5.1 Introduction

Juvenile justice is more concerned with the rehabilitation of its charges than is adult criminal justice.\(^{363}\) When discussing juveniles in conflict with law, international agreements generally emphasize the importance of preventing juveniles from coming into conflict with the law in the first place, as well as an expectation of complete rehabilitation by the time they leave the juvenile justice system. Throughout the proceedings within the system, “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth”.\(^{364}\) India’s original JJA 1986, written before many of these international instruments were promulgated, did not align with their requirements. In response to the U.N. Committee on the Rights of the Child’s recommendation that India incorporate the aims of the Convention on the Rights of the Child into domestic legislation, a new law was passed.\(^{365}\) The JJCPA, amended in 2002 and 2006, covers all aspects of interaction between children and the legal system.\(^{366}\) From adoption to abuse and neglect to children in conflict with the law, the Act is far-reaching in its scope and intent. The provisions within the

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364 Convention on the Rights of the Child, Article 40.
JJCPCA, like its international predecessors, are intended to preserve the dignity and best interests of the child.

The success of any legislation is measured by the actual welfare and benefits, which accrue to the people after implementation. Executive is the authority for the implementation of laws. They work as per the Act. As it is discussed in previous chapter that the JJA 1986, had lot of demerits and the same was repealed and JJCPCA, 2000 came into force. The point of consideration herein is the implementation of the Act whether it was JJA, 1986, JJCPCA 2000, JJCPCA amended in 2006 or Model Rules 2007.

5.2 Criminal Court Proceedings

From the time when the National policy for children was adopted till the enforcement of JJA 1986, three sets of laws applied socially handicapped children in different parts of the country. In the states and districts where Children Act was not enacted or if enacted, not enforced, provisions of the Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.) applied.\(^{367}\) This resulted in discriminatory treatment being meted out to children residing in different parts of the country. Voices were raised for uniformity of the law. The JJA 1986 was introduced which made some major changes in the structure of JJS of India. The vital changes are a uniform definition of juvenile for whole country, wider role of voluntary organization, prohibition of imprisonment of children under all circumstances; and uniform structure of juvenile justice for whole country, except the state of Jammu and Kashmir.\(^{368}\) The JJCPCA 2000 came into force and repealed and replaced the JJA 1986.


In the JJCPCA 2000 the constitution of the Board differed completely from the juvenile court under the JJA 1986. Under the JJCPCA 2000 the magistrate shall have the powers conferred by the Cr.P.C on a metropolitan or judicial magistrate. It is submitted that in view of the statutory vesting of powers, there is no need for conferring the powers specially as is required by the Cr.P.C. With the amendment of the JJCPCA 2000 in the 2006 and rules made, the more things changed and the more things remained the same.

“While the legislation has been made with the best of intentions, it has been criticized for its unprofessional and tardy drafting. Its implementation, also, has been piecemeal”. 369

The Dipa Dixit, the member of the NCPCR says

“The JJB and its procedures are as though for an adult, and therefore harsher for a child. The system is not child-centric at all”.

While the JJCPCA 2000 lays down a different adjudicatory mechanism for children, particularly for those in conflict with law, the system continues to rely on the IPC defining what constitutes an offence, as it doesn’t have a separate procedural code of its own. In fact, it continues to rely on the Cr.P.C. for procedural mechanisms Section 2(y). 370 Therefore, while a child may be “apprehended” instead of arrested, the police continue to use the same arrest memo. Whether or not the child will be considered a child in conflict with law will be based on the IPC or as “an offence punishable under any law for the time being in force” Section 2 (p) depending upon the Act committed. In the case of the children in need of care and protection, the child will continue to be part of the adult trial proceedings if the

370 Section 2(y) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973(2 of 1974) shall have the meanings respectively assigned to them in that case.
accused is an adult. This contributes to a whole lot of problems starting with the time a child is apprehended for an offence committed by him (or approaches police for justice for an offence committed against him or her) till the child is produced before the relevant authority such as the JJB (or the CWC). The need for FIRs, filing of charge sheet, unnecessary procedures for age verification, conventional methods of bail, an inquiry nothing less than a trial etc – all become necessary which only increases the trauma for the child. This also helps perpetuate the perception of these children as criminals in the mind of the police who cannot go beyond the boundary of their knowledge of these two codes. Having the Cr.P.C. does not prompt or facilitate a change in the attitude of the police and the judiciary, who keep working to the letter of the law without appreciating its very spirit.371

The Model Rules 2007 framed by the Union Government for implementation of the law emphasize the use of non-stigmatizing semantics, decisions and actions as a fundamental principle in the development of strategies, interpretation and implementation of the law. The Rule 3 clause 2 (VIII) of fundamental principles of juvenile justice and protection of the children clearly states principle of Non-stigmatizing semantics, decisions and action. The same is reproduced here in below:

The non-stigmatizing of the said Act must be strictly adhered to, and the use of adversarial or accusatory words, such arrest, remand, accused, chargesheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody etc. is prohibited in the process pertaining to the juvenile or child under the said Act.

A simple reading of the Act and the Rules however reflect just the opposite. The lack of political will to change and the restrictive attitude of the government show up in the continued use of terms such as ‘detention’ and ‘release’. This cardinal principle of non-stigmatizing semantics and action holds no meaning as long as the procedures of the Cr.P.C are to apply in matters of juvenile justice. If using the Cr.P.C. the use of chargesheet, trial, prosecution, warrant, summons, conviction etc. are inevitable. This inherent contradiction in our juvenile justice legislation has therefore failed to treat children separately from adults and they continue to be sent to ‘judicial custody’ by the JJB instead of being placed in safe custody as required under the law.

The fact that the JJCPCA allows the Cr.P.C to be followed in dealing with matters concerning children reflects the lawmakers’ and enforcers’ reluctance to rethink and innovate for children. It also raises doubts if the law was made to suit the needs of a few law enforcement officials, especially since the Cr.P.C. itself requires reforms for violating human rights principles. In a criminal justice system that does not establish distinct and specific legal procedures for children, ensuring justice to children will not be easy. In fact, there is no purpose served by the JJCPCA if it continues to rest on criminal procedures for adults. A separate set of procedures for children must be drawn up forthwith, and till that’s done, there must be a set of child-friendly procedures to settle matters where the alleged offence is not serious.

There are several areas lacking in both conceptual clarity and procedural transparency. For instance, the JJCPCA 2000 prescribes that children in “conflict with law” be first taken to observation homes, where they would stay till their production before the JJB for inquiry.
Yet, children are found to be staying at least one night, sometimes even five, in a police station. This is fraught with risk; the children might be abused, violated, kept hungry, a statement may be taken from them by intimidation, and so on. The law also says that no arrest can be made after sundown but police violate that on the pretext that the child might run away. Because the law says the children must be produced before the JJB within the next 24 hours, they even post-date their reports to the Board to hide the stay in the police station.372

On March 2, a division bench led by Chief Justice A P Shah in Delhi severely cautioned police, asking them to immediately stop taking child offenders to stations and making them sign statements. “There will be no signatures or thumb impressions taken from these children... Any officer who does so will be exposed to contempt of court”, it said.

But the law is not clear on where police will keep the child if the Observation Home authority refuses to admit the child without a paper signed by a senior official or if such an official cannot be contacted or on a holiday, which is a very common occurrence.373

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372 Id at 78-79.
373 JJCPA 2000, Section 12(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-Section (1) by the officer in-charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-Section by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.
But the term “prescribed manner” is defined neither in the Act nor in the Rules. Not even is it clear if taking a written order of any Member of the Board for placement in an observation home is a “prescribed manner”. Section 8 (4) of JJCPCA 2000 says that every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home, shall initially be kept in a reception unit of the observation home. The application of the law so far has been that a member of the JJB sends the child to the home and the reception unit is not prepared to receive any child till his/her first production before the JJB.374

We can understand why homes do not want to take in children without a written order. Firstly, the law says a child can be placed with a fit person or in a fit institution and only the JJB has the power to declare the ‘fitness’. Secondly, since the responsibility of the child admitted falls on the home, the home may be reluctant to admit the child without an order or a valid record, especially if he or she escapes or something happens to the child before production before the JJB.

The incongruity of using the Cr.P.C. is evident in another area: while the JJCPCA 2000 requires the completion of inquiry in four months at the most, the charge sheet under Cr.P.C. can be filed in 90 days or more, allowing the latter to frustrate the goal of speeding up the process. Secondly, the presumption of innocence is a crucial element of criminal judicial proceedings in India, but becomes complicated in juvenile proceedings. According to the Committee on the Rights of the Child, the presumption of innocence “means that the burden of proof of the charges brought against the child is on the prosecution”. This is a delimma for the JJB, which does not have a

374 Supra note 371 at 79.
separate prosecutor, and is expected to act as both arbiter and prosecutor. Moreover, the fact that guilt and retribution are not intended to be elements of the proceedings means that for any crime, all children receive the same punishment (if any). This makes the JJB “ineffunctual” in the eyes of the police and often influences the latter’s decision to anyhow send apprehended children, whom they suspect/know to be offenders, to adult prison.

5.3 Responsibility of Social and Child Welfare Department

The implementation of the Act lies with the central and state government. In Delhi the implementation of JJCPCA, 2000 lies with the Department of Women and Child Development (hereinafter referred as MWCD) of Government. It was formed in 2007 when the Department of Social Welfare was bifurcated into the Department of Social Welfare and the Department of Women and Child Development. The Delhi Government has divided Delhi into four districts to administer these Rules. There are four Child Welfare Committees and two Juvenile Justice Boards. As per the Section 68 of the JJCPCA, 2000 every state government has been empowered to frame their own Rules, and until the state government frames the same, the Model Rules of 2007 would apply. Till now no concrete information is available about how many states have framed their Rules. In the year 2009, the Delhi government framed their Rules and will be known as The Delhi JJCPC Rules, 2009. Regarding other states we can get the clear status in *Sampurna Behrua v Union of India & others, 376* the Supreme Court upon learning that only four states

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376 Writ Petition (Civil No) 473 of 2005. The petition outlines a detailed study in twelve states of India (Punjab, Bihar, Orissa, Madhya Pradesh, Uttar Pradesh, Rajasthan, West Bengal, Maharashtra, Manipur, Gujarat, Karnataka, and Uttaranchal), which highlighted that the JJCPCA was not being implemented. Most of these states failed to establish the following mandatory provisions: the establishment of Juvenile Justice Boards (JJB), Child Welfare Committees (CWC) and special Juvenile
(Gujarat, Orissa, Manipur, and Uttaranchal) have complied with the provisions of the JJCPCA, the Court in an order dated 3.1.2007 directed all the states to produce responses explaining their failures and the steps being taken to address them. As usual, the states hedged and delayed their reporting, perhaps because no further attempts were made to implement the act. Fed up, the Supreme Court issued an order on 13.12.2007 to all the Chief Secretaries of the non-compliant states to hasten the responses. Hopeful, this will get all of the shameful facts before the court’s attention and further progress can be made. But this took another few years to get the status of the states that too is incomplete. Till 17.1.2011, only nine states gave the report and which show that they have complied with the Act to the extent of the establishing of JJBs and CWCs. Even court made an observation on this that setting up of JJBs and CWCs is merely following the letter instead of object and spirit of the Act, which is not sufficient.

Another status on the implementation of JJCPA, whether the Rules are framed by the states can be obtain from the report published by the MWCD. After perusal of the report we can make out that all states do have the Rules but they are not amended after the Model Rule 2007 came into force. Same old rules are there only Punjab, Delhi and West Bengal are reviewing their Rules as per the Model Rule 2007.

For more clarity on the power and working of the department let have a glance on Section 68 clause (2).

Section 68 Power to Make Rules:

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(i) the term of office of the members of the Board and the manner in which such member may resign under sub-Section (4) of Section 4;

(ii) the time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under sub-Section (1) of Section 5;

(iii) the management of observation homes including the standards and various types of service to be provided by them and the circumstances in which and the manner in which, the certification of the observation home may be granted or withdrawn and such other matters as are referred to in Section 8;

(iv) the management of special homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the special home may be granted or withdrawn and such other matters as are referred to in Section 9;

(v) persons to whom any juvenile in conflict with law may be produced before the Board and the manner of sending such juvenile, to an observation home under sub-Section (2) Section 10;
(vi) matters relating to removal of disqualification attaching to conviction of a juvenile under Section 19;

(vii) the qualifications of the Chairperson and members, and the tenure for which they may be appointed under sub-Section (3) Section 29;

(viii) the time of the meetings of the Committee and the rules of procedure in regard to the transaction of business at its meeting under sub-Section (1) of Section 30;

(ix) the manner of making the report of the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry under sub-Section (2) of Section 32;

(x) the management of children's homes including the standards and nature of services to be provided by them, and the manner in which certification of a children's home or recognition to a voluntary organization may be granted or withdrawn under sub-Section (2) and the manner of registration of institutions under sub Section (3) of Section 34;

(xi) appointment if inspection committees for children's homes, their tenure and purposes for which inspection committees may be appointed and such other matters as are referred to in Section 35;

(xii) facilities to be provided by the shelter homes under sub-Section (3) of Section 37;
(xiia) rehabilitation mechanism to be resorted to in adoption under sub Section (2), notification of guidelines under sub Section (3) and the manner of recognition of specialised adoption agencies under sub Section (4) of Section (41);

(xiii) for carrying out the scheme of foster care programme of children under sub Section (3) of Section 42;

(xiv) for carrying out various schemes of sponsorship of children under sub-Section (2) of Section 43;

(xv) matters relating to after-care organization under Section 44;

(xvi) for ensuring effective linkages between various agencies for facilitating rehabilitation and social integration of the child under Section 45;

(xvii) the purposes and the manner in which the Fund shall be administered under sub-Section (3) of Section 61;

(xviii) any other matter which is required to be, or may be, prescribed.

Under United Nation Rules for the Protection of Juvenile Deprived of Their Liberty (hereinafter referred as JDL, Rules) as well as the United Nation Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) it states that the instruments addressing the protection of persons subject to detention or imprisonment—an independent body that oversees the various institutions responsible for juveniles in conflict with law is a crucial
mechanism for maintaining the best interests of children. The Government of India has not comprised this concept due to which observation homes and probation officers remain vaguely subject to oversight by the Department of Women and Child Development, a national administrative agency that is minimally involved in observing probation officers or Home staff at the local level.

The JJCPA, 2000 also establishes Inspection Committees and state-level advisory boards to oversee the administration of juvenile justice, but they haveno authority or required meeting dates are not fixed though as per rule they should meet once in three months. In practicality these committees do not conduct meetings or reviews of Homes the rules remains only on the paper. The police, meanwhile, are only held accountable within their own departments, and are subject to limited supervision combined with unlimited discretion as to when to get involved and what course of action to take. One of the more pernicious of the Government of India’s flaws, lack of oversight, flourishes in the juvenile justice system. Physical abuse, corruption, and abuse of power dominate the system, from police to incarceration to legal proceedings. Moreover, what is necessary is the integration of Ministry with the voluntary agency for

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378 JDL Rules, Article 72 (“Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities”). Article 77 (“Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements”). See also Riyadh Guidelines, art. 57 (“Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made”).

the implementation of the act at ground level. That however does require development of mechanism of supervision and accountability of the officers.

5.4 Role of Non-Governmental Organization

The juvenile justice system emphasized informal procedure and correction rather than punishment. Since long there has been tendency in to handle cases in public welfare agencies outside the court. Juvenile correctional institution have been separated from the regular prisons and although most are inadequate. Increased attention is now being paid towards expanding and strengthening the scope of voluntary action in prevention of crime and the treatment of the offenders. In all part of the globe efforts are being made to seek the co-operation of voluntary institutions and bodies whose functioning relates, directly or in directly, to a variety of social defence operation.\textsuperscript{380} In the last two decades, many governments have come to realize that the non-government organization (NGOs) are better able to deliver services than government authority.

The JJCPCA 2000 clearly carvesout a specific role for the voluntary organizations. This is a key shift from the earlier JJA 1986. The statement of objects and reasons for the JJCPCA 2000 clearly articulates this role. It states,

A review ofthe working of the JJA 1986 would indicate that much greater attention is required given to children in conflict with law or those in need ofcare and protection. The justice system as available for adults is not considered suitable for being applied to a juvenile or the child or anyone on their behalf including the police, voluntary organizations, social workers or parents and guardians,

\textsuperscript{380} Singh, Dharamveer and Pankaj, “Role of NGOs in Juvenile Justice –An Analytical Study”, NLIU, Bhopal, Cri L J (2005) at 109
throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, voluntary organizations and the community.

The JJCPCA 2000 has drawn upon various due process, welfare and participatory models in the best interest of the country. The law had appropriately accorded a primacy to community based welfare efforts in safeguarding the rights and interests of children processed through the formal system. Therefore, the implementation depends upon the extent to which the government is able to generate voluntary action. The JJCPCA 2000 act provides for street and abandoned children without abode, victims of child labour, armed conflict, natural calamity, HIV-AIDS besides those abused and exploited in any form either as children in need of care and protection or as children in conflict with law.\footnote{ibid.}

As per the Act government and states has tried to imbibe the advanced responsible role of the NGOs in the filed of juvenile justice system. Herein below abridge on the functioning of the NGOs in managing the institution, etc. and their responsibility towards the CWC, JJB and homes is given.

**Establishing Institutions**

A child centered juvenile justice system demands quality care for children in institutions. Standards of care in institutions are ensured through processes of licensing, certification and effective monitoring. The Act while ensuring participation of voluntary organizations in these areas, builds in systems for certification as well. Section 2 (h), (o) and (v) defines, “fit institutions”, “observation homes” and “special homes” as institutions established by a State.
Government or by voluntary organizations and certified by that Government under Sections 8, 9 and 12 of the Act.

The Act created an opportunity for the voluntary organizations to run institutions for the care of the children in conflict with law, the opportunity has not been utilized to the full potential. The voluntary organizations are hesitant to enter into this area for lack of experience and a lack of clear terms of engagement with the state.\(^{382}\)

Managing Institutions

While in certain states such as Maharashtra and Tamil Nadu there is a history of NGOs themselves being allocated grants to run institutions under the Government of India Juvenile Justice scheme, in a majority of States/Union Territories (UTs) this responsibility is the exclusive domain of the States/UTs. However, even in these states NGOs have invariably partnered the programme in different ways.

Let's have a brief glance at some of the partnership models of NGOs:

- The first and most prevalent partnership model is where NGOs pitch in with ad hoc supportive services to improve the quality of care extended in these institutions and also extend rehabilitative services. It is the poor standard of care in the government run institutions that motivates local NGOs to do so in the form of educational inputs, organizing outings, providing material inputs like clothes, shoes, school supplies, vocational training etc. State/UT established JJ Homes tend to accept as much support as the NGOs offer.

The second model is one where the government has formalized the support and participation of NGOs in the management of JJ Homes. Andhra Pradesh followed by Karnataka in recent years has passed such orders to formalize NGO involvement by forming Home Committees specifying the role and responsibilities of the NGOs in the partnership.

The third model is one in which the complete management is handed over to an NGO with allocated budget of a JJ Home. One of the examples of India’s new partnership approach to managing juvenile institutions is the Prayas Observation Home for Boys in Delhi. The Home’s facilities are owned by the government, but managed by Prayas, a national children’s NGO, through a partnership agreement. The Government provides grants to Prayas to run the institution, which is staffed entirely by Prayas personnel. Upon taking over the facility, Prayas made significant changes to the physical environment to make it less prison-like and more child-friendly. Prayas has a team of counselors and probation officers on staffs that assess the children and conduct family tracing and family reunification. All children participate in education and vocational training, and regularly take part in recreational and cultural activities, including regular outings and sporting activities in the community. Through its linkages with the broader NGO community, Prayas has also been able to expand its service by mobilising volunteer support from other professionals such as lawyers and doctors.
Receiving Children On Bail

The Act has created role for the voluntary organizations all through the process of a child’s journey in search for juvenile justice; from production before the JJB by the police, through the procedures in the Board, to final rehabilitation of the child. The child, while being released on bail may be placed in a “fit institution” which may be managed by the voluntary organization. This provision within the Section 12 of the Act creates a legitimate space for the involvement of the voluntary organizations, in protecting the best interest of the child and a child centered juvenile justice system. This provision has been effectively used by some voluntary organizations in Tamil Nadu, like the Relief Foundation. However, the voluntary organizations have been limited in their innovations.383

Preparing Social Investigation Reports

Before passing a final order as to whether the juvenile has committed an offence, the Board is required to obtain ‘Social Investigation Report’ on juvenile through a probation officer (or a recognized voluntary organization or otherwise) and take into consideration the findings of such report [Sections 15 (1) and (2)]. The voluntary organizations can obtain information regarding the antecedents and family background of the juvenile and other material circumstances in arriving at a decision in the best interest of the child. The decision whether to send the juvenile to a Special Home for three years or less, or to release to the care of the parents or guardian or a voluntary organization, or to be asked to do community service or just

383 Ibid at 140.
to be admonished and advised; depends on this social investigation report. The space provided for the voluntary organizations in the Act goes a step forward in Section 15. It empowers the Board to release a child found to have committed an offence on probation of good conduct and place him under the care of any “fit institution”. This is yet another provision, used in a very limited way since voluntary organizations have not come forward to play this role and the Boards are not confident in handing over this responsibility to the non state institutions. The Section can be effectively used only when the interaction between the JJB and the voluntary organizations are further strengthened. The social workers of the JJB could facilitate the strengthening of these relationships and play a critical role getting many more organizations registered as “fit institutions”. The Board could maintain data about the specialized services provided by the voluntary organizations in the district and elicit their help based on the specific need of the child in conflict with law. This move to respond to the specific need of the child is the requirement in a child centered juvenile justice system.\textsuperscript{384}

Running ‘after care’ organizations

To ensure the best interest of the child and to complete the rehabilitation process, role is created for voluntary organizations in the after care programmes as well. Section 44 provides for a scheme of after care programmes to be followed by After Care Organizations to care of juveniles after they leave Special Homes to enable them to lead an honest, industrious and useful life.

\textsuperscript{384} \textit{Ibid} at 143

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Monitoring and Watchdog function

The Act provides for the involvement of the voluntary organizations in two key functions: inspection and advice. Section 35 of the Act mandates that representatives of voluntary organizations should be part of the Inspection Committees. Through the provisions in Section 62, the district level Inspection Committees are also given the advisory capacity. Section 62 mandates the setting up of advisory committees at the national and state level to advise the government.

ROLE OF NGOs MOVING BEYOND THE PROVISIONS OF THE ACT

The Law reform on Juvenile Justice in India has been achieved through various interventions. These include the honorable higher courts of India, voluntary organizations, media and international treaties and conventions. There are a number of civil society organizations working for the realization of the rights of children in the country. The interventions by these organizations have been instrumental in influencing public policies on children, especially the policies on juvenile justice. The contributions by the voluntary organizations are listed below:

- The budget analysis and the work on child budgeting highlighted the low level of expenditure on children's programmes and especially the low allocation to the implementation of the Juvenile Justice Act. This helped in policy influencing and the announcement of the Integrated Child Protection Scheme with increased allocation to juvenile justice programmes in the country.
• The voluntary organizations brought court interventions through public interest litigations leading to law reform and accelerated implementation of the Act.

• Voluntary organizations sought details of expenditure on implementation of the JJCPCA 2000, by applying the Right to Information Act. This unearthed corruption within the system and compelled the government to take corrective measures.

• Support of voluntary organizations in the functioning of the Juvenile justice Boards and collaboration in creating Special Juvenile Protection Units created child friendly and child centered interventions.  

Integrated Child Protection Scheme (ICPS)

In 2006 MWCD proposed the adoption of the Integrated Child Protection Scheme. In the draft of ICPS, which was to be implemented in the Eleventh Five Year Plan period of 2007-12 to oversee the development of a national coordinated Juvenile Justice structure, the MWCD itself admitted that many states and Union territories in the country have not established any JJB. In 2009 the central government takes the scheme its approval and has begun the extensive task of providing children with a protection and safe environment to develop and flourish.

The Government of India, MWCD has formulated a new Centrally Sponsored Scheme – “Integrated Child Protection Scheme” with the objective to provide a safe and secure environment to the children in the country who are in need of care and protection as well

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385 Ibid at 145
The intervention includes, inter-alia, financial support for setting up and maintenance of Homes for children in need of care and protection and those in conflict with law, setting up of child protection structure – state child protection society, capacity building, advocacy etc.

The specific objectives of the scheme are:

- To institutionalize essential services and strengthen structures
- To enhance capacities at all systems and persons involved in service delivery
- To create database and knowledge base for child protection services
- To strengthen child protection at family and community level
- To coordinate and network with government institutions and non-government institutions to ensure effective implementation of the scheme
- To raise public awareness about child rights, child vulnerability and child protection services.

Guiding Principles

- Child protection, a primary responsibility of family, supported by community, government and civil society.
- Loving and caring family, the best place for the child.
- Privacy and Confidentiality.

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• Non-stigmatization and non-discrimination.
• Prevention and reduction of vulnerabilities, central to child protection outcomes.
• Institutionalization of children, the last resort.
• Child centered planning and implementation.
• Technical excellence, code of conduct.
• Flexible programming, responding to local individualized needs.
• Good governance, accountability and responsibility.

To reach out to all children, in particular to those in difficult circumstances, the MWCD proposes to combine its existing child protection schemes under one centrally sponsored scheme ICPS. The proposed ICPS brings together multiple vertical schemes under one comprehensive child protection programme and integrates interventions for protecting children and preventing harm. It does not see child protection as the exclusive responsibility of the MWCD but stresses that other sectors have vital roles to play. The Ministry looks at child protection holistically and seeks to rationalize programs for creating a strong protective environment for children, diversify and institutionalize essential services for children, mobilize intersectoral response for strengthening child protection and set standards for care and services. ICPS will function as a Government – Civil Society Partnership scheme under the overarching direction and responsibility of the Central and State Governments. The Government is aware that improving the situation of millions of India’s children in difficult circumstances requires an integrated effort and strong partnership of many agencies. Government cannot achieve this task alone.
Therefore, the ICPS will work closely with all voluntary agency including government departments, the voluntary sector, community groups, academia and, most importantly, families and children to create a protective environment for children in the country. Its holistic approach to child protection services and mechanisms is reflected in strong lateral linkages and complementary systems for vigilance, detection and response. The scheme visualizes a structure for providing services as well as monitoring and supervising the effective functioning of child protection system, involving Voluntary sector. Voluntary organizations will lobby for the protection of children of India and act as a watch-dog on the situation of children and implementation of public policies and programs aimed at children. The State will financially support voluntary organizations to provide vibrant, responsive and child friendly services for detention, counseling, care and rehabilitation for all children in need.

Within care, support and rehabilitation services the scheme will provide childline services, open shelters for children in need in urban and semi-urban areas, offer family based solutions through improving sponsorship, foster-care, adoption and after-care services, improve quality institutional services, and general grant-in-aid for need based/innovative interventions. Within statutory support services the scheme calls for the strengthening of CWCs, JJBs, SJPUs, as well as seeing to the set up of these services in each district. Beyond this ICPS also outlines the need for human resource development for strengthening counselling services, training and capacity building, strengthening the knowledge-base, conduct research studies, create and manage a child tracking system, carry out advocacy and public education programmes, and monitoring and evaluation of the scheme.
In order to ensure the objectives and approaches of ICPS are met, the scheme also calls for the establishment of new bodies within a service delivery structure.

Government & Civil Society Partnership:

(a) Government

(b) Civil Society Organizations & individuals
   (i) Voluntary sector
   (ii) Research and training institutions
   (iii) Media and advocacy groups
   (iv) Corporate sector

(a) Community groups and local leaders, volunteers, youth groups, families and children

At the district level there are:

- District Child Protection Society (DCPS)
- District Child Protection Committee (DCPC)
- Sponsorship and Foster Care Approval Committee (SFCAC)
- Block Level Child Protection Committee
- Village Level Child Protection Committee

At the state level there are:

- State Child Protection Society (SCPS)
- State Adoption Resource Agency (SARA)
- State Child Protection Committee (SCPC)
State Adoption Advisory Committee

At the regional level there are:

- Child Protection Division in the four Regional Centres of National Institute of Public Cooperation and Child Development (NIPCCD)
- Four Regional Centres of CHILDLINE India Foundation (CIF)

And lastly at the national level there are:

- Child Protection Division in the National Institute of Public Cooperation and Child Development (NIPCCD)
- Central Adoption Resource Agency (CARA)

The scheme outlines a specific implementation plan. It discusses the need of convergence of services to give the child the integrated plan. This is achieved through coordination of all department and ministries and NGOs involved.

Challenges or Problems In Implementation of The Role of NGOs

Some of the problems of voluntary action that require attention have been discussed herein below:

- The government has overlooked the simple fact that the way to reducing the problem related to juvenile social maladjustment or delinquency lies in preventing them at the first place. The government focus is on the treatment of juvenile offenders rather than in the prevention of conditions leading to the juvenile social maladjustment.388

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The policy of the government has been to appoint limited number of voluntary workers as non-official visitors and members and office-bearers of the managing or advisory committees of correctional institutions. This mode of the public participation has not yielded the expected result, perhaps because the individuals selected or nominated for the purpose neither represented the public in the strict sense nor effectively performed the role of selfless social worker inspired with missionary zeal.\footnote{389}

Funds proved to many voluntary organizations have been commendable indeed. The result is that hundreds of voluntary organization and bodies have emerged, but in fact many of the organization are hardly doing any worthwhile job. The purpose of such voluntary organization is to devour government money. Needless to say that the continuance of such organizations has brought discredit to several other voluntary institutions and organizations which inspite their numerous limitations are doing good job.\footnote{390} The irony of this situation is that many of the good voluntary organizations are crying for adequate government protection and encouragement. Many of them are withering away for want of requisite facilities and resources. The people who run these organizations are disillusioned with the manner concerned grant giving government department treat them. Red-tapism and authoritarianism are prevalent in concerned departments mainly at state level.

\footnote{389} Supra note 380.
\footnote{390} Ibid at 175.
The lukewarm response of the government to the question of enlarging and extending the scope of voluntary intervention in the juvenile corrections. The research available indicates that officially prescribed modalities of public participation leave much to be desired. The functionaries of the system have only done lip-service to the cause. They have made no effort to educate the people about its policies, strategies and programmes.\(^{391}\)

The offshoot of an erroneous and archaic notion that public spirited volunteers should always be selfless unpaid workers who should always work on their own without caring for the ostensible material or non-material reward in recognition of their work, which is past hangover. It must be understand that like any other thing, social service too has price. Any search for dedicated selfless voluntary workers is a utopia in today’s, world.

The voluntary correctional workers inability to organize themselves like any other professional group.

Many problems of practical nature have arisen because the idea of public participation in the prevention of crime and treatment of offenders has been pursued without the backing of firm empirical data on the subject. There is not much evaluative material that can guide social defence policy makers on the question of determining the viability of the existing modes of public participation or the role played by the NGOs.\(^{392}\)

\(^{391}\) *Supra* note 382.

Efforts of NGOs

It's always important to appreciate the work done for the betterment of the humanity. By doing that we are making the foundation for future emergence of the young groups to come forward for the help of children who are deprived of basic necessities. Let's not forget the work done by NGOs till now for the child in need of care and protection, child in conflict of law, etc. Here are some examples of intervention models of residential care services provided by NGOs working in the areas of social advocacy and residential care.

- Prayas – New Delhi: Prayas is an example of governmental and NGO partnership in custodial care (it runs three homes in Delhi). It also provides competence-building training programmes for childcare functionaries. It undertakes social advocacy for influencing policy changes.

- Balsakha – Patna, Bihar: works with the government and society for the effective implementation of laws for children. Organises and conducts competence-building training programmes for functionaries.

- St. Catherine’s Home, Mumbai: provides quality residential care services for orphaned girls, girls committed to care by the court, abused minors, unwed mothers, and HIV+ children. St. Catherine also offers non-institutional services such as adoption and sponsorship.

- Quality Institutional Care & Alternatives for Children (QIC & AC): refers to a campaign started in 2002 initiated by CRY nationally and supported by Saathi, Mumbai at the Maharashtra state level. It is an initiative taken in
collaboration with the State Department of Women and Child Development. It aims at ensuring quality care in residential institutions for children and in facilitating family-based and community-based alternatives for social reintegration and deinstitutionalisation.

- **SOS Children's Villages of India:** is a non-political welfare organization. It is part of the worldwide SOS Children's Villages. Since its inception in 1964, SOS gives the children the next best thing to a natural family; here the children find a mothersubstitute and brothers and sisters to grow up with. There are 32 SOS children's villages in India and 122 allied projects. The organization provides direct care to 15,000 children through the children's village programme and indirect cares to nearly 2,00,000 children through its various community projects (kindergartens, school, social projects, medical assistance, vocational training centres and family helperprogrammes.) This programme has also begun to address the needs of children affected by disasters.

- **Vinimay Trust, Mumbai:** initiated by socially conscious people in 1982. In 1989 it was registered as a Public Charitable Trust. Vinimay means ‘exchange’ in Sanskrit. For Vinimay social work is not performed out of charity but rather is social participation and social repayment. The Vinimay Trust is an organization of voluntary social workers devoted to the welfare of underprivileged children and youth and to supplement the work done by existing institutions. For the last fifteen years Vinimay has been working to enhance the welfare
and development of institutionalized children and also provides aftercare services. In 1989 it started a hostel in Nai Mumbai a transitional housing for boys who must leave the institution at the statutory age of 18 years. Vinimay began coaching classes for 500-600 children, has so far arranged job placements for 180 children, offers interest-free loans, etc.

**Children’s Aid Society (CAS) Mumbai:** The Central Development Committee of the Children’s Aid Society, Mumbai is a government-supported NGO. Established in 1927, the Children’s Aid Society has a long history of running the largest network of observation centres in Asia. At any one time there are some 500 children living in the observation centres. Some 2,000 children are housed in seven homes run by the CAS, neglected children, children who are in conflict with law and mentally challenged children. In March 2001 the then Chief Executive Officer appointed a Special Study Team to assess and propose measures for the qualitative upgrading of the CAS’s services. In accordance with the recommendations of the study team, the state government appointed a Central Development Committee to initiate this work.

**Conclusion**

A child centred juvenile justice system becomes a reality with the involvement of responsive, vigilant and innovative voluntary organizations willing to work closely with all. While day to day responsibilities are listed in the Act and the Rules, it is necessary to go beyond the letter of the law and imbibe the spirit behind it. The
preamble to the Act provides guidance on this. Clear understanding of
the fundamentals makes the approach obvious. Responsive voluntary
organizations play a crucial role in the reformation, rehabilitation and
social reintegration of children in conflict with law.

The key to change the present state of affairs of the juvenile
justice system lies with social workers and organizations. They can
maintain a continuous pressure for change as also after alternatives
to institutionalization and for diversion of juvenile away from the state
legal system.\footnote{Bajpai, Asha, Child Rights in India—Law, Policy and Practice, (2003).} Now the question is how to involve voluntary
organizations and organize them for building up movement for the
children. A small beginning in this direction was discernible in the
NGO “Forum for Street and Working Children” that began with the
combine of six non-governmental organizations in Delhi. Nirmila
Niketan in Mumbai also working in that direction, but there are yet no
signs for the move having a nation-wide impact. These steps are in
the right direction and need to be followed up more rigorously.\footnote{Ibid.} NGOs need to inculcate in the children a sense of dignity and social
responsibility. NGOs have to lobby with national and international
authorities. Lobbying generally means the informed communication
from private individuals and groups to public decision makers,
generally in support of or in opposition to some pending policy
decisions.\footnote{Federico Ferrara and Valentina Ferrara, The Children’s Prison: Street Children and
India’s Juvenile Justice System, (October 2005).}

\section*{5.5 Responsibility of Parents}

Parents play vital role in the development of the child. They are
the one who give them family. According to Wright and Wright, the
family is the foundation of human society. Children who are rejected

\begin{thebibliography}{9}
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\bibitem{Ibid} Ibid.
\bibitem{Ferrara} Federico Ferrara and Valentina Ferrara, The Children’s Prison: Street Children and
India’s Juvenile Justice System, (October 2005).
\end{thebibliography}
by their parents, who grow up in homes with considerable conflict, or who are inadequately supervised are at the greatest risk of becoming delinquent.\textsuperscript{396} Immarigeon says it best when he states that justice can be better served and young people steered on the right path by involving families in juvenile crime cases. If anything would play a large part in delinquency it would be a family. Understanding how the family and how the juvenile within the family works get to the core of delinquency.\textsuperscript{397}

Families are one of the strongest socializing forces in life. They teach children to control unacceptable behavior, to delay gratification, and to respect the rights of others. Conversely, families can teach children aggressive, antisocial, and violent behavior. Adolescence is a time of expanding vulnerabilities and opportunities that accompany the widening social and geographic exposure to life beyond school or family, but it starts with the family. Research indicates that various exposures to violence are important sources of early adolescent role exits, which means that not only a juvenile witness violence within the family but on the outside as well.\textsuperscript{398} If violence encompasses all emotionally environmental aspects of the juvenile’s life, he or she is more likely to engage in delinquent activities. A substantial number of children engage in delinquency. Antisocial and/or aggressive behaviors may begin as early as preschool or in the first few grades of elementary school. Such childhood misconduct tends to be resistant to change; for example, the parents disciplining more harshly, often

predicts continuing problems during adolescence, as well as adult criminality. 399

Coolay and others have laid emphasis on face to face relationships in the primary group family as the determinant factor of character formation and group behaviour. According to this approach deviations from normal family setting should be examined repeatedly for their bearing on delinquency. 400 Unprecedented increase in divorce cases and matrimonial disputes is also a potential cause for disrupting solidarity. Man’s hold over his family is declining facts. Once a child feels neglected, he is bound to go astray and this furnishes a soothing ground for juvenile delinquency.

Disintegration of family system and laxity in parental control over children is yet other cause of increase in juvenile delinquency. 401 A natural consequence of broken homes is lack of parental control, security and affection towards children, which increase delinquency among children. The warm relationship between child and his parents is of great significance is developing a wholesome set of ideals. 402 Love is the highest essential not only for the development but also for the very existence of a child. A child, who does not experience the warmth of love and sympathy and feels that he is not wanted, tends to become a behaviour problem. He is permanently impelled to go to the streets, seek substitute satisfaction and other means of escape in companionship of delinquent children or in other acts of deviance.

Professor Burt’s report states that over-strictness was reported in 10 percent of cases. The child who’s legitimate desires and urges are repressed heavily in the home, find delinquency a compensatory way of behavior more satisfying to him than they have experienced.\footnote{Cyril Burt, \textit{The Young Delinquents}, University of London, London (1925).}

We must accept this fundamental promise: "No child is born into the world to be good or bad. He is as bad or good as we make it possible for him to be". A child learns a set of roles, first in the family and then in other groups. Thus becomes the primary socializing agent while other group like neighborhood group, peer group, school group play the role of secondary socializing agents. A child from the very day of his birth lies and grows up in the family. As matter of fact, no one can ignore the importance of family as the most effective socializing agent. Other agency does not play the crucial role in formation of personality.

5.6 Advisory Board

According the JJCPCA 2000 as per Section 62 Central and State government are empowered to constitute advisory board. The advisory board shall have to work for the government and have to advise the government in relation to the matter related to the establishment and maintenance of homes. To check for facilities for education, training and rehabilitation of children in need of care and protection and juvenile in conflict with law. There must be coordination among various official and non-official agencies concerned.\footnote{Ashoka, \textit{Children in Correctional Institutions – A Study of Their Educational and Vocational Background}, \textit{The Indian Journal of Criminology and Criminalistics}, Vol. 15, (Jan-April 2009) at 24.}

The Ministry of Woman and Child Development shall constitute the advisory board. As per the JJ Model Rules 2007 following are
• representatives of voluntary organisations in the field of child welfare, corporate sector, academicians, medical professional,
• eminent social workers, and
• locally respectable and spirited citizens.

The District or City level Advisory Board constituted in terms Section 62 (3) shall also function as the Inspection Committee under Section 35 of the Act. 405

The main functions of the Advisory Boards while acting as the Inspection Committee are as below-

• carry out inspection of Homes at least once in three months 63(5).
• interact with children to determine their well-being and uninhibited feedback. 406
• visit and oversee the conditions in the institutions and look into the functioning of the Management Committee and Children’s Committee.

To ensure that advisory boards function effectively, its chairperson and a couple of other members should work full-time on it. The quality of the juvenile justice services depends heavily on the competence of the professional leadership available at the supervisory level. The creation of the database equally essential for need-based policy formulation and effectiveness of implementation by the advisory board. In fact, the government must provide training to all stakeholders in order to ensure effective coordination amongst the

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405 Model Rule 93 (9).
various organs, which would make the Act a meaningful and workable Act. It is the duty of the government to make all required support system for the purpose of ensuring effective functioning of all the other players under the Juvenile Justice System. However, various duties envisaged under the Act and the Rules cannot be implemented effectively unless and until the government take initiatives and create 'Juvenile Justice Fund' with sufficient amount for incurring expenditures for implementing programmes, restoration, aiding NGOs, to meet expenses of Homes, Special Juvenile Police Unit, Juvenile Justice Board and other statutory bodies for the purpose of ensuring effective functioning of the Juvenile Justice System. Therefore the role of the government is very crucial in the juvenile justice system as functioning revolves around the infrastructure and facilities made available by the State.