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DISSERTATION

**“PRELIMINARY ASSESSMENT UNDER JUVENILE JUSTICE
(CARE AND PROTECTION OF CHILDREN) ACT, 2015: AN
ANALYTICAL STUDY”**

SESSION 2023-24

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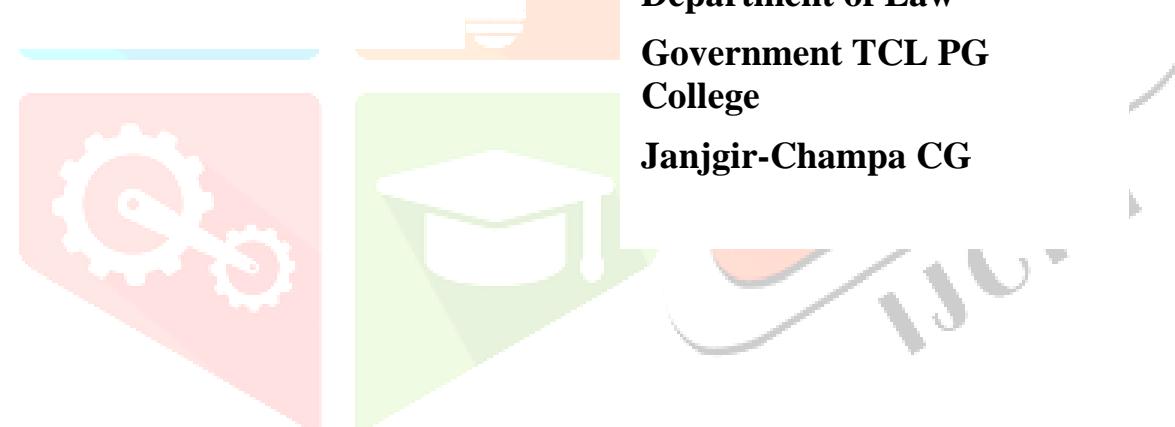
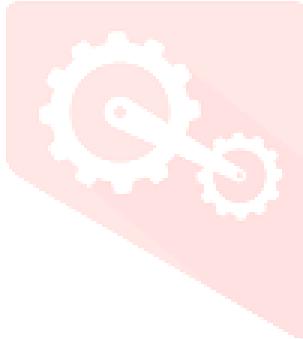
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DECLARATION

I hereby declare that this dissertation entitled "**PRELIMINARY ASSESSMENT UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015: AN ANALYTICAL STUDY**" was carried out by me in lieu of Paper III dissertation for LL.M. Final year, session 2023-24 under the guidance and supervision of Dr. Abha Sinha, HOD & faculty of law Government TCL PG College, Janjgir-Champa Chhattisgarh, India.

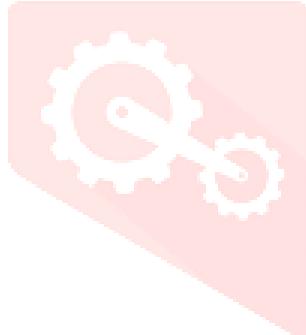
The interpretations put forth are based on my reading and understanding of the original texts and they are not published anywhere in the form of books, monographs or articles. The other books, articles and websites, which I have made use of are acknowledged at the respective place in the text.

Place: Chhattisgarh

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विद्या ददाति विनयम् विनयाद् याति पात्रताम् ।
पात्रत्वात् धनमाप्नोति धनात् धर्मं ततः सुखम् ॥

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Worthiness leads to wealth and wealth to righteousness & happiness."**

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List of Acronyms – Juvenile Justice

ACHR	Asian Centre for Human Rights
AIR	All India Reporter
CA	Chronological Age
CCI	Child Care Institute
CICL	Child in Conflict with Law
CNCP	Child in Need of Care and Protection.
Cr. P.C.	Code of Criminal Procedure, 1973
Cri. LJ	Criminal Law Journal
CWC	Child Welfare Committee.
CWPO	Child Welfare Police Officer
DCPU	District Child Protection Unit
DLSA	District Legal Service Authority
FIR	First Information Report
ICP	Individual Care Plan
ICPS	Integrated Child Protection Scheme
IPC	Indian Penal Code, 1860
IQ	Intelligent Quotient
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015
JJ Rules	JJ Rules (Juvenile Justice Care and Protection of Children) Model Rules, 2016
JJB	Juvenile Justice Board
LPO	Legal Cum Probation Officer
MA	Mental Age
NALSA	National Legal Service Authority
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Record Bureau
NDPS	Narcotic Drugs and Psychotropic Substances Act, 1985
NGO	Non-Government Organization
NRI	Non-Resident Indian
OCI	Overseas Citizen of India
PA	Preliminary Assessment
POCSO	Protection of Children from Sexual Offences Act, 2012
PS	Police Station
SALSA	State Legal Service Authority
SBR	Social Background Report
SC	Supreme Court
SCC	Supreme Court Cases
SCPCR	State Commission for Protection of Child Rights
SIR	Social Investigation Report
SP	Superintendent of Police
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime

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CHAPTER – 1

Introduction to Juvenile Justice (Care and Protection of Children) Act, 2015 and the Concept of Preliminary Assessment

INTRODUCTION

"Children are not mini-adults. They are not the property of their parents nor are they wards of the state. They have voices and views. They are participants in that big thing we call society." (Sheela Barse v. Secretary, Children's Aid Society, 1987).

Justice V.R. Krishna Iyer

On May 19, 2024, two young software engineers died untimely by a speeding Porsche car driven by an allegedly intoxicated 17-and-a-half-year-old minor in Pune. The investigation in this case revealed elaborate attempts by the family, doctors, police, and local politicians to cover up the crime committed by a teenager who is the only heir to the family fortunes, which runs in several hundred crores. An uproar on social media and protests on the streets of Pune ultimately forced the authorities to probe the case on the basis of the First Information Report (FIR) lodged by friends. The minor was produced before the Juvenile Justice Board which kept aside the request of the Police to try the boy as an adult. Also, within 15 hours, the Juvenile Justice Board also granted conditional bail to the minor and was asked to work with the 'Yerawada traffic police for 15 days, write a 300-word essay on the accident, get treatment to quit drinking and to seek psychiatric counselling'. Two days later, following a public outcry over these conditions, the Juvenile Justice Board cancelled the bail and remanded the minor to an Observation Home until June 5, 2024 which was further extended till June 12, 2024. The above case-text is a gist of an article written by *Vishvajeet Ghoshal, Co-Founder of Children Unbound Foundation and former Joint Secretary & Director (Projects) of Prayas JAC* published in [thepressindia.in¹](https://thepressindia.in/2024/06/09/lessons-from-a-tragedy-the-pune-porsche-accident/) where he explains that ***"Beyond the criticism and uproar over Juvenile Justice Board's direction, the issue needs to be seen in the larger legal context, as the underlying philosophy of the Juvenile Justice Act is different from the Criminal Justice System. The accused minor is four months short of becoming an 'adult'. The directions of the JJ Board were in the context of the 'process' to be followed for 'adjudication and disposal of matters in the best interest of the children', setting up a system distinct from the adult criminal justice system for apprehension, detention, prosecution, penalty, imprisonment, rehabilitation and social reintegration of children in conflict with law'. The basic tenet of the JJ Act is to focus on rehabilitation and social reintegration of the child rather than punishment".***

¹ <https://thepressindia.in/2024/06/09/lessons-from-a-tragedy-the-pune-porsche-accident/>

The concept of preliminary assessment of children is getting attention of many jurists at national and international levels because of its implications and procedure. Many professionals in this field are getting into such cases with different viewpoints because of its variability. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as JJ Act) introduces a provision under Section 15 that allows for the potential transfer of juveniles aged between 16 and 18 years to the adult criminal justice system for trial as adults, subject to specific conditions. This provision is applicable in cases where a juvenile is alleged to have committed heinous offences, as defined by the JJ Act. The transfer of such cases from the Juvenile Justice Board to the Children's Court is contingent upon a preliminary assessment by the Board, which evaluates factors such as the juvenile's mental and physical capacity, the circumstances of the alleged offense, and the availability of appropriate rehabilitation and reintegration programs. The provision has garnered significant attention and debate, raising questions regarding the balance between the principles of restorative justice and the societal concerns surrounding the gravity of certain offences committed by juveniles nearing adulthood.

The preliminary assessment process outlined in Section 15 of the JJ Act serves a very specific and limited purpose. It is not designed to extract a confession from the child or to determine their guilt or innocence regarding the alleged offense. Attempting to obtain self-incriminating statements or relying on any such statements from the child during this assessment would be a direct violation of the fundamental right against self-incrimination, a constitutional protection enshrined in Article 20(3) of the Indian Constitution. Consequently, the Juvenile Justice Board is strictly prohibited from considering or relying upon any material, evidence or statements in any form whatsoever, that could potentially constitute a self-incriminating admission by the child. This prohibition applies regardless of whether the self-incriminating material was obtained consciously or inadvertently and irrespective of the source or method through which it was procured, be it the Social Investigation Report (SIR), interactions with the child, or any other means. The preliminary assessment's scope is exclusively limited to evaluating three key aspects: firstly, the child's mental and physical capacity; secondly, the contextual circumstances surrounding the alleged offense; and thirdly, the availability and suitability of rehabilitation and reintegration programs for the child. Crucially, this assessment does not delve into determining the child's guilt or innocence regarding the alleged offense itself.

In *Thirumoorthy vs State Represented by The Inspector of Police*² the Supreme Court Bench comprising of Justices B.R. Gavai and Sandeep Mehta held that the provisions of JJ Act are mandatory in nature and must be strictly followed. The Juvenile Justice Board must conduct a preliminary assessment of the child in conflict with law who has committed a heinous offence and is an over 16 years of age, and form an opinion as to whether he should be tried as a juvenile or as an adult.

The assessment aims to determine whether the child should be tried as an adult or a juvenile. The process involves gathering relevant information through various means, including social investigation reports, psychological

² Thirumoorthy v. State Represented by The Inspector of Police, AIR 2024 SC

evaluations, and interactions with the child and their family. The preliminary assessment is a crucial step in ensuring a fair and appropriate course of action for the child's case.

The preliminary assessment aims to determine whether the child should be tried as an adult or a juvenile. The process involves gathering relevant information through various means, including Social Investigation Reports, Social Background Report, psychological evaluations, and interactions with the child and his family. In the case of *Child in Conflict with Law Through His Mother Vs. The State of Karnataka and Another*³ the Supreme Court ruled that the three-month period granted for the preliminary assessment under the JJ Act, to determine whether a child in conflict with the law should be tried as an adult or a juvenile, is not mandatory but directory in nature. The court clarified that the three-month period is not a rigid timeframe, and a delay in conducting the preliminary assessment beyond three months would not invalidate the subsequent proceedings. However, the court emphasized that the assessment should be conducted expeditiously, and any undue delay might result in the benefit being given to the child in conflict with the law.

DEFINITIONS

Here are some definitions provided under Juvenile Justice (Care and Protection of Children) Act, 2015⁴ which have to be understood regarding the Preliminary Assessment Procedure. For better understanding, the definitions have been referred here with the corresponding sections provided under the JJ Act itself.

- (1) “abandoned child” section 2(1) - means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;
- (2) “best interest of child” section 2(9) - means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;
- (3) “child” section 2(12) -means a person who has not completed eighteen years of age;
- (4) “child in conflict with law” section 2(13) -means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
- (5) “child in need of care and protection” Section 2(14) - means a child—
 - (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
 - (ii) who is found working in contravention of [the provisions of this Act or]⁵ labour laws for the time being in force or is found begging, or living on the street; or
 - (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

³ Child In Conflict with Law Through His Mother v. The State of Karnataka and Another, (2024) 3 SC

⁴ Definitions under various sub-sections of Section 2 of the Juvenile justice (Care and Protection of Children) Act, 2015

⁵ Inserted by Act 23 of 2021, s. 2 clause 14, for sub-clause (ii) (w.e.f. 1-9-2022).

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) [who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;]⁶

(vii) who is missing or run-away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and [has been or is being or is likely to be]⁷ inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

(6) “child friendly” Section 2(15) - means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;

(7) “Child Welfare Officer” Section 2(17) - means an officer attached to a [child care institution]⁸, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed;

(8) “Child Welfare Police Officer” Section 2(18) - means an officer designated as such under sub-section (1) of section 107;

(9) “Children’s Home” Section 2(19) - means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;

(10) “Children’s Court” Section 2(20) - means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

⁶Subs. by Act 23 of 2021, s. 2 clause 14, sub-clause (vi) (w.e.f. 1-9-2022).

⁷ Subs. By Act 23 of 2021, s. 2, clause 14, for sub-clause (ix) for “is likely to be” (w.e.f. 1-9-2022).

⁸ Subs. By Act 23 of 2021, s. 2 clause 17, for sub-clause (iii) for “Children’s Home” (w.e.f. 1-9-2022).

- (11) “*child care institution*” Section 2(21) - means *Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services*;
- (12) “*ChildLine services*” Section 2(25) - means a twenty-four hours emergency outreach service for children in crisis which links them to emergency or long-term care and rehabilitation service;
- (13) “*District Child Protection Unit*” Section 2(26) means a Child Protection Unit for a District, established by the State Government under section 106, [which shall function under the supervision of the District Magistrate]⁹ to ensure the implementation of this Act and other child protection measures in the district;
- (14) “*District Magistrate*” Section 2[(26-A) - includes Additional District Magistrate of the District;]¹⁰
- (15) “*heinous offences*” Section 2(33) - includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;
- (16) “*juvenile*” Section 2(35) - means a child below the age of eighteen years;
- (17) “*observation home*” Section 2(40) - means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of section 47;
- (18) “*petty offences*” Section 2(45) - includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years;
- (19) “*probation officer*” Section 2(48) - means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958) or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit;
- (20) [“*serious offences*” Section 2[(54) - includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is, —
 - (a) minimum imprisonment for a term more than three years and not exceeding seven years; or
 - (b) maximum imprisonment for a term more than seven years but no minimum imprisonment
 - (c) or minimum imprisonment of less than seven years is provided.]¹¹
- (21) “*special juvenile police unit*” Section 2(55) - means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 10.

BACKGROUND AND SIGNIFICANCE OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

⁹ Subs. by Act 23 of 2021, s. 2, for “which is the focal point” (w.e.f. 1-9-2022).

¹⁰ Inserted by Act 23 of 2021, (w.e.f. 1-9-2022).

¹¹ Subs. by s. 2, for clause (54) (w.e.f. 1-9-2022).

This research has delved into the intricate evolution of the juvenile justice system, a subject that lies at the intersection of law, psychology, and social values. Tracing its historical trajectory reveals a profound shift in our understanding of how to address the complex issue of juvenile delinquency.

In the formative years, the administration of justice for juveniles was indistinguishable from that of adults, reflecting a failure to recognize the unique psychological and developmental characteristics of children. Harsh punishments and incarceration were meted out indiscriminately, a grim reality that gradually garnered attention and sparked the demand for reform.

The evolution of the juvenile justice system can be broadly categorized into four phases. The first phase of this transformation can be traced back to the nineteenth century, with the establishment of "Ragged Schools"¹² in London. These institutions, initially laudable in their intent to educate under-privileged children, inadvertently became stigmatized due to the association of their students with criminal activities. Charles Dickens' literary works, notably "*Oliver Twist*,"¹³ played a pivotal role in exposing the harsh treatment of orphans and catalysing a moral awakening within the English elite and aristocracy. This powerful advocacy, coupled with mounting public outcry, paved the way for groundbreaking legislation like the Apprenticeship Act, 1851 and Reformatory School Act, 1897 which embraced a more reformative and rehabilitative approach to juvenile offenders.

The ripples of this movement extended to British India, where similar initiatives and laws emerged from the 1850s onwards, with experiments like the "*Ragged School*" in Kolkata garnering success and demonstrated the potential for positive change.

The second phase witnessed the efforts of individuals like Charles Hathaway¹⁴, the Governor of Punjab Prisons, who advocated for separate jails, courts, and procedures for child offenders.

These recommendations led to the enactment of Children Acts by various princely states, and eventually, the Model Children Act of 1960 in independent India. Initially it was applicable only in Delhi but subsequently serving as a blueprint for various state governments to craft their own legislation. This phase laid the foundation for a more cohesive and unified approach to the juvenile justice across the nation.

The third phase marked a significant milestone with the enactment of the Juvenile Justice Act of 1986, influenced by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)¹⁵

¹² In 1818, in Portsmouth, John Pounds, a crippled cobbler, taught up to forty children in his shop as he worked. Like Raikes, John Pounds has often been described as one of the founding fathers of the ragged school movement, but he started teaching almost by accident. Whilst looking after a crippled nephew, Pounds invited children into his shop to play with the boy. As Pounds talked to the children, he realized how little they knew and began to teach them reading and writing. Soon thirty to forty children came to his shop each day. As well as providing them with some schooling, he also gave food and clothes to those in need. [D. H. Webster, 'The Ragged School Movement and the Education of the Poor in the Nineteenth Century' (PhD thesis, Leicester University, 1973), pp. 15-18, 39; R. G. Bloomer, 'The Ragged School Movement Before 1870, with Special Reference to Some Lancashire Ragged Schools' (MED thesis, Manchester University, 1967), p.65.]

¹³ Dickens, Charles. 1992. *Oliver Twist: Wordsworth Classics Series*. Ware, Hertfordshire: Wordsworth Classics.

¹⁴ Hathaway, C. (1856). [Letter to the British Queen on the problems of incarcerating children with adults]. Archives of Punjab Prisons.

¹⁵ United Nations. (1985). United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

and the landmark observations of the Supreme Court's in the "*Sheela Barse vs Union of India, 1988*¹⁶" and "*Gopinath Ghosh vs State of West Bengal, 1983*¹⁷" cases. This legislation sought to address the lack of uniformity in defining the age of a child and the disparate treatment of juveniles across different jurisdictions.

India's ratification of the UN Convention on the Rights of the Child in 1992¹⁸ further reinforced the imperative to safeguard the rights and well-being of juveniles, culminating the enactment of the Juvenile Justice Act of 2000. This legislation embodied the principles of rehabilitation, reintegration, and the best interest of the child, reflecting a progressive and compassionate approach to juvenile delinquency. However, the most recent phase has witnessed a departure from the rehabilitative and reformative approach, catalysed by heinous crimes like the *2012 Delhi gang rape case*¹⁹ and the *Mumbai Shakti Mill case, 2019*²⁰, the discourse surrounding juvenile offenders took a decidedly punitive turn.

The enactment of the JJ Act marked a departure from the strictly rehabilitative and reformative approach, introducing provisions that allowed for the transfer of certain cases involving juveniles aged 16-18 to be tried as adults in the criminal justice system, while ostensibly aimed to debate surrounding the delicate balance between accountability, protection and reintegration of juvenile offenders. The JJ Act, represents a pivotal moment in India's legal landscape, reflecting the evolving societal values and legal principles that shape the nation's response to the multifaceted challenge of juvenile delinquency. On one hand, the rehabilitative approach acknowledges the inherent malleability and potential for reform within juveniles, recognizing that their actions are often shaped by their environment, upbringing, and developmental stages. This perspective argues for a compassionate and restorative system that prioritizes guidance, counselling, and reintegration, fostering an environment conducive to personal growth and positive societal contribution.

Conversely, the punitive stance asserts that certain egregious offences demand accountability and consequences, irrespective of the offender's age. Proponents of this view contend that a failure to mete out appropriate punishments undermines the deterrent effect of the law and erodes public confidence in the justice system. As I navigate this complex terrain, I am acutely aware of the profound societal implications that our collective choices will have. The juvenile justice system stands as a reflection of our values, our commitment to nurturing and protecting the next generation, and our willingness to extend compassion and second chances. It is a delicate balance, one that requires a nuanced understanding of child psychology, legal principles, and societal values. As future legal professionals, it is incumbent upon us to engage in thoughtful discourse, to weigh the evidence, and to strive for a system that upholds the principles of justice, rehabilitation, and the best interests of both the individual and society at large. Only through a holistic and empathetic approach can we hope to forge a path that acknowledges the complexities of juvenile delinquency while upholding the sanctity of the law and the inherent dignity of every human being, regardless of age or circumstance.

¹⁶ Sheela Barse vs Union of India & ors on 29 August, 1988

¹⁷ Gopinath Ghosh vs The State of West Bengal on 11 November, 1983

¹⁸ United Nations. (1989). Convention on the Rights of the Child.

¹⁹ Mukesh & anr vs State for NCT of Delhi & ors, (2017) 6 SCC 1.

²⁰ Vijay Jadhav vs State of Maharashtra, (2019) 3 SCC 355.

CONSTITUTION AND POWERS OF JUVENILE JUSTICE BOARD

Section 4 of JJ Act deals with constitution of the Juvenile Justice Board (Juvenile Justice Board) and Section 8 of the JJ Act talks about powers, functions and responsibilities of the Board. Under section 4 of the JJ Act it is provided that *notwithstanding the provisions of the Code of Criminal Procedure, 1973²¹, the State Government shall establish one or more Juvenile Justice Boards in every district.*

- **Composition of a Juvenile Justice Board** - A Metropolitan Magistrate or a Judicial Magistrate of First Class (not the Chief Metropolitan Magistrate or Chief Judicial Magistrate) with at least three years of experience, acting as the Principal Magistrate, and two social workers, at least one of whom shall be a woman, acting as the social workers or members selected in a prescribed manner. These members shall form a Bench with powers conferred by the Code of Criminal Procedure, 1973 ²²on a Metropolitan Magistrate or a Judicial Magistrate of First Class. An amendment in Juvenile Justice (Care and Protection of Children) Model Rules, 2016 in the year of 2022 provides that the members of Juvenile Justice Board can be appointed for two continuous terms.
- **Eligibility criteria for social workers** – The social members must have been actively involved in health, education, or welfare activities pertaining to children for at least seven years, or must be a practicing professional with a degree in child psychology, psychiatry, sociology, or law.
- **Ineligibility criteria for Board members** – The JJ Act also talks about ineligibility criteria for the Board members as such if any Board member has a past record of violating human rights or child rights; or as been convicted of an offense involving moral turpitude, and the conviction has not been reversed or pardoned; or has been removed or dismissed from service by the Central Government, State Government, or a government-owned or controlled entity; or has ever indulged in child abuse, employed child labour, or committed any other violation of human rights or immoral act shall be ineligible.
- **Training and sensitization** - The State Government shall ensure that all members of the Board, including the Principal Magistrate, receive induction training and sensitization on care, protection, rehabilitation, legal provisions, and justice for children within 60 days of their appointment.
- **Term of office and resignation and termination of appointment** - The term of office and the manner of resignation for Board members shall be prescribed. The State Government may terminate the appointment of any Board member, except the Principal Magistrate, after an inquiry if the member: has been found guilty of misuse of power vested under this Act; or fails to attend Board proceedings consecutively for three months

²¹ This Act is repealed with commencement of Bharatiya Nagrik Suraksha Sanhita, 2023 enacted from 1st July, 2024

²² The Code of Criminal Procedure, 1973 (in short Cr.PC, 1973) has been repealed and a new Act named Bharatiya Nagrik Suraksha Sanhita, 2023 (BNS, 2023) has been enacted in place of Cr.PC, 1973. So, this provision will be referred from Bharatiya Nagrik Suraksha Sanhita, 2023

without a valid reason; or fails to attend at least three-fourths of the sittings in a year; or becomes ineligible under sub-section (4) during their term as a member.

FUNCTIONS OF THE JUVENILE JUSTICE BOARD

Notwithstanding any other law in force, except as expressly provided in this Act, the Juvenile Justice Board, constituted for a district shall have the exclusive power to deal with all proceedings related to children in conflict with law within its jurisdiction. The powers conferred on the Board under this Act may also be exercised by the High Court and the Children's Court when proceedings come before them on appeal, revision, or otherwise under Section 19. The functions and responsibilities of the Juvenile Justice Board shall include:

- Ensuring informed participation of the child and the parent or guardian at every step of the process.
- Ensuring the child's rights are protected throughout the process of apprehension, inquiry, aftercare, and rehabilitation.
- Ensuring the availability of legal aid for the child through legal services institutions.
- Providing an interpreter or translator, with prescribed qualifications and fees, to the child if they fail to understand the language used in the proceedings.
- Directing the Probation Officer, or in their absence, the Child Welfare Officer or a social worker, to conduct a social investigation and submit a report within 15 days of the child's first production before the Board.
- Adjudicating and disposing of cases of children in conflict with law in accordance with the process of inquiry specified in Section 14.
- Transferring matters concerning a child alleged to be in conflict with law but stated to be in need of care and protection to the Child Welfare Committee at any stage, recognizing the dual nature of the child's needs.
- Disposing of matters and passing a final order that includes an individual care plan for the child's rehabilitation, with follow-up by the Probation Officer, District Child Protection Unit, or a non-governmental organization.
- Conducting inquiries to declare fit persons for the care of children in conflict with law.
- Conducting at least one inspection visit per month of residential facilities for children in conflict with law and recommending improvements to the District Child Protection Unit and the State Government.
- Ordering the police to register a First Information Report (FIR) for offences committed against any child in conflict with law or in need of care and protection, under this Act or any other law, upon receiving a complaint.
- Conducting regular inspections of jails meant for adults to check if any child is lodged there and taking immediate measures for the transfer of that child to an observation home or place of safety.
- Any other prescribed function.

CONSTITUTION AND POWERS OF CHILD WELFARE COMMITTEE

As per the provisions of the JJ Act, every district shall have one or more CWCs constituted by the State Government through a notification in the Official Gazette. The State Government shall ensure that induction training and sensitization of all members of the committee is provided within two months from the date of

notification. The CWC shall consist of a Chairperson and four other members, as appointed by the State Government, of whom at least one shall be a woman and another shall be an expert on matters concerning children.

The eligibility and educational criteria for the appointment of CWC includes that a member of the CWC shall possess a degree in child psychology, psychiatry, law, social work, sociology, human health, education, human development, or special education for differently-abled children.²³ The member must have been actively involved in health, education, or welfare activities pertaining to children for seven years, or be a practicing professional with a relevant degree. Other eligibility criteria clarifies that no person shall be eligible for selection as a member of the CWC if they:

- (i) have any past record of violation of human rights or child rights,
- (ii) have been convicted of an offense involving moral turpitude, and such conviction has not been reversed or has not been granted a full pardon,
- (iii) have been removed or dismissed from service of the Government of India or State Government or an undertaking or corporation owned or controlled by the Government of India or State Government,
- (iv) have ever indulged in child abuse, employment of child labour, immoral acts, or any other violation of human rights or immoral acts, or
- (v) are part of the management of a child care institution in the district.

Tenure of CWC members is up to 3 years and the appointment of any member of the CWC shall be terminated by the State Government after making an inquiry if:

- (i) they have been found guilty of misuse of power vested on them under this Act,
- (ii) they have been convicted of an offense involving moral turpitude and such conviction has not been reversed or they have not been granted a full pardon, or
- (iii) they fail to attend the proceedings of the CWC consecutively for three months without a valid reason or fail to attend a minimum²⁴ of three-fourths of the sittings in a year.

FUNCTIONS OF CHILD WELFARE COMMITTEE

The CWC shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974)²⁵ on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. The

²³ Subs. by Act 23 of 2021, s. 9, for sub-section (4) (w.e.f. 1-9-2022).

²⁴ Subs. by Act 23 of 2021, s. 9, for "less than" (w.e.f. 1-9-2022).

²⁵ The Code of Criminal Procedure, 1973 (in short Cr.PC, 1973) has been repealed and a new Act named Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS, 2023) has been enacted in place of Cr.PC, 1973. So, this provision will be referred from Bharatiya Nagrik Suraksha Sanhita, 2023

CWC shall submit a report to the District Magistrate in the prescribed form, and the District Magistrate shall conduct a quarterly review of the functioning of the CWC.²⁶ The District Magistrate shall be the grievance redressal authority to entertain any grievance arising out of the functioning of the CWC.²⁷ The affected child or anyone connected with the child may file a complaint before the District Magistrate, who shall take cognizance of the action of the CWC and, after giving the parties an opportunity of being heard, pass an appropriate order. The functions of a Child Welfare Committee are provided under section 30 of JJ Act which includes taking cognizance of children produced before CWC, conduct inquiry, direct child welfare officers, DCPU and NGOs for social investigation report submission and declare fit person, ensure care, protection, restoration and appropriate rehabilitation of children in need of care and protection and other functions as prescribed by the Act.

The discussion of the provisions regarding the constitution, appointment and powers of the bodies under the JJ Act is imperative regarding preliminary assessment because these bodies play a crucial role in this procedure. The JJ Act lacks in assuring the time bound appointment of the members of the JJ Board and the CWC. The absence of clear provisions regarding interim measures or time-bound appointments may lead to procedural delays and, in some instances, denial of timely justice to the children involved.

TYPES OF OFFENCES PROVIDED UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015



The JJ Act provides three categories of crime²⁸ –

Petty offences - The JJ Act provides a specific definition of petty offence under section 2(45) which says that "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code, 1860 (45 of 1860) or any other law for the time being in force is imprisonment up to three years. Also, Section 14(2) and 14(4) empowers the Juvenile Justice Board to dispose of cases involving petty offences committed by children through summary proceedings and by following the principle of restorative justice. Generally, petty offences are considered to be minor infractions or misdemeanours that do not involve serious harm or violence. Examples may include simple theft, trespassing, or mischief, criminal intimidation, simple hurt etc.

²⁶ Subs. by Act 23 of 2021, s. 9, for sub-section (8) (w.e.f. 1-9-2022).

²⁷ Subs. by Act 23 of 2021, s. 9, for sub-section (10) (w.e.f. 1-9-2022).

²⁸ Section (2) sub-section 45 defines "Petty Offences", under JJ Act, 2015

Section (2) sub-section 54 defines "Serious Offences", under JJ Act, 2015

Section (2) subsection 33 defines "Heinous Offences", under JJ Act, 2015

Serious offences – The JJ Act provided the definition of serious offences under section 2(54) that the offences for which the punishment under the Indian Penal Code, 1860 (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years. The JJ Act amended this definition to include crimes with a minimum sentence of more than three years, but a maximum sentence exceeding seven years via Juvenile Justice (Care and Protection of Children) Amendment Act, 2021. The amended definition is as follows – The offences for which the punishment under the Indian Penal Code, 1860 or any other law for the time being in force, is, -

- (a) minimum imprisonment for a term more than three years and not exceeding seven years; or
- (b) maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.²⁹

The amendment aims to provide clarity and remove any vagueness in determining offences qualify as "serious offences" under the JJ Act. It ensures that offences with severe punishments, either in terms of minimum or maximum sentences, are covered under the definition, thereby facilitating appropriate legal procedures and interventions for children in conflict with the law. The amendment allows the Juvenile Justice Board to investigate juveniles charged with serious offences. It also enables the trial of 16–18-year-olds as adults if they commit "heinous crimes". There are at least 46 offences for which juveniles between 16 and 18 years could potentially be tried as adults. The serious offences under the Indian Penal Code, 1860 and other laws are listed below:

Offences under Indian Penal Code, 1860³⁰ (replaced with Bharatiya Nyay Sanhita, 2023)

In this study, an attempt has been made to list most of the offences for which children in conflict with law are inquired by Juvenile Justice Board. It is to be noted that the Indian Penal Code, 1860 has been replaced by Bharatiya Nyay Sanhita, 2023, so that the offences allegedly committed by CICL under both the Acts are listed. Meanwhile this list is not exhaustive but covers maximum offences.

Serious offences with minimum imprisonment of more than 3 years and not exceeding 7 years:

Offences under IPC, 1860	Offences under BNS, 2023
Culpable homicide not amounting to murder - Section 304	Culpable homicide not amounting to murder - Section 101
Attempt to murder - Section 307	Abetment of suicide - Section 116

²⁹ Subs. by Act 23 of 2021, s. 2(vii), (w.e.f. 1-9-2022).

³⁰ This Act is repealed with commencement of Bharatiya Nyay Sanhita, 2023 (BNS, 2023) enacted from 1st July, 2024

Voluntarily causing grievous hurt - Section 325	Voluntarily causing grievous hurt - Section 151
Kidnapping for ransom - Section 364A	Kidnapping for ransom - Section 173
Rape (in certain circumstances) - Section 376	Robbery - Section 272
Robbery - Section 392	Dacoity - Section 277
Dacoity - Section 395	Extortion - Section 266
Extortion - Section 384	Rape (in certain circumstances) - Section 63
Criminal breach of trust by public servant or banker - Section 409	Criminal breach of trust by public servant or banker - Section 289
Counterfeiting of currency - Section 489A	Counterfeiting of currency - Section 304
Sedition - Section 124A	Sedition (under the new definition) - Section 150
Rioting armed with deadly weapon - Section 148	Rioting armed with deadly weapon - Section 172
Culpable homicide not amounting to murder - Section 304	Culpable homicide not amounting to murder - Section 101

Offences with maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided:

Offences under IPC, 1860	Offences under BNS, 2023
Waging war against the Government of India (up to life imprisonment, death) - Section 121	Sexual intercourse by person in authority (up to 10 years) - Section 73

Conspiracy to commit offenses punishable by Section 121 - Section 121A (up to life imprisonment)	Culpable homicide not amounting to murder - Section 100 (up to life imprisonment)
Collecting arms with intention of waging war against the Government of India - Section 122 (up to life imprisonment)	Causing death by negligence - Section 101 (up to 10 years)
Sedition - Section 124A (up to life imprisonment)	Attempt to murder - Section 104 (up to 10 years)
Waging war against any Asiatic Power in alliance with the Government of India - Section 125 (up to life imprisonment)	Attempt to commit suicide - Section 106 (up to 1 year)
Threatening or inducing any person to give false evidence - Section 195A (up to 10 years)	Abetment of suicide - Section 107 (up to 10 years)
Culpable homicide not amounting to murder - Section 304 (up to life imprisonment)	Act done with intent to cause miscarriage without woman's consent - Section 111 (up to life imprisonment)
Abetment of suicide of child or insane person - Section 305 (up to life imprisonment, death)	Act done with intent to prevent child being born alive or to cause it to die after birth - Section 114 (up to 10 years)
Attempt to murder - Section 307 (up to 10 years)	Sedition - Section 133 (up to life imprisonment)
Causing miscarriage without woman's consent - Section 313 (up to life imprisonment)	Waging war against any Asiatic power in alliance with India - Section 134 (up to life imprisonment)
Death caused by act done with intent to cause miscarriage - Section 314 (up to 10 years)	Collecting arms, etc., with intention of waging war against India - Section 136 (up to life imprisonment)

Voluntarily causing grievous hurt by dangerous weapons or means - Section 326 (up to life imprisonment)	Concealing with intent to facilitate design to wage war - Section 137 (up to 10 years)
Kidnapping or maiming a minor for purposes of begging - Section 363A (up to 10 years)	Voluntarily causing grievous hurt by use of acid, etc. - Section 152 (up to 10 years)
Kidnapping or abducting in order to murder - Section 364 (up to life imprisonment)	Kidnapping - Section 167 (up to 10 years)
Habitual dealing in slaves - Section 371 (up to life imprisonment)	Kidnapping or maiming a minor for purposes of begging - Section 168 (up to 10 years)
Selling minor for purposes of prostitution, etc. - Section 372 (up to 10 years)	Kidnapping for ransom, etc. - Section 172 (up to life imprisonment)
Buying minor for purposes of prostitution, etc. - Section 373 (up to 10 years)	Trafficking of person - Section 175 (up to 10 years or life imprisonment depending on circumstances)
Unnatural offenses - Section 377 (up to life imprisonment)	Punishment for robbery - Section 196 (up to 10 years)
Extortion by threat of accusation of an offense punishable with death or life imprisonment - Section 388 (up to 10 years)	Attempt to commit robbery - Section 197 (up to 7 years)
Putting person in fear of accusation of offense, in order to commit extortion - Section 389 (up to 10 years)	Dishonestly receiving stolen property - Section 214 (up to 10 years)
Voluntarily causing hurt in committing robbery - Section 394 (up to life imprisonment)	Mischief by fire or explosive substance with intent to destroy house, etc. - Section 228 (up to life imprisonment)

Dacoity - Section 395 (up to life imprisonment)	Forgery of valuable security, will, etc. - Section 238 (up to 10 years)
Dacoity with murder - Section 396 (life imprisonment, death)	Extortion - Section 266 (up to 10 years)
Robbery or dacoity with attempt to cause death or grievous hurt - Section 397 (minimum 7 years, up to life imprisonment)	Robbery - Section 272 (up to 10 years)
Attempt to commit robbery or dacoity when armed with deadly weapon - Section 398 (up to 10 years)	Dacoity - Section 277 (up to 10 years)
Making preparation to commit dacoity - Section 399 (up to 10 years)	Dacoity with murder - Section 278 (life imprisonment or death)
Belonging to a gang of dacoits - Section 400 (life imprisonment)	Making preparation to commit dacoity - Section 280 (up to 10 years)
Belonging to a gang of thieves - Section 401 (up to 10 years)	Belonging to gang of dacoits - Section 281 (up to life imprisonment)
Assembling for purpose of committing dacoity - Section 402 (up to 10 years)	Belonging to gang of thieves - Section 282 (up to 10 years)
Criminal breach of trust - Section 406 (up to 3 years, extendable)	Assembling for purpose of committing dacoity - Section 283 (up to 10 years)
Criminal breach of trust by public servant or banker - Section 409 (up to life imprisonment)	Criminal breach of trust by public servant, or by banker, merchant or agent - Section 289 (up to life imprisonment)
Dishonestly receiving property stolen in the commission of a dacoity - Section 412 (up to life imprisonment)	Counterfeiting currency-notes or bank-notes - Section 304 (up to life imprisonment)
Habitually dealing in stolen property - Section 413 (up to life imprisonment)	Using as genuine, forged or counterfeit currency-notes or bank-notes - Section 305 (up to life imprisonment)

Mischief by fire or explosive substance with intent to destroy house, etc. - Section 436 (up to life imprisonment)	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes - Section 307 (up to life imprisonment)
Offences under IPC, 1860	
Punishment for the mischief described in Section 437 when committed by fire or explosive substance - Section 438 (up to life imprisonment)	
House-trespass in order to commit an offense punishable with death - Section 449 (up to life imprisonment)	
House-trespass in order to commit an offense punishable with imprisonment for life - Section 450 (up to 10 years)	
Grievous hurt caused while committing lurking house-trespass or house-breaking - Section 459 (up to life imprisonment)	
All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them - Section 460 (up to life imprisonment)	
Forgery of valuable security, will, etc. - Section 467 (up to life imprisonment)	

Offenses under other laws:

Name of the Act	Offence
Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS, 1985)	Cultivation of cannabis plant - Section 20(b)(ii)(C) (up to 10 years)
Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act, 1989)	Financing illicit traffic and harboring offenders - Section 27A (up to 20 years)
Arms Act, 1959	Causing grievous hurt, rape, or murder of a member of SC/ST Community -

	Several sections (up to life imprisonment)
Explosives Act, 1884	Use of prohibited arms - Section 27(3) (up to 14 years)
Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012)	Sexual harassment of child - Section 11/12 (up to 5 years for first offense, up to 7 years for subsequent)
Prevention of Corruption Act, 1988	Public servant taking gratification - Section 7 (up to 10 years)
Information Technology Act, 2000	Cyber terrorism - Section 66F (up to life imprisonment)
Unlawful Activities (Prevention) Act, 1967	Punishment for terrorist act - Section 16 (up to life imprisonment)
Prevention of Money Laundering Act, 2002	Money laundering - Section 4 (up to 10 years)
Immoral Traffic (Prevention) Act, 1956	Procuring, inducing or taking person for prostitution - Section 5 (up to 14 years)

Heinous Offences – Section 2(33) of JJ Act defines "heinous offences" which includes the offences for which the minimum punishment under the Indian Penal Code, 1860 (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

Under the Indian Penal Code, 1860, and Bharatiya Nyay Sanhita, 2023 the following offences would be classified as heinous offences:

Offences under IPC, 1860	Offences under BNS, 2023
Rape - Section 376 (minimum 7 years)	Rape - Section 63 (minimum 10 years)
Causing death or resulting in persistent vegetative state of victim - Section 376A (minimum 20 years to life imprisonment or death)	Gang rape - Section 64 (minimum 20 years)

Gang rape - Section 376D (minimum 20 years to life imprisonment)	Rape on woman under sixteen years of age - Section 65 (minimum 20 years)
Repeat offenders in certain sexual offenses - Section 376E (life imprisonment or death)	Gang rape on woman under sixteen years of age - Section 66 (imprisonment for life)
Kidnapping for ransom - Section 364A (minimum 7 years)	Rape or gang rape resulting in death or persistent vegetative state - Section 67 (minimum 20 years to life imprisonment or death)
Trafficking of more than one minor - Section 370(4) (minimum 10 years)	Repeat offenders in certain sexual offenses - Section 68 (imprisonment for life or death)
Trafficking of a minor on more than one occasion - Section 370(5) (minimum 14 years)	Sexual assault on children - Section 70 (minimum 20 years)
Trafficking of more than one minor on more than one occasion - Section 370(6) (minimum life imprisonment)	Murder - Section 97 (minimum life imprisonment or death)
Public servant or police officer involved in trafficking of minor - Section 370(7) (minimum life imprisonment)	Dowry death - Section 103 (minimum 7 years)
Rape on woman under twelve years of age - Section 376AB (minimum 20 years to life imprisonment or death)	Terrorist act - Section 113 (minimum 5 years, extendable to life)
Gang rape on woman under sixteen years of age - Section 376DA (life imprisonment)	Waging war against Government of India - Section 136 (life imprisonment or death)
Gang rape on woman under twelve years of age - Section 376DB (life imprisonment or death)	Acid attack - Section 154 (minimum 10 years)

	Kidnapping for ransom - Section 173 (minimum 7 years)
	Trafficking of persons - Section 175 (minimum 7 years)
	Dacoity with murder - Section 278 (life imprisonment or death)

Offences under other laws:

Name of the Act	Offence
Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985	Possession of commercial quantity - Section 21(b) (10-20 years)
Arms Act, 1959	Manufacture, possession, or sale of psychotropic substances in commercial quantity - Section 22(b) (10-20 years)
Protection of Children from Sexual Offences (POCSO) Act, 2012	Import/export of narcotic drugs and psychotropic substances - Section 23 (10-20 years for commercial quantity)
Immoral Traffic (Prevention) Act, 1956	Use of prohibited arms or prohibited ammunition - Section 27(2) (minimum 7 years)
Information Technology Act, 2000	Use of prohibited arms or prohibited ammunition in certain cases - Section 27(3) (minimum 7 years)
The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	Penetrative Sexual Assault - Section 4 (minimum 10 years)
Explosives Act, 1884	Aggravated Penetrative Sexual Assault - Section 6 (minimum 20 years)

TYPES OF HOMES UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The JJ Act, and the Juvenile Justice Model Rules, 2016, outline various types of homes for the care and protection of children in conflict with the law (CICL) and children in need of care and protection (CNCP). Following are the homes under JJ Act -

- 1. Observation Home (Section 47):** A temporary reception centre for juveniles in conflict with the law during the pendency of their inquiry. The primary objective is to provide care and protective custody to these children. When an offence is committed by a child of 16-18 years, he is sent to the observation home of his district and resided there till the inquiry by the Board is complete. Even if the Board passes an order of preliminary assessment and decides to be tried as an adult by the Children's Court, he resides in the observation home.
- 2. Special Home (Section 48):** Special Homes are established by a state Government by itself or through voluntary NGOs for rehabilitation of children in conflict with the law, who have committed an offence and placed there by an order of the Juvenile Justice Board under section 18. The State Government, by rules provides for the management and monitoring of special homes; also, segregation and separation of children found to be in conflict with law on the basis of age, gender, nature of offence committed and child's mental and physical status.
- 3. Place of Safety (Section 49):** State Government shall set-up at least one place of safety in a state to place a person above the age of eighteen years or child in conflict with law of age 16-18 years and is accused of or convicted for committing a heinous offence. A facility for the reception and rehabilitation of children in need of care and protection.
- 4. Children's Home (Section 50):** Established and maintained by State Government in every district or group of districts either by itself or through NGOs where children in need of care and protection are placed for their care, treatment, education, training, development and rehabilitation. The State Government shall designate any Children's Home as a home fit for children with special needs delivering specialised services, depending on requirement. The monitoring and management are done with the help of individual care plan for each child depending upon the nature of services provided to them.

In addition to the homes discussed above, the JJ Act provides Fit Facility under section 51 to take the responsibility of a child temporarily for a specific purpose and Fit Person under section 52 to temporarily receive a child for care, protection and treatment of such child for a specified period.

Regarding Supreme Court judgments, the case of *Sampurna Behura v. Union of India (2018)* is relevant. The Supreme Court emphasized the importance of proper implementation of the JJ Act and the establishment of appropriate homes for the care and protection of children. The court also stressed the need for regular monitoring and inspection of these homes to ensure the well-being of the children housed there.

In another case, *Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India* (2017), the Supreme Court directed the state governments to ensure the effective implementation of the Juvenile Justice Act and the establishment of adequate homes for children in need of care and protection.

It is important to note that the primary objective of these homes, as envisioned by the JJ Act and the Supreme Court as explained in the above case, is to provide a safe and nurturing environment for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.

THE CONCEPT AND MEANING OF PRELIMINARY ASSESSMENT AND ITS NEED UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The concept of preliminary assessment was introduced in the JJ Act as a response to the public outcry and demands for stricter measures against juveniles involved in heinous crimes. The infamous *Nirbhaya case in 2012*³¹, where one of the accused was a juvenile, ignited nationwide protests and calls for reforming the juvenile justice system. Prior to the 2015 Act, the Juvenile Justice (Care and Protection) Act, 2000 was in force, which did not provide a mechanism to differentiate between juveniles based on the severity of the offence committed. The new Act aimed to address this gap by introducing the preliminary assessment process for children in conflict with law (CICL) aged 16 years or above, alleged to have committed a heinous offence. This process upholds the constitutional principles of fair trial, due process, and non-discrimination, as guaranteed by Articles 14, 21, and 15(3) of the Constitution of India. Furthermore, the preliminary assessment considers the child's family and social circumstances, including their educational and economic background. This aligns with the Directive Principles of State Policy outlined in Article 39(e) and (f) of the constitution of India which emphasize the protection of children's health, ensuring their humane treatment, and promoting their overall development.

Notably, the JJ Act places a strong emphasis on the principle of "best interests of the child", which is in consonance with Article 39(f) of the Constitution of India. This principle guides the entire juvenile justice process, ensuring that the child's rehabilitation, reformation, and reintegration into society are prioritized over punitive measures. The preliminary assessment also takes into account the child's right to be heard and participate in the proceedings, aligning with the constitutional principles of natural justice and fair hearing, as enshrined in Article 21 of the Constitution of India.

The preliminary assessment is a crucial step that determines whether a CICL should be tried as an adult or treated as a juvenile. It involves a comprehensive evaluation of the child's mental and physical capacity to commit the offence, their ability to understand the consequences of their actions, and the circumstances surrounding the alleged offence. This process is outlined in Section 15 of the JJ Act, 2015 which is as follows:

Section 15. Preliminary assessment into heinous offences by Board.

³¹ Mukesh & Anr vs State for NCT of Delhi & ors, (2017) 6 SCC 1

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. —For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974)³²:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

For the purpose of this research, we need to understand the meaning and ideology of preliminary assessment under following heads -

1. Heinous offence by a child who has not completed the age of 16 years.
2. The Board shall conduct the preliminary assessment to understand
 - a. Mental capacity of a child of 16-18 years
 - b. Physical capacity of a child of 16-18 years
 - c. Ability of a child to understand the consequences of the offence
 - d. Circumstances in which he allegedly committed the offence

Heinous offence by a child who has not completed the age of 16 years.

The JJ Act talks about three categories of offences as discussed earlier such as Petty offences under section – 2(45)³³; Serious offences – under Section 2(54)³⁴ and Heinous offences – under section 3(33). For the purpose of preliminary assessment; the heinous offences alleged to be committed by children are considered. The definition

³² The Code of Criminal Procedure, 1973 (in short Cr.PC, 1973) has been repealed and a new Act named Bharatiya Nagrik Suraksha Sanhita, 2023 (BNS, 2023) has been enacted in place of Cr.PC, 1973. So, this provision will be referred from Bharatiya Nagrik Suraksha Sanhita, 2023

³³ Section 2(45) of JJ Act, 2015

³⁴ Section 2(54) of JJ Act, 2015

of heinous offence says that the offence for which the minimum punishment under the Indian Penal Code, 1860 (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.³⁵

The JJ Act provides procedure of inquiry for the offences committed by children below the age of 18 years, under Section 14 of the Act.³⁶ When a child in conflict with law is produced before the Board for the first time, the Board passes an order in relation to such child as it deems fit under section 17 and 18 of JJ Act. Section 14 also provides the time limit for the proceedings of a case and principles of natural justice in relation to child in conflict with law. The inquiry procedure as per the types of offences provided under section 14 of the JJ Act is explained here -

Inquiry of petty offences – Section 14(5)(d)³⁷ gives inquiry procedure to be adopted in relation to petty offences. It provides that cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1973);³⁸

Inquiry of serious offences – As per section 14(5)(e) Inquiry of serious offences shall be disposed of by the Board by following the procedure for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1973).

Inquiry of heinous offences – Section 14(5)(f)(i) deals with procedure of inquiry of heinous offences in relation to CICL. If such child is below 16 years, then the case shall be disposed of by the Board otherwise if the age of a child is above 16 years, then the offence shall be dealt as per the procedure given in Section 14(5)(f)(ii) of the JJ Act.

Orders regarding child found to be in conflict with law Section 18 gives detailed procedure to be followed in relation to the offences committed by CICL. As per the provisions of Section 18(1) of the JJ Act, if the Board is satisfied on inquiry that a child has committed any petty or serious offence, then based on the nature of offence and considering specific needs for supervision or intervention, circumstances brought out in social investigation report and past conduct of the child; the Board may -

- a. Allow the child to go home after advice or admonition;
- b. Direct the child to participate in group counselling or similar activities;
- c. Order the child to perform Community service under supervision of an organization or institution, or a specific person/group of persons specified by the Board.
- d. Order the parents/ guardian of the child to pay fine;
- e. Direct the child to be released on probation of good conduct with or without surety.
- f. Direct the child to be released on probation of good conduct; not more than 3 years.

³⁵ Section 2(33) of JJ Act, 2015

³⁶ Section 14 of JJ Act, 2015

³⁷ Section 14(5)(d) of JJ Act, 2015

³⁸ from 1st July 2024 onwards, the cases will be inquired under Bharatiya Nagrik Suraksha Sanhita, 2023 which has been enacted in place of the Code of Criminal Procedure, 2023

g. Direct the child to be sent to special home for a period not exceeding 3 years.

Section 18(2) provides that the board may pass additional orders after passing an order under clause a to g of sub section 1 such as attend school, vocational training centre, therapeutic centre etc. Section 18(3) provides transfer provisions after preliminary assessment is complete.

Importance of Age of a Juvenile under JJ Act, 2015 The age of the child plays a crucial role in determining the provisions applicable under this Act. It defines a "child" as a person who has not completed 18 years of age. The Act recognizes that children below a certain age may not have the maturity to understand the consequences of their actions. The Act provides for differential treatment and rehabilitation measures based on the age of a child. In *Shah Nawaz vs State of UP & Ans AIR 2011 SC 31071* it was held that to determine the age of a child Section 7 and Rule 12(3)(a) of the Juvenile Justice (Care and Protection of Children) Act, 2000 mandates a sequence to be followed – the court said that matriculation or equivalent certificate has been given first preference and in the absence of it, the date of birth certificate from the school, first attended and in its absence, the birth certificate given by a Municipal Corporation or Panchayat and only in the absence of all the above, medical opinion will be sought from a duly constituted Board. *Vishnu v. State of Maharashtra [(2006) 1 SCC 283]* SC opined that "It is urged before us by Mr. Lalit that the determination of the age of the prosecutrix by conducting ossification test is scientifically proved and, therefore, the opinion of the doctor that the girl was of 18-19 years of age should be accepted. We are unable to accept this contention for the reasons that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact. *State of MP v. Dilip and others [2002(2) MPHT 564]* It was held that section 7 of the JJ Act makes it apparent that no court should waste time once the question of juvenility crops up and after making the requisite inquiry. It has been held in this case that if the juvenility is determined in the affirmative, return the charge sheet to the police for being submitted before the Board.

Determination of Age of a child under section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015

This section deals with the presumption and determination of the age of a person who is brought before the Juvenile Justice Board or the Child Welfare Committee under the provisions of this Act.

Subsection (1) of section 94 of JJ Act states that if it is obvious from the appearance of the person that they are a child, the Board or Committee shall record their age as nearly as possible and proceed with the inquiry without waiting for further confirmation of age.

Subsection (2) section 94 of JJ Act deals with situations where the Board or Committee has reasonable doubts about whether the person is a child or not. In such cases, they shall undertake the process of age determination by:

i) Seeking the date of birth certificate from school or matriculation/equivalent certificate, if available.

- ii) If (i) is not available, seeking the birth certificate from a municipal authority or panchayat.
- iii) If both (i) and (ii) are not available, ordering an ossification test or any other latest medical age determination test. The age determination test ordered by the Board or Committee must be completed within 15 days of the order.

Subsection (3) section 94 of JJ Act states that the age recorded by the Board or Committee shall be deemed to be the true age of that person for the purposes of this Act.

Meanwhile, the provision regarding age under section 94 of the JJ Act decides whether a child will undergo the procedure of preliminary assessment or not. If on the date of incident, the age of a child who alleged to have committed a heinous offence, is above 16 years and below 18 years then the procedure of preliminary assessment will be followed by the Board otherwise he will be tried by the Board without preliminary assessment.

ROLE AND RESPONSIBILITIES OF JUVENILE JUSTICE BOARD FOR PRELIMINARY ASSESSMENT

The Juvenile Justice (Care and Protection of Children) Act, 2015 introduced a significant change in the criminal justice system by allowing juveniles aged 16-18 years to be tried as adults in cases involving heinous offences. This legal fiction, as per Section 15 of the Act, permits the presumption of a juvenile as an adult based on an assessment of their mental and physical capacity to commit the offense and understand its consequences. The responsibility of conducting this crucial preliminary assessment lies with the Juvenile Justice Board, a body comprising of a Magistrate with at least three years of experience and two social workers appointed from different fields and one member must be a woman. When a child in conflict with law, aged above 16 years, is accused of a heinous offense, the Juvenile Justice Board is mandated to conduct a preliminary assessment under Section 15 of the Act. This assessment is pivotal as it determines whether the child will be tried as an adult by a Children's Court or by the Juvenile Justice Board itself. The assessment must evaluate the child's mental and physical capacity to commit the heinous offense, their ability to comprehend the consequences, and the circumstances of the alleged offense. To aid this process, the Juvenile Justice Board may seek assistance from experienced psychologists, psycho-social workers, or other experts working with children.

The procedure for this assessment is outlined in Rule 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. It stipulates that the Juvenile Justice Board must first verify if the child is 16 years or older. Throughout the assessment, the child is presumed innocent, aligning with the general principles of the Act, which emphasize the presumption of innocence and adherence to basic procedural safeguards. Importantly, if the Juvenile Justice Board concludes that the child needs to be tried as an adult, it must provide clear reasons for this decision. This requirement underscores that the assessment is not a mere formality but a critical judicial examination that demands application of mind. The Juvenile Justice Board's reasoning must demonstrate satisfaction regarding the child's capacity, understanding, and the circumstances of the offence.

The Supreme Court of India, in *Shilpa Mittal v. State of NCT of Delhi and Another (2020)*, highlighted that even if a child is to be tried as an adult, the Children's Court must ensure a child-friendly atmosphere, consider the child's special needs, and include an individual care plan for rehabilitation in its final order. In essence, the Juvenile Justice Board's role in the preliminary assessment is paramount. It must scrupulously follow the legal provisions, conduct an independent evaluation, and provide reasoned decisions. This process is not just a procedural step but a safeguard to ensure that the robust protections of juvenile justice are not withdrawn without due consideration of the child's circumstances and capacities.

In *Arif vs State of Haryana, 2024* honourable Punjab and Haryana High court has considered factum of incarceration of a minor in adult prison as one of the grounds for not treating a minor as an adult under section 15 of JJ Act.

In *Child in conflict with law through his mother vs State of Karnataka sp. Leave petition no. 3033 SC* it was held that the time limit of three months prescribed under Section 14(3) of the Juvenile Justice (Care and Protection) Act, 2015 for ascertaining the mental and physical capacity of a child under sixteen years of age to commit a serious offense Not mandatory but a guide. The court reasoned that where a statute does not specify the consequences of default for a prescribed period, it cannot be held to be mandatory. Section 14(3) of the JJ Act states that "The preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the Board within a period of three months from the date of the first presentation of the child before the Board."

Section 15(1) of the Act provides that the Juvenile Justice Board shall conduct the process of preliminary assessment to understand –

- a. Mental Capacity of a child in conflict with law of age 16-18 years,
- b. Physical Capacity of a child in conflict with law of age 16-18 years,
- c. Ability of a child to understand the consequences of the offence.
- d. Circumstances in which he allegedly committed the offence.

Mental Capacity of a Child in Conflict with Law

In *Murasoli v. State of Tamil Nadu, AIR 1988 SC 382* honourable Supreme Court held that a child's mental capacity should be assessed based on their understanding of the consequences of their actions. The court stated that a child's chronological age alone cannot determine their mental capacity, and other factors such as their level of maturity and intelligence should be considered. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) SC 753* Supreme Court emphasized the importance of considering the mental capacity of a child aged between 16-18 years when determining their culpability. The court held that if the child is capable of understanding the consequences of their actions, they can be tried as an adult. In *Pratap Singh v. State of Jharkhand (2005) 3 SCC 551* the Supreme Court held that the mental capacity of a child aged between 16-18 years should be assessed by a qualified medical practitioner or a psychologist. The court stated that a child's mental capacity cannot be assumed based solely on their age.

The Supreme Court reiterated the need for a comprehensive assessment of a child's mental capacity in *Hari Ram v. State of Rajasthan* (2009) 13 SCC 211, considering factors such as their level of education, family background, and social environment. The court emphasized that a child's mental capacity should be evaluated on a case-by-case basis. Additionally, in *Jarnail Singh v. State of Haryana* (2013) 7 SCC 263 In this case, the Supreme Court highlighted the importance of considering the mental capacity of a child aged between 16-18 years when determining the appropriate course of action under the Juvenile Justice Act. The court stressed the need for a thorough assessment of the child's mental capacity by qualified professionals.

Physical Capacity of a Child in Conflict with Law

When determining the physical capacity of a child aged 16-18 years in relation to committing an offence, the courts and juvenile justice authorities apply certain standard criteria. The assessment of physical capacity is crucial in ascertaining whether the child in conflict with the law possessed the requisite physical ability to commit the alleged offence.

The primary consideration is the child's physical development and maturity levels, as they may vary significantly during this age range. As stated in *Jarnail Singh v. State of Haryana* [(2013) 7 SCC 263], "The physical capacity of the child has to be judged on the basis of his physical growth, strength, and coordination."

In addition to that, medical examinations and evaluations by qualified professionals, such as paediatricians or child psychologists, are often sought to assess the child's physical growth, strength, and coordination. The Supreme Court, in *Pratap Singh v. State of Jharkhand* [(2005) 3 SCC 551], emphasized that "The physical capacity of the child must be assessed by a qualified medical practitioner, and not on the basis of mere assumption of any particular age."

Additionally, factors like the nature of the offense, the use of any weapons or tools, and the child's physical limitations or disabilities, if any, should be taken into account. The circumstances surrounding the commission of the offense, including the level of physical exertion required, should also be examined, as highlighted in *Hari Ram v. State of Rajasthan* [(2009) 13 SCC 211]. Furthermore, the child's overall health conditions, including any pre-existing medical conditions or developmental disorders that may impact their physical abilities, are considered, as per the guidelines in *Murasoli v. State of Tamil Nadu* [AIR 1988 SC 382]. Testimonies from eyewitnesses, family members, or others familiar with the child's physical capabilities may also be evaluated. The objective is to determine whether the child possessed the necessary physical capacity, strength, and dexterity to commit the alleged offense, considering their age, physical development, and the specific circumstances of the case. This assessment, along with other factors, helps the authorities to determine the appropriate course of action and interventions under the juvenile justice system.

Ability of a child to understand the consequences of the offence

In determining whether a child has the ability to understand the consequences of an offense during the preliminary assessment under the Juvenile Justice Act, 2015, the courts and authorities rely on various factors

and established legal precedents. The evaluation of a child's cognitive capacity and comprehension is crucial in ascertaining their culpability and the appropriate course of action. The Supreme Court, in *Murasoli v. State of Tamil Nadu [AIR 1988 SC 382]*, emphasized that "the academic attainment of the child and his capacity to understand the consequences of his act are relevant factors which have to be considered in determining the ability of the child to commit the alleged offence."

In the Supreme Court case of *Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551]* the court emphasized the importance of a comprehensive psychological evaluation to determine a child's mental capacity and ability to understand the consequences of their actions. The court recognized that chronological age alone is not a reliable indicator of a child's cognitive development and comprehension levels. The assessment of mental age, which is a measure of a child's cognitive abilities and functioning, compared to their chronological age, is crucial. A child may have a higher or lower mental age than their actual age, which can significantly impact their decision-making abilities and understanding of consequences.

Additionally, the court stressed the need for an IQ (Intelligence Quotient)³⁹ assessment, which is a standardized measure of a child's intellectual abilities and potential. An IQ test can provide valuable insights into a child's cognitive strengths and weaknesses, as well as their overall intellectual functioning. The court also highlighted the importance of evaluating the child's overall cognitive development, which encompasses various aspects such as attention, memory, language skills, problem-solving abilities, and executive functioning. These cognitive domains play a vital role in a child's ability to understand the nature and consequences of their actions. By involving qualified psychologists in the assessment process, the court aimed to ensure a comprehensive and objective evaluation of the child's mental capacities. These professionals are trained to administer standardized psychological tests, interpret the results, and provide an informed opinion on the child's cognitive abilities and their impact on decision-making and comprehension. However, it is important to note that the assessment of mental age, IQ, and cognitive development should not be viewed in isolation. The court emphasized that these factors should be considered in conjunction with other relevant circumstances, such as the child's educational level, family background, and social environment, to arrive at a holistic understanding of the child's ability to comprehend the consequences of their actions.

The Bombay High Court, in *Raju Dharamdasji Badhwar v. State of Maharashtra [2009 Cri LJ 2986]*, stated that "the ability of the child to understand the consequences of the act committed by him is a relevant factor to be considered while deciding whether the child should be tried as an adult or not."

Furthermore, the child's educational level, family background, and social environment are taken into account, as highlighted by the Supreme Court in *Hari Ram v. State of Rajasthan [(2009) 13 SCC 211]*, which stated, "The

³⁹ Intelligence quotient (IQ) refers to mental age (MA) expressed as a ratio of chronological age (CA) multiplied by 100. For IQ to remain stable, MA must increase with CA over time. This is true until around 18 years, when intellectual abilities are usually fully developed.

mental capacity of the child has to be judged on the basis of his educational level, family background, and other relevant circumstances."

The Delhi High Court, in *Rohit Anand v. State [2012 IV AD (Delhi) 404]*, emphasized the importance of considering the child's level of maturity and understanding of the gravity of the offence, stating, "The ability of the child to understand the consequences of his act and the gravity of the offence committed by him are relevant factors to be considered." The assessment of a child's ability to comprehend the consequences of their actions is a comprehensive process that involves evaluating various psychological, cognitive, and environmental factors. The courts and authorities rely on expert assessments, legal precedents, and a holistic approach to ensure a fair and appropriate determination under the Juvenile Justice Act, 2015.

The Delhi High Court, in the case of *Rohit Anand v. State [2012 IV AD (Delhi) 404]*, further reinforced this principle by stating, "The ability of the child to understand the consequences of his act and the gravity of the offense committed by him are relevant factors to be considered, and the same should be assessed by qualified professionals."

Circumstances in which he allegedly committed the offence

Many times, the uncontrollable circumstances often play a significant role when a child commits an offence. These circumstances can include factors such as poverty, neglect, abuse, exposure to violence, lack of proper guidance, peer pressure, mental health issues, or substance abuse problems. In some cases, children may be coerced or manipulated by adults into criminal activities. Developmental factors, including immature decision-making skills and impulse control, can also contribute to a child's involvement in criminal behaviour. Additionally, societal issues like discrimination, lack of educational opportunities, or community violence may create an environment where children are more likely to engage in delinquent acts. Trauma, whether from personal experiences or witnessed events, can significantly impact a child's behaviour and judgment. In cases of child marriage or forced labour, children may commit offenses as a desperate attempt to escape their situation. It's crucial for the justice system to consider these complex and often interrelated factors when dealing with juvenile offenders, as they highlight the need for rehabilitation and support rather than purely punitive measures.

In Smt. Durga vs State of Rajasthan, April 15, 2019 the Rajasthan High Court a juvenile of age 17 named Smt. Durga, killed her husband Bherulal with an axe blow. Durga had been married at 14 and allegedly faced ongoing abuse, including pressure to bear a child despite her young age. The court found significant flaws in how her case was handled: she was improperly tried as an adult, no female officers were involved in her case despite legal requirements, and she was illegally sent to an adult prison. The court emphasized that the circumstances of Durga's situation - her young age, the abusive marriage, and the immediate context of the killing - were not adequately considered.

The judgment highlighted the importance of following proper procedures for juvenile offenders and considering their unique circumstances. Ultimately, the court acquitted Durga of murder charges and ordered the state to pay

her compensation for violating her rights, setting a precedent for how similar cases should be handled in the future.

There are various cases on this point to showcase the role of difficult circumstances resulting commission of an offence by children. In *Roper v. Simmons (2005)* US Supreme Court While not an Indian case, this landmark decision abolished the death penalty for offenders under 18, recognizing that juveniles have diminished culpability due to lack of maturity and an underdeveloped sense of responsibility.

In *State of Maharashtra v. Mohd. Salim Mohd. Kudus Ansari (2006)* Bombay High Court a minor was wrongly tried as an adult. The court emphasized the need to consider age and circumstances in juvenile cases. Perhaps, people with less understanding about juvenile laws, at least understand and know that many offenders use juvenile justice law as an umbrella to shed their accusation and play with the system called justice. The authorities are required to work very carefully so that the innocents should not get punished.

CRITICAL ANALYSES OF THE PROCEDURE ADOPTED FOR PRELIMINARY ASSESSMENT UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

If we critically analyse the procedure adopted for preliminary assessment under JJ Act, it is almost salient on various key points. Section 15 of the JJ Act says that the performing preliminary assessment is the task of the Juvenile Justice Board and the Board “may” take assistance of experienced psychologists, psycho-social workers and other experts; but there is a big gap on how the process will commence. Certainly, there so many unresolved questions and uncertainties; due to which different approaches are being adopted by various Juvenile Justice Board's. This study tries to highlight some of the complexities and uncertainties of the process of preliminary assessment which I find unjust for children in conflict with law.

- The act is silent on the point of gravity of an offence that means the only criteria of conducting a preliminary assessment is the nature of an offence that is “heinous” under the definition of heinous offence of JJ Act. However, the courts are suggesting that the preliminary assessment should only be done when the harm is inhumane and cruel. Due to this point, many Boards are following the procedure of PA for all the cases of heinous offence committed by CICL, whereas some Boards are following the procedure as suggested by various courts.
- The Act is silent on the point of expert analyses. It is to be noted that the experts under Section 15 are Psychologists, Psychosocial Worker and Other Experts. The first issue to be considered is there is no degree or diploma for becoming a psychosocial worker; also, the term “other experts”, on a serious note, opens up the world for so called experts and dims the hopes of children in conflict with law.
- The Act says nothing about “psychological assessments/test”, whether they should be applied on children or not; If “yes” then there is no standardized test or psychological assessment for preliminary assessment all over India.

- The proviso of Section 15 of JJ Act states that the assessment shall be completed within the specified period under Section 14 of JJ Act but it doesn't specify that how many sittings should be allowed or provided to conduct preliminary assessment; or would it be asked to the expert or should the Board decide by evaluating the nature of the case?
- The Act is silent on the point of the place for preliminary assessment as in most of the cases the CICL is released on bail before preliminary assessment. It is up to the Board to decide the place for preliminary assessment which may be either the Juvenile Justice Board or any other place. It is worth mentioning that the preliminary assessment is an Inquiry; logically and procedurally, to be done at a place where the child in conflict with law feels safe and cooperate with the expert.
- The Act is silent on the point that who is authorised by law to prepare the report of preliminary assessment; whether the Board or the Expert who conducted the PA; however, it is taken for granted by many Boards and lack of clarity results delays in justice.

In *State of Maharashtra v. Mohsin Khan and Others, 2022* the Bombay High Court pointed out significant procedural lapses in the preliminary assessment process conducted by the Juvenile Justice Board (JJB). The JJB had decided to try a juvenile as an adult without proper psychological evaluation and failed to consider the socio-economic background and the mental state of the juvenile at the time of the offense. The court noted that the JJB did not adequately involve psychologists or social workers as mandated by Section 15 of the Juvenile Justice Act, 2015, resulting in an assessment that was not comprehensive or fair. The court's decision underscored the need for meticulous and informed assessments to ensure justice and proper rehabilitation. These are some key issues regarding the procedure of preliminary assessment under the JJ Act which need elaboration and clarity because the purpose of law is not fulfilled and lack of awareness regarding these key points is the reason for increased sufferings of children and their families in such cases.

The Supreme Court, in the case of *Shilpa Mittal v. State of NCT of Delhi 2020*, criticized the preliminary assessment process under the Juvenile Justice Act, 2015. The Court found that the JJB had conducted an inadequate assessment without properly considering the juvenile's mental and physical capacity to commit the offense or their ability to understand the consequences. The JJB's decision lacked detailed reasoning and failed to involve experienced psychologists or social workers as required. This case highlighted the need for detailed guidelines and strict adherence to procedural requirements to ensure fair and accurate assessments of juveniles.

In *Smt. Durga vs State of Rajasthan, April 15, 2019* the Delhi High Court ordered the re-examination of a preliminary assessment where the JJB used inappropriate psychological tests meant for younger children, aged 5-15, to evaluate a 17-year-old juvenile. The court noted that the tests did not accurately reflect the juvenile's mental state or capacity to understand the offense. Additionally, the court found that the JJB did not maintain the juvenile's right to privacy and confidentiality during the assessment process. This case underscored the importance of using age-appropriate evaluation tools and maintaining confidentiality to protect the rights of juveniles.

In *Radhika (Juvenile) vs State of U.P. (2019)*, the Juvenile Justice Board (JJB) in Mathura conducted a preliminary assessment under Section 15 of the Juvenile Justice Act, 2015, and decided to try the juvenile as an adult based on her age and perceived understanding of the consequences of her actions. The Board's decision was criticized for not adequately considering the juvenile's psychological evaluation and the circumstances leading to the offense. The appeal highlighted the necessity for a thorough and detailed assessment, involving experts, to ensure a fair evaluation. In *Master Bholu vs State of Haryana (2020)*, the determination of the juvenile's age and the preliminary assessment process were delayed significantly, leading to procedural lapses. The court noted that the JJB's assessment was inadequate and emphasized the importance of timely and accurate evaluations to ensure the juvenile's rights are protected and a fair decision is made. In *Budhiya vs State of Madhya Pradesh (2021)*, the Madhya Pradesh High Court denied bail to a 15-year-old accused of rape, emphasizing that the crime's nature required explicit knowledge and could not be attributed to ignorance. The court pointed out that the preliminary assessment failed to consider the juvenile's mental and emotional state adequately. This case underscored the need for the JJB to follow a comprehensive assessment process involving professional psychologists to determine the juvenile's capacity accurately.

IMPORTANCE OF MENTAL HEALTH EXPERTS FOR PRELIMINARY ASSESSMENT

The involvement of psychologists and psychosocial experts in the preliminary assessment process ensures a holistic evaluation of the child's cognitive abilities, emotional maturity, and psychosocial factors that may have influenced their behaviour. These professionals are trained to administer standardized tests, conduct interviews, and provide expert opinions that aid the Board in making informed decisions about the child's capacity and appropriate interventions. By collaborating with qualified professionals, the juvenile justice system aims to uphold the principles of fairness, objectivity, and the best interests of a child in conflict with law, ensuring that each case is assessed comprehensively and without bias. The integration of experts from various disciplines contributes to a more nuanced understanding of the child's circumstances and ultimately supports the effective rehabilitation and reintegration of children in conflict with the law. This study tries to pen down some key aspects showcasing the importance of mental health experts -

Positive Aspects

Expertise and Comprehensive Evaluation - Mental health experts, particularly psychologists, play a crucial role in the preliminary assessment process under the Juvenile Justice Act, 2015. Their expertise in understanding the cognitive, emotional, and psychological state of juveniles is indispensable. Psychologists can provide detailed insights into a juvenile's mental and physical capacity to commit an offense, their ability to understand the consequences, and the circumstances under which the offense was allegedly committed. This comprehensive evaluation helps ensure that the juvenile's actions are assessed accurately and fairly, leading to more informed

decisions about their rehabilitation or trial as adults. For instance, in the case of *Shilpa Mittal v. State of NCT of Delhi 2020*, the Supreme Court criticized the preliminary assessment process for not involving detailed psychological evaluations, highlighting the need for mental health experts.

Ensuring Fairness and Justice - Involving mental health experts ensures that the assessment is not just a procedural formality but a thorough investigation into the juvenile's mental state and circumstances. This approach aligns with the principles of restorative justice, focusing on rehabilitation rather than mere punishment. It acknowledges the juvenile's potential for change and the need for tailored interventions.

Identifying Underlying Issues - Mental health experts can identify underlying issues such as trauma, abuse, or mental health disorders that may have contributed to the juvenile's behavior. Addressing these root causes through appropriate interventions can prevent recidivism and aid in the juvenile's rehabilitation. The case of *Radhika (Juvenile) vs State of U.P. 2019* illustrated how inadequate consideration of a juvenile's background and mental state can lead to unfair decisions. The Bombay High Court, in the case of *Raju Dharamdasji Badhwar v. State of Maharashtra [2009 Cri LJ 2986]*, highlighted the importance of a comprehensive psychosocial assessment, noting that "the mental and psychological condition of the child, his family background, and other relevant circumstances should be taken into account while conducting the preliminary assessment."

Negative Aspects

Lack of Qualified Experts - One of the significant challenges is the lack of availability of qualified mental health experts, especially in rural and underdeveloped regions. In 2020, The Parliamentary Standing Committee on the Juvenile Justice Act noted the severe shortage of competent psychologists and other experts, which adversely affects the quality of preliminary assessments and timely disposal of cases. This scarcity can lead to incomplete or biased assessments, undermining the juvenile's right to a fair trial.

Potential for Misdiagnosis - Relying heavily on mental health experts also carries the risk of misdiagnosis or overemphasis on psychological evaluations without considering the broader social context. There is a concern that mental health assessments might sometimes pathologize normal adolescent behaviour or fail to account for the socio-economic and environmental factors influencing the juvenile's actions. For instance, in the case of *Budhiya vs State of Madhya Pradesh, 2021* the court highlighted the limitations of psychological evaluations in understanding the full context of the juvenile's behaviour.

Procedural Lapses - There have been instances where procedural lapses in involving mental health experts have led to flawed assessments. In *Master Bholu vs State of Haryana 2020*, the delay in determining the juvenile's age and the lack of timely psychological assessments were significant issues that compromised the fairness of the proceedings. Such lapses can lead to juveniles being unfairly tried as adults, contrary to the protective intent of the Juvenile Justice Act.

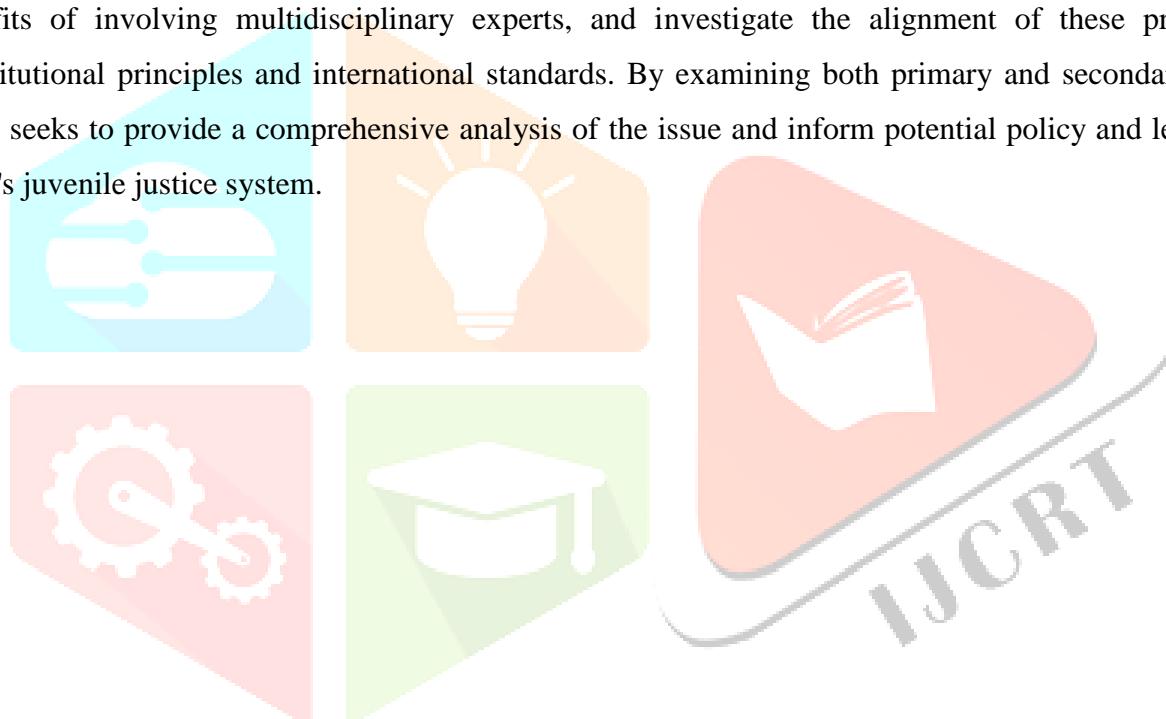
On the basis of above discussion, it can be concluded that the importance of mental health experts for preliminary assessment cannot be denied; however, if the Act is clear about the procedural part, then it will help the experts to perform preliminary assessment flawlessly and benefit the children in conflict with law to provide them justice and live their lives with positive attitude.



BRIEF OVERVIEW OF METHODOLOGY

This study employs a mixed-method approach, combining qualitative and quantitative empirical research designs, to examine the need for uniformity in preliminary assessment procedures conducted by Juvenile Justice Boards across India. The research is grounded in non-doctrinal legal research methodologies and qualitative content analysis of secondary sources. The primary data collection involves a questionnaire administered to a diverse group of professionals and students in the legal and psychological fields, including academicians, lawyers, legal cum probation officers, psychologists, and law students. Secondary data sources comprise relevant legal provisions, judicial pronouncements, and authoritative reports from national and international organizations. The study also analyses academic literature and international instruments related to juvenile justice and child rights.

The research aims to critically assess the current preliminary assessment procedures, explore the potential benefits of involving multidisciplinary experts, and investigate the alignment of these procedures with constitutional principles and international standards. By examining both primary and secondary sources, the study seeks to provide a comprehensive analysis of the issue and inform potential policy and legal reforms in India's juvenile justice system.



CHAPTER – 2

Agencies and Officials under Juvenile Justice (Care and Protection of Children) Act, 2015

The Hon'ble Supreme Court in *Barun Chandra Thakur v/s Master Bholu & anr. Criminal Appeal No.950/2022* vide its judgement dated 13.07.2022 cast an obligation for drafting of the guidelines or directions to facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015. The relevant para of the judgement is as follows: *"Before concluding, we may indicate that the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines this regard are put in place. Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission in for Protection of Child Rights to consider issuing guidelines or directions this the regard which may assist and facilitate Board in making the preliminary assessment under section 15 of the Act, 2015."*

The above paragraph is to bring your attention to the authorities which are not specifically mentioned in the JJ Act, but still play an important role in determining the path of Juvenile Justice System. Section 109 of JJ Act, authorizes the National/State Commissions for Protection of Child Rights to monitor the implementation of the JJ Act.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) was constituted in 2007 through an act of the Indian parliament. Its core mission is to safeguard children's rights as outlined in Indian Constitution and the UN Convention on the Rights of the Child. The commission aims to ensure all laws, policies, programs and administrative mechanisms uphold a child rights-based approach for those aged 0-18 years. It envisions cascading national child welfare initiatives down to the state, district and community levels, factoring in regional nuances. The NCPCR underscores the state's vital role in child well-being, robust institutional processes, respect for local governance, community engagement and heightened societal commitment to protecting children's interests. Its ground-level experiences are expected to inform higher-level policymaking for a comprehensive children's rights framework.

DISTRICT CHILD PROTECTION UNIT (DCPU)

The District Child Protection Unit (DCPU) plays a vital role in implementing the provisions of the Juvenile Justice Act, 2015 and the associated Model Rules at the district level. One of its key responsibilities is facilitating

the preliminary assessment process for children alleged to be in conflict with the law. The JJ Act and Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred as JJ Model Rules) mandate a comprehensive preliminary assessment to understand the child's circumstances, identify their needs, and devise an appropriate individual care plan. The DCPU coordinates with various stakeholders, including Child Welfare Police Officers, social workers, mental health experts, and medical professionals, to conduct this multidisciplinary assessment.

The preliminary assessment aims to gather information on the child's socio-economic background, family situation, educational status, and any previous involvement with the juvenile justice system. It also seeks to evaluate the child's mental and physical condition, assess their ability to understand the consequences of their actions, and identify any special needs or vulnerabilities. The findings of this assessment are crucial in determining the most suitable approach for the child's rehabilitation, either through community-based interventions or institutional care. DCPU ensures that the assessment process adheres to the principles of best interest, dignity, and well-being of the child, as outlined in the legislative framework. A key function, as per Section 8(3)(f) of the JJ Act, is facilitating the preliminary assessment for children alleged to be in conflict with the law, as mandated by the law and upheld by judicial pronouncements. The Supreme Court, in *Sampurna Behura v. Union of India (2018)*, while discussing Section 15 of the JJ Act, emphasized the significance of a comprehensive preliminary assessment to understand the child's circumstances, needs, and devise an appropriate individual care plan. The Delhi High Court, in *Court on its Own Motion v. Govt. of NCT of Delhi (2021)*, while dealing with Rule 10 of the Model Rules, reiterated the importance of a multi-disciplinary approach in this assessment process. As per Rule 10(1)⁴⁰, the DCPU coordinates with Child Welfare Police Officers (Section 107)⁴¹, psychologists, social workers and other experts (Rule 10(2)) to conduct this preliminary assessment.

LEGAL CUM PROBATION OFFICER

Legal cum probation officer (LPO) is like a fundamental pillar under Juvenile Justice system. The role of a legal-cum-probation officer under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is multifaceted and crucial in ensuring the proper implementation of the Act. The JJ Act and its accompanying rules, along with various judgments of the High Courts and the Supreme Court, have outlined the roles and responsibilities of this officer.

The duties of a probation officer are prescribed under section 64 of JJ Act. The primary role of an LPO is to coordinate with all the authorities working under the roof of JJ system like communicating with the Board and other judicial plus technical staff members, to look after the management of Homes formulated under JJ Act, to communicate with district Magistrate and Chief Judicial Magistrate regarding the cases of Juvenile Justice Board to communicate with Board members regarding children and many such responsibilities are there for an LPO:

⁴⁰ Rule (10) sub-section 1, Juvenile Justice (Care and Protection of Children) Model Rules, 2016

⁴¹ Section 107, Juvenile Justice (Care and Protection of Children) Act, 2015

Social Investigation Report (Section 8(3)(e), JJ Act; Rule 10(2), JJ Rules): The legal-cum-probation officer plays a vital role in creating a social investigation report of a child alleged to be in conflict with the law in form 5 prescribed in JJ Act. They are responsible for gathering information regarding the child's circumstances, family background, and the circumstances surrounding the alleged offense. They engage with the child, their family, and other relevant authorities to assess the child's need for care and protection, as well as the possibility of release on bail or probation. The Supreme Court, in the case of *Sampurna Behura v. Union of India (2018)*, emphasized the importance of a comprehensive SIR in ensuring the best interests of the child.

Supervision and Rehabilitation (Sections 3(xiii), 53, JJ Act; Rules 20-25, JJ Rules): The legal-cum-probation officer is responsible for supervising and monitoring the progress of children placed under their supervision, either on probation or after release from a Children's Home. They are required to provide counselling and guidance to the child and their family, facilitate access to educational and vocational opportunities, and ensure the child's overall well-being. The High Court of Delhi, in the case of *Court on its Own Motion v. Govt. of NCT of Delhi (2013)*, highlighted the need for effective supervision and rehabilitation programs.

Representation and Advocacy (Section 13(2), JJ Act; Rule 10(9), 11(2), JJ Rules): The legal-cum-probation officer acts as a representative for the child before the Juvenile Justice Board and other authorities. They advocate for the child's best interests, ensuring that their rights are protected and that appropriate measures are taken for their care, protection, and rehabilitation. The Supreme Court, in the case of *Sheela Barse v. Union of India (1986)*, emphasized the importance of effective representation for children in conflict with the law.

Coordination and Collaboration (Section 63, JJ Act; Rule 88, JJ Rules): The legal-cum-probation officer is responsible for coordinating and collaborating with various stakeholders, including the police, Child Welfare Committees (CWCs), Children's Homes, non-governmental organizations (NGOs), and other relevant authorities. They facilitate the smooth exchange of information and ensure that all parties work together in the best interests of the child. The High Court of Bombay, in the case of *Priya Narayan Bhandari v. State of Maharashtra (2020)*, highlighted the need for effective coordination among stakeholders.

Creates Individual Care Plan (ICP) for CICL (Rule 10A (3) JJ Rules: The legal-cum-probation officer is also responsible to create and maintain individual care plan as per the provisions of rule 10A (3) of JJ Rules and under Form 7 of the Act.

In managing the preliminary assessment under the JJ Act, the legal-cum-probation officer plays a crucial role in engaging all responsible authorities, such as the police, CWCs, and relevant government departments. They facilitate the exchange of information, coordinate meetings, and ensure that the assessment is conducted in a timely and comprehensive manner, taking into account the child's best interests. Courts have also noted that the failure to create or properly implement ICPs can be seen as a violation of the child's rights under the JJ Act.

THE MEMBERS OF JUVENILE JUSTICE BOARD

The Members of Juvenile Justice Board (Juvenile Justice Board) play a crucial role in the preliminary assessment of cases involving children in conflict with the law. Their responsibilities are governed by specific rules and case laws, ensuring a fair and comprehensive evaluation process. The Juvenile Justice Board is a statutory body constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015. It comprises a Metropolitan Magistrate or a Judicial Magistrate of the first class, who serves as the Principal Magistrate, and two social workers, one of whom should be a woman. The primary function of the Juvenile Justice Board is to conduct a preliminary assessment of cases involving children alleged to have committed offences. The board has the following powers and responsibilities:

1. Inquire into the circumstances of the alleged offense and determine whether the child is in conflict with the law.
2. Assess the child's age and determine if they should be tried as a child or an adult, based on the nature of the offense and their mental and physical capacity.
3. Decide on the release or detention of the child during the inquiry process, considering the best interests of the child.
4. Facilitate the child's rehabilitation and social reintegration through appropriate dispositional orders, such as counselling, community service, or placement in a special home.

Procedural Safeguards - The Juvenile Justice Board is required to follow specific procedural safeguards to ensure the rights of the child are protected. These include:

1. Conducting the inquiry in a child-friendly manner, ensuring the child's dignity and well-being.
2. Providing legal assistance and representation to the child.
3. Maintaining confidentiality and protecting the child's identity and privacy.
4. Adhering to the principles of natural justice and fair trial.

Several landmark case laws have shaped the role and responsibilities of the Juvenile Justice Board. Some notable examples include: *Sheela Barse v. Union of India (1986)* case emphasized the need for a separate juvenile justice system and the establishment of Juvenile Justice Boards to deal with cases involving children. In *Exploitation of Children in Orphanages v. Union of India (2017)* The Supreme Court directed the establishment of Juvenile Justice Boards in every district and outlined the procedural safeguards to be followed during inquiries. In *Amit Chaudhary v. State of Rajasthan (2018)* The court clarified the role of the Juvenile Justice Board in determining the age of the child and the applicable legal provisions based on the nature of the offense.

THE CHILDREN'S COURT

The Children's Court, also known as the Child Protection Court (POCSO Court), is a designated special court established under the Protection of Children from Sexual Offenses (POCSO) Act, 2012. It is presided over by a judge who has undergone specialized training in dealing with cases involving children. The court is designed to provide a child-friendly environment and ensure the protection of the child's privacy and dignity.

The Children's Court has exclusive jurisdiction over offences committed against children under the POCSO Act and other related laws. Its powers and responsibilities include: conducting preliminary assessments of cases involving the sexual exploitation and abuse of children, determining the age of the child victim and the appropriate legal provisions applicable to the case, ensuring the child's safety and well-being during the legal proceedings, facilitating the recording of the child's statement and testimony in a child-friendly manner, and imposing appropriate punishments and sentencing upon conviction, while considering the best interests of the child.

The Children's Court is required to follow specific procedural safeguards to protect the rights and dignity of the child victim. These include: maintaining the confidentiality of the child's identity and personal information, conducting in-camera proceedings to protect the child's privacy, providing support services, such as counselling and legal assistance, to the child and their family, ensuring the child's testimony is recorded through child-friendly means, such as video conferencing or using a single-window facility, and adhering to the principles of natural justice and fair trial.

When a heinous offence is alleged to be committed by a child, Juvenile Justice Board looks after the matter where during the inquiry of the case if that child is found to be of the age 16 to 18 years, a procedure of preliminary assessment under section 15 of JJ Act is followed by Juvenile Justice Board; where the Board has the power to transfer the cases to Children's Court on the basis of the parameters tested via preliminary assessment. After PA if the Board is not the opinion that a heinous offence is committed by a child of aged 16-18 years, the case is transferred to When a case is transferred to a Children's Court, the Children's court also confirms that a heinous offence is committed by a child of age 16 to 18 years and after such confirmation, the trial procedure of such child as an adult begins over there. This procedure is started after *Nirbhaya's case in 2012* when a girl is gang rapped in a bus in Delhi where one of the accused was a juvenile. This was the time when whole India started protests and dame in support of the victim named Nirbhaya who died in Singapore due to such heinous act. The sympathy towards child offenders was vanished due to this incident that's why the whole scenario regarding children's law has been changed where a new law named Protection of Children from Sexual offences.

Several landmark case laws have shaped the role and responsibilities of the Children's Court. Some notable examples include: *Sakshi v. Union of India (2004)*, which highlighted the need for child-friendly procedures and specialized courts to deal with cases involving the sexual exploitation of children; *Nipun Saxena v. Union of India (2018)*, where the Supreme Court emphasized the importance of establishing specialized POCSO courts

in each district and providing them with adequate infrastructure and resources; and *State of Madhya Pradesh v. Anoop Singh (2015)*, which clarified the role of the Children's Court in determining the appropriate punishment and sentencing for offences under the POCSO Act, considering the best interests of the child.

SIGNIFICANT AMENDMENTS IN CHILDREN'S LAW

The horrific *Delhi gang rape case in 2012*⁴² served as a catalytic event, prompting the Indian government to repeal and replace the outdated Juvenile Justice (Care and Protection of Children) Act, 2000 with a more comprehensive and updated version, the Juvenile Justice (Care and Protection of Children) Act, 2015. This new legislation introduced several significant changes aimed at improving the juvenile justice system and strengthening the rights of children in conflict with the law.⁴³

One notable change was the shift in terminology from 'juvenile in conflict with law' to 'child in conflict with law' throughout the Act. This modification aimed to remove the negative connotation associated with the word 'juvenile' and promote a more positive and child-centric approach. Furthermore, the Act brought clarity to the powers, functions, and responsibilities of the Juvenile Justice Board and the Child Welfare Committee (CWC). It also established clear timelines for inquiries by the Juvenile Justice Board, enhancing accountability and efficiency within the juvenile justice system.

The Juvenile Justice Act of 2015 underwent a significant amendment in 2021 to address emerging concerns and strengthen the juvenile justice system. The amendment expanded the scope of serious offences, introduced provisions for better rehabilitation and social reintegration of children, and brought in stringent measures to combat trafficking and child labour. Additionally, it streamlined the adoption process, including regulations for inter-country adoptions and adoptions by NRIs, OCIs⁴⁴, and foreign nationals. The amendment also enhanced accountability and monitoring mechanisms by empowering statutory bodies like the NCPCR and SCPCRs with more responsibilities. It also addressed emerging issues such as cybercrime involving children and mandated the maintenance of records for facilitating rehabilitation and reintegration of children in conflict with the law, aligning the legislation with international standards and best practices for child protection.

GENERAL PRINCIPLES OF CARE AND PROTECTION OF CHILDREN

In addition to the agencies and officials discussed above, the Act strengthened the rights framework by incorporating fundamental principles within the statute itself. These principles serve as a guiding light for stakeholders, ensuring that the implementation of the Act adheres to the highest standards of child rights and

⁴² Mukesh & anr vs State for NCT of Delhi & ors, (2017) 6 SCC 1.

⁴³ UNICEF, "Practice of Preliminary Assessment" By Centre for Child Rights National Law University Odisha

⁴⁴ NRI (Non-Resident Indian), OCI (Overseas Citizen of India)

protection. These principles are explained under Section 3 of Juvenile Justice (Care and Protection of Children) Act, 2015 which are as follows:

Section 3 of JJ Act⁴⁵ mandates that The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely: —

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

⁴⁵ Fundamental Principles, Section 3 of Juvenile Justice (Care and Protection of Children) Act, 2015

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

There are many judicial pronouncements which encourage to follow the fundamental rules explained in section 3 of JJ Act. *Sheela Barse v. Union of India (1986)* primarily dealt with the principle of dignity and worth concerning children in custody. The Supreme Court observed that children in custody were subjected to torture, ill-treatment, and violence, which violated their fundamental rights under Article 21 of the Constitution of India. The court issued specific guidelines to ensure the protection of children's rights, including their right to dignity and worth. The court's decision in this case was a significant step towards upholding the principle of dignity and worth for children in conflict with the law. It recognized that children, even those in custody, are entitled to humane treatment and protection from abuse or exploitation. The guidelines issued by the court aimed to ensure that the juvenile justice system respects the inherent dignity and worth of every child, aligning with the principles enshrined in the Juvenile Justice Act.

In *Sampurna Behura v. Union of India (2018)* the Supreme Court addressed the principle of best interest concerning the adoption of children. The court ruled that the child's welfare should be the paramount consideration in adoption cases, even if it conflicts with the personal laws or cultural practices of the adoptive parents. The court's decision upheld the principle of best interest, which is a fundamental tenet of the Juvenile Justice Act. By prioritizing the child's welfare over other considerations, the court ensured that the juvenile justice system remains focused on the child's well-being and overall development. This principle is crucial in ensuring that decisions related to children, including adoption, are made with their best interests in mind.

Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India (2017) is a case in which honourable Supreme Court addressed the principle of family responsibility concerning the care and protection of children in orphanages. The court emphasized the importance of families in providing care and protection to children and directed the government to take necessary steps to reunite children with their families wherever

possible. The court's decision reinforced the principle of family responsibility, which recognizes the vital role of families in a child's life. By directing the government to prioritize family reunification, the court upheld the principle that families have a primary responsibility in ensuring the care and protection of their children. This aligns with the constitutional directive principles of state policy and the principles enshrined in the Juvenile Justice Act.

These cases highlight the judiciary's commitment to upholding the fundamental principles enshrined in the Juvenile Justice Act and ensuring that the juvenile justice system operates within the constitutional framework and international conventions on child rights. Continuous monitoring, capacity-building, and accountability measures are essential to ensure that the principles are translated into practice and that the juvenile justice system truly safeguards the rights and best interests of children in conflict with the law.



CHAPTER – 3

Constitutionality of Preliminary Assessment in the light of National and International Laws

INDIAN CONSTITUTION AND PRELIMINARY ASSESSMENT

The Juvenile Justice (Care and Protection of Children) Act, 2015, as its name suggests, aims to provide a supportive and caring environment for children involved in criminal activities, regardless of whether they are victims or offenders. The Act seeks to offer a corrective approach rather than a punitive one, recognizing that subjecting young individuals to harsh punishments can have detrimental effects on their lives and overall mental development towards society. However, Section 15 of the Act raises legitimate concerns about its intended purpose. This section outlines the procedure for Juvenile Justice Boards to conduct a preliminary assessment of the "maturity" level of children in conflict with the law who are between the ages of 16 and 18. Based on this assessment, the Boards can decide whether to try these children as adults or not. The provision allowing preliminary assessment of children aged 16-18 for trial as adults has been a subject of debate and challenge in courts. In *Sachin Singhi v. Union of India (2018)*, the Calcutta High Court held that the presumption of culpable mental state in conflict with the principles of juvenile justice and child psychology was unconstitutional. However, the Supreme Court in *Shilpa Mittal v. State of NCT of Delhi (2020)* upheld the constitutional validity of Section 15. The court reasoned that a balance must be struck between the human rights of the juvenile and the need to protect society from serious crimes. It held that the provision acts as a safety valve, preventing subjecting the entire juvenile system to undesirable situations. In *Sameer Rana v. State of Maharashtra (2022)*, the Bombay High Court termed the preliminary assessment procedure "unconstitutional" and held that trying children as adults is contrary to the reformative approach mandated by the Act. The Punjab and Haryana High Court, in *Harsh Vardhan v. State of Haryana (2021)*, observed that subjecting children to preliminary assessment and potential trial as adults is "antithetical" to the Juvenile Justice Act's underlying principles. The Punjab and Haryana High Court, in *Harsh Vardhan v. State of Haryana (2021)*, observed that subjecting children to preliminary assessment and potential trial as adults is "antithetical" to the Juvenile Justice Act's underlying principles. The provision for preliminary assessment under Section 15 of the Juvenile Justice Act, 2015, has raised concerns regarding its compatibility with certain fundamental rights enshrined in the Indian Constitution.

1. Right to Equal Protection (Article 14): The preliminary assessment process treats children aged 16-18 differently from those below 16, raising questions of unequal treatment and arbitrary classification. However, the Supreme Court in *Shilpa Mittal v. State of NCT of Delhi (2020)* held that this classification is based on the intelligible differentia of age and has a rational nexus with the object of protecting society from heinous crimes. The court reasoned that the classification based on age is an intelligible differentia and has a rational nexus with the object of protecting society from heinous crimes committed by juveniles. The preliminary assessment process

raises concerns about the violation of the right to equal protection under Article 14 of the Constitution of India. By treating children aged 16-18 differently from those below 16, questions of unequal treatment and arbitrary classification have been raised.

2. Right to Personal Liberty (Article 21): Trying children as adults and subjecting them to the adult criminal justice system could potentially infringe upon their right to personal liberty. However, the Supreme Court reasoned that this provision acts as a safety valve to prevent undesirable situations in the juvenile justice system, striking a balance between the rights of the child and societal interests.

3. Right against Discrimination (Article 15): Critics argue that the preliminary assessment process discriminates against children based on their age and maturity level, which may be influenced by various socio-economic factors. However, the courts have maintained that the assessment is a procedural safeguard to determine the appropriate course of action, not a discriminatory measure. Although, *Hari Ram v. State of Rajasthan (2009)* case predates the JJ Act, 2015, it set a precedent by emphasizing that the date of the offense, not the date of apprehension, determines the applicability of juvenile laws. This principle is relevant because the preliminary assessment applies only to children above 16 years at the time of the offense. In *Dr. Subramanian Swamy & ors. v. Raju, The Member Juvenile Justice Board & ors. (2014)* case, which is related to the Delhi gang rape, led to amendments in juvenile laws. The Supreme Court upheld the constitutional validity of the Juvenile Justice Act, 2000, stating that age-based classification of juveniles is reasonable.

In *Gaurav Kumar v. State of Haryana (2019)* The Punjab and Haryana High Court held that the preliminary assessment under Section 15 must strictly follow the three parameters: mental capacity, physical capacity, and circumstances of the offense. Failure to do so violates the child's rights. In *Master Bholu Though His Father vs Central Bureau of Investigation on 6 June, 2018*, The Punjab and Haryana High Court emphasized that the Juvenile Justice Board must follow the procedure laid down in Section 15 and Rule 10A meticulously. It stated that the child must be provided with copies of witness statements and other documents before the preliminary assessment.

4. Best Interests of the Child (Article 39(f)): The Directive Principles of State Policy mandate that the state shall, in particular, direct its policy towards ensuring that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. The preliminary assessment provision aims to balance this principle with societal interests, but its application must prioritize the child's best interests.

In *Gaurav Jain v. Union of India (1997)* The Supreme Court held that the best interests of the child should be the primary consideration in all actions concerning children. Although this case dealt with rehabilitation of children of sex workers, the principle is broadly applicable. The court stated, "The child should be brought up in an atmosphere of love, affection, and trust." This could be used to argue that subjecting a juvenile to an adult trial, even after a preliminary assessment, may not serve their best interests thus, if the preliminary assessment, if not conducted with utmost care and in the child's best interests, could violate Article 39(f). In a landmark judgment of *Sampurna Behura v. Union of India (2018)*, which dealt with the implementation of the JJ Act,

2015. The Supreme Court reiterated that the best interests of the child should be the guiding principle in all matters concerning children. The court stated, "The best interest of the child has been made paramount and is the guiding factor for any statutory authority." This directly supports the argument that even in preliminary assessments under Section 15, the child's best interests must prevail. Similarly, *Bachpan Bachao Andolan v. Union of India (2011)* While primarily focused on child trafficking, this case is significant because the Supreme Court held that Article 21 (right to life) includes the right to education and protection of children from exploitation. The court observed that India's obligations under the UN Convention on the Rights of the Child (UNCRC) must be read into fundamental rights. The UNCRC emphasizes the best interests of the child, thus strengthening the argument that preliminary assessments must uphold this principle.

Shilpa Mittal v. State of NCT of Delhi (2020) Although this case doesn't directly challenge the preliminary assessment, it provides crucial guidance. The Supreme Court held that even when a child is to be tried as an adult under the JJ Act, the Children's Court must ensure a child-friendly atmosphere, consider the child's special needs, and include a rehabilitation plan. This suggests that the best interest's principle doesn't disappear even after a preliminary assessment determines adult trial. In a leading case of *Vishal Jeet v. Union of India (1990)* The court emphasized the need for rehabilitative measures for children, stating, "These children are the future of the country and it is the obligation of every generation to bring up children in a proper way." This could be used to argue that the preliminary assessment, by potentially denying rehabilitative opportunities, might violate Article 39(f).

5. Reformatory Approach (Article 39(e)): The Indian Constitution emphasizes the need for a reformatory approach towards offenders, including children. Although the preliminary assessment provision allows for trying children as adults, the courts have stressed that this provision should be employed as a last resort, and the reformatory philosophy of juvenile justice must be upheld. Similar view has been expressed in a landmark judgment of *Ramamurthy v. State of Karnataka (1997)* honourable Supreme Court affirmed the primacy of the reformatory theory of punishment. Justice K. Ramaswamy observed, "Reformation and rehabilitation of offenders as useful members of society should be the object of criminal justice." While not directly addressing juvenile justice, this principle strongly suggests that even in cases where juveniles are tried as adults after a preliminary assessment, the focus should remain on reform rather than retribution. *Mukesh & anr v. State (NCT of Delhi) & ors (2017)*, the case better known as the Nirbhaya case, this involved a juvenile offender. While public sentiment favoured harsher punishment, the court upheld the juvenile's rights. Justice Dipak Misra (as he then was) noted, "In our tradition-bound society, the young generally follow the ideals and examples set by the adults. The same is true of crime." This suggests that even in heinous cases, the focus should be on understanding and reforming the juvenile, not just punishment. The case of *Gopinath Ghosh v. State of West Bengal (1984)* though predating the JJ Act, 2015, this case is seminal. The court stated, "Reformatory and rehabilitative aspects of justice have to be given a far more fundamental and broader spectrum in the case of juveniles and youthful offenders." This principle remains relevant, suggesting that preliminary assessments should not sideline the reformatory goal.

The case of *State of Punjab v. Gurmit Singh (1996)* the court observed that while focusing on sentencing, the court's observation is pertinent: "The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering the imposition of appropriate punishment." This balanced view suggests that even when societal concerns lead to a juvenile being tried as an adult, the reformative aspect cannot be ignored.

To address the constitutional concerns surrounding Section 15, honourable Supreme Court has passed a judgment in the year of 2022 named *Barun Chandra Thakur v/s Master Bholu & anr. Criminal Appeal No. 950/2022* has held that the task of preliminary assessment under section 15 of JJ Act is a delicate task with requirement of expertise and it has its own implications as regards trial of the case. The central government, NCPCR, SCPCR have been directed by Hon'ble Court considering formulating guidelines for preliminary assessment to be adopted by the authorities. By following the directions of Hon'ble Supreme Court, NCPCR has developed guidelines on this procedure.

GUIDELINES ISSUED BY NCPCR⁴⁶

1.1 Aim of conducting preliminary assessment- The sole aim of preliminary assessment is to determine whether the child in the age of 16-18 years should be tried as an adult in case of heinous offence. This should not be considered an inquiry into the offence or a prelude to the trial by Children's Court or Juvenile Justice Board. Also, while making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise [Rule 10A (3)].

1.2 Criteria for conducting preliminary assessment- There are two essential conditions that calls for preliminary assessment under section 15 of the JJ Act, 2015. First, the crime that has taken place is in the category of heinous crime as defined in the JJ Act, 2015. Second, the child who has allegedly committed the crime is in the age group of 16-18 years. If the offence is allegedly committed by more than one child, preliminary assessment of each child will be carried out separately.

1.3 Determining the age of child allegedly in conflict of law- One of the most important steps for Juvenile Justice Board to proceed with preliminary assessment regarding children alleged of heinous offences is to determine the age of the child. For this, under section 94(2) Aim of the preliminary assessment is not to seek confession from the child nor to reach at a conclusion of any sort. of the JJ Act, the Board shall undertake the process of age determination, by seeking evidence by obtaining the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

⁴⁶ https://ncpcr.gov.in/uploads/16813797786437d1c2bea2a_guidelines-for-conducting-preliminary-assessment.pdf

ii) the birth certificate given by a corporation or a municipal authority or a panchayat; iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Board. Provided such age determination test conducted on the order of the Board shall be completed within fifteen days from the date of such order.

1.4 Determinants of a preliminary assessment- The preliminary assessment has to be carried out in terms of the following four determinants

a. physical capacity of the child to commit alleged offence- Child's locomotor abilities and capacities, particularly with regard to gross motor functions (such as walking, running, lifting, throwing...such abilities as would be required to engage in most antisocial activities due to which children come into conflict with the law). The expert shall not delve into assessing the physical age of the child as a part of the preliminary assessment. The age determination is concluded before the initiation of preliminary assessment by the Juvenile Justice Board and therefore, the experts shall not repeat the process at this stage. The role of the experts with regard to assessing physical capacity of the child to commit the alleged offence is only limited to assessing the aspects as have been mentioned above in light of the physical capacities that may be required to carry out the offence.

b. mental capacity of the child to commit alleged offence- Child's ability to make social decisions and judgments, for these are the critical executive functioning abilities that operate in the social context that offense takes place in. Thus, reporting on the child's "mental capacity" would draw on all the variables in the mental health and psychosocial assessment including substance abuse problems, life skills deficits, neglect or poor supervision by family or poor role models; experience of abuse and trauma; mental health disorder or other (neuro) developmental disabilities such as attention deficit hyperactivity disorder; intellectual disability.

c. the circumstances in which the child allegedly committed the offence- Psychosocial vulnerabilities, including life events and mental health problems that the child is afflicted with, i.e., factors relating to family, school, peer relationships, trauma and abuse, mental health, and substance use. Circumstances, therefore, do not refer merely to the immediate circumstances of the offense itself, i.e., the last event that occurred and led the child into conflict with the law. In fact, the offense behaviour, including its immediate circumstances, is a (cumulative) consequence of a whole plethora of other circumstances that have been occurring over relatively long time periods of the child's life (perhaps since early childhood). Thus, we take a longitudinal (versus a cross-sectional) perspective of circumstances of the offense.

d. ability to understand the consequences of the offence- Child's knowledge and/or understanding of social consequences (what other people will say or how they will perceive the behaviour and consequently what opinion society would form about the child including labelling and stigmatization), interpersonal consequences (how the behaviour might affect personal relationships in terms of loss of trust, affection and respect of family and friends) and legal consequences of their actions (knowledge of relevant laws on sexual abuse/rape/robbery/ dacoity etc. and violation of rules leading to serious consequences for the child in terms of punishment).

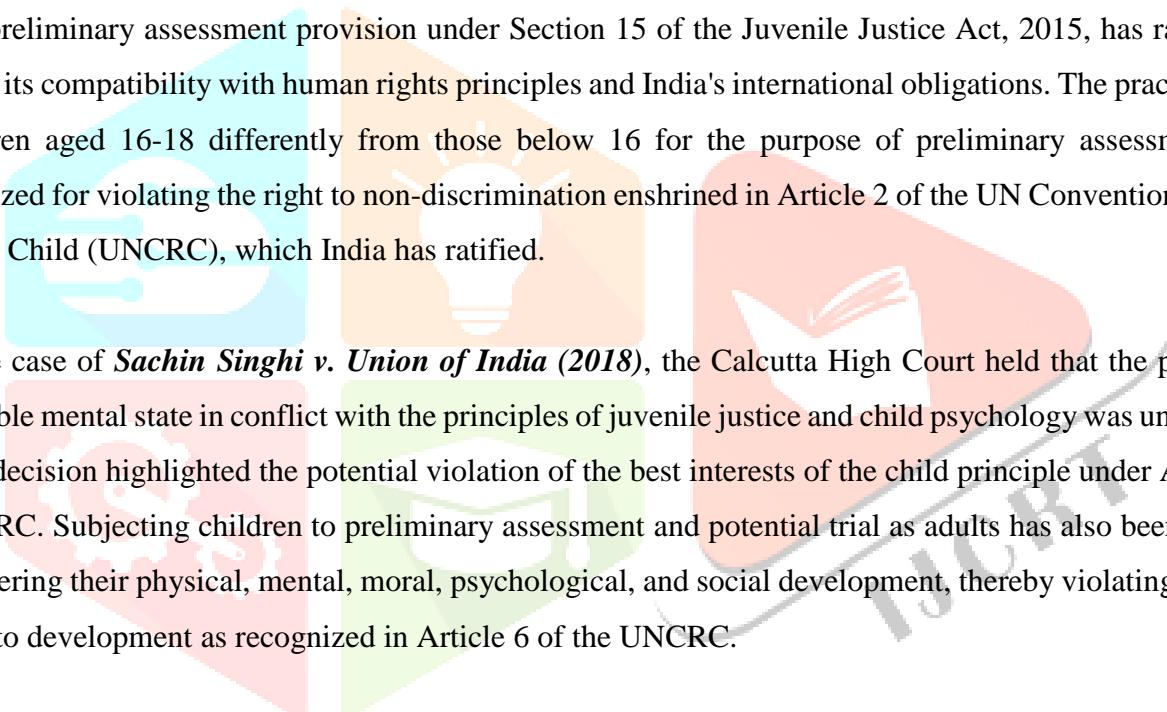
1.5 Sittings for conducting preliminary assessment- The psychologists and other experts must be given optimal opportunity to interact with the child. It is important that appropriate time and space is given for building

rapport with the child and for carrying out the assessment by admitting the child through in-patient or out-patient setting as deemed appropriate. However, in case the expertise is availed from outside District, the child should be assessed through in-patient facility.

NCPCR, in its guidelines also talks about the role of Juvenile Justice Board, period of completion of preliminary assessment, other information to be considered like SBR, SIR, ICP, witness report by CWPO and interaction with parents/guardian. It mentions the essential elements of the final report by Juvenile Justice Board regarding preliminary assessment report, and period of appeal under section 101 of JJ Act. In addition to all this, it also includes suggestive questions to be asked from a CICL while doing PA with some case examples.

HUMAN RIGHTS AND PRELIMINARY ASSESSMENT

The preliminary assessment provision under Section 15 of the Juvenile Justice Act, 2015, has raised concerns about its compatibility with human rights principles and India's international obligations. The practice of treating children aged 16-18 differently from those below 16 for the purpose of preliminary assessment has been criticized for violating the right to non-discrimination enshrined in Article 2 of the UN Convention on the Rights of the Child (UNCRC), which India has ratified.



In the case of *Sachin Singhi v. Union of India (2018)*, the Calcutta High Court held that the presumption of culpable mental state in conflict with the principles of juvenile justice and child psychology was unconstitutional. This decision highlighted the potential violation of the best interests of the child principle under Article 3 of the UNCRC. Subjecting children to preliminary assessment and potential trial as adults has also been criticized for hampering their physical, mental, moral, psychological, and social development, thereby violating their inherent right to development as recognized in Article 6 of the UNCRC.

Critics argue that exposing children to the adult criminal justice system fails to provide the necessary protection and care mandated by Article 19 of the UNCRC, which requires states to take appropriate measures to protect children from all forms of violence, abuse, and neglect. Furthermore, Article 40 of the UNCRC emphasizes the need for a child-friendly and reformatory approach to juvenile justice, with a focus on promoting the child's reintegration and assuming a constructive role in society. Trying children as adults and subjecting them to the punitive adult criminal justice system may be incompatible with this reformatory approach.

While the Indian courts, in cases like *Shilpa Mittal v. State of NCT of Delhi (2020)*, have upheld the constitutional validity of the preliminary assessment provision, concerns remain about its alignment with India's international human rights obligations under the UNCRC and other instruments. To address these concerns, the courts have issued guidelines to ensure that the preliminary assessment is conducted judiciously, with the child's

best interests as the paramount consideration. However, some experts argue for incorporating these guidelines into the Juvenile Justice Act itself to ensure greater consistency with international human rights standards.

Ultimately, while addressing societal concerns, it is crucial to ensure that the implementation of the preliminary assessment provision does not compromise India's commitment to upholding the human rights and best interests of children as enshrined in international conventions and human rights instruments.

INTERNATIONAL PERSPECTIVE OF PRELIMINARY ASSESSMENT

The practice of trying children as adults through a preliminary assessment process has been criticized by various international bodies and experts for violating several principles enshrined in international human rights instruments.

The United Nations Committee on the Rights of the Child, in its 2014 report on India⁴⁷, expressed concern over the provisions of the Juvenile Justice Act that allow for the transfer of children aged 16 years or above to the criminal justice system. The Committee stated that this practice is incompatible with the principles and provisions of the Convention on the Rights of the Child (CRC), particularly the principles of non-discrimination (Article 2), best interests of the child (Article 3), and the right to development (Article 6).

In a similar vein, the UN Special Rapporteur on the Independence of Judges and Lawyers, in a 2018 report⁴⁸, criticized the practice of trying children as adults, stating that it "violates international human rights standards and goes against the principle of juvenile justice."

The Inter-American Court of Human Rights, in the landmark case of "Children's Rehabilitation vs. Paraguay" (2004)⁴⁹, ruled that the practice of trying children as adults violates the principles of the American Convention on Human Rights and the rights of children to special protection. In this case, the Inter-American Court of Human Rights ruled that the practice of trying children as adults in Paraguay violated the principles of the American Convention on Human Rights and the rights of children to special protection. The key excerpt from the judgment relevant to the discussion is:

"The Court considers that all matters relating to children and their rights must be afforded priority attention... The State must provide those conditions that lead to the effective protection of the rights of the child, while at the same time assisting the family in performing its child-rearing responsibilities, and reinforce the development

⁴⁷ UN Committee on the Rights of the Child, **Concluding observations on the consolidated third and fourth periodic reports of India**, 13 June 2014, CRC/C/IND/CO/3-4, para 84.

⁴⁸ United Nations General Assembly, **Report of the Special Rapporteur on the independence of judges and lawyers** (A/73/365), 2018, available at <https://undocs.org/A/73/365>

⁴⁹ Inter-American Court of Human Rights, Case of the "**Instituto de Reeducción del Menor**" v. Paraguay, Judgment of September 2, 2004.

of a genuine family culture founded on the principles of responsibility and equality between spouses." (Paragraph. 147)

The Court further emphasized that the State has a duty to adopt special measures of protection for children, in line with their condition as minors and their best interests. This landmark case from the Inter-American Court of Human Rights established important principles regarding the treatment of children in conflict with the law, aligning with the standards set forth in international human rights instruments like the UN Convention on the Rights of the Child.

The European Court of Human Rights has also consistently held that the imposition of life imprisonment on children without the possibility of review or early release violates the prohibition of inhuman and degrading treatment under Article 3 of the European Convention on Human Rights. While not directly addressing the preliminary assessment provision, these rulings highlight the importance of protecting children's rights and providing them with a rehabilitative approach^{50,51}

The United Nations Global Study on Children Deprived of Liberty (2019)⁵² emphasized that the practice of trying children as adults should be abolished, as it is contrary to the principles of child justice and the best interests of the child. International human rights organizations, such as Amnesty International and Human Rights Watch, have also criticized the Indian government for allowing children to be tried as adults, stating that it violates international human rights standards and the principles of juvenile justice.

While the Indian courts have upheld the constitutional validity of the preliminary assessment provision, these international perspectives highlight the potential inconsistencies with India's obligations under international human rights instruments, such as the CRC and the International Covenant on Civil and Political Rights (ICCPR)⁵³.

To address these concerns, the Indian government and judiciary may consider revising the provisions of the Juvenile Justice Act to align with international human rights standards and the principles of juvenile justice, prioritizing the best interests of the child and a rehabilitative approach over punitive measures. According to *Gauri Pillai and Shrikrishna Upadhyay (2017)*⁵⁴, the transfer system envisioned by the 2015 Act is also in contradiction with the CRC's anti-discrimination principle. According to the CRC, state parties shall treat all children involved in legal disputes with respect and without engaging in any form of discrimination. According

⁵⁰ Vinter and Others v. United Kingdom [GC], nos. 66069/09, 130/10 and 3896/10, §§ 119-122, ECHR 2013.

⁵¹ Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 and 61199/12, §§ 243-245, ECHR 2014.

Khoroshenko v. Russia [GC], no. 41418/04, §§ 126-147, ECHR 2015.

⁵² United Nations General Assembly. (2019). Global Study on Children Deprived of Liberty: Report of the Independent Expert Leading the United Nations Global Study on Children Deprived of Liberty. A/74/136. New York: United Nations.

⁵³ United Nations General Assembly. (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171. New York: United Nations.

⁵⁴ Gauri Pillai & Shrikrishna Upadhyay, Juvenile Maturity and Heinous Crime, NUJS LAW REVIEW 10 NUJS L.Rev. 49 (2017).

to Rajya Sabha Parliamentary Standing Committee Report No. 264⁵⁵, the provisions of the JJ Act 2015's preliminary inquiry and transfer process contradict the United Nations Convention on the Rights of the Child. It also held that the proposed "transfer mechanism" is in breach of India's obligations under the United Nations Convention on the Rights of the Child⁵⁶. According to the body of IHRL treaties, rules, and guidelines, all persons under the age of 18 who violate the law must be treated within a distinct system, with the ultimate goal of guaranteeing their well-being and reintegration into society. Therefore, it can be argued that the specific provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 do not authorise the trial and punishment of juveniles as adults under international human rights law.⁵⁷

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules⁵⁸, redefined the objectives of juvenile justice systems. According to these rules, the purpose extends beyond merely punishing juvenile offenders. It emphasizes promoting the well-being and overall development of the child, ensuring a fair and proportionate response that considers the specific circumstances of the offense and the offender, and moving away from a solely punitive approach towards a more rehabilitative and reintegrative model (United Nations, 1985).⁵⁹

When a child is sentenced as an adult, there is a high likelihood that they will be incarcerated in a facility alongside adult inmates. This practice directly contravenes the explicit guidelines and international standards that mandate the separation of children and adults in detention facilities. The Standard Minimum Rules for the Treatment of Prisoners (1955)⁶⁰, the International Covenant on Civil and Political Rights (ICCPR)⁶¹, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)⁶², the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)⁶³, and the United Nations

⁵⁵ Rajya Sabha Secretariat, New Delhi. (2015, February). Rajya Sabha, 264th Report on Juvenile Justice (Care and Protection of Children) Bill, 2014. https://prsinindia.org/files/bills_acts/bills_parliament/2014/SC_report_Juvenile_juice_1.pdf

⁵⁶ United Nations General Assembly. (1989). Convention on the Rights of the Child. Treaty Series, 1577, 3. New York: United Nations.

⁵⁷ Transfer system, preliminary assessment, and treating children as adults under juvenile justice (care and protection of children) act, 2015 of India contravenes

Human right protection under united nations convention on the right of the child-1989, international human rights law, and Indian constitution, Research Paper, Bishwa Bhushan Nayak, Ph. D Research Scholar, Utkal University, Odisha, India Dr.S. D Moharana, Principal GM College, Puri, Odisha, India

⁵⁸ United Nations General Assembly. (1985). United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Resolution 40/33 of 29 November 1985. New York: United Nations.

⁵⁹ United Nations. (1985). United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Adopted by General Assembly resolution 40/33 of 29 November 1985. <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

⁶⁰ Standard Minimum Rules for Treatment of Prisoners, Adopted 30 August, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Congress on the Prevention of Crime and the Treatment of Offenders U.N. Doc. A/CONF/611, annex i, E.S.C. res. 663C, 24 U.N. escor Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. escor Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977) Rules 8(d) and 85(2). ICCPR, arts. 10(b-c) and 14(1).

⁶¹ ICCPR, arts. 10(b-c) and 14(1).

⁶² United Nations General Assembly. (1985). United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): Resolution adopted by the General Assembly (A/RES/40/33). <https://undocs.org/A/RES/40/33>

⁶³ United Nations General Assembly. (1990). United Nations Rules for the Protection of Juveniles Deprived of their Liberty (A/RES/45/113). <https://undocs.org/A/RES/45/113>

Convention on the Rights of the Child (UNCRC)⁶⁴ all emphasize the importance of keeping children and adult inmates apart.

The Beijing Rules⁶⁵ and the UNCRC, in particular, underscore the necessity of this separation, recognizing the potential risks of "criminal contamination" and negative influences that adult inmates can have on children. The commentary accompanying the Beijing Rules specifically warns against using administrative convenience as a justification for detaining children and adults together, citing the inherent dangers and potential harm to the child's well-being and development. The Beijing Rules changed the purpose of juvenile justice to include supporting the "wellbeing of the juvenile," providing a fair response based on the "circumstances of the offender and the crime," and avoiding a "punitive-only" approach.

Article 14(4) of the International Covenant on Civil and Political Rights (ICCPR)⁶⁶ states that processes for juveniles must "take into account their age and the need to promote their rehabilitation," demonstrating that juvenile justice is essentially rehabilitative rather than punitive. According to Bueren (1998)⁶⁷ there has been a shift in emphasis from rehabilitation to thorough reintegration of the child offender into society under the United Nations Convention on the Rights of the Child (UNCRC). Article 40 of the UNCRC requires a system that "respects children's dignity, nurtures in them a respect for human rights, and is motivated by the primary purpose of supporting the child's reintegration and child's adoption of a positive role in society."

PRACTICAL ASPECT OF PRELIMINARY ASSESSMENT

The Juvenile Justice Act, 2015 the practical aspect of Preliminary Assessment is something which is followed arbitrarily by the authorities empowered under the Act. As the Act serves as a comprehensive legal framework for addressing the unique needs and circumstances of children in conflict with the law. Section 15 of the Act outlines a crucial preliminary assessment procedure, which plays a pivotal role in determining the initial course of action for a child alleged to have committed an offense. Many children suffer due to the lack of knowledge by parents and acts of omission by the police that results incarceration by the misuse of legal provisions. ***The Delhi High Court in W.P. (C) 8889/2011***⁶⁸ held that once the Juvenile Justice Board has decided on the age of the child, the same could be used as an age document for the future. In this instance, the police failed to do this – they had information about the child's previous case but did not rely on his age determination order from that case and arrested him as an adult.

⁶⁴ United Nations General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989.

⁶⁵ Beijing Rules, r. 13(4) and 26(3) and uncrc, Article 37(c).

⁶⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁶⁷ Bueren, G.V., The International Law on the Rights of the Child (Martinus Nijhoff, 1998)

⁶⁸ Court on its own motion v. department of Woman and Child Development, Delhi High Court, W.P. (C) No. 8889 of 2011, 2012 SCC Online Del 1718

Clause 1 of section 15 of JJ Act clearly mentions that the procedure of preliminary assessment is a must because the word “shall” make it mandatory for a child who is above the age of 16 years on the date of incident and has not completed the age of 18 years. In the case of *Jarnail Singh v. State of Haryana (2013)*, the Supreme Court emphasized that the Juvenile Justice Board should not rely solely on the opinion of the medical experts but should also consider other relevant factors such as school records, birth certificates, and the circumstances surrounding the case. The court ruled that the age determination process should be a judicious mix of evidence-based procedures. In a handbook for field administrators⁶⁹ its clearly mentioned that “a child who is alleged or found to have committed an offence and who has not completed the eighteenth year of age on the date of commission of such offence is considered a “Child in Conflict with Law” section 2 (13). For determining applicability of JJ Act over a person, relevant date is “Date of Commission of Offence”. Considerable confusion arises in dealing with cases where a person who was a child at the time of commission of offence but turns adult subsequently. Section 5 and Section 6 of the JJ Act 2015 deal with situations where (1) a child completes the age of 18 years during the pendency of inquiry and (2) a person is apprehended for committing an offence when such person was below the age of 18 years. The law is abundantly clear that persons mentioned above shall continue to be treated as children and orders will be passed as if such person continues to be a child, irrespective of such person having turned adult.

Additionally, there is confusion regarding the placement of a person or a child - who may have crossed the age of 18 years at the time of apprehension or in the course of the inquiry - in an institution. The JJ Act is very clear on this point. Section 49 of JJ Act states that for such persons or children (if apprehended after the age of 18 years) the State Government shall set up at least one place of safety in a state, duly registered under section 41, in which such persons or children shall be placed. A CICL, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence shall also be placed in a Place of Safety.

Consecutively, the board after this preliminary assessment “may” pass an order in accordance with section 18(3) of JJ Act, 2015 which provides that –

Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

An Article by Arunav Kaul (2017) published in the NUJS Law Review⁷⁰, critically examines Section 15(1). It discusses the case of *Shilpa Mittal v. State (NCT of Delhi) (2020)*, where the Delhi High Court held that the preliminary assessment under Section 15(1) is mandatory and cannot be dispensed with, even if the child has attained the age of 18 years during the trial. An article by Prachi Shrivastava (2020)⁷¹, published on the

⁶⁹ Handbook on Effective Implementation of Juvenile Justice Act for Field Level Administrators, <https://www.patnahighcourt.gov.in/jjs/PDF/UPLOADED/79.PDF> Page 39

⁷⁰ <https://nujslawreview.org/wp-content/uploads/2017/12/Arunav-Kaul.pdf>

⁷¹ <https://www.lawctopus.com/academike/preliminary-assessment-under-section-15-of-the-juvenile-justice-act-2015/>

Lawctopus blog analyses the scope and interpretation of Section 15(1) in light of various court rulings. Similarly, in the case of **Kuldeep Singh Sengar vs. State (Govt. of NCT of Delhi) & anr., (2020) 5 SCC 764** The Bench of honourable Justice Anup Jairam Bhambhani held that the preliminary assessment regarding the juvenility of an accused person has to be conducted by the Juvenile Justice Board itself and not by any other authority, such as the Child Welfare Police Officer (CWPO) or the District Child Protection Unit (DCPU). The relevant excerpt from the judgment is as follows:

"The task of conducting a preliminary assessment as to whether an accused person was a child or not at the time of commission of the alleged offence, is a statutory function to be performed by the Juvenile Justice Board alone and cannot be delegated or outsourced to any other agency, authority, or individual."

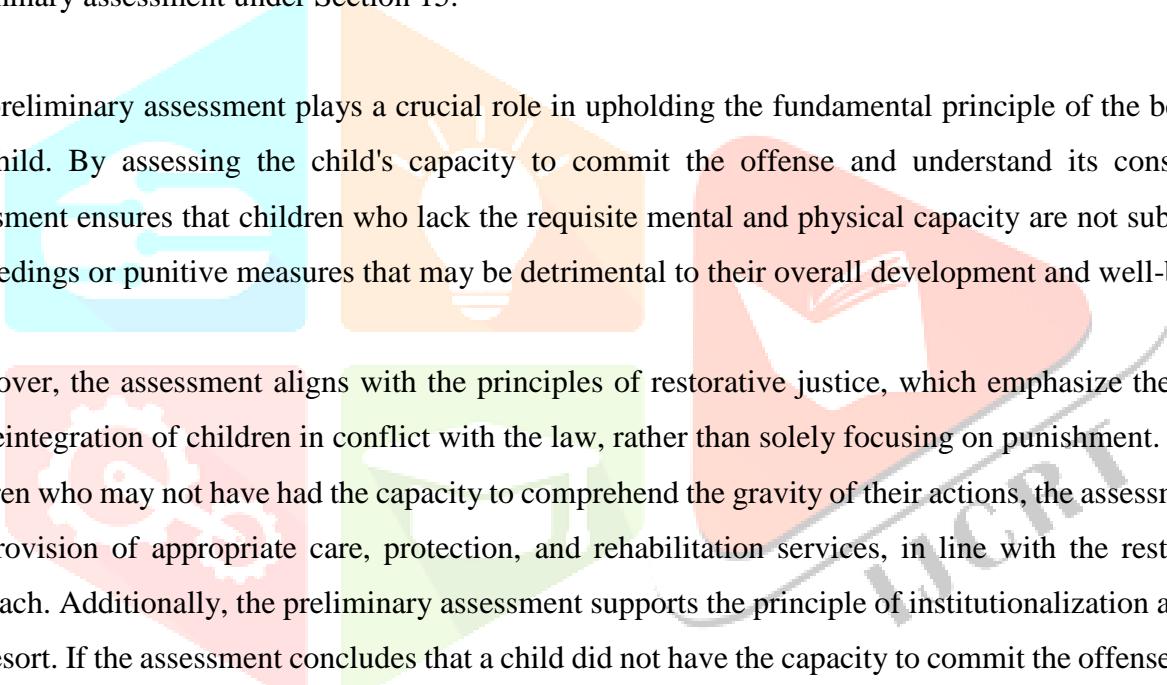
The proviso of section 15(1) specifically points out that that the Board "may" take the assistance of experienced psychologists and psychosocial workers or other experts. In the case of **Olef Khan vs. State of Madhya Pradesh (2021)**, the High Court considered the question of whether the word "may", used in reference to the assistance of psychologists during a preliminary assessment, should be construed as "shall," i.e., a mandatory pre-condition. The court has held that "when the word 'may' is used in an enactment in respect of a Court, the same has to be understood as 'shall'." The point of construing the word "may" as "shall" was well validated by the Supreme Court back in 1963 in the case of **Ramji Missir vs. State of Bihar, 1962**.

At this point various jurists have put forward their interpretation in favour of Juvenile Justice Board by saying that its solely a task of Juvenile Justice Board. The Delhi High Court, in the case of **Kuldeep Singh Sengar v. State (Govt. of NCT of Delhi) (2020)**, reiterated that the task of conducting a preliminary assessment of age is a statutory function to be performed by the Juvenile Justice Board alone, and it cannot be delegated or outsourced to any other agency or individual. However, the court acknowledged that the proviso under Section 15(1) allows the Juvenile Justice Board to seek assistance from experienced professionals, but the final determination remains with the Juvenile Justice Board. In the case of **Aarushi Talwar v. State of U.P. (2012) 8 SCC 57**, the Allahabad High Court observed that the Juvenile Justice Board should not mechanically rely on the opinion of the medical experts but should consider all relevant factors, including the psycho-social assessment of the child, as provided under the proviso of Section 15(1).

The Bombay High Court, in the case of **Raju Dharamji Mishra v. State of Maharashtra (2021)**, emphasized that the proviso under Section 15(1) is not mandatory but discretionary, meaning that the Juvenile Justice Board has the discretion to seek assistance from experts, but it is not obligated to do so in every case. The court stressed that the Juvenile Justice Board should exercise its discretion judiciously based on the facts and circumstances of each case.

The Explanation clause of section 15(1) of JJ Act specifies that "*For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.*"

The JJ Act, clarifies at this point that the preliminary assessment is not a trial but a crucial inquiry to ensure the fair and appropriate treatment of children in accordance with the constitutional principles and fundamental principles enshrined in the Juvenile Justice Act, 2015. The Constitution of India, being the supreme law of the land, provides a strong foundation for the protection of children's rights and the promotion of their overall well-being. The preliminary assessment under Section 15 is a manifestation of these constitutional principles, particularly the right to equality (Article 14), the right to life and personal liberty (Article 21), and the directive principles of state policy (Article 39(e)), which mandate the protection of children from abuse and the provision of opportunities for their healthy development. The JJ Act explicitly outlines the fundamental principles that must guide the implementation of the Act, including the best interests of the child, the principles of restorative justice, and the principle of institutionalization as a measure of last resort. These principles are enshrined in Section 3 of the Act and serve as a guiding framework for the entire juvenile justice process, including the preliminary assessment under Section 15.



The preliminary assessment plays a crucial role in upholding the fundamental principle of the best interests of the child. By assessing the child's capacity to commit the offense and understand its consequences, the assessment ensures that children who lack the requisite mental and physical capacity are not subjected to legal proceedings or punitive measures that may be detrimental to their overall development and well-being.

Moreover, the assessment aligns with the principles of restorative justice, which emphasize the rehabilitation and reintegration of children in conflict with the law, rather than solely focusing on punishment. By identifying children who may not have had the capacity to comprehend the gravity of their actions, the assessment facilitates the provision of appropriate care, protection, and rehabilitation services, in line with the restorative justice approach. Additionally, the preliminary assessment supports the principle of institutionalization as a measure of last resort. If the assessment concludes that a child did not have the capacity to commit the offense or understand its consequences, alternative measures such as diversion, community-based interventions, or non-institutional care may be explored, thereby avoiding the potential negative impacts of institutionalization on the child's development and well-being.

Clause 2 of section 15 of JJ Act provides that *(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):*

It must be noted that the procedure of preliminary assessment is judicial task which cannot be delegated to any other authority; this fact has been confirmed by various judicial pronouncements. *Mubasir v. State of Uttar Pradesh (2018) Criminal Appeal No. 1223 of 2018, Jarnail Singh v. State of Haryana (2013) Criminal Appeal No. 768 of 2013 SC, Raju Dharamji Mishra v. State of Maharashtra (2021) Criminal Writ Petition No. 1189 of 2021, Aarushi Talwar v. State of U.P. (2012) Case No. 2776 of 2008, Nitin Munim v. State of Maharashtra*

(2019) *Criminal Writ Petition No. 2468 of 2019* it was held by these courts that the preliminary assessment should be a judicious mix of evidence-based procedures, including an evaluation of the child's mental and physical capacity, maturity, and ability to understand the consequences of their actions, their understanding of the consequences, and the circumstances surrounding the alleged offense and the circumstances in which it was committed, as these factors are crucial in determining the applicability of the Juvenile Justice Act.

In the case of *Sampurna Behura v. Union of India (2018)*, the Orissa High Court upheld the constitutional validity of this provision, recognizing its efforts to strike a balance between the best interests of the child and the need for justice. One of the critical issues surrounding Section 15 is the significant discretionary power vested in the CWPO and the Juvenile Justice Board. This discretion, if not exercised judiciously, can lead to inconsistencies and potential abuse. The Supreme Court, in *Jitendra Singh v. State of UP (2013)*, cautioned against the arbitrary exercise of such discretionary powers, as it may undermine the principles of justice and fairness.

However, concerns have been raised regarding the potential infringement of the child's right to a fair trial and due process. The Supreme Court, in the case of *Hari Ram v. State of Rajasthan (2009)*, emphasized the necessity of a fair and just inquiry, even in cases involving juvenile offenders, to safeguard their fundamental rights. The Delhi High Court, in the case of *Mohd. Ahmed v. Union of India (2012)*, emphasized the importance of considering the child's best interests and rehabilitation during the inquiry process, in addition to the alleged offense.

The effective implementation of the preliminary assessment process is often hindered by a lack of resources and trained personnel. In the landmark case of *Sheela Barse v. Union of India (1986)*, the Supreme Court highlighted the need for adequate infrastructure and personnel to uphold the principles of the Juvenile Justice Act and ensure its proper execution.

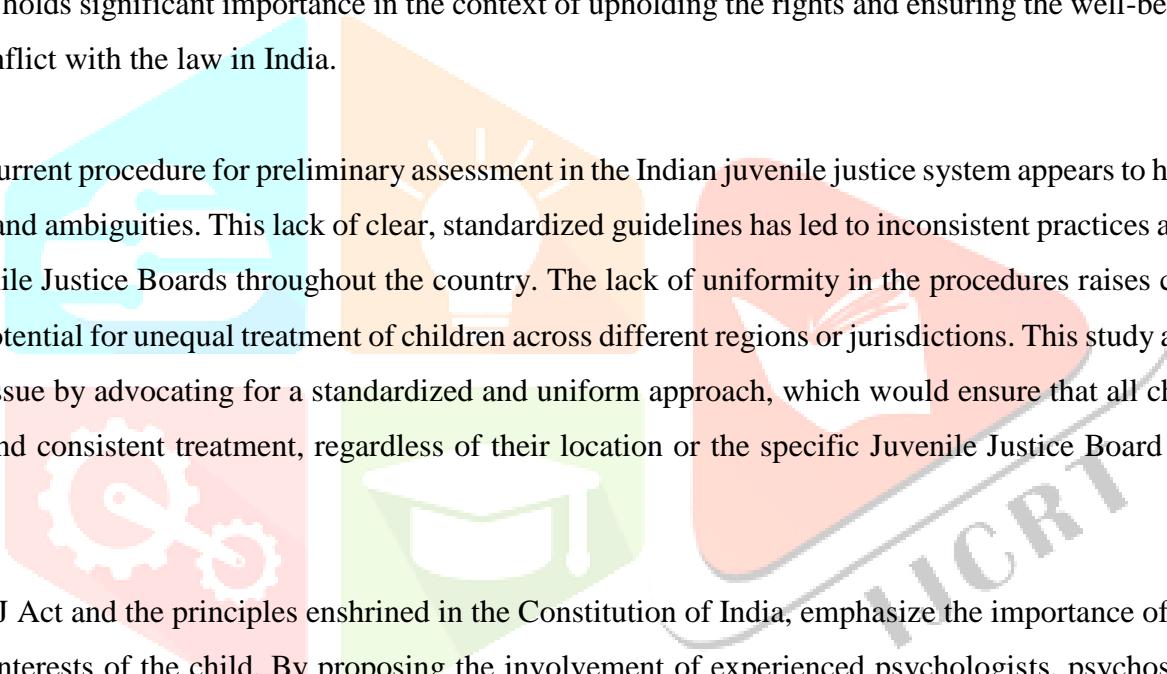
To address these challenges and uphold the constitutional rights of children in conflict with the law, it is imperative to adopt a multi-faceted approach. This includes providing adequate resources, training personnel, and establishing clear guidelines to ensure consistency and fairness in the preliminary assessment process. Additionally, a greater emphasis should be placed on the rehabilitation and reintegration of the child, aligning with the overarching objectives of the JJ Act.

CHAPTER – 4

RESEARCH METHODOLOGY

OBJECT OF THE STUDY

The primary objective of this study is to examine the need for uniformity in the procedure adopted by Juvenile Justice Boards when conducting preliminary assessments of juveniles in conflict with the law. Specifically, the study aims to investigate the potential benefits of involving experienced psychologists, psychosocial workers, and other relevant experts in a standardized manner during these assessments. This objective aligns with the principles enshrined in the Constitution of India and various child rights laws in the country. The object of your study holds significant importance in the context of upholding the rights and ensuring the well-being of children in conflict with the law in India.



The current procedure for preliminary assessment in the Indian juvenile justice system appears to have significant gaps and ambiguities. This lack of clear, standardized guidelines has led to inconsistent practices across different Juvenile Justice Boards throughout the country. The lack of uniformity in the procedures raises concerns about the potential for unequal treatment of children across different regions or jurisdictions. This study aims to address this issue by advocating for a standardized and uniform approach, which would ensure that all children receive fair and consistent treatment, regardless of their location or the specific Juvenile Justice Board handling their case.

The JJ Act and the principles enshrined in the Constitution of India, emphasize the importance of upholding the best interests of the child. By proposing the involvement of experienced psychologists, psychosocial workers, and other relevant experts in a standardized manner, your study seeks to strengthen the assessment process and ensure that decisions made by Juvenile Justice Boards are guided by professional expertise and a comprehensive understanding of the child's circumstances and needs.

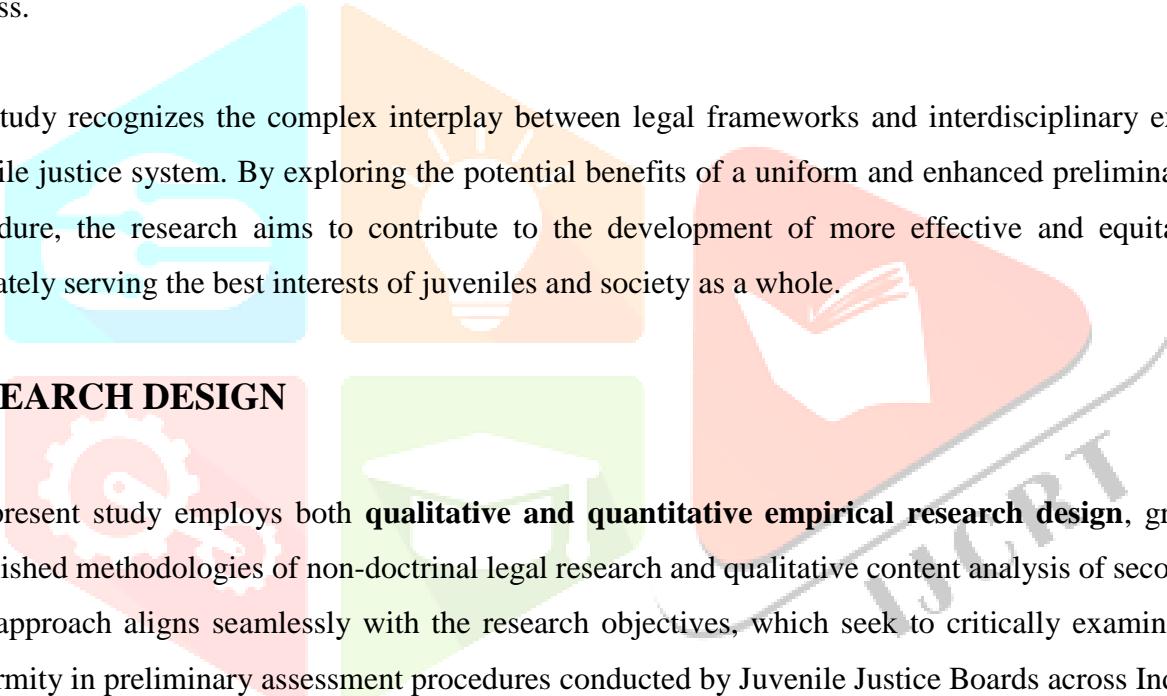
Aligning with International Standards and Principles given by United Nations Convention on the Rights of the Child (UNCRC)⁷², which India has ratified is another important concern of this study. The UNCRC emphasizes the importance of considering the best interests of the child and promoting their overall well-being. By advocating for a standardized and expert-driven assessment process, your study aims to bring India's juvenile justice system closer to international standards and best practices.

By generating empirical evidence and recommendations, this study has the potential to inform policy and legal reforms in the area of juvenile justice in India. The findings may lead to amendments in the Juvenile Justice

⁷² United Nations General Assembly. Convention on the Rights of the Child. November 20, 1989. United Nations, Treaty Series, vol. 1577, p. 3.

(Care and Protection) Act, 2015, or the development of supplementary guidelines, ensuring that the preliminary assessment process is consistent, comprehensive, and aligned with the principles of child rights and constitutional guarantees. The study seeks to explore that the implementation of a uniform procedure for preliminary assessments, involving a multidisciplinary team of experts, could contribute to a more equitable and effective juvenile justice system. By establishing standardized protocols and guidelines, the study aims to investigate whether such an approach could potentially decrease the likelihood of juveniles being subjected to adult trials, which often have severe long-term consequences.

Furthermore, the study will examine that the preliminary assessment procedure, while legally mandated, may require enhancements or modifications to incorporate the expertise of non-judicial bodies, such as psychologists and psychosocial workers. These experts possess specialized knowledge and skills in assessing the cognitive, emotional, and social development of juveniles, which could provide valuable insights during the assessment process.



The study recognizes the complex interplay between legal frameworks and interdisciplinary expertise in the juvenile justice system. By exploring the potential benefits of a uniform and enhanced preliminary assessment procedure, the research aims to contribute to the development of more effective and equitable practices, ultimately serving the best interests of juveniles and society as a whole.

RESEARCH DESIGN

The present study employs both **qualitative and quantitative empirical research design**, grounded in the established methodologies of non-doctrinal legal research and qualitative content analysis of secondary sources. This approach aligns seamlessly with the research objectives, which seek to critically examine the need for uniformity in preliminary assessment procedures conducted by Juvenile Justice Boards across India.

To construct a comprehensive understanding, the study engages with a diverse range of primary as well as secondary data sources. The primary data source of the study is based on a questionnaire applied to various field professionals and law students categorised as under -

1. Academicians
2. Lawyers/ Advocates
3. Legal cum Probation Officers
4. Psychologists
5. Law Students

The secondary data source encompasses relevant legal provisions, such as the Juvenile Justice (Care and Protection of Children) Act, 2015, and other applicable statutes governing the treatment of children in conflict

with the law. Judicial pronouncements and case laws from Indian courts, particularly those pertaining to preliminary assessments and juvenile rights, will be meticulously analysed. Additionally, authoritative reports and guidelines issued by reputable national and international organizations, like the NCPCR, UNICEF, and UNODC, ACHR and NCRB will be considered. These sources provide valuable insights from subject matter experts, highlighting best practices and international standards in juvenile justice. To ensure a comprehensive theoretical understanding, the study will engage with academic literature, including peer-reviewed journals, books, and scholarly commentaries on juvenile justice, child rights, and the role of multidisciplinary expertise in preliminary assessments. Moreover, relevant international instruments and conventions, such as the UNCRC, to which India is a signatory, will be examined to align the proposed enhancements with globally recognized principles for safeguarding children's rights and well-being.

LITERATURE REVIEW

The Supreme Court in *Dr. Subramanian Swamy & ors. v. Raju & ors. (2014) 8 SCC 390* dealt with a challenge to certain provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 in the aftermath of the gruesome Delhi gang-rape case of December 2012. One of the accused, Raju, was a juvenile below 18 years. The petitioners argued that intellectually/mentally mature juveniles accused of heinous crimes should be tried as adults, not as juveniles under the JJ Act. The court examined the JJ Act's provisions treating all persons below 18 as "juveniles" for differential treatment in light of India's commitments under international instruments like the UN Convention on the Rights of the Child, 1989⁷³. Referring to cases like *Murthy Match Works v. Assistant Collector (1974) 4 SCC 428* and other precedents, the court held that the classification of all below 18 as juveniles was a permissible categorization under Article 14, even if there were differences within this class based on mental maturity levels.

The court refused to "read down" the clear statutory provisions based on practices in some foreign jurisdictions like the UK, USA etc. of trying certain juveniles as adults for serious offences. This would amount to judicial overreach, as explained in *Delhi Transport Corporation v. DTC Mazdoor Congress (1991) Supp 1 SCC 600*.

However, the JJ Act did not violate the constitutional scheme by wholly replacing the criminal justice system, as argued relying on *Mithu v. State of Punjab (1983) 2 SCC 277* and *Dadu v. State of Maharashtra (2000) 8 SCC 437*. It merely provided a different scheme for trial and treatment of juvenile offenders while retaining the substantive penal laws. Ultimately, the court dismissed the challenge to the constitutional validity of the JJ Act's provisions mandating that the juvenile Raju be tried under the juvenile justice system and not as an adult offender in the regular criminal justice system.

This research on preliminary assessment under Section 15 of the JJ Act incorporates various approaches and tools for assessing juvenile offenders, focusing on psychometric validations, case outcomes, and the legal

⁷³ United Nations Convention on the Rights of the Child, adopted by General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990

implications of juvenile justice assessments. **Thompson and Pope (2005)**⁷⁴ present preliminary psychometric data for the Australian adaptation of the Youth Level of Service/Case Management Inventory, emphasizing its role in assessing risks, needs, and strengths of juvenile offenders. **Casey and Day (2016)**⁷⁵ discuss the development of a youth justice assessment tool that helps in case needs identification, mental health screening, and risk assessment. **Edner et al. (2020)**⁷⁶ validate a 14-item version of the Child Report of Posttraumatic Symptoms for juvenile offenders, showcasing its predictive capabilities. Dwyer et al. (2008) explore the use of psychiatric assessment data to differentiate between juvenile sex offenders and non-sex offenders, highlighting the mental health needs of detained juveniles. **Bala and Anand (2004)**⁷⁷ analyse case law under the Youth Criminal Justice Act, noting significant shifts toward community-based responses and the balancing of accountability with the needs of young offenders. Key themes include the balancing of rehabilitative and punitive measures, the principle of proportionality in sentencing, and the protection of the identity of minors to avoid stigmatization. The findings suggest a significant shift towards community-based responses and non-custodial sentences for less serious crimes, while still allowing for custodial sentences when necessary for rehabilitation.

Sruti Dk (2017)⁷⁸, titled "A Critical Analysis of Juvenile Justice Act and System in India," provides an in-depth examination of the Juvenile Justice Act, focusing on its implications and the societal indifferences that contribute to child delinquency. It also mentions the inadequacies of the Indian juvenile justice system, which often treats different types of offenders—regardless of the severity of their crimes—with the same rigid sentencing framework. Additionally, it addresses the historical context of juvenile justice legislation in India, noting the lack of significant improvement in the treatment of juveniles despite the enactment of uniform laws.

The study by **Venudhar Routiya (2016)**⁷⁹, titled "A Critical Study of Children Under Juvenile Justice System in India," provides a comprehensive evaluation of the Juvenile Justice System in India, focusing on the treatment and rehabilitation of juvenile offenders.

REPORTS AND COMMENTARIES ON SECTION 15 OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

⁷⁴ Thompson, A., & Pope, Z. (2005). Assessing juvenile offenders: Preliminary data for the Australian Adaptation of the Youth Level of Service/Case Management Inventory (Hoge & Andrews, 1995). *Australian Psychologist*, 40(3), 207-214. <https://doi.org/10.1080/00050060500243491>

⁷⁵ Casey, S., & Day, A. (2016). Accountability in Juvenile Justice: A Framework to Assess Client Outcomes. *International Journal of Offender Therapy and Comparative Criminology*, 60(10), 1157-1174. <https://doi.org/10.1177/0306624X15586767>.

⁷⁶ Edner, B. J., Piegore, A. L., Glaser, B. A., & Calhoun, G. B. (2020). Preliminary Cross-Sectional Validation of the CROPS 14-Item for Juvenile Offenders. *International Journal of Offender Therapy and Comparative Criminology*. <https://doi.org/10.1177/0306624X20904703>.

⁷⁷ Bala, N., & Anand, S. (2004). The First Months under the Youth Criminal Justice Act: A Survey and Analysis of Case Law. *Canadian Journal of Criminology and Criminal Justice*, 46(3), 251-269. <https://doi.org/10.3138/CJCCJ.46.3.251>.

⁷⁸ Sruti Dk. (2017). A Critical Analysis of Juvenile Justice Act and System in India. *Journal of Political Sciences & Public Affairs*, 5(2), 296. <https://doi.org/10.4172/2332-0761.1000296>.

⁷⁹ Routiya, V. (2016). A Critical Study of Children Under Juvenile Justice System in India. *IOSR Journal of Electronics and Communication Engineering*, 11(4), 81-86. <https://doi.org/10.9790/2834-1104038186>.

Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which allows for the preliminary assessment of juveniles accused of heinous crimes to determine whether they should be tried as adults, has generated significant discussion and analysis from various legal and human rights bodies. Below is an elaborate overview of the key reports, commentaries, and judgments that have shaped the understanding and implementation of this section.

Justice Verma Committee Report (2013)⁸⁰ The Justice Verma Committee was established in the aftermath of the 2012 Delhi gang rape case to recommend amendments to criminal laws, particularly concerning crimes against women. While the committee primarily focused on adult crimes, it addressed juvenile justice by recommending that juveniles aged 16-18 years accused of heinous offences should undergo a preliminary assessment to evaluate their mental and emotional maturity. The committee suggested that if found capable of understanding the nature and consequences of their actions, these juveniles could be tried in the adult criminal justice system. This recommendation aimed to balance the need for accountability with the potential for rehabilitation.

National Human Rights Commission (NHRC) Report (2016)⁸¹ The NHRC's 2016 report on juvenile justice emphasized the importance of protecting the rights of juveniles while ensuring justice for victims of heinous crimes. The NHRC advocated for a compassionate approach, highlighting that the primary focus should remain on rehabilitation. The commission recommended that psychological assessments by qualified professionals should be mandatory to determine the mental and emotional maturity of juveniles before deciding to try them as adults.

Law Commission of India, 264th Report (2017)⁸² The Law Commission's 264th report provided a detailed analysis of Section 15, endorsing the provision for preliminary assessment. The commission recommended that Juvenile Justice Boards should include child psychologists and social workers to aid in the assessment process. Regular training for Juvenile Justice Board members was suggested to ensure sensitive and expert handling of juvenile cases. The report emphasized a holistic approach that balances the juvenile's right to a fair trial with the community's need for safety and justice.

NALSA Report (2018)⁸³ The National Legal Services Authority (NALSA) in its 2018 report focused on the procedural aspects of Section 15. The report advocated for clear guidelines to standardize the preliminary assessment process across jurisdictions. It called for the establishment of dedicated child protection units within the Juvenile Justice Boards to ensure that juveniles receive appropriate legal aid and support during the

⁸⁰ Justice Verma Committee Report (2013). *Report of the Committee on Amendments to Criminal Law*. Government of India.

⁸¹ National Human Rights Commission (2016). *NHRC Report on Juvenile Justice*. Government of India.

⁸² Law Commission of India (2017). *264th Report on The Juvenile Justice (Care and Protection of Children) Act, 2015*. Government of India.

⁸³ National Legal Services Authority (2018). *NALSA Report on Child Rights and Legal Aid*. Government of India.

assessment and trial phases. NALSA emphasized the importance of a child-friendly environment during proceedings to minimize trauma and encourage the participation of juveniles in their defence.

Human Rights Watch Report (2017)⁸⁴ This report criticized the potential for misuse of Section 15, cautioning against the possibility of juveniles being unjustly tried as adults. It called for stringent safeguards to ensure fair and unbiased assessments.

National Commission for Protection of Child Rights (NCPCR)⁸⁵ The NCPCR has been actively involved in monitoring the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015. In its report, the NCPCR highlighted the need for a robust preliminary assessment process under Section 15 to ensure that juveniles accused of heinous crimes are appropriately assessed for their mental and emotional maturity. The NCPCR recommended that the Juvenile Justice Boards be equipped with trained psychologists and social workers to conduct these assessments. The commission emphasized the importance of rehabilitation and reintegration over punitive measures.

UNICEF REPORT (2016)⁸⁶ UNICEF's report on juvenile justice in India provides an extensive analysis of Section 15 of the Juvenile Justice Act, 2015. The report stresses the importance of protecting the rights of juveniles while ensuring justice for victims of heinous crimes. UNICEF advocates for a child-friendly approach that prioritizes rehabilitation and reintegration into society. The report also emphasizes the need for psychological assessments by qualified professionals to determine the maturity of juveniles, ensuring that decisions to try them as adults are based on a comprehensive understanding of their mental and emotional state.

United Nations Office on Drugs and Crime (UNODC)⁸⁷ The UNODC has provided guidance on implementing juvenile justice reforms, including the provisions under Section 15 of the Juvenile Justice Act, 2015. The UNODC report emphasizes adherence to international human rights standards, particularly the Convention on the Rights of the Child. It recommends that preliminary assessments should be conducted with the primary goal of rehabilitation, ensuring that juveniles are treated fairly and justly. The report also highlights best practices from other countries that India can adopt to improve its juvenile justice system.

Asian Centre for Human Rights (ACHR)⁸⁸ The ACHR report critically analyses the implementation of Section 15 of the Juvenile Justice Act, 2015. The report raises concerns about the potential for bias and inconsistencies in the preliminary assessment process. It calls for clear guidelines and standardized procedures to ensure fairness

⁸⁴ Human Rights Watch (2017). The Wrong Rights: How Juvenile Justice Laws in India Violate Child Rights. Human Rights Watch.

⁸⁵ National Commission for Protection of Child Rights (2017). Annual Report. NCPCR.

⁸⁶ UNICEF (2016). Juvenile Justice in India: An Analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015. UNICEF India.

⁸⁷ United Nations Office on Drugs and Crime (2016). Manual for the Measurement of Juvenile Justice Indicators. UNODC.

⁸⁸ Asian Centre for Human Rights (2017). *India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes*. ACHR.

and objectivity. The ACHR also emphasizes the need for continuous training of Juvenile Justice Board members and the involvement of child rights experts in the assessment process. The report advocates for a balanced approach that considers both the need for accountability and the rights of juveniles to a fair trial and rehabilitation.

National Crime Records Bureau (NCRB) REPORT (2019)⁸⁹ The NCRB provides statistical data on juvenile crime, which is essential for understanding the impact of Section 15 of the Juvenile Justice Act, 2015. The NCRB's annual reports include data on the number of juveniles apprehended, the nature of the offences committed, and the outcomes of preliminary assessments. The data highlights trends in juvenile crime and the effectiveness of the juvenile justice system in addressing these issues. The NCRB reports underscore the need for data-driven policies and reforms to ensure that juveniles are treated justly and rehabilitated effectively. Total Juvenile Crimes: In 2019, 44,013 cases were registered under the Indian Penal Code (IPC) and Special & Local Laws (SLL) by juveniles. This represented a slight increase from 43,506 cases in 2018.

Crime Rate: The crime rate (cases per 100,000 population) for juveniles was 1.7 in 2019, consistent with previous years.

Heinous Offences: Of the total juvenile crimes, heinous offences (punishable with imprisonment of seven years or more) accounted for 2,722 cases. These include murder, rape, and serious assault.

Petty and Serious Offenses: Petty offences (punishable with imprisonment of up to three years) and serious offences (punishable with imprisonment of three to seven years) made up the majority of the cases, indicating a higher prevalence of less severe crimes among juveniles.

Age Breakdown: Juveniles aged 16-18 years constituted the largest segment of offenders, accounting for 74% of the total juvenile crimes. This age group is particularly significant under Section 15, as it pertains to preliminary assessment for heinous crimes.

Gender Breakdown: Male juveniles were overwhelmingly represented, making up 96% of the total juvenile offenders.

Preliminary Assessments under Section 15: Number of Assessments: Out of the 2,722 cases of heinous crimes, preliminary assessments were conducted in 1,845 cases to determine whether the juveniles should be tried as adults. In approximately 65% of these assessments, juveniles were found to possess sufficient maturity to be tried as adults. This resulted in 1,200 juveniles being transferred to adult courts for trial.

⁸⁹ National Crime Records Bureau (2019). *Crime in India*. NCRB.

Socio-Economic Background: Education Level: A significant portion of juvenile offenders had only primary or lower secondary education, highlighting the correlation between lack of education and delinquency.

Family Income: Many offenders came from low-income families, with a notable percentage being from households with an annual income below INR 50,000.

Repeat Offenders: The data indicated that 17% of juveniles apprehended in 2019 had previous records of delinquency, pointing to challenges in the rehabilitation and reintegration processes.

Implementation Challenges: The NCRB data reveals significant variability in how different states implement the preliminary assessment process. States with better resources and training for Juvenile Justice Boards showed more consistent application of Section 15. Resource constraints and lack of trained personnel in some regions resulted in inconsistencies and delays in conducting preliminary assessments.

Impact of Rehabilitation Programs: States with robust rehabilitation and educational programs for juveniles reported lower recidivism rates. This underscores the importance of effective rehabilitation in reducing repeat offences.

Recommendations for Policy and Practice:

1. There is a need for standardized guidelines across states to ensure uniformity in the preliminary assessment process under Section 15.
2. Continuous training for Juvenile Justice Board members, including the involvement of child psychologists and social workers, is crucial for fair and accurate assessments.
3. Investing in education, vocational training, and mental health support for juveniles can significantly improve rehabilitation outcomes and reduce recidivism.
4. Community programs that address the socio-economic factors contributing to juvenile delinquency should be strengthened to prevent crime at its roots.

SAMPLE SIZE AND SAMPLING METHOD

Sampling is the process of selecting a subset of individuals or units from a larger population for the purpose of studying and making inferences about the entire population. It is a crucial aspect of research since studying an entire population is often impractical, costly, or impossible due to constraints such as time, resources, and accessibility. In this study the “Random Stratified Sampling Method” has been used and the sample size of the study is 50 in which persons from various spheres of life have been selected in the following manner: -

1	Academicians	10
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2	Lawyers/ Advocates	10
3	Legal cum Probation Officers (LPO)	10
4	Psychologists, Psychiatrists, Child Psychologists, Other Experts	10
5	Law Students	10
Total		50

One of the important requirements in social research is selection of sample. Sample is smaller representative of a large whole. In this study “Random Stratified Sampling Method.” Random stratified sampling is a method where the population is divided into non-overlapping groups (strata) based on one or more characteristics. A random sample is then selected from each stratum. The key steps are:

- 1) Identify the strata based on relevant variables.
- 2) Determine the sample size for each stratum.
- 3) Randomly select samples from each stratum.

The main advantages are ensuring representativeness of subgroups in the sample and potentially increasing precision of estimates compared to simple random sampling when strata are homogeneous within themselves but heterogeneous between each other.

HYPOTHESIS

The preliminary Assessment procedure has been added in the Juvenile Justice Act after the incident of Nirbhaya, with a vision to make a crime free society with special regard to children. After this incident, it seems that the whole world became against juvenile crimes with a universal opinion that every juvenile allegedly committing heinous offence must be punished rigorously by law; thus, the preliminary assessment introduced to assess the physical and mental capacity, ability to understand the consequences and circumstance of committing the offence by children aged 16-18 years. But by the time this procedure became just a procedure without considering the unique ideology, purpose and outcome of the Act.

The intention of law makers behind adding this procedure was to adopt adult like procedure for those who are literally involved in heinous crimes of such nature, where the offence is committed deliberately and is not only against the law; but inhumane; it was not for all the children. In addition to that, the preliminary assessment procedure has some loop holes whose benefit is being taken by many which is illegal and in-just. To find out those gaps in this procedure and to make it more competent, useful and practical, this study courageously takes this opportunity. In this way two hypotheses have been formulated such as –

1. Section 15 of JJ Act fails to provide uniformity in the procedure of preliminary assessment as Juvenile Justice Boards all over India adopt different tools/ techniques/ methods for preliminary assessment; thus, it is hypothesised that if there will be uniformity in the procedure it will provide great outcome which will not only match with the purpose of the Act but also help reducing adult trials for the best interest of children.
2. Section 15 of JJ Act, provides taking help of experienced psychologists, psychosocial workers by Juvenile Justice Boards; but the qualification and experience is not mentioned here pinpointedly, thus, to make this procedure more comprehensive, it is hypothesised that if this procedure will be done by a panel of Child Psychologists, Psychiatrists or Psychotherapists, it will become more reliable and comprehensive.

VARIABLES OF THE STUDY

The dependent variable in this study is the Juvenile Justice System, and the independent variable is the change in the need for proper guidelines regarding experts and the procedure for preliminary assessment under Section 15 of the Juvenile Justice Act. The data for this study has been collected from June 2024 onwards.

The dependent variable refers to the aspect or phenomenon that is being studied and observed for potential changes or effects. In this case, the Juvenile Justice System is the focal point of the research, and any impacts or alterations within this system will be evaluated. Conversely, the independent variable represents the factor or condition that is being manipulated or varied to determine its influence on the dependent variable.

The independent variable is the change in the need for proper guidelines concerning experts and the preliminary assessment procedure outlined in Section 15 of the Juvenile Justice Act. It is noteworthy that the data collection for this study commenced in June 2024, indicating that the observations and analyses will encompass information gathered from that point forward.

DATA COLLECTION

The collected data will undergo qualitative content analysis, a well-established method for systematic examination and interpretation of textual information. This research uses both primary and secondary data sources. For primary data source the method of data collection of this research is Questionnaire Method to cover all the importance and required aspects of this study. To collect original data as primary data source, a questionnaire is created using google form and it is sent to the persons i.e., academicians, advocates, LPOs, CWPOs and Law students.

The secondary sources of the study incorporate review of literature that is legal interpretations, case laws, reports, commentaries, guidelines issued by high courts and supreme court of India and reports by various commissions. An in-depth analysis will be done on the basis of primary and secondary data source of the study to find out what

the law says and what it needs. This dual approach allows for a thorough investigation of both the current legal framework and practical realities, aiming to provide insights into potential reforms in the juvenile justice system, particularly regarding standardized preliminary assessment procedures.

DATA ANALYSIS

The primary data of this study will be analysed with the help of a questionnaire created by the researcher herself using a google form and it was sent to the subjects randomly with a request to fill it; simultaneously the data automatically came in a form of an excel sheet which was further interpreted, synthesised for content analysis of the findings for the purpose of empirical evidence and actionable recommendations to fulfil the objectives of this research. Particular emphasis will be placed on aligning the proposed enhancements in the process of preliminary assessment and the guiding principles enshrined in the Constitution of India to secure child rights.

MAJOR FINDINGS AND INTERPRETATION OF DATA

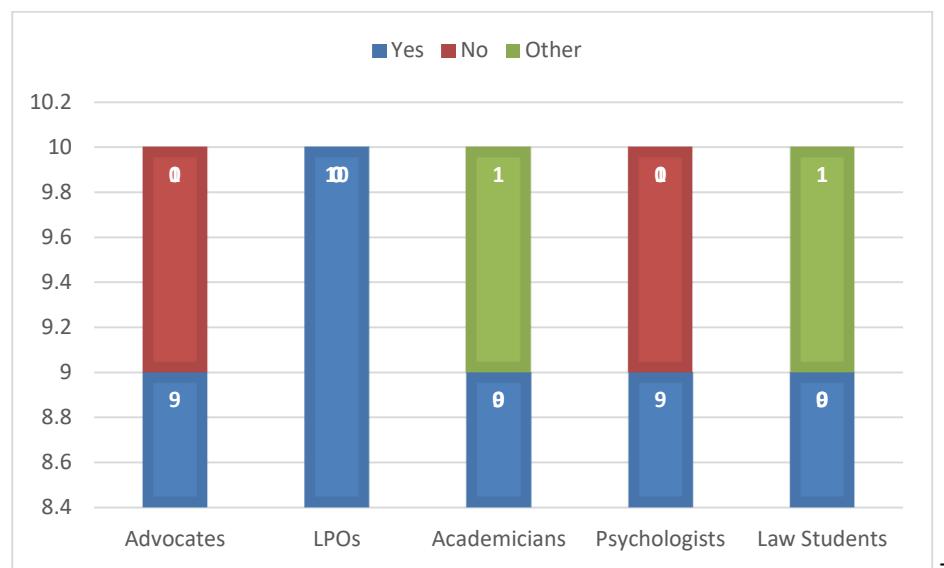
This primary data source of the study was collected by using a questionnaire created for the purpose of finding out the inadequacies of preliminary assessment under Juvenile Justice (Care and Protection of Children) Act, 2015. The secondary data source of this study encompasses – Acts, Statutes, Interpretation by various jurists who provided landmark judgments on juvenile laws. hypothesis have been formulated. This study also submits various reports regarding the status and inadequacies of preliminary assessment under the JJ Act. The data of this study is analysed, categorised and summarised as follows: -

TABLE – 1

1. Are you familiar with the preliminary assessment procedure under the Juvenile Justice (Care and Protection of Children) Act, 2015?

Stratum	Yes	No	Other
Advocates	9	1	0
LPOs	10	0	0
Academicians	9	0	1
Psychologists	9	1	0
Law Students	9	0	1
Total	46	2	2
Percentage	92%	4%	4%

CHART – 1



The question "Are you familiar with the preliminary assessment procedure under the Juvenile Justice (Care and Protection of Children) Act, 2015?" was posed to a diverse group of professionals and students, including advocates, legal professionals, academicians, psychologists, and law students. The responses were categorized into three groups: "Yes," "No," and "Other."

According to the data provided, an overwhelming majority of 92% responded with "Yes," indicating familiarity with the preliminary assessment procedure outlined in the Juvenile Justice Act. This high percentage suggests a commendable level of awareness and knowledge among the respondents regarding this specific aspect of the law.

On the other hand, a small percentage of 4% responded with "No," implying a lack of familiarity with the preliminary assessment procedure. While this percentage is relatively low, it highlights the need for continued efforts to disseminate information and provide training to ensure comprehensive understanding of the legal provisions among all stakeholders involved in the juvenile justice system.

Interestingly, another 4% of respondents fell into the "Other" category, which could potentially include responses that were ambiguous, incomplete, or required further clarification. This segment of responses may warrant additional investigation or follow-up to better understand the underlying reasons for their classification as "Other."

TABLE – 2

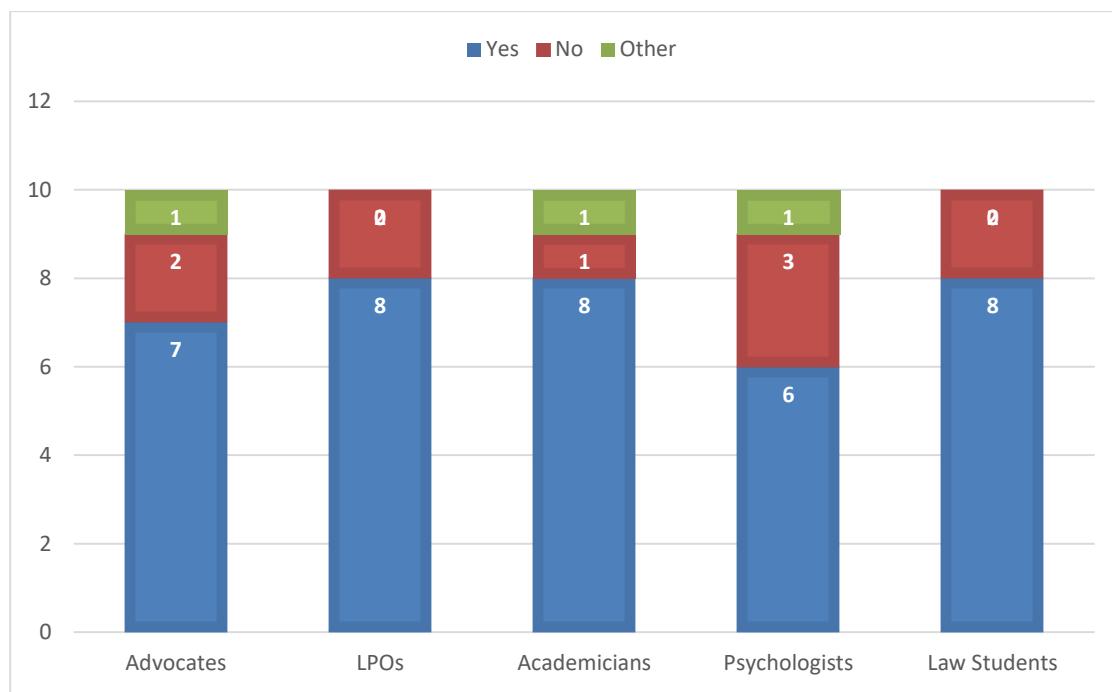
2. Have you observed any inconsistencies or lack of uniformity in the preliminary assessment procedure across different regions or states?

Stratum	Yes	No	Other
Advocates	7	2	1

LPOs	8	2	0
Academicians	8	1	1
Psychologists	6	3	1
Law Students	8	2	0
Total	37	10	3
Percentage	74%	20%	6%



CHART – 2



However, the preliminary assessment procedure for CICL under JJ Act maintains the confidentiality aspect and very less people know about it in reality. But the authorities working under the system are much aware and many take part in the procedure – like advocates, LPOs. The responses to the question indicate a concerning trend, with a significant majority (74%) of participants reporting inconsistencies or lack of uniformity in the preliminary assessment procedure across different regions or states. This suggests that the current assessment process is not being implemented consistently, leading to potential unfairness and disparities in how candidates are evaluated. Approximately one-fifth (20%) of the respondents did not observe any inconsistencies, implying that a portion of the assessment process may be functioning as intended. However, the overwhelming majority of "yes" responses cannot be ignored, as it highlights a systemic issue that needs to be addressed.

Furthermore, 6% of the respondents provided responses outside the "yes" or "no" categories. These "other" responses may offer additional insights or nuances that could shed light on the specific nature of the inconsistencies or the contexts in which they occur.

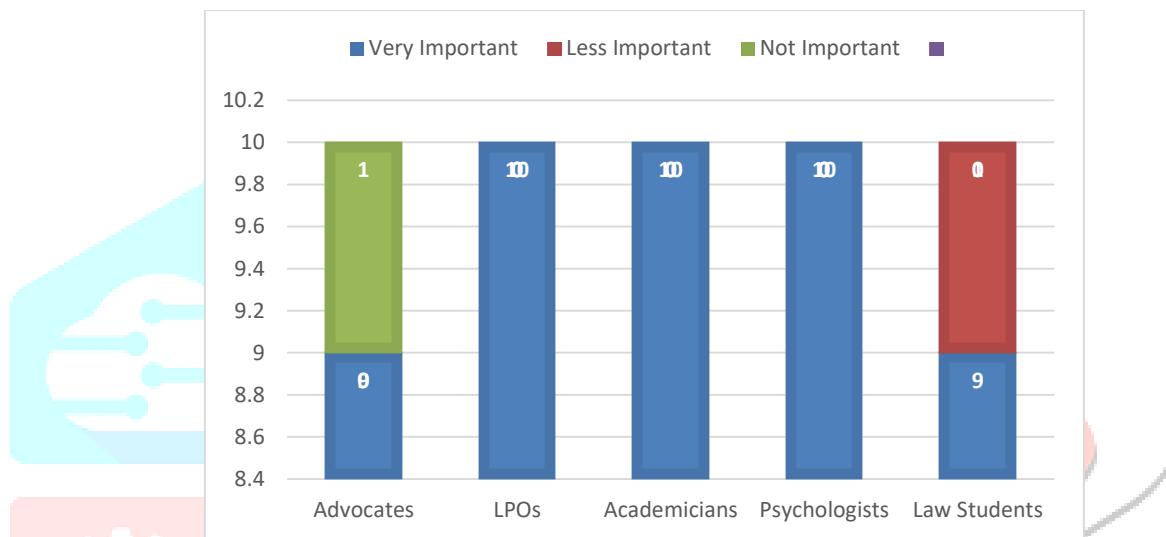
It is crucial to delve deeper into the "yes" and "other" responses to understand the root causes of these inconsistencies and the potential impacts they may have on the assessment process. Qualitative analysis of these responses could reveal patterns, themes, or specific areas of concern that require immediate attention and remediation. The high percentage of "yes" responses suggests that the issue of inconsistencies in the preliminary assessment procedure is widespread and not limited to a few isolated cases.

TABLE – 3

3. How important is the role of psychologists, psychosocial workers, and other experts in the preliminary assessment process?

Stratum	Very Important	Less Important	Not Important
Advocates	9	0	1
LPOs	10	0	0
Academicians	10	0	0
Psychologists	10	0	0
Law Students	9	1	0
Total	48	1	1
Percentage	96%	2%	2%

CHART – 3



The role of psychologists, psychosocial workers, and other experts in the preliminary assessment process is crucial and cannot be overstated. The high percentage of 'yes' responses (96%) in the provided data underscores the significance of their involvement. These experts bring invaluable expertise and insights that aid in a comprehensive and well-informed assessment process.

In the realm of legal proceedings, the courts have recognized and emphasized the importance of such expert assessments. Several landmark cases have highlighted the necessity of involving qualified professionals in the preliminary assessment stage, particularly in matters concerning mental health, trauma, and psychosocial well-being. One notable case that exemplifies this principle is *Ake v. Oklahoma (1985)*⁹⁰. In this seminal decision, the United States Supreme Court ruled that when a defendant's mental condition is a significant factor in the case, the state must provide access to a competent psychiatrist or psychologist to assist in the evaluation, preparation, and presentation of the defence. The Court recognized that the assistance of such experts is crucial for ensuring a fair trial and upholding the principles of due process. In this case, Justice Marshall, writing for the majority, stated, "Psychiatrists and psychologists can inform the legal process by gathering facts, through professional examination, interviews, and elsewhere, by analysing the information gathered and from it drawing

⁹⁰ *Ake v. Oklahoma*, 470 U.S. 68, 80 (1985)

plausible conclusions about the defendant's mental condition, and about the relevant issues of causality and intent."

This ruling underscore the importance of expert assessments in legal proceedings, particularly when mental health or psychological factors are at play.

Similarly, in the case of *Dusky v. United States (1960)*⁹¹, the Supreme Court established the standard for determining a defendant's competency to stand trial, emphasizing the need for expert evaluation and assessment. The Court held that a defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him."

Renowned jurists and legal scholars have also commented on the indispensable role of expert assessments in legal proceedings. Justice Antonin Scalia, in his dissenting opinion in *Jaffee v. Redmond (1996)*⁹², acknowledged the importance of psychotherapists' evaluations, stating, "They [psychotherapists] are, at least to some degree, implementing rules formulated by others."

Additionally, esteemed legal scholar and judge Richard A. Posner, in his book "*Frontiers of Legal Theory*"⁹³, highlighted the value of expert assessments, particularly in complex cases involving mental health or psychological factors. He noted, "The use of expert testimony in such cases is not only permissible but often essential for an accurate and fair adjudication."

It is important to note that while expert assessments are highly valuable, they should be considered in conjunction with other relevant evidence and factors. The courts must weigh the expert opinions against the totality of the evidence and make informed decisions based on the specific circumstances of each case.

In conclusion, the significant role of psychologists, psychosocial workers, and other experts in the preliminary assessment process is well-recognized and supported by legal precedents and judicial commentary. Their expertise and insights are invaluable in ensuring a comprehensive and fair assessment process, particularly in cases involving mental health, trauma, and psychosocial well-being.

TABLE – 4

4. Should the Act provide specific guidelines for the involvement of these experts in the preliminary assessment?

3.

⁹¹ Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960)

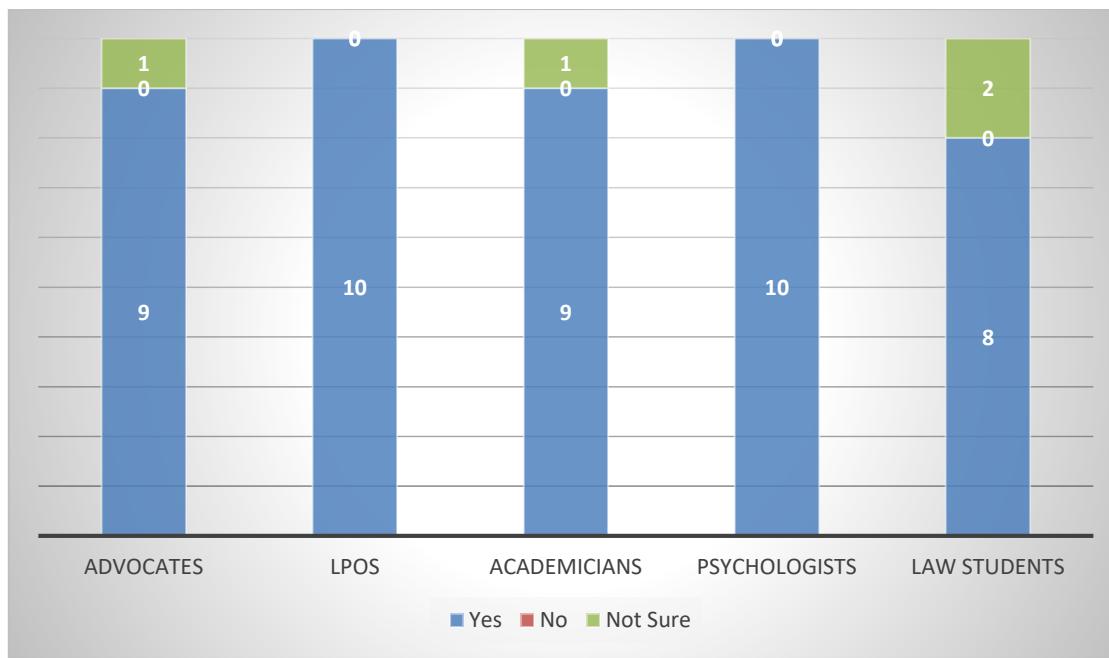
⁹² Jaffee v. Redmond, 518 U.S. 1, 116 S. Ct. 1923, 135 L. Ed. 2d 337 (1996)

⁹³ Posner, Richard A. *Frontiers of Legal Theory*. Cambridge, MA: Harvard University Press, 2001.

Stratum	Yes	No	Not Sure
Advocates	9	0	1
LPOs	10	0	0
Academicians	9	0	1
Psychologists	10	0	0
Law Students	8	0	2
Total	46	0	4
Percentage	92%	0%	8%



CHART – 4



Based on the given information, 92% of the respondents answered "Yes" to the question "Should the Act provide specific guidelines for the involvement of these experts in the preliminary assessment?", while 0% answered "No", and 4% were "Not Sure". Here's a detailed analysis of these results:

The majority of respondents (92%) believe that the Act should provide specific guidelines for the involvement of experts in the preliminary assessment. This high percentage indicates a strong consensus among the respondents that clear guidelines are necessary to ensure proper involvement and utilization of experts in the initial stages of the assessment process. The absence of "No" responses (0%) further reinforce the notion that there is no significant opposition to the idea of having specific guidelines for expert involvement. This suggests that the respondents recognize the importance and potential benefits of incorporating expert knowledge and expertise in the preliminary assessment phase.

However, it is worth noting that a small proportion (4%) of respondents were unsure about whether the Act should provide specific guidelines or not. This could be attributed to a lack of information or understanding about the potential implications or details of such guidelines, or perhaps a belief that the existing procedures are sufficient. Overall, the results demonstrate a compelling mandate from the respondents for the Act to establish clear and specific guidelines for the involvement of experts in the preliminary assessment. This call for action could stem from a desire for increased transparency, accountability, and standardization in the assessment process, as well as a recognition of the value that expert input can bring to the initial stages of evaluation.

TABLE – 5

5. How can the preliminary assessment procedure be improved to ensure a more comprehensive evaluation of the child's circumstances? (Please provide a brief written response)

CHART – 5

Category	Frequency	Percentage
Expert committee Involvement	7	14%
Educational Interventions	11	22%
Legal Awareness	9	18%
Comprehensive Assessment	11	22%
No Specific Suggestion	12	24%
Total	50	100%



The responses suggest that a significant portion of respondents (24%) did not offer any specific suggestions for improving the preliminary assessment procedure. However, the remaining 76% of respondents proposed several measures that could potentially enhance the evaluation process.

The two most frequently suggested categories were "Educational Interventions" and "Comprehensive Assessment," each accounting for 22% of the responses. This study shows a strong emphasis on incorporating educational strategies and ensuring a holistic evaluation approach to better understand the child's circumstances so that these children will not become the part of juvenile justice system. Furthermore, 18% of the respondents highlighted the importance of "Legal Awareness," suggesting that increasing knowledge and understanding of legal frameworks and child rights could contribute to a more comprehensive assessment. Thus, it is recommended that the educational system should incorporate legal awareness at school level so that children of different age group become more and more aware about the laws of land.

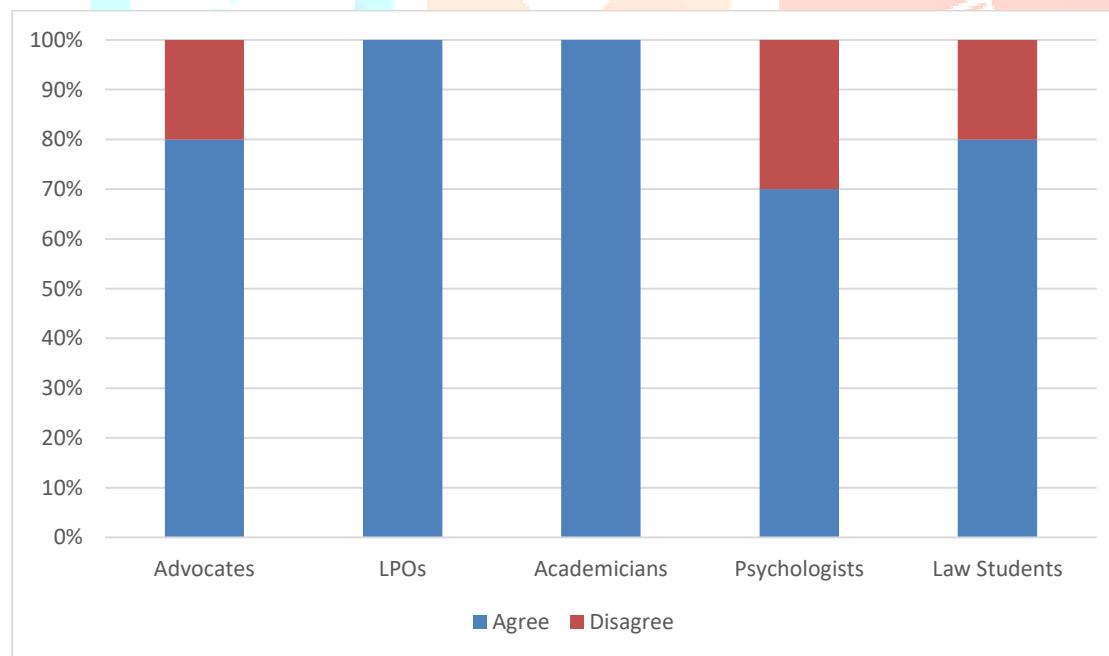
Lastly, 14% of the responses recommended the involvement of "Expert committees," which could bring together multidisciplinary teams with diverse expertise to provide a well-rounded assessment. This expert committee should be selected on the basis of various parameters to understand and apply the holistic approach with child in conflict with law.

TABLE – 6

6. Do you believe that a uniform procedure for preliminary assessment should be followed across India?

Stratum	Agree	Disagree
Advocates	8	2
LPOs	10	0
Academicians	10	0
Psychologists	7	3
Law Students	8	2
Total	43	7
Percentage	86%	14%

CHART – 6



This data presented here provides valuable insights into the perspectives of various stakeholders regarding the implementation of a uniform procedure for preliminary assessment across India. The majority, constituting 86% of the respondents, expressed their agreement with this proposition, while only 14% disagreed.

Breaking down the responses by stratum, it is evident that certain groups were unanimous in their support for a uniform procedure. Notably, all Legal Cum Probation Officers (LPOs) and academicians surveyed agreed with the need for a standardized approach. Among advocates, the agreement was also strong, with 8 out of 10

individuals supporting a uniform procedure. This suggests that legal professionals recognize the potential benefits of standardization in ensuring fair and equitable assessment processes across different jurisdictions.

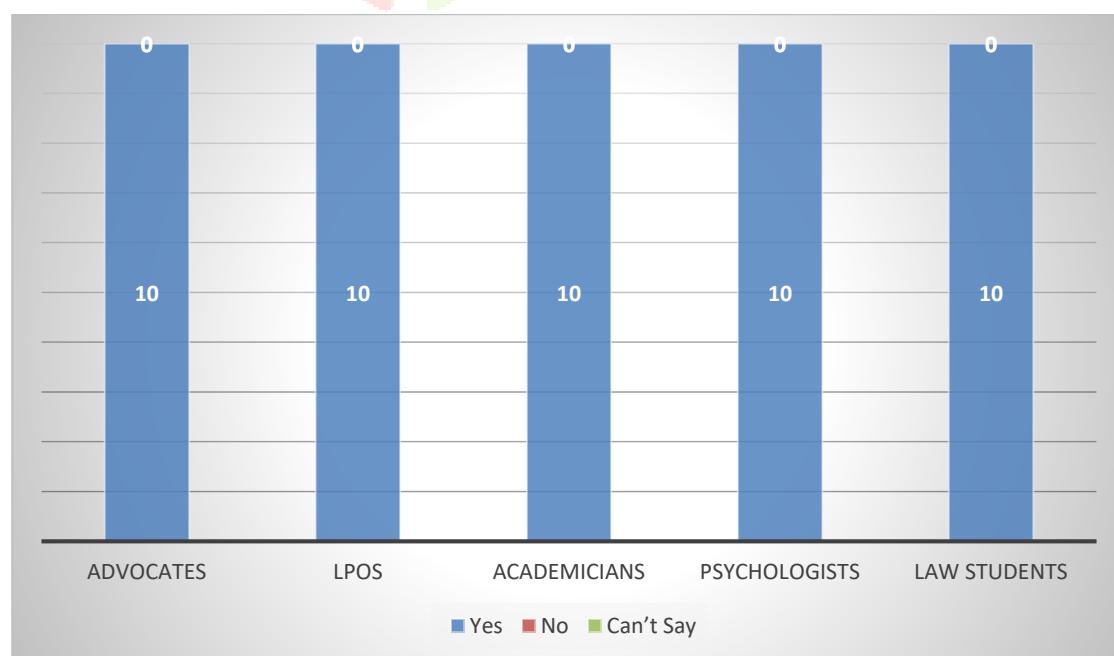
Interestingly, psychologists exhibited a slightly lower level of agreement compared to other groups, with 7 out of 10 respondents favouring a uniform procedure. The remaining 3 psychologists disagreed, which could potentially stem from concerns about the need for flexibility and individualized approaches in psychological assessments. Law students, representing the future generation of legal professionals, also largely supported the idea, with 8 out of 10 respondents agreeing with the implementation of a uniform procedure for preliminary assessment across India.

TABLE – 7

7. Should the Act provide for periodic training and capacity-building programs for Juvenile Justice Boards, psychologists, and other experts involved in the preliminary assessment process?

Stratum	Yes	No	Can't Say
Advocates	10	0	0
LPOs	10	0	0
Academicians	10	0	0
Psychologists	10	0	0
Law Students	10	0	0
Total	50	0	0
Percentage	100%	0	0

CHART – 7



The data clearly shows an overwhelming consensus among all stakeholders regarding the need for periodic training and capacity-building programs for Juvenile Justice Boards, psychologists, and other experts involved in the preliminary assessment process.

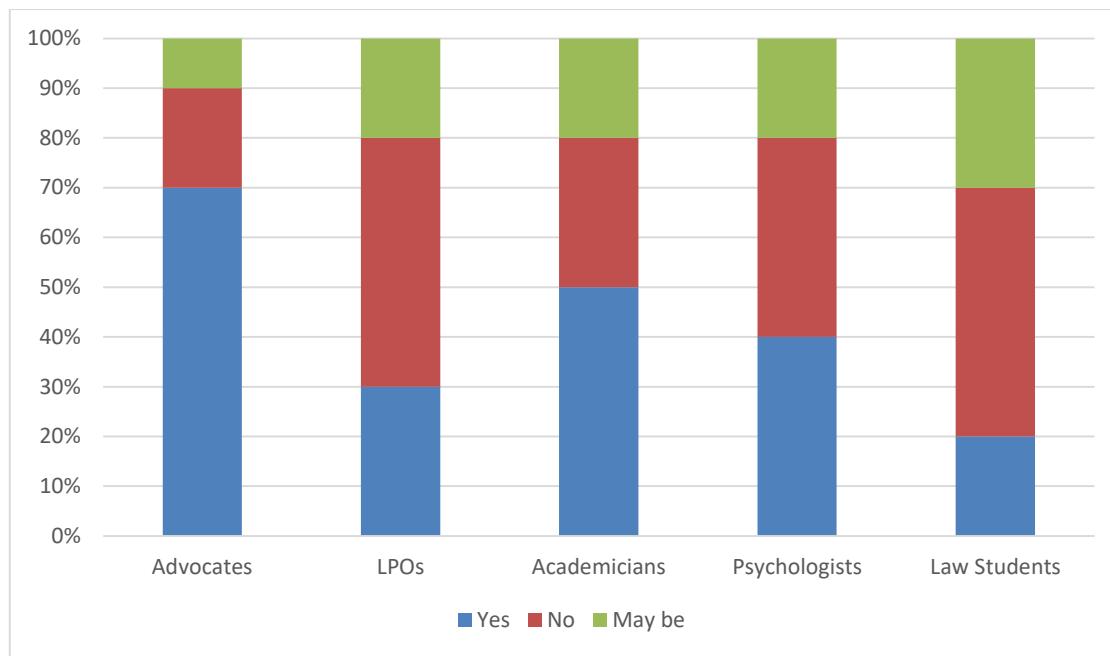
Across all strata, including advocates, Local Protection Officers (LPOs), academicians, psychologists, and law students, there was a unanimous agreement that such training programs should be provided. None of the respondents opposed the idea or expressed an inability to take a stance on the matter. The trainings and capacity building programs organized by various authorities working for Juvenile Justice System, mostly focus on upgradation of the principal magistrate, members, LPOs, counsellors, social workers and operators; however, for the purpose of preliminary assessment it is expedient to focus on the upgradation, training and capacity building of the psychologists, psychosocial workers and other experts doing an important task of preliminary assessment. But before such training programs the state government must provide a list of experienced and capable experts for preliminary assessment for every district and there must be a fixed criteria for this task as it is generally given in any paid vacancies.

TABLE – 8

8. Have you encountered any challenges or inconsistencies in the preliminary assessment procedure across different regions or states?

Stratum	Yes	No	May be
Advocates	7	2	1
LPOs	3	5	2
Academicians	5	3	2
Psychologists	4	4	2
Law Students	2	5	3
Total	21	19	10
Percentage	42%	38%	20%

CHART – 8



The data highlights the need for further examination and standardization of the preliminary assessment procedure to address the challenges and inconsistencies reported by various stakeholders. It is crucial to ensure uniformity and consistency in the assessment process, regardless of the region or state, to uphold the principles of fairness and equal treatment for all children involved.

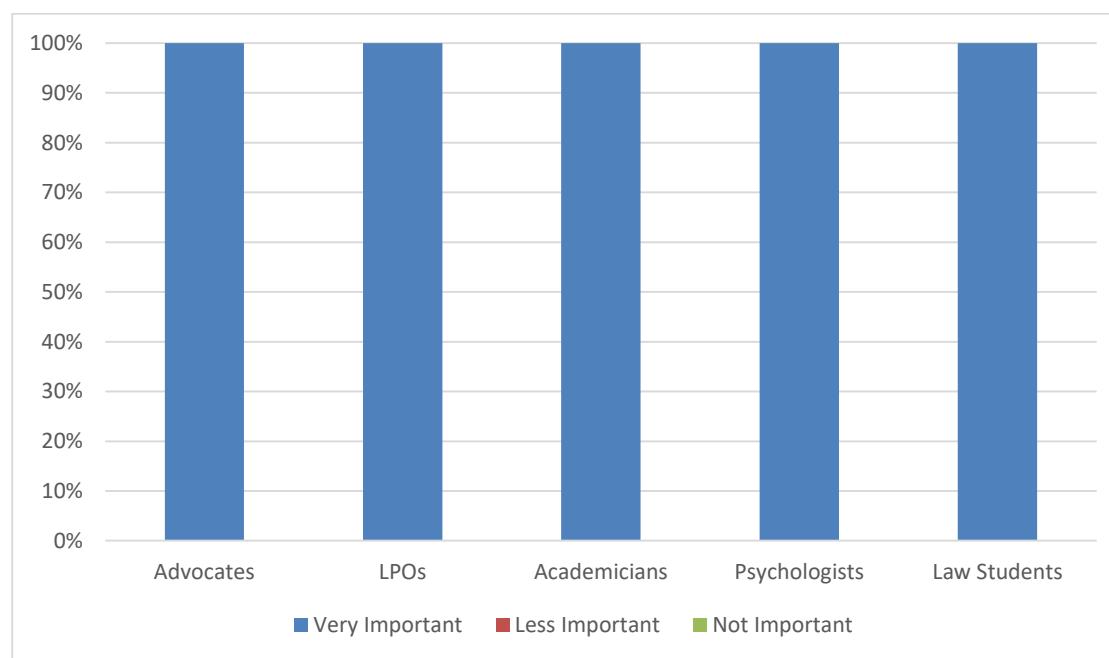
This data also demands that the procedural inconsistency is found in such a manner that the categories formed in this study have given mixed responses and exactly nothing can be turned out as specific and precise at this point.

TABLE – 9

9. How important is the role of a principal magistrate, LPO and Child Welfare Police Officer in the preliminary assessment process?

Stratum	Very Important	Less Important	Not Important
Advocates	10	0	0
LPOs	10	0	0
Academicians	10	0	0
Psychologists	10	0	0
Law Students	10	0	0
Total	50	0	0
Percentage	100%	0	0

CHART – 9



Across all strata, including advocates, LPOs, academicians, psychologists, and law students, there was a consensus that these key individuals play a vital role in the preliminary assessment process. None of the respondents disagreed or provided an alternative perspective on the matter. The principal magistrate, LPO, and Child Welfare Police Officer are critical stakeholders in the juvenile justice system, each with distinct responsibilities and functions. Their roles are interdependent and collectively contribute to ensuring a comprehensive and effective preliminary assessment process.

The principal magistrate, as the presiding authority of the Juvenile Justice Board, plays a crucial role in overseeing and guiding the assessment process. They are responsible for ensuring that the assessment is conducted in accordance with legal principles, procedural safeguards, and the best interests of the child. The principal magistrate's expertise in legal matters and judicial oversight is essential for maintaining the integrity and fairness of the assessment process. The Legal cum Probation officer (LPO) is a key figure in the preliminary assessment process. LPOs are tasked with conducting inquiries, preparing social investigation reports, and providing recommendations to the Juvenile Justice Board. Their role involves gathering relevant information, assessing the child's circumstances, and identifying appropriate interventions or support services. LPOs serve as a vital link between the child, the family, and the juvenile justice system, ensuring that the child's needs and rights are represented and addressed.

The Child Welfare Police Officer plays a crucial role in the initial stages of the assessment process. They are responsible for ensuring the safety and well-being of the child, as well as gathering relevant information and evidence related to the case. Child Welfare Police Officers collaborate closely with LPOs and other stakeholders, providing critical inputs and support throughout the assessment process. The unanimous recognition of the importance of these roles underscores the significance of a coordinated and collaborative approach in the preliminary assessment process. Each stakeholder brings unique expertise and responsibilities, and their

collective efforts contribute to a comprehensive understanding of the child's circumstances and the formulation of appropriate interventions.

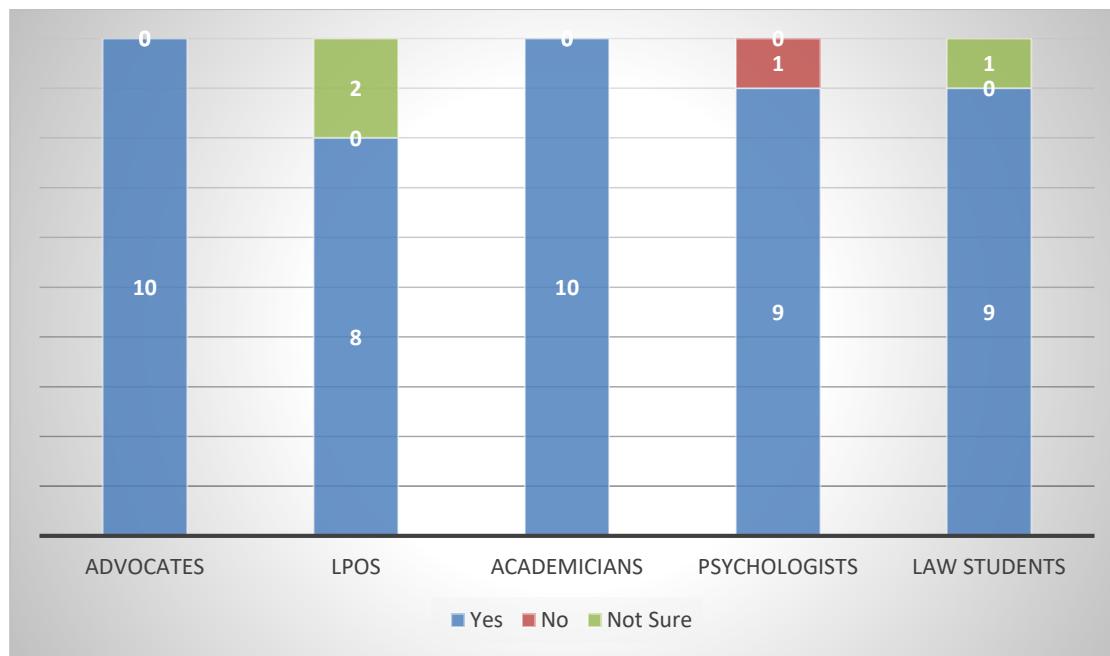
TABLE – 10

10. Should the Act provide specific guidelines for the tools/ techniques used and procedure adopted by the experts for preliminary assessment?

Stratum	Yes	No	Not Sure
Advocates	10	0	0
LPOs	8	0	2
Academicians	10	0	0
Psychologists	9	1	0
Law Students	9	0	1
Total	46	1	3
Percentage	92%	2%	6%



CHART – 10



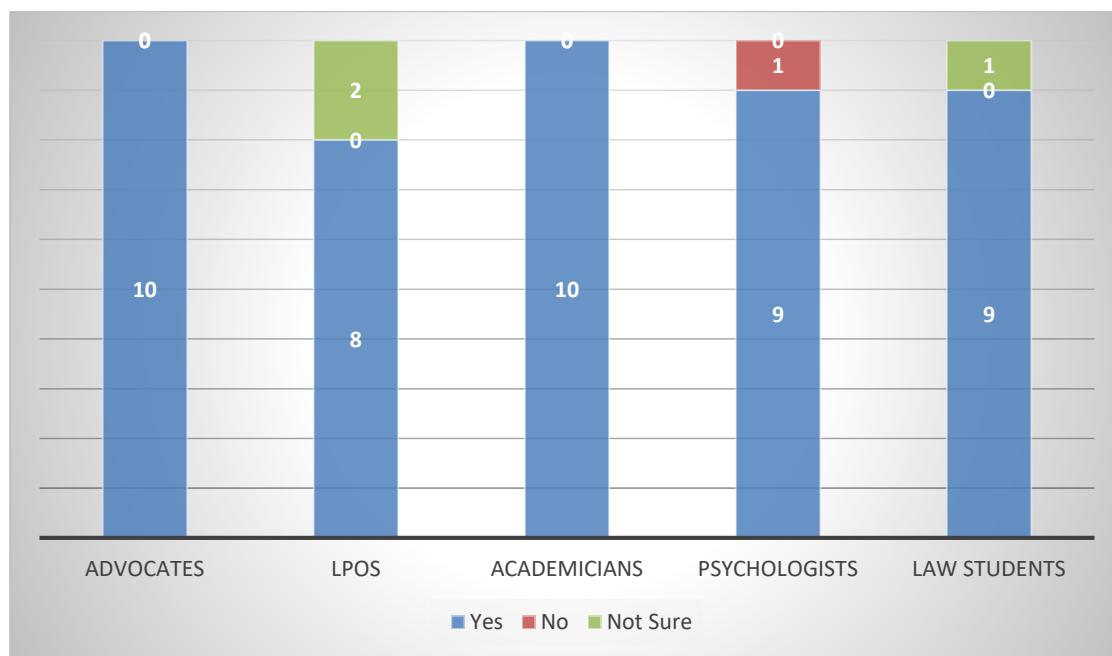
The data clearly shows a majority (46 out of 50 respondents, or 92%) in favour of the Act providing specific guidelines for the tools, techniques, and procedures used by experts during the preliminary assessment process. Only 1 respondent (a psychologist) explicitly disagreed with this proposition, while 3 respondents (2 LPOs and 1 law student) expressed uncertainty. However, the Supreme Court has already instructed the authorities working for juvenile justice to form standard guidelines and the NCPCRs is the first authority to issue guidelines in this regard. But still, this study proposes that these guidelines must be included in the act itself to strengthen it and to accept and implement its provisions universally. In addition to that, if there will be standardized tools, techniques, and procedures for preliminary assessment, it can facilitate a more comprehensive and objective evaluation of the child's circumstances, ensuring that critical aspects are not overlooked or underemphasized. Thus, this study proposes universal procedures for preliminary assessment by way of amendment in the JJ Act itself.

TABLE – 11

11. Should the Act provide specific qualification and experience of experts for the preliminary assessment?

Stratum	Yes	No	Not Sure
Advocates	10	0	0
LPOs	10	0	0
Academicians	10	0	0
Psychologists	10	0	0
Law Students	10	0	0
Total	50	0	0
Percentage	100%		

CHART – 11



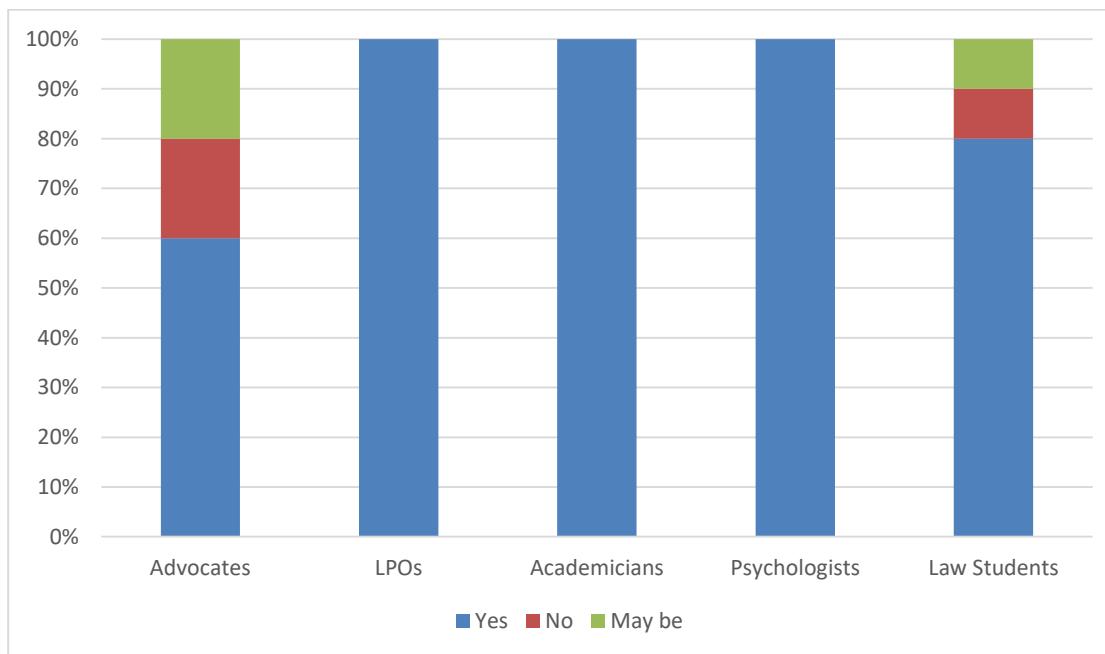
The data clearly shows a unanimous consensus among all stakeholders regarding the need for the Act to provide specific qualifications and experience requirements for experts, including Psychologists, Psychosocial workers and other Experts explained under Section 15 of JJ Act. It would be pertinent to include specific categories with qualification, expertise and experience so that these experts can do the task of preliminary assessment with confidence and with expertise.

TABLE – 12

12. Should the preliminary assessment procedure must be done by Clinical Psychologists, Child Psychologists, Psychiatrists or Psychotherapists?

Stratum	Yes	No	May be
Advocates	6	2	2
LPOs	10	0	0
Academicians	10	0	0
Psychologists	10	0	0
Law Students	8	1	1
Total	44	3	3
Percentage	88%	6%	6%

CHART – 12



The data reveals a strong inclination towards involving mental health professionals in the preliminary assessment procedure. A substantial majority of 44 out of 50 respondents (88%) supported the proposition, indicating a widespread recognition of the importance of psychological and psychiatric expertise in evaluating the child's circumstances. The unanimous agreement among LPOs, academicians, and psychologists highlights their confidence in the specialized knowledge and skills possessed by mental health professionals in assessing and understanding the psychological, emotional, and behavioural aspects of a child's well-being.

The advocates and law students, while not entirely unanimous, also demonstrated a significant level of support for the involvement of these professionals, suggesting a recognition of the value they can bring to the assessment process.

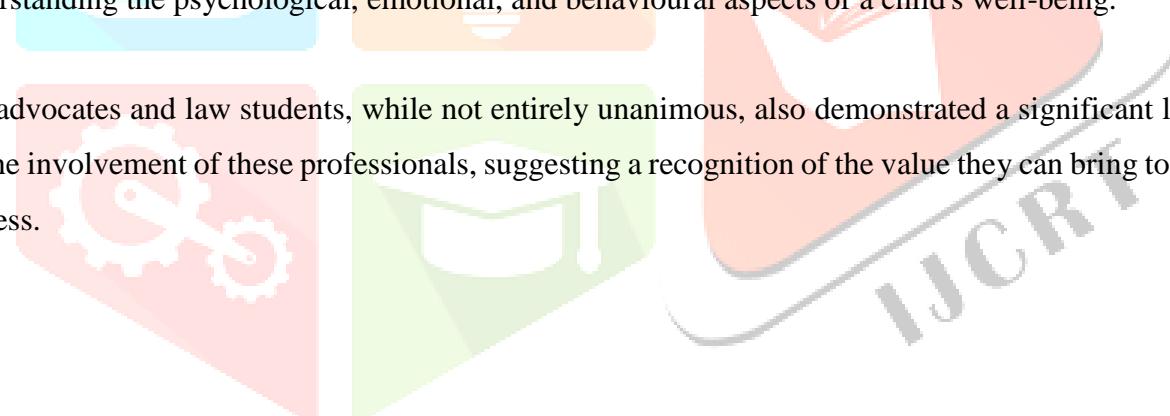
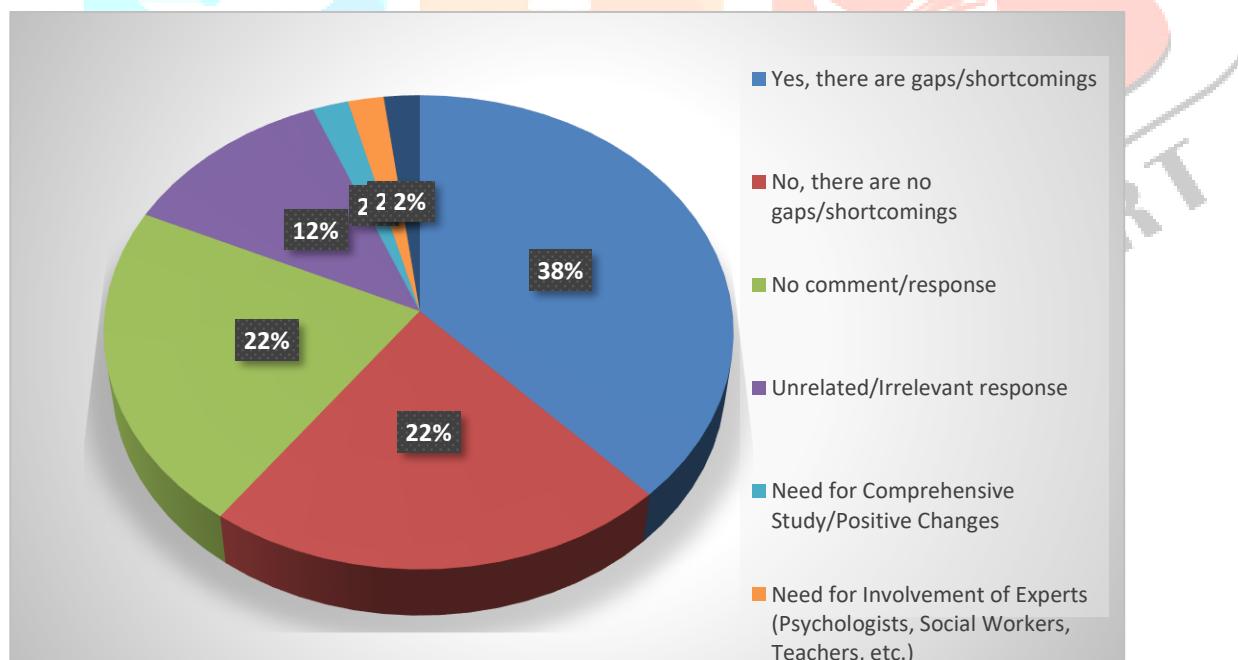


TABLE – 13

13. In your experience, have you observed any gaps or shortcomings in the current preliminary assessment procedure?

Category	Frequency	Percentage
Yes, there are gaps/shortcomings	19	38%
No, there are gaps/shortcomings	11	22%
No comment/response	11	22%
Unrelated/Irrelevant response	6	12%
Need for Comprehensive Study/Positive Changes	1	2%
Need for Involvement of Experts (Psychologists, Social Workers, Teachers, etc.)	1	2%
Time Duration Concerns	1	2%
Total	50	100%

CHART – 13



The responses to the question "In your experience, have you observed any gaps or shortcomings in the current preliminary assessment procedure?" reveal some insightful perspectives and concerns from the respondents. The largest group, constituting 38% of the responses, acknowledged the existence of gaps or shortcomings in the current preliminary assessment procedure.

This significant proportion highlights the need for careful examination and potential improvements to the existing system. On the other hand, 22% of the respondents did not observe any gaps or shortcomings, indicating a level of satisfaction with the current procedure among a sizeable minority.

It is noteworthy that an equal proportion (22%) of respondents did not provide any comment or response, which could be due to various reasons, such as lack of exposure, knowledge, or a neutral stance on the matter.

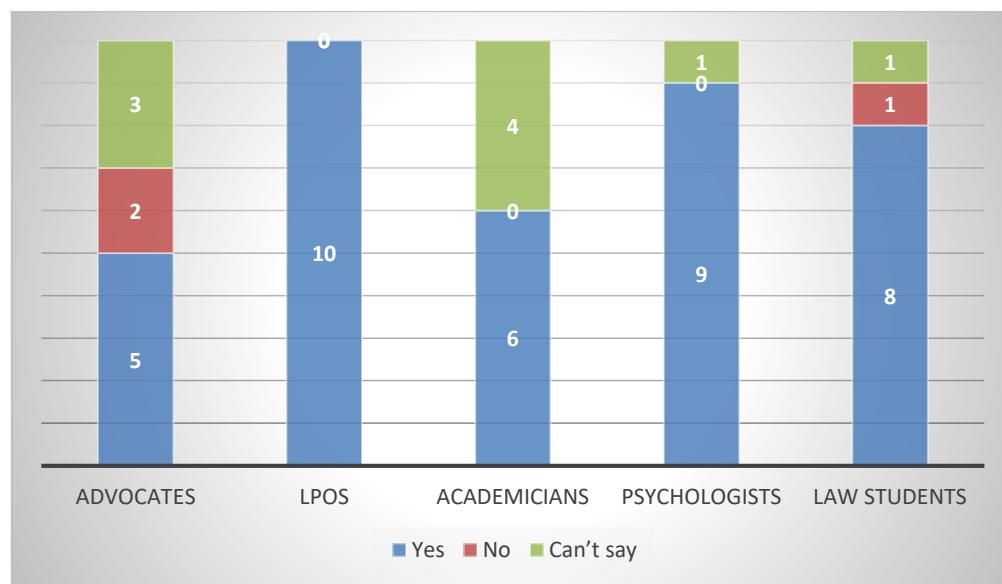
Additionally, 12% of the responses were categorized as unrelated or irrelevant, suggesting that some respondents may have misunderstood the question or provided responses that did not directly address the query.

TABLE – 14

14. Do you think the preliminary assessment procedure adequately addresses the best interests of the child?

Stratum	Yes	No	Can't say
Advocates	5	2	3
LPOs	10	0	0
Academicians	6	0	4
Psychologists	9	0	1
Law Students	8	1	1
Total	38	3	9
Percentage	76%	6%	18%

CHART – 14



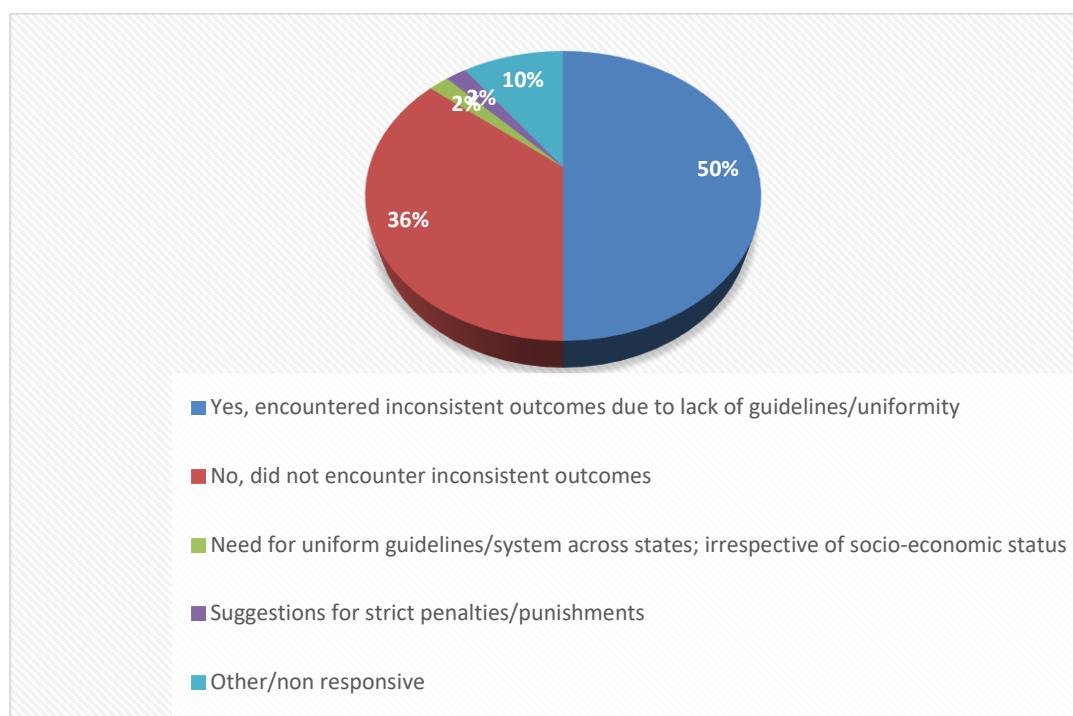
The data suggests that among the groups surveyed, there is a stronger inclination toward the belief that the preliminary assessment procedure adequately addresses the best interests of the child. However, the percentage of people saying it adequate is 76% and 18% of people are not in the state to say something about the procedure which shows that there is a strong inclination to spread awareness about the procedure then only people will be in the state to analyse overall interpretation considering its merits and demerits.

TABLE – 15

15. Have you encountered cases where the lack of guidelines or uniformity in the preliminary assessment procedure led to inconsistent outcomes?

Categories	Frequency	Percentage
Yes, encountered inconsistent outcomes due to lack of guidelines/uniformity	25	50%
No, did not encounter inconsistent outcomes	18	36%
Need for uniform guidelines/system across states; irrespective of socio-economic status	1	2%
Suggestions for strict penalties/punishments	1	2%
Other/non responsive	5	10%
Total	50	100%

CHART – 15



Detailed analysis of this data shows that, while a significant portion of respondents reported encountering inconsistent outcomes due to the lack of guidelines/uniformity, a considerable number also did not face such issues. The data highlights the need for uniform guidelines or systems across states, with only a few responses suggesting strict penalties or punishments as a measure. Additionally, there were some non-responsive or irrelevant responses.

This analysis provides insights into the varying experiences and perspectives of the respondents regarding the impact of the lack of guidelines or uniformity on the consistency of outcomes in the preliminary assessment procedure. It also highlights the potential areas of concern and suggestions for improvement. It's a notable point that 50% responses are in support of the issue raised in this study that lack of uniformity in the preliminary assessment procedure led to inconsistent outcomes.

A notable point to be considered on the basis of a response provided by an advocate, *"In each state, the preliminary assessment procedure is different, and due to different opinions and rules in different states, there is a lack of uniformity, which leads to the desired results not being achieved."* Similarly, an Academician has mentioned that *"Sometimes all juvenile delinquents are weighed on the same scale. Resulting in a wrong decision."* In addition to that, psychologists taken in this study for data collection has been of the opinion that *"Every child should undergo all psychological tests first and then cognitive assessment before evaluation. The circumstances and crimes committed should be analysed basis these tests. Every human is different coming from different backgrounds. Plus understanding of distortions in the child's psychology plays an important role along with his other abilities. These are important reports which should be done by a trained psychologist before the jurisdiction."* Another viewpoint by a psychologist, *"The procedure can be improved by standardizing assessment tools, providing regular training to experts, ensuring consistent implementation across regions, and incorporating a holistic approach that includes family background and socio-economic factors."*

TABLE – 16

16. In your opinion, what are the potential challenges in implementing a uniform preliminary assessment procedure across India?

Category	Key Insights	Example Quotes
Cultural and Social Differences	Diverse culture, caste system, and language barriers create significant challenges for uniform procedures.	"भ्रष्टाचार को रोककर प्रारंभिक निधारण की प्रक्रिया एकरूपता लाने हेतु वैचारिक मतभेद लंगवेज समस्या विधि समरूपता का न होना एवम वर्ण अव्यवस्था का सामान रूप ना होने से चुनौतियों का सामना करना पड़ सकता है।" (response by some advocates)
Legal and Policy Differences	Local laws and the need for strict adherence to national acts complicate implementation.	"Condition of every state is different. So proper training needed" (response by some advocates)
Training and Implementation	Uniform training and varying expertise levels among professionals affect the consistency of assessments.	"Training of individuals pan India" – (response by some Psychologist)
Resource Availability	Regional resource disparities and economic backgrounds influence the implementation of uniform procedure	"The cultural differences along with financial backgrounds" (response by some Psychologists)
Procedural and Logistical Issues	Standardizing procedures nationwide and the need for case-by-case assessment present logistical challenges.	"People should be aware of the act and it should be implemented on case to case basis" (response by some Psychologists)
Miscellaneous Challenges	Some believe no significant challenges exist, while others emphasize crime prevention and adherence to rules.	"No Nothing will come we will face all! It's not better to let make criminals in our country Who rape and kill our citizens It's better to be

		in good character and must be in rules and regulations" (response by some advocates)
By Amendment and Strict compliance of the JJ Act	Some of the respondents were of opinion that by strict compliance and required amendment in the JJ Act will bring uniformity in the Act.	अधिनियम का कड़ाई से पालन किये जाने हेतु निर्देश जारी किया जाना चाहिए। जे जे एक्ट में संशोधन करके (responses by some LPOs)
Patience and Empathy	Some believe that sincere efforts always payoff, also the challenges may be due to different state policies and procedures.	sincerity is must along with patience and empathy Due to different state policies and procedures. (responses by some Academicians)

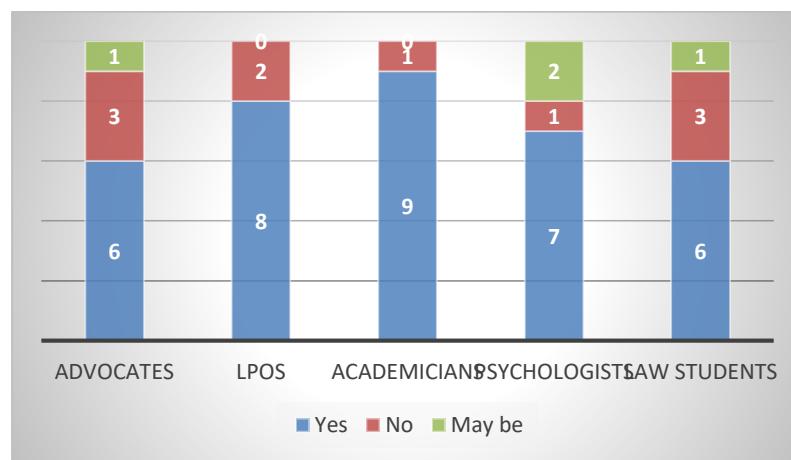
The answer to the above question demands qualitative interpretation thus the categories of responses have been formed on the basis of the data of this study. A detailed content analyses have been done where a holistic approach shows that different subjects of this study are of opinion to bring uniformity in preliminary assessment procedure. On the basis of above data, it can be concluded that there are various challenges in implementing uniform procedure but as the JJ Act suggests, strict adherence will make this task easier and the goal is achievable.

TABLE – 17

17. Should there be a Uniform Psychological Assessment for Preliminary Assessment?

Stratum	Yes	No	May be
Advocates	6	3	1
LPOs	8	2	0
Academicians	9	1	0
Psychologists	7	1	2
Law Students	6	3	1
Total	36	10	4
Percentage	72%	20%	8%

CHART – 17



The data presented from various respondent strata, including Advocates, LPOs, Academicians, Psychologists, and Law Students, suggests a significant consensus on the necessity of a uniform psychological assessment for preliminary assessments. Analysing the responses, it becomes evident that a substantial majority, **72%**, are in favor of implementing such a uniform procedure. This perspective is particularly strong among Academicians, with 9 out of 10 advocating for uniformity, and LPOs, where 8 out of 10 respondents support this initiative.

The Advocates and Law Students also show a majority in favor, with 6 out of 10 and 6 out of 10 respectively, supporting the uniform assessment, though a notable minority in these groups express opposition or uncertainty. Psychologists, who possess expert insights into the practical implications and benefits of psychological assessments, largely agree (7 out of 10) on the necessity, though there is some hesitancy reflected in the 'maybe' responses. Moreover, the data highlights that 20% of respondents oppose the idea, raising potential concerns regarding the feasibility of uniform implementation across diverse legal and cultural landscapes. An additional 8% of respondents are ambivalent, indicating that while they see potential benefits in uniformity, there may be reservations about practical implementation, training, and resource allocation.

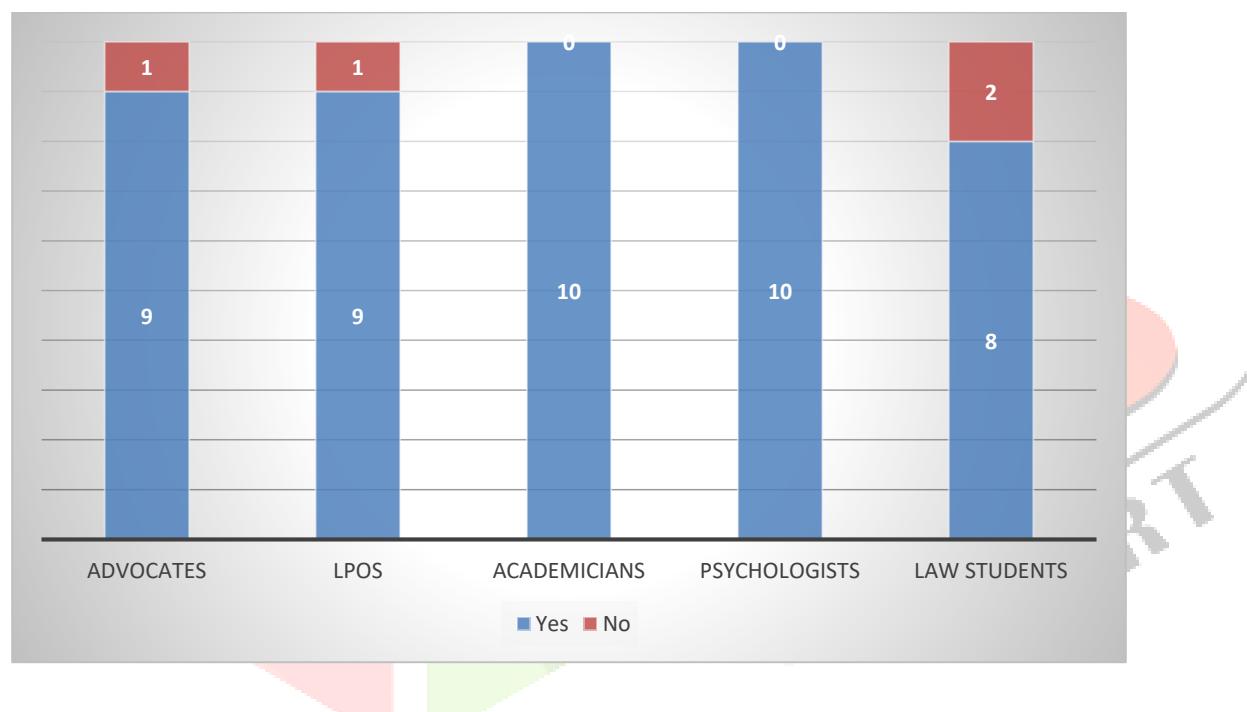
TABLE – 18

18. Do you think that the experts mentioned under Section 15 of JJ Act, 2015 viz Psychologists, Psychosocial Workers and other Experts, must be given more than one sittings/ session with the Juvenile for preliminary assessment?

Stratum	Yes	No
Advocates	9	1
LPOs	9	1
Academicians	10	0
Psychologists	10	0
Law Students	8	2
Total	46	4

Percentage	92%	8%
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CHART – 18



The necessity for multiple sessions between a psychologist and a child in conflict with the law is essential due to the complex nature of psychological assessment. A single session is often insufficient to capture the full scope of a child's psychological state, social background, and contributing factors to their behaviour. Multiple sessions allow for the development of rapport, enabling the child to feel comfortable and open up, providing honest and detailed information. This is crucial for an in-depth evaluation, as each session allows the psychologist to explore various aspects of the child's life, including mental health, family dynamics, and social environment, leading to a comprehensive understanding and accurate diagnosis.

Furthermore, consistent observations over multiple sessions help in identifying behavioural patterns and triggers that might not be evident in a single meeting. This extended interaction ensures the reliability of findings and aids in formulating effective, individualized intervention strategies. A holistic approach, considering psychological, social, and environmental factors, is vital for creating tailored interventions that address the child's

specific needs. From a legal and ethical standpoint, ensuring multiple sessions aligns with the juvenile justice system's aim to provide fair and rehabilitative measures rather than punitive actions. Thorough and just assessments support decisions that are in the best interest of the child. Psychologists have an ethical responsibility to base their assessments and recommendations on complete and accurate information, achievable through multiple interactions. Therefore, multiple sessions are crucial for comprehensive, accurate, and fair psychological assessments, aligning with the rehabilitative goals of the juvenile justice system to support and guide children towards positive development and reintegration into society.

The consensus among various expert groups, including Advocates, LPOs, Academicians, Psychologists, and Law Students, underscores the critical importance of granting more than one sitting or session for experts conducting preliminary assessments of juveniles under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The data reveals that an overwhelming 92% of respondents advocate for multiple sessions, highlighting a shared recognition of the complexity and sensitivity involved in juvenile assessments. Among the professionals surveyed, the unanimity is particularly strong among Academicians and Psychologists, with 100% of respondents in these categories supporting the necessity for more than one session. This strong agreement suggests that those with academic and psychological expertise understand the depth and breadth of evaluating juveniles' psychological and social contexts, which cannot be comprehensively assessed in a single meeting.

Advocates and LPOs also demonstrate strong support, with 9 out of 10 respondents in each category favouring multiple sessions. This reflects a legal perspective that acknowledges the importance of thorough and accurate preliminary assessments, which are crucial for informed decision-making in the juvenile justice system. The 8% of respondents who oppose multiple sessions may be concerned about logistical challenges, such as resource allocation and the potential for delays in the justice process.

However, the overwhelming support for multiple sessions indicates a broad understanding that the benefits of comprehensive, multi-session assessments far outweigh these concerns. In conclusion, the data compellingly suggests that experts under Section 15 of the JJ Act, 2015, should indeed be given the opportunity for multiple sittings with juveniles. This approach ensures a more thorough and nuanced understanding of each case, ultimately leading to more informed and fair outcomes in the juvenile justice system.

TABLE – 19

19. How can the preliminary assessment procedure be made more transparent and accountable considering its confidentiality?

Categories with Recommendations	Explanation
Expert Training for Preliminary Assessment and Protecting Juvenile's Identity (Advocates)	Extensive training for experts to handle cases effectively while maintaining confidentiality.
Clear Guidelines and Regular Audits (LPOs)	Establish clear guidelines, conduct regular audits, and reviews to ensure proper procedure adherence with confidentiality concern.
Multidisciplinary Teamwork (Academicians)	Involve a team including advocates, teachers, parents, and social workers for a comprehensive approach with feedback system.
Transparent Reporting Mechanisms (Psychologists)	Implement transparent reporting where the process and findings are communicated clearly while protecting the juvenile's identity.
Standardized Documentation Process (Law Students)	Use standardized documentation to maintain consistency and reliability in assessments and provide regular training, ensuring clear communication among all stakeholders involving in the process.

This study is not only concerned about identifying the loopholes of the preliminary assessment procedure under section 15 of the JJ Act but also respects the procedure already adopted and applied carefully by the authorities working for the children. The act talks about confidentiality on every step while working with children because the ultimate purpose of the act is restoration of children to the main stream of society to make them more responsible citizen. Considering the aspect of confidentiality the respondents were asked that how to maintain transparency in the procedure and how to make the authorities more accountable? The responses received were categorized and explained in Table – 19. Summarily, it can be said that the advocates are concerned about expert training, the LPOs focus on the proper and clear guidelines in the preliminary assessment procedure, the academicians believe in teamwork, the psychologists needed transparent reporting and the law students are with proper documentation.

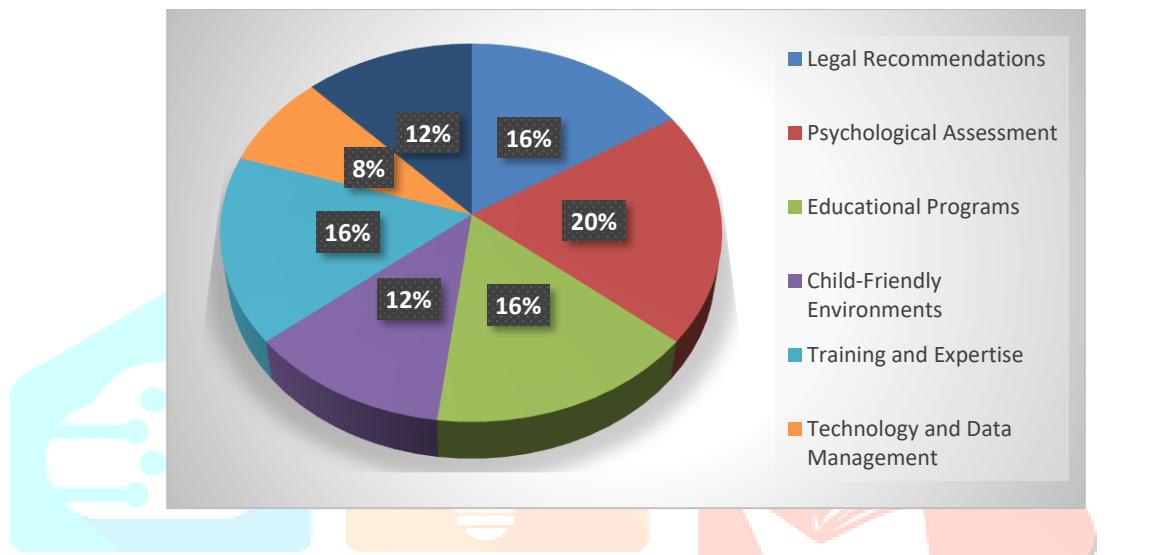
TABLE – 20

20. Do you have any other suggestions or recommendations for improving the preliminary assessment procedure under the Juvenile Justice Act?

Category	Frequency	Percentage
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Legal Recommendations	8	16%
Psychological Assessment	10	20%
Educational Programs	8	16%
Child-Friendly Environments	6	12%
Training and Expertise	8	16%
Technology and Data Management	4	8%
Other Recommendations	6	12%

CHART – 20



This study also focuses on suggestions and recommendations from the respondents which are categorised in different heads on the basis of the responses, these categories are as follows –

- Legal recommendations
- Psychological Assessment
- Educational Programs
- Child-Friendly Environments
- Training and Expertise
- Technology and Data Management
- Other Recommendations

The present study shows 16% of respondents supporting legal recommendations. Many of them are of opinion that inclusion of legal experts in the preliminary assessment team will ensure juveniles' rights and assessments are legally sound. Many respondents suggest that there should be clear and standardized guidelines for legal procedures during preliminary assessments. We live in the world where law is a must but knowledge and awareness about the laws is not much. Thus, it is important to provide access to legal support for children and their families to navigate the assessment process and understand their rights and the decisions are made within a specified time frame to avoid prolonged uncertainty.

20% of respondents were of opinion to form multidisciplinary team of psychologists, psychiatrists, and social workers to provide a comprehensive mental health evaluation and psychological assessment on regular basis; in addition to implement trauma-informed care practices to address the specific needs of children who have experienced trauma. 16% of respondents recommended law education in school programs must be introduced to teach children their legal rights and duties; also there must be public awareness programs to educate the community about the juvenile justice system and the importance of preliminary assessments. Moving forward one step ahead; the respondents also suggested to provide training for educators on juvenile justice issues to help them support affected students effectively and to integrate juvenile justice education within the school curriculum to create a more informed youth population.

The respondents were aware about the system of juveniles and their responses exhibit true sense of juvenile justice. 12% of respondents wanted to ensure that assessments are conducted in environments that make children feel safe and comfortable, supportive, caring. They also mentioned that children do not feel intimidated by the presence of too many adults during the assessment. 16% of respondents suggested that there must be regular training programs for professionals involved in assessments to keep them updated on best practices. They also need assurance that the assessment should be performed by experienced and trained professionals. The study also proposes some other recommendations such as collaboration between agencies like law enforcement and educational institutions and community involvement. Public awareness about juvenile justice system is a need to foster community support and cooperation also there is a need to develop a feedback mechanism to improve the assessment process based on practical experiences.

RESULT AND DISCUSSION

This research has illuminated critical issues within India's Juvenile Justice system, particularly regarding Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Our findings, supporting both hypotheses, have significant implications for the legal fraternity and the welfare of children in conflict with the law.

Eminent jurists and child rights experts have long emphasized the need for a more uniform and scientifically grounded approach to juvenile justice. Justice (Retd.) Madan B. Lokur, a former Supreme Court judge known for his work on child rights, has repeatedly stressed the importance of standardized procedures in juvenile justice. He argues that "inconsistency in preliminary assessment procedures not only violates the principle of equality before the law but also potentially infringes upon the child's right to a fair trial."⁹⁴

⁹⁴ <https://www.barandbench.com/interviews/justice-madan-lokur-on-caa-transfer-of-justice-muralidhar-and-how-the-judiciary-doesnt-market-itself-to-law-grads-watch-video>

The lack of uniformity in preliminary assessment procedures across Juvenile Justice Boards in India undermines the spirit of the JJ Act and potentially compromises children's fundamental rights under Articles 14 and 21 of the Indian Constitution. Dr. Asha Bajpai⁹⁵, a leading child rights expert, notes that standardizing these procedures would align with the 'best interest of the child' principle, bridging the gap between legislative intent and practical implementation.

Regarding the need for more specific qualifications for professionals assisting Juvenile Justice Boards, Dr. Shekhar Seshadri, a renowned child psychiatrist, emphasizes that "a multidisciplinary panel of child psychologists, psychiatrists, and psychotherapists would provide a more holistic understanding of the child's mental state and circumstances." This aligns with the JJ Act's rehabilitative approach and international standards set by the Beijing Rules and the Riyadh Guidelines.

The outcomes of this research are crucial for the Indian legal system. Addressing these issues can:

1. Ensure more consistent and fair treatment of juvenile offenders nationwide.
2. Reduce adult trials for juveniles, upholding the protective intent of juvenile justice laws.
3. Improve the quality and reliability of preliminary assessments.
4. Strengthen India's compliance with international child rights standards.
5. Contribute to the rehabilitation and reintegration of children in conflict with the law.

Child rights activist and lawyer Anant Kumar Asthana suggests that "implementing these changes would require a collaborative effort between the judiciary, legislature, and executive. It's not just about changing laws, but about changing mindsets and practices."

Former Chairperson of the National Commission for Protection of Child Rights, Stuti Kacker, emphasizes the need for continuous training and sensitization of Juvenile Justice Board members and associated professionals. She states, "Regular capacity building programs focusing on child psychology, latest assessment techniques, and child-friendly procedures are essential to bring about meaningful change."

In conclusion, this research underscores the urgent need for reforms in implementing Section 15 of the JJ Act. Standardizing preliminary assessment procedures and enhancing the expertise involved would create a more just, uniform, and child-centric juvenile justice system. These changes would benefit the children involved and reinforce India's commitment to protecting its youth.

The legal fraternity, policymakers, and child rights advocates should view these findings as a call to action. Implementing these recommendations would be a significant step towards realizing the true potential of the Juvenile Justice system. As noted by **Justice (Retd.) A.K. Sikri**, *"The essence of juvenile justice lies not in*

⁹⁵ Bajpai, A. (2018). "Child Rights in India: Contemporary Issues and Challenges." Springer.

punishment, but in understanding, reformation, and reintegration. Our procedures must reflect this philosophy."

This research contributes to the ongoing dialogue on juvenile justice reform in India. It provides empirical support for long-standing concerns raised by experts and offers a roadmap for enhancing the system's effectiveness. By addressing these issues, India can set a precedent in progressive juvenile justice practices, potentially influencing similar reforms in other jurisdictions.

Ultimately, the goal is to create a juvenile justice system that truly serves its intended purpose - protecting, rehabilitating, and ensuring the best interests of children in conflict with the law. This research is a crucial step towards that goal, offering insights that can shape policy, influence judicial interpretation, and improve the lives of vulnerable children across the nation.



CHAPTER – 5

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The Juvenile Justice (Care and Protection of Children) Act, 2015, marks a significant evolution in India's legal approach to juvenile offenders, reflecting a delicate balance between punitive measures and rehabilitative goals. This Act, particularly through the provisions of Section 15, introduces a mechanism for the preliminary assessment of juveniles aged between 16 and 18 accused of heinous offences, which can lead to their trial as adults. This approach underscores the legislature's intent to address severe juvenile crimes while also ensuring that the assessment process is thorough, fair, and considers the juvenile's capacity for understanding and rehabilitation. This provision, while acknowledging the gravity of heinous offences committed by juveniles aged 16-18 years, must be viewed through the prism of India's constitutional mandate and international obligations. As aptly stated in the Manu smriti, "धर्मो रक्षति रक्षितः" (dharma rakshati rakshitah), meaning "Dharma protects those who protect it." In the context of juvenile justice, this translates to the state's duty to protect children's rights, even when they are in conflict with the law.

The need for such a nuanced approach has been recognized both historically and in contemporary jurisprudence. Ancient legal texts like the Manu smriti⁹⁶ advocate for proportionate punishment that considers the offender's nature and circumstances. Manu articulates that "Punishment cannot achieve its aim unless it is proportionate to the offense and considers the offender's nature" (Manu smriti, Chapter 8, Verses 124-125). This principle aligns with the modern juvenile justice system's emphasis on individualized assessment and rehabilitation. Jurists such as Justice V.R. Krishna Iyer⁹⁷ have echoed these sentiments in contemporary legal discourse, emphasizing a compassionate and reformatory approach to juvenile justice. Justice Iyer argued that the juvenile justice system must recognize the inherent potential for reform in young offenders and focus on their rehabilitation and reintegration into society.

The preliminary assessment process outlined in the Juvenile Justice Act, 2015, is critical in determining whether a juvenile should be tried as an adult. This involves evaluating the juvenile's mental and physical capacity, their understanding of the consequences of their actions, and the specific circumstances of the alleged offense. The Supreme Court of India, in cases like *Thirumooorthy vs. State* and *Child in Conflict with Law vs. State of Karnataka*, has emphasized the necessity of strict adherence to these provisions to uphold justice and due process.

⁹⁶ Manu | Emphasized proportional punishment considering the offender's nature. | Manusmriti, Chapter 8, Verses 124-125

⁹⁷ Justice V.R. Krishna Iyer | Advocated for a compassionate and rehabilitative approach towards juvenile offenders. | Various Judgments and Writings

The Act also ensures that juveniles' rights are protected throughout the assessment process. Article 20(3) of the Indian Constitution, which safeguards against self-incrimination, is a cornerstone of this protection, ensuring that juveniles are not compelled to incriminate themselves during the assessment. This aligns with international standards, such as the United Nations Convention on the Rights of the Child⁹⁸, which India has ratified. These standards emphasize that the primary aim of juvenile justice systems should be the rehabilitation and reintegration of the juvenile into society, rather than punishment. The study's findings, contrasted with national and international legal frameworks, reveal certain gaps in the current system:

Inconsistent Procedures: The lack of uniformity in conducting preliminary assessments across India contravenes the principle of equality enshrined in Article 14 of the Constitution of India. As Justice P.N. Bhagwati noted in *Maneka Gandhi v. Union of India (1978)*, "Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed cabined and confined' within traditional and doctrinaire limits." These principal mandates procedural uniformity in preliminary assessments to ensure equal justice.

Expert Involvement: The ambiguity regarding the role and qualifications of psychologists and other experts in preliminary assessments undermines the scientific basis of these evaluations. This contradicts the Supreme Court's dictum in *Ratan Saha v. State of Tripura (2019)*, where it held, "The opinion of the expert witness should be given due weightage and cannot be discarded merely because it does not support the prosecution case."

Child's Best Interests: The current process may not adequately prioritize the "best interests of the child," a principle enshrined in Article 3 of the UNCRC and echoed in *Sampurna Behura v. Union of India (2018)*. Justice A.K. Sikri observed, "The best interest and well-being of the child shall be regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of children."

Reformative Justice: The tendency to try juveniles as adults may overshadow the reformative philosophy underpinning juvenile justice. This contradicts the dictum in *Ramamurthy v. State of Karnataka (1997)*, where the court held, "Reformation and rehabilitation of offenders as useful members of society should be the object of criminal justice."

RECOMMENDATIONS

This analytical study undertaken, encompassing the views of 50 stakeholders, unequivocally underscores the need for more child-centric guidelines in conducting preliminary assessments. This consensus resonates with the observations of eminent jurist,

1. Strengthening the Preliminary Assessment Framework

⁹⁸ United Nations | Emphasized the rehabilitative purpose of juvenile justice in international standards. | United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

The Juvenile Justice Boards should be equipped with clear guidelines and standardized procedures for conducting preliminary assessments. This includes specific protocols for involving psychologists, social workers, and other experts to ensure a comprehensive and unbiased evaluation of the juvenile's capacity and circumstances. Consistency in the assessment process across different jurisdictions can be achieved through the establishment of standardized assessment tools and training programs for the professionals involved.

2. Enhancing Training and Resources

Continuous training programs for Juvenile Justice Board members, Child Welfare Officers, and other stakeholders are essential to ensure they are well-versed in the latest legal provisions, psychological evaluation techniques, and rehabilitation methodologies. Adequate funding and resources must be allocated to support these training initiatives and to provide the necessary infrastructure for conducting assessments and rehabilitation programs. Training should also focus on sensitizing these officials to the unique needs and rights of juvenile offenders, ensuring a child-friendly approach throughout the process.

3. Fostering Uniformity in the Preliminary Assessment

Emphasizing the uniformity in the preliminary assessment will provide a fixed framework for all the people involved in the process. They will not be worried about inconsistency, and fear of being incorrect. When there will be fixed rules, uniformity, time boundedness, the people involved will be confident about the outcome and the system will be able to be just and fair with the children. To practically implement uniformity, it is recommended that the tools and techniques can be developed as per the gravity and categories of offences and these tools and techniques should be the part of this Act.

4. Ensuring Fair and Timely Proceedings

The timelines for preliminary assessments and subsequent legal proceedings should be strictly adhered to, ensuring that juveniles do not languish in legal limbo. Mechanisms should be in place to monitor and address any delays, with the best interests of the child being the paramount consideration. The courts and Juvenile Justice Boards must ensure that procedural safeguards are in place to protect the rights of juveniles during these assessments, including the right to legal representation and the right to be heard.

5. Promoting Awareness and Sensitization

Awareness campaigns and sensitization programs should be conducted to educate the public, law enforcement agencies, and the judiciary about the objectives and provisions of the Juvenile Justice Act. This will help in fostering a more informed and empathetic approach towards juvenile justice. Public awareness can also play a crucial role in preventing juvenile delinquency and supporting the reintegration of juvenile offenders into the community. As we have seen at so many instances that in accident cases, public used disturb law and order by hurting the accused at the crime scene which is not acceptable, they must remember that the country in which we live, believes in law and order so they should respect the rule of law.

6. Improving Coordination Among Stakeholders

Effective implementation of the Juvenile Justice Act requires coordination among various stakeholders, including the police, judiciary, child welfare committees, and non-governmental organizations. Establishing clear channels of communication and collaboration can enhance the efficiency of the juvenile justice system. Joint training sessions and workshops can be organized to facilitate better understanding and cooperation among these stakeholders.

7. Utilizing Technology and Data Management

Leveraging technology can improve the efficiency and transparency of the juvenile justice system. Implementing digital case management systems can help in tracking the progress of cases, ensuring timely interventions, and maintaining accurate records. Data analysis can also provide valuable insights into trends and patterns in juvenile delinquency, helping policymakers and practitioners develop more effective strategies for prevention and intervention. If we specifically talk about preliminary assessment procedure under juvenile justice system, the use of technology and data management will help to know the number of adult trials and the government plus authorities may take steps to control it.

8. Monitoring and Evaluation

Regular monitoring and evaluation of the juvenile justice system's functioning are essential to identify gaps and areas for improvement in preliminary assessment procedure. Such evaluation and monitoring should be done by lawyers, academicians, Juvenile Justice Board members, principal magistrates or child right activists.

9. Addressing Underlying Socio-Economic Factors

Many juveniles come into conflict with the law due to underlying socio-economic factors such as poverty, lack of education, and family dysfunction. Addressing these root causes through social welfare programs, access to quality education, and family support services can prevent juvenile delinquency. Collaborative efforts between government agencies, civil society organizations, and community groups are crucial in creating a supportive environment for at-risk children so that they do not get involved in any kind of offensive behaviour.

10. Ensuring Legal Representation and Support

Juveniles in conflict with the law must have access to competent legal representation throughout the judicial process. Legal aid services should be strengthened to provide free and effective legal assistance to juveniles. However, there are authorities such as NALSA, SALSA, DALSA and Taluka level legal service authority; playing an important role in this regard and spreading legal awareness to vulnerable people across the country, but it is expedient to spread awareness regarding juvenile justice system also, so that children who are considered the future of this country may serve as responsible citizens.

By implementing these recommendations, India can ensure that its juvenile justice system not only addresses the need for accountability but also upholds the principles of juvenile justice, aligning with both modern legal standards and age-old principles of justice.

In conclusion, the words of Nelson Mandela resonate: "There can be no keener revelation of a society's soul than the way in which it treats its children." The preliminary assessment under the JJ Act, 2015, is a critical juncture where the soul of our society is revealed. By considering the findings of this study and implementing these recommendations, the system of juveniles will be strengthened. We can ensure that preliminary assessment is not just a legal procedure, but a testament to our commitment to the rights and welfare of every child, even those in conflict with the law. It is rightly mentioned here - "बालानां संरक्षणं न्यायस्य मूलं, समाजस्य भविष्यं च।" meaning "The protection of children is the foundation of justice and the future of society." In the realm of juvenile justice, let the child's best interests be our guiding light.



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QUESTIONNAIRE USED IN THIS RESEARCH

Questionnaire: Preliminary Assessment Under Juvenile Justice (Care and Protection of Children) Act, 2015: An Analytical Study

B **I** **U** **↶** **↷**

This is a research work to analyse an important provision of children's law which decides the procedure of dealing with heinous offences allegedly committed by juveniles. Preliminary Assessment under JJ Act, 2015 is provided under section 15 of the Act which mandates that the Juvenile Justice Boards can take assistance of Experienced Psychologists, Psychosocial Workers and other Experts who will find out the physical and mental capacity, circumstances and understanding of the consequences of the alleged offence committed by a juvenile of age 16-18 years. This questionnaire contains 20 questions. please read them carefully and answer instantly without having a second thought.

यह बाल कानून के एक महत्वपूर्ण प्रावधान का विश्लेषण करने के लिए एक शोध कार्य है जो किशोरों द्वारा कथित रूप से किए गए जघन्य अपराधों से निपटने की प्रक्रिया तय करता है। जेजे अधिनियम, 2015 के तहत प्रारंभिक निधारण, अधिनियम की धारा 15 के तहत प्रदान किया गया है जो यह बताता है कि किशोर न्याय बोर्ड अनुभवी मनोवैज्ञानिकों, मनोसामाजिक कार्यकर्ताओं और अन्य विशेषज्ञों की सहायता ले सकते हैं जो 16-18 वर्ष की आयु के किशोर द्वारा किए गए कथित अपराध के परिणामों की शारीरिक और मानसिक क्षमता, परिस्थितियों और समझ का पता लगाएंग। इस प्रश्नावली में 20 प्रश्न हैं। कृपया उन्हें ध्यान से पढ़ें और बिना किसी दूसरे विचार के तुरंत उत्तर दें।

Email *

Valid email address

This form is collecting email addresses. [Change settings](#)

Name *

Short-answer text

Age *

Short-answer text

Educational Qualification *

Short-answer text

Email Address *

Short-answer text



Profession/Occupation *

Short-answer text

Years of Experience in the field

Short-answer text

1. Are you familiar with the preliminary assessment procedure under the Juvenile Justice (Care and Protection of Children) Act, 2015? *

1. क्या आप प्रारंभिक निर्धारण के प्रावधान से परिचित हैं ?

- Yes
- No
- Other...

2. Have you observed any inconsistencies or lack of uniformity in the preliminary assessment * procedure across different regions or states?

2. क्या आपने कभी भिन्न भिन्न क्षेत्रों / राज्यों में प्रारंभिक निर्धारण से सम्बंधित विसंगति या एकरूपता में कमी को देखा है?

- Yes
- No
- Other

3. How important is the role of psychologists, psychosocial workers, and other experts in the * preliminary assessment process?

3. प्रारंभिक निर्धारण में मनोवैज्ञानिकों मनोसामाजिक कार्यकर्ताओं और अन्य विशेषज्ञों का कितना महत्व है ?

- Very Important
- Not Important



4. Should the Act provide specific guidelines for the involvement of these experts in the preliminary assessment? *

4. क्या अधिनियम में विशेषज्ञों के सम्बन्ध में स्पष्ट निर्देश होने चाहिए?

Yes

No

Not Sure

5. How can the preliminary assessment procedure be improved to ensure a more comprehensive evaluation of the child's circumstances? (Please provide a brief written response) *

5. प्रारंभिक निर्धारण को किस प्रकार से बेहतर बनाया जाये कि यह विधि का उल्लंघन करने वाले बालकों का और अपराध की परिस्थितियों का और बेहतर तरीके से विश्लेषण और निर्धारण कर सके?

Long-answer text

7. Should the Act provide for periodic training and capacity-building programs for JJBs, psychologists, and other experts involved in the preliminary assessment process? *

7. क्या प्रारंभिक निर्धारण हेतु JJBs और समस्त विशेषज्ञों को बेहतर कार्य करने हेतु प्रशिक्षण प्रदान किया जाना चाहिए?

Yes

No

Cant say

8. Have you encountered any challenges or inconsistencies in the preliminary assessment procedure across different regions or states? *

8. क्या आपको प्रारंभिक निर्धारण के सम्बन्ध में भिन्न भिन्न क्षेत्रों में या राज्यों में कभी किसी विसंगति का सामना करना पड़ा है?

Yes

No

May be / शायद

9. How important is the role of a principal magistrate, LPO and Child Welfare Police Officer in * the preliminary assessment process?

9. प्रारंभिक निर्धारण में प्रधान मजिस्ट्रेट, LPO और CWPO का कितना महत्व है?

- Very Important
- Less Important
- Not Important

10. Should the Act provide specific guidelines for the tools/ techniques used and procedure * adopted by the experts for pre preliminary assessment?

10. क्या अधिनियम में विशेषज्ञों के द्वारा उपयोग में लाये जाने वाली तकनीक एवं प्रक्रिया से सम्बंधित स्पष्ट निर्देश होने चाहिए?

- Yes
- No
- Not Sure

11. Should the Act provide specific qualification and experience of experts for the preliminary * assessment?

11. क्या अधिनियम में विशेषज्ञों की योग्यता और अनुभव से सम्बन्धित प्रावधान जोड़े जाने चाहिए?

- Yes
- No
- Not Sure

12. Should the preliminary assessment procedure must be done by Clinical Psychologists, * Child Psychologists, Psychiatrists or Psychotherapists?

12. क्या प्रारंभिक निर्धारण हेतु नैदानिक मनोवैज्ञानिक, बाल मनोवैज्ञानिक या मनोचिकित्सक के द्वारा ही कराया जाना चाहिए?

- Yes
- No
- May Be



13. In your experience, have you observed any gaps or shortcomings in the current preliminary *

assessment procedure?

13. आपके अनुसार क्या प्रारंभिक निर्धारण की प्रक्रिया में कुछ कमियां हैं?

Long-answer text

14. Do you think the preliminary assessment procedure adequately addresses the best

interests of the child? *

14. क्या प्रारंभिक निर्धारण बालकों के सर्वोत्तम हित की प्रक्रिया है?

Yes

No

Can't Say पता नहीं।

15. Have you encountered cases where the lack of guidelines or uniformity in the preliminary *

assessment procedure led to inconsistent outcomes?

15. क्या आपने कभी ऐसा कोई केस देखा है जिसमें प्रारंभिक निर्धारण की प्रक्रिया में उचित निर्देश या एकरूपता का अभाव हो, और इस वजह से अवांछित परिणाम प्राप्त हुए हों?

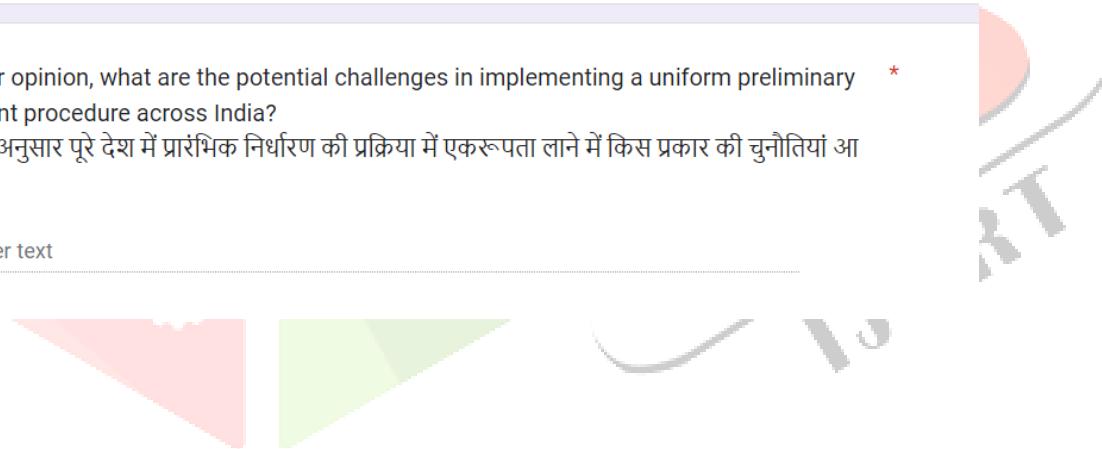
Long-answer text

16. In your opinion, what are the potential challenges in implementing a uniform preliminary *

assessment procedure across India?

16. आपके अनुसार पूरे देश में प्रारंभिक निर्धारण की प्रक्रिया में एकरूपता लाने में किस प्रकार की चुनौतियां आ सकती हैं?

Long-answer text



17. Should there be a Uniform Psychological Assessment for Preliminary Assessment? *
18. क्या पुरे देश में प्रारंभिक निर्धारण के लिए एक ही प्रकार की मापनी या प्रश्नावली/ प्रक्रिया उपयोग में लानी चाहिए?

- Yes
- No
- May Be

18. Do you think that the experts mentioned under Section 15 of JJ Act, 2015 viz *
Psychologists, Psychosocial Workers and other Experts, must be given more than one
sittings/ sessions with the Juvenile for preliminary assessment?
18. क्या आपको लगता है कि प्रारंभिक निर्धारण हेतु विशेषज्ञों को बालकों के साथ एक से अधिक सत्र मिलने चाहिए जिससे वे बेहतर विश्लेषण कर सकें ?

- Yes
- No

19. How can the preliminary assessment procedure be made more transparent and *
accountable considering its confidentiality?

19. प्रारंभिक निर्धारण की प्रक्रिया, गोपनीयता को ध्यान में रखते हुए किस प्रकार से और अधिक बेहतर और दायित्वधीन बनाया जा सकता है.

Long-answer text



20. Do you have any other suggestions or recommendations for improving the preliminary *
assessment procedure under the Juvenile Justice Act?

20. कृपया प्रारंभिक निर्धारण की प्रक्रिया के सम्बन्ध में आपके सुझाव और या सिफारिशें प्रदान करें.

Long-answer text

