
JUVENILE JUSTICE IN INDIA: EVALUATE THE EFFECTIVENESS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

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ABSTRACT

The Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted to address the rising concerns regarding juvenile crime in India, particularly following high-profile cases like the Nirbhaya incident. This legislation allows for juveniles aged 16 to 18 who commit heinous crimes to be tried as adults, marking a significant shift from previous laws that offered more lenient treatment for minors. The Act emphasizes a child-centric approach, aiming for rehabilitation rather than punishment while establishing frameworks such as Juvenile Justice Boards and Child Welfare Committees.

Despite its intent, the Act has faced criticism for provisions like the judicial waiver system and age determination processes, which some argue compromise its rehabilitative goals. This ongoing legislative evolution reflects India's efforts to balance justice with the rights and well-being of juveniles within the legal system.

Introduction

Nelson Mandela once said, "There can be no keener revelation of a society's soul than the way in which it treats its children."¹

Punishment of juveniles in India was a part Hindu and Muslim law till the British changed it. Their parents or relatives had to take the entire responsibility for children's misconduct. The British was much more proactive for juvenile delinquency after passing the Apprentices act 1850 for the offenders from the age of 10 up to 18 years of age and Indian penal code 1860 set a definite age limit for criminal responsibility excluding children who are below seven years of age. The old Code of Criminal Procedure was enacted in 1861. The change was reformatory in nature whereby the cases relating to the persons below 15 years of age, were to be tried separately and the punishments that were awarded were more in the nature of reformation rather than punishment, this was furthered by the Reformatory School Acts of 1876 and 1897. The young offenders are sent to reformatory schools rather than imprisonment with more importance being given to reform. After independence constitutional mandates provided in Article 15(3), 21, 24, 39(e) & (f) and 47² were made mandatory focusing that juveniles need special care and protection. In 1960's the Children's Act came as legislation to introduce the observation homes and the juvenile courts which paved the way to centralization of juvenile welfare and education. This paved the way to the formulation of the 1986 Juvenile Justice Act of India which included the UN's Beijing Rules and emphasized on rehabilitation rather than punishment. Act of Juvenile Justice 2000³, took the codification of care, protection, and child friendly system to new heights for ensuring India's compliance with United Nation Convention on Rights of Child. The goal of the current system is complete rehabilitation and the Juvenile Justice Boards and Child Welfare Committees are used as mechanisms towards achieving that goal.

The 21st century has faced a lot of challenges. With technological advancements along with the breaching of new heights in almost all spheres of life, juvenile delinquency is one such challenge. Nowadays, children are maturing at a faster rate than they were ten or twenty years ago. This means that they are getting more exposure to the outside world and also want to experiment more. The problem does persist in first-world countries but not at a large scale like

¹ Nelson Mandela, Former President of South Africa.

² Constitution of India, 1947, Article 15(3), 21, 24, 39(e), (f), and 47.

³ Juvenile Justice Act 2000.

it does in third-world nations. Slowly and gradually, juveniles are also indulging in illicit activities and this is causing harm to society. In order to curb these illegal acts, the government enacted rules and regulations. A variety of factors can contribute to a juvenile indulging in such activities.

They are a culmination of social as well as economic factors. Some of them are lack of funds, improper education, unemployment, emotional tensions, familial problems, deficiency of moral values, substance abuse, etc.

Historical Background of the Juvenile Justice system in India.

In the pre-independence era, there was strong support for the rehabilitation of children below the age of 18 who were showing deviant behaviour or were convicted for crimes. The Apprentices Act of 1850 was one of the first laws laid down which said that the children who were between the ages of 10-18 and were convicted for crimes in courts of law be provided with training and guidance as part of their process of rehabilitation.⁴ This is the first evidence of care of juveniles in the pre-independence era where a child convicted could be placed under the guardianship of the Magistrate and be placed under an apprenticeship for training as part of his or her rehabilitation. The Indian Penal Code of 1860 (82 now 20) exempts children under the age of seven years from any criminal responsibility.⁵ The code (83 now 21) also exempts children between the age of seven years and twelve years from any criminal responsibility because they have not attained sufficient maturity of understanding the consequences of their acts. These two provisions of the Indian Penal Code provide protection to children and juvenile delinquents from any and all criminal responsibility as they are seen as immature children who do not know the consequences of their acts. In the year 1897, a landmark legislation was passed by the government which dealt with the problem of juvenile delinquency in India which was called the Reformatory Schools Act of 1897. This act empowered the courts to detain juvenile delinquents in reformatory schools determined for that very purpose, for a period of three to seven years but after they had attained the age of 18 years, they could not be kept in those reformatory schools any longer as per the law. In the post-independence era of India, the Juvenile Justice system of India has been structured around the constitutional mandate which provides for special laws to be made for the welfare of children. This mandate manifests itself

⁴ Section 3, The Apprentices Act, 1950

⁵ Section 82, Indian Penal Code, 1860

in the form of Articles 15 (3), 24, 39 (e), 39 (f) and Article 45 of the Indian Constitution⁶. Another important article in the constitution of India with regard to upliftment of the rights of children is Article 21⁷ which talks about the right to life and in the subsequent years since the Constitution came to be adopted, this article has been expanded to include many other rights that a person would need to live a satisfying life. Apart from the constitutional provisions, India is also party to International Conventions that deal with the rights of child such as the UN Convention on the Rights of the Child also known as CRC and the UN Standard Minimum Rules for Administration of Juvenile Justice also known as Beijing Rules and India is obligated to form its juvenile justice system in conformity to these covenants. **Prior** to the new Juvenile Justice Acts, there existed the Children's Act of 1960 that aimed at protecting the interests and rights of children especially those who were delinquents. The act provided for the care, treatment, rehabilitation and development of a child. But with the developments in the international community, especially with the formation of the Beijing Rules and CRC, Indian lawmakers had to come up with new legislation to keep pace with the international response to the issue of juvenile justice and they came up with a new and progressive piece of legislation. Subsequently in the year 1986, the Juvenile Justice Act was passed which was replaced by the Juvenile Justice Act, 2000. Recently, the Parliament passed the Juvenile Justice Act, 2015⁸ which replaced the prior legislation of the year 2000. This change in the law governing juvenile justice system came in the backdrop of the frightful incident of Nirbhaya Delhi Gang Rape Case which sparked a lot of controversy and debate with the legal fraternity and social groups. The main point of the controversy was that one of the accused in the case was just six months short of attaining the age of majority, i.e., 18 years. The involvement of that accused in such a heinous crime which shook the social backbone of the entire country prompted the Indian lawmakers to formulate a new legislation to deal with such cases. Thus, the Indian Parliament in the year 2015 passed a new act known as Juvenile Justice (Care and Protection of Children) Act, 2015 which is the law governing juveniles to date. One of the changes made in this act of 2015 is that if a child between the age of 16 and 18 commits a heinous offence, then he may be tried as an adult.

⁶ Constitution of India, 1947, Article 15(3), 24, 39(e), (f), and 47.

⁷ Constitution of India, 1947, Article 21.

⁸ Juvenile Justice Act, 2015

Impact of the Juvenile Justice Act 2015 on Rehabilitation and Reformation of Juveniles in Heinous Offenses.

The Juvenile Justice Act, of 2015 was enacted to replace the Juvenile Justice Act, of 2000. The 2000 Act was considered outdated and inadequate to deal with the changing needs of children in conflict with the law. The new Act aims to provide a more child-friendly approach to dealing with children in conflict with the law and to ensure that their best interests are always given priority.

The Juvenile Justice (Care and Protection of Children) Act, of 2015 is a significant legislation in India aimed at providing care, protection, and rehabilitation to children in conflict with the law or in need of care and protection. The Juvenile Justice Act, 2000 was enacted with the objective of providing a comprehensive legal framework for the protection and rehabilitation of children in conflict with the law. However, the Act had several shortcomings, including inadequate provisions for rehabilitation, lack of clarity on the definition of 'juvenile', and limited scope for involvement of civil society organizations in the implementation of the Act.

In response to these shortcomings, the Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted with several new provisions aimed at addressing the gaps in the earlier legislation. The Act introduced a more comprehensive definition of 'juvenile', increased the scope for rehabilitation of children, and provided for the establishment of child-friendly juvenile justice systems. It represents a step towards a more balanced approach. It acknowledges the potential for change in young offenders and the need for a justice system that is both fair and compassionate. By continuing to refine this system, India can strive towards a society where justice is tempered with mercy, and every child is given the opportunity to build a better future.

The Act categorizes children into distinct groups: those in need of care and protection, those in conflict with the law, and those in institutional care. This categorization is crucial as it ensures that the specific needs and circumstances of each group are addressed through tailored support measures. The primary objective of the Act is to safeguard the rights of children and promote their well-being through appropriate legal and social interventions.

One of the driving forces behind the introduction of the 2015 Act was the noticeable increase in the number of crimes committed by juveniles aged 16 to 18, including serious offences such

as rape. This surge in juvenile crime led to the formulation of a law that is perceived as more retributive than reformatory, raising several critical questions and debates.

The new law is considered retributive primarily due to its provisions for juveniles who commit heinous crimes, defined as offences punishable by seven years or more. Under this legislation, juveniles aged 16 to 18 who are accused of such crimes are to be tried as adults but within the juvenile justice system. If found guilty, these juveniles are initially sent to a safe place until they reach the age of 21, after which they are transferred to an adult prison. This transition is overseen by the children's court, ensuring that the benefit of being treated as a child is not extended to minors found guilty of heinous crimes.

The law also stipulates the involvement of the Juvenile Justice Board (JJB) in determining whether a juvenile should be tried as an adult. This includes an assessment of the juvenile's mental and physical capacity to commit the offense and their ability to understand its consequences. Yet, the effectiveness of such assessments often comes under scrutiny, especially when the decisions involve nuanced psychological evaluations. The role of societal perception and media coverage cannot be overstated. High-profile cases often garner intense media attention, influencing public opinion and sometimes even judicial outcomes. The portrayal of juveniles in such cases can sway the narrative, pushing for either more lenient or harsher treatments.

International comparisons offer a broader perspective on how different societies handle juvenile justice. In the United States, for instance, the system is more flexible, with some states allowing juveniles as young as 14 to be tried as adults for serious crimes. In the UK, the juvenile courts focus heavily on rehabilitation, reserving severe penalties for the most serious offenses.

Rehabilitation remains a cornerstone of the juvenile justice system, aiming to reintegrate young offenders into society as productive members. However, the infrastructure and resources to support such rehabilitation are often lacking. Juvenile homes are frequently criticized for their poor conditions and inadequate staffing, which can undermine the rehabilitative efforts. Moreover, the implementation of the Juvenile Justice Act varies widely across different states and districts in India, leading to inconsistencies in how juvenile offenders are treated. This disparity can result in unequal justice, where the fate of a juvenile offender might hinge more on geographic location than the specifics of their case. The Juvenile Justice Act also identifies the role of child welfare committees (CWCs) in protecting children in need of care

and protection. These committees are tasked with ensuring that vulnerable children receive the necessary support and intervention.

In examining the broader implications of juvenile justice, it's essential to consider the societal factors that contribute to juvenile delinquency. Issues such as poverty, lack of education, and family instability can all play significant roles in pushing young people towards criminal behavior. Addressing these root causes is crucial for any meaningful reform of the juvenile justice system. Programs aimed at community support and integration can provide a safety net for at-risk youth, helping to steer them away from criminal activity. Initiatives like mentorship programs, vocational training, and educational support can make a substantial difference in the lives of young offenders, offering them a path to redemption and reintegration.

The ongoing debate around juvenile justice in India reflects the broader struggle to balance retribution and rehabilitation. While the law provides a framework for dealing with juvenile offenders, its implementation and interpretation continue to evolve, shaped by societal values, judicial decisions, and the ever-changing landscape of youth crime. Too strict a law can be detrimental to society. High-profile cases and the resulting public outrage often lead to harsher laws, but these laws can also lead to false accusations and extortion. Stricter laws may result in younger individuals being sent to jail, which is not beneficial for society in the long run. Moreover, there's a need to reflect on societal biases. The ongoing debate is crucial for developing a system that not only punishes but also rehabilitates, offering hope and a second chance to those who need it most.

The Juvenile Justice (Care and Protection of Children) Act, 2015 represents a reformatory approach toward handling juveniles in conflict with the law. The Act aims to balance the need for rehabilitation and reformation of minors with the requirement of accountability for more severe crimes.

Balancing Rehabilitation and Public Safety for Juveniles Aged 16-18 in Heinous Offenses.

Juvenile justice care and protection of children act 2015 is a sharp bend in the Indian change toward juvenile offenders especially 16 to 18 years of age accused of heinous crimes. Like all other legislation, this aims at addressing the need to guard basic rights of juvenile offenders as well as meet the interest of public safety. It permits the direct filing of charges against juveniles who commit serious offences that attract a sentence of seven years or more as adults; this shows

that there is some understanding that some persons who act negatively harm others and deserve to be held responsible.

Nevertheless, the Act is based on the principles of the desire to support the offender's rehabilitation rather than focus on punishment. It accepts the fact that they are still in the developmental stage. In implementing the Individualized Care and Support Services, the Act seeks to contain delinquent behavior by supporting those services that seek to tackle the root cause of the behavior in the first place. The places of Child Welfare Committees and Juvenile Justice Boards are important in assessing every case through age, maturity and possibility of change to make rehabilitation a main procedure.

However, this dual approach also presents challenges. The provision for trying certain juveniles as adults raises concerns about fairness and the effectiveness of rehabilitation efforts. Additionally, societal stigma against juvenile offenders can hinder their reintegration into society post-rehabilitation. Despite these challenges, the Act's framework reflects an attempt to balance the need for public safety with the recognition of juveniles' rights, aiming to serve both justice and societal interests effectively.

India's legal framework reflects an ongoing struggle to balance rehabilitation and public safety. The Juvenile Justice (Care and Protection of Children) Act, 2015 attempts to address this by categorizing offenses committed by juveniles into three categories: petty, serious, and heinous. The act provides for different treatment of juveniles based on the nature of the offense, with a greater emphasis on accountability in cases of heinous crimes.

The term 'heinous offences' as per Section 2(33) of the Juvenile Justice Act 2015 refers to crimes for which the Indian Penal Code, 1860 now Bharatiya Suraksha Sanhita 2023, or any other law in force instructs a minimum sentence of seven years in jail imprisonment or more.

For petty and serious offenses, the focus remains on rehabilitation, with juveniles typically being sent to special homes where they receive education and vocational training. However, in the case of heinous crimes, the Juvenile Justice Board (JJB) has the discretion to transfer the case to an adult court if the juvenile is aged between 16 and 18 and is deemed capable of understanding the nature and consequences of their actions.

This provision can be seen as controversial, as critics argue that it undermines the rehabilitative goals by contending that transferring juveniles to adult courts exposes them to the harsh realities of the adult criminal justice system, which can hinder their chances of rehabilitation and reintegration into society. On the other hand, supporters argue that it is necessary to ensure that justice is served, particularly in cases where the crime is of a particularly serious nature as it also protects the public at large. For instance, one of the offenders in the Delhi gang rape case who was 17 years old was found guilty on the charges of rape and murder and was tried as a juvenile, sentenced to three years in a reform facility - the maximum sentence available to a juvenile.

The High Court of Madhya Pradesh in a case stated that, “court is once again at pains to observe that juveniles in this country are being treated rather too leniently, and that the legislature, to the utter misfortune of the victims of such crimes, has still not learnt any lessons from the horrors of Nirbhaya”.⁹

They argue that a purely rehabilitative approach may undermine the rule of law and fail to provide justice for victims.

Under the BNS, Rape (64, 65, 70(2) of BNS) or Murder (101 of BNS) are seen as serious crimes that there is no scope for any leniency on account of age of the criminal. That is, punishment should be according to crime, no other factor like adult or juvenile should be relevant as the rapist does not see the age of the victim; his age should not be considered while deliberating on the punishment. If a child is physically and mentally mature enough to understand and commit rape, he should be considered mature for punishment also. Law should be fair to the victim for whom it is a lifelong trauma as she has to live with social stigma, fear, depression, guilt and negativity all her life. Culprit will use this factor as an escape route. If not punished now, seeds for more severe crimes will be sowed. Children are maturing fast; the law must also evolve. It is not right to argue that a juvenile who committed the crime does not know what he is doing, and that the crime is committed under impulse, or under influence of media or simply out of curiosity. Such arguments amount to making things simpler for the culprits. Wrongdoers will always try to find a loophole in law to escape from their liability and it is necessary that

⁹ Mehul Malpani, The Hindu, “ No lesson learnt from Nirbhaya, juvenile accused being treated ‘too leniently’: Madhya Pradesh HC”

<https://www.thehindu.com/news/national/madhya-pradesh/juvenile-accused-treated-too-leniently-in-india-no-lessons-learnt-from-nirbhaya-case-high-court/article68650940.ece>

all the people who have committed an offense be punished to know how their actions have affected the victim as well as the society at large.

It is not by instinct; rather it must have taken time and thought to commit the crime. For instance, if a juvenile tries to rape a child who is just two years old, will the court still let the accused walk away as a free man with no repercussions or will they ask him to write an essay? Is raping a child of only two years not considered inhumane? The Supreme Court on 2nd January 2025, in a case of rape and murder of a 10 year old girl in Uttar Pradesh let the boy walk freely as he was a juvenile. What is the guarantee that the boy will not commit any more offences?

According to the National Crime Records Bureau (2001-2018), India has experienced a significant increase in sexual assaults. The total number of reported rapes rose from 16,075 in 2001 to a peak of 38,947 in 2016, before slightly declining to 33,356 in 2018. Over these years, the percentage of rapes committed by juveniles also showed a gradual increase, starting at 2.48% in 2001 and reaching a high of 5.59% in 2013, before stabilizing around 4.6% by 2018. This trend highlights not only the growing prevalence of sexual violence but also raises concerns about the involvement of young offenders in such crimes.¹⁰

Effectiveness of the Juvenile Justice System Under BNSS 2023

The Bharatiya Nyaya Suraksha Sanhita 2023¹¹, that is a replacement for Criminal Procedure Code.

In light of the BNSS 2023 provision for expedited trials, the effectiveness of the current juvenile justice system in ensuring timely justice while preserving due process is a complex issue.

On one hand, the juvenile justice system often faces criticism for its delays, primarily due to procedural backlogs and insufficient specialized infrastructure. The expedited trial provisions aim to address these delays, ensuring that juveniles do not languish in detention for extended

¹⁰Dandona, R., Gupta, A., George, S., Kishan, S. & Kumar, G.A. (2022) 'Administrative data deficiencies plague understanding of the magnitude of rape-related crimes in Indian women and girls', BMC Public Health, 22(1), p. 788. doi: 10.1186/s12889-022-13182-0.

¹¹ Bharatiya Nyaya Suraksha Sanhita, 2023.

periods while awaiting adjudication. This aligns with the principle of the "best interests of the child," promoting a quicker resolution to their cases.

However, the challenge lies in maintaining due process during these expedited proceedings. The juvenile justice system is founded on the principle of rehabilitation rather than punishment, which necessitates a thorough examination of each case, including the child's background, psychological state, and the circumstances surrounding the offense. Rapid proceedings could risk overlooking these critical aspects, potentially compromising the child's developmental needs and the root causes of their behavior.

Moreover, many Juvenile Justice Boards (JJBs) and Child Care Institutions (CCIs) are already struggling with resource constraints, which could impede their ability to provide the necessary support and rehabilitation services under tighter timelines. Therefore, while the intention behind the BNSS 2023 provision is to enhance efficiency, it is crucial to ensure that these expedited trials do not undermine the essential principles of due process and rehabilitation that are vital for the juvenile justice system. Balancing timeliness with thoroughness is key to achieving a fair and effective system for juveniles.

Significant changes have been made from the Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS). Now, FIRs can be filed through electronic communication. If an e-FIR is filed, the victim must visit the police station within three days. Under the new laws, the court must frame charges within 60 days from the first hearing date. Delivering a verdict within a maximum of 45 days after the final hearing is mandatory. To expedite investigations and decisions, emails and mobile messages will also be accepted as evidence. This will prevent delays in court proceedings, ensuring quicker case resolutions. The new laws introduce the provision for filing a zero FIR. Reports can now be filed at any police station, and the FIR will be transferred to the jurisdictional police station within 15 days.

Conclusion

The juvenile justice system in India, governed by the Juvenile Justice (Care and Protection of Children) Act, 2015, is designed to prioritize rehabilitation over punishment for young offenders. However, this approach has faced significant criticism, particularly in cases involving heinous crimes. The recent Pune crash, where a juvenile was involved in a fatal accident, has reignited debate about the system's effectiveness in handling serious offenses.

Critics argue that the system's focus on rehabilitation does not adequately address the gravity of heinous crimes such as murder, rape, and manslaughter. They contend that juveniles often receive lighter sentences compared to adults for similar offenses, leading to public outcry and a perception that justice is not served. The provision allowing juveniles aged 16-18 to be tried as adults for heinous crimes is inconsistently applied, and there are calls for a more nuanced approach to assessing the maturity and culpability of younger offenders.

Skepticism also surrounds the effectiveness of rehabilitation programs, which are often under-resourced and poorly implemented. High recidivism rates among juveniles suggest that current measures may not sufficiently deter future crimes.

The implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015, has been significantly hindered by systemic deficiencies, particularly in age determination and judicial waiver processes, which compromise its rehabilitative goals. Research indicates that while the legislative framework is robust, there are substantial gaps in execution, including infrastructural inadequacies, procedural delays, and a lack of trained personnel. These issues have led to inconsistent applications of the law across different states, raising concerns about the effectiveness of the Act in protecting and rehabilitating juveniles. Furthermore, the judicial waiver process has been criticized for its ambiguity, allowing for arbitrary decisions by Juvenile Justice Boards. However, the recent amendments introduced in the 2023 Bill are expected to address these challenges by enhancing protections for juveniles and streamlining processes related to age determination and judicial waivers. These changes aim to improve coordination among stakeholders and ensure that the juvenile justice system operates more effectively, ultimately promoting rehabilitation rather than punishment. Thus, while the 2015 Act faced significant implementation challenges, the 2023 amendments represent a crucial step toward strengthening juvenile justice in India.

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