

INTERSECTION OF THE NDPS ACT AND THE JUVENILE JUSTICE ACT: A CRITICAL STUDY ON REHABILITATION MECHANISMS AND SOCIAL REINTEGRATION OF JUVENILE DRUG OFFENDERS IN INDIA

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Abstract

This research paper critically examines the legal intersection between the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, and the Juvenile Justice (Care and Protection of Children) Act, 2015. While the NDPS Act employs a stringent, deterrent-based approach to drug offences, the JJ Act operates on a reformatory, child-centric paradigm. This study explores the conflict arising when a juvenile is apprehended for drug trafficking, specifically analysing the tension between Section 37 of the NDPS Act (strict bail conditions) and Section 12 of the JJ Act (mandatory bail). It further scrutinizes the classification of commercial quantity drug offences as "heinous offences" for juveniles aged 16-18, the adequacy of statutory rehabilitation mechanisms, and the infrastructural gaps in de-addiction facilities. The paper concludes that while judicial interpretation has largely favoured the JJ Act, legislative inconsistencies and implementation failures continue to hinder the effective social reintegration of juvenile drug offenders.

Key Words: Juvenile Justice, NDPS Act, Child Rights and Protection Drug Offences, Bail and Heinous Offences, Rehabilitation and Reintegration

Introduction

The escalating involvement of adolescents in drug-related activities both as consumers and carriers presents a complex and sensitive challenge for the Indian criminal justice system. In recent years, the vulnerability of children and young persons to drug abuse and trafficking networks has increased due to factors such as socio-economic deprivation, peer pressure, urbanisation, and the easy availability of narcotic substances. Adolescents are often exploited by organised drug syndicates, who use them as carriers or intermediaries to evade stringent penal consequences under drug control laws. This raises serious concerns not only about public health and law enforcement

but also about the long-term rehabilitation and reintegration of affected children into society.

The Indian State is confronted with a dual and often conflicting responsibility in addressing this issue. On one hand, it must strictly enforce the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, which prescribes stringent punishments to combat drug trafficking and substance abuse. On the other hand, it is constitutionally and statutorily bound to protect the rights, dignity, and best interests of children under the Juvenile Justice (Care and Protection of Children) Act, 2015. This obligation is further reinforced by international instruments such as the United Nations Convention on the Rights of the Child, to which India is a signatory.

The intersection of these two legal regimes creates significant legal and ethical dilemmas regarding the treatment of adolescents involved in drug-related offences. The tension between punitive enforcement and rehabilitative justice necessitates a careful balancing approach by courts, law enforcement agencies, and policymakers. This research paper seeks to examine this conflict and analyse whether the existing legal framework adequately safeguards child rights while effectively addressing the drug menace in India.

Review of Literature

• Drug Abuse Among Juveniles

Scholars consistently argue that children involved in drug crimes are more often victims of socio-economic vulnerability than deliberate criminals. Studies by the National Institute of Social Defence (NISD) indicate that children exposed to family dysfunction, peer pressure, poverty, and school dropout are more likely to engage in substance use.

A 2021 study in the Indian Journal of Psychiatry found that adolescents engaged in drug abuse exhibit high levels of trauma, anxiety, and emotional distress, requiring psychological, not punitive, interventions.

• Literature on NDPS Act

Legal scholars, including K.D. Gaur and B.B. Pande, argue that the NDPS Act imposes disproportionately harsh standards, especially the reverse burden clauses under Sections 35 and 54. Critics note that these provisions presume possession and culpable mental state, which contradicts modern understandings of child psychology.

• Literature on JJ Act

Academic writings emphasise that the JJ Act is rooted in the Beijing Rules (1985) and UNCRC (1992), prioritising reintegration and the best interest of the child. Scholars argue that the JJ Act promotes a welfare-based approach by mandating counselling, individual care plans, and restorative justice principles.

Research Problem

The core problem lies in the ideological clash between the two statutes. The NDPS Act is punitive, presuming guilt in certain sections (Sec. 35, 54) and restricting bail (Sec. 37). Conversely, the JJ Act is protective, presuming innocence and mandating rehabilitation. The research problem investigates how far the stringent provisions of the NDPS Act align with the rehabilitative objectives of the JJ Act when dealing with juvenile drug offenders.

Research Objectives

1. To analyse the extent of overlap and conflict between the NDPS Act and the JJ Act.
2. To examine judicial trends in harmonizing the non-obstante clauses of both Acts.
3. To evaluate the statutory provisions for the rehabilitation of juvenile drug offenders.
4. To assess the adequacy of current legal and infrastructural mechanisms for social reintegration.

Hypothesis

While the Juvenile Justice Act provides a child-centric rehabilitative framework, inconsistencies and rigid applications of the NDPS Act particularly regarding "commercial quantity" offences limit effective legal harmonisation, thereby affecting the rehabilitation and reintegration of juvenile drug offenders.

Research Methodology

This paper employs a doctrinal research methodology. It relies on primary sources, including the text of the NDPS Act, 1985, and the JJ Act, 2015, alongside landmark judgments from the Supreme Court of India and various High Courts. Secondary sources such as reports by the National Commission for Protection of Child Rights (NCPCR), Law Commission reports, and academic legal journals have been utilised to substantiate the analysis. The study is analytical and descriptive, interpreting statutes to identify legal lacunae.

CHAPTER – I

Overview of the NDPS Act, 1985, and the JJ Act, 2015:

➤ The NDPS Act, 1985

Enacted to combat the growing menace of drug abuse and illicit trafficking, the Narcotic Drugs and Psychotropic Substances Act, 1985 provides a comprehensive legal framework to regulate and control narcotic drugs and psychotropic substances in India. Section 8 of the Act expressly prohibits the production, manufacture, possession, sale, purchase, transport, import, export, and consumption of such substances, except for limited purposes such as medical or scientific use. The Act reflects a strict prohibitionist policy aimed at safeguarding public health and maintaining social order. It also seeks to curb organised drug trafficking by imposing stringent procedural safeguards and severe penal consequences. By adopting a deterrent-oriented approach, the NDPS Act prioritises enforcement and punishment over rehabilitation. However, this rigidity often creates challenges when applied to vulnerable groups such as juveniles, necessitating careful judicial scrutiny.⁷²⁶

Chapter IV outlines offences and penalties:

- **Section 15:** Punishment for contravention relating to poppy straw – Rigorous imprisonment (RI) up to 10 years and fine for small quantities; up to 20 years for commercial quantities.
- **Section 16:** Similar for coca plant and leaves.
- **Section 17:** Opium-related offences.
- **Section 18:** Opium poppy and opium.
- **Section 19:** Embezzlement by cultivators.
- **Section 20:** Cannabis-related offences – RI up to 5 years for small quantities; up to 20 years for commercial.
- **Sections 21–23:** Manufactured drugs and preparations.
- **Section 24:** External dealings.

- **Section 25:** Allowing premises for offences.
- **Section 27:** Consumption – RI up to 1 year or fine.
- **Section 27A:** Financing illicit traffic – RI 10–20 years.
- **Section 31:** Enhanced punishment for repeat offenders.
- **Section 32A:** No suspension of sentence.
- **Section 37:** Bail restrictions – Accused not to be released unless public prosecutor is heard and court satisfied of innocence or reasonable grounds for non-guilt.

The Act classifies quantities as small, intermediate, or commercial, with punishments escalating accordingly⁷²⁷ (e.g., commercial quantity of Ganja: RI 10–20 years).

Notably, the NDPS Act does not explicitly address juveniles, treating all offenders uniformly, which creates tension with child protection laws⁷²⁸.

➤ Juvenile Justice Act 2015

Replacing the Juvenile Justice (Care and Protection of Children) Act, 2000, the Juvenile Justice Act, 2015 was enacted to bring Indian juvenile justice law in conformity with the principles laid down under the United Nations Convention on the Rights of the Child. The Act adopts a child-centric and rights-based approach, recognising children as individuals in need of care, protection, and guidance rather than retribution. It places primary emphasis on rehabilitation, reformation, and social reintegration instead of punitive punishment. The legislation introduces institutional and non-institutional mechanisms aimed at addressing the underlying causes of juvenile delinquency. By focusing on the best interests of the child, the JJ Act seeks to balance accountability with compassion and long-term societal welfare⁷²⁹.

Key definitions:

- **Section 2(12):** Child – Person below 18 years.

⁷²⁶ indiacode.nic.in

⁷²⁷ dor.gov.in

⁷²⁸ indiacode.nic.in

⁷²⁹ cara.wcd.gov.in

- **Section 2(13):** Child in Conflict with Law (CCL) – Child alleged/found to have committed an offence.
- **Section 2(33):** Heinous offence – Offence with minimum punishment of 7 years or more.
- **Section 2(45):** Petty offence – Up to 3 years imprisonment.
- **Section 2(54):** Serious offence – 3-7 years.

For CCL:

- **Section 4:** Juvenile Justice Board (JJB) for inquiries.
- **Section 12:** Bail as rule, unless release would defeat justice or expose child to criminals.
- **Section 14:** Inquiry completion within 4-6 months.
- **Section 15:** Preliminary assessment for 16-18 year olds in heinous offences; possible transfer to Children's Court (Section 18(3)).
- **Section 18:** Dispositions – Admonition, community service, probation, or placement in special home (max 3 years).
- **Section 19:** Children's Court trials for transferred cases, but with rehabilitative focus.
- **Section 21:** No death penalty or life imprisonment without parole.

The Act classifies offences into petty, serious, and heinous, allowing adult trial for heinous offences by 16-18 year olds after assessment, but mandates child-friendly procedures⁷³⁰.

CHAPTER-II

The Legal Framework: A Comparative Analysis

➤ The Punitive Scheme of the NDPS Act, 1985

The NDPS Act was enacted to implement stringent control over narcotic drugs.

- **Graded Punishment:** The NDPS Act adopts a graded system of punishment based on the quantity of narcotic drugs or psychotropic substances involved,

classifying offences into small, intermediate, and commercial quantities. This classification is central to determining the severity of punishment and reflects the legislative intent to differentiate between minor offenders and serious traffickers. For instance, offences involving commercial quantities under Section 21(c) attract stringent penalties, including a minimum mandatory sentence of ten years of rigorous imprisonment, which may extend up to twenty years, along with heavy fines. Such harsh sentencing provisions underscore the deterrent-oriented nature of the Act. However, the rigid sentencing structure leaves limited discretion to courts, particularly when the accused is a juvenile, thereby creating potential conflict with rehabilitative principles under juvenile justice laws⁷³¹.

- **Section 37:** Section 37 of the NDPS Act imposes exceptionally strict conditions on the grant of bail for offences involving commercial quantities of narcotic drugs and psychotropic substances. It operates as a significant departure from the general principles governing bail under criminal law, making such offences cognizable and non-bailable. Under this provision, the court must be satisfied that there are "reasonable grounds" for believing that the accused is not guilty of the alleged offence and is unlikely to commit any offence while on bail. This high threshold substantially restricts judicial discretion and places a heavy burden on the accused at the pre-trial stage. While intended to prevent drug traffickers from misusing bail provisions, the rigidity of Section 37 becomes particularly contentious when applied to juveniles, as it conflicts with the reformatory and rights-based approach

⁷³⁰ indiacode.nic.in

⁷³¹ Drug Abuse and NDPS-Linked Crimes, Record of Law, 2025.

mandated under the Juvenile Justice framework⁷³².

- **Presumption of Culpable Mental State:** Sections 35 and 54 of the NDPS Act introduce statutory presumptions that significantly alter the traditional criminal law principle of presumption of innocence. Section 35 presumes the existence of a culpable mental state on the part of the accused, unless the contrary is proved, while Section 54 allows the court to presume conscious possession of illicit substances when certain foundational facts are established by the prosecution. These provisions effectively shift the burden of proof onto the accused to demonstrate the absence of knowledge, intention, or possession. Such reverse onus clauses are intended to strengthen enforcement and address the challenges of proving mens rea in drug offences. However, their application raises serious concerns regarding fairness and due process, especially in cases involving juveniles, who may lack the maturity, resources, or legal awareness to rebut these presumptions effectively⁷³³.

➤ **The Reformatory Scheme of the JJ Act, 2015**

The JJ Act, 2015, enacted to replace the 2000 Act, aligns with the UN Convention on the Rights of the Child.

- **Non-Obstante Clause (Section 1(4)):** Section 1(4) of the Juvenile Justice (Care and Protection of Children) Act, 2015 contains a non-obstante clause which declares that the provisions of the Act shall apply to all matters concerning children in conflict with law, notwithstanding anything contained in any other law for the time being in force. This clause establishes the JJ Act as a special and overriding legislation in matters involving juveniles, thereby ensuring uniform and child-centric

treatment irrespective of the nature of the offence. The legislative intent behind this provision is to prioritise the welfare, best interests, and rehabilitative needs of children over punitive considerations. By granting overriding effect, Section 1(4) seeks to prevent the application of harsher criminal statutes to juveniles. However, its interaction with special penal laws such as the NDPS Act has given rise to interpretative challenges, particularly in cases involving serious drug offences⁷³⁴.

- **Bail (Section 12):** Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 mandates that a child in conflict with law shall ordinarily be released on bail, irrespective of whether the alleged offence is bailable or non-bailable. The provision embodies the reformatory and welfare-oriented philosophy of the Act by treating detention as an exceptional measure rather than the norm. Bail may be denied only in narrowly defined circumstances, such as where the release of the juvenile is likely to bring them into association with known criminals, expose them to moral, physical, or psychological danger, or defeat the ends of justice. Even in such cases, the child is to be placed in an observation home or a place of safety rather than in police custody or prison. This approach underscores the primacy of rehabilitation and social reintegration over punitive incarceration, often placing Section 12 in direct conflict with the stringent bail restrictions under special criminal statutes like the NDPS Act⁷³⁵.
- **Rehabilitation (Section 39):** Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2015 places rehabilitation and social reintegration at the core of the juvenile justice process. It mandates that children in conflict with

⁷³² Union of India v. Thamisharasi, (1995) 4 SCC 190.

⁷³³ State of Punjab v. Baldev Singh, (1999) 9 SCC 429.

⁷³⁴ Section 1(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

⁷³⁵ Rakesh Rai v. State of Bihar, Patna High Court, 2025.

law be provided with appropriate care, protection, treatment, education, vocational training, and psychological support through structured Individual Care Plans (ICPs). These plans are tailored to the specific needs, circumstances, and background of each child, with the objective of addressing the root causes of delinquent behaviour. The provision recognises that effective rehabilitation requires a multidisciplinary approach involving families, institutions, and community-based services. By prioritising restoration over retribution, Section 39 seeks to ensure that juveniles are reintegrated as responsible members of society. However, the lack of adequate infrastructure and trained personnel often undermines the effective implementation of such rehabilitative measures, particularly in cases involving substance abuse⁷³⁶.

CHAPTER-III

Intersection and Conflict: Judicial Interpretation

➤ Jurisdiction: JJ Board vs. Special Court

A primary and significant conflict between the NDPS Act and the Juvenile Justice Act arises with respect to the determination of jurisdiction over cases involving juveniles accused of drug-related offences. Section 36A of the NDPS Act provides for the constitution of Special Courts to ensure speedy trial of offences under the Act, particularly those involving serious and organised drug trafficking. These Special Courts are vested with exclusive jurisdiction to try offences punishable under the NDPS Act. In contrast, Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2015 confers exclusive jurisdiction upon the Juvenile Justice Board to deal with all matters concerning children in conflict with law.

This apparent overlap has led to judicial confusion, particularly in cases where juveniles

are accused of serious NDPS offences involving commercial quantities. The conflict was addressed by the Delhi High Court in **Mohd. Irshad @ Shiv Raj v. State (2006)**, wherein the Court held that once an accused is found to be a juvenile, the jurisdiction of the Juvenile Justice Board becomes exclusive. The Court clarified that a juvenile cannot be tried by a Special NDPS Court, even if charged under stringent provisions such as Sections 21 or 29 of the NDPS Act. This judgment reaffirmed the overriding and protective mandate of juvenile justice legislation, emphasising that the special procedure and rehabilitative philosophy of the JJ Act must prevail over the punitive framework of special criminal statutes when the accused is a child⁷³⁷. This principle affirms that the procedural safeguards of the JJ Act override the special procedures of the NDPS Act.

➤ The Bail Conflict: Section 12 JJ Act vs. Section 37 NDPS Act

The most contentious and frequently litigated conflict between the NDPS Act and the Juvenile Justice Act arises in the context of bail. Section 37 of the NDPS Act begins with a non-obstante clause, overriding the provisions of the Code of Criminal Procedure, 1973, and imposes stringent conditions for the grant of bail in cases involving commercial quantities of narcotic substances. This provision reflects the legislative intent to adopt a strict and deterrent approach towards serious drug offences.

In contrast, Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 also contains a non-obstante clause, giving it overriding effect over "any other law for the time being in force." It mandates that a child in conflict with law shall ordinarily be released on bail, irrespective of the nature or gravity of the offence, subject only to limited exceptions. The coexistence of two overriding clauses creates a direct statutory conflict when a juvenile is accused of an NDPS offence involving commercial quantity. This tension has

⁷³⁶ Rehabilitation and Social Reintegration of Children, JETIR, 2023.

⁷³⁷ Mohd. Irshad @ Shiv Raj v. State, Delhi High Court, 2006.

compelled courts to engage in purposive interpretation, often prioritising the welfare-oriented objectives of the JJ Act over the punitive framework of the NDPS Act.

- **Judicial Harmonization:** Courts have consistently held that Section 12 of the JJ Act prevails over Section 37 of the NDPS Act.
 - In **Rakesh Rai v. State of Bihar (2025)**, the Patna High Court reaffirmed the primacy of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 in matters relating to the grant of bail to juveniles. The Court categorically held that the mandatory nature of bail under Section 12 applies uniformly to all children in conflict with law, irrespective of the gravity or seriousness of the alleged offence. It was emphasised that even in cases involving stringent statutes such as the NDPS Act, the welfare-oriented and reformatory mandate of the JJ Act cannot be diluted. The Court observed that denial of bail to a juvenile can be justified only on the limited statutory grounds expressly mentioned under Section 12, and not merely on the basis of the severity of the offence. This judgment reinforces the consistent judicial approach that prioritises rehabilitation and protection of child rights over punitive detention, even in cases concerning serious drug-related offences.⁷³⁸
 - In **Anto v. State of Kerala**, the Kerala High Court addressed the apparent conflict between the stringent bail restrictions under Section 37 of the NDPS Act and the benevolent provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court held that the special protective regime envisaged under the JJ Act must prevail when the accused is a child in conflict with law. It categorically observed that the restrictive conditions imposed by Section

37 of the NDPS Act cannot be applied mechanically to juveniles, as doing so would defeat the very object of juvenile justice legislation. Emphasising the rehabilitative and child-centric philosophy of the JJ Act, the Court reaffirmed that bail to juveniles is the rule and detention an exception. This decision further strengthens the judicial trend of harmoniously interpreting special penal statutes in a manner that upholds the best interests and fundamental rights of children.

- **Rationale:** The rationale for resolving conflicts between the JJ Act and the NDPS Act lies in the distinct objectives and spheres of operation of the two statutes. While both are special legislations, the Juvenile Justice (Care and Protection of Children) Act, 2015 is special with respect to the status of the offender, namely age, whereas the NDPS Act is special with respect to the nature of the offence. In cases involving children in conflict with law, the determinative factor is the age of the accused rather than the gravity of the alleged crime. The JJ Act recognises that children, by virtue of their developmental immaturity, require protection, guidance, and reform rather than retributive punishment. Consequently, the child-centric and welfare-oriented framework of the JJ Act must take precedence when a juvenile is involved, even in cases of serious offences under the NDPS Act. This approach aligns with constitutional principles, international child rights obligations, and the overarching objective of ensuring the best interests of the child.

➤ **The "Heinous Offence" Dilemma (16-18 Age Group)**

The JJ Act, 2015 introduced a category of "Heinous Offences" crimes punishable with imprisonment of 7 years or more (Section 2(33)).

⁷³⁸ Rakesh Rai v. State of Bihar, Patna High Court, 2025.

- **The NDPS Link:** Offences involving “commercial quantities” of narcotic drugs and psychotropic substances under the NDPS Act attract exceptionally severe punishments, including a mandatory minimum sentence of ten years of rigorous imprisonment. Owing to the gravity of the prescribed punishment, such offences fall within the statutory definition of “heinous offences” under the Juvenile Justice (Care and Protection of Children) Act, 2015, which categorises offences punishable with imprisonment of seven years or more as heinous. This classification has significant legal consequences for juveniles aged between 16 and 18 years, as it opens the possibility of a preliminary assessment regarding their mental and physical capacity to commit the offence. The categorisation reflects the legislature’s intent to treat serious crimes with heightened scrutiny. However, when applied to NDPS offences, it raises concerns about subjecting vulnerable adolescents to an adult-like criminal framework, potentially undermining the rehabilitative objectives of juvenile justice.
- **Implication for 16–18 Year Olds:** When a juvenile aged between 16 and 18 years is apprehended for an offence involving a commercial quantity of narcotic drugs under the NDPS Act, the matter attracts the application of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. This provision mandates a Preliminary Assessment by the Juvenile Justice Board to evaluate the child’s mental and physical capacity to commit the alleged offence, as well as their ability to understand its consequences and the circumstances in which the offence was committed. The purpose of this assessment is not to determine guilt, but to decide whether the juvenile should be tried as an adult or continue to be dealt with under the juvenile justice framework. The process reflects an

attempt to balance accountability with rehabilitation for older adolescents involved in serious offences. However, in NDPS-related cases, the assessment assumes heightened significance due to the severe penalties involved, raising concerns about the potential erosion of the protective intent of juvenile justice legislation⁷³⁹.

If the Board finds the child has the physical/mental capacity and understands the consequences, the child can be transferred to the Children’s Court to be tried as an adult.

- **Implication:** The intersection of the NDPS Act and the Juvenile Justice (Care and Protection of Children) Act, 2015 represents one of the most challenging areas of Indian criminal jurisprudence, as it highlights the tension between a punitive and a protective legal framework. While the JJ Act enshrines a protective regime, explicitly prohibiting the imposition of the death penalty or life imprisonment without the possibility of release (Section 21), the NDPS Act prescribes exceptionally harsh punishments for offences involving commercial quantities of narcotic drugs, including a mandatory minimum sentence of ten years of rigorous imprisonment. This creates a scenario in which, if a juvenile aged 16–18 is deemed capable of committing the offence following a Preliminary Assessment under Section 15 of the JJ Act, they could theoretically be subjected to adult-like sentencing under the NDPS Act. Such a possibility underscores the vulnerability of older adolescents within the juvenile justice system and illustrates the ongoing legal and ethical dilemma of balancing deterrence, public safety, and the rehabilitative objectives that are central to juvenile justice. This tension highlights the urgent need for harmonised legislative interpretation and judicial discretion to prevent the erosion of child rights while addressing serious drug-related offences.

⁷³⁹ NCPCR Guidelines for Preliminary Assessment, 2024.

CHAPTER-IV

Rehabilitation and Social Reintegration Mechanisms

➤ Statutory Provisions

The JJ Act provides specific mechanisms for rehabilitation that apply to drug offenders:

• Individual Care Plan (ICP) (Section 39):

Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2015 mandates that every child placed in an observation home, special home, or other institution must have an Individual Care Plan (ICP) tailored to their specific needs. The ICP serves as a comprehensive roadmap for the child's rehabilitation, social reintegration, and overall development. In cases involving substance abuse or drug-related offences, the ICP is required to incorporate de-addiction measures, counselling, psychological support, educational and vocational training, and family engagement. The plan is designed to address both the immediate and long-term needs of the child, recognising that rehabilitation is a multidimensional process. By institutionalising a structured, child-centric approach, Section 39 ensures that interventions are personalised rather than generic, thereby increasing the likelihood of successful reintegration into society. This provision underscores the JJ Act's commitment to treating juveniles as individuals in need of care and guidance rather than merely as offenders⁷⁴⁰.

- **Referral to De-addiction Centres:** The Juvenile Justice (Care and Protection of Children) Act, 2015, along with its accompanying Model Rules, recognises the critical need for specialised intervention in cases where children are struggling with substance abuse or addiction. In such instances, the Act mandates that the child be referred to accredited de-addiction or rehabilitation centres that are equipped to provide professional medical treatment,

psychological counselling, and behavioural therapy. This referral is an essential component of the rehabilitative framework, ensuring that the child receives care tailored to their specific needs rather than merely punitive measures. The focus is on addressing the root causes of addiction, preventing relapse, and facilitating social reintegration. By institutionalising this process, the legislation aims to reduce recidivism, promote long-term recovery, and uphold the welfare-oriented objectives of juvenile justice. Furthermore, it underscores the holistic approach of the JJ Act, which integrates legal, medical, and social interventions to support the development and well-being of children in conflict with law.

- **Reintegration (Section 39(3))⁷⁴¹:** Section 39(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down a comprehensive framework for the social reintegration of children in conflict with law, recognising that rehabilitation is a continuous process extending beyond institutional care. Reintegration is envisaged to be family-based wherever possible, with mechanisms such as foster care, sponsorship, or guardianship providing a stable and supportive environment for the child. The Act also emphasises community-based reintegration, facilitated through monitoring and support by local authorities such as the District Child Protection Unit, which ensures follow-up, counselling, and oversight to prevent recidivism. In the case of juveniles involved in drug-related offences, reintegration strategies are supplemented with linkages to NDPS-approved de-addiction and rehabilitation centres. This dual approach addresses both the social and medical dimensions of rehabilitation, helping the child overcome addiction while rebuilding family and community ties. By combining family, community, and specialised institutional support, Section 39(3) operationalises the JJ Act's child-

⁷⁴⁰ Rehabilitation and Social Reintegration of Children, JETIR, 2023.

⁷⁴¹ thesupremereights.com

centric and reformatory philosophy, ensuring that reintegration is holistic, sustainable, and tailored to the specific vulnerabilities of the juvenile.

• **Institutions (Sections 40–46)**

The Juvenile Justice (Care and Protection of Children) Act, 2015 provides a structured institutional framework to ensure appropriate care, protection, and rehabilitation of children in conflict with law (CCL) and children in need of care and protection (CNCP).

- **Observation Homes (Section 47):** serve as temporary reception facilities where children are placed during the inquiry stage. These institutions are designed to provide basic care, supervision, and assessment while the Juvenile Justice Board conducts the preliminary inquiry or trial, ensuring that children are not unnecessarily exposed to adult criminal environments.
- **Special Homes (Section 48):** are intended for children in conflict with law following the Board's disposition. These institutions provide segregated facilities based on age, gender, and nature of the offence, with a focus on rehabilitation through education, vocational training, counselling, and skill development. Special Homes ensure that juveniles are kept in an environment conducive to reform rather than punishment.
- **Place of Safety (Section 49):** are reserved for children involved in serious or heinous offences, where a higher level of security and structured supervision is required. While the emphasis remains on rehabilitation, these facilities cater to situations where the risk posed by the child or the nature of the offence necessitates controlled institutional care.
- **Children's Homes (Section 50):** primarily accommodate children in need of care and protection. However, they may also

be utilised for juveniles with substance abuse issues when addiction renders the child vulnerable or in need of specialised intervention. In such cases, Children's Homes can be linked with de-addiction programmes and provide therapeutic support alongside basic care and education.

➤ **Child as a Victim (Section 77 & 78):**

- **Section 77:** Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 imposes criminal liability on adults who supply intoxicating liquor, narcotic drugs, or psychotropic substances to children. The provision recognises the heightened vulnerability of minors and seeks to deter adults from exploiting or endangering children by introducing them to substance abuse. Under this section, any adult found guilty of providing such substances to a child may be punished with rigorous imprisonment for a term of up to seven years, along with a monetary fine. The legislation underscores a preventive approach, aiming to protect children from exposure to addictive substances and potential criminal conduct arising from dependency. By criminalising the facilitation of drug or alcohol consumption among minors, Section 77 complements the broader rehabilitative and protective objectives of the JJ Act, ensuring that responsibility for safeguarding children extends beyond state institutions to families, guardians, and society at large. This provision reinforces the principle that children must be shielded from environments and influences that jeopardise their physical, mental, and moral development⁷⁴².
- **Section 78:** Section 78 of the Juvenile Justice (Care and Protection of Children) Act, 2015 criminalises the exploitation of

⁷⁴² Section 77 & 78, Juvenile Justice (Care and Protection of Children) Act, 2015.

children by adults for illegal purposes, specifically targeting the use of minors in peddling, transporting, or smuggling narcotic drugs, psychotropic substances, or other intoxicants. Recognising that children are highly vulnerable to manipulation and coercion by criminal networks, the provision imposes stringent penalties on adults who involve them in such illegal activities. The section serves a dual purpose: it protects children from being drawn into criminal enterprises and reinforces the accountability of adults who exploit their vulnerability. Punishments under Section 78 are designed to act as a deterrent, reflecting the legislative intent to prevent the use of minors as instruments for unlawful profit. By addressing the systemic exploitation of children in drug-related offences, this provision complements the rehabilitative and protective objectives of the JJ Act, ensuring that children are treated as victims requiring care and support rather than as offenders themselves. Section 78 thus highlights the Act's broader commitment to safeguarding child rights while holding adults criminally responsible for endangering their welfare.

- **Protection:** Rule 57(2) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, provides a critical safeguard for children exploited in drug-related activities. It mandates that any child found to have been used for peddling, smuggling, or other illegal purposes under Section 78 of the JJ Act should not be treated as a delinquent or offender. Instead, such a child must be categorised as a "Child in Need of Care and Protection" (CNCP). This classification represents a significant shift in focus from punitive action to rehabilitation, recognising that the child

is a victim of exploitation rather than a perpetrator of crime. Under this framework, the child becomes eligible for protective measures, including placement in a Children's Home, counselling, de-addiction treatment, if necessary, education, vocational training, and structured reintegration into family and community. Rule 57(2) exemplifies the child-centric philosophy of the JJ Act and its Model Rules, reinforcing the principle that children involved in criminal activities under coercion or manipulation require care, guidance, and support rather than punishment. This approach ensures that the rehabilitative objectives of juvenile justice are upheld even in cases intersecting with serious offences like drug trafficking⁷⁴³.

CHAPTER-V

➤ **Adequacy of Mechanisms: The Reality Gap**

Despite the legal text, the practical application reveals significant gaps:

- **Lack of Exclusive Facilities:** A significant challenge in implementing the rehabilitative objectives of the Juvenile Justice (Care and Protection of Children) Act, 2015 is the lack of exclusive de-addiction facilities for minors. A critical study conducted jointly by the National Commission for Protection of Child Rights (NCPCR) and the All India Institute of Medical Sciences (AIIMS) highlighted a severe shortage of child-specific rehabilitation centres, particularly for juveniles struggling with substance abuse. In many instances, minors are placed in adult de-addiction centres due to the non-availability of dedicated facilities. Such placement exposes them to hardened criminals and adult addicts, thereby increasing the risk of further victimisation, negative influence, and

⁷⁴³ Rule 57(2), Juvenile Justice Model Rules, 2016.

recidivism. This practice undermines the protective mandate of the JJ Act, which requires that children in conflict with law or in need of care and protection be housed in safe, age-appropriate, and secure environments. The study underscores the urgent need for expanding infrastructure, establishing child-exclusive de-addiction centres, and ensuring trained personnel to provide psychological, medical, and rehabilitative support. Without such measures, the effectiveness of statutory rehabilitation mechanisms remains compromised, limiting the social reintegration and holistic development of juvenile drug offenders⁷⁴⁴.

- **Criminalization of Consumption:** Section 27 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 criminalizes the consumption of narcotic drugs and psychotropic substances, even in small quantities. The provision reflects the law's strict deterrent-oriented approach, aiming to curb drug abuse through penal sanctions rather than solely through rehabilitative measures. However, in the context of juveniles, the criminalisation of consumption raises significant concerns. The imposition of criminal liability labels the child as an offender, creating social stigma and potentially undermining their prospects for education, employment, and community reintegration. Recognising these challenges, the Ministry of Social Justice and Empowerment has recommended the decriminalisation of consumption of small quantities of drugs, proposing a shift toward treatment, counselling, and harm reduction. Despite these policy suggestions, the current legal framework continues to treat consumption as a criminal act, thereby complicating the implementation of the Juvenile Justice Act's rehabilitative

mandate. For minors, this duality between criminalisation under the NDPS Act and protection under the JJ Act often results in legal and social ambiguities, highlighting the need for harmonised statutory and policy reforms to prioritise rehabilitation over punitive measures.

- **Inadequate Infrastructure:** A critical challenge in the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 is the persistent inadequacy of infrastructure in Observation Homes, which serve as the initial point of institutionalisation for children in conflict with law. Reports indicate that a majority of these facilities lack in-house psychiatric support or counsellors trained in paediatric addiction and behavioural management protocols. This deficiency significantly undermines the operationalisation of the Individual Care Plan (ICP) mandated under Section 39 of the Act, which requires personalised assessment and targeted intervention for each child. Without access to specialised psychological care, counselling, and de-addiction services, children struggling with substance abuse remain inadequately supported, and their rehabilitation is delayed or compromised. The absence of trained personnel also affects early identification of mental health issues, hinders the design of effective educational or vocational programmes, and limits family and community reintegration efforts. This infrastructural gap highlights the urgent need for capacity-building, professional training, and resource allocation to ensure that Observation Homes function not merely as custodial facilities, but as genuine centres for rehabilitation, care, and holistic development of juveniles.

⁷⁴⁴ NCPCR Joint Action Plan on Prevention of Drugs and Substance Abuse Among Children.

CHAPTER-VI

➤ Key Case Laws

• Anamul Haque v. Union of India (2020)⁷⁴⁵

Fact: A juvenile was apprehended for possession of Ganja, an offence under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, and subsequently applied for bail. The bail application was initially denied on the basis of Section 37 of the NDPS Act, which imposes stringent conditions for offences involving narcotic substances, particularly commercial quantities. Section 37, beginning with a non-obstante clause, overrides the general provisions of the Code of Criminal Procedure, making bail exceptionally difficult to obtain for accused persons involved in drug offences.

Issues: The primary legal issue before the court was whether the restrictive bail provisions under Section 37 of the NDPS Act could override the child-centric and protective provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly Section 12, which mandates the release of juveniles on bail except in narrowly defined circumstances. This raised broader questions about the reconciliation of punitive statutory frameworks with rehabilitative juvenile justice principles.

Judgment: The Patna High Court held that, in matters involving juveniles, the provisions of the JJ Act prevail over the NDPS Act. The Court emphasised that Section 12 of the JJ Act, which provides for mandatory bail for children in conflict with law, applies irrespective of the stringent conditions under Section 37 of the NDPS Act. The judgment highlighted that juveniles should be treated primarily as victims in need of care and protection rather than as offenders deserving punishment. By granting bail under the JJ Act, the Court reinforced the principles of restorative justice, rehabilitation, and social reintegration, underscoring the child-centric philosophy of the law. This decision serves as a significant precedent, reaffirming that the welfare and rights of the juvenile take

precedence over the deterrent-oriented objectives of special penal statutes.

• Patna High Court in Cr. Misc. No. 44946 of 2020 (2020)⁷⁴⁶

Facts: A juvenile was apprehended for possession and alleged involvement in the trafficking of opium under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. Following arrest, the juvenile applied for bail, but the application was denied on the basis of Section 37 of the NDPS Act, which imposes strict conditions for granting bail in offences involving commercial quantities of narcotic drugs. The stringent nature of Section 37, beginning with a non-obstante clause, effectively prioritises deterrence and public safety over the personal circumstances of the accused.

Issues: The central legal question before the court was whether the restrictive bail provisions of Section 37 NDPS could be applied to a child in conflict with law (CICL) or whether the child-centric provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly Section 12, would prevail. This raised broader concerns regarding the intersection of punitive legislation and rehabilitative juvenile justice principles, as well as the need to protect the vulnerability and rights of minors.

Judgment: The court reiterated that Section 12 of the JJ Act, which mandates bail for juveniles as a general rule with very limited exceptions, overrides the stringent bail restrictions of Section 37 of the NDPS Act. Emphasising the inherent vulnerability of children and the rehabilitative objectives of juvenile justice, the court granted bail to the juvenile. The judgment highlighted that juveniles should be treated primarily as persons in need of care and protection rather than as offenders subject to harsh punitive measures. This decision reinforced the principle that the welfare-oriented framework of the JJ Act takes precedence over the deterrent-oriented provisions of special criminal statutes, ensuring that juveniles are provided

⁷⁴⁵ legitquest.com

⁷⁴⁶ livelaw.in

opportunities for rehabilitation, counselling, and social reintegration rather than incarceration.

• **Dr. Subramanian Swamy v. Raju (2014)**⁷⁴⁷

Facts: In the aftermath of the Nirbhaya case, a legal challenge was raised questioning the applicability of the Juvenile Justice (Care and Protection of Children) Act, 2015 to juveniles involved in heinous offences. Although the case did not involve narcotic drugs, the principles regarding the interplay between special statutes and the JJ Act were considered relevant. The challenge specifically questioned whether the rehabilitative framework of the JJ Act could be applied to juveniles charged with extremely serious crimes and whether age determination mechanisms under the Act were sufficient.

Issues: The main issues before the Supreme Court were the scope of the JJ Act's applicability to juveniles accused of heinous offences, the retrospective application of its provisions, and the harmonisation of its rehabilitative mandate with the general criminal law framework for serious crimes. The case also raised questions about whether the child-centric focus of the JJ Act could limit the application of harsher penalties prescribed under other statutes.

Judgment: The Supreme Court upheld the applicability of the JJ Act, emphasising that the Act's rehabilitative and reformatory objectives take precedence whenever the accused is a juvenile. The Court highlighted the critical importance of accurate age determination, as the child's age is the key factor in deciding the application of juvenile justice procedures, irrespective of the gravity of the offence. While acknowledging public concern over heinous crimes, the Court reaffirmed that juveniles must be treated primarily as persons in need of care and protection, ensuring access to rehabilitation, counselling, and social reintegration. The judgment reinforced the principle that the JJ Act operates as a special, overriding legislation for all juveniles, demonstrating the judiciary's

commitment to balancing child protection with accountability, even in cases involving serious criminal conduct.

• **Kailas Pawar v. State of Maharashtra (2024)**⁷⁴⁸

Facts: A juvenile was apprehended for possession of narcotic drugs under the NDPS Act, 1985. The case highlighted the tension between strict enforcement of NDPS provisions, which impose severe penalties for possession and trafficking, and the rehabilitative objectives of the Juvenile Justice (Care and Protection of Children) Act, 2015. The juvenile sought bail and intervention for rehabilitation rather than punitive measures.

Issues: The central issues before the Bombay High Court were whether the stringent bail restrictions and mandatory sentences under the NDPS Act could be applied to juveniles, and how to reconcile the NDPS Act's deterrent framework with the JJ Act's child-centric and reformatory mandate. The case also raised concerns about the criminalisation of juveniles for substance use and the effectiveness of punitive approaches in addressing addiction.

Judgment: The Bombay High Court critically observed that overcriminalisation of juveniles for drug possession often undermines the objectives of rehabilitation and social reintegration. The Court emphasised that juveniles should be treated primarily as victims in need of care and guidance, rather than as offenders deserving harsh punishment. It advocated for de-addiction programmes, counselling, and structured rehabilitation instead of incarceration, underscoring the importance of implementing the JJ Act's protective and reformatory provisions. This judgment reinforced the principle that the welfare of the juvenile takes precedence over the deterrent goals of special criminal statutes, highlighting the need for a balanced approach that integrates care, rehabilitation, and public safety.

⁷⁴⁷ indiananoon.org

⁷⁴⁸ drishtijudiciary.com

• **P&H High Court in CRM-M-299495 (2025)⁷⁴⁹**

Facts: A juvenile was apprehended for possession of 39.7 kilograms of Ganja under the NDPS Act, 1985. Despite the large quantity, which ordinarily attracts severe mandatory sentencing under Section 21 of the NDPS Act, the juvenile applied for bail. The case also involved underlying assumptions and societal prejudices regarding juveniles from economically disadvantaged or slum areas, often stereotyped as predisposed to criminal behaviour.

Issues: The primary legal issues were whether the rigid provisions of the NDPS Act, including Section 37 relating to stringent bail conditions, could override the Juvenile Justice (Care and Protection of Children) Act, 2015, and whether courts could allow prejudicial social assumptions to influence judicial discretion. The case also examined how to reconcile the public interest in controlling drug trafficking with the child-centric, rehabilitative principles of the JJ Act.

Judgment: The court rejected stereotypical assumptions about the juvenile's background and emphasised that socio-economic conditions should not influence the application of justice. Applying the principles of the JJ Act, the court granted bail, reaffirming that juveniles must be treated primarily as children in need of care and rehabilitation rather than as hardened criminals. The judgment reinforced the supremacy of the JJ Act in matters involving juveniles, even in cases involving large quantities of narcotic drugs, and highlighted the importance of focusing on rehabilitation, social reintegration, and protection of the child's rights over the deterrent-oriented framework of the NDPS Act.

CHAPTER- VII

• **Suggestions and Legal Reforms**

To strengthen the harmonization between the Acts and ensure effective rehabilitation, the following reforms are proposed:

- **Decriminalization of Consumption for Minors:** An amendment should be introduced in the NDPS Act explicitly stating that Section 27 (punishment for consumption) shall not apply to minors. Instead, they should be automatically referred to the Child Welfare Committee (CWC) under Section 29 of the JJ Act.
- **Mandatory Separate De-addiction Wings:** The government must mandate the establishment of separate, child-friendly de-addiction wings within government hospitals or JJ institutions, distinct from adult facilities, to prevent abuse and ensuring age-appropriate therapy.
- **Clarification on "Heinous Offences":** The Supreme Court or Legislature must clarify the sentencing guidelines for 16–18-year-olds tried as adults in NDPS cases. The mandatory minimum of 10 years (under NDPS) should be discretionary for the Children's Court, allowing judges to impose lesser sentences based on reformative potential.
- **Strengthening Section 77 & 78:** Prosecution under these sections is rare. Law enforcement must be trained to target the adult supplier/handler rather than merely apprehending the juvenile carrier. The presumption should be that the juvenile carrier is a victim of trafficking (Section 78) until proven otherwise.

CHAPTER-VIII

Conclusion

The hypothesis of this study stands validated. While the Juvenile Justice Act, 2015, theoretically overrides the NDPS Act, 1985, through Section 12 (bail) and Section 78 (victim status), the rigid application of the "Heinous Offence" category for commercial quantities creates a backdoor for punitive measures against 16–18-year-olds. The judiciary has played a commendable role in upholding the supremacy of the JJ Act regarding bail and jurisdiction. However, the lack of

⁷⁴⁹ livelaw.in

exclusive de-addiction infrastructure and the continued criminalization of drug consumption create a "revolving door" where rehabilitated juveniles return to the same criminogenic environments. True social reintegration requires not just legal supremacy of the JJ Act, but a robust, funded, and specialized therapeutic infrastructure that treats the juvenile drug offender as a child in need of care, not a criminal in need of correction.

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