

Child Rights & Juvenile Justice

The issue of **child rights and juvenile justice** lies at the heart of a society's commitment to equality, dignity, and protection of its most vulnerable members. Children, being in a formative stage of life, require special care and legal protection to ensure their physical, emotional, and psychological well-being. The concept of juvenile justice — dealing with children in conflict with law or those in need of care and protection — reflects the moral and legal responsibility of states to safeguard their rights. While the global community has made significant strides in recognizing and institutionalizing child rights, India's experience reflects both progress and persistent challenges in implementation. The contrast between the global and Indian scenario highlights the varying degrees of commitment, cultural attitudes, and legal frameworks that govern the treatment of children.

Globally, the foundation for child rights is built upon the **United Nations Convention on the Rights of the Child (UNCRC)**, adopted in 1989. It remains the most comprehensive and widely ratified human rights treaty in history, recognizing children as independent rights-holders rather than passive recipients of welfare. The Convention lays down four core principles — **non-discrimination, best interests of the child, right to life, survival, and development, and respect for the views of the child**. It obligates signatory states to protect children from abuse, exploitation, neglect, and violence, and to ensure access to education, health care, and participation in decisions affecting them. The UNCRC, along with its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography, forms the cornerstone of the international child rights regime.

In most developed countries, these global standards are integrated into domestic law with a strong institutional focus on **rehabilitation rather than punishment** in cases of juvenile delinquency. For instance, in countries like Sweden, Norway, and the Netherlands, the justice system for juveniles emphasizes counselling, community service, and restorative practices over incarceration. The United States, though diverse across states, generally separates juvenile courts from adult criminal systems, recognizing the cognitive and emotional immaturity of minors. European models further emphasize diversionary measures — steering children away from the justice system through education, social work, and mental health support. The focus is on **reformation and reintegration**, ensuring that young offenders are given opportunities for correction and personal growth rather than stigmatization.

At the same time, the global discourse has increasingly stressed **child participation and empowerment**. Modern child rights frameworks go beyond protection to include agency — acknowledging children's right to express opinions and have them considered in legal and policy decisions. The Sustainable Development Goals (SDGs), particularly Goal 16, reinforce

the global commitment to ending abuse, exploitation, trafficking, and all forms of violence against children, while promoting inclusive institutions that deliver justice for all.

In contrast, the **Indian scenario** reflects a complex interplay of progressive legal frameworks and deep-rooted social challenges. India is a signatory to the UNCRC and has aligned much of its domestic legislation with international standards. The **Constitution of India** enshrines several provisions for child welfare — **Article 14** guarantees equality before the law, **Article 15(3)** allows special provisions for children, **Article 21A** ensures the right to free and compulsory education for children aged 6–14, and **Article 39(e) and (f)** direct the State to protect children from abuse and ensure their healthy development.

The cornerstone of India's child protection system is the **Juvenile Justice (Care and Protection of Children) Act**, first enacted in 2000 and later amended in 2015 and 2021. The Act is designed to address two categories of children — those in conflict with the law and those in need of care and protection. It established **Juvenile Justice Boards (JJBs)** and **Child Welfare Committees (CWCs)** across districts, with the goal of ensuring that no child is treated as a criminal but rather as a subject of care and rehabilitation. The law prohibits capital punishment or life imprisonment for juveniles and emphasizes education, counselling, and reintegration into society.

However, the **Juvenile Justice (Amendment) Act, 2015**, brought about a significant and controversial shift. Triggered by the public outrage following the 2012 Nirbhaya case, the amendment allowed juveniles aged **16–18 years** to be tried as adults in cases of heinous offences such as rape or murder, based on the assessment of the child's mental and physical maturity. While this provision was justified as a measure of accountability, many legal and child rights experts criticized it as regressive and inconsistent with the principles of the UNCRC. The amendment, they argue, blurs the line between adult and juvenile culpability and undermines the rehabilitative essence of juvenile justice.

From a broader rights perspective, India has also enacted important laws such as the **Protection of Children from Sexual Offences (POCSO) Act, 2012**, the **Right of Children to Free and Compulsory Education Act, 2009**, and the **Prohibition of Child Marriage Act, 2006**, all of which seek to safeguard children from violence, exploitation, and neglect. The **National Commission for Protection of Child Rights (NCPCR)** was established in 2007 to monitor and promote these rights. Yet, despite these legal advancements, India continues to face severe challenges in implementation. Issues such as child labour, malnutrition, trafficking, abuse, and lack of access to quality education persist, revealing a gap between law and practice.

Ethically and socially, the Indian approach still leans toward **punitive and moralistic attitudes** rather than rehabilitative and rights-based frameworks. Societal perceptions often view juvenile offenders as criminals rather than children in need of reform. Overburdened institutions, lack of trained personnel, poor rehabilitation facilities, and inadequate psychological support further hinder the system's effectiveness. In many cases, children from

marginalized backgrounds are disproportionately represented in the juvenile justice system, highlighting the intersection of poverty, social inequality, and crime.

In contrast, global models of juvenile justice, particularly in Europe and parts of Latin America, are increasingly grounded in the **restorative justice approach**, which emphasizes accountability, healing, and community involvement over retribution. These systems recognize that children's behavior is shaped by social environments, trauma, and lack of opportunity, and that punitive measures often lead to long-term harm and stigmatization. India's 2015 amendment, therefore, stands in sharp contrast to this global trend toward compassion and reintegration.

Nevertheless, India has made notable progress in institutionalizing child protection mechanisms and aligning them with international norms. The recent **Juvenile Justice (Amendment) Act, 2021**, attempts to address administrative inefficiencies by empowering District Magistrates to ensure faster adoption and protection proceedings. Yet, experts remain cautious about the risk of bureaucratic overreach and the need for specialized training to handle sensitive child-related cases. The contrast between the global and Indian scenario in the field of child rights and juvenile justice underscores the difference between **progressive ideals and practical realities**. While the global framework emphasizes rehabilitation, participation, and empowerment, India's system, though legally aligned, struggles with effective enforcement and social transformation. The need of the hour is a shift in perspective — from viewing children as potential offenders to recognizing them as individuals with rights, potential, and dignity. Strengthening the juvenile justice system through education, mental health support, and community-based rehabilitation, while ensuring that laws reflect compassion rather than retribution, will bring India closer to global standards of child justice. Only then can the promise of the Constitution and the UN Convention on the Rights of the Child be truly realized for every child in India.

At the **international level**, the foundation of modern child rights lies in the **United Nations Convention on the Rights of the Child (UNCRC)**, adopted in 1989. This landmark treaty, ratified by almost every country in the world, transformed the global understanding of children from being passive dependents to active rights-holders. The UNCRC is built upon four guiding principles: **non-discrimination**, the **best interests of the child**, the **right to life, survival, and development**, and **respect for the views of the child**. These principles collectively ensure that all laws, policies, and programs concerning children prioritize their welfare and agency.

The UNCRC outlines a broad range of rights — civil, political, economic, social, and cultural. It recognizes the child's right to a name and nationality, protection from violence and exploitation, access to education and healthcare, freedom of expression and thought, and participation in decisions that affect them. It also establishes the responsibility of states to provide special protection for children in vulnerable situations, such as those affected by armed conflict, trafficking, and disability. To strengthen its enforcement, two **Optional**

Protocols were added: one prohibiting the involvement of children in armed conflict, and another addressing the sale of children, child prostitution, and child pornography. Together, these instruments form a comprehensive global legal framework for child protection.

In addition to the UNCRC, other international conventions and declarations contribute to child rights protection. The **Universal Declaration of Human Rights (1948)** and the **International Covenant on Civil and Political Rights (ICCPR)** affirm the right to life and protection of minors. The **ILO Conventions** — particularly Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour — play a critical role in combating child labour globally. The **Beijing Rules (1985)** and **Riyadh Guidelines (1990)** further guide the administration of juvenile justice, emphasizing rehabilitation over punishment. Collectively, these frameworks establish a universal standard that states must integrate into their domestic laws.

In the **Indian context**, child rights are protected through a combination of **constitutional guarantees, legislative measures, and institutional mechanisms**. The **Constitution of India** serves as the supreme legal foundation for child protection. It recognizes the need for special measures to safeguard children's welfare and development. **Article 14** guarantees equality before the law, while **Article 15(3)** explicitly empowers the state to make special provisions for women and children. **Article 21** — the right to life and personal liberty — has been interpreted by the Supreme Court to include the right to live with dignity, health, and education. Following this, **Article 21A**, inserted by the 86th Constitutional Amendment, guarantees the right to free and compulsory education for children aged six to fourteen. The **Directive Principles of State Policy**, particularly **Articles 39(e) and 39(f)**, urge the state to protect children from abuse and ensure that their childhood and youth are not exploited.

India's legislative framework for child rights has evolved significantly, especially in response to its commitments under the UNCRC. The **Juvenile Justice (Care and Protection of Children) Act, 2015** stands as the cornerstone of child protection law. It deals with two categories: children in conflict with the law and children in need of care and protection. The Act establishes **Juvenile Justice Boards** and **Child Welfare Committees** in every district, ensuring that children are treated not as offenders but as individuals capable of rehabilitation. It prohibits life imprisonment or death penalty for juveniles and emphasizes counselling, education, and reintegration. The 2021 amendment further aimed to improve adoption processes and accountability of child care institutions, empowering district magistrates to oversee child protection.

Complementing the Juvenile Justice Act are several other important legislations. The **Protection of Children from Sexual Offences (POCSO) Act, 2012**, provides a comprehensive legal framework to safeguard children from sexual abuse and exploitation. It recognizes a wide range of offences, mandates child-friendly judicial procedures, and places the burden of proof on the accused. The **Right of Children to Free and Compulsory Education (RTE) Act, 2009**, operationalizes Article 21A, ensuring every child's right to quality education and prohibiting

corporal punishment and discrimination in schools. The **Prohibition of Child Marriage Act, 2006**, protects children, particularly girls, from early and forced marriages, while the **Child Labour (Prohibition and Regulation) Amendment Act, 2016**, bans the employment of children below 14 in all occupations and extends safeguards for adolescents in hazardous industries.

India has also established **institutional mechanisms** to monitor and promote child rights. The **National Commission for Protection of Child Rights (NCPCR)**, created under the Commission for Protection of Child Rights Act, 2005, serves as a statutory watchdog. It monitors implementation of laws, advises the government on policy matters, and ensures that state institutions comply with the principles of the UNCRC. State-level commissions perform similar functions at regional levels. Additionally, specialized courts such as **POCSO courts** and **juvenile justice boards** work to ensure that children receive speedy and sensitive justice.

Despite this robust legal framework, the challenge in India lies in **implementation rather than legislation**. Structural issues such as lack of awareness, poverty, social inequality, and inadequate institutional capacity often prevent laws from being fully effective. Millions of children continue to suffer from malnutrition, trafficking, child labour, and abuse. While the law provides for education, healthcare, and protection, enforcement remains uneven across states. The judiciary, through its progressive interpretations, has often intervened to strengthen child rights — as seen in cases like *M.C. Mehta v. State of Tamil Nadu* (1996), where the Supreme Court issued directions to eliminate child labour, and *Laxmi Kant Pandey v. Union of India* (1984), which laid down guidelines for inter-country adoption to prevent exploitation.

Ethically, India's legal framework demonstrates a strong moral commitment to children's welfare, but it also reflects a paternalistic attitude that focuses more on protection than participation. The **right of the child to be heard**, a key principle of the UNCRC, still struggles to find full expression in the Indian context. For true realization of child rights, there is a growing need to move beyond legal formalities toward a **rights-based approach**, which empowers children as participants in shaping their own lives. The legal frameworks for the protection of child rights — both globally and in India — are comprehensive and progressive in intent. They embody the collective recognition that children are entitled to special care, development, and protection. Yet, while global frameworks increasingly emphasize participation and empowerment, India's legal system continues to battle with practical barriers to enforcement. Strengthening institutions, increasing public awareness, ensuring coordination among agencies, and aligning implementation with constitutional and international commitments are essential steps. Only through such holistic efforts can the legal promise of protecting child rights translate into real social justice and equitable development for every child.

Legal experts in India hold **diverse but largely critical views** on the efficiency of the **juvenile justice system**, noting that while the legislative framework is progressive and well-intentioned, its **implementation remains uneven and often ineffective** in achieving the goals of protection, rehabilitation, and reintegration of children.

Most experts agree that the **Juvenile Justice (Care and Protection of Children) Act, 2015**, along with its 2021 amendments, provides a **comprehensive and rights-based framework** aligned with the **UN Convention on the Rights of the Child (UNCRC)**. It incorporates child-friendly judicial procedures, prohibits harsh punishments like death or life imprisonment for juveniles, and emphasizes rehabilitation rather than retribution. However, scholars, jurists, and child rights activists alike point out that **systemic inefficiencies, institutional weaknesses, and inconsistent enforcement** undermine the law's effectiveness.

1. Strengths Recognized by Legal Experts

Legal experts such as **Justice Madan B. Lokur (Retd.)**, a former Supreme Court judge who has extensively worked on child rights, have emphasized that the Juvenile Justice Act represents one of the most progressive pieces of social legislation in India. It reflects a **shift from a punitive to a restorative model** of justice, focusing on the best interests of the child. The establishment of **Juvenile Justice Boards (JJBs)** and **Child Welfare Committees (CWCs)** in every district is a step toward ensuring specialized and sensitive handling of cases involving children.

Many also commend the law for introducing **accountability mechanisms** for institutions such as adoption agencies and child care homes. The 2021 amendment, which empowered **District Magistrates** to oversee adoptions and monitor child protection units, is seen as an attempt to plug administrative loopholes. Legal scholars recognize this as a move toward greater **transparency and speed** in child welfare processes.

2. Criticisms and Concerns

Despite these strengths, most legal experts agree that the **juvenile justice system in practice falls short of its ideals**. A primary concern is the **inadequate infrastructure and human resources** at the ground level. Many JJBs and CWCs operate without trained social workers, psychologists, or probation officers — crucial personnel for child-sensitive justice. Reports from the **National Commission for Protection of Child Rights (NCPCR)** and independent studies by legal scholars such as Prof. Ved Kumari and Prof. Nilima Mehra note that **procedural delays, inadequate follow-ups, and overburdened boards** lead to inefficiency and compromised justice.

Another major criticism arises from the **2015 amendment**, which allows juveniles aged **16–18 years to be tried as adults** for heinous offences. Legal experts are divided on this provision. Many child rights advocates, such as **Prof. Shantha Sinha** (former NCPCR chairperson), argue that it violates the spirit of the UNCRC, which requires all individuals below 18 to be treated

as children. They believe this provision undermines the rehabilitative purpose of juvenile justice by reintroducing a punitive mindset. Others, however, view it as a pragmatic response to rising juvenile involvement in serious crimes, balancing societal protection with individual reform. Nonetheless, the consensus remains that **the process of transferring juveniles to adult courts must be applied cautiously and with thorough psychological evaluation** — a standard not always met in practice.

3. Institutional and Procedural Challenges

Legal practitioners and child welfare experts highlight several structural issues. Many **child care institutions (CCIs)** — shelters, observation homes, and special homes — are poorly regulated and underfunded. Multiple inspection reports, including by the **National Institute of Public Cooperation and Child Development (NIPCCD)**, have exposed instances of **abuse, neglect, and mismanagement** in such homes, defeating the purpose of rehabilitation. Experts like **Flavia Agnes** and **Indira Jaising** have stressed that the system often fails to distinguish between children in conflict with the law and those in need of care and protection, leading to **institutional overcrowding and stigmatization**.

Judicial experts also note that **delay in disposal of cases** is a persistent issue. The law mandates that inquiries into juvenile cases be completed within four months, yet many take years due to procedural lapses, lack of coordination among agencies, and shortage of specialized judges. This delay contradicts the principle of “**best interests of the child**,” as prolonged institutionalization can itself cause trauma and hinder reintegration.

4. Judicial Reflections and Landmark Opinions

The judiciary has often acknowledged these systemic flaws. In *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu (2017)*, the Supreme Court directed the government to ensure regular inspections and accountability of child care institutions. Similarly, in *Bachpan Bachao Andolan v. Union of India (2011)*, the Court emphasized the need for proper rehabilitation of rescued children. These judgments reflect judicial frustration with poor implementation despite a robust legal framework.

Legal commentators have also pointed to the **lack of proper training** for police and judicial officers handling juvenile cases. Many are unaware of child-friendly procedures prescribed under the Act, leading to insensitivity and procedural violations. Experts argue that **sensitization and capacity-building** should be institutionalized, not treated as occasional workshops.

5. Rehabilitation and Reintegration – The Missing Link

From a rights-based perspective, experts agree that the **rehabilitation component** of the juvenile justice system is its weakest link. Although the Act emphasizes social reintegration through education, vocational training, and counselling, the mechanisms to achieve these goals are often superficial. A 2020 study by the **Centre for Child and the Law (NLSIU,**

Bengaluru) revealed that most observation homes lack structured rehabilitation plans, with children often released without psychological support or community reintegration. Legal scholars argue that without meaningful rehabilitation, the system risks creating a **cycle of reoffending**, contradicting its own objectives.

6. Expert Recommendations for Improvement

Prominent child rights experts suggest several reforms to enhance efficiency:

- **Strengthen institutional capacity** by ensuring every district has fully functional and adequately staffed JJBs and CWCs.
- **Regular monitoring** of CCIs and child care homes by independent bodies to prevent abuse and neglect.
- **Prioritize rehabilitation** by mandating individual care plans and follow-up mechanisms.
- **Ensure compliance** with UNCRC standards by reviewing the practice of trying 16–18-year-olds as adults.
- **Enhance inter-agency coordination** between police, judiciary, child welfare departments, and NGOs for better case management.

While India's juvenile justice system is legally advanced and firmly grounded in international child rights standards, legal experts broadly agree that its **efficiency is compromised by weak implementation, poor infrastructure, and inadequate human resources**. The spirit of the law — emphasizing care, protection, and reintegration — often clashes with ground realities of neglect, delay, and insensitivity. Experts maintain that for the system to truly serve its purpose, India must **move from a legalistic to a rights-based and rehabilitative approach**, ensuring that every child in conflict with the law is given a genuine opportunity for reform and reintegration into society.