
PREVENTIVE DETENTION AND THE CORROSION OF JUVENILE JUSTICE: ANALYSING THE DILEMMA OF CHILDREN BEHIND BAR

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ABSTRACT

"A disillusioned radical tomorrow could be a result of a juvenile behind bars today". Preventive detention of juveniles in India embodies a blatant paradox between security interests of the nation and the very fundamental rights of such juveniles. On one hand the Juvenile Justice (Care and Protection) Act, 2015 facilitates the philosophy of rehabilitation and reformation, on the other, the prevalent laws of preventive detention, namely, the Public Safety Act, 1978 and the National Security Act, 1980, authorise the State to detain individuals, with inclusion of juveniles, without trial, especially in sensitive zones, such as Jammu and Kashmir. The aim of this research is to critically analyse the legal frameworks dealing with juvenile justice and preventive detention, emphasising the conflict between the legislations and the consequent systematic violations of fundamental rights provided under the Constitution as well as international obligations enshrined under the United Nations Conventions on the Rights of Child. Through methodical analysis of precedents, legislative discord, and comparison of varying jurisdictions, the present study highlights the incompatibility in India's perspective on juvenile justice, where the State is providing recognition to juveniles as vulnerable subjects in need for care and protection while simultaneously viewing them as threats to national security. It extends its arguments against under supervised application of preventive detention legislations, further disseminating the possibility of recidivism. The paper calls for amendments in such a manner that fundamental rights are not overridden in any form whatsoever. The requirement of the contemporary society is beyond mere legislative reforms; it demands a shift in approach, that is, from a punitive system to a reformatory one, discouraging the treatment of children as potential enemy of the state.

Keywords: Preventive Detention, Juvenile Justice, Juvenile Delinquency, Recidivism, Juvenile Detention, Child Rights.

INTRODUCTION

Preventive detention laws have been a ground of consistent legal debate as a consequence of its innate nature being that of apprehension of individuals on their potential to commit an offence as opposed to proven culpability. Finding its roots in the British colonial era, preventive detention was given substance through Article 22 clause (3) to clause (7) of the Constitution of India, granting the legislature and the executive, broad power in the name of public order and national security. Legislations such as Public Safety Act¹ in Jammu and Kashmir, and the National Security Act² are mere extensions of these powers, consequently allowing the aforementioned powerful authorities to detain individuals on ground of suspicion for extended periods of time without allowing them to exercise their right to seek trial, though being legally subject to procedural safeguards. These laws, however, have always given scope for abuse of power, thus, being a topic of unease for the government and its officials as it allows pre-emptive deprivation of an individual's right of personal liberty, which is a fundamental right guaranteed under Article 21 of the Constitution of India.

Historically, preventive detention laws had the defence of being justifiable tools for preserving order in exceptional circumstances only. Today, they pose threat not only to adults but to juveniles, causing a grave ethical and legal conundrum, as it contravenes the basic objective of Juvenile Justice (Care and Protection), Act 2015, which is protection through diminishing culpability and scope for reformation. The act of 2015, find its roots in the United Nations Convention on the Rights of the Child (UNCRC), which promotes principles of rehabilitation, reintegration, and securing the best interest of the child. It focuses on differential treatment of juveniles in comparison to adults, emphasising on non-punitive interventions which are reformatory in nature, and not deterrent or retributive.

In comparison, the preventive detention laws, more often than not, blur the lines between lawful restraint and punitive action. Cases of juveniles being a victim of preventive detention are prominently observed in conflict zones; an example of the same being Jammu and Kashmir, a state where events like civil unrest and insurgency are as common as an afternoon meal. There have been various reports and documented cases of minors being detained under the public security act for alleged participation in activities such as illegal protests, stone pelting, or any

¹ Public Safety Act, 1978 (Act No. VI of 1978)

² National Security Act, 1980 (Act No. 65 of 1980)

other activity which may be deemed as compromising the security of the state. While they may have actually been indulging in such activities, detaining minors violates the fundamental tenants of juvenile justice, which preaches protection of interest of children by not detaining them under laws meant for adult, and principles of non-criminalisation. The safeguards provided under the detention laws, namely, review by advisory board, are often unable to take into consideration the unique needs and protections which ought to be extended to juveniles. Many-a-times, the ages of these juveniles are left undisclosed.

The application of preventive detention laws to juveniles goes beyond being a legal issue; it is notably a societal challenge, pausing questions about the role of the state in securing public safety while compromising the rights of its most vulnerable citizens. The present paper dives into the possible intersection of prevent preventive retention laws and juvenile justice laws in India focusing on the legal and constitutional turmoil which take place when the aforementioned laws come in contact with each other. by analysing the key instances governing preventive detention of juveniles with existing preventive detention laws, judicial perspective an international approach, this research focuses on putting forth the necessity for systematic reforms governing juveniles and detention.

The paper is aimed at emphasising on the dire need of adopting a system which is child-oriented in its approach, especially in the most challenging of circumstances, further emphasising on drafting of legislative, judicial and institutional methods to safeguard the constitutional rights of juveniles and securing their dignity. In an attempt to do so this paper aims at initiating a broader discussion on juvenile justice in India with special reference to conflict affected regions, whether the line between legal and illegal, and safety of public and violation of the human rights becomes rather thin.

THE CONFLICTING LEGAL FRAMEWORKS

In order to understand preventive detention laws in relation to juveniles in India, it becomes crucial to analyse the two conflicting legal frameworks, that is, Juvenile Justice (Care and Protection) Act, 2015 and preventive detention legislation such as the Public Safety Act, 1978 and the National Security Act, 1980. On one hand, the Juvenile Justice Act focuses on rehabilitation and reformation of children, and the other, the preventive detention laws aim at ensuring public safety and public order. While, *prima facie*, it may appear that these legislations

have diverging objectives, they often come in conflict with each other, giving rise to legal as well as ethical concerns, especially in areas of unrest and conflict.

Juvenile Justice Act, 2015: A Model of Child-Centric Justice

The Juvenile Justice Act, 2015³ is the primary legislation responsible for prescribing legal procedures for children, emphasising on differentiating them from that of procedures prescribed for adults, which tend to be a lot harsher. Such difference is based on the basic philosophy that children possess the capacity to be reformed, and trying them as adults could throw them in a pit from which they might never come out of. It not only eliminates any possibility for reform, it puts them at an even higher risk for abuse⁴ and potential criminality.

The following are some relevant provisions of the Act of 2015, highlighting its core principles and the objectives it aims to achieve:

1. Best Interest of the Child

Section 3(iv) mandates that the decisions taken in relation to the child should be done keeping in one's primary consideration the best interests of the child, and such decisions should allow the child to develop his full potential.

2. Gradation of Offenses

The Juvenile Justice Act, 2015 categorizes offenses into three major parts, that is, (a) heinous offences; (b) serious offences; (c) petty offences. These are discussed as follows:

- (a) **Heinous Offenses**⁵: Hereinunder, offences for which the minimum sentence is of seven years, have been dealt with. Additionally, juveniles falling under the bracket of 16 to 18 years of age may even be tried as adults if they have been alleged to have committed a heinous offence. This may, however, not be implemented without **preliminary assessment** of the juvenile.

³ Juvenile Justice (Care and Protection) Act, 2015 (Act No. 2 of 2016)

⁴ Incarceration of Youths in an Adult Correctional Facility and Risk of Premature Death, Silver, I. A., Semenza, D. C., & Nedelec, J. L. <https://doi.org/10.1001/jamanetworkopen.2023.21805> (last visited: 4th February, 2025)

⁵ Section 2(33), Juvenile Justice (Care and Protection) Act, 2015 (Act No. 2 of 2016)

(b) **Serious Offences**⁶: Hereinunder, offences for which the minimum prescribed punishment is three years, but leads up to seven years, have been dealt with.

(c) **Petty Offenses**⁷: Hereinunder, the minimum prescribed punishable is less than three years of imprisonment.

The aforementioned classification highlights a graded approach when it comes to children in conflict with law, ensuring juvenile behaviour of different kinds are to be treated differently. Irrespective, they cannot be tried in the same manner as adults despite the gravity of offence until a preliminary assessment is conducted in that regard, indicting a protective approach towards minors.

4. Child Centric Approach of the Juvenile Justice Boards⁸:

Juvenile Justice Boards are specialized bodies established with the specific purpose of evaluating and adjudicating cases relating to children in conflict with law. They are mandated to adopt an approach more convenient to children, and are focused on rehabilitation and minimum sentencing, where need be. Special steps are taken to ensure that only people meeting the eligibility criteria form part of the Board, strictly prohibiting people in violation of child rights or offences involving moral turpitude. People with knowledge in law or child psychology are preferred to deal with juveniles.

5. Prohibition of Detention with Adults:

The Act of the of 2015⁹ puts an explicit prohibition on the authorises disallowing them from placing children in police lockups, which may otherwise be referred as adult jails.

This is one of the primary provisions which reflect the ground intent of the Act, that is, being juvenile-centric, and how the child in question must be treated with empathy and a reformative approach. The Act recognises that children are easily impressionable and there is always scope for their transformation by adopting the right methods and techniques.

⁶ Section 2(45), *ibid*

⁷ Section 2(54), *ibid*

⁸ Section 4, *ibid*

⁹ Proviso to Section 10, *ibid*

Preventive Detention Laws: The Imperative of Public Safety

Conflicting with the Juvenile Justice Act, 2015 are the preventive detention laws which are innately harsher in their approach due to their nature of ensuring security and public order by pre-emptively detaining individuals based on reasonable belief of potential threat; consequently, they often compromise the vulnerability and rights of juveniles. These have been discussed as follows. These laws have been discussed as follows:

1. The Jammu & Kashmir Public Safety Act, 1978¹⁰:

The Public Safety Act, 1978 is specifically established to prevent compromising of public safety or state security. It allows detention of individuals for up to 12 months for disrupting public order, and in cases of any suspicions of potential threat to the security of state, detention may extend up to 24 months.

The authorities responsible for the issue of detention orders are either district magistrates or divisional commissioners. The said detention orders are subject to review within 8 weeks of detention.

While the Act of 1978 may appear to be decently crafted, there lie several limitations on procedural safeguards, as a consequence of which detainees are made subject to considerably long durations of detention without formal charges or trial.

2. The National Security Act, 1980¹¹:

The National Security Act is aimed at authorisation of preventive detention for up to 12 months in case of any probable prejudice to public safety or national security. These orders of detention are based on executive satisfaction, without concrete and reasonable grounds and judicial check. The options for recourse under the Act are limited for the detainees as the courts often give benefit of doubt to the executive decision in matters of national security.

Preventive detention laws though aimed at ensuring maintenance of public order and security, often fail to establish a differentiating line between adults and juveniles. The lack of such

¹⁰ Act No. VI of 1978

¹¹ Act No. 65 of 1980

distinction is often the cause of various legal and ethical mishaps. Additionally, these laws do not expressly provide an age bracket or express prohibition against detention of children under the concerned legislation, therefore, leading to violation of the principles of juvenile justice and provisions of JJ Act.

Limited Procedural Safeguards for Juveniles:

The lack of established procedural safeguards is a principal tool in contributing towards the insufficiency of the authorities to protect the rights of juveniles. An example of the same may be the lack of judicial oversight in execution of detention ethically heavily impacts minors, leading to non-disclosure of fact of minority.

Conflict with Constitutional Safeguards:

The contradiction between the juvenile justice act and the preventive detention legislations lead to direct violation of the fundamental rights of juveniles under the Constitution of India. This includes the following:

- Article 14, which prescribes for equality before law and equal protection of law;
- Article 21, which includes in its ambit personal liberty and right to fair trial and just;
- Article 39 (e) and (f), that is, the Directive Principles of State Policy, which impose mandates on the State to extend protection to children from exploitation and assure their development.

The Need for Harmonization

A nuanced approach is the need of the hour in addressing issues arising as a consequence of conflict between the two laws so as to allow facilitation of balance between national security and principles of juvenile justice. The following steps may be of value for the purposes of said harmonisation:

- Introducing amendments in the existing legislations introducing absolute exclusion of juveniles from the ambit of preventive detention laws or in case of inclusion, a specific framework may be established especially for juveniles for the purposes of detention;

- Enhancing the role of Juvenile Justice Boards and strengthening their overall framework in zones of conflict to ensure that juveniles are not treated against the principles of juvenile justice in sensitive areas;
- Providing legal framework for additional judicial intervention and scrutiny in cases directly relating to juveniles, allowing them to uphold such principles as established under the Constitution and international obligations.

THE JUDICIAL PERSPECTIVE

Analysing case studies and judicial responses is essential to understand the practical implications of applying preventive detention laws to juveniles and how courts navigate the tension between public safety concerns and child rights. These cases shed light on systemic challenges, judicial interpretation, and the broader implications for the juvenile justice system in India.

Preventive Detention in Kashmir

1. Filing of writ of Habeas Corpus for Juveniles in Jammu and Kashmir¹²

Detention under the provisions of the Public Safety Act (PSA) has led to filing of various petitions of Habeas Corpus on behalf of juveniles. As the Act permits detention of individuals without formal charges, juveniles, falling victim to this legislation, have been frequently detained under it, especially in the event of civil unrest projected in different forms, such as illegal protests and stone-pelting.

Fact in issue: The aforementioned incidents of detention of juveniles fail to meet the standards and principles of the Juvenile Justice Act, 2015, which relate to non-criminalisation of minors and violation procedural safeguard extended towards them via the legislation.

Judicial Observations: Courts have often intervened and sought reasonable explanation behind detention of such nature; ordered release of juveniles where the act of detention was in violation of procedural safeguards established by concerned law or lack of sufficient evidence, thereof.

¹² People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235.

It may be noted that organisations, such as Jammu and Kashmir Coalition of Civil Society, have filed PILs wherein they have highlighted the abuse of the Public Safety Act against juveniles, seeking before the court stricter surveillance and adherence to principles of juvenile justice system.

2. Post-Abrogation of Article 370: Juvenile Detentions in 2019¹³

Subsequent to the abrogation of Article 370 in the year 2019, there were several reasonable reports of juveniles being detained surfacing under the Public Safety Act within the state of Jammu and Kashmir. The event of juvenile detention gave rise to grave criticism for contravening both international and domestic standards of juvenile justice system.

Judicial Observations: As the courts addressed the habeas corpus petitions, they examined the whether the detentions so executed adhered to the procedural safeguards provided under the Juvenile Justice Act, 2015. In most instances, the courts have directed the release of juveniles, reiterating that the detentions orders do not they have the ability to override the statutory protection of minors.¹⁴

Judicial Precedents in the Juvenile Justice System

Sheela Barse v. Union of India¹⁵

The precent of 1986 highlighted the inhumane treatment and conditions of juveniles in detention. The Apex Court in the judgment accentuated the principle of non-detention of juvenile with adult convicts, further insisting upon ensuring the treatment of juveniles with dignity and care, and not have it be akin to treatment of adults.

Sampurna Behura v. Union of India¹⁶

This particular precedent dives into the analysis of the systematic gaps present in the implementation of the Act of 2015. Herein the court emphasised on the establishment of *juvenile justice boards* in all states as well as *child welfare committees* to ensure effective

¹³ JKCCS, *Annual Human Rights Review of Jammu and Kashmir 2019*, available at <https://www.jkccs.net>

¹⁴ Ameesha Mathur, *9-year-olds among 144 minors detained in Kashmir since Article 370 abrogation*, India Today, February 10, 2022

¹⁵ *Sheela Barse v. Union of India*, (1986) 3 SCC 596

¹⁶ *Sampurna Behura v. Union of India*, (2018) 4 SCC 433

treatment of children in conflict with law, with special emphasis on regions of conflict such as Jammu and Kashmir, where preventive detention laws often bypass the juvenile justice legislation.

Salil Bali v. Union of India¹⁷

The Apex court in the present case analysed the very constitutionality of differential treatment of juveniles between the ages of sixteen and eighteen for heinous offences. The court herein upheld the objective of juvenile justice act to facilitate rehabilitation and reformation of juveniles, irrespective of the nature of the offence.

This judgement finds importance in the sense that it highlights the judicial view of treating juveniles as individuals having potential of reformation, as opposed to pre-emptive categorisation as threats to public safety for the remainder of their life.

Precedents emphasizing Preventive Detention and Procedural Safeguards

Mohammed Amin v. State of J&K¹⁸

In this case, the Public Safety Act was challenged in the State of Jammu and Kashmir, wherein the court emphasised on the cruciality of procedural safeguards in cases of preventive detention.

While it may be noted that the case of 1976 does not necessarily deal with the issue of juvenile detention, it endorsing the need for strict adherence to procedural safeguards. Now, such adherence is particularly a necessity in cases directly involving juveniles for the sole reason of juveniles being one of the most vulnerable demographics, thus being more prone to abuse and manipulation.

Sunil Batra v. Delhi Administration¹⁹

The landmark case addresses the issues surrounding treatment of detainees, being inclusive of juveniles, in custody. The Apex Court emphasised upon adopting humane methods of treatment

¹⁷ Salil Bali v. Union of India, (2013) 7 SCC 705

¹⁸ Mohammed Amin v. State of J&K, (1976) 2 SCC 398

¹⁹ 1980 SCC (3) 488

of detainees as well as inculcating adherence to constitutional safeguards in the event of preventive detention.

Juvenile Rights and The Constitution

*Gandhi v. Union of India*²⁰

While the case of *Maneka Gandhi* did not directly involve issues relating to juveniles, it did establish critical principles in extension of Article 21 of the Constitution of India, prescribing test of reasonableness and non-arbitrariness to be applied where the question relates to personal liberty of an individual.

The judgement serves as a critical precedent in cases of juvenile preventive detention, ensuring conforming to the juvenile justice laws, and their personal liberty not being compromised.

*Justice K.S. Puttaswamy v. Union of India*²¹

Rights The case of Justice Puttaswamy serves as a landmark judgement on the issue of recognition of right to privacy as a fundamental right, prescribed under Article 21.

The judgement is essential to ensure that the dignity and personal liberty of juveniles is not compromised under the detention laws.

International Jurisprudence and Juvenile Justice

*A v. United Kingdom*²²

Decided by the European Court of Human Rights, the precedent prescribed for procedural safeguards to be applied in the event of detention of juveniles, in light of human rights laws.

The instant case provides an international insight into the application of stricter measures in cases involving juveniles, especially in terms of procedure and application of child-centric principles.

²⁰ (1978) 1 SCC 248

²¹ AIR 2017 SC 4161

²² (1999) 27 EHRR 61

Roper v. Simmons²³

This particular case of the US Supreme Court had abolished death penalty in instances involving juveniles in view of their cognitive immaturity and scope for reformation.

It may, however, be noted that the stance of the court has contemporarily changed and death penalty may be awarded in certain cases. Nevertheless, it showcases the preference of a reformatory approach when a minor is involved as opposed to a punitive one.

The precedents as discussed above showcase a constant conflict between preventive detention laws and principles of juvenile justice. In most cases, the courts of higher authority have sought to uphold the rights of minors but face significant challenge in the absence of express laws and prescribed guidelines, further highlighting the need for legislative and judicial reforms upon the subject matter in question in order to minimise the abuse as a consequence of such systematic gap.

INTERNATIONAL INCIDENTS OF APPLICATION OF PRINCIPLES OF JUVENILE JUSTICE

The following is a brief observation on the application of juvenile justice principles in conflict-affected zones around the world:

Palestine:

- Palestine, under the Israeli military law, has been facing a similar ordeal of non-application of juvenile justice principles, raising similar concerns of abuse of preventive detention laws and adherence to due process²⁴.
- The abuse of preventive detention laws has been criticised heavily by international bodies for violating the rights of children as protected and prescribed under the UNCRC²⁵.

²³ 543 U.S. 551 (2005)

²⁴ Defense for Children International Palestine, *Arbitrary Detention of Palestinian Children under Israeli Law*, 2021, available at <https://www.dci-palestine.org>.

²⁵ United Nations Convention on the Rights of the Child, 1577 U.N.T.S. 3 (Nov. 20, 1989).

Conflicts in Northern Ireland:

- The conflict of Northern Ireland resulted in extreme challenges, including that of juvenile justice, as incidents of detention of without trial took shape.
- Subsequently, reforms were brought which minimised detention of juveniles and prioritised their rehabilitation²⁶.

Guantanamo Bay Detentions, USA:

- International criticism was attracted as a consequence of detention of juveniles without trial at Guantanamo Bay²⁷.
- This incident, in a first-world country, highlighted a need, around the globe, for better procedural safeguards for juveniles in detention.

India's adherence to International Obligations

While India's adherence to international obligations may be better than some countries, it still is not perfect; India faces consistent challenges in conforming to international standards prescribed for the juvenile justice system.

1. **Vague Application of Procedural Safeguards:** It may be noted that India has a legislation in perfect alignment with the UNCRC principles²⁸ in the form of the Juvenile Justice (Care and Protection) Act, 2015. The area of concern is the said legislation and the legislations silence on express prohibition of juvenile detention, leading to bypass of procedural safeguards.
2. **Lack of Oversight and Accountability:** The absence of established statutory bodies, other than juvenile justice boards, specifically assigned with the duty of supervising the application of aforementioned laws is a direct source of abuse of laws and violation of

²⁶ Browne, B., & Dwyer, C. (2014). Navigating Risk: Understanding the Impact of the Conflict on Children and Young People in Northern Ireland: Special Issue: Northern Ireland: 20 Years After the Cease-Fires. *Studies in Conflict and Terrorism*, 37(9), 792-805. <https://doi.org/10.1080/1057610X.2014.931213>

²⁷ Guantánamo Bay Detention Facility: An Overview, *The Centre for Victims of Torture*, available at: <https://www.cvt.org/what-we-do/advocating-for-change/legacy-of-us-torture/guantanamo-bay-detention-facility-an-overview/> (last visited: 7th February, 2025)

²⁸ United Nations Convention on the Rights of the Child, 1577 U.N.T.S. 3 (Nov. 20, 1989).

rights of juveniles²⁹.

3. **Judicial Indifference:** The courts in India, in extension of their limited jurisdiction have made attempts to address the issue of juvenile detention. However, the lack of express guidelines, which also ought to be uniform in nature, make it significantly difficult to tackle the issue at its very core³⁰.

From the above points, one may decode the urgency in the need for the Indian legal system to reconcile with international standards and make a rigid and strict mechanism for protection of juveniles from abuse of law which ought to protect them.

POLICY CONCERNS AND INSTRUMENTS OF SUPERVISION

Ineffectiveness in establishment of structures facilitating accountability and formulation of instruments of supervision has effectively contributed to the misappropriation of preventive detention laws in reference to juveniles.

Preventive detention laws in India grant arbitrary and unchecked discretion to executive authorities in the absence of provisions prohibiting exercise of their powers on juveniles, which results in preventive detention of juveniles in conflict zones. Lack of compulsory judicial review in cases of juvenile detention aggravates the issue, leading to detention without implementation of procedural safeguards and adherence to principles of natural justice.

Additionally, while juvenile justice boards play a crucial role under the Act of 2015, their powers do not extend to cases of preventive detention, thereby removing the veil of protection which the juvenile justice Act extends towards minors. Consequently, there are no statutory bodies to monitor the detention of juveniles under the preventive detention laws. A possible solution is the implementation of the prescribed mandate for Child Welfare Committees. However, until such implementation, lack of transparency and answerability is likely to

²⁹ National Commission for Protection of Child Rights (NCPCR), *Report on Juveniles in Conflict with Law*, 2020, available at <https://ncpcr.gov.in>.

³⁰ Ganguli, Prithwish, *Juvenile Justice System in India: Aims, Objectives, Failures, and Suggestions for Reform* (October 15, 2024). Available at SSRN: <https://ssrn.com/abstract=4988602> or <http://dx.doi.org/10.2139/ssrn.4988602>

prevail³¹.

In establishment of policies ensuring better mechanisms, it becomes essential to provide for special provisions for treatment of juveniles specifically in areas of conflict. This ought to be carried forward in light of the *principle of best interest of child*, which has been emphasised in both national³² as well as international law.³³ It is however a rarity in practice as public safety often overpowers the need for special treatment for children, showcasing the inefficiency of our existing mechanisms.

SUGGESTIONS AND PROPOSAL FOR REFORM

For the purposes of addressing the conflict between the preventive detention laws and provisions of juvenile justice, comprehensive reformations are required to be proposed. The reforms ought to go beyond legislative amendments, and include within its ambit judicial guidelines and institutional dealings with the aim of ensuring proper treatment of juveniles, which are in strict consistency with their rights and requirements. Such reformations should have the ability to operate in every circumstance, including that of unrest and concerns of national security.

1. Legislative Reforms

The contemporary legal framework for preventive detention is unable to account for special needs of juveniles. Consequently, amendments in the existing legislations are required³⁴, whereby detention of juveniles may be expressly prohibited or in specific cases where detention is inevitable, special mechanism and safeguards may be laid down for minors.

i. Express Prohibition on Preventive Detention of Juveniles:

Legislations such as the Public Safety Act or the National Security Act, ought to include distinct provisions, expressly prescribing an age bracket and prohibiting detention of

³¹ Ganguli, Prithwish, Juvenile Justice System in India: Aims, Objectives, Failures, and Suggestions for Reform (October 15, 2024). Available at

SSRN: <https://ssrn.com/abstract=4988602> or <http://dx.doi.org/10.2139/ssrn.4988602>

³² Section 3(iv), Juvenile Justice (Care and Protection) Act, 2015 (Act No. 02 of 2016)

³³ Article 3, United Nations Convention on the Rights of the Child, 1577 U.N.T.S. 3 (Nov. 20, 1989)

³⁴ Kaur, J., "Juvenile Justice System in India: Issues, Challenges, and Legal Reforms", Punjab University Law Review, Vol. 55, (2017), pp. 229 247

juveniles, with reasonable exceptions. Such an amendment would be in conformity with the principles enshrined in the Act of 2015.

ii. **Mandatory Involvement of Juvenile Justice Boards:**

It is essential for the various preventive detention laws to mandate the involvement of Juvenile Justice Boards, notwithstanding the nature of the offence for which detention is proposed to be executed of the juvenile. An assessment by the board would ensure that the best interest of the juvenile is secured and prioritised.

iii. **Provisions for Rehabilitation:**

Any amendment to the preventive detention laws, or the juvenile justice act, or both should include provisions of rehabilitation for juveniles who, on reasonable grounds, have been perceived to be a threat to public safety. Provisions of rehabilitation may include education of the child, counselling sessions, and other skill development activities.

iv. **Stricter Procedural Safeguards:**

Stricter procedural mechanisms ought to be introduced such as consistent assessment of preventive detention orders by a body established especially to carry out that purpose, provisions of judicial review, mandatory assignment of legal representation. Such step would serve as a key in prevention of abuse of detention laws as against juveniles.

2. Judicial Guidelines

It is an undeniable truth that role of judiciary is essential for securing the balance between concerns of public safety and rights of juveniles. Elaborate and unambiguous guidelines from judiciary could ensure uniform handling of juvenile cases.

i. **Prominence of Principle of Non-Detention:**

Making detention an exception rather than a norm is at the hands of the judiciary and ought to be reiterated, facilitating the philosophy of rehabilitation, even in cases

of national security.

ii. **Improved Scrutiny of Orders of Preventive Detention:**

It is essential for courts to adopt an increased and improved level of scrutiny when examining orders of detention involving minors. The onus of proof should be on the detaining authority to convince the court that detention is the last resort and such detention would be proportional in nature³⁵.

iii. **Enhancement of Jurisprudence on Juvenile Rights:**

The subject matter of juvenile rights is heavily untouched upon; therefore, it is essential for judiciary to develop vigorous jurisprudence on rights of juveniles in relation to preventive detention, which is inclusive of constitutional provisions such as Articles 21 and 22³⁶.

3. Institutional Measures

Institutional measures are essential to be taken in order to create harmony between the juvenile justice system and implementation of preventive detention laws. These may be discussed as follows³⁷:

i. **Enhancing Powers of Juvenile Justice Boards:**

The Boards should have power to play the central role in instances of juvenile detention under preventive laws. This power should include periodic review of detention orders, ensuring the juveniles receive counselling and legal representation as well as recommending alternatives to detention³⁸.

³⁵ Kaul, P., "Judicial Oversight in Juvenile Justice Matters: An Indian Perspective", *Journal of Constitutional and Administrative Law*, Vol. 57, (2019), pp. 159-174.

³⁶ Jain, M., "Role of Judiciary in Protecting Juvenile Rights in India", *Supreme Court Cases Journal*, Vol. 61, (2016), pp. 124-140.

³⁷ Sinha, A., "Reforming Juvenile Justice System in India: Legal and Institutional Challenges", *Journal of Indian Law Institute*, Vol. 55, No. 4, (2018), pp. 351-365

³⁸ Chatterjee, A., "Analyzing the Role of the Juvenile Justice Board in India", *Journal of Indian Judiciary*, Vol. 47, No. 2, (2018), pp. 267-282.

ii. **Establishment of Other Independent Bodies:**

Independent bodies ought to be established for the purposes of monitoring the detention of juveniles under preventive laws. Such bodies should include members from child welfare organisations, experts in law, and child psychology, or any other related field.

iii. **Capacity-Building for Law Enforcement:**

Officials responsible for enforcement of child-centric laws should be trained in the manner most beneficial for restoring their trust and securing their interests.

4. Rehabilitation and Reintegration Programs

Rehabilitation is the general norm for the juvenile justice system and must be prioritised as far as possible. This may be done in the following manner:

- i. Juveniles so detained must not be deprived of their right of education. Additionally, vocational training should also form part of detention programs.
- ii. Periodic sessions of counselling should be prioritised for the purposes of addressing psychological trauma, which may result as a consequence of detention, and facilitation their emotional recovery by prioritising the mental health of the child³⁹.
- iii. Rehabilitation programs should be inclusive of families, schools, and child-centric organisations⁴⁰ as far as practicable.
- iv. Efforts must be made to address social stigma surrounding detention, not only to the public but also the detainees and their families.

5. Policy Recommendations

Policy-level interventions are necessary to bring about systematic changes under the subject

³⁹ Rao, N., "Rehabilitation of Juvenile Offenders: Legal Framework in India", *Journal of Contemporary Legal Issues*, Vol. 39, (2016), pp. 143 158.

⁴⁰ Pandey, S., "The Role of NGOs in Strengthening the Juvenile Justice System", *Indian Legal Studies Review*, Vol. 44, No. 1, (2017), pp. 102 119.

matter of juvenile detention. The following actions may be undertaken:

- i. Drafting of national policy, with special focus on guidelines for treatment of juveniles under preventive detention laws;
- ii. Special focus should be extended to conflict-zones, where preventive detention of juveniles is at the very highest;
- iii. Efforts should be made to facilitate data collection and research to identify gaps in policies and procedures, and bring about systematic change⁴¹.

The above recommendations focus on establishing an elaborate mechanism for the issue of preventive detention of juveniles with an aim of facilitating it in harmony, without compromising concerns of national security.

CONCLUDING REMARKS

The conflict between preventive detention laws and juvenile justice system highlights a critical gap in the Indian legal system and how unequipped the state is in dealing with the issues which arise as a consequence of the conflict thereof. On one hand, the preventive detention laws are essential for addressing issues of national security, on the other their application often results in violation of principles established under the Juvenile Justice Act, 2015 and international conventions like UNCRC, of which India is a signatory.

Juveniles, at the very core, are vulnerable and susceptible to influence, thereby requiring guidance and support instead of being subjected to harsh punishments. The contemporary preventive detention laws do not acknowledge detention of juveniles as a separate offence, and combining the special needs of children with general application of detention laws perpetuates systematic abuse and cycles of marginalisation of juveniles, particularly in areas of conflict; as a result of which children are being exposed to arbitrary detentions.

The present paper focuses on filling the legislative, judicial and institutional gaps within the current legal system to discourage the misappropriation of preventive detention laws, as well as suggesting various policy reforms to be inculcated. It touches upon the socio-political

⁴¹ Bhattacharya, A., "Juvenile Justice: Law and Policy in India", *Indian Bar Review*, Vol. 47, No. 3, (2020), pp. 201-222

context of abuse of detention laws in conflict-zones, the contradictions between laws and fundamental role of judiciary in shaping jurisprudence relating to juveniles.

The suggestions extended in the paper emphasize the need for child-centric approach in enforcement of law and formulation of relevant policies. The legislative amendments should incorporate complete prohibition on preventive detention of children, within reasonable exceptions, wherein child-centric safeguards and mechanism are adapted. Additionally, the judiciary must play an active role in prescribing appropriate guidelines and ensuring fairness in interpretation of laws, and incorporating the principles of juvenile justice in its decisions. Moreover, establishment of independent bodies for oversight and supervision in the execution of laws and enhancing of powers of juvenile justice boards is essential in extending extension to juveniles.

Eventually, the discussions over preventive detention of juveniles are more than a mere legal debate; it showcases India's inclination for securing justice, equity and liberty and dignity of individuals. It brings up the question if India will prioritize rehabilitation and welfare of its children over extreme means to ensure national security. Such step would not only reflect a balance in approach of the nation, but also demonstrates a picture of a progressive and humane society⁴².

Can India be reimagined as a society which transcends punitive structures and embraces accountability and reformation of children, securing justice, compassion, and equity in execution of juvenile detention practices?

⁴² Singh, S., "Rehabilitation vs Punishment: The Debate in Juvenile Justice", *Law and Society Journal*, Vol. 63, (2018), pp. 345-361.