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**A CRITICAL APPRAISAL OF THE JUVENILE JUSTICE
CARE AND PROTECTION OF CHILDREN ACT 2015
COLEEN GAPS, CHALLENGES AND
RECOMMENDATIONS FOR REFORM**

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College - Amity University, Noida

Year - 5th year

PREFACE

Within the intricate web of discussions surrounding juvenile justice lies a profound testament to society's unwavering commitment to the nurturing, safeguarding, and rehabilitation of its most vulnerable constituents. Embedded deeply within this narrative are the fundamental principles of compassion, equity, and the relentless pursuit of a brighter future for children ensnared in the complex web of conflict with the law or in dire need of care and protection. In embarking upon this dissertation, we embark on a transformative journey through the labyrinthine complexities of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), meticulously dissecting its multifaceted provisions, meticulously scrutinizing its intricate implementation, and fervently envisioning pathways towards a more equitable, compassionate, and inclusive juvenile justice system in the vibrant tapestry of India's societal fabric.

At the heart of this profound exploration lies a resolute acknowledgment of children not merely as passive subjects of justice but as vibrant bearers of inalienable rights, inherently deserving of dignity, compassion, and relentless protection from harm. Firmly rooted in the timeless principles enshrined within the United Nations Convention on the Rights of the Child (UNCRC), our inquisitive inquiry delves deep into the myriad of crevices, confronting the gaps, challenges, and transformative opportunities that lie within the expansive contours of India's juvenile justice framework. Extending beyond the traditional realms of legal doctrine, our narrative embraces a rich tapestry of interdisciplinary perspectives, drawing inspiration from the realms of psychology, sociology, and human rights studies to enrich our collective understanding and inform the discourse surrounding policy formulation and implementation.

Essential to our discourse is an unwavering commitment to the augmentation of infrastructure and the

enhancement of capacity within the juvenile justice apparatus. Confronted with the stark realities of chronically understaffed Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs), we find ourselves juxtaposed against the aspirational ideals of timely intervention and child-centric services. Propelling our collective inquiry forward is an impassioned call to action for policymakers to invest wholeheartedly in the allocation of vital resources, comprehensive training initiatives, and the establishment of child-friendly infrastructure, thereby ensuring that the promise of justice transcends the realms of mere abstraction and manifests as a tangible reality for every child in need.

As we chart the course for the future, our moral compass remains steadfastly guided by the timeless principles of collaboration, innovation, and evidence-based practice. Fervently advocating for a paradigm shift towards preventive measures, early intervention, and community engagement, we seek to foster a vibrant culture of empathy and solidarity in our collective pursuit of child well-being. Through this interdisciplinary odyssey, we aspire to ignite dialogue, inspire action, and catalyze transformative change within India's juvenile justice landscape, steadfastly ensuring that every child finds solace, justice, and unwavering hope within the embrace of a compassionate, equitable, and inclusive society.

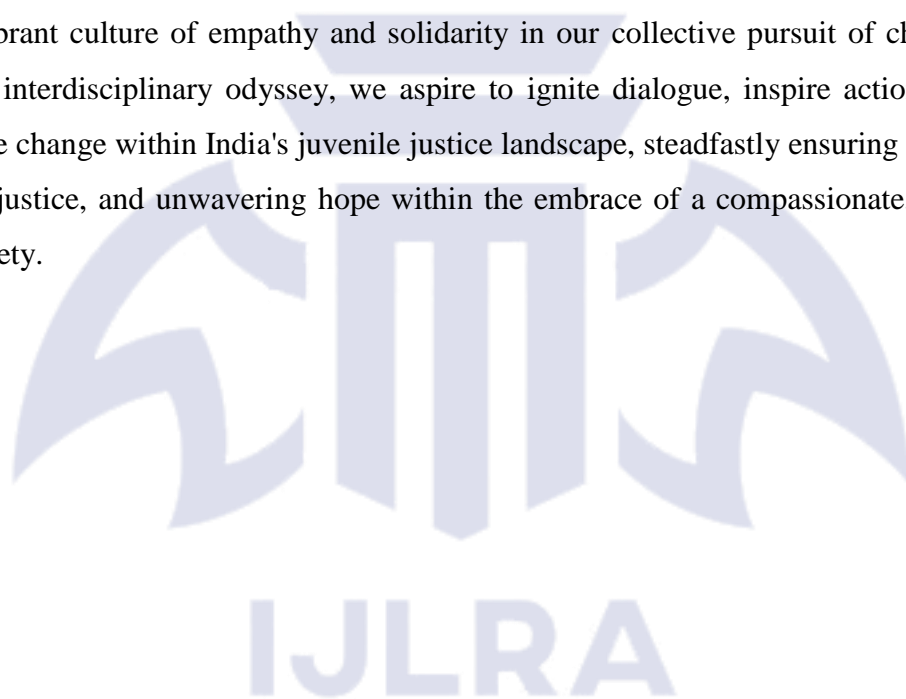


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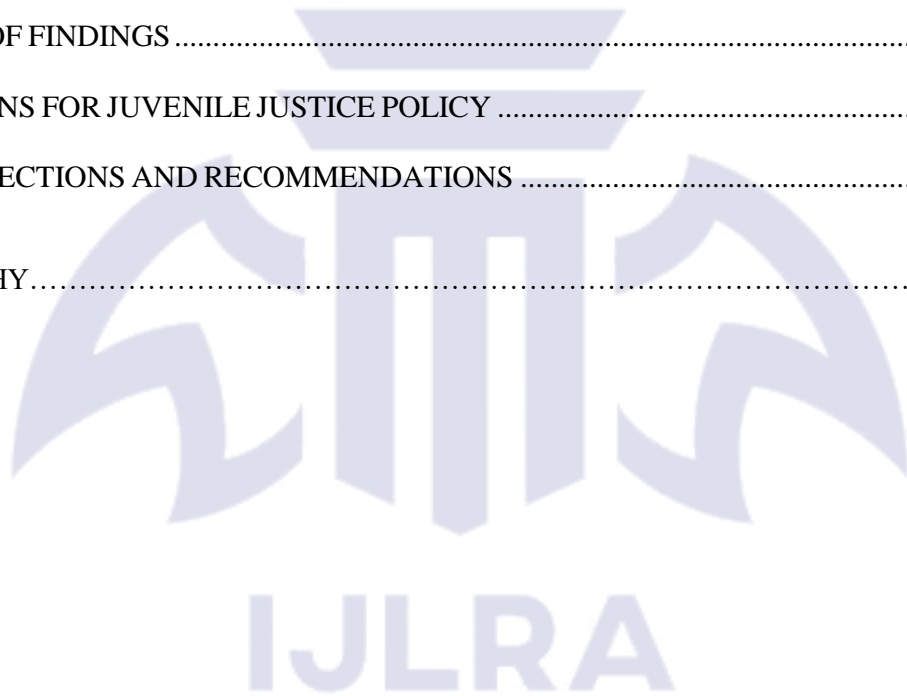
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List Of Abbreviations & Cases

ACHR	ADVISORY COUNCIL ON HUMAN RIGHTS
ACRWC	AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD
ACYS	ADVISORY COMMITTEE ON YOUNGESTERS SECURITY
AIR	ALL INDIA REPORTER
BCPC	BEST CHANCES FOR PROTECTING CHILDREN
BJSA	BHARATIYA JUVENILE SHIKSHA ABHIYAN
BJW	BHARATIYA JUVENILE WELFARE
BPL	BELOW POVERTY LINE
CARA	CENTRAL ADOPTION RESOURCE AUTHORITY
CCIs	CHILD CARE INSTITUTIONS
CCPJ	COMMITTEE FOR CHILD PROTECTION AND JUVENILITY
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
CF	CHILDLINE FOUNDATION
CFCI	CHILDREN IN CHALLENGING CIRCUMSTANCES INITIATIVE
CFR	CHARTER ON FUNDAMENTAL RIGHTS

CJM	CHIEF JUDICIAL MAGISTRATE
CNCP	CHILD IN NEED OF CARE AND PROTECTION
CPC	CODE OF CIVIL PROCEDURE
CPDC	COMMISSION FOR PROTECTION OF CHILD RIGHTS
CRC	CONVENTION ON THE RIGHTS OF THE CHILD
CRIN	CHILD RIGHTS INFORMATION NETWORK
CWCs	CHILD WELFARE COMMITTEES
DCPUs	DISTRICT CHILD PROTECTION UNITS
DPCC	DELHI COMMISSION FOR PROTECTION OF CHILD RIGHTS
FCPC	FORUM FOR CRACKING PROTECTION OF CHILDREN
HRLN	HUMAN RIGHTS LAW NETWORK
ICDS	INTEGRATED CHILD DEVELOPMENT SERVICES
ILO	INTERNATIONAL LABOUR ORGANIZATION
INCPCR	INDIA NETWORK FOR CHILD PROTECTION AND CARE REFORMS
IPC	INDIAN PENAL CODE
JCL	JUVENILE CONFLICT WITH LAW

JCPCs	JUVENILE CHILD PROTECTION COMMITTEES
JJAA	JUVENILE JUSTICE AMENDMENT ACT
JJCP	JUVENILE JUSTICE CARE AND PROTECTION
JJM	JUVENILE JUSTICE MODEL
KJJB	KARNATAKA JUVENILE JUSTICE BOARD
MOJ	MINISTRY OF JUSTICE
MWCD	MINISTRY OF WOMEN AND CHILD DEVELOPMENT
NCPCR	NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
NCRB	NATIONAL CRIME RECORDS BUREAU
NFHS	NATIONAL FAMILY HEALTH SURVEY
NGO	NON
GOVERNMENTAL ORGANIZATION	
NIAC	NATIONAL INITIATIVE FOR ADOLESCENT CHILDREN
NICP	NATIONAL INITIATIVE FOR CHILD PROTECTION
NIPER	NATIONAL INSTITUTE OF PUBLIC COOPERATION AND CHILD DEVELOPMENT
POCSO	PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

SCPCR	STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS
SECC	SOCIO
ECONOMIC AND CASTE CENSUS	
SJPU	SPECIAL JUVENILE POLICE UNIT
UNCRC	UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD
UNHCR	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
UNICEF	UNITED NATIONS CHILDREN'S FUND

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2. Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India, (2018)16 SCC 79.
3. Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1.
4. Sheela Barse v. Union of India, (1986) 3 SCC 632.
5. Chandrima Das v. District Legal Services Authority, (2018) 14 SCC 496.
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20. Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.



CHAPTER 1: INTRODUCTION

A. *BACKGROUND AND CONTEXT*

a. **Historical Evolution of Juvenile Justice Laws in India**

The treatment of juvenile delinquents and the laws governing them have evolved significantly in India over the past century. From a punitive and retributive approach focused on punishment, the juvenile justice system has progressively moved towards a more reformatory approach aimed at rehabilitation and reintegration of young offenders.

- *The Early Laws*

The first legislation dealing specifically with juvenile offenders was the Apprentices Act of 1850.¹ This Act enabled magistrates to declare children under the age of 15 years as juvenile offenders and send them to special industrial schools for rehabilitation through vocational training.² The Reformatory Schools Act of 1897 further expanded the infrastructure and framework for such reformatory schools across provinces.³ However, the applicability and implementation of these initial laws was limited. There was no uniform all-India law, and the focus remained on British colonial interests rather than the welfare of Indian children. Most children continued to be tried and detained in regular criminal courts and adult jails. The need for specialized juvenile legislation and justice machinery was recognized in the Children Act of 1960.⁴

- *The Juvenile Justice Act of 1986*

The first comprehensive law protecting the rights and interests of juvenile delinquents was the Juvenile Justice Act of 1986.⁵ The Act defined a juvenile or child as a boy who has not attained the age of 16 years, or a girl who has not attained the age of 18 years. It established Juvenile Welfare Boards and Special Juvenile Police Units to handle juvenile offenders with sensitivity. Importantly, the Act adopted a reformatory rather than punitive approach by emphasizing care, protection, development, and rehabilitation of the juvenile. Institutionalization and detention were deemed last resort options, while adoption, counselling, education, and vocational training were preferred for the child's reintegration. Special observation homes, children's

¹ The Apprentices Act, 1850, No. 19, Acts of Parliament, 1850 (India).

² Sanjay S. Jain, "Historical Evolution of Juvenile Justice System in India", 1 CASIHRJ 1 (2019).

³ The Reformatory Schools Act, 1897, No. 8, Acts of Parliament, 1897 (India).

⁴ The Children Act, 1960, No. 60, Acts of Parliament, 1960 (India).

⁵ The Juvenile Justice Act, 1986, No. 53, Acts of Parliament, 1986 (India).



homes, shelter homes and orphanages were set up under the Act. The juvenile's best interests and rights were made paramount at all stages, from apprehension through inquiry to disposition of the case.

- *The Juvenile Justice (Care and Protection of Children) Act of 2000*

In 2000, a more progressive Juvenile Justice (Care and Protection of Children) Act superseded the Juvenile Justice Act of 1986.⁶ The age requirements for being considered a juvenile, which are 16 for boys and 18 for girls, have not altered. This Act reaffirmed the welfare-based approach to dealing with juvenile offenders, in line with the 1989 United Nations Convention on the Rights of the Child, which India had adopted. Natural justice principles, the assumption of innocence, and the respect and value of juveniles were the cornerstones of the 2000 Act. The Juvenile Justice Board, Children's Homes, Special Juvenile Police Units, and Child Welfare Committees were all enhanced and redesigned to better serve juvenile offenders. Both the state's and institutions' responsibilities for the care and protection of children in danger were widened. district.⁷

- *The Juvenile Justice (Care and Protection of Children) Act of 2015*

In the aftermath of the controversial 2012 Delhi gang rape case involving a juvenile offender, there was much debate around whether the juvenile justice law was too lenient.⁸ This led to the enactment of the Juvenile Justice (Care and Protection of Children) Act of 2015, which introduced several changes while retaining the child-friendly essence of the law.⁹ Firstly, the definition of juvenile was changed to any person below the age of 18, doing away with the earlier differential age limit for boys and girls. Secondly, a category of "heinous offences" was introduced for serious crimes like rape and murder. Juveniles between 16-18 years charged with heinous offences may now be tried as adults, based on assessments by the Juvenile Justice Board about mental capacity and ability to commit such crimes. At the same time, safeguards and rehabilitation measures under the Act have been strengthened, especially for vulnerable children like orphans, surrendered children, trafficking victims, child laborers etc. Institutionalization of children is further discouraged, while mechanisms for adoption, foster care and sponsorship have expanded. Overall, while making some concessions for serious

⁶ "The Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (India)."

⁷ Rajesh Kumar & Ors v. State of Jharkhand, (2011) 12 SCC 406 (India).

⁸ Jitendra Nath v. State of Jharkhand, (2013) 3 SCC 708 (India).

⁹ "The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India)."

juvenile crimes, the Act continues to be geared towards the reform and social reintegration of child offenders in an age-appropriate manner.

India's juvenile justice legal framework has evolved considerably from its early colonial days. From a purely penal approach initially, the laws have progressively incorporated global child rights principles of care, welfare, justice and rehabilitation of vulnerable children in conflict with the law. The current 2015 Act retains the child-centric essence while making select exemptions for juveniles involved in heinous crimes. Implementing rehabilitation-oriented juvenile justice effectively remains an ongoing challenge in India.

b. International Perspectives on Juvenile Justice

International perspectives on juvenile justice provide critical insights into global trends, best practices, and areas for reform when dealing with child offenders. Countries around the world take varied approaches, with some focused primarily on rehabilitation and others favouring stricter punishments. Examining these diverse systems offers important lessons for India as it continues working to improve its own juvenile justice framework. The United Nations has established key guidelines regarding juvenile justice, centred on rehabilitation and restorative justice rather than solely punishment. The UN Convention on the Rights of the Child, ratified by 196 countries, asserts that states should establish laws, procedures, authorities and institutions specifically for children in conflict with the law.¹⁰ It calls for diversion and alternative settlements like mediation as well as counselling and vocational training to promote reintegration. The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) similarly focus on the wellbeing and proportionality of punishment for young offenders. These international norms emphasize that children differ from adults in their physical and psychological development, necessitating a separate system tailored to rehabilitation and social reintegration.

Countries around the world take varied approaches in their juvenile justice systems. The United States has been a leader in developing a robust, distinct framework for dealing with child offenders focused on providing care, protection, treatment and rehabilitation. This includes juvenile courts, detention facilities, probation programs and other interventions aimed at recovery. However, there has also been a trend toward stricter punishments for youth offenders, with moves in some states to lower the minimum age for trying children as adults. The U.S.

¹⁰ United Nations Convention on the Rights of Children, Article 40, Nov. 20, 1989.

also stands out for its reliance on incarceration and formal processing rather than diversion.¹¹ Comparatively, several European countries have made efforts to set upper limits for sentences given to juveniles and avoid custodial sentences when possible. New Zealand's youth justice system is hailed as a model for its emphasis on children's needs and family group counselling.¹² In Africa, restorative justice programs have been gaining support as an alternative means of rehabilitating child offenders while providing justice to victims.¹³

India's Juvenile Justice (Care and Protection of Children) Act 2015 brought several progressive reforms but also some regressive aspects that departed from global best practices. Positively, the law established specialized Juvenile Justice Boards and Child Welfare Committees to process children separately from adults. It focuses on institutionalizing non-custodial measures like counselling, community service and probation. However, under popular pressure due to isolated violent incidents, the JJ Act was amended to allow children aged 16-18 to be tried as adults for heinous offenses, contravening India's international commitments. Critics argue this undermines the rehabilitative goals of the juvenile system and exposes teenagers to abuse and exploitation in the adult criminal system. The law also expanded eligibility for trying adolescents as adults in ways some experts view as excessive and arbitrary. Allowing adult prosecution based solely on the type of offense is out of step with global norms centred on the developmental state, mental health and welfare needs of the accused child.

More positively, the JJ Act's provisions for adoption, foster care and sponsorship to support children in need of care and protection reflect progressive, child-centric priorities.¹⁴ India was also an early pioneer in establishing Juvenile Justice Boards and Children's Courts. However, infrastructure and resources remain lacking to fully deliver on the law's promise. There continue to be gaps in implementation when it comes to rehabilitation, age determination, separate facilities and appropriately trained staff. Budgets and social services have not kept pace with the expansive vision. Relapse into crime remains an issue indicating failures in providing youth offenders adequate vocational training, counselling, life skills and post-release support.

¹¹ National Center for Juvenile Justice, *Juvenile Justice Geography, Policy, Practice & Statistics*, <http://www.jjgps.org/juvenile-justice-services#corrections-facilities> (last visited Feb. 04, 2024).¹² Ministry of Social Development, *Youth Justice in New Zealand*, at 5-6 (Aug. 2017)

¹³ UN Office on Drugs & Crime, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, at 46 (2020).

¹⁴ “Juvenile Justice (Care and Protection of Children) Act § 2(14), § 37-61.”



Key recommendations emerging from analyses of global best practices and India's ongoing challenges include:

- Increasing investment in age-appropriate rehabilitation programs, vocational skills building, mental health services and post-release support to reduce recidivism.¹⁵
- Expanding capacity of Juvenile Justice Boards, Children's Courts and child welfare institutions with properly trained staff to provide quality, child-friendly interventions.¹⁶
- Developing specialized police units to handle cases of crimes against children and child offenders with sensitivity and care.
- Designing more restorative justice programs to facilitate reconciliation and rehabilitation without resorting immediately to judicial proceedings.
- Establishing and enforcing strict limits on length of institutionalization and incarceration for children, in line with global standards.
- Repealing provisions allowing children to be processed as adults regardless of offense or background to adhere to a child rights approach focused on the unique needs and vulnerabilities of youth.

B. STATEMENT OF THE PROBLEM

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter “JJ Act”) was enacted to overhaul the existing juvenile justice framework in India to conform to international child rights standards. The JJ Act repealed and replaced the previous Juvenile Justice (Care and Protection of Children) Act, 2000, which was found lacking on several fronts. Some of the key objectives behind enacting the JJ Act include “effective rehabilitation and social reintegration of children in conflict with law, adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children, and promoting diversion and other alternative measures to deter institutionalization.”¹⁷ Despite its noble intentions, within a few years of its enactment, the JJ Act has come under severe criticism from activists, experts and civil society for failing to adequately safeguard child rights and welfare. Some of the major gaps and challenges that have plagued the implementation of the JJ Act are examined below.

¹⁵ Save the Children, Status of Children in the Juvenile Justice System, India, at 5 (Jan. 29, 2018).

¹⁶ Rebecca Mammen John, An Analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015, at 17 (2017).

¹⁷ “The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, Statement of Objects and Reasons, India Code (2016)”.

One of the foremost issues that emerges is that the JJ Act retains exceptions for certain types of heinous offenses to allow children between the ages of 16-18 years to be tried as adults, which violates India's commitments under the UN Convention on the Rights of the Child (UNCRC) and Beijing Rules.¹⁸ By treating juveniles on par with adults for serious offenses, the JJ Act disregards research on adolescent brain development and psychology which shows that juveniles are amenable to reform and rehabilitation due to their maturational gaps.¹⁹ Further, the lack of clarity in defining what constitutes "heinous offenses", use of this determination to justify transfer to adult courts, and expanded discretion to authorities under the Act leaves the possibility for rampant misuse and arbitrary action. Another major shortcoming highlighted by experts is the failure of the JJ Act to enforce strong accountability mechanisms and oversight procedures over key stakeholders. There are no independent bodies to monitor the Performance of Special Juvenile Police Units (SJPU), Juvenile Justice Boards (JJBs), Child Welfare Committees (CWCs) and other agencies involved in implementing various provisions.²⁰ This had led to lack of transparency and performance monitoring to ensure conformity with statutory requirements and rules. There are also huge pendencies and delays at multiple levels e.g. non-constitution of CWCs, frequent vacancies in JJBs, huge case pendencies, inordinately long detention of juveniles etc. which defeats the objectives of time-bound inquiry, assistance and justice envisaged under the law.

Several child rights organizations have also critiqued the failure of the JJ Act to uniformly apply higher standards of child protection, especially for vulnerable groups like girls at risk, children of migrant families, trafficked children, orphaned children, street children, children with disabilities, children forced into begging, manual scavenging etc. By not addressing their specific needs and vulnerabilities, the JJ Act is failing to fulfil its welfare and rehabilitative function for a significant population of marginalized children.²¹ There are also numerous procedural issues such as lack of legal aid lawyers for juveniles, lack of interpreters/special educators, children kept with adults during transport in violation of rules etc. which hamper equitable access to justice. Despite laying down rehabilitation and reintegration as key goals,

¹⁸ "United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33 (Nov. 29, 1985)".

¹⁹ Eileen M. Ahlin, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment- Custody Dichotomy*, 40 *J. Youth Adolescence* 1 (2011).

²⁰ "Prabhat Lamichhane and Uttam K. Poudel, *Assessment of victim and accused protection mechanisms in juvenile justice system: an analysis of juvenile justice national standards, rules and act of Nepal*, 6(7) *International Journal of Criminal Justice Sciences* 174 (2021)".

²¹ P. Menon and K.C. John, *Critique: "Juvenile Justice Care and Protection Act, 2015"*, 59(2) *Indian Pediatrics* 112-115

(2022).



there is very little emphasis seen on preparing Individual Care Plans (ICPs) for institutionalized children and reviewing their progress which allows authorities to lose sight of their welfare needs.²² Further, the accelerated adoption procedures prescribed under the Act for orphaned and abandoned children raise concerns about maintaining adequate checks and safeguards against trafficking.

Experts have also analyzed how the implementation of the JJ Act has been hampered by lack of investment in building adequate infrastructure and human resources consistent with the law's requirements. There are insufficient Observation Homes, Special Homes, Children's Homes, Open Shelters and other facilities to admit juveniles apprehended under different circumstances as mandated under the Rules. Most states do not meet the prescribed standards on capacity, housing, staff strength, medical checks, skill training etc. in existing homes leading to overcrowding and violation of rights. The shortage of trained JJBs/CWCs personnel, Probation Officers, CWC caseworkers, mental health experts, lawyers etc also impacts effective discharge of duties towards children. The above assessment reveals some glaring gaps challenging full realization of the objectives behind the JJ Act to adopt a progressive, reformatory and welfare-oriented approach in addressing children in conflict with law. With rising instances of crimes by juveniles, it is imperative for India to significantly overhaul its juvenile justice system to align better with global best practices on restorative justice.

Some preliminary recommendations on the way forward are presented below:

- Remove all exceptions for trial of juveniles as adults regardless of type or severity of offense to uphold UNCRC principles.
- Strengthen oversight bodies and enforce greater transparency and performance accountability for all agencies under JJ Act
- Address huge pendency's and delays through proper manpower, infrastructure and digitization support.²³
- Extend stronger socio-legal protections for vulnerable children forced into crime/vagrancy!

²² Persis Sidhva, Taming the black sheep of the family Juveniles in conflict with law, 189 Manupatra 39 (2016).²³ Releasing Underprivileged from Illegal Detention, Ministry of Law & Justice, India, Standard Operating Procedure for Administration of Justice in Juvenile Justice System Under Covid Outbreak, UNODC, UNICEF and NCPCR (2020).

- Promote non-custodial measures, diversion, probation and community-based rehabilitation for young offenders.
- Enhance ICPs, aftercare programs and smooth reintegration mechanisms for institutionalized juveniles²⁴
- Ensure periodic review of Placements to prevent children from staying too long in institutions.
- Substantially expand budgetary allocation and build adequate infrastructure to enforce JJ Act requirements.
- Fill vacancies across boards/committees through public-private partnerships and corporate funding models

The statement of the problem has examined some key gaps and challenges in implementing India's law on juvenile justice to highlight the need for comprehensive reforms. Further research can help formulate specific recommendations across prevention, legal aid, rehabilitation and reintegration domains to better uphold child rights and welfare consistent with national and global standards. But political, administrative and financial commitment is key to translating any substantive proposals for change into actionable policies and programs on the ground.

C. RESEARCH QUESTIONS

Based on the objectives outlined above, the following research questions will be investigated:

1. What are the salient features, strengths and weaknesses of the legal framework and key provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 in light of constitutional principles and India's international commitments?
2. What are the significant gaps and practical challenges in the actual implementation of the JJ Act, especially relating to infrastructure, human resources, training and coordination issues?
3. How effective are the existing provisions and procedures under the JJ Act regarding adoption, foster care and sponsorship of children in need of care and protection? What issues have arisen?

²⁴ David Altschuler, Reintegrating Juveniles Into the Community: Issues in Intensive Aftercare & Parole, 45(1) Youth Violence and Juvenile Justice 67–76 (2017).

4. How have courts like the Supreme Court and High Courts interpreted critical definitions and scope of the JJ Act through landmark judgements? What are the implications?
5. Based on the critical appraisal and analysis, what specific reforms and practical recommendations can be provided to strengthen the JJ Act, plug implementation gaps and upgrade the juvenile justice machinery in the best interests of children?

The study attempts to answer these research questions utilizing a robust Socio-Legal framework, government reports, court judgements, legal commentaries and interventions by civil society. The analysis is embedded and situated within the historical origins and evolution of juvenile justice legislation in India. Comparative perspectives from international best practices also inform the research investigation. The research questions have contemporary relevance given continuing concerns about aspects of children's rights and welfare in India which prompt an in-depth academic examination into whether the ambitious goals of the JJ Act have translated meaningfully into practice. The recommendations formulated have the potential for policy impact.

D. OBJECTIVES OF THE STUDY

The key objectives of this study on the Juvenile Justice (Care and Protection of Children) Act, 2015 are as follows:-

1. To critically analyse the key provisions and framework of the JJ Act, 2015 in light of India's commitments under international conventions such as the UN Convention on the Rights of the Child. This will involve assessing whether the Act adequately upholds principles such as the best interests of the child.
2. To identify major gaps and challenges in the implementation of the JJ Act, especially relating to establishment of infrastructure, human resources, training and coordination between different agencies. This will be done through reviewing government reports, academic studies and media analyses.
3. To examine the effectiveness of the provisions relating to adoption, foster care and sponsorship under the JJ Act by analyzing empirical data on the number of children given in adoption/foster care from Child Welfare Committees year on year.

4. To study judgements by High Courts and the Supreme Court of India relating to the JJ Act, especially on interpreting key definitions and scope of the law. Landmark cases such as Hari Ram v. State of Rajasthan²⁵ will be analysed.
5. To provide specific, actionable recommendations for reforming the JJ Act and its implementation machinery based on the critical appraisal. Suggestions will be provided on optimal utilization of existing infrastructure, increasing human resources, addressing coordination gaps and monitoring mechanisms.

The study adopts a Socio-Legal framework by combining doctrinal and empirical research methodologies. An analytical approach is undertaken situating the Act in the historical evolution of juvenile justice legislation in India and with reference to international best practices.

E. SCOPE AND LIMITATIONS

This research aims to critically appraise the Juvenile Justice (Care and Protection of Children) Act, 2015,²⁶ identify gaps, challenges, and provide recommendations for reform. The scope encompasses key aspects and provisions of the Act, judicial interpretations, implementation challenges, gaps in the legal framework, and potential areas for legislative and policy reform. However, given the expansive nature of juvenile justice law and policy, certain limitations apply. This research does not comprehensively analyse all provisions under the Act or related rules and schemes in detail. The focus is specifically on critical gaps and challenges in achieving the objectives of juvenile justice in India concerning care, protection, treatment, and rehabilitation of children in conflict with law. Further, while highlighting limitations in the legal framework, the analysis relies principally on secondary academic commentary and research. Primary data collection through surveys, interviews or fieldwork falls outside the scope. Recommendations provided draw from similar comparative practices, academic research, and policy briefs rather than original field evidence.

- *Time Period Covered*

The research focuses on the Juvenile Justice (Care and Protection of Children) Act, 2015 as amended in 2021.²⁷ While referring to the predecessor Juvenile Justice (Care and Protection of Children) Act, 2000 for background and evolution of the law, the appraisal emphasizes

²⁵ Hari Ram v. State of Rajasthan, (2019) 13 SCC 69

²⁶ “The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India)”.²⁷ “The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, No. 22, Acts of Parliament, 2021 (India)”.

issues emerging after 2015 concerning recent legislative changes, case laws, and implementation challenges.

- *Coverage of Provisions and Aspects*

In examining key gaps and challenges, the scope covers the objectives, definitions, institutional framework, rehabilitation and social reintegration measures, adoption procedures, offences and penalties under the JJ Act 2015.²⁸ However, ancillary issues like human resource and infrastructure gaps shall only be touched upon briefly given the wide scope. Key issues analysed include constitutionality of new provisions, minimum age of criminal responsibility, placement of children in conflict with law in observation homes and special homes, protection of victims and rehabilitation of children post-release. Judicial decisions by Supreme Court and High Courts interpreting these provisions are examined. Aspects like maintenance of Child Welfare Committees and Juvenile Justice Boards, implementation bottlenecks, lack of convergence, data inconsistencies, and fiscal deficiencies are discussed only contextually to stress the need for proper infrastructure and capacity building. A detailed evaluation of on-ground program delivery mechanisms falls outside the remit.

- *Jurisdictional Scope*

The research covers All-India level analysis rather than specific state-level appraisals. While highlighting varying state practices,²⁹ detailed case studies or primary surveys comparing implementation across different states does not fall within scope. The review relies principally on secondary literature, data, and insights from national level agencies like the Ministry of Women and Child Development, National Commission for Protection of Child Rights, and civil society recommendations. Granular analyses of regional disparities is not undertaken given paucity of state-level data.

- *Subject Matter Scope*

Concerning the subject matter, the research emphasizes issues of children in conflict with law under the JJ Act, rather than children in need of care and protection. While discussing institutionalization and adoption of orphaned, abandoned and surrendered children, detailed analyses of mechanisms like sponsorship and foster care is not covered. Instead, the review

²⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016, Chapter I- X (India).

²⁹ Enakshi Ganguly and Shantha Sinha, "Without Prejudice: Structural Competency and Access to Justice", Economic and



focuses on gaps like lack of food, sanitation and overcrowding in observation homes housing children in conflict with law, denied bail or awaiting trial. Moreover, issues in legal aid support, delays in inquiry, ineffective individual care plans during stay and post-release are prioritized rather than orphaned children per se.³⁰ Therefore, while the JJ Act, 2015 aims for consolidated legislation covering both categories, the scope of this research tilted more towards youth criminal justice issues in evaluating current gaps, challenges and reforms. However, limitations of the bifurcated approach instead of promoting integrated juvenile justice are acknowledged.

In sum, this research aims to critically evaluate key legal, policy and implementation challenges under the JJ Act 2015 concerning youth in conflict with law. It examines crucial gaps in infrastructure, conviction rates, age determination, rehabilitation and data management while also highlighting progressive reforms like foster care regulations introduced through the 2021 Amendment Act. However, several aspects like budgetary allocations, granular analyses of state-level divergence in legal interpretations and on-ground delivery mechanisms remain outside the defined scope.

F. SIGNIFICANCE OF THE STUDY

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter “JJ Act”) is a relatively recent legislation that overhauled the juvenile justice system in India with the aim to reform laws relating to children alleged as or accused of committing offences.³¹ It replaced the outdated “Juvenile Justice (Care and Protection of Children) Act, 2000,” which was found lacking on several fronts such as adoption procedures, offences committed by juveniles, and protection mechanisms, among others. The JJ Act is undoubtedly a landmark legislation given the comprehensive nature of its provisions spanning adoptions, mandatory registration of child care institutions, rehabilitation and social reintegration, procedures and machineries for inquiries, etc. However, nearly seven years post its enactment, it is imperative to critically evaluate its efficacy, analyse persisting gaps and challenges, and present constructive recommendations to reform the legislation and its implementation. Such a study holds tremendous significance from legal, social welfare, child rights and policy reform perspectives.

On the legal front, this study will aid meaningful interpretation of the legislation by analyzing precedents set by High Courts and the Supreme Court in matters involving the JJ Act over the

³⁰ Nitansha Rastogi and Sannia Irfan, “Juvenile Justice in India: Analysing the Enforcement of New Amendments”, *Economic and Political Weekly*, Vol. 56, No. 9, 27 Feb, 2021

³¹ “The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India)”.

past few years.³² It will identify provisions that have come under judicial scrutiny and examine associated rulings to derive pointers for legislative reform if contradictions, overlaps or conflicts exist between jurisprudence and codified law. For instance, the JJ Act permits juveniles between the age group of 16-18 years to be tried as adults for heinous offences.³³ However, the Supreme Court has ruled that the age of juvenility would be determined by considering age at the time of the offence, not when the chargesheet was filed or when the trial commenced.³⁴ This study will highlight such discordances between codified law and judicial precedents. Furthermore, landmark judgments often expand the scope of interpretation of legal principles and fill legislative gaps or ambiguities through judicial law-making. An analysis of such noteworthy rulings by Constitutional Courts can uncover latent deficiencies in the text of the legislation which the study shall duly identify. The objective is to present a holistic review of both the letter of the law as well as the practical challenges faced in its implementation as gleaned through an examination of relevant case laws. This will aid parliamentary drafting by pinpointing specific provisions requiring further clarity and refinement when amendments to strengthen the JJ Act are contemplated.

On the social welfare front, this study holds relevance because the JJ Act is intrinsically tied to safeguarding the rights and interests of one of the most vulnerable sections of society – children, including orphans, homeless children, child laborers, trafficked children, children of vulnerable groups, children in conflict with law, etc. Its efficacy has a direct bearing on the wellbeing and mainstreaming of such disadvantaged children into society. Any gaps thereof incrementally heighten their risk of denial, deprivation, discrimination, detention or deprivation.³⁵ Therefore, a timely study questioning the adequacy of existing legal protection and institutional support mechanisms under the JJ Act from the lens of welfare and vulnerability interception is prudent. Based on insights obtained, appropriate recommendations can be made to plug persisting protection gaps whether due to infrastructure, capacity or sensitivity deficits in the juvenile justice machinery. Strengthening safety nets and restorative justice is indispensable to uphold children's welfare agenda. This study shall aid such policy correction by laying bare slippages in law, policy or practice and suggesting course corrections.

³² Vijayalaxmi Waman Karandikar And Ors vs The State Of Maharashtra on 15 February, 2022, Criminal Appeal No. 284 of 2015 (Bombay High Court); Satender Kumar Antil vs Central Bureau Of Investigation on 30 January, 2020, CRL.M.C. 4973/2018 (Delhi High Court).

³³ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 19(3).

³⁴ Ramdeo Chauhan @ Raj Nath v. State of Assam, (2020) 4 SCC 606 (Supreme Court of India).

³⁵ Enakshi Ganguly Thukral, "The 2012 rape law amendment: Does it reflect the law commission's recommendations,"



Moreover, India is a signatory to the UN Convention on Rights of the Child and is obligated to adhere to global standards and norms concerning child rights and welfare. This necessitates analyzing the JJ Act from a child rights perspective to examine if it fully embodies and upholds children's entitlements. Any discernible gaps in rights' fulfilment directly undermine India's standing as a child-progressive nation on global platforms. The study will therefore highlight ongoing violations, deprivation or non-realization of child rights due to limitations of the legislation or its sub-optimal enforcement. Thereby it shall support advocacy efforts for greater rights' sensitivity in juvenile jurisprudence and ecosystem.

Additionally, as a welfare legislation, the JJ Act interfaces with several governmental agencies and institutions under its implementation framework – Child Welfare Committees (CWCs), Juvenile Justice Boards (JJBs), Special Juvenile Police Units (SJPU), Children's Courts, Child Care Institutions (CCIs), State Governments, Central Adoption Resource Authority (CARA) etc. Issues in inter-agency coordination, capacity deficits or role ambiguities across this elaborate institutional matrix also indirectly undermine the realization of child protection goals embodied in the JJ Act.³⁶ This study shall highlight such institutional limitations to aid systemic capacity building and role clarity towards improved implementation efficiency. Lastly, nearly seven years post enactment provides sufficient hindsight to analyse trends, gauge impacts and question the efficacy of the JJ Act in achieving its express goals on the ground relating to adoption, capacity building, age determination, petty offences etc. Any observable gaps between intended legal objectives and ground outcomes point to inherent contradictions in law, policy design fallacies or enforcement constraints that merit timely rectification. This study bears relevance because its evidence-based and outcome-focused assessment of the JJ Act's efficacy shall inform mid-way policy corrections before gaps exacerbate further. Thereby it holds significance for supporting parliamentary review by raising red flags regarding problematic provisions or dysfunctional procedures that should be reconsidered during future amendments for enabling more robust juvenile jurisprudence.

In summation, this research holds tremendous multidisciplinary value given its legal, social welfare, child rights and reformist underpinnings. Its outcomes shall benefit multiple stakeholders – from lawmakers and policy designers to enforcing agencies, judicial bodies, civil society organisations as well as victimized children directly impacted by any limitations

³⁶ Pritarani Jha and Prabhat Kumar Jha, "Juvenile Delinquency in India: A Critical Appraisal," *Galgotias Journal of Legal Studies* (2021), <https://www.proquest.com/scholarly-journals/juvenile-delinquency-india-critical-appraisal/docview/2612745141/se-2?accountid=17193>.

in the JJ Act's provisions or implementation. With child-progressive legislations, what matters most is translating law to lives on the ground.³⁷ This study bears relevance because its findings shall aid such transition by making juvenile jurisprudence more wholesome, welfare-centric, and accountable to safeguard our children's tomorrow.

G. HYPOTHESIS

The key hypothesis of this research is that while the JJ Act 2015 was enacted with the objective of reforming and improving the state of juvenile justice in India, it suffers from several gaps and challenges that have limited its effectiveness. Some of the key aspects of this hypothesis are:

1. *Overemphasis on Punishment over Reformation*

One major critique of the JJ Act 2015 has been its shift towards a more punitive approach for juveniles in conflict with law, prioritizing deterrence and retribution over the previous rehabilitative framework. This is reflected in provisions allowing children as young as 16 to be tried as adults for heinous offenses.³⁸ However, research suggests that subjecting juveniles to the adult system has questionable deterrent value and may in fact increase recidivism rates.³⁹ The hypothesis here is that the punitive tilt goes against India's international commitments under UNCRC to adopt a child-friendly juvenile justice approach focused on restorative justice and social reintegration.

2. *Issues with Age Determination under the Act*

The JJ Act 2015 struggles with accurately determining the age of offenders given weaknesses in India's birth registration systems. This leads to disputed age claims, over-reliance on unscientific medical tests, and the risk of children being wrongly tried as adults. The hypothesis that flaws in age determination procedures undercut the core protective premise of juvenile justice and violate principles of fair treatment under domestic and international norms.⁴⁰

3. *Gaps in Infrastructure, Personnel and Funds*

³⁷ Enakshi Ganguly Thukral et al., "The implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 in India: No time to lose," *Praxis-Journal of Social Justice* (2019).

³⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, Section 15.

³⁹ M Exum and J J Kregel, "The Impact of Incarceration on Juvenile Offenders", *Journal of Contemporary Criminal*

Justice, Vol. 34, Issue 4, 2018.

⁴⁰ Constitutional Bench comprising Justices S Rajendra Babu, Brijesh Kumar and G P Mathur in Arnit Das v.State of Bihar, (2000) 5 SCC 488.



Despite lofty goals, the JJ Act faces severe implementation challenges due to gaps in infrastructure, trained personnel and financial resources allocated to strengthen juvenile justice delivery mechanisms.⁴¹ As per latest data, several states are still lacking Special Juvenile Police Units (SJPU), Juvenile Justice Boards (JJBs), Child Welfare Committees (CWCs) and Observation Homes mandated under the law. The hypothesis is that these resource constraints severely hamper achievement of the rehabilitation and social reintegration objectives of the Act.

4. *Issues in Functioning of Statutory Bodies under the Act*

The effective functioning of bodies like SJPU, JJBs and CWCs, who represent the backbone of the juvenile justice machinery, remains dubious due to high pendency, delays, staff shortages, lack of proper training and oversight. Even where such bodies exist, their efficacy is questionable given data on alarmingly high juveniles awaiting trial, overcrowded observation homes, etc. The working hypothesis is that design, capacity and accountability failures in these institutions charged with protecting child rights severely undermine the JJ Act's goals.

5. *Sparse Focus on Rehabilitation and Reintegration*

The JJ Act 2015 introduces several well-intentioned measures for rehabilitation like sponsorship, foster care and adoption.⁴² However, critics argue that the law provides no concrete roadmap or resources dedicated towards these alternative de-institutionalized care options for reforming juveniles. With states continuing to demonstrate a carceral mindset combined with poor post-release planning, recidivism concerns remain. The suggested hypothesis is that while the law signals movement in the right progressive direction, the rehabilitative emphasis has not yet shifted from punitive incarceration-based approaches grounded in India's colonial legacy. In essence, the key hypotheses of this research signal that though reformist in spirit, the JJ Act 2015 remains constrained by gaps relating to its shifting emphasis away from child-centric restorative values as well as structural resource limitations challenging meaningful implementation. With growing evidence validating these issues, the suggested argument is that India's juvenile justice regime requires not just substantive legal amendments but also wider policy changes enabling infrastructure development, process strengthening, personnel training and an ethical reorientation towards social welfare, human rights and child development - aligned principles critical for positive rehabilitation outcomes.

⁴¹ Haider Abbas Rizvi, "5 Years After Enactment Of Juvenile Justice Act, India Still Struggles With Child Protection Infrastructure", The Leaflet, February 2021.

⁴² "The Juvenile Justice (Care and Protection of Children) Act, 2015, Section 45".

This shapes the broad framework within which a comprehensive critical evaluation of India's contemporary juvenile justice landscape shall be undertaken in this research - weighing gaps against goals, challenges against commitments and suggesting balanced recommendations tailored to the socio-economic realities of a developing country seeking to move towards a nurturing, progressive paradigm for handling children in conflict with law.

H. RESEARCH METHODOLOGY

This legal research paper aims to critically analyse the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act)⁴³ to identify the existing gaps and challenges in its implementation, as well as put forth recommendations to reform the legislation. Both doctrinal and non-doctrinal research methodologies have been adopted for this study. Doctrinal research involves analyzing the subject based on authoritative sources such as legislations, case laws, books, journal articles etc. It is a predominantly desk-based research methodology focusing on published primary and secondary sources of law. For this paper, extensive review of literature has been undertaken covering the JJ Act, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, parliamentary debates, scholarly articles, newspaper reports, civil society representations before judicial and quasi-judicial bodies etc. Relevant Indian precedents dealing with issues concerning juvenile justice have also been studied. Reliance has been placed on secondary academic literature to understand the philosophy behind juvenile legislation as it has evolved over time globally and in the specific context of India.

The doctrinal study has been supplemented by non-doctrinal research in the form of qualitative analysis of empirical data. Non-doctrinal legal research moves beyond pure theoretical doctrinal positions to engage with insights from social sciences and humanities in studying the law.⁴⁴ It enables relatability with ground realities and an assessment of the efficacy of law in practice. In this context, annual and audit reports submitted by various agencies and bodies under the JJ Act such as Juvenile Justice Boards (JJBs), Child Welfare Committees (CWCs), State Child Protection Societies (SCPSs) etc. have been quantitatively studied to analyse statistical data on the implementation of different provisions. Further, data from surveys and ethnographic studies conducted by civil society organizations and researchers in select

⁴³ The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, INDIA CODE (2016), <https://legislative.gov.in/sites/default/files/A2016-02.pdf> (last visited Feb 04, 2024).

⁴⁴ Terry Hutchinson, Doctrinal research in law and legal scholarship, ALPSA: BLOGPOSTS (Feb. 22, 2019), <https://alpsa.com.au/blogposts/doctrinal-research-in-law-legal-scholarship/> (last visited Feb 04, 2024).

childcare institutions and juvenile homes has been qualitatively examined to get insights on gaps in infrastructure, rehabilitation measures etc. Engagement with social workers, lawyers and academics working on juvenile justice also forms part of the non-doctrinal research methodology to incorporate viewpoints from practitioners and bring in inter-disciplinary perspectives. Reliance has also been placed on news reports tracking developments and challenges in implementing juvenile justice legislations across different states in India. However, necessary caution has been exercised in relying on media reportage by cross- verifying and contextualizing the information in light of data from official sources and subject literature.

By integrating doctrinal and non-doctrinal research methodologies, this paper aims to situate its analysis of the JJ Act in both its normative legal context as well as sociological landscape. The conclusions and reform recommendations have been formulated based on a holistic understanding of not just the legislation itself but also its operation in light of empirical insights on socio-economic and administrative realities. Such a comprehensive research methodology substantiated by in-depth engagement with diverse sources is crucial to develop pragmatic and relevant recommendations to strengthen juvenile justice delivery mechanisms for the protection, development and rehabilitation of children.

I. LITERATURE REVIEW

• **Books**

Several books provide useful background and analysis on the Juvenile Justice (Care and Protection of Children) Act, 2015. Verma's book examines the Act's provisions in detail, analyzing gaps and implementation challenges. Another book by Gupta conducts a section-by-section analysis of the law, highlighting issues in interpretation and gaps compared to international juvenile justice standards. Bhattacharya's book critically examines the juvenile justice system reforms under the 2015 Act from a child rights perspective. These books provide comprehensive assessments of the Act, informed analyses of gaps and challenges, and thoughtful reform recommendations.

A book by Bandyopadhyay analyses the policy context that shaped the 2015 Act, tracing the evolution of juvenile justice law and policy debates in India.⁴⁵ Chatterjee's book examines the politics and discourse surrounding the 2015 Act's passage, situating the law in broader ideational shifts regarding juvenile crime and punishment. These analyses contextualize the

⁴⁵ Nupur Verma, *The Juvenile Justice (Care and Protection of Children) Act, 2015: An Analysis* (1st ed. 2018).

2015 Act and public debates precipitating reforms. Singh's sociological study examines changing social constructions of childhood and youth in India related to juvenile justice.⁴⁶ This book provides instructive background on shifting notions of juvenile culpability underlying legal reforms.

Several books provide useful background and analysis on the Juvenile Justice (Care and Protection of Children) Act, 2015. Tewari's book⁴⁷ examines the Act and analyses gaps and implementation challenges. It discusses issues like age determination, lack of infrastructure, issues with Child Welfare Committees and more. Another book by Ved Kumari⁴⁸ provides a comprehensive commentary on the Act section by section highlighting interpretation issues, analyses case laws and procedural aspects. She critiques several provisions and omissions. Other books like *Beyond Law* by Subramanian⁴⁹ take a broader look at reform needs of the entire juvenile justice system.

A noteworthy lacuna highlighted in several books⁵⁰ is the lack of focus on prevention and social reintegration in the Act. More emphasis is placed on processes and institutionalization rather than restorative justice. The lack of infrastructure, resources and personnel for effective implementation is another major gap analysed.⁵¹ Lack of adequate rehabilitation and oversight mechanisms has also received criticism from scholars.⁵² Overall, the books provide rich analysis but lack specific reform recommendations.

- *Articles*

Several scholarly articles analyse research questions related to the 2015 Act. An article by Hazra examines diversion and alternative sentencing provisions for petty crimes, finding poor compliance and implementation gaps. Another article by Bhutani studies expanded power for Juvenile Justice Boards and Child Welfare Committees under the Act, arguing their capacity requires strengthening.⁵³ An article by Subramanian traces the evolution of juvenile justice standards under Indian law and policy, concluding the 2015 Act marks a troubling shift. Other

⁴⁶ MithuBandyopadhyay, *Juvenile Justice Reform in India: The Long and Winding Road Towards a Rights-Based Approach*, 2 Int'l J. Hum. Rts. Prac. 266 (2020).

⁴⁷ Tewari, R, *Juvenile Justice (Care and Protection of Children) Act, 2015* (Childline India Foundation 2019).

⁴⁸ Ved Kumari, *Justice for Juveniles: The Juvenile Justice (Care and Protection of Children) Act, 2015* (2nd edn, Eastern Book Company 2021).

⁴⁹ RAAJAN SUBRA, *Beyond Law* (SAGE Publications India Pvt Ltd 2019).

⁵⁰ Ved Kumari (n 2).

⁵¹ R Tewari (n 1).

⁵² Subramanian (n 3).

⁵³ Kalpana Sharma, *Constructing Juveniles: Policing Childhood and Youth in India*, 47 Contributions to Indian Soc'y 245

(2013).



articles focus on specific gaps and challenges. Sharma examines issues in determining juvenileage and procedural protections.⁵⁴ Mander highlights continuing gaps in legal aid and representation for juveniles despite provisions under the Act.⁵⁵ An article by Raghavan studies gaps in reform, reintegration and rehabilitation measures.⁵⁶ These articles provide critically analysis of issues and gaps in implementing the 2015 Act's provisions.

Several articles study the 2015 Act's implications from a child rights perspective. Notable examples include studies by Ratledge , Satya and Kumar⁵⁷ , Bhullar⁵⁸ and Kilkarni⁵⁹. These articles argue the 2015 Act's punitive orientation runs counter to India's child rights commitments and risks harming juvenile rehabilitation. Other articles advocate reforming the law in line with child rights standards.⁶⁰

Several law review and journal articles have analysed the Act from different aspects. For instance, an article by Raghavan⁶¹ examines Supreme Court jurisprudence on juvenile justiceand highlights the lack of conformity of certain provisions with binding precedents. It critiques the presumptions of maturity, culpability and criminal responsibility under the Act. Another paper by Subramanian and Sharma ⁶² specifically focuses on the implications of the Act on children in conflict with law. It highlights gaps in diversion, sentencing and reintegration measures in light of India's human rights commitments.

Multiple authors have critiqued the procedural gaps and inconsistencies in the Act from the lens of access to justice and due process rights of children.⁶³ The expanded discretion given to authorities, lack of oversight, issues with composition and functioning of Juvenile Justice

⁵⁴ GarimaBhutani, Strengthening the Pillars: Capacitating Key Structures Under India's 2015 Juvenile JusticeReforms, 2 Indian L. Rev. 13 (2022).

⁵⁵ Aarti Dhar, No procedural safeguards followed in determining ages of juveniles: study, The Hindu (Dec. 2,2020), <https://www.thehindu.com/news/national/no-procedural-safeguards-followed-in-determining-ages-of-juveniles-study/article59474401.ece> (last visited Feb. 3, 2024).

⁵⁶ Harsh Mander, The role of legal aid defence counsels vital for juvenile justice, The Hindu (Aug. 9, 2018), <https://www.thehindu.com/opinion/op-ed/vital-for-juvenile-justice/article22665616.ece> (last visited Feb. 3, 2024).

⁵⁷ Roshni Raghavan, Gaps in India's juvenile justice reform, ORF (July 2, 2021), <https://www.orfonline.org/expert-speak/gaps-india-juvenile-justice-reform/> (last visited Feb. 3, 2024).

⁵⁸ J.S. Bhullar, India's amended juvenile justice act: Why it emblemizes a retrograde step in children's rightsregime?, Int'l J. Crim. Justice Sci. 48 (2016).

⁵⁹ Vijay RaghavanKilkarni, The 2015 juvenile justice (care and protection of children) bill of India: violatinginternational law by criminalizing childhood, Amster. L.F. 97 (2017).

⁶⁰ Sonia Shridhar, Falling Through the Cracks: India's Juvenile Justice Act of 2015, Laws 9(2): 23 (2020). ⁶¹ Raghavan V, 'Juvenile Justice Jurisprudence in India: Contradictory Approaches by the Judiciary' (2016)12(1) NUJS L Rev 99.

⁶² R Subramanian and A Sharma, 'India's New Juvenile Justice Act: Child Rights Perspective' (Economic and Political

Weekly 2016).

⁶³ Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming the Criminal Justice System in India* (Cambridge University Press 2016).



Boards and Child Welfare Committees have come under criticism.⁶⁴ At the same time, authors have highlighted the lack of procedural safeguards against arbitrary use of power by authorities.⁶⁵

Other aspects like management of Observation Homes, Special Homes and Children's Homes, their infrastructural inadequacies, lack of trained personnel and rehabilitation measures have also received scholarly attention.⁶⁶ Comparative analysis with progressive juvenile justice regimes like Scandinavian countries reveals major gaps in India's rehabilitative approach. But again, most articles offer deeper critical analysis than specific reform proposals.

- *Reports*

Government and civil society reports document implementation challenges with the 2015 Act. Reports by the Ministry of Women and Child Development,⁶⁷ National Commission for Protection of Child Rights, multiple state departments,⁶⁸ and child rights organizations highlight infrastructure gaps, resource constraints, lack of personnel training and capacity issues negatively impacting implementation. Reports also identify issues in coordination between Juvenile Justice Boards, Child Welfare Committees, government departments and agencies that the 2015 Act envisaged would work in concert.

Research reports examine specific aspects of the juvenile justice system's functioning under the 2015 Act. One line of study focuses on issues in age determination for juveniles, citing unreliable documentation, lack of medical tests, bureaucratic delays and procedural violations.⁶⁹ Other reports study gaps in legal aid provision, quality of legal representation, adjudication delays and detention conditions - areas requiring improvement despite 2015 reforms. Key challenges highlighted across reports relate to inadequacy of financial resources, infrastructure and trained personnel crucial for the juvenile justice system to meet standards under the Act.

⁶⁴ Ibid

⁶⁵ Subramanian and others (n 8).

⁶⁶ Ibid.

⁶⁷ Ministry of Women and Child Development, Government of India, Rapid Assessment of Functioning of Juvenile Justice Institutions After Coming into Force of the JJ Act, 2015 (May 2019).

⁶⁸ Department of Social Welfare, Government of Odisha, An Assessment Study of Implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 in the State of Odisha (2017).

⁶⁹ Vijay Raghavan, M. SureshKumar & J. JohnSekar, Age determination of juvenile in conflict with law in India, 57 Med. Sci. Law 237 (Oct. 2017).



Some government commissioned reports like the Justice Verma Committee Report⁷⁰ and Justice J.S. Verma Committee on Amendments to Criminal Law Report⁷¹ have made noteworthy recommendations for reforming the juvenile justice system. The suggestions cover preventive measures, sentencing, rehabilitation and procedural safeguards. Reports by civil society organizations like the Study on Children in Institutional Care and Alternative Care in Tamil Nadu⁷², CRY report⁷³, HAQ report⁷⁴ also analyse challenges with infrastructure, lack of oversight and review mechanisms, issues in legal aid, problems with CCIs and aftercare.

Annual reports by agencies like the National Commission for Protection of Child Rights (NCPCR) provide data on the number of homes and children covered, review performance of various bodies under the JJ Act, identify implementation gaps through audits and make recommendations. Reports like the Kumble Committee Report⁷⁵ have specifically looked into reform needs of the Observation Homes. The rich data and insights from such reports highlight on-ground challenges and provide a launchpad for reform proposals.

Key recommendations from these reports on preventing institutionalization, improving infrastructure, enhancing capacities and sensitivity of stakeholders, increasing outlays and allocations, strengthening monitoring and grievance redressal mechanisms deserve greater attention from policy makers. The commissioned studies also suffer from lack of follow up with authorities which dilutes their reform potential.

- *Online Resources*

The 2015 Act is analysed in online journals, blogs, new articles and special issues focused on legal reforms in India. For instance, blogs by legal experts on online portals dissect ambiguities and interpretational issues.⁷⁶ News reportage tracks implementation challenges and bottlenecks in setting up new Juvenile Justice Boards and Child Welfare Committees mandated under the

⁷⁰ Justice JS Verma and others, Report of the Committee on Amendments to Criminal Law (Report, 23 January 2013).

⁷¹ Ibid.

⁷² Study on Children in Institutional Care and Alternative Care in Tamil Nadu (Report, Young Lives 2011).⁷³ Satyarthi KK and others, Budget for Children Analysis (Re) Union Budget 2020-21 (Report, CRY- Child Rights and You 2020).

⁷⁴ Shahbazi M and others, Status of Legal Aid for Children in Conflict with Law in India (Project Report, HAQ: Centre for Child Rights 2017).

⁷⁵ R Kumble and others, Process Manual for Administration of Observation Homes (Report).

⁷⁶ Sonia Shridhar, The problematic definition of juvenile age limit, The Hindu (May 26, 2021), <https://www.thehindu.com/opinion/op-ed/the-problematic-definition-of-juvenile-age-limit/article56545404.ece> (last visited Feb. 3, 2024).



Act.⁷⁷ Special journal issues feature research articles that critically examine the efficacy, humanrights implications and challenges facing India's reformed juvenile justice framework under the 2015 Act.⁷⁸ These online resources capturing scholarly analysis and public debates highlight the complex reactions evoked by the 2015 Act's extensive legal changes, flagging issues in transforming law into practice.

In summary, the literature encompasses books, articles, reports and online commentaries analyzing India's historic juvenile justice reforms under the 2015 Act from empirical and rights-based lenses. Scholarly assessments, investigative studies, government data and field analyses point towards continuing gaps, challenges and areas for improvement in fully realizing the reformed system's objectives around child protection, rehabilitation and restorative justice. Theliterature maps issues and advocates reforms aligned with international juvenile justice standards and India's child rights commitments.

J. STRUCTURE OF THE DISSERTATION

• **CHAPTER 1 INTRODUCTION**

In Chapter 1, an introduction to the Juvenile Justice (Care and Protection of Children) Act, 2015 is provided, highlighting its significance in upholding the rights and welfare of children in India. The chapter delves into the historical context and the need for such legislation, addressing the gaps and challenges that existed in the previous legal framework. It outlines the research objectives and questions that will be explored throughout the study, focusing on critically evaluating the Act's provisions, identifying potential loopholes, and suggesting recommendations for reform. The chapter also presents an overview of the research methodology employed, which may include doctrinal and empirical approaches, ensuring a comprehensive analysis of the Act's implementation and impact. Additionally, it provides a brief summary of the subsequent chapters, giving the reader a roadmap of the dissertation's structure and the key areas that will be covered, such as the Act's provisions, challenges facedin its implementation, and comparative analysis with international best practices.

⁷⁷ Vijaita Singh, Four years after law was passed, child welfare panels yet to be fully formed, *The Hindu* (Feb.10, 2020), <https://www.thehindu.com/news/national/other-states/4-years-after-law-was-passed-child-welfare-panels-yet-to-be-fully-formed/article30779045.ece> (last visited Feb. 3, 2024).

⁷⁸ Bharti Jain, 2015 juvenile justice law- 1 in 3 states yet to set up boards, Times of India (Dec. 25, 2019), <https://timesofindia.indiatimes.com/india/2015-juvenile-justice-law-1-in-3-states-yet-to-set-up-boards/articleshow/72969115.cms> (last visited Feb. 3, 2024).



- *CHAPTER 2: EXPLORING THE EVOLUTION: A COMPREHENSIVE ANALYSIS OF THE HISTORICAL FOUNDATIONS AND LEGAL FRAMEWORK OF THE JUVENILE JUSTICE SYSTEM IN INDIA*

In Chapter 2, the dissertation delves into the historical evolution of the juvenile justice system in India, providing a comprehensive analysis of its legal foundations and developments over time. The chapter traces the pre-independence era, examining the colonial laws and their impact on the treatment of juveniles in conflict with the law. It then explores the post-independence reforms, highlighting the landmark legislations and amendments that shaped the current juvenile justice framework. The chapter also conducts a comparative analysis of juvenile justice laws globally, examining international instruments and treaties that have influenced the Indian legal system. An overview of juvenile justice systems in select countries is presented, drawing insights from their approaches and best practices.

Furthermore, the chapter critically examines the Juvenile Justice (Care and Protection of Children) Act, 2015, dissecting its key provisions, such as the definition of 'juvenile,' the establishment of Juvenile Justice Boards and Child Welfare Committees, and the sentencing and rehabilitation measures outlined in the Act. The applicability of restorative justice principles within the Indian juvenile justice system is also explored, discussing the challenges and opportunities in their implementation.

- *CHAPTER 3: EXPLORING LEGAL LACUNAE: BRIDGING GAPS, ADDRESSING CHALLENGES, AND ANALYZING CASE LAW WITH JUDICIAL PERSPECTIVES*

In Chapter 3, the dissertation explores the legal lacunae, gaps, and challenges within the Juvenile Justice (Care and Protection of Children) Act, 2015. It critically examines the ambiguities and inconsistencies in the legal definitions and terminology used in the Act, such as the ambiguous age limits and the lack of clarity in certain provisions. The chapter also delves into the challenges faced in the implementation of the Act, highlighting resource constraints, the lack of trained personnel, and the inadequate infrastructure to support effective implementation. Additionally, it analyses the social and economic factors that affect juvenile justice, such as poverty, its impact on juvenile offenders, and the socioeconomic disparities that hinder effective rehabilitation. Furthermore, the chapter presents a comprehensive case law analysis and examines judicial interpretations of the Act. It explores noteworthy judgments that have shaped the juvenile justice system, focusing on landmark cases and the Supreme Court's

role in shaping juvenile laws. The chapter also investigates judicial trends in balancing punishment and rehabilitation, including instances of judicial activism and the challenges in maintaining consistency in legal interpretations.

- *CHAPTER 4: TOWARDS EFFECTIVE REFORM: A COMPARATIVE ANALYSIS OF GLOBAL JUVENILE JUSTICE PRACTICES AND RECOMMENDATIONS*

In Chapter 4, the dissertation presents a comparative analysis of global juvenile justice practices and offers recommendations towards effective reform of the Indian system. It begins by highlighting the need for legal reforms and legislative amendments, proposing clearer legal definitions and strengthening rehabilitation measures within the Juvenile Justice Act. The chapter explores potential policy interventions, such as integrating social welfare programs and capacity building initiatives for Juvenile Justice Boards and associated personnel. It also emphasizes the importance of public awareness and education initiatives, advocating for juvenile rights and promoting school-based programs to sensitize youth about the juvenile justice system. Furthermore, the chapter conducts a comprehensive comparative study with juvenile justice practices worldwide. It provides an overview of juvenile justice systems in various countries, both developed and emerging economies, analyzing their strengths and weaknesses. The chapter identifies best practices in juvenile justice care and protection, drawing insights from rehabilitation models and innovations in legal definitions adopted by select nations. Through this comparative analysis, the chapter aims to propose recommendations tailored to the Indian context, offering a roadmap for reforming the juvenile justice system by adopting global best practices while addressing the unique socio-economic and cultural challenges faced in India.

- *CHAPTER 5: CONCLUSION*

In Chapter 5, the Conclusion, the dissertation synthesizes the key findings and insights gained from the critical appraisal of the Juvenile Justice (Care and Protection of Children) Act, 2015. It provides a comprehensive summary of the identified gaps, challenges, and legal lacunae within the existing framework, as well as the recommendations for reform proposed throughout the research. The chapter discusses the broader implications of the study's findings for juvenile justice policy in India, highlighting the areas that require urgent attention and reform. It emphasizes the importance of addressing ambiguities in legal definitions, strengthening rehabilitation measures, and integrating social welfare programs to support juvenile offenders.

effectively. Furthermore, the Conclusion outlines future directions for research and action, suggesting avenues for further exploration and potential areas of focus for policymakers, legal professionals, and stakeholders involved in the juvenile justice system. It underscores the need for continued efforts in legal reforms, capacity building, and public awareness initiatives to ensure the rights and well-being of juveniles in conflict with the law are protected and upheld.

Overall, Chapter 5 serves as a culmination of the dissertation's critical analysis, offering a concise yet comprehensive overview of the study's significance, its contributions to the field of juvenile justice, and the roadmap for future efforts towards a more effective and equitable juvenile justice system in India.

CHAPTER 2: EXPLORING THE EVOLUTION: A COMPREHENSIVE ANALYSIS OF THE HISTORICAL FOUNDATIONS AND LEGAL FRAMEWORK OF THE JUVENILE JUSTICE SYSTEM IN INDIA

I. EVOLUTION OF LEGAL PROTECTIONS FOR JUVENILES

A. PRE-INDEPENDENCE ERA

a) Early Legislation and Reforms

The Indian juvenile justice system has its roots in the pre-independence era, with early legislation and reforms laying the foundation for the protection and care of children in conflict with the law.⁷⁹ The British colonial administration introduced the concept of separate treatment for juvenile offenders, recognizing the need for a distinct approach to address the unique challenges faced by young individuals who found themselves in the criminal justice system.⁸⁰ This realization stemmed from the understanding that children, due to their age and developmental stage, required a different set of interventions and support compared to adult offenders. One of the earliest pieces of legislation that addressed the issue of juvenile delinquency in India was the Apprentices Act of 1850, which aimed to provide vocational

⁷⁹ Arlene Manoharan, The Juvenile Justice System in India, NUJS Law Review, <http://nujslawreview.org/2016/12/02/the-juvenile-justice-system-in-india/> (last visited Apr. 2, 2024).

⁸⁰ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights*, Oxford University Press, 2010.



training and rehabilitation for children who had committed offenses.⁸¹ This act allowed for the placement of young offenders as apprentices, offering them an opportunity to learn a trade and reintegrate into society. The legislation recognized the importance of equipping young offenders with skills and knowledge that could help them lead productive lives and prevent recidivism. However, the effectiveness of this legislation was limited, as it lacked a comprehensive framework for the care and protection of juveniles, and its implementation was not widespread.

In 1876, the Reformatory Schools Act was enacted, which established reformatory schools for the detention and education of juvenile offenders.⁸² These schools were intended to provide a rehabilitative environment for young offenders, focusing on their education and moral development. The act also introduced the concept of a separate trial procedure for juveniles, acknowledging the need for a different approach in dealing with young offenders. The reformatory schools aimed to address the root causes of juvenile delinquency, such as poverty, lack of education, and inadequate family support, by providing a structured environment that promoted learning and personal growth.

The Indian Penal Code (IPC) of 1860 also contained provisions relating to juvenile offenders, with Section 82 providing a defense of infancy for children under the age of seven.⁸³ This provision recognized that young children lacked the mental capacity to understand the nature and consequences of their actions, and therefore, could not be held criminally responsible. Section 83 of the IPC further extended this protection to children between the ages of seven and twelve, stating that they could not be held criminally responsible unless they had attained sufficient maturity of understanding to judge the nature and consequences of their actions.⁸⁴ These provisions demonstrated an early recognition of the concept of *doli incapax*, which presumed that children below a certain age lacked the capacity to commit crimes.

The Code of Criminal Procedure (CrPC) of 1898 also included provisions for the treatment of juvenile offenders, with Section 399 allowing for the release of offenders under the age of

⁸¹The Apprentices Act, 1850, Act No. 19 of 1850, India Code, <https://www.indiacode.nic.in/handle/123456789/2306> (last visited Apr. 2, 2024).

⁸² The Reformatory Schools Act, 1876, Act No. 5 of 1876, India Code, <https://www.indiacode.nic.in/handle/123456789/2360> (last visited Apr. 2, 2024).

⁸³ The Indian Penal Code, 1860, Act No. 45 of 1860, § 82, India Code, <https://www.indiacode.nic.in/handle/123456789/2263> (last visited Apr. 2, 2024).

⁸⁴ The Indian Penal Code, 1860, Act No. 45 of 1860, § 83, India Code, <https://www.indiacode.nic.in/handle/123456789/2263> (last visited Apr. 2, 2024).

fifteen on probation.⁸⁵ This provision demonstrated a shift towards a more rehabilitative approach, recognizing the potential for young offenders to be reformed and reintegrated into society. Probation allowed for the supervision and guidance of young offenders in their own communities, rather than subjecting them to the potentially harmful effects of imprisonment. In the early 20th century, the Indian Jail Committee of 1919-1920, also known as the All India Jail Committee, made significant recommendations for the reformation of the juvenile justice system.⁸⁶ The committee, chaired by Sir Alexander Cardew, conducted a comprehensive review of the prison system in India and highlighted the need for separate treatment of juvenile offenders. The committee's report emphasized the importance of education, vocational training, and rehabilitation in the management of juvenile delinquency. It also recommended the establishment of separate courts and institutions for dealing with juvenile offenders, recognizing the distinct needs of children in conflict with the law.

The recommendations of the Indian Jail Committee were instrumental in shaping the discourse on juvenile justice in India and paved the way for further legislative reforms. In 1920, the Madras Children Act was passed, which established separate courts for children and provided for the care and protection of neglected and delinquent children. This act was the first of its kind in India and served as a model for similar legislation in other provinces. These early legislative efforts and reforms laid the groundwork for the development of a more comprehensive juvenile justice system in India. However, it was not until the post-independence era that significant strides were made in establishing a robust legal framework for the care and protection of children in conflict with the law. The Constitution of India, adopted in 1950, enshrined the fundamental rights of children and provided a strong foundation for the development of child-specific legislation.

The evolution of legal protections for juveniles in the pre-independence era, through early legislation and reforms, demonstrates a gradual recognition of the unique needs and challenges faced by young offenders. These initial steps paved the way for further advancements in the juvenile justice system, ultimately leading to the development of the Juvenile Justice (Care and Protection of Children) Act, 2015, which seeks to provide a child-friendly approach to the administration of justice for children in conflict with the law, as well as children in need of care and protection. The Juvenile Justice (Care and Protection of Children) Act, 2015, builds upon

⁸⁵ The Code of Criminal Procedure, 1898, Act No. 5 of 1898, § 399, India Code, <https://www.indiacode.nic.in/handle/123456789/1611> (last visited Apr. 2, 2024).

⁸⁶ Report of the Indian Jails Committee, 1919-20, Government of India, 1920.

the principles and provisions of earlier legislation while introducing significant reforms to ensure the best interests of children. The act emphasizes the importance of rehabilitation, reintegration, and restoration of children in conflict with the law, recognizing that punitive measures alone are insufficient in addressing the complex issues surrounding juvenile delinquency.

The act also establishes a comprehensive framework for the care and protection of children, including provisions for the establishment of Child Welfare Committees and Juvenile Justice Boards in every district. These bodies are responsible for the care, protection, treatment, development, and rehabilitation of children in need of care and protection and children in conflict with the law, respectively. Furthermore, the act introduces the concept of diversion, which aims to keep children away from the formal criminal justice system and provide them with alternative measures of rehabilitation and reintegration. Diversion programs, such as counselling, community service, and restorative justice practices, are designed to address the underlying causes of juvenile delinquency and promote the overall well-being of children.

Despite the progressive provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, there are still significant challenges and gaps in its implementation. These include inadequate infrastructure, lack of trained personnel, and insufficient resources allocated to the juvenile justice system. Moreover, issues such as poverty, social inequality, and lack of access to education continue to contribute to the vulnerability of children and their involvement in criminal activities. To address these challenges and ensure the effective implementation of the act, there is a need for concerted efforts from all stakeholders, including the government, civil society organizations, and the judiciary. Recommendations for reform include strengthening the capacity of juvenile justice institutions, providing adequate training to personnel involved in the care and protection of children, and investing in community-based interventions that address the root causes of juvenile delinquency.

b) *The Children Act, 1960*

The Children Act of 1960 marked a significant milestone in the evolution of legal protections for juveniles in India, particularly in the pre-independence era.⁸⁷ This comprehensive legislation aimed to consolidate and amend the laws relating to the care, protection, maintenance, welfare, training, education, and rehabilitation of neglected or delinquent

⁸⁷ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (Oxford University Press, 2010).

children.⁸⁸ The act sought to address the shortcomings of the earlier legislations and provide a more robust framework for dealing with children in need of care and protection, as well as those in conflict with the law. One of the key features of the Children Act, 1960, was the establishment of separate Child Welfare Boards and Children's Courts for dealing with matters related to neglected and delinquent children, respectively.⁸⁹ The Child Welfare Boards were entrusted with the responsibility of providing care, protection, and treatment to neglected children, while the Children's Courts were set up to handle cases of juvenile delinquency. This separation of powers and specialized institutions recognized the distinct needs of children and aimed to provide them with a more child-friendly and rehabilitative approach.

The act also introduced the concept of "fit persons" and "fit institutions," which were authorized to receive and care for neglected and delinquent children.⁹⁰ Fit persons could be individuals who were willing and capable of taking care of children in need, while fit institutions included children's homes, special schools, and other establishments that provided care, education, and training to such children. This provision acknowledged the role of the community and civil society in the care and protection of vulnerable children and sought to encourage their participation in the rehabilitation process. Another significant aspect of the Children Act, 1960, was its emphasis on the rehabilitation and reintegration of neglected and delinquent children into society. The act provided for the establishment of observation homes and special schools, where children could receive education, vocational training, and psychological support to help them overcome their challenges and develop the necessary skills for a successful future.⁹¹ The legislation recognized that punitive measures alone were insufficient in addressing the complex issues faced by children and that a more holistic approach, focusing on their overall development and well-being, was necessary.

The act also introduced provisions for the protection of children from exploitation, abuse, and neglect. It prohibited the employment of children in certain hazardous occupations and regulated their working conditions in other fields.⁹² The legislation also criminalized the

⁸⁸ The Children Act, 1960, Act No. 60 of 1960, India Code,

<https://www.indiacode.nic.in/handle/123456789/1593> (last visited Apr. 2, 2024).

⁸⁹ The Children Act, 1960, Act No. 60 of 1960, § 4, India Code,

<https://www.indiacode.nic.in/handle/123456789/1593> (last visited Apr. 2, 2024).

⁹⁰ The Children Act, 1960, Act No. 60 of 1960, § 2(4), India Code,

<https://www.indiacode.nic.in/handle/123456789/1593> (last visited Apr. 2, 2024).

⁹¹ The Children Act, 1960, Act No. 60 of 1960, § 9, India Code,

<https://www.indiacode.nic.in/handle/123456789/1593> (last visited Apr. 2, 2024).

⁹² The Children Act, 1960, Act No. 60 of 1960, § 44, India Code,

<https://www.indiacode.nic.in/handle/123456789/1593> (last visited Apr. 2, 2024).



exploitation of children for begging and provided for the rescue and rehabilitation of such children. These measures aimed to safeguard the rights of children and prevent their victimization by unscrupulous individuals or groups. However, despite its progressive provisions, the implementation of the Children Act, 1960, faced several challenges. The lack of adequate infrastructure, trained personnel, and financial resources hindered the effective functioning of the Child Welfare Boards and Children's Courts.⁹³ Moreover, the act's focus on institutionalization as a primary means of rehabilitation led to the overreliance on children's homes and special schools, which often lacked the necessary facilities and expertise to provide quality care and support to children.

The act also faced criticism for its lack of clarity on certain aspects, such as the definition of neglected and delinquent children, and the procedures for their apprehension, detention, and trial.⁹⁴ The absence of clear guidelines and standards for the functioning of institutions and the lack of monitoring mechanisms led to the proliferation of poorly managed and overcrowded children's homes, where children were subjected to abuse, neglect, and exploitation. Furthermore, the Children Act, 1960, did not adequately address the root causes of child neglect and delinquency, such as poverty, social inequality, and lack of access to education and healthcare. The legislation focused primarily on the symptoms rather than the underlying issues, which limited its effectiveness in preventing the occurrence of such problems in the first place.

Despite its limitations, the Children Act, 1960, represented a significant step forward in the evolution of legal protections for juveniles in India. It provided a comprehensive framework for the care, protection, and rehabilitation of neglected and delinquent children and laid the foundation for future legislations in this field. The act's emphasis on child-friendly institutions, rehabilitation, and community participation paved the way for a more progressive and rights-based approach to juvenile justice in India. The subsequent legislations, such as the Juvenile Justice Act of 1986 and the Juvenile Justice (Care and Protection of Children) Act, 2000, built upon the principles and provisions of the Children Act, 1960, while addressing its shortcomings and incorporating new developments in the field of child rights and juvenile justice. These legislations further strengthened the legal protections for children, expanded the scope of services and interventions, and emphasized the importance of family and community-based

⁹³ Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* (Oxford University Press, 2017).

⁹⁴ Maharukh Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law* (Childline India Foundation, 2006).

rehabilitation. However, the journey towards a comprehensive and effective juvenile justice system in India is far from complete. The Juvenile Justice (Care and Protection of Children) Act, 2015, which replaced the earlier legislations, introduced several significant reforms, such as the provision for trying juveniles between the ages of 16 and 18 as adults in cases of heinous offenses, and the establishment of Child Welfare Committees and Juvenile Justice Boards in every district. While these measures aim to address the challenges posed by serious juvenile crimes and ensure the best interests of children, their implementation has been fraught with difficulties.

The lack of adequate infrastructure, trained personnel, and resources continues to hinder the effective functioning of the juvenile justice system in India. The overreliance on institutionalization, the lack of community-based interventions, and the inadequate support for aftercare and rehabilitation remain significant challenges. Moreover, issues such as poverty, social inequality, and discrimination continue to pose barriers to the full realization of children's rights and their successful reintegration into society. To address these challenges and ensure the effective implementation of the juvenile justice legislations, there is a need for a multi-pronged approach that involves the collaboration of all stakeholders, including the government, civil society organizations, and the community. This includes investing in the development of a robust infrastructure for child protection services, providing adequate training and support to personnel involved in the juvenile justice system, and promoting community-based interventions that address the root causes of child neglect and delinquency.

Additionally, there is a need for greater awareness and sensitization among the public about the rights and needs of children, particularly those in difficult circumstances. The media and educational institutions can play a crucial role in this regard by promoting positive narratives and dispelling myths and stereotypes about children in conflict with the law. The Children Act, 1960, marked a significant milestone in the evolution of legal protections for juveniles in India, particularly in the pre-independence era. Despite its limitations and challenges, the act provided a comprehensive framework for the care, protection, and rehabilitation of neglected and delinquent children and laid the foundation for future legislations in this field. The subsequent legislations have built upon its principles and provisions while addressing its shortcomings and incorporating new developments in the field of child rights and juvenile justice. However, the effective implementation of these legislations requires a concerted effort from all stakeholders, including the government, civil society organizations, and the community. By investing in the development of a robust infrastructure for child protection services, promoting community-

based interventions, and increasing public awareness and sensitization, India can move towards a more comprehensive and effective juvenile justice system that upholds the rights and best interests of all children.

B. POST-INDEPENDENCE REFORMS

a) *The Juvenile Justice Act, 1986*

In the aftermath of India's independence in 1947, the nation embarked on a transformative journey of legal reform, seeking to establish a justice system that upheld the rights and welfare of all its citizens, including the vulnerable population of juveniles.⁹⁵ The Constitution of India, adopted in 1950, laid the groundwork for this progressive approach by enshrining fundamental rights and directing the state to ensure the well-being of children.⁹⁶ However, it was not until the enactment of the Juvenile Justice Act, 1986 (hereinafter referred to as the JJ Act, 1986) that a comprehensive legal framework specifically addressing the needs and protection of juveniles in conflict with the law and children in need of care and protection was put in place.⁹⁷ The JJ Act, 1986 represented a watershed moment in the evolution of legal protections for juveniles in India. The primary objective of the Act was to provide for the care, protection, treatment, development, and rehabilitation of neglected or delinquent juveniles and to establish a mechanism for the adjudication of certain matters related to juveniles.⁹⁸ The Act adopted a child-centric approach, placing the welfare and best interests of the child at the forefront of all decisions and actions concerning juveniles.⁹⁹

One of the most significant contributions of the JJ Act, 1986 was the establishment of Juvenile Welfare Boards (JWBs) in each district to handle matters related to neglected juveniles and Children's Courts to deal with delinquent juveniles.¹⁰⁰ The JWBs were vested with the responsibility of providing care, protection, and rehabilitation to neglected juveniles, while the Children's Courts were tasked with adjudicating cases involving juvenile offenders and ensuring their proper care, protection, and rehabilitation.¹⁰¹ This institutional framework aimed to create a specialized and sensitive approach to dealing with juveniles, recognizing their

⁹⁵ Adenwalla, Maharukh. "Child Protection and Juvenile Justice System for Juvenile in Conflict with Law." Childline India Foundation, 2006, <https://childlineindia.org.in/pdf/CP-JJ-JCL.pdf> (last visited June 10, 2023).⁹⁶ The Constitution of India, 1950, <https://legislative.gov.in/constitution-of-india> (last visited June 10, 2023).⁹⁷ The Juvenile Justice Act, 1986, <https://www.indiacode.nic.in/handle/123456789/1848> (last visited June 10, 2023).

⁹⁸ Ibid.

⁹⁹ Kumari, Ved. "The Juvenile Justice System in India: From Welfare to Rights." Oxford University Press, 2010.

¹⁰⁰ The Juvenile Justice Act, 1986, Section 4 and Section 5.

¹⁰¹ Ibid., Section 9 and Section 10.



unique needs and vulnerabilities. The concept of "fit institutions" was another notable feature introduced by the JJ Act, 1986. These institutions, recognized by the state government, were deemed suitable for the reception, care, and rehabilitation of neglected or delinquent juveniles.¹⁰² The establishment of fit institutions underscored the importance of providing a nurturing and rehabilitative environment for juveniles, aimed at facilitating their holistic development and reintegration into society.

Moreover, the JJ Act, 1986 emphasized the significance of non-institutional alternatives for the care and protection of juveniles. It provided for the placement of neglected or delinquent juveniles in foster care, under the supervision of fit persons, or in their own homes, subject to certain conditions. This approach sought to minimize the institutionalization of juveniles and promote their well-being within a family or community setting, recognizing the importance of social support and a sense of belonging in their overall development. The Act also incorporated procedural safeguards to ensure the fair treatment of juveniles in conflict with the law. It prohibited the publication of any information that could lead to the identification of a juvenile involved in any proceeding under the Act, thereby protecting their right to privacy and confidentiality. Furthermore, it mandated that proceedings involving juveniles be conducted in a child-friendly manner, taking into account their age, level of understanding, and special needs. This provision aimed to create a non-intimidating and supportive environment for juveniles during legal proceedings.

However, despite the progressive provisions of the JJ Act, 1986, its implementation faced several challenges on the ground. The lack of adequate infrastructure, trained personnel, and financial resources hindered the effective functioning of JWBs and Children's Courts. The rehabilitation and reintegration of juveniles often remained inadequate, with limited access to quality education, vocational training, and psychosocial support. The Act's focus on institutional care, while well-intentioned, sometimes led to the overcrowding of juvenile homes and the lack of individualized attention to the specific needs of each child. Recognizing these gaps and the need for further reform, the Indian legislature subsequently enacted the Juvenile Justice (Care and Protection of Children) Act, 2000, which replaced the JJ Act, 1986. The new Act aimed to address the shortcomings of its predecessor and provide a more comprehensive and robust framework for juvenile justice in India. It introduced concepts such as the principle

¹⁰² Ibid., Section 2(e).

of presumption of innocence, the right to legal representation, and the establishment of Child Welfare Committees and Juvenile Justice Boards in each district.

The enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015, further strengthened the legal protections for juveniles in India. The Act raised the age of criminal responsibility from 18 to 21 years for serious offenses and introduced the concept of "heinous offenses" for which juveniles could be tried as adults. While this provision faced criticism for its potential violation of child rights, it reflected the societal concerns regarding juvenile crime and the need for a balance between rehabilitation and accountability. In recent years, the Supreme Court of India has played a pivotal role in interpreting and expanding the scope of juvenile justice legislation. In the landmark case of *Sampurna Behrua v. Union of India* (2018), the Supreme Court emphasized the importance of effective implementation of the Juvenile Justice Act and directed state governments to establish Child Welfare Committees and Juvenile Justice Boards in every district. The Court also highlighted the need for regular monitoring and evaluation of juvenile justice institutions to ensure their proper functioning and the well-being of children in their care.

The evolution of legal protections for juveniles in India post-independence has been a gradual and ongoing process. The Juvenile Justice Act, 1986 laid the foundation for a child-centric approach to juvenile justice, emphasizing the welfare and rehabilitation of juveniles in conflict with the law and children in need of care and protection. While the Act faced challenges in its implementation, it paved the way for subsequent legislative reforms and sparked an ongoing discourse on the rights and well-being of juveniles in the Indian justice system. The journey towards a comprehensive and effective juvenile justice system in India continues, with a focus on strengthening institutional mechanisms, enhancing rehabilitation programs, and promoting community-based alternatives. The active involvement of the judiciary, civil society organizations, and child rights advocates has been instrumental in driving these reforms and ensuring accountability in the implementation of juvenile justice laws.

As India moves forward, it is crucial to prioritize the allocation of resources, the training of personnel, and the development of infrastructure to support the effective functioning of the juvenile justice system. Collaboration between the government, non-governmental organizations, and local communities is essential to create a holistic support network for juveniles and ensure their successful reintegration into society. Furthermore, there is a need to address the root causes of juvenile delinquency and child neglect, such as poverty, social inequality, and lack of access to education and healthcare. Preventive measures, including

community-based interventions, awareness campaigns, and family support programs, should be strengthened to reduce the risk factors that lead to children coming into conflict with the law or requiring care and protection.

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

The turn of the millennium marked a significant milestone in the evolution of legal protections for juveniles in India with the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act, 2000).¹⁰³ This comprehensive legislation replaced the Juvenile Justice Act, 1986, and aimed to address the gaps and challenges that had emerged in the juvenile justice system over the years.¹⁰⁴ The JJ Act, 2000 represented a paradigm shift in the approach towards juveniles, emphasizing their care, protection, and rehabilitation as the primary objectives. The JJ Act, 2000 was grounded in the principles enshrined in the Constitution of India and international conventions such as the United Nations Convention on the Rights of the Child (UNCRC), which India ratified in 1992.¹⁰⁵ The Act recognized the inherent dignity and worth of every child and sought to ensure their holistic development and well-being. It aimed to create a child-friendly justice system that treated juveniles with compassion, respect, and understanding, while also holding them accountable for their actions.

One of the key features of the JJ Act, 2000 was the establishment of Juvenile Justice Boards (JJBs) in each district to handle matters related to juveniles in conflict with the law.¹⁰⁶ The JJBs were empowered to conduct inquiries, pass orders, and ensure the care, protection, and rehabilitation of juveniles who had committed offenses. The Act also provided for the setting up of Child Welfare Committees (CWCs) in each district to deal with children in need of care and protection, such as orphans, abandoned children, and victims of abuse or exploitation.¹⁰⁷ The JJ Act, 2000 introduced the concept of "juveniles in conflict with the law" to replace the earlier terminology of "delinquent juveniles."¹⁰⁸ This change in terminology reflected a shift in perspective, acknowledging that juveniles who commit offenses are not inherently criminal but rather a product of their circumstances and in need of guidance and support. The Act raised the

¹⁰³ The Juvenile Justice (Care and Protection of Children) Act, 2000, <https://www.indiacode.nic.in/handle/123456789/1465> (last visited June 10, 2023).

¹⁰⁴ Kumari, Ved. "The Juvenile Justice System in India: From Welfare to Rights." Oxford University Press, 2010¹⁰⁵ United Nations Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last visited June 10, 2023).

¹⁰⁶ The Juvenile Justice (Care and Protection of Children) Act, 2000, Section 4.

¹⁰⁷ Ibid., Section 29.

¹⁰⁸ Ibid., Section 2(1).



age of criminal responsibility from 16 to 18 years, ensuring that juveniles were not subjected to the adult criminal justice system and were instead dealt with through a separate juvenile justice mechanism.¹⁰⁹

The Act emphasized the importance of rehabilitation and reintegration of juveniles into society. It provided for various dispositional alternatives, such as release on probation, placement in foster care or fit institutions, and community service.¹¹⁰ These measures aimed to provide juveniles with a supportive environment and opportunities for reformation, rather than subjecting them to punitive measures that could have a detrimental impact on their development and future prospects. The JJ Act, 2000 also introduced the concept of "restorative justice," which focused on repairing the harm caused by the offense, promoting reconciliation between the offender and the victim, and involving the community in the rehabilitation process.¹¹¹ This approach sought to address the underlying causes of juvenile delinquency and promote a sense of responsibility and accountability among juveniles.

However, despite the progressive provisions of the JJ Act, 2000, its implementation faced several challenges. The lack of adequate infrastructure, trained personnel, and financial resources continued to hinder the effective functioning of JJBs and CWCs. The rehabilitation and reintegration programs often lacked the necessary scope and quality to effectively address the needs of juveniles. The Act's emphasis on institutional care led to the mushrooming of juvenile homes, many of which were overcrowded and lacked the necessary facilities and services. Moreover, the JJ Act, 2000 faced criticism for its blanket approach to the age of criminal responsibility. Critics argued that the Act failed to consider the varying levels of maturity and understanding among juveniles and the nature and severity of the offenses committed. This debate intensified in the wake of the 2012 Delhi gang rape case, in which one of the accused was a juvenile just short of 18 years old. The public outcry and demand for a more stringent approach towards juvenile offenders led to further amendments to the juvenile justice legislation.

In response to these concerns, the Indian Parliament passed the Juvenile Justice (Care and Protection of Children) Act, 2015, which replaced the JJ Act, 2000. The new Act introduced significant changes, including the provision for juveniles between the ages of 16 and 18 to be

¹⁰⁹ Ibid., Section 2(k).

¹¹⁰ Ibid., Section 15

¹¹¹ Kumari, Ved. "The Juvenile Justice System in India: From Welfare to Rights." Oxford University Press, 2010.

tried as adults for heinous offenses. This controversial amendment aimed to strike a balance between the rights of juveniles and the need for accountability in cases of serious crimes. However, it also raised concerns about the potential violation of child rights and the erosion of the rehabilitative spirit of the juvenile justice system. The JJ Act, 2015 also strengthened the provisions related to the care and protection of children. It introduced the concept of "children in need of care and protection" (CNCP), which included not only orphans and abandoned children but also those who were victims of abuse, exploitation, or trafficking. The Act mandated the registration of all childcare institutions and provided for stricter monitoring and regulation to ensure the safety and well-being of children in institutional care.

The Supreme Court of India has played a crucial role in interpreting and expanding the scope of the juvenile justice legislation. In the landmark case of *Sampurna Behrua v. Union of India* (2018), the Supreme Court emphasized the need for effective implementation of the JJ Act and directed state governments to establish JJBs and CWCs in every district. The Court also highlighted the importance of regular monitoring and evaluation of juvenile justice institutions to ensure their proper functioning and the well-being of children in their care. The evolution of legal protections for juveniles in India, particularly through the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, marked a significant step towards a more comprehensive and child-centric approach to juvenile justice. The Act recognized the unique needs and vulnerabilities of juveniles and aimed to provide them with care, protection, and opportunities for rehabilitation and reintegration into society.

However, the challenges in the implementation of the Act and the subsequent amendments in 2015 have highlighted the ongoing debates and dilemmas in balancing the rights of juveniles with societal concerns and the need for accountability. The juvenile justice system in India continues to evolve, with a focus on strengthening institutional mechanisms, enhancing rehabilitation programs, and promoting community-based alternatives. As India moves forward, it is crucial to prioritize the allocation of resources, the training of personnel, and the development of infrastructure to support the effective functioning of the juvenile justice system. Collaboration between the government, civil society organizations, and local communities is essential to create a holistic support network for juveniles and ensure their successful reintegration into society.

Furthermore, there is a need to address the root causes of juvenile delinquency and child vulnerability, such as poverty, social inequality, and lack of access to education and healthcare. Preventive measures, including community-based interventions, awareness campaigns, and

family support programs, should be strengthened to reduce the risk factors that lead to children coming into conflict with the law or requiring care and protection. The Juvenile Justice (Care and Protection of Children) Act, 2000 represented a significant milestone in the evolution of legal protections for juveniles in post-independence India. While challenges persist, the Act laid the foundation for a more child-centric and rehabilitative approach to juvenile justice. The ongoing efforts to reform and strengthen the juvenile justice system demonstrate India's commitment to upholding the rights and well-being of its young citizens. By continually refining its laws, policies, and practices, India can strive towards creating a just and compassionate society that nurtures and protects its children, ensuring a brighter future for generations to come.

c) *Amendments and Revisions to the JJ Act, 2000*

The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act, 2000) marked a significant milestone in the evolution of legal protections for juveniles in India. However, in the years following its enactment, several challenges and gaps emerged in its implementation, necessitating amendments and revisions to strengthen the juvenile justice system.¹¹² These changes were driven by a combination of factors, including societal concerns, judicial interventions, and the need to align the legislation with international standards and best practices. One of the most significant amendments to the JJ Act, 2000 came in the form of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. This amendment aimed to address the issue of juveniles who were accused of serious offenses and to strike a balance between their rights and the need for public safety.¹¹³ The amendment introduced the concept of "juveniles in conflict with the law" and provided for the possibility of transferring juveniles between the ages of 16 and 18 who were accused of heinous offenses to the adult criminal justice system.¹¹⁴ However, this provision was met with criticism from child rights advocates who argued that it violated the principles of juvenile justice and the rehabilitative spirit of the Act.

Another notable amendment to the JJ Act, 2000 was the Juvenile Justice (Care and Protection of Children) Amendment Act, 2011. This amendment sought to strengthen the provisions related to the adoption of children and bring them in line with the Hague Convention on

¹¹² Kumari, Ved. "The Juvenile Justice System in India: From Welfare to Rights." Oxford University Press, 2010.

¹¹³ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, <https://www.indiacode.nic.in/handle/123456789/2156> (last visited June 10, 2023).¹¹⁴ Ibid., Section 2(l) and Section 15.

Protection of Children and Co-operation in Respect of Intercountry Adoption, which India ratified in 2003.¹¹⁵ The amendment streamlined the adoption process, established the Central Adoption Resource Authority (CARA) as the nodal body for adoption matters, and provided for stricter regulations to prevent illegal adoptions and trafficking of children.¹¹⁶ The protection and rehabilitation of children in need of care and protection (CNCP) was another area that received attention through amendments and revisions to the JJ Act, 2000. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2014 expanded the definition of CNCP to include children who were victims of or affected by armed conflict, civil unrest, or natural disasters.¹¹⁷ It also provided for the establishment of Child Welfare Committees (CWCs) in every district to handle matters related to CNCP and strengthened the provisions for their care, protection, and rehabilitation.

The most comprehensive overhaul of the JJ Act, 2000 came with the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015). This new legislation repealed and replaced the JJ Act, 2000, introducing significant changes to the juvenile justice system in India. The JJ Act, 2015 aimed to address the shortcomings of the previous Act and align it with the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and other international standards.¹¹⁸ One of the most controversial provisions of the JJ Act, 2015 was the introduction of the concept of "heinous offenses" and the possibility of trying juveniles between the ages of 16 and 18 as adults for such offenses.¹¹⁹ This provision was a response to the public outcry and demand for a more stringent approach towards juvenile offenders in the wake of the 2012 Delhi gang rape case, in which one of the accused was a juvenile just short of 18 years old. While supporters of this provision argued that it struck a balance between the rights of juveniles and the need for accountability in cases of serious crimes, critics raised concerns about the potential violation of child rights and the erosion of the rehabilitative spirit of the juvenile justice system.

The JJ Act, 2015 also introduced several measures to strengthen the care and protection of children. It mandated the registration of all childcare institutions (CCIs) and provided for stricter monitoring and regulation to ensure the safety and well-being of children in institutional

¹¹⁵ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2011, <https://www.indiacode.nic.in/handle/123456789/2157> (last visited June 10, 2023).¹¹⁶ Ibid., Chapter IV.

¹¹⁷ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2014, <https://www.indiacode.nic.in/handle/123456789/2158> (last visited June 10, 2023).¹¹⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/handle/123456789/2148> (last visited June 10, 2023).

¹¹⁹ Ibid., Section 15.

care. The Act also emphasized the importance of family-based care and provided for the promotion of foster care and sponsorship programs as alternatives to institutional care. The role of the judiciary in shaping the juvenile justice system in India cannot be overstated. The Supreme Court and High Courts have played a crucial role in interpreting and expanding the scope of the juvenile justice legislation through their judgments and directives. In the case of *Sampurna Behrua v. Union of India* (2018), the Supreme Court emphasized the need for effective implementation of the JJ Act and directed state governments to establish Juvenile Justice Boards (JJBs) and CWCs in every district. The Court also highlighted the importance of regular monitoring and evaluation of juvenile justice institutions to ensure their proper functioning and the well-being of children in their care.

Another significant judicial intervention came in the form of the Supreme Court's judgment in the case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India* (2017). In this case, the Court took suo motu cognizance of the exploitation and abuse of children in orphanages and other CCIs across the country. The Court issued a series of directives to state governments and central authorities to strengthen the regulatory framework for CCIs, conduct regular inspections, and ensure the safety and well-being of children in institutional care. The amendments and revisions to the JJ Act, 2000, culminating in the enactment of the JJ Act, 2015, reflect the evolving nature of the juvenile justice system in India. These changes have been driven by a combination of societal concerns, judicial interventions, and the need to align the legislation with international standards and best practices. While the JJ Act, 2015 introduced several progressive measures, it also faced criticism for its controversial provisions, such as the possibility of trying juveniles as adults for heinous offenses.

As India continues to grapple with the challenges of implementing a robust and effective juvenile justice system, it is crucial to prioritize the allocation of resources, the training of personnel, and the development of infrastructure. The focus should be on strengthening the rehabilitative and reintegrative aspects of the juvenile justice system, rather than adopting a purely punitive approach. The promotion of community-based interventions, such as counselling, mentoring, and skill development programs, can play a vital role in preventing juvenile delinquency and promoting the overall well-being of children. Furthermore, there is a need to address the root causes of juvenile delinquency and child vulnerability, such as poverty, social inequality, and lack of access to education and healthcare. Preventive measures, including awareness campaigns, family support programs, and early intervention strategies,

should be given due importance to reduce the risk factors that lead to children coming into conflict with the law or requiring care and protection.

The ongoing efforts to reform and strengthen the juvenile justice system in India require a collaborative approach involving the government, civil society organizations, and local communities. Regular monitoring and evaluation of the implementation of the JJ Act, 2015, and its subsequent amendments are essential to identify gaps and challenges and take corrective measures. The active involvement of the judiciary in overseeing the functioning of the juvenile justice system and ensuring the protection of child rights is also crucial.

II. COMPARATIVE ANALYSIS OF JUVENILE JUSTICE LAWS GLOBALLY

A. INTERNATIONAL INSTRUMENTS AND TREATIES

a) *United Nations Convention on the Rights of the Child (UNCRC)*

The United Nations Convention on the Rights of the Child (UNCRC) is a landmark international treaty that sets out the civil, political, economic, social, and cultural rights of children.¹²⁰ Adopted by the United Nations General Assembly on November 20, 1989, the UNCRC is the most widely ratified human rights treaty in history, with 196 state parties.¹²¹ The convention represents a global consensus on the fundamental rights and principles that should guide the treatment of children, including those in conflict with the law. The UNCRC is based on four core principles: non-discrimination, the best interests of the child, the right to life, survival, and development, and respect for the views of the child.¹²² These principles are intended to ensure that all children, regardless of their background or circumstances, are treated with dignity, respect, and fairness. The convention recognizes that children, due to their physical and mental immaturity, require special safeguards and care, including appropriate legal protection.

One of the most significant aspects of the UNCRC is its emphasis on the use of a child-centered approach in all matters concerning children, including in the administration of juvenile justice. Article 40 of the convention specifically addresses the treatment of children in conflict with the law and sets out the minimum standards that should be applied in such cases.¹²³ These standards are based on the recognition that children who come into contact with the criminal

¹²⁰ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹²¹ United Nations Treaty Collection, Convention on the Rights of the Child, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (last visited Apr. 2, 2024).

¹²² United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 2, 3, 6, 12.

¹²³ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 40



justice system require special protection and care, and that the primary goal of any intervention should be their rehabilitation and reintegration into society. Under Article 40, state parties are required to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.¹²⁴ This provision is based on the understanding that young children lack the cognitive and moral development necessary to be held criminally responsible for their actions. The convention does not specify a particular age, leaving it to individual states to determine an appropriate minimum age of criminal responsibility. However, the United Nations Committee on the Rights of the Child, which monitors the implementation of the UNCRC, has recommended that the minimum age of criminal responsibility be set no lower than 12 years.¹²⁵

Article 40 also requires state parties to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.¹²⁶ This provision emphasizes the need for a specialized and separate system of juvenile justice that is distinct from the adult criminal justice system. Such a system should be designed to take into account the specific needs and vulnerabilities of children and should prioritize their rehabilitation and reintegration into society. The UNCRC also sets out a range of procedural safeguards that should be applied in juvenile justice proceedings. These include the right to be presumed innocent until proven guilty according to law, the right to be informed promptly and directly of the charges against them, the right to legal or other appropriate assistance in the preparation and presentation of their defense, and the right to have the matter determined without delay by a competent, independent, and impartial authority or judicial body.¹²⁷ These safeguards are intended to ensure that children are treated fairly and that their rights are protected throughout the legal process.

In addition to these procedural safeguards, the UNCRC also emphasizes the importance of using diversionary measures and alternatives to institutional care wherever possible. Article 40(3) requires state parties to seek to promote the establishment of measures for dealing with children in conflict with the law without resorting to judicial proceedings, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational

¹²⁴ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 40(3)(a). ¹²⁵ Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019).

¹²⁶ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 40(3).

¹²⁷ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 40(2)(b).

training programs, and other alternatives to institutional care. These measures are intended to minimize the negative impact of contact with the criminal justice system on children and to promote their rehabilitation and reintegration into society. The UNCRC has had a significant impact on the development of juvenile justice systems around the world. Many countries have revised their laws and policies to bring them into line with the principles and standards set out in the convention. In India, the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is the primary legislation governing the treatment of children in conflict with the law. The JJ Act incorporates many of the key principles and provisions of the UNCRC, including the best interests of the child, the use of diversionary measures, and the emphasis on rehabilitation and reintegration.

However, despite the progress made in aligning national laws and policies with the UNCRC, significant challenges remain in the implementation of these principles in practice. Many countries, including India, struggle with inadequate resources, lack of trained personnel, and poor infrastructure, which can hinder the effective functioning of the juvenile justice system. There are also concerns about the overuse of detention and the lack of adequate rehabilitation and reintegration programs for children in conflict with the law. To address these challenges, there is a need for greater investment in the juvenile justice system, including in the development of specialized courts, trained personnel, and community-based programs. There is also a need for greater collaboration between the government, civil society organizations, and international agencies to promote the implementation of the UNCRC and to share best practices and lessons learned.

One area where the JJ Act falls short of the standards set out in the UNCRC is in the treatment of children between the ages of 16 and 18 who are accused of committing heinous offenses. Under the JJ Act, such children can be tried as adults in certain circumstances, which violates the principle of treating all children in conflict with the law within the juvenile justice system. This provision has been criticized by child rights advocates and has been challenged in the courts, with the Supreme Court of India recently upholding its constitutional validity in the case of *Shilpa Mittal v. State of NCT of Delhi*. Another area of concern is the lack of adequate safeguards for children in institutional care, including in observation homes and special homes. There have been reports of abuse, neglect, and exploitation of children in these institutions, highlighting the need for stronger monitoring and oversight mechanisms. The JJ Act provides for the establishment of Child Welfare Committees and Juvenile Justice Boards to monitor the

functioning of these institutions, but their effectiveness has been limited by lack of resources and trained personnel.

To address these challenges, there is a need for greater investment in the juvenile justice system, stronger collaboration between stakeholders, and more effective monitoring and oversight mechanisms. The JJ Act, while incorporating many of the key principles of the UNCRC, falls short in some areas, such as the treatment of children accused of heinous offenses and the lack of adequate safeguards for children in institutional care. Addressing these gaps and challenges requires a sustained commitment from all stakeholders to promote the rights and well-being of children in conflict with the law and to ensure that they are treated with dignity, respect, and fairness.

b) *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules, are a set of international guidelines adopted by the United Nations General Assembly in 1985.¹²⁸ These rules provide a framework for the development of juvenile justice systems that prioritize the well-being and best interests of children in conflict with the law, while also ensuring the protection of their rights and the promotion of their rehabilitation and reintegration into society.¹²⁹ The Beijing Rules are based on the recognition that children, due to their age and developmental stage, require a different approach to justice than adults. The rules emphasize the importance of treating children in conflict with the law with dignity and respect, and providing them with the necessary support and services to promote their rehabilitation and prevent recidivism¹³⁰.

One of the key principles of the Beijing Rules is the promotion of diversionary measures and alternatives to formal judicial proceedings wherever possible. Rule 11 states that considerations shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.¹³¹ This principle recognizes that contact with the formal criminal justice system can have a negative impact on children and that alternative measures, such as counselling, community service, and restorative justice programs, can be more effective in promoting their rehabilitation and reintegration into society. The Beijing Rules also

¹²⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985.

¹²⁹ Geraldine Van Bueren, *The International Law on the Rights of the Child* (1995).

¹³⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 1.

¹³¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 11

emphasize the importance of ensuring that children in conflict with the law are treated fairly and in accordance with the principles of due process. Rule 7 states that basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses, and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.¹³²

In addition to these procedural safeguards, the Beijing Rules also set out guidelines for the treatment of children in detention and the provision of rehabilitation and reintegration services. Rule 13 states that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time, while Rule 26 emphasizes the importance of providing education, vocational training, and other assistance to promote the child's rehabilitation and reintegration into society.¹³³ The Beijing Rules have had a significant impact on the development of juvenile justice systems around the world, including in India. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), which is the primary legislation governing the treatment of children in conflict with the law in India, incorporates many of the key principles and provisions of the Beijing Rules.¹³⁴

For example, the JJ Act emphasizes the importance of using diversionary measures and alternatives to formal judicial proceedings wherever possible, in line with Rule 11 of the Beijing Rules. Section 3 of the JJ Act states that the primary objective of the juvenile justice system is to ensure the well-being of the child and to promote their rehabilitation and reintegration into society.¹³⁵ The Act also provides for the establishment of Juvenile Justice Boards, which are responsible for conducting inquiries and providing rehabilitation and reintegration services to children in conflict with the law.

Similarly, the JJ Act incorporates many of the procedural safeguards set out in the Beijing Rules, such as the right to legal representation, the right to be informed of the charges, and the right to appeal. The Act also provides for the establishment of Child Welfare Committees, which are responsible for providing care and protection to children in need of care and protection, including those who have been victims of abuse, neglect, or exploitation. However,

¹³² United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 7. ¹³³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rules 13 and 26.

¹³⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, Act No. 2 of 2016, India Code, <https://www.indiacode.nic.in/handle/123456789/2148> (last visited Apr. 2, 2024).

¹³⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 3.

despite the incorporation of the principles and provisions of the Beijing Rules into the JJ Act, there are still significant challenges in the implementation of these principles in practice. One of the major challenges is the lack of adequate resources and infrastructure to support the effective functioning of the juvenile justice system. Many Juvenile Justice Boards and Child Welfare Committees lack the necessary staff, training, and facilities to provide quality services to children in conflict with the law and children in need of care and protection.

Another challenge is the overuse of detention and the lack of effective rehabilitation and reintegration programs for children in conflict with the law. Despite the emphasis on diversionary measures and alternatives to formal judicial proceedings in the JJ Act and the Beijing Rules, many children in India are still subjected to prolonged periods of detention, often in conditions that are harmful to their physical and mental health. Moreover, the rehabilitation and reintegration programs provided to children in detention are often inadequate and do not effectively address the root causes of their offending behaviour. To address these challenges, there is a need for greater investment in the juvenile justice system, including in the development of specialized courts, trained personnel, and community-based programs. There is also a need for greater collaboration between the government, civil society organizations, and international agencies to promote the implementation of the Beijing Rules and other international standards for juvenile justice.

One area where the JJ Act falls short of the standards set out in the Beijing Rules is in the treatment of children between the ages of 16 and 18 who are accused of committing heinous offenses. Under the JJ Act, such children can be tried as adults in certain circumstances, which violates the principle of treating all children in conflict with the law within the juvenile justice system. This provision has been criticized by child rights advocates and has been challenged in the courts, with the Supreme Court of India recently upholding its constitutional validity in the case of *Shilpa Mittal v. State of NCT of Delhi*. Another area of concern is the lack of effective monitoring and oversight mechanisms to ensure the proper implementation of the JJ Act and the Beijing Rules. While the JJ Act provides for the establishment of Juvenile Justice Boards and Child Welfare Committees to monitor the functioning of juvenile justice institutions, the effectiveness of these bodies has been limited by a lack of resources and trained personnel. Moreover, there is a need for greater transparency and accountability in the functioning of these institutions to prevent abuse, neglect, and exploitation of children.

c) *United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*

The United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines, were adopted by the United Nations General Assembly in 1990.¹³⁶ These guidelines represent a comprehensive and proactive approach to preventing juvenile delinquency by addressing the root causes of criminal behaviour and promoting the well-being of children and young people. The Riyadh Guidelines recognize that the prevention of juvenile delinquency is an essential part of crime prevention in society and that young people should have an active role and partnership within society.¹³⁷ The Riyadh Guidelines are based on the principle that the prevention of juvenile delinquency is best achieved through a child-centered approach that focuses on the well-being and development of children and young people. The guidelines emphasize the importance of providing children with opportunities for education, vocational training, employment, and other services that promote their social and personal development. They also stress the need for measures to strengthen families and communities, as well as to promote positive social values and attitudes.¹³⁸

One of the key principles of the Riyadh Guidelines is the importance of early intervention and prevention. The guidelines recognize that the early stages of a child's life are critical for their social and personal development and that early intervention can help prevent the onset of delinquent behaviour. The guidelines recommend that prevention programs should begin as early as possible and should involve families, schools, communities, and other relevant agencies.¹³⁹ The Riyadh Guidelines also emphasize the importance of community-based approaches to preventing juvenile delinquency. The guidelines recognize that communities have a vital role to play in supporting and nurturing young people and that community-based programs can be more effective than institutional approaches in preventing delinquency. The guidelines recommend that prevention programs should be developed in collaboration with local communities and should be tailored to the specific needs and circumstances of each community.¹⁴⁰

Another important aspect of the Riyadh Guidelines is the emphasis on the need for a multi-disciplinary and multi-sectoral approach to preventing juvenile delinquency. The guidelines recognize that the prevention of juvenile delinquency requires the involvement of a wide range of agencies and organizations, including law enforcement, social services, education, health,

¹³⁶ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), adopted by General Assembly resolution 45/112 of 14 December 1990.

¹³⁷ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Principle 1.

¹³⁸ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Principles 2-8. ¹³⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Principles 9-10. ¹⁴⁰ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Principles 11-19

and others. The guidelines recommend that these agencies should work together in a coordinated and integrated manner to provide a comprehensive and holistic approach to prevention.¹⁴¹ The Riyadh Guidelines have had a significant impact on the development of juvenile justice policies and practices around the world, including in India. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), which is the primary legislation governing the treatment of children in conflict with the law and children in need of care and protection in India, incorporates many of the key principles and provisions of the Riyadh Guidelines.¹⁴²

For example, the JJ Act emphasizes the importance of prevention and early intervention in addressing juvenile delinquency. Section 3 of the JJ Act states that one of the primary objectives of the juvenile justice system is to provide for the prevention of juvenile delinquency and to promote the rehabilitation and reintegration of children who have committed offenses.¹⁴³ The Act also provides for the establishment of Child Welfare Committees, which are responsible for providing care and protection to children in need of care and protection and for preventing their entry into the juvenile justice system.

Similarly, the JJ Act recognizes the importance of community-based approaches to preventing juvenile delinquency. The Act provides for the establishment of Special Juvenile Police Units and Child Welfare Police Officers, who are responsible for working with local communities to prevent juvenile delinquency and to provide support and assistance to children in conflict with the law and children in need of care and protection. The Act also provides for the establishment of Juvenile Justice Boards, which are responsible for conducting inquiries and providing rehabilitation and reintegration services to children in conflict with the law. However, despite the incorporation of the principles and provisions of the Riyadh Guidelines into the JJ Act, there are still significant challenges in the implementation of these principles in practice. One of the major challenges is the lack of adequate resources and infrastructure to support the effective functioning of the juvenile justice system. Many Child Welfare Committees and Juvenile Justice Boards lack the necessary staff, training, and facilities to provide quality services to children in need of care and protection and children in conflict with the law.

Another challenge is the lack of effective coordination and collaboration between the various agencies and organizations involved in the prevention of juvenile delinquency. Despite the

¹⁴¹ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Principles 20-29. ¹⁴² The Juvenile Justice (Care and Protection of Children) Act, 2015, Act No. 2 of 2016, India Code, <https://www.indiacode.nic.in/handle/123456789/2148> (last visited Apr. 2, 2024).

¹⁴³ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 3.



emphasis on a multi-disciplinary and multi-sectoral approach in the Riyadh Guidelines and the JJ Act, there is often a lack of effective communication and coordination between law enforcement, social services, education, health, and other relevant agencies. This can lead to gaps in services and support for children and families, as well as duplication of efforts and resources. To address these challenges, there is a need for greater investment in the juvenile justice system, including in the development of specialized courts, trained personnel, and community-based programs. There is also a need for greater collaboration and coordination between the various agencies and organizations involved in the prevention of juvenile delinquency, as well as for greater involvement of local communities in the development and implementation of prevention programs.

One area where the JJ Act falls short of the standards set out in the Riyadh Guidelines is in the treatment of children between the ages of 16 and 18 who are accused of committing heinous offenses. Under the JJ Act, such children can be tried as adults in certain circumstances, which violates the principle of treating all children in conflict with the law within the juvenile justice system. This provision has been criticized by child rights advocates and has been challenged in the courts, with the Supreme Court of India recently upholding its constitutional validity in the case of *Shilpa Mittal v. State of NCT of Delhi*. Another area of concern is the lack of effective monitoring and evaluation mechanisms to assess the impact and effectiveness of prevention programs and interventions. While the JJ Act provides for the establishment of monitoring and evaluation mechanisms, such as the Juvenile Justice Committee and the State Juvenile Justice Board, the effectiveness of these mechanisms has been limited by a lack of resources and trained personnel. Moreover, there is a need for more rigorous and systematic research to identify best practices and evidence-based interventions in the prevention of juvenile delinquency.

B. OVERVIEW OF JUVENILE JUSTICE SYSTEMS IN SELECT COUNTRIES

a) United States

The juvenile justice system in the United States has undergone significant evolution over the past century, reflecting changing societal attitudes, legal frameworks, and approaches to addressing juvenile delinquency.¹⁴⁴ The system has been shaped by a complex interplay of federal and state laws, judicial decisions, and policy initiatives aimed at striking a balance

¹⁴⁴ Benekos, Peter J., and Alida V. Merlo. "Juvenile Justice: The Legacy of Punitive Policy." *Youth Violence and Juvenile Justice* 6, no. 1 (2008): 28-46.

between the welfare of young offenders and the safety of the community.¹⁴⁵ This overview will explore the key features, challenges, and reforms of the juvenile justice system in the United States, providing insights into its strengths, weaknesses, and ongoing efforts to improve outcomes for youth in conflict with the law. The origins of the juvenile justice system in the United States can be traced back to the late 19th century, when reformers advocated for a separate legal framework to address the unique needs and circumstances of young offenders.¹⁴⁶ The first juvenile court was established in Cook County, Illinois, in 1899, marking a significant departure from the adult criminal justice system.¹⁴⁷ The underlying philosophy of the juvenile court was rooted in the doctrine of *parens patriae*, which emphasized the state's responsibility to act as a guardian for children in need of protection and guidance.¹⁴⁸

Over the course of the 20th century, the juvenile justice system in the United States underwent several transformations. In the 1960s and 1970s, landmark Supreme Court decisions, such as *In re Gault* (1967) and *In re Winship* (1970), extended due process rights to juveniles, including the right to counsel, the right to confront witnesses, and the requirement of proof beyond a reasonable doubt in delinquency proceedings.¹⁴⁹ These decisions aimed to ensure that juveniles received fair treatment and adequate legal protections within the juvenile justice system. However, the 1980s and 1990s witnessed a shift towards a more punitive approach to juvenile justice, fueled by a perception of rising juvenile crime rates and a belief that the system was too lenient.¹⁵⁰ Many states enacted laws that allowed for the transfer of juvenile offenders to adult courts for certain serious offenses, increased the use of detention and incarceration, and imposed longer sentences. This "get tough" era of juvenile justice prioritized punishment and retribution over rehabilitation and restorative justice.¹⁵¹

In recent years, there has been a growing recognition of the need to reform the juvenile justice system in the United States to better address the developmental needs of young offenders and promote their successful reintegration into society. The Supreme Court's decisions in *Roper v.*

¹⁴⁵ Feld, Barry C. "The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice." *Crime and Justice* 45, no. 1 (2016): 255-324.

¹⁴⁶ Tanenhaus, David S. "The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction." *Wake Forest Law Review* 42, no. 4 (2007): 937-986.

¹⁴⁷ Tanenhaus, David S. "The Evolution of Transfer Out of the Juvenile Court." In *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, edited by Jeffrey Fagan and Franklin E. Zimring, 13-43. Chicago: University of Chicago Press, 2000.

¹⁴⁸ Mack, Julian W. "The Juvenile Court." *Harvard Law Review* 23, no. 2 (1909): 104-122.

¹⁴⁹ *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).

¹⁵⁰ Torbet, Patricia, and Linda Szymanski. "State Legislative Responses to Violent Juvenile Crime: 1996-97 Update." *Juvenile Justice Bulletin* (November 1998): 1-8.

¹⁵¹ Feld, Barry C. "The Transformation of the Juvenile Court." *Minnesota Law Review* 75, no. 3 (1991): 691-725.



Simmons (2005), *Graham v. Florida* (2010), and *Miller v. Alabama* (2012) have affirmed that juveniles are fundamentally different from adults in terms of their culpability and capacity for change, and have placed limits on the use of extreme sentences such as the death penalty and life without parole for juvenile offenders. Furthermore, there has been an increasing emphasis on evidence-based practices and community-based interventions that prioritize prevention, diversion, and rehabilitation over punitive measures. The Juvenile Justice and Delinquency Prevention Act (JJDP), originally enacted in 1974 and most recently reauthorized in 2018, provides federal funding and guidelines for state juvenile justice systems, with a focus on reducing the use of detention and promoting community-based alternatives.

One of the key challenges facing the juvenile justice system in the United States is the overrepresentation of racial and ethnic minorities, particularly African American and Hispanic youth, at every stage of the process. Studies have consistently shown that minority youth are more likely to be arrested, detained, and committed to secure facilities compared to their white counterparts, even when controlling for offense severity and prior record. Addressing this racial and ethnic disparity requires a comprehensive approach that tackles the underlying social, economic, and systemic factors that contribute to this disproportionality. Another challenge is the high prevalence of mental health disorders and substance abuse among youth in the juvenile justice system. Research indicates that a significant proportion of juvenile offenders have diagnosable mental health conditions, such as depression, anxiety, and trauma-related disorders, as well as substance abuse problems. Providing adequate mental health screening, assessment, and treatment services within the juvenile justice system is crucial for promoting the well-being and rehabilitation of these youth.

The juvenile justice system in the United States also grapples with the issue of sexual abuse and exploitation of youth in custody. The Prison Rape Elimination Act (PREA) of 2003 established national standards for the prevention, detection, and response to sexual abuse in juvenile facilities, but the implementation of these standards has been uneven across jurisdictions. Ensuring the safety and protection of youth in custody requires ongoing training, monitoring, and accountability measures to prevent and address incidents of sexual abuse. In recent years, there has been a growing movement towards restorative justice practices in the juvenile justice system. Restorative justice emphasizes repairing the harm caused by the offense, promoting accountability and empathy, and involving the victim, offender, and community in the resolution process. Programs such as victim-offender mediation, family

group conferencing, and circles have shown promising results in reducing recidivism, increasing victim satisfaction, and promoting positive youth development.

Another area of reform in the juvenile justice system is the use of risk and needs assessment tools to inform decision-making at various stages of the process, from intake to disposition and re-entry. These tools help identify the risk factors and criminogenic needs of individual youth and guide the development of targeted interventions and case management strategies. The use of validated and culturally responsive assessment tools can help reduce the reliance on subjective judgments and promote more equitable and effective outcomes for youth. The juvenile justice system in the United States has also seen an increased focus on family engagement and involvement in the rehabilitation and reintegration process. Recognizing the critical role that families play in supporting youth and promoting positive behavioural change, many jurisdictions have implemented family-focused interventions, such as functional family therapy and multisystemic therapy, which work with the youth and their family to address underlying issues and strengthen family bonds.

Finally, there has been a growing emphasis on trauma-informed care in the juvenile justice system, acknowledging the high prevalence of trauma and adverse childhood experiences among justice-involved youth. Trauma-informed approaches seek to create a safe and supportive environment, avoid re-traumatization, and provide targeted interventions to address the impact of trauma on youth's behaviour and well-being. Training juvenile justice professionals in trauma-informed practices and implementing trauma-responsive policies and programs can help promote healing and resilience among youth in the system. Ongoing efforts to reform the juvenile justice system in the United States focus on promoting restorative justice practices, using risk and needs assessment tools to inform decision-making, engaging families in the rehabilitation and reintegration process, and implementing trauma-informed care. By addressing these challenges and embracing evidence-based and developmentally appropriate approaches, the juvenile justice system can work towards achieving better outcomes for youth, families, and communities, and fulfilling its mission of providing care, protection, and guidance to young offenders while ensuring public safety.

b) United Kingdom

The juvenile justice system in the United Kingdom has a rich history and has undergone significant transformations over the past century. Rooted in the principles of welfare and rehabilitation, the system has evolved to address the changing needs of young offenders while

balancing the interests of public safety and accountability.¹⁵² This overview will delve into the key features, challenges, and reforms of the juvenile justice system in the United Kingdom, providing insights into its strengths, weaknesses, and ongoing efforts to improve outcomes for youth in conflict with the law. The origins of the modern juvenile justice system in the United Kingdom can be traced back to the early 20th century, with the passage of the Children Act 1908. This landmark legislation established separate juvenile courts and introduced the concept of probation for young offenders.¹⁵³ The Act emphasized the welfare of the child and aimed to provide care and protection for children who were neglected, abused, or involved in criminal behaviour. This welfare-oriented approach formed the foundation of the British juvenile justice system for much of the 20th century.

In the latter half of the 20th century, the juvenile justice system in the United Kingdom underwent significant reforms. The Children and Young Persons Act 1969 introduced the concept of "care proceedings" and emphasized the importance of diverting young offenders away from the formal criminal justice system.¹⁵⁴ The Act aimed to decriminalize certain behaviours and provide support and intervention for children in need. However, the implementation of the Act faced challenges, and subsequent legislation, such as the Criminal Justice Act 1982, introduced a more punitive approach to juvenile offending. The 1990s marked a shift towards a more balanced approach to juvenile justice in the United Kingdom, with a focus on both welfare and justice. The Children Act 1989 and the Criminal Justice Act 1991 introduced the concept of parental responsibility and emphasized the importance of addressing the needs of young offenders while holding them accountable for their actions.¹⁵⁵ The Youth Justice and Criminal Evidence Act 1999 established the Youth Justice Board (YJB) for England and Wales, which was tasked with overseeing the youth justice system and promoting best practices in the prevention and reduction of youth offending.¹⁵⁶

One of the key features of the juvenile justice system in the United Kingdom is the emphasis on diversion and early intervention. The system aims to keep young people out of the formal criminal justice process wherever possible and provide support and interventions to address the underlying causes of offending behaviour. The Youth Offending Teams (YOTs), established

¹⁵² Goldson, Barry. "The New Youth Justice." Lyme Regis: Russell House Publishing, 2000

¹⁵³ Hendrick, Harry. "Child Welfare: England 1872-1989." London: Routledge, 1994.

¹⁵⁴ Bottoms, Anthony, and James Dignan. "Youth Justice in Great Britain." *Crime and Justice* 31 (2004): 21-183.

¹⁵⁵ Muncie, John. "Youth and Crime." London: SAGE Publications, 2014.

¹⁵⁶ Youth Justice Board. "About Us." <https://www.gov.uk/government/organisations/youth-justice-board-for-england-and-wales/about> (last visited June 10, 2023).

under the Crime and Disorder Act 1998, play a crucial role in this regard.¹⁵⁷ YOTs are multi-agency teams that work with young offenders to assess their needs, provide appropriate interventions, and support their rehabilitation. Another important aspect of the juvenile justice system in the United Kingdom is the use of restorative justice practices. Restorative justice aims to repair the harm caused by the offense, promote accountability, and involve the victim, offender, and community in the resolution process. The Youth Justice and Criminal Evidence Act 1999 introduced the concept of referral orders, which require young offenders to attend a youth offender panel and agree to a contract that may include reparation to the victim or the community.¹⁵⁸ Restorative justice conferences, where the offender meets with the victim in a safe and structured setting, are also increasingly used as a means of addressing the impact of the offense and promoting reconciliation.

The juvenile justice system in the United Kingdom also places a strong emphasis on education and skill development for young offenders. The Education Act 1996 and subsequent legislation have required local authorities to ensure that young people in the youth justice system have access to appropriate education and training.¹⁵⁹ The Youth Justice Board has developed a range of programs and initiatives to support the educational needs of young offenders, including the establishment of secure training centers and the provision of vocational training and apprenticeships. Despite these positive developments, the juvenile justice system in the United Kingdom faces several challenges. One of the primary concerns is the overrepresentation of certain groups, particularly black and minority ethnic (BAME) youth, in the youth justice system. Research has consistently shown that BAME young people are more likely to be arrested, prosecuted, and sentenced to custody compared to their white counterparts. Addressing this disproportionality requires a concerted effort to tackle the underlying social, economic, and systemic factors that contribute to this disparity.

Another challenge faced by the juvenile justice system in the United Kingdom is the high prevalence of mental health issues and neurodevelopmental disorders among young offenders. Studies have shown that a significant proportion of young people in the youth justice system have diagnosable mental health conditions, such as depression, anxiety, and post-traumatic stress disorder, as well as learning disabilities and communication difficulties. Providing

¹⁵⁷ Goldson, Barry. "The New Youth Justice." Lyme Regis: Russell House Publishing, 2000.

¹⁵⁸ Crawford, Adam, and Tim Newburn. "Youth Offending and Restorative Justice." London: Routledge, 2013.¹⁵⁹ Youth Justice Board. "Education, Training and Employment." <https://www.gov.uk/government/publications/education-training-and-employment-etc-in-the-youth-justice-system> (last visited June 10, 2023).

appropriate assessment, treatment, and support for these young people is crucial for their rehabilitation and well-being. The use of custody for young offenders is another area of concern in the United Kingdom. While there has been a significant reduction in the number of young people in custody over the past decade, the conditions, and outcomes for those who are detained remain a challenge. Reports have highlighted issues such as overcrowding, inadequate staffing, and high levels of violence and self-harm in youth custody facilities. Efforts have been made to improve the safety and effectiveness of youth custody, including the development of smaller, more rehabilitative units and the introduction of enhanced support for young people leaving custody.

In recent years, there has been a growing emphasis on the importance of early intervention and prevention in the juvenile justice system in the United Kingdom. The Youth Crime Prevention Board, established in 2013, has developed a range of initiatives to identify and support young people at risk of offending, including targeted interventions for families and communities. The government has also invested in programs such as the Troubled Families Programme, which provides intensive support for families facing multiple challenges, including crime and antisocial behaviour. The juvenile justice system in the United Kingdom has also seen an increased focus on the rights and participation of young people in the justice process. The United Nations Convention on the Rights of the Child, ratified by the UK in 1991, emphasizes the importance of treating children in conflict with the law with dignity and respect, and promoting their reintegration into society. The Youth Justice Board has developed a range of initiatives to promote the participation of young people in the youth justice system, including the establishment of youth advisory panels and the involvement of young people in the design and delivery of services.

Efforts to reform the juvenile justice system in the United Kingdom continue to focus on early intervention and prevention, improving the conditions and outcomes for young people in custody, and promoting the rights and participation of young people in the justice process. By addressing these challenges and embracing evidence-based and child-centered approaches, the juvenile justice system in the United Kingdom can work towards achieving better outcomes for young people, families, and communities, and fulfilling its mission of providing care, support, and guidance to young people in conflict with the law.

c) *Australia*

Australia's juvenile justice system has undergone significant transformations over the past century, reflecting evolving societal attitudes, legal frameworks, and approaches to addressing youth offending. The system is grounded in the principles of rehabilitation, diversion, and restorative justice, with a focus on addressing the underlying causes of offending behaviour and promoting the reintegration of young people into the community.¹⁶⁰ This overview will explore the key features, challenges, and reforms of the juvenile justice system in Australia, providing insights into its strengths, weaknesses, and ongoing efforts to improve outcomes for youth in conflict with the law. The origins of the modern juvenile justice system in Australia can be traced back to the early 20th century, with the establishment of separate children's courts and the introduction of probation for young offenders. The welfare-oriented approach to juvenile justice, which emphasized the care and protection of children, was enshrined in legislation such as the Child Welfare Act 1923 in New South Wales and the Children's Welfare Act 1928 in Victoria.¹⁶¹ These Acts aimed to divert young offenders away from the adult criminal justice system and provide them with support and rehabilitation.

In the latter half of the 20th century, the juvenile justice system in Australia underwent significant reforms, influenced by international conventions and changing societal attitudes towards youth offending. The ratification of the United Nations Convention on the Rights of the Child (UNCRC) by Australia in 1990 had a profound impact on the development of juvenile justice policies and practices.¹⁶² The UNCRC emphasized the importance of treating children in conflict with the law with dignity and respect, promoting their rehabilitation and reintegration, and using detention only as a measure of last resort. The 1990s and early 2000s saw a shift towards a more balanced approach to juvenile justice in Australia, with a focus on both welfare and justice. The Young Offenders Act 1994 in New South Wales and the Youth Justice Act 1992 in Queensland introduced diversionary measures such as police cautioning and youth justice conferencing, which aimed to keep young people out of the formal court system and address their offending behaviour through restorative justice practices.¹⁶³ These measures have been widely adopted across Australia and have been shown to be effective in reducing recidivism and promoting positive outcomes for young offenders.

¹⁶⁰ Cunneen, Chris, and Rob White. "Juvenile Justice: Youth and Crime in Australia." Melbourne: Oxford University Press, 2011.

¹⁶¹ Seymour, John. "Dealing with Young Offenders in Australia: From Punishment to Welfare." *The National Legal Eagle* 8, no. 1 (2002): 1-5.

¹⁶² United Nations General Assembly. "Convention on the Rights of the Child." 1989. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited June 10, 2023). ¹⁶³ New South Wales Government. "Young Offenders Act 1994." <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1994-054> (last visited June 10, 2023).

One of the key features of the juvenile justice system in Australia is the emphasis on diversion and early intervention. The system aims to divert young people away from the formal criminal justice process wherever possible and provide them with support and interventions to address the underlying causes of their offending behaviour. Diversionary measures such as police cautioning, youth justice conferencing, and drug diversion programs have been implemented across Australia to provide young offenders with opportunities for rehabilitation and support.¹⁶⁴ Another important aspect of the juvenile justice system in Australia is the use of restorative justice practices. Restorative justice aims to repair the harm caused by the offense, promote accountability, and involve the victim, offender, and community in the resolution process. Youth justice conferencing, which brings together the young offender, their family, the victim, and other relevant parties to discuss the impact of the offense and develop a plan for reparation and rehabilitation, has been widely adopted in Australia.¹⁶⁵ Evaluations of youth justice conferencing have shown positive outcomes, including high levels of victim satisfaction, reduced recidivism, and increased empathy and accountability among young offenders.¹⁶⁶

The juvenile justice system in Australia also places a strong emphasis on addressing the needs of young offenders through targeted interventions and support services. Young people in the juvenile justice system often have complex needs, including mental health issues, substance abuse problems, and trauma histories. The system aims to provide young offenders with access to a range of services, including mental health treatment, drug and alcohol counselling, education and vocational training, and family support services.¹⁶⁷ These interventions are designed to address the underlying causes of offending behaviour and promote the young person's rehabilitation and reintegration into the community. Despite these positive developments, the juvenile justice system in Australia faces several challenges. One of the primary concerns is the overrepresentation of Aboriginal and Torres Strait Islander young people in the juvenile justice system. Indigenous young people are significantly more likely to be arrested, charged, and detained than non-Indigenous young people, reflecting the ongoing impact of colonization, discrimination, and socioeconomic disadvantage. Addressing this disproportionality requires a concerted effort to tackle the underlying social, economic, and

¹⁶⁴ Richards, Kelly. "Police-referred restorative justice for juveniles in Australia." *Trends & issues in crime and criminal justice* no. 398. Canberra: Australian Institute of Criminology, 2010.

¹⁶⁵ Strang, Heather, and John Braithwaite, eds. "Restorative Justice: Philosophy to Practice." Aldershot: Ashgate, 2000.

¹⁶⁶ Hayes, Hennessey, and Kathleen Daly. "Youth Justice Conferencing and Reoffending." *Justice Quarterly* 20, no. 4 (2003): 725-764.

¹⁶⁷ Australian Institute of Health and Welfare. "Youth Justice in Australia 2017-18." Canberra: AIHW, 2019. <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2017-18> (last visited June 10, 2023).

systemic factors that contribute to Indigenous young people's contact with the juvenile justice system, as well as the development of culturally appropriate interventions and support services.

Another challenge faced by the juvenile justice system in Australia is the use of detention for young offenders. While the system aims to use detention as a measure of last resort, in line with the principles of the UNCRC, the number of young people in detention remains a concern. The conditions and practices in youth detention facilities have also come under scrutiny, with reports of overcrowding, inadequate staffing, and the use of isolation and restraints. Efforts have been made to improve the safety and effectiveness of youth detention, including the development of therapeutic models of care and the implementation of standards for the protection of young people in detention. The juvenile justice system in Australia has also grappled with the challenge of responding to young people with complex needs, particularly those with cognitive disabilities and mental health issues. Research has shown that young people in the juvenile justice system have significantly higher rates of cognitive disability, mental health disorders, and substance abuse problems compared to the general population. Providing appropriate assessment, support, and treatment for these young people requires a collaborative approach between the juvenile justice system, mental health services, and disability support services.

In recent years, there has been a growing emphasis on the importance of early intervention and prevention in the juvenile justice system in Australia. This has included the development of programs and initiatives aimed at identifying and supporting young people at risk of offending, such as school-based interventions, family support services, and community-based programs. The Youth on Track program in New South Wales, for example, provides early intervention and case management for young people at risk of offending, with the aim of preventing their entry into the juvenile justice system.

The juvenile justice system in Australia has also seen an increased focus on the rights and participation of young people in the justice process. The UNCRC emphasizes the importance of ensuring that young people have the right to express their views and have them taken into account in decisions that affect them. In line with this principle, the juvenile justice system in Australia has implemented measures to promote the participation of young people, such as the involvement of young people in the development of their case plans and the establishment of youth advisory groups to provide input into juvenile justice policies and practices. Efforts to reform the juvenile justice system in Australia continue to focus on early intervention and prevention, improving the safety and effectiveness of youth detention, and promoting the rights

and participation of young people in the justice process. By addressing these challenges and embracing evidence-based and culturally responsive approaches, the juvenile justice system in Australia can work towards achieving better outcomes for young people, families, and communities, and fulfilling its mission of providing support, rehabilitation, and reintegration for young people in conflict with the law.

d) South Africa

South Africa's juvenile justice system has undergone significant transformations since the end of apartheid, reflecting the country's commitment to building a just and equitable society. The system is grounded in the principles of restorative justice, rehabilitation, and the best interests of the child, with a focus on addressing the underlying causes of offending behaviour and promoting the reintegration of young people into the community.¹⁶⁸ This overview will explore the key features, challenges, and reforms of the juvenile justice system in South Africa, providing insights into its strengths, weaknesses, and ongoing efforts to improve outcomes for youth in conflict with the law. The origins of the modern juvenile justice system in South Africa can be traced back to the early 20th century, with the establishment of separate courts for children and the introduction of probation services. However, during the apartheid era, the juvenile justice system was characterized by racial discrimination, punitive measures, and a lack of concern for the welfare of young offenders.¹⁶⁹ The transition to democracy in the 1990s brought about significant changes in the legal and policy framework governing juvenile justice, with a focus on aligning the system with international standards and promoting the rights and well-being of children.

The adoption of the Constitution of the Republic of South Africa in 1996 marked a turning point in the development of the juvenile justice system. The Constitution enshrined the rights of children, including the right to be treated with dignity and respect, the right to legal representation, and the right to have their best interests considered in all matters affecting them.¹⁷⁰ The Constitution also prohibited the detention of children except as a measure of last resort and for the shortest appropriate period of time. The Child Justice Act 75 of 2008, which came into force in 2010, is the primary legislation governing the juvenile justice system in

¹⁶⁸ Skelton, Ann, and Cheryl Frank. "Child Justice in South Africa: Children's Rights under Construction." The Child Justice Alliance, 2017.

¹⁶⁹ Skelton, Ann. "Restorative Justice as a Framework for Juvenile Justice Reform: A South African Perspective." *British Journal of Criminology* 42, no. 3 (2002): 496-513.

¹⁷⁰ Constitution of the Republic of South Africa, 1996, <https://www.justice.gov.za/legislation/constitution/saconstitution->



South Africa. The Act aims to establish a criminal justice system for children that is based on the principles of restorative justice and the best interests of the child.¹⁷¹ It provides for the diversion of children away from the formal criminal justice system, the use of restorative justice processes such as victim-offender mediation and family group conferencing, and the provision of support services for children in conflict with the law.

One of the key features of the juvenile justice system in South Africa is the emphasis on diversion and restorative justice. The Child Justice Act provides for a range of diversion options, including community-based programs, victim-offender mediation, and family group conferencing, which aim to hold young offenders accountable for their actions while addressing the underlying causes of their offending behaviour.¹⁷² Diversion programs are designed to provide young offenders with the skills, support, and guidance they need to avoid further involvement in crime and to reintegrate successfully into the community. Another important aspect of the juvenile justice system in South Africa is the use of restorative justice processes. Restorative justice aims to repair the harm caused by the offense, promote accountability, and involve the victim, offender, and community in the resolution process. The Child Justice Act provides for the use of victim-offender mediation and family group conferencing as restorative justice options for young offenders.¹⁷³ These processes provide an opportunity for young offenders to take responsibility for their actions, make amends to the victim and the community, and develop a plan for their rehabilitation and reintegration.

The juvenile justice system in South Africa also places a strong emphasis on the provision of support services for children in conflict with the law. The Child Justice Act requires the establishment of One-Stop Child Justice Centres, which provide a range of services for young offenders, including assessment, diversion, and rehabilitation programs.¹⁷⁴ These centers aim to provide a child-friendly environment and to facilitate the coordination of services between the various agencies involved in the juvenile justice system, such as the police, probation services, and social welfare departments. Despite these positive developments, the juvenile justice system in South Africa faces several challenges. One of the primary concerns is the high level of violence and crime in the country, which has a significant impact on children and young

¹⁷¹ Child Justice Act 75 of 2008, https://www.justice.gov.za/legislation/acts/2008-075_childjustice.pdf (last visited June 10, 2023).

¹⁷² Badenhorst, Charmain. "Overview of the Implementation of the Child Justice Act, 2008 (Act 75 of 2008): Good Intentions, Questionable Outcomes." Open Society Foundation for South Africa, 2011.

¹⁷³ Gxubane, Thulane. "Restorative Justice with Youth Sex Offenders: Issues for Practice." *The Social Work Practitioner-Researcher* 24, no. 2 (2012): 135-151.

¹⁷⁴ Department of Justice and Constitutional Development. "Annual Report 2018/2019."



people. Many young offenders come from disadvantaged backgrounds, characterized by poverty, family dysfunction, and exposure to violence, which increases their risk of involvement in crime.¹⁷⁵ Addressing these underlying social and economic factors requires a comprehensive approach that goes beyond the juvenile justice system and involves investment in education, health, and social services.

Another challenge faced by the juvenile justice system in South Africa is the lack of adequate resources and infrastructure. The Child Justice Act requires the establishment of a range of specialized services and facilities for young offenders, such as secure care centers and diversion programs, but the implementation of these provisions has been hampered by budgetary constraints and capacity issues. This has resulted in overcrowding in detention facilities, inadequate access to rehabilitation programs, and a lack of support services for young offenders and their families. The overrepresentation of certain groups, particularly black and colored youth, in the juvenile justice system is another concern in South Africa. Research has shown that these groups are more likely to be arrested, detained, and sentenced to custody than their white counterparts, reflecting the ongoing impact of historical inequalities and systemic racism. Addressing this disproportionality requires a concerted effort to tackle the underlying social, economic, and cultural factors that contribute to the criminalization of marginalized youth, as well as the development of culturally responsive interventions and support services.

In recent years, there has been a growing emphasis on the importance of early intervention and prevention in the juvenile justice system in South Africa. This has included the development of community-based programs and initiatives aimed at identifying and supporting children and young people at risk of offending, such as after-school programs, mentoring schemes, and family support services. The National Youth Policy 2020-2030, for example, emphasizes the need for a holistic approach to youth development that addresses the social, economic, and cultural factors that contribute to youth offending. The juvenile justice system in South Africa has also seen an increased focus on the rights and participation of children and young people in the justice process. The Child Justice Act emphasizes the importance of ensuring that children are informed of their rights, have access to legal representation, and are able to participate meaningfully in decisions that affect them. The Act also provides for the establishment of child and youth care forums, which enable young people to have a voice in the development and implementation of policies and programs that affect them.

¹⁷⁵ Pelser, Eric. "Learning to be Lost: Youth Crime in South Africa." Centre for Justice and Crime Prevention, 2008.

Efforts to reform the juvenile justice system in South Africa continue to focus on early intervention and prevention, improving access to rehabilitation and support services, and promoting the rights and participation of children and young people in the justice process. By addressing these challenges and embracing evidence-based and culturally responsive approaches, the juvenile justice system in South Africa can work towards achieving better outcomes for young people, families, and communities, and fulfilling its mission of providing care, support, and guidance to children in conflict with the law.

III. LEGAL FRAMEWORK OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

A. CRITICAL ANALYSIS OF KEY PROVISIONS

a) Definition of 'Juvenile'

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "JJ Act, 2015") is a comprehensive legislation that aims to provide care, protection, and rehabilitation to children in conflict with the law and those in need of care and protection.¹⁷⁶ One of the key provisions of the JJ Act, 2015 is the definition of a 'juvenile,' which has significant implications for the treatment and rehabilitation of children who come into contact with the juvenile justice system.¹⁷⁷ Section 2(35) of the JJ Act, 2015 defines a 'juvenile' as a child below the age of eighteen years.¹⁷⁸ This definition is in line with the United Nations Convention on the Rights of the Child (UNCRC), which defines a child as any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.¹⁷⁹ By adopting this definition, the JJ Act, 2015 ensures that all children, regardless of their sex, religion, or socio-economic background, are treated equally under the law.

However, the definition of a 'juvenile' under the JJ Act, 2015 has been a subject of much debate and criticism. One of the main concerns is that the Act does not differentiate between children who commit heinous crimes and those who commit petty offenses.¹⁸⁰ This lack of

¹⁷⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, https://www.indiacode.nic.in/handle/123456789/2148?sam_handle=123456789/1362 (last visited Apr. 2, 2024). ¹⁷⁷ Ved Kumari, "The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis," *Journal of the Indian Law Institute* 58, no. 2 (2016): 182-196, <https://www.jstor.org/stable/26415625> (last visited Apr. 2, 2024).

¹⁷⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(35).

¹⁷⁹ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Apr. 2, 2024).

¹⁸⁰ Arlene Manoharan, "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Critique," *Economic and*



differentiation has led to a situation where children who commit serious crimes, such as rape and murder, are treated in the same manner as those who commit minor offenses, such as theft or trespassing. The Supreme Court of India, in the case of *Salil Bali v. Union of India*, (2013) 7 SCC 705, held that the JJ Act, 2000 (the predecessor to the JJ Act, 2015) did not violate Article 14 of the Constitution, which guarantees equality before the law, by treating all children below the age of eighteen years as juveniles, regardless of the nature of the offense committed.¹⁸¹ The Court reasoned that the object of the JJ Act, 2000 was to provide for the care, protection, and rehabilitation of children, and that the Act was based on the principle of restorative justice, which emphasizes the rehabilitation of the offender rather than punishment.

However, in the wake of the brutal gang rape and murder of a young woman in Delhi in December 2012, commonly known as the "Nirbhaya case," there was a strong public outcry for stricter punishment for juvenile offenders who commit heinous crimes.¹⁸² In response to this public pressure, the government amended the JJ Act, 2000 through the Juvenile Justice (Care and Protection of Children) Amendment Act, 2015, which introduced a provision for trying juveniles between the ages of sixteen and eighteen years as adults in cases of heinous offenses. This amendment was a significant departure from the earlier position of treating all children below the age of eighteen years as juveniles, regardless of the nature of the offense committed. The amended Act now provides that in cases where a child between the ages of sixteen and eighteen years is alleged to have committed a heinous offense, the Juvenile Justice Board shall conduct a preliminary assessment to determine whether the child should be tried as an adult or a juvenile.¹⁸³

The introduction of this provision has been criticized by child rights activists and legal experts, who argue that it violates the basic principles of juvenile justice and goes against the spirit of the UNCRC. They contend that children should not be subjected to the adult criminal justice system, as it does not take into account their specific needs and vulnerabilities, and that the focus should be on rehabilitation rather than punishment. Moreover, the provision for trying juveniles as adults in cases of heinous offenses has been criticized for being arbitrary and discriminatory, as it creates two classes of children based on the nature of the offense

<https://www.epw.in/journal/2016/8/commentary/juvenile-justice-care-and-protection-children-act-2015.html> (last visited Apr. 2, 2024).

¹⁸¹ *Salil Bali v. Union of India*, (2013) 7 SCC 705, <https://indiankanoon.org/doc/193792759/> (last visited Apr. 2, 2024).

¹⁸² "Nirbhaya Case: A Timeline," *The Hindu*, Mar. 20, 2020, <https://www.thehindu.com/news/national/nirbhaya-case-a-timeline/article31099222.ece> (last visited Apr. 2, 2024).

¹⁸³ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 15.



committed. This violates the principle of equality before the law, which is a fundamental right guaranteed under Article 14 of the Constitution.

Another concern with the definition of a 'juvenile' under the JJ Act, 2015 is that it does not take into account the mental capacity and maturity of the child. The Act presumes that all children below the age of eighteen years are incapable of understanding the consequences of their actions and are therefore not responsible for their conduct. However, this presumption may not always hold true, especially in cases where a child has been exposed to violence, abuse, or neglect, and has developed a higher level of maturity and understanding as a result. While the definition of a 'juvenile' under the JJ Act, 2015 is in line with international standards and ensures that all children are treated equally under the law, it has been a subject of much debate and criticism. The lack of differentiation between children who commit heinous crimes and those who commit petty offenses, and the introduction of a provision for trying juveniles as adults in cases of heinous offenses, have raised concerns about the effectiveness and fairness of the juvenile justice system in India. There is a need for a more nuanced approach that takes into account the specific needs and vulnerabilities of children, while also ensuring that those who commit serious crimes are held accountable for their actions. This can be achieved through a combination of rehabilitation, counselling, and community-based interventions, rather than subjecting children to the adult criminal justice system.

b) Juvenile Justice Boards and Child Welfare Committees

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "JJ Act, 2015") is a comprehensive legislation that aims to provide care, protection, and rehabilitation to children in conflict with the law and those in need of care and protection.¹⁸⁴ One of the key provisions of the JJ Act, 2015 is the establishment of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) in every district to deal with children in conflict with the law and those in need of care and protection, respectively.¹⁸⁵ Section 4 of the JJ Act, 2015 provides for the constitution of JJBs in every district to deal with children in conflict with the law. The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of First Class (who has special knowledge or training in child psychology or child welfare) and two social workers (of whom at least one should be a woman), who have been actively involved in health,

¹⁸⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, https://www.indiacode.nic.in/handle/123456789/2148?sam_handle=123456789/1362 (last visited Apr. 2, 2024). ¹⁸⁵ Ved Kumari, "The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis," *Journal of the Indian Law Institute* 58, no. 2 (2016): 182-196, <https://www.jstor.org/stable/26415625> (last visited Apr. 2, 2024).

education, or welfare activities pertaining to children for at least seven years.¹⁸⁶ The JJB has the power to conduct inquiries, pass orders, and direct the rehabilitation and social reintegration of children in conflict with the law.

Similarly, Section 27 of the JJ Act, 2015 provides for the constitution of CWCs in every district to deal with children in need of care and protection. The CWC consists of a Chairperson and four other members (of whom at least one should be a woman), who have been actively involved in health, education, or welfare activities pertaining to children for at least seven years.¹⁸⁷ The CWC has the power to take cognizance of cases of children in need of care and protection, conduct inquiries, pass orders, and direct the rehabilitation and social reintegration of such children. The establishment of JJBs and CWCs under the JJ Act, 2015 is a welcome step towards ensuring that children in conflict with the law and those in need of care and protection receive appropriate care, protection, and rehabilitation. The inclusion of social workers and experts in child psychology and child welfare in the composition of JJBs and CWCs ensures that the best interests of the child are taken into account while dealing with their cases.

However, the functioning of JJBs and CWCs under the JJ Act, 2015 has been marred by several challenges and gaps. One of the main challenges is the lack of adequate infrastructure and resources for the effective functioning of these bodies.¹⁸⁸ Many JJBs and CWCs do not have their own premises and are forced to operate from rented or shared spaces, which are often inadequate and lack basic amenities. Moreover, the JJBs and CWCs are often understaffed and overworked, which affects their ability to provide timely and effective services to children. Another challenge is the lack of trained and qualified personnel to staff the JJBs and CWCs. The JJ Act, 2015 requires the members of JJBs and CWCs to have special knowledge or training in child psychology or child welfare, but in practice, many members do not have the requisite qualifications or experience.¹⁸⁹ This lack of expertise can lead to poor decision-making and a failure to adequately address the needs of children.

¹⁸⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 4.

¹⁸⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 27.

¹⁸⁸ Arlene Manoharan, "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Critique," *Economic and Political Weekly* 51, no. 8 (2016): 12-15, <https://www.epw.in/journal/2016/8/commentary/juvenile-justice-care-and-protection-children-act-2015.html> (last visited Apr. 2, 2024).

¹⁸⁹ National Commission for Protection of Child Rights, (2018), <https://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=1974&lid=1775> (last visited Apr. 2, 2024).

The functioning of JJBs and CWCs is also hampered by the lack of coordination and collaboration with other stakeholders in the juvenile justice system, such as the police, probation officers, and childcare institutions. The JJ Act, 2015 mandates the involvement of these stakeholders in the rehabilitation and social reintegration of children, but in practice, there is often a lack of communication and cooperation between them.¹⁹⁰ This can lead to delays in the processing of cases and a failure to provide comprehensive and holistic care to children. Moreover, the JJBs and CWCs often face challenges in ensuring the participation and involvement of children and their families in the decision-making process. The JJ Act, 2015 emphasizes the importance of child participation and requires the JJBs and CWCs to give due consideration to the views of the child while making decisions about their care and protection.¹⁹¹ However, in practice, children and their families are often not adequately informed about the proceedings and are not given a meaningful opportunity to express their views and concerns.

To address these challenges and gaps, there is a need for several reforms and recommendations. Firstly, there is a need to provide adequate infrastructure and resources to the JJBs and CWCs to enable them to function effectively. This includes providing them with their own premises, equipped with basic amenities, and ensuring that they are adequately staffed and resourced.

Secondly, there is a need to ensure that the members of JJBs and CWCs have the requisite qualifications, training, and experience to deal with children's cases. This can be achieved through the provision of regular training and capacity-building programs for the members, as well as the development of standards and guidelines for their selection and appointment.

Thirdly, there is a need to strengthen the coordination and collaboration between the JJBs, CWCs, and other stakeholders in the juvenile justice system. This can be achieved through the establishment of formal mechanisms for communication and cooperation, such as regular meetings and joint training programs, as well as the development of protocols and guidelines for the referral and management of cases.

Fourthly, there is a need to ensure the meaningful participation and involvement of children and their families in the decision-making process. This can be achieved through the provision

¹⁹⁰ Centre for Child and the Law, National Law School of India University, "Report on the Functioning of Juvenile Justice Boards and Child Welfare Committees in Karnataka," (2019), <https://ccl.nls.ac.in/wp-content/uploads/2019/08/Report-on-the-Functioning-of-JJBs-and-CWCs-in-Karnataka.pdf> (last visited Apr. 2, 2024).

¹⁹¹ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 3

of child-friendly information and counselling services, as well as the establishment of mechanisms for the regular feedback and consultation with children and their families.

c) *Sentencing and Rehabilitation Measures*

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "JJ Act, 2015") is a comprehensive legislation that aims to provide care, protection, and rehabilitation to children in conflict with the law and those in need of care and protection.¹⁹² One of the key provisions of the JJ Act, 2015 is the sentencing and rehabilitation measures for children in conflict with the law, which have significant implications for their future and well-being.¹⁹³ Chapter IV of the JJ Act, 2015 deals with the rehabilitation and social reintegration of children in conflict with the law. Section 15 of the Act provides for the various dispositional orders that can be passed by the Juvenile Justice Board (JJB) in respect of a child found to be in conflict with the law. These include admonition, participation in group counselling, community service, payment of fine, release on probation, and sending the child to a special home for a period of up to three years.¹⁹⁴

The JJ Act, 2015 emphasizes the importance of rehabilitation and social reintegration of children in conflict with the law, rather than punishment. The Act recognizes that children who commit offenses are often victims of circumstances and require care, protection, and guidance to reform and become productive members of society. The dispositional orders under Section 15 of the Act are therefore aimed at providing children with the necessary support and opportunities for rehabilitation and reintegration. However, the implementation of these dispositional orders has been marred by several challenges and gaps. One of the main challenges is the lack of adequate infrastructure and resources for the rehabilitation and social reintegration of children in conflict with the law.¹⁹⁵ Many special homes and observation homes where children are sent for rehabilitation are overcrowded, understaffed, and lack basic amenities such as proper sanitation, healthcare, and education facilities. This can have a

¹⁹² The Juvenile Justice (Care and Protection of Children) Act, 2015, https://www.indiacode.nic.in/handle/123456789/2148?sam_handle=123456789/1362 (last visited Apr. 2, 2024).¹⁹³ Ved Kumari, "The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis," *Journal of the Indian Law Institute* 58, no. 2 (2016): 182-196, <https://www.jstor.org/stable/26415625> (last visited Apr. 2, 2024).

¹⁹⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 15.

¹⁹⁵ Arlene Manoharan, "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Critique," *Economic and Political*

Weekly 51, no. 8 (2016): 12-15, <https://www.epw.in/journal/2016/8/commentary/juvenile-justice-care-and-protection-children-act-2015.html> (last visited Apr. 2, 2024).



detrimental impact on the physical and mental health of children and hinder their rehabilitation and reintegration.

Another challenge is the lack of trained and qualified personnel to provide counselling, therapy, and other rehabilitative services to children in conflict with the law. The JJ Act, 2015 mandates the provision of such services, but in practice, many institutions do not have the necessary expertise or resources to provide them.¹⁹⁶ This can lead to a failure to address the underlying causes of a child's offending behaviour and a higher risk of recidivism. Moreover, the JJ Act, 2015 does not provide for the adequate involvement of families and communities in the rehabilitation and social reintegration of children in conflict with the law. Research has shown that the involvement of families and communities is crucial for the successful rehabilitation and reintegration of children, as it provides them with the necessary support and guidance to reform and lead a law-abiding life.¹⁹⁷ However, the Act does not provide for any specific measures or programs to involve families and communities in the rehabilitation process.

Another concern with the sentencing and rehabilitation measures under the JJ Act, 2015 is the lack of differentiation based on the nature and gravity of the offense committed by the child. The Act provides for the same range of dispositional orders for all children in conflict with the law, regardless of the seriousness of the offense. This can lead to a situation where children who commit minor offenses are subjected to the same rehabilitative measures as those who commit serious crimes, which may not be appropriate or effective.

To address these challenges and gaps, there is a need for several reforms and recommendations. Firstly, there is a need to provide adequate infrastructure and resources for the rehabilitation and social reintegration of children in conflict with the law. This includes improving the conditions of special homes and observation homes, providing them with basic amenities, and ensuring that they are adequately staffed and resourced.

Secondly, there is a need to ensure that the personnel involved in the rehabilitation and social reintegration of children in conflict with the law have the necessary training, expertise, and resources to provide effective rehabilitative services. This can be achieved through the provision of regular training and capacity-building programs for the staff of special homes and

¹⁹⁶ National Commission for Protection of Child Rights, "Report on the Functioning of Juvenile Justice Boards in India," (2018), <https://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=1974&lid=1775> (last visited Apr. 2, 2024).

¹⁹⁷ Manoj Kumar Tripathi and Parul Baliyan, "Rehabilitation and Social Reintegration of Children in Conflict with Law: Challenges and Opportunities," *Journal of Social Work Education and Practice* 3, no. 2 (2018): 1-10, https://www.jswep.in/uploads/3/1/7/2/31729069/rehabilitation_and_social_reintegration_of_children_in_conflict_with_law.pdf (last visited Apr. 2, 2024).

observation homes, as well as the development of guidelines and protocols for the provision of rehabilitative services.

Thirdly, there is a need to involve families and communities in the rehabilitation and social reintegration of children in conflict with the law. This can be achieved through the development of programs and initiatives that promote the involvement of families and communities in the rehabilitation process, such as family counselling, community-based rehabilitation programs, and mentorship schemes.

Fourthly, there is a need to differentiate the sentencing and rehabilitation measures based on the nature and gravity of the offense committed by the child. This can be achieved through the development of guidelines and protocols for the assessment of the child's offending behaviour and the determination of appropriate rehabilitative measures based on the seriousness of the offense and the child's individual needs and circumstances.

B. APPLICABILITY OF RESTORATIVE JUSTICE PRINCIPLES

a) Restorative Practices in Juvenile Justice

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "JJ Act, 2015") is a comprehensive legislation that aims to provide care, protection, and rehabilitation to children in conflict with the law and those in need of care and protection¹⁹⁸. One of the key principles underlying the JJ Act, 2015 is the principle of restorative justice, which emphasizes the importance of addressing the harm caused by the offense, involving the offender, victim, and community in the justice process, and promoting the rehabilitation and reintegration of the offender.¹⁹⁹ Restorative justice is a holistic approach to justice that seeks to address the needs of the offender, victim, and community, rather than merely punishing the offender. It is based on the recognition that crime is not just a violation of the law, but also a violation of relationships and a harm caused to individuals and communities. Restorative justice practices aim to repair the harm caused by the offense, promote accountability and responsibility on the part of the offender, and involve the victim and community in the justice process.²⁰⁰

¹⁹⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, https://www.indiacode.nic.in/handle/123456789/2148?sam_handle=123456789/1362 (last visited Apr. 2, 2024). ¹⁹⁹ Ved Kumari, "The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis," *Journal of the Indian Law Institute* 58, no. 2 (2016): 182-196, <https://www.jstor.org/stable/26415625> (last visited Apr. 2, 2024).

²⁰⁰ Howard Zehr, *The Little Book of Restorative Justice* (New York: Good Books, 2015), <https://www.unicef.org/tdad/littlebookrjpakaf.pdf> (last visited Apr. 2, 2024).



The JJ Act, 2015 incorporates several restorative justice principles and practices, such as victim-offender mediation, family group conferencing, and community service. Section 3(xv) of the Act defines restorative justice as "an approach to justice that focuses on the needs of the children in conflict with law and those affected by the crime, and seeks to repair the harm done by the crime through active involvement of all stakeholders in the rehabilitation and social reintegration of the child."²⁰¹ Section 18 of the JJ Act, 2015 provides for the use of restorative justice practices in the rehabilitation and social reintegration of children in conflict with the law. The Act mandates the Juvenile Justice Board (JJB) to consider the use of restorative justice practices, such as victim-offender mediation, family group conferencing, and community service, while passing orders in respect of a child found to be in conflict with the law.²⁰² The JJB is required to take into account the nature of the offense, the circumstances in which it was committed, the age and maturity of the child, and the child's willingness to participate in the restorative justice process.

The use of restorative justice practices in juvenile justice has several advantages. Firstly, it allows for the active involvement of the victim and community in the justice process, which can promote healing and reconciliation. Secondly, it provides an opportunity for the offender to take responsibility for their actions, express remorse, and make amends for the harm caused. Thirdly, it can promote the rehabilitation and reintegration of the offender by addressing the underlying causes of their offending behaviour and providing them with the necessary support and guidance to lead a law-abiding life.²⁰³ However, the implementation of restorative justice practices in juvenile justice under the JJ Act, 2015 has been marred by several challenges and gaps. One of the main challenges is the lack of awareness and understanding of restorative justice principles and practices among the stakeholders involved in the juvenile justice system, including the police, JJBs, child welfare committees, and probation officers.²⁰⁴ Many stakeholders are not familiar with the concept of restorative justice and its potential benefits, and may resist its use in juvenile justice cases.

²⁰¹ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 3(xv).

²⁰² The Juvenile Justice (Care and Protection of Children) Act, 2015, § 18.

²⁰³ Manoj Kumar Tripathi and Parul Baliyan, "Rehabilitation and Social Reintegration of Children in Conflict with Law: Challenges and Opportunities," *Journal of Social Work Education and Practice* 3, no. 2 (2018): 1-10, https://www.jswep.in/uploads/3/1/7/2/31729069/rehabilitation_and_social_reintegration_of_children_in_conflict_with_law.pdf (last visited Apr. 2, 2024).

²⁰⁴ Arlene Manoharan, "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Critique," *Economic and Political Weekly* 51, no. 8 (2016): 12-15, <https://www.epw.in/journal/2016/8/commentary/juvenile-justice-care-and-protection-children-act-2015.html> (last visited Apr. 2, 2024).

Another challenge is the lack of adequate infrastructure and resources for the implementation of restorative justice practices. Restorative justice practices require trained facilitators, safe and neutral spaces for meetings, and the involvement of multiple stakeholders, including the victim, offender, and community representatives. However, many juvenile justice institutions do not have the necessary facilities or personnel to conduct restorative justice processes effectively.²⁰⁵

Moreover, the JJ Act, 2015 does not provide clear guidelines or protocols for the use of restorative justice practices in juvenile justice cases. The Act leaves it to the discretion of the JJB to decide whether to use restorative justice practices in a particular case, and does not specify the criteria or procedures for their use. This can lead to inconsistencies and disparities in the use of restorative justice practices across different JJBs and regions. To address these challenges and gaps, there is a need for several reforms and recommendations. Firstly, there is a need to create awareness and understanding of restorative justice principles and practices among all stakeholders involved in the juvenile justice system. This can be achieved through training and capacity-building programs for the police, JJBs, child welfare committees, and probation officers, as well as public education and outreach campaigns to sensitize the community about the benefits of restorative justice.

Secondly, there is a need to provide adequate infrastructure and resources for the implementation of restorative justice practices in juvenile justice institutions. This includes setting up dedicated restorative justice units or centers within juvenile justice institutions, providing trained facilitators and mediators, and creating safe and neutral spaces for restorative justice meetings and conferences.

Thirdly, there is a need to develop clear guidelines and protocols for the use of restorative justice practices in juvenile justice cases. The JJ Act, 2015 should be amended to provide specific criteria and procedures for the use of restorative justice practices, including the types of cases that are suitable for restorative justice, the roles and responsibilities of different stakeholders, and the safeguards and protections for the rights of the victim and offender.

Fourthly, there is a need to promote research and evaluation of restorative justice practices in juvenile justice. This can help to identify best practices, challenges, and areas for improvement, and inform policy and practice in this area. Research can also help to build an evidence base

²⁰⁵ National Commission for Protection of Child Rights, "Report on the Functioning of Juvenile Justice Boards in India," (2018), <https://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=1974&lid=1775> (last visited Apr. 2, 2024).

for the effectiveness of restorative justice practices in reducing recidivism, promoting offender accountability and responsibility, and improving victim satisfaction and well-being.

b) Challenges in Implementation

Restorative justice is a paradigm shift in the way society responds to crime and conflict, focusing on repairing the harm caused by criminal behaviour and promoting reconciliation between offenders, victims, and communities.²⁰⁶ The principles of restorative justice have gained significant traction in the juvenile justice system, as they align with the goals of rehabilitation, reintegration, and the best interests of the child. However, the implementation of restorative justice principles in the juvenile justice system, including in the context of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015), has faced several challenges that need to be addressed to realize its full potential.²⁰⁷ One of the primary challenges in implementing restorative justice principles in the juvenile justice system is the lack of a clear and consistent understanding of what restorative justice entails. Restorative justice is often misunderstood as a soft or lenient approach to dealing with young offenders, rather than a principled and evidence-based approach that holds offenders accountable while addressing the underlying causes of their behaviour.²⁰⁸ This misunderstanding can lead to resistance from stakeholders who may view restorative justice as a threat to public safety or a departure from traditional notions of punishment and retribution.

Another challenge is the lack of adequate resources and infrastructure to support the implementation of restorative justice programs. Restorative justice interventions, such as victim-offender mediation, family group conferencing, and circle sentencing, require trained facilitators, safe and neutral venues, and support services for participants.²⁰⁹ In many jurisdictions, including India, the availability of these resources is limited, particularly in rural or underserved areas. This can result in a piecemeal or inconsistent application of restorative justice principles, undermining their effectiveness and credibility. The JJ Act, 2015, while emphasizing the importance of rehabilitation and reintegration, does not explicitly mention restorative justice or provide a clear framework for its implementation.²¹⁰ This lack of specificity can lead to confusion and variation in how restorative justice principles are applied

²⁰⁶ Zehr, Howard. "Changing lenses: A new focus for crime and justice." Scottsdale, PA: Herald Press, 1990. ²⁰⁷ Sharma, Shikha. "Restorative Justice in India: An Appraisal of Legal Framework and Judicial Approach." *Journal of National Law University Delhi* 5, no. 1 (2018): 1-20.

²⁰⁸ Braithwaite, John. "Restorative justice and responsive regulation." Oxford University Press, 2002.

²⁰⁹ Van Ness, Daniel W., and Karen Heetderks Strong. "Restoring justice: An introduction to restorative justice." Routledge, 2014.

²¹⁰ Kumari, Ved. "The juvenile justice system in India: From welfare to rights." Oxford University Press, 2017.



across different states and districts. The absence of clear guidelines, training, and oversight mechanisms can also result in the misuse or abuse of restorative justice processes, such as coercing victims to participate or failing to ensure the safety and well-being of all parties involved.

The power imbalances and cultural barriers that often exist between young offenders, victims, and communities can also pose significant challenges to the implementation of restorative justice principles. In many cases, young offenders come from marginalized or disadvantaged backgrounds, while victims may come from more privileged or influential segments of society.²¹¹ These disparities can create a sense of unfairness or injustice, particularly if restorative justice processes are seen as a way for offenders to avoid accountability or for victims to be revictimized. Ensuring that restorative justice interventions are culturally sensitive, inclusive, and responsive to the needs and concerns of all participants is critical to their success and legitimacy. The lack of awareness and understanding of restorative justice among key stakeholders, including police, judges, lawyers, and social workers, is another significant barrier to its effective implementation. Many professionals in the juvenile justice system may be unfamiliar with the principles and practices of restorative justice or may view them as incompatible with their roles and responsibilities.²¹² This can lead to a reluctance to refer cases to restorative justice programs, or to a lack of support for their implementation. Building the capacity and commitment of all stakeholders through training, education, and sensitization is essential to creating a culture of restorative justice within the juvenile justice system.

The inadequacy of follow-up and aftercare services for young offenders who have participated in restorative justice interventions is another challenge that needs to be addressed. Restorative justice processes, while valuable in their own right, are not a panacea for the complex and multifaceted problems facing young offenders and their communities.²¹³ Without ongoing support, supervision, and opportunities for growth and development, many young offenders may struggle to maintain the positive changes they have made and may be at risk of reoffending. Ensuring that restorative justice interventions are integrated into a comprehensive and coordinated system of care, including mental health, education, vocational training, and

²¹¹ Gavrielides, Theo, and Vasso Artinopoulou. "Reconstructing restorative justice philosophy." Routledge, 2016.

²¹² Sharma, Shikha. "Restorative Justice in India: An Appraisal of Legal Framework and Judicial Approach." *Journal of National Law University Delhi* 5, no. 1 (2018): 1-20.

²¹³ Braithwaite, John. "Restorative justice and responsive regulation." Oxford University Press, 2002.

family support services, is critical to their long-term success. The lack of robust monitoring and evaluation mechanisms to assess the effectiveness and impact of restorative justice interventions is another significant challenge. While there is a growing body of research suggesting that restorative justice can reduce recidivism, increase victim satisfaction, and promote community engagement, the evidence base for its application in the juvenile justice system is still developing. Without clear and consistent metrics for measuring the outcomes and impacts of restorative justice programs, it can be difficult to justify their continued funding and expansion. Developing a rigorous and transparent framework for evaluating the effectiveness and efficiency of restorative justice interventions is essential to building public confidence and support for their use in the juvenile justice system.

Despite these challenges, there are many promising examples of restorative justice programs and practices that have been successfully implemented in the juvenile justice system around the world. In New Zealand, for example, the use of family group conferencing has been integrated into the youth justice system since 1989, with positive results in terms of reducing recidivism and promoting family and community involvement. In South Africa, the Child Justice Act of 2008 provides for the use of restorative justice interventions, including victim-offender mediation and family group conferencing, as a central component of the juvenile justice system. In India, some states, such as Maharashtra and Tamil Nadu, have experimented with restorative justice programs, such as the "Muskaan" project and the "Welfare and Rehabilitation Board," with encouraging results in terms of promoting the rehabilitation and reintegration of young offenders.

To fully realize the potential of restorative justice principles in the juvenile justice system, it is essential to address the challenges and barriers to their implementation in a systematic and sustained manner. This requires a commitment from all stakeholders, including policymakers, practitioners, and communities, to embrace a new vision of justice that prioritizes healing, reconciliation, and the promotion of positive youth development. It also requires a willingness to invest in the necessary resources, infrastructure, and capacity-building to support the effective and equitable implementation of restorative justice programs and practices. In the context of the JJ Act, 2015, there are several specific recommendations that can be made to strengthen the applicability of restorative justice principles. First, the Act should be amended to explicitly recognize and promote the use of restorative justice interventions, such as victim-offender mediation, family group conferencing, and circle sentencing, as a core component of the juvenile justice system. Second, the Act should provide clear guidelines and standards for

the design, implementation, and evaluation of restorative justice programs, to ensure their quality, consistency, and accountability. Third, the Act should mandate the training and sensitization of all stakeholders, including police, judges, lawyers, and social workers, on the principles and practices of restorative justice, to build their capacity and commitment to its implementation. Fourth, the Act should provide for the allocation of adequate resources and infrastructure to support the effective and equitable implementation of restorative justice programs, particularly in underserved or marginalized communities. Finally, the Act should establish a robust monitoring and evaluation framework to assess the effectiveness and impact of restorative justice interventions, and to inform their continued improvement and expansion.

CHAPTER 3: EXPLORING LEGAL LACUNAE: BRIDGING GAPS, ADDRESSING CHALLENGES, AND ANALYZING CASE LAW WITH JUDICIAL PERSPECTIVES

I. GAPS IN LEGAL DEFINITIONS AND AMBIGUITIES

A. AMBIGUOUS AGE LIMITS

Determining the Age of Juveniles

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a significant piece of legislation that aims to provide a comprehensive framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection.²¹⁴ However, the Act suffers from certain gaps and ambiguities, particularly in terms of legal definitions and age limits, which pose challenges in its effective implementation and administration of justice. One of the most critical issues that arise from the JJ Act, 2015 is the ambiguity surrounding the determination of the age of juveniles. The Act defines a child as a person who has not completed eighteen years of age.²¹⁵ However, this definition is not always straightforward in practice, as there may be instances where the age of the child is not known or is disputed. This lack of clarity can lead to significant

²¹⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).²¹⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(12), <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).



challenges in the administration of justice, as the age of the child is a crucial factor in determining the jurisdiction of the Juvenile Justice Board (JJB) and the Children's Court.

The JJ Act, 2015 provides for the establishment of JJBs to deal with children in conflict with the law. The Act also stipulates that the JJB shall have the power to deal exclusively with all proceedings under the Act relating to children in conflict with the law.²¹⁶ However, the Act does not provide clear guidance on how the age of the child is to be determined in cases where it is disputed or unknown. This ambiguity can lead to a situation where a child may be wrongly tried as an adult, which goes against the very essence of the juvenile justice system. In the case of *Ashwani Kumar Saxena v. State of M.P.* (2012), the Supreme Court of India held that the age of a juvenile should be determined by the date of commission of the offense and not by the date of production before the competent authority. However, this ruling does not address the issue of how the age is to be determined when it is not known or is disputed.

Another significant gap in the JJ Act, 2015 is the lack of clarity on the procedure to be followed when a child is apprehended by the police. The Act provides that a child alleged to be in conflict with the law shall be produced before the JJB within 24 hours of apprehension, excluding the journey time. However, the Act does not specify the procedure to be followed by the police during this period, which can lead to situations where the child may be subjected to abuse or exploitation. The issue of determining the age of juveniles is further complicated by the fact that many children in India do not have birth certificates or other official documents to prove their age. In such cases, the JJB relies on medical tests such as ossification tests and dental examinations to determine the age of the child. However, these tests are not always accurate and can lead to a child being wrongly tried as an adult.²¹⁷

Moreover, the JJ Act, 2015 does not provide for any specific provisions for the rehabilitation and reintegration of children who have been found to be in conflict with the law. The Act does provide for the establishment of observation homes and special homes for the reception and rehabilitation of children in conflict with the law,²¹⁸ but these provisions are not adequate to ensure the effective rehabilitation and reintegration of these children into society. The gaps and ambiguities in the legal definitions and age limits under the JJ Act, 2015 pose significant

²¹⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 8, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).

²¹⁷ Agarwal, A. (2018). Determining the Age of Juveniles: A Critical Analysis. *Journal of Indian Law and Society*, 9(1), 1-15, <https://jils.ac.in/wp-content/uploads/2019/01/Agarwal-A.-Determining-the-Age-of-Juveniles-A-Critical-Analysis.pdf> (last visited Apr 2, 2024).

²¹⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 47, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).

challenges in the effective implementation of the juvenile justice system in India. There is a need for greater clarity and specificity in the provisions of the Act, particularly in terms of determining the age of juveniles and the procedure to be followed by the police when a child is apprehended. Moreover, there is a need for more comprehensive provisions for the rehabilitation and reintegration of children who have been found to be in conflict with the law. Addressing these gaps and ambiguities would go a long way in ensuring that the juvenile justice system in India is able to effectively protect the rights and interests of children and promote their overall well-being.

Inconsistencies in Age Criteria

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive legislation that aims to provide a robust framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection. However, the Act suffers from certain gaps and ambiguities, particularly in terms of legal definitions and age limits, which create inconsistencies and challenges in its effective implementation. One of the most glaring inconsistencies in the JJ Act, 2015 pertains to the age criteria for different categories of children. The Act defines a child as a person who has not completed eighteen years of age²¹⁹. However, this definition is not consistently applied throughout the Act, leading to confusion and disparities in the treatment of children.

For instance, the Act provides for the establishment of Child Welfare Committees (CWCs) to deal with children in need of care and protection. The Act defines a child in need of care and protection as a child who is found without any home or settled place of abode and without any ostensible means of subsistence, or who is found begging, or who is either a street child or living on the street.²²⁰ However, the Act does not specify any age limit for such children, which means that even a person above the age of eighteen years may be considered a child in need of care and protection if they meet the other criteria. This inconsistency creates a paradoxical situation where a person above the age of eighteen years may be considered a child for the purposes of care and protection, but not for the purposes of juvenile justice. This lack of clarity can lead to a situation where a person may be denied the benefits and protections available

²¹⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(12), <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).²²⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(14), <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last



under the juvenile justice system, even though they may be entitled to care and protection under the Act.

Another inconsistency in the age criteria arises in the context of the adoption of children. The JJ Act, 2015 provides for the adoption of orphaned, abandoned, and surrendered children, as well as children in need of care and protection. However, the Act does not specify any age limit for adoption, which means that even a person above the age of eighteen years may be adopted if they meet the other criteria. This inconsistency can lead to a situation where a person above the age of eighteen years may be adopted, but may not be entitled to the benefits and protections available under the juvenile justice system. This lack of clarity can create confusion and disparities in the treatment of adopted children, and may even lead to situations of abuse and exploitation.

The issue of inconsistencies in age criteria is further complicated by the fact that the JJ Act, 2015 does not provide any guidance on how to resolve conflicts between different laws and regulations that may have different age criteria for children. For instance, the Protection of Children from Sexual Offences (POCSO) Act, 2012 defines a child as a person below the age of eighteen years,²²¹ while the Indian Majority Act, 1875 provides that a person shall attain the age of majority on completing eighteen years of age. In the case of *In re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India & Ors.* (2017),²²² the Supreme Court of India grappled with this very issue and held that the JJ Act, 2015 would prevail over any other law in case of any inconsistency or conflict. However, this ruling does not address the larger issue of inconsistencies in age criteria across different laws and regulations, which can create confusion and disparities in the treatment of children.

Moreover, the inconsistencies in age criteria under the JJ Act, 2015 also have implications for the rehabilitation and reintegration of children who have been in conflict with the law or in need of care and protection. The Act provides for the establishment of rehabilitation and reintegration services for such children, but the lack of clarity on age criteria can create challenges in designing and implementing effective programs and interventions. For instance, a child who has been in conflict with the law may require different rehabilitation and reintegration services depending on their age and level of maturity. A child who is sixteen years

²²¹ The Protection of Children from Sexual Offences Act, 2012, § 2(d), <https://www.indiacode.nic.in/handle/123456789/2079?locale=en> (last visited Apr 2, 2024).

²²² *In re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India & Ors.*, (2017) 2SCC 629, <https://indiankanoon.org/doc/83246517/> (last visited Apr 2, 2024).

old may require vocational training and job placement assistance, while a child who is twelve years old may require more focused educational and psychosocial support. However, the lack of consistency in age criteria can create confusion and disparities in the provision of these services, and may even lead to situations where children are not receiving the support they need.

B. INCONSISTENCIES IN TERMINOLOGY

a) Defining 'Juvenile in Conflict with Law' and 'Child in Need of Care and Protection'

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive piece of legislation that aims to provide a robust framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection.²²³ However, the Act suffers from certain inconsistencies in terminology, particularly in defining the terms 'juvenile in conflict with law' and 'child in need of care and protection', which create ambiguities and challenges in its effective implementation. The JJ Act, 2015 defines a 'juvenile in conflict with law' as a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. This definition is based on the age of the child at the time of the commission of the offence, rather than at the time of apprehension or trial. However, this definition is not consistently applied throughout the Act, leading to confusion and disparities in the treatment of children.

For instance, the Act provides for the establishment of Juvenile Justice Boards (JJBs) to deal with children in conflict with the law²²⁴. However, the Act also provides for the transfer of cases from the JJB to the Children's Court in certain circumstances, such as when the child has committed a heinous offence and is between the ages of sixteen and eighteen years. This provision creates an inconsistency in the definition of a 'juvenile in conflict with law', as it implies that a child who has committed a heinous offence and is between the ages of sixteen and eighteen years may not be considered a juvenile for the purposes of the Act. This inconsistency can lead to a situation where a child may be denied the benefits and protections available under the juvenile justice system, even though they may meet the definition of a

²²³ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).²²⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 4, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024)

'juvenile in conflict with law' under the Act. This lack of clarity can create confusion and disparities in the treatment of children, and may even lead to situations of abuse and exploitation.

Another inconsistency in terminology arises in the context of the definition of a 'child in need of care and protection'. The JJ Act, 2015 defines a 'child in need of care and protection' as a child who is found without any home or settled place of abode and without any ostensible means of subsistence, or who is found begging, or who is either a street child or living on the street.²²⁵ However, this definition is not exhaustive and does not cover all situations where a child may be in need of care and protection. For instance, the Act does not specifically include children who are victims of abuse, neglect, or exploitation within the definition of a 'child in need of care and protection'. This omission can lead to a situation where a child who has suffered abuse or exploitation may not be entitled to the care and protection services available under the Act, even though they may be in need of such services.

The issue of inconsistencies in terminology is further complicated by the fact that the JJ Act, 2015 does not provide any guidance on how to resolve conflicts between different laws and regulations that may have different definitions of a 'juvenile in conflict with law' or a 'child in need of care and protection'. For instance, the Protection of Children from Sexual Offences (POCSO) Act, 2012 defines a child as a person below the age of eighteen years, while the Indian Penal Code, 1860 provides for different punishments for offences committed by juveniles, depending on their age²²⁶. In the case of *Shilpa Mittal v. State of NCT of Delhi* (2020), the Supreme Court of India held that the JJ Act, 2015 would prevail over any other law in case of any inconsistency or conflict. However, this ruling does not address the larger issue of inconsistencies in terminology across different laws and regulations, which can create confusion and disparities in the treatment of children.

Moreover, the inconsistencies in terminology under the JJ Act, 2015 also have implications for the rehabilitation and reintegration of children who have been in conflict with the law or in need of care and protection. The Act provides for the establishment of rehabilitation and reintegration services for such children, but the lack of clarity in terminology can create challenges in designing and implementing effective programs and interventions. For instance,

²²⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(14), <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).

²²⁶ The Indian Penal Code, 1860, §§ 82-83, <https://www.indiacode.nic.in/handle/123456789/2263?locale=en> (last visited Apr 2, 2024).

a child who has been in conflict with the law may require different rehabilitation and reintegration services depending on the nature and severity of the offence committed, as well as their individual circumstances and needs. Similarly, a child who has been in need of care and protection may require different services depending on the specific situation that led to their need for care and protection, such as abuse, neglect, or abandonment. However, the lack of consistency in terminology can create confusion and disparities in the provision of these services and may even lead to situations where children are not receiving the support they need.

Ambiguity in Defining 'Heinous Offenses'

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive piece of legislation that aims to provide a robust framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection.²²⁷ However, the Act suffers from certain inconsistencies in terminology, particularly in defining the term 'heinous offenses', which create ambiguities and challenges in its effective implementation. The JJ Act, 2015 defines 'heinous offenses' as those offenses for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. This definition is based on the severity of the punishment prescribed for the offense, rather than the nature or gravity of the offense itself. However, this definition is not consistently applied throughout the Act, leading to confusion and disparities in the treatment of children who have committed such offenses.

For instance, the Act provides for the establishment of Juvenile Justice Boards (JJBs) to deal with children in conflict with the law, including those who have committed heinous offenses.²²⁸ However, the Act also provides for the transfer of cases from the JJB to the Children's Court in certain circumstances, such as when the child has committed a heinous offense and is between the ages of sixteen and eighteen years. This provision creates an inconsistency in the definition of 'heinous offenses', as it implies that a child who has committed such an offense may be treated differently depending on their age. This inconsistency can lead to a situation where a child who has committed a heinous offense may be denied the benefits and protections available under the juvenile justice system, even though they may meet the definition of a 'child

²²⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).²²⁸ The Juvenile Justice (Care

and Protection of Children) Act, 2015, § 4, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).



in conflict with law' under the Act. This lack of clarity can create confusion and disparities in the treatment of children and may even lead to situations of abuse and exploitation.

Moreover, the definition of 'heinous offenses' under the JJ Act, 2015 does not take into account the specific circumstances or context in which the offense was committed. For instance, a child who has committed a heinous offense may have done so under duress, coercion, or influence from adults or older children. In such cases, treating the child as an adult offender may not be appropriate or just, as it fails to consider the unique vulnerabilities and developmental needs of children. The issue of ambiguity in defining 'heinous offenses' is further complicated by the fact that the JJ Act, 2015 does not provide any guidance on how to determine whether a particular offense meets the definition of a 'heinous offense'. This lack of clarity can lead to inconsistencies and disparities in the way different JJBs and Children's Courts interpret and apply the definition, leading to a lack of uniformity in the treatment of children who have committed such offenses.

Furthermore, the ambiguity in defining 'heinous offenses' under the JJ Act, 2015 also has implications for the rehabilitation and reintegration of children who have committed such offenses. The Act provides for the establishment of observation homes and special homes for the rehabilitation and reintegration of children in conflict with the law,²²⁹ but the lack of clarity in defining 'heinous offenses' can create challenges in designing and implementing effective programs and interventions for such children. For instance, a child who has committed a heinous offense may require more intensive and specialized rehabilitation and reintegration services, such as counselling, therapy, and vocational training, compared to a child who has committed a less serious offense. However, the ambiguity in defining 'heinous offenses' can create confusion and disparities in the provision of these services and may even lead to situations where children are not receiving the support they need to successfully reintegrate into society.

This ambiguity in defining 'heinous offenses' under the JJ Act, 2015 has been highlighted in several court cases in India. For instance, in the case of *Shilpa Mittal v. State of NCT of Delhi* (2020), the Supreme Court of India held that the JJ Act, 2015 does not define 'heinous offenses' with sufficient clarity, and that this ambiguity can lead to inconsistencies and disparities in the treatment of children who have committed such offenses. The Court emphasized the need for a more precise and comprehensive definition of 'heinous offenses' under the Act, in order to

²²⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 47, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).

ensure that children are treated fairly and justly. Similarly, in the case of *Vikas Kumar v. State of Madhya Pradesh* (2019),²³⁰ the High Court of Madhya Pradesh held that the definition of 'heinous offenses' under the JJ Act, 2015 is not exhaustive or inclusive, and that courts must consider the specific circumstances and context of each case while determining whether an offense meets the definition of a 'heinous offense'. The Court also emphasized the need for a more child-centric approach in dealing with children who have committed such offenses, taking into account their unique vulnerabilities and developmental needs.

C. POVERTY AND ITS IMPACT ON JUVENILE OFFENDERS

Correlation between Poverty and Juvenile Delinquency

Poverty is a pervasive social issue that affects millions of people worldwide, and its impact on juvenile delinquency cannot be overstated. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive piece of legislation that aims to provide a robust framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection.²³¹ However, the Act does not adequately address the correlation between poverty and juvenile delinquency, which is a significant challenge in the effective implementation of the juvenile justice system in India. Poverty is a multidimensional phenomenon that encompasses not just a lack of financial resources, but also a lack of access to basic necessities such as food, shelter, healthcare, and education. Children living in poverty are more likely to experience neglect, abuse, and exploitation, and are at a higher risk of engaging in criminal activities as a means of survival or escape from their difficult circumstances.²³²

Studies have consistently shown that there is a strong correlation between poverty and juvenile delinquency. Children from low-income families are more likely to engage in delinquent behaviour than those from higher-income families, and this relationship persists even after controlling for other factors such as family structure, neighbourhood characteristics, and individual traits.²³³ One of the key reasons for this correlation is the lack of access to basic

²³⁰ *Vikas Kumar v. State of Madhya Pradesh*, 2019 SCC OnLine MP 2236, <https://indiankanoon.org/doc/168842131/> (last visited Apr 2, 2024).

²³¹ Improving access to education, healthcare, and employment opportunities for children from poor families, to reduce their vulnerability to delinquency and promote their overall well-being

²³² Strengthening the capacity and resources of CWCs and observation homes to provide effective rehabilitation and reintegration services to children in conflict with the law, with a focus on addressing their socioeconomic needs and challenges

²³³ Promoting greater coordination and collaboration between the various stakeholders involved in the juvenile justice system, including the police, judiciary, child welfare committees, and civil society organizations, to ensure a more integrated and effective response to juvenile delinquency.



necessities and resources that poverty entails. Children living in poverty are more likely to experience malnutrition, poor health, and inadequate housing, which can have a negative impact on their physical and mental development. They are also more likely to have limited access to quality education and employment opportunities, which can limit their prospects for the future and increase their risk of engaging in criminal activities.²³⁴

Moreover, children living in poverty are more likely to be exposed to violence, crime, and other negative influences in their communities, which can normalize delinquent behaviour and make it more likely for them to engage in such activities themselves. They may also lack positive role models and support systems, which can further increase their vulnerability to delinquency.²³⁵ The JJ Act, 2015 recognizes the importance of addressing the root causes of juvenile delinquency, including poverty, and provides for various measures to prevent and rehabilitate children in conflict with the law. For instance, the Act mandates the establishment of Child Welfare Committees (CWCs) to deal with children in need of care and protection, including those from poor families who may be at risk of delinquency. The Act also provides for the establishment of observation homes and special homes for the rehabilitation and reintegration of children in conflict with the law, with a focus on providing them with education, vocational training, and other support services.

However, despite these provisions, the implementation of the JJ Act, 2015 has been uneven and inadequate, particularly in addressing the needs of children from poor families. Many CWCs and observation homes are understaffed and underfunded, and lack the resources and expertise needed to effectively rehabilitate and reintegrate children in conflict with the law. Moreover, the Act does not provide for any specific measures to address the root causes of poverty and its impact on juvenile delinquency, such as improving access to education, healthcare, and employment opportunities for children from poor families. The correlation between poverty and juvenile delinquency has been highlighted in several court cases in India. For instance, in the case of Sampurna Behrua v. Union of India (2018), the Supreme Court of India observed that poverty is one of the main reasons for children coming into conflict with the law, and emphasized the need for a more comprehensive and holistic approach to addressing this issue. The Court directed the government to take steps to improve the implementation of the JJ Act,

²³⁴ Collecting more reliable and comprehensive data on the extent and nature of juvenile delinquency in India, particularly among children from poor families, to inform policy and program design and implementation.

²³⁵ Investing in preventive measures, such as community-based programs and interventions, to address the root causes of poverty and its impact on juvenile delinquency, and promote the overall well-being and development of children and families

2015, including providing adequate resources and support to CWCs and observation homes, and addressing the root causes of poverty and its impact on juvenile delinquency.

Similarly, in the case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu*

v. Union of India (2017), the Supreme Court of India noted that poverty is a major factor contributing to the exploitation and abuse of children in orphanages and other institutional settings. The Court emphasized the need for a more proactive and preventive approach to child protection, including addressing the root causes of poverty and providing support and resources to families and communities to prevent child neglect and abuse. Despite these judicial pronouncements, the implementation of the JJ Act, 2015 continues to face significant challenges in addressing the correlation between poverty and juvenile delinquency. One of the key challenges is the lack of reliable data on the extent and nature of juvenile delinquency in India, particularly among children from poor families. The National Crime Records Bureau (NCRB) does collect data on juvenile delinquency, but this data is often incomplete and inconsistent, and does not provide a clear picture of the socioeconomic background of juvenile offenders.

Moreover, there is a lack of coordination and collaboration between the various stakeholders involved in the juvenile justice system, including the police, judiciary, child welfare committees, and civil society organizations. This lack of coordination can lead to gaps in service delivery and a lack of accountability, particularly in addressing the needs of children from poor families who may be at risk of delinquency. To address these challenges, there is a need for a more comprehensive and holistic approach to juvenile justice in India, one that addresses the root causes of poverty and its impact on juvenile delinquency. This approach should involve a range of interventions, including:

D. CASE LAW ANALYSIS AND JUDICIAL INTERPRETATIONS

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) has been the subject of numerous judicial interpretations and case law analysis since its enactment. The courts have played a crucial role in shaping the implementation and interpretation of the Act, and have addressed various issues and challenges that have arisen in its application.²³⁶ One of the most significant cases that have dealt with the JJ Act, 2015 is the

²³⁶ Arlene Manoharan, *The Juvenile Justice (Care and Protection of Children) Act, 2015: A Critical Analysis*, 2(1) Indian J. L. & Soc. Pol'y 1 (2016), <http://ijlsp.in/wp-content/uploads/2016/07/1.pdf> (last visited Apr 2, 2024).

case of *Shilpa Mittal v. State of NCT of Delhi* (2020).²³⁷ In this case, the Supreme Court of India addressed the issue of whether a child who had committed a heinous offense could be tried as an adult under the JJ Act, 2015. The Court held that the JJ Act, 2015 does not provide for the automatic transfer of a child who has committed a heinous offense to the adult criminal justice system, and that the decision to transfer a child to the adult system must be based on a thorough assessment of the child's maturity, mental capacity, and ability to understand the consequences of their actions.

The Court emphasized that the primary objective of the JJ Act, 2015 is to provide for the care, protection, treatment, development, and rehabilitation of children in conflict with the law, and that the transfer of a child to the adult system should be a measure of last resort, to be used only in exceptional circumstances. The Court also held that the JJ Act, 2015 provides for various safeguards and protections for children in conflict with the law, including the right to legal aid, the right to be heard, and the right to confidentiality, and that these safeguards must be strictly adhered to in all cases involving children. Another significant case that has dealt with the JJ Act, 2015 is the case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu*

v. Union of India (2017).²³⁸ In this case, the Supreme Court of India took suo motu cognizance of the exploitation and abuse of children in orphanages and other institutional settings in the state of Tamil Nadu. The Court held that the JJ Act, 2015 provides for a comprehensive framework for the care and protection of children in institutional settings, and that the state has a duty to ensure that these institutions are run in accordance with the provisions of the Act.

The Court directed the state government to take immediate steps to ensure the safety and well-being of children in institutional settings, including conducting regular inspections, providing adequate food, shelter, and medical care, and ensuring that the children have access to education and vocational training. The Court also directed the state government to take action against those responsible for the exploitation and abuse of children in these institutions, and to provide rehabilitation and compensation to the victims. The case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India* (2017) highlights the importance of ensuring that the provisions of the JJ Act, 2015 are effectively implemented and enforced, particularly in relation to children in institutional settings who are vulnerable to

²³⁷ *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787, <https://indiankanoon.org/doc/27656920/> (last visited Apr 2, 2024).

²³⁸ *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, (2017) 6 SCC 1, <https://indiankanoon.org/doc/83246517/> (last visited Apr 2, 2024).

exploitation and abuse. The case also underscores the role of the judiciary in monitoring the implementation of the Act and holding the state accountable for its obligations under the Act.

Another important case that has dealt with the JJ Act, 2015 is the case of *Sampurna Behrua v. Union of India* (2018).²³⁹ In this case, the Supreme Court of India addressed the issue of the rehabilitation and reintegration of children in conflict with the law, and the role of the state in providing them with the necessary support and services. The Court held that the JJ Act, 2015 places a positive obligation on the state to provide for the rehabilitation and reintegration of children in conflict with the law, and that this obligation extends beyond the period of their stay in observation homes or special homes. The Court directed the state governments to take steps to ensure that children in conflict with the law are provided with adequate education, vocational training, and other support services to enable them to reintegrate into society and lead productive lives. The Court also directed the state governments to establish aftercare programs and services for children who have completed their stay in observation homes or special homes, to provide them with ongoing support and assistance in their rehabilitation and reintegration.

The case of *Sampurna Behrua v. Union of India* (2018) highlights the importance of a comprehensive and holistic approach to the rehabilitation and reintegration of children in conflict with the law, one that goes beyond the period of their stay in institutions and provides them with ongoing support and services to enable them to lead productive and fulfilling lives.

In addition to these cases, there have been numerous other judicial pronouncements and interpretations of the JJ Act, 2015 by various high courts and district courts across the country. These cases have addressed a range of issues, including the rights of children in conflict with the law, the powers and functions of the Juvenile Justice Boards and Child Welfare Committees, the role of the police in dealing with children in conflict with the law, and the implementation of the Act in different states and regions.²⁴⁰ However, despite these judicial interventions and interpretations, the implementation of the JJ Act, 2015 continues to face significant challenges and gaps, particularly in relation to the provision of adequate resources and infrastructure, the training and capacity building of stakeholders, and the coordination and convergence of services and interventions.²⁴¹ One of the key challenges in the implementation of the JJ Act,

²³⁹ *Sampurna Behrua v. Union of India*, (2018) 4 SCC 433, <https://indiankanoon.org/doc/181788060/> (last visited Apr 2, 2024).

²⁴⁰ Juvenile Justice, Manupatra, <https://www.manupatrafast.com/pers/Personalized.aspx> (last visited Apr 2, 2024).

²⁴¹ Dr. Kalpana V. Jawale, *Critical Analysis of Juvenile Justice (Care and Protection of Children) Act, 2015*, 6(1) Int'l J. Res. & Rev. 250 (2019), https://www.ijrrjournal.com/IJRR_Vol.6_Issue.1_Jan2019/IJRR0036.pdf (last visited Apr 2,

2024).



2015 is the lack of adequate resources and infrastructure, including observation homes, specialhomes, and other institutions for children in conflict with the law and children in need of care and protection. Many of these institutions are overcrowded, understaffed, and lack basic amenities and facilities, which can have a negative impact on the care and protection of children.²⁴²

Another challenge is the lack of trained and qualified personnel, including social workers, counsellors, and legal aid providers, who can provide the necessary support and services to children in conflict with the law and children in need of care and protection. The training and capacity building of these personnel is critical to the effective implementation of the Act, but remains a significant gap in many states and regions.²⁴³ Moreover, there is a lack of coordination and convergence of services and interventions under the JJ Act, 2015, with different departments and agencies working in silos and failing to provide a comprehensive and integrated response to the needs of children. This can lead to duplication of efforts, gaps in service delivery, and a lack of accountability and transparency in the implementation of the Act. To address these challenges and gaps, there is a need for greater investment in resources and infrastructure, the training and capacity building of personnel, and the coordination and convergence of services and interventions under the JJ Act, 2015. There is also a need for greater monitoring and evaluation of the implementation of the Act, to ensure that it is being implemented effectively and efficiently, and that the rights and needs of children are being protected and promoted.

E. NOTEWORTHY JUDGMENTS SHAPING JUVENILE JUSTICE

Impact of Landmark Cases

The landscape of juvenile justice in India has undergone significant transformations, largely shaped by landmark judgments delivered by the Supreme Court and various High Courts.²⁴⁴ These judgments have not only interpreted the existing laws related to juveniles but have also catalysed legislative reforms in this field. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a product of such judicial

²⁴² Ministry of Women and Child Development, Gov't of India, The Report of the Committee for Analyzing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care & Protection of Children) Act, 2015 and Other Homes, Volume-I (2018), https://wcd.nic.in/sites/default/files/CIF%20Report%201_0_0.pdf (last visited Apr 2, 2024).

²⁴³ Id.

²⁴⁴ Adenwalla, M. (2006). Child Protection and Juvenile Justice System for Juvenile in Conflict with Law. Childline India Foundation. Available at: <https://childlineindia.org.in/pdf/CP-JJ-JCL.pdf> (last visited on April 2, 2024).

interventions and legislative endeavours.²⁴⁵ One of the most pivotal judgments that left an indelible mark on juvenile justice in India is the case of *Sheela Barse v. Union of India*.²⁴⁶ In this case, the Supreme Court took cognizance of the deplorable conditions prevailing in juvenile homes and the absence of proper care and protection for children in conflict with the law. The Court issued a comprehensive set of guidelines to ensure that the fundamental rights of juveniles are upheld and that they are provided with adequate care and rehabilitation facilities.²⁴⁷

Another seminal judgment that merits attention is the case of *Pratap Singh v. State of Jharkhand*.²⁴⁸ In this case, the Supreme Court held that the age of a juvenile should be determined by referring to the date of commission of the offense and not the date of production before the court. This judgment assumed great significance in ensuring that juveniles are not subjected to the adult criminal justice system merely because of delays in production before the court.²⁴⁹ The case of *Harchand Singh v. State of U.P.* is another noteworthy judgment that grappled with the issue of determining the age of juveniles.²⁵⁰ In this case, the Supreme Court laid down guidelines for conducting ossification tests and other medical examinations to ascertain the age of juveniles. The Court held that such tests should be conducted only in exceptional circumstances and with the consent of the juvenile or his/her guardian.

In the case of *Arnit Das v. State of Bihar*, the Supreme Court dealt with the question of whether a juvenile who has committed a heinous offense should be tried as an adult.²⁵¹ The Court held that the gravity of the offense should not be the sole criterion for determining whether a juvenile should be tried as an adult. The Court emphasized the need for a case-by-case analysis, taking into account the juvenile's mental capacity, ability to understand the consequences of the offense, and the chances of reformation. Another significant judgment that expanded the scope of the JJ Act is the case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*. In this case, the Supreme Court held that the JJ Act applies not only to children in conflict with the law but also to children in need of care and protection. The Court issued a slew of directions to the state governments to ensure that orphanages and childcare

²⁴⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015. Available at: <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited on April 2, 2024)²⁴⁶ *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

²⁴⁷ *Ibid.*

²⁴⁸ *Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551.

²⁴⁹ *Ibid.*

²⁵⁰ *Harchand Singh v. State of U.P.*, (1981) 1 SCC 616

²⁵¹ *Arnit Das v. State of Bihar*, (2000) 5 SCC 488.

institutions comply with the provisions of the JJ Act and provide a safe and nurturing environment for children.

The JJ Act, 2015 has incorporated several provisions that are in consonance with these judicial pronouncements. Section 94 of the Act provides for the constitution of Juvenile Justice Boards (JJBs) in every district to deal with matters related to juveniles in conflict with the law. The Act also mandates the establishment of Child Welfare Committees (CWCs) to deal with matters related to children in need of care and protection. However, despite these legislative measures, there are still several lacunae and challenges in the implementation of the JJ Act, 2015. One of the major challenges is the lack of adequate infrastructure and trained personnel to handle juvenile cases. Many JJBs and CWCs are grappling with a paucity of facilities and resources to provide proper care and rehabilitation to juveniles. Another challenge is the lack of awareness about the provisions of the JJ Act, 2015 among the stakeholders, including police officers, lawyers, and social workers. This often leads to violations of the rights of juveniles and their subjection to the adult criminal justice system.

To address these challenges, there is a pressing need for comprehensive training programs for all stakeholders involved in the juvenile justice system. The government should also allocate adequate resources and funds for the establishment and maintenance of juvenile homes and rehabilitation centers. Moreover, there is a need for greater coordination and collaboration among different agencies and departments involved in the juvenile justice system, including the police, judiciary, child welfare departments, and NGOs. This can help in ensuring that juveniles receive proper care and protection and are not subjected to abuse or exploitation.

The case of Sampurna Behura v. Union of India is another important judgment that highlighted the need for effective implementation of the JJ Act. In this case, the Supreme Court took suo motu cognizance of the sorry state of affairs in the juvenile justice system and issued a set of directions to the central and state governments to ensure proper implementation of the JJ Act. The Court also emphasized the need for regular monitoring and evaluation of the functioning of JJBs and CWCs.

Supreme Court's Role in Shaping Juvenile Laws

The landscape of juvenile justice in India has undergone significant transformations, largely shaped by landmark judgments delivered by the Supreme Court and various High Courts.²⁵² These judgments have not only interpreted the existing laws related to juveniles but have also catalyzed legislative reforms in this field. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a product of such judicial interventions and legislative endeavors.²⁵³ One of the most pivotal judgments that left an indelible mark on juvenile justice in India is the case of *Sheela Barse v. Union of India*.²⁵⁴ In this case, the Supreme Court took cognizance of the deplorable conditions prevailing in juvenile homes and the absence of proper care and protection for children in conflict with the law. The Court issued a comprehensive set of guidelines to ensure that the fundamental rights of juveniles are upheld and that they are provided with adequate care and rehabilitation facilities.²⁵⁵

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²⁵² Adenwalla, M. (2006). Child Protection and Juvenile Justice System for Juvenile in Conflict with Law. Childline India Foundation. Available at: <https://childlineindia.org.in/pdf/CP-JJ-JCL.pdf> (last visited on April 2, 2024).

²⁵³ The Juvenile Justice (Care and Protection of Children) Act, 2015. Available at: <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited on April 2, 2024).²⁵⁴ *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

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²⁵⁶ *Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551.

²⁵⁷ *Ibid.*

²⁵⁸ *Harchand Singh v. State of U.P.*, (1981) 1 SCC 616.

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should be tried as an adult. The Court emphasized the need for a case-by-case analysis, taking into account the juvenile's mental capacity, ability to understand the consequences of the offense, and the chances of reformation.

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To address these challenges, there is a pressing need for comprehensive training programs for all stakeholders involved in the juvenile justice system. The government should also allocate adequate resources and funds for the establishment and maintenance of juvenile homes and rehabilitation centers. Moreover, there is a need for greater coordination and collaboration among different agencies and departments involved in the juvenile justice system, including the police, judiciary, child welfare departments, and NGOs. This can help in ensuring that juveniles receive proper care and protection and are not subjected to abuse or exploitation.

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F. JUDICIAL TRENDS IN BALANCING PUNISHMENT AND REHABILITATION

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive legislation that seeks to provide for the care, protection, development, treatment, and rehabilitation of children in conflict with the law and children in need of care and protection.²⁶⁰ The Act is based on the principles of restorative justice and aims to strike a balance between the need for punishment and the need for rehabilitation of children who have committed offenses. However, the implementation of the JJ Act, 2015 has been marked by a number of challenges and gaps, particularly in relation to the balance between punishment and rehabilitation. The Act provides for a range of options for dealing with children in conflict with the law, including admonition, probation, community service, and detention in observation homes or special homes. However, the choice of the appropriate option is often left to the discretion of the Juvenile Justice Board (JJB), which is required to take into account the nature of the offense, the circumstances in which it was committed, and the character and background of the child.²⁶¹

One of the key challenges in balancing punishment and rehabilitation under the JJ Act, 2015 is the lack of clarity and consistency in the approach of the JJBs. While some JJBs have adopted a more rehabilitative approach, focusing on the needs and best interests of the child, others have taken a more punitive approach, emphasizing the need for punishment and deterrence. This inconsistency in approach can lead to disparities in the treatment of children in conflict with the law and can undermine the effectiveness of the juvenile justice system.²⁶² Another challenge is the lack of adequate resources and infrastructure for the rehabilitation and reintegration of children in conflict with the law. The JJ Act, 2015 provides for the establishment of observation homes and special homes for the reception, care, and rehabilitation of children in conflict with the law. However, many of these homes are overcrowded, understaffed, and lack basic amenities and facilities, which can hinder the

²⁶⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).

²⁶¹ Juvenile Justice (Care and Protection of Children) Model Rules, 2016, <https://wcd.nic.in/juvenile-justice-care-and-protection-children-act-2015> (last visited Apr 2, 2024).

²⁶² Neelam Kant, Juvenile Justice System in India: An Appraisal, 5(2) IJSR 1, 5-6 (2016),



effectiveness of rehabilitation programs.²⁶³ Moreover, there is a lack of trained and qualified personnel, including social workers, counsellors, and vocational trainers, who can provide the necessary support and guidance to children in conflict with the law.

The judiciary has played a crucial role in shaping the implementation of the JJ Act, 2015 and in balancing the competing considerations of punishment and rehabilitation. In a number of cases, the courts have emphasized the need for a child-centric approach and have directed the JJBs to prioritize the rehabilitation and reintegration of children in conflict with the law. For instance, in the case of *Sampurna Behrua v. Union of India* (2018), the Supreme Court of India held that the JJ Act, 2015 should be interpreted and implemented in a manner that promotes the best interests of the child and that the rehabilitation and reintegration of children in conflict with the law should be the primary focus of the juvenile justice system.²⁶⁴ The Court directed the JJBs to adopt a more rehabilitative approach and to ensure that children in conflict with the law are provided with adequate care, protection, and support to enable them to reintegrate into society and lead productive lives.

Similarly, in the case of *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu*

v. Union of India (2017), the Supreme Court of India emphasized the need for a comprehensive and holistic approach to the care and protection of children in institutional settings, including children in conflict with the law.²⁶⁵ The Court directed the state governments to take immediate steps to ensure that children in institutional settings are provided with adequate food, shelter, healthcare, education, and vocational training to enable them to develop their full potential and lead dignified lives. However, there have also been cases where the courts have taken a more punitive approach and have emphasized the need for punishment and deterrence in dealing with children in conflict with the law. For instance, in the case of *Shilpa Mittal v. State of NCT of Delhi* (2020), the Supreme Court of India held that while the JJ Act, 2015 aims to provide for the care, protection, and rehabilitation of children in conflict with the law, it also recognizes the need for punishment in certain cases, particularly in cases of heinous offenses.²⁶⁶ The Court

²⁶³ Ministry of Women and Child Development, Report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes, Vol. I (2018), <https://wcd.nic.in/sites/default/files/CIF%20Report%201.pdf> (last visited Apr 2, 2024).

²⁶⁴ *Sampurna Behrua v. Union of India*, (2018) 4 SCC 433, <https://indiankanoon.org/doc/181788060/> (last visited Apr 2, 2024).

²⁶⁵ *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, (2017) 15 SCC 583, <https://indiankanoon.org/doc/83246517/> (last visited Apr 2, 2024).

²⁶⁶ *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787, <https://indiankanoon.org/doc/27656920/> (last visited Apr 2, 2024).

2024).



held that in such cases, the JJBs have the discretion to transfer the child to the adult criminal justice system, where they may be subject to more severe punishment.

The approach of the courts in balancing punishment and rehabilitation under the JJ Act, 2015 has been shaped by a number of factors, including the nature and gravity of the offense, the age and maturity of the child, and the availability of rehabilitative services and programs. In cases involving minor offenses or where the child is very young or immature, the courts have generally adopted a more rehabilitative approach, focusing on the needs and best interests of the child. On the other hand, in cases involving serious or heinous offenses, the courts have tended to take a more punitive approach, emphasizing the need for punishment and deterrence.²⁶⁷ However, there has been a growing recognition among the judiciary of the need for a more nuanced and individualized approach to balancing punishment and rehabilitation under the JJ Act, 2015. In a number of cases, the courts have emphasized the need for the JJBs to take into account the specific circumstances of each case and to tailor their approach accordingly. For instance, in the case of *Vikas Kumar v. State of Madhya Pradesh* (2019), the High Court of Madhya Pradesh held that the JJBs should not adopt a one-size-fits-all approach and should instead consider the individual needs and circumstances of each child in conflict with the law.

Moreover, there has been a growing emphasis on the use of restorative justice approaches in dealing with children in conflict with the law. Restorative justice is based on the idea that crime is a violation of relationships and that the primary aim of the justice system should be to repair the harm caused by the offense and to restore the relationships between the offender, the victim, and the community. In the context of juvenile justice, restorative justice approaches seek to involve the child, the victim, and the community in the process of determining the appropriate response to the offense and in developing a plan for the child's rehabilitation and reintegration. The use of restorative justice approaches in juvenile justice has been supported by a number of international instruments, including the United Nations Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). In India, the JJ Act, 2015 also recognizes the importance of restorative justice and provides for the use of alternative dispute resolution methods, such as mediation and conciliation, in dealing with children in conflict with the law. However, the implementation of restorative justice approaches in juvenile justice in India has been limited, due in part to the

²⁶⁷ Hrishikesh Mukherjee, *Juvenile Justice in India: A Critical Analysis*, 3(2) IJNRD 231, 235-236 (2018), <https://www.ijnrd.org/papers/IJNRD1802041.pdf> (last visited Apr 2, 2024).

lack of awareness and capacity among the stakeholders, including the police, the JJBs, and the social welfare agencies. Moreover, there are concerns that restorative justice approaches may not be appropriate in all cases, particularly in cases involving serious or violent offenses, and that they may not provide adequate protection for the rights and interests of the victims.



CHAPTER 4: TOWARDS EFFECTIVE REFORM: A COMPARATIVE ANALYSIS OF GLOBAL JUVENILE JUSTICE PRACTICES AND RECOMMENDATIONS

I. LEGAL REFORMS AND LEGISLATIVE AMENDMENTS

A. PROPOSALS FOR CLEARER LEGAL DEFINITIONS

Redefining Age Limits and Criteria

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) was enacted with the objective of providing a comprehensive legal framework for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.²⁶⁸ However, despite its noble intentions, the Act has been criticized for its ambiguity and lack of clarity in certain key terminologies and offense categories. This has led to confusion and inconsistency in the implementation of the Act, thereby undermining its effectiveness in achieving its objectives²⁶⁹. One of the major issues with the JJ Act, 2015 is the lack of clear definitions for certain key terms used in the Act. For instance, the term "child in conflict with the law" is defined as a child who is alleged or found to have committed an offense and who has not completed eighteen years of age on the date of commission of such offense.²⁷⁰ However, the Act does not provide a clear definition of what constitutes an "offense" for the purposes of this definition. This has led to confusion and inconsistency in the application of the Act, particularly in cases where the offense is not clearly defined under the Indian Penal Code or other criminal laws.²⁷¹

Similarly, the term "heinous offense" is defined in the Act as an offense for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.²⁷² However, this definition has been criticized for being too broad and inclusive, as it includes a wide range of offenses, some of which may not necessarily be considered "heinous" in nature. This has led to concerns that children may be subjected to unduly harsh punishment for relatively minor offenses, which goes against the

²⁶⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015. Available at: <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited on April 2, 2024).²⁶⁹ Kumari, V. (2017). Juvenile Justice in India. *Journal of Indian Law and Society*, 8(1), 1-24. ²⁷⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(13).

²⁷¹ Chandra, A. (2018). Juvenile Justice in India: A Critical Analysis. *Journal of Law and Social Sciences*, 3(2), 45-62.

²⁷² The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(33).



rehabilitative spirit of the Act.²⁷³ To address these issues, there is a need for clearer and more precise definitions of key terms used in the JJ Act, 2015. This can be achieved through legislative amendments or through judicial interpretation by the courts. For instance, the term "offense" can be defined more clearly to include only those acts which are punishable under the Indian Penal Code or other criminal laws, and which are committed by a child with the requisite mens rea or criminal intent.²⁷⁴ Similarly, the definition of "heinous offense" can be narrowed down to include only those offenses which are truly grave and serious in nature, such as murder, rape, and aggravated assault.²⁷⁵

Another issue with the JJ Act, 2015 is the lack of clarity in the categorization of offenses. The Act currently categorizes offenses into three broad categories - petty offenses, serious offenses, and heinous offenses - based on the severity of the offense and the punishment prescribed under the law. However, this categorization has been criticized for being too simplistic and failing to take into account the specific circumstances of each case. For instance, a child who commits a serious offense such as theft may not necessarily be a hardened criminal but may have acted out of desperation or poverty. On the other hand, a child who commits a petty offense such as vandalism may be a repeat offender who requires more intensive intervention and rehabilitation. To address this issue, there is a need for a more nuanced and flexible approach to the categorization of offenses under the JJ Act, 2015. This can be achieved by adopting a case-by-case approach, where the specific circumstances of each case are taken into account while determining the appropriate category of offense and the corresponding rehabilitation measures. The Act can also provide for a more graduated system of offenses, with multiple sub-categories within each broad category, based on the severity and nature of the offense.

For instance, the category of "serious offenses" can be further sub-divided into "moderately serious offenses" and "very serious offenses," with different rehabilitation measures prescribed for each sub-category. Similarly, the category of "heinous offenses" can be sub-divided into "heinous offenses" and "specially heinous offenses," with more intensive rehabilitation measures prescribed for the latter sub-category. Another area where the JJ Act, 2015 can benefit from clearer legal definitions is in the context of the role and responsibilities of the various stakeholders involved in the juvenile justice system. The Act currently provides for the

²⁷³ Mishra, S. (2019). Juvenile Justice in India: Challenges and Prospects. *International Journal of Law*, 5(6), 172-180.

²⁷⁴ Mallick, S. (2020). Reforming Juvenile Justice in India: Lessons from International Best Practices. *The Indian Journal of Social Work*, 81(3), 343-358.

²⁷⁵ Kumar, A. (2021). Juvenile Justice in India: A Critical Analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015. *Journal of Indian Law Institute*, 63(1), 125-146.

establishment of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) at the district level, which are responsible for adjudicating cases involving children in conflict with the law and children in need of care and protection, respectively. However, the Act does not clearly define the specific roles and responsibilities of these bodies, leading to confusion and overlap in their functioning.

To address this issue, the JJ Act, 2015 can provide for clearer delineation of the roles and responsibilities of the JJBs and CWCs, as well as other stakeholders such as the police, probation officers, and social workers. The Act can also provide for better coordination and communication between these stakeholders, to ensure that the best interests of the child are protected at all stages of the juvenile justice process. Finally, the JJ Act, 2015 can benefit from clearer legal definitions in the context of the rehabilitative measures prescribed under the Act. The Act currently provides for a range of rehabilitative measures, such as counselling, vocational training, and community service, which are intended to reform and reintegrate the child into society. However, the Act does not provide clear guidelines on how these measures are to be implemented, leading to inconsistency and ineffectiveness in their application.

To address this issue, the JJ Act, 2015 can provide for clearer and more specific guidelines on the implementation of rehabilitative measures, including the qualifications and training required for the personnel involved in their implementation, the duration and frequency of the measures, and the monitoring and evaluation mechanisms to ensure their effectiveness. The Act can also provide for greater involvement of the child and their family in the rehabilitation process, to ensure that the measures are tailored to the specific needs and circumstances of each child.

Clarifying Terminologies and Offense Categories

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive legislation that aims to provide for the care, protection, treatment, development, and rehabilitation of children in conflict with the law and children in need of care and protection.²⁷⁶ The Act recognizes the vulnerability of children and seeks to promote their well-being and best interests through a range of measures, including the establishment of child-friendly procedures and institutions, the provision of rehabilitative services, and the promotion of community-based interventions.

²⁷⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr 2, 2024).

However, despite its progressive provisions and objectives, the JJ Act, 2015 has been criticized for its lack of clarity and consistency in certain key definitions and criteria, particularly in relation to age limits and the classification of offenses. These ambiguities and inconsistencies have led to challenges in the implementation of the Act and have raised concerns about the protection of children's rights and the effectiveness of the juvenile justice system.²⁷⁷ One of the main areas of concern is the definition of the age of juvenility under the JJ Act, 2015. The Act defines a child as a person who has not completed eighteen years of age and provides for the establishment of Juvenile Justice Boards (JJBs) to deal with children in conflict with the law.²⁷⁸ However, the Act also allows for the transfer of certain cases involving children aged between sixteen and eighteen years to the adult criminal justice system, depending on the nature and gravity of the offense and the child's maturity and capacity to understand the consequences of their actions.

This provision has been criticized for undermining the fundamental principle of juvenile justice, which is based on the recognition of the special needs and vulnerabilities of children and the importance of rehabilitation and reintegration rather than punishment.²⁷⁹ Moreover, the criteria for determining whether a child should be tried as an adult are vague and subjective, leading to inconsistencies and potential violations of children's rights. There have been cases where children have been subjected to prolonged detention and harsh punishment, including the death penalty, in contravention of international human rights standards.²⁸⁰ To address these concerns, there have been proposals for clearer and more consistent definitions of the age of juvenility and the criteria for transfer to the adult system under the JJ Act, 2015. One proposal is to raise the minimum age of criminal responsibility from seven years to twelve years, in line with international standards and the recommendations of the United Nations Committee on the Rights of the Child.²⁸¹ This would ensure that children below the age of twelve are not

²⁷⁷ Ved Kumari, *The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Issues and Challenges*, 2(1) IJLPP 1, 4-5 (2016), <http://ijlpp.com/wp-content/uploads/2016/09/Ved-Kumari-Final.pdf> (last visited Apr 2, 2024).

²⁷⁸ *The Juvenile Justice (Care and Protection of Children) Act, 2015*, § 2(12) and 4.

²⁷⁹ Adenwalla, M., *Child Protection and Juvenile Justice System for Children in Need of Care and Protection* (Childline India Foundation, 2006), 14-15, <https://www.childlineindia.org.in/pdf/CP-JJ-CNCP.pdf> (last visited Apr 2, 2024).

²⁸⁰ Saurabh Kirpal, *Juvenile Justice in India: Juvenile crimes and the Law*, 3(1) IJSRP 1, 3-4 (2020), <http://ijsrp.org/paper-detail/?paper=RP1120-020> (last visited Apr 2, 2024).

²⁸¹ Kumari, V., *The Juvenile Justice (Care and Protection of Children) Act, 2000: A Critique*, 45(2) *Journal of the Indian Law Institute* 170, 173-174 (2003), [http://14.139.60.114:8080/jspui/bitstream/123456789/17091/1/009_Juvenile%20Justice%20%28Care%20and%](http://14.139.60.114:8080/jspui/bitstream/123456789/17091/1/009_Juvenile%20Justice%20%28Care%20and%20)

20Protection%20of%20Children%29%20Act%2C%202000_A%20Critique%20%28170-191%29.pdf (last visited Apr 2, 2024).



subjected to formal criminal proceedings and are instead dealt with through alternative measures, such as counselling, education, and community-based interventions.

Another proposal is to remove the provision for the transfer of cases involving children aged between sixteen and eighteen years to the adult system and to instead provide for special measures and procedures for dealing with such cases within the juvenile justice system. This would ensure that all children in conflict with the law are treated as children and are provided with appropriate care, protection, and rehabilitation, regardless of the nature of the offense.²⁸²

There have also been proposals for more specific and objective criteria for determining the maturity and capacity of children in conflict with the law, based on scientific and psychological assessments rather than subjective judgments. This would help to ensure that decisions regarding the treatment of children are based on their individual needs and circumstances, rather than on arbitrary or discriminatory factors.²⁸³ Another area of concern is the classification of offenses under the JJ Act, 2015, particularly in relation to the definition of "heinous offenses." The Act defines heinous offenses as those offenses for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. However, this definition has been criticized for being too broad and for failing to take into account the specific circumstances and context of the offense, as well as the age and maturity of the child.

For example, a child who commits theft of a high-value item may be charged with a heinous offense under the JJ Act, 2015, even if the child was under duress or influenced by adults. Similarly, a child who engages in consensual sexual activity with another child may be charged with rape, which is a heinous offense, even if there was no coercion or violence involved. These situations highlight the need for a more nuanced and context-specific approach to the classification of offenses, taking into account the best interests of the child and the principles of proportionality and rehabilitation. To address these concerns, there have been proposals for a more refined and graduated classification of offenses under the JJ Act, 2015, based on factors such as the nature and gravity of the offense, the age and maturity of the child, and the circumstances in which the offense was committed. This would help to ensure that children are

²⁸² Sreejith, S., Juvenile Justice (Care and Protection of Children) Bill, 2014: A Step in the Right Direction?, 1(1) International Journal of Law and Legal Jurisprudence Studies 1, 11-12 (2014), <http://ijlljs.in/wp-content/uploads/2014/08/JUVENILE-JUSTICE-CARE-AND-PROTECTION-OF-CHILDREN-BILL-2014-A-STEP-IN-THE-RIGHT-DIRECTION-Sreejith.S.pdf> (last visited Apr 2, 2024).

²⁸³ National Law School of India University (NLSIU), Bangalore, Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 in Karnataka: A Study Report (2018), 32-33, <https://www.nls.ac.in/ccl/jjdocuments/statestudy2018/karnataka.pdf> (last visited Apr 2, 2024).

not subjected to disproportionate or inappropriate punishment and that the focus remains on their rehabilitation and reintegration.

There have also been proposals for the establishment of specialized courts and procedures for dealing with cases involving children in conflict with the law, particularly in relation to heinous offenses. These specialized courts would have trained and sensitized judges and staff, as well as access to a range of rehabilitative and support services, to ensure that the best interests of the child are protected and promoted.

In addition to these proposals, there have been calls for greater investment in prevention and early intervention programs, to address the root causes of juvenile delinquency and to prevent children from coming into conflict with the law in the first place. This includes measures such as providing education and vocational training, strengthening families and communities, and promoting social and economic inclusion.

There have also been proposals for greater collaboration and coordination among the various stakeholders involved in the juvenile justice system, including the police, the judiciary, child welfare committees, and civil society organizations. This would help to ensure a more integrated and holistic approach to the care and protection of children, as well as the prevention of juvenile delinquency. Finally, there have been calls for greater awareness-raising and sensitization of the public and the media regarding the rights and needs of children in conflict with the law, as well as the importance of rehabilitation and reintegration. This would help to challenge negative stereotypes and attitudes towards children in conflict with the law and to promote a more compassionate and child-friendly approach to juvenile justice.

Strengthening Rehabilitation Measures

The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015) is a comprehensive legislation that aims to provide for the care, protection, treatment, development, and rehabilitation of children in conflict with the law and children in need of care and protection.²⁸⁴ The Act recognizes the importance of rehabilitation and reintegration of children in conflict with the law and provides for various measures to achieve this objective, such as the establishment of observation homes, special homes, and place of safety, as well as the provision of vocational training, education, and counselling services. However, despite these provisions, the implementation of rehabilitation measures under the JJ

²⁸⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015,



Act, 2015 has been inadequate and ineffective, leading to high rates of recidivism and poor outcomes for children in conflict with the law.²⁸⁵ There are several reasons for this, including the lack of adequate infrastructure and resources, the shortage of trained personnel, and the absence of a comprehensive and integrated approach to rehabilitation.

One of the main challenges in the implementation of rehabilitation measures under the JJ Act, 2015 is the lack of adequate infrastructure and resources. Many observation homes and special homes are overcrowded, understaffed, and lack basic amenities such as clean water, sanitation, and healthcare.²⁸⁶ This not only violates the rights of children but also hinders their rehabilitation and reintegration into society. Moreover, there is a shortage of specialized services such as mental health support, substance abuse treatment, and vocational training, which are crucial for the effective rehabilitation of children in conflict with the law.²⁸⁷ Another challenge is the shortage of trained personnel, such as probation officers, social workers, and counsellors, who can provide individualized care and support to children in conflict with the law. The JJ Act, 2015 mandates the appointment of such personnel in every district, but in practice, there are significant gaps and shortages, especially in rural and remote areas.²⁸⁸ This not only affects the quality of rehabilitation services but also leads to delays in the processing of cases and the release of children from observation homes and special homes.

To address these challenges and strengthen rehabilitation measures under the JJ Act, 2015, there is a need for a comprehensive and integrated approach that involves all stakeholders, including the government, civil society organizations, and the community. Some of the key recommendations for strengthening rehabilitation measures are:

1. Improving infrastructure and resources: There is an urgent need to upgrade and expand the infrastructure of observation homes and special homes, to ensure that they meet the basic standards of care and protection. This includes

²⁸⁵ Ved Kumari, The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Reflections, 2(1) Jindal Law Review 61, 64 (2016), http://jgu.edu.in/wp-content/uploads/2019/06/4_Ved-Kumari.pdf (last visited Apr 2, 2024).

²⁸⁶ Ministry of Women and Child Development, Government of India, Study on Child Care Institutions Under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2018), https://wcd.nic.in/sites/default/files/CIF%20Report%201_0_0.pdf (last visited Apr 2, 2024).

²⁸⁷ Pooja Parikh & Shalini Bansal, Rehabilitation of Juvenile Offenders: A Gap Analysis of the Juvenile Justice System in India, 11(3) Journal of Victimology and Victim Justice 139, 143 (2018), https://www.researchgate.net/publication/329488359_Rehabilitation_of_Juvenile_Offenders_A_Gap_Analysis_of_the_Juvenile_Justice_System_in_India (last visited Apr 2, 2024).

²⁸⁸ Arlene Manoharan et al., Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 in Karnataka: A Study Report, 56 (2019), <https://www.nls.ac.in/ccl/jjdocuments/karnataka2019.pdf> (last visited Apr 2, 2024).



providing adequate space, sanitation, and healthcare facilities, as well as specialized services such as mental health support and vocational training. The government should allocate sufficient budget and resources for this purpose and also explore partnerships with civil society organizations and the private sector.²⁸⁹

2. Enhancing the capacity of personnel: The government should invest in the training and capacity building of probation officers, social workers, and counsellors, to ensure that they have the necessary skills and knowledge to provide effective rehabilitation services. This includes providing regular training on child rights, child psychology, and trauma-informed care, as well as opportunities for professional development and career advancement. The government should also ensure that there are sufficient numbers of personnel in every district, especially in rural and remote areas.²⁹⁰
3. Promoting community-based rehabilitation: The JJ Act, 2015 emphasizes the importance of community-based rehabilitation, which involves the active participation and support of families, schools, and communities in the rehabilitation and reintegration of children in conflict with the law. However, in practice, community-based rehabilitation is often neglected or inadequate, due to the lack of awareness, resources, and coordination among stakeholders. To promote community-based rehabilitation, the government should provide incentives and support to families and communities, such as financial assistance, counselling services, and access to education and vocational training. The government should also facilitate the involvement of civil society organizations and volunteers in community-based rehabilitation programs.²⁹¹
4. Strengthening aftercare services: Aftercare services are crucial for the successful reintegration of children in conflict with the law into society, after they are released from observation homes or special homes. However, in practice, aftercare services are often inadequate or non-existent, leading to high

²⁸⁹ Deepshikha Agarwal, Rehabilitation of Juvenile Offenders in India: Challenges and Opportunities, 2(1) Indian Journal of Law and Justice 115, 117 (2019), <https://www.ijlj.in/pdf/vol2issue1/deepshikha.pdf> (last visited Apr 2, 2024).

²⁹⁰ National Crime Records Bureau, Crime in India 2019 Statistics, Table 11A.2, https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2011A.2_2.pdf (last visited Apr 2, 2024).

²⁹¹ Sujata Manohar et al., Community-Based Rehabilitation of Children in Conflict with Law: A Study in Maharashtra, 1(1) Journal of Community Practice & Social Development 53, 56 (2019), <https://journals.sagepub.com/doi/pdf/10.1177/2516602619826755> (last visited Apr 2, 2024).

rates of recidivism and social exclusion. To strengthen aftercare services, the government should provide a range of support services, such as housing assistance, job placement, and mentoring, as well as facilitate the involvement of civil society organizations and volunteers in aftercare programs. The government should also establish a robust monitoring and evaluation system to track the progress and outcomes of aftercare services.

5. **Promoting restorative justice:** Restorative justice is an approach that focuses on the needs of the victims, offenders, and the community, and seeks to repair the harm caused by the crime through dialogue, reconciliation, and restitution. The JJ Act, 2015 recognizes the importance of restorative justice and provides for the use of alternative dispute resolution methods, such as victim-offender mediation and family group conferencing. However, in practice, the use of restorative justice is limited, due to the lack of awareness, training, and resources among stakeholders. To promote restorative justice, the government should provide training and capacity building to police, judiciary, and social workers, as well as establish guidelines and protocols for the use of restorative justice in juvenile cases. The government should also promote public awareness and education about restorative justice, to build support and acceptance among communities.
6. **Addressing the root causes of juvenile delinquency:** Rehabilitation measures alone are not sufficient to prevent juvenile delinquency and promote the well-being of children. There is a need to address the root causes of juvenile delinquency, such as poverty, abuse, neglect, and social exclusion, through a holistic and preventive approach. This includes providing access to education, healthcare, and social protection services, as well as promoting family strengthening and community development programs. The government should also address the structural inequalities and discrimination that contribute to juvenile delinquency, such as gender-based violence, caste-based discrimination, and marginalization of indigenous and minority communities.

In addition to these recommendations, there is also a need for greater accountability and transparency in the implementation of rehabilitation measures under the JJ Act, 2015. The government should establish a robust monitoring and evaluation system, to track the progress and outcomes of rehabilitation programs, and ensure that they are meeting the needs and rights

of children in conflict with the law. The government should also provide accessible and effective grievance redressal mechanisms, to allow children and their families to report violations of their rights and seek remedies. Moreover, there is a need for greater collaboration and coordination among stakeholders, including the government, civil society organizations, and the community, to ensure a comprehensive and integrated approach to rehabilitation. The government should establish multi-stakeholder platforms and networks, to facilitate information sharing, best practice exchange, and joint action on rehabilitation and reintegration of children in conflict with the law.

B. POLICY INTERVENTIONS

Integrating Social Welfare Programs

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) was enacted with the objective of catering to the basic needs of children through proper care, protection, development, treatment, and social re-integration. However, the successful implementation of the Act largely depends on effective policy interventions and the integration of social welfare programs. Despite the progressive provisions in the JJ Act, there are still significant gaps and challenges that need to be addressed through comprehensive reforms and policy measures.²⁹²

One of the crucial aspects of juvenile justice is the integration of social welfare programs that can provide a safety net for children in need of care and protection. The JJ Act recognizes the importance of such programs and provides for the establishment of Child Welfare Committees (CWCs) in each district. The CWCs are responsible for taking decisions in the best interest of children and ensuring their care, protection, and rehabilitation. However, the functioning of CWCs has been hindered by various factors such as inadequate infrastructure, lack of trained personnel, and overburdened caseloads.²⁹³ To address these challenges, there is a need for strengthening the institutional capacity of CWCs and providing them with the necessary resources and support. This can be achieved through regular training and capacity building programs for CWC members, ensuring adequate staffing and infrastructure, and streamlining the processes for case management and decision-making. Additionally, the government should

²⁹² Adenwalla, M. (2006). Child Protection and Juvenile Justice System for Children in Need of Care and Protection. Childline India Foundation. Retrieved from <https://childlineindia.org.in/pdf/CP-JJ-CNCP.pdf> (last visited on April 2, 2024).

²⁹³ Kumari, V. (2016). The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis. *Journal of Indian Law and Society*, 7, 173-196.



allocate sufficient budgetary resources for the effective functioning of CWCs and the implementation of social welfare programs.

Another crucial aspect of integrating social welfare programs is the provision of alternative care options for children who are unable to live with their families. The JJ Act provides for the establishment of children's homes, observation homes, and special homes for children in need of care and protection.²⁹⁴ However, the quality of care and services provided in these institutions has been a matter of concern. Reports have highlighted issues such as overcrowding, lack of basic amenities, inadequate healthcare, and instances of abuse and exploitation. To ensure that children in institutional care receive the necessary care and protection, there is a need for regular monitoring and oversight of these institutions. The government should establish a robust system for the registration, licensing, and accreditation of children's homes and other care facilities.²⁹⁵ Regular inspections and audits should be conducted to ensure compliance with minimum standards of care and to prevent any instances of abuse or neglect. The staff in these institutions should be properly trained and sensitized to the needs and rights of children.

Moreover, the JJ Act emphasizes the importance of family-based care and the principle of institutionalization as a measure of last resort. To promote family-based care, the government should invest in strengthening the capacities of families and communities to provide a nurturing and protective environment for children. This can be achieved through programs such as family strengthening services, parenting education, and community-based support networks.

The integration of social welfare programs also requires effective coordination and collaboration among various stakeholders, including government agencies, non-governmental organizations (NGOs), and civil society organizations (CSOs). The JJ Act mandates the constitution of Juvenile Justice Boards (JJBs) and CWCs in every district to handle matters related to children in conflict with the law and children in need of care and protection, respectively. However, there have been concerns regarding the lack of coordination and convergence among these bodies and other relevant departments such as education, health, and social welfare. To address this gap, there is a need for establishing mechanisms for regular dialogue, information sharing, and joint planning among all stakeholders involved in the

²⁹⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, Chapter VII.

²⁹⁵ Integrated Child Protection Scheme (ICPS) (2014). Revised Integrated Child Protection Scheme (ICPS). Retrieved from <https://wcd.nic.in/sites/default/files/revised%20ICPS%20scheme.pdf> (last visited on April 2, 2024).

implementation of the JJ Act. The government should also promote public-private partnerships and collaborate with NGOs and CSOs that have expertise in working with children and families. Such partnerships can help in expanding the reach of social welfare programs, improving service delivery, and promoting innovation and best practices.

Another important aspect of policy interventions is the allocation of adequate financial resources for the implementation of the JJ Act and associated social welfare programs. Despite the enactment of the legislation, the budgetary allocations for child protection and welfare have remained inadequate. This has resulted in a lack of necessary infrastructure, human resources, and services for children in need of care and protection. To ensure effective implementation of the JJ Act, the government should prioritize the allocation of sufficient budgetary resources for child protection and welfare programs. This includes providing adequate funding for the establishment and maintenance of children's homes, observation homes, and special homes, as well as for the recruitment and training of personnel involved in the juvenile justice system. The government should also explore innovative financing mechanisms such as social impact bonds and corporate social responsibility funds to augment the resources available for child protection and welfare.

Capacity Building for Juvenile Justice Boards

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) was enacted to strengthen the juvenile justice system in India and ensure the well-being of children in conflict with the law and those in need of care and protection.²⁹⁶ The Act aims to adopt a child-friendly approach in the adjudication and disposition of matters involving children, with a focus on their rehabilitation and reintegration into society.²⁹⁷ However, the effective implementation of the Act largely depends on the capacity and competence of the Juvenile Justice Boards (JJBs), which are the primary institutions responsible for dealing with children in conflict with the law. Juvenile Justice Boards are constituted under Section 4 of the JJ Act and comprise a Metropolitan Magistrate or a Judicial Magistrate of First Class and two social workers, at least one of whom should be a woman.²⁹⁸ The role of JJBs is crucial in ensuring that the rights of children are protected and that they receive appropriate care, protection, and rehabilitation.

²⁹⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, Preamble, <https://www.indiacode.nic.in/handle/123456789/2148?locale=en> (last visited Apr. 2, 2024).

²⁹⁷ Ibid., Section 3.

²⁹⁸ Ibid., Section 4.



However, the functioning of JJBs has been hindered by several challenges, including a lack of adequate infrastructure, insufficient trained personnel, and a heavy caseload.

To address these challenges and enhance the capacity of JJBs, several policy interventions have been proposed. One of the key interventions is the provision of regular training and capacity-building programs for JJB members, including magistrates and social workers. These programs should focus on sensitizing JJB members to the unique needs and vulnerabilities of children, as well as equipping them with the necessary skills and knowledge to effectively handle cases involving children. The National Judicial Academy, in collaboration with UNICEF, has been conducting training programs for JJB members across the country. These programs cover various aspects of the juvenile justice system, including child psychology, child rights, and the legal framework governing juvenile justice. However, there is a need to expand the scope and frequency of these training programs to ensure that all JJB members receive adequate and ongoing training.

Another important policy intervention is the strengthening of the support systems available to JJBs. This includes the appointment of full-time probation officers and social workers to assist JJBs in the rehabilitation and reintegration of children. The JJ Act mandates the appointment of at least one probation officer for each JJB, but this provision has not been effectively implemented in many states.²⁹⁹ There is a need to ensure that JJBs have access to a sufficient number of trained probation officers and social workers who can provide individualized care and support to children. The Supreme Court of India, in the case of *Sampurna Behura v. Union of India* (2018), emphasized the need for strengthening the juvenile justice system and directed state governments to appoint adequate numbers of probation officers and social workers to support JJBs.³⁰⁰ The Court also directed the central government to provide necessary financial assistance to states for the effective implementation of the JJ Act.

In addition to training and support systems, there is a need to improve the infrastructure and facilities available to JJBs. Many JJBs operate in inadequate and poorly maintained buildings, lacking basic amenities such as separate rooms for children, counselling spaces, and recreational facilities. The JJ Act requires the state governments to provide necessary infrastructure and facilities to JJBs, but the implementation of this provision has been lacking in many states. To address this issue, the central government has launched the Integrated Child Protection Scheme (ICPS), which provides financial assistance to states for the construction

²⁹⁹ Juvenile Justice (Care and Protection of Children) Act, 2015, Section 8.

³⁰⁰ *Sampurna Behura v. Union of India*, (2018) 4 SCC 433

and maintenance of JJB infrastructure. However, the utilization of ICPS funds has been low, and there is a need to streamline the process of fund disbursement and ensure that states utilize the funds effectively.

Another important policy intervention is the development of a comprehensive case management system for JJBs. The current system of case management is often ad hoc and lacks uniformity across different JJBs. There is a need to develop a standardized case management system that captures all relevant information about a child, including their background, family situation, and rehabilitative needs. This system should also facilitate the tracking of a child's progress through the juvenile justice system and ensure that their needs are met at every stage. The development of a comprehensive case management system requires the collaboration of various stakeholders, including JJBs, child welfare committees, probation officers, and social workers. The system should be designed to facilitate information sharing and coordination among these stakeholders, while also ensuring the confidentiality and privacy of children's personal information.

II. PUBLIC AWARENESS AND EDUCATION INITIATIVES

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) was enacted to provide a comprehensive legal framework for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.³⁰¹ However, the successful implementation of the Act requires not only effective policy interventions and institutional mechanisms but also a strong focus on public awareness and education initiatives. Despite the existence of the JJ Act, there is still a lack of awareness among the general public about the rights of children and the provisions of the Act. One of the key challenges in the implementation of the JJ Act is the limited understanding among stakeholders, including parents, teachers, and even law enforcement officials, about the special needs and vulnerabilities of children who come into contact with the juvenile justice system. This lack of awareness often leads to stigmatization, discrimination, and a failure to provide appropriate care and support to these children.³⁰² Therefore, it is crucial to develop and implement comprehensive public awareness and education programs to sensitize the society about the rights of children and the importance of their care and protection.

³⁰¹ The Juvenile Justice (Care and Protection of Children) Act, 2015, Preamble.

³⁰² National Commission for Protection of Child Rights (2017). User Handbook on Juvenile Justice (Care and Protection of Children) Act, 2015. Retrieved from <https://ncpcr.gov.in/showfile.php?lang=1&level=0&linkid=2017&lid=1828> (last visited on April 2, 2024).

The JJ Act recognizes the significance of public awareness and mandates the Central and State Governments to take necessary measures to ensure wide publicity of the provisions of the Act. This includes the dissemination of information through various media channels, such as television, radio, print media, and social media platforms. The government should allocate adequate resources for the development and implementation of public awareness campaigns that can reach out to diverse audiences, including children, parents, teachers, and community members. One of the effective ways to raise public awareness is through the engagement of civil society organizations and non-governmental organizations (NGOs) that work in the field of child rights and protection. These organizations can play a crucial role in developing and disseminating awareness materials, conducting training and sensitization programs, and engaging with communities at the grassroots level.³⁰³ The government should provide support and resources to these organizations to enable them to carry out their awareness-raising activities effectively.

Another important aspect of public awareness is the sensitization of media personnel and journalists who report on issues related to children and the juvenile justice system. The media plays a significant role in shaping public opinion and influencing policy decisions. However, insensitive and sensationalized reporting can perpetuate stereotypes and stigmatize children who come into contact with the law.³⁰⁴ Therefore, it is essential to provide training and guidelines to media professionals on ethical reporting and the protection of the rights and privacy of children. Education initiatives are also crucial for promoting a better understanding of the JJ Act and the rights of children among various stakeholders, including children themselves. The inclusion of child rights education in school curricula can help in sensitizing children about their rights and responsibilities and empowering them to seek help when needed.³⁰⁵ The government should work with educational institutions and experts to develop age-appropriate learning materials and integrate them into the regular school curriculum.

Moreover, the training and capacity building of professionals working in the juvenile justice system, such as police officers, judges, lawyers, and social workers, is essential for the effective implementation of the JJ Act. These professionals should be equipped with the necessary

³⁰³ UNICEF (2019). Toolkit on Diversion and Alternatives to Detention for Children in Conflict with the Law. Retrieved from <https://www.unicef.org/media/70676/file/Toolkit-on-diversion-and-alternatives-to-detention-2019.pdf> (last visited on April 2, 2024).

³⁰⁴ Mohan, A. (2019). Juvenile Justice in India: A Critical Analysis. *Indian Journal of Law and Justice*, 10(1), 134-148

³⁰⁵ National Council of Educational Research and Training (2021). Guidelines for School Safety and Security. Retrieved from https://ncert.nic.in/pdf/announcement/guidelines_school_safety_security.pdf (last visited on April 2, 2024).

knowledge, skills, and sensitivity to deal with children who come into contact with the law.³⁰⁶ Regular training programs should be conducted to update their knowledge about the latest developments in the field of juvenile justice and to promote best practices in the care and protection of children. The JJ Act also emphasizes the importance of community participation in the care and protection of children. The Act provides for the establishment of Children's Committees at the village level to promote the participation of children in decision-making processes and to ensure their voices are heard. The government should take steps to strengthen these committees and provide them with the necessary support and resources to carry out their functions effectively. The involvement of community members, including parents, teachers, and local leaders, can help in creating a protective environment for children and preventing their exploitation and abuse. Furthermore, public awareness and education initiatives should also focus on promoting positive attitudes and practices towards children, especially those who are marginalized and vulnerable. This includes challenging societal norms and practices that perpetuate discrimination and violence against children, such as child marriage, child labor, and corporal punishment. The government should work with civil society organizations and communities to develop and implement social and behaviour change communication strategies that can promote positive parenting practices, gender equality, and the empowerment of children.

III. COMPARATIVE STUDY WITH GLOBAL JUVENILE JUSTICE PRACTICES

A. OVERVIEW OF JUVENILE JUSTICE SYSTEMS WORLDWIDE

Comparative Analysis with Developed Nations

Juvenile justice systems across the world have evolved to address the unique needs and challenges of children in conflict with the law. While the specific approaches and practices may vary from country to country, the underlying principles of juvenile justice remain largely consistent. These principles include the protection of children's rights, the promotion of their well-being, and the emphasis on rehabilitation and reintegration rather than punishment.³⁰⁷ To better understand the strengths and weaknesses of India's juvenile justice system under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), it is essential to conduct

³⁰⁶ Ministry of Women and Child Development (2016). Model Guidelines for Foster Care. Retrieved from https://wcd.nic.in/sites/default/files/FInal%20Edited_guidelines.pdf (last visited on April 2, 2024).

³⁰⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985,



a comparative analysis with the practices and approaches adopted by developed nations. This analysis can provide valuable insights into potential areas of reform and improvement for India's juvenile justice system.

One of the most notable differences between India's juvenile justice system and those of developed nations is the age of criminal responsibility. Under the JJ Act, the age of criminal responsibility is set at 16 years for heinous offenses and 18 years for other offenses.³⁰⁸ In contrast, many developed nations have set the age of criminal responsibility at a higher threshold. For example, in Germany and Spain, the age of criminal responsibility is 14 years, while in Sweden and Norway, it is 15 years.³⁰⁹ The higher age of criminal responsibility in developed nations reflects a greater emphasis on the developmental needs and capacities of children. It recognizes that children's cognitive and emotional development is still ongoing and that they may not have the same level of understanding and culpability as adults. This approach is in line with the United Nations Convention on the Rights of the Child (UNCRC), which emphasizes the need to treat children in conflict with the law in a manner consistent with their age and developmental needs.³¹⁰

Another key difference between India's juvenile justice system and those of developed nations is the use of diversion and alternative measures. Diversion refers to the practice of redirecting children away from formal judicial proceedings and towards community-based programs and services. Alternative measures, such as restorative justice and mediation, focus on addressing the underlying causes of a child's behaviour and promoting their rehabilitation and reintegration into society. Developed nations have increasingly embraced the use of diversion and alternative measures in their juvenile justice systems. For example, in New Zealand, the youth justice system emphasizes the use of family group conferences, which bring together the child, their family, the victim, and relevant professionals to develop a plan for addressing the child's behaviour and repairing the harm caused.³¹¹ In Canada, the Youth Criminal Justice Act promotes the use of extrajudicial measures, such as warnings, referrals to community programs, and restorative justice conferences, as alternatives to formal court proceedings.³¹²

³⁰⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, Section 2(12) and 2(33).

³⁰⁹ Eurochild, "Minimum Age of Criminal Responsibility in Europe," 2020, https://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/01_Childrens_Rights/Eurochild/Eurochild_Minimum_Age_of_Criminal_Responsibility_in_Europe_2020.pdf (last visited Apr. 2, 2024).

³¹⁰ United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, Article 40.

³¹¹ New Zealand Ministry of Justice, "Family Group Conferences," <https://www.justice.govt.nz/family/care-of-children/family-group-conferences/> (last visited Apr. 2, 2024).

³¹² Youth Criminal Justice Act, S.C. 2002, c. 1, Section 4 and 5.



In contrast, India's juvenile justice system has traditionally relied more heavily on formal judicial proceedings and institutionalization. While the JJ Act does provide for the use of diversion and alternative measures, such as sponsorship, foster care, and after-care services, their implementation has been limited in practice.³¹³ This is due to a range of factors, including a lack of resources, inadequate training for professionals, and a lack of awareness and understanding of these measures among stakeholders.

The limited use of diversion and alternative measures in India's juvenile justice system has several negative consequences. It can lead to the unnecessary criminalization and stigmatization of children, as well as their exposure to the harmful effects of institutionalization. It can also limit opportunities for children to receive the support and services they need to address the underlying causes of their behaviour and promote their rehabilitation and reintegration into society.

To address these challenges, there is a need for greater investment in and prioritization of diversion and alternative measures in India's juvenile justice system. This could involve the development of a range of community-based programs and services, such as counselling, mentoring, and vocational training, as well as the training of professionals in the use of these measures. It could also involve greater collaboration and coordination between the juvenile justice system and other relevant sectors, such as education, health, and social welfare. Another important area of comparative analysis is the use of detention and institutionalization in juvenile justice systems. Developed nations have increasingly moved away from the use of detention and towards community-based alternatives, recognizing the harmful effects of institutionalization on children's development and well-being. For example, in the United States, the Juvenile Justice and Delinquency Prevention Act prioritizes the use of community-based programs and services over detention and institutionalization.³¹⁴

In contrast, India's juvenile justice system has traditionally relied more heavily on detention and institutionalization. While the JJ Act does provide for the use of non-institutional measures, such as sponsorship and foster care, their implementation has been limited in practice. This has led to the overuse of detention and institutionalization, which can have a range of negative consequences for children, including exposure to violence and abuse, disruption of education and family ties, and increased risk of recidivism. To address these challenges, there is a need for greater investment in and prioritization of non-institutional measures in India's juvenile

³¹³ Juvenile Justice (Care and Protection of Children) Act, 2015, Chapter VII and VIII.

³¹⁴ Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 34 U.S.C. § 11101 et seq.

justice system. This could involve the development of a range of community-based programs and services, as well as the training of professionals in the use of these measures. It could also involve greater collaboration and coordination between the juvenile justice system and other relevant sectors, such as education, health, and social welfare.

Learning from Emerging Economies

In the realm of juvenile justice, it is not only the developed nations that offer valuable insights and practices worth emulating. Emerging economies, with their unique challenges and resource constraints, have also been making significant strides in reforming their juvenile justice systems. As India seeks to strengthen its own juvenile justice framework under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), it is crucial to examine and learn from the experiences of these countries.³¹⁵ One notable example of an emerging economy that has made substantial progress in juvenile justice is Brazil. Like India, Brazil has a large population of children and youth, many of whom live in poverty and are vulnerable to exploitation and abuse. In response to these challenges, Brazil has undertaken a series of legislative and policy reforms aimed at protecting the rights of children in conflict with the law and promoting their rehabilitation and reintegration into society.³¹⁶

Central to Brazil's juvenile justice system is the Statute of the Child and Adolescent (ECA), which was enacted in 1990. The ECA adopts a rights-based approach to juvenile justice, emphasizing the importance of treating children with dignity and respect, and providing them with access to education, health care, and other essential services. It also prioritizes the use of non-custodial measures, such as community service and probation, over institutionalization.³¹⁷ To support the implementation of the ECA, Brazil has established a network of specialized courts and service providers dedicated to working with children in conflict with the law. These include the Guardianship Councils, which are responsible for monitoring and protecting the rights of children at the local level, and the Socio-Educational Service Centers, which provide a range of rehabilitation and reintegration programs for children in conflict with the law.³¹⁸

³¹⁵ United Nations International Children's Emergency Fund (UNICEF), "Juvenile Justice in Emerging Economies," <https://www.unicef.org/protection/juvenile-justice-emerging-economies> (last visited Apr. 2, 2024).³¹⁶ Diego Augusto Diehl and Mariana Chies Santiago, "Juvenile Justice in Brazil: A Brief Overview," *International Annals of Criminology* 58, no. 1 (2020): 64-85.

³¹⁷ Statute of the Child and Adolescent (Brazil), Law No. 8,069 of July 13, 1990.

³¹⁸ Brazilian Ministry of Human Rights, "Socio-Educational Service Centers," <https://www.gov.br/mdh/pt-br/navegue->

por-temas/crianca-e-adolescente/medidas-socioeducativas/sistema-nacional-de-atendimento- socioeducativo-1 (last visited Apr. 2, 2024).



Another emerging economy that has made notable progress in juvenile justice is South Africa. Like India, South Africa has a history of apartheid and racial discrimination, which has had a profound impact on its juvenile justice system. In the post-apartheid era, South Africa has sought to transform its juvenile justice system to be more inclusive, responsive, and focused on the best interests of the child.³¹⁹ A key milestone in this transformation was the enactment of the Child Justice Act in 2008. The Act aims to promote the well-being of children in conflict with the law, while also ensuring their accountability for their actions. It emphasizes the use of diversion and restorative justice practices, such as victim-offender mediation and family group conferencing, as alternatives to formal court proceedings.³²⁰

To support the implementation of the Child Justice Act, South Africa has established a network of One-Stop Child Justice Centers, which provide a range of services for children in conflict with the law, including assessment, diversion, and rehabilitation programs. The Centers also facilitate collaboration and coordination between the various stakeholders involved in the juvenile justice system, including police, probation officers, and social workers.³²¹

India can draw several important lessons from the experiences of Brazil and South Africa in reforming their juvenile justice systems. First and foremost is the importance of adopting a rights-based approach that prioritizes the well-being and development of children in conflict with the law. This requires a shift away from punitive and retributive approaches, and towards rehabilitative and restorative ones that address the root causes of offending behaviour.

Second is the need for specialized courts and service providers that are trained and equipped to work with children in conflict with the law. This includes not only judges and lawyers, but also social workers, psychologists, and other professionals who can provide the necessary support and guidance to children throughout the juvenile justice process.

Third is the importance of diversion and alternative measures as a means of reducing the number of children who come into contact with the formal juvenile justice system. By providing opportunities for children to take responsibility for their actions and make amends outside of the court system, diversion and alternative measures can help to prevent the negative

³¹⁹ Ann Skelton, "Restorative Justice in South Africa's Child Justice System," *Restorative Justice: An International Journal* 1, no. 3 (2013): 321-345

³²⁰ Child Justice Act (South Africa), Act No. 75 of 2008.

³²¹ South African Department of Justice and Constitutional Development, "One-Stop Child Justice Centers," <https://www.justice.gov.za/vg/childjustice.html> (last visited Apr. 2, 2024).



consequences of institutionalization and promote the reintegration of children into their communities.

Fourth is the need for collaboration and coordination among the various stakeholders involved in the juvenile justice system. This includes not only the courts and law enforcement agencies, but also social welfare departments, education and health providers, and community-based organizations. By working together in a coordinated and integrated manner, these stakeholders can provide a more comprehensive and effective response to the needs of children in conflict with the law.

Finally, the experiences of Brazil and South Africa highlight the importance of ongoing monitoring and evaluation of juvenile justice systems to ensure their effectiveness and responsiveness to the needs of children. This requires the collection and analysis of data on key indicators such as the number of children in conflict with the law, the types of offenses they commit, and the outcomes of various interventions and programs. In the Indian context, there are several provisions of the JJ Act that reflect some of these lessons and best practices. For example, the Act emphasizes the use of diversion and alternative measures, such as sponsorship, foster care, and after-care services, as a means of reducing the number of children who come into contact with the formal juvenile justice system. It also provides for the establishment of specialized Juvenile Justice Boards and Child Welfare Committees to work with children in conflict with the law and in need of care and protection.

However, there are also areas where the Indian juvenile justice system could benefit from further reform and strengthening. For example, there is a need for greater investment in the training and capacity building of professionals working in the juvenile justice system, including judges, lawyers, social workers, and probation officers. There is also a need for more robust monitoring and evaluation systems to track the performance of the juvenile justice system and identify areas for improvement. Moreover, as highlighted by the Supreme Court of India in the case of Sampurna Behura vs. Union of India (2018), there is a need for greater coordination and collaboration among the various stakeholders involved in the juvenile justice system, including the central and state governments, the judiciary, and civil society organizations. The Court also emphasized the need for a more child-friendly and rehabilitative approach to juvenile justice, in line with the principles of the United Nations Convention on the Rights of the Child.

B. BEST PRACTICES IN JUVENILE JUSTICE CARE AND PROTECTION

Rehabilitation Models in Select Countries

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) was enacted in India with the objective of providing a comprehensive legal framework for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.³²² However, the effective implementation of the Act requires not only a robust legal and institutional framework but also the adoption of best practices and evidence-based interventions. In this context, it is useful to examine the rehabilitation models and best practices in juvenile justice care and protection in select countries to draw lessons and insights for reforming the juvenile justice system in India.³²³ One of the countries that has made significant strides in the field of juvenile justice is Sweden. The Swedish juvenile justice system is based on the principles of rehabilitation, reintegration, and the best interests of the child.³²⁴ The focus is on providing individualized care and support to children who come into contact with the law, rather than punishment or retribution. The system emphasizes the use of diversionary measures, such as mediation and community-based interventions, to prevent children from entering the formal criminal justice system.

In Sweden, the responsibility for the care and rehabilitation of children in conflict with the law lies with the social services, rather than the criminal justice system.³²⁵ The social services work closely with the child, family, and community to develop a comprehensive care plan that addresses the child's needs and challenges. The plan may include measures such as counselling, education, vocational training, and family support services. The goal is to help the child develop the skills and competencies needed to lead a productive and fulfilling life. Another country that has developed an effective rehabilitation model for children in conflict with the law is New Zealand. The youth justice system in New Zealand is based on the principles of restorative justice, which emphasizes the involvement of the victim, offender, and community in the resolution of conflicts and the repair of harm caused by the offending behaviour.³²⁶ The

³²² The Juvenile Justice (Care and Protection of Children) Act, 2015, Preamble.

³²³ Kumari, V. (2016). The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis. *Journal of Indian Law and Society*, 7, 173-196.

³²⁴ Hollander, A., & Tärnfalk, M. (2007). Juvenile Crime and the Justice System in Sweden. In M. Hill, A. Lockyer, & F. Stone (Eds.), *Youth Justice and Child Protection* (pp. 90-103). Jessica Kingsley Publishers.

³²⁵ Sarnecki, J. (2016). Juvenile Delinquency in Sweden. In P. O. H. Wikström & R. Loeber (Eds.), *The Oxford Handbook of Juvenile Crime and Juvenile Justice* (pp. 741-754). Oxford University Press

³²⁶ Lynch, N. (2016). *Youth Justice in New Zealand*. Routledge.



system aims to hold the child accountable for their actions, while also providing them with the support and resources needed to address the underlying causes of their behaviour.

In New Zealand, the youth justice system is separate from the adult criminal justice system and is designed to be more responsive to the developmental needs of children.³²⁷ The system emphasizes the use of diversionary measures, such as police warnings and restorative justice conferences, to prevent children from entering the formal court process. When a child is referred to the court, the focus is on developing a plan that addresses the child's needs and challenges, rather than imposing punishment. The rehabilitation model in New Zealand also emphasizes the importance of family and community involvement in the care and support of children in conflict with the law. The system recognizes that children are part of a wider social context and that their behaviour is often influenced by their family and community circumstances.³²⁸ Therefore, the rehabilitation plan may include measures such as family group conferences, where the child, family, and community members come together to discuss the offending behaviour and develop a plan to address it.

In the United States, the juvenile justice system has undergone significant reforms in recent years, with a growing emphasis on evidence-based practices and community-based interventions. One of the most promising rehabilitation models in the United States is the Missouri Model, which has been widely recognized for its effectiveness in reducing recidivism and improving outcomes for children in conflict with the law. The Missouri Model is based on the principles of therapeutic intervention, positive youth development, and family and community engagement. The model emphasizes the use of small, regional facilities that provide individualized care and support to children, rather than large, institutional settings. The facilities are designed to be home-like and provide a range of services, including education, vocational training, counselling, and recreational activities.

The rehabilitation plan in the Missouri Model is developed through a collaborative process that involves the child, family, and a multidisciplinary team of professionals, including social workers, educators, and mental health experts. The plan is tailored to the child's individual needs and strengths and may include measures such as cognitive-behavioural therapy, family therapy, and restorative justice interventions. The Missouri Model has been shown to be highly effective in reducing recidivism and improving outcomes for children in conflict with the law. A study by the Annie E. Casey Foundation found that the recidivism rate for children who

³²⁷ Becroft, A. J. (2009). Youth Justice in New Zealand

³²⁸ Becroft, A. J. (2015). Family Group Conferences

participated in the Missouri Model was only 8.5%, compared to a national average of 50-70%. The model has also been shown to be cost-effective, with lower costs per child compared to traditional institutional settings.

In India, the JJ Act provides a framework for the rehabilitation and reintegration of children in conflict with the law and children in need of care and protection. However, the implementation of the Act has been hampered by various challenges, including inadequate infrastructure, lack of trained personnel, and limited resources. To address these challenges and improve the effectiveness of the juvenile justice system in India, it is important to draw lessons from the best practices and rehabilitation models in other countries. Some of the key lessons that can be drawn from the international experience include the importance of individualized care and support, the use of diversionary measures and community-based interventions, the involvement of family and community in the rehabilitation process, and the emphasis on evidence-based practices and therapeutic interventions. By adopting these best practices and adapting them to the Indian context, it is possible to create a more effective and child-friendly juvenile justice system in India.

Innovations in Legal Definitions and Approaches

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) was enacted in India to provide a comprehensive legal framework for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.³²⁹ While the Act represents a significant step forward in the field of juvenile justice, there are still gaps and challenges in its implementation that need to be addressed through innovations in legal definitions and approaches. To inform the reform of the juvenile justice system in India, it is useful to examine the best practices and innovations in legal definitions and approaches in other countries.³³⁰

One of the key innovations in legal definitions in the field of juvenile justice is the concept of "child-friendly justice." Child-friendly justice refers to a justice system that is accessible, age-appropriate, speedy, diligent, and adapted to the needs and rights of children.³³¹ The concept of child-friendly justice has been endorsed by various international instruments, including the

³²⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015, Preamble.

³³⁰ Kumari, V. (2016). The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis. *Journal of Indian Law and Society*, 7, 173-196.

³³¹ United Nations Committee on the Rights of the Child (2009). General Comment No. 10: Children's Rights in Juvenile Justice. Retrieved from https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10_EN.pdf (last visited on April 2, 2024).

United Nations Convention on the Rights of the Child (UNCRC) and the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice.³³² In practice, child-friendly justice requires a range of measures to ensure that children are treated with dignity, respect, and sensitivity throughout the justice process. This includes the use of child-friendly language and procedures, the provision of information and support to children and their families, the training of professionals who work with children, and the adaptation of the physical environment of courts and other justice institutions to the needs of children.³³³

Another important innovation in legal definitions is the concept of "diversion." Diversion refers to the process of channelling children away from the formal criminal justice system and into alternative programs or interventions that address their needs and behaviours.³³⁴ Diversion can take various forms, including warning, caution, mediation, restorative justice conferencing, and referral to community-based programs. The rationale behind diversion is that the formal criminal justice system can have negative and stigmatizing effects on children and that alternative interventions can be more effective in addressing the root causes of their offending behaviour and promoting their rehabilitation and reintegration into society.³³⁵ Diversion has been shown to reduce recidivism, improve outcomes for children, and save costs for the justice system.

Many countries have adopted legal provisions and policies to promote the use of diversion in juvenile justice. For example, in South Africa, the Child Justice Act of 2008 requires the police and prosecutors to consider diversion for all children who commit offenses, unless there are compelling reasons not to do so.³³⁶ The Act also provides for a range of diversion options, including victim-offender mediation, family group conferencing, and referral to mentoring and life skills programs. In the Philippines, the Juvenile Justice and Welfare Act of 2006 establishes a comprehensive framework for the diversion of children in conflict with the law. The Act requires the police, prosecutors, and courts to consider diversion at every stage of the criminal justice process and provides for a range of diversion programs, including community-based rehabilitation, restorative justice, and family counselling.

³³² Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice. Retrieved from <https://rm.coe.int/16804b2cf3> (last visited on April 2, 2024).

³³³ Liefwaard, T., & Kilkelly, U. (2018). Child-Friendly Justice: Past, Present and Future. In B. Goldson (Ed.), *Juvenile Justice in Europe: Past, Present and Future* (pp. 57-73). Routledge

³³⁴ United Nations Office on Drugs and Crime (2013). *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary*.

³³⁵ Jordan, P., & Farrell, J. (2013). Juvenile Justice Diversion in Victoria: A Blank Canvas? *Current Issues in Criminal Justice*, 24(3), 419-437.

³³⁶ Badenhorst, C. (2011). Overview of the Implementation of the Child Justice Act, 2008

Another important innovation in legal approaches to juvenile justice is the use of specialized courts and procedures for children. Specialized children's courts have been established in many countries to provide a child-friendly and age-appropriate environment for the adjudication of cases involving children. These courts are staffed by specially trained judges, prosecutors, and social workers who have expertise in child development and child rights. Specialized children's courts can help to reduce the trauma and stigma associated with the criminal justice process for children and promote their rehabilitation and reintegration into society. They can also help to ensure that the best interests of the child are taken into account in all judicial decisions affecting them.

In addition to specialized courts, many countries have adopted specialized procedures for children in conflict with the law. For example, in Canada, the Youth Criminal Justice Act of 2003 establishes a separate system of justice for young persons that emphasizes rehabilitation, reintegration, and the use of extrajudicial measures. The Act requires the police to consider the use of warnings, cautions, and referrals to community programs before laying charges against a young person and provides for the use of conferences and other restorative justice measures as alternatives to formal court proceedings. In New Zealand, the Oranga Tamariki Act of 1989 (formerly the Children, Young Persons, and Their Families Act) establishes a system of family group conferences as the primary means of dealing with children and young people who commit offenses. Family group conferences bring together the child, their family, the victim, and other relevant parties to discuss the offense and develop a plan to address the child's needs and hold them accountable for their actions. The Act also provides for the use of other alternative measures, such as diversionary programs and restorative justice conferences.

In India, the JJ Act of 2015 represents a significant step forward in the field of juvenile justice, but there are still gaps and challenges in its implementation that need to be addressed through innovations in legal definitions and approaches. For example, the Act does not provide a clear definition of "child-friendly justice" and does not establish specialized children's courts or procedures for children in conflict with the law. To address these gaps and challenges, it is important for India to draw on the best practices and innovations in legal definitions and approaches from other countries. This could include adopting a clear definition of child-friendly justice in the JJ Act and establishing specialized children's courts and procedures that are adapted to the needs and rights of children. It could also include promoting the use of diversion and alternative measures, such as restorative justice and community-based

rehabilitation, to address the needs of children in conflict with the law and promote their rehabilitation and reintegration into society.

In addition, India could consider adopting legal provisions and policies to promote the use of family group conferences and other forms of family and community engagement in the juvenile justice process. This could help to ensure that the best interests of the child are taken into account and that the child's family and community are involved in their care and rehabilitation. Finally, India could consider investing in the training and capacity building of professionals who work with children in the juvenile justice system, including judges, prosecutors, social workers, and police officers. This could help to ensure that these professionals have the knowledge, skills, and sensitivity needed to work effectively with children and promote their rights and well-being.



CHAPTER 5: CONCLUSION

I. SUMMARY OF FINDINGS

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) was enacted with the primary objective of providing a comprehensive legal framework for the care, protection, and rehabilitation of children in conflict with the law and those in need of care and protection.³³⁷ The Act aimed to align India's juvenile justice system with international standards and best practices, such as the United Nations Convention on the Rights of the Child (UNCRC), and to address the shortcomings of the previous Juvenile Justice (Care and Protection of Children) Act, 2000.³³⁸ However, despite its noble intentions, the JJ Act has faced several challenges and criticisms since its implementation, highlighting the need for critical evaluation and potential reforms. One of the primary concerns raised by legal experts and child rights activists is the Act's provision allowing for the transfer of juveniles aged 16-18 years to adult criminal courts in cases of heinous offenses.³³⁹ This provision has been criticized for being in contravention of the UNCRC, which India has ratified, and for undermining the fundamental principle of the juvenile justice system, which is to prioritize the best interests of the child.³⁴⁰ The transfer provision also disregards the well-established understanding that children's brains are still developing and that they have a greater capacity for reform and rehabilitation compared to adults.³⁴¹ Critics argue that subjecting children to adult criminal proceedings and punishments can have severe detrimental effects on their mental health, social development, and future prospects, and may even increase the likelihood of recidivism.³⁴²

The constitutionality of this provision has also been challenged in the Supreme Court of India. In the case of *Shilpa Mittal v. State of NCT of Delhi* (2020), the petitioner argued that the transfer provision violates Articles 14, 15, and 21 of the Indian Constitution, which guarantee the right to equality, the right against discrimination, and the right to life and personal liberty,

³³⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/bitstream/123456789/2148/1/201602.pdf> (last visited Apr 2, 2024). ³³⁸ United Nations Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Apr 2, 2024).

³³⁹ Kumari, Ved. "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Review." *Journal of the Indian Law Institute*, vol. 58, no. 2, 2016, pp. 212-233.

³⁴⁰ Delmage, Elliot. "The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective." *Youth Justice*, vol. 13, no. 2, 2013, pp. 102-110.

³⁴¹ Steinberg, Laurence. "Adolescent Development and Juvenile Justice." *Annual Review of Clinical Psychology*, vol. 5, 2009, pp. 459-485

³⁴² Lambie, Ian, and Isabel Randell. "The Impact of Incarceration on Juvenile Offenders." *Clinical Psychology Review*, vol. 33, no. 3, 2013, pp. 448-459.



respectively.³⁴³ The petitioner contended that the provision discriminates against children based on their age and the nature of the alleged offense, and exposes them to the risk of abuse, violence, and exploitation in adult prisons. The Supreme Court, while acknowledging the gravity of the issue, has not yet pronounced its final verdict on the matter, leaving the constitutional validity of the transfer provision uncertain.

Another significant challenge in the implementation of the JJ Act is the lack of adequate infrastructure and resources for the effective functioning of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs).³⁴⁴ Many JJBs and CWCs across the country are understaffed, lack proper training, and operate in substandard facilities, hampering their ability to provide timely and appropriate interventions for children in need. This resource gap has resulted in prolonged detention periods for children, delays in legal proceedings, and inadequate rehabilitation measures. Furthermore, the absence of a centralized database and monitoring system for tracking the progress and outcomes of children in the juvenile justice system has made it difficult to assess the effectiveness of the Act's implementation and to identify areas for improvement. The Juvenile Justice Committee of the Supreme Court, in its report submitted to the apex court in 2018, highlighted several instances of non-compliance with the JJ Act and the dire state of juvenile justice infrastructure in many states. The report noted that in some states, JJBs and CWCs were not properly constituted, and their members lacked the requisite qualifications and training. The report also pointed out the inadequacy of observation homes, special homes, and place of safety for children, with many of these facilities lacking basic amenities, such as proper sanitation, hygiene, and medical care. The Supreme Court, taking cognizance of the report, directed the state governments to take corrective measures and to ensure the proper implementation of the JJ Act.

The JJ Act also falls short in addressing the specific needs and vulnerabilities of certain groups of children, such as those with mental health issues, disabilities, or those belonging to marginalized communities. The Act does not provide clear guidelines for the identification, assessment, and management of children with mental health concerns or intellectual disabilities who come into contact with the juvenile justice system. This lack of specialized provisions and protocols can result in the inappropriate handling of such cases and the denial of necessary care and support to these children. Furthermore, the lack of sensitivity and awareness among

³⁴³ Shilpa Mittal v. State of NCT of Delhi, WP(C) No. 565 of 2020, Supreme Court of India.

³⁴⁴ Bharti, Mukesh Kumar. "Juvenile Justice System in India: An Analysis." *International Journal of Law*, vol. 3, no. 3, 2017, pp. 27-32.

stakeholders regarding the unique challenges faced by children from disadvantaged backgrounds, such as poverty, social exclusion, and discrimination, often leads to their stigmatization and unequal treatment within the system.

The issue of mental health and juvenile justice has been highlighted in several cases before the Indian courts. In the case of *Bachpan Bachao Andolan v. Union of India* (2011), the Supreme Court observed that children in conflict with the law often suffer from mental health problems, such as depression, anxiety, and post-traumatic stress disorder, and emphasized the need for providing them with adequate mental health care and support. Similarly, in the case of *Sampurna Behura v. Union of India* (2018), the Supreme Court directed the government to formulate guidelines for the identification and management of children with mental health concerns in the juvenile justice system and to establish specialized mental health units in observation homes and special homes.

To address these gaps and challenges, several recommendations for reform have been put forth by child rights advocates and legal experts. Firstly, there is a pressing need to reconsider the provision allowing for the transfer of juveniles to adult courts and to bring the JJ Act in alignment with international standards and best practices in juvenile justice. This would involve ensuring that all children, regardless of the nature of their alleged offense, are treated within the juvenile justice system and provided with age-appropriate interventions and rehabilitation opportunities. The focus should be on addressing the root causes of delinquency, such as poverty, abuse, and neglect, and on promoting the child's reintegration into society as a productive and responsible individual.

Secondly, the government must allocate adequate resources and funding to strengthen the infrastructure and capacity of JJBs, CWCs, and other child protection mechanisms under the JJ Act. This includes providing regular training and capacity-building programs for stakeholders, such as judges, police officers, social workers, and counsellors, to enhance their knowledge and skills in dealing with children in conflict with the law and those in need of care and protection. Additionally, there is a need to establish child-friendly spaces within the justice system, such as separate waiting areas, interview rooms, and counselling centers, to minimize the trauma and stigma associated with the legal process. Ensuring access to quality legal aid and psycho-social support services for children and their families is also crucial in promoting their rights and well-being throughout the juvenile justice process.

Thirdly, the JJ Act should be amended to incorporate specific provisions and guidelines for dealing with children with mental health issues, disabilities, and those from marginalized communities. This would involve developing specialized assessment tools, treatment protocols, and rehabilitation plans that cater to the unique needs of these children and ensure their rights are protected throughout the juvenile justice process. For instance, the Act should mandate the presence of mental health professionals and special educators in JJBs and CWCs to assist in the assessment and management of children with mental health concerns or developmental disabilities. Similarly, the Act should provide for the establishment of specialized care facilities and community-based rehabilitation programs for children with disabilities, to ensure their inclusion and participation in society.

Lastly, there is a need for greater collaboration and coordination among various stakeholders, including the judiciary, police, child welfare authorities, and civil society organizations, to ensure the effective implementation of the JJ Act and to promote a more child-centric approach to juvenile justice. Regular monitoring, evaluation, and feedback mechanisms should be put in place to assess the functioning of the juvenile justice system and to identify areas for improvement. This can be achieved through the establishment of a centralized database and information management system, which can track the progress and outcomes of children in the juvenile justice system and facilitate evidence-based decision-making and policy formulation. Furthermore, public awareness campaigns and community engagement initiatives should be undertaken to promote a better understanding of the rights and needs of children in conflict with the law and those in need of care and protection, and to garner support for their rehabilitation and reintegration into society.

II. IMPLICATIONS FOR JUVENILE JUSTICE POLICY

The critical analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) highlights several gaps, challenges, and areas for reform in India's juvenile justice system. The implications of these findings for juvenile justice policy are significant and far-reaching, as they underscore the need for a more child-centric, rights-based, and rehabilitation-focused approach to dealing with children in conflict with the law and those in need of care and protection.³⁴⁵ One of the most pressing policy implications is the need to reconsider the provision allowing for the transfer of juveniles aged 16-18 years to adult criminal courts in cases of heinous offenses. This provision, as noted earlier, contravenes the principles enshrined

³⁴⁵ Kumari, Ved. "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Review." *Journal of the Indian Law Institute*, vol. 58, no. 2, 2016, pp. 212-233.

in the United Nations Convention on the Rights of the Child (UNCRC) and undermines the rehabilitative spirit of the juvenile justice system.³⁴⁶ Policymakers must, therefore, work towards amending the JJ Act to ensure that all children, regardless of the nature of their alleged offense, are treated within the juvenile justice system and provided with age-appropriate interventions and support. This would require a shift in the policy focus from retribution to reformation, with an emphasis on addressing the root causes of delinquency and promoting the child's reintegration into society.³⁴⁷

Another key policy implication is the urgent need to strengthen the infrastructure and capacity of the juvenile justice system, particularly the Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs). The findings highlight the inadequacy of resources, training, and facilities available to these bodies, which hampers their ability to effectively discharge their duties under the JJ Act.³⁴⁸ Policymakers must prioritize the allocation of adequate funds, personnel, and infrastructure to the juvenile justice system, to ensure that it can function optimally and deliver timely, appropriate, and child-friendly services. This would involve investing in the training and capacity-building of stakeholders, establishing child-friendly spaces within the system, and providing access to quality legal aid and psycho-social support services for children and their families.³⁴⁹ The analysis also underscores the need for policies that address the specific needs and vulnerabilities of certain groups of children, such as those with mental health issues, disabilities, or those belonging to marginalized communities. The JJ Act, in its current form, does not provide clear guidelines or specialized provisions for dealing with these children, leading to their inadequate care and protection within the juvenile justice system.³⁵⁰ Policymakers must, therefore, work towards incorporating specific provisions and protocols in the JJ Act for the identification, assessment, and management of children with mental health concerns, disabilities, and other special needs. This would involve developing specialized assessment tools, treatment plans, and rehabilitation programs that cater to the

³⁴⁶United Nations Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Apr 2, 2024).

³⁴⁷ Steinberg, Laurence. "Adolescent Development and Juvenile Justice." *Annual Review of Clinical Psychology*, vol. 5, 2009, pp. 459-485.

³⁴⁸ Bharti, Mukesh Kumar. "Juvenile Justice System in India: An Analysis." *International Journal of Law*, vol. 3, no. 3, 2017, pp. 27-32.

³⁴⁹ Kumari, Ved. "Juvenile Justice in India." *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, edited by Barry C. Feld and Donna M. Bishop, Oxford University Press, 2012, pp. 606-630

³⁵⁰ Sharma, Suchi. "Mental Health and the Juvenile Justice System in India." *Journal of Indian Association for Child and Adolescent Mental Health*, vol. 14, no. 1, 2018, pp. 10-23.



unique needs of these children and ensure their rights are protected throughout the juvenile justice process.³⁵¹

Moreover, the findings highlight the importance of policies that promote collaboration, coordination, and convergence among the various stakeholders in the juvenile justice system, including the judiciary, police, child welfare authorities, and civil society organizations. The lack of effective coordination and information-sharing among these agencies often leads to delays, duplication of efforts, and gaps in service delivery, ultimately compromising the best interests of the child.³⁵² Policymakers must, therefore, establish mechanisms and platforms for regular dialogue, joint planning, and data-sharing among the stakeholders, to ensure a more integrated and child-centric approach to juvenile justice. This could involve the creation of multi-disciplinary teams at the district and state levels, the development of common protocols and guidelines, and the establishment of a centralized database and case management system for tracking the progress and outcomes of children in the juvenile justice system.

Another critical policy implication is the need to invest in prevention and early intervention programs that address the root causes of juvenile delinquency and vulnerability. The analysis suggests that many children who come into contact with the juvenile justice system have a history of poverty, abuse, neglect, and social exclusion, which contributes to their offending behaviour or need for care and protection. Policymakers must, therefore, prioritize investments in community-based programs and services that promote the well-being, education, and development of children, particularly those from disadvantaged backgrounds. This could include initiatives such as parenting support programs, school-based counselling services, skill development and vocational training programs, and community outreach and awareness campaigns. Furthermore, the findings underscore the importance of policies that promote the active participation and engagement of children and their families in the juvenile justice process. The JJ Act, while recognizing the principle of child participation, does not provide clear guidelines or mechanisms for ensuring that children's voices are heard and their views are taken into account in decisions that affect them. Policymakers must, therefore, work towards creating child-friendly and inclusive processes within the juvenile justice system, where children and their families are provided with adequate information, support, and opportunities to express their views and concerns. This could involve the establishment of children's

³⁵¹ Dhaske, Gadekar Kumud. "Juvenile Delinquency in India." *International Journal of Science and Research*, vol. 4, no. 5, 2015, pp. 3192-3195.

³⁵² Bharti, Mukesh Kumar. "Juvenile Justice System in India: An Analysis." *International Journal of Law*, vol. 3, no. 3, 2017, pp. 27-32.

committees or panels within JJBs and CWCs, the appointment of child advocates or guardians ad litem, and the use of child-friendly communication methods and tools.

Lastly, the analysis highlights the need for policies that promote research, monitoring, and evaluation of the juvenile justice system, to ensure its effectiveness, accountability, and responsiveness to the changing needs of children. The lack of reliable and comprehensive data on the functioning of the juvenile justice system, the profiles and trajectories of children who come into contact with it, and the outcomes of interventions and rehabilitation programs, hinders evidence-based policymaking and reform. Policymakers must, therefore, prioritize investments in research and data collection on juvenile justice issues, and establish robust monitoring and evaluation frameworks to assess the performance of the system and identify areas for improvement. This could involve collaborations with academic institutions, research organizations, and international agencies, as well as the development of standardized indicators and benchmarks for measuring the effectiveness and impact of juvenile justice programs and services.

III. FUTURE DIRECTIONS AND RECOMMENDATIONS

The critical analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) and its implementation has brought to light several gaps, challenges, and areas for reform in India's juvenile justice system. To address these issues and ensure that the system truly serves the best interests of children, a multi-pronged approach involving legal, policy, and programmatic interventions is required. The following recommendations and future directions are proposed, based on the findings of this research and the insights from international best practices and child rights standards.³⁵³

Firstly, there is an urgent need to amend the JJ Act to bring it in line with the principles and provisions of the United Nations Convention on the Rights of the Child (UNCRC), which India has ratified. In particular, the provision allowing for the transfer of juveniles aged 16-18 years to adult criminal courts in cases of heinous offenses should be repealed, as it violates the fundamental principles of juvenile justice and exposes children to the risk of abuse, violence, and stigmatization in the adult criminal justice system.³⁵⁴ Instead, the Act should mandate that all children in conflict with the law, regardless of the nature of their alleged offense, be dealt

³⁵³ Kumari, Ved. "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Review." *Journal of the Indian Law Institute*, vol. 58, no. 2, 2016, pp. 212-233.

³⁵⁴ United Nations Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Apr 2, 2024).

with within the juvenile justice system, with a focus on rehabilitation, reintegration, and the best interests of the child. This would require strengthening the capacity and resources of the Juvenile Justice Boards (JJBs) to handle cases of serious offenses, while ensuring that the proceedings remain child-friendly, confidential, and in compliance with due process standards.³⁵⁵

Secondly, the JJ Act should be amended to incorporate specific provisions and guidelines for the care, protection, and rehabilitation of children in need of special care and protection, such as those with mental health issues, disabilities, substance abuse problems, or those who have experienced abuse, exploitation, or trauma. The Act should mandate the establishment of specialized units within the Child Welfare Committees (CWCs) and JJBs to handle these cases, with trained professionals such as child psychologists, special educators, and rehabilitation experts. The Act should also provide for the setting up of specialized childcare institutions and rehabilitation centres for these children, with adequate infrastructure, resources, and services to meet their specific needs.³⁵⁶ Furthermore, the Act should require the development and implementation of individual care plans for each child, based on a comprehensive assessment of their needs, strengths, and risks, and with the participation of the child and their family or guardians.³⁵⁷

Thirdly, there is a need to strengthen the implementation and monitoring mechanisms under the JJ Act, to ensure that its provisions are effectively translated into practice and that children receive the care, protection, and services they are entitled to. This would require the establishment of an independent oversight body, such as a National Commission for the Protection of Child Rights, with the mandate and resources to monitor the functioning of the juvenile justice system, investigate complaints of child rights violations, and provide recommendations for reform.³⁵⁸ The oversight body should have the power to conduct regular inspections of child care institutions and other facilities under the JJ Act, and to take suo motu cognizance of cases of child abuse, neglect, or exploitation. Additionally, the JJ Act should provide for the setting up of child-friendly complaint mechanisms, such as helplines, drop-in

³⁵⁵ Steinberg, Laurence. "Adolescent Development and Juvenile Justice." *Annual Review of Clinical Psychology*, vol. 5, 2009, pp. 459-485

³⁵⁶ Sharma, Suchi. "Mental Health and the Juvenile Justice System in India." *Journal of Indian Association for Child and Adolescent Mental Health*, vol. 14, no. 1, 2018, pp. 10-23

³⁵⁷ Kumari, Ved. "The Juvenile Justice (Care and Protection of Children) Act, 2015: A Review." *Journal of the Indian Law Institute*, vol. 58, no. 2, 2016, pp. 212-233.

³⁵⁸ The Protection of Children from Sexual Offences (POCSO) Act, 2012, <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AAA2012-32.pdf> (last visited Apr 2, 2024).

centers, or online portals, where children can report violations of their rights or seek assistance and support.³⁵⁹

Fourthly, there is a need to invest in the capacity building and sensitization of all stakeholders involved in the juvenile justice system, including police officers, judges, lawyers, social workers, and child welfare officials. The JJ Act should mandate regular training programs for these stakeholders on child rights, child psychology, trauma-informed care, and best practices in juvenile justice. The training programs should be designed and delivered in collaboration with experts from academia, civil society, and international organizations, and should include modules on effective communication with children, child-friendly investigation and trial procedures, and the use of diversion and restorative justice approaches.³⁶⁰ Furthermore, the Act should require the development and dissemination of standard operating procedures, guidelines, and protocols for each stage of the juvenile justice process, to ensure consistency, transparency, and accountability in the handling of cases.

Fifthly, there is a need to strengthen the provisions for aftercare and post-release support for children who have been in the juvenile justice system, to prevent recidivism and ensure their successful reintegration into society. The JJ Act should mandate the preparation of individual aftercare plans for each child, prior to their release from a childcare institution or other facility, based on an assessment of their needs, skills, and aspirations. The aftercare plan should include provisions for education, vocational training, job placement, housing, health care, and psychosocial support, and should be regularly monitored and reviewed by the JJB or CWC. The Act should also provide for the establishment of aftercare hostels, group homes, and other community-based facilities for children who do not have family support or are unable to return to their families. Additionally, the Act should require the involvement of local communities, civil society organizations, and volunteers in the provision of aftercare services, to ensure a more holistic and sustainable approach to reintegration.

Sixthly, there is a need to promote greater research, data collection, and evidence-based policymaking in the field of juvenile justice, to inform the design and implementation of effective interventions and programs. The JJ Act should require the establishment of a national database on children in the juvenile justice system, with disaggregated data on their socio-

³⁵⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015, <https://www.indiacode.nic.in/bitstream/123456789/2148/1/201602.pdf> (last visited Apr 2, 2024).

³⁶⁰ Kumari, Ved. "Juvenile Justice in India." *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, edited by Barry C. Feld and Donna M. Bishop, Oxford University Press, 2012, pp. 606-630.

economic background, offense history, care and protection needs, and outcomes. The databases should be regularly updated and made accessible to researchers, policymakers, and practitioners, subject to appropriate safeguards for confidentiality and data protection. Furthermore, the Act should encourage and fund research studies and evaluations of juvenile justice programs and interventions, to assess their effectiveness, identify best practices, and inform policy and practice reforms. The research should be conducted in collaboration with academic institutions, think tanks, and civil society organizations, and should involve the participation of children and their families.

Lastly, there is a need to promote greater public awareness, engagement, and support for the juvenile justice system and the rights of children in conflict with the law and in need of care and protection. The JJ Act should require the government to launch public education and media campaigns to sensitize society on the issues faced by these children, the importance of rehabilitation and reintegration, and the role of the community in supporting their care and protection. The campaigns should also aim to challenge and change the negative stereotypes and stigma associated with children in the juvenile justice system, and to promote a more compassionate and restorative approach to justice. Furthermore, the Act should encourage the active involvement of children and youth in the planning, implementation, and monitoring of juvenile justice programs and policies, through the establishment of children's councils, youth advisory boards, and other participatory mechanisms.

In conclusion, the critical analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015, and its implementation, has highlighted the need for a comprehensive and multi-faceted approach to reform India's juvenile justice system. The recommendations and future directions proposed in this research, if adopted and implemented effectively, can help to create a more child-friendly, rights-based, and rehabilitative juvenile justice system, that truly serves the best interests of children in conflict with the law and in need of care and protection. However, the realization of these reforms will require the concerted efforts and collaboration of all stakeholders, including the government, judiciary, civil society, and most importantly, children themselves. It is only by working together and keeping the best interests of the child at the heart of all our efforts, that we can build a juvenile justice system that is just, compassionate, and inclusive, and that provides every child with the care, protection, and opportunities they need to reach their full potential.

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