
A CRITICAL ANALYSIS OF THE JUVENILE JUSTICE SYSTEM IN INDIA: A VICTIM'S PERSPECTIVE AND CASE STUDY OF STATE OF BIHAR

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ABSTRACT

The Juvenile Justice System of India has been in significant discussion in recent times, with particular emphasis on the part dealing with Juveniles in Conflict with Law. Often, questions concerning the conduct of such juveniles are put up, along with deliberations on the age prescribed for punishing them. The Juvenile Justice Act 2015 is an Act that states that juveniles between 16-18 years of age, committing heinous offences, are to be tried as adults. However, while these little steps are being taken, there is another question that is asked: whether the measures to reform the juveniles are adequate from the victim's point of view, as it is often noticed that while the victim is still trying to overcome the grief, the juvenile has been released also. In such a scenario, it is of late being considered whether the criminal responsibility for juveniles accused of heinous offences should be reduced. This paper seeks to analyze the present juvenile justice regime for delinquent offenders, and its efficacy in dealing with the situation at hand. The author has referred to various doctrinal sources, along with a survey report of the juvenile condition in the state of Bihar, before drawing necessary implications and offering solutions. The main aim of this paper is to make the readers understand the loopholes in juvenile delinquency laws of India, and offer insight into the same.

Keywords: Juvenile in conflict with law, Juvenile Delinquency, criminal responsibility, victim.

1. Introduction

Juvenile Justice System is a topic of global concern. With the rise in the crime rate of *children* below 18 years of age, it has become crucial for international organizations and countries to revise their juvenile justice systems to meet the needs of present-day society. Across the world, as a universal norm, generally, 18 years is regarded as the age of majority. However, there are numerous children, mainly teenagers, who commit *heinous* offences like rape and murder, but still get a free ticket courtesy of the juvenile justice laws of the land. India is no different. Here as well, children or juveniles (as per the legal terminology) are considered innocent before the law, and it is assumed that they do not have enough *mens rea* (guilty mind) to commit a crime. Only juveniles committing heinous offences (for which the punishment for an adult under Indian Penal Code, 1860, herein referred to as IPC, is 7 years imprisonment or above) , that too, who are above 16 years of age can be tried as adults. For all the other offences, juveniles will be sent to rehabilitation centres, where they will be provided adequate facilities to *reform* themselves.

However, the pertinent question to be asked here is whether these steps being taken by the government of India are adequate to put a blanket stop to these crimes. The answer, sadly, is a No. The NCRB Report clearly shows an increase in the number of juveniles in conflict with law (herein to be referred to as JCL).¹ The Report indicates that there has been a rise in crimes by 4.7% among juveniles. This clearly shows that the current approach of the government in dealing with JCL needs to be revised. While a considerable sum of money every year is allocated to the restoration of the JCL, and to bring them in accordance with societal regulations, yet this increase makes one think whether the efforts are bearing any fruit.

There are many theories governing the Juvenile Justice System in India, particularly with respect to the JCL. Theories like *Doli Incapex*, are just the founding stones on which the idea behind children incapable of possessing the intention to commit a crime formulates. This research paper aims to bring out an analysis of the Juvenile Justice System of India, with special emphasis on the adequacy of punishment of a juvenile, and the reformatory theory applied to them, particularly from the victim's perspective. This paper also adopts a case study of Bihar, by using the data provided by the Juvenile Cell of Bihar to substantiate specific points.

2. History Of Juvenile Justice

¹ NATIONAL CRIME RECORDS BUREAU, <https://ncrb.gov.in/sites/default/files/CII-2021/CII%202021%20SNAPSHOTS%20STATES.pdf>, (last visited Jan. 9th, 2023)

About 4,000 years ago, the Code of Hammurabi had discussed runaways or children who abused and cursed their fathers.² Then again, during the era of the Roman Empire, when the Empire was at its pinnacle, the issue of children committing a crime was again in discussion. Roman Law, as well as the canon law, both distinguished between juveniles and adults. This was around 2,000 years ago, when the concept of the mind being guilty was not prevalent, or was only found in canon law.³ The Church (governed by Canon Law), did consider the issue of the mind being guilty. Moreover, it was said that the crime was attributable to the devil conquering over the human mind, and that penance would help the person to wash away his crime.

However, the same was not considered for the standard codified Roman Laws. Here, the presence of a guilty mind as a concept had not developed fully, hence, both juveniles and adults were penalised for crimes, and not for the *mens rea* they possessed. Furthermore, the ancient Jewish Laws, the Talmud, had prescribed the age limit for considering a person mature, wherein the age of maturity for females was 12 years and the age of maturity for males was 13 years. Capital punishment was prohibited below the age of 20 years.⁴ Similar understanding was also extended to children in Mohamaden law, wherein capital punishment was restricted for people below 17 years of age.

Therefore, the concept of juveniles, juvenile crimes, as well as juvenile justice is not something that has come up in the 20th century. It has been omnipresent throughout the evolution of mankind into societies that are to be governed by institutional means. However, the concept of juvenile justice owes its origin to the Roman Empire in the 5th century BC, when Roman Law was classified into the Twelve Tables, which put criminal responsibility on children.⁵ Offenders under puberty were to be flogged while their commensurate punishment for adults was death penalty.⁶ Initially, children who suffer from disability were acquitted from their guilt, however, later, the age increased to 7 years of age. Hence, a child who is below 7 will not have any criminal liability.⁷

² (6th ed.) STEVEN M. COX, JENNIFER M. ALLEN, ROBERT D. HANSER & JOHN J. CONRAD, JUVENILE JUSTICE: A GUIDE TO THEORY, POLICY AND PRACTICE (Sage, 2008)

³ Ibid

⁴ Ibid

⁵ FRANKLIN E. ZIMRING, MAXIMO LANGER & DAVID S. TENENHAUS, JUVENILE JUSTICE IN GLOBAL PERSPECTIVE (Sage| Vistaar, 2017)

⁶ Supra note 2

⁷ The Indian Penal Code, s. 82, No. 45, Acts of Imperial Parliament, 1860 (British India)

As can be seen from what has been written above, the age of juveniles has been a topic of great conflict. While some scholars feel that juveniles shouldn't be given the benefit of age at all, and should be judged on the basis of the crime they commit, several other scholars have said that a child is innocent, and cannot be said to have *mens rea*. This issue was discussed in great detail in 2012 when the *Nirbhaya Gangrape* case came to public knowledge, where the most heinous treatment to the victim was done by a juvenile. After several debates, it was established that for heinous offences under the Indian Penal Code, i.e., offences for which the punishment is 7 years or more imprisonment, if committed by a person aged 16 or above, will be said to have been conducted by an adult, and the trial will be done in conformity with a trial carried out for an adult offender.⁸

This was seen to be a significant breakthrough for India in terms of the Juvenile Justice System with respect to JCL, where the criminal liability age was reduced, and a great relief was provided to the victims who were a target of juvenile crimes. Furthermore, this also prohibited people involved in human trafficking from using children for their own selfish deeds. A new legislation called the Juvenile Justice (Care and Protection) Act 2015 was also passed by the Parliament so as to give effect to this change that was hailed to be a reform in this area of law. However, with the change in dynamics of the juvenile system, especially with the exposure to technology and gizmos, has a negative influence on the juveniles of today. As a result, crimes among juveniles between the ages of 12-15 years have become very widespread, leading to a change in the thought of people that whether almost 7 years after the JJ Act 2015 was brought in, the Act needs to be amended to keep up with the needs of the society.

3. Laws Governing Juvenile Justice System

The JCL framework is an immensely complex one. It is based on both international covenants and legislation that have impacted India significantly. The Juvenile Justice (Care and Protection) Act 2015 is the principal legislation governing JCL in India. Chapter III and Chapter IV of this Act deals with JCL, and issues thereto, regarding the Juvenile Justice Board, Children's Court, and other administrative issues. However, the inception of this Act can be traced back to the United Nations Charter (herein referred to as UN Charter), Universal Declaration of Human Rights 1948 (herein referred to as UDHR) and other allied Conventions.

3.1 International Laws and Conventions

⁸ The Juvenile Justice (Care and Protection) Act 2015, s. 15(1), No. 2, Acts of Parliament, 2015 (India)

The UN Charter, in its Preamble, has mentioned “*to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*” as one of the objectives sought to achieve.⁹ This in itself shows the importance given by the UN to human life, including juveniles. One of the primary *Charter* existing for the protection of human rights, the UN Charter, has played a significant role in the development of the rights of JCL (along with UDHR).

The UDHR is another such law protecting the rights of JCL. The different articles of the UDHR have also played a fundamental role in development of JCL rights.¹⁰ These rights deal with diverse issues, including the right to life of a person, the right not to be discriminated, the right to get proper and fair trial, the principle of innocent until proven guilty, as well as the right to lead a dignified life. These are all essential articles from the victim’s perspectives, since, in some instances, they are denied the right to dignified trials and the right to fair compensation as well, by opting for a reformatory approach.

This was followed by the United Nations Declaration of the Rights of Child 1959, wherein India became a signatory and had to introduce a legal mechanism to regulate juvenile delinquency in India. “*The child is recognized, universally, as a human being who must be able to develop physically, mentally, socially, morally, and spiritually, with freedom and dignity*”- an important translation under this Declaration, was considered a landmark since it was the first universal declaration to speak exclusively on Child Rights.¹¹

The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990, also known as the Riyadh guidelines, is another such convention that has dramatically influenced the JCL structure of India.¹² These guidelines speak about the alarming rate of increase in juvenile delinquency, and also put forth steps to deal with the same. The approach spoken about in this Convention is a child-centred approach based on the development of the child. This is basically a raw version of the reformatory approach in use in India today. Following

⁹ UNITED NATIONS, <https://www.un.org/en/about-us/un-charter/preamble>, (last visited Dec. 1, 2022)

¹⁰ UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948, https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf (last visited Dec. 1, 2022)

¹¹ Anonymous, *Declaration of the Rights of the Child 1959*, HUMANIUM, <https://www.humanium.org/en/declaration-rights-child-2/>

¹² Anonymous, *United Nations Guidelines for the Prevention of Juvenile Delinquency: The Riyadh guidelines (A/RES/45/112)*, SAVE THE CHILDREN (1990), <https://resourcecentre.savethechildren.net/document/united-nations-guidelines-prevention-juvenile-delinquency-riyadh-guidelines-ares45112/#:~:text=During%20its%2068th%20plenary%20meeting,crime%2C%20the%20necessity%20of%20implementing>

this, the Vienna Guidelines 1997 was formed and adopted for the protection of children, and it was addressed not only to the states but also to NGO's and media.¹³ There have been many international conventions for the formulation of guidelines so as to prevent (or limit) juvenile delinquency, however, they all have seen little success. However, all these legislation have had a profound impact on the Indian Legal System, which has absorbed the lessons from all these laws into a single unified law called the Juvenile Justice (Care and Protection) Act 2015 (herein referred to as the JJ Act 2015).

3.2 India

Before elaborating on the JJ Act 2015, it is pertinent to note that the supreme law of India, the Constitution of India, is also a document that governs the juvenile justice system in India. Articles 14 (Right to Equality), 15 (Right of Non-Discrimination on the basis of caste, religion, sex, place of birth and race), 19(1)(a) (Right to Freedom of Speech and Expression), 20(1) (Ex-post facto laws), 21 (Right to Life and Liberty), 21A (Right to Education) and 23 & 24 (Rights against exploitation) are some articles dealing with Child Rights loosely.¹⁴

It is interesting to note that before the JJ Act 2015 was introduced, India had a vibrant history of dealing with juvenile delinquency. Prior to India becoming a signatory to the 1959 Declaration, there was no national law to regulate this subject. Each state had its own laws to deal with the situation. However, in 1960, India passed the first national law, called the Children Act 1960, to formally set up a mechanism to deal with juvenile justice.¹⁵

Owing to various reasons, this Act was soon repealed by the Juvenile Justice Act 1986, which defined a juvenile as a girl who is below the age of 18 years and a boy who is below the age of 16 years. However, further changes in the UN declarations led to the repealing of this statute as well, to be replaced with the Juvenile Justice (Care and Protection) Act 2000 (herein referred to as JJ Act 2000). This statute fixed the age of juveniles at 18 years for both boys and girls.

¹³ UNITED NATIONS Guidelines FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM, <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-action-children-criminal-justice-system> (last visited Dec. 2, 2022)

¹⁴ INDIA CONST., art. 14; INDIA CONST., art. 15; INDIA CONST., art. 19, cl. 1(a); INDIA CONST., art. 20, cl. 1; INDIA CONST., art. 21; INDIA CONST., art. 21A, *amended by* The Constitutional Amendment (Eighty-Six Amendment) Act, 2002; INDIA CONST., art. 23; INDIA CONST., art. 24

¹⁵Dibakar Banerjee, *Juvenile Justice*, LEGAL SERVICES INDIA, <https://www.legalserviceindia.com/legal/article-3089-juvenile-justice.html#:~:text=Juvenile%20Justice%20System%20In%20India&text=N%20countries%20in%20November%201985,a%20age%20of%2016%20years.>

The constitutional provisions, along with the JJ Act 2000, were considered sufficient to manage the JCL of India till the gory incident of the *Nirbhaya Gangrape* case took place in 2012. It was then realized that while the rights bestowed by the constitution are being used for adjudicating upon cases of JCL, however, it still offers no relief to a victim who died as a consequence of the act of JCL. Furthermore, what should be understood is that these rights should also be accorded to the victim's family. In the case of *Pawan Kumar Gupta v. NCT of Delhi*, also known as the *Nirbhaya Gangrape* case (clubbed with 3 other petitions), the petitioner here was 17 years 10 months old when he brutally raped and killed a girl inside a moving bus in Delhi at the late night along with the other three convicts.¹⁶ He pleaded juvenility as under the JJ Act 2000 and was granted the same (since the recent amendment of sec 15(1) was not in existence then). The other 3 convicts (who were adults) were sentenced to death.

This led to nationwide protests in India, the most significant thing being that if the victim has lost their family due to murder by a juvenile, or the victim has been sexually assaulted by the juvenile, like in the case of the *Nirbhaya* case, then isn't the victim also entitled to article 21 benefits to lead a life of dignity, and to get his/her offender adequately punished.

This led to the constitution of the Justice JS Verma Committee and later Justice (Retd.) A P Shah Committee that paved the way for the JJ Act 2015 to be brought into effect in India. The Juvenile Justice (Care and Protection) Act 2015 was explicitly brought about after the *Nirbhaya* case, reducing the age of a child being considered a criminal (in case of heinous offences) to 16 years.

Before delving into the Committee Report and its observations, it would be pertinent to highlight that there is another legislation also dealing with this thought. The Legal Service Authorities Act 1987 is another legislation that plays a vital role in this arena.¹⁷ This Act provides for victim compensation schemes and for providing free legal aid to children by setting up legal aid clinics in Juvenile Centres. Hence, this law works both ways, i.e., for the victim as well as the accused/convict.

3.2.1 Formation of Committee and their Report

Following the events of the 2012 case, *Justice JS Verma Committee* was constituted to suggest amendments to Criminal law. It was headed by the former Chief Justice of India, Justice JS

¹⁶ *Pawan Kumar Gupta v. NCT of Delhi*, (2020) 2 SCC 803

¹⁷ The Legal Services Authority Act, No. 39, Acts of Parliament, 1987 (India)

Verma, along with Justice Leila Seth (former Judge of the High Court), and Gopal Subramaniam (former Solicitor General of India) as the committee members.¹⁸ The Committee held extensive debates and discussions of various aspects of Criminal Law. It unanimously agreed on rape (of any form) being a crime, and suggested stringent steps to curb it. It was also unanimously viewed that rapes are not just crimes of passion, but also crimes of power, to assert one's dominance over the victim. The committee reviewed criminal law related to sexual assault, and batted for enhanced punishment, including imprisoning one for the remainder of his life in grave cases. They also highlighted the need for a legislative clarification to ensure that life imprisonment in grave cases. The need for legislative clarification to ensure that life imprisonment meant imprisonment for the "entire natural life of the convict" was also sought.¹⁹ However, the committee was silent on the issue of the age of JCL.

In 2015, a committee headed by Justice (Retd.) AP Shah was formed to discuss the legality of death penalty in India. The Committee here discussed the effectiveness and the use of death penalty.²⁰ It has been stated that the Committee found itself at loggerheads when 3 of the 9 members stated that death penalty should be abolished except in the case of terrorists.²¹ The Committee then went on to refer the findings made in the Verma Committee of 2013, and found that though the committee accorded 'serious punishment' for rape, yet death penalty never found its mention there. However, the arguments went on to state that if death penalty is abolished, then it may encourage crimes.

Stemming out of these dissensions was the age range for JCL. On the one hand, it was voiced out that the age be reduced, yet on the other hand, it was contended that doing so, treating the adolescent brains of a 15 or a 16-year-old as an adult and sending them to adult prisons can end up worse thereof. For instance, they may come out as becoming even more cold-blooded criminals than they are now. However, it was also taken into consideration after the 2012 case

¹⁸ Anonymous, *Justice Verma Committee Report Summary*, PRE LEGISLATIVE RESEARCH, <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>

¹⁹ Supra note 18

²⁰ Shemin Joy, *Justice Verma committee, Law commission opposed death penalty to Nirbhaya case convict*, DECCAN HERALD (March 20, 2020, 15:17 PM IST), <https://www.deccanherald.com/national/north-and-central/justice-verma-committee-law-commission-opposed-death-penalty-to-nirbhaya-case-convict-815696.html>

²¹ Anonymous, *Law Commission recommends abolition of death penalty for all crimes except terrorism*, THE ECONOMIC TIMES (Sep. 1, 2015), <https://economictimes.indiatimes.com/news/politics-and-nation/law-commission-recommends-abolition-of-death-penalty-for-all-crimes-except-terrorism/articleshow/48751615.cms?from=mdr>

that for a juvenile committing heinous offence, if left out free after spending a few years in the juvenile homes, may encourage people to push juveniles towards crime as a way of vengeance.

After due deliberation and discussion, it was agreed that in the case of juveniles committing crimes for which the IPC prescribed punishment is 7 years or above imprisonment, the juveniles would be treated as adults. However, for this provision to be applicable, the juvenile must be around 16-18 years of age. This was included under sec. 15(1) of the JJ Act 2015.²²

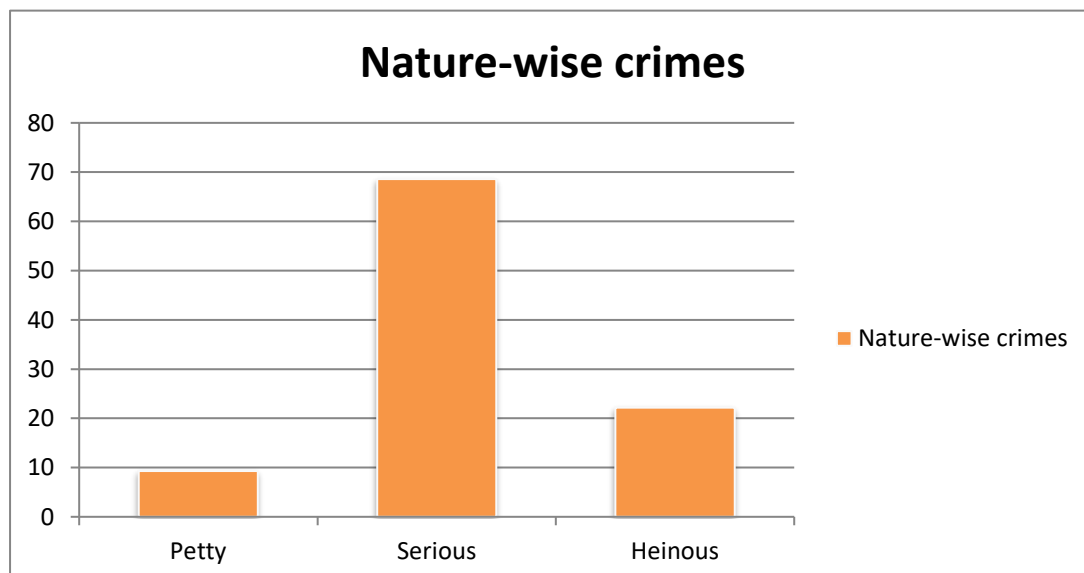
4. Case Study of Bihar

In order to have a comprehensive understanding of the situation of juvenile crimes in India, the author conducted a survey of the JCL in Bihar. There were mainly 3 questions that were posed.

1) The categorization of crimes of juveniles in Bihar (how many juveniles, both undertrials and convicts, are in each of the three categories).

2) The age group of people in the juvenile centres (e.x., the number of juveniles who are 13 years of age)

3) The individual data of the crimes committed (e.g., theft, murder, rape, etc.) and their age group (e.x. the juvenile committing murder is 12 years old).²³



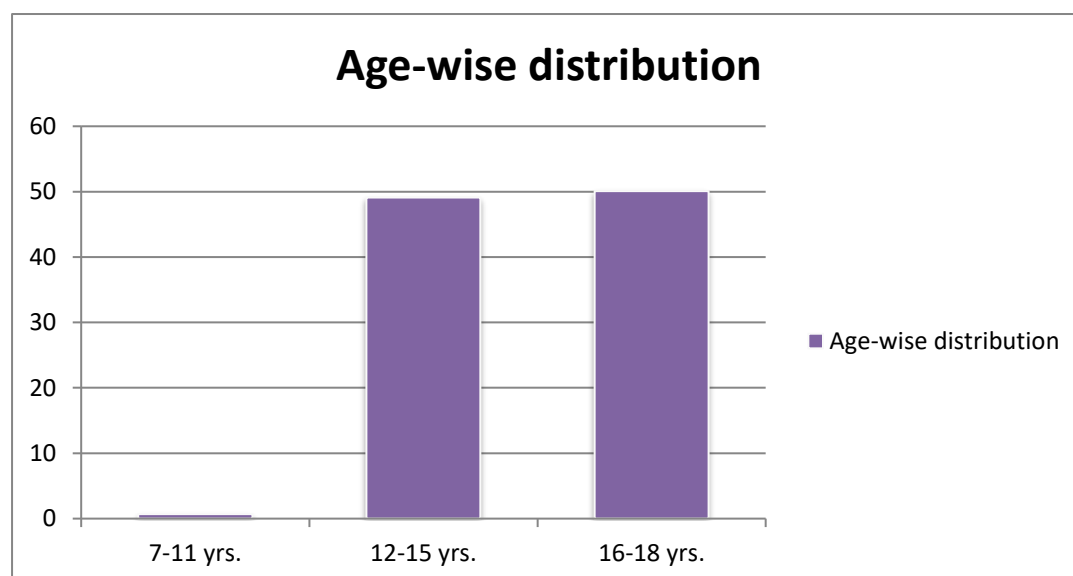
²² The Juvenile Justice (Care and Protection) Act 2015, s. 15(1), No. 2, Acts of Parliament, 2015 (India)

²³ It is to be noted here that the data has been updated till August 2022.

Therefore, from the data given above, it is clear that the amount of offenders committing serious offences in Bihar among juveniles is the largest, followed by heinous crime offenders. Petty crime constitutes only 9.3% of the total juvenile crimes conducted by juveniles in Bihar.

Hence, it can be inferred that the rate of serious crimes is on the rise in Bihar. This needs to be corrected soon. The juveniles are nothing but the youth of the country, and they committing serious offences can have a detrimental impact on the Indian polity and society. The rate of crime at a particular place may be attributed to the socio-economic conditions of both the surrounding area in which the juvenile resides, as well as the state in general. Bihar, having a reputation of states having one of the lowest per capita income in India, doesn't get to see the opportunities being provided in other states by way of industrial development and job creation, and hence the youth resort to crimes to fulfil the needs is one way of explaining the increased juvenile crimes in the state.

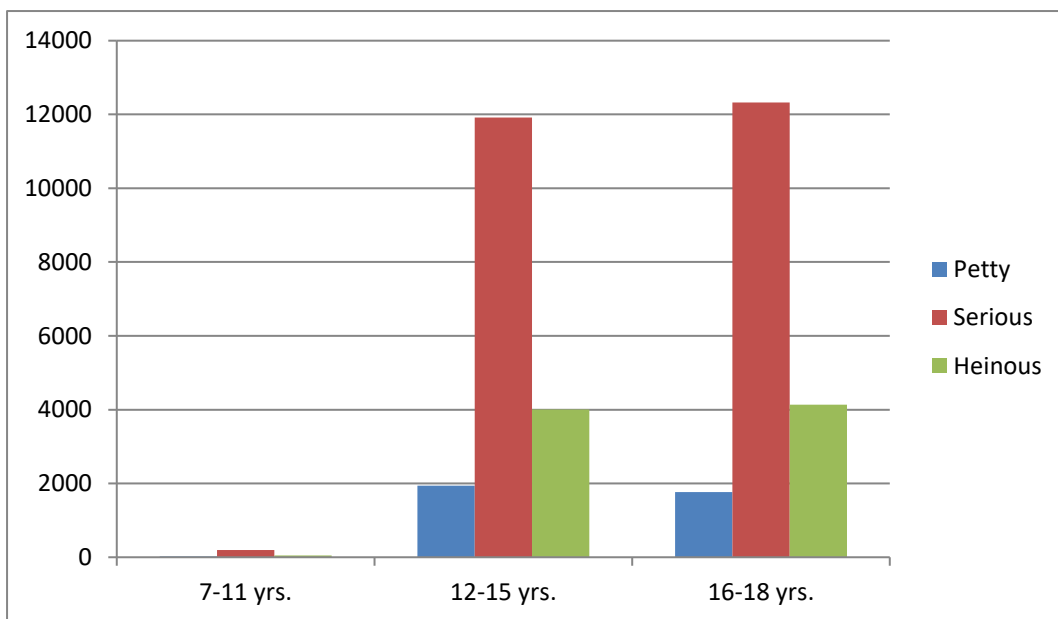
However, juvenile crimes can be attributed to the individuals also, and not necessarily to the society. The Nirbhaya case is an example here, where the crime was conducted in Delhi, supposed to be one of the most advanced cities in India. Hence, whenever a juvenile is accused, the first step of investigation involves research into the Socio-Economic Investigation that the authorities in charge of the juvenile centres' conduct, wherein the child's background is studied by the people, so as to identify the cause or trigger of crime.



From the chart shown above, it is clear that the maximum crime is committed by children aged between 16-18 years, followed by the negligible difference between the two by children between 12-15 years of age. Hence, the JJ Act 2015, dealing with JCL, needs to be relooked

into. With an insane amount of children committing inhumane deeds, the era of juvenile protection is long forgotten. Instead, the Act should focus more on deterrence theory, that is, give such sanctions so that other children are deterred from committing similar crimes. Since the JCL provides for various exemptions being given to juveniles, hence it becomes easier for juveniles to commit crimes and walk away with it scot-free or with minimal punishment. This, in turn, is a benefit introduced for protection but is now being misutilized by the juveniles to work in their favour against the law. Hence, it has become of utmost importance now to revamp the JJ Act 2015 too, so that deterrence as a concept prevails in society.

Nature & Age-wise Juvenile Crimes



Age Group	Petty	Serious	Heinous
7-11 yrs.	22	197	47
12-15 yrs.	1944	11915	4003
16-18 yrs.	1759	12029	3968

For all categories, as can be seen from the table given above, the number of serious and heinous offences committed is much more than the petty offences. This table also substantiates the earlier point of the crime being more amongst children between 12-18 years of age.

5. Recommendations To The Current Structure

As can be seen from the survey conducted in the state of Bihar, coupled with the NCRB Report, it is clear that the present regime of the JJ Act 2015 is also proving to be ineffective. With the rise in cases of juvenile delinquency, it has become important to take measures to curb the situation at hand. One way of doing so can be by looking at the model structure being followed in certain developed countries like the US and the UK. In the case of *Alyssa D. Bustamante v State of Missouri* (US), the petitioner lured her 9-year-old neighbour into the woods and killed her brutally.²⁴ She was tried as an adult, and was sentenced to life imprisonment, with a parole option. There is also a record of another similar instance in the UK that involved two 10-year-old boys, who were charged with the abduction and mutilation of a 2-year-old boy.²⁵ They were tried as adults, and were subjected to imprisonment and rehabilitation till they became major.

In both these cases, it was ruled by the appropriate court that the children here did possess *mens rea*, i.e., they had the intention, as well as the knowledge about the consequences of their activities; hence they were tried as adults despite being juveniles. However, the germane question to ask here would be whether the same reasoning can be adopted by the Indian Courts.

Well, the reasoning given for the Nirbhaya case, with respect to juveniles, was basically the protection under article 20(1) dealing with ex-post facto laws that state that the law at the time of crime would be applicable. Another reason was that his juvenility was considered, and not the seriousness of his act. This further led to a lot of protests from people. Nonetheless, many people feel that if a child is not given adequate punishment, then he/she may tend to commit the same crime. It has happened in the US, wherein the petitioner, who was a 12-years-old boy, brutally murdered a 6-year-old boy.²⁶ He was tried, found guilty, and kept under house arrest for over 1 year as he was still a boy. However, after being left, he committed another crime and was sentenced to 10 years in prison. Ergo some measures should be taken to avoid such a situation in India.

²⁴ *Alyssa D. Bustamante v. State of Missouri*, W.D. Mo. Sep. 30, 2019 (US)

²⁵ *Jon Venables & Roert Thompson v. State*, 1993 (UK)

²⁶ *Tate v. State of Florida*, 864 So. 2d 44 (US)

However, in India, Indian Courts have been way too liberal in granting juvenility in favour of the accused, thereby acquitting them from punishment even in the worst-case scenario. In the case of, where in the present case, the accused was 17 years, 6 months of age, and was said to be a part of a village attack, and was also found possessing lethal weapons with himself.²⁷ Here again, the juvenility of the accused was pleaded before the Bench. Here again, the accused was tried as a juvenile only.

This case clearly shows the lacunae in Indian laws while dealing with juvenility. While the deterrence theory (with rigorous punishment) is what developed countries usually go for, India is still following the reformatory theory of punishment, nurturing the child, and expecting them to harbour good societal behaviour once they are left off, even after committing heinous offences. This *may* also create a problem in the social order, as an accused finds it very difficult to function as an ordinary being if his criminal antecedent is leaked, and the chances of him resorting to crime after non-acceptance from the society increases. There is also apprehension in the minds of prospective employers about the nature of the person, and hence the person finds himself to be a social outcast. This is the reason why India believes in hiding the criminal antecedent of JCL, so as to avoid facing a similar situation.

The hiding of the data by the government does little to help the society. If the JCL again attempts to commit a crime, then the employer or any other person will be caught unaware, suffering from injuries. However, the liability of such an act of a released JCL is also conflicted, i.e., whether it lies with the government or the JCL himself. The Indian laws may again send the JCL for rehabilitation, and again release him if the crime is non-heinous, and the JCL's age is below 18 years. Therefore, this system of India leaves the society more vulnerable to the JCL.

There has also been apprehension that JCL being left without stringent punishment may encourage a racket to bloom in this predator industry, wherein juveniles may be hired to commit crimes. This could lead to an increase in the number of JCL being hired for such unlawful activities. Economically weaker sections may even fall prey to this scam, falling for the hunger in their stomachs rather than the moral values of life. This is what had also happened in the case of Ajmal Kasab, one of the terrorists behind the 26/11 Mumbai attacks. It was said that his age varied between 18-21 years at the time of the attack, and initially, even he, after claiming

²⁷ Central Bureau of Investigation v. Swapan Roy, (2014) 15 SCC 659

himself as a juvenile, was being tried in a juvenile court.²⁸ However, once his age as an adult was confirmed, then he was tried as an adult.

In such a catch-22 situation, wherein even a terrorist was being accorded juvenile defense is something grave. Another important point to be taken note of from this case is the statements given by Kasab's family. It was said that the parents were unaware of their son's terrorist activities, and were offered money to send him to vocational training. Lack of money, and the hopeless situation of his house made him forget the importance of human lives, and he gladly accepted to have no regrets for killing the victims on that fateful night. Many people fear that the present juvenile regime (even with the age limit for heinous crimes being reduced to 16 years) stands ineffective in eradicating such evils from the society.

Some of the suggestions include fixing the punishment for juveniles based on the crime rather than the age (as is done for an adult). This can help avoid such situations. Some others feel that the criminal liability age, fixed as 12 in India, should be reduced, while commensurate reduction should also take place in JJ Act to include children of 14 and above to be considered in case of heinous offences.

All these recommendations are based on 2 main logic- (a) the victim and his/her family members/dependents are the ones who have to bear the mental agony, along with any other physical or financial damage caused, while the accused is left scot-free after spending his time in reformatory centres, and, (b) if a person is capable of understanding the nature of his/her crime, then he/she is liable to get punished (even if the person is a child). Therefore, the justification for the punishment stems from these thoughts.

5.1 Criticisms

While on the one hand, there is a demand for stringent punishment, on the other hand, there is still a fraction of the population that feels that the present system for regulating JCL is sufficient. This is based on the fact that if the JCL is allowed to go to adult prisons for offences committed due to their tender age, they may get wrongly influenced and may end up becoming hard-core criminals.

²⁸ Shanthie Mariet D'Souza, *Mumbai terrorist attacks of 2008*, BRITANNICA (Nov. 19, 2022) <https://www.britannica.com/event/Mumbai-terrorist-attacks-of-2008>

Another argument against the change in the regime of the JJ system in India is regarding the psychology of the child. A child's mind, as per certain psychological studies, has been found to be extremely sensitive.²⁹ Hence, exposure to a jail atmosphere, where numerous types of convicts are kept, can lead to life-long trauma for the JCL. It is also debated that if JCL is to be placed in the same cell as adults, then instances of abuse may also take place that the JCL may not be able to stand up to.

It is also stated that the compensation being accorded to victims under the various statutes can be extended to provide rehabilitation facilities, as well as counselling facilities, so as to empower the victims. In case of death or permanent disability of the victim by the JCL, it has been argued that government can step in to bridge the shortfall, just like it happens in the case of acid attack victims, whose compensation is decided per se on the damage caused to the victim, rather than by the strict adherence to statutory provisions.

The experts have also argued that JCL be punished strictly for heinous offences committed by them (as done by the 2015 Act). But yet again, this is only for those juveniles who are between the age group of 16-18 years of age. All pleas to change this limit have fallen on deaf ears as it is believed that reducing the age from 16 to 14 will cause psychological damage to the child, and will spoil the life of the child (irrespective of whether his/her actions have caused lifelong harm to the victim).

6. Conclusion

The procedure for children in conflict with the law is established in order to ensure that the justice system does not focus more on the punishment, but follows an approach to rehabilitate and reintegrate the child into the society in order to prosper in their future endeavours. The provisions under the Act ensure that the children are prosecuted in a children-friendly manner and not treated as adults. However, if a child commits an offence of heinous nature, then he can undergo the same trial as an adult in order to achieve ends of justice, subject to his age at the time of the commission of the offence.

As the case study shows, the child-friendly way of providing reformatory justice to JCL has been proven to be ineffective. Therefore, more inflexible approaches need to be sought after. India can take the first step in this direction by following the models set up by the UK and the

²⁹ Kendra Cherry, *Child Psychology and Development*, VERYWELL MIND (April 8th, 2021) <https://www.verywellmind.com/what-is-child-psychology-2795067>

US, wherein juveniles committing heinous offences are treated as adults. India can also try reducing the age under section 15(1) of the JJ Act 2015 to 14 years (a trend being followed in certain developed countries). With all said and done, the present JJ system for JCL is highly inadequate from the victim's point of view, and even when data pertaining to the deterrence of crimes by JCL is looked at, the result looks unsatisfying. It is high time that India adopts a victim-friendly approach now towards victims of JCL, and gives the victims their due justice.

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