

## JUVENILE JUSTICE IN INDIA: REFORM AND THE CHANGING APPROACH TO CHILD OFFENDERS

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### ABSTRACT

The juvenile justice system in India is structured to offer care, protection, therapy, growth and rehabilitation to the children that are in conflict with the law. Juvenile Justice (Care and Protection of Children) Act, 2015<sup>1988</sup>, is the main law in the system aimed at determining a child-friendly adjudicatory and rehabilitative system with the principles established in the United Nations Convention on the Rights of the Child. Engagement of a minor in heinous crimes especially in the case that is being analyzed in *Mukesh and Anr v. State (NCT of Delhi)*<sup>1989</sup>, urged the Indian legislature to revisit the philosophical principles of juvenile justice and brought substantial changes to allow children between the age of 16 and 18 years charged with heinous crimes to be subjected to preliminary assessment.<sup>1990</sup> Although the major purpose of juvenile law has been reformative, but not retributive, there are still arguments on whether accountability and rehabilitation should be balanced or not. This paper provides a summary of juvenile delinquency and discusses the legislative framework of juvenile justice in India. It follows the historical development of the laws of juvenile justice, examines the notable judicial decisions, and comparatively appraises juvenile justice systems of the United States, the United Kingdom, and India. Lastly, it critically presents the gaps in the current structure and suggests changes to make the system more efficient and child-centered.

**Keywords:** Juvenile Delinquency, Heinous Crimes, Minor, Rehabilitation, Child Rights, Reformative Justice.

GRASP - EDUCATE - EVOLVE

<sup>1988</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>1989</sup> *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 S.C.C. 1 (India).

<sup>1990</sup> Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, 40 J. INDIAN L. INST. 203 (1998).

## INTRODUCTION

A child under the age of eighteen years, who is suspected of having committed, or who is suspected of having committed, an offence under any penal law in force in India, is classified as a child in conflict with the law as provided in Juvenile Justice (Care and Protection of Children) Act, 2015. Traditionally, the notion of juvenility in India was developed gradually as a result of the recognition that children due to their psychological maturity and the level of cognitive development are not able to comprehend the full scope of their actions. This realization was the basis of the principle philosophy of the separation of juvenile offenders and adult criminals, and the establishment of a separate system of justice administration of children. The previous Juvenile Justice Act, 1986 and then the Juvenile Justice (Care and Protection of Children) Act, 2000 gave a unified framework which addressed both the children in conflict of law and those in need of care and protection. The legislative way was based on the global changes, especially the reforms in England and the United States. When the first juvenile court was formed in the United States in 1899, a shift in the jurisprudence of juvenile justice was effected. The Children Act 1908 of England introduced another set of statutes, which united the neglected and delinquent children. India followed the same path, and both ultimately fell under one statute. The development of juvenile justice in India is an expression of a change in punitive reactions to reformative and rehabilitative. The principle is still the best interest of the child that focuses on care, protection and reintegration into the society; not punishment.

## RESEARCH OBJECTIVES

- To examine the conceptual and legislative framework of juvenile delinquency in India.
- To trace the historical evolution of juvenile justice laws in India and analyze

the influence of landmark judicial decisions.

- To undertake a comparative analysis of the juvenile justice systems in India, the United Kingdom, and the United States.
- To critically analyze the weaknesses in the current Indian juvenile justice framework and propose reforms to enhance its rehabilitative effectiveness.

## RESEARCH QUESTIONS

1. What has happened to the concept of juvenile delinquency in India and what has it done to the way juvenile justice laws have evolved?
2. How has the juvenile justice system in India developed historically and judicially and what are the major statutes and historic precedents governing it?
3. What is the juvenile justice system in India in comparison with that of the United Kingdom and the United States and what are the legislative loopholes or structural flaws within the India juvenile justice system which need to be fixed?

## SIGNIFICANCE OF THE STUDY

Juvenile delinquency is a socio legal predicament that is severe not only in India, but also in other parts of the world. Failure to rehabilitate a delinquent child in the right way will result in the high chances of becoming a habitual criminal. This is because criminal behaviour among children can and should be dealt with before it becomes a serious menace to the society. Periodic data released by the *National Crime Records Bureau*<sup>1991</sup> show that there are ups and downs in juvenile offences and in some categories the increasing trends are observed. There is a need thus, to conduct a detailed study of socio-economic reasons, psychological causes and responses of the institution. Despite legislations that have been passed by the Parliament to resolve juvenile justice issues, there are loopholes in regard to

<sup>1991</sup> National Crime Records Bureau, Crime in India 2023–2024, Ministry of Home Affairs, Government of India (2024), <https://ncrb.gov.in> (last visited Jan. 2026).

implementation, infrastructure, monitoring, and prevention provisions. The importance of the study is that it tries to fill the gap between the doctrinal analysis and practical reform suggestions.

### RESEARCH METHODOLOGY

The research methodology is the doctrinal of the study. It is based on the interpretation of the statutory laws, judicial rulings of the Supreme Court and other High Courts, academic articles, research papers, and authoritative commentaries. Special attention has been drawn to the analysis of case laws that explain and implement the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. Secondary sources based on juvenile justice systems on the United Kingdom and the United States have been used to make a comparative analysis.

### HYPOTHESIS

*Ambiguities in offence classification and lack of subgroup-specific rehabilitation mechanisms contribute to inconsistent application and reduced effectiveness of the juvenile justice framework.*

#### 1. JUVENILE DELINQUENCY: A CONCEPTUAL AND LEGAL OVERVIEW

Juvenile crime is one of the most perplexing points of meeting of criminal law and sociology, psychology and constitutional jurisprudence. The term juvenile is a term based on Latin whose connotation is the term juvenis meaning young. In law, the concept of a child is usually taken as a child who is not mentally and emotionally mature enough to realize the implications of their behavior. The principle of *doli incapax* is applied to modern criminal jurisprudence and assumes that a child cannot develop the required criminal intent. This was the foundational principle of reform based juvenile justice systems in the world.

Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>1992</sup> which

<sup>1992</sup>1992 Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, INDIA CODE (2015).

defines a child as an individual who has yet to reach the age of eighteen years, provides the statutory definition of a child in India. The Act also divides children into two categories, the category of a child in conflict with law and the category of child in need of care and protection. This category is noteworthy since it represents a welfare oriented approach as opposed to a punitive approach. The phrase, child in conflict with law, is used as an alternative to the previous title, juvenile delinquent, making it less stigmatizing and incorporating the law into the law and curriculum of child rights.<sup>1993</sup>

The definition of a child however, does not cut across the Indian legislations. The Mines Act, 1952<sup>1994</sup> considers an individual younger than eighteen as a child to be employed. The act of children of 1960 used to define a boy under the age of sixteen and a girl under the age of eighteen as a child. The Child Labour (Prohibition and Regulation) Act, 1986<sup>1995</sup> regards a child as a person under fourteen years of age, whereas Factories Act, 1948 makes the difference between children (under fifteen) and adolescents (fifteen to eighteen). This legislative anomaly presents critical constitutional issues of equality and protection of children in a uniform manner in the light of article 14 of the India constitution.

On the international scale, there is a harmonisation in the definition of a child and it is established through the United Nations Convention on the Rights of the Child<sup>1996</sup> which defines a child as all human beings under eighteen years of age unless the majority is reached, in accordance with the domestic laws. In 1992, India signed the Convention thus undertaking a child focused and rehabilitative justice regime in line with the international best practices.

Juvenile delinquency can be defined as illegal or anti social acts carried out by persons who

<sup>1993</sup> M.P. Singh, *Juvenile Justice and the Constitution of India*, 3 NATL L. SCH. INDIA REV. 45 (1991).

<sup>1994</sup> Mines Act, No. 35 of 1952, INDIA CODE (1952).

<sup>1995</sup> Child Labour (Prohibition and Regulation) Act, No. 61 of 1986

<sup>1996</sup> *Convention on the Rights of the Child*, Nov. 20, 1989

are less than eighteen years of age. Such behaviour can be stealing, assaulting, sexual offence, drug related activities or cybercrime. It should be mentioned that delinquent behaviour is not necessarily criminal. Some activities like truancy, runaway, or drug abuse are usually referred to as status offences since such activities can only be categorized as offences because of the age at which the offender is. Delinquency should, however, be interpreted as not just a criminal behavior but a social symptom due to structural, economic and psychological susceptibility.

The argument about juvenile delinquency in India escalated with the *Mukesh and Anr v. The Nirbhaya* case, which is also referred to as State (NCT of Delhi). One of the defendants was seventeen years and six months old when he committed the crime. Following an uproar by society over the perceived leniency in handing down a sentence on a juvenile, the legislation was enacted in 2015 and it allowed children over the age of sixteen to eighteen years of age to be tried under the adult system after being assessed on mental and physical capability. This change in legislation was a philosophical change, which should be considered as one of the shifts toward a more hybrid model involving the aspects of deterrence and accountability.

Juvenile delinquency has multidimensional causes. The social factors are predominant. Vulnerability is greatly augmented by broken families, parental neglect, poverty, unemployment, overcrowding in urban areas and exposure to criminal peer groups. The high rates of industrialisation and urban migration have caused destruction of families and lack of control especially in urban locations. Lack of the economy usually forces children into illegal activities out of their own choice or under pressure.

It is equally important regarding psychological and personal factors. Mental illness, substance abuse, behavioural deviations, inferiority complexes, and emotional instability are some of the factors. Recent neuroscientific findings

suggest that the prefrontal cortex, responsible to the impulse control and making rational decisions, does not reach maturity until mid-twenties. This scientific understanding poses some fundamental constitutional and ethical issues concerning the criminal responsibility of teens between the ages of sixteen to eighteen.

It is also possible that biological and development factors can affect behaviour. Premature physiological development and inadequate cognitive development may lead to being easy to tempt and being influenced by others. Consequently, juvenile delinquency should be examined in an interdisciplinary approach as opposed to a legal one.

The Supreme Court clearly defined in *Dr. Subramanian Swamy v. Raju*, the difference between the juvenile system of justice and the normal criminal justice system. The Court noted that juvenile proceedings are non-adversarial processes but kid friendly investigations designed to achieve reformation and rehabilitation. In a juvenile, one is not arrested but is apprehended, a person cannot be placed under police custody nor in jail and no bail is the exception but the rule. Social reintegration and not punishment is the end goal of juvenile justice. This rehabilitative ideology makes it very different in its core principles with the adult criminal justice system that focuses on deterrence and retribution.<sup>1997</sup>

### OBSERVATIONS

Through a critical analysis it is evident that the juvenile justice system in India is currently on a ground of conflict between the rights of children and the legal opinion of having a more accountable system. Although the law acknowledges developmental vulnerability, the implementation of adult cases of some juveniles is an indication of change based on societal indignation and not necessarily based on factual criminological evidence. The question of whether such a hybrid model is effective in reducing juvenile crime is also a

<sup>1997</sup> Aparna Chandra, *Juvenile Justice after the 2015 Act: A Critical Appraisal*, 8 INDIAN J. CONST. L. 112 (2016).

notable research question. The following is a reduced and scholarly polished form of your notes in paragraph form:

The critical evaluation of the current framework shows that the juvenile justice system in India is still within the arena of a constant conflict between welfare and retribution. Despite the Juvenile Justice (Care and Protection of Children) Act, 2015 still being oriented towards reform and child-focus, the clause allowing children to be between sixteen and eighteen years old and accused of heinous crimes to be tried like adults is a normative change. This change seems to have been influenced more by the social response to extraordinary crimes rather than the intensive criminological or developmental studies.

Although the 2015 statutory definition of a child is consistent with the international norms, including the United Nations convention on the rights of the child, the differences in the age definitions of other domestic laws produce structural fragmentation. These differences undermine the unity of dogma and bring up the issue of equal constitutional protection. It would improve equality principles and legal clarity through harmonisation of age standards.

It is progressive that the use of terminology has changed to a child in conflict with law, as opposed to juvenile delinquent as the term was previously referred to. Nonetheless, reform of language should be accompanied by the institutional capability. In the absence of effectiveness in terms of providing proper rehabilitation facilities, psychological counselling and reintegration systems, the reformative potential of the statute is likely to be merely nominal as opposed to nominal.

The watering down of the classical doctrine of *doli incapax* by the preliminary assessment mechanism which has been brought into existence following *Mukesh & Anr v. State (NCT of Delhi)* establishes a paradox of jurisprudence. The neuroscientific findings of the incomplete cognitive development during adolescence dispel the idea that some young offenders have

a criminal intent of adults. This brings up key constitutional and ethical issues concerning proportionality and culpability.

More so, despite the Dr. Subramanian Swamy decision, the Supreme Court still construes the 1991 law to apply to the case. Raju confirmed the claim that juvenile proceedings are rehabilitative and not adversarial, and that practical implementation is not even across the board. The negative attention of the media, the pressure of the general population, and the insufficient empirical assessment of the 2015 amendment can cause the shift to the punitive symbolism system instead of evidence based reform.<sup>1998</sup>

## EVOLUTION OF JUVENILE JUSTICE IN INDIA

Comprehensively, the current hybrid model that incorporates welfare and selective deterrence generates the ambiguity of doctrines. The key issue is to make sure that the accountability mechanisms are working under a rehabilitative framework without the violation of the principle of the best interest, which is at the basis of juvenile justice. The history of the development of the juvenile justice system and legislations in India.

### Pre-Independence Era

The idea of treating children differently because of their conflict with the law is not a novel idea. In ancient tradition, even old codes like the Code of Hammurabi acknowledged less responsibility to minors. Systematic juvenile reform in India had started in the colonial era. One of the first laws that were enacted to train young offenders as opposed to imprisoning them was the Apprentices Act, 1850.<sup>1999</sup> This was subsequently succeeded by the Reformatory Schools Act, 1897<sup>2000</sup> which gave court the power to transfer the juvenile offenders to reformatory schools to be rehabilitated instead of being put into jails. Probation of young offenders was also brought in by the Criminal Procedure Code of

<sup>1998</sup>1998 Mrinal Satish, *The Changing Face of Juvenile Justice in India*, 5 NUJS L. REV. 145 (2012)

<sup>1999</sup> Apprentices Act, No. 19 of 1850, INDIA CODE (1850).

<sup>2000</sup> Reformatory Schools Act, No. 8 of 1897, INDIA CODE (1897)

1898. These colonial legislations formed the basis of a reformatory policy.<sup>2001</sup>

### Post- Independence Constitutional vision

Child protection was enshrined in the constitution after independence. Article 15(3), 39 (e), 39 (f) and 21 of the Constitution<sup>2002</sup> are all binding the State to ensure children are not exploited and have the environment to be healthy so that they can develop well. Children Act, 1960 was promoted to take care, safeguard, educate, and rehabilitate children within the Union Territories. It did not allow the imprisonment of children and made observation homes, children homes and special schools.

### Legislative phases

A full scale national framework came with the introduction of the Juvenile Justice Act, 1986, which passed to bring the Indian law in line with the United Nations Standard Minimum Rules of the Administration of Juvenile Justice (Beijing Rules, 1985).<sup>2003</sup> This Act established a national system and focused on care, protection, treatment and rehabilitation.

Later, when the UN Convention of the Rights of the Child was ratified by India, the Parliament passed the Juvenile Justice (Care and Protection of Children) Act, 2000. This act increased the juvenile age to eighteen years both to boys and girls hence making the domestic law to align with the international standards. Nevertheless, knowledge gaps, lack of infrastructures and increased societal anxiety on grave crimes perpetrated by young people resulted in the need to reform.

The replacement of the 2000 Act was by Juvenile Justice (Care and Protection of Children) Act, 2015. It brought a major innovation where offences are categorised into petty, serious and heinous. Most notoriously, it permitted children between sixteen and eighteen years of age that committed heinous

crimes to stand trial as adults following a preliminary determination by the Juvenile Justice Board on their mental maturity and comprehension of the implications of their actions. This was a structural deviation of the purely welfare-based model.<sup>2004</sup>

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021<sup>2005</sup>, changed some of the powers of adoption to the District Magistrate and defined the category of offences. The amendment was meant to facilitate the adoption procedures and to increase the accountability of administration, but the issues of bureaucratic overreach in sensitive child welfare practices have also been raised.

### OBSERVATION

Juvenile justice development in India can therefore be categorized into three stages namely the colonial reformatory stage, the post-independence welfare stage and the modern accountability-oriented stage. The existing system is trying to strike a balance between the rights of children and the demands of the society that some deterrence exists. Nonetheless, a more analytical examination of the constitution is that the 2015 amendment is a change that is driven by the pressure of populism, as opposed to empirical research on criminology. Empirical evidence shows that over punishment of minors can actually lead to higher recidivism, instead of crime.

Thus, the key challenge that the Indian juvenile justice system faces is not only the legislation but successful implementation, institutional reinforcement, and creation of evidence-based policies. An effectively child-focused system should incorporate psychological evaluation, restorative justice, vocational training and reintegration processes in the community.

### LANDMARK JUDGEMENTS RELATED TO JUVENILE DELIQUENCY

<sup>2001</sup> Madhav Menon, *Juvenile Justice: Emerging Trends and Challenges*, 42 J. INDIAN L. INST. 325 (2000).

<sup>2002</sup> Constitution of India, arts. 14, 15(3), 21, 39(e), 39(f).

<sup>2003</sup> Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000

<sup>2004</sup> Arvind Narrain, *The Child and the Criminal Law in India*, 4 NALSAR L. REV. 89 (2009).

<sup>2005</sup> Juvenile Justice (Care and Protection of Children) Amendment Act, No. 23 of 2021, INDIA CODE (2021).

1. *Sheela Barse and Anr versus Union of India and Ors. [1986 AIR 1773].*<sup>2006</sup>

This was a petition that was presented in the Hon'ble Supreme Court to seek directions on release of children (those under the age of 16 years) in jails. The petitioners also requested the manufacture of full information regarding children in jails, and that there were juvenile courts, homes and schools in the country. On the petition, the Hon'ble Supreme Court ordered: State Legal Aid and Advice Board to dispatch two attorneys to each jail in the State every week to offer legal services to children (those less than 16 years of age) imprisoned in prisons. Each of the State Governments to report the number of children homes, remand homes and observation homes in their States and the number of inmates in each of the institutions. States to effectively implement the Children Act passed by them. They are required to submit affidavits to demonstrate the reasons as to why they are not applying those Acts. District and Sessions Judges to pay frequent visits to the District Jails, and to specially attend to child prisoners.

2. *Sheela Barse and other v. Union of India and other [1986 SCALE (2) 230].*

In the given case the Hon'ble Supreme court made the following provisions associated with juveniles: In instances where a child has been charged with committing an offense punishable with less than 7 years of incarceration, the investigation requires completion within 3 months of filling the FIR and the trial requires completion within 6 months of filling the charge sheet. No situation should make children be detained in jails. The State Governments need to establish remand and observation homes. In case of no accommodation in these remand or observation homes, then the children are supposed to be bailed. To achieve total uniformity, Children Act should be enacted by the Union Government to trial children under the age of 16 and rehabilitate such children. 30

<sup>2006</sup> *Sheela Barse v. Union of India, AIR 1986 SC 1773.*

3. *Pratap Singh v. State of Jharkhand & Anr.*<sup>2007</sup>

The Hon'ble Supreme Court in the given case asserted that the juvenility of an individual in contravention of the law must be computed based on the date of the offence and not based on the date of cognizance taken by the Magistrate.

4. *Hari Ram v. State of Rajasthan & Anr. [2009 SCC 13 211]*<sup>2008</sup>

The Juvenile Justice Act, 1986, put an upper age of male children at 16 years to be deemed as juvenile. However, the Juvenile Justice (Care and Protection of Children) Act, 2000 considers children below the age of 18 years as juveniles. Thus, the main question to the court in this case was the following, whether JJ Act, 2000 is applicable to offences which were committed prior to the date of the JJ Act, 2000. The court further stated that when conjoint reading of the Sections 2(k), 2(l), 7A, 20, and 49 is done, it becomes clear that the juvenile treatment would apply to all the persons who were under the age of 18 years on the date of commission of the offence even before the commencement of JJ Act, 2000. It would be immaterial that the complaint of juvenility was made after the offender had reached the age of 18 years.

5. *Jitendra Singh Babboo Singh and Anr. vs. State of U.P. [Criminal Appeal No.763 of 2003].*<sup>2009</sup>

In the case, the court established that anybody purporting to be a minor during an act or offence should do so as soon as possible before the Trial Court or the High Court. However, when there is no such claim, due to any reason, then that does not disable a person to bring such a claim before the Supreme Court. JJ Act is an advantageous law, a technical plea (such as delay in filing the claim of juvenility) would not paralyze an individual to claim under the Act. However, the onus of burden of proving, to

<sup>2007</sup> *Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551.*

<sup>2008</sup> *Hari Ram v. State of Rajasthan, (2009) 13 SCC 211.*

<sup>2009</sup> *Jitendra Singh Babboo Singh and Anr. vs. State of U.P. [Criminal Appeal No.763 of 2003]*

establish the prima facie case of directing an enquiry into the juvenile plea lies on the shoulders of the maker of the case.

6. *Sampurna Behura v. Union of India & Ors. [Writ Petition (Civil) No. 473 of 2005]*<sup>2010</sup>

The case was mostly connected with the application of the Juvenile Justice (Care and Protection of Children) Act, 2000, and Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015). The court realized that the future of our country is the children and they need to be taken care of. The topics connected with the child rights should be discussed in the curricula of National & State Police Academies. The State Governments were encouraged to make sure that the entire Child Care Institutions (CCIs) are registered in order to ensure they resolve the problem of missing children and trafficking. State Governments and UT Governments should appoint eminent Persons to the Visitor status of the CCIs in the civil society. The members of the Juvenile Justice Boards, Child Protection Societies, District Child Protection Units, and Special Juvenile Police Units should be provided with.

7. *Abuzar Hossain @ Gulam Hossain v. State of West Bengal*<sup>2011</sup>

The Court held that such claims can be raised at any stage, even after final disposal of the case. Courts were advised against adopting hyper-technical approaches, while also cautioning against frivolous claims.

8. *Anjum Abdul Razak Menon v. State of Maharashtra*

The Supreme Court dealt with the conflict between the Juvenile Justice Act, 2000 and the repealed TADA Act, 1987. The Court clarified that the overriding clause of the JJ Act would not revive or override a repealed statute, thereby settling interpretative conflicts between special laws.

9. *Jarnail Singh v. State of Haryana*,<sup>2012</sup>

<sup>2010</sup> *Sampurna Behura v. Union of India & Ors. [Writ Petition (Civil) No. 473 of 2005]*

<sup>2011</sup> *Abuzar Hossain v. State of West Bengal*, (2012) 10 SCC 489.

The Court held that Rule 12 of the Juvenile Justice Rules, 2007 must guide age determination, and that the procedure could also be applied for determining the age of child victims.

10. *Salil Bali v. Union of India & Anr.*,<sup>2013</sup>

The constitutional validity of fixing eighteen years as the age of juvenility was challenged. The Supreme Court upheld the provision, observing that the age limit was based on expert understanding of adolescent psychology and international standards.

11. *Shabnam Hashmi v. Union of India & Ors.*<sup>2014</sup>,

The Court recognized the statutory right to adopt under secular law but refrained from declaring adoption a fundamental right under Article 21, reflecting judicial caution in socio-religious matters.

12. *Dr. Subramanian Swamy & Ors. v. Raju*<sup>2015</sup>

The petition sought to try juveniles accused of heinous crimes as adults. The Court refused to “read down” the JJ Act, 2000, holding that Parliament had consciously created a separate class for all persons below eighteen. This judgment indirectly influenced the legislative shift in the Juvenile Justice Act, 2015, which introduced the concept of preliminary assessment for heinous offences committed by children aged sixteen to eighteen.

13. *Parag Bhati v. State of Uttar Pradesh*,<sup>2016</sup>

The Court clarified that documentary proof under Rule 12 is generally conclusive for age determination, but courts may order medical examination where doubt arises. The judgment balanced evidentiary certainty with judicial discretion.

## OBSERVATIONS

These decisions demonstrate a gradual judicial movement from custodial control toward

<sup>2012</sup> *Jarnail Singh v. State of Haryana*, (2013) 7 SCC 263.

<sup>2013</sup> *Salil Bali v. Union of India*, (2013) 7 SCC 705.

<sup>2014</sup> *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1.

<sup>2015</sup> *Dr. Subramanian Swamy v. Raju*, (2014) 8 SCC 390.

<sup>2016</sup> *Parag Bhati v. State of Uttar Pradesh*, (2016) 12 SCC 744

rights-based protection, procedural fairness, restorative justice, and systemic accountability. The Supreme Court has not merely interpreted the Juvenile Justice Act but has actively shaped child-centric jurisprudence in India. These landmark rulings form the constitutional backbone of the juvenile justice system and continue to influence legislative reforms and policy directions.

All together, these rulings demonstrate a clear judicial direction with five central themes that are: (1) absolute inadmissibility of children being kept in jails; (2) expansive and retrospective interpretation of favourable laws; (3) the creation of procedural means of asserting juvenility; (4) the institutional and systemic responsibility; and (5) constitutional restraint on issues of the legislative policy. The Supreme Court has not just interpreted the juvenile justice laws but it has also actively developed a child oriented constitutional jurisprudence where rehabilitation is emphasized rather than retribution.

The judicial trend in general does not lie in its fragmentation but in its systematic evolution namely, the rights based expansion of 2000s, the further evolution of immediate custodial protection in the 1980s and the ultimate institutional governance established in 2015. All these decisions make up the constitutional and doctrinal foundation of the juvenile justice system in India and remain a source of legislative reform, policy application, and academic debate.

### **COMPARATIVE ANALYSIS OF JUVENILE JUSTICE SYSTEMS: INDIA, UNITED KINGDOM, UNITED STATES AND THE SCANDINAVIAN MODEL**

Juvenile Justice models are examined by comparing perspectives of juvenile offenses and injustice within the framework of their different legal systems. Comparative Observations on Juvenile Justice Models Juvenile offenses and injustice are viewed on the prism of their varied legal systems.

Comparative analysis of juvenile justice systems in India, the United Kingdom, the United States and Scandinavia indicates that variations are anchored not so much in crime trends but in philosophical orientation of childhood, culpability and responsibility of the state. The Indian system as provided by the Juvenile Justice (Care and Protection of Children) Act, 2015 is a hybrid system with a normative context of reform and a selectively penal approach. Trying to balance between child rights and social responsibility, India tries to authorize two types of transferring of juveniles between sixteen and eighteen years to adult courts. Nonetheless, the effect of this balancing act is that it creates a tension in the doctrine as the system acknowledges developmental vulnerability but on a conditional basis assigns the adult-like culpability.

#### **UK**

The United Kingdom on the other hand takes of a structurally disciplined community based approach. Although the UK continues to have a relatively low criminal responsibility age, institutions and diversionary processes, combined with organized youth supervision, compensate as statutes like the Children and Young Persons Act of 1933 and the Crime and Disorder Act of 1998.<sup>2017</sup> The British experience shows, that the initial criminal responsibility does not necessarily presuppose punitive harshness, but it depends on procedural containment and rehabilitative control. It does not focus on the transfer of juveniles to the adult systems but rather enhances the structured intervention in the youth justice institutions.<sup>2018</sup>

#### **US**

In the United States, this is a warning trend. The federal system that was shaped by the Juvenile Justice and Delinquency Prevention Act at first welcomed welfare ideals but changed radically

<sup>2017</sup> Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78 (2008).

<sup>2018</sup> Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 FUTURE CHILD. 15 (2008).

in the late twentieth century in accordance with the narrative of super predators. Violent transfer policies and harsh sentencing policies were an expression of a time when fear was more influential than developmental science.<sup>2019</sup> Later constitutional jurisprudence has since amended this overkill, acknowledging the reduced culpability of juveniles. The American case can be used to understand how reactive penal policy grows quickly when under pressure of the populace and needs to be judicially realigned to get proportionality back.<sup>2020</sup>

### SCANDINAVIAN MODEL

The Scandinavian model, especially Norway, is completely another philosophical commitment.<sup>2021</sup> Instead of arguing when a child is mature enough to address him as an adult, the Scandinavian model asks whether it is possible to imprison a child at all and ask that to develop. The system puts priority on restorative justice, mediation, psychological counselling and reintegration. In this case, the state takes up a high welfare role where juvenile offending is considered to be a breakdown of social systems and not personal moral decadence. Even these lower recidivism rates would indicate that reintegration should be employed instead of retribution to enhance long term public safety.<sup>2022</sup>

### OBSERVATION

Relatively, the current hybrid in India seems to be on a crossroad. Although it has not adopted the broad punitive transfer tradition that was observed in certain parts of the United States, it has shed the pure welfare orientation that is more similar to Scandinavian ideals. The most important conclusion made during the comparative analysis is that the systems, which spent much money on early intervention, community supervision, and psychological

support, are able to deliver more sustainable results, compared to the ones, which depended on symbolic severity.

The other significant observation is that of institutional capacity. A UK and Scandinavian model proves that despite having accountability mechanisms, they are underpinned by well-developed probation services, trained professionals, and data driven monitoring systems. The issue with India is not really a question of statutory philosophy but on infrastructural profundity. In the absence of rigorous psychological evaluation criteria, post release assistance and objective impact evaluation, transfer provisions run the risk of becoming reactive measures instead of reforms based on evidence.<sup>2023</sup>

Finally, the comparative analysis points out that the future of juvenile justice does not consist of the reduction of the adult prosecution thresholds but rather in the reinforcement of restorative architecture. Responsibility does not necessarily have to be equivalent to adult criminalisation. A more consistent way forward between child rights and the security of the population can be found in a calibrated system, which is firm but has its roots in the developmental science and social welfare.

### LOOPHOLES, CRITICAL OBSERVATIONS AND A TRANSFORMATIVE REFORM MODEL IN INDIA'S JUVENILE JUSTICE SYSTEM

#### Basic Tensions in the Current Juvenile Justice System

India's juvenile justice framework, primarily governed by the Juvenile Justice (Care and Protection of Children) Act, 2015, aspires to balance rehabilitation, reintegration, and accountability. However, a closer structural and philosophical examination reveals persistent tensions between welfare jurisprudence and punitive populism. Although the statutory language is child-centric, legislative amendments and ground level implementation reflect uncertainty regarding the system's core

<sup>2019</sup> David S. Tanenhaus, *The Constitutional Rights of Children: In re Gault and Juvenile Justice*, 66 OHIO ST. L.J. 1087 (2005).

<sup>2020</sup> Barry C. Feld, *The Transformation of the Juvenile Court- Part I: The Right to Counsel and the Consequences of Gault*, 15 J. CONTEMP. L. 1 (1989).

<sup>2021</sup> Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case of Juvenile Justice*, 69 N.C. L. REV. 1083 (1991).

<sup>2022</sup> Franklin E. Zimring, *The Common Thread: Diversion in Juvenile Justice*, 88 CALIF. L. REV. 2477 (2000).

<sup>2023</sup> United Nations International Children's Emergency Fund

objective, whether to prioritize reform or retribution. This tension has shaped the evolution of juvenile justice in India and continues to influence its operational effectiveness.

### Problems with the Preliminary Assessment for Adult Trial

One of the most significant structural loopholes lies in the preliminary assessment mechanism introduced under Section 15 of the 2015 Act. This provision, enacted in the aftermath of public outrage following the Nirbhaya case, culminating in *Mukesh v. State (NCT of Delhi)*, permits children aged 16–18 accused of heinous offences to be assessed for trial as adults. This marked a departure from the uniform protective framework that had earlier been upheld in *Dr. Subramanian Swamy v. Raju*.

The conceptual difficulty with this provision lies in its reliance on the subjective determination of “mental and physical capacity.” Neuroscientific research demonstrates that adolescent cognitive development, particularly impulse control and risk assessment, continues well beyond eighteen years. Expecting Juvenile Justice Boards to conclusively evaluate maturity within limited procedural timelines risks arbitrariness and undermines legal certainty.<sup>2024</sup>

### Confusion in Classifying Offences

A further structural weakness arises from the classification of offences into petty, serious, and heinous categories. The statutory framework does not clearly address offences where only maximum punishment is prescribed without a statutory minimum. This creates interpretational ambiguity and inconsistent categorization across jurisdictions, thereby affecting uniform application of the law. Such ambiguity undermines predictability, which is a fundamental principle of criminal jurisprudence.

### Lack of Special Treatment for Different Categories of Juveniles

<sup>2024</sup> Sanjay Jain, *Juvenile Justice Reform in India: An Analysis of the 2015 Amendment*, 7 INDIAN J. L. & JUST. 98 (2019).

The system lacks subgroup-specific statutory mechanisms. Juvenile sex offenders, repeat offenders, and girl juveniles are treated under a generalized model of delinquency. Empirical studies indicate that adolescent sexual offending often emerges from exposure, trauma, or lack of awareness rather than entrenched criminality.<sup>2025</sup> However, the Act does not mandate structured therapeutic interventions, standardized psychological risk assessment tools, or intensive rehabilitation programs tailored to recidivists.

Similarly, girls in conflict with law frequently have histories of abuse, trafficking, or coercion, yet trauma informed and gender responsive rehabilitation is not expressly codified. The absence of differentiated frameworks results in a one-size-fits-all approach that may inadequately address underlying causes.

### Institutional and Administrative Weaknesses

Institutional infrastructure presents additional concerns. Although the statute provides for “Places of Safety” for children transferred after preliminary assessment, facilities remain uneven across States. Overcrowding, shortage of trained psychologists and counsellors, and limited vocational opportunities weaken rehabilitative potential. Instead of serving as reformatory spaces, institutions risk becoming environments of negative peer influence.<sup>2026</sup>

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 further complicated the framework by altering procedural aspects, including making certain offences against children non-cognizable and transferring adoption related powers to District Magistrates. While intended to streamline administration, these changes raise concerns regarding delay, bureaucratic concentration of authority, and dilution of specialized child-rights oversight.

### Key Systemic Issues and Observations

<sup>2025</sup> Shalini Gera, *Criminal Responsibility and Adolescence under Indian Law*, 9 J. NAT'L L. UNIV. DELHI 121 (2020).

<sup>2026</sup> Lindsey Pointer, *Restorative Justice in Juvenile Systems: A Comparative Study*, 19 YOUTH JUST. 115 (2019).

First, juvenile justice reform in India appears reactive rather than research driven. Legislative shifts have often followed exceptional cases rather than comprehensive empirical review.

Second, socio-economic vulnerability remains a dominant underlying factor in juvenile delinquency. A substantial proportion of children entering the system come from marginalized backgrounds characterized by poverty, school dropout, family instability, or substance abuse exposure. The statutory model emphasizes adjudication but inadequately integrates preventive social policy measures.

Third, the system exhibits gender invisibility, failing to sufficiently recognize trauma histories among girls.

Fourth, victim rights remain weakly institutionalized; restorative justice practices such as victim-offender mediation or community conferencing are not structurally embedded within the Act.

Fifth, India lacks a centralized digital mechanism to monitor recidivism, educational reintegration, mental health outcomes, and vocational placement, resulting in policy decisions without reliable longitudinal data.

Finally, implementation deficits persist, with many Juvenile Justice Boards lacking specialized professionals and consistent inspection mechanisms.<sup>2027</sup>

### Differences in Implementation Across States

Although the Act applies uniformly across the country, federal disparities significantly influence outcomes. States such as **Kerala** demonstrate relatively strong preventive frameworks supported by literacy and community engagement, yet systematic long-term rehabilitation tracking remains limited. **Maharashtra**, particularly in high-density urban centres, faces institutional overload despite active NGO participation. **Delhi**, under heightened judicial scrutiny, exhibits comparatively stronger procedural compliance

but struggles with reintegration challenges in complex urban settings.<sup>2028</sup> These variations reveal that juvenile justice in India operates as a federal patchwork, where effective protection depends as much on administrative capacity as on statutory design.

### A Transformative Reform Model: The 4R-P Framework

In light of these observations, a transformative reform model is required. A structured “4R-P” framework may provide a coherent pathway forward.

Recalibration should involve revisiting the preliminary assessment mechanism in light of developmental science and considering specialized secure juvenile rehabilitation centres instead of adult transfer.

Rehabilitation must incorporate subgroup specific treatment protocols, including trauma-informed care for girls, cognitive behavioural therapy for violent offenders, structured interventions for juvenile sex offenders, and intensive case management for repeat offenders.

Restoration requires statutory institutionalization of restorative justice practices, including victim-offender mediation, community conferencing, compensation mechanisms, and dedicated victim assistance units.

Reintegration should be measured through concrete indicators such as educational re-enrolment, vocational placement, mental health continuity, and family reintegration support.

Prevention must function as a cross cutting pillar linking juvenile justice with education retention schemes, poverty alleviation programs, mental health services, and substance abuse prevention initiatives.

### Strengthening Policy and Administrative Mechanisms

<sup>2027</sup> National Commission for Protection of Child Rights

<sup>2028</sup> S. Muralidhar, *Constitutional Protection of Children in Conflict with Law*, 8 INDIAN J. CONST. L. 87 (2015).

Policy and administrative strengthening is equally essential. Establishing a National Juvenile Justice Performance Index would enable measurable evaluation of diversion rates and rehabilitation outcomes. A centralized digital tracking system integrated with national crime data would facilitate evidence based reform.<sup>2029</sup> Mandatory certification and periodic training for Juvenile Justice Board members and child welfare officers would enhance professional competence. Dedicated budget allocations, state-level specialized facilities for girl juveniles, surprise inspections, and victim compensation mechanisms would reinforce accountability.

### CONCLUSION AND SUGGESTIONS

Juvenile justice in India has evolved due to a continuous constitutional dialogue between the reformative ideology and societal demand of accountability. The structure under the Juvenile Justice (Care and Protection of Children) Act, 2015 was considered as a child-centric, progressive piece of legislation based on the concept of dignity, equality, and rehabilitation concepts. It saw the commitment of India to the international child rights norm and the reaffirmation of the many-year-old welfare orientation which had been consolidated judicially on the cases as far back as *Dr. Subramanian Swamy v. Raju*. Nevertheless, any changes in legislation, especially those made in reaction to popular indignation to such events as the Nirbhaya one that led to the *Mukesh* case, resulted in shifts in the court's decision. States (NCT of Delhi), have redefined the philosophical outlines of the system.

The current system is in a fragile crossroad. On the one hand, it still declares the rehabilitation as the guiding goal; on the other hand, it implements the instruments, e.g., the preliminary assessment to transfer to adult courts, which are the indicators of the partial abandonment of the traditional protective paradigm under which juvenile justice had been

historically attached. This duality gives conceptual ambiguity. Any system, which concurrently adopts reformative principles and punitive exceptions, is prone to internal contradiction unless powered by powerful institutional protections and evidence-based practice.

The critical analysis has shown that the issues facing the juvenile justice system in India are not confined to statutory lexicon, they reach into the depths of structural, administrative and socio-economic spheres. The imprecision in classifying offences, subjectivity in maturity tests, inadequate infrastructure in observation homes and places of safety, absence of special therapy programs, and inconsistent use of the Act across States add to the dilution of the reformative promise of the Act. Further, the youth crime in India is closely related to poverty, family breakdown, substance abuse, school drop off and social marginalization. The system will simply treat the symptom and not the cause unless preventive social policy is incorporated with the justice administration.

It is also important that restorative justice remains rather institutionalized. Although the law focuses on child rehabilitation, it offers a space that is inadequate in terms of structuring space in the participation of the victim, mediation or structured community based reconciliation. The paradigm of justice in juvenile setting should not be limited to adjudication only, as restoration of the child, the victim, and community needs to be made. Moreover, evidence-based policymaking is limited by the lack of centralized digital surveillance and the presence of reliable longitudinal data of recidivism, reintegration, and mental health outcomes. Data-less reform is not transformative, but speculative.

With such observations, a reform should go beyond reactive changes in the form of legislative commitments and focus on systemic recalibration. When a child is alleged to have committed such serious offences, the justice system should also reiterate that they are

<sup>2029</sup> Nivedita Menon, *Reformative Justice and the Indian Juvenile Justice Framework*, 3 NALSAR L. REV. 54 (2018).

developmentally different as opposed to an adult. Policy decisions ought to be informed by scientific knowledge of adolescent psychology, so that accountability is not compromised by mechanisms of accountability.

### SUGGESTIONS

First, the pre-trial system of children between the age of 16 and 18 who committed heinous crimes should go under a fresh look of empirical check-up. Rather than trying them in adult courts, India can think of setting up secure juvenile rehabilitation centres which integrate structured supervision with aggressive psychological intervention. This would maintain accountability and developmental sensitivity.

Second, the division of offences as minor, major, and heinous offences should have a statutory explanation to eradicate ambiguity especially in situations where criminal law only gives maximum punishment. Clarity of the legislation would offer consistency and lessen variation in comprehension of the legislation among jurisdictions.

Third, a requirement of specific rehabilitation protocols on subgroups is necessary. Juvenile sex offenders need to be subjected to structured therapeutic programs and psycho-educational interventions; repeat offenders need to be placed under intensive supervision and need cognitive behavioural approaches; girl juveniles need trauma-informed and even gender-specific attention. The framework of differentiated rehabilitation would increase the effectiveness and decrease recidivism.

Fourth, the restorative justice mechanisms must be institutionalized. Accountability can be enhanced through community conferencing, victim offender mediation, as well as structured compensation models, which promote reconciliation. The juvenile justice system should also have dedicated victim assistance units whereby the victims are not set aside in the process of reforming them.

Fifth, the process of reintegration should turn objective. Rehabilitation plans should include

compulsory, educational re-enrolment, vocational training and certification of skills and post-release counselling. Sustainable reintegration can be achieved through partnerships with educational institutions, missions on skills development and employers in the private sector.

Sixth, it should be preventive integration. The juvenile justice policy should be consistent with education retention, schemes of alleviating poverty, mental, and substance abuse prevention programs. Mechanisms of early intervention in schools and communities can help to lower the rates of institutionalization to a large extent.

Seventh, it is essential to strengthen administration. Institutionalization should be done to mandate certification and periodic training of Juvenile Justice Board members, Child Welfare Committee members, probation officers and child welfare police officers. Transparency, accountability and evidence based reform can be facilitated by a National Juvenile Justice Performance Index, which is backed by centralized digital data tracking.

Eighth, infrastructure should be focused on. All the States should have adequate funding, regular social audits, psychological staffing, and special facilities to deal with the girl juveniles to minimize the federal disparities in impFinal Reflection.

The juvenile justice system of India has to strike a balance between being compassionate and responsible in the end. It is not the treatment of the ideal citizens but the treatment of the most vulnerable of the constitutional democracy; children who go wrong. An innovative juvenile justice model should move beyond a reactionary mode of episodic intervention to structural intervention, individual assumptions to a tailored rehabilitation and symbolic punishment to quantifiable reintegration.

With constitutional morality, scientific understanding, social justice, and so on, India can change its juvenile justice system into a

model that not only gives verdicts on children who commit wrongful acts but also reinvents the course of life. It should not aim to produce meaner children, but smarter, humane and evidence based justice to make societies safer.

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