

A COMPARATIVE STUDY ON THE LEGAL FRAMEWORK GOVERNING JUVENILE OFFENDERS IN MALAYSIA AND INDIA

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ABSTRACT

*Malaysia's juvenile justice system has experienced substantial alteration, notably after the introduction of the Child Act 2001, which replaced the Juvenile Courts Act 1947 (Act 611) and brought it in line with the Convention on the Rights of the Child. Despite this legal move, fundamental flaws persist in the system's actual operation. The main difficulty is the uncertain prioritising of rehabilitation above vengeance, notably in section 91 of the Act, which lacks explicit guidelines to orient the Court for Children towards rehabilitative justice. Furthermore, juvenile criminals are still sentenced to adult criminal proceedings, and diversionary alternatives are underutilised, as demonstrated in *Public Prosecutor v Chong Waijun* [2025] MLJU 514. The purpose of this study is to determine how well Malaysia's juvenile justice system meets its rehabilitative promises while also adhering to international legal norms. The study uses a doctrinal and qualitative legal research approach to conduct a comparative analysis of India's Juvenile Justice (Care and Protection of Children) Act 2015. The findings show that Malaysia's system falls short of establishing child-centered justice and consistently using international instruments like the Beijing Rules. The research proposes broad legislative change, clearer judicial standards, and increased use of diversionary procedures. It finds that significant reforms are required to guarantee a rights-based, rehabilitative approach to juvenile justice in Malaysia.*

Keywords: Child Act 2001; Juvenile Offender; Juvenile Justice; Rehabilitation; Restorative Justice.

INTRODUCTION

A child in Malaysia is defined as an individual under the age of 18 according to the Child Act 2001, which is consistent with Malaysia's ratification of the Convention on the Rights of the Child. Section 82 of the Penal Code states that any youngster under the age of ten is not held criminally responsible for their behaviour. Meanwhile, a criminal aged 14 to 17 is referred to as a youthful offender (Oxford University Press, 2002). Under the Juvenile Courts Act 1947, section 2 applied to offender aged between 10 and 18. In this context, following Malaysia's ratification of the Convention on the Rights of the Child (CRC) in 1995, the

Act was replaced by the Child Act 2001, which established a specialized Children's court. Moreover, section 11 confers jurisdiction on the court to hear charges against minors, while section 83(1) requires that arrest, detention and trial procedures for children follow the Child Act rather than adult criminal procedures. Nevertheless, implementation challenges persist, particularly in ensuring that rehabilitation is effectively carried out.

In addition, Malaysia's juvenile justice system is premised on protecting the rights of children in line with international standards such as the CRC and the United Nations Standard Minimum Rules for the

Administration of Juvenile Justice (Bejing Rules). Section 91 of the Child Act reinforces this approach by discouraging the use of the term “punishment” in cases involving juveniles (Haji Zainol et al., 2024). While the legislative framework demonstrates a commitment to rehabilitation, its success depends on consistent judicial application and institutional practice. Without this, the rights based foundation risks remaining largely aspirational rather than practical.

The implementation of the juvenile justice system still shows significant gaps in its approach toward juvenile offenders, particularly in section 91 of the Child Act 2001. This section provides for various orders that may be imposed by the Court for Children. However, it does not clearly emphasise the principle of “rehabilitation over retribution.” The absence of clear guidelines on rehabilitation leads to ambiguity in the sentencing of children who have been found guilty under the law. In contrast, the juvenile justice system in India, specifically section 18 of the Juvenile Justice (Care and Protection of Children) Act 2015, offers a more comprehensive approach by clearly prioritising rehabilitation and reintegration of juvenile offenders. For instance, section 18(1)(a) allows a child to return home after receiving advice or a warning, following appropriate investigation and counselling for both the child and his or her parents or guardians. The lack of clear rehabilitative measures in Malaysia's Child Act 2001 creates a gap that can hinder the full rehabilitation and development of juvenile offenders.

In furtherance of this, this issue is evident in the case of *Public Prosecutor v Chong Waijun* [2025] MLJU 514, where the accused, a child, was charged under the Dangerous Drugs Act 1952. The case raised concerns because, although the court had powers under the Child Act to order rehabilitation, the prosecution procedure still applied punitive adult laws rather than

rehabilitative ones. In her judgment, Magistrate Anis Hanini Abdullah, presiding over the Ipoh Magistrates' Court, explicitly stated that ‘the court recognises that the paramount objective in juvenile sentencing is not retribution but rehabilitation, ensuring that young offenders are given a genuine opportunity to reform rather than being subjected to punitive measures that may exacerbate delinquent tendencies.’ She also expressed concern over the proposal to place the offender in Henry Gurney School, noting that “placing PKK in Henry Gurney School would expose him to a more hardened criminal environment, which may be detrimental to his rehabilitation”. These statements reflect judicial concern over the existing legal system's tendency to punish children through approaches that are not in line with rehabilitative principles. Overall, these statements show that although national legal policy prioritises the rehabilitation of juvenile offenders, weaknesses in the implementation and the application of adult laws to children still occur. This not only creates inconsistencies in justice but also indirectly contributes to the increasing number of repeat juvenile offenders, as they do not receive constructive or holistic intervention in line with true juvenile justice principles. Studies also have shown that punitive measures without rehabilitative components often lead to higher rates of reoffending among juvenile offenders (United Nations Office on Drugs and Crime, 2020). This research critically examines the juvenile justice system in Malaysia by focusing on the legal treatment of juvenile offenders. It aims to identify the fundamental principles underlying the concept of juvenile justice in addressing juvenile delinquency, to evaluate the extent to which the legal frameworks in Malaysia and India provide for the effective management of juvenile offenders, and to propose improvements that would enhance the rehabilitative focus of the Malaysian juvenile justice system in line with international best practices.

This study focuses primarily on examining the legal framework governing juvenile offenders in Malaysia, with particular emphasis on how existing laws address issues of rehabilitation and protection. It further adopts a comparative perspective by analysing India's juvenile justice system to draw lessons and identify models that promote a more child centered and rehabilitative approach. The main legislation under review is the Child Act 2001 (Act 611), supplemented by relevant provisions of the Penal Code and the Criminal Procedure Code. Judicial interpretation is also considered through key cases such as *Public Prosecutor v Chong Waijun* [2025] MLJU 514 and *PP v Morah Chekwube Chukwudi* [2017] MLRAU 276, which illustrate the practical application of juvenile justice principles and highlight gaps in the protection of children in conflict with the law. In addition, the comparative reference to India provides insights into best practices and potential reforms that could strengthen Malaysia's juvenile justice framework.

This research adopts a doctrinal legal methodology to address the stated objectives. Doctrinal analysis is primarily concerned with determining "what the law is" through a structured examination of statutory provisions and judicial decisions. As noted by Shukla (2023), this approach is typically library based and relies on a systematic review of legal sources to clarify and interpret established doctrines. In addition, a qualitative perspective is integrated to provide a deeper understanding of how these legal provisions operate in practice. This approach is also normative in nature and does not aim to explain or predict human behavior as seen in social or sociological research. Instead, it emphasises determining how individuals ought to act according to the existing legal framework. This study also adopts a qualitative approach, as it aims to conduct an in-depth analysis of the juvenile justice system, particularly in relation to the legal treatment

of juvenile offenders and the effectiveness of rehabilitation programs within Malaysia's juvenile justice framework. Qualitative research is an approach that focuses on exploring human experiences, understanding the meanings underlying particular phenomena, and interpreting the social world from the perspectives of those involved. Unlike the more structured and objective nature of quantitative research, the qualitative approach prioritises words, narratives, and interpretive meaning over numerical data or statistics (Mills. J, & Birks. M, 2014). The primary sources referenced in this study consist of statutes and official reports issued by legislative bodies or Parliament. Secondary sources include scholarly books, journal articles, newspapers, and theses written by academics concerning the juvenile justice system in Malaysia. The data collection technique employed in this study includes library-based research to achieve the research objectives. This involves the examination of statutes, case law, journals, articles, books, and official reports issued by legislative institutions. A review of the existing literature reveals several Malaysian publications that explore the juvenile justice system in depth, particularly with regard to the legal treatment of juvenile offenders and the effectiveness of rehabilitation programs within the Malaysian context. Therefore, foreign journals and articles will also be referred to in this study to ensure comprehensive analysis.

JUVENILE JUSTICE SYSTEM IN MALAYSIA

The juvenile justice system in Malaysia was established under the Child Act 2001, which introduced the Juvenile Court along with protective provisions and special procedures for handling child offenders. Malaysia's juvenile justice system has developed dramatically over the last several decades, from a punitive one to one that is more consistent with international human rights standards. According to Abdullah and Nahid

Ferdousi (2024), Malaysia's ratification of the United Nations Convention on the Rights of the Child (UNCRC) in 1995 marked a turning point in shaping its juvenile justice system, compelling the state to incorporate principles of child protection, rehabilitation and reintegration into domestic law. The Child Act 2001 reflects these commitments by embedding key UNCRC principles, including the best interests of the child, substantive justice and a rehabilitative focus. Nonetheless, the effectiveness of these measures remains constrained by persistent challenges such as weak inter agency coordination, limited resources and insufficient monitoring mechanisms. The cited study serves as an important reference, providing both historical context and an analysis of the practical realities influencing the operation of Malaysia's juvenile justice system.

The primary legislation governing juvenile justice includes the Child Act 2001, the Penal Code, and the Criminal Procedure Code 1976. In Malaysia, a "child" is defined as someone under the age of 18. The juvenile court system, created in 1947 and codified by the 2001 Act, hears matters involving minors and is presided over by a magistrate aided by two lay advisers. The Act emphasises privacy and child-friendly processes during trials. Section 91 of Child Act authorises the court to make non-custodial remedial orders, such as admonishment, supervision, and placement in the care of relatives. Besides that, according to Abdullah & Nahid Ferdousi, (2024), it can be determined that institutional care remains an important component of the system with facilities such as Henry Gurney Schools and Tunas Bakti Schools which offering rehabilitation services under either the Social Welfare Department or the Prison Department which depending on the seriousness of the offence. In this situation, children may stay at these facilities until the age of 21. Additionally, Probation Officers also play a vital role by generating extensive social inquiry reports to support judicial

decisions. According to Mustaffa & Mazlan (2022), despite these developments, Malaysia has faced criticism for its insufficient use of diversionary devices. In addition, studies also indicate that the limited availability of diversion alternatives, along with an overreliance on formal, punitive criminal procedures, may undermine the rehabilitative effectiveness of the juvenile justice system. Therefore, it is essential to conduct research to examine and identify various effective sentencing approaches for children, with the aim strengthening rehabilitation and reducing recidivism (Human Rights Commission of Malaysia, 2004).

In January 1996, the Malaysian government established a Cabinet Committee to address rising social issues, leading to the formulation of the *Pelan Tindakan Sosial (PINTAS)* or Social Action Plan. This initiative reviewed several statutes relating to child protection, including the Child Protection Act 1991, the Women and Girls Protection Act 1973 and the Juvenile Courts Act 1947. All three were subsequently repealed and consolidated into the Child Act 2001 which sought to harmonise laws on childcare, protection and rehabilitation while standardizing measures applicable to cases involving juvenile offenders (Nazeri N, 2007.). The term 'juvenil' can be defined as a young, immature person or a child, as stated in Kamus Dewan (2007). Children who are charged under the law have the right to legal protection as enshrined in Articles 37 and 40 of the Convention on the Rights of the Child. According to a study that has been conducted by the Ministry of Women, Family and Community Development and UNICEF Malaysia, the term juvenile justice refers to the legal framework, standards, procedures, and institutional bodies concerning juvenile offenders. Indirectly, the juvenile justice system in Malaysia plays a crucial role in handling criminal cases involving children and adolescents.

JUVENILE JUSTICE SYSTEM IN INDIA

The Indian juvenile justice system is founded on the principle that children in conflict with the law should be treated with care, compassion and focus on rehabilitation rather than punishment. According to Aggarwal et al. (2011), the Indian juvenile justice system is based on the notion that children who have broken the law should be dealt with care, compassion and reformative aim. In this context, rather than being punished in the same way that adult offenders are. This approach is in accordance with constitutional protections and India's international commitments, notably the United Nations Convention on the Rights of the Child (1989), which emphasises the need to protect and rehabilitate child offenders in a way compatible with their dignity and rights.

The constitutional legality of this rehabilitative method was upheld in the landmark case of *Salil Bali v Union of India & Another* [2013] 7 SCC 705. In this case, the Supreme Court emphasising that the law must prioritise rehabilitation over retribution and cannot be changed only because of public pressure or high profile cases. The court reiterated that the existing legal system was in accordance with India's international commitments under the UNCRC. According to Parliament of India (2015), the Juvenile Justice (Care and Protection of Children) Act 2015 has been implemented in response to public outrage over high profile cases such as the 2012 Delhi gang rape. The fact that one of the accused was a juvenile sparked national outrage and intense scrutiny of the existing juvenile justice framework. In response to public demand, the government has established the J.S. Verma Committee to suggest legal reforms for better protection of women. The committee has maintained a strong stance in support of retaining the juvenile age limit at 18 years and has emphasised that any reform should be in line with constitutional morality and international obligations (Verma J S,

Leila Seth and Gopal Subramaniam, 2013). A significant and contentious change was the introduction of provisions allowing juveniles aged 16 to 18 years to be tried as adults for heinous offences, depending on a preliminary evaluation of their mental maturity and responsibility by the Juvenile Justice Board (JJB).

In a study by Palak Singh (2020), the author provides a comprehensive examination of the evolution of India's juvenile legal system, tracing its development from the British colonial era to the implementation of the Juvenile Justice (Care and Protection of Children) Act 2015. The article also analyses the application of the principle of "rehabilitation over retribution", and highlights the controversy surrounding the 2015 Act, particularly its provision allowing juveniles aged 16 to 18 who commit serious offences to be tried as adults, subject to a preliminary assessment by the Juvenile Justice Board.

According to Aggarwal et al. (2011), the Juvenile Justice (Care and Protection of Children) Act 2015 was enacted to replace the earlier Juvenile Justice Act 2000 in response to the need for a more robust and effective justice system that incorporates both deterrent and reformative approaches. Besides that, recognizing that juveniles require a different treatment from adults, Parliament emphasised that children should be given greater opportunities for transformation and rehabilitation which is achievable only through a specialized justice framework. In this context, a child is also defined as any person who has not completed 18 years of age as stated in section 2(12) of Juvenile Justice (Care and Protection of Children) Act 2015. The act also further classifies children into two categories which are children in need of care and protection and children in conflict with law as outlined in section 2(13) of Juvenile Justice (Care and Protection of Children) Act 2015. This explicit classification and legislative structure reflect the Act's

fundamental goal of ensuring that juveniles are handled with in a manner that prioritises both their welfare and rehabilitation.

BALANCING REHABILITATION AND RETRIBUTION WITHIN MALAYSIA'S JUVENILE JUSTICE FRAMEWORK

According to Ahmad et al. (2022), the administration of juvenile justice in Malaysia, regulated by the Child Act 2001 has displayed numerous fundamental flaws that impede the complete protection of children in confrontation with the law. Section 91 of the Child Act 2001 allows the court for children a variety of punishment alternatives for juvenile offenders, including detention in a place of refuge or the Henry Gurney School. However, the Act has placed insufficient emphasis on rehabilitation as the primary goal. This lack of clarity is especially problematic in light of Malaysia's obligations under Article 40(1) of the Convention on the Rights of the Child (CRC), which emphasises the need of juvenile justice systems to promote the reintegration of children into society and foster their constructive role within it (Ruggiero, 2022).

The treatment of juvenile offenders under adult penal law remains a troubling concern within the justice system. This issue was clearly illustrated in *Public Prosectur v Chong Waijun* [2025] MLJU 514, where a juvenile was charged under the Dangerous Drugs Act 1952 which is a statute designed primarily for adult offenders. Despite the court's recognition that rehabilitation should be prioritised over punitive measures, the

legal process applied in this case contradicted the fundamental principles of juvenile justice. Magistrate Anis openly acknowledged the importance of focusing on the child's rehabilitation rather than resorting to harsh punishment. This case not only highlights the structural gaps in the current legal framework but also reflects a broader tension between punitive laws and the rehabilitative aims of juvenile justice. It underscores the urgent need to reassess how juveniles are prosecuted, ensuring that legal responses align with the principles of rehabilitation and child welfare, rather than exposing young offenders to environment that may worsen their situation. In addition, the rehabilitative philosophy enshrined in the Child Act 2001 and reinforced by the case of *PP v Morah Chekwube Chukwudi* [2017] MLRAU 276 was also considered by the court. It was emphasised that, in accordance with these principles, an alternative corrective approach should be pursued. The court was therefore of the view that punitive measures alone were insufficient, and that corrective strategies focusing on the juvenile's reintegration and personal development were warranted. Nevertheless, this decision has emphasized an essential point, while judicial discretion might tend towards rehabilitation, the structural limits of the law prevent the continuous implementation of child-friendly justice concepts (Human Rights Commission of Malaysia, 2008.). This instance demonstrates the discrepancy between the legal framework's rehabilitative goal and actual execution.

TABLE 1. Juvenile Facilities in Malaysia

State	Juvenile Rehabilitation Facility	Gender Intake	Managed by
Perlis	Rumah Kanak-Kanak Arau	Mixed	Department of Social Welfare (Malaysia)
Kedah	Asrama Akhlak Pokok Sena	Male	Department of Social Welfare (Malaysia)
	Asrama Akhlak (P) Jitra	Female	

Pulau Pinang	Sekolah Tunas Bakti Telok Air Tawar	Mixed	Department of Social Welfare (Malaysia)
	Asrama Akhlak Paya Terubong	Male	
Perak	Sekolah Tunas Bakti Taiping	Mixed	Department of Social Welfare (Malaysia)
	Sekolah Henry Gurney Wanita, Batu Gajah	Female	Malaysian Prison Department
Selangor	Pusat Perkembangan Kemahiran Kebangsaan Serendah	Mixed	Department of Social Welfare (Malaysia)
	Sekolah Integriti Kajang	Mixed	Malaysian Prison Department
Kuala Lumpur	Sekolah Tunas Bakti Sungai Besi	Male	Department of Social Welfare (Malaysia)
	Asrama Sentosa Asrama Bahagia Kampung Pandan	Female	Department of Social Welfare (Malaysia)
Melaka	Sekolah Tunas Bakti Sungai Lereh	Male	Department of Social Welfare (Malaysia)
	Sekolah Henry Gurney Telok Mas	Mixed	Malaysian Prison Department
Negeri Sembilan	Rumah Kanak-Kanak Rembau	Mixed	Department of Social Welfare (Malaysia)
Johor	Asrama Akhlak Lelaki Kempas	Male	Department of Social Welfare (Malaysia)
	Sekolah Integriti Kluang	Mixed	Malaysia Prison Department
Pahang	Rumah Kanak-Kanak Tengku Ampuan Fatimah, Kuantan	Mixed	Department of Social Welfare (Malaysia)
	Sekolah Integriti Bentong	Female	Malaysia Prison Department
Terengganu	Sekolah Tunas Bakti Marang	Male	Department of Social Welfare (Malaysia)
	Sekolah Integriti Marang		Malaysia Prison Department
Sabah	Sekolah Tunas Bakti Kota Kinabalu	Male	Department of Social Welfare (Malaysia)
	Sekolah Henry Gurney Kota Kinabalu	Female	Malaysian Prison Department
Sarawak	Sekolah Tunas Bakti Kuching	Male	Department of Social Welfare (Malaysia)
	Sekolah Henry Gurney Puncak Borneo, Kuching	Mixed	Malaysian Prison Department

The Malaysian Prison Department (2020), notes that its role within the criminal justice system extends beyond carrying out custodial sentences to include rehabilitation programmes that support reintegration. With backing from the Ministry of Home Affairs and the Ministry of Education, prison based initiatives such as education and skills training are aligned with the national *Education for All* agenda championed by UNESCO.

In Perlis, Rumah Kanak-Kanak Arau operates as a mixed gender institution under the Department of Social Welfare, focusing on care and protection rather than punitive measures. Its approach reflects the family based model of Rumah Tunas Harapan (RTH), which provides a home like environment for children who cannot remain with their biological families (MyGOV, 2024). In Kedah, rehabilitation services are delivered through gender specific facilities which Asrama Akhlak Pokok Sena for boys and Asrama Akhlak Jitra for girls. Both are administered by the Department of Social Welfare and function as non-custodial hostels aimed at moral development and behavioural reform, consistent with the objectives of Probation Hostels under section 61 of the Child Act 2001.

In Pulau Pinang, juvenile rehabilitation is provided through two facilities under the Department of Social Welfare which are Sekolah Tunas Bakti Telok Air Tawar which accepts both male and female juveniles. Meanwhile, Asrama Akhlak Paya Terubong which is limited to male offenders. Sekolah Tunas Bakti operates under section 65 of the Child Act 2001 as a semi custodial institution combining detention with educational and vocational programmes. By contrast, Asrama Akhlak Paya Terubong functions under section 61(1) as a placement centre for youths involved in criminal activity or deemed beyond parental control. It accommodates those on remand, awaiting transfer, or serving Probation of Morality

Orders, with the primary aim of offering structured rehabilitation and treatment within a controlled environment before reintegration into the community (Department of Social Welfare Penang, 2023).

In Perak, Sekolah Tunas Bakti Taiping serves female and male juveniles under the supervision of Department of Social Welfare Malaysia (JKM), whilst Sekolah Henry Gurney Wanita, Batu Gajah is a detention facility for female juvenile offenders overseen by the Malaysian Prison Department. The Henry Gurney schools, developed by the Prison Department offer a more secure correctional approach which focuses on juvenile offenders who have engaged in more serious or repeated criminal conduct (Department of Social Welfare Malaysia, 2023). In Selangor, Pusat Perkembangan Kemahiran Kebangsaan Serendah under Department of Social Welfare Malaysia has offers vocational training as well as behavioural reform, whilst Sekolah Integriti Kajang under the Prison Department focuses on detained youths who require structured correctional education. Sekolah Integriti facilities are developed to support the rehabilitation of juveniles within the prison system with a rehabilitation rather than punitive focus (Jabatan Kebajikan Masyarakat, 2023). In addition, the Department of Social Welfare Malaysia operates three schools in Kuala Lumpur which are Sekolah Tunas Bakti Sungai Besi, Asrama Sentosa and Asrama Bahagia Kampung Pandan. These shelters follow the paradigm of Taman Seri Puteri (TSP), institutions that care for girls in moral danger or needing rehabilitation under section 55 of the Child Act 2001 (Department of Social Welfare Malaysia, 2023).

Furthermore, Melaka has features both Sekolah Tunas Bakti Sungai Lereh which is under supervision of Department of Social Welfare Malaysia and Sekolah Henry Gurney Telok Mas which is operated by the Malaysian Prison Department serves both

male and female convicts. This dual approach represents the state's combination of rehabilitative and correctional services. Meanwhile in Negeri Sembilan, Rumah Kanak-Kanak Rembau is a mixed-gender of Department of Social Welfare Malaysia facility which centred on care and shelter rather than discipline, comparable to Darul Kifayah which assists orphans and underprivileged children through moral guidance and religious education (Federal Territory Islamic Religious Council, 2024). Next, Johor has Asrama Akhlak Lelaki Kempas which is handled by the Department of Social Welfare Malaysia, while Sekolah Integriti Kluang is managed by the Malaysian Prison Department. This division highlights the dual track approach of social welfare based and correctional rehabilitation (Department of Social Welfare Malaysia, 2023). Moreover, Pahang operates Rumah Kanak-Kanak Tengku Ampuan Fatimah Kuantan which is managed by the Department of Social Welfare Malaysia, while Sekolah Integriti Bentong is managed by the Malaysian Prison Department. Thus, these institutions reflect a complementary structure that meets both protective care and criminal rehabilitation demands (Department of Social Welfare Malaysia, 2023).

In Terengganu, Sekolah Tunas Bakti Marang and Sekolah Integriti Marang which are managed by Malaysian Prison Department and Department of Social Welfare Malaysia serve the dual mandate of welfare-based training and prison-based rehabilitation. Meanwhile Sabah has Sekolah Tunas Bakti Kota Kinabalu which is operated by Department of Social Welfare Malaysia and Sekolah Henry Gurney which particularly for female juvenile offenders is managed by Malaysian Prison Department (Department of Social Welfare Malaysia, 2023). This structure guarantees that both male and female minors in Sabah have access to state funded rehabilitation treatments. Finally, Sarawak has a Sekolah Tunas Bakti Kuching which particularly for male juvenile offenders, whereas Sekolah Henry Gurney

Puncak Borneo Kuching is managed by the Malaysian Prison Department, highlighting the theme of a bifurcated rehabilitation and custodial juvenile justice infrastructure.

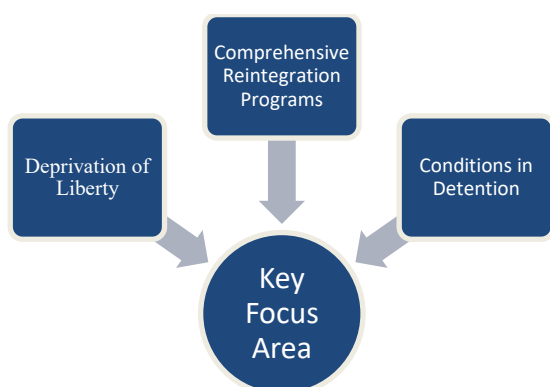
In addition, further consideration relates to the development capacity of children compared with adults. Studies show that juveniles often lack the maturity to fully appreciate the consequences of their conduct to resist peer influence or to make rational decisions in the same way as adult offenders. This raises doubts about the effectiveness of deterrence based penalties such as imprisonment or corporal punishment which presuppose that offenders act after weighing risks and benefits. In fact, many children engage in unlawful behaviour impulsively or under external pressure without anticipating long term repercussions. Although courts sometimes argue that rehabilitative or less severe sentences could encourage delinquency, such reasoning disregards the fact that young offenders rarely comprehend the seriousness or proportionality of punishment. Thus, rehabilitation offers a more appropriate response as it better reflects children's cognitive limitations and supports constructive reintegration rather than isolation (Samuri & Mohd Awal, 2009).

Therefore, Malaysia's juvenile justice framework exemplifies a structured but fragmented system that combines welfare based rehabilitative with correctional approaches across various states. While the establishment of several institutions demonstrates the country's commitment to combat juvenile delinquency, the system is still profoundly divided between social welfare and initiatives and punitive punishments. This dual track approach highlights the critical need for comprehensive, child centered reforms that are consistent with international standards, ensuring that all children in conflict with the law are treated with dignity, receive effective rehabilitation and are protected from institutional harm. Strengthening statutory clarity, improving diversion programs and

promoting community-based alternatives would be critical to Malaysia's juvenile justice system becoming more cohesive and rights based.

COMPARATIVE INSIGHTS FROM INDIA'S JUVENILE JUSTICE FRAMEWORK AND LESSONS FOR REFORM IN MALAYSIA

FIGURE 1. Recommendations for Reforming
Malaysia's Juvenile Justice System



Several substantial improvements are needed to strengthen Malaysia's juvenile justice system and ensure compliance with international human rights norms. These recommendations are based on the comparative experiences of other countries, notably those with established child justice systems, as well as the provisions of the Convention on the Rights of the Child (CRC).

First and foremost, by referring to Figure 1, Malaysia should evaluate its legislation, regulations and judicial practices to ensure that loss of liberty for children is only used as a last resort. Although section 84 of the Child Act 2001 mentions custody as a last resort, it lacks enough statutory safeguards to ensure strict compliance in practice (Ministry of Women, Family and Community Development and UNICEF Malaysia, 2013). In contrast, section 15 of the Indian Juvenile Justice (Care and Protection of Children) Act 2015, juveniles aged 16 to 18 years old who are being accused of heinous offences, the Juvenile Justice Board (JJB) must conduct a

preliminary assessment of the child's capacity, ability to understand the consequences and circumstances of the offence before deciding whether to transfer the case to a regular court for trial as an adult. This ensures that institutionalisation is not automatic and alternatives such as counselling and community service are considered first (National Law University Odisha, 2024). As a result, it is critical that Malaysia establish explicit legislative criteria requiring that detention can be considered only after less restrictive alternatives have been thoroughly evaluated.

Next, the Child Act 2001 should be changed to contain specific measures protecting children's rights during arrest, inquiry and police detention. Malaysia's legislative framework currently lacks explicit protections for juveniles at these important times (Ab Aziz et al., 2022). The Juvenile Justice (Care and Protection of Children) Act 2015 of India provides a practical model through its Juvenile Justice Act 2015 which mandates the establishment of Special Juvenile Police Units and the appointment of Child Welfare Police Officers in every police station which can be seen in section 107 of Juvenile Justice (Care and Protection of Children) Act 2015. Thus, Malaysia can improve juvenile protections and align with global best practices and uphold CRC principles by implementing similar procedural measures such as designated officers training, prohibition of adult lock up detention and mandated guardian and legal counsel presence.

Besides that, by referring to Figure 1, Malaysia should progressively transition from its current model of large scale centralised institutions such as Sekolah Tunas Bakti (STB) and juvenile hostels to smaller, decentralized and community based open detention facilities (Ministry of Women, Family and Community Development and UNICEF Malaysia, 2013). This adjustment would promote a more child friendly and rehabilitative environment,

lowering the chance of institutionalisation and improving reintegration outcomes. In addition, there is an urgent need to improve the physical architecture and operational procedures of existing hostels, Henry Gurney School and Sekolah Tunas Bakti. In this context, these institutions should be transformed into home like therapeutic environments rather than maintaining a prison like atmosphere marked by discipline, drills and strict regimentation. The emphasis should be on nurturing care, emotional support and therapeutic interventions (Ministry of Women, Family and Community Development and UNICEF Malaysia, 2013). Moreover, Malaysia's juvenile justice system would substantially benefit from implementing a more thorough and systematic reintegration framework, particularly one that is consistent with internationally accepted best practices. In this regard, India's community based care approach under the Juvenile Justice (Care and Protection of Children) Act 2015 offers a more child friendly alternative where they have provided a smaller, decentralised facilities such as Observation Homes, Special Homes and Fit Facilities which designed to provide tailored care, focusing on psychological support education and emotional well-being (Prachi CP, n.d). Therefore, Malaysia could benefit by restructuring its institutional modes towards smaller, community-oriented settings ensuring detention centres function as therapeutic environment that promote healing, social adjustment and psychological well-being. Thus, by undertaking legislative amendments, strengthening procedural safeguards, decentralizing detention facilities and establishing a holistic reintegration framework it can helps Malaysia advance towards a more rehabilitative and rights based juvenile justice system which prioritises the best interests of a child while enhancing long term reintegration outcomes and reducing reoffending.

CONCLUSION

In conclusion, this study emphasises the critical need for Malaysia to reform its juvenile justice system in ensure stronger compliance with international human rights standards and to foster a truly rehabilitative approach. Although the Child Act 2001 was an important legislative step towards harmonizing Malaysian legislation with the Convention on the Rights of the Child (CRC), there are still gaps in its actual implementation. Current provisions, particularly section 91 of the Child Act are vague and insufficiently direct courts to prioritise rehabilitation over punitive measures, resulting in inconsistent outcomes. A comparison with India's Juvenile Justice (Care and Protection of Children) Act 2015 shows that Malaysia's legal framework still lacks comprehensive diversion options and defined processes for community based rehabilitation. The case of *Public Prosecutor v Chong Waijun* [2025] MLJU 514 and *PP v Morah Chekwube Chukwudi* [2017] MLRAU 276 demonstrates the courts' limited ability to completely apply rehabilitative goals due to structural limits in the law. Furthermore, Malaysia's current institutional structure which is centred on large scale detention facilities such as Sekolah Tunas Bakti and Henry Gurney Schools remains fragmented, combining welfare oriented and correctional approaches without a cohesive rehabilitative strategy. Without therapeutic, child sensitive rehabilitation programming, these institutions risk repeating recidivism cycles rather than aiding reintegration into society. Drawing on India's holistic reintegration model, this study proposes that Malaysia adopt a more community based rehabilitative juvenile justice system. Reform efforts should focus on reducing the use of detention to a last resort, improving procedural safeguards for children during arrest and investigation and redesigning institutional settings to provide a home like therapeutic environment. Individualised reintegration plans that include vocational training and

family assistance are also required to ensure that juveniles have the tools they need for effective reintegration.

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CONFLICT OF INTEREST

The authors declare that they have no conflict of interest in this study.

AUTHORS' CONTRIBUTION

All authors contributed to the final version and approved the submission.

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