
THE JUVENILE JUSTICE PARADOX AFTER 2018: BALANCING CHILDHOOD, CRIME AND CONSTITUTIONAL ACCOUNTABILITY

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ABSTRACT

The change in juvenile justice regime in post-Nirbhaya India is one of the most controversial changes in the modern constitutional criminal jurisprudence. The introduction of the preliminary assessment process in Section 15 of the Juvenile Justice (Care and Protection of Children) Act 2015 represents a move away from the age-centered approach to juvenile responsibility and a new approach based on developmental maturity. There is a clear contradiction between the constitutional mandate to rehabilitate children and the legitimate expectations of the society for accountability in the case of heinous offences, which was addressed in this reform; the reform, however, set the stage for possible inconsistencies, subjectivity, and unequal treatment. This lack of statutory guidance on the developmental maturity assessment has left a great deal of discretion to Juvenile Justice Boards, giving rise to fundamental concerns about equality before law, procedural fairness and the constitutional legitimacy of the different treatment of similarly situated children.

This paper contends that the topic of constitutional enforcement is not whether older adolescents should be held accountable, but how they are held accountable in a way that is transparent, scientifically grounded and respects their rights, versus by judicial intuition and public outcry. The study relies on constitutional doctrine, legislative history, Supreme Court jurisprudence, developmental psychology and neuroscience, comparative legal systems and international child rights standards to review the current framework and suggest a change to a Constitutional Accountability Framework which represents a re-thinking of accountability as a constitutional protection rather than a punishment. It argues that the concepts of rehabilitation and accountability are complementary constitutional values, and suggests a set of nationally standardised maturity assessment protocols, multidisciplinary expert participation, procedural safeguards and institutional reforms that will enhance child rights protection as well as public trust in the developing juvenile justice system in India.

Keywords: Juvenile Justice; Constitutional Accountability; Developmental Maturity; Juvenile Criminal Responsibility; Juvenile Justice (Care and Protection of Children) Act, 2015; Section 15; Preliminary Assessment; Constitutional Jurisprudence; Child Rights; Rehabilitation; Procedural Fairness; Developmental Psychology; Juvenile Justice Boards; Comparative Juvenile Justice; UN Convention on the Rights of the Child (UNCRC)

I. Introduction

The juvenile justice system has always held a unique place in the world of criminal justice because it strives to achieve two goals that are both equally important in the Constitution: to protect children as vulnerable persons and to protect society from criminal behaviours. Juvenile justice is based on principles of juveniles, which differ from adults' criminal justice in that it is more concerned with children's cognitive, emotional and psychological growth than punishment and deterrence¹. Thus, they have a higher potential for behavioural change and reintegration into society.

This knowledge has influenced adolescent rehabilitation in all countries, both in terms of legislation and international child rights instruments, and has become the backbone of juvenile justice in the world today. The philosophy was seen in the Juvenile Justice (Care and Protection of Children) Act, 2000 in India which applied a blanket definition of juvenile to any incident involving a child under 18, regardless of the nature of the offense². This bill was based on the constitutional principles outlined in Article 15(3), Article 39(e) and Article 39(f) of the Bill of Rights that provides special legal protection for children and mandates that the State protect their healthy development.³

The Act also addressed the need of India to comply with the United Nations Convention on the Rights of the Child (UNCRC)⁴ which highlights dignity, reintegration and best interests of the child as the core principles of Juvenile Justice. But after the horrifying events of the Nirbhaya rape and murder in Delhi in 2012, the case of juvenile criminal responsibility in the legal discourse took a dramatic turn. The presence of a seventeen year old accused, who was eligible for a maximum three years' rehabilitation under the existing law, led to widespread discussions

¹ Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Development and Juvenile Justice*, 58 Am. Psych. 1009, 1010–12 (2013).

² Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56 of 2000, INDIA CODE (repealed 2015).

³ INDIA CONST. arts. 15(3), 39(e)–(f).

⁴ Convention on the Rights of the Child arts. 3, 40, Nov. 20, 1989, 1577 U.N.T.S. 3.

on the issue of the need for a more age-based approach to criminal responsibility.⁵

The age of Juvenile was recommended to be 18 years by the Justice J.S Verma Committee and later it was passed by the Parliament in Juvenile Justice (Care and Protection of Children) Act, 2015.⁶ The law did not lower the age of juvenility but instead provided for a preliminary assessment process under Section 15 that will allow Juvenile Justice Boards to consider the developmental maturity of youth between the ages of sixteen and eighteen who are accused of heinous offences before referring them to a Children's Court trial⁷. The inclusion of this mechanism has changed the concept of juvenile jurisprudence in India. The concept of developmental maturity was included for the first time, in addition to chronological age, in the legislation relevant to determining competence to stand trial. Developmental maturity was introduced for the first time in the legislation that determines competence to stand trial in addition to chronological age. It was an attempt to balance conflicting constitutional principles by maintaining the principle of rehabilitation as a general rule but giving the judicial bodies discretion to punish the offender in exceptional circumstances in which the offender would be an older adolescent and the offence was serious.

However, it also brought along a number of new legal and practical issues. Under the Act, Boards are obliged to make a mental capacity assessment, a physical capacity assessment, an understanding of the implications of the alleged conduct, and an assessment of the circumstances of the offence, but the Act does not prescribe a uniform way of making these assessments⁸. This has led to variable results in different jurisdictions, and concerns about the arbitrariness, fairness and equal treatment of the process. This paper proposes that the post-2015 is an important, yet unfinished development in Indian juvenile justice. While individual assessment is preferred to a totally presumptive approach based upon age or offence severity, there are objective, transparent and scientifically reliable standards that must be met if individual assessment is to be legitimate under the Constitution. Without appropriate protections, the process of assessing maturity and competence may become subjective and inconsistent, eroding children's rights and public trust in the justice system.

In this paper, it is therefore argued that the two constitutional goals of rehabilitation and

⁵ Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).

⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, INDIA CODE § 15.

⁷ Juvenile Justice (Care and Protection of Children) Rules, 2016, r. 10A (providing procedural guidance regarding preliminary assessment under the Act).

⁸ Juvenile Justice (Care and Protection of Children) Act, 2015 § 15(1).

accountability must be understood as complementary and not conflicting and that a framework of Constitutional Accountability will be advanced. The paper argues that there is a broad consensus that accountability should be measured by a developmental maturity assessment based on evidence but that the rehabilitative principles of juvenile justice should not be abandoned. This is supported by reviewing legislative history, the Constitution, judicial precedents, comparative jurisprudence, developmental psychology, neuroscience, and international child rights standards. It ends with a set of legal and institutional reforms that could enhance constitutional justice and the effectiveness of India's post-2018 juvenile justice system.

II. Evolution of Juvenile Justice in India

The development of juvenile justice in India has seen the transition of a punishment-based approach to criminal administration to a rights-based approach focused on rehabilitation, social welfare, and constitutional protection⁹. This change was not an instantaneous one, but rather a result of colonial laws, the Constitution, and international human rights agreements, as well as evolving views on childhood and criminality. Early legislation focused on discipline and correction, whereas today's laws take into account that children have developing capabilities, less blame and a greater potential for change. This transformation is reflected in the Juvenile Justice (Care and Protection of Children) Act, 2015 which for the first time makes Juvenile Justice accountable.

2.1 Colonial Origins of Juvenile Justice

The idea of juvenile offenders receiving separate treatment first arose during the British rule. If a child was charged with a crime, before the 19th century there was no difference in treatment of children and adults, and they were treated like adults, often in the same courtroom. Punishment was seen as the main way of keeping the peace in the public and much less emphasis was placed on the developmental differences of children and adults.

These differences were first acknowledged in the legislation of **the Apprentices Act, 1850**¹⁰. The Act did not require children to be put in prison, but would allow young people to be placed

⁹ U.N. Convention on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, U.N. Doc. CRC/C/GC/24 (2019).

¹⁰ The Apprentices Act, 1850, Act No. 19 of 1850, INDIA CODE.

into apprenticeship programs to provide vocational training and supervision. While the legislation was narrow, it did bring in the concept of 'corrective measures' and not just 'sanctions' for children. A more organised system developed as a result of **the Reformatory Schools Act 1897**, which gave courts the right to send off juvenile offenders to reformatory schools rather than prisons.¹¹

Such institutions aimed to integrate education, training and discipline to reform youthful offenders before they reached maturity. The Act was progressive in some respects, but its overall approach was more of a paternalistic colonial attitude which focused on control rather than on children's legal rights.

2.2 Constitutional Vision and the Protection of Children

The Constitution of India adopted in 1950, changed the philosophical framework of juvenile justice¹². The Constitution recognised children as a vulnerable group that needed positive legal protection and placed positive obligations on the State in the field of child development. Article 15(3) does give the State the power to establish special provisions for children and women, which will form the constitutional foundation for separate juvenile justice laws¹³. This is a form of substantive equality, because it acknowledges that there are groups who are vulnerable and might need to be treated differently so that there will be real justice for them. Likewise, Article 39(e) and (f) of the Directive Principles of State Policy obligates the State to safeguard the children against abuse, exploitation and circumstances that affect their physical, intellectual, or moral growth¹⁴.

These are non-justiciable provisions, but they have been a consistent guide for policy and judicial decisions in child welfare. These constitutional principles, in conjunction with Article 21 (right to life and dignity), set the standards for juvenile justice in India as the goal of rehabilitation and reintegration¹⁵. The constitutional vision was thus far removed from the colonial approach. The Constitution saw children as rights-bearing individuals who should be engaged with the criminal justice system to change their lives, rather than to continue to be

¹¹ The Reformatory Schools Act, 1897, Act No. 8 of 1897, INDIA CODE (repealed).

¹² INDIA CONST. arts. 15(3), 39(e)–(f).

¹³ *Government of Andhra Pradesh v. P.B. Vijayakumar*, (1995) 4 S.C.C. 520, 531 (recognizing Article 15(3) as a constitutional basis for affirmative measures).

¹⁴ INDIA CONST. art. 39(e)–(f).

¹⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, 618.

marginalized. Before the Juvenile Justice Act, 2000, the law was considered underdeveloped.

2.3 Prior to the Juvenile Justice Act, 2000, the law was considered underdeveloped.

The constitutional provision for child welfare resulted in the enactment of the Children Act, 1960, which was the first all-encompassing post-independent act with the theme of juvenile delinquency in India¹⁶. It created children's courts and welfare institutions, and stressed, as well as the importance of education, counselling, and rehabilitation, instead of the imprisonment. But the application of this was limited to Union Territories and significant differences appeared among State laws. To achieve uniform standards, Parliament passed the Juvenile Justice Act, 1986, establishing a set of uniform laws for children involved in conflict with the law throughout the country¹⁷. It was a welfare approach with provisions for the rehabilitation via observation homes, special homes, counseling and vocational education. However, it continued to have a different age for boys and girls, and children under age sixteen were classified as juveniles, as were females under age eighteen. This separation won criticism for being constitutionally and developmentally deficient. The United Nations Convention on the Rights of the Child (UNCRC) adopted in 1992 by India was a significant factor in prompting for reform¹⁸. The Convention applies to all individuals under the age of 18 and requires States to create dedicated juvenile justice systems which shall focus on dignity, reintegration and social rehabilitation. This meant that complete changes to the laws had to be made for compliance with these international standards.

2.4 The Juvenile Justice Act, 2000: A Rights Based Framework

In order to respond to constitutional requirements and international commitments, Parliament passed the Juvenile Justice (Care and Protection of Children) Act, 2000¹⁹. The legislation marked a clear departure from a welfare-based approach to a rights-based approach based on the principles of rehabilitation and child protection. The Act made no distinction between males and females when defining juvenile status; it was age-based, and anyone under the age of eighteen was considered a juvenile²⁰. It set up Juvenile Justice Boards to review cases of

¹⁶ The Children Act, 1960, Act No. 60 of 1960, INDIA CODE (repealed).

¹⁷ Juvenile Justice Act, 1986, Act No. 53 of 1986, INDIA CODE (repealed).

¹⁸ Convention on the Rights of the Child, United Nations Treaty Collection, Status of Treaties (India ratified Aug. 11, 1992).

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2000, Statement of Objects and Reasons, No. 56 of 2000, INDIA CODE.

²⁰ Juvenile Justice (Care and Protection of Children) Act, 2000, § 2(k), INDIA CODE (repealed)

juvenile offenders, and it banned ordinary criminal trials of juvenile offenders²¹. The law focuses on social reintegration, vocational training, psychological support, education and counselling rather than incarceration. The highest deemed institutional rehabilitation was three years as children were not supposed to be sentenced to punishment aimed at adults.

The 2000 Act also reiterated the concept of child friendly, informal and free from unnecessary stigma juvenile proceedings. It acknowledged the goal of juvenile justice was not simply to react to acts of misbehaviour but to address the social and developmental factors that led to delinquent acts. This led to the law being one of the most explicit statements of the rehabilitative approach in criminal jurisprudence in India.

2.5 From rehabilitation to constitutional accountability

In spite of its progressive goals, Juvenile Justice Act 2000 was criticized more and more in the wake of a number of serious offenses by older adolescents. The Nirbhaya case of 2012 had added to the public angst as one of the main accused was only 17 years old and hence was eligible to the protection which is provided under juvenile law even after being charged with an extremely brutal offence²². The case sparked much discussion on the issue of whether only chronological age should be considered when assessing criminal responsibility in the context of a heinous crime.²³

Instead, Parliament aimed to balance rehabilitation and accountability in the Juvenile Justice (Care and Protection of Children) Act, 2015, which did not aim to lower the age of juvenile²⁴. Legislation continued to make eighteen the statutory age of juvenility, but provided for a preliminary assessment procedure for juveniles between the ages of sixteen and eighteen accused of heinous offenses. For the first time developmental maturity became legally relevant in determining the fate of a child: to continue in the juvenile justice system or to be prosecuted by a Children's Court. This shift in legislation did not give up on the rehabilitative philosophy that had been adopted by Indian juvenile justice for decades. Rather, it recognized that accountability could live in tandem with rehabilitation where there were an individual assessment and constitutional protection. The difficulty, however, is in making sure that such

²¹ Juvenile Justice (Care and Protection of Children) Act, 2000, §§ 4, 15, INDIA CODE (repealed).

²² *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 S.C.C. 1.

²³ Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).

²⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, Statement of Objects and Reasons, No. 2 of 2016, INDIA CODE.

evaluations are objective, science-based, and in accord with the guarantees of equality and due process of the Constitution. The next chapter focuses on this Constitutional change, which began with the *Nirbhaya* case and culminated in the changes made in 2015.

III. The *Nirbhaya* Case and the Constitutional Shift Towards Accountability

The enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be understood without examining the constitutional, social, and legal consequences of the 2012 *Nirbhaya* case²⁵. More than a criminal prosecution, the incident became a defining moment in Indian criminal jurisprudence, exposing perceived inadequacies within the existing juvenile justice framework and prompting Parliament to reconsider the relationship between childhood, criminal responsibility, and public accountability. While earlier legislation viewed rehabilitation as the dominant objective of juvenile justice, the events following the ***Nirbhaya* case** introduced a competing constitutional concern, the need to ensure accountability where older adolescents are accused of exceptionally grave offences.

The reforms that followed did not abandon the rehabilitative philosophy embedded in juvenile justice law. Instead, they attempted to redefine its scope by recognising that developmental maturity and the seriousness of the alleged offence could, in limited circumstances, justify a differentiated legal response. This chapter analyses the constitutional significance of the *Nirbhaya* case and explains how it transformed Indian juvenile justice from a purely welfare-oriented framework into one that incorporates accountability through individualized assessment.

3.1 The *Nirbhaya* Case and the Existing Legal Position

A 23-year-old physiotherapy student was brutally gang-raped and assaulted in a running bus in Delhi on 16 December 2012. Her injuries were so severe that she died, sparking widespread outrage and one of the biggest protest rallies against gender-based violence in independent India. One of the six accused was a 17-year-old at the time of the crime.

He was legally classified a juvenile under Juvenile Justice (Care and Protection of Children) Act, 2000, and it was only the Juvenile Justice Board that had jurisdiction over him²⁶. The

²⁵ *Mukesh & Anr.*, (2017) 6 S.C.C. 1.

²⁶ Juvenile Justice (Care and Protection of Children) Act, 2000, Section. 2(k), 4, INDIA CODE (repealed).

statute was rather vague, affording little room for interpretation by the courts. All persons under the age of eighteen had the right to be tried as a juvenile for any offense, no matter how serious. Thus, the maximum sentence that could be given to the juvenile accused was three years of institutional rehabilitation²⁷. The adult co-accused were prosecuted in the ordinary criminal court system and ultimately punished much more severely, but the juvenile offender was under a rehabilitative regime where his reintegration would be facilitated, rather than his retribution. This difference in legal results was the focus of public discussion.

Many wondered if such a brutal crime committed by an adult coming to the end of his or her childhood should be treated equally to crimes that were lesser in severity and committed by younger children. Child rights groups, in turn, claimed that the level of seriousness of the individual case or public opinion could not be the basis for deciding whether a right to confidentiality exists in the constitution. The controversy did not just involve the facts of the prosecution but also took a more general turn to a constitutional argument about the scope of juvenile criminal responsibility.

3.2 Public Response and the Justice Verma Committee

The Justice Verma Committee was formed in response to the public outcry. The public outcry led to the formation of the Justice Verma Committee. The Nirbhaya case had triggered unprecedented public protest in favor of a comprehensive reform of the criminal justice system in India. Although a lot of the discussion in the media was about policing, investigations and legislation on sexual offences, a significant amount of the discussion was about the functioning of juvenile justice law. This feeling that the current law failed to deal with serious offences by older adolescents prompted a strong call for the reduction of the age of juveniles to sixteen years. The Government of India, therefore, set up the Justice J.S. Verma Committee to suggest changes in the laws of crime and protection of women.²⁸

The Committee discussed the constitutional principles, international obligations and recent studies on adolescent development, and refrained from making any proposal to cut the statutory age of juvenility²⁹. It said that while the tragic events of isolated incidents should not lead to changing a juvenile justice system built around constitutional and international obligations to

²⁷ Juvenile Justice (Care and Protection of Children) Act, 2000 § 15(1)(g), INDIA CODE (repealed).

²⁸ Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).

²⁹ *Verma Committee Report*, supra note 28.

protect children. Rather, the Committee called for the improvement of the institutional infrastructure, strengthening rehabilitation programs, effective implementation of the existing legislation and the improvement of accountability in juvenile institutions. It also acknowledged that scientific research on adolescent development was inconsistent with finding equivalence among older adolescents when determining criminal responsibility.

The Justice Verma Committee's recommendations were based on empirical evidence on law reform. They recognized the voices of children and of society, but they also stated that rights to children in the constitution should not be compromised because of society's reaction. However, Parliament ultimately went with a different way of legislation

3.3 Legislative Response: The Juvenile Justice Act, 2015

Parliament had tried to strike a balance between rehabilitation and accountability in the Juvenile Justice (Care and Protection of Children) Act, 2015 without reducing the statutory age of the juvenile. The bill eliminated the automatic prosecution of an adult offender of a juvenile over the age of sixteen for serious crimes, and created a preliminary assessment process for children ages sixteen to eighteen accused of heinous crimes. The Juvenile Justice Board must review the child's mental and physical capacity to commit the alleged offence, his or her ability to comprehend its consequences, and circumstances under which the offence was committed, as required by Section 15 of the Act. If the Board considers there is adequate developmental maturity, the case can be referred back to the Children's Court for further consideration. Importantly, this assessment is procedural and not determinative, that is, does not amount to guilt, but only to the determination of the proper venue of trial. This is an approach that is a compromise in legislation. The demand for the uniform treatment of older adolescents as adults was rejected in the Parliament, while at the same time acknowledging that chronological age might not always be a good indicator of crime responsibility in these adolescents. The Act aimed to maintain the rehabilitative core of the juvenile justice system and incorporate moderate accountability by keeping 18 years the minimum age for juvenility and allowing for individualized assessment in "extraordinary circumstances.

3.4 Accountability as a Constitutional Principle

In 2015, reforms were made that brought accountability into juvenile justice, but at the same time recognized the constitutional duty to rehabilitate. However, in terms of accountability, the

term punishment should not be equated with the term accountability. In constitutional law, the principle of accountability demands that the law must respond to the actual level of responsibility of the individual, subject to the procedural fairness, equality before the law and the rights of the victim and the accused³⁰. This concept is much more complex than that of retributive justice. Do not treat harshly simply because an offence has been in the public eye. Rather, it demands objective evaluation, rational decisions and proportionality. The gravity of an offence may warrant greater scrutiny by judges but does not automatically mean the person is responsible for their action as an adult. The preliminary assessment is thus an attempt to reconcile various constitutional concerns. Children are still afforded special protection under Article 15(3) and 39(f), victims' rights and public confidence in the justice system are acknowledged through a case-by-case assessment of developmental maturity. Achievement of this balance will depend on the fairness and scientific soundness of the assessment process itself.

3.5 Critical Evaluation

The Nirbhaya case no doubt changed the face of the juvenile justice system in India, leading Parliament to rethink the age-maturity-criminal-responsibility nexus. The Juvenile Justice Act, 2015 represents a measured move away from the traditional absolute rehabilitative approach which was reflected in past laws. The Act is not intended to substitute punishment for rehabilitation, but rather to allow for accountability to fit into a constitutionally guaranteed juvenile justice system. But this legislative compromise depends on the quality of the initial assessments that are made in accordance with Section 15. There is no uniform national definition of developmental maturity which leaves some inconsistencies in the implementation, issues of equality, procedural fairness and judicial discretion³¹.

The post-2015 framework's constitutional validity is therefore not only based upon the legislature's desire to achieve this, but also on the creation of objective and scientifically based mechanisms that differentiate between actual developmental maturity and mere assumption on the basis of the severity of the alleged offense. The concerns are more pronounced looking at the operational structure created by the Juvenile Justice Act, 2015, for the preliminary assessment and developmental maturity determination. These issues are discussed in the next

³⁰ INDIA CONST. arts. 14, 21.

³¹ U.N. Comm. on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, Sec. 28–31, U.N. Doc. CRC/C/GC/24 (2019).

chapter.

IV. The Post-2018 Juvenile Justice Framework: Reassessing Criminal Responsibility

The Juvenile Justice (Care and Protection of Children) Act, 2015 was one of the most important reforms in the history of Juvenile Justice in India as it moved from an age-based approach to an individualized assessment-based approach. Although eighteen years was the statutory age of juvenility, it recognised there is a need to apply a different legal process to those aged between sixteen and eighteen who are charged with serious offences, based on their developmental maturity. This change did not change the over-arching goal of the rehabilitation process but was an effort to address the rising concerns on accountability since the Nirbhaya case.

The heart of the new framework is the initial test in Section 15, according to which the Juvenile Justice Board (JJB) will consider an older adolescent's level of maturity before deciding whether he or she is capable of going to trial in a Children's Court. This mechanism is a change in law from the previous legislation in that it adds developmental capacity to the list of factors which can be used to establish criminal responsibility. The reform, however, is impressive in the realm of legislative innovation, but it also poses constitutional issues of equality, procedural fairness and the lack of standard assessment criteria.

4.1 Classification of Offences under the Juvenile Justice Act, 2015

The Juvenile Justice Act, 2015 categorizes offences into 3 categories: petty, serious and heinous³². It sets out the procedure for children in conflict with the law and is a major change in structure from the Juvenile Justice Act, 2000.

Petty offences are offences that can be sentenced to up to three years imprisonment. Imprisonment for serious offences ranges from 3-7 years, and for heinous offences, the prescribed minimum punishment is 7 years or more. The difference is of a legal nature since the children who would be subject to that preliminary assessment procedure under Section 15 would be from sixteen to eighteen years.

The basis for this classification in the legislation is that it is intended to differentiate between

³² Juvenile Justice (Care and Protection of Children) Act, 2015, sec. 2(33), sec.2(45), sec. 2(54).

ordinary juvenile delinquency and very serious criminal acts. Parliament acknowledged that most juvenile offenders need rehabilitative intervention but those involving extreme violence can be examined more closely by the judges in order to decide on the proper forum for the juvenile. However, the gravity of an offence is only a procedural requirement and cannot on its own constitute criminal 'maturity' or grounds for bringing the offender to the adult court.

4.2 Preliminary Assessment under Section 15

The post 2018 framework is on the pillars of section 15. If the child is alleged to have committed a heinous offence in the 16 to 18 age group, the Juvenile Justice Board must make an initial assessment before deciding whether the matter should be transferred to the Children's Court or remain in the juvenile justice system³³.

The Board shall consider the four statutory factors as follows:

- the ability of the child to understand what he or she is doing;
- the physical ability to commit the crime;
- the child's understanding of the implications of the behavior; and
- the circumstances in which the alleged offence was committed. Importantly, the preliminary assessment is not a determination of guilt. It is not a procedure to adjudicate on. The Board only makes the decision as to whether the child should be treated in the rehabilitative juvenile justice system or whether additional action before the Children's Court is needed.

This is to a certain degree an attempt by Parliament to remove automatic presumptions and to evaluate an individual case. The law provides for developmental maturity assessment before making any transfer decision to treat every adolescent over the age of sixteen accused of a heinous offence as an adult. This seems to be consistent with constitutional values as it takes into account the person's ability, not just his or her age, when determining criminal responsibility.

³³ *Juvenile Justice Act* sec. 15.

4.3 Determining Developmental Maturity

The basis of the preliminary assessment is the developmental capacity but the Act does not provide a statutory definition of terms such as 'mental capacity' or 'understanding of consequences'. This is one of the main limitations of the legislation.

Developmental maturity is a multi-dimensional phenomenon which goes beyond intelligence or educational level.³⁴ It includes logical ability, emotional control, the ability to control impulse, moral judgment, being influenced by peers, and the ability to see long-range effects of decisions. These characteristics take time to develop during the adolescence and can differ significantly between people of the same chronological age.

As a result, chronological age does not provide a good indicator of criminal responsibility. Psychologically, a 17-year-old boy can be significantly different from his 17 year old girl counterpart. In recognition of this fact, Section 15 in an attempt to assign an individual responsibility for crime. The act does not define common standards for assessing the needs of children; however, Juvenile Justice Boards often consult different expert opinions, psychological reports, and institutional practices. All these inconsistencies indicate a lack of predictability and fairness necessary for constitutional adjudication.

4.4 Constitutional Analysis of the Preliminary Assessment Process

The post-2018 framework is largely dependent on the constitutional validity because of its compatibility with Articles 14 and 21 of the Constitution.

The equality before the law and the ban on arbitrary State action are guaranteed by Article 14. Only if done in an objective and consistent manner is individualized assessment constitutionally permissible. Of course, if the psychological methods used are not the same, or the resources within the various institutions vary, the guarantee of equal protection is at risk where children of a similar age are provided different legal outcomes.

Article 21 also imposes a requirement that all processes that might involve interference with personal freedom be fair, just and reasonable.³⁵ A preliminary assessment is key to the legal

³⁴ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psych. 459, 463–65 (2009).

³⁵ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.

consequences of a child transferring to the Children's Court, so it is important that it is transparent, is on good evidence and is accompanied by reasoned judicial orders. The Supreme Court has set out a constitutional test of procedural fairness, which would be inadequate if the state relied on its own determinations of maturity or how serious an offence was. Therefore, it is not the presence of preliminary assessment that is important but the quality of the procedures used for preliminary assessment.

4.5 Challenges in Implementation

Despite its progressive objectives, the implementation of the Juvenile Justice Act, 2015 continues to face significant institutional challenges.³⁶ Many Juvenile Justice Boards operate without regular access to trained psychologists, psychiatrists, or child development specialists. The absence of multidisciplinary expertise frequently results in assessments that rely upon limited psychological reports or subjective judicial observations.³⁷

Another major concern is the lack of nationally standardized assessment protocols. Unlike forensic investigations, which are governed by established scientific procedures, maturity assessments often vary from one jurisdiction to another. Consequently, similarly situated children may receive different legal treatment depending upon the district in which proceedings are conducted.

Delays in obtaining expert reports, inadequate institutional infrastructure, and uneven availability of child welfare professionals further reduce the effectiveness of the assessment process. These deficiencies not only affect the rights of children but also undermine public confidence in the consistency and fairness of juvenile justice administration.

The post-2018 framework therefore represents an important legislative advancement, yet its constitutional success ultimately depends upon the development of objective standards capable of ensuring that individualized assessment remains scientifically reliable, procedurally fair, and free from arbitrary discretion. These concerns naturally lead to a broader question:

What role should developmental maturity and crime severity play in determining juvenile criminal responsibility? The following chapter addresses this issue by examining

³⁶ U.N. Comm. on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, Sec. 28–31, U.N. Doc. CRC/C/GC/24 (2019).

³⁷ Law Comm'n of India, *Juvenile Justice System in India: A Study* (Report No. 177, 2001).

constitutional theory alongside developments in developmental psychology and neuroscience.

V. Maturity, Crime Severity, and the Constitutional Accountability Framework

While the issue of juvenile criminal responsibility debates has evolved from asking "How old is the offender?" to questioning "How responsible was the offender?" the discussion has not yet fully become more nuanced. The debate over juvenile criminal responsibility has advanced from asking "How old is the offender?" to asking "How responsible was the offender?" but the shift has not been complete. Increasingly, modern legal systems have understood that chronological age is one significant factor, but not the only factor to be considered when determining criminal responsibility.³⁸ There are considerable changes in cognition, emotional control, moral reasoning and susceptibility to external influences that are experienced during adolescence. Thus, two people at the same age could have very different capacities to understand the implications of their behavior.

The Juvenile Justice Act, 2015 is indicative of this understanding as it makes the concept of developmental maturity a relevant consideration in cases of heinous offences. But the lack of objective standards persists, presenting continuing uncertainties about the right balance between rehabilitation and accountability.

5.1 Chronological Age versus Developmental Maturity

Chronological age may be an administratively convenient yardstick, but is not a reliable measure of criminal responsibility.³⁹ Age has historically been a basis for legal systems due to the ease of determining and uniformity it provides. However, developmental psychology research shows that adolescence is not a homogenous period of human life. Biological, psychological and environmental factors play a part in the rate at which intellectual, emotional, impulse control and decision-making abilities develop.

The distinction is acknowledged in the initial assessment process outlined in Section 15, which involves consideration of the child's mental capacity and understanding of consequences by Juvenile Justice Boards.⁴⁰ maturing developmental status should not be inferred simply because

³⁸ Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 30–35 (2008).

³⁹ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psych. 459, 463–65 (2009).

⁴⁰ *Juvenile Justice Act* sec. 15.

a child is reaching the age of 18. But individual assessment continues to be crucial to ensure constitutional protections are based on the individual's actual capacity, rather than on a guess.

5.2 Developmental Psychology and Neuroscientific Perspectives

The field of modern developmental psychology repeatedly shows that adolescents are different to adults in a number of ways which have direct relevance to criminal responsibility. Studies have shown that logical reasoning is developed relatively earlier, whereas other aspects of children's higher-order executive functions such as impulse control, emotional control, risk evaluation, and long-term planning are still developing during their early adolescence.⁴¹ Neuroscientific research further indicates that the prefrontal cortex, which is involved in executive decision making and behaviour control, develops later in life than regions that are involved in emotional responses and reward seeking behaviour.⁴²

Consequently, young people are much more likely to be influenced by their peers, act impulsively, and make short-term decisions, compared to fully grown adults. These scientific results, however, do not suggest that the adolescent is not responsible for the criminal behavior. Instead, they show that criminality varies across the life-span.⁴³ As such, maturity evaluations should include scientific evidence but not be Reductionism about neuroscience and offending.

5.3 Crime Severity and Individual Culpability

The level of severity of an offence will clearly impact on the expectations of accountability amongst society.⁴⁴ Public confidence in justice is an important constitutional consideration, in the aftermath of heinous crimes affecting the lives of victims, families and communities. However, the severity of the offense is not the only factor used to ascertain adult-like criminal responsibility of a juvenile.⁴⁵

Planning, understanding, coercion, and psychological development for two adolescents charged with the same offence can be quite different. Thus, an offence-centred strategy could encourage a 'just punishment' mentality, rather than providing a just punishment.⁴⁶ It is

⁴¹ *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005).

⁴² Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 *Developmental Rev.* 78, 82–84 (2008).

⁴³ *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012).

⁴⁴ *Graham v. Florida*, 560 U.S. 48, 67–68 (2010).

⁴⁵ *Roper v. Simmons*, 543 U.S. 551, 570–71 (2005).

⁴⁶ *Graham*, 560 U.S. at 44.

constitutional to take a closer look at an offence rather than applying preset legal penalties if the nature of the offence is serious.

In turn, the degree of severity of the crime should be the determining factor of whether a person is mature enough to be considered for assessment, not the deciding factor.

5.4 A Constitutional Accountability Framework

This paper suggests a Constitutional Accountability Framework as a normative approach to deciding the juvenile criminal responsibility for an India post-2018.⁴⁷ The framework aims to ensure that the transition decision-making in Section 15 is done in a way that balances the goals of rehabilitation with the goal of accountability, using constitutional values to drive the decision making process.

The framework proposed is based on five principles:

- **Individualised Assessment:** Each child should be assessed based on their developmental maturity and not just chronological age.
- **Scientific Reliability:** Psychological and psychiatric assessments should be based on nationally standardised protocols that have been developed through a multidisciplinary approach.
- **Procedural Fairness:** Juvenile Justice Boards are required to give reasons for their decisions and evidence to support those reasons, which is the requirement of the Constitution, articles 14 and 21.
- **Proportional Accountability:** Accountability must be commensurate with evidence of developmental capacity, and not to be tied to public outrage or level of offence severity.
- **Rehabilitation:** shall be a core sentencing and post-sentencing objective, even if it is determined that it is suitable to be included in the Children's Court, and it shall be the

⁴⁷ INDIA CONST. arts. 14, 21.

goal of rehabilitation.⁴⁸

This framework acknowledges that the values of accountability and rehabilitation are not incompatible constitutional values. However, real accountability can only be achieved if child sensitive, transparent and evidence based procedures are used to determine responsibility.

The issue before the Constitution is not so much whether older adolescents should ever be held accountable but whether the accountability is based on a process that continues to adhere to the principles of equality, dignity, proportionality and due process. The best way to achieve this balance is with a scientifically valid and constitutionally founded assessment model.

VI. Judicial Interpretation of the Post-2015 Juvenile Justice Framework

Whether the Juvenile Justice (Care and Protection of Children) Act, 2015 is effective will depend on the interpretation of the judges. It would seem that Parliament had sought to expand the definition of juvenility and enhance the range of offences for the preliminary assessment through the enactment of the preliminary assessment mechanism, but the judiciary have had a major part to play in stretching the definition, in the way that statutory provisions are interpreted, and in the importance that they give to the constitutional guarantees.

The Supreme Court in the decisions it has made has always reiterated that Juvenile Justice acts as a good legislation to secure the welfare of children and at the same time taking care of the society's interest.⁴⁹

6.1 *Pratap Singh v. State of Jharkhand*⁵⁰

The Supreme Court in *Pratap Singh v. State of Jharkhand* has clarified the meaning of 'juvenile' and noted that such an age shall be calculated on the date of the commission of the offence and not the date of the arrest. The Court considered the purpose of juvenile law to be that of affording opportunities to children to be reformed and not to be subjected to punishment as is the case with adults.

The ruling was made under the previous law but it provided a basis for the following principle.

⁴⁸ U.N. Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, U.N. Doc. A/RES/40/33 (1985).

⁴⁹ *Hari Ram v. State of Rajasthan*, (2009) 13 S.C.C. 211.

⁵⁰ *Pratap Singh v. State of Jharkhand*, (2005) 3 S.C.C. 551.

ple that the age of the accused should still be the most important factor in establishing juvenile status. The judgment has strengthened the notion that criminal responsibility can't be determined by the age on the date of trial or appeal. This principle remains a guiding principle on the interpretation of the Juvenile Justice Act 2015.

6.2 *Hari Ram v. State of Rajasthan*⁵¹

Supreme Court in *Hari Ram v. State of Rajasthan* has given a strong boost to the child rights paradigm by stating that the provisions of the Juvenile Justice Act must be read liberally in favour of the child. The Court understood that laws made in the interest of children should not be confined by arcane procedural obstacles.

The court further ruled that the defence of juvenility can be invoked even after the accused has been convicted, if he was younger than 18 years at the time of the offence. Such a procedure is in keeping with the constitutional principle of substantive justice, which gives the court the flexibility to take a more holistic approach than adherence to procedure, and is an indication of the judiciary's willingness to focus on rehabilitation as far as the law permits.

6.3 *Shilpa Mittal v. State (NCT of Delhi)*⁵²

Perhaps one of the most important post-2015 decisions was *Shilpa Mittal v. State (NCT of Delhi)* in which the Supreme Court discussed the classification of offences under the Juvenile Justice Act, 2015. The Court discussed the uncertainty of the legislature around offenses for which the maximum sentences are greater than seven years, but which do not establish a minimum sentence.

The Court concluded that offences under this section should not be presumed to be heinous offences for the purposes of this Section. Rather, they should be considered serious offences until Parliament makes it a legal definition. The interpretation avoided needless over-reaching of the preliminary assessment process and helped to reinforce the caution which should be exercised when interpreting provisions that impact on the rights of juveniles.

The ruling demonstrates the judiciary's dedication to maintaining the protecting nature of

⁵¹ *Hari Ram supra note 49.*

⁵² *Shilpa Mittal v. State (NCT of Delhi)*, (2020) 2 S.C.C. 787.

juvenile justice as well as upholding the legislative intent.

6.4 Judicial Trends and Constitutional Implications

Collectively, these decisions demonstrate a consistent judicial approach. Juvenile law has been found to be consistent with the constitutional rights afforded by Article 14 and 21 of the constitution which guarantee individual justice rather than mechanical application of the law. Despite the 2015 Act, the judiciary have been slow in accepting interpretation of older adolescents as adult offenders.

But, from the judgments, one can also see the practical constraints due to the lack of standardisation of maturity assessment procedures. Inconsistencies in methodology are more likely among different Juvenile Justice Boards. Thus, judicial review cannot completely address the issue of arbitrariness without the more explicit guidance of the law, and the scientifically sound evaluation principles.

The growing jurisprudence thus calls for a balance between accountability and constitutionally fair procedures and not for the public opinion or gravity of the alleged offence only.

VII. Comparative and International Perspectives on Juvenile Criminal Responsibility

7.1 International Child Rights Framework

International human rights law has had a significant impact on the development of juvenile justice, in part because children are known to have developing capacities and thus need to be treated differently under the law. International texts have consistently called attention to the fact that children have a responsibility to commit a crime, but that this responsibility is to be exercised in a context that puts rehabilitation, proportionality, fairness in proceedings, and reintegration at the heart of the matter. In this international context, the Indian juvenile justice system has evolved, and there is a need to compare it to the fruit of this evolution in order to assess its constitutional legitimacy in the post-2015 framework.

The most important international document is the United Nations Convention on the Rights of the Child (UNCRC), 1989 that India signed in 1992.⁵³ Article 40 of the Convention calls on

⁵³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

State Parties to establish special procedures for children in need, and foster a respect for children's dignity and value, and the reintegration of children into society.⁵⁴ There is no restriction under the Convention to holding somebody accountable for serious offences. Rather, it is their firm belief that the sentence of any child should take into account their age, maturity, and developmental needs. This does not only condemn retributive reactions, but also acknowledges the need for rehabilitation as a part of justice.

UN Committee on the Rights of the Child, General Comment No. 24 (2019), also went on to state that adolescence is a period of ongoing neurological and psychological maturation.⁵⁵ Legal systems, therefore, should not deal with children as little adults nor make transfer to regular criminal courts a routine. The Committee also emphasized the need to base decisions on juvenile offenders on objective evidence and not on public opinion or political pressure. These principles are similar to the concept of equality enshrined in Article 14 of the Constitution of India, and the rule of fair procedure in Article 21.

Likewise, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985 establish proportionality as a key principle of the juvenile justice system.⁵⁶ The Rules recognise that the nature of an offence must not be the only factor taken into account when determining the level of accountability of a child, but instead consider their personal circumstances, developmental maturity and future prospects. This multidimensional approach is based on the notion that the responsibility of the criminal cannot be assessed only from the point of view of the alleged crime.

This philosophy is supported by the Riyadh Guidelines, 1990 which focus on preventive interventions, education, family support and community participation.⁵⁷ The Guidelines do not only address post-offence sanctions, but also promote measures in response to social and economic conditions that can lead to juvenile delinquency. This view helps to reinforce the State's constitutional duty to provide conditions conducive to the healthy development of

⁵⁴ Convention on the Rights of the Child art. 40, Nov. 20, 1989, 1577 U.N.T.S. 3

⁵⁵ U.N. Comm. on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, U.N. Doc. CRC/C/GC/24 (2019).

⁵⁶ U.N. Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, U.N. Doc. A/RES/40/33 (1985).

⁵⁷ U.N. Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, annex, U.N. Doc. A/RES/45/112 (1990).

children, not just react to criminal behaviour.

These are the international instruments collectively that show that modern justice of youth is not a justice of softness. Rather, it aims to balance accountability and rehabilitation through processes that are evidence based, child sensitive, and respect human rights principles. It is not an issue of whether there should be accountability or not, but how accountability can be rolled out without compromising constitutional rights of children.

7.2 Comparative Approaches

Comparative jurisprudence shows that each country has found its own approach to reconciling responsibility and rehabilitation.⁵⁸ The institutional forms are different, but there is a common denominator. Modern democracies are increasingly moving away from age-specific presumptions, and automatic referrals to adult criminal courts. In modern democracies, there is a growing trend to move away from age-based presumptions and automatic referrals to adult criminal courts.

In the United Kingdom, children aged 10 to 17 are normally sent to specialised youth courts. Very serious offences, like murder, can be tried before the Crown Court, however.⁵⁹ In those instances, sentencing principles take into account that the culpability of adolescent offenders is diminished, and courts routinely take into account developmental maturity, family background, and prospects of rehabilitation. Thus, with respect to serious prosecution, the British approach does not motivate procedural accountability and adult punishment, maintaining the rehabilitative philosophy.

The U.S. offers a contrasting model. Some states allow prosecutors or judges to transfer juveniles to adult criminal court under statutory conditions, including age, type of offense or criminal history.⁶⁰ This treatment arose out of concerns about violent juvenile crime, but has been subject to constant criticism. Empirical evidence suggests that juveniles charged as adults are more likely to recidivate and to have less successful reintegration than comparable offenders within the juvenile justice system. The United States Supreme Court has, in recent

⁵⁸U.N. Comm. on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, U.N. Doc. CRC/C/GC/24 (2019).

⁵⁹ Children and Young Persons Act 1933, 23 & 24 Geo. 5 c. 12 (U.K.).

⁶⁰ Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 Crime & Just. 189, 194-96 (1998).

decisions, such as *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*, begun to take account of scientific information regarding adolescent brain development and to restrict the most severe punishment available to juvenile offenders.⁶¹

In Canada, the principles of proportionality, accountability and rehabilitation inform the design of a youth justice framework within a unified approach, called the Youth Criminal Justice Act.⁶² Adult sentences are only imposed in exceptional cases when the court is satisfied that nothing less than an adult sentence will be appropriate. In Canada, the legislation is a reasonable balance that will acknowledge public safety and still honor the constitutional mandate for child welfare. These comparative experiences show that accountability should not be at the expense of juvenile justice principles. Successful systems, on the other hand, are based on individual assessment, special institutions, a high level of psychological assessment expertise, and strong procedural protections. The post-2015 framework in India has many of these goals but is less mature in institutional implementation, as the lack of nationally standardised protocols and multi-disciplinary decision-making structures has made it less effective.

7.3 Lessons for India

The comparative analysis brings out three important lessons on Indian juvenile justice. First, the basis for criminal responsibility must continue to be an individualized assessment, but with the provision of scientifically sound national standards to support it.⁶³ Secondly, it should remain an exceptional measure, based upon evidence, not just public opinion, or the level of offence. Third, rehabilitation is to be continued even if accountability is imposed, for successful reintegration is ultimately a constitutional value and for long term public safety.

Such an approach is already enshrined in the Constitution of India as its norm. The only thing that is needed is institutional reform that would help in the implementation of the constitutional principles that are consistent in administrative practice. This proposed Constitutional Accountability Framework aims to fill this gap with a comprehensive constitutional framework that incorporates scientific evaluation, procedural justice and restorative justice.

⁶¹ *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012).

⁶² Youth Criminal Justice Act, S.C. 2002, c. 1 (Can.).

⁶³ *Juvenile Justice Act* sec. 15; U.N. Comm. on the Rights of the Child, General Comment No. 24 (2019)

VIII. Strengthening Constitutional Accountability in India's Juvenile Justice System

As per the above analysis, it is clear that the Juvenile Justice (Care and Protection of Children) Act, 2015 is a huge leap towards a progressive juvenile jurisprudence in India that recognizes the developmental maturity as a basis for determining whether the children aged between sixteen and eighteen years are liable for heinous crimes committed against them. The Act has not been consistently applied in practice, however, given inconsistencies in standards assessment, inadequate institutional capacity and various interpretations of the definition of Section 15⁶⁴ by Juvenile Justice Boards. Such drawbacks compromise not only the constitutional rights of children but also undermining the legitimacy of the justice system.

This paper therefore suggests a number of legislative, institutional and procedural changes to be put in place, to operationalize the Constitutional Accountability Framework. All these recommendations aim to guarantee that the accountability process is based on objective, scientifically evidence-based and constitutionally sound processes and that rehabilitation remains the central goal of juvenile justice.

8.1 Establishing a National Standardised Maturity Assessment Framework

Need the most is a national uniform system to implement the initial evaluation as per Section 15 of Juvenile Justice Act, 2015. The law currently only states that the factors include mental capacity, physical capacity, understanding of consequences and circumstances, and does not specify any method for determining these. That is, some Juvenile Justice Boards and experts make decisions based on their mindsets.

Consulting with the National Commission for Protection of Child Rights (NCPCR), Psychologists, Psychiatrists, Neuroscientists, Criminologists and Law Scholars should prepare a comprehensive assessment guideline for all over the country.⁶⁵ Such guidelines should include measurable criteria for the developmental maturity of the student and known psychological assessment instruments and specify minimum procedures to guarantee uniformity amongst jurisdictions.

The impact of the uniform standards would be to significantly reduce arbitrariness, to increase

⁶⁴ Juvenile Justice Act sec. 15.

⁶⁵ National Commission for Protection of Child Rights Act, 2005, No. 4 of 2006, INDIA CODE.

the confidence that is placed in the experts' reports and to make it easier to meet the requirement set out in Article 14 of the Constitution that all are equal before the law and that the State will not act in an arbitrary manner.

8.2 Strengthening the Role of Multidisciplinary Expert Panels

Developing maturity has to be more than just a legal understanding.⁶⁶ At present, Juvenile Justice Boards rely on inferior quality psychological reports and in many districts, it is the specialists who are not available and not consulted in a routine manner.⁶⁷

The lack of this, therefore, should be corrected by the permanent availability of a multidisciplinary assessment panel within each Juvenile Justice Board, consisting of a clinical psychologist, psychiatrist, child development specialist, social worker and, when needed, an educational counsellor. The professionals have to form integrated assessment reports about the child's cognitive development, emotional maturity, family background, educational history, behavioural traits, vulnerability to various influences and mental health.

This all-encompassing evaluation would do away with reliance on individual expert judgments and result in more holistic and consistent judgments, as opposed to relying on assumptions based on age or offence gravity.

8.3 Capacity Building and Specialised Judicial Training

The effectiveness of any legislation rests on the ability of the institutions executing it. In particular, Juvenile Justice Boards, Children's Courts, juvenile prosecutors, legal aid counsel, probation officers, and child welfare professionals working in the juvenile justice system should be trained in developmental psychology, adolescent neuroscience, child rights jurisprudence, trauma-informed interviewing techniques and constitutional principles of juvenile justice, both in their initial training and over time.

Decision-makers should also be made familiar with international conventions, like the UN Convention on the Rights of the Child, the Beijing Rules, and General Comment No. 24. This capacity building would lead to more uniformity in decision making and make it less likely

⁶⁶ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psych. 459, 463–65 (2009).

⁶⁷ U.N. Comm. on the Rights of the Child, General Comment No. 24 (2019)

that subjective or stereotypical assumptions will impact on initial assessments. The need for specialised judicial training is especially significant as Section 15 places on Boards the responsibility to interpret scientific evidence which may not be within their traditional legal knowledge. PfD should thus improve the quality and legitimacy of judicial decision making.

8.4 Promoting Restorative Justice alongside Accountability

The goal of juvenile justice is more than just to establish the criminality of a child. It is also a means to promote reconciliation, behavioural change and reintegration in good conditions. Restorative justice processes therefore must form a part of child justice processes.

Structured victim-offender mediation, psychological counselling, educational programmes, community service and family intervention programmes should be used to supplement formal judicial proceedings where appropriate. Restorative processes should not be used to lessen the seriousness of the offence nor compromise the rights of the victim. Rather they need to offer the opportunity to recognise the harm, accept responsibility and engage in meaningful rehabilitation.

Restorative justice has been shown to lower recidivism rates, enhance satisfaction amongst victims and instill greater trust in juvenile justice systems around the world.⁶⁸ The importance of tackling accountability and rehabilitation together, and not as two distinct philosophies, would be strengthened with the inclusion of these practices within the constitutional framework in India.

8.5 Legislative Clarification of Section 15

While the Supreme Court has answered some of the interpretative questions through decisions, there are still some concepts in Section 15 that are not defined. Statutory changes or detailed rules should define terms like 'mental capacity', 'physical capacity' and 'understand the consequences of the offence'.

Finally, the law should set out minimum standards of procedure for carrying out a preliminary assessment, including the requirement for the involvement of experts, disclosure of assessment reports to the parties, the provision of an opportunity to challenge the experts' findings and

⁶⁸ Daniel W. Van Ness & Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* 68–70 (5th ed. 2015).

reasoned written orders confirming the decisions made regarding a transfer. Such procedural safeguards would enhance compliance with Article 21, as it would ensure that decisions that impact a child's freedom of movement are equitable, transparent and open to meaningful appeal.⁶⁹

In addition, mechanisms should be put in place for periodic review of transferred cases to ensure that ongoing proceedings before the Children's Court are in line with the developmental needs and rehabilitation potential of the child.

8.6 Institutional Accountability and Future Reform

Enforcement of the Constitution should not only apply to juvenile offenders but to the institutions that administer justice. The success of Juvenile Justice Act is not just dependent on legislation but also requires proper funding, infrastructure, data collection, and administrative control.

The Government should create a national database for the documentation of preliminary assessments, transfer decision, rehabilitation, and the rate of recidivism. Such empirical data would help to inform evidence-based policy making and help to periodically assess the effectiveness of the framework. Juvenile Justice Boards should also be monitored by the independent bodies like National Commission for Protection of Child Rights and State Commissions to ensure that they follow the prescribed statutory procedure and the values of the Constitution. Regular review of assessment practices would help to achieve transparency and continuous institutional improvement.

Finally, there is a need for constitutional accountability to be seen as joint responsibility of legislators, judges, psychologists, administrators, child welfare workers and society. A juvenile justice system based on scientific facts, process justice and rehabilitative values will be more public-confident and constitutional than a juvenile justice system that is based exclusively on punitive considerations.

The recommendations in this chapter aim to make the Constitutional Accountability Framework into a model that can be used for future legislative changes and judicial decisions. The measures, if implemented effectively, would enhance the child rights protection system

⁶⁹ INDIA CONST. art. 21; *Maneka Gandhi*

and also provide accountability of serious offences in accordance to principled, transparent and constitutionally sound procedures.

IX. Conclusion

The discussion on the nature of juvenile delinquency in India is no longer limited to the definition of a statutory age for which a person can be said to be a juvenile. It has grown to become a much more complex constitutional debate about how far the law should go in balancing the interests of the child, of the individual, of the victim and of the public in the administration of justice. In an attempt to address this constitutional issue, Parliament has passed the Juvenile Justice (Care and Protection of Children) Act, 2015, which has maintained 18 years as the age of juvenility and added a provision on how to determine the developmental maturity of children aged 16-18 who are accused of heinous offences. While this bill recognises that age alone does not automatically mean that a person is not criminally responsible, it also poses some basic questions about justice, equality and the constitutional boundaries of judicial discretion.

The study has shown that, separately, chronological age and severity of offenses are not constitutionally adequate grounds for holding children accountable for committing crimes. Chronological age is legally definitive; however, it does not take into consideration the substantial developmental differences among adolescents. On the other hand, if the gravity of an offence is relied on as the basis for a decision, it could be possible that children's rights to development and rehabilitative justice are lost to rage and retributive justice. Having a law based on one of those alone would inevitably lead to injustice, since it fails to consider the multidimensional nature of the growth of the adolescent, and the constitutional duty to treat him/her as a person and not as a representative of an age group or category of a crime.

The analysis presented in this paper confirms that developmental maturity offers a more principled foundation for criminal responsibility, where criminal responsibility is determined through objective, scientifically sound and procedurally fair mechanisms. There are clear advances in developmental psychology and neuroscience that show that adolescents are cognitively and emotionally very different from adults, have differing levels of impulse control, moral judgment, and are more susceptible to external influences. It is not possible to adequately describe these differences using chronological age, and it cannot be assumed from the severity of the alleged offence. As such, the preliminary assessment in Section 15 has constitutional

value only if it is an "evidence-based" assessment and not an "arbitrary" one based on the judge's subjective interpretation of the facts.

The comparative analysis carried out in the present study also shows a tendency on the part of mature constitutional democracies to give up the idea of strictly enforcing the responsibility of young offenders. Rather, the international practice is to rely on specialised juvenile institutions, multidisciplinary assessment, procedural safeguards and interventions designed to rehabilitate rather than punish, where the adolescent's culpability is de-emphasised and that the adolescent has the capacity to change. Many of these developments are captured by the India's post-2015 framework which in principle captures it. The implementation of it is, however, beset with inconsistencies among institutions, lack of nationally standardised assessment procedures, limited availability of specialised experts and differences in the interpretation of these procedures in Juvenile Justice Boards among jurisdictions. If this structural imbalance is not corrected, the possibility of 'justice for all' promised by the Act will be half realised.

The key contribution of this research is the Constitutional Accountability Framework, which provides an alternative normative framework to interpret juvenile criminal liability in post-2018 India. Unlike traditional models that separate rehabilitation and accountability at two ends of the justice continuum, this model shows that both are rooted in the same commitment to justice in the Constitution. Rehabilitation safeguards the dignity and developmental rights of children, and accountability safeguards the rule of law, victim rights and public trust in legal institutions. These objectives, therefore, appear to be contradictory but are not. True constitutional justice must have both. Rehabilitation without accountability is juvenile justice run amok.

However, rehabilitation without accountability has the potential to undermine the trust of the public in the justice system and to ignore the rights of the victims. It is therefore essential that a juvenile justice system that is constitutionally sustainable incorporate these values, not give up one in exchange for the other.

For this reason, the following paper recommends that future reforms go beyond an amendment to the law aimed at extending or limiting the range of criminal liability. The actual challenge is to enhance decision making, the quality of which. If a person's assessment is to meet the constitutional obligations of equality, fairness, proportionality and due process, then there are important prerequisites, such as standardised maturity assessment protocols, multidisciplinary

expertise, specialised judicial training, restorative justice mechanisms, and increased institutional oversight. Such changes would render the initial assessment process as a science-based constitutional measure, instead of a discretionary process, and enable society to be protected as well as children's rights.

The trouble with a constitutional democracy is not how harsh it is against those who offend, but how fair it is in its exercise of the power to punish. Serious misbehavior and incidences must always be dealt with in a way that holds the child accountable. That task, however, has to be carried out in a rational, transparent, evidence-based and constitutional manner, not by the threat of, or sentiment for, the populace. The future of juvenile justice in India cannot, then, be a dichotomy of rehabilitation versus accountability, but one of framing a jurisprudence which can be integrated in a larger framework of constitutional governance.