

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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CRIMINALS OR VICTIMS? THE UNRESOLVED STRUGGLES OF JUVENILE JUSTICE IN INDIA

AUTHORED BY – AYUSHI SINGH & RIDDHI SOLANKI

INTRODUCTION

The concept of child-centric justice in India has undergone a significant evolution, tracing its roots from ancient legal traditions to contemporary practices. This research project aims to explore the historical trajectory and current state of child-centric justice approaches in India, examining how societal, cultural and legal paradigms have shaped the treatment of children within the justice system.

The post-independence period saw a gradual shift towards a child-centric approach in the judicial system, culminating in the Juvenile Justice Act, 1986 and its subsequent amendments. These legislative changes reflected India's commitment to international standards, particularly the United Nations Convention on the Rights of the Child (UNCRC), 1992. Contemporary child-centric justice faces numerous challenges, including debates over the age of criminal responsibility, the treatment of juveniles/delinquents in conflict with law, and the balance between rehabilitation and punitive measures.

Delinquency is a deviation from the course of usual social life. Juvenile delinquency refers to illegal or criminal behaviour committed by minors (under the age of 18 years), which may prove to be hazardous and detrimental to the society. To curb the acts of crime, that are committed under the protection and umbrella of being a minor, each nation has its own legislation which covers the definition of 'juvenile' and 'acts of juvenile' and subsequently provides for punishment for the same.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP),¹ a component of the U.S Department of Justice, defines Juvenile Delinquency as **“the illegal behaviour of a child or youth under the statutory age of majority”**.

¹ 'Office of Juvenile Justice and Delinquency Prevention (OJJDP)' <<https://ojjdp.ojp.gov/>> accessed 12 September 2024

According to Black Law's Dictionary,² juvenile delinquency is an "anti-social or criminal behaviour by juveniles" and "violation of the criminal code and/or pursuit of certain behaviours, such as underage drinking, by juveniles".

The National Crime Records Bureau (NCRB),³ uses the term "juvenile in conflict with law" to refer to youth involved in delinquent behaviours.

Ministry of Women and Child Development, defines juvenile delinquency in line with the Juvenile Justice Act, focusing on children in conflict with the law and the need for their protection and rehabilitation.

In India, the prevention of juvenile delinquency is a vital part of the overall crime prevention in society. The juvenile system however echoes a likeness for social rather than judicial approaches for juveniles. The prevention of crime requires individual, group and organizational efforts aimed to curb minors from exhibiting criminal behaviour. One approach used to prevent youth crime focuses on using the treat of harsh punishment as a deterrent, this method focuses on communicating the severe consequences they might face if they break the law.

This research project will delve into the historical, legal, and sociocultural aspects of child-centric justice in India, analysing its evolution from ancient roots to current practices. By examining this trajectory, we aim to provide insights into the challenges and opportunities for further developing a more effective and compassionate juvenile justice system in India.

1. HISTORICAL BACKGROUND OF JUVENILE JUSTICE IN INDIA

1.1 EARLY APPROACHES TO JUVENILE JUSTICE

A. Pre-independence treatment of juvenile offenders.

The juvenile justice system in India has experienced significant transformations, highlighting an increasing recognition of the distinct needs and vulnerabilities of children involved with the law. Historically, there was no recognition of separate legal system for juveniles during the British colonial influence. However, in 1908 the establishment of first juvenile court in Bombay marked the onset of a more progressive and enlightened approach, which emphasized

² Bryan A. Garner, *Black Law Dictionary* (12th edn, Thomas Reuters, 2024)

³ 'National Crime Records Bureau' <<https://ncrb.gov.in/en>> accessed 12 September 2024

rehabilitation over punishment.

The concept of differentiated treatment for children dates back to the Code of Hammurabi in 1790 BC, which assigned the responsibility for their care and supervision to their families. The period between 1850 and 1919 was characterized by significant social and industrial changes which paved the way for important legislative advancements.

In addition to this, the Reformatory School Acts of 1876 and 1897 enabled courts to detain juvenile delinquents in reform schools for a period ranging from two to seven years. Also, it was ensured that they received appropriate treatment until they reach the age of majority. Furthermore, The Criminal Procedure Act of 1898⁴ acknowledged the need for a specialized approach to deal or handle minor offenders. It allowed probation up to the age of twenty-one years to those who demonstrated good behaviour.

In 1919 – 1920, the Indian Jail Committee drafted the Indian Children Act, which empowered provincial governments to enact their own legislation for juveniles. By the early 1920s, provinces such as Madras, Bombay and Bengal had implemented their own Children Acts, thereby establishing a dedicated and specialized juvenile justice system. It sets the foundation for more child- focused approaches in the future.

B. Post-Independence Era

Between 1948 to 1959, there were only some minor amendments in Children's Act but a significant shift occurred in 1960. It is to be noted that various therapeutic recommendations were adopted at the second United Nations Congress on the Prevention of Crime and Treatment of Offenders held in London which led to the enactment of the Children Act 1960, by the Union Government. It is aimed to ensure the protection and care of children in Union Territories.

Although state-specific children's acts which were implemented post-independence to address issues related to delinquent youth, these laws often lacked minimum standards for basic living conditions, needs and standard care. Acknowledging this gap highlighted the necessity for uniform legislation to tackle these shortcomings, leading to the eventual enactment of the Juvenile Justice Act of 1986.

⁴ Criminal Procedure Act 1898

The Juvenile justice Act 1986⁵ was enacted to provide for care, protection, treatment, development and rehabilitation of delinquent or delinquent juveniles. In India, the juvenile justice policy is largely based on Part- III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Indian Constitution. Furthermore, this policy incorporates several international covenants, including the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice, commonly known as Beijing Rules.

After independence, the provisions of the Constitution incorporated for the protection and development of children through its fundamental rights as well as directive principles. The Children Act of 1960,⁶ prohibited the imprisonment of children under any circumstances and mandated their care, welfare, education, maintenance, protection and rehabilitation. This Act was specifically applicable to Union Territories and established three essential institutions: a facility for observation during court proceedings, a home for neglected children and a special school for youth offenders.

In order to maintain consistency with The Children Act and align with the United Nations Declaration of the Rights of the Child 1959, the Juvenile Justice Act of 1986 was enacted. Eventually, the government progressed and led to the enactment of The Juvenile Justice Act of 2000.

2. THE JUVENILE JUSTICE ACT: KEY MILESTONES

The evolution of juvenile justice from early acts to the current system reflects a growing understanding of child psychology, child rights, and the societal factors that contribute to juvenile delinquency. It reflects a shift from a punitive, one-size-fits-all approach to a more refined, rights-based and rehabilitative system. In the current scenario, the complexity of factors influencing juvenile behaviour are aimed to be addressed through balancing the needs of the child with the safety of the society.

⁵ Juvenile Justice Act 1986

⁶ Children Act 1960

2.1 EARLY JUVENILE SYSTEM (LATE 19TH TO MID-20TH CENTURY)

- **Apprentices Act, 1850:** In British India, the first piece of legislation that aimed to sort and address children in conflict with the law was the Apprentices Act, 1850.⁷ It provided for binding over of children under the age of 15 years found to have committed petty offences as apprentices to master craftsmen or tradespeople. Instead of punishment, it proposed a rehabilitative method through apprenticeship.
- **Reformatory Schools Act, 1897:** Consequently, the Reformatory Schools Act, 1897,⁸ was built upon the principles introduced in the Apprentices Act. It provided that children up to the age of 15 years sentenced to imprisonment may be sent to reformatory cell. Under this act, the children could be detained for 3 to 7 years, but not beyond the age of 18 years. It was primarily meant to provide basic education and vocational training.
- **Children Act, 1960:** It attempted to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories.⁹

2.2 MID-STAGE EVOLUTION (LATE 20TH CENTURY)

Juvenile Justice Act, 1986

The Juvenile Justice Act, 1986,¹⁰ a uniform legislation in the country was enacted by the Parliament in order to provide care, protection, treatment, development, and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles as a uniform system of juvenile justice mechanism throughout the country. It also included universally agreed principles and standards for the protection of the juveniles such as the United Nations Standard Minimum Rules for the Administration of the Juveniles Justice, 1985 (commonly known as “Beijing Rules”).

Section 2(a) of the Juvenile Justice Act, 1986,¹¹ defined the term juvenile as a “boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years”.

Section 52, 53 and 54 of Juvenile Justice Act, 1986,¹² also provided for the establishment of

⁷ Apprentices Act 1850

⁸ Reformatory Schools Act 1897

⁹ Children Act 1960

¹⁰ Juvenile Justice Act 1986

¹¹ Juvenile Justice Act 1986, s 2(a)

¹² Juvenile Justice Act 1986, s 52, 53, 54

social welfare and juvenile rehabilitation funds, the establishment of advisory councils and the appointment of visitors to juvenile institutions.

In compliance with the Convention on the Rights of the Child (CRC) embraced by the General Assembly of United Nation, the Juvenile Justice Act, 1986, was repealed in India and to bring the uniformity to the definition of a 'Juvenile'.

2.3 CONTEMPORARY TIME EVOLUTION (EARLY 21ST CENTURY)

2.3.1 The Juvenile Justice (Care and Protection of Children) Act, 2000,¹³

It was enacted in accordance with International Convention on Rights of the Child and with the aim to *“consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment”*.

A. Title of the Act

The title of the act stresses on the need for care and protection to both categories of children. Among the major changes brought by the act, the first and foremost is in the definition of 'Juvenile', which provides that Juvenile means a person who has not completed eighteenth year of age. Among the cosmetic changes the terminologies “Juvenile Delinquency” and “Neglected child” has been substituted by “Child in conflict with law” and “Child in need of care and protection” respectively.¹⁴

B. Maturity level of the juveniles

An issue which needed special attention is parallel culpability of the children (between the ages 16 to 21 years) with that adult. The Juvenile Justice Act, 2000, reverse the well-founded principle of juvenile justice by allowing the Juvenile Justice Board under the act to waive off the right of children above the age of 16 years who have committed a heinous offence into the criminal justice system. This means that children between the ages of sixteen and eighteen involved in heinous crimes are to be tried as adults and would receive the maximum punishment

¹³ Juvenile Justice (Care and Protection of Children) Act 2000

¹⁴ Dr. Harunrashid Kadri 'The Juvenile Justice (Care & Protection of Children) Act, 2000 – An Overview' (2013) <<https://www.ssrn.com/index.cfm/en/>> accessed 12 September

In *Prabhakaran v. State of Tamil Nadu, 1987*,¹⁵ the Madras High Court observed that the rights of a child are an integral part of human rights, but it is less focused upon by the protagonists of human rights. It stated further that if the Board is satisfied that a juvenile has committed an offence it would allow the juvenile offender to go home with an advice or admonition or direct him for group counselling, community services etc; direct him to be released on probation as also order such directives as it may think fit. Thus, the main intention of the law makers is the welfare of the juvenile offender.

C. Applicability of the Act

In a Supreme Court case of *Jameel v. The State of Maharashtra*,¹⁶ the applicability of Juvenile Justice Act, 2000,¹⁷ was addressed. When the matter was of unethical sexual intercourse at the age of 16 in 1989, the SC interpreted the intent of the legislature and held that the law (Juvenile Justice Act, 1986) in force at that time of the offense would determine the juvenile status. A later legislation (here, the Juvenile Justice, 2000) cannot be applied retroactively to change the status of an accused from adult to juvenile if they were considered to be an adult under the law applicable when the offense was committed.

D. Constitution and the Juvenile system

In *R.K Tarun v. Union of India & Ors.*,¹⁸ the court held that section 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, violated the rights guaranteed to a citizen under Article 21¹⁹ of the constitution. In another case *Pratap Singh v. State of Jharkhand*,²⁰ it was observed by the court that while defining juvenile criminality or criminal responsibility, the moral and psychological components must be given prime importance. The Juvenile Justice Act, 2000, violated the Article 14 of the Indian constitution that guarantees equality before law. It treated all the juvenile offenders under one criterion, regardless of the severity of their crime. This blanket approach failed to depict the true intent of the legislature as it didn't distinguish between minor offenses and serious crimes.

¹⁵ *Prabhakaran v. State of Tamil Nadu, 1987 AIR 2117.*

¹⁶ *Jameel v. The State of Maharashtra, AIR 2007 SC 971.*

¹⁷ Juvenile Justice Act, 2000

¹⁸ *R.K Tarun v. Union of India, 2022 DHC 5155.*

¹⁹ Indian Constitution, art. 21

²⁰ *Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551.*

Juvenile Justice Act, 2000,²¹ violated Article 15(3)²² which guarantees special provisions for women and children. It treated all the under 18 offenders under the same category, thereby failing to make adequate provisions for younger children. Also, the act's focus on rehabilitation rather than punishment could be seen as inconsistent with the constitutional protections against self-incrimination or double jeopardy guaranteed by Article 20.

E. Key Challenges in Implementing the Juvenile Justice Act of 2000

Although the Juvenile Justice Act, 2000,²³ was adopted in accordance with the International Convention of Rights of the Child, it faced severe criticism due to shortcomings in its interpretation, meaning and true intent of the legislature. The act imposed a rigid sentencing structure regardless of the offense's nature or severity, failing to distinguish between minor infractions and serious crimes. Furthermore, the Act rehabilitation framework was questioned for its arbitrary three-year maximum timeframe, which disregarded the individual time framework of the offenders. The critics of the act also pointed out that the legislation failed to consider the varying levels of cognitive development and maturity among juveniles, instead solely relying on maturity as a determining factor. These issues collectively were responsible for the shortcomings of the Act in addressing the complex system of juvenile delinquency.

2.3.2 Juvenile Justice (Care & Protection of Children) Act, 2015

In the backdrop of the 2012 Nirbhaya Rape Case, in which a juvenile accused received a lighter punishment because of his age, it was realised that there were several loopholes in the JJ Act 2000,²⁴ and it was flawed with implementation issues. The case raised critical questions about the accountability and punishment of juvenile offenders involved in heinous crimes, sparking a revaluation of existing laws. In response to the public outcry and concerns arising from the Nirbhaya case, the Juvenile Justice (Care and Protection of Children) Amendment Act, 2015 was enacted.²⁵ Accordingly, it was laid down under the bill of 2015 that the Juvenile Justice Board will decide whether a juvenile between the age group of 16 to 18 years should be treated as an adult. The juveniles who commit heinous crimes such as murder and rape should be treated as adults.

²¹ Juvenile Justice Act 2000

²² Indian Constitution, art. 15(3)

²³ Juvenile Justice Act 2000

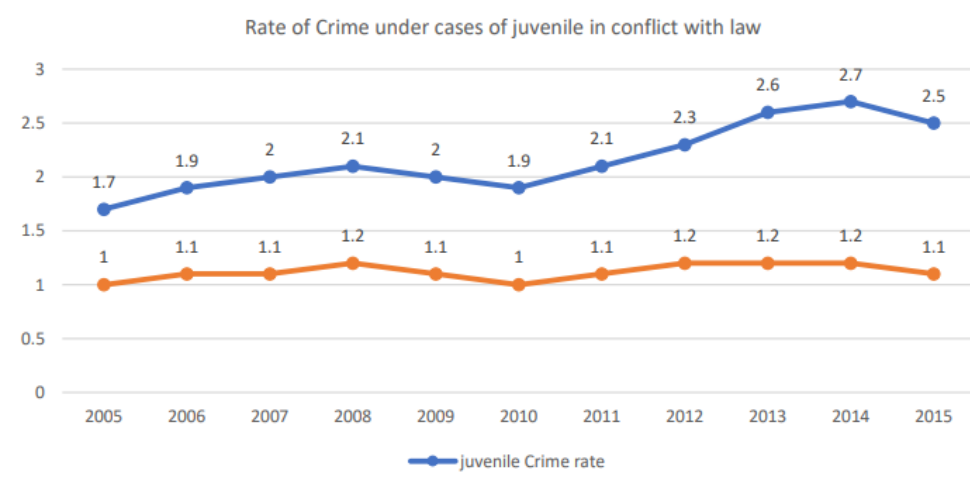
²⁴ Juvenile Justice Act 2000

²⁵ Arkapriya Ghosh, 'The Nirbhaya Case: Legal Analysis of a Landmark Verdict' (2023) <<https://www.theextimes.com/>> accessed 27 August 2024

Fig No. Juvenile Delinquency in India (2008-2013)

S.No.	Year	Juvenile Crimes	Total cognisable crimes	Percentage of juvenile crimes to total crimes
1.	2008	24,535	20,93,379	1.2
2.	2009	23,926	21,21,345	1.1
3.	2010	22,740	22,24,831	1.0
4.	2011	25,125	23,25,575	1.1
5.	2012	27,936	23,87,188	1.2
6.	2013	31,725	26,47,722	1.2

Fig No. Rate of Crimes under cases of juvenile in conflict with law



A. Analysis of Notable Amendments

To address the complexities of juvenile justice and child protection in India, the Juvenile Justice (Care & Protection of Children) Act, 2015,²⁶ introduced comprehensive changes. It extended the preliminary assessment period for juveniles to three months, clarifying that this assessment evaluates the child’s capacity rather than serving as a trial. It emphasizes fair trials in child-friendly atmospheres, protects against disqualifications from convictions, and mandates the destruction of most conviction records after the appeal period. It also mandated training for NCPCR and SCPCR as nodal authorities for implementation. The amendment aimed to balance rehabilitation with accountability, addressing juvenile justice issues more comprehensively.

B. Stringent Aspects of the Act

The act can be a worrisome piece of legislation on some aspects, one of them being the fact

²⁶ Juvenile Justice (Care & Protection of Children) Act 2015.

that more juveniles will be incarcerated, as it is seen that the Act promotes the adoption of a retributive and punitive stance against them. Further, also the Act recommends to adopt Judicial weaver to try juvenile for heinous crimes. Under the new act, juveniles alleged to have committed a heinous crime will be confined to a “place of safety”, which is essentially a place of imprisonment, both during the period of inquiry and after the conviction. This concept is nothing but a gross violation of international norms of human rights, as juveniles who were incarcerated would higher rates of recidivism and poorer educational attainments than juveniles who were not detained in correctional institutions The Act has further violated the fundamental rights guaranteed under Article 14²⁷ and Article 15(3)²⁸ of the Constitution, as out of 472 million children of the country, only 1.2% have committed crimes. And that, of these, only 2.17% had committed murder and 3.5% had committed rape. Since the act has come into force, it has evidently jeopardised the other 99.98% children in this country.

A study stated that although the proposed policy under the Act of 2015 was contrary to the established principles of juvenile justice, the solution wasn't reversion to the position under the act of 2000 with focus on its implementation. They hold that the Act of 2000 didn't take into account that heinous offences should carry with them a higher punishment than just three years, which falls short of guaranteeing effective rehabilitation, After an analysis of the Acts, they concluded that the Act of 2000 was more offender centric and didn't acknowledge the plight of victims, They suggest that while retaining the emphasis on rehabilitation , principles of restorative justice ought to be annexed as the mandatory second limb for the formulation of a comprehensive juvenile justice policy in India.²⁹

3. CONTEMPORARY CHALLENGES IN THE JUVENILE JUSTICE SYSTEM

3.1 AGE DETERMINATION AND DEBATE OVER “CHILDREN AS ADULTS”:

The 2015 Act, distinguished between minor, serious and heinous offenses and proposed that juvenile offenders between the ages of sixteen and eighteen who commit ‘heinous offences’ be tried as adults in the criminal justice system. The newly amended act itself states that no juvenile offender who comes under the meaning of the word child with conflict with law as mentioned in sub – section 13 of Section 2 of the Act shall not be tried as adult and shall sent

²⁷ Indian Constitution, art 14

²⁸ Indian Constitution, art 15(3)

²⁹ Bajpai, G.S., *Juvenile Justice: Impact and Implementation in India* (2019, Bloomsbury Publishing).

to Child Care Centre or any Rehabilitation Centre (till the offender attain the age of 21 years and then he or she may shift to the jail or prison). Hence it is to concluded that the current Juvenile laws in India, considers age determination as main thing to decide as whether the offender falls under the purview of Juvenile Justice Act or not.³⁰ The Act empowered the Juvenile Justice Board ('JJB') to determine the level of maturity of the juvenile over sixteen years of age, and accordingly transfer the juvenile to adult courts.

Fig No. Age Wise Distribution of Juvenile Delinquents 2005-2015

Year	7-12 years	Percentage of total	12-16 years	Percentage of total	16-18 years	Percentage of total	Total apprehended
2005	1645	5.0	13090	40.1	17946	54.9	32681
2006	1595	5.0	12535	39.0	18015	56.0	32145
2007	1460	4.2	12114	35.1	20943	60.7	34527
2008	1281	3.7	12272	35.6	20954	60.7	34507
2009	1133	3.4	10741	31.9	21768	64.7	33642
2010	927	3.1	10123	33.4	19253	63.5	30303
2011	1211	3.6	11019	32.5	21657	63.9	33887
2012	1286	3.2	12063	30.3	26473	66.5	39822
2013	1330	3.1	13346	30.7	28830	66.3	43506
2014	872	1.8	11220	23.3	36138	74.9	48230
2015	601	1.5	11052	26.7	29731	71.8	41385

Source – Author's interpretation of the NCRB data

The Madhya Pradesh High Court in a recent case of **Budhiya v. The State of Madhya Pradesh, 2021**,³¹ denied bail to a 15-year-old juvenile who raped a minor girl. The Bench stated that because the age of a child in heinous crimes is still preserved below 16 years, it provides protection to delinquent under the age of 16 years to commit heinous offences.

3.2 LEGAL AND ETHICAL IMPLICATIONS OF LOWERING THE AGE FOR ADULT TRIALS

The juvenile justice system is centred around the rehabilitation of young offenders, recognizing that children, due to their psychological immaturity are more amenable to reform. By lowering the age for adult trials, the focus shifts from rehabilitation to punishment, reflecting a more retributive justice model.

The Act also conflicts the United Nations Convention on the Rights of the Child (UNCRC), which defined a child as any individual below the age of 18 years and advocates for the use of rehabilitation rather than punitive measures. This legal shift also undermines the Beijing Rules (1985), which recommended that young offenders should only be subject to measures that

³⁰Nayer, G., 'Contemporary Issues in Juvenile Justice' <<https://www.academia.edu/download/89789231/479928812.pdf>> accessed 14 September 2024

³¹ Budhiya v. State of Madhya Pradesh, LL 2021 SC 696.

foster their rehabilitation.

Juveniles tried and sentenced as adults are often placed in adult correctional facilities where they are exposed to hardened criminals and stringent environments. Although the specific environmental conditions within youth detention facilities vary widely, all detained youth are removed from the typical social context and placed in an atypical social context during a time of extensive social development.³² This can lead to greater recidivism, as juveniles are more likely to get influenced negatively rather than reformation. Youth detained in adult facilities are vulnerable to exploitation by older inmates.³³ In this sense, incarceration may stall adolescents' psychosocial development by reducing opportunities for normative social experiences, disrupting contact with key social others (e.g., parents, friends, teachers, mentors) and increasing contact with antisocial others (i.e., fellow inmates).³⁴ Because delinquent behaviour results from a dynamic interaction between developmental immaturity and bonding to antisocial socializing units, this may increase the likelihood of future delinquent behaviour.³⁵

Further, many juveniles who commit crimes are found to have undiagnosed mental health issues, trauma, or developmental disorders which may be ignored due to lowered age for adult trials.

3.3 SOCIAL INTEGRATION AND REHABILITATION

Juveniles tried and convicted as adults face social stigma that can affect their ability to reintegrate into the society. This would lower their chances of leading a normal life, the ethical dilemma would be that whether the society should sacrifice the long-term welfare of juveniles for short term punitive measures and satisfaction.

With regards to Rehabilitation, the parliamentary Standing Committee, in its 264th report, noted that while there has been notable research as far as the condition of juvenile homes are concerned, none of these studies have addressed the need to trace the level of reform and rehabilitation of children in conflict with law after they are released. More importantly, there

³² Caitlin Cavana, 'Healthy adolescent development and the juvenile justice system: Challenges and solutions' (2022) <<https://www.srca.org/>> accessed 16 September 2024

³³ Ahlin, E. M., 'Taking stock of sexual victimization among youth in correctional facilities: Is it time to apply the evidence to reduce risk' (2020) <[https://doi.org/10.1016/S0005-7894\(96\)80023-2](https://doi.org/10.1016/S0005-7894(96)80023-2)> accessed 17 September 2024

³⁴ Caitlin Cavana, 'Healthy adolescent development and the juvenile justice system: Challenges and solutions' (2022) <<https://www.srca.org/>> accessed 16 September 2024

³⁵ Scott, E., Duell, N., & Steinberg, L., 'Brain development, social context, and justice policy' (2018) <https://openscholarship.wustl.edu/law_journal_law_policy/vol57/iss1/8> accessed 10 September 2024

is no data or record with regard to juveniles who committed crimes after attaining majority or leaving the homes. Training and treatment of juvenile offenders is likely to go to waste if their difficult transition from institution outside world is not helped and guided by humane and efficient after-care programmes.³⁶

Section 3 of the 2015 Act, envisages providing a ‘fresh start’ to a juvenile delinquent, directing the removal and deletion of records of delinquency except in ‘special circumstances. Though espousing the need of repatriating a juvenile back into the society, the exception of ‘special circumstances’ takes us a step backwards.

A recent Supreme Court case also highlighted the importance of the ‘fresh start’ principle. The respondent, Ramesh Bishnoi, was denied a job appointment due to his previous record that highlighted his conviction as a juvenile, which was not sealed or removed. Upholding the High Court’s order of reinstating Bishnoi’s appointment, the Supreme Court held that the principle of fresh start read with the rehabilitative objective of the 2000 and the 2015 Act should ensure that an individual is not prevented from securing a job. The SC further noted that “*even if he had been convicted, the same could not have been held against him from getting a job, as admittedly he was a minor when the alleged offences were committed and the charges had been framed against him*”.

3.4 JUDGE’S DILEMMA: WHAT ACTIONS DO THEY TAKE AND HOW DO THEY APPROACH THEM?

The issues judges have to deal with in juvenile cases are testimony to the fact that a legal system needs to be better designed to handle such matters. Ideally, there are legal principles available; however, there exists a significant struggle in translating such principles into practice and having direct implications on the life of a juvenile inside the justice system. Another landmark case which defined such apprehensions was Ashwani Kumar Saxena v. State of Madhya Pradesh.³⁷

While there have been instances in which legislation was followed appropriately, evidence from the field reflects a lingering mis framing of adolescent development at the hands of those

³⁶ G.S. Bajpai, ‘Juvenile Justice: Impact and Implementation in India’ (2019) <[Juvenile Justice: Impact and Implementation in India - G S Bajpai - Google Books](#)> accessed 16 September 2024

³⁷ Ashwani Kumar Saxena v. State of Madhya Pradesh, AIR 2013 SC 553.

in the judicial system. The Juvenile Justice Act of 2015 is a step forward as it mandates training for members of juvenile justice boards but yet disappointingly fails to take specific, effective steps to train magistrates who are so often essential in these proceedings. Such a lag in training can lead to uneven implementation of the law and sometimes less-than-optimum support for youths.

The shift of cases to the adult criminal justice system further denies young offenders' chances for rehabilitation, mostly condemning them to constantly reoffend and not to be reintegrated into society. To this end, there is a great need for uniform training as well as follow-up support to judges and other officials operating in the juvenile justice system. Thus, we would be able to fulfil the letter and spirit of the principles that govern juvenile justice more effectively, whereby the rights and developmental needs of young persons are promoted within the legal framework.

4. INDIA'S JUVENILE JUSTICE SYSTEM AND ITS ALIGNMENT WITH GLOBAL STANDARDS

The laws under Indian juvenile justice system have always tried to strike a balance between accountability and rehabilitation with core emphasis on the interests of the child. The juvenile system in India is founded on principles of non – discrimination, rehabilitation, and safeguarding children's welfare which aligns with international standards especially the United Nations Convention on the Rights of the Child (UNCRC). In comparison to other systems like United Kingdoms and United States of America, the juvenile system of India emphasizes more on rehabilitation.

To evaluate the fairness and efficiency of India's Juvenile System of India, it must be considered in the context of international human rights standards for juvenile offenders. Let us analyse the influence of global norms on the treatment of juvenile offenders and how they assist in shaping Indian laws and policies.

4.1 UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD (UNCRC)

The United Nations Convention on the Rights of the Child (UNCRC) was adopted in 1989 to set out the civil, political, economic, social, health and cultural rights of children. The United Nations Convention on the Rights of the Child (UNCRC) was adopted to succeed the 1924

Declaration of the Rights of the Child by the League of Nations. The UNCRC standardizes international law by determining the basic rights of children and parents, protection from abuses, parental responsibilities, and legal representation, among others. Notably, the UNCRC expressly forbids the use of capital punishment upon minors and by extension those who commit crimes while minors³⁸.

It is based on certain leading principles which are demonstrated below –



4.2 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Political and civil rights are safeguarded under the ICCPR, to which India is a signatory. However, these protections don't entirely cover juvenile offenders. India has placed a reservation on Article 10, which deals with the treatment of young offenders, signalling its intent to keep its juvenile justice system separate from the obligations of this article.

Over time, India's juvenile justice system has adopted several reforms influenced by the Beijing Rules. These guidelines encourage finding alternatives to detention and aim to reduce the length of time young offenders are held, aligning with India's focus on rehabilitation and reform within its juvenile justice framework.

³⁸Juvenile Justice Centre, 'United Nations Convention on the Rights of the Child' (2018) <[United Nations Convention on the Rights of the Child \(UNCRC\) - Juvenile Justice Centre](#)> accessed 15 September 2024

4.3 THE RIYADH GUIDELINES (UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY)

India's approach to addressing the root causes of juvenile crime has been shaped by the Riyadh Guidelines, which focus on preventive measures for juvenile delinquency. The Indian government recognizes the importance of tackling issues like poverty, education, and family stability as key factors in reducing juvenile crime. India's commitment to safeguarding the rights and welfare of juvenile offenders is evident through its alignment with international human rights standards, including its ratification of the UNCRC and the integration of crucial principles from global recommendations. This international framework ensures that juvenile offenders in India receive the care and attention they need, with a strong emphasis on rehabilitation and focusing on the child's well-being within the justice system³⁹.

5. YOUTH JUSTICE MODELS: TRACING THEIR ORIGINS AND EVOLUTION ACROSS NATIONS

Exploring the origin and evolution of juvenile system is a multifaceted task. There are five – youth justice models that have influenced this system - the welfare model, the justice model, the minimum intervention model, the restorative justice model, and the neo-correctionalist model. It is to be noted that these models are considered the ideal type that highlights major differences in the approaches adopted to treat young offenders and no system corresponds exclusively to one model. Most of the systems have evolved over time and share multiple approaches. It gives rise to a question whether we can find any common pattern in the evolution of juvenile systems nationwide. To answer the same let us first discuss the characteristics of each model.

5.1 THE WELFARE MODEL

This model adopts a positivist perspective, according to which the offenses committed by juveniles are influenced by social or environmental factors which are not under the control of the individual. The main idea of this model is to look for the 'best interests' and 'needs' of children. It emphasizes more on support and treatment rather than punishment.

The main feature of this model is that it uses same tribunals for both – the children in need of care as well as those in need of legal issues. Its jurisdiction extends to 'status offenses' like

³⁹ [An-Analysis-of-the-Juvenile-Justice-System-and-Order-in-India \(1\).pdf](#)

truancy. Also, it allows intervention of courts even before the offence is committed and includes informal procedures without legal requirements. Social scientific experts such as psychologists and social workers advise decision-makers to exercise their discretion in the 'best interests of the child.

5.2 THE JUSTICE MODEL

This model adopts a classicist approach which is opposite to the welfare model's positivism. It emphasizes that young people possess free will and are accountable for their actions subjected to exceptions. This system focuses on the deeds of the child rather their welfare needs. The primary goal of the same is to determine whether the offender is guilty or innocent and if they are convicted it should be followed by punishment based on the seriousness of the crime.

The Justice model pays attention towards procedural rights comprising of the right to be informed of charges, legal representation, a fair hearing and the presumption of innocence. However, granting sentence for a punishment resemble those in adult courts which is focused on proportionate and consistent penalties.

5.3 THE MINIMUM INTERVENTION MODEL

This model is rooted in the criminological theory named – 'labelling theory'. This theory suggests formal actions against juveniles have the potential to commit more harm than good. Also, it can be noted that keeping the offenders in custodial institutions may expose them to more criminal influences which in turn lead to deeper involvement in crime leading to a cycle of 'secondary deviance'.

It includes avoiding custodial sentences unless absolutely necessary. Furthermore, intervention of the judiciary should be cautious and the courts should try not to intervene in minor cases that could have resolved informally. Along with this, minor offenses should be decriminalized in order to remove the threat of criminal sanctions. Serious offenses should be depenalized and should rather be handled through civil proceedings and in child sensitive institutions.

5.4 THE RESTORATIVE JUSTICE MODEL

This model offers a different view of crime as compared to the traditional criminal justice. This

model focuses on the harm done to the victim rather than the offence committed against the State. It believes that the needs of the victims are often overlooked in the conventional systems. The traditional approaches leave the responsibility of dealing with offenders to state agencies while the restorative justice involves offenders, victims and their communities in deciding how to address the crime. The emphasis is on the specific interests of those directly affected, rather than the broader “public interest.”

It believes that there should be less reliance on prisons and also it recognized that incarceration often hinders meaningful restoration.

5.5 THE NEO- CORRECTIONALIST MODEL

This is a punishment driven approach which focuses more on crime prevention. It is centred around tough interventions aimed at reducing reoffending, even if it means harsher penalties. The primary goal of this model is to provide efficient juvenile system by increasing the speed of the processes and enhancing coordination between criminal justice agencies. Key policies under the neo-correctionalist model include **mandatory penalties**, progressive sentencing for repeat offenders, fast-tracking young offenders through the justice system, and encouraging **inter-agency collaboration**.

This is how the juvenile justice system has evolved through the influence of five key models where each model has its own approach to handle these young offenders. Although no system adheres solely to one model, many nations incorporate a blend of these approaches, reflecting varied philosophies and social priorities in juvenile justice.⁴⁰

6. FLAWS IN THE PRESENT JUVENILE JUSTICE SYSTEM

The shift of India’s juvenile justice system towards retributive approach has a lot of issues. It is believed that to serve the best interests of children, the most effective way is to incline towards rehabilitation model. Let us delve into the issue further to highlight various flaws in our current juvenile system.

The first thing is that there is simply no basis to uphold the notion of an alarming rise in crimes committed by children in conflict with the law. Issues to be tackled here are two: first, the data

⁴⁰James Dignan, ‘Juvenile Justice Systems: A Comparative Analysis’ (2010) <https://www.oijj.org/sites/default/files/documentos/documental_1263_en.pdf> accessed 10 September 2024

does not generate reason for the shift to a retributive model given the insignificance of juvenile crime; and second, the data itself is full of inconsistencies.

However, in fact, in the year 2015, it was revealed that the percentage of crime committed in India by CCL was 1.2% and the number is considered low by the international standards. This percentage is so low that the crimes committed under this head fall into a negligible percentage that often falls under consensual sexual activities between CCL misrepresented as criminal offenses. Moreover, the juvenile crime percentages of metro cities and states and Union territories have witnessed a declining trend in the period of 2016-18.

The data collected itself is not trustworthy as it is garnered and filed in a manner that makes it unreliable. The National Crime Records Bureau monitors crime in India and uses the number of FIRs or First Information Reports as its basis. However, FIRs can't hope to fill most convictions, and it simply distorts the natural crime rate. Once again, the data is presented in such a way that the impact is sensationalized, although, statistically, it is well managed. Even the new Juvenile Justice Act falls short of making proper procedural protections for children in the age group of sixteen to eighteen years. There is a prima facie issue that the preliminary assessment of maturity has no scientific basis, and the Act does not demand greater proof at the process of decision-making to either try CCL as adults. This is important because children fundamentally differ from adults and should have different considerations in law. Another serious omission is in the areas of aftercare and rehabilitation services. Most institutions tasked with rehabilitation are grossly under-resourced and inadequately trained. There is huge variance in quality of services being offered from state to state. Most of the institutions in the country do not even reach the minimum threshold of registration under the new Act. Reports of rampant abuse and lack of proper gender and age segregation within these facilities remain a serious issue.⁴¹

⁴¹ Crimes by Children in Conflict with the Law, 'Heinousness, Acceptability, and Age of Adulthood: A Comprehensive Critique of the Present Juvenile Justice System' (2020) 32.1 NLSI Rev 69

7. PHILOSOPHICAL PERSPECTIVE: INSTITUTIONAL FETISHISM AND DECONSTRUCTION OF THE JUVENILE JUSTICE SYSTEM IN INDIA

Institutional fetishism refers to an over-reliance on established systems and structures that focus more on procedural compliance rather than attending to the actual needs and well-being of people, particularly juveniles. In India, it has the form of strict adherence to bureaucratic protocols, which often override the very goals of rehabilitation and reintegration. The criticism is focused on how these institutions, instead of providing scope for reforming in a positive manner, merely continue to provide custodial and punitive responses that overlook This philosophical approach provokes a critical analysis of paradigms in juvenile justice by questioning the effectiveness of institutions in place and their utility in changing the course of young offenders. It is based upon the fact that it would encourage a paradigm shift focusing upon the child-centric approach.⁴²

8. SUGGESTED REFORMS TO THE INDIAN JUVENILE JUSTICE SYSTEM

While the new Juvenile Justice Act is an attempt to comply with the best interest criteria of the child, most provisions are biased towards retributive justice that poses more harm not only to the children but also to the larger society. In that regard, this section recommends some reformative changes to the existing system in full recognition that public safety is no less an important concern in the sentencing of juvenile justice. Inasmuch as rehabilitation is integral to the Act, there are certain circumstances under which more drastic steps are warranted. The Nirbhaya case acted as a catalyst to media sensationalization of crimes committed by youth. The political parties were quick to make promises in line with the desires of the public. Under such scenario, the full abolition of these very provisions may not be possible. Therefore, it is suggested to make a balance that also works to the benefit of CCL.

A rehabilitative juvenile justice system calls for not only fiscal investment but also human resources, involving an enormous effort from the State. But, again, this would be worth the price. Rehabilitative and reformative intervention showed considerable rehibition of recidivism rates. Although such a step entails much investment, this will eventually prove to

⁴² M Mehta, 'Children No More? A Feminist Critique of the Juvenile Justice Transfer System in India' (2019) 12 NUJS L. Rev.

be for the good of the society, children, and the victims at large. It may eventually salvage costs in the prosecution of CCL and juvenile homes. The investment in the future of children was long overdue. There are some very attractive reasons why we should desist from adopting a "tough on crime" attitude when it comes to the youths and their offenders. Instead, all provisions need to be targeted so that CCL members are reintegrated into society.⁴³

By investing in the future of the juveniles and ensuring their reintegration into society, the system can actually benefit not only the children but the crime levels and wider social costs as well. A balanced approach which would require upholding public safety alongside rehabilitation is both necessary and long overdue.

8.1 STRENGTHENING CHILD WELFARE INSTITUTIONS

Improved, upgraded, and given the more appropriate infrastructure child welfare institutions, along with more proper training and holistic rehabilitation programs, would better rehabilitate children in conflict with the law. All these will achieve a safe environment for a child, access to education and mental health, and targeted support system so that the child becomes better through child welfare institutions. Accountability measures may be supplemented by facilitating NGO and community organization partnerships.

8.2 ROLE OF EDUCATION AND COMMUNITY INVOLVEMENT

Some interventions can involve the early years and community-based programs to stop juvenile delinquency. These would include educational programs with life skills, conflict resolution, or emotional regulation. The avenue that could build their support networks into engaging in positive social behaviours and thus not being isolated would include involvement of the community. Programs aimed at bringing families and other stakeholders in the community may build a protective environment for children and discourage deviant behaviour.

8.3 PSYCHOSOCIAL SUPPORT AND TRAUMA-INFORMED APPROACHES

More emphasis on trauma-informed care is also seen in the setting of juvenile justice to meet the psychological needs of the youthful offenders. Trauma-informed care recognizes the

⁴³ Pillai, S Upadhyay, 'Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India' (2017) 10 NUJS L Rev 49

trauma effect on behavior and builds an environment and approach that is safe and supportive. Training staff to be sensitive to trauma tends to open up more responsive interactions and interventions, which helps individuals heal and rehabilitate. More could be done from these rehabilitation processes by considering mental health support and counselling in order to deal with the real issues that lead to delinquent behaviour.

8.4 INVOLVEMENT OF NGOs AND CIVIL SOCIETY

Key to the rehabilitation of juvenile offenders who ultimately reintegrate into society is cooperation with NGOs and civil society bodies. These organizations can make resources, mentorship, and other support services available to each individual child. The juvenile justice system can effectively improve positive outcomes and minimize recidivism by engaging in partnerships that find strengths and leverage expertise within communities. An advocacy effort promotes and increases awareness and mobilizes more resources because civil society is involved in the cause of children's rights and welfare⁴⁴.

DATA INTERPRETATION AND ANALYSIS – EMPIRICAL STUDY

The data collected through the method of circulated google forms shows the perception and perspective of the respondents in context of juvenile justice system in India. The sample size of the survey includes 100 citizens of ages starting from 18 years.

1. DEMOGRAPHY

i. Age

The sample size consists of citizens classifies into five categories – 12-18,18-25,26-35, above 35 years. Here, 6% people are from age group 12-18 years category. 18% from 18-25 years, 16% from 26-35 years, 60% from above 35 years.

ii. Gender

Out of 50 samples collected 13 were females while 37 were males.

2. EDUCATIONAL QUALIFICATION

Out of sample size of 50 people, 2 belong to first category, 3 belong to second category, 22 belong to third category and 23 belong to fourth category.

⁴⁴ A Rahul Dalmia, SS Kokkalera, 'Re-Examining India's Juvenile Justice Framework: A Call to Recognize a Juvenile's Mitigated Culpability and Potential for Reform' (2021) 12.1 JILS 1

3. FAMILIARITY WITH THE JUVENILE JUSTICE ACT

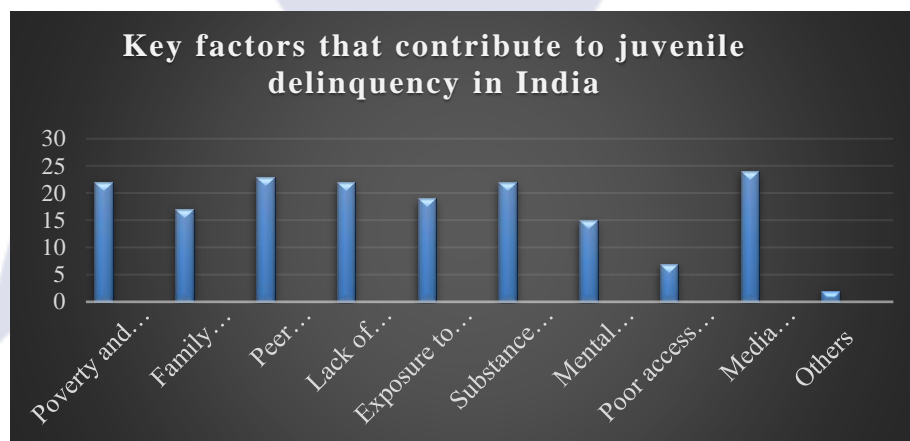
The survey indicates that a significant majority, 64%, are fully aware of the topic, while 36% have varying degrees of awareness, suggesting a strong overall familiarity among the population.

4. EVOLUTION OF JUVENILE SYSTEM FROM HISTORICAL TIMES TO PRESENT DAY

16% people believed that the juvenile system in India has drastically improved while 46% people agreed that it has somewhat improved. According to 28% people there is no significant change and 5% believed that it has worsened.

In general opinion is positive, but it still has some scope for improvement. Though recognition of progress appears in data, most of them demand more significant changes.

5. KEY FACTORS THAT CONTRIBUTE TO JUVENILE DELINQUENCY IN INDIA



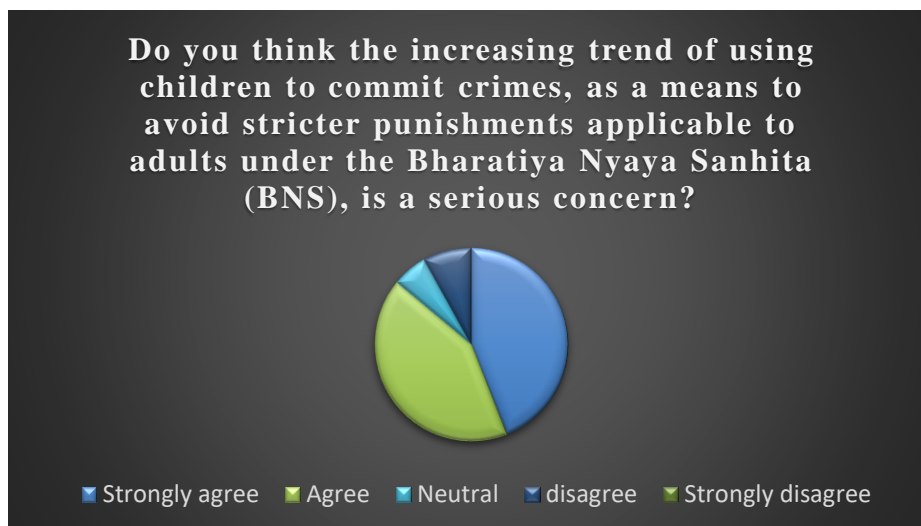
On analysing the responses, it was seen that people were convinced that **poverty and economic stability** contributes to 22% juvenile delinquency in India. **Family dysfunction or lack of support** was given 17% prevalence. 23% was attributed to **peer pressure and influence**, 22% was given to **lack of education and opportunities**, 19% to **exposure to violence in the community**, 22% to **substance abuse (alcohol, drugs)**, 15% was given to **mental health issues**, 7% was given to **poor access to recreational activities and programs**, 24% to **media influence** and 2% prevalence was given to others.

6. WHAT SHOULD BE THE PRIMARY FOCUS OF LAW FOR JUVENILE OFFENDERS: PUNISHMENT OR REHABILITATION?

Majority of people that is 58% believed that the primary focus of law should be on both punishment and rehabilitation. 12% answered that law should focus on punishment

while 24% agreed that focus should be on rehabilitation.6% of the respondents were not sure about the same.

- 7. DO YOU THINK THE INCREASING TREND OF USING CHILDREN TO COMMIT CRIMES, AS A MEANS TO AVOID STRICTER PUNISHMENTS APPLICABLE TO ADULTS UNDER THE BHARATIYA NYAYA SANHITA (BNS), IS A SERIOUS CONCERN?**



On analysing the responses, 44% strongly agreed and 8% disagreed with the question above. 42% answered with agree, 6% of them were neutral.

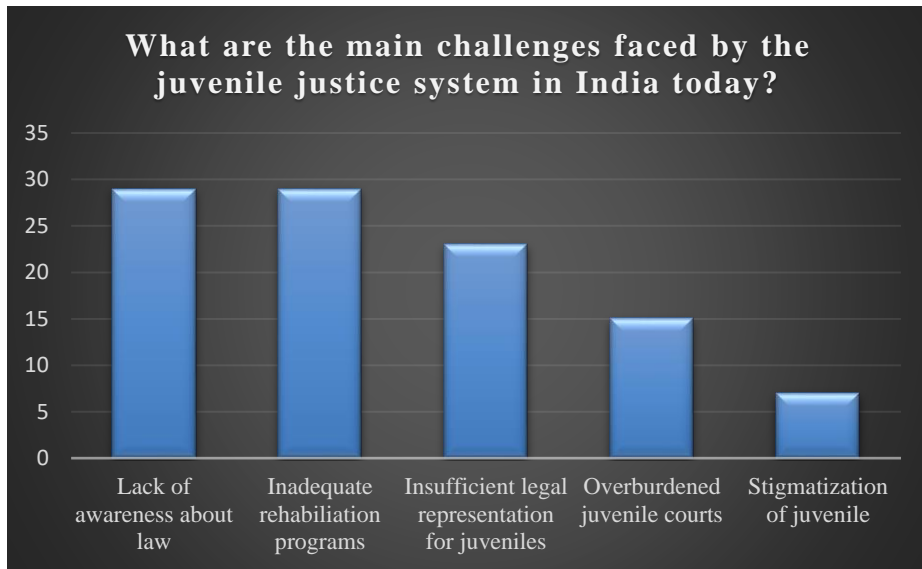
- 8. IN CASES WHERE CHILDREN ARE USED BY ADULTS TO COMMIT CRIMES (AS OUTLINED IN THE BNS), SHOULD STRICTER PENALTIES BE IMPOSED ON THE ADULTS INVOLVED?**

To this question 68% strongly agreed while 22% agreed. 8% had a neutral stand and 2% disagreed.

- 9. DO YOU SUPPORT THE DECISION TO LOWER THE MINIMUM AGE WHICH IS CURRENTLY 16 FOR JUVENILES TO BE TRIED AS ADULTS IN CASES OF HEINOUS CRIMES?**

On analysing the responses, it was seen that 27 people agreed and supported the decision while 9 of them did not support the decision. 12 of them said that it depends on specific case and 2 of them were unsure.

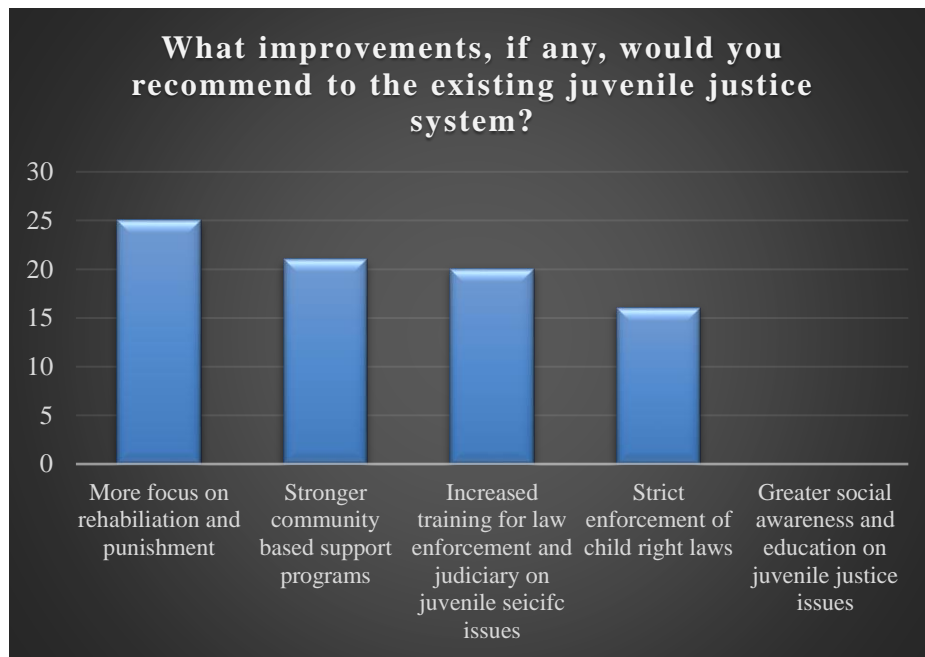
- 10. WHAT ARE THE MAIN CHALLENGES FACED BY THE JUVENILE JUSTICE SYSTEM IN INDIA TODAY?**



11. HOW CAN CHILD-CENTRIC JUSTICE APPROACHES BE BETTER INTEGRATED INTO THE GENERAL CRIMINAL JUSTICE SYSTEM?



12. WHAT IMPROVEMENTS, IF ANY, WOULD YOU RECOMMEND TO THE EXISTING JUVENILE JUSTICE SYSTEM?



13. IN YOUR OPINION, HOW CAN INDIA BETTER BALANCE THE PROTECTION OF SOCIETY WITH THE RIGHTS OF JUVENILE OFFENDERS?

Strict action against adults who promote juvenile offenders and strong law enforcement can work its way to strengthen the juvenile justice system. Increasing awareness and regulation of social media can help lead legal rights and consequences toward building social acceptance of juvenile laws, especially for victims. Rehabilitation rather than punishment should be promoted among juveniles so they may not face any liability in the future. Some more reforms suggested include separate juvenile courts, training of all judges and police officials, and providing legal representation to all of them. At-risk youth should receive counselling, education, and vocational training through community-based programs.

The important steps involve updating the Juvenile Justice Act in accordance with the international standard, increasing the age of criminal responsibility, and enhancing the delivery of support services, including child-friendly police stations. This will also call for efforts and considerations for data-driven policy action. Community engagement and collaboration with NGOs will enhance capacity. Redemption and detoxification can be achieved through non-punitive measures such as issuing warnings for minor offenses and the establishment of fast-track courts without increased stigma. Education and awareness about comprehensive counselling of minors are very important factors to create a supporting environment around the rehabilitation of youths.

CONCLUSION

The evolution of child-centric justice approaches in India reflects a growing recognition of the rights of a juvenile offender and their special status within the Indian legal system. Historically, the treatment of juveniles in conflict with law was based on a punitive model which influenced future legislators to introduce changes in the legislation with regards to the rights of a juvenile. Thereby significant reforms, particularly through the Juvenile Justice (Care and Protection of Children) Act and its amendments, have shifted the focus towards rehabilitation, reformation and reintegration of children. Despite these advancements, the challenges in the contemporary times persist resulting from systemic gaps, inconsistent implementation and societal stigmatization. Therefore, to uphold the best interests of children, there is a pressing need for continued reforms, proper resource allocation and a shift towards juvenile offenders. India's child-centric justice approach must continue to evolve to suffice the need of the hour and to control emerging issues, including the growing involvement of children in heinous crimes. By adapting to these challenges, the system can ensure a more holistic and effective approach that upholds the well-being of the society as a whole.

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