

Legislative Brief

The Juvenile Justice (Care & Protection of Children) Bill, 2014

The Bill was introduced in the Lok Sabha on August 12, 2014 by the Minister of Women and Child Development, Ms. Maneka Gandhi.

The Bill was referred to the Standing Committee on Human Resource Development (Chairperson: Dr. Satyanarayan Jatiya) on September 22, 2014. The Committee submitted its report on February 25, 2015.

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April 20, 2015

Highlights of the Bill

- ◆ The Bill replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. It addresses children in conflict with law and children in need of care and protection.
- ◆ The Bill permits juveniles between the ages of 16-18 years to be tried as adults for heinous offences. Also, any 16-18 year old, who commits a lesser, i.e., serious offence, may be tried as an adult only if he is apprehended after the age of 21 years.
- ◆ Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) will be constituted in each district. The JJB will conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. The CWC will determine institutional care for children in need of care and protection.
- ◆ Eligibility of adoptive parents and the procedure for adoption have been included in the Bill.
- ◆ Penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have been prescribed.

Key Issues and Analysis

- ◆ There are differing views on whether juveniles should be tried as adults. Some argue that the current law does not act as a deterrent for juveniles committing heinous crimes. Another view is that a reformatory approach will reduce likelihood of repeating offences.
- ◆ The provision of trying a juvenile committing a serious or heinous offence as an adult based on date of apprehension could violate the Article 14 (right to equality) and Article 21 (requiring that laws and procedures are fair and reasonable). The provision also counters the spirit of Article 20(1) by according a higher penalty for the same offence, if the person is apprehended after 21 years of age.
- ◆ The UN Convention on the Rights of the Child requires all signatory countries to treat every child under the age of 18 years as equal. The provision of trying a juvenile as an adult contravenes the Convention.
- ◆ Some penalties provided in the Bill are not in proportion to the gravity of the offence. For example, the penalty for selling a child is lower than that for offering intoxicating or psychotropic substances to a child.
- ◆ The Standing Committee examining the Bill observed that the Bill was based on misleading data regarding juvenile crimes and violated certain provisions of the Constitution.

PART A: HIGHLIGHTS OF THE BILL¹

Context

A juvenile or child is a person less than 18 years of age. Under Section 82 of the Indian Penal Code (IPC), the minimum age at which any person can be charged for a crime is seven years. The Juvenile Justice (Care and Protection of Children) Act, 2000 addresses children who are in conflict with law and children in need of care and protection.² The Act was brought in to adhere to the United Nations Convention on the Rights of the Child (UNCRC) which was ratified by India in 1992. As a signatory, India is required to undertake all appropriate measures to ensure the rights of children with regard to juvenile justice, care and protection, adoption, etc.

As per 2011 census data, juveniles between the ages of seven to 18 years constitute about 25% of the total population.³ According to the National Crime Records Bureau (NCRB), the percentage of juvenile crimes as a proportion of total crimes has increased from 1% to 1.2% from 2003 to 2013.⁴

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

Over the years, courts have looked at various cases regarding juveniles committing crimes under the Juvenile Justice Act, 2000, and have recommended reviewing the Act with regard to issues related to implementation of the Act, stringent penalties, etc.^{5, 10}

The Juvenile Justice (Care and Protection of Children) Bill, 2014 was introduced in Lok Sabha on August 12, 2014 to address crimes committed by juveniles, children in need of protection, their rehabilitation and adoption processes, etc.

Table 1: Juveniles between 16-18 years apprehended under IPC

Crime	2003	2013
Burglary	1,160	2,117
Rape	293	1,388
Kidnapping/abduction	156	933
Robbery	165	880
Murder	328	845
Other offences	11,839	19,641
Total	13,941	25,804

Note: Other offences include cheating, rioting, etc.
Source: Juveniles in conflict with law, Crime in India 2013, National Crime Records Bureau.

Key Features

- The Bill seeks to replace the Juvenile Justice (Care and Protection of Children) Act, 2000.

Children in Conflict with Law

- Juvenile Justice Boards (JJBs) will be constituted in each district to deal with children in conflict with law. They will consist of a Metropolitan or Judicial Magistrate and two social workers, including a woman.
- Offences committed by juveniles are categorized as: (i) heinous offences (those with minimum punishment of seven years of imprisonment under IPC or any other law), (ii) serious offences (three to seven years of imprisonment), and (iii) petty offences (below three years of imprisonment). A juvenile cannot be given life imprisonment without the possibility of release or death penalty.
- Under the Bill, a juvenile in conflict with law can be required to spend a maximum of three years in a special home or fit facility. However, juveniles in the age group of 16-18 years may be tried as adults in certain cases. Any person who is between the ages of 16-18 years and has committed a *heinous offence* may be tried as an adult, irrespective of date of apprehension. Also, a juvenile between 16-18 years of age who has committed a *serious offence* and apprehended after the age of 21 years, may be tried as an adult.
- In all other cases, juveniles will get a maximum of three years in institutional care, as determined by the JJB.
- In case of *heinous offences*, if a juvenile is apprehended before 21 years of age the JJB will conduct a preliminary inquiry. This will determine his mental/physical capacity to commit an offence and an understanding of its consequences. The JJB will then pass an order that recommends: (i) interventions like counseling or community service; (ii) staying at an observation home for a temporary or long-term period; or (iii) refer the juvenile to a Children's Court to determine whether to try him as an adult.
- A Children's Court is a Sessions Court notified under the Commissions for Protection of Child Rights Act, 2005. For the purposes of this Bill, once a juvenile is referred by a JJB to a Children's Court it will determine whether to try him as an adult or else recommend counseling, stay at observation home, etc.

Children in Need of Care and Protection

- Child Welfare Committees (CWCs) will be constituted in each district to deal with children in need of care and protection. They will be composed of a chairperson and four other members who shall be experts on matters relating to children. At least one of the four members will be a woman.

- A child who is found to be in need of care and protection shall be brought before a CWC within 24 hours. Subsequently, a Social Investigation Report is required to be prepared within 15 days. After assessing the report, the CWC may recommend that the child be sent to a children's home or another facility for long term or temporary care, or declare the child as free for adoption or foster care.

Offences and Penalties

- The offence of assaulting, abandoning, abusing, or willfully neglecting a child will attract a punishment of up to three years of imprisonment and/or a fine of one lakh rupees. The penalty for employing a child for the purpose of begging will lead to an imprisonment of up to five years and a fine of one lakh rupees.
- A person who gives a child an intoxicating or narcotic substance will be liable for imprisonment up to seven years and a fine extending up to one lakh rupees. The penalty for selling or buying a child for any purpose will be imprisonment up to five years and a fine of one lakh rupees.

Other Provisions

- **Adoption:** The Central Adoption Resource Agency will frame regulations on adoption. These regulations will be implemented by state and district agencies. Prospective adoptive parents should be physically and financially sound. A single or divorced person may adopt a child. A single male may not adopt a girl child. The Bill also provides for inter-country adoption.
- **Registration of institutions:** Institutions for child care having a valid registration under the 2000 Act will continue to be recognized. Other institutions are required to be registered within six months of this Bill coming into force. The registration is valid for five years and needs to be renewed. Inspection committees will inspect these institutions and registration may be cancelled if they do not meet the prescribed criteria.

PART B: KEY ISSUES AND ANALYSIS

16-18 year olds accused of certain offences may be tried as adults

The Bill states that 16-18 year old juvenile offenders may be tried as adults in certain cases. There are differing views on whether juveniles should be tried as adults. Recently, the Supreme Court while hearing a case related to juvenile crime observed that the 2000 Act needs to be reviewed due to increasing heinous offences by juveniles. The law needs to deter juveniles from committing heinous crimes and safeguard the rights of victims. For crimes like rape and murder it is hard to conceive that the juvenile is not aware of the consequences.⁶ However, the Standing Committee examining the proposed Bill observed that 16-18 years is a sensitive and critical age requiring greater protection.⁷ Other experts have argued that a criminal justice system that has a reformatory and rehabilitative approach towards juvenile offenders may reduce cases of repeat offences. They say that under the current law, juvenile crime has only shown a marginal increase over the past few years.⁸

Non compliance with the UNCRC in treatment of 16-18 year age group

Bill:

Clause
16(1)

UNCRC:
General
Comment
10

The Bill requires certain juveniles between the ages of 16-18 years to be tried as adults with regard to specific offences. This provision is not in accordance with the UNCRC, as ratified by India, and mentioned in the Bill's Statement of Objects and Reasons. The Standing Committee observed that the Bill violates the UNCRC as it differentiates between children below 18 years of age.⁷ The UNCRC states that signatory countries should *treat every child under the age of 18 years in the same manner and not try them as adults*. It recommends that those countries that treat or propose to treat 16-18 year olds as adult criminals, change their laws to align with the principle of non-discrimination towards children.

Act:
Section
15(f)

The 2000 Act was enacted to implement the UNCRC guidelines in the Indian context. Unlike the Bill, the 2000 Act complies with the UNCRC guidelines and does not distinguish between persons below the age of 18 years. However, many other countries try juveniles as adults, in case of certain crimes. All of these countries, except the United States, have ratified the UNCRC. In the Annexure on the last page, we compare criminal laws in these countries with regard to treating juvenile offenders as adults.

Juvenile apprehended after 21 years of age for serious/heinous offences

Possible violation of Articles 14, 21 and 20(1) of the Constitution

Clause 7 of the Bill states that any person who is between the ages of 16-18 years and has committed a *serious* (between three to seven years imprisonment) or *heinous offence* (minimum seven years imprisonment), will be

Clauses
7, 16(1)

tried as an adult if he is apprehended after the age of 21 years (subject to other provisions of the Bill). This provision could violate some Fundamental Rights guaranteed by the Constitution.

Article 14 states that every person shall be treated equally before law. It has been interpreted that unequal treatment may be permitted between different sets of people only if there is a clear public purpose sought to be achieved by such unequal treatment. The Bill creates a distinction between two juvenile offenders committing the same offence on the basis of the date of apprehension. It is unclear what public purpose is being achieved by differentiating between two individuals, committing the same offence, on the basis of date of apprehension.

Table 2 below demonstrates the implications of this provision:

Table 2: Differentiation on the basis of date of apprehension for serious and heinous offences

Juvenile offender	Type of offence	Age when offence committed	Age on date of apprehension	Penalty
A	Serious offence	17 years	Below 21 years	Counselling or fine or maximum 3 years in special home
B	Serious offence	17 years	Above 21 years	Will be tried as an adult; Imprisonment of 3-7 years
C	Heinous offence	17 years	Below 21 years	Based on evaluation of mental capacity, etc, may be tried as a child (max. 3 years) or adult (more than 7 years)
D	Heinous offence	17 years	Above 21 years	Will be tried as an adult; Imprisonment of 7 years and above

Source: The Juvenile Justice Bill, 2014; PRS.

As can be seen, in case of the same serious offence, juveniles A and B will be tried differently based on the date of apprehension. Juvenile A will be treated as a child and juvenile B will be tried as an adult. In case of heinous offences, juvenile C may be tried as an adult subject to a preliminary inquiry, which determines the mental/physical capacity of the juvenile and ability to understand the consequences of the offence, etc. On the other hand, for the same offence, juvenile D will be tried as an adult without the process of a preliminary inquiry. The question is whether the differentiation between juveniles A and B, and that between juveniles C and D, based only on the date of apprehension, would satisfy the requirements of Article 14 of the Constitution.

Article 21 states that no person can be deprived of their right to life or personal liberty, except according to procedure established by law. Courts have interpreted this to say that any law or procedure established should be fair and reasonable.⁹ The differentiation based on the date of apprehension may fail this standard.

In 2005, a Constitution Bench of the Supreme Court, while determining the age of a juvenile and the resulting penalty (under the 2000 Act and an earlier 1986 Act) decided that the date on which the offence is committed matters, and not the date of apprehension.¹⁰ The provision of the Bill mentioned above contradicts this ruling of the Constitution Bench, and considers the date of apprehension when deciding the penalty given to a juvenile.

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

Gradation of offences and proportionality of penalties assigned to them

The Bill specifies penalties for various offences such as for giving a child narcotic substances, employing a child for begging, etc. It could be argued that the penalties prescribed under the Bill are not in proportion to the gradation of the crimes. For example, a person giving a child a tobacco product or liquor attracts a higher term of imprisonment and fine than a person who engages in child trafficking. See Table 3 below, for details:

Table 3: Comparison of penalties assigned to offences under the 2014 Bill

Offence	Penalty prescribed in the 2014 Bill
Giving a child any intoxicating liquor/narcotic drug/tobacco/psychotropic substances	Imprisonment: up to seven years; Fine: up to one lakh rupees
Selling or buying a child	Imprisonment: up to five years; Fine: one lakh rupees
Subjecting a child to cruelty	Imprisonment: up to three years; Fine: and/or one lakh rupees
Employing a child for begging	Imprisonment: up to five years; Fine: one lakh rupees

Clauses
78, 82,
76, 77(1)

Key observations and recommendations of the Standing Committee

The Standing Committee on Human Resource Development (Chair: Dr. Satyanarayan Jatiya) submitted its report on the Bill on February 25, 2015. Key recommendations include⁷:

- **Constitutional provisions:** The Committee noted that the 2000 Act recognises the sensitive age of 16-18 year olds and is reformatory and rehabilitative in nature. Subjecting juveniles to the adult judicial system would go against the principle of Articles 14 (unequal treatment of 16-18 year olds) and 15(3) (against the objective of protecting children) of the Constitution. It also said that the Bill was in violation of Articles 20(1) and 21 of the Constitution.
- **NCRB data:** One of the reasons cited for the Bill's introduction is an increase in heinous offences committed by 16-18 year olds. The Committee stated that this data compiled by NCRB is misleading as it is based on filing of FIRs and not actual convictions.
- **Implementation:** The Committee observed that the Act is not being implemented well. It recommended better implementation and uniform establishment of systems and procedures, by all agencies.

Comparison of the Juvenile Justice Act, 2000 Act and proposed Bill

Table 4: Comparison of the Juvenile Justice Act, 2000 with the Juvenile Justice Bill, 2014

Provision	The Juvenile Justice Act, 2000	The Juvenile Justice Bill, 2014
Treatment of juveniles	All children under the age of 18 years treated equally. Maximum penalty for juvenile in conflict with law is three years.	Juveniles aged between 16-18 years committing serious or heinous offences could be tried as adults. However, there will be no death penalty or life imprisonment.
Juvenile Justice Board	Conducts inquiry and directs the juvenile to be placed in any fit institution for a period not exceeding three years.	Adds a preliminary inquiry, conducted in certain cases by JJB to determine whether a child is placed in a home or sent to Children's Court to be tried as an adult.
Child Welfare Committee	Disposing of cases for children in need of care and protection; Frequency of meetings not specified.	Functions are same as in the Act; training of members to be done within two months of Bill becoming law; Committee to meet at least 20 days in a month.
Appeals	Appeal to the Session Court within 30 days of JJB order; further appeal to a High Court.	Appeal JJB/CWC order within 30 days to Children's Court, further High Court (District Magistrate for foster care, etc).
Adoption	No provision for inter-country adoption in the Act; the Guidelines Governing the Adoption of Children, 2011 provide for inter-country adoption.	Inter-country adoption allowed if adoption cannot take place within the country, within 30 days of child being declared legally free for adoption.
Foster care	Temporary placement of a child to be given for adoption, with a family for a short/extended period of time; biological family may be allowed to visit.	Same as the Act. Adds new provision for monthly checks on foster family by the CWC.
After-care	Monetary and continued support for children after they leave special or children home for a period of three years or till 21 years of age.	One-time financial support to children leaving child care institutions after completing 18 years of age.

Sources: The Juvenile Justice Act, 2000; Juvenile Justice Bill, 2014; PRS.

1. This Brief has been written on the basis of the Juvenile Justice (Care and Protection of Children) Bill, 2014, introduced in the Lok Sabha on August 12, 2014.
2. The Juvenile Justice (Care and Protection of Children) Act, 2000, Ministry of Women and Child Development.
3. Single year age data, Population Enumeration Data (Final Population), 2011 Census of India.
4. Juveniles in Conflict with Law, Crime in India 2013, National Crime Records Bureau, Ministry of Home Affairs.
5. Bachpan Bachao Andolan vs Union of India and others, Case no. 51 of 2006, April 18, 2011, Ram Singh and Ors. Vs State of NCT of Delhi, Crl. Rev. P. 124 of 2013.
6. Gaurav Kumar vs. State of Haryana, Petition for Special Leave to Appeal, 2366-2368/ 2015.
7. The Juvenile Justice (Care and Protection of Children) Bill, 2014, Standing Committee on Human Resource Development, February 25, 2015.
8. "Rough Justice", Faizan Mustafa, Vice Chancellor, NALSAR University of Law, The Indian Express, November 27, 2014.
9. Maneka Gandhi vs Union of India, AIR 1978 SC 597.
10. Pratap Singh vs. State of Jharkhand & Anr., Appeal (Crl.) 210 of 2005.

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Annexure: International Comparison of Criminal Laws

Some countries allow for the trial of juvenile offenders as adults, in case of certain offences. Table 5 below compares criminal laws of different countries on the basis of the age at which juveniles can be tried as adults, types of offences, etc.

Table 5: Comparison of Criminal Laws in various countries addressing treatment of juvenile offenders

Country	United States of America	United Kingdom	South Africa	France	Canada	Germany	India (JJ Act, 2000)	India (Proposed Bill, 2014)
Minimum age at which juvenile can be charged for an offence	Ranges from 6-10 years ¹	10 years	10 years	Case by case basis ⁴	12 years	14 years	7 years (Under IPC)	7 years (Under IPC)
Age at which juvenile can be tried as adult	13 years ²	17 years in England, Wales and N. Ireland, 16 years in Scotland (can be lower in exceptional circumstances)	16 Years	16 years	14 years	14 years	Juvenile cannot be tried as an adult	16 years
Type of offence for which juvenile can be tried as adult	Assault, murder, robbery, aggravated sexual abuse, firearms offences, drug offences ³	Murder, rape, causing any explosion likely to endanger life or property	Murder, rape, robbery	Murder, armed robbery, serious drug offences, rape	Murder, aggravated sexual assault, serious bodily harm to another person	Sexual abuse, child abuse leading to death, abuse of persons who are incapable of resistance	Not applicable	Serious offence (punishment 3-7 years e.g. cheating, counterfeiting) or heinous offence, (punishment > 7 years e.g. murder, rape, robbery)
Penalty for juveniles treated as adults	Same as adults. No life imprisonment; no death penalty	Same as adults. Life imprisonment allowed; no death penalty	Same as adults. No life imprisonment; no death penalty	Same as adults, on a case by case basis; life imprisonment allowed	Murder: 7-10 years; maximum penalty for other offences is three years; no life imprisonment; no death penalty	10 years; no life imprisonment or death penalty	Not applicable	Same as adults. Life imprisonment with possibility of release allowed; no death penalty

Note: ¹varies across different states; ²according to Federal law, may vary across different states; ³United States Attorneys Manual, Criminal Resource Manual 54, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00054.htm; ⁴minors over the age of 13 years are criminally responsible for their offences if they are able to understand their actions: French Penal Code, www.legifrance.gouv.fr/content/download/1957/13715/.../Code_33.pdf. Sources: **United States:** U.S. Code Chapter 403- Juvenile Delinquency, <http://www.law.cornell.edu/uscode/text/18/part-IV/chapter-403>; **United Kingdom:** Children and Young Persons Act, 1933, <http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/contents>; **South Africa:** Child Justice Act, 2008, <http://www.justice.gov.za/legislation/regulations/childjustice-reg-amend.pdf>; Criminal Law Amendment Act, 1997, http://www.saflii.org/za/legis/num_act/claa1997205.pdf; **France:** Children's Rights- August 2007, The Library of Congress, <http://www.loc.gov/law/help/child-rights/pdfs/Children's%20Rights-France.pdf>; **Canada:** Youth Criminal Justice Act, 2002, <http://laws.justice.gc.ca/PDF/Y-1.5.pdf>; **Germany:** Youth Courts Law, 1974, http://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0097; German Criminal Code, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html; **India:** Juvenile Justice (Care and Protection of Children) Act, 2000, <http://wcd.nic.in/childprot/jjact2000.pdf>; Juvenile Justice (Care and Protection of Children) Bill, 2014, <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20justice%20Bill,%202014.pdf>.