

## “Juvenile Justice and Child Rights: A Critical Study in the Context of India & International Human Rights Standards”

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**"Humanity owes to the child the best it has to give."<sup>1</sup>**

**Abstract:** Children's rights are not limited to legal terminology alone, but represent a moral responsibility of every society and nation to uphold and implement them. International solidarity and cooperation among nations are crucial, not only for the well-being of children but also for recognizing their future as citizens of the world. Protecting and respecting children's rights is not merely a national responsibility but a universal one. International treaties, declarations, and guidelines promise that every child should receive their human rights and live a safe, educated, and fulfilling life.

This research chapter analyzes the history, development, and philosophy of child rights and juvenile justice systems at the international level. It examines why and how children are treated differently, even when the nature of the offense is the same. International declarations, treaties, and guidelines proclaimed over time – particularly the United Nations Convention on the Rights of the Child, 1989 – have shifted juvenile justice from a punitive approach to one based on reform, welfare, and rights.

This research also analyzes how current human rights principles, which have evolved from the 'parens patriae' principle, prioritize the protection, welfare, dignity, respect, and social integration of juveniles. Furthermore, it sheds light on the impact of international standards on Indian juvenile justice law, particularly the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015. This study concludes that the success of the juvenile justice system lies not merely in enacting laws, but in their humane, scientific, and effective implementation and enforcement.

**Keywords:** Child rights, juvenile justice, parens patriae, international human rights,

### **Introduction**

Juvenile justice plays a vital role in bridging the gap between international human rights law and criminal law. It reflects the extent to which a state protects and safeguards its most vulnerable citizens—children. Like many other countries, the system must be examined to determine whether it effectively fulfills international human rights obligations toward children who come into conflict with the law, as well as those who are in need of care and protection, and whether they are provided justice in accordance with international legal standards.

From an international legal perspective, juvenile justice extends far beyond the punishment of young offenders. It represents a system centered on rehabilitation, social reintegration, and the protection of human dignity. International legal standards, particularly Articles 37 and 40 of the Convention on the Rights of the Child (CRC), require states to establish procedures that prioritize the best interests of the child, promote alternatives to formal judicial proceedings, and restrict the use of detention to exceptional circumstances only.

In the early 1990s, the state ratified both the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC), thereby committing itself to aligning its domestic laws and practices with these international standards. Despite this commitment, persistent challenges remain in the effective implementation of these obligations at the national level. Although the constitutional recognition of public international law within domestic law exists, its application has often been limited due to legislative gaps, institutional weaknesses, and socio-economic constraints<sup>2</sup>.

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<sup>1</sup> Adopted by the League of Nations on 26th September 1924.( Geneva Declaration of the Rights of the Child, 1924, available <http://www.humanium.org/en/childrens>.(visited on July 23,2017).

<sup>2</sup> United Nations Treaty Collection, 'Status of the Convention on the Rights of the Child' (UNTC, 2024) <https://treaties.un.org>

As a result, a critical question remains unanswered: to what extent does the juvenile justice system comply with the country's international legal obligations? This article therefore seeks to undertake a critical evaluation of the juvenile justice system from the perspective of public international law. It examines the degree of harmony between international legal standards and their national implementation, evaluates the effectiveness of existing safeguards, and assesses the practical realities faced by children within the justice system.

### **Children's Rights**

In the history of human rights, the rights of children have been regarded as a top priority. The United Nations Convention on the Rights of the Child (UNCRC) defines children's rights as the minimum rights and freedoms that must be granted to every individual under the age of eighteen, without discrimination of any kind. These rights apply regardless of race, national origin, colour, gender, language, religion, opinions, social or economic background, birth status, disability, or any other characteristic.

These rights include a child's freedom and civil liberties, the right to grow up in a family environment, access to essential healthcare and well-being, education, leisure, play, and cultural activities, as well as special protection measures. The UNCRC groups these fundamental human rights of children into four broad categories, ensuring comprehensive coverage of all civil, political, social, economic, and cultural rights of every child.

### **What is Juvenile Justice?**

Juvenile justice is a legal system that deals with the rights of children who either come into conflict with the law or are in need of care and protection. It applies to children and adolescents between the ages of 10 and 18 who are accused of committing an offence, suspected of involvement in a crime, or have already committed an offence.

Understanding how the juvenile justice system functions is important because it can significantly affect a child's future. This impact may exist even in cases where the child is not found guilty or is not sent to prison.

### **Parens Patriae:**

1. The principle of separating children from adult offenders, and
2. The principle of "Parens Patriae," meaning the state assumes responsibility for all juveniles who need care and protection.

Gradually, this shifted from a "welfare-based approach" (Parens Patriae) to a "rights-based approach," which respects the constitutional and procedural rights of juveniles.

Now, juvenile justice is considered part of the concept of human rights.

A child in conflict with the law should be treated in a manner:

- That promotes their dignity and sense of self-worth,
- And that strengthens their respect for human rights.

And such treatment should respect the fundamental freedoms of others, and take into account the child's age and the need to promote the child's rehabilitation so that they can become capable of playing a constructive role in society. Third International Conference on Child Welfare and Protection (1902)

The main objective of the Third International Conference on Child Welfare and Protection (1902) was to address the problems of neglected children and the concern that if these children were not properly cared for and raised, they might turn to crime.

Therefore, the conference emphasized the need to care for neglected minors to prevent them from entering the world of crime.

### **Objectives of the Study:**

- To study the historical and conceptual background of child rights and juvenile justice at the international level.
- To analyze key international documents before and after 1989.
- To understand the rationale for treating juvenile offenders differently from adults.
- To evaluate the shift from a 'welfare-based approach' to a 'rights-based approach'.

- To analyze the impact of international standards on Indian juvenile justice law.
- To review the features, criticisms, and practical challenges of the Juvenile Justice Act, 2015.

### **Research Methodology:**

This research employs a doctrinal and descriptive research methodology.

The following sources were used for the study: International treaties and declarations United Nations rules and guidelines Legal texts, research books, and journal articles Indian legislation and related literature Logical and critical conclusions have been drawn by analyzing the available secondary sources.

**Scope of the Study:** This study is limited to international declarations, treaties, and guidelines related to child rights and juvenile justice. It analyzes the standards developed by the United Nations and other international organizations, and attempts to understand the impact of these standards in the Indian context. The scope of the study is limited to theoretical, legal, and human rights-based analysis, and does not include statistical or regional surveys.

### **International Human Rights:**

The international community plays a crucial role in protecting the rights and ensuring justice for children. International treaties and declarations prioritize the development, protection, and well-being of children. India, a member of the United Nations and a signatory to numerous human rights treaties, has supported global efforts against child exploitation and violence.

India has strived to align its national laws with the following international standards:

- United Nations Convention on the Rights of the Child (UNCRC)
- International Human Rights Treaties
- Geneva Conventions
- Various declarations and rules related to child protection

### **Before 1989**

1. 1924 – Geneva Declaration of the Rights of the Child: This was the first international declaration that recognized the need for special protection and care for children.
2. 1948 – Universal Declaration of Human Rights (UDHR): Stated the need for special care and assistance for motherhood and childhood.
3. 1949 – Geneva Conventions: Ensured special protection for children in situations of war and conflict.
4. 1959 – United Nations Declaration of the Rights of the Child: Outlined the rights of children to protection, development, and education through 10 key principles.
5. 1966 – International Covenants on Civil, Political, Economic, Social and Cultural Rights: Recognized the rights of children to protection from exploitation, education, and identity.
6. 1985 – Beijing Rules for the Administration of Juvenile Justice: Provided procedural guidelines for treating children with a rehabilitative and restorative approach.
7. Regional Human Rights Documents: Various regional efforts, including the African Charter, also incorporated children's rights.

### **After 1989**

United Nations Convention on the Rights of the Child (UNCRC), 1989<sup>3</sup>

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<sup>3</sup> 20 November 1989, General Assembly resolution 44/25 (article 1 -51) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

- The most comprehensive and legally binding document on children's rights.
- India ratified it in 1992. Its four main principles are:

- o Non-discrimination
- o The best interests of the child
- o The right to life and development
- o Freedom of thought and expression

World Summit for Children, 1990

- The World Declaration on the Survival, Protection and Development of Children and the Plan of Action were adopted.
- The responsibility of the community to ensure the holistic development of children was established.

#### **United Nations Guidelines on Juvenile Justice**

- Riyadh Guidelines, 1990 – Emphasized the prevention of juvenile delinquency.
- Havana Rules, 1990 – Rules to ensure the protection of children in detention.
- Vienna Guidelines, 1997 – Guidelines for the treatment of children in the justice system.

Other United Nations Guidelines (2005–2011)

- Detailed guidelines were issued on issues such as child trafficking, sexual exploitation, and violence.

#### **Key Rights under the UNCRC**

According to the Convention, every child has the right to:

- A name and nationality
- Education and healthcare
- Protection from exploitation and abuse
- Freedom of thought, religion, and expression
- Family care or alternative protection
- Special protection in situations of war and conflict

Implementation Challenges

Although international agreements are legally binding, their implementation faces numerous obstacles, such as:

- Lack of public awareness
- Weak enforcement mechanisms
- Socio-economic inequality
- Certain cultural practices that are contrary to child rights

India's juvenile justice law and child protection system are influenced by international declarations and agreements. These documents ensure that every child has the opportunity to live with dignity, equality, and the prospect of rehabilitation. This responsibility rests not only with the state but also with society to implement these rights on the ground.

In this chapter, the researcher has focused on the international and national aspects of differential treatment of child offenders. A clear understanding of this subject requires an analysis of national and international documents to understand why a juvenile offender is treated differently from an adult, even if the crime is the same.

#### **Criteria for Differentiated Treatment of Minors**

- (i) Geneva Declaration of the Rights of the Child, 1924

The Geneva Declaration of the Rights of the Child (1924) was the first significant document that recognized that children have specific rights and that adults have responsibilities towards them.

The declaration stated: This document supports the principle that child offenders should be rehabilitated, not punished. It places the following obligation on humanity:

"It is the duty of humanity to bring the delinquent child back into the mainstream."

This declaration prioritizes the social and economic rights of children and lays the foundation for future international standards. It recognizes the rights of children to welfare, protection, development, assistance, and relief.

The fundamental needs of children are summarized in five key aspects:

1. "The child must be given the standard conditions for proper physical and spiritual development."
2. "The child who is hungry must be fed, the sick child treated, the backward child assisted, the delinquent child rehabilitated, and the orphan and destitute child sheltered and protected."
3. "In times of distress, the child must be the first to receive relief."
4. "The child must be enabled to earn a livelihood and protected against all forms of exploitation."
5. "The child must be brought up with the understanding that his talents should be used in the service of humanity."

8. Ian Brownlie & Guy S. Goodwin-Gill, Basic Documents on Human Rights, pp. 23-28 Oxford University Press, 5th edition, 2010.

#### **Indian context:**

#### **Juvenile Justice Act, 2000:**

The objective of this Act was to reform rather than punish juveniles and to keep them separate from adult offenders.

Main Provisions:

- Special units were created to investigate juvenile crimes.
- Juvenile Justice Boards (JJBs) were constituted for hearings.
- The maximum period of detention was set at 3 years.
- Emphasis was placed on rehabilitation through observation homes and special care institutions.

#### **Circumstances leading to the 2015 Act:**

This Act came into existence due to public outrage following the 2012 Nirbhaya gang-rape case.

- ❖ Juveniles aged 16-18 years were allowed to be tried as adults in heinous crimes.
- ❖ This aimed to create a deterrent effect as the crime rate in this age group was increasing.

#### **Juvenile Justice (Care and Protection of Children) Amendment Act, 2021:**

- I. This amendment was made after an audit of Child Care Institutions (CCIs) in 2020 revealed shortcomings such as lack of registration and poor infrastructure.
- II. Main Changes:
- III. "Serious offenses" were redefined as offenses punishable with imprisonment of 7 years or more.
- IV. Adoption orders are now issued by District Magistrates instead of courts.
- V. Stricter oversight was placed on CCIs and Child Welfare Committees (CWCs) by District Magistrates.
- VI. Eligibility criteria for CWC members were redefined, and new grounds for their removal were added.

This Act ensures dual protection for children:

They will not be sent to adult prisons (unless the Juvenile Justice Board allows them to be tried as adults). The maximum sentence is only up to 3 years, unless the case involves a 'heinous crime'.

Features of this Act:

- ❖ Clear distinction between law and care-protection.
- ❖ Mandatory registration of children's homes.
- ❖ Bringing children aged 16-18 under the purview of justice.
- ❖ Efforts to provide justice to victims.

**Criticisms and Concerns:**

Treating 16-18 year olds as adults is controversial. Psychologically, this age group is considered vulnerable. This is considered contrary to the provisions of the UNCRC, which defines all individuals under 18 years of age as 'children'. The social and economic reasons that lead children to crime have been overlooked.

The Juvenile Justice Act, 2015 is a significant step towards the rehabilitation of children, making them valuable members of society, and protecting their rights. However, transparency, scientific evaluation, and human sensitivity are crucial in its implementation. This law will only be considered successful when we understand the root causes of juvenile delinquency in society and strengthen basic infrastructure such as education, nutrition, and security to prevent it.

**Problems in the Effective Implementation of the Juvenile Justice System**

The main reasons are:

- I. Lack of communication between agencies of the juvenile justice system.
- II. No/inadequate infrastructure available in each state and union territory as suggested by the Act.
- III. The Juvenile Justice Fund provided under Section 105 of the Juvenile Justice Act is not available in every state/union territory.
- IV. Lack of awareness about the provisions of the Act, as in many cases children are arrested instead of following the provisions of Model Rule 8(1).
- V. No follow-up or aftercare plan is followed in most states.
- VI. In some districts where combined observation homes are available, members from other districts have no right to interact with the children.

**Steps to be taken for the Effective Implementation of the Juvenile Justice System**

1. Individual Care Plan
2. Rehabilitation and Post-Release Follow-up
3. Training and Capacity Building
4. Awareness about the Juvenile Justice Act
5. Awareness about Sexual Offenses
6. Cultural and Moral Development in Slums and Deprived Areas
7. Legal Awareness among Middle/High/Higher Secondary School Children
8. Capacity Building Modules
9. Strict implementation of laws where children are used as tools to commit crimes:

**Major Implementation Challenges:**

Administrative Challenges	Operational Challenges
<ul style="list-style-type: none"> <li>• Lack of coordination between different departments</li> </ul>	<ul style="list-style-type: none"> <li>• Shortage of expert staff</li> </ul>
<ul style="list-style-type: none"> <li>• Inadequate budget allocation</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient training and capacity building</li> </ul>

<ul style="list-style-type: none"> <li>• Weak monitoring mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>• Poor maintenance of infrastructure</li> </ul>
<ul style="list-style-type: none"> <li>• Inadequate data management systems</li> </ul>	<ul style="list-style-type: none"> <li>• Non-adherence to statutory timelines</li> </ul>

**Recommendations:**

<b>Short-Term Recommendations</b>	<b>Long-Term Recommendations</b>
I. Infrastructure Development II. Immediate establishment of essential facilities III. Upgradation of existing infrastructure IV. Implementation of standardized facilities  <b>Human Resource Management:-</b> I. Expediting recruitment processes II. Implementation of standardized training programs III. Development of performance monitoring systems IV. Procedural Reforms V. Digital case management system VI. Standardized operating procedures VII. Regular Monitoring and Evaluation	<b>Legislative Reforms:</b> <ul style="list-style-type: none"> <li>• Amendment of problematic provisions</li> <li>• Introduction of time-bound processes</li> <li>• Enhancement of accountability measures</li> </ul>
	<b>Institutional Strengthening:</b> <ul style="list-style-type: none"> <li>• Capacity building programs</li> <li>• Research and development initiatives</li> <li>• Inter-state coordination mechanisms</li> </ul>
	<b>Focus on Rehabilitation:</b> <ul style="list-style-type: none"> <li>• Enhancement of after-care programs</li> <li>• Skill development initiatives</li> <li>• Community integration programs</li> </ul>

**Way Forward: Key Suggestions:**

- a. Establish mechanisms for better convergence and coordination among various stakeholders
- b. Development of a convergent CPMIS is essential for a better data management system
- c. Develop a comprehensive human resource plan including timely recruitment for vacant positions, review of service conditions, adequate training and capacity building based on their roles and responsibilities
- d. Creation of a comprehensive Child Protection Policy and District Child Protection Plan
- e. ICPS staff should not be given additional responsibilities of other schemes
- f. Use of technology as a solution to challenges, such as presenting children before CWC, JJB through video conferencing instead of transporting them to the CWC, JJB of the neighboring district, receiving orders on WhatsApp
- g. Effective utilization of the Juvenile Justice Fund

**Way Forward: Key Suggestions**

- a. A robust Child Protection Management Information System (CP-MIS) should be designed and implemented
- b. Data from the CPMIS should be analyzed and used to strengthen program review, planning, and implementation
- c. SCPC, DCPC, BCPC, and VCPC should be strengthened with skills and capacity and made functional to review the child protection system operating in the state/districts
- d. Monitoring of CCIs should be made more intensive and sensitive, and follow-up action should be taken by the DIC.

- e. Police should include issues related to CNCP and CCL in the crime meeting agenda, and it should be reviewed on a monthly basis by the ADG-CID at the state level.
- f. Alternative care services (foster care, sponsorship, and adoption) should be monitored on an individual basis and the concerned families should be strengthened.

**Administrative Issues:** There is a lack of clarity regarding the roles of the Social Security Department, which is implementing the Integrated Child Protection Scheme (ICPS) through District Child Protection Units (DCPUs) in all districts, the Social Welfare Department which is working on preventing child marriage, and the Department of Empowerment of Persons with Disabilities which is monitoring child care institutions for children with special needs. However, the ICPS guidelines lack clarity and consistency regarding the roles for outreach services to be carried out through the DCPUs. For example, they were instructed to transform the child protection watchdog committees into village management committees, which has not been fully implemented across the district. There was confusion regarding the roles and responsibilities in child repatriation, presenting children before the Child Welfare Committee (CWC), accompanying the District Child Protection Officer to prevent child marriages, and providing other non-institutional services to children in need of care and protection. This was because most Child line staff performed these duties without adequate transportation facilities. The proper implementation of ICPS is lagging due to the lack of a proper timeline and action plan, and there are also persistent problems in carrying out duties according to the action plan at the DCPU level.

- Lack of coordination between the concerned departments and other stakeholders to ensure the proper implementation of the Juvenile Justice Act, 2015.
- Lack of maintenance of standards in government-run child care institutions (CCIs) such as special homes, observation homes, shelter homes, day care centers for homeless children, aftercare homes and children's homes run by government and non-governmental organizations.
- Lack of follow-up on cases in non-institutional services due to excessive workload and limited staff across the district.
- The District Child Protection Unit (DCPU) employs social workers who are not professionally qualified. Counselors do not possess the relevant educational and experiential background.

Lack of coordination between the District Social Welfare Office (DSWO) and the DCPU in addressing cases of child marriage, child abuse, and sexual assault, and a lack of clarity regarding the roles and responsibilities of the DSWO and DCPU, leading to role conflicts in processes such as preventing child marriage, rescue operations, filing FIRs, medical examinations, and counseling.

### **Conclusion:**

The study clearly shows that the development of child rights and the juvenile justice system internationally reflects a shift in thinking, viewing children as deserving of reform and rehabilitation rather than punishment. The United Nations Convention on the Rights of the Child, 1989, has placed juvenile justice within the broader framework of human rights. The Indian Juvenile Justice Act, 2015, is a significant step towards protecting children's rights in line with international standards, but provisions such as treating 16-18 year olds as adults in the criminal justice system raise serious controversies and concerns. Ultimately, the effectiveness of juvenile justice depends not only on legislative provisions but also on the collective responsibility of society, the state, and institutions. Without education, proper nutrition, protection, and a sensitive judicial approach, a lasting solution to the problem of juvenile delinquency is not possible.

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