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## BALANCING THE SCALES: AN ANALYTICAL EXAMINATION OF THE REHABILITATION AND PUNISHMENT FRAMEWORK IN INDIA'S JUVENILE JUSTICE SYSTEM

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### Abstract

This paper provides an overall legal and socio-political analysis of the continuing debate between rehabilitation and punishment within the Indian juvenile justice framework. It follows the ideological development of the Indian system, from its colonial, welfare-oriented roots and progressing to a more advanced, rights-centred framework established by the Juvenile Justice (Care and Protection of Children) Act, 2000, which is in accordance with global human rights norms. This analysis centres on the controversial shift towards a stricter approach represented by the Juvenile Justice (Care and Protection of Children) Act, 2015. Following a prominent and emotionally impactful criminal case, the 2015 Act established a measure allowing for the trial of juveniles between the ages of 16 and 18 as adults for "heinous" crimes. This paper contends that this shift towards harsher penalties, mainly influenced by public opinion and political convenience rather than data on juvenile crime patterns, signifies a notable setback. It diminishes the system's ability to rehabilitate, goes against India's constitutional principles regarding child welfare, and is in sharp opposition to the more effective restorative juvenile justice models used in various other regions. By thoroughly analysing legislative history, significant court rulings, statistical information from the National Crime Records Bureau, and a comparative study of global systems, this paper argues that the punitive provisions of the 2015 Act undermine efforts to decrease recidivism and promote long-term public safety. The conclusion emphasises the need for a refresh, evidence-driven approach to rehabilitative justice, urging changes in legislation, enhancing the support systems for care and reintegration, and promoting a wider societal perspective that views juvenile delinquency as a result of socio-economic challenge rather than a typical tendency towards crime.

### Introduction

The way a society addresses its juvenile offenders is a deep indication of its fundamental principles, its comprehension of human growth, and its perspective on justice. The area of juvenile justice is not simply a branch of criminal law; it constitutes a separate legal and social sphere founded on a specific philosophical basis that acknowledges the fundamental differences between minors and adults. This field itself is at a junction, balancing the complex and frequently opposing pressures

of community safety, the responsibility of offenders, and the possibility for personal changes. At the core of this navigation exists a crucial contrast: the decision between punishment and rehabilitation. This decision goes beyond mere policy preference; it highlights the contrasting punishment philosophies that determine the ultimate aim and role of the justice system when dealing with a child.

**Establishing the contrast: the Goals of Rehabilitation and Punishment in Penology**

The ideas of punishment and rehabilitation represent two differing approaches within the framework of justice. Their meanings, rationales, and desired results are based on different moral and philosophical traditions that have influenced legal systems worldwide.

This perspective emphasises that it's not about future outcomes but ensuring that offenders receive the appropriate consequences for their misdeeds, arguing that appropriate consequences for their suffering should be similar to the harm they have inflicted.

**Rehabilitation**, on the other hand, involves the process of educating an offender and preparing them for a successful return to society. It embodies a progressive and transformative mindset that aims to tackle the underlying factors contributing to criminal behaviour, such as substance abuse, psychological challenges, or deficiencies in education and skills—to reduce the likelihood of reoffending. The objective is not simply to penalise an offender for their previous actions, but to restore their social and moral status while equipping them with the cognitive, behavioural, and vocational skills necessary to live as law-abiding citizens within the community. This method incorporates various interventions, including cognitive-behavioural therapy, educational and vocational training, and mental health support, all designed to disrupt the cycle of criminal activity. (Forsberg)

The conflict between these two ideologies is both inherent and significant. This discussion goes beyond a straightforward examination of “what is effective” in lowering crime rates; it addresses a deeper ideological question about which aim is ethically more justifiable for a justice system to pursue. Punishment, especially in its retributive aspect, concentrates on the wrongdoing and the past. In contrast, rehabilitation centres on the individual and their future. This essential difference in perspective decides between the two approaches is incredibly important, particularly when the

offender is a child, whose future remains largely open-handed. (LOGAN, 1993)

### **The concept of Doli Incapax and the justification for an independent judicial system**

The establishment of a distinct juvenile justice system stems directly from the acknowledgement that children develop differently from adults. This acknowledgement is historically summarised in the common law principle of Doli Incapax, which presumes that a child cannot possess the requisite criminal intent (Mens Rea) to engage in unlawful behaviour. Although the age distinctions have changed over time and across different jurisdictions, the underlying concept remains consistent: children are not held to the same level of criminal culpability as adults due to their incomplete cognitive and moral development. (Dwivedi, 2017)

This principle provides the rationale for a system that operates on the premise that youth are fundamentally different from adults and are particularly open to rehabilitation. The primary goals of a juvenile justice system are, therefore, distinct from those of the adult criminal system. Instead of focusing on punishment and imprisonment, the juvenile system prioritises skill development, habilitation, rehabilitation, addressing treatment needs, and ensuring the successful reintegration of the youth into the community. The core belief is that children are not “naturally violent and cruel” and can lead valuable lives if allowed to grow rather than being presumed irredeemable. As a result, any legal structure that enables children to be regarded as adults when it comes to punishment fundamentally opposes the essential principles on which the juvenile justice system was established. This approach implicitly disregards the significance of developmental variations in specific instances, thus forming an exception that risks destroying the overall justification for a distinct system. (center on juvenile & criminal justice, n.d.)

### **The Indian context: Constitutional Mandates and the Doctrine of Parens Patriae**

In India, the imperative to treat children with special care is not merely a matter of policy but a constitutional mandate. The Constitution of India contains several provisions that impose a positive duty on the state to protect and develop its children. Article 15(3) empowers the state to make special provisions for children, while Article 21, guaranteeing the right to life and personal liberty, has been interpreted by the Supreme Court to encompass a broad spectrum of child welfare rights. Furthermore, the directive principles of state policy, though not directly enforceable, guide the state's governance. Article 39(f) requires that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity," while Article(e) instructs the state to guarantee that "the tender age of children are not abused." (Kuwad, 2025)

This constitutional principle is brought into legal effect through the parens patriae doctrine, meaning "the state as parent". This doctrine empowers the state to take on the guardian role for individuals who cannot care for themselves, particularly children. It offers a legal basis for state involvement in the lives of children, functioning not as a punitive measure but as a means of protection. This concept forms the core philosophy of India's juvenile justice system, which is fundamentally focused on care, protection, and welfare instead of punishment. (center on juvenile & criminal jurisdiction, n.d.)

### **The Evolution of Juvenile Justice in India: A Legislative Trajectory**

The evolution of juvenile justice laws in India presents a captivating story of changing societal awareness, active judicial involvement, and greater alignment with global human rights principles. It illustrates a distinct, though gradual, shift from viewing children as small adults within a unified framework that addresses their specific requirements. This journey, which spans more than 150 years, has

been marked by an increasing commitment to welfare, care, and rehabilitation, making the recent shift towards harsher measures a noticeable and troubling deviation from this historical path.

### **The Children Act, 1960: A Post-Independence Welfare Model**

After India gained independence, the commitment to child welfare in the constitution served as the philosophical foundation for a more cohesive approach. This effort culminated in the Children Act of 1960, the first piece of central legislation on this issue. The Act marked a significant advancement, reflecting a distinct welfare philosophy. Its key aims included ensuring the care, protection, maintenance, welfare, training, education, and rehabilitation of neglected or delinquent children. Importantly, the act expressly forbade the incarceration of children. Importantly, the Act explicitly forbade the imprisonment of children under any circumstances and required the creation of facilities such as observation homes and special schools.

The 1960 Act had a significant drawback: its direct enforcement was limited to the union territories. Although states were urged to implement comparable laws, this resulted in inconsistent definitions, procedures, and institutional standards nationwide, a major shortcoming that later legislation aimed to rectify.

### **The juvenile justice Act, 1986: The First Step Towards a Uniform code**

The requirement for a cohesive and consistent legal framework across India, along with an increasing global agreement on juvenile justice norms, resulted in the introduction of the Juvenile Justice Act, 1986. The legislation was a direct reaction to global standards, especially the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the Beijing Rules (1985). (Ganguly, n.d.)

The 1986 Act represented a significant achievement as it created a unified legal structure across the nation. Its primary goal is to ensure the care, protection, treatment, development, and rehabilitation of juveniles who are neglected or have engaged in delinquent behaviour. Major provisions encompassed:

- **A Two-Tier System:** It created a clear distinction between “neglected juveniles” and “delinquent juveniles.”
- **Specialised Authorities:** It mandates the establishment of **Juvenile Welfare Boards** to deal with neglected juveniles and **Juvenile Courts** to adjudicate matters concerning delinquent juveniles.
- **Rehabilitate Focus:** The Act adopted a largely rehabilitative stance, offering numerous non-punitive measures and focusing on institutional care intended for reform.
- **Differential Age of Juvenility:** One of the most debated aspects of the 1986 Act was its characterisation of a “juvenile”. It classified a juvenile as a male under the age of 16 or a female under the age of 18. This discrimination based on gender represented a major legal and moral shortcoming that gender represented a major legal and moral shortcoming that would eventually be addressed.

### **The Juvenile Justice Act, 2000: Embracing International Standards and a Child-Centric Approach**

The subsequent significant legislative reform was a direct result of India’s ratification of the **UN Convention on the Rights of the Child (UNCRC)** in 1992. To align its domestic laws with the UNRC principles, India abolished the 1986 Act and implemented the Juvenile Justice (Care and Protection of Children Act, 2000. This legislation marked a peak in the rehabilitative and rights-focused philosophy within Indian juvenile justice. It was broadly regarded as a forward-thinking law that fully adopted a child-centred approach. (Raj, 2025)

Its most significant features were:

- **Uniform Age of Juvenility:** The law addressed the gender inequality present in the 1986 legislation by categorising a “juvenile” or “child” as anyone under 18 years old. This adjustment included thousands of boys aged 16 to 18 within the safeguarding scope of the juvenile system.
- **Bifurcated Structure:** It improved the two-tier system by establishing two separate categories of children and assigning different authorities to manage them. “Children in Need of Care and Protection”(CNCP) were to be addressed by child welfare committees (CWCs), whereas “Juveniles in Conflict with Law” were to be managed by Juvenile Justice Boards (JJBs).
- **Child-Friendly Approach:** The Act clearly required a “child-friendly approach” throughout all procedures, from arrest to judgment and resolution. It also brought in terminology that avoids stigma, changing “delinquent juvenile” to “juvenile in conflict with law”.
- **Emphasis on Rehabilitation and Alternatives:** The legislation placed a strong emphasis on rehabilitation rather than punishment, banning the death penalty and life imprisonment for juveniles. Additionally, it broadened the range of non-institutional options available, such as adoption, foster care, sponsorship, and aftercare programs.

### **The Paradigm Shift: The Juvenile Justice Act, 2015, and the spectre of punitiveness**

The progressive, rehabilitative approach of Indian juvenile law experienced a sudden disruption with the introduction of the **Juvenile Justice (Care and Protection of Children) Act, 2015**. This law was enacted in the emotionally charged context following the horrific 2012 Delhi gang rape incident, where one of the offenders was just shy of turning 18 and thus was treated under the 2000 Act, receiving at most a three-year sentence in a special home (CHAHAL,

2023). The perceived leniency of this verdict sparked significant public outrage and intensified political demands for stricter legislation. (Sukriti, 2023)

The 2015 Act, which supplanted the 2000 Act, signifies a profound shift in the legal philosophy that had been evolving for more than a century. Although it preserved and improved upon several child protection and adoption elements from the former legislation (for instance, granting statutory recognition to the Central Adoption Resource Authority, or CARA), it introduced a provision that fundamentally changed the nature of the system. The most notable and contentious alteration was the provision permitting juveniles **aged 16 to 18**, accused of committing a **“heinous offence”** (classified as an offence with a minimum sentence of seven years’ imprisonment), to be **prosecuted as adults**. This

transfer to the adult criminal justice system will be determined by the Juvenile Justice Board after conducting a “Preliminary assessment” of the child’s mental and physical capabilities.

This introduction of a punitive pathway for a specific group of children represented a significant departure from a 150-year trend that aimed to separate children from the adult legal system. Interestingly, the 2015 Act also continued the shift towards non-stigmatising language, changing the phrase from “juvenile in conflict with law” to “child in conflict with law” to eliminate any negative implications tied to the term “juvenile”. This resulted in a profound internal contradiction: the very legislation that intended to soften its terminology to prevent branding a child as a criminal simultaneously introduced the most severe form the stigmatisation- labelling and prosecuting them as adults.

Feature	Juvenile Justice Act, 1986	Juvenile Justice (Care and Protection of Children) Act, 2000	Juvenile Justice (Care and Protection of Children) Act, 2015
<b>Age of Juvenility</b>	16 years for boys, 18 years for girls	Uniform 18 years for all children	Uniform 18 years for all children
<b>Key terminology</b>	“Delinquent Juvenile”/ “Neglected Juvenile”	“Juvenile in Conflict with Law”/ “Child in Need of Care and Protection”	“Child in Conflict with Law”/ “Child in Need of Care and Protection”
<b>Primary Authority</b>	Juvenile Court (for delinquents), Juvenile Welfare Board (for neglected)	Juvenile Justice Board (for CICL), Child Welfare Committee (for CNCP)	Juvenile Justice Board (for CICL), Child Welfare Committee (for CNCP)
<b>Approach to Serious Offences</b>	Exclusively rehabilitative; no provision for trial as an adult. Maximum stay in the special home.	Exclusively rehabilitative; no death penalty or life imprisonment. maximum 3-year stay in a special home.	Hybrid; allows for children aged 16-18 accused of “heinous offences” to be tried as adults by the Children’s Court after a preliminary assessment.
<b>Guiding Philosophy</b>	Uniform welfare and rehabilitation framework.	Rights-based, child-centric, and rehabilitative, aligned with UNRC.	The hybrid model attempts to balance rehabilitation with punitive measures for

			certain offences.
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### The Core Debate: Rehabilitation vs. Punishment in Contemporary India

The introduction of the Juvenile Justice (Care and Protection of Children) Act, 2015, did not settle the argument between rehabilitation and punishment; it institutionalised that debate. The Act established a dual-track system where the principles of rehabilitation exist uncomfortably alongside a new punitive approach for older adolescents. The change was not the outcome of gradual, evidence-based policy development but was a rapid reaction to a specific, distressing event that captured national attention, a situation best described as “penal populism”. Consequently, the legal structure is riddled with internal inconsistencies, which conflict with the protective principles historically advocated by the Indian judiciary.

The strong public opinion generated immense pressure on the government and legislators to modify the law. When justifying the implementation of the new bill in 2014, the government referenced the Nirbhaya case and used statistics from the National Crime Records Bureau (NCRB) to assert that there had been a notable rise in serious and violent crimes committed by juveniles, especially those aged 16 to 18. This perspective portrayed the situation as one where public safety was at risk because the rehabilitation system was insufficient.

Yet, this driver for stricter legislation faced opposition from various quarters. The parliamentary standing committee on Human Resource Development, which reviewed the bill, issued a stern warning against enacting laws driven by public fury. The committee contended that crafting policy based on such “Public outrage” was a backward movement. Additionally, it pointed out that the National Crime Records Bureau (NCRB) statistics referenced by the government could be misleading, as they relied on the First Information Report (FIR) submitted by the police

rather than actual conviction rates. In spite of these professional cautions and concerns regarding the constitutionality of the bill, the political pressure proved too strong, leading to the passage of the legislation that included the punitive transfer provision. This series of events exemplifies a textbook instance of penal populism, where a singular, highly emotional event unduly swayed national law-making, disregarding a well-established legal consensus and expert recommendations.

### Trying Children as Adults: Examination of Section 15

The essence of the punitive approach in the 2015 Act is found in Section 15, which outlines the process for a “preliminary assessment” regarding serious offences committed by a child aged 16-18. This assessment, carried out by the Juvenile Justice Board, aims to determine:

1. The child's mental and physical ability to commit such an offence.
2. The child's comprehension of the consequences of their actions.
3. The context in which the child allegedly carried out the offence.

If the board, after conducting this evaluation, determines that the child should be tried as an adult, it can issue an order to transfer the case to a children's court (a designated court of session). The Children's Court is then empowered to impose any penalty that an adult could receive offence, with the exceptions being the death penalty and life imprisonment without the possibility of parole.

This provision has faced significant criticism from legal and psychological perspectives. The criteria for the evaluation are ambiguous and lack definitive, scientific standards, making them susceptible to the personal interpretation of board members, who frequently do not have the necessary expertise in child psychology and adolescent development. More fundamentally, the process establishes a legal contradiction. It

necessitates an appraisal of a child's mental condition and comprehension of an act before it has been legally determined that the child actually committed the act. This seems to contravene the "Principle of Presumption of Innocence", which is clearly stated as a guiding principle in section 3 of the same Act. Psychological evaluations conducted for this purpose can be invasive and may force a child to divulge information that could be used against them, thereby undermining the constitutional right against self-incrimination. The process effectively treats the child as guilty for the sake of the assessment before guilt has been proven in court, creating a significant contradiction at the core of the Act's most contentious section. (BHARTI ALI, n.d.)

### **Judicial Oversight: Landmark Supreme Court Judgements on the Primacy of Child Welfare**

The legislative shift in 2015 towards a more punitive approach sharply contrasts with the historically protective and welfare-focused legal interpretations of children's rights by the Indian judiciary. For many years, the Supreme Court of India has consistently understood juvenile justice laws in a way that emphasizes the best interests and rehabilitation of children.

The Supreme court has consistently mandated that children be separated from adult system, notably in *Sheela Barse v. Union of India*<sup>763</sup>

**Pratap Singh v. State of Jharkhand**,<sup>764</sup> the Court addressed a significant procedural issue, ruling that the assessment of an individual's juvenility should be determined by **their age at the time the offence was committed**, rather than at the time the court acknowledges the case.

**Sailil v. Union of India**,<sup>765</sup> the Supreme Court was asked to reconsider the age defining juvenility under the 2000 Act, with petitioners advocating for a reduction from 18 years.

These and other rulings have established a cohesive body of legal precedent that views children in conflict with the law through the lens of care and reform. The 2015 Act, which emphasises the culpability of those aged 16-18, signifies a substantial philosophical departure from this path established by the judiciary, creating a conflict between legislative intent and the constitutional interpretation of child rights by the highest court.

### **Statistical Realities vs Public Perception: An Analysis of NCRB Data**

The main rationale behind the punitive changes introduced in the 2015 Act was the assertion of an increasing number of serious crimes committed by older adolescents. A thorough evaluation of the national Crime Records Bureau (NCRB) data is thus crucial to determine the factual accuracy of this assertion.

The key issue is the percentage of the offences categorised as "heinous". Although extracting precise long-term trend data for "heinous offences" as defined by the 2015 Act from older records can be challenging, analyses frequently indicate that a large majority of juvenile crimes are not heinous. Offences related to property, such a theft, along with less severe personal crimes, make up the majority of cases. This statistical reality implies that the legislative approach taken in 2015, which concentrated on the most extreme and uncommon cases of juvenile crime, might have been an exaggerated response to an issue that was sensationalised by public perception rather than concerns articulated by the parliamentary standing committee, that policy making was influenced more by high-profile incidents than by comprehensive data. (APOORVA, 2015)

<sup>763</sup> *Sheela Barse & Anr. V. Union of India & Ors.* (1986)

<sup>764</sup> *Pratap Singh v. State of Jharkhand & Anr*

<sup>765</sup> *Sailil v. Union of India & Anr.* (2013)

Year	Total Crimes by juveniles ages)	IPC by (all)	Juveniles Apprehended (16-18 years)	Cases of Rape by Juveniles	Cases of Rape by Juveniles
2013	38,765		25,804	845	1,388
2014	33,526		N/A	N/A	N/A
2015	31,396		N/A	N/A	1,586 (5.03% of total)
2016	35,849		N/A	N/A	N/A
2017	32,235		N/A	N/A	N/A
2018	31,591		N/A	N/A	N/A
2019	32,235		N/A	N/A	N/A
2020	29,768		N/A	N/A	N/A
2021	31,170		28,539 (76.2% of total apprehended)	N/A	N/A
2022	26,571		29,690 (78.6% of total apprehended)	794 (3.0% of IPC crimes)	1,532 (5.8% of IPC crimes)

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**The Framework for Rehabilitation Institutions: An Assessment of Effectiveness**

Although the philosophical and legal discussion surrounding rehabilitation versus punishment is important, its practical significance depends on the ability of the state’s institutional frame work to fulfil the promise of reform, in India, the Juvenile Justice Act establishes a system of specialized facilities aimed at caring for and rehabilitating children, nonetheless, there remains a considerable disparity between nonetheless, there remains a considerable disparity between the legislative intentions of these facilities and their actual conditions on the ground. Systemic shortcomings- including insufficient resources, inadequate infrastructure, a shortage of trained staff, and ineffective aftercare-often turn these intended

rehabilitation spaces into zones of neglect, effectively making them punitive by default and undermining the fundamental objectives of the juvenile justice system.

The care standards for these facilities, outlined by the Act and its Model Rules, are extensive. They must provide not just basic needs such as food, shelter, and clothing, but also a comprehensive range of rehabilitative services, which include medical treatment, mental health care, educational opportunities, and recreational amenities, all within a safeguarding and non-punitive atmosphere.

**Evaluating outcomes: Recidivism Rates and the Socio-Economic Background of Re-offenders**

The primary indicators of a rehabilitative system’s effectiveness are its capacity to deter future offences. Although obtaining detailed, nationwide statistics on juvenile recidivism in India is exceptionally challenging, existing studies and reports highlight an increase of

<sup>766</sup> Note: Direct year-on-year comparison is challenging due to variations in NCRB reporting categories over time. However, the data consistently shows that while the 16-18 age group is the most represented, the most heinous crimes like murder and rape constitute a small single-digit percentage of the total offences committed by juveniles.

11.6% from 2015 to 2018. This suggests that the institutional care provider is frequently unsuccessful in achieving its main goal.

Conversely, focused and well-funded interventions have demonstrated impressive results. The 'Kaval' initiative in Kerala, a leading program developed by the state's Women and Child Development Department, offers comprehensive, community-based psychological and social support to juveniles involved with the law through a collaboration between government and NGOs. This multi-faceted partnership includes counselling, educational assistance, skill development, and substance abuse treatment, and has successfully reduced the re-offending rate among participants to merely 3.8%. The Kaval programme's success illustrates that when rehabilitation is implemented with sufficient resources and a community-focused strategy, it can yield significant results.

The case for a rehabilitative approach over a punitive one is further supported by examining the demographics of children entering the system. Data consistently reveal that juvenile crime is closely linked to socioeconomic hardship. A punitive strategy that emphasises personal guilt fundamentally misinterprets the issue. These are not inherently criminal youth, but rather children affected by their circumstances, whose actions often reflect broader societal failures. Punishing them for these systemic issues is not only unfair but also an ineffective crime prevention strategy. A genuinely effective system must tackle these underlying causes through education, assistance, and opportunities—key principles of rehabilitation.

(18.7% of the total apprehended)	
16-18 years (78.6% of the total apprehended)	29,690
<b>Educational Level</b>	
Illiterate (of the total apprehended)	3,117 (8.3%)
Below Primary (16.8% of the total apprehended)	6,366
Primary to Matric (63.6% of the total apprehended)	24,037
Above Matric (of the total apprehended)	4,260 (11.3%)
<b>Family Background</b>	
Living with Parents/Guardians 34,714 (91.9% of the total apprehended)	
Homeless (of the total apprehended)	1,226 (3.2%)
<b>Economic Status (Parental Income)</b>	
Up to ₹25,000 annually 10,767 (28.5% of the total apprehended)	
₹25,001 to ₹50,000 annually (of the total apprehended)	11,105 (29.4%)
₹50,001 to ₹1,00,000 annually (of the total apprehended)	8,245 (21.8%)

Characteristic Percentage	Data /
<b>Age Group</b>	
7-12 years (of the total apprehended)	1,023 (2.7%)
12-16 years	7,067

**The Aftercare Gap: Difficulties in Transition from institutionalization to reintegration**

Rehabilitation is not complete once a child exits an institution. The process of reintegrating into society is a crucial and sensitive phase. The JJ Act acknowledges this necessity by requiring the provision of aftercare services for care-leavers who have reached the age of 18, extending support until they turn 21. This assistance is intended to be financial, educational, and vocational, empowering them to live independently.

Nonetheless, the execution of aftercare remains one of the most significant weaknesses in the

juvenile justice system. Research indicates a significant disconnect between the legislative requirements and the experiences encountered by care-leavers. Major obstacles include:

**Lack of Awareness:** A significant portion of care-leavers are not informed about their entitlement to aftercare support.

**Insufficient preparation:** children are frequently released from institutions without an individual Care Plan or proper preparation for independent living, often lacking fundamental life skills such as financial literacy.

**Administrative Barriers:** Many find it challenging to obtain crucial identity documents (like Aadhaar cards or birth certificates), necessary for accessing education, employment, and government programs.

**Insufficient Housing and mentorship:** Finding safe and affordable accommodation poses a considerable challenge, and most care-leavers do not have a reliable adult or mentor to assist them with important life choices.

This inadequacy in aftercare signifies a serious failure in the rehabilitation process. The government invests time and resources in caring for a child for several years within an institution, only to leave them unsupported at the most critical moment, rendering them susceptible to poverty, exploitation, and recidivism.

**Implementation Deficits: Resource Allocation, Training, and Systemic Bottlenecks**

The ineffectiveness of numerous juvenile facilities and aftercare programs illustrates deeper, systemic issues with implementation. The gap between a progressive legislative framework and the harsh realities on the ground is significant. Reports from government agencies like the Ministry of Women and Child Development (MWCD), academic bodies such as the National Institute of Public Cooperation and Child Development (NIPCCD), and civil society organisations consistently identify a recurring set of debilitating challenges:

**Inadequate Infrastructure:** Numerous Child Care Institutions (CCIs) suffer from severe overcrowding and poor hygiene while lacking fundamental necessities such as proper bedding, sanitation, and nutrition. According to a 2016 MWCD report, only 32% of CCIs were registered under the JJ Act, and just 46% had a sufficient number of caregivers.

**Shortage of Trained Personnel:** There is a persistent deficit of trained and qualified personnel, including probation officers, counsels, social workers, and even members of JJBs and CWCs. This shortage of professional expertise severely limits the ability to perform thorough assessments, develop tailored care plans, and provide effective therapeutic interventions.

**Delays in procedures:** The backlog of cases before the JJBs is a significant issue. One study indicated that thousands of children remain in facilities for years due to delays in the justice process, which flagrantly violates their rights and fosters an environment counterproductive to rehabilitation.

**Inadequate Funding:** Despite initiatives like the Integrated Child Protection Scheme (ICPS), now known as Mission Vatsalya, which is the primary mechanism for carrying out the JJ Act, financial resources are still a significant limitation. Insufficient budget allocations from the central and state governments constitute a fundamental cause of the deficient infrastructure and scarcity of professional staff.

These systemic shortcomings imply that even with rehabilitative legislation in place, the real-life experiences of children within the system are often characterised by hardship, neglect, and extended uncertainty. Thus default punitive environment not only fails to facilitate rehabilitation but may also unintentionally perpetuate the cycle of crime it aims to disrupt.

**A Comparative Jurisprudence: International Models of Juvenile Justice**

To truly understand the implications of the debate between rehabilitation and punishment

in India, it is crucial to examine its system within a global framework. The decisions made by the Indian legislature in 2015 were influenced by a broader international conversation regarding responses to youth crime. By looking at the methods and results of other countries focused on rehabilitation can pinpoint cautionary examples, effective practices, and a more defined direction for India. This comparative study indicates that India's 2015 legislative change aligns it more closely with the punitive and less effective elements of the U.S. model, while distancing it from the successful rehabilitative strategies seen in Northern Europe.

### **The punitive-Rehabilitative Pendulum: The United States and United Kingdom**

The juvenile justice systems in both the United States and the United Kingdom have historically fluctuated between welfare-oriented and punitive strategies, often influenced by public sentiment regarding youth crime.

**United States:** The juvenile justice framework in the U.S. is perhaps the most notable instance of a punitive-rehabilitative pendulum. Beginning with a focus on rehabilitation in 1889, the system took a sharply punitive direction in the late 1980s, driven by media-induced moral panic about the so-called generation of juvenile "super-predators". This shift resulted in the broad implementation of "transfer laws", facilitating the prosecution and sentencing of minors in adult criminal courts. The approach varies greatly by state, with some allowing prosecutors extensive discretion and others imposing automatic transfers for specific offences. This punitive initiative has been extensively analysed, and the findings serve as a deterrent and often result in higher recidivism rates compared to those who remain in the juvenile system. In addition, juveniles held in adult facilities face a considerably greater risk of physical violence, sexual abuse, and suicide, while being deprived of access to age-appropriate educational and rehabilitative resources.

### **The Educational-Restorative Model: Insights from Germany and Norway**

Unlike the sifting attitudes observed in Anglo-American contexts, several Northern European nations have consistently adhered to a rehabilitative and educational framework.

**Germany:** The juvenile justice system in Germany is founded on the concept of *Erziehung vor Strafe* (education before punishment). The system is primarily focused on education, aiming to tackle the root causes of a young person's actions and facilitate their social integration. Legislation offers a variety of educational and therapeutic options, with imprisonment being regarded as a last resort, applied in under 2% of instances. A notable aspect is the strong focus on vocational education and training (VET), often through a "dual system" that integrates classroom learning with practical, on-the-job experience, ensuring that youths develop skills that are valuable in the Job market. The system's commitment to rehabilitation is so profound that even for young adults aged 18-20, courts are permitted to be in a juvenile developmental stage.

**Norway:** Norway frequently serves as a leading example of a restorative and rehabilitative justice framework. Its approach is deeply rooted in a larger social and political environment that prioritises social welfare and reintegration rather than punitive measures. The Norwegian system is marked by:

A relatively high age of criminal responsibility is set at 15 years.

A strong hesitance to resort to incarceration for minors; it is seen as the last option, typically used for brief durations, even in serious situations.

A robust emphasis on resort justice, aimed at mending the damage inflicted by the crime through actions such as mediation between offenders and the victim.

A focus on "Normality" ensures that life in any correctional facility closely resembles life

outside to aid reintegration. The effectiveness of this method is evident in its results: Norway boasts on of the lowest recidivism rates globally, around 20%.

**Analysing Global Best Practices: Diversion, Restorative Justice, and Community-Based Approaches**

The comparative study demonstrates a clear trend: systems that focus on punishment, like the one in the United States, often exhibit higher rates of recidivism. In contrast, systems that emphasise rehabilitation, education, and restoration, such as those in Germany and Norway, are more effective in reintegrating youth and promoting long-term public safety. The most successful international practices share several common characteristics that resonate with the principles of UNRC:

**Diversion:** A strong emphasis on steering children away from the formal court process whenever feasible, utilising informal warning, counselling, or community-based initiatives.

**Restorative Justice:** Implementing processes that facilitate dialogue among offenders, victims, and community members to collaboratively address the aftermath of the offence and its future implications.

**Community-Based Interventions:** An emphasis on local programs and support systems instead of large, impersonal facilities, enabling youth to maintain connections with their families and social networks.

**Deprivation of liberty as a Resort:** A firm commitment to the principle that incarcerating a child should be the last resort, used only for the minimum necessary time when no alternative is available.

This international evidence indicates that meaningful reform in India necessitates not only changes to legislation but also a significant transformation in public and political dialogue—shifting from a narrative centred on fear and punishment towards one that acknowledges investing in the rehabilitation of children as the most sensible investment in a safer society.

Feature	India(Post-2015)	United States	United Kingdom	Germany	Norway
<b>Guiding Philosophy</b>	Hybrid (Rehabilitative with Punitive Shift)	Punitive Rehabilitative pendulum; varies by State	Welfare/restorative (shift from punitive)	Education/rehabilitative	Restorative/Rehabilitative
Age of Criminal Responsibility	7 years(IPC); 18 for JJ Act applicability	Varies by State (as low as 6-10 years)	10 years	14 years	15 years
<b>Use of Transfer/Trial as an Adult</b>	Yes, for 16-18 year-olds in "heinous" cases	Widespread Use of transfer/waiver laws	No, the youth court system up to 18	No, can apply juvenile law up to age 21	No, the adult system starts at 15, but with a rehabilitative focus
<b>Primary Sanctions</b>	Institutionalisation, community service probation and potential adult	Probation, Detention, incarceration in juvenile or adult facilities	Community orders, youth rehabilitation orders, detention (last resort)	Educational measures, community service, and youth	Mediation, community sanctions, and imprisonment are

	imprisonment			custody	extremely rare
<b>Reported Recidivism Rate</b>	High; one study suggests 11.6% increase(2015-18)	High, over 70% in some studies, for transferred youth	High for custodial sentences (approx 69%)	Lower; two-thirds of detained juveniles re-offend	Very low; approx. 20%

### Analysis and Recommendations for the Indian System

The earlier analysis has examined the philosophical foundations, legislative development, institutional realities, and global context of juvenile justice in India. This punitive direction of the 2015 act has created a significant divide in a legal framework that was otherwise moving toward a more compassionate and effective rehabilitative model. The way forward necessitates a bold reassessment of this punitive approach and a renewed commitment to evidence-based strategies centred on rehabilitation and restorative justice. This is not an appeal for an effective method of safeguarding both the well-being of children and the long-term security of society.

### Re-evaluating the 2015 Act: Does Prosecuting Juveniles as Adults Improve Public Safety?

The main policy issue raised by the JJ Act, 2015, is whether shifting offences of children aged 16-18 to the adult criminal justice system for serious offences improves public safety. The existing international evidence, especially from the United States' complicated history with such policies, provides a clear and strong conclusion: it does not. In fact, it may be counterproductive.

Research on transfer laws in laws in the U.S. consistently shows that youth tried in adult courts have higher rates of reoffending compared to those who stay in the juvenile system. The reasons for this are numerous. The adult criminal justice system is primarily punitive rather than rehabilitative. Placing a developing young person in an adult prison

exposes them to violence, abuse and a hardened criminal environment, increasing the likelihood that they will come out more damaged and more dangerous than when they entered. It denies them access to appropriate education, counselling, and therapeutic services that are critical for their rehabilitation and healthy growth.

Apply this lesson to India, placing a youth in the country's notoriously overcrowded and often brutal adult prison system is a formula for failure. It disregards the objective of reintegration and instead promotes alienation and criminal behaviour. The policy essentially bets against the significant cost to both the individual and society. Thus, the policy allowing for juveniles to be tried as adults does not improve public safety; rather, it threatens it by increasing the chances of future offences. (Law, 2010)

### Reinforcing the Rehabilitation Infrastructure: A Plan for Change

The discussion surrounding legal theory becomes irrelevant if the institutions responsible for its execution are ineffective. The most urgent requirement within India's juvenile justice framework is not stricter legislation, but rather a functional infrastructure that can fulfil the commitment to rehabilitation. The existing system suffers from significant implementation shortcomings that need immediate attention. A reform plan should encompass:

**Enhanced and Designated Funding:** the budget for Mission Vatsalya should see a considerable increase, with funds specifically allocated for upgrades to the physical conditions of observation Homes, special Homes and

addressing areas such as sanitation, nutrition, and educational provisions.

**Professional Development of Staff:** Standards must be set and enforced for staff-to-child ratios and professional qualifications for all personnel, including social workers, counsellors, and caregivers. This entails investing in training and capacity-building initiatives, like those offered by NIPCCD, to ensure staff possess the necessary skills to handle and rehabilitate children with intricate needs.

**Expanding Effective Models:** The achievements of initiatives like Kerala's 'kaval' project, which utilises a public-private partnership approach to deliver intensive, community-based psycho-social support, should be analysed and duplicated. Such initiatives illustrate that investing in well-organised, multi-stakeholder rehabilitation programs produces favourable outcomes in decreasing recidivism. (Roshni, 2024)

#### **Policy Suggestions: Changes to Legislation, Improved Judicial Training, and Community Involvement**

In addition to structural changes, a policy shift is necessary to shift the focus back onto rehabilitation within the system.

**Legislation Change:** The most essential reform is to repeal Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Eliminating the provision for a "preliminary assessment" and the trial of minors as adults is essential. This action would ensure that India's legal framework aligns fully with the UN Convention on the Rights of the Child and reaffirms the country's dedication to a separate, rehabilitative justice system for all individuals under 18.

**Improved Judicial and Board Training:** There is an immediate need for specialised and ongoing training for all members of Juvenile Justice Boards and magistrates presiding over Children's Courts. This training should extend beyond legal procedures to encompass topics such as adolescent brain development, child

psychology, trauma-informed care, and restorative justice principles. Having knowledge and understanding judiciary is critical to establishing a child-friendly justice system.

#### **Encouraging Non-Institutional Alternatives and Restorative Justice:**

The focus of the system must actively shift away from institutionalisation as the primary response. There should be an expansion of non-institutional measures such as probation, community service, and involvement in group counselling. Additionally, India should formally adopt restorative justice methods, such as victim-offender mediation and family group conferencing, within the juvenile justice framework. These approaches, which concentrate on mending harm and fostering accountability through conversation, have shown success in other regions and align more closely with the objective of social reintegration.

#### **Investing in Prevention: Tackling the Fundamental Cause of Juvenile Delinquency**

Ultimately, a truly juvenile justice strategy must extend beyond the justice system itself and focus on preventive measures. As indicated by the NCRB data, juvenile delinquency in India primarily stems from poverty, social exclusion, and insufficient educational opportunities. To effectively decrease juvenile crime in the long run, it is essential to confront these root issues. This necessitates a coordinated effort across multiple sectors:

**Enhancing Public Education:** Guaranteeing that every child, particularly those from underserved communities, has access to high-quality education represents the most crucial strategy for preventing crime. This encompasses targeted efforts to lower school dropout rates.

#### **Vocational Training and Job Possibilities:**

Offering meaningful vocational training and pathways to employment for at-risk youth can provide a positive alternative to delinquent behaviour.

#### **Support for Families and communities:**

Establishing programs that assist at-risk

families, teach parenting skills, and provide community-based mental health and addiction recovery services can foster a more protective environment for children, thereby decreasing their likelihood of engaging in unlawful activities.

### Conclusion: Shaping the Future of Juvenile Justice in India

The evolution of juvenile justice in India has been extensive and largely positive, highlighting an increasing commitment to recognising that children represent the most valuable asset of a nation and must be nurtured, safeguarded, and rehabilitated rather than merely punished. The Juvenile Justice (Care and Protection of Children) Act, 2015, marks a troubling departure from this trajectory. The establishment of a punitive approach to prosecute children as adults reflects a regressive shift, promoted by a moment of national distress and public outrage instead of sound, evidence-driven policy. This provision contradicts India's constitutional obligation for child welfare, conflicts with the protective jurisprudence established by its Supreme Court, lacks support from the statistical realities of juvenile delinquency, and runs counter to insights gained from more successful global approaches.

The findings discussed in the paper lead to a clear conclusion: the route to a safer society is not paved by treating more children as offenders. Instead, it lies in reinforcing the systems aimed at preventing them from turning to crime. This necessitates a courageous, evidence-informed recommitment to the ideals of rehabilitation and a restorative justice framework that is effective, adequately funded, and staffed with professionals. It requires addressing the profound socioeconomic inequalities that drive children to the outskirts of society and into conflict with legal systems.

Channelling resources into the welfare, education, and reform of children is not a gesture of leniency; it represents the most practical and efficient strategy for securing long-term community safety. By prioritising

rehabilitation, India can fulfil its legal and moral responsibilities towards its children while simultaneously fostering a more equitable, secure, and prosperous future for all its citizens.

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