
JUVENILE JUSTICE IN INDIA: TRACING THE SHIFT FROM PUNISHMENT TO REHABILITATION

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ABSTRACT

This paper explores the epistemological development of juvenile justice in India with specific reference to the paradigm shift from punitive to a rehabilitative scheme. Initially, juvenile justice in India mirrored British policies, which viewed children in conflict with the law as miniature adults and thus subjected them to identical punitive measures through the Indian Penal Code (1860). The dominant philosophy was one of deterrence disciplining children by fear instead of taking into account their developmental requirements. After independence, India slowly started reinventing juvenile justice with a more child-oriented approach, understanding that children are fundamentally different from adults in terms of their cognitive, emotional, and moral abilities. This change accelerated with India's ratification of the United Nations Convention on the Rights of the Child, 1989 (hereinafter called as UNCRC) in 1992. Under this change, by embracing a Eurocentric framework that conceives of children as right-holding persons, the Indian system of juvenile justice transitioned toward an approach emphasizing protection, rehabilitation, and reintegration rather than punishment.

The central legacy of this transformation is the Juvenile Justice (Care and Protection of Children) Act, 2015(hereinafter called as JJ Act,2015), which embodies the rehabilitative ideal through prioritization of the child's best interests, the right to a second chance, and the aim of social reintegration. This paper follows the historical and philosophical evolution from colonial punitive models to the modern rehabilitative ideals, both marking progress and the ongoing challenges to realization of the vision. In spite of positive legal reforms, large disparities between the law's rehabilitative intent and its disparate practice in action continue to persist.

Keywords: juvenile justice, populist punitiveness, retribution, rehabilitation

INTRODUCTION

The juvenile justice system is a specialized legal system that aims to meet the unique needs of children in conflict with the law. Its primary goals are protection, rehabilitation, and reintegration, focusing on a child-centered approach rather than punishment. Internationally, juvenile justice systems aim to reconcile legal accountability with the best interests of the child, recognizing that children, because of their age and immaturity, need guidance and assistance instead of punishment.

One turning point in the evolution of this system was the opening of the first juvenile court in Cook County, Illinois, in 1899, which implemented the concept of *parens patriae* the state as guardian. This reversed the focus from punitive measures to rehabilitation and became a model for the systems throughout the world.

India caught up with international trends in juvenile justice through passing its first Juvenile Justice Act in 1986, marking a formal resolve to protecting children and following international norms, such as the United Nations Convention on the Rights of the Child (UNCRC), which it signed in 1992. This resulted in a more standardized legal definition of 'child' and reform according to international standards such as the Beijing Rules. The 2000 Juvenile Justice Act also strengthened a protective and rehabilitative model.

A watershed moment in the Indian juvenile justice debate came after the 2012 Delhi gang rape¹, when one of the accused was a juvenile. A spate of public protests and media hype created the clamour for tougher punishment, particularly in crimes which were termed "heinous." The Juvenile Justice (Care and Protection of Children) Act, 2015, followed. The Act retained the majority of the rehabilitative aspects of the 2000 Act but had a controversial amendment: juveniles aged in the range of 16 to 18 years could now be tried as an adult on serious offenses, subject to assessment by the Juvenile Justice Board.

Nonetheless, the system has continued to suffer from inherent implementation issues such as poor infrastructure and unavailability of trained human resources. On account of burgeoning juvenile crime and public anxiety, the Juvenile Justice (Care and Protection of Children) Act, 2015 was passed. While retaining its rehabilitative aims, it notoriously provides for the trial as

¹ *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, AIR 2017 SC 2161

adults of children aged 16 years and over for serious offenses, representing a change towards punitive directions.²

India's system for juvenile justice evidences a persistent shift from welfare to a rights-oriented approach. But the growing focus on punitive provisions warrants careful examination to ensure that the underlying objectives of rehabilitation and reintegration remain at the forefront.

HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE IN INDIA

Colonial Foundations of Juvenile Justice in India

The history of juvenile justice in India has its roots deeply rooted in British colonial law, which initially followed a punishment and moral blame model but later incorporated reformatory elements. The first juvenile justice legislation, the Apprentices Act of 1850, aimed to target 10–18-year-old children who participated in minor offenses or vagrancy. While it was based on punitive praxis, it sought to use vocational training as a form of correction in behavior, foreshadowing early rehabilitative ideals.

The Indian Penal Code of 1860 determined age-based criminal responsibility by exempting children below seven years and conditionally exempting those between seven and twelve years³. Although recognizing differences in development, this still predominantly functioned in a punitive model.

The Reformatory Schools Act of 1876, amended in 1897, provided for the detention of boys under 15 in reformatory schools for two to seven years⁴. Although described as reformatory, these schools were focused on discipline and control, indicating ongoing dependence on imprisonment.

The Criminal Procedure Codes of 1973 provided for separate trials for juveniles⁵ and their committal to reformatories instead of prisons among adults reflecting an increased, if still limited, understanding of the necessity for differential treatment.

² Dr. Aneesh V Pillai, “Explaining the Juvenile Justice System in India: An Analytical View” BLR, 70, 75-79, 2018

³ Indian Penal Code, 1860 § 82, 83, No. 45, Acts of Parliament, 1860(India).

⁴ The Reformatory Schools Act, 1876 § 7 No. 5, Acts of Parliament, 1876(India).

⁵ The Code of Criminal Procedure, 1973 § 27 No. 2, Acts of Parliament, 1973(India).

The Indian Jail Committee (1919–1920) saw juvenile trials in regular courts as deplorable and suggested child courts and institutions. It represented a major step towards the rehabilitation and child focus of justice.

Even with these advances, colonial juvenile justice continued to be entwined with the ideas of punishment and moral responsibility. Reformatories continued to exercise disciplinary incarceration, showing the ambiguity of the period towards deterrence and evolving reformist thinking. The period set the stage for post-independence attempts to recast juvenile justice in rehabilitative, rights-oriented terms.

Post-Independence Phase: Institutionalizing Rehabilitation in Juvenile Justice

Post-independence India marked a significant shift in juvenile justice, moving away from punitive colonial legacies toward a welfare-oriented and rehabilitative approach. This transformation was driven by evolving legal thought, increased awareness of child development, and alignment with international human rights standards.

The Children Act, 1960 laid the foundation for this shift, treating juveniles as individuals in need of care and reintegration rather than as criminals. It prohibited imprisonment and capital punishment for children, banned detention in adult facilities, and introduced separate mechanisms for ‘neglected’ and ‘delinquent’ children through Child Welfare Boards and Children’s Courts⁶.

International frameworks further shaped India’s approach. The Beijing Rules (1985) promoted non-punitive, individualized care, while the UN Convention on the Rights of the Child (1992) reinforced the child’s right to dignity, development, and rehabilitation, emphasizing reintegration over retribution.

In response, the Juvenile Justice Act, 1986 established a national framework aligned with these standards, introducing Juvenile Justice Boards, Observation Homes, and Special Homes for children under 16 moving juvenile cases outside the regular criminal system and institutionalizing rehabilitation⁷.

⁶ The Children’s Act, 1960 § 4,5, 22 No. 60, Act of Parliament, 1960(India).

⁷ Juvenile Justice Act, 1986 § 6, 10, 11 No. 53, Acts of Parliament, 1986(India).

The Juvenile Justice (Care and Protection of Children) Act, 2000 deepened this shift by raising the age of juvenility to 18⁸, replacing criminal terminology with child-friendly language, and emphasizing reintegration through education, counseling, and skill development. It prohibited life imprisonment and capital punishment for juveniles, reinforcing a rights-based, rehabilitative ethos.

The Juvenile Justice Act, 2015, while allowing the trial of juveniles in the age group of 16–18 years as adults in the case of heinous offences, still had the condition of a preliminary test by the Juvenile Justice Board (JJB)⁹. This test determines the child's physical and mental strength, maturity, and comprehension of the nature and result of the crime, thereby allowing scope for differentiated treatment within the age group.

The Juvenile Justice Amendment Act, 2021, aims to make and consolidate existing provisions under the Juvenile Justice Act more child-friendly and protective, with an emphasis on adoption. Triggered by increasing rates of juvenile crime, unregulated Child Care Institutions (CCIs), the bill adds a new category of "Serious Offences" to further safeguard juveniles from trial by adults¹⁰. It gives District Magistrates more powers, such as monitoring juvenile justice systems and supervising adoption orders to speed up court procedures. The bill also imposes tougher controls on CCIs and Child Welfare Committees to make them answerable and emphasize rehabilitation. Though it is a step forward on paper, there are issues regarding effective implementation because of bureaucratic red tape and the requirement for proper training and monitoring.

Moreover, India's inherited legal doctrine of *doli incapax*¹¹, embedded in the *Bhartiya Nyay Sanhita* (BNS), presumes that children below the age of seven lack criminal intent. For children aged seven to twelve, the presumption of incapacity is rebuttable, introducing a grey area that further complicates legal interpretations of childhood and culpability.

This period reflects a fundamental shift in India's juvenile justice philosophy from punitive responses to a child-centered model that prioritizes care, protection, and long-term reintegration.

⁸ The Juvenile Justice (Care and Protection) Act, 2000 § 2(k) No. 56, Acts of Parliament, 2000(India).

⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015 § 15 No. 2, Acts of Parliament, 2016(India).

¹⁰ The Juvenile Justice (Care and Protection of Children) Act, 2021 § 86 No. 23, Acts of Parliament, 2021(India).

¹¹ *Bhartiya Nyay Sanhita*, 2023 § 20, 21 No. 45, Acts of Parliament, 2023(India).

TRACING THE SHIFT

Scientific advancements in child psychology and neuroscience have significantly influenced juvenile justice by demonstrating that adolescents differ from adults in cognitive maturity, emotional regulation, and impulse control. These insights support the legal principle of *parens patriae*, justifying state intervention and reinforcing the rehabilitative orientation of India's juvenile justice system.¹²

The Juvenile Justice (Care and Protection of Children) Act, 2000 reflected this developmental understanding by raising the age of juvenility to 18, aligning with the UN Convention on the Rights of the Child (UNCRC). It recognized that individuals under 18 are still undergoing key phases of psychosocial development and are more responsive to reform.

International frameworks, particularly the UNCRC and the Beijing Rules (1985), have shaped India's rights-based approach to juvenile justice, emphasizing non-discrimination, child welfare, and reintegration. These standards inspired key reforms, including the JJ Acts of 1986 and 2000, which prioritized education, diversion, and procedural safeguards.

The JJ Act of 2015, while permitting juveniles aged 16–18 to be tried as adults for heinous crimes, introduced a preliminary assessment by the Juvenile Justice Board to determine their maturity and understanding retaining some space for differentiated treatment. However, critics note inconsistent application of this principle, citing a lack of judicial training and a gap between scientific understanding and courtroom decisions. The 2015 amendment has been criticized for departing from the international commitments by allowing punitive treatment of older adolescents, thus challenging the principle of universal childhood and shifting the system toward retribution.¹³

Indian jurisprudence has largely upheld the rehabilitative ethos. In *Subramanian Swamy v. Raju* (2014)¹⁴ and *Babli v. State of Haryana* (2013)¹⁵, courts reaffirmed the importance of reform

¹² Gauri Pillai & Shrikrishna Upadhyay, "Juvenile Maturity And Heinous Crimes: A Re-Look At Juvenile Justice Policy In India", Manupatra at <https://docs.manupatra.in/newsline/articles/Upload/B2ED7DC9-B6A8-4780-8A9C-C015A5C48C71.pdf> (accessed on 26 April 2025)

¹³ Bhat, N. R., "Juvenile Justice in India: A Critical Appraisal of Juvenile Justice (Care and Protection of Children) Act, 2015" IJSW, 77, 200, 234-245, 2016.

¹⁴ *Subramanian Swamy v. Raju*, 2014 AIR SCW 2021

¹⁵ *Babli v. State of Haryana*, 2 January, 2013

and reintegration. Yet, public outrage following the Nirbhaya case (2012)¹⁶ spurred demands for harsher juvenile laws. Although the Justice Verma Committee opposed reducing the age of juvenility, political pressure led to the 2015 amendment a shift seen by many as driven more by public sentiment than developmental science or legal principle.

This tension between rehabilitation and retribution continues to shape India's juvenile justice landscape, challenging its commitment to a truly child-centered legal framework.

The Juvenile Justice Amendment Bill, 2021, passed by the Lok Sabha, seeks to clarify and strengthen existing provisions under the Juvenile Justice Act, focusing on child protection and adoption. Prompted by rising juvenile crime rates, unregulated Child Care Institutions (CCIs), and controversies like the Nirbhaya case, the bill introduces a new category of "Serious Offences" to better protect juveniles from adult trials. It grants District Magistrates greater authority, including overseeing juvenile justice mechanisms and issuing adoption orders to expedite processes. The bill also enforces stricter regulations for CCIs and Child Welfare Committees to ensure accountability and prioritize rehabilitation. While it marks progress on paper, concerns remain about effective implementation due to bureaucratic burdens and the need for adequate training and oversight.

PUBLIC PERCEPTION: POPULIST PUNITIVENESS VS. REHABILITATIVE JUSTICE

One of the most significant challenges lies in reconciling public demand for retribution with the system's core rehabilitative principles. In the aftermath of the **Delhi Gang Rape Case (2012)**¹⁷, widespread public outrage over the involvement of a juvenile led to a national outcry for harsher penalties. This sentiment culminated in the **Juvenile Justice (Care and Protection of Children) Act, 2015**, which allowed juveniles aged 16–18 to be tried as adults for heinous offences, subject to a preliminary assessment by the Juvenile Justice Board (JJB).

This shift reflects what scholars have termed "**populist punitiveness**" a legislative response more rooted in emotional and political pressures than in developmental science or child rights jurisprudence. While intended to assuage public anger, such measures arguably represent a

¹⁶ *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, AIR 2017 SC 2161

¹⁷ *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, AIR 2017 SC 2161

regression from the child-centric, reformative ethos enshrined in earlier legislation and in **international frameworks** like the **UNCRC**, which India has ratified.

The underlying epistemic tension here lies in a clash between public perceptions of crime and justice, and the knowledge generated by psychology, neuroscience, and child rights advocacy. As the sources suggest, yielding to punitive public sentiment may risk eroding the long-term goals of rehabilitation and reintegration, replacing them with short-term displays of retributive justice that are inconsistent with global best practices¹⁸.

DOMINANT DISCOURSES TODAY: REHABILITATION OR RETRIBUTION?

Current discourses around juvenile justice in India reflect a **complex interplay between rehabilitative ideals and retributive impulses**. On paper, the system continues to prioritise rehabilitation and reintegration, as emphasised in the preambles and objectives of the Juvenile Justice Acts of 2000 and 2015. Legal scholarship and key judicial pronouncements, including *Subramanian Swamy v. Raju* (2014)¹⁹ and *Gaurav Jain v. Union of India* (1997)²⁰, have reaffirmed the primacy of the child's welfare over punitive outcomes.

However, the inclusion of provisions for trying older adolescents as adults in the 2015 Act reflects a **growing influence of punitive discourse**, particularly in response to media and public pressure. This trend, often referred to as "**populist punitiveness**", suggests a shift in epistemology from an understanding rooted in child development and rights to one driven by fear, retribution, and a desire for immediate justice²¹.

Compounding this tension is the practical reality: **under-resourced juvenile institutions, inconsistent application of procedures, and the influence of adult criminal justice frameworks** on juvenile courts often result in outcomes that contradict the system's reformative intent. The enduring gap between stated policy and its execution raises concerns about the sustainability of a truly rehabilitative juvenile justice system in India.

¹⁸ Shailesh Kumar, "Shifting Epistemology of Juvenile Justice in India", 41, Contexto Intermacional, 113, 122-123, 2019

¹⁹ *Subramanian Swamy v. Raju*, 2014 AIR SCW 2021.

²⁰ *Gaurav Jain v. Union of India*, 9 July, 1997.

²¹ SHAILESH, *supra* note 17 at 8

RECOMMENDATIONS

To build a knowledge-driven and just juvenile justice system, India must prioritize epistemic transformation in the following areas:

1. Education and Public Discourse

- Promote evidence-based narratives over fear-driven myths through public awareness campaigns.
- Engage media as a partner in fostering informed, balanced reporting, especially after high-profile juvenile cases.
- Encourage civil society and educators to contextualize juvenile offending within socio-economic and psychological frameworks to build public empathy.

2. Judiciary and Legal Training

- Provide continuous, specialized training for judicial officers on child development, trauma-informed care, and international child rights.
- Equip judges with interdisciplinary insights to ensure child-centric, not punitive, decision-making.

3. Policy and Institutional Support

- Ensure reforms are backed by resource planning, including funding for mental health, education, and reintegration services.
- Strengthen implementation through robust monitoring and accountability systems.
- Align policy proactively with current research on adolescence and rehabilitative justice.

CONCLUSION

India's juvenile justice system is at a critical juncture, with the pull of punitive instincts pitted against the tenets of child-focused justice. While past reforms such as the Juvenile Justice (Care and Protection of Children) Act of 2000 had espoused a return to rehabilitative methods based

on children's rights, the 2015 amendment represented a turn towards a more retributive structure. This shift, permitting juveniles between 16 and 18 years to be tried as adults for serious offenses, was more the result of public outcry over sensationalized cases than data or psychological understanding. Such populist policymaking erodes India's constitutional commitment to treating children with care, protection, and dignity.

India needs to reaffirm its commitment to evidence-based and ethically grounded reforms to move ahead. This involves integrating developmental psychology, neuroscience, criminology, and social work into all areas of the juvenile justice system. Education for judges, law enforcement, and social workers must incorporate this interdisciplinary knowledge. Public opinion needs to move away from demonizing children and towards understanding their potential for change. Legislation must emphasize rehabilitation over punishment. By grounding juvenile justice in knowledge and not in fear, India can create a system that is not only legally strong but also truly humane and socially progressive.

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- United Nation Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)