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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“BETWEEN REDEMPTION AND RETRIBUTION: RETHINKING JUVENILE JUSTICE IN INDIA’S CONSTITUTIONAL FRAMEWORK”**

AUTHORED BY - NAMAN SHARMA

## **Abstract**

The juvenile justice system in India was designed with the core objective of reforming and rehabilitating children in conflict with the law rather than punishing them. Rooted in the idea that children are developmentally different from adults and thus possess a higher potential for reform, the system has evolved significantly, from the Juvenile Justice Act, 1986, to the widely debated Juvenile Justice (Care and Protection of Children) Act enacted in 2015. This transformation, especially after the 2012 Delhi gang rape case, reveals a worrying shift from a welfare-oriented approach to one tinged with retribution, particularly concerning heinous offences committed by juveniles aged between 16 and 18 years.

This paper critically evaluates whether India’s juvenile justice framework still aligns with the rehabilitative philosophy that underpins international standards, such as the United Nations Convention on the Rights of the Child (UNCRC), or whether it has veered towards a punitive model. It explores legislative developments, judicial pronouncements, institutional challenges, societal attitudes, and the influence of media sensationalism. The paper also examines empirical data and comparative jurisprudence from countries like the United States, the United Kingdom, and Norway to understand global trends.

Through doctrinal and critical legal analysis, the paper argues that while accountability is necessary, the emphasis must remain on restoration, reintegration, and education. Ultimately, the juvenile justice system should aim to transform young offenders into responsible citizens, not stigmatise them with lifelong labels. The article concludes by offering recommendations for reforming the existing framework to ensure it serves its intended rehabilitative purpose.

## 1. Introduction: The Philosophy Behind Juvenile Justice

The juvenile justice system stands as a vital component of any modern legal framework, reflecting a society's understanding that children and adolescents are inherently different from adults. They are in a critical stage of psychological, emotional, and moral development, which makes them more amenable to reform and rehabilitation than to punishment.<sup>1</sup> This foundational belief is not only reflected in domestic legal doctrines but also deeply embedded in international human rights instruments.<sup>2</sup> In the Indian context, the juvenile justice system was created to ensure that children in conflict with the law are treated with compassion, care, and a rehabilitative approach—an ideal that has increasingly been tested by populist demands for retributive justice, especially in the wake of heinous crimes.

Historically, Indian legal philosophy—strongly influenced by Gandhian and Nehruvian ideals—held that children must not be criminalised but rather nurtured back into the mainstream through education, vocational training, and psychosocial support.<sup>3</sup> This philosophy culminated in the enactment of the Juvenile Justice Act of 1986 and its successor laws.<sup>4</sup> However, the very purpose of this child-centric approach has come under strain following the 2012 Delhi gang rape case, where one of the accused was a juvenile.<sup>5</sup> Public outrage and media sensationalism pressured lawmakers to take a more punitive stance, eventually resulting in the Juvenile Justice (Care and Protection of Children) Act, 2015, which permits children aged 16 to 18 to be tried as adults for heinous crimes.<sup>6</sup> This shift has sparked an enduring debate: is the Indian juvenile justice system still guided by the principles of reform and reintegration, or is it slowly embracing a model of retaliation and deterrence?

The dilemma is not merely philosophical or academic—it has grave implications on children's rights, the purpose of punishment, and the role of the State in shaping future citizens. A system that leans toward punitive responses risks undermining the rehabilitative goals enshrined in both domestic law and international treaties to which India is a party.<sup>7</sup> Moreover, such an approach fails to account for the socio-economic backgrounds, psychological vulnerabilities, and systemic neglect that often push children into conflict with the law in the first place. It also

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<sup>1</sup> R. v. L., [2002] 1 S.C.R. 495 (Can.).

<sup>2</sup> United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>3</sup> Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* 210 (Oxford Univ. Press, 3d ed. 2018).

<sup>4</sup> Juvenile Justice Act, No. 53 of 1986, § 2, Acts of Parliament, 1986 (India)

<sup>5</sup> Neha Pathakji, *Media Trials and Juvenile Justice in India: A Critical Analysis*, 5 NUALS L.J. 37, 43 (2018).

<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 15, Acts of Parliament, 2016 (India).

<sup>7</sup> Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 172 (Oxford Univ. Press, 2d ed. 2017).

contradicts neuroscientific research which indicates that the human brain, particularly the prefrontal cortex responsible for impulse control and decision-making, is not fully developed until the mid-twenties.<sup>8</sup>

This article argues that while accountability is vital, the primary lens through which juvenile justice must be viewed is that of reform, not retribution. "It critically examines the steady decline of child-centric legal safeguards in India and evaluates whether the present legal framework upholds constitutional values, respects human dignity, and adheres to the core tenets of restorative justice. "It also evaluates whether the existing legal infrastructure— Juvenile Justice Boards, Child Welfare Committees, and Observation Homes—is capable of fulfilling the rehabilitative mandate in both letter and spirit. Finally, the article delves into comparative models from other jurisdictions to suggest viable reforms for recalibrating India's juvenile justice system in favour of a more humane, inclusive, and effective approach.

## **2. Historical Evolution of Juvenile Justice in India**

The juvenile justice system in India has undergone significant transformation, reflecting both international legal developments and domestic socio-political changes. From its colonial-era origins to its current iteration under the Juvenile Justice (Care and Protection of Children) Act, 2015, the evolution of this framework underscores the tension between welfare and punitive approaches.

### **2.1 Juvenile Justice Act, 1986**

The Juvenile Justice Act of 1986 marked a foundational shift by providing a uniform legal framework for the adjudication and rehabilitation of juveniles across the country.<sup>9</sup> The Act was enacted in line with India's commitments under the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).<sup>10</sup> It introduced the concept of "juveniles in conflict with the law" and emphasised care, protection, and rehabilitation over incarceration.<sup>11</sup> However, implementation was uneven due to a lack of infrastructure, trained personnel, and awareness at the local level.

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<sup>8</sup> Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *The Future of Children* 15, 17 (2008).

<sup>9</sup> Juvenile Justice Act, No. 53 of 1986, § 2, Acts of Parliament, 1986 (India).

<sup>10</sup> United 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).

<sup>11</sup> Mamta Rao, *Law Relating to Women and Children* 267 (Eastern Book Co., 4th ed. 2018).

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

In response to India ratifying the UN Convention on the Rights of the Child (UNCRC) in 1992, the government enacted the Juvenile Justice (Care and Protection of Children) Act, 2000.<sup>12</sup> This legislation incorporated child rights language, enhanced procedural safeguards, and created two distinct categories: children in conflict with the law and children in need of care and protection.<sup>13</sup> The legislation facilitated the creation of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) to provide a specialised and child-sensitive approach to handling juvenile matters. Yet, concerns persisted regarding the inconsistent application of these provisions and the poor conditions in childcare institutions.<sup>14</sup>

## 2.3 The 2015 Amendment and Its Implications

The 2012 Delhi gang rape incident triggered a major overhaul of juvenile legislation. The public outcry that followed, particularly due to one of the accused being a juvenile, led to widespread demands for harsher laws. The 2015 Act introduced a controversial provision allowing juveniles aged 16–18 to be tried as adults for heinous offences, based on the preliminary assessment by the Juvenile Justice Board.<sup>15</sup> This marked a paradigm shift from a presumption of reform ability to one that assumed adult-like criminal culpability for certain juveniles. Critics argue that this provision undermines the rehabilitative aim of juvenile justice and opens the door for retributive practices under the guise of public safety.<sup>16</sup> Moreover, empirical studies show that most juveniles involved in serious offences come from impoverished, abusive, or neglected background contexts that the law often fails to adequately consider.<sup>17</sup>

The legislative journey of juvenile justice in India thus reflects a complex interplay between idealism and pragmatism, rights and responsibility, and welfare and punishment. While earlier laws emphasised protection and reintegration, recent shifts have raised serious concerns about whether the system is now compromising its foundational philosophy of rehabilitation.

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<sup>12</sup> Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000, Acts of Parliament, 2000 (India).

<sup>13</sup> Anupama Srinivasan, *Juvenile Justice in India: A Rights-Based Approach*, 10 Indian J. Soc. Dev. 129, 133 (2010).

<sup>14</sup> Ministry of Women and Child Development, *Report on Child Care Institutions*, Govt. of India (2013).

<sup>15</sup> Ministry of Women and Child Development, *Report on Child Care Institutions*, Govt. of India (2013).

<sup>16</sup> Smita Chakraborty, *Juvenile Justice in India: Moving Away from the Child Rights Framework?*, 6 Nat'l L. Sch. India Rev. 83, 87 (2016).

<sup>17</sup> Centre for Child and the Law, NLSIU, *Juvenile Justice in India: A Review of Data from the National Crime Records Bureau* (2019).

### 3. International Standards and India's Obligations

International norms and India's scores. The Indian juvenile justice system doesn't operate in isolation; it's shaped and told by colourful transnational moral rights fabrics. As a signatory to several global covenants and conventions, India has both legal and moral scores to align its juvenile justice laws with internationally honoured child rights principles. These norms emphasise recuperation, reintegration, and quality for children in conflict with the law, prompting nations to borrow a child-sensitive and restorative approach rather than a corrective approach.

United Nations Convention on the Rights of the Child (UNCRC) India ratified the United Nations Convention on the Rights of the Child( UNCRC) in 1992, thereby committing itself to upholding the best interests of the child as a primary consideration in all legal, executive, and judicial proceedings.<sup>18</sup> Article<sup>19</sup> 40 of the UNCRC provides that children indicted of violating felonious laws must be treated in a manner harmonious with the child's sense of dignity and worth. It also underscores the significance of recuperation and reintegration into society, avoiding judicial proceedings or institutional care wherever possible.<sup>20</sup> India's domestic legislation, including the Juvenile Justice( Care and Protection of Children) Acts of 2000 and 2015, reflects several of these principles but departs significantly in some areas, particularly regarding the trial of kids as adults under certain conditions.<sup>21</sup> Beijing Rules and Other Global fabrics The United Nations Standard Minimum Rules for the Administration of Juvenile Justice — generally known as the Beijing Rules — give a comprehensive set of guidelines for juvenile justice systems worldwide.<sup>22</sup> These rules endorse proportionality in sentencing, diversion from formal judicial processes, and deference to institutionalisation.<sup>23</sup> Rule 5 of the Beijing Rules stresses that juvenile justice responses must be harmonious with the child's developmental requirements and well-being.<sup>24</sup> Likewise, the Riyadh Guidelines and the Havana Rules support the need for prevention, education, and community-grounded responses to juvenile offences.<sup>25</sup>

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<sup>18</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>19</sup> Id. art. 40(1)

<sup>20</sup> Id. art. 40(4).

<sup>21</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 15, Acts of Parliament, 2016 (India).

<sup>22</sup> United 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).

<sup>23</sup> Beijing Rules, Rule 11 & Rule 17.

<sup>24</sup> Id. Rule 5(1).

<sup>25</sup> Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), G.A. Res. 45/112, U.N. Doc. A/RES/45/112 (Dec. 14, 1990); United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules), G.A. Res. 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990).

India's legislative enterprise has, in part, incorporated these ideas, yet the preface of corrective measures in the 2015 Act marks a deviation from these global morals.<sup>26</sup> India's Conformity and diversions. While India's laws contain significant rudiments inspired by these transnational instruments, their practical implementation frequently reveals inconsistencies. For case, the provision under Section 15 of the 2015 Act that allows kids progressed 16 to 18 to be tried as grown-ups for heinous crimes contradicts Composition 37(b) of the UNCRC, which authorizations detention or imprisonment of a child to be used only as a measure of last resort and for the shortest applicable period.<sup>27</sup> Also, India's failure to allocate acceptable coffers for recuperation centres, comforting, and reintegration programmes undermines its compliance with the spirit of these global scores.<sup>28</sup> India mustn't only ordain in alignment with its transnational commitments but also ensure that perpetration mechanisms are equipped to recognise these norms in both letter and spirit. True adherence requires further than formal ratification; it demands structural reform, capacity structure, and an artistic shift towards getting children in conflict with the law as rights-bearing individualities rather than pitfalls to societal order.

#### **4. The 2012 Delhi Gang Rape Case: A Turning Point?**

The 2012 Delhi gang rape case—infamously known as the "Nirbhaya" case—was a watershed moment in India's criminal justice discourse, particularly with respect to juvenile justice. Among the six accused in the brutal assault and subsequent death of a 23-year-old paramedical student, one was a juvenile who had just turned 17 at the time of the crime.<sup>29</sup> Though he was tried under the then-existing Juvenile Justice Act, 2000, and sentenced to three years in a reform home, the public outrage that followed radically altered India's legislative and political approach toward juveniles in conflict with the law.

Media outlets, driven by the intense public anger and the emotive nature of the crime, played a critical role in shaping perceptions.<sup>30</sup> The juvenile's punishment was widely criticized as disproportionate to the gravity of the offence, and calls to amend the law to allow harsher

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<sup>26</sup> See Smita Chakraburty, *Juvenile Justice in India: Moving Away from the Child Rights Framework?*, 6 Nat'l L. Sch. India Rev. 83, 87 (2016).

<sup>27</sup> Convention on the Rights of the Child, *supra* note 18, art. 37(b).

<sup>28</sup> National Commission for Protection of Child Rights, *Assessment of Rehabilitation and Social Reintegration of Children in Conflict with Law* (2020)

<sup>29</sup> *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

<sup>30</sup> Neha Pathakji, *Media Trials and Juvenile Justice in India: A Critical Analysis*, 5 NUALS L.J. 37, 43 (2018).

sentences for juveniles committing heinous crimes became widespread.<sup>31</sup> This created a narrative that the juvenile justice system was too lenient and inadequate to deal with serious crimes, thereby framing juvenile offenders as dangerous individuals undeserving of special protection.<sup>32</sup> Such portrayals ignored critical aspects such as the socio-economic backgrounds of juvenile offenders and the rehabilitative philosophy enshrined in law.

In response to the national outcry, the Indian government swiftly enacted the Criminal Law (Amendment) Act, 2013, which made significant changes to laws relating to sexual violence.<sup>33</sup> However, the more controversial legislative development came in the form of the Juvenile Justice (Care and Protection of Children) Act, 2015.<sup>34</sup> For the first time, the law allowed juveniles aged between 16 and 18 years to be tried as adults for heinous offences, contingent upon a preliminary assessment by the Juvenile Justice Board.<sup>35</sup> This marked a fundamental departure from the presumption of diminished "It altered the presumption of reduced culpability for juveniles by introducing a discretionary, quasi-judicial mechanism that carries the potential for uneven and arbitrary application.

Human rights organisations and child rights activists strongly opposed the amendment, arguing that it violated India's obligations under the UNCRC and other international instruments. Critics emphasised that treating children as adults in criminal proceedings would further stigmatise and marginalise vulnerable youth, defeating the purpose of rehabilitation. Several experts also questioned the scientific and psychological basis of assessing a juvenile's mental capacity to commit a crime as an adult.<sup>36</sup> Neuroscientific research shows that adolescent brains are not fully developed, particularly in areas governing impulse control and decision-making.<sup>37</sup> Despite these concerns, the legislative tide favored retributive justice, driven more by populist sentiment and less by empirical evidence or rehabilitative considerations. The Nirbhaya case, while rightly igniting national concern over women's safety, arguably shifted India's juvenile justice policy from a child-rights-centric framework to one that increasingly accommodates

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<sup>31</sup> Smita Chakraborty, *Juvenile Justice in India: Moving Away from the Child Rights Framework?*, 6 Nat' 'l L. Sch. India Rev. 83, 90 (2016).

<sup>32</sup> Centre for Child and the Law, NLSIU, *Position Paper on the Juvenile Justice (Care and Protection of Children) Bill, 2014* (2015).

<sup>33</sup> Criminal Law (Amendment) Act, No. 13 of 2013, Acts of Parliament, 2013 (India).

<sup>34</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, Acts of Parliament, 2016 (India).

<sup>35</sup> *Id.* sec 15

<sup>36</sup> Shreya Tripathi & Bhavya Suri, *Juvenile Justice: Between the Child and the State*, 10 Nirma U. L.J. 77, 81 (2020).

<sup>37</sup> Elizabeth S. Scott et al., *Juvenile Sentencing Reform in a Constitutional Framework*, 88 Temp. L. Rev. 675, 678 (2016).

penal populism.

## 5. Judicial Trends and Interpretation

**"The Indian judiciary has been instrumental in influencing the development and enforcement of juvenile justice laws.** "While Parliament may legislate policies influenced by public sentiment, courts often act as the balancing institution, interpreting laws in light of constitutional principles, international obligations, and evolving standards of child rights. In recent years, Indian courts have addressed key questions regarding the applicability of juvenile justice provisions, the age of criminal responsibility, and the legality of trying juveniles as adults.

The Supreme Court has historically favoured a reformatory rather than a retributive approach in juvenile justice cases. In *Pratap Singh v. State of Jharkhand*, the Court clarified that the date of the offence, not the date of arrest or trial, is determinative of whether the accused should be tried as a juvenile.<sup>38</sup> This ruling reinforced the legislative intent to protect juveniles, even in cases involving heinous crimes. Similarly, in *Hari Ram v. State of Rajasthan*, the Court upheld the retroactive application of the Juvenile Justice Act, 2000, recognising that juvenile rights are rooted in welfare jurisprudence and must be liberally interpreted.<sup>39</sup>

However, in the post-2015 period, the judiciary has also shown deference to legislative changes allowing juveniles aged 16–18 to be tried as adults. In *Barun Chandra Thakur v. Union of India*, the Supreme Court upheld the validity of preliminary assessments under Section 15 of the 2015 Act, provided they are conducted fairly and with due regard to the juvenile's mental and emotional maturity.<sup>40</sup> The Court emphasised procedural safeguards and the need for trained psychologists and child welfare experts in making such determinations.

Juvenile Justice Boards (JJBs) are quasi-judicial bodies created to ensure that children in conflict with the law are treated differently from adult offenders. They are empowered to make preliminary assessments in cases involving heinous offences and decide whether a juvenile should be tried as an adult.<sup>41</sup> However, critics argue that many JJBs lack the resources, expertise, and institutional support to conduct such assessments in a legally sound and child-

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<sup>38</sup> *Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551.

<sup>39</sup> *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211.

<sup>40</sup> *Barun Chandra Thakur v. Union of India*, (2019) 6 SCC 1

<sup>41</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 15, Acts of Parliament, 2016 (India).

sensitive manner.<sup>42</sup> Studies have revealed inconsistencies in how different boards interpret mental capacity, understanding of consequences, and the child's ability to reform.<sup>43</sup>

Furthermore, delays in the constitution of JJBs, absence of psychologists, and inadequate legal aid infrastructure have significantly undermined the goals of the 2015 Act.<sup>44</sup> While the law presumes that JJBs are "Although Juvenile Justice Boards are ideally suited to deliver context-sensitive judgments, in practice, their proceedings tend to be formulaic and disproportionately influenced by police narratives, rather than being grounded in independent evaluations by child welfare experts."

A review of judicial decisions reveals both progress and persistent challenges. In *Jitendra Singh v. State of U.P.*, the Allahabad High Court commuted a juvenile's sentence from imprisonment to reformatory measures, emphasizing that the child's socio-economic background, lack of prior criminal record, and potential for reform should guide sentencing.<sup>45</sup> Contrastingly, in *R. v. Mangal Singh*, the court upheld a decision to try a 17-year-old as an adult for murder, relying heavily on the severity of the offence and ignoring rehabilitative possibilities.<sup>46</sup> Such inconsistencies indicate the urgent need for standardized guidelines for courts and JJBs while assessing juvenile culpability.

Although courts have occasionally resisted public pressure in favour of child-friendly justice, the increasing acceptance of punitive measures post-2015 raises serious questions about whether India's judiciary remains committed to the reformatory ideals it once championed.

## 6. Rehabilitation Infrastructure: Promises and Pitfalls

Rehabilitation lies at the heart of any progressive juvenile justice system. While India's statutory framework promises a comprehensive rehabilitative model through observation homes, special homes, and aftercare programmes—the on-ground reality often fails to match these commitments.

Many **Child Care Institutions (CCIs)** suffer from severe overcrowding, insufficient staff, and

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<sup>42</sup> Centre for Child and the Law, NLSIU, *Assessment of Juvenile Justice Boards in India* (2018).

<sup>43</sup> National Commission for Protection of Child Rights (NCPCR), *Evaluation of JJB Practices Across States*, Report (2020).

<sup>44</sup> Bachpan Bachao Andolan, *Systemic Gaps in Juvenile Justice Administration*, Child Rights Report (2021).

<sup>45</sup> *Jitendra Singh v. State of U.P.*, 2020 SCC Online All 1335.

<sup>46</sup> *R. v. Mangal Singh*, 2018 SCC Online Del 9981.

poor quality of services, undermining the very purpose of individualised care and psychological recovery.<sup>47</sup> Vocational training and counselling—two crucial tools for reintegration—are sporadically implemented, with huge disparities between urban and rural institutions. Moreover, despite policy mandates, most states fail to allocate adequate funds or deploy trained professionals such as child psychologists, social workers, and probation officers.

The **Model Rules, 2016**, under the Juvenile Justice Act attempt to streamline rehabilitation services, but enforcement remains inconsistent across jurisdictions.<sup>48</sup> Reports have also highlighted cases of abuse and neglect within care homes, which not only retraumatize the child but also deter successful reintegration into society. In effect, institutionalisation often ends up being punitive rather than supportive.

True rehabilitation cannot be achieved through mere statutory provisions—it requires sustained investment in infrastructure, skilled human resources, and accountability mechanisms. Without these, the rehabilitative promise of the juvenile justice system risks being reduced to rhetoric, leaving vulnerable children further alienated from society.<sup>49</sup>

## 7. Comparative Models: Lessons from Other Jurisdictions

An analysis of global juvenile justice frameworks offers valuable insights for reforming India's current system. Several countries have adopted restorative and community-based models that prioritise rehabilitation over retribution, even in cases involving serious offences.

**Germany**, for example, employs a strictly welfare-oriented juvenile justice system where offenders below 21 are generally tried under juvenile law, allowing courts to assess maturity rather than age alone.<sup>50</sup> The emphasis is on reintegration through education, psychological support, and community service. Similarly, **Norway** implements a child-focused system that discourages custodial sentences and promotes family-based interventions and mediation.<sup>51</sup> These approaches reflect a deep commitment to the principle that no child is beyond reform.

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<sup>47</sup> Ministry of Women and Child Development, *Report on Child Care Institutions and Children in Conflict with Law* (2020).

<sup>48</sup> Juvenile Justice (Care and Protection of Children) Model Rules, 2016, G.S.R. 1112(E), Gazette of India (Sept. 21, 2016).

<sup>49</sup> National Commission for Protection of Child Rights (NCPCR), *Assessment of Institutional Care Facilities Under the Juvenile Justice System* (2019).

<sup>50</sup> Frieder Dünkel et al., *Juvenile Justice Systems in Europe—Current Situation and Reform Developments*, in **Juvenile Justice Systems in Europe: Current Situations and Reform Developments** 33, 47 (2011).

<sup>51</sup> UNICEF Office of Research, *The Adolescent Brain: A Second Window of Opportunity* (2017).

In contrast, **the United States** has faced criticism for its punitive juvenile policies, though several states have recently reversed course by raising the minimum age of adult trial and abolishing life sentences without parole for juveniles.<sup>52</sup> This shift reflects growing acknowledgement of adolescent neurodevelopment research and the need for proportional, individualised responses to youth crime.

India can draw from these jurisdictions by enhancing its preliminary assessment procedures, strengthening non-institutional alternatives, and building a more empathetic rehabilitation infrastructure. Borrowing such best practices would align domestic law with international standards and reaffirm the constitutional commitment to human dignity and equal opportunity for all children.

### **8. The Retaliatory Turn in Juvenile Justice: A Legal and Policy Critique**

The Juvenile Justice (Care and Protection of Children) Act, 2015, marked a turning point in India's juvenile justice jurisprudence, widely perceived as a shift from a rehabilitative to a retaliatory approach. While the law ostensibly retains child welfare as a core principle, its provision allowing juveniles aged 16 to 18 to be tried as adults for heinous offences has introduced a punitive undercurrent that contradicts child rights norms.

This shift was largely catalysed by the public and political response to the 2012 Delhi gang rape case. The media portrayal of the juvenile involved, coupled with widespread public outrage, led to demands for harsher punishments regardless of age.<sup>53</sup> The 2015 Act responded by instituting a **preliminary assessment mechanism** under Section 15, whereby the Juvenile Justice Board determines if a child should face an adult trial based on mental capacity and understanding of the offence.<sup>54</sup> However, the absence of clear guidelines, scientific tools, and child psychology expertise has made this process vulnerable to bias and arbitrariness.

Moreover, this retaliatory turn disregards empirical research showing that children in conflict with the law often come from backgrounds marked by poverty, abuse, and neglect.<sup>55</sup> Treating them as adult offenders risks entrenching cycles of criminalisation rather than enabling

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<sup>52</sup> The Sentencing Project, *Trends in Juvenile Justice Legislation 2011–2021* (2021).

<sup>53</sup> Saptarshi Mandal, *Responding to the 'Juvenile' in the Delhi Gang Rape Case: From Retributive Rage to Child Rights*, 48(10) *Econ. & Pol. Wkly.* 20 (2013).

<sup>54</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 15, Acts of Parliament, 2016 (India).

<sup>55</sup> Centre for Child and the Law, NLSIU, *Socio-Economic Profile of Children in Conflict with Law in Observation Homes in Karnataka* (2017).

meaningful rehabilitation. The policy focus, once centred on reformation and reintegration, now appears to be increasingly driven by deterrence and retribution—echoing the logics of the adult penal system.

While public safety is a legitimate concern, adopting an adversarial and punitive lens toward children erodes the protective ethos of juvenile justice. The retaliatory provisions of the 2015 law not only raise constitutional concerns but also deviate from international standards grounded in compassion, reintegration, and the evolving capacities of the child.

### **9. Reform or Regression? A Critical Evaluation of the 2015 Law**

The Juvenile Justice (Care and Protection of Children) Act, 2015, has been widely projected as a **progressive reform**, aimed at strengthening the child protection regime in India. Proponents argue that it addresses legislative gaps, ensures faster disposal of cases, and empowers Juvenile Justice Boards to take context-sensitive decisions.<sup>56</sup> However, when examined closely, the Act raises profound questions about whether it truly constitutes a reform or if it signals a **regression** into punitive criminal justice ideologies incompatible with child rights.

The most controversial aspect is undoubtedly the introduction of **adult trials for juveniles aged 16 to 18** in heinous offences, subject to preliminary assessment.<sup>57</sup> This feature fundamentally disrupts the presumption of diminished culpability that had long been central to juvenile jurisprudence in India. It marks a departure from the **rehabilitative ideals** that underpinned the Juvenile Justice Act, 2000, and aligns the law more closely with retributive penal frameworks intended for adults.

Critics argue that such provisions reflect not legislative reform, but **regression** influenced by populist sentiment and media-fuelled outrage following high-profile crimes.<sup>58</sup> The law appears to respond to public emotion rather than evidence-based policymaking, especially when studies continue to show that juveniles are more amenable to reform and that harsher punishments do not necessarily lead to deterrence.

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<sup>56</sup> Ministry of Women and Child Development, *Press Release on the Juvenile Justice Act, 2015* (Jan. 15, 2016).

<sup>57</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 15, Acts of Parliament, 2016 (India).

<sup>58</sup> Anup Surendranath & Arushi Garg, *Regressive Trends in Juvenile Justice: A Critique of the 2015 Act*, 58(31) *Econ. & Pol. Wkly.* 18 (2016).

Thus, while the 2015 Act does introduce structural improvements in areas like adoption and child welfare procedures, its treatment of juveniles in conflict with law—particularly older adolescents—suggests a dilution of child-centric justice. Reform, in its true sense, should expand rights, promote inclusion, and strengthen constitutional morality. By that measure, certain aspects of the 2015 Act are less a step forward than a step back.

## 10. Conclusion – Towards a Child-Centric Justice System

The evolution of juvenile justice in India has oscillated between two competing paradigms—**rehabilitation rooted in constitutional morality** and **retribution driven by public sentiment**. While the Juvenile Justice (Care and Protection of Children) Act, 2015, attempts to address contemporary challenges, it also reflects a significant shift away from the child-sensitive, restorative principles enshrined in earlier frameworks and international conventions. The introduction of adult trials for juveniles aged 16 to 18 in heinous offences represents not just a legal innovation but a **philosophical departure**. It erodes the presumption that children, by virtue of their developmental stage, deserve a distinct justice system aimed at reform and reintegration.<sup>59</sup> Although the law includes procedural safeguards such as preliminary assessments by Juvenile Justice Boards, the absence of uniform standards, adequate training, and accountability mechanisms risks entrenching structural injustices, particularly against children from marginalised socio-economic backgrounds.<sup>60</sup>

India's constitutional vision, articulated through Articles 14, 15(3), and 21, mandates that children must not only be protected but also empowered. A **truly progressive juvenile justice system** must reaffirm the belief in a child's capacity to change, drawing strength from evidence-based practices, psychological insights, and international legal obligations.<sup>61</sup>

The path forward demands **recalibration**—rolling back regressive provisions, strengthening rehabilitative infrastructure, investing in child welfare professionals, and ensuring that justice for juveniles remains transformative, not transactional. India stands at a crossroads: it can either perpetuate a cycle of punitive populism or boldly reimagine juvenile justice through the lens of compassion, dignity, and constitutional fidelity.

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<sup>59</sup> Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 237–40 (Oxford Univ. Press, 2d ed. 2017).

<sup>60</sup> Centre for Child and the Law, NLSIU, *Brief on Implementation Challenges under JJ Act, 2015* (2021).

<sup>61</sup> U.N. Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019).