



Fall 1-1-2017

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Recommended Citation

Alixandria Davis, *From Playground to Prison: A Comparison of the United States' and India's Transfer Policies*, 32 Emory Int'l L. Rev. Recent Dev. 1015 (2017).

Available at: <https://scholarlycommons.law.emory.edu/eilr-recent-developments/6>

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FROM PLAYGROUND TO PRISON: A COMPARISON OF THE UNITED STATES' AND INDIA'S TRANSFER POLICIES

INTRODUCTION

Juvenile courts allegedly work to hold youth accountable for wrongdoing, reduce crime, and increase public safety.¹ However, trying, convicting, and sentencing children as adults under transfer laws in the juvenile justice system frequently work against these goals.² The United States is the global leader for using transfer laws as the solution to juvenile crime.³ Recently, India followed the United States' example by adopting its own transfer provision.⁴ Research on youth in the United States demonstrates that transfer provisions are not suitable solutions to juvenile crimes.⁵ This Essay argues that India should be wary of following the United States' example, especially given the negative consequences of having such transfer laws.

This Essay proceeds as follows: Part I will discuss the history of the juvenile justice system in the United States and in India. Part I will also dive deeper into why India has followed in the United States' footsteps. Lastly, it will address how the transfer process in the United States and India operate. Part II will discuss the negative consequences of having transfer provisions and their impact on the United States' youth. It will then discuss the negative impact India is likely to encounter for following the same trajectory as the United States.

¹ BENJAMIN CHAMBERS & ANNIE BALCK, BECAUSE KIDS ARE DIFFERENT: FIVE OPPORTUNITIES FOR REFORMING THE JUVENILE JUSTICE SYSTEM 1, 3 (Dec. 2014), <http://modelsforchange.net/publications/718>.

² *Id.*; See AARON KUPCHIK, JUDGING JUVENILES: PROSECUTING ADOLESCENTS IN ADULT AND JUVENILE COURTS 109–10 (2006).

³ Joe Lambe, *US Leads the World in Sending Children to Adult Prison*, TRUTH OUT (Sept. 15, 2009), <http://www.truth-out.org/archive/component/k2/item/86068-us-leads-the-world-in-sending-children-to-adult-prison?Itemid=228article>.

⁴ See *infra* Section II.B.

⁵ UCLA SCH. OF LAW JUVENILE JUSTICE PROJECT, THE IMPACT OF PROSECUTING YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM 3 (2010), available at <http://www.campaignforyouthjustice.org/documents/UCLA-Literature-Review.pdf>.

I. HISTORY OF JUVENILE JUSTICE

A. *Evolution of Juvenile Justice in the United States*

The evolution of the juvenile justice system in the United States is quite extensive, however the most relevant time periods for this Essay can be divided into two phases: the alternative phase and fearful phase. During the alternative phase, which began in the early 1970s, there was a strong push for deinstitutionalization and community-based programs.⁶ In 1974, deinstitutionalization and community-based programs were initiated when Congress passed the Juvenile Justice and Delinquency Prevention Act, which provided monetary incentives to states that would implement community-based programs as an alternative to institutionalization.⁷ However, the alternative phase was pushed out by the media and replaced with the fearful phase, which began in the mid-1970s.⁸

During the fearful phase in the mid-1980s, the media emphasized the rise in violent crimes.⁹ Seeing images of young murder victims and school shootings in the evening news led to public fear and outcry.¹⁰ Along with the media, authors and politicians continued to blame youth, painting a harsh and unsympathetic picture:

America is now home to thickening ranks of juvenile “super-predators”—radically impulsive, brutally remorseless youngsters, including ever more preteen age boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. . . . To these mean-street youngsters, the words “right” and “wrong” have no fixed moral meaning.¹¹

With this mindset, the federal government responded to the fear with a “get tough” approach.¹² State legislatures responded by passing more punitive juvenile justice laws.¹³ The fearful phase continued into the 1990s: “31 states

⁶ *Id.*

⁷ NAT'L RESEARCH COUNSEL, JUVENILE CRIME, JUVENILE JUSTICE 160–61 (Joan McCord et al. eds. 2001), available at <https://www.nap.edu/read/9747/chapter/7#157>.

⁸ *Child or Adult? A Century Long View*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/childadult.html> (last visited Nov. 16, 2017).

⁹ DAVID L. MYERS, BOYS AMONG MEN: TRYING AND SENTENCING JUVENILES AS ADULTS 35, 40 (2005); *Child or Adult? A Century Long View*, *supra* note 8.

¹⁰ Vincent Schiraldi, *Juvenile Crime is Decreasing—It's Media Coverage That's Soaring*, L.A. TIMES (Nov. 22, 1999), <http://articles.latimes.com/1999/nov/22/local/me-36357>.

¹¹ MYERS, *supra* note 9, at 7.

¹² *Child or Adult? A Century Long View*, *supra* note 8.

¹³ *Id.*

passed laws expanding sentencing options; 47 states modified confidentiality provisions for juvenile courts; and 22 states passed laws increasing the victim's role in juvenile court processing."¹⁴ Most notably, nearly every state passed transfer laws, making it easier for juveniles to be tried and sentenced in adult criminal courts.¹⁵ Under the transfer laws, all states allow—or even require— young offenders to be prosecuted as adults for serious offenses, regardless of their age.¹⁶

B. Evolution of Juvenile Justice in India

Like the United States, India's juvenile justice history is quite extensive. However, the most relevant era for this Essay begins after India gained its independence from British rule.¹⁷ In the post-Independence era, the juvenile justice policies in India were based on three specific documents: first, the Constitution of India;¹⁸ second, the U.N. Convention on the Rights of the Child;¹⁹ and third, the U.N. Standard Minimum Rules for the Administration of Juvenile Justice.²⁰ For the first document, the Constituent Assembly adopted the Constitution of India during the same time the U.N. General Assembly adopted the Universal Declaration of Human Rights (UDHR).²¹ The drafters of India's Constitution were influenced by the UDHR; as a result, it provided fundamental rights in order to protect children.²²

Secondly, India ratified the U.N. Convention on the Rights of the Child (CRC) in 1992.²³ The most relevant provision in the CRC for children in conflict with the law is Article 37 because it specifies the limitations in which

¹⁴ *Id.*

¹⁵ MYERS, *supra* note 9, at 41; *see also* Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, in OFF. OF JUV. JUST. & DELINQ. PREVENTION NAT'L REP. SERIES BULL. at 1, 1 (Ser. No. NCJ 232434, 2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

¹⁶ *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> (last visited Nov. 16, 2017).

¹⁷ Mousumi Dey, *Juvenile Justice in India*, INT'L J. INTERDISC. & MULTIDISCIPLINARY STUD. 64, 65–66 (2014).

¹⁸ T.H. Khan, *Juvenile Justice System in India: An Appraisal*, 7 CENT. INDIA L. Q. 61, 63–64 (1994).

¹⁹ Dey, *supra* note 17, at 65.

²⁰ *Id.* at 64.

²¹ Amit Kumar Garg, *Juvenile Justice System in India: Problems and Perspectives*, 1, 138 (2015) (unpublished Ph.D. dissertation, Kurukshetra University), <http://hdl.handle.net/10603/75364>.

²² *Id.*

²³ Dey, *supra* note 17, at 65; *Status of Ratification Interactive Dashboard*, UNITED NATIONS HUMAN RIGHTS, <http://indicators.ohchr.org>.

a child can be punished.²⁴ The last document, which had the greatest impact on juvenile justice policies in India, is the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).²⁵ The Beijing Rules provide guidelines for the treatment of juvenile prisoners and offenders.²⁶ To conform with the Beijing Rules, the Parliament enacted the Juvenile Justice Act of 1986.²⁷ But the Juvenile Justice Act of 1986 was repealed by the Juvenile Justice (Care and Protection of Children) Act of 2000 (JJA 2000) because the 1986 law did not show a “dramatic improvement in the treatment of children.”²⁸ The JJA 2000 encompasses two main categories: (i) “children in need of care and protection”; and (ii) “juveniles in conflict with the law.”²⁹ This Essay is primarily concerned with the latter.

Not too long after the JJA 2000 was enacted, India, like the United States, had its own fearful phase due to an increase in violent crimes committed by children. In 2001, the total number of violent crimes committed by children under the age of eighteen was 3,254.³⁰ By 2012, there was a sharp increase to a total of 8,779.³¹ Along with this sharp increase in juvenile offenses came a surge in public fear, particularly after the brutal Delhi gang rape occurred.³² The incident occurred when a female college student and her male friend had just left the movies for a study break.³³ The two companions boarded a bus expecting to get home safely.³⁴ However, six men on the bus, posing as passengers, beat them with a metal rod and raped the woman.³⁵ The entire

²⁴ Convention on the Rights of the Child art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3.

²⁵ Dey, *supra* note 17, at 65; *see also* G.A. Res. 40/33, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Nov. 29, 1985) [hereinafter *Beijing Rules*]. It was called the Beijing Rules because much of the drafting took place in Beijing. *Id.*

²⁶ *Beijing Rules*, *supra* note 25, ¶ 2.

²⁷ VED KUMARI, *THE JUVENILE JUSTICE SYSTEM IN INDIA: FROM WELFARE TO RIGHTS* 56 (2d ed. 2010); Dey, *supra* note 17, at 65.

²⁸ Garg, *supra* note 21, at 139.

²⁹ Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56 of 2000, INDIA CODE (2000).

³⁰ Ved Kumari, *Juvenile Justice in India*, in *JUVENILE JUSTICE IN GLOBAL PERSPECTIVE* 1, 180 (Franklin Zimring et al. eds., 2015). The types of violent offenses included in this comparative table of violent crime are murder, attempted murder, culpable homicide not amounting to murder, rape, kidnapping and abduction, dacoity (which means armed robbery in India), preparation for dacoity, robbery, riots, arson, and dowry death. *Id.*

³¹ *Id.*

³² *Id.* at 175–76.

³³ *Delhi Gangrape Victim’s Friend Relives the Horrifying 84 Minutes of December 16 Night*, INDIA TODAY (Sept. 13, 2013), <http://indiatoday.intoday.in/story/delhi-gangrape-victims-friend-relives-the-horrifying-84-minutes-of-december-16-night/1/309573.html>.

³⁴ *Id.*

³⁵ *Id.*

ordeal lasted eighty-four minutes.³⁶ Naked and battered, the victims were thrown on the side of the road.³⁷ The male friend survived, but the young woman died from her injuries two weeks later.³⁸

Although other horrific incidents had occurred in the past, the Delhi gang rape was the last straw, leading to public fear and outrage in India “like never before.”³⁹ Hundreds of people marched through the streets of Delhi demanding greater safety for women and the harshest punishment for these six men.⁴⁰ The police were able to capture and detain all six men.⁴¹ Of the six men, one was a minor.⁴² The juvenile received a sentence of three years at a probation home.⁴³ The media shaped India’s public opinion—infuriation that the seventeen-year-old did not receive a harsher punishment.⁴⁴ Although the public did not believe the punishment fit the crime, the punishment the juvenile received was properly governed by Section 15(1)(g) of the JJA 2000.⁴⁵

Just as the state legislatures in the United States responded to public outcry by passing transfer laws, the Parliament and legislators in India responded to the protests by adopting the Juvenile Justice (Care and Protection of Children) Act of 2015 (JJA 2015).⁴⁶ Sections 14(5)(f) and 15 of the JJA 2015 authorize the Juvenile Justice Board to “dispose” of cases that are found to be heinous or serious offenses committed by children above sixteen years of age.⁴⁷ In other

³⁶ *Id.*

³⁷ Dominique Moosbergen, *Delhi Bus Gang Rape Victim Has Intestines Removed as Shocking Details of Assault Emerge*, HUFFINGTON POST (Dec. 26, 2012), http://www.huffingtonpost.com/2012/12/20/delhi-bus-gang-rape-victim-intestines-shocking-details_n_2340721.html.

³⁸ Garg, *supra* note 21, at 235.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 235–36.

⁴² The adults were sentenced to death for gang rape and murder. One of the adults committed suicide while detained. *Id.* at 237.

⁴³ KUMARI, *supra* note 27, at 176.

⁴⁴ Garg, *supra* note 21, at 238.

⁴⁵ *Id.* at 233; Section 15(1)(g) of the JJA 2000 mandates that a juvenile convicted of any offense can serve a maximum sentence of three years in a special home. *Id.* Such provisions in the JJA 2000 exist because the purpose of the JJA is rehabilitation, not punishment. However, the Indian community wanted harsher punishments regardless of the purpose. Aparna Ravi, *Child and Punishment*, INDIAN EXPRESS (July 17, 2014), <http://indianexpress.com/article/opinion/columns/child-and-punishment/>. The JJA 2015 repealed the Juvenile Justice Act of 2000. *Bill Summary of the Juvenile Justice (Care and Protection of Children) Bill, 2014*, PRS LEGISLATIVE RESEARCH (2014), at 1, <http://www.prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-bill-2014-3362/>.

⁴⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, INDIA CODE (2016), vol. 2.

⁴⁷ Juvenile Justice (Care and Protection of Children) Act, 2015, §14(5)(f), §15.

words, juveniles between the ages of sixteen and eighteen can be tried as adults for heinous and serious crimes.⁴⁸

C. *How Do the Transfer Provisions Work?*

Now that India and the United States have transfer laws that give jurisdiction to adult criminal courts,⁴⁹ the question becomes: How do the juvenile courts determine which juveniles will be transferred to the adult courts? In the United States, statutory exclusion is one of the judicial mechanisms in place that allows juveniles to be transferred to the adult courts.⁵⁰ Statutory exclusion occurs when the juvenile is transferred because he or she meets the criteria specified in the statute.⁵¹ The criteria in the statute often contain several factors, one of which is the seriousness of the offense.⁵² Thus, if the child commits a heinous crime, the child would be automatically transferred to adult criminal courts, provided that the child also meets the minimum age requirement.⁵³

India's transfer mechanism, under Sections 14(5)(f) and 15 of the JJA 2015, is synonymous with the United States' statutory exclusion in two ways. First, the JJA 2015 requires that the crime be a heinous offense.⁵⁴ Under the Indian Penal Code, heinous offenses are punished by a minimum of seven years' imprisonment.⁵⁵ Second, the JJA 2015 also has an age requirement.⁵⁶ The age requirement specifies that the child must be "above the age of sixteen years" in order for the Board to transfer the case to adult courts.⁵⁷

⁴⁸ *Id.*

⁴⁹ See *Juvenile Justice State Laws*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/states.html> (last visited Nov. 16, 2017).

⁵⁰ Statutory exclusion is also known as automatic transfer or legislative waiver. See Griffin et al., *supra* note 15, at 2; There are several other judicial mechanisms in the United States such as Concurrent Jurisdiction and Judicial waiver; however, statutory exclusion is most similar to India's transfer provision. *Juvenile Justice State Laws*, *supra* note 49.

⁵¹ Griffin et al., *supra* note 15, at 2.

⁵² See *id.* at 6; see also *Juvenile Justice State Laws*, *supra* note 49.

⁵³ See *Juvenile Justice State Laws*, *supra* note 49. For example, several states require juveniles being charged with murder to go to adult court automatically, without any apparent opportunity to seek transfer to juvenile court. These states include Arizona, California, Georgia, Louisiana, and Oregon. MYERS, *supra* note 9, at 45.

⁵⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, INDIA CODE, §15, §18 (2016), vol. 2.

⁵⁵ *Id.* §1(33).

⁵⁶ *Id.* §14.

⁵⁷ *Id.*

Considering the strong similarities between the United States and India, it seems as if the United States served as an example for India in determining whether to adopt transfer laws. If India did look to the United States, it should be wary of following the United States' example because it may result in the same negative outcomes that result from charging children as adults.

II. THE CONSEQUENCES

A. *The Negative Impact on the United States and its Youth*

“[I]t is hard to imagine how the conditions and criminal culture of adult prisons could be rehabilitative for juvenile offenders.”⁵⁸ Yet, policymakers and public opinion did imagine that treating juveniles as adults would reduce juvenile crime.⁵⁹ Current research demonstrates that transfer laws have “no deterrent effect on juveniles prosecuted under transfer laws or [on] the general juvenile population.”⁶⁰ One study evaluated Georgia’s statutory exclusion law, which became effective in 1994.⁶¹ The three researchers compared the juvenile arrest rates before and after the law’s implementation.⁶² The results revealed no statistically significant decrease in arrest rates, suggesting the law did not have a deterrent effect as expected by policymakers.⁶³

In some circumstances, transfer laws actually have led to an increase in crime.⁶⁴ For example, in Wisconsin, juveniles who had been transferred reoffended more than double the rate of adults over a three-year period.⁶⁵ Looking at New York, research shows violent youth offenders who were transferred reoffended at a higher rate than their counterparts in the New Jersey juvenile system.⁶⁶ Research further shows that youths tried as adults in Pennsylvania were more likely to be arrested again for a more serious crime than youths in the juvenile system.⁶⁷

⁵⁸ MYERS, *supra* note 9, at 101.

⁵⁹ *Id.* at 121.

⁶⁰ UCLA SCH. OF LAW JUVENILE JUSTICE PROJECT, *supra* note 5, at 30.

⁶¹ MYERS, *supra* note 9, at 122.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ UCLA SCH. OF LAW JUVENILE JUSTICE PROJECT, *supra* note 5, at 30.

⁶⁵ *Id.* at 31.

⁶⁶ *Id.*

⁶⁷ *Id.*

With all of the data, it can be concluded that the juvenile justice system is better equipped to handle juveniles.⁶⁸ Transfer “seriously limits” a juvenile’s ability to mature and to acquire proper skills and experiences.⁶⁹ In an adult system, the juvenile has a high likelihood of developing a propensity to commit more crimes.⁷⁰ Overall, not only are transfer laws ineffective at addressing juvenile crime, but they also harm the juvenile.⁷¹ Seeing how transfer laws negatively affect the United States, India’s youth will potentially suffer the same consequences.

B. The Potential Negative Impact on India and Its Youth

Based on the similarities between India’s new transfer provision and the United States’ transfer provisions, India is likely to see the same results as the United States. Considering the JJA 2015 did not enter into force until January 1, 2016,⁷² the availability of statistics and research are limited. The National Crime Records Bureau (NCRB) does provide data on juveniles in conflict with the law in its annual publication, *Crime in India*, but the 2016 publication has not been released yet.⁷³

Even when the 2016 publication is released, it may not be sufficient to draw any conclusions regarding the effectiveness of India’s transfer provisions because the first case in Delhi to use the transfer law did not occur until August 2016.⁷⁴ Considering it may take years for the courts to adjudicate this case, the effects of teens being transferred to the adult court will not be understood for some time.⁷⁵ However, even without this information, India will likely find

⁶⁸ *Id.* at 32.

⁶⁹ *Id.*

⁷⁰ *See id.*

⁷¹ *Id.* Youth who are transferred to an adult facility do not have access to resources that are essential for adolescent development and are susceptible to assault, physical abuse, and sexual abuse. *Id.* at 3.

⁷² Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, INDIA CODE (2016), vol. 2.

⁷³ The publication date of the annual NCRB varies each year. For example, the 2012 publication was released earlier than planned in June of 2013. Shafi Alam, *Foreword*, in NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2012 (2013), <http://ncrb.nic.in>. However, the 2015 publication was expected to be released in March of 2016. Archana Ramasundaram, *Forward in*, NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2014 (2015), <http://ncrb.nic.in>.

⁷⁴ A teen was accused of raping a seventeen-year-old girl. The Juvenile Justice Board decided to transfer the case to an adult court because the crime seemed meticulous and planned. *Try Teen as Adult in Rape Case*, *Says JJB*, TIMES INDIA (Aug. 18, 2016), <http://epaperbeta.timesofindia.com/Article.aspx?eid=31808&articlexml=Try-teen-as-adult-in-rape-case-says-18082016002051>.

⁷⁵ COMM. ON REFORMS OF THE CRIMINAL JUSTICE SYS., MINISTRY OF HOME AFFAIRS, REPORT: VOLUME I, at 13 (2003).

itself in the same position as the United States in the near future—with an ineffective juvenile justice system.

India's transfer laws are aimed at juveniles who commit heinous crimes.⁷⁶ Even after the public outrage, media frenzy, and changes to the Juvenile Justice Act, heinous crimes continued.⁷⁷ Just four months after its adoption, three more heinous incidents occurred, all involving murder.⁷⁸ Mandating offending children to be tried under the adult criminal system will not stop these events from happening again. Policymakers and politicians in the United States expected transferring teens to adult courts to have a deterrent effect, but their expectation was not met because, as discussed above in Section II.A., transfer laws have no deterrent effect.⁷⁹ Since transfer laws have not been effective for the United States, they will not be effective for India.

To subject a child to the adult criminal justice system severely diminishes their chances of being rehabilitated because the Indian criminal justice system is riddled with flaws.⁸⁰ There are three flaws in justice system that warrant particular attention: delay of justice, lack of coordination, and lack of resources.⁸¹ Addressing the first, a common cliché, “justice delayed is justice denied,” reigns true in India.⁸² In 2000, the NCRB reported that it took three to five years to dispose of 10,382 cases, five to ten years to dispose of 6,503 cases, and over ten years to dispose of 2,187 cases.⁸³ Although serving justice takes time, it certainly should not take ten years.⁸⁴

⁷⁶ Juvenile Justice (Care and Protection of Children) Act, 2015 §§ 15, 18.

⁷⁷ See Raj Shekhar, *Trial as Adult Crime May Nip Juvenile Crime*, TIMES INDIA (June 5, 2016), http://epaperbeta.timesofindia.com/Gallery.aspx?id=05_06_2016_005_020_011&type=P&artUrl=Adult-trial-may-nip-juvenile-crime-05062016005020&eid=31808.

⁷⁸ *Id.*

⁷⁹ MYERS, *supra* note 9, at 121. Interestingly, juvenile crime rates in India from 2014 to 2015 have decreased by 6.4 percent. However, this decrease occurred before the JJA 2015 was effective. Therefore, the decrease cannot be attributed to the adoption of the transfer laws. See NATIONAL CRIME RECORDS BUREAU, NEW DELHI, MINISTRY OF HOME AFFAIRS, CRIME IN INDIA YEAR 2015: SNAPSHOTS 4 (2015).

⁸⁰ ANUP KUMAR VARSHNEY, CRIMINAL JUSTICE SYSTEM: NEED FOR REFORM 282, 284–87 (2006), available at http://14.139.60.114:8080/jspui/bitstream/123456789/991/1/055_Criminal%20Justice%20System%20Need%20for%20Reforms.pdf; see COMM. ON REFORMS OF THE CRIMINAL JUSTICE SYSTEM, *supra* note 75, at 10–19.

⁸¹ VARSHNEY, *supra* note 80, at 284–85; COMM. ON REFORMS OF THE CRIMINAL JUSTICE SYS., *supra* note 75, at 269.

⁸² COMM. ON REFORMS OF THE CRIMINAL JUSTICE SYS., *supra* note 75, at 13.

⁸³ *Id.*

⁸⁴ *Id.*

Lack of coordination is the second substantial flaw in the adult criminal justice system of India.⁸⁵ There are several components in this system, such as the police, prosecution, judiciary, and correctional organizations.⁸⁶ When one component fails to perform its role properly, “the whole system suffers.”⁸⁷ The police are corrupt⁸⁸ and lack commitment and determination when pursuing investigations.⁸⁹ The prosecution is untrained to collect evidence and present a case before the judiciary in an effective manner.⁹⁰ The judiciary continuously fails to provide expedited justice.⁹¹ Since no component is doing its job effectively, it makes it difficult for each part to coordinate, leading to further delays.⁹²

The final flaw in the adult judicial system in India is lack of resources.⁹³ India’s large population exacerbates its lack of resources.⁹⁴ The number of judges is twelve to thirteen per one million people, which is not near India’s goal.⁹⁵ As juveniles are added to the adult system, the ratios will increase and the resources will decrease, further crippling the criminal justice system. Each flaw demonstrates that the adult system is no place for a juvenile.

CONCLUSION

Through years of transferring juveniles to adult courts and extensive research, the crucial lesson to be learned is clear: the transfer provisions are not a cure-all for tackling violent juvenile offending.⁹⁶ In India, prior to the Delhi rape, Parliament was progressing towards an appropriate system that addressed juvenile crime. Although that system had flaws, India has taken the wrong step towards fixing those flaws by following in the United States’ footsteps. Unfortunately, these steps lead to a path with even more flaws. Ironically, both

⁸⁵ See VARSHNEY, *supra* note 80, at 284.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 286. The police can easily be bought by rich men and politicians. *Id.* at 287.

⁸⁹ *Id.* at 287.

⁹⁰ *Id.* at 285.

⁹¹ *Id.* at 286.

⁹² See *id.* at 284–85.

⁹³ See COMM. ON REFORMS OF THE CRIMINAL JUSTICE SYS., *supra* note 75, at 269.

⁹⁴ Next to China, India is the second-most populated country in the world. S. George Vincentnathan, *Juvenile Justice in India*, in DELINQUENCY AND JUVENILE JUSTICE SYSTEMS IN THE NON-WESTERN WORLD 25 (Paul C. Friday & Xin Ren eds., 2006).

⁹⁵ By way of comparison, the United States has 107 judges per million. India’s goal is to get it to fifty judges per one million people in the next five years. COMM. ON REFORMS OF THE CRIMINAL JUSTICE SYS., *supra* note 75, at 18–19.

⁹⁶ MYERS, *supra* note 9, at 144.

countries took this path due to public backlash. Juvenile justice legislation should be built on what is best for the youth, not the fears of the public.

In an ideal world, youth would always remain in the juvenile justice system.⁹⁷ To do otherwise is contrary to research and goals described by India and the United States. This Essay demonstrates that justice is hindered by forcing juveniles through a system that is not equipped to process youth and that transfer laws have exacerbated the problems they hoped to tackle.⁹⁸ However, seeing that India's JJA 2015 was recently implemented, there are limitations to this Essay. Therefore, future researchers should conduct studies that focus on the outcome of juveniles who are transferred versus those who are not.

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⁹⁷ CHAMBERS & BALCK, *supra* note 1, at 9–10 (Dec. 2014), <http://nicic.gov/library/029627>.

⁹⁸ UCLA SCH. OF LAW JUVENILE JUSTICE PROJECT, *supra* note 5, at 1.

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