ENGRAVED SLATES & RUPTURED STATES: CRITIQUING JUVENILE CRIMINALISATION

ABSTRACT

This article interrogates the tension between juvenile victimization and offending through the socio-legal perspectives of Locke, Rousseau, and Foucault. It contends that the Indian juvenile justice framework, particularly under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, entrenches a retributive dichotomy between punishment and welfare. Children experiencing structural neglect, developmental vulnerabilities, and social marginalization are frequently criminalized rather than protected, violating constitutional guarantees under Articles 14, 15(3), 21, and 39 of the Constitution of India. Locke's environmental determinism, Rousseau's conception of natural innocence, and Foucault's critique of disciplinary power together expose the flaw in treating juveniles as miniature adults. The reliance on retributive models disregards developmental neuroscience and the empirical reality of victim-offender overlap shown in NCRB data. The Supreme Court's decision in Barun Chandra Thakur v. Master Bholu highlights the procedural and substantive flaws of treating adolescent maturity as equivalent to adult culpability. Against this background, the article proposes a statutory "Vulnerability Defense" recognizing developmental immaturity, trauma, and structural disadvantage as factors precluding adult trial. It further advocates transforming detention centers into trauma-informed therapeutic communities. By embedding vulnerability into legal culpability, the juvenile justice system can move toward a holistic model reconciling constitutional morality with child rights.

Keywords*: Juvenile criminalization, Locke, Rousseau, Indian Constitution, Rehabilitation.*

I. INTRODUCTION: THE SOCIO-LEGAL PARADOX OF THE YOUTHFUL OFFENDER

Modern criminal law is conceptually grounded in an adult-oriented perspective of rational agency, free choice and moral responsibility[1]. But, when this hard-liner jurisprudential filter is applied to kids, the idea of a subjective sovereign comes undone. [2]The distinction between 'innocent child victim' and 'vicious child offender' is not fixed, non-negotiable, or even natural, but rather an artificial, porous, and politically charged boundary in socio-legal reality of the juvenile justice system. [3] Yet, contemporary trends in the laws of common law countries and most notably in India increasingly focus on a punitive, retributive approach to juvenile justice, with age limits for criminal responsibility lowered and exceptions to older school principles of juvenile justice made for certain types of 'heinous' offenses, thereby highlighting the fact that there is a high prevalence of victim-offender overlap among juveniles in the juvenile justice system. With this empirical fact, it is hardly surprising that contemporary trends in legislation in common law countries, and especially in India, have increasingly moved towards a punitive and retributive approach to juvenile justice, in which the age criterion for criminal responsibility has been lowered, and exceptional exceptions and derogations have been made to the traditional rule of juvenile justice to certain types of 'heinous' offences.

This article tackles this crisis in the juvenile jurisprudence by engaging with the fundamental epistemological discourses which have historically formed the Western ideas of childhood, agency and moral development and underlining these with post-colonial social-political challenges in India. Theories of John Locke's [4]environmental determinism (with a theory of tabula rasa or 'blank slate') and Jean Jacques Rousseau's[5] radical critique of institutional and societal corruption as presented in his seminal work Emile are integrated into the study to

[1] Andrew Ashworth, *Principles of Criminal Law1* (7th ed 2013) .
[2] David Garland, *Punishment and Modern Society: A Study in Social Theor*y 1 (1990).
[3] Barry C. Feld, *Juvenile Justice: Historical Continuity and 21st Century Change*, 31 Notre Dame J.L. Ethics & Pub. Pol'y 529(2017). (Consolidated full citation)
[4] John Locke, *An Essay Concerning Human Understanding* (1689).
[5]Jean-Jacques Rousseau, *The Social Contract and Discourses* (G.D.H. Cole trans., J.M. Dent & Sons 1973).

provide a sophisticated diagnostic tool for the deconstruction of how a child is 'steered' down the path towards criminality when operationalized within a socio-legal critique.

It may be said that this article reveals a deep-rooted hypocrisy in the system in question, which is the statutory framework of India, in particular the operation and evolution of section 15 of the Indian Juvenile Justice (Care and Protection of Children) Act, 2015 ('the Act of 2015')[6]. It claims the state is to blame for its structural failures, which first mark the blank slate of the vulnerable child with deprivation, trauma, marginalization by caste, and survival-driven deviance. The child then responds to this harmful writing and the state sets to work with its punishment machinery and affixes a sticky and stigmatizing label, 'delinquent' or 'offender'. [7] This process essentially encases criminality in institutions and formalities it says it is intent on stopping. Hence, the law is the main instrument of the Rousseau social corruption and the Foucault disciplinary subjugation[8]. It removes the child's developmental protection, and turns survival strategies into a sign of an adult-like evil. The article has five substantive parts: Section II sets the epistemological and philosophical backdrop of childhood; *Section III examines the Indian socio-economic and constitutional context; Section IV gives a doctrinal analysis of the Act of 2015 and the related case law; Section V offers a comprehensive and actionable framework for a unified and vulnerability-informed jurisprudence and Section VI calls for a systemic reform.*

II. THEORETICAL AND PHILOSOPHICAL FOUNDATIONS: DEEPENING THE EPISTEMOLOGICAL DUALISM

A. The Radical Rejection of Innate Malice: John Locke and Environmental Inscription

In his foundational work *An Essay Concerning Human Understanding (1689)*, John Locke goes against the longstanding scholastic and Cartesian notions of innate ideas, instead saying that the human mind at birth is blank like a sheet of white paper with no characters, no ideas. For Locke, knowledge is the product of experience, habituation, and accretion of sense data; morality is nothing more than a skill learned from experience, and identity is merely a sense of self that has

[6] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2015, § 15 (India).
[7] Pratap Bhanu Mehta, *The Burden of the State: Juvenile Justice in India*, 51 Econ. & Pol. Weekly 45 (2016).
[8]Michel Foucault, *Society Must Be Defended: Lectures at the College de France*, 1975–76 (2003).

been created through the ongoing process of accumulating sense data[9]. This means that the moral development of children is a highly contingent, malleable and fluid process. The child is not morally or immorally responsible; he is a hyper-receptive vessel, highly sensitive to the impressions that are inscribed on him by his family, community and socio-economic environment.[10] The little and imperceptible impressions received in our delicate infancy have very deep and permanent effects, Locke said.[11]

Locke's epistemological determinism is a direct challenge to the classical, retributive fiction of the rational autonomous juvenile offender, when translated into a socio-legal framework. A child's mind is a blank sheet of paper, and no one can say that delinquency is a free and independent act of the will, or a sign of the natural depravity of the human heart.[12] Rather, criminality must be viewed as an inscription that is foreign to the child, an inscription that takes place in his consciousness through another text imposed by his surrounding environment: hostile, neglectful, or abusive. Today, retributive criminal systems assume a Hobbesian conception of the offender's innate wickedness, and argue for his or her instant incarceration[13]. The framework of Locke, on the other hand, puts responsibility on the other side. When the child's slate is overlaid with trauma, anti-social survival strategies and hostility, then the pen was held by the social actors and institutional forces. At the core of the child offender problem is that the child has always been a major victim of a reality that did not program a healthy, stabilizing story into his/her mind.

B. Jean Jacques Rousseau's Amour-Propre and the institutionalization of vice.

Jean-Jacques Rousseau presented a more radical normative statement about the moral nature of childhood, however, which was in opposition to Locke, who saw the child as a neutral blank slate to be molded by experience. [14] For Rousseau, childhood is a separate and pure period of human experience, where children are naturally innocent, compassionate and possess an innate ability for empathy.[15] Most important, Rousseau maintained that a decline into evil, violence and

[9] *Id*. bk II, ch I.
[10] *Id* bk II, ch XXVII.
[11] *Id* bk I, ch II.
[12] Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (1996).
[13] Barry C Feld, '*Juvenile Justice: Historical Continuity and 21st Century Change*' (2017).
[14] John Locke, *An Essay Concerning Human Understanding* (1689).
[15] Jean-Jacques Rousseau, *Émile, or On Education* (1762).

delinquency is not a personal moral defect but a direct consequence of society's corruption.[16] Civil society's fixed hierarchies, unnatural inequalities, and oppressive institutions systematically warp, break, and corrupt the child's natural goodness, compelling him or her to face a competitive social structure grounded in exploitation and structural violence.[17]

In a state of nature, a child reacts out of amour de soi and his/her reactive behaviors – even those that seem disruptive – are an attempt to protect, defend, guard, and survive in the short term.[18] But if an unequal, indifferent civil society places a vulnerable child in an environment of extreme poverty, it gradually reshapes that amour de soi into a negative and defensive amour-propre.[19] If the state reacts to a child's survival-related misbehaviors by pointing a gun at him, locking him up in a police cell, and moving him into a prison cell, it does not return natural innocence. Rather, it brings to its fullness the shift towards amour-propre.[20] The state's punitive institutions educate the child to see themselves only as adversaries to a society, instilling deep-seated resentment, alienation and hardened criminal identity.[21] the very embodiment of Rousseau's social corruption, the state takes a defenseless child and deliberately warps him into a social monster, and then punishes him for the deformity he was deliberately made.

C. Michel Foucault and the Production of the Delinquent Subject[22]

In order to link these historical philosophies to the structural mechanisms of present-day juvenile institutions, the critique needs to be founded on Michel Foucault's ideas of discipline and bio politics.[23] In Discipline and Punish (1975), Foucault found that modern punishment does not merely fail to rehabilitate, but in fact produces.[24] The first time a child makes it into a home in the Observation Home or Special Home, they experience a high caliber, forced regime of constant observation, categorization, and disciplinary splitting.[25]

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[16] *Id* bk IV.
[17] Robert Wokler, Rousseau, *A Very Short Introduction* (2001).
[18] Rousseau, *Émile* (n 2).
[19] Jean-Jacques Rousseau, *Discourse on the Origin and Basis of Inequality Among Men* (1755).
[20] *Id*
[21] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1977).
[22] Foucault (n 5) 264-270.
[23] Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France,* 1975–76 (2003).
[24] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1977).
[25] Juvenile Justice (Care and Protection of Children) Act 2015, s 47.

It is panoptic surveillance that leads to ‘fabrication’ of individuals as Foucault would put it. The state's juvenile machinery systematically collects psychological, psychiatric and social reports, which becomes a permanent bureaucratic archive of the child's life history. This documentation is not intended to free or cure the child; rather it is intended to establish him permanently in a special deviant matrix. The juvenile institution takes away the child's flowing identity and gives him/her a standardized, over-the-top profile of a ‘high-risk delinquent'. The whole prison system is to make sure the child will never be able to return to the normal citizen status. The state creates, categorizes and institutionalizes the youth in a criminalized underworld that makes ‘delinquency’ a bounded, manageable political and economic tool.[26] Foucault's analysis shows that there is no such thing as a state correctional system that is a healing mechanism, but rather a machine that seizes at-risk youth, remolds them as lifelong carceral subjects, and continues to maintain its own sovereignty by consistently administering punitive discipline.[27]

III. THE INDIAN ASPECT: CONSTITUTIONAL MANDATES AND SOCIO-ECONOMIC INTERSECTIONALITY

A. The Constitutional Architecture of Child Protection: Articles 14, 15(3), 21 and 39

It cannot be said that the current punitive shift in juvenile justice is just a ‘statutory aberration’ because it is a serious and deep-rooted violation of the constitutional fabric and foundation of the Republic of India. The Constitution of India is not a passive, no-touch document, rather it is a transformative constitution which has an absolute and unconditional duty on the State to protect, nurture and defend the rights of children[28]. It is not a mere discretion but a positive constitutional command in Article 15(3) [29]: “Nothing in this article shall prevent the State from making any special provision for women and children”. In Article 15(3) it is not discretionary but a positive constitutional requirement to create a non-punitive, protective legal architecture for children that protects them from the harsh mechanisms of civil and criminal law which are largely adult-centric.

[26]Garland, *supra* note 2.
[27] Foucault, *supra* note 22, at 301.
[28] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.
[29] Constitution of India, 1950, art 15(3).

Article 21, guaranteeing the right to life and personal liberty, has extensive jurisprudence to bolster this protective shield. [30] For a child, Article 21 is an inalienable right to developmental protection and an unadulterated opportunity to grow. In addition, the moral and political guide to government is the Directive Principles of State Policy (DPSP).[31] When the state passes punitive laws which are applicable to children as young as 16 and allows them to be tried and jailed as adults, it is actively infringing on the above mentioned Directive Principles, giving children a chance to be treated as an enemy of the state rather than the subject of the state's care and protection as a 'parens patriae'.[32]

B. Socio-Economic Intersectionality: Caste, Class, and the Empirical Reality of the NCRB

When faced with 'juvenile delinquent' or 'child offender' in an abstract sense, these terms vanish entirely in the stark realities of society in India which are intertwined and determined by socio-economic variables. Children are not born into crime, as those who are caught up in the wheels of India's juvenile justice machinery are overwhelmingly from the most impoverished, oppressed and structurally under-served sections of society.[33] Every year the National Crime Records Bureau (NCRB) releases a dismal report that reveals more than 75% of children arrested for alleged offences are from families with an income below the poverty line and a huge proportion of them are uneducated, school dropouts or from very unstable and broken families[34].

Most importantly, this vulnerability is an intersectional one which overlaps with the caste hierarchy in the system and with the marginalized religious minority communities (Scheduled Castes and Scheduled Tribes)[35]. Historical caste discrimination in India continues to be a process of destructive exclusion, denying access to families to land, formal employment and quality education. [36]Children born into these communities live in under-policed, over-surveilled urban slums and out-of-the-way rural corners where they face chronic malnutrition, exposure to

[30] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.
[31] Constitution of India 1950, Part IV.
[32] *Sheela Barse v Union of India* (1986) 3 SCC 596.
[33] Pratap Bhanu Mehta, 'The Burden of the State: Juvenile Justice in India' (2016) 51 Economic and Political Weekly 45.
[34] National Crime Records Bureau, Crime in India 2024 (Ministry of Home Affairs 2026), https://ncrb.gov.in (last visited Sept. 19, 2026).

[35] Surinder S Jodhka, *Caste in Contemporary India* (2015).
[36] Id.

violence at home or in the street and are entirely lacking in institutional support systems.[37] An arrest of a child for a property offence, petty theft, and localized group violence is an instant result of structural violence and material abandonment for a child belonging to an SC/ST and/or poor family background. The government has been forcefully writing on their Locke tabula rasa in many ways, through its disregard of the Right to Education (Article 21A) [38]and its lack of attention to the government's obligation to provide basic economic security. The Indian state commits an epistemic injustice by de-contextualizing the survival-driven actions from their socio-economic context, and passing through a punitive legal framework. [39]It condemns the child for the structural wounds it has given to the child, and it seeks to mask the failures of it to create a just and equal social order with prison retribution.

IV. DEVELOPMENTAL NEUROSCIENCE AND THE LIMITS OF ADOLESCENT CULPABILITY

A. The Adolescent Mind: Capacity, Maturity and Responsibility

The question of juvenile criminal responsibility occupies a difficult position within modern criminal jurisprudence. Criminal law traditionally assumes that individuals possess the capacity to understand the nature of their conduct, appreciate its consequences, and regulate their behaviour in accordance with legal standards. This assumption is relatively straightforward when applied to adults. However, its application to children and adolescents raises important questions concerning the relationship between age, maturity, autonomy, and moral responsibility. The legal system must determine whether a child who commits a serious offence should be understood through the same framework of responsibility that governs an adult. This question becomes particularly significant where the child is between sixteen and eighteen years of age and is alleged to have committed a heinous offence.

The Juvenile Justice (Care and Protection of Children) Act, 2015, recognizes childhood as a legally distinct condition. Its general framework is based upon care, protection, rehabilitation, social reintegration, and the recognition of the special needs of children in conflict with law. Nevertheless, Section 15 introduces a preliminary assessment mechanism for children between

[37] Amita Baviskar, In *the Belly of the River: Tribal Conflicts over Development in the Narmada Valley* (2005).
[38] Constitution of India 1950, art 21A.
[39] Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (2007).

sixteen and eighteen years of age who are alleged to have committed heinous offences. The Juvenile Justice Board is required to consider the child's mental and physical capacity to commit the alleged offence, the ability to understand its consequences, and the circumstances in which the offence was allegedly committed. Section 18(3) permits the matter to be transferred to the Children's Court where the statutory requirements are satisfied.

This legislative arrangement creates a tension between the general principle of juvenile protection and the possibility of adult-oriented criminal proceedings. It assumes that, in particular circumstances, a child may possess sufficient maturity to justify a different legal treatment. The difficulty lies in determining what constitutes maturity and how it can be assessed fairly. The ability to perform an act, understand that the act is prohibited, or recognize an immediate consequence does not necessarily establish the same degree of judgment and responsibility expected of an adult.

Developmental neuroscience contributes to this debate by emphasizing that adolescence is a period of continuing cognitive, emotional, and social development. The adolescent brain undergoes changes that affect decision-making, impulse control, emotional regulation, and the assessment of risk. These changes do not mean that adolescents are incapable of understanding rules or making choices. Rather, they demonstrate that the capacity to make decisions develops gradually and may operate differently under conditions of emotional intensity, peer pressure, fear, or perceived social threat.

The distinction between knowledge and judgment is therefore essential. A young person may know that a particular act is unlawful but may have difficulty evaluating its long-term consequences in a stressful situation. Similarly, an adolescent may understand that violence is harmful while nevertheless responding impulsively to provocation, coercion, or the expectations of a peer group. Such circumstances do not automatically eliminate responsibility, but they are relevant to the quality of the decision-making process.

The jurisprudential significance of developmental science lies in its challenge to the assumption that chronological age can be replaced by a superficial assessment of maturity. A child may appear physically mature, possess ordinary intellectual abilities, or demonstrate considerable practical intelligence. These characteristics do not necessarily establish adult-like emotional

regulation or independent judgment. The law must therefore distinguish between the capacity to understand a simple proposition and the broader capacity to exercise mature judgment in complex circumstances.

This distinction is consistent with the philosophical framework developed in the present article. John Locke's account of the mind as shaped by experience emphasizes the importance of environmental conditions in the formation of habits, knowledge, and conduct. Rousseau's conception of childhood challenges the assumption that harmful behaviour necessarily reflects innate moral corruption. Foucault's analysis of disciplinary institutions further demonstrates how legal categories may transform complex individuals into standardized subjects of control.

Developmental neuroscience does not simply repeat these philosophical positions. Instead, it provides an additional basis for understanding why children should not be treated as miniature adults. It demonstrates that the development of responsibility is connected to biological, psychological, and social processes. These processes are particularly important when the legal system considers whether a child should be exposed to adult-oriented criminal proceedings.

The relevance of developmental science must, however, be approached with caution. It would be inaccurate to conclude that every adolescent lacks responsibility or that every child who experiences trauma will engage in offending. Such assumptions would replace one form of simplification with another. The purpose of developmental analysis is not to deny the harm caused by juvenile offending. It is to ensure that responsibility is attributed through an accurate understanding of the child's capacities and circumstances.

The central argument, therefore, is that juvenile culpability should be assessed through a developmental framework rather than through the seriousness of the alleged act alone. The seriousness of harm remains important, particularly from the perspective of victims and affected communities. Nevertheless, the gravity of an offence cannot by itself establish that the person accused possessed adult-like moral and emotional maturity at the time of the alleged conduct.

B. Intelligence, Emotional Regulation and the Fallacy of Adult-Like Maturity

One of the principal difficulties in the legal assessment of juvenile maturity is the tendency to equate intelligence with responsibility. A child who communicates confidently, performs well

academically, or demonstrates an understanding of immediate consequences may be regarded as sufficiently mature to face adult criminal proceedings. Such reasoning is problematic because intelligence and maturity are related but distinct concepts.

Intelligence generally concerns the ability to acquire knowledge, solve problems, understand information, and respond to particular cognitive demands. Maturity, by contrast, involves a wider range of capacities. It includes emotional regulation, resistance to pressure, appreciation of long-term consequences, judgment under stress, and the ability to evaluate competing interests. A child may possess considerable intellectual ability while remaining developmentally immature in emotional and social decision-making.

This distinction is particularly relevant to Section 15 of the Juvenile Justice Act. The statutory language requires an assessment of mental capacity and the ability to understand the consequences of the alleged offence. These inquiries should not be treated as identical. A child may possess the cognitive ability to understand that an act is prohibited without possessing the emotional maturity necessary to evaluate its consequences in a rapidly changing situation.

The Supreme Court's decision in Barun Chandra Thakur v. Master Bholu provides an important foundation for this distinction. The Court emphasized that the preliminary assessment cannot be reduced to a mechanical exercise and that the child's mental capacity must be distinguished from the ability to understand the consequences of the alleged offence. The Court's approach recognizes that the assessment of maturity requires a holistic inquiry rather than reliance upon isolated indicators.

The decision is significant because it challenges the assumption that ordinary intelligence establishes adult-like culpability. A psychological report indicating normal intellectual functioning cannot, by itself, demonstrate that a child possesses the same emotional and social capacities as an adult. Nor can educational performance, physical appearance, or confidence in communication establish that the child is capable of making decisions with adult-like foresight.

This concern becomes more pronounced where children have developed practical survival skills. A child who has grown up in an unstable environment may possess considerable street knowledge, physical confidence, or the ability to navigate difficult social conditions. Such

characteristics may be interpreted as evidence of maturity. However, they may also reflect adaptation to deprivation, violence, neglect, or insecurity.

The legal system must therefore avoid treating survival skills as proof of adult responsibility. A child's ability to navigate a dangerous environment does not necessarily demonstrate the capacity to regulate emotions, resist coercion, or evaluate long-term consequences. Indeed, the same circumstances that produce practical resourcefulness may also expose the child to heightened vulnerability.

This issue connects directly with Locke's environmental account of moral development. If conduct is shaped through experience and habituation, then the experiences of a child must be considered when evaluating responsibility. A child exposed to violence may learn defensive responses that are adaptive in the immediate environment but harmful in other circumstances. The legal system should examine how these patterns developed rather than treating them as evidence of innate criminality.

Rousseau's critique of social corruption provides a further normative perspective. The child's conduct may reflect the influence of social conditions that have undermined opportunities for healthy development. Poverty, family instability, educational exclusion, and exposure to violence may affect the child's capacity to make decisions in a secure and supportive environment. These conditions do not excuse every harmful act, but they demonstrate why the assessment of culpability cannot be separated from the child's social history.

Foucault's analysis of institutional categorization also becomes relevant. When a child is classified as a dangerous or mature offender, the classification may become more influential than the child's actual developmental condition. The institutional label can transform a complex individual into a standardized legal subject. Such a process risks reinforcing the very criminal identity that the juvenile justice system should seek to prevent.

A developmentally informed approach would therefore require the Juvenile Justice Board to examine several dimensions of maturity. These include the child's emotional regulation, ability to resist peer influence, understanding of long-term consequences, social relationships, educational experience, family circumstances, and exposure to violence. The assessment should

also consider whether the child's behavior reflects coercion, manipulation, fear, or an attempt to secure immediate protection.

The purpose of such an assessment is not to create an automatic exemption from responsibility. It is to establish a more accurate basis for determining the appropriate legal response. A child who causes serious harm may require accountability, supervision, rehabilitation, and structured intervention. However, those measures should be designed in a manner consistent with the child's developmental status.

The distinction between intelligence and maturity is therefore central to the critique of juvenile criminalization. The law must not confuse the ability to understand an immediate consequence with the ability to exercise mature judgment. Nor should it assume that a serious allegation demonstrates a fully developed moral personality. The assessment of juvenile responsibility must remain sensitive to the difference between cognitive ability and developmental maturity.

C. Peer Influence, Trauma and the Social Context of Juvenile Offending

Juvenile offending cannot be adequately understood through an isolated examination of the alleged act. Adolescents develop within social environments that influence their beliefs, relationships, expectations, and responses to conflict. Family conditions, peer groups, educational institutions, neighborhoods, and exposure to violence may shape the circumstances in which a child makes decisions. These influences do not eliminate agency, but they complicate the assumption that adolescent conduct is always the product of fully autonomous choice.

Peer influence is particularly important during adolescence. Young people may seek acceptance, recognition, protection, or belonging within peer groups. In certain circumstances, the desire to conform to group expectations may affect risk-taking and decision-making. An adolescent may act under the perceived pressure of peers even where the individual understands that the conduct is unlawful or harmful.

The legal relevance of peer influence lies in its effect upon the circumstances of the alleged offence. A child who acts under coercion, manipulation, or fear may possess a different degree of responsibility from a child who acts independently and after careful consideration. The law must therefore examine the social setting in which the alleged conduct occurred.

Trauma is another important factor. Exposure to domestic violence, abuse, neglect, or community violence may affect emotional regulation and responses to perceived threats. A child who has experienced repeated violence may develop defensive or reactive patterns of behaviour. These patterns may influence how the child interprets conflict and responds to stressful situations.

The recognition of trauma does not establish that every child who has experienced adversity will offend. Nor does it mean that harmful conduct should be ignored. Its significance lies in the need to understand the child's behavior within the circumstances in which it developed. A trauma-informed assessment seeks to determine whether the child's experiences materially affected decision-making, emotional regulation, or the ability to evaluate consequences.

This approach is consistent with the central argument of the present article that the distinction between victim and offender is often porous. A child may be both a person who has caused harm and a person who has experienced neglect, violence, or structural disadvantage. The two conditions are not mutually exclusive. Treating them as mutually exclusive may prevent the legal system from identifying the factors that contributed to the child's conduct.

The Indian socio-economic context makes this issue particularly significant. Children from impoverished families, unstable households, or communities with limited access to education and social support may encounter conditions that affect their development. Where the state fails to provide adequate protection, the child may experience a combination of deprivation, insecurity, and exposure to harmful environments.

The relationship between structural disadvantage and juvenile offending must not be understood through deterministic assumptions. Poverty does not produce criminality, and social marginalization does not remove personal agency. Nevertheless, structural conditions may influence the opportunities available to children, the risks they encounter, and the support systems upon which they can rely.

The failure to examine these circumstances creates the possibility of what may be described as contextual injustice. The child's conduct is removed from its social setting and evaluated as

though it emerged from an entirely independent decision-making process. Such an approach may conceal the relationship between social deprivation and the child's vulnerability.

The relevance of Foucault's analysis lies in the institutional consequences of this process. Once a child enters the juvenile justice system, psychological reports, social investigations, and institutional classifications may become part of a permanent record. These records may emphasize the child's alleged offence while reducing the significance of the child's social history. The child may then be understood primarily through the category of delinquency.

A vulnerability-informed approach would reverse this emphasis. It would require the legal system to investigate the child's circumstances before deciding whether adult-oriented treatment is appropriate. The assessment should consider the child's family environment, educational history, exposure to violence, peer relationships, and access to supportive adults.

This approach also supports the transformation of juvenile institutions into therapeutic and educational communities. If the child's conduct is understood partly through developmental and social circumstances, then the legal response should address those circumstances. Psychological support, education, vocational training, family intervention, and community reintegration may be more relevant to long-term rehabilitation than punitive institutionalization alone.

The principle of accountability remains important. Restorative justice does not require the denial of harm or the exclusion of victims from the legal process. Rather, it seeks to create a framework in which the child is required to confront the consequences of the conduct while receiving appropriate support for rehabilitation.

The recognition of peer influence and trauma therefore strengthens, rather than weakens, the legitimacy of juvenile justice. It enables the system to distinguish between different forms of responsibility and to design interventions that address the causes of harmful behavior. The objective should be to prevent further harm while preserving the child's capacity for development and social reintegration.

D. Developmental Science and the Proposed Vulnerability Defense

The developmental perspective developed above provides a foundation for the proposed statutory Vulnerability Defense. The defense is intended to recognize that juvenile responsibility cannot be determined solely by the seriousness of the alleged offence or by superficial indicators of maturity. It would require the legal system to consider the child's developmental and social circumstances before permitting adult-oriented criminal proceedings.

The proposed defense should not be understood as an automatic exemption for every child who has experienced hardship. Such an approach would be both legally imprecise and inconsistent with the need for individualized assessment. Instead, the defense should operate as a structured safeguard against the conversion of vulnerability into evidence of adult culpability.

The first element of the proposed defense would be a comprehensive assessment of developmental capacity. This assessment should examine the child's cognitive abilities, emotional regulation, social understanding, and ability to appreciate the consequences of the alleged conduct. It should distinguish between the ability to understand a simple rule and the ability to exercise mature judgment under stressful circumstances.

The second element would involve an examination of the child's social and environmental history. Relevant considerations may include poverty, family instability, educational deprivation, exposure to domestic or community violence, coercive relationships, and the absence of supportive adults. These factors should not be treated as automatic proof of innocence. Their relevance lies in determining whether they materially affected the child's decision-making or developmental condition.

The third element would concern the circumstances of the alleged offence. The legal system should examine whether the child acted under peer pressure, fear, coercion, manipulation, emotional distress, or perceived threat. It should also consider whether the conduct was spontaneous or planned, while recognizing that planning alone does not establish adult maturity.

The fourth element would involve the child's prospects of rehabilitation. Developmental science suggests that adolescence is a period of continuing change. A child's present conduct should not automatically be treated as a fixed indication of future criminal identity. The possibility of behavioral transformation is therefore relevant to the legal response.

The proposed defense would also require the state to justify any departure from the ordinary protective framework of juvenile justice. Where the law permits adult-oriented proceedings, the decision should be supported by clear reasoning and reliable evidence. A superficial psychological report, physical maturity, or the seriousness of the alleged offence should not be sufficient.

This approach is consistent with the constitutional principles identified in the present article. Articles 14, 15(3), and 21 provide an important foundation for the recognition of children as a distinct and protected class. Article 39 further reflects the constitutional commitment to protecting children from exploitation and ensuring opportunities for healthy development.

The Vulnerability Defense would give practical effect to these principles by requiring the legal system to consider whether the child's developmental and social circumstances have been adequately addressed. It would also strengthen the relationship between juvenile justice and the state's positive obligations toward children. The defense must, however, be designed carefully. It should not depend upon broad assumptions about the moral character of disadvantaged children. Nor should it permit the court to replace individualized evidence with general theories of social determinism. The assessment must remain grounded in the particular child, the particular circumstances, and the particular legal question.

A developmentally informed Vulnerability Defense would therefore represent a shift in the meaning of culpability. It would recognize that responsibility is not merely a question of whether an act occurred, but also a question of the capacities and circumstances of the person alleged to have committed it. This approach would allow the legal system to respond to harm while avoiding the premature construction of a child as an adult offender. Ultimately, developmental science does not require the abolition of accountability. It requires accountability to be understood through the realities of childhood. A child may cause serious harm and still remain developmentally distinct from an adult. The legal system must therefore avoid treating the seriousness of an act as conclusive evidence of adult-like maturity.

The proposed Vulnerability Defense offers a way to reconcile these concerns. It would recognize developmental immaturity, trauma, and structural disadvantage as relevant factors in the assessment of juvenile responsibility. It would also require the state to demonstrate that any

departure from the protective framework of juvenile justice is justified through a careful and individualized inquiry.

The broader significance of this approach lies in its capacity to transform juvenile justice from a system primarily concerned with classification and punishment into a system concerned with responsibility, rehabilitation, and care. By incorporating developmental science into the legal conception of culpability, India's juvenile justice framework can move beyond the rigid binary of victim and offender and toward a more comprehensive jurisprudence of developmental justice.

V. DOCTRINAL CRISIS: THE CRITIQUE OF SECTION 15 AND THE FALLACY OF MATURITY

A. Section 15 of the JJ Act 2015: The Deconstruction of Childhood

The theoretical and constitutional conflicts mentioned above are captured in Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. If the Juvenile Justice Board (JJB), on the basis of this assessment, concludes that the child has reached maturity and mental competency to commit an alleged 'heinous offence' and can understand the consequences of the offence, then, according to Section 18(3)[40], the Board may transfer the child to the regular Children's Court for trial as an adult.

This is a total reversal of the basic principles of juvenile welfare as a doctrine. It clearly brings in a punitive exception to the definition of childhood and says that a child's right to rehabilitation can be taken away because of just the level of the criminal offense that they are charged with. This legislative decision is based on the assumption that when a person commits a terrible act they have a fully formed intellectual capacity. This logic is at odds with the well-established developmental neuroscience literature. Adolescents exhibit a high risk-taking personality, heightened emotional sensitivity and susceptibility to peer influence, all of which are established neurological facts and are processes which continue until one is in their mid-twenties. Section 15 is fundamentally about a legal fiction: that a 16 year old kid can be treated as an adult. By

[40] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2015, § 18(3) (India).

allowing a 16-year-old child to be tried as an adult, Section 15 ignores these immutable biological and developmental facts and treats a malleable child as a hardened adult offender.

B. The Judicial Backlash: From Mechanical Assessments to Barun Chandra Thakur

Section 15 has brought a lot of confusion in the judiciary across India on procedural and substantive grounds. In practice, Juvenile Justice Boards have often reduced such preliminary evaluations to abstract "check-the-box" activities. Boards often mistake a child's "street-smart" survival skills, physical maturity or the level of violence in the alleged crime for adult cognition and often hold that children should be tried in the adult court system on the basis of a one-page report by a basic psychologist.

In Barun Chandra Thakur v. Master Bholu (2022), the Supreme Court of India directly challenged this precarious situation where a 16-year-old student killed a younger schoolmate in a school washroom to force the cancellation of examinations and a parent-teacher meeting. The Court drawn a sharp legal distinction between simple cognitive knowledge of an act and the mature appreciation of its legal and moral consequences." The JJB and the lower courts had simply transferred the child to the adult court, based upon a simple psychological evaluation in which they determined that the child had a normal IQ and suffered no obvious physical disability. Writing for the Supreme Court, Justice Vikram Nath" (the opinion was authored by Vikram Nath, J.).[41] The Court made a crucial and incisive distinction between the child's capacity for simple, immediate knowledge the victim's throat was slit with a knife in the school toilet (he was not shot); adjust the surrounding example about "a gun kills people" accordingly.[42] The Court observed:

"Assessing whether a child has the mental capacity to know the consequences of an act cannot be a 'tick the box' exercise of looking at their education or simple mental processes. It requires trauma-informed investigation of the child's social context, psychological growth and unique stressors or risk factors affecting their life. To attempt to try a child as an adult is a serious violation of the basic tenets of juvenile justice, and is not possible to undertake without making

[41] Id. ¶ 42.
[42] Id. ¶ 47.

some superficial assessments that do not take into account the developmental differences between the adolescent mind and the adult mind".[43]

The gist of the Barun Chandra Thakur judgment is the basic defect in Section 15. The state wants to assess the child's mind in isolation, in an institutionalized environment free of outside influences. It denies the Lockean fact that the child's mind is a blank page and that, where it does not have the proper moral maturity, it is due to the failure of its environment and the state to provide it. [44]The switch to an adult court system forfeits its responsibility to protect children, and instead acts as an instrument of Rousseau's "social corruption," leaving a fledgling mind unformed by the "travelling and decaying powers" of the adult prison system.[45]

VI. PARADIGM SHIFT: ACTIONABLE AND RESTRUCTURING RECOMMENDATIONS

To resolve the deep structural crises within India's juvenile justice system, the legal framework must completely move away from the rigid, punitive binary of 'victim or offender.' It must embrace a unified, vulnerability-centric jurisprudence. This transformation requires an epistemic shift: the law must recognize that a child's entry into conflict with the law is not an insulated choice of an autonomous individual, but a clear sign of systemic institutional failure. To reconstruct the legal slate of the child, the following formal legislative and policy reforms are urgently proposed:

- Abolition of Section 15 and Adult Trials for Children: The preliminary assessment mechanism under Section 15 must be entirely repealed. The legal system must restore an absolute, non-negotiable age threshold of 18 years for juvenile protection, ensuring that no child, regardless of the nature of the charge, is ever transferred to an adult court or incarcerated in an adult prison[46]. This change aligns the law with scientific facts regarding adolescent brain development and honour India's international obligations under the United Nations Convention on the Rights of the Child.

[43] Id. ¶ 49.
[44] John Locke, *An Essay Concerning Human Understanding* (1689).
[45] Jean-Jacques Rousseau, *Émile, or On Education* (1762).
[46] Id. § 18(3).

- Statutory Codification of a 'Vulnerability Defence': The Juvenile Justice Act must be amended to include a formal pre-trial 'Vulnerability Defence.' This amendment would mandate the judiciary to conduct a thorough 'Structural Mapping' of the child's life history, evaluating factors such as generational poverty, systemic caste discrimination, lack of access to schooling, domestic abuse, and neighborhood instability.[47] If it is established that the State chronically failed to provide basic protections (such as free and compulsory education under Article 21A), the court must hold that the State's moral authority to punish is vitiated.[48] The proceeding must then immediately pivot from prosecution to complete, state-funded material and psychological rehabilitation.
- Deconstruction of Prison Spaces into Therapeutic Communities[49]: The existing, panoptic Observation Homes and Special Homes which Foucault identified as assembly lines for delinquency must be completely demilitarized and restructured[50]. Prison guards and uniform police presence must be entirely replaced by specialized child development experts, trauma-informed counsellors, and social workers. These facilities must operate as open, therapeutic, and educational communities rather than detention centers, focusing entirely on cognitive rehabilitation, vocational skills, and psychological healing, thereby preventing the institutional corruption of the child's slate.
- Institutionalization of Restorative Justice Circles: Adversarial legal proceedings must be replaced with community-based Restorative Justice Circles for all juvenile offenses.[51] These circles should bring together the child, the victim, affected community members, and child advocates in a safe, non-threatening space. The goal must shift away from assigning adult guilt and toward understanding the root causes of the harm, facilitating genuine accountability, and designing a collaborative, community-backed plan for the child's complete social reintegration.[52]

VII. CONCLUSION

[47] United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
[48] Surinder S Jodhka, *Caste in Contemporary India* (2015).
[49] David B Wexler, '*An Introduction to Therapeutic Jurisprudence*' (1995).
[50] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1977).
[51] Howard Zehr, *The Little Book of Restorative Justice* (2002).
[52] Barry C Feld, '*Juvenile Justice: Historical Continuity and 21st Century Change*' (2017).

The criminalization of children is one of the most challenging paradoxes of present criminal justice. On the other hand, the state has the right and responsibility to stop society from harming itself, to deal with serious violence and acknowledge the pain of the victims. At the same time, it is constitutionally and morally significant that children are not yet fully formed human beings, with capacities, identities and futures that need to be recognized. The focus of this article has been on the question whether the growing acceptance of juveniles being treated as adults in the criminal justice system is in keeping with this responsibility. The analysis shows that to analyze the culpability of the juvenile properly, only the gravity of the alleged offence would not be sufficient. It should be considered along the prism of development, environment, social vulnerability, constitutional protection and potential rehabilitation.

This conclusion is supported by the philosophical approach of John Locke, Jean-Jacques Rousseau and Michel Foucault. Locke's description of the mind formed by the experience of the world, which conflicts with the idea that criminal action is the result of a fixed or innate criminality. The behavior of a child could be affected by family situations, school, relationships, deprivation and exposure to violence. Rousseau's concept of the "state of nature" as one in which children are protected from the adult world also challenges the notion that children are corrupt or morally the same as adults. Foucault's account of the power of discipline shows how institutions classify, observe and regulate persons by legal and psychological categories. These two points collectively show that criminalization of young people is not a simple punishment for wrongdoing, but also the process in which the state constructs the notion of childhood, responsibility, danger and social belonging.

In India, the Constitution further emphasizes the need for a unique approach to children in conflict with law. *Article 14, Article 15(3), Article 21, Article 21A, and Article 39* of the Constitution provide that equality does not demand the same treatment and children have a right to special protection, education, dignity and opportunities for development. It is therefore not only the negative protection from the unlawful punishment which bounds the constitutional status of the child. It also imposes positive obligations on the State to ensure a safe environment for children to grow and become engaged citizens. Juvenile justice is as such a means of constitutional change and not simply a tool of crime control.

This constitutional approach is reflected in the Juvenile Justice (Care and Protection of Children) Act, 2015 which emphasizes on the care, protection, rehabilitation, social reintegration and best interests of the child. But *Section 15* is a major exception to the rule, allowing a preliminary exam of children aged between 16 and 18 for alleged heinous offences. *Section 18(3)* also provides for the transfer of the matter to the Children's Court where the conditions are met. These stipulations generate a legal paradox between the recognition of childhood as a developmental stage and the threat of adult-like consequences for some children.

What is hard is not just that differential treatment is allowed under such provisions. What is more troubling is the ambiguity as to what maturity is. If a child's behavior is physically mature, academically successful, confident, intelligent, or if he or she knows an act is illegal, then that does not automatically mean he or she is responsible for the act as an adult. Knowledge of consequences is not the same as the ability to assess those consequences in stressful situations, and intelligence is not the same as emotional control. Adolescents may act impulsively when facing a threat, an influence of peers, coercion, fear, or emotional intensity. These situations do not remove the sense of agency, but do make it difficult to assume that adolescent decision making is the same as adult judgment.

The role of developmental neuroscience is thus important. It reflects the fact that adolescence is a time of continued cognitive, emotional, and social development. Reflects the fact that adolescence is a time of continued cognitive, emotional, and social development. Adolescents' ability to assess risks, control their impulses, plan for the future, and regulate their emotions is still developing. This does not imply inability to be responsible or that bad behavior is justified for any young person. Instead, it is to be accepted that responsibility needs to be assigned sensitively to developmental realities. Children should not be considered as miniature adults if they are able to understand a rule or engage in a harmful action.

This is the aspect in which the decision in *Barun Chandra Thakur v. Master Bholu* is important. The judgment highlights that the preliminary examination in Section 15 has to be more than a mechanical process. The capacity to understand a consequence must be considered separately as well as mental capacity. The ruling follows a holistic strategy that considers psychological evaluation, social investigation, and the context of alleged offences all in one. It also illustrates

the danger of allowing “grown up” signs and gestures to replace a proper developmental investigation.

The article has also highlighted the need for the social and economic context of the life of the juvenile offender to be taken into account in the understanding of juvenile offending. Children’s opportunities and choices can be impacted by poverty, caste-based exclusion, family instability, educational deprivation, exposure to violence, and the absence of supportive institutions. The conditions should be treated non-deterministically. No one is to blame for poverty, and poverty does not explain criminality, nor does it eliminate personal agency. However, structural vulnerability can shape behavior, conflict and ability to deal with stressful situations. Failure to consider these factors may result in contextual injustice if the child’s behavior is assessed as if it came from a completely separate and safe setting.

The overlap of victimization and offending is particularly noteworthy. A child can be seriously harmed and at the same time suffer from neglect, abuse, coercion, exploitation and/or violence. None of these are mutually exclusive. A justice system that only deals with the offender and neglects the vulnerable child can perpetuate the social environment that facilitated the offending behavior. It doesn’t mean that victims suffer from their suffering or that responsibility is washed away. It calls for greater awareness of responsibility such as recognizing the harm done and the circumstances in which the child developed.

In this context, the proposed Vulnerability Defense offers a possible statutory safeguard. It would require the legal system to consider the child’s developmental capacity, social history, exposure to violence, peer relationships, coercion, emotional condition, and prospects of rehabilitation before permitting adult-oriented proceedings. The defense should not operate as an automatic exemption. Instead, it should prevent vulnerability from being misinterpreted as evidence of maturity or adult culpability. Any departure from the ordinary juvenile framework should be supported by clear reasons, reliable evidence, and an individualized assessment.

The proposed defense should operate alongside broader institutional reforms. Juvenile justice institutions must be transformed from spaces of mere confinement into therapeutic, educational, and restorative communities. Psychological assistance, education, vocational training, family intervention, substance-abuse support where relevant, and structured community reintegration

should form part of the legal response. Restorative justice may also provide a meaningful framework through which children confront the consequences of their conduct while victims are given recognition, participation, and appropriate support.

Ultimately, the legitimacy of juvenile justice should not be measured by the severity of punishment imposed upon children. It should be measured by the system's ability to prevent further harm while preserving dignity, accountability, and the possibility of transformation. A child's present conduct should not be treated as a permanent declaration of future criminal identity. Adolescence remains a period of change, and the law should preserve the possibility that responsibility, education, care, and social support may redirect the child's life.

The critique of juvenile criminalization advanced in this article is therefore not an argument for impunity. It is an argument for proportionate, developmentally informed, and constitutionally grounded accountability. The state must protect victims and society, but it must also protect children from being reduced to their worst alleged act. A just juvenile system must recognize harm without abandoning humanity, impose accountability without reproducing exclusion, and respond to offending without extinguishing the possibility of reform. The child must remain more than the offence alleged against them. That principle should remain the foundation of Indian juvenile justice.