

PREVENTIVE POLICING OF JUVENILES IN MASS PROTESTS: AN APPROACH CENTRED AT BEST INTERESTS OF CHILD

by

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Abstract

The Juvenile Justice (Care and Protection of Children) Act, 2015 mandates for differential treatment of juveniles in contact with the police. Provided that their apprehension could take place merely with respect to an alleged offence. A “child in conflict with law” is defined as a child below 18 years of age who is alleged or found to have committed an offence under Section 2(13) of the JJ Act, 2015. While the Section 10 and 12 regulate the apprehension on that footing of alleged offence and Section 22 prohibits proceedings for security for keeping peace to be done against children yet the preventive arrest under Section 170 of BNSS, 2023 and the crowd control and dispersal measures under Section 148, 163 and 172 do operate on the persons (here children) upon whom no offence has yet been alleged. The paper delves into this very issue of apprehension of children upon whom no offence has yet been alleged and resultantly they lie outside the purview of apprehension safeguards provided in the act including the bar on their detention in police lock ups. And this statutory gap combined with the weak implementation exposes the children at protests to the adult policing framework contrary to the principle of best interests of the child. Using the doctrinal analysis through the JJ Act, BNSS and UNCRC along with the quantitative analysis through public perception survey and drawing comparative jurisprudences from United States and United Kingdom, the paper tries to provide recommendations and protest policing framework through Special Juvenile Police Units that tend

to protect the best interests of child while preserving the public order of the State through non custodial and least restrictive measures.

Keywords: Children in conflict with law, Mass Protest, Apprehension, Special Juvenile Police Unit, Best interests of Child.

2. Introduction

The Supreme Court ordered in July 2026 directing the release of minors detained during the student protests at Jantar Mantar. While permitting the State authorities to proceed with the investigation of the FIRs registered in relation to the protests, the court ordered the immediate release of all minors arrested in connection with the demonstrations and restrained the police from taking coercive action against “protesting students” unless they had criminal antecedents.¹ The atrocities upon the minors detained and kept in police lock ups during the 2019 anti CAA protests in UP. Close to 41 minors were detained and subjected to custodial torture. Of these 22 minors were detained and tortured in Bijnor and 14 minors in Muzzafarnagar². These incidents reveal the vulnerability of the children participating in the protests at the hands of the police through the adult policing technique used against these children. The children during these protests have been susceptible to preventive policing methods used for treatment. The Juvenile Justice Act, 2015 defines the children in conflict with law as the child below the age of 18 years who is alleged or found to have committed an offence.³ The procedural framework with respect to children has been laid down in the Juvenile Justice Act and is different from that of adults. The child in conflict with law is thus apprehended and provided with the apprehension safeguards wherein the apprehended child had to be placed under the charge of the special juvenile police unit or designated child welfare police officer and no such child has to be placed in police lockup⁴ and the provision for the release of such child on bail⁵. These safeguards come into force when there is any offence alleged to be committed by the child. Also the act bars

¹ THE HINDU (July 28, 2026), <https://www.thehindu.com/news/national/supreme-court-neet-jantar-mantar-cjp-delhi-protest-police-excesses-hearing-updates-july-28-2026/article71275783.ece/amp/>. (last visited on Oct 6, 2026).

² Quill Foundation, Citizens Against Hate and HAQ: Centre for Child Rights, "Brutalizing Innocence" (January 2020, with February 2020 update). <https://www.haqcrc.org/wp-content/uploads/2020/03/brutalizing-innocence-an-update.pdf> (last visited on Oct 6, 2026).

³ Juvenile Justice (Care and Protection of Children) Act, 2015 Section 2(13) [herein after JJ Act].

⁴ JJ Act, 2015 Section 10.

⁵ JJ Act, 2015 Section 12.

proceedings for security for keeping peace against children. However, the participation of juveniles in these protests is peaceful and is a part of their right to expression as well as the social and political rights being a part of the democracy. Yet Police, while using the preventive framework for crowd control and dispersal tactics either arrest or use force upon the people and the children being part of the gathering are prone to such excessive techniques undertaken by the police. Such a procedural framework is given under the Section 148, 163, 172 as crowd control and dispersal mechanism along with Section 170 that provides for preventive arrest which is conducive to handling of adults during the protest.. The children being cognitively different from adults since they are in their growing age have developing brains.⁶ . The statutory lacunae and weak implementation of the prevailing mechanism makes the children vulnerable to the atrocities of the adult policing system.

3. Review of Literature

The existing literature on children's participation in protests highlights the challenge of balancing their democratic rights with the duty of state to maintain public order. Rongheet Poddar, in *Political Participation of Minors in India: A Critical Perspective from the Prism of UNCRC*, argues that children should not be viewed merely as individuals who require protection but also as rightsholders who are capable of political participation. The study emphasises that the principle of the best interests of the child should not be used to restrict their freedom of expression and peaceful assembly. Similarly, Aoife Daly, in *Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law*, draws attention to the responsibility of the state to protect children's rights while ensuring their meaningful participation in public life. The question of how the police regulate protests is explored by Rahul Hemrajani, Rajkamal Singh and Amit Ahuja in *Preventive Repression: Protest Policing in New Delhi*. Their study examines the factors which influence police decisions to permit or restrict demonstrations and highlights the tension between maintaining public order and protecting the right to protest. Sarah Pickard's *Excessive Force, Coercive Policing and Criminalisation of Dissent* further explains how the use of force and restrictive policing measures can turn youth participation in protests to seem like a law and order problem. The literature on juvenile justice raises similar concerns about the treatment of children by law enforcement authorities. Suhail

⁶ Jeff Q. Bostic, Lisa Thurau, Mona Potter & Stacy S. Drury, *Policing the Teen Brain*, 53 J. Am. Acad. Child & Adolescent Psychiatry 127 (2014).doi: 10.1016/j.jaac.2013.09.021. PMID: 24472245; PMCID: PMC4336465.

Sharma's *Juvenile Justice System Reforms and Policing System in India* examines the development of juvenile justice and the need for a distinctive approach towards children within the criminal justice system. Prashant Kumar and Arushi Jha, in *Preventive Detention and the Corrosion of Juvenile Justice*, highlight the conflict between preventive detention and the rehabilitative and reformatory purpose of juvenile justice. Jeff Q. Bostic and his co authors, in *Policing the Teen Brain*, further demonstrate the importance of understanding adolescent development while training police officers to interact with young people. The physical consequences of crowd control measures are discussed by Rohini Haar and others in their systematic review of injuries and deaths caused by tear gas and pepper spray. Meanwhile, Hege Stein Hellend's work on reconciling children's best interests with their right to be heard highlights the need to consider children's voices while making decisions affecting them.

4. Problem Statement

In mass protests, the police rely on a preventive framework. Such framework allows arrest under Section 170 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), to prevent an offence and also authorises crowd control and dispersal under Sections 148, 163 and 172. These provisions are act upon the persons being a part of the protesting crowd, and in such case no offence has to be alleged. Whenever children become part of those crowds, they are either detained or subjected to force at par with the adults. The Juvenile Justice (Care and Protection of Children) Act, 2015 provides a different procedural framework for the children to be treated differently from adults, including placement of child under charge of a special juvenile police unit, bar on police lockups, and provision for bail. But these apprehension safeguards apply only when a child is alleged to have committed an offence. However, a child who is merely present at a protest, and against whom nothing has been alleged, is found to be dealt with under the BNSS provisions which are mandated for adults. The problem addressed by this paper is this procedural gap. A child who is entitled to a distinct, welfare centric process yet during the mass protests is policed under a framework built for adults. The paper examines how this gap arises and what it means practically for children. It also puts forward recommendations to make the protest policing aligned with the best interests of the child.

5. Research Gap

The existing literature examines children's participation in protests, preventive policing, and juvenile justice, but these issues are usually addressed separately. Limited attention has been given to the statutory gap between the child centric safeguards under the Juvenile Justice (Care and Protection of Children) Act, 2015, and the preventive policing framework under the Bharatiya Nagarik Suraksha Sanhita, 2023. The former provides special procedures for children in conflict with law, the latter provides preventive measures to maintain public order without establishing a distinctive framework for handling minors during mass protests. This intersection raises concerns about children being subjected to adult policing practices, which could potentially result in unlawful detention, excessive force and custodial abuse. This paper seeks to examine how this statutory gap and inadequate implementation of existing safeguards can lead to exposure of minors in protest to excesses of police and how preventive policing can be reconciled with the best interests of the child.

6. Research Objective

1. To find out whether the apprehension safeguards under JJ Act, 2015 depend on the alleged offence.
2. To find out whether the policing techniques used during the mass protests are favourable with the best interests of child.
3. To establish the procedural gap between the preventive policing framework used practically and the one which is mandated for the children.
4. To suggest the policing framework to be used during mass protests which could align with the best interests of the child.

7. Research Questions

RQ1: Does the protective framework of the JJ Act, 2015 is applicable only when an offence has been alleged?

RQ2: Does the Preventive Arrest under Section 170 BNSS and the crowd control mechanism under Section 148, 163 and 172 BNSS are against the apprehension safeguards provided under the JJ Act, 2015 as well as the interests of the child?

RQ3: Is the Procedural Gap real and How is this Gap combined with weak implementation operated during the protests?

RQ4: What measures can be suggested to mould the procedural gap while protecting the public order of the State?

8. Research Hypothesis

H1: The apprehension safeguards of Juvenile Justice Act, 2015 (Section 10 and 12 and the bar on police lock ups) are applicable on a child only when he is alleged of an offence or found to have committed it and do not extend to a child confined under preventive powers.

H2: The preventive and crowd control provisions of the BNSS does not contain any child specific safeguards and so a child in protest crowd is policed as an adult.

H3: Extension of safeguards under the act to children held under preventive powers and adoption of a binding protest policing protocol, would lead to reconciliation of best interests of child without obstructing police's core power to maintain public order.

9. Research Methodology

This paper adopts a mixed-method approach, combining doctrinal analysis with a small quantitative study, so that the legal gap can be examined on paper and then tested against how people actually understand it. The doctrinal component forms the core of the research. It includes a close reading of the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly Sections 2(13), 10, 12 and 22, along with the preventive and crowd control provisions of the Bharatiya Nagrik Suraksha Sanhita, 2023, namely Sections 148, 163, 170 and 172. Reading the two statutes simultaneously reveals where the child's safeguards stop and where adult preventive powers begin. The analysis is supported by judicial decisions on preventive arrest and the rights of children, by international standards, chiefly the UNCRC, and by secondary sources, including the journal articles and research papers reviewed in this paper. Comparative material from the United States and the United Kingdom and other states is also considered. The quantitative component is a structured questionnaire administered to 20–25 respondents drawn from three groups: common people, advocates and police officials. Including these three perspectives allows the study to compare how the public, the legal profession and those who enforce the law view the policing of children during protests, and how aware each group is of the safeguards available to children. The responses are analysed using descriptive statistics, such as frequencies and percentages, and presented in tables and charts. Because the sample is small, the survey findings are treated as indicative of perception and not as generalisable conclusions. Combining these two

methods takes the paper from what the law provides, to how it is understood, and finally to recommendations for a child sensitive protest policing framework.

10. The Framework of Juvenile Justice Act

The Juvenile Justice (Care and Protection of Children) Act, 2015 “notwithstanding anything contained in any other law is applicable to all matters concerning the children in need of care and protection and the child in conflict with law”⁷ which provides for its strict applicability to all the matters concerned with the child in conflict with law as given therein that includes the matters of apprehension. The act also provides for the fundamental ground which is the best interests of child⁸ to be taken into account while dealing with child in conflict with law. Also, there are guiding principles for dealing with the child in conflict with law which have been enumerated in Section 3 including that the child to be presumed innocent of criminal intent below 18 years of age, best interests of child to be primarily considered in taking decisions regarding the child, accusatory and adversarial not to be used in processes concerning child and the child to be placed in institutional care as a means of last resort.⁹ While the child in conflict with law is a child below 18 years of age who is alleged or found to have committed an offence¹⁰; in order to apprehend such a child it is needed that the child must have been alleged of an offence or committed an offence. Once apprehended the child has to be placed under the charge of Special Juvenile Police Unit or the Designated Child Welfare Police Officer who must produce the child before the Board within twenty four hours.¹¹ Also, such child shall not be placed in a police lockup¹². The practice of keeping a child below 18 years in lock up had also been condemned in the landmark case of **Sheela Barse v. Union of India**.¹³ The statute grants bail to a person who is apparent to be a child and alleged to have committed an offence.¹⁴ This highlights that the provision protects the interests of those who appear to be a child as long as they are alleged of committing an offence. The proceedings for security for keeping peace against children are barred by the act.¹⁵ The child is to be apprehended in case of alleged offence being heinous or the

⁷ JJ Act, 2015 Section 1(4).

⁸ JJ Act, 2015 Section 2(9).

⁹ JJ Act, 2015 Section 3.

¹⁰ JJ Act, 2015 Section 2(13).

¹¹ JJ Act, 2015 Section 10.

¹² JJ Act, 2015 Section 10 proviso.

¹³ 1986 SCC (3) 596.

¹⁴ JJ Act, 2015 Section 12.

¹⁵ JJ Act, 2015 Section 22.

offence committed jointly with an adult provided when such apprehension lies in the best interests of child.¹⁶ Whereas in the case of petty or serious offences, the SJPU/CWPO shall forward the information regarding the alleged offence along with Social Background Report to the Board and intimate it to the parents or guardians of the child in conflict with law. Every police station is required to designate at least one Child Welfare Police Officer and Special Juvenile Police Unit in every district or city.¹⁷ upheld in **Sampurna Behura v. Union of India**¹⁸ The child who has been a part of protest or alleged to be a part of protest shall not be apprehended at firsthand since it is not a heinous offence¹⁹ which prescribes for arrest as per the Juvenile Justice Model Rules 2016. Whereas the children who are preventively arrested under Section 170, against whom no offence has been alleged do not receive any such safeguards which either the JJ Act or the Model Rules provides. The differential treatment framework under the JJ Act, 2015 is multilayered ranging from its overriding application through principles to the apprehension safeguards. However, these safeguards depend on one condition that the offence has been alleged or found to have been committed. This leads the child who has been preventively arrested during the protest to fall outside the purview of apprehension safeguards of the JJ Act, 2015 and is hence governed by the provisions under the procedural framework of BNSS.

11. The Statutory Framework under the BNSS

The procedural framework of the BNSS is with regards to the general criminal law. The preventive policing framework has been laid down in the given statute which ranges from the Chapter on Security for Keeping Peace and for Good Behaviour to Preventive Arrests and Crowd Control Mechanisms. The provisions for Security for keeping peace and good behaviour have been given under Section 126-129 of BNSS (earlier Chapter VIII of CrPc).

A bar has been created from implementing these provisions upon the child in conflict with law as given under Section 22 of the Juvenile Justice Act, 2015. However, this mandate is frequently ignored by the police officials in practice. This is evident from the example of the arrest of nine juveniles and keeping them in observation home for varying periods under Section 107 of CrPc

¹⁶ Juvenile Justice (Care and Protection of Children) Model Rules, 2016 rule 8(1).

¹⁷ JJ Act, 2015 Section 107,

¹⁸ (2018) 4 SCC 433.

¹⁹ Id. at 16.

during the post 2019 Kashmir proceedings²⁰ which shows that the bar is disregarded. The said bar is not only upon the provision of BNSS (earlier CrPc) but also upon the preventive detention act including the National Security Act or J&K Public Safety Act. The J&K and Ladakh High Court held that the JJ Act excludes the preventive detention mechanisms which are meant for adults.²¹ The preventive arrest power is given under the Section 170 of BNSS that authorises the police officer to arrest a person without warrant or without order from the magistrate to prevent a cognizable offence as long as the police officer knows the design of committing a cognisable offence and if it appears that the offence cannot be otherwise prevented.²² The person arrested cannot be detained for more than twenty four hours unless another provision authorises it.²³ It is emphasised that the police officer in order to preventively arrest a person with respect to any cognisable offence must have the knowledge of existence of the design of cognizable offence which would be committed. He must believe that the commission of offence cannot be prevented by any means otherwise than the arrest of the person. There should be such an imminent threat related to the commission of the offence that the last resort to prevent it is the detention of the person likely to commit it. But such an arrest without any legitimate evidence of knowledge of such design not only violates the Section 151 of CrPc (now Section 170 of BNSS) but also Article 21 of the Constitution of India.²⁴ Because in such a manner the preventive detention would be violative of the right to life of the person. Hence, in regards to the child the detention could violate his right to life. Also, it does not address where the child would be kept and by whom he would be handled during the twenty four hours for which he would be detained. The child being a part of the protest, who is alleged to have committed rioting under Section 191 of BNS would be a child in conflict with law under Section 2(13) of JJ Act. The child in conflict with law firsthand could not be apprehended because the offence of which he has been alleged is not a heinous offence. The apprehension of a child in conflict with law is provided for heinous offences only as given under the Rule 8(1) of Model Rules, 2016. Secondly, since there is no alleged offence upon the child, he falls outside the apprehension safeguards provided under

²⁰ Anjana Prakash, "Jammu And Kashmir Police Has Violated The JJ Act In Detaining Children"LiveLaw (8 October 2019) <https://livelaw.in/columns/jk-violated-jj-act-148815> (last visited on Oct 9).

²¹ Fariz Gulzar v. Union Territory of J&K HCP No. 239/2025.

²² Bharatiya Nagrik Suraksha Sanhita, 2023 Section 170(1) [hereinafter BNSS].

²³ BNSS, 2023 Section 170(2).

²⁴ Anand Mahadevan v. State of Kerala, 2023 LiveLaw (Ker) 175 (limits of preventive arrest under section 151 CrPC)LiveLaw report <https://www.livelaw.in/amp/news-updates/police-can-arrest-without-warrant-under-151-crpc-only-when-there-is-knowledge-of-existence-of-design-to-commit-cognizable-offence-225450> (last visited on Oct, 10).

Section 10 and 12 of the JJ Act. It creates a paradox that a child alleged to have committed an offence is protected more fully than the one against whom nothing has been alleged. This cannot reflect the intent for protection of best interests of child. The crowd control and dispersal mechanisms under BNSS takes under its ambit the assembly of people rather than an individual. The police officer or the executive magistrate is empowered to order the dispersal of assembly of more than five people which is likely to cause disturbance to public peace and in case of non compliance can disperse it by force.²⁵ Nothing in this provision has distinguished children within the assembly. Also, the executive magistrates are empowered to issue temporary written orders such as to ban the assembly of people or prevent obstruction to public order in the cases of nuisance or apprehended danger. While a child remains at the protest site and becomes liable to the orders of removal or arrest, no consideration is made with regards to the children in the order. In **Anuradha Bhasin v. Union of India**²⁶, it was held that Section 144, Cr.P.C. cannot be used as a tool to prevent the legitimate expression of opinion or grievance or exercise of any democratic rights. So, children being part of such gatherings cannot be prevented from any legitimate expression of dissent. Moreover a police officer is allowed to detain or remove any person resisting or disregarding a lawful direction and release him within twenty four hours or present him before the magistrate.²⁷ Such detention is not upon commission of an offence rather upon non compliance of crowd direction. This detention being devoid of offence does not come under the ambit of apprehension safeguards in the JJ Act, 2015. Thus, BNSS provides a comprehensive preventive framework which acts on assemblies and people before an offence has been alleged but none of these make distinction for a child and the bar in JJ Act is restricted only to security proceedings. A child who is preventively arrested or removed during a protest therefore falls outside the apprehension safeguards of the JJ Act and remains subject to a process which does not make distinction for the child. The JJ Act, 2015 through its Section 1(4) has an overriding effect in preventive detention laws and such provisions under BNSS. And also taking into purview the principle of best interests of child and institutionalisation as measure of last resort, the courts hence can give such crowd control or arrest orders a purposive construction when dealing with child as the Article 15(3) provides for special laws to be framed for children. However the catch is that the authority that acts at the scene is the police before the courts are seized.

²⁵ BNSS, 2023 Section 148.

²⁶ (2020) 3 SCC 637.

²⁷ BNSS, 2023 Section 172(2).

11. Protest Site Incidents and Implementation Failure

This section would delve into the incidents which occur at the protest sites and are an evidence of the implementation failure.

11.1 Uttar Pradesh 2019 Detentions: Anti CAA Protests

The signing of the Citizenship Amendment Act in December 2019 led to widespread protest across the country. These protests have been met with excessive police repression and particularly in the state of UP. The 24 districts in UP witnessed protest wherein 90% of these recorded excessive violence against the protestors. Especially, the recorded violence has been against minors despite the national and international legislations. Approximately 41 minors were detained and subjected to custodial torture. Out of 22 were detained and tortured in Bijnor and 14 in Muzzafarnagar.²⁸ FIR has been filed against these minors for petty and serious offences which is against the Juvenile Justice Model Rules, 2016. Also, the minors were not only detained for more than twenty four hours but also were not produced before the board. They were detained in police lock ups and tortured as well as were made to witness the police torture. The minors were recorded as adults without age determination through the process given under Section 94. The principles under Section 3 such as principle of presumption of innocence, best interests of child, institutionalisation as last resort, equality, dignity etc were undermined. The UNCRC provisions including protection against all forms of discrimination, right to freedom of association and peaceful assembly, right to be heard were also not taken into account for. The Allahabad High Court has ordered for a state wide compliance affidavit with respect to JJ Act, 2015.²⁹

11.2 Jammu & Kashmir after 2019 Preventive Proceedings

Section 22 of the JJ Act bars security proceedings against children, yet the Jammu and Kashmir experience provides an example that a prohibition on paper does not guarantee protection at the point of arrest. After 5 August 2019, police data placed before the J&K High Court Juvenile Justice Committee recorded 144 juveniles as held, some as young as 9 and 11. Petitioners' counsel contended that it was undisputed that 79 of them were held under Section 107 CrPC, the preventive provision the bar was meant to exclude. The Court accepted the Committee's second report that no child was illegally detained and declined to "sit in appeal" over its findings³⁰. As

²⁸ Id. at 2.

²⁹ HAQ Centre for Child Rights v. State of UP (W.P. No. 26/2020) (Dec 17, 2020).

³⁰ Enakshi Ganguly v. Union of India (WP No. 1169/2019) (Dec 13, 2019).

reported, its order turned on those factual findings, so the legal objection that preventive proceedings against minors are barred went unresolved. This reveals the gap in operation that child could be held on preventive grounds without the safeguards for accused children being engaged. The same problem appears in other cases. A 2018 report says a 14 year old in Kulgam was held under the Public Safety Act after his age was wrongly recorded as 21. His family found the error only when his school certificate was produced³¹. Recently, in 2026, courts have begun to correct such orders. The J&K and Ladakh High Court struck down detention orders in **Fariz Gulzar v. Union Territory of J&K**³² and **Zahid Ahmad Mir v. UT of J&K**³³ because the authorities had ignored that the person was a juvenile when the alleged acts took place, But in every one of these cases, relief came only after the person was already in custody, through a habeas corpus petition. The protection child in each case depends on the fact that someone notices the mistake and approaches the court. It did not depend on what the police did at the time of arrest, and this is the gap which is evident.

11.3 The Bidar School Play Case

The procedural gap has been shown from a different direction through this incident. In January, 2020 the primary school students enacted a play on CAA and NRC. Resultantly, a sedition case was filed against the adults of the school and the children who were never accused of an offence were then questioned by the police. Since they were neither alleged of an offence nor apprehended so the apprehension safeguards of the JJ Act do not extend to them. However, the petitioner before the Karnataka High Court alleged that about 85 children were questioned. It was noted by the bench headed by Oka CJ that the photographs showed three children being questioned by five officers, out of which four in full uniform and two carrying firearms³⁴. It is held prima facie to be a violation of the Juvenile Justice Model Rules, 2016 which provides that officers dealing with children need to be in plain clothes as per Rule 86(5). The court directed the state to report the action taken against the officers. The protection to the children came from rules and not from the statutory framework on child's status.

³¹ Rabia Noor, Public Safety Act being misused against juveniles in Jammu and Kashmir, THE QUINT (2 May 2018) <https://www.thequint.com/opinion/public-safety-act-being-misused-against-juveniles-in-jammu-and-kashmir> (last visited on Oct, 10).

³² Id. at 21.

³³ 2026:JKLHC-SGR:223.

³⁴ Nayana Jyothi Jhavar v. State of Karnataka W.P. No. 3485/2020.

11.4 The July 2026 NEET UG Exam Paper Leak Protests

The protest in July 2026 which took place at Jantar Mantar against the exam paper leaks especially the NEET-UG 2026. The students were observing a peaceful protest highlighting their demands. They decided to observe a march towards the parliament on July 20. Resultantly, they were faced by lathi charge, pellet guns and tear gas explosions to prevent them from marching ahead. The students were detained irrespective of the Juvenile Justice Act framework and some were produced before the magistrate after more than forty hours in Bihar. The Supreme Court on July 28 ruled that the detainees below eighteen years of age to be released and no further proceedings to be continued against those who do not have any criminal antecedents³⁵. On 3 August the court clarified that the interim order regarding criminal antecedents would be limited to only to those who are facing heinous charges as per the framework of the JJ Act that provides apprehension safeguards to those alleged of an offence³⁶. However the safeguards were dependent on the past records of the child and were not applicable at the time of detention.

12. Children As Right Holders in Mass Protests

The children as a part of the mass protest are not only objects of protection but they do exercise their rights as right holders. The rights of children are available under national as well as international legislations. Under the national legislation, the “right to freedom of speech and expression” has been guaranteed to every citizen of the country under Article 19(1)(a) of the Indian Constitution. This right is not restricted merely to adults but extends to children. The Supreme Court has protected the right to freedom of expression of schoolchildren including the right to remain silent as upheld in *Bijoe Emmanuel v. State of Kerala*.³⁷ The children have also be guaranteed to the” right to freedom to assemble peacefully without arms” under Article 19(1) (b) of the Constitution. These fundamental rights uphold the participation of children in mass protests through peaceful assembly and empowers them to express their dissent subject to reasonable restrictions under Article 19(2). The children have also been guaranteed rights

³⁵ What the Supreme Court Actually Directed on NEET Paper Leak Protest Violence, SCC ONLINE BLOG (July 29, 2026) <https://www.sconline.com/blog/post/2026/07/29/neet-paper-leak-protest-proceedings-sc-interim-directions-police-violence/> (last visited on Oct, 12, 2026).

³⁶ Samridh Chaturvedi, "India dispatch: Supreme Court clarifies student protest order exposing flawed policing of dissent" JURIST (11 August 2026) <https://www.jurist.org/news/2026/08/india-dispatch-supreme-court-clarifies-student-protest-order-exposing-ad-hoc-policing-of-dissent/> (last visited on Oct 12, 2026).

³⁷ (1986) 3 SCC 615.

internationally under the United Nations Convention on Rights of Child. The Article 15 of UNCRC provides for the right of child to freedom of association and peaceful assembly except for restrictions on the case of national security, public security or protection of public health. Under Article 12 the children have also been guaranteed with the right to be heard in all matters affecting the child. Moreover the Human Rights Committee's General Comment No. 37 ensures that the right to peaceful assembly enables the individuals to to express themselves and to participate in shaping their societies.

13. The Risk of Breakdown of Safeguards

13.1 Age Determination

The central issue that occurs while the application of safeguards is the determination of the age of the individual which is usually unknown or misrecorded in the crowd. The JJ Act, 2015 under its Section 94(1) allows the Board or Committee to proceed on the basis of appearance of the person when brought before it and the Section 94(2) provides for a documentary hierarchy to determine the age when it cannot be assessed on the basis of appearance. But these provisions come to light once the person is brought before the Board. However, during the protests police are the authority who is under the responsibility to determine the age. The consequence of this drawback is evident through the incidents where the minors are being detained without determination of their age. It is evident from the UP Anti CAA detentions where no such process for determination of age had not taken place before, during or after the detention. The minors were booked as adults by the police such as happened in UP detentions for anti CAA³⁸ and the 2018 PSA detention in Kashmir³⁹. It is proposed that the police can treat a person who appears to be under 18 as a child in the absence of clear evidence. The reference for this can be borrowed from paragraph 1.5 of PACE Code C.

13.2 Classification of Offence

The child can be apprehended and a charge can be inflicted upon him in case of a heinous offence. Heinous offence is defined under Section 2(33) of the JJ Act, 2015 as the offence which provides for a minimum punishment of seven years or more. The offences which could be alleged during a protest could be of unlawful assembly under Section 189 and rioting under

³⁸ Id. at 2.

³⁹ Id. at 31.

Section 191 of BNS for which there is no minimum punishment and a maximum of five years of punishment. It can also include the offence under Section 152 which includes act endangering the sovereignty, unity and integrity of India wherein the minimum punishment is of seven years or extending to life imprisonment. None of these offences fall under heinous offences. However, these could be considered as serious offences given under Section 2(54) which provides for a punishment of three to seven years. It also includes offences for which maximum punishment is imprisonment of more than seven years and minimum punishment is either not prescribed or less than seven years.⁴⁰ Hence, applying this the child has to be treated under the framework of JJ Act, 2015 since the alleged offence (if applicable) being a serious offence. And according to the JJ Act if the offence committed by the child is a heinous offence, a preliminary assessment is conducted under Section 15 thereafter the child is transferred to a Children's Court. Moreover, while considering the Section 190 of BNS wherein each member of the unlawful assembly is guilty of the offence committed in prosecution of common object, so a death occurring during the protest may attract charges of murder, a heinous offence upon the minor of 16 or 17 years old who was merely present there. In such a case where a minor has been alleged of commission of a heinous offence, his preliminary assessment is directed to be done so as to evaluate the mental and physical capacity of the child and his ability to understand the consequences of his act. During the preliminary assessment the Board can take assistance of experts wherever necessary. This is because the board lacks it and this would provide a safeguard to the minor. So, even for an accused child, the safeguard is not uniform. Whether the child could be apprehended, how far the process could proceed, depends on the classification of offence. This classification depends on the charges which police decides to register at the scene before any oversight by the JJB. Therefore, the child treatment depends on the charging of offence by police which is uncertain from the beginning.

14. Comparative Perspective

The protection of the best interests of a child does not depend on the fact of alleged offence in other legal systems as contrary to the Indian legal system. The international standards follow an approach which links safeguards to the age of child and to the fact of detention. The right of the child or more precisely juveniles are protected under various international conventions.

⁴⁰ Shilpa Mittal v. State NCT of Delhi 2020 (2) SCC 787.

14.1 International Legal Framework

A. The United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985

These rules, also known as Beijing rules, provide standards for administration of child justice. These rules were adopted by the United Nations in Beijing, China. The Rule 2 defines juvenile as a child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from the one meted out to an adult. The Rule 4 requests the state not to fix the age of criminal responsibility at too low an age level, taking into consideration the facts of emotional, mental and intellectual maturity. Rule 5 emphasises on the well being of juveniles and to ensure that any reaction to juvenile offenders shall be in proportion to circumstances of both the offender and offence. Rule 7.1 provides for the rights of juveniles through basic procedural safeguards such as the presumption of innocence, right to be notified of charges, right to remain silent, right to counsel, right to presence of parent or guardian, and right to appeal to higher authority at all stages of proceedings. As per Rule 10.1 The parents or guardians of a juvenile are notified immediately of his or her apprehension. Rule 11 provides for diversion from formal procedure of trial in case of juveniles. Rule 12.1 provides for police dealing with juveniles shall be specially instructed and trained. . Rule 19.1 provides that the placement of juveniles in an institution shall be a measure of last resort and for a minimum necessary period. So, altogether they ensure justice administered to the child who has been a part of the protest.

B. United Nations Convention on Rights of Child, 1949

There are several necessary rights which are available to the minors who are a part of the protest and listed in the convention. Article 13 provides for the right to freedom of expression including the freedom to seek, receive and impart information subject to certain restrictions as respect of the right or reputation of others or protection of national security. Article 15 recognises the freedom of association and freedom of peaceful assembly. Article 37(b) provides for arrest to be used as a measure of last resort and for the shortest appropriate time. The state parties to recognise the right of every child alleged of penal law to be treated in such a manner that is consistent with promotion of child's dignity and worth which reinforces the child's respect for human rights, freedom of rights for others and

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

The Havana Rules protect a child whenever their liberty is taken away, whatever be the reason and whether or not an offence has been alleged. Rule 11(b) defines deprivation of liberty as any detention or placement taking place in a custodial setting from which a person is not permitted to leave at will, by order of a judicial, administrative or other public authority. Although nothing is alleged against the child yet a child detained or confined by police during a mass protest falls within the rules. Rule 2 makes deprivation of liberty a last resort, for the minimum necessary period and in exceptional cases only. Rule 17 presumes an untried juvenile to be innocent, requires alternatives to detention to be tried first, and asks that any detention be kept as short as possible. Rule 29 requires children not to be kept with adults. A valid order, an entry in a register and prompt information to parents or guardians is required by Rule 20 and 22, and a medical examination upon admission is required under Rule 50 so that any prior ill treatment is recorded. Rules 63 and 64 allow restraint and force only in exceptional cases and as a last resort and for the shortest time. Rule 7 asks States to provide remedies, including compensation, where a child is injured. These rules give a child detained in a crowd a baseline of protection that does not depend on how the detention is classified.

D. Commentary on the Rights of Child

Two General Comments form the international foundation for detaining people at assemblies. General Comment No. 24 on children's rights in the child justice system requires that a child deprived of liberty be brought before a competent authority within twenty-four hours (para 90). General Comment No. 37 on peaceful assembly treats preventive detention of individuals to keep them from preventing an assembly as potentially arbitrary, especially if it lasts more than a few hours. It permits it only in the most exceptional cases, unless absolutely necessary, and on proof of an intention of the assembly to engage in or incite violence, and it treats indiscriminate mass arrest as arbitrary (para 82). Containment, or kettling, is allowed only where necessary and proportionate to meet actual or imminent violence, and it should reach only those linked to that violence and last the minimum time (para 84). Paragraph 80 adds that officers policing assemblies should be trained to recognise the needs of children.

14.2 Comparison with Nations

A. United States

The United States has no equivalent to the JJ Act's apprehension regime, so its case law is useful for its reasoning. In **Roper v Simmons**⁴¹, the Supreme Court held that adolescents are less mature than adults and more vulnerable to outside pressures, which lowers their culpability. **J.D.B. v North Carolina**⁴² has further moved that reasoning into police contact. A thirteen year old had been questioned for at least half an hour in a closed school room. The Court held that it was beyond dispute that children will often feel bound to submit to police questioning; however, an adult would feel free to leave at the same instance, so a child's age must be taken into account while deciding if they were in custody during police questioning. The test is practical. When the age was known to the officer or would have been apparent to a reasonable officer, it can be considered. The Court did not ask police to read a child's state of mind. **Tinker v Des Moines**⁴³ upheld protecting peaceful expression by students unless it materially disrupts school. Read together, the three cases show that a child's age matters at the first moment of police contact and not only after a charge.

B. United Kingdom

The United Kingdom is the closest counterpart, because its safeguards attach to detention itself and not to the offence alleged. Under PACE Code C, a person who appears to be under eighteen is treated as a juvenile in the absence of clear evidence otherwise (para 1.5). The custody officer must identify and inform the person responsible for the juvenile's welfare (para 3.13), and an appropriate adult must attend (paras 3.5 and 3.15). These rules apply once a person is in police detention after arrest, so they do not reach a crowd. That gap was tested in **Castle v Commissioner of Police for the Metropolis**⁴⁴. During the November 2010 student protest, a 14 year old and two 16 year olds were held in a containment of over 3,000 people. Containment is not arrest, so the claimants relied on the duty in section 11 of the Children Act 2004 to safeguard and promote children's welfare. The Divisional Court held that this duty is applicable to operational decisions such as containment. The claim however failed, because the commander had planned for the release of vulnerable people, and the Court added that police policy should address children expressly. It emphasises a presumption of childhood at contact, and a duty to plan for children in a crowd.

C. Chile

⁴¹ 543 U.S. 551 (2005).

⁴² 564 U.S. 261 (2011).

⁴³ 393 U.S. 503 (1969).

⁴⁴ [2011] EWHC 2317.

Chile does not provide for a model law rather it presents an account of what adult policing does to children. During the student led protests in 2011, a 16 boy was killed by a stray bullet fired by a police officer. Felipe González and Mounu Prem⁴⁵ followed teenagers linked to the victims including his classmates and people in vicinity through administrative data over hundreds of protest and non-protest days. They found that the killing has lowered participation in street rallies but increased adherence to test boycotts. These effects appeared among the victim's schoolmates and not among students living near the shooting. Also, the schoolmates suffered negative educational consequences, and the authors suggest that psychological mechanisms are a reasonable explanation for this. The study's value is practical. It is an example that the harm of coercive policing does not end with the immediate event and can reach a child's schooling and later conduct. It also shows that force does not simply quiet protest. This supports the cause for child sensitive policing.

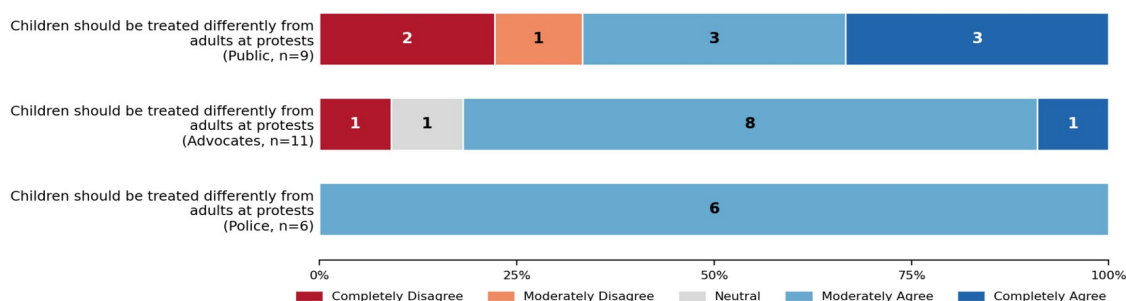
D. South Africa

South Africa's Child Justice Act 75 of 2008 shows a statute that regulates the arrest of children directly. It declares that children are not to be detained except as a last resort and, if detained, only for the shortest appropriate time. Section 20 of the act provides that the arresting officer explain the immediate procedure to the child and to inform a parent, appropriate person or guardian. The officer must also inform a probation officer within 24 hours, and a preliminary inquiry must follow within 48 hours of arrest. The Act provides written notice and summons as alternatives to arrest, and it deals with uncertainty over a child's age. However, it is built around a child alleged to have committed an offence, so it does not obviously reach a child restrained under a public order power.

⁴⁵ Felipe González & Mounu Prem, Police Violence, Student Protest and Educational Performance, 106 REV. ECON. & STAT. 712 (2024).

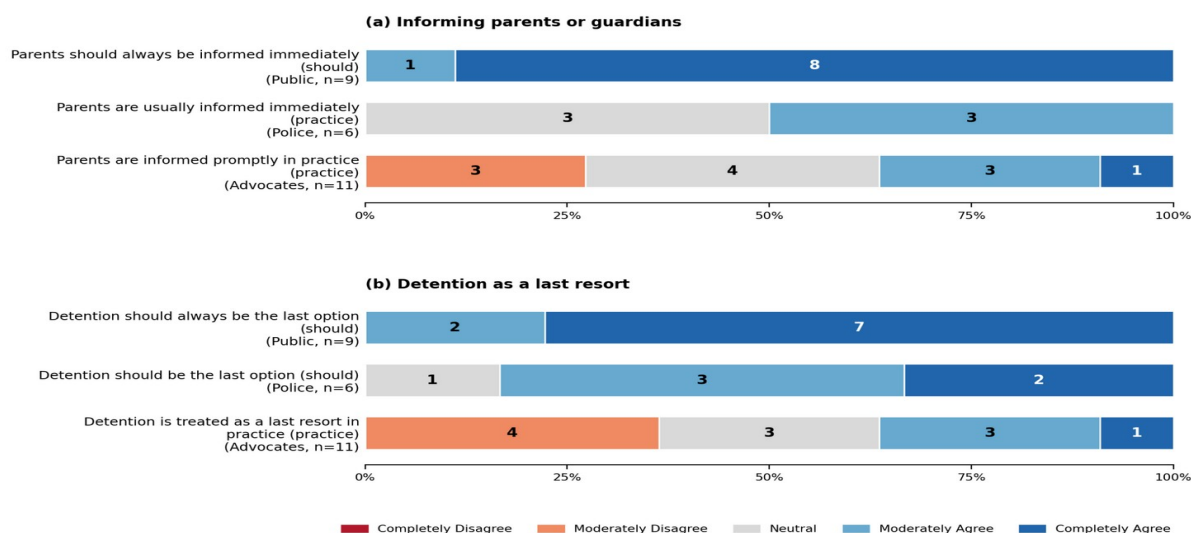
15. Empirical Findings

Figure 1: Should children be treated differently from adults at protests? (counts shown in bars)

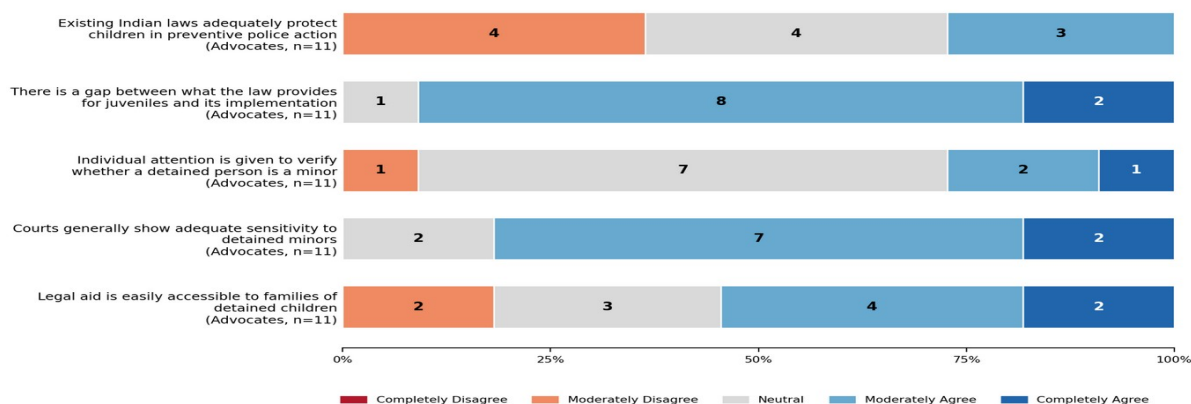


Out of the 26 respondents, 21 agreed that children should be treated differently from adults at protests, including every police officials and nine of eleven advocates, while four disagreed and one was neutral. With respect to H1, it does not test it since it depends on statute, but supports its premise. So, the principle of separate treatment of children in the JJ Act is widely accepted even by the officers who apply it. Therefore, the problem lies in statutory framework and its implementation

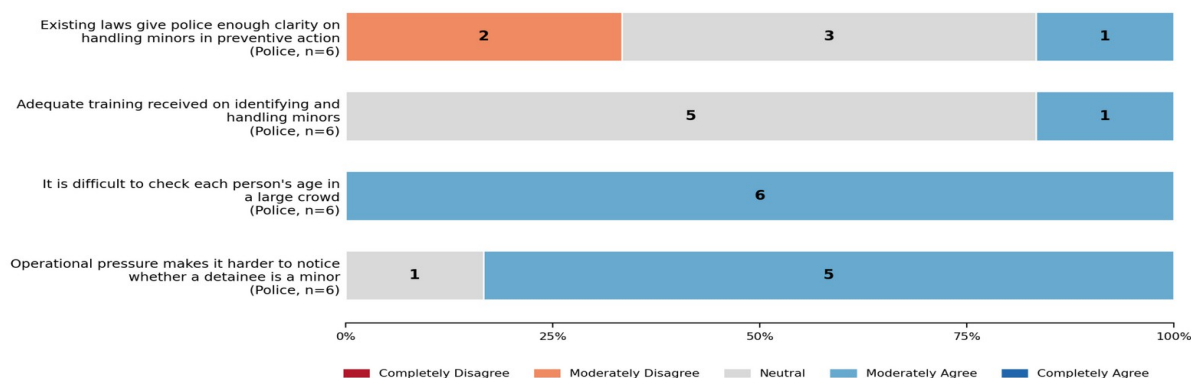
Figure 2: Principle versus practice (counts shown in bars)



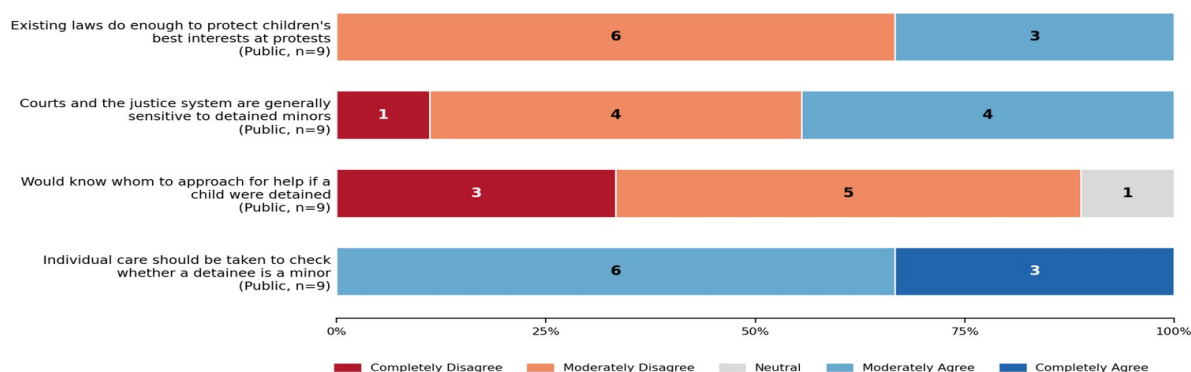
The respondents have largely agreed on principle but have described a different reality in principle. Every public respondent said parents should be informed immediately and detention should be the last option. Most police officials agreed on this yet only half the officers and four of eleven advocates said that parents are informed promptly. Also the advocates were split on whether detention is treated as last resort. This gap between what should happen and what is reported lies consistent with H2 and suggests that weak implementation widens statutory gap.

Figure 3: Advocates on protection and implementation (counts shown in bars)

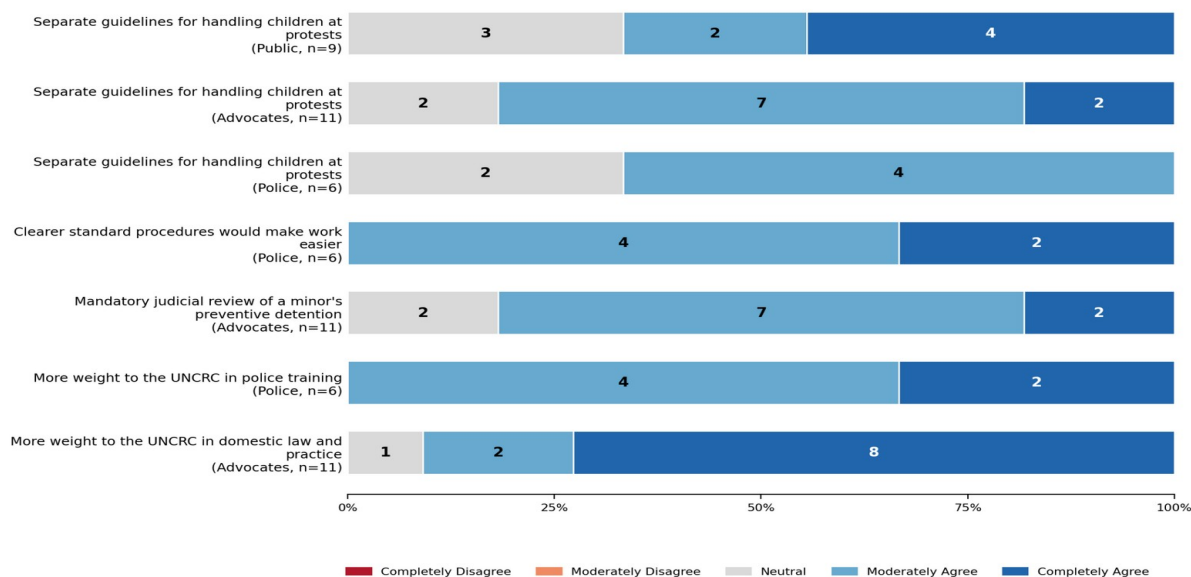
Ten out of eleven advocates saw a gap between what is provided by law and how it is implemented, and only three felt that individual attention is given for verification of detainee's age. The opinion on the adequacy of law was divided and none agreed strongly. Most of them regarded the court as sensitive and a small majority suggested that legal aid was accessible. Altogether, these answers suggest that difficulty may lie at the point of police contact and not in later stages. This supports H2 and that the incidents examined earlier that relief came later through courts.

Figure 4: Police officials on legal clarity, training and age checks (counts shown in bars)

All of the six police officials said that checking the age of each person in a large crowd is difficult and five said operational pressure makes it harder to notice a minor, while only one felt that existing law gives enough clarity and only one that training has been adequate. The officers thus describe the problem in terms of H2 as limited legal clarity, little training and crowd setting in which age cannot be readily checked.

Figure 5: Members of the public on protection and access to help (counts shown in bars)

Most public respondents doubt that existing laws do enough to protect children at protests, a majority of them doubted that courts are sensitive to detained minors, and eight of nine said they would not know whom to approach for help. Although all of them agreed that a detainee's age should be checked individually. Therefore, the public sees little protection and no accessible help. This lies in contrast with the more positive view of courts and legal aid by advocates. It supports H2 by showing that safeguards existing in law are hard to use.

Figure 6: Support for guidelines, procedures and review (counts shown in bars)

Out of 26 respondents, 19 backed separate guidelines for handling children at protest. Every police official said clearer procedure would ease their work while most advocates supported mandatory judicial review and greater weight for UNCRC. This partly supports the H3 since the survey tested the protocol and not the statutory amendment. The police backing suggests that a child specific protocol need not be seen as an obstacle to public order. It is the reconciliation as

proposed by the paper. Some neutral responses remain, so the support is indicative and not conclusive.

16. Recommendations

Mass protest is a means for citizens to exercise their right to freedom of speech and expression and voice dissent. During such protests, the administration through the police officials remain responsible for public order. As it was held in **Mazdoor Kisan Shakti Sangathan v. Union of India**⁴⁶ that the protest rights are subject to reasonable restrictions and be balanced against rights of residents. In **Amit Sahni v. Commissioner of Police**⁴⁷ it held that public ways cannot be occupied indefinitely. In **Re: Ramlila Maidan incident**⁴⁸ it accepted that power to restrain assemblies but required that restraint be reasonable and minimal.

This highlights that the protesters need to demonstrate in a manner which does not hamper the public order. And, the protests can be policed in case of disruption of public order but such that minimal and less restrictive means is used. The paper emphasises on child rights and their welfare to be protected while preventive policing. And the recommendations below start from this position.

It must also be accepted that a child in a protest crowd may sometimes be involved in violence, and the police need to separate and remove the child quickly. Adolescents are still developing judgement and are more prone to pressure from a crowd, so early and protective separation is necessary to keep the child out of consequences that they may not foresee. The recommendations are hence built to allow this.

- Amendment in Juvenile Justice Act, 2015 so that safeguards follow custody and not allegations: Section 10 and 12 and bar on police lock up should extend to any person appearing to be a child and is arrested, detained, removed or confined under Section 148, 163, 170 and 172 of BNSS or any other preventive or public order power. For a child not apprehended for offence, bail is not a remedy so amendment should provide for release to a parent or guardian or place of safety when cannot be returned to the guardian. The act should also adopt an appearance based presumption for child for police at point of contact, thereby borrowing from para 1.5 of PACE Code C because the age rule of the act operates once the child reaches the board.

⁴⁶ (2018) 17 SCC 324.

⁴⁷ AIR 2020 SC 4074.

⁴⁸ (2012) 5 SCC 1.

- Adopt a protest policing protocol: The statutory rights are applied by the officers at the scene, so the law must be built accordingly for practical implementation. The protocol should provide for
- A designated SJPU or CWPO member at every protest deployment, carrying visible identification which says who they are before any contact, in line with General Comment no. 37.
- Immediate Action form adult detainees and release them to a parent, guardian or place of safety instead of lock up.
- No handcuffing of children
- Written reasons for any custody beyond release.

This can be done either through amendment in model rules or state rules or issuance of police standing orders or circulars. As the guidelines through the Supreme Court can act as interim measures however, the rules could be a better guiding principle in practice.

- Police should receive training in adolescent development.
- The custody records should be reviewed by boards and child rights commissions as well as the designation of an SJPU and CWPO in every district should be checked in practice.

These methods are not directed at tying the police's hands rather they still authorise them to disperse, separate and remove children when peaceful assembly might turn unruly and even to apprehend when they commit a heinous offence. But, this should be without placing the child in police lock up and treating them as adults on mere apprehension. These measures would take into consideration both the protection of the best interests of child as well as ensure public order through less restrictive means. Therefore altogether, these measures would aid in reconciling the preventive policing during mass protest with the protection of the best interests of child along with ensuring the established public order as a state's mandate.

17. Conclusion

This paper has argued that the safeguards the Juvenile Justice Act, 2015 ensures a child who comes into contact with the police depends merely on a condition that an offence is alleged or found. The preventive powers under Sections 148, 163, 170 and 172 of the BNSS however operate before any offence is alleged and make no distinction for a child. A child who is a part of the protest crowd therefore falls between the two statutes and is policed as an adult. The incidents examined, ranging from Uttar Pradesh and Jammu and Kashmir to Bidar and the July

2026 protests at Jantar Mantar show this gap practically. In each incident, the child's protection came late, either through courts, rules or habeas corpus, and not at the very point of contact. The International standards and the United Kingdom's approach through PACE Code C show that protection can be attached to a child's age and to custody itself. The paper thus proposes three measures which are extending the JJ Act's safeguards to children held under preventive powers, a presumption of childhood at first contact, and a binding protocol for policing protests. These measures do not encroach the State's power to maintain order. They only try to bar lock up and adult processing of children, which reconciles public order with the best interests of the child.

18. Limitation and Challenges

This study has faced limits with respect to evidence and challenges in putting proposals to practice. With respect to the evidence side, the survey covers only 20 to 25 respondents drawn from the public, advocates and police officials. It covers perception and cannot show how often the practices described occur, also police respondents may answer cautiously. Many incidents rest on press reports of court orders and on civil society reports, not on official records and several facts are allegations made before court and not findings. There are little case laws on Sections 148, 163, 170 and 172 as applied to children, and the argument rests largely on reading the statutes together. There can be limited comparison with the United States and the United Kingdom, since their systems differ from those followed in India and the international standards relied on have a persuasive, not binding. With respect to implementation, the proposals depend on matters outside the paper's control. The police officials must judge a person's age upon sight in a crowd, a protocol needs trained and adequately resourced juvenile police units, and an amendment needs legislative will. Also, balancing child protection against public order will also remain contested in individual cases.

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