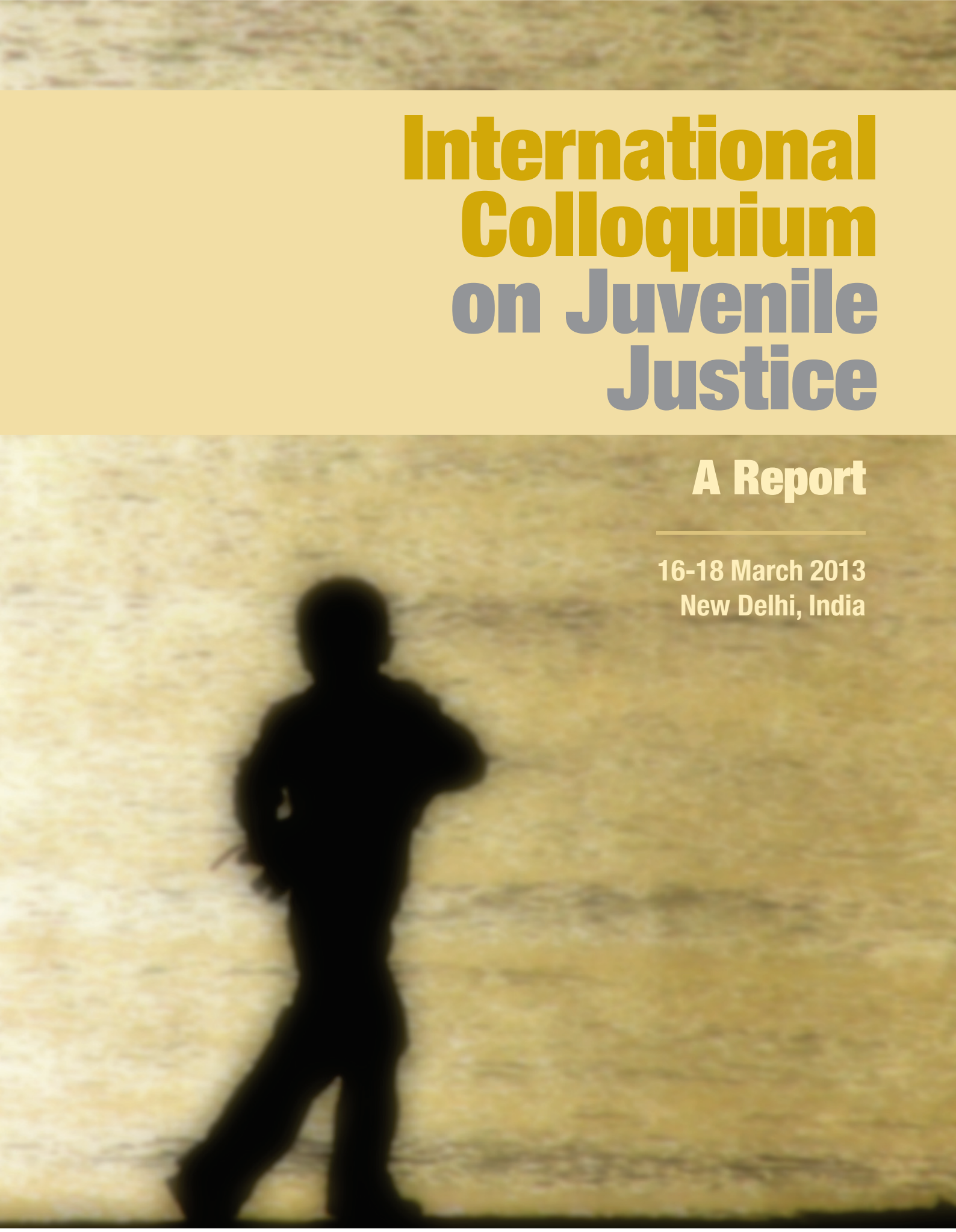
International Colloquium on Juvenile Justice

A Report

16-18 March 2013
New Delhi, India



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ISBN NO. 978-93-83807-00-0

December 2013

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Suggested citation: HAQ: Centre for Child Rights, International Colloquium on Juvenile Justice: A Report. 16-18 March 2013. New Delhi, India.

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Publication Supported by

CORDAID

Colloquium Partners

National Law University, Delhi

Penal Reform International (PRI)

UK-Aid,

UNICEF India,

Save the Children - India

ChildFund India

CORDAID

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Cover Picture

Pallab Seth

Acknowledgments

HAQ: Centre for Child Rights is grateful to all its partners who joined hands for organising the first ever International Colloquium on Juvenile Justice in India. The Colloquium was very timely as it coincided with the ongoing debate on amending the Juvenile Justice law in India following involvement of an under-age boy in the 16 December 2012 gang rape case that rocked the country. Suddenly the whole country was debating on the need to lower the age of juvenility and demanding harsher punishment for children found to have committed "heinous offences".

HAQ had been planning this Colloquium with the National Law University, Delhi for over a year as part of its project on juvenile justice being supported by Cordaid. We truly value the infrastructural support and cooperation received from the National Law University, Delhi, especially Prof. Ranbir Singh (Vice Chancellor), Prof. Sri Krishna Deva Rao (Registrar), Dr. Mrinal Satish and Ms. Neha Singhal.

Recognising the need for bringing in more organisations into taking this forward, HAQ also brought on board Penal Reform International (PRI) and UK-Aid, UNICEF India, Save the Children - India, and ChildFund India as partners in this event.

HAQ is grateful to the Advisory Board for the Colloquium, particularly Hon'ble Mr. Justice Madan B. Lokur, Supreme Court of India, Prof. (Dr.) Srikrishna Deva Rao, Registrar, National Law University, Delhi, Mr. Nikhil Roy, Programme Development Director, Penal Reform International, and Dr. Ann Skelton, Director, Centre for Child Law, University of Pretoria, and Mr. Cedric Foussard, International Juvenile Justice Observatory who stood by us all through the Colloquium and provided continuous guidance and support.

It was a privilege to have the Colloquium inaugurated by Honourable Mr. Justice Altamas Kabir, Chief Justice of India. We also thank Mrs. Minna Kabir for extending her support and presence throughout the event.

We also thank NDTV and Ms. Sutapa Deb for allowing us to edit three of their stories and screen the edited version during the inauguration of the Colloquium. Along with the NDTV we thank those children whose life experiences were included in the film which forced all of us to examine the issue in detail.

We thank the Butterflies' School of Culinary and Catering, a vocational training and employment initiative of Butterflies engaging adolescents above the age of 15 years, who provided the much needed "food" for thought.

We thank Prof. Jaap E Doek from Netherlands, Mr. Alasdair Roy from Australia and Ms. Kathi Grasso from the United States for joining us on skype.

The Colloquium was announced on several websites and Dreamcast India successfully organised a simultaneous webcast of the deliberations. We sincerely appreciate their services.

Finally, we thank the entire HAQ team – Maria Centrone Rosaria (Volunteer Intern), who coordinated the organisation of the Colloquium and prepared this report, Krinna Shah who took copious notes of the deliberations, Kumar Shailabh for managing computer technology and enabling smooth operation of all presentations, Shahbaz Khan for being readily available for all odd tasks, Rhea Sharma and Anisha Ghosh for taking minutes and assisting with other organisational details, Preeti Singh for handling accounts, logistics and overall supervision, Aditya Kumar and Tarcitius Baa who often had to be available at odd hours to handle important tasks that required running around.

Our volunteers, Farhana Yashmin Hazarika, Bijoy Limbu, and Sumaiya Ahmed worked tirelessly during the preparation with the HAQ team.

As always, no publication in HAQ is possible without the support of Nishant Singh and Sukhwinder Singh of Aspire Design, who bear with our deadlines and our demands.

Enakshi Ganguly Thukral
Co-Director

Bharti Ali
Co-Director

Contents

Abbreviations

ACRWC	African Charter on Rights and Welfare of the Child
ATJ	Access to Justice Initiative
BLAST	Bangladesh Legal Aid and Service Trust
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCIL/CCL	Children in Conflict with the Law
CJA	Child Justice Act
CNCP	Children in Need of Care and Protection
Cr.PC	Code of Criminal Procedure
CRC Committee / CROC	Committee on the Rights of the Child
CRC/UNCRC	United Nations Convention on the Rights of the Child
CRIPA	Civil Rights of Institutionalised Persons Act Cultural Rights
CWC	Child Welfare Committee
DM	District Magistrate
FATA	Federally Administered Tribal Areas
FCR	Frontier Crimes Regulation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJJ	International Colloquium on Juvenile Justice
ICPS	Integrated Child Protection Scheme
IJJO	International Juvenile Justice Observatory
IPC	Indian Penal Code
J&K	Jammu & Kashmir

JJ	Juvenile Justice
JJB	Juvenile Justice Board
JJS	Juvenile Justice System
KP	Khyber Pakhtunkhwa
MACR	Minimum age of Criminal Responsibility
MST	Multi Systemic Therapy
NCRB	National Crime Records Bureau
NCPCR	National Commission for Protection of Child Rights
NGOs	Non-governmental organisations
OJJDP	Office of Juvenile Justice and Delinquency Prevention
OPCAT	Optional Protocol to CAT Prevention
PRI	Penal Reform International
PTD	Pre-trial Detention
SBB	Statistical Briefing Book
SLS	Special Litigation Section
SP	Superintendent of Police
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
US/USA	United States of America

Background

Rule of law and access to justice are the basic requirements for a country's development and is as important for the reduction of social differences as the provision of basic services such as proper health and education systems.

However, it has also come to be recognised that children, when dependent on the same justice mechanism as adults may find themselves further victimised by the system itself. It is this recognition that has led to the development of a separate child justice system or juvenile justice system in many parts of the world. In some countries, despite recognition for the need for a separate juvenile justice system (JJS), children in the higher age group may be treated through the adult criminal justice system for certain offences and in many, punishment for heinous crimes committed by juveniles is stringent and at par with that prescribed for adults. The stage of development of the understanding, discourse and even the law in the area of juvenile justice vary from one region to another, depending on the history and culture of its citizens, their approach to human rights, their legal and technical capacities and their governance system.

The term juvenile justice emanates from the word Juvenis, which in Latin means young and hence a justice system for the young. If we go back in history, we find that the concept of juvenile justice was derived from the belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the traditional processes of criminal law. Juvenile justice thus got to be seen as administering justice to minors who have/are alleged to have broken the law, and about reforming a criminal justice system designed for adults to cater to the age specificities and circumstances of children and youth. Over the years, increasingly, a need is felt to ensure that the juvenile justice system is not designed to respond to the needs of young offenders only but also provide specialised and preventive treatment services for children and young persons as a means of 'secondary prevention, rehabilitation and improved socialisation'.[i] The obvious linkages of the social justice framework to poverty, discrimination, abuse of power, and marginalisation are coming to be taken into consideration in some countries.

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i Ved Kumari. The Juvenile Justice in India. From Welfare to Rights. OUP, 2004 p.1

States have been progressively adopting rules, regulations and standards regarding the administration of juvenile justice. The development, acceptance and ratification of international conventions, standards and guidelines (through the CRC and its General Comments, the UN Minimum Rules for the Administration of Juvenile Justice: the Beijing Rules (1985), the UN Guidelines for the Prevention of Juvenile Delinquency: the Riyadh Guidelines (1990), the Tokyo Guidelines for Action on Children in the Criminal Justice System, the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)), has provided a large body of information and a comprehensive framework for States to legislate for a juvenile justice system in line with child rights. In fact, through ratification of the Convention on the Rights of the Child, States are legally obliged to protect the rights of all children including those in conflict with the law. Despite this, there remains a lot of ambiguity when it comes to implementation of the standards in national contexts.

In many countries, tools and means to implement an effective JJS are missing. Professionals and staff working in youth institutions, judges, lawyers and social workers often lack special training in the field of law, psychology and human rights. Violence in these institutions and even in the system continues. Some countries remain far from making deprivation of liberty a measure of last resort. In other countries, with long experience in safeguarding rights, authorities have established specific courts for minors, adapted to children's psychological and physical particularities. It is these models of progress and good practice that must be shared and encouraged between countries and regions.

Three models or approaches have been identified in the JJS across the world – the welfare or the *parens patriae* model, the due process model and the participatory model.

Many countries of the world have combined all these models to evolve their own.[ii] Not surprisingly, as mentioned earlier, even the understanding of what constitutes juvenile justice differs. For example, the juvenile justice system in most countries deals only with children in conflict with law, while other social and state-specific laws are used for children in need of care and protection. In India, the Juvenile Justice (Care and Protection of Children) Act, 2000 deals with two categories of children viz. those "in conflict with the law" (CICL) and "children in need of care and protection" (CNCP). The reason for including CNCP is that these are children who are living on the edge and are vulnerable to coming in conflict with the law if there is no timely intervention. Over the years, amendments to the law have gone to the extent of treating CICLs found involved in petty offences with an unfit family or no family to be treated as CNCP and the matter to be transferred from the Juvenile Justice Board (JJB)[iii] to the Child Welfare Committee (CWC)[iv]. This ensures that such children are not kept with those involved in heinous offences and are taken care of by the State till they complete 18 years of age.

The international understanding of JJS seems to be confined to children in conflict with the law. For example the General Comment No. 10 (2007) 'Children's rights in Juvenile Justice' deals with rights of children alleged as, accused of, or recognised as having infringed the penal law, also referred to as "children in conflict with the law" as do the Beijing Rules, Riyadh Guidelines and Tokyo Guidelines referred to above. The Inter-agency Panel on Juvenile Justice too focuses on this category of children.

At the same time, in India in particular, as also in many other countries of the world, we are still grappling with

Under the Welfare or Parens Patriae Model, the child's well-being and protection takes priority over due process of law.

The Due Process Model emphasises on applying the law over treating the juvenile, stressing on when and how the law is used if a juvenile is involved. Children are not viewed as property of parents' or the state, but as individuals to be tried and treated in accordance with the law and the principles of natural justice and fair hearing.

The Participatory Model emphasises on active participation by community agencies and citizens in an effort to contain the harmful behaviour of young people. It thus uses alternative dispute resolution techniques, such as mediation, conciliation, and arbitration, in criminal justice systems, instead of, or before, going to court.

ii Ved Kumari. The Juvenile Justice in India. From Welfare to Rights.OUP. 2004 p.2

iii JJB – the competent authority responsible adjudicating and disposing cases involving children in conflict with the law. It is a bench of three persons, headed by a Judicial Magistrate of First Class and Two Social Worker Members.

iv CWC – the competent authority responsible for care, protection and rehabilitation of children in difficult circumstances. It is a bench of five persons.

concepts such as diversion, restorative justice and best interest of the child, and how they are to be implemented. There have been some discussions on these subjects in other parts of the world (for example the Quito Seminar "Building restorative juvenile justice process in Latin America" was held in June 2010). There have also been discussions on addressing incidences of violence, which are often prevalent in the juvenile justice system.[v]

Such discussions have not happened in India, despite the juvenile justice law having completed 10 years in its present form. It is indeed time there was a much greater clarity in India, as also some consensus across the world regarding bringing all the issues of children in need of care and protection as well as children in conflict with law within the JJS.

It is in this context that HAQ: Centre for Child Rights, in partnership with Penal Reform International (PRI), the National Law University - Delhi, UNICEF India, Save the Children - India, Cordaid, UK-Aid and ChildFund India, organised an International Colloquium on Juvenile Justice.

Objectives of the Colloquium

The purpose of the colloquium is to reflect upon the variety of problems different countries face in implementing the international standards relating to juvenile justice and how they can best respond to them within their national context. The conference provided a forum to compare legislation, policies and practices of implementation.

It provided space for participants to share good practice, innovative ideas and successful and promising projects for building systems of juvenile justice based on international standards and a common understanding of children's rights and need, and their unbreakable linkage with the development and growth of a nation.

It is hoped that this conference report will bring greater visibility to the important issue of juvenile justice among policymakers and professionals in India, in the region and beyond.

Participants

The Colloquium brought together 60 participants from 14 countries representing statutory bodies, academics, lawyers and practitioners. This included Prof. Jaap E Doek, Former Chair of the UN Committee on the Rights of the Child; Mr. Cedric Foussard, Director, International Juvenile Justice Observatory; Mr. Alasdair Roy, Children and Young people Commissioner, Human Rights Commission, Australia; and Ms. Kathi L Grasso, JD, Director, Concentration of Federal Efforts Program, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

Advisory Board

1. **Hon'ble Mr. Justice Madan B. Lokur**
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2. **Dr. Ved Kumari**
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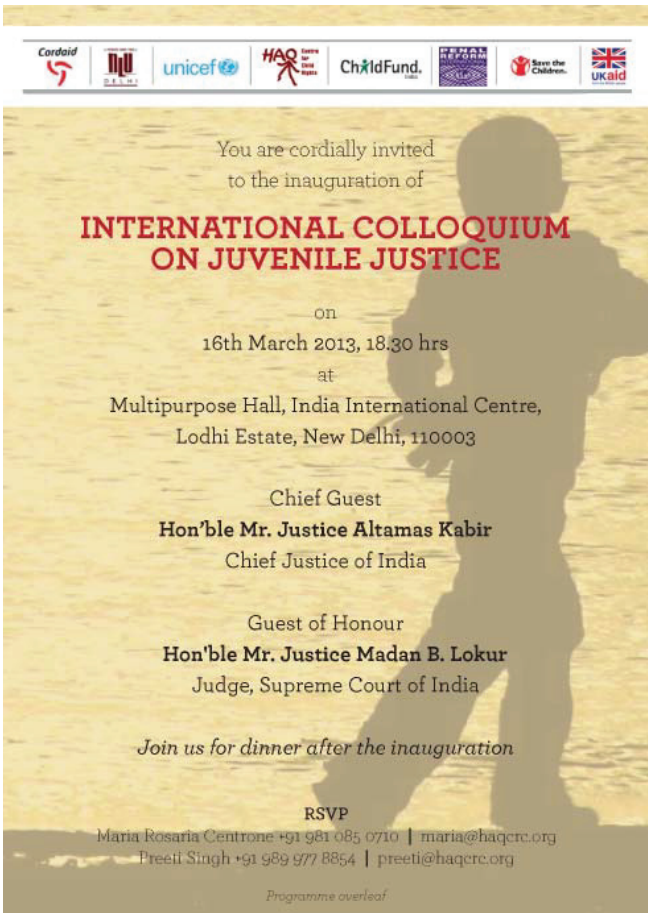
3. **Mr. Nikhil Roy**
   Penal Reform International
4. **Mr. Cedric Foussard**
   International Juvenile Justice Observatory
5. **Dr. Ann Skelton**
   Director, Centre for Child Law, University of Pretoria
6. **Dr. Srikrishna Deva Rao**
   Registrar, National Law University, Delhi
7. **Ms. Enakshi Ganguly Thukral**
   HAQ: Centre for Child Rights

v Expert Consultation on Prevention of and Responses to Violence Against Children Within The Juvenile Justice System Vienna, 23-24 January 2012



Welcome Address

Ms. Enakshi Ganguly, HAQ: Centre for Child Rights

Introduction to the Colloquium

Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India

Dr. Ranbir Singh, Vice Chancellor, National Law University - Delhi

Mr. Louis-Georges Arsenault, Country Representative, UNICEF - India

Mr. Nikhil Roy, Penal Reform International (PRI)

Mr. Dola Mohapatra, National Director, ChildFund India

Mr. Thomas Chandy, CEO, Save the Children

Key Note Address

Hon'ble Mr. Justice Altamas Kabir, Chief Justice of India

Vote of Thanks

Ms. Bharti Ali, HAQ: Centre for Child Rights

Dinner

FIRSTPOST.

Public sentiment against juvenile before trial is unfortunate: CJI

by Mar 16, 2013

New Delhi: Chief Justice of India Altamas Kabir today said public sentiments akin to "baying for blood" of the juvenile accused in the Delhi gangrape-cum-murder case before the conclusion of trial is unfortunate.

Referring to December 16 gangrape-cum-murder case as a "ghastly" incident, Justice Kabir also said the kneejerk reaction of general public against the juvenile was wrong.

PTI

He was speaking at an International Colloquium on juvenile justice, Justice Kabir also blamed media for allegedly whipping up sentiments of public against the juvenile by projecting him as the most brutal among all accused.

"It is not new and such incidents have happened earlier also. But unfortunately media this time came out saying that juvenile was the most brutal before evidence was produced and trial started," he said.

He said various versions are coming to fore about the incident and media should wait for the completion of trial in the case.

He said juvenile delinquents should be brought to the mainstream and made useful citizens of the country. Rights of child should be protected as they are the future of the country, he added.









INTERNATIONAL COLLOQUIUM
ON JUVENILE JUSTICE



NILE
ANN SKELTON


ASHA BAIPAI


INT
NIKHIL ROY

CHAPTER 1

International Framework

1.1 Justice for Children

Children come in contact with justice delivery system for different purposes and reasons. During the last decade, the work of different governments, NGOs and international agencies has focused of reforming justice systems to make them more suitable to children's needs, developing the concept of Justice for Children.

The United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP), working on criminal justice and human rights, together with the United Nations Children's Fund (UNICEF), joined the common efforts of placing children's justice issues within the larger framework of Rule of Law.

In 2008, the United Nations General Secretary called for all UN agencies to incorporate justice for children measures in their rule of law programmes. This was in recognition of the fact that there can be no peace and security without tackling justice for children issues; that children constitute half or more than half of the population in many countries; that they are often the most affected by breaches in rule of law, including violence and insecurity; and that child justice issues do not find their space in discourse of justice reform, and hence often left out of the rule of law initiatives.

The concept of justice for children thus includes children who come in contact with the justice system in mainly three different ways:

- Children in Conflict with the Law (alleged as, accused of, or recognised as having infringed the penal law). They are traditionally part of juvenile justice.

- Child victims and witnesses of crime.
- Children in contact with justice systems for reasons such as custody, protection or inheritance (child parties to a justice process)

The goal of the justice for children approach is to ensure that:

- all children…
- …have access to justice systems (more or less formal), not merely as recipients, but also as participants in the justice system…
- …and are better served and protected by these systems…
- …through full application of relevant international norms and standards

The goals of justice for children approach are to be met by-

- Including children within broader Rule of Law reforms;
- Following a coherent approach, including children as offenders & victims & witnesses;
- Acting on the basis of international child rights norms & standards established from time to time through various international treaties and guidelines;
- Focusing on prevention, pushing the understanding of prevention beyond prevention of child labour and child marriage to preventive child protection.

THE UN FRAMEWORK FOR JUSTICE FOR CHILDREN
Integrating children's issues into the rule of law initiatives

Children's issues are to be integrated into the Rule of Law initiatives through following efforts:

Constitution, legal frameworks and implementation, e.g.:

- Constitution-making processes
- Law and policy reform efforts
- Institutional reform and capacity development for professionals

Legal empowerment of communities (including children) and access to justice, e.g.:

- Legal & judicial institutions; human rights education & legal awareness
- Monitoring and accountability mechanisms
- Community based legal and paralegal outreach services
- Empowering Children with legal knowledge
- Social and justice sector coordination

Specific crisis and post-crisis interventions, e.g.:

- Peace agreements
- Transitional justice mechanisms
- Security sector reform

1.2 Juvenile Justice and International Standards

One of the most complex issues within the justice for children and rule of law framework is Juvenile Justice. Children in Conflict with the Law (CCL), the so-called "juveniles", constituted the focus of the International Colloquium on Juvenile Justice. To frame a common background for discussion, irrespective of regional, national and generally

I would like to narrate a case I heard 3 days ago when I was in a very remote village in Sonebhadra district of Uttar Pradesh last week. We were actually meeting a group of community members who have set up a child protection committee in their village. After we discussed about how they form these child protection committees, what are the issues they address and what actions do they take, the committee members asked me if we could talk a bit about the December 16, 2012 Delhi Gang Rape case. One of the Committee members said that they had heard that the juvenile accused in this case was going to go scot free. These were people who have to deal with their day to day life struggles and issues such as exclusion and poverty, but were still concerned about how this young person who has committed such a heinous crime can be allowed to go scot free. The impression that has gone out to people through media is that the 'juvenile offender' is going to be let off. When we started talking about this case and spoke about this child, I shared whatever little we know about him, where he comes from, his background and the situations that the child may have gone through to reach this particular stage in his life. The Child Protection Committee members actually related this case to one of the cases within their own community where a 14 year old boy had left the village for Delhi in search of work, suffered a great deal of problems and exploitation at the hands of his employers, but at least had the opportunity to return to his family. In desperation, after 3-4 months he called someone from his village and managed to return. They actually managed to relate the juvenile's case to this particular child. I think the communities are really evolving and trying to understand the larger issues of juvenile justice as well. And I think that justice for children makes it relevant for all of us to talk about prevention first, as communities have started doing.

Mr. Aniruddha Kulkarni, *Child Protection Officer, UNICEF Country Office, New Delhi, INDIA*

territorial differences, the Colloquium considered the human rights and child justice approach as the most suitable starting point for a debate on the subject.

In 1924, the then League of Nations adopted the Declaration of the Rights of the Child, which inspired the United Nations (UN) to adopt the Declaration of the Rights of the Child in 1959. In 1979 the African Declaration on the Rights and Welfare of the Child was adopted. In 1989, the first ever binding international children's instrument – the UN Convention on the Rights of the Child (CRC) – was adopted by the UN General Assembly, followed by the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC) in 1990. In effect, the adoption of the CRC and the ACRWC has revolutionised the conception of childhood and children's rights worldwide.[1]

As a positive recognition of the need for an international instrument providing adequate protection for children's rights, the **CRC has been ratified by all members (193) of the UN, except the US and Somalia. This 'signals that the rights which contribute towards the protection of children have outgrown the discretionary power of the national legislators.'**[2] With the adoption of the two principal international children's rights instruments, states around the world are increasingly domesticating the principles and standards enshrined in these instruments as well as in other international human rights instruments into national laws and local laws.

The framework defining the **rights of the child** and the international laws regarding the **rights of people in conflict with the law** have to be looked at together and in continuous interaction, keeping in mind the principle of indivisibility of all human rights.

The **United Nations Standard Minimum Rules for the Administration of Juvenile Justice** (1985), known as the Beijing Rules, developed by the United Nations General Assembly, settled the first international standards for the administration of juvenile justice, which is confined to justice for children in conflict with the law (CCL) in most countries across the world. The spirit of the Beijing Rules as incorporated in the **Convention on the Rights of the Child** (CRC) (1989). **General Comment No. 10** on Children's Rights in Juvenile Justice (2007), not only re-affirms and clarifies the CRC statements, but also distils and summarises some of the key elements in the Beijing Rules, Riyadh Guidelines and the Havana Rules. It provides the essence of international thinking and the key principles of juvenile justice and is therefore an additional key-document to understand juvenile justice through a human rights lens.

1 J. Clement Mashamba, *A Study of Tanzania's Non-Compliance with its Obligation to Domesticate International Juvenile Justice Standards in Comparison with South Africa*, Ph.D. Thesis, Open University of Tanzania, 2013.

2 Sloth-Nielsen, J. and B.D. Mezmur, *Surveying the Research Landscape to Promote Children's Legal Rights in an African Context*, African Human Rights Law Journal, Vol. 7 No. 2, 2007, p. 331.

International Treaties relevant to Juvenile Justice

- Convention on the Rights of the Child (CRC) (1989)
- UN Standard Minimum Rules for the Treatment of Prisoners (1955)
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985)
- Convention against Torture (CAT) (1984; 1987)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (1990)
- UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990)
- Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) (1997)
- ILO Convention 182 concerning the Elimination and immediate prohibition of the Worst Forms of Child Labour (Convention 182) (1999)
- Optional Protocol to the Convention against Torture (OPCAT) (2006)
- UN Standard Minimum Rules for the Treatment of Prisoners (1957)
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (2010)
- The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012)

The CRC is the most important and relevant treaty for effective functioning of Juvenile Justice Systems (JJS), since it is not only child-centred, but unlike other international guidelines and documents on juvenile justice, it constitutes a binding commitment for the States Parties. Countries which ratified the CRC committed to constantly reporting to the Committee on the Rights of the Child, which, in addition to the States Parties' submissions, collects alternative reports from NGOs and civil society. The Concluding Observations, written by the CRC Committee, represent a very important set of recommendations in terms of the country's failures and successes, short and long-term goals and agendas, also regarding juvenile justice.

Article 37 of the CRC clearly points out that children should only be deprived of their liberty as a measure of last resort and for the shortest period of time deemed appropriate. To comply with this principle, countries should review sentences on a regular basis. No torture and no capital punishment or life imprisonment are admitted in the framework of juvenile justice. Prompt access to legal assistance should be assured to the child.

Article 40 of the CRC helps to understand why and how a distinctive system of juvenile justice should be constituted in the first place. It encourages the States Parties to establish a minimum age below which children are presumed not to have the capacity to infringe the criminal law. The primary purpose of detention, like any action taken against children in the juvenile justice system, must be rehabilitation and reintegration of the child rather than retribution. Article 40 requires States to promote a distinctive system of juvenile justice for children with specific rehabilitative rather than punitive aims. The child has the same rights and freedoms as others, he/she must be presumed innocent and must be promptly informed of the charges against him/her. Determination of matters must be assured without delay and diversionary measures away from formal justice system should be implemented.

Apart from the specific Articles 37 and 40, the guiding principles highlighted throughout the CRC should constitute the basis for the development of an effective rights-based Juvenile Justice System - best interest of the child, fair and equal treatment, fulfillment of the rights of the child to express his/her views and participate in the process of justice,

Legal aid in the best interests of the child

- In all legal aid decisions affecting children, the best interests of the child should be the primary consideration.
- Legal aid provided to children should be prioritised, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

protection of every child from abuse, exploitation and violence and an approach which never undermines the child's dignity.

Apart from the CRC, the **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (CAT) (1984), its Optional Protocol (OPCAT) (2004) and the **United Nations Rules for the Protection of Juveniles Deprived of their Liberty** (1990), also known as the Havana Rules, frame guiding points to protect children deprived of their liberty.

While CAT defines torture, requires criminalisation of torture, prosecution and accountability of perpetrators and redress for victims, OPCAT adds the necessity of international and national monitoring systems for the prevention of torture.

India has not ratified the CAT, but if it does, being a binding treaty, it will certainly constitute a strong tool for assurance of a good juvenile justice system.

The concept of **deprivation of liberty**, and consequently all the civil, political, economic, social and cultural rights connected to it, is central to the understanding of juvenile justice in a human rights perspective.

The **right to name and nationality** is the first step to ensuring justice to persons coming in contact with the law, including CCLs. Often persons below the age of 18 years are found in adult prisons and being dealt by the adult criminal justice system for want of proof of age. Birth registration,[3] leading to a valid birth certificate issued by a competent authority is therefore the first step in dispensation of juvenile justice. Similarly, CCLs with no proof of nationality end up suffering long periods of detention. The **right to health,** including mental health, of the juvenile has to be fulfilled at the highest possible standards, providing the child with access to healthcare facilities equivalent in standards to those enjoyed by the community outside. The **right to education** has to be respected, especially considering the importance it assumes in the rehabilitation process. Vocational trainings in particular are an effective tool for successful re-integration of the juvenile in society. The **rights** of the juvenile **to physical exercise, leisure and religion** have also to be assured in detention.

Well-designed juvenile justice detention centres and **good living conditions** are fundamental for the realisation of the juvenile's rights and his/her rehabilitation. Children should be held in detention centres specifically designed for persons of their respective age[4] and male and female juveniles have to be detained in separate facilities.[5] Sleeping accommodations should be unobtrusively supervised; bedding has to be appropriate to the climate; storage and sanitary facilities have to be available as well as personal clothing; adequate food and drinking water have to be provided.[6] Disciplinary measures should not compromise on physical and mental health of children in detention. Torture and inhuman and cruel conditions and sentencing in child justice systems call for serious re-thinking. Girls in detention are generally less in numbers than boys, but they deserve special attention.[7] They are often kept together with adult women, against international standards. The UN Economic and Social Council published the **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders** (the Bangkok Rules) in 2010 to look specifically at the rights of women and girls in the justice system, both offenders and in need of rehabilitation.

Monitoring and Complaint Mechanisms are crucial in the effective and healthy functionality of right-based and child-centred juvenile justice systems, since they are fundamental to prevent violence in detention facilities, inhuman treatment and poor living conditions. Complaint mechanisms need to be both internal and external, giving the children, their families and various stakeholders the possibility of interacting with the system and among each other.[8]

3 CRC 7
4 CRC 37(c)
5 BR 26.4, Bangkok Rules 36-39.
6 Section D, Havana Rules.
7 Bangkok Rules, 36-39
8 Cedric Foussard, Director of International Affairs, International Juvenile Justice Observatory (IJJO), Presentation at the ICJJ 2013, New Delhi, India, 16-18 March 2013.

Bangkok Rules on Juvenile female prisoners

Rule 36
Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

Rule 37
Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

Rule 38
Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

Rule 39
Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

Fundamental points of the Havana Rules:

- The JJS should promote physical and mental well-being of juveniles.
- Deprivation of liberty of a juvenile should be a disposition of last resort and for the minimum necessary period.
- Human rights and fundamental freedoms of the juvenile should be respected, counteracting the detrimental effects of detention and fostering integration in society.
- The juvenile should not suffer discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.
- Professionals involved in the management of the JJS should use the Rules as standards for their work.
- Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge.
- States should incorporate the Rules into their legislation or amend it accordingly and monitor the application of the Rules.
- Active steps should be taken to foster open contacts between the juveniles and the local community.

To ensure that children are placed near their families, the Havana Rules encourage States to decentralise institutions. For an effective complaint mechanism to be in place, the staff working in the detention facilities should be professionally trained in order to carry responsibilities in compliance with the required standards. Detention facilities should also be open to inputs given by other stakeholders such as NGOs, media and even the private sector, encouraging interaction with individuals and organisations outside the system. Developing centres for detention as **interactive facilities with the outside world** is a way to reduce abuses and enhance the respect of rights as well as constant improvement of the juvenile justice system. Furthermore, a continuous contact of the juvenile with society is important to assure social and professional inclusion after the detention period is over.[9]

Participation of the whole society, as well as of the child him/herself, in the processes of decision-making, is also a fundamental tool to develop and implement effective preventive measures. The **UN Guidelines for the Prevention of Juvenile Delinquency** (1990), called the Riyadh Guidelines, constitute the normative framework to define and permanently reconsider protection measures avoiding criminalising the child.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012) constitute the most recent international document related to JJ. They re-affirm the duty of the State in assuring access to legal aid to persons suspected or charged with criminal offences, victims of crimes and witnesses. Prompt and effective

9 Section J, Havana Rules.

provision of legal aid should be available for all people, regardless of age, race, colour, gender, language, religion, political opinion, birth, education or social status. The Guidelines also push for special measures to ensure access to legal aid for women, children and groups with special needs.

Even if the ICJJ focused on CCL, assisting victims of crimes is a fundamental duty embedded in the concept of justice. The rights of the victims and those of the juveniles have to be looked at together, especially when serious offences lead to popular outcries for summary justice. The UN Economic and Social Council's Guidelines on Justice in Matters involving Child Victims or Witnesses of Crime (2005) help completing the framework of international instruments to develop a holistic concept of justice for children.

Apart from the various Treaties and Guidelines issued by the United Nations, interesting standards regarding the concept of child-friendly justice can be found in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and their explanatory memorandum (2010). The five basic principles at the basis of the EU Guidelines are those of participation, best interest of the child, dignity, protection from discrimination and the rule of law.

Ten-Point Plan for Fair and Effective Criminal Justice for Children

1. Develop and implement a crime prevention strategy for children
2. Collect accurate evidence and data on the administration of criminal justice for children and use this to inform policy reform
3. Increase the age of criminal responsibility
4. Set up a separate criminal justice system for children with trained staff
5. Abolish status offences
6. Ensure that children have the right to be heard
7. Invest in diverting children from the formal criminal justice system
8. Use detention as a last resort
9. Develop and implement reintegration and rehabilitation programmes
10. Prohibit and prevent all forms of violence against children in conflict with the law

PRI and IPJJ, August 2012
www.penalreform.org

Key challenges for the region

- Children's rights and juvenile justice in particular is a low priority
- Lack of data and statistics
- Lack of information on recidivism and hence no programmes to deal with it
- Laws are becoming, in some of the countries, more punitive which means obviously more children in detention and this is a vicious circle
- Conditions of detention are poor and often violent, calling for immediate attention
- Lack of a complaint mechanism for children within the JJ system
- Lack of social reintegration services and poor collaboration with NGOs and other private sector agencies working in this field
- Budget or Public Fund to implement juvenile justice programmes are low
- Lack of convergence of services and cross-sectoral linkages e.g. between health and education system and justice system
- Separation from adults and more recently the opposite sex has been a challenge both in law and practice in some jurisdictions
- Severance of a juvenile's contact with the outside world during the period of detention is not addressed as part of the process of social reintegration nor a measure of bringing transparency and accountability in the functioning of detention facilities.

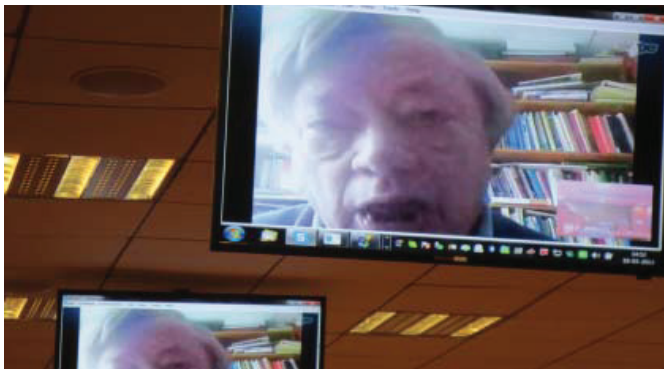
Mr. Cedric Foussard, *Director of International Affairs, International Juvenile Justice Observatory (IJJO)*

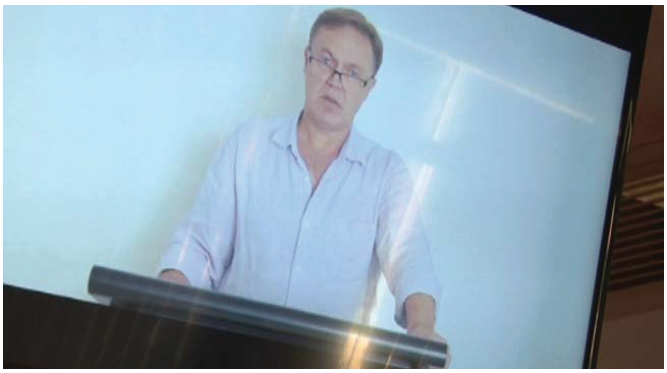

JUSTICE MADAN
B. LOKUR


JUSTICE AMAR
SARAN


APARNA
CHANDRA


BB PANDI





CHAPTER **2**

Diversion

Diversion is a core principle of juvenile justice, recognised and accepted globally as an alternative to legal proceedings in courts or detention. Historically, the first measure of diversion can be traced in the USA in 1899, when a separate juvenile justice system with different courts for children was established. The main objective was to prevent children being treated as adult criminals, mainly using disciplinary measures such as community and probation services.[10]

International Standards for diversion measures are mainly contained in the Beijing Rules, the CRC and its General Comment No. 10. *State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.* Governments have to establish a *minimum age below which children shall be presumed not to have the capacity to infringe the penal law* and *measures for dealing with such children without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected.*[11]

The CRC clearly pushes for the use of diversion in as large a number of cases as far as possible.[12]

Essential Pre-requisites for Diversion

- The process of diversion should start only when there is compelling evidence that the child committed the offence. There are some systems where diversion measures are based on the lower standards e.g. it is done on prima facie basis.

10 Prof. Jaap E. Doek, Understanding Diversion and Restorative Justice: Setting the Context, p.1. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.
11 CRC Art 40 para 3
12 General Comment No. 10.

- The decision on use of diversion as alternative to trial should not be based on the need to deal with a situation where evidence is lacking.
- Diversion must happen only if the child has voluntarily admitted responsibility without intermediation or coercion. The person making the decision about diversion will have to be satisfied that there was no coercion.
- The child should be informed about the nature and the duration of the measures taken and their implications.
- Diversion measures should not resolve in criminal records of the juvenile.
- Anything admitted in the diversion process should not stand against the child later.
- National law should define which cases are to be diverted and who are the authorities responsible for diversion.

The question of who are the authorities responsible for declaring diversion measures has a different answer from country to country. In New Zealand for example, it is the police to start the process of diversion. However, in a large number of states, since it is believed that the police are prone to corruption or they do not have the necessary tools to initiate the diversion process, police diversion is not allowed. For example, in South Africa police is still seen as the authority responsible for the enforcement of apartheid and citizens do not always fully trust it, hence diversion is initiated by the judiciary. Some countries allow diversion in minor offences and others allow in all offences, but the level of decision maker changes as per the seriousness of the offence. Even in more serious offences diversion could be done, but it will have to be based on preliminary inquiry chaired by a Judicial Magistrate. This means a presiding officer is deciding diversion.

Considering that diversion is meant to avoid the child being dealt with and sentenced by the court, law provisions which allow specified authorities to divert the child before formal legal proceedings start, seem the best and most coherent option.[13]

There is confusion in India over diverting a child before bringing him/her to court. Only post-conviction diversion is allowed. Even if the police do not apprehend a child or leave a child on advice and admonition, the case has to be put up before the Juvenile Justice Board, which shall make the final decision. Pre-trial diversion by the police is therefore not possible in its true sense under the Juvenile Justice System in India. The main argument supporting this decision is that if diversion is used at a pre-enquiry stage, it might actually take away the assumption of the child's innocence. However, even in this case, General Comment No. 10 clearly states that if the diversion measure fails, the child should always be able to go back without having to plead guilty.

> If India is considering diversion but is not yet ready to make it part of the law, the country could consider to undertake a pilot project of developing a model that really fits and works with the existing system.
>
> **Hon'ble Mr. Justice Madan B. Lokur,** *Supreme Court of India*

Whether diversion should be decided before, in-between or after the trial remains a matter of debate and depends, to some extent, on the nature of the system the child is being diverted from, and on the kind of approach countries follow in handling crimes by children.

If the child is being diverted from the criminal justice system, there are many benefits for him/her. The child can avoid a trial, hence avoid getting criminal records, he/she will avoid coming into contact with the courts and getting into pre-trial detention with all the problems connected to it. On the other hand, if the justice system is already one which does not have criminal records, extensively uses restorative justice and solves cases quickly, there might be different considerations pushing towards in-between and post-trial diversion. The child might get some benefits entering the justice system.

13 Prof. Jaap E. Doek, Understanding Diversion and Restorative Justice: Setting the Context, p.4-5. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.

2.1 Age of Criminal Responsibility

Since any Juvenile Justice System is mainly based on the concept that every child, i.e. every person below 18, should be treated differently than adults when he/she commits a crime, age becomes a fundamental and key issue in all debates related to JJ.

The Minimum Age of Criminal Responsibility (MACR) is the age which is defined by the law as the one which allows the child who commits a crime to be subjected to sentencing. The CRC is not explicit, simply stating that States Parties must set a lower age of criminal responsibility. Accordingly, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)[14] limit themselves to the rule that the minimum age for criminal responsibility should not be too low. However, General Comment No. 10 clarifies the point by stating that 12 years of age must be the absolute lower limit and States Parties should continue to increase it to a higher age level; countries that set their MACR at less than 12 years would be falling short of the required standards while those with higher age limits would be commended.

When it comes to MACR, the Committee on the Rights of the Child (CROC) has often been concerned that too many States Parties have set very low age of criminal responsibility. In particular, such states are those belonging to the common law system, which have inherited the low minimum age from the British colonial rule.[15] It has also voiced concern over the *doli incapax* rule. Although the *doli incapax* presumptions were designed in order to protect children, it has been noted that they can easily be rebutted, and that they do not, in fact, present an impediment to the prosecution and conviction of young people. Zenzile in South Africa, for example, provides a very interesting instance relating to the presumptions in the following regard: 'mothers of children are asked to indicate whether their children understand the difference between right and wrong. An answer in the affirmative is often considered sufficient grounds to rebut the presumption of *doli incapax*.[16]

Prof. Jaap Doek, former chairperson of the CRC Committee argues, the practice or the implementation of this rule gives reason for concern. According to him, in many countries, 'the prosecutor has the discretion to decide whether he or she will charge the child.'[17] Because of this the CROC 'is not in favour of the *doli incapax* rule and would prefer to set the minimum age at the level where the States Parties would like it to be in principle.'[18] Therefore, the CROC considers 14 years to be appropriate 'as this is the age when children are considered to be *doli capax*.'[19]

Doli incapax was an idea of the 19th century, that was there when Criminal Laws were being formulated in the 19th Century. Under Section 82 of the Indian Penal Code (IPC) or Macaulay's Code "Nothing is an offence which is done by a child under seven years of age". Section 83 says "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." This means that person below 7 was doli incapax and not capable of forming a guilty mind that is the adult guilty mind and hence adult criminality. For the age group between seven and twelve, the presumption is rebuttable and this has no place in the 21st century. In the juvenile justice system there is no concept of MACR but it is "Age of Innocence"; there is no criminal responsibility of a child as against the adult criminal responsibility.

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14 Adopted by the UN General Assembly Resolution 40/33 29 November 1985.
15 J. Clement Mashamba, Recent Juvenile Justice Law Reform Developments in Africa: A Comparative Examination of the Minimum Age of Criminal Responsibility of Children in South Africa and Tanzania. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.
16 Prof. Jaap E. Doek, "Child Justice Trends and Concerns with a Reflection on South Africa", in Gallinetti, J. et al (eds.), *Child Justice in South Africa: Children's Rights under Construction* Newlands/Cape Town, Open Society Foundation for South Africa and Child Justice Alliance, 2006.
17 Ibid.
18 Ibid.
19 Ibid.

MACR debate in the Philippines

On June 4, 2012, the House of Representatives introduced House Bill No. 6052 proposing amendment in the juvenile justice law to lower the MACR from below 15 to below 12 years; to exempt children who are above 12 years but below 15 years old from culpability unless they act with discernment; to add presumption of discernment when the crime committed is murder, parricide, homicide, kidnapping, robbery, drug trafficking, infanticide, illegal detention, destructive arson, carnapping, or an offence that is punishable with 12 years imprisonment; and presumption of discernment regardless of the crime in case of children who are above 15 but below 18 years of age.

Supporters of this bill referred to alleged significant reports that since the advent of the juvenile justice law, criminal gangs and syndicates are hiring minors in order to avoid arrest and prosecution. The other common argument is that children who are exempt from criminal liability are released to their families and communities without undergoing the necessary intervention programs due to the lack of institutions or systems.

Children's Networks in the Philippines voiced their concerns against the proposal to lower the MACR arguing that 'difficulties in implementing the law cannot be used to justify the lowering of the MACR; otherwise, the rights of children will be compromised merely on the basis of expediency. What is glaring, however, is the lack of evidence-based information to support the moves to lower the MACR…

Instead of amending a six-year old law, inefficiency in the implementation by local and law enforcement authorities must be reviewed, let alone the alleged cases of torture committed against CICL while they are being arrested and / or while being detained.

Ms. Rowena Legaspi-Medina, *Director, Children's Legal Rights and Development Center, Philippines*

On the other hand is the upper age limit i.e. the age where children in conflict with the law can be pushed into the adult system. General Comment No. 10, in paragraphs 37 and 38, draws attention to the specific issue of upper age limit, stating that *every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.*[20] All the States Parties which allow exceptions for children aged 16-18 years to be treated as adult criminals are pushed to change their views, while those countries which allow for the application of the rules of JJ to young people aged 18-21 years are looked at with appreciation.[21]

A higher MACR and higher upper age limits are concepts being supported not only by international human rights law, but also by scientific research on the development of brain in adolescents. Even assuming that a child was completely aware of his/her crime at the time of committing it, could it be said that he/she has the same understanding of an adult? Growth

Different ages in different laws: is there a legislative conflict?

International standards define a child as any person below the age of 18, but different laws regulating the rights and lives of children, nationally and internationally, settle various age limits. A child might be allowed to work when he/she is 14 or 15, to engage in sexual intercourse at 16, while MACR could be defined at 12 and juvenility at 18. This diversity could easily be perceived as confusing and mining the protective system that all children should be assured of. But in practice, homogenising laws defining 18 as the age standard for every regulation concerning the life of a child does not give justice to children and their development; hence it is not advisable.

Childhood is a very long process from 0 to 18, and as children get older they begin to gain autonomy; hence their autonomy must be recognised and built into law. At the same time, protections don't need to be thrown out of the window as they are still not fully mature adults. Children might be sexually active at 16 but they also need to be protected from the full force of the Criminal Law until they are 18. There is no contradiction in this as there is no 'one size fit all' solution. So, a protective system should be constituted around children's autonomy. Otherwise, probably more young people will get drawn into Criminal Justice.

Dr. Ann Skelton, *Director, Centre for Child Law, University of Pretoria*

20 General Comment No. 10, para. 37.
21 Ibid. 38.

and development are an ongoing process and adolescents are more prone to peer influence and less aware of risks and benefits when they take decisions. Hence, even if their actions might be the same as that of adults', they do not come from the same process of reasoning, or at least the variables which influence this process are different.[22]

In the United States of America, which has not signed the CRC and falls miserably short on many international standards regarding JJ, the use of brain science research has proved effective to influence some judgments regarding the upper age of criminal responsibility.

In reference to the concept of diversion, very high MACR can become conceptually problematic. Diversion is based on the acknowledgment of responsibility. To divert a child, it requires his/her understanding on the impact of his/her behaviour. The contradiction or challenge in this case is that if the child does not hold criminal responsibility, he/she cannot really be required to understand the wrong doing as much as to be diverted. In Juvenile Justice Systems, where a child of a certain age is a *priori* considered innocent because of *doli incapax*, the question being raised in India is how can confession or guilt be attributed to him/her and how can he/she be subjected to a meaningful diversion process?

Furthermore, although every system is judged mainly on the basis of its MACR, some argue that it is important to understand what happens to children below the age of criminal responsibility, especially in those countries where the MACR is quite high, following international standards. If Juvenile Justice Systems are conceptualised as rehabilitative and child-friendly, children who come into conflict with the law but do not enter the system because they are below the MACR might lose a good opportunity for change and improvement. Sending these children back to their homes, clearly often means restoring them to the same circumstances which might have caused or facilitated their actions. The options available for these children have to be considered while discussing and defining the MACR, especially at the specific national level. It has been said that 'failure to recognize a link between setting a minimum age and how to deal with children below the minimum age leads to the possibility of serious violations of children's rights. This makes provision for children below the minimum age a key to this aspect of the children's rights model, just as the rule on setting a minimum age is.'[23]

The difference in the approaches to Juvenile Justice is one of the key points to be taken into consideration while discussing MACR. For example, in a welfare approach, one of the most pertinent questions would be whether it makes sense arguing around the minimum age of criminal responsibility at all? The welfarist model was initiated in the US in 1899, but many countries shifted towards a more justice approach. In most countries therefore, matters pertaining to CCLs fall within the criminal justice system, while separate laws and systems deal with children needing care and protection.

India, through its JJ Act, is one of the few countries in the world, together with Scotland, which follows a so-called welfare approach, providing for CCL and Children in Need of Care and Protection (CNCP) under the same law. In India, the Juvenile Justice (Care and Protection) Act, 2000 (JJ Act) does not mention MACR at all, though under the Indian Penal Code of 1860 (IPC), the MACR is 7 years of age. Between 7 and 12 years of age, even though criminal responsibility is based on the understanding of the child, ***all children in conflict with the law (CCL) aged 7 years and above get referred to the Juvenile Justice System***, which is not punitive and clearly distinct from the adult criminal justice system. South Africa on the other hand is one of those countries where the care and protection system is completely distinct and enforced under a different law. Children can be transferred from the child justice system to the care and protection system if the reasons for them committing crime are such that they need care and protection. In absence of such reasons, they are dealt within the ***child justice system***, which ***is a "protective criminal justice system"*** and ***therefore*** it becomes ***important to argue and decide on the age at which 'culpability' can be attributed*** to a person.

22 Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children who commit serious offences – Reflection on the Way Forward. Centre for Child and the Law, National Law School University of India, Bangalore. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.

23 N. Cantwell, "Juvenile Justice" in UNICEF, Innocenti Digest No. 3 on Juvenile Justice Florence: UNICEF, 1998, p. 4; and Odongo, op. cit, pp. 183-4. Quoted in Recent Juvenile Justice Law Reform Developments in Africa: A Comparative Examination of the Minimum Age of Criminal Responsibility of Children in South Africa and Tanzania. Paper contributed by J. Clement Mashamba, Executive Director of the National Organisation for Legal Assistance (NOLA) and member/3rd Vice Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

Different Approaches to Juvenile Justice and the Importance of MACR

For systems based on the 'justice approach' the age of criminal responsibility or 'capacity' to commit a crime is very important because of the fact that all children in a Child Justice System do not get treated as welfarist cases; these are essentially criminal justice matters, where children come into a 'protective criminal justice system' that treats them differently from adults, but, as individuals to be tried and treated in accordance with the law and the principles of natural justice and fair hearing.

In the welfarist approach, child's well-being and protection takes priority over due process of law as children are viewed as property of the state, where the state becomes responsible for the danger/risk/harm to children or deviations from a normal and secure childhood that puts children in difficult circumstances. Thus the minimum age of criminal responsibility has no real significance in determining the treatment of children in conflict with the law.

A Matter of Age: the South African Child Justice Act

South Africa had one of the lowest MACR in the world – 7 years of age. Children below 7 were presumed to be *doli incapax*, i.e. lacking capacity to understand their wrong doings. For children aged 7-14 years, the state had to prove if they had the capacity to understand their crimes and be held accountable for them. However, practical difficulties in defining a child *doli capax* were considerable and no psychologist or other experts apart from the judiciary were involved in the process.

The Child Justice Act, 2008 (CJA) raised the MACR from 7 to 10 years. Children below 10 cannot be taken into the CJA system, but they are referred to a probation officer who can link the child with services, constantly interact with the family or even decide to take no action at all. From the ages of 10 to 14, children are presumed to lack capacity, but if necessary, the state can prove the contrary. To do this, proper evidence is needed and the help of psychologists can be used to take a decision.

The CJA did not pass without any debate. NGOs have been pushing for 12 as MACR and, in conformity with international standards, did not approve the provision of *doli incapax* and would have preferred one standard cut-off age. A compromise was finally reached, in the form of a clause in the CJA, which states that the MACR must be reviewed with a view to raising it within 5 years.

Regarding serious offences, an amendment was introduced in South Africa in 2007, stating that for certain serious crimes (murder, rape, etc.) imprisonment should have been a first resort measure and long sentences in case of finding substantial and compelling evidence could also be applied for 16-18 year-olds. This law contradicted a constitutional provision which states that every child has the right not to be detained, except as a measure of last resort and for the shortest appropriate period of time. As the South African Constitution defines children as all people below 18 years, their protection could not change depending on the seriousness of the crime. The new amendment was challenged by advocates and academicians, until the Constitutional Court declared that the 2007 Act was unconstitutional for 16 and 17 year olds:

Excerpts from the Majority Judgement in Centre for Child Law v. Minister of Justice 2009 (6) SA 632 (CC)

The Constitution draws this sharp distinction between children and adults not out of sentimental considerations, but for practical reasons relating to children's greater physical and psychological vulnerability. Children's bodies are generally frailer, and their ability to make choices generally more constricted than those of adults. […] These are the premises on which the Constitution requires the courts and Parliament to differentiate child offenders from adults. We distinguish them because we recognize that children's crimes may stem from immature judgment, from as yet unformed character, from youthful vulnerability to error, to impulse, and to influence. We recognize that exacting full moral accountability for a misdeed might to be too harsh because they are not yet adults. Hence we afford children some leeway of hope and possibility […] There is no intrinsic magic in the age of 18, except that in many contexts it has been accepted as marking the transition from childhood to adulthood. The Constitution's drafters could conceivably have set the frontier at 19 or at 17. They did not. They chose 18. For so long as the Bill of Rights stipulates that "child' means a person under the age of 18 years, its benefits and protections must be afforded to all those under the age of 18 years. This is a bulwark that the legislature cannot overturn without cogent justification.

Dr. Ann Skelton, *Director, Centre for Child Law, University of Pretoria*

2.2 Response to Serious Offending

The UNCRC clearly prohibits imposition of death penalty and life imprisonment without the possibility of release of juveniles. International standards also state that diversion measures should not be limited to minor offences such as shoplifting or other property offences, or to first-time child offenders, but the use of diversion measures for juveniles should be as much extended as possible. On the other hand, there is often pressure, especially from public opinion, to treat older children or children charged with very serious offences as adult criminals, giving them harsh sentences.

Since the mid-90s, in the aftermath of a series of cases which saw teenagers as perpetrators of very serious crimes, especially in Europe and USA, various governments shifted from the welfare approach, which characterised juvenile justice since the '80s, to a more punitive approach.

The year 2013 marks In England the 20th anniversary of the unfortunately famous murder of James Bulger, a two year-old child, killed by two eleven year-old boys. At the time of the trial, a petition had asked for them to be "rotting in jail for life". The crowd threw stones at the police vans carrying the children. Newspapers demonised them with words like "freaks of nature", "nasty little juveniles", "worthlessly evil", "Savages", "'Torture' bruvs" etc.

At the time, in 1993, British law recognised *doli incapax*, the presumption that children between the ages of 10 and 14 lack the necessary criminal intent to be fully responsible for their actions. At the Bulger trial, evidence of teachers and psychiatrists established that the boys were mature enough to know they were doing something wrong, but at the end, they served a relatively shorter sentence of eight years. The Crime and Disorder Act (1998) was passed some years after, eliminating the concept of *doli incapax*, hence nowadays children between 10 and 14 in Great Britain are no longer given the benefit of the doubt.[24]

The murder case, the way media and civil society dealt with it and the influence the case had on the subsequent legislation easily recall the more recent event which struck India. Following the horrifying gang-rape of a 23 year-old woman in the capital in December 2012, where one underage boy has been depicted as the most cruel of the perpetrators, discussions on lowering the age of male juveniles in the country has overwhelmed the media and the political debates. Suddenly the interest of mainstream media has focused on juvenile crimes and several sections of public opinion have been crying for summary justice and trial for heinous offences allegedly committed by juveniles aged 16-18 years by the adult criminal justice system.

Allusions to the age of the accused are not always offered in mitigation, and often imply the opposite. The 17 year-old boy, the youngest among all the perpetrators, has been depicted as the most cruel, the one who actually lethally wounded the victim and caused her death. Shop-talks easily claim the boy would go scot free thanks to the JJ Act. On the other hand, few media articles concentrated on the boy's past, his difficult life in the village, his departure to the metropolis in search of fortune, his bad company, his helpless status and need for rehabilitation. Violence in TV scenes, video games and exposure of children to an *evil world* are concepts which easily enter into the picture both in the West and in developing countries, to complete a depiction of a different generation of kids who have grown up faster than ever before and more violent and cruel than their parents.

There are provisions in the legislation of many countries, which state that children are not to be subjected to the criminal justice system unless they commit murder or rape or until they turn 16 years. In the United States of America, under such provisions, children as young as 13 years old could be pushed into the adult criminal justice system.

The way law should intervene in cases of serious offences committed by children is a matter of an intricate debate which becomes more and more difficult when public opinion, and consequently governments, get influenced by sensationalised media news.

24 Blake Morrison, The Guardian, *Let the circus begin*, Saturday, 11 April 2009. Available at: http://www.guardian.co.uk/uk/2009/apr/11/bulger-trial-juvenile-crime-edlington

Two opposite trends of thoughts could be defined when discussing underage serious offenders being pushed into the adult system. On the one side, there are those who look at these teenagers as not prone to rehabilitation and deserving punishment as much as adults. On the other side, many strictly stick to the age of 18 as the upper age limit. Human rights activists, keen on maintaining national laws as close as possible to the CRC standards, have to constantly respond to the public backlash which questions the fundamental ideas at the basis of Juvenile Justice.

When talking about serious offences committed by children, the debate during the Colloquium emphasised the necessity of avoiding knee-jerk reactions based on one or few incidents, no matter how serious or how grave they are. The reaction to serious offences should first of all come from the reflection on a series of deeper questions – which offences are serious and which are not? Who defines the seriousness of offences? Is an offence labeled as *serious* when the juvenile retains it as serious, or when it is serious for the victim, or when society and public opinion thinks about it as serious? In India for example, the term *serious offences* does not appear in the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (Cr.P.C), or the JJ Act. Instead, Rule 11(7) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (JJ Model Rules) defines *serious* crime as that which entails a punishment of 7 years and above.[25] But in some cases offences entailing lesser punishment may also be serious in terms of the consequences or action.

While data in the USA is not supporting people's fear that crime committed by children is on the rise, we are now stuck with a lot of policies that we created during late 1990s and it is very difficult to roll back. The caution note that I would give to other countries is that once you are heading down this path of reactionary and stringent laws, it's very difficult to get back to a reasonable place.

Transfer mechanisms that allow children to be excluded from the juvenile justice system and placed directly in the adult criminal justice system based on their age, their offense or a combination of both should be avoided because they do not take into consideration the youth's individual developmental characteristics.

The offenses juveniles commit may be terrible and inflict great harm on their victims and society, but our response must not disregard our obligation to respond to them as individual beings who are still growing up.

Dr. Kimberly D. Ambrose, *Senior Lecturer, University of Washington School of Law, USA*

Even excluding the possibility of lowering the upper age limit for all children and considering individualised decisions on case to case basis seems a complicated option in its conceptualisation. Who takes this decision? What are the factors to be taken into consideration to decide the future of the child? Many might think the circumstances of the crime are a fundamental variable, while others might give more importance to the "maturity" of the child and his/her capability to understand his/her wrong doings. The judge, the prosecutor, or whoever has to take the final call would need a team of social workers and psychologists to advice him/her. Such decisions will no doubt be subjective and arbitrary, even if taken with the assumption of the best interest of the child. Research has shown that a precise determination of a juveniles' capability to reform or not is not entirely possible.[26] Furthermore, especially in developing countries, which face huge challenge of capacity building in their juvenile justice systems, it becomes mandatory to ask if psychologists should not be used to assist children with serious behaviour problems and if capable social workers should not focus on implementing effective rehabilitative projects, instead of helping judges in assessments to push juveniles into the adult system.

If children who commit serious offences are pushed into the adult system, the more punitive approach and the stricter sentences are not the only concern. Adult criminal trials are almost everywhere different from the "child-friendly" trials juveniles are supposed to be subjected to in a JJS which conforms to international standards, and such trials might undermine the child's rights to be heard, to be informed and to access legal aid.[27] There are countries which have set different MACR for serious offences, as is being demanded in India after the December 2012 gang rape. In Kazakhstan for example, MACR is 16 years but for serious crimes it is 14. Many argue that this defies all logic as either a child has the capacity to commit a crime or not, regardless of its nature.[28]

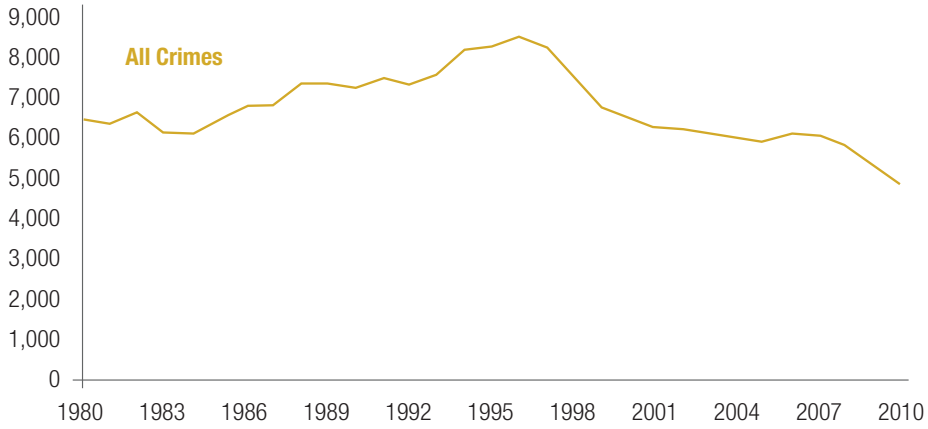
25 Arlene Manoharan and Swagata Raha, *The Juvenile Justice System in India and Children who commit serious offences – Reflection on the Way Forward.* Centre for Child and the Law, National Law School University of India, Bangalore. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.
26 Ibid.
27 Ibid.
28 Nikhil Roy, Penal Reform International, *UK, Appropriate Responses to Serious Offending.* A presentation made at the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

Other questions to be answered when talking about children who commit serious offences are related to availability of reliable data and their analysis. How many crimes are actually committed by children? How many of them are *serious*? Do more punitive laws bring to better results and less recidivism?

In India, the National Crime Records Bureau (NCRB) data shows that out of the total 2,325,575 crimes committed in 2011, 25,125 were committed by children, i.e. younger than 18 years old. This means that 1.1 per cent of the total crimes in 2011, as opposed to 0.9 per cent of the total crimes (16,509 out of 1,769,308) in 2001, were juvenile crimes. In 2012, this figure went up to 1.17% of total cognizable crimes, with 66.5 per cent of juveniles in the age group 16-18 years and 67 per cent of them accused of serious offences, i.e. punishable with more than 7 years.[29] The increase from 2001 is actually marginal and the highest number of juveniles were apprehended for property related offences such as theft (7,205), hurt (5,934) and burglary (3,520), accounting for 41.8 per cent of total juveniles apprehended under IPC crimes. Additionally, the main reasons for the increase in the juvenile crime rates is the fact that in 2000 the Juvenile Justice Act, 1986 was revised and the cut-off age for boys in conflict with law was increased from 16 to 18 years. Since it is mainly this age group of boys who get into trouble with the law, the increase in the number of children committing offences from 2001 to 2012 becomes logical. A second reason is that many children who would be otherwise hidden in the adult jails are now coming into the juvenile justice system because of increased activism, consciousness and awareness about claims for juvenility. For example, out of 330 inmates of two adult jails (Tihar Jail and Rohini Jail) in New Delhi, who made applications claiming to be younger than eighteen years old, 180 were actually found to be children.[30]

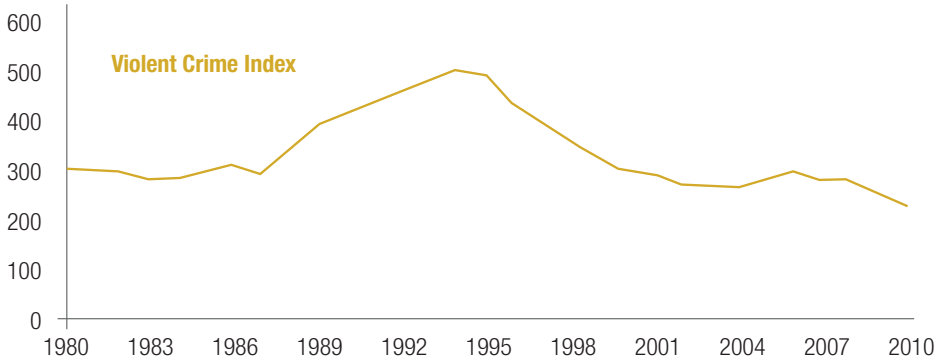
Studies have shown that approaches to child offending based on deterrence, punishment or intensive surveillance are not only ineffective but counter-productive (*e.g.* Goldson & Peters (2000)). The Colloquium therefore agreed on the belief that even children who committed very serious crimes have the potential of being rehabilitated and their rights as children have to be fully respected and never be forgotten. Entering the adult criminal justice system, often characterised by retributive justice, would prevent them from getting the protective environment and the necessary treatment they need at the most sensitive stage of their life.

U.S. Juvenile (ages 10-17 yrs.) Arrest Rates for All Crimes, 1980-2010



29 National Crime Records Bureau, Crime in India -2011 and 2012, Chapter 10. Juvenile Delinquency.
30 Intervention during the Colloquium by Mrs. Minna Kabir and Dr. Asha Bajpai

U.S. Juvenile (ages 10-17 yrs.) Arrest Rates for Violent Crime Index Offenses, 1980-2010



Children are not getting worse: the American Experience

Data on juveniles arrested between 1980 and 2010 in the United States of America shows that the juvenile crime rate reached its peak in 1994. As a result, during the late 1990s, reactionary laws were created and very young children, even 12 year olds, could be pushed into the adult system in case they committed serious offences, and they could be subjected even to excessive and extreme sentences. The shift from welfare towards a more punitive system was done adopting various legal mechanisms. Three methods were conceived to turn a juvenile into the adult criminal justice system when he/she comes in conflict with the law, giving discretion to – the judge, the legislature or the prosecutor. Most states have some combination of the three.

In almost the whole of USA, the law enables the judge to look at the individual child and take the decision on the basis of the seriousness of the offence committed, the child's maturity level and understanding, and the environmental circumstances of the crime.

However, probably the most common way of transferring children into the adult system is statutory exclusion. Various legislatures (50 of them in USA) have stated different ages and crimes to push juveniles into the adult system. For example, in New York at the age of 16, a child in conflict with law is automatically filed in the adult system; in Washington, if a 16-17 year old child commits certain type of serious violent offences, i.e. murder, robbery of the first degree, assault with deadly weapons, etc., he/she will be brought directly into the adult system. This system might also lead to juveniles being sentenced with death penalty, as in the case of Roper vs. Simmons, where a 17 year old boy committed a very heinous murder. The crime took place in Missouri, where the law required capital punishment and the teenager was sentenced accordingly.

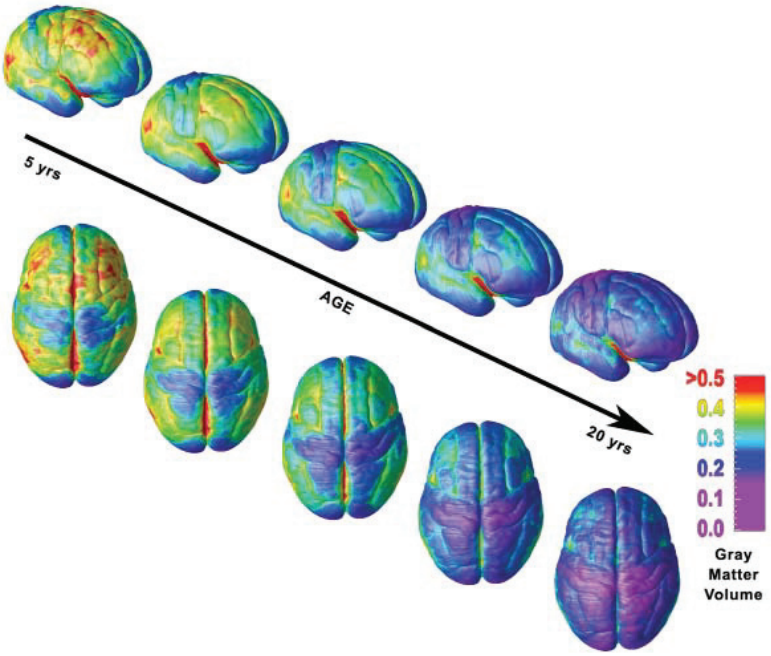
An example of a juvenile pushed into the adult system by the prosecutor's decision is the case of Graham vs. Florida. A boy was convicted for an armed burglary and judged as an adult, since he had a weapon and had harmed somebody. He was convicted and given a life without parole sentence.

More recently, the punitive trend has been reversed and the Supreme Court of USA has started to place limits on the process of sentencing children. The first case in 2005 was Roper vs. Simmons, whose judgment banned executing children. In 2010, in Graham vs. Florida, the Supreme Court banned life without parole sentences for children who have not been convicted for murder. Finally, in the most recent case of August Miller vs. Alabama, the Supreme Court held that life imprisonment without parole is unconstitutional even for children who commit murder.

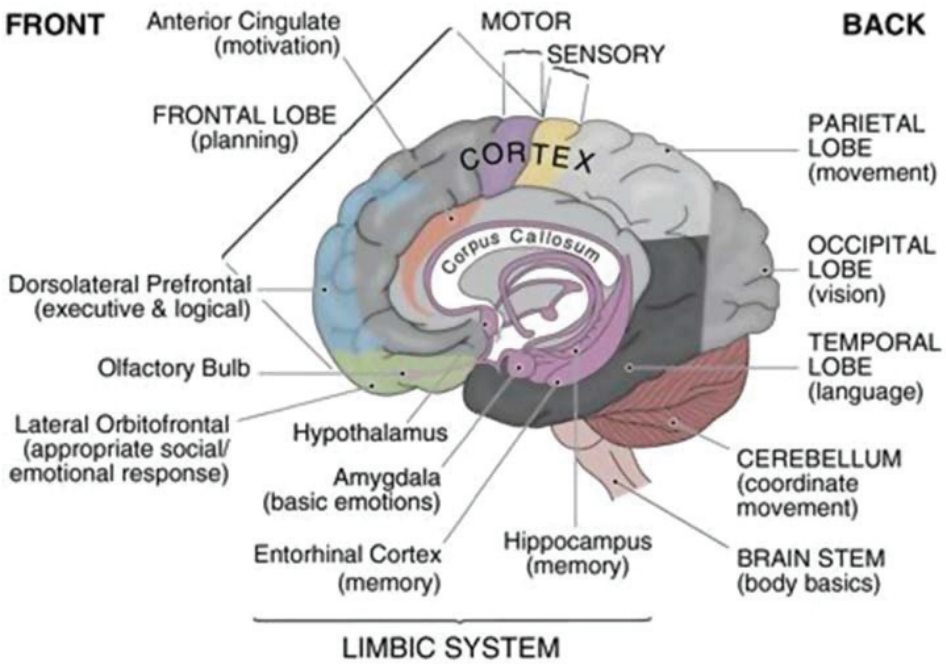
In 2010, USA is back to the lowest rates of juveniles found in crimes and arrested. These rates had started dropping soon after the pick of 1994, which is actually before the time that any of the reactionary laws were really being implemented. Research has found that any stringent law does not deter juvenile criminal behaviour. In fact children who have been transferred to the adult system were recidivating more than their peers in juvenile justice institutions and turning more violent exactly because of their treatment in the adult system. Despite the sadly famous gun violence in USA, data ascertains that children in the juvenile justice system are not getting worse in terms of crimes committed by them.

Dr. Kimberly D. Ambrose, *Senior Lecturer, University of Washington School of Law, USA*

It required science to inform and convince the Supreme Court of USA that children are different from adults in the ways in which their brains develop.



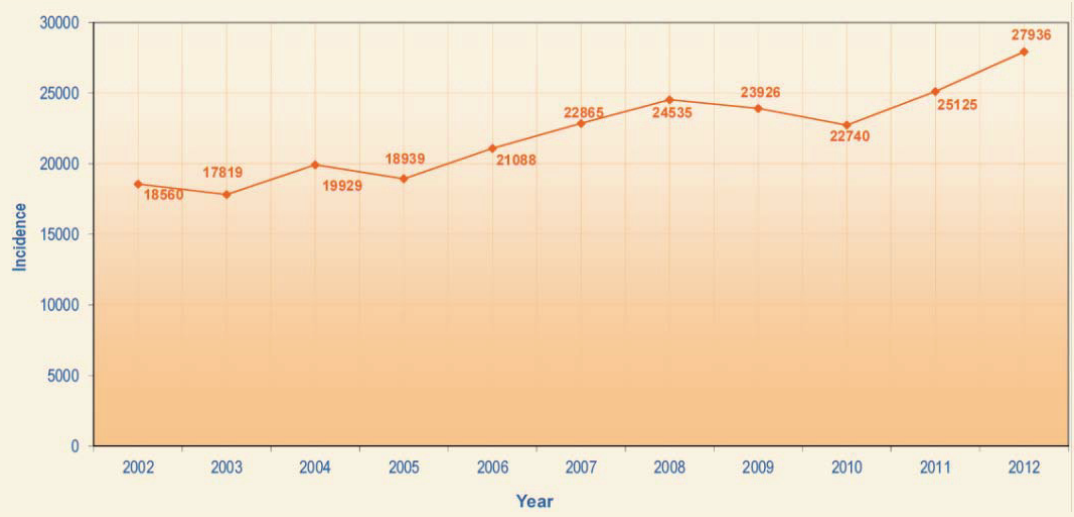
The gray matter isn't completely developed in early 20's and it's a little later for boys than for girls.



The last part of the brain to develop is the frontal cortex, the frontal lobe, which is responsible for executive decision-making and that is where adolescents are more impulsive, they take more risk and they are unable to really determine the consequences of their behaviour.

Dr. Kimberly D. Ambrose, *Senior Lecturer, University of Washington School of Law, USA*

Juvenile Justice Act and Serious Offences: the Indian Debate



Source: Crime in India 2012, NCRB, New Delhi

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act) prescribes a maximum period of three years detention for children and, in conformity with the UN CRC, prohibits capital punishment and life imprisonment. Especially after the gang rape case on 16th of December 2012, involving a juvenile, many believe this period as being insufficient for the impact of such a crime and are pushing for changes in the JJ Act.

Before discussing possible changes in the Act, it is important to understand the ways in which JJ Act in India deals with children who commit serious offences:

- Children in conflict with the law have to be placed in Observation Homes (OH), with the option of being housed in a place of safety during the period of inquiry (Section 12 (3), JJ Act, 2000).
- State governments are required to frame Rules to provide for the classification and segregation of juveniles in the OHs, also on the basis of offences committed (Section 9 (4), JJ Act 2000).
- The Juvenile Justice Board (JJB) can pass a final protective custody order to place juveniles older than 16 years in a place of safety (Provisio to Section 16, JJ Act 2000).
- The maximum detention of 3 years can be reduced by the JJB in its final order, after having considered the circumstances of the crime, the social investigation report of the Probation Officer etc.
- After care is mandatory even for juveniles between 17 and 18 years of age and they can receive it until the age of 20 (Proviso to Section 44 (b), JJ Act, 2000). Individual Care Plans must be prepared by probation officers or voluntary organisations for all children in conflict with the law, including juveniles who commit serious offences. These ICPs have to be a necessary part of the JJB's final dispositional orders (Rule 15 (3), JJ Model Rules, 2007).
- If the juvenile has problems related to drug addiction or mental health problems, he/she can be directed by the JJB to a psychiatric hospital or a nursing home (Section 58, JJ Amendment Act 2011).

In the debate which followed the Delhi gang rape case, regarding possible amendments in the JJ Act, two distinct positions have emerged. Some propose that all juveniles aged 16-18 years should be sentenced as adults, while others suggest that only those who commit serious offences should be pushed into the adult criminal justice system. The latter proposal would include the creation of a waiver system, where the final decision could be taken exclusively by the prosecutor or by a judge at the prosecutor's request. Both these positions seem incompatible with the Indian legal system. Firstly, because considering the mainly retributive nature of the Indian criminal justice system, it implies the idea of impossible rehabilitation for the child. Additionally, Articles 14 and 15 of the Indian Constitution allow for the classification of people on the basis of their vulnerabilities, which is at the basis of the JJ Act itself. A different treatment for all children compared to adults is hence sustained by the principles of the Constitution. Furthermore, the JJ Rules state that every child in conflict with the law should have equal opportunities and equal treatment. Pushing serious offenders or 16-18 year olds into the adult system would certainly not respect the JJ Act and the Constitution of India.

However, the Act might be modified a little in the best interest of juveniles who commit serious offences and their rehabilitation. Attendance of counseling sessions could be made mandatory, the maximum period of detention could be increased to 4 years, and integrated programmes in collaboration with Special Therapeutic Treatment Institutes could be initiated specifically for serious offenders.

Additionally, in India, where crimes against women constitute a problem of safety and also a main concern of the public opinion, special attention to juvenile sex offenders could be considered to ameliorate the Act. Researches show that sexual arousal is a dynamic process, hence those juveniles who commit sexual offences are often prone to change and very responsive to reformative treatments. Not only specific psychological support, but also focus on vocational trainings with better prospects for employment as adults could be key elements to be introduced in the rehabilitation process of these children. The curriculum of law schools and schools of social work, counseling training institutes and police academies should be modified to include a focus on how to rehabilitate serious sex offenders.

Ms. Arlene Manoharan and Ms. Swagata Raha, *Centre for Child and the Law, NLSUI Bangalore*

2.3 Alternatives to Detention

Diversion measures vary from country to country; support from social workers and probation officers, community service and other forms of restorative justice, including compensation for the victim, have been put in place and developed in different countries.[31]

In case of children, the irony of deprivation of liberty lies in the fact that it is about …

- Preparing for freedom by taking away their freedom
- Preparing for responsibility by giving them no responsibilities
- Preparing for reintegration in society by cutting them off from society!

Prof. Ved Kumari, *Faculty of Law, Delhi University*

Institutional care is not a diversionary measure, since it means detention, i.e. children are forcibly kept away from their families. Yet, in some jurisdictions, as in India, institutionalisation is almost always the inevitable measure adopted during the period of inquiry and post-inquiry as an alternative to detention in prisons. In most countries institutions are found to be below standard and violations of children's rights are not unknown. Sending children to even the best of institutions implies institutionalisation; stigma; cut off from friends, family and society; and difficulty in social mainstreaming post release.[32]

Use of institutions as a measure of last resort for the minimum period till community alternatives are not ready for the child is an acceptable international principle of juvenile justice. However, diversion as a community based alternative to detention would need availability of efficient service providers. They could be governmental or NGO projects, funded or not by the state. The advantage of those measures in comparison with institutional care is that there is a scope for a lot of community involvement, creativity and inclusion of cultural practices.

Evidence based on early intervention, prevention, and diversion programmes are cost effective, and reduce overall expenditure in the youth justice system. So, not only do you end up with fewer young people in custody, it also saves you money.

Mr. Alasdair Roy, *Children & Young People's Commissioner, ACT Human Rights Commission, Canberra, Australia*

31 Prof. Jaap. E. Doek, Understanding Diversion and Restorative Justice: Setting the Context, p.4. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.

32 Prof. Ved Kumari, Faculty of Law, Delhi University. Alternatives To Detention: Pre-Trial, During Trial And Post-Trial. Power Point Presentation during the International Colloquium on juvenile Justice, 16-18 March 2013, New Delhi.

Diversion can be seen as part of a restorative justice system.[33] Projects of restorative justice where the victim and the offender come together and the perpetrator tries to compensate the offended party are valuable diversion measures. This kind of restorative diversion could be done either as a pre-trial measure or could be part of the sentencing process.

However, restorative justice is not necessary only between the perpetrator and the victim, but the offender can also *restore* something to the community. For example, a restorative diversion option could be community service, where the child offender pays back to the community by doing some unpaid work.

Probation services are fundamental for diversion programmes, since they are meant to give close attention and care to the child offender, especially when he/she comes from difficult familial and environmental situations. Probation officers have to understand the underlying causes of the child's delinquency, whether it is due to a dysfunctional home because of lack of economic possibilities or domestic violence or neglect. Many different factors may push a child into the company of a peer group engaged in delinquent activities or may make him/her a loner with negative and hostile feelings towards others. Hence probation services must aim at rehabilitating and re-integrating the child into the society by developing a close relationship with him/her, monitoring his/her activities, meeting his/her developmental and personal needs and supporting the family of the child.[34]

> ".....the relationship between the probation officer and the probationer will have little value if it is regarded as a matter of carrying out the terms of a contract for a certain period... The essential power of the probation officer is in his personality; if he can inspire devotion in his charge; if the probationer becomes filled with a genuine desire to gain his approval; if the parents accept him unreservedly as a wise friend of the family and profit by his suggestions on the upbringing of their offspring; if the probationer does not look on him as a sort of policeman whose watchfulness it is almost a point of honour to cheat; then the probation officer may hope for a true success.... the probation officer can only cure delinquency by effecting a change of heart either in the child or the parent."
>
> **A.E. Jones,** *Juvenile Delinquency and the Law, 1945*

Are we ready for Diversion?: Questions that demand a response from Governments

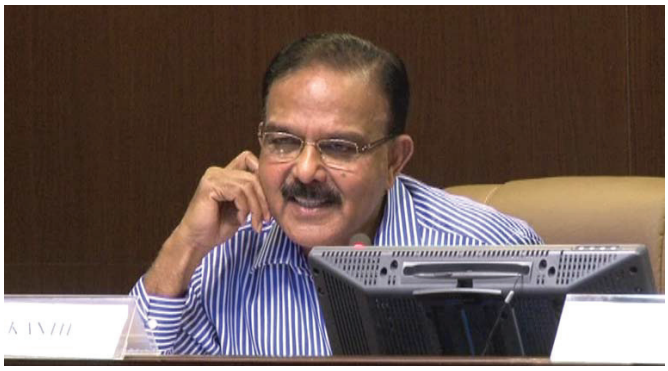
- Is there adequate investment of manpower – police, judiciary, probation officers, case workers, legal aid lawyers, psychologists, counselors, facilitators and mediators?
- Are the police, judiciary, probation officers, mediators and other functionaries in the juvenile justice system trained in diversion measures and juvenile justice?
- Is there a strong community based programme for diversion and as an alternative to detention?
- Is a good probation services programme in place?
- Are children merely passive recipients of justice or can they somehow be more pro-active in their interventions, in their interactions?
- Is there a tracking system and periodic research being carried out on children who come in conflict with the law, ages at which children commit crimes, and nature of crimes being committed, children's vulnerabilities, assessment of needs of children in the juvenile justice system, and capacity of the government and NGOs to meet those needs, treatment meted out to juveniles, follow-up post release etc.?
- Is the juvenile justice system open and transparent?

33 Franklin E. Zimring, "The Common Thread: Diversion in the Jurisprudence of the Juvenile Courts", in Margaret K. Rosenheim et alia (Eds.), *A Century of Juvenile Justice*, 142 – 157. Chicago and London: The University of Chicago Press 2002. Quoted in Understanding Diversion and Restorative Justice: Setting the Context by Prof. Jaap. E. Doek, 2013.

34 Justice Amar Saran, Allahabad High Court, Uttar Pradesh, Significance of Probation Services In India – Theory And Reality. Paper contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.


SUHAS CHAKMA


ENILE




JUSTICE S
RAVINDRA BHATT


SAMYA CHARIKA
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CHAPTER 3

Restorative Justice

"Restorative process" means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.[35]

3.1 A Brief History and the Emerging of Restorative Justice[36]

Restorative justice initiatives have seen a significant growth worldwide, but their roots can be drawn upon traditional and indigenous forms of justice, which view crimes as fundamentally harmful to all people – the perpetrators, the victims and the communities they live in.

Ancient times (before around 1200): damage caused by a crime/offence was dealt with by the families of the offender and the victim, negotiating the arrangement of satisfactory reparation of or compensation for the damage

35 UN Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12, available at: http://www.refworld.org/docid/46c455820.html [accessed 24 July 2013]

36 Prof. Jaap E. Doek, Former Chairperson, Committee on the Rights of the Child, Understanding Diversion and Restorative Justice: Setting the Context. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

done; possible contribution to reconciling families. But negotiating also failed and was often followed by full blown revenge (the eye for an eye approach).[37]

Middle ages: emerging of national, regional or city governments led to a process in which the authorities took control over responses to crimes (also because of the often violent ways in which families responded to crimes). Interventions regarding crimes became a matter of the state (or similar public bodies) and the offender and the victim disappeared from the negotiations.

Primary goal became maintaining public order and that was done by punishing the offender (often in very cruel ways) after a process between state officials (prosecutors) and the offender and decided by a judge or a jury.

19th and 20th century: In the course of the 19th and 20th centuries growing attention was paid to development of fair trial, introducing rules protecting the position of the offender vis à vis the power of the state. In addition the responses to crimes were increasingly focusing on the offender and less on (the seriousness of) the crime with a view to rehabilitate the offender and thus prevent recidivism (move from general prevention to special prevention). This development was strengthened and supported by the increasing importance of Human Rights after WW II (UDHR 1948 and the adoption of the ICCPR and the ICESCR in 1966 + Regional Conventions in Europe, the Americas and Africa). The victim disappeared completely from the picture of criminal justice.

Emerging of Restorative Justice:

Factors contributing to this emerging:

Growing dissatisfaction regarding the effectiveness of criminal justice. In particular imprisonment was not only quite expensive but did barely contribute to the prevention of crimes. Persons who had served their imprisonment recommitted crimes and responses to crimes were stigmatising and did not contribute to re-integration into society of the offenders.

Growing attention for the position of the victim. Victimology became a new area of discussion and research. Services were established (1975 in the Netherlands) to provide victims with counseling and practical support to overcome the trauma suffered from the crimes committed against them.

Furthermore, legislative measures were taken to improve the possibilities for the victims to get compensation and to allow them to play a more active role in the criminal justice process.

These developments resulted in efforts to avoid criminalisation of offenders and to strengthen efforts for a better re-integration of offenders while at the same time improve compensation for the victims. In many countries this led to the development of alternatives, in particular DIVERSION and later also the introduction of RESTORATIVE JUSTICE.

In the introduction of restorative justice the way indigenous people were and are dealing with crimes, the Maoris in New Zealand, the aboriginals in Australia, the Inuit (first nation people) in Canada and indigenous groups in Africa and Asia played an important and inspiring role.

The offender and the victim are central in the restorative justice process and thus it is different from the traditional criminal justice practice in which reprisal/retaliation, punishment and general prevention are the core notions.

Nowadays there are practices of restorative justice in many countries in the world, but restorative juvenile justice is not yet an activity that exists in many States Parties to the CRC. There are experiences with different forms of restorative justice such as Family Group Conferencing and Victim-Offender mediation, for instance in Argentina, Belgium, Brazil, New Zealand, Northern Ireland and South Africa. Victim offender reconciliation programmes were

37 See E. Weitekamp, "The History of Restorative Justice" in Gordon Bazemore and Lode Walgrave, *Restorative Juvenile Justice: repairing the Harm of Youth Crime,* 75 – 102. New York: Willow Press Inc. 1999

also introduced in the USA. In some countries restorative justice is an integral element of juvenile justice (e.g. New Zealand, Belgium) but in other countries it is a rather marginal activity with difficulties to offer sufficient restorative services (e.g. The Netherlands).[38]

3.2 Restorative Justice Approach and Programmes in Juvenile Justice

The restorative justice approach has three main objectives. It aims at guaranteeing reparation of the victim, allowing offenders to really understand the causes and consequences of their behaviour and enabling communities to participate in the process of justice in a constructive way.[39] The UN Economic and Social Council Resolution 2002/12 (Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters)[40] offers the rules at the basis of understanding restorative justice in an international perspective and regulates the relations among the victim, the offender and the facilitator.

Restorative justice objectives

- Restore community order and peace and repair damaged relationships
- Denounce criminal behavior as unacceptable and reaffirm community values
- Support victims, give them a voice, enable their participation and address their needs
- Encourage all concerned parties to take responsibility, particularly the the offenders
- Identify restorative, forward looking outcomes
- Prevent recidivism by encouraging change in individual offenders and facilitating their reintegration into the community

Handbook on Restorative Justice Programmes, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime, Vienna

The document states that restorative justice programmes can be used at any stage of the criminal justice system, in accordance with the legislation of the country, but only where there is enough evidence to charge the offender. The victim has to consent to the use of restorative justice and he/she has to agree with the offender on the basic facts which constitute the crime. The safety of both the parties should always be taken into consideration during the process of restoration and none of them should be forced to participate in any programme or initiative.[41]

International human rights law states that a large variety of disposition measures should be made available to the judiciary to allow for flexibility in sentencing and consequently, limiting institutionalisation of the juvenile to the greatest extent possible. Such measures, some of which may be combined, include care, guidance and supervision orders, probation, community service, financial penalties or compensation, forced participation in group counseling, foster care, living with affected communities or in educational settings. Juveniles should never be removed from the supervision of their parents, even if partial, except in circumstances which require it.[42]

Restorative justice and diversion are often linked with each other but they are different concepts. Restorative justice can be, but is not always, an alternative to prosecution as diversion is. It can be part of the sentence by the juvenile court or it can lead to an agreement between the offender and the victim as an alternative to sentencing by the court. Diversion is dealing with an offence without resorting to the criminal proceedings (divert the juvenile from the criminal justice process; art. 40 (3) CRC) and does not necessarily imply an active interaction between the offender and the victim for the purpose of compensating the victim.[43]

38 Prof. Jaap E. Doek, Understanding Diversion and Restorative Justice: Setting the Context. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.
39 UN Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12. Available at: http://www.refworld.org/docid/46c455820.html [accessed 24 July 2013]
40 Ibid.
41 Ibid.
42 Rule no. 18, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").
43 Prof. Jaap E. Doek, Understanding Diversion and Restorative Justice: Setting the Context. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

The role of facilitators is very important for the effective outcomes of restorative justice programmes. He/she should always perform his/her duties impartially and should have a good understanding of the culture and social background of the victim and the offender. Training courses for facilitators are fundamental for a functional restorative justice system.[44]

The great advantage in using restorative justice does not simply lie in the outcomes of single cases, but it has to be seen in a larger scenario. Improved responses from victims and offenders and the involvement of the community would make the whole society more supportive of the justice system and people would have the possibility of understanding, participating and even protecting a human rights based approach to justice, conceiving it as *theirs* and not exclusively as a matter of governance.

The Government, the media, service providers, the police, the courts and the public prosecutors all have a role to play in the process of restorative justice. If the principles of restoration replace those of retribution in the general idea of justice, making the community share a sort of common justice vision, success of a restorative justice system would be guaranteed.[45]

Community, tradition and culture for the rehabilitation of juveniles in Sri Lanka

It has already been a decade that a Sri Lankan civil society organisation has been rehabilitating juvenile offenders with problems of drug addiction implementing practices drawn from the Buddhist tradition of the island. A Buddhist monk takes care of mind purification of the children through water therapy. The term *mind purification* is purposely used by the monk, instead of the word *rehabilitation*, since the latter implies the idea of "something broken", which needs to be fixed and could even break again. Instead, water therapy has been conceived as an inner process of transformation which leads to life-long, lasting results.

The children in drug de-addiction centres are guided to connect with nature and community. They work for the elders, bathe and feed them, and even cut their hair, as a perfect example of restorative justice, where juveniles give back to the community they entered in conflict with.

Dr. Samiya Charika Marasinghe, *Freelance Human Rights and Child Rights Law Consultant, Sri Lanka*

3.3 Rehabilitation and Reform

A great advantage offered by the use of restorative justice is that it includes a wide range of measures and initiatives which can be easily adapted to different kinds of juvenile justice systems, respecting the necessities and the cultural, social and economic variety of countries. Furthermore, the use of restorative justice does not preclude the right of states to prosecute the perpetrators of crimes.[46] Rehabilitation of the juvenile can in fact be taken care of, whether in detention or not.

One of the most successful and advanced practice for rehabilitation of juveniles, while keeping them with their families and community, is the Multi Systemic Therapy (MST), developed by Dr. Henggeler and his team in the USA at the beginning of the nineties. The main idea behind MST is to *take therapy to the adolescents instead of taking the adolescents to the therapy*. This means clinicians would go to the children's homes and families, and also to their schools, teachers, neighbourhoods and friends. The work of psychologists is based not only on the failures, but especially on the successes of the child, trying to focus on his/her positive sides and strengths. Their actions should be well-defined, with specific targets, and aimed at enforcing the juvenile's and the family's responsibilities. MST

44 UN Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12. Available at: http://www.refworld.org/docid/46c455820.html [accessed 24 July 2013]

45 Alasdair Roy, Children & Young People's Commissioner, ACT Human Rights Commission, Canberra, Australia Key Messages from an Independent Inquiry into the ACT Youth System, p.5. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

46 UN Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12. Available at: http://www.refworld.org/docid/46c455820.html [accessed 24 July 2013]

therapists are on call 24 hours a day, 7 days a week, and their work has proved efficient in decreasing adolescent drug and alcohol use and in reducing recidivism, while keeping the juveniles at home and in school.[47]

Rehabilitation in detention requires different kinds of efforts and awareness. Prisons and institutions are a reflection of society and there is always a constant interchange between them and the outside world. Keeping this in mind, holistic systemic measures for rehabilitation of children in detention, which involve the community and the families, are imperative.

Especially in poor countries, the role of civil society in creating child-friendly institutions for the rehabilitation of children in conflict with the law is important. The government has to recognise fit NGOs, with potential of implementing high standards of juvenile justice, and partner with them, assuring a valid support, even in terms of money.

Turning a juvenile into a police assistant: best practice from Bangalore

Empowerment of Children and Human Rights Organisation (ECHO), a Bangalore based NGO which runs an institution for juvenile offenders, has found projects implemented with the help of the community as the most effective to rehabilitate children in conflict with the law.

The Traffic Police Assistant Programme (TPAP) is the successful outcome of a joint effort between ECHO and the Department of Police. Since 2002, 375 children have been trained to become traffic police assistants. Children and young people in the age group of 16 to 20 years are given intensive orientation and training in traffic rules and regulations, basic information of the city, first aid and community dynamics. As Traffic Police Assistants the inmates gain dignity, respect and self-worth along with financial independence. In 2006, appreciating the work done by the TPA boys, the Government of Karnataka even invited them to participate in the Republic Day's Parade in Bangalore.

Dr. Antony Sebastian, *Executive Director, ECHO, Bangalore*

The principle at the basis of the daily life of an institution for juveniles is that places of detention for children should not look like prisons, but like homes. The children might prepare meals together, share their monthly expenses and participate in household chores. They can be allowed to visit their families and return to the institution whenever they need help.

Certainly, working in any rehabilitation programme for young offenders, children have to be placed at the centre of all decisions. Every single action taken has to be child-centered in nature and has to aim at the benefit of the juvenile first of all. Active participation of children in the process of decision making is imperative for the effective realisation of any restorative and rehabilitative programme.[48]

Until the nineties, the effectiveness of rehabilitation programmes had been subjected to debate. For long time the dominant view of social scientists has been that nothing works to reduce recidivism amongst juveniles. Today, scientific evidence all around the world regarding the success of rehabilitation projects is wide and often well recognised even by the mainstream society. In fact, the final compelling argument in support of rehabilitation is surely utilitarian. No juvenile is headed for careers in crime, unless correctional interventions push him/her in that direction. Hence, money spent for rehabilitation programmes pays back with results. A 2006 research in the USA showed how majority of the people surveyed were willing to pay more for rehabilitation than for punishment of juveniles. The public cares about safety, but it is quite open to rehabilitative programmes that work.[49]

47 http://mstservices.com/index.php

48 Alasdair Roy, Children & Young People's Commissioner, ACT Human Rights Commission, Canberra, Australia Key Messages from an Independent Inquiry into the ACT Youth System, p.9. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

49 Elizabeth S. Scott and Laurance Steinberg, "Adolescent Development and the Regulation of Youth Crime", pp. 25-28. In *The Future of Children,* Vol. 18 / No. 2 / FALL 2008. http://futureofchildren.org/futureofchildren/publications/docs/18_02_02.pdf

We have to establish partnerships with the family and community to which the children belong, involving all community stakeholders in a comprehensive approach to protect, empower and provide skills to community members; to create more satisfying life conditions for the disadvantaged and counter the problems in a spirit of self help. This has been made possible by the establishment of a network of community based civil society organisations, government departments, youth organisations, political representatives, community elders and the influential, for providing needs-based and rights-based services to clients. Services include health, education, vocational and income generation skills training, microenterprise development, legal aid and social welfare services.

Dr. Parveen Azam Khan, *Director, DOST Welfare Foundation, Pakistan*

Juveniles and drug addiction: the Delhi experience

The *Sahyog De-addiction Centre* was founded in Delhi in 2011 by the Society for Promotion of Youth and Masses (SPYM) in collaboration with the Delhi government, which provided the centre the building, electricity and water. Since then, 300 juveniles with drug addiction problems have gone through their programmes for rehabilitation.

The centre takes care of children in a holistic manner. Most of them are teenagers between 14 and 16 year-old, hence a very important aim of the Centre is to provide them with quality education.

Vocational training courses are implemented with the help of the government and private sector. A motor mechanics training scheme has been set up by the Centre in collaboration with industrial firm Kirloskar Brothers, providing not only recognised training, but practical work experience. 42 boys have been trained in motor mechanics till date and 17 of them got secure employment at the Kirloskar service centre in the capital. Government of Delhi's Industrial Training Institute provided training to 124 boys in food production and currently a team of 10 boys manages the kitchen at the Centre. Sahyog also provides training in laundry and computer skills.

Formal education is a more difficult challenge, considering the social background of the boys and their former problems of drug addiction, which, at a tender age, often slows down their cognitive abilities. 70 percent of the children have dropped out at primary level. 237 boys have been enrolled in the literacy project and only 138 have reached class IV.

The Sayhog centre provides also a holistic range of services from detoxification, counselling and psychotherapy, to yoga, dance, puppetry, theatre and drawing courses. Like at home, children discuss and decide on work tasks and any complaints or issues at the Centre. They meet constantly in a sort of *child parliament*, in Hindi *bal panchayat*, where no supervisors or adults take part. In this way they also learn how to take decisions, manage and solve problems, handle the dynamics of a group of peers.

Interaction with families is always carried on during the stay of children in the centre, and also thereafter, when social workers follow-up the rehabilitation of the boys who go back home. It often happens that those children who have completed their treatment from Sayhog have nowhere else to go. Either their parents or guardians are incapacitated, or are unwilling to take them home. In these circumstances, the centre becomes a halfway home, where the boys can come and go, keeping Sahyog as the firm point they can always refer to.

Dr. Rajesh Kumar and Mr. Shibendu Bhattarcharjee, *SAHYOG de-addiction programme for juveniles, SPYM New Delhi*

3.4 Rights of Victim vs. Child in Conflict with the Law

An indelible principle at the basis of a human rights approach to justice is that justice for the victim of crime can and must be assured while safeguarding the rights of the accused and vice versa. In the juvenile justice system this principle becomes a very sensitive one, considering the need to balance the rehabilitative needs of the juvenile with other competing interests such as accountability to the victim and restoration of communities impacted by crime.[50]

The idea of justice for victims is commonly reduced to a simplistic assumption that the stricter the penalty for the offender, the more the justice for the victim. Justice systems based on or bending towards retribution certainly fulfill this principle. The wider public perceives more punitive laws as synonymous to justice and consequently, governments tend to pass stricter legislative provisions to portrait themselves as just authorities with no mercy for wrong doing and respectful for the suffering of their citizens.

In the United States of America, for example, to respond to violent and sensational crimes, laws are passed and named after the victims, i.e. Megan's Law or Adam Walsh's Act. There, victims' rights movements went as far as assuring the introduction of written and oral impact statements at the sentencing stage, to provide the court with information about the nature and the extent of the victim's harm and focus the court's attention on the victim's desires. This approach has been widely criticised by child rights activists, since it undermines the very basis of a functional rehabilitative juvenile justice system.[51] Many scholars and practitioners in fact affirm that victim's rights, even if indirectly, can be better safeguarded with age-appropriate and tailored rehabilitation treatments for juvenile offenders.

Agreements between the two parties can be reached with the help of facilitators as both a pre-trial or post-trial option. In some countries, the judge can tell the juvenile to contact the victim and ask for the possibility of restoration. Some people are totally in favour of agreements between victims and offenders, affirming that, if there is a mutual understanding between the two parts, the state should not intervene in the prosecution process at all.

Including the victim in the whole juvenile's rehabilitation process may serve non-retributive goals such as aiding in the victim's search for emotional healing and reducing the victim's fears of re-victimisation. Programmes such as victim-offender mediation, victim impact classes, and victim awareness training have proved good vehicles to facilitate both victim participation and offender rehabilitation. These programmes take advantage of the social and relational aspects of remorse and apology and encourage victims and offenders to talk and understand each other's experiences. The mediated face-to-face dialogue allows the victim and the juvenile to ask questions of one another and gives the child time to understand and explain why he/she committed the crime.[52]

> Some are of the view that an agreement does not necessarily mean that the case is closed and that the court cannot issue a sentence. In that case it is argued that the court should take into account the agreement and e.g. give a conditional sentence which will be executed if the agreement is not implemented. But at the same time the Basic Rules state that the failure to implement a restorative justice programme cannot be used as a justification for a more severe sentence. When an agreement is not reached the case should be referred back to the established juvenile justice process. The lack of an agreement should not be used in subsequent juvenile justice proceedings. Participation of the offender shall not be used as evidence of guilt in subsequent legal proceedings (Basic Rules para 8) and there should be no more severe punishment because of the failure to reach an agreement.
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> **Prof. Jaap E. Doek,** *Former Chairperson, Committee on the Rights of the Child*

It is very important that all these mediation processes are taken care of by competent facilitators, aware of the social, cultural and economic differences which might often divide the juvenile and the victim of the crime. Victim impact statements might be also used into the child's long-term treatment plan. When combined with counseling, mediation,

50 What's Wrong with Victims' Rights in Juvenile Court? Retributive Versus Rehabilitative System of Justice. Kristin Henning, California Law Review Vol.97, p.1108.
51 Ibid
52 ibid, p. 1129/1162/1167.

or other victim awareness programming, victim impact statements might educate the child on the far-reaching impact of his/her conduct and help him/her empathise with victims.[53]

While victim-offender mediation and other restorative justice programmes have significant benefits, they do carry some risks. First of all, the intimate face-to-face interaction and advanced preparation for effective mediation may increase the amount of information victims learn about the juvenile and disclose the obligation of confidentiality.[54]

Furthermore, this kind of rehabilitative and restorative approach depends on the willingness not only of the juvenile but also of the victim, who does not always want to cooperate and should not be subjected to coercion. Victims take time to enter the restorative justice system and rehabilitation processes based on victim-offender interaction are particularly time consuming, considering the complexity of issues involved.

In cases of serious offences, it is often more difficult to involve the two parties in restorative justice programmes, but some experiences world-wide show how a victim-offender encounter can be possible and effective even after heinous crimes. Probably the most famous example of an almost unthinkable relation between offender and victim is enshrined in Katy Hutchinson's book *Walking After Midnight: One Woman's Journey Through Murder, Justice and Forgiveness.* Katy Hutchinson is a Canadian woman whose husband was murdered on New Year's Eve 1997 while trying to break up a teenagers' party at a friend's house. Katy was left a widow with four-year-old twins. She waited for five years while the police worked to obtain the evidence to prosecute and convict his killers. During that period, she developed her perception of the societal forces and lack of understanding amongst young people that created the circumstances leading to her husband's death. She grew to recognise the need to advise and educate young members of the community about the risks that arise with the combination of young people, alcohol, and a lack of supervision. Katy reached out to Ryan, one of the juveniles who murdered her husband, and they have since forged a powerful and unique relationship. Ryan has now joined Katy in her speaking engagements, and Katy supported his recent successful appeal for early parole.

Cases of sexual exploitation are even more sensitive from this point of view because of the physical, psychological and emotional consequences of the crime on the victim. But exactly for these reasons, they require a strong rehabilitative and supportive approach on both parties. More stringent laws cannot pay back the pain suffered by the victim, but may simply assure a temporary relief. Counselling and psychological support, especially in the case of physical or sexual violence or very cruel crimes, is imperative.

In Cornwall and Devon, United Kingdom, for example, since December 2012, 29 seventeen year-olds accused of sexual assault on someone below 17 were dealt with using restorative justice over the last year. They worked out a solution together with their victims, when they agreed to.[55]

Notwithstanding the gravity of the crime, researches have also shown that very serious punishment and penalties for rape and sexual assault actually reduce reporting. A lot of these offences are inter-family and inter-community crimes, often accompanied by domestic violence of all sorts. When the victims know they are condemning relatives or community members to a lifetime of stigmatisation and long term imprisonment (sometimes even undermining their own economical resources, being the perpetuators often male bread-winners of the family), they think twice before reporting. Hence restorative responses can offer alternatives to a victim who has kept silent out of fear that the abuser will be arrested and the family's means of support or relationships ended.

53 Ibid, p. 1162/1167/1132.
54 Ibid, p.1166.
55 Teenage rape prevention campaign launched in http://www.piratefm.co.uk, 5th Dec. 2012.

Perspective of a Rape Victim

....I was raped twice, at knifepoint, by a man who had been released from prison, just 24 hours earlier. I was his 27th victim. I reported the crime immediately. He had walked off abruptly in the middle of the attack and I was sure of 2 things: he had done this before and he would do it again.

I was believed and the rapist was caught, sentenced and returned to prison. Justice was done. Since the assailant pled "guilty" he was allowed a third off his tariff and the Judge, "to spare me any further distress", proceeded quickly to his decision. Although I was in court, nobody looked at me and nobody heard me.

From the outset, I knew I wanted to speak with the rapist. I didn't want to be just another rape statistic. I was a real person, with a real life, who had been really harmed. The collateral damage to my family and friends was immense.

I wasn't aware of Restorative Justice (RJ) at the time; and despite being so traumatised and barely able to function, I went on to work with two highly skilled mediators who agreed to take on my case. After 20 months of negotiation, I finally got to speak to the man whose first words to me had been "Do as I say, or I'll kill you".

....When we finally met, the offender was shaking, sweating and wary of my actions. I was in the perverse situation of asking him if HE was alright! However, we both went on to calmly talk for 2 hours. He did say "sorry". I had to ask him to say it. He said it didn't seem enough after I'd described my current state of desperation. He had eye contact with me when he said this and at last I felt like I counted. I was able to voice the feeling of hurt, abandonment and the damage wreaked on my family and I as my life slowly fell apart in the months after his conviction.

It is 'human' to want to feel understood. I needed to be heard, but so did the offender. I listened, without judgment, to the pain and hurt he described of his early childhood. How his anger and unhealthy sexual fantasies had evolved into his own rage; enacting crimes perceived by the public as second in severity only to murder. I wanted him to take responsibility for his crimes. Chillingly, he described how this was the first time he had ever viewed his victim as a real person and only because I was sitting beside him and confronting his excuses; bringing him out of his disassociation from the reality of his crimes.

Rape is about power, anger and control. It is rarely about sex. On that day, in a small prison visiting room, the balance of power changed. I too had to confront my hopelessness and helplessness. I was also in prison but the fear was in my head. Being given the opportunity to allow the rapist to think about his crimes in a different way was a huge step forward in the start of my recovery.

From an article by Claire Chung for Restorative Justice Week 2011
www.restorativejustice.org


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MARASINGHE

CHAPTER 4

Violence against Children in Juvenile Justice System

Violence in police custody and detention facilities is an overwhelming problem across the globe. Juveniles are exposed to violence by police officials, staff members of the institutions where they are placed during the trial and after the sentence, and even by other inmates. Self-harm is also a form of violence which many children in detention inflict to themselves, as means to cope with the often brute reality.

Corporal punishment and solitary confinement are prohibited for juveniles by international standards, but many national laws still unrightfully allow these practices. A research Penal Reform International undertook in 8 different countries (Bangladesh, Georgia, Jordan, Kazakhstan, Pakistan, Russia, Tanzania and Uganda) showed that corporal punishment is considered a disciplinary measure in Bangladesh, Pakistan and Tanzania, while solitary confinement is allowed in Russia and Kazakhstan. In South Asia, corporal punishment in penal system as sentence for crime is prohibited only in Bhutan, Nepal and Sri Lanka, while in India and Pakistan, even though criminalised in the juvenile justice system, the law is not applied in practice. In Afghanistan and Maldives, *Sharia* makes corporal punishment in institutions lawful.[56]

When corporal punishment and torture are prohibited, the main difficulty in holding perpetrators of violence accountable is that gathering evidential proof of violence is not easy. Children are scared to speak up, they get blackmailed and they rarely interact with people they can trust and who are not involved in the system. Contact with family is not always possible, even though Penal Reform International (PRI) mentioned few good examples in the region analysed through its research. In Jordan for instance, juveniles can leave institutions to visit their

56 http://www.endcorporalpunishment.org/pages/frame.html

The Prohibition of torture or cruel, inhuman or degrading treatment or punishment is recognised in several UN treaties and highlighted by various UN Committees:

- UN Convention on the Rights of the Child (Article 19; 28, para.2 and 37(a)) and the CRC General Comment No. 8 (2006)
- International Covenant on Civil and Political Rights (Articles 7 and 24(1))
- UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 1 and 16)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Article 10)
- Convention on the Rights of Persons with Disabilities (Article 15)
- International Covenant on Economic, Social and Cultural Rights (Article 10(3))
- The Human Rights Committee first made recommendations on corporal punishment in the Penal system in 1993, in school in 1995 and in all settings in 2007.
- The Committee on the Elimination of Discrimination against Women made recommendations against corporal punishment to different states.

families or attend vocational courses, even for a long period, and children who are held in pre-trial detention are allowed to leave for a week or so to visit relatives.

When cases of violence against children are detected, their systematic collection in a proper database is the actual first step for structural meaningful interventions, especially in terms of prevention, grounded in reality. At the same time, the storage of children's personal information, including records of allegations of abuse, should be kept safely to protect the identity of the juvenile.

The PRI research presented during the Colloquium revealed the importance of preventing violence in the first place. A starting point to diminish violence against children in the JJSs is minimising the contact that children have with the justice system itself. In countries like Jordan and Pakistan, for example, children as young as 7 years old can be held in detention, while diversion measures are very limited.

When there is no alternative to detention, the placement of children has to be strictly made in conformity with international standards, separating juveniles on the basis of their sex and age. Many children, especially girls, are often not properly separated from adults, because female convicts are fewer in numbers than their male counterparts and girls are considered less prone to violence by older women.

The problem of violence against children in juvenile justice systems has been widely denounced in different countries by social workers, civil society and media, but even where laws to prevent abuse and hold the perpetrators of violence accountable are in place, there is still a long way to go. An analysis of the situation in various states shows a common denominator among the roots of the problem – the fact that violence against juveniles in detention is not always, almost never, a political priority.

Discussions during the ICJJ, on the other hand, revealed that the problem lies within the structure of juvenile justice system and solutions can be found through a holistic approach to the system, looking not only at the necessary legislative provisions to be enacted, but especially at the capacity building of police and staff and effective measures

Even in liberal democracies, because of the nature of the democratic system itself, children are the lowest priority concern for governments and society, since they have no bargaining power. Juveniles in detention cannot vote and have no financial, political or administrative clout, hence they have no voice. Furthermore, a common belief, conveniently often perpetuated by governments, is that violence in detention is due to few bad apples in the system and it is not a problem of the system per sé.

Frances Sheahan, *Independent Legal Services Professional and Consultant, Penal Reform International (PRI)*

of implementation of the good laws already in place. Numerous contributions during the International Colloquium underlined the need of opening up institutions for juveniles to interaction with the outside world.

4.1 Violence in Police Custody and Pre-Trial Detention

Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Beijing Rules, No.10

International standards for Juvenile Justice state that children should be held in police and pre-trial detention (PTD) for the shortest period of time possible. The CRC settles a limit of 24 hours for police detention and 6 months for PTD, but the ground reality results to be very different.

For instance, a Penal Reform International (PRI) study found out that in Russia children can be kept in PTD for 18 months and in Tanzania for 2 years. A child can be held for 72 hours in police detention in Georgia, Russia and Kazakhstan. In India, even though placing a child in police lockup or jail has been prohibited, the law is not always properly implemented.

> PRI has very strong information coming from Tanzania, where the National Human Rights Institution conducted some very interesting information gathering in 2011 and interviewed a great number of children held in detention. They found that among the children interviewed 37% have actually been held in police detention for more than 4 days, 33% between 2 to 3 days. So amongst those children who were interviewed, adherence to 24 hours was actually only in 33% of cases.
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> **Frances Sheahan,** *Independent Legal Services Professional and Consultant, Penal Reform International (PRI)*

Courts in many countries are seldom supported in their decision making by social workers, probation officers or children's legal representatives to identify and push for community based alternatives to detention. Furthermore, especially in poor countries, activities which many children carry on simply for their survival are criminalised by police, bringing up the numbers of juveniles unnecessarily and unfairly. Plenty of street children get arrested and detained only for having been found begging, loitering, selling tissues, etc. Children get punished instead of receiving the adequate protective environment which should be granted to them. In India, petty cases under the Railways Act, where children from neglected families might have drifted away from home, are granted with immediate bail, but children are in any case picked up and placed in institutions with other juveniles accused of rape or murder.[57]

Laws regulating treatment and conditions in police stations are often not specialised for children. Children are not always registered on arrival allowing for time limits on detention to be abused. Parents or guardians have to be contacted and legal representation has to be assured. Police stations need to be monitored to guarantee high standards and a specific child rights focussed complaints mechanism has to be put in place. It is also important that evidence obtained under duress is made inadmissible at trial.

International standards state that police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained.[58] For example, establishing special

> In Delhi, during one of my visits to the Observation Homes where juveniles are kept, I came across few school boys arrested for petty crimes. They experienced a humiliating and dreadful medical examination and shared the abuses they suffered with me. The doctor forced them to take off their clothes and bend over and did the examination of the sexual organs with a stick. Then he hit them until they admitted to be addicted to drugs. Many other boys had complained about the same treatment previously, but nobody ever listened to their complaints.
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> **Mrs. Minna Kabir,** *Child Rights Activist, Delhi*

57 Justice Amar Saran, Significance of Probation Services in India – Theory and Reality, p.11. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

58 Beijing Rules, No.12.

police units in big cities has been proved a good practice in Jordan. The Jordanian Juveniles' Police Administration (JPA) works towards the enhancement of respect for child rights. On the one side, JPA enforces alternative solutions that are already in place in the legislation to deal with juvenile cases, on the other side, it tries to develop and improve police procedures treating children. JPA also partners with government and non-governmental organisations to raise issues among the local community.

In India, when the juvenile is arrested, the arresting police officer should inform the probation officer. He/she then is supposed to be in direct contact with the child in pre-trial detention and during the whole course of the inquiry. This is surely a deterrent for police violence or any sort of abuse.

Social service provisions through the Office of Social Development hosted by JPA in Jordan:

Qualified social workers:
- Interview children and prepare plans for rehabilitation
- Research causes of juvenile crime
- Provide specialised social counselling and programmes to help reintegrate children back into society.

Psychiatric services:
- Diagnose children through specialised psychiatrist seconded from the National Centre of Psychiatry
- Refer children to psychiatrists where necessary
- Provide post-psychiatry care services and follow-up through referring cases to specialised medical centres

Awareness
- Use media channels, school visits and lectures, local society development centres and religious channels.
- Specialised database of child cases to collect data and research causes of child crime.
- Partner with others to develop preventive programs

Mr. Nikhil Roy, *Programme Development Director, Penal Reform International (PRI)*

Juvenile 'beaten' to death in Bareilly observation home

Express news service

Posted online: Fri Feb 15 2013, 1:56 hrs

The Indian EXPRESS
JOURNALISM OF COURAGE

Lucknow: A 17-year-old boy facing charges of rape and abduction was allegedly beaten to death by six inmates of the Juvenile Observation Home in Bareilly on Wednesday. He was brought to the place on Tuesday.

Initial probe has found that the boy was beaten when he resisted ragging attempts by inmates, including two majors, said Bareilly SSP Akash Kulhary. The police have registered a case of murder against the accused.

The SSP said the boy's body had serious injury marks. Since the autopsy could not ascertain the death cause, the viscera has been preserved for forensic analysis.

However, the superintendent of the observation home, Chhavinath Rai, has claimed that the boy had injury marks on his back and chest when he was brought there. "The details of the injuries were entered in the register that bears signatures of the police constables who brought the boy," he said.

District Magistrate Abhishek Prakash said he has ordered an inquiry into the death. It would be conducted by additional city magistrate-I Vandita Srivastava.

Meanwhile, the victim's father, Bhoopram, has alleged that his son was initially beaten up by the family members of the girl who alleged rape and later by policemen before he was taken to the observation home.

Home superintendent Rai said that he was away when the cops from Nawabganj police station brought two 17-year-old boys at 5.30 pm on Tuesday. Both of them belong to Nawabganj area and were accused of abduction and rape in two separate cases.

The staff at the gates spotted injury marks on the back and chest of one of the boys and bruises on back, face and arms of the other during the routine checking before taking them in, he said.

Around 8.45 am on Wednesday, one of the boys suddenly fell unconscious and was rushed to the district hospital where he was declared brought dead, Rai said.

He said he did not know of any incident of ragging or attack on the boy in the observation home. The family members of the boy had told the staff that the angry relatives of the girls had beaten up the boys causing injuries, the superintendent said.

4.2 Violence in Centres for Detention

Reports from different countries of the world show that children in detention are subjected to violence perpetuated by staff and officials working in institutions. Juveniles suffer torture, isolation, beatings, restraints, harassment, rape and humiliation. Furthermore, stigmatisation, isolation and even de-socialisation result from these "disciplinary measures", placing the victims at much greater risk of being exposed to further violence and in some cases becoming perpetrators of it.[59]

Perpetuation of violence and corporal punishment in institutions has emerged as a striking issue during the Colloquium. A research carried on by *Aangan*, an Indian NGO, in 3 Indian states, showed that many, almost all the children in observation homes have had their rights violated and have suffered extreme violence. 76 percent of juveniles reported having been in lockups for long periods of time. Many reported beatings being inflicted in order to extort money for release and for false confession of guilt. Home staff, according to the children, has often been unapproachable.

The age separation imposed by international standards and national legal provisions is not always respected. In India the Juvenile Justice Act, 2000 imposes segregation of children in detention in 3 age groups (7-12, 13-15, 16-18 years), but in many institutions this division is overlooked. When children of different ages are kept together, younger boys and girls are often more prone to violence and abuses by the older ones. Additionally, in the particular case of India, where the Juvenile Justice Act deals with both Children in Conflict with the Law and Children in Need of Care and Protection, both the categories are not always kept in different institutions, creating a clear ground for abuse.

Teenagers are a particularly sensitive category, especially when they are in detention because of serious offences. Cases of crimes committed by 16-18 year old boys are often addressed by the media with harsh coverage and public response not only affects the thoughts of the staff of the institution, but also of the inmates, resulting in violence in detention.

Often the staff in the institutions, knowing that it is not allowed to use any violent punitive measures against the children or simply to avoid the hassle of keeping a day to day watch over the inmates, make the older children the watch dogs and give them all the powers of inflicting punishment to maintain "order".

Violence against children does not have to be understood only in terms of corporal punishment or physical abuse. Children in detention can also experience malnutrition; absence of treatment for physical or mental illness; psychological trauma; lack of education, rest, play, leisure and other conditions necessary for healthy development; discrimination; interference with privacy and family life; violation of other civil and political rights such as freedom of thought, conscience, religion, association, expression and protection of their legal safeguards in relation to deprivation of liberty.[60]

> *Officers have perfected the art of shifting the burden and passing the buck. In my interaction with government I rarely see anyone owning responsibility. There is always a scapegoat lower down in the ladder whose head could be made to roll, by suspensions or administrative inquiry if things go wrong.*
>
> **Justice Amar Saran,** *Allahabad High Court, Uttar Pradesh*

Standards of care and protection of children in institutions exist in many countries, but to be actually implemented effectively, people who work in institutions have to deeply believe in them and conceive them as their own job and mission. At the same time, the role of administrators of the system has to be carried on with consciousness and knowledge regarding the problems at the ground. If people who work within and for the system do not believe in the values of justice and human rights at the basis of the conception of separate justice systems for juveniles, implementation of legislative provisions will be always poor.

59 UN World Report on Violence Against Children, Violence against Children in care and justice institutions, 2006, p.175.
60 UK AID - PRI, Independent monitoring mechanisms for children in detention, Justice for Children No.2

The prejudice that juveniles are no different from adult offenders, that their rehabilitation is not possible and that they deserve retributive punitive measures for their wrongdoings will always affect the acts of the JJS administration from top to bottom. Laws cannot be enforced properly and become the engine for a structural transformation of institutional systems if the morals and ideologies they embody are not internalised by the people within the system.

Juvenile home inmates snatch rifles, assault cops; two go missing

Express news service

Posted online: Thu Jan 17 2013, 09:19 hrs

The Indian EXPRESS
JOURNALISM OF COURAGE

Angered by constables slapping two boys, the inmates of a juvenile reform centre and observation home in Hardoi district snatched four rifles from policemen, fired in air and fought a pitched battle with the police for over three hours in City Kotwali police station area on Wednesday. Three constables were injured in brick-batting.

A police force, led by the district magistrate and the SP, managed to bring the inmates back to the centre and recovered the rifles. However, district probation officer Yogesh Saxena said two of the 59 inmates, both from different areas in Hardoi, were missing.

Hardoi SP R K Srivastava said the trouble started when an inmate objected to smoking by another inmate, who is about 22 years old now and has been kept in the centre for the past six years in a theft case. The elder boy hit the minor one, leading to a clash between groups of inmates.

Two police constables on sentry duty came, along with the staff, to separate the groups and slapped the two boys. This angered the inmates who attacked the constables and four staff members.

Srivastava said the boys snatched the service rifles and cartridges of the constables and started firing in the air. The policemen and the staff members ran away and returned with two other armed constables from a nearby outpost. But the inmates, who had in the meantime walked out of the centre through unmanned gates, attacked the other constables and snatched their rifles too.

The inmates then ransacked the office, store room and superintendent's cabin. A few climbed on the water tank on the terrace and started firing in the air, said the SP.

The SP, along with the DM and a police force then rushed to the centre to pacify the inmates. Those outside were persuaded to go back inside. But it took about an hour to bring down the boys from water tank and the terrace and collect the rifles and cartridges, the SP said.

The staff later found that two boys were missing. The two constables who were on sentry duty have been suspended. DM Anil Kumar said he has ordered a magisterial inquiry.

4.3 Complaint Mechanisms

Request and Complaint Mechanisms are very crucial in preventing violence, inhuman treatment and poor living conditions in detention facilities. Complaint mechanisms need to be both internal and external, giving children, their families and various stakeholders the possibility of interacting with the system and among each others. For an effective complaint mechanism to be in place, the staff working in the detention facilities should be professionally trained in order to carry responsibilities effectively and maintain the required standards.

Monitoring mechanisms are crucial to assure that minimum standards settled by the law are respected. The main problem in monitoring the centres of detention derives from the fact that they are "closed institutions", not open to public scrutiny. General Comment No. 10 to the UN CRC pushes for independent inspections of juveniles' institutions to be taken on a regular basis or even unannounced. This recommendation is supported by a conspicuous number of international treaties such as the United Nations Convention Against Torture (1984), the Havana Rules (1990), the Bangkok Rules (2010), the Standard Minimum Rules for the Treatment of Prisoners (1957) and the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988).

It is important that independent bodies keep an eye on juveniles' centres for detention, since they should be free to criticise the government for eventual violation of the rights of the inmates. Reports should be made public to ensure

transparency, but inspectors must be aware of the risk that once public, their reports might be used to sensationalise issues around children in detention and that the children who participated may be misrepresented. Images and language which could degrade and further victimise children should be avoided, as well as generalisations which do not accurately reflect the nature of the situation, or which discriminate against certain groups of children.[61]

Teams of qualified inspectors should constitute the independent committees, including at least one person with a legal background and one with a medical background. The inclusion of women as part of the team is particularly significant where the detention facilities being inspected hold girls.

Independent inspection committees should be free to make unannounced visits and to access all places under a state's jurisdiction. They should be granted access to all information and records about the treatment and condition of children and should be allowed to conduct interviews with children in detention on a confidential basis.[62]

Before inspections, in some cases, the staff of the homes has been giving children drugs, the so-called "Tablet 10", to make them become more aggressive and justify punishments or discourage the inspectors to interact with the children.

Mrs. Minna Kabir, *Child Rights Activist, Delhi*

Independent monitoring exists in many countries, especially from National Human Rights Institutions, but it is not systematic, thorough or unannounced. Judges and prosecutors often ignore children's complaints of torture and ill-treatment and do not order independent medical investigations.

The Colloquium stressed the fact that particularly in India, the opening of Juvenile Justice institutions to NGOs is fundamental, but it has been always resisted. Because the managements of many centres frowned upon external visits, when the first inspections started, inspectors tried to have closed-doors-meetings with the children. However, these kinds of solutions do not always work out, since some children might act as spies with their supervisors to get benefits.

Visits are much more effective in terms of promoting sustained improvement in the conditions of detention and treatment of children if they take place on a regular and systematic basis. If visits by external commissions to centres of detention for juveniles are carried on only sporadically, they might even harm the children more. They create expectations among the inmates, which are often not fulfilled; they might bring more violence and abuses in a circle of punishment for "spies" and reward for "silent spectators"; in a system prone to corruption, external commissions might become even politically motivated; the children may also misuse the presence of the monitoring panel/individuals who come across as the most caring people visiting them. Without proper follow-up and farsighted structural changes in the internal complaint mechanisms of institutions, visits by external inspectors and commission become pointless.

In India, since the monitoring of institutions from external commissions started, there seem to have been little improvements. We are stuck in a sort of circle of monitoring, where reports are written but the way further is not clear.

Ms. Krinna Shah, *Project Coordinator, HAQ: Centre for Child Rights*

The structure in place for the monitoring of institutions will have to take into account not only the best interest of the children, but also the concerns of the staff involved in managing the institutions. Very low salaries, extensive working hours or abusive working conditions of the staff are often co-causes of problems faced by the inmates. Providing a protective mechanism for detention facility employees against unfounded criticism and supporting employees who do not want to be involved in bad practices are among the aims of the monitoring mechanisms.[63] People at the higher levels in the administration of the institutions should always interact with the inmates and staff, because many answers to the challenges of the system can come from people within the system itself, in a bottom-top approach which might be more practical and focused, hence effective.

61 UK AID - PRI , Independent monitoring mechanisms for children in detention, Justice for Children No.2
62 Ibid
63 Ibid

A Reality Shock: Juveniles sneak complaint letter in the hands of Judge

[…] After Mrs. Bharti Ali's invitation to attend this conference, I thought I would obtain feedback from the Probation Officer about his duties and his problems, and called him to the Allahabad Observation home so that I could at the same time also inspect the home. I noticed the moment I entered the home on Friday 2nd March, that one boy signalled, and all the boys rushed to their different rooms. […] Some boys did look older than the others. (I have later obtained details from the State Director, Women and Child Welfare which shows that there are 8 inmates who are admittedly over 18 years in the Allahabad Observation Home. All over U.P. there are 82 such inmates). On my rounds all the boys expressed satisfaction with their treatment in the Home. There was a little murmur about some older boys facing some difficulty in writing their coming Board examinations, but nothing more. I noticed a complaint box and inquired if any complaints were made. I was told that there was only one instance of a boy complaining. Things indeed looked a little too good to be true. In Room No. 10 however one of the 14 or 15 year olds handed me a folded letter. The authorities thought it was a letter asking for permission to write the coming Board examinations and immediately the superintendent began explaining his difficulties and his need to obtain the admit card and examination schedule before arranging for a police escort and making the necessary arrangements for the purpose.

When I later read the note which was addressed to the Magistrate, Khuldabad Jail (the location and description of the home), I was very disturbed. It was signed by 40 boys. It said that the boys were prevented from ventilating their grievances either before the Jailor saheb (i.e. how the superintendent of the Observation Home was described), or before any Magistrate. The head senior boy was given a free hand to call the boys downstairs and to assault them if they made any complaint. One named boy made a complaint to the Fatehpur Judicial Magistrate, when the Jailor Saheb learnt this fact, he was severely punished, abused and given life threats if he again complained. Boys were threatened with transfer to another "jail." When another boy complained then even a named senior boy who sided with him was beaten. Rs. 1000 per month was demanded from the boys. Those who could pay could escape from performing the required chores at the home, those who could not were punished and severely assaulted under the pretext that they had not properly performed their allotted chores. The note added that when they did not have enough money for getting bail, how could they make the monthly payment. One named senior inmate was the collecting agent for the jailor saheb. The boys prayed for action in the matter while keeping their identities concealed.

The very next morning I called the District Magistrate and the District Judge Allahabad. I asked them to conduct an inquiry after removing all staff members and the monitors and other named seniors who appear to have become moles or "pakkas" and agents for the Home administration. A two member inquiry committee of a judicial and administrative officer was constituted which has submitted a report on 8.3.13 indicting the superintendent of some charges, and the DM has passed an order on 9.3.13 recommending his suspension and initiation of disciplinary proceedings against him. […]

Excerpts from "Significance of Probation Services in India – Theory and reality"
Hon'ble Mr. Justice Amar Saran, *Allahabad High Court, Uttar Pradesh*

Best practice from U.S. Department of Justice, Civil Rights Division, Special Litigation Section

The Special Litigation Section (SLS) of the Civil Rights Division of the U.S. Department of Justice is tasked to investigate violations of institutionalized people's statutory and constitutional rights. It works to protect the rights of youth confined in juvenile detention facilities run by, or on behalf of, state or local governments. The Section has the power to investigate whether juveniles are at risk of unnecessary confinement in such institutions and if the juvenile justice systems comply with youths' civil rights. If SLS finds that a juvenile justice system or a state or local government systematically deprives youth of their rights, it has the power to act.

The Section's work helps to ensure that children who were living in dire, often life-threatening conditions receive adequate medical and mental health care, protection from violence and exploitation from staff or other inmates, effective programs that encourage juveniles to manage their behaviour, adequate educational services, etc. It also works with jurisdictions to explore alternatives to detention for juvenile.

Complaints might come from various sources - families, children and other community stakeholders. The Civil Rights of Institutionalised Persons Act (CRIPA), 1997 allows SLS to review conditions and practices within juvenile justice institutions, but not to assist with individual claims or correct a problem in a specific federal facility. SLS can act if a systemic pattern or practice that causes harm is identified. Systemic problems have to be detected to contact the state describing the problems and identifying what steps they must take to fix them. When an agreement with the state or local government on how to fix the problems cannot be found, a lawsuit in federal court usually follows.

In addition to actions under CRIPA, the Section may use the Violent Crime Control and Law Enforcement Act of 1994. This law allows investigating whether youths' civil rights are being complied with in juvenile arrests, juvenile courts and juvenile probation systems, as well as in detention facilities.

A variety of issues, including physical and mental health care, protection from sexual abuse, equality of ethnicity, and fair court procedures have been dealt by SLS. For example, in Louisiana, a comprehensive agreement that addresses suicide prevention, how youth are disciplined, keeping youth safe from physical and sexual abuse and staff accountability has been obtained.

SLS collaborates intensively with other parts of the Justice Department and other federal agencies that regulate, fund, and provide technical assistance to state and local governments - the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, the Bureau of Prisons, the United States Department of Education, the United States Department of Health and Human Services, and the Prison Rape Elimination Working Group.

Ms. Kathi L. Grasso, *Director, Concentration of Federal Efforts Program, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice*










CHAPTER 5

Challenges to Juvenile Justice Administration

A shared vision about which goals juvenile justice should aim at reaching and for what reasons is not sufficient in realising an efficient JJ system. Ideas have to be translated into policies and procedures, which have to be implemented. *There is no point having agreement about what a system is trying to achieve, if that system does not have the necessary administrative structures and support systems to put the vision into practice.*[64]

For the Juvenile Justice Administration to function properly, a sufficient number of Courts/Boards, as well as institutions/centres of detention should be available. Also the number of people working in JJS has to be adequate to assure everybody the possibility of complying with the workload requirements without losing on quality standards.

In large and populous countries like India the necessity of increasing the facilities and the number of people working in the system seems quite obvious. In other countries, much smaller in size and with little numbers of juveniles in comparison, the problem is often overlooked. Furthermore, Juvenile Justice Administration should work extensively in the whole national territory, through mechanisms of decentralisation, making sure not to leave certain areas or regions uncovered, penalising children who live far from the metropolis and denying their right to physical access to justice.

Sri Lanka, for example, has only two child friendly courts, in Colombo. Majority of children exposed to these courts are in need of care and protection, while juveniles are often judged by adult courts. Some facilities are available in some provinces but not in others, and authorities are struggling to work with

64 Key Message from an Independent Inquiry into the ACT Youth Justice System, Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, Australia, p.5.

the three (Central, Western and Southern) provinces. It might practically happen that a shelter is provided in the Western province, while the court is in the Southern one and the juvenile belongs to the Central Province. The fact that juveniles are not kept at accessible distance from their residential place is a problem which emerged also in Bangladesh, where the NGO Bangladesh Legal Aid and Service Trust (BLAST) has underlined the need of increasing the number of homes and setting up a special juvenile justice institution in every district of the country. Similarly, in the state of Jammu and Kashmir in India, there are only two juvenile justice homes, so all the children in conflict with the law coming from different districts are brought there after days of travel. In Jammu and Kashmir (J&K) the JJ Act, 2000 is not valid and the old Indian law from 1986 is still the only basis for the administration of juvenile justice in J&K, resulting in evident lack of fulfillment of children's right in the state.

Effective JJ administration should assure that each case is handled without delay. The fast conduct of formal procedures is an imperative concern; otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult to relate the procedure and disposition to the offence.[65] Vigilance and dedicated attention is required by the judiciary and governmental functionaries to reduce pendency. Victims of juvenile offences need to know that justice will be speedy and fair. Children in conflict with the law and adult criminals who often use them, thinking juveniles can get away with offences easily because of long inquiries, need to get the message that effective justice is the hallmark of the juvenile justice system.[66]

Apart from the length of the judicial procedures, another common problem in different countries might be communication within various institutions involved in the administration of juvenile justice. Numerous ministries, agencies and departments are often involved in the JJS and their proper coordination proves paramount to the good functioning of the administrative machinery. Even ministries and departments which are not directly in charge of juvenile justice issues might be productively involved in certain discussions. For example, the International Juvenile Justice Observatory has been working extensively on mental health issues of children in detention centres, showing how the health and justice ministries can collaborate productively for the welfare of children. On the other hand, BLAST suggested that in Bangladesh, where the juvenile justice system is at its inception, the National Human Rights Committee could take up a specific mandate to focus on rights of children in detention.

There are countries in the world where, even though effective administrative structures for juvenile justice are in place in the law, this is not true and valid for the *whole* country in practice. In conflict zones, there is no justice for children and no attempt to deliver it. India is a sadly good example in this regard. In the subcontinent, 184 districts have been notified as armed conflict zones and left wing affected areas and in these regions there are no special homes and no observation homes. Similar critical features undermine the functioning of the JJ System in the Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa (KP) regions on the Pakistani border with Afghanistan. Terrorist activities, suicide bombing, drone strikes and military operations in terrorist locations have resulted in massive displacement of population and increase in the drugs and arms trade, which often involves children. FATA and KP are zones of transit of 90 percent of the opium produced in the whole world and young boys are active part of the smuggling circuit. All these teenagers are denied the protection of a juvenile justice system.[67]

None of the duties and improvements within juvenile justice administration can be fulfilled without appropriate budget allocations. Resources for the juvenile justice system have not only to be sufficient in terms of quantity, but they also have to be allocated in a detailed manner and for the whole process of rehabilitation of the juvenile. Funds are needed for the daily functioning of the JJS, to prevent children into coming in contact with the system in the first place and to avoid recidivism in all ways possible. For example, during the ICJJ debate, it has been underlined that in India there is no budget for the transport of the Probation Officer for the visits to the juvenile's family or school after he/she gets released.[68] Furthermore, a contribution from Australia has shown how without complete prevention, in-care and after-care programme, resources for implementing a holistic approach to juvenile justice, juvenile justice systems can

65 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Art. 20

66 Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children who commit serious offenses – Reflection on the Way Forward. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.

67 Dr. Parveen Azam Khan, Community Involvement in Rehabilitation of Children in Conflict with the Law. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

68 Justice Amar Saran, Significance of Probation Services in India – Theory and Reality, p.11. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.

even become harmful, counterproductive and more expensive. If rehabilitation is in fact not cheap, the alternative, i.e. more crimes and recidivism, is certainly not cheaper.[69]

Elimination of all forms of corruption at all levels of administration is imperative to assure that the efforts in terms of budget allocations show their results. Often building new homes or developing new infrastructure is preferred to the improvement of existing infrastructure or the focus on rehabilitation projects within the home, since they are opportunities for bribes. Corruption might pollute even the very bottom level, where inmates might be asked for money in return of little favours, such as access to mobile phone or unscheduled meeting with their parents, or even to sneak drugs into the centre for detention.[70] Performance measures that accurately quantify if juvenile justice administration is functioning properly need to be developed, and put in place.[71]

Gender focus needed: efforts of the JJ Administration in the U.S.

In 2004, the Office of Juvenile Justice and Delinquency Prevention (OJJPD) in the U.S. created the **Girls Study Group** to research on female juvenile offenders and identify strategies for preventing and reducing girls' involvement in delinquency. Nationally known researchers produced a summary of its findings in the publication "Girls Study Group--Charting the Way to Delinquency Prevention for Girls."

More recently, in 2010, to better meet the needs of at-risk and delinquent girls related administration, OJJDP established the **National Girls Institute** to offer training and technical assistance in programme development and evaluation, effective decision making, community collaborations, fundraising, and numerous other areas.

Both these initiatives based on research have helped to advance understanding of girls' delinquency and the risk and protective factors that are specific to girls.

The Institute's website (www.nationalgirlsinstitute.org) provides a wealth of resources for service providers, including tools for assessing the suitability of interventions for girls, as well as information about grant proposal writing, funding sources, gender-responsive curriculums, and training and technical assistance. The website also features a section for families that includes information about the juvenile justice system, crisis hotlines, and resources for learning more about promoting healthy lifestyles in youth through sex education, drug awareness, and structured social activities.

Ms. Kathi L. Grasso, *Director, Concentration of Federal Efforts Program, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice*

5.1 Right to be Heard and Legal Aid

International standards impose a fair trial by an independent jury as a paramount feature of justice. The Right to be heard is a fundamental part of the right to a fair trial under the criminal justice system. A person should be heard if any proposed action is likely to adversely affect him/her and the same person should be provided with an opportunity to put forth his/her views and preferences during the trial.

This is obviously true also for juveniles, whose right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child, promoting children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate. Obviously, juveniles are not happy of being forced to spend time in institutions; hence the possibility for them to speak out and express their views and preferences could make an actual difference in the way they look at trial and the sentence.

69 Key Message from an Independent Inquiry into the ACT Youth Justice System, Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, Australia, p.7.
70 Justice Amar Saran, Significance of Probation Services in India – Theory and Reality, p.11. Paper Contributed for the International Colloquium on Juvenile Justice, 16-18 March 2013, New Delhi.
71 Key Message from an Independent Inquiry into the ACT Youth Justice System, Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, Australia, p.5.

Right to a hearing and participation is to be enjoyed by the juvenile at all stages and levels of the judicial proceeding and all the stakeholders working within the juvenile justice system are the duty bearers of this right. Probation Officers, advocates, judges/magistrates, personnel in institutions, police, psychologists, etc. should respect and protect the right of the child to be heard. This means they not only have to let the child express opinions, but they also have to assure that no other stakeholder is violating this right, threatening the child directly or indirectly.

Furthermore, the right to be heard has to be fulfilled putting in place all the conditions for the child to speak out. In fact, the right to effective participation can surely not be enjoyed if the juvenile is not provided with relevant information in a manner that he/she understands. The child must know the case against him/her, understand features of the juvenile justice system and be aware of the possible alternative measures that may be imposed upon him/her. Information has to be available for the juvenile formally, through proper explanation of legal proceedings, and informally, creating spaces where the child can access them.

The U.S. Department of Justice established the **Access to Justice Initiative** (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. The initiative's staff works within the Department of Justice, across federal agencies, and with state, local and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.

Ms. Kathi L. Grasso, *Director, Concentration of Federal Efforts Program, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice*

It is important to engage the juvenile in discussions regarding his/her offence-related behaviour, throwing light on the circumstances that resulted in his/her offending and bringing about changes in such respect. The information gathered and the manner of its gathering should be in accordance with the domestic law and international human rights principles and should be used only for the advantage and interests of the juvenile.

Throughout the proceedings, the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.[72] Access to juvenile justice has to be assured, not only physically, but also without discrimination on a class basis. Hence there should be provisions for children belonging to economically weaker sections of the population to rely on free and qualitative legal aid in case they commit offences. Many governments partner with NGOs in this respect, but partnership is not always based on real financial commitment. In India, for example, many organisations which provide legal aid for juveniles do it almost free of cost, facing extreme difficulties in both expanding their outreach as well as maintaining their qualitative targets.

The parents of the child have to be entitled to participate in the proceedings, but they may be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.[73]

72 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Art. 15.1
73 Ibid

Guidelines for different stakeholders in the Indian Juvenile Justice System to respect, protect and fulfill a juvenile's Right to be heard and the Right to participation

What should the Police do?

- Inform the juvenile about reasons for his/her apprehension and his/her rights under juvenile legislation.
- Hear the juvenile about his/her claim of juvenility in case of doubt about his/her age.
- Seek information from the juvenile about his/her parent, guardian or any other person requiring to be told about the juvenile's apprehension.
- Do not ask the child to plead guilty.

What should the Juvenile Justice Board do?

- First production of juvenile;
- Subsequent production of juvenile;
- Probation Officer's Report;
- Bail hearing;
- Framing of charges & recording of juvenile's plea;
- Cross- examination of prosecution witnesses;
- Accused's statement;
- Lead evidence in his support;
- Arguments in support of juvenile;
- Imposition of alternative measures.

What should the Probation Officer do?

- Preparation of Probation Officer's Report;
- Referral to other experts for assessment or treatment;
- Regular meeting for rapport building;
- Follow-up of directions of JJB.

What should the lawyer do?

- Get information about the case against him/her, the implications & juvenile law;
- Instruct his/her lawyer about the legal case, social circumstances & developmental needs.
- Get information about progress of the case.

What should be done in Institutional Settings?

- Views of the juvenile have to be considered by management / staff in respect of day-to-day functioning;
- The management/staff should ensure participation in all activities to enhance the juvenile's overall development;
- Children's Committees have to be created to involve the child in the decision-making process.

Adv. Ms. Maharukh Adenwalla, *Mumbai, India*

5.2 Capacity Building

Human interaction is of key importance in the functioning of juvenile justice systems. All stakeholders who are directly in contact with the juvenile should focus on creating a good relation with the child, in conformity with their own roles in the system. Probation Officers, advocates, police officials, psychologists, personnel in institutions and even the judiciary have to gain the child's confidence and trust, doing their jobs properly and honestly.

The Beijing Rules state that professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional

training of personnel and to provide them with the necessary means to enable them to properly fulfill their functions. All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice.[74]

Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilised to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases. Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure fair representation of women and minorities in juvenile justice agencies.[75]

> Magistrates at the Juvenile Justice Board often feel that their position is somehow lower compared to magistrates working in the adult criminal system. In the Indian reality, many magistrates, at the beginning of their mandates, are very enthusiastic, but after some time they simply try to move on with cases as fast as possible to impress judges with the prompt wrap-up of their work.
>
> **Mrs. Minna Kabir,** *Child Rights Activist, Delhi*

Training Public Prosecutors in Juvenile Justice should be specific, since the role they perform differs from the adult criminal justice system, because they are required to adhere to the philosophy, procedures and fundamental principles of juvenile justice. The same is valid for the Probation Officers, who are meant to make the child understand his/her mistakes as well as to assess the reasons of his/her coming in conflict with the law.

Lawyers representing juveniles need to be competent, zealous and vigilant and also have the time and skill to work in close co-ordination with Probation Officers, counselors, social workers, psychologists, personnel in the institutions, families and others. All this calls for a high commitment from legal education.[76]

Capacity building of police men is a particularly important issue, since police officials are almost always the first point of contact with the law for young people. Very well prepared police officials in some countries bring in even the possibility of diversion by the police itself, avoiding not only legal proceedings but also problems and difficulties for the children and their families, and also cutting down administration cost.

Psychologists are a fundamental component of the juvenile justice system and their role is imperative to help the interaction of the child with all other stakeholders and to facilitate his/her cooperation with the system. The role of psychiatrists on the other hand might not always be necessary. Most juveniles are actually mentally healthy, so psychiatrists could be of better use in fields where they are endemically needed (child victims of sexual abuse, drug-addicts, children afflicted by trauma related to natural disasters or conflict, etc.). A strategic use of human resources has to be taken into account, especially in poor countries, where governmental expenditure might be limited.

Last but not the least, capacity building of the personnel working in institutions has to be taken care of by the juvenile justice administration. Unqualified and poorly remunerated staff in juvenile detention facilities seems to be the first reason for low quality standards, while lack of severe sanctions for using violence against children in detention reinforces abuse. *Staff should be recruited on the assumption that their primary role is one of engagement and support, not simply control – and certainly* never *punishment. If a youth detention centre is run like a prison it will not work.*[77]

For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required.[78] Topics for awareness and training of all stakeholders should include the contents of international conventions such as the Universal Declaration on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination Against Women, the Convention Against Torture and all the

74 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Art. 22.
75 Ibid.
76 Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children who commit serious offenses – Reflection on the Way Forward. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.
77 Key Message from an Independent Inquiry into the ACT Youth Justice System, Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, Australia, p.5.
78 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Art. 22.

national legislative provisions regarding juvenile justice.

If the goal of juvenile justice is to create a sensitive and result oriented juvenile justice system that 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.[79]

Additionally, it would be useful to remember that capacity building is not simply a top-bottom approach, especially in the juvenile justice system. The experiences of people who interact with children and who face the problems caused by loopholes in the JJ administration every day are the best source for policy makers or officials in high positions to improve strategies and intelligently allocate resources.

Disinterest in detailed planning and delays in implementation in India

In line with the attitude of giving least importance to child and juvenile welfare issues, and the cynical disdain with which these matters are treated, and the culture of zero work, policies are similarly framed and sought to be implemented in a nonchalant manner with no interest in details and with no concern about the critical problems which need to be addressed. Rule 68 calls for at least 3 posts of Probation Officer or Child Welfare Officer or Case Worker, 2 Counsellors, 4 House mothers or House fathers, 1 Doctor and 1 Paramedical in institutions with a capacity of 100 juveniles. These posts are never filled up, and no one cares. The one District Probation Officer in failing to monitor the problems of the institution and attending to the various personal and developmental needs of the inmate, then has a convenient alibi for his incapacity, that he has been overburdened with multiple duties under the JJ Act and now the ICPS scheme, in addition to release of adult prisoners on probation, work relating to women's protection and welfare, vetting of NGO proposals for government grants, following governmental, departmental and the DM's directions and sundry other jobs. This also gives him an opportunity to chose to perform the lucrative jobs where he interacts with more resourceful applicants, or where discretion is required to be exercised in someone's favour, or to perform duties which the DM or the Court is pushing for, in preference to the more mundane job of attending to the day to day present and future life and needs of the poor inmate in the home.

Significance of Probation Services in India – Theory and Reality
Hon'ble Mr. Justice Amar Saran, *Allahabad High Court, Uttar Pradesh*

Capacity Building efforts in Pakistan: Dost Welfare Foundation

Apart from all relevant international treaties, some of the topics dealing with the main issues of criminal justice in Pakistan are included in the capacity building trainings of police, probation/parole officials and prison staff carried on by DOST Foundation. Topics for training include:

- Lack of knowledge and adequate understanding of the existing laws of the country among the law enforcement agencies and the general population in Pakistan.
- Lack of training and adequate coordination between the personnel involved in the administration of criminal justice i.e. the police, prosecution, magistracy, courts, prison, probation and parole personnel and lawyers.
- Poor Investigation and prosecution, with delay in trial of criminal cases and in the conclusion of trials, delay in production of witnesses and accused persons, low conviction rate and lack of rehabilitation services for victims and their family members.
- The Frontier Crimes Regulation (FCR) in the FATA areas of Pakistan, which was recently amended, but has not been implemented. According to this law the whole tribe can be punished for the crime of an individual, under the principle of "collective responsibility". This draconian law has been amended but has not been implemented due to lack of awareness, disinterest and poor governance.

Dr. Parveen Azam Khan, *Director, DOST Welfare Foundation, Pakistan*

79 Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children who commit serious offenses – Reflection on the Way Forward. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi.

5.3 Data Collection and Management

Data collection has to be systematic and varied to be useful to the practical needs of the juvenile justice administration.

In countries like Sri Lanka or the Philippines, the small size of the country creates opposite problems to those faced in large and very populous countries. Data collection regarding juvenile justice system could actually be a much easier task, but the public opinion, and consequently the political class, targets the problem as minimal or limited, hence there is no proper collection of data and follow-up.

From the ICJJ debate, it emerged that one huge loophole in different countries' data collection systems is the lack of focus on recidivism. Data regarding what are the circumstances which bring children to re-commit crimes is few, even though obviously extremely useful. Many surveys show that when first offenders are rehabilitated properly, the chances they would re-offend decrease drastically, but little surveys inform on the results of certain rehabilitation projects on recidivists.

The U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) has developed high-tech solutions using the Internet to share information with the public. The **OJJDP Statistical Briefing Book** (SBB) enables users to access online information via OJJDP's web site to learn more about juvenile crime and victimisation and about youth involved in the juvenile justice system. SBB provides timely and reliable statistical answers to the most frequently asked questions by policymakers, media, and the general public. In addition, the data analysis and dissemination tools available through SBB give users quick and easy access to detailed statistics on a variety of juvenile justice topics.

Additionally, it has been proven that large numbers of children are detained in adult jails in many countries and nothing is done about it. During the Colloquium, it emerged that NGOs and associations working in the Philippines, Bangladesh and India have been finding children in centres of detention for adult criminals and trying to bring them out. In Bangladesh for example, UNICEF states that there are 205 children in adult jails and 98 of them are under 16 years old. In other countries, where laws regarding juvenile justice are quite new and/or administrations are weak, there might be plenty of such cases and surveys are imperative to find out the ground reality.

The lack of data collection is only a consequence of lack of political focus or investment of resources.

When researchers collect information on children's crimes, it is imperative that the research protocol includes explicit procedures to prevent breaches of confidentiality. This is critical when the researcher acquires information directly from the offender (i.e. primary data collection), and also when he/she uses previously collected data (secondary data) containing information that can be used, either alone or in combination with other information, to identify the child.[80] While it is important to fulfill the right standards which prohibit collection and disclosure of information on juvenile offenders, it is also important to assure that systematic data can be used to guide policies and interventions.

Obviously, all identifiable personal information – such as name, address, I.D. numbers, etc. – should not be collected or, if collected, must be taken out from the data file, making it unlikely to identify a particular boy or girl. However, *unidentified data* can, through a combination of information, be interpreted as referring to a specific person. For example, when reporting drug violations for certain racial groups in a school, if a probation officer has one boy on his caseload in a particular racial group at a certain grade level, then the identification would not be difficult. Hence, even unintentional disclosure of confidential information can constitute a potential threat to the rights and well being of juveniles.[81]

In the U.S.A., to overcome these problems, state agencies collect information about juvenile offenders with the assurance of confidentiality. Before distributing this information for research or statistical analysis, these agencies use an array of methods to ensure that the risk of disclosure is minimised. *Statistical disclosure limitation techniques* restrict the amount of information released to the public, but often the statistical methods that protect the confidentiality can make the data unsuitable for detailed statistical analysis. When additional information is needed, agencies consent to release more detailed data files only under highly controlled conditions. The imposed conditions can be on who can

80 http://www.ncjj.org/irb/Confidentiality.asp
81 Ibid

access the data, the purpose for which the data can be used, where the data can be used, how the data must be stored, and other features associated with access to the data files.[82]

Prayas Observation Home: a successful administration story

Prayas – Juvenile Aid Centre is the first ever integrated partnership project between police and social workers in India. The project brings together police officers who directly deal with juveniles who are victims of neglect and exploitation and practitioners from various fields such as social work, education, vocational training and health.

The Prayas Observation Home for Boys in Delhi for the past 15 years has proved a good example of partnership between government and civil society to ameliorate the overall juvenile justice administration. The institution is a short stay home for juveniles during pendency of their inquiry, managed by the NGO Prayas in collaboration with Delhi Police and the Department of Women and Child Development.

Prayas has developed a working system, which not only respects the rules of the Juvenile Justice Act, 2000, but also maximises the law's potential.

When the juveniles enter the home, they get introduced to other inmates and to the care-taker. They have a bath and they receive a proper meal, before their interaction with the probation officer. Then they get placed in the proper sadan, i.e. dormitory, on the basis of their age. There are eight dormitories and each one of them hosts 15-20 children.

A non-formal education system is carried on in Prayas Home, with flexible curricula, keeping in mind the high turn-over of children, who come and go from the institution quite quickly. Yoga is an integrative part of the curriculum. A large number of vocational training courses have been organised in the institution – Madhubani painting, candle, incense and chalk making, *mehndi* design, mobile cover and jute bag making, clay modeling and paper work, cutting, tailoring and embroidery. Regular health check-ups, counseling sessions and recreational activities, including sports, cultural programmes and outgoings, are all fundamental part of the daily life of the inmates of the Home.

The work of Prayas does not stop after the children get released. In fact, since May 2011, the NGO started the Yuva-Connect Project for after-care of juveniles. Under this programme, nearly one hundred children have been taken care of. The project is a joint venture of the Delhi Police, the Delhi Commission for the Protection of Child Rights and Prayas and its goal is to ensure safe and independent life, free from crime, through skill enhancement, income generation and social mainstreaming of the juveniles who leave the centres of detention.

Mr. Amod K. Kanth, *General Secretary, Prayas*

82 Ibid

Politics

www.chauthiduniya.com

CHAUTH DUNIYA

"The adult age in India has a "direct link to the Indian education system and with the social environment"

An International Perspective

Juvenile Justice

Activists have criticised India's juvenile laws for being too lenient. The maximum punishment under the law, even for offenses such as rape and murder, is three years' confinement in a reformatory. In comparison, the maximum punishment for minors in the U.K. and the U.S. is life imprisonment...

The new Lieutenant Governor of Delhi has, according to local media reports, called for reforms to India's juvenile justice laws to introduce tougher punishments for crimes such as rape and murder. Najeeb Jung's comments came after a teenager involved in the gang-rape and murder of a young woman on a bus in Delhilast year was sentenced to three years in a reformatory, the maximum punishment under India's Juvenile Justice Act. Mr. Jung, who oversees Delhi's police, city planning, development and education, was quoted by the Press Trust of India as saying that he was not happy with the sentence in the trial of the teenager who was 17 years old when he took part in the gang-rape of the female student, who died from her injuries.

"The age of the juvenile should be lowered. These days, young people grow up much faster," PTI quoted Mr. Jung as saying. Mr. Jung couldn't be reached for comment. In India, the criminal age of majority – the age at which a person can be tried as an adult – is 18. But the brutality of the rape in December, just months before the teenager involved turned 18, led to calls for the age limit for a juvenile to be lowered.

The Supreme Court has turned down eight petitions to this effect in recent months and is considering an application from Subramanian Swamy, a politician, who asked judges to amend the law so that mental and intellectual capability, rather than age, determines whether someone should be tried as an adult.

"People are saying the age limit should be brought down to 16. Even if the age of a juvenile is lowered to 14, there would be nothing wrong with that. There is need to review it," Mr. Jung reportedly said. A committee formed by the Government to recommend ways to improve laws to protect women advised against changing the upper age limit for juveniles in India.

Gopal Subramanium, one of the members of that committee, told India Real Time that juveniles may not always be completely responsible for their decisions. "If you were to follow the kind of schooling which you have in the Netherlands or in some of the Scandinavian democracies, then you could bring the age limit down to 16 or 14, because they are taught responsibility from a young age," Mr. Subramanium said.

He added that the adult age in India has a "direct link to the Indian education system and with the social environment."

The first special legislation for juveniles in India was enacted in 1850 with the Apprentice Act, requiring children aged 10 to 18 convicted in court to be given vocational training as a rehabilitation. The laws of young people went through a number of changes until the Juvenile Justice Act, 1986 defined juveniles as under 16 for boys and under 18 for girls. This was criticised by human rights groups because it put children who committed crime in jail alongside those who were neglected and in need of care.

In 2000, India replaced the Act with a more comprehensive piece of legislation under the Juvenile Justice Act. Doing so was part of its obligations under the Convention on the Rights of the Child, which it signed in 1992.

Other signatories, including the U.S. and the U.K., also fixed the upper age for minors at 18. But, unlike India, criminal law in both countries provides room for minors to be tried as adults. In the U.S., prosecutors can appeal to court requesting the case of a minor be moved from a juvenile court to an adult one, according to a report by the U.S. Department of Justice. Judges in a juvenile court also have the power to rule that a minor be tried as an adult. In cases where the offense is grave, such as rape or murder, [illegible] courts – where the lowest re[illegible]

Activists have also criticised India's juvenile laws for being too lenient. The maximum punishment under the law, even for offenses such as rape and murder, is three years' confinement in a reformatory. In comparison, the maximum punishment for minors in the U.K. and the U.S. is life imprisonment. Until 2005, minors could also be sentenced to death in the U.S.

According to Penal Reform International, a London - based non-governmental organization seeking changes to the prison system worldwide, research from the U.S.has suggested that transferring children to adult courts results in high rates of pretrial detention, harsher sentences, placement of children in adult facilities and overall increased rates of reoffending. In the Philippines, offenders up to the age of 21 are given more lenient custodial sentences. In Germany, those over 18 but under 21 can be transferred from adult to youth courts. In India, offenders can remain in youth reformatories after they have reached adulthood.

At the other end of the scale, the minimum age of criminal responsibility in India, the age at which children may be held criminally [illegible] crimes, is seven. This is on[illegible] worldwide. Accor[illegible] report on justice[illegible]dan, Lebanon, s[illegible] criminal respons[illegible] Pakistan, the mi[illegible] The Indian Penal [illegible] for children up t[illegible] considered incap[illegible] intent to comm[illegible] younger than th[illegible] responsible for t[illegible] a non-punitive, [illegible] tion oriented m[illegible] a Unicef report [illegible] That report [illegible] the lowest reg[illegible]

The Supreme Court in India has turned down eight petitions in recent months and is considering an application from Subramanian Swamy, a politician, who asked judges to amend the law so that mental and intellectual capability, rather than age, determines whether someone should be tried as an adult.

Juvenile Justice

SC CORRECTS A MISUNDERSTANDING AND SAYS...

There is a misconception that after 18, a juvenile found guilty of a heinous offence is allowed to go free. It was generally perceived that a juvenile was free to go, even if he had committed a heinous crime, when he ceased to be a juvenile

An amendment made in 2006 says that even if a juvenile turns 18 in a year of his crime, he will have to undergo 3 years in a heinous crime, which could spill beyond the period of one year when he attains [illegible]

IMPACT

The SC order makes it clear that if juvenile in Nirbhaya case is convicted for maximum term of 3 years, he will be in a special home till he is 21

SC Refuses to Lower Juvenile Age

OUR POLITICAL BUREAU
NEW DELHI

The Supreme Court has refused to lower the age bar for juveniles from 18 to 16 years, ruling that the involvement of a 17-year-old minor in a gang rape in Delhi last December was an aberration.

The gruesome assault that led to the death of the 23-year-old paramedical student had led to a public outcry that the bar should be lowered so as to [illegible] of the crime, [illegible] maximum three-year stay in a juvenile or special home.

"There is little doubt that the incident, which occurred on the night of 16th December, 2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, whose role is yet to be [illegible] volved, [illegible] parison [illegible] occurri[illegible] ration [illegible] preme [illegible] Wednes[illegible] itions. [illegible] the repo[illegible] reau, is true, then the number of crimes committed by juveniles comes to about 2% of the country's crime rate," the court said.

The three-member Supreme Court bench headed by the outgoing Chief Justice of India Altamas Kabir said [illegible] that the Juvenile [illegible]

Why apex court refused change in age of juvenility

RULING Supreme Court said juvenile act provides for rehabilitation of children in conflict with society; age of 18 fixed after consultation with child psychologists

Satya Prakash
satya.prakash@hindustantimes.com

NEW DELHI: "There is little doubt that the incident (gang rape) which occurred on the night of December 16, 2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, whose role is yet to be established, was involved. But such an incident, in comparison to the vast number of crimes occurring in India, makes it an aberration rather than the rule."

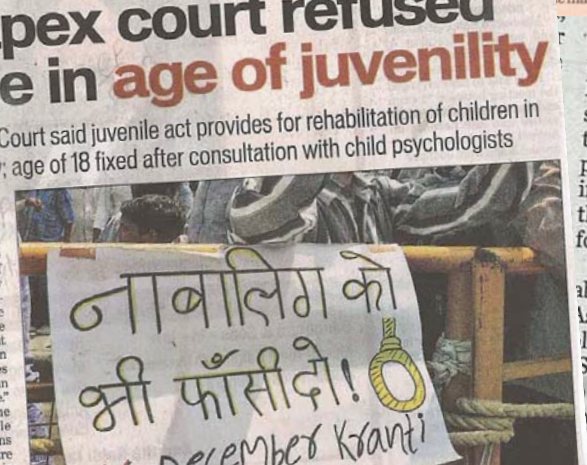
This is what the Supreme Court said on July 17 while rejecting a batch of petitions seeking a direction to the Centre to take steps to make changes in the law to ensure that juveniles be tried under normal law in heinous offences such as rape and murder.

"In recent years, there has been a spurt in criminal activities by adults, but not so by juveniles... In the absence of any proper data, it would not be wise on our part to deviate from the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which represent the collective wisdom of Parliament," a three-judge bench headed by then Chief Justice of India Altmas Kabir had said.

"If what has come out from the reports of the Crime Records Bureau is true, then the number of crimes committed by juveniles comes to about 2% of the country's crime rate," it had noted.

The bench had said the essence of the Act and the Rules framed under it in 2007, is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society.

THE SC BENCH SAID THE ESSENCE OF THE ACT IS REHABILITATION OF CHILDREN IN CONFLICT WITH LAW INTO MAINSTREAM SOCIETY



Thousands of p[illegible] December 16 g[illegible]

"The age of 1[illegible] on account of th[illegible] of experts in c[illegible] and behaviour[illegible] till such an a[illegible] in conflict wit[illegible] be redeemed [illegible] mainstream s[illegible] becoming har[illegible] in future," it h[illegible]

While adm[illegible] could be exc[illegible] child in the a[illegible] 18 may have d[illegible] propensities, [illegible] it virtually in[illegible] her to be rein[illegible] stream socie[illegible] "But such e[illegible] such propor[illegible] any change [illegible] is probably [illegible] integrate ch[illegible] propensitie[illegible] society, ra[illegible] them to do[illegible] criminals, [illegible] well for the[illegible]

But the[illegible] admitted [illegible] mer MP [illegible] seeking in[illegible] definition [illegible] the Juven[illegible]

Ministry proposes stricter punishment for juveniles

Bindu Shajan Perappadan

[illegible]ry has a provision for death penalty [illegible]les, but sentence is more than 3 years. [illegible] maximum punishment for a juvenile is [illegible]ars, irrespective of gravity of offence

[illegible]N THE US	IN FRANCE
[illegible] Special juvenile [illegible]ourts to deal [illegible]ith under-18	Anyone under 18 can only be tried by special courts

Juveniles involved in murder, rape may be tried as adults

Finally, Govt Mulls Graded Approach In Heinous Crimes

An official source said, "There is an increasing trend of offenders being arrested for crimes like gang rape and murder seeking lower punishments on the plea that they have not yet reached 18 years of age." The Nirbhaya case apart, Mumbai's Shakti Mills gang rape and a recent gang rape in Guwahati have stood out for the involvement of juveniles in the heinous crime.

Several developed countries, including the UK, US and France, adopt a graded response to heinous crimes by juveniles. Around 20 US states allow them to be tried as adults. In Florida, for instance, a 13-year-old was charged as an adult in 2012 for beating his half-brother to death and sexually abus[illegible] another aged five.

Balancing the juvenile act

Young offenders above a certain age who commit violent crimes should be prosecuted as adults

Aparna Viswanathan

On August 31, 2013, the Juvenile Justice Board (JJB) ordered that the boy who raped Nirbhaya, brutalised her with an iron rod, pulled out her intestines and then cleaned up the bus and made tea would go virtually free by sentencing him to only 28 months in a remand home as eight months of the total 36 months' sentence had already been served. This order is subject to review by the JJB based on the behaviour of the juvenile and the police are required to expunge this crime from his record in order to ensure complete rehabilitation. Despite the unprecedented street protests following the Nirbhaya rape, there has been little substantive debate on the adequacy of the Juvenile Justice Act to deal with such heinous crimes.

Underlying principle

The JJ Act was passed in 2000 with the purpose of incorporating into domestic law India's obligations under international law as a signatory of the U.N. Convention on the Rights of the [illegible]

assistance by government programmes. However, since the increase in violent crimes committed by juveniles in the 1990s, U.S. States have adopted a "get tough" approach in response.

In most U.S. States, the jurisdiction of juvenile courts is automatically waived when a juvenile above a certain age, usually 13 or 15, commits a violent or other serious crime, and the case is automatically transferred to adult court. A certification hearing takes place and an adult court prosecutor is required to convince the adult court that the case should be transferred. The juvenile is entitled to an attorney at the hearing and to present any evidence which mitigates against the transfer. For example, in Indiana, South Dakota and Vermont, children as young as 10 can be tried as adults. California's Proposition 21 which was passed in 2000 allows prosecutors to automatically try juveniles who commit felonies as adults. Under Michigan's Juvenile Waiver Law passed in 1997, juveniles can automa[illegible] as adults

have legal or other appropriate assistance in the preparation of his defence, to have the matter determined without delay by a competent and impartial authority or judicial body, not to be compelled to confess guilty, and to examine witnesses. Moreover, the state can establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Therefore, in accordance with the U.N. Convention, the JJ Act could have established an age limit, such as 14 or 16, below which a person could not be deemed to have the capacity to commit an offence. In short, the U.N. Convention does not prohibit prosecuting a child under 18 who has committed an offence under the regular penal laws.

Beijing Rules

Rule 17 of the Beijing Rules, in turn, provides that the reaction shall be in proportion to the circ[illegible] of the offenders and the needs of society may be disproportionate to the violence of the victims in [illegible]. Unlike the Beijing Rules do not [illegible]tend, the JJB is unable to [illegible] There[illegible]gestions JJ Act age of [illegible]opting [illegible]ould be [illegible] JJB [illegible]ntence

Juveniles involved in murder, rape may be tried as adults

Finally, Govt Mulls Graded Approach In Heinous Crimes

Himanshi Dhawan | TNN

New Delhi: After doggedly turning down arguments for a graded response to crimes [illegible]venile[illegible], depending on [illegible]ravity of their crime and [illegible]venile's age, the governm[illegible] it is finally coming [illegible]d to the view juveniles [illegible]

NO KID GLOVES No country has a provision for death penalty to juveniles, but sentence is more than 3 years. In India, maximum punishment for a juvenile is three years, irrespective of gravity of offence

IN THE UK	IN THE US	IN FRANCE
Anybody who has attained the age of 17 is an adult. Separate 'youth court' without a [illegible] for those under 18	Special juvenile courts to deal with under-18 delinquents Around 20 states [illegible] them to be	Anyone under 18 can only be tried by special courts A separate Juvenile Assize court tries minors [illegible] 18 years

Tougher penalty for heinous crimes by juveniles? SC agrees to examine

Govt To Consider Reducing Age Limit To 16

Dhananjay Mahapatra | TNN

New Delhi: The demand for lowering the age of juveniles or to have a graded approach to crimes by juveniles received an impetus on Monday when the Supreme Court agreed to examine whether juveniles should be allowed to escape stringent punishment even when they are convicted of heinous offences like rape and murder.

The day also saw the government promising to examine the definition of a juvenile and what should be deemed to be the cut-off age in the event of heinous crimes. The twin developments accelerated the debate which has raged in the wake of Nirbhaya's rape and murder.

Taking cognizance of the outrage over the likelihood of Nirbhaya's most brutal tormentor getting away with a light punishment because of being a juvenile, a bench of Justices K S Radhakrishnan and Dipak Misra issued notice to the Centre and said it would examine "the correlation between grave offences on the one side and age of the juvenile on the other" and "whether there is a need to revisit the age limit for juvenile".

The development in the SC coincided with a promise from the government that it would look into the demand for lowering the age cut-off for juveniles under the law. The assurance came from senior minister P Chidambaram, although he acknowledged that a consensus would have to be reached first.

HOW OTHERS DEAL WITH JUVENILES

FRANCE
Up to 10 yrs age: No criminal charges. **10 to 13:** Educational penalties such as placing in a home or specialized centre. **13-16:** Minors will get only half the adult sentence. **16-18:** Can be remanded and **plea of juvenility can be set aside**

UNITED KINGDOM
In England and Wales, those below 10 yrs can't be charged with crime. **10-18:** Juveniles tried in youth court without jury. For serious crimes, like murder or rape, **case starts in youth court but will be passed to adults court**

UNITED STATES
Juveniles can be **tried as adults** in criminal court by being 'transferred' to adult court from juvenile justice system. The age at which this can be done differs from state to state. Once transferred to adult court, juvenile defendants lose status as minor

AUSTRALIA
Up to 10 yrs, no criminal charges. **10-12: Can be criminally prosecuted** if proved that the child understood that what he's done was wrong. In most states, age of juveniles **17 years.** In Queensland, it's **16 years**

A protest in Delhi on Monday against the anti-rape ordinance

"The Juvenile Justice Act is a separate law. Whether the age should be reduced, whether it should be reduced for certain kinds of offences, what you call heinous offences, is a matter that has to be considered very carefully and within the permissible limits of the Constitution," he said, adding that the government would approach Parliament on the issue, if necessary.

Repeat rapists to face capital punishment

Vishwa Mohan & Himanshi Dhawan | TNN

New Delhi: Death penalty will not just be restricted to rapists in cases where the victim dies or is pushed into a persistent vegetative state, but will also be awarded to those who "repeat" the offence of aggravated sexual assault.

The provisions of the ordinance on sexual assault laws, made public by the government on Monday, put repeat offence of rape in the "rarest of rare category", which will attract maximum punishment of death penalty.

The government also indi[illegible]

▶ 'Key suggestions taken', P 14

cated on Monday that it had an open mind on contentious issues such as whether marital rape should be treated as an offence. It defended the decision to bring in the ordinance by asserting that it would deter potential rapists during the period Parliament enacts the new law.

▶ 'Does juvenile act violate rights?' P 14


The 18-year-old who was convicted in the December '12 gang-rape case was lodged at the Place of Safety juvenile home in Majnu ka Tila.

WHERE GOVT HAS FAILED

1. The Observation Home for Boys, the Special Home and the Place of Safety are all located at the same complex in Majnu ka Tila. This is in clear violation of the Juvenile Justice Act that mandates segregation of juvenile delinquents on the basis of age and nature of crime.
2. Though housed within the same complex, the three buildings are separated just by "walls and iron gates". During the August 8 incident, inmates from the three buildings managed to breach the security arrangements and gathered on the terrace and front ground creating ruckus.
3. CCTVs installed across the complex are non-functional. However the government justified it by saying that some juveniles damaged its wiring and damaged cameras making them dysfunctional.
4. The Delhi government claims it has engaged two NGOs — Manav Sadhna and Muskurahta Educational Society — for providing mental health care and vocational training to inmates. The petitioners, however, said the facilities are just eyewash.
5. The government has submitted that the food served at the juvenile homes is nutritious and checked by officials on regular basis. However, the inmates constantly complain of poor food quality, which also led to the August 8 violence.
6. The Department of Women & Child Development has been directed to meet with inmates to understand what led to the August 8 violence. However, it's been over a month but the government hasn't arrived to any conclusion.


A group of inmates at the juvenile home in Majnu ka Tila on August 8 went on the rampage, clashing with private security staff in protest against poor food.

By Ayesha Arvind in New Delhi

Delhi juvenile homes fail in reform mission

REPEATED calls from social activists for improving the abysmal condition of observation homes in the national capital seem to have fallen on deaf ears of the Delhi government.

While seeking a response from the city government on the violence of August 8 at the observation home in Majnu ka Tila, the Delhi High Court had observed on August 21 that "prima facie" it appeared that these facilities might be in violation of the Juvenile Justice (Care and Protection of Children) Act, 2000. The High Court had also slammed the state for housing children at observation homes as per the Act and ordered the Juvenile Justice Board to ensure the same.

In its affidavit submitted on September 11, the Delhi government admitted that the 200-bed facility with a housing capacity of 50 inmates — the sole observation home which can accommodate 10 inmates and the Place of Safety having a housing capacity of 10 inmates — are all located in the same premises in Majnu ka Tila. The affidavit, filed by the Juvenile Justice Cell, which mandates segregation of inmates on the basis of age and nature of offences committed by them.

Further, the government has stated that the inmates, though housed in the same complex, are segregated by "raised walls and iron grills". But

Conclusion

A variety of experiences were shared during the International Colloquium on Juvenile Justice (ICJJ) highlighting the need for respecting international standards in juvenile justice administration.

The Colloquium agreed to maintain the age of juvenility at 18 years, while working towards raising the minimum age of criminal responsibility. The debate stated the importance of considering a child as an individual, with his/her own will and faculties, even though not fully developed. The participants reiterated the need to focus on the offender and not the offence while dealing with crimes by children. There was a unanimous agreement on the fact that appropriate responses to certain crimes are imperative, but they have to be taken within a restorative juvenile justice system.

The participants underlined that pitching rights of victims against juvenile justice will not help either the victim or the offender. Both need to be treated according to the Rule of law. The sense of justice of the victim is as important as the treatment of a young offender.

Children in conflict with the law are not just offenders. Most often they are children in need of care and protection. All of them need support and planned attention. The responsibility to provide opportunities for reform, allowing children in conflict with the law to be an integral and active part of society, falls on different stakeholders, starting from governments extending to the civil society, including the private sector and the media. Every actor has an important role in building these opportunities and nurturing young people in the right direction as well as in shaping public opinion.

In the next ten-twenty years, it is these children who will be the adult population of many countries; and if today these children are not taken in hand, if these children are not provided for, they are going to be the mass of the citizens of tomorrow, without the requisite qualifications for being good citizens. Today, there are children who have taken to crime. Why is it? Is it because they want to take to crime? Possibly not. Or is it because of the situation that they are in? Certainly yes.

We are today concerned with the Juvenile Justice System, what it is meant to be and what we intend it to be. We want it to be restorative, rehabilitative and not a system which tries to punish; not Retributive Justice.

Hon'ble Mr. Justice Altamas Kabir, *Former Chief Justice of India*

Programme

Day 1: 16 March 2013

Venue: Multipurpose Hall, India International Centre, Lodhi Estate, New Delhi, 110003

INAUGURAL SESSION

Time	
1830 – 2000 hrs	**Welcome Address** Ms. Enakshi Ganguly Thukral *HAQ: Centre for Child Rights*
	Screening of a Short Film on Juvenile Justice
	Introduction to the Colloquium
	Guest of Honour and Chair Hon'ble Mr. Justice Madan B. Lokur, Supreme Court of India
	Speakers Prof. (Dr.) Ranbir Singh *Vice Chancellor, National Law University - Delhi* Mr. Louis-Georges Arsenault *Country Representative, UNICEF - India* Mr. Nikhil Roy *Penal Reform International (PRI)* Mr. Dola Mohapatra *National Director, ChildFund India* Mr. Thomas Chandy *CEO, Save the Children - India*
	CHIEF GUEST AND KEY NOTE ADDRESS Hon'ble Mr. Justice Altamas Kabir, Chief Justice of India
	Vote of thanks Ms. Bharti Ali *HAQ: Centre for Child Rights*
2000 – 2130 hrs	DINNER

Day 2: 17 March 2013

VENUE: Seminar Hall 506 (5th Floor), National Law University, Sector 14, Dwarka, New Delhi- 110078

SESSION I JUSTICE FOR CHILDREN – INTERNATIONAL STANDARDS

Time	Chair Mr. Cedric Foussard *International Juvenile Justice Observatory (IJJO)*
	Topics and Speakers:
0930 – 1045 hrs	**JUSTICE FOR CHILDREN – THE CONCEPTUAL FRAMEWORK** Mr. Aniruddha Kulkarni *UNICEF India, New Delhi*
	INTERNATIONAL STANDARDS FOR JUVENILE JUSTICE Mr. Nikhil Roy *Penal Reform International (PRI)*
	AGE OF CRIMINAL RESPONSIBILITY Dr. Ann Skelton *Centre for Child Law, University of Pretoria*
	REDUCING VULNERABILITIES TO PREVENT JUVENILE OFFENCES Dr. Asha Bajpai *Tata Institute of Social Sciences (TISS)*
1045 – 1100 hrs	COFFEE/TEA

SESSION II ADMINISTRATION OF JUVENILE JUSTICE: REGIONAL AND NATIONAL CHALLENGES

Time	Chair Prof. BB Pande *National Law University - Delhi*
	Speakers
1100 – 1300 hrs	Dr. Mohammed Elewa Badar *Brunel Law School, Brunel University, London* Dr. Clement Mashamba *National Organisation for Legal Assistance (NOLA), Tanzania, Africa* Dr. Kimberly D Ambrose *University of Washington School of Law, USA* Ms. Kathi L Grasso, JD *Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice* Dr. Samya Charika Marasinghe *Human Rights and Child Rights Law Consultant, Sri Lanka* Mr. Alasdair Roy *Children & Young People Commissioner, ACT Human Rights Commission, Australia* Mr. Suhas Chakma *Asian Centre for Human Rights (ACHR), India* Dr. Yubaraj Sangroula *Kathmandu School of Law, Nepal* Ms. Rowena Legaspi-Medina *Children's Legal Rights, Philippines* Mr. SM Rezaul Karim *Bangladesh Legal Aid Services Trust (BLAST), Bangladesh*
1300 – 1400 hrs	LUNCH

SESSION III DIVERSION AND RESTORATIVE JUSTICE

Time	Chair Hon'ble Mr. Justice Madan B. Lokur *Supreme Court of India*
	Topics and Speakers:
1400 – 1545 hrs	**UNDERSTANDING DIVERSION AND RESTORATIVE JUSTICE: SETTING THE CONTEXT** Prof. Jaap E Doek *Former Chairperson, UN Committee on the Rights of the Child* **SIGNIFICANCE OF PROBATION SERVICES** Hon'ble Mr. Justice Amar Saran, *Allahabad High Court* **PLEA BARGAINING VS. TRIAL AND CHILDREN'S RIGHT TO BE HEARD** Prof. Aparna Chandra, *National Law University-Delhi* & Advocate Maharukh Adenwalla, *Mumbai* **ALTERNATIVES TO DETENTION: PRE-TRIAL, DURING TRIAL AND POST-TRIAL** Dr. Ved Kumari, *Faculty of Law, Delhi University* **ROLE OF POLICE IN THE JUVENILE JUSTICE SYSTEM** Ms. Suman Nalwa, *Special Police Unit for Women and Children, Delhi* & Mr. Nikhil Roy, *Penal Reform International (PRI)*
1545 – 1600 hrs	COFFEE/TEA

SESSION IV CENTRES FOR DETENTION – CONCERNS AND CHALLENGES

Time	Chair Dr. Rani D. Shankardass *Penal Reform and Justice Association (PRAJA) and Penal Reform International (PRI)*
	Topics and Speakers:
1600 – 1730 hrs	**ENSURING TRANSPARENCY AND ACCOUNTABILITY IN THE MANAGEMENT AND FUNCTIONING OF DETENTION FACILITIES / INSTITUTIONS** Hon'ble Mr. Justice S Ravindra Bhat, *High Court of Delhi* & Prof. Srikrishna Deva Rao, *National Law University -Delhi* **REDUCING VIOLENCE IN CENTRES OF DETENTION** Ms. Frances Sheahan *Penal Reform International (PRI)* **COMPLAINTS, REDRESS MECHANISMS AND LEGAL AID** Ms. Minna Kabir, *Child Rights Activist, Delhi* **STANDARDS OF CARE AND PROTECTION IN DETENTION FACILITIES / INSTITUTIONS** Ms. Atiya Bose, *Aangan Trust, Mumbai* & Mr. Amod Kanth, *Prayas, Delhi*

Day 3: 18 March 2013

VENUE: Seminar Hall 506 (5th Floor), National Law University, Sector 14, Dwarka, New Delhi- 110078

SESSION V REHABILITATION AND RESTORATION OF CHILDREN IN CONFLICT WITH THE LAW AND AFTER CARE

Time	**Chair** Prof. Jaap E Doek *Former Chairperson, UN Committee on the Rights of the Child*
	Topics and Speakers:
0930 – 1045 hrs	**APPROPRIATE RESPONSES TO SERIOUS OFFENDING** Ms. Arlene Manoharan, *Centre for Child and the Law, NLSUI Bangalore* & Mr. Nikhil Roy, *Penal Reform International (PRI)* **REHABILITATION SUPPORT INTERVENTIONS** Fr. Anthony Sebastian, *ECHO, Bangalore* & Dr. Rajesh Kumar, *Sahyog De-addiction Centre, SPYM, Delhi* **ROLE OF COMMUNITY** Dr. Parveen Azam Khan, *DOST Welfare Foundation, Pakistan*
1045 – 1100 hrs	COFFEE/TEA

List of Participants

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