



ILE MULTIDISCIPLINARY
JOURNAL

VOLUME 4 AND ISSUE 1 OF 2025

INSTITUTE OF LEGAL EDUCATION



ILE MULTIDISCIPLINARY
JOURNAL

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ILE MULTIDISCIPLINARY JOURNAL

APIS – 3920 – 0007 | ISSN – 2583-7230

(OPEN ACCESS JOURNAL)

Journal's Home Page – <https://mj.iledu.in/>

Journal's Editorial Page – <https://mj.iledu.in/editorial-board/>

Volume 4 and Issue 1 (Access Full Issue on – <https://mj.iledu.in/category/volume-4-and-issue-1-of-2025/>)

Publisher

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SYSTEMATIC LITERATURE REVIEW

A VICIOUS CYCLE: UNDERSTANDING WHAT KEEPS JUVENILE OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM

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BEST CITATION – TISTA KHASNOBIS, SYSTEMATIC LITERATURE REVIEW – A VICIOUS CYCLE: UNDERSTANDING WHAT KEEPS JUVENILE OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM, ILE MULTIDISCIPLINARY JOURNAL, 4 (1) OF 2025, PG. 590-595, APIS – 3920-0007 | ISSN – 2583-7230

ABSTRACT

This study delves into the complex factors contributing to the persistent involvement of juveniles within the criminal justice system. By examining the interplay of systemic, individual and contextual variables, this research aims to understand how these elements contribute to recidivism and prolonged engagement with the legal system.

Through a comprehensive analysis of existing literature, case studies and statistical data, this study seeks to identify key barriers to successful reintegration and highlight the research gaps in the study of the juvenile justice system.

Keywords: Recidivism, reintegration, systemic, contextual, individual.

RESEARCH QUESTIONS

1. To what extent do the provisions of the Juvenile Justice (Care and Protection of Children) Act 2015, effectively address the issue of prolonged detention of juveniles?
2. How does the interplay between Juvenile Justice Act and the Bharatiya Nyaya Samhita impact the treatment of offenders and how does that compare to the JJA 2015 interplay with the Indian Penal Code of 1860?
3. How effective are mechanisms for alternate dispute resolution in juvenile justice cases?
4. How effective are after care services as outlined by the Juvenile Justice Board in preventing recidivism and reducing the likelihood of re-entry into the juvenile justice system.
5. What are the specific problems faced by marginalised groups in receiving legal aid within the juvenile justice system?
6. How do factors like caste, gender and socio-economic status affect recidivism in the juvenile justice system?

METHODS AND MATERIALS

Doctrinal research analysing legal texts, statutes, case law and amendments with a combination of primary and secondary data sources.

METHOD

Steps involved in analysing the literature:

1. Identifying relevant legal provisions:
 - a. The growth and development of the Juvenile Justice Act from 2000 to 2015, including all amendments.
 - b. Sections of the BNS and IPC that interplay with the JJA.
 - c. Relevant International law provisions outlined in the Vienna, Beijing and Riyadh Rules.
2. Case Law Analysis: Analysis of landmark cases that shaped the Indian Juvenile Justice



System. Analyse judgements to understand the judicial interpretation of the law. Emerging patterns in the Narayam Chaudhary case and the Gopinath case were identified.

3. Comparative Analysis:

a. Between Juvenile Justice Act of 2000 and Juvenile Justice Act 2015.

b. Between Indian policies and International policies.

c. Pre-Colonial and post colonial policies.

4. Critical Analysis:

a. Of the existing legal framework in addressing recidivism in the juvenile justice system.

b. Identify the ambiguity in the law:

- i. Classification between petty, serious and heinous offences.
- ii. Overturning of the established principles of the United Nations Convention on Child Rights (UNRC) by JJA, 2015.
- iii. Justice Verma Committee Report on the dangers of lowering the age of minority for heinous offences.

MATERIALS

1. Primary Legal Sources:

a. The Juvenile Justice (Care and Protection of Children) Act 2015 and amendments.:

Repeals the Juvenile Justice Act of 2000. It brought about much needed reforms permitting a Juvenile Justice Board, which would incorporate analysts and sociologists, to choose whether the adolescent criminal between the ages of 16 and 18 years³¹⁴ can be tried as an adult. It adopted a child friendly approach for adjudication and disposal of matters ensuring reintegration back into society.

1. Section 2 (13): of the act speaks of children in conflict with the law. It makes it mandatory to ensure these juveniles are not subject to harm or neglect during their trial and intentionally does not use accusatory words like arrest or remand.

2. Section 4 speaks of the Juvenile Justice Board that can be established by a State Government for each district. Since this section has a 'saving clause', it has an overriding effect over the Code of Criminal Procedure, 1973.

3. Section 8 : outlines powers and functions of the Board. It is necessary so as to ensure accountability and proper safeguard of rights of the child.

4. Section 27: Establishes Child Welfare Committee.

5. Various sections that outline Rehabilitation of Juveniles under the Juvenile Justice Act,2015.

- a. Observation homes under Section 47
- b. Special Homes under Section 48
- c. Children's homes under section 50
- d. After care programs under section 57
- b. Indian Penal Code 1860:

Section 82 is based on the doctrine of *Doli incapax* which means incapable of committing a crime, states that a child under the age of seven cannot be held guilty of an offence. In addition to that, Section 83 states that children between the ages of 7 and 12 qualify for immunity due to immaturity of understanding.

c. Bharitya Nyaya Samhita, 2023:

This Act and the ones above serve as the basis of juvenile Justice in the Indian Criminal Systems. Positive aspects in the development of jurisprudence in this sphere includes highlighting gender neutrality in offences and prioritising rehabilitation over reprimanding.

However, these are lacking in terms of execution. The Act must include a minimum standard to provide basic necessities of

³¹⁴ Kaur, A. (2023) *Juvenile delinquency in India*. <https://blog.ipleaders.in/juvenile-delinquency-related-legislations-india/>.



clothing, food and shelter to the child. It must standardise and ensure maintenance of infrastructure, salary of staff at observation homes and provide alternative family care.

d. Case Laws from High Court, Supreme Court and lower court:

A National Commission for Children must be established as suggested by the high level committee constituted by the Supreme Court in a public interest petition for basic facilities for children engaged in the fireworks industry in Madras and Sivaski in the 1990s³¹⁵.

e. Specific State Juvenile Legislation:

Act XIX of 1850, 1876 Reformatory Schools Act, the Borstal School Act, the Children's Act of 1920, and other state-specific legislation like the Bengal Children's Act, and Madras Children's Act to address neglected and deviant children these laws gave delinquents some special provisions regarding their Institutionalisation and rehabilitation³¹⁶.

2. International law Provisions:

a. The Beijing rules³¹⁷: United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985. It provides guidelines as to how children should be treated while in the criminal justice system and addresses issues such as privacy, special training for the police and due process guarantees.

b. The Riyadh Rules³¹⁸: United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990. Emphasis on preventive policies, facilitation for the successful socialisation and integration of children and young persons in the juvenile justice system. Also suggest governments to enact and enforce specific laws.

c. The Vienna Guidelines³¹⁹: Guidelines for action on children in the criminal justice system, 1997.

Outlines a uniform standard and application of juvenile justice, the role of juvenile courts and implementation of assistance projects.

3. Juvenile justice Committees in India:

a. Justice Verma Committee, 2012: reforms to criminal laws related to sexual assaults against women, specifically the Nirbhaya case where the committee refused to lower the age of minority from 18 to 16.³²⁰

b. Supreme Court Committee on Juvenile Justice: Currently constituted by Justice B.V. Nagrathan and Justice J.B. Pardiwala. The Juvenile Justice Conference Report (28-29 Nov 2020) highlights the neglect of children in the criminal justice system as a result of the Covid-19 lockdown and the need to curb this negative aftermath by emphasising on family based options to rehabilitate and reducing burden on caregivers.³²¹

4. Case Laws:

a. *Narayan Chetan Ram Chaudhary Versus The State Of Maharashtra*³²²

The Supreme released Narayan Chetan Ram, death row convict upon finding that even though he was a juvenile at the time of the commission of the offence, he was tried as an adult and sentenced to death. Noting that under the Juvenile Justice Act of 2015, one cannot be subjected to the death penalty and that the maximum sentence is 3 years.³²³

b. *Gopinath Gosh V. State Of West Bengal*³²⁴

³¹⁵ M.C. Mehta vs State Of Tamil Nadu And Others AIR 1997 SUPREME COURT 699

³¹⁶ Bhattacharyya, S.K., 1981. Juvenile justice system in India. *Journal of the Indian Law Institute*, 23(4), pp.606-612.

³¹⁷ Gane, C. and Mackarel, M., 1997. United Nations: Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). In *Human Rights and the Administration of Justice* (pp. 469-477). Brill Nijhoff.

³¹⁸ Van Bueren, G., 1993. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990. In *International Documents on Children* (pp. 232-241). Brill Nijhoff.

³¹⁹ Cohen, C.P., 2005. administration of juvenile justice (art. 40). In *The Jurisprudence on the Rights of the Child* (pp. 2977-3247). Brill Nijhoff.

³²⁰ Chakravorty, S., 2018. The Verma Committee report, 2013: notes on nation, gender and crime. *South Asian History and Culture*, 9(4), pp.388-395.

³²¹ Kumari, V., 2015. Juvenile justice in India. *Juvenile justice in global perspective*, pp.145-197.

³²² AIR 2000 SUPREME COURT 3352

³²³ Chowdhury, S. and Law, L. (2023) 'Live law,' *Live Law*, 29 March. <https://www.livelaw.in/top-stories/supreme-court-releases-death-row-prisoner-after-28-years-on-finding-him-to-be-a-juvenile-at-the-time-of-offence-224905>.

³²⁴ AIR1984 SC 237



The appellant was convicted and sentenced to life imprisonment for committing murder. Appeal was filed claiming that the appellant was a child at the time of committing the offence. The court held that a Medical Board or Civil Surgeon³²⁵ must be consulted for obtaining credit worthy evidence about age. This procedure if properly followed would avoid a journey up to the Apex court and return the journey to the grassroots court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation.

5. Secondary Legal Sources:

- a. Law Commission Reports
- b. Legal Journals and Articles
- c. Legal Books and commentaries

Tools to gather legal sources-

1. Legal Databases

- a. SCC Online
 - b. Manupatra
2. Online Legal Resources
- a. Websites of Indian Courts
 - b. Websites of law commission

3. Secondary Data:

1. Government Reports and Statistics:
Open Government Data (OGD)

Online Database- data.gov.in

Keyword- Juvenile

Data Statistics on:

1. Juvenile Crimes under IPC.
2. Proportion of Juvenile Crimes to Total Crime.
3. Volume of Juvenile Crime to one lakh population.

4. Incidence and rate of juvenile delinquency under IPC³²⁶

2. Academic Research Papers:

1. Benard, T.J. and Kurlychek M.C.,2010. The cycle of Juvenile Justice. Oxford University Press. Second edition.³²⁷:

Chapter 1 establishes the idea of a cyclical pattern in Juvenile Justice where the same policies are repeated throughout the years. Juvenile crime is thought to be unusually high. Punishments are harsher and fewer treatments are lenient. Officials have to choose the harsher punishment rather than doing nothing at all. This 'forced choice' is blamed in the second stage of the cycle for the rise of juvenile crime. Third stage is the advent for major reform and introduction of lenient treatments creating a middle ground. Lenient treatment is then attributed to rise in Juvenile crime in Stage 4, which brings the cycle back to Stage 1. This concept helps analyse and predict the stage of reform in Juvenile Justice policy in India.

2. Kumar, S., 2019. Shifting epistemology of juvenile justice in India. *Contexto Internacional*.³²⁸:

This paper is a good start to analyse colonial laws and policies related to children and gendered norms and practices in Colonial India that laid down the foundation of discriminatory juvenile justice system. It also highlights the media portrayals of juvenile offenders, particularly male and how public opinion and political pressure influences the juvenile justice system in India.

3. Pillai, G. and Upadhyay, S., 2017. Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India. *NJUS. Rev 10*.³²⁹:

³²⁶ *crime-and-law juveniles-delinquency Statistics and Growth Figures Year-wise of india-Indiastat.* (n.d.). <https://www.indiastat.com/data/crime-and-law/juveniles-delinquency>

³²⁷ Benard, T.J. and Kurlychek M.C.,2010. The cycle of Juvenile Justice. Oxford University Press. Second edition.

³²⁸ Kumar, S., 2019. Shifting epistemology of juvenile justice in India. *Contexto Internacional*.

³²⁹ Pillai, G. and Upadhyay, S., 2017. Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India. *NJUS. Rev 10*.

³²⁵ *Shrikrishna Chandrakant Marathe Vs. The State of Maharashtra* 2019 ALL MR (Cri) 1997



This paper highlights India's chequered past with regard to the determination of the age of juveniles in conflict with law. Such as in the Narayan Chetan Ram case of mistaken identity where law enforcement did not take reasonable care in establishing age of the accused. This paper highlights the drawbacks of the 2015 Juvenile Justice Act which it believes was offered as a rushed solution to curb media pressure and public backlash post the Nirbhaya Case. It highlights how the Juvenile Justice Acts in India are offender centric by focusing on punishments but do not cater to the welfare of the victim. It proposes an ideal balance between the welfare of the juvenile offender, interests of the victim and concerns of public safety through restorative justice.

4. Mallett, C.A., 2016. The school-to-prison pipeline: A critical review of the punitive paradigm shift. *Child and adolescent social work journal*.33³⁰.

This paper highlights how socio-economic factors in school systems that are overburdened and under financed, increasingly suspend and expel students due to criminalising typical adolescent behaviours as well as low level type misdemeanours. It shows how adolescents from economically disadvantaged classes end up in harmful punitive systems disproportionality and how the 'school-to-prison pipeline' keeps them in the criminal justice system even though they pose no risk to their schools or communities.

3. Reports from NGOs: including project 39 A and reports from NGO advocating for Narayan Chentanram Chaudhary accused.

4. Non-Legal Academic Books: On the Sociological and Psychological impact of the Juvenile Justice System on Juvenile Offenders.

ANALYSIS

This literature review examines complex factors pertaining to these persistent issues of recidivism by exploring systemic, individual and

legal influences to identify knowledge and research gaps to analyse the ineffectiveness of prevention and intervention strategies of juvenile crimes in India.

The understanding of research of research gaps rests on various factors such as:

1. SYSTEMIC FACTORS:

- a. Data collection: Need for a comprehensive and consistent data collection on juvenile offenders especially emphasising on demographic based information.
- b. Bias: Disproportionate impact of the juvenile justice system on specific communities.
- c. Interagency Collaboration: Lack of collaboration between the criminal justice system, education and health ministries.

2. INDIVIDUAL FACTORS:

- a. Trauma: Impact on youth mental health and consequences of being in the juvenile justice system for a prolonged period of time.
- b. Substance Abuse: Substance Abuse and juvenile criminal behaviour are interrelated. Juvenile offenders suffer from substance abuse even before entering the criminal system. However, there is a research gap in identifying the onset of, or the rise in substance abuse by juvenile offenders post entering the juvenile justice system.
- c. Cognitive Development: Increased risk-taking behaviour.

3. LEGAL FACTORS:

- a. Over Reliance on Detention: Rise of punitive action and lack of research on the effectiveness of detention based punishment compared to community based alternatives in India.
- b. Tried as Adults: Understand the potential miscarriage of justice in cases of heinous crimes where those between the ages of 16 to 18 years can be tried as adults, as specified under section 15 of the Juvenile Justice Act of 2015, in an offender centric view. On the flip side in upholding the interests of the victim the

³⁰ Mallett, C.A., 2016. The school-to-prison pipeline: A critical review of the punitive paradigm shift. *Child and adolescent social work journal*.33



preferred approach would be a Retributive Approach to justice rather than a Restorative Approach.

c. Legal Representation: How individual and systemic factors prevent access to adequate legal representation including factors such as economic background and caste, to name a few.

KEY FINDINGS

1. Without comprehensive data, policy makers and researchers are unable to comprehend and act accordingly to resolve the true extent of this problem.

2. Though the Juvenile Justice Act provides a legal framework, its implementation varies widely across states. Hence, there is a need for a decentralised approach– researching factors that aggravate disparity in the Juvenile Justice System of a particular state.

3. Need for Systemic Reform through a multi-faceted approach:

a. Courts and Detention Centres: Need for implementing measures to expedite the juvenile justice process, reducing time spent in detention. Implementing measures such as community based alternatives, alternate dispute resolutions and to achieve this, the strengthening of the Juvenile Justice Board is fundamental.

b. Rehabilitation: By addressing educational, vocational and mental health needs through robust aftercare services and models that emphasise restorative justice.

4. Sensitisation: Training of Juvenile Justice Personnel to carry out preliminary assessments, specifically and general training of correctional officers and police on child rights and juvenile justice.

LIMITATIONS

1. Data Availability:

a. No data related to BNS and JJA interplay

b. Statistical data on OGD limited.

2. Difficulty of Field Research: Due to the nature of the crimes and the minority of the offenders, their identities are kept hidden and trials are in-camera trials with restrictions of publishing.

3. Interdisciplinary Approach: Cannot solve the problems in the Juvenile Justice System in a legal vacuum. It is necessary to apply sociological concepts in understanding specific problems faced by marginalised groups in receiving legal aid within the juvenile justice system and how factors like caste, gender and socio-economic status affect recidivism in the juvenile justice system. It is also essential to have an interdisciplinary approach to have a grasp over psychological factors that come into play when analysing how substance abuse can affect recidivism.