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# **RESPONSE OF THE INDIAN LEGAL SYSTEM TOWARDS JUVENILE IN CONFLICT WITH THE LAW**

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## **INTRODUCTION**

*“The true measure of any society can be found in how it treats its most vulnerable members” - Mahatma Gandhi.<sup>1</sup>*

Juvenile justice is a system of law introduced to protect and promote the human rights of all Juveniles. The primary objective of the Juvenile justice system deals with the care, protection, treatment, development, and rehabilitation of neglected and juvenile delinquents. Therefore, the juvenile justice system falls within the ambit of the administration of the criminal justice system. The term ‘juvenile’ originated from the Latin term ‘juvenile’, which means ‘young’; hence, childhood is the main factor in the juvenile justice system. The primary purposes of these legal systems are rehabilitation, justice, and the protection of children’s rights. According to these legal systems, juveniles accused of offences are known as juveniles in conflict with the law. International standards emphasize the importance of preventing and rehabilitating these juveniles who conflict with the law.

India’s approach to the juvenile justice system promotes establishing the legal framework for dealing with juveniles in conflict with the law, through which it supports differential treatment, rehabilitation and reintegration, child-friendly procedures, protection of their rights, etc. There is no other country in the world that embraces such an extraordinary profusion of ethnic groups, mutually incomprehensible languages, topography and climate, religions and cultural practices, and levels of economic development. This largest democracy in the world is also home to the largest number of children in the world<sup>2</sup>. Hence, India’s approach to juvenile justice shows or

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<sup>1</sup> Quotefacny, <https://quotefancy.com/quote/856011/Mahatma-Gandhi-The-true-measure-of-any-society-can-be-found-in-how-it-treats-its-most> (last visited June 2, 2024).

<sup>2</sup> Asha Bajpai, Protecting India’s Children: Vulnerabilities and Challenges, 29 Macalester International, p. 59 (Spring 2012).

reflects a commitment to promoting the welfare and rehabilitation of children in conflict with the law. However, despite these efforts, criticism persists regarding the effectiveness of existing legislation. This raises the question of whether India has adequately met the need for significant juvenile justice laws.

## **THE NECESSITY OF A UNIFORM LAW FOR ADDRESSING JUVENILE MATTERS**

### **IN INDIA**

The evolution of legislation in India regarding juveniles in conflict with the law was passed in 1850, i.e., the Apprentices Act was introduced to keep juveniles out of jails. Later, the Report of All-India Jail Committee in 1919-1920 recommended that children be separated from the existing criminal justice system. Through the Apprentices Act of 1850, children between the ages of 10 and 18 who were vagrants or committed minor offences were required to serve their sentences as apprentices. After the enactment of the Indian jail committee, the British Govt established separate institutions to have individual state legislate trials. In connection with this, many new acts were introduced in different regions of India.

After the constitution's enactment, the Children Act 1960 was established as a model for various state legislations. It became the basis for the central law passed as the Juvenile Justice Act 1986. Later in the case of *Sheela Barse's case*<sup>3</sup>, it was crucial to get the uniform juvenile justice law passed since it declared that kids in detention should get special treatment and suggested that the parliament create a uniform law that would apply nationwide. Thus, the Juvenile Justice Act of 1986 was established for the first time to require improved treatment, care, and development for neglected and delinquent youth as well as to adjudicate juvenile delinquency cases across the nation. The 1986 Act was primarily designed to align domestic law with the UN Standard 1985. However, this goal was met, so the Act underwent numerous revisions and replacements.

## **EXAMINING INDIA'S JUVENILE JUSTICE SYSTEM: AMENDMENTS AND CASE**

### **LAWS**

In India, the legal system has evolved significantly in its response to juvenile offenders, shaped by domestic legislation, international conventions, and judicial interpretations. In the early stage, the Indian legal system recognized juveniles' unique vulnerabilities and developmental needs, establishing separate juvenile justice mechanisms. The Juvenile Justice Act of 1986, later initiated

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<sup>3</sup> 1983 SC 378.

by the JJ Act in 2000, laid the foundation for a rehabilitative approach to juvenile justice, emphasizing children's welfare and best interests. Later, the Nirbhaya case 2012 prompted public outcry and calls for stricter measures against juvenile offenders, particularly in cases involving serious crimes. The Juvenile Act was amended in 2015 to allow trials of heinous crimes committed by juveniles above sixteen years, which was newly introduced in this Act. So, this JJ ACT 2015 discusses the controversial provision of 'transferring' children between 16 and 18 years accused of "Heinous Offences" to the adult criminal justice system.

Thus, India is actively working to improve its laws relating to children in conflict with statutes by adding new provisions multiple times, along with the evolution of thinking about children and international documents to which India is a signatory. The Juvenile Justice Act has seen numerous amendments in 2000, 2006 and 2015. Also, the Lok Sabha introduced the Juvenile Justice Amendment Bill 2021, aiming to enhance and simplify measures for protecting and adopting children. These amendments underscore India's need for an improved juvenile justice system.

To gain better knowledge, we need to evaluate the effectiveness of the amendments made to these Acts through case laws and consider whether India has successfully established a juvenile justice system to address delinquent acts committed by minors.

### **JUVENILE JUSTICE ACT 1986**

- This Act offers a highly legalistic definition of juvenile, setting the age limit at 16 years for boys and 18 years for girls. The reason for this difference in consideration of age is the patriarchal nature of society, where women have limited freedom to make decisions about their own lives.
- Children were categorized as delinquent juvenile and neglected juvenile

Here, separate institutions are created to house these two categories. Differentiating between neglected and delinquent juveniles can be challenging because, in reality, it is different to determine. The juvenile welfare board dealt with the neglected juvenile, whereas the delinquent juvenile was brought before the juvenile court. Moreover, this does not have any specified provision or does not directly deal with any provision relating to child sexual abuse.

Later, Govt of India ratified the CRC in 1992, thereby making it expedient to adhere to the standards prescribed in the convention. Hence, the 1986 JJ Act had to be reviewed, and changes

had to be made to secure the child's best interests and focus on the social reintegration of the child without resorting to judicial proceedings. The JJ Act 1986 was repealed, and a new JJ Act 2000 was introduced, which considered all the international standards prescribed per the Convention on the Rights of the Child.

#### **SHEELA BARSE V. UNION OF INDIA<sup>4</sup>**

A petition was filed asking the courts to release children under 16 years of age kept in jails in different states. The central issue in this case was whether the children under 16 years of age who are kept in prisons are poorly treated and abused or not. The Supreme Court observed that it is a settled principle in law that children must not be confined to prisons like adult criminals, as it would have harmful effects on them that would affect their growth and development. The court also issued several directions to improve the JJ system, including better living conditions in detention, etc.

#### **JUVENILE JUSTICE ACT 2000**

- Under the JJ Act of 2000, the proceedings should be informal and child-friendly. Keeping in mind the needs of children, separate Juvenile Justice Boards have been set up.
- The Act establishes a uniform age criterion for both boys and girls, encompassing any individual who has not yet reached the age of 18. This aligns with the definition of a child as per the Convention on the Rights of Child (CRC)
- This act mainly recognised the importance of restoring children to their families as long as it was in their best interest. It also outlines four options of restoration for children in children's homes and unique homes, which include adoption, foster care, sponsorship and aftercare.

#### **PRATAP SINGH V. STATE OF JHARKHAND<sup>5</sup>**

In this case, the appellant faced charges related to causing the death of a person through poisoning. Initially, when the appellant was produced in court, he was **18 years old**. However, it

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<sup>4</sup> Ibid.

<sup>5</sup> (2005) 3 SCC 551.

was alleged that he was a **juvenile** at the time the crime was committed. The primary issue was the determination of the age of juvenility. Whether the date of occurrence (i.e., date of committing the crime by the accused) is the correct date for the determination of the age of juvenility of the date of production (i.e., date of production of the accused before the Court; So, here when the case was transferred to the juvenile court, where his certificates were examined, and it was determined that he was a minor on the date the crime occurred, consequently, he was released on bail.

The decision regarding the age of juvenility was further upheld by the **High Court of Jharkhand**, which emphasised that **school certificates** serve as the best evidence in such cases. However, the **Supreme Court** took a different stance by upholding the decision of *Umesh Chandra v. State of Rajasthan* (1982). It held that the date of crime should be the criterion for determining juvenility.

Another important aspect of this case was the applicability of the **Juvenile Justice Act (Care and Protection of Children), 2000**. Although the case was initially filed under the **Juvenile Justice Act of 1986**, the 2000 Act had replaced it by the time it reached the Supreme Court. Relying on the precedent set by the *Upendra Kumar v. State of Bihar* case, the Supreme Court held that the 2000 Act would apply to cases pending in any court or authority under the 1986 Act. Additionally, cases still pending when the 2000 Act was enforced, where the person had yet to complete 18 years of age, would be decided according to the 2000 Act.

#### **HARI RAM V. STATE OF RAJASTHAN<sup>6</sup>**

Hari Ram was accused, which raised questions about whether he should be treated as an adult or juvenile. Initially, it was determined by the court that Hari Ram's age was below 16 at the time of the crimes when it referred to the juvenile board. Later, his father's testimony and the medical report concluded that Hari Ram was above 16 when the offences were committed, thus excluding him from juvenile status.

The Supreme Court addressed the issue of which law should apply to Hari Ram's case. Despite the High Court's ruling, the Supreme Court held that all pending cases should be governed by the

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<sup>6</sup> (2009) 13 SCC 211.

2000 Act, which extended juvenile status up to 18 years. Consequently, Hari Ram was deemed a juvenile under this Act, impacting the handling of his case.

When considering these judgments and the JJ Act, it determines the age of juveniles in cases related to the Juvenile Justice Act and observes several challenges. One of the main problems is consistency or the need for clarity in the methods used to ascertain the age of the accused juvenile. Additionally, the JJ Act has undergone amendments over time, leading to changes in the criteria and procedures for determining juvenile age. This can promote clarity and consistency in the application of law, especially in situations where different versions of the Act might apply.

### **JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT; ACT**

#### **2006**

- This act differentiated two categories of children:
  - (i) Those who need care and protection
  - (ii) (ii) those who conflict with the law. Here, the Child Welfare Committee was set up for children needing care and protection, and the Juvenile Justice Board was created for children in conflict with the law.
- The Act mentioned establishing Children's homes for children in need of care and protection, Special homes for children in conflict with the law, and observation homes for children who were housed only temporarily until their cases were pending with the Boards or Committees. Subsequently, the Juvenile Justice (Care and Protection) Rules of 2007 were introduced to implement the Act of 2006.

#### **JARNAIL SINGH V. STATE OF HARYANA<sup>7</sup>**

Here, the accused was charged with taking the prosecutrix away from her parents and committing forceful sexual intercourse with her. The case involved issues related to the accused's age and whether he should be treated as an adult or a juvenile. He was sentenced to ten years of rigorous punishment along with a fine by the sessions court. The accused, being the aggrieved party, appealed the decision. Moreover, he argued that it was proven that the accuser was a minor. The Supreme Court, in this case, held that the rules determining the age of a juvenile through the Juvenile Justice Rules, 2007, can be applied in cases connected to the Protection of Children from Sexual Offence Act, 2012, as well.

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<sup>7</sup> 2013 (7) SCC 263.

## **THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT ACT 2015**

The Women and Child Development Ministry of the Government of India introduced the Juvenile Justice (Care and Protection of Children) Bill in 2014 in the Lok Sabha in August of the same year. This was done in the aftermath of **the Nirbhaya gang rape case in Delhi and the increase in juvenile crimes**, especially within the age group of 16- 18 years.

### **PROBLEMS WITH JJ ACT 2000:**

- Section 2(k) of the JJ Act 2000 defined “juvenile” or “child” as meaning a person who has not completed the eighteenth year of age;
- Further, Section 2(l) defined a “juvenile in conflict with law” as a juvenile
- Alleged to have committed an offence. Furthermore, Section 2(p) defined an “offence” as meaning an offence punishable under any law for the time being in force;
- The central problem of the JJ Act 2000 is that it covers within its ambit any person under 18 years who is alleged to have committed any offence under any extant law. Mainly, no distinction was made between any class of offences. Nor was there any sub-classification between different age groups, such as ages 1 to 12, 12 to 16, 16 to 18, etc.

### **MUKESH AND ANR V. STATE NCT OF DELHI & ORS<sup>8</sup> (NIRBHAYA CASE)**

This case involved a gang rape; during the commission of the crime, one of the accused was 17 years old. The central issue is whether he should be treated as a juvenile or an adult. Thus, because of juvenile laws at the time, JJ Act 2000, the rapist was not dealt with harshly in comparison with other rapists. Others were sentenced to death. He was tried as a juvenile offender under the then-extant Juvenile Justice Act, 2000 (“JJ Act, 2000”) and sentenced to the statutory maximum of 3 years in a reformation centre, including the eight months he spent in remand pending trial. As a result of juveniles’ heinous crimes and the harsh punishments they receive under Indian law, the juvenile’s case was highly debated. Due to the crime’s heinous nature, people raised the demand that the juvenile rapist is considered an adult. Due to the massive outcry in 2015, laws were changed, imposing penalties on children in conflict with the law. Later, the Lok Sabha passed the

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<sup>8</sup> (2017) 6 SCC 1.

Juvenile Justice (Care and Protection of Children) Act, which explains that children aged 16-18 could be treated and charged for heinous crimes as adults.

Here, legislature acceded to this public sentiment when Parliament passed the Juvenile Justice (Care & Protection of Children) Act, 2015, wherein a new class of juveniles was created who, in cases of “**heinous offences**”, could be tried and sentenced as adults.

### **THE MAJOR AMENDMENTS OF THE JJ ACT, 2015**

The main objective is to pass this JJ ACT 2015 was to curb the heinous crimes committed by the minors between 16 and 18 years of age, such as rape.

- Heinous crimes: sec 2(33) of IPC defines any offence for which minimum punishment is imprisonment for seven years or more. Some examples; Murder, rape, kidnapping for ransom, dowry death, gang rape, acid attacks, child sexual abuse, and terrorism.

### **NEW CHANGES THROUGH JJ ACT, 2015:**

- A minor 16- 18 years of age is considered an adult if they have committed any heinous crime. Minors who have committed serious offences may be tried as adults if apprehended after age twenty. But if he committed the horrific crime at the age of a minor, he may be tried as a child or adult, depending on their mental and physical capabilities. Therefore, it deals;
  - a. If a minor commits a serious offence and is apprehended before turning 21, they may face a max of 3 years in a unique home with counselling
  - b. If apprehended after turning 21 for a serious offence, the minor will be tried as an adult and could face up to 7 years in jail
  - c. For heinous crimes committed at 17, the minor may be tried as a child or adult, depending on their mental and physical capabilities.
  - d. If arrested after turning 21 for a heinous crime, the case will be tried as an adult, with a possible seven years imprisonment
- No juvenile will be sentenced to life imprisonment or death
- The evaluation of the heinous crime must be completed within 60 days of the child’s initial appearance before the JJ Board.

These are the significant changes that show that India needs to change the juvenile system to meet the changing needs of society.

## **PARAG BHATI (JUVENILE) THROUGH LEGAL GUARDIAN V. STATE OF UTTAR PRADESH<sup>9</sup>**

The accused, in this case, was arrested for the offence of murder and kept in a juvenile home. His father applied to his age, stating that he is a minor. Various school certificates also supported this. However, after scrutinizing the certificates, the Juvenile Justice Board had doubts regarding his juvenile, and the accused was referred to the medical board to examine and determine his age. The medical board opined that he was a major, so his case was transferred to the court of the Chief Judicial Magistrate.

The Supreme Court, on the issue of determination of juvenility, held that the principle of juvenile under the Act would be applicable only in cases where the accused is prima facie a minor. The present case deals with a severe, well-planned offence that depicts the maturity of the accused, who is not innocent. The plea of juvenility in this case was held to be of a nature to dodge the law in place.

## **SAMPURNA BEHURA V. UNION OF INDIA & ORS<sup>10</sup>**

Sampurna Behura initiated a writ petition against the Union of India and others. This case dealt with implementing the Juvenile Justice Act of 2000 and 2015. The Supreme Court observed that the State needs to ensure that the Juvenile Justice Act is adequately implemented to deal with the needs of children in society. The court also recommended that Chief Justices of each High Court consider establishing child-friendly in court. And vulnerable witness courts. So, these are the significant changes in the juvenile justice system.

## **THE JUVENILE JUSTICE ACT AMENDMENT IN 2021 AND AN ANALYSIS**

The Juvenile Justice (Care and Protection of Children) Bill, 2021 has been passed by Lok Sabha on 24 March, 2021 and thereafter the Rajya Sabha also the same on 28<sup>th</sup> day of July 2021<sup>11</sup>. The main objective of this Bill is to strengthen the child protection at district level, to empower District Magistrate, to strengthen Child Welfare Committee etc. But so far as the age of juvenile or child in need care and protection is concerned, the Bill does not propose any change or amendment of the same. This Bill seeks to amend the Juvenile Justice (Care and Protection of Children) Act of 2015. The major highlights of the Bill;

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<sup>9</sup> (2016) 12 SCC 744.

<sup>10</sup> W.P (C) NO 473 OF 2005.

<sup>11</sup> Live Law.in, Parliament Passes Juvenile Amendment Bill To Strengthen Child Protection; Empower District Magistrates To Authorise Adoption Order, available at <https://www.livelaw.in/news-updates/parliament-passes-juvenile-justice-amendment-bill-2021-178328> (last visited June 2, 2024) quoted in Dr. Sandeep Kumar, Juvenile Justice system in India: An Overview, 9 J. Emerging Tech.& Innovative Research. Para.4.14 (2022).

- The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final on the issuance of an adoption order by the civil court. The Bill provides that instead of the court, the district magistrate (including additional district magistrate) will issue such adoption orders.
- Under the 2015 Act offences committed by Juveniles are categorised as heinous offences, serious offences, and petty offences. Serious offences include offences with three to seven years of imprisonment. The Bill adds that serious offences will also include offences for which maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is less than seven years.<sup>12</sup>
- The District Magistrates have been further empowered under the Act, to ensure its smooth implementation, as well as garner synergized efforts in favour of children in distress conditions. As per the amended provisions of the Act, any Child Care Institutions shall be registered after considering the recommendations of the District Magistrate. The DM shall independently evaluate the functioning of District Child Protection Units, Child Welfare Committees, Juvenile Justice Board, Specialized Juvenile Police Units, Child care institutions etc.
- The eligibility parameters for appointment of CWC members have been redefined. Criteria for disqualification of CWC members has also introduced to ensure that only the persons capable of rendering quality service with requisite competence and integrity are appointed to CWC.
- Several difficulties faced in implementation of various provisions of the Act have also been addressed and Suitable amendments to remove these difficulties arising in the interpretation of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and to clarify the scope of certain provisions of the Act have also been introduced.<sup>13</sup>

While the new act has performed a herculean task of straightening out the main issue of the antecedent act that came into being in 2015, it does not in any way mean that this act too does not have its own share of fallacies. There is a pressing need to close the procedural loopholes that

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<sup>12</sup> PRS Legislative Research, Legislative Brief, The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, available at [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/Legislative%20Brief%20Juvenile%20Justice%20Amendment%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/Legislative%20Brief%20Juvenile%20Justice%20Amendment%20Bill,%202021.pdf) (last visited June 2, 2024).

<sup>13</sup> Ministry of Women and Child Development, "Parliament Passes Juvenile Justice (Care and Protection of Children) Amendment Bill 2021," Press Release, (visited June 2, 2024), available at <https://pib.gov.in?PressRealsePage.aspx?PRID=1740011>.

now exist while simultaneously ensuring that justice is delivered swiftly and fairly.<sup>14</sup> Therefore, considering this amendment, India's stance on the Juvenile Justice system remains pivotal, leading to various amendments reflecting the evolving landscape of the legal framework at both domestic and international levels.

### CONCLUSION

The Juvenile Justice System has evolved in the country in response to international and domestic understanding of children and their deviancy. Quantitative estimates have provided a backdrop against which changes have been initiated. The nature and incidence of crimes committed by children have changed. The Juvenile Justice system has considered this and altered the legislation's provisions. Over time, the system has emphasized monitoring and implementing the requirements and recognised its limitations, further leading to amendments. The main aim of the system is to rehabilitate children who are either deprived or have come into conflict with the law. Very often, children fall under both of these categories. So, it becomes crucial that children are handled with care to avoid recidivism and become responsible citizens of the country.

Implementing these amendments to the juvenile justice system enhances the efficacy of current law, prompting the question of whether India still needs to strengthen its juvenile justice legislation further. Evaluating this aspect, India has made significant progress in fulfilling its need to protect juveniles through legislative amendments and case laws. However, despite these improvements, challenges in implementation and consistent application of laws across different regions persist; therefore, continuous efforts are needed to address these challenges. Consequently, the way the Indian legal system handles juveniles involved in legal disputes highlights the necessity of India to refine its system by incorporating modification, drawing on various international documents and adapting to societal shifts.

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<sup>14</sup> Tanya Jain, "A Critical Review of the Juvenile Justice Amendment Act, 2021," The Amikus Qriae, available at <https://theamikusqriae.com/a-critical-review-of-the-juvenile-justice-amendment-act-2021/> (visited June 2, 2024).