

Chapter 4- Assessment of Practices in the Indian juvenile justice system concerning children in conflict with law and its Accountability mechanisms

Chapter Objectives-

- To analyze Indian law relating to children in conflict with law by using International Standards (United Nations) framework
- To examine whether the appropriate legal procedures and institutions are in place for an efficacious and fair justice system for juveniles
- To explore the mechanisms that exist in India to ensure the accountability of all the key actors involved in Indian juvenile justice system dealing with children in conflict with law

Chapter 4-Assessment of Practices in the Indian juvenile justice system concerning children in conflict with law and its Accountability mechanisms

The United Nations Convention on the Rights of the Child, 1989 (hereafter referred to as UNCRC) is a comprehensive treaty covering civil, political, economic, social and cultural rights of children which is ratified by almost all the countries of the world. The UNCRC was ratified by India in the year 1992. There is a primary duty on the part of the State parties of the UNCRC to send periodic reports to the Committee on the Rights of the Child (hereinafter referred to as UNCtRC) established by UNCRC.³⁵² The periodic report is to be submitted every 5 years informing the measures the State parties have taken to give effect to the UNCRC at the domestic level and on the progress made on the enjoyment of those rights.³⁵³ The UNCtRC has provided detailed guidelines and recommendations for the establishment of juvenile justice system in compliance with UNCRC (Art. 37 and 40) after evaluating the extent of implementation by the state parties through their periodic reports. These detailed guidelines were provided through the General Comment No.10 adopted by the United Nations Committee on the Rights of the Child (UNCtRC) held in Geneva in 2007 on the Children's Rights in the Juvenile Justice.³⁵⁴ The UNCtRC in its General Comment has indicated core components of comprehensive juvenile justice policy which are as follows-

- i. Prevention of Juvenile delinquency
- ii. Interventions without resorting to judicial proceedings
- iii. Interventions in the context of judicial proceedings
- iv. Minimum Age of Criminal responsibility
- v. Maximum age limit for juvenile justice
- vi. Guarantees for fair trial

³⁵² Article 43, UNCRC

³⁵³ Article 44, UNCRC

³⁵⁴ 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]

vii. Measures- Pretrial Alternatives and Dispositions made by the Juvenile Court/ Judge

viii. Deprivation of liberty including pre-trial detention and post trial incarceration.

In this regard the UNCtRC fully supports the State parties to incorporate in its national legal system other international standards namely the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), United Nations Rules for the Protection of Juveniles deprived of their liberty and United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) to develop and implement a comprehensive juvenile justice policy.³⁵⁵

The researcher chose aforementioned indicators 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) and other relevant international instruments on juvenile justice.³⁵⁶ The Age of Criminal Responsibility (Core components numbered as iv and v) has already been discussed in Chapter 3. In particular, this chapter examines whether the appropriate legal procedures and institutions are in place for an effective and fair justice system for children in conflict with law in India and whether these are in compliance with the international standards.

An attempt is also made to explore & understand the mechanisms that exist in India to ensure the accountability of all the key actors dealing with children in conflict with law. For this purpose, the researcher, in this chapter has also empirically studied each of the following components of juvenile justice system dealing with children in conflict with law. The empirical/ non-doctrinal study of researcher concentrates on three districts of Karnataka- Bangalore (Urban), Udupi & Dharwad.

- Police and Juvenile/Child in conflict with law
- Juvenile Justice Board and Juvenile/Child in conflict with law

³⁵⁵ Objectives to General Comment No. 10 (2007): Childrens Right in Juvenile Justice

³⁵⁶ Preamble to JJA 2015 & JJA 2000

- Observation home, Special home & Place of safety (Staff members of these homes, Rehabilitation and other services) and Juvenile/Child in conflict with law

The experience of the researcher as an observer to the observation home, special home, place of safety, Juvenile Justice Board is incorporated in this chapter. By presenting the collected data the researcher does not intend to generalize the findings but, intends to give valuable and practical insights.

4.1 Assessment of Indian law relating to children in conflict with law by using International Standards (UNCtRC) framework

4.1.1. Prevention of juvenile delinquency

The UNCtRC has identified prevention of juvenile delinquency as one of the important aspect of comprehensive juvenile justice policy. Early intervention and preventive measures are vital because they may not only prevent the young children from coming into conflict with the law but, also minimize the likelihood of such children turning into adult criminals. Investments in developing and practicing evidence based delinquency prevention programs are likely to save ensuing costs incurred in rehabilitating, reintegrating and incarcerating the juvenile delinquents. According to the American Psychiatric Association, the serious and violent offenders show the symptoms of anti-social behavior as early as the pre-school years related to risk factors such as adverse maternal health related behaviors during pregnancy associated with children's neurological psychological deficits, child abuse and neglect, and troubled maternal life course.³⁵⁷ Over the past few years, many countries in Europe and America have been primarily focusing on the development and practice of programs to prevent juvenile delinquency and some of them have proven to be effective in the course of time. The researcher recites some of the delinquency prevention programs derived from the compiled study of Dr. Peter Greenwood,

³⁵⁷ David Olds et al, *Prenatal and early childhood Nurse Home visitation*, Juvenile Justice Bulletin (Nov. 1998), Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, available at <https://www.ncjrs.gov/pdffiles/172875.pdf> , last seen on 27.08.2016

Executive Director of Association for the advancement of Evidence –based Practice (AEBP)³⁵⁸ which includes the following³⁵⁹-

- David Olds Home Nurse visitation programs select young, poor, first time mothers visited by trained nurses wherein intervention begins even before the birth of the child by providing pre-natal care and parenting skills to such mothers. These nurses also help to raise children in healthy environment by helping such mothers complete their education or find an employment.
- School based intervention programs such as specialized good quality education with parental support and weekly home visits by teachers etc
- Parental training and counseling programs to enable parents to deal effectively with behavioral problems of their children
- Bulling prevention programs etc

The UNCRC promotes the overall development of the child and has urged the State parties to adopt measures to implement rights relating to children such as enjoyment of the highest standard of health and access to health care services³⁶⁰ adequate standard of living to attain physical, mental, spiritual, moral, social development³⁶¹ education³⁶², protection from economic exploitation³⁶³, protection from all forms of sexual exploitation and sexual abuse³⁶⁴ etc. These rights enumerated in the UNCRC are likely to prevent the children from coming into conflict with the law and help young persons in developing non-criminogenic behavior.

The UNCTRC has urged the State parties to fully integrate the United Nations Guidelines for the prevention of Juvenile Delinquency, 1990 (hereinafter referred to as Riyadh Guidelines) adopted by General Assembly Resolution 45/112 dated

³⁵⁸ AEBP is a national organisation promoting evidence based programs and promising practices for children, youth and families. <http://www.aebp.org/>

³⁵⁹ Peter Greenwood, *Prevention and Intervention programs for Juvenile Offenders*, 18(2) The future of Children, 185-210 (2008), available at http://www.futureofchildren.org/futureofchildren/publications/docs/18_02_09.pdf, last seen on 26.08.2017

³⁶⁰ Art.24,UNCRC 1989

³⁶¹ Art. 27, UNCRC 1989

³⁶² Art.28 & 29, UNCRC 1989

³⁶³ Art 32, UNCRC 1989

³⁶⁴ Art 34, UNCRC 1989

14.10.1990 into their comprehensive national policy for juvenile justice.³⁶⁵ The Riyadh guidelines emphasize successful socialization and integration of all children through the agents of socialization: family, the community, peer groups, schools, vocational training and voluntary organizations.³⁶⁶ Children vulnerable due to economic, social and cultural changes deserve special attention.³⁶⁷ Socialization takes place in early childhood and *family* is the primary unit responsible for the socialization of children. In this regard, the Riyadh guidelines urges the State parties to take measures to develop programs to provide families with the opportunity to learn about parental roles and obligation concerning child development and child care, promoting positive parent child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community based activities.³⁶⁸ Further, the State parties are obligated to make public *education* accessible to all children focusing not only on their academic achievement and vocational training activities but also inculcating basic values to enable the development of personality, talent, mental, and physical ability of such children to the fullest potential.³⁶⁹ The Riyadh guidelines also endorse school based interventions to prevent juvenile delinquency. In this regard, special attention should be given by the educational systems to young persons who are at social risk and adopt strategies by involving teachers and other professionals after adequate training to prevent alcohol, drug and other substance abuse by young persons.³⁷⁰ Also special assistance should be given to all children who drop out of school/ otherwise do not comply with attendance codes.³⁷¹ Government agencies of the State parties should give high priority to plans and programs (*social policy*) concerning young persons and provide sufficient funds and other resources to adequate medical and mental healthcare, nutrition, housing and other relevant services to children.³⁷² Efforts to reduce juvenile delinquency through community based services have been practiced in many countries across the globe. The *Community based services and programs* responding to the special needs and protection of young children as well as offering counseling and guidance to such

³⁶⁵ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 17

³⁶⁶ Art.10, The Riyadh Guidelines (1990)

³⁶⁷ Art. 15, The Riyadh Guidelines (1990)

³⁶⁸ Art. 16, The Riyadh Guidelines (1990)

³⁶⁹ Art.21(b), The Riyadh Guidelines (1990)

³⁷⁰ Art. 24 & 25, The Riyadh Guidelines (1990)

³⁷¹ Art. 30, The Riyadh Guidelines (1990)

³⁷² Art. 48, The Riyadh Guidelines (1990)

families should be developed and strengthened.³⁷³ The Riyadh Guidelines also specify a wide range of community based support measures including community development centers, recreational facilities and services to respond to the special problems of the children who are at social risk.³⁷⁴ Voluntary organizations providing such services should be given financial and other support by Government and other institutions.³⁷⁵ The Riyadh Guidelines also urges the State parties to establish and strengthen youth organizations at the local level seeking to help young persons in need of assistance.³⁷⁶ It also persuades the mass media to make a positive contribution in prevention of juvenile delinquency by minimizing the depiction of pornography/violent contents and to promote egalitarian principles and rules aware of its social role and responsibility.³⁷⁷

It is also pertinent to note here that the JJA 2015 is silent on the prevention of juvenile delinquency and currently no specific juvenile delinquency prevention and early intervention programs exist. India has been primarily focusing on prevention of re-offending in juveniles found in conflict with law rather than making any efforts to prevent such juveniles from coming into conflict with law in the first place. Accordingly, India must capture the successful delinquency prevention strategies adopted in other jurisdictions or rather evolve its own preventive measures to combat delinquency. At this juncture, it is relevant to mention that the programs to prevent juvenile delinquency requires planning and design on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.³⁷⁸ The delinquency prevention programs proved to be successful & effective in some countries may turn out to be failure in other countries. Therefore, the Riyadh guidelines draw attention of the State parties to implement its guidelines in the context of their economic, social and cultural conditions.³⁷⁹

The researcher sought the details under the Right to information Act, 2005 from the Ministry of Women and Child development, Government of India, regarding the total amount of money allocated by the Central Government towards juveniles in India

³⁷³ Art. 32, The Riyadh Guidelines (1990)

³⁷⁴ Art. 33, The Riyadh Guidelines (1990)

³⁷⁵ Art. 36, The Riyadh Guidelines (1990)

³⁷⁶ Art. 37, The Riyadh Guidelines (1990)

³⁷⁷ Art. 40-44, The Riyadh Guidelines (1990)

³⁷⁸ Art. 48, The Riyadh Guidelines (1990)

³⁷⁹ Article 8, The Riyadh Guidelines (1990)

from the year 2001-2016. In this regard, the Ministry has provided the following details of funds sanctioned and released to the State Governments and Union Territories for the financial year 2009-16 under the Integrated Child Protection Schemes (ICPS) which provides financial and technical support to provide protection services to children in different circumstances.³⁸⁰ The following table summarizes the amounts sanctioned and disbursed in the financial year 2009-16.

Year	Total amt. sanctioned by CG to SG's and UT's (Rs. in lakhs)	Total amount utilized (Rs. in lakhs)	Amt. sanctioned to State of Karnataka (Rs. in lakhs)	Amt. utilized by State of Karnataka (Rs. in lakhs)
2009-10	3330.75	2246.87	203.11	203.11
2010-11	9681.49	8138.38	381.67	356.54
2011-12	15742.50	10612.04	1410.91	1227.37
2012-13	22729.31	18555.92	1856.50	2125.05
2013-14	23472.90	22541.71	2403.63	2388.38
2014-15	39716.41	43364.59	3689.87	3747.81
2015-16	43892.60	32146.97	1845.24	2193.66
2016-17	21627.15	-	507.56	-

The table shows that the total amount sanctioned by the Government of India to the State Governments and Union territories have increased from Rs.3,333.75 lakhs in 2009-10 to Rs. 43,892.60 lakhs in 2015-16. The total amount utilized has increased from 2,246.87 lakhs in 2009-10 to Rs. 32,146 lakhs in 2015-16. Although, both the amount sanctioned and the amount disbursed has increased over the years, the amount sanctioned has increased more than the amount disbursed. Similarly, in Karnataka, the amount sanctioned and the amount disbursed has increased over the years.

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 (2017) observed that the large amount allocated under the Integrated Child Protection Scheme towards child welfare is lying unspent by the states and thus remarked that the problem is not the lack of funds but absence of the will to gainfully utilize the funds.³⁸¹

³⁸⁰ See Annexure-5

³⁸¹ Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017).

4.1.2. Diversion i.e Interventions without resorting to judicial proceedings

Diversion of children in conflict with law from the formal courts in non-serious criminal acts is likely to prevent stigmatization of conviction of such children. The Beijing Rules urges the State parties to divert the juvenile delinquents from the formal hearing in appropriate cases by empowering the police / other authorities to dispose such cases at their discretion in accordance with clear guidelines set out by respective legal system keeping in mind the principles contained in the Rules.³⁸² The JJA 2015 does not have any explicit provision on diversion and every child apprehended shall be produced before the Juvenile Justice Board.³⁸³ However, it includes diversion from the Juvenile Justice Board as one of the fundamental principles which the Central Government, State Government, the Board and other agencies may consider while implementing the provisions of this Act.³⁸⁴

It is relevant to note here that the Juvenile Justice (Care and Protection of Children) Karnataka Rules, 2002 and 2010 had included provisions to divert juveniles from the Juvenile Justice Board proceedings. In Karnataka, children who have committed petty offences (offences punishable with imprisonment upto 3 years) may be released from the Special Juvenile Police Unit itself after admonition or reconciliation facilitated by child welfare police officer and shall submit reports of such diversion to the JJB.³⁸⁵ The JJB shall either accept recommendations to release the child or direct the child to be transferred /retained in the observation Home and physically produced before the Board.³⁸⁶ On interaction with the Child welfare Police Officers (CWPO) in Bangalore, Udupi & Dharwad the researcher further found that the child alleged to be in conflict with law on apprehension, are cooperatively dealt by a CWPO and a social worker who shall conduct preliminary inquiries, provide counseling to such child and mutually arrive at a decision regarding diversion in cases of petty offence. The researcher opines that this composition of CWPO and social workers is likely to be sensitive to the needs of the children in conflict with law and prevent misuse of discretionary police powers in handling juvenile matters. In cases of apprehension of

³⁸² Rule 11.1 and 11.2, The Beijing Rules(1985)

³⁸³ Sec 10, JJA 2015

³⁸⁴ Sec 3(xv), JJA 2015

³⁸⁵ Rule 11 Clause (2) and (3) of Karnataka JJ Rules 2002 and Rule 18(18) of Karnataka JJ Rules 2010.

³⁸⁶ Ibid

child alleged to have committed an offence other than petty offence, they are to be mandatorily produced by the CWPO's before the JJB for further action.

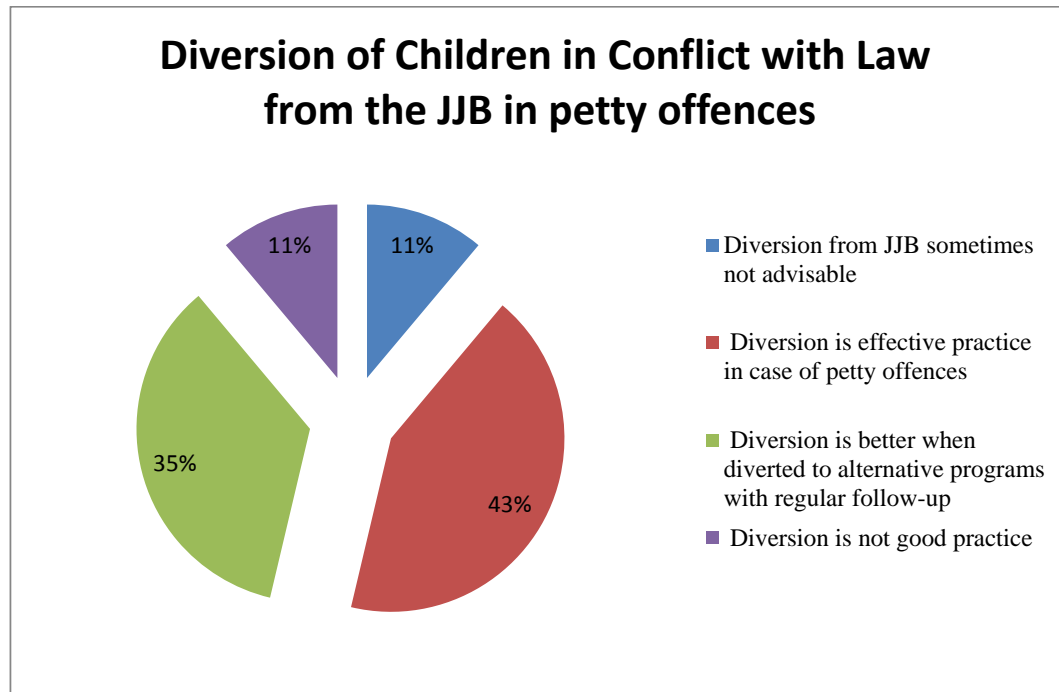
Further, the United Nations acknowledges non-intervention as the best response in cases where the offence is of non-serious nature and where the family, school or other informal social control institutions have already responded or likely to respond in an appropriate and constructive manner.³⁸⁷ Such measures in a vast country like India will contribute to the apparent decline in congestion in juvenile courts and child care institutions so that the serious/violent juvenile delinquents receive required attention in these formal institutions.

In cases where any other measures are imposed by police/other authority through diversion involving referral to appropriate community or other responses such as temporary supervision, restitution and compensation to victims, the consent of juvenile/parents/guardian shall be obtained to enable such diversion decision to be subjected to review by a competent authority upon application.³⁸⁸ Although, the Karnataka JJ Rules 2002 & 2010 empower CWPO to divert the child in conflict with law from the JJB in petty offences, they have no power to impose any other diversion measures except informal warning and one-time counseling.

In the following figure, it can be observed that nearly 43% of the interviewed key actors working with children in conflict with law in the three selected districts for this study consider diversion from the JJB as an effective practice in petty offences. Over 35% of those interviewed opine that diversion would be better if such children in conflict with law were diverted to alternative measures with regular follow up. According to them, these minor offences may be stepping stones to serious criminality and thus early interventions are likely to be more effective. Around 11% of the interviewees do not prefer the diversion of juvenile delinquents from the JJB even in petty offences.

³⁸⁷ Commentary to Rule 11, The Beijing Rules (1985)

³⁸⁸ Rule 11.3 and 11.4, The Beijing Rules (1985)



4.1.3. Guarantees for a fair trial

The right to fair trial is the vital element of any legal system and is a fundamental human right of both adults and children. The special juvenile justice procedure followed by any legal system in the world should adhere to the minimum standards that are universally guaranteed to any criminal defendant in the form of due process of law.³⁸⁹ The exercise of due process rights with respect to juvenile delinquents requires the proceedings to be conducted in the best interest of child in an atmosphere of an understanding allowing the participant to express himself/herself freely.³⁹⁰ The JJB hearings in India have almost adopted Code of Criminal procedure framework conducted with less formal approach in a child friendly manner.

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. The UNCTRC in its General Comment (2007) has reiterated the significance of the guarantees specified under Article 40(2) of UNCRC and referred to them as the minimum standards of fair trial

³⁸⁹ Commentary to Rule 14, The Beijing Rules

³⁹⁰ Rule 14.2, The Beijing Rules

to be observed by the State parties.³⁹¹ The international minimum standards of fair trial with respect to children alleged to be in conflict with law and the Indian position are discussed as follows-

i. Presumption of innocence [Article 40(2)(b)(i) of UNCRC]

The child alleged or having infringed the penal law is to be presumed innocent until proved guilty according to law.³⁹² It is pertinent to note here that the JJA 2015 allows a juvenile aged sixteen and above alleged to have committed heinous offence to be tried as an adult after preliminary assessment is made by the JJB with respect to such child's mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he/she allegedly committed the offence.³⁹³ If the JJB is satisfied through preliminary assessments, that such child requires to be tried as an adult, it may pass an order transferring the trial of the case to the Children's Court/ the Court of Sessions (where the Children's Court has not been designated).³⁹⁴ Further, an explanation is provided in the JJA 2015 that preliminary assessment is not a trial, but an assessment of the capacity of the child to commit and understand the consequences of the alleged offence.³⁹⁵ It is contended that this assessment procedure to transfer juveniles without the completion of full hearing accompanied with lack of evidentiary standards presumes child to be guilty before they are tried and thus violating Article 40(2)(b)(i) of the UNCRC. 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 JJB members in this regard indicated that it 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 submission of the prosecution and accused).³⁹⁶ It is also pertinent to note here that such juveniles transferred to Children's Court are not automatically tried and punished as an adult. When the case is being 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

³⁹¹ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 40

³⁹² Article 40(2)(b)(i), UNCRC

³⁹³ Sec 15, JJA 2015

³⁹⁴ Ibid

³⁹⁵ Explanation to Sec 15(1), JJA 2015

³⁹⁶ Sec 227 & 228, The Code of Criminal Procedure (India)

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 under Sec 18, JJA 2015.³⁹⁷ Thus, the researcher understands that preliminary assessment procedure per se does not violate any international standards. Although, the preliminary assessment procedure does not violate the principle of presumption of innocence, the researcher submits that it is a faulty procedure premised on a flawed criterion likely leading to arbitrary decisions threatening the best interest of child.³⁹⁸

ii. Prompt and direct information of charge [Article 40(2)(b)(ii) of UNCRC]

The child alleged or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him or her.³⁹⁹ It is the responsibility of the deciding authority to make sure that the child understands the charges.⁴⁰⁰ The JJA, 2015 mandates the JJB to ensure the informed participation of the child and parents throughout the process.⁴⁰¹ The researcher observed that the JJB proceedings in Bangalore, Udupi & Dharwad were transparent and the members of 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.

³⁹⁷ Sec 19(1), JJA 2015

³⁹⁸ The reasons are cited by the researcher in Chapter 3 of this study at 105

³⁹⁹ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 47

⁴⁰⁰ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 48

⁴⁰¹ Sec 8(3)(a), JJA 2015

iii. Legal and other appropriate assistance [Article 40(2) (b) (iii) of UNCRC]

The child alleged or accused of having infringed the penal law must have legal or other appropriate assistance in the preparation or presentation of his/her defence.⁴⁰² The JJA 2015 obligates the JJB to ensure legal aid is made available to such children.⁴⁰³ The researcher observed that most of the children coming before the JJB of Bangalore, Udipi & Dharwad had legal counsel of their own. Those without legal representation were provided assistance through District legal services authority.

iv. Decisions without delay [Article 40(2) (b)(iii)]

Decisions concerning children in conflict with law should be made by competent, independent and impartial authority/judicial body without delay, fulfilling all the procedural requirements of a fair hearing.⁴⁰⁴ 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 Board; unless the period is extended for a maximum period of two more months by the Board having recorded the reasons in writing.⁴⁰⁵ 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.⁴⁰⁶ 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 for the reasons recorded in writing.⁴⁰⁷ The Act is silent 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 preliminary assessment by the JJB in case of heinous offences followed by

⁴⁰²UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 49

⁴⁰³ Sec 8(3)(c), JJA 2015

⁴⁰⁴ Art. 40(2)(b)(iii), UNCRC 1989

⁴⁰⁵ Sec 14(2), JJA 2015

⁴⁰⁶ Sec 14(3), JJA 2015

⁴⁰⁷ Proviso to Sec 14(4), JJA 2015

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.

v. Freedom against self-incrimination [Article 40(2) (b)(iv)]

The UNCRC mandate the State parties to ensure that the child alleged to be in conflict with law is not compelled to give any testimony / confess any guilt.⁴⁰⁸ Nevertheless, the other relevant international instruments also urge the State parties to permit confessions or testimonies which are voluntary and not coerced & which are to be considered after an independent investigation of the interrogation techniques.⁴⁰⁹

The juvenile proceedings determining 'delinquency' which may lead to commitment to a state institution must be regarded as 'criminal' for purposes of the privilege against self-incrimination.⁴¹⁰ The interaction with Principal Magistrates of JJB also 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 fairness⁴¹¹ 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. This is to ensure that the confession is voluntary and not coerced. An admission by the juvenile may not be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent.⁴¹² Admissions and confessions by juveniles require special caution as to their reliability and voluntariness.⁴¹³

During the interaction with the CWPO's in three selected districts of this study, the researcher was given to understand that every child on apprehension is interrogated

⁴⁰⁸ Article 40(2)(b)(iv), UNCRC

⁴⁰⁹ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 at para 58

⁴¹⁰ State vs. Jagtar & Ors, Decided by Delhi High Court on August 1, 2014

⁴¹¹ Sec 3(xvi), JJA 2015

⁴¹² State vs. Jagtar & Ors, Decided by Delhi High Court on August 1, 2014

⁴¹³ Ibid

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 & are interrogated in child friendly manner. The defence lawyers & Assistant Public Prosecutors contacted in this study opined that the presence of social worker in the interrogation has reduced the complaints of torture/inhuman treatment used in order to lead the juvenile to confession.

vi. Right to appeal [Article 40(2) (b) (v) of UNCRC]

Accountability at all the stages of juvenile justice system is necessary to establish better protection and fair system for juveniles. International standards mandate the State parties to ensure that the child found guilty of infringement of penal law has the right to appeal against such decision and against the measures imposed as a consequence of this guilty verdict.⁴¹⁴ This appeal should be decided by a higher, independent and impartial authority/judicial body.⁴¹⁵ The UNCtRC urges the State parties not to restrict this right of appeal to the more serious offences or imprisonment sentences.⁴¹⁶ 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.⁴¹⁷ The prominent argument that arises here is victims of serious and 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. However, the JJA 2015 does not make any reference to the victims of crimes committed by juveniles and strangely the researcher in the course of study did not find any Government, legal or scholarly studies with respect to the victims of crimes committed by juveniles in India.

⁴¹⁴ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 60

⁴¹⁵ Ibid

⁴¹⁶ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 61

⁴¹⁷ Sec 101(3)(a), JJA 2015

vii. Free assistance of an interpreter [Article 40(2) (b) (vi)]

The child alleged to be in conflict with law should have the right of free assistance of an interpreter at all the stages of juvenile justice process if such child cannot understand or speak the language used. The JJA, 2015 mandates the JJB to provide the services of translators or interpreters whenever required.⁴¹⁸

viii. Right to privacy [Article 40(2)(b)(vii)]

The privacy of the child alleged to be in conflict with law should be protected at all the phases of juvenile justice proceedings so as to not to hinder and curb the social life, education or employment opportunities of such children. Some of the relevant international standards with respect to protection of privacy of the children alleged to be in conflict with law are- Media should be prohibited from disclosing the identity of such children and erring media houses/ journalist should be imposed with disciplinary or penal sanctions,⁴¹⁹ the hearings of juvenile delinquents should be conducted in a closed setting and relevant experts or other professionals may be present with the special permission of the court⁴²⁰ etc. However public hearings in case of juveniles may be permitted in exceptional cases clearly stated in the law.⁴²¹ The records of such children should not be permanently kept and thus deleted automatically upon such child attaining the age of eighteen years.⁴²²

As far as the privacy of the children alleged to be in conflict with law throughout the JJB hearings, Bangalore (U) are concerned, the researcher in her field study observed that the proceedings are not conducted privately in closed settings but rather in the courtroom which is regularly packed with juveniles, victims, their family, friends and relatives, lawyers, CWPO's, defence and prosecution witnesses, 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.

⁴¹⁸ Sec 8(3)(d), JJA 2015

⁴¹⁹ UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 64

⁴²⁰ Ibid, at para 65

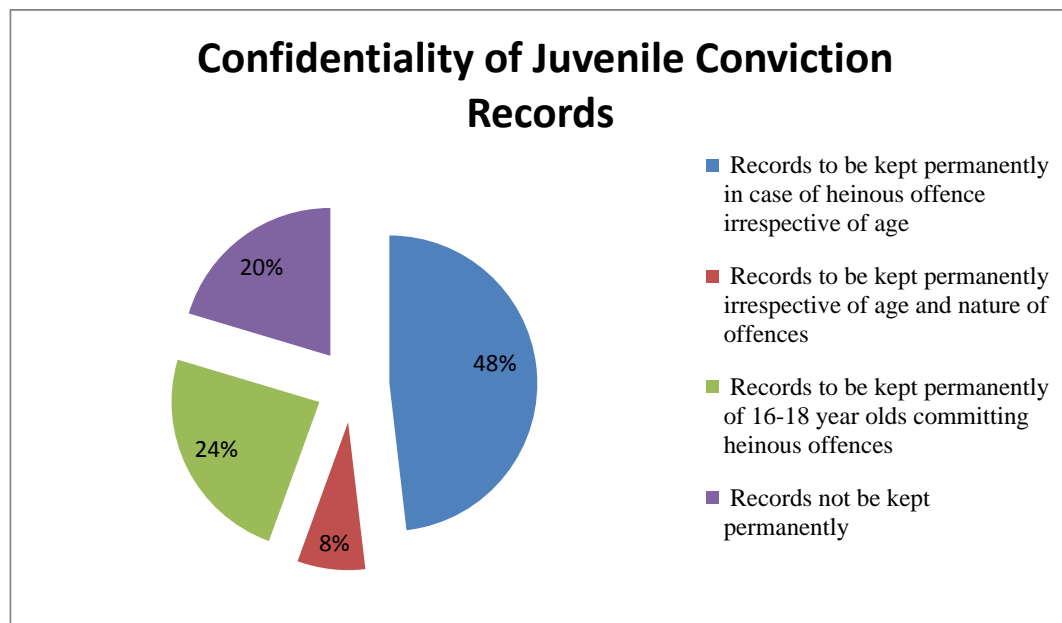
⁴²¹ Ibid

⁴²² Rule 21.2 of the Beijing Rules read with para 67 of the General Comment UNCtRC (2009)

Although there are separate waiting rooms in JJB Udupi & Dharwad, the situation is not too different from JJB, Bangalore.

Further, the 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. But, in case of juvenile aged sixteen and above is tried by the Children's Court as an adult for heinous offence & adjudicated guilty, the relevant records of conviction of such child shall be preserved by the Children Court.⁴²³

In the following figure, it can be observed that the 48% of the interviewed respondents opine that the juvenile conviction records must be kept permanently in cases of heinous offences irrespective of the age of the juvenile and made accessible only by courts and police. Around 8% prefer the records to be permanently kept in all cases irrespective of the age and the nature of offences committed by juveniles. Around 20% of the interviewees opine that the records need not be permanently kept in any case and expunged after a certain period of time.



It is pertinent to note here that the Indian juvenile justice system do not keep the records of convicted juvenile aged below sixteen years permanently and do not follow into their adulthood. Consequently, a juvenile already convicted in the past, repeating

⁴²³ Sec 24, JJA 2015

a crime at the age of 18 years or more would be placed in the adult criminal justice system. As the records of juveniles 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 the records of serious, violent and habitual juvenile offenders irrespective of age permanently accessible by Court and police only. This also helps to determine offender's previous criminal history and decide appropriate dispositions.

The current legal framework in India also prohibits the disclosure of any particulars concerning child in conflict with law which may lead to such child's identification and makes such disclosure punishable with imprisonment which may extend to six months or fine which may extend to two lakh rupees or both.⁴²⁴

4.1.4 Measures (Pre-trial alternatives and Dispositions by the juvenile court/ Judge)

International standards mandate that the incarceration of juvenile offender at an institution should be a disposition of last resort and invoked only in the absence of any other appropriate response.⁴²⁵ Furthermore, a wide range of alternative disposition measures should be made available to the competent authorities to avoid the institutionalization of children found in conflict with law.⁴²⁶ The international standard documents have provided a non-exhaustive list of alternatives to institutional care such as-⁴²⁷

- Care, guidance and supervision order
- Counseling
- Probation
- Foster Care
- Education

⁴²⁴ Sec 74, JJA 2015

⁴²⁵ Rule 19.1 read with commentary, The Beijing Rules

⁴²⁶ Rule 18.1, Beijing Rules

⁴²⁷ Combined reading of Article 40(4) of UNCRC and Rule 18.1 of Beijing Rules

- Vocational training programmes
- Community service orders
- Financial penalties and compensation
- Participation in group counseling or similar activities and
- Other relevant orders.

In this regard, JJA 2015 has aligned with international standards by providing a wide range of custodial and non-custodial measures that could be passed by the JJB with respect to child in conflict with law which are as follows- 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 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.⁴²⁸ Such rehabilitative services must include education, skill development, counseling, behavior modification therapy and psychiatric support.⁴²⁹ The JJB may also send the child in conflict with law to the place of safety if it is necessary in the child's interest or in the interest of other children housed in a special home.⁴³⁰ The JJB may in addition pass orders to attend school, vocational training centre, and therapeutic centre and de-addiction programme.⁴³¹ The study of the NCRB data for the last 15 years by the researcher (See Chapter 2) indicate that the most used orders by the JJB against the children found 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 by the JJB against an adjudicated juvenile delinquent in India. In India, the community service programmes include activities like maintaining a park, serving the elderly, helping at a local hospital or nursing home, serving disabled children, serving as traffic volunteers.⁴³² The researcher posits that aforementioned service programme provides no help to crime victims, their survivors and the juvenile delinquents. Thus, the researcher opines that the community service performed by the juvenile offenders must be of value to the victims/ their survivors and such that the offenders must be

⁴²⁸ Sec 18 (1), JJA 2015

⁴²⁹ Sec 18(1)(g), JJA 2015

⁴³⁰ Proviso to Sec 18(1)(g), JJA 2015

⁴³¹ Sec 18(2), JJA 2015

⁴³² Rule 2(vi), Juvenile Justice (Care and Protection of Children) Model Rules, 2016

made to understand and realize the wrongfulness of their act through these programmes.

Mental disorder and addiction to substance use is common among young offenders and such offenders require mental health care and suitable de-addiction treatments rather than provided with educational and vocational training unjustifiably in the child care institutions. 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. The study suggests prompt identification by thorough psychiatric evaluation/testing for substance use and immediate treatment instead of being incarcerated in the prison without referral to proper treatment. The study of 487 juveniles-under-inquiry in Prayas Observation Home, Delhi reported that 86.44% of the sample had a history of substance use.⁴³³ Research has shown that there is a strong positive association between drug use and crime in adolescents.⁴³⁴ These issues are more important in the context of juvenile justice system in India as its primary goal is rehabilitation and reintegration of children in conflict with law. There are provisions in the JJA, 2015 & the JJ Model Rules, 2016 which permits the child care institutions to arrange for medical examinations of each child admitted including physical, mental health examination, addiction to drugs etc & if diagnosed positive, such children shall be kept in the special care homes/mental health centres/drug de-addiction centres /hospitals for treatment.⁴³⁵ In some cases the JJB/ Children's Court may send such child to fit facility on being certified /recommended by medical officer/staff of the Home. If, the child is cured of the physical/mental health problems and requires no further care, the Board may order such child to be discharged.⁴³⁶

⁴³³ Shridhar Sharma et al, *Substance use and criminality among juveniles-under-enquiry in New Delhi*, 58(2) Indian Journal of Psychiatry, 178–182 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4919962/>, last seen on 7/04/2018

⁴³⁴ Chetna Malhotra et al, *Drug use among Juveniles in conflict with law*, 74(4) Indian Journal of Pediatrics, 353-356 (2007), available at <http://medind.nic.in/icb/t07/i4/icbt07i4p353.pdf> , last seen on 5/04/2018

⁴³⁵ Sec 18(2) JJA 2015 & Rule 34, JJ Rules 2016

⁴³⁶ Rule 80, JJ Rules 2016

4.1.5 Deprivation of liberty- Pre-trial detention and post trial incarceration

International standards urge the State parties to ensure deprivation of liberty of juveniles as a measure of last resort and shall be in accordance with law.⁴³⁷ A child alleged to be in conflict with law is said to be deprived of liberty when such child is subjected to any form of detention or imprisonment or placement in a public/private custodial setting.⁴³⁸ The UN Rules for the Protection of Children deprived of liberty (1990) urges the State parties to avoid detention of juvenile pending trial to the maximum extent possible and rather adopt alternative measures.⁴³⁹ In this regard, the Beijing Rules has provided some alternative measures for placement of children pending trial such as closed supervision, intensive care /placement with a family or in an educational setting or home.⁴⁴⁰ The pre-trial detainees shall be separated from convicted juveniles⁴⁴¹ and such juveniles pending trial in custodial settings shall be provided with education, vocational training, physical education, medical care, adequate communication with families and friends etc. to assist them in developing their potential as productive members of society.⁴⁴² The JJA, 2015 complies with this international standard by mandating the JJB's to place the children pending inquiry in an observation home when such child apprehended is not released on bail.⁴⁴³

The international standards particularly, the Beijing Rules has laid down substantive guidelines with respect to deprivation of liberty of juvenile as a means of last resort. It legitimizes the deprivation of personal liberty by competent deciding authority only when the juvenile is adjudicated of a serious act involving violence against any other person or of persistence in committing other serious offences and that there is no other appropriate response.⁴⁴⁴ Simply put, the international standard has not absolutely dismissed the deprivation of liberty of children in conflict with law & has acknowledged its imposition in exceptional cases. Although, the JJA 2015 does not explicitly state in its text that deprivation of liberty should only be used as a measure

⁴³⁷ Article 37(b), UNCRC

⁴³⁸ Article 37(b) of UNCRC read with Article 11(b), The UN Rules for the Protection of Juveniles deprived of their liberty(1990)

⁴³⁹ Article 17, The UN Rules for the Protection of Juveniles deprived of their liberty (1990)

⁴⁴⁰ Rule 13.3, The Beijing Rules (1985)

⁴⁴¹ Art 37(d) UNCRC read with Article 17, The UN Rules for the Protection of Juveniles deprived of their liberty(1990)

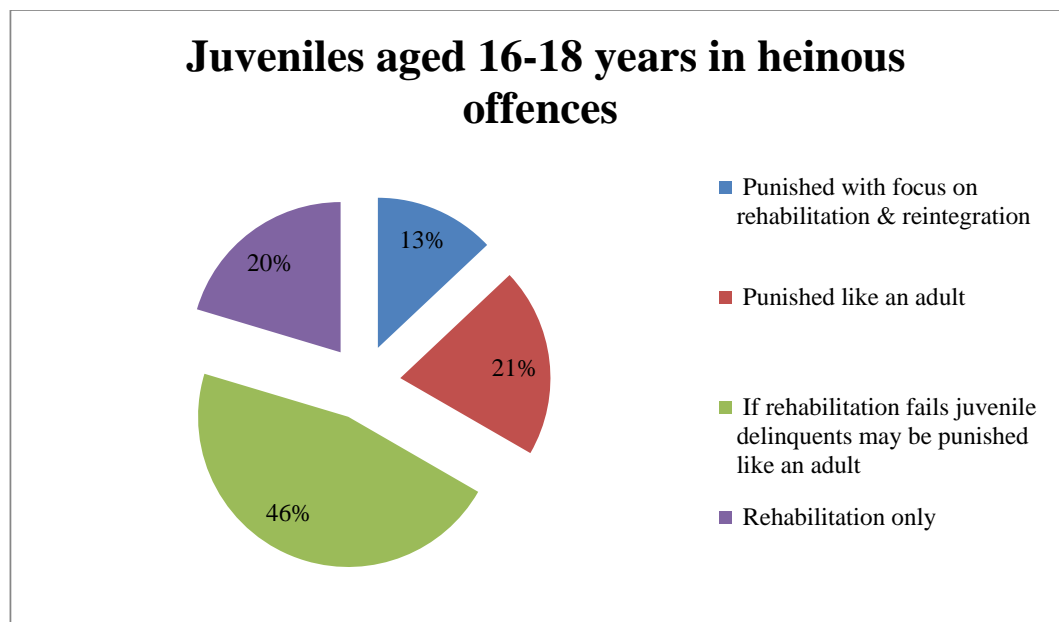
⁴⁴² Article 12, The UN Rules for the Protection of Juveniles deprived of their liberty(1990) read with para 89 of the UNCtRC General Comment (2009)

⁴⁴³ Sec 12(3), JJA 2015

⁴⁴⁴ Rule 17(1)(c), The Beijing Rules

of last resort, it permits deprivation of liberty in heinous offences after adhering to due procedures in appropriate cases.⁴⁴⁵ Also, there is range of non-custodial measures at the disposal of the JJB.⁴⁴⁶ 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 the most appropriate disposition in each individual case.

In the following figure, 46% of the respondents opine that juveniles aged 16-18 adjudicated guilty in heinous offences may be punished like an adult if, rehabilitation fails or shown to be impossible. Around 21% of the respondents prefer such delinquents to be punished like an adult. 20% of the interviewees emphasize on rehabilitation only, not punishment. 13% of the interviewees prefer such delinquents to be punished for the crime, but more focus must be on the rehabilitation and reintegration of such young offenders.



4.2 Juvenile Justice and Accountability

Although, not explicitly stated in the Statements of Objects & Reasons to the Juvenile Justice (Care & Protection of Children) Bill, 2014, the underlying idea of this crucial change to segregate juveniles aged 16-18 years on the basis of heinous offence to be

⁴⁴⁵ Sec 18(1) (g), 19 & 20, JJA 2015

⁴⁴⁶ Sec 18, JJA 2015

tried as an adult was to increase sanctions and to hold them accountable for heinous crimes. Many countries across the globe (Canada, USA, England etc) have included terminologies such as juvenile accountability, public safety etc in the text of their juvenile justice statutes. Accountability of a juvenile in the juvenile justice systems across the world is interpreted to mean different things such as punishment, personal responsibility of juvenile delinquent, understanding the wrongfulness of their actions and the impact of their wrongful acts on the victims etc. At this juncture, it is worth pointing out the following explanation of the meaning of accountability provided by the director of the California Youth Authority (CYA) in an interview on the subject. He differentiated it from rehabilitation of youth offenders and the punitive nature of adult corrections:

*“It's a form of honesty when you tell someone they alone are accountable. (It) doesn't buy the idea that parents are responsible, or that the educational system is responsible for a kid's criminal behaviour. In short, (the concept of accountability) rejects the sociological theories that have plagued corrections for so long. Besides, these sociological factors are beyond our (the Youth Authority's) control anyway. They can't be seen as causes. There are too many people who live in deteriorated neighbourhoods that grow up o.k....[Y]oung people are fully responsible for their behaviour .They are morally developed. (By the time they come to the CYA) their values are entrenched...but their life style is not....They are irresponsible...but they have the ability to changeWe tell them, you and you alone can make **choices**....We tell them they are here (in the CYA) for their criminal behaviour; and they are to be held accountable for their behaviour. But we also expect them to make something of themselves while they are here. Instead, the accountability model expects youthful offenders to be productive-it's a wholesome, honest model...that satisfies the wishes of the public”⁴⁴⁷*

The international standards point out that the response to juvenile delinquents shall always be in proportion not only to circumstances and gravity of the offence but also

⁴⁴⁷M.E.Blomquist, Politics,Corrections and Juvenile Justice: Changing Correctional Ideology, Institutional Organization, and Release Policy of California's Youth Correctional System,**1968-1988(1990)** (unpublished Ph.D.dissertation, University of California, Boalt Hall School of Law) at 410-411; M.E.Blomquist , M.L.Forst ,*Moral and Practical Problems with Redefining the Goal of the Juvenile Justice System as Accountability*,14 J. Juv. L. 26 (1993) available at heinonline

the circumstances and needs of juvenile as well as the needs of the society.⁴⁴⁸ Therefore, the researcher understands that the State is required to hold juveniles accountable for their criminal behaviour by paying adequate attention to the needs of juvenile delinquents, their victims & public safety.

The researcher in the empirical study interacted with some of the children found in conflict with law & 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 juveniles in conflict with law to understand and realize the wrongfulness of their act, its impact on the victims and deter them from further committing crimes. Various studies pointing to neurobiological immaturities of adolescents also suggest that they are more amenable to rehabilitation.⁴⁴⁹ Therefore, a juvenile delinquent must be approached from a developmental context keeping in mind the incomplete brain maturation of juveniles 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 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.

Despite child welfare legislations, it is unfortunate that 40% of the children in India continue to live in deplorable situations both within the statutory homes established under law in the juvenile justice system, as well as in the wider community.⁴⁵⁰ It is the constitutional duty of the State to provide children the opportunities and facilities of

⁴⁴⁸ Rule 17.1, The Beijing Rules

⁴⁴⁹ 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>

⁴⁵⁰ 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 in support with the UNICEF and Child Center for Law, NLSIU p.1

education, healthy living conditions free from exploitation, abuse etc.⁴⁵¹ In the child care institutions the State gets a chance to fulfil its constitutional duty towards children by guiding, helping and rehabilitating the children in conflict with law who are usually the victims of their vulnerabilities.

Accountability at all the stages of juvenile justice process is required to ensure better protection and just system for juveniles. As with any legislation, successful implementation is more important. Proper implementation ensures accountability. The UNCtRC 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.⁴⁵² Generally speaking, reporting, inspections, capacity building of personnel of juvenile justice etc ensures accountability. An attempt is made to explore and understand the mechanisms that exist in India to ensure the accountability of all the key actors dealing with children in conflict with law. In this regard, the researcher has empirically studied each of the following components of the juvenile justice system dealing with the child in conflict with law in three selected districts of Karnataka i.e Bangalore (U), Udipi & Dharwad.

4.3 Empirical Study of the components

4.3.1. Child Welfare Police Officers and SJPU

The international standards mandate the State parties to provide special training to the police who deal with juveniles and urge the establishment of special juvenile police units.⁴⁵³ Accordingly, the JJA 2015 has empowered every police station to designate at least one police officer as Child Welfare Police Officer (CWPO) to exclusively deal matters with respect to children including the children alleged to be in conflict with law.⁴⁵⁴ Furthermore, the JJA 2015 mandates the State Government to constitute the Special Juvenile police unit (SJPU) in every district and city consisting of the designated child welfare police officers across the district/city, as the case may be and

⁴⁵¹ Article 21A, 24, 39(e), 39 (f) of the Constitution of India

⁴⁵² UNCRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, para 40

⁴⁵³ Rule 12.1, The Beijing Rules

⁴⁵⁴ Sec 107(1), JJA 2015

two social workers ⁴⁵⁵ and such police officers should receive special training especially at the induction.⁴⁵⁶ The provisions relating to the establishment of SJPU and designation of CWPO also existed in the JJA 2000.

As per the RTI replies received dated 16/5/2015, 40 Special Juvenile Police Units (SJPU) have been set up in Karnataka.⁴⁵⁷ Each SJPU is headed by Senior Child Welfare Officer-

- Police Inspector-District Crime Investigation Bureau at the 30 Districts
- Asst. Commissioner of Police- City Crime Branch at Mysore, Mangalore and Hubli- Dharwad Commissionarates
- Sub Divisional Asst. Commissioners of Police at the seven zones in the Bangalore City.

At each of the police station in the State, 2 police personnel (1 Police Sub Inspector and an ASI/HC/PC) have been designated as Child Welfare Police Officers (CWPO) to handle matters related to children. In Karnataka, these officers receive regular training sessions including discussions with experts and NGO's in the area of child protection.⁴⁵⁸ In the empirical study, the researcher learnt that these officers did not receive any training at their induction, but at different intervals of time. The contents of training given to these officers are generally on all the legislations concerning children in India & not specific to juveniles (*See Annexure 7*). It is necessary to sensitize these police officers towards juveniles by providing them training with respect to child friendly interrogation techniques. Rule 89(7) of the JJ Rules Model Rules, 2016 suggest the Police Academy in States to develop training manual for CWPO's covering child psychology, use of child friendly procedures etc.

Senior Child Welfare Police Officers and Child Welfare Police Officers are police personnel and are accountable for the lapses in procedures when handling cases of children in conflict with law. The Child Welfare Police Officers are dealt in the same manner in which the lapses by police in other cases are handled.⁴⁵⁹ They are also liable to be questioned by the JJB. As per the RTI replies received dated 27/09/2016,

⁴⁵⁵ Sec 107(2), JJA 2015

⁴⁵⁶ Sec 107(3), JJA 2015

⁴⁵⁷ See Annexure 6

⁴⁵⁸ Information sought through RTI, See Annexure 7

⁴⁵⁹ Information sought through RTI, See Annexure 7

these CWPO's are subject to transfers and not always posted as CWPO's on such transfers.⁴⁶⁰ It is pertinent to note here that after receiving training & gaining experience in working with children in conflict with law, the CWPO's are likely to better understand the juvenile justice system and deal in the best interest of such children. During the visit to police stations across the three selected districts of Karnataka for the study i.e Bangalore (U), Udupi & Dharwad, the researcher mostly found newly designated and inexperienced CWPO's which could hamper the effective implementation of the legislation. The researcher opines 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. Further, several of the Child Welfare Police Officers interviewees especially Bangalore (U) expressed concerns with regard to handling of matters relating to juveniles in conflict with law by pointing out it as an additional responsibility to their already burdened police department duties. In the juvenile justice enforcement sphere, the CWPO must make the social background report after interviewing the child and produce such child before the JJB within 24 hours. Further, they must only wear plain clothes and not police uniform when handling such children. According to the CWPO interviewees, the procedure for handling juveniles requires their special attention and the overburdened workloads are seen as roadblocks in effective implementation of their duties as CWPO's. Therefore, the researcher opines that it is desirable to create posts of Child Welfare Police Officers to specifically handle matters only relating to children.

4.3.2 Juvenile Justice Board

As per the RTI reply received dated 27.11.2013, of the 30 districts in Karnataka the JJB's were constituted and functioning in 29 districts except the Bellary district.⁴⁶¹ As of 1/4/2018 JJB's are constituted & functioning in all the 30 districts of Karnataka. The JJB in Bangalore (Urban), Dharwad & Udupi holds its sitting in the premises of the Observation home. The JJB, Bangalore (U) holds its sitting twice a week & cases are listed for hearing between 9.30 am to 5.30 pm. The JJB Udupi & Dharwad holds its sitting once a week with sessions beginning at 3 pm & continuing until 5.30 pm.

⁴⁶⁰ See Annexure 7

⁴⁶¹ See Annexure 8

Considering the varying special needs of juveniles as well as the variety of dispositional measures available, the exercise of discretion by the deciding authority is inevitable and it is very important to make determinations most appropriate in each individual case.⁴⁶² In this regard, the Beijing Rules urges the State parties to take steps to ensure accountability in exercise of such discretion.⁴⁶³ Special qualification and training are considered as a valuable means for ensuring judicious exercise of discretions.⁴⁶⁴ Simply put, capacity building of the JJB members ensures accountability. The JJB's in India consisting of Judicial Magistrate of first class / Metropolitan Magistrate known as Principal Magistrate (not being chief metropolitan magistrate/ chief judicial magistrate) and two social workers shall compulsorily receive induction training.⁴⁶⁵ Although, the Board is composed of both judges and social workers, it is necessary that that the judges must demonstrate knowledge and understanding of child development and social workers have understanding of relevant laws to make most appropriate dispositions in each case. The JJA 2015 do not prescribe any special qualification/ knowledge for the magistrates but, its predecessor legislation JJA 2000 mandated special knowledge/training in child psychology/ child welfare for the Principal magistrates to be appointed as the member of the Board.⁴⁶⁶ Any social worker to be appointed as a member of the Board must be such person actively involved in health, education/ welfare activities pertaining to children for atleast seven years/ practicing professional with a degree in child psychology, psychiatry, sociology or law.⁴⁶⁷ 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.⁴⁶⁸

⁴⁶² Rule 6.1, The Beijing Rules

⁴⁶³ Rule 6.2, The Beijing Rules

⁴⁶⁴ Rule 6.3, The Beijing Rules

⁴⁶⁵ Sec 4(5), JJA 2015

⁴⁶⁶ Sec 4(3), JJA 2000, Rule 5(3)(ii) JJ Rules 2007 further provided that in case the Principal Magistrate with such special knowledge or training is not available, then, the State Government shall provide for such short-term training in child psychology or child welfare as it considers necessary

⁴⁶⁷ Sec 4(3), JJA 2015

⁴⁶⁸ Sec 7(3), JJA 2015. The Principal Magistrate must be present at the final disposal of the case (Proviso to Sec 7(3))

As per the RTI reply received dated 24.10.2016, the JJB members in Karnataka receive trainings and attend workshops on laws related to children in India, child protection issues and concerns, physical and mental needs etc which takes place four or five times a year.⁴⁶⁹ It is usually short term training programs for duration of one to five days. The contents of the training provided to the JJB members in Karnataka are generally on the legislations covering children & not explicitly on juveniles. However, the Model JJ 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.⁴⁷⁰ The Judicial Academy in States may develop training modules for Principal Magistrates on child psychology, child friendly procedures, care and rehabilitation of children etc.⁴⁷¹

Posting of the Judicial Magistrate first class/ Metropolitan magistrate as a Principal Magistrate in the JJB in Karnataka is an additional charge for them and therefore, the researcher posits that the tenure of the judges in the JJB must be given due weightage in their performance assessments to impel them to do better. 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.⁴⁷² The details revealed that they are subject to frequent transfers without any fixed tenure and 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. On the other hand, 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.⁴⁷³ Frequent transfer of Principal magistrates of 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. 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.

⁴⁶⁹ See Annexure 9

⁴⁷⁰ Rule 89(2), JJ Rules 2016

⁴⁷¹ Rule 89(6), JJ Rules 2016

⁴⁷² See Annexure 10

⁴⁷³ Rule 5, JJ Model Rules 2016

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.⁴⁷⁴ It also mandates the JJB to furnish the information of pendency on a quarterly basis to the District Child Protection Unit.⁴⁷⁵ The High Court of Karnataka in its general circular no.3/2014 dated 21.02.2014 directed the JJB's across the state to develop a systematic data collection mechanism in respect of children in conflict with law through the use of forms, reporting and meetings at the District level and State level. As per the RTI responses received on 28.08.2017⁴⁷⁶ 237 heinous cases are pending for more than 1 year in the JJB, Bangalore Urban. The JJB, Bangalore Urban holds its sitting twice a week and the low frequency of court sittings may add to the pendency of cases. Ideally, the JJB should sit on all the working days unless the case pendency is less.⁴⁷⁷ 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.

4.3.3 Child Care Institutions (Observation Home, Special Home & Place of Safety) & Juvenile/Child in conflict with law

The JJA 2015 (preceding legislations also) mandates the State Government to establish Observation Home, Special Home in every district or group of districts.⁴⁷⁸ The JJA 2015 also mandates the establishment of atleast one place of safety in a

⁴⁷⁴ Sec 16(1) & (2) of the JJA, 2015

⁴⁷⁵ Sec 16(3), JJA, 2015

⁴⁷⁶ See Annexure 11

⁴⁷⁷ Rule 6(7) Central Model JJ Rules 2016 & Rule 9(3) Central Model JJ Rules 2007

⁴⁷⁸ Sec 47(1) & 48(1) JJA 2015

State.⁴⁷⁹ As per the RTI replies received on 24/11/2016, Karnataka has 16 Observation Homes and 1 Special Home.⁴⁸⁰ These are –

1. Observation Home, Bangalore Urban
 2. Observation Home, Bangalore Rural
 3. Observation Home, Bijapur
 4. Observation Home, Gulbarga
 5. Observation Home, Dharwad
 6. Observation Home, Mysore
 7. Observation Home, Bellary
 8. Observation Home, Shimoga
 9. Observation Home, Davangere
 10. Observation Home, Hassan
 11. Observation Home, Karwar
 12. Observation Home, Belgaum
 13. Observation Home, Raichur
 14. Observation Home, Udupi
 15. Observation Home, Chitradurga
 16. Observation Home, Kolar and
1. ECHO Special Home, Bangalore

As per the RTI reply received on 24/11/2016, place of safety was yet to be sanctioned in Karnataka and one aftercare home for men at Belgaum and two units at Bangalore are functioning.⁴⁸¹ 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 (U).

⁴⁷⁹ 49(1), JJA 2015

⁴⁸⁰ See Annexure 12

⁴⁸¹ See Annexure 12

4.3.3.1 Infrastructure, Staffing pattern & Rehabilitative services for children in conflict with law in child care institutions

The JJA, 2015 (also preceding legislations) mandates the classification of children in conflict with law according to age, gender, the nature of offence committed by them and the child's mental and physical status in these homes.⁴⁸² It also directs these homes to provide various types of services for the rehabilitation and reintegration of such children.⁴⁸³ 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 the offence committed by them. Segregation and separation according to the nature of offences is very crucial especially, in cases of non-serious juvenile delinquents to reduce their chances of coming into contact with serious / violent juvenile offenders. The children in these homes are rarely engaged in activities like basic computer training, spoken English and dance classes. National Institute of Mental Health & Neuro Sciences (NIMHANS), Bangalore and NGO does provide group counseling occasionally. However, there are no regular educational facilities and vocational training provided in the Observation home in Bangalore.⁴⁸⁴ Similarly, there are no educational & vocational training provided in the Observation Homes in Dharwad & Udupi too. File-making, drawing, dancing are some of the activities the children in Observation Home, Dharwad are involved. The staff of the Observation Home in Dharwad & Udupi remarked that regular educational & vocational training in Observation Homes are not pragmatic as most of the children alleged to be in conflict with law are released on bail within a few days of their placement in the Observation Homes. Although, Observation Homes are temporary stoppage for children alleged to be in conflict with law, the researcher opines that it is desirable to provide them with short term skill development programmes to replace their idle time with productive work. 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.

During the frequent visits to the Observation Home, Bangalore, the researcher always noticed the lingering smell of cigarette smoke in the Home. Despite the stringent

⁴⁸² Sec 47(4) and Sec 48(3), JJA 2015

⁴⁸³ Sec 47(3) and 48(2), JJA 2015

⁴⁸⁴ See Annexure 13. Interview with Superintendent of Observation Home, Bangalore

security and continuous monitoring, strangely cigarettes are readily available to children in the Observation Home. It is the responsibility of the staff of these homes to identify substance abuse through periodic screening and provide such children with de-addiction programmes. The researcher also observed some children in observation home, Bangalore mopping the floor of the home & cleaning the toilets. This lack of facilities, care, protection, neglect & exploitation in the homes hampers their development. It is the duty of the staff to ensure safe, secure and conducive environment in these homes to transform them into productive citizens. The interview with the staff members of this Home revealed that they have not received any formal training to deal with children in conflict with law.

The staffing pattern & the physical infrastructure of the Observation Home in three selected districts for this study i.e Bangalore (U), Dharwad & Udupi is as follows-

Suggested staff pattern under JJ Rules 2016(Rule 26(7)) Capacity 100	Staff in Observation Home Bangalore as on 12.12.2016	Staff in Observation Home Dharwad as on 9.03.2018	Staff in Observation Home Udupi as on 14.03.2018
Person in charge(1)	01	01	01
Probation Officer(3)	02(regular) 02(deputation)	Person in charge designated as PO	Person in charge designated as PO
Counselor/psychologist/mental health expert(2)	1(regular) 1 (part time)	01(contract basis)	01(on call)
House Mother/Father (4)	01(deputation)	01	01(outsourced)
Educator/Tutor 2(part time)	Nil	Nil	Nil
Medical Officer-/physician(1 on call)	01(on call)	01(on call)	01(on call)
Staff nurse (1)	01(deputation)	Nil	Nil
Store keeper cum Accountant (1)	Probation Officer is made in charge	House father	Person in charge & House father
Art, Craft & Activity teacher (1 part time)	Nil. Rarely NGO's visit homes	Nil	Nil
Physical trainer (1 part time)	Nil	01	Nil
Cook (2)	01(regular) 01(outsourced)	01	Nil Food is supplied from Children's Home
Helper (2)	01(outsourced)	01	Nil
Housekeeping(2)	01	01	01
Driver (1)	Nil	Nil	Nil
Gardener (1 part time)	Nil	Nil	Nil

Infrastructure & Accommodation suggested under the JJ Rules, 2016(Rule 29(6)) Capacity 50	Observation Home Bangalore (Capacity 50)	Observation Home Dharwad (Capacity 25)	Observation Home Udupi (Capacity 25)
Dormitories (2)	02	02	02
Class Rooms(2)	01	Nil	Nil
First aid room(1)	01	Nil, but first aid facilities available	01
Kitchen(1)	01	01	01
Dining Hall (1)	01	01	01
Store(1)	01	01	01
Recreation Room(1)	Common Hall	01	01
Library(1)	Nil	01	01
Bathroom (5)	14	10	08
Toilets(8)	14	10	08
Office Rooms(1)	02	04	04
Counselling & Guidance Room(1)	Nil. Counselling takes place in Office Room	Nil. Counselling takes place in Office Room	01
Workshop	Nil	Nil	Nil
Residence for person on charge	In the premises	In the premises	Not provided in premises
Rooms for JJB (2)	02	02	01
Playground	In the premises	In the premises	In the premises

The observation Home, Bangalore does not have a separate library/reading room. There is no counseling room in the Observation Home, Dharwad & Bangalore & counseling sessions are conducted in the office rooms in an open setting. There are no qualified tutors. Most of the staff members are working on ad-hoc basis & not regularized. The researcher learnt that these children do not receive any mental health check up on admission. Although, they have in-house counselor, no mental health professionals visit these homes on regular basis. Overall, the cleanliness of these homes was adequate.

The researcher on her visit to the Special Home, Bangalore on 06/01/2017 was informed that the juveniles in conflict with law in the special home in Bangalore are segregated according to their age groups of 12-16 years and 16-18 years and children remanded to this home are usually convicted of serious and heinous offences. The capacity of the special home, Bangalore is 50 and as on 06/01/2017, the strength of children in conflict with law in the home was 13. As far as accommodation and required infrastructure of special home 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. 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. 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 the education to be provided, according to age & ability, both inside and outside homes as per requirement.⁴⁸⁵ 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. However, there is provision of library, recreation room, counselling rooms, playgrounds etc in the special home. The vocational training offered in the special home includes basic computer course, tailoring, papad making, idol making, painting, traffic police assistant programmes etc. The researcher opines that it is imperative to provide the juvenile with age appropriate educational and vocational training in the Special Home to reform him but, the question which arises is whether the aforementioned skills learned in these homes are enough for securing a livelihood in this technological complex society. If not, it may directly or indirectly contribute to his re-offending. The Superintendent of the Special Home opines that State Government must authorise 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 opines that gainful vocational training with job placement can significantly reduce the risk reoffending among juveniles and enable their successful re-integration.

The staffing pattern & the physical infrastructure of Special Home, Bangalore is as follows-

⁴⁸⁵ Rule 36(1), JJ Rules 2016

Suggested staff pattern under JJ Rules 2016(Rule 26(7) Capacity 100	Staff in Special Home Bangalore as on 06.01.2017
Person in charge(1)	01
Probation Officer(3)	01
Counselor/psychologist/mental health expert(2)	01
House Mother/Father(4)	02
Educator/Tutor 2(part time)	01
Medical Officer-/physician(1 on call)	01
Staff nurse (1)	01
Store keeper cum Accountant (1)	01
Art, Craft & Activity teacher (1 part time)	01
Physical trainer (1 part time)	01
Cook (2)	01
Helper (2)	01
Housekeeping(2)	01
Driver (1)	01
Gardener (1 part time)	Nil

Infrastructure & Accommodation suggested under the JJ Rules, 2016(Rule 29(6) Capacity 50	Special Home Bangalore
Dormitories (2)	01
Class Rooms(2)	01
First aid room(1)	01
Kitchen(1)	01
Dining Hall (1)	01
Store(1)	01
Recreation Room(1)	01
Library(1)	01
Bathroom (5)	05
Toilets(8)	11
Office Rooms(1)	01
Counselling & Guidance Room(1)	01
Workshop	Open area
Residence for person on charge	In the same premises
Rooms for JJB (2)	NA
Playground	In the premises

As far as child care institutions dealing with children in conflict with law are concerned, the JJ Model Rules 2016 has elaborately listed guidelines for infrastructure, physical facilities, staffing pattern and standard of care (sanitation, hygiene, nutrition, medical care, mental health, education, vocational training, recreation, life skill training etc) to be provided to children in conflict with law. Moreover, the Ministry of Women and Child Development(WCD) has developed a manual titled “Living conditions in Institutions for Children in conflict with Law” as per the directions of the Hon’ble Supreme Court dated 05.02.16, in the matter of Re-inhuman conditions in 1382 prisons, WP (C) 406 of 2013, in which the Apex court had directed the Ministry of WCD to prepare a manual similar to the Model Prison Manual as being prepared by Ministry of Home Affairs that will take into consideration the living conditions and other issues pertaining to juveniles who are in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.⁴⁸⁶ The manual describes the standards of care for children in these child care institutions within the purview of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Model Rules, 2016. It also lays down the processes to be followed by all concerned key actors while providing services to such children. With elaborate guidelines already in place, the researcher emphasizes on its compliance & adherence. In this regard, attention is drawn to the improvement of physical infrastructure & strengthening the calibre of the staff of these institutions to provide quality services to children in conflict with law. The international standards provide that the administration should provide for the careful selection and recruitment of every grade and type of personnel⁴⁸⁷ in detention facilities since the proper management of detention facilities depend upon their integrity, humanity, ability and professional capacity to deal with juveniles as well as personal suitability for the work.⁴⁸⁸

⁴⁸⁶ Manual on Living conditions in Institutions for Children in conflict with Law available at http://wcd.nic.in/sites/default/files/Final%20Manual%2024%20April%202017_5.pdf , last seen on 12/4/2018

⁴⁸⁷ Personnel should include a number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists- Article 81, The UN Rules for the Juveniles Deprived of their liberty

⁴⁸⁸ Article 82, The UN Rules for the Juveniles Deprived of their liberty (1990)

4.3.3.2 Role of a Probation Officer with respect to child in conflict with law in Child Care Institutions

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. At first, the probation officer must provide the JJB with Social Investigation Reports (family background and conditions in which juvenile is living, circumstances in which offence was committed etc). Social inquiry reports are an indispensable aid to facilitate judicious adjudication of the case by competent authority.⁴⁸⁹ Further, the Probation officers as per the JJA, 2015 must prepare individual care plan and post release plan, follow-up with juveniles undergoing rehabilitation regularly to evaluate the progress of such child.⁴⁹⁰ Therefore, it is imperative that these officers must demonstrate knowledge and experience to work effectively with juveniles. As per the Cadre and Recruitment Rules of the Department of Women and Child Development, Karnataka the post of PO's in the 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.⁴⁹¹ This means the PO's do not have necessary formal qualifications and experience to deal with children in conflict with law. Accordingly, the researcher noticed that the PO's in the Observation Home, 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. To successfully carry out the mission of rehabilitation and reintegration of children in conflict with law dedicated, committed probation officers with professional competence must be recruited. In the empirical study, the researcher found that as of 09.01.2017, there is single Probation Officer for Bangalore (Urban) appointed under the Probation Offenders Act, 1958 who prepares the Social Investigation Report (SIR) on the juveniles and also deals with cases of adults. He is seated in the criminal court complex of the city. During the interview, the researcher learnt that that he is assigned atleast 20 cases of juveniles each month for the preparation of social investigation reports. This overburdened workload is likely to reduce the quality of the Social investigation report. This also leads to the delay in filing the social investigation reports. In Dharwad, the Superintendent of the

⁴⁸⁹ Rule 16.1, The Beijing Rules

⁴⁹⁰ Rule 64 (xi), Juvenile Justice (Care and Protection of Children) Model Rules, 2016

⁴⁹¹ Information sought through RTI, See Annexure 14

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.

Social investigation report (SIR) and individual care plan (ICP) is the nucleus of the rehabilitation and reintegration of the child in conflict with law in the juvenile justice system. 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.⁴⁹² Social Investigation report must provide sufficient information about the background of the juvenile delinquent (family, neighborhood, education, living conditions, history of abuse if any etc) circumstances of the commission of crime, mental condition etc.⁴⁹³ To ensure quality, social investigation reports must be prepared only by qualified and experienced probation officers with a degree in social work, psychology, social science with rigorous induction training in child related issues.

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.⁴⁹⁴ It is a comprehensive development plan designed to reintegrate & nurture such children into a responsible citizen after taking into account case history and individual specific needs such as health including emotional & psychological needs, nutrition, education, vocational training, recreation, restoration, follow up, life skill training etc.⁴⁹⁵ The JJ Model Rules, 2016 mandate that daily routine for children in conflict with law to provide for disciplined life, personal hygiene, cleanliness, physical exercise, yoga classes, educational classes, vocational training, moral education etc.⁴⁹⁶ Needless to say, the JJA,2015 stresses on reformation of child in conflict with law by inculcating

⁴⁹² 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

⁴⁹³ Form 6, JJ Model Rules, 2016

⁴⁹⁴ Sec 19 & 8(h) of the JJA 2015, Also Rule 13(7)(vi) Model rules, 2016

⁴⁹⁵ Rule 2(ix), Central Model JJ Rules 2016

⁴⁹⁶ Rule 32(2), Central Model JJ Rules 2016

moral and ethical values in addition to education, vocational training etc. The values of humanity, constitutional principles, self-discipline etc must be imparted to such children to shape their behaviour over a lifetime. 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 researcher posits that the preparation of individual care plan must involve a multidisciplinary team of experienced competent professionals consisting of mental health experts, social workers, professional counsellors, staff of the special home or the place of safety (Superintendent, Probation officer & the Counsellor) where the child is housed for rehabilitation in consultation with the adjudicating authorities (JJB or the Children's Court) to ensure that it reflects a holistic approach. Parents/families may also be involved as they are better informed about the behavioural problems of their children. 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(Rule 15(3)), 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.⁴⁹⁷

4.3.3.3 Superintendence and Inspection of Child Care institutions

As far as the accountability of the staff of the child care institutions are concerned, 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.⁴⁹⁸ The 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.⁴⁹⁹ Criminal action can be taken against every person

⁴⁹⁷ Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017)

⁴⁹⁸ Rule 66, JJ Model Rules, 2016

⁴⁹⁹ Rule 93, Central Model JJ Rules 2016

working with child care institutions in cases of offences committed against the children.⁵⁰⁰

The United Nations urges the State parties to establish the accountability of the custodial institutions by constituting an independent authority to conduct regular inspections including unannounced inspections.⁵⁰¹ In case of any violations found concerning the rights or operation of these institutions through inspections, it should call for further investigation followed by prosecution.⁵⁰² The JJA 2015 mainly addresses the inspections of these custodial institutions by mandating the State Government to appoint inspection committees and that this inspection committee shall submit the report to the District Child Protection Unit (DCPU) or the State Government, as the case may be.⁵⁰³ Appropriate actions shall be taken by DCPU or the State Government based on the inspection reports followed by submission of compliance report to the State Government.⁵⁰⁴

The Government of Karnataka in the order dated 2.11.2015 constituted the District Inspection Committee effective for three years with the following composition⁵⁰⁵-

SL.No	District Inspection Committee Composition	
1	District Commissioner/ person nominated by him	President
2	Deputy Director, Women and Child Development Department	Member
3	Chairman of the JJB/ person nominated by him	Member
4	Chairman, Child welfare Committee / person nominated by him	Member
5	District Health and family welfare Officer	Member

⁵⁰⁰ Rule 54, Central Model JJ Rules 2016

⁵⁰¹ Article 72, The UN Rules for the Protection of Juveniles deprived of their liberty (1990)

⁵⁰² Article 74 , The UN Rules for the Protection of Juveniles deprived of their liberty (1990)

⁵⁰³ Sec 54(2), JJA 2015

⁵⁰⁴ Sec 54(3), JJA 2015

⁵⁰⁵ Information sought through RTI, See Annexure 15

6	Representative of NGO selected by the DC	Member
7	District Child Protection Officer	Member Secretary

Clearly, the District Inspection Committee which comprises of the 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. Therefore, constitution of an independent authority to conduct regular inspections of custodial institutions is desirable to avoid any conflict of interest. The State and district inspection committees under the newly enacted Juvenile Justice (Care and Protection of Children) Act, 2015 also comprises of members from among the State Government.⁵⁰⁶

Further, the United Nations also endorses the complaints mechanism for the juvenile delinquents housed in such institutions and shall have the right to make a request or complaint without censorship to any proper authorities and to be informed of any response without any delay.⁵⁰⁷ The JJ Model Rules 2016 mandate the arrangement of a complaint mechanism for the juveniles housed in such institutions & also the installation of Children's suggestion Box.⁵⁰⁸ In this regard, the Special Home in Bangalore has experimented with the concept of Bal Panchayat wherein the children in this home raise and discuss any issues concerning them and the proceedings of such meetings are conveyed by the child representative to the Superintendent of the Home who shall intervene and redress the grievances. It also maintains children suggestion and complaint box. However, no formal complaint mechanism exists in the Observation Homes in the three selected districts for the study and complaint is received informally i.e. children approach superintendent of the Observation Home. A formalized complaint mechanism is likely to make the child care institutions safer and strengthen their accountability.

⁵⁰⁶ 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, 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, Central model JJ Rules 2016)

⁵⁰⁷ Art. 76, The UN Rules for the Protection of Juveniles deprived of their liberty

⁵⁰⁸ Rule 39 (5), JJ Rules 2016

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* had raised the need of social audit in terms of 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.⁵⁰⁹ 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.⁵¹⁰ It was also brought to the notice of this Hon'ble Court that no social audit was carried out despite the rules notified in 2007. It is pertinent to note here that the provisions relating to social audit are conspicuous by its absence in the Model JJ Rules, 2016.

Hypothesis 2-Lack of qualified, trained and committed personnel is the main cause for the ineffective implementation of law relating to children in conflict with law.

In the empirical study the researcher felt that the weakest aspect of implementation of law relating to children in conflict with law is the lack of qualified, trained and committed personnel. Although, the physical infrastructure of the Observation Homes and Special Homes were not fully satisfactory, they did meet minimum standards. It is revealed in the empirical study of this chapter that the key actors dealing with children in conflict with law do not have the necessary qualification and training. The JJA 2015 do not prescribe any special qualification/ knowledge for the Principal magistrates but, its predecessor legislation JJA 2000 mandated special knowledge/training in child psychology/ child welfare for the Principal Magistrates to be appointed as the member of the Board. The contents of the training provided to the JJB members in Karnataka are generally on the legislations covering children and not explicitly on juveniles (*See Annexure 9*). 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

⁵⁰⁹ Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India), Decided on 05.05.2017

⁵¹⁰ Ibid

children in conflict with law. 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. The interview with the staff members of the Observation Homes revealed that they have not received any formal training to deal with children in conflict with law. Most of the staff members of Observation Homes in Karnataka are working on ad-hoc basis and not regularized. There are no qualified tutors in the Observation Homes of three selected districts of Karnataka. PO's in the Observation Home, Bangalore were the First Division Assistants' (FDA's) who were promoted to the position (*See Annexure 14*). They neither have the formal qualifications nor received any training to deal with children in conflict with law. These probation officers in the observation home do not perform any probation officer duties.

Posting of the Judicial Magistrate first class/ Metropolitan Magistrate as a Principal Magistrate in the JJB in Karnataka is an additional charge for them. They hold JJB sittings once or twice a week despite the pendency of cases. They are subject to frequent transfers without any fixed tenure (*See Annexure 10*). CWPO handle the matters relating to children in addition to their police department duties. The interaction further revealed that this overburdened workload of the JJB members and CWPO's serves as an obstacle to fully commit themselves towards juveniles and work in the best interest of the child.

This hypothesis is substantiated.

4.4 Conclusion

To, conclude, the researcher submits that India has not absolutely departed from the requirements of 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, deplorable standards of care in the child care institutions, lack of proper educational, vocational and life skill training facilities etc and these factors will continue to fail the juvenile justice system in India.