

# **The Juvenile Justice System in India and Children who commit serious offences – Reflections on the Way Forward<sup>1</sup>**

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## **I. Introduction**

The issue of serious/violent juvenile crime is a very complex one, warranting a judicious approach to be adopted in order to effectively address the competing interests of these juveniles, the victims (especially women and girls), and that of public safety. The gang rape on 16 December 2012 has triggered a nationwide debate on a number of issues, one of them being the quantum of punishment for juveniles involved in heinous crimes. The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act) prescribes a maximum period of three years detention in a Special Home (SH), which many believe as being disproportionate to the impact of such a crime on the victim and society. There are two distinct positions that have emerged – one that all juveniles in the age group of 16-18 years be dealt with by the adult criminal justice system and second, that only those juveniles who have allegedly committed heinous crimes be dealt with in this manner, through the establishment of a waiver system.

Shorn of the panic it has triggered, the incident has raised issues that require a deeper examination of the principles and values of the juvenile justice system and an evaluation of the adequacy of responses to juveniles who commit serious/violent crime in India. This paper examines the measures contained in juvenile law in India, highlights issues concerning rehabilitation/restoration/aftercare for this group of children, and addresses the appropriateness of subjecting such juveniles to the adult system. The paper concludes with an attempt to list appropriate steps that must be taken by the State and civil society to more effectively address the problem of juveniles who commit serious offences in India.

At the outset, it is necessary to clarify what is meant by the term “serious offences”. While the term does not appear in the text of the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (Cr.P.C), or the JJ Act, it does in the Juvenile Justice (Care and Protection of Children) Rules, 2007 (JJ Model Rules). According to Rule 11(7), the Police or the Special Juvenile Police Unit (SJPU) should apprehend a juvenile only if he/she is allegedly involved “in serious offences (entailing a punishment of more than 7 years imprisonment for adults)”. For the purpose of this paper, the term “serious offence” will therefore mean offences that carry more than 7 years imprisonment for adults.

## **II. Overview of the responses to serious offences by juveniles under juvenile law in India**

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The JJ Act provides a number of entitlements to juveniles, including those who are alleged to or found to have committed serious crime. The stated objects of the Act are to provide for “the proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation<sup>2</sup>” and “re-socialization<sup>3</sup>”. The Act enables a multi-disciplinary inquiry by a Juvenile Justice Board (JJB), consisting of a Principal Magistrate and two Social Workers<sup>4</sup> as members sitting as a bench<sup>5</sup>, to conduct inquiries into juvenile crime in a child-friendly<sup>6</sup> manner in order to pursue ‘the ends of justice<sup>7</sup>’. The JJB therefore has to also take into consideration the concerns of the victims if any, and public interest. These inquiries are to focus not only on establishing guilt but on understanding the juvenile and his/her circumstances, as well as the motives and root causes that may have played a role in the commission of the crime. In cases where a juvenile is allegedly co-accused with an adult/s, the law forbids joint trials.<sup>8</sup> In a conscious departure from the Code of Criminal Procedure (Cr. P.C.), the JJ Act and Rules restrict apprehension of juveniles<sup>9</sup>, stipulate bail as a right (under certain conditions) irrespective of whether the offence is bailable or non-bailable<sup>10</sup>, and prescribe inquiries to be conducted as per the procedure meant for trial in summons cases.<sup>11</sup>

These child-friendly measures are indicative of the Legislature’s intention that the benefits of these provisions be available to all juveniles irrespective of the nature of the offence allegedly committed by them. The law is based on the idea that all juveniles can and should be reformed through this child rights and child friendly approach. In all these aspects, it is a unique legislation and very much in line with juvenile jurisprudence, child and adolescent psychology and therapeutic jurisprudence. It may seem difficult to believe, that even juveniles who have allegedly committed heinous crimes should be treated in this way, but a deeper reflection and research on effective measures to ensure that such juveniles are genuinely reformed and prevented from re-entering the system reveals that an appropriate response should not only focus on reformation and accountability, but also the care, protection, treatment and over-all wellbeing of the child/adolescent in order to enable him/her to re-integrate into the community with dignity and move away from a life of crime.

## **2.1. Responses to juvenile offenders who commit serious crime under the JJ Act and Model Rules**

The seriousness of offences committed by juveniles is taken into consideration under the JJ Act and Rules in the following ways:

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<sup>2</sup>As stated in the long title of the Juvenile Justice (Care and Protection of Children) Act 2000

<sup>3</sup>Section 9(3), JJ Act 2000

<sup>4</sup> These social workers hail from various disciplines, and not only from social work. See Rule 7, JJ Model Rules 2007

<sup>5</sup> Section 4 (2) and (3), JJ Act 2000 and Rule 7, JJ Model Rules 2007

<sup>6</sup> See Preamble, JJ Act and Rule 2 (d), 64(1), 9(2), 13 (2) (b), 13 (4), JJ Model Rules 2007

<sup>7</sup> Section 12 (1), JJ Act 2000

<sup>8</sup> Section 18, JJ Act 2000

<sup>9</sup> Rule 11(7), JJ Model Rules 2007

<sup>10</sup> Section 12, JJ Act 2000

<sup>11</sup> Section 54(1), JJ Act 2000 and Rule 13(e), JJ Model Rules 2007

- Juveniles who are not released on bail, are required to be first placed in the reception unit of an institution called the Observation Home (OH), pending inquiry, Here along with age, physical and mental status, the degree of offence allegedly committed is also considered in order to classify and segregate the juveniles so that all children residing there get the requisite care and protection while in the Home.<sup>12</sup> Juveniles who are alleged to have committed a serious offence may also be housed in a place of safety<sup>13</sup> instead of the OH during the period of inquiry<sup>14</sup>.
- The State Governments have been empowered to frame Rules to provide for the classification and segregation of juveniles also in Special Homes (SH) (institutions where a juvenile may be placed as per a final order of the JJB) on the basis of age, the nature of offence committed, and their mental and physical status.<sup>15</sup>
- The JJB can also pass a final protective custody order<sup>16</sup> that a juvenile above 16 years of age who has committed an offence “so serious in nature” that it would not be in his interest or the interest of other juveniles in an SH to place him there and that none of the other measures specified would be suitable, be kept in a place of safety.<sup>17</sup>
- Juveniles who have been found guilty of committing heinous or serious offences can, at the most be sent to an SH for a maximum period of three years.<sup>18</sup> At the time of passing final orders, the JJB can also reduce the period of stay if it satisfied that it is necessary to do so having regard to the nature of the offence and the circumstances of the case.
- Such juveniles, like all others, are entitled to be socially integrated/rehabilitated through adoption, foster care, sponsorship and after care.<sup>19</sup> After Care organizations are mandated by law to take care of juveniles after they leave the SH for the purpose of enabling them to lead an “honest, industrious and useful life”<sup>20</sup>, and ‘to facilitate their transition from an institution-based life to mainstream society for social re-integration<sup>21</sup>. Such after care can be provided for a maximum of three years<sup>22</sup>, and for a juvenile between 17 and 18 years of age till he/she attains the age of 20 years.<sup>23</sup> All juveniles in after care come under the jurisdiction of the JJB<sup>24</sup>.
- The law demands that intensive individualized attention be provided to such juveniles. Probation Officers, the key duty bearers in this regard, are required to undertake a number of responsibilities that are vital to achieve the goals relating to juveniles who commit serious offences including developing various kinds of care plans, facilitating after care<sup>25</sup>, and mentoring, monitoring, supervision, and reporting the progress of

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<sup>12</sup>Section 8(4), JJ Act2000

<sup>13</sup>Section 2 (q), JJ Act 2000

<sup>14</sup> Section 12 (3), JJ Act 2000

<sup>15</sup>Section 9(4), JJ Act2000

<sup>16</sup> Section 16 (2), JJ Act2000

<sup>17</sup>Proviso to Section 16, JJ Act2000

<sup>18</sup> Section 15 (1) (g), JJ Act2000

<sup>19</sup> Section 40, JJ Act 2000

<sup>20</sup> Section 44 (b), JJ Act 2000

<sup>21</sup> Rule 38 (1), JJ Model Rules2007

<sup>22</sup> Proviso to Section 44 (b), JJ Act 2000

<sup>23</sup> Proviso to Section 44 (b) JJ Act 2000

<sup>24</sup> Rule 38 (4), JJ Model Rules2007

<sup>25</sup> Section 44, JJ Act 2000

each juvenile<sup>26</sup>. Individual Care Plans<sup>27</sup>(ICPs) must be prepared for all juveniles within one month of their admission into an institution<sup>28</sup> in order to ensure they get individualized attention in their journey towards reformation, rehabilitation, social mainstreaming and restoration back into the community. The JJBs are required to pass final orders based on these ICPs prepared by a probation officer or voluntary organization on the basis of interaction with the juvenile and his family where possible.<sup>29</sup> Moreover, a Mental Health Care Plan, with recommendations from experts has to be maintained in every case file and integrated into the ICP of every juvenile.<sup>30</sup>The Management Committees that are to be set up in every institution are also required to meet every month to consider and review the ‘individual problems of juveniles..., provision of legal aid services and institutional adjustment<sup>31</sup>’, prepare Pre-release restoration plans, as well as post-release and follow up plans as part of the ICP for juveniles who completing their term of placement in a Fit Institution or SH and to also review these plans on a quarterly basis<sup>32</sup>

- Given that juveniles who commit serious crime are likely to have problems related to mental health and/or chemical dependency, if a juvenile appears to the JJB as being mentally ill, or addicted to alcohol or other drugs which leads to behavioural changes, an order can be passed directing that the child be sent to a psychiatric hospital/nursing home.<sup>33</sup> In such cases the JJB may, on the advice given in the certificate of discharge of the psychiatric hospital/nursing home, order to remove such juvenile to an Integrated Rehabilitation Centre for Addicts or similar centres maintained by the State Government for mentally ill persons (including the persons addicted to any narcotic drug or psychotropic substance). The law permits such removal to be made only for the period required for the in-patient treatment of such juvenile.

An appropriate response to juveniles who commit serious crime requires a system that demands specialized customized responses based on the needs and circumstances of each juvenile, while also taking into consideration the impact on the victim of his crime (if any), and the wider interests of society. From the above analysis it is clear that juvenile law in India does indeed provide for a juvenile jurisprudence grounded system which focuses on reforming and rehabilitating juveniles who commit serious crime through individualized inter-disciplinary services that are monitored and reviewed rigorously, aspects that are not envisaged in the adult criminal justice system which is premised on retribution and punishment. It also retains the focus on the ends of justice, taking into account the interests of the victim and wider society.

## 2.2. Gaps in law

Though the law is fairly progressive, it does have certain gaps that need to be filled in order to better address the challenge of effectively reforming, treating and rehabilitating juveniles

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<sup>26</sup> Rule 84, JJ Model Rules 2007

<sup>27</sup> Rule 2 (h), JJ Model Rules 2007.

<sup>28</sup> Rule 50 (12) (a), JJ Model Rules 2007

<sup>29</sup> Rule 15 (3), JJ Model Rules 2007

<sup>30</sup> Rule 46 (7) and (8), JJ Model Rules 2007

<sup>31</sup> Rule 55 (6) (a) (v), JJ Model Rules 2007

<sup>32</sup> Rule 50 (12) (c) and 17 (3), JJ Model Rules 2007

<sup>33</sup> Section 58, JJ Amendment Act 2011

who commit serious offences and preventing recidivism. Evidence Based Research on 'what works' with such juveniles reveals a range of inter-disciplinary strategies<sup>34</sup>, approaches and models; the insights of which need to inform law reform processes in India. The best practices from other jurisdictions<sup>35</sup> need to be taken into account. More importantly, the experiential insights of the individuals and organizations working with this group of children around the country needs to be collated and analysed in order to identify gaps or weaknesses in law. The Centre for Child and the Law's Juvenile Justice Team's (JJ Team) field interventions with juveniles in Bangalore Urban and Rural, (especially the work on Multi-Disciplinary Pre-Hearing Case Conferences<sup>36</sup> with juveniles alleged/found to have committed serious crime along with other actors involved in his/her case, aimed at impacting JJB decisions, individual care plans, and pre-release and post-release plans), is also informative in this regard. An initial list of legislative gaps on this issue is given below.

The Act does not taken into account the special needs and requirements of certain sub-groups among juveniles in conflict with law. For instance, it fails to stipulate guidelines or policy directions for dealing with juvenile sex offenders, recidivists, female juveniles and child or other victims of juvenile crime.

- a) *Juvenile sex offenders*: "Adolescence is a time of dramatic change. It is a time of awakened sexual interest, and for many youth, a willingness to engage in rule-breaking behavior that will not persist into adulthood<sup>37</sup>." However, young people do commit serious and violent sexual crime. Research indicates that juveniles who sexually offend are a diverse population with complex treatment needs; sexual arousal is dynamic and not "fixed" in the majority of cases; those who sexually offend are responsive to treatment interventions and such juveniles are more similar than different to other delinquent youth<sup>38</sup>. Provisions relating to management, reformation or treatment of juvenile sex offenders are however conspicuous by their absence in the JJ Act and Rules.
- b) *Juvenile Recidivists*: Our experience has shown that there are some young adolescents who are trapped in a cycle of crime and frequently re-enter the proverbial revolving door of the JJ system. These children are most often those with complex unmet needs, and pose enormous challenges to the staff, the judicial officers handling the case, and also to the community. Here again, provisions concerning how functionaries and the JJB need to deal with juvenile recidivists do

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<sup>34</sup> Keystones for Reform, Promising Juvenile Justice Policies and Practices in Pennsylvania, Models for Change, Chapter 4, Youth Law Centre, October 2005

<sup>35</sup> See point 19.32 and 19.33 and recommendation 200, Seen and heard: priority for children in the legal process, Australia Law Commission Report, 1997, available at <http://www.alrc.gov.au/publications/report-84>

<sup>36</sup> These MDDCs are being conducted by the CCL NLSIU JJ team in partnership with the Department of Child and Adolescent Psychiatry NIMHANS, Bangalore

<sup>37</sup> Miner *et al*, Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders, Sexual Offender Treatment, Volume 1 (2006), Issue 3, available at [http://www.iatso.org/index.php?option=com\\_phocadownload&view=category&id=4&Itemid=24](http://www.iatso.org/index.php?option=com_phocadownload&view=category&id=4&Itemid=24)

<sup>38</sup> Prescott, David (2006), Reitzel, L., Carbonell, J. (2006) and Rich, S.A. (1998); as cited by Kecia Rongen, DSHS Juvenile Rehabilitation Administration 2011, available at <http://www.wcsap.org/sites/www.wcsap.org/files/uploads/webinars/Juveniles%20Who%20Commit%20Sex%20Offenses/Slides.pdf>

not feature anywhere in the legal framework – a serious flaw that prevents effective remedies for this group.

- c) *Girls who commit serious crime*: While boys and girls entering the system may share many common characteristics, research confirms that girls overwhelmingly have childhood histories of trauma and abuse, mental health disorders, and family separation. In addition, girls are more likely to be involved in prostitution or prostitution-related offenses<sup>39</sup>. Though only 6% of all juveniles apprehended in the year 2011 were girls<sup>40</sup>, they face much graver battles in their journey towards rehabilitation and re-integration into the community. The law is largely silent on girl juveniles, though there are rules providing for segregation based on sex in the OH/SH<sup>41</sup>, and for re-integration into society through customized after care programmes<sup>42</sup>. There are no legal standards however, for specific kind of services that are to be provided to girls in Special Homes resulting in statutory functionaries and civil society actors finding it extremely challenging to deal with this special group of children. The JJ team's experience in handling one such girl, who, having apparently earlier got trapped into prostitution herself, and later apprehended and charged as a co-accused with eight adults, and finally found guilty for a series of crimes including those that are punishable with life imprisonment if committed by an adult, is a vivid case in point.
- d) *Victims of serious crimes committed by juveniles*: The juvenile justice system does not reflect an understanding of the plight or the rights of victims of juvenile crime. Restorative Justice programmes that enable victim – offender reconciliation is increasingly gaining ground around the world (even in cases of juveniles who commit serious/violent crime), attempting to balance 'competency development, accountability and public safety goals in an effort to restore victims, communities and offenders, and restore broken relationships<sup>43</sup>.' The JJ team has painfully experienced the unique challenges that emerge when a juvenile is found to have committed a serious offence against another child. There are little or no services or systems in place to ensure that the needs and rights of victims of juvenile offences are respected and realized. Victims and their families who have had to navigate through the system without any legal, psycho-social, or financial assistance or support end up disillusioned and embittered by the process as well as the outcome of JJB proceedings. This contributes to a negative perception of the juvenile justice system.

Increasing the effectiveness of reformation and rehabilitation of such juveniles needs to be prioritized in order to build accountability and faith in the system, and prevent reactionary legislative measures.

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<sup>39</sup> Marsha L. Levick and Francine T. Sherman, "When Individual Differences Demand Equal Treatment: An Equal Rights Approach to the Special Needs of Girls in the Juvenile Justice System", Boston College of Law, Legal Studies Research Paper Series, vol 18:9, Jan 1<sup>st</sup> 2003, pg 12

<sup>40</sup> National Crime Records Bureau, *Crime in India -2011*, Chapter 10. Juvenile Delinquency, <http://ncrb.nic.in/CD-CII2011/cii-2011/Chapter%2010.pdf>

<sup>41</sup> Rule 16 (1) and 40 (a) (i), (b) (i) of the JJ Model Rules 2007

<sup>42</sup> Rule 17 (9) and (13) of the JJ Model Rules 2007

<sup>43</sup> *Balanced and Restorative Justice for Juveniles, A Framework for Juvenile Justice in the 21<sup>st</sup> Century*, Office of Juvenile Justice and Delinquency Prevention, Balanced and Restorative Justice Project, University of Minnesota, 1997, pg ii

### **2.3. Gaps in administration of juvenile justice, specifically pertaining to the issue of serious offences committed by juveniles**

Lowering the age of the juvenile or incorporating a waiver system to enable JJBs to transfer juveniles alleged to have committed serious crime to the adult criminal justice system will not help in better protection of women from juvenile crime or in reform of serious juvenile offenders. The most urgent and critical area of reform therefore, is not of the law, but of the way it is being implemented. If the law is implemented in letter and spirit, and services are designed and delivered by dedicated professionals from various disciplines, juveniles alleged to or found to have committed serious crime can indeed be reformed, rehabilitated and re-socialized.

At present, the system is bogged down by infrastructural insufficiencies and untrained staffs that render the legislative goal of reformation and re-integration of juveniles a distant dream. There is often little or no tolerance, understanding or willingness to treat such children for who they are – young adolescents, most of who seem to be on the margins of society. This is borne out by the NCRB data, according to which 6122 of the juveniles apprehended in 2011 were illiterate, 12, 803 had education up to primary level and 56.7% hailed from poor families whose annual income was up to Rs 25,000.<sup>44</sup> These juveniles are largely treated as hardened criminals at the OH, SH, or the place of safety. There are no specialized cadres in the JJ system – be it Probation Officers, Public Prosecutors, Superintendents, Police officers, or even Social Work members/ Principal Magistrates of the JJB, etc. The quality of social investigation reports, counseling, supervision and mentoring through probation services, community services, SH, etc., are largely abysmal if at all available. Functionaries are almost always de-motivated and generally consider these as punishment postings as on the one hand they do not get the training and support necessary to deal with extremely challenging situations in the OH and SH, and on the other – get blamed when children escape or commit suicide. Though most State governments do have some kind of training offered for functionaries, JJBs, SJPU and others, these are sporadic and lack a vision for competency building, a comprehensive curriculum, or cutting edge training material.

There are only 30 Special Homes in the country.<sup>45</sup> Several States have not even established an SH.<sup>46</sup> There is hardly any data available on whether juveniles committing serious crime are indeed receiving the treatment and reformatory services that are necessary for rehabilitation and re-integration.

The inclination of the government to protect children is highly suspect given that the overall allocation has dropped from 4.76% in 2012-13 to 4.64% in 2013-14.<sup>47</sup> Further, the allocation

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<sup>44</sup> NCRB, *Crime in India – 2011*, Chapter 10, pg138

<sup>45</sup> <http://wcd.nic.in/>

<sup>46</sup> The States of Bihar, Chhattisgarh, Kerala, Meghalaya, Sikkim, Tripura, Daman and Diu, Lakshadweep, Dadar and Nagar Haveli, Jharkhand and Delhi, in which the capital of India is located, have not yet established such homes.

<sup>47</sup> HAQ Centre for Child Rights, Budget 2013-14 and Children – A First Glance, P.2 at [http://www.haqrc.org/sites/default/files/BUDGET%202013-14\\_Print%20Final-1.pdf](http://www.haqrc.org/sites/default/files/BUDGET%202013-14_Print%20Final-1.pdf)

for the Integrated Child Protection Scheme<sup>48</sup> has dropped from Rs 400 crore to Rs 300 crore.<sup>49</sup> Child protection remains an area of neglect as it constitutes a measly 0.04% of the total budget.<sup>50</sup> In the absence of adequate allocation, the reformation, rehabilitation and treatment envisaged under the JJ Act cannot be actualized. It will then be unfair to declare that the Act has failed to prevent juvenile crime, deliver justice to victims of juvenile crime or reform juveniles who commit serious offences given that the infrastructure and resources necessary to do so have not been made available.

The National Crime Records Bureau, the nodal agency under the Ministry of Home Affairs, collects data on crime and recidivism. However, one serious gap is that it does not collect data on juvenile recidivists, an issue that becomes a major hurdle in either ensuring a suitable response to such children or in assessing the impact of the juvenile justice system.

The Central Government/State Governments therefore need to take concrete measures to not only implement the provisions of the law and rules more effectively, but also put in place, activate and take seriously the recommendations made by monitoring and reviewing authorities to demonstrate results. The role of the Courts, including the Juvenile Justice Committees set up by the High Courts in certain states also needs to be highlighted, in enabling enforcement of the law and rules. The most urgent need therefore is to build the faith of victims, the families of juveniles and wider public in the JJ system through effective implementation of the law, not through cursory and unfounded amendments in law.

### **III. Appropriateness of “Adult Time for Adult Crime”<sup>51</sup>**

All human beings, especially growing children need to be taught that there are consequences for their actions, for which they will be held accountable. However, the means for ensuring such accountability should be grounded in child/adolescent psychology, the human rights of children and a deeper understanding of the circumstances that led to such behavior/actions. The Committee on the Rights of the Child has gone to the extent of stating that the overriding factor in responding to severe offences by children must be “the need to safeguard the well-being and best interests of the child and to promote his/her reintegration”.<sup>52</sup>

In this light, it must be examined whether subjecting children who commit serious offences to the adult criminal justice system would be an appropriate response and whether such juveniles should be sentenced to death or life imprisonment. The UNCRC expressly prohibits the imposition of death penalty and life imprisonment without the possibility of release

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<sup>48</sup> A Central Scheme notified by the Ministry of Women and Child Development, Government of India in 2009, to enable effective implementation of the JJ Act and strengthen child protection in India

<sup>49</sup> HAQ Centre for Child Rights, Budget 2013-14 and Children – A First Glance, P.6 at [http://www.haqcrc.org/sites/default/files/BUDGET%202013-14\\_Print%20Final-1.pdf](http://www.haqcrc.org/sites/default/files/BUDGET%202013-14_Print%20Final-1.pdf)

<sup>50</sup> HAQ Centre for Child Rights, Budget 2013-14 and Children – A First Glance, P.2 at [http://www.haqcrc.org/sites/default/files/BUDGET%202013-14\\_Print%20Final-1.pdf](http://www.haqcrc.org/sites/default/files/BUDGET%202013-14_Print%20Final-1.pdf)

<sup>51</sup> This expression has been borrowed from various scholarly articles that examined the appropriateness of treating juveniles who commit serious offences as adults in the USA.

<sup>52</sup> Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, para 71



upon children below the age of 18 years.<sup>53</sup>The Committee on the Rights of the Child encouraged States “to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counseling, probation, foster care, educational and training programmes, and other alternatives to institutional care (Art. 40 (4)).”<sup>54</sup>Emphasizing that detention or imprisonment of children must be used only a measure of last resort and for the shortest appropriate period of time<sup>55</sup>, the Committee stressed on the need for a robust probation service “to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.”<sup>56</sup>In conformity with the UN Convention on the Rights of the Child, the JJ Act prohibits the JJB from awarding a sentence of imprisonment or capital punishment.<sup>57</sup>

By dealing with juveniles as adults and sending them to adult prisons, the State will effectively deny them access to rehabilitative and reformatory interventions under the JJ Act that are absent in the adult system. Further, the adversarial mode of adult criminal trials is distinct from the child friendly ‘hearing’ provided under the JJ Act.<sup>58</sup>As an under-trial or convict in prisons housing adults, the juvenile will invariably be exposed and inducted into the adult world of crime and violence, negatively impacting his chances for reform. In such a scenario, neither is the juvenile going to be reformed, nor is society going to be at any less risk when a juvenile exits a prison even after successfully completing the terms of his sentence. A poignant letter from a youth detained in an adult prison in the USA to the District Attorney<sup>59</sup> is a convincing argument in this regard. This letter is a fine example of what the government needs to do while formulating policy and law – respect the rights of children to be heard, to enable them to tell the story of the lived (and often suicidal) experiences in jail, a situation India is not unfamiliar with.

Recent discussions point towards two distinct positions on this theme – one which advocates lowering the age, resulting in all juveniles above 16 years of age being dealt with by the adult system, and the second – a waiver system, (of which there are various models, including a decision solely by the prosecution, a request by the prosecution to a judge who makes the decision at a specific waiver hearing that determines whether such a juvenile should be dealt with by the JJ system or the criminal justice system). According to Professor Kimberly Thomas, “[t]hese decisions are usually limited by legislation, which permits only youth of a certain age or who are charged with a certain list of offenses, to be eligible for waiver to adult court. For example, waiver can be limited to youth only above 13, or can be

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<sup>53</sup> Article 37(a), UN Convention on the Rights of the Child, 1989

<sup>54</sup> Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s right in juvenile justice, para 23.

<sup>55</sup> Article 37(b), UN Convention on the Rights of the Child, 1989

<sup>56</sup> Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, para 28

<sup>57</sup> Section 16 (1), JJ Act 2000

<sup>58</sup> Preamble and Section 54(1), JJ Act, and Rules 9(2), 13 (2) (b) & (e), and 13 (4), JJ Model Rules 2007

<sup>59</sup> Jailing Juveniles – The Dangers of Incarcerating Youth in Adult Jails in America, A Campaign for Youth Justice - Because the Consequences are not Minor, 2007, available at [http://www.campaignforyouthjustice.org/documents/CFYJNR\\_JailingJuveniles.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf)

limited to youth who are alleged to have committed only the most serious offenses. In jurisdictions that require judicial hearings prior to waiver, the judge is usually bound to consider other factors, such as the youth's prior involvement with the juvenile system, whether the juvenile system can rehabilitate the youth, and the development of the individual youth. Finally, in addition to "waiver" to adult court, some jurisdictions allow alternatives after the youth has been waived, such as the availability of a transfer back to juvenile court or the possibility of a juvenile sentence, even after trial for the adult criminal offense."<sup>60</sup>

These positions must be scrutinized in order to assess their compatibility with the Indian Constitution as well as the international legal framework. A blanket transfer of juveniles who commit serious crimes to the adult system would imply a presumption that such juveniles are not amenable to reform. More importantly, it would deprive them of their right to contest the transfer/waiver and thus vitiate their due process rights under Article 21. Yet, an individualized approach is also not bereft of constitutional concerns. Who should decide whether a juvenile should be transferred to the adult system? What are the factors that must be taken into consideration –the maturity of the juvenile, the threat posed by him/her to society at large, or the absence of any scope of rehabilitation? What about the social history of the juvenile and the circumstances leading up to the crime? What should be the overriding concern be - the threat posed by the juvenile to society at large, the interests of the victim/s (if any), or the best interests of the juvenile? How should these interests be balanced? Such decisions will invariably be subjective in nature and prone to arbitrariness. Is a precise determination of a juvenile's incapability to reform or psychosocial maturity levels possible? Elizabeth S. Scott and Laurence Steinberg, former members of the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent and Juvenile Justice caution against a case-to-case approach in determining maturity<sup>61</sup>:

The problem with individualized assessments of immaturity is that practitioners lack diagnostic tools to evaluate psychosocial maturity and identity formation on an individualized basis. Recently, courts in some areas have begun to use a psychopathy checklist, a variation of an instrument developed for adults, in an effort to identify adolescent psychopaths for transfer or sentencing purposes. This practice, however, is fraught with the potential for error; it is simply not yet possible to distinguish incipient psychopaths from youths whose crimes reflect transient immaturity. For this reason, the American Psychiatric Association restricts the diagnosis of psychopathy to individuals aged eighteen and older. Evaluating antisocial traits and conduct in adolescence is just too uncertain.

A law that subjects children to the same criminal justice system as adults would be premised on the flawed assumptions that children and adults can be held to the same standards of culpability and that children are capable of participating in legal proceedings in a like manner. Research in developmental psychology explains the difference in cognitive capacity and psychosocial maturity between children including adolescents and adults that influence

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<sup>60</sup>Explanation provided by Professor Kimberly Thomas, Clinical Professor, University of Michigan Law School, USA, in email to the author dated 12.1.13

<sup>61</sup> Elizabeth S. Scott and Laurence Steinberg, "Adolescent Development and the Regulation of Youth Crime", *The Future of Children*, VOL. 18 NO. 2, FALL 2008, p.15 at 24-25

their decision-making in anti-social situations.<sup>62</sup> Whether the juvenile was aware of the illegality of his or her conduct or should have known the consequences of the act is a narrow and non-holistic approach to respond to serious crimes. It fails to take into account the ongoing process of development and its impact on children, especially adolescents. According to Andrew Von Hirsch, Honorary Professor of Penal Theory and Penal Law at Cambridge University, “[y]oung adolescents, the reasoning must be, cannot reasonably be expected to have a fully fledged comprehension of what people’s basic interests are and how typical crimes affect those interests – because achieving this kind of understanding is a developmental process. Developing that understanding calls both for cognitive skills and capacity for moral reasoning which develop over time – and does so precisely during the period of adolescence...”<sup>63</sup> While the cognitive levels of a 16 or 17 year old may match that of an adult, findings show that they lack in psychosocial maturity levels as compared to adults.<sup>64</sup> Adolescents are more prone to peer influence, are less likely to focus on future outcomes, are less risk-averse than adults, and evaluate risks and benefits differently.<sup>65</sup> Further, their ability to understand legal processes and make decisions relating to their case is not the same as adults. The findings of a juvenile competence study undertaken by the MacArthur Foundation reveals that “[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor’s offer of a plea agreement. In addition, they are less likely to recognize the risks inherent in the various choices they face or to consider the long-term, and not merely the immediate, consequences of their legal decisions.”<sup>66</sup>

The principles of equality and non-discrimination and the best interests of the child would constitute the core of the juvenile justice system. Through General Comment No. 10 on Children’s rights in juvenile justice, the Committee on the Rights of the Child emphasized that all State Parties must adhere to Article 40 of the Convention which stipulates rights of children accused of, or recognized as having infringed penal law. It recommended that States which have adopted a narrow construction of juvenile as a person below 16 years or which regard 16 or 17 year-olds as adult criminals in exceptional situations, amend their law “with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.”<sup>67</sup> Under Rule 3(2)(X) of the JJ Model Rules, “Equality of access, equality of opportunity, equality in treatment under the Act shall be guaranteed to every child or juvenile in conflict with law.” This signifies that the equality

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<sup>62</sup>Elizabeth Cauffman and Laurence Steinberg, “(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults,” *Behav. Sci. Law* 18: 741 at 742-743 (2000)

<sup>63</sup> Andrew Von Hirsch, “Proportionate Sentences for Juveniles: How Different than for Adults?” *Punishment & Society* 2001 3: 221 at 225

<sup>64</sup>Elizabeth Cauffman and Laurence Steinberg, “(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults,” *Behav. Sci. Law* 18: 741 at 759 (2000)

<sup>65</sup>Elizabeth S. Scott and Laurence Steinberg, “Adolescent Development and the Regulation of Youth Crime”, *The Future of Children*, VOL. 18 NO. 2, FALL 2008, p.15 at 20-21

<sup>66</sup>Mac Arthur Foundation Research Network on Adolescent Development & Juvenile Justice, “MacArthur Juvenile Competence Study Results”, [http://www.adjj.org/content/related\\_resources.php?cat\\_id=2&page\\_id=2](http://www.adjj.org/content/related_resources.php?cat_id=2&page_id=2) This study was conducted between mid-2001 and March 2002 where (with?) 1412 subjects ranging from the age of 11 years to 24 years

<sup>67</sup>Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, para 8

principle cannot not be altered, relaxed or undermined even if the juvenile offender commits a heinous crime.

Developmental factors and international standards support the basis for treating children including adolescents differently, especially in the context of culpability. The Indian Constitution guarantees the right to equality and also expressly recognizes the vulnerability of children by empowering the State to make special laws for children.<sup>68</sup> Article 14 allows reasonable classification of persons. In order to be reasonable, the classification should be based on intelligible differentia and the differentia must have a rational or reasonable nexus with the object sought to be achieved by the legislation. The JJ Act therefore clearly satisfies the test for reasonable classification, as it is premised on the understanding that children are more amenable to rehabilitative interventions and that they cannot be held to the same standards of culpability as adults because of their developmental immaturity. A proposal to amend the Act to exclude juveniles in the age group of 16-18 years or to transfer juveniles who commit violent crimes to the adult system would deny all children in these crucial adolescent years the benevolent provisions of this legislation, which is not only serving the interests and needs of this vulnerable group, but also the interests of society. It would also mean that even first time offenders in this age group would have to face the harsh realities and outcomes of the adult criminal justice system that is not designed to deal with children or adolescents. This would constitute a violation of Article 40 of the UNCRC as well as the right to equality and the right to life guaranteed under the Indian Constitution.

The demand for a revision in law on the basis that juvenile crimes are on the rise is also without any foundation. According to the National Crime Records Bureau's *Crime in India-2011*<sup>69</sup>, the percentage of IPC crimes committed by juveniles to total IPC crimes reported in the country is a measly 1.1%. In 2011, a total of 33, 887 juveniles were apprehended of which 63.9% of the juveniles were in the age group of 16-18 years. Approximately, 67% of juveniles were apprehended for IPC offences punishable with more than seven years imprisonment.<sup>70</sup> The overall increase in juveniles apprehended at the national level was 11.8% (3584) in 2011 over 2010. The highest numbers of juveniles were apprehended for property-related offences such as theft (6552) and burglary (3334). Further, 5016 were apprehended for hurt, 1149 for rape, and 888 juveniles for murder. These numbers point to a modest but very vulnerable population that requires to be handled with much more care and caution so as to prevent recidivism, engineer reform and re-integration, and counter the regressive and outdated idea that children who commit adult crimes, deserve adult time.

#### **IV. Recommendations for reform of law and its implementation to more effectively address the issue of serious crime by juvenile offenders**

CCL NLSIU believes that the provisions of the JJ Act and Model Rules concerning the scope of the law relating to age of juveniles in conflict with law are in line with the internationally accepted goals and principles of juvenile justice as well as child and adolescent psychology,

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<sup>68</sup>Article 15(3), Constitution of India, 1950

<sup>69</sup>National Crime Records Bureau, *Crime in India -2011*, Chapter 10. Juvenile Delinquency, <http://ncrb.nic.in/CD-CII2011/cii-2011/Chapter%2010.pdf>

<sup>70</sup>National Crime Records Bureau, *Crime in India- 2011*, Table 10.2,

and should therefore not be disturbed through an amendment. The legal framework provides a fairly comprehensive framework to enable a genuine reform and rehabilitation of children/adolescents who are alleged to or found to have committed serious/violent crime. The law does not need to be amended either to reduce the age of the juvenile or to enable the establishment of a waiver system that will enable the transfer of juveniles alleged to have committed serious offences into the adult criminal justice system.

Reform is, however, warranted at several levels and with the aid of a combination of strategies and methods. While the legislative route is necessary to address a few gaps in the JJ Act, a strong will is required on the part of the concerned Ministries, especially the Ministry of Women and Child Development as well as the Judiciary to ensure the implementation/enforcement of the law. These recommendations aim to highlight suitable responses that may be made in order to build faith as well as accountability in the JJ system, so that justice is done to three main stakeholders – juveniles who commit serious offences, the victims of their offences and the wider community.

## **1. Specific Recommendations concerning Juveniles who commit Serious Crime**

### ***(i) Expansion of list of orders that can be passed by JJBs***

Section 15 of the JJ Act, which stipulates orders that may be passed by the JJB upon finding that juvenile has committed an offence may be considered for amendment on the following lines, after rigorous debate which takes into account the insight from relevant disciplines and practice:

- a. A proviso to Section 15(1) may be included that empowers the JJB to pass orders that include a combination of any of the options under this Section based on the needs of the offender, the goal of reformation/rehabilitation, the circumstances and the gravity of the offence. However, this should be on condition that the maximum period of detention is not increased, and that the provisos to Section 15 (g) are adhered to. Further, JJBs must be empowered to empanel experts<sup>71</sup> who can readily provide assistance and professional opinions to inform their orders and feed into SIRs.
- b. Another option may be included under Section 15(1), to provide for placement in a Special Therapeutic Treatment programme in a State or Regional Institute of Mental Health, recognized or authorized by the State/Central Government for the purpose of reforming and treating all juveniles, but more specifically those found to have committed serious crime, who in the opinion of the JJB will benefit from such an integrated and specialized treatment programme.
- c. All final orders by a JJB for juveniles found to have committed serious crime should include attendance at mandatory counselling sessions for the juvenile (as well as the family to the extent feasible), as well as other structured programmes that may be listed out in the Rules, including Education, employment, independent living skills, chemical dependency treatment, anger management, victim empathy courses and sex offender counseling etc.
- d. For juveniles found guilty of sexual offences or violent offences, the final orders should include a Risk Assessment order, and a Safety Plan order which could include

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<sup>71</sup> Child Welfare Committees have been empowered to do this under Rule 27 (12), JJ Model Rules 2007

- a no contact order – with restrictions related to places the juvenile cannot go, and persons he cannot voluntarily come in contact with.
- e. The period for which a juvenile may be placed in an SH may be increased to more than three years, if it is found that such juvenile will benefit from specialized therapeutic treatment as provided for under Section 48 and 58 of the JJ Act, provided that such period shall not extend to more than four years, and that the JJB reviews the progress of the juvenile every month, with the assistance of the empanelled experts as suggested above.
  - f. Rules may be revised to provide for Guidelines on Rehabilitation of Juvenile Offenders which include models that have been found to have been effective in other jurisdictions,

**(ii) *Additional specific recommendations for Juvenile Sex Offenders***

While initiating efforts to amend the law to deal with this special group as recommended above, the executive arm of government needs to also prioritize investment in developing and establishing Specialized Juvenile Offender Rehabilitation Programmes to be offered for juvenile sex offenders. Experts and the four Regional Institutes of Mental Health<sup>72</sup> and others could be mandated to design a replicable module of an Integrated Treatment Programme for Juveniles committing serious offences, especially Juvenile Sex Offenders. NIMHANS, Bangalore has recently been given the status of an Institute of National Importance and can play a nodal role in designing replicable evidence based demonstration projects in this area, especially given that the Government of Karnataka has already partnered with the institution to train all the counselors appointed under the ICPS scheme in the state. These models could then be anchored by the counselor at the OH / SH with help from local mental health institutions and specialists. Such an Integrated Treatment programme should mandatorily include a) *Treatment*: Psychiatric treatment for those juveniles diagnosed as having a psychiatric disorder, Cognitive Behaviour Therapy, Anger Replacement Training, Family Therapy, Dialectical Behaviour Therapy, Chemical Dependency Treatment, etc. b) *Education*: This should include Special Education for those juveniles with mental impairments, sexuality education, value education, and life skills education, etc. c) *Apprenticeship/Vocational Training/Sheltered Work experience*. The overall goal for such integrated treatment facilities should be to train the juvenile sex offender to manage and change his/her behaviour, in order to achieve his/her own goals in a progressively less secure setting. This may mean that the SH could be designed in a manner that enables juveniles to transition from very secure to less secure settings within the SH in a phased manner, possibly through preparation and monitoring of ICPs and Behaviour Modification programmes. In the final phase, the juvenile needs to be prepared for release back into the community, and this will require structured After Care programmes for such juveniles with high levels of monitoring, mentoring and psycho-social support systems in place. Sensitization and Training in handling juvenile sex offenders must therefore be included in curriculum of law schools, schools of social work, counselling training institutes, police training academies, judicial academies, and training institutes for JJ functionaries. Standards adopted by

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<sup>72</sup>Institute of Human Behaviour and Allied Sciences (IBHAS) – Delhi, Central Institute of Psychiatry – Ranchi, LokoPriyaGopinathBordoloi Regional Institute of Mental Health – Tezpur and NIMHANS Bangalore

the International Association for the Treatment of Sexual Offenders<sup>73</sup> to guide the formulation and implementation of the above recommendations is also informative in this regard.

### ***(iii) Enhancing effectiveness of rehabilitation programs***

The principle aim of the juvenile justice system is to offer protection and treatment to children in keeping with their developmental needs. It must be realized that the objectives of ensuring public safety and prevention of juvenile crime and recidivism cannot be achieved by adopting an overly penal approach. Instead, greater investment is required in designing evidence-based rehabilitation programmes that will be effective. The Ministry of Women and Child Development must, in collaboration with the Commissions for Protection of Child Rights<sup>74</sup>, NGOs, doctors, psychologists, social workers, and other experts undertake extensive research on rehabilitation programmes for all juveniles in conflict with law, with special focus on the effective means of dealing with juveniles who commit serious offences. Research has shown that appropriate rehabilitation outcomes can be achieved by taking into account the characteristics of the program, the offender, and the settings in which it is delivered.<sup>75</sup> In this regard, the “What Works” principles of correctional interventions must be considered. They comprise five principles – Risk Principle, Needs Principle, Responsivity Principle, Integrity Principle and Professional Discretion Principle<sup>76</sup>, which according to Day, Howells, and Rickwood, suggest that “reductions in recidivism can be maximized when programs select appropriate candidates, target factors that directly relate to their offending, and are delivered in ways that facilitate learning.”<sup>77</sup> “The ‘what works’ principles suggest a model of differentiated case management, whereby those with the highest level of need and greatest risk of reoffending are given the most intensive programs. This is not only likely to maximise program effectiveness, but also provide a reasonable and empirically defensible way of allocating resources. Although there are differences between adult and juvenile services, we would argue that adherence to each principle is still likely to improve rehabilitation outcomes<sup>78</sup>”.

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<sup>73</sup> Miner *et al*, Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders, Sexual Offender Treatment, Volume 1 (2006), Issue 3, available at [http://www.iatso.org/index.php?option=com\\_phocadownload&view=category&id=4&Itemid=24](http://www.iatso.org/index.php?option=com_phocadownload&view=category&id=4&Itemid=24)

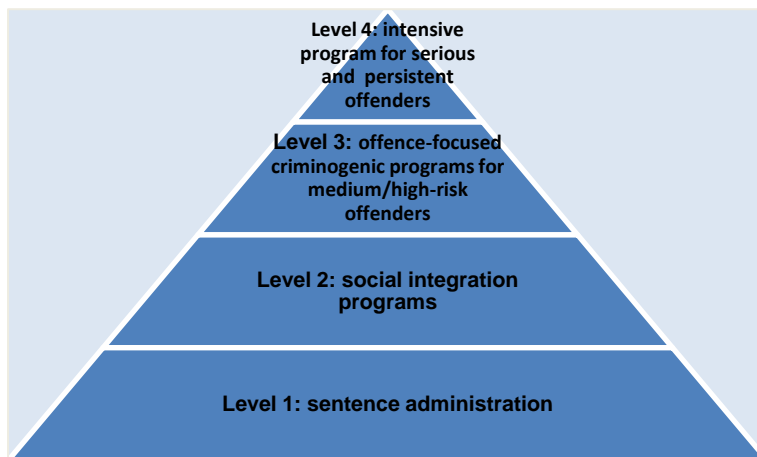
<sup>74</sup> Human Rights Institutions for children established under the Commissions for Protection of Child Rights Act, 2005, having functions that enable them to undertake review of legislation and research and make recommendations to Government on child rights issues.

<sup>75</sup> Kevin Howells and Andrew Day, “The rehabilitation of Offenders: International Perspectives Applied to Australian Correctional Systems”, *Trends and issues in crime and criminal justice*, No.112 May 1999, p. 2 at <http://www.aic.gov.au/documents/B/D/O/%7BBD027F93-A5CF-497C-B4A2-85B1987B4668%7Dt112.pdf>

<sup>76</sup> Andrew Day, Kevin Howells and Debra Rickwood, “Current Trends in the Rehabilitation of Juvenile Offenders”, *Trends and Issues in crime and criminal justice*, No.284, October 2004, p.2, <http://www.aic.gov.au/documents/2/E/E/%7B2EE121F5-11DE-4267-9E3C-11511261549D%7Dtandi284.p>

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*, pg 5



*Proposed framework for Management and Rehabilitation of Juveniles in Conflict with Law: The Case Management approach, being adopted in Victoria propose four levels of programming, which could be considered as a framework for rehabilitating and reforming such juveniles. Day, Howells and Rickwood*

*Figure 1 Proposed framework for rehabilitation in juvenile justice. Extracted from: Andrew Day, Kevin Howells and Debra Rickwood, "Current Trends in the Rehabilitation of Juvenile Offenders", Trends and Issues in crime and criminal justice, No.284, October 2004.*

explain that level 3 or 4 interventions are indicated for young offenders who are at medium to high risk of

offending. They go on to state that the aim of these interventions is to reduce the risk of offending and that programmes should explicitly focus on criminogenic needs. "A range of programs for different criminogenic needs should be available, including for common areas of need such as substance use, pro-offending attitudes, peer/criminal associate influences and family influence. As a minimum, these needs should be targeted through systematic intervention. Level 4 interventions are the most intensive and should be offered to the highest risk or most persistent offenders. According to professional judgment, they may also be offered to those whose offences are considered particularly harmful. It is likely that the number of young people requiring level 4 programs will be small, and as such resources might be targeted towards particular offending groups (for example, serious and/or persistent violent and sexual offenders)<sup>79</sup>.

***(iv) Place of Safety<sup>80</sup> to adhere to minimum standards to ensure it is indeed a safe place***

It should be mandatory for all States to establish places of safety, and for them to adhere to all the fundamental principles enshrined in the JJ Model Rules. All monitoring and Inspection authorities under the Act and Rules shall be given unrestricted access to such places, in order to conduct surprise visits, so as to prevent and address allegations of torture, abuse or neglect of juveniles residing there. Juveniles not released on bail and placed in such places should be segregated from those placed there as per final orders of the JJB, and in both these categories, juveniles should be classified and segregated based on age, sex and degree of offence or mental status. A Special Committee consisting of professional social workers, counselors, psychiatrists, advocates, child rights experts, etc., should be established in order to provide specialized services to juveniles residing in such places of safety. Such Special Committee should have access to requisite staff such as Probation Officers, Counsellors, Outreach workers as provided for under the JJ Act and Rules to Special Homes and Observation Homes.

Law needs to provide for separate arrangements to be made to house persons above the age of 18 years who are under inquiry by the JJB, or found to have committed a crime, and

<sup>79</sup> Id, pg 4

<sup>80</sup> See Section 2 (q), and 12 (3), and proviso to Section 16 (1), JJ Act 2000



ordered to be kept in detention as per final orders. It is unconstitutional for such persons to be kept in 'adult correctional institutions' as they are entitled to the provisions of juvenile law for crimes committed as a child.

***(v) Prevention of Recidivism***

The law needs to be amended in order to make provisions that will effectively identify and address the problem of recidivism, which jeopardize public safety, and increase costs incurred on law enforcement and juvenile justice.

Concerned authorities such as the National Crime Records Bureau, the State and District Child Protection Units<sup>81</sup>, the National Institute for Public Co-operation and Child Development (NIPCCD), academia and research institutes need to take on responsibility for collecting and analyzing data on recidivism. The insights from this should inform policy and law, but also provide a strong rationale for a social audit on the effectiveness of service delivery in meeting the goals of juvenile justice. Data on the number of juvenile recidivists, their age, sex and the type of offences committed at the first instance and second/ third instance, the nature of final orders passed in cases, the involvement of adult offenders or peers along with relevant data about them could be valuable in this regard. Probation Officers, counselors, and other functionaries need to be made accountable for identifying juveniles at a higher risk of recidivism, case management, monitoring and ensuring educational/vocational/mental health/financial/chemical dependency treatment and other support for juveniles residing in OH and SH as well as those released back into the community.

***(vi) Establishment of Integrated Treatment Centres for juveniles in conflict with law***

While the law is enabling<sup>82</sup>, systems are not in place to help identify and treat juveniles alleged to or found to have committed serious crime, who also have problems regarding chemical dependency, or mental health problems.

***(viii) Establishment of Special Homes***

The JJ Act must be amended so as to make it mandatory and not discretionary<sup>83</sup> for all State Governments to set up Special Homes under this Act so as to ensure provision of specialized services to such juveniles. The Rules need to flesh out the various kinds of mandatory and optional services and structured programmes that need to be provided that reflect the 'special' nature of such institutions.

***(ix) Education as a means to address juvenile crime***

The Government should consider amending the Right of Children to Free and Compulsory Education to enable the extension of the age limit for the fundamental right to Education up to 18 years from the present 14 years<sup>84</sup>. This will ensure that the children of that age group are retained in common neighbourhood schools until age 18 or completion of Class XII, instead of being subjected to risk and exploitation at a very tender age and facing the risk of

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<sup>81</sup> Section 62 (3), JJ Act 2000

<sup>82</sup> Section 48 and 58 provides that the competent Authorities may transfer the cases of juveniles of unsound mind, juveniles addicted to drugs or suffering from sexual abuse etc.

<sup>83</sup> Section 9 (1), JJ Act 2000

<sup>84</sup> Extensive research has been undertaken on this issue at CCL NLSIU. For more information visit our official website – [www.nls.ac.in/ccl](http://www.nls.ac.in/ccl)

getting into situations of neglect, abuse or exploitation and/or turning to crime. Funding for implementation of the JJ Act to State Governments for implementing Rules<sup>85</sup> relating to provision of education and related programmes needs to be enhanced, and the State Governments need to be accountable for ensuring that the right to education for all children in the age group of 6-14 years in these institutions is realized.

**(x)Addressing the unique challenges of girls who commit serious crime:** Functionaries in the JJ system need to be sensitized and trained to deal with girls who commit serious crime. Given the small numbers of such children, it is recommended that at least one SH be set up in every State for such girls, and rehabilitation programmes be customized to meet their unique needs.

**(xi)Case Conferencing:** Rules could be amended to provide for Multi-Disciplinary Case Conferencing as a means to inform decisions by the JJB including the various kinds of Care Plans, given the additional challenges in dealing with this special group of juveniles.

## **2. Specific Recommendations concerning Victims of Serious Offences committed by Juveniles**

Though the Cr.P.C enables private lawyers to submit an application to assist the Public Prosecutor<sup>86</sup>, this is inadequate, given that many victims are unable to afford this assistance. The Legal Services Authority could therefore consider setting up of a panel of free legal aid lawyers who could assist the PP in representing the cases of all indigent victims of juvenile crime (especially women and children). State Governments should be directed to notify Victim Compensation Schemes.<sup>87</sup> The JJBs, CWCs, advocates and support persons should be sensitized about these and other victim compensation schemes.<sup>88</sup> They also should provide information to the child victims and their families in appropriate cases about accessing sponsorship schemes, protective care etc., through enabling access to the CWC and the State Child Rights Commissions.

Law could be amended to expressly empower JJBs to direct that the fine collected from juveniles or their parents<sup>89</sup> be paid as compensation to the victim. The State Governments must take measures to set up Victim Assistance Units<sup>90</sup> which could provide integrated services such as medical, counselling, legal, and a support person to assist victims in the JJB proceedings.

## **3. General Recommendations concerning Actualization of the Statutory Mandate**

The effective implementation of the JJA and the ICPS is dependent on a number of functionaries from a range of Departments, upon whom duties have been ascribed. If the goal of juvenile justice is to create a sensitive and result oriented juvenile justice system that

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<sup>85</sup> Rule 47, JJ Model Rules 2007

<sup>86</sup> Proviso to Section 24 (8), Cr. P.C

<sup>87</sup> Section 357 (A), Cr. P.C.

<sup>88</sup> Commissions for Protection of Child Rights are empowered to recommend to the State Government to grant interim compensation for child victims under Section 15 (3), Commissions for Protection of Child Rights Act, 2005

<sup>89</sup> Section 15 (1) (d), JJ Act 2000

<sup>90</sup> Section 19, The Goa Children's Act, 2003

effectively reforms and re-integrates serious offenders into the community, then it is but natural that the duty bearers responsible for implementing the law, have a common vision, are competent and committed, and find fulfillment in what they do. Particularly in the context of serious offenders, the state has to recognize that unless a concerted effort is made in this direction, the noble intent of the law will remain on paper, and the outrage of the public against such juveniles will only exacerbate. We recommend that training be given to Public Prosecutors to perform their unique role in the JJBs, one that is very different from the role they perform in the adult criminal justice system, as here they are also required to adhere to the philosophy, procedures and fundamental principles of juvenile justice. State Governments should pay much greater attention to strengthening the Probation system for juveniles, given that this is one of the key pillars of an effective justice system. Lawyers representing such juveniles need to be competent in child rights friendly lawyering, zealous, vigilant, and also have the time and skill to work in close co-ordination with probation officers, counsellors, social workers, psychiatrists, house parents, families, and others, in a multi-disciplinary team. All this calls for a much higher commitment from legal education in the form of specialized clinical as well as continuing legal education for lawyers/practicing advocates<sup>91</sup> on the one hand and dedicated cadre of such lawyers along with sustained monitoring systems to be established by the State, District and Taluk Legal Services Authorities, so that every juvenile alleged or found to have committed serious offences in even the remotest corner has access to quality legal aid and representation.

Vigilance and dedicated attention is required by the judiciary and government functionaries to reduce pendency. Victims of juvenile offences need to know that justice will be speedy, fair and just. Juveniles in conflict with law, and all those who think that they can use this group of children to commit crime and get away, because of the long drawn out inquiries, need to get the message that speedy and effective justice is the hallmark of the juvenile justice system.

## **V. Conclusion**

The response to juvenile crime has to be fair, age-appropriate and reflective of an understanding of developmental psychology. Any amendment to existing law requires in-depth understanding of the jurisprudence, philosophy and impact of the current law. It needs to be facilitated through intense and participatory consultative processes that first build consensus on key policy questions. In the absence of empirical and evidence-based studies, altering the position with respect to age of a juvenile, that is well entrenched in international human rights law as well as our domestic legal framework, will be an inappropriate and regressive response. Amending the JJ Act, as a reaction to the countrywide outrage against one juvenile will set a dangerous trend and may affect hundreds of adolescents who are currently entitled to the juvenile focused reform and rehabilitative services envisioned in the law that is currently in force. It will also violate the legal obligations arising from the Constitution, the recommendations of the Justice J. S.

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<sup>91</sup> The JJ team at CCL NLSIU conducted a 3 day Continuing Legal Education Programme for Practicing Advocates representing juveniles in conflict with law in Karnataka, in partnership with the Karnataka State Legal Services Authority with support from the Sir Dorabji Tata Trust in December 2012, a report of which is available.

Verma Committee,<sup>92</sup> and the universal standards enshrined in the UN Convention on the Rights of the Child. The nation needs to re-dedicate itself to investing in such juveniles, to reform and rehabilitate them into the community with dignity. A number of countries around the world are moving away from policies of deterrence to that of restorative and reformative justice. India has a fairly progressive law grounded in universally recognized principles and approaches. The way forward should therefore be to demonstrate that the reformative/rehabilitative/ model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the will and the heart to prove it. Our children, our victims of juvenile crime and our society deserve no less.

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<sup>92</sup>The Justice J. S. Verma Committee consisting of Justice J. S. Verma (retd.) - Chairman, Justice Leila Seth (retd.) – Member and Mr. GopalSubramaniam – Member, was constituted by GOI Notification No SO (3003) E, dated December 23, 2012 to look into possible amendments of the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. The Committee submitted its report a month later, and is available on numerous websites including the following website - <http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece>.