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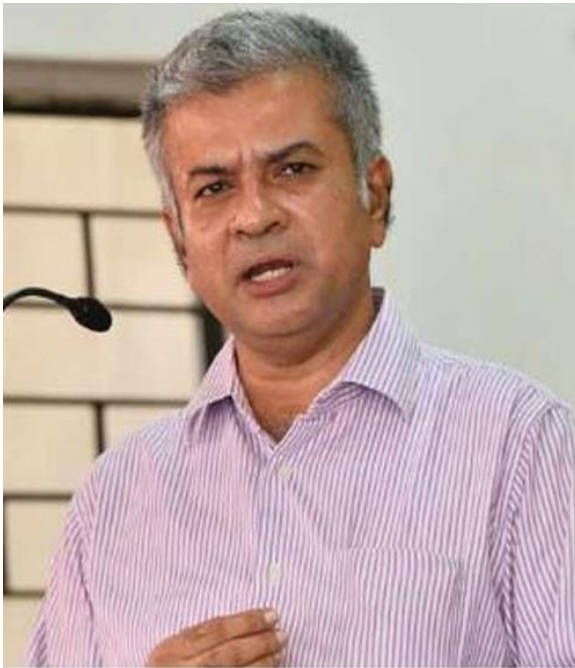
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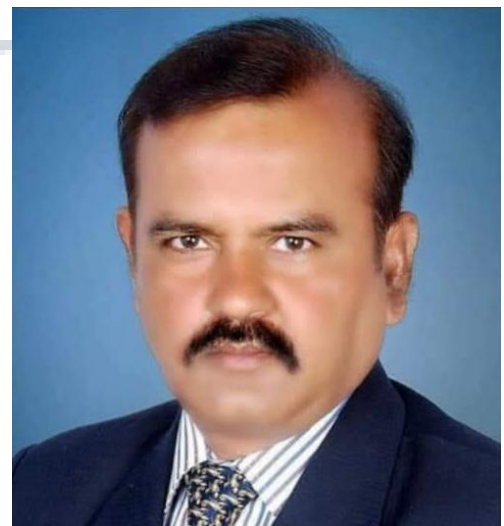
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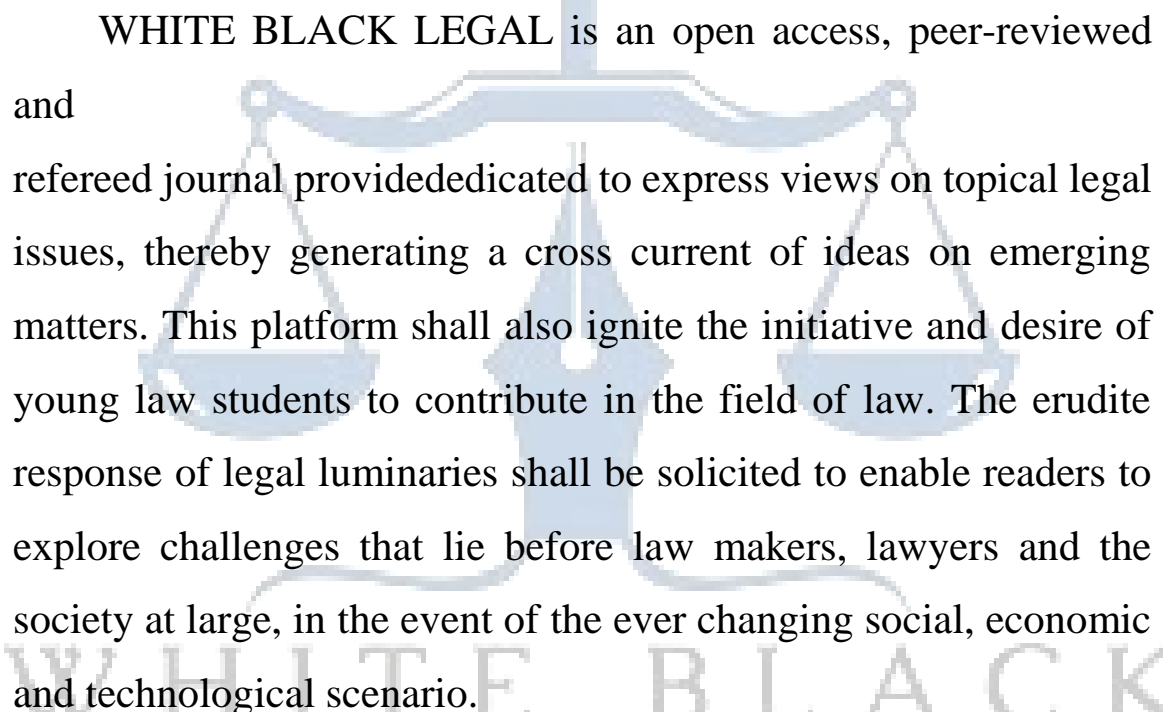


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With this thought, we hereby present to you

# **THE EVOLUTION OF JUVENILE JUSTICE JURISPRUDENCE IN INDIA: RETRIBUTION TO RESTORATION**

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## **ABSTRACT**

This paper analyzes the role of juvenile justice jurisprudence in the evolution of India's legal framework, emphasizing its critical transition from retributive approaches to rehabilitative practices. It explores the historical development of juvenile justice laws in India, mainly focusing on key milestones such as the Juvenile Justice Act of 1986 and the Juvenile Justice (Care and Protection of Children) Act of 2015. These legislative reforms are contextualized within the broader societal and international frameworks emphasizing child welfare and rights. This study examines the influence of public sentiment and landmark cases, notably the Nirbhaya case, which catalyzed legislative changes permitting juveniles aged 16–18 to be tried as adults for heinous crimes under specific conditions. Through a detailed analysis of legal principles, psychological studies, and comparative global practices, the paper investigates the tension between rehabilitation and retribution, emphasizing the constitutional mandate to uphold the child's best interests.

## **INTRODUCTION**

Juvenile justice jurisprudence predicates rehabilitation as opposed to retribution; its evolution beckons the transformation of laws into comprehensible ones within the legislative framework. The historical trajectory of the same in Indian law highlights the measures taken to transition the system away from a punitive one. The *Juvenile Justice Act of 1986*<sup>1</sup> was the first national effort to create a uniform framework for juvenile justice across India, replacing earlier state-specific laws.<sup>2</sup> It categorized juveniles into two groups: those in conflict with the law, meaning children accused of committing crimes, and those in need of care and protection, referring to

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<sup>1</sup> *The Juvenile Justice Act, 1986.*

<sup>2</sup> "Quest Journals : Home." *Www.questjournals.org*, [www.questjournals.org](http://www.questjournals.org).

neglected or abused children. The Act emphasized reformation over punishment and established separate procedures to address the unique needs of juveniles.

In 2000, the *Juvenile Justice (Care and Protection of Children) Act*<sup>3</sup> was introduced to align India's juvenile laws with international standards following its ratification of the *United Nations Convention on the Rights of the Child (UNCRC)* in 1992.<sup>4</sup> This Act prioritized rehabilitation, deinstitutionalization, and family-based care through measures such as foster care and adoption while prohibiting the death penalty and life imprisonment for juveniles. The *Juvenile Justice (Care and Protection of Children) Act*<sup>5</sup> 2015 brought about further significant changes, influenced by public outrage over heinous crimes involving juveniles, particularly the 2012 *Nirbhaya case*.<sup>6</sup> This legislation introduced provisions allowing juveniles aged 16-18 to be tried as adults for heinous offenses, subject to an assessment by the Juvenile Justice Board (JJB). It also strengthened the adoption and child welfare framework, with specific provisions for foster care and guidelines for the Central Adoption Resource Authority (CARA). While these reforms highlighted the importance of rehabilitation, they also sought to address public safety concerns.

The constitutional framework in India provides robust support for the protection and welfare of children. *Article 15(3)*<sup>7</sup> empowers the State to make special provisions for children and women, recognizing their vulnerability and need for additional safeguards. *Article 21*<sup>8</sup> guarantees the right to life and personal liberty, interpreted by courts to include the right to dignity, development, and rehabilitation of children. *Articles 39(e)*<sup>9</sup> and *(f)*<sup>10</sup> mandate the State to ensure that children are not abused or forced into vocations unsuitable to their age or strength while directing that opportunities be provided for their healthy development in freedom and

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<sup>3</sup> "Juvenile Justice Act 2000 | Department of Women and Child Development." *Wcd.delhi.gov.in*, [wcd.delhi.gov.in/wcd/juvenile-justice-act-2000](http://wcd.delhi.gov.in/wcd/juvenile-justice-act-2000).

<sup>4</sup> "Treaty Bodies Treaties." *Tbinternet.ohchr.org*, [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en).

<sup>5</sup> "Juvenile Justice (Care and Protection of Children) Act, 2015." *Indiacode.nic.in*, 2016, [www.indiacode.nic.in/handle/123456789/2148?view\\_type=browse#:~:text=An%20Act%20to%20consolidate%20and,https://doi.org/201602](http://www.indiacode.nic.in/handle/123456789/2148?view_type=browse#:~:text=An%20Act%20to%20consolidate%20and,https://doi.org/201602).

<sup>6</sup> "NIRBHAYA CASE, 2012» Lawful Legal." *Lawful Legal*, 23 Mar. 2024, [lawfullegal.in/nirbhaya-case-2012/](http://lawfullegal.in/nirbhaya-case-2012/). Accessed 24 Nov. 2024.

<sup>7</sup> Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>8</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>9</sup> that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

<sup>10</sup> that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.



dignity. These provisions form the cornerstone of juvenile justice jurisprudence in India, reinforcing the State's duty to protect and nurture children.

The primary objective of the juvenile justice system is rehabilitation, focusing on treating juveniles as individuals with the potential for reform rather than as criminals deserving punishment. This rehabilitative philosophy recognizes the inherent differences between juveniles and adults regarding maturity, culpability, and capacity for change. It emphasizes reformation through education, counseling, vocational training, and psychological support, ensuring that juveniles are not stigmatized or hardened by exposure to adult penal systems. The juvenile justice framework's guiding principles include prioritizing the child's best interest, treating juveniles in conflict with the law as individuals needing guidance rather than punishment, and fostering their reintegration into society by equipping them with skills and opportunities for a meaningful future.

The institutional mechanisms under this system include Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs). JJBs, composed of a judicial magistrate and two social workers, adjudicate cases involving juveniles in conflict with the law, ensuring a balance of legal and rehabilitative perspectives. CWCs address the needs of children requiring care and protection, facilitating family-based solutions, institutional care, or adoption as necessary. Consistent with India's international obligations under treaties like the UNCRC, the juvenile justice system is committed to restorative approaches to juvenile delinquency, striving to balance the imperatives of rehabilitation with the broader goals of justice and public safety.

### CASE REFERENCE

The case of *Mukesh & Anr v. State for NCT<sup>11</sup>* of Delhi (commonly referred to as the Nirbhaya case) represents a pivotal moment in Indian legal history, particularly in juvenile justice reform. This case exemplifies the tension between public sentiment, the principles of juvenile justice, and the State's constitutional and international obligations. On December 16, 2012, a 23-year-old woman, later referred to as "Nirbhaya," was brutally gang-raped and assaulted on a private bus in Delhi by six individuals, including a juvenile. The sheer heinousness of the crime shocked the nation, and Nirbhaya's death on December 29, 2012, ignited widespread outrage. The juvenile accused, aged 17 at the time, was alleged to have played a significant and violent

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<sup>11</sup> Ibid, 6

role in the assault. However, he was tried under the *Juvenile Justice (Care and Protection of Children) Act*,<sup>12</sup> 2000, which shielded him from being treated as an adult and limited his sentence to a maximum of three years in a reformatory home. The case highlighted several legal and policy issues, including the appropriateness of the age threshold of 18 years under the Juvenile Justice Act for heinous crimes. Public opinion overwhelmingly demanded lowering the age of juvenility, asserting that individuals capable of committing such atrocities should face stricter punishments irrespective of their age.

The case also questioned whether the juvenile justice framework adequately balanced the need for societal justice and deterrence with the potential for rehabilitation and reform of juveniles. Critics examined whether the existing law sufficiently addressed the realities of heinous crimes committed by minors, notably as juvenile involvement in severe offenses appeared to be on the rise. While the adult accused were convicted under various provisions of the Indian Penal Code (IPC) for gang rape and murder and sentenced to death—a decision upheld by the High Court and the Supreme Court—the juvenile accused was tried separately under the Juvenile Justice Board's jurisdiction, as mandated by the *2000 Act*.<sup>13</sup>

He received the maximum sentence permissible under the law: three years in a reformatory home. This decision drew widespread criticism, with many perceiving the sentence as disproportionately lenient given the gravity of the offense. The Supreme Court, however, upheld the Juvenile Justice Act, emphasizing its legislative intent and India's obligations under international law, particularly the United Nations Convention on the Rights of the Child (UNCRC). The Court reiterated that juveniles, due to their developmental immaturity and greater capacity for reform, must be treated differently from adults under the justice system.

The public outcry following the case led to significant legislative changes, including establishing the *Justice Verma Committee*<sup>14</sup> in 2013. This committee was tasked with recommending reforms in laws related to sexual violence. While it opposed lowering the age of juvenility, it emphasized systemic changes to ensure justice for victims and effective rehabilitation of offenders. Subsequently, the *Juvenile Justice (Care and Protection of*

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<sup>12</sup> Ibid, 3

<sup>13</sup> Ibid, 3

<sup>14</sup> "Committee Reports." *PRS Legislative Research*, [prsindia.org/policy/report-summaries/justice-verma-committee-report-summary](http://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary).

*Children) Act*,<sup>15</sup> 2015, was enacted, introducing provisions to allow juveniles aged 16 to 18 to be tried as adults for heinous crimes.

This determination, however, required a preliminary assessment by the Juvenile Justice Board to evaluate the juvenile's mental and physical capacity to commit the offense, their ability to understand its consequences, and the circumstances under which the offense was committed. The Supreme Court's rationale underscored the rule of law, emphasizing that legal principles and legislative frameworks must prevail over public sentiment to ensure fairness and consistency.

The case also reinforced the focus on reformatory justice, recognizing the psychological and developmental differences between juveniles and adults. While the legislative amendments sought to address public demands for accountability, they retained a rehabilitative ethos by mandating careful evaluations before juveniles could be tried as adults. Thus, The Nirbhaya case is a critical example of how public opinion and judicial philosophy can intersect to shape the trajectory of legal reform in sensitive domains like juvenile justice.

### **SOCIO-LEGAL ASPECTS**

The debate surrounding juvenile justice systems often revolves around two competing philosophies: rehabilitation and retribution. This dichotomy became particularly prominent following the Nirbhaya case, where the involvement of a juvenile in a heinous crime sparked discussions about the efficacy and fairness of treating juveniles under a rehabilitative framework.

On the one hand, the rehabilitation perspective views juveniles as individuals in a developmental stage with the capacity for change, emphasizing the provision of education, psychological support, and skill development to reintegrate them into society as law-abiding citizens. This approach aligns with constitutional mandates like *Article 39(f)*<sup>16</sup> and international conventions such as the United Nations Convention on the Rights of the Child (UNCRC), which advocate prioritizing the child's best interests. On the other hand, proponents of retributive justice argue that juveniles involved in heinous crimes should face stricter

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<sup>15</sup> Ibid, 5

<sup>16</sup> Ibid, 10

accountability to ensure justice for victims and deter future offenders.

Retribution also addresses public demands for punishment proportional to the gravity of the crime. Psychological studies have reinforced the case for rehabilitation, noting that juveniles' prefrontal cortex, responsible for decision-making and impulse control, remains underdeveloped until their mid-20s.<sup>17</sup> This underdevelopment affects their ability to foresee consequences, exercise restraint, and resist peer pressure. Furthermore, juveniles exhibit heightened neuroplasticity, making them more responsive to rehabilitative interventions than adults.

Research indicates that most juvenile offenders can be reformed with appropriate counseling, education, and vocational training. Comparatively, India's juvenile justice system reflects a mix of international practices. The UNCRC, ratified by India in 1992, emphasizes a rehabilitative approach, focusing on reintegration and constructive participation in society. For instance, *Article 37 of the UNCRC*<sup>18</sup> prohibits life imprisonment without parole for children under 18 and mandates humane treatment.

Globally, practices vary—while the United States allows juveniles to be tried as adults in certain severe cases, this approach has faced criticism for its long-term social and psychological consequences. In contrast, Scandinavian countries focus almost exclusively on rehabilitation through structured reintegration programs, and the United Kingdom adopts a hybrid model, detaining juveniles in secure training centers that combine rehabilitative services with accountability measures.

## **POLICY IMPLICATIONS**

The *2015 Act*<sup>19</sup> introduced provisions allowing juveniles aged 16–18 accused of heinous crimes to be tried as adults, provided specific conditions were met. Heinous offenses were punishable by imprisonment of seven years or more under the Indian Penal Code (IPC). A key feature was the preliminary assessment conducted by the Juvenile Justice Board (JJB) to evaluate the juvenile's mental and physical capacity to commit the offense, their understanding of its

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<sup>17</sup> Abrams, Zara. "What Neuroscience Tells Us about the Teenage Brain." *American Psychological Association*, 1 July 2022, [www.apa.org/monitor/2022/07/feature-neuroscience-teen-brain](http://www.apa.org/monitor/2022/07/feature-neuroscience-teen-brain).

<sup>18</sup> UNICEF. "Convention on the Rights of the Child." *Unicef*, 1989, [www.unicef.org/child-rights-convention/convention-text](http://www.unicef.org/child-rights-convention/convention-text).

<sup>19</sup> *Ibid*, 5

consequences, and the circumstances of the crime.

If deemed capable, the case could be transferred to a Children's Court for trial as an adult. Despite these changes, the Act retained a focus on rehabilitation, ensuring that juveniles convicted as adults were not housed with adult offenders, even in incarceration. The amendments faced criticism on multiple fronts.

Critics argued that trying juveniles as adults violated principles enshrined in the UN Convention on the Rights of the Child (UNCRC), which India has ratified, emphasizing reintegration and humane treatment for juveniles. Additionally, research suggests that subjecting juveniles to adult trials and incarceration increases the likelihood of reoffending due to exposure to punitive environments and hardened criminals. Concerns were also raised about the lack of clear, standardized guidelines for JJB assessments, leading to inconsistent application across cases and regions.

Implementation of the Act has faced significant challenges. Rehabilitation homes across India suffer from inadequate funding, overcrowding, and insufficient facilities, limiting their ability to provide vocational training, psychological counseling, and education. A shortage of trained professionals, including psychologists and social workers, further hampers practical assessment and rehabilitation. The resource disparity between states exacerbates these issues, with underdeveloped states struggling to meet basic requirements. Moreover, juveniles tried as adults or labeled as offenders often face societal stigma, making reintegration and employment difficult.

Despite these challenges, success stories highlight the potential of rehabilitative measures. In Maharashtra, a juvenile accused of theft received vocational training in carpentry and tailoring, securing stable employment after his sentence. Tamil Nadu introduced skill development programs in reform homes, offering computer literacy and mechanics courses, which helped many juveniles reintegrate successfully. In Delhi, collaboration with NGOs provided counseling and family therapy, leading to marked behavioral improvements and reconnection with families.

The *Juvenile Justice (Care and Protection of Children) Act* 2015,<sup>20</sup> reflects an attempt to balance societal demands for accountability with the rehabilitative philosophy of juvenile justice. However, its effectiveness depends on addressing challenges such as inadequate infrastructure, the shortage of trained professionals, and societal stigma. Success stories demonstrate the transformative potential of rehabilitation, emphasizing the need for sustained investment and a focus on child welfare and reform to ensure the juvenile justice system achieves its intended goals.

## CURRENT SCENARIO

The current scenario of juvenile justice in India reveals a complex interplay of developments and challenges in the aftermath of the Nirbhaya case, marked by notable recent cases and trends in juvenile crimes. In a significant 2023 case from Delhi, a 17-year-old was charged with gang rape and abduction. The Juvenile Justice Board (JJB) decided to try the individual as an adult due to the heinous nature of the crime and the demonstrated mental maturity, reigniting debates about rehabilitation versus retribution under the Juvenile Justice (Care and Protection of Children) Act, 2015.

This law allows juveniles aged 16–18 involved in heinous crimes to be assessed for their capacity to understand the consequences of their actions and potentially tried as adults. Another example, the 2022 Mumbai minor assault case, involved a juvenile in a fatal peer assault. The JJB opted for counseling and housing the offender in a reform home instead of pursuing an adult trial, reflecting the rehabilitative provisions of the act. Notably, the Nirbhaya case juvenile offender, post-release in 2015, was reportedly involved in radical activities, raising concerns about the long-term effectiveness of rehabilitation.

Statistically, Delhi recorded the highest juvenile crime rate among major cities in 2022, as per NCRB data. Crimes included theft, burglary, and sexual offenses. A notable trend was a 10% rise in juveniles involved in heinous crimes from 2021 to 2022, attributed to socio-economic factors and criminal influences. Recidivism remains a significant issue, with many juveniles struggling to reintegrate into society due to stigmatization and a lack of follow-up support.

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<sup>20</sup> Ibid, 5

*The Juvenile Justice Act 2015*,<sup>21</sup> aims to balance societal safety with rehabilitation, especially for those aged 16–18 accused of heinous crimes. However, its implementation faces challenges, such as inconsistent assessments, insufficient rehabilitative infrastructure, and social stigma. While rehabilitative measures have shown success in some cases, other instances, like repeated offenses post-rehabilitation, underscore the risks of punitive approaches without adequate support systems. The discourse emphasizes the need for evidence-based policies integrating developmental psychology, improved rehabilitation frameworks, and public education to support reintegration.

## CONCLUSION

In conclusion, the juvenile justice system in India embodies an evolving framework that seeks to balance the imperatives of rehabilitation and public safety. The Juvenile Justice (Care and Protection of Children) Act, 2015 represents a significant step in addressing societal concerns over heinous crimes committed by juveniles aged 16–18. While the act has introduced necessary provisions to ensure accountability, it retains a rehabilitative ethos. However, challenges persist in implementation, including inconsistent assessments, inadequate rehabilitative infrastructure, and the stigmatization of juveniles, which hinder reintegration and potentially increase recidivism.

To enhance the system's effectiveness, future policies must prioritize robust rehabilitation programs, including skill development and mental health support, alongside public education to foster acceptance and reintegration. A balanced approach is essential—one that upholds societal safety while recognizing juveniles as individuals with the capacity for reform and reintegration. Through evidence-based policies and sustained investment, India's juvenile justice system can strive to achieve its dual goals of justice and reformation.

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<sup>21</sup> Ibid, 5