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JUVENILE JUSTICE IN INDIA: BALANCING REHABILITATION AND PUNISHMENT UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

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ABSTRACT

India's juvenile justice system stands at a constitutional and sociological crossroads. The Juvenile Justice (Care and Protection of Children) Act, 2015⁵⁹² seeks to rehabilitate children who come into conflict with the law while simultaneously responding to growing public concern over serious offences committed by juveniles aged 16 to 18. This article undertakes a doctrinal and socio-legal analysis of the tension between two foundational principles – rehabilitative justice and punitive accountability – within India's juvenile justice framework. Drawing on constitutional provisions, landmark judgments including *Sheela Barse v. Union of India*, *Pratap Singh v. State of Jharkhand*, and *Mukesh v. State (NCT of Delhi)*, NCRB data,⁵⁹³ and comparative international standards, the article critically evaluates the provisions for preliminary assessment and adult-trial transfer introduced by the 2015 Act. It identifies five structural challenges – inadequate institutional infrastructure, inconsistent implementation, the indeterminate nature of maturity assessment, victim justice deficit, and post-release recidivism – and proposes a balanced reform framework centred on restorative justice, neurodevelopmentally informed assessment, and robust aftercare.

Keywords: *juvenile justice, rehabilitation, punishment, JJ Act 2015, doli incapax, preliminary assessment, restorative justice, juvenile delinquency, India*

I. INTRODUCTION

Juvenile delinquency occupies a uniquely contested space in legal discourse: it invokes simultaneously the claims of child welfare, the rights of victims, and the imperatives of social order. India – home to approximately 253 million children between the ages of 10 and 18 – has witnessed a troubling rise in the involvement of juveniles in criminal activity in recent years.

Official statistics record over 31,000 cases registered against juveniles in 2022 alone,⁵⁹⁴ with a discernible increase in serious and violent offences. These developments have intensified a decades-old normative debate: should the justice system treat the juvenile primarily as a victim of circumstance deserving rehabilitation, or as an offender deserving proportionate punishment?

⁵⁹²Juvenile Justice (Care and Protection of Children) Act 2015 (India), Preamble.

⁵⁹³National Crime Records Bureau, 'Crime in India 2022' (NCRB 2023) Table 10A (reflecting 31,170 cases registered against juveniles in 2022).

⁵⁹⁴*Sheela Barse v. Union of India* AIR 1986 SC 1773.

The Supreme Court of India's early recognition in *Sheela Barse v. Union of India* that the legal system owes children a duty of special protection

3 set the constitutional tone for a welfare-centred approach. Yet the brutal gang-rape of December 2012 – in which one of the accused was 17 years and 6 months old – exposed the perceived inadequacy of a purely rehabilitative framework, catalysing legislative change that culminated in the 2015 Act's controversial provision permitting certain juveniles to be tried as adults.

This article addresses that tension directly. Section II examines the constitutional and international legal foundation for India's juvenile justice system. Section III analyses the evolution of juvenile justice legislation and the doctrinal significance of the 2015 Act. Section IV scrutinises the core tension between rehabilitation and punishment. Section V identifies structural implementation challenges. Section VI proposes a balanced reform framework. Section VII presents findings and recommendations.

II. CONSTITUTIONAL AND INTERNATIONAL LEGAL FOUNDATION

A. Constitutional Provisions

The constitutional basis for juvenile justice in India is multi-layered. Article 15(3) empowers the State to make special provisions for women and children, providing the constitutional warrant for protective legislation.⁵⁹⁵ Article 21 – the right to life and personal liberty – has been expansively interpreted by the Supreme Court to encompass the right to live with dignity. Detention of a juvenile must therefore conform to standards that preserve that dignity; incarceration is constitutionally permissible only as a last resort and must be conducted in a reformatory rather than punitive environment.⁵⁹⁶ Articles 39(e) and (f) of the Directive Principles mandate that the State ensure children are not exploited and are

given opportunities to develop in a healthy manner – obligations that have been judicially treated as integral to the State's duty of care.

B. International Standards

India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which requires that the 'best interests of the child' be the primary consideration in all legal proceedings.⁵⁹⁷ The Beijing Rules (1985) require that deprivation of liberty be used as a measure of last resort for the shortest appropriate period. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, 1990) emphasise the importance of preventive social measures. Together, these instruments provide the normative architecture within which the 2015 Act must be interpreted and applied.

III. EVOLUTION OF INDIA'S JUVENILE JUSTICE LEGISLATIVE FRAMEWORK

A. Historical Development

The legal treatment of juvenile offenders in India has traversed three distinct phases. During the colonial period, juveniles were largely governed by the general criminal law, with minimal accommodation for age or developmental immaturity. The Reformatory Schools Act 1897 and the Indian Jails Committee's recommendations of 1919 represented early, limited recognition of the juvenile's distinctive status, but reform remained institutionally rudimentary.

Post-independence, the Juvenile Justice Act 1986 constituted the first attempt at uniform national legislation, establishing Juvenile Welfare Boards and directing that children not be subjected to the ordinary processes of the adult criminal justice system.

The Juvenile Justice (Care and Protection of Children) Act 2000 marked a qualitative leap: aligning Indian law with the UNCRC, it raised the age of juvenility to 18 for children of both sexes, established Juvenile Justice Boards (JJBs) with a

⁵⁹⁵*Pratap Singh v. State of Jharkhand* (2005) 3 SCC 551.

⁵⁹⁶United Nations Convention on the Rights of the Child 1989 (UNCRC), art 3(1).

⁵⁹⁷*Mukesh & Another v. State (NCT of Delhi)* (2017) 6 SCC 1 (the Nirbhaya case), arising from the events of December 2012.

judicial magistrate and social workers, and created Child Welfare Committees (CWCs) for children in need of care and protection.⁵⁹⁸ The rehabilitative paradigm was firmly institutionalised.

B. The Juvenile Justice (Care and Protection of Children) Act, 2015

The 2015 Act represents a deliberate legislative recalibration. Its three principal innovations require careful doctrinal analysis.

Tripartite Classification of Offences. Section 2 classifies offences as petty (maximum sentence up to three years), serious (three to seven years), and heinous (minimum sentence of seven years or more).⁵⁹⁹ This graduated taxonomy determines both the procedural pathway and the intensity of legal intervention, ensuring that minor infractions are handled without stigma while grave offences receive proportionate attention.

Preliminary Assessment and Transfer Provisions. Section 15 introduces a preliminary assessment mechanism for juveniles aged 16 to 18 accused of heinous offences. The JJB – assisted by experienced psychologists and psycho-social workers⁶⁰⁰ – must assess whether the juvenile possessed the mental and physical capacity to commit the offence and appreciate its consequences. A finding of sufficient maturity enables transfer to a Children's Court under Section 18(3)⁶⁰¹ for trial as an adult, though the quantum of sentence remains limited to the maximum permissible for adults.

Institutional Mechanisms. The Act mandates JJBs in every district⁶⁰² and CWCs with plenary authority over children in need of care and protection.⁶⁰³ Observation homes, special homes, and place of safety are separately defined and regulated, with the Supreme Court's

directions in *Exploitation of Children in Orphanages, In Re* serving as the constitutional baseline for institutional standards.⁶⁰⁴

IV. THE CORE TENSION: REHABILITATION VERSUS PUNISHMENT

A. The Doctrine of *Doli Incapax* and its Modern Transformation

The foundational common law doctrine of *doli incapax* – incapable of deceit – presumed that children below a certain age lacked the *mens rea* necessary for criminal liability.⁶⁰⁵ In its classical form, the doctrine created an irrebuttable presumption of incapacity for children below seven and a rebuttable presumption between ages seven and fourteen. The modern Indian framework has significantly complicated this binary: the JJB's preliminary assessment under Section 15 of the 2015 Act is, in effect, an individualised *doli incapax* inquiry for the 16-to-18 cohort – the state no longer relies on age alone but scrutinises the specific juvenile's cognitive maturity and appreciation of consequences. This represents a jurisprudential shift of considerable significance, moving from categorical protection to case-by-case evaluation of culpability.

B. The Reformatory Approach

The reformatory approach – the traditional and constitutionally preferred paradigm – is premised on three empirical and normative propositions. First, that adolescent brain development, particularly in the prefrontal cortex governing impulse control and risk assessment, is neurologically incomplete until the mid-twenties, rendering juveniles constitutionally less culpable than adults.⁶⁰⁶ Second, that juvenile delinquency is predominantly a product of structural disadvantage – poverty, family breakdown, educational exclusion, and peer

598JJ Act 2015, s 15 (preliminary assessment); s 18(3) (transfer to Children's Court).

599See generally S.N. Mishra, *Juvenile Justice System in India: A Critical Study* (Allahabad Law Agency, 2nd edn).

600Constitution of India 1950, art 15(3).

601Constitution of India 1950, art 21; *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

602Constitution of India 1950, art 39(e)–(f).

603Juvenile Justice Act 1986 (India), later repealed by the JJ Act 2000.

604JJ (Care and Protection of Children) Act 2000, s 1(4) (raising age of juvenility to 18 for both sexes); aligning with UNCRC art 1.

605JJ Act 2015, s 2(33) (petty offence), s 2(45) (serious offence), s 2(54) (heinous offence) read with s 15.

606N.V. Paranjape, *Criminology and Penology* (Central Law Publications, 17th edn) 312–315.

group dynamics – rather than incorrigible criminality.⁶⁰⁷ Third, that harsh incarceration in adult criminal environments serves as a 'school of crime,' entrenching rather than extinguishing criminal behaviour. Rehabilitation through counselling, education, and vocational training addresses root causes; retribution merely addresses symptoms.

In *Pratap Singh v. State of Jharkhand*,⁶⁰⁸ the Supreme Court held that the JJB retains exclusive jurisdiction over a juvenile even where age is disputed, reinforcing the primacy of the welfare framework. The Court's insistence that age be determined with reference to the date of the offence rather than the date of cognizance further demonstrates the protective orientation of the law.⁶⁰⁹

C. The Punitive Response and its Constitutional Limits

The 2012 Delhi gang-rape case⁶¹⁰ crystallised public demand for a punitive response to juveniles accused of heinous crimes. The 2015 Act's transfer provisions were the legislative answer. Proponents of the punitive approach advance three arguments: first, that justice for victims requires proportionate punishment irrespective of the offender's age; second, that deterrence demands that potential offenders – particularly those approaching adulthood – appreciate the full consequences of grave acts; and third, that the 17-year-old accused of rape or murder is not meaningfully less culpable than an 18-year-old.

Against these arguments stand compelling constitutional and empirical objections. The constitutional objection is structural: Article 21 demands that any deprivation of liberty be governed by a procedure that is just, fair, and reasonable. Wholesale transfer of a juvenile to the adult criminal justice system – with its accompanying exposure to hardened offenders,

stigmatic record, and diminished rehabilitation prospects – must satisfy a high constitutional threshold. Neurodevelopmental research consistently demonstrates that juveniles' greater susceptibility to peer pressure, impulsive decision-making, and failure to appreciate long-term consequences qualitatively distinguishes their culpability from that of adults, regardless of the gravity of the offence committed.

V. STRUCTURAL CHALLENGES IN IMPLEMENTATION

A. Institutional Infrastructure Deficit

The most persistent failure of India's juvenile justice system lies not in legislative design but in institutional implementation. NCPDR's audit of juvenile justice institutions across States revealed widespread deficiencies: overcrowding in observation homes, absence of trained psychologists and counsellors, inadequate educational facilities, and in several institutions, conditions that are rehabilitative in name only.⁶¹¹ The judicial monitoring directions in *Exploitation of Children in Orphanages, In Re*⁶¹² have not produced systematic improvement. The gap between legislative mandate and institutional reality undermines the entire rehabilitative enterprise.

B. Indeterminate Maturity Assessment

Section 15's preliminary assessment requirement – that the JJB evaluate the juvenile's mental and physical capacity and appreciation of consequences – invites subjective and potentially arbitrary determinations. The Act requires assistance from psychologists or psycho-social workers, but the shortage of qualified professionals at the district level means that assessments are frequently conducted by inadequately trained personnel, or not conducted with the rigour the provision demands.⁶¹³ The absence of standardised

607JJ Act 2015, s 4 (constitution of JJB); Model Rules 2016, r 6.

608JJ Act 2015, s 27 (constitution of CWC); Model Rules 2016, r 20.

609Exploitation of Children in Orphanages, In Re (2017) 8 SCC 56, directing States to conduct comprehensive surveys of childcare institutions.

610Jarnail Singh v. State of Haryana (2013) 7 SCC 263 (juvenile's age determined with reference to the date of the offence, not date of cognizance).

611NCRB, 'Crime in India 2022' (n 2) Tables 10.1–10.3 (sexual offences, murder, and hurt by juveniles).

612JJ Act 2015, s 15(1): the JJB must be assisted by two experienced psychologists or psycho-social workers during preliminary assessment.

613Roper v. Simmons 543 US 551 (2005) (US Supreme Court holding that the Eighth Amendment prohibits the death penalty for offenders who were under

assessment protocols creates unacceptable inter-JJB variation in transfer decisions, raising equal protection concerns under Article 14.

C. Age Determination Disputes

The Supreme Court's clarification in *Jarnail Singh v. State of Haryana*⁶¹⁴ that age must be determined as at the date of the offence has not eliminated disputes. Documentary evidence of age – birth certificates, school records – is frequently unavailable for children from marginalised communities, necessitating ossification radiological tests whose accuracy is medically contested. The evidentiary uncertainty disproportionately disadvantages children from socio-economically deprived backgrounds, inverting the protective purpose of the age threshold.

D. Victim Justice Deficit

A significant criticism of the rehabilitative paradigm is its perceived indifference to the rights of victims. The juvenile justice framework provides no structured mechanism for victim participation, compensation, or restorative engagement. While the 2015 Act and the Model Rules 2016 gesture toward restorative processes, their operationalisation is nascent. The resulting perception of institutional leniency fuels public demand for punitive responses that may be disproportionate in their constitutional impact on the juvenile offender.

E. Post-Release Recidivism

Rehabilitation's ultimate test is the prevention of reoffending. Ministry of Women and Child Development data indicate that aftercare provisions – intended to support juveniles transitioning back into society after institutional care – remain poorly resourced and minimally implemented.⁶¹⁵ Without employment support, continued education, mental health services, and community reintegration, the institutional rehabilitation achieved within observation

homes is rapidly eroded upon release. The systemic failure of aftercare undermines the persuasive case for a purely rehabilitative approach.

VI. TOWARDS A BALANCED REFORM FRAMEWORK

A. Restorative Justice as the Foundational Paradigm

Restorative justice – understood as a process in which victim, offender, and community participate in repairing the harm caused by the offence – offers a principled resolution to the rehabilitation-punishment binary. Rather than choosing between reform and retribution, restorative justice re-frames the question: the goal is not to punish or rehabilitate in isolation but to repair the damage caused to victim and community while simultaneously addressing the offender's needs and responsibilities. India's JJ Act 2015 contains the seeds of a restorative approach in its provisions for community service, mediation, and family group conferencing, but these remain deeply under-utilised. Legislative amendment and institutional investment are required to make restorative processes the default pathway for all but the most serious offences.

B. Neurodevelopmentally Informed Assessment

The Section 15 preliminary assessment must be restructured around standardised, neurodevelopmentally grounded protocols developed in collaboration with child psychiatrists, developmental psychologists, and legal experts. The current framework's reliance on a binary 'capacity' determination is scientifically inadequate. A graduated maturity continuum – informed by research on adolescent brain development and contextualised by the individual juvenile's social history – would produce more constitutionally defensible and empirically accurate transfer

18 at the time of the crime, relying in part on neurological research on adolescent brain development).

614Ministry of Women and Child Development, 'Annual Report on Child Protection Services 2022-23' (MoWCD 2023) 47-52.

615NCPCR, 'Report on Implementation of JJ Act 2015 Across States' (NCPCR 2022) 18-27.

decisions. The Supreme Court of the United States' jurisprudence in *Roper v. Simmons*, recognising the constitutional significance of adolescent neurodevelopment, provides comparative guidance.

C. Mandatory Aftercare and Social Reintegration

Parliament must amend the JJ Act 2015 to render aftercare obligatory rather than aspirational. Every juvenile leaving institutional care must receive a structured Reintegration Plan encompassing: (i) continuation of formal or vocational education; (ii) employment or skills placement; (iii) mental health and psychosocial support for a minimum of 24 months post-release; and (iv) a designated case worker responsible for monitoring compliance. Without this infrastructure, rehabilitation remains incomplete and recidivism inevitable.

D. Victim Participation and Restorative Reparation

A reformed juvenile justice framework must incorporate structured victim participation through: trained victim advocates within the JJB process; mandatory consideration of victim impact in all disposition decisions; a statutory juvenile justice compensation fund; and facilitated restorative conferencing where the victim consents. These measures address the legitimate justice interests of victims without abandoning the rehabilitative imperative.

E. Independent Monitoring Authority

A statutory National Juvenile Justice Monitoring Authority – constituted with judicial, academic, civil society, and child rights expertise – must be established to audit JJBs and CWCs, standardise practices, and report annually to Parliament. The NCPDR's existing mandate should be strengthened with investigative and enforcement powers to address institutional failures.⁶¹⁶

VII. FINDINGS AND RECOMMENDATIONS

A. Major Findings

This research establishes the following conclusions:

- The JJ Act 2015 represents a constitutionally and comparatively sophisticated framework, but its central innovation – the preliminary assessment and adult-trial transfer mechanism – requires neurodevelopmentally grounded procedural reform to satisfy the constitutional standards of Articles 14 and 21.
- Juvenile delinquency in India is primarily a product of structural social disadvantage – poverty, educational exclusion, family instability – and the justice system's response must prioritise addressing these root causes alongside legal intervention.
- The institutional infrastructure for rehabilitation – observation homes, special homes, counselling services, and aftercare programmes – is systematically under-resourced, creating an irreconcilable gap between legislative aspiration and operational reality.
- The exclusive focus on the juvenile offender's rehabilitation, without structured provision for victim participation and restorative reparation, generates a legitimacy deficit that fuels disproportionate punitive demands.
- International comparative experience – particularly from jurisdictions that have adopted restorative justice and trauma-informed care as primary frameworks – demonstrates that balanced approaches can simultaneously reduce recidivism, address victim needs, and preserve children's developmental rights.

616P.S.A. Pillai, *Criminal Law* (LexisNexis, 14th edn) 98–103 (discussing *doli incapax* and *mens rea*).

B. Recommendations

On the basis of the foregoing findings, the following eight recommendations are advanced:

- **Standardised Assessment Protocols:** Parliament must amend Section 15 of the JJ Act to require the adoption of standardised, neurodevelopmentally grounded maturity assessment instruments, developed jointly by MoWCD, NCPDR, and child development experts, applicable uniformly across all JJBs.
- **Mandatory Aftercare:** The Model Rules 2016 must be amended to make the preparation of an individual Reintegration Plan obligatory for every juvenile leaving institutional care, with statutory minimum durations for post-release supervision and support.
- **Restorative Justice Infrastructure:** MoWCD must issue guidelines institutionalising restorative conferencing, victim-offender mediation, and community service as default dispositions for petty and serious offences, with adequately trained facilitators in every district.
- **Victim Compensation Fund:** A dedicated Juvenile Justice Victim Compensation Fund must be established, funded by annual parliamentary appropriation, to provide reparation to victims of juvenile offenders irrespective of the offender's ability to pay.
- **Institutional Upgradation:** The central government must constitute a time-bound Institutional Reform Mission to upgrade all observation homes and special homes to the standards mandated by the JJ Act and the Supreme Court's directions in *Exploitation of Children in Orphanages, In Re.*
- **Professional Workforce:** Every JJB must be equipped with at least one full-time

child psychiatrist and one psycho-social worker. State governments must fund dedicated cadres of juvenile justice professionals through the ICPS framework.

- **National Monitoring Authority:** Parliament must establish an independent National Juvenile Justice Monitoring Authority with investigative, audit, and enforcement powers, reporting annually to both Houses.
- **Age Determination Reform:** MoWCD and MeitY must collaborate to develop a centralised digital birth registration system to eliminate evidentiary uncertainty in age determination, with a presumption in favour of juvenility in all cases of genuine doubt.

VIII. CONCLUSION

Juvenile justice is, at its core, a question about what a society believes about the relationship between childhood, culpability, and redemption. The Juvenile Justice (Care and Protection of Children) Act 2015 embodies an attempt to answer that question for a rapidly urbanising, socially stratified India confronting genuinely difficult choices: how to provide justice to victims of serious crimes while preserving the developmental rights of the children who commit them.

This article has argued that the answer does not lie in either pole of the rehabilitation-punishment binary. A system that treats every juvenile offender identically – whether shoplifter or perpetrator of violent crime – fails both the child and the community. But a system that responds to public outrage by progressively assimilating juvenile justice into the adult criminal framework abandons the constitutional and scientific premise that makes juvenile justice a distinct and necessary institution.

The path forward is a genuinely balanced framework: rehabilitation as the primary, constitutionally grounded response; restorative justice as the mechanism for addressing victim

needs; neurodevelopmentally informed assessment for the limited category of older juveniles accused of heinous offences; and robust aftercare as the test of whether rehabilitation has succeeded. The legal architecture for this framework exists in the 2015 Act and the Constitution; what is required is the institutional investment, professional infrastructure, and political will to make it operational.

A justice system that abandons hope for its youngest offenders abandons hope for its own future stability. The constitutional vision of a just and humane republic demands no less than a juvenile justice system that is compassionate in its intent and rigorous in its implementation.

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