

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 4 | Issue 3

2022

© 2022 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Reformation and Rehabilitation of Children in Conflict with Law and Children in Need of Care and Protection: A Study under the JJ Act, 2015

CHANDANI G S¹

ABSTRACT

To begin with it is important to highlight that there are two categories of children or juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2015, namely, a “child in conflict with law” and a “child in need of care and protection.” This statute has two primary objectives. Firstly, it is concerned with the reformation of children in conflict with law or juvenile delinquency. Secondly, it deals with the rehabilitation of children in need of care and protection. The predominant reason behind the implementation of the aforesaid Act was the brutal Nirbhaya rape incident which took place in Delhi in the year 2012. In this inhumane act, one of the guilty persons was a juvenile. In light of the same, this Act treats children between the age group of 16 to 18 years who have committed heinous offences differently. They are tried in the same manner as adults. This article is concerned with four main aspects. Firstly, it explores the historical background behind the fabrication of the Juvenile Justice Act of 2015. Secondly, it discusses the main objectives, definitions and principles of reformation and rehabilitation under the enactment. Thirdly, it explores the main provisions of the Act in relation to the reformation and rehabilitation of children. It also discusses some of the landmark judgments rendered by the Judiciary in this regard. Fourthly, it seeks to trace some of the major drawbacks in the Juvenile Justice Act, 2015 and some of the loopholes prevalent in the juvenile justice system in general. Lastly, it makes a few recommendations on how the loopholes can be addressed and rectified. In this way, this article tries to conduct a detailed study regarding the reformation and rehabilitation process under the Juvenile Justice Act, 2015.

Keywords: Juvenile, conflict, law, protection, reformation and rehabilitation.

¹ Author is a Student at BMS College of Law, Bangalore, India.

I. INTRODUCTION

Some of the first legislations on the subject matter of juvenile justice system were the Apprentices Act, 1850, Reformatory Schools Act, 1897 and so on. Some of the major provisions in the Constitution of India, 1950 that are concerned with juvenile justice are Articles 14, 15(3), 24, 39(e), 39(f) and 47 to name a few. The first statutory enactment on this topic was the Juvenile Justice Act, 1986. The United Nations Convention on the Rights of the Child, 1989 played a significant role in the fabrication of the Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force on 15th January, 2016. The predominant reason behind the implementation of the aforesaid Act was the brutal Nirbhaya rape incident which took place in Delhi in the year 2012. In this inhumane act, one of the guilty persons was a juvenile. In light of the same, this Act treats children between the age group of 16 to 18 years who have committed heinous offences differently. They are tried in the same manner as adults. This is one of the major features of the JJ Act, 2015.

This Act contemplates two categories of children, namely, a “child in conflict with law” and a “child in need of care and protection”. This enactment has two main objectives. Firstly, it deals with the reformation of children in conflict with law or juvenile delinquents. Secondly, it is concerned with the rehabilitation of children in need of care and protection. Sections 2(13) and 2(14) of the Act defines a “child in conflict with law” and a “child in need of care and protection” respectively. In simple language, a child in conflict with law is an individual below the age of 18 years who has committed an offence or crime. A child in need of care and protection, on the other hand, is a juvenile who has no means of subsistence or shelter or is a victim of child labour, child marriage, child trafficking or child pornography. It has to be noted that Section 3 of the Act has enumerated certain general principles to be followed in the administration of the Act and through the processes of reformation and rehabilitation.

Chapter VII of the Juvenile Justice (Care and Protection of Children) Act, 2015 is concerned with rehabilitation and social re-integration of children. Sections 39 to 55 are concerned with the same. It discusses various aspects of reformation and rehabilitation such as process of rehabilitation and social re-integration, individual care plan, registration of child-care institutions, observation homes, special homes, children’s homes, rehabilitation and re-integration services to be furnished at such child care institutions and so on.

On a critical analysis of the Juvenile Justice Act, 2015 and the juvenile justice system in general, it can be inferred that the system suffers from several loopholes or drawbacks. Some

of them comprises of too many responsibilities conferred on the District Magistrate, children between the age group of 16 to 18 years are treated differently, need for sensitization, need for constant monitoring of the conditions in observation homes and special homes, children should not be addressed as criminals or juvenile delinquents, issues relating to implementation of the Act and so on.

This article is concerned with four main aspects. Firstly, it traces the historical background behind the fabrication of the Juvenile Justice Act of 2015 and the relevant Constitutional provisions in this regard. Secondly, it discusses the main objectives, definitions and general principles of reformation and rehabilitation under the enactment. Thirdly, it explores the main provisions of the Act in relation to the reformation and rehabilitation of children. It also discusses some of the landmark judgments rendered by the Judiciary in this regard. Fourthly, it seeks to trace some of the major drawbacks in the Juvenile Justice Act, 2015 and some of the loopholes prevalent in the juvenile justice system in general. Lastly, it seeks to make recommendations or suggestions on how these drawbacks can be effectively redressed.

II. HISTORICAL BACKGROUND BEHIND THE IMPLEMENTATION OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 AND RELEVANT CONSTITUTIONAL PROVISIONS:

This concept of Juvenile Justice System in India is borrowed from the Western Countries². Some of the first legislations on the juvenile justice system were the Apprentices Act, 1850, Indian Penal Code, 1860, Reformatory Schools Act, 1897, Code of Criminal Procedure, 1898 and so on³. After independence in the year 1947, the Constitution of India, 1950 has come into force. Some of the significant Constitutional provisions in this regard are Articles 14, 15(3), 24, 39(e), 39(f), 47 and so on. The Juvenile Justice Act, 1986 was the first statutory enactment on the subject matter of juvenile justice. This statute defined a child or juvenile by differentiating the age group for boys and girls. Under this Act, the age limit for boys was 16 years and for girls 18 years⁴ to be identified as a child.

Some of the international instruments also played a major role in the execution of the Juvenile Justice (Care and Protection of Children) Act, 2015. The United Nations Convention on the Rights of the Child, 1989 is one such noteworthy International Convention. Under

² Team Lawyered, *History of Juvenile Justice System in India*, LAWYERED (Apr. 21, 2022, 10:30 PM), <https://www.lawyered.in/legal-disrupt/articles/history-juvenile-justice-system-india/>

³ *Id.* at 1.

⁴ Dibakar Banerjee, *Juvenile Justice*, Legal Service India (Apr. 21, 2022, 10:38 PM), <https://www.legalserviceindia.com/legal/article-3089-juvenile-justice.html>.

Article 1 of this Convention, a child means every human being who is below the age of 18 years. India has ratified this Convention on the Rights of Child 1989 on 11th December 1992. This ratification has stimulated the Parliament to bring about several changes in the prevailing Juvenile Justice system. As a consequence of the same, the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted. This brought about a standard definition of child for both boys and girls. Also, the Act makes it clear that children in conflict with law should be separated from children in need of care and protection as they come from different backgrounds and mindsets. This will facilitate effective and efficient reformation or rehabilitation of children. Several amendments were made to the Juvenile Justice (Care and Protection of children) Act, 2000 by way of the Amendment Act of 2006.

The main stimulation behind the coming into effect of the Juvenile Justice Act, 2015 was the brutal Nirbhaya rape incident which took place in Delhi in the year 2012. In this inhumane crime, one of the convicts was a juvenile.

Presently, after the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015, children between the age group of 16 to 18 years who commit heinous offences are treated differently from other juveniles. After a preliminary assessment, they are tried in the same manner like adults and are produced before the children's Court and not Juvenile Justice Boards for the purposes of adjudication. This is one of the major features of the 2015 Act which did not exist earlier.

Some of the Constitutional provisions under the Constitution of India, 1950 instrumental in the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 are as given below. These provisions are either fundamental rights under PART-III or Directive Principles of State Policy under PART-IV of the Constitution.

- a. **Article 14:** This article contains the principle of equality. It confers equality before the law and equal protection of laws to every person within the territory of India⁵. The former expression is concerned with formal equality and the latter expression deals with substantive equality.
- b. **Article 15(3):** As a matter of substantive equality, this Article empowers the State to make special provisions for women and children⁶.
- c. **Article 24:** It prohibits the employment of children below the age of 14 years in factories, mines or in any other hazardous employment⁷.

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 15, cl. 3.

- d. Article 39(e):** It obligates the State to see that the health and strength of men or women workers, tender age of children are not abused. The main aim is to ensure that citizens are not coerced because of their economic necessity to enter avocations or occupations beyond their strength, capacity or age⁸.
- e. Article 39(f):** This Article explicitly mentions that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. It is to be noted that children and youth must be afforded protection against any kind of exploitation or moral or material abandonment⁹.
- f. Article 45:** Being a Directive Principle of State Policy, this provision makes it clear that the State shall endeavor to provide early childhood care and education for all children until 6 years of age. However, after the implementation of the Right of Children to free and compulsory education Act, 2009, the State is obligated to furnish free and compulsory education to children between the age group of 6 to 14 years¹⁰.
- g. Article 47:** This article pertains to duty of the State to raise the level of nutrition, standard of living and to improve public health¹¹.
- h. Article 51-A(k):** This is inserted by the Constitution (86th Amendment) Act, 2002. It states that it is the fundamental duty of every citizen as a parent or a guardian to provide educational opportunities for the child between the age group of 6 to 14 years¹².

In this manner, the Constitutional provisions have played an instrumental role in the promulgation of the Juvenile Justice Act, 2015.

III. MAIN OBJECTIVES, DEFINITIONS AND PRINCIPLES OF REFORMATION AND REHABILITATION UNDER THE JUVENILE JUSTICE ACT, 2015

The Juvenile Justice (Care and Protection of children) Act, 2015 was enacted primarily with two main objectives namely-

- i. Reformation of a child in conflict with law; and
- ii. Rehabilitation of a child in need of care and protection.

⁷ INDIA CONST. art. 24.

⁸ INDIA CONST. art. 39 cl. (e).

⁹ INDIA CONST. art. 39 cl. (f).

¹⁰ INDIA CONST. art. 45

¹¹ INDIA CONST. art. 47.

¹² INDIA CONST. art. 51-A cl. (k).

Some of the main definitions are discussed below¹³:

- **Child:** It refers to a person who has not completed 18 years of age.
- **Child in conflict with law:** It is used in the context of a child who is alleged or found to have committed an offence and who is below the age of 18 years on the date of commission of the offence. Essentially, it means a child who has acted in contravention of criminal laws.
- **Child in need of care and protection:** A child in need of care and protection is someone who has no home, settled place of abode or ostensible means of subsistence. It includes cases wherein children are the victims of child labour, child abuse, child trafficking, child marriage and other forms of exploitation.
- **Juvenile:** It simply means a child who is below the age of 18 years.

Some general principles of reformation and rehabilitation that have to be kept in mind during the implementation of this Act are below mentioned. These principles are laid down under Section 3 of the Juvenile Justice Act, 2015¹⁴.

- **Principle of presumption of innocence:** It is applicable to a child in conflict with law. This principle is in reference to the mental element involved in the commission of the offence by the child. There is a general presumption that the child is free of any mala fide or criminal intention up to the age of 18 years. Basically, it will be presumed that the child is an innocent.
- **Principle of dignity and worth:** It is a basic human right principle. The fundamental rights enunciated in PART-III of the Constitution also talks about right to live with human dignity. It comes under the ambit of Article 21 which confers right to life and personal liberty to every person. In a similar manner, the Juvenile Justice Act also states that each and every child should be treated with equal dignity and rights.
- **Principle of best interest:** It has to be noted that there are many authorities constituted under the Juvenile Justice Act. Taking for instance, the authorities include Juvenile Justice Boards, Child Welfare Committees and so on. This principle explicitly mentions that whenever the authorities are taking decisions concerning the reformation or rehabilitation of the child, it should be in the best interests of the child.

¹³ The Juvenile Justice (Care and Protection of children) Act, 2015, No. 2, Acts of Parliament, 2015 (India).

¹⁴ *Id.* at 12.

It should be ensured that such decisions facilitate the child to develop to its full potential.

- **Principle of right to privacy and confidentiality:** It is extremely important that the child's anonymity needs to be maintained throughout the course of judicial proceedings. This is because his current mindset and situation should not prevent him from having a bright future. There should be a stringent protection of privacy and confidentiality.
- **Principle of institutionalization as a last resort:** It needs to be highlighted that whenever a child is rescued, a sincere attempt should be made by the concerned authorities to unite the child with its family. It is of utmost significance that the child should receive abundant family love and affection. Therefore, institutionalization is considered to be the last resort where no other remedy is available.
- **Principle of repatriation and restoration:** This principle is closely inter-connected with the principle of institutionalization as a measure of last resort. It articulates that every child shall have a right to be re-united with his family as soon as possible. Also, the child must be restored to the same socio-economic or cultural status as he was in before coming under the ambit of the Juvenile Justice Act.
- **Principle of fresh start:** This principle stipulates that except in special circumstances, all the past records pertaining to the child under the juvenile justice system should be erased. It should be done to make sure that the antecedents of the child do not affect the precious future of the child.

At this juncture, it is relevant to discuss a case law on the point. In the judgment of Juvenile 'X' through his father v. State of U.P.¹⁵, the Allahabad High Court has held that the name of the juvenile should not be disclosed during the judicial proceedings for being in conflict with law. In this matter, the identity of the child had been revealed which infringes the right to privacy and confidentiality principle. The memo of the parties mentioned the name of the juvenile. Therefore, the Hon'ble High Court directed the Registry to conceal the names of the juvenile from the cause list as well as other records. The court in strengthening its view took the support of the Supreme Court's decision in the case of Shilpa Mittal v. NCT Delhi¹⁶.

¹⁵ Shivang, *Identity of Juvenile is not to be disclosed: Allahabad High Court reminds its registry*, LiveLaw (Apr. 27, 2022, 4:44PM), <https://www.livelaw.in/news-updates/allahabad-high-court-juvenile-identity-confidential-section-74-jj-act-192984>.

¹⁶ Shilpa Mittal v. State (NCT of Delhi), (2020) 2 SCC 787.

IV. CERTAIN IMPORTANT PROVISIONS RELATING TO THE REFORMATION AND REHABILITATION OF CHILDREN

Chapter VII of the Juvenile Justice (Care and Protection of Children) Act, 2015 is concerned with rehabilitation and social re-integration of children. Sections 39 to 55 are concerned with the same¹⁷.

- 1. Process of rehabilitation and social re-integration:** According to Section 39 of the Act, this process of rehabilitation and social re-integration of each child is done on the basis of an individual care plan. Individual care plan is a plan which is specific to each child. It enunciates the reformation or rehabilitation mechanism for each child.
- 2. Registration of child care institutions:** Section 41 is concerned with the same. There are different kinds of child care institutions under this Act, namely, observation homes, special homes, open shelter, children's homes, place of safety and so on. The legislation has made it mandatory for all these institutions whether run by the State Government or non-governmental organizations catering to the needs of children in conflict with law and children in need of care and protection to be compulsorily registered with the State Government. The time period for the same is within a period of 6 months from the date of commencement of the Act.
- 3. Observation homes:** These institutions are established by the State Government under Section 47 of the Act. The functions of these observation homes are temporary reception, care and rehabilitation of children in conflict with law whenever the inquiry with respect to the child is pending before the adjudicatory authorities.
- 4. Special Homes:** They are constituted under Section 48 by the State Government. Whenever the juvenile justice board passes an order that a child in conflict with law has committed an offence, special homes come into picture. These homes provide for the effective reformation and rehabilitation of children in conflict with law once the Board has confirmed the commission of the offence.
- 5. Children's Homes:** Section 50 of the Act deals with the same. They are institutions established and maintained by the State Government for the purpose of placement of children in need of care and protection. They provide for care, treatment, education, training and effective rehabilitation of children in need of care and protection.

¹⁷ The Juvenile Justice (Care and Protection of children) Act, 2015, No. 2, Acts of Parliament, 2015 (India).

In *Re. Exploitation of children in orphanages in the State of Tamil Nadu v. Union of India*¹⁸, the Supreme Court has observed that the juvenile justice boards in India which are the adjudicatory authorities must follow the provisions of the Juvenile Justice enactments in full spirit. These Boards should not be silent spectators and should take suo moto cognizance of matters coming to their notice in the best interests of the juvenile. The Apex Court has averred that if it comes to the knowledge of these authorities that a child has been detained in police lock up or prison instead of being sent to observation homes or special homes, they have to take immediate cognizance of the issue. It is their primary duty to make sure that such a child is forthwith granted bail and sent to an observation home or place of safety or other child care institutions¹⁹.

6. Rehabilitation and Re-integration services in institutions registered under this Act and management thereof: The following rehabilitation and re-integration services have to be furnished at child care institutions.

- (a) Basic and fundamental requirements or needs such as food, clean drinking water, shelter, clothing and medical attention wherever required needs to be provided to the child.
- (b) There should be adequate facilities for furnishing appropriate education to the child. The Right of Children to free and compulsory education Act, 2009 mandates that children between the age group of 6 to 14 years should be given compulsory education.
- (c) The child care institutions have to focus on making arrangements for skill development. This might prove beneficial to the child when it seeks for employment in the future as an adult.
- (d) An important element of the process of reformation and rehabilitation is including recreational activities such as sports or cultural activities like art, painting, singing or dancing. The child care institutions have to ensure that children are exposed to indoor and outdoor games.
- (e) Provision for legal aid wherever applicable.

¹⁸ Akshita Saxena, *A child in conflict with law cannot be kept in jail or police lockup under any circumstances: Supreme Court*, LiveLaw (Apr. 26, 2022, 11:32PM), <https://www.livelaw.in/top-stories/a-child-in-conflict-with-law-cannot-be-kept-in-jail-or-police-lockup-at-any-circumstances-sc-read-order-152644>.

¹⁹ *Id* at 17.

- (f) Emphasis has to be laid on occupational therapy and life skill education. The individual care plan should include yoga, meditation and other mind refreshing activities.
- (g) Focus must be laid on mental health of the child. The children should be given adequate counseling specific to the need of every child.

In *Re. Children in need of care and protection due to loss of parents during COVID-19*²⁰, the Supreme Court has instructed the District Magistrates to interact with the children personally and analyze their educational status and health conditions. It has mandated the District Magistrates to ensure that the various benefits are meted out to children in need of care and protection as a consequence of the COVID-19 pandemic. The Apex Court has conferred various duties on the District Magistrates to improvise the situation of struggling children²¹.

In the judgment of Court on its own motion *v. State*²², the Delhi High Court has issued various directions concerning the reformation and rehabilitation of a child in conflict with law. It was stated that in consonance to the legislations on the subject matter of juvenile justice, the juvenile justice boards must guarantee that the post-release plan which is required to be drawn up 2 months before a child leaves the child care institution must be scrutinized by the Juvenile Justice Board with utmost care and attention. Post release plans are those plans which contain several recommendations or suggestions regarding the aftercare for each child. Also, the child is required to be produced before the concerned Board prior to 2 months before its release²³.

In this way, the Juvenile Justice (Care and Protection of children) Act, 2015 makes several provisions for the effective reformation and rehabilitation of children. The Judiciary has also encouraged the same through its various decisions.

V. DRAWBACKS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 AND THE JUVENILE JUSTICE SYSTEM IN INDIA:

On a critical analysis of the Juvenile Justice Act, 2015 and the juvenile justice system in general, it can be inferred that the system suffers from several loopholes or drawbacks. Some

²⁰ Sohini Chowdhury, *COVID Orphans: Supreme Court directs district magistrates to personally interact with children to review health and education*, LiveLaw (Apr. 26, 2022, 11:30PM), <https://www.livelaw.in/top-stories/supreme-court-suo-moto-children-in-need-of-care-and-protection-loss-of-parents-covid-five-states-directions-186591>.

²¹ *Id* at 19.

²² Nupur Thapliyal, *JJBs to review progress of child in conflict with law, ensure post release plans, Delhi High Court issues slew of directions*, LiveLaw (Apr. 26, 2022, 11:27PM), <https://www.livelaw.in/news-updates/delhi-high-court-directions-juvenile-justice-child-in-conflict-with-law-post-release-plans-188127>.

²³ *Id.* at 21.

of them comprises of too many responsibilities conferred on the District Magistrate, children between the age group of 16 to 18 years are treated differently, need for sensitization, need for constant monitoring of the conditions in observation homes and special homes, children should not be addressed as criminals or juvenile delinquents, issues relating to implementation of the Act and so on.

- 1. Too many responsibilities conferred on the District Magistrate:** The Act confers several responsibilities to District Magistrates. Taking for instance, under Section 27 of the Act, the District Magistrate has to quarterly review the functioning of the Child Welfare Committee. Also, the District Magistrate shall be the grievances redressal authority for the Child Welfare Committee. Further, under Section 101, certain appeals pertaining to foster care and sponsorship after care shall lie to the District Magistrate²⁴.
- 2. Children between the age group of 16 to 18 years are treated differently:** Under the 2015 Act, children between 16 to 18 years who commit heinous offences are tried like adults. This is in contravention of the equality clause under Article 14 and the mandate of special provisions for women and children under Article 15(3) of the Indian Constitution²⁵.
- 3. Implementation of the Act after the child in conflict with law is released from custody:** Once the child in conflict with law has undergone the reformatory or rehabilitation period, it is mainstreamed in the society. In this process of mainstreaming, considering the heavy population of India, it is very difficult to trace whether the children are continuing their therapy and have undergone complete transformation²⁶.
- 4. Discourages the reformatory theory of punishment:** It has to be noted that when children commit heinous offences, they are induced by several external factors. This is because a child is born innocent and he learns various things from the society and environment in which he is brought up. The author rightly points out that there can be various reasons and causes for this deviant behavior of the child. It includes lack of self-esteem, educational, economic or social status, discouraging environment in the

²⁴ Esha Roy, *What do the amendments to the Juvenile Justice Act mean?*, The Indian Express (Apr. 26, 2022, 11:25PM), <https://indianexpress.com/article/explained/explained-what-amendments-to-juvenile-justice-act-mean-7194672/>.

²⁵ Abhikriti Singh, *The need for making Juvenile Justice Act more Juvenile friendly*, Knowlaw (Apr. 26, 2022, 11:23PM), <https://knowlaw.in/index.php/2020/09/23/juvenile-justice-act-more-juvenile-friendly/>.

²⁶ Abhimanyu Tewari, *The logical problems with the juvenile justice Act in India*, Firstpost (Apr. 26, 2022, 11:21PM), <https://www.firstpost.com/india/the-logical-problems-with-juvenile-justice-in-india-586874.html>.

family and so on²⁷. Therefore, when children are treated like adults, the principle of reform is forgotten.

- 5. Reality is different and execution is not yielding best outcomes:** This is supported by the following empirical data. According to the “Crime in India” report of 2018, around 85% of the juveniles lived with their parents, 92% of the juvenile cases were IPC related crimes, 40% of the cases were related to offences affecting human body comprising of hurt, grievous hurt, assault, outraging the modesty of woman and rape, 38% were property related offences and about 70% cases were that of theft²⁸.
- 6. Need for sensitization:** It is of utmost importance that orientation and refresher courses are provided to the decision makers or authorities under the Juvenile Justice Act. This would enable them in effective and child-friendly decision making. Also, it is essential that the entire community or general public are sensitized regarding the process of reformation and rehabilitation of a juvenile delinquent²⁹.
- 7. Children in conflict with law should not be labeled as criminals or delinquents³⁰:** It is pertinent to note that children are born innocent and have no mala fide intention. It is the upbringing, circumstances, social evils or poverty that compels a child to commit a crime. Therefore, considering the fact that India has adopted the reformatory theory of punishment, efforts should be made to completely reform the child. In that process of reformation or rehabilitation or any time thereafter, children should not be addressed as “criminals” or “delinquents”. These words tend to have a long-lasting impact on the child’s mindset and might result in converting him to a habitual offender. Also, in order to protect the mental health of the child, such words must not be used.
- 8. Need for constant monitoring of the conditions in observation homes and special homes:** The Observation homes and special homes are established and constituted by the State Government. Pending a trial or inquiry, the child is kept in an observation

²⁷ Bibhabasu Misra, *Are we becoming intolerant, retrograde towards our own people – A critical evaluation of the Juvenile Justice Amendment Act, 2015*, SCC Online Blog (Apr. 26, 2022, 11:19PM), <https://www.sconline.com/blog/post/2020/01/08/are-we-becoming-intolerant-retrograde-towards-our-own-people-a-critical-evaluation-of-the-juvenile-justice-amendment-act-2015/>.

²⁸ Fauzia Khan, *Juvenile Justice Laws need to uphold the twin objectives of justice and deterrence*, The Wire (Apr. 26, 2022, 11:16PM), <https://thewire.in/law/juvenile-justice-laws-need-to-uphold-the-twin-objectives-of-justice-and-deterrence>.

²⁹ Pavitra Ravindra Alur, *Study on rehabilitation of children in conflict with law in India*, ResearchGate (Apr. 26, 2022, 11:13PM), https://www.researchgate.net/publication/344387590_Study_on_Rehabilitation_of_children_in_conflict_with_law_in_India/link/5f6f2604299bf1b53ef455e5/download.

³⁰ Srinivasa Murthy A T & Dr. Doddamani Lokaraj, *Rehabilitation and reintegration of juvenile in conflict with law*, 9 JETIR 137, 146-147 (2022).

home and once the charges against the child are confirmed, they are shifted to special homes. The author points out in many instances the children residing in such homes are subjected to sexual assault, exploitation, torture, ill-treatment and so on³¹. Girls constitute the most vulnerable sections as they are sexually abused³². Therefore, there is a need for constant monitoring on the part of the State Government. There must be regular inspections in such observation homes or special homes.

9. Composition of the Juvenile Justice Boards and Child Welfare Committees: The author argues that even though the juvenile justice boards and child welfare committees are aimed at the reformation, rehabilitation and repatriation of a child, they are open to politicization and routinely see the appointment of under-qualified or unsuitable people³³. The author further argues that even though in rare instances, qualified people are appointed they have very little time to effectively discharge the functions of the Child Welfare Committee³⁴.

10. Child friendly approach in schools and colleges: The right approach in cases relating to juveniles is “the earlier the better” approach³⁵ or in other words, “Prevention is better than cure”. Whenever a child is regularly absent from school, the parents have to be immediately informed. It is very significant that the child receives parental love, care and affection and is not made a victim of any kind of inferiority complexes³⁶. Apart from focusing on their academic performances or good marks, they have to indulge in art, music or dance, other recreational or cultural activities and sports³⁷.

VI. CONCLUSION AND RECOMMENDATIONS

From the above mentioned detailed discussion and analysis, it can be concluded that the Juvenile Justice (Care and Protection of Children) Act, 2015 has made commendable efforts in the task of reformation and rehabilitation of a child in conflict with law and child in need

³¹ Dr. Deepti Kohli, *Juvenile Justice Act and reformation of juveniles in the observation homes: A critique*, The Law Brigade Publishers (Apr. 22, 2022, 9:01PM), <https://thelawbrigade.com/wp-content/uploads/2019/05/Deepti-Kohli.pdf>.

³² *Id* at 30.

³³ Utkarsh Tripathi, *The case for Borstal Schools in India*, VIDHI Centre for Legal Policy (Apr. 22, 2022, 8:57PM), <https://vidhilegalpolicy.in/blog/the-case-for-borstal-schools-in-india/>.

³⁴ *Id* at 32.

³⁵ Sumesh Kumar Badhwar, *HT Chandigarh Readers' take: Help juveniles turn right on the route to reformation*, Hindustan Times (Apr. 22, 2022, 8:54PM), <https://www.hindustantimes.com/chandigarh/ht-chandigarh-readers-take-help-juveniles-turn-right-on-the-route-to-reformation/story-0fNGHIy4ALgDc5hR2Tv4TP.html>.

³⁶ *Id* at 34.

³⁷ *Id* at 35.

of care and protection respectively. A robust legislative framework and mechanism is in place to reform the juvenile delinquents. The statutory provisions also try to ensure that a child in need of care and protection is rehabilitated and re-integrated as soon as possible. It aims at furnishing the juvenile with basic requirements like food, water and shelter as well as good quality education. It makes a significant and sincere effort to prevent children from turning into habitual offenders in the future. Nonetheless, there are certain loopholes in the enactment as well as the juvenile justice system in general. In order to address the same, this article makes the following recommendations:

- There are various authorities constituted under the Act and are conferred with too many responsibilities. There should be proper and more effective division of labour than what is already present.
- The Act should not treat children between the age group of 16-18 years who have committed heinous offences differently. This is violating the equality clause under our legal framework. Also, it is contradicting the reformatory theory of punishment which India has adopted.
- Once the child is released from the child care institution and is mainstreamed to the society, the child should be constantly monitored by the authorities.
- There is an urgent need for sensitization. Apart from educating the various authorities under the Act, the general public should also be made aware. The Government should make efforts to create a general awareness.
- Whenever the children are undergoing reformation or rehabilitation in child care institutions or when they are mainstreamed to the society, they should not be addressed as criminals. Efforts should be made to create awareness in this context as well.
- It has to be noted that sometimes juveniles are kept in jails or lock-ups and not observation homes or special homes. Also, the children live in deplorable conditions in such observation homes or special homes. Therefore, there is a need for constant monitoring and vigilance.
- All the decisions taken by the Juvenile Justice Boards or Child Welfare Committees should be in the best interests of the child. In order to ensure the same, the appointment of adjudicating officers in such adjudicating authorities should be done by the Judiciary and not executive.

- It is a well-known maxim that precaution is better than cure. Therefore, children should be treated with love and affection in schools and colleges. They should not be subjected to extreme stress or abuse in any form, physical or mental.
- Lastly, an impartial, separate and vigilant authority can be constituted under the Act to keep an eye on the overall execution or implementation of the legislation at hand.

These are some of the recommendations that I would like to make in order to improvise the juvenile justice system further.
