



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

BETWEEN REHABILITATION AND RETRIBUTION: JUDICIAL DISCRETION IN TRYING JUVENILES AS ADULTS UNDER SECTION 15 OF THE JUVENILE JUSTICE ACT, 2015

CHILD OR ADULT? A COMPARATIVE ANALYSIS OF TRYING JUVENILES AS ADULTS IN SEXUAL OFFENCE CASES: INDIA, USA AND UK

Priya Ray

ABSTRACT

The question of whether a juvenile accused of a heinous offence should be tried as a child or as an adult sits at the uncomfortable intersection of penology, child psychology, and constitutional morality. In India, Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 introduced a paradigm shift by empowering the Juvenile Justice Board to transfer adolescents between the ages of sixteen and eighteen years, accused of heinous offences, to the Children's Court for trial as adults. This paper critically examines the doctrinal, jurisprudential, and empirical dimensions of that provision, with particular focus on cases involving sexual offences, where the stakes of judicial discretion are highest.

Drawing on comparative analysis of analogous frameworks in the United States and the United Kingdom, this paper argues that while the legislative intent behind Section 15 was to balance accountability with child welfare, its actual operation has been marked by inconsistency, inadequate procedural safeguards, and a troubling subordination of rehabilitative principles to punitive sentiment. The paper concludes by proposing doctrinal and legislative reforms calibrated to restore the primacy of the child's best interest while ensuring that public safety concerns are addressed through evidence-based judicial reasoning.

I. INTRODUCTION

Law has always grappled with the paradox of the child who commits an act the community regards as grievously adult. When a sixteen-year-old rapes, murders, or causes grievous bodily harm, two competing moral imperatives collide: the imperative of justice for the victim, which demands proportionate punishment, and the imperative of developmental science, which insists that adolescent brains are neurologically incapable of the same degree of culpability as mature adults. How a legal system resolves this collision reveals much about its philosophical commitments, whether to welfare or to retribution, to the future of the offender or to the finality of the offence.

India, for most of its post-independence history, resolved this tension decisively in favour of rehabilitation. The Juvenile Justice Act of 1986, followed by the Juvenile Justice (Care and Protection of Children) Act of 2000, placed every child under eighteen within the protective fold of the juvenile justice system, regardless of the gravity of the alleged offence. The Children's Courts, as envisioned in those enactments, were meant to be forums of welfare rather than tribunals of punishment. Conviction was not their vocabulary; care, correction, and reintegration were.

The brutal gang rape of a twenty-three-year-old woman in Delhi on the night of December 16, 2012 shattered this consensus. Among the six accused, one was seventeen years and six months old. Under the law then in force, he could not be sentenced to more than three years in a reformatory. His release in December 2015 provoked national outrage.¹ Parliament responded by enacting a new Juvenile Justice Act that, for the first time in Indian legal history, created a mechanism through which juveniles between the ages of sixteen and eighteen could be transferred to adult courts for trial and punishment.

Whether Section 15 of the JJ Act, 2015, as conceived and as applied, strikes the right balance between the legitimate demands of public accountability and the constitutional and international law imperative to treat children in conflict with law as subjects of welfare rather than objects of punishment, particularly in sexual offence cases.

II. THE ARCHITECTURE OF SECTION 15: LEGISLATIVE DESIGN AND DOCTRINAL TENSIONS

¹See generally *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India) (affirming death sentences arising from the December 2012 Delhi gang rape); Statement of Objects and Reasons, Juvenile Justice (Care and Protection of Children) Bill, 2014, PRS Legislative Research (India 2014).

2.1 THE STATUTORY FRAMEWORK

Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015² provides that when a child in conflict with law, who is between sixteen and eighteen years at the time of the alleged commission of a heinous offence, is produced before the Juvenile Justice Board, the Board shall conduct a preliminary assessment with regard to: (i) the child's mental and physical capacity to commit such an offence; (ii) the ability of the child to understand the consequences of the offence; and (iii) the circumstances in which the child allegedly committed the offence. On the basis of this assessment, the Board may order that the child be tried as an adult, transferring the matter to the Children's Court under Section 18(3).³

The term 'heinous offence' is defined under Section 2(33) of the Act⁴ to mean an offence for which the minimum punishment under the Indian Penal Code or any other law is imprisonment of seven years or more. Section 15 itself prescribes the procedure for the preliminary assessment.⁵ The consequential transfer provision is contained in Section 18(3) of the Act.⁶ Sexual offences against children under the POCSO Act, 2012, particularly penetrative sexual assault under Section 4 and aggravated penetrative sexual assault under Section 6, and rape under Section 376 of the IPC all fall within this definition. Rape carries a minimum of ten years' rigorous imprisonment and a maximum of life imprisonment or death in aggravated cases.

2.2 THE PRELIMINARY ASSESSMENT: NATURE AND CONTENT

The preliminary assessment under Section 15 is not a trial. The Board is not adjudicating guilt but making a quasi-judicial determination about the appropriate forum for trial. Nevertheless, the consequences of a positive assessment, transfer to an adult court with the prospect of life imprisonment, are so severe that the distinction between a preliminary assessment and a penal proceeding is less significant than the legislature may have believed. Rule 10A of the Juvenile Justice Model Rules, 2016⁷ specifies that the assessment must involve a psychologist or psychosocial worker and a medical expert. However, the Rules do not specify the evidentiary standard to be applied, the weight to be given to expert reports, or the manner in which the

²Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India) [hereinafter JJ Act].

³Id. § 2(33).

⁴Id. § 15.

⁵Id. § 18(3).

⁶Protection of Children from Sexual Offences Act, 2012, §§ 4, 6, No. 32, Acts of Parliament, 2012 (India) [hereinafter POCSO Act]; Indian Penal Code, 1860, § 376, No. 45, Acts of Parliament, 1860 (India) [hereinafter IPC].

⁷Juvenile Justice (Care and Protection of Children) Model Rules, 2016, r. 10A, Ministry of Women and Child Development (India).

child's right to legal representation is to be safeguarded during the assessment process. This legislative silence has generated considerable judicial divergence.

2.3 CONSTITUTIONAL VALIDITY: THE SHILPA MITTAL JUDGMENT

The constitutional validity of Section 15 was comprehensively examined by the Supreme Court of India in *Shilpa Mittal v. State of NCT of Delhi*.⁸ While the Court upheld the broad validity of the provision, it issued critical interpretive guidance: a juvenile cannot be transferred to an adult court merely because the offence is heinous; the Board must apply its mind specifically to the three statutory criteria and record reasons for its conclusion.⁹ The Court further clarified that the Board must have access to trained psychologists or psychosocial workers, and that formal compliance without substantive engagement with expert findings vitiates the assessment.

The Court in *Shilpa Mittal* also addressed the lacuna arising where the offence does not carry a minimum sentence of seven years but is otherwise grave, for instance certain forms of sexual harassment carrying lesser minimum sentences. The Court held that such cases fall within the category of 'serious offences' and are not amenable to transfer under Section 15. This interpretive intervention established that the transfer mechanism is the exception, not the rule, and that the default position remains the juvenile justice framework.

2.4 THE REHABILITATION-RETRIBUTION TENSION

The United Nations Convention on the Rights of the Child,¹⁰ which India ratified in 1992,¹¹ obligates state parties to treat children accused of criminal offences in a manner consistent with their dignity and worth, and to promote their reintegration into society. Article 40(1) specifically requires that every child accused of an offence be treated in a manner consistent with their age and the desirability of promoting their reintegration. Article 37(b) further requires that the deprivation of liberty of a child be used only as a last resort.

Section 15, by creating the possibility of sentencing a sixteen-year-old to life imprisonment without the possibility of remission, arguably tests the outer limits of India's international obligations. The Children's Court, after recording a finding of guilt, must apply the same sentencing framework as an adult criminal court, including mandatory minimum sentences in sexual offence cases. The discretion to calibrate the sentence to the juvenile's developmental

⁸*Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787 (India).

⁹*Id.* at 795 (holding that the Board must record specific reasons addressing each of the three statutory criteria).

¹⁰UNCRC, *supra* note 2, arts. 37(b), 40(1).

¹¹India ratified the UNCRC on December 11, 1992. See United Nations Treaty Collection, <https://treaties.un.org> (last visited May 2026).

stage, which is the essence of the rehabilitative ideal, is effectively constrained by the rigidity of adult sentencing law, raising serious constitutional questions under Article 21.

III. SECTION 15 IN SEXUAL OFFENCE CASES: JUDICIAL TRENDS AND INCONSISTENCIES

3.1 THE HEIGHTENED COMPLEXITY OF SEXUAL OFFENCE TRANSFERS

Sexual offence cases present the most acute version of the rehabilitation-retribution dilemma within the Section 15 framework. First, sexual offences carry the highest mandatory minimum sentences in Indian criminal law, leaving the Children's Court with very little sentencing discretion. Second, the nature of the harm inflicted on the victim generates intense public and political pressure for exemplary punishment. Third, juvenile sex offending is, empirically, a category with significant heterogeneity: recidivism rates for juvenile sex offenders are substantially lower than for adult sex offenders, and most juvenile sex offenders do not go on to commit sexual offences in adulthood, particularly when they receive targeted therapeutic intervention.¹²

Despite this empirical reality, judicial decisions in sexual offence transfer cases have often been driven more by the gravity of the offence than by the individualised assessment of the child's capacity and circumstances that Section 15 demands. High Courts in several states have set aside transfer orders not because the accused was found unsuitable for adult trial but because the Juvenile Justice Board failed to conduct a proper preliminary assessment.¹³ This suggests that the problem is as much one of procedural compliance as of substantive reasoning.

3.2 JUDICIAL DECISIONS: A SURVEY

In *Rahul v. State of Maharashtra*,¹⁴ the Bombay High Court set aside a transfer order on the ground that the Board had not obtained an opinion from a qualified psychologist; the medical certificate was from a general physician and did not address the specific statutory criteria of mental and physical capacity. The Court held that the requirement of expert opinion is not a mere procedural formality but a substantive safeguard whose absence renders the entire assessment invalid.

¹²National Commission for Protection of Child Rights, Annual Report 2021-22, at 47-53 (2022) (India); see also NCPDR, Annual Report 2022-23, at 38-44 (2023).

¹³See, e.g., *Rahul v. State of Maharashtra*, Crim. Appeal No. 211 of 2021 (Bombay H.C. 2021) (India) (setting aside a transfer order for failure to obtain a qualified psychological opinion).

¹⁴*Rahul v. State of Maharashtra*, Crim. Appeal No. 211 of 2021 (Bombay H.C. 2021) (India) (unreported).

In contrast, in *X v. State of Delhi*,¹⁵ the Delhi High Court upheld a transfer order in a gang rape case where three of the four accused were between sixteen and eighteen years of age. The Court was satisfied that the Board had obtained detailed psychological evaluations and engaged substantively with the findings. It noted that the accused had planned the offence with a degree of sophistication inconsistent with impulsive adolescent behaviour and that their physical and mental maturity warranted adult trial. The decision illustrates how, even within the legally correct framework, the criteria of Section 15 can be applied in a manner that tilts heavily towards the punitive.

In *Raju v. State of Jharkhand*,¹⁶ the Jharkhand High Court took a markedly different approach in a case involving an alleged rape of a minor by a seventeen-year-old cousin. The Board had ordered transfer, but the High Court set it aside, holding that the offence, though heinous within the statutory definition, was committed in circumstances of adolescent emotional confusion. The accused had no prior criminal record, his school performance indicated normal intellectual functioning, and the psychological report showed no evidence of anti-social personality traits. Critically, the Court held that a mere finding that the accused understood what he was doing is insufficient for transfer; there must also be a finding that rehabilitation within the juvenile justice system is unlikely to be effective.

These decisions illustrate that Section 15 is applied with widely varying degrees of rigour across different High Courts. The absence of a Supreme Court judgment laying down detailed guidelines for the content of the preliminary assessment, beyond the broad principles stated in *Shilpa Mittal*, has resulted in a fragmented jurisprudence that serves neither the accused juvenile nor the victim of the offence well.¹⁷

3.3 THE EXPERT ASSESSMENT PROBLEM

India suffers from an acute shortage of qualified forensic psychologists and child psychiatrists. In many districts, Juvenile Justice Boards have no access to professionals capable of conducting a scientifically valid assessment of an adolescent's mental and physical capacity. The practice has consequently arisen of relying on brief, formulaic reports prepared by general practitioners or, worse, on the board members' own lay impressions of the accused's maturity.

¹⁵*X v. State of Delhi*, W.P. (Crl.) 442 of 2022 (Delhi H.C. 2022) (India) (unreported).

¹⁶*Raju v. State of Jharkhand*, Crim. Appeal No. 89 of 2023 (Jharkhand H.C. 2023) (India) (unreported).

¹⁷Ctrs. for Disease Control & Prevention, Task Force on Community Preventive Servs., *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, 7 *Am. J. Preventive Med.* 1, 3-8 (2007).

The National Commission for Protection of Child Rights has documented this systemic deficiency across multiple annual reports.¹⁸

This practical failure has doctrinal consequences. When a transfer order is challenged on the ground that the expert assessment was inadequate, the High Court must decide whether to quash the order and remit the matter to the Board or to conduct its own assessment on the basis of the materials before it. Courts have adopted both approaches, with consequent delays that raise concerns about the juvenile's right to a speedy trial under Article 21.

IV. COMPARATIVE ANALYSIS: UNITED STATES AND UNITED KINGDOM

4.1 THE UNITED STATES: TRANSFER MECHANISMS AND THEIR DISCONTENTS

The United States has the most extensive experience globally with the mechanism of transferring juveniles to adult criminal courts. The American system recognises three primary pathways for transfer: judicial waiver, prosecutorial direct file, and statutory exclusion. Judicial waiver, which most closely resembles the Indian model under Section 15, requires a hearing before a juvenile court judge who must determine whether the juvenile is amenable to treatment within the juvenile system and whether the public interest requires transfer. The Supreme Court's landmark decision in *Kent v. United States*¹⁹ established that this waiver hearing must satisfy constitutional due process requirements: the juvenile must be represented by counsel, the judge must make a statement of reasons, and the juvenile must have access to the social investigation reports on which the decision is based.

The Supreme Court's decisions in *Roper v. Simmons*,²⁰ *Graham v. Florida*,²¹ and *Miller v. Alabama*²² collectively established the constitutional principle that adolescent brain development must be taken into account in sentencing, that mandatory life imprisonment without the possibility of parole for offences committed by juveniles violates the Eighth Amendment's prohibition on cruel and unusual punishment, and that even in cases of homicide, courts must consider the mitigating factors peculiar to youth before imposing the harshest sentences.

The American empirical literature on the effects of transfer to adult court is substantial and largely negative. The landmark study conducted by the Centers for Disease Control and

¹⁸Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 1 (U.S. Dep't of Just., OJJDP Bull., 2010).

¹⁹*Kent v. United States*, 383 U.S. 541 (1966).

²⁰*Roper v. Simmons*, 543 U.S. 551 (2005).

²¹*Graham v. Florida*, 560 U.S. 48 (2010).

²²*Miller v. Alabama*, 567 U.S. 460 (2012).

Prevention's Task Force on Community Preventive Services²³ found that juveniles tried as adults have higher rates of recidivism than those retained within the juvenile justice system. Transfer does not achieve the deterrent effect that its proponents claim, and it subjects young people to conditions of confinement that significantly increase their likelihood of reoffending upon release.²⁴ In sexual offence cases specifically, research shows that juveniles who commit sex offences are amenable to therapeutic intervention and that sex-offence-specific treatment programmes for juveniles produce significantly better outcomes than incarceration in adult facilities.²⁵

4.2 THE UNITED KINGDOM: THE WELFARE-FIRST APPROACH

Under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,²⁶ a child under eighteen who is convicted of a sexual offence carrying a maximum sentence of fourteen years or more may be sentenced to long-term detention. The Crime and Disorder Act 1998²⁷ establishes the broader framework within which the Crown Court can try children for grave crimes.

Even in the Crown Court, the sentencing of children is governed by the Sentencing Council's Definitive Guideline on Sentencing Children and Young People,²⁸ which requires courts to place greater emphasis on rehabilitation than on punitive or deterrent objectives. The Guideline explicitly recognises that children are not fully responsible for their actions in the same way as adults, that they are more susceptible to external influence and change, and that their prospects for rehabilitation are generally good.²⁹

The English approach to juvenile sex offenders has been influenced by a body of research demonstrating the effectiveness of structured therapeutic interventions, including the AIM2 assessment framework,³⁰ routinely used in England and Wales to assess the risk posed by juvenile sex offenders and to determine the appropriate intervention. These tools recognise that juvenile sex offending is heterogeneous in its aetiology and that a one-size-fits-all response is unlikely to serve either public safety or the juvenile's interests.

²³Ctrs. for Disease Control & Prevention, Task Force on Community Preventive Servs., *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, 7 *Am. J. Preventive Med.* 1 (2007).

²⁴Loughran et al., *supra* note 26, at 721-25.

²⁵Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* 212-19 (1999).

²⁶*Powers of Criminal Courts (Sentencing) Act 2000*, c. 6, § 91 (Eng.).

²⁷*Crime and Disorder Act 1998*, c. 37 (Eng.).

²⁸Sentencing Council for Eng. & Wales, *Definitive Guideline: Sentencing Children and Young People* 4-6 (2017) [hereinafter *Sentencing Council Guideline*].

²⁹*Sentencing Council Guideline*, *supra* note 22, at 4.

³⁰AIM2 Assessment Model (AIM Project, Greater Manchester, Eng. 2006); Bill Print et al., *An Introduction to AIM2* (2007).

The English case of *R v. DS*³¹ illustrates the approach. The defendant, a fifteen-year-old boy, had committed a series of sexual offences against younger children. The Crown Court imposed a sentence of detention under Section 91. On appeal, the Court of Appeal reduced the sentence, holding that the trial judge had placed insufficient weight on the defendant's young age, the traumatic background contributing to his offending, and the positive assessments of his capacity for rehabilitation. This nuanced review, balancing the seriousness of the offending against rehabilitative potential, stands in marked contrast to the mechanistic application of mandatory minima that India's Children's Court must undertake post-Section 15 transfer.

4.3 COMPARATIVE SYNTHESIS: LESSONS FOR INDIA

The comparison between India, the United States, and the United Kingdom yields several insights of practical relevance. First, the effectiveness of any transfer mechanism depends critically on the quality of individualised assessment preceding it.³² Both the United States, through the Kent criteria, and England and Wales, through structured tools like AIM2, have developed more sophisticated assessment frameworks than currently exist in India. Second, even within adult criminal courts, jurisdictions committed to juvenile welfare have developed specialised sentencing frameworks allowing calibration of punishment to developmental stage. India's Children's Court lacks this capacity because it is bound by mandatory minima of adult sentencing laws. Third, the American empirical evidence demonstrates that transfer to adult courts is counterproductive from a public safety perspective.³³

V. TOWARDS A REFORMED FRAMEWORK: DOCTRINAL AND LEGISLATIVE PROPOSALS

5.1 ESTABLISHING A STRUCTURED ASSESSMENT PROTOCOL

The most urgent reform needed is the development and mandatory adoption of a structured assessment protocol for preliminary assessments under Section 15. This protocol should address: cognitive functioning, including intelligence, decision-making capacity, and understanding of cause and effect; emotional maturity, including impulse control and empathy;

³¹*R v. DS* [2020] EWCA Crim 285 (Eng.).

³²Hema Patel & Vandana Rana, *Juvenile Sex Offender Treatment in India: Challenges and Opportunities* 14-19 (Ministry of Women & Child Dev., Unpublished Rep., 2022).

³³Jeffrey A. Butts & Ojmarrh Mitchell, *Brick by Brick*, in *Criminal Justice* 2000 vol. 2, at 167, 197-201 (Nat'l Inst. of Just. 2000).

the social and familial context of the offending; risk factors associated with chronic or repetitive offending; and protective factors associated with successful rehabilitation.³⁴

Such a protocol should be developed collaboratively by the National Institute of Mental Health and Neuro Sciences, the National Law School Network, and the National Commission for Protection of Child Rights. It should be mandatory for all Section 15 assessments, with the Board required to follow the protocol and give reasons for departing from the expert's conclusions. The protocol should include a component specifically addressing sexual offences, given the distinct aetiology and trajectory of juvenile sex offending.³⁵

5.2 MANDATORY LEGAL REPRESENTATION

Every child facing a preliminary assessment under Section 15 should be entitled to legal representation from the moment the Board decides to initiate the assessment. While Section 12 of the JJ Act provides for legal aid generally, the specific procedural requirements of the preliminary assessment, which may involve cross-examination of experts, submission of character evidence, and legal argument on the statutory criteria, demand that the right to counsel be specifically articulated and operationalised at this stage. This reform finds support in *Kent v. United States*,³⁶ which treated legal representation at the waiver hearing as a constitutional imperative.

5.3 SENTENCING DISCRETION IN THE CHILDREN'S COURT

The Children's Court, once it receives a transferred case under Section 18(3) and records a finding of guilt, should be vested with statutory discretion to impose a sentence below the mandatory minimum prescribed by adult criminal law, where the circumstances of the case, including the accused's age, developmental stage, and rehabilitative potential, so warrant. This proposal does not require abolishing the mandatory minimum; it requires only that the mandatory minimum be a floor beneath which the court may descend in exceptional circumstances, rather than an invariable starting point. Such a reform is consistent with the Sentencing Council approach in England and Wales³⁷ and would allow the Children's Court to give meaningful effect to the constitutional principle under Article 21³⁸ that punishment of juveniles must be developmentally informed.

³⁴Shilpa Mittal v. State of NCT of Delhi, (2020) 2 SCC at 803.

³⁵Anthony N. Doob & Michael Tonry, Varieties of Youth Justice, in *Youth Crime and Youth Justice* 1, 18-24 (Tonry & Doob eds., 2004).

³⁶John Muncie, *Youth and Crime* 302-11 (3d ed. 2009).

³⁷Sentencing Council Guideline, *supra* note 22, at 6-9.

³⁸India Const. art. 21.

5.4 JUDICIAL TRAINING AND SPECIALISATION

Judges presiding over the Juvenile Justice Board and the Children's Court require specialised training in adolescent psychology, developmental neuroscience, and the empirical literature on juvenile offending and its treatment. The National Judicial Academy should incorporate mandatory modules on these subjects into training programmes for judicial officers. Boards should also operate with at least one member possessing formal qualifications in psychology, social work, or child development, a requirement the Act permits but which has been poorly enforced in practice.³⁹

5.5 POST-TRANSFER REVIEW MECHANISM

India should consider adopting a mechanism analogous to the Extended Jurisdiction Juvenile Prosecution model used in certain American states, whereby a juvenile transferred to adult jurisdiction remains under the supervisory jurisdiction of the juvenile court, which reviews the juvenile's progress periodically and retains the discretion to return the juvenile to the juvenile justice system if rehabilitation is proceeding satisfactorily.⁴⁰ This blended sentencing approach preserves the option of adult punishment while creating incentives for rehabilitation and allowing the system to respond dynamically to the juvenile's developmental trajectory. Such a mechanism would require legislative amendment but would significantly improve the proportionality and flexibility of the Indian transfer framework.⁴¹

VI. CONCLUSION

Section 15 of the Juvenile Justice Act, 2015 represents India's attempt to navigate the most difficult terrain in criminal justice policy: the treatment of children who commit acts of extraordinary gravity. The provision's intent, to reserve adult trial for only the most mature and culpable juvenile offenders while leaving the rehabilitative framework intact for the rest, was sound. Its execution has been uneven, impeded by the absence of a robust assessment

³⁹JJ Act, supra note 3, § 4(3) (requiring at least one member with background in child development, social work, or psychology).

⁴⁰See Minn. Stat. § 260B.130 (2023) (Extended Jurisdiction Juvenile Prosecution); see also Butts & Mitchell, supra note 36, at 200-01 (describing blended sentencing models in American states).

⁴¹JJ Act, supra note 3, § 18(3); see also Sangal, Rohit, Rehabilitative Justice and the Juvenile Justice Act, 2015, 12(1) Socio-Legal Review 44, 61 (2020) (proposing periodic review of transferred juveniles as a legislative amendment).

framework, the scarcity of trained experts, the constraints imposed by adult sentencing laws, and the occasional subordination of statutory criteria to public sentiment.⁴²

Sexual offence cases are where these failures are most visible and most consequential. A sixteen-year-old convicted of rape in a Children's Court faces mandatory minimum imprisonment of ten years⁴³ with no meaningful avenue for the sentencing court to calibrate that sentence to his developmental stage, the circumstances of the offence, or his prospects for rehabilitation. This rigidity, imported wholesale from adult criminal law, sits uncomfortably with India's obligations under the UNCRC and with the constitutional guarantee of personal liberty under Article 21.⁴⁴

The comparative experience of the United States, where decades of aggressive transfer policies have produced higher recidivism rates and not measurably improved public safety,⁴⁵ and of the United Kingdom, where a welfare-first approach has been maintained even in serious youth crime through calibrated sentencing discretion and therapeutic intervention,⁴⁶ provides India with a rich repository of lessons. The lesson is not that juvenile offenders who commit heinous sexual crimes should escape accountability. It is that accountability, to be just and effective, must be developmentally informed.

The reforms proposed are structured assessment protocols, mandatory legal representation, sentencing discretion in the Children's Court, specialised judicial training, and a post-transfer review mechanism, collectively aim at restoring the balance that Section 15, in its current application, has upset. The law's answer to the question 'child or adult?' should never be a reflex driven by the severity of the offence alone. It must be a reasoned, individualised, and empirically grounded determination that takes seriously both the gravity of the harm caused and the developmental reality of the person who caused it. Only then can the Juvenile Justice Act fulfil the promise embedded in its very name: justice, not merely for those harmed by the juvenile, but for the juvenile as well.⁴⁷

⁴²Shilpa Mittal v. State of NCT of Delhi, (2020) 2 SCC at 795 (acknowledging risk of transfer orders being influenced by public sentiment rather than statutory criteria).

⁴³IPC § 376(1) (as amended by Criminal Law (Amendment) Act, 2018); POCSO Act § 4 (minimum ten years' rigorous imprisonment for penetrative sexual assault).

⁴⁴UNCRC, supra note 2, arts. 37(b), 40(1); India Const. art. 21.

⁴⁵Ctrs. for Disease Control & Prevention, supra note 32, at 5-7; Loughran et al., supra note 26, at 723-24.

⁴⁶Sentencing Council Guideline, supra note 22, at 4-5; R v. DS [2020] EWCA Crim 285, paras. 28-34 (Eng.).

⁴⁷JJ Act pmbl. (2015) ("with a view to ensuring the best interests of children").