Chapter - 7
Discussion
Tens of millions of children live in the streets of cities scattered all over the world. While their presence may be noticed in developed as well as developing countries, a majority of street children live in the poor nations of Africa, Asia and Latin America, especially India and Brazil. Some estimates put the number of street children living in India's six most populous cities at 5,00,000, of which more than 1,00,000 may be found in Delhi alone. From the UNICEF 2004 report, out of 640 million children around the world who do not have sufficient lodging, 147 million are in India alone. Globally 270 million children do not have health care services of whom 85 million are in India. Before reaching the age of one year almost 2 million children die every year in India due to disease and malnutrition in most cases (Consortium for Street Children, Street Children Statistics, 2009). Out of the 140 million children in our world today who have never attended school, 33 million are in India (Consortium for Street Children, Street Children Statistics, 2009). The school drop out rate in India for 2001-02 was 58% (India Registrar General, Census Commission, 2001). As per the Census of India 2001, there are 12.59 million working children in India. Due to poverty, unplanned growth of cities, unaccommodated population addition and endless flow of rural landless laborers towards cities, the problem is growing. In addition to this and other statistics available on our children, one could conservatively estimate the number of neglected, abused and exploited children in need of care and protection in the country to anywhere between 150 to 200 million or 35 to 40 percent of our child population (NCPCR Sub Committee Report, 2008).

In broader terms, the children in need of care and protection are the products of family instability, violence or economic circumstances of the family. All such children are subjected to a similar set of economic and social problems, including coping with significant increases in the cost of living, compelling these children to take up unhealthy occupations such as, rag picking and becoming increasingly vulnerable to criminal activity and prostitution. In a world where they lack adult care and protection, the lifestyles of street children become characterised by a struggle for survival. Their difficulties further get compounded by the prevailing negative attitudes held towards them, which result in further discrimination and a lack of support from the general public. A common view, of children in need of care and protection largely the street children tends to be that they are hooligans, and deserve institutionalization for their own better development under a closer scrutiny rather than sympathy.

Any intervention aiming to rehabilitate the street children requires one to understand their social and family background, the reasons that forced them to leave their homes, and the lifestyle that the street thrusts upon them. This understanding constitutes one of the objectives of this study, which endeavors to shed some light on the lives of institutionalized
children, the inadequacy of the government’s response to their growing numbers — above all, the structure and functioning of Children’s Homes under the Juvenile Justice System of the country, where they are frequently incarcerated. Every child has a unique story to tell. As important as it is to quantify this phenomenon, numbers alone are of little help in understanding the context in which they live, the desperation that leads them to run away from home, and challenges they struggle with to survive on the streets and the life in the institutions. Listening to children's views and perspectives is particularly important if we wish to gain a greater understanding of the similarities and differences between the lives of children in difficult circumstances. In planning programs and policies for children it is important to recognize the diversity among children's life experiences, and to respond to children within their local community contexts.

When we look at legal provisions and their implementation our study helps us to raise some key issues. These could be clustered in the following sub-groups:

**General Issues**

The current response to ensure effective child protection for juveniles in conflict with the law and children in need of care and protection in the country is the Juvenile Justice (Care and Protection of Children) Act 2000, amended in the year 2006. To implement the Act and protect the rights of these children, the Government of India had a budget allocation of Rs 23.00 crores for 2006-07 (revised estimate) of which Rs.21.7 crores was utilized (MWCD Annual Report 2007-08, GoI). Currently the primary intervention of this scheme is institutional care reaching out to 39,962 children in 2006-07 living in 711 Juvenile Justice (JJ) Homes in 25 States/Union Territories. States run the scheme with the Central Government reimbursing 50% (NCPCR Report, 2008, GoI).

This data shows the fact that 93% of the resources in the country have already been spent in setting up institutions and its activities leaving just 7% for community work and collaboration with non-governmental agencies and their concerned departments. Not only the proportional expenditure on community and NGO involvement is extremely inappropriate but the expenditure on institutions also has not been adequate as reflected by the non-availability of various categories of necessary staff, basic facilities and vocational training and recreational activities.

Secondly, there is the lack of any correlation between the number of children in India in need of care and protection and the reach of the JJ Scheme. Can it be taken that only 39,962 children who came in contact with the protection system in the year 2006-07 and were offered institutional care and allied services, were the children in need of care and
protection? Our review has also shown that at present the estimates for such children are much larger, the current estimates being approximately 100,000 – 125,000 street children, living in Delhi alone (UNDP, HDR, 1993).

Over and above this, the children coming into contact with the limited system may not be the children for whom it was most designed that is, those in conflict with law. In reality, due to the nature of street children’s visibility, their lack of power and prevailing negative attitudes towards them, street and working children are frequently brought into the institutions under the purview of the Juvenile Justice System without adequate reasons. The arbitrary nature of detention of street children in Children’s Homes or Observation Homes needs to be underlined.

The legislation does not provide for strictly differentiating between children in need for e.g., street children and those who are indulging in illegal activities. The decision is taken after “suspecting” illegality and the task of “picking up” children is left to the most inappropriate personnel i.e. the police. Thus there is no direct mechanism for identifying street children and the method followed is using conflict to pick them up and then the justices system deciding in which category the child should be put in need or in conflict. This means that the legislation has no mechanism of reaching out to the children on the street unless and until they are suspected of illegality. This inadequacy of legislation has 2 serious implications. Firstly, despite a change in nomenclature, the Act does not reach the children in need at all unless suspected of guilt. Meaning there by that it waits or ignores them till they make a mistake. Secondly, the definition of “conflict” is vague and it is the police which define it. Our data shows that this in itself leads to corruption where working street children are often fleeced to be free and the picking up is determined by the quota that the policeman might have to fill of the work done or even an expression of his own frustrations and anger on a vulnerable, defenseless child. This lacuna of legislation needs to be seriously addressed.

Yet another issue is that even though there are separate institutions for keeping children in need (street children) and juveniles in conflict. When the child is being investigated to be put in the right category, he has no separate place to be housed. Hence, they stay in the Home for children and many a times juveniles in conflict enter these homes for children in need of care and protection and are left there for a long time. This leads to several problems of operations, exploitations and serious problems for young and vulnerable once who have no protection from these hardened characters.

Though the legislation has improved at the level of concepts, it has failed to device mechanisms which could concretize the concept of caring for children in need of care and protection. In the absence of adequate resource management of conflicts remains the most
practicable way of maintaining law and social order and therefore the focus of attention of implementing institutions remains children in conflict with law and not those who need help. The very fact that the Act has been in existence since 2000, the exact estimates of these children remains vague till today.

From our exploration of the challenge of defining street children or even a child and by looking at the backgrounds of the institutionalized children it was clear that the street children do not necessarily mean that they have no family affiliation. They are those who have families with strained inter-familiar relationships and economic pressures and varying contacts with their families, those who are brought by family members themselves because they can’t manage the child those who are lost and totally alone. In addition we found an interesting category of children who had created a family of friends with whom they live and of whom they take care and were taken care of. Very often they spend their earnings for their friends’ needs (apart from children interviewed within and outside institutions), also identified during M.Phil work of the researcher. Logically then children who have links with the families need welfare and economic inputs for their families so that they become stable and capable of looking after the street child. The ones who are lost and have no families or are brought by them certainly need institutional care. However the category that constitutes its own social group as alternate family works and finds its place under the sun on the basis of legitimate labour is a category that requires innovative handling.

**Issues in the Articulation of Legislation**

The Juvenile Justice (Care and Protection of Children) Act 2000\(^8\) covers all aspects of interaction between children and the legal system. Though there has been some improvement with the various amendments in the Act, certain ambiguities shall remain. Some illustrations are given in the following paragraphs.

The basic reference point for law reforms were the UN Convention on the Rights of the Child (CRC) together with other instruments that set out the principles for ‘full protection’ (which calls law to become an effective instrument for the defence and promotion of human rights for all children and adolescents).

Definition of a uniform age of childhood remains elusive because though the JJ Act 2000 had defined it to be 18, a consensus with other Acts is yet to be arrived which variously define the age of a child as 14, age under hazardous occupations and processes under the

\(^8\) The remaining text uses the expression ‘JJ Act’ alternatively for Juvenile Justice (Care and Protection of Children) Act 2000
Surprisingly there is no linkage between the JJ (C & P of Children) Act and other related legal provisions for children, such as child labour, primary education, sexual abuse, disabilities and health. The missing relation between the JJ (C & P of Children) Act and other legislations has created a lacuna where important issues like the definition of child and adoption are left for judicial interpretation. In a free rein of judicial interpretation in most cases the rights of children get flawed rather than being upheld.

The new Act has increased the scope of the Act to cover all children who have not reached the age of eighteen years. The failure to engage with the CRC guidelines that suggest that all human beings under 11 years of age should be regarded as children and those between 11 and 18 years of age as adolescents has only exacerbated the problems related to ‘difficult and dangerous’ adolescent boys and girls who are viewed as anything but ‘children’.

Another issue related to the age of the children apprehended is the determination of the juvenility and implications of delay in this assessment. The CRC emphasizes the importance of conducting proceedings involving juveniles ‘without delay to ensure the shortest possible duration of detention.’ To ensure speedy proceedings, the JJ Act specifies that proceedings ‘shall be completed within a period of four months from the date of (their) commencement,’ but with exceptions if the ‘period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.’ Extension is often given in case of juveniles in conflict with law. This was noted and confirmed by the Magistrate of the Juvenile Justice Board (JJB) - II and also the members of JJB-I. This is crucial because this is what determines the treatment meted out to the child. They are neither given the basic kit and bedding or almirah to keep their belongings nor are they given medical facilities. The delay results in the child in need of care and protection or the juvenile languishing in the Home premises during the pendency of case. The consequences of such a delay are grave, because there are situations when the convict is exceeding 18 years of age and even after having committed an offence of serious nature is housed with other children in the Home. At the same time there are cases of children who had not even committed an offence but due to the delay in determining their juvenility they stay with some hard core criminals in the Homes. The existence of such cases that do not have a proper justification violate the JJ Act mandate of a speedy justice. The children under the JJ Act should be granted bail as frequently as possible, or should be sent to the Special Homes for behaviour modification or probated in the community under
the supervision of a Welfare Officer. Unfortunately mechanisms and reasons for bail/release on probation are not very well laid down leaving it often to the discretion of the magistrate/chairperson. These authorities are usually biased against the socio-economic backgrounds of these deprived children who are seen as the source of criminal activities. Magistrates/Chairperson often grant bail to those with parents who can provide landed surety, but are less likely to grant bail to children of day laborers or those with a poor socio-economic background. These implicit bail and surety restrictions have resulted in the institutionalization of children along socio-economic lines, in violation of international conventions expressing anti-discrimination principles.

*The JJ Act despite of all good intentions foregoes the principle laid down in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) of appointing an independent body that oversees the various institutions responsible for juveniles. The Government of India has not embraced this concept. The JJ Act establishes Home Inspection Committees and State Level Advisory Boards to oversee the administration of juvenile justice, but in reality they have no authority as they are themselves under the Department of Women and Child Development, a national administrative agency. In this way there is no autonomy given to the agency meant for overseeing the institutions.*

Children are themselves in a difficult situation in developing their own voice to represent their cases. In such situations the adult charge themselves with acting in the best interests of the children which presumes that adults can determine what the best interests of children actually are. As noted, a majority of children coming in purview of the JJ system belong to the lower socio-economic strata and are required to be represented by Child Welfare Officer at the initial proceedings, making their prospect of an appeal for the bail or release unlikely. Given the nature of authority which is primarily drawn from the government bureaucracy and the legal system, the Child Welfare Officer is not the right person to defend the children’s rights as they are unfamiliar with legal proceedings and do not have any training in legal procedures. Therefore either they should be trained in these to make an effective defence for the child or there should be a system of providing public lawyers to represent the children. As of today, Child Welfare Officers simply place the cases in front of the judges and if the child is lucky to have a parent or an NGO support, he is defended by them.

*Another lacuna in the Act has been it does not clearly lay down the protocols or procedures for dealing with children who are victims of criminal acts such as rape, abduction, violence or trafficking. The procedures are through adult courts. The absence of a clear jurisdiction*
and system of providing community based rehabilitation to children under the Act thus becomes a major flaw.

As an improvement over the previous Act, the amendments to the Juvenile Justice (Care and Protection of Children) Act 2000 in 2006 have introduced more options for the restoration of child by introducing ‘fit person’ and ‘fit institution’ to the category of those who provide restoration comprising of parents, adopted parents and foster parents. No legal institutions or procedures have been created to promote foster care, adoption, etc. In reality therefore institutionalization is the only option in practice, for the apprehended children. Once institutionalized there were no systematic efforts in the government run Children’s Homes under study, to provide a suitable alternative for the restoration of the child. Integration with the community or NGOs or family is thus not happening in reality. There are no guidelines in the Act which confirm the State Rules to have inter-state and intra-state uniformity on these crucial parameters.

Another noteworthy innovation introduced in the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 has been, making adoption process secular and the adopted child to be conferred the legitimate rights over parents. But it may be mentioned that despite a considerable period of this amendment, adoption and foster care were not reported by the institutions under study over the two years period – 2003-2005. This calls for a need to probe into the various factors which might be acting as hindrance in the desired implementation of the progressive amendment in the legislature. At the functional level, there is very little awareness about the provisions in this Act. Secondly, amending the Act is not enough, there has to be more clarity about procedures and information, as how the law should be applied. It is not clear how this law would override the provisions of other personal laws. Even this progressive Act has some weaknesses that need to be addressed, for e.g., the Act is silent about the criteria for age difference between the adoptee and adoptive parents in case they are of opposite sex. This is an essential factor for adoption, which should be considered seriously for the purpose of preventing child abuse and trafficking. Secondly, the Act does not specify the necessity of the consent of the spouse of the adopting parent within a marriage. Thirdly, lack of a clear definition of the court for filing application is a source of confusion for people opting for adoption.

Despite some of the above discussed gaps in the much amended Act, it goes without saying that there have been positive efforts towards the improvisation of the legislation through a series of amendments suggested by the child rights activists, like minded NGOs and the rights enshrined in the International treaties like UN-CRC and Beijing Rules.
As pointed out in the general section, the Act falls short of defining clear mechanisms of reaching out to the child in need, in not conflict situations and in strictly separating the child in need from the hardened children in conflict with law.

Children’s Homes: Concerns regarding Procedures and Management

The overall position of staff availability in institutions leaves many questions unanswered. The officially prescribed posts of Child Welfare Officers (CWOs) in both Alipur and Nirmal Chaya Children’s Homes were sufficient but nearly 40 percent of them were lying vacant. The inadequacy of staff in these Homes puts extra pressure on the existing staff with one Child Welfare Officer now responsible for 75-100 children as against the official ratio of 1 Child Welfare Officer: 25-30 children. Some of the prime reasons for the situation were stringent government policies for the appointment of staff and short stay of the CWOs in these Homes due to extra work pressure in the Homes and they did not find the salary too lucrative. The high attrition rate among the CWOs does not provide them enough time to involve with the children. Most of the CWOs in all the four Homes were found to be young pass outs from the college and thus inexperienced of handling children in such Homes.

The children in the 6-12 years age group require more personalised care which is often not feasible in a mass care set up having limited staff strength and lacking accountability. Of the 270 children studied, 27% were 12 years of age or less. Obviously they deserved more intensive care (see Table-15, p.141, Chapter-5). Second, if we look at their backgrounds, 13% remembered their parents as loving, 21% as indifferent, 33% as harsh and only 26% felt they were rejected (see Table-22, p.165, Chapter-5). Thirdly, 39% of the institutionalised children studied accepted the vices like taking drugs, alcohol, tobacco, smoking (Table-32, p. 183, Chapter-5). 28% of them suffered from disabilities including mental retardation, deafness and dumbness.

These factors highlight the need for emotional support and psychological help that these children needed. Even then a large, almost half of the children did not have any of these problems and can be handled with good basic facilities, warmth and meaningful education. The CWOs with a post graduation in social work are expected to counsel the children. However, they were so over burdened that they were never able to spend time with children, what to say of counseling children with a complex range of emotional and psychological problems. In the absence of a regular system of training and orientation of the staff members on the juvenile justice system, most of the staff members lack sufficient clarity about their roles and responsibilities and the new amendments in the Act.
Absence of any supervision and monitoring of the caretakers gives tremendous powers in their hands. Children were scared to approach them, ask for help or complaint against harassment by other. They knew that they will be punished for this as the caretakers did not like to be disturbed of their easy routine of non-activity. In fact, the caretakers worked through a system of patronage of the stronger and bigger boys. Thus the Home environment was more threatening than supportive. The motivation level, of the class IV staff comprising of caretakers who stay for twenty four hours in shifts with the children, forming one of the most important units of these Homes, in the absence of a regular appraisal system was found negligible.

For a goal oriented and coordinated working, the staff has to function as a team with regular meetings, sharing information, coordination with each other along with a system of supervision and two-way communication. Our findings point out that most of these practices were missing. There were no records of staff meetings and the Superintendent and the Child Welfare Officers were hardly seen discussing the ways to improve the Home functioning. There need to be orientation visits of the staff to other well managed Homes within the Juvenile Justice system exhibiting best practices as a learning.

For many children, life in the institution makes demand on their capacity to adjust. The general perception of the institutionalised children about the overall behaviour of the caretakers, under whose supervision the children are suppose to spend their entire day in the Home was negative. Majority of the institutionalised children had a common feeling of having nobody in the Home with whom they could share their feelings. As observed some of the girls were quiet most of the time but no staff member bothered to counsel them.

Another reality in institutional life is escape. Official data shows that, during the year 2003, there were four escape cases in the Children's Home for Boys – 1 for 12-18 years old boys. The Superintendent of this Home reported that these escapes occurred because of quarrels among children, home sickness, non-availability of drugs, etc., though on interaction with the inmates, the reasons for such escapes were found to be entirely different. Some of them are non-caring abusive attitude of the staff members, routinised life with no freedom, ill treatment, no friends and in some cases non-availability of drugs or traumatized by some older boys in the Home.

Another significant observation has been children are not having any say in the Home activities affecting their lives. They were mute recipients who were not allowed to question any of the staff members for the fear of tough disciplinary action. This matter needs urgent attention as all children residents of these Homes crave for emotional support from an adult
figure and look for stimulating activities for a constructive usage of their free time in the Home. The children want a fear free situation where they are permitted to participate in the activities of their choice.

The Homes in the Juvenile Justice System are directly funded by the State through the Directorate of Social Welfare, which is affiliated to the Ministry of Social Welfare, Government of India. None of them raises funds through donations or through foreign agencies. Budgetary heads of Government grants are more or less uniform across the country in these Homes. The main budget heads were security, staff salary, administration and food and clothing supplies. A major part of the funds is diverted to the staff salary and security concerns. This reflects upon the priority of the Government. If a Child Welfare Officer in any Home wants to introduce some innovative idea towards a better stay of the children in the Home, s/he is required to go through a series of government procedures which are long and time consuming enough, to dampen the spirits of young fresh ideas of the staff members.

Recreational facilities are provided to the children but as noted they were of a poor quality and much less in number. It is surprising that such crucial details often miss the eyes of the Inspection Committees. More than seventy percent of the funds for the staff salaries and the Home security must be rationally directed to other more important concerns like the long term rehabilitation of the institutionalized children. It is however ironical that such well endorsed security arrangements have virtually failed to bring a halt to the escape of children from these Homes.

Another grave issue is the absence of transparency within the system. The financial information is not accessible and open. The administrative unit and accounts department under no circumstances shared the receipts of purchase of food and clothing items for children in any of the four Government run Children’s Homes under study. The poor quality of the food served and the general discontentment of the children with the food served compelled us to look through the nutritional chart of the Homes. The diet plans on paper look much in order comprising of a balanced provision of proteins and carbohydrates to the children through a regular provision of milk, pulses and rice. In reality none of the children talked to could confirm of getting milk unless they were severely ill. The pulses provided were having more percent of water. These anomalies have been taken into notice by some NGOs and child rights activists. Pratidhi, a Delhi based NGO used the Right to Information Act to gain access to the financial information within one of the Children’s Homes in Delhi. They have unearthed gross misappropriation of funds meant for children. They found that in a Children’s Home for Boys in Delhi, the annual budget for the
purchase of undergarments amounting Rs. 20 lakhs was spent on the basis of a forged quotation from Kendriya Bhandar. Pratidhi along with another NGO Ashadeep Federation filed a complaint in the anti-corruption department for immediate action. In response the anti-corruption department conducted a raid in the premises of the Joint Director, Directorate of Social Welfare and the Deputy Commissioner, MCD and found a big scam in the purchase of supplies in various Homes under the JJ Act ('Bal Sudhar Griho ke liye Kharidari me Ghotala,' Navbharat Times, New Delhi, 27 June, 2008). These reports and the ground reality confirm the pilferage of food and clothing provided by the Government for these children, which will continue in the absence of a proper monitoring system in place.

The Homes under the JJ system as a mandatory requirement have provision of educational and vocational training for the inmates. The schools attached with the Homes are affiliated to the Central Board of Secondary Education. The noted indifferent attitude of instructors towards the children in these Homes acts as a deterrent in generating interest amongst the children for academic classes and often the vocational training courses as well. Needless to mention that the school enrollment and attrition ratio was abysmally low in the Homes under study. In Boys’ Homes, vocational training courses include welding, wiring, banding, weaving, cane work, barber skills, domestic arrangement and tailoring. As against this, it is only stitching, embroidery, painting and tie & dye which are pursued in the Girls’ Homes. Apparently, the latter have paid but scant attention to the market-relevance of the trades. The enrollment and retention ratio for these courses was thus much better in the Boys’ Homes. In the recent past there have been some efforts to get associated with reputed professional institutes in these Homes as a support towards a better economic rehabilitation of these children. There is however no system of support to the children once they are released from the institution, thus making the entire effort having less long term impact on the rehabilitation of children in need of care and protection.

Amongst the basic facilities provided to the children in these Homes, medical facilities form an important aspect. Medical facilities in the Girls’ Homes were more streamlined with an in-house dispensary and a dedicated full-time medical doctor who was in service since more than five years. In contrast the Boys’ Homes were bereft of an in-house dispensary and a full time doctor. Therefore a full time para-medical staff used to look through the cases in the two Homes and refer them to the doctor or the nearby government hospital. Unlike the Home for Girls, in CHB-I & II the children suffering from any contagious disease like tuberculosis were often left undiagnosed and thus not separated from other children. Unlike the Home for Girls in CHB-I & II the children suffering from any contagious disease like tuberculosis were often left undiagnosed and thus not separated
from other children. The sick inmates were not provided with a special / therapeutic / more nutritious diet. The general sanitary condition of the Boys Home is self explanatory for a larger ratio of children were suffering from dysentery (28.57%) of the 112 boys reporting of illness in the Homes during the course of study (see p.181 of chapter-5). Understanding the need of an in-house dispensary the Superintendent informed that he has taken up the matter with the Directorate and is hopeful of the required action. Since the decision making is top down, this matter has been pending since more than six months. Had any CWC been making its routine inspection visits to the Home, the matter could have been taken up more seriously.

The overall atmosphere of these Homes was gloomy and depressing as most of them were overcrowded housing the regular inmates along with a significant number of pending court cases. The children were mainly kept inside their dormitories and were allowed to move out only to attend their educational and vocational classes or for food. This lock up system was highly resented by the children especially those in the older age group i.e., 12-18 years. The presence of electric fences on the boundary wall in the CHB-I provided the children a jail like atmosphere.

The caretakers are responsible for a regular supervision of the toilets and bathrooms and reporting the same to the CWOs and the Superintendent. In the absence of a regular supervision by the staff personnel and monitoring visits by the inspection committees and the Child Welfare Committees as mandated under the JJ Act, these aspects of maintaining hygiene with clean toilets and dormitories meant for use by the children receive least priority. The toilets in the CHG-I & II were found to be comparatively better than the Boys’ Home. The walls were not dirty and also the water supply was there for fixed timings or through tanks. The toilets in CHB- I & II, through the entire duration of the study were found to be in an unpleasant condition. Since the dormitories in the Boys’ Home - I were at a small distance from the toilets on the same floor, they shared the unpleasant stench. This kind of situation in JJ Homes has been covered by the media as well. The caretakers held the children responsible for the situation, stating that the ‘children staying in the institutions need to consider this as their home. The class IV staff members in both Girls’ and Boys’ Homes were found having complaints against children for their irresponsible behaviour and dirty lifestyle.

It goes without saying that the children in the Homes under study are all from difficult backgrounds (see p.148-55), in case of 28.89 % children both parents were dead and 49.63

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% of the children had their either of the parents dead or separated, thus compelling them to live on the streets on their own are susceptible to all forms of exploitation. These children more than others are in need of individualized care and protection from the Home staff which was virtually found absent. Instead what they are subjected to is corporal punishment by the staff members in name of disciplining and maintaining order in the Home. The caretakers who spend maximum time with the inmates inflict all kinds of verbal and physical abuses on these children believing that they belong to such kinds of families where this kind of atmosphere prevails. The unilateral process of penal disciplining the children in Children’s Homes lead to three kinds of reactions, fear, hatred & anger. These three contribute adversely, affecting not only their normal growth but also infusing in them a desire to escape from the Home. This perhaps provides an answer to the frequent reports of escape from the Homes under Juvenile Justice System (Nine boys escape from juvenile home,’ Hindustan Times, New Delhi, June 26, 2010; ‘Teen leader, 27 others escape juvenile home,’ Indian Express, New Delhi, Mar 16 2010; ‘36 boys escape from observation home,’ The Times of India, New Delhi, September 10, 2009). If prevention of delinquency, neglect and desertion is sought to be the objective, the duty of the state is to help family adjustment rather than punish maladjustment. When we punish maladjustment, we neither correct maladjustment nor promote better adjustment.

The institutionalised children had all experienced the street life before being brought to home and 50.7% children were on the streets full-time. Their being on the street was not decided by the existence of parents as 47.2% of the 163 children having either both or one parent alive were living on the streets. These children were apprehended by the police and placed in the JJ Homes where they are subjected to repressive correctional measures. The truth is that these children are fiercely independent, and when faced with a repressive environment they will either try to run away or develop psychological problems. Our findings on the level of contentment of the children, with the quality of the food served show that 79.96% of children (see p. 125 & p. 138, chapter-4) found the food available on the streets much better and they did not have to suffer the rude behaviour of the staff and their punishments.

This confirms that the state run Homes for the children in need of care and protection do not have a setting and environment conducive to the protection and positive development of the children. For street children, being housed in these Homes is synonymous to imprisonment, which only serves to increase their marginalization and undermines their ability to cope with the outside world upon discharge. The efforts to mainstream them by the involvement of their families and community based organizations are virtually absent in the four Homes covered.
Issues of Functioning of the Legal Institutions
The JJ Act with progressive amendments over the years has ensured the establishment of more CWCs, JJBs and SJPPUs in the capital. Yet their numbers and structures are inadequate. Children are expected to be brought here by families, NGOs, police ‘pick-up’, Child-line and concerned citizens. However more than 90% of the children were brought by the police. What is glaringly noticeable are the limitations including the indifference of the administrative cadre of the Directorate of Social Welfare to the ground level realities and a top-down decision making that has devastating outcomes for children. The Directorates of Social Welfare are supposed to prepare comprehensive annual reports of the work done by various institutions. Such reports are generally not published. The rules in Delhi provide for the creation of a Board or Committee to guide the Superintendents of the Homes in matters connected with the working of the institution. Supervision and guidance from the Directorates to the Heads of institutions are generally on administrative matters. Practically no guidance is given on matters of better techniques of treatment of inmates and on programmes. No inspection committees visit regularly. There is no regularity of meetings of different judicial bodies concerned with juvenile justice system. At the level of institutions, in Children’s Homes, there is no advice given to the subordinate staff comprising of Child Welfare Officers, Probation Officers, Care takers, etc., for a better execution of their duties and responsibilities.

CWCs meant to look after the children in need of care and protection did not have members with adequate experience of working with children. The CWC members’ qualifications were rather having worked in some government department. It is therefore difficult to expect their empathetic approach towards the children. The CWC members informed that the monitoring visits are made on a regular basis to the Children’s Homes within their districts. This could not be verified in the absence of transparency as the researcher was not allowed to see any official document. However during the period of field work, no such visit was observed. The modes of disposal of cases considered were mainly institutionalization or release on bail, no other options were observed.

Functioning of Juvenile Justice Boards (JJBs) was also not much different. With the amendments in the Principal Act in 2006, the State Government was required to constitute, for every district, one or more JJBs, within a period of one year from the date of commencement of the Juvenile Justice Act 2006. However, notwithstanding the statutory mandate, only one Juvenile Justice Board was constituted for the entire Delhi till 2008. Even though presently two Juvenile Justice Boards have been set up in Delhi, they are not having sensitive personnel envisaged under the JJ Act. Both the JJBs have a Principal
Magistrate and two members, of whom one was a Social Worker having minimum or no say in the case proceedings due to their limited understanding of the criminal jurisprudence and law. The Principal Magistrate is appointed for a fixed tenure, after which s/he moves on to the next post. It was revealed that in the absence of any special training, the Magistrate learns on the job. They keep themselves aloof from the other functionaries of the juvenile justice system and more so from the children. There is no provision to ensure consistency or “quality control” in the performance of these functionaries who have undeniably crucial role in the entire JJ System.

Juvenile judicial proceedings are intended to differ notably from ordinary criminal proceedings. These alternative proceedings however do not significantly diminish the sense of formality and criminal suspicion under the shadow of the adult criminal justice agencies and institutions (like the police). Children are brought in vehicles meant for adult prisoners and have to wait till they are called in, sometimes the whole day till all matters listed for the day are attended by the Board/Committee and they can all be carted back to their institution. There is no provision of toilet and drinking water facility for the children waiting to appear before the Juvenile Justice Board or the Child Welfare Committee. Each Board handles on an average, twenty five to thirty cases in a single day. The effort to look through as many cases as possible in a day bars the Board members to carefully assess any particular case and listen to the child’s verdict. Lack of proper training and monitoring compounded by the insensitivity of competent authorities leave little space for children’s views to be expressed or heard. Regarding the modes of disposal of children in difficult circumstances, institutionalization or admonition and release were mostly used. None of them utilized such modalities as group counseling community services, probation, etc. The official data available by the NCRB, Gol for the year 2003 also authenticates our findings. During 2003, in Delhi, 802 juveniles were apprehended under the IPC and SLL crimes and sent to the JJBs, of which 396 children forming 49.4% were sent to the Special Homes and only 59 children were sent back to families after advice. As mentioned earlier, 323 (40.3%) children of the total children apprehended were the non-committed pending cases who are sent to the Observation Homes. There was no case of restoring the child in adoption or fit institution and only two were dealt with fine (NCRB-Crime in India, 2003).

The level of coordination amongst the various stakeholders of the legal implementation of the law was almost missing. Field observation brings out that numerous children in need of care and protection and those in conflict with law have spent inordinately long periods of time in the Observation Home, without their cases making any substantive headway and the same was noted in the Children’s Homes. The absence of coordination meetings has created a gap in the effective functioning of the amended juvenile justice system.
The CWC/JJB members were mainly bothered about the availability of separate rooms, stationary, telephone and other office facilities for themselves. They were more concerned about the work pressure due to more number of cases rather having an equivalent concern for the children who were required to wait for hours for their chance to be heard. None of them expressed the need to arrange for the basic facilities like water and toilet for these children in the waiting queue. There was no effort noted in listening to the verdict of the child. Thus an empathetic approach for children was missing in the case proceedings of CWCs and JJBs.

Our detailed discussion with the institutionalized and the street children who have experienced the juvenile justice system specially the police street confirmed that despite all noble thinking envisaged in the JJ Act with the proposal of constitution of Special Juvenile Police Unit specially trained to deal with the children in difficult circumstances, the ground reality is not much different from the past. As mentioned earlier (see pages 216-218, Chapter-6), street children’s worst nightmare was the prospect of being rounded up by the police and being packed off to a JJ Home. Encounters with the police are a dominant and a recurrent theme in the narratives of street children.

In a clear flouting of the JJ Act, the children are illegally detained by the police who are empowered to take charge of street children and place them in Homes, especially when they fail to part away with their meager earnings as a regular bribe demanded by the police (see p. 216, chapter-6). During our field visits to the JJBs and CWCs, police personnel were always seen in uniform and having a tough approach towards children picked by them. Most of them used harsh language and considered the children in need of care and protection comprising of a large number of street children, a nuisance who could be found anywhere in the city. Most of them accepted that they do not explain the reason of arrest to these children and consider them in need of some corrective action. It comes out clearly that it is not enough to change the words and make the Act sound more ‘child friendly’, when the implementation and supervision continue to be tardy. Despite being called ‘Special Juvenile Police Unit’, in an absence of proper training and monitoring, the behaviour of police personnel, who are often the first to come in contact with the street children, remains unchanged and the brutality continues unchecked in the absence of punitive measures.

Having a limited role in the actual functioning of the JJ system, NGOs attached with the Special Juvenile Police Units in Delhi felt the need for more sensitization training programmes for the police personnel towards the rights of children. They also felt that there should be more Child Welfare Committees and Juvenile Justice Boards in place since the
case load on the existing CWCs and JJBs was difficult to be managed and makes the list of pending cases longer. As a result many children are institutionalized for no fault and often the pending cases of children in conflict with law are sent to the Children's Homes meant for the children in need of care and protection. Most importantly it was felt that the NGOs should be involved in the rehabilitation of the institutionalized children.

Our efforts to get data from the police personnel were quite frustrating as the so-called sensitization of the police was more on paper and it was difficult to contact them as they were always out on duty. We therefore used the alternate strategy of talking to the street children and gauging their experiences of the justice system specially the police. Interviews with children about their experiences, with the police and the justice system often demonstrate the vicious cycle of street life, police treatment, institutionalization, release/escape and recidivism. These children were free to express their views in contrast to their institutionalized counterparts who were under the constant vigil of Home staff. It was found that boys are more prone to such arrests or confinement to Children's Homes than the girls. Most of the street boys were working, with a good network of friends and were found content with their life. These children nurture negative attitudes towards the police personnel, they fear or hate them for their corrupt and inhumane approach towards them. All the street children who were confined to the Children's Home felt that the provision for meeting the basic needs was not adequate and the food provided was of bad quality. The behavior of the caretakers in the Home was found highly atrocious who made them regularly clean the sewage and the toilets. They also complained of the bossy behavior of the older boys in the Homes. The educational and training facilities with no after support were considered less fruitful by these children. They all preferred the life on streets to Home, which allows them freedom of deciding about their lives.

Implications for Future Approach to Interventions

The present study findings are glimpse of the structure and functioning of the juvenile justice system in the Capital region of Delhi. Learning from the present study we make the following suggestions.

Most importantly, the Juvenile Justice Act needs to make a clear distinction between children 'in need of care and protection' and those 'in conflict with the law' and this distinction must be rendered complete and effective.

The de facto criminalization of street children must be ended by placing the relevant legislation outside the criminal justice system and by transferring, their care and protection to agencies — whether governmental or non-governmental — whose personnel are trained
in social work, not correction. In addition, in cases where both options of re-uniting the child with his/her family and adoption prove to be inadequate or impracticable solutions, viable alternatives to detention, foster care, adoption must be devised. Greater emphasis, in particular, must be placed on the rehabilitation and personal development of former street children.

While some NGOs like Butterflies, Prayas, Care & Share are having experience in successfully running Children’s Homes and some of them have been invited to help manage Observation Homes. It is certainly desirable that the government uses the models of these NGO run Homes and increasingly delegates the care and development of street children to civil society organizations.

*Fair Working* - ‘Openness and Transparency’ is a new goal emphasized by the Juvenile Justice Act. The work under Juvenile Justice Act has been carried for decades in Delhi, yet there has been no systematic evaluation of the work except for some reviews of the Homes by the Committees formed in response to the media reports on death or escape of the institutionalised children. Research is essential to obtain objective data regarding the function, programme, personnel, etc., of juvenile correctional institutions. The Directorate of Social Welfare itself may not have qualified persons to conduct research, but it can always invite persons from outside to undertake studies into the causes of escape from the institutions, treatment of children in the Homes and evaluate different aspects of work. A specific mention in the Act may provide enough force behind such action. It should be laid down in the law that the expenses involved in the conduct of research by the Directorate or by an individual or an organization approved by the Directorate, would be defrayed out of funds made available by the state government.

*Children’s Voice* - Children should not be seen merely as recipients of services or beneficiaries of protective measures, but rather as subjects of rights and participants in actions affecting them. This implies a change in the approach, also towards vulnerable children in research and decision making. Care and rehabilitation cannot be pursued by depriving the children of their personal freedom. On contrary, such objectives can only be accomplished in places where the children can be motivated, where they can be provided with the means, the confidence, and the self-image they need to fully realize their potential, and where they can feel free, cared for, and loved. Above all, street children must be given their childhood back. The category of institutionalised and street children that constitutes its own social group as alternate family works and finds its place under the sun on the basis of legitimate labour is one that requires innovative handling. Institutionalizing them, asking their autonomy, taking away their livelihood is perhaps not the best way of handling this
group. It is here that the work of NGOs like Butterflies, Akanksha, Care & Share, CINI Asha and other experiments where self management and self-care is taught and practice to make these children responsible citizens is something that needs to be expanded and taken up formally as a way of help of these children on the street.

In the current system, the street children who are mostly unattached with no adults to vouch for them, are the easy targets be apprehended and sent to languish in the Homes, as they have often no one to bail for them. In this scenario, it is important to stress on the need for the recognition of the right to ‘legal representation’ for all children in difficult circumstances. This may alleviate the problems of the lack of child participation and accountability of the judicial proceedings by providing children with free legal aid who can object to inordinate delays or inappropriate behavior on the part of the Board/Committee.

Section 23 of new Juvenile Justice Act, 2000 provides punishment for cruelty to child. Whoever, having the actual charge of or control over, a child causes him unnecessarily mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both (Bare Act, JJ Act, 2000). Notwithstanding this section, the hard core treatment of the children in the Homes continues with no system of checks and controls and training or sensitisation of the Home staff towards the needs of children. Some times a child specific approach is needed to understand him/her and shape up to the requirements. A concerted effort has to be made to reorient attitudes of the Home staff with a special focus on the caretakers who spent maximum time with the children in these Homes. The Child Welfare Officers should be motivated to spend quality time in listening to the children beyond the preparation and maintenance of their files.

**Quantity or Quality** – There has been some improvement in the number of Homes and CWCs and JJBs with the implementation of the JJ Act 2000 further amended in 2006. As reported by NCPCR Sub Committee Report (2007-08), the utilization of funds has also been satisfactory (89.5% in 2002-03 and approximately 100% in 2003-04), and the funds for the next year are released without delay in the last month of the financial year. However the controlling Ministries release funds to the state governments without an evaluation of an effective utilization of the prior funds.

The quality of services in JJ Homes often forms the headlines in national dailies due to its maltreatment of children, their escapes and the lackadaisical functioning of the Home staff as well as the functionaries under the legal mechanism of the Act. The absence of proper supervision and quantitative and qualitative evaluation of delivery is obvious. In this scenario any demand for the release of more funds for setting up more Homes or
JJBs/CWCs/SJPUs is futile. The system needs an overhauling, stress on identifying a strategy for a better execution of the current services in place through proper staffing, monitoring and supervision. With a better system of monitoring and regular inter-department meetings, there would be more transparency and accountability of the functionaries. Only after achieving this there should be efforts for expansion of services.

It is important that all posts in institutions should be filled with qualified persons. The government policies for the staff appointment should be flexible to avoid the current situation of a high ratio of vacant posts against the sanctioned posts affecting the overall functioning of the Child Welfare Officers in place. The Directorate and the parent organizations should try to retain the services of experienced and capable staff by providing opportunities for advancement, improved working conditions and adequate incentives. Some turnover of the staff is inevitable in spite of sincere efforts.

The filling up of the sanctioned posts of CWOs in Children’s Homes would be of less gains in absence of a proper system of training and orientation of the staff and building in them sensitivity for the beneficiaries coming often from a difficult background and in need of individualized care and protection. The Directorate should evolve a system of regular staff meetings within the institutions where the minutes get documented and are available for the researchers or the review committee. Similarly there need to be a more organized system of meetings amongst the staff members of the Homes and the Directorate, CWCs and JJBs on the situation of the inmates as one of the agenda items besides the administrative tasks. This would strengthen the links between JJ Institutions and provide a regular monitoring mechanism in place. The inspecting staff from the respective CWCs and JJBs mandated to conduct a regular supervision of the Homes should spend at least two to three days in each Home once or twice a year. The inspection of Homes should be on a surprise visit basis without prior notification and report of the same should be documented. Counselors/caseworkers should sit down with parents on a monthly basis to discuss their child’s progress and encourage family reunion. De-Addiction centres must be available for children. There can be collaboration with existing facilities. A separate budget must be provided for this along with counseling facilities.

Before the setting up of more SJPUs there need to be rigorous sensitization programme for the police functionaries on the juvenile justice system with the underlying aim to change the general negative perception for street children. Statistics with respect to the arrested children according to the Crime in India 2003 (NCPCR, GoI) shows that the largest chunk of children in conflict with law (73.8%) belonged to poor families. Clearly it is all those
who cannot get bail or the advantage of surety that 26.2% economically well-off get. This requires a careful consideration from the administrators.

Revisiting JJ Homes - An audit of conformity of physical living conditions for each of the Homes should be undertaken. Clean drinking water should be a mandatory facility and toilets to have doors and running water facilities. One option that the Homes could explore is a tie up with Sulabh International or similar initiatives to outsource the sanitation management of institutions (NCPCR, GoI, 2008).

Employing children to assist in the kitchen at the cost of their missing out on schooling or other skill development activities must be avoided. Institutional programmes, vocational or general education need attention of higher authorities. The Children’s Home for Girls should also have market oriented vocational training for the inmates. The current system lacks support after the release of inmates or any job placement. The Homes should work in cooperation with the schools and vocational training institutions in a particular locality in giving education and other training to the institutionalized children. This would pave the way towards the mainstreaming of inmates and prevent their social exclusion during the period of institutionalisation. A properly organized follow-up of inmates is essential to improve institutional treatment programmes.

The Government needs to seriously focus on child development through its welfare departments and not only on reducing the numbers of street children. This would mean that the Departments of Child Welfare and Social Welfare would focus more on child and social development. While the current policy of the Indian government is limited to reducing the number of children on the streets and making sure they are in no condition to harm themselves or others, the priorities must be represented by their education, their physical and mental health, and their re-entry into society as responsible and productive citizens. A Welfare Department providing child guidance services, family counseling and referral services in each institution could assist with the preparation of individual Child Care Plans and promote out of Home placement of children. It could also service the specific function of identifying and handling problems of children in distress living in the community before they become cases of delinquency.

Community Involvement

a) Direct Involvement - Uniform reporting system by all institutions should be worked out by the Directorate of Social Welfare. In order to give information to people, the Directorate should arrange occasional press releases and radio talks and the people of the community should be encouraged to participate in institutional programmes. In framing or amending procedures or rules, the opinions and suggestions of institutional heads should be solicited
and given proper weight. The committee of visitors or such bodies appointed for each institution should include members from different fields of activities. The schools of social work & public health should be given proper representation in such bodies.

b) Community Outreach – With NGOs having a better acceptance and approachability in the community, it is important to strengthen their involvement in the community sensitisation process as well as in the rehabilitation of the institutionalised children. NGOs with a proven track record of working on the causes of street children like Butterflies in Delhi, Navjeevan Bal Bhavan in Hyderabad, Loreto Day School (Rainbow) in Calcutta and many more, can sensitize the local communities on child issues, child rights, Juvenile Justice Act 2000 and generate their due participation in the co-management of the activities of the Homes. They can be supported in organising workshops and awareness programmes for Superintendents of Children’s Homes and Observation Homes on child rights, quality of care and treatment of children, speedy trials of children in Homes. With their community presence, NGOs can play an effective role in the reintegration of the children with their families by collaborating with the district level Child Welfare Committee or the Children’s Home. This effort however must be backed by a regular follow up and counselling of the family in order to prevent the chances of child’s way back to the streets.

Apart from the possible interventions above, our study of street children highlights the links between social disadvantage, poverty and backwardness. Therefore a pointer, to the need of poverty reduction as a central thrust demanding attention to rural development through a better implementation of various poverty elimination programmes like National Rural Employment Guarantee Act (NREGA), Minimum Wages Act, Gramin Vikas Yojana and so on. Also, confirms the need of strengthening family life through counseling, providing day care for children of working parents wherever possible.

The present study was exploratory in nature. Apart from bringing out some additional problems than what have been known so far, it helps in identifying new areas of research in this field. As a result of this study, three types of studies may be suggested: (i) Similar exhaustive studies of juvenile institutions and street children in other States where the new Act, Juvenile Justice (Care and Protection of Children) Act, 2000 has been implemented, (ii) Exhaustive study of individual institutions, to assess if the new Act has been implemented in its true spirit, and (iii) Study of the NGO managed institutes under the Juvenile Justice System in the Capital and other states of the country to understand innovative strategies. Secondly, the information generated can be effectively used in future planning for the children through some legislative reforms (identified), improvements in running of Homes and legal institutions by intervening at points identified by the study and through planning of better need based community programmes for the children in distress.