

Emerging Issues in Juvenile Justice System in India: Strengthening Mandatory Statutory Mechanisms at the Pre-Adjudicatory Stages

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Issues in Focus

"In 2001, two students of IXth standard in Sundarnagri area of Delhi, Rajiv and Chandu, (names changed) both aged 14-15 years, were accused by a person of pick-pocketing while they were returning from school. The accuser along with other people around got hold of the kids, beat them up and handed them over to Police. Both the children were kept in the Police Lockup for 3 days before they were produced in the Children's Court (now Juvenile Justice Board) at Majnu Ka Tilla. The Children were released on bail by the Children's Court on a surety bond! Their parents could meet them only after their release! However, the accuser's purse was never recovered from the children.

This event had a very adverse effect on the lives of the kids, they dropped out of the school, they became isolated. 6 years down the line, they and their parents are still appearing in the court hearings. Their parents, who are from economically weaker section, have borrowed money to pay for legal fees. Rajiv and Chadu are still awaiting sentence for a crime which has no evidence to prove they are guilty.

The children continue to visit the local police stations as and when they are summoned, sometimes for unnecessary questions".

This is not an isolated case. There are thousands of children who are victims of similar situations. Compared to adults, children are more vulnerable in such circumstances because it is difficult for them to prove innocence simply because their viewpoints and reactions are not taken seriously. When children are arrested and treated harshly for petty crimes they become victims to everlasting psychological scars and stigma. Most often they become social and mental recluse.

Generally speaking the Juvenile Justice system in India is in a very nascent stage in this area of protecting rights of children in conflict with law. Juvenile Justice (Care and Protection of Children – Amendment) Act 2006 is far from being followed in major parts of the country and lacks in creating uniform facilities and practices. Very recently, a 17 year old boy, working as domestic help, was detained in the Lockup for over 3 weeks in a NOIDA Police Station. The boy was neither produced before the Juvenile Justice Board nor was he released. His crime was that he used to work in Nithari case accused Moninder Singh Pandher's house. Even as the Police had no answer to the question why he was being detained in an unlawful manner.

The situation is worse in many other States. Even in States where there are statutory institutions functioning the list of issues concerning the style of functioning, attitudinal problems of the functionaries, procedural loopholes and delays is very long. Recently in Karnataka, 46 children escaped from a remand home. All children were awaiting trial for serious crimes. The event has revealed the pathetic conditions that these detainees were facing in the home. Instead of taking notice of the condition of the remand home, a Bangalore Joint-Commissioner of Police, issued a statement that "Police were not involved in the upkeep of the remand home which is run by DWCD". One senior minister in the Karnataka Government said that the children if captured would be "shifted to jails".

Violation against children in general is very high in the country. In this scenario one can just imagine what behavior children in conflict with law must be getting. In this regard, some of the major concerns can be listed as:

1. Criminalization of normal petty behavior;
2. Police haste in registering criminal cases against juveniles accused of petty crimes;
3. Complete lack of social investigation, family/school/community based intervention practices;
4. Prevalent practice of arrest and detention of children, putting them in the lockups;
5. Over-zealousness in bringing every child under the purview of the law;
6. Children are apprehended without the information of parents, guardians and other concerned persons;
7. Delay in producing children before the competent authorities;
8. Placement of detained accused juveniles while the case is still being heard with juveniles serving a term.
9. Lack of involvement of parents/communities/schools, in probation or after release from special homes.

Basic Principles

The approach of juvenile justice system is different from criminal justice system. The new approach demands that no child in conflict with law is considered 'criminal' but is treated as a child victim of unfavorable circumstances. Thus it is important to take into consideration factors like age of the child, gravity of the crime committed, social status and family situation of the accused juveniles, and other factors affecting/influencing personal circumstances of the juveniles before the prosecution should act on a complaint against them.

Every child has a right to protection and well being irrespective of his/her status in the society and the primary aim of the Juvenile Justice should be to serve in the promotion of the well-being of the juveniles, this also involves criminal court procedures.

Article 40 of UNCRC, already ratified by the Government of India, directs that even a child who is alleged or accused of having infringed the law has a right to be treated in a manner which reinforces the child's respect for the rights and freedoms of others, which does not inflict his/her sense of dignity and worth and which helps in child's reintegration, with a constructive role, in society. Thus every child alleged or accused of having infringed the law should have guaranty:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed of the charges against him or her;
- (iii) To have legal or other appropriate assistance in the preparation of his or her defense;
- (iv) To have the matter determined without delay by a competent authority;
- (v) To have the decisions reviewed by a higher competent authority or judicial body;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
- (viii) In addition, to have the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses at all stages of proceedings.

In addition, one of the perceived roles of the Juvenile Justice system is also to minimize the necessity of intervention by the juvenile justice system, and in turn, reduce the harm that may be caused by any intervention. There can be much bigger role for alternative practices, like community service as a sentence, involvement of social workers, medico-legal and mental health experts for dealing with juveniles in conflict with law.

Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is used, highest priority should be given to most expeditious processing of such cases to ensure the shortest possible duration of detention.

Dealing with the Juveniles in Conflict with Law

1. Identifying Responsible Factors

Children are not born with criminal tendencies. Studies have shown that there can be many varied reasons for a divergent behavior in children. These include factors attributed to family, school, community and peers.

Some identifiable characteristics for at risk children families are there is poor parental supervision and discipline, history of conflicts within the family, history of problem behaviors within the family, parental involvement/attitudes condoning problem behaviors, low family income and poor housing.

In the schools at risk children can be identified on the basis of low educational achievement (beginning in primary school), aggressive behaviour, habitual bullying, low attachment and school disorganization.

Community based factors like disadvantaged neighborhood, community disorganization and neglect, high turnover and lack of neighborhood attachment can be responsible for children's conflicting behaviour.

Individual and peer signs like alienation and lack of social commitment, attitudes condoning problem behaviors and friends involved in problem behaviour are also some signs for identifying factors for children at risk of conflict with law.

2. Preventive Approach

Prevention is better than cure. It is even more important for children than adults because children are the future of the humanity and have a long way to go. The preventive approach requires that the interventions are made at the family, community and school level:

At family level: By strengthening parent-child relationships, improving parenting skills, enhancing problem solving capabilities.

At community level: By strengthening community response to child abuse/neglect, family guidance and support, community mobilization for conflict resolution at a local level; multi-disciplinary approach to include children, parents, police professionals.

At school level: By strengthening social bonding, opportunities for involvement, assisting social and learning skills, recognition and praise.

3. ~~Alternative Child Friendly Practices~~

Since the goal is to de-criminalize the approach towards juveniles in conflict with the law, alternative practices arising out of individual situations are far more effective at pre-adjudicatory stages. These are nothing new to India where the community has been playing a very important role in the justice system from ages. Some of alternative practices can be suggested as follows:

Guidelines for Police

A. Acting on a complaint: The law (JJ Act) itself has a provision of special juvenile police units and designated special police officers in every Police Station in the Country. In addition Police should have a panel of social workers and counselors as advisors and consultants. Before acting on a complaint, the concerned special juvenile police officer should make an independent assessment of:

- i. The accused juvenile's age;

*Restorative Justice Practice Vis-a-Vis
Traditional Criminal Justice Practice*

- ii. The nature and gravity of the crime;
- iii. The socio-economic background of the child's family;
- iv. The circumstances under which the juvenile committed the crime;
- v. Personal circumstances of the accused juvenile in terms of his/her mental and physical status etc.

The Police should involve to the extent possible the empanelled social workers, medico-legal experts and counselors in conducting inquiry of the alleged offence, assessment of family situation, social and personal investigation and initial questioning of the accused juvenile.

After the above assessments have been done, unless the ^{offence} accusation is very serious ^{in nature} or there is a greater danger to the society from the accused juvenile, Police should avoid apprehending the juvenile and, instead, decide the future course of action in consultation with the parents/guardians and other persons having a stake in the case. Such processes should be undertaken in the best interest of the child and not otherwise and there should be openness in practicing diversified approaches aimed at settling the issues with a goal to minimize the harm to the concerned child.

Police Level Diversion B. Apprehension of a Juvenile

Children who are accused of petty crimes or ~~are very young to understand the meaning and implications of the crime~~ need not be brought under the purview of the law. Their ~~parents may be called and counseled.~~ ^{have to be taken into confidence} ~~Trained family and child welfare counselors may be sent to counsel such children and guide their parents.~~
(Some examples: stealing sweets or food in a shop or small amount of money, fighting with other children and inflicting minor injury etc.)

Children who are accused of non serious offences: Taking into consideration the assessment and inquiry reports, Police should use their discretion in deciding that:

1. Such children are not separated from the families, or detained;
2. If such children are detained, such detention should only be carried out on the orders of a competent authority. The period of detention should be short, detained children should be handed over to parents or produced in the Board within 24 hours;
3. ~~All~~ ^{all} ~~medico-legal~~ ^{who come in conflict law} and counseling services should be available to apprehended juveniles;
4. Identity of ~~such~~ children should be kept confidential and should not be released or reported to media.
5. If their cases are being forwarded to the Juvenile Justice Board and Probation Officers for further enquiry; should also accompany the social investigation, medical and other reports; Such documents may also include age verification and school character certificates;

6. If the crime is of not very serious nature and harmful for the society, the complainant may also be convinced for an out of court settlement.

C. Community-based Diversion and Re-integration

For children accused of less serious offences, this practice can be very effective in diverting children from the formal justice system, helping them change their behaviour, and reintegrating children after their release.

Diversion practices generally operate through the principle of mediation and involve community members, children groups, parents etc. Under the approach the child is brought in a mediation centers instead of being formally arrested and held in police custody prior to going to court. The mediators at the center may also include trained peer educators to advice and assist children brought to the center or returning to the area after release from detention.

In Laos, Children's Mediation Units have been set up at village levels to promote diversion and build children's own capacity in peer group intervention. The Children's Mediation Units play an important role in diversion from court and custody, data collection on children in conflict with law and at risk and training and dissemination of good practices.

D. Restorative Justice Practice

"Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall 1996; McCold 1998).

Under the restorative justice practice victims and offenders are brought face to face by Police or by Juvenile Justice officials; the victim confronts the wrongdoer about the offensive behavior. The ^{child}offending person listens respectfully to gain a clear understanding of the nature of the wrong and its consequences so he/she can accept responsibility for the behavior, apologize and make amends, including a plan to prevent a reoccurrence. The offender is then forgiven, trust is restored and the relationship is repaired. *child who has committed the offence*

In Juvenile Justice the aim of restorative practice is to encourage parental and community accountability and responsibility towards offender children, generate victims' sensitivity towards offender children, increasing children's own involvement and accountability in justice system, minimize out-of-home and out-of-community placements of juveniles in conflict with law, increasing family's partnering with social workers, counselors etc. The information is frankly shared

with the family so family members themselves can play principal role in monitoring the case and administration of justice.

4. Police Level Diversion: "HALT" Alternative Sanction Programme (The Netherlands)

HALT, short for "the Alternative", is an alternative sanction whereby the Police can propose that the child offender be offered work or damage compensation for a maximum of 20 hours. In case of petty and small crimes, the Police can refer a Juvenile to a HALT bureau, set up by the local authorities in cooperation with the state prosecution service.

The child in conflict with the law is given the choice of having the charges dropped in exchange for his or her participation in a HALT project. A written offer is made to the child with the reminder that he or she is not forced to participate in the scheme. If the child is below 16, the parents must give their consent. If the child agrees to the offer, the Police draw up a protocol and send it to a HALT bureau. After the measures have been carried out, the Police conduct a review with the HALT team and decide whether the charges should be dropped. If the outcome of the HALT measure is positive the Police inform both the juvenile and the state prosecutor's office in writing. By doing so, further criminal proceedings are dropped unless the victim has made a successful complaint to the court house.

Guidelines for Juvenile Justice Boards

A. Detention of a Juvenile:

Detaining an accused juvenile should be used as a last resort and when it is absolutely necessary in view of the seriousness of the crime. The detention of juveniles should fulfill following conditions:

1. Juvenile should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
2. Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
3. Juveniles should receive leisure and recreation.
4. Parents/Guardians of the children are immediately informed of such a detention and are given access to the detention center where the child is placed.

5. The board must make clear the period for which the juvenile is being detained; in no case the detention period should exceed 4 months, during which period all inquiries, probation should complete.

B. Bail of Juvenile

While releasing the Juveniles on Bail, it should be ensured that he/she is not likely to come in association with any known criminal or exposed to moral, physical or psychological danger.

C. Alternative for Detention: Community Service

With regards to alternative measures associated with the supervision of children in conflict with law, several counties are currently studying and debating new approaches to dealing with youth who are arrested and held pre-trial. Some of the measures include expanding the use of community-based programs and detention alternatives.

In this regard, intermediate community based practices are found to be good alternatives to pretrial detention. For example, use of electronic tracking and monitoring devices, (designed as bracelets), issued to accused juveniles as supervisory mechanism, is currently being practiced in the United States. Some other alternatives include evening reporting centers, home confinement, community service work projects, and open shelters. The evening reporting centers are run by the community nearby to the offender juveniles' place of residence or school. The centers hold specialized sessions, skill training, counseling sessions, social gathering events etc. with an aim for the juvenile's social and mental re-integration in the community and family.

Guidelines for Detention Centers

A. Placement of detained juveniles

It should be kept in mind that the juvenile has been detained for his/her best interest and not as a punitive measure. Thus, the juvenile shall be placed under the care of a fit institution where the child should get care, protection, development opportunities and recreation facilities. The detention centers should be easily accessible to parents/guardians of the juveniles. The centers must have up-to-date medical, counseling and emergency services. The centers must separate detained children from children already serving a sentence. Children should also be separated on the basis of age, gravity of crime and backgrounds etc.

B. Training and sensitization of staff in detention centers

All the staff members in the fit institutions where children in conflict with law are placed should be regularly trained on child rights issues and sensitized towards the needs of the children. The staff members should be qualified and capable of working with children. The training and sensitization must be able to ensure that:

- i. no child is being discriminated for being an accused;
- ii. nobody is making a mockery of the juveniles or issuing castigating remarks against them;
- iii. basic rights of every individual child are being fulfilled;
- iv. children are getting adequate nutrition, medical and counseling support
- v. children are protected from all forms of abuse and exploitation; physical, emotional or sexual.

C. Training and empowerment of children

The trained staff at the detention centers should hold sessions with children where they are given skill training and empowerment on legal issues. Children should be made clear through these sessions about the nature and goal of the inquiry pending against them. They should be made to understand that being in detention does not mean that they are convicted.

Guidelines for Parents/Guardians

Parents have a big influence in shaping the persona and outlook of children. Investments in strengthening parenting skills and support can go a long way as preventive measures. A rehabilitative approach towards children in conflict with law should ensure that the children are kept restored with the families to the extent possible. Some of the do's for the families whose children are in conflict with law:

1. Accept that your child has committed an offence and needs corrective measures;
2. Comply with the prescribed norms and coordinate with the legal processes;
3. Arrange for the professional counselling and guidance for kid if you are unable to handle the divergent behaviour of the child;
4. Don't panic if your child has been apprehended by the Police, understand the implications and arrange for legal aid;
5. Involve in the legal proceedings and participate in the placement process through contribution, regular visits to the detention centres etc.;
6. Stop all kinds of discrimination, castigation and rude behaviour towards the accused child;
7. Involve the accused child in family/community programs as though nothing has happened, don't let the child be isolated;
8. Maintain regular contact with schools and teachers and clear their doubts if any;
9. Involve the child in educational, developmental and recreational activities;

Guidelines for teachers and school authorities

In several instances, role of teachers has been highlighted as even bigger than that of parents in overall development of children. Teachers can play an important part in preventing children from committing offenses as well as in the rehabilitation of juveniles in conflict with law. Some of the practices that teachers can ensure are as follows:

1. All teachers should be given training on issues concerning children in conflict with law and should be aware of basic counseling skills;

2. They should be able to identify children at risk or children needing special attention; such children should be referred to specialized school based interventions like counseling and guidance centers;
3. The teachers must maintain regular contact with the parents and inform them about the child's divergent behavior, if noticed;
4. No accused child should be discriminated against or removed from the school on this basis;
5. The identity of the accused child should be kept confidential;
6. The schools should cooperate in the legal proceedings for the best interest of the child;
7. The schools should not show any reluctance in issuing necessary documents that may be valuable in defense of the child, like age-proof, character certificate etc.;

As a rule, every school should develop spaces within the school where children can walk in for counseling and guidance.

A. Alternative practice: Mentoring programs

There is growing belief that mentoring can, in many instances, help children change direction and do better academically and socially. Mentoring has been defined as a sustained, close, developmental relationship between an older, more experienced individual and a younger person, with the goal of building character and competence on the part of the child. Usually the relationship involves regular contact over a sustained period of time and involves mutual commitment, respect, and loyalty. Studies have shown that individuals who gain the trust of children and adolescents through interaction and time can have great influence on their lives.

Schools are the ideal place for operating mentoring programs since children spend most time in the schools. Voluntary mentoring centers can also be associated with community programs, NGOs, religious organizations and local hospitals.

A very innovative and successful mentoring program has been developed by the Big Brothers/Big Sisters mentor program in the US. It involves Police officers for mentoring children accused of being in conflict with law and at-risk adolescents. The program employs prevention and intervention strategies helping youngsters to cope chaotic environments, peer pressure, succeed in school, and make career decisions and sound lifestyle choices.

B. Alternative Practice: Community Crime Prevention Committees

The community crime prevention committees are usually formed by distinguished members of the community, for examples Headmaster of the local school, some teachers, the village head, elders, parents group representatives, youth, NGO representatives etc.

Whenever a child from the community comes in conflict with the law, the community crime prevention committee tries to solve the matter within the community itself without resorting to police or juvenile justice officials. Thus, the committees aim to prevent and divert children in conflict with the law from court system. Sometimes parents and teachers go to the crime prevention committee to discuss issues related to “unruly” children: children who do not go to school, children who damage school property etc. The committees then act as counselors.

References:

- ❖ United Nations Convention on the Rights of the Child (UNCRC)
- ❖ United Nations Standard Minimum Rules for the Administration of the Juvenile Justice (the Beijing Rules) 1985
- ❖ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990
- ❖ Summary Report of Violence Against Children in Conflict with Law: A Thematic Consultation for UN Secretary General’s Study on Violence Against Children, April 2005, Geneva
- ❖ Juvenile Justice (Care and Protection of Children – Amendment) Act 2006
- ❖ Juvenile Justice (Care and Protection of Children) Act 2000
- ❖ Juvenile Justice Act 1986
- ❖ Carnegie Council for Adolescent Development. 1994 (April). *A Matter of Time: Risk and Opportunity in the Out-of-School Hours*. New York: Canegie Foundation
- ❖ *Making A Difference: An Impact Study of Big Brothers/Big Sisters*.
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With inputs from Junned Khan,
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**At National Conference on JJ System in India
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Issues in Focus

"In 2001, two students of IXth standard in Sundarnagri area of Delhi, Rajiv and Chandu, (names changed) both aged 14-15 years, were accused by a person of pick-pocketing. The accuser along with a group of agitated people got hold of the kids, beat them up and handed them over to Police. Both the children were kept in the Police Lockup for 3 days prior to being produced before the local Juvenile Justice Board. The Children were released on bail by JJB on a surety bond! Their parents could meet them only after their release! However, the accusation was not proved.

This event had a very adverse effect on the lives of the two boys, they dropped out of school, as they were taunted by their school mates and teachers and could not get rid of the stigma of being falsely accused of being a thief.

This is not an isolated case. There are number of such instances where children are falsely charged or have been arrested for very petty conflicts with the law which need not have sent them through the criminal justice system. Unfortunately majority of these children are poor and therefore cannot afford a lawyer.

Juvenile Justice System in India is in a very nascent stage in the area of protecting rights of children in conflict with law. The Juvenile Justice (Care and Protection of Children – Amendment) Act 2006 although in its preamble quotes UNCRC, but as one reads the text further it becomes obvious that the spirit of UNCRC is missing. In India we have not done much in developing new strategies of dealing with children who come in conflict with law. Our ways of looking at this issue still remains from the perspective of adult criminal procedure code. Furthermore, all states in India do not have adequate infrastructure or resources to fulfill the obligations under the law. Very recently, a 17 year old boy, working as domestic help, was detained in the police lockup for over 3 weeks in a NOIDA Police Station. The boy was neither produced before the Juvenile Justice Board nor was he released. His fault was that he used to work in Nithari case accused Moninder Singh Pandher's house.

The situation is worse in many other States. Even in States where there are statutory institutions functioning the list of issues concerning the style of functioning, attitudinal problems of the functionaries, procedural loopholes and delays is very long. Recently in Karnataka, 46 children escaped from a special home. No one knows the reason as to why the children were desperate to run away from the institution. The concerned minister of

the state Government could only think of a more repressive action and that was to state that if the children are found they would be “shifted to jails”.

Violation of rights of the children who come in conflict with law need to be taken seriously. There are some major concerns which need to be addressed, such as :

1. Criminalization of children who have committed petty crimes and are first time offenders.
2. Prevalent practice of arrest and detention of children and putting them in police lock ups with out letting them know about the charges.
3. Over-zealousness in bringing every child under the purview of the law;
4. Children are apprehended without the presence of parents, guardians and other concerned persons or community members.
5. Delay in producing children before the competent authorities;
6. Children under investigation kept in the same home with juveniles serving term or in some instances kept in the same observation home with children in need of care and protection.
7. Lack of involvement of parents/communities/schools, during probation period or after release from special homes.

Basic Principles

The approach of juvenile justice system should be different from adult criminal justice system. The approach demands that no child in conflict with law is considered ‘criminal’ but is treated as a child victim of unfavorable circumstances. Thus it is important to take into account factors like age of the child, gravity of the crime committed, socio economic status and family situation of the accused juveniles, and other factors affecting/influencing personal circumstances of the juveniles.

Every child has a right to protection and well being irrespective of his/her status in the society and the primary aim of the Juvenile Justice should be to protect the rights of the child and ensure that the child gets a fair trial.

Article 40 of UNCRC, ratified by the Government of India, directs that a child who is alleged or accused of having infringed the law has a right to be treated in a manner which reinforces the child's respect for the rights and freedoms of others, which does not inflict his/her sense of dignity and worth and which helps in child's reintegration, with a constructive role, in society. Thus every child alleged or accused of having infringed the law should have guarantee:

- (i) To be presumed innocent until proven guilty according to law;
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- (iv) To have the matter determined without delay by a competent authority;
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- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
- (viii) In addition, to have the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses at all stages of proceedings.

In addition, one of the perceived roles of the Juvenile Justice system is also to minimize the necessity of intervention by the juvenile justice system, and in turn, reduce the harm that may be caused by any intervention. There can be much bigger role for alternative practices, like community service as a sentence, involvement of social workers, medico-legal and mental health experts for dealing with juveniles in conflict with law.

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Children are not born with criminal tendencies. Studies have shown that there can be many varied reasons for delinquency among children. These include factors attributed to family, school, community and peers.

Some identifiable characteristics for at risk children families are poor parental supervision and discipline, history of conflicts within the family, history of problem behaviors within the family, parental involvement/attitudes condoning problem behaviors, low family income and poor housing.

In the schools at risk children can be identified on the basis of low educational achievement (beginning in primary school), aggressive behaviour, habitual bullying, low attachment and school disorganization.

Community based factors like disadvantaged neighborhood, community disorganization and neglect, and lack of neighborhood attachment can be responsible for children's conflicting behaviour.

Individual and peer signs like alienation and lack of social commitment, attitudes condoning problem behaviors and friends involved in problem behaviour are also some signs for identifying factors for children at risk of conflict with law.

2. Preventive Approach

Prevention is better than cure. It is even more important for children so that they do not grow up to be adults who choose criminal way of life. The preventive approach requires that the interventions are made at the family, community and school level:

At family level: By strengthening parent-child relationships, improving parenting skills, enhancing problem solving capabilities.

At community level: By strengthening community response to child abuse/neglect, family guidance and support, community mobilization for conflict resolution at a local level; multi-disciplinary approach to include children, parents, police professionals.

At school level: By strengthening social bonding, opportunities for involvement, assisting social and learning skills, recognition and praise.

3. Restorative Justice Practices Vis-a Vis traditional Criminal Justice Practices

"Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall 1996; McCold 1998).

Under the restorative justice practice victims and children in conflict with the law are brought face to face by Police or by Juvenile Justice Officials; the victim confronts the wrongdoer about the unruly behavior. The child in conflict with the law listens respectfully to gain a clear understanding of the nature of the wrong and its consequences so he/she can accept responsibility for the behavior, apologize and make amends, including a plan to prevent a reoccurrence. The child in conflict with the law is then forgiven, trust is restored and the relationship is repaired.

In Juvenile Justice the aim of restorative practice is to encourage parental and community accountability and responsibility towards children coming in conflict with the law, generate victims' sensitivity towards children coming in conflict with the law, increasing children's own involvement and accountability in justice system, minimize out-of-home and out-of-community placements of juveniles in conflict with law, increasing family's partnering with social workers, counselors etc. The information is frankly shared with the

family so family members themselves can play principal role in monitoring the case and administration of justice.

Since the goal is to de-criminalize the approach towards juveniles in conflict with the law, alternative practices arising out of individual situations are far more effective at pre-adjudicatory stages. Some of alternative practices can be suggested as follows:

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- i. The accused juvenile's age;
- ii. The nature and gravity of the conflict with the law;
- iii. The socio-economic background of the child's family;
- iv. The circumstances under which the juvenile come in the conflict with law;
- v. Personal circumstances of the accused juvenile in terms of his/her mental and physical status etc.

The Police should involve to the extent possible the empanelled social workers, medico-legal experts and counselors in conducting inquiry of the alleged conflict with law, assessment of family situation, social and personal investigation and initial questioning of the accused juvenile.

After the above assessments have been done, unless the accusation is very serious or there is a greater danger to the society from the accused juvenile, Police should avoid apprehending the juvenile and, instead, decide the future course of action in consultation with the parents/guardians and other persons having a stake in the case. Such processes should be undertaken in the best interest of the child and not otherwise and there should be openness in practicing diversified approaches aimed at settling the issues with a goal to minimize the harm to the concerned child.

B. Apprehension of a Juvenile

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Children who are accused of not serious offence: Taking into consideration the assessment and inquiry reports, Police should use their discretion in deciding that:

1. Such children are not separated from the families, or detained;
2. If such children are detained, such detention should only be carried out on the orders of a competent authority. The period of detention should be short, detained children should be handed over to parents or produced before the Board within 24 hours;
3. All medico-legal and counseling services should be available to apprehended juveniles;
4. Identity of such children should be kept confidential and should not be released or reported to media.
5. If their cases are being forwarded to the Juvenile Justice Board and Probation Officers for further enquiry; should also accompany the social investigation, medical and other reports; Such documents may also include age verification and school character certificates;
6. If the offence is of not very serious nature and harmful for the society, efforts must be made to give alternate sanctions to the child.

C. Community-based Diversion and Re-integration

For children accused of less serious crimes, this practice can be very effective in diverting children from the formal justice system, helping them change their behaviour, and reintegrating children after their release.

Diversion practices generally operate through the principle of mediation and involve community members, children groups, parents etc. Under the approach the child is brought in a mediation center instead of being formally arrested and held in police custody prior to going to court. The mediators at the center may also include trained peer educators to advice and assist children brought to the center or return to the area after release from detention.

In Laos, Children's Mediation Units have been set up at village levels to promote diversion and build children's own capacity in peer group intervention. The Children's Mediation Units play an important role in diversion from court and custody, data collection on children in conflict with law and at risk and training and dissemination of good practices.

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D. Police Level Diversion: "HALT" Alternative Sanction Programme (The Netherlands)

HALT, short for "the Alternative", is an alternative sanction whereby the Police can propose that the child in conflict with the law be offered work or damage compensation for a maximum of 20 hours. In case of petty and small conflicts with the law, the Police can refer a Juvenile to a HALT bureau, set up by the local authorities in cooperation with the state prosecution service.

The child in conflict with the law is given the choice of having the charges dropped in exchange for his or her participation in a HALT project. A written offer is made to the child with the reminder that he or she is not forced to participate in the scheme. If the child is below 16, the parents must give their consent. If the child agrees to the offer, the Police draw up a protocol and send it to a HALT bureau. After the measures have been carried out, the Police conduct a review with the HALT team and decide whether the charges should be dropped. If the outcome of the HALT measure is positive the Police inform both the juvenile and the state prosecutor's office in writing. By doing so, further criminal proceedings are dropped unless the victim has made a successful complaint to the court house.

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A. Detention of a Juvenile:

Detaining an accused juvenile should be used as a last resort and when it is absolutely necessary in view of the seriousness of the crime. The detention of juveniles should fulfill following conditions:

1. Juvenile should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
2. Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
3. Juveniles should receive leisure and recreation.

4. Parents/Guardians of the children are immediately informed of such a detention and are given access to the detention center where the child is placed.
5. The board must make clear the period for which the juvenile is being detained; in no case the detention period should exceed 4 months, during which period all inquiries, probation should be completed.

B. Bail of Juvenile

While releasing the Juveniles on Bail, it should be ensured that he/she is not likely to come in association with any known criminal or exposed to moral, physical or psychological danger.

Guidelines for Detention Centers

A. Placement of detained juveniles

It should be kept in mind that the juvenile has been detained for his/her best interest and to be supported for a smooth reintegration in society after the detention period. Thus, the detention/special homes should be places where the child gets care, protection, counseling services, development opportunities and recreation facilities. The special/detention homes/centers should be easily accessible to parents/guardians of the juveniles. The homes/centers must have up-to-date medical, counseling and emergency services. The homes/centers must separate detained children from children already serving a sentence. Children should also be separated on the basis of age, gravity of conflict with the law.

B. Training and sensitization of staff in detention centers

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It is important that state governments have a written stated policy on child protection, which could be the instrument to ensure that no adult abuses children.

C. Children's Consultation and Participation

The staff should hold sessions with children where they are given information and knowledge of the legal procedures, the law and implications of it. Children should also be consulted at every stage of the inquiry and shared the outcome of the investigation. Although the present law does not permit the child or his/her family to have preview of the investigation report, in all fairness it must be shared.

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Parents have a major responsibility towards their children in imbibing good values in them, to be responsible parents by spending enough time with them, getting to know their friends and how they spend their free time. Investments in strengthening parenting skills and support can go a long way as preventive measures.

During the process of investigation and while the child is in detention parents must be consulted while decisions are being made about the child. A rehabilitative approach towards children in conflict with law should ensure that children remain with their families wherever possible.

Guidelines for teachers and school authorities

In several instances, role of teachers has been highlighted as even bigger than that of parents in overall development of children. Teachers can play an important part in preventing children from coming in conflict with the law as well as in the rehabilitation of juveniles in conflict with law. It is important that as part of their teacher training course teachers are taught child rights issues, basic counseling and communication skills.

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Alternative practice: Mentoring programs

There is growing belief that mentoring can, in many instances, help children change direction and do better academically and socially. Mentoring has been defined as a sustained, close, developmental relationship between an older, more experienced individual and a younger person, with the goal of building character and competence on the part of the child. Usually the relationship involves regular contact over a

sustained period of time and involves mutual commitment, respect, and loyalty. Studies have shown that individuals who gain the trust of children and adolescents through interaction and time can have great influence on their lives.

Schools are the ideal place for operating mentoring programs since children spend most time in the schools. Voluntary mentoring centers can also be associated with community programs, NGOs, religious organizations and local hospitals.

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In Conclusion

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**Emerging Issues in Juvenile Justice System in India :
Strengthening Mandatory Statutory Mechanisms at the Pre-
Adjudicatory Stages**

**A Paper Presented by Ms. Rita Panicker, Director,
Butterflies Program with Street and Working Children,
U-4, Green Park Extension, New Delhi
With inputs from Junned Khan,
Program Officer (Alliance Building, Butterflies)**

**At National Conference on JJ System in India
Organised by NHRC3-4 Feb 2007**

Emerging Issues in Juvenile Justice System in India: **Strengthening Mandatory Statutory Mechanisms at the Pre-Adjudicatory Stages**

Issues in Focus

"In 2001, two students of IXth standard in Sundarnagri area of Delhi, Rajiv and Chandu, (names changed) both aged 14-15 years, were accused by a person of pick-pocketing. The accuser along with a group of agitated people got hold of the kids, beat them up and handed them over to Police. Both the children were kept in the Police Lockup for 3 days prior to being produced before the local Juvenile Justice Board. The Children were released on bail by JJB on a surety bond! Their parents could meet them only after their release! However, the accusation was not proved.

This event had a very adverse effect on the lives of the two boys, they dropped out of school, as they were taunted by their school mates and teachers and could not get rid of the stigma of being falsely accused of being a thief.

This is not an isolated case. There are number of such instances where children are falsely charged or have been arrested for very petty conflicts with the law which need not have sent them through the criminal justice system. Unfortunately majority of these children are poor and therefore cannot afford a lawyer.

Juvenile Justice System in India is in a very nascent stage in the area of protecting rights of children in conflict with law. The Juvenile Justice (Care and Protection of Children – Amendment) Act 2006 although in its preamble quotes UNCRC, but as one reads the text further it becomes obvious that the spirit of UNCRC is missing. In India we have not done much in developing new strategies of dealing with children who come in conflict with law. Our ways of looking at this issue still remains from the perspective of adult criminal procedure code. Furthermore, all states in India do not have adequate infrastructure or resources to fulfill the obligations under the law. Very recently, a 17 year old boy, working as domestic help, was detained in the police lockup for over 3 weeks in a NOIDA Police Station. The boy was neither produced before the Juvenile Justice Board nor was he released. His fault was that he used to work in Nithari case accused Moninder Singh Pandher's house.

The situation is worse in many other States. Even in States where there are statutory institutions functioning the list of issues concerning the style of functioning, attitudinal problems of the functionaries, procedural loopholes and delays is very long. Recently in Karnataka, 46 children escaped from a special home. No one knows the reason as to why the children were desperate to run away from the institution. The concerned minister of

the state Government could only think of a more repressive action and that was to state that if the children are found they would be “shifted to jails”.

Violation of rights of the children who come in conflict with law need to be taken seriously. There are some major concerns which need to be addressed, such as :

1. Criminalization of children who have committed petty crimes and are first time offenders.
2. Prevalent practice of arrest and detention of children and putting them in police lock ups with out letting them know about the charges.
3. Over-zealousness in bringing every child under the purview of the law;
4. Children are apprehended without the presence of parents, guardians and other concerned persons or community members.
5. Delay in producing children before the competent authorities;
6. Children under investigation kept in the same home with juveniles serving term or in some instances kept in the same observation home with children in need of care and protection.
7. Lack of involvement of parents/communities/schools, during probation period or after release from special homes.

Basic Principles

The approach of juvenile justice system should be different from adult criminal justice system. The approach demands that no child in conflict with law is considered ‘criminal’ but is treated as a child victim of unfavorable circumstances. Thus it is important to take into account factors like age of the child, gravity of the crime committed, socio economic status and family situation of the accused juveniles, and other factors affecting/influencing personal circumstances of the juveniles.

Every child has a right to protection and well being irrespective of his/her status in the society and the primary aim of the Juvenile Justice should be to protect the rights of the child and ensure that the child gets a fair trial.

Article 40 of UNCRC, ratified by the Government of India, directs that a child who is alleged or accused of having infringed the law has a right to be treated in a manner which reinforces the child's respect for the rights and freedoms of others, which does not inflict his/her sense of dignity and worth and which helps in child's reintegration, with a constructive role, in society. Thus every child alleged or accused of having infringed the law should have guarantee:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed of the charges against him or her;
- (iii) To have legal or other appropriate assistance in the preparation of his or her defense;
- (iv) To have the matter determined without delay by a competent authority;
- (v) To have the decisions reviewed by a higher competent authority or judicial body;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
- (viii) In addition, to have the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses at all stages of proceedings.

In addition, one of the perceived roles of the Juvenile Justice system is also to minimize the necessity of intervention by the juvenile justice system, and in turn, reduce the harm that may be caused by any intervention. There can be much bigger role for alternative practices, like community service as a sentence, involvement of social workers, medico-legal and mental health experts for dealing with juveniles in conflict with law.

Deprivation of the liberty of a juvenile should be the last resort and for the minimum necessary period and should be limited to exceptional cases. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is used, highest priority should be given to most expeditious processing of such cases to ensure the shortest possible duration of detention.

Dealing with the Juveniles in Conflict with Law

1. Identifying Responsible Factors

Children are not born with criminal tendencies. Studies have shown that there can be many varied reasons for delinquency among children. These include factors attributed to family, school, community and peers.

Some identifiable characteristics for at risk children families are poor parental supervision and discipline, history of conflicts within the family, history of problem behaviors within the family, parental involvement/attitudes condoning problem behaviors, low family income and poor housing.

In the schools at risk children can be identified on the basis of low educational achievement (beginning in primary school), aggressive behaviour, habitual bullying, low attachment and school disorganization.

Community based factors like disadvantaged neighborhood, community disorganization and neglect, and lack of neighborhood attachment can be responsible for children's conflicting behaviour.

Individual and peer signs like alienation and lack of social commitment, attitudes condoning problem behaviors and friends involved in problem behaviour are also some signs for identifying factors for children at risk of conflict with law.

2. Preventive Approach

Prevention is better than cure. It is even more important for children so that they do not grow up to be adults who choose criminal way of life. The preventive approach requires that the interventions are made at the family, community and school level:

At family level: By strengthening parent-child relationships, improving parenting skills, enhancing problem solving capabilities.

At community level: By strengthening community response to child abuse/neglect, family guidance and support, community mobilization for conflict resolution at a local level; multi-disciplinary approach to include children, parents, police professionals.

At school level: By strengthening social bonding, opportunities for involvement, assisting social and learning skills, recognition and praise.

3. Restorative Justice Practices Vis-a Vis traditional Criminal Justice Practices

"Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall 1996; McCold 1998).

Under the restorative justice practice victims and children in conflict with the law are brought face to face by Police or by Juvenile Justice Officials; the victim confronts the wrongdoer about the unruly behavior. The child in conflict with the law listens respectfully to gain a clear understanding of the nature of the wrong and its consequences so he/she can accept responsibility for the behavior, apologize and make amends, including a plan to prevent a reoccurrence. The child in conflict with the law is then forgiven, trust is restored and the relationship is repaired.

In Juvenile Justice the aim of restorative practice is to encourage parental and community accountability and responsibility towards children coming in conflict with the law, generate victims' sensitivity towards children coming in conflict with the law, increasing children's own involvement and accountability in justice system, minimize out-of-home and out-of-community placements of juveniles in conflict with law, increasing family's partnering with social workers, counselors etc. The information is frankly shared with the

family so family members themselves can play principal role in monitoring the case and administration of justice.

Since the goal is to de-criminalize the approach towards juveniles in conflict with the law, alternative practices arising out of individual situations are far more effective at pre-adjudicatory stages. Some of alternative practices can be suggested as follows:

Protocol for Police

- A. Acting on a complaint:** The law (JJ Act) itself has a provision of special juvenile police units and designated special police officers in every Police Station in the Country. In addition Police should have a panel of social workers and counselors as advisors and consultants. Before acting on a complaint, the concerned special juvenile police officer should make an independent assessment of:
- i. The accused juvenile's age;
 - ii. The nature and gravity of the conflict with the law;
 - iii. The socio-economic background of the child's family;
 - iv. The circumstances under which the juvenile come in the conflict with law;
 - v. Personal circumstances of the accused juvenile in terms of his/her mental and physical status etc.

The Police should involve to the extent possible the empanelled social workers, medico-legal experts and counselors in conducting inquiry of the alleged conflict with law, assessment of family situation, social and personal investigation and initial questioning of the accused juvenile.

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