
RESTORATIVE JUSTICE IN INDIA'S JUVENILE SYSTEM: RECONCILING REFORM OF THE CHILD, THE RIGHTS OF VICTIMS, AND THE SAFETY OF THE PUBLIC

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ABSTRACT

Of all the criminal-justice statutes in India, the Juvenile Justice (Care and Protection of Children) Act, 2015 comes closest to a restorative ideal, since it favours reform over retribution.¹ This paper looks at how restorative thinking shapes the treatment of children in conflict with law (CCL) through diversion, counselling, community service, and procedures designed to avoid stigma. It also takes up a difficult question that has dogged the field since 2012: how to respond to public demands for harsh treatment of sixteen-to-eighteen-year-olds who commit heinous offences, without abandoning the child's rights or forgetting the victims of juvenile crime, who are too often overlooked. The paper's position is that India needs a balanced restorative model, one that makes children answerable for what they have done without branding them as criminals, gives victims a real voice, and keeps communities safe.

Keywords: Juvenile Justice; Children in Conflict with Law; Rehabilitation; Diversion; Reintegrative Shaming.

¹ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016 (India)

1. Introduction

Few legal systems today would deny that a child who breaks the law deserves a different response from an adult. The justification lies in developmental reality. Young people judge risk less reliably, control impulses less well, bend more easily to the pressure of friends and family, and have a far greater chance of changing course. International instruments reflect this. The Convention on the Rights of the Child asks States to handle an accused child in a way that supports the child's sense of dignity and worth and encourages reintegration into society.² The Beijing Rules of 1985 place the juvenile's well-being at the centre and insist that any reaction be proportionate.³ The Riyadh Guidelines of 1990 turn attention towards prevention and the involvement of the community.⁴ India ratified the Convention in 1992 and has since built its domestic law around these commitments.

The governing statute today is the Juvenile Justice (Care and Protection of Children) Act, 2015 (the JJ Act), which took the place of the 2000 Act.⁵ Where ordinary criminal statutes are silent on guiding values, the JJ Act sets them out in section 3. They include the presumption of innocence, dignity and worth, participation, the child's best interest, family responsibility, safety, positive measures, non-stigmatizing language, non-waiver of rights, equality, privacy and confidentiality, institutionalization only as a last resort, repatriation and restoration, and a fresh start.⁶ Many of these are restorative at heart: they call for respect toward every person, a say for those affected, accountability joined to reintegration, and a refusal to stigmatize.

The Act has faced pressure ever since the 2012 Delhi gang rape, in which one accused was only months away from his eighteenth birthday. Public outrage at the three-year ceiling on institutional stay pushed Parliament, in 2015, to permit some older children to be tried as adults. That amendment revived an old argument over whether juvenile justice should stay rooted in reform or lean towards deterrence and punishment.

1.1 Research Questions

1. In what ways does the JJ Act put restorative justice into practice?

² Convention on the Rights of the Child art. 40(1), Nov. 20, 1989, 1577 U.N.T.S. 3.

³ G.A. Res. 40/33, U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) rr. 5, 17 (Nov. 29, 1985).

⁴ G.A. Res. 45/112, U.N. Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (Dec. 14, 1990).

⁵ JJ Act (repealing the Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56 of 2000).

⁶ JJ Act § 3.

2. Does the provision for transferring children to adult trial weaken the Act's restorative purpose?

3. How can the rights of victims be reconciled with the rehabilitation of the child?

1.2 Methodology

The study is doctrinal. It draws on the JJ Act and the Model Rules, case law, international instruments, Law Commission and parliamentary materials, and criminological writing on restorative approaches to youth offending.

2. How the JJ Act Builds a Restorative Framework

2.1. Procedure Designed Around the Child

Once a child is apprehended, the Act places the child with the Special Juvenile Police Unit or a designated child welfare police officer, and requires production before the Juvenile Justice Board without delay, within twenty-four hours excluding travel.⁷ A police lock-up or jail is forbidden.⁸ The Board meets in a setting meant to feel unlike a courtroom. Bail is the default: whether the offence is bailable or not, the child is to be released, with or without a surety. The exceptions are narrow: where release would likely bring the child into contact with known criminals, expose the child to moral, physical, or psychological harm, or defeat the ends of justice.⁹

2.2. Dispositional Orders

When an inquiry satisfies the Board that the child committed the offence, section 18 offers a spectrum of responses. The Board may send the child home with advice or a warning, require group counselling, order community service under a supervising body, impose a fine on the child or parents, release the child on probation with a parent, guardian, or fit person, release on probation under a fit institution, or commit the child to a special home.¹⁰ The common thread is repair and learning, with confinement kept as the final option. The Act also caps institutional

⁷ Id. §§ 10(1), 12 [verify the 24-hour requirement in the Model Rules and § 10].

⁸ Id. § 10(1).

⁹ Id. § 12(1).

¹⁰ Id. § 18(1).

stay at three years in the gravest cases and obliges the Board to review the child's progress.¹¹

2.3. Freedom from Stigma

Section 24 protects a child from the disqualifications that ordinarily follow a criminal conviction. After the appeal period lapses, the Board must order the child's records destroyed, though children tried as adults for heinous offences are an exception.¹² The provision reflects what Braithwaite called reintegrative shaming: the child must answer for the act, yet is not forced to wear a permanent label.¹³

2.4. Family and Community as Partners

Justice under the Act is meant to be a shared task. A Probation Officer or child welfare officer prepares a social investigation report covering the child's background, which the Board must weigh.¹⁴ Parents or guardians are to be told of the apprehension and may take part in proceedings.¹⁵ Child Welfare Committees, fit persons, and fit institutions share the work of care.¹⁶ Each child receives an Individual Care Plan that sets goals and records progress.¹⁷ Observation Homes and Special Homes are expected to offer schooling, vocational training, counselling, and recreation.¹⁸ The design recognizes that a child's conduct grows out of home, school, and neighbourhood, so the remedy must involve those same settings.

2.5. The Missing Victim

For all this, the Act is overwhelmingly child-focused and gives the victim no formal standing. The Board may order compensation, for instance through a fine paid by a parent,¹⁹ and the Model Rules allow some input from victims. Yet nothing in the scheme lets a victim question the child, hear an explanation or apology, or help decide on restitution. Before the Board, the victim is mostly a witness and occasionally a recipient of information.

¹¹ Id. § 18(3).

¹² Id. § 24(1)-(2).

¹³ Braithwaite, *supra* note 5, at 55.

¹⁴ JJ Act § 8(3)(h); Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (India).

¹⁵ JJ Act § 10.

¹⁶ Id. §§ 27, 50-52.

¹⁷ Id. § 18(2); Model Rules r. 8.

¹⁸ JJ Act §§ 47-48.

¹⁹ Id. § 18(1)(e).

The result is a legitimacy gap. In grave cases, particularly sexual offences, victims and their families may conclude that the process disregarded them and that justice was refused. A system gentle towards the offender but indifferent to the harmed party cannot fairly call itself restorative, because the concept by its nature demands attention to those who were hurt.²⁰

2.6. Diversion and the Limits of the Board's Toolkit

Diversion simply means keeping a child out of the formal trial process where that makes sense, and it sits at the heart of restorative thinking. The Act nods in this direction. A Board can wrap up a matter with a warning or a light order. What the Act does not offer is a clear, step-by-step diversion route like those found in some other countries. In reality, most children's cases go through a full inquiry first, and the gentler outcomes only appear at the very end. A truly restorative system would try to resolve suitable cases much sooner, before the inquiry process hardens attitudes and before the child has spent months carrying the tag of an accused.

Two problems get in the way. One is delay. Monitoring bodies and civil society groups have pointed out again and again that many inquiries before Boards drag on well past the period the law expects. Everyone loses when this happens. The child lives in limbo, the victim waits for closure that never comes, and the school and family ties that might have helped the child recover slowly come apart. The other problem is the social investigation report. When probation officers are stretched thin, their reports tend to turn into templates, filled in rather than written. A thin report weakens every decision that follows, from the choice of order to, in heinous cases, the preliminary assessment.

So, speed and quality should be seen as restorative values in their own right and not just as matters of administration. Time limits that are actually enforced, sensible caseloads for probation staff, and a habit of detailed, individual reporting would do more for children and victims than another category of offence ever could.

3. The Hard Case: Heinous Offences by Sixteen-to-Eighteen-Year-Olds

3.1. What the Statute Says

Sections 15 to 19 create a distinct track. It applies to a child aged sixteen to eighteen accused

²⁰ See Zehr, *supra* note 4, at 13-15.

of a heinous offence, meaning one carrying a minimum punishment of seven years or more under the Indian Penal Code or any other law.²¹ The Board must first carry out a preliminary assessment of the child's mental and physical capacity to commit the offence, understanding of its consequences, and the circumstances surrounding it.²² It may take help from psychologists or psycho-social workers.²³ If the Board decides the child should face adult trial, the matter goes to the Children's Court, which then chooses between trying the child as an adult and passing child-appropriate orders.²⁴ A child tried as an adult cannot receive the death penalty or life imprisonment without release.²⁵ Such a child stays in a place of safety until twenty-one, after which an evaluation follows.²⁶

3.2. The Courts' Approach

The Supreme Court accepted the reform in principle. In *Subramanian Swamy v. Raju*, the Court dealt with the age of juvenility under the 2000 Act in the wake of the Nirbhaya case, and recognized the legislature's competence to draw distinctions.²⁷ In *Shilpa Mittal v. State (NCT of Delhi)*, the Court held that an offence with a maximum above seven years but no minimum, or a minimum below seven years, is a "serious" offence rather than a "heinous" one, so the preliminary assessment and transfer route does not apply.²⁸ This reading shields children from an overbroad use of the transfer power. In *Barun Chandra Thakur v. Master Bholu*, the Court considered bail for a child and the "ends of justice" exception, and stressed the child-centred character of the Act.²⁹ The Court has likewise indicated, in decisions such as *Mumtaz Ahmed Nasir Khan v. State of Maharashtra*, that the preliminary assessment is a weighty exercise requiring a reasoned and child-sensitive evaluation.

3.3. Reading Transfer Restoratively

Critics say transfer smuggles retribution into a reformatory system, since seriousness of the offence can lead to adult treatment. A restorative reading would handle it differently. Transfer should be rare. It should rest on a real, individual assessment of the child's maturity and

²¹ JJ Act § 2(33).

²² Id. § 15(1).

²³ Id. § 15(1) (first proviso).

²⁴ Id. § 18(3).

²⁵ Id. § 21.

²⁶ Id. § 19(1)(ii), 19(3).

²⁷ *Subramanian Swamy v. Raju*, (2014) 8 SCC 390 (India).

²⁸ *Shilpa Mittal v. State (NCT of Delhi)*, (2020) 2 SCC 787 (India).

²⁹ *Barun Chandra Thakur v. Master Bholu*, (2022) SCC OnLine SC 870

circumstances, as the statute demands, and not on public anger or the gravity of the act alone. The Board should give written reasons, the child should have legal aid, and expert psychological and social input should inform the decision.³⁰

The case for harsher treatment on public-safety grounds is thinner than it looks. Studies of transfer to adult courts, chiefly from the United States, suggest it does little to reduce reoffending and may raise it.³¹ Long confinement among adults exposes a young person to violence and to criminal networks. Evaluations of restorative practices, such as family group conferencing, restitution, and supervised community service, report lower reoffending and greater victim satisfaction than conventional processing, though results differ by setting.³² Safety is better served by changing a young person's path than by lengthening confinement.

None of this means serious harm should be brushed aside. Restorative justice keeps accountability but redefines it: the young person must grasp the harm done and act to put it right. For many children that is a heavier burden than quietly serving a term.

3.4. The Developmental Argument in More Depth

The reasoning behind separate treatment of juveniles deserves a closer look, because it answers the common claim that a child who commits a terrible act has forfeited childhood protections. Adolescent neuroscience points to a gap between cognitive ability and psychosocial maturity. A sixteen-year-old may reason about consequences in a calm setting yet act rashly under pressure from peers, fear, or anger. This is not an excuse. It is an explanation of why the blame we assign, and the response we choose, should differ from that for an adult with fully formed judgment. Courts in other jurisdictions have drawn on such findings to limit the harshest penalties for juveniles, and Indian decision-makers can do the same when conducting the preliminary assessment.

There is also a point about what the assessment is able to measure. Section 15 asks the Board to judge capacity and understanding at the time of the offence, often months afterwards, and by people who may lack clinical training. Such an inquiry is open to error and to the influence

³⁰ See Shilpa Mittal, (2020) 2 SCC at 787.

³¹ See Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* Juv. Just. Bull., June 2010, at 1 (U.S. Dep't of Just.).

³² See Heather Strang et al., *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims*, 9 Campbell Systematic Revs., no. 12, 2013.

of how shocking the facts are. A decision-maker who has just read a gruesome account will find it hard to remain neutral on whether the child was "mature." This is another reason to require multidisciplinary input and written reasons, since they discipline the decision and make appeal meaningful.

3.5. Voices of Victims in Grave Cases

It would be a mistake to treat victims of heinous juvenile offences as people who simply want the harshest outcome. Victim research in several countries shows that many seek acknowledgment, answers, and assurance that it will not happen again, alongside or even ahead of punishment. A process that gives them information, a chance to be heard, and some confidence that the young person is being seriously dealt with can reduce the pull toward retributive demands. Where dialogue is unsafe or unwanted, indirect forms such as shuttle mediation, written statements, or victim impact reports read to the Board can still give the victim a place in the process.

3.6. Gender, Poverty, and Who Actually Comes Before the Board

Public debate about juvenile justice is shaped by a few shocking cases, yet the daily reality before Boards looks very different. National crime data have consistently shown that most apprehended children are charged with property crimes or offences of middling seriousness, and that many come from families with little formal education and low or unsteady income. A good number have already left school. Some live or work on the streets. Against this background, the dangerous sixteen-year-old who dominates the headlines is the exception and not the rule.

This has real consequences for how restorative programmes should be built. If most children are in the system because of poverty, neglect, and shaky family support, then a response built only on personal remorse misses the mark. Accountability has to come with practical help: getting back into school, learning a trade, access to health and counselling services, and support for families that are struggling themselves. Restorative justice that overlooks the conditions of a child's life can turn into a moral lecture aimed at people with little power to change their situation. Victims often come from similar backgrounds, which makes restitution a delicate matter. A fine that a poor family cannot pay helps nobody and may simply push a household deeper into hardship.

Gender also deserves attention. Girls make up a small share of children in conflict with law, but their situations can be especially difficult, often involving earlier abuse and a heavier risk of stigma after release. Programmes need to take this into account. Facilitators who work with victims of sexual violence in particular need specialist training so that a dialogue does not cause further harm to a girl or woman who has already suffered.

3.7. Comparative Lessons

Other countries offer models worth studying, though not copying outright. New Zealand's family group conference, which took shape in the late 1980s, brings together the young person, the family, the victim, and professionals to agree on a plan, and it has long been central to how that country deals with youth offending. Parts of Australia use conferencing that begins with a police or court referral. Canada's youth justice law encourages measures outside the courtroom and lists principles favouring community responses, while still allowing adult sentences for a narrow group of grave cases.

Two warnings are in order. These systems operate with different resources, family structures, and expectations of the State, so any scheme brought to India has to be adapted. And even in countries known for restorative youth justice, the practice has drawn criticism for uneven delivery, for pressure on victims to take part, and for a gap between policy on paper and what happens in local communities. These concerns support the safeguards suggested in Part IV: voluntary participation, trained facilitators, and the freedom of anyone involved to step away.

India also has resources of its own. Panchayats and other local bodies have a long record of resolving disputes, and families often play a major part in settling conflict. A restorative juvenile model could build on that social capital, as long as child-rights safeguards keep traditional forums from reproducing divisions of caste, gender, or age at the expense of the child or the victim.

4. Towards a Balanced Restorative Model for India

The paper proposes six reforms.

4.1. Create a structure for victim-child conferencing.

For non-heinous cases, the Act or the Model Rules should authorize a pilot scheme of mediated

dialogue in which the child accepts responsibility, expresses remorse, and offers restitution, such as community work or compensation through parents. Both sides must join voluntarily, trained facilitators should run the sessions, and safeguards must guard against pressure. The child needs a lawyer or support person. Victims must never be pushed to forgive, and the process should be avoided where the power imbalance or risk of re-traumatization is too great.³³

4.2. Make Individual Care Plans broader.

Plans now concentrate on the child's history and needs. They should also address the harm caused, its effect on the victim, and community concerns, so that rehabilitation contains a concrete element of responsibility and repair.

4.3. Improve the preliminary assessment.

Section 15 already permits expert consultation, but the decision belongs to a Board that need not include trained mental-health professionals. A multidisciplinary team of psychologists and social workers should conduct the assessment and report in writing, with legal aid for the child throughout. Transfer should never be automatic, and the Board should have to explain why gentler options fall short. Guidance from the National Commission for Protection of Child Rights and the Supreme Court exists and should be turned into binding rules.³⁴

4.4. Fund and monitor aftercare.

Section 46 provides aftercare for young people leaving institutional care, up to the age of twenty-one.³⁵ In practice it is underfunded and patchily applied. Dedicated funding and independent monitoring are needed so that young people actually obtain housing, education, and work, which is what makes reintegration real.

4.5. Build community awareness.

Panchayats, schools, and victim-support groups should be brought in to stop the child from being labelled a criminal, to build local acceptance of reintegration, and to help victims heal.

³³ See Daly & Stubbs, *supra* note 54, at 9.

³⁴ See Nat'l Comm'n for Prot. of Child Rts., Guidelines for Preliminary Assessment Under Section 15 of the JJ Act (2016)

³⁵ JJ Act § 46.

Local child protection committees, already envisaged under Mission Vatsalya, could host such work.³⁶

4.6. Train and resource the personnel.

None of the above will work without people who can carry it out. Board members, probation officers, police child welfare officers, and institutional staff need continuing training in restorative methods, trauma-informed practice, and child development. Many Boards are short-staffed, and vacancies and heavy caseloads have been reported in several States. Restorative work is slow and relational, so it cannot be squeezed into overloaded dockets. Regular social audits of Observation and Special Homes, with published findings, would also help ensure that what is written in the statute happens on the ground.

4.7. Collect data, evaluate, and hold the system to account.

Reform plans in this area often fail for a simple reason: nobody checks what happens next. India needs dependable, broken-down figures on how many children are diverted, which orders are used most, how long inquiries last, how many preliminary assessments lead to transfer and why, and how children fare after release. Pilot conferencing schemes should be reviewed by independent evaluators who look at reoffending, victim satisfaction, the child's schooling and work, and any harm to participants. The results should be made public so that Boards, State governments, and researchers can learn from them. Without evidence, arguments for and against restorative practice will stay a clash of hunches.

A word on safeguards. People often worry that restorative processes could erode a child's right to a fair process or lead to forced admissions. This paper therefore assumes that any acknowledgment of responsibility is given freely, that the child receives legal advice before agreeing to anything, and that nothing said in a conference can later be used against the child in formal proceedings. These protections honour the presumption of innocence in section 3 and stop the restorative route from becoming a way around fair procedure.

5. Objections and Responses

Three objections come up often enough to deserve a direct reply.

³⁶ See Ministry of Women & Child Dev., Gov't of India, Mission Vatsalya Guidelines (2022)

First is Restorative approaches go too easy on serious harm. Going easy and holding someone accountable are not the same thing. A child who must face the person harmed, listen to how the offence affected them, and carry out a demanding plan of repair has not been let off. For grave offences, this paper does not call for scrapping the transfer power or removing custody. It asks that these tools be used with care and paired with restorative elements, including victim participation where that is safe and wanted.

The second is that Victims may not want to meet the child. Often that is true, and the model depends on choice. Some victims will say no, and that decision should cost them nothing. For those who decline, the system should still offer information, support services, and, where suitable, indirect ways to take part. The goal is to widen the options open to victims and not to push everyone toward one script of reconciliation.

The third is that India lacks the resources to deliver this. The worry is a fair one, and it is the reason the paper recommends phased pilots, investment in training, and evaluation before any wider rollout. It is also worth remembering that the current approach has its own price: long stays in institutions, repeat offending, and young lives lost to cycles of exclusion. Spending on prevention and reintegration may well prove cheaper than repeated confinement, but that claim should be tested against Indian data and not simply taken for granted.

6. Conclusion

Juvenile justice is where India's commitment to restorative ideas faces its hardest test. The JJ Act already sets aside deterrence as its main goal and embraces reform, diversion, family involvement, and freedom from stigma. The task is not to retreat in alarm over heinous offences but to make the restorative promise believable by bringing victims inside it. At present the Act is restorative towards the child and largely silent towards the person harmed, and that silence weakens public trust and feeds calls for harsher laws.

A child who understands the harm, makes amends, and is welcomed back by the community serves victims and public safety better than one hardened by prison. The transfer provision should be used sparingly and with strict safeguards, in line with the Supreme Court's guidance. Beyond that, a genuinely Indian restorative model for juveniles would join constitutional values under Articles 15(3), 21, and 39(e)-(f) with older traditions of communal responsibility, so that

the child answers to the victim and the community and not only to the State.³⁷

The recommendations that follow build on the reforms set out in Part IV and are arranged according to who is best placed to act on them.

Legislative and policy reform. Parliament and the Ministry of Women and Child Development should begin by recognizing victims in the scheme of the Act or the Model Rules. Victims ought to have a clear right to information about the progress of the case, an opportunity to submit a statement describing the impact of the offence, and, in non-heinous matters, access to voluntary mediated dialogue with the child. It should be made plain that a victim who declines to take part suffers no penalty for doing so. The law should also set out a structured diversion pathway, identifying the petty and moderate offences suited to early resolution and requiring the Board to consider diversion before opening a full inquiry. Aftercare under section 46 needs dedicated funding and annual public reporting, so that the numbers of young people receiving housing, education, and employment support after leaving institutions are visible. Finally, the guidance on preliminary assessment should be turned into binding rules that call for a multidisciplinary team, a written report, legal aid for the child, and recorded reasons for any decision to transfer.

Judicial practice. Courts and Boards can do a great deal without waiting for legislation. Transfer should continue to be treated as exceptional, and the gravity of the offence should never be enough on its own to justify adult trial. Each child must be assessed individually. High Courts, acting through their Juvenile Justice Committees, can monitor pendency and press Boards to complete inquiries within the period the law allows. Boards should also use the full range of section 18 orders, including counselling, community service, and probation, and should record their reasons whenever they choose a custodial order. Even without a statutory change, a Board can invite a victim to share their views and later explain the outcome in plain language, which would go some way towards closing the legitimacy gap described earlier.

Administration and implementation. State governments carry much of the burden of making the Act work. Vacancies among Board members, probation officers, and child welfare police officers need to be filled, and caseloads should be capped at a level that allows careful work. Staff require regular training in restorative methods, trauma-informed practice, child

³⁷ India Const. arts. 15(3), 21, 39(e)-(f).

development, and the handling of cases involving sexual violence. Conferencing programmes should begin as pilots in a small number of districts, with independent evaluation of reoffending, victim satisfaction, and any harm to participants, and the findings should be published before the schemes are widened. Regular social audits of Observation Homes and Special Homes, again with published results, would help ensure that conditions on the ground match what the Act promises.

Communities and civil society. Restorative justice depends on the willingness of communities to take part. Schools, panchayats, and local organizations should be encouraged to accept returning children and to resist branding them as criminals. Victim-support groups can offer counselling and accompany victims through the process, whether or not they choose to meet the child. Programmes should also reach the families of both the child and the victim, since poverty and fragile support so often lie behind the offence.

Research. Finally, the Indian evidence base needs to grow. Studies of reoffending, diversion outcomes, and victim experience in India remain few, and much of the current debate leans on research from the United States and elsewhere. Systematic, disaggregated data would allow policy to rest on evidence and not on the pressure of the latest headline. Researchers should also examine why the law and its practice diverge, looking at staffing, funding, and the attitudes of those who run the system.

None of these steps requires giving up public safety as a goal. They rest instead on the view that safety is best secured by changing the direction of a young person's life while respecting the rights and the pain of those who were harmed. If India can make its juvenile justice system restorative for victims as well as for children, it will be better placed to answer both questions at the heart of this debate: how to treat the child who has done wrong, and how to treat the person who has been wronged.