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The Socio-Legal Framework of Juvenile Delinquency in India: A Critical Analysis

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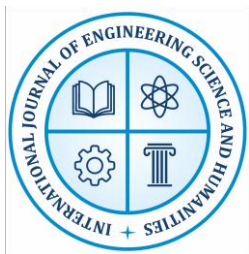
Abstract

Juvenile delinquency occupies a distinctive place within the criminal justice system, for the response of the State to children in conflict with law proceeds not upon the ordinary assumptions of full culpability and deterrence but upon the assumptions of diminished culpability, developmental immaturity and amenability to reform. This paper examines the socio-legal framework governing juvenile delinquency in India, tracing its historical development from the colonial statutes of the nineteenth century to the Juvenile Justice (Care and Protection of Children) Act, 2015, and situating it within the constitutional provisions relating to children and the international standards embodied in the Convention on the Rights of the Child. It analyses the principal provisions of the 2015 Act, including the controversial provision permitting the trial of older adolescents as adults for heinous offences, and it examines the institutional machinery of the framework and the body of judicial decisions that has elaborated it. The paper offers a critical evaluation of the framework, arguing that it is, in its design, a progressive and reformatory one, but that its operation in practice is beset by significant deficiencies of implementation. It concludes that the principal challenge confronting the juvenile justice system in India lies not in the redesign of the framework but in the closing of the gap between the law as declared and the law as implemented.

Keywords: juvenile delinquency; juvenile justice; children in conflict with law; Juvenile Justice Act 2015; preliminary assessment; rehabilitation; child rights.

1. Introduction

The legal framework governing juvenile delinquency represents the institutional expression of society's considered response to the phenomenon of children coming into conflict with law. The distinctive feature of this framework is its departure from the ordinary criminal law: whereas the general criminal law proceeds upon the assumptions of full culpability and deterrence, the juvenile justice framework proceeds upon the assumptions of diminished culpability, developmental immaturity and amenability to reform. This departure is not a matter of indulgence but of principle, reflecting the recognition—rooted in developmental psychology and



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affirmed in international human rights law—that children are different from adults and that the response of the State must be correspondingly different (Kumari, 2010).

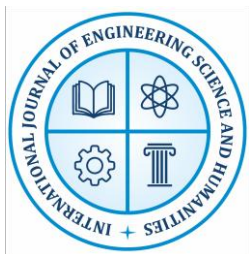
The importance of the subject is underscored by the empirical record. The National Crime Records Bureau reports that, after a period of decline, the incidence of juvenile delinquency in India has risen in recent years, the number of cases registered against juveniles increasing from around 30,555 in 2022 to 34,878 in 2023, with the great majority of offending concentrated in the sixteen-to-eighteen age group (NCRB, 2023). These figures, and the human realities they represent, lend continuing significance to the framework through which the State responds to juvenile delinquency, and they render its critical examination a matter of practical as well as theoretical importance.

The response of the State to juvenile delinquency has long occupied a contested space between two competing imperatives: the welfare of the child, which counsels a protective and reformatory response, and the demand for accountability and public safety, which counsels a more punitive one. The history of juvenile justice, in India as elsewhere, may be read as a series of attempts to reconcile these imperatives, and the tensions that characterise the contemporary framework are, in part, the legacy of that unresolved reconciliation. The Juvenile Justice (Care and Protection of Children) Act, 2015, and in particular its provision for the trial of older adolescents as adults, represents the most recent chapter in this history, and it brings the tension between welfare and accountability into sharp focus.

This paper undertakes a critical examination of the framework. It is organised into ten sections. Following this introduction, it traces the historical development of the juvenile justice framework in India; it examines the international and constitutional foundations of the framework; it analyses the principal provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015; it examines the institutional machinery established under the Act; it reviews the principal judicial decisions; it offers a critical evaluation of the framework and its operation; it advances suggestions for reform; and it concludes. The analysis is doctrinal and socio-legal in character, reading the legal framework in the light of its reformatory purpose and assessing its operation against the standards it prescribes, drawing upon the statutory provisions, the constitutional and international standards, the judicial decisions, and the available empirical evidence concerning the operation of the framework.

2. Historical Development of Juvenile Justice in India

The juvenile justice framework in India is the product of a long process of development, in the course of which the treatment of children in conflict with law has moved from the punitive and custodial paradigm of the colonial era towards the welfare-oriented and rights-based paradigm of the present. In the pre-colonial period, the treatment of children who transgressed was governed by the customary and religious law of the several communities, which generally accorded a



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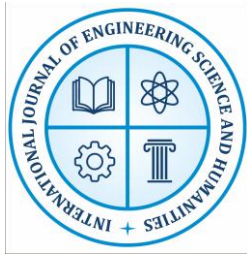
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measure of leniency to the young. The doctrine of *doli incapax*—the incapacity of the young child to form criminal intent—was embodied in the Indian Penal Code, 1860, which conferred absolute immunity upon the child below seven years of age and qualified immunity upon the child between seven and twelve who had not attained sufficient maturity to understand the nature and consequences of the conduct (ss. 82–83). These provisions have since been reproduced, without substantive change, in Sections 20 and 21 of the Bharatiya Nyaya Sanhita, 2023, which replaced the Penal Code with effect from 1 July 2023.

The recognition that child offenders required not merely age-based immunities but a distinct system of treatment emerged gradually. The Apprentices Act, 1850 represents the earliest legislative recognition in India that children in conflict with law required treatment distinct from that meted out to adults, empowering the courts to bind child offenders as apprentices rather than committing them to prison (Paranjape, 2019). The Reformatory Schools Act, 1897 carried the reformatory impulse further, providing for the establishment of reformatory schools to which youthful offenders could be committed in lieu of imprisonment. In the early twentieth century, a number of provinces enacted Children Acts, and after independence the Children Act, 1960 was enacted for the Union Territories, prohibiting the imprisonment of children and emphasising their care, protection and rehabilitation.

The Juvenile Justice Act, 1986 was the first legislation to establish a uniform juvenile justice framework across the country, replacing the patchwork of provincial Children Acts with a single national law. The Act provided for the establishment of Juvenile Welfare Boards and Juvenile Courts and distinguished between the neglected and the delinquent juvenile. The Act, however, adopted a differential definition of juvenility, treating a boy below sixteen and a girl below eighteen as a juvenile—a distinction later criticised as discriminatory and removed by subsequent legislation.

The Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to bring Indian law into conformity with the Convention on the Rights of the Child, which India had ratified in 1992. The 2000 Act effected several important reforms: it adopted a uniform definition of juvenility at eighteen years irrespective of sex, thereby removing the discriminatory distinction of the earlier law; it replaced the Juvenile Welfare Boards and Juvenile Courts with Juvenile Justice Boards and Child Welfare Committees, distinguishing more clearly between children in conflict with law and children in need of care and protection; and it strengthened the framework for rehabilitation and social reintegration, providing for adoption, foster care, sponsorship and after-care. The Act was amended in 2006 to clarify that the relevant date for the determination of juvenility is the date of commission of the offence, giving statutory effect to a principle the courts had already established (Kumari, 2010). The present legislation, the Juvenile Justice (Care and Protection of Children) Act, 2015, replaced the 2000 Act with effect from January 2016,



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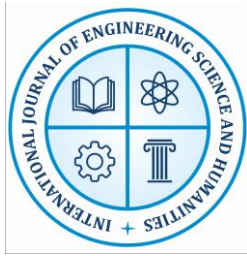
retaining the welfare-oriented core of its predecessor while introducing the significant and controversial changes examined below.

3. International and Constitutional Foundations

The Indian juvenile justice framework rests upon a foundation of international standards and constitutional provisions. The United Nations Convention on the Rights of the Child, adopted in 1989 and ratified by India in 1992, is the foundational instrument of contemporary international child rights law. It requires State parties to establish a distinct system of juvenile justice, to treat the best interest of the child as a primary consideration, and to ensure that the arrest, detention or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period (UNCRC, 1989, art. 37). These standards are supplemented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), which emphasise the well-being of the juvenile and the principle of proportionality, and by the United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines), which adopt a preventive orientation directed at the family, the school and the community.

Taken together, the international instruments articulate a set of standards on child-friendly justice that has profoundly influenced the Indian framework. The standards require that the justice system be adapted to the needs and capacities of the child; that proceedings be conducted in an atmosphere of understanding that allows the child to participate and express views; that the child's privacy be protected; that the deprivation of liberty be a measure of last resort; and that the objective of the system be the reformation and reintegration of the child rather than punishment. The preamble to the 2015 Act expressly invokes these standards, and the correspondence between them and the reformatory philosophy of the Indian legislation is close, though, as this paper argues, the correspondence between the standards and the actual operation of the system is considerably less exact.

The constitutional foundation of the framework is located in a number of provisions of the Constitution of India. Article 14 guarantees equality before the law, which in the context of juvenile justice permits and indeed requires the differential treatment of children in recognition of their different circumstances and needs. Article 15(3) expressly empowers the State to make special provision for children, supplying the constitutional warrant for the entire edifice of child-protective legislation. Article 21 guarantees the right to life and personal liberty, which the Supreme Court has interpreted expansively to embrace the right to live with dignity and to the conditions necessary for human development. Article 21A guarantees the right to free and compulsory education, and Articles 23 and 24 protect children against trafficking, forced labour and hazardous employment. The directive principles contained in Article 39(e) and (f) require the State to direct its policy towards securing that the tender age of children is not abused and



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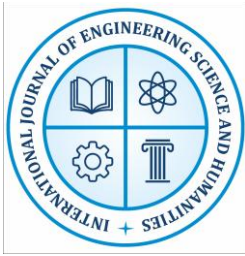
that children are given opportunities to develop in conditions of freedom and dignity, while Articles 45 and 47 concern early childhood care and the improvement of public health. Together, these provisions articulate the constitutional commitment to the protection and development of children upon which the juvenile justice framework rests, and they supply the standards against which the operation of the framework is ultimately to be assessed.

4. The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 is the centrepiece of the contemporary framework. The Act is directed, as its long title declares, at consolidating and amending the law relating to children alleged and found to be in conflict with law and children in need of care and protection, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and by providing for their rehabilitation. It defines a “child” as a person who has not completed eighteen years of age, and it distinguishes the “child in conflict with law” from the “child in need of care and protection” (s. 2). Its general principles, enumerated in Section 3, include the presumption of innocence, the principle of dignity and worth, the principle of the best interest of the child, and the principle that institutionalisation is a measure of last resort.

A significant innovation of the 2015 Act is its classification of offences into three categories, graded according to the punishment prescribed under the applicable penal law. A “petty offence” is one for which the maximum punishment is imprisonment up to three years; a “serious offence” is one for which the punishment is imprisonment between three and seven years; and a “heinous offence” is one for which the minimum punishment is imprisonment of seven years or more (s. 2). This classification carries important procedural consequences, for it is only in relation to heinous offences allegedly committed by children above sixteen years that the possibility of transfer to the adult system arises.

The most controversial provision of the Act is that permitting the trial of older adolescents as adults. Where a child above sixteen years is alleged to have committed a heinous offence, Section 15 requires the Juvenile Justice Board to conduct a preliminary assessment with regard to the child’s mental and physical capacity to commit the offence, the ability to understand its consequences, and the circumstances in which it was allegedly committed. On the basis of this assessment, the Board may order that the child be tried as an adult by the Children’s Court. This provision, enacted in the aftermath of intense public debate following a notorious offence involving a juvenile, represents a qualification of the uniform welfare model and rests upon the contested premise that an older adolescent who commits a heinous offence may possess a degree of maturity and culpability warranting adult treatment. The provision has been the subject of extensive scholarly and judicial attention, examined below.



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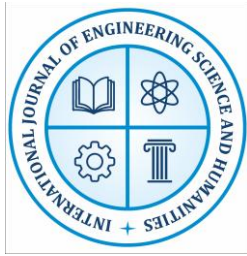
The Act confers upon children in conflict with law a comprehensive set of rights and protections. These include the right to be treated with dignity and without discrimination, the right to legal aid and representation, the right to privacy and confidentiality, the right to protection from abuse and exploitation, and the right to rehabilitation and, wherever possible, family reintegration. The Act contains specific provisions directed at protecting the identity of the child and preventing the disclosure of information that might lead to identification, giving effect to the principle of the fresh start and to the concern, articulated in the criminological literature, to prevent the stigmatisation that may impede reintegration and contribute to recidivism (Kumari, 2010). The dispositional orders available to the Board are weighted towards non-custodial and rehabilitative measures—admonition, counselling, community service, probation, and, as a last resort, placement in a special home—reflecting the principle that institutionalisation is to be a measure of last resort (s. 18).

5. Institutional Machinery of the Framework

The 2015 Act establishes a network of institutions for the adjudication, care and rehabilitation of children. The Juvenile Justice Board, constituted in every district, is the specialised adjudicatory body for children in conflict with law. It comprises a Metropolitan or Judicial Magistrate of the First Class, designated the Principal Magistrate, together with two social worker members, of whom at least one must be a woman. The composition reflects the intention that decisions concerning children be informed not only by legal expertise but by an understanding of child welfare and psychology (s. 4). The Board conducts inquiries, determines the age of the child where juvenility is in question, conducts the preliminary assessment in heinous cases, and passes dispositional orders weighted towards non-custodial and rehabilitative measures.

The Child Welfare Committee, likewise constituted in every district, deals with children in need of care and protection, performing functions analogous to those of the Board and directed at the restoration of such children to their families wherever possible (s. 27). The category of children in need of care and protection is defined broadly to include children who are homeless, abandoned, abused, exploited, or otherwise in circumstances of vulnerability, and it overlaps significantly with the circumstances that give rise to delinquency, for many of the conditions that render a child in need of care and protection are the same conditions that predispose to delinquency.

The Act also provides for a graduated range of institutions—observation homes for the temporary care of children during inquiry, special homes for the rehabilitation of children found to have committed offences, places of safety for older adolescents in heinous cases, and children's homes for children in need of care and protection. The framework further provides for Special Juvenile Police Units and Child Welfare Police Officers to bring a degree of specialisation and sensitivity to the handling of children by the police, and it prohibits the



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detention of children in police lock-ups or jails. The graduated range of measures reflects the recognition that the needs of children vary and that the response of the system should be calibrated to those needs, and it embodies the preference for family-based and community-based care over institutional care that is a central feature of the contemporary approach. The Act and the Juvenile Justice Model Rules, 2016 prescribe standards of care to be maintained in the institutions and provide for their monitoring, though the enforcement of these standards, as the critical evaluation below observes, is frequently found wanting (Ministry of Women and Child Development, 2023).

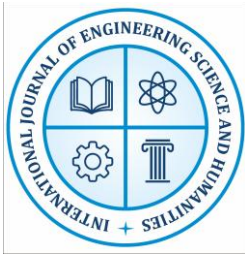
6. Judicial Response and Case Law

The jurisprudence of the superior courts constitutes an important body of law that supplements and elaborates the statutory framework. The courts have, in general, interpreted the legislation in the light of its protective and reformative purpose, resolving ambiguities in favour of the child. This protective approach was established early, in *Sheela Barse v. Union of India* (1986), where the Supreme Court addressed the plight of children detained in jails and directed their protection and the expeditious disposal of their cases. The Court held that the detention of children in adult jails is impermissible and that the cases of children require special sensitivity.

The determination of juvenility has generated a substantial body of case law. In *Pratap Singh v. State of Jharkhand* (2005), a Constitution Bench of the Supreme Court held that the relevant date for the determination of juvenility is the date of commission of the offence, resolving a question that had generated considerable litigation and establishing a principle subsequently given statutory effect. The protective approach to the determination of age has been consistently applied, the courts holding that documentary evidence such as school records is to be preferred to medical opinion and that the benefit of the doubt is to be given to the child.

The constitutional validity of the framework, and in particular of the uniform threshold of eighteen years, was challenged and upheld in *Salil Bali v. Union of India* (2013), where the Supreme Court rejected a challenge seeking the reduction of the age of juvenility and held that the framework was founded upon sound principles consistent with the Constitution and with India's international obligations. A further challenge, seeking a reading down of the definition of juvenility so as to permit the individualised assessment of older adolescents, was declined in *Dr. Subramanian Swamy v. Raju* (2014), the Court holding that the uniform threshold was a considered legislative choice. The legislature subsequently addressed the underlying concern through the transfer provision of the 2015 Act.

Two decisions upon the 2015 Act are of particular importance. In *Shilpa Mittal v. State (NCT of Delhi)* (2020), the Supreme Court considered whether an offence prescribing a maximum but no minimum punishment of seven years fell within the category of heinous offences. The Court held that it did not, the statutory definition requiring a minimum punishment of seven years or more,



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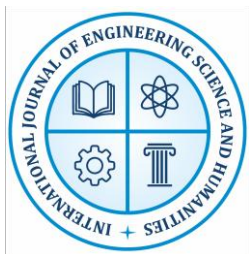
and it thereby narrowed the category of heinous offences and correspondingly widened the class of children entitled to the full benefit of the reformatory framework. The decision is a notable illustration of the beneficial interpretation of the framework, though it also drew attention to a gap in the statutory scheme that the Court held to be a matter for the legislature to address. In *Barun Chandra Thakur v. Master Bholu* (2023), the Court addressed the conduct of the preliminary assessment under Section 15, holding that the proviso permitting the Board to take expert assistance operates in mandatory form where the Board lacks a member with the requisite psychological or psychiatric qualifications, that the assessment of the child's ability to understand consequences depends upon emotional maturity and cannot be established by a mere finding of average intelligence, and that the assessment cannot be reduced to a perfunctory exercise. The Court further directed the framing of guidelines to assist the Boards, recognising the absence of adequate statutory guidance as a serious deficiency. The decision illustrates the dependence of the framework upon psychological understanding and the difficulties that attend the assessment of the maturity of an individual adolescent.

Taken together, these decisions reveal a judiciary that has, in the main, sought to give effect to the protective and reformatory purpose of the framework, resolving ambiguities in favour of the child, insisting upon the effective implementation of the framework, and elaborating the principles governing its application. The courts have also served as an important mechanism of oversight, repeatedly drawing attention to the deficiencies of implementation and directing their amelioration. Yet the persistence of these deficiencies, notwithstanding the courts' repeated intervention, indicates the limits of judicial oversight and the necessity of executive and legislative action to secure the effective implementation of the framework.

7. Critical Evaluation of the Framework

The framework examined above is, in its design, a progressive and comprehensive one, embodying a sophisticated and humane approach to children in conflict with law. Its general principles, its child-friendly procedures, its graduated range of rehabilitative measures and its emphasis upon family-based and community-based care all reflect the reformatory and rights-based philosophy that has developed over the preceding century. At the same time, the framework is open to criticism in certain respects, and its operation in practice is beset by significant deficiencies.

The provision permitting the transfer of older adolescents to the adult system is in tension with the reformatory philosophy that animates the remainder of the Act, and it rests upon contested empirical assumptions concerning the maturity and culpability of adolescents. The developmental understanding of adolescence, which emphasises the heightened impulsivity and incomplete capacity for self-control characteristic of the adolescent years, cautions against the assimilation of adolescents to adults for the purposes of the criminal law (Steinberg, 2008). The



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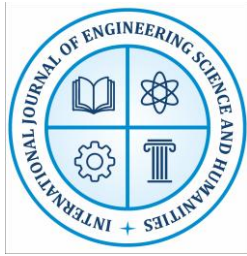
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preliminary assessment that the transfer provision requires imposes upon the Boards a task of considerable difficulty, for which adequate expertise and guidance are frequently unavailable, as the Supreme Court recognised in *Barun Chandra Thakur*.

Beyond the difficulties of principle, the operation of the framework is compromised by serious deficiencies of implementation. Studies and official reports document persistent delays in the disposal of cases, notwithstanding the timelines prescribed by the Act; a chronic shortage of trained personnel, and in particular of the psychologists and counsellors upon whom the assessment and rehabilitation of children depend; the inadequacy of the infrastructure and resources; and, in some cases, the abuse and neglect of children within the very institutions established for their protection. In *Sampurna Behura v. Union of India* (2018), the Supreme Court drew attention to these deficiencies and issued directions for the effective implementation of the framework, the establishment and functioning of the institutional mechanisms, and the filling of vacancies—directions whose repetition reflects the persistence of the deficiencies they address.

The rehabilitative promise of the framework is, in practice, imperfectly realised. The Act provides for a comprehensive range of rehabilitative measures—individual care plans, counselling and psychological intervention, education and vocational training, family counselling and community-based intervention, and aftercare—but the provision of these measures is frequently inadequate. The psychological and family-focused measures, which address the factors most closely associated with delinquency, are the least adequately provided, owing to the chronic shortage of trained psychologists, counsellors and social workers; and the provision of aftercare, essential to the sustainable reintegration of the child, is particularly deficient. The reformative vision of the framework thus outruns the resources devoted to its realisation, and the interventions upon which reformation depends are, too often, unavailable to the children who require them.

The transfer provision also exemplifies the enduring tension between the welfare and the accountability imperatives that runs through the history of juvenile justice. The provision represents a concession to the demand for accountability in the most serious cases, and, as such, it responds to a genuine public concern that a purely welfare-oriented framework may appear to neglect. Yet the concession is in tension with the reformative philosophy that animates the remainder of the framework, and it risks distorting the orientation of the system as a whole. The empirical record indicates that the heinous offences that engage the transfer provision constitute a small minority of juvenile offending, the great majority of which consists of the less serious offences amenable to the reformative response (NCRB, 2023). The reformative framework is thus appropriate to the great majority of cases, and the transfer provision, addressed to the



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exceptional case, should not be permitted to distort the reformatory orientation of the framework as a whole.

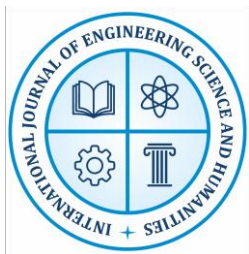
The gap between the framework as designed and the framework as implemented is the central problem of the juvenile justice system in India. A framework that is sound in design but deficient in implementation fails to achieve its reformatory purpose and fails the children it is intended to protect. The empirical evidence concerning the profile of children in conflict with law—their concentration among the educationally deprived and the economically disadvantaged, and the prevalence among them of adverse family circumstances—underscores the connection between delinquency and social disadvantage, and it indicates that the effective response to delinquency requires not merely the operation of the legal machinery but the amelioration of the conditions from which delinquency arises (NCRB, 2023). The framework does not operate in a vacuum, and its effectiveness depends in part upon the broader social and economic conditions that shape the lives of the children subject to it.

8. Suggestions and Conclusion

The analysis undertaken in this paper supports a number of suggestions for the reform of the framework and the improvement of the response to juvenile delinquency. First, the priority in reform should be accorded to the closing of the gap between the framework as designed and the framework as implemented, through the adequate resourcing of the system, the recruitment and training of personnel, and the effective delivery of the interventions that the framework contemplates. The soundness of the framework's design implies that the priority should be the effective implementation of the existing framework rather than its fundamental redesign.

Second, particular priority should be accorded to the strengthening of the psychological and family-focused interventions, which are central to an effective response but which are, in practice, the least adequately provided. This requires the recruitment and training of psychologists, counsellors and social workers, and the development of the programmes through which the psychological and familial factors associated with delinquency are addressed. Third, the operation of the transfer provision should be reviewed, and, pending any legislative reconsideration, it should be operated with the caution that the Supreme Court has enjoined, with the preliminary assessment conducted with appropriate psychological expertise and in accordance with proper guidelines. Fourth, the prevention of delinquency should be accorded due priority alongside the treatment of children who have already offended, through interventions directed at the family, the school and the community, in accordance with the preventive orientation of the Riyadh Guidelines.

In conclusion, the socio-legal framework governing juvenile delinquency in India is, in its design, a progressive and comprehensive framework founded upon a sound reformatory and rehabilitative philosophy, consonant with the constitutional provisions and the international



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standards. Its principal deficiency lies not in its design but in its implementation, and the closing of the gap between the law as declared and the law as implemented is the central challenge confronting the system. The child in conflict with law is not merely an offender to be punished but a developing person whose delinquency arises from the interaction of psychological dispositions and social circumstances, and whose reformation and reintegration are both the object of the framework and the true measure of its success. It is in the effective realisation of this reformatory vision, through the diligent implementation of the framework and the provision of the interventions that an effective response requires, that the path to a more humane and a more effective response to juvenile delinquency in India is to be found.

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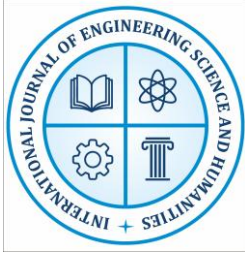
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