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JUVENILE JUSTICE IN INDIA: A CRITICAL LEGAL ANALYSIS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

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ABSTRACT

Juvenile justice occupies a unique and pivotal space within the broader framework of criminal law, reflecting society's commitment to the rehabilitation, reformation, and reintegration of children who come into conflict with the law. In India, the Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act, 2015") as amended in 2021 constitutes the primary legislative framework governing matters relating to both children in conflict with the law and children in need of care and protection. This paper undertakes a critical legal analysis of the juvenile justice system in India, examining its constitutional foundations, statutory framework, institutional mechanisms, procedural safeguards, and international obligations.

The paper further examines the controversial provision allowing the trial of juveniles between sixteen and eighteen years of age as adults for heinous offences, tracing its genesis to the Nirbhaya gang rape case of 2012. Drawing on landmark judicial decisions, empirical data, and comparative jurisdictional analysis, this research argues that while the JJ Act, 2015 represents a progressive shift from punitive to rehabilitative justice, significant gaps persist in its implementation, particularly in the functioning of Juvenile Justice Boards, Child Welfare Committees, and Child Care Institutions. The paper concludes with recommendations for legislative reform and institutional strengthening.

Keywords: *Juvenile Justice, Child Rights, JJ Act 2015, Children in Conflict with Law, Juvenile Justice Board, Heinous Offences, Rehabilitation, POCSO, UNCRC, Criminal Law Reform.*

CHAPTER 1: INTRODUCTION

1.1 Background and Rationale

The treatment of children who commit offences has been a subject of significant jurisprudential and sociological debate across legal systems worldwide. Unlike adult offenders, children are presumed to lack full moral culpability owing to their developmental immaturity, susceptibility to environmental influences, and capacity for reform. This foundational premise rooted in the doctrine of *parens patriae* underlies the establishment of a distinct juvenile justice system separate from the mainstream criminal justice apparatus.

In India, the evolution of juvenile justice law has been marked by successive legislative iterations: the Children Act, 1960; the Juvenile Justice Act, 1986; the Juvenile Justice (Care and Protection of Children) Act, 2000 ("JJ Act, 2000"); and finally the JJ Act, 2015, which was further amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021. Each enactment has sought to align domestic law with evolving international standards and ground realities.

1.2 Statement of Problem

Despite the enactment of the JJ Act, 2015, India's juvenile justice system continues to face structural and implementation challenges. Reports by the National Crime Records Bureau (NCRB) indicate that the number of juveniles apprehended for serious offences has shown an upward trend. Simultaneously, infrastructure deficits in Child Care Institutions (CCIs), overburdened Juvenile Justice Boards (JJBs), and inadequate rehabilitative programmes undermine the system's reformatory goals. The provision permitting trial of juveniles as adults a contentious departure from the rehabilitative paradigm raises fundamental questions about the compatibility of the JJ Act, 2015 with international child rights norms.

1.3 Research Objectives

- To trace the historical evolution of juvenile justice legislation in India.
- To analyse the constitutional and international legal foundations of juvenile justice.
- To critically examine the institutional framework under the JJ Act, 2015.
- To evaluate the provision for trying juveniles as adults and its implications.
- To identify implementation gaps and suggest reforms.

1.4 Research Methodology

This research adopts a doctrinal methodology, primarily relying on primary sources including statutes, constitutional provisions, judicial pronouncements of the Supreme Court and High Courts, and international instruments. Secondary sources including academic commentaries, NCRB data, reports of the National Commission for Protection of Child Rights (NCPCR), and comparative jurisdictional materials are also utilised. The research is analytical and critical in nature.

1.5 Scope and Limitations

The research focuses on the JJ Act, 2015 as amended in 2021, and its practical operation within the Indian legal system. Matters relating to adoption under the Act are excluded from the scope of this paper. Further, given the constraints of a research paper, a comprehensive empirical study of all states is not undertaken; instead, select NCRB data and case studies are employed for illustrative purposes.

CHAPTER 2: HISTORICAL AND CONSTITUTIONAL FRAMEWORK

2.1 Historical Evolution of Juvenile Justice Law in India

The genesis of a distinct legal framework for juveniles in India may be traced to the colonial era. The Apprentices Act, 1850 provided for the engagement of children convicted of petty offences as apprentices rather than subjecting them to imprisonment. The Reformatory Schools Act, 1897 further institutionalised the distinction by establishing reformatory schools for juvenile offenders.

Post-independence, the Children Act, 1960 was enacted by the Central Government applicable to the Union Territories, providing for care, protection, and rehabilitation of neglected and delinquent children. Crucially, it established Children's Courts and prohibited the sending of juveniles to ordinary jails. Several states enacted their own children's legislation during this period, resulting in a non-uniform patchwork of laws across the country.

The Juvenile Justice Act, 1986 ("JJA, 1986") was the first central legislation with national applicability that sought to consolidate and uniformly govern the treatment of juvenile offenders. It raised the age of juvenility to sixteen years for boys and eighteen years for girls a distinction that was widely criticised as discriminatory. The JJA, 1986 was repealed and replaced by the JJ Act, 2000, enacted in conformity with the United Nations Convention on the Rights of the Child

("UNCRC"), which India had ratified in 1992. The JJ Act, 2000 uniformly fixed the age of juvenility at eighteen years for all children regardless of gender, in alignment with Article 1 of the UNCRC.

Following the public outcry generated by the gang rape case of December 2012 in Delhi (commonly referred to as the Nirbhaya case), wherein one of the accused was a seventeen-year-old juvenile who received only three years in a reformatory, the Parliament enacted the JJ Act, 2015 a legislation that introduced the significant and controversial provision of trying certain juveniles as adults.

2.2 Constitutional Foundations

The juvenile justice framework in India draws sustenance from multiple provisions of the Constitution of India, 1950. Article 15(3) empowers the State to make special provisions for women and children, thereby constitutionally legitimising differential treatment of children within the legal system. Article 21A, inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002, guarantees the fundamental right to free and compulsory education to children between six and fourteen years directly intersecting with rehabilitative goals of juvenile justice.

Article 39(e) and (f) Directive Principles of State Policy obligate the State to ensure that children are not forced by economic necessity to enter vocations unsuited to their age and strength, and that children are given opportunities and facilities to develop in a healthy manner. Article 45 originally directed the State to provide free and compulsory education for children, now read with Article 21A post the Eighty-Sixth Amendment. Article 51A(k) imposes a fundamental duty on parents and guardians to provide educational opportunities to children between six and fourteen years.

The doctrine of *parens patriae* wherein the State assumes the role of a guardian for those who are unable to care for themselves has been recognised and applied by the Supreme Court in numerous decisions, forming the philosophical bedrock of the juvenile justice system. In *Sheela Barse v. Union of India* (1986) 3 SCC 632, the Supreme Court issued comprehensive guidelines for the protection of children in conflict with the law, emphasising that the State's obligation is reformatory rather than retributive.

2.3 International Legal Obligations

India's international obligations significantly inform the interpretation and application of the JJ Act, 2015. Key instruments include:

- United Nations Convention on the Rights of the Child, 1989 (UNCRC): Ratified by India in 1992. Article 37 prohibits capital punishment and life imprisonment without the possibility of release for offences committed by persons below eighteen years. Article 40 mandates States to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged to have committed offences.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules): Prescribe minimum standards for the treatment of juvenile offenders, emphasising proportionality of response, diversion, and the primacy of the well-being of the juvenile.
- United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (Riyadh Guidelines): Emphasise preventive strategies through family, education, community, and social policy measures.
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules): Set minimum standards for the treatment of juveniles deprived of liberty.

In *Bachpan Bachao Andolan v. Union of India* (2011) 5 SCC 1, the Supreme Court held that India's ratification of the UNCRC imposes a duty upon the State to implement its provisions in letter and spirit, and that domestic legislation must be interpreted in conformity with international child rights norms.

CHAPTER 3: THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

3.1 Overview and Structure

The JJ Act, 2015 is a comprehensive legislation consisting of ten chapters and one hundred and twelve sections, governing two broad categories of children: (i) Children in Conflict with Law (CCL), and (ii) Children in Need of Care and Protection (CNCP). This dual focus reflects an integrated understanding of juvenile delinquency that children who offend are often also children who are themselves victims of neglect, abuse, poverty, or exploitation.

he Act was further amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, which notably transferred the authority to declare an institution as fit for placement of children from the District Magistrate to Designated Courts, streamlined adoption procedures under the CARA framework, and introduced enhanced penalties for crimes against children.

3.2 Definition of "Child" and Classification of Offences

Section 2(12) of the JJ Act, 2015 defines a "child" as a person who has not completed eighteen years of age. This is consistent with the UNCRC and represents a departure from the gender-differential approach of the JJA, 1986.

A critical innovation of the JJ Act, 2015 is the tripartite classification of offences attributed to Children in Conflict with Law under Section 2:

- Petty Offences [Section 2(45)]: Offences for which the maximum punishment under the Indian Penal Code (IPC) or any other law is imprisonment up to three years.
- Serious Offences [Section 2(54)]: Offences for which the punishment under the IPC or any other law is imprisonment between three and seven years.
- Heinous Offences [Section 2(33)]: Offences for which the minimum punishment under the IPC or any other law is imprisonment of seven years or more.

This classification is of paramount significance because it determines the procedure to be followed, the forum before which the child shall be produced, and the possible consequence of trial as an adult.

3.3 Juvenile Justice Board (JJB)

The Juvenile Justice Board (JJB) is the primary adjudicatory body for Children in Conflict with Law, constituted under Section 4 of the JJ Act, 2015. Every district is required to have at least one JJB, composed of a Principal Magistrate and two social workers (one of whom must be a woman). The JJB exercises the powers of a Judicial Magistrate First Class.

The JJB is mandated to conduct inquiry not a "trial" in the conventional criminal law sense in a child-friendly manner. Section 24 provides that no disqualification shall attach to a child found to have committed an offence, reinforcing the reformatory approach. The JJB is empowered to pass a variety of orders including allowing the child to go home after advice and admonition, directing the

child to participate in group counselling, imposing community service, sending the child to a special home, or placing the child in a fit facility.

In *Ajay Kumar Mittal v. State of U.P.* (2016) 6 SCC 418, the Supreme Court reiterated that the inquiry before the JJB must be conducted in accordance with the principles of natural justice and the child-friendly ethos of the JJ Act, while ensuring that the rights of the child are not compromised.

3.4 Child Welfare Committee (CWC)

The Child Welfare Committee (CWC), constituted under Section 27 of the JJ Act, 2015, is the statutory body responsible for addressing the needs of Children in Need of Care and Protection. It is composed of a Chairperson and four other members appointed by the State Government. The CWC exercises the powers of a Judicial Magistrate First Class in respect of matters within its jurisdiction.

The CWC receives children produced before it by police, NGOs, or any person, conducts social investigations through Child Welfare Officers or social workers, and passes appropriate orders regarding placement, rehabilitation, and restoration. The 2021 Amendment enhanced the powers of District Magistrates in overseeing CCIs and the functioning of CWCs.

3.5 Special Juvenile Police Units (SJPUs) and Child Care Institutions (CCIs)

Section 107 of the JJ Act, 2015 mandates the designation of a Special Juvenile Police Unit (SJPU) in every district and city, staffed by police officers trained in child psychology and welfare. The SJPU serves as the first point of contact for children in conflict with the law, and its conduct at the initial stage is critical to the child's experience of the justice system.

Child Care Institutions (CCIs) encompass Observation Homes, Special Homes, Place of Safety, Shelter Homes, and Open Shelters. These institutions are required to be registered under Section 41 of the Act. Persistent concerns about overcrowding, understaffing, absence of trained counsellors, and incidents of abuse within CCIs have been documented by the NCPCR and various High Courts through suo motu proceedings.

CHAPTER 4: TRYING JUVENILES AS ADULTS A CRITICAL EXAMINATION

4.1 The Statutory Provision Section 15

Section 15 of the JJ Act, 2015 constitutes the most controversial departure from the traditional rehabilitative paradigm of juvenile justice. It empowers the JJB to conduct a preliminary assessment in cases involving heinous offences alleged against a child who is sixteen years of age or above to determine whether the child has the mental and physical capacity to commit such an offence, the ability to understand the consequences of the offence, and the circumstances in which the offence was allegedly committed. If the JJB concludes, based on this assessment (including psychological reports), that the case ought to be tried by a Children's Court (Sessions Court), it may pass an order to that effect under Section 18(3).

Upon transfer, the Children's Court is empowered under Section 19 to conduct a trial as if the juvenile were an adult. Crucially, if the Children's Court finds the child guilty, it must assess whether the child can be reformed during the period before attaining the age of twenty-one years. If yes, the child may be sent to a place of safety; if not, the child may be sentenced as an adult.

4.2 Judicial Scrutiny of Section 15

The constitutional validity and scope of Section 15 has been the subject of extensive judicial examination. In *Shilpa Mittal v. State of NCT of Delhi* (2020) 2 SCC 787, the Supreme Court addressed the definition of "heinous offence" and noted a legislative lacuna: where the minimum sentence prescribed for an offence is less than seven years but the maximum is seven years or more, the offence does not squarely fit the definition of "heinous offence" under Section 2(33). The Court held that such offences must be treated as "serious offences" for the purposes of the Act, and directed the Law Commission to recommend suitable amendments.

In *Barun Chandra Thakur v. Master Bholu* (2022) 10 SCC 700, the Supreme Court examined the procedural safeguards required under Section 15 and emphasised that the preliminary assessment by the JJB must be thorough, based on expert opinions, and cannot be a mere formality. The Court cautioned against mechanical transfer orders and underscored that the best interests of the child must be the paramount consideration.

4.3 Critical Analysis Compatibility with International Norms

The provision for trying juveniles as adults under Section 15 of the JJ Act, 2015 has attracted criticism from child rights advocates and legal scholars on the ground that it is inconsistent with India's obligations under the UNCRC and the Beijing Rules. Article 40(3) of the UNCRC requires

States Parties to promote the establishment of laws and procedures applicable to children without resorting to judicial proceedings. The Beijing Rules explicitly caution against the transfer of juvenile cases to adult courts.

Proponents of Section 15 argue that the provision strikes a balance between the reformatory ideal and societal demands for accountability in cases of extreme violence, and that robust procedural safeguards including mandatory psychological assessment, representation by a legal aid counsel, and judicial oversight at multiple stages sufficiently protect the child's rights. Critics counter that the provision effectively penalises developmental immaturity and that neurological research consistently demonstrates that the adolescent brain's capacity for impulse control and appreciation of long-term consequences is not fully developed until the mid-twenties.

A comparative analysis reveals that several jurisdictions, including the United Kingdom, Canada, and Germany, have moved decisively away from adult trials for juveniles, emphasising restorative and therapeutic justice models. The United States, which has historically employed adult trials for juveniles, has in recent years witnessed significant judicial and legislative reform following Supreme Court decisions in *Roper v. Simmons* (2005) and *Miller v. Alabama* (2012), which restricted mandatory life imprisonment without parole for juveniles.

CHAPTER 5: IMPLEMENTATION CHALLENGES AND EMPIRICAL PERSPECTIVE

5.1 Statistical Overview

According to the National Crime Records Bureau (NCRB) Report on "Crime in India, 2022", a total of 35,849 juveniles were apprehended across the country during 2022. Of these, the majority were in the age group of sixteen to eighteen years (approximately 57.3%). The highest number of juvenile apprehensions were recorded in Madhya Pradesh, Maharashtra, and Uttar Pradesh. Offences against property (theft, house-breaking) and offences against the body constituted the largest categories. Notably, the number of cases in which JJBs ordered transfer to Children's Courts under Section 15 remained relatively low, suggesting that the provision, while controversial, is applied with some measure of restraint.

5.2 Infrastructural and Institutional Gaps

The effective implementation of the JJ Act, 2015 is significantly hampered by persistent infrastructural deficits. The NCPDR's Annual Report (2022-23) highlights:

- A significant number of districts lack a fully functional JJB; several JJBs operate without the requisite two social worker members, rendering their composition non-compliant with Section 4.
- Child Care Institutions across states suffer from overcrowding, inadequate staff-to-child ratios, absence of qualified counsellors and psychologists, and in several documented instances, physical abuse of children.
- The non-registration of numerous CCIs under Section 41 continues despite judicial directions, exposing children to unregulated and potentially harmful environments.
- Legal aid services under Section 12 are often inadequate, with many children appearing before JJBs without effective representation.

5.3 The Role of POCSO Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012 intersects significantly with the juvenile justice framework, both as a law under which children may be victims and one under which juveniles may be accused. Section 28 of the POCSO Act designates Special Courts for trial of offences thereunder. Where the accused is a juvenile, the JJB retains jurisdiction for the inquiry under the JJ Act, with the POCSO Act's substantive provisions applicable to the nature of the offence.

The Supreme Court in *Alakh Alok Srivastava v. Union of India* (2018) 17 SCC 291 issued comprehensive directions for the expeditious disposal of POCSO cases, which also have implications for the functioning of JJBs in cases involving juvenile accused.

CHAPTER 6: RECOMMENDATIONS AND CONCLUSION

6.1 Recommendations

Based on the foregoing analysis, the following recommendations are advanced:

1. Legislative Clarification on Heinous Offences

The legislative ambiguity identified by the Supreme Court in *Shilpa Mittal (supra)* regarding offences that do not squarely fit the tripartite classification must be resolved through a suitable amendment to Section 2(33) of the JJ Act, 2015. A clearly delineated classification avoids arbitrary application and ensures procedural fairness.

2. Strengthening the JJB

Every district must be provided with a fully functional JJB with qualified social worker members and adequate administrative infrastructure. The State Governments must ensure timely filling of vacancies and regular capacity-building training for JJB members on child psychology, developmental science, and legal provisions.

3. Reform of Child Care Institutions

Mandatory registration of all CCIs under Section 41, coupled with robust and regular inspection by the District Magistrate and the State Child Protection Society, must be enforced. Investment in qualified rehabilitation staff, educational programmes, and mental health services within CCIs is essential to achieve the reformatory mandate of the Act.

4. Reconsideration of Adult Trial Provision

The provision for trying juveniles as adults under Section 15 should be subjected to periodic review by the Law Commission of India, taking into account empirical data on recidivism, outcomes of rehabilitation, and evolving neurological research on adolescent brain development. A presumption against adult trial should be statutory, with transfer to Children's Courts reserved as an exceptional measure subject to stringent standards.

5. Expansion of Diversion Mechanisms

In conformity with the Beijing Rules, pre-inquiry diversion mechanisms should be expanded and formalised, allowing for community-based interventions, family group conferencing, and restorative justice practices as alternatives to formal JJB proceedings, particularly for petty offences.

6.2 Conclusion

The juvenile justice system in India, as governed by the JJ Act, 2015, represents a complex but significant legislative endeavour to balance the reformatory ideal with societal concerns about serious juvenile crime. The Act's dual focus on children in conflict with the law and children in need

of care and protection reflects a holistic understanding of the causes and contexts of juvenile delinquency. Its constitutional moorings in Articles 15(3), 21, 21A, and 39(e)(f) are well-established, and its alignment with international norms under the UNCRC and the Beijing Rules is broadly commendable.

However, the provision for adult trial of juveniles under Section 15 remains a contentious departure from the rehabilitative paradigm and merits careful, evidence-based re-evaluation. More urgently, the chronic implementation deficits inadequate JJBs, dysfunctional CCIs, insufficiency of legal aid, and lack of trained personnel represent the most pressing challenge to the Act's reformatory goals. Legislative reform, however well-intentioned, can only achieve its purpose when matched by commensurate institutional capacity, political will, and financial investment.

Ultimately, the juvenile justice system's success must be measured not by the number of adjudications, but by the degree to which it succeeds in restoring a child's life trajectory transforming a child who has come into conflict with the law into a productive, dignified member of society. That, and nothing less, is the constitutional and moral imperative that animates the JJ Act, 2015.

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