

**FROM PROTECTION TO ACCOUNTABILITY:
A CRITICAL ANALYSIS OF JUVENILE JUSTICE
SYSTEM IN INDIA WITH SPECIAL REFERENCE TO
THE STATE OF KARNATAKA**

**A Thesis submitted to the
National Law School of India University, Bengaluru for the Degree
of
DOCTOR OF PHILOSOPHY**

**Submitted by
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CERTIFICATE

This is to certify that this thesis titled “*From Protection to Accountability: A Critical Analysis of Juvenile Justice System in India with special reference to the State of Karnataka*”, submitted by Ms. Chaitra.V, in partial fulfilment of the requirement for the degree of Doctor of Philosophy (Ph.D) in Law, of the National Law School of India University, Bengaluru is the result of research work done by her, under my guidance.

This thesis or any part thereof has not been submitted earlier for award of any degree or diploma of any other university in India or abroad. I certify that this is a bonafide work of Ms. Chaitra.V.

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DECLARATION

I hereby declare that this thesis titled “*From Protection to Accountability: A Critical Analysis of Juvenile Justice System in India with special reference to the State of Karnataka*”, which I am submitting for the award of Degree of Doctor of Philosophy in Law, to the National Law School of India University, Bengaluru, is an original research work done by me except for those references taken from such authorities which have been sincerely acknowledged and cited appropriately in the thesis.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.

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LIST OF ABBREVIATIONS

| | |
|------------------|--|
| AIR: | All India Reporter |
| APP: | Assistant Public Prosecutor |
| CWPO: | Child Welfare Police Officer |
| DCPU: | District Child Protection Unit |
| DLSA: | District Legal Services Authority |
| FDA: | First Division Assistant |
| ICP: | Individual Care Plan |
| IPC: | Indian Penal Code |
| JJA 2000: | Juvenile Justice (Care & Protection of Children) Act, 2000 |
| JJA 2015: | Juvenile Justice (Care & Protection of Children) Act, 2015 |
| JJB: | Juvenile Justice Board |
| MACR: | Minimum Age of Criminal Responsibility |
| NGO: | Non Governmental Organisation |
| NCRB: | National Crime Records Bureau |
| PO: | Probation Officer |
| RTI: | Right to Information |
| SCC: | Supreme Court cases |
| SIR: | Social Investigation Report |
| SJPU: | Special Juvenile Police Unit |
| SLL: | Special & Local Law |

RTI: Right to Information

UN: United Nations

UNCRC: United Nations Convention on the Rights of the Child

UNCtRC: United Nations Committee on the Rights of the Child

UOI: Union of India

LIST OF CASES REFERRED

- Arnit Das v. State of Bihar, AIR 2000 SC 2264
- Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750
- Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1
- Bhola Bhagat v. State of Bihar, AIR 1998 SC 236
- Bhoop Ram v. State of U.P., AIR 1989 SC 1329
- Breed v. Jones, 421 U.S. 519 (1975, Supreme Court of the United States)
- Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr., 2017 (3) RCR (Cr.) 734 (SC)
- Gaurav Jain v. Union of India, AIR 1997 SC 3021
- Gopinath Ghosh v West Bengal, AIR 1984 SC 237
- Graham v. Florida, 560 U.S. 48 (2010, Supreme Court of the United States)
- Jaya Mala v. Home Secretary, Government of J&K, (1982) 2 SCC 538
- Jayendra v. State of U.P., AIR 1982 SC 685
- Jyoti Prakash Rai v. State of Bihar, 2008 (64) AIC 1 (SC)
- K.Thimmappa v. Chairman Central Board of Directors SBI, AIR 2001 SC 467
- KulaiIbrahim v. State of Coimbatore, AIR 2014 SC 2726
- Kent v. United States 383 U.S. 542 (1966, Supreme Court of the United States)
- Krishna Kant v. State of U.P., AIR 1994 SC 104

Lakshmi Kant Pandey v. Union of India AIR 1984 SC 469

Lavkush Kumar v. State of U.P., 2003(46) ACC 802

M.C. Mehta v. State of Tamil Nadu (1996) 6 SCC 756

Miller v. Alabama, 567 U.S. 460 (2012, Supreme Court of the United States)

Mohammed Zakir Muktar Shaikh v. State of Maharashtra, 2008 Cri LJ 2519 (Bom)

Munshi Khan v. State of Rajasthan, 2004 Cri LJ 3465 (Raj)

Pratap Singh v. State of Jharkhand, AIR 2005 SC 2731

Ravi- Ul-Islam v. State (NCT, Delhi), 2007 Cri LJ 612(Del)

Ram Deo Chauhan v. State of Assam, 2001 Cri L J 2902

re Gault, 387 U.S. 1 (1967, Supreme Court of the United States)

Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and Ors, 2017 (5) SCALE 787

Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and Ors, (2011) 15 SCC 348

Roper v. Simmons, 543 U.S. 551 (2005, Supreme Court of the United States)

Salil Bali v. Union of India, (2013) 4 SCC 705

Sampurna Behura v. Union of India, (2011) 9 SCC 801

Sampurna Behura v. Union of India, (2018) SCC OnLine SC 106

Sanat Kumar Sinah v. State of Bihar & Ors., 1991 (2) Crimes 241

Sanjay Chaurasia v. State of U.P, 2006 Cri. L.J 2957

Sanjay Suri v. Delhi Administration, (1988) SCR (2) 234

Sarita v. State, 1990 Cr LJ 351 (Bom)

Satbir Singh and others v. State of Haryana, AIR 2005 SC 3549

Sheela Barse v. Secretary Childrens Aid Society, (1987) 3 SCC 50

Sheela Barse v. Union of India, (1986) 3 SCC 632

Subramanian Swamy and Ors v. Raju, (2014) 8 SCC 390

Umesh Singh v. State of Bihar, AIR 2000 SC 2111

Umesh Chandra v. State of Rajasthan, (1982) 2 SCC 202

Vimal Chadha v. Vikas Choudhary, 2008 (67) AIC 267 (SC)

Vishal Jeet v. Union of India, AIR 1990 SC 1412

TABLE OF STATUTES

India

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

The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice Act, 1986

The Children Act, 1960

The Whipping Act, 1864

The Reformatory Schools Act, 1897

The Madras Children Act, 1920

The Bengal Children Act, 1922

The Karnataka Borstal Schools Act, 1963

The Protection of Children from Sexual Offences Act, 2012

The Commissions for Protection of Child Rights Act, 2005

The Child Labour (Prohibition and Regulation) Amendment Act, 2016

The Right of Children to Free and Compulsory Education Act, 2012

The Hindu Minority and Guardianship Act, 1956

Probation of Offenders Act, 1958

The Indian Penal Code, 1860

The Constitution of India, 1950

Code of Criminal Procedure, 1973

United Kingdom (England)

Crime and Disorder Act, 1998

Children and Young Persons Act, 1933

Powers of Criminal Courts (Sentencing) Act, 2000

Canada

Child and Family Services Act, 1990

The Youth Criminal Justice Act, 2002

Norway

Child Welfare Act, 1992

The Criminal Procedure Act, 1981

TABLE OF RULES AND REGULATIONS

The Juvenile Justice (Care and Protection of Children) Model Rules, 2016

The Juvenile Justice (Care and Protection of Children) Model Rules, 2007

Juvenile Justice (Care & Protection of Children) Karnataka Rules, 2010

Juvenile Justice (Care & Protection of Children) Karnataka Rules, 2002

INTERNATIONAL INSTRUMENTS

United Nations Convention on the Rights of the Child, 1989

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990

UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice

The International Covenant on Economic, Social and Cultural Rights, 1966

The Declaration of the Rights of the Child, 1959

The Universal Declaration of Human Rights, 1948