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**Is The New Juvenile Justice Act Actually Incarcerating Minors For Their  
Heinous Offences Or Giving Them A Clean Chit To Commit More Of It?**

**Purbasha Mukherjee**

*“A child is a person who is going to carry on what you have started.... He will assume control of your cities, States, and nations. He is going to move in and take over your churches, schools, universities, and corporations...the fate of humanity is in his hands.”*

*-Abraham Lincoln*

## INTRODUCTION

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With changing times and a fast-growing society, the norms and the standards have undergone a tremendous change. The ethics, morality, disciplines, ideologies, everything is being shaped in the new light of the ever-changing society and the impact it had on people is outrageous. With westernization and a changing atmosphere, a huge amount of good came our way. Protests for rights are still receiving the recognition it deserves and people learned to stand up for themselves but along with it came a huge wave of immorality and unethical practices as well and overexposure to all of the above has affected every human being and more so, the children. A surge in crime rates has baffled us and what's the most mind-boggling is that these crimes, especially in recent times, are being committed by minors. With passing years the types of crimes and juvenile delinquency have taken a step further and almost in the most inhuman crimes that have shaken up mankind, minors play the most important role. The existing laws were starting to fall short for punishing their offences because the maximum punishment that could be given to them was only of three years in reformation homes even for heinous crimes and so people started speaking up against the laws and amidst intense controversy, protests and debates among both the ends of the pole, people supporting as well speaking against Juvenile incarcerations and trying their heinous crimes as adult crimes under the court of law, The Juvenile justice act, 2015, came into existence replacing the Juvenile Justice (Care and Protection of Children) Act, 2000. The gut-wrenching Jyoti Singh rape case a.k.a Nirbhaya case that shook the whole country from its core paved the way for the act. People of India took turns to protest when the juvenile rapist involved in the barbarous act was only given three-year imprisonment in a reform house for being only six months younger than the age of majority and even from which eight months were deducted for staying in the custody before the juvenile court gave the verdict. The greater mass thought this as an 'escape of punishment' because even after there were eight writs filed against his juvenile trial, the Supreme Court dismissed all of them after hearing the pleas because with the then provisions of the juvenile law the punishment in the reform house was not unconstitutional. Later, in the year 2014, the then minister of women and child development, Maneka Gandhi, in July, said a new bill was going to

be introduced in the lower house of the Parliament where any juvenile between 16 to 18 years old can be tried as an adult for committing heinous crimes such as rapes and murders because almost 50% of the crimes in recent times are being committed by teenagers who thought that they can '*get away with it*'. The bill was introduced on 12 August 2014 and was ultimately passed through the upper house after huge debates and protests and henceforth, enacted on 7<sup>th</sup> May 2015, and assented by the President of India on 31<sup>st</sup> December 2015, thus replacing the pre-existing Juvenile Justice (Care and Protection of Children) Act, 2000.

## **JUVENILE JUSTICE ACT, 2015**

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The Juvenile Justice Act, 2015, was brought about for inducing the country's new law update in the 21<sup>st</sup> century where crimes by minors were turning out to be so severe that the Juvenile Justice (Care and Protection of Children) Act, 2000, was unable to provide for the proper punishment of the offenders and give justice to the victims and the Delhi gang-rape case in 2012 a.k.a Nirbhaya rape case played a prominent role in the amendment of the same when the juvenile offender of the rape case couldn't be given more than three years in a reformation home according to the provisions of the previous law. Thus, on 31<sup>st</sup> December 2015, the new Juvenile Justice Act came into force and circulated. The Act claims that the law is associated for the assessment of the children who are in conflict with the law and needs to be provided with care and protection by accounting to their daily needs through legitimate consideration, treatments, child cordiality and trying to remove their issues with the help of the most progressive child growth, rehabilitation and restoration procedures as mentioned in the Juvenile Justice Act, 2015<sup>1</sup>. Also due to the severe atrocities committed upon women in the recent past, the act in its section 18(3) states that, after a preliminary evaluation of the juvenile to check his mental and physical capacity to commit such heinous offence and the ability to understand the consequence of the offence and the circumstances in which they committed it, the juvenile board may send them to a children's court from where they may be sent to another safe place for their attainment of the age of 21 and thereafter sent to the prison for the offence committed.<sup>2</sup>

Some important changes made in this act from the previous act are<sup>3</sup> :

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<sup>1</sup> <https://blog.ipleaders.in/introduction-overview-juvenile-justice-care-protection-act-2015/>

<sup>2</sup> [https://www.sconline-com.cdn.ampproject.org/v/s/www.sconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/amp/?amp\\_js\\_v=a2&amp\\_gsa=1&usqp=mq331AQFKAGwASA%3D#\\_ftn12](https://www.sconline-com.cdn.ampproject.org/v/s/www.sconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/amp/?amp_js_v=a2&amp_gsa=1&usqp=mq331AQFKAGwASA%3D#_ftn12)

<sup>3</sup> <https://blog.ipleaders.in/introduction-overview-juvenile-justice-care-protection-act-2015/>



1. Depending on the severity of the crime, if the crime is heinous and brutal, juveniles between the ages of 16 to 18 years will face adult court trials.
2. If any child is convicted of any crime then they will be sent for three months of preliminary evaluation
3. A child's essential and special needs will be taken care of in a proper atmosphere if any child is under the evaluation period.
4. The child will not go through any disqualification in their personal careers, job, and education, for being acquitted under this act.
5. The guilty record will not be given after serving the punishment except in case of atrocious and rare crimes.

### **“JUVENILES SHOULDN'T BE TREATED AS ADULTS IN SERIOUS CRIMES”**

After the introduction of the new Juvenile Justice Act in the Parliament where minors from and above the age of 16 years could be prosecuted under adult court and be punished for heinous and grave crimes like rapes and murders, a huge storm of debate and collective disapproval could be heard. The members of the Lok Sabha debated on how this bill was against the Child rights as it runs counter to CRC (Convention to Child Rights) according to which anyone below the age of 18 years should be treated as a minor, uniformly<sup>4</sup>. The standing committee that was created to oppose the proposed bill, juveniles of the age 16 and above should be treated same as adult offenders, headed by BJP MP Satya Narayan Jatiya said that there is no need to subject juveniles to a separate or adult judicial system as it will go against the Article 14 (equality before law) and Article 15 (prohibition of discrimination on the grounds of religion, race, caste, sex and place of birth) of the constitution. The committee during different consultations and meetings with stakeholders and child rights activists said that a little over one percent of total crimes in India were committed by juveniles among which only a small amount is involved in such cases. He added, “the number was extremely few and which could be tackled under the current system.”<sup>5</sup>

## **CRIMES BY MINORS**

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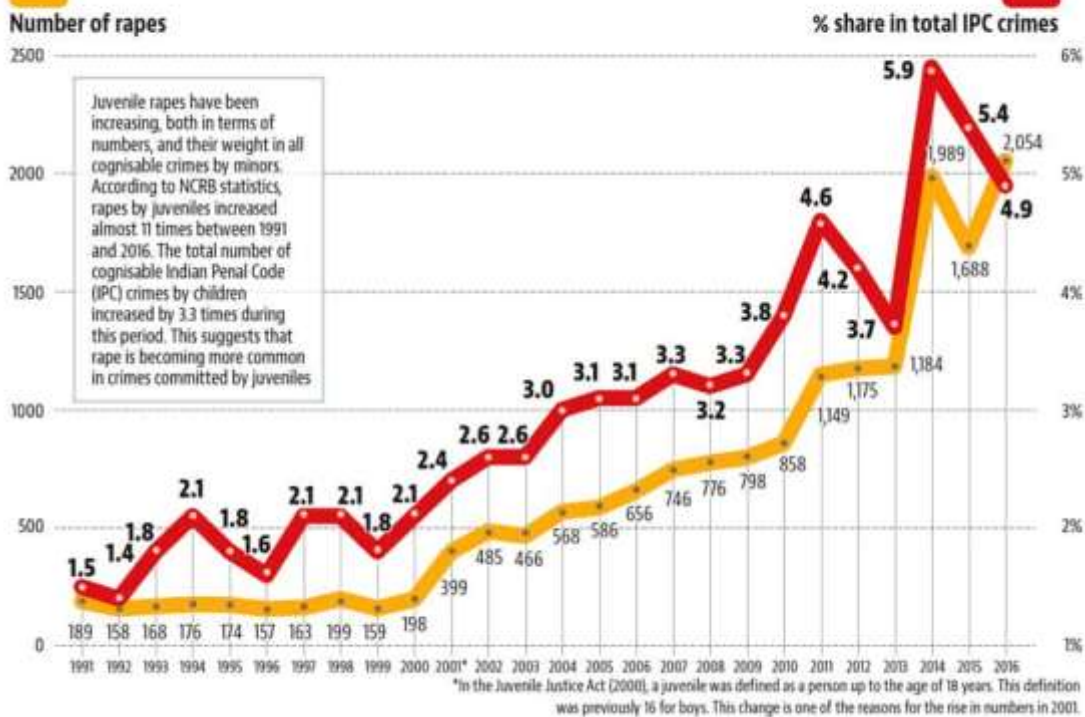
<sup>4</sup> <https://orgs.law.harvard.edu/lids/2015/05/14/data-and-the-debate-on-juvenile-justice-in-india/>

<sup>5</sup> <https://m.hindustantimes.com/india/juveniles-shouldn-t-be-treated-as-adults-in-serious-crimes/story-MBB1mez8Fnyyq4G30QGhBN.html>

In the last few years, the juvenile crime rates have gone quite high up with as many as 1,614 rape cases and 1,456 sexual assaults in the year 2017 committed by juveniles according to a report by National Crime Records Bureau (NCRB). More than 40,000 juveniles were caught, in the year 2017, for their involvement in different criminal offences among which 72 percent belong to the 16-18 age group.<sup>6</sup>

"Majority of juveniles in conflict with law apprehended under IPC (Indian Penal Code) and SLL (Special and Local Laws) crimes were in the age group of 16 years to 18 years. These cases accounted for 29,194 out of 40,420, totaling 72.2 percent cases during 2017," the NCRB report said. Among the states, Madhya Pradesh alone accounted for a whopping 19.3 percent of all juvenile offenders cases followed by Maharashtra with a 17.9 percent and then Delhi with an 8.8 percent of the total juvenile cases in the country.<sup>7</sup> Here is a statistical data showing the rise in rape cases through the years.<sup>8</sup>

## Losing their way at a young age



<sup>6</sup> <https://www.newindianexpress.com/nation/2019/oct/22/over-40000-juveniles-caught-in-2017-72-per-cent-in-16-18-age-group-ncrb-data-2051445.html>

<sup>7</sup> "Majority of juveniles in conflict with law apprehended under IPC (Indian Penal Code) and SLL (Special and Local Laws) crimes were in the age group of 16 years to 18 years. These cases accounted for 29,194 out of 40,420, totalling 72.2 per cent cases during 2017," the NCRB said.

<sup>8</sup> <https://www.hindustantimes.com/india-news/why-are-so-many-minors-committing-heinous-sex-crimes/story-nmiXVEXugqNLGH5FLJt1XP.html>

Some of the infamous brutal crimes committed by juveniles are as follows :<sup>9</sup>

- *The Nirbhaya rape case* – On 16<sup>th</sup> of December, 2012, a medical student was brutally gang-raped by 5 men in a moving bus she was traveling in while returning to her place with a male friend after watching a movie together. Among those 5 men, one of them was a minor who was given three years in a reformation home and let go by the then justice system of our country that followed the juvenile justice (Care and Protection of Children) Act, 2000. This was the most prominent cases that brought about huge protests against juveniles committing such heinous crimes and that they should be tried and punished according to adult court of law.
- *Hatigaon rape case* – a group of 5 juvenile boys between 12 years to 16 years of age raped a 12-year-old minor girl throughout the night after dragging her to an abandoned place.
- *Mayur vihar murder case* – allegedly a group of 5 minors, in 2013, murdered a jeweler's wife in Mayur Vihar in Delhi and fled off with gold and cash.

Some of the recent cases that have been reported during the Pandemic period in the year 2020 in India are :

- A 12-year-old girl in Assam's Biswanath district was gang-raped by seven minors and murdered in an abandoned jungle area.<sup>10</sup>
- An 18-year-old girl was gang-raped by seven men among which 3 were minors in Madhya Pradesh's Betul district while she was on her way back home with her brother from a petrol pump.

## **WHY ARE MINORS COMMITTING THESE HEINOUS CRIMES?**

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The justice system in our country deals differently with different kinds of offenders because not every other person committing a crime deserves capital punishment. So the juvenile justice system was different up till the huge round of protest that emerged after the direful rape case that took the life of a young medical student and brought out the collective rage of the greater masses of the countrymen, as a whole. People stood for justice by different protests and marches and neither police's lathi charges nor water cannons could stop the fire rifting in the hearts of those millions who just wanted justice for Jyoti Singh a.k.a Nirbhaya and yet our judicial system couldn't punish the juvenile offender with the

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<sup>9</sup> <https://www.sconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/>

<sup>10</sup> <https://www.indiatoday.in/crime/story/assam-12-year-old-girl-gang-raped-and-murdered-7-minors-arrested-1651410-2020-03-01>

same stringent like the other offenders of the same case, which again took another seven years for giving them the death sentence, and that brought forth the new wave of protests, protests towards the leniency shown to juveniles despite committing such atrocious crimes and thus, a new bill was produced and passed by the Parliament and the new Juvenile Justice Act came into force.

But what keeps bugging those million minds who brought about the wave of ‘similar punishment for similar crime notwithstanding their age’ protests, is why do minors commit such crimes? There are different reasons for which minors, especially nowadays, are drowning deeper into the dark abyss of ferocity without thinking of themselves or their families. Nothing in the world seems to intrigue them than the path of wrongs and sometimes issues as minor as preferences of one sibling or a cousin over another in families can push them to their edge. According to researches on why minors commit crimes, some of them are:-

- **No fear of law** – The teenagers and juveniles have full and proper knowledge about how the legal system of the country does not punish children for their crimes and the knowledge of it has led to no fear of law and thus the excessive increase in crimes by minors. They know that they can get away with whatever they do.
- **Peer pressure** – Peer pressure plays one of the greatest roles in juvenile delinquency in every part of the world. To be accepted in the peer group, minors end up committing offenses as monstrous as rapes and murders.
- **Broken family and emotionally unavailable parents** - Children from broken families or who have emotionally unavailable parents often divert from the right path while trying to find the love they do not receive from their families and often ends up getting lost in the darkness and do not realize until too late that what they have done is wrong.
- **Overexposure to the internet** – with changing times, the internet has created an irreplaceable place for itself in human lives and today, without the internet nothing can be done. Phones and gadgets are in everyone’s hand and most of the problems, also, stem from it. Children from a very young age start surfing the internet and where, even in 21<sup>st</sup> century, Indian households and schools do not talk or provide education about sex to the kids, the internet brings forth sexual imageries in excess and along with it dehumanizing concepts about gender, discriminating ideas and unrealistic expectations of machismo and male chauvinism which results in such sickeningly nasty rape cases and other sexual offences.

- **Lack of communication** – Lack of communication at homes with parents or closed ones often results in low self-esteem and zero self-confidence and often children who are suffering from such issues look out of their homes for friends to find solace in and fall into the wrong path and unhealthy lifestyles.
- **Financial issues** – Minors often commit crimes and wrongful activities due to their financial condition. To bring a grain of food for their families or to find a better lifestyle for themselves they start selling drugs or commits different offences including murders.
- **Unable to accept rejection** – Today's youth have been so acquainted with getting whatever they ask for, especially being a male child still fetches them whatever they want in Indian households, accepting rejections have become the most difficult thing to adhere to for them and this unacceptability of any rejection from a girl or anyone else makes them spiral out of control and ends up committing hardcore offences.

A testimony by a minor offender's father, a fourteen-year-old boy who raped a five-year-old infant, brings forth the harmful effects of the internet and social media in these cases. He blamed the 'video clips' his son usually watched along with his friends all the time. Pornography, in recent times, has been heavily linked with sexual offences by minors and adults all over the world. Sexual imageries of women are in rife in all sexual platforms and the minors, not having any knowledge about women body because of no proper sex education from schools or homes, tend to believe in the foul things written on these platforms and learns to objectify women for their body parts and genitals. The unrealistic machismo that the internet world and the society bring forth makes them believe that women are just objects of enjoyment and they're bound by every word a man says and when they get a rejection they are unable to accept it and end up committing heinous crimes like rapes.

### **IS THE NEW ACT MAKING A DIFFERENCE?**

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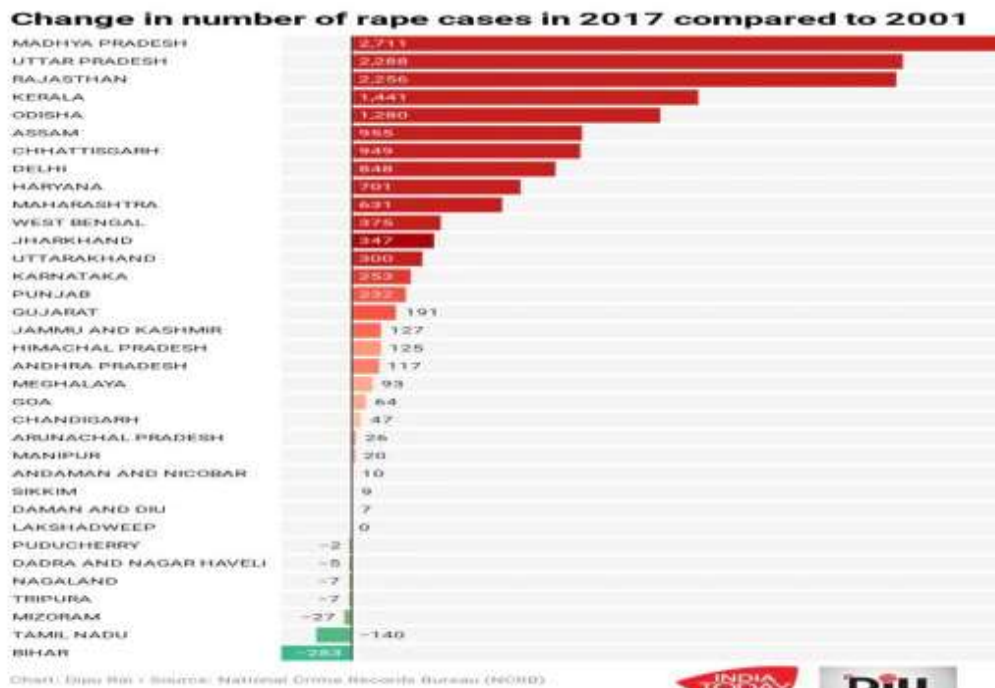
In the year 2014, the bench of justice Dipak Misra and U.U Lalit referred to the Juvenile Justice (care and protection) act, 2000 as 'far too liberal' and that it doesn't satisfy the need of society and opined that the law needs an appraisal in *Gaurav v. State of Haryana*<sup>11</sup> as the law has failed to deter the minors from committing trivial as well as hardcore offences<sup>12</sup> and thus after a lot of protests and debates, the new Juvenile Justice Act, 2015, came into force. But has anything changed since? Even after seven

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<sup>11</sup> *Gaurav v. State of Haryana* (2015) 16 SCC 310

<sup>12</sup> <https://www.scconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/>

years of the spine-chilling Nirbhaya rape case where the juvenile offender was released with three years, more appropriately two years and four months in a reformation home, the offender is living a life in a different state and his identity is still being protected by the police whereas the girl succumbed to the injuries caused by the carnal abuse. In the year 2017, two years after the Juvenile justice act, 2015, came into force, there were over 40,000 juveniles caught across the country for their involvement in various offences<sup>13</sup>. Also, according to another NCRB report, 99 percent of the juveniles involved in different crimes are boys who live with their parents. Not only Juvenile offences have risen but also other sexual offences, offences committed by adults, have risen to a great extent. More than 32,500 rape cases were recorded and registered in 2017 excluding the cases that weren't even reported<sup>14</sup>. According to another NCRB data, more than 4,15,786 rape cases were registered from 2001 to 2017. In 2001 the number 16,075 rose drastically to 32,559 in 2017, which is an increase of nearly 103 percent. According to another NCRB report, the increase in rape cases from 2001 to 2017 is statistically presented for our clear idea - <sup>15</sup>



<sup>13</sup> <https://www.newindianexpress.com/nation/2019/oct/22/over-40000-juveniles-caught-in-2017-72-per-cent-in-16-18-age-group-ncrb-data-2051445.html>

<sup>14</sup> <https://www.reuters.com/article/us-india-rape-factbox-idUSKBN1YA0UV>

<sup>15</sup> <https://www.indiatoday.in/diu/story/sexual-violence-pandemic-india-rape-cases-doubled-seventeen-years-1628143-2019-12-13>

In another report by the same, the number of literate juveniles, minors who have completed till their matriculation and higher secondary levels, committing rapes and sexual crimes increased from 4,244 in 2016 to 6,260 in 2017- which is a difference of above 32 percent whereas the numbers of illiterate juveniles have gone down by 20 percent. <sup>16</sup>

In the past few years, only 18,300 cases were disposed of by the Court and over 127,800 cases were still at hand in the year 2017.<sup>17</sup> Among the reported cases of rape, almost 88 percent were pending for resolution by the end of 2017 and other than that almost 29 percent of these cases are delayed and at times aren't even solved by the police itself, for a long time, then to even get the chance to come to the court for a judgment. The justice system in the country is a slow process and the legal maxim 'justice delayed is justice denied' is the only thing that goes well at the end. Thus, the implementation and the workability of the Juvenile Justice act, 2015, is still a blur according to most critics in our country and in the recent past, there hasn't been any good done even in atrocious cases of adult crimes that could give a lesson to these juveniles on why they shouldn't commit these offences because that might land them in a trouble. There is a saying that goes "*children are great imitators. So give them something great to imitate*" and our country has only given children to imitate such heinousness and monstrosity rather than something good if not something great.

### **IS THE SLOW JUVENILE JUSTICE SYSTEM PROBING THE MINORS TOWARD MORE SUCH CRIMES?**

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On December 6, 2019, four perpetrators of the dreadful Hyderabad gang rape case were shot dead in an 'encounter' by the cops and most of the common people applauded them because even after a fast track court was set up for the case, people knew how justice was going to be delayed by years just like the Nirbhaya case which took almost seven years to bring justice. But it also raised questions on the judicial system on why justice gets delayed so much that such 'encounters' needs to be devised for proper justice. With almost three crores pending cases in various courts, the heinous crimes at hand are being deprived of their early and proper justice. A country's legal system is important for its citizens as it determines as to how they look upon various issues concerning the country and their individual lives but in spite of having the longest constitution and going through numerous amendments, justice

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<sup>16</sup> [https://theprint-in.cdn.ampproject.org/v/s/theprint.in/india/educated-juveniles-crimes-more-illiterate-ones-2017-ncrb/310527/?amp\\_js\\_v=a2&amp\\_gsa=1&amp&usqp=mq331AQFKAGwASA%3D#aoh=15940420029023&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=From%20%251%24s&ampshare=https%3A%2F%2Ftheprint.in%2FIndia%2Feducated-juveniles-crimes-more-illiterate-ones-2017-ncrb%2F310527%2F](https://theprint-in.cdn.ampproject.org/v/s/theprint.in/india/educated-juveniles-crimes-more-illiterate-ones-2017-ncrb/310527/?amp_js_v=a2&amp_gsa=1&amp&usqp=mq331AQFKAGwASA%3D#aoh=15940420029023&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s&ampshare=https%3A%2F%2Ftheprint.in%2FIndia%2Feducated-juveniles-crimes-more-illiterate-ones-2017-ncrb%2F310527%2F)

<sup>17</sup> <https://www.reuters.com/article/us-india-rape-factbox-idUSKBN1YA0UV>



in India is always delayed. With that comes ineffective governance and barriers that only let a single portion of the society get limited access to things while the other portion gets way too much access to the country's socio-economic and political rights. Thus, criminals committing crimes do not face any fear of punishment. With an increase in all sorts of crimes, the viability of the judicial system is slowing down more and also with the ongoing debate about how Juveniles should not be tried in adult courts, the rate in crimes being committed by them is also increasing. The powerful section of the society, due to slow justice and extreme corruption, drill holes out of the nasty crimes they commit despite their age and gender, and the victims suffer their whole lives. In thousands of cases, the victims are killed or burnt by the time they get justice or the justice they get after their struggles doesn't do them any good at all. Along with that, the internet world has brought about new opportunities for money-making through illegal work and sexual offences and thus cybercrimes are also in the rise.

### **IS THE ACT, THUS, INCARCERATING OR GIVING THEM A FREE PASS TO MORE CRIMES?**

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The Juveniles act of 2015 brought about some much-needed changes to correct the lag of the justice system in the country with the provision to incarcerate juveniles between 16 to 18 years who commits heinous crimes but with the endless access to the internet and pornographic sites with no age restrictions, the sexual and other offences committed by the minors are hard to stop. As rightly said by Yamini Abde, child rights activist, the desire to do something extraordinary and different, thrilling and daring, is the driving force behind the rapes and murders by minors. She also added that desire for money, access to pornography, crime videos, increase in aggression and sexual activities among teenagers and most importantly the knowledge of the fact that they won't be punished under the Justice system of the country has served in the surge of juvenile offences in the recent past<sup>18</sup>. Also with more than three crores cases still at hand, the judiciary is unable to provide fast justice to the victim's of the atrocities done to them and with newly amended laws still being considered thinking how things might take a turn for good with the new law, is anything good happening? And other questions like did a single case of such atrocious act been dealt with fast enough for the citizens to drastically start believing in the justice system of the country? How are the juveniles not affected and afraid of the punishment that could be given to them under the new Juvenile Act if they commit such

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<sup>18</sup> [https://www.sconline-com.cdn.ampproject.org/v/s/www.sconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/amp/?amp\\_js\\_v=a2&gsa=1&usqp=mq331AQFKAGwASA%3D#\\_ftn12](https://www.sconline-com.cdn.ampproject.org/v/s/www.sconline.com/blog/post/2018/01/31/adult-time-adult-crime-road-juvenile-justice/amp/?amp_js_v=a2&gsa=1&usqp=mq331AQFKAGwASA%3D#_ftn12)



heinous offences? And most importantly, what work did the Juvenile Justice Act, 2015, do that rather than a decrease in the crime rates by juveniles, there is an increase in it? continues to invade our minds.