Children, Rights and the Law: An Empirical Study of Deprivation of Rights and Humane Treatment of Juveniles in Conflict with Law in India

(Workshop III: Access to Justice: Ensuring Restorative Measures are Considered at the Pre-Trial Stage, Dec 3)

By
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Abstract

This paper is a part of my PhD thesis on socio-legal study on juvenile delinquency in Jammu and Kashmir, a northern most State of India, in light of the International Conventions of the United Nations on child rights. The paper focuses on the condition of juvenile delinquents in India from the standpoint of the provisions guaranteed to them by the Juvenile Justice (Care and Protection of Children) Act, 2000, amended in 2006 and 2011. Many of the issues addressed provide for the similar challenges in many South-Asian countries. The paper analyzes the upper age limit of the Indian juvenile justice system and the gap between theory and practise by looking at the data for 200 juvenile court case files from the Kashmir province juvenile courts and in depth interviews of 400 children (200 Juveniles in Conflict with Law and 200 Children in Need of Care and Protection). The special focus of the paper are the stone-pelting riots of 2008 and 2010 in Kashmir in which hundreds of juveniles were involved thereby raising a number of questions regarding child rights in India which will be addressed.

The paper concludes with some recommendations for the Government of India in order to facilitate child-friendly system for Juveniles in Conflict with Law and Children in Need of Care and Protection.

1. Children in India: An Overview

India is home to the largest number of children in the world. Nearly every fifth child in the world lives in India. It is home to 2,43,492 children aged between 10-19, constituting a total of 20% of the world population.\(^1\) It is estimated that there are about 43 crore children in the age group of 0-18 years.\(^2\) 16 crore are in the age group of 0-6 years of which there are 8.5 crore males and 7.88 crore females. In the age group of 6-18 years, there are about 27 crore children. It is estimated that a large proportion of these children, about 40 % are in very difficult circumstances or vulnerable. This includes children in poor households without family income, children denied education opportunities and forced into labour, abused/trafficked children, children on the streets, children affected by substance abuse, by armed conflict/civil unrest/natural calamity and so on. Survival, growth, development and

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protection of these children therefore need priority focus and attention.\footnote{Report of the Working Group on Child Rights for the 12th Five Year Plan. Available at: \url{http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_child.pdf}} India is a country where significant human and child rights problems persist. The total number of juveniles in conflict with law for the year 2013 is 31,725 and total crimes committed against children in the same year are 58224.\footnote{Crime in India, 2013. National Crime Record Bureau, Government of India. Available at: \url{http://ncrb.nic.in/}.}

2. Juvenile Justice in India: Brief Information

After India’s independence in 1950, there have been many contributions towards development of juvenile justice in India like Central Children’s Act (CCA) 1960 which provided for care, protection, and treatment of children, and made it applicable in the territories under direct Central Government rule. In 1974, India declared its National Policy for children-recognizing children as nation’s supremely important assets. This led to the introduction and enforcement of the Juvenile Justice Act 1986 and its uniform application to whole of India with the aim to bring the administration of juvenile justice in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules).\footnote{Kumari, Ved,(2004). \textit{The Juvenile Justice System in India: From Welfare to Rights}, Oxford University Press, New Delhi, pp. 56-93.} In 1992, India ratified the United Nations Conventions on the rights of the Child 1989 (referred to as UNCRC henceforth), which is the most widely ratified treaty in the history of juvenile justice.

As a State Party to the UNCRC, the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 , United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and various other rules and guidelines on children's rights, the Government of India is bound to fulfil the duties set out in these conventions. International agreements on children's rights, as they concern juveniles in conflict with law, promote a holistic approach, concerned with the development, care, and protection of children throughout their interactions with the juvenile justice system. A National Program of Action on Children-India, was approved by the Union Cabinet in 1992 as a follow-up of the World Declaration on the Survival, Protection and Development of children. The Government of India submitted its country report under Article 44 of the CRC to United Committee in 1997 which recommended India to review the loss in the administration of children and justice to ensure that they are in accordance with the convention, especially articles 37, 40 and 39, and other relevant international standards such as the Beijing Rules, the United Nations Guidelines for the Protection of Juveniles Deprived
of their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.\textsuperscript{6}

In response to the U.N. Committee on the Rights of the Child’s recommendation that India incorporate the aims of the UNCRC into domestic legislation, a new law was passed. The Juvenile Justice (Care and Protection of Children) Act 2000 (referred to as JJA henceforth), which was amended in 2006(Juvenile Justice (care and protection of children) Amendment Act 2006) \{referred to as JJ (Amendment) Act 2006 henceforth\} and 2011 and to which Rules were added in 2007, covers all aspects of interaction between children and the legal system. The provisions within the JJA, like its international predecessors, are intended to preserve the dignity and best interests of the child.

3. Incidence and Pattern of Crimes Committed by Children and Crimes committed Against Children in India.

Before discussing various issues of child rights in India, it becomes pertinent to analyze the nature and extent of juvenile delinquency and child victimization in India

3.1 Crimes Committed by Juveniles in Conflict with Law

The following Tables and Figures show the basic pattern of juvenile delinquency in India from 2003-2013 according to the statistics of National crime Records Bureau.\textsuperscript{7}

\textsuperscript{6}Ibid.

\textsuperscript{7}Crime in India, 2013. National Crime Record Bureau, Government of India. Available at: http://ncrb.nic.in/
### Table 1.
Incidence And Rate Of Juveniles in Conflict with Law Under IPC (2003-2013)

<table>
<thead>
<tr>
<th>S. No</th>
<th>Year</th>
<th>Incidence of Juvenile Crimes</th>
<th>Total Cognizable Crimes</th>
<th>Percentage of Juvenile Crime to Total Crime</th>
<th>Estimated Mid Year Population (In Lakhs)</th>
<th>Rate of Crime by Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2003</td>
<td>17819</td>
<td>1716120</td>
<td>1.00</td>
<td>10682</td>
<td>1.70</td>
</tr>
<tr>
<td>2</td>
<td>2004</td>
<td>19229</td>
<td>1832015</td>
<td>1.00</td>
<td>10856</td>
<td>1.80</td>
</tr>
<tr>
<td>3</td>
<td>2005</td>
<td>18939</td>
<td>1822602</td>
<td>1.00</td>
<td>11028</td>
<td>1.70</td>
</tr>
<tr>
<td>4</td>
<td>2006</td>
<td>21088</td>
<td>1878293</td>
<td>1.10</td>
<td>11198</td>
<td>1.90</td>
</tr>
<tr>
<td>5</td>
<td>2007</td>
<td>22865</td>
<td>1989673</td>
<td>1.10</td>
<td>11366</td>
<td>2.00</td>
</tr>
<tr>
<td>6</td>
<td>2008</td>
<td>24535</td>
<td>2093379</td>
<td>1.20</td>
<td>11531</td>
<td>2.10</td>
</tr>
<tr>
<td>7</td>
<td>2009</td>
<td>23926</td>
<td>2121345</td>
<td>1.10</td>
<td>11694</td>
<td>2.00</td>
</tr>
<tr>
<td>8</td>
<td>2010</td>
<td>22740</td>
<td>2224831</td>
<td>1.00</td>
<td>11858</td>
<td>1.90</td>
</tr>
<tr>
<td>9</td>
<td>2011</td>
<td>25125</td>
<td>2325575</td>
<td>1.10</td>
<td>12102</td>
<td>2.10</td>
</tr>
<tr>
<td>10</td>
<td>2012</td>
<td>27936</td>
<td>2387188</td>
<td>1.20</td>
<td>12134</td>
<td>2.30</td>
</tr>
<tr>
<td>11</td>
<td>2013</td>
<td>31725</td>
<td>2647722</td>
<td>1.20</td>
<td>12288</td>
<td>2.60</td>
</tr>
</tbody>
</table>

![Figure 1. Rate and Percentage of Juvenile Crime to Total Crime Under Indian Penal Code (2003-2013)](chart.png)
Since 2008, there has been a marked increase in the total number of juveniles in conflict with law. The most common offences, as shown by the Figure 2, alleged to have committed by children have been found to be; hurt, theft, burglary, robbery, riots, rape, assault on modesty of women, kidnapping and abduction, murder, attempt to murder, rape etc. A large share of offences have been grouped under the category ‘other crimes’ under the Indian Penal Code (IPC).
Table 2.
Juveniles in Conflict with Law Apprehended Under IPC and SLL in India (2003-2013)

<table>
<thead>
<tr>
<th>S. No</th>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
<th>Percentage of Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2003</td>
<td>30985</td>
<td>2335</td>
<td>33320</td>
<td>7.00</td>
</tr>
<tr>
<td>2</td>
<td>2004</td>
<td>28878</td>
<td>2065</td>
<td>30943</td>
<td>6.70</td>
</tr>
<tr>
<td>3</td>
<td>2005</td>
<td>30606</td>
<td>2075</td>
<td>32681</td>
<td>6.30</td>
</tr>
<tr>
<td>4</td>
<td>2006</td>
<td>30375</td>
<td>1770</td>
<td>32145</td>
<td>5.50</td>
</tr>
<tr>
<td>5</td>
<td>2007</td>
<td>32671</td>
<td>1856</td>
<td>34527</td>
<td>5.40</td>
</tr>
<tr>
<td>6</td>
<td>2008</td>
<td>32795</td>
<td>1712</td>
<td>34507</td>
<td>5.00</td>
</tr>
<tr>
<td>7</td>
<td>2009</td>
<td>31550</td>
<td>2092</td>
<td>33642</td>
<td>6.20</td>
</tr>
<tr>
<td>8</td>
<td>2010</td>
<td>28763</td>
<td>1540</td>
<td>30303</td>
<td>5.10</td>
</tr>
<tr>
<td>9</td>
<td>2011</td>
<td>31909</td>
<td>1978</td>
<td>33887</td>
<td>5.80</td>
</tr>
<tr>
<td>10</td>
<td>2012</td>
<td>37764</td>
<td>2058</td>
<td>39822</td>
<td>5.20</td>
</tr>
<tr>
<td>11</td>
<td>2013</td>
<td>41639</td>
<td>1867</td>
<td>43506</td>
<td>4.30</td>
</tr>
</tbody>
</table>

It may be noted that Figures 3, 4, 5, 6, 7, and 8 show total apprehensions under IPC and SLL. For example, in 2013 the total apprehensions under IPC and SLL were 43506. The Figure 3 shows that since 2003 the total number of apprehensions for girls is decreasing whereas the apprehensions for boys are on an increase. This means either girls commit fewer crimes or they manage to escape apprehension.
Table 3

Juveniles apprehended Under IPC and SLL Crimes by Age Groups (2003-2013)

<table>
<thead>
<tr>
<th>S. No</th>
<th>Year</th>
<th>7-12 Years</th>
<th>Percentage to Total</th>
<th>12-16 Years</th>
<th>Percentage to Total</th>
<th>16-18 Years</th>
<th>Percentage to Total</th>
<th>Total Apprehended</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2003</td>
<td>3584</td>
<td>10.80</td>
<td>11687</td>
<td>35.10</td>
<td>18049</td>
<td>54.20</td>
<td>33320</td>
</tr>
<tr>
<td>3</td>
<td>2004</td>
<td>2107</td>
<td>6.80</td>
<td>12415</td>
<td>40.10</td>
<td>16421</td>
<td>53.10</td>
<td>30943</td>
</tr>
<tr>
<td>4</td>
<td>2005</td>
<td>1645</td>
<td>5.00</td>
<td>13090</td>
<td>40.10</td>
<td>17946</td>
<td>54.90</td>
<td>32681</td>
</tr>
<tr>
<td>5</td>
<td>2006</td>
<td>1595</td>
<td>5.00</td>
<td>12535</td>
<td>39.00</td>
<td>18015</td>
<td>56.00</td>
<td>32145</td>
</tr>
<tr>
<td>6</td>
<td>2007</td>
<td>1460</td>
<td>4.20</td>
<td>12114</td>
<td>35.10</td>
<td>20953</td>
<td>60.70</td>
<td>34527</td>
</tr>
<tr>
<td>7</td>
<td>2008</td>
<td>1281</td>
<td>3.70</td>
<td>12272</td>
<td>35.60</td>
<td>20954</td>
<td>60.70</td>
<td>34507</td>
</tr>
<tr>
<td>8</td>
<td>2009</td>
<td>1133</td>
<td>3.40</td>
<td>10741</td>
<td>31.90</td>
<td>21768</td>
<td>64.70</td>
<td>33642</td>
</tr>
<tr>
<td>9</td>
<td>2010</td>
<td>927</td>
<td>3.10</td>
<td>10123</td>
<td>33.40</td>
<td>19253</td>
<td>63.50</td>
<td>30303</td>
</tr>
<tr>
<td>10</td>
<td>2011</td>
<td>1211</td>
<td>3.60</td>
<td>11019</td>
<td>32.50</td>
<td>21657</td>
<td>63.90</td>
<td>33887</td>
</tr>
<tr>
<td>11</td>
<td>2012</td>
<td>1286</td>
<td>3.20</td>
<td>12063</td>
<td>30.30</td>
<td>26473</td>
<td>66.50</td>
<td>39822</td>
</tr>
<tr>
<td>12</td>
<td>2013</td>
<td>1330</td>
<td>3.10</td>
<td>13346</td>
<td>30.70</td>
<td>28830</td>
<td>66.30</td>
<td>43506</td>
</tr>
</tbody>
</table>

Interestingly, the total number of juveniles in conflict with law in the age groups 7-12 and 12-16 show a decrease over the decade whereas juveniles in conflict with law in the age group 16-18 are on a steady increase. Where UNCRC says that with age children are able to make better adjustments and are less likely to commit crimes, the juveniles offence in India shows a different situation. The increase in the later group carries significance with the growing unemployment, and the consequent frustration, rampant in India.
Figure 5. Disposal of Juveniles in Conflict with Law Apprehended and Sent to Courts in India During 2013

- Pending Disposal: 27.82%
- Aquitted or Otherwise Disposed Off: 7.35%
- Dealt With Fine: 4.04%
- Sent to Special Home: 21.95%
- Released and Placed Under the Care of Fit Institution: 3.88%
- Released and Placed Under the Care of Parent/Guardian: 19.77%
- Sent to Home After Advice and Admonition: 15.2%

Figure 6. Classification of Juveniles in Conflict with Law by Education

- Illiterate: 13.36%
- Primary: 32.14%
- Above Primary But Below Matric/H Sec: 35.45%
- Matric H Sec And Above: 19.29%

Figure 7. Classification of Juveniles in Conflict with Law by Family Background

- Living With Parents: 81.01%
- Living With Guardians: 5.66%
- Homeless: 13.33%
The disposal of the cases is a long term process in India. Figure 5 shows that a high percentage of cases remain pending in 2013. A large number have been sent to home after advice and admonition and again a large percentage put under the care of parent and guardian. This is also due to the fact that the institutions of care, protection and development meant specifically for juveniles in conflict with law are meagre in India. The pending cases imply that either children are kept in jails, police stations and observation homes or released on bail. The police departments are highly hesitant all over India in sharing information on detention of children in jails.

One of the biggest push towards crime and delinquency is lack of education and poverty. The Figures above show that 13.36% of the juveniles in conflict with law in 2013 in India have not crossed 10th standard whereas Table 3 shows 66.30% of juveniles in conflict with law in 2013 falling in the age group of 16-18. Together with 50.25% of the total falling in the annual income group of less than 25,000, poverty and lack of education act as boosters for increasing juvenile crime for adolescents between 16-18 years of age. A report of 2012-2013 by National Commission on Protection of Child Rights (NCPCR) shows that the school dropout rate for adolescents between classes IX-XII (as on 30.9.2005) has been 61.59%. The drop-out rate for primary classes (I-V) was 27.0% during 2010-11. It was 40.6% for elementary classes (I-VIII) during the same year.

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3.2 Incidence and Pattern of Crimes Committed Against Children in India in 2013

Over the years, in India some children have been categorised as children in difficult circumstances and these categorisations include: homeless children (pavement dwellers, displaced/evicted, etc.), orphaned or abandoned children, children whose parents cannot or are not able to take care of them, children separated from parents, migrant and refugee children, street children, working children, trafficked children, children in bondage, children in prostitution, children of sex workers / prostitutes / sexual minorities, children of prisoners, children affected by conflict, children affected by natural disasters, children affected by HIV/AIDS, children suffering from terminal diseases, the girl child, children with disabilities and related special needs, children belonging to the ethnic and religious minorities, and other minority communities, and those belonging to the Scheduled Castes and Scheduled Tribes, children in institutional care, be it in state-run institutions or religious and other charitable institutions, children in conflict with law, children who are victims of crime.  

The following Tables show the extent of victimization of ‘Children in Need of Care and Protection’ in India during 2013.

<table>
<thead>
<tr>
<th>S. No</th>
<th>Year</th>
<th>Incidence of Crimes Committed Against Children</th>
<th>Total Crime in India</th>
<th>Percentage of Crime Against Children to Total Crime</th>
<th>Estimated Mid Year Children Population (in Lakhs)</th>
<th>Rate of Total Cognizable Crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2003</td>
<td>11633</td>
<td>1716120</td>
<td>0.68</td>
<td>10682.14</td>
<td>1.1</td>
</tr>
<tr>
<td>2</td>
<td>2004</td>
<td>14423</td>
<td>1832015</td>
<td>0.79</td>
<td>10856.00</td>
<td>1.3</td>
</tr>
<tr>
<td>3</td>
<td>2005</td>
<td>14975</td>
<td>1822602</td>
<td>0.82</td>
<td>11027.91</td>
<td>1.4</td>
</tr>
<tr>
<td>4</td>
<td>2006</td>
<td>18967</td>
<td>1878293</td>
<td>1.01</td>
<td>11197.75</td>
<td>1.7</td>
</tr>
<tr>
<td>5</td>
<td>2007</td>
<td>20410</td>
<td>1989673</td>
<td>1.03</td>
<td>11365.53</td>
<td>1.8</td>
</tr>
<tr>
<td>6</td>
<td>2008</td>
<td>22500</td>
<td>2093379</td>
<td>1.07</td>
<td>11531.26</td>
<td>2.0</td>
</tr>
<tr>
<td>7</td>
<td>2009</td>
<td>24201</td>
<td>2121345</td>
<td>1.14</td>
<td>11694.44</td>
<td>2.1</td>
</tr>
<tr>
<td>8</td>
<td>2010</td>
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<td>2224831</td>
<td>1.20</td>
<td>11857.56</td>
<td>2.3</td>
</tr>
<tr>
<td>9</td>
<td>2011</td>
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<td>2325575</td>
<td>1.42</td>
<td>12101.93</td>
<td>2.7</td>
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<td>10</td>
<td>2012</td>
<td>38172</td>
<td>2387188</td>
<td>1.60</td>
<td>4294.04</td>
<td>8.89</td>
</tr>
<tr>
<td>11</td>
<td>2013</td>
<td>58224</td>
<td>2647722</td>
<td>2.20</td>
<td>4402.43</td>
<td>13.23</td>
</tr>
</tbody>
</table>


The above Figure shows the percentage break-up of the total of 58224 crimes committed against children in India during 2013. It follows from Figure 9 that children in India are highly vulnerable to be victimized in form of kidnapping and abduction, rape, murder and procuration of minor girls. It may be noted that the total number of crimes committed against children in India is far greater than crimes committed by children.
Table 5  
Disposal of Cases by Police of Crimes Committed Against Children in India During 2013

<table>
<thead>
<tr>
<th>S. No</th>
<th>Nature of Disposal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Number Cases for Investigation Including Cases Pending from Previous Years</td>
<td>74954</td>
</tr>
<tr>
<td>2</td>
<td>Cases Withdrawn by Government</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Number of Cases in Which</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Investigation Refused or not Investigated</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>Investigation completed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Charge Found False/Mistake of Fact or Law Etc</td>
<td>6098</td>
</tr>
<tr>
<td></td>
<td>Final Report True Submitted</td>
<td>7141</td>
</tr>
<tr>
<td></td>
<td>Charge Sheet Submitted</td>
<td>35954</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>49193</td>
</tr>
<tr>
<td>4</td>
<td>Number of Cases/Pending Investigation at the End of the Year</td>
<td>25696</td>
</tr>
</tbody>
</table>

The extent of carelessness of police may be noted from the above Table. In a majority of cases the charge has been found false. Such disposals only instigate more crime. The lot of pending cases at the end of the year is also very high.

Table 6  
Disposal of Cases by Courts for Crimes Committed Against Children in India During 2013

<table>
<thead>
<tr>
<th>S.No</th>
<th>Nature of Disposal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total No. for Cases for trial Including Pending Cases from Previous Year</td>
<td>114295</td>
</tr>
<tr>
<td>2</td>
<td>Cases Withdrawn by Government</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Number of Cases</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compounded or Withdrawn</td>
<td>803</td>
</tr>
<tr>
<td></td>
<td>In Which Trial Completed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Convicted</td>
<td>4916</td>
</tr>
<tr>
<td></td>
<td>Acquitted</td>
<td>10974</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>15890</td>
</tr>
<tr>
<td>4</td>
<td>Pending trial at the End of the Year</td>
<td>97602</td>
</tr>
</tbody>
</table>

The Table above shows that significant proportions, a total of 4916, offenders have been convicted but again a majority, 10974 accused have been acquitted by the Courts. As the offenders know how to prove the charges false, such law enforcement and adjudication is going to only pave way to more crime against children.
4. A Brief Introduction to the Provisions for Children Under JJA

The UNCRC and all the other international standards on child rights and mechanism of juvenile justice direct the State parties to adopt and endorse a child-friendly juvenile justice system which aims at reintegration, rehabilitation and restoration of the child. Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. India ratified the UNCRC in 1992 and took eight years before it could bring the system of juvenile justice at par with the UNCRC with introduction of the JJA in 2000 which ensures that the children in difficult circumstances, that is, ‘Juveniles in Conflict with Law’ and ‘Children in Need of Care and Protection’ are well cared for and given full opportunity to grow and develop. Certain important definitions and provisions of children under the JJA are summarized in the Box 1.12

5. National Programs catering to the Need of Children

At the national level some of the programs operating for the development and protection of children are:13

1. National Policy for Children 1974
2. National Policy for Children 2013
4. Protection of Children from Sexual Offences Bill 2011
8. Integrated Child Development Scheme (ICDS)
9. National Institute for Public Cooperation and Child Development

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12 Sections of the Legislations can be seen from: Juvenile Justice (Care and Protection of Children) Act 2000. Available at: wcd.nic.in/childprot/jjact2000.pdf
10. Integrated Child Protection Scheme (ICPS)
11. Promotion of Adoption of Children as Non-Institutional Care- Streamlining Process
12. The Right of Children to Free and Compulsory Education Act (RTE) 2009

<table>
<thead>
<tr>
<th>BOX 1 (Continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 2(k)</strong>, &quot;a juvenile&quot; or &quot;child&quot; means a person who has not completed eighteenth year of age</td>
</tr>
<tr>
<td><strong>Section 2(L)</strong>, &quot;juvenile in conflict with law&quot; means a juvenile who is alleged to have committed an offence</td>
</tr>
<tr>
<td><strong>Section 2(d)</strong> of the Act defines &quot;child in need of care and protection&quot; - i. who is found without any home or settled place or abode and without any ostensible means of subsistence, ii. who resides with a person (whether a guardian of the child or not) and such person - a. has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or b. has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person, iii. who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after, iv. who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, v. who does not have a parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry, vi. who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, vii. who is found vulnerable and is likely to be inducted into drug abuse or trafficking, viii. who is being or is likely to be abused for unconscionable gains, ix. who is victim of any armed conflict, civil commotion or natural calamity;</td>
</tr>
</tbody>
</table>

**Important Sections Relating Juveniles in Conflict with Law**

- **Section 1** of the Principal Act has been amended in 2006 by adding **sub-section 4** which highlights the overriding effect of the legislation and provides that the Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law.
- **Section 4** provides for constitution of Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on them which shall consist of a Metropolitan shall Magistrate possessing special knowledge or training in child psychology or child welfare.
- **Section 8.** Observation homes for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them.
- **Section 9(1)** provides for Special Homes for reception and rehabilitation of juvenile in conflict with law.
- **Section 10** by the JJA Amendment 2006 provides that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.
- **Section 13** provides that when a juvenile is arrested the first persons to be informed are the parent, guardian or probation officer.
- **Section 15(2)** says “The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.”
- **Section 16** provides that no juvenile in conflict with law shall be sentenced to death or life imprisonment.
- **Section 18** says that there can be No joint proceeding of juvenile and person not a juvenile.
- **Section 19** says that a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification and the Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period.
Section 21 prohibits publication of name, etc., of juvenile in law and children in need of care and protection (the later have also been included by the JJA 2006) involved in any proceeding under the Act in any newspaper, magazine, news-sheet or visual media or disclosure of the name, address or school or any other particulars calculated to lead to the identification of the juvenile.

Important Sections Relating Children in Need of Care and Protection

- **Section 29** provides for constitution of Child Welfare Committee for every district or group for exercising the powers and discharge the duties in relation to child in need of care and protection.

- **Section 31** says that the Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

- **Section 34** provides for the constitution of Children's homes in every district for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

- **Section 39**. Restoration.- (1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home which shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently. The "restoration of child" means restoration to parents, adopted parents or foster parents. The JJA Amendment 2006 extends the restoration to other three agents, guardian, fit person and fit institution.

- **Section 40** stresses rehabilitation and social reintegration of a child which shall begin during the stay of the child in a children's home or special which shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation.

Miscellaneous Sections

- **Section 49** stresses the presumption and determination of age and provides where it appears to a competent authority that person brought before it is a juvenile or the child, the competent authority shall make due inquiry.

- **Section 63** stresses the constitution of a Special juvenile police unit in every district and city who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children and that they shall be specially instructed and trained. In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer.'

**Insertion of New Sections to the Principal Act.**

- 7(A)Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry. The claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case. and if the accused is found to be a juvenile, any sentence passed by a court shall be deemed to have no effect.

- **62A** provides for constitution of Child Protection Unit in every district responsible for implementation of the Act consisting of such appointed to take up matters relating to children in need of care and protection and juveniles in conflict with law.

Jammu and Kashmir is the northern-most State of India, situated between 32°-15´ and 37°-5´ north latitude and 72°-35´ and 80°-20´ and east longitude and commonly referred to as Kashmir region. It stretches over an area of 15,853 km giving the appearance of an old lacustrine bed which measures 135 km in length and 14 km at its widest point. Jammu and Kashmir stands 19th State of the country as far as population is concerned with an overall population of 1,25,48,926. It is a zone of armed conflict since 1989 and hence owing to the turbulent history of the region, the legal system in Jammu and Kashmir is not as developed as the rest of the Indian judiciary, and has minimal provisions for the rights to children.

This paper is based on a survey of juvenile delinquency and situation of children in the Kashmir region through massive fieldwork encompassing the Courts, adjudication, police and various other departments responsible for protection and development of children in the region. The universe of the study is Kashmir region (10 districts of the region). The sample includes 400 children, 200 juveniles in conflict with law and 200 children in need of care and protection or at-risk children from whom information was acquired through in-depth interviews. The socio-economic profile of these children is presented in Table 7, p. 19. Therefore, after presenting the situation of children in Jammu and Kashmir through the statistics of National Crime Records Bureau, the threadbare analysis of juvenile justice system in India will be supported in view of the statistics acquired in the field survey of the Kashmir region.

6.1 The following Figures show us the extent and magnitude of crimes committed by juveniles in conflict with law and crimes committed against children in the State of Jammu and Kashmir as per the statistics of the National Crime Records Bureau (NCRB).

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The Figure above shows the percentage break up of a total of 100 offences committed by juveniles in conflict with law in the State of Jammu and Kashmir in 2013. The juveniles in conflict with law have been found to have committed crimes like riots, burglary, theft, attempt to murder, murder, rape, assault on a woman’s modesty etc. Hence, the picture of juvenile delinquency in Jammu and Kashmir also depicts risk because the children have committed heinous offences.
The Figure 12 shows the total percentage for 136 cases apprehended under IPC and SLL in the State.

The number of children in difficult circumstances is significant in the State of Jammu and Kashmir. The following Figure shows the extent of victimization of the children. A total of 75 crimes were committed against children in 2013 in Jammu and Kashmir.
The Table below shows the socio-economic profile of the children interviewed in Kashmir in 2012.

### Table 7: Socio-economic Background of Juveniles in Conflict with Law and Children in Need of Care and Protection in Kashmir

<table>
<thead>
<tr>
<th>S. No</th>
<th>Attributes</th>
<th>Juveniles in Conflict with Law</th>
<th>Children in Need of Care and Protection</th>
<th>Total</th>
<th>Percentage of the Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>7-12.</td>
<td>2</td>
<td>50</td>
<td>52</td>
<td>13.00</td>
</tr>
<tr>
<td></td>
<td>12-16.</td>
<td>132</td>
<td>137</td>
<td>269</td>
<td>67.25</td>
</tr>
<tr>
<td></td>
<td>16-18.</td>
<td>66</td>
<td>13</td>
<td>79</td>
<td>19.75</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
</tr>
<tr>
<td>2</td>
<td>Sex</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Male</td>
<td>190</td>
<td>108</td>
<td>298</td>
<td>74.50</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>10</td>
<td>92</td>
<td>102</td>
<td>25.50</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
</tr>
<tr>
<td>3</td>
<td>Area</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>50</td>
<td>28</td>
<td>78</td>
<td>19.50</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>150</td>
<td>172</td>
<td>322</td>
<td>80.50</td>
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<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
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<tr>
<td>4</td>
<td>Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Illiterate</td>
<td>68</td>
<td>145</td>
<td>213</td>
<td>53.25</td>
</tr>
<tr>
<td></td>
<td>Primary</td>
<td>8</td>
<td>17</td>
<td>25</td>
<td>6.25</td>
</tr>
<tr>
<td></td>
<td>Above Primary but Below</td>
<td>86</td>
<td>25</td>
<td>111</td>
<td>27.75</td>
</tr>
<tr>
<td></td>
<td>Matric/H. Sec</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Matric H. Sec and Above</td>
<td>38</td>
<td>13</td>
<td>51</td>
<td>12.75</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
</tr>
<tr>
<td>5</td>
<td>Income Group</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rs &lt; 25,000</td>
<td>22</td>
<td>96</td>
<td>118</td>
<td>29.50</td>
</tr>
<tr>
<td></td>
<td>Rs 25,000-50,000</td>
<td>82</td>
<td>86</td>
<td>168</td>
<td>42.00</td>
</tr>
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<td></td>
<td>Rs 50,001-1,00,000</td>
<td>70</td>
<td>6</td>
<td>76</td>
<td>19.00</td>
</tr>
<tr>
<td></td>
<td>1,00,001-2,00,000</td>
<td>11</td>
<td>4</td>
<td>15</td>
<td>3.75</td>
</tr>
<tr>
<td></td>
<td>2,00,001-3,00,000</td>
<td>8</td>
<td>0</td>
<td>8</td>
<td>2.00</td>
</tr>
<tr>
<td></td>
<td>Above 3,00,000</td>
<td>7</td>
<td>8</td>
<td>15</td>
<td>3.75</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
</tr>
<tr>
<td>6</td>
<td>Occupation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Students</td>
<td>132</td>
<td>0</td>
<td>132</td>
<td>33.00</td>
</tr>
<tr>
<td></td>
<td>Beggars</td>
<td>2</td>
<td>150</td>
<td>152</td>
<td>38.00</td>
</tr>
<tr>
<td></td>
<td>Child Labours/Domestic Helpers</td>
<td>25</td>
<td>25</td>
<td>50</td>
<td>12.50</td>
</tr>
<tr>
<td></td>
<td>Student(Orphans and Children Indulged in Substance Use)</td>
<td>0</td>
<td>25</td>
<td>25</td>
<td>6.25</td>
</tr>
<tr>
<td></td>
<td>Stay at Home</td>
<td>24</td>
<td>0</td>
<td>24</td>
<td>6.00</td>
</tr>
<tr>
<td></td>
<td>Vendor/Helper in Shops</td>
<td>17</td>
<td>0</td>
<td>17</td>
<td>4.25</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
</tr>
<tr>
<td>7</td>
<td>Family Size</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2-5 Members</td>
<td>158</td>
<td>40</td>
<td>198</td>
<td>49.50</td>
</tr>
<tr>
<td></td>
<td>6-9 Members</td>
<td>38</td>
<td>87</td>
<td>125</td>
<td>31.25</td>
</tr>
<tr>
<td></td>
<td>10-12 Members</td>
<td>4</td>
<td>73</td>
<td>77</td>
<td>19.25</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>200</td>
<td>200</td>
<td>400</td>
<td>100.00</td>
</tr>
</tbody>
</table>
As the present paper is based on field survey of Kashmir region, it therefore becomes pertinent to present statistics gathered through the survey. The following Figure includes statistics for 200 juvenile court case files collected from 10 districts of the Kashmir region in 2012 and the office of Inspector General of Police, Kashmir division and Senior Superintendent of Police, Srinagar. Furthermore, in analysing certain crucial issues relating the children in India in the later part of the paper, more statistics collected in the survey of Kashmir region will be presented.

*Source: Juvenile Courts, Office of the Inspector General of Police(Kashmir Division) and Senior Superintendent of Police (Srinagar)
7. Certain Crucial Issues Regarding Juveniles in Conflict With Law in India
The focus of this section are the several issues that serve as impediments in achieving juvenile justice in India as prescribed by the JJA, UNCRC and several other international conventions on juvenile justice.

7.1 Minimum Age of Criminal Responsibility (MACR)
The MACR refers to the minimum age below which children shall be presumed not to have the capacity to infringe the penal law (UNCRC Article 40). The establishment of such a minimum means that if a child below that age breaks the law, he or she shall not be held criminally responsible. Article 40 of the UNCRC requires that all State Parties establish a minimum age; however, it leaves the specific age to be decided by the individual State.16 Section 82 of the Indian Penal Code 1860 (IPC) defines the MACR at 7 years of age, as nothing is an offence done by a child below 7 years of age. Section 83 lays out ‘doli incapax’ provisions for children between 7 and 12 years of age, “nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.” Unfortunately there are no yardsticks to assess whether or not the child has attained the ‘sufficient maturity.’ Even though India made important progress in juvenile justice with enactment of the JJA but the Act does not alter the Penal Code’s MACR provisions nor are there any further efforts to increase India’s MACR, in fact efforts are being made to decrease the MACR which will be discussed towards the end this section.

The Committee on the Rights of the Child indicates guidelines for the establishment of the minimum age, stating in its General Comment No 10 (GC 10) that anything below the age of 12 is considered unacceptable by international standards. There is a broad range of minimum ages of criminal responsibility existing in national legislations across the world - from as young as 7 years up to age 18. The UNCRC stresses the importance for States to set a minimum age while GC 10 more specifically urges States to raise their minimum age as high as possible, taking into account the developmental differences and decision-making capabilities of children and young people. GC 10 also encourages States to adopt an upper-age limit (the age of eighteen, according to the UNCRC) and they are also encouraged to make this limit higher (up to age 21 for example) whenever possible and appropriate. In GC 10, the Committee expresses concern over the confusion caused in states which have two

minimum ages, like in India from age 7 to age 12, the actions of children fall under the IPC and between 12 and 18 their actions fall under the JJA.\footnote{See, \textit{UNCRC General Comment No 10}. Available at: \url{http://www2.ohchr.org/english/bodies/crc/docs/CRC_C_GC.10.pdf}}

7.2 No Uniform Code

The JJA is applicable to the whole of India except its northern most State, Jammu and Kashmir because of a special status accorded to the State under Article 370 of the Indian constitution. Meant as a temporary provision in 1950, Article 370 of the Indian Constitution allows the State of Jammu and Kashmir unprecedented legal independence with relation to all other regions of India and hence the juveniles of the State come under the purview of the Jammu and Kashmir Juvenile Justice Act 1997 (referred to as JKJJA 1997 henceforth) which is just a reflection of the JJA 1989. Although, JKJJA 1997 was amended in 2013 and renamed as Juvenile Justice (Care and Protection of Children) Act, 2013 but the Act does not fully comply with the provisions of the Central legislation. Owing to the distinctions in the upper age limit of juveniles made by JKJJA 1997 (which fixed the upper age of juvenility for boys to be 16 and for girls to be 18), the juvenile justice system in this part of the country was quite confusing because a boy between 16-18 had to be treated as an adult criminal. To some extent this confusion has been resolved with the introduction of the Juvenile Justice (Care and Protection of Children) Act, 2013 in the State which raised the upper age limit of juvenility for boys from 16-18.

Article 7 A has been inserted in the JJA by the JJ (Amendment) Act 2006 which gives benefit to the juveniles to raise plea of being a child or a person below the prescribed age range within which he/she cannot be tried as an adult criminal. Under this section the claim of juvenility can be raised even after disposal of the case\footnote{See, \textit{Juvenile Justice (Amendment) Act 2006}. Available at: \url{http://meghpol.nic.in/acts/central/juvenile_justice_care-protection_children_amendment_act_2011.pdf}} but the juveniles of the State of Jammu and Kashmir could not take this benefit until 2013.
The above Figure shows that out of a total 200 juveniles in conflict with law in 2012 in the State, 30.50 % of male juveniles in conflict with law have been processed under the criminal justice system in Kashmir.

7.3 Overlapping of the Central Legislation and Several Special and Local Laws (SLLs).

Despite the provisions by the JJA, there is a constant weaving and overlapping of several other provisions and Acts which cause to slacken justice to the juveniles. The dubious legacy of the Acts like, Armed Forces (Special Powers) Act (AFSPA) 1958, the Jammu and Kashmir Public Safety Act (PSA) 1978, etc decelerate the ends of justice.

Jammu and Kashmir has been a territory of serious political controversy since India’s independence in 1947 but the year 1989 marked the age of armed conflict and violent agitation among the people for self-determination and independence from India. In context of the conflict between the State and armed separatist groups, the state local police and the central police forces are permitted to make use of the AFSPA and PSA to maintain peace and order. On March 3, 2012, United Nations asked India to repeal AFSPA in the country, especially in Kashmir and the North-East States of India and the law has been reported to be ‘symbol of excessive State power’ and ‘has no role to play in democracy’ by Christof Heynes, UN’s Special Rapporteur on extrajudicial.¹⁹

¹⁹ After Sri Lanka Now India in Trouble, UN Asks to Repeal AFSPA. Available at: http://news.oneindia.in/2012/03/31/after-sri-lanka-india-in-trouble-un-asks-to-repeal-afspa.html
As shown by the above Figure, a large number of juveniles in Kashmir have been arrested and detained under the PSA, the AFSPA, making a total of 23.5% of the arrests. These children have been tortured and interrogated which is against the international laws on human and child rights. Shockingly PSA allows for administrative detention for up to two years “in cases of persons acting in any manner prejudicial to the security of the State,” and for administrative detention of up to one year where “any person is acting in any manner prejudicial to the maintenance of public order.”  

7.4 Age Determination

The JJA requires that any child who has committed an offence and is proved to be under the age of juvenility is to be dealt with under it. But to prove that a child is under the prescribed range of juvenility needs that the juvenile’s birth is registered somewhere like birth registration or school registration. There is enormous population in India whose birth is not registered, therefore they lack in having any proof of age. As per NFHS-3 (2005-06), 41 percent of children under age five years have had their birth registered with the civil authorities. However, only 27 percent of children under age five years have a birth certificate. In addition, a vast number are those who never attended schools. Some regions of India, specifically rural areas, still register less than 30% of births which consequently creates disagreement in context of MACR according to a report of Amnesty International. In 2007, the National Family Health Survey III conducted in 29 States reported that only 41%

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20 Section 18, PSA. See PSA 1978. Available at: [http://jkhome.nic.in/PSA0001.pdf](http://jkhome.nic.in/PSA0001.pdf)
% of children under 5 years of age had their birth registered.\textsuperscript{23} As a result juveniles younger than 7 years of age in India are imprisoned as adult criminals, given sentences and put in detention in jails by the adjudicatory bodies defying the provision of ‘doli incapax’ laid by the Section 83 of the Indian Penal Code.\textsuperscript{24}

7.5. Overriding Effect of the Legislation

The JJA provides that all the juvenile cases have to be dealt with under it irrespective of the type of the offence as in Raj Singh V. State of Haryana,\textsuperscript{25} the Supreme Court held that the juvenile legislation shall reign supreme in the cases relating juveniles regardless of the nature of the offence committed by the juvenile. To the Principal Act, after Sub-Section (3), the following Sub-Section has been inserted “(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”\textsuperscript{26} Hence, it is only the JJA which is going to decide the fate of the juveniles irrespective of nature of the offence but some or the other Children Acts have been always been obscuring its applicability, e.g., the decision of the Supreme Court in Rohtas V. State of Haryana and Ragbhir V. State of Haryana,\textsuperscript{27} when it held that the Children Act applicable at that time applied to such cases. To some extent this issue has been now resolved by the insertion of the sub-section 4 as discussed above but the overriding effect of the legislation has never reached its entirety insofar as its application is concerned. Certain prominent examples on such violation in Jammu and Kashmir include: Shiekh Akram (Age 15), Fazin Rafiq (Age 14), Faizan (Age 12), Zahida (Age 17), Danish Farooq Wani (Age 16), V. State of Jammu and Kashmir, all of whom have been arrested, detained and many of them tortured like adult criminals. In a nutshell, one or the other special law overshadows the juvenile legislations in India.

7.6 India’s New Juvenile Justice Bill Against Child Rights

In the wake of a gruesome rape of a young woman on 16th December 2012 (Nirbhaya Gang-Rape Case) in Delhi, a heated debate had been raging at national level with respect to

\footnotesize\textsuperscript{25} \textit{AIR} 2000 6 SSC 759, 2000 SCC (cri) 1270.
\footnotesize\textsuperscript{26} See, \textit{JJ (Amendment) Act} 2006. Available at: \url{http://meghpol.nic.in/acts/central/juvenile_justice_care-protection_children_amendment_act_2011.pdf}
lowering the age of juveniles to 16 years. On 27th February 2013, the Minister for Women and Child Development told the Rajya Sabha, “We are not changing the age of juvenile as defined in the Juvenile Justice Act, as it may hurt the larger interests of children in the country. All those under 18 years of age are juvenile.” The Criminal Law (Amendment) Bill, 2013 passed in the Lok Sabha on 19 March 2013 retained the age of consent for the sex to 18 years.28

Once again, the Government of India, Ministry of Women and Child Development introduced a new Juvenile Justice (Care and Protection of Children) Bill, 2014 into the Parliament (Lok Shaba) on 12th of August, 2014, tabled by Maneka Gandhi. The Bill proposes change in the JJA and wants to re-enact and repeal it with lowering the upper age of juvenility from 18-16 (in fact, it was JJA which increased the age of juvenility from 16-18 in order to bring the juvenile justice in India at par with the UNCRC after ratifying it in 1992). The Bill 2014 requires the Juvenile Justice Board (JJB) to determine whether the child should be tried in a regular court if he or she is above 16 years of age and is alleged to have committed one of the heinous offences listed in the section.29 However, an article published in The Hindu reports that Maneka Gandhi told PTI, in July, that according to the police, 50% of all the sexual crimes were committed by 16 year olds who know the JJA so they can do it but the lowering of the age of juvenility would curb their actions. The report says that the Minister is wrong because in 2013 juveniles were charged with 3.4% of all rape cases committed in India, according to the NCRB.30 The Hindu’s recent study of rape cases in Delhi’s District Courts showed that the “largest category of cases (40 per cent of all cases that were fully tried) dealt with elopement and consensual sex between young couples, and the girl’s parents filing rape charges against the boy. In most of these cases, the boy was between 18 and 20 years of age and the girl between 16 and 18 years. This Bill is only going to act as a forum to not only indulge in moral policing and curtailing choice, but also to use the criminal law to prevent inter-caste, inter-class, and inter-religious relationships which are very basic to a modern secular and sovereign country.”31 The IJJO also urges the Ministry to
reconsider and to reject the Bill’s proposed amendments to treat juveniles as adults because children under 18 have the right to be treated in a separate system under the UNCRC.\textsuperscript{32} UNICEF urges the debate on the proposed amendment to be informed by widely available research findings and evidence: “Worldwide, evidence shows that the process of judicial waiver or transfer of juvenile cases to adult courts has not resulted in reduction of crime or recidivism. Instead, investments in a working system of treatment and rehabilitation of children have shown to lead to better results in reducing recidivism,” says Louis-Georges Arsenault, UNICEF Country Representative.\textsuperscript{33} Furthermore, the Bill is proposing to bring whole of India under its purview except the State of Jammu and Kashmir under its Section 1(2).\textsuperscript{34}

7.7 Lack of Infrastructure, Disparity of Funds and Absence of Mutual Coordination

The juvenile justice system in India has considerable issues relating adjudication, proper residential facilities and rehabilitation. Lack of mutual co-ordination, inexperienced and unqualified personnel, particularly judges, defeat the deliverance of justice to the children. No orientation trainings are provided to the regular magistrates, members of the Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs), if at all they are present, and the personnel of residential facilities before they are assigned the fragile work of dealing with juveniles. There is scarcity of funds for juvenile justice and whatever schemes are present show higher levels of disparity in terms of fund distribution. For example the flagship centrally-sponsored scheme whose benefit is taken away by a few huge, only 70 % of the total states are said to take the benefit. Five states, Arunachal Pradesh, Himachal Pradesh, Jammu and Kashmir, Jharkhand and Manipur cannot take the benefit of the scheme because of their inability to provide a matching share of 50 % whereas Maharashtra swallows the major part of the funds, having swallowed more than 35.5 % in 2002-2003 and 45.3 % in 2003-2004.\textsuperscript{35} Many states have yet to set up the JJ fund under the Act or have set up the fund

\begin{itemize}
\item \textsuperscript{33} UNICEF India, Media Centre. Aug 7, 2014. \textit{UNICEF India Urges Focus on Reformative Juvenile Justice System and Shares Concerns About Juvenile Justice Act Amendment}. Available at: \url{http://www.unicef.org/india/media_8969.htm}
\item \textsuperscript{34} Draft Juvenile Justice (Care and Protection of Children) Act 2014. Ministry of Women and Child Development. Available at: \url{http://wcd.nic.in/icpsmon/pdf/draft_%207_%20JJ_Bill_June_2014_18062014.pdf}
\end{itemize}
and not begun utilizing it. Delhi set up a Rs 20-lakh fund in 2008 but hasn’t spent anything out of it.\textsuperscript{36}

The overall studies of residential facilities in India depict deplorable conditions. Most of them are barricaded like regular jails and lack in providing general and basic facilities to the inmates like, proper food, educational and vocational training, personal hygiene, segregation of misdemeanours from felony committers etc. The Observation Home, the only Home for juveniles in conflict with law in Kashmir, was regarded by the NCPCR as not less than a jail where juveniles are put behind bars like regular criminals in jails.\textsuperscript{37} There are reports from all over the country that children in residential facilities are subject to torture, violence and sexual abuse. Furthermore, majority of the States lack in having separate residential facilities for female juvenile inmates with the result that they are sometimes detained in the boys observation homes or in regular jails. Rehabilitation to the inmates in the detention centres is completely absent. As per the latest (3rd) Handloom Census of 2009–10, there are 23.77 lakh handlooms in the country, providing employment to 43.32 lakh handloom weavers and ancillary workers.\textsuperscript{38} Such training to the inmates, who do not want to carry on with their education, would truly benefit them.

8. Working of the Boards and Courts

In majority of the States the powers of the JJB have been conferred upon the magistrates of First Class who try the juvenile cases. Out of 28 states and 7 Union territories (including the National Capital Territory of Delhi) in India, all states have constituted more than half of the required CWC and JJB per district and a few have them in all districts, though only recently but again majority of them are not independent so are sitting in the lower judiciary with magistrates holding the additional charges of the JJB. Only 20 states have constituted the three types of homes prescribed by the JJA. Punjab had its first JJB only on 15 September 2006\textsuperscript{39} whereas Jammu and Kashmir still does not have a JJB. It had its first observation home in November 2011.

8.1 No Age Benefit and Age Determination.

It was known by various Magistrates that while filling the charge sheet of minors the police does not bother to enquire about the age of juveniles who apparently appear to be so and on

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{36} \textit{Ibid.}, p.42
\item \textsuperscript{37} NCPCR Report, 2012. Available at: http://www.ncpcr.gov.in/view_file.php?fid=31
\item \textsuperscript{38} Twelfth Five Year Plan 2012-2017, Economic Sectors, Vol II. P. 397. Available at: http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol2.pdf
\item \textsuperscript{39} Shastri, Paromita and Thukral, Enakshi Ganguly, 2010. \textit{Op cit.}, p. 42.
\end{enumerate}
\end{footnotesize}
the basis of charge sheet the Magistrates also try the juveniles as regular adults. Sometimes the lawyers do not acquaint the juvenile and his family about the benefits they have been granted by the Act and they do so for their own benefits. In certain cases, the Magistrates also do not bother to ascertain the age of the offender, even if he apparently appears to be a juvenile because of the heavy case loads.

8.2 Falsification of Documents.
International Human Rights Association of American Minorities (IHRAAM) insists that despite the promised changes to the Jammu and Kashmir Juvenile Justice Act, cases of arbitrary detention of youths under the age of 18 continue to occur. Amnesty International has noted at least three cases of individuals under 18, whose documents were falsified upon their detention. Mohmmad Rafiq Shiekh, Murtaza Manzoor Panzoo and Danish Farooq are the examples the first two were 17 when taken into custody but inaccurately labelled as 19 and the latter was arrested for stone pelting at 16 and bailed out but immediately rearrested for similar charges and falsely labelled as 19 and was put in detention centre with adults.40

8.3 Joint Trial of a Juvenile With An Adult
Article 10(3) of the ICCPR and Article 37(c) of the UNCRC require that children should be detained separately from adults or from convicted children, but reports of a failure to separate adults from children in detention facilities are commonplace in India. Article 18 of the JJA provides that there shall be no joint proceeding of juvenile and person not a juvenile. The philosophy of juvenile justice system is undoubtedly based on the concept of diversion which means distracting minors from the formal proceedings of the criminal Courts and helping them avoid criminal contagion so that they realize that life has other options. “Restorative justice is an important component of diversion. This approach focuses on ‘restoring’ damaged relationships (between victim, offender and community) to the way they were before a crime was committed – to ‘make things right as much as possible.’”41 The problem of joint trials exists throughout India.

8.4 Loads of Pending Cases: Disposal a Prolonged Process

Article 40 2 b (iii) of the UNCRC stresses that the juvenile cases must be decided without any delay. The Courts and Boards throughout India have heavy case loads which sometimes lead to hasty decisions to be taken by the magistrates and judges about the juveniles in conflict with law, hence defeating the ends of justice. Due to governmental pressures, sometimes the judges finish off the lot of pending cases without enquiring much into the age issues with the result that often juvenile cases are tried and decided as regular criminal cases. Furthermore, the apprehended juveniles sometimes have to wait for years till their cases are decided and justice is delivered to them. In a speech on judicial reforms in February 2008, Chief Justice of India K G Balakrishnan pointed out that even with a network of about 14,000 functioning Courts and a working strength of 12,500 judges handling 40 million cases, each judge in India was required to deal with a record number of 4,000 cases a year, clearly a Herculean feat.

The Figure 17 shows that out of a total of 29.50 % of disposed off cases for the years 2012-2013 in Kashmir, 14.50 % cases were decided between a period of 6 months to 10 years. Amongst the pending cases, the years of commission of offence for 13 cases making a total of 6.50 %, are between 1995-2008 which had not been decided until April 2013. Among these cases some of the juveniles attained adulthood during the process of their investigation and detainment in jails but their cases remain undecided.

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42 See, UNCRC 1989. Available at: http://www.unesco.org/education/pdf/CHILD_E.PDF
8.5 No Expungement of Records of Conviction
Despite provisions by Article 19(2) of the JJA that that the relevant records of conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed, no efforts have been made to conceal the identity of juveniles in conflict with law who are handcuffed and chained and are brought from jails in buses with regular criminals. The reason of expunging records is the idea that the presence of records of any offence committed by the juveniles at the Courts or police stations might lead to their stigmatization. Photographs of children taken through mobiles and cameras have been witnessed during the visits to the Courts in Kashmir.

9. Certain Crucial Issues Regarding ‘Children in Need of Care and Protection’
The study on child abuse conducted by Ministry of Women and Child Development in 2007 in 13 states, reported high incidence of sexual abuse of children. Sexual offences against children are inadequately addressed by earlier existing legislation. A large number of sexual offences are neither specifically provided for nor are they penalised, as a result of which offenders are tried under more lax and non specific provisions of the Indian Penal Code. The report found that 53.22 % of children reported sexual abuse, 50 % reported physical abuse and in almost all cases the abuser was a known person. The UNCRC has highly stressed the protection of such children but unfortunately India is lagging far behind protection of its children in difficult circumstances. Further, the General comment No. 14 of 2013 by the Committee on Rights of the Child stresses best interests of child in situation of vulnerability (sec, 75, 76) “The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child’s uniqueness. An individualized assessment of each child’s history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child’s development process.”

Hundreds and thousands of girls and boys are caught in powerful nexuses of traffickers and agents, are missing, and end up being victims of sexual assault, domestic help, begging,

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46 See, General Comment No. 14 (2013), Committee on the Rights of the Child. Available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf
transfer of organs, pornography. All of them fight lonely battles every day of their lives to get out of exploitation. Some are lucky and win, most lose resulting in their ill health, depression, loneliness, loss of selfhood, fractured psyche and even death. It is estimated that 92% victims have not been rescued, 6% have been rescued once and 2.0% rescued twice.\textsuperscript{47} Of the estimated 11 million street children in India, over 100,000 children live around each of the railway stations of Delhi, Mumbai and Kolkata. They are children who have run away from their homes, abandoned, missing or trafficked children.\textsuperscript{48} As per the Census 2011, there are a total of 4353247 child labourers in the age group of 5-14 in India.\textsuperscript{49} India’s country report, 2008 shows that there are 3 million prostitutes in the country of whom 40% are children.\textsuperscript{50}

\textbf{9.1 Absence of Child Welfare Committees (CWCs)}

Ironically, Child Welfare Committees have not been constituted in most of the States in India. However, a 2010 report compiled from information provided by the respective State departments/ directorates, reveals the existence of only 516 CWCs across the country (the compilation excludes Uttaranchal and J&K districts), indicating that CWCs have not been formed in over 100 districts. A report in May 2013 by National Commission on Protection of Child Rights says that there are nearly 480 CWCs and close to 400 JJBs in the country and it is estimated that there are 117 million children who are in need of care and protection.\textsuperscript{51} Further, the NALSA report submitted to the Supreme Court of India shows that as of August 2011, at least 8 of the 33 States/ Union Territories (excluding Arunachal Pradesh and J&K) have not constituted CWCs in every district.\textsuperscript{52} The institutionalization of children results into a wide range of negative results like, emotional deprivation, interpersonal relationship problems, segregation and isolation from the society and so on. For this reason the UNCRC Article 20 and 21, recommends non-institutional care of the children through adoption. Likewise the JJA through its Section 40 stresses rehabilitation and social reintegration of a child which shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i)


\textsuperscript{48} Ibid., p. 17.

\textsuperscript{49} Available at: \url{http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Census-2001%262011.pdf}


\textsuperscript{51} Ibid., p.11.

adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation. JJ (Amendment) Act 2006 has added the option of ‘Adoption’ of orphaned, abandoned or surrendered children through Article 41 of the Act which remains inapplicable to the State of Jammu and Kashmir

9.2 Reasons for Non-Application of Integrated Child Protection Scheme (ICPS)
The ICPS is the main scheme devised in India for the protection and development of children in difficult circumstances.\(^{53}\) At the moment there are only a total of about 10,000 functionaries i.e the Probation Officers, Case Workers, Superintendents, Counsellors administrative and field staff etc of the ICPS for a population of 170 million children in need of care and protection, which is at the ratio of 1: 17000. Further they still are to have proper orientation, training, knowledge and skills for social investigation reports, counselling, supervision and mentoring.\(^{54}\)

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**BOX 2**

The Integrated Child Protection Scheme (ICPS) is implemented through State level governments, which receive financial and technical support from the central government. Of particular relevance to children without adequate parental care, the ICPS specifically articulates the need to move away from over-reliance on institutional care and towards responses that support family based care, starting from interventions and policies that would strengthen ‘the family capabilities to care for and protect the child’ to providing a range of family based alternatives, including sponsorship, kinship care, foster care and adoption. Hence, the ICPS objectives are: to contribute to the improvements in the well being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children. These will be achieved by: (i) improved access to and quality of child protection services; (ii) raised public awareness about the reality of child rights, situation and protection in India; (iii) clearly articulated responsibilities and enforced accountability for child protection (iv) established and functioning structures at all government levels for delivery of statutory and support services to children in difficult circumstances; (v) introduced and operational evidence based monitoring and evaluation. The target groups are the ‘Juveniles in conflict with law’ and the ‘Children in need of care and protection.

The Integrated Child Protection Scheme.

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9.3 Reasons for Non-Application of ICPS in Jammu and Kashmir

The ICPS cannot be launched in Jammu and Kashmir as the State government is not well equipped to accommodate the scheme. Some of the reasons are (a) ICPS requires setting up of service delivery structures, that is, State Child Protection Society (SCPS), District Child Protection Society (DCPS), State Project Support Unit (SPSU) and State Adoption Resource Agency (SARA) to manage and monitor the implementation of the scheme. At present there are 22 districts in Jammu and Kashmir but only two observation homes, one at Harwan and other at R.S. Pura. (b) ICPS requires setting up of structures mandated by the JJA and under this Act Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs) have been mandated for every district to enable expeditious disposal of cases related to children and Supreme Court has entrusted National Commission for Protection of Child Rights (NCPCR) with the responsibility of monitoring progress in this regard. The State has just constituted two Juvenile Welfare Boards for children in need of care and protection in which no cases have been registered yet and for delinquent children trials are conducted by regular courts. (c) ICPS requires district wise need assessment for child protection. Presently there is no scientific data available on the count of neglected children including abandoned children, beggars, abused children, children in conflict situations, child labourers. The absence of data makes it impossible to identify the district wise requirement for the intervention. (d) ICPS requires assessing the demand for Homes and up gradation of existing homes and services. A review of occupancy figures of the Homes in several States has revealed that while some of the Homes are housing children more than their capacity, there are others which are under-utilized. The two Homes at R.S. Pura, Jammu and Harwan, Srinagar are in bad shape and require up gradation including services and there is no home for delinquent girls in the State.

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56 Ibid.

57 Ibid.
10. Underlying Factors of Juvenile Delinquency and Problems of Children in Kashmir

The in-depth interviews with juveniles in conflict with law and children in need of care and protection reveal that the causes of crime by children and against children in Kashmir are social, economic and an outcome of situation of armed conflict. The crimes committed against children in special circumstances in turn, make them more prone to commit crimes. The following Figures will present statistics which corresponds to the data collected from 400 children in Kashmir (200 juveniles in conflict with law and 200 children in need of care and protection).

10.1 Social Factors

The adolescents most at risk of coming into conflict with the law are often the product of difficult family circumstances that might include poverty, family breakdown, parental abuse or alcoholism. The following Figures show that the familial conditions are to a great extent responsible for juvenile offence in the State.

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BOX 3

The National Policy for Children 2013 highly stresses protection of children in difficult circumstances. The major areas of stress are: creation of a safe, secure and protective environment for the realisation of all other rights of children and to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces; protection of all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse; secure the rights of children deprived of parental care through sponsorship, kinship, foster care and adoption, with institutionalisation as a measure of last resort; secure the rights and entitlements of children in need of special protection, characterised by their specific social, economic and geo-political situations, including their need for and reintegration, in particular but not limited to, children affected by migration, displacement, communal or sectarian violence, civil unrest, disasters and calamities, street children, children of sex workers, children forced into commercial sexual exploitation, abused and exploited children, children forced into begging, children in conflict and contact with the law, children in situations of labour, children of prisoners, children infected/affected by HIV/AIDS, children with disabilities, children affected by alcohol and substance abuse, children of manual scavengers and children from any other socially excluded group, children affected by armed conflict and any other category of children requiring care and protection; promotion of child friendly jurisprudence, enact progressive legislation, build a preventive and responsive child protection system, including emergency outreach services, and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect to comprehensively address issues related to child protection.

National Policy for Children 2013
BOX 4

“A 2005 International Save the Children Alliance (ISCA) report for the UN says violence in the family, including physical, sexual and psychological abuse as well as neglect, abandonment and discrimination, not only has a major impact on the child’s well-being and development, it fundamentally affects a child’s choices and may force her or him into coping strategies that often lead to further victimization or criminalization. Thus, often the primary factor that brings children into conflict with the law is the breakdown of their familial, protective and familiar environment, the same situation that makes them children in need of care and protection. Interestingly, the ISCA report also says, “the reality is that a majority of children will break the law at least once before they become 18.”

There is a Lack of Understanding Between us
The Parents Exhibit an Attitude of Hostility and Rejection
There is a Mutual Affection Between us
Sometimes Parents Involve us in Stealing
Mothers do not Take Care Because of their Work
Death of Either Parent but Strong Bonds with the Other Parent

Figure 20. Nature of Social Relations Between Juveniles and Their Parents

Figure 21. Nature of Disciplinary Practices Adopted by Parents of Juveniles
Figure 22. Nature of Undesirability in the Behaviour of Parents of Juveniles

Figure 23. Prevalence of Mental/Physical Problems Among Parents of Juveniles

Figure 24. Educational Qualification of Parents of Juveniles
From the above Figures it follows that:

- A total of 52% of juveniles reported domestic violence in their respective families.
- Out of the total 400 juveniles interviewed, there is prevalence of broken homes for half of the total juveniles, 43.25% reported serious dissention and nagging and 6.5% reported divorce between the parents.
- A total of 75.00% of the juveniles reported lack of warm relations among them and their parents. A lack of understanding, parental hostility and rejection, parents involving them in stealing and lack of mother’s attention due to their jobs were reported by the juveniles.
- A total of 70.50% of the juveniles reported inconsistent disciplinary practices adopted by their parents as a means of controlling their behaviour. These practices include over strictness, laxity, physical punishment and rebuking.
Out of the total, 60.00% accepted that there is some type of undesirability in the behaviour of their parents like, drunkard parents, drug addicts and use of bad language.

Again out of the total, 68.00% of the juveniles reported that their parents suffer from some sort of physical or mental problem.

Out of the total, 78.75% have illiterate parents.

65.25% have working mothers out of which 43.25% accepted that they are affected by the work of their mothers.

Out of the total 46.75% of the juveniles who are literate, 27.25% reveal negative behavioural patterns like fighting at school, reasons being, hatred and antipathy for some classmates, incompatibility and aggressiveness.

The data reveals that the major part of risk may be attributed to home and family conditions, and the big five factors of family structure and functions in Kashmir that account for juvenile delinquency are broken homes, undesirable behaviour on part of parents, domestic violence, inconsistent disciplinary practices and lack of strong bonds between parents and children.

10.2 Economic and Environmental Factors

Statistics on children who are in conflict with law or have fallen into delinquency reveal that they often come from a particular background, or rather are found in a particular background, including growing up in violence and exclusion. 50.25% of the children apprehended for being in conflict with law in 2013, says the National Crime Records Bureau (NCRB), come from households with an annual income of less than Rs 25000. The next biggest group, 27.32%, belong to the families with an annual income of Rs 25,001-50,000. The next largest group of 14.93% have Middle income between 50,001-1,00,000 and 5.28% have a Middle income between 1,00,001-2,00,000. The data points towards the fact that the poor in India are the chief committers of the wide range of offences. The NSSO Report shows that in India unemployment is typically higher among youth and educated, particularly among the age group 15-29 years for both males and females and in urban and rural areas the unemployment is significantly higher than the average level of unemployment of all persons.59

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It is deriding that despite stress on the development in these border areas the government of India has not achieved much in dealing with the issues of poverty, as shown by the statistics of NCRB, out of a total of 43506 juveniles apprehended in 2013, 136 belong to Jammu and Kashmir with the largest category of delinquents, 44, falling in the Annual income category of 25,000, 39 to an Annual income category of 25,001-50,000, 30 fall in the category of having Middle income between 1,00,001-2,00,000 and 23 have Middle income between 50,001-1,00,000. In addition, all the 136 juveniles are new delinquents. This shows the interest of Government of India in the development of Jammu and Kashmir which is not only a zone of armed conflict but comes under the purview of BADP.

The following Figures throw light on the economic and environmental situation of the juveniles in conflict with law and children in need of care and protection in Kashmir.

**BOX 5**

The Border Area Development Programme (BADP) is a 100 per cent Centrally Funded Programme initiated in the border areas of the western region during the Seventh Five Year Plan period for ensuring balanced development through development of infrastructure and promotion of sense of security among the border population. Since then the BADP has been implemented by the GOI together with State Governments as part of a comprehensive approach to border management. The programme now covers 358 border blocks of 94 border districts of 17 States located along the international land border (Arunachal Pradesh, Assam, Bihar, Himachal Pradesh, J&K, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Sikkim, Tripura, UP, Uttarakhand and West Bengal). Under the BADP, priorities are given to the areas closer to the border. Works under BADP are taken up by the States under various sectors such as strengthening of social and economic infrastructure, schemes for employment generation, education, health, agriculture and allied sector and schemes which provide for critical inputs in the social sector.

_ Twelfth Five Year Plan (2012-2017), Faster, More Inclusive and Sustainable Growth, Vol. 1, P.327._

**BOX 6**

Economic poverty is directly linked with living in low standard areas. Children living in insecure environments experience denial or disruption of access to health, childcare, education and other basic services which may create exposure and vulnerability to violence. A major initiative was effectively taken up addressing areas affected by Left Wing Extremism and other tribal and backward districts through an Integrated Action Plan launched in initially 60 and later 78 districts in 9 states. This has provided learning models for strengthening a protective environment in such areas—in families, communities, in health and childcare centres and schools—with an effective community based child tracking system, psychosocial care and support and special protection measures as needed. Similarly, enabling interventions are also needed in any other areas that may be affected by insecurities in the environment.

Figure 27. Nature of Jobs of parents of Juveniles

- Begging: 0.50
- Menial Services: 0.80
- Vendor/Helper at Shop: 1.25
- Driver: 0.00
- Laborer: 1.25
- Artisan: 0.00
- Petty Retail Trader: 2.50
- Petty Jobs: 2.50
- Business and Government Jobs: 2.50

Figure 28. Reasons Given for Lack of Education by Juveniles

- Question not Applicable: 13.75
- Failure in Examination: 4.50
- Death of Parents: 5.00
- Lack of Interest in School and Teachers: 11.25
- Poverty: 5.75

Figure 29. Kind of House or Place of Abode of Juveniles

- Orphanage or any other institution: 3.75
- Living in a slum: 5.50
- Living on rental accommodation: 6.25
- House of your own: 34.50

Children in Need of Care and Protection
Juvenile in Conflict with Law
The respondents for the present study come from marginal annual income groups, majority of them living in downtown areas and other economically marginal rural areas and slums.

- The data shows that 70.00% of the juveniles have fathers who have lowest paying jobs which reveals a situation of general hardship. Among them, 38.75% are those whose parents have servile jobs, 45.75% are those who earn hand to mouth.
- Due to the nature of jobs of parents, 35.50% have feelings of inferiority, 24.00% say their daily needs go unmet and 11.25% reported that their education has suffered.
- 25.75% say that poverty is the reason for the lack of education among them.
- The data in Table 7, p.19 shows that 90.50%, occupy the marginal income groups, 29.50% belong to the annual income group of <25,000, 42.00% belong to an annual income group of Rs. 25,001-50,000 whereas 19.50% belong to an annual income group of Rs.50,001-2,00,000.
- 44.50% of the juveniles have fathers having heavy time constraints as far as their jobs are concerned, that is, a kind of work that keeps them hours away from their children.
- 51.75% of the juveniles have their own house and the rest live in slums, rental accommodation and orphanages.
- Out of the total, only 28.00% are satisfied with their housing conditions whereas 72.00% are dissatisfied. The reasons for dissatisfaction include unhealthy hygiene and sanitation, bad neighbouring environment, lack in basic necessities and small to accommodate the whole family.

This quest and dissatisfaction may in turn produce delinquent tendencies in a person and force him towards gaining comfortable living through illegal means.
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10.3 Armed Conflict

Article 2 common to the Geneva Conventions states that “[i]n addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” 60 India ratified the Geneva Convention in 1950 but is a country where human and child rights violations, with regards to armed conflict, frequently occur.

BOX 9

The children who are victims of armed conflict are more prone to commit crimes. The UN Security Council has characterized crimes against children during wartime as a ‘potential threat to international peace and security’ the Council leaves open the possibility of imposing more stringent sanctions, or even intervening under Chapter 7 of the UN Charter in response to such crimes. Protecting children from the effects of armed conflict is a moral imperative, a legal responsibility and a question of international peace and security. The Security Council has resolved that the protection of children from armed conflict is an important aspect of any comprehensive strategy to resolve conflict, and should be a priority for the international community. The General Assembly and other UN bodies have repeatedly called for special protection afforded to children by all parties to conflict.

The Secretary-General identified six grave violations against children during armed conflict, based on their suitability for monitoring and verification, their egregious nature and the severity of their consequences on the lives of children, they are, Recruitment and use of children, killing and maiming of children, sexual violence against children, attacks against schools and hospitals, abduction of children and denial of humanitarian access. The key legal sources of these six violence are: International Humanitarian Law, International Human Rights Law, International Jurisprudence and Security Council Resolutions on children and armed conflict.


BOX 8

“There are 82 districts in the country affected by civil unrest often leading to large scale displacement of families from the villages, causing fear, anxiety and disruption in their lives. There is a near collapse of all public institutions in the area. Given their vulnerability, children are the worst affected. They are also the most invisible and voiceless. NCPCR followed up on protection of rights of children in areas which are affected by naxal-related violence in Chhattisgarh, Bihar, Andhra Pradesh, Maharashtra, Orissa, and ethnic violence in Assam, Tripura and all other States in the North East as well as in Jammu and Kashmir.”

The following Figures show the nature and consequences of armed conflict on the 400 children interviewed.
The Figures above reveal that:

- 30.25% of the total juveniles admitted that they have been victimized by the armed conflict prevailing in Kashmir. The kinds of victimization include “Beating of Male Members of the Family”, “Frequent Crackdowns”, “Father, Sibling or Relative Being Imprisoned”, “Death of Parents” and “Place of Abode Being Burnt in Encounter.”

- The different consequences of conflict victimization as revealed by 30.25% of juveniles include, “Poor Economic Conditions”, “Constant Feeling of Fear and Anxiety”, “Normlessness and Incomplete Supervision in the Family Due to Absence of Parents” and that they face “Nomadic Life Due to Lack of Settled Place of Abode.”


On 26 May 2008, the Government of India and State Government of Jammu and Kashmir reached an agreement to transfer 99 acres (0.40 km\(^2\)) of forest land to the Shri Amarnath Shrine Board (SASB) in the Sonamarg area, a tourist spot, in Kashmir valley to set up shelters and facilities for Hindu pilgrims (as per Article 370 of the Indian Constitution, only permanent residents of Kashmir can buy property in Kashmir). This paved way to violent upsurge in the Kashmir valley against the land transfer in form of stone pelting protests in which millions of people and thousands of juveniles were involved. The largest demonstration saw more than 500,000 protesters at a single rally, among the largest in Kashmir’s history. The separatist parties in Kashmir led to huge protests in form of March to Line of Control (LOC) between India and Pakistan in August 2008 which led to hundreds of civilian killings in Kashmir. However, the riots culminated in signing of an agreement on August 31 2008, between leaders of agitation and Jammu and Kashmir Governor-appointed panel, under which the SASB can only make a temporary use of the land.

The 2010 Kashmir unrest was a series of raging protests and riots in the Kashmir Valley in June 2010 which were a result of killing of three civilians in Rafiabad area who were wrongfully alleged to be Pakistani infiltrators and had actually been lured by the Indian Army to their camps by promising them jobs and later were killed by the army in cold blood for claim of cash award by the Indian Government. The brutal incident led again to widespread stone pelting protests launched by the separatist and subsequent, demands for complete demilitarization in the Kashmir. Rioters shouting pro-independence slogans, defied curfew, attacked police with stones and burnt vehicles and buildings. The riot police consisting of Jammu and Kashmir Police and Indian Para-military forces fired teargas shells rubber bullets
and also live ammunition on the protesters, resulting in 112 deaths (official number) which were actually many more than that, including many children and adolescents between 7-18 years of age. Mr. Chidambaram said at least 108 Kashmiris had died; 194 students were in custody for throwing stones and 51 for violating the PSA. Home minister Mr. P. Chidambaram said he would advise the state government to free the imprisoned students as well as people jailed under the Public Safety Act, making their release a seeming certainty. However, records from the office of Sr. Superintendent of Police, Srinagar, Oct. 2012, show a total of 60 minors arrested in 2010, 100 arrested in 2011 and 41 in 2012 in Srinagar.

The riots abated in September when the then Prime Minister Mr Manmohan Singh proposed an all party meeting in Jammu and Kashmir led by a delegation of 39 high profile members on behalf of the Central Government who subsequently visited Kashmir, believing that dialogue was the only solution. Later, the Central Government of India promised several measures to relieve tension in Kashmir. Although, the tension neutralized but most of the promises made by government were merely an eye-wash.

11.1 Arrest and Detention of the Juveniles in Conflict with Law under AFSPA and PSA

Children from 7-18 years of age, who were involved in stone hurling protests, remained detained in jails and police stations until the Government granted Amnesty to some of them in 2011-2012. Although the Jammu and Kashmir Chief Minister Omar Abdullah announced general Amnesty in August 2011 for youth involved in stone hurling since 2010, youth involved in arson did not achieve the benefit. The CM said “We have decided to give the youths a second chance, cases against all the youths arrested on charges of stone pelting, but not involved in arson, registered during last year’s disturbence will be withdrawn.”

The violence in Kashmir again triggered a nationwide debate on the validity of the AFSPA and PSA. In November 2011, the Central Government extended the AFSPA in Jammu and Kashmir for another year. The Act was first imposed in the State in 1990 (it was first introduced in the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura) and since then its term has been extended every year by the

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62 Statistics from Office of SSP Srinagar, Kashmir.
unanimous agreement of all concerned agencies. When United Nations Human Rights Committee questioned the validity of AFSPA in 1991 under Indian Law and in light of Article 4 of the International Covenant on Civil and Political Rights (ICCPR), the Indian Government said that the Act is quintessential to prevent the secession of the North Eastern States. In reality these states were made a part of the Indian Republic after 1947 by force. Due to having vast differences in terms of society and culture between them and India, the integration and acculturation seemed to be a herculean task. Additionally, the government knowingly or unknowingly, has been uninterested in their socio-economic development. AFSPA is a draconian law which gives uncontrolled powers to the armed forces. Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to “maintain the public order” in a “disturbed area.”

Indian Army since 1989 has used AFSPA for killing civilians and children ruthlessly in Kashmir. In fact, the right to life, survival and development of children has been stressed by the General Comment 14 of 2013 of the Committee on Rights of the Child, which states: “(42)States must create an environment that respects human dignity and ensures the holistic development of every child. In the assessment and determination of the child’s best interests, the State must ensure full respect for his or her inherent right to life, survival and development.” General Comment No. 8 of the Human Rights Committee emphasises that Article 9 ICCPR is applicable to all types of deprivation of liberty, including all forms of administrative detention.

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65 AFSPA 1958. Available at: http://www.hrw.org/reports/2008/india0908/5.htm
66 See, General Comment No. 14 (2013), Committee on the Rights of the Child. Available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf
The study in Kashmir province shows that out of the total of 200 juvenile cases registered in all the respective and concerned Courts throughout Kashmir, 58 cases, that is, 29% of the total have been arrested under the SLL, 22% have been arrested under the PSA of which 16% were withdrawn under Amnesty whereas 6% were held criminally responsible for their actions despite overriding effect of the JJA. Children who pelted stones (who actually should

BOX 11

In a report in 2012, Amnesty International explained in detail how the PSA violates India’s obligation under the international human rights law in Kashmir. It documented that the government of Kashmir has been passing PSA detention orders against children below 15. There is no communication of the grounds of detention by the detaining authorities, there is a common practice of revolving door detentions, and there is non-application of mind by detaining authorities, torture, ill treatment and lack of medical care in the detention centres and sometimes detentions are held in unknown places where even the families of the juveniles are not told about the place of detainment and are not allowed any communication usually referred to as “incommunicado” detentions.”

In the 2011 report, Amnesty International explained in detail how PSA is inconsistent with provisions of the International Convention of Civil and Political Rights (ICCPR). Despite the amendments to the PSA in 2012, these concerns remain outstanding. India acceded to the ICCPR on 10 April 1979, and is therefore bound by this treaty. The PSA violates several provisions of article 9 of the ICCPR, which protect the right to liberty. At the time of accession, India made a reservation to Article 9 of the ICCPR, declaring that it “shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India.” Articles 22(1) and 22(2) of the Constitution provide robust protections for persons arrested in India. However, article 22(3) weakens these protections for persons subject to administrative (or “preventive”) detention. The rights to be produced before a magistrate within 24 hours of arrest and to consult and be represented by a lawyer of choice are thus available to persons ordinarily arrested in India, but are unavailable to persons under administrative detention. Under international law, India’s reservations to the ICCPR, including its reservation to article 9, must not be “incompatible with the object and purpose of the treaty.” The UNHRC has clarified that to reserve the right “to arbitrarily arrest and detain persons” would be incompatible with the object and purpose of the ICCPR. Similarly, in 2008, the UN Working Group on Arbitrary Detention concluded that 10 individuals detained under the PSA in Jammu and Kashmir had been arbitrarily detained in violation of articles 7, 9, 10 and 11(1) of the Universal Declaration of Human Rights and Articles 9 and 14 of the ICCPR. The Working Group called on the government to bring its laws in conformity with international human rights law


BOX 12

The brutality of the Indian Army does not seem to dwindle. Recently, on November 3, 2014, two boys have been ruthlessly killed by the Indian army after firing on a car in which four youngsters were travelling; two of them are critically injured and hospitalized. Out of the two killed, one was a juvenile named Faisal Yousaf, Age 14. Faisal, along with three other boys was, going to see the preparations of Muharram (sacred month of the Shia sect of Muslims). That time Army had been checking the vehicles and they tried to stop the car in which Faisal and the other three boys were travelling. Unfortunately, the boys did not stop as an answer of which the Army indiscriminately started firing at the vehicle with the result that two boys are dead and the other two are fighting for their lives in the hospital. The Army could have stopped the vehicle by firing at the tyres, but the intention was to kill.


The study in Kashmir province shows that out of the total of 200 juvenile cases registered in all the respective and concerned Courts throughout Kashmir, 58 cases, that is, 29% of the total have been arrested under the SLL, 22% have been arrested under the PSA of which 16% were withdrawn under Amnesty whereas 6% were held criminally responsible for their actions despite overriding effect of the JJA. Children who pelted stones (who actually should
have been apprehended for riots) were arrested for arson and attempt to murder other than riots. Complete information on killings and Sections invoked against children involved in stone pelting protests is given in Table 8, p.53.

11.2 Police Brutality
The commonality of such events, which are in direct conflict with Article 9, Paragraph 1, of the International Covenant on Civil and Political Rights, prohibiting arbitrary detention and imprisonment of minors, are also contradictory of the rights to prompt access to legal representation and other relevant assistance as stimulated in the same paragraph. The International Human Rights Association of American Minorities (IHRAAM) also emphasizes that the youths detained by the State authorities in Kashmir are not held in the juvenile detention centres that could offer appropriate and separate facilities for minors. This is in violation of Article 37 of the Convention on the Rights of Children, which provides that detained minors will be held in conditions that take into account their specific needs.

However, the trend of illegal arrests of juveniles remains unabated until now. The following Figures show the place and period of detainment of 200 juveniles in conflict with law in Kashmir, 24.50 % of the total have been detained in police stations, observation home and regular jails for very long period.

Figure 33. Place of Detainment of Juveniles in Conflict with Law in Kashmir

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68 ICCPR. Available at: https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf
It is absolutely against human and child rights to detain children for such long time. The above Figure shows that one juvenile in conflict with law had been detained for more than 6 years. Alleged to have committed murder when he was only 9, the case was lodged against him in 1995 and the offence has still not been proved. The UNCRC 1989, Article 37, prohibits arbitrary detention of children and requires that States detaining children put in place measures to ensure that the detention is for shortest period of time possible.\(^\text{70}\)

The following are certain cases of the desolate and despairing stone hurlers of 2010-2012, who have been illegally arrested and detained in jails, police stations, observation homes and sometimes unknown and illegal places of detention.

- Arrest of Sheikh Akram, Age 15, R/o Jogilanker, Rainawari, who was arrested on 17 June 2010 and charged with stone pelting and hatching conspiracy against the State and was sent to Kote Bhalwal Jail.\(^\text{71}\)
- On 7 February 2011, Fazin Rafiq Hakinm, Age 14, was arrested and held without charges and trial.\(^\text{72}\)
- Murtaza Manzoor, 17 was released in May 2011 after a three month detention in prison after a High Court order and was immediately rearrested by the police according to Amnesty international.\(^\text{73}\)
- Umar, 16, was jailed in Baramulla and bailed out in October 2011, but still faces several charged including arson and attempt to murder.\(^\text{74}\)

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\(^\text{70}\) See, *UNCRC 1989*. Available at: [http://www.unesco.org/education/pdf/CHILD_E.PDF](http://www.unesco.org/education/pdf/CHILD_E.PDF)


- A 12 year old student Faizan was arrested by Srinagar police on the charges of stone pelting and burning of a police vehicle on August 20, 2012. He was kept in a police station without providing any bedding or food on the night of 25th August 2012 and was kept with habitual criminals. He was produced before the Magistrate in Srinagar on 27th August 2012 and dispatched to another police lock-up in Nishat. Faizan has been paid a compensation of Rs 10 lacs by an order of Supreme Court in March 2013 for wrongfully being confined in a police station, brought before the Magistrate and remanded for 15 days.

- Police arrested a 15 year old boy who was released on bail on Monday 24 Nov, 2012, after a week of detainment in police custody. The minor boy of Chattabal was arrested on Nov. 19 and remained in the police lock-up of Shaheed Gunj Police Station. As soon as he left the Court he was again been arrested by police personals of Kralkhoud Police Station. The minor said that he was not transferred to the observation home during his detainment and was severely tortured and beaten at the police station.

- On 21st Dec. 2012 police detained a 17 year old disabled girl Zahida Akhter, of Islamabad for her alleged involvement in stone pelting during the 2010 summer unrest. She was booked under attempt to murder and other serious offences. She was released a day after her detainment when the Court granted interim bail to her. Zahida was summoned by the police to Sadda Police Station, Islamabad on the pretext that they have to seek information about the bullet injury on her leg she received in 2010 but was later detained. She had to spend whole night in the police station along with male prisoners.

- Police arrested Danish Farooq Wani, age 16 in Nov, 2012 who according to the police was notorious stone pelter and involved in a number of stone pelting incidents and a
petrol bomb attack for which a case under attempt to murder and endangering life of a person, stands registered against him in the Kral Khud Police Station.\(^8^0\)

- The juvenile detainees of observation home, Harwan unveiled their tragic stories of arrest and ill treatment by the police. A stone hurler of Zoonimar, Srinagar said that cigarette bits were applied on his arms by police. Similar treatment was received by other two stone hurlers of Nowhatta and Rajouri Kadal.\(^8^1\)

- Amnesty International asked the Government of Jammu and Kashmir to end the administrative detention of two children held under the PSA and further ensure that the practice of unlawful detention of children in the State is put to an end. Asif Mujeeb Shaksaz, aged 15 and Sajad Ahmad Mir, 16, were arrested on grounds of “stone-pelting” and “disruption of peace” on 25 March and 8 March 2013, respectively.

The following are details (compiled by the Centre for dialogue and Reconciliation, New Delhi) of the juveniles aged 8-18, who were ruthlessly killed by the Police, CRPF and Indian Army in the 2010 Kashmir unrest.\(^8^2\)

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\(^8^1\) A Juvenile Detainee of Observation Home, Harvan, *FIR*: 24/12, R/O Zoonimar, Kashmir.

<table>
<thead>
<tr>
<th>S. No</th>
<th>Name of the Victim</th>
<th>Age</th>
<th>Address</th>
<th>Circumstances of Death as reported by Family and Eyewitnesses</th>
<th>FIR No</th>
<th>Sections Invoked</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ishtiyaq Ahmad Khanda y</td>
<td>16</td>
<td>Anchidora, Anantnag</td>
<td>Ishtayaq was going to bakers to get bread when police came chasing. He ran for safety and entered compound of a house. Police chased him there and shot him along with other two boys</td>
<td>261/2010</td>
<td>302 RPC against Constable/307, 188 Against Victim</td>
</tr>
<tr>
<td>2</td>
<td>Imtiyaz Ahmad Itoo</td>
<td>18</td>
<td>Watergoam, Anantnag</td>
<td>Was with Case 1</td>
<td>Same as Case 1</td>
<td>Same as Case 1</td>
</tr>
<tr>
<td>3</td>
<td>Aquib gulzar Wagay</td>
<td>15</td>
<td>Sarnal Bala, Anantnag</td>
<td>He was standing in the street near his home. CRPF personnel opened fire and he later died at District Hospital, Anantnag</td>
<td>345/2010</td>
<td>307, 188 RPC</td>
</tr>
<tr>
<td>4</td>
<td>Ishfaq ahmad Parray</td>
<td>13</td>
<td>Eidgah, Anantnag</td>
<td>Ishfaq was part of a protest at Sher bagh area of the town when police fired pallets at him. He died on his way to SKIMS(Hospital)</td>
<td>331/2010</td>
<td>148, 149, 336, 307, 188 RPC</td>
</tr>
<tr>
<td>5</td>
<td>Milad Ahmad Dar</td>
<td>7</td>
<td>Wanihama, Ganderbal</td>
<td>Milad had gone to his aunt’s house in Khanabal. There while returning to his aunt’s house from Darsgah(Islamic study Centre), he was hit in his head near Rashtriya Rifles Camp. He later died at SKIMS</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Ashiq Hussain Bhat</td>
<td>18</td>
<td>Harpora, Kulgam</td>
<td>He joined a procession coming neighbouring village Mohanpora. On way to Kulgam, police and CRPF fired at them. He was shot in leg and the police took him in custody for half an hour and he lost blood. Later, he died on way to SKIMS</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Jehangir Ahmad Bhat</td>
<td>17</td>
<td>Chinagam, Kulgam</td>
<td>Jehangir was shot when a group of young men attacked a police post in nearby Sherpora village</td>
<td>93/2010</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Rameez Ahmad bhat</td>
<td>17</td>
<td>Labripora, Kulgam</td>
<td>He was going to a friend’s house when a police vehicle passing on the main road fired at him and other boys. He was hit in chest and died 3 hours later</td>
<td>164/2010</td>
<td>322, 307, 203, 250, 59, 74 RPC</td>
</tr>
<tr>
<td>9</td>
<td>Adil ahmad Teli</td>
<td>18</td>
<td>Humhama, Budgam</td>
<td>Police fired at a procession at Humhama of which Adil was a part. He was hit in abdomen and died on way to SMHS hospital</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Mohmad Maqbool Shiekh</td>
<td>14</td>
<td>Chadoora, Budgam</td>
<td>Maqbool was returning home from his sister’s house who lives at Kadlabal. While crossing the Kadlabal bridge, police and CRPF fired indiscriminately at the people in which he was hit in his head.</td>
<td>165/2010</td>
<td>Not Known to the Family</td>
</tr>
<tr>
<td>11</td>
<td>Sajad Ahmad Pandit</td>
<td>18</td>
<td>Shiekhpora, Budgam</td>
<td>Sajad was a part of the protests moving towards Humhama where police fired upon the protestors. He was hit and wa critically injured. He remained in the SKIMS hospital for 10 days before succumbing to his injuries</td>
<td>Family has a copy but does not trust the research team</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Danish nabi kumar</td>
<td>13</td>
<td>Chariershariaf, Budgam</td>
<td>He was part of the protests when CRPT fired at them. He was hit in chest and died on spot.</td>
<td>157/2010</td>
<td>147, 148, 149, 120 B, 332, 336, 307, 397, 436, 427</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Age</td>
<td>Location</td>
<td>Incident Description</td>
<td>Family Status</td>
<td></td>
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<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>13</td>
<td>Muzaffer Ahmad Bhat</td>
<td>17</td>
<td>Byepass, Batamaloo, Srinagar</td>
<td>He was playing cricket in the flood channel when police chased the boys and took him in custody. He was beaten to death.</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Javeed Ahmad Malla</td>
<td>18</td>
<td>Qamarwari, Srinagar</td>
<td>Javeed was part of the funeral of his cousin when police started firing at them. He received a bullet in his neck.</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Abrar Ahmad Khan</td>
<td>17</td>
<td>Lachowk, Srinagar</td>
<td>Abrar left home to attend funeral of a girl killed in batamaloo. As he stepped out of his house, he police started firing at them and two bullets hit him in his neck. Died on way to SMHS hospital</td>
<td>57/2010</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Fida Nai</td>
<td>17</td>
<td>HMT, Srinagar</td>
<td>Fida was part of protest which was fired upon by the police and CRPF. He was hit by a bullet which ricocheted of a rock on the road and hit him in head. He later died in the hospital after several days on ventilator</td>
<td>189/2010 341, 147, 148, 149, 336, 427, 307, 435 RPC</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Sameer Ahmad Bhat</td>
<td>8</td>
<td>Batamaloo, Srinagar</td>
<td>Sameer was severely beaten by CRPF while he was going out to play with other kids. He was declared dead at the hospital</td>
<td>93/2010 307, 147, 146, 148, 188, 332, 427</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Suhail Ahmad Dar</td>
<td>15</td>
<td>HMT, Srinagar</td>
<td>Separatists had called for a march to Eidgah and Suhail was part of that protest. Police had cordoned the road and stated firing at the protestors as they reached the road. Suhail was hit by a bullet on left side of hisbelly. He died later in the hospital</td>
<td>307, 148, 332, 336 RPC</td>
<td></td>
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<tr>
<td>19</td>
<td>Anees Khurshid Ganaie</td>
<td>17</td>
<td>Eidgah, Srinagar</td>
<td>Anees went out to recharge his mobile SIM card when a CRPF party came and fired at people sitting on shop fronts in the market. Separatists had called for Eidgah Chalo(March). In shooting, Anees was hit in belly and was declared dead at hospital</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Tufail Ahmad Mattoo</td>
<td>17</td>
<td>Saida kadal, Srinagar</td>
<td>He was coming back from tuition. Near Gani Memorial Stadium, police fired a tear smoke shell and he died on spot</td>
<td>45/2010 302 RPC</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Asif Hassan Rather</td>
<td>10</td>
<td>Delina, Baramulla</td>
<td>Asif was killed by CRPF when he was standing on the Srinagar-Baramulla highway. He had stepped out of his house to find his elder brother. Bullet hit him in belly</td>
<td>122/2010 307, 148, 332, 336 RPC</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Adil Ranzan Sheikh</td>
<td>12</td>
<td>Pattan, Baramulla</td>
<td>Adil was hit by a bullet when he had gone to play cricket in Pattan yown. He was taken to hospital, Army entered into the hospital and broke the window panes and entered the room where he was kept. They shot him again there and he died on the hospital bed</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Faizan Rafiq Buhroo</td>
<td>13</td>
<td>Main Town, Baramulla</td>
<td>Protests were going on when Faizan was caught and beaten ruthlessly by police and CRPF on the Azad Gunj Bridge. His head was struck with gunbutts. Later, his body was thrown in the river Jehlum where from his body was fished out two days later.</td>
<td>132/2010</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Tajamul Islam</td>
<td>16</td>
<td>Sopore, Baramulla</td>
<td>Tajamul was shot near sub-district hospital in Sopore on the day when Hurriyat Conference hadcalled for a march to Sopore. Bullet hit him in chest and he succumbed there</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Farhat Maqsood</td>
<td>15</td>
<td>Sopore, Baramulla</td>
<td>Farhat was part of a protest that went to Bomai and started pelting stones at a CRPF camp. The CRPF fired im response and killed him. He was hit in abdomen</td>
<td>Copy not given to the family</td>
<td></td>
</tr>
</tbody>
</table>
Summary of Legal Sections Under the Ranbir Penal Code (RPC) are given in the Box below

BOX 13 (Continued)

Section 146: Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly is guilty of the offense of rioting. To sustain a charge of rioting, the prosecution has to establish that there was an unlawful assembly, that force or violence was employed and that an offense was committed. The offense involves (a) the use of force or violence, (b) by an unlawful assembly or by any member thereof, and (c) in prosecution of the common object of the assembly.

Section 147: Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. Essentials of unlawful assembly are (i) there must be proof of assemblage of five or more persons. (ii) object of assembly must be one according to five objects mentioned in the section. (iii) object is common to all members. (iv) members joined or continue to join assembly. (v) dishonesty. (vi) being aware of all facts. The five common objects given in the section are: (i) to overawe by criminal force or the show of criminal force, to the Government, State Legislature or public servant in exercise of his lawful power as public servant, (ii) to resist execution of any legal process or any law, (iii) to commit any mischief or criminal trespass or other offenses, (iv) to take or obtain possession of any property by means of force or show of criminal force or to deprive any person of the right of enjoyment of right of way, or use of water, or to enforce any right or supposed right, and (v) to compel any person to do a thing by means of force or show force which he is not legally bound to do.

Section 148: Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offense is likely to cause death or grievous hurt, shall be punished with imprisonment which shall not be less than one year but may extend to five years and shall also liable to fine. Section 148 can be attracted only when a rioter is armed with a deadly weapon or with a weapon of offense likely to cause death. A person can’t be found guilty unless he actually had a dangerous weapon in his hand.

Section 149 (Every member of unlawful assembly guilty of offenses committed in prosecution of common object): If an offense is committed by any member of an unlawful assembly in prosecution of the common object of the assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offense, is a member of the same assembly, is guilty of that offense.

Section 188 (Disobedience to order duly promulgated by public servant): Whoever, knowing that, by an order promulgated by the public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction; shall if disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with imprisonment which may extend to one year or shall also be liable to fine; and if such disobedience causes or tends to cause danger to human life, health or safety, causes or tends to cause a riot or affray, shall be punished with imprisonment which shall be less than three months but may extend to two years and shall be liable to fine.

Section 239 (Delivery of coin possessed with knowledge that it is counterfeit): Whoever, having a counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

12. Conclusion and Recommendations

The profile of the juveniles in India displays that majority of them are living in deplorable and wretched conditions and are truly deprived of developmental opportunities. The JJA has failed, in a number of areas, to bring about any meaningful change due to its fragmented and incomplete implementation. Despite continuous recommendations from international and national organizations like the United Nations, Amnesty International, Asian Centre for Human Rights, National Commission for Protection of Child Rights (NCPCR) etc, the Government of India seems to be totally uninterested in humanitarian treatment of the children. Although, there were seemingly certain positive political and legal developments in 2012 (like suspension of some parts of the PSA in Jammu and Kashmir, release of children under 18 from prisons in Kashmir on recommendations of Amnesty International), the implementation of AFSPA, the PSA in Jammu and Kashmir and AFSPA in the North-Eastern States continue to violate India’s obligation under international human and child rights.

The prospects for social development and economic growth are hindered in Kashmir and hence delinquency and crime are developmental issues. On the other hand the internal reality is that Kashmir is a zone of tremendous armed conflict. The lethal violence has significant repercussions on the social and economic developments of Kashmir. In order to enhance the social and economic state of a country, the occurring problems need to be identified and tackled. Unless and until due attention is given to framing of accurate policies and programs...
and revision and strengthening of existing policies, schemes and legislations, there are abysmal chances that crime by children and crime against children will diminish in India.

Irrespective of the armed conflict in many parts of the country, the level of its economic development and the legacy of political management, an affluent, flexible and healthy system of juvenile justice can be acquired only if there is a strong political will at the Central and State levels. The problem of poverty, illiteracy, unemployment, neglect and delinquency are interrelated, so policies and programs must focus on lessening of poverty and improvement in the sector of education and employment. In addition, proactive efforts shall be taken to engage NGOs, community, mass-media, public and in fact, the concerned officials which are altogether fundamental to the long-term effectiveness of the measures for bringing magnificent juvenile justice in the country. Certain recommendations for Government of India for ensuring best-interest of the children and child-friendly juvenile justice system in the country are:

- Repeal the Juvenile Justice (Care and Protection of Children) Bill 2014 which proposes lowering the upper age limit of juvenility from 18-16 which is in direct violation of the UNCRC.
- Strengthen and review all the existing policies, programs and legislations for children.
- Establish a State Commission for Protection of Child Rights SCPCR in all the States immediately, so that the ICPS is implemented in all the States and all the children in India are able to take its benefit.
- Expand role of the NCPCR to circumspect the SCPCRs so that the funds for child development and protection are not unnecessarily swallowed by the States.
- Direct the States to set-up and establish the required number of Juvenile Justice Boards, Child Welfare Committees, Observation Homes and other institutions necessary for protection and development of children under the UNCRC and provide funds and infrastructure for establishing the same.
- Direct the Courts and Boards for speedy trial of the juveniles in conflict with law and circumspect the working of the adjudication and the law enforcement.
- Direct the State authorities to circumspect the staff of the residential homes to ensure that the juvenile detainees are provided with all the facilities guaranteed to them under the JJA and all international conventions ratified by India, particularly the UNCRC.
• Repeal the AFSPA and PSA in the States under armed conflict and until they are repealed, put an end to the administrative detention, incommunicado detention and detention of children in unofficial places.

• Ensure that the information of arrest of a juvenile is first given to his parents and he is brought before a magistrate within 24 hours of arrest.

• Set up Special Juvenile Police Units in letter and spirit to put an end to maltreatment of children by the regular police.

• Repeal ‘doli incapax’ provisions so as to clear the confusion created about two minimum ages, one by the Indian Penal Code and the other prescribed by the UNCRC.

• Stipulate that the same upper age limit of juvenility applies uniformly throughout the country and that it is not subject to any separate legislations or Special and Local Laws.

• Ensure that juveniles in conflict with law, who are younger than MACR and below the upper age of juvenility as per the JJA and UNCRC, are fully protected, rehabilitated and are never treated under the criminal justice system. Focus on their rehabilitation and reintegration into society, stop torture and cruel punishment to them.

• Ensure that no juvenile in conflict with law is handcuffed and use detention as a measure of last resort and for the shortest possible time.

• Verification of age must be done accurately by the police just after the juvenile in conflict with law is apprehended. The Magistrates shall try their best to fully enquire the age of an offender if they feel that the accused apparently is a juvenile.

• Training to build up the required capacity of the personnel in juvenile justice is necessary. Officers having knowledge of child psychology and those with right aptitude and training must be shouldered the responsibility of dealing with children.

• Take steps for undertaking qualitative as well as quantitative study on the number of children in difficult circumstances. Presently, India is facing lack of credible data on children which makes it difficult to exactly understand the multidimensional problems faced by the children and devise the policies accordingly.

• Strengthen family-based and community-based care for children in need of care and protection. Devise policies that focus on early intervention and detection, diversion, restoration, rehabilitation, and protection.