# INSTITUTIONAL TREATMENT OF FEMALE JUVENILE DELINQUENTS

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## Indian Juvenile Justice System Distinct from Criminal Justice System

To understand the system of juvenile protection and welfare, one needs to clearly understand the Juvenile Justice System as distinct from the Criminal Justice System. The differential treatment given to the child, which has been in the process of evolution over hundreds of years, creates a separate Juvenile Justice System, other than the Criminal Justice System which is, obviously, meant for the adults, that is, those over 18 years of age. This system of separate legal and administrative treatment operates beyond the realm of Law alone and drifts into the complex dynamics of socio-economic, psycho-emotional and the family- community based institutional and non-institutional interventions and organizations.

Under British rule in India the Common Law practice of 'parens patriae' (*Parens patriae* is Latin for "father of the people"). In law, it refers to the public policy power of the state to intervene against an abusive or negligent natural parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection) marked the practice of differentiating juveniles from adult
cases. However British law had meager effect as most communities had few crimes, and most interpersonal problems were settled in panchayats, informal village courts. Children’s law violations and disciplinary problems were handled by parents, caste and panchayat elders. These practices continue to some extent even today. Nation-building activities after India’s independence established centralized regulatory and legal institutions. Population growth, economic development, democratization, modernization, urbanization and inter-caste and communal strife have also stimulated expansion of these institutions.

The Indian legal system, which was founded on Common Law practices was introduced during the British occupation of India. The impact of Common Law on juveniles in India began with the Apprentices Act of 1850, which provided power to magistrates to commit destitute, vagrant, and delinquent children to parents, guardian, or specified institutions as apprentices to learn trades for employment. This act related to juveniles between the ages 10 and 18, who could be held in these types of programs until they become 21 years of ages. The reformatory Act of 1897 reduced the severity of punishment to juveniles who had committed serious offences.

It also required juvenile offenders to be to be separated from adult prisoners and placed in reform schools. The Code of Criminal Procedures of 1898 elaborated the methods of accomplishing these aims. The Madras children’s Act of 1920, which was the first comprehensive Act to be introduced in India, provided for juveniles courts, juvenile institutions and juvenile treatments. These courts were established with broad powers. They could be either separate, or part of adult courts with 'parens patriae'

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224 Siddique A (1978), Criminology Problems and Perspectives, Lucknow, Eastern Book Company, pp-129-130
Juvenile hearings were conducted separately, privately, informally and practically without the right to appellate review.

In the name of providing treatment, education, and occupational training and rehabilitation for juveniles, and stressing that children need only these, officials often sacrifices legal rights and procedures. Felony cases for which juveniles might be given death sentence were not handled in the juvenile or magistrate courts, but were sent to higher level courts with jurisdictions over adults. The Madras Borstal School Act of 1925 created industrial schools for occupational training, moral development, and rehabilitation of delinquents. Enactments and changes were eventually introduced to modify the system. The Constitutions of India, created in 1949 after independence, recognizes the rights of the accused- the right against self-discrimination, the right to an attorney, and the right to freedom (article 20, 21, and 22 of the Indian Constitution). Many of these rights are yet to be realized through enactments, practices and case decisions. Even though the Children’s Act of 1960 was in essences largely a reflection of earlier acts and practices, it recognized the importance of legal rights and later led to their development. For example, the Act recognized that a defense attorney can be present in juvenile hearings.

The Juvenile Justice Act of 1986 conferred the greater power to juvenile courts even to hear capital cases involving juveniles. The Juvenile Justice Act of 2000 made more significant strides in providing for legal safeguards, procedures and rights, in addition to rehabilitation services. It saved children from being subject to death penalty. This act was heavily influences by the 1985 United Nations Standard Minimum Rules for Administration of Justice, the 1989 United Nations Conventions for the Rights of the

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Even though juvenile delinquency rates are currently lower in India than in many other countries, they are bound to increase in the future. At present, however, cruel treatment, punishment and victimization of children are a more serious problem. Since Independence, several acts have been introduced to improve the Juvenile Justice System. More than any other act before, the Juvenile Justice (Care and Protection of Children) Act, 2000 provides legal rights, protection and rehabilitation for juveniles in conflict with law and for children in need of care and protection. If its rationale and suggested practices are followed the Juvenile Justice System will significantly improve.

It is quite possible to handle the problem of the neglected child through the informal system of social control of the family and the community. It is possible for the social workers and NGOs to look after neglected children on their own with help and support from the government agencies within the given infrastructure.

Institutional care has been the response to delinquency. This system is definitely better than prisons but the fact remains that it is not an adequate solution. This system tends to substitute family care which is not possible in reality and the result is that it deprives the child of emotional and social support. Such systems also exclude the child from community care and consciousness where the children are brought together in a group of unrelated children and adults. It is estimated that Government spends approximately 7.5 crores annually on institutional care which is extremely inadequate, almost peanuts, considering the fact that there are estimated 35 million children in situations of neglect in the country and couple of lacs juveniles in conflict.

with law. The institutional care system for all these children/juveniles put together are not more than for 35-40 thousand of them.

The procedures to deal with the Children and Juveniles in the Institutions have to be ultimately modeled after the informal and natural institutions relating to the family and society. In fact, the ideal conditions in any informal system of formal institution for both the neglected and delinquent child may be achieved if the attributes of the informal institutions are brought in to the formal systems. The love and care within the family or within the time tested social institutions, which are being developed by a number of voluntary organizations in the country, can alone create the ideal situation. Most of the formal institutions created by the law do not serve the basic purpose due to the absence of the natural attributes, lack of personalized care, love and empathy that lends life to any programme pertaining to the children. As such, in the formal institutions, certain regimentation and discipline, organised activities and programs may be extremely useful for the children in delinquency and special needs, absence of genuine love and care often steals away the soul of the system.

**Treatment of Offenders.**

The Juvenile Justice System tries to treat and rehabilitate youngsters who become involved in delinquency. The methods can be categorized as community treatment, residential treatment, non-residential community treatment, and institutionalization. In most instances community treatment involves placing the child on probation. When the child is not believed to be harmful to others, he or she is placed under the supervision of an officer of the juvenile court and must abide by the specific rules that are worked out between the officer and the child. In some instances community treatment also takes the form of restitution, in which the child

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reimburses the victim either through direct payment or through some form of work or community service.

Residential treatment generally takes place in a group home where the juvenile is provided with psychological and vocational counseling. Other forms of residential treatment include rural programs such as forestry camps and work farms. Youngsters placed in non-residential community-based treatment programs live at home and receive treatment from mental health clinics or similar services.

Institutionalization is the most severe form of treatment for juvenile offenders. Erving Goffman (1961) in his book 'Asylums Essays on the Condition of the Social Situation of Mental Patients and Other Inmates' discussed in detail the concept of institutionalization and total institutions. Based on his participant observation field work the book details Goffman's theory of the "total institution" and the process by which it takes efforts to maintain predictable and regular behavior on the part of both "guard" and "captor," suggesting that many of the features of such institutions serve the ritual function of ensuring that both classes of people know their function and social role, in other words of "institutionalizing" them.

In Asylums, Goffman used his research in a mental hospital to develop a theory of the world of ‘total institutions’, a category that includes not only mental hospitals, but prisons, the armed services, and so on. Goffman defines total institutions as a place of residence and work where a number of individuals in similar situations are cut off from the wider society and lead an enclosed, formally administered life. The key fact of total institution is that many human needs of the whole blocs of people are under bureaucratic control. In the total institutions there is a basic cleavage between the small managing group and the large managed group. The staff is concerned with surveillance; the inmates with conformity. Each group sees the other in terms of
narrow, hostile stereotypes. Their association is marked by misunderstanding and mistrust\(^{229}\).

The book concludes that adjusting the inmates to their role has at least as much importance as "curing" them. A total institution, also referred to as a voracious institution, as defined by Erving Goffman in *Asylums*, is an institution where all parts of life of individuals under the institution are subordinated to and dependent upon the authorities of the organization.

The institution is responsible for the child's counseling, education, recreation, room and board, and other daily activities. The child is incarcerated in a secure facility and denied freedom to come and go in the community. Institutionalized children are considered as highly deprived class of society. These children are left helpless, abandoned, neglected due to social, economic and personal reasons by the parents/caregivers and they are deprived of one or more necessities of life. Early separation from parents, deprivation of parental care, love, affection, warmth, security, acceptance and discipline during childhood disrupts their normal socio-emotional development. So it becomes necessary to know whether institutionalized children who are devoid of family life with the emotional warmth grow up normally and how well they are able to cope with himself and adjust to the demands of the environment/society around them. Therefore, the study with the aim to know the level of adjustment of institutionalized children was taken up.

Whatever be the noble reasons for institutionalising a child, a child perceives the loss of freedom as punishment in itself. Juveniles, most of whom have been on their own and making their choices since a very young age, do not welcome the protection advanced by the Juvenile Justice System, and look upon it as an intrusion. Traditional reasons for sentencing juveniles to institutions was for their rehabilitation, it was believed that academic and vocational training will result in those released

\(^{229}\) Samuel E. Wallace 1971, Total Institutions, USA, Transaction Publishers, pg-11
The Beijing Rules, reflect this philosophy when it deals with the objectives of institutional treatment. "The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society." And the Beijing Rules further go on to state, "Juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex, and personality and in the interest of their wholesome development."

Lundman observes that the reason for institutionalization of juvenile offenders has since changed; the focus now is on revenge, incapacitating the juvenile from continuing a life of crime and deterrence. Institutionalization is being advocated not for reformation or rehabilitation of juveniles, but that, "Doing time in a juvenile correctional facility is painful and it almost certainly is the pain, rather than the treatment all institutions provide, that makes the lasting impression."

By institutionalizing juveniles the state sends a message into society that it intends to deal strictly with juveniles, especially those who have committed serious offences, such as murder and rape. Incarceration is a means to placate the fearful public that strong action is being taken against juvenile offenders, and at the same time rationalize it by propounding that treatment within the institution is for the future welfare of the institutionalized child. The preamble to the 2000 Act spoke of "ultimate rehabilitation through various institutions established under this enactment". This preamble has been altered by the 2006 amendment in as much as rehabilitation of the juvenile is the ultimate goal, but it is to be attained via different modes, not only through institutions.

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231 Rule 26 of the Beijing Rules
It is documented that institutions rarely provide conditions favourable for rehabilitation. Maintenance of discipline is inherent in an institutional setting, and could result in the use of force or threats; such an environment is not conducive for rehabilitation of a child. Therefore, to ensure that a juvenile does not undergo prolonged institutionalization, bail is to be granted at the earliest in most juvenile cases and there is a wide range of orders, other than institutionalization, that a Juvenile Justice Board can pass at the time of final disposal. Furthermore, juveniles perceive institutionalization as punishment, hence there have been cases of juveniles escaping from the confines of an Observation Home or Special Home, or from the care of a fit person. In such case, under section 22 of JJA 2000, the juvenile has to be sent back to the custody of the Observation Home or Special Home or fit person.

Child psychologists believe that 10 to 18 years is the formative stage. The inputs and exposure during these years will instruct the child’s personality development. Therefore, it is necessary to examine the techniques and means employed by institutions in their treatment programmes. The test of these programmes is whether the intervention will assist children to overcome the forces that push them into a life of crime, and check recidivism. Institutions having distinct roles are to be established for the treatment of juveniles during their journey through the Juvenile Justice System.

No specific treatment has been proven the most effective form. Effectiveness is typically measured by recidivism rates—that is, by the percentage of children treated who subsequently commit additional criminal acts. The recidivism rates for all forms of treatment, however, are about the same. A large percentage of delinquent acts are never discovered, which further complicates this measurement. Thus, an absence of subsequent reported delinquent acts by a treated child may mean nothing more than that the child was not caught.
ROLE OF POLICE IN THE TREATMENT OF OFFENDERS

Mostly the police arrest the juveniles and produce them before the Juvenile Justice Board (JJB). Very rarely, if at all, a juvenile is produced before the Juvenile Justice Board by a private party or voluntary organization. Hence, a juvenile's first contact with the Juvenile Justice System is through the police. A private party or voluntary producing a juvenile before the Juvenile Justice Board should preferably inform the police about such production. Mostly the police investigate a juvenile case, and submit the charge-sheet before the competent authority.

The dispensing of distinct treatment to juveniles as obligated under juvenile legislation is defeated if the police treat juveniles in the same manner as they treat hardened criminals. So the Statement of Objects and Reasons of JJA 2000 includes to create special juvenile police units with a humane approach through sensitization and training of police personnel. Accordingly, JJA 2000 envisages the setting-up of the Special Juvenile Police Unit (SJPU) in every district and city, and the designation of at least one police officer attached to a police station as “the juvenile or the child welfare officer”.

Section 63 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 states the following points (1) that in order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained. (2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the ‘juvenile or the child welfare officer’ who will handle the juvenile or the child in co-ordination with the police. (3) Special juvenile police unit, of which all the police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the
The Model Rules of the Juvenile Justice (Care and Protection of Children) Act, (2000)\textsuperscript{232}, visualise the SJPU at the district level to function under a juvenile or child welfare officer (of the rank of Inspector of Police and two paid social workers, of whom one shall be a woman, having experience of working in the field of child welfare. This ensures social intervention in a juvenile case from the time of arrest. It would be optimum if the social workers appointed to assist SJPUs are trained in child psychology. In 1952, the Juvenile Aid Police Unit [JAPU] was created in Greater Mumbai, and continues as a special cell within the force to mainly handle destitute and neglected children.

Different methods have been innovated for the establishment of SJPUs. In Karnataka State, the SJPUs are to be assisted by recognized voluntary organizations\textsuperscript{233}. In Bangalore, SJPUs are established in two zones. Each SJPU is assisted by an organization working with children. The SJPUs are situated at police stations, headed by a senior level police officer, and its members are the Child Welfare Officers (also called "Designated Police Officers") attached to different police stations within that zone. As soon as a juvenile offender is arrested the relevant voluntary organization will be informed. The voluntary organization ensures that the provisions of juvenile legislation are adhered to, and that the child enjoys the rights guaranteed to him within the Juvenile Justice System. In case of a minor offence, the endeavor is to "divert" the juvenile with the permission of the Juvenile Justice Board\textsuperscript{234}. Diversion is a process \textsuperscript{3} by which a juvenile offender, in appropriate cases, does not enter the juvenile justice system, and hence, is not compulsorily made to face an inquiry before the Juvenile Justice Board.

It is necessary to examine the role of the police under juvenile legislation

\textsuperscript{232} Rule 84 (1) of the Model Rules of JJ Act 2000
\textsuperscript{233} Rule 12(1)(b) of the Karnataka (Juvenile Justice Care and Protection of Children) Rules 2002
\textsuperscript{234} Rule 11(2) & (3) of the Karnataka (Juvenile Justice Care and Protection of Children) Rules 2002
1. It is the police who apprehends the juvenile suspected of having committed an offence.

2. Immediately upon apprehension, the juvenile is to be placed under the charge of SJPU or juvenile welfare officer\(^{235}\).

3. Within 24 hours of apprehension, the SJPU or the Juvenile Welfare Officer, as the case may be, is to produce the juvenile before the Juvenile Justice Board\(^{236}\).

4. Pending production before Juvenile Justice Board, the juvenile is to be kept in the Observation Home. Under no circumstances should a juvenile be kept in the police lock-up or jail\(^{237}\).

5. The SJPU or juvenile welfare officer must inform the parent or guardian\(^{238}\) or any other person of the juvenile’s choice about the juvenile’s apprehension.

6. The SJPU or juvenile welfare officer must inform the Probation Officer\(^{239}\) about the juvenile’s arrest so that information may be obtained “regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.”

7. Section 12(2) of JJA 2000 gives the police the authority to immediately on apprehension release a juvenile on bail. The same provision contained in JJA 1986\(^{240}\) and Bombay Children Act (BCA) 1948\(^{241}\). But the police, however insignificant the crime alleged to have been committed, do not release a juvenile on bail as they would, an adult, alleged to have committed a bailable offence. This is the correct practice. In the case of the juvenile it is not the offence that determines whether he should be released on bail or not, but the juvenile’s situation, and that can only be determined by a body having the requisite expertise and assistance. Moreover, the police decision to grant bail may be based on extraneous reasons, and result in arbitrariness.

\(^{235}\) Section 10(1) of JJA 2000
\(^{236}\) Section 10(1) of JJA 2000
\(^{237}\) Section 10(1) of JJA 2000
\(^{238}\) Section 13(a) of JJA 2000
\(^{239}\) Section 13(b) of JJA 2000
\(^{240}\) Section 18(1) of JJA 1986
\(^{241}\) Section 64 of BCA 1948
8. The Juvenile Justice Board whilst considering a bail application will seek the police's response to the same. Sadly, the police almost always file their report opposing the grant of bail on some pretext or another in absolute contravention of the spirit of juvenile legislation. It has been observed that most police responses habitually oppose the grant of bail on grounds other than those prescribed under Juvenile Justice (Care and Protection of Children) Act 2000. Gravity of offence or likelihood of tampering with prosecution witnesses or difficulty to obtain juvenile's presence during inquiry are the reasons generally pleaded by the police to deny bail to a juvenile. It must be noted that the three conditions set out in juvenile legislation are in existence only in rare cases, but the police lack the magnanimity to accept the actuality.

9. In the absence of documentary proof of age, and juvenile not being able to apparent, the Juvenile Justice Board directs the police to take the person produced for medical examination to ascertain his age. It is imperative that the PO or any other functionary of the Observation Home also accompanies the juvenile.

10. The SJPU or juvenile welfare officer investigates the matter, and files a charge-sheet before the Juvenile Justice Board. At this stage it is essential to recall that every police station will be embodied in the SJPU through its juvenile welfare officer, and hence, assistance of the relevant police station will be taken to carry out the investigation.

11. Under juvenile legislation, the juvenile in conflict with law will always be under the charge of the Juvenile Justice Board, and there is nothing like police custody. Once a juvenile is produced before the Juvenile Justice Board, the police lose control over the juvenile. If the police require interrogating the juvenile, they will have to seek the prior permission Juvenile Justice Board. Granting of such permission is at the discretion of the Juvenile Justice Board, and if permission is given, the Juvenile Justice Board will ensure that the interrogation is done in the presence of the Probation Officer or any other functionary attached to the Observation Home.
12. During inquiry, it is the police who are directed to produce the prosecution witnesses before the JJB.

13. On completion of inquiry, it is the police who escort the juvenile to the Special Home or to his place of residence when below 18 years of age.

The police while dealing with a juvenile case should be in plain clothes, and not in uniform. A juvenile should never be handcuffed when brought to the Observation Home or otherwise. Such was also the case under the 1986 Act as most States had incorporated alike provision under their respective Rules framed under JJA 1986.

It is imperative for State governments to ensure that juvenile justice forms part of the police's training curriculum. That the law treats the juveniles not in the conflict with law will always be under the charge of the JJB, and there is nothing like "police custody". Once a juvenile is produced treats juveniles not in the same manner as an adult criminal, and the reasons for such distinct treatment, should be engraved mind of every police personnel. This will be a step towards assuring a juvenile his rights. It will also curtail the police's prevailing practice of treating juveniles and adults.

It is only time that will reflect whether training changes the perspective of police officer who is typified into believing that those who commit crimes deserve to be treated stringently, and punished. It is not only the public, it is also policemen who believe that juvenile legislation deals leniently with those from whom society requires protection. The model rules provide, "Any police officer found guilty, after due inquiry, of torturing the child, mentally or physically, shall be liable to be removed from service besides being prosecuted for the offence". It is hoped that the above rule will deter physical abuse of children at the hands of the police.

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242 Rule 75 of the Model Rules of JJ Act 2000
243 Rule 76 of the Model Rules of JJ Act 2000
244 Rule 84 (11) of the Model Rules of JJ Act 2000
ROLE OF PROBATION OFFICERS IN THE TREATMENT OF OFFENDERS

As repeatedly mentioned, reformation and rehabilitation of the juvenile is the end hoped to be attained by the juvenile’s contact with the juvenile justice system. It calls for balancing the juvenile’s care with the control of his future behavior. There is a fine, distinctive difference between reformation and rehabilitation. Reformation is founded in the belief that a juvenile is capable of changing his attitudes and recognizing that what he did was wrong. Rehabilitation is founded in the belief that circumstances resulted in the juvenile committing the crime. Therefore the concentration is on setting right these circumstances. The focus is entirely on the juvenile and his particular circumstances. This calls for concerted attention towards an individual juvenile and his existing familial and social environment. That’s why the “principle of proportionality” underlies the decision of the JJB, and the demand for a socio-legal approach: “reaction to any case of delinquent act and to the offender should be dictated not only by the gravity of the offence but also by the circumstances of the offender and those in which the offence was committed by him.”245 The circumstances could relate to the juvenile’s family situation, social status, etc.

A Probation Officer (PO) is appointed by the State government or recognized as such by the State government, or in any exceptional case, any other person, who, in the opinion of the court, is fit to act as a PO in the special circumstances of the case246. The Model Rules247 authorize the competent authority to co-opt as Pos, voluntary organizations and social workers found fit to render probation services. The Probation Offenders Act 1958 enumerates the “Duties of Probation Officers”248 as follows:

(a) Inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist

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246 Section 13 of the Probation of Offenders Act 1958
247 Rule 85 of the Model Rules
248 Section 14 of the Probation of Offenders Act 1958
the court in determining the most suitable method of dealing with him and submit reports to the court;

(b) Supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment.

(c) Advise and assist offenders in the payment of compensation or costs ordered by the court.

(d) Advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4; and

(e) Perform such other duties as may be prescribed.”

The role of a PO is two-fold within the Juvenile Justice System:

(a) To assist the JJB whilst making decisions or passing orders with regards to the juvenile; and

(b) To be a friend to the juvenile, and to assist and advise him during the probation period so that he fulfils his promise not to re-offend during this period, and, hopefully, ever again

POs provide the JJB with information about the child, and also supervise the juveniles whom the JJB has returned to the community. The Probation Officer’s Report is sought by the JJB whilst entertaining a bail application and also at the time of final disposal of the case. The main purpose of this report is to examine the juvenile’s background so as to identify the reasons for commission of the offence. The order of the JJB should treat the reasons as a doctor treats an illness. This report is a social worker’s evaluation juvenile in his familial or social environment, and whether such environment is conducive for his reformation and rehabilitation. Section 87 of the Model Rules deals with the “Duties of a Probation Officer or Child Welfare Officer or Case Worker”, and states that “the probation officer shall inquire into the antecedents and family history of the juvenile or the child and such other material circumstances, as may be necessary and submit a social investigation report as early as possible.”
Further, the PO is to do “follow-up of juveniles after their release and extending help and guidance to them” and to visit “regularly the residence of the juvenile or child under their supervision and also places of employment or school attended by such juvenile or child” and submit fortnightly reports. Depending on the Probation Officer’s suggestions, recommendations and reports, the JJB will decide what treatment plan should be prepared for the juvenile’s comprehensive rehabilitation.

Hence, the Probation Officer’s Report is an important document that will determine the future treatment of a juvenile who is found to have committed an offence. Though the Probation Officer’s Report has only recommendatory value, it is imperative for the JJB to peruse the same prior to taking any decision in respect of the juvenile, and to chalk its action accordingly. If the juvenile does not hail from within the jurisdiction of the JJB, the PO may take the assistance of (i) the PO having territorial jurisdiction over the place where the family resides, or (ii) an NGO working in that area. Generally, the PO interacts with the juvenile and his parent, guardian or relative whilst preparing the report.

The Beijing Rules have also stressed the importance of Social Inquiry Reports in Section 16.1 stating that in all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.”

Section 15 of JJA 2000 deals with orders that the JJB can pass on reaching a finding that a juvenile has committed an offence, and sub-section (2) of section 15 states that the “The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order.”
The PO has always played a pivotal role under juvenile legislation. When BCA 1948 was in force, the youthful offender was not permitted legal representation, and it was the Juvenile Court and the PO who decided the fate of the child. The Report of the Child Welfare Officer (Probation) had to be considered by the Juvenile Court when passing orders\textsuperscript{249}. The JJA 1986 also included "the reports made by the probation officer" to be one of the circumstances to be considered whilst passing an order in respect of a juvenile\textsuperscript{250}.

Section 57(2) of JJA 1986 enumerated the duties of a PO as under:

(a) to inquire, in accordance with the direction of a competent authority, into the antecedents and family history of any juvenile accused of an offence, with a view to assist the authority in making the inquiry;

(b) To visit neglected and delinquent at such intervals as the probation officer may think fit;

(c) To report to competent authority as to the behavior of any neglected or delinquent juvenile;

(d) to advise and assist neglected or delinquent juveniles and, if necessary, endeavor to find them suitable employment;

(e) where a neglected or delinquent juvenile is placed under the care of any person or institution on certain conditions, to see whether such conditions are being complied with; and

(f) To perform such other duties as may be prescribed.”

Moreover, the PO was also empowered to visit institutions established under JJA 1986 and submit inspection reports to the State government\textsuperscript{251}. It is felt by some that the 2000 Act has tokenized the role of a PO in favor of due process and legal procedures, and that this shift in focus could in future result in an increase in recidivism, caused due to minimal contact with POs.

\textsuperscript{249} Section 21 of the Bombay Children Act 1948
\textsuperscript{250} Section 33 (d) of JJ Act 1986
\textsuperscript{251} Section 57 (3) of JJ Act 1986
Probation is non-institutional social treatment of the adjudged juvenile or youthful or adult offender. The social treatment will be prescribed by the adjudicating authority. Probation is an alternative to institutionalization, and is the most often utilized sentencing option for juveniles. The juvenile makes a promise before the JJB that he will not re-offend. His word is accepted by the JJB, and he is released on the assumption that he will fulfill his promise and not re-offend during a stipulated period of time. Section 15(1) (e) and (f) of JJA 2000 provides for release of the juvenile on probation for a period not exceeding 3 years.

The promise is made by the juvenile’s parent or guardian or the fit person in whose care the juvenile is being released, by such person executing a written bond. During the period contained in the order, the juvenile who is released on probation is coerced into good behavior as otherwise he could face institutionalization in a Special Home. There is no specific provision under juvenile legislation for the juvenile to be released on his personal bond, the argument being that the juvenile has not attained the age of majority, and hence cannot contract. Though not specifically provided in the Act, a juvenile who has ceased to be a juvenile at the time of final disposal of the case, can be released on his personal bond i.e., on his own assurance of good behavior.

The JJB whilst passing any order may direct that the juvenile shall remain under the supervision of the PO. A supervision order may be passed by the JJB at the time of granting bail or final disposal of the juvenile case. If during the period of supervision, the PO reports that the juvenile has not been of good behavior, the JJB may after making inquiry, order the juvenile’s placement in a Special Home. Similar provisions for release of a youthful offender under the supervision of a Child Welfare

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253 Section 12 (1) of JJ Act 2000
254 Section 15 (3) of JJ Act 2000
Officer (Probation) existed under BCA 1948\textsuperscript{255}.

It is not only a juvenile who can be released on probation of good conduct; adults too can be so released. Section 360 CRPC deals with releasing an accused on probation of good conduct or after admonition instead of sentencing him to imprisonment, and the Probation Offenders Act 1958 also deals with the same issue. Both of them lay down the circumstances under which an accused may be released by the court on probation. Under these laws, probation cannot be claimed as of right by the accused, it is a discretionary power of the court whether or not to release an accused on probation of good conduct.

Contact with a PO is essential for the well-being of a juvenile. It is submitted that even if a juvenile is released on bail, pending inquiry his contact with the PO should continue. It is the PO who will be the juvenile’s guide, and lead to the juvenile’s self-realization of his wrongs and the will not to repeat the same on release after completion of inquiry. The test of a proficient PO is that the juveniles whom he has worked with continue to remain in touch, and seek his guidance, especially when faced with a difficult situation.

**ROLE OF SOCIAL WORKERS AND NGOS IN JUVENILE JUSTICE SYSTEM**

Social workers play a crucial role in the treatment of juvenile offenders. As earlier mentioned the JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class and two social workers. The social workers should have ‘been actively involved in health, education, or welfare activities pertaining to children for at least seven years’.\textsuperscript{256} The Model Rules has prescribed the criterion necessary for appointment as a social worker on the Board. The social worker to be appointed as a member of the Board shall be a person not less than 35 years of age, who has a post-

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\textsuperscript{255} Section 75 of BCA 1948
\textsuperscript{256} Section 4(3) of JJA 2000
graduate degree in social work, health, education, psychology, child development or any other social science discipline and has been actively involved and engaged in planning, implementation and administering measures relating to child welfare for at least seven years. The two social workers are to “be appointed by the State Government on the recommendation of the Selection Committee.”

The Selection Committee has as its members, amongst others, “two representatives of reputed non-governmental organizations working in the area of child welfare.” The social worker members on the JJB must be assertive, and not get overwhelmed by the Magistrate, as they have an important role to play in the rehabilitation of the juvenile. Under section 5(4) of JJA, 2000, the social worker members can overrule the Magistrate. They should familiarize themselves with the provisions of juvenile legislation, as also with the papers and proceeding of each case pending before the JJB to ensure that justice is done to juvenile.

It is for the social worker members to gain the confidence of the juvenile, whilst at the same time to portray to him that though his best interest is on their minds, he is to be dealt with sternly. It is under the orders of the JJB that the juvenile is placed in an institution. Hence, it is imperative that the JJB, especially the social worker members, regularly visit the Observation Homes, the Special Homes and other institutions where juveniles are referred, to ensure that the objective of reformation and rehabilitation is satisfied.

The 1986 Act also recognized the importance of social workers whilst dispensing justice to juveniles. The Juvenile Court was to “be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the State

257 Rule 7(1) of the Model Rules of JJ Act 2000
258 Rule 5(4) of the Model Rules of JJ Act 2000
259 Rule 91(c) of the Model Rules of JJ Act 2000
Government.\textsuperscript{260} The 2000 Act elevated the social worker to being part of the Bench that constitutes the JJB, instead of merely assisting the Magistrate. Despite, social work intervention playing an important role, the same is always alongside words such as "honorary", "voluntary" and "charitable".

Not only the 1986 Act were "two honorary social workers" (emphasis added) assisting Juvenile Court, but a similar trend continues under the 2000 Act. The social worker members on the JJB are to be paid "travel and sitting allowance"\textsuperscript{261} as may be fixed by the State government. It is high time that governments recognize that social workers are professionals, playing a crucial role, and the importance of whose work requires to be accepted and appreciated.

POs are qualified social workers. The Superintendents of child-care institutions are also academically trained social workers, as is also the other senior staff employed in the homes. POs and the staff attached to institutions have several critical parts to play in the lives of juveniles. Firstly, that of a friend so that the child feels comfortable to speak freely with him and secondly, that of an advisor and guide so that the child has confidence to approach him when in need. Thirdly, that of a reformer so that the child understands that what he did was wrong. Fourthly, that of a healer who helps the child accomplish his full-potential, and directs him towards his future. The setting-up of a Child Guidance in an institution is vital as repeated sessions with the juvenile are crucial to bring about a change in his attitude. It is a qualified and trained child psychologist or psychotherapist in a Child Guidance Clinic who can bring about a positive change in the juvenile's future.

NGOs too play a pivotal role. They under JJA 2000 can seek charge of juveniles pending or on completion of inquiry in the capacity of a "fit person" or "fit institution". The 2000 Act has empowered voluntary organizations under agreement

\begin{footnotesize}
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\item \textsuperscript{260} Section 5(3) of JJA 1986
\item \textsuperscript{261} Rule 8 of the Model Rules
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with State governments to establish and maintain Observation Homes and Special Homes. Moreover, voluntary organizations need to provide services within institutions established and maintained by the State government, such as counselling, imparting education and vocational training, etc., to secure the juvenile his comprehensive rehabilitation.

THE ROLE OF THE MEDIA

Media is a double-edged tool. On the one hand it plays an important role in moulding public opinion, and on the other, its character is to sensationalise issues to attract readers. In furtherance of its objective to reform a juvenile and not penalize him, section 19 has been incorporated in JJA 2000. This section ensures that “a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.” An identical provision was contained in JJA 1986. Furthermore, sub-section (2) of section 19 states, “The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.” The Model Rules provide for the records or documents relating to a juvenile to be preserved for 7 years, and thereafter to be destroyed by the Board. The law, thus, sends a clear message that the future of a child is not to be adversely impacted due to his past conduct.

Despite the inclusion of section 19 in the statute, juveniles in conflict with law find it difficult to re-join mainstream society. Schools have been known to expel juveniles in conflict with law claiming that they would be a bad influence upon the other students. Their employment opportunities dwindle as the stigma follows them into the job market, and they are compelled to depend upon the underpaid unorganised

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262 Section 25 of JJA 1986
263 Rule 99 of the Model Rules
sector for earning a livelihood. To curtail this victimization, juvenile legislation protects the juvenile's right to privacy by restricting media reportage.

Section 21 states Prohibition of publication of name, etc of juvenile in conflict with law or child in need care and protection involved proceeding under the Act.- (1) No report in any newspaper, magazine, news-sheet or visual media of any regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile child nor shall any picture of any such juvenile or child be published: Provided that for reasons to be recorded writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child. (2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty- thousand rupees.”

Similar provision constraining the media is also contained in the Beijing Rules:

“8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead lead to the identification of juvenile offender shall be published.”

Moreover, records of juvenile offenders are to “be kept strictly confidential and closed to third parties”\footnote{Rule 21.1 of the Beijing Rules} and “not be used in adult proceedings in subsequent cases involving the same offender.”\footnote{Rule 21.2 of the Beijing Rules} These provisions are inserted to avoid stigma, and to enable a juvenile offender to enjoy opportunities offered to other children his age. Nor should an unlawful act committed due to immaturity of judgment be treated as his antecedents.
Nevertheless repeatedly photographs of the juveniles are splashed in newspapers with detailed description of the juvenile offender and the crime he is alleged to have committed. The juvenile and his support system, if any, is most concerned with the case pending before the JJB, and take no action against the errant media. So the media continues to exploit the situation to the detriment of the juvenile. To deter unmindful media reporting, the JJB and the High Court should take suo-moto action under section 21(2) of JJA 2000.

The Maharashtra Juvenile Justice (Care Protection of Children) Rules 2002 prescribes, “The Board shall initiate action against any media for publishing any matters relating to the children in conflict with law which would lead to the identification of the Juvenile.” Moreover, those working in field of child rights should bring such publications to the notice of the judiciary, as well as dialogue with the media, and apprise them of the law and the effect their reporting could have on a young life.

Section 21 in no manner fetters reporters and journalists from bringing to the attention of readers the conditions prevailing in child-care institutions, the apathy of the government towards children, the illegal detention of juveniles in prisons, the back-log of cases before the JJB, and other such topics. On the contrary such reports or articles should be encouraged as media coverage could improve the situation for children. Pro-active journalism has played a positive role in changing the appalling position of children. It is also not that the media should blank out crimes committed by juveniles, but currently only gory crimes committed by juveniles are highlighted which has resulted in the public believing that all juvenile crimes are violent crimes. It is imperative that the media portrays the true picture in respect of juvenile crime.

266 Rule 6(20) of the Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002
According to the World Report on Violence Against Children\textsuperscript{267}, the most common reasons for placing children in residential care are because of disability, family disintegration, violence in the home, lack of social support systems, and poor social and economic conditions, including poverty. In some countries, natural disasters, armed conflict or the effects of the HIV/AIDS pandemic may leave parents unable to care for their children. Illness, accidents, and incarceration may also separate children from their parents.

\textbf{Poverty}: This is a significant factor in the decision of many parents to place children in residential care. When parents feel unable to provide for their children, and believe that children can receive better access to education, health care and adequate nutrition in residential facilities, they may choose to place their child in care, believing he or she will be better off than at home.

\textbf{Violence within Families}: Many children end up in care because of violence in their family, including neglect, and psychological, physical and sexual violence. A similar scenario was seen in the present study where 172 respondents had run away from home and landed in the shelter homes for girls. Out of 172 responded 26 reported to have taken such a step because of Neglect, 60 because of family turbulence and 86 because of sexual and physical abuse subjected to them at home. Domestic violence in Latin America is also a leading cause for the loss of parental care. SOS Children’s Villages, a Non-government Organization working for children found that 73 percentage of children in their Villages in Venezuela had prior experiences of physical or psychological violence, including sexual violence. The organization found that 88 percentage of children in SOS Children’s Villages in Croatia, 75

\textsuperscript{267} Paulo Sérgio Pinheiro (2005), World Report on Violence Against Children, New York, United Nations Publication, pp- 185-186
percentage of children in Belarus, and 55 percentage of children in Lithuania, had suffered physical or sexual violence within the biological family. Also, many children are removed from families because of substance abuse by their parents and caregivers. The Nithari incidence is an excellent example of such violence where skeletons of a number of apparently murdered women and children were unearthed in the village.

**Disability:** Because of the widespread stigmatization of children with disabilities as well as the lack of support provided to parents, these children are institutionalized at significantly higher rates than other children. In Jamaica, for example, 65 percent of children with developmental or physical disabilities live in homes run exclusively for children with disabilities. Country reports prepared by the CEE/CIS for the 2002 UN Special Session on Children found that the overriding reason why families placed their children with disabilities in institutions was due to a lack of care-giving capacity. Mis-diagnosis, over-diagnosis and an exclusive focus on the medical model of disability are also problems leading to the overuse of institutionalization in these countries. In some cases, the lack of stimulation or the lack of access to high-quality health and education can delay development, therefore adding to the children’s disability.

**Family Catastrophes including HIV/AIDS:** Armed conflicts, natural disasters on a massive scale, the HIV/AIDS pandemic, or other disease naturally incline some humanitarian organizations to propose the establishment of care institutions and orphanages as a suitable response to the large numbers of children in need of care. In Russia, for example, babies born with HIV who have been abandoned are placed in special orphanages just for HIV-positive children, or isolated indefinitely in hospital wards, where they are deprived of any opportunities for social, physical and mental development.
In some conflict-torn countries where a high proportion of children have lost one or both parents, levels of institutionalization may be unusually high. In Somalia, for example, although it is contrary to Islamic standards and traditional norms, use of children’s homes or orphanages is strongly advocated by parents and careers, especially in urban areas. Children’s homes, all of which subsist on external, mostly charitable support, provide children with food, shelter and education, which are often not available elsewhere. Among the approximately 8,000 Somali children resident in children’s homes, a high proportion of them have relatives.

**Lack of alternatives:** In many environments, alternatives to institutionalization, including support for vulnerable families and family-based care, have not been developed. This can lead to unnecessary overuse of residential placements. For example, the director of a psychiatric hospital in Turkey estimated that of 500 patients (including adults and children) at his facility, only 10 percent would need to be confined as in-patients if community-based services were available. In Romania, the population of children in orphanages has been reduced, but many children with disabilities have simply been moved from larger institutions to smaller ones. The extensive funding needed for these new institutions has drained scarce resources from developing foster care and services that would support community integration.

Children who are victims of sexual or economic exploitation are frequently detained as if they were criminals, including girls feeing forced marriages, trafficked children and children in the commercial sex industry. For example, under ‘safe custody’ laws in Bangladesh, boys and girls can be detained in jails or homes for vagrants in cases where they have been the victims of rape or sexual assaults, rescued from brothels or from traffickers, or, in the case of girls and women, where they have married someone from another religion or without the consent of their guardians. Similarly, in India and Nepal, trafficking survivors and girls
found in brothels are often forced by the police and NGOs into ‘protective custody’ in secure institutions.

The use of so-called ‘protective custody’ disproportionately affects girls who are most often the victims of sexual abuse and exploitation. Detention for the protection of girls who have been sexually abused is particularly acute in countries where ‘honor crimes’ are practiced. For example, in Syria, girls who have been sexually assaulted are often put into an institution for juvenile delinquents rather than handed over to their parents, due to fears that the girls may be killed to preserve the family honor, or forced to marry their rapist.

Since girls are usually detained in much smaller numbers than boys, Governments may have even fewer facilities to ensure their segregation from adults. A 2002 paper on juveniles and the law commented that “The numbers of juvenile girls within the system are small, and as a result they are simply tacked onto the rest of the system with little recognition that their needs are different and separate from older women. It also means that they attract fewer resources. Girls in detention facilities are at particular risk of physical and sexual abuse, particularly when detained in mixed-sex facilities, or where a general lack of facilities for girls results in placement in adult facilities. An additional concern is the lack of female staff in facilities detaining girls. Male staff often engages in ‘sanctioned sexual harassment,’ including improper touching during searches or watching girls while they dress, shower, or use the toilet. Male staffs also use their positions of authority to demand sexual favors, and are responsible for sexual assault and rape.

Reformation and rehabilitation, instead of penalizing the child, is the essence of juvenile jurisprudence. Towards this end it is necessary to place the juvenile in a specialized setting where his development is of paramount importance. If adult offender and juvenile are kept together there is a danger of the juvenile being corrupted by hardened criminals or being abused by them. The harsh treatment meted
to inmates in police lock-ups and jails is not commensurate with the juvenile's age and is likely to scar him.

Under no circumstances is a juvenile to be kept in a police lock-up or jail. This has been the sentiment of juvenile legislation since the enactment of the Children Acts. Separate detection facilities were established for placement of youthful offenders under BCA 1948; pending enquiry they were to be detained in Approved Centres and those found to have committed an offence were to be kept in Classifying Centres. Distinct institutions for the placement of juveniles continued under JJA 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000.

**Institutions under Juvenile Justice (Care and Protection of Children) Act, 2000**

Juvenile Justice (Care and Protection of Children) Act, 2000 is a big leap forward in terms of being a progressive and pro-active legislation for care, protection, treatment and rehabilitation of child in need of care and protection and juvenile in conflict with law. It is a comprehensive legislation for justice to the children in the situation of abuse, exploitation and social maladjustment. The Act provides for safety and security from abandonment and for development of character and personality of the Juveniles to become useful citizens of the country.

It enjoins on the states to make provisions for proper care, treatment, development and rehabilitation of the children/juveniles. It also calls upon the state to develop network with the voluntary organizations working in various fields of child welfare to come forward and shoulder the responsibility along with the state to further the care of child in need of care and protection and juvenile in conflict with law.

The institutions under the new J.J. Act, 2000 are supposed to act as the places of safety and for the growth of character and personality of the children. The institutions therefore have to develop suitable programmes to achieve this. The institutions now
provided under the new J. J. Act, 2000 are Observation Homes, Special Homes, Children’s Homes, Shelter Homes and After Care Organization. These are either the Government run institutions or the bonafide fit institutions run by NGOs which are expected to provide congenial atmosphere for the holistic growth and development of children/juvenile.

The preamble of the Juvenile Justice (Care and Protection of Children) Act, 2000, is very comprehensive which enumerates needs for proper care, protection and treatment of the juveniles/children catering to their rehabilitative and developmental needs while adopting a child family approach. The final disposal/dispositions/rehabilitation through various institutions established under this Act has to be in the best interest of the juvenile/child.

The Homes under the Juvenile Justice Act, 1986 now Juvenile Justice (Care and Protection of Children) Act, 2000 are mostly under the direct charge of the government. The Act, however, stipulates the involvement of voluntary sector in the management of these Homes but very little initiative has so far been taken in the country. On a very small scale in Delhi, voluntary organizations like Prayas and Samarth have been associated with the government run Homes. Maharashtra, however, has many more examples of government-NGO partnership, the major one being the Children Aid Society, which have run most of the government institutions for a long time, and, in Mumbai, perhaps Don Bosco has access to a few government homes.

The new Act stipulates establishment of various kinds of institutions for the residential care of the children/juveniles and prescribes therein for the observance and enforcement of minimum standards for the care of juveniles/children. These Homes are:

1. **Observation Homes**: For the temporary reception of any juveniles in conflict with
law during the pendency of any enquiry regarding them under the Act. An Observation Home is an institution established for the temporary reception of juveniles in conflict with law during the pendency of their inquiry before the JJB. The law provides for an Observation Home to be set-up in each district or a group of districts by the State government or by a voluntary organization under an agreement with the State government.

Maintenance of these institutions is an integral part of law and order and is the responsibility of the state. Voluntary organizations should be encouraged to provide their expert services to benefit the juveniles housed therein. It is preferable for the JJB to hold its sittings at the Observation Home. This prevents delay in disposal of juvenile cases because the presence of the juvenile not released on bail is guaranteed on each JJB date; he is not at the mercy of police escort for production before the JJB.

Juveniles are to be segregated in an Observation Home according to their age i.e. 7 to 12 years, 12 to 16 years and 16 to 18 years. This separation is essential to curtail bullying of the younger juveniles at the hands of the older ones, and to protect the young juveniles from the influence of the older juvenile offenders, who may have committed violent offences or have been consistently engaged in criminal activities. This segregation takes place pursuant to preliminary inquiries that are conducted in the Reception Unit of the Observation Home where the juvenile is initially kept for classification according to age, and physical and mental status. Separate Observation Homes are to be maintained for boys and girls.

It is hoped that very few juveniles would remain in the Observation Home pending their inquiry as most would have been released on bail. It is also hoped that the period of stay in the Observation Home would be short as the inquiry is to be expeditiously completed. Unfortunately, the actuality very

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268 Section 8 of JJA 2000
different. Observation Homes are filled to the brim as many juveniles are unable to avail of the bail provisions, mainly because they are migrants having no family or monetary support, and therefore unable to access legal representation or provide surety to the satisfaction of the Juvenile Justice Board. Furthermore, JJBs rarely dispose of juvenile cases within the period contemplated by law and juveniles continue to languish in the Observation Home for long periods. Hence, it is imperative to provide the juvenile with educational and vocational training in the Observation Home so that his stay there is not wasted.

State governments in their respective Rules framed under juvenile legislation are to prescribe the standard to be maintained in Observation Homes, and the measures to be taken for the rehabilitation and social integration of the juvenile. It is necessary to recollect the affirmations made in the Beijing Rules under rule no 13.1 ‘Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time’ and rule number 13.2. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.” Under clause 13.5, it is set-out that “While in custody, juveniles shall receive care, protection and all necessary individual assistance such as social, educational, vocational, psychological, medical and physical they may require in view of their age, sex and personality.”

2. Special Homes: For reception and rehabilitation of juveniles in conflict with law under the Act. A Special Home is to be established “for reception and rehabilitation of juvenile in conflict with law under this Act.” On completion of inquiry, if the JJB is of the opinion that a juvenile should be institutionalized, he is required to be placed in a Special Home for his treatment.

The State government is required to set-up Special Homes in a district or

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269 Section 9 of JJA 2000
group of districts by itself or under agreement with a voluntary organization. Under the 1986 Act, only the State government could establish Special Homes and Observation Homes\textsuperscript{270}. The entry of voluntary organizations in the establishment or management of these detention facilities is vociferously opposed because the potential for abuse in a close institution is very high and the levels of accountability of private entities would be very low.

Placement of a juvenile in a Special Home is under the law restricted to a period of years. During their stay in the Special Home a juvenile should be able to avail of education or vocational courses depending upon the child's aptitude, as also facilities for sports and co-curricular activities such as music, painting, reading, drama, yoga, etc. An incarcerated juvenile must benefit from his stay in a Special Home as otherwise his detention will amount to punishment and the object of juvenile legislation will be defeated. Moreover, the stay in the Special Home, as also the Observation Home, should lead to realization in the child that what he had done was wrong. It is not only education or vocational training that can bring about this change. He should whilst in the institution be under the guidance of a PO, and in certain cases intensive counselling, and at the same time undergo life-skill training to help him face the challenges he will face in the big bad world.

3. **Children Homes**: For the reception of children in need of care and protection during the pendency of any enquiry and, subsequently, for their care, treatment, education, training, development and rehabilitation.

4. **Shelter Homes**: The State Government may recognize the reputed and capable voluntary organizations and provide them assistance to set up and administer as many Shelter Homes for the juveniles or children as may be required. These

\textsuperscript{270} Section 10 and 11 of JJA 1986
Shelter Homes shall function as drop-in-centre for the children in need of urgent support who have been drop to such Homes.

5. **After-care Organization:** The government may by rule made under this Act, provide for the establishment or recognition of after-care organizations for taking care of juveniles or children, after they leave Special Homes or Children’s Homes for the purpose of enabling them to lead honest, industrious and useful life. After-care organizations are for the care, guidance and protection of juveniles in conflict with law or children in need of care and protection who have completed their term in the Special Homes or Children’s Homes, and their rehabilitation process is not completed. After-care is the means and rehabilitation is the end. The objective of these organizations shall to enable such children to adapt to the society and during their stay in these transitional homes a these children will be encouraged move away from an institution-based life to a normal one.

It is the PO who will refer a juvenile to the After-care Home, and monitor his progress in such facility. As a juvenile’s stay in an After-care Home is to advocate independence and prepare him to face the world without institutional support, the law envisages that such stay should not exceed 3 years. A juvenile cannot against his wish be admitted to an after-care programme.

Management of Institutions

The management of the Homes is the true indicator of the spirit of Juvenile Justice Act being followed. It is the Home where the purpose of the Act is either achieved or

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272 Rule 38 (5) of the Model Rules
273 Section 44 of JJA 2000
defeated. True to the expression, there should be family like environment in the Home and the juveniles should be treated with humane approach, love and affection. The approach of treating the juveniles must be distinctly child friendly. The Home must have opportunities for the growth and development of character and personality of the juveniles. The treatment of the juvenile should lead to reform them of their mistakes and inculcate in them some values which can help them become good citizens and social beings. For effective management, the Home must have certain set of rules, procedures and daily routine and have sufficient facilities. The following responses were received from the respondents regarding the infrastructure facilities in the Institutions

The available studies however, show that there are very few Homes in the country that cater to even the fringe of the problem. The official records point to the fact the living conditions in the Homes are pathetic and inhuman. So much so that several Public Interest Litigations (PILs) were filed in Supreme Court, in Delhi High Court and Patna High Court, etc., against the prevailing conditions of the Homes. These PILs have brought in some improvements, but they are not significant.

The entire situation seems to be a paradoxical. On the one hand, there is a need for more residential institutions for children, while on the other, the existing institution are not providing congenial environment as per the objectives of the J.J. Act, 2000. The homes continue to be like prisons for both the children in need of care and protection and for juveniles in conflict with law. Despite the best of intentions, lack of coordination between various Juvenile Justice Agencies causes the whole system to be dysfunctional. A report released by the National Commission for Protection of Child Rights (NCPCR) on February 6, 2008 throws light on the pitiful condition of juvenile delinquents languishing in reform homes in India. Around 5,000 cases against juveniles are pending in Courts. Apart from delayed justice, these children are victims of improper care by reform homes. Over 50 percent of the juvenile homes do
not provide any counseling services to juvenile delinquents, besides more than 80 percent of the caretakers of these homes are not trained.

In 70 percent of the juvenile care-centre, physical punishment is a dominant method to discipline children. They are locked up for 24 hours or even more and not allowed to go out and if they even try to peep outside, they are beaten up. The report has suggested that reforms should be undertaken by juvenile homes. Not only this, the caretakers of juvenile homes should be so trained and equipped to deal with the juveniles under them with tenderness and care, as would be required for dealing with such children of tender age.

The Juvenile Homes are generally considered by all children as jails. This impression has to be erased from the mind of one and all. The fact is that in some ways, they are worse than adults' jails. Prisons have enough space for the prisoners but in most juvenile homes there is not even enough space for the juveniles to stay in proper humane conditions. For girls, the situation is even worse. At places, a hundred girls are made to spend their entire day inside one small room in the name of protection.

**Institution for Girls in Delhi**

There are three Observation Homes for girls, three Juvenile Homes for Girls and three Juvenile cum Special homes for girls in Delhi. All the nine institutions are located in the Nirmal Chhaya Complex in the form of nine buildings. These homes are located within the premise of Nirmal Chhaya, which is owned by the government of Delhi and comes under the direct control of the Department of Social Welfare.

Let us first understand the nature of these three types of institutions.

1. Juvenile cum Special Homes for Girls: This home was established in the year 1960 and has a sanctioned capacity of keeping 75 children (girls) at a time. It is a home where the destitute/neglected/delinquent juveniles are admitted under the
state protection under the orders of Juvenile Welfare Board/court till they cease to be juveniles. The board can extend the period of their stay but in no case beyond 20 years of age. The girls falling between 12-18 years of age group are admitted in Juvenile Home and between 7-18 years of age group are admitted in Special Home. The inmates are provided with free boarding, lodging, medical care, school education and vocational training facilities. It has also been designated as Special Home for Girls where emphasis is given on the development of character and abilities and on training for reformation of delinquent girls.  

2. Juvenile Homes for Girls: This home was established in the year 1975 and has a sanctioned capacity of keeping 100 children at a time. The destitute/neglected juveniles (girls) are admitted under the state protection under the orders of Juvenile Welfare Board (Age group 0-12 years for juvenile girls and 0-5 years for boys). The inmates are provided with free boarding, lodging, medical care, school education and vocational training facilities.

3. Observation Homes for Girls: It is a Remand Home/Observation Home established in the year 1960. It has a sanctioned capacity of keeping 50 children at a time. Destitute/neglected girls below the age of 18 years and boys below the age of 6 years who are found begging/or without ostensible means of subsistence/or whose parents/guardians are unfit to exercise control over them/or who are likely to be abused or exploited for immoral or illegal purposes/or are taken charge of by the police/or any other person/or organization authorized by the Govt. of India are kept here under the orders of the Juvenile Welfare Board/court till their restoration or commitment by the Board/court to the Juvenile Home. Free boarding and lodging, medical care, school education and vocational training are provided to the children.

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274 Information taken from the website of Social Welfare Department, Govt. of NCT Delhi; http://socialwelfare.delhigovt.nic.in/Asp/dspInstitute.asp?opt=SI&cat=C001

275 Information taken from the website of Social Welfare Department, Govt. of NCT Delhi; http://socialwelfare.delhigovt.nic.in/Asp/dspInstitute.asp?opt=SI&cat=C001

276 Information taken from the website of Social Welfare Department, Govt. of NCT Delhi; http://socialwelfare.delhigovt.nic.in/Asp/dspInstitute.asp?opt=SI&cat=C001