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Rethinking Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015

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Abstract

Scholars from diverse backgrounds strongly condemned the Juvenile Justice Act (JJA), 2000 for its failure to effectively penalize juvenile offenders. So, the main focus was on making punishments tougher to stop people from doing bad things. In response to the Nirbhaya case, the Indian Parliament quickly passed the JJA, 2015 to appease public anger. In accordance with the fresh legislation, young individuals between the ages of sixteen and eighteen who are charged with a particularly severe offense can be transferred to adult courts. The focus of this research is to analyse how Section 15 of the Act intersects with the physiological processes in young individuals' bodies. In conclusion, the paper addresses the perplexity within the law and puts forward potential solutions to resolve it.

Introduction

The JJA of 2015 is a law that was approved by the Hon'ble President of India on 13th December, 2015. All parts of India are subject to this regulation, with the exception of Jammu and Kashmir. The horrible incident (rape) in the well-known case of Nirbhaya involved a Seventeen-year-old offender, who was almost an adult.¹ This raised concerns that the JJA, 2000 was not prepared to handle such dangerous young criminals, known as juvenile delinquents. Policy makers, media, and regular people from all walks of life started questioning if the juvenile laws were fair and if harsher punishments were needed to prevent such crimes.² The Parliament was heavily criticized for not being able to address the issue of young criminals, so it gave in to the demands of some critics who believed in the exaggerated idea of super-dangerous youngsters. As a result, the Parliament passed the JJ Act in 2015, which made it simpler to treat young offenders as adults in court. Under the current system, if a child aged 16-18 is accused of a serious crime, they may be sent to a special court for children but treated as an adult. Section 15 in the JJ Act, 2015 has emerged as highly disputable, as it compels the Juvenile Justice Board (JJB) to shift cases involving 16-18 year old individuals accused of grave offenses to the children's court. The Board needs to make a decision based on a preliminary assessment to see if the child is capable of committing a crime. This Section makes the JJB have a difficult responsibility of getting help from psycho-social workers, psychologists, and other experts to decide if the accused person is mentally fit or not. If the Board thinks the child is okay, they can send them to the Children's Court. The author thinks that the process of checking the child can be unfair and biased. The

¹ Shamik Ghosh, 'Delhi gang-rape case: 17-year-old accused is a minor, rules Juvenile Justice Board' (*NDTV*, 28 Jan 2013) <<https://www.ndtv.com/india-news/delhi-gang-rape-case-17-year-old-accused-is-a-minor-rules-juvenile-justice-board-511623>> accessed 14 Aug 2023.

² *ibid.*



lawmakers overlooked the undeniable and up-to-date scientific proof indicating that the evaluation of a child's mental ability on an individual basis is impractical. Many international regulations were established to safeguard children's rights before the implementation of the JJ Act, 2015. However, it doesn't match up with what these international rules say. The act of transferring a minor to the adult criminal justice system, as outlined in the JJ Act, 2015, is also contradictory to the provisions stated in Articles 14 and 15(3) of the Indian Constitution.

Juvenile Justice: International Agreements

The introduction of the JJ Act, 2015 does not comply with the international standards for protecting human rights as mentioned. The Declaration of the Rights of the Child, also called the Declaration of Geneva, was the first international agreement about the rights of children.³ It said that children who commit crimes should be changed for the better, not just punished. It is the responsibility of all people to help troubled children to become better. The minimum requirements for member countries regarding juvenile justice are detailed in the United Nations' Beijing Rules.⁴ This text explains how young people should be treated, without any differences.⁵ It talks about helping them become better and also gives different ways to handle their situations.

In 1990, the "United Nations General Assembly" (i.e. UNGA) made two important agreements. The UN Guidelines, also known as the *Riyadh Guidelines*, emphasized and acknowledged the importance of preventing young people from engaging in illegal activities. The main objective of their creation was to promote a positive atmosphere and surrounding among juveniles, noting that:

"part of maturing often includes behaviour that does not conform to societal norms and that tends to disappear in most individuals with the transition to adulthood and avoid labelling a youth a deviant or delinquent as this contributes to negative patterns of behavior".⁶

The United Nations' Havana Rules outline criteria for designating individuals as a juvenile depending on their age at the time. A juvenile refers to an individual who is below the age of 18.⁷ India, like many other countries, has signed and committed to abide by the international agreement known as the Convention on

³ Geneva Declaration of the Rights of the Child, 1924 (Geneva Convention).

⁴ G.A. Res. 40/33, United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules).

⁵ *ibid* Rules 18, 24.1 and 25.1.

⁶ G.A Res. 45/112, United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (The Riyadh Guidelines).

⁷ G.A Res. 45/113, United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990, Rule 11(a).



the Rights of the Child (CRC), which was enacted in 1989. This text highlights the importance of considering what is best for children and helping them reintegrate into society.⁸ It criticizes India for not following international agreements and instead allowing children as young as 16 to be treated as criminals. Violating international standards, this act contradicts the principles enshrined in the CRC as well as fundamental human rights. It is astonishingly noted in the introduction of the JJA, 2015.

Injustices under Section 15

The JJA, 2015 brings about a crucial modification whereby 16-year-old or older youths can be handled as adults within the justice system. In accordance with the Act, a child is defined as an individual under the age of 18.⁹ There have been no changes made to the definition of a child. Even though the Act retained the same age in its definition, Section 15 of the Act introduced a change by lowering the age at which minors can be treated as adults for serious crimes, decreasing it from 18 to 16 years. It cannot be overlooked or misunderstood, as it is an evident and inevitable contradiction.

Section 15 of the JJA, 2015 requires the (Juvenile Justice Board) JJB to evaluate children's mental condition as an initial step. The mental capabilities of individuals can be assessed by seeking assistance from a variety of professionals such as psycho-social workers, psychologists, and other experts. In accordance with Section 18(3), the child may be transferred to Children's Court and treated as an adult for trial if the Board determines their mental capability to commit a serious crime. This change is important because it involves a long and difficult process with a lot of arguing. By treating young People as either adults or children, blended sentencing, sometimes referred to as extended jurisdiction juvenile (EJJ), enables the Children's Court to handle matters involving juveniles. This type of sentence is more punishment-oriented because it treats children as adults when sentencing them.¹⁰ In simple words, this means that the reasons for having a separate system for dealing with young offenders are slowly disappearing. Furthermore, when a child is found guilty, they may be given a sentence to be served somewhere safe until they become an adult, and then they will be transferred to a regular prison.¹¹ The preservation of a child's dignity has been reiterated as paramount by the highest court. International conventions and rules further reinforce the belief that child

⁸ G.A Res. 44/25, Convention on the Rights of the Child 1989.

⁹ The Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act 2015), §§ 2(12) and (13).

¹⁰ Andrea Knox, 'Blakely and Blended Sentencing: A Constitutional Challenge to Sentencing Child Criminals' (2007) 70(5) OSLJ 1261 <<https://core.ac.uk/download/pdf/159609718.pdf>> accessed 14 Aug 2023.

¹¹ JJ Act 2016, s 19(3).



offenders deserve distinct treatment when compared to adult offenders. General Comment No. 10 outlines the duties of the countries under the “UN Committee on the Rights of the Child” (CRC).

"they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. This means that every person under the age of 18 years, at the time of the alleged commission of an offence, must be treated in accordance with the rules of juvenile justice".¹²

These rules & agreements give special treatment to adolescent criminals to protect them. India agreed to one of these agreements in 1992, but the government has now decided to treat young criminals the same as adults. The JJB is now empowered to disqualify young offenders aged 16 and above, who have engaged in serious criminal activities, from being incorporated into the juvenile system.

Professor Chris Cunneen is a well-known expert in crime studies. He has come up with a theory called the Labelling Theory.¹³ This theory suggests that when young people interact with the legal system, it greatly influences their behaviour and can cause them to become involved in criminal activities.¹⁴ The manner in which young offenders are handled within India's justice system can create a perception of being a criminal, evoking negative feelings. All the society and the judicial system soon embrace this persona and assign it to that person that violated the law. Labelling a child within society's framework may heighten the chances of their inclination towards criminal behaviour. Children's behaviour often aligns with the labels assigned to them.¹⁵ Consequently, if a child is constantly referred to as bad, they will adopt this identity and behave accordingly as they grow up. The Act may have intended to keep the child away from the adult justice system in order to discourage delinquent behaviour, as being designated as a juvenile can lead to problematic actions. The rationale behind considering children as adults under Section 15 is rooted in the principle of proportionate punishment based on the severity of their wrongdoing.

¹² UN Committee on the Rights of the Child (CRC), *General comment No. 10: Children's Rights in Juvenile Justice* (UNCRC 2007).

¹³ Chris Cunneen and Rob White, *Juvenile Justice - An Australian Perspective* (1st edn, Oxford University Press 1995) 28-90.

¹⁴ *ibid.*

¹⁵ Jason Rafferty, 'Gender Identity Development in Children' (*Healthy Children*, n.d.) <<https://www.healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx>> accessed 14 Aug 2023.



In the historic decision of *Subramanian Swami v. Raju*, the Indian Supreme Court, acting through the Juvenile Justice Board, recognized strong arguments against reducing the eligibility age from eighteen to sixteen years old. In determining whether the concept of a child as someone under the age of eighteen is legal, the court in *Salil Bali v. Union of India* declares the following:

*"The age of eighteen years has been fixed on account of the understanding of the experts in child psychology and behaviour patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. It is probably better to try and reintegrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future."*¹⁶

The Department Related Parliamentary Standing Committee examined the 2014 "Juvenile Justice (Care and Protection) Bill" in its 264th report.¹⁷ It came to their attention that there were individuals who had raised objections to certain sections of the law, claiming that they violated the Constitution. Moreover, the Committee acknowledged the possible adverse effects that the law could have on children, who are considered the most vulnerable individuals in society. They decided not to approve the bill because they believed it was ultra vires and against the constitution. in the following words:

*"[T]he existing JJA, 2000 is not only reformative and rehabilitative in nature but also recognizes the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence, there is no need to subject them to a different or an adult judicial system as it will violate Article 14 and 15(3) of the Constitution. We also took notice of the Crime in India, 2013 by the National Crimes Records Bureau which shows juvenile crimes to be 1.2 percent of the total crimes committed. It is evident that juvenile crime is not significantly increasing so as to warrant bringing radical changes in the legislation, which could very well be tackled within the existing framework, with appropriate infrastructure".*¹⁸

¹⁶ *ibid.*

¹⁷ Parliament Standing Committee, 'Two Hundred Sixty Fourth Report The Juvenile Justice (Care and Protection of Children) Bill, 2014' (Feb 2015). <https://prsindia.org/files/bills_acts/bills_parliament/2014/SC_report-_Juvenile_justice_1.pdf> accessed 14 Aug 2023.

¹⁸ *ibid* 30.



The Jagdish Sharan Verma Committee, formed by the Delhi Gang rape case in 2013, was created to assess possible revisions of criminal law. The committee also recommended against lowering the age at which someone is considered a juvenile. The parliament, in response to public pressure from the media, passed the law as it stands today, although there were convincing arguments presented by the committees and the Supreme court.

Psychological Factor and Juvenile Delinquency

The Board is required under Section 15 of the JJ Act 2015 to certify the mental and physical fitness of every child who is sixteen years of age or older. To determine whether a child is mentally and physically capable of committing a crime, the authority may seek the assistance of specialists, such as mental health specialists. But the Act has not been successful in creating a definition that everyone agrees on, which means that there is confusion and uncertainty. Psychology as a field is insufficient in comprehending and evaluating this notion to provide an accurate and dependable analysis. Psychological and developmental sciences are unable to pinpoint the precise age at which an individual possesses all the skills and capabilities of an adult.¹⁹ It is subjective and arbitrary to decide when someone is considered a child or an adult. The Court presiding over *S v Dyk*²⁰ reasoned that using an ambiguous moral standard may result in charging a youngster accountable for an act of violence. For the past 15-20 years, studies have focused on examining how brain development can aid in establishing the earliest age at which individuals can be deemed accountable for committing a crime.²¹ Teenage brains are proven to be incomplete and comparable to adult brains only after reaching the age of 25 through the utilization of medical imaging and advanced technology. In the *Stanford v. Kentucky*²², the US Supreme Court said that children, even as old as 16 and 17 years old, are not very good at controlling their actions or understanding the possible outcomes of their risky behaviour. In *Roper v Simmons*²³, a 17-year-old child had been given the punishment of death. In an endeavour to sway the ruling, the Supreme Court received documentation from the American Psychological Association, which sought to demonstrate that brain development in teenagers remains ongoing at the age of 17 years old. In light of research findings, the Supreme Court abolished the death sentence.²⁴ The JJBs should consider sending the

¹⁹ National Library of Medicine, 'Young Adults in the 21st Century' (NCBI, n.d.) <<https://www.ncbi.nlm.nih.gov/books/NBK284782/>> accessed 14 Aug 2023.

²⁰ 1969 (1) SA 601(C)

²¹ Michael E Lamb & Megam PY Sim, 'Developmental Factors Affecting Children in Legal Contexts' (2013) 13 Sage Journals 131.

²² 492 US 361.

²³ 543 US 551 (2005)

²⁴ Aliya Haider, 'Roper v. Simmons: The Role of the Science Brief' (2006) 3 Ohio State Journal of Criminal Law 369.



child to state-run hospitals that have psychiatric departments in order to assess their mental health. Because these hospitals have problems with their infrastructure and finances, we can say that these departments may not be capable of meeting the necessary standards. Psychologists are not certified as required by paragraph 15(1) of the 2015 JJ Act since their area of expertise is in identifying mental illnesses and disorders rather than children's cognitive or physical skills.²⁵ This type of assessment is difficult, takes a lot of time, and can be expensive to perform on every child.²⁶ The JJ Act, 2015 ignores important areas of study like neurodevelopmental sciences, social sciences, and the teachings of various religions about human nature. Despite numerous studies conducted in this field, it is disheartening that the government, swayed by misconceptions among the public, enacted the JJ Act, 2015.

Juvenile Justice and the Constitution

Articles 15(3), 39(e) and (f), 45, and 47 of the Constitution are mentioned in the Preamble of the JJ Act, 2015. It states that the government has an obligation to guarantee children's well-being and the preservation of their rights. The Act's transfer of children to the adult criminal system is in direct contradiction to the constitutional guarantee of equal treatment. Article 14 states that everyone should be treated equally under the law. However, not everyone is naturally or situationally equal.²⁷ This means that a strict equality before the law can lead to unfairness. The Supreme Court in the land has emphasized this important idea in this way:

"Article 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discrimination. It means that equals should be treated alike; it does not mean that 'unequals ought to be treated equally'. Persons who are in the like circumstances should be treated equally. On the other hand, where persons or groups of persons are not situated equally, to treat them as equals would itself be violative of Article 14 as this would result in inequality".²⁸

As the growth of minds varies between children and adults, it is important to recognize this difference and treat them accordingly. Within the criminal justice system, there is an erroneous belief that children and adults share equal responsibility for their actions and possess the same capacity to endure legal proceedings, which disregards the fundamental differences between these two groups. By anticipating that children will

²⁵ *Barun Chandra Thakur V. Master Bholu & Anr* 2022 SCC OnLine SC 870.

²⁶ *ibid.*

²⁷ *R.D Upadhyay v. State of A.P and Ors.* AIR 2006 SC 1946.

²⁸ *RK Garg v Union of India* AIR 1981 SC 2138.



possess the same comprehension and exhibit identical behaviour as adults, we are treating them as equals, despite their inherent differences.²⁹ This goes against Article 14. A child distinguishes from an adult by the fact that they are still undergoing growth and development on their way to adulthood. Some people call this stage "semiautonomous".³⁰ Consequently, it is not equitable to subject them to the same expectations as adults. Another part of the Constitution, Article 15(3), requires states to create special rules that help children, rather than harm them. The Constitution of India requires the state to safeguard the liberties and pursuits of its citizens, as opposed to just offering them a favour to demonstrate goodwill.

Avenues for Change: Possible Solutions

An ancient proverb that dates back to 1837 states that "Hard Cases make bad law." In the case of *Winterbottom v. Wright*, 1842, Justice Robert Rolf noted:

*"This is one of those unfortunate cases...in which, it is, no doubt, a hardship upon the plaintiff to be without a remedy but by that consideration we ought not to be influenced. Hard cases, it has frequently been observed, are apt to introduce bad law".*³¹

Judge Robert Rolf's observation has important consequences. Laws should be created to help and protect everyone in the community. The legislations should be grounded on regular occurrences rather than exceptional circumstances. Unusual situations are not a good reason to make laws. In the Nirbhaya case, a violent rape took place involving a group of individuals and a medical student. It is a very awful example. The young wrongdoer, who became the subject of extensive discussions across the country regarding the functionality of the juvenile justice legislation, was named the most brutal among all the culprits. India's introduction of the JJ Act, 2015 can be considered a misstep, influenced by a disturbing case of a heinous gang-rape.

The government paid no attention to the responsibility of examining the experiences of nations that have moved children to the adult criminal justice system. There has been an increase in the number of individuals in these nations who have engaged in criminal activities once more. According to the latest "Crimes in India" report published by the NCRB in 2021, there were a total of 31,170 reported incidents involving

²⁹ Raunak Chaturvedi, 'Preliminary assessment- reality of the Juvenile Justice (Care Protection of Children) Act, 2015' (*ipleaders*, 23 July 2020) <<https://blog.ipleaders.in/preliminary-assessment-reality-juvenile-justice-care-protection-children-act-2015/>> accessed 14 Aug 2023.

³⁰ Franklin E. Zimring, *The Changing Legal World of Adolescence* (Macmillan Publishing Co. New York, 1985).

³¹ *Winterbottom v Wright*, 152 ER 402.



minors, representing a 4.7% increase from the previous year's 29,768 cases (page 21).³² In the case of *Madrid v. Gomez*³³ Court noticed that way people live in prisons nowadays can be really tough on their minds. Krishna Iyer, J believes that adult prisons are similar to “animal farms”.³⁴ The future for young people who commit crimes and end up in adult prisons looks very negative. The presence of this system heightens the risk for young people to injure themselves and encounter instances of sexual and physical harm perpetrated by older prisoners. We can see that there is a clear connection between the brutal treatment of young people and the negative impacts they experience. The prison culture and surroundings influence how young people behave, making them more likely to repeat offenses. They also learn ways to commit crimes when they come back to society. The writer says that rehabilitation is very important in the Juvenile justice system. Helping young people who have done something wrong to change their behaviour can actually keep others from making the same mistakes. Rehabilitation is effective as it prevents individuals who have encountered difficulties from repeating their actions.

Conclusion

The introduction of a transfer provision by the JJ Act of 2015 undermines the distinctive position held by a juvenile. The main aim of the JJ Act, 2015, is to govern and address juvenile offenders as opposed to facilitating their rehabilitation or alteration of behaviour. The committee reviewing the “Juvenile Justice Bill”, 2014 was informed by the “Ministry of Women and Child Development, Government of India” about the different issues in the JJ Act, 2000. These problems included things like inquiries taking longer than they should, confusion about people's roles and responsibilities, and JJBs not being held accountable. The reports also mentioned that there were instances where children were mistreated at the institution. The government disregarded the opportunity to strengthen the Act of 2000, which had a better understanding of the child's needs, and instead hastily enacted a completely new law that is regressive and unlikely to be beneficial. Juvenile or criminal courts are unlikely to witness sufficient competence or proficiency in individuals under the age of 18. Due to their challenges in effective communication and limited trust in their legal representation, children facing court proceedings often encounter difficulties in attaining a just outcome. The emphasis has shifted from treatment to prioritizing children in the law. The government passed the JJ Act, 2015, without addressing important child rights issues. The government's efforts to help children have not focused enough on the main problems that cause young people to become involved in crime.

³² National Crime Records Bureau, *Crimes in India* (Ministry for Home Affairs 2021).

³³ 889 F. Supp. 1146 (ND Cal. 1995).

³⁴ *Satto v. State of UP* (1979) 2 SCC 628.



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It has been observed that when a child is exposed to a negative environment, it can result in criminal tendencies. Instead of solely considering the damage caused to society, the legal system should prioritize comprehending the specific issues that require assistance for the offender. Locke argues that education is the sole means to aid troubled youth engaged in criminal activities and assist them in resolving their issues. Developing a system that pays attention to helping as soon as possible is very important. We should concentrate on making education and family institutions stronger. These things can cost a lot of money, but they end up being cheaper when you consider all the important factors. Doing this thing will probably be very helpful in investing in the child's growth and progress, instead of calling them unable to improve.

The writer thinks it should be uncommon to treat young people as adults in court, and it should only happen for very serious and violent crimes. We should only use model rules to treat a young person as an adult in very exceptional cases. Offenders are not supported in their personal development or encouraged to change for the better within adult prisons. Instead, it makes a situation where more crime is likely to happen. The system should prioritize implementing constructive measures to aid in the rehabilitation of the offender, while ensuring no further harm is inflicted. By doing so, the child will develop into a responsible individual who abides by societal norms.