

- 1. Evolution of Juvenile Jurisprudence**
- 2. Major Changes in JJA**
- 3. Constitutionality Issues**

Prof. Ved Kumari
Faculty of Law
University of Delhi

Juvenile Jurisprudence

- Basis for differential treatment for children
 - Welfare
 - Parens Patriae
 - Mens Rea
 - Rights

Juvenile Justice Legislative History

- 1850 – Apprentices Act
- 1864 – Whipping Act
- 1898 – Reformatory Schools Act
- 1920 – Children Act
- 1960 – (Model) Children Act – **No imprisonment**
- 1986 – JJA – uniform for India – u/16 Boys, u/18 girls
- 2000 – JJ (C&P of Children) Act – all children /18
- 2015 – All children u/18 but selective transfer of 16-18 years old children to adult court in case of heinous offence

JJA 2015 Objectives

- catering to their basic needs through proper care, protection, development, treatment, social re-integration,
- by adopting a child-friendly approach in the adjudication and
- disposal of matters in the best interest of children
- and for their rehabilitation through processes provided, and institutions and bodies established

S.3 – General Fundamental Principles

- Chapter 2 - GENERAL PRINCIPLES OF CARE AND PROTECTION OF CHILDREN
- The Central Government, the State Governments, **the Board, and other agencies**, as the case may be, while implementing the provisions of this Act shall be guided by the following **fundamental principles**

- i. Principle of presumption of innocence:**
“Any child shall be presumed to be an innocent of any *mala fide* or criminal intent up to the age of eighteen years.”
- ii. Principle of dignity and worth:**
- iii. Principle of participation:**

- iv. Principle of best interest:** “All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.”
- v. Principle of family responsibility:**
- vi. Principle of safety:**

vii. Positive measures:

viii. Principle of non-stigmatising semantics:

“Adversarial or accusatory words are not to be used in the processes pertaining to a child.”

ix. Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

x. Principle of equality and non-discrimination:

- xi. Principle of right to privacy and confidentiality:** “Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.”
- xii. Principle of institutionalisation as a measure of last resort:** “A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.”
- xiii. Principle of repatriation and restoration:**

xiv. Principle of fresh start:

xv. Principle of diversion:

xvi. Principles of natural justice: “Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.”

Scheme of the JJA 2015

Child = not completed 18 yrs

CCL – JJB / Children Court

- Orders u/s.18
 - If below 16 years - Any offence
 - 16-18 years – petty or serious offence
- **16-18 years – heinous offence**
 - Preliminary assessment
 - Selective transfer to Children’s Court
- Review of assessment and disposal by Children’s Court

CNCP- CWC

- Restoration
- Children’s Home
- Other residential homes
- Foster Care
- Adoption

Selective Transfer by JJB to Children's Court

- In case of 16-18 years old alleged to have committed heinous offence

- **Essential Steps**

- i. Age Determination
- ii. Finding if offence is Heinous
- iii. Preliminary Assessment
- iv. Transfer to the Children's Court or not?
- v. Orders if not transferred?

1. Age Determination Challenge

1. Above 16 years of age
 2. And below the age of 18 years on the date of offence
- *Rajinder Chander v. State of Chhatisgarh*, (2002) 2 SCC 287
 - Benefit of doubt in favour of child up to one year on the lower side
 - Standard of proof – balance of probability

2. Classification of Offence as Heinous

- (33) “heinous offences” includes the offences for which the **minimum** punishment under the Indian Penal Code or any other law for the time being in force is **imprisonment for seven years or more**;
- (45) “petty offences” includes the offences for which the **maximum** punishment under the Indian Penal Code or any other law for the time being in force is **imprisonment up to three years**;
- (54) “serious offences” includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment **between three to seven years**;

Task: Classify offence / Jurisdiction / Order

Two 17 years old boys are produced before you for robbery. One of them had pushed a woman. She fell down. They snatched a note of Rs.500 from her hand and ran away.

- (33) “heinous offences” includes the offences for which the **minimum** punishment under the Indian Penal Code or any other law for the time being in force is **imprisonment for seven years or more**;
- (45) “petty offences” includes the offences for which the **maximum** punishment under the Indian Penal Code or any other law for the time being in force is **imprisonment up to three years**;
- (54) “serious offences” includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment **between three to seven years**;

Orders u/S.18

- (a) advice or admonition
- (b) group counselling and similar activities;
- (c) community service;
- (d) fine
- (e) released under parent, guardian or fit person – max 3 yrs;
- (f) release under any fit facility – max 3 yrs ;
- (g) send to a special home – max 3 yrs ,
for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send **such child to the place of safety.**

Additional Orders

S.18 (2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

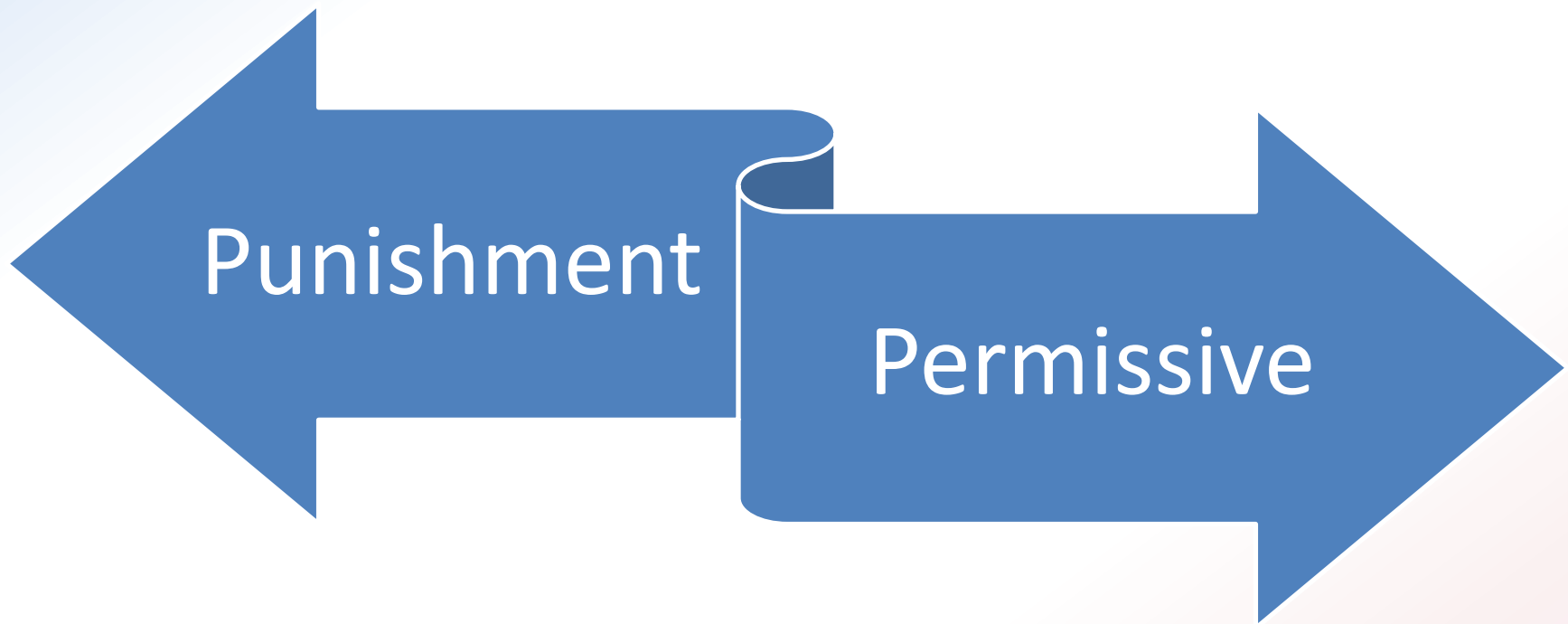
- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- (v) undergo a de-addiction programme.

Additional Facts

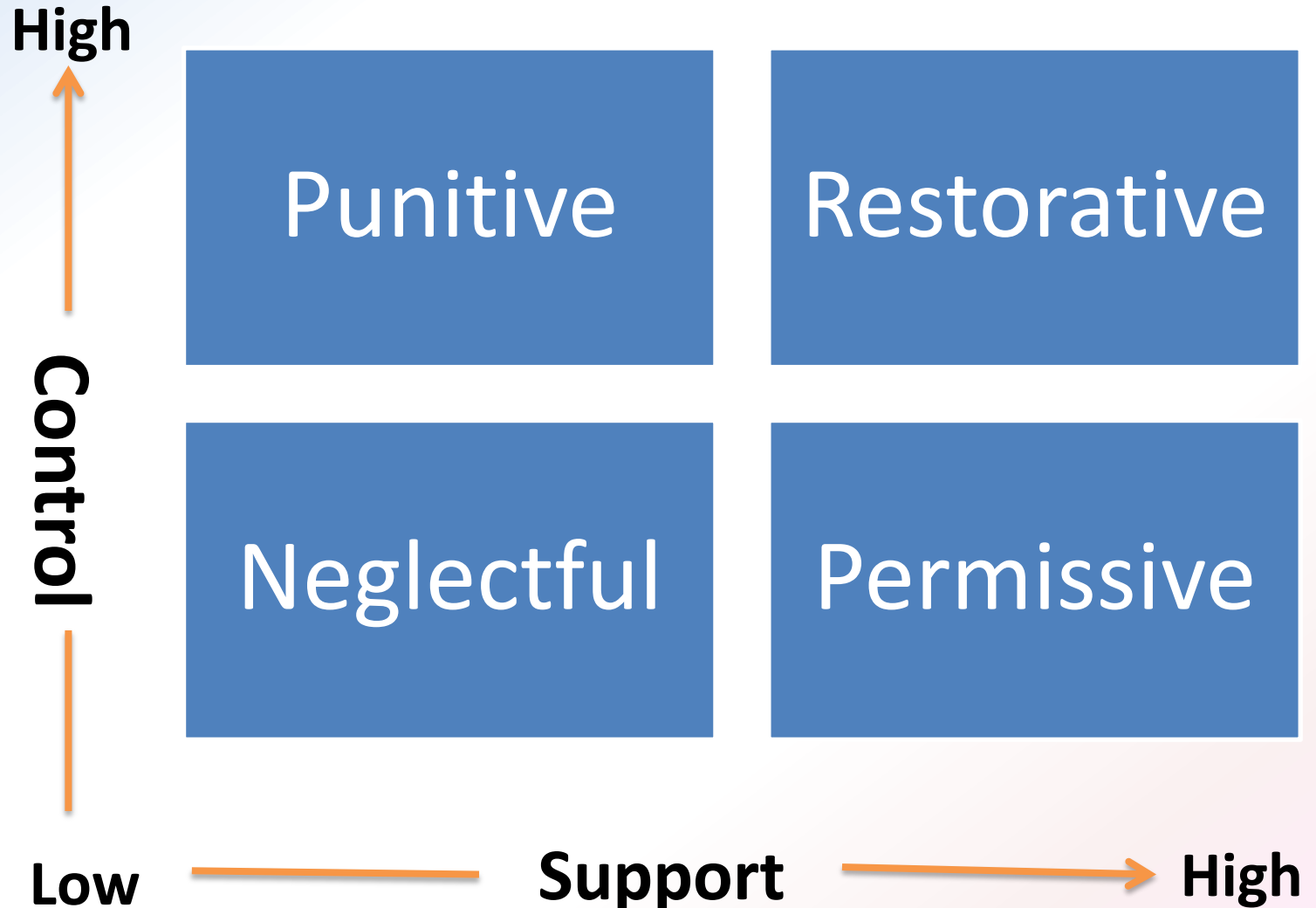
The SIR shows that they study in a government school. They are known to be mischievous but there is no serious complaint against them. They are OK in their studies. They have supportive families. They want to make amends and are sorry for their action.

The victim is about 70 years old. She broke her leg as she fell and has become immobile for 6 weeks due to plaster. She has been living alone in her house but now is too scared to do so. She is looking for an alternate community living arrangement.

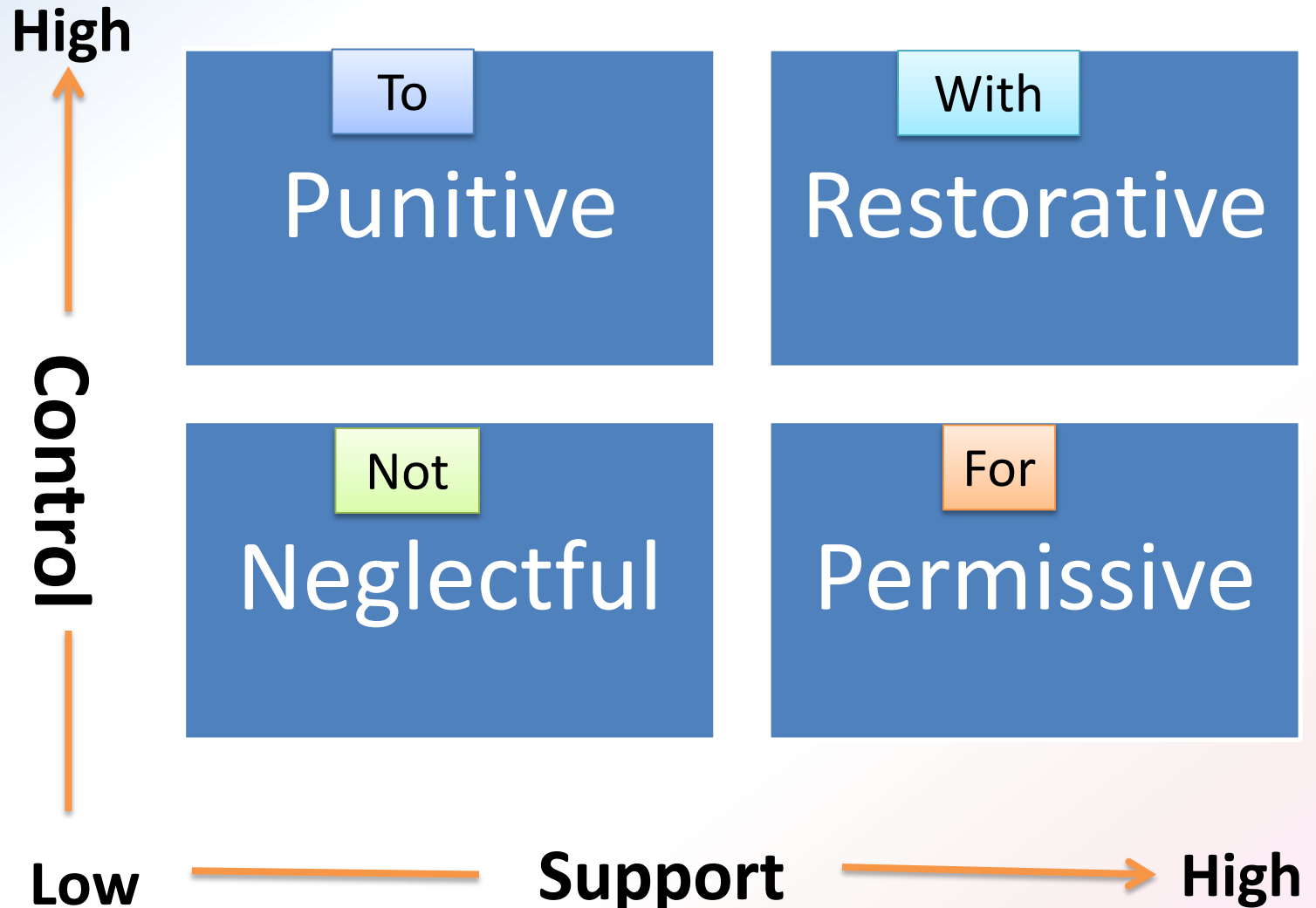
Standard Misunderstanding re Response to Crime



Social Discipline Window



Social Discipline Window



Restorative Justice Approach through Community Service and Group Counselling

Orders by JJB if 16 + & Heinous Offence?

- Transfer to Children's Court
- **Not to transfer to Children's Court**
 - Conduct inquiry in offence
 - Pass final orders U/ which Section?

S.21 Orders that cannot be passed

- Death Penalty
- Life imprisonment without the possibility of release

Constitutionality Challenge re Transfer

- Art. 14 – Reasonable classification - should have direct nexus with the objective of Act?
- Criterion of classification
 - Age group – 16-18 years
 - Nature of offence – heinous
- Objective of Classification
 - trial by adult court imposing adult punishment
- Purpose of the Act
 - Cater to basic needs through proper care, protection, development, treatment, social re-integration

Art.15

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.