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JUVENILE DELINQUENCY AND THE JUVENILE JUSTICE SYSTEM

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ABSTRACT

Juvenile delinquency is one of the most persistent challenges for any society because it forces the law to balance two competing commitments: accountability for wrongdoing and the protection and reformation of children. This paper examines juvenile delinquency and the juvenile justice system with particular emphasis on India. It begins by explaining the meaning, causes and theoretical explanations of delinquency and traces the evolution of Indian juvenile law from colonial-era reformatory statutes to the Juvenile Justice (Care and Protection of Children) Act, 2015, as amended in 2021. It then studies the international framework, including the United Nations Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines and the Havana Rules, and compares the models followed in the United States, the United Kingdom, Germany, New Zealand and South Africa. The paper analyses leading judicial precedents, both Indian and foreign, on the age of juvenility, determination of age, treatment of juveniles accused of heinous offences, conditions of custody and rehabilitation. The study concludes that while India has built a progressive statutory architecture, its effectiveness depends on institutional capacity, uniform implementation, trained personnel and a genuinely rehabilitative outlook rather than punitive reaction to public outrage.

Keywords: juvenile delinquency; child in conflict with law; Juvenile Justice Act, 2015; heinous offences; best interests of the child; reformation.

1. INTRODUCTION

1.1 Background and Significance

Every legal system recognises that children are not simply smaller adults. Their capacity for judgment, impulse control and moral reasoning is still developing, they are far more vulnerable to family, peer and economic pressures, and they have a greater capacity for change.

Criminal law, which is built on the idea of a mature person who freely chooses to do wrong, therefore sits uneasily with the conduct of children. Juvenile justice systems exist to resolve this tension. Their foundational idea is that a child who breaks the law should be treated primarily as a person in need of guidance, care and rehabilitation, and not as a criminal deserving retribution.¹

The subject has acquired renewed urgency in India. A country with one of the largest child populations in the world, rapid urbanisation, deep economic inequality and uneven access to education necessarily produces a large number of children who come into conflict with the law. Official data compiled by the National Crime Records Bureau (NCRB) show, year after year, that tens of thousands of cases are registered against juveniles annually, that the majority of apprehended juveniles fall in the 16 to 18 age group, and that a large proportion come from poor families with little or no formal education.² These figures show that delinquency is as much a social problem as a legal one.

Public debate about juvenile justice in India has often been driven by individual cases of extreme violence. The most prominent was the gang rape and murder of a young woman in Delhi on 16 December 2012, one of whose perpetrators was a few months short of eighteen years of age. The Juvenile Justice Board could only direct his stay in a special home for the maximum period of three years, and public anger led to demands that juveniles accused of serious crimes be tried as adults.³ Parliament responded with the Juvenile Justice (Care and Protection of Children) Act, 2015, which for the first time since independence allowed children between sixteen and eighteen who commit heinous offences to be tried as adults. The 2015 Act therefore marks a major shift in the philosophy of Indian juvenile law and is a central concern of this paper.

1.2 Meaning of Juvenile and Juvenile Delinquency

The word "juvenile" derives from the Latin *juvenis*, meaning young. In law, a juvenile is a person who has not attained the age at which criminal responsibility is fully imposed. Juvenile delinquency refers to the commission of an act that would be an offence if done by an adult, by a person below the statutory age of majority. Sociologists use the term more broadly to include status offences such as truancy, running away from home and incorrigibility, which are not offences for adults. Indian law does not use the word "delinquent" any longer. Section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the 2015 Act") uses the expression "child in conflict with law", defined as a child who is alleged or found to have committed an offence and who had not completed eighteen years of age on the date of

commission of the offence.⁴ The change of vocabulary is deliberate, and Section 3 of the Act expressly lists the use of child-friendly and non-stigmatising language as one of its fundamental principles.

Under the general criminal law, a child's capacity to commit a crime was historically governed by the doctrine of *doli incapax*. Sections 82 and 83 of the Indian Penal Code, 1860 provided that nothing is an offence if done by a child under seven years of age, and that nothing is an offence if done by a child above seven and under twelve who has not attained sufficient maturity of understanding to judge the nature and consequences of the conduct. These provisions have been carried forward in Sections 20 and 21 of the Bharatiya Nyaya Sanhita, 2023.⁵ The age of seven as the minimum age of criminal responsibility is very low by international standards, a point to which this paper returns later.

1.3 Causes and Theoretical Explanations

Criminologists have offered many explanations of why young people offend. The early biological school associated with Cesare Lombroso argued that criminals are born with identifiable physical characteristics, a view now discredited.⁶ Modern theories look to the social environment. Edwin Sutherland's theory of differential association holds that criminal behaviour is learnt through interaction with intimate groups, so that a child surrounded by peers or family members who approve of lawbreaking is more likely to offend.⁷ Robert Merton's strain theory explains delinquency as a result of the gap between culturally approved goals, such as material success, and the legitimate means available to achieve them, a gap that is particularly wide for children from poor and marginalised families.⁸ Travis Hirschi's social control theory takes the opposite approach and asks why most children do not offend, answering that attachment to family, commitment to education, involvement in conventional activities and belief in social norms bind children to law-abiding conduct, and delinquency follows when these bonds weaken.⁹ The labelling perspective of Howard Becker adds that the official response to a child's first offence, by stigmatising the child as a "delinquent", can itself push the child into a deviant identity.¹⁰

In the Indian setting, research and official reports identify a cluster of recurring factors: poverty and unemployment, broken or dysfunctional families, parental neglect and abuse, school dropout, child labour, migration and life on the street, peer pressure, substance abuse, exposure to violent media and easy availability of weapons or drugs in certain settings. No single factor explains delinquency. The more useful insight, which underlies modern juvenile justice, is that most of these risk factors are outside the child's control and many can be

addressed by social intervention. This is the philosophical justification for a system that emphasises rehabilitation and reintegration.

1.4 Historical Evolution of Juvenile Justice in India

Before the colonial period, juveniles in India were generally dealt with under religious and customary norms that recognised reduced responsibility for the young. The first statutory recognition of the special needs of young offenders came under British rule. The Apprentices Act, 1850 allowed courts to bind out destitute and convicted children as apprentices, and the Reformatory Schools Act, 1897 empowered courts to send young offenders to reformatory schools rather than prison. Provincial legislation followed in the early twentieth century, notably the Madras Children Act, 1920, the Bengal Children Act, 1922 and the Bombay Children Act, 1924, which created juvenile courts and made a distinction between delinquent and neglected children.

After independence, the Constitution gave the subject a firm foundation. Article 15(3) permits special provisions for children, Article 21A guarantees free and compulsory education for children between six and fourteen, Article 24 prohibits employment of children in hazardous work, Article 39(e) and (f) direct the State to ensure that children are not abused and are given opportunities to develop in a healthy manner and in conditions of freedom and dignity, and Article 45 and Article 47 speak of early childhood care and the duty to raise the level of nutrition and public health. Article 51A(k) places a fundamental duty on parents and guardians to provide educational opportunities to their children. The Children Act, 1960 was the first central enactment, but it applied only to Union Territories. The Juvenile Justice Act, 1986 established a uniform national scheme, defining a juvenile as a boy below sixteen and a girl below eighteen. This distinction between boys and girls was criticised as discriminatory and as inconsistent with international norms.

India ratified the United Nations Convention on the Rights of the Child (CRC) in December 1992, and the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to bring domestic law in line with the Convention. It raised the age of juvenility to eighteen for both boys and girls, created Juvenile Justice Boards and Child Welfare Committees, and was amended in 2006 and 2010 to resolve practical difficulties. The 2015 Act, which received assent at the end of 2015 and came into force in January 2016, repealed the 2000 Act. It was further amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, which, among other things, clarified the category of "serious offences", gave District Magistrates wider powers in monitoring child care institutions and in adoption

matters, and designated Children's Courts to deal with offences under the Act.¹¹

1.5 Salient Features of the Juvenile Justice (Care and Protection of Children) Act, 2015

The 2015 Act is a comprehensive code that deals both with children in conflict with law and with children in need of care and protection. Its main features relevant to this study are as follows. First, it begins with a statement of general principles in Section 3, including the presumption of innocence, dignity and worth, best interests of the child, family responsibility, safety, positive measures, non-stigmatising semantics, privacy and confidentiality, the right to be heard, institutionalisation as a measure of last resort, and the principle of a fresh start under which the child's past records are to be erased.

Second, the Act creates two sets of institutions. A Juvenile Justice Board (JJB), consisting of a Metropolitan Magistrate or Judicial Magistrate of First Class and two social workers, of whom at least one must be a woman, is constituted in every district to deal with children in conflict with law. Child Welfare Committees deal with children in need of care and protection. Every police station is to have a child welfare police officer, and Special Juvenile Police Units are to be set up in each district. A child apprehended by the police must be placed under the charge of the Special Juvenile Police Unit or child welfare police officer and produced before the Board within twenty-four hours, and must not be placed in a police lockup or lodged in jail.

Third, Section 12 provides that a child alleged to be in conflict with law shall be released on bail with or without surety, notwithstanding the bailable or non-bailable nature of the offence, unless there are reasonable grounds for believing that release is likely to bring the child into association with a known criminal, expose the child to moral, physical or psychological danger, or defeat the ends of justice. Fourth, the Act classifies offences into petty offences (maximum punishment up to three years), serious offences (punishable with imprisonment of three to seven years) and heinous offences (for which the minimum punishment is imprisonment of seven years or more).¹² The class of offence determines the manner of inquiry and the time limits within which it must be concluded.

Fifth, and most controversially, Section 15 provides that where a child between sixteen and eighteen years is alleged to have committed a heinous offence, the Board must conduct a preliminary assessment of the child's mental and physical capacity to commit the offence, ability to understand its consequences and the circumstances in which it was committed, and may take the assistance of experienced psychologists or psychosocial workers. On that assessment, the Board may either itself conduct the inquiry as a child, or transfer the case to the Children's Court, which decides under Section 19 whether the child should be tried as an

adult. Even where a child is tried as an adult, Section 21 prohibits the death penalty and life imprisonment without the possibility of release, and Section 19(3) requires the Children's Court to hold periodic follow-up and, on the child attaining twenty-one years, to decide whether the child should be released or sent to jail. Where the child is not transferred, the Board may pass orders under Section 18, such as advice or admonition, group counselling, community service, payment of fine, release on probation or placement in a special home, which in general cannot exceed three years. Sixth, Section 74 prohibits disclosure of the name, address or school or any other particular that may lead to identification of a child in conflict with law in any media report, and Section 94 lays down the method of determining the age of a child, giving priority to school and matriculation certificates and birth certificates, and resorting to ossification or other medical tests only in their absence.

1.6 Objectives, Research Questions and Methodology

This paper has the following objectives: to understand the concept and causes of juvenile delinquency; to examine the Indian juvenile justice framework; to study international standards and the models adopted in selected jurisdictions; to analyse the approach of courts in India and abroad; and to suggest reforms. The central research question is whether the Indian juvenile justice system, particularly after the 2015 and 2021 reforms, strikes an appropriate balance between the protection of children and the interests of public safety, in light of international child rights standards. The study is doctrinal. It relies on statutes, international instruments, judicial decisions, committee reports and scholarly writing as primary and secondary sources.

2. INTERNATIONAL PERSPECTIVE

2.1 International Instruments and Standards

Modern juvenile justice rests on a body of international instruments that together set minimum standards for States. The most important is the United Nations Convention on the Rights of the Child, 1989, the most widely ratified human rights treaty in the world. Article 1 defines a child as every human being below eighteen unless the national law fixes majority earlier. Article 3 requires that the best interests of the child be a primary consideration in all actions concerning children. Article 37 prohibits torture and cruel, inhuman or degrading treatment, bars capital punishment and life imprisonment without possibility of release for offences committed by persons below eighteen, requires that arrest, detention or imprisonment be used only as a measure of last resort and for the shortest appropriate period, and guarantees

separation from adult prisoners and prompt access to legal assistance. Article 40 recognises the right of every child accused of infringing penal law to be treated in a manner consistent with the child's sense of dignity and worth, requires States to establish a minimum age of criminal responsibility, and encourages measures for dealing with children without resort to judicial proceedings, provided human rights and legal safeguards are fully respected.¹³

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules (1985), are the earliest comprehensive soft law instrument. They stress that the juvenile justice system shall emphasise the well-being of the juvenile and ensure that any reaction to juvenile offenders is always in proportion to the circumstances of both the offender and the offence. They call for the minimum age of criminal responsibility not to be fixed at too low a level, encourage diversion from formal proceedings, restrict institutionalisation to a last resort, and demand protection of privacy.¹⁴ The United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines (1990), shift the focus to prevention through family, school, community and media, and caution against labelling children as deviant.¹⁵ The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Havana Rules (1990), regulate conditions in custody, including accommodation, education, health care and the use of force, while the Tokyo Rules (1990) promote non-custodial measures.¹⁶ The International Covenant on Civil and Political Rights, 1966, to which India is a party, also contains safeguards: Article 6(5) prohibits the death penalty for crimes committed below eighteen, Article 10 requires segregation of accused juveniles from adults, and Article 14(4) requires that procedure for juveniles take account of their age and the desirability of promoting rehabilitation.¹⁷

The Committee on the Rights of the Child, which monitors the Convention, has issued General Comment No. 24 (2019) on children's rights in the child justice system, replacing its earlier General Comment No. 10 (2007). It recommends that States parties raise the minimum age of criminal responsibility to at least fourteen years, commends States that have set it higher, and states that children who commit offences before eighteen should be dealt with under the child justice system and not be tried as adults, including in cases of serious offences.¹⁸ This last recommendation is difficult to reconcile with the transfer mechanism of Section 15 of the Indian 2015 Act, and the Indian system has accordingly been questioned in international fora.

2.2 Minimum Age of Criminal Responsibility: A Comparative Snapshot

States differ greatly in the age at which a child can be held criminally responsible. In England and Wales it is ten, after the Crime and Disorder Act, 1998 abolished the presumption

of *doli incapax* for children aged ten to thirteen.¹⁹ Scotland, which earlier had a minimum age of eight, raised it to twelve by the Age of Criminal Responsibility (Scotland) Act 2019. Germany fixes it at fourteen, Sweden at fifteen, and Japan at fourteen under its Juvenile Act. South Africa raised it from ten to twelve through the Child Justice Act, 2008 as amended. India's minimum age of seven under the Bharatiya Nyaya Sanhita, 2023, subject to a presumption of immaturity until twelve, is one of the lowest in the world and falls well below the fourteen years recommended by the Committee on the Rights of the Child.

2.3 The United States

The juvenile court was born in the United States. The Illinois Juvenile Court Act of 1899 established the first juvenile court in Cook County, Chicago, on the *parens patriae* model, with informal, non-adversarial proceedings aimed at the child's welfare. Over the twentieth century, concerns arose that children received neither the care promised nor the procedural protection due to adults. In response, the Supreme Court transformed juvenile procedure through a series of landmark decisions, discussed in Part 3 below. A distinctive feature of American law is the "transfer" or "waiver" of juveniles to adult courts, whether by judicial decision, prosecutorial discretion or statutory exclusion for particular offences. Research has questioned the deterrent value of transfer, and found higher recidivism among transferred youth. The federal Juvenile Justice and Delinquency Prevention Act, 1974 encourages States to deinstitutionalise status offenders and to separate juveniles from adult prisoners.

2.4 The United Kingdom

In England and Wales, the Children and Young Persons Act, 1933 required courts to have regard to the welfare of the child, but the system changed with the Crime and Disorder Act, 1998, which created the Youth Justice Board and multi-agency Youth Offending Teams and introduced measures such as reprimands, final warnings and referral orders under which a young offender agrees a contract with a community panel. Youth justice thus combines a welfare approach with an offence-focused approach. The jurisprudence of the European Court of Human Rights has influenced domestic practice, most notably in *T v United Kingdom* and *V v United Kingdom*, which arose from the trial of two ten-year-old boys for the murder of a toddler in 1993. The Court held that the minimum age of criminal responsibility of ten was not itself a violation of the Convention, but that the boys' trial in a public adult Crown Court in a highly publicised and intimidating atmosphere denied them a fair hearing under Article 6.²⁰

2.5 Germany, New Zealand, South Africa and Japan

Germany follows an explicitly educational model under its Juvenile Court Act (*Jugendgerichtsgesetz*). The guiding principle is that the response to a young offender should primarily be educational, and criminal punishment is a last resort. The Act applies to persons between fourteen and eighteen, and courts may apply it to young adults between eighteen and twenty-one where their development is found to be still that of a juvenile. The maximum juvenile sentence is generally five years and up to ten years for the gravest offences, far lower than adult maxima.

New Zealand, under the Oranga Tamariki Act, 1989, pioneered the family group conference, in which the young person, family, victim and professionals jointly decide how the offender should make amends. Most young offenders are dealt with outside the court, and the model is widely cited as an example of restorative justice and diversion. South Africa's Child Justice Act, 75 of 2008 sets up a dedicated system with a preliminary inquiry, extensive diversion options, and a minimum age of responsibility of twelve. Japan, which reduced the general age of majority to eighteen in 2022, nevertheless retained juvenile procedures for eighteen and nineteen year olds, treating them as "specified juveniles" with special rules for serious offences. These examples show that many jurisdictions respond to concerns about serious youth crime by adjusting the system without abandoning its child-centred character.

2.6 India and International Standards: A Gap Analysis

Measured against the international standards discussed above, the Indian framework shows both strong alignment and notable divergence. India is broadly aligned in fixing eighteen as the age of childhood for juvenile justice purposes, in prohibiting the death penalty and life imprisonment without release for offences by children, in providing for bail as a rule, in insisting on privacy, and in requiring separation of children from adult prisoners. The statutory preference for diversion, community service and probation also reflects the spirit of the Beijing and Tokyo Rules.

The divergences are equally clear. The minimum age of criminal responsibility of seven is far lower than the international benchmark. The transfer of sixteen to eighteen year olds to the adult system under Section 15 conflicts with the recommendation of the Committee on the Rights of the Child that all persons below eighteen be dealt with by the child justice system. The reliance on subjective preliminary assessments, which vary in quality from one Board to another, raises concerns of arbitrariness under Article 14 of the Constitution. Finally, the gap between law and practice is itself a divergence from the Havana Rules, since overcrowded and

poorly staffed institutions cannot deliver the education, health care and individual attention that those Rules require. Closing these gaps, and not merely enacting new provisions, is the real challenge before Indian policy makers.

3. JUDICIAL PRECEDENTS RELATED TO JUVENILES

Courts have played a central role in shaping juvenile justice, both by interpreting statutory provisions and by enforcing constitutional and human rights standards. This part first examines Indian decisions, grouped by theme, and then turns to leading foreign decisions.

3.1 Indian Case Law

(a) Custody, procedure and rehabilitation

The Supreme Court's early engagement with juvenile justice came through public interest litigation. In *Sheela Barse v Union of India*, the petitioner, a journalist, drew the Court's attention to children confined in jails along with adults. The Court emphasised that children are a supremely important national asset, that their treatment is a crucial test of a nation's humanity, and issued directions for speedy trial, prohibition of detention of children in jails, and the establishment of juvenile courts and observation homes under the Children Acts.²¹ In *Sanjay Suri v Delhi Administration*, the Court similarly took notice of juveniles lodged in Tihar Jail and directed corrective measures.²² In *Gaurav Jain v Union of India*, the Court dealt with the rehabilitation of children of sex workers and stressed that such children must be mainstreamed through education and care, and not segregated or stigmatised.²³ These cases established that Article 21 and the directive principles impose positive obligations on the State towards children.

The reformatory philosophy has deep roots in Indian jurisprudence. In *Mohd Giasuddin v State of Andhra Pradesh*, Justice V R Krishna Iyer observed that the purpose of punishment should be to reform the offender and that criminals are often the product of social conditions for which society shares responsibility, a sentiment that applies with special force to children.²⁴ More recently, in *Sampurna Behrui v Union of India*, the Court monitored the implementation of the 2015 Act across the country and found that many States had not constituted Juvenile Justice Boards and Child Welfare Committees, left posts vacant, and failed to provide for child-friendly institutions. The Court issued directions on filling vacancies, framing rules, setting up Special Juvenile Police Units and the proper functioning of child care institutions.²⁵

(b) Relevant date for determining juvenility

A recurring question has been the date on which age is to be reckoned. In *Arnit Das v State of Bihar*, a two-judge bench held that the relevant date was that on which the accused was first produced before the court. This was overruled by a Constitution Bench in *Pratap Singh v State of Jharkhand*, which held that the date of the offence is the relevant date for deciding whether a person is a juvenile, because the protective purpose of the legislation would be defeated if delays in investigation or trial could take a child outside its benefit. The Court also dealt with the transition from the 1986 Act to the 2000 Act.²⁶ In *Hari Ram v State of Rajasthan*, the Court held that following the 2000 Act as amended in 2006, every person who was below eighteen on the date of the offence is entitled to be treated as a juvenile, even if the offence was committed before the 2000 Act came into force and even though the 1986 Act had fixed a lower age for boys.²⁷

(c) Proof of age and the plea of juvenility

The Supreme Court has repeatedly held that a claim of juvenility can be raised at any stage. In *Abuzar Hossain v State of West Bengal*, the Court held that the plea may be raised before any court, at any stage, even after final disposal of the case, but that the claim must be supported by some prima facie material, and a bald assertion is not enough. The court is then to conduct an inquiry and record a finding.²⁸ In *Jayendra Vishnu Thakur v State of Maharashtra*, the Court held that the juvenile law is a beneficial piece of legislation which must be interpreted liberally in favour of the child.²⁹ In *Ashwani Kumar Saxena v State of Madhya Pradesh*, the Court made clear that the Board or court must follow the hierarchy of documents prescribed by law, giving primacy to matriculation or school certificates, then birth certificates issued by local authorities, and only in their absence should a medical (ossification) test be ordered. Courts should not conduct a roving inquiry or insist on documents beyond those prescribed, and where two views are possible on age, the one favouring the child should be preferred.³⁰ The principle was reiterated in *Mukarrab v State of Uttar Pradesh*, where the Court gave effect to documentary proof of age and held that mere suspicion about authenticity cannot displace statutory evidence.³¹ These decisions are now reflected in Section 94 of the 2015 Act.

(d) Constitutionality of the age of eighteen and the Nirbhaya controversy

In the wake of the December 2012 incident, petitions were filed challenging the definition of "juvenile" in the 2000 Act as arbitrary. In *Salil Bali v Union of India*, the Supreme Court

upheld the age of eighteen. It noted that the age was fixed in accordance with the CRC and Beijing Rules and reflected a considered legislative policy, that science and research on adolescent maturity did not support the argument that sixteen-year-olds understand consequences like adults, and that there was no empirical data to show that juveniles were disproportionately involved in heinous crimes.³² In *Dr Subramanian Swamy v Raju*, the Court again refused to read down the Act or to direct that the juvenile in the Delhi case be tried as an adult. It held that the juvenile could not be denied the benefit of the Act, and that whether juvenile law needs to be changed is a matter for Parliament.³³ The Justice J S Verma Committee, which reported in January 2013, similarly recommended against lowering the age, and the Parliamentary Standing Committee examining the 2014 Bill expressed serious reservations about trying sixteen to eighteen year olds as adults.³⁴ Parliament nevertheless chose the path of limited transfer in 2015.

(e) Classification of offences under the 2015 Act

The 2015 Act has itself generated litigation. In *Shilpa Mittal v State of NCT of Delhi*, the Supreme Court considered offences for which the law prescribes a maximum punishment of more than seven years but does not provide any minimum punishment, or provides a minimum of less than seven years. The Court held that such offences are not "heinous offences" within Section 2(33), which covers only offences with a minimum punishment of seven years or more, and fall instead in the category of "serious offences". The preliminary assessment under Section 15 and the possibility of transfer to the Children's Court therefore does not apply to them. The Court also noted the legislative gap and observed that Parliament might consider the matter.³⁵ Parliament later took up the gap in the 2021 Amendment, which expressly provides that offences with a maximum punishment of more than seven years but with no minimum, or with a minimum of less than seven years, are "serious offences". The decision is significant because it favours a strict, narrow reading of provisions that expose children to adult trial.

3.2 Foreign Decisions

In the United States, *Kent v United States* (1966) was the first major intervention. Holding that the juvenile court's waiver of jurisdiction to the adult court without a hearing, access to records or reasons was invalid, the Supreme Court remarked that the child receives "the worst of both worlds", neither the protection given to adults nor the solicitous care promised to children.³⁶ In *In re Gault* (1967), the Court held that juveniles facing commitment to an institution are entitled to notice of charges, the right to counsel, the right to confront and cross-

examine witnesses and the privilege against self-incrimination.³⁷ *In re Winship* (1970) extended the proof beyond reasonable doubt standard to juvenile delinquency adjudications.³⁸ In *McKeiver v Pennsylvania* (1971), however, the Court declined to hold that juveniles have a constitutional right to jury trial, in order to preserve the distinct character of juvenile proceedings.³⁹

The more recent line of cases is built on developmental science. *Roper v Simmons* (2005) held that the execution of persons who were under eighteen at the time of the offence violates the Eighth Amendment, identifying lack of maturity and an underdeveloped sense of responsibility, vulnerability to negative influences and the greater possibility of reform as the characteristic differences between juveniles and adults.⁴⁰ *Graham v Florida* (2010) prohibited life imprisonment without parole for juveniles convicted of non-homicide offences, *Miller v Alabama* (2012) held mandatory life without parole for juvenile homicide offenders unconstitutional, and *Montgomery v Louisiana* (2016) made *Miller* retroactive.⁴¹ These decisions parallel Section 21 of the Indian Act, which bars the death penalty and life imprisonment without release for children, even those tried as adults, and they are consistent with Article 37(a) of the CRC. Together with the European Court's judgment in *T and V v United Kingdom* discussed above, they show a worldwide judicial trend: courts insist on fair, age-appropriate procedure and recognise diminished culpability of the young.

4. CONCLUSION AND SUGGESTIONS

Juvenile delinquency is a symptom of failures of family, school, community and State, and any serious response must begin with prevention. The juvenile justice system, however, is the last line of response when prevention has failed, and its task is to hold children accountable in a manner that protects society while preserving the child's chance of becoming a productive adult. India's law has travelled a long way from colonial reformatory schools to a rights-based statute grounded in the Constitution and the CRC. The 2015 Act, with its principles of best interests, diversion, bail as a rule, privacy, the right to a fresh start and child-friendly institutions, is in many respects advanced. Judicial decisions from *Sheela Barse* to *Salil Bali* and *Shilpa Mittal* have strengthened that framework, treating juvenile law as beneficial legislation and insisting that children not be placed beyond its protection by technicalities.

At the same time, the system faces serious problems. The Supreme Court's findings in *Sampurna Behrui* show that statutory institutions are often under-staffed or non-functional, and that observation homes and special homes frequently lack adequate education, counselling

and healthcare. Pendency of inquiries before Boards, and delays in preliminary assessments, defeat the purpose of speedy and sensitive resolution. The transfer provision in Section 15 depends on assessments of a child's "mental capacity" by Boards and psychologists that are often unevenly performed, and it runs contrary to the position of the Committee on the Rights of the Child and to the research consensus that adolescent brains continue to develop into the early twenties. The low minimum age of criminal responsibility in the Bharatiya Nyaya Sanhita and the practical difficulty of proving age, particularly for children without documents, continue to cause injustice.

Based on the above analysis, the following suggestions are put forward. First, the minimum age of criminal responsibility should be reviewed and raised towards the fourteen years recommended internationally. Second, the transfer of children to the adult system under Section 15 should be reconsidered, or at least confined to exceptional cases with uniform, scientifically sound assessment protocols, mandatory reasoned orders and the involvement of qualified child psychologists. Third, States must fill vacancies in Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units, ensure regular training of Board members, police and probation officers in child psychology and law, and monitor child care institutions through independent inspection. Fourth, the system should prioritise diversion, community service, counselling, family-based care and restorative approaches such as family group conferences, with institutionalisation as a genuine last resort. Fifth, education, vocational training, and aftercare programmes for children leaving institutions, as the 2015 Act envisages, should be properly funded so that these children are not pushed back into crime. Sixth, prevention through schools, community programmes, addressing substance abuse and strengthening families should receive attention in line with the Riyadh Guidelines, and reliable disaggregated data should be collected to support evidence-based policy rather than reaction to isolated cases.

In the end, the measure of a juvenile justice system is not how harshly it responds to the worst case before it but how effectively it reduces the number of children who reach that stage and restores those who do. A system that is firmly rooted in the Constitution, in the international standards India has accepted, and in the humane vision expressed by the courts, can protect both children and society.

- ¹This approach is rooted in the doctrine of *parens patriae*, under which the State acts as the guardian of those who cannot protect themselves. See Ahmad Siddique, *Criminology, Penology and Victimology* (Eastern Book Company, 6th edn).
- ²National Crime Records Bureau, *Crime in India* (Ministry of Home Affairs, annual reports), chapter on crimes by juveniles. Exact figures vary every year and the latest edition should be consulted before citing numbers.
- ³The juvenile was held guilty by the Juvenile Justice Board, Delhi on 31 August 2013 and sent to a special home for three years, the maximum then permissible under the Juvenile Justice (Care and Protection of Children) Act, 2000.
- ⁴Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(12) (definition of "child") and s 2(13) (definition of "child in conflict with law").
- ⁵Bharatiya Nyaya Sanhita, 2023, ss 20 and 21, replacing the Indian Penal Code, 1860, ss 82 and 83.
- ⁶Cesare Lombroso, *L'uomo delinquente* (1876).
- ⁷Edwin H Sutherland, *Principles of Criminology* (1939); Edwin H Sutherland and Donald R Cressey, *Criminology* (J B Lippincott, 10th edn 1978).
- ⁸Robert K Merton, "Social Structure and Anomie" (1938) 3 *American Sociological Review* 672.
- ⁹Travis Hirschi, *Causes of Delinquency* (University of California Press 1969).
- ¹⁰Howard S Becker, *Outsiders: Studies in the Sociology of Deviance* (Free Press 1963).
- ¹¹Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (Act 23 of 2021).
- ¹²Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(33) (heinous offences), s 2(45) (petty offences) and s 2(54) (serious offences), as clarified by the 2021 amendment.
- ¹³Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3, arts 1, 3, 37 and 40. India ratified the Convention on 11 December 1992.
- ¹⁴United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UNGA Res 40/33 (29 November 1985), rules 4, 5, 8, 11, 17 and 19.
- ¹⁵United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), UNGA Res 45/112 (14 December 1990).
- ¹⁶United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), UNGA Res 45/113 (14 December 1990); United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), UNGA Res 45/110 (14 December 1990).
- ¹⁷International Covenant on Civil and Political Rights 1966, 999 UNTS 171, arts 6(5), 10(2)(b), 10(3) and 14(4).
- ¹⁸UN Committee on the Rights of the Child, General Comment No 24 (2019) on children's rights in the child justice system, CRC/C/GC/24 (18 September 2019), paras 22 and 29 to 31.
- ¹⁹Crime and Disorder Act 1998 (UK), s 34.
- ²⁰*T v United Kingdom* and *V v United Kingdom* (1999) 30 EHRR 121 (Grand Chamber, 16 December 1999).
- ²¹*Sheela Barse v Union of India* (1986) 3 SCC 596. See also *Sheela Barse v Secretary, Children's Aid Society* (1987) 3 SCC 50, in which the Court examined conditions in remand homes and the need for trained staff and rehabilitation.
- ²²*Sanjay Suri v Delhi Administration* 1988 Supp SCC 160.
- ²³*Gaurav Jain v Union of India* (1997) 8 SCC 114.
- ²⁴*Mohd Giasuddin v State of Andhra Pradesh* (1977) 3 SCC 287.
- ²⁵*Sampurna Behrui v Union of India* (2018) 4 SCC 433.
- ²⁶*Arnit Das v State of Bihar* (2000) 5 SCC 488, overruled in *Pratap Singh v State of Jharkhand* (2005) 3 SCC 551 (Constitution Bench).
- ²⁷*Hari Ram v State of Rajasthan* (2009) 13 SCC 211.
- ²⁸*Abuzar Hossain v State of West Bengal* (2012) 10 SCC 489.
- ²⁹*Jayendra Vishnu Thakur v State of Maharashtra* (2009) 7 SCC 104.
- ³⁰*Ashwani Kumar Saxena v State of Madhya Pradesh* (2012) 9 SCC 750.
- ³¹*Mukarrab v State of Uttar Pradesh* (2017) 2 SCC 210.
- ³²*Salil Bali v Union of India* (2013) 7 SCC 705.
- ³³*Dr Subramanian Swamy v Raju, Member, Juvenile Justice Board* (2014) 8 SCC 390.
- ³⁴Committee on Amendments to Criminal Law (Chair: Justice J S Verma), *Report* (January 2013); Department-

related Parliamentary Standing Committee on Human Resource Development, *Two Hundred and Sixty-fourth Report on the Juvenile Justice (Care and Protection of Children) Bill, 2014* (Rajya Sabha, 2015).

³⁵*Shilpa Mittal v State of NCT of Delhi* (2020) 2 SCC 787.

³⁶*Kent v United States* 383 US 541 (1966).

³⁷*In re Gault* 387 US 1 (1967).

³⁸*In re Winship* 397 US 358 (1970).

³⁹*McKeiver v Pennsylvania* 403 US 528 (1971).

⁴⁰*Roper v Simmons* 543 US 551 (2005).

⁴¹*Graham v Florida* 560 US 48 (2010); *Miller v Alabama* 567 US 460 (2012); *Montgomery v Louisiana* 577 US 190 (2016).

