
BALANCING REHABILITATION AND ACCOUNTABILITY: DISTINGUISHING CORE PHILOSOPHIES IN THE TREATMENT OF JUVENILE OFFENDERS IN INDIA AND VIETNAM

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ABSTRACT

Juvenile justice systems must balance two fundamental objectives: rehabilitating young offenders while ensuring accountability and protecting society. The manner in which this balance is achieved reflects each jurisdiction's underlying philosophy of juvenile justice. This article compares India's Juvenile Justice Act 2015 with Vietnam's Law on Juvenile Justice 2024, examining how each system addresses these competing objectives in treating juvenile offenders. Focusing on diversionary mechanisms, thresholds for criminal prosecution, and institutional design, the study finds that India adopts a differentiated model that strongly prioritises rehabilitation while permitting conditional accountability for juveniles aged 16 to under 18 who commit heinous offences, subject to cognitive capacity assessment. Vietnam, by contrast, employs a broadly discretionary model in which diversion or criminal prosecution may be applied to juvenile offenders of all age groups based on a necessity assessment conducted by procedural authorities. The article argues that while both models seek to balance rehabilitation and accountability, they reflect distinct normative choices and generate different structural risks. Comparative insights are offered to inform legislative refinement in both jurisdictions.

Keywords: accountability; diversion; judicial proceedings; juvenile; rehabilitation

Introduction:

Children¹ occupy a distinctive position within criminal justice systems, where the objectives of crime control intersect with the obligation to safeguard the best interests of the child. Unlike adult criminal justice, juvenile justice goes beyond punishing unlawful conduct – it aims to rehabilitate offenders, reintegrate them into society, and support their healthy development. International legal instruments like the UN Convention on the Rights of the Child and the Beijing Rules embed these principles, encouraging States to prioritize diversion and non-custodial measures when appropriate.

At the same time, increasing public concern over serious and violent offences committed by juveniles has intensified debates over accountability and social protection. Legislators and courts must often decide whether to divert juvenile offenders from formal criminal proceedings or subject them to judicial processes emphasizing responsibility and deterrence. This tension is particularly pronounced in relation to older juveniles, whose cognitive maturity and moral culpability are frequently contested. Fundamentally, there exist two modalities for handling juvenile offenders, comprising: diversion (measures not involving judicial proceedings) and judicial proceedings.² Accordingly, diversion³ comprises measures of a highly restorative nature, possessing minimal punitive or deterrent attributes, primarily designed to educate the juvenile to rectify their errors, foster their development into law-abiding citizens, and facilitate early reintegration into the family and community. Conversely, judicial proceedings constitute the procedure for criminal prosecution to adjudicate the individual at a trial, culminating in the imposition of a specific penalty. This mechanism entails a high degree of accountability (while retaining a certain restorative element); beyond its punitive and reformative effects on the offender, it also serves to combat crime and ensure social safety.

Against this background, this article examines how India and Vietnam conceptualise and

¹ Pursuant to Section 2 (12) and (13) of the JJA 2015: “child” means a person who has not completed eighteen years of age; “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. Conversely, under Article 1 of the Law on Children 2016, a “Child” is defined as a person under 16 years of age, and according to Clause 1, Article 3 of the Law on Juvenile Justice 2024, a “Juvenile offender” denotes a person who commits a crime as prescribed by the Penal Code while aged between the full age of 14 and under 18 years. Consequently, individuals aged between 16 and under 18 years constitute children within the Indian jurisdiction, whereas they do not satisfy the legal definition of children in Vietnam (where they are designated solely as minors).

² Le Huynh Tan Duy, *The Juvenile Justice Model Oriented by the United Nations*, 5 J. Legal Sci. 33 (2014).

³ The Committee on the Rights of the Child, in General Comment No. 24 (2019) on children’s rights in the child justice system, defines diversion as measures for referring children away from the judicial system, at any time prior to or during the relevant legal proceedings.

operationalise the balance between rehabilitation and accountability in their juvenile justice systems. Employing a normative comparative legal methodology, the study analyses statutory provisions governing diversion, criminal prosecution, and institutional decision-making under India's Juvenile Justice (Care and Protection of Children) Act 2015 and Vietnam's Law on Juvenile Justice 2024. By comparing legal norms, underlying principles, and institutional arrangements, the article seeks to identify the core philosophies informing the treatment of juvenile offenders in both jurisdictions, assess their respective strengths and limitations, and contribute to broader scholarly discussions on child-centred justice in comparative perspective.

Analysis and Discussion:

A philosophy of robust rehabilitation applies to children under the age of 16 (regarding all infractions) and children aged between 16 and under 18 years who commit non-heinous offenses; flexible adjudication, predicated on a capacity assessment, is employed for children aged between 16 and under 18 years who commit heinous offenses.

This constitutes the jurisprudential philosophy governing the treatment of juvenile offenders in India. Indeed, Section 3(xv) of the Juvenile Justice (Care and Protection of Children) Act, 2015 stipulates:

“Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole”.

This provision shows that diversion is the preferred approach for children in conflict with the law. This principle evidences that the objective of rehabilitation is accorded paramount importance. With respect to children under the age of 16 (committing any offense) or children aged between 16 and under 18 years committing non-heinous offenses, the legislature presumes that this cohort inherently possesses insufficient cognitive capacity compared to adults. Consequently, they are invariably afforded the conditions for rehabilitation and community reintegration, being subject strictly to diversionary measures. The diversionary measures to which they may be amenable include: advice or admonition, group counselling, community service, pay fine, probation of good conduct, [or] to be sent to a special home⁴. These measures possess a highly restorative character, aiming primarily at education and reintegration into the

⁴ Section 18.1 The Juvenile Justice (Care and Protection of Children) act, 2015.

family and community. These individuals are never deemed to possess full cognitive capacity, nor are they adjudicated as adults. Regarding individuals aged between 16 and under 18 years, this constitutes a highly sensitive demographic; biologically and psychologically, certain individuals within this age bracket may possess full cognitive awareness, while others may lack the maturity equivalent to that of an adult. Consequently, the legislature has adopted a flexible approach to adjudication, seeking to balance rehabilitation with accountability. Should individuals in this age group commit ordinary offenses (non-heinous offenses), they are treated in a manner identical to the cohort under 16 years of age. However, in instances where they commit heinous offenses, they may be liable to be tried as adults under the Penal Code and in accordance with criminal procedure, or they may remain subject to diversionary measures. Specifically, regarding a heinous offense alleged to have been committed by a child aged between 16 and under 18 years, the Juvenile Justice Board (JJB) shall conduct a preliminary assessment to determine whether the child comprehended the consequences of the alleged offense and whether the child possesses the capacity to be tried as an adult⁵. This constitutes the preliminary screening phase, wherein the JJB exercises decisive authority regarding the mode of adjudication. Upon completion of the assessment, should the JJB deem it necessary to try the child as an adult, it shall transfer the case proceedings to the competent Court. This serves as a transfer provision, subjecting the child to trial under the Penal Code and applicable criminal procedures in the same capacity as an adult. Under these circumstances, the individual may be subject to a term of imprisonment, or life imprisonment with the possibility of release, contingent upon a re-evaluation once the individual attains the age of 21⁶. Conversely, should the JJB find no necessity to try the child as an adult, it shall proceed to dispose of the case in accordance with the remaining provisions of the JJA 2015; specifically, the child aged between 16 and under 18 years shall remain subject to the system of diversionary measures.

Consequently, it is evident that the Indian adjudicatory philosophy regarding offenders aged between 16 and under 18 years is characterized by flexibility, operating under a bifurcation of potential outcomes: either their treatment as children via diversionary measures, or their prosecution as adults pursuant to the Penal Code and the Code of Criminal Procedure. This determination depends on the nature of the offense committed and predicated upon the preliminary assessment conducted by the JJB. This statutory provision originated from a heinous incident that occurred on December 16, 2012, in New Delhi, India, known as the

⁵ Section 15 The Juvenile Justice (Care and Protection of Children) act, 2015.

⁶ Section 18.3 The Juvenile Justice (Care and Protection of Children) act, 2015.

Nirbhaya case⁷. This case involved the gang rape of a 23-year-old female student by six males, including a 17-year-old who was alleged to be the most active perpetrator. However, under the statutory regime prevailing at that time, this individual was adjudicated by the JJB within the framework of diversionary measures, whereas his co-accused were tried by the ordinary courts and faced imprisonment or capital punishment⁸. The case provoked widespread public indignation regarding the disposition of the 17-year-old perpetrator. Public sentiment demanded that he be held to a higher standard of accountability and subjected to severe punitive sanctions. However, the prevailing legal architecture at that juncture precluded authorities from adjudicating in accordance with the popular will. Consequently, in response to overwhelming sociopolitical pressure, the Indian legislature enacted the Juvenile Justice Act, 2015, incorporating the aforementioned flexible provisions regarding offenders aged between 16 and under 18 years. This new statutory regime empowers authorities to prosecute individuals aged between 16 and under 18 years, who commit similar offenses in the future, as adults, thereby subjecting them to commensurately severe penalties. This legislative trajectory was designed to assuage public outcry surrounding the Nirbhaya case, while simultaneously representing a compromise that strikes an equilibrium between the principles of rehabilitation and accountability.

However, this new regulatory approach has encountered substantial criticism from the academic community. According to Mr. Atul S. Jaybhaye, within the history of child rights in India, the JJA 2015 disregards both the Constitution of India and the United Nations Convention on the Rights of the Child; this new legislation represents a regression compared to the standards established 150 years ago.⁹ Similarly, Shruti Bedi argues that the JJA 2015 constitutes a retrograde step, contravening the initial progressive philosophies of juvenile justice. This stands in contrast to the many nations that have adopted the concept of restorative

⁷ The matter eventually came up before the Supreme Court and was decided by a constitutional bench of three judges, Dipak Mishra, R. Banumathi & Ashok Bhushan, JJ. on 5 May, 2017. *Mukesh and Anrs. v. NCT Delhi (Nirbhaya case)* (2017) 6 SCC 1. See case comment on: <https://legaldesire.com/mukesh-and-anrs-vs-nct-delhi-nirbhaya-case2017-6-scc-1-case-comment/>.

⁸ The other accused were tried in a regular sessions court and were found guilty of the offences under Sections 376 (2)(g) and 302 of the Indian Penal Code, 1860. They were sentenced to death by the trial court. Their appeal against the aforesaid conviction and the sentence imposed has since been dismissed, and the death penalty was confirmed by the High Court of Delhi. The Supreme Court has upheld the death sentence for the accused, calling it a rarest of rare case. See, *Subramanian Swamy v. Raju through Member, Juvenile Justice Board and Anr.* (2014) 8 SCC 390. Read more at: Rautray, S. (6 May 2017), 'Supreme Court confirms death sentence for four convicts in Nirbhaya gang rape case' *The Economic Times*. Retrieved from: <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-confirms-death-sentence-for-four-convicts-in-nirbhaya-gang-rape-case/articleshow/58531130.cms>.

⁹ Mr. Atul S. Jaybhaye, *Critical Analysis of Juvenile Justice System in India*, Bharati L. Rev., 103 (2017).

justice, even regarding brutal crimes such as murder and rape committed by adults.¹⁰ We contend that this model confronts a major challenge regarding fairness. For if it is presumed that individuals aged 16 to under 18 possess sufficient cognitive capacity comparable to adults (as determined via the JJB's preliminary assessment) to warrant their transfer for trial as adults, why then is this applied exclusively to heinous offences rather than all categories of crime. We argue that if they are deemed to possess adult-level cognitive maturity regarding heinous offences, they arguably possess sufficient maturity regarding other crimes as well. However, it appears the Indian legislature is willing to accept the risks and consequences associated with ordinary crimes (non-heinous offences). Regarding ordinary crimes, the scales remain heavily tipped toward the principles of rehabilitation and the protection of the juvenile's best interests; only when confronted with heinous offences does the balance begin to shift toward the principle of accountability. This model does, however, possess certain merits. In cases of heinous offences, the dispositions available within the juvenile justice system – the most severe being a 3-year stay at a Special Home – not only fail to meet the requirements of crime prevention and social safety but also, at times, lack sufficient efficacy in educating and rehabilitating the juvenile into a law-abiding citizen. Therefore, with such flexible regulations, the JJB shall meticulously research and examine each individual case to determine whether a transfer is warranted. We posit that the Indian legislature exercised prudent deliberation and measurement when prescribing the flexible and differentiated handling of offenders aged 16 to under 18, ensuring the closest possible alignment with the principle of rehabilitation without disregarding the principle of accountability.

We submit that India's current model for handling juvenile offenders exhibits the following merits: (1) Flexibility in processing and individualization regarding heinous offences: The JJB's preliminary assessment mechanism (Section 15 of the JJA 2015) enables the system to distinguish between children who are cognitively immature and those possessing a maturity level approximating that of adults (based on cognitive capacity). This facilitates an appropriate disposition for distinct cases, aiming to balance the requisites of rehabilitation and the protection of the child's best interests with the necessity of ensuring public safety and crime prevention. (2) Persons under 16 and those aged 16 to under 18 who have not committed heinous offences receive robust protection: The philosophy of rehabilitation is applied to the fullest extent, affording them the opportunity to rectify their errors and become law-abiding

¹⁰ Shruti Bedi, *The Juvenile Justice Law in India: Are You Old Enough to Commit a Crime?*, 5 Vietnamese J. Legal Sci. 16 (2021).

citizens in the future. (3) An absolute cap on the deprivation of liberty (where no transfer occurs): If not tried as adults, the maximum deprivation of liberty a juvenile is subject to is a 3-year stay at a Special Home. This serves as a robust safeguard for the rehabilitative objective, utilizing friendly, highly educational diversionary measures. (4) Institutional separation: The system clearly delineates between the Juvenile Justice Board (JJB) (handling offenders) and the Child Welfare Committee (CWC) (care and protection), thereby ensuring specialization for each respective function. Conversely, the current Indian model for handling juvenile offenders presents the following limitations: (1) Violation of juvenile procedural principles (regarding transferred individuals): Permitting trial as an adult (notwithstanding sentencing caps) is criticized for contravening the child-friendly procedural norms of the United Nations Convention on the Rights of the Child and undermining the philosophy of rehabilitation. Transferred juveniles are subjected to a significantly harsher adult adversarial process. (2) Subjectivity and risk of social pressure: The decision to transfer relies excessively on the JJB's assessment of cognitive capacity; however, this determination is susceptible to public pressure and the brutality of the crime (as witnessed in the aftermath of the Nirbhaya Case), rather than being grounded in behavioral and psychological science. (3) Implementation challenges: The Indian system confronts substantial hurdles regarding case pendency before the JJB and a deficit in professional resources required to conduct the in-depth psychological reports necessary for capacity assessment.

The philosophy of prioritizing the principle of rehabilitation and flexible handling based on necessity assessment

The philosophy of flexible handling based on necessity assessment is understood as the philosophy governing the treatment of juvenile offenders, wherein the determination to subject them to a system of diversionary measures or to adjudicate them under the Penal Code and criminal judicial proceedings depends on a necessity assessment conducted by competent authorities, based on multiple factors. This constitutes the current philosophy regarding the handling of juvenile offenders in Vietnam. Indeed, Clause 2 and Clause 3 of Article 5 of the Law on Juvenile Justice 2024 stipulate as follows:

“Criminal prosecution of juvenile offenders shall be pursued only where necessary and primarily for the purpose of education, assisting them in rectifying their errors, fostering healthy development, and becoming citizens useful to society.

The handling of juvenile offenders must be predicated upon the criminal act, personal background, age, level of maturity, their cognitive capacity regarding the social dangerousness of the criminal act, the causes and conditions giving rise to the crime, and the requirements of crime prevention.”

Clause 1, Article 35 of the Law on Juvenile Justice 2024 further stipulates:

“The application of diversionary measures must be predicated upon the nature and degree of danger of the criminal act; the potential for education and rehabilitation of the juvenile offender; and the safety of the victim and the community.”

From the foregoing provisions, clearly the determination of whether a juvenile offender (of any age from 14 to under 18) committing a crime (irrespective of the type of offence) shall be subject to criminal prosecution (i.e., subject to penalties under the Penal Code and criminal judicial proceedings) or handled via diversionary measures depends on a necessity assessment by the procedural authorities. This assessment is grounded in factors such as: the criminal act, personal background, age, level of maturity, their cognitive capacity regarding the social dangerousness of the act, the causes and conditions precipitating the crime, the requirements of crime prevention, the juvenile's potential for education and rehabilitation, and the safety of the victim and the community. Should the juvenile qualify for (i.e., it is deemed necessary to apply) diversionary measures, they may be subject to one or more of the following measures: reprimand; apology to the victim; compensation for damage; education at the commune or ward level; home supervision; restriction on travel hours; prohibition from contact with persons at risk of inciting further juvenile delinquency; prohibition from visiting locations at risk of inciting further juvenile delinquency; participation in academic or vocational training programs; participation in psychological treatment or counseling; performance of community service; or education at a reformatory school¹¹. These measures possess a highly rehabilitative character and aim for community and family reintegration, analogous to the provisions of India's JJA 2015. Conversely, where a juvenile does not satisfy the eligibility criteria for diversionary measures, they shall be subject to criminal prosecution and liable to penalties pursuant to the Penal Code and criminal judicial proceedings. However, in instances where a juvenile is subject to criminal prosecution, they shall be guaranteed friendly and simplified procedural mechanisms that are commensurate with the psychological state, age, level of

¹¹ Article 36 of the Law on Juvenile Justice 2024.

maturity, and cognitive capacity of the juvenile¹². The penalties to which juveniles may be subject include: warning, fine, non-custodial reform, and imprisonment for a definite term. Where imprisonment is imposed, the maximum duration to which a juvenile may be subject is 12 years for individuals aged 14 to under 16, and 18 years for individuals aged 16 to under 18¹³ and numerous other mitigating and favorable provisions. The Court shall apply imprisonment for a definite term to a juvenile offender only where it deems that other penalties and measures are ineffective for deterrence and prevention; when imposing imprisonment for a definite term, the Court shall grant the juvenile offender a lighter sentence than that applied to a corresponding adult offender and for the shortest appropriate duration¹⁴.

Key differences exist between India's Children's Court and Vietnam's Family and Juvenile Court that warrant closer examination. The Children's Court possesses the authority to conduct a review following a transfer order by the JJB; should this Court determine not to try the child as an adult, the dossier is remanded to the JJB to handle the child via diversionary measures. If the Children's Court decides to proceed with trial as an adult, it assumes the full powers of a Court of Session, adjudicating individuals aged 16 to under 18 as adults subject to specific penalties. Conversely, the Family and Juvenile Court of Vietnam holds jurisdiction to adjudicate all cases involving juvenile offenders (aged 14 to under 18) and determines whether the juvenile receives diversionary measures (if not previously applied by the Investigation Agency and the Procuracy) or is tried under the Penal Code and criminal judicial proceedings subject to specific penalties. When adjudicating a juvenile and pronouncing a sentence, particularly a sentence of imprisonment, the Family and Juvenile Court must provide a justification as to why diversionary measures or non-custodial penalties could not be applied. Furthermore, the Family and Juvenile Court must ensure that procedural formalities and the organization of the trial are friendly, simplified, and commensurate with the psychology, age, level of maturity, and cognitive capacity of the juvenile.

From the foregoing provisions and analysis, clearly the philosophy governing the handling of juvenile offenders places the principle of rehabilitation and the guarantee of the best interests of the juvenile in a position of higher priority¹⁵, yet the principle of accountability,

¹² Article 6 of the Law on Juvenile Justice 2024.

¹³ Article 119 of the Law on Juvenile Justice 2024.

¹⁴ Clauses 4 and 5, Article 12 of the Law on Juvenile Justice 2024.

¹⁵ Article 11 of the Law on Juvenile Justice 2024 stipulates: "*Diversion measures shall be prioritized for juvenile offenders throughout all stages of investigation, prosecution, and adjudication...*"

the assurance of social safety, and the combating and prevention of crime¹⁶ remain subject to thorough consideration. This rationale may be elucidated by the legislature's aspiration to align Vietnamese jurisprudence with the United Nations legal framework regarding children's rights and to safeguard the best interests of juvenile offenders; however, in recent years, juvenile delinquency in Vietnam has exhibited an upward trajectory in both frequency and severity.¹⁷ Caught between the dual imperatives of child protection and the prevention of crime to safeguard society, the Vietnamese legislature has carefully weighed and calibrated its approach, ultimately adopting the aforementioned model for handling juvenile offenders. Prior to the enactment of the Law on Juvenile Justice 2024, the Penal Code and the Criminal Procedure Code dedicated specific chapters to the regulation of juvenile offender processing. With the advent of the Law on Juvenile Justice 2024, this philosophy has been further entrenched and perpetuated, incorporating numerous positive enhancements. Through the Law on Juvenile Justice 2024, Vietnam's juvenile justice system has acquired its first specialized statute, establishing a clearer and more specific legal framework governing the disposition of juvenile offenders.

We submit that Vietnam's current model for handling juvenile offenders possesses the following merits: (1) Flexibility in disposition and individualization regarding each specific case. The determination of whether to apply diversion measures or to proceed with criminal prosecution and adjudication is made by the competent procedural authorities, contingent upon a necessity assessment involving multiple factors. This facilitates a tailored course of action for unique cases, aiming to strike a balance between the imperatives of rehabilitation and the protection of the minor's best interests, while simultaneously ensuring public safety and the prevention of crime. The diverse array of diversion measures and non-custodial penalties affords procedural authorities a breadth of appropriate options, thereby granting minors greater opportunities for rehabilitation and the avoidance of incarceration. (2) Absolute limits on the deprivation of liberty: Should diversion measures be applied, the maximum duration of deprivation of liberty imposed upon a minor is 2 years of education at a reformatory school. This constitutes a robust safeguard for the rehabilitative objective. (3) Restrictions on the

¹⁶ Article 12 of the Law on Juvenile Justice stipulates: "*Penalties imposed upon juvenile offenders are primarily aimed at educating them to possess a sense of respect for and observance of the law and ethical standards and lifestyle, preventing them from committing new crimes, and serving the functions of crime prevention and combat...*"

¹⁷ Nguyen Duy Huy, Comments on the Draft Law on Juvenile Justice Regarding the Institution of Diversion for Juvenile Offenders, *Phap Ly Mag.* (2024), <https://phaply.net.vn/gop-y-du-thao-luat-tu-phap-nguo-chua-thanh-nien-ve-che-dinh-xu-ly-chuyen-huong-doi-voi-nguo-chua-thanh-nien-vi-pham-phap-luat-a258034.html>.

application and duration of imprisonment: Should a custodial sentence be imposed upon a minor, the Court is obligated to articulate why diversion measures and other non-custodial penalties were deemed inapplicable. The maximum imprisonment terms to which a minor may be subject are as follows: for persons aged 16 to under 18, the maximum term is 18 years for murder, rape, rape of a person under 16, sexual coercion of a person from 13 to under 16, and illegal production of narcotic substances, while the maximum is 15 years for other offenses; for persons aged 14 to under 16, the maximum term is 12 years for murder, rape, rape of a person under 16, sexual coercion of a person from 13 to under 16, and illegal production of narcotic substances, while the maximum is 9 years for other offenses. While we do not hold this specific aspect in high regard, the provisions regarding the limitations and duration of imprisonment evidence the significant effort exerted by Vietnamese legislators in carefully weighing the balance between the principles of rehabilitation and accountability. (4) Absolute protection of minors within a friendly processing procedure. Whether a minor is subject to diversion measures or adjudicated via criminal proceedings, the processing procedure is guaranteed to remain friendly; they are neither treated nor tried in the same manner as adults. Furthermore, Vietnam's current model for handling juvenile offenders presents the following limitations: (1) Excessive flexibility in selecting the disposition for juvenile offenders is prone to arbitrariness or subjective assessment. Even persons aged 14 to under 16 and persons aged 16 to under 18 committing less serious crimes, albeit through negligence, may still be prosecuted under criminal procedure and face imprisonment. This is because the determination of whether to apply diversion measures remains subject to the review and decision of the procedural authorities. (2) There is an absence of provisions for mandatory diversion, for instance, regarding persons aged 14 to under 16 or persons aged 16 to under 18 committing less serious crimes through negligence. All instances of juvenile offending must be reviewed and the disposition determined by procedural authorities. Consequently, the restorative principle within Vietnam's philosophy on handling juvenile offenders is not yet sufficiently robust. (3) Resource challenges: As the Law on Juvenile Justice 2024 is very new, its implementation faces numerous challenges, such as: a shortage of formally trained psychological and social work professionals, inconsistent procedures for applying diversion measures, and a lack of synchronized coordination among agencies.

Conclusion:

In summary, the juvenile justice philosophies of India and Vietnam each possess distinct merits and limitations. The philosophies of the two nations are not identical; they exhibit

specific convergences and divergences contingent upon the respective political, economic, and social contexts. India demonstrates a robust restorative philosophy regarding children under 16 (for all infractions) and children aged 16 to under 18 committing ordinary crimes (excluding heinous offences). These juveniles are strictly guaranteed the application of diversion measures and are never subjected to harsh procedural formalities or imprisonment. Conversely, persons aged 16 to under 18 committing heinous offences are handled with flexibility based on an assessment of cognitive capacity, reflecting a balance with the objective of accountability; they may be subject to diversion or face proceedings analogous to adults and imprisonment. In contrast, Vietnam operates under a philosophy of excessive flexibility, lacking provisions for mandatory diversion; rather, in every instance and across all age groups, the procedural authorities review and evaluate multiple factors to determine whether to apply diversion measures or to proceed with criminal prosecution and adjudication. In instances where persons aged 16 to under 18 in India are not granted diversion, they face rigorous proceedings similar to adults and a maximum penalty of life imprisonment (with conditions for amnesty or sentence reduction). Conversely, in Vietnam, should a minor face criminal prosecution, friendly procedural protocols are applied, carrying a maximum imprisonment term of 18 years for persons aged 16 to under 18, and 12 years for persons aged 14 to under 16. Additionally, we advance several recommendations for the legislative refinement of both India and Vietnam. Regarding India: The Children's Court should be developed as a friendly model, adhering to friendly procedural rules dedicated to the adjudication of juvenile offenders; the maximum penalty of life imprisonment (with conditions for amnesty or sentence reduction) applicable to persons aged 16 to under 18 committing heinous offences should be reduced to fixed-term imprisonment; and additional diversion measures should be introduced to ensure a diverse and flexible methodological approach for specific cases. Regarding Vietnam: The restorative philosophy requires significantly more robust reinforcement, specifically by mandating instances where the application of diversion is absolute, particularly for uncompleted crimes, consequences of minor gravity, or negligence; further reducing the maximum imprisonment limits of 18 years for persons aged 16 to under 18, and 12 years for persons aged 14 to under 16; and strengthening the workforce of formally trained psychological and social experts to provide precise proposals serving as a reliable basis for procedural authorities when determining the disposition of juvenile offenders.