

# **AN ANALYSIS OF THE JUVENILE JUSTICE ACT 2015 IN INDIA AND THE LACUNA IN IT**

*Jerine Alex*

*CHRIST (Deemed to be University), Bangalore*

## **ABSTRACT**

The Juvenile Justice (Care and Protection of Children) Act, 2015 has heralded a new era of juvenile justice in India by introducing the provision of transfer of 16-18 years old children alleged to have committed a heinous offence to an adult criminal court. The reason behind it being the Nirbhaya rape case which is one of the most horrific crimes committed, back in 2012. The juvenile justice boards have been given the responsibility of assessing the child in conflict with law and accordingly decide whether the child needs to be transferred to a children's court or whether the child should be tried as an adult in the adult's court. This paper will be focussing on the inaccuracies when it comes to determining certain factors while assessing the child. The number of cases where the child is transferred to the Adult courts is constantly increasing. The focus will be on the psychological assessment test. The author of this paper would additionally like to highlight the difficulties the child going to jail would have to face and the importance of adopting a psychological approach when it comes to reformation of the juvenile. Lastly the author would like to suggest some reforms and the researcher's opinions regarding children in conflict with law.

**Keywords:** Child assessment inaccuracies, Child in conflict with law, Psychological Assessment test, Issues the child faces, Reforms suggested.

## **INTRODUCTION**

The Juvenile Justice Act, 2015, as passed by the Parliament, received the assent of the President of India on December 13<sup>th</sup>, 2015 and came in to force on January 15<sup>th</sup>, 2016. The JJA, 2015 has taken a step backward in the modern history of juvenile justice in India which began in 1850.<sup>1</sup> The Apprentices Act, 1850 initiated differential treatment of children by providing for binding over of vagrant children and children committing petty offences below

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<sup>1</sup> Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 83

the age of 15 years as apprentices instead of sending them to jail. Post that in 1898, saw enactment of Reformatory Schools Act, 1897 providing for sending of children below 15 years of age to reformatory schools instead of prison if found suitable. Pursuant to the recommendations of the All-India Jail Committee 1919-1920, the era of children Acts began in 1920 which extended the segregation of children accused of committing offences at the adjudication stage by establishing separate children courts.<sup>2</sup>

All these children Acts provided for sending the children to remand homes but permitted sending of children to jail in exceptional circumstances. Since Independence in 1947, Parliament passed the first legislation on the subject, namely, the Children Act, 1960. The Children Act, 1960 introduced a sex-based definition of child bringing girls till the age of 18 years and boys till the age of 16 years within its protective umbrella. It also made the remarkable departure from all the earlier children Acts passed by the states by completely prohibiting use of police stations or jail under any circumstances for children covered within its purview. All children Acts passed after 1960 followed this pattern.

In 1983, Sheela Barse, a journalist filled the writ of habeas corpus in the Supreme Court seeking release of 1400 children lodged in various jails in India despite the prohibition against use of police station or jails under various children Acts.<sup>3</sup> During the pendency of this petition, the Supreme Court recognised that differential cut-off age, defining child in different children Acts in force in different parts of India, were violating the fundamental right to equality before law and equal protection of law to all children as guaranteed by the Constitution.<sup>4</sup> Hence, it pointed in one of its orders that it would be better to have a uniform legislation for the whole country. Pursuant to this direction, Parliament passed the first uniform legislation for the children applicable to the whole of India, namely, the Juvenile Justice Act, 1986.<sup>5</sup> It substantially followed the scheme of the Children Act, 1960 but substituted the word 'child' by 'juvenile' perhaps influenced by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 adopted by the General Assembly. Use of police station or jail at any stage and under any circumstances for keeping

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<sup>2</sup> Id.at.pg. 83

<sup>3</sup> Id.at pg. 84

<sup>4</sup> Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 84

<sup>5</sup> Id.at.pg. 84

girls below the age of 18 years and boys below the age of 16 years became illegal with the enforcement of the JJA, 1986 in the whole of India.

When India signed and ratified the United Nations Convention on the Rights of the Child in December, 1992, it was considered essential to adopt the uniform cut off age of 18 years for both girls and boys in conformity with the definition of child in the Convention on the Rights of Child, 1992<sup>6</sup>. The Juvenile Justice (Care and Protection of Children) Act, 2000 extended the ban on use of prisons or police station at any stage of proceedings and under any circumstance for children below the age of 18 years found to have committed any offence under any law in force in India. All these enactments since 1850 were moving in one direction to bring an increasing number of children within the protective umbrella of juvenile justice.<sup>7</sup>

However, the gang rape of a Delhi girl, Jyoti Pande (named Nirbhaya by media) on December 16, 2012 resulted in use of social media to organise spontaneous protests against the gruesome rape.<sup>8</sup> It resonated in different parts of India. Soon media coverage shifted the focus from women's safety to the involvement of a 17-year-old child in this gang rape.<sup>9</sup> The newspapers and multi-media screamed with flashing headlines that the child was 'the most brutal' of all accused in this rape. The media created and promoted the frenzy around this lie.<sup>10</sup>

With the passing of the Criminal Law Amendment Act, 2013, all women were presumed to have become safe except from 'juveniles' who were continuing to pose the biggest threat to safety of women in India.<sup>11</sup> Newspapers and multi-media flashed more lies of 50% increase in juvenile crime, 60% increase in sexual offences by children and so on even though the National Crimes Records Bureau (NCRB) data continued to show that there was no substantive change in either the rate of crime or share of juvenile delinquency to total crime.<sup>12</sup>

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<sup>6</sup> Id.at. pg.84

<sup>7</sup> id.at. pg.84

<sup>8</sup> Id.at, pg.85

<sup>9</sup> Id.at pg.85

<sup>10</sup> Id.at.pg.85

<sup>11</sup> Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 86

<sup>12</sup> id pg. 86

Gallery didn't perform any debate on the provisions of the bill or the objections to the bill rose by the Parliamentary Standing Committee.

However, now that the JJA, 2015 has been enforced, it is essential to clearly understand the scheme of the new Act and the challenges presented by its various provisions in its implementation.

### **CHANGES BROUGHT ABOUT IN THE 2015 AMENDMENT**

In the Amendment there has been no change to the meaning of "child". Someone who has not completed the age of 18 years is still considered to be a child under law.<sup>13</sup> The change was for those who are between the age of 16-18 years and who has committed a heinous offence. Such persons can be tried under the adult's criminal court as adults, under certain circumstances if the Juvenile Justice Board thinks fit.

The JJA, 2015 continues to apply to 2 broad categories of children. First children in conflict with law, these children will be assessed the Juvenile Justice Board. The second category being children in need of care and protection, these children will be taken cared by the child welfare committee (CWC). The JJB continues to be constituted by one judicial magistrate and two social workers; it is no more required that the magistrate must have special knowledge of child psychology and child welfare.<sup>14</sup> "A practicing professional with a degree in child psychology, psychiatry, sociology or law" are among the categories of persons who may be appointed as members of the JJB and the child welfare committee (CWC).<sup>15</sup>

Section 6 clearly laid down that if a person who has crossed the age of 18 years is apprehended for an offence committed prior to the age of 18 years, is to be treated as a child and their cases are to be disposed under the provisions of this Act.<sup>16</sup>

When a CCL is produced before the JJB, if it is obvious from the appearance of the child that it is so, it may note the age and proceed with inquiry. In other cases, the age is to be determined by adducing evidence. In order of preference, age is to be determined by reference to, the date of birth certificate from the school, or matriculation certificate from the

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<sup>13</sup> Id.at. pg. 86

<sup>14</sup> Id.at.pg. 86

<sup>15</sup> Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 87

<sup>16</sup> Id.at.pg. 88

concerned examination Board, the birth certificate given by a corporation or a municipal authority or a panchayat; and only in the absence of the above 2 options, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

For the purposes of disposal of cases of CCL, the JJA, 2015 has categorised the offences in three categories, namely, petty offences, serious offences, and heinous offences. The JJB has to dispose of all cases of children below the age of 16 years committing any offence, and cases of children between the ages of 16-18 years if they have committed a petty or serious offence. In these instances, the JJB is free to choose any of the following orders for any offence on the basis of the social investigation report and suitability of the order in the best interest of the child.<sup>17</sup>

In case of a 16-18-year-old child alleged to have committed a heinous offence, the JJB has to "conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand. The consequences of the offence and the circumstances in which he allegedly committed the offence taking the help of experienced psychologists or psycho-social workers or other experts."<sup>18</sup> After this assessment, the JJB may choose to dispose of the case itself or may decide to transfer the case to the children's court.

On receipt of preliminary assessment from the JJB, the children's court has the discretion to decide whether to try the child as an adult or to deal with her/him as child and pass appropriate orders accordingly. Progress of children sent for stay for terms beyond the age of 21 years need to be reviewed annually. On their attaining the age of 21 years, another assessment is to be done to see if the child has reformed and is ready to be released in society; the children's court may direct their release under the supervision of the monitoring committee for the remainder of the period of stay initially ordered.<sup>19</sup> Any aggrieved person may file an appeal against any orders by the JJB or the children's court.

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<sup>17</sup> id at.pg.88

<sup>18</sup> Ved Kumari, THE JUVENILE JUSTICE ACT 2015-CRITICAL UNDERSTANDING, Vol. 58, No. 1 (January - March 2016), pg. 90

<sup>19</sup> Id.at.pg.90

## OBJECTIVE OF RESEARCH

The objective of this research is to critically analyse the 2015 amendment brought about under the juvenile justice Act. The researcher intends to analyse the negative impact on the juveniles and the loopholes this amendment did not look at. Apart from highlighting the issues with the amendment, the paper will also focus on the changes that can be made to the present juvenile law.

## RESEARCH QUESTIONS

### 1) Lacuna in the law

- How can the preliminary assessment test determine whether a child has a childlike or an adult like mind? Is it accurate?
- Problem with the vague definition of heinous crimes

### 2) The importance of Adopting a psychological point of view when it comes to punishments and focussing on a reformative model

## METHODOLOGY OF RESEARCH

The methodology used in this paper is doctrinal. The researcher has used primary resources like existing data and a few case laws to substantiate the points of arguments made in this paper. Critical analysis of the legislation is also done, the focus being on the 2015 amendment.

## LACUNAE IN THE LAW

How can the preliminary assessment test determine whether a child has a child like or an adult like mind? Is it accurate?

The preliminary test is conducted to understand the mental maturity of the child who has committed the crime. But the test is clearly not conducted by experienced psychologists. The Act itself doesn't make it compulsory to use qualified professionals to conduct the test. Often a simple IQ test is conducted, which clearly is no proper factor to determine whether that



child has the mental capacity to understand the repercussions of his actions. The researcher would now explain the inaccuracy with the help of case laws.

In the case of *Bholu vs Central Bureau of Investigation* <sup>20</sup>

Briefly, the facts of the case are that a child aged about seven years, who was a student of 2nd Class, was found lying in an injured condition in the washroom of the school. He was immediately shifted to the hospital, where, he was declared dead. Initially, the investigation of the case was conducted by the local police but thereafter, the investigation of the case was handed over to the Central Bureau of Investigation. During investigation, it was found that the student of the same school i.e., the petitioner was found to be involved in the commission of offence, who was more than 16 years of age but less than 18 years.<sup>21</sup> The imaginary name was given to the juvenile, who was in conflict with law as Bholu.<sup>22</sup> By considering his age as well as physical and mental fitness, he was to be assessed by the Board as to whether he could be tried as an adult by the trial Court or not. A preliminary assessment was done by the Board as per provisions of section 15 of the Act.

It was found out that the inquiry conducted by the Board before passing the impugned order as required under sub-Section 3 of Section 18 of the Act was not as per spirit of Section 15(1) of the Act. Only the general questions were put to the juvenile and no question regarding the offence committed and consequences thereof were put to him. During apprehension Bholu and his father were called for normal conversation to the Office of Central Bureau of Investigation but he was intimidated, coerced, manhandled and also got separated from his father during questioning by putting undue influence. The statutory provisions contained under Section 15 of the Act for conducting preliminary assessment to assess the mental and physical capacity of the juvenile, in conflict with law, to commit a heinous offence and ability to understand the consequences of said offence and also the circumstances, under which, he allegedly committed the offence, were not followed.

Neither the documents relied upon by the Board were supplied to neither the juvenile nor his parents and even the application submitted by him was dismissed. <sup>23</sup>

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<sup>20</sup> Bholu vs. Central Bureau of Investigation, 'MANU/PH/1039/2018

<sup>21</sup> Bholu vs. Central Bureau Of Investigation on 11 October, 2018, <https://indiankanoon.org/doc/88300452/>

<sup>22</sup> Bholu vs Central Bureau of Investigation on 11 October, 2018, <https://indiankanoon.org/doc/88300452/>

<sup>23</sup> Id.at.43

The purpose of preliminary assessment of the juvenile is to find out the physical and mental capacity of the juvenile, ability to understand and consequences of the offence committed by the juvenile and also the circumstances, under which, he had committed the alleged offence.<sup>24</sup> As per Section 15 of the Act, 2015, the Board can have the assistance of any psychologist or any other expert. Dr. Joginder Kairo, Clinical Psychologist, P.G.I.M.S. Rohtak, who conducted two tests upon the juvenile, suggested that for further assessment, the juvenile may be sent to the Institute of Mental Health, University of Health Sciences, Rohtak but no such assistance has been taken in spite of giving suggestions by the aforesaid doctor.<sup>25</sup> The Board has completely ignored not only the provisions of the Act but Rules as well.<sup>26</sup> The report was based on inappropriate tests, namely, Coloured Progressive Matrices (CPM) and Malin's Intelligence Scale for Indian Children (MISIC) meant for children between the age group of 5-11 and 5-15, which were taken as the basis for the determination of the mental capacity of a child of 16 years.

It was also found out that this fact was brought to the notice of the Board as well as the Appellate Authority but still it was not considered. A specific request was made to cross-examine the psychologist but such request made by the petitioner was also rejected. The copies of the reports were not supplied to the petitioner to cross examine the psychologist and the request was rejected.

Every child is presumed to be innocent up to the age of 18 years and he has a right to be heard and required to participate in all the proceedings and decisions affecting his interest by giving due regard to his age and maturity. The juvenile has a right of privacy and confidentiality which is mandatory to be maintained but the right of confidentiality and privacy has been mis-interpreted by the Board as well as by the lower Appellate Court.<sup>27</sup> The CBI itself had admitted in the proceedings before the Board as well as before the Appellate Authority that no such trained officers were available for investigation so as to reach to the logical conclusion in view of special provisions of the Act.<sup>28</sup> The three parameters for making preliminary assessment i.e. the mental and physical capacity, ability to understand the consequences of the offence and the circumstances under which the alleged offence has been

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<sup>24</sup> Id.at.43

<sup>25</sup> Bholu vs central Bureau of Investigation, 'MANU/PH/1039/2018

<sup>26</sup> Bholu vs Central Bureau Of Investigation on 11 October, 2018, <https://indiankanoon.org/doc/88300452/>

<sup>27</sup> id at.53

<sup>28</sup> id at.53



committed are necessary to be followed but said parameters have not been followed as no such finding has been given by the Board so as to reach to the conclusion that the juvenile was well aware about the consequences of the offence committed by him and his mental and physical capacity was such that he was well aware about the nature of offence and the consequences thereof.<sup>29</sup>

The test conducted to determine the IQ of the juvenile was for the children up to the age of 15 years and none of the tests conducted were designed for the children above 15 years of age.<sup>30</sup> Even in those tests conducted by the Board, the IQ of the petitioner was below normal i.e., 95, which shows that as per said test, the mental age of the petitioner was not even of 15 years. In this case it was clear that principles of natural justice were not followed by both the Courts below as no opportunity was given to the petitioner or his parents to rebut the reports in question.<sup>31</sup> A very short period was given to them to go through the reports but copies thereof even were not supplied to them.<sup>32</sup>

From the case of Bholu vs central investigation bureau lack of proper implementation of the law is very clearly visible. The author through this paper is not trying to cover up the misdeeds of juveniles; the main focus is on the harsh way juveniles are dealt with. It is very evident from the Bholu case that the assessment test conducted by the Board is done just for the sake of it and is not at all sufficient when it comes to judging the mental capacity and understanding of the child. Immaterial of the fact whether the juvenile is at fault or not, how can a mere test gauge the mental capacity of the child while performing the crime. Although JJBs have psychologists and sociologists on board, there are no specific indicators to gauge the mental maturity of an offender.

The next argument the researcher would like to put forth is that 16-18 is an extremely sensitive and tender age, and does imposing harsh punishments for juveniles really reform their character. By being subjected to the horrific environments in India jails, there are chances for these children coming out of jails even more bitter and prone to committing worse crimes. Yet, looking at the way JJBs would work, it is possible that JJBs may send wrong juveniles to adult courts. The Board's assessments are subject to judicial review and

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<sup>29</sup> id at.53

<sup>30</sup> id at.53

<sup>31</sup>Bholu vs Central Bureau of Investigation on 11 October, 2018, <https://indiankanoon.org/doc/88300452/>

<sup>32</sup> Id.at.63

this might set off further litigation over whether one 16-year-old was let off lightly or another was wrongly sent to an adult court. It is also a huge possibility that. Such decisions might be influenced by the prevailing public mood in case such a heinous crime.

Another aspect that cannot be ignored is that transferring the juvenile to the adult courts is violative of the confidentiality and the privacy of the child and makes it difficult for the child to re-enter the society without being looked at as a criminal. Some of the collateral consequences the juvenile faces are the public release of juvenile records which will affect them for the rest of their lives are when looking for educational and job opportunities.

The next bone of contention is another clause through which a person of age more than 21 can be tried as an adult for serious offences he/she committed as a juvenile.<sup>33</sup> This provision violates Articles 14 and 20 of the Constitution and is also morally wrong as it tries to punish the juvenile for failure of the investigative agencies.<sup>34</sup> Another blatant violation of natural justice is found in section 15 of the Act. This section prescribes the JJB to conduct an assessment into the capacity of the juvenile to commit a crime. It is essential to understand that the language of this section presumes the child to be guilty from the beginning, regardless of whether he/she actually committed the crime or not.<sup>35</sup>

This appears to be a case of sentencing before guilt and is against the test of procedural fairness, which is an integral part of due process (*Maneka Gandhi v. Union of India*)<sup>36</sup>, as it introduces a bias against the child from the start.<sup>37</sup> It is in contravention of the principles of presumption of innocence and best interests which must be followed in administration of the Act. Another criticism of the decision of the government to repeal the 2000 JJ Act is that the Supreme Court of India, in cases of *Salil Bali v. Union of India*<sup>38</sup> and *Subramaniam Swamy*

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<sup>33</sup> Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis, (march 16<sup>th</sup>, 2020), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>

<sup>34</sup> Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis, (march 16<sup>th</sup>, 2020), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>

<sup>35</sup> Id.at.65

<sup>36</sup> Maneka Gandhi vs UOI, AIR 597,1978

<sup>37</sup> Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis, (march 16<sup>th</sup>, 2020), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>

<sup>38</sup> Salil bali vs UOI, (2013) 7 SCC 705

*v. Raju*<sup>39</sup>, had upheld the constitutionality of the Act, mandating that all children in conflict with law be dealt with equally irrespective of the gravity of their offence.<sup>40</sup>

### **THE LACUNAE IN THE DEFINITION OF HEINOUS CRIMES**

There is a clear lacune when it comes to the scope of heinous crimes. Under the IPC heinous crimes includes all those crimes which award a minimum punishment of imprisonment for 7 years or more. Theft, treason, arson, trafficking is some of the crimes that come under heinous crimes. Now does that mean that a juvenile of 16 would have to undergo imprisonment of 7 years just for theft? There is a necessity for this ambiguity to be cleared and there should be some exceptions put forth when it comes to juveniles.

Other major situations where this legislation can be misused can be say a 25-year-old woman, filing a false rape case against a 17-year-old boy, the boy will be tried as an adult in this case. Similarly, if a boy and a girl both fall in love and start a physical relationship and at this point the girl's father files a rape case against the boy, the boy will be tried as an adult. The legislation was a knee jerk reaction to public demand post the Nirbhaya's case; it has a lot of gaps which can be easily misused by many.

### **THE IMPORTANCE OF LOOKING AT THE MIND OF THE JUVENILE AND ADOPTING A PSYCHOLOGICAL POINT OF VIEW**

The second issue the researcher deals with in this paper is the impact prisons have on juveniles who committed heinous crimes. In the researcher's opinion there is a dire need a more reformatory structure. The upbringing and condition in which the child is brought up is also extremely crucial. Can punishing solve all problems? Example say a small child does something wrong, the parents' first instinct is to hit the child or punish the child or lock that child in a dark room. Similarly, when a juvenile commits an offence all we want to do is shut the child away. The real question here is that, does that really help. Does a parent punishes that child or law punishing him; really make that child a better person with a better mindset? The parents or society, so called elders or the law by punishing the juvenile delinquent are doing nothing but adding to the pains of an already hurt mind. It is proved that post getting out of jails these children tend to commit more offences. The mind of a child is extremely

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<sup>39</sup> Subramaniam Swamy vs Raju, (2014)8 SCC 390

<sup>40</sup> Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis, (march 16<sup>th</sup>, 2020), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>

sensitive and delicate and correcting them through love, care and gentle counselling should be focused on, rather than imposing them to harsh conditions. The brain of a 16–18-year-old is not fully developed. There are 2 systems in the brain, the cognitive and the more adventurous one.<sup>41</sup> Both of these continue to develop till a person is in his early 20's.<sup>42</sup>

It is extremely crucial is to also understand the background of the child in conflict with law. A lot of children brought up in disturbed households and who are financially backward tend to commit more crimes. Poverty and financial and economic backwardness are some of the factors and by putting a juvenile in jail it doesn't really correct them and make them better people. Most of these children come from vulnerable sections of our society, neglected by the Government, society and every other person.

Some of the factors we have to look delve deep in to before deciding the appropriate punishment for the child are-

**Physical factors-** Such as malnutrition, lack of sleep, developmental aberrations, sensory defects, speech defects, endocrine disorders, deformities, nervous diseases, other ailments, physical exuberance, drug addiction.<sup>43</sup>

**Mental factors-** Such as mental defect, superior intelligence, psychoses, psychoneuroses, psychopathic constitution (including emotional instability), abnormalities of instinct and emotion, uneven mental development, obsessive imagery and imagination, mental conflicts, repression and substitution, inferiority complex, introversion and egocentrism, revengefulness (get-even complex), suggestibility, contra-suggestibility, lethargy and laziness, adolescent emotional instability, sex habits and experiences, habits and association.<sup>44</sup>

**Home conditions-** Such as unsanitary conditions, material deficiencies, excess in material things, poverty and unemployment, broken homes, mental and physical abnormalities of

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<sup>41</sup> Rashme Sehgal, Does the Juvenile justice Act need Amendment, (July 28<sup>th</sup>, 2014), 18:44, <https://www.rediff.com/news/column/does-the-juvenile-justice-act-need-amendment/20140728.htm>

<sup>42</sup> Rashme Sehgal, Does the Juvenile justice Act need Amendment, (July 28<sup>th</sup>, 2014), 18:44, <https://www.rediff.com/news/column/does-the-juvenile-justice-act-need-amendment/20140728.htm>

<sup>43</sup> Shreya Mahajan, HOW DO JUVENILE JUSTICE BOARDS DECIDE THE FATE OF 16-18 YEAR OLDS? PRELIMINARY ASSESSMENT UNDER SECTION 15 OF THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2015, ILI Law Review, summer issue 2020, [file:///C:/Users/admin/Downloads/shm%20\(2\).pdf](file:///C:/Users/admin/Downloads/shm%20(2).pdf)

<sup>44</sup> Id.at.77

parents, or siblings, immoral and delinquent parents, ill-treatment by foster parents, stepparents, or guardians, stigma of illegitimacy, lack of parental care and affection, lack of confidence and frankness between parents and children, deficient and misdirected discipline, unhappy relationship with siblings, bad example, foreign birth or parentage and superior education of children.<sup>45</sup>

**School conditions-** Such as inadequate school building and equipment, inadequate facilities for recreation, rigid and inelastic school system, the goose-step, poor attendance laws and lax enforcement, wrong grading, unsatisfactory teacher, undesirable attitude of pupil towards teacher, bad school companions and codes of morals.<sup>46</sup>

**Neighbourhood conditions-** Such as lack of recreational facilities, congested neighbourhood and slums, disreputable morals of the district, proximity of luxury and wealth, influence of gangs and gang codes, loneliness, lack of social outlets, over stimulating movies and shows.

**Occupational conditions-** Such as irregular occupation, occupational misfit, spare time and idleness, truancy, factory influences, monotony and restraint and decline in the apprenticeship system.<sup>47</sup>

Hence through these arguments the researcher intends to say that the basic psychological aspect cannot be neglected and reformatory measures should be customised according to the needs of that particular child. So many children are locked in prisons today, if their potential is channelised in the right direction, they can go far ahead in their life. Our youngsters are the future of our country.

## **SUGGESTIONS AND CONCLUSION**

Firstly, regarding the psychological assessment test the time period should be extended from 3 months to about 10 months to a year to properly analyse the situation and make appropriate decisions.

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<sup>45</sup> Id.at77

<sup>46</sup> Shreya Mahajan, HOW DO JUVENILE JUSTICE BOARDS DECIDE THE FATE OF 16–18-YEAR-OLDS? PRELIMINARY ASSESSMENT UNDER SECTION 15 OF THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2015, ILI Law Review, summer issue 2020, [file:///C:/Users/admin/Downloads/shm%20\(2\).pdf](file:///C:/Users/admin/Downloads/shm%20(2).pdf)

<sup>47</sup> Id.at.80

The psychologists must meet more than at least 5 times and interact with the children in conflict with law, only then a proper analysis of their mindset is possible, for even in the day to day lives, we do not get to know a person that well, let alone deciding the fate of such children. The probation officers, the members and all the related functionaries should be sensitized towards children in conflict with law and instead of a one- time training, they should be given training at different and regular intervals. Unless the child's experiences and reality are understood, no decision can be taken by any authority on how to ensure their care, protection, treatment, rehabilitation and reintegration.<sup>48</sup> It is crucial to understand the root cause of why or what led the juvenile to commit such an act.

There is a huge shortage of good juvenile homes. Most remand homes are in pathetic condition and need a massive overhaul. Juvenile homes must be created in a manner where delinquents have the opportunity to tune themselves with the rest of the society.<sup>49</sup> They must receive the opportunities to reform and be educated, to be ready to make the plunge back into civilised society and live an honourable life. In Sangli, a programme called 'Disha' has been turning around the lives of juveniles.<sup>50</sup> With focus on rehabilitating them, the observation home has recorded a number of success stories by training and providing employment to such youth.<sup>51</sup> The process of rehabilitation involves a multi-faceted psychological approach towards confidence building and employability, at the end of which the juveniles are ready to face challenges of everyday life.<sup>52</sup>

The focus should not be on more stringent and tougher laws, it should be on proper implementation of the existing laws. The lack of infrastructure, resources and knowledge we have now is not enough for proper implementation of the law. While it cannot be disputed that children are capable of committing crimes, the solution does not lie in jailing them.<sup>53</sup> The focus should be on educating them and rehabilitating them<sup>54</sup>

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<sup>48</sup> Id.at.80, pg.25

<sup>49</sup> Ritwik Tyagi, The Juvenile Justice (care and protection of children) Act- 2015 – Critical Analysis,(march 16<sup>th</sup>, 2020), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>

<sup>50</sup> Id.at.85

<sup>51</sup> Id.at.85

<sup>52</sup> Smita Nair, Justice League: An Attempt to Institutionalise Juvenile Reform and Rehabilitation, <https://indianexpress.com/article/india/juvenile-justice-correctional-home-rehabilitation-5857362/>, (31-07-19, 00:16).

<sup>53</sup> Ritwik Tyagi, The Juvenile Justice ( care and protection of children) Act- 2015 – Critical Analysis,(march 16<sup>th</sup>, 2020), <https://medium.com/legal-jumble/the-juvenile-justice-act-e3870ce5fd3d>

<sup>54</sup> Id.at.91



A number of countries around the world are moving away from policies of deterrence to that of restorative and reformatory justice. The way forward should therefore be to demonstrate that the reformatory and rehabilitative model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the will and the heart to prove it. We have good scope for betterment of the juvenile legislation. Our children, our victims of juvenile crime and our society deserve no less.



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