

## THE JUVENILE JUSTICE ACT AMENDMENT: TRYING JUVENILES AS ADULTS

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*The Government of India has proposed certain amendments to the Juvenile Justice Act, 2000. Among the various proposed amendments, the one that is highlighted and is the cause of disagreement is the reduction in the age and to try juveniles aged 16-18 as adults. This change has been debated in the Parliament at length and has been consulted with necessary interested parties. However, there is no uniformity in the opinions and there is widespread disagreement on whether the change is for the better or for worse. The paper analyses the proposed amendments and explains the reasons given behind the said amendments. The paper elucidates the data provided by the concerned authorities on crime committed by juveniles. The paper also highlights the opinions of parliamentarians and civil society members to the modifications. The paper assesses the said amendments in light of the constitutional provisions and international conventions to ascertain the various issues involved in the changes proposed.*

**KEYWORDS:** *Juvenile Justice Act, Amendments, Parliamentary Standing Committee, Constitution, United Nations Convention on the Rights of the Child*

### INTRODUCTION

The Lok Sabha passed the Juvenile Justice (Care and Protection of Children) Act, 2014, which will allow children in the 16-18 age groups to be tried as adults if they commit heinous crimes. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been amended twice: in 2006 and in 2011. The proposed legislation clearly defines and classifies offences as petty, serious and heinous, and defines differentiated processes for each category. However, according to the Bill, in no case the juvenile would be sentenced to death or life imprisonment. The trial of the juvenile, whether as an adult or child, would depend upon the opinion of the board, which would comprise of psychologists and social experts. The heinous crimes would include those offences under the Indian Penal Code, which attract imprisonment of over seven years. The Bill also lays down procedures in case of children in need of care and protection, their rehabilitation and social re-integration measures, adoption of orphans, abandoned and surrendered children and offences committed against them. It includes facilitating faster adoption of children and setting up foster care homes. The draft incorporates the principles of the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993) which was absent in the original Juvenile Justice Act, 2000.

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## RATIONALE

The proposed amendment was brought about due to the 2012 Delhi gang rape. It was found that one of the accused was a few months away from being 18. Therefore, he was tried in a juvenile court and the juvenile court gave its verdict, sentencing the boy to 3 years in a reform home on 31 August 2013. In the aftermath of the 2012 incident, with street protesters at India Gate demanding that the law be changed with retrospective effect, the U.P.A. government started the process of looking afresh at the Act. There was, of course, no way to make it applicable to the juvenile who was the focus of the public anger. There were and continue to be many who advocated calm, and opposed change. It is in part because of the relentless push by these activists that Parliament remains split on the issue. The activists including prominent lawyers and people working with children in conflict with law hold that a child takes to crime because society has failed in its duty to take care of him or her.

The apex court in the public interest litigation decided on March 28, 2014, in *Dr. Subramanian Swamy and Ors. v. Raju and Anr.*, refused to read down the provisions of the Juvenile Justice Act, 2000, in order to account for the mental and intellectual competence of a juvenile offender. The Hon'ble Court refused to interfere with the age of a juvenile accused, in cases where juveniles were found guilty of heinous crimes. It was held by the Court that the provisions of the Act are in compliance with Constitutional directives and international conventions. The Court further stated that the classification of juveniles as a special class stood the test of Article 14 of the Constitution, and that the Court should restrict itself to the legitimacy and not certainty of the law.

## REFERRAL TO THE PARLIAMENTARY STANDING COMMITTEE

The Bill was referred to the Parliamentary Standing Committee on Human Resource Development for its opinion. After extensive deliberations with stakeholders including NGOs, and considering data from the National Crime Records Bureau, the Committee rejected the Union Government's recommendation to treat accused in cases of rape and other heinous crimes, who are 16-18 years old, as adults. *"The drastic changes proposed need deep introspection and it is surprising the ministry ignored major stakeholders,"* the Committee said in its report. It is believed that the Government's decision to push ahead also is a result of order of the Supreme Court in *Gaurav Kumar v. State of Haryana*. The court observed that, *"When we said that we thought that there should be a rethinking by the legislature, it is apt to note here that there can be a situation where commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences, but in cases of rape, dacoity, murder, which are heinous crimes, it is extremely difficult to conceive that the juvenile was not aware of the consequences"*.

## DATA OF NATIONAL CRIME RECORDS BUREAU

As per 2011 census data, juveniles between the ages of seven to 18 years constitute about 25% of the total population. According to the National Crime Records Bureau (N.C.R.B.),

the percentage of juvenile crimes as a proportion of total crimes has increased from 1% to 1.2% from 2003 to 2013. During the same period, 16-18 year olds accused of crimes as a percentage of all juveniles accused of crimes increased from 54% to 66 %. The types of crimes committed by juveniles in the 16-18 year age group vary as seen in Table 1.

Table 1: Juveniles between 16-18 years apprehended under IPC		
Crime	2003	2013
Burglary	1,160	2,117
Rape	293	1,388
Kidnapping/abduction	156	933
Robbery	165	880
Murder	328	845
Other offences	11,839	19,641
Total	13,941	25,804
Note: Other offences include cheating, rioting, etc. Source: Juveniles in conflict with law, Crime in India 2013, National Crime Records Bureau.		

According to the National Crime Records Bureau, the highest increase in incidents of crime committed by juveniles in 2013 was reported in these categories: assault on women with intent to outrage her modesty, 132.3%; insult to the modesty of women, 70.5%; and rape, 60.3%. Of the 43,506 juveniles arrested for different crimes in 2013, 66.3% were in the 16-18 age groups, and 50.2% came from poor families, with annual income of up to Rs. 25,000. Most were illiterate or had attended only primary school.

## PROPOSED AMENDMENTS

The proposed Bill makes certain changes and amendments. The word 'juvenile' has been replaced with the word 'child' and the expression 'juvenile in conflict with the law' has been changed to 'child in conflict with law.' While in the Juvenile Justice Act, 2000, juveniles in conflict with the law are defined as the 'accused', the draft Bill identifies a 'child in conflict with law' to be one who has been found by the Juvenile Justice Board to have actually committed an offence. Juvenile Justice Boards will be constituted in each district to deal with children in conflict with law. They will consist of a Metropolitan or Judicial Magistrate and two social workers, including a woman. Offences committed by juveniles are categorized as: (i) heinous offences (those with minimum punishment of seven years of imprisonment under IPC or any other law), (ii) serious offences (three to seven years of imprisonment), and (iii) petty offences (below three years of imprisonment). Chapter Two is the most noteworthy characteristic of the proposed Bill, providing for 'Fundamental Principles for Care, Protection, Rehabilitation and Justice for Children'. It incorporates internationally accepted principles of presumption of innocence, dignity and worth, family responsibility, non-stigmatising semantics, privacy and confidentiality, repatriation and restoration, equality and

non-discrimination, and diversion and natural justice, among others. Institutionalisation is suggested as a measure of last resort. A revamped Child Welfare Committee has been identified, empowered and has been given statutory functions. A child who is found to be in need of care and protection shall be brought before a C.W.C. within 24 hours. Subsequently, a Social Investigation Report is required to be prepared within 15 days. After assessing the report, the C.W.C. may recommend that the child be sent to a children's home or another facility for long term or temporary care, or declare the child as free for adoption or foster care. The state governments have been given power to set up Observation, shelter and special homes. Central Adoption Resource Authority, (CARA) has been made a statutory body vested with functions of in-country and inter-country adoptions. Section 58 of the draft Bill lays down special emphasis on inter-country adoptions, stating that all applications for adoption shall be filed before a Principal Magistrate of the concerned jurisdiction where the registered adoption agency is located. The Bill has provided for mandatory registration of childcare institutions. The proposed Bill also prohibits the media from disclosing the identity of children or propagating any such information which would lead to identifying them. All reports relating to children are to be treated as confidential. Corporal punishment and ragging, cruelty to children, employment of children for begging, adoption without proper procedure, and sale or procurement of children for any purpose are all acts that are punishable under the draft Bill.

The draft Bill therefore provides a comprehensive mechanism to deal with children in conflict with law as well as children who are in need of care and protection. However, only a stringent implementation can provide a meaningful disposition to make it a true letter of law.

## CRITICISMS BY CIVIL SOCIETY

- Shashi Tharoor vehemently opposed the proposed Bill in the Parliamentary debates. He said that the justice system should focus on *"rehabilitation and not retribution"*. He added that it would be *"emotionally, ethically and morally"* wrong to punish a child, who does not have access to basic facilities, like an adult. *"There is no scientific system of determining the age of a children and in certain cases it is done by looking at the child"*, he said. He further added that the Bill violated the fundamental rights guaranteed under Article 14 and Article 15(3) of the Constitution and the 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985' or the 'Beijing Rules' which require a child or a young person accused of an offence to be treated differently from an adult.
- Supriya Sule cautioned the government against drafting the amendments out of emotion. *"The law comes in the backdrop of the gang rape. For one Nirbhaya rape, you cannot make a law out of emotion... You need to look into your international commitments as well,"* she said. *"We need to look into the psychology aspect. Every child, although he makes a mistake, deserves a second chance,"* she said.
- Vinod Kumar opposed the trial of juvenile between 16 to 18 years of age as adults, saying they need education and moral classes as most of them committing crimes come from economically backward families. Quoting data, he said crime committed

by juvenile as a percentage of total crime is just 1.2 percent. *"In present circumstances educating them and giving them moral classes will help control such crimes. But if he is tried like adults in the age of 16-18 years, it would have bad impact on their psychology,"* Kumar said.

- Dharamvir Gandhi said that lowering the age to 16 years for trial of juvenile would be injustice to the child as a child of that age is unable to comprehend a situation. *"The age should not be brought down. It will be gross injustice to the child and will be violation of international laws,"* he said.
- Badaruddoza Khan said the lowering of age of trial of juvenile for heinous crimes is not in accordance with the international laws. *"The amendment with regard to lowering of age is short-sighted, unjust and against public interest."*
- P. Joseph Victor Raj, of Campaign Against Child Labour (CACL), has called the bill a regressive step. He has said the bill is passed based on false assumption there has been a rise in crimes in the 16–18 group. He pointed out that these assumptions are based on National Crime Records Bureau (NCRB) data which noted filed reports not convictions. He also said that the government has ignored the opinion of the National Commission for Protection of Child Rights (NCPCR) and child rights activists. He also pointed out that the law is against the UN Convention on the Rights of the Child and India's National Plan of Action for Children, 2005.
- Amod Kanth, former Director General of Police of Goa and one of the drafters of the Juvenile Justice (Care and Protection of Children) Act, 2000, said that the role of the teenager in the 2012 had been blown up by the media. He also that the NCRB data quoted by Maneka Gandhi states reported cases, the actual cases are much lower.
- Sreedhar Methar, of Save the Children, said that most of the rape cases against juvenile boys were actually case of elopement. He also said that the new law which judges whether the accused's mind is childlike or adult-like is arbitrary.

## RESERVATIONS OF PROPOSED AMENDMENTS

The reservations raised by the various sections of the civil society are relevant. There are certain issues with the Bill that need to be highlighted and clarified.

- The provision of trying a juvenile committing a serious or heinous offence as an adult could violate the Article 14 and Article 21. The provision also counters the spirit of Article 20(1) by according a higher penalty for the same offence, if the person is apprehended after 21 years of age.

Article 14 states that *"Every person shall be treated equally before law."* It has been interpreted that unequal treatment may be permitted between different sets of people only if there is a clear public purpose sought to be achieved by such unequal treatment. The distinction made between two juvenile offenders committing the same offence based on the date of apprehension is in violation of the said purpose.

Article 21 states that *"No person can be deprived of their right to life or personal liberty, except according to procedure established by law"*. Courts have interpreted this to say that any law or procedure established should be fair and reasonable. The segregation based on the date of apprehension may fail this standard. In 2005, a

Constitution Bench of the Supreme Court, while determining the age of a juvenile and the resulting penalty (under the 2000 Act and an earlier 1986 Act) decided that the date on which the offence is committed matters, and not the date of apprehension. The provision of the Bill mentioned above contradicts this ruling of the Constitution Bench, and considers the date of apprehension when deciding the penalty given to a juvenile.

Article 20(1) of the Constitution states that “*A person cannot be subjected to a penalty greater than what would have been applicable to him, under a law in force at the time of commission of the offence*”. Under the Bill, if a juvenile between the ages of 16-18 years commits an offence and is apprehended at a later date, he may face a higher penalty than what would be applicable to him if he had been apprehended at the time of commission of the offence. This provision does not directly contradict Article 20(1) as provisions of the Bill do not apply retrospectively. However, if the spirit of Article 20(1) is that a person should not get a penalty higher than what would be applicable at the time of commission of the offence, then this objective is not being met by the Bill.

- The United Nations Convention on the Rights of the Child (U.N.C.R.C.) requires all signatory countries to treat every child under the age of 18 years as equal. The U.N.C.R.C. states that signatory countries should “*treat every child under the age of 18 years in the same manner and not try them as adults*”. It recommends that those countries that treat or propose to treat 16-18 year olds as adult criminals, change their laws to align with the principle of non-discrimination towards children.
- Some penalties provided in the Bill are not in proportion to the gravity of the offence. For example, the penalty for selling a child is lower than that for offering intoxicating or psychotropic substances to a child.
- The Standing Committee examining the Bill observed that the Bill was based on misleading data regarding juvenile crimes and violated certain provisions of the Constitution. The Standing Committee opposed any amendments to the said Act and recommended that there should be a much better execution and uniform establishments of schemes and procedures.

## CONCLUSION

In conclusion, it is observed that the unwarranted haste to move forward with these reforms in the face of democratic dissent is most fascinating. The whole rationale behind such separate legal system for juveniles was because it is believed that a juvenile lacks the understanding and maturity of his actions and thus needs to be protected. This amendment will turn over more than nine decades of thought on juvenile justice, developed through legislative debates and judicial decisions and opinions. Further, the amendments proposed are in total disregard to the recommendations of the Joint Parliamentary Committee, which had favored the continuation of the present laws. The amendments will also contravene the basic fundamental rights guaranteed to every citizen under the Constitution of India. Such changes will result in violation of commitments made to the United Nations, in particular, the Recommendations 79 and 80 of the United Nations Committee on the Rights of the Child.



There is no need for such hurriedness in passing of amendments that may be more harmful for the future prospects of juvenile offenders. The preamble reads as thus, “*An Act...proper care, protection and treatment, and by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their ultimate rehabilitation through processes provided, and...incidental thereto.*” If such drastic amendments result in total failure of the said purpose, then the existence of such laws is pointless. In cases of extreme brutality, such action can be justified that the victim should not suffer and be denied justice only because the perpetrator was not of a particular age. However, considering the complexities and issues involved in implementation of laws in the country, the possible violation of the rights of juveniles cannot be excluded. The proposed amendments need to be re-looked, keeping in mind the various participants of the society. The Parliamentarians, after due deliberations and debates should ascertain what is best for the juveniles.