

No. Gen/XIX/Misc/920/2023/1614

Dated 11/10/2023

From: Registrar General,
Rajasthan High Court,
Jodhpur.

To : All the District & Sessions Judges.

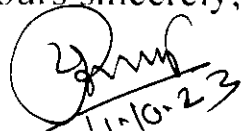
Sub. : Circulation of Email dated 14.08.2023 of Mr. Saurabh Shashi Ashok, Project Officer, Policy and Law, SAMVAD NIMHANS along with National Study report on "**Factors Impacting Judicial Decision Making on Juvenile Transfer in India.**"

Sir,

While enclosing herewith a copy of Email dated 14.08.2023 received from Mr. Saurabh Shashi Ashok, Project Officer, Policy and Law, SAMVAD NIMHANS along with National Study report on "**Factors Impacting Judicial Decision Making on Juvenile Transfer in India**" in soft copy, I am under direction to request you to circulate the same amongst all the Children Courts, Special Court, Principal Magistrate of J.J.B & All Judicial Officers posted in your Judgeship for information and necessary action.

Encl. : As above.

Yours sincerely,


11.10.23
REGISTRAR (ADMN.)

Factors Impacting Judicial Decision-Making on Juvenile Transfer in India - An Exploratory Study



August 2023



SAMVAD

**(Support, Advocacy & Mental health interventions for children in
Vulnerable circumstances And Distress)**

**(A National Initiative & Integrated Resource for Child Protection, Mental Health, &
Psychosocial Care)**

**Established by Ministry of Women & Child Development, Government of India
Located at Dept. of Child and Adolescent Psychiatry,
National Institute of Mental Health & Neurosciences (NIMHANS), Bangalore**



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Acknowledgements

We express our sincere gratitude to the Hon'ble High Courts of Patna, Madras, Gauhati, Calcutta, Madhya Pradesh, Allahabad, Punjab and Haryana, Jharkhand, Gujarat, Rajasthan, Meghalaya, Tripura, Manipur, Telangana, Kerala, and Andhra Pradesh. That the Hon'ble Chief Justices and the Hon'ble Juvenile Justice Committees of these High Courts granted permission for such a study to be conducted in their states, is a certain indication of their interest and commitment to enhancing the role of the judiciary in the lives of children.

This study would not have been possible but for the proactive support of the Judicial Academies of the aforementioned States and High Courts. Indeed, the impetus for such a study originated from our work with State Judicial Academies around the country, through SAMVAD's work in judicial education, in the area of child and law. The many invitations and kindnesses of Academy Directors and staff, have made for truly memorable visits and interactions across the country, also introducing us to various legal and judicial aspects of child law, that we may otherwise have been ignorant about. We especially hope that this study will contribute to informing the judicial education mandate, in regards to child law, that the Academies strive to diligently implement.

Our warmest appreciation is for the judicial officers, for those who took time from their busy schedules to so patiently respond to the study...but also for the many others, who over the years, have helped us understand the nuances, dilemmas and challenges in interpreting and implementing child laws. Their intensely passionate engagement in the many debates and deliberations that the SAMVAD team has had with them, and their endeavours to assist children in need, often beyond the calls of duty, despite the many limitations of their roles and circumstances, is a testimony to their commitment to child justice. We hope that the results of this study will also be thought-provoking for them, leading them to further reflection on their roles and functions within the juvenile justice system.

Finally, we would like to express our gratitude to the Ministry of Women and Child Development, Government of India, whose vision, and unwavering support has enabled SAMVAD to engage in learning collaborations that facilitate knowledge creation and dissemination on critical aspects of child mental health, protection, and law.

We hope that this study will inform, and enrich the thinking on juvenile transfer, and indeed, on the manner of implementation of juvenile justice in India, and elsewhere, to better ensure that protection and legal decisions address the vulnerabilities and lived realities of children in conflict with the law.

Sheila Ramaswamy, Technical & Operational Lead, SAMVAD, NIMHANS

Saurabh Shashi Ashok, Project Officer (Policy and Law), SAMVAD, NIMHANS

Dr Binu V.S. Associate Professor, Dept. of Bio-Statistics, NIMHANS

Dr John Vijay Sagar, Principal Investigator, SAMVAD & Head, Dept. of Child & Adolescent Psychiatry, NIMHANS

Dr Shekhar Seshadri, Advisor, SAMVAD & (Former) Senior Professor, Dept. of Child & Hon'ble Justice Madan B. Lokur, (Former) Judge & Chairperson of Juvenile Justice Committee, Supreme Court of India

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“And this also, though the word lie heavy upon your hearts:

The murdered is not unaccountable for his own murder,

And the robbed is not blameless in being robbed.

The righteous is not innocent of the deeds of the wicked,

And the white-handed is not clean in the doings of the felon.

Yea, the guilty is oftentimes the victim of the injured,

*And still more often the condemned is the burden bearer for the
guiltless and unblamed.*

*You cannot separate the just from the unjust and the good from
the wicked;*

*For they stand together before the face of the sun even as the black
thread and the white are woven together.*

*And when the black thread breaks, the weaver shall look into the
whole cloth, and he shall examine the loom also”.*

--Excerpt from Khalil Gibran’s ‘On Crime and Punishment’

Executive Summary

I. Introduction

Over the years, juvenile transfer provisions have reflected the oscillating tendencies of juvenile justice systems, across the world, from a retributive to a rehabilitative mandate and vice versa. These mandates, often contingent upon the incidence of juvenile crime, and specific instances of public outrage in the wake of certain heinous offences, have become a contentious point of discourse in the Indian context following the introduction of juvenile transfer in the otherwise rehabilitative Juvenile Justice Act of 2015. Global literature has tended to focus on judicial knowledge and attitudes to understand the adjudicative implications of such provisions for children in conflict with the law.

There is an imperative, however, to move beyond an understanding of judicial attitudes and knowledge, to study how judicial officers make transfer decisions, given that the exercise of discretion in decisions on transfer, has at least two key implications, for: (i) whether the Juvenile Justice (Care and Protection of Children) Act 2015 is being implemented in accordance with the essential mandate and objectives of the Act; (ii) the dispensation of juvenile justice and its subsequent consequences on the lives of children.

Key Research Questions

- ✓ What factors do judicial personnel use to make decisions regarding transfer?
- ✓ Which factors are most likely to result in transfer?
- ✓ Which types of cases are more likely to result in transfer?
- ✓ Do judicial personnel integrate a child-centric perspective into juvenile transfer decision-making.
- ✓ Is the transfer being implemented in accordance with the legally mandated principles and criteria or extraneous criteria?
- ✓ What do the findings tell us about the use of judicial discretion in transfer decision-making...and consequently, what is the extent to which decisions are arbitrary?

II. Research Methodology

This country-wide research study was located in India, and used a mixed methods design: an exploratory sequential design was applied wherein qualitative data was first collected and analysed, followed by the use of a quantitative methodology in order to understand and confirm trends and distributions across the country, with regard to judicial decision-making on juvenile transfer.

The study reached out to judicial personnel, across the country, who are key decision-makers with regard to juvenile transfer. This group comprises of three types of officers,

who have been included in the sampling framework because of their mandate with regard to juvenile transfer: i) Juvenile Justice Magistrates; ii) Special Court and Children's Court judges; iii) District and Sessions Court Judges

A survey questionnaire, comprised of a set of vignettes, was developed, each of which represented a certain case type. They included physical violence with grievous injury, physical violence with death, sexual violence with grievous injury, sexual violence with death, sexual relationship with contact and sexual relationship with pregnancy. Data analysis focussed on understanding the level of child-orientation and transfer decisions of the officers, across different domains and case types.

III. Findings & Analysis

(a) Respondent's Profile

A total of 742 judicial responses were received for this study. The profile of respondents is as follows: Principal Magistrate/ Juvenile Justice Magistrates – 345 (47%), Special Court Judges – 141 (19%), District and Sessions Judges – 178 (24%), Children's Court Judges – 78 (11%).

(b) Overall Child Orientation (Across Domains)

- The highest proportion of child-oriented responses are observed in the sexual relationship – contact only case type (56%).
- With a similar high proportion of child-oriented responses, is the case of physical violence with grievous injury (51%).
- The lowest proportion of child-oriented responses was observed in the case of sexual violence with death (8%).
- Overall, physical violence cases seem to elicit a higher level of child-oriented responses than sexual violence cases.
- At the very outset, therefore, these findings indicate that case type, including the severity of offence, influence judicial personnel's evaluation of children's actions.
- However, the proportion of child-oriented responses in the case of physical violence with death and sexual relationship with pregnancy were observed to be on par, suggesting that judicial officers consider the consequences stemming from these two categories of offences to be comparable.

(c) Domain 1: Interpretation of Mental Capacity

- On average, in physical violence cases, close to half the judicial respondents (i.e., 49-56%) provided child-oriented responses. Within physical violence cases, there was a higher proportion of child-oriented responses to physical violence with grievous injury than with death.

- Contrastingly, the proportion of child-oriented responses, to sexual violence cases was 37-39%. This is reflective of how mental capacity is viewed differentially based on case type, with sexual violence regarded by judicial respondents as a more 'heinous' offence than physical violence.
- Over half the respondents (55%) had child-oriented responses to the sexual relationship case, with sexual contact as a consequence, while only over a third of the respondents (36%) had child-oriented responses to the case on sexual relationship resulting in pregnancy.
- A minimal difference was noted in the proportion of child-oriented responses (ranging from 35-38%) to sexual violence cases (with and without death), on one hand, and the sexual relationship case resulting in pregnancy (36%), on the other. This finding reflects that judicial personnel do not differentiate between acts of sexual engagement i.e., between cases of sexual violence and consenting relationship.
- Judicial officers are, therefore, likelier to concede that adolescents do not have mental capacity when it comes to physical violence, as opposed to sexual violence or sexual relationships.

(d) Domain 2: Appreciation of pathways and circumstances

- Across case type (irrespective of the offense severity), over 70% judicial respondents appear to acknowledge and understand the role of pathways to offending, and their impact on risk and vulnerability.
- The difference in proportion of child-oriented responses, between cases of varying severity, was observed to be low in physical and sexual violence cases. This is unlike judicial responses to the other domains which reflect considerable variance across offence type and severity.
- The highest proportion of child-oriented responses, with regard to appreciation of pathways and circumstances, amongst all cases, was observed in sexual relationships (with contact). However, in the context of sexual relationship cases, a difference of 11% was observed, with a higher proportion of child-oriented responses to sexual relationship with contact (81%) than with pregnancy (70%).

(e) Domain 3: Perception of Severity and Consequences

- In regards to perception of severity and consequences (to victim), the lowest proportion of child-oriented responses pertained to sexual violence (47-50%). In fact, within sexual violence, there was little variance between grievous injury and death, indicating that even the consequences did not seem to affect child orientation in this domain.
- In physical violence, there is a variance in the proportion of child-oriented judicial responses: physical violence with death elicited a lower proportion of child-oriented responses (59%) than physical violence with grievous injury (70%).

- In sexual relationship cases, some variance in child-oriented responses, was observed, based on offense severity. The proportion of child-oriented responses was higher in sexual relationship with contact (69%) than with pregnancy (58%). This reflects that judicial personnel take into consideration severity and consequences of offence, within a given case type.
- While the two categories of sexual offences are characterized as involving sexual engagement, the proportion of child-oriented responses to sexual relationships, constituting non-abusive sexual engagement, is considerably more than the proportion of child-oriented responses to sexual violence.

(f) Domain 4: Estimation of Criminal Intent

- An overwhelmingly low proportion of child-oriented responses to sexual violence cases was observed, as compared to physical violence and sexual relationship cases.
- In the sexual violence cases, the proportion of child-oriented responses (35-40%), across cases of varying severity, is significantly lower than the proportion of child-oriented responses to physical violence (50-67%) and sexual relationship cases (60-74%).
- However, while the variance in proportion of child-oriented responses between the two sexual violence cases, was observed to negligible, the observation within the two types of physical violence cases was different. While the proportion of child-oriented responses was 67% in the case of physical violence with injury, the proportion was significantly lower in physical violence with death with only 50% child-oriented responses.
- This finding also suggests that judicial respondents perceive CICL as more likely to possess *mens rea* in physical violence cases wherein the consequence (i.e., death) for the victim is greater. A similar finding was also made in cases of sexual relationships.
- Relationships resulting in pregnancy elicited a significantly lesser proportion of child-oriented responses (60%), to questions relating to criminal intent, than relationships involving sexual contact without pregnancy (74%).
- Thus, except in case of sexual violence, wherein case type of was the predominant factor affecting judicial perceptions of *mens rea*, in other offences, this perception is impacted both by case type as well as severity.

(g) Transfer Decision by Case Type

- The highest proportion of juvenile transfer i.e., between 64-68%, occurs in cases of sexual violence.
- The second highest proportion of pro-transfer judicial responses was noted in cases of physical violence with death (54%).

- A lower proportion of pro-transfer responses were observed in cases of sexual relationships resulting in pregnancy (42%), physical violence with grievous injury (38%), and sexual relationship with contact (28%).
- Therefore, the proportion of pro-transfer judicial responses was observed to be lowest in cases of sexual relationships with contact.

(h) Relationship between Domain Responses and Transfer Decisions

- Criminal intent, and mental capacity, were significant factors associated with a decision in favour of juvenile transfer, having adjusted for the other variables.
- With regard to criminal intent, non-child-oriented responses were 4 times more likely, than child-oriented responses, to lead to transfer in the (consenting) sexual relationship case type; in the case types of physical violence and sexual violence, non-child-oriented responses were over 3 times and 2 times, respectively, more likely to lead to a decision in favour of transfer.
- In regards to mental capacity, across all case types, non-child-oriented responses were about 1.5 times more likely to lead to a decision in favour of transfer.
- The Pathways and circumstances domain was significant to transfer decisions only in the case types of physical violence with grievous injury and sexual relationship resulting in pregnancy.
- Interestingly, although severity of offence emerged as a factor in the overall analysis on domain-wise child orientation, by case type, the severity and consequence variable seemed to have no significant bearing on transfer decisions.

(i) Opinions on the interface between law and child mental health

- 62% of the judicial officers were of the view that the implementation of preliminary assessment was a fundamentally judicial exercise, and that juvenile transfer decisions must solely be informed by the facts and circumstances of the case.
- However, an overwhelming majority of officers (95%) also maintained that it would be most advisable to take the assistance of mental health professionals (including psychiatrists, psychologists, and psycho-social workers).
- While these two opinions may seem contradictory, they represent a shared view, amongst judicial officers, that while taking expert assistance is desirable, this assistance is to be treated on par with expert opinions rendered in a trial context, wherein other key sources of evidence (that provide a description of the facts and circumstances) are given primacy over an expert's assessment.

IV. Recommendations

- **Imperatives for Standardization in Implementation of Preliminary Assessments**

In recognition of the many dilemmas that the implementation of the juvenile transfer provision is ridden with, the Supreme Court of India, in its July 2022 judgement in the *Barun Chandra Thakur v. Master Bholu & Anr.* case, directed the use of NIMHANS' standardized methodology for preliminary assessment.

A standardization of the methodology for implementation of Section 15, in this regard, is critical to ensure that judicial decision-making in the context of juvenile transfer is reasoned and scientifically-informed by the relevant disciplines of adolescent development and neuroscience. In addition to addressing arbitrariness in the exercise of judicial discretion, standardisation is also imperative in a low-resource setting such as India where there is a paucity of mental health professionals.

- **Implications for Judicial Education**

With child-related caseloads being high, it is important for legal and judicial personnel to acquire requisite knowledge and skills in child law. In this endeavour, judicial education may also benefit from a reflexive pedagogical orientation, that remains present to the legal and operational challenges, faced by judicial officers, in the exercise of their adjudicatory functions. The incorporation of judicial queries and concerns can be undertaken through periodical needs assessments conducted by State Judicial Academies across the country.

Judicial education, in this regard, requires a streamlining of training programs on CICL through the calendar year. The following are key imperatives in this regard:

- a) Development of Comprehensive Training Curricula and Content
- b) Application of Transdisciplinary Training Methodologies
- c) Multiple levels of training

- **Need for Training of Multiple Stakeholders, including Child Protection and Mental Health Service Providers**

The process of preliminary assessment and juvenile transfer decisions calls for the involvement of counsellors and mental health service providers. These include professionals working within observation homes and/or facilities and services that provide care, protection, mental health, and rehabilitation services to children in conflict with the law; they also include District Mental Health Program functionaries working at secondary levels of care and Departments of Psychiatry, located in Government Medical Colleges, designated Centres of Excellence (in health care), and tertiary mental healthcare facilities.

- **Imperative for Exclusive Jurisdiction of Principal Magistrates**

It is critical to ensure that Principal Magistrates have sole jurisdiction of juvenile justice cases, without additional charge over any other matters. Such specialisation in judicial administration of justice enables the progressive development of human resource capacities and physical infrastructure, in ways that are in keeping with contemporary knowledge from the scientific domains of child and adolescent development and mental health.

There is already a precedent of such an approach of exclusivity in the context of child sexual abuse cases, wherein exclusive POCSO courts have been established across the country, pursuant to the Centrally Sponsored Scheme on Fast Track Special Courts, under the Department of Justice.

1. Background & Rationale

1.1. The Juvenile Transfer Law in India

Originating in 19th century America, the idea of juvenile justice, entailed separation of juvenile offenders (henceforth referred to as 'Children in Conflict with Law' or 'CICL'), from adult offenders; it was founded on the need to provide adolescents with care and rehabilitation, as opposed to detention and punishment (1). However, in the 1990s, in response to public perceptions that adolescent and youth offences were increasing, and that the juvenile justice system was too lenient, legal reforms designed to deter juvenile offences, and 'get tough' on adolescent offenders, were passed (2). One of these reforms, pertaining to juvenile transfer laws (3), expanded the types of offences and offenders, and lowered the minimum age of criminal responsibility, suitable for transfer from the juvenile court to adult criminal court for trial and sentencing; it also extended prosecutorial discretion and curtailed judicial discretion in decisions pertaining to transfer (2)(4).

Such shifts and reforms in juvenile justice are mirrored by countries such as India, which also in the 19th century set up children's courts to ensure complete severance of juvenile and adult systems of justice, with a view to preventing CICL from being placed in (adult) prisons, and to recognizing their needs for care, protection, reformation, and rehabilitation. In fact, this rehabilitative justice ideology was preserved across the years, despite the various amendments made to India's Juvenile Justice (Care and Protection) Act, in the early 21st century. In 2015, however, this ideology came into question, following the incident of gang rape of a young woman, and in which one of the accused was an adolescent between 16 and 18 years of age (5). Thereafter, as happened in the American context, with public pressure on the state to 'get tough' on adolescent and youth offenders, the Juvenile Justice Act was amended, and India joined countries such as the United States of America, United Kingdom, and Canada, in adopting juvenile transfer laws, in the hope of addressing adolescent offence concerns.

The juvenile transfer law in the Juvenile Justice (Care and Protection of Children) Act 2015 stipulates that any child aged 16-18 years, accused of committing a heinous offence, must be subject to a preliminary assessment to ascertain whether the child is to remain within juvenile jurisdiction, or whether the child possesses sufficient maturity and understanding, in order to be transferred to the criminal justice system. The requisite preliminary assessment provides three evaluative criteria for transfer of CICL: (i) that the child must have the physical and mental capacity to have committed the offence; (ii) the circumstances of the offence must be considered; (iii) the child must have knowledge of the consequences of the offence (6). Juvenile Justice Boards (JJBs), quasi-judicial bodies, dealing with matters of CICL, have the responsibility of making decisions regarding juvenile transfer, including relatively high discretionary powers in this regard. JJBs, one per district, constituted in accordance with the Juvenile Justice Act, 2015 (6), have 3 members: a Metropolitan Magistrate or Judicial Magistrate First Class (also known as the Principal Magistrate) with at least 3 years of experience; two social workers (one being a woman), with at least 7 years of experience in health, education or welfare activities pertaining to

children or a practising professional with a degree in child psychology, psychiatry, sociology or law. In theory, and as stipulated by the law, the magistrates and members have equal power in decisions pertaining to CICTL, including in matters pertaining to juvenile transfer. In practice, and as per anecdotal information, however, the decisions of the magistrates generally take precedence over those of the members. Consequently, the discretionary powers with regard to juvenile transfer are primarily exercised by magistrates.

Like elsewhere, with the law oscillating back towards retributive approaches to justice, juvenile transfer laws have prompted many disagreements and controversies in the world of child rights, mental health, and law. Transfer laws are viewed as pitting the agendas of child rights and protection against those of public safety, with the latter taking precedence over the former (7). They have also been viewed as a violation of child rights, including the United Nation Principles of protection of the child's best interests (8), (9), (10), and criticized due to the paucity of evidence to support their crime deterrence and recidivism agendas (11), (12), (13), (14).

1.2. Implementing Juvenile Transfer Laws

A major controversy, however, pertains to the manner of implementation of juvenile transfer laws. One component of implementation relates to the lack of clear guidelines on making transfer decisions. First, it does not define or operationalize various terms contained in the transfer provisions – such as 'mental capacity', 'circumstances of the offence', or 'knowledge of the consequences of the offence'—thus leading to varied interpretations of the law itself, and which in turn, results in lack of standardized methods of implementation of transfer decisions. Indeed, one of the limitations associated with the process of transfer and sentencing decisions of juvenile court judges globally, is the lack of standardization of rules and procedures that direct their decisions (15). While the US developed psycho-legal assessments of CICTL, for transfer to adult court, namely the Risk-Sophistication-Treatment Inventory (RSTI) (16) and the Structured Assessment of Violence Risk in Youth (SAVRY) (17),¹ there has been little procedural guidance on how clinicians should define and interpret these psychological dimensions, in order to implement these assessments; this is particularly concerning given the relative subjectivity in interpreting the concept of psychological maturity and the difficulty in finding the psychological evidence to determine adolescents' motivation and amenability to treatment (18), (19). Furthermore, mental health and child rights critiques have suggested that these instruments do not adequately take into cognizance normative adolescent development and neuroscience, and their impact on adolescent behaviour, nor do they adequately incorporate the principles of child rights and procedural justice (7).

In light of the limitations of the American psycho-legal instruments for juvenile transfer, India has, in recent years, developed a psycho-legal assessment proforma for juvenile transfer. This methodology supports child rights and procedural justice, through

¹ These measures, emergent in the American context, aimed at evaluating CICTL for judgments of risk, maturity, and treatment amenability and criminal sophistication—based on which transfer decisions are expected to be made.

incorporating neuro-developmental and mental health issues in adolescence as well as psychosocial factors of risk and vulnerability, steering judicial decisions towards rehabilitation and reformation instead of retributive approaches of transfer (7). A recent judgement by the Supreme Court, in the *Barun Chandra Thakur* case², directed all stakeholders concerned with CICL, in legal and mental health domains, to use this assessment methodology for decisions on juvenile transfer. Still in its early stages of implementation, and with the additional imperatives of the Supreme Court judgement, there is a need now to understand how judicial personnel are likely to use this proforma; in other words, how they interpret the (interface between) various legal and mental health domains that pertain to assessments in juvenile transfer.

The erstwhile described divergent views and critiques, both among the legal and mental health fraternity, have compounded the difficulties in agreeing on a way to interpret a common, standardized methodology for making transfer decisions. Interestingly, and perhaps inadvertently, they have also led to greater arbitrariness in transfer decisions within the juvenile justice system. In the absence of a clearly stipulated methodology, legal and judicial personnel, who are responsible for transfer decisions also therefore have considerably higher discretionary powers in this regard. In such a situation, there is an imperative to understand how judicial officers make transfer decisions because the manner of exercising their discretionary powers to make decisions on transfer, has at least two key implications, for: (i) whether the Juvenile Justice (Care and Protection of Children) Act 2015 is being implemented in accordance with the essential mandate and objectives of the Act; (ii) the dispensation of juvenile justice and its subsequent consequences for the lives of children. These two issues, also forming major justifications for the current study, are elucidated below.

1.3. Dispensation of Juvenile Justice and Implications for Children

CICL are typically children drawn from Adverse childhood experiences (ACEs)³, which have been identified as key risk factors for juvenile offending and victimization (20), (21), (22). Given their ACEs, CICL are 3 times more likely to have mental health problems than the average adolescents in the community, with greater impairment of their cognitive and psychosocial capacities than their mentally healthy peers, and poorer decision-making abilities, thereby placing them at increased risk of impulsive and antisocial behaviours (23), (24). As a result, interventions for CICL require juvenile justice systems to provide treatment and care, through mental health and rehabilitative services (25), rather than retributive approaches such as transfer.

Judicial decisions that favour transfer, however, are often predicated on the premise that CICL who are recidivist and engage in serious offences, cannot be effectively rehabilitated within the juvenile justice system, and that such children are best dealt with using the

² *Barun Chandra Thakur v. Master Bholu & Anr.* (2022 SCC OnLine SC 870), 2022 available @ https://main.sci.gov.in/supremecourt/2018/41570/41570_2018_9_1503_36311_Judgement_13-Jul-2022.pdf

³ ACEs refers to a range difficult experiences, namely exposure to emotional, physical, and sexual abuse, emotional and physical neglect, family violence, household substance abuse, household mental illness, parental separation/divorce, and incarceration of a household member (Baglivio et al., 2015).

retributive and deterrent approaches of the adult criminal justice system (15). While the statutory scheme of transfer provided under Section 15, requires children to be remanded to a place of safety from the date of conviction (by the Children's Court) till the age of 21, anecdotal accounts in different parts of the country call into question the extent to which this provision is being implemented. Consequently, transfer decisions by judicial personnel, on occasion, have been alleged to result in CICL being placed in adult prison immediately after conviction (i.e., before reaching the age of 21). This potentially has serious life consequences for CICL, in terms of placing them at higher risk for offences, and depriving them of opportunities for treatment and rehabilitation.

Adult prisons, where transferred CICL are alleged to be placed, in certain instances, are less likely than juvenile facilities to offer age-appropriate rehabilitation programs and treatment services as required by adolescents (26), (27), (28), thereby also compromising the safety and health of adolescents. Adolescents in adult prisons are found to be at greater risk of abuse and suicidal attempts than adults (29). Similarly, youth in adult placements are more vulnerable to depression and mental health problems than those in juvenile placements and community-based youth (27). It is also significant to note that while transfer provisions are typically assumed to deter juvenile offending better than less severe rehabilitative dispositions, research indicates that this is not the case. Contrastingly, CICL who remain within the juvenile system have been found to be less likely to recidivate (30), (31).

Thus, there is little evidence in support of juvenile transfer as an effective means of intervention for CICL, for, it neither serves the purpose of deterrence nor rehabilitation. In the light of the possible consequences judicial decisions may have for CICL, and their lives, it is critical to understand judicial thinking and decision-making in this area; it is only then that judicial education and training can be (re)focused on ensuring the child-centric, protective, and rehabilitative mandate of the juvenile justice law.

1.4. Research on Judicial Decision-Making in the Context of Juvenile Transfer

There are, over the last couple of decades, relatively few primary research studies, on judicial decision-making in the context of juvenile transfer. Those that exist are located mostly in North America, and use survey methodologies to explore questions, pertaining to knowledge and attitudes of judges, such as: whether vulnerable minority youths are being targeted for prosecution in adult courts and whether such population sub-groups are more vulnerable to involvement in crime (32); whether judicial attitudes to transferring CICL are influenced by demographic, social and offence-related characteristics of CICL or what characteristics the 'typical juvenile offender' most likely to be transferred to criminal court has (32), (15); the influence of legal and extra-legal factors on transfer decisions, the utility and ramifications of transferring juveniles to adult court and the future of transferring juveniles to criminal court (32), (33); judicial perspectives regarding the core criteria for parameters used in transfer assessments i.e. dangerousness, sophistication-maturity, and amenability to treatment (34); how describing, diagnosing, and naming or labelling

psychopathy and stereotypical beliefs about CICL can influence judicial decisions on transfer (35), (36).

There has been relatively more research on the area of juvenile court and criminal court sentencing (in cases of transfer), (37), (38), (39). Juvenile transfer is, however, fundamentally distinct from sentencing as it is a pre-trial assessment of adolescents' psychosocial capacity and circumstances that contributed to the offence, in contrast to sentencing, which exists on a different footing i.e., a post-trial process concerned with the decision-making on a sentence that is proportionate to the mitigating and aggravating circumstances of the offence. Nevertheless, there is a parallel in judicial evaluation of the proportionality of offending circumstances vis-à-vis longitudinal vulnerability of the offender in sentencing decisions and judicial approaches to proportionality in transfer decision-making (36), (40).

1.5. The Present Study

While research on various aspects of judicial knowledge and attitudes, as described above, have contributed to building an understanding of how judicial stakeholders view critical issues in the context of transfer, there has continued to exist a deficit in our collective understanding of how, and indeed, to what extent do these factors actually influence transfer decision-making (36), (15), (41) (33). This study, therefore, presents an opportunity to understand which of these legal and extra-legal factors affect decision-making in reality.

Additionally, while some of the aforementioned research provides analysis on judicial perceptions of key statutory imperatives, and indeed, extra-legal factors like socio-demographic variables pertaining to child offenders, this study has sought to quantify the extent to which these perceptions have contributed to statutory non-compliance in judicial decision-making on transfer. Currently, the information we possess on judicial knowledge and attitudes has contributed to the identification of implications for decision-making. However, it is our understanding that evidence-based approaches, in this regard, may help inform judicial education efforts and address areas of non-compliance more effectively. Research studies of this nature, as

Key Research Questions

- ✓ What factors do judicial personnel use to make decisions regarding transfer?
- ✓ Which factors are most likely to result in transfer?
- ✓ Which types of cases are more likely to result in transfer?
- ✓ Do judicial personnel integrate a child-centric perspective into juvenile transfer decision-making.
- ✓ Is the transfer being implemented in accordance with the legally mandated principles and criteria or extraneous criteria?
- ✓ What do the findings tell us about the use of judicial discretion in transfer decision-making...and consequently, what is the extent to which decisions are arbitrary?
- ✓ Consequently, what are the implications for judicial education?

contrasted with studies on judicial knowledge and attitudes, can help better inform education interventions aimed at scientifically guiding judicial discretion and limiting the propensity for arbitrariness.

Through employment of the case vignette methodology, this study also sought to develop a nuanced understanding of whether judicial personnel integrate a child-centric perspective in transfer decision-making, that is necessarily informed by risk factors, socio-economic and psychosocial vulnerability. As a result, this study is potentially critical in evaluating whether/to what extent judicial officers place reliance on other disciplines like mental health and adolescent neurodevelopment in decision-making.

2. Objectives and Methodology

2.1. Objectives

- To understand the extent of judicial officers' child orientation and the use of discretion by judicial personnel in approaching and interpreting the three evaluative criteria under Section 15.
- To identify the types of variables and factors that judicial personnel consider while undertaking preliminary assessments and making decisions on transfer.
- To elicit the opinions of judicial officers on using expert assessments while conducting preliminary assessments.
- To use the study findings to inform judicial education and capacity enhancement.

2.2. Methodology

This country-wide research study was located in India, and used a mixed methods design: an exploratory sequential design was applied wherein qualitative data was first collected and analysed, followed by the use of a quantitative methodology in order to understand and confirm trends and distributions across the country, with regard to judicial decision-making on juvenile transfer.

(a) Organizational Context of Study

The study was conducted by SAMVAD, a national initiative on child protection, mental health, and psychosocial care, established by the Ministry of Women and Child Development, Government of India, and located in the Dept. of Child and Adolescent Psychiatry, National Institute of Mental Health, and Neurosciences (NIMHANS), Bangalore.

Uniquely positioned within a specialized mental health institute and under the aegis of the central government, SAMVAD is a distinctive initiative that works across the country to increase access to and availability of child and adolescent mental health and protection support and services through the use of integrated approaches to child well-being. While child mental health is SAMVAD's core domain, given the increasingly complex emergent child protection and mental health needs and contexts, within spaces such as families and communities, pre-schools and schools, child care institutions and courts of law, it recognizes the criticality of convergence, striving to incorporate child-centric perspectives towards systemic transformation.

In light of this, SAMVAD works in an integrated manner, in four key verticals, namely, care and protection, mental health, education, and policy and law, to (i) enhance child and adolescent protection and psychosocial care through provision of technical and programmatic support; (ii) develop standardized child-centric modules and methods for strengthening of knowledge and skills in various child service providers and stakeholders (ranging from teachers, child protection functionaries, health workers and mental health

professionals to law enforcement and judicial personnel) (iii) inform child policy and law through relevant advocacy, review and research interventions.

Since its inception in June 2020, SAMVAD has pioneered work in the field of child and law, particularly in the contexts of child sexual abuse and children in conflict with the law. Its activities in this domain have ranged from development of training curriculums integrating child mental health into legal and judicial procedures and engagement in judicial education programs through the training academies across the country to extending psychosocial, mental health and legal support to individual children, and assisting investigating agencies under the Supreme Court's directions with investigations of child abuse. It has been one of the few, if not the only child mental health agency, to also engage in research activities with the judiciary, towards co-production of child and law knowledge.

(b) Location and Sampling Frame

The study aimed to reach out to judicial personnel, across the country, who are key decision-makers with regard to juvenile transfer. This group comprises of three types of officers, who have been included in the sampling framework because of their mandate with regard to juvenile transfer:

- (i) **Juvenile Justice Magistrates**, who serve on the Juvenile Justice Boards (one per district), and conduct the preliminary assessment, as per Section 15, in order to make decisions about juvenile transfer.
- (ii) **Special Court**⁴ and **Children's Court Judges**, who undertake a second level transfer evaluation wherein they may decide either to conduct a trial of the child, or to conduct an inquiry in accordance with the procedure followed by Juvenile Justice Boards.
- (iii) **District and Sessions Court Judges**, who perform the same function, vis-à-vis juvenile transfer, as Special Court and Children's Court Judges, except that they do so in districts wherein no Special Court or Children's Court has been constituted.

As per the most recent information, there are 701 Juvenile Justice Boards⁵ and 664 Special Court or Children's Court Judges⁶. Thus, our sampling frame included a total of about 1,365 judicial personnel, from across 28 states and 4 union territories of India; these officers represent 25 High Courts and Judicial Academies.

⁴ Established under the Protection of Children from Sexual Offences Act, 2012, in India, Special Courts are Courts which have specialized jurisdiction, dealing with a specific area of law i.e., child sexual offences.

⁵ Data as per a 2018 press release, sharing the response of the Minister of State for Women and Child Development, to a question in Lok Sabha available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1520104>

⁶ Data as per a 2019 press release, by the Ministry of Women and Child Development, Government of India, available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579557>

No other inclusion or exclusion criteria were set in terms of the qualifications or number of years of experience because statutory responsibilities in regards to juvenile transfer are situated within specific judicial cadres. As a result, and also given that all judicial officers are recruited into judicial services on the basis of a specific set of educational qualifications, and standardized tests that are held at a national level, there is no variance in the functions performed by these different judicial cadres, irrespective of age or experience. Their years of service and experience might have been relevant if they worked exclusively with children; however, as their profession does not entail this type of intensive child work, their years of experience was not particularly relevant to our research question.

(c) Data Collection

Phase 1: Use of Qualitative Methods to Identify Issues and Themes in the Interpretation and Implementation of Juvenile Transfer Provisions of the Juvenile Justice Act

Over a period of about two to three years, SAMVAD had conducted a series of deliberations and judicial education programs for the aforementioned officers. These qualitative methods (as described below), which primarily used a focus-group discussion approach, helped to elicit judicial officers' perspectives on juvenile transfer i.e., on legal, moral, and philosophical underpinnings that they base their views on, in order to make decisions with regard to CICL. In other words, the data emergent from these methods were recorded and analysed to generate themes and considerations that judicial officers applied in their decision-making processes with regard to juvenile transfer.

The emergent issues centred around four areas, that also appeared to broadly form the factors that judicial officers applied in juvenile transfer decision-making processes, namely: (i) interpretation of mental capacity; (ii) appreciation of pathways to vulnerability & circumstances of the offence; (iii) perception of severity of offence and consequences for the victim; and iv) evaluation of criminal intent in capacity-based transfer evaluations.

They also helped identify areas of tension in juvenile transfer processes, such as those pertaining to child mental health well-being, protection, and procedural justice versus public safety, and how judicial officers reflect on these ambiguities and complexities.

Deliberations:

A deliberation is a collaborative process of discussing contested issues by considering various perspectives in order to form opinions and guide judgment; while a deliberative practice can take various forms, from discussions, to role-playing exercises, to formal debates, it incorporates sustained and appropriate modes of argumentation, with a view to exploring differing perspectives and informing various decisions. The deliberations we held were centered on issues such as whether the juvenile transfer provision is in comport with the essential objectives and principles of the Juvenile Justice Act 2015, the role of mental health service providers in conducting preliminary assessments for making decisions on juvenile transfer, and the application of *mens rea* in the dispensation of juvenile justice. This method was thus used with judicial personnel from various Indian states, to

understand their current thinking on key aspects of the juvenile transfer legislation, namely its interpretation and consequent (gaps and challenges in) implementation.

Judicial Education Programs:

Judicial education programs, on the other hand, were conducted for the officers (upon requests for training, from State Judicial Academies), with a view to orient the officers to a restorative framework, as envisaged by key provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and to facilitate an understanding of the psychosocial and mental health contexts and vulnerabilities of children in conflict with the law, including their rehabilitative needs. Discussions that formed part of the training workshops across the country, entailed case analyses, including exemplars shared by the judicial officers, from their experiences with CICL, which brought forward the case types and critical themes that the officers were compelled to consider in their decision-making processes on juvenile transfer.

Phase 2: Application of Quantitative Methods for Understanding and Confirming Trends and Distributions in Judicial Decision-Making on Juvenile Transfer

While the qualitative methods allowed for identification of the emergent complexities and ambiguities in the processes of interpretation and decision-making on juvenile transfer, there was a need to understand the patterns and distributions of specific factors that judicial officers consider in decisions on juvenile transfer. It was towards this end that a quantitative method, namely a survey, was employed, to follow up on qualitative findings, and to help in generating facts and figures, which were expected to have country-wide implications for judicial education.

(i) Development of Survey Tool (based on Case Vignettes)

A survey questionnaire comprising of a set of direct questions to elicit which factors judicial officers employ in their decision-making processes on juvenile transfer is likely to have been too simplistic, since it is likely to have failed to capture the contextual complexities of each case of CICL. Survey research may, therefore, be limited by the assumption that people have a fixed set of underlying beliefs which apply equally in all contexts (42). Thus, given the challenge of application of social research methodologies aiming to capture beliefs, attitudes, values and perceptions, so as to reflect the existing contextual and life realities, as fully as possible (in our case, of judicial officers on CICL and juvenile transfer) (43), we adopted the use of a vignette methodology in the survey.

Vignettes, which refer to stimuli, such as text and images, to which research participants are invited to respond (43), are applied particularly in research relating to situations wherein people are subject to biases or distortions (44). Finch described the usefulness of vignettes in survey research thus (45): "Vignettes move further away from a direct and abstracted approach, and allow for features of the context to be specified, so that the respondent is being invited to make normative statements about a set of social circumstances rather than to express his or her 'beliefs' or 'values' in a vacuum."(p. 105).

- **Construction of Vignettes**

In light of the above, the survey questionnaire comprised of a set of 6 vignettes, each of which represented a certain case type. Since vignette methodology entails the artificial construction of scenarios, one of the concerns is about whether the written narratives adequately reflect contextual realities, and would enable us to elicit responses that would be similar to those in real world scenarios (42). The validity of our vignettes lies in the fact that we drew from the case types and themes emergent from the erstwhile described qualitative methodologies, namely the deliberations and judicial education programs. The vignettes, therefore, reflect the types of CICL cases that judicial personnel engage with, with a particular focus on the dilemmas faced by these stakeholders in decision-making on juvenile transfer.

As per the Juvenile Justice (Care and Protection of Children) Act 2015, juvenile transfer is to be considered in cases of CICL between the ages of 16 to 18 years, who have allegedly committed certain 'heinous' offences. The law's description of heinous offences comprises of a list of criminal offences under the Indian Penal Code, which invite a minimum punishment of 7 years, ranging from various acts of violence (such as rape and murder), to organised crime and exploitation (such as kidnapping and trafficking), and furthermore, to offences stipulated under other criminal laws such as the manufacture, possession, sale or use of specified banned narcotic substances, in commercial quantities, under the Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985.

As such, there is little basis for categorizing many of these offences as 'heinous', particularly in the context of children. We opted, for the purposes of the study, to develop case types centred around violence for the following reasons:

(i) juvenile transfer in India, as elsewhere, in countries such as America, was enacted due to the 'get-tough' movement (observed to emerge in the 1980s and 1990s in America), which in turn emerged from public perceptions that violent crime amongst adolescents was on the increase (7), (46), (47).

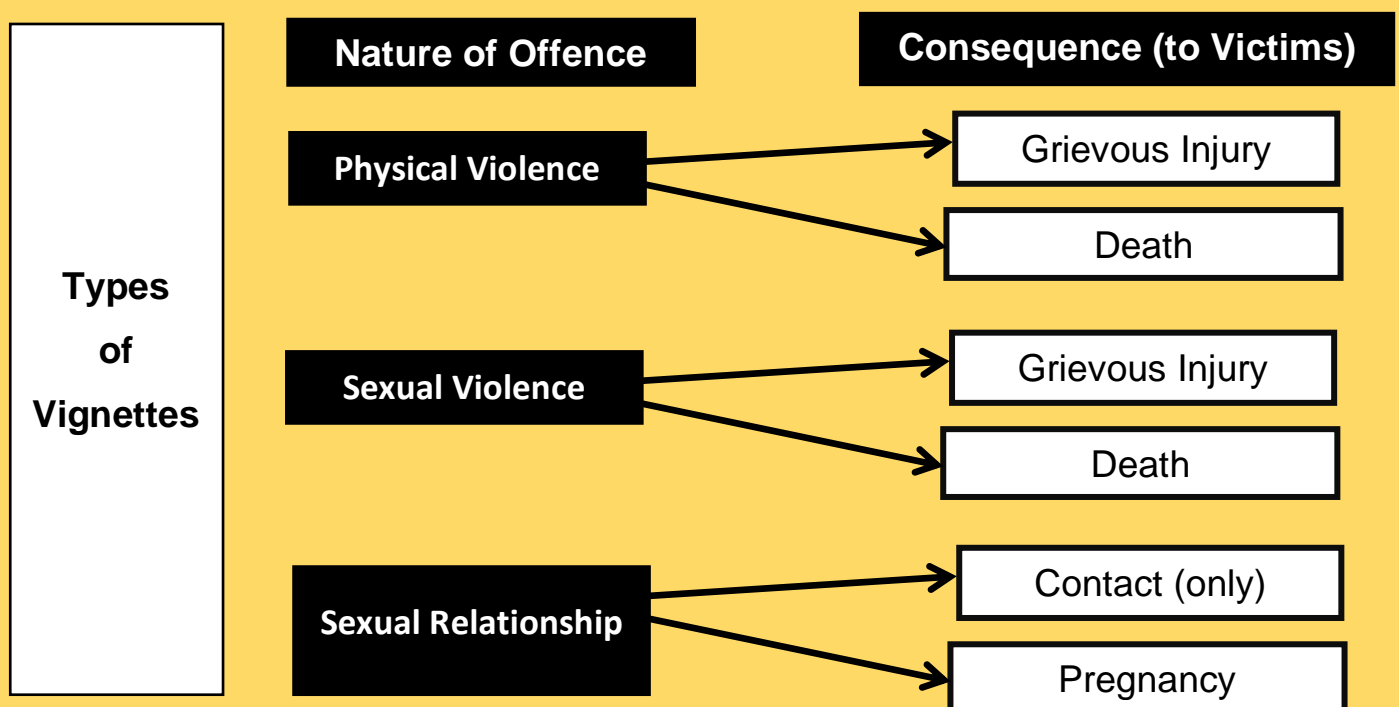
(ii) A 'signal crime', of which violent crimes are a major one, is any criminal incident that causes change in the public's behaviour and/or beliefs about their security; and that certain types of violence and their outcomes are instrumental in shaping collective risk perception and public opinion on sentencing decisions because not all crimes have the same signal value (48), (49).

(iii) Crimes such as sexual offending tend to elicit responses of moral outrage (50), also responsible for people's negative judgement of sexual offenders (51), (52); these reactions tend to occur before people can consider an issue in a conscious and reflective manner, thereby also emotionally colouring policy discourses (53).

(iv) Consequently, contrary to what might be believed or even expected of judicial officers, like the general public at large (of which officers are also a part), they hold implicit biases, which can also influence their judgement (54).

Thus, of the six vignettes (refer to figure 1), four captured contexts of violence, which were varied according to the nature of violence i.e., physical, and sexual violence, and also according to their consequences – grievous injury and death. The remaining two vignettes focus on sexual relationships: this is different from the context of sexual violence, in that we are referring to consenting sexual and romantic relationships between adolescents, which in the Indian context is against the law i.e., the law does not recognize consent below the age of 18 years, and any sexual engagement amongst minors is construed as child sexual abuse. Within these contexts, each vignette contained details on: (a) family and social circumstances of the child; (ii) the nature of the (alleged) offence engaged in by the child; (iii) the impact of the offence on the victim.

Figure 1: Types of Vignettes according to Nature and Consequence of Offence



It is noteworthy that all vignettes only contain accounts of male CICL. One reason for this is that the case discussions emerging in judicial deliberations and training centred around boys because most cases received by JJBs are of boys⁷; in fact, nearly all observation homes in the country are for boys i.e., there are almost no observation homes for girls. On rare occasion, when girls in conflict with law are received by the state, they are housed in institutions designated for children in need of care and protection (CNCP). There is no clear reason for this gender-biased notion except, possibly, prevalent, but not necessarily accurate, notions that boys are more likely than girls to commit offences. Thus, since we

⁷ There are a few accounts, in recent years, of female CICL in the news media. However, since they did not emerge through the judicial officers, we had no way, at the time of the study to validate these accounts, in order to convert them into vignettes.

did not have adequate cases with female CICLs, we would have been unable to validate these vignettes through the qualitative methods through which we derived the vignettes.

- **Creation of Domains and Questions**

Section 15 of the Juvenile Justice Act stipulates three broad evaluative criteria that must form the basis of the decisions taken by the Juvenile Justice Board in respect of whether a child aged between 16-18 years should be tried as an adult for the commission of heinous offences. These criteria relate to the mental and physical capacity of the child to commit the offence, the ability to understand the consequences of the offence and the circumstances in which the offence took place (6). If the JJB determines that the child accused of committing certain heinous offences fulfils the criteria mentioned above, then it may order that the trial of the case be handed over to the Children's Court in accordance with Section 18 (3) of the Act. The domains that the questions are categorized into have thus been formulated to reflect: (a) the scheme of the evaluative criteria under Section 15; (b) parameters that are extraneous to Section 15, that judicial officers consider in juvenile transfer, as found through the use of the erstwhile described qualitative methodologies.

- **Development of Questions for Vignettes**

In order to enable an understanding of the types of variables and factors that judicial personnel consider while undertaking preliminary assessments and making decisions on transfer, as well as the use of discretion by judicial personnel in approaching and interpreting the three evaluative criteria under Section 15, each vignette was followed by two types of close-ended questions:

- ❖ A set of statements that judicial officers are required to respond to i.e., agree or disagree with, in regards to the case. These statements represent the domains relevant to decision-making on transfer. (The domains and how they are constructed are described below).
- ❖ Questions on the decision of transfer/trial that judicial personnel would make in that case.

Finally, in order to enable insights into the opinions of judicial officers on the reliability of expert assessments while conducting preliminary assessments, the survey questionnaire concluded with questions that seek judicial officers' opinions on whether they regarded preliminary assessment as a fundamentally judicial exercise or whether they felt that it would be useful to take the assistance of a mental health professional in order to make transfer decisions.

Table 1: Statements Representative of Each Domain in the Case Vignettes

Domain	Elucidation & Purpose
Interpretation of Mental Capacity & Developmental Stage	<ul style="list-style-type: none"> • Application of knowledge on prevalent adolescent mental health and neurodevelopmental research, according to which adolescents do not have the socio-emotional and cognitive capacities to make appropriate decisions and/or appreciate the consequences. • This domain is in consonance with the first evaluative criteria of whether a child had the mental (and physical) capacity to engage in the alleged offence (at the time of the offence); and also relates to the second evaluative criteria of the law on whether the child had knowledge of consequences of his/her actions (again, a mental capacity issue).
Appreciation of Pathways to Vulnerability & Circumstances of the Offence	<ul style="list-style-type: none"> • Application of an understanding of pathways to vulnerability, and to consequently coming into conflict with the law; such vulnerabilities and psychosocial risks may pertain to family dysfunction, experiences of trauma and abuse, difficulties with education and learning, deviant peer influence, involvement in child labour, and (pre)existing developmental disabilities and mental health disorders • This domain is also in consonance with the third evaluative criteria of the juvenile transfer law—requiring the child to be assessed on the circumstances in which the alleged offence took place, as they contribute to judicial evaluations of culpability.
Perception of Severity & Consequences	<ul style="list-style-type: none"> • Inclusion of severity and consequences of the offence on perceptions of culpability; it also gauges perceptions of the link between potential for reformation and severity of offence. • This domain is not in consonance with the law. While Section 15 of the JJ Act stipulates that the child’s understanding of consequences is relevant for the purposes of preliminary assessment, this domain seeks to capture how judges’ subjective perceptions of severity of the crime, and its resulting consequences for the victim, inform the process of preliminary assessment. The latter is extraneous to the criteria stipulated under Section 15.
Estimation of Criminal Intent in Preliminary Assessment	<ul style="list-style-type: none"> • Inclusion of judicial perceptions of the child’s criminal intent i.e., <i>mens rea</i> as a factor in preliminary assessment and transfer. While Section 15 has not been envisaged as a trial (like in cases of adult criminality), the questions in this section seek to understand the extent to which the process of preliminary assessment is criminalized in practice, through considerations of innocence and guilt or the existence of criminal intent. • This domain is not in consonance with the law. While proof of criminal intent is a requisite in any adjudicatory process or trial concerned with criminal culpability, it is not within the statutory mandate of adjudication of juvenile offences.

(ii) Validation of Tool by Experts

In addition to a senior child mental health practitioner i.e., an academician and psychiatrist from the Dept. of Child and Adolescent Psychiatry, NIMHANS, the questionnaire (and methodology) were validated by an expert in the field of law, namely a Former Supreme Court Judge, who has also been a Chairperson of the Juvenile Justice Committee of the Supreme Court, and served as a panellist on the erstwhile described Deliberations across the country with State Judicial Academies. These subject experts and their inputs and viewpoints allowed for the study to be conducted in truly transdisciplinary ways, with the incorporation of disciplines of law, criminology, and child mental health.

(iii) Data Collection Procedure

Given that one of the objectives of the study was to inform judicial education in the area of juvenile justice and its application to children in conflict with law, SAMVAD reached out to all the 25 State Judicial Academies⁸ which fulfil the education and training needs of judicial officers, including JJB magistrates and Special Court/ Children's Court judges, requesting them to solicit participation from as many of the relevant officers, as were willing to be study respondents. The Academies, in turn, sought requisite permissions from their respective State High Courts, for the study, and subject to their approval, sent the survey tool to all the officers in their state, via online modes. The judicial officers thus received the survey tool via email and other online communication, from their academies, enabling them to respond via the google form application.

For ease of access, the survey tool was placed on the google form application, a survey administration software, which allows for creation of online forms with multiple question types.

(d) Data Analysis

The quantitative data emerging from the vignette responses was coded into SPSS, and univariate and multivariate analyses were generated, in order to explore each variable in the data set, separately. Descriptive statistics in the form of frequency tables and graphs were used to explore and summarize data in response to the research questions. The qualitative understanding obtained from deliberations and judicial education workshops, with judicial personnel, were used to analyse the quantitative findings.

❖ Scoring of Domain Responses for Child Orientation

The domain-wise statements that judicial officers were required to respond to i.e., agree or disagree with, in regards to the vignette, were scored according to whether they were child-oriented or not. Each response was assigned a valence of 1 or 0.

⁸ The number of Judicial Academies and High Courts is fewer than the number of states because in some instances, a single High Court (and consequently, an Academy), caters to more than one state.

Responses that reflected their agreement with the following principles were considered as ‘*child-oriented*’ responses; such responses were given a score of 1:

- Children’s developmental capacities, and mental health risks
- Children’s adverse experiences, vulnerabilities, and risks (in family/school/living situations)
- A belief in children’s ability to transform behaviours and the consequent need for them to avail of rehabilitative opportunities.
- An understanding that mental capacity for formation of criminal intent/knowledge (*mens rea*) cannot be inferred solely from the offending behaviours.

On the contrary, responses that were not reflective of the above-mentioned principles, and tended to be more retributive in nature, were considered as ‘*non-child-oriented*’ responses; such responses were scored 0.

Thus, a consolidated or total score for each domain was generated by adding the individual scores of each item in the respective domain, with the lowest domain score being 0 and highest (attainable) score being 3. A domain total score of 0 or 1 was categorized as non-child oriented, and a score of 2 or 3 was categorized as being child-oriented. These categorizations were used to generate frequency tables to understand distributions and patterns of judicial responses domain-wise, disaggregated by case types.

Additionally, with the objective of providing an overview of child orientation of judicial officers, according to case type, a further scoring and categorization was done across domains. Since there were four domains in each vignette, a total score of 12 was attainable, for each case type, if the maximum number of responses were child-oriented. We also therefore generated a consolidated score per vignette, out of 12, to indicate how child-oriented judicial officers’ responses were in a given case type. A score between 0 and 4 was categorized as having child orientation to a low extent; a score between 5 and 8 was categorized as having child orientation to some extent, and a score from 9 to 12 was categorized as having child orientation to a high extent.

❖ **Regression Analysis**

In order to understand the relationship between domain responses (disaggregated by child orientation and case type), and juvenile transfer decisions, a univariate and multivariable Poisson regression analysis with a robust estimator was used. In this analysis, while each domain is the independent variable, the juvenile transfer decision is the outcome variable of interest which is binary (0 = not in favour of transfer, or 1 = in favour of transfer). The unadjusted and adjusted proportion ratio and corresponding 95% confidence intervals were obtained using univariate and multivariable regression analysis respectively. For all tests p value < 0.05 was considered as statistically significant. Two domains, namely mental capacity and pathways are within the juvenile transfer statutory framework and the other two domains, namely, severity and consequences, and criminal intent, are extraneous to the transfer evaluation criteria. The Poisson regression analysis, employed here, enabled an understanding of the extent to which child orientation in each domain

played a significant role in transfer— i.e., the relationship between a child orientation to each domain, and its determinative value in subsequent transfer decision-making.

3. Findings & Analysis

3.1. Respondent Profile

16 (64%) of High Courts and State Judicial Academies, representative of 20 states and 3 Union Territories responded with permissions that allowed for their judicial officers to participate in the study. Since participation was voluntary, 742 officers (54% of the sampling framework) participated in the study. Table 2 (below) shows the distribution of the respondents in terms of their designation within the judicial system. Nearly half the respondents were Principal or Juvenile Justice Magistrates, while the other three types of officers made up the remaining part of the respondents. Thus, while every state in the country may not have participated, all regions of the country were represented, thereby accounting for perceptual differences resulting from variations in socio-cultural milieus.

Table 2: Types of Judicial Officers

Type of Judicial Officer	No. of Officers (% of Study Respondents) (N=742)
Principal Magistrate/ Juvenile Justice Magistrates	345 (47%)
Special Court Judge	141 (19%)
District and Sessions Judge	178 (24%)
Children's Court Judge	78 (11%)

Of the 742 respondents, 34 Judicial Officers (5%) were in service for less than 2 years, 90 judicial officers (12%) had been in service for 2 to 5 years, and 616 judicial officers had been in service for more than 5 years.

3.2. Case type and Child Orientation

The highest proportion of child-oriented responses are observed in the sexual relationship – contact only case type (56%). With a similar high proportion of child-oriented responses, is the case of physical violence with grievous injury (51%). The lowest proportion of child-oriented responses was observed in the case of sexual violence with death (8%). Overall, physical violence cases seem to elicit a higher level of child-oriented responses than sexual violence cases. At the very outset, therefore, these findings indicate that case type, including the severity of offence, influence judicial personnel's evaluation of children's actions. Curiously, however, the proportion of child-oriented responses in the case of physical violence with death and sexual relationship with pregnancy were observed to be on par, suggesting that judicial officers consider the consequences stemming from these two categories of offences to be comparable.

Table 3: Case-wise Consolidated Score on Child Orientation

Case Type		Level of Child-Orientation of Judicial Officer Responses		
		Low Extent (Score<4)	Some Extent (Score >4, <8)	High Extent (Score >8)
Physical Violence	Grievous Injury (N=742)	142 (19%)	219 (30%)	381 (51%)
	Death (N=742)	219 (30%)	217 (29%)	306 (41%)
Sexual Violence	Grievous Injury (N=742)	304 (41%)	221 (30%)	217 (29%)
	Death (N=742)	250 (34%)	431 (58%)	61 (8%)
Sexual Relationship	Contact Only (N=742)	134 (18%)	194 (26%)	414 (56%)
	Pregnancy (N=742)	220 (30%)	245 (34%)	277 (36%)

On an average, the consolidated scores of child-oriented responses for the cases of sexual relationship with contact and physical violence with injury was 8, indicating the highest level of child orientation for these case types. The average consolidated score for the remaining case types ranged from 6-7, indicating some child orientation in the case types on sexual violence with injury and death, physical violence with death, and sexual relationship with pregnancy. On an average, none of the case types elicited low consolidated child-oriented scores.

3.3. Domain and Child Orientation

(a) Interpretation of Mental Capacity

This domain sought to evaluate judges' knowledge of developmental immaturity of adolescents in terms of decision-making and understanding of consequences that affects social judgement. It is observed that despite the offence severity (injury and death) remaining constant across cases of physical and sexual violence, judicial respondents tend to be less child-oriented in cases involving any sexual engagement (whether violent or mutually-consenting). This is significant when considered in light of the fact that judges are less child-oriented even when the statutory offence (of sexual relationships resulting in pregnancy) is not, in reality, constitutive of abusive sexual engagement. As a result, this finding alludes to a qualitative difference in responses to cases involving any sexual engagement, violent or otherwise.

On average, in physical violence cases, close to half the judicial respondents (i.e., 49-56%) provided child-oriented responses to questions pertaining to the impact of adolescent development on their capacity for decision-making. Within physical violence cases, it was observed that there was a 7% difference in the proportion of child-oriented responses

between cases of varying severity, with a higher proportion of child-oriented responses to physical violence with grievous injury than with death.

Table 4: Responses on interpretation of mental capacity, disaggregated by case type

Case Type		Judicial Officer Responses (N=742)	
		Child-Oriented	Non-Child Oriented
Physical Violence	Grievous Injury	413 (56%)	329 (44%)
	Death	366 (49 %)	376 (51%)
Sexual Violence	Grievous Injury	277 (37%)	465 (63%)
	Death	286 (39%)	456 (61%)
Sexual Relationship	Contact Only	405 (55%)	337 (45%)
	Pregnancy	264 (36%)	478 (64%)

Contrastingly, the proportion of child-oriented responses, to sexual violence cases (37-39%), was significantly lower than child-oriented responses to physical violence cases, in relation to questions on the impact of adolescent development and mental capacity on decision-making. This is reflective of how mental capacity is viewed differentially based on case type, with sexual violence regarded by judicial respondents as a more ‘heinous’ offence than physical violence.

Within sexual violence cases, it was observed that there was a negligible difference in the proportion of child-oriented responses between cases of varying severity. Interestingly, there is considerable variance in the child-orientation of responses to sexual relationship cases, on questions of mental capacity and adolescent development, wherein the two cases varied in consequences i.e., contact vis-à-vis pregnancy. Over half the respondents (55%) had child-oriented responses to the sexual relationship case, with sexual contact as a consequence, while only over a third of the respondents (36%) had child-oriented responses to the case on sexual relationship resulting in pregnancy. This indicates that, where the sexual engagement is non-abusive, judicial officers weigh their decisions based on consequence to the victim.

A minimal difference was noted in the proportion of child-oriented responses (ranging from 35-38%) to sexual violence cases (with and without death), on one hand, and the sexual relationship case resulting in pregnancy (36%), on the other. This finding reflects that judicial personnel do not differentiate between acts of sexual engagement i.e., between cases of sexual violence and consenting relationships, in this context. The fundamentally distinct nature of sexual abuse and mutually-consenting sexual relationships was not observed to positively impact child-orientation. That this does not consider (criminal) intent in sexual offences, contradicts the finding on the estimation of criminal intent, which

demonstrates that judicial personnel factor criminal intent in their evaluation (subsequently discussed in sub-section 3.2.d)).

In the light of the above, despite the law affording the primacy to all heinous offences, judicial officers are, therefore, likelier to concede that adolescents do not have mental capacity when it comes to physical violence, as opposed to sexual violence or sexual relationships. This is also potentially reflective of a perception amongst judicial respondents that different kinds of offences involve different kinds of cognitive capacities.

Additionally, while judicial officers do not seem to possess a sufficient understanding of mental capacity, it is interesting to note that they consider normative adolescent development and sexuality in other domains. This has been observed particularly in the varied levels of child-oriented responses between sexual violence and sexual relationship cases, in the remaining domains. In this regard, judicial officers seem to acknowledge the legitimacy of normative adolescent development and adolescent sexuality rights within the domain of perception of severity and consequences, and that of pathways and circumstances (as discussed below sub-section 3.2.b) and c)).

b) Appreciation of pathways and circumstances

This domain sought to evaluate judicial respondents' understanding and knowledge of adolescents' pathways to conflict with the law and the circumstances in which the alleged offence took place. In particular, the questions under this domain sought to understand how child-oriented judicial respondents are in their appreciation of the salience of psychosocial circumstances in offending behaviours.

Table 5: Responses on appreciation of pathways and circumstances, disaggregated by case type

Case Type		Judicial Officer Responses (N=742)	
		Child-Oriented	Non-Child-Oriented
Physical Violence	Grievous Injury	563 (76%)	179 (24%)
	Death	530 (71%)	212 (29%)
Sexual Violence	Grievous Injury	536 (72%)	206 (28%)
	Death	527 (71%)	215 (29%)
Sexual Relationship	Contact Only	597 (81%)	145 (19%)
	Pregnancy	522 (70%)	220 (30%)

Significantly, across case type (irrespective of the offense severity), over 70% judicial respondents appear to acknowledge and understand the role of pathways to offending, and their impact on risk and vulnerability. For instance, the difference in proportion of child-oriented responses, between cases of varying severity, was observed to be low in physical

and sexual violence cases. This is unlike judicial responses to the other domains which reflect considerable variance across offence type and severity. This finding reflects a generally consistent and widespread child orientation to appreciation of offence pathways and circumstances, with offence type and severity contributing to minor variations in child orientation.

It is noteworthy that the highest proportion of child-oriented responses, with regard to appreciation of pathways and circumstances, amongst all cases, was observed in sexual relationships (with contact). However, in the context of sexual relationship cases, a difference of 11% was observed, with a higher proportion of child-oriented responses to sexual relationship with contact (81%) than with pregnancy (70%). Therefore, in the context of sexual relationships, severity of the offence was observed to impact child orientation.

c) Perception of Severity and Consequences

This domain sought to evaluate judicial respondents' perceptions of severity of victim consequences and offender accountability, from the standpoint of child orientation. Critically, questions in this domain were framed with a view to understanding variations in judicial perception of severity, keeping in mind the nature of the offence and resultant victim consequences. Although, severity of consequences is not a statutory criterion for decision-making on transfer, this section sought to elicit responses to questions on victim consequences and appropriate offender accountability, in order to sufficiently glean the extent to which a criminal law orientation negatively impacts the statutory imperative for child orientation amongst judicial officers.

Table 6: Responses on perception of severity and consequences, disaggregated by case type

Case Type		Judicial Officer Responses (N=742)	
		Child-Oriented	Non-Child-Oriented
Physical Violence	Grievous Injury	519 (70%)	223 (30%)
	Death	441 (59%)	301 (41%)
Sexual Violence	Grievous Injury	351 (47%)	391 (53%)
	Death	369 (50%)	373 (50%)
Sexual Relationship	Contact Only	510 (69%)	232 (31%)
	Pregnancy	433 (58%)	309 (42%)

Overall, in regards to perception of severity and consequences (to victim), the lowest proportion of child-oriented responses pertained to sexual violence. In fact, within sexual violence, there was little variance between grievous injury and death, indicating that even

the consequences did not seem to affect child orientation in this domain. This is different from physical violence cases, wherein it was observed that there is a variance in the proportion of child-oriented judicial responses: physical violence with death elicited a lower proportion of child-oriented responses (59%) than physical violence with grievous injury (70%).

In sexual relationship cases, a difference in proportion of child-oriented responses, was observed, based on offense severity. The proportion of child-oriented responses was higher in sexual relationship with contact (69%) than with pregnancy (58%). Interestingly, the difference in the proportion of child-oriented responses between the sexual relationship cases was noted to be nearly identical to the variance in the proportion of child-oriented responses between the physical violence cases of differing severity (11%). This reflects that judicial personnel take into consideration severity and consequences of offence, within a given case type.

Additionally, from the foregoing analysis, it is important to note that while the two categories of sexual offences are characterized as involving sexual engagement, the proportion of child-oriented responses to sexual relationships, constituting non-abusive sexual engagement, is considerably more than the proportion of child-oriented responses to sexual violence. This suggests that judges may see a qualitative difference in the nature of sexual engagement and offender accountability, between these two categories of cases, while responding to questions of victim impact and requisite offender accountability, with the former involving coercion and the latter as likely to be involving consent.

d) Estimation of Criminal Intent

This domain sought to evaluate judicial perceptions of criminal intent (*mens rea*) with specific reference to the role such perceptions play in the process of preliminary assessment. From Section 15 of the Juvenile Justice Act, it is evident that an evaluation of criminal intent is not within the intended legal framework of the Section. While the purpose of preliminary assessment is to determine the appropriate adjudicatory forum to decide the matter, and as such, is not an adjudicatory process in itself, this domain sought to ascertain criminal imputations made by judicial officers and its impact on their child orientation vis-à-vis transfer decision-making.

An overwhelmingly low proportion of child-oriented responses to sexual violence cases was observed, as compared to physical violence and sexual relationship cases.

In the sexual violence cases, it was observed that the proportion of child-oriented responses (35-40%), across cases of varying severity, is significantly lower than the proportion of child-oriented responses to physical violence (50-67%) and sexual relationship cases (60-74%). This finding demonstrates, at the very outset, the determinative value of the nature of offence, in judicial estimations of criminal intent and suitability for transfer under Section 15 of the JJ Act.

However, while the variance in proportion of child-oriented responses between the two sexual violence cases, was observed to be negligible, the observation within the two types of physical violence cases was different. While the proportion of child-oriented responses

was 67% in the case of physical violence with injury, the proportion was significantly lower in physical violence with death with only 50% child-oriented responses. Given the formulation of questions, under this domain, this finding also suggests that judicial respondents perceive CICL as more likely to possess *mens rea* in physical violence cases wherein the consequence (i.e., death) for the victim is greater. A similar finding was also made in cases of sexual relationships, wherein variance in offence severity was observed to affect judicial perceptions of criminal intent in adolescents engaged in sexual relationships, and by extension, their child orientation.

Table 7: Responses on estimation of criminal intent, disaggregated by case type

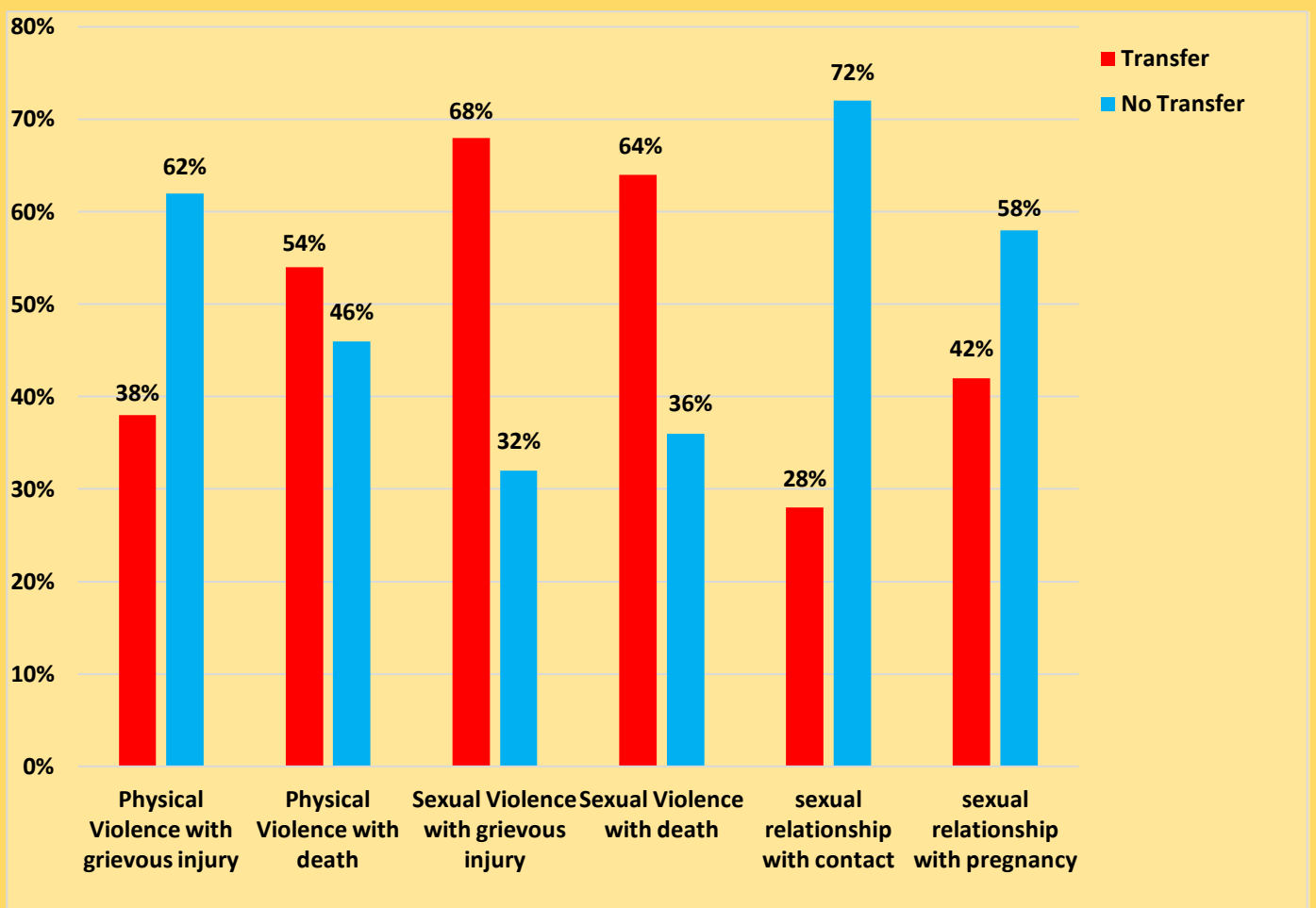
Case Type		Judicial Officer Responses (N=742)	
		Child-Oriented	Non-Child-Oriented
Physical Violence	Grievous Injury	497 (67%)	245 (33%)
	Death	372 (50%)	370 (50%)
Sexual Violence	Grievous Injury	260 (35%)	482 (65%)
	Death	293 (40%)	449 (60%)
Sexual Relationship	Contact Only	549 (74%)	193 (26%)
	Pregnancy	445 (60%)	296 (40%)

Relationships resulting in pregnancy elicited a significantly lesser proportion of child-oriented responses (60%), to questions relating to criminal intent, than relationships involving sexual contact without pregnancy (74%). Thus, except in case of sexual violence, wherein case type of was the predominant factor affecting judicial perceptions of *mens rea*, in other offences, this perception is impacted both by case type as well as severity.

3.4. Transfer Decision by Case Type

It is significant to note that there are observable differences, across case type, in regards to the proportion of judicial responses in favour of juvenile transfer. As reflected in Figure 2 below, the highest proportion of juvenile transfer i.e., between 64-68%, occurs in cases of sexual violence. While cases of sexual violence recorded the highest proportion of judicial responses in favour of transfer, as reported above, the second highest proportion of pro-transfer judicial responses was noted in cases of physical violence with death (54%). In contrast, a lower proportion of pro-transfer responses were observed in cases of sexual relationships resulting in pregnancy (42%), physical violence with grievous injury (38%), and sexual relationship with contact (28%). Therefore, the proportion of pro-transfer judicial responses was observed to be lowest in cases of sexual relationships with contact. It is also interesting to note that the overall proportion of responses, in favour of transfer, in both cases of sexual relationships (i.e., with contact and pregnancy), is notably lower than cases of physical and sexual violence.

Figure 2: Transfer decision by Case Type



The proportion of transfer in both cases of sexual violence are nearly twice the proportion of transfer in physical violence with grievous injury and over the twice the proportion of transfer in sexual relationship with contact cases. The proportion of transfer in cases of sexual violence are also considerably higher than proportion of transfer in sexual relationship with pregnancy cases.

Again though, severity of the offence appears to play a role in transfer. Relative to physical abuse with grievous injury, however, the gap between the proportion of transfer in sexual violence cases, and physical violence with death cases is lower. It is interesting to note, however, that variation in severity of the sexual violence i.e., with grievous injury or death, was not observed to particularly impact the proportion of transfers. This indicates that judicial officers tend not to apply the severity lens to sexual violence cases, in the manner in which they apply this lens to other offences. However, as suggested by the findings in physical violence and sexual relationship case type, wherein pro-transfer positions seem to be influenced by severity, there seems to be a possible association between transfer decisions and perception of severity of consequences in a given case type.

3.5. Relationship between Domain Responses & Juvenile Transfer (using Poisson Regression Analysis)

Univariate and multivariable Poisson regression analyses were carried out to demonstrate the associations between each of the domains (mental capacity, pathways and circumstances, severity and consequences, and criminal intent) and the juvenile transfer decision. Proportion ratios were used as a measure of strength of the relationships between dependent and independent variables. (Refer to Annex 1 for detailed data tables).

Univariate Analysis

In the univariate Poisson regression analysis, the unadjusted proportion ratios demonstrate that criminal intent was a significant variable in juvenile transfer decisions. In this regard, non-child oriented (NCO) responses were over 5 times more likely to lead to a decision in favour of transfer, in cases of physical violence with grievous injury, (consenting) sexual relationship with contact and/or resulting in pregnancy, compared with child-oriented (CO) responses⁹; the unadjusted proportion ratio was also high in the remaining three case types, wherein non-child oriented responses were 3-4 times more likely to lead to decisions in favour of transfer, in cases of physical violence with death, sexual violence with grievous injury and/or death¹⁰.

As per the univariate regression analysis model, another significant variable influencing transfer decision-making was mental capacity. Across nearly all case types, non-child-oriented responses were about 3 times more likely to lead to a decision in favour of transfer¹¹. The variable that had considerably less of an impact on decisions in favour of juvenile transfer, was pathways and circumstances. Across most case types, the unadjusted proportion ratios for non-child-oriented responses were under 2¹². This implies that, despite the evaluative criteria under Section 15, pathways and circumstances were less likely be taken into account by judicial personnel while making decisions on transfer.

⁹ **Physical Violence & Grievous Injury:** 5.50 (95% CI 4.44 to 6.81); **Sexual Relationship (Contact Only):** 5.98 (95% CI 4.72 to 7.59); **Sexual Relationship (Pregnancy):** 5.83 (95% CI 4.62 to 7.35).

¹⁰ **Physical Violence & Death:** 4.89 (95% CI 3.94 to 6.09); **Sexual Violence & Grievous Injury:** 3.83 (95% CI 3.07 to 4.77); **Sexual Violence & Death:** 3.23 (95% CI 2.67 to 3.91).

¹¹ **Physical Violence & Grievous Injury:** 3.73 (95% CI 2.97 to 4.68); **Physical Violence & Death:** 3.29 (95% CI 2.74 to 3.96); **Sexual Violence & Grievous Injury:** 2.69 (95% CI 2.27 to 3.19); **Sexual Violence & Death:** 2.69 (95% CI 2.26 to 3.21); **Sexual Relationship (Contact Only):** 3.33 (95% CI 2.54 to 4.35); **Sexual Relationship (Pregnancy):** 3.21 (95% CI 2.44 to 4.22).

¹² **Physical Violence & Grievous Injury:** 2.65 (95% CI 2.25 to 3.12); **Physical Violence & Death:** 1.74 (95% CI 1.55 to 1.97); **Sexual Violence & Grievous Injury:** 1.51 (95% CI 1.38 to 1.64); **Sexual Violence & Death:** 1.52 (95% CI 1.38 to 1.67); **Sexual Relationship: Contact Only:** 2.72 (95% CI 2.21 to 3.35); **Sexual Relationship (Pregnancy):** 2.65 (95% CI 2.26 to 3.09).

In regards to severity and consequences¹³, with the exception of the sexual relationship case type, non-child-oriented responses were about twice as likely to lead to juvenile transfer decisions.

Multi-variable Analysis

In the multivariable logistic regression analysis model, applied to evaluate the association between domain responses and the juvenile transfer decision, two variables, namely criminal intent, and mental capacity, were significant factors associated with a decision in favour of juvenile transfer, having adjusted for the variables in the univariate model. With regard to criminal intent, non-child-oriented responses were about 4 times more likely, than child-oriented responses, to lead to transfer in the (consenting) sexual relationship case type¹⁴; in the case types of physical violence and sexual violence, non-child-oriented responses were over 3 times¹⁵ and 2 times¹⁶, respectively, more likely to lead to a decision in favour of transfer.

In regards to mental capacity, across all case types, non-child-oriented responses were about 1.5 times more likely to lead to a decision in favour of transfer¹⁷. The Pathways and circumstances domain was significant to transfer decisions only in the case types of physical violence with grievous injury and sexual relationship resulting in pregnancy. Interestingly, although severity of offence emerged as a factor in the overall analysis on domain-wise child orientation, by case type, the severity and consequence variable seemed to have no significant bearing on transfer decisions¹⁸.

¹³ **Physical Violence & Grievous Injury:** 2.80 (95% CI 2.35 to 3.33); **Physical Violence & Death:** 2.19 (95% CI 1.91 to 2.51); **Sexual Violence & Grievous Injury:** 2.03 (95% CI 1.79 to 2.30); **Sexual Violence & Death:** 1.99 (95% CI 1.76 to 2.26); **Sexual Relationship (Contact Only):** 3.53 (95% CI 2.80 to 4.44); **Sexual Relationship (Pregnancy):** 3.26 (95% CI 2.69 to 3.96).

¹⁴ **Sexual Relationship (Contact Only):** 4.39 (95% CI 3.13 to 6.15); **Sexual Relationship (Pregnancy):** 4.13 (95% CI 3.08 to 5.55).

¹⁵ **Physical Violence & Grievous Injury:** 3.61 (95% CI 2.72 to 4.80); **Physical Violence & Death:** 3.75 (95% CI 2.88 to 4.90).

¹⁶ **Sexual Violence & Grievous Injury:** 2.85 (95% CI 2.21 to 3.69); **Sexual Violence & Death:** 2.29 (95% CI 1.83 to 2.86).

¹⁷ **Physical Violence & Grievous Injury:** 1.59 (95% CI 1.24 to 2.03); **Physical Violence & Death:** 1.53 (95% CI 1.26 to 1.84); **Sexual Violence & Grievous Injury:** 1.49 (95% CI 1.27 to 1.76); **Sexual Violence & Death:** 1.64 (95% CI 1.37 to 1.97); **Sexual Relationship (Contact Only):** 1.45 (95% CI 1.08 to 1.94); **Sexual Relationship (Pregnancy):** 1.47 (95% CI 1.14 to 1.90).

¹⁸ **Physical Violence & Grievous Injury:** 1.10 (95% CI 0.94 to 1.29); **Physical Violence & Death:** 1.03 (95% CI 0.94 to 1.13); **Sexual Violence & Grievous Injury:** 1.06 (95% CI 0.97 to 1.15); **Sexual Violence & Death:** 1.10 (95% CI 0.99 to 1.22); **Sexual Relationship (Contact Only):** 1.13 (95% CI 0.87 to 1.47); **Sexual Relationship (Pregnancy):** 1.18 (95% CI 0.98 to 1.41).

3.6. Opinions on the interface between law and child mental health

62% of the judicial officers were of the view that the implementation of preliminary assessment was a fundamentally judicial exercise, and that juvenile transfer decisions must solely be informed by the facts and circumstances of the case. However, an overwhelming majority of officers (95%) also maintained that it would be most advisable to take the assistance of mental health professionals (including psychiatrists, psychologists, and psycho-social workers).

While, on the face of it, these two opinions may seem contradictory, they represent a shared view, amongst judicial officers, that while taking expert assistance is desirable, this assistance is to be treated on par with expert opinions rendered in a trial context, wherein other key sources of evidence (that provide a first-hand description of the facts and circumstances) are given primacy over an expert's assessment (that is essentially a reasoned opinion). In other words, while judicial officers do recognise the importance of considering scientific inputs from the specialised domains of adolescent development and neuroscience, the determinative value assigned to this scientific knowledge, in the development of reasoned decisions on juvenile transfer, is subject to judicial discretion. This is likely attributable, at least in part, to the vast differences in the quality and exhaustiveness of expert assessments provided across the country.

It is significant to note, however, that the fundamentally distinct nature of preliminary assessment, as a capacity determination, made pursuant to the application of mental health and psychosocial criteria, has not effectuated a change in judicial officers' criminal law approach to transfer decision-making. As a result, criminal law truisms in regards to the evidentiary value of expert opinions are transposed, without suitable adaptation, to what is essentially a juvenile justice process. Additionally, given the statutory imperative for adherence to criminal procedure, in the facilitation of the inquiry in accordance with Section 14 of the Juvenile Justice Act, the process of preliminary assessment is not, in practise, distinct from a trial procedure in many procedural respects, including in the admissibility and appreciation of expert evidence.

Any group of professionals (judicial personnel included), naturally tend to prefer monodisciplinary approaches in the performance of their professional roles. In other words, they tend to remain within the dictates and boundaries of their discipline, in the discharge of their roles and functions. Viewed from a human and psychological perspective, such positions are only natural and legitimate for they help to maintain the obscure and esoteric knowledge systems of a given discipline. This might also help explain the reason for judicial officers' views on the singular nature of preliminary assessment as a judicial exercise.

4. Discussion

Ultimately, the juvenile justice system and its judicial officers have the power to transfer adolescents to criminal courts; and in making transfer decisions, they are called upon to assess the competing interests of public safety, on one hand, and the rights, best interests, and rehabilitation of children in conflict with the law. The weightage given to these two interest groups lies at the core of transfer decision-making: the adoption of a primarily utilitarian approach is likely to result in the prioritization of public safety, but does not necessarily serve the interest of the individual child. While public safety is a legitimate agenda, judicial decision-making that espouses a more expansive and conciliatory approach to CICL cases, and juvenile transfer, in particular, is likely to increase the options and resources available to this vulnerable sub-group that is in need of treatment and rehabilitation assistance (55). Such rehabilitative and restorative approaches are thus not only more child-centric, and child rights or child justice oriented, but by reducing recidivism (56), (57), (58), they also reduce the perceived dichotomy between public safety and child rights.

In essence, our study sought to understand the nature of and extent to which judicial officers apply a restorative and rehabilitative lens to decisions on juvenile transfer. On average, that a substantial proportion, of over half, of judicial officers are not in favour of transfer, and that over 70% of them, on average, are indeed child-oriented to some/high extent (is a testimony to the child-centric nature of India's juvenile justice system—for, a judicial system that is adversarial to the extent that it does not consider the best interests of the child along with public safety issues, would be fundamentally flawed (55). However, a related and critical research question was to identify the types of variables and factors that judicial personnel consider while undertaking preliminary assessments and making decisions on transfer. Analyzed through a child-centric or restorative lens, the results for interpretation of the three evaluative criteria under Section 15, are mixed: they evoke critical reflections on judicial processes of transfer decisions, and point to possible ways forward, particularly with regard to judicial education.

4.1. Interpretation of Mental capacity and Developmental Stage

An important finding from this study is that the proportion of child-oriented responses in the domain of mental capacity, across case types, was low. This finding is potentially reflective of a perception amongst judicial respondents that different kinds of offences involve different kinds of cognitive capacities. Judicial responses to sexual violence case types may also be reflective of the strongly emotional responses that this offence type in particular seems to elicit from the public at large. Sexual offence has tended to prompt intense debate and strong opinions across society and amongst different professionals; in general, those who engage in sexual crimes (particularly those who abuse children), are much despised, with news media, a major source of information on sexual offenders, strongly influencing these perceptions (59).

Another possible reason for this is that in these offences, moral outrage and dehumanization of the offender mediate the relationship between perceived harm and severity of punishment, leading to more retributive justice approaches (50). At any rate, the emotions of anger, disgust or shock that are invoked in the context of sexual offences also inform law-makers, their constituencies as well as law enforcers (60). It is also possible that such emotional imperatives, have contributed to the increasing importance that sexual crime has acquired as a public policy issue, resulting in various social and legal system responses, amongst which juvenile transfer is one (59), (61) (Levenson et al., 2007). In fact, it is the deeply emotional reactions that the erstwhile mentioned Nirbhaya rape case evoked in the general public that served as a key imperative in the introduction of the juvenile transfer law in India.

Juvenile transfer provisions do not support such a proposition—given that it does not differentiate between the ‘heinousness’ of the offences listed as heinous, for consideration of transfer. Furthermore, such a proposition is not supported by the research on adolescent neurodevelopment. Developmental research has found much evidence to suggest that, owing to the tremendous structural changes occurring in brain architecture during adolescence, this is a period of increased behavioral and psychiatric vulnerability (62). It is therefore well-established that decision-making processes are wired differently in adolescents and adults, with processes pertaining to reward reactivity, uncertainty-tolerance, delay discounting, and assessments of value and risk, compromising such decision-making processes in adolescents, and resulting in risky behaviours (63), (64), (65). Behavioral theory attributes differences in adolescent and adult decision-making processes to the type of information they use and its prioritization (66). Research has found that adolescents may have the ability to make appropriate decisions on issues such as voting, consent for research participation, and certain medical procedures, because they are likely to entail reflection in the absence of intense emotionality (67) and time pressure, so as to reduce the risk of impulsivity (68). On the other hand, there is a greater likelihood of them making impulsive decisions in emotionally charged situations, such as driving, consuming alcohol, and criminal behavior, which make deliberations difficult, especially in the context of the presence of peers (69), (70). In fact, the neurodevelopmental issues that give rise to high-risk (and anti-social) behaviours, namely, sensation-seeking, impulse control, inability to process future consequences (of behaviour) and vulnerability to peer pressure decline only upon moving into adulthood (71), (72), (73), (70).

Our results indicate that many judicial officers view adolescents committing heinous offences as having the mental capacities of adults. Knowledge on adolescent neurodevelopment, in this regard, would enable judicial officers to understand normative behavior in adolescence, as well as the social deviance that often occurs during this developmental stage in ways that do not criminalize adolescents. In fact, developmental psychologists and child protection workers argue that the compromised decision-making abilities call for greater policy and procedural safeguards (74). That adolescents are less mature than adults in ways that mitigate their criminal culpability (75) was also recognized

by the American Supreme Court's ruling on criminal behavior in juveniles¹⁹. Thus, integrating this knowledge perspective into judicial decisions on juvenile transfer, would also prompt a more uniform and scientific interpretation of the mental capacity evaluative criteria under Section 15.

4.2. Appreciation of Pathways and Circumstances

A second significant finding pertains to judicial officers' employment of circumstances of the offence in considerations of juvenile transfer i.e., their understanding of children's vulnerabilities and pathways to coming into conflict with the law. Our findings are heartening in that they indicate a high degree of child-orientation in this regard, by way of officers recognizing children's difficult circumstances; this is so even in offences of a more severe nature such as physical and sexual violence with death. Yet, interestingly, and although the Section 15 provisions mandate it, this positive child orientation was not observed to influence transfer decision-making. This finding could be explained by a possibility that judicial officers are not, at present, making the linkages between (difficult) circumstances and mental capacity or (poor) decision-making abilities. As erstwhile described, there is much literature to support that Adverse Childhood Experiences (ACEs), serve as key risk factors for juvenile offending and victimization (20), (21), (22), (76). Various studies in India have established that CICL come from extremely vulnerable psychosocial contexts (77), (78), (79). Childhood trauma places adolescents at greater risk of cognitive-emotional deficits, impaired self-regulation and decision-making, which leads to more socially inappropriate behaviors, such as violence (80), (81). The evaluative criteria under Section 15, of considering the children's culpability in terms of their (adverse) circumstances, actually relates to the first evaluative criteria on interpreting mental capacity i.e., recognizing that an adolescent from difficult circumstances is more likely to have compromised mental capacities than other adolescents. This essentially means that some adolescents are 'less equal than others'—they carry a double burden of mental incapacity, because in addition to the disadvantages of normative adolescent neurodevelopment, they are also hampered by the cognitive difficulties inflicted on them by their difficult circumstances.

One might also consider circumstances of the offence, in the juvenile justice system as the equivalent of what is known as mitigating factors in the (adult) criminal justice system. While there are many overlaps, within mitigating factors between adult sentencing and juvenile transfer evaluations, there are some factors that are distinct and uniquely applicable in the juvenile context. Adolescent (neuro)development is one such mitigating factor: as discussed above, it is a dimension of capacity that is only relevant to adolescents. While the mental capacity parameter is also applied in adult criminal contexts, it is largely restricted to viewing (in)capacity in terms of cognitive abilities that are severely affected, to the extent of impairing functionality and comprehension of an individual, such as in case of mental illness or intellectual disability²⁰ (82), (83), (84).

¹⁹ *Roper v. Simmons*, 2005, 125 S Ct. 1183; *Graham v. Florida*, 2010, 130 S. Ct. 2011; *Miller v. Alabama*, 2012, 132 S. Ct. 2455

²⁰ *State of Rajasthan v. Shera Ram @ Vishnu Dutta* (2012), AIR 2012 SC 1, 2012

Another mitigating factor is, as erstwhile discussed, Adverse Childhood Experiences. Again, while difficult and traumatic experiences might also form mitigating considerations in the (adult) criminal justice system, it is important to acknowledge that such experiences do not, due to age and developmental stage, have the same impact on children and adults. The differential effects of childhood trauma, its emergence early in the life course, and its enduring nature, as compared with later life traumas, has different consequences for individuals' experience of post-traumatic disorder, and its manifestations in coping abilities (85); trauma experienced at younger ages is more likely to result in distinct and lasting deficits in self-regulation and impulse control (86). These differential impacts of trauma, on mental capacity, and consequently on behaviours, point to the fact that judicial officers are required, to employ a different lens to understanding and interpreting circumstances and mitigating factors in the juvenile justice system vis-à-vis the adult criminal justice system.

At present, there appears to be a tendency to use the criminal lens in evaluating mitigating factors in children's cases, which is possibly why the criteria of circumstances is not being adequately considered in decisions on juvenile transfer. Furthermore, mitigating factors, within the adult criminal justice system are considered only post the trial, at the time of sentencing, as opposed to within the juvenile justice system, wherein transfer decisions are made at the pre-trial stage. This (sub-conscious internalization of criminal law processes) may also lead judicial officers to make transfer decisions without factoring in the child's circumstances, because the expectation is that the criminal justice system, which upon transfer, proceeds to the trial stage, will duly consider mitigating factors at the time of sentencing. The understanding, therefore, is that this negates the requirement of sufficiently considering the mitigating impact of circumstances at the time of transfer. During the erstwhile-described deliberations, some judicial officers also expressed the view that a detailed consideration of the impact of circumstances at the pre-trial transfer stage was superfluous, given that the Children's Court is also tasked with evaluating the impact of the circumstances on the child, at the trial stage.

4.3. Estimation of Criminal Intent

(a) Social context of juvenile transfer and the exercise of judicial responsibilities

Judicial officers occupy a unique position in the narrative on the enforcement of juvenile transfer laws, as indeed they perhaps do in the case of similar legislation that has been spurned by prominent cases of crime. In this regard, the role tasks, and functions within the (juvenile) justice system, require them to possess and apply the value of impartiality. Inherent in this foundational legal value is the judicial obligation to be unbiased in relation to any party or issue, to make decisions independently (87); by extension, they are also expected to practice without emotion—as emotions, by virtue of being political, unstable, personal, and irrational, threaten the application of impartial judicial authority (88), (89). However, it is likely that judicial officers also mirror their social milieus, and these include public opinion (90). Public opinion frequently aligns with punitive actions and correction of children in conflict with law, supporting 'get tough' policies and sentiments such as "adult crime" merits "adult time" (36), (91). Like elsewhere, in India too, public attitudes to juvenile crime, played a role in shaping juvenile justice policy (92), particularly in case of juvenile

transfer. Such propositions may also help understand why judicial officers are likely to apply criminal intent as one of two key factors in making transfer decisions.

(b) The difficulty of distinguishing evaluations of capacity from criminal intent

One of the recurring points of contention in the implementation of the Juvenile Justice Act, is with regard to the legal maxim of ‘innocent until proven guilty.’ From the aforementioned findings, seemingly supported by our interactions with judicial officers in judicial education programs, this legal maxim is often taken, in principle, to be equivalent to the presumption of innocence codified in Section 3²¹, thereby resulting in a view as to the redundancy of this presumption. The above-mentioned findings have brought to fore a deep misunderstanding and conflation of the concepts of mental capacity and *mens rea*.

Significantly, the presumption of innocence, codified in Section 3 of the Act, is not a question of criminal intent but capacity (93), (94). As a result, this conceptual conflation has adverse implications for any given child’s case, on account of the unwitting transformation of preliminary assessment into a trial. Specifically, the consequence of conflating these two concepts at the stage of preliminary assessment, is one of abrogating the right of the accused against self-incrimination, enshrined in Article 20(3) of the Constitution of India.²² This problem is particularly concerning in jurisdictions, like India, with pre-trial juvenile transfer hearings, wherein typically, these hearings are required to be accompanied by procedural protections that disallow the use of potentially incriminating information as evidence at the stage of adjudication or sentencing. In state legal systems across jurisdictions, like the United States of America, these procedural protections include requiring different judges to preside over the transfer and adjudication stage (95). However, in the absence of such protections in India, where the Children’s Court is legally permitted to conduct a second transfer evaluation (in accordance with Section 19), such conceptual conflation can severely prejudice the child’s case and violate their fundamental right against self-incrimination.

From a conceptual point of view, however, there are ambiguities inherent in the law itself that could possibly explain this interpretive quagmire. The three-part evaluative framework under Section 15 includes a knowledge component, factual estimation of circumstances and an undefined element of ‘mental capacity’. On a closer reading with criminal law requirements, the dissimilarities between mental capacity and *mens rea* become less evident. Generally, the common law interpretation of *mens rea* includes an intention or knowledge component²³ (96), (97). As a result, when the essential components of mental capacity and *mens rea* are examined together, it appears evident that there is more than a significant overlap between the two.

To contextualise this issue, one needs only to briefly advert to the construction of the offence of culpable homicide (Section 299, IPC) and murder (Section 300, IPC) (84). Both these statutory offences include knowledge components that are constructed along the

²¹ Fundamental principles to be followed in administration of the Act.

²² Article 20 (3) states that “No person accused of any offence shall be compelled to be a witness against himself.”

²³ *State of Maharashtra v. Mayor Hans George* AIR 1965 SC 722.

same lines as Section 15. As mentioned above, in the absence of procedural protections against self-incrimination at the stage of preliminary assessment, this conceptual ambiguity and conflation is a significant procedural concern.

This issue of criminalisation of a juvenile justice process, from an implementation standpoint, is also compounded by the fact that India's juvenile transfer provisions, do not take into consideration criminal law factors while evaluating the suitability of a case for transfer. This is not co-extensive with transfer provisions in jurisdictions like the United States of America, where explicitly criminal law factors like prior record of the offender and offense seriousness are codified in transfer statutes across state jurisdictions (15), (98).

In light of the above, the analysis of factors affecting decision-making in the context of juvenile transfer, demonstrate that judicial officers tend to apply criminal law frameworks pertaining to intent and behaviour, in ways that contravene the statutory mandate of juvenile transfer as a pre-inquiry/pre-trial capacity determination. This criminalization of the juvenile transfer process has critical implications for CICL's constitutionally protected fundamental right against self-incrimination, as highlighted above, in addition to prejudicially affecting the integrity of the criminal trial following submission of preliminary assessments to Children Courts.

c) *Doli incapax* provisions and Section 15

Upon the introduction of the Indian Penal Code (84), Section 82 determined that the Minimum Age of Criminal Responsibility (MACR) would be 7 years i.e., any child below 7 years of age is deemed not to possess the capacity to form criminal intent. This statutory presumption was absolute and conclusive. Section 83 further introduced the concept of *doli incapax* for children aged between 7-12 years i.e., children are statutorily presumed to not have the capacity to form criminal intent unless it is demonstrated that the child possessed the requisite maturity to judge the nature and consequences of their actions. Therefore, for children aged between 7-12 years, the presumption was rebuttable.

In the context of the above-mentioned introduction of evaluative standards, judicial pronouncements on applicability of the presumption of *doli incapax*, in common law jurisdictions like England and Australia, offer a brief overview of the many problems in interpreting the 'infancy' conception (94), and by extension, judicial interpretations of 'maturity' in children and adolescents. Essentially, the construction of the doctrine of infancy is directly commensurate with the construction of the 'reasonable person.' The impact of developmental immaturity on the adolescent's mental capacity, renders the adolescent 'abnormal' vis-à-vis the reasonable person, by virtue of not possessing the requisite mental capacity for a valid attribution of fault (82). As a result, this construction of abnormality-based infancy prompted legislative efforts in countries like England to rebut claims of immaturity and do away with *doli incapax* provisions altogether (99).

This is particularly significant in the present discussion, given the functional equivalence between the imperative behind *doli incapax* and juvenile transfer provisions. By way of example, in the infamous case of *C (A minor) v. Director of Public Prosecutions*²⁴, Lord

²⁴ *C (A Minor) v DPP* [1996] AC 1

Lowry explicated the notion of 'knowledge of wrongfulness' as being easier to identify in cases of 'more obviously heinous offences', thereby imputing a generalized standard of knowledge to a child, on the basis of the gravity of the offence, as opposed to actual knowledge/intention. In some cases, this adult-like imputation of knowledge even took the form of a 'presumption of normality' that directly contradicted the presumption of *doli incapax*, by assuming adult-levels of knowledge in younger adolescents, for offences considered 'obviously seriously wrong' (94).

(d) Indeterminacy of the mental element and the case for the reasonable juvenile standard

The interpretive challenges described above relate to two significant problems in criminal law: i) indeterminate 'knowledge' requirements in certain offences; and ii) imputation of reasonable 'adult' standards of knowledge to prove juvenile criminal culpability.

In relation to the first problem, issues in the formulation of certain 'heinous' offences in Indian criminal law raise the possibility that adolescents transferred under Section 15 are unwittingly held to an adult standard of imputed knowledge even in cases of certain offences that prima facie have explicit *mens rea* requirements. The implication of this predicament is that transferred adolescents will not be punished in proportion to their culpability (proportionate culpability), but instead, will be punished in accordance with the notion that they are blameworthy for some offence (threshold culpability). In the latter form of culpability, *mens rea* does not attach to every element of the offence, with the implication that once the individual meets a certain threshold of blameworthiness, "strict liability may apply to circumstances or results, even when large distinctions in liability and sentence may rest on their proof" (96). This is a troubling picture for juvenile culpability in India, given the indeterminacy of the mental element in heinous offences like that of rape. As Pande notes, some such relatively serious *mens rea*-less offences are in desperate need of rationalization, in order to effectively arrive at an interpretation more closely suited to proportionate culpability, particularly in the context of transferred adolescents (100).

From the foregoing analysis, the exceedingly complex issues in juvenile criminal culpability are evident to see, and raise the crucial question of what the alternative to the current criminal law frameworks may be. In connection with this dilemma, reference may be had to the US Supreme Court case of *J.D.B. v. North Carolina*²⁵, wherein the apex court explicitly adopted a reasonable juvenile standard in undertaking a Miranda custody analysis, to evaluate whether the child could be evaluated as being "in custody". The significance of adopting such an alternative to the 'reasonable person standard', was that the Court was fundamentally guided by normative child development, without any inference from or imputation of adult-like knowledge. This considerably simplified the Court's task by eliminating the requirement of a construction of 'abnormality' in order to extend custody protections to the child.

However, as Levick and Tierney note, the implications of this decision go much further than custody analysis, and can conceivably be extended to criminal culpability (101).

²⁵ *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)

Perhaps, the most relevant illustration of an application of the reasonable juvenile standard to culpability, is in the interpretation of 'peer pressure' as a factor exercising undue pressure on an individual, in certain circumstances, prompting the employment of the criminal law defense of duress against culpability for an offence. Such an explanatory basis for duress is simultaneously both: unthinkable in an adult context, yet completely normative in an adolescent context.

Therefore, as highlighted by the many facets of criminalization identified above, there exists an unwitting enmeshing of criminal law frameworks in pre-trial transfer evaluations. Such a predicament is owed, in part, to the criminal law functions performed by judicial officers in addition to their mandate under the juvenile justice system. This issue requires reconsideration of the current assignment of judicial caseloads to varying cadres of officers.

4.4. Significance of this Study

Finally, this study is not without its limitations. Socio-demographic variables such as gender, caste, and religion of the judges were not included in our study, and we acknowledge that these have the likelihood of impacting judicial attitudes and perceptions, in general, especially on social justice, amongst which juvenile justice is one. The reason we did not include socio-demographic variables was that the primary purpose of our study was to explore the impact of judges' knowledge and attitudes, in the specific context of the interface between child laws and mental health, on decision-making in juvenile transfer. In keeping with this research imperative, judges' personal characteristics and their relationship with judicial outcomes on juvenile transfer, were outside of the scope of this study. Consequently, we did not also construct the vignettes in ways that would elicit biases of gender, caste, and religion vis-à-vis children i.e., by including socio-demographic details of the children. That said, oddly enough, contrary to findings from western countries about judicial bias resulting from gender, religious, or ethnic lines (102) (103), (104), large-scale studies in Indian district courts do not disclose in-group bias on such variables (105), (106). But given the global literature on juvenile transfer, and how judicial decision-making has, in certain countries, entailed arbitrariness, based on socio-demographic variables such as race (41), (107), it might be worthwhile to explore such biases in judicial decision-making in the Indian context as well.

Despite these limitations, the study reflects other methodological strengths: (i) the nature and size of the respondent sample-- comprising of judicial officers from various regions of the country, ensures that the study is reasonably representative of judicial thought on transfer decision-making across the country; (ii) the vignette methodology which allowed for exploration of a sensitive issue (108), (109), such as juvenile transfer allowed for assessment of multi-faceted issues (110), to draw attention to specific elements in complex processes (111), in ways that reduced the risk of socially desirable responses (109), (43).

This study is also significant in many other ways. To the best of our knowledge, it is the first and only one on implementation of juvenile transfer laws, not only in India, but in South Asia i.e., amongst those countries, including China, Japan, Nepal, Thailand, Bangladesh,

that possess jurisdictional waivers/juvenile transfer. For India, its importance lies in the fact that it is the first systematic, scientific, large-scale effort to explore whether preliminary assessment is being implemented in accordance with the statutory scheme of Section 15, and in accordance with the objectives and principles enshrined in JJ Act—with critical implications for ways forward, within the judicial system. Globally, this study is of considerable importance because while other studies on judicial transfer (or sentencing), have tended to focus on judicial attitudes/perceptions, and knowledge of statutory criteria in regards to transfer, our study moves beyond exploring knowledge and attitudes to examine factors that actually impinge upon decision-making. D'Angelo in fact cautioned that attitudes may not necessarily determine decision-making outcomes; he therefore highlighted the imperative for future studies to be focussed on the measurable impact of variables such as nature and severity of the offence, socio-cultural and psychological factors on their transfer decisions (15)—many of which the present work has incorporated.

Furthermore, while other studies on judicial attitudes have focussed more on legal vis-à-vis extra-legal aspects of decision-making in juvenile transfer (112), (15), (98), (113), the present study makes a strong case for the employment of transdisciplinary approaches, in laws that address social justice issues, particularly in the context of vulnerable witnesses, such as children. In such cases, if legal outcomes are intended to be victim-centred and just, the implementation of the law necessitates moving beyond strongly adversarial and (retributive) criminal justice frameworks to employing more restorative and rehabilitative factors in legal and judicial decision-making. Given the nature of preliminary assessment as a developmentally informed mental health and psychosocial assessment, judicial discretion in admitting and appreciating such expert assessments, must be circumscribed within reasonable limits of discretionary latitude, informed by scientific knowledge from the domains of mental health and neuroscience. Additionally, there is an imperative for judicial personnel (including Children's Court Judges and Principal Magistrates) to work with mental health professionals and non-judicial members of the JJBs in transdisciplinary ways that adhere to constitutional safeguards and knowledge from legal and non-legal disciplines. In light of the above, there is an imperative to develop a scientific framework for evaluation of adolescents' mental capacity, understanding of consequences, and impact of circumstances on their offending behaviours, so as to ensure that the statutory presumption of innocence is not vitiated as a result of discretionary and arbitrary ways of assessment and decision-making.

5. Recommendations and Ways Forward

5.1. Imperatives for Standardization in Implementation of Preliminary Assessments

One of the key problems in not having a standardized approach to preliminary assessments is the varied interpretations, and consequent differential manner of implementation of the evaluative criteria outlined under Section 15 of the Juvenile Justice Act, 2015. This in turn leads to the exercise of possibly excessive judicial discretion, and arbitrariness in juvenile transfer decisions—often with adverse life consequences for children. In recognition of the many dilemmas that the implementation of the juvenile transfer law is ridden with, the Supreme Court of India, in its judgement in the *Barun Chandra Thakur v. Master Bholu & Anr., 2022* case²⁶, directed the use of a standardized methodology for preliminary assessment. Cognizant that the JJ Act did not operationalize the terms ‘mental capacity’, ‘circumstances’ and ‘ability to understand consequences’ in Section 15 of the Act, the Court explicitly stated the following in its judgement:

“This evaluation of ‘mental capacity and ability to understand the consequences’ of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. The process of taking a decision on which the fate of the child in conflict with law precariously rests, should not be taken without conducting a meticulous psychological evaluation”.

In the aforementioned case, a 16-year-old child came into conflict with the law for the alleged murder of a younger child, and the apex Court drew from the practice methodologies developed by NIMHANS (SAMVAD), on juvenile transfer²⁷, to emphasize the importance of uniformity in the administration of preliminary assessments by juvenile justice boards and judicial officers across the country. In so doing, the Court implies that juvenile transfer decisions cannot be arbitrary, or, in other words, judicial discretion may be exercised in a circumscribed manner, by adhering to scientific methods and guidelines. Thus, a standardization of the methodology for implementation of Section 15, in this regard, is critical to ensure that judicial decision-making in the context of juvenile transfer is reasoned and scientifically-informed by the relevant disciplines of adolescent development and neuroscience. In addition to addressing arbitrariness in the exercise of judicial discretion, standardisation is also imperative in a low-resource setting such as India

²⁶ *Barun Chandra Thakur v. Master Bholu & Anr.* (2022 SCC OnLine SC 870), 2022 available @ https://main.sci.gov.in/supremecourt/2018/41570/41570_2018_9_1503_36311_Judgement_13-Jul-2022.pdf

²⁷ **NIMHANS Psychosocial and Mental Health Proforma:**
https://docs.google.com/document/d/1gka6hDAwCQY7vveUFnKuhqr853zfZgg_/edit?usp=sharing&ouid=100528329348518655686&rtopf=true&sd=true

NIMHANS Preliminary Assessment Proforma:
https://docs.google.com/document/d/1oRZ8k5zbPluWYZHFAJwRL9RuwwqgUYmc/edit?usp=drive_li nk&ouid=100528329348518655686&rtopf=true&sd=true

where there is a paucity of mental health professionals. Therefore, the approach necessarily needs to shift from a reliance on scarcely-available 'experts' to standardised assessment methodologies implemented by trained mental health professionals, child protection functionaries and psycho-social workers.

5.2. Implications for Judicial Education

As per the National Crime Records Bureau statistics of 2021, the case load involving children in criminal cases is quite high²⁸. With child-related caseloads being high, it is important for legal and judicial personnel to acquire requisite knowledge and skills in child law. Further, general criminal law frameworks do not transpose directly to child law concerns. Unlike many other criminal matters, which are suitably dealt with by the regular criminal law frameworks, that are codified under the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act, children's issues do not fit within the adjudicatory ambit of this system. Like certain other contexts that require special laws, such as disability-related matters, marital and family disputes, and offences against Scheduled Castes and Scheduled Tribes, to name a few, judicial engagement with vulnerable populations, such as children (including those in conflict with the law), require differential perspectives, processes, and capacities in their adjudication. These realities create renewed imperatives for the nature and quality of judicial education, and consequently, for the role that State High Courts and Judicial Academies play in enhancing the skills and capacities of their judicial officers.

In this endeavour, judicial education may also benefit from a reflexive pedagogical orientation, that remains present to the legal and operational challenges, faced by judicial officers, in the exercise of their adjudicatory functions. The incorporation of judicial queries and concerns can be undertaken through periodical needs assessments conducted by State Judicial Academies across the country. This way of work will also help facilitate mutual learning, on one hand, and the avoidance of didactic methods of engagement, on subjects that may not bear the same degree of relevance to all judicial officers. Judicial education, in this regard, requires a streamlining of training programs on CICL through the calendar year.

(a) Development of Comprehensive Training Curricula and Content

It is recommended that judicial education programs on juvenile justice and children in conflict with law are implemented in ways that facilitate judicial capacities in two key areas:

- (i) adequately incorporating the individual child's mental health and psychosocial circumstances in decisions on appropriate interventions and methods of disposition/diversion or decisions on cases of transfer to the criminal justice system;

²⁸ The burden of crime against children in 2021 stands at 1,49,404 (Rate of Crime: 33.6 per lakh of population); crime committed by juveniles amounts to 31,170 cases (Rate of Crime: 7 per lakh of population). Available @ https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf

- (ii) instrumentalizing the restorative aims of the JJ Act by conducting inquiry proceedings/passing orders to effectively rehabilitate the child, and ultimately, socially re-integrate the child. These priorities become particularly relevant in the context of the separate mechanism for preliminary assessment which raises questions of punishment and restoration simultaneously.

In light of these aims, it would be useful for training content and curricula to include the following:

- A global overview of the development of principles, approaches, and laws on juvenile justice.
- An orientation to the restorative framework, including the key provisions of the Indian Juvenile Justice (Care and Protection) Act, 2015.
- An understanding of the psychosocial and mental health contexts and vulnerabilities of children in conflict with the law, including their rehabilitative needs.
- A knowledge of the methodology for preliminary assessment for transfers to the criminal justice system, in accordance with the direction of the Supreme Court of India in the (aforementioned) *Barun Chandra Thakur* case.

In order to provide a deep understanding of juvenile transfer and methodologies for decision-making thereof, the training must ensure to include knowledge on issues such as:

- Knowledge of adolescent neurodevelopment and its application to mental capacity assessments.
- How children's vulnerabilities, pathways, and circumstances impact children's emotional and behavioural health, and consequently their mental capacities.
- The application of legal concepts such as *mens rea* in the context of child law and juvenile justice (as opposed to adult criminal law contexts).

Such detailed judicial education programs warrant longer time durations i.e., three-day programs instead of the one-day programs that judicial academies often propose. While we acknowledge the busy schedules and caseload that judicial officers have, judicial education that provides for systematic and scientific methodologies of engagement with vulnerable witnesses (children), are likely to enable them to be more efficient, also easing the burden of their often-complex tasks.

(b) Application of Transdisciplinary Training Methodologies

In directing the country to adopt the preliminary assessment put forward by NIMHANS (SAMVAD) i.e., a psycholegal assessment integrating legal and mental health concerns of CICL, the Supreme Court of India recognized the need to adopt transdisciplinary methodologies to address difficult questions of law, that straddled the paradoxical tensions of child rights, protection, law, mental health, rehabilitation, and public safety. While juvenile transfer decisions are made in legal and judicial spaces, the considerations for determining transfer i.e., children's mental capacity, circumstances, and knowledge consequences, all lie in the domain of mental health. The need to address such concerns,

as posed by implementation of preliminary assessments and juvenile transfer, necessitate the application of transdisciplinary methodologies in judicial education, i.e., to transcend the boundaries of a given discipline—in this case, of law— and integrate both legal and child mental health perspectives in judicial education, in particular, to enable judicial personnel to develop a child-centric understanding of child law issues—as proposed above.

Furthermore, the implementation of transdisciplinary methodologies entails moving away from top-down, didactic methods of engagement, that are particularly incompatible with adult pedagogies, to the use of creative and participatory methods. In SAMVAD's experience, the use of methodologies such as deliberations and review consultations, which encourage the convergence and co-production of knowledge between key (adult) stakeholders i.e., judicial personnel and (child) mental health professionals, improve the prospects for large-scale, sustainable impact on the delivery of justice, and consequently on children's lives. Within judicial training programs, SAMVAD has experimented extensively with participatory methods such as visualization, case study analyses, role plays, film screening and discussions, with much success; officers have often stated that such approaches are not the norm in judicial education programs, and that they not only found these methods engaging and fun, but also that the content and methodologies truly addressed the complex field realities of their work. SAMVAD's observation has also been that such methods allow judicial officers, to overcome their professional reserve, enabling exchange of thought and ideas, in a system that tends to be epistemically inaccessible. Breaking away from conventional methods of teaching and training thus helps judicial officers express and reflect on the questions that they grapple with in their child law practice, but the joyous freedom and equitable platforms that these methodologies create for engagement and (co) production of knowledge, also embodies the spirit of child work at large.

c) Multiple Levels of Training

As judicial officers often straddle the differing requirements of the criminal justice system and the framework for dispensation of juvenile justice, it is imperative to ensure that judicial officers are oriented to the various facets of child law. This includes criminal law matters such as child sexual abuse, juvenile offending, on one hand, and civil law matters, such as family court adjudication (in matrimonial and custody disputes), on the other.

In this regard, a three-tier system of judicial education is proposed where, at a first level, judicial officers will be provided a broad-based orientation on key issues and legal debates in civil and criminal child law matters. This level of training may be provided, exhaustively to all Judicial Magistrates First-Class (JMFCs) as a part of their induction training, or within a period of 3 years following the induction training²⁹.

²⁹ This approach was adopted by the Karnataka Judicial Academy, under the aegis and guidance of the Juvenile Justice Committee, High Court of Karnataka, wherein a 3-Day broad overview of all child-related laws was provided, including, amongst others, issues concerning: Juvenile Justice, POCSO, Adoption, Custody and Guardianship.

At a second level, a focused one-day orientation may be provided to newly designated Principal Magistrates on the basic imperatives of the juvenile justice system. This orientation must be provided before the Principal Magistrates assume charge of the JJB, in order that they are familiar with the procedures and methodologies codified under the JJ Act's statutory framework. In particular, the fundamental differences between punitive approaches (used in the criminal justice system) vis-à-vis the rehabilitative and restorative justice mandate codified in the Act may be highlighted at this stage.

Finally, at a third level, a depth training program (as described above) integrating legal and child mental health issues, must be offered over an extended period of at least 3 days, so as to allow for the adoption of transdisciplinary approaches to assisting children in conflict with the law.

5.3. Need for Training of Multiple Stakeholders, including Child Protection and Mental Health Service Providers

Given that the above-mentioned NIMHANS preliminary assessment proforma, which in itself contains items on mental health, is predicated on a mental health and psychosocial assessment proforma, the process of preliminary assessment and juvenile transfer decisions calls for the involvement of counsellors and mental health service providers. These include professionals working within observation homes and/or facilities and services that provide care, protection, mental health, and rehabilitation services to children in conflict with the law; they also include District Mental Health Program functionaries working at secondary levels of care and Departments of Psychiatry, located in Government Medical Colleges, designated Centres of Excellence (in health care), and tertiary mental healthcare facilities.

It is generally acknowledged that the experiences and skills of mental health professionals, even if we were to take an advanced mental health cadre such as psychiatrists, are extremely varied. In other words, the kind of preliminary assessment report a given psychiatrist may provide to the JJ Board would depend on a number of variables such as:

- The extent of their knowledge and skills in child mental health (which also depends on the amount of work/ practice of the professional in child mental health).
- The depth and nuance of their understanding of these children and their needs and vulnerabilities (seeing CICL as 'problem' children having conduct and behaviour issues that merely require behavioural modification versus being able to understand the circumstances of the offence in terms of the individual and social vulnerabilities of these children).
- Professionals' views on the JJ amendment and its implications (there are those who are ideologically against the new amendment and therefore are reluctant to comply/ implement preliminary assessments);

Given the variance in knowledge, skill, and approach, therefore, and the nature of the preliminary assessment proforma, it would be essential for all mental health and child protection professionals who use it, to receive training. In other words, without training of other child workers, who provide assistance to Juvenile Justice Boards and judicial

personnel in juvenile transfer decisions, the use of this proforma would become arbitrary; this would result in the provision of varied and random opinions by professionals, again defeating the purpose of the JJ Act and its mandate for CICL; most of all, it would result in injustice to children.

Training and capacity building programs for accurate and standardized implementation of preliminary assessments therefore need to extend beyond judicial officers and juvenile justice board members, to include child protection and mental health service providers. The ultimate aim, for all child service providers and stakeholders, is to equip them to understand the needs of each CICL and develop interventions and care plans in keeping with behaviour transformation and rehabilitation objectives.

5.4. Imperative for Exclusive Jurisdiction of Principal Magistrates

As often stated by judicial personnel serving in juvenile justice boards, as magistrates, they spend a relatively limited amount of time i.e., one to two days a week, on the board. The bulk of their time is spent in the adult criminal justice system, where the approaches to dispensation of justice are quite different from the juvenile justice system. The adult system calls for more retributive and punishment-orientated approaches versus juvenile justice whose considerations are centred on vulnerability, protection, and rehabilitation. Consequently, JJB magistrates have often expressed a struggle with having to re-orient and re-calibrate their thinking and approaches, to accommodate these frequent paradigm shifts—which then have particularly unfavourable impacts for children in conflict with the law.

One possibility therefore, to overcome this challenge, is to ensure that Principal Magistrates (or Juvenile Justice Magistrates) have sole jurisdiction of juvenile justice cases, without additional charge over any other matters. There is already a precedent of such an approach of exclusivity in the context of child sexual abuse cases, wherein exclusive POCSO courts have been established across the country, pursuant to the Centrally Sponsored Scheme on Fast Track Special Courts, under the Department of Justice. The juvenile justice system would also greatly benefit from a rationale similar to the POCSO courts—one that prioritizes child-friendly adjudication and timely disposal of cases. In fact, such a precedent also extends to Children Courts, under the 2021 amendment³⁰ to the Juvenile Justice Act 2015, which have been reposed with exclusive jurisdiction over offences against children. Such specialisation in judicial administration of justice enables the progressive development of human resource capacities and physical infrastructure, in ways that are in keeping with contemporary knowledge from the scientific domains of child and adolescent development and mental health. The Supreme Court's direction in regards to the establishment of Vulnerable Witness Deposition Complexes, across the country, is an example of the benefits to be accrued from such specialisation.

³⁰ Section 26 (4), Juvenile Justice (Amendment) Act 2021 available @ https://cara.nic.in/PDF/JJ%20Amendment%20Act%20-2021_.PDF

Annexe 1
Results of Univariate and Multivariable Analysis:
Relationship between Domain Responses
and Juvenile Transfer
Univariate Analysis

(a) Physical Violence & Grievous Injury

Domain	Nature of Response	Transfer Responses		Unadjusted Proportion Ratio (95% Confidence Interval)	P Value
		Against N= 460 (%)	In favour N= 282 (%)		
Mental Capacity	Non-Child-Oriented Responses (N=329)	118 (36)	211 (64)	3.73 (2.97, 4.68)	<0.001
	Child-Oriented Responses (N=413)	342 (83)	71 (17)	Reference	
Pathways & Circumstances	Non-Child-Oriented Responses (N=179)	50 (28)	129 (72)	2.65 (2.25, 3.12)	<0.001
	Child-Oriented Responses (N=563)	410 (73)	153 (27)	Reference	
Severity & Consequences	Non-Child-Oriented Responses (N=223)	69 (31)	154 (69)	2.80 (2.35, 3.33)	<0.001
	Child-Oriented Responses (N=519)	391 (75)	128 (25)	Reference	
Criminal Intent	Non-Child-Oriented Responses (N=245)	39 (16)	206 (84)	5.50 (4.44, 6.81)	<0.001
	Child-Oriented Responses (N=497)	421 (85)	76 (15)	Reference	

(b) Physical Violence & Death

Domain	Nature of Response	Transfer Responses		Unadjusted Proportion Ratio (95% Confidence Interval)	P Value
		Against N= 343 (%)	In favour N= 399 (%)		
Mental Capacity	Non-Child-Oriented Responses (N=376)	68 (18)	308 (82)	3.29 (2.74, 3.96)	<0.001
	Child-Oriented Responses (N=366)	275 (75)	91 (25)	Reference	
Pathways & Circumstances	Non-Child-Oriented Responses (N=212)	48 (23)	164 (77)	1.74 (1.55, 1.97)	<0.001
	Child-Oriented Responses (N=530)	295 (56)	235 (44)	Reference	
Severity & Consequences	Non-Child-Oriented Responses (N=301)	62 (21)	239 (79)	2.19 (1.91, 2.51)	<0.001
	Child-Oriented Responses (N=441)	281 (64)	160 (36)	Reference	
Criminal Intent	Non-Child-Oriented Responses (N=370)	39 (11)	331 (89)	4.89 (3.94, 6.09)	<0.001
	Child-Oriented Responses (N=372)	304 (82)	68 (18)	Reference	

(c) Sexual Violence & Grievous Injury

Domain	Nature of Response	Transfer Responses		Unadjusted Proportion Ratio (95% Confidence Interval)	P Value
		Against N= 240 (%)	In favour N= 502 (%)		
Mental Capacity	Non-Child-Oriented Responses (N= 465)	54 (12)	411 (88)	2.69 (2.27, 3.19)	<0.001
	Child-Oriented Responses (N=277)	186 (67)	91 (33)	Reference	
Pathways & Circumstances	Non-Child-Oriented Responses (N= 206)	22 (11)	184 (89)	1.51 (1.38, 1.64)	<0.001
	Child-Oriented Responses (N=536)	218 (41)	318 (59)	Reference	
Severity & Consequences	Non-Child-Oriented Responses (N=391)	43 (11)	348 (89)	2.03 (1.79, 2.30)	<0.001
	Child-Oriented Responses (N=351)	197 (56)	154 (44)	Reference	
Criminal Intent	Non-Child-Oriented Responses (N=482)	42 (9)	440 (91)	3.83 (3.07, 4.77)	<0.001
	Child-Oriented Responses (N=260)	198 (76)	62 (24)	Reference	

(d) Sexual Violence & Death

Domain	Nature of Response	Transfer Responses		Unadjusted Proportion Ratio (95% Confidence Interval)	P Value
		Against N= 266 (%)	In favour N= 476 (%)		
Mental Capacity	Non-Child-Oriented Responses (N=456)	70 (15)	386 (85)	2.69 (2.26, 3.21)	<0.001
	Child-Oriented Responses (N=286)	196 (69)	90 (31)	Reference	
Pathways & Circumstances	Non-Child-Oriented Responses (N=215)	33 (15)	182 (85)	1.52 (1.38, 1.67)	<0.001
	Child-Oriented Responses (N=527)	233 (44)	294 (56)	Reference	
Severity & Consequences	Non-Child-Oriented Responses (N=373)	55 (15)	318 (85)	1.99 (1.76, 2.26)	<0.001
	Child-Oriented Responses (N=369)	211 (57)	158 (43)	Reference	
Criminal Intent	Non-Child-Oriented Responses (N=449)	53 (12)	396 (88)	3.23 (2.67, 3.91)	<0.001
	Child-Oriented Responses (N=293)	213 (73)	80 (27)	Reference	

(e) Sexual Relationship: Contact Only

Domain	Nature of Response	Transfer Responses		Unadjusted Proportion Ratio (95% Confidence Interval)	P Value
		Against N= 531 (%)	In favour N=211 (%)		
Mental Capacity	Non-Child-Oriented Responses (N=337)	182 (54)	155 (46)	3.33 (2.54, 4.35)	<0.001
	Child-Oriented Responses (N=405)	349 (86)	56 (14)	Reference	
Pathways & Circumstances	Non-Child-Oriented Responses (N= 145)	61 (42)	84 (58)	2.72 (2.21, 3.35)	<0.001
	Child-Oriented Responses (N=597)	470 (79)	127 (21)	Reference	
Severity & Consequences	Non-Child-Oriented Responses (N=232)	102 (44)	130 (56)	3.53 (2.80, 4.44)	<0.001
	Child-Oriented Responses (N=510)	429 (84)	81 (16)	Reference	
Criminal Intent	Non-Child-Oriented Responses (N=193)	50 (26)	143 (74)	5.98 (4.72, 7.59)	<0.001
	Child-Oriented Responses (N=549)	481 (88)	68 (12)	Reference	

(f) Sexual Relationship: Pregnancy

Domain	Nature of Response	Transfer Responses		Unadjusted Proportion Ratio (95% Confidence Interval)	P Value
		Against N= 429 (%)	In favour N= 313 (%)		
Mental Capacity	Non-Child-Oriented Responses (N=478)	211 (44)	267 (56)	3.21 (2.44, 4.22)	<0.001
	Child-Oriented Responses (N=264)	218 (83)	46 (17)	Reference	
Pathways & Circumstances	Non-Child-Oriented Responses (N=220)	55 (25)	165 (75)	2.65 (2.26, 3.09)	<0.001
	Child-Oriented Responses (N=522)	374 (72)	148 (28)	Reference	
Severity & Consequences	Non-Child-Oriented Responses (N=309)	90 (29)	219 (71)	3.26 (2.69, 3.96)	<0.001
	Child-Oriented Responses (N=433)	339 (78)	94 (22)	Reference	
Criminal Intent	Non-Child-Oriented Responses (N=296)	48 (16)	248 (84)	5.83 (4.62, 7.35)	<0.001
	Child-Oriented Responses (N=445)	381 (86)	64 (14)	Reference	

Multi-variate Analysis

(a) Physical Violence & Grievous Injury

Domains	Nature of Response	Adjusted Proportion Ratio (95% Confidence Interval)	P Value
Mental Capacity	Non-Child Oriented	1.59 (1.24, 2.03)	<0.001
	Child Oriented	Reference	
Pathways and Circumstances	Non-Child Oriented	1.43 (1.23, 1.67)	<0.001
	Child Oriented	Reference	
Severity and Consequences	Non-Child Oriented	1.10 (0.94, 1.29)	0.246
	Child Oriented	Reference	
Criminal Intent	Non-Child Oriented	3.61 (2.72, 4.80)	<0.001
	Child Oriented	Reference	

(b) Physical Violence & Death

Domains	Nature of Response	Adjusted Proportion Ratio (95% Confidence Interval)	P Value
Mental Capacity	Non-Child Oriented	1.53 (1.26, 1.84)	<0.001
	Child Oriented	Reference	
Pathways and Circumstances	Non-Child Oriented	0.97 (0.89, 1.04)	0.411
	Child Oriented	Reference	
Severity and Consequences	Non-Child Oriented	1.03 (0.94, 1.13)	0.538
	Child Oriented	Reference	
Criminal Intent	Non-Child Oriented	3.75 (2.88, 4.90)	<0.001
	Child Oriented	Reference	

(c) Sexual Violence & Grievous Injury

Domains	Nature of Response	Adjusted Proportion Ratio (95% Confidence Interval)	P Value
Mental Capacity	Non-Child Oriented	1.49 (1.27, 1.76)	<0.001
	Child Oriented	Reference	
Pathways and Circumstances	Non-Child Oriented	1.04 (0.97, 1.11)	0.233
	Child Oriented	Reference	
Severity and Consequences	Non-Child Oriented	1.06 (0.97, 1.15)	0.194
	Child Oriented	Reference	
Criminal Intent	Non-Child Oriented	2.85 (2.21, 3.69)	<0.001
	Child Oriented	Reference	

(d) Sexual Violence & Death

Domains	Nature of Response	Adjusted Proportion Ratio (95% Confidence Interval)	P Value
Mental Capacity	Non-Child Oriented	1.64 (1.37, 1.97)	<0.001
	Child Oriented	Reference	
Pathways and Circumstances	Non-Child Oriented	1.03 (0.95, 1.11)	0.487
	Child Oriented	Reference	
Severity and Consequences	Non-Child Oriented	1.10 (0.99, 1.22)	0.063
	Child Oriented	Reference	
Criminal Intent	Non-Child Oriented	2.29 (1.83, 2.86)	<0.001
	Child Oriented	Reference	

(e) Sexual Relationship: Contact Only

Domains	Nature of Response	Adjusted Proportion Ratio (95% Confidence Interval)	P Value
Mental Capacity	Non-Child Oriented	1.45 (1.08, 1.94)	0.013
	Child Oriented	Reference	
Pathways and Circumstances	Non-Child Oriented	1.09 (0.89 ,1.33)	0.424
	Child Oriented	Reference	
Severity and Consequences	Non-Child Oriented	1.13 (0.87,1.47)	0.349
	Child Oriented	Reference	
Criminal Intent	Non-Child Oriented	4.39 (3.13, 6.15)	<0.001
	Child Oriented	Reference	

(f) Sexual Relationship: Pregnancy

Domains	Nature of Response	Adjusted Proportion Ratio (95% Confidence Interval)	P Value
Mental Capacity	Non-Child Oriented	1.47 (1.14, 1.90)	0.003
	Child Oriented	Reference	
Pathways and Circumstances	Non-Child Oriented	1.24 (1.09, 1.42)	<0.001
	Child Oriented	Reference	
Severity and Consequences	Non-Child Oriented	1.18 (0.98, 1.41)	0.081
	Child Oriented	Reference	
Criminal Intent	Non-Child Oriented	4.13 (3.08, 5.55)	<0.001
	Child Oriented	Reference	

Annexe 2

SAMVAD's Resources on Children in Conflict with the Law

▪ Training Curriculums

○ For Judicial Officers:

“Legal, Psychosocial & Mental Health Considerations in Juvenile Justice: Frameworks for Child-Inclusive Judicial Response to Children in Conflict with the Law” available here: https://drive.google.com/file/d/1LmeJNDBzSqAPwZApkdrqhJEeVyY0rfok/view?usp=drive_link

○ For Child Protection Functionaries:

“Working with Children in Conflict with Law: Implementing Child Protection, Mental Health & Law-related Interventions in Juvenile Justice Systems” available here: https://drive.google.com/file/d/1F144ponw7IHv4sOGR8ymM1xp21mu9UHT/view?usp=drive_link

○ For Mental Health Service Providers:

“Essential Child and Adolescent Mental Health Interventions & Psychosocial Care” available here: <https://drive.google.com/file/d/1L-hB7w2l2WAXe4s1Pj7BqANXw3RQwIh-/view?usp=sharing>

▪ NIMHANS Assessments for Children in Conflict with Law

○ Psychosocial & Mental Health Assessment Proforma available here:

https://docs.google.com/document/d/1gka6hDAwCQY7vveUFnKuhqr853zfZgg_/edit?usp=sharing&oid=100528329348518655686&rtpof=true&sd=true

○ Psychosocial & Mental Health Assessment Guidance Notes available here:

https://docs.google.com/document/d/10RuQ6HRIjOTmvtlqIhoL_tZT6JEhov0N/edit?usp=sharing&oid=100528329348518655686&rtpof=true&sd=true

○ Preliminary Assessment Proforma available here:

<https://docs.google.com/document/d/1oRZ8k5zbPluWYZHFAJwRL9RuwwqgUYmc/edit?usp=sharing&oid=100528329348518655686&rtpof=true&sd=true>

○ Preliminary Assessment Guidance Notes available here:

<https://docs.google.com/document/d/1V4AajWcKUKJtD9jztX08iZAxNXagsrDC/edit?usp=sharing&oid=100528329348518655686&rtpof=true&sd=true>

▪ Relevant Publications

- Ramaswamy, S., Seshadri, S., & Bunders-Aelen, J. (2021). Navigating Juvenile Transfer Laws: The Application of Vulnerability, Mental Health, and Rights Frameworks in Psycholegal Assessments of Children in Conflict with the Law. In Innovations in Global Mental Health. S. Okpaku (ed.) (pp. 1–30). Springer Nature. https://doi.org/10.1007/978-3-319-70134-9_142-1

- Ramaswamy, S., Seshadri, S., & Bunders-Aelen, J. (2021). Building a research agenda for mental health assessments in resolving legal dilemmas on adolescent sexual consent. *Asian Journal of Psychiatry*, 66, 102907. <https://doi.org/10.1016/j.ajp.2021.102907>
- Ashok, S. S., Ramaswamy, S., & Seshadri, S. (2022). A Transdisciplinary Perspective on the Adolescent Consent-Abuse Binary. *Journal of Indian Association for Child and Adolescent Mental Health*, 18(3), 210–213. <https://doi.org/10.1177/09731342221143854>
- Ramaswamy, S., Chaitra, K., & Seshadri, S. (2019). Critical Issues in Psychosocial Care & Mental Health of Children in Conflict with the law—A Practitioner’s Perspective (p. 21). National Institute of Mental Health & Neurosciences & Dept. of Women & Child Development, Government of Karnataka. Available @ <https://www.nimhanschildproject.in/wp-content/uploads/2020/03/Critical-Issues-in-Psychosocial-Care-and-Mental-Health-of-Children-in-CCL.pdf>

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