

UNIVERSITY COLLEGE STOCKHOLM  
School of Human Rights and Democracy

DEGREE PROJECT  
2023-08-24

# Retributive or Restorative System?

## Best Interest of Young Persons in Conflict with the Law – the Case of India

Author: Litta Marak Sandra Rangsa

Supervisor: Professor Kjell-Åke Nordquist  
University College Stockholm

## **Abstract**

This study delves into the complexities surrounding Children in Conflict with the Law (CCL) within India's juvenile justice system, underscoring barriers to education, mental health challenges, and peer dynamics, among other concerns. While current provisions exist to assist CCLs, there remains significant potential for holistic reform. This paper introduces restorative justice as an innovative solution, emphasizing its focus on repairing harm over punitive measures. The restorative justice model presents opportunities for holistic healing, educational integration, community engagement, non-custodial solutions, and enhanced mental health support for CCLs. The approach aligns with the United Nations Convention on the Rights of the Child (UNCRC) principles, advocating for detention as a last resort. Suggestions for future research include assessing the effectiveness of restorative practices, studying long-term outcomes, obtaining diverse stakeholder perspectives, and ensuring cultural sensitivity. Ultimately, integrating restorative justice principles could transform the juvenile justice system in India, promoting a child-centric, compassionate, and effective approach.

## **Keywords**

CCL, UNCRC, Restorative Justice, Non-custodial

## Acknowledgments

First and foremost, I extend my sincerest gratitude to my advisor, Professor Kjell-Åke Nordquist, for his unwavering support, invaluable guidance, and encouragement throughout this journey. Your profound insights and dedication have been the cornerstone of this work, and I am deeply indebted for having had the privilege to learn under your mentorship. Also, I would like to thank the Head of the Department, Dr. Johanna Ohlsson, the Director of Studies, Emma Sundkvist, and the course administrator, Bjørg Farstad, for their support. Additionally, I would like to thank Professor Ulf Johansson-Dahre for his support and mentoring. I will forever be indebted and thankful to all my teachers.

Special thanks to my colleagues and friends in the Department of Human Rights and Democracy, who provided intellectual companionship, lively debates, and moments of levity.

I am deeply grateful to my family for their unyielding faith in my abilities, their constant words of encouragement, and the love and comfort they provided during challenging times.

Lastly, I appreciate the financial and infrastructural support from the Swedish International Development Cooperation Agency (SIDA) for its MFS funding, without which this research wouldn't have been possible.

## List of Abbreviations

CCL	Children in Conflict with Law
DWCD	Department of Women and Child Development
NCT	National Capital Territory
OHB	Observation Home for Boys
SIDA	Swedish International Development Cooperation Agency
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of Child
UNGA	United Nations General Assembly

# Table of Contents

1	Introduction .....	6
1.1	Research Problem.....	7
1.2	Research Question.....	8
1.3	Research Goal .....	8
1.4	Relevance and Previous Research.....	9
1.5	Why India? .....	12
2	Theoretical Framework.....	14
2.1	Best interest of a child.....	14
2.2	Who is a child?.....	15
2.3	“Juvenile,” “Juvenile Delinquency,” and Children in Conflict with the Law (CCL) .	15
2.4	Juvenile Justice System.....	16
2.5	Retributive Justice Theory .....	17
2.6	Restorative Justice Theory .....	17
2.7	Non-Custodial Measures .....	19
2.8	What theory of criminal justice does India follow? .....	20
3	Research Methodology .....	22
3.1	Ethical Considerations.....	23
3.2	Challenges and Limitations.....	24
4	Materials .....	25
4.1	Field Data.....	25
4.1.1	Barriers to Education.....	25
4.1.2	Educational Environment & Resources.....	26
4.1.3	Peer Dynamics and Influence .....	27
4.1.4	Cultural and Societal Factors in the Juvenile Justice System.....	28
4.1.5	Mental and Emotional Health, and Family Ties.....	29
4.1.6	Skills and Vocational Training in Detention Centers.....	30
4.1.7	Vocational Training vs. Formal Education.....	30
4.1.8	Challenges and Needs of CCLs .....	31
5	Material Analysis and Discussion .....	33
6	Conclusions and Future Research.....	35
	Bibliography.....	37
	Appendix – Questionnaire.....	38

# 1 Introduction

The juvenile justice system occupies a significant place within legal proceedings, given its complex processes that define duties and responsibilities, all while prioritizing the well-being of juvenile delinquents. It is true for any country with a juvenile justice system. These considerations extend to the complex web of alleged or unforeseen children's rights issues and human rights concerns. The system's primary challenge is to uphold the rights of these young individuals while ensuring their overall well-being. Such a task requires precision and sensitivity, emphasizing the system's role as both a guardian of rights and a protector of the juveniles' welfare.

Following the foundational doctrines of the Universal Declaration of Human Rights (UDHR) promulgated in 1948, every individual, irrespective of age, possesses inherent rights and the entitlement to fair and dignified treatment. This universal perspective is extended to children, who share equal rights with adults. Acknowledging the unique needs of children, the 1989 United Nations Convention on the Rights of the Child (UNCRC) established a global legal framework encompassing critical provisions tailored to address these distinctive requirements.

The United Nations Convention on the Rights of the Child (UNCRC) unequivocally mandates that a child's paramount interests must receive primary consideration, with concerted efforts directed toward nurturing their well-being and development. The "best interest of the child"<sup>1</sup> as a guiding principle of the UNCRC underscores the imperative of safeguarding a child's welfare in all circumstances, including within the context of institutions responsible for juvenile justice.

Globally, the prevailing justice paradigm adheres to a model encompassing retribution, rehabilitation, deterrence, and offender incapacitation. This paradigm extends to Children in Conflict with the Law (CCL), where incarceration and detention are employed within prisons and juvenile homes. Given this approach, addressing both juvenile homes and prisons is

---

<sup>1</sup> The "best interest" concept will be discussed in more detail in Section 2.1 of the chapter Theoretical Framework.

inevitable, as the trajectory of juvenile offenders often leads them to adulthood and possible transfer to adult penitentiaries upon reaching the defined age of maturity.

However, it is noteworthy that incarceration frequently exacerbates individuals' socioeconomic and community challenges. Critiques have emerged about the substantial financial burden associated with maintaining such facilities (Healey 2017, 2). Recent public outcry against the justice system is alarming, shedding light on concerns of racial bias, inefficacy, and a propensity for punitive measures (Lanni 2021, 637). Moreover, these traditional models often encroach upon the rights of individuals within the scope of this empirical research, such as the right to personal liberty and education, among other rights. The signatories to the UNCRC do not uniformly adhere to the same justice model in their jurisdictions. However, many states have been observed turning to retributive models, which have proven less effective. Consequently, exploring alternative prototypes that could yield greater effectiveness is imperative.

## **1.1 Research Problem**

Throughout human history, the concept of human rights has been an inherent aspect of civilization. The evolution of human rights and the recognition of prisoners' rights, while not immediate, have progressed over time (Danjuma et al. 2018, 37). Similarly, the treatment of juvenile offenders can be traced back to ancient times. However, determining the precise origins of written laws in this context poses challenges (Thomas and Bilchik 1985, 442). Modern frameworks for juvenile justice began to materialize in the 19th century, transitioning from rudimentary systems to today's well-defined paradigms (Thomas and Bilchik 1985, 445).

Recent statistics underscore the urgency of addressing juvenile justice. According to UNESCO, as of 2020, youth aged 15 to 24 represent 16% of the global population. However, disconcertingly, a UN Global Study in 2019 by UNICEF on Children Deprived of Liberty estimated that in 2018 up to 250,000 children were entangled in pre-trial detention centers and prisons. Moreover, around a staggering 1 million were detained under police custody (UNICEF 2021, 4).

The crux of the predicament lies in harmonizing the "best interests of the child" principle within juvenile justice frameworks, specifically for Children in Conflict with the Law (CCL). The universal commitment to children's rights, as enshrined in the UNCRC, often falters in its real-

world application, more so in developing nations. The prevalent inclination towards imprisoning CCLs stands juxtaposed with their fundamental rights, often culminating in detrimental consequences. There is an unsettling stagnation in the system's evolution, notably when empirical evidence favors restorative methods over punitive ones, emphasizing the latter's alignment with human rights ethos.

Using India as its focal point, the crux of this investigation is to examine the application of the UNCRC's 1989 guiding principles concerning juvenile justice. While not drawing direct comparisons with other nations, this research endeavors to discern the efficiency of retributive and restorative paradigms in the context of international norms. The prime objective is to discern the gaps in the retributive system, understanding why it falters in delivering the envisaged outcomes for CCLs.

## **1.2 Research Question**

In exploring the best interests of Children in Conflict with the Law (CCL) within the juvenile justice system, based on the fundamental principles outlined in critical Articles of the UNCRC, it becomes crucial to address research questions pertaining to child rights under the CRC.

- 1) To what degree does the principle of prioritizing the child's best interest, as articulated in the United Nations Convention on the Rights of the Child (UNCRC), effectively apply within India's Juvenile Justice System, particularly concerning the specific context of detention in state institutions? In other words, how is the child's best interest upheld or compromised in this context?
- 2) How do alternative approaches, such as restorative justice, compare to traditional systems like the retributive approach aligning with the child's best interest within the juvenile justice system?
- 3) Could non-custodial solutions be viable alternatives within the juvenile justice system to adhere to the stringent detention standards outlined by the UNCRC and to serve as a measure of last resort for Children in Conflict with the Law (CCL)?

## **1.3 Research Goal**



The primary goal of this study is to comprehensively assess the application of the “child’s best interest” principle within India’s juvenile justice system, with a specific focus on Children in Conflict with the Law (CCL). The study aims to scrutinize the extent to which the principles outlined in critical articles of the United Nations Convention on the Rights of the Child (UNCRC) are effectively upheld within the juvenile justice context. Through a meticulous exploration of the complex interplay between retributive and restorative systems, the research seeks to shed light on the alignment of these systems with the principles of the UNCRC. Furthermore, the study aims to investigate the viability of non-custodial alternatives as measures of last resort for CCL within the parameters set forth by the UNCRC. By addressing these critical aspects, the research aims to contribute to a more profound insight into the effective safeguarding of child rights within India’s juvenile justice framework, aiming to advance the well-being, rehabilitation, and reintegration of Children in Conflict with the Law.

## **1.4 Relevance and Previous Research**

There is growing concern about the implications for children’s rights within the UNCRC, especially when addressing children’s rights in conflict with the law (CCL). Evidence suggests that specific actions, policies, or situations can impact the fundamental rights of such children. This concern revolves around how specific scenarios or interventions within the juvenile justice system might infringe upon, compromise, or even support the rights of these children. In the intricate landscape of the juvenile justice system, a pressing issue emerges the compromised rights of Children in Conflict with the Law (CCL). Among the many rights that every child is inherently entitled to, two are particularly jeopardized in this context: the right to personal liberty and the right to education, raising pivotal questions about the delicate balance between administering justice and safeguarding the fundamental rights of these young individuals.

### **Balancing Personal Liberty and Justice: Safeguarding the Rights of Children in Conflict with the Law**

Personal liberty, a cornerstone of human rights, takes on a nuanced balance when considering Children in Conflict with the Law (CCL). As the justice system addresses unlawful actions, it becomes vital to guarantee that these young individuals’ foundational rights are neither overshadowed nor neglected. Central to this argument is the assertion that decisions impacting

children's liberty should consistently respect the highest standards of the child's best interests, as outlined in Article 3 of the UNCRC. Fundamental to this debate is the principle of personal liberty – the right to be protected against arbitrary detention. This right becomes especially precarious for CCL. Often confronted with detention, which inherently limits their freedom, these children risk the potential loss of personal liberty. This situation presents a profound dilemma, questioning the foundational tenets of justice and the preservation of their dignity and intrinsic value. Young, Greer, and Church (2017, 26) note that detaining tactics can harm young individuals due to associated stigmas, subsequent consequences, and additional monetary costs. Furthermore, Article 37(b) of the CRC mandates that children should be detained only as a last resort and for the shortest duration possible, primarily “reserved for high-risk offenders” (Young, Greer, & Church 2017, 26). The term “last resort” prompts a vital question: what constitutes such a measure? A global overview, however, displays inconsistency. The Global Study highlights a concerning fact – a significant portion of detained children globally have faced deprivation of liberty in contradiction to these principles (Nowak 2019, 10). The adherence to Article 37(b) of the CRC often falls short of its stringent legal expectations.

The nuanced relationship between personal liberty, the obligations of the justice system, and the rights of Children in Conflict with the Law (CCL) confront society with a multi-dimensional challenge. Addressing this challenge requires rigorous scrutiny and deliberate action, situated at the intersection of justice, humanity, and safeguarding young lives. It underscores the need to uphold human rights and principles of justice unwaveringly.

### **Education: A Pathway to Rehabilitation and Reintegration**

Detailed studies of the juvenile justice system have revealed a pressing concern: the compromised educational rights of Children in Conflict with the Law (CCL). Although education is universally recognized as a fundamental right, it holds particular importance for CCL, serving as the foundation for rehabilitation, reintegration, and prospects for a brighter future. However, some aspects of the juvenile justice system, notably detention, can impede this crucial facet of a child's development. Such obstructions jeopardize their educational rights, potentially leading to a cycle of lost opportunities and limited futures. Consequently, the educational provision for CCL should resonate with the Agenda 2030 for Sustainable Development's commitments and prioritize the child's best interests as emphasized in the UNCRC, ensuring holistic and inclusive development.

The compromised right of education for CCL cannot be underestimated. It symbolizes the aspirations of society to protect and nurture its youngest members. The intricate challenge lies in finding the delicate equilibrium between addressing delinquent behavior and upholding this inherent right. Recognizing and remedying the implication of this right is not just a matter of compliance with international legal frameworks; it is a statement of society's commitment to ensuring that even those who have transgressed the law are given the opportunity for redemption, growth, and reintegration into society. The journey towards restoring the rights of CCL within the juvenile justice system is, fundamentally, a journey towards constructing a more just and compassionate world for all.

A comprehensive review of global research shows an unmistakable uptick in youth crimes, leading to a heightened number of young individuals facing arrests and incarcerations. This trend emphasizes the pertinence and immediacy of current studies. Juvenile justice, coupled with the rights of young offenders, has taken center stage in international discourse, driven by the escalating number of detained minors worldwide. Delving into the annals of human rights shows that rights and justice have perennially been human civilization's cornerstones. Considering youths between 15 to 24 years account for 16% of the global population, their welfare and rights gain heightened importance. The treatment they receive not only impacts them but also carries implications for society at large and its successive generations.

Education stands out as a sector where the rights of these youth are most compromised. An in-depth look at the Children in Conflict with the Law (CCL) reveals an alarming erosion of their educational rights. While globally accepted as an essential right, education represents more than just knowledge for CCLs; it is a ray of hope and a foundational pillar for rehabilitation and societal reintegration. However, the confines of the juvenile justice system, notably detention facilities, can stymie this crucial developmental phase, setting them on a path with limited prospects. The 2030 Agenda for Sustainable Development accentuates the indispensability of equal education, with the UNCRC championing the alignment of education with a child's paramount interests.

This study amplifies concerns by delving into educational discrimination, using the USA and India as case points. While direct parallels are not drawn between the two nations, the research illuminates recurring patterns of educational bias within India's distinct socio-cultural

landscape. Such insights provide a holistic understanding of the myriad challenges marginalized youth face in India's juvenile justice system.

In the USA, with the backdrop of safeguarding human rights in educational institutions, there is an alarming trend of criminalizing students, a reaction to rampant mass shootings. Lingis (2022, 178) expounds on this, pointing out that measures like surveillance cameras, metal detectors, and backpack checks are being implemented as responses to these tragedies. Nevertheless, Lingis (2022, 178) also highlights the financial strains these policies impose on many schools. Simultaneously, strict policies against carrying weapons have emerged in most states. The zero-tolerance approach towards offenses such as possession of weapons or drugs, disruptive behavior, and truancy leads to punitive measures ranging from suspensions to arrests. Crucially, Lingis (2022, 179) underscores the disproportionate targeting of Black, Hispanic, and Native American students, who face harsher consequences than their white counterparts. The repercussions of such policies are grim: students who face arrest often abandon their education, leading to a bleak future marked by unemployment and increased tendencies towards recidivism, especially in a system resistant to rehabilitation.

In contrast, India's Juvenile Justice Care and Protection of Children Act 2015 delineates adult jurisdiction for heinous offenses by those over 16. While India enshrines the right to free and mandatory education for all its citizens under 14 (Parackal and Panicker 2019, 30), there is a prevailing concern: many young individuals, typically from historically illiterate and marginalized communities, are deprived of this right. Given India's substantial youth demographic, this shortcoming threatens to perpetuate a cycle of illiteracy and criminality.

## **1.5 Why India?**

### **Examining India's Juvenile Justice System: A Closer Look**

There is a globally recognized need for a distinct juvenile justice system, anchored in the understanding that young offenders, due to their specific developmental stages and more significant potential for rehabilitation, require different treatment from adults. The 1989 United Nations Convention on the Rights of the Child bolstered this perspective, focusing on a child's

right to comprehensive development and protection. With the exception of the United States, every UN member nation has endorsed this convention. This consensus, however, does not lead to uniformity; national juvenile justice systems vary significantly in age definitions, rights granted, and the balance struck between punishment and rehabilitation.

For example, while the Netherlands' system heavily emphasizes rehabilitation, the U.S. has been criticized for its stringent punitive actions, such as life sentences for young offenders. Countries like India, Australia, Canada, Germany, Japan, South Africa, and the UK have designed specialized structures to handle juvenile delinquency. Nevertheless, debates about their efficacy and humaneness persist, often igniting calls for modifications.

India presents a particularly interesting study. Its established juvenile justice system navigates issues surrounding minors in conflict with the law through its Juvenile Justice Board, a dedicated legal entity that fervently champions child rights and is in line with global conventions. This commitment, however, is riddled with challenges. Inconsistencies in applying the 'child's best interest' principle are evident, leading to divergent decisions by judges, probation officers, and child welfare entities. This discrepancy is evident in Parackal and Panicker's (2019, 204) findings, where underage detainees were initially placed in Tihar jail, an adult facility, before being transferred to a juvenile institution.

India's young offenders often emerge from backgrounds marred by urbanization, chronic poverty, societal violence, and the pressures of an increasingly materialistic culture. These factors inevitably shape their lives and prospects. Despite this, a pervasive sentiment exists that equates the majority of these youngsters to perpetrators of severe crimes, pushing them into a justice system intended for serious public safety threats.

Such views are unfortunately amplified by a public that lacks empathy for these children. They frequently overlook the unique developmental attributes of the juveniles, like impulsiveness, risk-taking tendencies, hyperactivity, lack of future planning, immature judgment, and susceptibility to external influences. This systemic immersion subjects the children to environments that are not just harsh but also alienate them from familial and societal pillars designed for their guidance (Parackal and Panicker 2019, 6).

## 2 Theoretical Framework

This research adopts an empirical approach to delve into the best interests of children within the juvenile justice system, with particular emphasis on Children in Conflict with the Law (CCL) from a non-legal, human rights perspective. Through the analysis of empirical data, the retributive and restorative justice models will be contrasted to determine the extent to which the retributive system upholds a child's best interests. This chapter sets the stage by offering essential definitions pertinent to this study, ensuring clarity in the key concepts. To provide clarity, terms such as 'the best interest of the child,' 'child,' 'juvenile,' 'delinquent,' 'age of criminality,' 'juvenile justice system,' and both 'retributive and restorative justice models' will be defined within the context of this study.

### 2.1 Best interest of a child

In the intricate realm of juvenile justice, particularly concerning Children in Conflict with the Law (CCL), this empirical research delves deeply into the concept of the "best interest of a child." To anchor this study within its broader context, it becomes essential to elucidate this principle, prominently featured in international human rights instruments like the United Nations Convention on the Rights of the Child (UNCRC). Article 3 of the UNCRC expressly underscores that decisions pertaining to a child should invariably prioritize their holistic well-being, advocating a comprehensive evaluation of a child's rights, evolving needs, maturing capacities, and the determination of the most advantageous trajectory under the given circumstances. This "best interest" doctrine, pivotal within legal and child welfare domains, champions a holistic and child-centric paradigm, emphasizing their overall welfare, development, and entitlements. The UNCRC's mandate extends well beyond mere physical safety, encompassing emotional and psychological stability, thereby promoting a nurturing environment buttressed by strong relational ties.

Further, this principle integrates various facets, including uncompromised healthcare, quality education, respect for cultural and religious identities, maintenance of stable environments (especially critical during custody disputes or welfare deliberations), acknowledgment and

incorporation of the child's voice (calibrated to their age and cognitive development), preservation of nurturing relationships, nuanced appreciation of diverse developmental phases, and the urgency in decision-making processes to mitigate undue stress. By fusing these elements, this research offers a comprehensive exploration of the "best interest" construct, all within the prism of a human rights perspective in juvenile justice.

## **2.2 Who is a child?**

The term "child" holds a universally accepted definition per the United Nations Convention on the Rights of the Child (UNCRC). Article 1 of the UNCRC defines a child as any individual under eighteen. This definition, while overarching, is flexible, acknowledging the varied legal traditions and systems across countries.

For instance, even if a specific nation's legal system determines that adulthood is attained before eighteen, such local age stipulations would take precedence over the UNCRC's general definition. A case in point is India. While the Juvenile Justice (Care and Protection of Children) Act, 2015, in India generally recognizes individuals under 18 as children, it permits children above 16 to be tried and sentenced as adults for certain 'heinous offenses' (Nowak 2019, 279). Additionally, the Indian legal framework sets the age of criminal responsibility at seven (Parackal and Panicker 2019, 3).

This flexibility in the UNCRC's definition underscores its primary intent: to provide a global benchmark of eighteen years for the term "child" while respecting the nuances of national and regional legislations that might assign adult responsibilities or recognize adulthood at an earlier age.

## **2.3 "Juvenile," "Juvenile Delinquency," and Children in Conflict with the Law (CCL)**

The term "juvenile," sometimes used interchangeably with "child," has distinct nuances. Its definition can diverge across jurisdictions due to a lack of universal consensus (Young, Greer, & Church 2017, 21). Generally, a juvenile is above the minimum age of criminal responsibility but below the age of majority, often set at 18 years. It is supported by The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as The Beijing Rules.

On the other hand, “juvenile delinquency” refers to behaviors exhibited by children that society deems unacceptable. Adding another layer of complexity, under the umbrella of the United Nations, agencies like UNESCO sometimes classify individuals aged 15-24 as “youth,” a definition that does not enjoy universal acceptance.

Diving deeper, “Children in Conflict with the Law” are those under 18 who have committed or been accused of an offense (Parackal and Panicker 2019, 243). This label goes beyond the mere act to encompass the socioeconomic, familial, and educational circumstances pushing a child into legal conflicts. Highlighting these distinctions is crucial, especially when considering children in conflict with the legal system — the CCLs. They demand a tailored approach that champions their rights, addresses their unique needs, and puts a premium on their rehabilitation and reintegration.

## **2.4 Juvenile Justice System**

The Juvenile Justice System represents a holistic legal structure, blending policies and bodies focused on the needs of children in conflict with the law. Central to its mission is protecting their rights and offering justice tailored to their developmental age and evolution. This system harmonizes diverse laws, societal norms, professional standards, and tailored interventions for the welfare of these young individuals (Parackal and Panicker 2019, 244). At the heart of this system is an unwavering emphasis on rehabilitation. It starkly contrasts the adult criminal justice approach, which operates on the pillars of retribution, deterrence, and rehabilitation.

Historically, there has been an enduring dedication to granting juveniles distinct care and focus within the judicial sphere (Young, Greer, & Church 2017, 22). Such dedication aligns with the ‘reconstructive attitude’ philosophy. Instead of centering on punitive measures, this approach seeks to unearth the root causes behind individual and societal strains, aiming to mend the underlying disruptions. The ambition extends beyond mere punishment — it aspires to foster positive future outcomes by identifying and addressing core challenges (Parackal and Panicker 2019, 199). The restorative justice programs further exemplify it. These programs champion collaborative processes wherein victims, offenders, and, when apt, other community members affected by a crime come together for resolution. Typically steered by a mediator, these processes may include mediation, conciliation, conferencing, or sentencing circles, all with a



unified goal: to engage all stakeholders in understanding the crime's aftermath and forging a route toward reconciliation and recovery.

## **2.5 Retributive Justice Theory**

Retributive justice is rooted in the belief that wrongdoers should face punishment commensurate with the harm they have inflicted on their victims. It is less concerned with the consequences of the crime on the victim and more with the principle that crimes intrinsically deserve punishment. Rather than seeing the criminal as an individual in need of aid, advocates of retribution view the harm resulting from a crime as necessitating an equivalent "moral penalty" to the perpetrator. The essence of this perspective is that a criminal should be punished not as a means to some other end but because they merit it (Riishojgaard 2019, 903).

This traditional stance on justice accentuates retribution and deterrence, typically advocating for punitive measures like imprisonment. The retributive approach contends that punishment should mirror the severity of the offense, focusing on past misdeeds rather than potential future outcomes. It upholds punishment as a justifiable end, not merely a tool for deterrence or rehabilitation. While the adage "an eye for an eye" encapsulates the spirit of this theory, modern interpretations do not advocate equivalent reprisal but seek punishments aligned with the nature and gravity of the offense. Central to this concept is the ideal of justice, emphasizing that wrongdoers should rightfully face the consequences of their actions. It contrasts with other penal philosophies, such as the utilitarian approach, which values societal happiness, or the rehabilitative approach, aiming to reform the offender. Critics of the retributive theory highlight potential rigidity, lack of consideration for individual circumstances, and inadequate emphasis on crime prevention or offender rehabilitation. However, supporters believe it ensures that justice prevails.

## **2.6 Restorative Justice Theory**

Restorative justice theory emphasizes the pivotal role of healing and reconciliation in the justice process rather than mere punitive responses (Riishojgaard 2019, 916). It posits that the criminal justice system's objective should be to curtail the possibility of reoffending by promoting a process that actively involves the victim, offender, and community in collective repair. In this framework, offenders are not seen merely as individuals deserving punishment but as members

of society who need guidance, support, and rehabilitation to restore harm and reintegrate into the community (Riishojgaard 2019, 903).

At its heart, restorative justice is about repairing the harm caused by criminal acts. This holistic approach to justice prioritizes holding offenders accountable, addressing the root causes of their behavior, and promoting their societal reintegration. The rehabilitative facet of this theory zeroes in on the underlying determinants of criminal behavior, offering support structures, education, and interventions to foster positive behavioral shifts.

Despite the recognized potential of rehabilitation, its definition remains fluid in academic discourse. Riegler (2020, 707) implies that while rehabilitation denotes a return to a pre-offense state, it concurrently seeks progression toward an improved state through specific rehabilitative programs. As Riegler (2020, p. 708) highlights, there is an apparent lack of empirical evidence suggesting that purely punitive approaches can foster rehabilitation.

While the ethos of restorative justice—encompassing diversion, community services, victim-offender mediation, family conferences, and group therapy—holds promise, its full integration remains an aspiration in many jurisdictions. It is particularly concerning as some countries have begun to recognize and employ restorative justice due to its potential to reform and reduce recidivism rates (Parackal and Panicker 2019, 230). The significance of such an approach is underscored by research indicating that significantly prolonged incarceration may not be the most effective or appropriate solution for even serious juvenile offenders. Studies reveal that community-based supervision can potentially lower reoffending rates, enhance pro-social behaviors, and increase school or work engagement (Parackal and Panicker 2019, 231). Consequently, integrating community-based services, particularly substance abuse treatments, emerges as a pivotal strategy to optimize the reduction of serious juvenile offending while ensuring the efficient and effective delivery of essential services.

Evidence from countries like Northern Ireland, South Africa, Austria, the Czech Republic, and Italy further strengthens the case for restorative justice. These nations have demonstrated their efficacy in reducing recidivism among young offenders and aiding their seamless reintegration into society (Parackal and Panicker 2019, 228).

## 2.7 Non-Custodial Measures

Non-custodial alternatives are sanctions placed upon offenders without resorting to imprisonment. These mechanisms prioritize rehabilitating offenders, preventing further offenses, and aiding victims while alleviating pressures on penal systems. Such measures can be employed during various phases of the justice process, including pre-trial, trial, and post-conviction stages.

These non-custodial strategies are more cost-effective and more efficient in preventing crime and ensuring the care and protection of juveniles deprived of their liberty (Nowak 2019, 13). The UNCRC's guiding principle in Article 37(b) asserts that custodial actions should be the last resort, employed for the shortest duration possible. Furthermore, adhering to the child's best interests, delineated in Article 3(1) of the UNCRC, non-custodial interventions should be prioritized before infringing upon personal freedoms (Nowak 2019, 253). It has been observed that pre-trial detentions can inadvertently lead to a higher rate of reoffending in comparison to non-custodial programs. Children subjected to pre-trial detention are notably more inclined to receive a post-conviction custodial sentence than those who undergo conditional release following their initial court hearing (Nowak 2019, 297).

Detention, devoid of impactful rehabilitation, could become the catalyst for repeated offenses and subsequent detentions. The use of deprivation of liberty in child justice is further questioned when weighed against its inability to enhance community safety or reduce juvenile offenses. Such deprivation is increasingly seen as problematic, considering its fiscal burdens, adverse impacts on children, and broader societal repercussions (Nowak 2019, 298). An optimal strategy to shield children from the adverse effects of the criminal justice system is to prevent their initial engagement with it. It necessitates a focus on preventive measures and policies geared towards diverting children from formal criminal procedures at the earliest stages, with priority given to family and community support and comprehensive education. Collaborative efforts are vital, encompassing child justice sectors, law enforcement, social welfare, and education. This approach aligns with international legal standards and is demonstrably more effective. Several efficacious non-custodial alternatives include verbal admonishments, conditional discharges, fines, restitution or compensation orders, community service mandates, house arrest, and other non-institutional treatments (Nowak 2019, 349).

## 2.8 What theory of criminal justice does India follow?

India's criminal justice system operates at the intersection of various theories, primarily highlighting retributive and rehabilitative models. Especially in the context of juvenile offenders, the system leans heavily towards rehabilitation, even though it does not shy away from retributive measures like imprisonment for grave crimes. The Juvenile Justice Act is emblematic of this rehabilitative inclination. This legislation underscores the critical need to comprehend the socioeconomic triggers driving juveniles towards crime and champions their societal reintegration and rehabilitation over strictly punitive actions. To aid in this, the Act sanctions the establishment of observation and special homes that provide care, protection, and vocational training to the juveniles, facilitating their smooth reintegration.

Amidst this framework, the welfare of Children in Conflict with Law (CCL) is paramount. The detriments of depriving them of personal liberty are many, affecting their physical, psychological, and social well-being deeply, as noted by Parackal and Panicker (2019, 4). The country has been moving progressively towards embracing restorative justice approaches, especially for juvenile delinquents. This method is centered on repairing the harm caused by an offense, often bridging the gap between the victim and the offender, focusing on holistic healing rather than just punitive measures. However, specific laws, such as the National Security Act, are geared towards preventing potential offenses, particularly those threatening national security.

One innovation within this system is the integration of non-custodial measures, such as probation, community service, house arrests, and electronic monitoring. Such alternatives to imprisonment fit perfectly within the juvenile justice framework, amplifying India's commitment to rehabilitation. Although using electronic monitoring is not widespread in India, other non-custodial alternatives, such as post-release follow-up and counseling, are practiced. Rather than an automatic route to jail, these non-custodial measures ensure that juveniles receive a more constructive response that aligns with the spirit of the Juvenile Justice Act 2015.

However, the theoretical underpinnings of the legislative framework sometimes do not align with its practical application or with public sentiment. Public emotions, especially in the aftermath of heinous offenses, can tilt heavily toward demanding punitive action. It is evident in certain legislative decisions, like trying individuals over 16 as adults for specific severe

crimes under the Juvenile Justice Act, 2015. Therefore, while anchored in various justice theories, India's justice system remains fluid and adaptable, shaped by factors like the nature of the offense, the age of the offender, prevailing public sentiment, and the broader socio-political context. Incorporating non-custodial measures into this system adds a layer of flexibility, ensuring a more balanced approach.

### 3 Research Methodology

The foundation of this study lies in a qualitative deductive research design chosen for its capacity to deeply probe the experiences and views of stakeholders within the juvenile justice system, especially juvenile delinquents. By observing subjects in their natural environment, the study ensures that the data remains authentic and not entirely dependent on secondary sources. Such an approach allows the research to confront existing theories with on-ground observations, providing a robust platform to validate data for accuracy and reliability.

#### **Data Collection and Analysis:**

The primary data collection was sourced through intensive personal interviews with 61 Children in Conflict with the Law (CCL) housed in various facilities in Delhi, India. This mixed-methods approach was enriched by analyzing interview transcripts, spontaneous interactions with CCLs, academic reports, and domestic legislation. Random sampling ensured the anonymity of the participants, and snowball sampling helped navigate subsequent interviews. A pre-approved questionnaire guided the interviews more straightforwardly, and more personal questions were interspersed to build rapport.

#### **Challenges and Trust-Building:**

The CCLs' apprehension, stemming from fears of repercussions like prolonged detention or denied bail pleas, posed a significant hurdle in establishing trust. The researcher approached the situation with empathy, incorporating non-threatening questions about their preferences in food and other related experiences to mitigate these concerns and foster trust.

Direct engagement enabled the collection of vivid, firsthand narratives from CCLs, grounding abstract human rights principles into tangible, lived experiences. This method also facilitated a profound understanding of the socio-political and cultural underpinnings of the juvenile justice system. Furthermore, fieldwork provided avenues for potential future collaborations, emphasizing the importance of advocacy based on firsthand observations and interactions.

### 3.1 Ethical Considerations

The integrity and ethics of this research have been diligently maintained, with strict adherence to guidelines laid out by University College Stockholm (UCS), Sweden, and the Department of Women and Child Development (DWCD) of the Government of NCT of Delhi. Before data collection, all protocols were discussed and agreed upon with the thesis supervisor.

Foremost, participation in the study was voluntary. No Child in Conflict with the Law (CCL) was compelled to participate against their wishes. The purpose and nature of the research were transparently conveyed to all participants: a written introduction about the researcher and the study was provided to each participant. Subsequently, they were presented with an informed consent form detailing their rights and the research's scope. Only after securing their signed informed consents did the interviews commence.

Ethical considerations were central throughout the study, especially considering the participants' vulnerability, the CCLs housed in Observation homes. Their anonymity and privacy were paramount; therefore, to ensure this, participants' identities have been kept strictly confidential.

For consistency and to ensure no leading of participants, a predetermined set of 27 open-ended questions was utilized during the interviews, with the provision for spontaneous but ethically considered questions when needed. Although the researcher possesses the participants' informed consent to utilize their responses, this trust has been held sacrosanct, with all data handled respectfully and securely.

To further ensure the safety and comfort of the participants, no audio or video recordings were taken during the interviews. Instead, with the explicit consent of the participants, the researcher documented their responses manually. Stringent precautions have been implemented to prevent any data breach or loss, ensuring both the security of the collected data and the protection of the CCLs' individuality. At every step, care was taken to mitigate any potential harm or discomfort to the participants.

## 3.2 Challenges and Limitations

This study grapples with several constraints. Among the most pressing are issues related to sample size, time limitations, and biases in the selection of participants. The snowballing interview technique further exacerbated these concerns. Illustratively, after interviewing the first CCL, they were asked to recommend a subsequent CCL participant. This process ignited discussions among the dormitory residents regarding the nature of the interview, anticipated questions, and the degree of openness required. Such interactions suggest that early participants could have influenced subsequent participants' viewpoints. The potential for bias increased when some interviewees recommended people, they were familiar with, either from their dormitories or those co-accused. These dynamics raise concerns about the accuracy and consistency of the data gathered.

Moreover, the findings might have relevance primarily within specific legal and cultural environments, limiting their broader relevance. Time management obstacles led to potential research discrepancies and conflicts. Securing access to observation homes was another challenge. Notably, the study's predominant focus on male feedback excluded valuable perspectives from female Children in Conflict with the Law (CCL), a limitation attributed to time constraints and the study's specific design.



## **4 Materials**

This chapter presents the findings obtained through empirical data collection methods, primarily focusing on personal interviews conducted with Children in Conflict with the Law (CCL). These interviews provide deeply personal insights and experiences of the CCL residing in the Observation Home for Boys in New Delhi. To prioritize the children's welfare and respect the authenticity of their experiences, their responses have been paraphrased or, when necessary, partially quoted, ensuring anonymity. The data was analyzed meticulously to retain their statements' original meaning and context. No personal interpretation from the interviewer or researcher was introduced, guaranteeing that the data remained pure and faithful to the children's accounts.

### **4.1 Field Data**

The evidence collected from the field revealed myriads of patterns concerning the development of CCLs—for instance, the barriers to education, educational environment and resources, peer dynamics and influence, cultural and societal factors, the role of educators and institutions, and mental and emotional health.

#### **4.1.1 Barriers to Education**

Through in-depth face-to-face interviews, it became evident that many Children in Conflict with the Law (CCLs) had limited exposure to formal education before their detention. The majority had discontinued their education at the elementary level. A concerning number could barely write their own names, and when faced with the need to sign documents, many exhibited visible discomfort and embarrassment, often apologizing.

Upon their detention and relocation to the observation homes, their challenges multiplied. Within the confines of these facilities, the CCLs were largely bereft of access to quality education. The limited availability of specialized teachers or tailored education programs exacerbated this gap. However, the system did offer some flexibility: CCLs, even when detained for periods ranging from fourteen days to several months, were permitted to prepare for upcoming examinations. They could temporarily exit the facility to take these tests with authorization from the Juvenile Justice Board, which oversees juvenile cases.

Their socioeconomic challenges added layers to their predicament. Many CCLs came from families existing at the lower economic threshold. Distressingly, some of these children were primary breadwinners. Their detention robbed them of their freedom and meant they lost access to the labor market and their jobs. Families were thrust into even more precarious financial situations, especially when the child had been instrumental in supporting single mothers. These mothers faced the dual challenge of coping with the loss of income and the mounting expenses of legal aid and bail.

As these CCLs contemplated their future, they were overshadowed by a pervasive, albeit intangible fear—the impending stigma and discrimination they might face upon release. Many were apprehensive that past transgressions could hinder their attempts at societal reintegration. Consequently, several families moved to new locations to mitigate these concerns and seek a fresh start.

#### **4.1.2 Educational Environment & Resources**

Interview feedback highlighted the diverse and often challenging educational environment within detention centers. A recurring theme was that the quality of the educational facilities frequently led to limited or restrictive learning opportunities.

- **Teaching Methods and Curriculum Disparities:** An informant, having already received a high school education, felt underserved by the curriculum, noting it was primarily tailored for beginners. In contrast, another participant felt out of depth, stating that the instructional content seemed too advanced, making foundational literacy skills hard to attain during his time in the observation home.
- **Resource Availability:** There is a marked variance in resources across observation homes. While a significant number of participants lamented the limited range and number of books in the libraries, the extent of access to digital tools also seemed inconsistent. Although online learning was generally limited, one observation home stood out by offering computer classes, thanks to the superintendent's initiative. Financial literacy took center stage in another facility, with the superintendent teaching CCLs about stock market dynamics.

- **Teacher-Student Ratio:** A primary concern expressed was the disparity in the teacher-student ratio. The data suggests that in most cases, a single educator is tasked with managing a large group of students, each at different academic stages, inevitably affecting the quality of instruction and learning.
- **Daily Life and Open Schooling:** All participants enjoyed some recreational facilities, such as watching television and adhering to a structured daily schedule. A segment of these children showed interest in furthering their education via open schools as opposed to conventional institutions. This flexible system allows students to study remotely and take examinations as needed. However, some CCLs faced challenges with this approach. A poignant reflection came from a participant who, as an elementary school dropout, felt overwhelmed by high school content in open schooling. Nevertheless, the core ethos of open schools was highlighted: anyone can pursue and complete a high school education, with the primary requirement being exam performance. Enlistment in these programs was voluntary.

### 4.1.3 Peer Dynamics and Influence

The influence of peer groups on individual attitudes toward education was a significant theme that emerged from the participants' feedback. Many participants underscored their co-accused or fellow detainees' pivotal role in shaping their daily experiences and learning outcomes.

Distractions, often stemming from peer pressures, dampened the educational aspirations of several informants who initially had a keen interest in learning. Furthermore, bullying was a prevalent concern. Many participants recounted instances of being subjected to intimidation and harassment, especially during the early stages of their detention. This discrimination was frequently based on differences in their criminal histories.

An alarming revelation was the pattern of repeat offenders. Having been institutionalized multiple times for similar offenses, these individuals often exerted dominance over newcomers. As reported by some informants, these repeat offenders would force the newer detainees to undertake chores, like doing their laundry.

In the detention setting, the peer environment sometimes functioned as a learning platform, albeit for malicious intents. Some participants revealed they acquired new techniques and strategies for committing crimes upon release, taking cues from fellow inmates. The range of criminal activities they described often involved violent acts such as snatching personal belongings and frequently employing weapons like knives. Additionally, it was noted that many detainees were incarcerated for grave offenses, including rape, murder, and attempted murder.

#### **4.1.4 Cultural and Societal Factors in the Juvenile Justice System**

The juvenile justice system operates within broader cultural and societal landscapes. These landscapes greatly influence the system's policies, practices, and outcomes. For effective interventions and policies, it is imperative to comprehend the intricate web of influences stemming from cultural norms and societal expectations.

Different cultures hold unique definitions and expectations of acceptable behavior for young people. A behavior deemed a rite of passage in one culture might be considered delinquency in another. Additionally, societal views on education and opportunities can differ vastly, causing discrepancies in how juveniles perceive themselves and their futures.

Interviews with Children in Conflict with Law (CCL) provide deeper insights into these dynamics. Many CCL informants hail from diverse backgrounds, each bringing their unique experiences into the conversation. Some expressed remorse, stating their current predicament was due to a first-time offense. Others, particularly repeat offenders, mentioned learning dangerous behaviors from adult family members. Substance abuse, especially cannabis, emerged as a recurrent theme among these young individuals, with some even considering it a norm. This perception of normalcy reflects a deeper societal issue where certain behaviors become normalized due to cultural or community influences. The stark contrast in experiences and worldviews among these juveniles underscores the need for the justice system to tailor its interventions. Recognizing and respecting these diverse backgrounds and perspectives is crucial in delivering effective, culturally sensitive solutions. The end goal should be not just to correct behavior but to offer these children a chance at a life that their peers outside the system take for granted.

### **4.1.5 Mental and Emotional Health, and Family Ties**

Detention centers frequently leave an indelible mark on the mental and emotional health of Children in Conflict with the Law (CCL). The trauma experienced within these institutions not only hampers their ability to learn and accentuates pre-existing mental health conditions. Before stepping foot in these centers, numerous juveniles face issues ranging from mood and anxiety disorders to more severe psychiatric ailments. Such challenges often drive behaviors that lead to incarceration, with many of these disorders rooted in childhood adversities such as abuse or neglect.

Ironically, for some CCLs, their initial interaction with the justice system is their first exposure to mental health diagnosis or treatment. It underscores the inadvertent yet pivotal role the system can play in identifying and addressing these issues. Tailored therapeutic interventions and counseling services can be more effective than punitive measures. Neglecting these mental health concerns escalates the risk of reoffending. Proactively addressing these needs enhances their well-being and significantly curtails the probability of system re-entry. The heartfelt accounts of several CCLs highlight their ongoing mental struggles. Their stories, filled with raw emotions of despair and helplessness, emphasize the urgency of comprehensive mental health support, which is instrumental for their overall rehabilitation and educational progression.

Parallely, the influence of family and community ties cannot be understated. However, it is imperative to recognize that only some familial or community connections are beneficial. In some instances, these ties propelled the juveniles into legal trouble. As a result, it is essential for judicial professionals to discerningly evaluate these relationships discerningly, balancing their potential advantages and downsides.

Family often serves as a beacon of hope and support for many CCLs, especially during their tenure in detention centers like the Observation Home for Boys (OHB). While many CCLs cherish visits from family members, these interactions sometimes come with their challenges. Single mothers, for instance, face the daunting task of balancing work commitments with visitation schedules. The logistical impediments, coupled with the brief duration of these visits, sometimes lead to feelings of disappointment and inferred abandonment among the CCLs.

On a brighter note, some CCLs narrate uplifting tales of love and acceptance during these visits. Nevertheless, others are weighed down by shame and financial constraints, leading them to decline familial interactions. A prevalent sentiment echoed by many CCLs is the fear of societal judgment post-release, painting a bleak picture of their anticipated futures in the community.

#### **4.1.6 Skills and Vocational Training in Detention Centers**

Many interview participants disclosed their access to vocational and life-skills training while in detention. Available courses inside the observation homes spanned a range from sewing, plumbing, and electrical repair, to computer classes and even investment lessons on stock market trading. However, the range of options was perceived as limited, leading many CCLs to opt out of any vocational lessons. The relevance of the skills taught within detention centers to real-world opportunities varied, as noted by many CCLs. Some found value in these courses, while others felt detached from the vocational and formal education offerings inside these homes.

#### **4.1.7 Vocational Training vs. Formal Education**

Vocational training equips the CCLs with technical skills tailored for specific jobs or trades. For instance, courses may cover carpentry, plumbing, or automotive repair areas. In contrast, formal education offers a broad spectrum of academic subjects, from mathematics to literature, emphasizing the development of critical thinking, problem-solving, and a foundation of general knowledge.

The two forms of education complement each other. While vocational training provides hands-on experience and practical knowledge, formal education provides the foundation for critical analysis and theoretical understanding. For example, a student studying physics in a formal setting might find practical application in an electronics vocational course.

When combined effectively, vocational and formal education arm individuals with academic knowledge and practical skills, making them well-equipped to face the challenges of the modern world.

### **4.1.8 Challenges and Needs of CCLs**

Within the confines of detention centers, there are opportunities and challenges in addressing the needs of Children in Conflict with the Law (CCL). A recurring sentiment among the CCLs underscores the pressing need for continuous formal education within these centers. This aspiration for formal education often stands alongside, or even in place of, the vocational training offered. However, not all views align; certain CCLs have voiced disinterest in vocational and formal education provisions within observation homes.

These varied educational aspirations underscore the importance of broadening the scope of rehabilitative measures. Non-custodial measures encompass alternative educational and rehabilitative programs outside detention centers and may offer a more tailored approach to individual needs and aspirations. An illustrative point concerns the CCLs who have already pursued education up to the high school level. These individuals frequently lamented the lack of materials tailored to their reading level within observation homes. They believe that alternatives to detention, such as probation or house arrest, could offer them better access to appropriate study materials in the familiar surroundings of their homes. Intriguingly, data from the interviews indicates that CCLs often voiced such preferences for advanced reading materials from relatively affluent socioeconomic backgrounds, characterized by family members with tertiary education, high school-graduated siblings, or parents with considerable purchasing power.

The expressed desire for greater educational autonomy and personal freedom converges to highlight a pivotal theme: the restrictive environment of detention centers not only constrains educational pursuits but also shapes perceptions and anticipations regarding the judicial process.

Supporting this theme, findings from the study indicate a prevalent notion among children subjected to pre-trial detention: they are more susceptible to receiving post-conviction custodial sentences than peers granted conditional releases post their initial court appearance. During the interviews, a substantial number of CCL informants shared their anticipation of bail, especially those experiencing the confines of an institution for the first time. It emerged that such beliefs were often influenced by older detainees, who, with their repeated offenses, had become

somewhat seasoned in navigating the juvenile justice system. This mix of first-time detainees with experienced offenders further enriches our understanding of the dynamics within detention centers.



## 5 Material Analysis and Discussion

The juvenile justice system presents a microcosm of broader societal concerns and intricacies. The Children in Conflict with the Law (CCLs) are at the heart of this system, individuals caught at the intersection of their personal experiences, societal norms, and the judicial framework. A study of the Observation Home for Boys in New Delhi presents an opportunity to understand these interactions in depth.

The educational background of the CCLs is of paramount concern. Education, often seen as a silver bullet to societal woes, remains elusive for many CCLs. Prior to their detention, many had minimal exposure to quality education, having left school early due to various socioeconomic challenges. The detention environment further compounds this deprivation. The glaring absence of specialized educators, tailored programs, and contemporary teaching resources makes genuine learning difficult. Given the essentiality of education in molding perspectives, its inadequacy has profound implications on the CCLs' worldview.

The socioeconomic fabric from which many CCLs emerge further complicates their challenges. Economic difficulties not only curtail their educational opportunities but also shape their forays into activities deemed unlawful by society. The repercussion of their detention extends beyond the individual. For families living on the economic margins, the incarceration of a young member often translates to a tangible loss of income. These further strains familial ties and compels many to consider relocation as a means to escape societal judgment.

The environment within detention centers mirrors the broader societal challenges. The teaching paradigms need to be more consistent and resonate with the unique learning needs of the CCLs. The disparity in resource allocation, notably in terms of digital tools and books, accentuates the educational divide. Furthermore, a skewed teacher-student ratio makes personalized learning a distant dream. Despite these hurdles, introducing open schooling provides a semblance of optimism. Such frameworks, if executed efficiently, can bring about discernible positive shifts. The peer dynamics in these settings present a paradox. While shared experiences foster camaraderie, the pervasive negative influences can be detrimental. CCLs, particularly those new to the system, are susceptible to the dominant narratives propagated by repeat offenders. This dynamic often molds their perspectives, with some internalizing the criminal identity. The

societal norms and cultures in which the CCLs are rooted also influence their outlook. The alarming acceptance of behaviors, such as substance abuse, illuminates the necessity for cultural cognizance in rehabilitative measures.

One of the most pressing issues facing CCLs is their mental well-being. Their life stories, marred by trauma, paint a bleak picture. These traumatic experiences, both pre, and post-detention, can culminate in a plethora of mental health issues. Thus, the juvenile justice system inadvertently becomes a platform for early detection and intervention of these issues. Addressing them is pivotal to ensuring genuine rehabilitation and deterring criminal activities post-release.

Vocational training within detention centers stands out as a promising avenue. These programs, ranging from skill-based crafts to knowledge of contemporary fields, offer CCLs a tangible set of skills. The appeal of such programs, however, is varied. While they resonate with some, others remain skeptical, advocating for a more traditional educational route. This dichotomy between vocational and formal education requires careful navigation. An optimal blend of both can yield a comprehensive learning environment, priming CCLs for reintegration into society. In synthesizing these insights, a clear aspiration emerges among CCLs: a thirst for continuous, holistic education. While certain avenues are in place, they often fall short of addressing the diverse needs of these young individuals. The will to learn, be it through vocational or formal channels, is palpable. However, the means to realize this aspiration often remains inadequate or misdirected.

The Observation Home for Boys in New Delhi epitomizes the multifaceted challenges and aspirations inherent in the juvenile justice system. The testimonies of the CCLs serve as a stark reminder of the intricate balance between personal experiences, societal norms, and judicial mandates. They emphasize an urgent need for comprehensive reforms, weaving in education, mental health support, and societal reintegration, to rehabilitate and empower these young souls truly.

## 6 Conclusions and Future Research

The extensive research into the best interests of Children in Conflict with the Law (CCL) within India's juvenile justice system presents a compelling case for reforms that genuinely prioritize the child's well-being. The core issues highlighted - from barriers to education and mental health concerns to the effects of peer dynamics and the need for skills and vocational training - underscore the multifaceted nature of CCLs' challenges. While the system currently provides certain amenities and services, there is ample room for innovation and improvement, especially in light of the UNCRC's foundational principles.

Restorative justice stands out as a promising avenue for innovation in the juvenile justice system. There are evidences to supplement the success claims. Unlike the traditional retributive approach, which primarily focuses on punishment, restorative justice emphasizes repairing the harm caused by criminal behavior. This method could address many of the concerns highlighted in this study.

Central to the restorative justice philosophy is the belief that when a crime is committed, it harms individuals, relationships, and the community. The approach then seeks to mend these ruptures. For CCLs, many of whom carry the burdens of past traumas, abuse, or neglect, this can facilitate holistic healing, addressing their criminal actions and the underlying issues leading to those actions.

Restorative practices can be seamlessly incorporated into educational frameworks within detention centers. Peer mediation programs, for instance, can empower CCLs to resolve conflicts independently, providing them with essential life skills. Furthermore, integrating restorative circles in educational settings can create safe spaces for open dialogue, allowing students to express concerns, discuss peer dynamics, and collaboratively develop solutions.

A key component of restorative justice involves community engagement. The community is pivotal in reintegrating CCLs, offering support, mentorship, and opportunities for meaningful societal contributions. By actively involving the community in the rehabilitation process, the stigmas and discrimination many CCLs fear post-release can be significantly reduced.

Restorative justice can serve as a foundation for non-custodial solutions. Instead of immediate detention, CCLs can be directed towards community service, restitution programs, or therapeutic interventions. These alternatives, grounded in the principles of repair and rehabilitation, align with the UNCRC's emphasis on detention as a measure of last resort. Restorative justice practices, such as victim-offender dialogues, can foster empathy, accountability, and personal growth. Such interventions can play a crucial role in addressing the mental and emotional challenges CCLs face, providing them with avenues for reflection, understanding, and genuine remorse.

However, it is essential to note that while restorative justice practices can lead to non-custodial agreements, such as an offender committing to community service to redress the victim and the community, not every non-custodial measure stems from restorative justice. Similarly, restorative justice processes do not always culminate in non-custodial solutions.

### **Future Research Directions**

1. **Effectiveness of Restorative Practices:** Further studies can explore the effectiveness of specific restorative practices within juvenile justice systems, drawing comparisons between different models and their outcomes.
2. **Long-term Impacts:** A longitudinal study assessing the long-term impacts of restorative justice on CCLs can provide insights into recidivism rates, societal reintegration, and overall well-being.
3. **Stakeholder Perspectives:** Future research can delve deeper into the perspectives of other stakeholders involved in the restorative process, including victims, families, community members, and facilitators.
4. **Cultural Sensitivity:** Given the diversity of cultural backgrounds of CCLs, studies can explore how restorative justice practices can be tailored to be culturally sensitive and inclusive.

Finally, while the challenges facing Children in Conflict with the Law are profound, solutions grounded in empathy, understanding, and restoration promise to create a juvenile justice system that prioritizes the child's best interest. Integrating restorative justice principles can pave the way for a more compassionate, effective, and holistic approach to juvenile justice in India.

## Bibliography

Danjuma, I., R. Nordin, and M.M. Muhamad. "Prisoners' Rights Under International Law: An Aetiological Myths." *Int. J. Human Rights and Constitutional Studies* 6, no. 1 (2018): 36–50.

Healey, Justin, ed. 2017. *Issues in Prisons*. ProQuest Ebook Central - Law Ebooks. ISBNs 978-1-925339-46-8; 978-1-925339-47-5.

Nowak, Manfred. United Nations Global Study on Children Deprived of Liberty. Published November 2019; reprinted June 2020.

Parackal, Saju, and Rita Panicker. *Children and Crime in India: Causes, Narratives and Interventions*. Palgrave Advances in Criminology and Criminal Justice in Asia. Palgrave Macmillan, 2019. <https://doi.org/10.1007/978-3-030-16589-5>.

Riegler, Edith. "Rehabilitating Enemies of Mankind: An Exploration of the Concept of Rehabilitation as a Sentencing Aim at the ICTY and the ICC." *International Criminal Law Review* 20 (2020): 701-727. Leiden: Leiden University. <https://brill.com/icla>.

Riishojgaard, Isabella. "The Role of the Judiciary in Assessing Police Conduct: Moving Back toward Retributive Justice." *Georgetown Journal of Legal Ethics* 32, no. 4 (Fall 2019): 903-918.

Thomas, Charles W., and Shay Bilchik. "Prosecuting Juveniles in Criminal Courts: A Legal and Empirical Analysis." *Journal of Criminal Law and Criminology* 76, no. 2 (1985): 439-479.

UDHR, Universal Declaration of Human Rights. United Nations. 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

UNCRC, United Nations Convention on the Rights of the Child. Convention on the Rights of the Child. Adopted 20 November 1989. General Assembly Resolution 44/25. <https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-rights-child>.

UNGA, United Nations General Assembly. "70/1. Transforming our world: the 2030 Agenda for Sustainable Development." A/RES/70/1. Seventieth session, Agenda items 15 and 116. 21 October 2015.

Young, Susan, Barry Greer, and Rachel Church. "Juvenile delinquency, welfare, justice and therapeutic interventions: A global perspective." *BJPsych Bulletin* 41, no. 1 (2017): 21-29. doi:10.1192/pb.bp.115.052274.

## Appendix – Questionnaire

1. Introduction. Inform the participant, and get the informed consent form signed.
2. Pleasantries (if needed, else, get directly to the next question).
3. How old are you?
4. I want to hear you speak about your world, your life, and your thoughts from your perspective.
5. Please describe to me how did you get to this juncture. You don't need to describe in detail under what circumstances you were reprimanded, but how did you get here? Or ask straightforward, how did you come/get here?
6. Describe your family life. Do you have both parents living together or separated? Do you have siblings/how many brothers or sisters do you have? Do you have siblings? Does any of your siblings go to school?
7. In case of not living with both parents OR if living with a single parent OR siblings OR no siblings, do you have a guardian or someone older than you to look out for you?
8. Who is responsible for you?
9. Do you go to school? Did you ever go to school? If yes, when was the last time you had been to a school?
10. Do you have friends? Do they go to school?
11. If, in case do not go to school, do you want to go to school?
12. (If in case IP is school dropout) do you want to continue your studies?
13. How do you imagine your future? Do you have different dreams now as compared to when you were younger?
14. Describe your experience during the covid pandemic. What are the post-covid pandemic repercussions on education and livelihood?
15. Do you know how long you will be here?

16. Do you get visitors? Who comes to meet you? How many times?
17. How do you spend your day and time? Describe your routine?
18. What would you think you could be doing in another place and time?
19. Do you feel alright here? How have things been around here? What do you think of the current system of arrangement? Did you face any kind of unfairness Or Discrimination? Any difficulty?
20. Has it happened in the past, that you have proposed some change to your situation in (the institution where you are now)?" In what way, according to you, do you think it can be improved?
21. Do you know if someone comes to monitor the prison?
22. How often does anyone come to check on you?
23. Where will you go from here after this place?
24. Will anybody wait for you after your time is done here?
25. What kind of support will you receive from the current arrangement to return to your previous life (successful reintegration?)
26. Who do you think can change your life situation? And how?
27. Can you imagine your life and describe it outside this place.
28. Any other questions ... maybe spontaneously?