

INCARCERATION OF CHILDREN IN CONFLICT WITH LAW: CONSTITUTIONAL CHALLENGES AND IMPLEMENTATION GAPS

*Abhishek Yadav**

Abstract

In this paper an attempt has been made to examine the complex legal landscape surrounding children in conflict with law in India, with particular focus on the problematic incarceration of juveniles in adult prisons. It critically analyzes the various definitions of childhood across Indian statutes and International instruments and also highlights inconsistencies which create problems within the juvenile justice system. The research further explores the scientific rationale behind setting 18 as the presumptive age of majority and challenges the premise of treating adolescents as adults under certain circumstances. Central to the research is the alarming and shocking reality of children wrongfully detained in adult prisons. Through Doctrinal constitutional analysis the paper interrogates contentious provisions of the Juvenile Justice Act, 2015, particularly those allowing transfer of juveniles to adult criminal justice systems. The researcher suggests the strict adherence to statutory mandate, thorough awareness programmes, proper medical examinations and also implementations of directives of various constitutional courts failing so shall be compensated by the State.

Keywords: Juvenile justice, age determination, children in conflict with law, adult prison incarceration, age of majority

- I. Introduction**
- II. Age of child under various statutes and international instruments**
- III. Explanation for choosing the cut-off age**
- IV. Constitutional challenges in the Juvenile Justice Act, 2015**
- V. Children in conflict with law in adult prisons**
- VI. Conclusion**

I. Introduction

THE SUPREME Court of India in one of the landmark cases titled as *Gaurav Jain v. Union of India*¹ spoke in great anguish when referred to *Aldous Huxley*, who said:

“A million million spermatozoa

All of them alive:

Out of their cataclysm but one poor

*PhD Scholar, Indian Law Institute, New Delhi.

¹*Gaurav Jain v. Union of India*, AIR 1997 SC 3021.

Noah
Dare hope to survive
And among that billion minus one
Might have chanced to be
Shakespeare, another Newton, a new
Donne
But the one was me.”

In this poem the efforts are made to speak about the inherent and latent propensities linked with the pinnacle of glory that can be in the child which when blossomed can scatter fragrance for all to enjoy.² The author further explains that what is needed is the sense of wisdom that a child has an integrated personality and that this personality must grow to its full stature. The greatness of every nation lies in the child, one thing which needs to be understood is that children should never be put into categories and then to be looked after and cared for. Child is Child. There are various efforts made worldwide for the protection of the rights of the children or we can say to protect their childhood. There are various International Convention and Declarations that give a call for the protection of childhood. These declarations very forcefully talk about the commitment of the international community to see that children are not exploited and deprived of their basic rights and also stress upon the provisions to be made available to enable them to lead a decent human life.

Before going much deeper, it is essential to understand the meaning of the word child. Whenever we think about the child, the picture of a “miniature human being” comes to our mind.³ In earlier times people did not pay attention to the difference between a child and an adult however with the developments the difference was understood. And it was realized that both of them are different not only in respect of size but in other aspects also. One of the major differences is maturity. Thus because of immaturity a child is not able to differentiate between wrong and right. In addition to this children are born into dependency and they are totally dependent on their guardians for their basic needs. It has been said that physical and mental immaturity and dependency on others are the most outstanding features of childhood.⁴ Generally it is the belief among the masses that children attain physical maturity when they cross the age of puberty. However puberty is totally an individualistic factor which depends from individual to individual. Thus a child of the same age may attain puberty at an earlier

²Suman Nalwa and Hari Dev Kohli, *Commentary on The Juvenile Justice Act 2* (Universal Law Publishing Company, New Delhi, 2011 Edition).

³Ved Kumari, *The Juvenile Justice System in India* 11 (Oxford University Press, New Delhi, 1st edn., 2004).

⁴*Ibid.*

age than others. Generally speaking a girl attains the age of puberty between the age of twelfth and fifteenth years of her age. On the other hand boys attain it about one to two years later than girls.⁵ However there is no hard and fast formula or rule to understand the mental maturity of a person. In maximum cases a person attains it when he/she is in his/her 20's. But there are cases when one attains it in his/her 40's and in few where it is never achieved.

The difference between "physical and mental maturity" lies in some considerations like social and cultural. It is totally based upon the behavior shown to the child. For e.g. one who is being nurtured and brought up by the parents may attain it at a later stage than the one who was not given such care. And that is why it becomes important that children should be given full love, care and support as they are always born with dependency.⁶

There are two streams of thoughts for dealing with children committing offenses as opposed to adults committing offenses. The first emanates from the doctrine of *parens patriae* and the other from the concept of *mens rea*.⁷ Children are born into dependency and no human child can survive if not taken care by the adults. Usually the natural parents are expected to take care of the child, and if they fail then the state steps into the shoes of parents and takes care of the children. From this perspective, the legal safeguards required to be secured for adults committing offenses are not needed to be made part of the system as the courts are expected to secure the best interest of a child. The children's courts as initially established in America, were constituted with this philosophy and approach and did not have any legal safeguards like right to counsel, written notice, cross-examination, appeals etc. However the *mens rea* approach provided for a special procedure for children on the understanding that their mind is not as mature as that of an adult offender and they cannot be dealt with in the same manner as the adults. Following this understanding the English Courts established separate children's courts but did not do away with the legal safeguards.

There are two other ways which have further influenced the legal norms. One is the welfare approach and the other one is the right approach. The welfare approach does not think of a child as a right holder but only as recipients of what the State may provide for them out of goodwill and being a welfare state. The Geneva Declaration is the first instrument which recognizes that the children too have rights. The Geneva Declaration was adopted on

⁵ Stages of Puberty : Stages in development in boys and girls, *available at* : <https://timesofindia.indiatimes.com/life-style/parenting/teen/stages-of-puberty-stages-and-development-in-boys-and-girls/articleshow/81870499.cms> (last visited on April 25, 2025).

⁶*Supra* note 4 at 11.

⁷Ved Kumari, *The Juvenile Justice (Care and Protection of Children) Act 2015, Critical Analysis 1* (Universal Law Publishing, New Delhi, 1st edn., 2017).

behalf of people of all nations recognizing that “*mankind owes to the child the best that it has to give*”.⁸

The Geneva Declaration was followed by the Declaration of the Rights of the child proclaimed by the General Assembly of the United Nations in 1959.⁹ This declaration became the basis for adoption of the UNCRC. The historic and landmark judgment of the US Supreme Court in *re Gault* for the first time recognized the rights of child¹⁰. In this case the discussion revolves around the safeguards available to children accused of committing offences. As it was alleged that there were various cases when children accused of committing offences were denied these rights and safeguards.

Earlier in India also there was no provision for a child to claim the facility of legal counsel as a matter of right before the children’s court.¹¹ The Saurashtra Children Act was also having the same provision which was declared unconstitutional by the High Court in the judgment of *Kario alias Mansing Malu v. State of Gujarat*¹². Thus from this the discussion started regarding the safeguards to be given to children accused of committing offences. And our country formally recognised all these safeguards by adhering and signing the UNCRC in 1992.¹³

II. Age of Child under various Statutes and International Instruments

Article 40 of the UNCRC 1992 requires signatory states to :

“Seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular :

- The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”

The UNCRC did not prescribe any minimum age wherein any child accused of committing any offense can be held liable. However the Committee of the United Nations responsible for monitoring compliance explained that the minimum age to hold the person accountable differs. It fluctuates as per the history and culture of a particular nation. The new approach takes into consideration as to whether a child “can live up to the moral and psychological

⁸The Geneva Declaration of the Rights of Child, 1924.

⁹The Declaration of the Rights of Child, 1959.

¹⁰(1967) 387 US 1.

¹¹*Supra* note 8 at 2.

¹² (1969) 10 Guj LR 60.

¹³*Supra* note 8 at 3.

components of criminal responsibility”. In other words it means whether a child can be made responsible for the anti-social behavior by virtue of his or her individual discernment. The committee also commented that if there is no minimum age or it has been set too low then the concept of responsibility becomes meaningless. By not prescribing any minimum age the UNCRC has left it to the signatory states to decide the same. This is so because a child needs a different pattern of treatment depending upon his/her growth. In order to understand it better an attempt will be made hereafter to understand as to when a person can be termed as a child.

Frieder Dunkel in “Juvenile Justice Systems and Crime Policy in Europe” (Unpublished draft article) refers to the age of criminal responsibility at the International Level.¹⁴ He observed that: The minimum age when a person can be said as a child in Europe varies between 10 and 15. In England, Wales, Northern Ireland and Switzerland it is 10 and in the Netherlands, Scotland and Turkey it is 12 and in France it is 13 while in Austria, Germany, Italy, Spain and numerous Central and Eastern European countries it is 14 while in Greece and Scandinavian countries the minimum age is 15.

In India and other Asian countries the minimum age remains that which must have been fixed by the principles of capacity determined by the adult criminal justice system. The researcher has tried to trace the minimum age by looking at various legislations. The first legislation on this is the 1850 Act (Repealed) which started sending a child as an apprentice rather than sending him/her to jail. The statute included those children below 15 years who were accused of petty offences and were vagrants.¹⁵

The 1860 Code and the Bharatiya Nyay Sanhita, 2023 provide different cut off ages for different things. Under section 82 IPC and Section 20 BNS - the minimum cut off age is 7 years. Under section 83 IPC and section 21 BNS it is (7-12) depending upon the understanding of the child. Under section 361 IPC and Section 137(1)(b) BNS it is 16/18 for boys/girls. Under section 363-A, 372, 373 IPC and section 139, section 98, section 99 BNS it is 18 for both. And under section 375 IPC and section 63 BNS the age provided is under 16 for girls.¹⁶

The Contract Act of 1872 has provided 18 years for both boys and girls. Section 11 of the said Act provides for the qualifications of a person to enter into a contract. It provides that the

¹⁴ B.B. Pande, “Bad Juveniles and the Worst Juvenile Justice Law? The Second Challenge To Juvenile Justice Law in Darga Ram v. State of Rajasthan” 57(1) *Journal of Indian Law Institute* 36 (January - March 2015).

¹⁵ The Apprentices Act, 1850 (Act 19 of 1850).

¹⁶ The Indian Penal Code, 1860 (Act 45 of 1860)/ Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

person should be “major, sound mind and not disqualified by any law” to enter into a contract.¹⁷

The Majority Act of 1875 provides the cut-off age of *18 years for both*. Section 3 of the said Act lays down the age of majority of persons domiciled in India as *18 years*.¹⁸

The 1890’s Guardians and Wards Act provides the cut-off age of *18 years for both*. Section 4 of the said Act lays down the age of majority as per the Majority Act of 1875.¹⁹

Another legislation on the subject is the 1897’s Act which provides for sending children who have not attained *15 years of age* to reformatory schools rather than putting them behind bars.²⁰

The Child Marriage Restraint Act of 1929 provides the cut off age of *18 years for girls and 21 years for boys*.²¹

Another legislation enacted to prevent the child labour was the, “The Children (Pledging of Labour) Act, 1933”. Section 2 of the said Act defines “child” as a person who is below *15 years*.²² This legislation is very beneficial for those who have been put into labour forcefully by any person.²³ Another legislation on this is the 1938 Act which deals with the employment of children. Section 3(3) of the Act lays down that a child below *14 years* shall not be employed to work in any workshop where processes set forth in schedule are carried on. Further sub section 2 of the section fixes the working condition of a person in the age group of *15 to 17 years* and provides for an interval of rest for at least 12 consecutive hours which shall include seven consecutive hours between 10 pm and 7 am.²⁴

In order to regulate the working conditions of persons employed in the factories another act was enacted in the year 1948. Section 2(c) of the said Act lays down *15 years* as the age of the child. There are few questions which must come to one’s mind while going through the above legislations.

Can it be said that childhood ends at fifteen?

Does the child attain his full mental and physical growth at fifteen?

¹⁷The Indian Contract Act 1872 (Act 9 of 1872).

¹⁸The Majority Act 1875 (Act 9 of 1875).

¹⁹The Guardians and Wards Act 1890 (Act 8 of 1890).

²⁰The Reformatory Schools Act, 1897 (Act 8 of 1897).

²¹The Child Marriage Restraint Act, 1929 (Act 19 of 1929).

²²Asutosh Mookherjee, *Juvenile Justice (An in-depth study on matters relating to children)* 297 (Ajoy De of SC Sarkar and Sons Pvt Ltd., Calcutta, 1st edn., 1989).

²³Suman Nalwa and Hari Dev Kohli, *Commentary on The Juvenile Justice Act 10* (Universal Law Publishing Company, New Delhi, 2011 Edition)

²⁴*Id.* at 11.

In order to regulate the working conditions in the plantations, “The Plantation Labour Act, 1951” was enacted. This legislation was enacted with an aim to provide for support and assistance to laborers employed.²⁵ Section 2 (c) of the Act defines, “child” means a person who is below *15 years*. This is the amended definition after the amendment of 1986. Prior to this amendment, the Act defined a child as one who has not attained his *12 years*.

The Mines Act, 1952 under section 2(c) of the legislation defined a child as one who has not attained his/her *15 years* of age. Before the introduction of the 1983 amendment to the Act, under section 2(a) adolescent was defined as one who is below *15 years* but who has not attained his/her *18 years*.²⁶ Thus it can be pointed out that a child is one who is not of *18* years, but after this omission the age of child was pegged at *15*, as per section 2 (c). Thus it appears that there is legislative confusion regarding the child’s majority age.²⁷

After Independence, the Indian Parliament enacted the first legislation related to this subject. That was the “Children Act, 1960”. Before the introduction of this legislation there were around eight Children Act legislations which were enforceable in different states.²⁸ However there were certain differences in the pre 1960 and post 1960 legislations.

The difference as available in literature survey is reproduced below:

1. The age of the majority of children varied but it was the same for both sexes. However that was not so in the post 1960 Children Act.
2. The Children Courts were obliged to deal with those children who were accused of committing offenses as well as one who were neglected. However after the 1960 Act, two adjudicatory bodies were established. These were Children’s Court and Child Welfare Committees. The former consisted of a bench of 2 Magistrates and the latter dealt with the children who were neglected.
3. In the post 1960 Children Act, there was complete prohibition on the keeping of any child in Police Stations or in Jails. However that was not so in the pre 1960 Children Act.
4. In the post 1960 Children’s Act, three kinds of institutions were established. These were Observation Homes, Children Homes and Special Homes. In the Observation Homes children were kept during pendency of cases however neglected children pursuant to orders of CWC were kept in Children Homes. Lastly, those who were

²⁵The Plantation Labour Act, 1951 (Act 69 of 1951).

²⁶The Mines Act, 1952 (Act 35 of 1952).

²⁷*Supra* note 23 at 303.

²⁸ Madras, Maharashtra, West Bengal, Uttar Pradesh, Andhra Pradesh, Karnataka, Gujarat and Karnataka.

having delinquent behavior and as directed by the children's court were kept in Special Homes.²⁹

Section 2 (c) of the 1960 Children Act introduced a minimum age of sixteen years for boys to be considered as children. However for girls it was eighteen years. This difference in the minimum age of both sexes was introduced for the first time in the history of Juvenile Justice in India. The developments in other countries led to the choosing of a cut off age of sixteen years.³⁰ However, ignoring all such developments the 1960 Children Act introduced such a difference in the age. The reason behind the choosing of different cut off age for both sexes was not being explained properly. It was being said that since girls require protection for a longer period than boys that is why *18 years* was chosen for them.³¹

However the statement made by the minister in the Parliament regarding the difference in the cut off age was not supported by any literature, empirical study or any data. No intelligible criterion was given for choosing 16 for boys and 18 for girls. Thus no rationale was given for selecting such a cut-off age.³² The year 1983 became a ray of hope for change. A *habeas corpus* petition was filed in the apex court of the country for the release of around 1400 children who were put in various jails of the country. This was against the law of land which provided that no child can be kept in a jail or prison. During the pendency of the petition the court recognised that there was a difference in the cut off age for boys and girls under various statutes. The court pointed out that it violates constitutional principles particularly Art. 14. Thus in one of its orders the court stressed on the need to have a uniform law on this aspect for the whole nation.³³ After this, the Act of 1986 was enacted by the Parliament.

Another legislation on the subject was the one dealing with welfare of the workers dealing with industries relating to *beedi* and *cigar*. Section 2(b) of the said Act provided the definition of child as one who has not attained his/her *fourteen years of age*.³⁴

Another legislation was the one dealing with welfare of workers working in the establishments concerning operating and keeping care of dangerous machines. It also provided for compensation to the workers who suffered any injury or lost their life, while working in such establishments. Section 3(a) of the statute defined a child as one who has not

²⁹ *Supra* note 8 at 3.

³⁰ Ved Kumari, *The Juvenile Justice System in India* 16 (Oxford University Press, New Delhi, 1st edn., 2004).

³¹ Dr. K.L. Shrimali, *Rajya Sabha Debates*, (15 December 1960).

³² *Supra* note 23 at 17.

³³ *Supra* note 8 at 4.

³⁴ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Act 32 of 1966).

attained his or her *fourteenth years of age*.³⁵ In order to put a ban on the involvement of children in certain industries another statute was created. Section 2(ii) of the statute provided for the definition of child as one who is below *fourteenth years of age*.³⁶

The Juvenile Justice Act, 1986

This new piece of legislation on the subject introduced the word juvenile in place of the term child. The available literature provides a detailed insight about the query as to whether the word juvenile is different from the word child. The dictionary meaning of the two terms shows that these two terms are interchangeable as used under Act of 1960 and JJ Act 1986 and moreover the legal status of these two terms i.e. “juvenile” and the word “child” is identical under the two statutes. However if we try to trace the shift in the use of the words we will find that the change seems to have been influenced by its usage in one of the International Rules i.e. the Beijing Rules. In the Beijing Rules the word juvenile has been used to refer to delinquent and non delinquent children. However, the word juvenile has now become value loaded in legal parlance by the manner in which the Juvenile Justice Act uses the phrase “juvenile in conflict with law” in contradistinction with the word “children in need of care and protection”.

Both the 1960 and 1986 Act defined the word child/juvenile in the same manner. Both the statutes somehow provided that in the case of a boy the cut off age was sixteen years and eighteen years in the case of girls. The main issue which strikes one’s mind is as to why there is the difference between the age of a boy child and girl child. Is it not discrimination and violative of constitutional principles? The literature and existing data at that time was insufficient to justify limiting the scope of the JJ system to children below the age of 16 years only, or for excluding protection to the boy child from 16 to 18 years of age. Hence in the absence of any supporting data behind such usage, “the definition of child under the Juvenile Justice Act was *unfavorable, non-benign, sex-based discrimination and violative of the Constitutional principle prohibiting discrimination on the basis of sex*”.³⁷

One thing which is very apt is that until and unless there is an intelligible differentia the classification can not succeed. Hence for the “sex based definition of child” under the 1986 Act to succeed against the challenge of the sex based discrimination, it must be shown that

³⁵ The Dangerous Machines (Regulation) Act, 1983 (Act 35 of 1983).

³⁶ The Child Labor (Prohibition and Regulation) Act, 1986 (Act 61 of 1986).

³⁷ Ved Kumari, *Treatise on The Juvenile Justice Act 1986*, 7(The Indian Law Institute, New Delhi, 1993 Edition).

the classification was founded on an intelligible differentia. And satisfying reasons should be given as to why protection was not given to those boy children who are more than sixteen years of age and less than eighteen years of age. One thing which should also come to our mind is that Article 15(3) permits a law only in favor of children and not against them.

The law for the juveniles at that time protected them in many ways, however the “sex based” definition denied protection to juveniles who are more than sixteen years of age and less than eighteen years of age. Legislations such as Majority Act and Contract Act and also the scientific study conducted provides that till 18 years of age a child mind is not developed properly. Thus he/she is unable to take decisions till he attains the age of 18 years. That is why a logical and convincing explanation supported by scientific study is required to prove that those boys who commit offences attain maturity earlier than other boys of the same age. Then only they can be held liable for their actions. However the statement given by the minister in the Parliament does not explain and give satisfactory reasoning behind the introduction of sixteen years for boys. In addition to this no reason or scientific data was provided for.³⁸

Child Labour (Prohibition and Regulation) Act, 1987

Section 2 (ii) of the Act defines “a child as a person who has not completed his or her 14 years of age”. The Apex Court in *MC Mehta v. State of Tamil Nadu* noted that menace of child labour was wide spread and issues various directions in particular prohibiting employment and exploitation of child below the age of 14.³⁹

Juvenile Justice (Care and Protection of Children) Act, 2000

After the signing of UNCRC by India it became imperative to bring a uniform cut off age for both boys and girls. Moving forward in this direction, the 1986 law on the subject matter was being replaced by the 2000. Through this newly enacted law an attempt was made to bring the Indian law for juveniles in conformity with the UNCRC.⁴⁰ JJ Act 2000 gave a uniform definition for both sexes. It defined them as one who has not attained his/her eighteen years of age. Another important change was made in the constitution of the JJB. For dealing with children in conflict with law the structure of JJB was amended to include two social workers along with a Magistrate. Through this shift an attempt was made to make the bench aware of the sociological factors concerning juveniles. And even in cases of disagreements the social

³⁸Supra note 38 at 7.

³⁹(1996) 6 SCC 756.

⁴⁰Supra note 8 at 5.

workers could override the single judicial magistrate.⁴¹ In order to effectively deal with the juvenile justice laws in India, the Model Rules 2001 were enacted. However the same were held to be not binding on the states by the judgment of the Supreme Court in *Pratap Singh v. State of Jharkhand*.⁴²

The Juvenile Justice (Care and Protection of Children) Amendment Act 2006

In order to effectively implement the JJ Act, 2000 some crucial amendments were made to it. This settled many issues which were argued before the Supreme Court and the High Courts.⁴³ Thus by virtue of the 2006 amendment certain changes were made and also new sections were inserted. Amendments were made under sections 2(1), 20, 64 and 68 and newly inserted sections were sections 1(4) and section 7A. Section 1(4) gave JJ Act, 2000 an overriding effect over all the laws. Through this insertion all those confusion regarding the applicability of JJ, Act 1986 to child accused under TADA, POTA, NDPS were settled.⁴⁴ In addition to this there was also some confusion regarding the date on which the accused was a child. Some argued that the date of commission of offense should be seen and some believed the date of first production before court was a relevant factor. All these issues were examined by the court on various occasions.⁴⁵ However this issue was settled by the constitutional bench of the court in *Pratap Singh v. State of Jharkhand* ⁴⁶. The court held that the age of the person at the date of committing offense will decide the applicability of the Act.⁴⁷

Section 7 A was inserted to lay down the procedure for age determination and it provided that “a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case”.⁴⁸

The Juvenile Justice (Care and Protection of Children) Amendment Act 2011

In order to give equal protection to children who are suffering from infectious diseases an amendment was brought in the year 2011. Through this amendment discriminatory practices were brought to an end.⁴⁹

⁴¹*Ibid.*

⁴²(2005) 3 SCC 551.

⁴³*Supra* note 15 at 6.

⁴⁴*Jagdish Bhuyan v. State*, 1992 Cri LJ 3194 (Assam).

⁴⁵ In *Umesh Chandra v. State of Rajasthan*, the apex court of the country ruled that the date on which offense was committed would be relevant and in another case *Arnit Das v. State of Bihar*, the court ruled that the date of first production before the court would be relevant.

⁴⁶(2005) 3 SCC 551.

⁴⁷Section 2 (1) of the Juvenile Justice Act, 2000.

⁴⁸*Supra* note 8 at 5.

⁴⁹*Ibid.*

Another development on the law was the filing of two writ petitions in the Supreme Court of the country. These were *Bachpan Bachao Andolan*⁵⁰ and *Sampurna Behrua*⁵¹. *Bachpan Bachao Andolan* was filed in “the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme conditions.”⁵² *Sampurna Behrua* was filed in “view of the non-implementation and mal-implementation of the Juvenile Justice Act.”⁵³

The Juvenile Justice (Care and Protection of Children) Act 2015

On 16th December 2002 a gruesome infamous incident happened in the NCT of Delhi.⁵⁴ After this the discussions pertaining to the safety and security of women were intensified in the country. One of the accused in the incident was a juvenile.⁵⁵ Debates soon started related to the involvement of a 17 year old child and him being the most brutal among all.⁵⁶ There were also widespread media discussions claiming him to be most brutal. However the JJB categorically noted in its order that neither the victim nor her male friend had pointed out him to be most brutal.⁵⁷ Soon after this the 2013 CLA was brought in which made stringent laws pertaining to the safety and security of women in India. Despite all these developments the greater attention was given to incidents involving juveniles in India. Every single case in which juveniles were involved were highlighted by the media. Continued myths were propagated that due to loopholes in the law juveniles are getting free despite being so brutal.⁵⁸

Newspapers and media channels also started reporting that there is around 50% increase in crimes committed by juveniles and around 60% increase in offences against women committed by them. However these reporting undermined the NCRB data which shows that there is no such increase and majority of sexual offences were due to the consensual intercourse out of love affairs and them being treated under statutory rape.⁵⁹ This was so

⁵⁰Writ Petition Criminal Number 51 of 2006.

⁵¹Writ Petition Civil Number 473 of 2005.

⁵²*Supra* note 8 at 6.

⁵³*Ibid.*

⁵⁴ Sanjoy Majumdar, “Protests in India after Delhi Gangrape Victim dies” *BBC News* available at : <https://www.bbc.com/news/world-asia-india-20863707> (last visited on May 1 2025).

⁵⁵*Ibid.*

⁵⁶*Supra* note 8 at 8.

⁵⁷Smriti Singh and Manoj Mitta, *Nirbhaya Case Juvenile was not ‘most brutal’?*, Times of India, 3rd October 2013, available at <https://timesofindia.indiatimes.com/city/delhi/nirbhaya-case-juvenile-wasnt-most-brutal/articleshow/23426346.cms> (last visited on 28 April 2025).

⁵⁸*Supra* note 8 at 8.

⁵⁹ The Hindu published a report titled “The Many Shades of Rape Cases in Delhi” wherein it analysed all the pending cases of rape in Delhi. The Report reveals that over 40 % were related to consensual sex. It mainly involved the elopement of a young couple and the family subsequently charging the boy with rape, *available at* :

because of the raising of age of consent under POCSO⁶⁰ as well as widening of the definition of rape by CLA, 2013.⁶¹ Several petitions were filed in the Apex Court of the country challenging the definition of child⁶² and also for reducing the cut-off age for defining a child. However all these petitions were dismissed by the court with cogent reasoning. Despite all these the JJ Bill, 2014 was passed which introduced the possibility of treating 16-18 years as an adult.⁶³ One thing which needs to be discussed is that the JJ Bill, 2014 also received certain comments when asked by the Ministry within a short duration of 15 days. However no attention was paid to such comments. In addition to this, “The 264th Report on Juvenile Justice (Care and Protection of Children) Bill 2014 rejected the Bill as violative of constitutional principles. Unfortunately ignoring all these developments the JJ Bill was passed and given assent by the President of India on 31st December 2015.

III. Age Determination

Whenever a child is produced before the JJB or the committee, the first question which requires determination is regarding the age of child as to whether he is below 18 on the relevant date. Thus the following three pertinent questions arise regarding the applicability of 2015 law.

- What is the “relevant date” on which the child should be below the specified age ?
This question was decided by the apex court in the case of *Pratap Singh*⁶⁴ in which the court ruled that the age on the date of the commission of offense determines the applicability of the Act.⁶⁵
- What Evidence may be relied upon?
- Who has the duty to raise the question of age and who has the burden to prove the age? At what stage the question of age may be raised?

<https://www.thehindu.com/news/cities/Delhi/the-many-shades-of-rape-cases-in-delhi/article6262476.ece> (last visited on 3 May 2025).

⁶⁰It increased the age of consent for voluntary sexual intercourse from 16 years to 18 years.

⁶¹Section 357 was amended which widened the definition of rape. It included peno-vaginal, oral, anal sexual intercourse as well as penetration of various orifices of the woman’s body by body parts and objects within the meaning of sexual intercourse.

⁶²*Salil Bali v. Union of India and others*, Writ Petition (C) 10 OF 2013.

⁶³Ved Kumari, “Juvenile Justice Bill 2014 - A Regressive Step” 56(3) *Journal of Indian Law Institute* 303 (July - Sept 2014).

⁶⁴(2005) 3 SCC 551.

⁶⁵Ved Kumari, “Quagmire of Age Issues under the Juvenile Justice Act : From Inclusion to Exclusion”, 51(2) *Journal of Indian Law Institute* 176 (April - June 2009).

The JJ Act 2015 had imposed a duty on all courts to determine the age of the accused in the cases where plea for juvenility has been raised.⁶⁶ Section 94 of the JJA 2015 deals with it and provides for the procedure which is needed to be adhered to. If the accused is below 16 years on the date of commission of the offense then the board decides the matter in a normal manner. However if it has been determined that the accused was above 16 years of age then the board will further determine as to how to deal with the child or to transfer it to the children's court. Age determination is a very crucial task and it becomes very difficult to determine with certainty that a particular child falls within the crucial age range of 16 to 18 years.

The JJA 2015 provides for giving preference to documentary evidence from school and birth certificate in age determination over medical examination similar to the procedure under JJA 2000. The JJA 2015 provides that the age shall be determined by either bone ossification test or any other latest medical age determination test on the orders of the board or committee. The Delhi High Court⁶⁷ has observed that in cases concerning sexual assault under the POCSO Act the upper age of the victim be given preference with a margin of two years. The court acknowledged the Adversarial system under Indian Law and also presumption of innocence as its facet recognising the benefit of doubt to the accused.

Section 15 of the JJ Act 2015 prescribes the procedure to be followed in case of a 16 to 18 years old child alleged to have committed a heinous offense. It directs the board to conduct a Preliminary Assessment in the case of a 16 to 18 years old child alleged to have committed a heinous offense.

IV. Explanation for choosing the Cut off Age

In this part the researcher will look at the reason behind the usage of a particular cut off age for juveniles in India. This would be more or less like an historical study where the objective behind the enactment of laws would be sincerely looked at. The first and foremost legislation after independence is the Act of 1960 which provided 16 years as the cut off age for boys. Now the question arises as to why this particular number has been fixed, it could have been another number. The answer to this query is very simple. It is so because of the historical situations.⁶⁸ As the earlier law ie. The Act of 1948 defined it in the similar manner. Thus a conclusion can be derived that the existing cut off age seems to depend on the range of law

⁶⁶The Juvenile Justice Act 2015 (Section 9).

⁶⁷*Court on its own motion v. State of NCT of Delhi* (W.P. Criminal 2024).

⁶⁸*Supra* note 7 at 16.

and also on the physical and mental understanding of the child. For example, for laws concerning labour practices physical and body strength was a prime detriment. Thus cut off age was decided accordingly. However for criminal law purposes mental understanding was a prime requirement thus for that person the cut off age was decided accordingly.⁶⁹ Thus it totally depends upon the range of law. Another example could be - if we look at the legislation dealing with child labour then we will find that it prescribe the cut off age of 14 years. Until such an age none can work. An analogy can be drawn here by looking at the mandate of the government to provide mandatory education. Indian Constitution provides, “free and compulsory education to children in the age group of six to fourteen years”.⁷⁰ Since it is the duty of the State to provide mandatory and free education till 14 years that is why for labour legislations the cut off age is 14 years.

The detailed survey of available literature provides that the selection of the cut-off age depends on the range of law and policies. The substantive provisions need to be read along with the policies of the government pertaining to the protection of children. The Government has also initiated numerous policies and programmes for the welfare of children which can be used for the children who have chosen the wrong path due to forced circumstances. In the year 1974, the Government prepared a National Policy for Children. In the context of child labour, in 1987 the National Policy on Child Labour recognised that in view of the current socio economic realities, child labor cannot be prohibited in every sector of the country. The Gurupadaswamy Committee Report in 1979 highlighted poverty and child labour linkages, took a multipronged approach to the problems of working children and explored banning work in hazardous sectors and regulating it in others. Thus children of Bhima Sangha said that this is not child labour, but it is response to the economic condition of the family. And the legislation should prohibit the work in hazardous sectors and ameliorate in other sectors. However the views of children failed to be included in the Act. In 1994, the central government set up National Child Labour Projects in many states for identifying child labor wherein a major activity is the establishment of special schools to provide basic needs like supplementary education, non-formal education, vocational education etc., to the children withdrawn from employment.⁷¹ The National Charter for Children, 2003 made provisions for the protection of children from economic exploitation and all forms of abuse. Further, in 2005, the National Plan of Action, seeks, inter alia, to prevent the trafficking of children for

⁶⁹ *Supra* note 7 at 17.

⁷⁰ Suman Nalwa and Hari Dev Kohli, *Commentary on The Juvenile Justice Act* (Universal Law Publishing Company, New Delhi, 2011 Edition).

⁷¹ *Ibid.*

various purposes including child labor. It focused on various aspects of child abuse and child neglect. Article 24 provides that, “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. This provision is certainly in the interest of public health and safety of life of the children and children are the assets of the nation. Thus in pursuant to the said Article 24, various enactments like Mines Act, 1952; The Merchants Shipping Act 1958; The Motor Transport Workers Act, 1951; The Plantation Labour Act, 1951 ; The Beedi and Cigar Workers (Condition of Employment) Act, 1966 and the Apprentice Act, 1961 prohibiting employment of children below a certain age come into the statute book. The earlier enactments i.e. The Employment of Children Act, 1938 and the Children (Pledging of Labour) Act, 1933, The Factories Act, 1948 fall in the same category. Article 39(e) contains a directive that it is the duty of the state to prevent the children from doing work which does not suit their age. This directive subserves the purpose of Article 24 of the Constitution. Article 39(f) further directs the State that “The children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”. These provisions, among others, were taken into account by the Supreme Court in *M.C. Mehta v. State of Tamil Nadu*,⁷² where the court deciding a petition regarding the child labour employed in the manufacture of fireworks issued directions to the State and guidelines on various aspects including, regarding the education, health, nutrition etc. of the child labourers. Similar is the case in Apprentices Act, which is completely recognizing the fatherhood of the child, it also provided under section 4 that “A person shall not be qualified for being engaged as an apprentice unless he is not less than 14 years of age, and for hazardous industries he should not be less than 18 years of age. The Act further provided that the child will only be eligible to sign the contract after attaining the age of 14 years.

Thirdly, in relation to the Child Marriage Restraint Act, the cut off age for marriage was 14 and 16 years for girls and boys respectively in 1929. It was increased to 15 and 18 years in 1949 and then to 18 to 21 years in 1978 due to change in policy. Thus all those legislations which were dealing with the marriage of two couples, seems to provide the cut off age as per the policy of law. The Children’s Act 1960 for the first time introduced the different cut off age for boys and girls, and the reason as provided by the minister was that, since girls require greater protection as per the boys, hence a different cut off age was needed. Thus legislations

⁷²AIR 1997 SC.

defined age keeping in view many factors such as the range of law, the policies of the government, as well as the Physical and Mental Maturity of the children.

Treating Adolescents as Adults

The scientific study conducted by Laurence Steinberg and team revealed that the adolescent brain is completely different in structure as well as functioning from adults. Thus they vehemently and staunchly argued that we should never treat adolescents as adults. And if we attempt to do that then it is a serious violation of constitutional guarantee. This study was accepted and relied upon by the highest court of the United States which, “ declared imposition of the death penalty for any offense committed by a person during their juvenility as unconstitutional in *Roper v. Simmons*”.⁷³ A similar approach was also followed by the court in another pronouncement of *Graham v. Florida*⁷⁴ wherein life imprisonment without remission was declared unconstitutional. There are also various studies being conducted which analysed the impact of trial of minors as adults and also sending them to adult prisons. The studies revealed that those children end up committing more offences in their later life as compared to ones who have not been tried as an adult.⁷⁵ Compared to those tried in youth justice these have around 34% more arrests.⁷⁶ In addition to this 80% of youth tried as adults to commit more serious crimes in their later life.⁷⁷ These studies along with studies conducted by neuro scientists compel us to think about 18 as the presumptive age of majority.⁷⁸

18 as Presumptive age of Majority

After the ratification of UNCRC by India the age of male child was increased from 16 to 18 years under the Juvenile Justice Act, 2000.⁷⁹ This was in consonance with article 1 of the said convention which described a child in similar terms. The scientific study conducted by neuro scientists in this field reveals that the human brains attain maturity at different rates. Some attain it at an earlier stage however some attain this later. Thus they suggested a range from 15 to 22 years of age. And out of this choosing 18 would be perfect and which is also called

⁷³543 US 551 (2005).

⁷⁴560 U.S. (2010).

⁷⁵Effects on violence of Laws and Policies Facilitating the Transfer of youth from the juvenile to the Adult Justice System : A Report on Recommendations of the Task Force on Community Preventive Services, Centre for Disease Control and Prevention, MMWR 2007, available at : <https://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf> (last visited on May 1 2025).

⁷⁶*Ibid.*

⁷⁷*Ibid.*

⁷⁸*Supra* note 66 at 12.

⁷⁹B.B. Pande, “Stilling the Turbulent Juvenile Justice Waters : The Apex Court's Precedented Response to an Unprecedented Challenge in *Salil Bali v. Union of India*” 9 SCC J-25,J-30 (2013).

the Presumptive age of Majority.⁸⁰ The Supreme Court of India also in *Salil Bali v Union of India*, held that “the age of 18 has been fixed on account of the understanding of experts in child psychology and behavioral 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”.

V. Constitutional Challenges in the Juvenile Justice Act, 2015

Article 14 of the Indian Constitution guarantees equality to all persons. Similarly Art. 15 prohibits discrimination on the ground “only of religion, race, caste, sex, place of birth or any of them.” However Article 15(3) is an exception which allows some special provisions to be made in favour of “women and children”. Since both of them are inseparable and require greater protection. In addition to this while both of them cannot claim beneficial provisions for them but if the Parliament decides to make law then only those provisions which favours and protects them can be made. Now if we look at the aim of the JJ Act, 2015 as mentioned in the preamble we will find that the statute has been enacted for the “care, protection and development of children”. Serious reading of the preamble tells us that the statute has been enacted to consolidate and amend the law related to those who are in “need of care and protection” and also who are found to be in “conflict with law”. This all can be achieved through “proper care, protection, development, treatment, social reintegration” and also by following an approach which will be very friendly to the child in the adjudication and disposal of matters keeping in view the “best interest of children” and also providing “rehabilitation” to the children, which can be ensured by institutions and bodies established under the Act. Thus the object of the JJA 2015 is only to provide for the “*care, protection, development, treatment and social reintegration* “.The object of the statute nowhere mentions about punishing the juveniles or treating them as adults.⁸¹ And thus the provisions which allow sending them to jails after trying them as an adult is out of the purview of the objective of the Act. Thus in cases where they are being tried as an adult and punished then they end up spending time for the things which they committed when they do not have enough understanding and mental maturity. Such children will also face life long disqualifications attached whenever people are convicted for an offense.⁸² In *Subramanian*

⁸⁰Laurence Steinberg, “Should the Science of Adolescent Brain Development Inform Public Policy” *Issues in Science and Technology* 71 (Spring, 2012).

⁸¹*Supra* note 8 at 67.

⁸²*Ibid.*

Swami v. Union of India,⁸³ It was argued that treating all those who are under eighteen years of age as the same without looking at their capacities, abilities and nature of offense committed was over-classification and not permissible under the Indian Constitution. The court while rejecting the plea to read down provisions of JJA 2000 held, “Classification or categorization need not be the outcome of mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class”. In another pronouncement of *Salil Bali v. Union of India and another*,⁸⁴ In this case the definition of child under JJ Act, 2000 was being challenged. It was argued that no separate standard of criminal responsibility can be fixed apart from what is given in the penal code. The court rejected all the arguments and held that, the age 18 has been chosen on account of the understandings in the field of child psychology and behavioral patterns, and till the age of 18 a child can be easily rehabilitated in the mainstream society.

Regarding the age group of 16 to 18, the court held that, there are certain exceptions where a juvenile in the age bracket of (16-18) might have developed criminal behavior and propensities, and which can become an obstacle in “rehabilitating” and “reintegrating” the child in the society. But it has to be understood that such instances are very less and are of not such proportion to try them in an adult court. The court also noticed the fact that if we try such children in the adult system then there are chances that they can develop into hardened criminals, which is not good for the future. It means that while children can not ask for special provisions for them but if the State chooses to make a law especially for them, it must be for their protection and welfare and not against them.

VII. Children in Conflict with Law in Adult Prisons

The Supreme Court of India in one of the landmark ruling has clearly observed that, “children should not be confined to jail because incarceration in jail has a dehumanizing effect, and is harmful to the growth and development of children”.⁸⁵ Similarly Act of 2015 clearly provides that a child who has not completed his 18 years of age and is alleged to have committed an offense or is found guilty be not placed in adult jails or prisons. The statutory requirement mandates that such children be kept in a “place of safety” or in a “special home” or an “observation home” respectively. This simply means that it is unlawful and also against the

⁸³Criminal Appeal No. 695 of 2014.

⁸⁴Writ Petition Criminal Number 10 of 2013.

⁸⁵*Sheela Barse v. Union Of India* , Supreme Court, 1988 (4) SCC 226.

due process of law to place a child in an adult jail or a prison.⁸⁶ There are various studies conducted which reveal that the children tried as an adult and sent to prisons, later developed more delinquent behavior. One of the 16 year old children revealed his experience that, “The inmates were knocking out the lights to make it dark. It was definitely the Twilight Zone for me at a young age going into the country jail”. Others shared his experience⁸⁷ saying that for me the first impression of adult jail was the smell; “piss and metal”.⁸⁸ Experts dealing with the subjects pointed out that the prisons are correctional facilities for adults, which are not the places of enlightenment. They are not the places where some sort of treatment, therapy, or rehabilitation is going on. Another expert pointed out that young, tender age people who are tried into the adult system and given long sentences would not be well prepared to re-enter the society again.⁸⁹ They are at their crucial stage of development and at such a stage the association of hardened criminals can affect their behavior a lot.⁹⁰ The report from the “Office of Juvenile Justice and Delinquency Prevention” revealed that :

Although transfers were created to deter juveniles from committing crimes, the rate of reoffending youth in the adult system is higher than youth in the juvenile system and often involves more serious crimes.⁹¹

Courts in India have time and again reiterated that children should not end up in prisons. If we try to interpret the sentence, “to end up in prison”, it simply means that they should not be placed in adult prisons. And they can be placed there only due to “sheer negligence, omission, or even deliberately.”⁹² It further means that they have crossed three major checkpoints. Firstly, they have been mistakenly arrested as an adult by the police; secondly, they have passed a hearing for first remand by a Magistrate and thirdly, they have been admitted into prison without reporting to proper authorities that they are too young.⁹³ In

⁸⁶ The Delhi High Court in *Court On Its Own Motion v. State*, commented that based on the government’s submission around 800 CCLs were transferred from adult prisons to juveniles homes over last 5 years.

⁸⁷ “Since coming to the adult prison I have seen crazy things. Rape is a reality not a myth. People sharing needles, shooting dope ... gangs run things and drugs are easily available. I have a friend who spent 6 months breaking & entering. He came in a pot-head and left a cocaine addict. He is now serving a 16 to 20 yr sentence. What is the purpose of prison? To make people come out worse than they went in?”

⁸⁸ Super predator legacy: How children end up in the prison system *available at* : <https://kidsimprisoned.news21.com/super-predator-kids-tried-adults/> (last visited on May 16th, 2025).

⁸⁹ Children in adult prisons, *available at* : <https://eji.org/issues/children-in-prison/> (last visited on May 16th, 2025).

⁹⁰ There are several studies that show that juveniles who go through the adult prison system and are put into jails with hardened criminals in most cases remain in the cycle of crime and there are high chances of them becoming repeat offenders.

⁹¹ Juveniles in Adult Jails and Prisons : A National Assessment *available at* : <https://www.ojp.gov/pdffiles1/bja/182503.pdf> (last visited on May 16th, 2025).

⁹² *Court On Its Own Motion v. Department of Women and Child Development*, Delhi High Court, W.P (C) No. 8889 of 2011, 2012 SCC Online Del 1718.

⁹³ iProbono, “A National RTI Study on Incarceration of children” (Justice Leila Seth Fellowship, 2024).

order to check this mandate of Juvenile Justice Act, 2015 that children should not be kept in adult prisons, the researcher has referred to an RTI based report on incarceration of children.⁹⁴ The report has collected data from many states about the children who were wrongly placed in adult jails across India from 2016 to 2021, and later moved on to proper children's facilities. The report also highlights the role of the JJB as to whether the mandate of Section 8(3)(m) of the JJ Act, 2015 is being fulfilled or not.⁹⁵ The report provides an insight that the data received from the RTI highlights that at least 9681 children were transferred from the adult prisons to juvenile homes between 01 January 2016 and 31 December 2021.⁹⁶ Data received from Tihar Jail Delhi and District Prison Jhunjhunu is shocking, it indicates how long children could spend in prison before being transferred to child care facilities. Total of 730 children were transferred from jail number 5 of Delhi in six years ; out of this 22 children were in adult prison for one week or less ; 93% were there for less than three months ; 26 children were there for 3-6 months, 14 children were there in adult prison for around 6-12 months ; 3 children were there for one year and there was a child who was transferred from adult prison in his 3rd year. And in the district prison Jhunjhunu, there were a total of 16 children who were transferred from adult prison to child care institutions. Out of 16 children, 10 children were in adult prison for less than 3 months, 4 children were in adult prison for around 3-6 months and two children were in adult prison for around 6-12 months.⁹⁷ Thus as discussed above it is a sheer violation of the fundamental rights of the children if they are placed in an adult prison even for a day.

Thus children should never be kept in adult prisons because it causes serious harm to their development and future. When children are locked up with adult criminals, they often experience violence, abuse, and are exposed to harmful influences that can make them more likely to commit crimes later. Adult prisons focus on punishment, while the juvenile justice system is designed to help rehabilitate young people. Studies show that children in adult prisons are more likely to reoffend and commit more serious crimes than those handled

⁹⁴*Ibid.*

⁹⁵Conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home.

⁹⁶ This number is despite an overall response rate of exactly 50 per cent, i.e. responses from 285 district and central prisons out of a total of 570. This also does not include the 749 other prisons from which we did not request data, including sub jails, women's prisons, open prisons, special prisons, borstal schools, and other prisons. It also, as previously mentioned, only includes those who were successfully identified and transferred, not all those who were juveniles at the time of their alleged offence, including those identified by prison visitors, families, or through self-identification.

⁹⁷iProbono, "A National RTI Study on Incarceration of children" (Justice Leila Seth Fellowship, 2024).

through juvenile systems.⁹⁸ Children's brains are still developing, making them more capable of change and rehabilitation in proper environments. Despite laws forbidding it, thousands of children end up in adult prisons in India, sometimes spending months or even years there before being transferred to appropriate juvenile facilities. This failure of the system not only violates children's rights but creates lasting psychological damage, turning troubled youth into hardened criminals instead of giving them a chance at reform and a better life. In addition to this there is a shocking study by the Delhi Police which reveals that, between 2014 and 2024 the percentages of juveniles involved in murder cases has gone up. In the year 2023, 20.1 % juveniles were charged with the offense of murder and in the year 2024 this data went up to 26.07%. Thus there is an increase in the recidivism rate among the juveniles.⁹⁹

VIII. Conclusion and Suggestions

The Act of 2015 is somehow a major step backward in terms of aspirations and forward looking vision which was initiated after the enactment of Apprentices Act 1850. By opening a window of sending 16 to 18 years to jail in exceptional circumstances, it was taken back to India in 1920 when the initial children Acts was introduced. It somehow feels as though developments after 1920 have been ignored and rather than becoming more progressive the law has moved backward in its approach. It has ignored the developments in criminology, penology, victimology, psychology, psychiatry, neuroscience, rehabilitation, restorative justice which have guided us better in dealing with persons committing offenses. Various research on the subject matter shows that till 18 years of age a person can be easily reformed and restored in society, still the JJA 2015 has introduced the cut off age of 16 to 18 years in heinous offenses. It is always said a law made in a hurry can never prove to be a good law. The same has happened with the JJA 2015. Even the "264 Report on Juvenile Justice (Care and Protection of Children) Bill 2014", rejected the Bill as unconstitutional and commented that 16 to 18 years is an extremely sensitive and critical age which requires greater protection. The report suggested that there is no need to subject them to different or adult judicial systems.

⁹⁸ Richard E Redding, 'Juvenile Transfer Laws: An Effective Deterrent to Delinquency?' (Juvenile Justice Bulletin 2010) available at <https://www.ncjrs.gov/pdffiles1/ojdp/220595> (last visited on May 16th, 2025).

⁹⁹ Killings by Juveniles up over last 10 months, available at: <file:///C:/Users/Shiv%20Abhishek/Downloads/Gaurav%20Sir/IE%20DELHI%2018-12-24.pdf> (last visited on May 06, 2025).

In addition to this, children should never be kept in adult prisons because it causes serious harm to their development and future. When children are locked up with adult criminals, they often experience violence, abuse, and are exposed to harmful influences that can make them more likely to commit crimes later. Adult prisons focus on punishment, while the juvenile justice system is designed to help rehabilitate young people. Studies show that children in adult prisons are more likely to reoffend and commit more serious crimes than those handled through juvenile systems. Their brains are still developing, making them more capable of change and rehabilitation in proper environments. Despite laws forbidding it, thousands of children end up in adult prisons in India, sometimes spending months or even years there before being transferred to appropriate juvenile facilities. This failure of the system not only violates children's rights but creates lasting psychological damage, turning troubled youth into hardened criminals instead of giving them a chance at reform and a better life.

Suggestions

The following suggestions can be considered for strengthening the mandate and objective of the Juvenile Justice Act, 2015:

- I. Holding the State accountable for wrongful incarceration of children in adult prisons :
The government can be held responsible for wrongly putting children in prison by making them pay money as a compensation. This helps in creating pressure among the officials for fixing the issues. In 2004, the Bombay High Court ordered Rs. 1 lakh payment to a boy who was wrongfully incarcerated in adult prison for almost three years. Both the police station and the concerned prison were ordered to pay the compensation to the child.¹⁰⁰ In 2011 the Delhi High Court ordered Rs. 5 lakh compensation to a child who was incarcerated in adult prison at the age of 14 or 15 years and spent 8 years in prison for murder. The law at that time did not allow for a punishment of more than three years in a special home for a juvenile. The court stayed all proceedings against him and also quashed all criminal cases lodged against him.¹⁰¹
- II. Monitoring and Legal Awareness: It has been found in various places that children and adolescents are not aware about their rights. The state government along with the help of the central government should organize awareness programmes and add the rights available to children in the school curriculums. Posters should be placed in

¹⁰⁰*Master Salim Ikramuddin Ansari v. Officer-In-Charge, Borivali Police Station*, Bombay High Court, SCC OnLine Bom 722.

¹⁰¹*Subhash v. State*, Delhi High Court, 2011 SCC OnLine Del 1612.

important locations like police stations, prisons and courtrooms on the protections available to children. This will help in disseminating the information and also empower the children about their rights.

- III. Thorough Medical Examination: The Model prison rules direct that whenever any person is brought in prison; he or she should be thoroughly examined. Thus efforts should be made in improving this direction and also putting a mandate and strict check on this. The medical examination team should be made aware of the safeguards and they should make sure that no child be kept in adult prisons.
- IV. Establishment of Observation Homes and Place of Safety : Across India, there are only 311 observation homes, 39 special homes, and 36 places of safety,¹⁰² which indicates the urgent need for such facilities and institutions which can cater to the needs of children in conflict with law and children in need of care and protection.¹⁰³
- V. Strict adherence to the directions given by the courts¹⁰⁴ mandating police officers to include the age of the accused in the arrest memo prepared at the time of the arrest.¹⁰⁵

¹⁰² As of March 2022, there were states such as Odisha, Himachal Pradesh, and Arunachal Pradesh that did not have a single observation home. No UTs without a legislature other than Chandigarh had an observation home. In approximately 2/3rds of all districts in Uttar Pradesh, there are no observation homes. As on 31.03.2022, there were only 26 observation homes in a state that has 75 districts. And as on 31.03.2023, there were only two special homes and one place of safety in the entire state.

¹⁰³ Government of India, Ministry of Women and Child Development, available at : [https://sansad.in/getFile/loksabhaquestions/annex/1712/AU2628.pdf?source=pqals#:~:text=\(a\)%20&%20\(b\):,;%20health%20care;%20counselling%20etc](https://sansad.in/getFile/loksabhaquestions/annex/1712/AU2628.pdf?source=pqals#:~:text=(a)%20&%20(b):,;%20health%20care;%20counselling%20etc) (last visited on May 13th, 2025).

¹⁰⁴ *Court On Its Own Motion v. Department of Women and Child Development*, Delhi High Court, W.P (C) No. 8889 of 2011, 2012 SCC OnLine Del 1718.

¹⁰⁵ A report published in May 2024 by Project 39A at the National Law University - Delhi titled “Magistrates and Constitutional Protections – An Ethnographic Study of First Production and Remand in Delhi Courts” reveals that the arrest memo used in Delhi glaringly does not include any reference to the age of the accused.