



PROPOSED JUVENILE JUSTICE BILL – A MISGUIDED MISSILE

* Bharti Ali, December 2014

“If children are created in the image of God, then... *My God is a Juvenile Delinquent!*”, wrote Ruzbeh N. Bharucha in the year 2008 in his book titled ‘My God is Juvenile Delinquent’. Not much has changed since. In fact, if anything, we have the government expressing the inability of the present juvenile justice system to deal with children committing heinous offences as the reason for changing the law and subjecting them to the adult criminal justice processes.

Historically, media has played an important role in building public opinion against the juvenile justice system everywhere in the world on the basis of a couple of gruesome instances involving juveniles and quoting statistics, often devoid of a contextual basis in which juvenile crimes need to be understood and analysed. For England it was the James Bulger case and in India it has been the ‘Nirbhaya’ gang rape in Delhi in December 2012.

Every now and then, the newspapers get back into action to build an emotionally charged up public opinion against the present juvenile justice law and in favour of treating juveniles committing heinous offences as adults. Indeed statistics and percentage increase in crimes by juveniles, especially those relating to women have been the bait. As a result, while the 300% increase in rapes by juveniles in the last ten years becomes the headline in a national daily, none talk about how much WE as a NATION have invested in juvenile justice in the last ten years. None write to inform public about what the governments are required to do for establishing an effective juvenile justice system and specially for juvenile crime prevention.

The white paper of the European Council for Juvenile Justice on improving youth justice systems during a time of economic crisis¹ (IJJO, July 2013) also takes the view that public and governmental fear of youth crime continues to influence policy regardless of crime levels. It recognizes that in their reporting of crime, the media exacerbate a fear of youth crime and thus, instead of instigating innovative and positive changes in youth justice policy, governments cling to punishment over progress.

The commentary to the Council of Europe recommendation concerning new ways of dealing with juvenile delinquency states:

“Public attitude surveys consistently tend to underestimate the extent to which custody is used (particularly relative to adults), overestimate the involvement of juveniles in crime and perceive youth crime as perpetually increasing, even when it is not... Research shows that there is a close relationship between punitive public attitudes and the use

* Bharti Ali is Co-Director, HAQ: Centre for Child Rights, a Delhi based NGO working towards recognition, protection and promotion of child rights in India and improved governance for children.

¹ International Juvenile Justice Observatory (IJJO), Save Money, Protect Society and Realise Youth Potential, Improving Youth Justice Systems During a Time of Economic Crisis, The European Council For Juvenile Justice White Paper, July 2013. Available at: http://www.oijj.org/sites/default/files/white_paper_publication.pdf

*of custodial sanctions for young offenders across different countries. Countries where public attitudes are punitive tend to have the highest youth custody rates and vice versa... The media are the filter through which the public learn most of what they know about young offenders, but research shows that when members of the public are given more detailed and specific information about the causes of crime, the circumstances of young offenders and their offences, they tend to be less punitive. So since public attitudes constitute a serious obstacle to reducing the excessive use of custody, it is important to widely publicise and disseminate objective knowledge about the realities of juvenile crime and justice. The public needs to know some of the key facts about youth crime; for example that it is fairly common and mostly petty, that most young people grow out of it and that there are alternatives to prosecution and custody which, on balance, are more cost-effective. And it may help to counteract the largely negative coverage of youth crime if some of the successful stories were also given publicity”.*²

INTERNATIONAL LAW IS BINDING, BUT WHO CARES!

That the proposed Juvenile Justice Bill, 2012 allowing transfer of some children in conflict with law to the adult criminal justice system as well as long periods of detention is a violation of both the Constitution of India and the international standards has been repeated time and again by defenders of juvenile justice in India. Indeed in such charged up times, when juvenile crimes are being portrayed as a serious threat to public safety, a selective reading of the Constitution as well as the international law becomes a natural and expected outcome.

- Article 37 (c) of the UN Convention on Rights of the Child (CRC) says – ‘Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, **every child deprived of liberty shall be separated from adults** unless it is considered in the child’s best interest not to do so...’
- General Comment No. 10, issued by the UN Committee on the Rights of the Child in 2007, titled ‘Children’s rights on juvenile justice’ recommends the **applicability of juvenile justice system “for all children who, at the time of commission of an offence [or act punishable under the criminal law], have not yet reached the age of 18 years”**(Para 36). It further recommends that **those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 [or lower] years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years**. The Committee notes with appreciation that some States Parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception” (Para 38).
- Article 3 (1) of the CRC says, – ‘**In all actions concerning children**, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration**’.
- General Comment No. 14 issued by the UN Committee on the Rights of the Child on the Principle of Best Interest of the Child underlines that “**protecting the child’s best interests means that the traditional**

² Commentary on the Council of Europe Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders (Para 28)". It further states that "the child's best interests shall be applied to all matters concerning the child or children, and taken into account to resolve any possible conflicts among the rights enshrined in the Convention or other human rights treaties. Attention must be placed on identifying possible solutions which are in the child's best interests" (Para 33) "If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best" (Para 39).

- Article 10(3) of the International Covenant on Civil and Political Rights states – ‘... **Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.**’
- Resolution No. 4 in the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders states that **pre-trial detention of juveniles must be a last resort and no minor should be detained in a facility where they are susceptible to the negative influences of adult offenders.**

In drafting the proposed Juvenile Justice Bill, 2012, not only did we forget the international standards set out above, but also forgot the Concluding Observations made on India, which have at different points of time made recommendations on not treating juveniles as adults and providing adequate resources and infrastructure for implementation of the juvenile justice law.

Concluding Observations of the CRC Committee on India – 2000, 2004 and 2013

Ensure that persons under 18 years are not tried as adults and that boys under 18 years are covered by the definition of juvenile, as girls already are. (CRC/C/15/Add.115/para 79, 81 and CRC/C/15/Add.228/para 78, 79, 80 (g), 81).

Establish the executing state mechanisms necessary and provide adequate resources and infrastructure to implement the JJ Act. (CRC/C/15/Add.115/para 79, 80 and CRC/C/15/Add.228/para 79, 80 (d)).

Take all necessary measures to address those recommendations included in the concluding observations of the second periodic report under the Convention that have not been implemented or insufficiently implemented, particularly those related to non-discrimination,... administration of juvenile justice. (CRC/C/IND/CO/3-4/para 8).

Criticism from the CRC monitoring committee regarding implementation of international standards on juvenile justice cannot be taken lightly. As the white paper of the European Council for Juvenile Justice (created by the International Juvenile Justice Observatory (IJJO) in 2009) observes, these standards "come from internationally respected organs and bodies of the UN and the Council of Europe, agreed on by a community of meaningful and significant state representatives and that these regulations are an expression of the behavior which the respective Member States expect from each other".³

³ Pruin, I. (2011). The evaluation of the implementation of international standards in European juvenile justice systems (European Council on Juvenile Justice, Administration Section), IJJO.

INVESTING IN JUVENILE JUSTICE - WHY, WHAT, WHEN, WHERE AND HOW?

Instead of investing in juvenile justice adequately, countries tend to believe that incarceration will achieve the objective of deterrence necessary to achieve the goal of public safety. But there is little evidence to support this contention. The Council of Europe noted in 2003 that “popular responses to youth crime in Europe are repressive. In times of economic crisis, this has the potential to become even more marked, as there is increased instability and insecurity”.⁴

Internationally there has been growing recognition of the need for investing in preventing juvenile delinquency, reviewing spending on youth criminal justice systems, and targeting resources away from detention and towards policies of prevention and diversion.

The questions that have guided this thinking are⁵...

- Is there a clear vision of the outcomes that need to be achieved for children and society? Without a clear picture in mind of what we want to accomplish, youth justice policies are vulnerable to emotion and knee jerk reactions that end up having a negative impact.
- Do we have data understand what the current system looks like in practice, and to understand the baseline point from which we need to move forward? How else do we measure the improvements to be made for the children, the level of security felt by the population and the level of youth crime? And how else do we establish where we want to concentrate our resources?
- Ensuring value for money is key for any modern justice system. Therefore, have countries been able to test their services in order to ensure that they are delivering value for money to the public?

⁴ The Council of Europe Commentary on Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

⁵ International Juvenile Justice Observatory (IJJO), Save Money, Protect Society and Realise Youth Potential, Improving Youth Justice Systems During a Time of Economic Crisis, The European Council For Juvenile Justice White Paper, July 2013. Available at: http://www.oijj.org/sites/default/files/white_paper_publication.pdf

IMPORTANCE OF INVESTING IN JUVENILE JUSTICE
Excerpts from General Comment 10 - Children's Rights in Juvenile Justice
Committee on The Rights of the Child, Forty-fourth Session, Geneva,
15 January-2 February 2007

*"In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to **establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system**. As stated in article 40 (3) of CRC, States parties shall seek to promote the **establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law**.*

*A comprehensive juvenile justice system further requires the **establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child**.*

*The Committee recommends that the States parties **establish juvenile courts either as separate units or as part of existing regional/district courts**. Where that is not immediately feasible for practical reasons, the States parties should ensure the **appointment of specialized judges or magistrates for dealing with cases of juvenile justice**.*

*In addition, **specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders**. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner."*

Excerpts from the white paper of the European Council for Juvenile Justice⁶...

"In the USA the annual average cost per year of a detention bed – depending on geography and cost of living – could range from \$32,000 (\$87 per day) to as high as \$65,000 a year (\$178 per day), with some big cities paying far more.

In England and Wales, youth offending institutions cost £65,000 per child per year, secure training centres cost £178,000 per child per year and secure children's homes cost £212,000 per child per year
In the UK it can cost as much as £212,000 per child per year to keep them in custody⁷.

The number of children in pre-trial detention and other forms of detention in Europe is excessive. Not only is detention harmful to children, it does not prevent reoffending and is the most expensive way of dealing with children in conflict with the law. Children who enter the prison system are more likely to be damaged in the short term through the trauma of the experience, and in the long term will find it more difficult to return to school or obtain employment or vocational training, and are therefore more likely to be a burden on the economy and society at large, rather than being able to contribute to its advancement and healing in times of economic crisis.⁸

Concentrating resources on prevention yields considerable long lasting savings to society in terms of reduced welfare, criminal justice expenditure and higher tax revenues.

⁶ Ibid.

⁷ Ministry of Justice (2013). Green Paper: Transforming youth custody Putting education at the heart of detention. HM Government.

⁸ Holman, B. & Zeidenbuerg, J. (2006). The Dangers of detention: The impact of incarcerating youth in detention and other secure facilities. Justice Policy Institute.

Research suggests that it is better to rehabilitate a child in the community than in detention. Community sanctions have been proven to work even on serious and violent offenders, reducing recidivism by as much as 50%.⁹

In Toronto, Canada, PACT (Participation, Acknowledgement, Commitment and Transformation), a Life Plan Coaching Programme, was developed and designed to specifically address the needs of a small group of habitual young offenders between the ages of 12 and 18 years who were ultimately responsible for the majority of youth crime committed in communities, and by extension made up the majority of the charges before youth courts. The programme has found that for an investment of \$5,000 (Canadian) for turning around the life of one habitual offender it can save society \$2 million (Canadian) over the course of the offender's lifetime.

Evidence from Estonia and Romania clearly suggest that probation is far more cost-effective than imprisonment. In Estonia, the cost of probation supervision is €30 per month, while the cost of a prisoner is about €300 per month. In Romania, the cost for one probation client is estimated at €143 per year, while the average cost of one prisoner is € 1,685 per year, meaning that probation is at least ten times cheaper than prison.

In the USA, Washington State Institute for Public Policy (WSIPP), an institute created by the Washington State legislature, conducts research to identify evidence-based programmes that reduce crime and generate significant returns on investment. This information is generated for the state's legislators and public agency leaders so they are able to make informed decisions about the allocation of limited resources. WSIPP found that:

- For every dollar spent on county juvenile detention systems, \$1.98 of 'benefits' in terms of reduced crime and costs of crime to taxpayers was achieved.
- Juvenile boot camps and 'scared straight' programmes cost more money and were not preventative. The 'scared straight' programmes had an estimated net cost of \$51 per participant, but as a result of higher recidivism among participants, they yielded an estimated loss of – \$24,531 because of increased criminal justice and victim costs. Similarly, child boot camps, which had an estimated net cost of \$15,424, yielded an estimated loss of –\$3,587.
- Aggression replacement training (ART), which was estimated to have a net cost of \$738 per participant, yielded benefits to taxpayers of approximately \$33,143. With a benefit-cost ratio of \$44.91, this meant every dollar invested in aggression replacement training was estimated to yield almost \$45 in total benefits.
- Multi-systemic therapy (MST), which was estimated to have a net cost of \$4,743 per participant, saved \$131,918 in criminal justice costs and reduced victim costs. With a benefit-cost ratio of \$27.81, this means that every dollar invested in multi-systemic therapy is estimated to yield almost \$28 in total benefits.
- Functional family therapy (FFT), which was estimated to have a net cost of \$2,161 per participant, yielded benefits of \$59,067 per participant, meaning every dollar invested in FFT was estimated to yield approximately \$27 in total benefits.
- Multidimensional treatment foster care (MTFC), which was estimated to have a net cost of \$2,052 per participant, yielded benefits of \$87,622, meaning that every dollar invested in multidimensional treatment foster care is estimated to yield almost \$43 in total benefits.

⁹ Sexton, T.L. & Alexander, J.F. (2000). Functional family therapy. DC.

In the minority of cases, because of law, the best interest of the child or for public safety, deprivation of liberty may be necessary. However, in these cases its administration should always follow international standards, respecting the well-being of the child, and with rehabilitation and reintegration as the founding principles. It is clear that it is better to rehabilitate a child in the community than in detention. Indeed, European and UN guidelines agree that community sentences are more beneficial than detention to young people. They recommend that a large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible”.¹⁰

REALITY BYTES – HAS INDIA INVESTED IN JUVENILE JUSTICE ADEQUATELY ENOUGH TO SAY THAT IT DOESN'T WORK AND HENCE THE LAW MUCH CHANGE?

Although there is a charged up atmosphere today vehemently seeking some regressive changes in the juvenile justice law, we must ask whether India was doing enough to ensure an effective juvenile justice system and implementation of its constitutional commitments and international standards in this regard.

Up a blind alley, the demand for changing the juvenile justice law comes at a time when in the last ten years the average expenditure of Union of India on child protection in totality has been under 3 paise out of every 100 Rupees spent by the government.

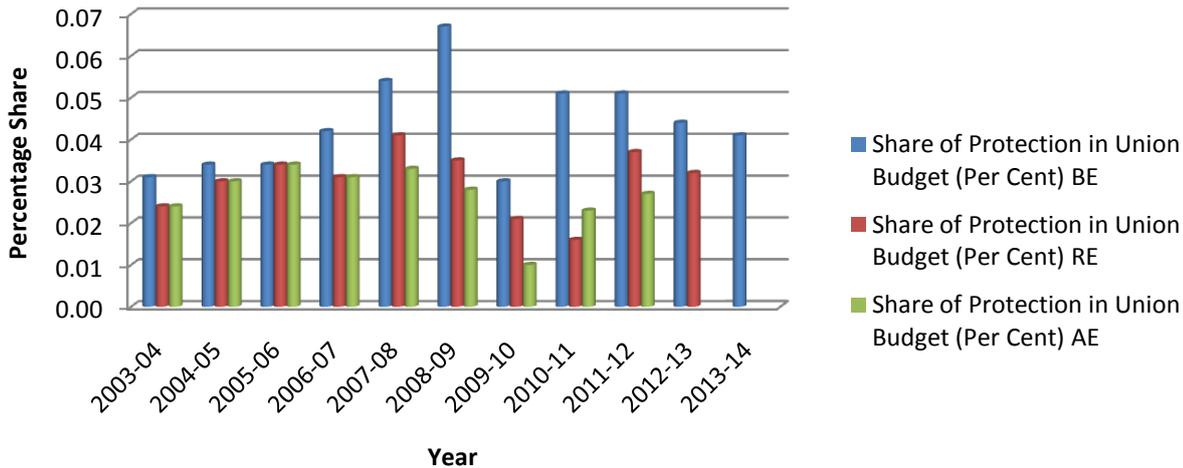
Share of Protection in Union Budget (Per Cent)			
Year	BE	RE	AE
2003-04	0.03	0.02	0.02
2004-05	0.03	0.03	0.03
2005-06	0.03	0.03	0.03
2006-07	0.04	0.03	0.03
2007-08	0.05	0.04	0.03
2008-09	0.07	0.04	0.03
2009-10	0.03	0.02	0.01
2010-11	0.05	0.02	0.02
2011-12	0.05	0.04	0.03
2012-13	0.04	0.03	NA
2013-14	0.04	NA	NA

Note: BE – Budget Estimates, RE – Revised Estimates, AE – Actual Expenditure, NA – Not Available

Source: Budget for Children (BfC) Analysis carried out by HAQ: Centre for Child Rights based on the Demands for Grants.

¹⁰ Convention on the Rights of the Child, Article 40; Beijing Rules, Rule 18; Tokyo Rules, Rule 2.

Share of Children Protection in the Union Budget



Hard to digest but this is a truth that people do not get to see...

Child Protection has never been a real concern!

While there is no separate and distinct budget for implementing the juvenile justice legislation, the Integrated Child Protection Scheme (ICPS) is the main scheme which provides the financial resources for implementing various child protection laws, including the law on juvenile justice.

In 2009-10, the ICPS budget was reduced by 25% from Rs. 400 crore to Rs. 300 crore. Mid-term appraisal of the Eleventh Five Year Plan suggested a requirement of Rs. 300 Crore for the year 2010-11.

By the end of the Xth Five Year Plan, 34 States and Union Territories except Jammu and Kashmir had signed the ICPS MoU with the centre. While this was the time to increase allocations, the budget for ICPS witnessed a decline instead.

By 2010-11, most states and union territories had signed an MoU with the centre for implementing the ICPS. However, a simple assessment of recurring costs required for setting up the basic structures under this scheme reflected inept planning for rolling out the ICPS and hence a highly inadequate budget of Rs. 300 Crore.

- Recurring costs for setting up a State Child Protection Society in each of the 34 states and union territories that signed an MoU with the Centre for ICPS was about Rs. 27 Crores.
- If only the District Child Protection Units were to be set up in each of the 638 districts in the country at that time (excluding the state of Jammu and Kashmir), the budget requirement as per ICPS norms came to a little over Rs. 235 Crores.
- To comply with the legal requirement of having one Child Welfare Committee (CWC) and one Juvenile Justice Board (JJB) in every district, an additional fund of approximately Rs. 60 Crores was required.
- The 259 childline services across the country required a budget of about Rs. 42 Crore.

- Going by the Ministry's figure of 698 institutions for children in 2011-12 (excluding open shelters, Specialised Adoption Agencies and specialised units for children with special needs), fund requirement as per ICPS norms came to approximately Rs. 141 Crores.
- **An addition of these five basic structural components of ICPS came to Rs. 505 Crores.**
- **Yet, the government's budget estimate in 2010-11 was only Rs. 300 Crore!**

Even today, the situation is appalling. In 2013-14, not only did the budget estimates for ICPS go down to about 296 Crore Indian Rupees, even the meager allocations could not be spent by the states.

Under spending has become a trend!

As per the Appropriation Accounts...

2009-2010

INR 600 lakhs remained unutilized due to re-appropriation of part funds/funds to functional heads for utilization on schemes for the benefit of North Eastern Region and Sikkim and surrender of the balance amount.

Also a total of INR 1136.56 lakhs remained unutilized due to delay in finalization of Memorandum of Understanding with States and Union Territories.

2010-2011

Saving of INR 371.27 lakhs in GIA (against the sanction provision of INR 2200.00 lakhs) due to non-setting up of Central Project Support Unit and non-receipt of demand from Central Adoption Resource Agency and National Institute of Public Co-operation and Child Development.

Saving of INR 14663.02 lakhs and INR 455.49 lakhs in State and UT component (against the sanctioned provision of INR 24000.00 lakhs and INR 800.00 lakhs) due to delay in signing of Memorandum of Understandings and non-receipt of detailed proposals or receipt of less number of viable proposals from the States and Union Territories.

2011-2012

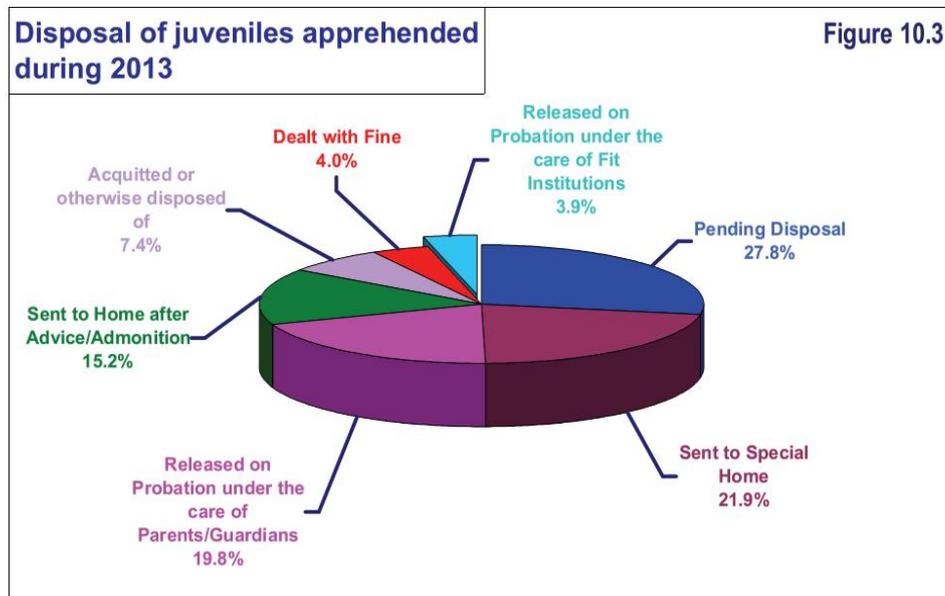
Saving of INR 6570.63 lakhs in State and UT component (against the sanctioned provision of INR 24300.00 lakhs) due to receipt of less number of viable proposals from the implementing agencies, States and Union Territories.

The mistakes we continue to make...

“Youth offending is often related to other problems that the juvenile justice systems cannot address in isolation (e.g. mental illness, substance abuse etc.). Therefore, juvenile justice systems need to be coordinated and cover the full spectrum of required services including early intervention, family and

school-based therapies, drug and alcohol rehabilitation services, mental health services, foster care services, specialist indigenous services, housing and employment services and detention services etc”¹¹.

However, the juvenile justice system in India and many other countries of the world is an offshoot of the criminal justice system. As a result, policy makers and planners have always reflected confusion in the law and its administration, marked by the tension between the protective approach of juvenile justice and the traditional approach of dealing with crime.



An individual care plan is supposed to be part of every dispositional order made by the Juvenile Justice Board. But where are these plans? Cases get disposed without these plans. At the end of the day performance of every judge is rated on their record of disposal and pendency of cases. Hence no Juvenile Justice Board waits for a probation officer or social worker to be given to them to prepare these individual care plans. No wonder data from India’s National Crime Records Bureau’s (NCRB) on ‘Disposal’ does not reflect on how many children were successfully rehabilitated. Should it not show how many children received counseling services and for what duration? And what about follow-up? Can a case under the Juvenile Justice law be shown as ‘disposed’ until the need for follow-up is over and the Board accordingly orders closure of the case?

“Funds are rarely released under the heads of formal education, vocational training, counseling and drug de-toxification which form the backbone of rehabilitation process”, says Meghna Dasgupta in her working paper on ‘Rehabilitation through Education for Juveniles in Conflict with Law’.¹²

While several aspects relating to administration of juvenile justice have been looked into by various High Courts and the Supreme Court of India, the one that never catches the eye is Section 61 of the Juvenile Justice Act and Rule 95 of the Central Model Rules on Juvenile Justice dated 2007, which require states to create a Juvenile Justice Fund for welfare, rehabilitation and restoration of juveniles. Delhi was forced

¹¹ International Juvenile Justice Observatory (IJJO), Save Money, Protect Society and Realise Youth Potential, Improving Youth Justice Systems During a Time of Economic Crisis, The European Council For Juvenile Justice White Paper, July 2013. Available at: http://www.oijj.org/sites/default/files/white_paper_publication.pdf

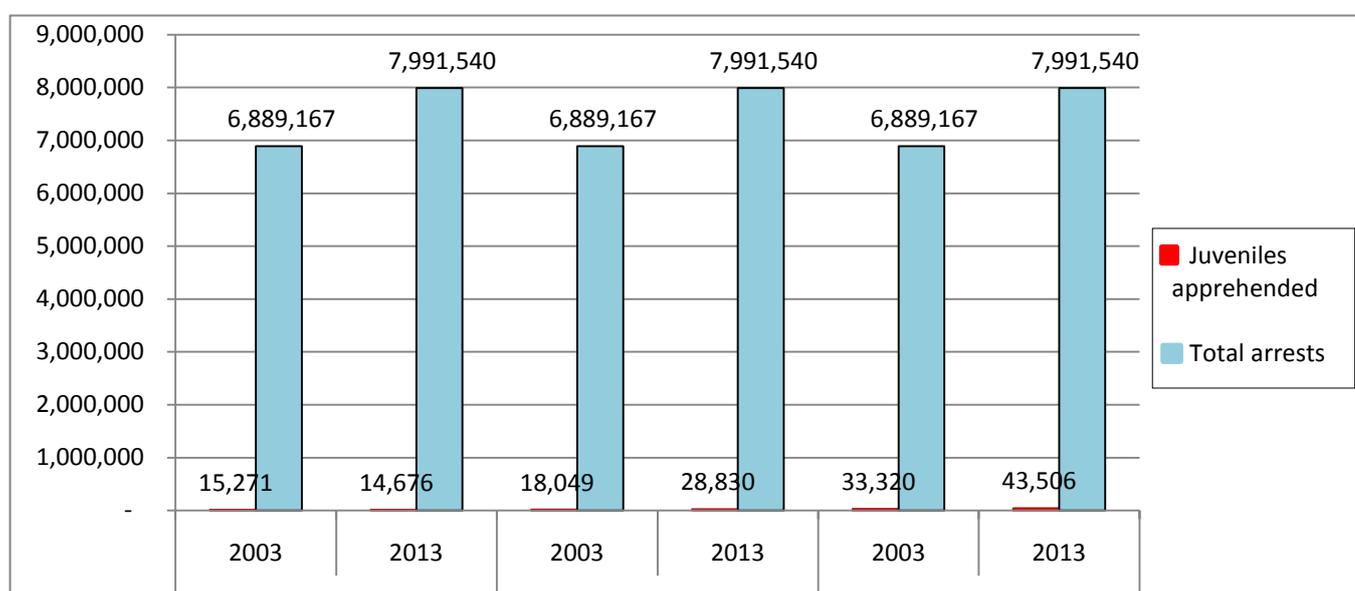
¹² Dasgupta Meghna, ‘Rehabilitation through Education for Juveniles in Conflict with Law’, Working Paper No 238 submitted to Centre for Civil Society as part of Summer Research Internship, 2010.

to create such a fund in 2009. According to Megna Dasgupta, “Rs. 5 lakhs have been deposited in it. But in spite of pressing infrastructural requirements, it remains unused”¹³. Information regarding Juvenile Justice Fund in other states is unfortunately not available.

Clearly, the basic idea of juvenile justice across the world is to reintegrate the child into family and society and make the society a better place for both juveniles and others affected by their law breaking behaviour and actions. This calls for a proper network of rehabilitation and after care services. Unfortunately, such an arrangement is almost non-existent in the country.

NO POLICY, NO SOCIOLOGICAL RESEARCH, NO EVIDENCE TO SUGGEST A CHANGE IN THE LAW

There is no juvenile justice policy to begin with and the thrust required on a preventive approach to juvenile justice is completely lacking. Sociological research on factors leading to increased incidence of children coming in conflict with the law, as is being reported, is also missing. To say the least, there has been no such research in the last ten years that could inform policy and decision making.



Juveniles apprehended in different age groups as percentage of total arrests made in 2003 and 2013						
Age group	7-16yrs		16-18yrs		7-18yrs	
Year	2003	2013	2003	2013	2003	2013
Juveniles apprehended under IPC And SLL crimes across different age groups	15,271	14,676	18,049	28,830	33,320	43,506
Total arrested	6,889,167	7,991,540	6,889,167	7,991,540	6,889,167	7,991,540

While it would be popular at this hour to show 300% increase in rapes by juveniles, in doing so several critical aspects remain hidden from the public eye.

Firstly, in absolute numbers, we are talking about 1884 rape cases involving 2074 juveniles, of whom 1388 juveniles were aged 16-18 years (Crime in India 2013, NCRB, Tables 10.2 and 10.8). While the figure does

¹³ Ibid.

not and should not be used to justify rape, it also cannot be used as an alarm bell to opt for a regressive law on juvenile justice. Being the second largest country in the world with a population over 1.2 billion and one of the fastest growing economies in the world, can India afford to take the plea that it is unable to deal with 1388 juveniles aged 16-18 years and hence these children should be subjected to the adult criminal justice system?!

Secondly, if the number of rapes by children has gone up, the absolute number of children has also increase in the last ten years from 414,965,000 children in 2003 to 435,384,000 children in 2013. Thus, the percentage of children who were apprehended for rape as against total child population in 2003 comes to 0.000112% and in 2013 it stands 0.000433%, showing an increase of 0.000321 percentage points.¹⁴

Thirdly, despite this increase, the share of juvenile crimes to total cognizable IPC crimes has remained around 1% in the last ten years.

Share of "Alleged" crimes by children as percentage of total cognizable crimes under IPC										
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1.04%	1.05%	1.04%	1.12%	1.15%	1.17%	1.13%	1.02%	1.08%	1.17%	1.2%
Note: Data is from various Crime in India Publications of the NCRB. 2001 data is taken because the age juvenility was raised from 16 years to 18 years for in the year 2000.										

Fourthly, the percentage of juveniles apprehended for IPC and SLL crimes as against total arrests has gone up from 0.26% in 2003 to 0.36% in 2013, reflecting an increase of only 1 percentage point in a span of ten years.

Finally, it is equally important to know and acknowledge that despite an otherwise progressive law and efforts made in the last ten years to reduce detention of juveniles, children have not been spared by an essentially criminal justice outlook of law enforcement officials. An RTI filed by NGO HAQ: Centre for Child Rights with Jail No.7 in Tihar, brought to light the shocking violation of child rights and juvenile justice, where, in a 10 month period between October 2010 and August 2011, 114 juveniles or children in conflict with the law, were transferred to observation homes after being first lodged in Tihar jail. A PIL based on this finding is pending in the Delhi High Court. Meanwhile, despite court's directions to deal with such a situation in keeping with the principle that a child should not have to be in an adult jail even for a single day, regular visits are being carried out by a panel of visitors constituted by the National Commission for Protection of Child Rights. These visits brought forth another set of 280 boys lodged in Tihar jail, whose age verification confirmed their status as juveniles, and were accordingly transferred to Juvenile Justice Boards. Age inquiry in the case of over 1500 inmates who were identified as possible juveniles is still pending.

Post these transfers, newspapers witnessed a series of stories on violence inside homes for juveniles. Staff in these institutions, government and the judiciary is aware of the spurt in violence in these homes after some boys get transferred from the Tihar jail and accordingly different arrangements have been made for

¹⁴ Calculations provided by Prof. Ved Kumari, Faculty of Law, Delhi University.

these boys from time to time. Is there any other proof required to show what living in a jail with adult criminals can do to young people?

TO CONCLUDE...

“You cannot fight fear of crime and moral panics without tools. The best way to convince the public that what you are doing is preventing youth crime and ensuring that it ceases rather than proliferates is by being sure of this yourself. Instead of being swayed by emotional moral panics, youth justice policy needs to re-stabilise by ensuring that there is a bedrock of data being collected, projects and reoffending rates being monitored and evaluated, and good-quality research proving that the outcomes for children are improving”.¹⁵

It is important to get down to brass tacks lest the proposed change in the juvenile justice law diverting it from a restorative justice approach to punitive approach will turn into a misguided missile, leaving irreparable scars on generations to follow and hampering national progress.

¹⁵ International Juvenile Justice Observatory (IJJO), Save Money, Protect Society and Realise Youth Potential, Improving Youth Justice Systems During a Time of Economic Crisis, The European Council For Juvenile Justice White Paper, July 2013. Available at: http://www.oijj.org/sites/default/files/white_paper_publication.pdf