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# INNOCENCE OF AGE ENDS WHERE HEINOUS CRIME BEGINS: A CRITICAL ANALYSIS OF JUVENILE CRIMINAL RESPONSIBILITY IN INDIA WITH COMPARATIVE PERSPECTIVES ON LEGAL REFORM AND REHABILITATION OF YOUNG OFFENDERS

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## ABSTRACT

The Juvenile Justice (Care and Protection of Children) Act, 2015 introduced the Section 15 preliminary assessment mechanism enabling children aged sixteen to eighteen accused of heinous offences to be tried as adults — a paradigm shift from the absolute age shield upheld by the Supreme Court in *Salil Bali v. Union of India* (2013). This article critically examines the constitutional, procedural, and institutional adequacy of this mechanism. Drawing upon Articles 14, 15(3), 20(1), 21, and 39(f) of the Constitution of India, 1950, doctrinal analysis of post-2015 Supreme Court and High Court jurisprudence — including *Shilpa Mittal v. State (NCT of Delhi)* (2020), *Gaurav Kumar v. State of Haryana* (2019), *Vijay Sharma v. Union of India* (2018), and *Abuzar Hossain v. State of West Bengal* (2012) — and comparative jurisprudence from the United States, United Kingdom, Germany, and South Africa, the article argues that the conditioned accountability model is constitutionally valid in principle but procedurally underdeveloped and dispositionally compromised in practice. The principal reform mandate lies not in tightening the adult trial mechanism but in transforming India's rehabilitation infrastructure. Concrete legislative, judicial, and institutional reforms are advanced, including amendment to Section 2(33), statutory sentencing guidelines, mandatory victim participation rights, and the adoption of evidence-based rehabilitation programming. The article concludes that legal reform and rehabilitative deepening are not competing objectives but inseparable elements of a constitutionally and humanely adequate juvenile justice response.

**Keywords:** Juvenile Justice; Heinous Offence; Section 15 Preliminary Assessment; Age of Criminal Responsibility; Rehabilitation; Constitutional Safeguards; Reformatory Jurisprudence; Comparative Juvenile Law.

## I. INTRODUCTION

The question of when a child ceases to be merely a child and becomes a criminal actor accountable under the full rigour of penal law is among the most vexed inquiries in jurisprudence. The tension between rehabilitative childhood justice and the societal demand for retributive accountability is most acute when a minor commits an act of extraordinary brutality. Contemporary legal systems acknowledge childhood as a period deserving protective insulation from the ordinary criminal process, with the Convention on the Rights of the Child<sup>1</sup> and the Beijing Rules<sup>2</sup> providing the international framework. India's response to this universal challenge is the Juvenile Justice (Care and Protection of Children) Act, 2015,<sup>3</sup> which introduced Section 15 the preliminary assessment mechanism enabling children aged sixteen to eighteen accused of heinous offences to be tried as adults.

This Section 15 mechanism was the legislative response to public outrage following the December 2012 Delhi gang-rape case,<sup>4</sup> in which one of the perpetrators was seventeen years and six months old at the time of offence and processed under the JJ Act 2000. The Supreme Court had earlier upheld the absolute age shield under the 2000 Act in *Salil Bali v. Union of India*,<sup>5</sup> and the 2015 Act represents a legislative departure from that position. This article argues that the conditioned accountability model is constitutionally valid in principle but procedurally underdeveloped and dispositionally compromised in practice; and that the principal reform imperative lies in the transformation of India's rehabilitation infrastructure.

Part II surveys the constitutional and statutory framework. Part III conducts the doctrinal analysis of Section 15 through post-2015 jurisprudence. Part IV examines the empirical reality of rehabilitation infrastructure. Part V draws comparative lessons from four foreign jurisdictions. Part VI advances concrete reform proposals. Part VII concludes.

## II. THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

### A. Constitutional Architecture

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<sup>1</sup>Convention on the Rights of the Child, G.A. Res. 44/25 (20 November 1989); India ratified on 11 December 1992.

<sup>2</sup>United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33 (1985).

<sup>3</sup>Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016) [hereinafter 'JJ Act 2015'].

<sup>4</sup>State (NCT of Delhi) v. Ram Singh & Ors., Sessions Case No. 114 of 2013, Saket Court; final judgment on adult perpetrators in *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, (2017) 6 SCC 1.

<sup>5</sup>*Salil Bali v. Union of India*, (2013) 7 SCC 705.

The Indian juvenile justice framework rests on four constitutional pillars: Article 15(3) authorising special provisions for children; Article 21 guaranteeing life and personal liberty as elaborated in *Maneka Gandhi v. Union of India*<sup>6</sup> to require just, fair, and reasonable procedure; Article 39(f) directing the State to ensure children's healthy development and protection from exploitation; and Article 14 subjecting all classifications to the test of rational nexus.<sup>7</sup> These provisions, read with Articles 51(c) and 253 governing reception of international law, establish both the protective architecture and the affirmative obligations of the State.

## **B. Statutory Architecture**

The substantive criminal law remains the Indian Penal Code, 1860<sup>8</sup> — with the codified doctrine of *doli incapax* in Sections 82 and 83 providing absolute immunity below seven years and rebuttable immunity below twelve years where sufficient maturity is absent. The procedural and dispositional regime is provided by the JJ Act 2015 as amended in 2021,<sup>9</sup> supplemented by the Juvenile Justice Model Rules, 2016.<sup>10</sup> The Code of Criminal Procedure, 1973, particularly Sections 357 and 357A,<sup>11</sup> provides the victim compensation framework. The institutional architecture comprises the Juvenile Justice Board (JJB), Child Welfare Committee (CWC), Children's Court, Observation Homes, Special Homes, and Places of Safety.

## **C. The Heinous Offence Innovation**

The most consequential feature of the 2015 Act is Section 2(33) defining a 'heinous offence' as one for which the minimum punishment is imprisonment of seven years or more. For a child aged sixteen to eighteen alleged to have committed such an offence, Section 15 requires the JJB to conduct a preliminary assessment of the child's mental and physical capacity, understanding of consequences, and the circumstances of the offence before deciding whether to refer the case to the Children's Court for adult trial. This conditioned accountability model is the institutional centrepiece of the 2015 Act's departure from the absolute age shield.

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<sup>6</sup>*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>7</sup>Constitution of India, 1950, Articles 14, 15(3), 20(1), 21 and 39(f).

<sup>8</sup>Indian Penal Code, 1860 (Act 45 of 1860), ss. 82, 83 and 84.

<sup>9</sup>Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (Act 23 of 2021).

<sup>10</sup>Juvenile Justice Model Rules, 2016, Rule 10A.

<sup>11</sup>Code of Criminal Procedure, 1973 (Act 2 of 1974), ss. 357 and 357A.

### III. DOCTRINAL ANALYSIS OF SECTION 15

#### A. The Definitional Anomaly: Shilpa Mittal

In *Shilpa Mittal v. State (NCT of Delhi)*,<sup>12</sup> the Supreme Court held that only offences carrying a minimum sentence of seven years or more qualify as 'heinous' under Section 2(33). Offences without a prescribed minimum, or with a minimum below seven years, are excluded even if the maximum extends beyond seven years. Section 304 IPC (culpable homicide not amounting to murder), prescribing a maximum of life imprisonment but no minimum of seven years, therefore falls outside the heinous category. The Court noted the anomaly but held that the remedy lay with the legislature squarely identifying the legislative reform required.

#### B. Procedural Adequacy of the Assessment

The Section 15 preliminary assessment is a quasi-judicial inquiry into the cognitive and volitional architecture of the juvenile at the time of the alleged offence. In *Gaurav Kumar v. State of Haryana*,<sup>13</sup> the Supreme Court held that the JJB is the sole competent authority for assessment, that the Children's Court has no power to re-conduct it, and that the Board's order must be supported by substantive reasons and is subject to appellate review. In *Vijay Sharma v. Union of India*,<sup>14</sup> the Bombay High Court held that a Board order that merely reproduces conclusions of expert reports without independent analysis fails the standard of reasoned administrative decision-making. Despite these jurisprudential standards, the 2015 Act and Model Rules do not prescribe statutory timelines, minimum qualifications for experts, or uniform assessment protocols producing systemic inconsistency across districts.

#### C. Age Determination and the Continuity of Juvenility

In *Pratap Singh v. State of Jharkhand*<sup>15</sup> (Constitution Bench), the Supreme Court held that the relevant date for determining juvenility is the date of the alleged offence, not the date of production before the authority or initiation of proceedings. In *Hari Ram v. State of Rajasthan*,<sup>16</sup> the Court applied this principle to hold that beneficial juvenile justice legislation must be given the broadest possible retrospective application. In *Abuzar Hossain v. State of*

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<sup>12</sup>*Shilpa Mittal v. State (NCT of Delhi)*, (2020) 2 SCC 787.

<sup>13</sup>*Gaurav Kumar v. State of Haryana*, (2019) 5 SCC 467.

<sup>14</sup>*Vijay Sharma v. Union of India*, (2018) CriLJ 3368 (Bombay HC).

<sup>15</sup>*Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551 (Constitution Bench).

<sup>16</sup>*Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211.

*West Bengal*,<sup>17</sup> a three-judge bench held that a claim of juvenility may be raised at any stage of proceedings, including for the first time before the Supreme Court. The benefit of doubt regarding age must always favour the accused. Juvenility is a continuous constitutional right that cannot be waived by procedural default.

#### IV. THE EMPIRICAL REALITY OF REHABILITATION INFRASTRUCTURE

The constitutional adequacy of Section 15 depends not only on the rigour of the assessment but on the substantive rehabilitative response that follows. The empirical record reveals a sustained failure on this dispositional front. In *Sheela Barse v. Union of India*,<sup>18</sup> the Supreme Court documented the detention of children alongside adult criminals in ordinary jails. Two and a half decades later, in *Bachpan Bachao Andolan v. Union of India*,<sup>19</sup> the Court documented widespread non-implementation of the JJ Act 2000 absence of functioning JJBs in many districts, inadequate special homes, and continued detention of children in adult jails. Most recently, in *Re: Exploitation of Children in Orphanages*,<sup>20</sup> the Court documented exploitation, abuse, and inhuman conditions in children's homes and orphanages across multiple states, and in *Re: Inhuman Conditions in 1382 Prisons*,<sup>21</sup> the Court reaffirmed the directions in *Sheela Barse* and *Bachpan Bachao Andolan*. Despite repeated judicial intervention spanning four decades, the implementation gap has not closed.

The National Crime Records Bureau's *Crime in India 2022*<sup>22</sup> reveals that the majority of juvenile offenders are aged sixteen to eighteen at apprehension and that the overwhelming majority come from economically disadvantaged backgrounds. The National Commission for Protection of Child Rights' inspection records<sup>23</sup> document persistent deficiencies: overcrowding beyond sanctioned capacity; absence of qualified counsellors, social workers, and psychologists; inadequate educational and vocational programmes; poor sanitation, nutrition, and medical care; and absence of individual case management plans. The international comparative literature, particularly from the United States, consistently demonstrates that adult prosecution increases rather than reduces juvenile recidivism. The deterrence justification for the Section 15 transfer mechanism is therefore empirically

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<sup>17</sup>Abuzar Hossain @ Gulam Hossain v. State of West Bengal, (2012) 10 SCC 489.

<sup>18</sup>Sheela Barse v. Union of India, (1986) 3 SCC 596.

<sup>19</sup>Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1.

<sup>20</sup>Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, (2017) 9 SCC 737.

<sup>21</sup>Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700.

<sup>22</sup>National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, 2023).

<sup>23</sup>National Commission for Protection of Child Rights, Annual Report 2021–22 (2022).

unsupported. The case for reform lies in the rehabilitative, not the retributive, register.

## V. COMPARATIVE PERSPECTIVES

**United States.** The US Supreme Court trilogy of *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*<sup>24</sup> — abolishing the juvenile death penalty, prohibiting juvenile life-without-parole for non-homicide offences, and prohibiting mandatory life-without-parole for juvenile homicide offenders — establishes youth as a constitutional mitigating factor and requires individualised sentencing. *In re Gault*<sup>25</sup> earlier extended due process protections to juvenile defendants. The 1990s American expansion of transfer statutes, however, produced higher recidivism and serves as a cautionary lesson against any further expansion of the Indian transfer mechanism.

**United Kingdom.** England and Wales abolished the rebuttable presumption of *doli incapax* for ages 10–13 by Section 34 of the Crime and Disorder Act 1998,<sup>26</sup> producing the lowest age of criminal responsibility in Western Europe — a cautionary example, not a model. The UK Sentencing Council’s Definitive Guideline on Sentencing Children and Young People<sup>27</sup> provides a structured framework for individualised consideration of youth as a mitigating factor; this is a template India should adopt.

**Germany.** The German Juvenile Courts Act (*Jugendgerichtsgesetz*) of 1953<sup>28</sup> applies the juvenile justice framework to all offenders below eighteen regardless of offence gravity. There is no provision for adult trial of juveniles. The relative success of the German model, measured by low recidivism rates, demonstrates that rehabilitation infrastructure rather than transfer to adult courts determines outcomes.

**South Africa.** The Child Justice Act 75 of 2008<sup>29</sup> establishes a mandatory preliminary inquiry encompassing age determination, capacity assessment, diversion evaluation, and exploration of restorative options — a model of considerably greater rigour than the Indian Section 15

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<sup>24</sup>*Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

<sup>25</sup>*In re Gault*, 387 U.S. 1 (1967).

<sup>26</sup>Crime and Disorder Act 1998 (UK), s. 34; *R v. T (A Juvenile)* [1999] QB 566.

<sup>27</sup>Sentencing Council of England and Wales, *Sentencing Children and Young People: Overarching Principles Definitive Guideline* (effective June 2017).

<sup>28</sup>*Jugendgerichtsgesetz* (Juvenile Courts Act, Germany), 1953 as amended.

<sup>29</sup>Child Justice Act 75 of 2008 (South Africa).

assessment.

The comparative synthesis points to a single conclusion: the most successful juvenile justice systems combine rigorous procedural safeguards at the assessment stage with substantial investment in rehabilitative infrastructure at the dispositional stage.

## VI. REFORM PROPOSALS

### A. Legislative

(i) Section 2(33) should be amended to supplement the seven-year minimum threshold with a judicial discretion clause enabling inclusion of offences of extreme gravity (such as Section 304 IPC) where the conduct involves premeditated, brutal, or sustained violence addressing the anomaly identified in *Shilpa Mittal*.

(ii) Section 15 should be amended to prescribe statutory timelines for assessment completion; minimum qualifications for expert witnesses; a uniform statutory assessment protocol incorporating standardised psychometric instruments and developmental neuroscience consistent with Roper-Graham-Miller; and detailed reasoned-order requirements consistent with *Vijay Sharma*.

(iii) Section 19 should be amended to introduce statutory sentencing guidelines for Children's Courts trying juveniles as adults mandatory pre-sentencing developmental reports, presumption in favour of the minimum sentence, prohibition of life imprisonment without periodic review, individual rehabilitation plans, and sentence review at intervals not exceeding three years.

(iv) Statutory victim participation rights should be introduced information, victim impact statements, restorative process opt-in, and streamlined Section 357A compensation.

### B. Judicial

(i) The Supreme Court should issue comprehensive Article 142 guidelines prescribing procedural standards for Section 15 assessments, evidentiary weight of developmental neuroscience, and minimum reasoned-order content, building on *Gaurav Kumar*.

(ii) A consolidating Supreme Court judgment should develop sentencing principles applicable

to juvenile offenders tried as adults, drawing on Articles 14, 21, and 39(f), the JJ Act 2015 framework, and the Roper-Graham-Miller comparative jurisprudence.

(iii) High Courts should exercise active supervisory jurisdiction over conditions in observation homes, special homes, and places of safety, monitoring compliance with the directions in *Bachpan Bachao Andolan* and *Re: Exploitation of Children in Orphanages*.

### **C. Institutional**

(i) Establishment of a National Commission on Juvenile Justice with a mandate encompassing empirical research, policy evaluation, capacity-assessment standardisation, and inter-ministerial coordination.

(ii) Substantial increase in budgetary allocation for rehabilitation infrastructure designated places of safety in every state, qualified psychologists and social workers for all JJBs, and adoption of evidence-based programme models drawing on the German Jugendstrafe system.

(iii) NALSA-led specialist legal aid panels for mandatory representation in Section 15 proceedings.

(iv) National longitudinal recidivism database maintained by the NCRB to enable evidence-based policy evaluation.

## **VII. CONCLUSION**

The absolute age-based immunity from adult criminal accountability is neither philosophically compelled nor constitutionally required. The presumption of developmental incapacity is empirically founded and normatively important, but it is a rebuttable presumption, not an infeasible right. Where a rigorous, scientifically grounded, and procedurally fair assessment establishes adult-equivalent capacity in a juvenile above sixteen who has committed a heinous offence, the conditioned withdrawal of juvenile status is constitutionally valid and normatively defensible. The Section 15 mechanism, in concept, is sound.

In implementation, however, it is procedurally underdeveloped and dispositionally compromised. The procedural inadequacies identified in *Vijay Sharma* and *Gaurav Kumar* are remediable through legislative amendment specifying assessment protocols, expert

qualifications, and timelines. The definitional anomaly identified in *Shilpa Mittal* is remediable through legislative amendment to Section 2(33). The dispositional inadequacies documented across four decades of Supreme Court jurisprudence from *Sheela Barse* through *Bachpan Bachao Andolan* to *Re: Exploitation of Children in Orphanages* are remediable only through substantial institutional investment in rehabilitation infrastructure.

Legal reform and rehabilitative deepening are not competing objectives but the two essential and inseparable elements of a constitutionally and humanely adequate juvenile justice response. The innocence of age is precious, hard-won by centuries of legal progress, and deserving of every protection that a just society can afford. It is precisely because that innocence is so precious that its invocation must be genuine, its assessment rigorous, and its institutional complement rehabilitation genuinely resourced and professionally delivered. The reform agenda outlined here is an attempt to give that imperative legislative, judicial, and institutional content.