

# KnowLaw Journal

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## Revamping Juvenile Laws – India needs it.

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### Abstract

This research paper focuses on the juvenile laws that exist currently in India and emphasizes on the need to bring an upgrade to the present laws. Even though the statutes and legislations are austere, the number of children getting involved in crimes is surging. The Juvenile Justice System is a system coming quite close to criminal law administration of justice. This is a system embraced for youngsters, who are not mature enough to be considered liable for criminal demonstrations. This system is applicable to those under 18 years of age. Juvenile Justice is managed and regulated through Juvenile Court which is child friendly in nature. The paper also discusses about the big reforms in India's justice system that were caused by the Delhi gang rape case. After the protests of several people in the case of Nirbhaya where the juvenile prisoner was released, Rajya Sabha passed the Juvenile Justice Bill, 2014. On 15 January 2016, the Government of India repealed the Juvenile Justice Act, 2000. This Act benefits minors who are in dispute with laws and protects them from the District and High Court's harsher penalties. Many times, the researcher finds that these juvenile laws need a revamping. When the minor is accused of a crime, the Juvenile Justice Board makes a decision whether the child needs to be sent to rehabilitation centre or to be tried in the court. This strategy is decided on the psychological and physical capacity of the juvenile. The paper comes out with the need to revamp the existing juvenile laws and also briefs various case laws of juvenile crimes.

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## Introduction

The very term "Juvenile" comprehensively indicates an individual who, by virtue of his tender age has not yet achieved adequate development or comprehension to pass judgment on the nature and results of his activities. In law, a juvenile is considered not mature enough to be considered responsible for his criminal demonstrations. Once recognized as a 'Juvenile', the law concedes immunity to him from the consequences of his action which are in conflict with the law applicable to adults. Juvenile crimes are not given enough seriousness in our country. A huge section of our society rules out grant of harsher punishment to minor offenders, irrespective of the gravity of their offences. Even though our country is witnessing a rise in the number of juvenile culprits, many people want those culprits to be educated. Many studies have come up with the fact that educated people take a place higher than uneducated in the case of crimes. The number of 'literate' juvenile wrongdoers, who have concentrated up to matriculation and higher secondary levels, increased to 6,260 in 2017 from 4,244 in 2016, according to a report of National Crime Records Bureau (NCRB) on 'Crime in India'.<sup>2</sup> The role of education in reducing crimes and unlawful practices cannot be precluded. Education has got a role to do in this field; but punishment has a greater impact than education. Most people do not prefer to end up in prison and so they are deterred from committing crimes that might be punished that way. Juveniles can be given consideration, but to a limited extent only. This paper throws light on various juvenile crimes across our country. This paper also elucidates the amended Juvenile Justice Act, 2015.

## Research Questions

1. Is it just that children in the age bracket of 13-15 are privileged to seek an exemption from the punishment for juvenile crimes?
2. Is the learned opinion of providing targeted education as a solution for juvenile crimes, a perfect tool?

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<sup>2</sup> The Print, <https://theprint.in/india/educated-juveniles-crimes-more-illiterate-ones-2017-ncrb/310527/> (last visited Mar. 4,2021)

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## History of the Juvenile Justice System

The Apprentice Act, 1850<sup>3</sup> was the first enactment to be passed under which children belonging to the age bracket of 10 to 18 years were convicted and vocational training was given to them as a part of reformatory and rehabilitative steps. Then came the Reformatory Schools Act in the year 1897. The necessity of providing a square trial and a separate treatment system for young offenders was established by the Indian Jail Committee. In 1920, the Children Act in Madras came into force as part of the recommendations put forward by the said Indian Jail Committee. This led to the enactment of Children Act in Bengal in 1922 as well as Bombay in 1924. These Acts got amended between the time period of 1948 and 1959. In order to serve the necessities of Union Territories, another act named the Children Act was enacted in the year 1960. The Act got amended again in the year 1978. The Juvenile Justice Bill, 1986<sup>4</sup> was presented in the Lok Sabha on 22nd August, 1986. Its articles and provisions were definite and evident that a survey of the working of the current Children Acts would demonstrate that a lot more noteworthy consideration needed to be given to children found in circumstances of social sick therapy, desperation or disregard. Even after the enactment of Juvenile Justice Act, 1986, there existed loopholes and lacunas and the Act of 1986 couldn't breeze through the assessment of time and needed to clear a path for another Act that is The Juvenile Justice (Care and Protection of Children) Act, 2000.<sup>5</sup> The Act was changed twice – first in 2006 and later in the year of 2011.<sup>6</sup> The Act was supplanted not long after the Delhi rape case by The Juvenile Justice (Care and Protection) Act, 2015.<sup>7</sup>

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<sup>3</sup> Apprentices Act, 1850, No. 52, Acts of Parliament, 1850 (India)

<sup>4</sup> The Juvenile Justice Bill, 1986, No. 53, Acts of Parliament, 1986 (India)

<sup>5</sup> Gaurav Mohunta, Juvenility Determines Juvenile Justice: A Comparative Analysis - India and USA, LAW FINDER LIVE, (Mar. 9, 2021, 12:30 PM), <https://www.lawfinderlive.com>

<sup>6</sup> Juvenile Justice (Care and Protection of Children) Amendment Act, 2011, No. 12, Acts of Parliament, 2011 (India)

<sup>7</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No. 02, Acts of Parliament, 2016 (India)

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## **How a Juvenile Culprit is dealt in terms of Law?**

A juvenile is a child who has not yet attained a certain age at which he can be held liable for his criminal acts like an adult person under the law. Legally, it is said that a juvenile is a person who has not reached the age of eighteen years. It has a legal importance. According to the Juvenile Justice (Care and Protection) Act 2000, a juvenile will not be treated as a grown-up regardless of whether he/she is engaged with any criminal act for the purpose of trial and punishment in the court of law.<sup>8</sup> When a juvenile is convicted in a criminal case, a completely different method is followed as compared to the procedure followed in case of adult offenders. There is not even a single chance of life imprisonment or death sentence for juvenile culprits. Whatever the offence may be, a few years of imprisonment is the only retribution. When the case reaches the Juvenile Court, various factors are taken into consideration so that the way to proceed with the case can be decided. These factors include the severity of offence, age of juvenile, juvenile's gender, past record, etc. Nearly 20% of the cases are dispersed and about 25% of the cases are held informally. The remaining cases go through formal proceedings and are considered by the Juvenile Courts. When formal proceedings come into the topic of discussion, a petition is filed by the prosecutor or by the probation officer. The minor is afterwards formally charged before a Magistrate of the Juvenile Court. In most of the cases, minors are allowed to stay at home while awaiting the hearing.

## **Nirbhaya Gang Rape and Murder Case**

In our judicial system, especially in the Juvenile Justice Act, the most contentious and violent Nirbhaya Gang Rape case has brought many reforms. Several new laws have been enacted, and six new fast-track courts have been formed to hear cases of rape.

After watching a movie at a Delhi movie theatre, Nirbhaya and her friend were returning home. Both of them took a public bus to get back home. They were harassed and attacked while the

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<sup>8</sup> Helpline Law, <https://www.helplineLaw.com/employment-criminal-and-labour/MCHCO/whether-minors-committing-heinous-crimes-should-be-treated-as-juvenile.html> (last visited Mar. 4, 2021)

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bus was traveling. Their possessions were confiscated by the culprits. A friend of Nirbhaya was stripped and battered with an iron bar. Nirbhaya was taken to the rear of the bus and raped. She was inhumanely abused and an iron rod was inserted by the culprits, causing significant damage to her genitals, uterus and intestines. Later, the culprits had thrown the victims out of the bus. Before burning it, the attackers then wiped the bus with the victim's clothes and distributed the loot between them, including two cell phones, a wrist watch, and a pair of shoes. Nirbhaya died in a hospital in Singapore two weeks after the rape, where doctors had been attending her for severe body and brain injuries. She gave statements to the police about the rape before she died. Soon after the incident, six suspects were identified by the police, who had known each other before the incident. According to court records, the oldest of the culprits was Ram Singh (34 years old), a school bus driver who frequently drove the bus where the attack took place. He was charged with the rape and murder of the victim, but was not tried as he reportedly committed suicide just after the trial began in jail. His lawyer and family believed that he had been killed.

The youngest, who was just 17 years old at the time of the incident, was sentenced to three years' in a juvenile correctional facility and was later released on 20<sup>th</sup> December 2015. The other four, less than a year apart, were tried and sentenced to death. They include Akshay Thakur (bus cleaner), Pawan Gupta (fruit seller), Vinay Sharma (part-time gym instructor), and Mukesh Singh, the younger brother of Ram Singh.<sup>9</sup>

His three-year sentence has been completed by the juvenile and he has been transferred from places to places, changed his name, and he is now employed as a cook down in the South. The young man belonged to a village some 240 kilometres from the National Capital, where his elder sister looked after the six-person household. At the age of 11, he left home and worked with Ram Singh on his bus as a cleaner. There were rumours that, when he hit the victim with an iron pole, the juvenile was one of the most violent of all the convicted. The Juvenile Justice

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<sup>9</sup> 9 News, <https://www.9news.com.au/world/nirbhaya-bus-gang-rape-and-murder-attackers-executed-in-india/d5f9f28b-60e2-4ad7-9f0f-3c76d11c3bdf> (last visited Feb. 24, 2021)

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Commission, however, swept away all the accusations and called it, according to The Times of India, 'media hype'.

## **Juvenile Justice Act, 2015**

Indian legislation's first reform in juvenile justice was introduced in the year 1850. Minors above the age of 10 years who were convicted in courts were to be provided vocational training along with the rehabilitation process. The original law underwent two amendments in the years 1986 and 2000. According to the revamped Juvenile Justice Bill passed in 2015, children between the ages of 16-18 years, committing heinous offences, are to be treated as adults. An assessment on whether the crime was committed as a child or an adult is to be monitored by the Juvenile Justice Board (JJB). The presentation of the Judicial Waiver System opened an extension to treat adolescents under grown-up criminal justice systems and rebuff them for the same, whenever required. The decision is seen as a vital change in the Indian juvenile law. The Bill was initially rejected by a Standing Committee of Parliament but was proceeded by the Government as the suggestions were not legally binding. It was later passed in Lok Sabha and stands till date.

The amended Juvenile Justice Act, 2015 came with the following measures:

- In case of a minor aged 17 years or more, committing a serious offence, the punishment would be a maximum of three years in special home including counselling, given the offender is apprehended before 21 years of age.
- In an identical case where apprehension is after the age of 21 years, the offender can be imprisoned for three to seven years after being treated as an adult.
- Evaluation of mental and physical capacity would be adopted if a heinous offence is committed by a minor above 17 years of age, apprehended below the age of 21 years.
- A similar scenario with apprehension above the age of 21 would mean s/he is considered as an adult and would be given an imprisonment of 7 years or more.
- A juvenile in no case will be sentenced to life-imprisonment or death sentence.

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- Once the minor is produced before the Juvenile Justice Board, the inquiry must be completed within a span of four months. An extension up to two months can be availed upon presentation of written reasoning.
- In case of heinous crimes, assessment period would be 60 days from the presentation of the minor before the Juvenile Justice Board.
- A period of 30 days will be allotted for a minor's adoption after being legally declared free. If an adoption doesn't take place within the duration, inter-country adoption will be permitted.
- In the case of biological parents opting for adoption, they will be offered a time frame of three months to revise their decision. The period was one month previously.
- A child being abandoned by biological parents under unavoidable situations will not be considered as wilful give up of the child.<sup>10</sup>

## The need to revamp Juvenile Laws

Punishment is given to the culprits or offenders for two purposes. First purpose is to make the convict suffer according to the law if he has committed a crime. Second is to give an example to society so that people are discouraged from committing a crime. Penalizing the culprit makes the society believe in the judicial system. In 2018, one-fourth of the rape victims were minors and more than half of them were in the age bracket of 18 to 30 years, according to the National Crime Records Bureau data.<sup>11</sup> Our country is witnessing a rise in the number of juvenile crimes. It's not just the Delhi rape case; several other brutalities followed. One case was in December 2017 in Noida where a mother and sister were stabbed to death by a 16-year-old boy after being scolded and beaten by the mother for poor academic performance. The mother's advice over neglecting studies resulted in the deadly crime. Another juvenile crime was reported in September 2019 where a 13-year-old boy stabbed his 30-year-old teacher to death at her house. A couple of years ago, the city of Gurugram woke up to the shocking news of a 16-year-old

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<sup>10</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No. 02, Acts of Parliament, 2016 (India)

<sup>11</sup> India Today, <https://www.indiatoday.in/india/story/rapes-in-india-offenders-victim-minor-data-ncrb-1635691-2020-01-10> (last visited Feb. 28, 2021)

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class 11 student taking the life of an 8-year-old class 2 student, Pradyuman Thakur, of Ryan International School. According to the latest data of the National Crime Records Bureau (NCRB)<sup>12</sup> pertaining to 2017, about rape cases in India, 1,614 rapes and 1,456 other sexual assaults were committed by juveniles.

The researcher looks forward to a change in the juvenile law system. Our country keeps age as a barrier for every aspect. When a juvenile commits a heinous crime, he or she should be treated in the same way like other adult offenders. Age should not be a factor to decide a person's criminality. A juvenile who is able to kill or harm another person has a sense of criminality and that should be given more consideration than the age factor. *Doli incapax*, i.e. 'unable to commit a crime,' is a child under the age of seven. Additionally, a child between the age of seven and twelve has limited criminal liability. The contention is to justify a lenient treatment to young offenders as they cannot comprehend the nature and consequences of their actions due to lack of sufficient maturity and understanding.<sup>13</sup> Law has made such measures to protect juveniles from the crime they did due to their immaturity and lack of mental development. Just consider the Nirbhaya rape case. The juvenile culprit was released after three years in a juvenile correctional facility. It was just a matter of 6 months for him not to be treated as a juvenile. The Court came with a remedy in the year 2015 by amending the Juvenile Justice Act to permit treatment of minors, between the ages 16 and 18, as adults in case of heinous offences. The question is that what should be done in case of 13-15 year old teens who are accused of rape. There are 14-year-old murderers. The time has come to examine other factors like criminal mentality, upbringing, etc. of juveniles. Age is not at all a factor nowadays. Children are exposed to society. Children these days are smart and mentally developed as compared to the past generations.

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<sup>12</sup> Business Standard, [https://www.business-standard.com/article/pti-stories/over-40k-juveniles-caught-in-2017-72-pc-in-16-18-age-group-ncrb-119102201492\\_1.html](https://www.business-standard.com/article/pti-stories/over-40k-juveniles-caught-in-2017-72-pc-in-16-18-age-group-ncrb-119102201492_1.html) (last visited Feb. 28, 2021)

<sup>13</sup> Legal Services India, <http://www.legalservicesindia.com/law/article/1294/17/Juvenile-Delinquency-In-India> (last visited Mar. 4, 2021)

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## **Study of Public Mindset regarding Juvenile Laws**

In order to study juvenile crimes and their impact on the society, the researcher conducted an online questionnaire and questions that were asked in the survey were:

1. Do you keep yourself updated with news and current affairs?
2. Do you feel our country has a well-functioning judicial system?
3. Are you a juvenile?
4. Do you think juvenile laws in our country are not equipped enough to deal with the cases happening over here?
5. Are you that person who thinks juveniles who commit serious crimes like murder, rape, etc. should be punished?
6. According to your opinion, can age factor be taken into consideration in deadly crimes involving juvenile culprits?
7. Do you prefer an upgrade to the existing juvenile laws in our country and why?

When we take into consideration the responses of this survey, 96.4% of the people who responded belong to the age group of 18+. For the 5th question, most of the people responded by giving a yes, which is a clear adherence to the researcher's point of view. Everyone preferred an upgrade to the existing laws in our country. When asked about the role of age factor in cases involving juvenile culprits, responses were very logical. Most of them quoted the Nirbhaya case and shared the same viewpoint as that of the researcher demanding no age factor consideration should be there in case of heinous crimes. Another common point given by people who responded, was to take into consideration the mental capacity of the culprit and punish them accordingly.

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## Conclusion

This paper's focal point is to emphasize on the need to upgrade the existing juvenile laws. The researcher wants the juveniles to be treated fairly, but considering age as a factor to seek an exemption from the crime they committed is not just. It should be ensured that even a single culprit should not break the net of justice. This is required to safeguard the morale of the society and to upkeep the confidence in the judicial system. Every victim or injured party who approaches the judiciary has a firm confidence and hope that justice won't be denied to them. Punishment should be made strong as this will deter them from repeating the same offence. Although many countries consider people under 18 as juveniles, there are some countries which differ in this concept. In France, justification of circumstances and delinquent personality of a juvenile above 13 years is examined to offer criminal sentences, if needed. Vermont, a North Eastern U.S state has extended the juvenile age from 18 to 20, which is an odd practice when compared to that of our state. This upholds the concept that juvenile justice differs from country to country. However, the alarming rise in the number of juvenile crimes coerces the need for revamping juvenile laws.

Dealing with the first research question- Is it just that children in the age bracket of 13-15 are privileged to seek an exemption from the punishment for juvenile crimes- the researcher draws attention to consider the sense of criminality in juveniles. There is a need for the children to be educated so that they understand how to behave in public, following the basic rules. When taken into account, the survey report of the National Crime Records Bureau, the number of educated and literate juvenile culprits are more as compared to the remaining illiterate group. This exemplifies that education is just a method to create awareness among children regarding crimes and their effects. Punishing juveniles, contemplating the depth of crime they have committed and their sense of criminality can bring a decline in the criminal practices of children. The second research question put forward in this paper is a widely discussed topic as to whether providing targeted education is a solution for juvenile crimes. Education can play a vital role in children regarding crimes. But the extent to which education as a perfect and the only tool to strike off juvenile crimes is doubtful. A juvenile delinquent should be treated as an

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adult when it comes to punishment. Children are educated enough to distinguish good from bad. Actually, a sense of criminality is something completely different from education. It is an inborn nature and a person gets to know its consequences even before getting educated. The physical and mental development of a kid should be examined. Rather than restoration, they ought to be tried as grown-ups. Juveniles are a danger to the general public as they can undoubtedly ruin different youngsters in their gathering.

It is a positive nod that the Juvenile Justice Act, 2000 was amended in the year 2015 so as to ensure that Children in Conflict with Law (CCL) can be tried as adults, if it necessitates. As per the amended Act, children belonging to the age group of 16-18 shall be subjected to trial as that of adults if heinous crimes have been committed by them, deserving a punishment of minimum seven years. However, this provision of juveniles being tried as adults is not compulsory. This amendment was brought by the Ministry of Women and Child Development<sup>14</sup> soon after the Delhi gang rape case where one of the culprits was a juvenile at the time of the incident. It is a pity that since the Act did not proclaim any retrospective effect, the juvenile in the said case escaped from his most deserving punishment. The researcher is of the strong opinion that being a juvenile should never be a tool for letting the culprit free when he commits a murder or a rape. Letting free under the pretext of being a juvenile sets a wrong message to the society as a whole. Provisions of law should be a whip to correct the faulty. Law should not confine itself on the pages of books. Rather, the strength of law should be explicitly made use of in order to punish the criminals, even though s/he is a juvenile. This would be the most effective tool of prevention of such heinous offences. Revamping of a targeted education along with effective application of the provisions of law will definitely ensure a lesser, though not cent percent crime-free society. In the long run, the same tempo should be sustained to establish a comfortable social atmosphere to live in. Indian Judicial

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<sup>14</sup> The Indian Express, <https://indianexpress.com/article/explained/when-a-juvenile-is-tried-as-an-adult-when-not-5840823/> (last visited Mar. 8, 2021)

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System has to play the pivotal role in the run and the researcher is strongly advocating the same.