

REFORMING JUVENILE JUSTICE IN INDIA: BALANCING CHILD RIGHTS, ACCOUNTABILITY, AND REHABILITATION

by

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ABSTRACT

The Juvenile Justice (Care and Protection of Children) Act, 2015 allows a child aged sixteen or seventeen who is alleged to have committed a heinous offence to be tried as an adult after a “preliminary assessment” by the Juvenile Justice Board. This paper argues that the transfer mechanism is less a principled answer to serious adolescent offending than a legislative compromise whose costs fall on the procedural guarantees the Act otherwise extends to children. It reads section 15 against the Supreme Court’s decisions in *Shilpa Mittal* and *Barun Chandra Thakur*, the age-determination case law, and the developmental research on adolescent culpability, and it engages the retributive and victim-centred case for transfer on its own terms. Accountability and rehabilitation, the paper contends, are not two poles to be traded off at a single age threshold. Both depend on institutional capacity that the system has never been resourced to supply: functioning Boards, trained probation staff, individual care plans that are actually followed, and aftercare that reaches young people beyond eighteen. Reform should narrow and proceduralise transfer, introduce statutory diversion, decouple offence classification from the general penal code, and treat implementation failure as a rights violation rather than an administrative shortfall.

Keywords: Juvenile justice; Child in conflict with law; Preliminary Assessment; Transfer to Children’s Court; Rehabilitation; age determination; UNCRC

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I. The Older Adolescent Problem

Every juvenile justice system eventually has to say what it will do with the older adolescent who has done something terrible. India gave two opposite answers within fifteen years. The Juvenile Justice (Care and Protection of Children) Act, 2000 fixed a uniform age of eighteen and declined to look behind it.² Its successor, passed in December 2015 after three years of public anger over the disposition received by the juvenile accused in the Delhi gang rape case, kept eighteen as the age of childhood but opened a route by which a sixteen or seventeen year old charged with a heinous offence could be sent for trial as an adult.³ Parliament did not redefine who is a child. It decided that some children could be treated as though they were not.

Public argument about that decision has mostly been argument about a number. Child rights advocates read the 2015 Act as a retreat from the Convention on the Rights of the Child, to which India acceded in 1992;⁴ its supporters read it as the correction of a regime that released serious offenders after three years. Both sides assume the age line is what is at stake. This paper contends that it is not. The decisive questions lie downstream of the line: what a Juvenile Justice Board can actually learn about an adolescent's maturity in the time and with the expertise the statute gives it, what remains of the Act's procedural protections once a case leaves the Board, and whether the rehabilitative system meant to justify keeping most children out of adult courts works well enough to carry that justification.

One feature of the Indian statute unsettles any clean division between offenders and victims. The 2015 Act governs both the child in conflict with law and the child in need of care and protection,⁵ and the categories overlap far more in practice than they do in the definitions clause. A boy apprehended for theft at fifteen has often been out of school, working, or living without stable adult care for years before the police met him. Accountability talk that ignores this history misdescribes the population the law processes. Rights talk that ignores the harm done to victims misdescribes what the public is entitled to expect. The analysis below tries to keep both in view.

The argument moves from the statute's development to the courts' handling of transfer and age determination, then to the strongest form of the case for adult trial, and finally to the institutional record on which any defence of the present scheme depends. It ends with

² The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act 56 of 2000), s. 2(k).

³ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 2(33), 15, 18(3), 19.

⁴ Convention on the Rights of the Child, 1989 (1577 UNTS 3); India acceded on Dec. 11, 1992.

⁵ *Supra* note 2, ss. 2(13), 2(14).

proposals that are deliberately less dramatic than a change in the age threshold and, I suggest, more likely to matter.

II. Welfare, Rights, and the Turn to Transfer

Indian juvenile law began as provincial welfare legislation. The Madras Children Act, 1920, the Bengal Children Act, 1922 and the Bombay Children Act, 1924 drew on English reformatory models and treated delinquency as a symptom of neglect, to be met by custody in certified schools rather than prison.⁶ The Children Act, 1960 carried a similar scheme into the Union Territories,⁷ but the States legislated unevenly, and a child's treatment came to depend on where the arrest happened. The Supreme Court's engagement in *Sheela Barse v. Union of India*, triggered by reports of children held in adult jails, pressed the case for a single national statute.⁸ The Juvenile Justice Act, 1986 followed, though it set the line at sixteen for boys and eighteen for girls.⁹

Ved Kumari has characterised what came next as a movement from welfare to rights.¹⁰ The 2000 Act harmonised the age at eighteen, separated children in conflict with law from children in need of care, and adopted the vocabulary of the Convention. Courts then did much of the work of making the uniform age effective. In *Pratap Singh v. State of Jharkhand* a Constitution Bench held that juvenility is fixed by age on the date of the offence, rejecting the date-of-production reading in *Arnit Das*.¹¹ *Hari Ram v. State of Rajasthan* extended the benefit of the 2000 Act to persons who were under eighteen when the offence occurred, even where proceedings had begun under the earlier law.¹²

The period after December 2012 tested this settlement directly. In *Salil Bali v. Union of India* the Court refused to disturb the age of eighteen,¹³ and in *Dr. Subramanian Swamy v. Raju* it declined to read "juvenile" as turning on mental and intellectual maturity rather than chronological age, treating the choice of a fixed line as one for Parliament.¹⁴ That deference matters for what followed. The Court did not hold that individualised maturity assessment is unconstitutional or unworkable. It held that the legislature had not chosen it. Within two years Parliament did, for one age band and one class of offences.

⁶ The Madras Children Act, 1920; the Bengal Children Act, 1922; the Bombay Children Act, 1924.

⁷ The Children Act, 1960 (Act 60 of 1960).

⁸ *Sheela Barse v. Union of India* (1986) 3 SCC 596.

⁹ The Juvenile Justice Act, 1986 (Act 53 of 1986), s. 2(h).

¹⁰ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (Oxford University Press, New Delhi, 2nd edn., 2010).

¹¹ *Arnit Das v. State of Bihar* (2000) 5 SCC 488; *Pratap Singh v. State of Jharkhand* (2005) 3 SCC 551.

¹² *Hari Ram v. State of Rajasthan* (2009) 13 SCC 211.

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

¹⁴ *Dr. Subramanian Swamy v. Raju* (2014) 8 SCC 390.

The statute that emerged is divided against itself in a way its drafters may not have fully intended. Section 3 sets out sixteen general principles, among them the presumption of innocence, the best interest of the child, non-stigmatising semantics, institutionalisation as a last resort, and a fresh start under which records are to be erased.¹⁵ Beside these sits a transfer mechanism whose operating logic is individual risk and public protection. The Children's Court that receives transferred cases is a court designated under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the POCSO Act, and where neither exists, the Court of Session.¹⁶ In a good number of districts the residual option is the working one. Kumari's welfare-to-rights account accordingly needs a third chapter, which might be called the turn to risk, and the 2015 Act is where it opens.

III. What the Board Is Asked to Know

Section 15 requires the Board, where a child of sixteen or above is alleged to have committed a heinous offence, to conduct a preliminary assessment of the child's mental and physical capacity to commit the offence, ability to understand its consequences, and the circumstances in which it was allegedly committed. The Board may take the assistance of experienced psychologists, psycho-social workers or other experts, and an Explanation declares that the assessment is not a trial.¹⁷ It is to be completed within three months of the child's first production before the Board.¹⁸ If the Board finds a need for trial as an adult, it may transfer the case to the Children's Court, which must decide for itself whether that need exists and may instead proceed as a Board would.¹⁹ A child convicted after transfer is held in a place of safety until twenty-one, is then evaluated by the Children's Court, and is either released on conditions or sent to jail for the rest of the term; neither death nor life imprisonment without the possibility of release can be imposed.²⁰

— Each statutory criterion has a defect. Physical capacity to commit the offence is close to tautological once the prosecution alleges that the child committed it. The “circumstances in which he allegedly committed the offence” draw the Board into evaluating the facts of the allegation before any finding on them, which sits awkwardly with the Explanation and with the presumption of innocence in section 3. The middle criterion, ability

¹⁵ *Supra* note 2, s. 3.

¹⁶ *Id.*, s. 2(20); The Commissions for Protection of Child Rights Act, 2005 (Act 4 of 2006), s. 25; The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 28.

¹⁷ *Supra* note 2, s. 15(1) and Explanation.

¹⁸ *Id.*, s. 14(3).

¹⁹ *Id.*, ss. 18(3), 19(1).

²⁰ *Id.*, ss. 19(3), 20, 21.

to understand consequences, carries most of the weight in practice, and it is the one most likely to be answered yes.

That last point receives less attention than it deserves. Developmental research separates cognitive capacity, the ability to reason about consequences in the abstract, which approaches adult levels by mid-adolescence, from psychosocial maturity: impulse control, resistance to peer influence, sensitivity to reward and orientation toward the future. The second set of capacities continues to develop into the early twenties.²¹ Scott and Steinberg built their case for a distinct juvenile system on exactly this gap. Adolescents can usually say that an act is wrong and will be punished, yet decide under arousal and in the presence of peers in ways adults generally do not.²² A test framed around whether the child understood the consequences measures the faculty that matures earliest and omits those that mature last. Read literally, section 15 is calibrated to find most sixteen-year-olds fit for adult trial.

The Board is not obviously equipped to look past that framing. It consists of a Metropolitan or Judicial Magistrate and two social workers, at least one a woman, whose qualifying experience lies in child health, education or welfare rather than clinical assessment.²³ The Supreme Court confronted the consequences in *Barun Chandra Thakur v. Master Bholu*, arising from the killing of a seven-year-old at a school in Gurugram. The Board had ordered transfer on a psychological report the Court found inadequate to the task. Setting the order aside, the Court described the preliminary assessment as a delicate exercise with grave consequences for the child, read the power to obtain expert assistance as close to obligatory where the Board itself lacks that expertise, remitted the matter, and asked the Central Government and the child rights commissions to consider issuing guidelines.²⁴ The NCPCR subsequently issued guidelines on conducting the assessment.²⁵

Barun Chandra Thakur improved the procedure without touching the question. A careful inquiry into whether a sixteen-year-old understood that killing is wrong will, in most cases, return the same answer as a careless one. What the judgment did secure was seriousness, and seriousness takes time. Time then became the next site of contest. In *Child in Conflict with Law through his Mother v. State of Karnataka*, the Supreme Court held the

²¹ Laurence Steinberg and Elizabeth S. Scott, “Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty” 58 *American Psychologist* 1009 (2003).

²² Elizabeth S. Scott and Laurence Steinberg, *Rethinking Juvenile Justice* (Harvard University Press, Cambridge, MA, 2008).

²³ *Supra* note 2, s. 4(2), (4).

²⁴ *Barun Chandra Thakur v. Master Bholu*, 2022 SCC OnLine SC 870.

²⁵ National Commission for Protection of Child Rights, *Guidelines for Conducting Preliminary Assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015* (2023).

three-month period in section 14(3) to be directory.²⁶ The textual case for that reading is respectable, since section 14(4) prescribes termination for inconclusive inquiries into petty offences and no comparable consequence attaches in heinous cases.²⁷ Its practical effect is that the period during which a child's status remains unresolved, frequently spent in an observation home, now has no enforceable outer limit. Taken together, the two judgments ask Boards to take more care while removing the deadline that might have compelled the State to provide the means of taking it.

IV. Constitutional Doubts and the International Benchmark

The constitutional case against section 15 has been argued but, so far as the author is aware, not adjudicated by the Supreme Court; what follows is offered on that footing, and readers should check for any challenge decided or pending after this writing. The Parliamentary Standing Committee on Human Resource Development, examining the 2014 Bill, recorded objections that the transfer scheme offended the equality guarantee and Article 21, questioned the data advanced in its support, and recommended that the provisions be reviewed.²⁸ Parliament enacted them largely unchanged.

The equality objection is stronger than it first looks. Article 15(3) permits special provision for children.²⁹ It does not obviously authorise a provision that withdraws, case by case, the protections that special status confers. Two seventeen-year-olds accused of the same offence may face a maximum of three years in a special home or a full adult sentence, depending on an assessment whose criteria, as argued above, do not track culpability. Under the manifest arbitrariness standard articulated in *Shayara Bano v. Union of India*, legislation conferring such consequential discretion without a determining principle is open to attack.³⁰ The opposing view has real force. Courts have long allowed Parliament wide latitude to grade offences by gravity, and the age-band and offence-band limits give the classification a rational nexus with a stated object, the protection of society from serious crime. Ordinary rational-nexus review would probably sustain the scheme. The arbitrariness challenge succeeds only if a court is willing to ask whether the assessment criteria measure

²⁶ *Child in Conflict with Law through his Mother v. State of Karnataka* (Supreme Court of India, 2024).

²⁷ *Supra* note 2, s. 14(4).

²⁸ Department-related Parliamentary Standing Committee on Human Resource Development, *Two Hundred Sixty-Fourth Report on the Juvenile Justice (Care and Protection of Children) Bill, 2014* (Rajya Sabha Secretariat, New Delhi, Feb. 2015).

²⁹ The Constitution of India, arts. 14, 15(3), 21, 39(e), 39(f).

³⁰ *Shayara Bano v. Union of India* (2017) 9 SCC 1.

what they claim to measure, a more searching inquiry than the Court usually undertakes in criminal legislation.

Article 21 supplies a more promising route. Since *Maneka Gandhi v. Union of India*, a procedure depriving a person of liberty must be fair, just and reasonable.³¹ A procedure under which exposure to an adult sentence turns on an assessment with no mandatory expert input, no enforceable time limit after the Karnataka ruling, and criteria loosely related to blameworthiness is vulnerable on that standard. *Barun Chandra Thakur* cured part of the defect by judicial gloss. The rest awaits either legislation or a case squarely raising the point.

The international position is clearer than the domestic one, though its legal force is contested. Article 40 of the Convention requires that a child accused of an offence be treated in a manner that takes account of age and the desirability of reintegration, and favours measures without resort to judicial proceedings where appropriate; Article 37 limits deprivation of liberty to a last resort for the shortest appropriate time and prohibits life imprisonment without possibility of release.³² The Beijing Rules add proportionality and diversion as organising principles.³³ General Comment No. 24 goes further, urging States that permit sixteen and seventeen year olds to be treated as adults for serious offences to amend their laws so that the child justice system applies to everyone under eighteen at the time of the offence.³⁴ In its 2014 concluding observations on India, issued while the Bill was under consideration, the Committee on the Rights of the Child expressed concern at the proposal and called on India not to adopt it.³⁵

India has a respectable reply. The Convention's text does not prohibit transfer in terms, and section 21 complies with the express bar in Article 37(a). General Comments are authoritative interpretation, not treaty obligation, and India never accepted a reading of the Convention under which all forms of individualised adult trial are forbidden. The stronger argument against section 15 is not that it breaches a clear rule of international law. It is that it adopts, without the evidence that would justify it, a model that the most experienced transfer jurisdiction has spent two decades qualifying. The United States Supreme Court abolished the juvenile death penalty in *Roper v. Simmons*, life without parole for non-homicide offences in

³¹ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

³² *Supra* note 3, arts. 37, 40.

³³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), GA Res. 40/33 (Nov. 29, 1985), rr. 5, 11, 17.

³⁴ Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, UN Doc. CRC/C/GC/24 (Sep. 18, 2019).

³⁵ Committee on the Rights of the Child, *Concluding Observations on the Consolidated Third and Fourth Periodic Reports of India*, UN Doc. CRC/C/IND/CO/3-4 (July 7, 2014).

Graham v. Florida, and mandatory life without parole in *Miller v. Alabama*, each time reasoning from the developmental differences discussed in Part III.³⁶ That line of cases built on the earlier insistence in *In re Gault* that informality in juvenile proceedings cannot be a pretext for denying due process.³⁷ The European Court of Human Rights, in *T v. United Kingdom*, held that trying two eleven-year-olds in the formal setting of an adult Crown Court denied them effective participation.³⁸ Section 19 partly anticipates that concern by requiring the Children's Court to maintain a child-friendly atmosphere and to frame an individual care plan.³⁹ Whether a Court of Session acting as a Children's Court in an ordinary courtroom meets that standard is a factual question the statute cannot answer by declaration.

V. The Case for Accountability, Taken Seriously

Critics of transfer often treat the opposing position as a product of moral panic. Some of it was. A defensible case for accountability nonetheless exists, and it is better answered than caricatured.

Its first strand is retributive. If punishment should track both the gravity of the offence and the culpability of the offender, a ceiling of three years in a special home for a planned killing or rape committed at seventeen, which is what section 18(1)(g) provides, can look disproportionate in the opposite direction.⁴⁰ Proportionality in the desert tradition limits severity, but it also makes a positive claim about what an offence deserves.⁴¹ The second strand concerns victims. Indian criminal procedure has moved, slowly, toward treating victims as participants with rights of their own, and the recognition of the victim's right to appeal in *Mallikarjun Kodagali v. State of Karnataka* marks that shift.⁴² A family told that the maximum is three years whatever the facts may reasonably conclude that its interest in vindication counted for nothing. The third strand targets the age line itself. Any fixed threshold produces apparent injustice at the margin, where conduct a week before and a week after the eighteenth birthday attracts radically different treatment. And in *Om Prakash v. State of Rajasthan* the Supreme Court voiced the worry that juvenility claims could become a

³⁶ *Roper v. Simmons* 543 US 551 (2005); *Graham v. Florida* 560 US 48 (2010); *Miller v. Alabama* 567 US 460 (2012).

³⁷ *In re Gault* 387 US 1 (1967).

³⁸ *T v. United Kingdom* (2000) 30 EHRR 121.

³⁹ *Supra* note 2, s. 19(1)(i), (4).

⁴⁰ *Id.*, s. 18(1)(g).

⁴¹ Andrew von Hirsch, *Censure and Sanctions* (Clarendon Press, Oxford, 1993).

⁴² *Mallikarjun Kodagali v. State of Karnataka* (2019) 2 SCC 752.

device for evading liability for grave crimes, particularly where documentary proof of age was weak.⁴³

The deterrence version of the argument is the weakest. Research on transfer in the United States, where it has operated far longer and at far greater scale, has generally found no general deterrent effect and higher reoffending among transferred youth than among comparable youth kept in the juvenile system.⁴⁴ Indian data cannot settle the matter in either direction. Figures on offences by juveniles in the National Crime Records Bureau's annual reports move with registration practice and with changes in what is counted,⁴⁵ and no study known to the author isolates any effect attributable to section 15. Criminological work on the age-crime curve explains why deterrence through transfer should disappoint: most adolescent offending is confined to adolescence and desists without intensive intervention, while the small group whose offending persists cannot be reliably identified at sixteen.⁴⁶

The retributive strand is harder to dismiss, and the developmental evidence does not defeat it completely. That evidence establishes diminished culpability, not its absence. A sixteen-year-old who plans a killing is less blameworthy than an adult who does the same, but is not blameless, and a scheme whose most serious disposition is three years may fail to mark the difference between shoplifting and murder in terms the public can recognise. The question is what follows from conceding this. Adult trial does not follow. A juvenile system can carry a graduated, longer disposition for the gravest cases while preserving the confidentiality and procedural protections of the juvenile forum. The 2015 Act already does something close to this for transferred children through detention in a place of safety until twenty-one followed by review.⁴⁷ The real choice embedded in the Act lies between two forums rather than between accountability and rehabilitation, and the case for the adult forum has never been made on its own terms.

—The concern that organised groups recruit older adolescents because the law is lenient toward them also has a better answer than transfer. Section 83 punishes adults and groups who use children for illegal activities.⁴⁸ If recruitment is the problem, enforcement against recruiters is the proportionate response, and adult trial of the recruited is not. There is

⁴³ *Om Prakash v. State of Rajasthan* (2012) 5 SCC 201.

⁴⁴ Richard E. Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?", *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, Washington DC, June 2010).

⁴⁵ National Crime Records Bureau, *Crime in India* (Ministry of Home Affairs, Government of India, New Delhi, annual editions), chapter on juveniles in conflict with law.

⁴⁶ Terrie E. Moffitt, "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy" 100 *Psychological Review* 674 (1993).

⁴⁷ *Supra* note 19.

⁴⁸ *Supra* note 2, s. 83.

a distributive warning here as well. Feld's history of the American juvenile court shows that "get tough" waiver regimes fell disproportionately on poor and minority youth.⁴⁹ In India the analogous risks run along lines of caste, class and migrant status, and a transfer power exercised through a discretionary assessment of maturity and circumstance is precisely the kind of power through which such disparities enter unobserved.

VI. Gravity by Proxy: Classifying Offences Through Sentence

The 2015 Act sorts offences into three classes by borrowing punishments from other laws. Petty offences carry a maximum of up to three years, serious offences between three and seven years, and heinous offences a minimum of seven years or more.⁵⁰ The arrangement looked tidy until *Shilpa Mittal v. State (NCT of Delhi)* exposed a gap. The offence in issue, culpable homicide not amounting to murder under section 304 of the Indian Penal Code, carried a maximum of imprisonment for life but no minimum, and so fell within none of the three definitions. The Court held that it could not be treated as heinous, because that definition turns on a minimum of seven years, and directed that such offences be dealt with as serious until Parliament intervened.⁵¹ Parliament did so in 2021, amending section 2(54) to place offences with a maximum above seven years and either no minimum or a minimum below seven years in the serious category.⁵²

Shilpa Mittal is usually read as an exercise in literal construction favouring the child. It is more revealing as a demonstration of what the scheme delegates. By defining heinousness through minimum sentences, the Act lets the general criminal law decide which children are exposed to transfer. Whenever Parliament creates or raises a mandatory minimum, the transfer pool changes, though nobody debating that minimum is thinking about sixteen-year-olds. The Bharatiya Nyaya Sanhita, 2023 restructured a number of offences and their sentencing ranges,⁵³ and to the extent it did, the class of heinous offences under the juvenile statute shifted without any amendment to the juvenile statute. I have not attempted a full mapping of the new code against section 2(33). Such a mapping is overdue, and its absence is itself evidence that nobody is responsible for the question.

Sexual offences show how the proxy misfires. After the 2019 amendment, penetrative sexual assault under section 4 of the POCSO Act carries a minimum of ten years,

⁴⁹ Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford University Press, New York, 1999).

⁵⁰ *Supra* note 2, ss. 2(33), 2(45), 2(54).

⁵¹ *Shilpa Mittal v. State (NCT of Delhi)* (2020) 2 SCC 787.

⁵² The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (Act 23 of 2021).

⁵³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

rising to twenty where the child is below sixteen.⁵⁴ Because consent is legally irrelevant below eighteen, a seventeen-year-old in a consensual relationship with a sixteen-year-old is, on the statute's terms, accused of a heinous offence and eligible for preliminary assessment with a view to adult trial. The Law Commission, in its 283rd Report, declined to recommend lowering the age of consent but proposed guided judicial discretion in sentencing where there is tacit approval between adolescents aged sixteen to eighteen.⁵⁵ That proposal addresses punishment at the end of the process. It leaves untouched the anterior problem, which is that a sentence-based classification places these cases in the transfer category at all. Whatever view one takes of adolescent sexuality and the protective purposes of POCSO, a mechanism designed for the gravest violence should not be triggered by the arithmetic of another statute's minimum.

VII. Proving Childhood

Juvenility is a jurisdictional fact, and the law on its proof has been shaped by the knowledge that the State's birth records are incomplete. Section 9(2) allows the claim to be raised before any court, at any stage, even after final disposal. Section 94 prescribes an order of evidence: a date-of-birth certificate from the school or a matriculation certificate first, then a birth certificate from a municipal authority or panchayat, and only in the absence of both an ossification test or other medical age-determination test, to be completed within fifteen days.⁵⁶

The Supreme Court has given the claim generous scope. It entertained juvenility raised for the first time before it in *Gopinath Ghosh v. State of West Bengal*;⁵⁷ held in *Abuzar Hossain v. State of West Bengal* that the plea may be raised at any stage and that a prima facie case calls for an inquiry;⁵⁸ and in *Jitendra Singh v. State of U.P.* left the conviction of a person later found to have been a juvenile undisturbed while setting aside the sentence and sending the matter to the Board.⁵⁹ *Ashwani Kumar Saxena v. State of M.P.* cautioned against a roving inquiry where acceptable documents existed,⁶⁰ *Mukarrab v. State of U.P.* treated medical estimates as approximations carrying a recognised margin of error,⁶¹ and

⁵⁴ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 4, as amended by the Protection of Children from Sexual Offences (Amendment) Act, 2019 (Act 25 of 2019).

⁵⁵ Law Commission of India, *Report No. 283 on Age of Consent under the Protection of Children from Sexual Offences Act, 2012* (Sep. 2023).

⁵⁶ *Supra* note 2, ss. 9(2), 94.

⁵⁷ *Gopinath Ghosh v. State of West Bengal* 1984 Supp SCC 228.

⁵⁸ *Abuzar Hossain v. State of West Bengal* (2012) 10 SCC 489.

⁵⁹ *Jitendra Singh v. State of U.P.* (2013) 11 SCC 193.

⁶⁰ *Ashwani Kumar Saxena v. State of M.P.* (2012) 9 SCC 750.

⁶¹ *Mukarrab v. State of U.P.* (2017) 2 SCC 210.

Rishipal Singh Solanki v. State of U.P. drew the principles together, including the proposition that documents may be examined for genuineness where there is reason to doubt them.⁶²

This jurisprudence protects children against a State that will not prove their age. It also generates the late discovery that empties the protection of content. When juvenility is established a decade after conviction, there is nothing left for the Board to do in the register of rehabilitation. The person is released, which is right, but the years in adult prison are not restored and the reason the juvenile forum exists has been defeated entirely. The documentary hierarchy carries its own distortion. Admission registers in rural schools are often completed by teachers or parents estimating a child's age, frequently in round figures; a document's position at the head of the statutory list says nothing about its accuracy. The concern in *Om Prakash* about manipulated documents and the advocate's concern about children wrongly tried as adults share a single source, which is that age is fixed late, by courts, instead of early, at first contact.

The remedy lies outside courtroom doctrine. If the police and the Board were obliged to complete an age inquiry at first production, with legal aid present and a duty on the State to search for records rather than on the child to produce them, both the false claim and the missed claim would become rarer. The fifteen-day limit for medical testing shows that the drafters understood the value of speed. No matching obligation binds investigating agencies at the stage where speed would do the most good.

VIII. The Rehabilitative Promise and the Institutional Record

The political bargain of 2015 was that most children would stay in a system built to rehabilitate them while a small number of grave cases went elsewhere. The bargain is only as sound as the system it protects, and the courts themselves have documented how far that system falls short.

Bail is where the system first meets the child. Section 12 directs release, with or without surety, notwithstanding anything in the general law of bail, unless release is likely to bring the child into association with a known criminal, expose the child to moral, physical or psychological danger, or defeat the ends of justice.⁶³ Release is the rule on paper. In practice, children whose families cannot produce a guardian or surety, and migrant children whose families are far away, remain in observation homes for want of conditions that courts

⁶² *Rishipal Singh Solanki v. State of U.P.* (2022) 8 SCC 602.

⁶³ *Supra* note 2, s. 12.

attach to release. A protection framed as a presumption becomes, for the poorest children, a condition they cannot satisfy.

The Supreme Court has repeatedly been drawn into the machinery. In *Sampurna Behrua v. Union of India* it examined implementation across the States, recorded serious gaps in the constitution and functioning of Juvenile Justice Boards, Special Juvenile Police Units and Child Welfare Committees, and issued directions.⁶⁴ In *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India* it required the registration of child care institutions and a social audit.⁶⁵ During the pandemic, in suo motu proceedings on children in protection homes, it directed Boards to consider releasing children held in observation homes.⁶⁶ Each intervention was necessary, and each addressed a failure the statute already prohibited. When a court must keep directing the executive to do what an Act of Parliament requires, the deficit lies in governance rather than in legal design, and redesigning the law around the age line does nothing to repair it.

The transition at eighteen is where the gap is widest. Section 46 permits financial support to children leaving institutional care so that they can reintegrate, and the Model Rules extend aftercare into the early twenties; Mission Vatsalya provides the funding stream.⁶⁷ The language is permissive, and the support is discretionary at precisely the age when desistance research suggests that stable housing, work and relationships do most to end offending. A transferred child at least receives a structured review at twenty-one under section 20. A child kept in the juvenile system who turns eighteen in a special home faces something closer to a cliff. Oddly, the Act gives more structured attention to the transition of the children it trusts least.

The dispositional menu in section 18(1) is broader than critics of leniency acknowledge: admonition, group counselling, community service, fines, probation and placement in a special home.⁶⁸ What cannot be measured is how these options are used. No national dataset known to the author records dispositions by type, district and outcome, which means that claims about the system's success or failure, including some made in this paper, rest on judicial findings, field reports and inference rather than systematic evidence. That limitation should be stated plainly, because it cuts against confident claims from every side.

⁶⁴ *Sampurna Behrua v. Union of India* (2018) 4 SCC 433.

⁶⁵ *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India* (2017) 7 SCC 578.

⁶⁶ *In Re: Contagion of COVID 19 Virus in Children Protection Homes*, Suo Motu Writ Petition (Civil) No. 4 of 2020, order dated Apr. 3, 2020 (Supreme Court of India).

⁶⁷ *Supra* note 2, s. 46; The Juvenile Justice (Care and Protection of Children) Model Rules, 2016; Ministry of Women and Child Development, *Mission Vatsalya Scheme Guidelines* (Government of India, New Delhi, 2022).

⁶⁸ *Supra* note 2, s. 18(1).

Diversion is the most conspicuous absence. The Convention and the Beijing Rules both favour dealing with children without judicial proceedings where appropriate,⁶⁹ yet the 2015 Act provides no structured pathway out of the Board process for petty or first-time cases. Restorative approaches, in which the child confronts the harm done in the presence of family and community and makes reparation, have a theoretical grounding in Braithwaite's account of reintegrative shaming⁷⁰ and a practical affinity with the family-centred care that Bajpai and others have urged for Indian child law.⁷¹ Their absence from the statute is not neutral. Every case that might have been diverted competes for the same scarce Board time that grave cases require.

IX. Reform Built Around Capacity

If the age line is not where the real problems lie, reform should not begin there either. The proposals below share one premise: a juvenile system earns public trust in proportion to what it can demonstrably do, and most of the pressure for transfer is pressure generated by institutional failure.

The first and most important change is to narrow transfer and give it a real procedure. Eligibility should rest on a closed schedule of offences set out in the juvenile statute itself, confined to offences resulting in death and to grave sexual violence outside peer relationships, instead of floating on minimum sentences in the general penal law. The assessment criteria should be rewritten around psychosocial maturity, the child's history of prior intervention, and amenability to treatment within the juvenile system. The factors developed in *Kent v. United States* are a useful starting point, though not a template to be copied.⁷² There should be a statutory presumption against transfer with the burden on the prosecution, a mandatory independent expert report disclosed in full to the child, the right to counsel and to lead evidence at the assessment, and a reasoned order. The existing appeal to the Court of Session under section 101(2) would then have something to review.⁷³

A bolder alternative would abolish transfer and replace it with an extended juvenile disposition for the same narrow class, available only after a finding of guilt and subject to periodic review by the Board. This meets the retributive objection without surrendering the juvenile forum. It carries a cost that should not be understated: longer

⁶⁹ *Supra* note 31, art. 40(3)(b); *supra* note 32, r. 11.

⁷⁰ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, Cambridge, 1989).

⁷¹ Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* (Oxford University Press, New Delhi, 3rd edn., 2017).

⁷² *Kent v. United States* 383 US 541 (1966).

⁷³ *Supra* note 2, s. 101(2).

maximum terms tend to migrate downward into ordinary cases, and a reform designed for a handful of grave offences could lengthen custody for many children. Any such provision would need a statutory ceiling on the proportion of cases in which it is invoked, or at least mandatory reporting on its use.

Time limits need restoring by legislation. After the Karnataka decision, Parliament could provide that where the assessment is not completed within three months, extendable once for recorded reasons, the case proceeds in the juvenile system. Hard cases may escape transfer through delay; that is the point of a deadline, since it places the cost of delay on the State, which controls the resources, and not on the child, who controls nothing. The periodic judicial review of pendency under section 16 offers an existing hook for monitoring compliance.⁷⁴

Statutory diversion should be introduced at the police and Board stages for petty offences and first-time serious offences, conditional on the child's voluntary participation, with a bar on using any admission made during the process in later proceedings. The risk is real. In a policing culture with entrenched custodial habits, informal diversion can become coercion without records. For that reason diversion should operate only under the Board's supervision and be logged, so that it adds accountability instead of removing it.

Peer sexual cases require a close-in-age provision that excludes them from the heinous category for purposes of the juvenile statute, whatever sentencing reform POCSO itself receives. The Law Commission's caution that any relaxation could shelter trafficking and exploitation is a reason for careful drafting, through age-gap limits and exclusions for coercion or position of trust, but not a reason for leaving consensual adolescent relationships within reach of adult trial.

Finally, implementation duties should be enforceable as rights. Districts with high pendency should have full-time Boards. Aftercare to twenty-one should become an entitlement and not a discretion. Inspection committees under section 54 should be independent of the institutions they inspect and should publish their findings.⁷⁵ The legal aid already promised to children under section 8(3) should be present from first production, not first hearing.⁷⁶ A child held beyond the statutory period, or detained without an individual care plan, should be able to treat that failure as a breach of Article 21 sounding in release, so that institutional default has a legal consequence that falls on the State.

⁷⁴ *Id.*, s. 16.

⁷⁵ *Id.*, s. 54.

⁷⁶ *Id.*, s. 8(3).

X. Accountability Without Abandonment

The debate over trying sixteen-year-olds as adults has been conducted as if one side held a principle and the other only a grievance. Both positions rest on defensible commitments. Children are less culpable than adults and more capable of change; victims are owed a response that registers the gravity of what was done to them. The disagreement that remains is narrower than either camp admits. It concerns which forum should respond to the gravest adolescent offending and whether the institutions charged with rehabilitation can do what the law claims for them.

On the first question, this paper has argued that section 15 answers badly. Its criteria measure the wrong capacities, its classification of offences is borrowed from statutes written for adults, and after the Karnataka ruling its timetable is unenforceable. On the second, the honest answer is that nobody knows with confidence, because the data that would tell us are not collected. That uncertainty should temper every claim in this field, including the claim that the juvenile system works well enough to justify keeping all children in it.

There is, however, a dynamic worth naming. Each failure of rehabilitation, each child released at eighteen with nowhere to go, each Board that cannot complete an inquiry, strengthens the political demand for transfer. Each serious investment in the juvenile system weakens it. The most effective way to defend the age of eighteen may be to stop defending it in the abstract and start making the system behind it work. Indian juvenile justice reform, on this view, is less a contest between rights and accountability than a test of whether the State will pay for the promises it has already legislated.

A note on sources. Citations in the footnotes follow ILI style. Reporter citations for recent judgments, the title and date of the NCPCR guidelines, and statements about the current status of challenges to section 15 should be verified against the official reports and current records before submission.

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