
RATIONALIZATION OF A PUNITIVE APPROACH TO ADOLESCENT INDICTMENT IN THE SCENARIO OF HIGH RAPES AND MURDERS: JUVENILE JUSTICE ACT, 2015

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ABSTRACT

This article examines the justification for the JJ Act (Care and Protection of Children) of 2015, which gives a new dimension to the criminal culpability of juvenile delinquents for their involvement in heinous and serious crimes. After a brief introduction, this article goes on to explain what the terms "juveniles" and "juvenile delinquencies" signify, as well as the major factors that contribute to this category of crime. It also aims to shed some light on how the concept of juvenile justice developed and related to the concept of *parens patriae* and how it is evolving in India. Since the JJ Act of 2015 repealed the JJ Act of 2000, the article provides a fair comparison of the two to understand how one differs from the other and what additional features it contains. It then goes on to examine the circumstances in which the JJ Act of 2015 was passed, as well as the grounds for it. Various case laws have also been cited in order to give it a practical edge. Since the act of 2015's retributive approach to juveniles has elicited a mixed response of criticism and praise, it has been demonstrated that India is not the only country to take such a stance in the face of horrific crimes, and the article sheds light on the global trend. After that, a modest attempt is made to conduct a critical analysis and appraise the grey areas where some considerations may be considered. The article is then ended by examining the significance of the relevant Act, as well as many objections and the arguments for them.

Keywords: Juvenile Justice Act, Juveniles, Juvenile delinquency, heinous offences, *parens patriae*.

“We as a Nation have failed the juvenile justice system, which, in turn, is failing us.”¹ -the Federal Interdepartmental Working Group.

Introduction

Children, as we perceive, are a nation's prospective generation, the cornerstones of a brighter future. However, if these cornerstones are shattered, the entire nation will crumble. Conversely, when a child becomes rebellious, it is ordinarily the responsibility of the parents, and in the event of public offences, the State, to set them right. Recently we have witnessed the upsurge of egregious perpetrations by youths of the Nation. The Asifa Bano Rape case in Kathua, Kashmir in India one being such where a minor was reportedly engaged in such horrendous atrocities. The role of Juvenile Justice (Care and Protection of Children) Act, 2015 and its impact on juvenile delinquency comes into play in this setting. In this paper, we will examine the justification for the legislation in various national and international settings under different paradigms, as well as its consequences and flaws that need to be addressed in light of rising atrocities in India, including rapes and murders.

Juvenile Delinquency

The term "juveniles" comes from the Latin term "juvenilis," which meaning "young."² As a result, the term "juveniles" conjures up images of vulnerable people. The subject of who can be placed under the jurisdiction of minors is frequently raised. On a global scale, the age restriction for the above question has been set between 16 and 18 years of age, according on the laws of each country. In line with the aforesaid trend, India has implemented a criterion for determining the determining age factor, which has been set at 18 years of age. According to section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015, “juvenile means a child below the age of eighteen years.”³ Delinquency on the other hand refers to the practices of criminality. So, if we read the above two meanings together, we can conclude that juvenile delinquency refers to criminality among children. The term juvenile delinquent corresponds to the term “child in conflict with law” under section 2(13) of the said Act which

¹ Interdepartmental Working Group on Violence (1994). Violence: Report to the President and Domestic Policy Council. [online] Washington, DC. Available at:

<https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/action/sec2.htm> [Accessed 8 Nov. 2021].

² www.dictionary.com. (2019). the definition of juvenile. [online] Available at:

<https://www.dictionary.com/browse/juvenile>.

³Juvenile Justice (Care and protection of Children), Act of 2015. Section 2(35).

says “child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence”⁴. However, the concept of crime as it relates to minors is a little more complicated and differs depending on where you are in the world. In some states, what is considered a crime in one jurisdiction may not be considered a crime in another. “In the United States, for example, skipping school is considered a delinquent behaviour; yet, in India, these acts are not considered delinquent; in England, a boy under the age of 14 cannot be found guilty of a sexual offence”⁵. The nature and sources of juvenile delinquency in India are vandalism, larceny, filching, street peddling, and breaking law.

Factors behind juvenile delinquency: There are several catalyst forces to the delinquent behaviour amid juveniles. I have attempted to instance a few factors below:

1) Deranged Childhood: This sub-head encompasses a variety of sub-concepts such as immoral parents, shattered families as a result of divorce or parents living apart for various reasons, and so on. Parents who are hesitant to follow laws and social standards and engage in unlawful activities and other offences frequently set a poor example for their children. Children from such backgrounds are frequently denied access to a wide range of life chances and are forced to live in isolation, leading to frustrations and violence.

2) Negative Influence: The minds of young adolescents are often delicate and easily influenced because they have poor judgement, and one can easily mold their minds to fulfil their personal agendas. Furthermore, social pressure acts as a motivator for young people to join gangs. For example, when these young people are unable to meet academic and other social standards, they frequently seek an easier way to earn money and, as a result, end up engaging in criminal activity.

3) Cases of child sexual revictimization to become offenders⁶: Victims of pedophilia

⁴ Juvenile Justice (Care and protection of Children), Act of 2015. Section 2(13).

⁵ D. MURUGESAN (2014). A Study of the Causal Factors Leading Juveniles to be in Conflict with the Law in Tamil Nādu: Sociological Perspective, [online] p.1. Available at: <https://bprd.nic.in/WriteReadData/userfiles/file/201608020527404923032ExecutiveSummary.pdf> [Accessed 4 Nov. 2021].

⁶ McGrath, S.A., Nilsen, A.A. and Kerley, K.R. (2011). Sexual victimization in childhood and the propensity for juvenile delinquency and adult criminal behaviour: A systematic review. *Aggression and Violent Behaviour*, 16(6), pp.485–492.

not only engage in covered criminality, but they also develop a proclivity for other disruptive behavior. Chandy, Blum, and Resnick (1996) discovered that a substantial percentage of teenagers who had a history of sexual abuse not only cultivate an inclination towards petty crimes such as theft, vandalism, affrays, and other immoral activities, but also crimes that are now of grave concern to society as a whole such as murder, rape, and man-slaughter. According to reports, these young offenders recurrently commit violent acts to the juncture where the victim requires immediate medical attention⁷.

4) Addiction to narcotics: This is a growing concern for society at the moment. Adolescents frequently indulge in the use of illegal substances. Consumption of these drugs or other legal substances but obtained in illegal manner is frequently used as a motivator for juveniles to commit crimes. The following trends are of particular concern at the moment: first, adolescents are consuming even stronger substances than in the past, and second, the age range during which juveniles consume drugs is younger.

5) Media, the Internet, and Television: Today's media is diverse, covering a wide range of topics. On a daily basis, the news has featured violence, crimes, and law-breaking. In addition, crime is shown in movies and serials. Despite the fact that the goal is to convey a positive message to the public, many people are drawn to the negative components of movies and serials. Also, numerous cybercrimes such as photograph morphing, cyber-stalking, and so on have been perpetrated via internet access. These elements, too, play a significant role in motivating minors to conduct a variety of crimes.

Origin

Juvenile offender laws and judicial procedures have an age long history, stretching back thousands of years. Fugitives, children who rebelled their parents, etc were some that found a place in the Hammurabi's Code, which was penned nearly at 2270 B.C.). Also, Roman jurisprudence and canon sanctions introduced the idea of "age of accountability" to distinguish between juveniles and adults. The Talmud established conditions in which immaturity should

⁷ J. Hussey, J. Chang and J. Kotch (2006). Child Maltreatment in the United States: Prevalence, Risk Factors, and Adolescent Health Consequences. [online] Available at: <https://www.semanticscholar.org/paper/Child-Maltreatment-in-the-United-States%3A-Risk-and-Hussey-Chang/ae8b5a686b942136b4623902699c249a756a3c3c> [Accessed 4 Nov. 2021].

be taken into account when imposing punishment in early Jewish law. Muslim law also called for mercy when it came to punishing young offenders, with minors under the age of 17 being exempt from the death penalty. Under English Common Law, Chancery Courts were founded namely to act under the principle of “*loco parentis*” for the women and children who are in need of assistance. The American Jurisprudence concerning this particular subject was stemmed from the English Law itself. Previously, juvenile lawbreakers were dealt with under the concept of “*parens patriae*,” which implied that if the parents of the concerned child were reluctant to exercise strict control over their children, the authority, which in this particular instance was the State, would intervene to correct the deviant child. **Ex parte Crouse (1838)**⁸, a case before the Pennsylvania Supreme Court in 1838, was the first time the theory of *parens patriae* was put to the test. Also, in **People v. Turner (1870)**⁹, the court determined that since the recurring intrusion of the state for all minor infractions by juveniles was posing significant threats to the wellbeing of children, the state would only engage in adopting correctional measures towards the concerned offender under the edict of *parens patriae*. Following that, in the year 1899, the first juvenile court was formed in Chicago, Illinois. It was built on the belief that juveniles, as delicate minds in society, should not be subjected to the perplexities of criminal proceedings intended for adults, but should instead be dealt with in a relaxed atmosphere with the focus on the rehabilitation and restoration of those young offenders¹⁰. Following that, the philosophy of juvenile justice attracted wide attention and expanded to every corner of the globe, encouraging each country to adapt the concept to its own jurisprudence.

Evolution of Juvenile justice system in India

The Apprentices Act of 1850 during British era in India, which requires minor infractions offenders between the ages of 10 and 18 to serve as assistants to British merchants, was the first to exemplify the concept of disparate treatment of juvenile and adult offenders, or simply stated, the idea of juvenile justice in its purest form is manifested therein during the British rule in India. The groundbreaking Indian Penal Code, which categorizes criminal responsibility, was enacted in 1860 under Lord Macaulay's supervision, which classifies children's culpability into two categories: absolute immunity and conditional immunity. Section 82 which states

⁸ 4 Whart.9(1839). Available at: <https://criminallaw.uslegal.com/juvenile-system/juvenile-case-history/>.

⁹ 39 Cal. 370(Cal.1870).

¹⁰ HISTORY AND DEVELOPMENT OF THE JUVENILE COURT AND JUSTICE PROCESS. (n.d.). [online] Available at: https://www.sagepub.com/sites/default/files/upm-binaries/19434_Section_I.pdf.

“Nothing is an offence which is done by a child under seven years of age”¹¹. Thus, it totally exempts a child from bearing any sort of criminal liability. Whereas section 83 states “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”¹² This section is based on the principle of DOLI INCAPAX implying incapability of comprehending “the nature, quality and consequences of the act.”¹³ This immunity is prone to rebuttal and the onus of proving this qualified shield is upon the concerned juvenile. Following that, the Reformatory Schools Act of 1897 dictated that juvenile criminals be sent to these government institutions rather than jails. Post-independence, the Children's Act of 1960 was the first piece of law to identify the need for a rehabilitative approach to juvenile offenders in accordance with international attitudes toward the subject of "juvenile justice." The terminology "Children's Welfare Board," "delinquent child," "child in need of care and protection," "children's courts," and others were given legal legitimacy for the first time. The act outlawed the imposition of capital punishment and the imposition of a life sentence without the possibility of parole. Previously, the relevant issue was on the State List, which culminated in discrepancies in the implementation of the model legislation, the Children's Act of 1960. As a result, India's legislators were committed to providing coherence to the rights and obligations of juvenile offenders, paving the way JJ Act of 1986 which was in consonance to the Beijing Rules in the year 1985. Following India's accession of the United Nations Conventions on the Rights of the Child in 1990 in 1992, the JJ(Care and Protection of Children) Act of 2000 was enacted to bring the topic in accordance with global standards. Having followed that, the rise in juvenile crime, notably in atrocious crimes such as rape and murder, prompted India's policymakers to urge for an amendment, and the JJ (Care and Protection of Children) Act, 2015 was introduced.

Key Differences between JJ(Care and Protection of Children) Act of 2000 and 2015

UNCRC which exemplifies that childhood until 18 years of age should be delicately handled as against adults; it is a privileged, secured phase where children must be encouraged to grow, learn explore and thrive with dignity. JJ (Care and protection of Children Act) of 2000 was implemented in consonance to the above convention. This particular legislation addresses three

¹¹ Indian Penal Code.82.

¹² Indian Penal Code (45 of 1860). Section 83.

¹³ Mishra, Prof.S.N. (n.d.). INDIAN PENAL CODE. Twenty-Second ed. Prayagraj: Central Law Publications, p.189.

distinct sorts of juvenile or children's issues: (i) juvenile in conflict with law¹⁴; (ii) child in need of care and protection¹⁵; and (iii) rehabilitation¹⁶ and restoration¹⁷ into society. The said Act determined 18 years as the benchmark for juvenility irrespective of the gender. It mandated the establishment of a JJB in each district, whether singular or plural in number, for the adjudication of disputes concerning juvenile infractions. The board will be formed by three members: one first-class Judicial Magistrate or metropolitan magistrate with expertise in child psychology or child welfare programmes, and at least one woman from the remaining two social workers, each of whom must have at least seven years of practical experience in child health, education, and welfare programmes. JJB has exclusive jurisdiction over the adjudication of conflicts involving minors, and it has the authority to inflict imprisonment of three years in prison at maximum. This bill was a tremendous step forward in dealing with juvenile criminals. It did not, however, have a major deterrent effect on youth crime. Rapes and murders committed by minors were typical occurrences. Reports, which will be explored further in this article, revealed a sharp increase in the rate of crime. Several social activists place stress on Indian legislators to alter the country's current juvenile justice system, because kids were allegedly caught for their active participation in majority of atrocities and the lack of harsh punishment for them was seen as a setback to the goal of justice. Following that, India was devastated by the dreadful "NIRBHAYA GANG RAPE" case in 2012, which included the gruesome murder of Jyoti Singh, the victim. In addition, one accused juvenile was dealt with the JJB because his juvenility prevented him from being tried in ordinary courts. This drew widespread condemnation, with the majority of people wishing that the accused juvenile be handled equally to the other adult co-accused¹⁸. Having followed several debates and discussions, Indian legislators felt the need to revise the provisions of the JJ (Care and Protection of Children) Act of 2000 in light of the upsurge in juvenile atrocities and the misappropriation of the shield of juvenility to get away with a crime suffering lenient punishment, and laid the foundation stone for the JJ (Care and Protection of Children) Act of 2015. This law established a distinction between heinous and serious crimes. The Act acknowledged the criminal accountability of a juvenile aged 16 to 18 who was involved in

¹⁴ Juvenile Justice (Care and Protection of Children) Act, 2000. Section 2(l).

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2000. Section 2(d).

¹⁶ Juvenile Justice (Care and Protection of Children) Act, 2000. Section 40.

¹⁷ Juvenile Justice (Care and Protection of Children) Act, 2000. 39.

¹⁸ Firstpost. (2013). Delhi gangrape: Should juveniles be tried and punished as adults? - Living News , Firstpost. [online] Available at: <https://www.firstpost.com/living/delhi-gangrape-should-juveniles-be-tried-and-punished-as-adults-587015.html>.

"heinous offences"¹⁹ on the same footing as adults. In the case of "serious offences"²⁰ involving the above-mentioned age category, a juvenile may only be tried as an adult if he was apprehended after the age of 21²¹. In the instance of heinous acts, the JJB will conduct a preliminary investigation and, if substantial grounds are found, the juvenile will be sent to ordinary courts; otherwise, the case will be resolved under its jurisdiction²².

Justification for the amendment

Previously, statutes pertaining to JJ was based entirely on the principles of the child's best interests, rehabilitation, and absorption into society in a transformed manner. Children were thought to be fragile, and the popular belief was that "no one is born a criminal." The idea behind was that children are a valuable resource who play a critical part in shaping the nation's destiny. They are the cornerstones that are being set today, on which the nation's future will be erected. To solidify these foundations, every effort should be made to provide them with an equal opportunity for all-around development, so that they can grow into strong future citizens who are physically fit, mentally alert, and morally healthy, and who possess the skills and motivations that society requires to progress. And, as a result of their susceptibility and immaturity, minors frequently partake in or are induced into atrocities by others, unaware of the nature and potential consequences. However, we must keep in mind that the concept of crime is fluid and subject to change at any given time in terms of the degree of gruesomeness of a crime. Furthermore, the permanence of a piece of legislation dealing to a subject typically attracts the criminals' desire to locate any available loophole in order to avoid culpability. The following table gives an insight about the failure of legislations to cast a deterrent impact amongst the juvenile offenders in their engagement to violence.

Year	Cases against juveniles in conflict with law	Total cognizable crimes under Ipc	% To total cognizable crimes	Rate of crime

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2015. Section 2(33).

²⁰ Juvenile Justice (Care and Protection of Children) Act, 2015. Section 2(54).

²¹ The Fact Factor. (2020). Juvenile Justice Act, 1986, 2000, 2006, 2015: Objects of the Act. [online] Available at: https://thefactfactor.com/facts/law/legal_concepts/criminology/the-juvenile-justice-act/12079/ [Accessed 6 Nov. 2021].

²² Juvenile Justice (Care and Protection of Children) Act, 2015. Section 15(1).

2005	18939	1822602	1.0	1.7
2006	21088	1878293	1.1	1.9
				Contd.....
2007	22865	1989673	1.1	2.0
2008	24535	2093379	1.2	2.1
2009	23926	2121345	1.1	2.0
2010	22740	2224831	1.0	1.9
2011	25125	2325575	1.1	2.1
2012	27936	2387188	1.2	2.3
2013	31725	2647722	1.2	2.6
2014	33526	2851563	1.2	2.7
2015	31396	2949400	1.1	2.5
Juvenile Crime Statistics Year-wise (2005-2015) ²³				
Juvenile Crime Statistics throughout the year 2015 ²⁴				
Offence	Relevant IPC sections		Number of cases reported	
Murder	302		853	
Rape	376		1688	

²³ Crime in India 2015 Statistics. (2016). [online] National Crime Record Bureau (NCRB), p.305. Available at: https://ncrb.gov.in/sites/default/files/Statistics/Statistics-2015_rev1_1.pdf [Accessed 5 Nov. 2021].

²⁴ Ibid

Attempt to commit murder	302	980
Kidnapping and Abduction	363	1630
Kidnapping and Abduction for murder	364	482
Riots	-	1017
Grievous Hurt and Acid Attacks	325,326,326 A and 326 B	1027
Robbery	392,394,397,398	1358

As a result, we can see that young teenagers participate in atrocities and despicable acts in significant numbers. The situation was disturbing to the entire country, and reversing this tendency was urgently required. We'll also look at a few incidents where it was clear that the criminals abused the core concept of the JJ Act of 2000 by using juvenility as a shield to shrink criminal liability.

1. **Salil Bali vs Union of India and Anr²⁵**- In December 2012, a heinous gang rape labelled "NIRBHAYA" unfolded in Delhi, in which a young girl called Jyoti Singh was viciously raped and murdered to the point where her internal organs were ruptured. One of individuals involved in the event was a 17-year-old child. Questions emerged as to whether the minor's juvenility would be recognised as a defence, and whether a maximum sentence of 3 years in prison would be adequate justice for the late victim and her family. This triggered a need for a re-evaluation of the law, with some arguing that the term "juvenile" had been given a too liberal interpretation and that juveniles had been treated too leniently. In this case, it was proposed that the prevailing juvenile legislation be updated to drop the age of criminal culpability to 16 years, as well as to modify legislation to prevent a juvenile committing gruesome acts from pursuing the plea of juvenility and being tried in regular courts alongside adults. This petition was

²⁵ (2013) 7 SCC 705.

turned down by the court expressing that the subject is within the jurisdiction of the legislature and the court is not supposed to intrude.

2. **Om Prakash vs State of Rajasthan and Anr²⁶**- The accused had committed the horrendous act of raping a thirteen and half year-old minor girl — The accused's technique and mode of commission of the offence demonstrated diabolical and matured expertise. Also, the father of the accused presented documents in support of juvenility of the accused but which happened to be ambiguous and unreliable in nature. Because the trial court was unable to achieve a convincing conclusion with respect to the age of the accused, medical expertise grounded upon x-ray and ossification tests would be given emphasis over questionable evidence based on school records and a request of deductive reasoning on the story cooked up by the accused's father. Thereafter, in the lack of any legal and authentic document pertaining to the age of the accused claiming minority, the court relied on medical expert testimony that favoured the majority of the accused. And the court determined that the juvenility shield provided by the JJ Act only applies to unintentional lawbreakers, not to perpetrators of developed minds who manipulate the law to get away with a crime, and thus ordered the accused to be tried by a court of competent jurisdiction rather than JJB.
3. **Sham Lal and Anr. Petitioners. vs State of Haryana²⁷**- In this case, the accused (the petitioner in this case) allegedly committed rape on a girl while he was still a minor. Following that, the accused filed a plea for bail with the JJB, which was dismissed by the Board on the grounds that there is a good likelihood that if he is released on bail, he will consort with other criminals, defeating the goals of justice. The accused's attorney contended that the board's position is untenable, and that it is not the board's responsibility to determine whether the accused would mix with other criminals. Thereafter the petition was allowed in this case.
4. **Subramanian Swamy and others vs Raju through Member, Juvenile Justice Board and Another²⁸**- Dr Swamy argues that the Act should be read down to comprehend

²⁶ (2012) 5 SCC 201

²⁷ Sham Lal and Anr. Petitioners. Vs State of Haryana [2004] (Punjab and Haryana High Court) Available at: <https://www.casemine.com/judgement/in/56b49492607dba348f00d6b9> [Accessed 7 Nov. 2021].

²⁸ (2014) 8 SCC 390, Available at: <https://www.casemine.com/judgement/in/5609af42e4b0149711415f8c#13> [Accessed 7 Nov. 2021].

that the essential test of juvenility is the form of psychological maturity of the offender, not the age of the offender. The Act is not supposed to refer to juveniles who commit significant or egregious crimes. Sections 82 and 83 of the penal code have been inserted to argue that while a child under the age of seven cannot be held criminally delinquent, those aged seven to twelve must be evaluated in the light of their cognitive growth. Likewise, it is argued that the similar principle would apply to the offenders of age-group between 12-18 years. A balanced and concurrent interpretations of IPC and JJ Act of 2000 only would serve the ends of justice and suffice for the laches existent in the present legislation. Dr Swamy asserts that in that situation, the Act would contravene article 14 of the constitution which provides for reasonable classification since all offenders under the age of 18 would be treated equally, regardless of their level of mental maturity or the gravity of the crime they committed. Our constitutional framework forbids such a blanket treatment of all criminals under the age of 18 who commit any crime, regardless of its magnitude or gruesomeness.

From the above-mentioned examples, we can see how the perpetrators have times again taken the plea of minority under the Act of 2000 to shrink their criminal culpability and thereby undergoing reduced imprisonments. Also, it is many people argue onto the point that for seeking protection under juvenility, perpetrators are often encouraged to forge false documents, birth certificates and several other crimes. The present crisis pertaining to increasing involvement of minors in gruesome acts and inadequacy of the punishment under JJ Act, 2000, invited several opinions from the masses. Shweta Kapoor, a Delhi-based lawyer, has moved a public interest lawsuit in the Delhi High Court, with a requisition that the JJ Act of 2000 be modified to deal with juveniles who has crossed the age of 16 and are involved in atrocities. It was argued that those young minds were developed and did not warrant supervision of the society. Rather, the society seeks protection from them²⁹. Some people believe that young people who have committed heinous crimes should be confined in reformatory facilities until they hit adulthood and then tried as adults in regular courts, as is done in the United States³⁰. However, the latter viewpoint would be in violation of the articles of the Indian Constitution, which explicitly

²⁹ Firstpost. (2013). *Delhi gangrape: Should juveniles be tried and punished as adults?* - Living News , Firstpost. [online] Available at: <https://www.firstpost.com/living/delhi-gangrape-should-juveniles-be-tried-and-punished-as-adults-587015.html>.

³⁰ Ibid

state that double jeopardy is strictly prohibited, and hence is untenable. Several other passionate debates on this subject were witnessed. Finally, in 2014, the legislator submitted the JJ Bill, 2014 to alleviate the situation and fill in the gaps that were desperately in need of filling. Maneka Gandhi posited the bill in Parliament on August 12, 2014³¹. Thereafter the President assented to the bill and JJ Act of 2015 was enacted. It was mainly based upon the retributive and deterrent aspects of punishment. The idea was to instil a fear amongst the young perpetrators who took the lenient treatment under the previous legislation for granted. Holding the young perpetrators criminally responsible and subjecting them to treatment comparable to that which an adult offender would get in identical circumstances might set an example for the rest and have a significant deterrent effect on adolescent crimes and violence.

However, just as a rose has thorns, the JJ Act of 2015 has confronted challenges and attracted several criticisms. One of the prominent being violative of UDHR, Beijing Rules and UNCRC to which India has accessed. According to Maharukh Adenwalla, a top lawyer based in Mumbai who works on children's welfare concerns, the JJA is seen as a merciful statute because it is reformatory rather than adversarial in nature. "The JJ Act is not a lenient law, but rather an age-appropriate law."³² The Act's ideology is based on the assumption that children cannot cope with situations in the same manner that adults can since they are easily persuaded and easily transformed. As a result, we must cope with the culprit rather than the crime. Many argued that the creation of yet another category of under "children in conflict with law", i.e., 16-18 years perhaps is derogatory and infringing of basic rights warranted by the Constitution of India.

However, in light of all of these criticisms, it is important to remember that, given the rise in young perpetrators, particularly their involvement in egregious crimes, the state, in addition to pursuing the best interests of the concerned juvenile in his trial, also owes a responsibility to the nation in terms of providing justice to all those victims who have fallen a prey to such brutality. Given the advancement of technology and easy access to the internet, pornographies, and other adult content on the web and television, it may be presumed that young teenagers

³¹ The Indian Express. (2014). *Juvenile Justice Bill introduced in Lok Sabha*. [online] Available at: <https://indianexpress.com/article/india/india-others/juvenile-justice-bill-introduced-in-lok-sabha/> [Accessed 6 Nov. 2021].

³² Firstpost. (2013). *Delhi gangrape: Should juveniles be tried and punished as adults? - Living News*, Firstpost. [online] Available at: <https://www.firstpost.com/living/delhi-gangrape-should-juveniles-be-tried-and-punished-as-adults-587015.html>.

have a good understanding of what rape is and the potential consequences and likewise is the case with murder and other heinous acts. The juvenile justice system can put more emphasis on its resources involving vulnerable youth and less serious and violent offenders who can benefit themselves from reformatory and welfare children programmes under the legislation by relocating targeted juvenile offenders who commit the atrocities and gruesome acts to criminal court. However, in their efforts to ensure that certain juvenile offenders are transferred to the criminal justice system because of the seriousness of their offenses, the States must be sure that only those youth whose trial as an adult is demanded in true essence be placed in the criminal justice system. For this the JJB is empowered to conduct a preliminary investigation to assess the mental maturity of the offender, their motive and knowledge about the consequences ensuing the act.

Regarding the criticism that the Indian government took a regressive and naive step by enforcing the JJ (Care and Protection of Children Act) of 2015, which is in violation of the UDHR, UNCRC, Beijing Rules, and other international treaties, it should be noted that India is not the first country to hold juveniles criminally culpable in the same way as adults. Given the prevalence of juvenile offences, the Act of 2015 is a particularly progressive and landmark move in terms of providing the nation with protection and justice.

International Trends

There are several other nations being the signatories to the international conventions revolving around children protection and rights try juveniles, for say United-kingdom and USA (though not being signatory to UNCRC) are the notable nations that usually try juveniles as an adult depending on the gruesomeness of the crime. Juveniles of age 16-18 in the United States are only tried in adult court for grave crimes, and a conviction for a life sentence with a chance of parole against such a juvenile is also legal at the discretion of the court if the judge believes the juvenile is beyond reformation, as it was held in. Though in the particular case of *Montgomery V Louisiana* (2016)³³ mandatory life sentence without parole was prohibited as being unconstitutional.

- 1) **Jones v Mississippi**³⁴ (2020)- Brett Jones murdered his grandfather when he was 15 years old. Jones was charged with murder in Lee County, Mississippi's Circuit

³³ 577 U.S. ____ (2016)

³⁴ 593 US _ (2021).

Court. He was found guilty and condemned to life in jail without the chance of parole. The Mississippi Supreme Court ordered the county circuit court to hold a sentence rehearing. Jones was resentenced to life in prison without the possibility of parole by the circuit court. Brett appealed to the Mississippi Court of Appeals, but his request to overturn the sentence was denied. The case was then dismissed by the state supreme court after oral arguments. Jones filed a request for review with the United States Supreme Court. The Supreme Court determined that a sentencing judge is not bound to make a separate finding that a juvenile convicted of murder is permanently incorrigible before imposing a life without parole sentence. Constitutionally, a flexible sentencing system that allows the sentencer to account the defendant's age is appropriate.

Juveniles of age 16-18 in the United States are only tried in adult court for grave crimes, and a conviction for a life sentence with a chance of parole against such a juvenile is also legal at the discretion of the court if the judge believes the juvenile is beyond reformation, as it was held in. Though in the particular case of **Montgomery V Louisiana**³⁵ mandatory life sentence without parole was prohibited as being unconstitutional.

- 2) **R v Skeete (2013)**³⁶- Skeete was charged as an adult, which meant he would be sentenced to life in prison with a seven-year period of parole ineligibility. Skeete's defence contended that he should be punished as a juvenile for second-degree murder, and that because of the time he has already spent in detention (remand credit), he should be sentenced to four years in prison and three years of community supervision. Skeete did not request any credit for the time he had spent on remand since his arrest, but the Youth Criminal Justice Act requires the Court to "take into account" Skeete's detention time. Despite the fact that Skeete was just 16 at the time of the murder, the Court determined that, after considering all of the relevant elements in the case, Skeete was no longer entitled to the presumption of diminished culpability. Skeete was sentenced to life in prison with a seven-year period of parole eligibility. A lifelong weapons prohibition order, a DNA order for a major designated offence, and the lifting of Skeete's name publishing ban were also enforced.

³⁵ 577 U.S. ____ (2016)

³⁶ 2013 NSPC 3, Available at: <https://archive.crin.org/en/library/legal-database/r-v-skeete.html> [Accessed 7 Nov. 2021].

Under the category of juveniles, the laws of the United Kingdom draw a line between those who are involved in petty offences and those who are involved in serious crimes and are between the ages of 16 and 18³⁷. Aside from these top nations, a number of other countries have enacted harsh sanctions for teenagers who have committed a horrendous crime. In Germany, Netherlands, Croatia mostly the juvenile sanctions are enforced on young offenders but judicial discretion is sought in cases of egregious crimes involving juveniles to decide whether adult law or juvenile regulations will be applied on them³⁸. For crimes committed when under the age of 18, 67 nations maintain life imprisonment as a sanction, with another 49 allowing terms of 15 years or longer and 90 allowing penalties of 10 years or longer. Life imprisonment and hefty jail sentences are not confined for a select few; they are evident in a number of states' legislation³⁹.

Conclusion

1. The implementation of the JJ (Care and Protection of Children Act) in 2015 is without a doubt a significant step forward in the pursuit of justice within the nation's legal system. Of course, by creating this specific piece of legislation, policymakers have taken on a tremendous deal of responsibility and demonstrated their sensitivity to the rising number of rapes, murders, and other heinous crimes involving minors. However, there is still a long way to go in terms of effectively enforcing the legislation and achieving its fundamental goal, which is to dissuade adolescents from committing such horrible atrocities. The framers should look for any remaining vulnerabilities, or else the perpetrators again will find ways to use them to their advantage.
2. In **Shilpa Mittal V State (NCT of Delhi) & Anr (2020)**⁴⁰, the petitioner expressed worry about acts for which there is no specific minimum punishment in a statute yet the maximum term exceeds 7 years, such as "Culpable Homicide Not Amounting to

³⁷ Jan 30, S.S. / T. /, 2013 and Ist, 01:43 (n.d.). *In other countries juveniles tried as adults for heinous crimes / Delhi News - Times of India*. [online] The Times of India. Available at: <https://timesofindia.indiatimes.com/city/delhi/in-other-countries-juveniles-tried-as-adults-for-heinous-crimes/articleshow/18247249.cms> [Accessed 7 Nov. 2021].

³⁸ phys.org. (n.d.). *Juvenile justice practices in Europe can inform practices in the US*. [online] Available at: <https://phys.org/news/2018-07-juvenile-justice-europe.html>.

³⁹ archive.crin.org. (n.d.). *INHUMAN SENTENCING: Life imprisonment of children around the world*. [online] Available at: <https://archive.crin.org/en/library/publications/inhuman-sentencing-life-imprisonment-children-around-world.html> [Accessed 7 Nov. 2021].

⁴⁰ (2020) 2 SCC 787 Available at: <https://www.casemine.com/judgement/in/5e1808a43321bc147b17eb87> [Accessed 8 Nov. 2021].

Murder"⁴¹, "abetment"⁴², "attempt to murder"⁴³ etc. In this instance, it was contended that the legislation failed to account for a new class of offences with a minimum penalty of less than 7 years or no minimum sentence at all, but a maximum punishment of more than 7 years. If this matter is left unaddressed, it will likely cause confusion, which the legislators would not want. The Court concluded that the legislature should settle the problem, and that in the lack of an express provision to that effect, the above-mentioned group shall be dealt with under the phrase "serious offences"⁴⁴.

3. A similar concern was again expressed in the case of **Saurabh Jalinder Nangre V State of Maharashtra (2018)**⁴⁵.
4. Another aspect to consider is that, while the approach taken under the relevant legislation is penalizing, the eventual aim should be to reintegrate the transformed juvenile into society. Strict surveillance by the detention authority of the youngster while incarcerated, as well as effective welfare and counselling programmes, could all help to achieve this goal to some extent, if not entirely.
5. The mental growth of the juvenile detainee also requires close interaction between children welfare personnel and the youngster.
6. The JJB has been entrusted with determining the type and degree of the alleged crime, as well as the intellectual age of the kid and his willing participation in the claimed crime. Because the fate of the kid is in his hands, the responsibility must be handled with extreme attention and care. A single blunder might lead to a complete miscarriage of justice. His commitment and dedication in the specific case should be exclusive for this objective.

The Juvenile Justice Act of 2015 is a major leap forward in the development of a new paradigm of probation and parole of convicted youngsters. Under the State's *parens patriae* authority, a new dimension has been added. Without a doubt, using the 16-18 age bracket to determine criminal culpability based on the severity of the offence has drawn many accusations as a violation of international commitments under the UNCRC and the fundamental right to equality guaranteed by Article 14 of the Indian Constitution. However, it must be recalled that the right to life guaranteed by Article

⁴¹ Indian Penal Code (45 of 1860). S.302.

⁴² Indian Penal Code (45 of 1860). S.108.

⁴³ Indian Penal Code (45 of 1860). S.307.

⁴⁴ Juvenile Justice (Care and Protection of Children) Act, 2015. Section 2(54).

⁴⁵ 2020 ALLMR (CRI) 2707, Available at: <https://www.casemine.com/judgement/in/5c385d4fb338d179e8e3b8ee> [Accessed 8 Nov. 2021].

21 of the Constitution is of paramount importance. If there is no life at all, perhaps there is no meaning to justice or merit to human rights. Furthermore, Article 14 allows for fair categorisation, which has been established as precedent on several occasions. As a result, evaluating the above-mentioned age bracket against the backdrop of an increase in youth delinquents is appropriate in the quest for justice. In terms of India's international commitments, they are merely advisory and cannot take precedence over state legislation, as outlined by Article 51 of the Indian Constitution. According to the most recent data on juveniles in contact with the law in India, at least one youngster was detained for raping a woman or girl every eight hours in 2019, and more than three were incarcerated on average for attacking a woman every day. People are questioning if the retributive strategy outlined in the statute is indeed helpful in deterring young abusers based on the statistics issued by the National Crime Records Bureau (NCRB), 2,750 juveniles were detained for rape, assault against women, and attempted rape in 2019; there have been 1,383 indictments for rape and 1,327 arrests for assault⁴⁶. However, because juvenile delinquency is a lifelong idea, reforms cannot happen overnight. In India, teenage offenders of adult crimes are being tried as adults for the first time. In contrast to many countries that do not hold back from imposing lifelong imprisonment on juvenile offenders depending on the gruesomeness of the offence committed, Section 21 of the JJ Act of 2015 strictly prohibits the imposition of lifelong sentences with a least likely chance of release and the death penalty in accordance with her international obligations. Rather than challenging the constitutionality of government actions, it is sometimes important to take a leap of faith in them so that we can all contribute to the advancement of these young minds.

⁴⁶ indpaedia.com. (n.d.). *Juvenile delinquency in India - Indpaedia*. [online] Available at: http://indpaedia.com/ind/index.php/Juvenile_delinquency_in_India [Accessed 8 Nov. 2021].

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