

Chapter 6- Conclusion and Recommendations

“We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer ‘tomorrow’. His name is ‘Today’.”

- Nobel Laureate, Gabriel Mistral

This chapter presents the summary of the findings of each chapter followed by conclusion and recommendations.

6.1 Summary of chapters and findings

The chapter wise summary of the study is narrated as hereunder.

The *first chapter* is the introduction to this research study, description of the research process and methodology.

Chapter 2- The Juvenile Justice System in India

In the *second chapter*, the researcher has examined the legislative history in India that has guided the development of separate justice system for juveniles and has also closely analyzed the structural changes that took place in the course of development. The notion of separate justice system for juveniles or child offenders largely developed in India during the British rule with the passage of legislations such as Apprentice Act, 1850 and Reformatory Act, 1897. The Indian Jail Committee Report 1919-1920 played a very significant role. The period between 1920 until the Independence saw numerous State legislations reflecting progressive approaches through the establishment of separate institutions such as courts, reformatory schools

etc. The Post British India witnessed many juvenile related legislations being enacted, repealed and re-enacted. The first legislation after independence, the Children's Act 1960 applicable only to the Union territories provided for the establishment of separate courts, schools, observation homes, after-care organizations etc. There was no limit on the period of stay in special schools and the court could order such children to be kept in these homes until they ceased to be child. The Act, though banned death punishment and imprisonment, permitted detention in a safe custody (not exceeding the maximum period of imprisonment for the offence committed) in exceptional cases of offence of serious & grave nature committed by child aged fourteen and above. Then, followed the Juvenile Justice Act, 1986 which was made applicable to the whole of India was very much alike but, differed marginally from its predecessor, the Children's Act, 1960.

The Juvenile Justice (Care and Protection of Children) Act 2000 which repealed the Juvenile Justice Act, 1986 introduced the establishment of special juvenile police units in addition to the already existing components of the juvenile justice system handling juveniles in conflict with law established under its preceding legislations. One of the conspicuous transitions seen in the JJA 2000 was with respect to provisions relating to the period of stay in special homes and juveniles involved in crimes of serious & grave nature. This Act brought in the detention time limit by providing that a juvenile in conflict with law could be sent to special home for a maximum period of three years.⁶⁴⁹ It also laid down that the juveniles aged sixteen and above could be detained in a safe custody for not more than three years in exceptional cases of offences of serious & grave nature.⁶⁵⁰

The researcher in the course of the study of the development of the juvenile justice system mainly focusing on structural developments discovered that the post-independence legislations brought all the juveniles upto the age of eighteen years under single reformatory institution unlike the pre-independence State legislations which sub-classified them based on the age and subjected them to different institutional arrangements. The period between 1920 until 2000 provided provisions for the detention of juveniles aged 14 and above in exceptional cases of offences of serious and grave nature, not exceeding the maximum period of imprisonment

⁶⁴⁹ Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

⁶⁵⁰ Ibid

prescribed under IPC for the offence committed. This was replaced by the JJA 2000 which brought in detention time limit of three years irrespective of the seriousness and gravity of the offence. Again, the new legislation of 2015 permits the juveniles aged between sixteen and eighteen years to be tried as adults in Children's Courts for heinous offences allowing detention not exceeding the maximum period of imprisonment prescribed under IPC for the offence committed and subject to Sec 21 of the Act.⁶⁵¹ With the passage of Juvenile Justice (Care and Protection of Children) Act, 2015, the juvenile justice legislative development in India has come in full circle.

In the *second chapter*, the researcher has also examined various theories of causation of juvenile delinquency for the better understanding of the concept of juvenile delinquency. The researcher has also attempted to examine and evaluate the nature & extent of crimes committed by juveniles in India. In this regard, the researcher has relied on the National Crime Records Bureau data (NCRB) and various other empirical studies. The major theories of delinquency discussed in this study explain various risk factors as the cause for an individual's inclination towards delinquent behaviour and consequently leads to the conclusion that no single theory can explain juvenile delinquency. Furthermore, *these theories indicate that there are certain determinants of delinquency commonly seen in the juvenile delinquency cases which are psychological, sociological by nature and which do not directly lead to delinquency but, is merely a pre-disposition to such behaviour.* Not all individuals predisposed to risk factors eventually turn into delinquents. Nevertheless, the contemporary juvenile justice practice in most countries across the world reflects both classical and positivistic approach to delinquency. The classical school of thought considers an individual responsible for his own actions and focus on proportionate punishment. This approach is in corroboration with few countries transferring serious juvenile delinquents to adult justice system to be tried and punished as an adult criminal. The positivist view, on the other hand, assumes that human behaviour is predominantly influenced by biological, psychological and sociological factors beyond the control of any individual. These approaches resulted in the development of

⁶⁵¹ Sec 21 of the JJA 2015, "No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code."

policies which now focuses on rehabilitation and social reintegration of juvenile delinquents.

A case-control study conducted in the five observation homes in the city of Hyderabad, Lucknow and Pune by the Armed Forces Medical College, Pune, India indicated that all the children surveyed belonged to the lower economic strata and the study concluded that it is difficult to pinpoint a single factor responsible for juvenile crime but, a combination of factors such as broken homes, addictions and abuse seem to have an important association with juvenile delinquency.⁶⁵² On the other hand, the study conducted by the Delhi Commission for Protection of Child Rights (DCPCR) and Butterflies (NGO) on children in conflict with law in Delhi, indicated that juvenile delinquency is an issue prevalent in all socioeconomic classes but, the lower class are more likely to be incarcerated as the children from higher strata though, involve in such behaviour, rarely come for adjudication process.⁶⁵³ In most instances, their cases are settled out of court or also go unreported fearing damage to the family status, thus making them invisible in the statistics.⁶⁵⁴ Also, according to this study, parental neglect, broken homes, poor academic achievements, drugs/substance abuse can act as risk factors of juvenile delinquency.⁶⁵⁵ The study titled '*Mental Health & Substance Use Problems in Prisons: The Bangalore Prison Mental Health Study (2011)*' conducted by NIMHANS, Bangalore in collaboration with Karnataka State Legal Services Authority reported that 79.6% of the prisoners could be diagnosed as having the diagnosis of either mental disorders/substance use. These mental disorder/addiction to substance use may either be present prior to prison entry/ or aggravate in prison. Studies in several countries indicate that around 65-85% of youths in correctional homes have major psychiatric diagnoses.⁶⁵⁶ A cross-sectional study of 50 juvenile boys in an Observation home in India concluded that 88% of

⁶⁵² Archit Gupta et al, *Sociodemographic characteristics and aggression quotient among children in conflict with the law in India: A case-control study*,28(4) The National Medical Journal 172, 172 (2015), available at <http://archive.nmji.in/archives/Volume-28/Issue-4/Original-Article-I.pdf>, last seen on 5/10/2017

⁶⁵³ *Why Children commit offences-Study on Children in conflict with law in Delhi* ,Delhi Commission for protection of Child Rights (DCPCR), 8 (2015) available at <http://www.butterflieschildrights.org/admin/resource/Why%20Children%20Commit%20Offences-DCPCR.pdf>, last seen on 8/10/2017

⁶⁵⁴ Ibid

⁶⁵⁵ Ibid

⁶⁵⁶ Bhoge N D et al, *A cross sectional study of psychiatric morbidity in juvenile boys admitted in an Observation home*, 4(1) International Journal of Advances in Medicine 192, 193 (2017), available at <http://www.ijmedicine.com/index.php/ijam/article/viewFile/308/279>, last seen on 8/01/2018

them suffered from psychiatric disorders.⁶⁵⁷ The study of 487 juveniles-under-enquiry in Prayas Observation Home, Delhi reported that 86.44% of the sample had a history of substance use.⁶⁵⁸ Research has shown that there is a strong positive association between drug use and crime in adolescents.⁶⁵⁹ Taking into account the various theories of causation of juvenile delinquency and the aforementioned findings of the empirical study, the researcher concludes that, although, all children who are the victims of vulnerabilities do not turn into delinquents, the vulnerability factors are often present in the background of the children who come into conflict with law.

The researcher in this study has presented, compared and analyzed the NCRB data pertaining to juveniles to understand the nature and extent of crimes committed by them. The study is based on the data relating to crimes committed by juveniles from 2001-2015. One of the reasons cited in the Statement of Objects and Reasons of the Juvenile Justice (Care and Protection) Bill, 2014 for repealing the Juvenile Justice (Care and Protection of Children) Act, 2000 was its inability to tackle the juvenile offenders in the age group of 16-18 years. This was based on the data collected by National Crime Records Bureau (NCRB) which reported increased arrests for the heinous offences committed by the children in the age-group of 16-18 years. However, it is pertinent to note that the NCRB does not collect any data regarding convictions of juveniles classified by age and crime. The NCRB attached to the Ministry of Home Affairs possibly provides the most authentic compilation of official data and the closest reliable data pertaining to crimes including crimes committed by juveniles. This cannot be disregarded in the larger interest of the public. There are no other authoritative studies conducted neither at the national level nor at the regional level on the rate of juvenile crimes. Based on the study of the NCRB figures from 2001-2015, the following concluding observations are made by the researcher-

⁶⁵⁷ Ibid

⁶⁵⁸ Shridhar Sharma et al, *Substance use and criminality among juveniles-under-enquiry in New Delhi*, 58(2) Indian Journal of Psychiatry 178, 178 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4919962/>, last seen on 8/12/2017

⁶⁵⁹ Chetna Malhotra et al, *Drug use among Juveniles in conflict with law*, 74(4) Indian Journal of Pediatrics 353, 353 (2007) , available at <http://medind.nic.in/icb/t07/i4/icbt07i4p353.pdf> , last seen on 7/11/2017

1. The percentage of cases registered against juveniles from 2001-2015 remain stable but, it has escalated proportionately with the overall crimes registered in India. It has never significantly declined in these years.⁶⁶⁰

2. The juveniles apprehended in the age-group of 16-18 years account for 50%-70% of the total juvenile arrests made every year. The children in the age group of 12-16 years which accounts for 25%-40% of the total arrests every year has remained constant over the years. Thus, the researcher understands that *there is direct relationship between the age and numbers of crimes committed by juveniles i.e. older juveniles have the highest arrest rates. Furthermore, the data show that the highest numbers of arrests for murder, rape were made in the age- group of 16-18 years which accounted for 50%-70% of the total arrests every year. Moreover, the majority of arrests for dacoity and robbery were also made of juveniles in the age-group of 16-18 years. Thus, there is also direct relationship between the age and nature of crimes committed by juveniles.* The number of arrests of juveniles in the age group of 12-16 years also shows an increasing trend in some serious offences like murder and rape.

3. The data of the National Crime Records Bureau, 2000-2010 indicate that about 60 percent of juveniles apprehended came from families whose income was less than 25,000/-per annum and 20% from families whose income was between 25,000/- to 50,000/- per annum aggregating to about 80% of juveniles arrested in that income group.⁶⁶¹

4. The study of the NCRB data for 2001-2015 show that around 70-80% of the juveniles apprehended every year live with their parents. However, it does not provide any details as to the number of juveniles apprehended living with their single parent or both the parents. Moreover, the juvenile delinquents living with guardians also show an increasing trend. At the same time, it is unusual that juveniles who are homeless are showing a declining trend. Due to non availability of total juvenile population in India on the basis of the aforementioned classification of residence, it is not possible to establish any relationship between crimes committed by juveniles and their residence. However, it does not go without saying that the influential role of

⁶⁶⁰ See Chapter 2, page 65

⁶⁶¹ Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care & Protection of Children) Bill*, 2014, at 26

family and parental control in the socialization process of the child has declined over the years.

5. The National Crime Records Bureau (NCRB) does not provide any data as to crimes committed by the juveniles who acted alone or in a group. Some of the recent high profile crimes by juveniles in India were committed in groups or gangs under peer pressure. In such cases a juvenile may be aiding or contributing to the offence in a secondary way. Statistical research in many countries endorse that juvenile crime is predominantly a group phenomenon.⁶⁶² A study conducted by the Delhi Commission for protection of Child Rights (DCPCR) and Butterflies(NGO) on Children in conflict with law in Delhi indicate that 58.8% of the crimes were committed by children in gangs/company of others.⁶⁶³

6. The most used orders by the JJB against children in conflict with law are sending to special homes or releasing such children on probation under the care of parents /guardians. There is no data as to the performance of community service which is one of the orders that may be passed against an adjudicated juvenile delinquent in India.

Chapter 3- The Age of Criminal Responsibility

The *third chapter* is an attempt to understand the extent of India's compliance to international standards and constitutional provisions on the issue of age of criminal responsibility of a juvenile and to analyze Indian position in the light of scientific developments on adolescent brain maturation. The researcher also critically looked into the significance of treating juveniles aged 16-18 years committing heinous offences differently and attempted to bring to the fore, the undecided issues. Age of criminal responsibility is one of the intricate issues in the area of juvenile justice across the globe as there are no objective standards to determine the conclusion of childhood and commencement of adulthood. The United Nations Convention on the Rights of the Child (1989) and other international instruments urge the State parties to

⁶⁶² United Nations fact sheets on youth, available at <http://www.un.org/esa/socdev/nyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>, last seen on 8/04/2018

⁶⁶³ *Why Children commit offences-Study on Children in conflict with law in Delhi* ,Delhi Commission for protection of Child Rights (DCPCR), at 9 & 33 (2015) available at <http://www.butterflieschildrights.org/admin/resource/Why%20Children%20Commit%20Offences-DCPCR.pdf>, last seen on 8/10/201

establish separate laws and institutions applicable to all children committing crimes under the age of 18 years. However, they can be subject to penal law procedures but, distinct to adult criminal justice system.⁶⁶⁴ As far as minimum age of criminal responsibility (MACR) i.e. lower age limit for juvenile court jurisdiction is concerned, the international standards appeal to the State parties not to fix MACR at very low level and children below the MACR committing crimes shall be presumed not to have the capacity to infringe the law. The Beijing Rules (1985), the earliest international instrument specifically dealing with juvenile justice laid down certain subjective factors viz. emotional, mental and intellectual maturity to be considered in fixing the MACR. The UNCRC (1989) which was drafted four years after the adoption of the Beijing Rules has preferred to omit the aforementioned factors in determining the MACR laid down in the Beijing Rules. Interestingly, the UNCRC which has sourced many of its provisions from the Beijing Rules including the MACR has not acknowledged the subjective criteria laid down in the Beijing Rules for fixing the MACR. The lack of substantive guidelines justifies the wide interpretation among the State parties across the globe resulting in practice of varied age limits of MACR. Further, the UN Committee on the Rights of the Child (UNCtRC) in the General Comment No. 10 has concluded that the “*MACR below 12 years is internationally not acceptable*” and inappropriate. However, the rationale for fixing 12 years as the MACR is not fully understood by the researcher. The UNCtRC further restricts the State parties from transferring persons under the age of 18 years to the adult criminal justice system.⁶⁶⁵ *Having carefully considered the international standards, the researcher submits that India has set an age of criminal majority of 18 years which does not violate any international standards. The MACR in India ranges from 7-12 years contingent on maturity and understanding of such child. However, MACR of 7 years appears too low compared to the international standards. In India, the children in conflict with law aged 7-18 years come within the purview of juvenile justice system governed by special rules and procedures laid down in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJA 2015). The JJA 2015 permits juveniles aged 16-18 years committing heinous offence to be tried as an adult in Children’s Court after assessing the physical and mental capacity of such*

⁶⁶⁴ UNCRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 33

⁶⁶⁵ Ibid, at para 38

*juveniles. If the juvenile is found to be in conflict with law by the concerned court, the court shall ensure that such juvenile is sent to a place of safety wherein he is rehabilitated till he attains the age of twenty one years and thereafter transferred to jail to serve the remainder of his term only if such rehabilitation fails. To elaborate further, when such juveniles attain the age of twenty one years, the Children's court is mandated to conduct an evaluation based on the yearly progress reports & opinions of the relevant experts to either decide the child to be released under the supervision of monitoring authority or to complete the remainder of the sentence in jail.*⁶⁶⁶ *Apparently, by retaining the children in conflict with law within the juvenile justice system until the age of 21 years, the JJA 2015 does not seem to violate any international standards concerning the age of criminal responsibility.*

Assessment of mental capacity/maturity of a juvenile was not a major concern until it became the basis of transfer of such juveniles to the adult criminal justice system in some jurisdictions. The mental capacity/ maturity in the context of neuroscience and developmental psychology include intellectual, social and emotional development. The recent scientific breakthroughs indicate that children mature at a higher age than what has been previously accepted. There is a huge body of scientific research on the adolescent neurological development which indicates that the brain does not fully mature until the mid 20's.⁶⁶⁷ Dr. Jay Giedd, a brain imaging scientist who is extensively cited as an expert on the adolescent brain development expounds that the prefrontal cortex, the part of the brain which is responsible for impulse control and decision making is not completely mature until the third decade of life and one of the last regions of the brain to develop.⁶⁶⁸ The studies have discovered that adolescents mostly employ their amygdala, the region of the brain that experiences fear, threat, danger and which is associated with emotional and gut responses, whereas the adults more often use their pre-frontal cortex, the area of the brain related to reasoning and judgement.⁶⁶⁹ These differences will definitely impact the way the adolescents process

⁶⁶⁶ Sec 19 & 20, JJA 2015

⁶⁶⁷ National Institute of Mental Health, Press Release, *Imaging Study shows Brain Maturing*, (17/05/2004) available at <http://www.nimh.nih.gov/news/science-news/2004/imaging-study-shows-brain-maturing.shtm>, last seen on 1/08/2016

⁶⁶⁸ Daniel R Weinberger, Brita Elveg, Jay N Giedd, *The Adolescent Brain- A work in progress*, The National Campaign to teen pregnancy (June 2005), at 3, available at https://www.michigan.gov/documents/mdch/The_Adolescent_Brain_-_A_Work_in_Progress_292729_7.pdf, last seen on 12/08/2017

⁶⁶⁹ Ibid, at 2; Interview with Dr. Preeti Jacob, NIMHANS , Bangalore (16/01/2017)

their thoughts and react to situations. Therefore, adolescents are inclined to act impulsively without analyzing the situation and consequences of their actions. According to Lawrence Steinberg, an internationally renowned expert on psychological development, “the ability of self control is easier brain process for adults in comparison to adolescents.” Further, he states that the adolescents are highly hypersensitive to risky acts when the potential of reward is high. However, the neurologist, Paul Thompson at the University of California, Los Angeles, opines that these researches on incomplete brain maturation of adolescents cannot be used to condone them of their violent and homicidal behaviour, but rather indicates that such adolescents are not yet adults and the legal system should not treat them as such. Lawrence Steinberg also affirms that adolescents should be perceived as inherently less responsible than adults and shall be punished less harshly than adults when the crimes committed are identical.⁶⁷⁰ According to the studies of Lawrence Steinberg, the brain systems responsible for cognitive process mature faster than the regions related to self-regulation and accordingly adolescents mature intellectually before they attain social and emotional maturation⁶⁷¹ and on the basis of this finding the researcher is compelled to infer that some juveniles are smart enough to plan/ carry out adult like crimes but, not matured enough emotionally to magnify the consequences of their actions. According to Dr. Preeti Jacob of Department of the Child and Adolescent Psychiatry at NIMHANS, Bengaluru, preparation or planning of serious crimes does not indicate mental capacity/ maturity of a juvenile but, rather choosing an inappropriate behaviour is an indication of an immature brain. These studies further reveal that the structural and functional changes in the brain do not take place in an invariable manner and consequently different individuals mature at different ages.⁶⁷² The Piaget’s theory of cognitive development points to the fact that the cognitive development starts at different times, progresses at different rates in different individuals, but, it takes place within the similar age ranges. The American Psychologist, Lawrence Kohlberg’s theory of stages of moral development points to the conclusion that it is impossible to establish that an individual has reached moral development by a particular age. Thus, it is beyond the bounds of possibility to

⁶⁷⁰ Steinberg Lawrence, *Should the Science of Adolescent brain development inform public policy?* 50 Court Review 70, 74 (2012), available at <http://aja.ncsc.dni.us/publications/courtrv/cr50-2/CR50-2Steinberg.pdf>, last seen on 14/05/2017

⁶⁷¹ Ibid, at 71

⁶⁷² See Chapter 3, at 91

accurately state the age as to when the juvenile brain becomes an adult brain. *Precisely, incomplete brain maturation, lack of impulse control and self regulation, diminished decision making capacity, risk taking behaviour etc are the factors that lessen the criminal culpability of juvenile delinquent. The neuroscience and behavioural study suggests that the adolescents lack the maturity & judgement to foresee & understand the consequences of their actions.* At this stage of the research, considering the scientific evidence that all individuals progress through different stages and at different rates, it seemed reasonable for the researcher to decide the cases of serious & violent juvenile delinquents on an individual basis after assessing the mental maturity of such juveniles rather than setting a distinct chronological age. *However, the relevant studies in this regard and interaction of the researcher with the concerned experts indicated that the tools to assess and measure mental maturity on an individual basis are neither well developed and nor it is possible to distinguish between mature and immature adolescents on the basis of brain images which is likely to produce many errors.*⁶⁷³ *In the light of probability of errors that may arise due to the absence of tools to make individual mental maturity assessments and taking into account the aforementioned neuroscience & psychological findings, the researcher submits that it is desirable to set a specific age limit to define a juvenile to determine criminal culpability. Although, the age of 18 has been set to define a juvenile in India, the JJA 2015 permits juveniles aged 16-18 years committing heinous offences to be tried as an adult in Children's Court after assessing their physical and mental capacity known as preliminary assessment.*

Categorization of juveniles aged 16-18 years on the basis of heinous offences

The rationale for the genesis of this practice was based on the data collected by the NCRB which established that juveniles in the age group of 16-18 have the highest arrest rates for heinous offences and was not suitable to be dealt by Juvenile Justice (Care & Protection of Children) Act, 2000.⁶⁷⁴ However, it is pertinent to note here that the NCRB does not collect any data regarding convictions of juveniles classified by

⁶⁷³ See Chapter 3 at 95 and 96

⁶⁷⁴ Statements of Objects and Reasons of the Juvenile Justice (Care & Protection) Bill, 2014

age and crime. The researcher understands that reliance on conviction rates rather than arrest rates is likely to provide better estimates and accurate data for the purpose of the sub-classification of juveniles on the basis of age and crimes. Therefore, the researcher attempted to get conviction data of juveniles & sought details from the High Court of Karnataka by relying on the General circular No.3/2014 issued by this court on 21.12.2014 mandating the JJB of every district to submit the quarterly reports of disposed & pending cases to the High Court. It is pertinent to note here that the convictions/ acquittals are counted at the year of adjudication and not at the year of the institution of the case i.e for instance, a case instituted in the year 2014 might result in conviction/acquittal in 2016 and they form part of the 2016 acquittal/conviction records. Therefore, comparison of cases instituted and the number of conviction/acquittals on an annual basis does not provide correct estimates. Taking this into account, the researcher posits that it is not judicious to rely on conviction data. In the absence of any other official data, the 'closest' reliable data available regarding crimes committed by juveniles is that of the NCRB on the arrest rates. They are definitely an important source of information which cannot be disregarded in the larger interest of the public. ***On the analysis of the statistical data of the NCRB over the years i.e 2001-2015, the researcher submits that the older juveniles specifically in the age group of 16-18 years have the highest arrest rates and account for the majority of arrests for serious and heinous offences i.e around 70% of the total arrests every year.*** Even before the passage of the JJA 2015, the Honourable Supreme Court in Salil Bali's case (2013)⁶⁷⁵ had ruled that the definition of a juvenile could be considered differently if sufficient data exists to necessitate the change. The statistical data of the NCRB over the last 15 years signaling highest arrest rates of juveniles in age group of 16-18 for heinous offences when read together with the above Supreme Court ruling appears logical and also justify JJA 2015 in further categorizing juveniles aged 16-18 years on the basis of heinous offence to be subjected to distinct treatment.

The researcher further posits that this categorization of juveniles aged 16-18 on the basis of heinous offence is not violative of Art.14 of the Constitution and the differential treatment is meted out to them on the basis of reasonable classification. ***The findings from the various empirical literatures suggest that serious and violent juvenile delinquents constitute a distinct category of offenders with varying***

⁶⁷⁵ (2013) 4 SCC 705

*behavioural & emotional problems and serious violent offences may indicate rigorous and longer rehabilitative needs than non violent offences.*⁶⁷⁶ Taking into consideration the NCRB statistical data of 15 years (2001-2015) signaling highest arrests of juveniles aged 16-18 years for heinous offences and the relevant empirical studies indicating serious, violent juvenile delinquents as a category of offenders distinct from non-violent delinquents warranting rigorous individualized interventions and secure confinements, the researcher submits that juveniles aged 16-18 years committing heinous offences constitute a distinct group & believes that this satisfies the first limb of the test of reasonable classification *i.e. the classification must be founded on an intelligible differentia which distinguishes the persons or things that are grouped together from those excluded.*⁶⁷⁷ The essence of the JJA 2015 is undoubtedly rehabilitation and reintegration of a child in conflict with law. It is relevant to note here that when a juvenile aged 16 -18 years alleged to have committed a heinous offence is tried as an adult and adjudicated guilty, such child found in conflict with law is sent to the place of safety for rehabilitation (secure confinement) till he attains the age of twenty one years and thereafter shall be transferred to jail to serve the remainder of his term.⁶⁷⁸ But, such child on attaining the age of twenty one years is not automatically transferred to jail to complete the remainder of the sentence. The JJA 2015 mandates the Children's Court/Sessions Court to conduct the evaluation of such child based on the yearly follow up progress reports and based on this evaluation result the concerned Court may either decide the child to be released under the supervision of monitoring authority or to complete the remainder of the sentence in jail.⁶⁷⁹ In other words, a juvenile aged 16-18 years held guilty of heinous offence is placed in an adult jail only if the rehabilitation of such juvenile has been unsuccessful in the juvenile justice system. The researcher posits that this satisfies the second limb of the reasonable classification test *i.e. the differentia must have rational nexus with the object sought to be achieved by the statute in question.*⁶⁸⁰ Putting together of older serious violent juvenile offenders with the younger non serious offenders in the same correctional institutions is likely to lead to criminal contamination and is against the best interests of the child. Thus, juveniles

⁶⁷⁶ See Chapter 3 at 104 and 105

⁶⁷⁷ K.Thimmappa vs. Chairman Central Board of Directors SBI, AIR 2001 SC 467

⁶⁷⁸ Sec 19 and 20, JJA 2015

⁶⁷⁹ Sec 20, JJA 2015

⁶⁸⁰ K.Thimmappa vs. Chairman Central Board of Directors SBI, AIR 2001 SC 467

committing heinous offences in the age-group of 16-18 warrant differential treatment, secure confinement i.e place of safety designed to treat their serious, violent criminal behaviours. *Although, the viability and the legality of the mechanism of transferring the juvenile aged 16-18 to Children Court is discussed critically in subsequent paragraphs, the researcher submits that there is no fallacy in further categorizing the juveniles aged 16-18 years on the basis of heinous offence to be subjected to differential treatment.*

Preliminary Assessment into the heinous offences by the JJB

In case of heinous offence alleged to have been committed by a juvenile aged sixteen and above, a preliminary assessment is made by the Juvenile Justice Board (JJB) to transfer the trial of the case to the Children's Court/ Sessions Court where Children's Court is not designated. The assessment is made with respect to mental and physical capacity of such juvenile to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence with the assistance of experienced psychologists or psychosocial workers or other experts.⁶⁸¹ *The researcher submits that the preliminary assessment is a faulty mechanism premised on a flawed criterion for three reasons. Firstly, the JJA 2015 and the Juvenile Justice (Care & Protection of Children) Model Rules, 2016 entirely places the responsibility to make transfer decisions on the JJB members who may take the assistance of experienced psychologists or psychosocial workers. The statute in question and the Rules has not provided any additional guidelines regarding the procedure of preliminary assessments and as a matter of course leaving room for discretion. The draft model Juvenile Justice Rules, 2016 had authorized the JJB to make any transfer decision only after interacting with the child and after taking into consideration the social investigation report, statement of witnesses recorded by the Child welfare police officer, medico- legal report, forensic reports, documents prepared during the course of investigation by Child Welfare Police Officer, medical reports, mental health reports including an assessment of the cognitive maturity of the*

⁶⁸¹ Sec 15, JJA 2015

child in addition to submissions made by the child through his legal representative.⁶⁸² However, it is conspicuous by its absence in Juvenile Justice (Care & Protection of Children) Model Rules, 2016 notified on 21st September, 2016. The lack of guidelines and clarity in the procedure may result in differential treatment of similarly situated juvenile offenders. There have already been ambiguity and arbitrariness in the preliminary assessment process reported in many parts across India with instances of juveniles being subjected to Intelligence Quotient (IQ) tests to assess their mental capacity to commit the alleged heinous offences.⁶⁸³ Also, in the empirical study of three selected districts of Karnataka- Bangalore, Udupi & Dharwad, the researcher learnt that the JJB, Dharwad as of 9.03.2018, has transferred two cases of juveniles aged 16-18 years alleged to have committed heinous offence to the Children courts. The JJB members stated that the transfer was made by relying on the assessment report submitted by Dharwad Institute of Mental Health and Neurosciences (DIMHANS). The further interaction with the JJB members & Public Prosecutor, Dharwad indicated that transfer was made on the finding in the assessment report that such juvenile was not suffering from any mental disease. The question which arises here is whether an IQ test/ mental health would mean the child's capacity to commit the offence and understand its consequences. On the other hand, as of 28/03/2018, the JJB Bangalore has not transferred any cases of juveniles alleged to have committed heinous offences to the Childrens Court. The members of the JJB, Bangalore stated that such juveniles shall be dealt by the JJB itself until the establishment of Childrens Court to try heinous offences. The further discussion indicated that although L, LIII & LIV Addl. City Civil & Sessions Judge is designated as Special Courts under POCSO Act, 2012 in Bengaluru City, direction has been issued to shift this court to the premises of the Observation Home, Bangalore. **Secondly**, taking into account the latest scientific research affirming adolescents diminished criminal culpability on the basis of developmental immaturity and lack of tools to measure mental maturity/ assess mental capacity on an individual basis, the researcher opines and submits that the criterion of mental capacity in preliminary assessments to transfer juveniles to Children's Court is unintelligible. **Thirdly**, the judges in the Children's Court and

⁶⁸² Rule 14(4) and 14(5), Draft Model Rules, 2016 under the Juvenile Justice (Care and Protection of Children) Act, 2015

⁶⁸³ Bhavya Dore, *A year since the new Juvenile Justice Act came into being, chaos rules its implementation*, Scroll.in(15/01/2017), available at <https://scroll.in/article/826668/a-year-since-the-new-juvenile-justice-act-came-into-being-chaos-rules-its-implementation>, last seen on 17/08/2017

Sessions Court are not trained to deal with children in conflict with law in contrast with the specially designed and trained JJB panel comprising of a Principal Magistrate and two social workers. It is pertinent to note here that the Children's Court is the Sessions Court equipped to try offences committed against children by adults per se and not the offences committed by children. Trial of juveniles in adult courts is violation of the UNCRC as it mandates the State parties to establish distinct justice system applicable to all children in conflict with law.⁶⁸⁴

Chapter 4-Assessment of Practices in the Indian Juvenile Justice System concerning children in conflict with law and its Accountability mechanisms

The United Nations Committee on the Rights of the Child (UNCtRC) in General comment no. 10 (2007) has indicated and elaborated on the core elements of a comprehensive juvenile justice policy to be adopted by the State parties viz; *Prevention of juvenile delinquency, interventions without resorting to judicial proceedings, interventions in the context of judicial proceedings, minimum age of criminal responsibility, maximum age limit for juvenile justice, guarantees for fair trial, measures- pretrial alternatives and dispositions made by the Juvenile Court/ Judge, deprivation of liberty including pre-trial detention and post trial incarceration.*⁶⁸⁵ In the *fourth chapter* of this study, the researcher uses the aforementioned core elements laid down by the UNCtRC as a framework to analyze the Indian law relating to children in conflict with law because the JJA 2015 (also JJA 2000) was passed by the Parliament bearing in mind the standards prescribed in UNCRC (1989) & other relevant international instruments on juvenile justice.⁶⁸⁶ Having carefully considered, the researcher draws the following conclusions-

- JJA 2015 is silent on the *prevention of juvenile delinquency* and currently no specific juvenile delinquency prevention and early intervention programmes exists in India. India has been only focusing on the prevention of re-offending

⁶⁸⁴ Art. 40(3), UNCRC

⁶⁸⁵ UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, available at: <http://www.refworld.org/docid/4670fca12.html> [accessed 12 June 2016]

⁶⁸⁶ Preamble to JJA 2015 & JJA 2000

in juveniles found in conflict with law rather than taking steps to prevent such juveniles from coming into conflict with law in the first place.

- Although the JJA, 2015 does not have any explicit provision on the *diversion of the juveniles* from the formal justice system, it includes diversion as one of the fundamental principles which may be considered by the Central Government, State Government, JJB & other agencies in implementing the provisions of this Act.⁶⁸⁷ However, it is relevant to note here that in Karnataka as per the Juvenile Justice (Care and Protection of Children) Karnataka Rules 2002 and 2010, the children who have committed petty offences (punishable with imprisonment upto three years) may be released from the Special Juvenile Police Unit (SJPU) itself facilitated by a Child Welfare Police Officer and a social worker subject to the approval of the JJB. Although, these Rules to some extent empower the Child Welfare Police Officers to divert the children in conflict with law from the JJB in petty offences, it is pertinent to note here that they do not have the authority to impose any other diversion measures except informal warning and one-time personal counseling. Nevertheless, the researcher opines that this composition of CWPO and social worker is likely to be sensitive to the needs of the children in conflict with law and prevent the misuse of discretionary police powers in handling juvenile matters.
- Various *procedural rights associated with fair trial* has been explicitly set out in Article 40(2) of the UNCRC to be guaranteed by the State parties in ensuring fair hearing to the children who come into conflict with law. These rights are referred to as minimum standards of fair trial by the UNCTRC in the General comment no.10. *The international minimum standards of fair trial with respect to juveniles and the Indian position can be outlined as follows-*
 - a) *Presumption of innocence:* The selective transfer of juveniles aged 16-18 years alleged to have committed heinous offences to the Children's Court to be tried as an adult through preliminary assessments by the JJB under the JJA 2015 is contended to be

⁶⁸⁷ Sec 3(xv), JJA 2015

arbitrary without the completion of full hearing, accompanied with lack of evidentiary standards and thus, presuming child to be guilty before they are tried. However, the researcher understands that the JJB shall transfer the trial of the case only if it is satisfied that there is sufficient ground to presume that the juvenile has committed the offence (The interaction with the Principal Magistrates of the JJB in this regard indicated that this stage is similar to the procedure provided under Sec 227 and 228 of the Crpc in India empowering the Magistrates to proceed to discharge the accused or frame charge after consideration of the record of the case/ document submitted and after hearing the submissions of the prosecution and accused).⁶⁸⁸ It is pertinent to note here that such juveniles transferred to Children's Court by the JJB, are not automatically tried and punished as an adult. When the case is transferred to a Children's Court, the said Court is required to reassess the matter to decide whether to try the child as an adult or not. If, the Court is of the opinion that the child is to be tried as an adult, it shall conduct the trial in the manner as laid down under Section 19 of the JJA, 2015 or alternatively if it holds that there is no need for the trial of the child as an adult, it shall conduct the inquiry as a JJB and pass appropriate orders that could be passed by the Board.⁶⁸⁹ Thus, the researcher understands that preliminary assessment procedure per se does not violate the principle of presumption of innocence, but submits that it is a faulty procedure premised on a flawed criterion likely to lead to arbitrary decisions threatening the best interest of child.

b) Prompt and direct information of charge: The JJA 2015 mandates the JJB to ensure informed participation of the child and parents throughout the process.⁶⁹⁰ In actual practice, the JJB proceedings in Bangalore, Udupi & Dharwad were transparent and the members of

⁶⁸⁸ Sec 227 & 228, The Code of Criminal Procedure (India)

⁶⁸⁹ Sec 19 (1) & (2), JJA 2015

⁶⁹⁰ Sec 8(3)(a), JJA 2015

the Board explained the charges to the child and parents in the language understood by them. Simultaneously, the JJB also provided counseling to both the parent and the child. But, the crowded noisy courtroom is not conducive for children to freely talk or express their views, thus violating their right to be heard. The JJB in Bangalore is always packed with juvenile delinquents, victims, their families and relatives, witnesses, general public etc. These children produced before the JJB, are made to stand in the court room all through the hearing. The views of the child alleged to be in conflict with the law were not always taken into consideration during the proceedings.

c) *Legal and other appropriate response:* The JJA, 2015 obligates the JJB to ensure legal aid is made available to such children.⁶⁹¹ Most of the children coming before the JJB of Bangalore, Udupi & Dharwad had legal counsel of their own. Those without legal representation were provided assistance through the District legal services authority.

d) *Decisions without delay:* In this regard, the JJA 2015 has set time limits for the completion of inquiry by the JJB which is four months from the date of first production of the child before the JJB and can be extended for a maximum period of two more months by the Board for the reasons recorded in writing.⁶⁹² But, preliminary assessments in cases of heinous offence shall be disposed of by the Board within a period of three months from the date of first production of the child.⁶⁹³ However, further extension of the prescribed time limit for the completion of inquiry by JJB in case of serious and heinous offences shall be granted by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate.⁶⁹⁴ The Act is silent

⁶⁹¹ Sec 8(3)(c), JJA 2015

⁶⁹² Sec 14(2), JJA 2015

⁶⁹³ Sec 14(3), JJA 2015

⁶⁹⁴ Sec 14(4), JJA 2015

on the length of the extensions that can be granted by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate. This provision for extension of time limit is much desired in some unusual cases to protect the rights and interests of the accused as well as the victims. Though, no time limit can be fixed, it is desirable that the adjudicating bodies ensure that all the stages of the inquiry will proceed without undue delay. At this juncture, it is important to point out here that the preliminary assessment by the JJB in case of heinous offences followed by transfer of such child to Children's Court to be tried as an adult is likely to prolong the trial for years. This violates the right of the juvenile to decisions without delay.

e) Freedom from self incrimination: The interaction with Principal Magistrates of the JJB of the three selected districts of Karnataka indicated that the Juvenile Justice Board hearings across India loosely follow the Code of Criminal Procedure framework & thus a child alleged to be in conflict with law in India has the right to basic procedural standards of fairness⁶⁹⁵ including the right to remain silent (privilege against self incrimination) which is guaranteed under Article 20(3) of the Constitution of India. The researcher also learnt in the interaction that the confession of the juvenile is considered by the JJB only in the presence of their legal counsel and parents/guardians of such juvenile to ensure its reliability and voluntariness. In the empirical study, the researcher was given to understand that every child on apprehension is interrogated in a child friendly manner cooperatively by the CWPO and a social worker comprising the SJPU. They also revealed that they do not compel the child to confess any guilt and are interrogated in child friendly manner. The defence lawyers and Assistant Public Prosecutors contacted in this study opined that the presence of social worker in

⁶⁹⁵ Sec 3(xvi), JJA 2015

the interrogation has reduced the complaints of torture/inhuman treatment used in order to lead the juvenile to confession.

f) Right to appeal: The JJA 2015 specifically grants the right of appeal to the aggrieved parties except the orders of acquittal made by the Board in respect of the child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years.⁶⁹⁶ The prominent argument that arises here is that the victims of serious & heinous offences committed by juveniles below the age of 16 years do not have the right to appeal against the order of acquittal and this failure to listen to crime victims is violation of their right to receive fair justice.

g) Free assistance of an interpreter: The JJA, 2015 mandates the JJB to provide the services of translators or interpreters whenever required.

h) Right to privacy: The international standards mandate privacy of judicial hearings, confidentiality of records and not permanently preserving those records. The researcher in the field study observed that the JJB proceedings in Bangalore are not conducted privately in closed settings and the courtroom is generally packed with juvenile delinquents, victims, their family, friends and relatives, lawyers, CWPO's, defence and prosecution witness, general public etc. There are no separate waiting rooms. When the case is called for hearing, the name of the juvenile is called out by the court staff using loudspeakers. There is clear breach of child's privacy by the JJB itself and identity of juvenile is revealed to the world. Although, there are separate waiting rooms in JJB, Dharwad & Udupi, the situation there is not too different from JJB, Bangalore. Further the

⁶⁹⁶ Sec 101(3)(a), JJA 2015

JJA 2015 provides that the records and documents relating to a child in conflict with law shall not be kept permanently and destroyed either after the expiry of the period of appeal or any valid period prescribed except in cases of children aged 16-18 years convicted by Children's Court for heinous offences.⁶⁹⁷

- As mandated by the international standards, a wide range of alternative *measures* are made available under the JJA 2015 to avoid institutionalization of children found in conflict with law. A wide range of custodial and non-custodial orders could be passed by the JJB with respect to child in conflict with law viz; to be sent to home after admonition or counseling, to participate in group counseling, to perform community service, to pay fine, to be released into parent's / guardian's /fit person's/fit facility's care and custody to be placed in probation for any period not exceeding three years and to be sent to special home for rehabilitation for a period not exceeding three years.⁶⁹⁸ Such rehabilitative services must include education, skill development, counseling, behaviour modification therapy and psychiatric support.⁶⁹⁹ The study of the NCRB data for the last 15 years indicate that the most used orders by the JJB against the juveniles are sending to special homes or releasing such children on probation under the care of parents /guardians.⁷⁰⁰ There is no data as to the performance of community service which is one of the orders that may be passed against an adjudicated juvenile delinquent in India. Numerous studies⁷⁰¹ have indicated that mental disorders and substance use are common among juvenile delinquents. The researcher posits that such offenders require mental health care and suitable de-addiction treatments rather than being provided with educational and vocational training unjustifiably in the child care institutions. Although, the JJA 2015 & JJ Model Rules 2016 empower the JJB to send such juveniles to the therapeutic centres for appropriate treatment, mandate the child care institutions to arrange the mental health examination,

⁶⁹⁷ Sec 24, JJA 2015

⁶⁹⁸ Sec 18(1), JJA 2015

⁶⁹⁹ Sec 18(1)(g) JJA 2015

⁷⁰⁰ See Chapter 2, p. 70 and 71

⁷⁰¹ See Chapter 4, p 140

screening for substance abuse of every juvenile admitted,⁷⁰² the children in the Observation home of the three selected districts for the study do not receive any mental health check up/screening for substance abuse on admission. The Special Home, Bangalore does screen the juveniles for the psychiatric problems only at the time of admission. Although, the Special Home does have in-house counsellor, no mental health professionals visit these homes on a regular basis.

- Although, the international standards emphasizes on the *deprivation of liberty of juveniles as a means of last resort*, it legitimizes the deprivation of their personal liberty by competent deciding authority in exceptional cases of serious and violent acts by juveniles against any other person and that when there is no other suitable response.⁷⁰³ Although, the JJA 2015 does not explicitly state in its text that deprivation of liberty should only be used as a measure of last resort, it permits deprivation of liberty in heinous offences after adhering to due procedures in appropriate cases.⁷⁰⁴ Also, there is range of non-custodial measures at the disposal of the JJB.⁷⁰⁵ Considering the varying special needs of juvenile delinquents as well as the variety of dispositional measures available, the JJB in India is given discretion to make most appropriate disposition in each individual case.

Although, not explicitly stated in the Statements of Objects & Reasons to the Juvenile Justice (Care & Protection of Children) Bill, 2014, the underlying idea of the crucial change to segregate juveniles aged 16-18 years on the basis of heinous offence to be tried as an adult was to increase sanctions and to hold them accountable for heinous crimes. The researcher in the empirical study interacted with some of the children found in conflict with law and most of them justified their criminal behaviour by citing reasons of poverty, peer pressure etc rather than acknowledging their responsibility in the wrongdoing. The goal of the juvenile justice system must be also to help the juvenile delinquents to understand and realize the wrongfulness of their act, its impact on the victims and deter them from further committing crimes. Various

⁷⁰² Sec 18(2) JJA 2015 & Rule 34 & 80 JJ Model Rules 2016

⁷⁰³ Rule 17(1)(c), The Beijing Rules

⁷⁰⁴ Sec 18(1) (g), 19 & 20, JJA 2015

⁷⁰⁵ Sec 18, JJA 2015

studies pointing to neurobiological immaturities of adolescents also suggest that they are more amenable to rehabilitation.⁷⁰⁶ Therefore, a juvenile must be approached from a developmental context keeping in mind their incomplete brain maturation, diminished criminal culpability and their vulnerability factors. They must be held accountable for their criminal behaviour but, in a manner that helps them in their successful reintegration and also ensures that the community is safe when such child is released back into the society and no longer monitored by the juvenile justice system. Therefore, the researcher posits that the juveniles must be dealt by building a system of accountability which guarantees their ultimate reformation & rehabilitation. To achieve this, accountability must be integrated into every aspect of juvenile justice system i.e. law enforcers must be equally accountable for their actions, dispositions and related rehabilitation and treatment services.

Generally speaking, effective implementation of the legislation, reporting, inspections, capacity building of the personnel etc ensures accountability. On the other hand, the UNcTcRC prioritizes the quality of persons involved at every stage of juvenile justice process for the effective and proper implementation and urges the State parties to focus on training of such persons in a systematic and persistent manner.⁷⁰⁷ The researcher *in the fourth chapter of this study has attempted to explore and understand the mechanisms that exist in India to ensure the accountability of all the key personnel involved in Indian juvenile justice system dealing with children in conflict with law.* In this regard, the empirical study of the components dealing with the child in conflict with law in three selected districts of Karnataka i.e Bangalore (U), Udupi & Dharwad indicated the following-

- ***Child Welfare Police Officers-*** A special juvenile police unit exists in all the 30 districts of Karnataka. Each police station has designated atleast one police officer as CWPO. Although JJA 2015(also preceding legislation JJA 2000) has recognized the importance of training of the CWPO, in the empirical study, the researcher learnt that these CWPO's do not get any training at their

⁷⁰⁶ Beatriz Luna, *The Relevance of Immaturities in the Juvenile Brain to Culpability and Rehabilitation*, 63 Hastings Law Journal 1469, 1485 (2012); John F. Stinneford, *Youth Matters: Miller v. Alabama and the Future of Juvenile Sentencing*, 11 Ohio St. J. Crim. L. 1, 2 (2013), available at <http://scholarship.law.ufl.edu/facultypub/423>

⁷⁰⁷ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 40

induction but, receive it at different intervals of time. The contents of the training provided to these CWPO's in Karnataka, sought by the researcher through the RTI indicates that they generally cover all the legislations concerning children in India and are not specific to juveniles. However, the Child Welfare Police Officers (CWPO) are held accountable for the lapses in procedures when handling cases of children in conflict with law in the same manner in which lapses by police in other cases are handled. As per the RTI responses received on 27/09/2016, the CWPO are subject to frequent transfers and not always posted as CWPO on such transfers. Consequently, during the visit to police stations across the selected districts for the study i.e Bangalore (U), Dharwad & Udupi, the researcher found newly designated and inexperienced CWPO's. Moreover, these CWPO's handle matters relating to children in conflict with law in addition to their already burdened police department duties which could hamper the effective implementation of the legislation.

- **Juvenile Justice Board-** As of 1.04.2018, JJB's are constituted and functioning in all the 30 districts of Karnataka. The varying needs of juveniles, variety of dispositional measures available at the disposal of the deciding authority, makes the exercise of discretion inevitable and it is very important to make determinations most appropriate in each individual case.⁷⁰⁸ The international standards stress on the accountability of the deciding authorities in the exercise of their discretion ensured through special qualification and training.⁷⁰⁹ The JJA 2015 does not prescribe any special qualification/ knowledge for the Principal Magistrates constituting the JJB. On the contrary, the preceding legislation JJA 2000 mandated special knowledge/training in child psychology/ child welfare for the magistrates to be appointed as the member of the Board. As per the information sought through RTI, the JJB members in Karnataka receive trainings and attend workshops relating to laws concerning children in India, child protection issues and concerns, physical and mental needs etc which takes place four or five times a year. It is usually short term training programs for duration of one to five days. The contents of

⁷⁰⁸ Rule 6.1, The Beijing Rules

⁷⁰⁹ Rule 6.2 & 6.3, The Beijing Rules

the training provided to JJB members in Karnataka indicate that they are comprehensive and not specific to juveniles. However, JJ Model Rules 2016 mandates a minimum of fifteen days training to JJB members on JJ Act & Rules, orientation on child welfare, care, protection and child rights.⁷¹⁰ Furthermore, the social workers constituting the JJB of the three selected districts for the study had the necessary formal qualifications in accordance with the JJA 2015, but did not receive any training at all to deal with the children in conflict with law. The training of social workers is significant here as the JJA 2015 empowers the social workers constituting the JJB to conduct inquiry even in the absence of Principal Magistrate.⁷¹¹

The researcher sought details from the High Court of Karnataka, Bangalore regarding the details of Principal Magistrates presiding JJB for the last 7 years i.e 2010-2017 with respect to three selected districts of Karnataka for this study. The details sought indicated that there is no continuity of service of the JJB members in the JJB i.e Principal magistrates are subject to frequent transfers without any fixed tenure ⁷¹² & are not always posted in the JJB's on such transfer. The details sought also indicate that the tenure of the Principal Magistrates in the JJBs of the three selected districts ranges from 8 months to 3 years. Further, the tenure of the social workers of the Board is 3 years and is eligible for appointment of maximum of two terms, which shall not be continuous.⁷¹³ Frequent transfer of Principal Magistrates, limitations on the number of times an appointment of social worker may be made to the JJB deprives the JJB from the required specialist expertise or experience. Simply put, after receiving training & gaining experience in working with children in conflict with law, the JJB members are likely to make better dispositions and thus raise the level of professional competency. The JJA 2015 mandates the review of the pendency of the cases of the JJB every three months by the Chief Judicial Magistrate/ the Chief Metropolitan Magistrate/ high level committee. It also mandates the JJB to furnish the information of pendency on a quarterly

⁷¹⁰ Rule 89(2), JJ Model Rules 2016

⁷¹¹ Sec 7(3), JJA 2015, However, the Principal Magistrate must be present at the final disposal of the case (Proviso to Sec 7(3))

⁷¹² Information sought through RTI, See Annexure 10

⁷¹³ Rule 5, JJ Model Rules 2016

basis to the District Child Protection Unit. The researcher sought details regarding the pendency of cases with respect to three selected districts for this study by relying on the General circular No.3/2014 issued by the High Court of Karnataka on 21.02.2014 mandating the JJB of every district to submit the quarterly reports of disposed & pending cases to the High Court. As per the RTI responses received on 28.08.2017, 237 heinous cases are pending for more than 1 year in the JJB, Bangalore (Urban) itself.⁷¹⁴ The JJB, Bangalore (Urban) holds its sitting twice a week and the frequency of JJB sittings may add to the pendency of cases. Ideally, the JJB should sit on all the working days unless the case pendency is less.⁷¹⁵ There is no support staff to perform the clerical functions of the JJB in all the selected districts for this study. The staff members of the Homes perform these clerical functions. The researcher also draws attention to the need of providing training & sensitization to the Public Prosecutors appointed for the JJB. The Public Prosecutors & the legal aid lawyers representing the children in conflict with law in Bangalore (U), Udupi & Dharwad have not received any training at all to deal with such children.

- ***Child Care Institutions dealing with Children in conflict with law-*** The JJA 2015 (preceding legislation also) mandates the State Government to establish Observation Home, Special Home in every district or group of districts and atleast one place of safety in the State. ***Karnataka has 16 Observation Homes, 1 Special Home and 2 aftercare homes. As of 03/04/2018, one place of safety is sanctioned in the state of Karnataka to be established in the premises of the Observation Home, Bangalore. The empirical study reveals that the juveniles in the observation home, Bangalore are segregated according to their age group 7- 16 years and 16-18 years without any consideration to the nature of offences committed. Further, the juveniles in the Observation Home in Dharwad & Udupi are also segregated only on the basis of their age-group 7- 16 years and 16-18 years. There are no regular educational and vocational training provided to children in these***

⁷¹⁴ See Annexure 11

⁷¹⁵ Rule 6(7) Central Model JJ Rules 2016 & Rule 9(3) Central Model JJ Rules 2007

observation Homes. There is no counseling room in the Observation Home, Dharwad & Bangalore and counseling sessions are conducted in the office rooms in an open setting. There are no qualified tutors. Most of the staff of the Observation Homes in the selected districts for the study is working on an ad-hoc basis & not regularized. The interaction of the researcher with the staff members of these homes further revealed that they neither have the necessary formal qualifications nor have received any training to deal with children in conflict with law. *The vocational training offered in the special home, Bangalore includes basic computer course, tailoring, papad making, idol making, painting & traffic police assistant programmes. The researcher posits that the aforementioned skills learned in these homes are not enough for securing a livelihood in this technological complex society and it may directly or indirectly contribute to the re-offending of the children in conflict with law.* As far as accommodation and required infrastructure of special home, Bangalore is concerned, there is single dormitory provided for the children housed in the home. It inevitably leads to mixing of the older and the younger juvenile delinquents. The regular educational programmes provided in the Special Home are basic education, bridge courses and children are also allowed to directly appear for SSLC and PUC examinations without attending regular classes. The law mandates education to be provided both within and outside the special home as per the requirement. As far as sending such children to schools or colleges outside the premises of the special home is concerned, the Superintendent of the Special home, Bangalore opines that it is not in the interest of child's safety as well as public safety. There is single class room provided to the children at the special Home. This raises a huge doubt as to the possibility of providing age appropriate education to all the children placed in the special home.

- **Probation Officers (PO's)** - are the linchpin of a juvenile justice system as they play very critical role at every stage of the juvenile justice process. As per the Cadre and Recruitment Rules of the Department of Women and Child Development, Karnataka, the post of PO's for these Observation Homes are filled by promotion from the cadre of First Division Assistants (FDA's) who

have put in not less than five years of service in the cadre of FDA.⁷¹⁶ This means the PO's do not have necessary formal qualifications and experience to deal with children in conflict with law. Accordingly, the researcher found that the PO's in the Observation Home in Bangalore were the FDA's who were promoted to the position. These probation officers in the observation home do not perform any probation officer duties. They are involved in the administrative functions of the JJB. In the study, the researcher also found that there is single Probation Officer for Bangalore (Urban) appointed under the Probation Offenders Act, 1958 who prepares the social investigation report of the juveniles and also deals with cases of adults. This overburdened workload is likely to reduce the quality of the social investigation report. Serious concerns about the quality of the social investigation reports has been raised in the Regional Round table conference on Strengthening the Rehabilitation and Restoration of Children in the Juvenile Justice System (2016) organized by the Supreme Court in support with the UNICEF and Child Center for Law, NLSIU.⁷¹⁷ Further, in Dharwad, the Superintendent of the Observation Home is designated as the Probation Officer who prepares the Social Investigation report. As far as Udupi is concerned, strangely no social investigation report relating to juvenile in conflict with law is filed before the JJB.

Every child found in conflict with law has varying needs & different vulnerabilities & it is necessary to make dispositions suitable to that particular child. Therefore, individual care plan plays very integral role in the rehabilitation & reintegration of the child. The JJA 2015 mandates the Children's Court as well as the JJB to include an individual care plan in the disposition for the rehabilitation of the child prepared by the probation officer/child welfare officer/recognised voluntary organisation.⁷¹⁸ The Superintendent of the Special Home, Bangalore stated that the individual care plans are prepared for every child in conflict with law placed in the special home, Bangalore by the Probation Officer of the Home. The request of the

⁷¹⁶ See Annexure 14

⁷¹⁷ Consolidated Report of Second Round of Regional Level Round Table Conferences, September 2016, on Strengthening the Rehabilitation and Restoration of Children in the Juvenile Justice System (2016) organized by the Supreme Court of India in support with the UNICEF and Child Center for Law, NLSIU at 21

⁷¹⁸ Sec 19 & 8(h) of the JJA 2015, Also Rule 13(7)(vi) JJ Model rules, 2016

researcher to observe the individual care plans of the children in Special Home was turned down citing the reasons of privacy & confidentiality. Although, the preparation of individual case files and care plans were mandatory even under the JJA 2000 as well as the JJ Model Rules 2007,⁷¹⁹ little or no attention was paid to it. The failure of preparation and implementation of individual care plans in child care institutions across the country was brought to the notice of the Hon'ble Supreme Court by learned Amicus in Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India (UOI) and Ors.⁷²⁰

- ***Superintendence of Child Care Institutions*** -As far as the accountability of the staff is concerned, the JJA 2015 & JJ Model Rules 2016 contain provisions defining the roles & responsibilities of staff at these custodial institutions. They are subject to the control and supervision of the Person- in- charge and the latter shall recommend/take strict disciplinary action against the staff in cases of dereliction of duties or violation of rules/orders.⁷²¹The State Government may take action against any officer/institution, statutory body etc after due inquiry in cases of non-compliance of the Act and the Rules.⁷²² Criminal action can be taken against every person working with child care institution in cases of offences committed against children.⁷²³
- ***Inspection of Child Care Institutions dealing with children in conflict with law-*** As far as the accountability of custodial institutions housing children in conflict with the law are concerned, the international standards emphasize the constitution of an independent authority to conduct regular inspections. Although, the JJA 2015 empowers the State Government to appoint inspection committees for the State & district, it primarily comprises of State Government employees.⁷²⁴ As per the RTI responses received on 24/11/2016,

⁷¹⁹ Rule 15(3), JJ Rules 2007

⁷²⁰ Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017

⁷²¹ Rule 66, JJ Model Rules 2016

⁷²² Rule 93, JJ Model Rules 2016

⁷²³ Rule 54, JJ Model Rules 2016

⁷²⁴ The State Inspection Committee comprises of members from Board, State Commission for the Protection of Child Rights, the State Human rights Commission, State Adoption Resource Agency,

the District Inspection Committee constituted on 2.11.2015 by the State Government of Karnataka effective for three years comprises of the State Government employees.⁷²⁵ The researcher opines that this inspection committee comprising of State Government employees is likely to be constrained to make an impartial report in cases of child care institutions run by the State Government itself. Further, the international standards and JJ Model Rules 2016 endorse & mandate the complaints mechanism for the juveniles housed in such institutions. In this regard, the Special Home in Bangalore has experimented with the concept of BAL Panchayat and also maintains child suggestion and complaint box. However, no formal complaint mechanism exists in the Observation Homes in the three selected districts for this study and complaint is received informally i.e. children approach superintendent of the Observation Home.

The significance of the *social audit* was stressed by the Hon'ble Supreme Court in Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India (UOI) and Ors in terms of Rule 64 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which mandated the Central Government /the State Government to evaluate the implementation of the JJ Act 2000 with the support of the autonomous bodies.⁷²⁶ It was also brought to the notice of this Hon'ble Court that no social audit was carried in spite of the rules notified in JJ Model Rules 2007. The Supreme Court in this case, observed the relevance of social audit as tool of public accountability and used the concept of social audit as an assessment of department's non financial objectives through systematic and regular monitoring on the basis of the views of the stakeholders.⁷²⁷ It is pertinent to note here that the provisions relating to social audit are conspicuous by its absence in the JJA 2015 as well as JJ Model Rules, 2016.

medical & other experts, voluntary organizations & reputed social workers. District Inspection Committee comprises of a member from Board, District Child Protection Officer, Medical Officer, Mental health expert and a member of civil society working in the area of child rights, care etc.(Rule 41, JJ Model Rules 2016)

⁷²⁵ See Annexure 15

⁷²⁶ Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017

⁷²⁷ Ibid

The Ministry of Women & Child development (MCWD) has online central level monitoring system which is responsible for collection & analysis of reports received from the States in the prescribed format with respect to child care institutions, JJBs etc.⁷²⁸ The Affidavit filed by the MCWD before the Hon'ble Supreme Court indicated that the most States, for the period 2015-2016 did not provide the necessary information to online central level monitoring system including the State of Karnataka.⁷²⁹

The researcher submits that India has not absolutely departed from the requirements of a comprehensive juvenile justice policy as indicated by the UN Committee on the Rights of the Child, but some aspects like prevention of juvenile delinquency, permanent destruction of conviction records and privacy of judicial hearings are neither incorporated into its domestic law nor into practice. However, the faulty preliminary assessment mechanism to transfer trial of heinous offences premised on faulty criterion is very likely to cause arbitrary decisions, differential treatment of similarly situated offenders and decision making delays. In the empirical study, it is evident that there is pendency of cases, lack of quality and committed personnel dealing with children in conflict with law, unsatisfactory standards of care in the child care institutions, lack of proper educational, vocational and life skill training facilities etc. The researcher felt that the weakest aspect of implementation of JJA 2015 is lack of qualified, trained & committed personnel dealing with child in conflict with law. Strangely, the Indian Parliamentary Standing Committee on Human Resource Development states that Karnataka (Bangalore) is one of the regions across the country which has implemented the legal provisions for children well.⁷³⁰ The researcher submits that aforementioned factors will continue to fail the juvenile justice system in India because the JJA 2000 was repealed to address the same issues that arose in the implementation such as abuse of children in institutions, inadequate facilities, quality of care & rehabilitation measures in Homes, high pendency of cases, lack of

⁷²⁸ Sampurna Behura v. Union of India, 2018 SCC OnLine SC 106, decided on 09.02.2018

⁷²⁹ Ibid

⁷³⁰ Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care & Protection of Children) Bill*, 2014, at 38

responsibilities and accountability of institutions etc.⁷³¹ There are many sins committed by the State which cannot be forgiven but those which relate to the welfare of children deserve condign public censure because the child is the first charge on the State's resources.⁷³²

Chapter 5- A study of Legislative Practices concerning Juveniles in UK (England), USA, Canada and Norway

The researcher in this chapter explored the salient features of the juvenile justice legislations and practices in UK (England), USA, Canada and Norway to discover their present-time legal practices that could be implemented in the Indian juvenile justice system. Selected comparisons in this chapter was also made only to understand key differences and similarities between the Indian and selected jurisdictions approaches to juvenile delinquency.

The English justice system focuses on early intervention, prevention programmes and rehabilitation; it has reserved a wide range of custodial sentences at their disposal for the delinquent children under the age of 18 years who commit serious offence which includes fixed term (Detention and training order) indeterminate and life sentences. Indeterminate and life sentences are reserved for serious offences endangering human life and public safety. The Norwegian justice system has blended the child welfare services with the criminal justice system to deal with the juvenile offenders without establishing a separate juvenile justice system. Every person aged 15 years/above is criminally held responsible as an adult. But, the Norwegian penal law authorizes the court to impose lesser sentence than that prescribed for the offence in cases of crime committed by children under the age of 18 years. Furthermore, Canada places a greater emphasis on community based programmes and protects and promotes variety of competing interests of the juvenile justice system- rehabilitation, punishment, protection of the public and accountability of juveniles. The legislation concerning Canadian youth offenders makes provision for both rehabilitative and punitive

⁷³¹ The Statements of Objects and Reasons of the Juvenile Justice (Care & Protection of Children) Bill, 2014

⁷³² Justice V.R. Krishna Iyer, *Jurisprudence of Juvenile Justice: A Preambular Perspective* at 16, available at http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf

approaches to tackle young offenders. In addition to youth sentences, the Youth Justice Court of Canada is authorized to impose adult length sentences in cases of serious violent offences (endangering human life & safety) committed by young persons aged 14 and above. USA has adopted various techniques to transfer serious violent offenders to the adult criminal justice system. The brief study of the legislative framework of the selected jurisdictions indicates that unblended and pure models of juvenile justice do not exist in practice. The juvenile justice systems in these countries are a fusion of different approaches. Although, rehabilitation and reintegration of youth delinquents remains the primary goal of the juvenile justice systems in these countries, the most serious responses are retained for the serious and violent crimes committed by the juveniles.

The researcher has provided some of the contemporary innovative legislative practices in the aforementioned selected jurisdictions as recommendations for developing better approaches in India.

6.2 Thematic recommendations-

1. Age of criminal responsibility

- The Minimum Age of Criminal Responsibility (MACR) in India ranges from 7-12 years contingent on maturity and understanding of that child. Clearly, this authorizes the use of minimum age as low as 7 years. The United Nations Committee on the Rights of the Child (UNCtRC) recommends the age of MACR not to be below 12 years. It also states that the use of doli incapex presumption in assessing the criminal responsibility is entirely left to the discretion of the judge and allows the use of lower minimum age often leading to discriminatory practices. Therefore, the researcher recommends that the doli-incapex presumption to be abolished. 7 years appears to be too low compared to international community. Therefore, the researcher proposes to increase the MACR to 12 years, in line with the United Nations standards.
- In India, there is no mechanism to deal with the children below the MACR committing crimes. Early interventions are likely to reduce recidivism and the

likelihood of young delinquents turning into adult offenders. Therefore, it is recommended to establish a mechanism to exclusively deal with the children committing crimes below the MACR.

2. Preliminary Assessment into heinous offences by the Juvenile Justice Board

- Taking into account the latest scientific research affirming adolescents diminished criminal culpability on the basis of developmental immaturity and lack of tools to measure mental capacity/mental maturity on an individual basis, the researcher opines and submits that the criterion of mental capacity in preliminary assessments to transfer juveniles to Children's Court is unintelligible. Thus, preliminary assessments by the JJB are an arbitrary and faulty mechanism premised on a flawed criterion. In the light of neuroscience, child psychology and the researcher's interaction with the psychiatrist at NIMHANS, Bangalore, the researcher concludes that an adolescent can never be considered as an adult. Therefore, the researcher proposes that the juveniles aged 16 and above alleged to have committed heinous offences must be given distinct treatment within the juvenile justice system by empowering the JJB to decide such cases rather than transferring the trial to the Childrens Court/the Sessions Court.

3. Rehabilitation and reintegration of children in conflict with law

- The researcher strongly suggests that indeterminate sentencing may be appropriate for juvenile delinquents. Rehabilitation is clinical which is based upon observation and treatment rather than theory and discretion. Therefore, the duration of rehabilitation should be indeterminate because it is impossible to anticipate the course or extent of rehabilitation as it entirely depends upon how a person responds to it. Indeterminate sentencing is based upon notions of

rehabilitation, while determinate sentencing is based upon a desire for retribution or punishment.⁷³³

- Considering the subjectivity of release decisions in case of rehabilitation dependent sentences, the researcher proposes the constitution of a multidisciplinary team. The determination that the juvenile has been rehabilitated or not must be assigned to a multidisciplinary team comprising of adjudicating authority (JJB), mental health experts, experienced psychologists/ counselors and staff members of the place of safety or special homes (Superintendent of the house, Probation Officer and /Counselor). The researcher opines that multidisciplinary team comprising of variety of expert minds is likely to make objective release decisions in the best interest of the juvenile as well as the society.
- Individual care plan is the nucleus of rehabilitation and reintegration of child in conflict with law in the juvenile justice system. A multidisciplinary team comprising of adjudicating authority (JJB), mental health experts, experienced psychologists/ counselors and staff members of the place of safety/ special home (Superintendent of the house, Probation Officer and the Counselor) must prepare the individual care plan rather than the probation officer/ child welfare officer/recognised voluntary organisation as provided under the JJA 2015. The same team must regularly evaluate the child, make determination as to whether the child has been rehabilitated or not and make release decisions. This multidisciplinary team comprising of variety of expert minds are likely to develop effective individual care plans (ICP) and make objective release decisions. Parents/families may also be involved in preparation of ICP as they are better informed about the behavioural problems of their children. The aforementioned panel of experts must be maintained by the respective District child protection Units (DCPU) to enable the JJB to readily use their services whenever required.

⁷³³ Barry C. Feld, Case and materials on Juvenile Justice Administration, American Book series, 890(2nd ed., 2004)

- Mental health disorders & substance abuse is common among juvenile delinquents. Such juveniles must be diagnosed and treated rather than provided with educational & vocational training unjustifiably in the child care institutions. The child care institutions must address these problems by initial and periodic screening for psychiatric disorders and substance abuse, appropriate medications, regular counseling, de-addiction programmes etc. De-addiction centers must be established in all the child care institutions.
- Rehabilitation in the place of safety has to be rigorous and effectual. Under the JJA 2015 when the child convicted by the Children's Court for heinous offence attains the age of 21 years, an evaluation is made that could potentially send such offender to the jail. Therefore, the researcher suggests that such children in the place of safety must be provided with effective rehabilitative and treatment services by heterogeneous professionals like experts in the field of behavioural science, mental health experts, professional counselors etc.
- There are no regular educational facilities and vocational training provided in the observation home of Bangalore (U), Udupi & Dharwad. Although, Observation Homes are temporary stoppage for children alleged to be in conflict with law, the researcher recommends that it is desirable to provide them with short term skill development programmes to replace their idle time with productive work.
- The vocational training offered in the special home, Bangalore includes basic computer course, tailoring, papad making, idol making, painting, traffic police assistant programmes etc. The researcher opines that gainful vocational training in the areas such as health care, computer technology, office management, skilled trade etc with job placement can significantly reduce the risk of reoffending among juveniles. The Superintendent of the Special Home opines that State Government must authorize job oriented vocational training in auto mechanics, welding, hotel management courses etc to be provided to children in the Special Home according to their age and interest.

- The researcher in the proceedings of the JJB as well as in the Observation Homes of the three selected districts for the study, observed the unsupportive and insensitive behaviour of some of the parents towards their delinquent children and further interaction with the staff revealed the cases of parents disapproving their relationship with such children rather than disapproving only the child's delinquent act. On the other hand, the researcher also understands that juvenile delinquency can be of serious consequences for both the child as well as the parents. The researcher recommends that the juvenile justice system must make attempts to rebuild the prosocial relationship between the juvenile delinquent and parents, community etc. Parental counseling program must be mandatorily included in the rehabilitation plan of the child.
- There must be regular and proper follow up of child in conflict with law after leaving observation home/ special homes/ places of safety. A child's improved behaviour/conduct may disappear when he is sent back to the influence of his area and locality.
- Adequate Special Homes and Place of safety must be established in the State of Karnataka.

4. Accountability in Juvenile Justice

- Accountability must be integrated into every component of juvenile justice system i.e. law enforcers must be equally accountable for their actions, dispositions and related rehabilitation and treatment services. As per the international standards, qualification & training of personnel and inspections of custodial institutions ensures successful implementation & accountability of the law enforcers (Recommendations regarding the same are discussed in detail in sub-heading 5 &6).
- In addition to rehabilitation & reintegration, the children in conflict with law must be held accountable for their actions without criminalization/penalization

as they are more responsive to rehabilitation i.e. the juveniles must be made to understand and realize the wrongfulness of their act, impact of their acts on the victim. The researcher therefore, suggests the use of restorative justice practices such as restitution, victim-offender mediation, family group conferencing, and community based services etc in the rehabilitation plan. It is likely to increase the sensitivity levels of the juvenile offenders towards their victims and also maximize the participation of the victim in the juvenile justice process. The Indian juvenile justice system must introduce the use of these restorative justice practices as an intervention measure to deal with children in conflict with law provided the victim agrees to attend it without being subject to any form of coercion.

- In India, performance of community service programmes which can be imposed by JJB as a non-custodial measure include activities like maintaining a park, serving the elderly, helping at a local hospital or nursing home, serving disabled children, serving as traffic volunteers.⁷³⁴ It is pertinent to note here that aforementioned service programmes provides no help to crime victims, their survivors and the juvenile delinquents. Thus, the researcher opines that the community service performed by the juveniles must of value to the victims/ their survivors and such that the juveniles must be made to understand and realize the wrongfulness of their act through these programmes.

5. Training standards and Capacity building for Juvenile Justice Personnel

- It was evident during the personal interaction by the researcher with the personnel (CWPO's, JJB members, Probation Officers, Social workers etc) dealing with the children in conflict with law experienced different problems in the implementation of the Act. Therefore, the researcher recommends joint trainings of all the key actors dealing with juveniles to enable them to be informed from each other's experiences of the issues pertaining to the

⁷³⁴ Rule 2(vi), JJ Model Rules 2016

implementation of the Act. This would help them to arrive at best solution and co-ordinate practices. Also, periodic joint training with the case study of serious and violent juvenile offenders may provide valuable guidance to the experienced as well as new professionals dealing with such children.

- The Child Welfare Police Officer's (CWPO) in Karnataka are subject to frequent transfers and not always posted as CWPO's on such transfers. The researcher recommends that the CWPO's must be transferred to the same cadre of CWPO's as the trained and experienced professionals raise the level of professional competency in the juvenile justice system. Furthermore, the CWPO's handle juvenile matters in addition to their already burdened police department duties which could hamper the effective implementation of the Act. Therefore, the researcher opines that it is desirable to create posts of CWPOs to specifically handle matters relating to children. Furthermore, it is necessary to sensitize the CWPO towards juveniles by providing them training with respect to child friendly interrogation techniques & procedures.
- Posting of the Judicial Magistrate first class / Metropolitan Magistrate (Principal Magistrate) in the JJB, Karnataka is an additional charge. Moreover, the JJB of the selected districts for the study holds sittings once / twice a week. The frequency of sittings of the JJB may add to the pendency of cases. This shortcoming should be addressed through constitution of additional JJBs.
- Frequent transfer of Principal magistrates constituting JJB, limitations on the number of times an appointment of social worker may be made to the JJB deprives the JJB from the required specialist expertise or experience. Therefore, the State must create & maintain experienced cadre of Principal Magistrates and social workers of the Juvenile Justice Board for appointments to JJB. The tenure of the Principal Magistrates in the JJB must be given due weightage in their performance assessments to impel them to do better. The training provided to the JJB members must be specific to juveniles rather than being general in nature.

- The Public Prosecutors appearing before the JJB & the legal aid lawyers representing the children in conflict with law must be given training & sensitization with respect to children in conflict with law.
- Adequate support staff must be appointed to perform the clerical functions of JJB.
- To successfully carry out the goal of rehabilitation and reintegration of children in conflict with law, sufficient number of dedicated, committed probation officers with professional competence must be recruited. Further, to ensure quality, social investigation reports must be prepared only by qualified and experienced probation officers with a degree in social work, psychology or social science with rigorous induction training in child related issues.
- Qualified staff must be appointed to the Observation Homes, Special Home & Place of safety. Training must be provided to these staff members at their induction. The staffs deputed from the other departments to these homes lack the commitment to work in the best interest of the child. Dedicated workers have to be found out, proper training to them has to be imparted and such people alone should be introduced into the children homes.⁷³⁵
- India must revamp and strengthen the training programmes for all the personnel dealing with children in conflict with law. Rule 89 of the JJ Model Rules 2016 mandates a minimum period of 15 days training to various categories of personnel under the JJA 2015. It also postulates the Judicial Academy, Police Academy in the States as well as the State Legal Services Authorities to prepare suitable training modules and provide training to personnel. However, it was pointed out by the learned *Amicus* before the Hon'ble Supreme Court that this rule is being followed more in the breach and there is hardly any Judicial Academy or Police Academy or State Legal

⁷³⁵ Sheela Barse v. Secretary Childrens Aid Society, (1987) 3 SCC 50

Services Authority which conducts 15 days training programmes.⁷³⁶ It is high time that the High Court's exercise their supervisory jurisdiction and intervene and take appropriate remedial steps.⁷³⁷

6. Accountability of Child Care Institutions

- There must be an independent body that oversees various components of the juvenile justice system dealing with children in conflict with law. Constitution of an independent authority to conduct regular inspections of child care institutions is desirable to avoid any conflict of interest. It also enables to make an impartial report in cases of child care institutions run by the State Government.
- The child care institutions must be placed under the legal guardianship of the High Court and a Committee of Judges must be formed which could undertake surprise inspections to ensure that the children are living in a healthy atmosphere.⁷³⁸
- A formalized complaint mechanism in the child care institution is likely to make these institutions efficient, safer and strengthen their accountability.
- Social audit of the child care institutions must be undertaken to ensure transparency and accountability in its functioning.

7. Prevention of Juvenile Delinquency

- Early intervention and prevention measures are of critical importance as they not only prevent the young children from coming into conflict with law but,

⁷³⁶ Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India (UOI) and Ors (Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017)

⁷³⁷ Ibid

⁷³⁸ Report of the Committee on Amendments to Criminal Law (2013) at 196

also reduce the likelihood of them turning into adult offenders. India must capture the successful juvenile delinquency prevention strategies adopted in other jurisdictions or rather develop its own preventive measures. In this regard, the researcher emphasizes on successful socialization of child, parental training programmes to deal with children's behavioural problems, school based interventions, social policies etc to prevent juvenile delinquency.

- Taking a cue from the England's juvenile justice practice, the researcher recommends the constitution of efficient team in every area/locality to identify children who are at risk of offending in that respective locality/ area and provide necessary assistance.

8. Diversion from the formal justice system

- Diversion of juveniles from the formal justice system in non-serious criminal acts is likely to prevent stigmatization of conviction of such children and such measures in a vast country like India will contribute to the decline in congestion in JJBs and correctional homes so that the serious/violent juvenile offenders receive required attention in these formal institutions. According to the functionaries interviewed, the minor offences may be stepping stones to serious criminality and early interventions are likely to be more effective. Although, the Karnataka Juvenile Justice Rules 2002 & 2010 empower the CWPO to some extent, to divert the children in conflict with law from the JJB in petty offences, they have no authority to impose any other diversion measures except informal warning and one-time counseling. In such cases, an effective intervention through regular counseling, temporary supervision, community based responses etc is desirable.

9. Confidentiality of records

- The Indian juvenile justice system does not keep the records of convicted juveniles aged below sixteen years permanently and do not follow into their adulthood. Consequently, a juvenile already convicted in the past, repeating a

crime at the age of 18 years or more would be placed in the adult criminal justice system. As the records of juvenile are not kept permanently, such repeat offenders shall be considered as first time offenders and thus treated leniently. Thus, the researcher contends that this practice of expunging juvenile records impedes the goals of justice and crime deterrence. Safety of public is more important than the protection of identity of juveniles in exceptional cases. So provisions should be made in law to keep permanently the conviction records of heinous and habitual juvenile offenders irrespective of age accessible by Court and police only. In this regard, digitalization of such records is desirable. This also helps to determine offender's previous criminal history and decide appropriate dispositions.

10. Evidence based approach in tackling juvenile delinquency

- Evidence based approach is necessary to develop programmes that works best for children in conflict with law. For better implementation, every key actor in the juvenile justice system dealing with children in conflict with law must have access to the high quality information such as the impact of particular rehabilitation programmes, vocational training programmes etc on the juvenile delinquents practiced across various States in India. This also helps in designing individual care plans for the children in conflict with law.
- The National Crime Records Bureau (NCRB) does not provide any data as to crimes committed by the juveniles who acted alone or in a group. Some of the recent high profile crimes by juveniles in India were committed in groups or gangs under peer pressure. In such cases, a juvenile may be aiding or contributing to the offence in a secondary way. Statistical research in many countries endorse that juvenile crime is predominantly a group phenomenon.⁷³⁹ Although, NCRB provides recidivism data with respect to juveniles, the researcher opines that the segregation of data of the repeat

⁷³⁹ United Nations fact sheets on youth, available at <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>, last seen on 8/04/2018

offenders by age, details of previous convictions (offence committed, length & type of custodial/non-custodial sentence) etc would help in understanding the deficiency of the juvenile justice practice in India.

- The researcher recommends that there should be agreement between the relevant ministries of the countries across the globe to share knowledge and best practices concerning children in conflict with law. An attempt should be made build a body of knowledge with innovative contemporary practices which will over time emerge into evidence based practices.
- Every childcare institution i.e observation home, special home and place of safety in the country dealing with children in conflict with law must develop and maintain a database displaying data as to the number of children incarcerated in such homes, duration of stay, number of children successfully rehabilitated etc. This brings transparency and helps in testing the effectiveness of the system.
- The States & Union Territories of India must unfailingly send the periodic reports as required by the Online Central level monitoring system to the Ministry of Women & Child development. Needless to say, this brings transparency, helps in testing the effectiveness of the system and may also serve as guidance for further improvements.

11. Report on utilization of funds

- The State Governments and Union territory should draw up plans for full and proper utilization of grants (along with expenditure statement) given by the Union Government under the Integrated Child Protection Scheme.⁷⁴⁰

⁷⁴⁰ Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India (UOI) and Ors (Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017)

12. Public awareness

- Creation of public awareness towards the topic of child in conflict with law to enable the general public to become more sensitive to the needs of such children and provide support in their successful reintegration into the society. Religious institutions, schools, colleges, NGO's and media must take initiatives to sensitize the society in this regard.