CHAPTER 8
CONCLUSION AND SUGGESTIONS

8.1 Gaps in law
Although the law is always fairly progressive but still it have certain gaps that could need to be filled by effective 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 inter-disciplinary strategies\(^1\), approaches and models; the insights of which was to inform law reform processes in India. We have to resort for the best practices from other jurisdictions\(^2\). Specially insights of the individuals and organizations working in the interest of children across the country needs to be collated and analysed to identify gaps or loopholes in law. The Centre for Child and the Law’s Juvenile Justice Team’s (JJ Team) investigates in Bangalore Urban and Rural, (especially on Multi-Disciplinary Pre-Hearing Case Conferences,\(^3\) juveniles alleged/ found to have committed serious crime along with other factors involved in his/her case, aimed at impacting JJB decisions, individual care plans, and pre-release and post-release plans), is also informative in this regard.

The Act does not take into interest the special needs and requirements of certain sub-groups among juveniles in conflict with law. For instance, fails to formulate 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.

During this time period there is increased sexual interest, many youth indulge into smoking and drinking habits and there is increased

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\(^1\) Keystones for Reform, Promising Juvenile Justice Policies and Practices in Pennsylvania, Models for Change, Chapter 4, Youth Law Centre, October 2005


\(^3\) These MDDCs are being conducted by the CCL NLSIU JJ team in partnership with the Department of Child and Adolescent Psychiatry NIMHANS, Bangalore
willingness in them to engage in rule breaking behavior which may not persist into adulthood⁴. However, young people do commit serious and violent sexual crime. Research indicates that juveniles who sexually offend are a diverse population with complex treatment needs; sexual arousal is dynamic and not “fixed” in the majority of cases; those who sexually offend are responsive to treatment interventions and such juveniles are more similar than different to other delinquent youth⁵. Provisions relating to management, reformation or treatment of juvenile sex offenders are however conspicuous by their absence in the JJ Act and Rules.

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. These children are most often those with complex unmet needs, and pose enormous challenges to the staff, the judicial officers handling the case, and also to the community. Here again, provisions concerning how functionaries and the JJB need to deal with juvenile recidivists do not feature anywhere in the legal framework – a serious flaw that prevents effective remedies for this group.

c **Girls who commit serious crime**: While boys and girls entering the system may share many common characteristics, research confirms that girls overwhelmingly have childhood histories of mental and physical trauma, sexual abuse, health disorders, emotional instability and family separation. In addition, girls are more likely to be involved in prostitution-related offenses⁶. Though only 6% of all juveniles

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⁴ 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
apprehended in the year 2011 were girls\textsuperscript{7}, they face much graver battles in their journey towards rehabilitation and re-integration into the community. The law is largely silent on girl juveniles, though there are rules providing for segregation based on sex in the OH/SH\textsuperscript{8}, and for re-integration into society through customized after care programmes\textsuperscript{9}. There are no legal standards however, for specific kind of services that are to be provided to girls in Special Homes resulting in statutory functionaries and civil society actors finding it extremely challenging to deal with this special group of children. The JJ team’s experience in handling one such girl, who, having apparently earlier got trapped into prostitution herself, and later apprehended and charged as a co-accused with eight adults, and finally found guilty for a series of crimes including those that are punishable with life imprisonment if committed by an adult, is a vivid case in point.

\textbf{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. Restorative Justice programmes that enable victim – offender reconciliation is increasingly gaining ground around the world (even in cases of juveniles who commit serious/violent crime), attempting to balance competency development, accountability and public safety goals in an effort to restore victims, communities and offenders, and restore broken relationships\textsuperscript{10}. The JJ team has painfully experienced the unique challenges that emerge when a juvenile is found to have committed a serious offence against another child. There are little or no services or systems in place to ensure that the needs and rights of victims of juvenile offences are

\textsuperscript{8}Rule 16 (1) and 40 (a) (i), (b) (i) of the JJ Model Rules 2007
\textsuperscript{9}Rule 17 (9) and (13) of the JJ Model Rules 2007
respected and realized. Victims and their families who have had to navigate through the system without any legal, psycho-social, or financial assistance or support end up disillusioned and embittered by the process as well as the outcome of JJB proceedings. This contributes to a negative perception of the juvenile justice system. Increasing the effectiveness of reformation and rehabilitation of such juveniles needs to be prioritized in order to build accountability and faith in the system, and prevent reactionary legislative measures.

8.2 Gaps in administration of juvenile justice, specifically pertaining to the issue of serious offences committed by juveniles

Lowering the age of the juvenile or incorporating a waiver system to enable JJBs to transfer juveniles alleged to have committed serious crime to the adult criminal justice system will not help for protection of women from juvenile offenders. The most urgent and critical area of reform therefore, is not of the law, but the way it is being implemented. If the law is implemented in letter and spirit, and services are given by devoted professionals from different fields, can prevent juvenile from committing serious crimes and help them in their rehabilitation and reformation.

At present, the system is bogged down by infrastructural insufficiencies and untrained staffs that render the legislative goal of reformation and re-integration of juveniles a distant dream. This is borne out by the NCRB data, according to which 6122 of the juveniles apprehended in 2011 were illiterate, 12, 803 had education up to primary level and 56.7% hailed from poor families whose annual income was upto Rs 25,000.11 These juveniles are largely treated as hardened criminals at the Observation Homes, Special Homes, or the place of safety. There are no specialized cadres in the Juvenile Justice system; either it is Probation Officers, Public Prosecutors, Police officials, or even Social Workers, even the Principal Magistrates of the JJB.

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11 NCRB, Crime in India – 2011, Chapter 10, pg138
The method used in collection of data and quality of social analysis reports, counseling, supervision and mentoring through probation officers and social workers etc., are largely awful. Authorities are always de-motivated and generally consider their posting in this department as punishment and even they do not get the necessary training to deal with exceptionally challenging situations in the Observation Homes and Special Homes, and they blamed when any child run away or if commit suicide. Though most State governments do have some kind of training offered for authorities, JJBs, SJPUUs and others, these are sporadic and lack a vision for competency building, a comprehensive curriculum, or cutting edge training material.

There are only 30 Special Homes in the country. Several States have not even established an SH. There is hardly any data available on whether juveniles committing serious crime are indeed receiving the treatment and reformatory services that are necessary for rehabilitation and re-integration.

The inclination of the government to protect children is highly suspect given that the overall allocation has dropped from 4.76% in 2012-13 to 4.64% in 2013-14. Further, the allocation for the Integrated Child Protection Scheme has dropped from Rs 400 crore to Rs 300 crore. Child protection remains an area of neglect as it constitutes a measly 0.04% of the total budget. In the absence of adequate allocation, the reformation, rehabilitation and treatment envisaged under the JJ Act cannot be actualized. It will then be unfair to declare that the Act has failed to prevent juvenile crime, deliver justice to

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12 http://wcd.nic.in
13 The States of Bihar, Chhattisgarh, Kerala, Meghalaya, Sikkim, Tripura, Daman and Diu, Lakshadweep, Dadar and Nagar Haveli, Jharkhand and Delhi, in which the capital of India is located, have not yet established such homes
15 A Central Scheme notified by the Ministry of Women and Child Development, Government of India in 2009, to enable effective implementation of the JJ Act and strengthen child protection in India
victims of juvenile crime or reform juveniles who commit serious offences given that the infrastructure and resources necessary to do so have not been made available.

The National Crime Records Bureau (agency under the Ministry of Home Affairs), collects data on crime and recidivism. However, one serious gap is that it does not collect data on juvenile recidivists, an issue that becomes a major hurdle in either ensuring a suitable response to such children or in assessing the impact of the juvenile justice system.

The Central Government/State Governments therefore need to take measures to execute the legal provisions effectively and take seriously the recommendations made by committees/authorities to achieve the results. It is the duty of the Courts including the Juvenile Justice Committees and boards set up by the High Courts in the states to enforce the law and rules. The most urgent need is to build the faith of victims, families of juveniles and general public in the Juvenile Justice system through effective implementation of the rules and law.

8.3 Appropriateness of “Adult Time for Adult Crime”

All children need to be educated that must tell them about the consequences for the acts done by them, and for which they will be held liable. However, the means for ensuring such liability, there is a need to be grounded in child psychology and need to understand the circumstances that led to such action/behavior18. The Committee on the Rights of the Child has gone to the extent of stating that the overriding factor in responding to severe offences by children must be “the need to safeguard the well-being and best interests of the child and to promote his/her reintegration”19.

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18 This expression has been borrowed from various scholarly articles that examined the appropriateness of treating juveniles who commit serious offences as adults in the USA.

19 Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, para 71
In this light, it must be examined whether subjecting children who commit serious offences to the adult criminal justice system would be an appropriate response and whether such juveniles should be sentenced to life imprisonment or death. The UNCRC clearly prohibits the imposition of death penalty and L.I without the possibility of release upon child under the age of eighteen years. The Committee on the Rights of the Children encouraged States “to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counseling, probation, foster care, educational and training programmes, and other alternatives to institutional care (Art.40 (4)).” Emphasizing that detention or imprisonment of children must be used as a last measure, the Committee stressed on the need for a robust probation service “to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centers, and the possibility of early release from detention.” In conformity with the UN Convention on the Rights of the Child, the JJ Act prohibits the JJB from giving a sentence of L.I or capital punishment.

By dealing with juveniles as adults and sending them to adult prisons, the State will effectively deny them access to rehabilitative and reformative 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. As an under-trial or convict in prisons housing adults, the juvenile will invariably be exposed and inducted into the

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20 Article 37(a), UN Convention on the Rights of the Child, 1989
22 Article 37(b), UN Convention on the Rights of the Child, 1989
23 Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, para 28
24 Section 16 (1), JJ Act 2000
adult world of crime and violence, negatively impacting his chances for reform. In such a scenario, neither is the juvenile going to be reformed, nor is society going to be at any less risk when a juvenile exits a prison even after successfully completing the terms of his sentence. A poignant letter from a youth detained in an adult prison in the USA to the District Attorney is a convincing argument in this regard. This letter is a fine example of what the government needs to do while formulating policy and law – respect the rights of children to be heard, to enable them to tell the story of the lived (and often suicidal) experiences in jail, a situation India is not unfamiliar with.

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 a juvenile should be dealt with by the JJ system or the criminal justice system). According to Professor Kimberly Thomas, these decisions are usually limited by legislation, which permits only youth of a certain age or who are charged with a certain list of offenses, to be eligible for waiver to adult court. For example, waiver can be limited to youth only above 13, or can be limited to youth who are alleged to have committed only the most serious offenses. In jurisdictions that require judicial hearings prior to waiver, the judge is usually bound to consider other factors, such as the youth’s prior involvement with the juvenile system, whether the juvenile system can rehabilitate the youth, and the development of the individual youth. Finally, in addition to “waiver” to adult court, some jurisdictions allow alternatives after the youth have been waived, such as the availability of a transfer back to juvenile court or the possibility of a juvenile

26 Explanation provided by Professor Kimberly Thomas, Clinical Professor, University of Michigan Law School, USA, in email to the author dated 12.1.13
sentence, even after trial for the adult criminal offense. These positions must be scrutinized in order to assess their compatibility with the Indian Constitution as well as the international legal framework. A blanket transfer of juveniles who commit serious crimes to the adult system would imply a presumption that such juveniles are not amenable to reform. More importantly, it would deprive them of their right to contest the transfer/waiver and thus vitiate their due process rights under Article 21. Yet, an individualized approach is also not bereft of constitutional concerns. Who should decide whether a juvenile should be transferred to the adult system? What are the factors that must be taken into consideration—the maturity of the juvenile, the threat posed by him/her to society at large, or the absence of any scope of rehabilitation? What about the social history of the juvenile and the circumstances leading up to the crime? What should be the overriding concern be—the threat posed by the juvenile to society at large, the interests of the victim/s (if any), or the best interests of the juvenile? How should these interests be balanced? Such decisions will invariably be subjective in nature and prone to arbitrariness. Is a precise determination of a juvenile’s incapability to reform or psychosocial maturity levels possible? Elizabeth S. Scott and Laurence Steinberg, former members of the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent and Juvenile Justice caution against a case-to-case approach in determining maturity:

Recently, courts in some areas have begun to use a psychopathy checklist, which have been tried as an effort to identify adolescent psychopaths for sentencing purposes. However there is potential of error in this practice as it is not possible to distinguish incipient psychopaths from youths whose crimes reflect transient immaturity. Because of this drawback the American Psychiatric Association has restricted the diagnosis of psychopathy to

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individuals aged eighteen and older. It’s still too uncertain to evaluate antisocial elements and conduct in adolescence.

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. Research in developmental psychology explains the difference in cognitive capacity and psychosocial maturity between children including adolescents and adults that influence their decision-making in anti-social situations. Whether the juvenile was aware of the illegality of his or her conduct or should have known the consequences of the act is a narrow and non-holistic approach to respond to serious crimes. It fails to take into account the ongoing process of development and its impact on children, especially adolescents. According to Andrew Von Hirsch, Honorary Professor of Penal Theory and Penal Law at Cambridge University, “young adolescents, the reasoning must be, cannot reasonably be expected to have a fully-fledged comprehension of what people’s basic interests are and how typical crimes affect those interests – because achieving this kind of understanding is a developmental process. Developing that understanding calls both for cognitive skills and capacity for moral reasoning which develop over time – and does so precisely during the period of adolescence.”

While the cognitive levels of a 16 or 17 year old may match that of an adult, findings show that they lack in psychosocial maturity levels as compared to adults. Adolescents are not able to evaluate the risks and benefits, more prone to peer influence and are less likely to focus on future results. Further, they don’t

32 MacArthur Foundation Research Network on Adolescent Development & Juvenile Justice, “MacArthur Juvenile Competence Study Results”, http://www.adjj.org/content/related_resources.php?cat_id=2&page_id=2 Thus study was
have the same ability to understand legal processes and make decisions regarding their case as compared to adults. The findings of a juvenile competence study undertaken by the MacArthur Foundation reveals that adolescents are more likely than young adults to make choices that reflect a natural tendency to act in accordance with the authorities concerned, such as confessing to the police instead of being silent or accepting a prosecutor's offer of a plea agreement. In addition, they are less likely to be aware of the risks inbuilt in the various choices they face or to consider the long-term, and not merely the immediate, consequences of their legal decisions.\(^{33}\)

The principles of equality and non-discrimination and the best interests of the child would constitute core of the Juvenile Justice System. The Committee on the Rights of the Child emphasized that all State Parties must adhere to Article 40 of the Convention which stipulates rights of accused children, or recognized as having violated the penal law. It recommended that States which have adopted a narrow construction of juvenile as a person below 16 years or which regard 16 or 17 year-olds as adult criminals in exceptional situations, amend their law with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.\(^{34}\) Under Rule 3(2)(X) of the JJ Model Rules, “Equality of access, equality of opportunity, equality in treatment under the Act shall be guaranteed to every child or juvenile in conflict with law.” This signifies that the equality principle cannot not be altered, relaxed or undermined even if the juvenile offender commits a heinous crime.

Developmental factors and international standards support the basis for treating children including adolescents differently, especially in the context of culpability. The Indian Constitution guarantees the right to equality and also expressly recognizes the vulnerability of children by empowering the State to

\(^{33}\) Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s rights in juvenile justice, para 8

\(^{34}\) Article 15(3), Constitution of India
make special laws for children.\textsuperscript{35} Article 14 allows reasonable classification of persons. In order to be reasonable, the classification should be based on intelligible differentia and the differentia must have a rational or reasonable nexus with the object required to be achieved by the legislation. The JJ Act therefore clearly satisfies the test for reasonable classification, as it is premised on the understanding that children are more amenable to rehabilitative interventions and because of their developmental immaturity, the standards of culpability mounted for adults cannot be applied for them. A proposal to amend the Act is to keep out the juveniles in the age group of 16-18 years or to transfer juveniles who commit violent crimes to the adult system, then it would disallow all children in their adolescent years the caring provisions of this legislation, which is necessary for the interests and needs of this exposed group and also necessary for the interests of society. It would also suggest that even first time offenders of this age group would have to face the cruel realities and outcomes of the adult criminal justice system that is not designed to deal with children or adolescents. This would constitute a violation of Article 40 of the UNCRC as well as the right to equality and the right to life guaranteed under the Indian Constitution.

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, the percentage of IPC crimes committed by juveniles to total IPC crimes reported in the whole country is a just 1.1%. In 2014, a total of 48,230 juveniles were held, out of which 46,638 were boys and 1,592 were girls and 74.9\% of the juveniles were in the age group of 16-18 years. Approximately, 73.9\% of juveniles were apprehended for IPC offences punishable with more than seven years imprisonment.\textsuperscript{36} The overall increase in juveniles recorded at the national level was 4724 in 2014 over 2013. These numbers point to a modest but very vulnerable population that requires to be handled with much

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  \item \textsuperscript{36}National Crime Records Bureau- 2014
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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.

8.4 Recommendations for reform of law and its implementation to more effectively address the issue of serious crime by juvenile offenders

CCL NLSIU believes that 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. The legal framework provides a fairly inclusive framework to enable reform and rehabilitation of children/juvenile who are suspected to be found to have committed serious offences. The law does not need to be amended either to reduce the age of the juvenile or to enable the establishment of a waiver system according to which the juveniles who are alleged to have committed serious offences will be transferred into the adult criminal justice system.

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 Juvenile Justice system; so that justice is done to three main stakeholders are juveniles who commit serious offences, the victims of their offences and the general community.

37 Child Welfare Committees have been empowered to do this under Rule 27 (12), JJ Model Rules 2007
8.4.1. Specific Recommendations concerning Juveniles who commit Serious Crimes.

(a) 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:

i. A proviso to Section 15(1) may be included that empowers the JJB to pass orders that include a combination of any of the options under this Section based on the needs of the offender, the goal of reformation/rehabilitation, the circumstances and the gravity of the offence. However, this should be on condition that the maximum period of detention is not increased, and that the provisos to Section 15 (g) are adhered to. Further, JJBs must be empowered to empanel experts who can readily provide assistance and professional opinions to inform their orders and feed into SIRs.

ii. Another option may be included under Section 15(1), to provide for placement in a Special Therapeutic Treatment programme in a State or Regional Institute of Mental Health, recognized or authorized by the State/Central Government for the purpose of reforming and treating all juveniles, but more specifically those found to have committed serious crime, who in the opinion of the JJB will benefit from such an integrated and specialized treatment programme.

iii. All final orders by a JJB for juveniles found to have committed serious crime should include attendance at mandatory counseling sessions for the juvenile (as well as the family to the extent feasible), as well as other structured programmes that may be listed out in the Rules, including Education, employment, independent living skills, chemical
dependency treatment, anger management, victim empathy courses and sex offender counseling etc.

iv. For juveniles found guilty of sexual offences or violent offences, the final orders should include a Risk Assessment order, and a Safety Plan order which could include a no contact order – with restrictions related to places the juvenile cannot go, and persons he cannot voluntarily come in contact with.

v. The period for which a juvenile may be placed in an SH may be increased to more than three years, if it is found that such juvenile will benefit from specialized therapeutic treatment as provided for under Section 48 and 58 of the JJ Act, provided that such period shall not extend to more than four years, and that the JJB reviews the progress of the juvenile every month, with the assistance of the empanelled experts as suggested above.

vi. Rules may be revised to provide for Guidelines on Rehabilitation of Juvenile Offenders which include models that have been found to have been effective in other jurisdictions,

(b) 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. Experts and the four Regional Institutes of Mental Health\(^{38}\) and others could be mandated to design a replicable module of an Integrated Treatment Programme for Juveniles committing serious crimes, especially Juvenile Sex Offenders. NIMHANS, Bangalore has recently been given the status of an

\(^{38}\) Institute of Human Behaviour and Allied Sciences (IBHAS) – Delhi, Central Institute of Psychiatry – Ranchi, LokoPriyaGopinathBordoloi Regional Institute of Mental Health – Tezpur and NIMHANS Bangalore
Institute of National Importance and can play a nodal role in designing replicable evidence based demonstration projects in this area, especially given that the Government of Karnataka has already partnered with the institution to train all the counselors appointed under the ICPS scheme in the state. These models could then be anchored by the counselor at the OH / SH with help from local mental health institutions and specialists. Such an Integrated Treatment programme should mandatorily include a) Treatment: Psychiatric treatment for those juveniles diagnosed as having a psychiatric disorder are Cognitive Behaviour Therapy, Anger Replacement Training, Family counselling, Dialectical Behaviour Therapy, Substance Abuse Treatment, etc.

b) Education: This should include Special Education for those juveniles with mental impairments, sexuality education, value education, and life skills education, etc. c) Apprenticeship/Vocational Training/Sheltered Work experience. The overall goal for such integrated treatment facilities should be to train the juvenile sex offender to manage and change his/her behaviour, in order to achieve his/her own goals in a progressively less secure setting. This may mean that the SH could be designed in a manner that enables juveniles to transition from very secure to less secure settings within the SH in a phased manner, possibly through preparation and monitoring of ICPs and Behaviour Modification Programmes. In the final phase, the juvenile needs to be prepared for release back into the community, and this will require structured After Care programmes for such juveniles with high levels of monitoring, mentoring and psycho-social support systems in place. Sensitization and Training in handling juvenile sex offenders must therefore be included in curriculum of law schools, schools of social work, counseling training institutes, police training academies, judicial academies, and training institutes for JJ functionaries. Standards adopted by the International Association for the Treatment of Sexual Offenders\textsuperscript{39} to guide the formulation and implementation of the above recommendations is also informative in this regard.

\textsuperscript{39}Miner et al, Standards of Care for Juvenile Sexual Offenders of the International
(c) Enhancing effectiveness of rehabilitation programs

Level 4: intensive program for serious and persistent offenders

Level 3: offence-focused criminogenic programs for medium/high-risk offenders

Level 2: social integration programs

Level 1: sentence administration

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 work in collaboration with the Commissions for Protection of Child Rights 40, NGOs working on child welfare, psychotherapists, social workers, and other experts undertake extensive research on rehabilitation programmes for all juveniles in conflict with law, with special focus on the effective measures required to deal with the juveniles involved in serious offences. Research has shown that appropriate rehabilitation outcomes can be achieved by taking into account the characteristics of the program, the offender, and the settings in which it is delivered. 41 In this regard, the “What Works” principles of correctional interventions must be considered. They comprise five principles – Risk

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40 Human Rights Institutions for children established under the Commissions for Protection of Child Rights Act, 2005, having functions that enable them to undertake review of legislation and research and make recommendations to Government on child rights issues.

Principle, Needs Principle, Responsivity Principle, Integrity Principle and Professional Discretion Principle\textsuperscript{42}, which according to Day, Howells, and Rickwood, suggest that reductions in recidivism can be maximized when programs select appropriate candidates, target factors that directly relate to their offending, and are delivered in ways that facilitate learning.\textsuperscript{43} The ‘what works’ principles suggest a model of differentiated case management, whereby most of the intensive programs are provided to those with the highest level of need and greater risk of reoffending. This is not only likely to maximise program effectiveness, but also provide a reasonable and empirically defensible way of allocating resources. Although there are differences between adult and juvenile services, we would argue that adherence to each principle is still likely to improve rehabilitation outcomes\textsuperscript{44}.

8.5 Proposed framework for Management and Rehabilitation of Juveniles in Conflict with Law: The Case Management approach, being adopted in Victoria propose four levels of programming, which could be considered as a framework for rehabilitating and reforming such juveniles. Day, Howells and Rickwood explain that level 3 or 4 interventions are indicated for young offenders who are at medium to high risk of offending. They go on to state that the aim of these interventions is to reduce the risk of offending and that programmes should explicitly focus on criminogenic needs. A range of programs for different criminogenic needs should be available, including for common areas of need such as substance use, pro-offending attitudes, peer/criminal associate influences and family influence. As a minimum, these needs should be targeted through systematic intervention. Level 4 interventions are the most intensive and should be offered to the highest risk


\textsuperscript{43} Id.

\textsuperscript{44} Id, pg 5
or most persistent offenders. According to professional judgment, they may also be offered to those whose offences are considered particularly harmful. It is likely that the number of young people requiring level 4 programs will be small, and as such resources might be targeted towards particular offending groups (for example, serious and/or persistent violent and sexual offenders)\(^{45}\).

(a) **Place of Safety**\(^{46}\) 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. A Special Committee consisting of professional social workers, counselors, psychiatrists, advocates, child rights experts, etc., should be established in order to provide specialized services to juveniles residing in such places of safety. Such Special Committee should have access to requisite staff such as Probation Officers, Counsellors, Outreach workers as provided for under the JJ Act and Rules to Special and Observation Homes.

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’

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\(^{46}\)See Section 2 (q), and 12 (3), and proviso to Section 16 (1), JJ Act 2000
as they are entitled to the provisions of juvenile law for crimes committed as a child.

(b) 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.

Concerned authorities such as the National Crime Records Bureau, the State and District Child Protection Units, the National Institute for Public Co-operation and Child Development (NIPCCD), academia and research institutes need to take on responsibility for collecting and analyzing data on recidivism. The insights from this should inform policy and law, but also provide a strong rationale for a social audit on the effectiveness of service delivery in meeting the goals of juvenile justice. Data on the number of juvenile recidivists, their age, sex and the type of offences committed at the first instance and second/third instance, the nature of final orders passed in cases, the involvement of adult offenders or peers along with relevant data about them could be valuable in this regard. Probation Officers, counselors, and other functionaries need to be made accountable for identifying juveniles at a higher risk of recidivism, case management, monitoring and ensuring educational/vocational/mental health/financial/chemical dependency treatment and other support for juveniles residing in OH and SH as well as those who are put back into the community.

(c) Establishment of Integrated Treatment Centres for juveniles in conflict with law:

47Section 62 (3), JJ Act 2000
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.

(d) Establishment of Special Homes

The JJ Act must be amended so as to make it mandatory and not discretionary 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 14 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.

(e) 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 retained in neighborhood schools until age 18 or till completion of Class XII, and protect them from the risk of exploitation at a very small age and it also reduce the risk of getting them into situations of delinquency, neglect, abuse or exploitation. Funding for implementation of the JJ Act to State Governments for implementing Rules relating to provision of education and related programmes needs to be enhanced, and the State Governments need to be accountable for ensuring that the right to education for all children in the age group of 6-14 years in these institutions is realized.

48Section 48 and 58 provides that the competent Authorities may transfer the cases of juveniles of unsound mind, juveniles addicted to drugs or suffering from sexual abuse etc
49Extensive research has been undertaken on this issue at CCL NLSIU. For more information visit our official website – www.nls.ac.in/ccl
50Rule 47, JJ Model Rules 2007
(f) **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 urgent needs and demands.

(g) **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.

### 8.6 Specific Recommendations concerning Victims of Serious Offences committed by Juveniles

Though the Cr.P.C enables private lawyers to submit an application to assist the Public Prosecutor\(^{51}\), 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). State Governments should be directed to notify Victim Compensation Schemes.\(^{52}\) The JJBs, CWCs, advocates and support persons should be sensitized about these and other victim compensation schemes.\(^{53}\) They also should provide information to the child victims and their families in appropriate cases about accessing sponsorship schemes, protective care etc., through enabling access to the CWC and the State Child Rights Commissions.

\(^{51}\)Proviso to Section 24 (8), Cr. P.C
\(^{52}\)Section 357 (A), Cr. P.C
\(^{53}\)Commissions for Protection of Child Rights are empowered to recommend to the State Government to grant interim compensation for child victims under Section 15 (3), Commissions for Protection of Child Rights Act, 2005
Law could be amended to expressly empower JJBs to direct that the fine collected from juveniles or their parents\(^\text{54}\) be paid as compensation to the victim. The State Governments must take measures to set up Victim Assistance Units\(^\text{55}\) which could provide integrated services such as medical, counseling, legal, and a support person to assist victims in the JJB proceedings.

8.7 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 fulfillment in what they do. Particularly in the context of serious offenders, the state has to recognize that unless a concerted effort is made in this direction, the noble intent of the law will remain on paper, and the outrage of the public against such juveniles will only exacerbate. We recommend that training be given to Public Prosecutors to perform their unique role in the JJBs, one that is very different from the role they perform in the adult criminal justice system, as here they are also required to adhere to the philosophy, procedures and fundamental principles of juvenile justice. State Governments should pay more attention to strengthening the Probation system for juveniles, given that is one of the means for an effective justice system. Lawyers representing such juveniles need to be competent in child rights friendly lawyering, zealous, vigilant, and also have the time and skill to work in close co-ordination with probation officers, counselors, social

\(^{54}\)Section 15 (1) (d), JJ Act 2000

\(^{55}\)Section 19, The Goa Children's Act, 2003
workers, psychiatrists, house parents, families, and others, in a multi-disciplinary team. All this calls for a much higher commitment from legal education in the form of specialized clinical as well as continuing legal education for lawyers/practicing advocates on the one hand and dedicated cadre of such lawyers along with sustained monitoring systems to be established by the State, District and Taluk Legal Services Authorities, so that every juvenile alleged or found to have committed serious offences in even the remotest corner has access to quality legal aid and representation. The Justice J. S. Verma Committee consisting of Justice J. S. Verma (retd.) - Chairman, Justice Leila Seth (retd.) – Member and Mr. Gopal Subramanium Member, was constituted by GOI Notification No SO (3003) E, dated December 23, 2012 to look into possible amendments of the Criminal Law to provide for fast trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. The Committee submitted its report a month later, and is available on numerous websites.

Observation and attention is required by the judiciary and government authorities to reduce pendency of cases. It is necessary that the victims of juvenile offences know that justice will be given to them in speedy, fair and just manner. Juveniles in conflict with law, and all those who exploit this group of children to commit crime and get away, need to deliver the message that speedy, fair and effective justice is the key feature of the juvenile justice system.

Uniformity on the national level with regard to different treatment and other procedures relating to juvenile is still lacking. Prescribed institutions for

56 The JJ team at CCL NLSIU conducted a 3 day Continuing Legal Education Programme for Practicing Advocates representing juveniles in conflict with law in Karnataka, in partnership with the Karnataka State Legal Services Authority with support from the Sir Dorabji Tata Trust in December 2012, a report of which is available.
custody and adjudication, trial and treatment of juveniles prescribed under the acts have not yet been properly created which is a major setback to successful implementation of Juvenile Justice Act, 2000. Various factors like lack of training on the part of officials in handling the force relating to children, lack of coordination among various institutions and also the financial crunch running in the institutions all together act as a discouraging factor in implementation of beneficial legislation.

The Act has not prescribed minimum age below which the Act would not be applicable. The Act fails to expressly lay down the age of innocence. The definition of juvenile delinquency provides almost no scope for any acts to be dealt within the community.

a The concept of parental responsibility encouraging child delinquency is also missing in the Act. It has been noticed that many a times parents are responsible for putting their children where they are exploited and abused.

b The education, recreation and training of the children in observation homes have not been properly provided for. The Act has also failed to consider basic or school education. Besides this higher education and training of these children should also be considered and included in the Act.

c The Act has failed to provide for procedural guarantees like right to speedy trial. Though the Act provides for time frame for conclusion of the trial but it is observed that a number of a cases are still pending in the courts for years.

d The Act of 2000 is silent on inter-country adoption. Linkage between Juvenile Justice Act, 2000 and other legal provisions relating to child labor, primary education, sexual abuse, adoption, disabilities, health etc. is missing.

e The juvenile justice adjudicatory cadre is drawn from the cadre of Magistrates of the state judiciary. The other implementing agencies and
institutions like police are also not separate. Lack of institutional infrastructure and trained manpower has contributed a lot to blur the objective of the legislation.

f) No obligation has been cast on the part of the state in the Act on account of which a right based perspective is missing in the Act. So whatever in the name of protection is given to the child is not seen as a right but a charity or welfare. There is no specific provision ensuring services for children relating to education, health, legal and social. Even identification of the 'juvenile in need of care and protection' is not done for want of proper mechanism.

g) Keeping in mind the high level of sensitivity of the issue and alarming rate of increasing number of juveniles a regular coordination is required amongst various government agencies and NGOs working in this area. But this coordination is missing and the Juvenile Justice Act, 2000 does not have any provision to ensure the continuous supervision, monitoring and evaluation of the functioning of juvenile justice system as a whole.

h) The coverage of the Act is quite limited and a large number is still away from its purview. The children affected by drug abuse, HIV/AIDS, militancy, disaster etc. do not have any remediation under the Act and the issues like child marriage, female foeticide, child labor, street children is also not covered under it. 9. The problem gets engraved due to lack of support services to venerable families which are factories for turning their children into delinquency. There is no yardstick to standardize the facilities and services in the institutions in different states. There is no way to know the quality of performance of various institutions working in the area of juvenile justice.

i) The police which have a direct and immediate contact with the juvenile delinquents more than often violates the procedure for handling the juvenile and police indifference in implementing the law is most
disappointing. There are instances to record a wrong age in the police record to avoid their fatigue in taking the juvenile delinquent before the Juvenile Justice Board. The arrangement for reintegrating the child into family and society for its proper rehabilitation and after care service is almost non-existent.

j The Supreme Court is of the view that it should be ensured beforehand that the states are ready with the infrastructure to implement any law which is being enacted by the government otherwise besides blunting the objective of law this puts the whole machinery into unnecessary pressure and frustration. Our zeal to bring the law is more pronounced than evolving the ways and means to enact the same. The need to make a proper study and feasibility is imperative. At times the goals of such laws are too ambitious and they do not relate well to the ground level situation.

k The problem of special care and needs of the disabled children have been ignored by the Act. The standards of quality care have also not been laid.

l The expansion of definition of 'child in need of care and protection' could lead to undue influence in the lives of poor children and the families by the system.

8.9 On the Basis of the Critical Study the Following Suggestions are Given:

A. Juvenile Justice Board
   i. As referred in section 4 of the Act, a special training programme must be prepared and the officers of the Board including the Principal Magistrate should be given training of child psychology and child welfare.
   ii. Ambience of the place where the Board holds enquiry should be child friendly. Wearing of black coats, using raised platforms or
dias etc. should be avoided. Practice of making the juvenile stand in front of the Board should be stopped. The child must be made comfortable and feel free from fear of any person. Sittings can be held by the Board in the observation homes.

iii. Basic infrastructure like computer, typewriter, stenographer, furniture and buildings should also be provided to the Board for smooth discharge of duties.

iv. There should be a proper maintenance of files and case records.

v. Video linking of the homes should be provided for children to facilitate inspection and supervision by the Board to keep a check on anything done against the best interest of the child.

vi. At least one of the two social workers in a Board should be a person with a minimum qualification of law degree.

vii. The Board should be provided with a list of experts in the field of psychology, counselling, clinical psychiatrist, NGOs, panellists of advocates and fit institutions and fit persons, observation homes, special homes and voluntary organizations who are dedicated to the field of child welfare. The services of such persons may be utilized. The officers manning the juvenile courts/Boards need to be sensitized to the development need of the juvenile in which case, flexible enough to respond to new discoveries in social sciences research and willing to invest in the experiment with promising new interventions for offenders.

viii. For giving good services to the juvenile and the parents of the child, they should be treated psychologically in consultation with a psychiatrist. For the same, a psychologist and one social worker, who has awareness of the relevant law, must be appointed in the Juvenile Justice Board.

ix. JJ Board may seek co-operation of NGOs and other social organizations in addition to probation officer and special juvenile
police unit. Probation officer should be given the sufficient training that how they have to prepare the social investigation report which will help the JJB. Lady probation officer is appointed instead of government probation officer for the preparation of social investigation report.

x. One government welfare official should be appointed by the government to work as a liaison officer between the NGO and Juvenile Justice Board child welfare committee. In this regard, the State Government Welfare Department may organize seminars, sensitization and orientation programme inviting all the probable officials, police personal who are responsible for better delivery of justice to the children.

B. Treatment of Juvenile

i. Juvenile should be brought before J J B within 24 hours.

ii. The age of the juvenile should be determined with reference to the date of commission of crime. A detailed scientific investigation for determination of the age is not required.

iii. The Board should ensure that privacy rights of the juvenile should not be violated.

iv. The juvenile has the same Constitutional safeguards like other adult offenders and should be allowed if wants to adduce any evidence.

v. In any circumstances the juvenile shall not be sentenced to death or put into behind the bar in default of payment of fine or furnishing security.

vi. Whenever a juvenile is produced before magistrate, the magistrate not empowered to exercise the powers of the board under the J. J. Act and such magistrate should without any delay record such opinion as regards the juvenile and send the juvenile to the Juvenile
Board and the board shall hold the enquiry as if the juvenile had originally been brought before it.

vii. Judges in the juvenile courts should be trained to recognize the educational, social and treatment needs of the children in crisis.

viii. Mere implementing the laws without there being proper infrastructure or its proper implementation remains incomplete. This part should also be simultaneously dealt with by all concerned government or nongovernmental agencies.

ix. There is religion based adoption system in India. It needs to be under uniform law not based on religion and a comprehensive inter-country adoption law is also required.

x. For proper implementation and giving relief to the juveniles determination of age is a relevant factor. In India because of many reasons many children do not have birth certificates so even in absence of age proof the beneficial provision of the Act should be made applicable to the child.

C. Procedure for Inquiry

i Principal Magistrate should not be entrusted with any other court work except the JJB, as the Board need to complete the enquiry within four months.

ii Due to the variations in state rules from state to state, there is an ambiguity regarding proper implementation of provisions of the Act. Therefore, common rules should be followed throughout India in all JJ Boards.

iii Stay in special home or observation home to be ordered only in exceptional cases and for strong reasons which are to be recorded.

iv The board should conduct independent and private inquiries with the juvenile to ascertain whether he/she was abused, sexually or
otherwise by anyone or is suffering from any disease and if it so the juvenile be sent to government hospital for checking and treatment.

v The Board should also ensure that the police officer who apprehends a juvenile should inform the parent or guardian of the juvenile regarding such apprehension.

vi The Board shall not adjudicate the proceedings without calling the report of probationary officer.

vii Summary procedure should be adopted during enquiry instead of summons procedure trial.

viii No joint proceeding of a juvenile and an adult accused should be held.

ix Monthly group meeting should be organized of all departments which are engaged in the welfare of the child i.e. District Judge, members of J.J.Board, welfare officer and superintendent of the observation home etc for discussing the programme for welfare and betterment of children.

x JJ Board should conduct awareness programmes about offences against children in every school situated in their jurisdiction through legal aid campaign.

xi The Board may also be complainant and lodge the case in any regular court when it is found that provisions of section 21,23,25,26 have been violated and offence is committed against the juvenile by any person who has been given actual control or control of the juvenile.

D. Rehabilitation/ Shelter Home/ Observation Home.

i Separate homes should be constructed for juveniles and these homes should not be like jails. The homes for children should be video linked to facilitate inspection and supervision by the Board so as to keep a check on anything done against the best interest of the child.
Also, surprise visits should be made at the special homes, juvenile homes and observation homes. Senior citizens should be involved as community resource person to look after the well being of the children in various homes with their expertise in different fields.

i Schooling of the children in the homes up to the age of 14 should be made compulsory. They should be given the best of the facilities and opportunities like any Boarding school (hostel) making a course of moral science and civics compulsory for those who are in homes. For the welfare of juvenile, he must be allowed to go on leave and released on license during examination so that he can continue with his studies. Sponsorships should be provided for education of juveniles in good institutions. Personality enhancement courses should be organized. There is no provision of providing legal aid under JJ Act. There is no assistance provided by the lawyer to a juvenile facing a criminal charge before the Board. This is a serious loop hole in the Act, which requires immediate attention.

iii For better welfare of juvenile games, sports and other functional programmes may be organized in observation home and institution and encourage the juvenile to participate in these programme so they connect themselves with society.

iv Adoption used in section 41 should be defined to avoid conflict.

v The property right of the juvenile on adoption be incorporated in the Act in clear terms.

E. Police

i. The state governments should be directed to establish a special juvenile police unit in every district and the unit must be specially instructed and trained in child psychology and child welfare. The public prosecutors handling the cases should be sensitised and given training with the juvenile police.
ii. If a juvenile apprehended by any police officer then he/she should be placed under the charge of designated police officer or under the special juvenile police unit. Police should be given sufficient direction that summons or warrant of the juvenile is served/executed in time so that the JJ Board can complete the enquiry within four months as per the mandate of the J J Act.

iii. A time limit should be fixed for investigation and the Police officer who investigate the juvenile case, must submit the report within 60 to 90 days from the date of complaint.

iv. A social worker can also be associates with the investigating police officer and at least one lady police officer should be appointed in the child cell.

v. The police department also plays a very important role in ensuring child protection. But, practically police officials are not aware about provisions of the JJ Act. Thus, the police officer should conduct awareness programmes from time to time and in these programme the Principal Magistrate and JJB members and NGOs should also be involved in these awareness programme.

F. Miscellaneous

i. The High Court of every state should take concrete steps to establish more Juvenile Justice Boards or court in order to dispose-of Juvenile cases within specified period as intended in JJAct.

ii. The Juvenile Justice Board should be made functional on all working days and the proceedings be held on all working days.

iii. The Act should be amended to enable the JJB to directly entertain complaints of child instead of being through police so that the child can give his complaint without any fear.
iv. The Juvenile Justice Act, does not make any difference between a male and a female child. But The JJ Act fails to take a note of the fact that the female juvenile being more comfortably and conveniently exploited and even abused adversely. Such a female juvenile needs special protection even at an observation home or at a place of safety, notwithstanding the fact that voluntary social organizations may come forward to provide a place of safety. An inbuilt safety mechanism is required to be provided to such a female juvenile in the Act itself.

v. Provision should be made to divert at least 25% of the fine amount collected by the criminal courts at each place towards creation of a juvenile welfare and rehabilitation fund, at the disposal of the J J Board of the particular place/area to be utilized by it in day to day rehabilitation need of the juvenile or child concerned.

vi. The Act is silent as to whether a juvenile involved in a TADA/POTA/NDPS Act case can be bailed out under section l2. The Act should provide immediate relief to the juvenile and must add the bail provision in the act in cases of above said categories.

vii. The Juvenile Justice Act is silent about doing justice to the victims who have been victimized in the hands of juveniles. Necessary provisions/amendments should be made in this regard.

viii. Protective custody’ should be defined in Juvenile Justice Act to avoid any confusion.

ix. The Act should make it clear as to when enquiry commences.

x. Voluntary social organisation with necessary government supervision and assistance should be allowed to run after care programmes to build a meaningful and constructive after care programme in order to rehabilitate the inmates by helping them to secure jobs in various government and private undertakings.
xi. Special police units must be constituted to investigate the cases of juveniles.

xii. Orientation courses, seminars and awareness programmes should be organized by government on juvenile justice on regular intervals to enable the functionaries imbibe the message discussed and conveyed to them.

xiii. It is not enough to make good legislation unless it is honestly, strictly and scrupulously enforced without fear and favour. The Juvenile Justice Act has been enacted for the purpose of providing care and protection to the child. So the functionaries of the JJS should enforce the Act honestly, strictly and without any fear and favour.

xiv. The primary object of JJS is to provide protection to the child and adopt measures for keeping the child integrated with his family and back them to the mainstream of the society. The Advisory Board should be established at the central, state, district and city level for integration of the children with the family. The Advisory Boards should also provide facility to the juvenile so that desired output can rendered by them.

xv. The community participation should be maximised.

xvi. NGOs working on the street and with children should be increasingly involved.

xvii. The children’s villages’ pattern, which was recommended by the Indian Jail Committee 1920 should be followed. Community services for education, vocational training and recreation along with other children in the society may be used by these homes to ensure that the institutionalized juveniles are not marginalised and that the standard of programmes for the institutionalized children is at par with those for other children.
xviii. The community based programmes should be under close supervision to ensure fulfilment of obligation by the child and the person in whose care juvenile is placed under the placement order. For this purpose the number of probation officers/social workers and case workers is also increased to the standardized ratio between such workers and children.

xix. In March 2007 “National Commission for Protection of Child Rights (NCPCR)” was set up under the Commission for Protection of Child Rights Act, 2005, an act passed by Parliament in December 2005. The Commission's ensure that all provisions, laws, programmes and policies are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Commission should focus and evolve programmes for all categories of children co-ordinating various programmes, undertaking follow-up of its recommendation with various other bodies and departments to create a database for policy formulation and review.

xx. The state should start experimental projects with alternative ways for dealing with children and after successful evaluation they should be made part of the enforceable law. Because merely renaming the existing structures or JJA serves no purpose.

xxi. Probation and other community based programmes, apart from being cost effective should be preferred for their potential for ensuring better care and rehabilitation of juveniles.

xxii. There should be a clear relationship and mutual coordination between JJA and other legislations that affect the life of the children covered under its scope
8.10 Conclusion

The answer to juvenile crime has to be just and reasonable, proper and reflective of an understanding of their psychology. For making any new amendment to the existing legislation, it requires deep understanding or knowledge of the jurisprudence, philosophy and impact of the existing law. It can be easy through concentrated, participatory and consultative processes which construct consensus on key policy questions. Amending the JJ Act, as a result to the nationwide anger against one juvenile put a dangerous trend and may also have an effect on all juveniles who are presently entitled for the juvenile focused care and protection and rehabilitative reform which conceive in the law that is currently in force. It will also violate the legal obligations arising from the Constitution, the recommendations of the Justice J. S. Verma Committee, and the universal standards enshrined in the UN Convention on the Rights of the Child. The nation needs is to reform and rehabilitate the juveniles and bring them into the society with dignity. A number of countries around the world are moving away from policies of deterrence to that of restorative and reformative justice. India has a fairly progressive law grounded in universally recognized principles and approaches. The way forward should therefore be to demonstrate that the reformative/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.

Kofi A. Annan, the Secretary, general of UN observed that “there is no trust more sacred than the one the world holds with children, there is no duty more important than ensuring their rights are respected and their welfare is
Children are recognized worldwide as supremely assets of the Nation. The Indian government also express through its National Policy for Children that “their nurture and solicitude are our responsibility. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice”. Children because of their supremely importance ought to have been the prime issue of planning, research and welfare in India but unluckily, they still are a 'almost forgotten' lot and required attention has not been paid to this important issue so far. In spite of the Constitutional provision of child protection against abuse and exploitation and National Policy for Children, but in India it is still a nightmare because 'the future of the country' continues to live without proper care and protection. The main aim to conceive the juvenile justice system is to providing care, protection, development, rehabilitation and after-care of juvenile delinquent. India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined various Rights of the children are:

i. The right to protection from abuse,

ii. The right to protection from exploitation,

iii. Right to health and care right to protection from neglect,

iv. Right to expression and right to nutrition etc

These rights have been defined as the primary rights for children by the Convention on the Rights of the child.\(^59\)

Now in India, situation for the children has changed and currently their issues and associated matters have been given attention and discussed at every stage. But still there is big challenge in India to providing proper protection and care to the children in such a huge country. In India socio-economic condition is the main reason in children due to which they adding themselves in the list of


\(^59\) http Smile Foundation Organisation Child Right HTM Access.
delinquent child. Now day’s children are under tremendous social pressure due to change in social conditions. UNICEF report of 2005 on the condition of world's children under the title “Child under Threat”, talking regarding India, mentioned that “millions of Indian children are equally deprived their right of survival, health, nutrition, education and safe drinking water. This is what happening to the majority of the youthful children who if properly taken care of, would be good for the future of the country”. The cache statements “Children are supremely important national asset”\textsuperscript{60} and the utmost gift of humanity\textsuperscript{61} but in the present situation and on ground reality it appears hollow.

In India children need two sided protection. Firstly they need to be provided with the basic requirements such as education, love and care, recreation activities, parent attention etc for their whole development and making them mentally and physically, irrespective of their caste, class, sex and family atmosphere. Secondly, also provide proper treatment and rehabilitation and after care to the child who is termed as delinquent child. The action is required on two fronts are (1) by prevention of delinquency, and (2) equal opportunity should be given to the delinquent child to join the mainstream of the society.

It is difficult to defined Juvenile delinquency as to its behavioural connotations. There is a need to study the different approaches of various authors for solving the problem of juvenile delinquency. Some definitions include all issues of juvenile behaviour at the same time as others have paying attention only on their criminal behaviour. There is also another opinion according to which confusion has been created between delinquency and other social behavioural problems of children. Whateover definitions given by the different authors on the subject matter, the fact remains that, the growth and wellbeing of the juvenile/children is most significant because today’s delinquent will be a tomorrow criminal.

\textsuperscript{60}Laxmikant Pandey vs. Union of India,1984(2) SC 244, 249
\textsuperscript{61}Bandhua Mukti Morcha vs. Union of India (1997) 10 SC 551-553
There is requirement to provide special care to the children of any society because children are future of a nation. Winston Churchill recognised their importance saying that “there is no finer investment for any community than putting milk into babies”. Justice Krishna Iyar\(^62\) says “This appeal to the people everywhere, this fundamental faith in juvenile justice, this reorganization of the worth of the infants born and unborn, is the beginning of juvenile justice”. And also say that “child is the father of man and in order to enable fathering of a courageous and vibrant man, the child must be groomed well in the formative years of his life. The child must receive education; acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned”. Bandhua Mukti Morcha’s\(^63\) case recognised and highlighted importance of the child by comparing the children to the lights in society and also mentioned that if children are deprived of their childhood socially, economically, mentally, the nation's get deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.

By preventing the juvenile delinquency we shall control and check the future criminals. Now it cannot be a denied and is an admitted fact that tendency among children to commit crime is growing these days. The National Policy for Children observed that “the children are supremely and important asset of a nation”. Welfare of its children is most importance to a society and nation. The child is an important social unit and is entitled to get its all basic rights like health, education, nutrition, good standard of living, parent care and love etc and also have the right to extend his abilities to their fullest degree. Total wellbeing of the child includes the mental, emotional and social development


of child and not only the care of delinquent children. Juvenile delinquency creates hurdles in the development of child.

In brief, it can be said that juvenile justice system in India has gained momentum. Attitude and perception towards Child Rights needs a change. On the legislative side a lot of work has been done in India but implementation part still requires improvement. The laws enacted require to be effectively implemented to achieve the desired goal of welfare of the children. The society must encourage children's participation in matters affecting their rights as services to the children are no longer a charity. The judiciary has played an appreciable role and contributed a lot in proper and beneficial implementation of the juvenile justice legislation by interpreting the provisions of Juvenile Justice Acts so as to provide maximum benefit and relief to the maximum number of the juveniles covered under the beneficial and favourable legislation. A good intended and properly implemented legislation can significantly reverse the crime trends in the juveniles.

From the above discussion we can say that serious crimes like rape and murders still unpunished with the juvenile offender also cause of juvenility. So, there is an urgent need of amendment in the present legislation. But the delinquency cannot be prevented only by executing and amending the Juvenile Justice Act. It is necessary to spread awareness among the society regarding this problem that exists in our society. Generally juveniles caught up in criminal acts are not hard core offenders, most of the time they are sufferers of society. Juvenile delinquency can be prevent at the early stage by provided them special care and protection at home and school. Teachers and Parents play an important role in development of children intellect. Instead of categories them as criminals or delinquents, measures need to be taken to put away them from wrongful activities and if they commit any wrong then it would be better the errors of their live are brought to their notices. And treat
the problem of juvenile delinquency is like any other social evil and it is just as the lack of perfections of our society. The idea is slowly gaining acceptance over a wide range that juvenile delinquent does not need the strict rules and regulations of law but needs the sympathy and a wider understanding of our society.