



## Juvenile Justice: the Amendment

### KEYWORDS

Juvenile Justice, Heinous Crimes, Nirbhaya, Juvenile delinquency

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**ABSTRACT** *This article evaluates the existing legal system in trying juvenile offenders and the new bill suggesting that juvenile boards will have the power to decide if 16 to 18 year olds in rape and murder cases should be tried as children or as adults. Flaws in both-the existing and the upcoming procedure-have been identified and analyzed with the help of a few recent cases in the country. The information used was taken up by various articles available online and the newspapers. Keeping in mind not only the principles of natural justice but also the legislative intent of the JJ Act i.e. reformation of juveniles, the article suggests having a set of offences comprising of heinous crimes to determine whether an offender be tried under the IPC or the JJ Act instead of having an age limit. Yet still, appropriate ways of reformation of a juvenile offender should be included in the course taken.*

With growing population, the number of crimes is increasing rapidly. People from all age groups commit various types of offences from petty crimes such as theft and robbery, to heinous ones such as murder and rape. Not only grownups, both-educated and uneducated, poor and well to do-commit crimes, but also minors as old as 10 years of age commit crimes. Less education, growing exposure, less responsibility on parts of parents or guardians are few of the many factors that lead to juvenile crimes.

Offences involving minors, chain-snatching, conmen impersonating as policemen, vehicle thefts and crime against women witnessed a marked rise in 2009. According to the police, a review of offences involving minors in the age group of 13 to 16 years have revealed that a lot of children were found involved in crimes such as rape, murder, house break-ins, and theft, robbery, dacoit and body offences.

While adults are tried under the Indian Penal Code, 1860 (IPC), citizens below 18 years of age are tried under the Juvenile Justice Act, 2000, (JJ Act) by the Juvenile Justice Board (JJ Board). The legislative intent behind this being that children need to be protected from exploitation and that they should get a chance to reform and start over as a better human being.

Existing laws have loopholes, such as the age bar of 18 years and maximum punishment of 3 years. Juvenile criminals between 16 and 18 years accounted for more than 60% of the crimes registered against minors in India last year, recently released figures of the National Crime Records Bureau (NCRB) have revealed.

The Indian Cabinet recently suggested a far reaching change for juvenile law. According to the new bill, called the Juvenile Justice (Care and Protection of Children) Act of 2014, juvenile boards will have the power to decide if 16 to 18 year olds in rape and murder cases should be tried as children or as adults.

What is the purpose of the law? Has it been put in place to punish or to reform criminals? Proposed changes in the juvenile justice system in India have ignited a debate on this issue. For children, reform, not punishment, helps.

They get an opportunity to start their life afresh as a better person. But what happens to natural justice? Just because someone is a juvenile, they shouldn't be given the leverage of committing heinous crimes that turn someone else's life upside down.

Just because surveys say that 16-18 years old people commit crimes, it doesn't mean that all people between the age of 16-18 are dangerous and hence shouldn't get a chance to reform if they aren't responsible for anything brutal. At the same time it doesn't mean that children below the age of 16 cannot commit offences serious in nature.

The suggested change has a number of debates and criticisms surrounding it. Firstly, many feel that this has been done due to the mob pressure and not by genuinely thinking about the future of that child. The question raised is whether we should treat all acts of juvenile delinquency as serious crimes and lock up youngsters in the same jails as adults, given the stifling atmosphere of our criminal justice system? But there's another group of people which thinks that the Juvenile Justice Act in its present form provides a shield to such criminals, who get a maximum of three years in a reforms home for even the worst barbarity. There's another criticism that the Article 14 of the constitution is violated by not treating equals equally i.e. there's a group of children falling under the age group of 16-18 years of age who will be treated differently from the children below 16 years of age, irrespective of the fact that they are all considered juveniles in the eyes of law. What we need to understand here is that we should make a distinction within this group but not on the basis of age but on the basis of the offence that one commits.

The issue of how juveniles ought to be punished has come to the fore due to the infamous gang rape and brutal murder of a young woman in December 2013 in Delhi. One of the six criminals of in this case was a young boy, who was six months below the age of 18. According to media reports, the boy was the most brutal of the involved perpetrators. Yet he received a sentence of three years in reform, while the others got capital punishment. What if it wasn't him, but one of the others who did such an act of brutality but convinced him to take the blame as he was a juvenile? If such is the case, juveniles are simply taking un-

due advantage of the protection granted by the Government of India, being *parens patrie*.

The intensity of crime differs from case to case, so does one's maturity. The concern that children should be safeguarded against exploitation should be taken care through the IPC. Maturity starts gearing up at the onset of puberty, around the age of 14 years, but recognizing whether an act is good or bad can be done by a child of as young as 10 years of age. But letting the court decide whether one should be subjected to a punishment under the IPC or the JJ Act would be very arbitrary and ambiguous.

Nowadays, children aren't acting their age. There's underage smoking, drinking, watching adult movies and indulging in other sorts of activities which aren't sometimes legal even for adults, let alone children! In a world where 15 year olds know what drugs are, understanding of offences like rape and murder is obvious. There shouldn't even be a debate on whether to lower down the age bar from 18 to 16, there should be set of offences comprising of heinous crimes which if committed by a juvenile, they shall be tried alongside adults and not under the JJ Board.

In The UK, a person under 17 (the cut-off for juveniles there) can be tried as adult in serious offences like sexual assault, child sex offences and sexual activity with a child family member. France has a separate Juvenile Assize court to deal with serious offences committed by minors in the 16-18 age bracket.

The 2013 Mumbai gang rapes also witnessed juveniles being a part of the physical abuse and humiliation undergone by two in Mumbai. While two of the accused have already been awarded capital punishment and the other two a death sentence, the two minors, one in each case, are currently being tried by the Juvenile Justice Board separately. If convicted, the maximum punishment they can face under Indian law is three years imprisonment, which includes time in custody.

In the case of Ramdeo Chauhan, the Supreme Court refused to determine the age of the accused on the basis of entries in the school register or medical evidence, both of which indicated him to be a child on the date of the offence, and confirmed the death penalty for the offence of murder even though one judge expressed a doubt as to whether the boy was a child on the date of commission of offence. The governor later commuted his sentence to life imprisonment on the recommendation of the National Human Rights Commission.

Though there shouldn't be a death penalty or life imprisonment for the purpose of upholding the legislative intent of the JJ Act about reform, but there should be punishments of more than 3 years in cases such as murder, rape, unnatural offences, offences against children etc. This is because, in such cases, reform is not the first question, justice is. Also, precedents are a source of law and we need to set precedents even for juveniles so that the power of law isn't undermined by people of any age in the society.

The young offenders should, however, not be placed in prison alongside adults, but in secure training centres, secure children's homes, or young offenders' institutions, so as to make sure that the purpose of the punishment is reform. Separate cells should be created to keep minors at correctional centres and they should be counseled as there is a scope to rehabilitate them.

Awareness should be created about such acts and their repercussions. Along with other sort of workshops conducted in schools, there should be some awareness about the criminal world too. More than that, as PM Modi rightly said in his Independence Day speech, parents should take account of their children. So, parents' talking to their children is very important because a child is usually a reflection of his family and surroundings.

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