

## RETHINKING OF JUVENILE JUSTICE SYSTEM IN INDIA

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The Juvenile Justice Act, 2000 was enacted by the parliament in regarding the age of juveniles. All individuals who have not completed eighteen years of age under the purview of this legislation. This was done obviously to protect the interests of the child. However, in the present age, there are many instances of children committing heinous crime such as rape, murder, sexual assault etc. The issue of serious/violent juvenile crime is a very complex one, warranting a judicious approach to be adopted in order to effectively address the competing interests of these juveniles, the victims (especially women and girls), and that of public safety. THE GANG RAPE ON 16 DECEMBER 2012 HAS A TRIGGERED A NATIONWIDE DEBATE ON A NUMBER OF ISSUES, ONE OF THEM BEING THE QUANTUM OF PUNISHMENT FOR JUVENILES INVOLVED IN HEINOUS CRIME.

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act) prescribes a maximum period of THREE years detention in a SPECIAL HOME(SH), which many believe as being disproportionate to the impact of such a crime on the victim and society. There are two distinct positions that have emerged – one that all juveniles in the age group of 16-18 years be dealt with by the adult criminal justice system and second, that only those juveniles who have allegedly committed heinous crimes be dealt with in this manner, through the establishment of a waiver system.

Shorn of the panic it has triggered, the incident has raised issues that require a deeper examination of the principles and values of the juvenile justice system and an evaluation of the adequacy of responses to juveniles who commit serious/violent crime in India. This paper examines the measures contained in juvenile law in India, highlights issues concerning rehabilitation/restoration/aftercare for this group of children, and addresses the appropriateness of subjecting such juveniles to the adult system.

## INTRODUCTION-

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

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

### **Overview of the responses to serious offences by juveniles-**

The JJ Act provides a number of entitlements to juveniles, including those who are alleged to or found to have committed serious crime.

<sup>1</sup> As stated in the long title of the Juvenile Justice (Care and Protection of Children) Act 2000

<sup>2</sup> Section 9 (3), JJ Act 2000

<sup>3</sup> Section 18, JJ Act 2000

<sup>4</sup> Rule 11(7), JJ Model Rules 2007

<sup>5</sup> Section 12, JJ Act 2000

The stated objects of the Act are to provide for “the proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation<sup>1</sup>”and “resocialization<sup>2</sup>”

In cases where a juvenile is allegedly co accused with an adult/s, the law forbids joint trials<sup>3</sup>. In a conscious departure from the Code of Criminal Procedure (Cr. P.C.), the JJ Act and Rules restrict apprehension of juveniles<sup>4</sup>, stipulate bail as a right (under certain conditions) irrespective of whether the offence is bailable or non-bailable<sup>5</sup>, and prescribe inquiries to be conducted as per the procedure meant for trial in summons cases<sup>6</sup>.

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

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

- Juveniles who are not released on bail, are required to be first placed in the reception unit of an institution called the Observation Home (OH), pending inquiry, Here along with age, physical and mental status, the degree of offence allegedly committed is also considered in order to classify and segregate the juveniles so that all children residing there get the requisite care and protection while in the Home<sup>7</sup>.
- The State Governments have been empowered to frame Rules to provide for the classification and segregation of juveniles also in Special Homes (SH) (institutions where a juvenile may be placed as per a final order of the JJB) on the basis of age, the nature of offence committed, and their mental and physical status<sup>8</sup>.
- The JJB can also pass a final protective custody order<sup>9</sup> that a juvenile above 16 years of age who has committed an offence “so serious in nature” that it would not be in his interest or the interest of other juveniles in an SH to place him there and that none of the other measures specified would be suitable, be kept in place of safety<sup>10</sup>.

<sup>6</sup>Section 54(1), JJ Act 2000 and Rule 13(e), JJ Model Rules 2007

<sup>7</sup>Section 8(4) JJ ACT2000



• Juveniles who have been found guilty of committing heinous or serious offences can, at the most be sent to an SH for a maximum period of three years<sup>11</sup> At the time of passing final orders, the JJB can also reduce the period of stay if it satisfied that it is necessary to do so having regard to the nature of the offence and the circumstances of the case.

• **Gaps in law**

Though the law is fairly progressive, it does have certain gaps that need to be filled in order to better address the challenge of effectively reforming, treating and rehabilitating juveniles who commit serious offences and preventing recidivism. Evidence Based Research on 'what works' with such juveniles reveals a range of interdisciplinary strategies, approaches and models; the insights of which need to inform law reform processes in India.

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

- a) Juvenile sex offenders: "Adolescence is a time of dramatic change. It is a time of awakened sexual interest, and for many youth, a willingness to engage in rule-breaking behaviour that will not persist into adulthood<sup>12</sup>."
- b) Juvenile Recidivists: Our experience has shown that there are some young adolescents who are trapped in a cycle of crime and frequently re-enter the proverbial revolving door of the JJ system.
- c) Girls who commit serious crime: While boys and girls entering the system may share many common characteristics, research confirms that girlsoverwhelmingly have childhood histories of trauma and abuse, mental health disorders, and family separation.

<sup>8</sup>SECTION 16(2) JJ ACT 2000

<sup>9</sup>PROVISIO TO SECTION 16 JJ ACT 2000

<sup>10</sup>SECTION 15(1) g JJ ACT 2000

<sup>11</sup>Keystones for Reform, Promising Juvenile Justice Policies and Practices in Pennsylvania, Models for Change ,Chapter 4, Youth Law Center, October 2000

<sup>12</sup>Miner et al, standards of care for juvenile sexual offenders of the international association for the treatment of Sexual offenders, sexual offender treatment, volume 1 (2006),Issue 3

- d) Victims of serious crimes committed by juveniles: The juvenile justice system does not reflect an understanding of the plight or the rights of victims of juvenile crime

#### **“Adult Time for Adult Crime”-**

All human beings, especially growing children need to be taught that there are consequences for their actions, for which they will be held accountable. However, the means for ensuring such accountability should be grounded in child/adolescent psychology, the human rights of children and a deeper understanding of the circumstances that led to such behaviour/actions.

The UNCRC expressly prohibits the imposition of death penalty and life imprisonment without the possibility of release upon children below the age of 18 years<sup>13</sup>. By dealing with juveniles as adults and sending them to adult prisons, the State will effectively deny them access to rehabilitative and reformatory interventions under the JJ Act that are absent in the adult system. Further, the adversarial mode of adult criminal trials is distinct from the child friendly ‘hearing’ provided under the JJ Act.

Recent discussions point towards two distinct positions on this theme – one which advocates lowering the age, resulting in all juveniles above 16 years of age being dealt with by the adult system, and the second – a waiver system, (of which there are various models, including a decision solely by the prosecution, a request by the prosecution to a judge who makes the decision at a specific waiver hearing that determines whether such juvenile should be dealt with by the JJ system or the criminal justice system).

A law that subjects children to the same criminal justice system as adults would be premised on the flawed assumptions that children and adults can be held to the same standards of culpability and that children are capable of participating in legal proceedings in a like manner.

The principles of equality and non-discrimination and the best interests of the child would constitute the core of the juvenile justice system.

<sup>13</sup>Article 37(a), UN Convention on the Rights of the Child, 1989

The demand for a revision in law on the basis that juvenile crimes are on the rise is also without any foundation. According to the National Crime Records Bureau's Crime in India-2011, the percentage of IPC crimes committed by juveniles to total IPC crimes reported in the country is a measly 1.1%. In 2011, a total of 33, 887 juveniles were apprehended of which 63.9% of the juveniles were in the age group of 16-18 years. Approximately, 67% of juveniles were apprehended for IPC offences punishable with more than seven years imprisonment<sup>14</sup>. The overall increase in juveniles apprehended at the national level was 11.8% (3584) in 2011 over 2010. The highest numbers of juveniles were apprehended for property-related offences such as theft (6552) and burglary (3334). Further, 5016 were apprehended for hurt, 1149 for rape, and 888 juveniles for murder. These numbers point to a modest but very vulnerable population that requires to be handled with much more care and caution so as to prevent recidivism, engineer reform and re-integration, and counter the regressive and outdated idea that children who commit adult crimes, deserve adult time.

#### **Recommendations for reform of law and its implementation-**

The provisions of the JJ Act and Model Rules concerning the scope of the law relating to age of juveniles in conflict with law are in line with the internationally accepted goals and principles of juvenile justice as well as child and adolescent psychology, and should therefore not be disturbed through an amendment.

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

<sup>14</sup>National Crime Records Bureau, Crime in India- 2011

<sup>15</sup>Section 2 (q), and 12 (3), and proviso to Section 16 (1), JJ Act 2000



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

- **Expansion of list of orders that can be passed by JJBs**

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

- **Additional specific recommendations for Juvenile Sex Offenders**

While initiating efforts to amend the law to deal with this special group as recommended above, the executive arm of government needs to also prioritize investment in developing and establishing Specialized Juvenile Offender Rehabilitation Programmes to be offered for juvenile sex offenders. Specialized Juvenile Offender Rehabilitation Programmes to be offered for juvenile sex offenders. Experts and the four Regional Institutes of Mental Health and others could be mandated to design a replicable module of an Integrated Treatment Programme for Juveniles committing serious offences, especially Juvenile Sex Offenders.

- **Enhancing effectiveness of rehabilitation programs**

The principle aim of the juvenile justice system is to offer protection and treatment to children in keeping with their developmental needs. It must be realized that the objectives of ensuring public safety and prevention of juvenile crime and recidivism cannot be achieved by adopting an overly penal approach. Instead, greater investment is required in designing evidence-based rehabilitation programmes that will be effective. The Ministry of Women and Child Development must, in collaboration with the Commissions for Protection of Child Rights, NGOs, doctors, psychologists, social workers, and other experts undertake extensive research on rehabilitation programmes for all juveniles in conflict with law, with special focus on the effective means of dealing with juveniles who commit serious offences.

- **Place of Safety<sup>15</sup> to adhere to minimum standards to ensure it is indeed a safe place**

It should be mandatory for all States to establish places of safety, and for them to adhere to all the fundamental principles enshrined in the JJ Model Rules. All monitoring and Inspection authorities under the Act and Rules shall be given unrestricted access to such places, in order to conduct surprise visits, so as to prevent and address allegations of torture, abuse or neglect of juveniles residing there. Juveniles not released on bail and placed in such places should be segregated from those placed there as per final orders of the JJB, and in both these categories, juveniles should be classified and segregated based on age, sex and degree of offence or mental status.

Section 2 (q), and 12 (3), and proviso to Section 16 (1), JJ Act 2000

Law needs to provide for separate arrangements to be made to house persons above the age of 18 years who are under inquiry by the JJB, or found to have committed a crime, and ordered to be kept in detention as per final orders. It is unconstitutional for such persons to be kept in 'adult correctional institutions' as they are entitled to the provisions of juvenile law for crimes committed as a child.

- **Prevention of Recidivism**

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

- **Establishment of Integrated Treatment Centres for juveniles in conflict with law**

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

- **Establishment of Special Homes**

The JJ Act must be amended so as to make it mandatory and not discretionary<sup>16</sup> for all State Governments to set up Special Homes under this Act so as to ensure provision of specialized services to such juveniles. The



Rules need to flesh out the various kinds of mandatory and optional services and structured programmes that need to be provided that reflect the 'special' nature of such institutions.

- **Education as a means to address juvenile crime**

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

- **Addressing the unique challenges of girls who commit serious crime**

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

- **Case Conferencing**

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

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

Though the CrPC enables private lawyers to submit an application to assist the Public Prosecutor<sup>17</sup>, this is inadequate, given that many victims are unable to afford this assistance. The Legal Services Authority could therefore consider setting up of a panel of free legal aid lawyers who could assist the PP in representing the cases of all indigent victims of juvenile crime (especially women and children).

Law could be amended to expressly empower JJBs to direct that the fine collected from juveniles or their parents<sup>18</sup> be paid as compensation to the victim. The State Governments must take measures to set up Victim Assistance Units<sup>19</sup> which could

provide integrated services such as medical, counselling, legal, and a support person to assist victims in the JJB proceedings.

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

#### **Mandate**

The effective implementation of the JJA and the ICPS is dependent on a number of functionaries from a range of Departments, upon whom duties have been ascribed. If the goal of juvenile justice is to create a sensitive and result oriented juvenile justice system that effectively reforms and re-integrates serious offenders into the community, then it is but natural that the duty bearers responsible for implementing the law, have a common vision, are competent and committed, and find fulfilment in what they do. Victims of juvenile offences need to know that justice will be speedy, fair and just. Juveniles in conflict with law, and all those who think that they can use this group of children to commit crime and get away, because of the long drawn out inquiries, need to get the message that speedy and effective justice is the hallmark of the juvenile justice system.

#### **Conclusion**

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

The way forward should therefore be to demonstrate that the reformatory/rehabilitative/ model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the

will and the heart to prove it. Our children, our victims of juvenile crime and our society deserve no less.

<sup>16</sup>Section 9 (1), JJ Act 2000

<sup>17</sup>Proviso to Section 24 (8), Cr. P.C

<sup>18</sup>Section 15 (1) (d), JJ Act 2000

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

