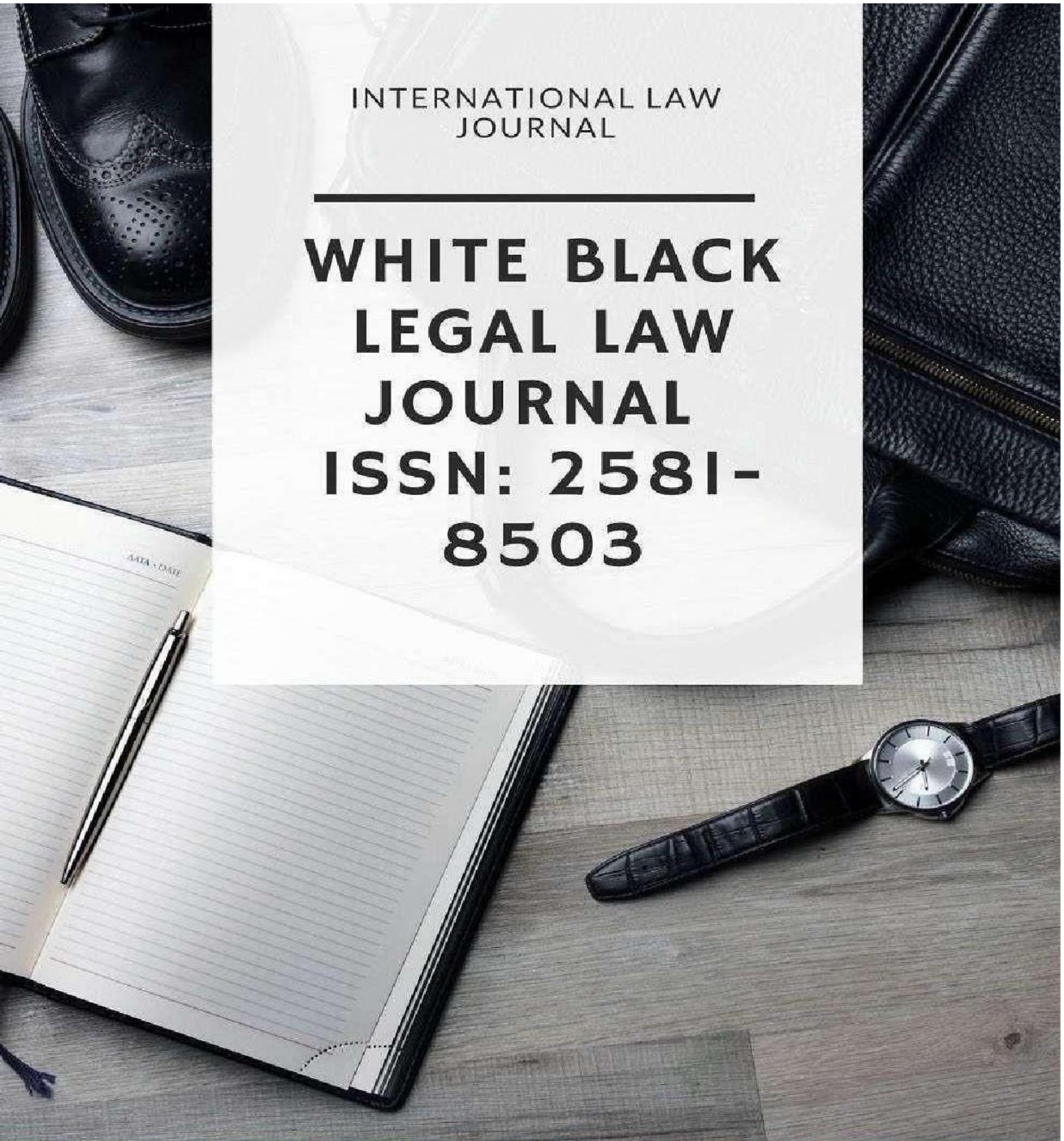




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THE SCHEME OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015: A CRITICAL ANALYSIS

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1. Introduction

The Juvenile Justice (Care and Protection of Children) Act, 2015¹ represents a transformative overhaul of India's legal framework governing children in conflict with law and children in need of care and protection. Enacted on 31 December 2015 and brought into force on 15 January 2016, the Act replaced the earlier Juvenile Justice (Care and Protection of Children) Act, 2000², which itself had supplanted the Juvenile Justice Act, 1986.³

The legislative impetus for this reform was manifold. India's obligations under the United Nations Convention on the Rights of the Child (UNCRC)⁴ and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)⁵ necessitated a more comprehensive, rehabilitative, and rights-based framework. Moreover, the heinous gang rape case of December 2012 in Delhi – in which one of the accused was a juvenile just short of eighteen years – brought sharp public focus on perceived inadequacies in dealing with juveniles who commit grave crimes, ultimately catalysing Parliament to introduce the age-based tripartite classification of offences.⁶

The Supreme Court, in *Salil Bali v. Union of India*⁷, had already declined to lower the age of juvenility while acknowledging societal concerns. The 2015 Act sought a middle ground: preserving the age of eighteen as the threshold for juvenility while enabling Children's Courts

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¹The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, Acts of Parliament, 2015 (India) [hereinafter "JJ Act, 2015"].

²The Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56 of 2000, Acts of Parliament (India).

³The Juvenile Justice Act, 1986 (No. 53 of 1986); repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000.

⁴United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. India ratified the Convention on December 11, 1992.

⁵United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).

⁶Statement of Objects and Reasons, The Juvenile Justice (Care and Protection of Children) Bill, 2014, as introduced in Lok Sabha.

⁷*Salil Bali v. Union of India*, (2013) 7 SCC 705 (India). The Supreme Court declined to raise the age of juvenility while acknowledging the concerns regarding heinous offences.

to try persons between sixteen and eighteen years as adults for heinous offences, after a preliminary assessment by the Juvenile Justice Board.

This analysis critically examines the scheme of the Act under five broad heads: (i) definitional framework and classification of offences; (ii) the institutional architecture; (iii) procedures for children in conflict with law; (iv) care, protection, and rehabilitation of children; and (v) a critical appraisal of the Act's strengths, lacunae, and judicial interpretation.

2. Definitional Framework and Classification of Offences

A. Key Definitions

The Act operates upon a dual classificatory axis. A "child in conflict with law"⁸ refers to a child alleged or found to have committed an offence and who had not completed eighteen years of age on the date of commission of such offence. A "child in need of care and protection"⁹ encompasses children in vulnerable, destitute, or exploitative circumstances who require State intervention for their welfare, including orphaned, abandoned, surrendered, and trafficked children.

B. Tripartite Classification of Offences

One of the Act's most significant and controversial innovations is the tripartite classification of offences into petty, serious, and heinous categories. Heinous offences¹⁰ are those carrying a minimum punishment of seven years or more under the Indian Penal Code or any other applicable law. Serious offences¹¹ carry a punishment ranging between three to seven years. Petty offences¹² are those punishable with imprisonment up to three years.

This classification carries profound procedural consequences. For petty and serious offences, the Juvenile Justice Board retains exclusive jurisdiction. For heinous offences allegedly committed by a child between the ages of sixteen and eighteen, the Board must conduct a preliminary assessment and may thereafter transfer the matter to the Children's Court for trial as an adult. This structure has been the subject of significant judicial scrutiny, as discussed in

⁸JJ Act, 2015, Sec. 2(13): "child in conflict with law" means 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.

⁹JJ Act, 2015, Sec. 2(14): "child in need of care and protection" includes a child who is found without any home or settled place of abode, without means of subsistence, or in other vulnerable circumstances enumerated therein.

¹⁰JJ Act, 2015, Sec. 2(33): "heinous offences" means offences 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.

¹¹JJ Act, 2015, Sec. 2(45): "serious offences" means offences for which the punishment under the Indian Penal Code or any other law is imprisonment between three to seven years.

¹²JJ Act, 2015, Sec. 2(54): "petty offences" includes offences for which the maximum punishment provided under any law is imprisonment up to three years.

Section IV below.

3. Institutional Architecture

A. Guiding Principles

Chapter II of the Act¹³ enumerates general principles governing implementation, including: the presumption of innocence; dignity and worth of the child; best interest of the child¹⁴; non-stigmatisation; non-waiver of rights; equality and non-discrimination; right to privacy and confidentiality; institutionalisation as a measure of last resort; fresh start; diversion; and natural justice. These principles draw heavily from international instruments and reflect a rehabilitative rather than punitive philosophy.

B. Juvenile Justice Board

The Juvenile Justice Board (JJB)¹⁵ is the cornerstone institution for addressing children in conflict with law. Constituted at the district level, each Board comprises a Principal Magistrate (a Metropolitan Magistrate or Judicial Magistrate of First Class) and two social workers, at least one of whom must be a woman.¹⁶

The Board's functions encompass conducting preliminary assessments in cases of heinous offences¹⁷, ensuring procedural safeguards, directing diversion and community service, and overseeing post-order follow-up. The Act mandates that every Board shall have a designated support person – a social worker or probation officer – for each child, signalling a commitment to individualised rehabilitation.

C. Children's Court

The Children's Court, designated under the Commissions for Protection of Child Rights Act, 2005, or, if none exists, a Sessions Court designated by the State Government, has jurisdiction to try children between sixteen and eighteen years transferred for heinous offences. The Court is required to determine, after the completion of inquiry, whether the child should receive

¹³JJ Act, 2015, Sections 3–5 (Principles Governing Implementation).

¹⁴The principle of best interest of the child is enshrined in Art. 3 of the United Nations Convention on the Rights of the Child, 1989, and incorporated in sec. 3(i) of the JJ Act, 2015.

¹⁵JJ Act, 2015, sec. 4 (Juvenile Justice Board).

¹⁶JJ Act, 2015, sec. 4(2). The Board comprises a Metropolitan Magistrate or a Judicial Magistrate of first class and two social workers, of whom at least one shall be a woman.

¹⁷JJ Act, 2015, sec.15. The preliminary assessment must consider mental and physical capacity, ability to understand consequences of the offence, and circumstances in which the offence was allegedly committed.

institutional care, reformatory treatment, or be sentenced as an adult.¹⁸

D. Child Welfare Committee

The Child Welfare Committee (CWC)¹⁹ addresses children in need of care and protection. Constituted at the district level²⁰, each CWC comprises a Chairperson and four other members. It is tasked with receiving, placing, and overseeing the rehabilitation of such children, including ordering their placement in children's homes, foster care, or adoption. The CWC's decisions are quasi-judicial in nature and appealable before the Children's Court.

4. Procedure for Children in Conflict with Law

A. Apprehension, Production, and Bail

Upon apprehension of a child, the Act mandates immediate notification to parents or guardians and the probation officer. No child in conflict with law can be placed in a police lockup or jail. The child must be produced before the Board within twenty-four hours. The Board is empowered to release the child on bail with or without surety, with the default rule being release unless the release appears likely to defeat the ends of justice or endanger the child's safety.

B. Preliminary Assessment for Heinous Offences

Section 15 of the Act²¹ introduces a critical procedural innovation: where a child between sixteen and eighteen years is alleged to have committed a heinous offence, the Board must conduct a preliminary assessment with the assistance of experienced psychologists and psychosocial workers to evaluate the child's mental and physical capacity, ability to comprehend the consequences of the offence, and the circumstances in which it was committed. This assessment – which crucially is not a trial – determines whether the child should be tried as a juvenile or transferred to the Children's Court for trial as an adult.

The constitutionality of Section 15 was examined by the Supreme Court in *Shilpa Mittal v. State of NCT of Delhi*²², where the Court was called upon to interpret the phrase "heinous

¹⁸JJ Act, 2015, sec.18(3). Where the Children's Court finds that the child should be treated as an adult, it may pass appropriate orders in accordance with the provisions of the Code of Criminal Procedure, 1973.

¹⁹JJ Act, 2015, Sections 27–30 (Child Welfare Committee).

²⁰JJ Act, 2015, sec. 27(1). Every district shall have one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees.

²²*Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787 (India). The Supreme Court held that offences for which no minimum sentence is prescribed but maximum sentence exceeds seven years fall under "serious offences" and not "heinous offences".

offences.” The Court held that offences for which no minimum sentence is prescribed but maximum sentence exceeds seven years do not qualify as heinous offences, plugging an interpretive lacuna that had led to inconsistent practice across High Courts.

C. Inquiry and Disposal

The Board must complete the inquiry within four months, extendable by two months in exceptional circumstances. Disposal options available to the Board range from admonition and community service at the lower end, to placement in observation homes, special homes, or place of safety at the more serious end. The emphasis throughout is on rehabilitation, skill development, and reintegration rather than incarceration.

D. Transfer to Children’s Court

Where the Board, after preliminary assessment, concludes that the child should be tried as an adult, it transmits the case to the Children’s Court. The Children’s Court may pass sentence under the ordinary criminal law upon finding the child guilty, but it must consider placing the child in a place of safety until the child attains twenty-one years, after which the remaining sentence, if any, may be served in an adult correctional facility.

5. Care, Protection, and Rehabilitation

A. Rehabilitation and Social Reintegration

Chapter VII²³ mandates individual care plans for every child entering the juvenile justice system. These plans, prepared by probation officers and case workers, address the child’s educational, health, psychological, and social needs, and are reviewed periodically. Children’s homes, open shelters, and observation homes form the institutional infrastructure for this purpose.

B. Foster Care and Sponsorship

The Act formally institutionalises sponsorship²⁴ as a means of supporting children in need by providing financial assistance to families, guardians, or child care institutions. Foster care – both in-country and extended – is regulated with a view to providing a family-like environment for children pending restoration or adoption.

²³JJ Act, 2015, Sections 37–49 (Rehabilitation and Social Reintegration).

²⁴JJ Act, 2015, Sections 41–50 (Sponsorship and Foster Care).

C. Adoption

Chapter VIII²⁵ overhauls the adoption framework. The Act draws from the Hague Convention on Inter-Country Adoption²⁶ and places the Central Adoption Resource Authority (CARA)²⁷ on a statutory footing for the first time. The Act establishes a structured preferential order for adoption: in-country adoption is preferred over inter-country adoption. Prospective adoptive parents must be registered on the online adoption portal, and the process is subject to judicial oversight by the Family Court or District Court.

6. Offences Against Children and Penalties

Chapter IX²⁸ contains a comprehensive catalogue of offences against children, many of which were absent from predecessor legislation. These include cruelty by persons having actual charge or control, employment of children for begging²⁹, use of children by militant groups, offences relating to child marriage, trafficking, and corporal punishment in child care institutions. The Act complements existing protections under the Protection of Children from Sexual Offences Act, 2012 (POCSO) and the Child Labour (Prohibition and Regulation) Act, 1986.

In *Bachpan Bachao Andolan v. Union of India*³⁰, the Supreme Court had already directed comprehensive measures for child labourers. The JJ Act, 2015 provides a more elaborate framework for such situations, including the role of the CWC in rehabilitating rescued children.

7. Critical Appraisal

A. Strengths of the Act

Several aspects of the Act deserve commendation:

- (i) **Rights-Based Approach:** The Act's grounding in international standards – the UNCRC, the Beijing Rules, the Riyadh Guidelines, and the Tokyo Rules – and its articulation of guiding principles in Chapter II marks a decisive shift toward a

²⁵JJ Act, 2015, Sections 56–73 (Adoption).

²⁶The Hague Convention on Inter-Country Adoption, May 29, 1993, 32 I.L.M. 1134. India ratified the Convention on June 6, 2003.

²⁷JJ Act, 2015, sec. 65. The Central Adoption Resource Authority (CARA) was given statutory recognition under the Act.

²⁸JJ Act, 2015, Sections 74–76 (Offences against Children). These provisions criminalise cruelty, exploitation, and abandonment of children by those managing child care institutions.

²⁹JJ Act, 2015, Sections 75–78. Offences include cruelty to child (sec. 75), employing child for begging (sec. 76), use of child by militant groups (sec. 77), and corporal punishment in child care institutions (sec. 82).

³⁰*Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1 (India). The Supreme Court issued comprehensive directions for rehabilitation of child labourers and those engaged in begging.

rights-based understanding of juvenile justice.

- (ii) **Structured Diversion:** The Act emphasises pre-trial and post-trial diversion for petty and first-time serious offenders, reducing unnecessary criminalisation and institutional exposure for minor offenders.
- (iii) **Statutory CARA:** Giving CARA a statutory footing and streamlining the adoption process reduces delays and opaqueness in adoption proceedings, which are ultimately in the child's best interest.
- (iv) **Criminalisation of Institutional Abuse:** The inclusion of offences of cruelty and corporal punishment within child care institutions addresses a longstanding gap.

B. Criticisms and Lacunae

Notwithstanding its strengths, the Act has attracted significant criticism:

- (i) **The “Heinous Offences” Classification:** The classification is blunt and mechanistic. It focuses exclusively on the gravity of the alleged offence rather than on the child's individual circumstances, antecedents, or rehabilitative potential. This is inconsistent with the philosophy of juvenile justice and the spirit of Article 37(b) of the UNCRC.³¹
- (ii) **Preliminary Assessment Concerns:** The preliminary assessment under Section 15 – conducted by the JJB without the assistance of a defence psychologist accessible to the child, and within a short timeframe – risks becoming a formality. The Law Commission's Report No. 264³² expressed concern that the assessment process may not meaningfully protect the child's interests.
- (iii) **Implementation Deficits:** Data from the National Crime Records Bureau³³ indicates persistent underreporting of crimes against children, weak CWC functionality in several States, and inadequate funding for child care institutions, rehabilitation programmes, and trained social workers. The Act creates elaborate institutional structures, but implementation remains uneven.
- (iv) **Conflation of Punitive and Rehabilitative Goals:** The provision for trying sixteen-to-eighteen-year-olds as adults for heinous offences sits in uneasy tension

³¹Convention on the Rights of the Child, Art. 37(b): "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

³²Law Commission of India, Report No. 264, "A Review of the Juvenile Justice (Care and Protection of Children) Act, 2015" (2018).

³³National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2022 (2023), Statistics on Juveniles in Conflict with Law.

with the Act's stated rehabilitative philosophy. Critics argue it conflates adult criminal law's logic of deterrence with juvenile justice's emphasis on reformation.

- (v) **Ambiguity in Offence Classification:** As *Shilpa Mittal* revealed, the definition of "heinous offence" created unintended gaps. Numerous offences carrying severe maximum penalties but no prescribed minimum fell into an undefined zone, generating inconsistent outcomes across jurisdictions until the Supreme Court intervened.

C. Judicial Interpretation: Key Trends

The Supreme Court and various High Courts have played an active role in shaping the Act's application. In *Gaurav Kumar v. State of Haryana*³⁴, the Court reaffirmed that the object of juvenile justice legislation is reformatory and not punitive, and that the benefit of the Act must be liberally construed in favour of the accused child.

The long-standing principle in *Pratap Singh v. State of Jharkhand*³⁵ – that the date of commission of the offence, not the date of trial, determines juvenility – continues to apply under the 2015 Act. Similarly, *Abuzar Hossain v. State of West Bengal*³⁶ confirmed that a plea of juvenility may be raised at any stage of proceedings, including before the Supreme Court, and the courts are obligated to make an inquiry into the age of the accused.

8. Conclusion

The Juvenile Justice (Care and Protection of Children) Act, 2015 is a landmark, if imperfect, piece of child welfare legislation. It brings India's juvenile justice system considerably closer to international standards by articulating rights-based principles, creating specialised institutions, mandating individual care plans, and formalising the adoption process. The dual classification of children – those in conflict with law and those in need of care and protection – provides a coherent structural axis for the entire legislative scheme.

However, the Act's most controversial feature – the provision for treating sixteen-to-eighteen-year-old children as adults for heinous offences – remains both legally contested and philosophically problematic. It risks reversing decades of progressive juvenile justice

³⁴*Gaurav Kumar v. State of Haryana*, (2023) SCC OnLine SC 445 (India). The Court reiterated that the object of juvenile justice legislation is reformatory and not punitive.

³⁵*Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551 (India). The Court held that the date of commission of offence, and not the date of trial, is relevant for determining juvenility.

³⁶*Abuzar Hossain v. State of West Bengal*, (2012) 10 SCC 489 (India). The plea of juvenility can be raised at any stage of criminal proceedings, even before the Supreme Court.

jurisprudence for a segment of the most vulnerable population without convincing empirical evidence that such a measure reduces juvenile recidivism or promotes public safety.

The Act's promise will ultimately be measured not by the elegance of its text but by the quality of its implementation: the functionality of Juvenile Justice Boards and Child Welfare Committees; the adequacy of trained social workers, psychologists, and legal aid; and the capacity of observation homes and child care institutions to deliver meaningful rehabilitation. Until these implementation gaps are addressed, the transformative potential of the 2015 Act will remain partly unrealised.

In sum, the Act represents a necessary but incomplete step. Further legislative refinement – particularly in clarifying the heinous offences category, strengthening institutional capacity, and reinforcing the primacy of rehabilitation over punishment – is essential to make the juvenile justice system a genuine instrument of child rights and welfare.

