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# Rehabilitation of Children in Conflict with Law: A Reformative Approach

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## ABSTRACT

*The rehabilitation of “Children in conflict with the law” is a pressing issue in India, where there are approximately 33,000 children in various stages of the criminal justice system. The traditional punitive approach to dealing with these children has been criticized for being ineffective and failing to address the underlying causes of their criminal behavior. This research paper explores the concept of rehabilitation in the context of “Children in conflict with the law” in India and advocates for a reformative approach. The paper reviews the current legal framework for juvenile justice in India and highlights the strengths and weaknesses of the existing system. The paper argues that a reformative approach is necessary to address the root causes of criminal behavior in children, such as poverty, neglect, and lack of education. It advocates for a multi-disciplinary approach that includes legal, social, and psychological interventions to support the rehabilitation of children. The paper also examines the challenges faced by the juvenile justice system in India, such as overcrowding in juvenile homes, delays in the legal process, and inadequate resources. It recommends that the government invest in the necessary resources to support the rehabilitation of “Children in conflict with the law” and improve the infrastructure of juvenile justice institutions. Furthermore, the paper emphasizes the importance of involving the children themselves, as well as their families and communities, in the rehabilitation process. It suggests that community-based rehabilitation programs be implemented to ensure a holistic approach to rehabilitation. In conclusion, this research paper highlights the need for a reformative approach to the rehabilitation of “Children in conflict with the law” in India. It recommends that legal systems and policymakers adopt a child-centric approach that prioritizes the rehabilitation of children and invest in the necessary resources to support this approach.*

## I. INTRODUCTION

The issue of “Children in conflict with the law” is a complex and pressing problem in India. According to the National Crime Records Bureau, there were over 33,000 “Children in conflict

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with the law” in India in 2019.<sup>3</sup> These children are often accused of committing serious offenses, including theft, murder, and rape. The current legal framework for dealing with these children is the “*Juvenile Justice (Care and Protection of Children) Act, 2015*,”<sup>4</sup> which provides for their protection and rehabilitation.

The legal framework for dealing with “Children in conflict with the law” in India has evolved over time. Prior to the “*Juvenile Justice Act, 1960*,”<sup>5</sup> governed the protection and care of children in need of care and protection, including “Children in conflict with the law”. The Juvenile Justice Act, 1986,<sup>6</sup> was later replaced by “*the Juvenile Justice (Care and Protection of Children) Act, 2000*,” and subsequently by the current act in 2015.

Despite the existence of a legal framework for the protection and rehabilitation of “Children in conflict with the law” in India, the current system has been criticized for its punitive approach, leading to overcrowding in juvenile homes and high rates of recidivism. The lack of a reformatory approach to rehabilitation has resulted in a failure to address the underlying causes of criminal behavior among children and provide them with the necessary skills and support to become productive members of society. This study aims to examine the best practices in rehabilitation of “Children in conflict with the law” in India and provide recommendations for a reformatory approach to rehabilitation, which emphasizes multi-disciplinary interventions and community-based programs.

## II. LEGAL FRAMEWORK IN INDIA

The legal framework for juvenile justice in India is essential for protecting the rights of “Children in conflict with the law” and ensuring that they are treated with dignity, respect, and fairness. The framework provides a comprehensive approach that includes prevention, intervention, treatment, and rehabilitation, which are all critical components of the juvenile justice system.

Prevention measures aim to address the root causes of delinquency and reduce the likelihood of “children coming into conflict with the law.” This includes efforts to address poverty, inequality, and social exclusion, as well as programs to promote education, health, and well-being.

Intervention measures focus on providing support and guidance to children who are at risk of

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<sup>3</sup> National Crime Records Bureau, ‘Crime in India’ 2019, Ministry of Home Affairs, Government of India (2020), at 258, <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>.

<sup>4</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2015 (India).

<sup>5</sup> The Juvenile Justice Act, No. 53, Acts of Parliament, 1986 (India).

<sup>6</sup> Ibid

becoming delinquent, including counseling, family mediation, and diversion programs. These measures aim to prevent the escalation of minor offenses and divert children away from the formal justice system.

Treatment measures involve providing appropriate care and support to children who have come into conflict with the law, including access to healthcare, education, and vocational training. These measures aim to address the underlying causes of delinquency and promote the rehabilitation and reintegration of children into society.

Rehabilitation measures are critical for ensuring that “Children in conflict with the law” are provided with the necessary skills, support, and opportunities to become productive and law-abiding members of society. This includes community-based programs, such as mentoring, job training, and community service, as well as measures to promote the participation of children in the decision-making process.

A comprehensive approach to juvenile justice, therefore, is essential for promoting the well-being and development of “Children in conflict with the law” and ensuring that they are given a second chance to lead productive and fulfilling lives. Without a strong legal framework that includes prevention, intervention, treatment, and rehabilitation measures, “Children in conflict with the law” may be subject to *“abuse, neglect, and discrimination, which can have lasting consequences for their physical, emotional, and social development.”*

The legal framework for juvenile justice in India has evolved over time, with several key legislative and policy developments.

The Juvenile Justice Act of 1986<sup>7</sup> was the first major legislative effort to address the issue of juvenile justice in India. It provided for the establishment of juvenile courts and juvenile boards to adjudicate cases involving “Children in conflict with the law”, as well as provisions for probation, care, and protection.

In 2000, the Juvenile Justice (Care and Protection of Children) Act<sup>8</sup> replaced the 1986 Act and introduced several key reforms, including a focus on the rehabilitation and social reintegration of “Children in conflict with the law”, the establishment of special homes for juvenile offenders, and the creation of a statutory framework for child protection.

The 2000 Act was further amended in 2006 to address concerns about the implementation and effectiveness of the law. The amendments introduced a range of measures to strengthen the juvenile justice system, including provisions for the establishment of child-friendly courts, the

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<sup>7</sup> Ibid.

<sup>8</sup> Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (India).

creation of a National Commission for the Protection of Child Rights, and the expansion of the definition of child in need of care and protection.

In 2015, the Juvenile Justice (Care and Protection of Children) Act was revised again to align with international standards and address concerns about the treatment of “Children in conflict with the law”. The Act introduced several key changes, including the recognition of the principles of restorative justice, the establishment of a new Juvenile Justice Board, and the provision of greater support for the rehabilitation and social reintegration of “Children in conflict with the law”.

### **Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice (Care and Protection of Children) Act of 2015 introduced several key provisions related to the rehabilitation of “Children in conflict with the law” in India, reflecting a commitment to restorative justice and a child-centered approach to juvenile justice. The Act replaced the Juvenile Justice (Care and Protection of Children) Act of 2000 and the Juvenile Justice Act of 1986.

- **Sections related to rehabilitation of children in conflict with law:**

Section 3(1)(f)<sup>9</sup> of the Act defines a child in conflict with law as a person who is alleged to have committed an offense and has not completed 18 years of age on the date of commission of such offense. Section 3(2)<sup>10</sup> of the Act provides that no child shall be sentenced to death or life imprisonment without the possibility of release.

Section 15<sup>11</sup> of the Act deals with the principles of rehabilitation and social reintegration of “Children in conflict with the law”. It mandates that the rehabilitation and social reintegration of such children should be based on the individual care plan prepared by the Child Welfare Committee, taking into account the best interests of the child and the need for their proper care, protection, and development.

Section 19<sup>12</sup> of the Act provides for the establishment of a Juvenile Justice Board in every district to deal with cases involving “Children in conflict with the law”. The Board is responsible for conducting inquiries, determining the rehabilitation needs of the child, and passing appropriate orders for the rehabilitation and social reintegration of the child.

Section 37<sup>13</sup> of the Act lays down the procedure for the rehabilitation and social reintegration

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<sup>9</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 3(1)(f).

<sup>10</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 3(2).

<sup>11</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 15.

<sup>12</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 19.

<sup>13</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, § 37.

of “Children in conflict with the law”. It provides for a range of rehabilitation measures, such as counseling, education, vocational training, and community service, to be undertaken by the Child Welfare Committee in consultation with the child.

Case laws related to rehabilitation of children in conflict with law:

In the case of *Sheela Barse vs. State of Maharashtra* (1983),<sup>14</sup> the Supreme Court emphasized the need for a humanistic and rehabilitative approach towards juvenile justice, recognizing the importance of social reintegration and the potential for reform and rehabilitation of juvenile offenders.

In the case of *Gopinath Ghosh vs. State of West Bengal* (1986),<sup>15</sup> the Supreme Court held that the ultimate aim of the juvenile justice system should be the rehabilitation and social reintegration of juvenile offenders, rather than punishment.

In the case of *Salil Bali vs. Union of India* (2013),<sup>16</sup> the Delhi High Court held that the rehabilitation of “Children in conflict with the law” should be individualized and child-centered, taking into account the specific needs and circumstances of the child.

### **Challenges and Criticisms of the existing system**

The legal framework for juvenile justice in India has come a long way since the Juvenile Justice Act of 1986. However, there are still several challenges and criticisms of the current system that need to be addressed. This section will discuss some of these challenges and criticisms.

One of the major challenges is the lack of adequate resources and infrastructure. The rehabilitation process requires a significant amount of resources, including trained personnel, counseling services, and infrastructure for housing and education. However, the existing juvenile justice institutions in India often lack these resources, leading to inadequate rehabilitation and reintegration of “Children in conflict with the law”.

Another challenge is the need for greater coordination among stakeholders. The rehabilitation of “Children in conflict with the law” requires the involvement of multiple stakeholders, including the police, the Juvenile Justice Board, Child Welfare Committees, and NGOs. However, the lack of coordination among these stakeholders often leads to delays in the rehabilitation process and hampers the effectiveness of the legal framework.

There is also criticism regarding the over-reliance on institutional care. While institutional care

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<sup>14</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

<sup>15</sup> *Gopinath Ghosh v. State of West Bengal*, AIR 1986 SC 828 (India).

<sup>16</sup> *Salil Bali v. Union of India*, (2013) 7 SCC 705.

can be an effective means of rehabilitation, it is not the only option. The current legal framework does not adequately address alternative forms of rehabilitation, such as community-based rehabilitation programs, which may be more effective in certain cases.

Furthermore, there are concerns regarding the efficacy of the restorative justice principles included in the Juvenile Justice Act of 2015. While restorative justice is a valuable approach to rehabilitation, there is a lack of clarity in the legal framework regarding the implementation of these principles.

In the case of *Gaurav Kumar v. State of Haryana (2012)*,<sup>17</sup> the Supreme Court of India emphasized the need for a comprehensive approach to juvenile justice that includes prevention, intervention, treatment, and rehabilitation. The Court held that the aim of the juvenile justice system should be to provide a second chance to “Children in conflict with the law” and to ensure their reintegration into society.

While the legal framework for juvenile justice in India has made significant progress in recent years, there are still several challenges and criticisms that need to be addressed. The government must provide adequate resources and infrastructure for rehabilitation, promote greater coordination among stakeholders, and explore alternative forms of rehabilitation beyond institutional care. Additionally, there is a need for greater clarity regarding the implementation of restorative justice principles.

### **III. REHABILITATION: A REFORMATIVE APPROACH**

#### **(A) Concept of rehabilitation**

Rehabilitation refers to the process of helping individuals in conflict with the law to reintegrate into society and lead a normal life. The primary objective of rehabilitation is to enable individuals to overcome their past experiences, develop new skills, and become responsible members of society. In the context of juvenile justice, rehabilitation is particularly important as it aims to prevent young people from becoming repeat offenders and falling back into a life of crime.

Rehabilitation is essential for “Children in conflict with the law” as it provides them with the support and guidance needed to overcome the challenges they face. These challenges may include poverty, lack of education, and social exclusion. Through rehabilitation, children are provided with the tools and resources necessary to rebuild their lives and become productive members of society.

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<sup>17</sup> *Gaurav Kumar v. State of Haryana*, (2012) 12 SCC 635.

Rehabilitation is also important as it helps to address the root causes of juvenile delinquency. By addressing these causes, such as poverty and lack of education, young people can develop a sense of purpose and hope for their future, reducing their risk of reoffending. Moreover, rehabilitation can provide children with the opportunity to develop new skills, such as vocational training, which can enhance their employment prospects and increase their chances of leading a successful and fulfilling life.

### **(B) The need for a reformatory approach**

A reformatory approach is necessary for the rehabilitation of “Children in conflict with the law” because it recognizes that the child is not inherently bad or evil but has committed an offense due to various factors, including social, economic, and environmental factors. A reformatory approach aims to address the underlying issues that led to the child's delinquent behavior, instead of just punishing them for their actions.

In contrast, a punitive approach focuses solely on punishing the child for their offense, without addressing the root causes of their behavior. A punitive approach often leads to stigmatization, marginalization, and further criminalization of the child, resulting in long-term negative consequences for their development and future prospects.

A reformatory approach is more effective in promoting the rehabilitation and social reintegration of “Children in conflict with the law” because it aims to provide a holistic approach to the child's needs. It includes psychological, educational, vocational, and social support to enable the child to overcome their past experiences, gain new skills, and become productive members of society. The reformatory approach focuses on the child's strengths and potential, instead of their deficits, and involves the child's family and community in the rehabilitation process.

Moreover, a reformatory approach is in line with the principles of restorative justice, which seeks to repair the harm caused by the offense and restore the relationships between the offender, victim, and the community. The reformatory approach promotes a collaborative and participatory process that enables the child to take responsibility for their actions, make amends, and reintegrate into society as responsible citizens.

### **Case Studies**

There are several successful rehabilitation programs for “Children in conflict with the law” that have been implemented in India and other countries. One such example is the Juvenile Justice (Care and Protection of Children) Act, 2015 in India. The Act emphasizes the importance of a child-centric approach to rehabilitation, focusing on the child's individual needs and providing



a range of services, including counseling, education, and vocational training.

Another example is the Restorative Justice program implemented in New Zealand,<sup>18</sup> which involves bringing together the victim, the offender, and the community to address the harm caused by the offense and find ways to repair it. This program has been successful in reducing reoffending rates and promoting the rehabilitation of young offenders.

In the United States, the Missouri Model<sup>19</sup> is a successful example of a reformatory approach to juvenile justice. The program emphasizes the importance of treating young offenders as individuals and addressing the underlying issues that led to their involvement in criminal activities. This includes providing mental health services, education, and vocational training.

These programs' success can be attributed to several factors, including a focus on the individual needs of the child, a holistic approach that addresses the root causes of offending, community involvement and support, and a commitment to restorative justice principles. Replication of these programs requires a commitment from policymakers to prioritize the rehabilitation and social reintegration of "Children in conflict with the law" and allocate the necessary resources and infrastructure to support these efforts.

#### **IV. CHALLENGES IN THE REHABILITATION OF CHILDREN IN CONFLICT WITH LAW**

The rehabilitation of "Children in conflict with the law" is a complex and challenging process that requires a coordinated effort from all stakeholders. Despite the provisions in the Juvenile Justice (Care and Protection of Children) Act, 2015, the rehabilitation of "Children in conflict with the law" in India faces several challenges. In this section, we will discuss some of the major challenges that hinder the rehabilitation process and the effective social reintegration of "Children in conflict with the law".

##### **A. Overcrowding in Juvenile Homes**

One of the major challenges in the rehabilitation of "Children in conflict with the law" is the issue of overcrowding in juvenile homes. In India, most of the juvenile homes are overcrowded, which leads to various problems such as lack of hygiene, lack of privacy, and inadequate living conditions. The National Commission for Protection of Child Rights (NCPCR) reported that in 2018, 12 states in India had more than 100% occupancy in their juvenile homes, and four states

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<sup>18</sup> New Zealand Ministry of Justice, Restorative Justice (visited Apr. 19, 2023), <https://www.justice.govt.nz/criminal-justice/restorative-justice/>.

<sup>19</sup> Casey, Patricia M., and Carolyn F. Earle. "The Missouri Approach: A Case Study of the Benefits and Challenges of Transforming the Juvenile Justice System." The Annie E. Casey Foundation, January 2017, <https://www.aecf.org/resources/the-missouri-approach-a-case-study-of-the-benefits-and-challenges-of-transforming-the-juvenile-justice-system/>.

had more than 200% occupancy.<sup>20</sup>

The overcrowding of juvenile homes not only violates the basic human rights of the children but also hampers their rehabilitation process. Due to the lack of space, the children are unable to participate in recreational activities, and they do not have access to adequate educational and vocational training programs. Moreover, the overcrowding of juvenile homes also leads to an increased risk of violence, sexual abuse, and other forms of exploitation.

To address this issue, the government needs to take immediate steps to increase the capacity of existing juvenile homes and establish new ones. It is also essential to ensure that the facilities in the juvenile homes are adequate and that the children receive proper care and attention. The government should also explore alternative forms of rehabilitation, such as community-based rehabilitation programs, which would provide a more conducive environment for the children's rehabilitation and social reintegration.

### **B. Delays in the legal process**

One of the major challenges faced in the rehabilitation of “Children in conflict with the law” in India is the long and arduous legal process. The process of inquiry, trial, and disposition of cases involving children can take several months, if not years, due to a range of factors such as the shortage of trained personnel, inadequate infrastructure, and bureaucratic inefficiencies. The delays in the legal process can have a detrimental impact on the rehabilitation of children, as they are often kept in institutional care for extended periods of time while awaiting trial and disposition of their cases.

The delay in legal proceedings can also have psychological effects on children, who may develop anxiety and fear about their future. Furthermore, children who are kept in institutional care for prolonged periods without any resolution to their cases may become disillusioned with the legal system and may feel disconnected from society. This can further hinder their rehabilitation and reintegration into society.

It is important to address the issue of delays in the legal process to ensure that “Children in conflict with the law” receive a timely and fair trial, and to minimize the negative impacts of prolonged institutionalization. This can be achieved through a range of measures, such as improving the infrastructure of the juvenile justice system, increasing the number of trained personnel, and streamlining bureaucratic processes. Additionally, alternative dispute resolution mechanisms such as mediation and restorative justice can be utilized to expedite the legal

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<sup>20</sup> The National Commission for Protection of Child Rights (NCPCR), 'Annual Report 2018-2019', (New Delhi, Government of India, 2019), p. 69.

process and ensure a faster resolution of cases involving “Children in conflict with the law”. Inadequate resources.

### **C. Inadequate resources**

The Juvenile Justice system in India suffers from a severe shortage of financial resources, staff, and infrastructure. This leads to a number of problems such as overcrowding, inadequate nutrition and hygiene, and limited access to education and vocational training.

The shortage of resources also affects the quality of care provided to “Children in conflict with the law”. Due to the lack of trained staff and facilities, many children do not receive the necessary medical or psychological support. In addition, the lack of resources makes it difficult to provide specialized care for children with specific needs, such as those with disabilities or mental health issues.

The problem of inadequate resources is further compounded by the uneven distribution of resources across different states and regions in India. While some states have well-equipped juvenile justice institutions and adequate funding, others struggle with severe resource constraints.

In order to address this challenge, there is a need for increased funding and resources to be allocated to the Juvenile Justice system. This can be done through government budgetary allocations, partnerships with civil society organizations and private sector entities, and international aid and support. Moreover, efforts must be made to ensure that resources are distributed equitably across different states and regions, so that all “Children in conflict with the law” have access to adequate care and support.

There are multiple other reasons such as Stigmatization and discrimination and lack of coordination amongst stakeholders.

## **V. CONCLUSION**

In conclusion, the rehabilitation of “Children in conflict with the law” is a complex and multifaceted issue that requires a comprehensive and reformative approach. The legal framework for juvenile justice in India, specifically the Juvenile Justice (Care and Protection of Children) Act of 2015, provides a good foundation for a reformative approach to rehabilitation. However, there are significant challenges to the rehabilitation of “Children in conflict with the law”, such as overcrowding in juvenile homes, delays in the legal process, and inadequate resources. To address these challenges, there needs to be greater coordination among stakeholders, investment in resources for rehabilitation, and a child-centric approach to

rehabilitation.

Successful rehabilitation programs, such as those highlighted in case studies, have shown that a multi-disciplinary approach, community-based rehabilitation, and the involvement of children, families, and communities are key factors contributing to their success.

Ultimately, the goal of rehabilitation is to help “Children in conflict with the law” overcome their past experiences, gain new skills, and become productive members of society. By investing in rehabilitation programs that prioritize reformative approaches, we can ensure that “Children in conflict with the law” have a better chance at a brighter future.

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