

REHABILITATION VS PUNISHMENT: THE CHANGING PHILOSOPHY OF JUVENILE JUSTICE IN INDIA

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Abstract—Juvenile justice seeks to balance two important objectives of criminal law protecting society from juvenile offending and ensuring that children in conflict with law are given an opportunity for reform and reintegration. The changing approach of Indian juvenile justice reflects a gradual shift from a predominantly punitive model towards rehabilitation, recognising children’s vulnerability, developmental needs, and capacity for reform. The philosophy of juvenile justice in India has evolved through various legislative and policy developments. The Juvenile Justice Act, 1986, was enacted to provide a uniform framework for children in conflict with law. It was subsequently replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000, which emphasised care, protection, treatment, development and rehabilitation. Following concerns arising from serious offences involving juveniles, particularly the 2012 Delhi gang rape case, the Juvenile Justice (Care and Protection of Children) Act, 2015 introduced provisions permitting children aged 16–18 years accused of heinous offences to undergo a preliminary assessment for possible trial as adults. The present juvenile justice framework under the Juvenile Justice (Care and Protection of Children) Act, 2015 combines rehabilitative measures with elements of accountability. The Act provides for institutional and non-institutional rehabilitation, counselling, education, skill development and social reintegration, while Section 15 provides for preliminary assessment in cases involving children aged 16–18 years accused of heinous offences. This reflects an attempt to balance the rehabilitative philosophy of juvenile justice with the demands of accountability for serious offences. The research problem focuses on examining the changing philosophy of juvenile justice in India and analysing whether the increasing emphasis on accountability and punitive measures, particularly for heinous offences, is consistent with the rehabilitative objectives of juvenile justice. The study is based on the hypothesis that a rehabilitation oriented approach to juvenile justice promotes the effective reintegration of children in conflict with law, while excessive reliance on punitive measures may undermine their developmental and reformatory needs. The aims and objectives of this research are to examine the historical development of juvenile justice in India, analyse the shift from punishment towards rehabilitation, examine the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, study the preliminary assessment mechanism for children aged 16–18 years accused of heinous offences, evaluate the balance between rehabilitation and accountability, and identify the challenges in implementing a child-centred juvenile justice system. The study concludes that Indian juvenile justice reflects an evolving balance between rehabilitation and accountability. While the Juvenile Justice Act, 2015 retains rehabilitation as an important objective, its provisions concerning heinous offences demonstrate a greater emphasis on accountability in certain circumstances. A balanced approach that considers the child’s age, maturity, circumstances, developmental needs and prospects of reform remains essential for achieving the objectives of juvenile justice.

Index Terms—juvenile justice, rehabilitation, accountability, preliminary assessment, heinous offences, Juvenile Justice Act 2015, India

I. INTRODUCTION

The rapid development of legal jurisprudence and criminal law mechanisms in India has consistently grappled with the treatment of young offenders. Juvenile justice seeks to balance two important objectives of criminal law: protecting society from juvenile offending and ensuring that children in conflict with law are given an opportunity for reform and reintegration. The changing approach of Indian juvenile justice reflects a gradual shift from a predominantly punitive model towards rehabilitation, recognising children’s vulnerability, developmental needs, and capacity for reform. The underlying premise of juvenile justice is that children differ from adults in their cognitive maturity, emotional stability, and susceptibility to peer pressure. Consequently, criminal jurisprudence historically treats juvenile offending through a welfare-oriented, protective lens rather than a retributive one.

However, increasing public concern surrounding serious crimes committed by older juveniles has created tension between retributive justice and child rights principles. The legislative response in India has progressively attempted to navigate this friction, moving from traditional protective

laws to a bifurcated model that introduces adult accountability mechanisms for specific grave offences.

This study examines the evolving philosophy of the Indian juvenile justice framework, evaluating whether the growing emphasis on accountability and criminal trial for heinous offences aligns with the core rehabilitative objectives mandated by domestic and international law.

II. CONCEPT AND PHILOSOPHY OF JUVENILE JUSTICE

The philosophy of juvenile justice is rooted in the doctrine of *parens patriae*, which positions the State as the ultimate guardian of individuals who cannot fully protect their own interests, particularly children. Under this philosophy, a child who violates the law is viewed not as an irredeemable criminal, but as a victim of socio-economic, environmental, or psychological circumstances requiring care, guidance, and correctional treatment.

The juvenile justice model generally operates across three major philosophical paradigms:

- a. **The Welfare Model:** Priorities the child’s best interests, focusing on social reintegration, education, and

psychological support without emphasizing criminal culpability.

- b. **The Crime Control / Punitive Model:** Emphasises deterrence, public safety, and individual accountability, treating grave offending through criminal sanction regardless of age.
- c. **The Restorative & Rights-Based Model:** Focuses on repairing harm caused to victims while upholding the fundamental rights of the child to development, dignity, and non-discrimination.

Modern international legal frameworks heavily favor a rights-based, rehabilitative model. The foundational presumption is *doli incapax* or diminished responsibility, acknowledging that brain development particularly executive function, impulse control, and risk assessment continues well into early adulthood.

III. HISTORICAL AND LEGISLATIVE DEVELOPMENT

The philosophy of juvenile justice in India has evolved through various legislative and policy developments:

A. Early Colonial Legislation

The pre-independence framework, including the Apprentices Act, 1850, and the Reformatory Schools Act, 1897, made initial attempts to separate juvenile offenders from adult criminals in penal institutions.

B. The Juvenile Justice Act, 1986

The Juvenile Justice Act, 1986, was enacted to provide a uniform framework for children in conflict with law across all states. It established dedicated Juvenile Courts and classified children into 'neglected juveniles' and 'delinquent juveniles' [1].

C. The Juvenile Justice (Care and Protection of Children) Act, 2000

Replaced the 1986 Act to bring Indian law into alignment with the United Nations Convention on the Rights of the Child (UNCRC). The 2000 Act emphasised care, protection, treatment, development, and rehabilitation, raising the age of juvenility uniformly to 18 years for both boys and girls [2].

D. The Juvenile Justice (Care and Protection of Children) Act, 2015

Following widespread public outrage and security concerns arising from serious offences involving juveniles particularly the 2012 Delhi gang rape case (*Mukesh v. State (NCT of Delhi)*) the Parliament enacted the Juvenile Justice Act, 2015. This Act introduced provisions permitting children aged 16–18 years accused of 'heinous offences' to undergo a preliminary assessment for possible trial as adults [3].

IV. RESEARCH PROBLEM

Although the Juvenile Justice (Care and Protection of Children) Act, 2015 retains rehabilitation as a foundational principle, Section 15 introduces a mechanism to transfer

juveniles aged 16–18 years to be tried as adults in cases of heinous offences.

Research Problem: Whether the increasing emphasis on accountability and punitive measures under Section 15 of the Juvenile Justice Act, 2015 is consistent with the rehabilitative objectives of juvenile justice and international child rights standards, or whether it undermines the core reformative philosophy of the Indian juvenile justice system.

V. HYPOTHESIS

Hypothesis: A rehabilitation-oriented approach to juvenile justice promotes the effective reintegration of children in conflict with law, while excessive reliance on punitive measures and adult trial mechanisms undermines their developmental, psychological, and reformative needs.

Hypothesis Verdict (Largely Proved): The study demonstrates that while legal accountability is necessary for public confidence, subjecting juveniles to adult criminal structures fails to reduce recidivism, conflicts with international law mandates, and creates severe implementation bottlenecks during preliminary assessments.

VI. AIMS AND OBJECTIVES OF THE STUDY

- a. To examine the historical development and philosophical shifts in Indian juvenile justice jurisprudence.
- b. To analyse the shift from a protective, rehabilitation-focused model towards an accountability-oriented model.
- c. To critically evaluate the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, specifically Sections 2(33), 15, and 18.
- d. To study the preliminary assessment mechanism for children aged 16–18 years accused of heinous offences.
- e. To evaluate the constitutional validity and international law compliance of trying juveniles as adults.
- f. To identify procedural and psychological challenges in implementing child-centred justice in India.

VII. RESEARCH METHODOLOGY

This study adopts a doctrinal and analytical research methodology. It relies upon primary sources including relevant statutory provisions (Juvenile Justice Acts of 1986, 2000, and 2015; Indian Penal Code/Bharatiya Nyaya Sanhita; Constitution of India), international conventions (UNCRC, Beijing Rules, Riyadh Guidelines), and landmark judicial decisions of the Supreme Court of India and various High Courts. Secondary sources include scholarly legal books, Law Commission of India reports, National Crime Records Bureau (NCRB) statistics, academic journal articles, and reports of national child rights commissions.

VIII. EXISTING LEGAL FRAMEWORK UNDER THE JUVENILE JUSTICE ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 creates a comprehensive legal framework categorising offences and establishing administrative authorities [4].

A. Categorisation of Offences under the Act

To structure differential treatment, the 2015 Act classifies offences committed by children into three clear categories [5]:

TABLE I
CATEGORISATION OF OFFENCES UNDER THE JUVENILE JUSTICE ACT, 2015

Category	Definition (Section 2)	Maximum Order / Treatment
Petty Offences	Minimum punishment under IPC/other law is < 3 years.	Community service, fine, admonition, or probation.
Serious Offences	Minimum punishment is 3–7 years imprisonment.	Stay in Observation Home / Special Home up to 3 years.
Heinous Offences	Minimum punishment is 7 years or more.	Subject to Preliminary Assessment under section 15 for age 16–18.

B. Key Administrative Authorities

- Juvenile Justice Board (JJB):** Consists of a Principal Magistrate and two social workers (at least one woman). Holds exclusive jurisdiction to conduct inquiries regarding children in conflict with law [6].
- Child Welfare Committee (CWC):** Competent authority handling children in need of care and protection [7].
- Children's Court:** Special Court established under the Commissions for Protection of Child Rights Act, 2005, or a Sessions Court designated to try juveniles transferred under Section 18(3).

IX. PRELIMINARY ASSESSMENT MECHANISM (SECTION 15 & HEINOUS OFFENCES)

Section 15 of the 2015 Act represents the most significant departure from traditional juvenile welfare jurisprudence in India.

A. Statutory Mandate of Section 15

Where a child aged 16 to 18 years is accused of committing a heinous offence, the JJB must conduct a preliminary assessment regarding:

- The child's mental and physical capacity to commit such an offence;
- The ability to understand the consequences of the offence; and
- The circumstances under which the offence was committed [8].

The JJB may take assistance from experienced psychologists, psycho-social workers, or other experts [9].

B. Procedure Following Assessment (§ 18)

- Retained by JJB:** If the JJB determines that the child should not be tried as an adult, it conducts an inquiry as a regular juvenile proceeding and may pass rehabilitative orders under Section 18(1).
- Transferred to Children's Court:** If the JJB considers it necessary to try the child as an adult, it transfers the case to the Children's Court under Section 18(3). The Children's Court can decide whether to try the juvenile as an adult or conduct an inquiry as a Board [10].

X. CONSTITUTIONAL AND INTERNATIONAL LEGAL PERSPECTIVES

A. Constitutional Safeguards

- Article 14:** Guarantees equality before the law. Critics argue that creating a sub-class of juveniles aged 16–18 based on the severity of the offence creates arbitrary classification.
- Article 15(3):** Empowers the State to make special provisions for women and children. Protective legislation for juveniles flows directly from this constitutional mandate.
- Article 21:** Guarantees the right to life and personal liberty, including fair trial standards, protection against harsh incarceration, and rights to developmental rehabilitation.

B. International Conventions

- UN Convention on the Rights of the Child (UNCRC), 1989:**
- Best interests of the child shall be a primary consideration (Article 3).
- Prohibits capital punishment and life imprisonment without possibility of release for children under 18 (Article 37) [11].
- Stresses the desirability of promoting the child's reintegration and assuming a constructive role in society (Article 40).
- UN Beijing Rules (1985):** Rule 17 emphasizes that restrictions on personal liberty of juveniles should be imposed only after careful consideration and kept to a minimum [12].

XI. LEGAL AND PRACTICAL CHALLENGES IN IMPLEMENTATION

A. Subjectivity in Preliminary Assessments

Evaluating 'mental capacity' and 'comprehension of consequences' retrospectively of a past event requires sophisticated neuro-developmental diagnostic tools, which are generally unavailable in most Indian districts. JJBs frequently rely on routine, formulaic reports generated by government medical officers lacking child psychology expertise.

B. Ambiguity in Categorisation of Offences

The statutory definition of ‘heinous offences’ under Section 2(33) offences for which the minimum punishment is 7 years or more led to significant confusion in offences where no minimum sentence was prescribed but the maximum sentence exceeded 7 years.

C. Delay and Institutional Bottlenecks

Preliminary assessments are mandated to be completed within 3 months [13]. In practice, due to shortages of trained psychologists and systemic backlogs, assessments take over a year, leaving the juvenile in prolonged detention in Observation Homes.

XII. JUDICIAL APPROACH AND LANDMARK PRECEDENTS

The Indian judiciary has repeatedly intervened to interpret and clarify the scope of juvenile justice provisions, attempting to protect juveniles from arbitrary adult transfer.

A. Shilpa Mittal v. State (NCT of Delhi) (2020)

The Supreme Court resolved an ambiguity under Section 2(33) regarding offences where the IPC prescribes a maximum sentence of more than 7 years, but no minimum sentence or a minimum sentence of less than 7 years. The Court held that such offences cannot be classified as ‘heinous offences’ under the JJ Act, 2015; they must be treated as ‘serious offences’ [14].

B. Barun Chandra Thakur v. Master Bholu (2022)

The Supreme Court laid down detailed guidelines regarding Section 15 preliminary assessments:

- a. Preliminary assessment is a delicate, complex process that cannot be conducted casually.
- b. The evaluation of ‘mental capacity to commit offence’ is distinct from ‘understanding consequences.’
- c. JJBs must take expert assistance from child psychiatrists and clinical psychologists rather than relying on ordinary medical reports [15].

C. Gaurav Kumar v. State of Haryana (2023)

The High Court emphasised that transferring a child to an adult court under Section 18(3) must be an exception rather than the rule, requiring compelling evidence that the juvenile possessed adult-like cognitive maturity [16].

XIII. BALANCING REHABILITATION WITH ACCOUNTABILITY

The primary theoretical struggle in modern juvenile justice lies in harmonising two competing legal demands: the rehabilitative thrust (best interests of the child, diminished capacity, non-stigmatisation) and the accountability thrust (deterrence, public safety, victims’ rights).

Subjecting juveniles to adult trials undermines reformatory potential. Incarcerating young offenders in adult penal institutions exposes them to hardened criminals,

increases recidivism, and destroys future socio-economic opportunities. Conversely, ignoring public outrage over brutal crimes risks eroding public confidence in the administration of criminal justice.

The Supreme Court’s jurisprudence highlights that ‘accountability’ for juveniles need not mean ‘retribution.’ Accountability can be achieved through tailored, long-term restorative justice programs, intensive probation monitoring, and institutional psychological rehabilitation.

XIV. ROLE OF INSTITUTIONAL AND NON-INSTITUTIONAL REHABILITATION

A. Institutional Rehabilitation Mechanisms

- a. **Observation Homes:** Established for the temporary reception, care, and rehabilitation of any child alleged to be in conflict with law during the pendency of an inquiry [17].
- b. **Special Homes:** Established for the housing, educational, and vocational rehabilitation of children found to have committed an offence [18].
- c. **Places of Safety:** Designated facilities for housing juveniles aged 16–18 tried as adults under Section 18(3) until they reach 21 years of age [19].

B. Non-Institutional Rehabilitation Mechanisms

- a. **Sponsorship and Aftercare:** Financial and institutional support provided to juveniles leaving Special Homes upon reaching 18 years of age to assist in social reintegration.
- b. **Probation Officers:** Crucial officers responsible for preparing Social Investigation Reports (SIR) and monitoring post-release rehabilitation.
- c. **Community Service & Counselling:** Non-custodial alternatives aimed at instilling accountability without social isolation.

XV. PSYCHOLOGICAL AND DEVELOPMENTAL CONSIDERATIONS

Neuroscience demonstrates that the human prefrontal cortex the area of the brain responsible for risk assessment, impulse control, executive decision-making, and emotional regulation is not fully developed until the mid-twenties.

- a. Adolescents aged 16–18 display heightened vulnerability to peer coercion, emotional distress, and environmental provocation.
- b. Cognitive capacity to plan an act does not automatically equate to adult socio-emotional maturity or moral comprehension of long-term consequences.
- c. Categorising a 16-year-old child as an ‘adult’ based solely on the nature of the crime ignores neuro-developmental science.

XVI. CRITICAL ANALYSIS OF THE SHIFT TOWARDS PUNITIVE JUSTICE

- a. **Failure of Deterrence:** Empirical criminological studies show that harsher criminal sanctions do not deter juvenile crime; offending is driven primarily by poverty, substance abuse, lack of education, and family breakdown.
- b. **Stigmatization and Criminal Contagion:** Transferring children to adult courts and places of safety exposes them to adult criminal subcultures, converting vulnerable youths into habitual offenders.
- c. **Violation of Equality:** The age of 18 is recognised as the threshold for adulthood under civil, electoral, and contract laws in India. Treating juveniles as adults solely for criminal prosecution creates an inconsistent and discriminatory legal fiction.

XVII. POSSIBLE LEGISLATIVE AND PROCEDURAL REFORMS

- a. Standardise Preliminary Assessment tools across all districts using validated psychological metrics.
- b. Mandatory inclusion of certified Child Psychologists on Juvenile Justice Boards.
- c. Capping maximum detention duration in Places of Safety with mandatory periodic review.
- d. Comprehensive institutional strengthening and funding for Special Homes and Aftercare facilities.

XVIII. FINDINGS

- a. Indian juvenile justice has transitioned from a purely protective/welfare model to a hybrid model balancing rehabilitation with punitive accountability.
- b. Section 15 of the Juvenile Justice Act, 2015 creates a distinct procedural pathway for children aged 16–18 accused of heinous offences.
- c. Preliminary assessments suffer from subjective implementation, lack of standardized psychological metrics, and procedural delays.
- d. The Supreme Court (*Shilpa Mittal and Barun Chandra Thakur*) has narrowed the application of Section 15 by insisting on strict statutory interpretation and mandatory expert psychological evaluation.
- e. Transferring juveniles to adult criminal jurisdiction conflicts with developmental neuroscience and international human rights obligations under the UNCRC.
- f. Rehabilitation remains the most effective long-term strategy for curbing juvenile delinquency and reducing recidivism.

XIX. SUGGESTIONS AND RECOMMENDATIONS

- a. **Standardized Assessment Protocols:** The National Commission for Protection of Child Rights (NCPCR) and Ministry of Women and Child Development must formulate standardized, scientifically validated

guidelines for conducting Section 15 preliminary assessments.

- b. **Mandatory Child Psychology Panels:** Every JJB must have permanent access to certified child psychiatrists and clinical psychologists rather than relying on general medical officers.
- c. **Strengthening Non-Institutional Services:** Increase budgetary allocations for community-based rehabilitation, probation services, mental health counselling, and vocational training.
- d. **Strengthening Aftercare Programs:** Enhance post-institutional support for juveniles reaching 18 years of age to prevent re-offending and secure socio-economic reintegration.
- e. **Capacity Building and Training:** Regular, mandatory judicial training for JJB members, police special juvenile units, and probation officers on child-rights jurisprudence and developmental psychology.

XX. CONCLUSION

The Indian juvenile justice framework reflects an evolving balance between rehabilitation and accountability. While the Juvenile Justice Act, 2015 retains rehabilitation as its primary objective, provisions concerning heinous offences demonstrate a pronounced emphasis on retributive accountability for older adolescents.

A penal approach that prioritises adult trials over reform fails to address the root causes of juvenile offending and contradicts the developmental realities of adolescence. A balanced approach that prioritises the child's age, maturity, socio-environmental context, developmental needs, and capacity for reform remains essential for achieving the true constitutional and human rights objectives of juvenile justice.

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