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Beyond Retribution: A Conceptual Analysis of the Dignity of Child, Juvenile Justice and Human Rights in India

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This paper presents a conceptual analysis of the juvenile justice system and the associated legal framework in India, with specific reference to the dignity of a child as established philosophically and in international law. The author aims to understand and clarify the concept of dignity for children, which is not explicitly defined. It analyses the legislative architecture of the juvenile system in India by situating the Juvenile Justice (Care and Protection of Children) Act, 2015, within broader historical, philosophical, and international human rights paradigms. This study explores key challenges in the Indian legal framework in the implementation of child rights, specifically the dignity of a child as a child in conflict with the law in accordance with the UN Convention on the Rights of the Child. It examines the penal approach for children below 18 and discusses rehabilitative and reformatory approaches while punishing them. The paper argues for a realignment of Indian laws towards child-centric justice that emphasises dignity as an important human right for children, developmental needs, and other legal protections as per international legal standards. This study relies on critical engagement with international treaties, statutes, judicial interpretations, and legal theories to propose normative pathways for reform and enhanced compliance with international human rights and legal standards.

Keywords: *juvenile justice, penal approach, human rights, reform, rehabilitation.*

INTRODUCTION

Juvenile Justice represents a critical dimension of legal theory and human rights discourse,

reflecting society's approach towards children in conflict with the law (hereinafter CCL). The challenge lies in balancing the dual imperatives of protecting vulnerable youth on one hand and holding them accountable in ways consistent with their developmental capacities and dignity on the other hand.¹ India, with its complex socio-legal landscape, embodies this tension within a framework that has evolved significantly over the past decades. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter JJ Act, 2015), marks the most recent legislative turning point in Indian jurisprudence regarding child rights, embodying both progressive principles that protect and the new provisions that allow for the treatment of CCL as adults in exceptional circumstances. This development reflects heightened concerns about heinous crimes committed by children and has also raised profound questions regarding India's adherence to international legal standards.²

The theoretical foundation of juvenile justice rests on the key paradigms of welfare, *parens patriae*, restorative justice, and child rights as human rights.³ The United Nations Convention on the Rights of the Child (hereinafter UNCRC) is a significant human rights treaty that concretises the international legal standards with regard to child rights in general and CCL in particular. The welfare paradigm emphasises that legal treatment of children in conflict with the law should prioritise care, rehabilitation, and social reintegration rather than punishment.⁴ The doctrine of *parens patriae* underpins the intervention of the State on behalf of the children. It is predicated on their incapacity to properly advocate for themselves.⁵ As children mature, legal frameworks seek to calibrate the treatment by considering their evolving cognitive and moral capacities, ensuring both protection and proportional accountability. However, it is noteworthy that reflection of mature behaviour does not entail adult-like treatment of children automatically as per international legal

¹ Prince Rajput, 'Juvenile Justice Reform: Balancing Rehabilitation and Punishment' (2025) 5(4) *Jus Corpus Law Journal* 54 <<https://www.juscorpus.com/wp-content/uploads/2025/07/10.-Prince-Rajput.pdf>> accessed 26 January 2026

² Deepak Singh, 'An Analysis of Section 15 of the Juvenile Justice Act, 2015' (2019) 8(2) *Christ University Law Journal* 1 <<https://doi.org/10.12728/culj.15.1>> accessed 29 December 2025

³ Divyanshi Sankhla and Dr Kratika Gupta, 'CONCEPTUAL FRAMEWORK OF JUVENILE JUSTICE AND GENDER-BASED CRIMES' (2025) 5(5) *Indian Journal of Legal Review* 464 <<https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I549.pdf>> accessed 29 December 2025

⁴ Setya Wahyudi, 'Implementation of the Restorative Justice Paradigm in Juvenile Criminal Justice System' (Proceedings of the 3rd International Conference on Law, Governance, and Social Justice, 2023)

⁵ QC Kechin Wang, 'The Continuing Turbulence Surrounding the *Parens Patriae* Concept in American Juvenile Courts (Part 2)' (1972) 18(3) *McGill Law Journal* <<https://lawjournal.mcgill.ca/wp-content/uploads/pdf/1663726-wang.pdf>> accessed 29 December 2025

standards.⁶ The JJ Act, 2015, retains the approach of rehabilitation and social integration, ensuring the dignity of children in its present framework.

Further, the Indian Constitution has accorded special status to children via Articles 15(3), 21, and 39, mandating care, protection, and equal opportunity for development.⁷ The JJ Act, 2015, operationalises these mandates into a structured legal system comprising mainly Juvenile Justice Boards, Child Welfare Committees, and rehabilitation institutions, which further support juvenile justice as a distinct realm, separate from the criminal law as applicable to adults, aiming to ensure dignity at the procedural level. Nevertheless, contemporary challenges, especially section 15 of the JJ Act, 2015, which aims at a penal approach, pose a serious threat to the adequacy of these protections and the justification for trying CCL in adult courts.

International human rights instruments play a critical normative role in shaping the juvenile justice law of India. The United Nations Convention on the Rights of the Child (hereinafter UNCRC), along with the Beijing and Havana Rules and Riyadh Guidelines, articulate the standards for the treatment of children within the juvenile justice system. These standards emphasise the dignity, non-discrimination, and rehabilitation of CCL. India's legal obligations under these treaties impose constraints on the whimsical application of concepts of juvenile justice in India.⁸ It calls for an aligned approach in accordance with the international treaties that India has ratified.

The author critically analyses the juvenile justice system in India through the lens of human rights and aims at identifying the areas in the juvenile justice system where the dignity of a child is violated systemically. The paper is structured in five parts, part I discusses the foundational philosophy of dignity as a concept, part II discusses concept of dignity as

⁶ Gauri Pillai and Shrikrishna Upadhyay, 'JUVENILE MATURITY AND HEINOUS CRIMES: A RE-LOOK AT JUVENILE JUSTICE POLICY IN INDIA' (2017) 10(1) NUJS Law Review <<https://docs.manupatra.in/newslines/articles/Upload/B2ED7DC9-B6A8-4780-8A9C-C015A5C48C71.pdf>> accessed 29 December 2025

⁷ V K Mishra, 'Constitutional, statutory and human rights of children' (2022) 4(4) International Journal of Law, Policy and Social Review <<https://www.lawjournals.net/assets/archives/2022/vol4issue4/4-4-11-774.pdf>> accessed 25 December 2025

⁸ Suchitra Debbarma, 'REFLECTION OF THE PROVISIONS OF THE BEIJING RULES, RIYADH GUIDELINES, AND CONVENTION ON THE RIGHTS OF THE CHILD IN THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015' (2025) 5(3) Indian Journal of Integrated Research in Law 1142 <<https://ijirl.com/wp-content/uploads/2025/06/REFLECTION-OF-THE-PROVISIONS-OF-THE-BEIJING-RULES-RIYADH-GUIDELINES-AND-CONVENTION-ON-THE-RIGHTS-OF-THE-CHILD-IN-THE-JUVENILE-JUSTICE-CARE-AND-PROTECTION-OF-CHILDREN-ACT-2015.pdf>> accessed 25 December 2025

reflected in international human rights norms and legal standards that inform the contemporary juvenile justice practices, part III analyses the legislative evolution and application of international legal standards regarding juvenile justice in India, and is followed by Part IV which concludes the paper and suggests measures.

PHILOSOPHICAL UNDERPINNINGS OF DIGNITY AND CHILD RIGHTS

Dignity, in general terms, refers to the inherent worth of every human being. It is an abstract concept. The concept of human dignity has undergone profound philosophical evolution across distinct historical periods, enriching the concept as well as giving new dimensions to its application. This progression reveals both continuities and strategic shifts in how dignity grounds rights and justice systems. It is noteworthy that dignity as an abstract moral idea needs the concrete support of legal entitlements to be realised in its true spirit. The author draws upon the concept of dignity as articulated by four key philosophers: Thomas Aquinas, Immanuel Kant, Amartya Sen, and Martha Nussbaum to develop an understanding of the dignity of the child. Their combined perspectives offer a conceptual progression from inherent worth to moral respect to substantive freedom, and finally to concrete capability-based entitlements, providing a coherent philosophical foundation for understanding the dignity of the child within contemporary human rights and juvenile justice frameworks.

THOMAS AQUINAS AND NATURAL LAW: DIGNITY AS PARTICIPATION IN DIVINE REASON

Thomas Aquinas grounded the concept of human dignity in natural law and regarded it as the rational creature's participation in God's eternal divine law. Aquinas asserts that since human beings have reason, and because reason is the spark of the divine, all human lives are sacred and of infinite value intrinsically.⁹ Human dignity flows from the rational soul as the distinctive proper form of humanity, and it generates certain natural inclinations to preserve life, nurture children and family, and pursue knowledge of truth.¹⁰

Crucially, Aquinas recognised that natural law operates through human reasoning and free

⁹ Fred Guyette, 'Thomas Aquinas and Recent Questions about Human Dignity' (2013) 38 *Diametros* 113 <<https://doi.org/10.13153/diam.38.2013.540>> accessed 26 January 2026

¹⁰ Justin Matchulat, 'THOMAS AQUINAS ON NATURAL INCLINATIONS: METAPHYSICAL BACKGROUND, PHILOSOPHICAL ANTHROPOLOGY, AND RELATION TO GOODS AND PRECEPTS' (2021) 16 *Esercizi Filosofici* <<https://www.openstarts.units.it/bitstreams/a8e606c2-d3ab-4ab9-8597-71ff90999020/download>> accessed 30 December 2025

choice. According to him, humans, unlike non-rational creatures, participate in moral law through deliberation and choice. Aquinas also insisted on affirmative state duties like law must positively support the necessities of food, shelter, education and family stability, enabling humans to realise their natural good.¹¹ This vision established that dignity is not merely freedom from harm but entitlement to the material and social conditions of flourishing.

While Aquinas grounded human dignity in participation in divine reason and the God-given moral order, Emmanuel Kant secularised and internalised this idea by locating dignity in human rational autonomy itself, making the person an end in itself rather than a bearer of externally conferred worth.¹²

Kant's departures from older, status-based ideas of dignity assert that every human being has an 'inner worth' that is unconditional and incomparable. This worth is grounded in our rational nature and capacity for autonomy, not in success, talent, or social position.¹³ His well-known idea of the Categorical Imperative, which is to treat humanity, never merely as a means, but always at the same time as an end, translates this into a strict duty of respect. Immanuel Kant revolutionised dignity discourse by displacing the divine foundation and locating dignity in rational autonomy and moral agency. In the *Groundwork*, Kant argues that autonomy is the ground of the dignity of human nature and of every rational nature.¹⁴ Thus, Kantian Dignity becomes an unconditional, incomparable worth that permits no equivalent value.

Kant universalised dignity across all rational beings, independent of social rank, achievement, or utility, in society or the social order. His formulation of the Categorical Imperative operationalises dignity as an absolute duty of one rational being towards another.

¹¹ Matthew Levering, 'NATURAL LAW AND NATURAL INCLINATIONS: RHONHEIMER, PINCKAERS, McALEER' (2006) 70(2) *The Thomist*

<[https://isidore.co/misc/Res%20pro%20Deo/Journals/The%20Thomist%20\(1941-2024\)/2006_Volume70_Number2.pdf](https://isidore.co/misc/Res%20pro%20Deo/Journals/The%20Thomist%20(1941-2024)/2006_Volume70_Number2.pdf)> accessed 26 January 2026

¹² Apara Kumar, 'Kant on the Ground of Human Dignity' (2021) 26(3) *Kantian Review* 435 <<https://doi.org/10.1017/S1369415420000588>> accessed 26 January 2026

¹³ Dr Kim Treiger-Bar-Am, 'In Defense of Autonomy: An Ethic of Care' (2008) 3 *NYU Journal of Law and Liberty* 548 <https://www.law.nyu.edu/sites/default/files/ECM_PRO_060976.pdf> accessed 26 January 2026.

¹⁴ Immanuel Kant and Jonathan Bennett, *Groundwork for the Metaphysics of Morals* (CUP 1785)

No person may be instrumentalised for economic, political, or utilitarian purposes.¹⁵

This framework grounds absolute prohibitions on slavery, torture, and exploitation, making it foundational to modern human rights discourse. However, it is significant to note that the basis of Kantian dignity in the autonomy of rational beings to choose moral actions creates an interpretive dilemma for children and differently abled individuals. If dignity depends on the capacity to choose moral ends, then what about those who are still developing autonomy or those who have diminished autonomy owing to a reason beyond their control? Since children possess the capacity for autonomy, and it is a fully realised application of Kantian dignity prospectively to them, it becomes a blind spot. However, this position was clarified by later scholars.

AMARTYA SEN: FROM AUTONOMY TO SUBSTANTIVE FREEDOMS

Amartya Sen's capability approach fundamentally reframes dignity by moving from abstract autonomy to real opportunities to live lives one has reason to value. Sen critiques formal rights frameworks by declaring that a right would have no significance if poverty, discrimination, or poor infrastructure prevent real access. Dignity requires substantive freedoms, i.e., actual capabilities shaped by social conditions, personal circumstances, and systemic support.¹⁶

This represents a crucial philosophical move in the dignity discourse that dignity is not a property of the individual alone but is realised through enabling conditions. In the case of children, whose freedoms are acutely dependent on family, community, and state support, this framework is especially illuminating. It explains why a State's child rights system must address poverty, nutritional deficiency, and infrastructural gaps, not merely declare protections. In the absence of enabling conditions, the grant of rights becomes futile.

MARTHA NUSSBAUM'S INTEGRATION OF CAPABILITIES AS DIGNITY'S EXPRESSION

Martha Nussbaum synthesises Kantian inherent dignity, Aquinas's material goods, and

¹⁵ Sherzad Ahmed AL-Najjar and Hemn Ghani Saeed, 'Immanuel Kant's concept of dignity: A philosophical ground and a case for considering human dignity as the highest constitutional value' (2022) 65 *Political Issues* <<https://doi.org/10.58298/2021160>> accessed 26 January 2026

¹⁶ Nikita G Saigaran et al., 'The Capability Approach: Comparing Amartya Sen and Martha Nussbaum' (Proceedings of USM International Conference of Social Sciences, Universiti Sains Malaysia, Minden, 2015)

Sen's substantive freedoms into an explicit capability theory of justice. She proposes ten central human capabilities: life, bodily health, bodily integrity, education, emotions, practical reason, affiliation, play, control over the environment and control over other species as the threshold entitlements necessary for a life worthy of human dignity.¹⁷

Nussbaum's approach makes two crucial interventions in interpreting dignity. Firstly, it affirms that every person, including the disabled and infants, possesses dignity from birth. This entitles them to capability development not only as future citizens, but also as present rights bearers. Secondly, it insists on a single non-negotiable threshold for all citizens and resists separate standards that would segregate the vulnerable people. These vital interventions are rooted in the philosophy that dignity cannot be reserved for the capable only.

This approach solves the possible interpretive dilemma from Kantian dignity by interpreting that the capacity for autonomy, which children possess prospectively, is distinguished from the exercise of that autonomy. Thus, their dignity needs to be protected by establishing the State's duties in this regard. According to Nussbaum's capability approach, as expounded by Noam Peleg, early childhood represents a critical period for justice intervention because foundational investments in health, nutrition, emotional security, and education establish the internal capabilities upon which the adult substantive freedoms depend. Nussbaum argues these are not discretionary goods but threshold entitlements necessary for dignity and agency across the lifespan of a person.¹⁸

APPLICATION TO CHILD-CENTRED JUSTICE

Together, these thoughts ground the child rights frameworks. Drawing upon the philosophy of dignity from Aquinas through Kant, Sen and Nussbaum, it is recognised and reaffirmed that children possess unconditional dignity. This dignity entails positive state obligations to secure necessities of nutrition, health, shelter, education, and family care; these entitlements must be substantive, and not merely formal and early childhood deserves priority because

¹⁷ Martha C Nussbaum, 'Human Rights and Human Capabilities' (2007) 20 *Harvard Human Rights Journal* 21 <<https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2020/06/20HHRJ21-Nussbaum.pdf>> accessed 26 January 2026

¹⁸ Noam Peleg, 'Reconceptualising the Child's Right to Development: Children and the Capability Approach' (2013) 21(3) *International Journal of Children's Rights* 523 <<https://doi.org/10.1163/15718182-02103003>> accessed 26 January 2026

developmental windows are irreversible. This convergence explains why contemporary child rights systems mandate affirmative provisions. Dignity is neither passive freedom from interference nor abstract autonomy; it's a dynamic entitlement to the capabilities necessary to enable a fulfilling human life.

INTERNATIONAL LEGAL STANDARDS IN JUVENILE JUSTICE

Children's dignity in juvenile justice is framed in international legal standards as inherent, inalienable and requiring child-centred, humane procedures which focus on reintegration rather than punishment.¹⁹ UN instruments explicitly require that all stages of justice administration promote the child's sense of dignity and worth, prohibit degrading treatment, and guarantee child-friendly, participatory processes.²⁰

The first authoritative international document that discusses dignity is UDHR, and also ICCPR and ICESCR; however, UNCRC in 1989 has emerged as the authoritative international legal standard which acts as the grund norm of child rights globally. Article 40(1) requires treatment of every child alleged, accused or recognised as having infringed the penal law 'in a manner consistent with the promotion of the child's sense of dignity and worth', reinforcing respect for human rights, age and reintegration. Article 37 bans torture, cruel, inhuman or degrading treatment or punishment, and prohibits the death penalty and life imprisonment without release for offences committed by children under the age of 18 years. This approach embodies an absolute limit on the severity of punishment and is rooted in the dignity of the child. Other significant instruments that discuss the dignity of children specific to juvenile justice are the Beijing Rules, the Havana Rules and the Riyadh guidelines.²¹

Rule 1.1 of the Beijing Rules²² states that juvenile justice must emphasise the 'well-being of the juvenile' and proportionate responses. As commentary to Rule 1.4-1.6 conceptualises juvenile justice as part of social justice and human development, it rejects purely retributive models. Rules on fair trial, participation, privacy and avoiding institutionalisation apply the

¹⁹ Kumari Sukriti, 'Juvenile justice and human rights: Reforming India's juvenile justice act' (2023) 3(2) International Journal of Civil Law and Legal Research 58 <<https://www.civillawjournal.com/article/138/5-2-3-465.pdf>> accessed 26 January 2026

²⁰ *Ibid*

²¹ Dr Louise Forde, *Compliance with International Children's Rights in the Youth Justice System* (Her Majesty's Inspectorate of Probation 2022)

²² United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985

concept of dignity through presumption of innocence, participation rights and minimum use of deprivation of liberty.

Havana Rules²³ emphasise respect for the inherent dignity and worth of juvenile detainees, requiring conditions that protect physical and mental health, education, family contact and protection from violence, with detention as a last resort and for the shortest time. Riyadh Guidelines²⁴ locate delinquency prevention within social policy that respects the rights, personality and dignity of young persons. It emphasises supportive, non-stigmatising measures in schools, communities and families.

Further to guide the treaty provisions, the UNCRC committee issues General Comments for better implementation of the treaty. General Comment No. 10, in its original form, interprets Article 40 as requiring a child-oriented system that recognises children as rights holders, and it prohibits all forms of violence in justice settings, and insists on diversion, restorative approaches and minimal use of detention as expressions of dignity and best interests. It also stresses training in child development for all professionals, so that interactions respect evolving capacities and avoid humiliation or coercion. This Comment was replaced by General Comment No. 24,²⁵ which reiterates that respect for the dignity of the child excludes all violent, humiliating or degrading treatment in arrest, questioning, trial and sanctions, and condemns life sentences and very low ages of criminal responsibility. It underlines that a rights-based juvenile justice system must prioritise reintegration and operate on the assumption that children have a high potential for change, which is the core assumption underlying dignity.

General Comment No. 27,²⁶ which is in the drafting stage, frames access to justice as a precondition for the enjoyment of rights and the prevention of oppression and injustice against children. It demands procedures that preserve dignity, respect and freedom from discrimination or violence. It emphasises participation, effective remedies, free legal aid and protection measures as a part of a child-sensitive system aiming at justice with dignity. Thus, it is evident that International legal standards have consistently upheld the inherent dignity

²³ UN Rules for the Protection of Juveniles Deprived of their Liberty 1990

²⁴ UN Guidelines for the Prevention of Juvenile Delinquency 1990

²⁵ *Ibid*

²⁶ 'Draft general comment No. 27 on children's right to access to justice and to an effective remedy' (*United Nations*, 01 February 2024) <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-comment-no-27-childrens-right-access>> accessed 27 January 2026

of children in juvenile justice, providing clear foundational principles that domestic legal systems can implement to ensure fair, humane practices focusing on reintegration. How far these practices have been applied in the domestic framework of India is discussed further.

JUVENILE JUSTICE IN INDIA AND CHILDREN'S DIGNITY

India's juvenile justice system has undergone significant transformation through successive legislative enactments, reflecting evolving understandings of child rights and criminal responsibility of CCL. The statutory framework has progressed from the Children Act of 1960, through the Juvenile Justice Acts of 1986 and 2000. The major shift was the enactment of The JJ Act, 2015, which is currently applicable to CCL and has introduced the penal approach for children between 16-18 years of age who have committed heinous crimes.²⁷

The Children Act 1960 established the foundational principle of treating children separately from adults in the criminal justice system, emphasising welfare over punishment.²⁸ The Juvenile Justice Act, 1986, strengthened this approach by incorporating international standards and creating specialised institutions for juvenile care. The Juvenile Justice Act, 2000, further expanded protections, establishing Child Welfare Committees and formalising rehabilitation procedures. The amendment of 2011 in the 2000 Act further strengthened the process by focusing on refining rules related to the medical treatment of juveniles and managing children with psychiatric or addiction issues within the system.²⁹

The dignity of the child in juvenile justice is established as a fundamental, inalienable human right under international legal standards binding on India through the UNCRC, which India ratified in 1992.³⁰ Even though dignity as a specifically defined concept did not find a place, neither in the previous laws nor in the present ones, in India, the reflections of the concept can be traced from the adoption of international legal standards and

²⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 15

²⁸ Children Act 1960

²⁹ Vinit Raj, 'Historical and legal evolution of juvenile justice in India' (2025) 6(4) International Journal of Research Publication and Reviews 10693 <<https://ijrpr.com/uploads/V6ISSUE4/IJRPR43038.pdf>> accessed 26 January 2026

³⁰ 'Pledge by India: Celebrating 30 Years of the Convention on the Rights of the Child' (Office of the High Commissioner for Human Rights) <<https://www.ohchr.org/en/treaty-bodies/crc/celebrating-30-years-convention-rights-child/pledge-india>> accessed 26 January 2026

implementation of the same in the domestic law.

Dignity operates through several interlocking principles like inherent worth and non-degradation, best interests and holistic well-being, meaningful participation and deprivation of liberty only as a last resort for the shortest appropriate time. This framework prioritises rehabilitation, reintegration, and restitution over punishment. However, India's juvenile justice system, specifically section 15, which permits juveniles aged between 16 and 18 years to be tried as adults for heinous offences following a 'preliminary assessment'³¹ systemically as well as systematically violates these international standards and constitutional obligations to dignity, creating a gap between legal standards and actual practice.

The JJ Act, 2015, represents the most significant legislative development by introducing fundamental changes to the Indian juvenile justice system. The Act retains the previous provision regarding the definition of child and defines a child as any person below eighteen years of age and establishes two distinct categories: 'child in conflict with law' and 'child in need of care and protection' (hereinafter CNCP).³² The new addition is the classification of offences into three categories. The Act classifies offences as petty, having a maximum of 3 years imprisonment, serious, having 3-7 years imprisonment, and heinous, having a minimum of 7 years imprisonment, and they differ in the procedural responses by the system.³³

The 2015 Act establishes a comprehensive institutional framework comprising specialised bodies with distinct mandates and compositions in furtherance of juvenile justice. JJBs constitute the primary adjudicatory mechanism for CCL. Each Board consists of a Principal Magistrate and two social workers, at least one of whom must be a woman.³⁴ The JJB exercises all the powers of a Metropolitan Magistrate or Judicial Magistrate of First Class under the BNSS and has exclusive jurisdiction over matters relating to children in conflict with law.³⁵

Section 15 of the JJ Act, 2015, empowers JJBs to conduct preliminary assessments for heinous

³¹ Juvenile Justice (Care and Protection) Act 2015, s 15

³² Juvenile Justice (Care and Protection) Act 2015, ss 2(13), 2(14)

³³ Juvenile Justice (Care and Protection) Act 2015, ss 2(45), 2(54) and 2(33)

³⁴ Juvenile Justice (Care and Protection) Act 2015, s 4(2)

³⁵ Juvenile Justice (Care and Protection) Act 2015, s 4(1)

offences allegedly committed by children aged between 16 and 18 years. This assessment examines the child's mental and physical capacity to commit the offence, ability to understand its consequences, and the circumstances surrounding the alleged crime. Following this assessment, the Board may order transfer of the case to a Children's Court for trial as an adult.³⁶ It is noteworthy that the preliminary assessment is not to be treated at par with the psychological assessment, as the former lacks the mandatory scientific and evidence-based psychological tests.

The JJ Act, 2015, enshrines sixteen fundamental principles governing juvenile justice, including presumption of innocence, dignity and worth, best interests of the child, family responsibility, safety, positive measures, non-stigmatising semantics, non-waiver of rights, equality and non-discrimination, privacy and confidentiality, institutionalisation as last resort, repatriation and restoration, fresh start, diversion, and natural justice.³⁷ These principles aim to guide all proceedings and decisions under the JJ Act, 2015. A careful examination of this framework suggests that India has very well incorporated the principles of UNCRC in letter, but Section 15 deviates from those principles and violates the dignity of children, thereby rejecting the principles in spirit. It is also pertinent to note here that neither the UNCRC nor Indian laws define dignity in a child-specific manner.

CONCEPT OF DIGNITY IN INDIA

In India, the concept of dignity flows from the creative interpretation of the fundamental constitutional right as mentioned in Article 21.³⁸ The judiciary has played a pivotal role in defining dignity. The expressed guarantee of Article 21 of the Indian Constitution that 'No person shall be deprived of his life or personal liberty except according to procedure established by law'³⁹ has been interpreted by the Supreme Court as a guarantee not just of survival, but of dignified existence. Through a long line of decisions, SC has read life to mean a life with human dignity, expanding it into a substantive, multidimensional right. Some significant ones are referred to below.

The modern doctrine begins with *Maneka Gandhi v Union of India*⁴⁰, where the Court held

³⁶ Juvenile Justice (Care and Protection) Act 2015, s 15

³⁷ Juvenile Justice (Care and Protection) Act 2015, s 3

³⁸ Constitution of India 1950, art 21

³⁹ *Ibid*

⁴⁰ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

that any procedure restricting life or liberty must be ‘fair, just and reasonable,’ effectively importing due process and making dignity a core value of Article 21. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*⁴¹, Justice Bhagwati articulated the classic formulation that the right to life includes the right to live with human dignity and ‘all that goes along with it,’ such as adequate nutrition, clothing, shelter, the ability to read, write, move freely, and mix with others. This judgment explicitly linked dignity to both negative protection, i.e., freedom from torture and degrading treatment, and also positive entitlements referring to minimum material conditions necessary for a meaningful life.

Referring to the concept of dignity as envisaged by Justice P.N. Bhagwati, where the concept was read into an expansive interpretation of Article 21 as encompassing negative protections and positive entitlements, a child’s dignity under the JJ Act 2015 is similarly multidimensional. Application of the concept to child rights reveals that negative dignity for CCL denotes protection from forms of treatment that negate their inherent worth and future potential, including freedom from arbitrary transfer to adult courts and positive dignity, by contrast, imposes obligations upon the State to actively enable the child’s development and reintegration. It will aim to encompass access to rehabilitation through various child-friendly ways and provisions of structured aftercare support to facilitate social and economic reintegration, and meaningful child participation in accordance with international legal standards. Thus, dignity for CCLs is protection from degradation and rehabilitation through State action enabling their future autonomy, which resonates with the Kantian concept of dignity as discussed in Part II.

The Indian judiciary, particularly the Supreme Court, has played a transformative role in shaping juvenile justice jurisprudence through pioneering decisions that have established fundamental principles of child protection and rehabilitation. Dignity has not been interpreted directly but indirectly by Courts acknowledging the immaturity of the CCL and treating him like a child, and by upholding the UNCRC standards. These landmark interventions have not only interpreted statutory provisions but have also filled legislative gaps while reinforcing the constitutional mandate to protect children’s rights.

⁴¹ *Francis Coralie Mullin v The Administrator, Union Territory of Delhi and Ors* AIR 1981 SC 746

JUDICIAL APPROACH TOWARDS JUVENILE JUSTICE

Major judicial decisions that have set the trajectory of juvenile justice and have ensured the rights of CCL are discussed briefly in this section.

Sheela Barse v Union of India:⁴² This case stands as the foundational case that revolutionised the concept of juvenile justice in India. Social activist Sheela Barse's PIL exposed the horrific conditions under which children below 16 years were detained in regular jails along with the adult criminals. The SC's comprehensive directions fundamentally transformed the treatment of juveniles within the criminal justice system. The Court mandated that all states must implement the Children Act, 1960, and ensure the maintenance of jail manuals. It further required district and session judges to visit prisons at least once every two months to inspect conditions and ensure compliance with juvenile protection norms. This judgment established the categorical principle that children must not be confined to prisons like adult criminals, since this kind of detention would have harmful effects on their growth and development. Further, in the case of

Hari Ram v State of Rajasthan:⁴³ This case addressed the critical question of retrospective application of beneficial juvenile justice provisions when legislative amendments expand protections. Hari Ram was charged with criminal offences when he was over 16 but under 18 years of age. Under the Juvenile Justice Act, 1986, the juvenile age limit was 16 years for boys, but the Juvenile Justice Act, 2000, raised this limit to 18 years for all children. The Supreme Court held that the beneficial provisions of the newer Act should apply retrospectively to pending cases, emphasising that juvenile justice laws are rehabilitative rather than punitive in nature. The Court observed that 'a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases.' This precedent established the principle that juvenile status should be determined liberally in favour of the accused when evidence permits multiple interpretations.

The Salil Bali Case:⁴⁴ Represents perhaps the most significant judicial pronouncement on

⁴² *Sheela Barse & Ors v Union of India & Ors* (1986) 3 SCC 596

⁴³ *Hari Ram v State of Rajasthan & Anr* (2009) 13 SCC 211

⁴⁴ *Salil Bali v Union of India and Anr* AIR 2013 SC 3743

the theoretical foundations of juvenile justice in contemporary India. Filed in the aftermath of the 2012 Delhi gang rape case involving a CCL, multiple petitions urged the Supreme Court to lower the age limit from 18 to 16 years for CCLs and allow CCLs accused of heinous crimes to be tried as adults. The Supreme Court categorically rejected these demands, reaffirming the constitutional and international foundations of juvenile justice. The Court held that the Juvenile Justice Act and associated rules are based on sound principles contained in the Indian Constitution and various international declarations and conventions. Significantly, the Court emphasised that the primary focus of juvenile justice must remain on rehabilitation and reintegration rather than punishment, and that detention should be a measure of last resort. The judgment reinforced that the age of 18 years had been determined on scientific and psychological grounds, recognising that juveniles below this age can be reformed and restored to society. The constitutionality of the Juvenile Justice Act, 2000, was upheld, reiterating international legal standards and also post the enactment of JJ Act, 2015, courts have consistently emphasised rehabilitation and reformative approaches rather than retribution.

Sampurna Behura v Union of India:⁴⁵ Addressed systemic implementation failures in juvenile justice administration across India. Filed by social activist Sampurna Behura, the petition highlighted widespread problems in observation homes, shelter homes, and other juvenile care institutions, drawing attention to the state's failure to fulfil constitutional duties regarding child welfare and development. The Supreme Court issued comprehensive directions requiring the proper implementation of the Juvenile Justice Act according to children's needs. The Court mandated that the Ministry of Women and Child Development ensure adequate staffing and functioning of National and State Commissions for Protection of Child Rights, directed JJBs and Child Welfare Committees to conduct regular sessions for speedy justice delivery, and required chief justices of high courts to create child-friendly court environments. The judgment also mandated that state governments ensure registration of all child care institutions and provide adequate facilities for nutrition, health, and education.

Sher Singh @ Sheru v State of U.P.:⁴⁶ Clarified important procedural aspects of age

⁴⁵ *Sampurna Behura v Union of India and Ors* (2018) 4 SCC 433

⁴⁶ *Sher Singh @ Sheru v State of U P* (2017) CrI LJ 233

determination, establishing that the right to claim juvenile status cannot be denied merely because previous applications were dismissed or treated as infructuous. The Court ruled that juvenile status pleas can be raised even during criminal appeals and established a hierarchy of documentary evidence for age determination, prioritising matriculation certificates, followed by birth certificates from schools or civic authorities, with medical examination serving as the last resort when other documents are unavailable.

Hansraj v State of Uttar Pradesh:⁴⁷ The Supreme Court reaffirmed the enduring principle that the protective spirit of juvenile justice cannot be restricted by time. The person was given the complete benefit of the JJ Act, 2000, retrospectively, since he was 12 years old at the time of the commission of the offence.

Even though the list of cases discussed is not exhaustive but indicative, it is evident that the Judiciary inclines towards implementing the international legal standards and upholding the dignity of CCL. These judicial interventions collectively demonstrate the Supreme Court's commitment to maintaining juvenile justice as a distinct legal regime governed by rehabilitation rather than retribution. The cases establish the theoretical foundations of child-centric justice grounded in constitutional mandates and international human rights obligations. These judicial precedents thus strengthen the argument that the current legal framework represents a departure from established constitutional and jurisprudential principles governing juvenile justice in India.

CONCLUSION AND SUGGESTIONS: THE WAY AHEAD

The JJ Act, 2015, while heralding progressive reforms, embodies a fundamental contradiction that undermines its rehabilitative ethos and constitutional commitments. Section 15, permitting CCLs aged between 16 and 18 years accused of heinous offences to be tried as adults following the preliminary assessment, represents a fundamental shift from the welfare paradigm, *parens patriae* doctrine, and child rights jurisprudence that have historically defined juvenile justice. This provision threatens the very dignity of children, CCL. It fundamentally transforms what should be a protective, developmental area into a punitive mechanism where the alleged crime overshadows the child's state of existence. Despite the JJ Act, 2015's preamble invoking UNCRC, Beijing Rules, Havana Rules, and Riyadh

⁴⁷ *Hansraj v State of Uttar Pradesh* (2025) INSC 1211

Guidelines, section 15's punitive approach renders these commitments futile. There is an urgent need for realignment with international standards.

From the perspective of dignity, section 15 violates child dignity in multiple ways. Constitutionally, it breaches Article 21's mandate for life with dignity as envisaged in the Francis Coralie case. Further, the preliminary assessment, which is devoid of any scientific evidence-based mandatory procedures and of qualified psychologists, exposes children to arbitrary adult trials, conflating intellectual understanding with emotional maturity. Neuroscience confirms that adolescent brains mature into the mid-20s,⁴⁸ yet Section 15 presumes adult culpability based on the subjective discretion of JJB. This approach ignores impulse control deficits and trauma histories of CCL. Further, Article 14 is compromised through offence-based categorisation, creating a system where children who are at an equal pedestal of developmental stage face disparate fates. Special provisions for children under Article 15(3) become punitive exceptions, contradicting the constitutional vision of development in conditions of freedom and dignity as per Article 39(f).

From the perspective of the judiciary, the Salil Bali case affirmed juvenile status as categorical protection up to 18, rooted in reformation and UNCRC compliance. In the Hansraj v State of U.P. case, the SC again reinforced retrospective juvenility claims and *parens patriae*, treating CCL as victims deserving rehabilitation, not hardened criminals. Thus, Section 15 enables procedural lapses violating Francis Coralie's holistic dignity.

Internationally, Section 15 disregards UNCRC Article 40(3), mandating a minimum age of criminal responsibility below which no child is tried as an adult, emphasising rehabilitation and non-judicial diversion. The Committee on the Rights of the Child critiques such judicial waivers as incompatible with juvenile justice's restorative purpose. This theoretical dissonance, where a progressive preamble is contradicted by the punitive core, creates practical issues leading to the violation of child rights. Preliminary assessment is devoid of scientific tools and thus renders the purpose of the assessment futile, as it relies more on the

⁴⁸ Giordana Sansone et al., 'Adolescent Neurodevelopment and Implications for the Criminal Justice System: Literature Synthesis' (*Fraser Mustard Institute for Human Development Policy Bench*, April 2023) <https://socialwork.utoronto.ca/wp-content/uploads/2023/04/Policy-Bench-Lit-Synthesis-Adolescents_Justice-System-Final-web.pdf> accessed 26 January 2026

discretion of the JJB members rather than evidence-backed tools. The author suggests the following measures to ensure compliance with the UNCRC:

Repeal Section 15: Restore categorical juvenile protection under 18, aligning with UNCRC Article 40 and General Comment No. 24 (2019), prohibiting adult trials for Children less than 18 years of age. The separate category of heinous offences may be an indicator of special focus and extended rehabilitation, not adult punishment.

Psychological Assessment instead of Preliminary Assessment: If the concept of assessment is retained, then it needs to be fortified with scientific and evidence-based psychological tests as per international standards.

Diversion Emphasis in Accordance with Restorative Justice: Codification of the Beijing/Riyadh diversion, which aims at community service and counselling, as a default process in domestic law. Institutionalisation should be the last resort. Restorative justice is not merely an alternative; it's the international standard as per Art. 40 UNCRC and Beijing Rule 11 that resolves dignity violations by section 15. This shift transforms CCL from threats to community members, ensuring true justice that aims at healing rather than hardening them.

Section 15's repeal is imperative; child dignity demands rehabilitation, not retribution. India must honour its treaty obligations and reclaim juvenile justice as a beacon of child rights, ensuring no child is lost to punitive expediency.