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REFORMATION OVER RETRIBUTION: ANALYZING SYSTEMIC FAILURES AND RECIDIVISM UNDER THE JUVENILE JUSTICE ACT, 2015

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ABSTRACT

Juvenile Justice (Care and Protection of Children) Act, 2015 was formulated to conform with the international laws governing child rights in order to lay out a progressive system based on the principles of reformation, restoration, and destigmatizing the juveniles. Nevertheless, there still exists an acute mismatch between the ideal provisions laid out in the statute and their execution, resulting in multiple lapses in the implementation of institutional care facilities. This research attempts to examine some of the critical bottlenecks impeding the process of providing juvenile justice in India by concentrating primarily on the operational issues with Observation Homes, Special Homes, and aftercare services. Instead of considering the juvenile's reoffending behavior as a personal flaw or regarding the juvenile as a habitual offender, the study suggests that repeated violations of the law reflect poorly on the inefficiency of the entire institutional setup in question. Through the examination of legislative history of child welfare statutes along with important legal precedents, this paper demonstrates how poor state of the facility's infrastructure, scarcity of trained rehabilitation professionals, and the lack of reintegration programs are undermining the very idea of rehabilitation. In conclusion, it is necessary to recognize that achieving juvenile reform not only requires legislation, but overcoming many structural socio-economic barriers. For ensuring that vulnerable youths are not being systematically criminalized, India needs to transition from passive confinement into active social reintegration.

Keywords: Juvenile Justice Act 2015, Reformation, Recidivism, Observation Homes, Social Reintegration, Rehabilitation

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I. INTRODUCTION

The juvenile justice system is formed to deal with crimes committed by people below the age of 18 years, but instead of punishment, it aims to ensure their reformation and rehabilitation, along with the full development of the child, and make them productive assets for the country's future. The Juvenile Justice Act was enacted to offer a legal mechanism that would protect children in conflict with the law, ensure rehabilitation, and uphold the child-friendly approach², but This system faces criticism, particularly when grappling with children known as “habitual offenders.” Critics believe that the emergence of repeaters shows that the law is too lenient and ineffective³.

However, this critique has completely misconceived the spirit of the law and the nature of juvenile delinquency. The Juvenile Justice Act does not recognize the category of "habitual offender". Every child is treated as capable of reform, and the principle of non-stigmatization under section 3 of the JJ Act, 2015, ensures that children are not branded or punished by using language or action that could label them as criminals or cause them to be socially isolated. When a child reoffends, it is not a sign of irredeemable criminality but a reflection of systemic and social failures, under-resourced rehabilitation programs, lack of customized interventions, social stigma, and failures of the institution itself that prevent successful reintegration.⁴

Thus, the recurring offence of certain juveniles is not evidence of law being lenient or the child's entire fault, but the system's inability to provide the proper support, guidance, and opportunity for true rehabilitation. This article will therefore focus on the philosophical basis of juvenile justice and its historical approach, which has been reformed many times to ensure its proper functioning and use, and then focus on how reform is the central concern of this act rather than the punishment. This is then followed by highlighting the benefits and provisions that are inherent in the Act; lastly, analyzing the system failure that prevents any reform, but once again confirming that rehabilitation remains a social responsibility, rather than a rationale for leniency.

²The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 3.

³The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), available at: https://legislative.gov.in/sites/default/files/A2016-2_0.pdf (last visited on June 14, 2026).

⁴*Salil Bali v. Union of India*, (2013) 7 SCC 705.

II. PHILOSOPHICAL AND LEGAL BASIS OF JUVENILE JUSTICE

Those under the age of 18 years old are referred to as juveniles because at that age people have not learned about the world and the rules yet and their brain structure works differently compared to that of an adult person. The word "juvenile" comes from the Latin word "juvenis" meaning young⁵. They are young people that have committed some crimes and they have not reached 18 years of age therefore not tried as adults⁶. The Juvenile Justice Act 2015 is a special Act that deals with children in conflict with the law and also in need of protection⁷. As children in their teens undergo hormone changes, peer pressure, identity crisis and brain development, they have faster emotional reactions than self-control and hence their mood and risk-taking abilities become greater and it leads them to commit crime and hence more focus should be put into reforming them as oppose to punishing them. The focus of punishment is control and intimidation; it entails using pain, guilt, shame or fear in order to prevent undesirable behavior. It does not teach the children to behave but to lie about what they did in order to escape from punishment. Punishment causes children to develop anxiety disorders, low self esteem or withdraw emotionally from situations. They feel bad regardless of not knowing what they did wrong..Therefore, punishment is not the solution in the juvenile justice act, but the focus is on the reformation of the child. Parens patriae is the Latin term for "parents of the nation," a legal doctrine that allows the state to step in as the guardian for individuals who are unable to care for themselves and work towards their welfare⁸. This doctrine enables the state to be the institution formed to ensure reform and welfare, rather than harsh punishments, for children⁹. The Guardian, which here refers to the state, does not punish children like in the criminal court. Guardian guides, protects, corrects, and reforms. When child commits offence it's the state role to be corrective and protective not punitive as act focuses on the welfare principle by focusing on the best interest of the child and child's family background, peer influence, trauma and work to seek proper long term reform instead of focusing on control, fear and deterrence which at first satisfy public anger but harm long term development of child and even not be good approach for the country future. Reformation, on the other hand, serves both the child and society. According to the Juvenile

⁵Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-Taking" 28 Developmental Review 78 (2008).

⁶The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(12).

⁷Sheela Barse v Union of India, (1986) 3 SCC 596.

⁸Bryan A. Garner (ed.), *Black's Law Dictionary* (West Group, St. Paul, MN, 8th edn., 2004

⁹Gaurav Jain v. Union of India, (1997) 8 SCC 114.

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Justice Act 2015¹⁰, a child in conflict with the law who is proven guilty is monitored for reformation so that the child learns from their mistake. Reformation focuses on care protection, education, and reintegration with society so that the child, instead of just feeling guilty and bad about the past, actually tries to improve to be a responsible adult citizen of India. The reformation process, as mentioned under section 18 of JJ Act 2015, mentions the special homes where juveniles are kept to get reformatory services like education, skill development, counseling, and behavioral modification therapy. These reforms help children to do better and adapt and change themselves because children have more brain plasticity than adults, and their prefrontal cortices are still developing. Reformation takes time and efforts which is worth investing. It requires time, consistency, and follow-up.

Reformation in the juvenile justice system does not, therefore, mean the lack of accountability¹¹. In fact, by virtue of the JJ Act, children in conflict with the law are not excused from their actions, but they are held accountable in a way that is fitting to their age, maturity, and abilities to be reformed. Whereas criminal justice is primarily punitive, juvenile justice seeks to make the offenders, in this case, children, aware of the implications of their actions by way of correction, counseling, and direction. Holding children accountable in this way is educative, not punitive, as the objective is not to punish the children for their actions but to make them aware, responsible, and change their behaviour.

“The best interest of the child” principle is the bedrock of the Juvenile Justice Act, 2015, and adds strength to the reformation aspect. All aspects related to the juveniles in conflict with the law should take into consideration the juveniles’ proper health and opportunities for reintegration into society. This is in the context of the constitutional values ensuring dignity, equality, and a sense of human treatment, and for that matter a differential legal treatment for juveniles is justified. Children should not be treated as adults when it comes to punishing them, as they have developmental weaknesses and are not very aware of the constitutional provision for the protection of childhood¹². Reformation is not an indulgence in guilt but a need in the context of the Constitution, balancing the individual and societal needs¹³.

Reformation plays an immensely valuable role in society because it focuses on addressing the potential causes of juvenile delinquency and ultimately ensures that these children never have

¹⁰The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

¹¹The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

¹²Maneka Gandhi v. Union of India, (1978) 1 SCC 248; The Constitution of India, art. 21.

¹³Salil Bali v. Union of India, (2013) 7 SCC 705.

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any run-ins with the law again. This is because children have a flexible mind and can easily be changed. Such children can even be transformed into productive members of society.

On the other hand, a strategy that could potentially worsen the situation rather than improve it may not even focus on the anger that is emerging in the community, but will rather promote hard crimes among these children while increasing their sense of rejection towards society.

Thus, the idea of reforms in juvenile justice is neither a theory nor just an ideology because it has had a profound impact on the Indian laws for juveniles justice. Instead of punishing, it is concerned with the rehabilitation of juveniles.

III. EVOLUTION OF JUVENILE JUSTICE LAW IN INDIA: A CONTINUED REFORMATION

It is not a new phenomenon in Indian law but rather a long, sustained effort to provide due care and reform to juveniles. The immediate post-independence era in India experienced fragmented and different state laws regulating the concept of juveniles and had negligible emphasis on rehabilitation as an objective¹⁴. It is essential to recognize the need for juveniles to be treated within a child-friendly legal system, and the Children Act, 1960 is the first post-independence enactment that targets the issue pertaining to juveniles in need of care and protection and juveniles in the context of delinquency¹⁵. This Act understood that juveniles needed care, protection, and guidance, and not punishment, thereby initiating a shift in the treatment paradigm for juveniles as a departure from the usual treatment for offenders¹⁶.

However, the Children Act of 1960 was only applicable in the Union Territories. This culminated in disparities in practices in different States¹⁷. Thus, in a bid to address the disparities in the aspects of juvenile justice in the country, the Juvenile Justice Act of 1986 emerged as the first national legislation in the Country¹⁸. The Act superseded all state legislation pertaining to the matter in question. This ensured uniformity in the treatment of juveniles in India. The legislation identified two distinct categories: those in conflict with the

¹⁴Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (Oxford University Press, New Delhi, 2nd edn., 2017).

¹⁵Dr. Subramanian, *Juvenile Justice in India* 41 (Oxford University Press, New Delhi, 2014).

¹⁶The Children Act, 1960 (Act 60 of 1960).

¹⁷*Sheela Barse v. Union of India*, (1986) 3 SCC 596.

¹⁸The Juvenile Justice Act, 1986 (Act 53 of 1986).

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law and those in need of protection and care, while establishing Juvenile-friendly practices in the Country. The legislation that had a wide range of strengths had weaknesses such as loopholes in the definition pertaining chiefly to the age of juvenility.

Another set of amendments to the Act was made by statutory changes to the Act in 2006 and again in 2011, which covered issues such as delays in procedural justice, improvement of institutional mechanisms, and also Juvenile Justice Boards and Child Welfare Committees' role. This was done with a positive intention to remove out some of the difficulties being encountered in implementing it, rather than shifting from its philosophical base. But again, with a focus still on rehabilitation and reintegration during this phase, a sense of continuity can be seen regarding the reformatory justice approach being promoted by the legislature for children, despite the difficulties being encountered.

The Juvenile Justice (Care and Protection of Children) Act, 2015 came up in the wake of increasing public debate about juvenile crime, especially in the wake of the unfortunate incident of rape in Delhi in 2012. Although there were some procedural reforms and measures in the Act, the essence of the Act remained the same as the earlier Act, which emphasized reformation, rehabilitation, and welfare. Clearly, there has been no abandonment of the concept of reformation by the legislators under the Act of 2015, which continued to view children as amenable to change and emphasized properly designed rehabilitation through observation homes, special homes, and aftercare facilities.

From a historical viewpoint, there is considerable realization of the fact that in general, the evolution of laws in the field of juvenile justice in India has been a “praxis of improving care, protection, and reform mechanisms without uprooting said mechanisms and replacing them with punitive provisions¹⁹.” Each one of them had been “an attempt to fill up gaps in the effectiveness of said mechanisms.” Yet, “none of them questioned the basic philosophy that children require reform and rehabilitation and not punishment.” Consequently, there arises an imperative to examine how far the reformatory possibility in the Juvenile Justice Act, 2015 is being actualized.

IV. REFORM AS A CORE CENTRAL PART OF JUVENILE JUSTICE ACT, 2015

¹⁹*Mukesh v. State* (NCT of Delhi), (2017) 6 SCC 1.

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First and foremost, the Juvenile Justice Act, 2015 is based on the awareness that there is a specific need for creation of the justice system that is different from any adult one, who falls under the ambit of the criminal justice system because of his or her being a child in conflict with the law. Indeed, without doubt it should be stated that the structure of the law contained in the JJ Act, 2015 is predicated on the premise of reformatory nature of the procedure established thereby. In terms of the procedure, it must be emphasized that the procedure under the Act provides for the handling of all the cases involving children in conflict with law in the manner prescribed in terms of Juvenile Justice Boards, whose mandate is to function in a manner conducive to the well-being of a child, in the sense of being non-adversarial²⁰. The very composition of such a Board, that consists of a Principal Magistrate and social workers having experience in dealing with issues of child welfare, illustrates the approach towards integration of legal judgment and social psychology²¹. In addition, the conduct of the procedure itself entails that account is taken in relation to the age, mental and physical condition, social background and surrounding circumstances in which the act is committed. Through this personalized approach, the reaction to juvenile delinquency comes down to a needs-based strategy in relation to the child rather than the offence committed per se. As may be observed much more clearly in the disposition process outlined under Section 18 of the Juvenile Justice Act, 2015, the reformatory nature of the Act becomes quite evident.²² Indeed, the Act provides for the filling of baskets with rehabilitative actions rather than punitive ones : counseling, community service, supervision by probation officer and special homes – all this works towards making a juvenile answerable in such a way that triggers reflexive correction of the latter.

The institutional arrangements in the Act strengthen the demand to have a reformatory approach. The observation homes and the special homes are to be established as residential institutions meant for the temporary reception, care, education, and rehabilitation of children in conflict with law. The Act proposes such institutions to be places meant for imparting education, vocational training, skill development courses, psychological counseling, and behaviour modification therapy to children. The said institutions are to follow legal norms and are to be inspected periodically, thereby emphasizing the fact that the institution is not meant to have a custodial role. Not only does the Act address the aspects of institution-based

²⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

²¹ Juvenile Justice (Care and Protection of Children) Act 2015, ss 4 and 8.

²² The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 18.

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rehabilitation but also reintegration or aftercare. Aftercare programs aim to help children upon leaving an institution through the provision of education or employment opportunities, as well as employment training²³. The fact that children will be exposed during the reintegration process shows that it is only through leaving the institution that children can be fully rehabilitated, since the process of becoming a new person does not only occur while in the institution.

Monitoring and follow-up is another crucial aspect of this reformative framework. Children placed in probation and supervision are also subjected to monitoring from time to time in order to judge their progress and changes in their behaviour. The probation officer and child welfare staff play a crucial role in this context in order to make sure that the reformative measures are actually implemented and undergo changes according to the needs of the child. This monitoring procedure has been developed in order to introduce continuity to the reformative procedure so that it is not a mere token of reformation. On analysis of the JJ act of 2015, it provides a holistic approach towards the legal system in which the transformation not only becomes a legal obligation but also a social investment. Thus, along with the principles of assessment, orders of renovation, care in institutions, and after-care, it appears that the Juvenile Justice Act more or less deals with the root causes of recidivism in the juveniles rather than their effect. Therefore, it can be said that it provides a clear sign that the ambit and spirit of the law concerning the Indian juvenile injustice system are not guided by indulgence but are a law guided by insight and rational planning. Therefore, it can be said that in case the objective of transformation does not succeed, it has to be assessed in terms of its delivery rather than stating that the law itself has not succeeded.

V. When Reformation Fails: Repeated Conflict with Law and Systemic Shortcomings

The issue of minors ending up in positions where they find themselves at odds with the law being a cyclical issue appears to be one of the most debate-ridden issues within contemporary dialogue regarding the justice for juveniles as well. The issue of minors ending up repeatedly within criminal activities appears to indicate that the effectiveness of the Juvenile Justice Act, 2015, is not effective and less harsh. The establishment of such appears to indicate itself

²³The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 47–50.

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within a lack of consistency regarding the theme itself within the perspective of the concept itself, within the sense that it does not manage to reflect within itself the abnormalities within itself as a theme. Indeed, it can be safely argued that the issue of minors finding themselves at odds with the law has nothing within itself to do with the criminal nature of juveniles.

To begin with, it is essential that the Juvenile Justice Act is not oblivious to the existence of persistent offenders. The children under its consideration undergo managed accountability in terms of counseling, probation, institutional placement, and supervision, depending on the nature and circumstances of the individual child's case²⁴. The Juvenile Justice Board has the power to make and record a reformatory order in individual cases under the provisions of the Juvenile Justice Act after taking into consideration the relevant social investigation and psychological reports about the child²⁵. It becomes clear that it is not oblivious to persistent behaviour and addresses these in a corrective and not punitive capacity. Despite this structured framework, instances of conflict with the law have continually been happening, thereby raising questions about the effectiveness of this process in place for the purpose of effecting a change in these youths. But to raise this issue in this manner is to completely ignore the broader context under which this attempt at effecting a change in this youth, or maybe youths, is taking place. The juvenile justice system is not complete after the issuance of such an order from such a board after being released from such an institution.

Among the core systemic defects, which perpetuate the persisting nature of the conflict in the context of the law, the capacities available in the reformatory and rehabilitative mechanism appear limited. The observation houses and the special houses would most likely be faced with the challenges of congestion, infrastructure, the absence of trained counselors, and the irregular nature of the reformatory scheme. While the law envisages inputs in the areas of education, skills, and the psychological, the standards and treatment vary drastically²⁶. Failure in this would be aggravated by the experience in custody, thus diminishing the reformatory measures as enunciated in the Act²⁷. Another key aspect, in fact, is the matter of after-care support and the monitoring that follows their release, which ironically is the weakest link in the whole Juvenile Justice System. The stage of the adjustment period of the children in conflict with the law in their re-entry into society following their stay within the

²⁴Salil Bali v. Union of India, (2013) 7 SCC 705.

²⁵The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 14, 15.

²⁶The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 47–50

²⁷The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, rr. 10, 13.

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institutions is a crucial phase in the life of children in conflict with the law. The importance of providing support to children in conflict with the law under the Act is acknowledged; the fact is that the implementation aspect in that respect sometimes is weak. Children in the same atmosphere, social conditions, and circumstances within which they exist before they find themselves in conflict with the law can again find themselves in conflict with the law.

The role of the family/community has equal influence in determining the outcomes of the children who come into contact with the intervention of the reformatory intervention²⁸. The statutory obligation of the Juvenile Justice Board to provide access to the rehabilitation provision has been discharged; now it largely depends upon the family/community and the social welfare service for its prevention. Where there is a lack of family ability, resource, or will to facilitate reintegration, the child will suffer from neglect, abandonment, or re-exposure to deleterious influence. The inability for reintegration to build upon support structures within the family signifies a direct correlation with return conflict with law.

Social institutions and the probation services are meant to provide a link between institutional care and the reintegration of these children back into their communities. It is often the case that a lack of resource, coordination, and monitoring makes it difficult for the effectiveness of these services. Social workers and probation officers are often overstretched, making it impossible for them to monitor the children on a continuous basis. Without the coordination of the services provided to these children, they often slide between the institutional cracks and are often not provided the necessary services. Repeated offender children are not rebellious towards the reformatory services but towards the absence of a support service that can sustain them.

More significantly, having available repeat young offenders does not provide any justification for introducing a new punitive category identified as “habitual young offenders²⁹.” Such a move would go against the very grain and foundation of the JJ Act and would render null and void any sense of purpose and intuition that lies behind such an act and philosophy with regard to youth justice and treatment within a juvenile justice system that operates within a given nation and place. The very nature and premise of childhood and youth is defined by

²⁸The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 46.

²⁹*Salil Bali v. Union of India*, (2013) 7 SCC 705.

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adaptation and a focus that is flexible and always characterized by a sense of flux and a desire for transformation and growth for the better with proper handling and treatment.

This implies that it is crucial to look at the conflict with the law as a symptom of systemic failings and shortcomings, as opposed to a justification of downgrading friendly provisions for children³⁰. This is crucial because at a point it will no longer be feasible. It is necessary to ensure that institutions and social organizations that aid readaption instead of stiffening sentences have improved. It is vital to concentrate on constructing rehabilitation facilities and improving social organizations. This critique only points out that the problem of re-arrest among juveniles is one of incompleteness in reform, rather than one of over-leniency. Neglecting continued reform efforts outside the walls veils the question of incompleteness in reform on the shoulders of the children instead of the continuing role of the State in providing juvenile justice system without criminalizing childhood in the name of public protection.

VI. CONCLUSION

The JJ Act of 2015, at the point of contact between law and morals and at that point of societal responsibility, inherently holds within it many features of a CJ system that leans towards a singular aim---that of reform. The charge that JJ Act is "too lenient" has specially appeared within a scenario of recurrence with respect to the law. The implication of recurrence is not irredeemability but rather a warning indicator of unaddressed vulnerability and restructuring weaknesses within the process of reformation at JJ. This article has tried to prove through various means that in situations where children land in a situation of conflict with the law, it is not in the corrective or preventive measures of the Juvenile Justice Act that the fault lies but in the imperfect implementation of the same. The measure of reformation, which begins in the form of Juvenile Justice Boards and institutions, justice, cannot itself ensure that it continues in a way independent of other factors. Reformation is a continuous process; it does not merely finish at the time of adjudication or in institutions but reaches into family, social setups too. The Demand for Punitive Measures Regarding Consistent Offending by Minors, Corresponding to the Demand for Protection against Harm to Other Persons, May Produce a Problem for the bases of the Whole Concept of Justice for Minors. An Eye for an Eye Will by No Means Help to Prevent the Offending, nor Will an Eye for an Eye Help to Remove the Problem Regarding Consistent Harm. The Method to Twist the

³⁰The United Nations Convention on the Rights of the Child, 1989.

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Reforms by the Same Reformatory Stick Would Put All Responsibility for the Inefficiency Regarding the Reformatory Activity onto the Minors.

The real accountability in the juvenile justice system is therefore the need to not only not surrender to the challenges faced in the reform but to ensure that the systems in place to support this reform are only strengthened. The real response to the existence of juvenile delinquency in society is actually the need for introspection in the responsibility pertaining to this juvenile delinquency. In the end, it is how a society treats its children after it punishes them that will determine how a society is measured. It is a societal failure if children continue to commit crimes after a trial; it is a failure of society if it fails to walk with these children after a trial. It is not lenient to uphold the spirit of reformatory justice for children; rather, it is a vote of confidence in the future of the nation and its future generations.

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