

INSTITUTIONAL FRAMEWORK FOR JUVENILE JUSTICE SYSTEM IN THE STATE OF HARYANA: A CRITICAL ANALYSIS

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DECLARATION

I, hereby declare that the research work on the topic entitled, "**INSTITUTIONAL FRAMEWORK FOR JUVENILE JUSTICE SYSTEM IN THE STATE OF HARYANA: A CRITICAL ANALYSIS**" is done by me under the guidance of **Dr. Varinder Kaur**, Assistant Professor in the School of Law, Lovely Professional University, Phagwara Punjab. The findings and conclusions drawn in the thesis are based on data and other relevant information collected by the researcher during the period of the research study for the award of **Doctor of Philosophy (Ph.D.)** degree in Law, Lovely Professional University, Phagwara Punjab. I, further declare that the research submitted on this topic is my original research work. Neither the work published in any journal or anywhere else and has not formed the basis for the award of any degree, diploma, associate ship, fellowship, titles in this or any other University of Institution of higher learning. All the material and data obtained from all other sources have been properly acknowledged in the thesis.

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ABSTRACT

The reason behind a juvenile to become a criminal can be many. This may be beyond the control of the immature youngsters. The aim of correctional institutions should be to facilitate the rehabilitative process and placement of a juvenile in a society. The needs, motivations, forces and compulsions of juveniles cast upon a system an obligation to establish a network of institutions that attempt to cater to these demands and foreshadow the issue of delinquency.

Particularly in the years following World War II, when it became evident that doing so is crucial for maintaining both peace and security on a global level, the United Nations places a great deal of emphasis on the need to protect fundamental human rights as a means of preserving international peace and security. As a result, the United Nations charter restated support for basic human rights as well as for the value and dignity of every individual. Additionally, it charged the international organisation with advocating and fostering adherence to these fundamental rights and freedoms. The charter makes fundamental freedoms and human rights a significant standard of international law, imposing an obligation on member nations to maintain them, as children are unique and require special protection, the rights of children have received special attention at the global level. Children are tomorrow's citizens and because they are susceptible to all types of abuse and exploitation, there is a strong need to defend their human rights. Children have a very real chance of becoming invisible to the world if proper and enough protection is not provided. However, doing so would expose them to greater abuse, neglect, and exploitation, which we simply cannot afford.

In India, the process of juvenile correction starts at a point when a member of society/probation officer and/or police personnel locates/identifies a juvenile, apprehends him and produces him before an agency for adjudication, Juvenile Court/Child Welfare Board for intervention and appropriate action. The institutions

that have specific duty to deal with defenceless or real delinquents could be numerous and different. These institutions organize variety of activities to impart educational, vocational, moral and spiritual training with a view to socialize as well as develop skills in juveniles. The major emphasis in these programmes is on total personality development and strengthening of pro-social attitudes in juveniles. These attempts are undertaken with a view to preparing them to compete in a society.

Key research gaps identified include insufficient inspection of obstacles that cause malfunctioning of Juvenile Justice System and how these obstacles effect the lawful implementation of the process ensured under the statute. Additionally, other studies are based on statistical data of the National crime records bureau but this study is based on the primary data collected by the researcher.

The study's focus has been restricted to the subject of children in conflict with the law, which has been examined from both theoretical and empirical angles. In this venture, the researcher has made an effort to investigate legal jurisprudence in relation to the juvenile justice system, which explores ideas, international practises. The researcher also looked into the issue of over-institutionalization and lack of basic facilities in the State of Haryana and attempted to assess the difficulties encountered in putting juvenile justice laws, particularly the Juvenile Justice Act, 2015, into practise. The study aims to find out the extent of law enforcing agencies involved in protection of 'rights of children' under the juvenile justice system. Furthermore, the study is focused on the implementation of rehabilitation and reformation practices in different districts of the State of Haryana. The analysis of the data collected will help the state authorities to improve the infrastructure and effectively implement the legislation and the model rules.

The purpose of this study is to evaluate the national and international perspective of the juvenile delinquency, and the main objective is to examine and critically evaluate the Institutional set up regarding The Juvenile Justice in the State of Haryana.

In accordance with the study's objective, the hypothesis emphasizes on how the absence of qualified officials and adequate infrastructure has hampered the purpose of the legislation. The empirical study and data collection was done during September 2021 to June 2022 by using questionnaires for inmates, staff of the homes and juvenile justice board of three selected districts which are Ambala, Hisar and Karnal, employed a purposive sampling method.

The study explores many questions that are covered in detail in this work, including who the juveniles are housed with, why they are being held there, their educational background, family history, and environmental background, how long they have been in the homes, and the treatments they receive in terms of food, shelter, clothing, medications, sports, education, and training programs.

Further, the investigation shows that the State of Haryana does not yet have all of the necessary institutions in place to comply with the JJ Act. The current systems lack the necessary personnel, institutional facilities and resources to properly execute the JJ Act. Employees fail miserably in their roles because they lack the necessary attitude and ability. The information gathered from the youths living in the institutes sheds light on their current circumstances and analyses the unsatisfactory rehabilitation and reintegration programs that were made available to them.

The study concludes that the process of rehabilitation requires all child care facilities, as well as the other agencies involved, to make a systematic, structured, and planned effort to intentionally stress on the kid's self-development and future prospects. The social reintegration of such CCL back into an active community is a crucial component. It is important to ensure that all of their basic developmental needs are met. This includes seeing to it that not only their physical needs met in order to promote healthy growth, but also that their mental and emotional needs are met in order to foster their intellectual and creative potential. A CCL should experience healing and positivity in the institutional homes where there is a strong spiritual and interpersonal link. As a result, while CCL is being rehabbed, attitudes must change

from a need-based approach to a rights-based approach. Additionally, the Observation Homes, Special Homes, and Places of Safety must employ qualified personnel. These employees must receive training when they are recruited. The enacted laws must be properly applied in order to fulfil the intended purpose of promoting the welfare of children.

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Accomplishment of my present work entitled “Institutional Framework for Juvenile Justice System in the State of Haryana: A Critical Analysis” would have been impossible without the unending support of many people.

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Mausam

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53.	<i>Vinod v. State of UP</i>	1999 Cri LJ 3729 (All)

LIST OF ABBREVIATIONS

AIR	:	All India Reporter
APP	:	Assistant Public Prosecutor
CWPO	:	Child Welfare Police Officer
DCPU	:	District Child Protection Unit
DLSA	:	District Legal Services Authority
DTO	:	Detention and Training Order
FDA	:	First Division Assistant
HIPA	:	Haryana Institute of Public Administration
ICP	:	Individual Care Plan
ICPS	:	Integrated Child Protection Scheme
IPC	:	Indian Penal Code
JCL	:	Juvenile in Conflict with Law (JCL).
JJA 2000	:	Juvenile Justice (Care & Protection of Children) Act, 2000
JJA 2015	:	Juvenile Justice (Care & Protection of Children) Act, 2015
JJB	:	Juvenile Justice Board
JJS	:	Juvenile Justice Services
MACR	:	Minimum Age of Criminal Responsibility
MWCD	:	Ministry of Women and Child Development (for short MWCD)
NALSA	:	National Legal Service Authority
NCPCR	:	National Commission for Protection of Child Rights
NCRB	:	National Crime Records Bureau
NGO	:	Non-Governmental Organisation
NCRB	:	National Crime Records Bureau
PO	:	Probation Officer
POCSO	:	Protection of children from Sexual Offences Act
SCC	:	Supreme Court cases
SCPCR	:	State Commission for Protection of Child Rights
SIR	:	Social Investigation Report

SJPU	:	Special Juvenile Police Unit
SLL	:	Special & Local Law
RTI	:	Right to Information
UN	:	United Nations
UNCRC	:	United Nations Convention on the Rights of the Child
UOI	:	Union of India

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CHAPTER - 1

INTRODUCTION AND HISTORICAL BACKGROUND OF JUVENILE JUSTICE SYSTEM

“Safety and security don’t just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizen in our society, a life free of violence and fear”

– Nelson Mandela

1. INTRODUCTION

India has the world's largest population of children, which is almost 20% of the World's children. More than 40% of the country's population is below 18 years. In Indian scenario a child requires proper love, affection, care and nourishment but experience shows that the children are subject to maltreatment in many situations.¹ The reason of increasing crime rate is may be due to the nurturing environment of the child, economic circumstances, lack of education and the proper prenatal care. These are some of the basic reasons behind the increase in the crime rate by the children. The most unfortunate part is that, children are used as tools to perpetrate crime as at this stage their minds are not mature and can easily be manipulated. The young minds are unable to understand the divergent circumstances of life, as a lead to previous few decades; the crime rate by the children has increased. John Milton, the renowned poet, accurately stated that childhood shows the man as the morning shows the day.² According to the poet, children pick up knowledge by watching adults, thus if a family member engages in illegal activity, it will have an impact on the children's mental health.

¹ S. C. Tripathi and Vibha Arora, *Law Relating to Women & Children* 366 (Central Law Publication, Allahabad, 2012).

² William Kerrigan, John Rum rich, *et.al.* (eds.), *The Complete Poetry and Essential Prose of John Milton 1671 (220-221)* (Modern Library, NYC, U.S. 2007).

Juvenile Delinquency served as the inspiration for the concept of Juvenile Justice. When children engage in illegal or antisocial behaviour, it is considered a crime, just as when an adult engages in comparable behaviour. It was reportedly suggested by Mahatma Gandhi that one should detest crime rather than the criminal. This is often true in the domain of juvenile justice, since the international society recognises the concept of reformation as a cornerstone and it dominates the approach to punishment when dealing with children in confrontation with the law. Since juveniles are less responsible and unable to care for themselves, they require distinct treatment.³

The basic objective of the juvenile justice system is to provide care and protection for all children, even those who are involved in legal issues. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJA 2015) had the effect of repealing the previous law that had been in place from the year 2000. It was based on the legislative mandate that was suggested in Article 15. The day when it became effective was January 15, 2016. Article 45, 47, 39(e), 39(f), and 15(3) of the Indian Constitution are all included,⁴ as a country that is a party to the United Nations Convention on the Rights of the Child, 1989 (UNCRC) and several other international instruments that pertain to juvenile justice. India is obligated to protect the integrity of children and to act in their best interests. Additionally, India is required to implement international conventions within the framework of the national

³ John Pitts, *Youth Justice in England and Wales*, in *The New Politics of Crime and Punishment*, ed. Roger Matthews and Jock Young, 71 (Willan Publishing, 2003).

⁴ Article 15(3), The Constitution of India, “Nothing in this article shall prevent the State from making any special provision for women and children”;
Article 39 (f), The Constitution of India, “The State shall provide children the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”;
Article 45, The Constitution of India, “The State shall endeavour to provide for free and compulsory education for all children until they complete the age of fourteen years”;
Article 47, The Constitution of India, “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

system of the state.⁵ Within the framework of the Juvenile Justice Act of 2015, the primary emphasis is placed on the rehabilitation and reformation of juvenile offenders, with the ultimate objective of establishing a juvenile justice system that is distinct from the adult criminal justice system.

According to the Indian legal system, a juvenile offender is a person who has not yet reached the age of 18 years on the day that the claimed act was committed. This kind of individual is also referred to as a kid who is in dispute with the law.⁶

The new bill was passed with many reforms in the Indian Criminal Law Jurisprudence. Before it was passed there was a broad debate for it on being unconstitutional and violating the international conventions and the terrifying incident of Nirbhaya case, the public panic, protests and efforts of the parents of the rape victim have demanded the law makers to enact the law, due to which the act was passed in the need of the hour but a lot of its provisions are violating the purpose of care and protection of children.

The Nirbhaya case involved a 23-year-old woman who was gang-raped by six individuals, one of whom was a 17-year-old minor. The accused was sent to a reformatory school, and the question of whether the court should have treated the accused as an adult arose. The Juvenile Justice Act of 2015 then opened the door for the minor, who is between the ages of 16 and 18, to be considered an adult by the court if they have committed any heinous offence. On the basis of their preliminary evaluation of the minor's physical and mental capacity to commit the offence, as well as their capacity to comprehend the circumstances and consequences of the offence, the juvenile justice boards are the ones who are

⁵ The Parliament has passed the JJA 2015 “taking into consideration the standards prescribed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990); Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993) (Preamble to JJ Act, 2015)”.

⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(13).

responsible for determining whether or not a minor is responsible enough to be treated as an adult.⁷

The process of juvenile correction starts at a point when a member of society/probation officer and/or police personnel locates/identifies a juvenile, apprehends him and produces him before an agency for adjudication, Juvenile Court/Child Welfare Board for intervention and appropriate action. The institutions that have specific duty to deal with defenceless or real delinquents could be numerous and different. Such institutions are- Analytic institutions, for example, observation Homes, Remand Homes so forth. Treatment Foundations, for example, Special Homes, Place of safety, Reformatory Homes, Juvenile Jails so forth.



Image shows Structure of Juvenile Justice System in India.

Under the Ministry/Department of Women and Child Development, the institutions that have a special responsibility to handle susceptible or actual delinquents could be many and varied. Such institutions are- Diagnostic Institutions such as Observation Homes, Remand Homes, Child Guidance Clinics etc. Treatment Institutions such as Special Homes, Place of Safety, Reformatory Homes, Juvenile Jails etc.

These institutions organize variety of activities to impart educational, vocational, moral and spiritual training with a view to socialize as well as develop skills in juveniles. The

⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 15.

major emphasis in these programmes is on total personality development and strengthening of pro-social attitudes in juveniles. These attempts are undertaken with a view to preparing them to compete in a society.⁸

There are certain gaps in the Institutional system, due to the political, cultural, social, administrative and situational pressures operating at various levels. These, in turn, affect the functioning of the correctional apparatus — inter and intra institutional mechanisms as also the relations between the institutional staff and juveniles.

Even though the Indian Supreme Court has instructed High Courts and lower courts to monitor the juvenile justice system, numerous juvenile justice boards and child welfare committees are not operating effectively under the current framework. The Indian Supreme Court has mandated that the National Legal Service Authority and the State Legal Authority safeguard the rights of children. An additional weakness is the dearth of trained counsellors in India's Special Homes and Observation Homes for the purpose of advising minors who are in legal trouble.

The reason behind a juvenile to become a criminal can be many. This may be beyond the control of the immature youngsters. The aim of correctional institutions should be to facilitate the rehabilitative process and placement of a juvenile in a society. The needs, motivations, forces and compulsions of juveniles cast upon a system an obligation to establish a network of institutions that attempt to cater to these demands and foreshadow the issue of delinquency.

1.1 HISTORICAL BACKGROUND

The Latin word *Juvenis*, which meaning a young person, is where the word juvenile originated. A person who has not reached the age of eighteen is referred to as a child or juvenile. The juvenile crimes start with Juvenile Delinquency. Juvenile delinquency is the

⁸ K. S. Shukla, "Delinquency Control: The Institutional Strategy" *Indian Journal of Social Work* (1982) available at: <http://ijsw.tiss.edu/greenstone/collect/ijsw/index/assoc/HASHf529/62ddcd7a.dir/doc.pdf> (last visited on May, 12, 2021).

word used to describe illegal and antisocial behaviour by a kid (under the age of eighteen) that would be considered a crime if committed by an adult. There are many factors for a child to go against the law. The evolution of the juvenile justice system shows that how the juvenile justice system has grown and developed.

The researcher's goal is to investigate India's juvenile justice system's legislative past. As a result, the chronological evolution of laws pertaining to minors in legal trouble, two segments have been identified: (A) Pre-Independence and (B) Post-Independence.

1.1.1. Pre- Independence

In India, juvenile offenders have traditionally been treated differently. The practice of treating children differently dates back to the Code of Hammurabi, which was established in 1790 BC and placed the onus of their maintenance and supervision on the family.

Maintaining children was the primary responsibility of parents and family, and both Hindu and Muslim laws made provisions for this they demonstrated differential treatment in certain offences and adopted the principle of lesser culpability of children for their criminal activities, even though there was no specific reference to juvenile delinquents.⁹ During the British period an abundance of legislations were passed in favour of children such as eradication of child labour, female infanticide, care and protection etc. In 1843, Lord Cornwallis, in accordance with the instructions of the colonial government, built the first facility for those youngsters, which was known as the Ragged School.¹⁰ But, there was neither any legislation nor any reference made to juvenile delinquents or child offenders until the passage of **the Apprentice Act, 1850**.¹¹ In place of putting minors to jail for minor offences, the Apprentice Act empowered the magistrates to obligate children between the ages of 10 and 15 to serve out their sentences as apprentices to learn a trade, craft, or

⁹ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 57 (OUP, India, 2004).

¹⁰ Mousumi Dey, "Juvenile Justice System in India"1(6) *International Journal of Interdisciplinary a Multidisciplinary Studies (IJIMS)* 65(2014), available at: <https://www.ijims.com/uploads/c516b1534d85a22ad192z9.pdf> (last visited on March 30, 2021).

¹¹ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 60 (OUP, India, 2004).

employment.¹² The first step towards stopping juvenile offenders from being transported to adult jails was taken by this legislation.

According to the old **Indian Penal Code, 1860** and now Bharatiya Nyaya Sanhita, 2023, a kid under the age of seven is exempted from all criminal liability and is incapable of committing any offence due to a lack of mens rea.¹³ If it can be demonstrated that a kid between the ages of 7 and 12 had mens rea at the time of the offence and was aware of the implications of his actions, the child may be prosecuted.¹⁴ Even today the *doli incapax* presumption holds relevance in the Indian legal system.

The Whipping Act, which allowed whipping as a form of punishment for minors in some circumstances, was enacted in 1864 primarily in response to two factors: a rising rate of recidivism among minors and an increase in the number of juvenile offenders incarcerated.¹⁵ For juvenile offenders found guilty of acts not punishable by death under the Indian Penal Code, the Act authorised flogging as a form of punishment.¹⁶ It was believed that the imposition of whipping as a punishment would reduce the population of juvenile offenders in jails and render the establishment of reformatory homes unnecessary.¹⁷ The punishment was inflicted in the way of school discipline with a light rattan not exceeding thirty stripes which took place in the presence of Justice of peace or authorized officer and medical officer.¹⁸ In case of adults the punishment of whipping was awarded in addition to imprisonment under the Indian Penal Code and was inflicted with any instrument and on any part of the person as directed by the local Government not exceeding one hundred and fifty lashes.¹⁹

¹² *Ibid.*

¹³ The Indian Penal Code, 1860, s. 82 now Bharatiya Nyaya Sanhita, 2023, s. 20.

¹⁴ The Indian Penal Code, 1860, s. 83 now Bharatiya Nyaya Sanhita, 2023, s. 21.

¹⁵ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 61 (OUP, India, 2004).

¹⁶ The Whipping Act, 1864, s. 5.

¹⁷ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 61 (OUP, India, 2004).

¹⁸ The Whipping Act, 1864, s. 10.

¹⁹ *Ibid.*

Then, shortly after the Whipping Act was passed in 1864, the Jail Committee was established, and it stated that the Whipping Act should not take precedence over the necessity of prison reforms, including reformatory schools, because juvenile offenders were the major issue that required immediate legislative attention.²⁰ The real impetus for the passing of the **Reformatory Schools Act, 1876** was provided by the then Lt. Governor of Bengal, Sir Richard Temple, a visionary who felt that it was necessary to send the juvenile offenders to reformatory homes rather than jails where they would come into contact with older hardcore criminals, the Jail Committee Report of 1864 suggested, despite the urgent need for reformatory schools for delinquent children due to poor prison conditions.²¹

Reformatories and juvenile offenders were two examples of such situations that necessitated an immediate response from the legislative branch. Due to the fact that they believed there was a high probability that unethical parents would coerce their children into committing crimes in order for them to be able to attend public schools, a segment of the Indian Jail Committee was opposed to the idea of education being provided via reformatories in India.²²

Another landmark juvenile legislation was Reformatory School Act, 1876 modified in the year 1897. The legislation attempts to keep juvenile offenders in distinct institutions like reformatory schools rather than adult prisons. The proportion of juvenile offenders under 15 years old is 6.5% of the total. The juvenile delinquency rate was rising, moving from minor offences to more serious ones, and the jail system and other institutions were unable to keep up with this rapid rise. As a result, this act dealt with boys under the age of fifteen who are found guilty of crimes carrying jail sentences and are referred to as juvenile offenders. The law permitted the provisional Government to establish Reformatory schools

²⁰ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 61 (OUP, India, 2004).

²¹ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 63 (OUP, India, 2004).

²²“ Indian Jail Committee Report” 20 (1864) available at: <https://archive.org/details/dli.ministry.20785>(last visited on December 30, 2022).

or use schools maintained by private persons having basic arrangements of water supply, food, clothing, bedding along with the means of giving industrial training to youthful offenders.²³

After considering the nature of their offences and other factors, the Court was empowered to sentence juvenile offenders to such reformatory schools for a period of three to seven years instead of serving their sentence in adult jails subject to any rules made by the State Government. However, after they turned eighteen²⁴ they could not be kept in these schools.²⁵ These youthful offenders over the age of 14 years could be licensed out to reliable persons named in license or authorized officers of the Government agreeing to take charge of and employ such youth at some trade/ occupation not exceeding three months.²⁶

Juvenile offenders were detained in reformatory schools until they turned eighteen, after which they were released. This policy was outlined in the Reformatory Schools Acts of 1876 and 1897. When young people in reformatories acquired profitable jobs, they were free to depart.²⁷

During the British Rule the Code of Criminal Procedure 1898 was enacted which included relevant provisions under section 29B and 399 regarding custody of juvenile offenders and jurisdiction of the criminal courts.

According to old **the Code of Criminal Procedure 1973** and now The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the following are the courts' areas of jurisdiction: The Court of Chief Judicial Magistrate, any court specifically authorised by the Children Act of 1960, or any other law that is currently enacted that provides for the treatment, training,

²³ The Reformatory Schools Act, 1897, s. 5 *available at* :[https://indiankanoon.org/doc/1551389/#:~:text=The%20State%20Government%20may%2D%20\(a,direct%20that%20any%20school%20so](https://indiankanoon.org/doc/1551389/#:~:text=The%20State%20Government%20may%2D%20(a,direct%20that%20any%20school%20so) (last visited on November 3, 2022).

²⁴ *Id.*, s. 8.

²⁵ *Id.* s. 13.

²⁶ *Id.*, s. 18.

²⁷ Winterdyk J., *Juvenile Justice Systems: International Perspectives* 265 (Canadian Scholars' Press Inc. 2nd edn. July, 2002).

and recovery of young offenders may try any offence done by anyone under the age of 16 that is not punishable by death or life in prison. This includes any offence that is not liable by either of these two extremes.²⁸

The Report of the Indian Jail Committee 1919–20 is widely regarded as one of the most important milestones in the history of India's juvenile justice system.²⁹ The Committee emphasized the necessity of classifying and separating criminals based on their age and length of imprisonment.³⁰ They emphasized that young children shouldn't be penalised by having their diets restricted; instead, they should be required to attend school and engage in daily activity. It was underlined that young criminals with a history of crime should not be placed in reformatories. As a result, they would be prevented from attending school, which would be a harsher practice for the prisoner.

It was noticed by the All India Jail Committee on Jail Reforms that in many instances, the age of the children was purposefully shown on the upper side by the police in order to place these youngsters in the category of youthful offenders, which is defined as being between the ages of 16 and 21 years old³¹ and In the year 1919-1920, the issue of jailed children was considerably more severe than what is shown in official data. This is because the number of these children, when added to the overall turnover of children in prison, reveals that the problem was much more severe than what is seen in the statistics.³²

The Committee observed that the juvenile delinquent is predominantly the creation of unfavourable environment and is more amenable to reformation, thus entitled to special

²⁸ *Id.*, s. 27.

²⁹ “Report of the Indian Jail committee” 71 (April 1889) *available at*: <https://archive.org/details/dli.ministry.20785> (last visited on December 30, 2022).

³⁰ Indian Central Bureau of Correctional Services, “Juvenile Delinquency: A Challenge” 1970, *available at*: https://books.google.co.in/books/about/Juvenile_Delinquency.html?id=J0ygJsTsp1MC&redirec=y (last visited on August 15, 2021).

³¹ Ahuja, R., *Social Problems in India* 305 (Rawat Publications 1992).

³² Narayan, M. A., *Indian Police Systems* 232 (APH Publishing, 1990).

treatment and fresh start under better surroundings.³³ Further the committee recommended the constitution of the Children court in India.

According to the **England Children Act of 1908** and the **Madras Children Act of 1920**, a person is considered a kid if they are younger than sixteen and a young person if they are older than fourteen.³⁴ The Committee suggested extending the age range of adolescence from sixteen to twenty-one years old upon reaching the age of sixteen at the end of childhood.³⁵

Young Person: The English law in fact had laid down that the children under the age of fourteen could not be sentenced to imprisonment or penal servitude and children aged fourteen and above but under sixteen could not be sentenced to penal servitude but, could only be sentenced to imprisonment if, the court certified that the young person in question was so unruly or so depraved that he could not be sent to any other place of detention.³⁶

The child offenders were handed over to the private families temporarily or permanently adopted instead of sending them to schools and orphanages.³⁷ There was an understanding in America that reformatory institutions should be arranged on cottage plan under which boys or girls would be placed in small cottages or bungalows under the superintendence of a house mother and in the case of older boys, of a man and his wife.³⁸ The report indicated that these houses with small numbers not exceeding 20 or 25 were likely to reproduce to some extent, the atmosphere of family life.³⁹ It also observed that the recommendation of

³³ “Report of the Indian Jail Committee” 193 para 363 (1919-20) *available at*: <http://jail.mp.gov.in/sites/default/files/Report%20of%20the%20Indian%20Jail%20Committee,%201919-1920.pdf> (last visited on March 18, 2021).

³⁴ *Ibid.* at 194, para 364.

³⁵ “Report of the Indian Jail Committee” 204 para 388 (1919-20) *available at*: <https://archive.org/details/eastindiajailsco01indi/page/n3/mode/2up> (last visited on March 18, 2021).

³⁶ *Ibid.* at 195.

³⁷ “Report of the Indian Jail Committee” 201 para 379(1919-20), *available at*: <https://archive.org/details/eastindiajailsco01indi/page/n3/mode/2up> (last visited on March 18, 2020).

³⁸ *Ibid.*

³⁹ *Ibid.*

incorporation of this American cottage system of housing the child offenders with private families were unrealistic for India due to dominant caste system practices.⁴⁰ In 1646, the General Court of Massachusetts Bay Colony had passed the Stubborn Child Law, decreeing that teenage boys who disobeyed their parents could be put to death.⁴¹ In fact, as late as 1971, the highest state court in Massachusetts reaffirmed the Massachusetts Stubborn Child Law and ruled that children have no right of dissent against the reasonable and lawful commands of their parents or legal guardians.⁴² This law was not repealed until 1973.⁴³

Adolescents: The committee concluded that the adolescents committing crimes should not be sent to ordinary jails where they come into contact with the adult offenders but, rather subjected to separate reformatory schools providing with education as well as religious and moral teaching.⁴⁴ For this class of offenders, it favoured the creation of Special Adolescent Institutions which would be basically reformatory in character.⁴⁵ On the other hand it endorsed serious interventions in case of adolescents guilty of grave crimes such as murder, culpable homicide, rape etc. The committee favoured the housing of such class of adolescents in juvenile jails closely resembling adult jails where labour and education were to be administered similar to adult jail system and no ceiling on detention except the sentence of the Court.⁴⁶

The Madras Children Act 1920 was passed by Madras (now Tamil Nadu) on June 20th 1920. The act emphasis on the prohibition against the imprisonment of juvenile offenders,

⁴⁰ *Ibid.*

⁴¹ “Too young for life without parole”, *Los Angeles Times* (15/3/2012), available at: <https://www.latimes.com/opinion/la-xpm-2012-mar-15-la-oe-ellison-sentence-20120315-story.html> (last visited on May 29, 2021).

⁴² MAJ Herbert A. Denson, “Child Abuse” 10 *Military Police Law*, nl, Spring (1798). available at: <https://www.ojp.gov/pdffiles1/Digitization/46809NCJRS.pdf> (last visited on April 6, 2021).

⁴³ *Ibid.*

⁴⁴ “Report of the Indian Jail Committee” 205 para 389 (1919-20) available at: <https://archive.org/details/eastindiajailsco01indi/page/n3/mode/2up> (last visited on 18 March, 2021).

⁴⁵ “Report of the Indian Jail Committee” 207 para 395 (1919-20) available at: <https://archive.org/details/eastindiajailsco01indi/page/n3/mode/2up> (last visited on 18 March, 2021).

⁴⁶ *Ibid.*, para 394.

age limit of childhood, certified schools, remand homes etc. According to the Act, a young offender is someone under sixteen who has been found guilty of a crime that carries a jail sentence.⁴⁷In order to deal with young offenders, it divided them into two categories: children who were found guilty of an offence that carried a jail sentence and who were 12 years of age or older but younger than 18 could be sent to senior approved schools for a minimum of two years and a maximum of five years, but not beyond the age of eighteen in addition to or instead of the sentence.⁴⁸

The juvenile offender may be placed in the care of a parent, guardian, adult relative, or other appropriate person while being supervised by a probation officer.⁴⁹

When a child under the age of twelve commits a crime that carries a jail sentence, the court may order that the kid be sent to a junior authorised school for a minimum of two years, with no upper limit, and for no longer than 18 years.⁵⁰

After Madras the children act was enacted in Bombay and Bengal. The Madras Children Act was adopted in Andhra area pursuant to the Indian Jail Committee, 1919-20. More states followed the action year after years these are the East Punjab Children Act of 1949; the Delhi Children Act of 1941; the Mysore Children Act of 1943; the Travancore Children Act of 1945; the Cochin Children Act of 1946; and so on.

The only States which have not yet enacted any legislation in the area of juvenile delinquency are Nagaland, Orissa, Sikkim and Tripura. To this day, the Andaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Lakshadweep, and Mizoram have not been subject to the enforcement of the Central Children Act.

⁴⁷ The Madras Children Act, 1920, s. 3(3) *available at*: <https://www.courtktuchehry.com/Acts/Home/LegalActsDownload?Id=22779&Name=Madras%20Children%20Act,%201920> (last visited on 26 July, 2021).

⁴⁸ The Madras Children Act, 1920, s. 23, 24.

⁴⁹ *Id.*, s. 25.

⁵⁰ The Madras Children Act, 1920, s. 23, 24.

Furthermore, the Children Acts have not been implemented in all of the districts in a number of the states around the country.⁵¹

1.1.2. Post- Independence

The framework changed after the British India. The constitution came into force and several provisions for prevention and protection of children were incorporated. In accordance with Article 15(3) of the Constitution of India, the State may make any specific provisions for women and children, and nothing in this Article may restrict the State from doing so.⁵² Additionally, the first central legislation, the **Children Act of 1960**, was passed as a result of the lack of uniformity among State legislations and the recommendations of the UN Declaration of the Rights of the Child in 1959 to enact a special law for children.⁵³ Since Independence of India in 1947, Parliament passes the first legislation on the subject, namely, the Children Act 1960.⁵⁴

Treatment and rehabilitation of children who have been neglected was the primary motivation for the creation of the Children's Act.⁵⁵ A discriminating definition of child was introduced by the Children Act of 1960,⁵⁶ It furthermore established two distinct adjudicatory bodies for the purpose of dealing with children who were in violation of the law and children who need care.⁵⁷

⁵¹ National Institute of Social Defence, "Towards Delinquency Control" 22 (1979) *available at*: <https://ijsw.tiss.edu/collect/ijsw/import/vol.43/no.3/283-292.pdf> (last visited on 17 July, 2021).

⁵² The Constitution of India, art. 15(3).

⁵³ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 83 (OUP, India, 2004).

⁵⁴ Ved Kumari, *The Juvenile Justice (Care and Protection) Act 2015 Critical Analysis* 3 (Universal Law Publication, 2017).

⁵⁵ The Children Act, 1960 *available at*: <https://indiankanoon.org/doc/1973522/> (last visited on August 7, 2021).

⁵⁶ The Children Act, 1960, s. 2(e).

⁵⁷ Mahmood, T. "Child Abuse in Arabia, India and the west comparative Legal Aspects" Vol. II:3 *Islamic and Comparative Law Quarterly*, 173 (1982c). *available at* : <https://www.ojp.gov/ncjrs/virtual-library/abstracts/child-abuse-arabia-india-and-west-comparative-legal-aspects-family> (last visited on September 5, 2021).

The Act only applied to the Union Territories; states continued to pursue their own subsisting laws by appropriately amending existing ones.

The major features of the Act are as follows: -

1. The definition of Child: - A boy under the age of sixteen and a girl under the age of eighteen is considered a child.
2. Chapter two of the Act provides the two distinct competent authorities and institutions for the children. These are Child Welfare Boards concerning neglected children and Children's Court concerning the delinquent children.
3. Under this Act a separate system of the institutions was introduced. There was Children's Home for the maintenance of neglected children and Special Schools for the reception of delinquent children.
4. It stipulates that every special school to which a delinquent child is sent under this Act shall, in addition to providing housing, maintenance, and educational facilities, provide the kid with facilities for the development of his character and skills, provide him with the required training for his reformation, and undertake any other obligations that are mandated.⁵⁸
5. In addition to non-institutional remedies, delinquent children may be transferred to special schools for a minimum of three years for boys above the age of fourteen, and a minimum of sixteen years for girls. The court may shorten or lengthen the stay, but it cannot be done once the child turns eighteen (for a male) or twenty (for a girl).⁵⁹
6. The Act prohibited the death sentence and imprisonment of child delinquents but where a child aged 14 and above committed an offence of serious and grave nature

⁵⁸ The Children Act, 1969, Inserted by Act No. 15 of 1978, s. 9(3).

⁵⁹ The Children Act, 1960, s. 21(1)(c).

and the Children's court was satisfied that the existing special schools or measures were not suitable, it could order the child to be placed in a place of safe custody and report to the Administrator of Union Territory who would make arrangement for the detention of the child not exceeding the maximum period of imprisonment to which the child could have been sentenced for offence committed.⁶⁰

Even though States modified their Children's Act to align it with the central legislation of 1960, the differential age limit defining a child continued in states which resulted in discrimination. The treatment, duration of stay at special or reformatory homes varied from State to State.⁶¹ In 1974, India announced its first National Policy for Children, which stated that children in need of help, whether they be from delinquent families, socially challenged, forced to beg, or in other situations, would receive education, training, and rehabilitation services in order to help them become contributing members of society.⁶²

The United Nations adopted the Beijing Rules, also known as the UN Standard Minimum Rules for the Administration of Juvenile Justice, as the first international instrument on juvenile justice in 1985. India changed its internal laws and adopted the Beijing rules. In *Sheela Barse v. Union of India*, the Honourable Supreme Court recommended the Government to begin parliamentary legislation to guarantee that all child-related laws are entirely uniform across the country and that no child is ever locked up by the police or placed in jail.⁶³

In response to these two significant occurrences, **the Juvenile Justice Act of 1986**⁶⁴ was passed, governing all of India with the exception of the State of Jammu and Kashmir.

⁶⁰ *Id.*, s. 22.

⁶¹ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 84 (OUP, India, 2004).

⁶² "National Policy for Children", 1974 available at: https://childlineindia.org.in/CP-CRDownloads/national_policy_for_children.pdf (last visited on August 29, 2021).

⁶³ *Sheela Barse & Anr. vs Union of India & Ors* (1986) 3 SCC 632.

⁶⁴ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* 85 (OUP, India, 2004).

The following are the act's key characteristics: -

1. This act created the term juvenile, designating boys as those under sixteen and girls as those under eighteen.
2. The Juvenile Justice Act of 1986 established the Juvenile Welfare Board, whose members must include a minimum of one woman and a chairman chosen by the State Government. Therefore, in accordance with the Criminal Procedure Code of 1973, they will be granted the authority of a Metropolitan Magistrate. This board is concerned with children who have been neglected.
3. Section 5 of the Act requires that Juvenile Courts be established for dealing with delinquent juvenile. The State Government will choose a Principal Magistrate from the pool of Metropolitan Magistrates or Judicial Magistrates of the First Class, as appropriate, who make up the Juvenile Court bench.⁶⁵ The juvenile court shall assist with two social workers possessing qualifications as prescribed and one of them should be women.
4. The measure allowed for the construction of observation homes to house minors while the investigation was ongoing.
5. The Act provides for aftercare facilities.
6. The delinquent juvenile could be sent to special home for a period of not less than three years, in case of boys over fourteen years and in case of girls over sixteen years, in addition to non-institutional measures.⁶⁶ It also empowered the juvenile

⁶⁵ Srivastava, S.P., "Juvenile Justice and Its Justice Delivery System, An Overview of the Policy, Programmes and Problems of Juvenile Justice Administration" 1 *Lucknow University Law Journal* 13-23 (1994).

⁶⁶ The Juvenile Justice Act, 1986, s. 21. *available at*: <https://lawsisto.com/Read-Central-Act/1232/JUVENILE-JUSTICE-ACT-1986> (last visited on September 9, 2021).

courts to reduce or extend the period of stay but not beyond the age of eighteen years in the case of a boy and twenty years in case of a girl.⁶⁷

7. The Act prohibited death sentence and imprisonment of juvenile delinquents but, a juvenile aged fourteen and above found to have committed an offence of serious and grave nature could be ordered to be kept in a place of safe custody not exceeding the maximum period of imprisonment to which the child could have been sentenced for offence committed.⁶⁸

1.1.3. The Juvenile Justice (Care and Protection of Children) Act, 2000

The prior Act of 1986 was repealed, and on April 1, 2001, JJA 2000 went into effect. The preamble to the Act of 2000 includes a statement that shows the purpose of the lawmakers, which was to modify and consolidate the laws that pertain to children who are reported to be in legal difficulty with the law and children who need care and protection. In order to achieve this goal, it is necessary to provide for their fundamental requirements, which include the provision of development, treatment, and social reintegration; to make decisions that are in the children's best interests by adopting a child-friendly perspective; and to provide assistance for their rehabilitation by making use of established institutions, procedures, and bodies.⁶⁹

Some of the main features of the JJA 2000 are as follows: -

1. According to Section 2(k) of the Act of 2000, a person who has not reached the age of eighteen is considered a juvenile. This definition applies to both boys and girls, and it is based on the UNCRC.
2. The Juvenile Justice Board for juveniles in dispute with the law and the Child Welfare Committee for children in need of care and protection are the two distinct

⁶⁷ *Ibid.*

⁶⁸ The Juvenile Justice Act, 1986, s. 22.

⁶⁹ Bajpai G.S., *Juvenile Justice Impact and Implementation in India*35 (Bloomsbury India 2019).

adjudicating bodies mandated by the Act of 2000 to be established in each district. In case a juvenile court was not established for a particular area, the District Magistrate, Sub-divisional Magistrate, Metropolitan Magistrate, or Judicial Magistrate of First Class could exercise the aforementioned powers, according to an earlier 1986 statute.⁷⁰

3. Special Juvenile Police Units were created to deal with issues pertaining to youngsters in particular.
4. In accordance with Section 9(1), the State Government may construct and maintain special homes in any district or group of districts as may be required for the reception and rehabilitation of juveniles in conflict with the law under this Act, either independently or in collaboration with nonprofit organisations. Children Homes should be built to house young people who require protection and care.⁷¹
5. Under this act, observation homes will be built to house juveniles who are allegedly in legal trouble while their cases are pending trial and investigation.
6. In order to lessen stigma, the act was renamed as child friendly, adopting the terms child in need of care and protection, juvenile in conflict with the law, and juvenile justice board, which was before known as juvenile/children's court.
7. The juvenile in violation of the legislation may be placed in a special home for a maximum of three years, though the Board may shorten that term based on the circumstances of the case and the nature of the conduct.⁷²
8. The Act forbade the execution of minors who broke the law or their imprisonment; however, if a minor, 16 years of age or older, was found to have committed a serious

⁷⁰ The Juvenile Justice Act, 1986, s. 7(2).

⁷¹ The Juvenile Justice Act (Care and Protection), 2000, s. 9(1).

⁷² *Id.*, s. 15(g).

and grave offence, the Board could order that the minor be held in a place of safety (arranged by the State Government) for a maximum of three years.⁷³

9. The words brothel, prostitute and prostitution were removed.
10. In accordance with the authority to establish regulations conferred by section 68(1) of the Act of 2000. The Model Rules under the Juvenile Justice (Care and Protection) Act 2000 were notified on October 26, 2007, by the Ministry of Women and Children in New Delhi.

Civil society's persistent observation of the challenges encountered in the correct execution of the JJA 2000 resulted in extensive and significant revisions to the JJA in 2006, resolving numerous legal issues that had been raised in numerous instances before the Supreme Court and the High Court.⁷⁴ In order to address misunderstandings generated in the Arnit Das v. State of Bihar case, the Juvenile Justice Act 2000 was changed in 2006. This amendment made it plain that juvenility will be regarded from the date of commission of offence for those who had not yet reached the age of 18.⁷⁵

According to the Rules, an individual care plan is a thorough development plan created for a juvenile based on the juvenile's history, age, and gender.⁷⁶

1.1.4. The Present Juvenile Justice System in India

Following the gang rape of Delhi girl Nirbhaya on December 16, 2012, social media users spontaneously coordinated rallies against the horrific rape.⁷⁷ The new bill was passed with

⁷³ The Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, s. 16(1), 16(2).

⁷⁴ Ved Kumari, *"Epilogue- New Development" the juvenile justice system in India from welfare to rights* (OUP, India, 2ndedn., 2010).

⁷⁵ [(2000) 5 SCC 488].

⁷⁶ The Juvenile Justice (Care and Protection of Children) Model Rules of 2007, s. 2(h).

⁷⁷ Ved Kumari, *The Juvenile Justice (Care and Protection of Children) Act 2015 Critical Analysis*10 (Universal LexisNexis first edition 2017).

many reforms in the Indian Criminal Law Jurisprudence. The law was passed in the nick of time, but many of its provisions violate the goal of care and protection of children. This was due to the intense debate that preceded it, which focused on its unconstitutionality and violations of international conventions. Additionally, the horrific Nirbhaya case incident, public panic, protests, and the efforts of the victim's parents to force the legislature to pass the legislation. However, the 2013 letter from the National Commission for the Protection of Child Rights (NCPCR) member to the Press Council of India stated that there was no evidence found in the investigation to support the claim that the young person engaged in the Delhi gang rape case was the.⁷⁸

In 2015, the **Juvenile Justice (Care and Protection of Children) Act**, which had been in effect since the year 2000, was repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015.

The Juvenile Justice (Care & Protection of Children) Bill, 2014's Statements of Objects and Reasons relied on data gathered by the National Crime Records Bureau (NCRB) to establish a rise in the number of horrific crimes committed by children in the 16–18 age range, arguing that the Act, 2000 was inadequate to address these children,⁷⁹ but the Parliamentary Standing Committee Report stated that the NCBR data is merely based on the number of juvenile apprehender and not the number of convictions. It makes it rather evident that there are unquestionably less horrific crimes perpetrated by minors between the ages of 16 and 18 than there are in the NCRB data.

⁷⁸ Dhanya Rajendran “*Busting myths being propagated by media about Nirbhaya’s juvenile rapist*” *The News Minute* (18/12/2015) available at: <https://www.thenewsminute.com/news/busting-myths-being-propagated-media-about-nirbhaya-s-juvenile-rapist-36894> (last visited on October 17, 2022).

⁷⁹ The Parliamentary Standing Committee on Human Resource Development, Rajya Sabha, 264th Report on The Juvenile Justice (Care & Protection of Children) Bill, 2014 available at: https://prsindia.org/files/bills_acts/bills_parliament/2014/SC_report-_Juvenile_justice_1.pdf (last visited on October 18, 2022).

The Justice Verma Committee, which was established in 2013 to suggest changes to the Criminal Law, likewise came to the conclusion that 16 should not be the new minimum age for juveniles. Article 15(3) of The Constitution of India is also violated, there are provisions for children that state can make special provisions for women and children which do not protect them in case of any activity done in immaturity.

In addition, it highlighted the issues that arose during the implementation of the Juvenile Justice Act of 2000 (JJA 2000), such as inadequate facilities, the quality of care and rehabilitation, safety measures in families, a rise in the number of incidents of child abuse in institutions, and other challenges that necessitated the review of the 2000 Act.⁸⁰ The Ministry highlighted that the involvement of juveniles in publicized cases as one of the reasons to pass the existing law.⁸¹ The Juvenile Justice Board has the authority to issue orders for juveniles who are in conflict with the law, which may include placing them in a special home for a maximum of three years during which they are reformed and rehabilitated.⁸² There are no evidences and rational reasoning to provide that the complete rehabilitation can be achieved within a period of three years. The duration and extent of rehabilitation depend upon how a person responds to it.

The following are some of the most notable aspects of the Juvenile Justice Act of 2015: -

1. Classification of offence- the offences are classified into three categories that are Petty, Serious and Heinous offences.
2. Juvenile Justice Board- In order to transfer a trial to the Children's Court in cases involving severe offences committed by minors between the ages of 16 and 18, the JJB is required by section 15 of the act to perform a preliminary evaluation.

⁸⁰ Statements of Objects & Reasons to the Juvenile Justice (Care & Protection of Children) Bill, 2014.

⁸¹ Committee on Human Resource Development, Rajya Sabha, The Juvenile Justice (Care and Protection of Children) Bill, 2014 p.12.

⁸² The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 18(1)(g).

3. Time for inquiry- In accordance with section 14 of the act, the investigation must be finished within four months after the child's initial presentation to the JJB. It may be further extended for a maximum of two months if the Board records the reasons in writing. Within three months of the child's initial production date, the preliminary assessment must be completed. For the grounds above, the Chief Judicial Magistrate and Chief Metropolitan Magistrates may award additional extensions of time for the most severe and egregious violations.
4. Special Juvenile Police Unit- (SJPU) must be established in each district and city
5. Child Care Institutions- Under section 47 of the act Observation Home shall be established in every district or group of districts.

Under section 48 the Special Home may be established in every district or group of districts.

Section 49 mandates the establishment of at least one safe haven in each State. According to section 2(46), a place of safety is any place or establishment—not a police lockup or jail—that is set up independently or in conjunction with an observation home or special home, depending on the circumstances, and the person in charge is willing to accept and care for children who are suspected of breaking the law and provide ongoing rehabilitation to them both during the course of the investigation and after they are found guilty.

6. Orders that may be passed- If a child between the ages of 16 and 18 is accused of committing a heinous crime, they may be tried as adults in Children's Court. If found guilty, they will be placed in protective custody until they turn 21 and then either released or sent to an adult jail to serve out their remaining sentence, depending on evaluation. Judges of the Children Courts have the authority to choose the length of stay, according to Section 21 of the JJA 2015, under Sections 19 and 20.

7. Orders that may not be passed- Section 21 states that no kid in legal trouble may be sentenced to death or life in prison without first being given the chance to be released from custody for any kind of offence.
8. Removal of disqualification attached to conviction- Section 24 states that the Children's Court must save the pertinent records of any convictions for children aged 16 to 18 who are deemed to be in conflict with the law.

1.2. STATEMENT OF THE PROBLEM

A child is presumed to be innocent. The nature of crime which he commits reflects the circumstances which prompted him/her to commit such offence. The justice delivery system in every country requires that such child should be reformed through correctional measures which would be provided by the government or nongovernmental institutions in the children care institutions i.e., shelter home, observation home, special homes and place of safety etc. However, juvenile suffers abuses, hunger and lives in unhygienic conditions in these children care institutions. Therefore, sometimes they run away from these homes or turn into more aggressive person, and sometimes the facilities provided under these institutions fails to meet the purpose of rehabilitation. It shows that the purpose for which the Child Care Institutions are established have failed in achieving the objectives. Therefore, in this research the conditions of the 'observation home', where the children who have committed crimes are housed, are analysed and discussed. An endeavour is also made to find out whether these observation homes really provide the rehabilitation and reformation of the juveniles for which the Juvenile Justice Act is enacted.

1.3. REVIEW OF LITERATURE

The purpose of this review is to examine the juvenile justice system in India as well as the way that legislation pertaining to it are being implemented. There are some reviews of earlier research projects in the area of India's juvenile justice system. In order to identify

research gaps, the purpose of this review is to evaluate the present statutory requirements on the age of criminal responsibility of a juvenile in India and their compliance with pertinent constitutional provisions and international standards.

K. M. Banham Bridges (1927)⁸³ has emphasised that every crime is the result of a complicated set of circumstances. Through a number of case studies, the author has demonstrated that each unique situation involved a unique set of factors.

Stephen Schafer and Richard D. Knudten (1970)⁸⁴ began by pointing out that despite the global push for children and adolescents to be treated separately and specifically by juvenile courts, there is still no global consensus on the idea and definition of delinquency and its causes. This is due to the fact that juvenile delinquency is being conceptualised from several perspectives, such as those who favour a legal strategy that focuses primarily on the act rather than the actor.

La Fontaine (1979)⁸⁵ explained that the psychological immaturity of the child is a biological fact but the ways in which this immaturity is understood and made useful is purely a cultural fact.

Robert C. Trojanowicz (1983)⁸⁶ has talked extensively on the combination of elements that pertain to the causes, prevention, treatment and management of juvenile delinquency. The author presents a variety of sociological and psychological ideas with relation to juvenile delinquency and emphasises that the environment of the individual is a crucial factor in crime causation.

⁸³ K. M. Banham Bridges, "Factors Contributing to Juvenile Delinquency" *Journal of Criminal Law & Criminology* (1927).

⁸⁴ Stephen Schafer and Richard D. Kundten, *Juvenile Delinquency: An Introduction* (Random House, New York, 1970).

⁸⁵ La Fontaine, J.S., *Sex and Age as Principles of Social Differentiation* (Academic Press, London, 1979).

⁸⁶ Robert C. Trojanowics, *Juvenile Delinquency Concepts and Control* (Prentice Hall, New Jersey, 3rd ed., 1973).

Dr. N. L. Mitra (1988)⁸⁷ discussed the Juvenile Justice Act of 1986 in great details by going into the rules, practises and treatment of children. The Indian context is used to fully analyse the causes of juvenile misbehaviour and causative phenomena. The rates of juvenile crime were also evaluated in addition to the theoretical methods.

Dr. T. H. Khan (1994)⁸⁸ has extensively explored the start of the legislative process for resolving the issues of neglected and delinquent children and to provide them full justice so that they may be safeguarded and rehabilitated instead of mistreated.

Manu N. Kulkarni (1994)⁸⁹ the author explored since police officers' harsh approach results in the majority of juvenile offenders being imprisoned, the method and grounds of police apprehension have been questioned. In order to safeguard children's rights and their childhood, it has been strongly argued that all parties involved in the juvenile justice system must get training.

M.S. Sabnis (1996)⁹⁰ Since the publication of this book, the juvenile justice laws have been re-enacted. However, the book is essential reading for anyone who wants to better understand the fundamental ideas of juvenile justice. It takes a very philosophical stance and is a harsh critic of the way the government handles the issue of juvenile misbehaviour. Its philosophical consideration of several concepts, such as juvenile justice, juvenile delinquency, corrective treatment, etc., makes it applicable to all future generations.

Sunil Kanta Bhattacharya (2000)⁹¹ has described in detail how the traditional way of life has been impacted by the processes of development, science, industrialization, and

⁸⁷ Dr. N.L. Mitra, *Juvenile Delinquency and Indian Justice System* (Deep & Deep Publications, 1988).

⁸⁸ Dr. T. H. Khan, "Juvenile Justice System in India: An Appraisal" Vol. VII *Central India Law Quarterly* 61-73 (1994) available at: <https://www.scribd.com/document/572885090/Juvenile-Justice-System-in-India-An-Appraisal> (last visited on November, 2021).

⁸⁹ Manu N. Kulkarni, "Justice for 'Delinquents'" 29(26) *Economic and Political Weekly* 1575 (1994) available at: <https://www.jstor.org/stable/4401387> (last visited on August, 2022).

⁹⁰ M.S. Sabnis, *Juvenile Justice and Juvenile Correction: Pride and Prudence* (Somaiya Publications Pvt. Ltd. Bombay, India, 1996).

⁹¹ Sunil Kanta Bhattacharya, *Juvenile Justice: An Indian Scenario* (Regency Publications, New Delhi, 2000).

urbanisation. As a result, social maladjustment and disorganisation have occurred, which has had a negative impact on young children.

According to **Dreze and Sen (2002)**⁹² the states are passing on their failures to the children in order to hide their shortcomings in the areas of social security, health care, and education.

J. P. S. Sirohi (2004)⁹³ has discussed the concept and problem of juvenile delinquency in length. Additionally, he has emphasised the particular features of juvenile courts, such as informal hearings, private hearings, a limited right to counsel, protection from stigma and negative effects of the law, etc.

Swagata Raha (2004)⁹⁴ has provided a detailed description of the legal framework for the treatment of minors when an offence has been established. To put it briefly, the United Nations Convention on the Rights of Children, the Beijing Rules, and the Juvenile Justice (Care and Protection of Children) Act of 2000 all uphold the idea that children should only be dealt with in a manner that is appropriate for their needs, circumstances, and offence. They require support, supervision, care, education, training, counselling, and foster care.

D. P. Chaudhury (2004)⁹⁵ has conducted a critical examination of the Juvenile Justice (Care and Protection of Children) Act, 2000's provisions with the goal of putting the Act's guiding principles into practise. The author has identified some gaps that need to be filled, such as the juvenile justice board members lack of training regarding the bail provision, the police's lack of a time for completing their investigation, and the juvenile justice board's lack of a procedure for gathering information about juvenile's behaviour, social

⁹² Sen A, Drèze J., *India: Development and Participation* (New Delhi, India: Oxford University Press, 2002).

⁹³ J. P. S. Sirohi, *Criminology & Penology* (Allahabad Law Agency, Faridabad 6th edn. 2004).

⁹⁴ Swagata Raha, "Treatment of Juveniles in Conflict with Law: Legal Framework and the Judicial Response" Issue-May, *Criminal Law Journal* 152-157 (2004).

⁹⁵ D.P. Choudhury, "Promoting Co-ordination within the Juvenile Justice System for Effective Implementation of Juvenile Justice Act: Problems and Remedies" Issue- August *The Indian Journal of Criminology & Criminalistics* 225-229 (2004).

status and environment in order to understand their psychology, which has great relevance with the juvenile justice system.

Ved Kumari (2004)⁹⁶ The number of participants from the pioneer status in the field of juvenile justice namely T.N, Bengal and Maharashtra or their statement did not reflect the long history and experience of their status in the field, lawyer's analysis of the Bill despite of high percentage of advocates among the debaters.

Maharukh Adenwala (2006)⁹⁷ The entire topic of juveniles, including their identities and the treatment they get before the Juvenile Justice Board, the definition of a juvenile provides the framework for the discussion. Anybody under the age of eighteen is considered a Juvenile or Child.

Dr. Savita Bhakhry (2006)⁹⁸ In order to comprehend how child rights have evolved in light of global events. Additionally, in its introduction, the author has tried to address the idea of young children and childhood in the Indian setting. It has been extensively debated how the law has taken the child and given it a different recognition.

Chetna Malhotra et.al. (2007)⁹⁹ A qualitative investigation was carried out to find out how much the boys used drugs at the Prayas Observation Home in New Delhi. The study conducted the interview of the staff of the observation home & also selected some boys of the home to participate in the focus group interviews. The study concluded that 60%-70%

⁹⁶ Ved Kumari, *Juvenile Justice System in India- From Welfare to Rights* (Oxford University Press, 2nd ed., 2004).

⁹⁷ Maharukh Adenwala, *Child Protection and Juvenile Justice System for Juveniles in Conflict with Laws* (Childline India Foundation, Mumbai 2006).

⁹⁸ Dr. Savita Bhakhry, *Children in India and their Rights* (National Human Rights Commission, 2006) available at: <https://nhrc.nic.in/sites/default/files/ChildrenRights.pdf> (last visited on June, 2020).

⁹⁹ Chetna Malhotra et.al., "Drug use among Juveniles in conflict with law" 74(4) *Indian Journal of Paediatrics* (2007) available at: <https://link.springer.com/article/10.1007/s12098-007-0059-1> (last visited on April, 2021).

of those boys had addiction to drugs prior to their placement in these homes. Peer pressure was found to be one of the main factors responsible for drug addiction among juveniles.

Rattan Lal and Dhiraj Lal (2007)¹⁰⁰ has discussed the Indian Penal Code, 1860's Section 82 and 83, which govern the punishment of juvenile offenders. On the other hand, children under the age of seven are totally excluded from criminal culpability under Section 82. Since age is deemed to be *doli incapax* and cannot be accommodated in any way, demonstrating that the accused is a minor under the age of seven serves as evidence against the prosecution.

Elizabeth S. Scott and Laurence Steinberg (2008)¹⁰¹ Based on the most recent psychological and neuroscientific knowledge about young people's brains and behaviors, the writers of this book make a meek attempt to propose a new juvenile justice model known as the "developmental model." The term "developmental model" refers to the knowledge that children up to the age of 25 go through specific developmental phases that have an impact on their behavior. The authors have proposed a number of modifications to the juvenile courts' jurisdiction concerning the characteristics and ages of young offenders as part of their push to reform the juvenile justice system.

Don Cipriani (2009)¹⁰² concentrated on the Minimum Age of Criminal Responsibility (MACR), which is the most contentious aspect of juvenile justice. The international standards of MACR are discussed by the author. The author has also discussed the MACR in context of children rights in this book. The book has also discussed in detail the historical impact of Roman laws, European colonial laws, Islamic laws, customary and religious law system on the MACR. The author has also highlighted the difficulties in applying and

¹⁰⁰ Ratan Lal and Dhiraj Lal, *Indian Penal Code, 1860* (Wadhwa & Wadhwa Co. Publisher, New Delhi 30th ed., 2007).

¹⁰¹ Elizabeth S. Scott and L. Steinberg; *Rethinking Juvenile Justice* (Harvard University Press, 2008).

¹⁰² Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Routledge, London, 1st ed., 2009).

putting into practice MACR to support children's rights. One of the dubious parts of the text is its silence on the age of criminal majority.

Nayan Joshi (2009)¹⁰³ The Juvenile Justice (Care and Protection of Children) Act, 2000, and its provisions, such as how to determine a juvenile's age, the trial process, bail, guidelines for rehabilitation, and guidelines for punishment.

A comprehensive study on the deterrent impact of moving young people from juvenile courts to criminal courts is presented by **Richard E. Redding (2008)**¹⁰⁴. They have offered a time series analysis that was carried out by many academics between 1976 and 1993.

Jaap Doek (2009)¹⁰⁵ The Convention on the Rights of the Child is the primary topic of this study, which was produced from a child rights perspective. It draws attention to the rights of adolescents, particularly young offenders, who must have their rights maintained by all juvenile justice system personnel. The author outlines the rights available for children over 12 but under 18 years old, highlighting the Convention's goals and guiding principles and discussing the minimum age of 12 and parental responsibility for actions taken by children under that age. When the youngster is arrested, he must be made aware of his rights.

Donald J Shoemaker's (2010)¹⁰⁶ thoroughly describes and assesses the main juvenile delinquency theories. Theories explored in the book includes explanations of female delinquency as well as biological and psychological causes of juvenile delinquency, differential association, drift theory, labelling theory, and critical theories. By citing

¹⁰³ Nayan Joshi, *Law Relating to Juvenile Justice (Care and Protection of Children) Act, 2000* (Kamal Publishers, New Delhi 2009).

¹⁰⁴ Redding, Richard E., "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" *Juvenile Justice Bulletin* (August, 2008) available at: <https://ssrn.com/abstract=1313229> (last visited on May, 2020).

¹⁰⁵ Jaap Doek, "The UN Convention on the Rights of the Child" Josine Junger-Tas, Frieder Dunkel (eds.), *Reforming Juvenile Justice*(Springer, 2009)available at: <https://link.springer.com/book/10.1007/978-0-387-89295-5>(last visited on August, 2020).

¹⁰⁶ Donald J Shoemaker, *Theories of Delinquency: An Examination of Explanations of Delinquent Behaviour* (OUP USA, 6th ed., 2010).

various international instances of the methods to juvenile delinquency in many jurisdictions, the book helps readers comprehend the theories. Although none of the theories are currently universally recognized, the researcher has concluded from the book that their significance cannot be overstated because they sometimes inform different ways to combating juvenile delinquency.

R. N. Choudhry (2011)¹⁰⁷ Unless it is determined that it is in the kid's best interest not to, every youngster deprived of liberty must be kept apart from adults. Respecting human dignity and treating all children deprived of their freedom with humanity is imperative.

Barry C. Feld and Donna M. Bishop (2011)¹⁰⁸ provides a current compilation of advanced critical studies of the body of information about the causes of delinquency, their implications for justice policy, and advancements made in the juvenile justice system to deter and manage juvenile crime. In the first half of the handbook, which focuses on juvenile crime, trends and patterns in victimization and delinquency are examined, along with the causes of delinquency from the perspectives of social and natural sciences, as well as at the individual, micro-, and macro-social levels, and their implications for the design of a juvenile justice system. The handbook's second half focuses on juvenile justice and covers a variety of topics, such as the juvenile court's historical roots and reimagining, the mental health of young offenders and the aspects of trial competence and culpability, intake, diversion, detention, and juvenile courts, as well as transfer/waiver strategies. It also looks at how the juvenile justice system itself affects delinquency.

Azhar Hameed Qamar (2012)¹⁰⁹ the author notes that after delving a little into the historical factors that contributed to the UN Convention on the Rights of the Child's

¹⁰⁷ R.N. Choudhary, *Law relating to Juvenile Justice in India* (Orient Publishing Company, Allahabad 3rd edn., 2012).

¹⁰⁸ Barry C. Feld and Donna M. Bishop, *The Oxford Handbook of Juvenile Crime and Juvenile Justice* (Oxford University Press, 2011).

¹⁰⁹ Azhar Hameed Qamar, "UN Convention on the Rights of the Child (UNCRC, 1989): A Brief Presentation"3(1) *Mindshare* (2012) available at: <https://www.researchgate.net/publication/32617>

creation, it was unable to reach a consensus on whether childhood starts at conception or at birth. Along with highlighting several significant rights and concepts, the report places special emphasis on what is best for the kid. Although the author acknowledges that the text may not be used exactly as written, he nevertheless praises it as a significant turning point in the evolution of the legal theory that "childhood matters."

Nancy E. Dowd (2013)¹¹⁰ The book addresses several significant subjects, including as the evolution of juvenile justice in America, the role of parents in child interrogation, and the value of education in preventing delinquency. Reports on restorative justice and initiatives to keep young people from becoming delinquent are also covered. It is a useful book for learning about the American juvenile justice system and various delinquency prevention strategies.

Barry C Feld (2013)¹¹¹ The author has gone into great detail about the most recent scientific findings regarding children's brains and behavior. According to the author, children need extra protection because they are not yet old enough to behave appropriately in interrogation institutions. He has also talked about the legality of various interrogation techniques used in America and England.

Saumyata Panwar (2014)¹¹² critically examined the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The author begins by outlining the core principles and goals of the Juvenile Justice (Care and Protection of Children) Act, 2000, as well as the constitutional provisions pertaining to children. These regulations aim to safeguard care-needy children while simultaneously attending to their developmental needs

4160_UN_Convention_on_the_Rights_of_the_Child_A_Brief_Presentation (last visited on July, 2020).

¹¹⁰ Nancy E. Dowd (ed.), *Justice for Kids* (New York University Press, New York, 2013).

¹¹¹ Barry C. Feld, *Kids, Cops and Confessions: Inside the Interrogation Room* (New York University Press, New York, 2013).

¹¹² Saumyata Panwar, "Juvenile Delinquency Laws in India and Emerging Issues" *Lex-Warrier* (Aug. 13, 2014) available at: <https://lex-warrier.in/archives/juvenile-delinquency-laws-india-emerging-issues.html> (last visited on December, 2020).

Ved Kumari (2015)¹¹³ thinks that this kind of system, which connects the seriousness of the crime committed to the child's maturity, undermines the goals of juvenile justice law by allowing the crime to overshadow the child. The current legislature is critically analyzed in the book. The inclusion of a provision of waiver for minors between the ages of 16 and 18 who are accused of committing a serious crime has drawn harsh criticism from the author. The author is upset for good reason—this shift is politically driven and goes against the most recent neuroscientific findings on a child's brain development. It has been praised as a progressive move that section 3 incorporates juvenile justice principles.

Rakshit Shiladitya (2015)¹¹⁴ The juvenile justice system in India does not provide unique treatment for juveniles who commit heinous crimes, according to the author, who also noted that the structure proposed by the 2015 Act shows that the juvenile is as mature as an adult and does not require special treatment. But this is predicated on two false premises: first, that a child's maturity can be accurately determined; and second, that the seriousness of the offence the youngster commits is a measure of his maturity.

Archit Gupta, Susmita Biddala, et.al. (2015)¹¹⁵ A case study evaluating the sociodemographic traits and aggression quotient of kids in legal trouble was conducted in five observation houses spread across three Indian cities: Lucknow, Hyderabad, and Pune. The study concludes that the sociodemographic characteristics like broken homes, addictions to substance use & abuse seem to have an interconnection with Juvenile Delinquency.

¹¹³ Ved Kumari, *Juvenile Justice (Care and Protection of Children) Act, 2015- Critical Analyses* (Universal Law publishing, 1stedn. 2017).

¹¹⁴ Rakshit Shiladitya, “‘Missing the Justice’ in the Juvenile Justice (Care and Protection of Children) Bill, 2014” 8(1) *Law & Policy Brief* 2 (2015) available at: <http://www.jgu.edu.in/public/policypdf/Law-and-PolicyBrief-Aug-2015-Issue-8.pdf>. (last visited on April, 2020).

¹¹⁵ Archit Gupta, Susmita Biddala, et.al., “Sociodemographic characteristics and aggression quotient among children in conflict with the law in India: A case-control study” 28(4) *The National Medical Journal* (July 2015) available at: https://www.researchgate.net/publication/304_938986_Socio-demographic_characteristics_and_aggression_quotient_among_children_in_conflict_with_the_la_w_in_India_A_case-control_study (last visited on April, 2020).

B.B. Pande (2015)¹¹⁶ The Juvenile Justice (Care & Protection of Children) Bill, 2014 has drawn criticism from the author. The author of this piece has extensively examined one of the most contentious aspects of the JJ Bill, namely the classification of minors between the ages of 16 and 18 based on severe offences. For this reason, it merits special attention. The author has come to the conclusion that it is socially and constitutionally unacceptable to classify youngsters as more or less vicious.

John Munice (2015)¹¹⁷ The book gives a clear picture of how the ideas of childhood and adolescence evolve. The book contains chapters on a variety of subjects related to crime and adolescents. The writers began by discussing the extent of juvenile crime and how childhood is a social construct, then moved on to analyze theories of crime and social policies aimed at regulating and controlling juvenile crime. Youth justice tactics that are popular in England and Wales are also included in the book. To learn more about England's and Wales juvenile justice system

The Delhi Commission for Protection of Child Rights commissioned study on children in confrontation with the law in Delhi, which was then handed to **the non-governmental organisation Butterflies (2015)**¹¹⁸. The effectiveness of the structure and system in Delhi's Special Homes and Observation Homes was the main focus of the study. The author listed the elements that encourage kids to become juvenile offenders.

Smita Aggarwal and Nishant Kumar (2016)¹¹⁹ The purpose of this article is to evaluate the recently updated Juvenile Justice Care and Protection Act of 2015 and determine

¹¹⁶ B.B. Pande, "Bad Juveniles and the Worst Juvenile Justice Law? The Second Challenge to Juvenile Justice Law in Darga Ram v. State of Rajasthan" 57(1) *Journal of the Indian Law Institute* 27-47 (2015) available at: <https://www.jstor.org/stable/44782489> (last visited on April, 2020).

¹¹⁷ John Munice, *Youth & Crime* (Sage Publications Ltd, 4thedn. 2015).

¹¹⁸ Delhi Commission for protection of Child Rights, *Why Children commit offences-Study on Children in conflict with law in Delhi* (DCPCR, 2015) available at: <http://www.butterflieschildrights.org/admin/resource/Why%20Children%20Commit%20Offences-DCPCR.pdf> (last visited on April, 2020).

¹¹⁹ Smita Aggarwal and Nishant Kumar, "Juvenile Justice (Care and Protection of Children) Act 2015: A Review" 3 *Space and Culture India* (2016) available at: <https://www.spaceandculture.in/index.php/spaceandculture/article/view/165> (last visited on June, 2020).

whether or not the new measures are broad enough to completely remove the possibility of criminal activity by minors. The review's author came to the conclusion that the statute violates Article 14 of the Indian Constitution since it treats two people accused of the same crime differently and allows the accused to take advantage of these protections.

Scott. H. Decker and Marteache Nerea (2016)¹²⁰ the author stated that the bill was signed into law on January 15, 2016, and it will go into effect immediately. It will take some time to see if the severe language of this bill will alter the perception of the juvenile justice system for juveniles who are in legal trouble among the public, law enforcement, and judges.

Alexandra O. Cohen and Richard J Bonnie et al. (2016)¹²¹ The article discusses the "age of criminal responsibilities," one of the controversial topics in juvenile justice. The topic was covered in light of Supreme Court rulings that are grounded on developmental science, it was from early articles on the subject. It draws attention to the fact that different US states have different criminal responsibility ages. While some have set different ages as the ages of liability, others have not set a minimum age. The writers provide an overview of the latest behavioral and neurological research on cognitive abilities and how it affects laws pertaining to adulthood age.

N. D. Bhoge and S. N. Panse, et.al. (2017)¹²² the study involved the sampling methodology including 50 boys aged between 6-16 years, for knowing the psychiatric disorder among the juveniles. This research has discussed the various studies on psychiatric

¹²⁰ Scott. H. Decker and Marteache Nerea, *International Handbook of Juvenile Justice* (Springer International Publishing 2nd edn., 2016).

¹²¹ Alexandra O. Cohen and Richard J Bonnie et al., "When Does A Juvenile Become An Adult? Implications for Law and Policy" 88(4) *Temple Law Review* (2016) available at: <https://www.templelawreview.org/lawreview/assets/uploads/2016/08/Cohen-et-al-88-Temp.-L.-Rev.-769.pdf> (last visited on June, 2020).

¹²² N. D. Bhoge and S. N. Panse, et.al., "A cross-sectional study of psychiatric morbidity in juvenile boys admitted in an Observation home" 4(1) *International Journal of Advances in Medicine* (2017) available at: <https://www.ijmedicine.com/index.php/ijam/article/view/308> (last visited on July, 2020).

disorder in India and other countries. As a result of the study, it was concluded that out of 50 boys, 44 were having psychiatric disorder.

Sruti (2017)¹²³ the author has criticised juvenile justice system in India. The author has explained about the behaviour of juvenile on the basis of 2 theories i.e., Psychodynamic theory was projected by Sigmund Freud, it states that a child born with animal instinct and ego, ego develops into superego and the juvenile become delinquents and the social learning theory states that a child is born innocent and learns from elders. In each case the major role is played by the surroundings and the society.

Rod K. Brunson and Kashea Pegram (2018)¹²⁴ The elements that influence a police officer's choice to stop, search, and arrest a minor have been covered by the scholars. Inequitably, the police use their discretion, and more Latino and Black teenagers are arrested than white ones. According to the authors, these discriminatory practices are seriously affecting the lives of children from specific racial groups and minorities, resulting in serious harm that will be very challenging to fix. The authors believe that by implementing procedural justice principles and putting a stop to racial biased police, policing can be improved.

Selvi Nithya and P. B. Shankar Narayan (2018)¹²⁵ the researcher stated the district level professional experiences, finds that there is no proper implementation of Integrated Child Protection Scheme (ICPS) due to lack of action plan, proper scheduling, due to the limited

¹²³ Sruti, "A Critical Analysis of Juvenile Justice Act and System in India" *Journal of Political Science & Public Affairs* (2017) available at: <https://www.longdom.org/open-access-pdfs/a-critical-analysis-of-juvenile-justice-act-and-system-in-india-2332-0761-1000296.pdf> (last visited on July, 2020).

¹²⁴ Rod K. Brunson and Kashea Pegram, "Kids Don Not So Much Make Trouble, They Are Trouble" 28(1) *The Future of Children* (Spring 2018) available at: <https://files.eric.ed.gov/fulltext/EJ1179177.pdf> (last visited on September, 2020).

¹²⁵ Selvi Nithya and P. B. Shankar Narayan, "Gaps and Challenges in implementing Juvenile Justice (Care and Protection of Children) Act 2015 – A Critical Analysis" Special issue 7, Vol. 5 *Shanlax International Journal of Arts, Science and Humanities* (2018) available at: https://www.researchgatenet/publication/332441888_GAPS_AND_CHALLENGES_IN_IMPLEMENTING_JUVENILE_JUSTICE_CARE_AND_PROTECTION_OF_CHILDREN_ACT_2015_-_A_CRITICAL_ANALYSIS (last visited on July, 2020).

staff structure and overburdened responsibilities the minimum standards in the Governmental and Non-Governmental organisations are not maintained.

Kumar Askand Pandey (2019)¹²⁶ The author has carefully examined the JJ Act, 2015's provisions, the JJ Model Rules, and numerous court rulings that are pertinent to addressing the problems pertaining to children who are in legal trouble as well as those who require care and protection. The author has placed a lot of stress on juvenile justice while tracing the evolution of the idea of child rights in India. Section 3 of the JJ Act, 2015, which outlines the juvenile justice idea, has been thoroughly explained. It provides a clear picture of how juvenile justice should handle youngsters who are in legal trouble. Understanding how India's juvenile justice system functions is made easier by reading this.

Arvind Ganeshan (2020)¹²⁷ Juvenile Delinquency law was characterised by the feature that they prescribe many acts which are regarded as noncriminal if included by elder person. The extension of the concept of Juvenile Delinquency to wider limit has drawn adverse criticism on the ground that it is neither necessary nor desirable.

Justice Iyer has elaborately discussed jurisprudential aspects of Juvenile Justice.¹²⁸

In *Satish Kumar v. State of A.P.* the accused had not demonstrated that he was younger than eighteen on the day of the occurrence. The Act's provisions did not apply to him. However, because it was acknowledged that the accused was under 21 on the day of the conviction. The Inspector General of Police (Prisons) was instructed by the High Court to

¹²⁶ Kumar Askand Pandey, *Juvenile Justice: A Commentary* (Eastern Book Company, 2019).

¹²⁷ Arvind Ganeshan, Human Rights Watch, *Police Abuse and Killings of Street Children in India* (1 November 1996) available at: <https://www.refworld.org/reference/countryrep/hrw/1996/en/36325> (last visited on October, 2020).

¹²⁸ Iyer, V.R. Krishna, *Jurisprudence of Juvenile Justice: A Preambular Perspectives* (Indian Law Institute, New Delhi, 1994).

evaluate his case and transfer him to Borstal School in accordance with Section 10 of the Borstal Schools Act.¹²⁹

In *Dharambir v. State of NCT Delhi*, a juvenile who turned eighteen on the day the offence occurred would also be eligible to receive benefits under the Juvenile Justice Act.¹³⁰

In *Sanjeet Kumar Gupta v. State of Bihar*, a juvenile's matriculation certificate is a legitimate document used to ascertain their age. The matriculation certificate will help the juvenile.¹³¹

In *Bhoop Ram v. State of Uttar Pradesh*¹³² The SC overturned the sessions judge's decision, ruling that the person was older than the designated age based on medical advice and that it was common for schools, age to be understated by one or two years for future benefits. Since the medical evidence was only an estimate based on physical features and radiological testing, the SC ruled that the real documentary evidence was more compelling than the medical opinion. The court further noted that it was possible for an estimate error to influence the conclusion. It also restated the rule that, in the absence of any evidence raising questions about the entry's authenticity, school credentials should be taken as trustworthy and valid.

1.4. RESEARCH GAPS

1. The review of literature has shown that many of the studies are based upon analysis of legislations, and factors responsible for juvenile delinquency. The study is different from the above-mentioned studies, as it involves the obstacles that cause malfunctioning of Juvenile Justice System in India.

¹²⁹ Satish Kumar v. State of A.P., 2009 Cri LJ 1099.

¹³⁰ Dharambir v. State of NCT Delhi, AIR 2010 SC 1801.

¹³¹ Sanjeet Kumar Gupta v. State of Bihar, 2010 Cri LJ 1255.

¹³² Bhoop Ram v. State of Uttar Pradesh, 1989 (1) SCALE 799.

2. Other studies are based on Statistical data of the National crime records bureau but this study is based on the primary data collected by the researcher.
3. The important setup for apprehended youngsters such as the institutions for inmates and facilities provided to them under these institutions has not been explored in context of rehabilitation.

1.5 SIGNIFICANCE OF THE STUDY

In India the Juvenile Delinquency is one of the most consequential socio-legal issues. The aim of the Juvenile Justice Care and Protection Act, 2015 is to reform and rehabilitate the juvenile offenders. The study's focus has been restricted to the subject of children in conflict with the law, which has been examined from both theoretical and empirical angles. In this venture, the researcher has made an effort to investigate legal jurisprudence in relation to the juvenile justice system, which explores ideas, international practises. The researcher also looked into the issue of over-institutionalization and lack of basic facilities in the State of Haryana and attempted to assess the difficulties encountered in putting juvenile justice laws, particularly the Juvenile Justice Act, 2015, into practise. The study aims to find out the extent of law enforcing agencies involved in protection of 'rights of children' under the juvenile justice system. Furthermore, the study is focused on the implementation of rehabilitation and reformation practices in different districts of the State of Haryana. The analysis of the data collected will help the state authorities to improve the infrastructure and effectively implement the legislation and the model rules.

1.6. OBJECTIVES OF THE STUDY

The objectives of the study are following:

1. To study the historical background of Juvenile Justice System in India.
2. To evaluate international perspective on Juvenile Delinquency.
3. To analyse the Legal framework on Juvenile Delinquency in India.

4. To examine the Institutional set up regarding The Juvenile Justice System in the State of Haryana.
5. To evaluate the different components of the institutional setup for juvenile delinquents by using empirical data in order to identify any discrepancies with reference to the State of Haryana.
6. To give the finding of the study and suggestions to improve the Juvenile Justice System in India.

1.7 HYPOTHESIS OF THE STUDY

Taking into account the objective of the study the research will endeavour on the basis of the hypothesis:

1. That lack of trained officials and well-equipped infrastructure has defeated the objective of the legislation.

1.8 RESEARCH METHODOLOGY

1.8.1 Research Methods

To accomplish the objectives of the study primary as well as secondary data will be taken in consideration and both Doctrinal and Empirical research methodology will be used. To fulfil empirical objectives, primary and secondary data is collected. The researcher emphasis on the available primary sources including international instruments, national instruments, legislations, case laws etc. the study also place considerable reliance on secondary sources.

The Doctrinal part of research includes review of law books, research papers, judgements, magazines, newspapers, governmental and non-governmental reports, statutes, policies, plans, conventions etc. The former makes for in-depth analysis of existing laws on juvenile justice in terms of delinquency and march of law thereafter, as seen in their application and interpretation by a higher judiciary.

The research work involves analysis of case laws, arranging, ordering and systematizing legal proposition and study of legal institutions through legal reasoning.

1.8.2 Sample selection

There is total 22 districts in the State of Haryana and as of now there are only four Observation Homes/ Place of Safety situated at Ambala, Hisar, Faridabad and Karnal. Out of these four districts three Observation Homes/ Place of safety are selected for in depth study. These are Ambala, Hisar and Karnal. For the collection of data three types of respondents have been chosen: Inmates, Staff members and Members of the Juvenile Justice Boards. The purposive sampling method is used to collect data from the State of Haryana.



There are total 276 inmates of the Observation Homes/Place of Safety, 68 staff members of these institutions and 9 members of Juvenile Justice Boards of the three selected

Districts, from Observation Home Ambala total 26 inmates, 17 staff members and 3 members of the JJB are selected, 90 inmates from Observation Home Hisar, 19 staff members and 3 members of the JJB are selected and from Karnal, 160 inmates, 32 staff members and 3 members of the JJB are selected respectively. There are total staff members selected are 17 from Ambala, 19 from Hisar and 32 from the Place of Safety Karnal respectively.

To carry out the research, the researcher got permission to conduct survey from Women and Child Development Department (Haryana). The researcher visited the institution in person and made a direct observation of the institutions.

For the doctrinal research study, the researcher emphasis on the available primary sources including international instruments, national instruments, legislations, case laws etc. the study also place considerable reliance on secondary sources.

1.8.3. Methods of Data Collection

Questionnaire method is adopted for the subject in hand. Pre-structured questions are used. Separate sets of questions were prepared for different categories of respondents. The first category of respondents are the staff of the institutions and second category are the inmates of the Institutional homes. The third category respondents are the Juvenile Justice Board members of the 3 selected districts. The data is collected during September 2021 to November 2022.

The questions include socioeconomic variables, quality of service provided by the institution and performance indicator for officials. The findings of this study can be used to enhance the service and environment of these homes, improve the rehabilitation process of juvenile and elevate the in-homes training and vocational facilities of institutions. Graphs, Charts, Tables have been used to represent the data.

1.9. RESEARCH QUESTIONS

1. Whether the law relating to ‘juvenile in conflict with law’ under Indian Juvenile Justice System is in compliance with The United Nation Standards and norms and all other pertinent International Instruments related to Juvenile Justice?
2. Are the laws adequate and authorities like staff members, counsellors are able to deal with Juvenile Delinquents in India?
3. Are the rehabilitative services provided and reformatory methods adopted by the Observation homes, special homes and place of safety in Haryana effectual enough to reform the Juvenile Delinquents?

1.10. LIMITATIONS OF THE RESEARCH

1. The current research is pertinent throughout India because it is not feasible to conduct this type of study or necessary for a thesis because of a lack of time and resources.
2. The State of Haryana has been the exclusive focus of the research for several of reasons. Since the researcher lives in the state and familiar with its language, culture, social values, and customs.
3. The research is not intended to analyse all the detailed provisions of Juvenile Justice Care and Protection Act, 2015, the research is limited to ‘children in conflict with law’ under the act. The empirical study is limited to the State of Haryana only.

1.11. CHAPTERS SUMMARY

The present study is divided into six chapters:

Chapter- 1 Introduction and Historical Background of Juvenile Justice System: The foundation for this entire research study is laid forth in this chapter, which introduces the subject and elaborates on the study's purpose. This chapter provides a brief overview of the juvenile justice system in India and discusses the historical background of Juvenile

Delinquency in India. The Chapter also describes the study's significance and objectives, as well as its scope, research methods, and chapters plan. This chapter also includes a literature review, in which the researcher has examined books and academic papers and other chosen jurisdictions and has offered helpful points of reference.

Chapter- 2 The International perspectives of Juvenile Justice System: The chapter proposes to present the international instruments of juvenile justice related to juveniles in conflict with law and the age of criminal responsibility. A detailed study of the International Rules is made to find out how far they can be implemented by country like India. The chapter also includes legislative practices concerning juveniles in other countries.

Chapter-3 Children in Conflict with Law and The Legal framework of Juvenile Justice System in India: The chapter aims to briefly describe the organization and structure of juvenile justice system in India, explains the current legal framework of juvenile justice for the Juvenile in conflict with the law and its implementation in India. The nature and scope of adolescent crimes in India are also discussed.

Chapter-4 Juvenile Institutional setup in the State of Haryana concerning children in conflict with law: The chapter deals with the State authorities working under the Juvenile Justice System and juvenile institutional setup in the State of Haryana. Further the chapter briefly discusses the Juvenile Justice Model Rules for juvenile in conflict with law adopted by the State government.

Chapter- 5 Institutionalization and the Child in conflict with law: An Empirical study in the State of Haryana: This chapter presents an empirical investigation based on home visits in the state of Haryana. Many questions are covered in detail in this work, including who the juveniles are housed with, why they are being held there, their educational background, family history, and environmental background, how long they have been in the homes, and the treatments they receive in terms of food, shelter, clothing, medications, sports, education, and training programs. The findings of the study are elucidated in this chapter.

Chapter- 6 Conclusion and Suggestions: The first section of this chapter deals with the conclusions found after conducting the analysis and providing answers to the questions that were attempted to be analysed in accordance with the relevance and study objectives, and the second section of this chapter offers a set of concrete recommendations for improving the efficacy of the system.

CHAPTER- 2

THE INTERNATIONAL PRESPECTIVE OF JUVENILE JUSTICE SYSTEM

2. INTRODUCTION

Each and every individual is endowed with specific rights, including the right to life, freedom, marriage, and other rights. We all possess these rights by nature, and living a life of dignity is impossible without them. These rights, usually referred to as human rights, are crucial since they influence our daily lives.

Particularly in the years following World War II, when it became evident that doing so is crucial for maintaining both peace and security on a global level, the United Nations places a great deal of emphasis on the need to protect fundamental human rights as a means of preserving international peace and security. As a result, the United Nations charter restated support for basic human rights as well as for the value and dignity of every individual. Additionally, it charged the international organisation with advocating and fostering adherence to these fundamental rights and freedoms. The charter makes fundamental freedoms and human rights a significant standard of international law, imposing an obligation on member nations to maintain them.¹

The multiple international instruments that contain universal rights are primarily geared toward people and generally available to everyone, including children. However, as children are unique and require special protection, the rights of children have received special attention at the global level. Because children are tomorrow's citizens and because they are susceptible to all types of abuse and exploitation, there is a strong need to defend their human rights. Children have a very real chance of becoming invisible to the world if

¹ B.N. Tripathi, *Jurisprudence -The Legal Theory* 412 (Allahabad Law Agency, 141th edn., 1999).

proper and enough protection is not provided. However, doing so would expose them to greater abuse, neglect, and exploitation, which we simply cannot afford.

Examining international treaties and conventions is necessary to comprehend the current status of the juvenile justice system in India. The fields of child rights and the prevention of child abuse have benefited greatly from the international instruments and treaties. International law placed a strong emphasis on progress, survival, and protection. The rights of children are acknowledged everywhere. The following are the International Conventions and instruments:

(I) International instruments for the protection of child before 1989

- 1) Declaration of the Rights of Child, 1924 (Human Rights Instrument Specific to the Rights of the Child).
- 2) Universal Declaration of Human Rights, 1948.
- 3) U.N. Declaration of the Rights of the Child, 1959.
- 4) International Covenant on Civil and Political Rights, 1966.
- 5) International Covenant on Economic Social and Cultural Rights, 1966.
- 6) United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules).

(II) International instruments for the protection of child after 1989

- 1) Convention on the Rights of the Child, 1989.
- 2) UN Convention for Prevention of Juvenile Delinquency: The Riyadh Guidelines, 1990.
- 3) UN Rules for the Protection of Juveniles Deprived Of their Liberty: Havana Convention, 1990.

- 4) Guidelines for Action on Children in the Criminal Justice System: Vienna Guidelines, 1997.
- 5) SAARC Convention on Regional Arrangement for Promotion of Child Welfare, 2002.

2.1. INTERNATIONAL INSTRUMENTS FOR PROTECTION OF CHILDREN BEFORE 1989

2.1.1. Declaration of the Rights of Child, 1924 (Human Rights Instrument Specific to the Rights of the Child)²

The **Declaration of the Rights of the Child**, Eglantyne Jebb is the author of the Geneva Convention of the Rights of the Child, which was authorised by the League of Nations in 1924. This document is a worldwide treaty that protects the rights of children. During the year 1959, the United Nations made more advancements to it.³

A five-point declaration on children's rights was approved by the council of the non-governmental organisation known as Save the Children International Union in the year 1923. This proclamation was intended to draw attention to the present state of children all over the world. During the fifth Assembly of the League of Nations, which took place in 1924, the Geneva Declaration was approved. The declaration discussed the well-being of children and recognised their right to development, assistance, relief and protection.⁴

The elementary needs of children were summarised as follows: For a child to develop normally, both financially and spiritually, the mean requirements must be met. It is imperative to provide food to the poor, aid the ill, support the underprivileged, reclaim the

² Dr. V.K. Anand, *Human Rights* 224 (Allahabad Law Agency, Allahabad, 2003).

³ Declaration of the Rights of the Child 1924 *available at*: https://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_the_Child (last visited on November 20, 2021).

⁴ Geneva Declaration of the Rights of the Child, 1924, *available at*: <https://www.humanium.org/en/text-2/> (last visited on November 20, 2021).

offending youth, and provide shelter and care for the orphans and waifs. In times of need, the youngster has to be the first to get assistance. The youngster needs to be shielded from all forms of exploitation and placed in a situation where they can support themselves. The youngster needs to grow up understanding that the purpose of its ability to serve the needs of other people.

2.1.2. Universal Declaration of Human Rights, 1948.

The UN General Assembly approved an expanded version of the text in 1948, and in 1959, a revised declaration for the welfare and protection of children was adopted. But before we discuss the seminal works that the international community did to recognise the needs of children, we should discuss The Convention on the Rights of the Child (1989) and The Declaration of the Rights of the Child (1959). The Universal Declaration of Human Rights (UDHR) is a key document in the history of human rights. The United States General Assembly adopted the Declaration on December 10, 1948, in Paris. It was authored by delegates from diverse legal and cultural backgrounds across the world. For all states and peoples, the Declaration acted as a standard of success.⁵

Article 25(2) states that all children, whether born in or out of wedlock, shall enjoy the same social protection and that motherhood and childhood are entitled to special care and assistance.⁶The family is the natural and fundamental group unit of society and is entitled to protection by society and the State, according to Article 16(3).⁷The right to education is guaranteed under Article 26(1), which also states that elementary education shall be compulsory and education shall be free, at least in the elementary and fundamental stages.⁸

⁵ The Universal Declaration of Human Rights, 1948, *available at*: <https://www.un.org/en/universal-declaration-human-rights/> (last visited on June 6, 2021).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

Although minimalist in its pronouncement on children's rights, the UDHR in three articles creates a solid foundation for child protection in the ensuing years.⁹

Article 16, which deals inadvertently with the rehabilitation and social reintegration of adolescent offenders, is a significant part of this declaration. Unintentionally addressing the rehabilitation and social reintegration of juvenile offenders, Article 16 plays a major role in this declaration. Children will naturally be taken care of if the family is taken care of. All child care programs fail if families are left penniless while the children are cared for. Therefore, protecting parents' human rights is a prerequisite to defending children's rights.¹⁰

2.1.3. Declaration of the Rights of the Child, 1959

In a plenary session that drew representatives from 78 nations, the General Assembly unanimously adopted the Declaration of the Rights of the Child on November 20, 1959. The 1959 Declaration on the Rights of the Child's preamble lists the principal objectives of the text.¹¹

The declaration of the Rights of the Child lays down ten standards:

1. The right to equality, without discrimination based on national origin, race, or religion.
2. The entitlement to extra safeguards for the child's social, mental, and physical development.

⁹ UchéEwelukwa, "The Universal Declaration of Human Rights and The African Child Today: Progress Or Problem?" 25 *American University International Law Review* (2009) available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2312602 (last visited on August, 2021).

¹⁰ Ian Brownlie & Guy S. Goodwin-Gill, *Basic Documents on Human Rights* 23-28 (Oxford the University Press, 5th edition, 2010).

¹¹ The Preamble of the Declaration of the rights of the child, 1959 available at: <https://www.childlineindia.org/pdf/Declaration%20of%20the%20Rights%20of%20the%20Child-1959.pdf> (last visited on March 21, 2021).

3. The entitlement to a nationality and a name.
4. The entitlement to sufficient housing, food, and healthcare.
5. The entitlement to special education and care for children with mental or physical disabilities.
6. The entitlement to empathy and affection from both parents and society.
7. The entitlement to free education and leisure time.
8. The entitlement to be among the first in case of emergency to receive aid.
9. The right to be shielded from abuse, exploitation, and neglect in any form.
10. The right to grow up in an environment that promotes intercultural friendliness, tolerance, understanding, and fraternity.

2.1.4. The International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights was created on December 16, 1966, by General Assembly Resolution 2200A (XXI), which also made it accessible for ratification and accession. That was signed into law on March 23, 1976.

According to Article 6(5) of the Covenant, State Parties are prohibited from enacting legislation that would carry out the execution of a juvenile offender who is younger than eighteen years old for the offence they committed.¹² According to Article 7, the child accused cannot receive cruel or humiliating treatment. Torture or other harsh treatment cannot be used when someone is in custody or detained.¹³ Young offenders will receive therapy appropriate to their age and legal status while being segregated from adults.

¹² The International Covenant on Civil and Political Rights, 1966, Article 6(5). *available at:* <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited on March 21, 2021).

¹³ *Id.*, Article 7 of ICCPR.

According to Article 10, the accused minors must be taken away from adults and brought to court as soon as feasible.¹⁴ According to Article 14(1), everyone is entitled to a minimum set of safeguards in the event that they are accused of a crime. When dealing with juveniles, the procedure must take into account both their age and the necessity of assisting with their rehabilitation.¹⁵

2.1.5. International Covenant on Economic, Social and Cultural Rights, 1966.

Equal protection under the law for all children and their families is guaranteed under the International Covenant on Economic, Social, and Cultural Rights.¹⁶

Additionally, everyone's right to a child's health and growth is acknowledged by the covenant.¹⁷ The right to an education is also acknowledged in the Covenant. Peace on Earth, individual flourishing, and the opportunity for all people to fully engage in a democratic society should be the ends of formal education. Children's schools can be chosen by their parents or legal guardians.¹⁸

2.1.6. United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules).

Under the The Beijing Rules¹⁹ juvenile is defined as a minor who, depending on their country's laws, can face different consequences for a crime than an adult would.²⁰ It calls for the adjudicating authority to carry out procedures in a way that is most beneficial to the

¹⁴ *Id.*, Article 10 of ICCPR.

¹⁵ *Id.*, Article 14(1) of ICCPR.

¹⁶ International Covenant on Economic, Social and Cultural Rights, 1966, Article 10(1) *available at*: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited on April 9, 2021).

¹⁷ *Id.*, Article 12(1).

¹⁸ *Id.*, Article 13(1), (3), (4).

¹⁹ Adopted by UNO General Assembly Resolution 40/33, dated 29.11.1985 cited in *Law Relating to Juvenile Justice in India* by R.N. Choudhry 1235- 1243 (Orient Publishing Company, 3rd edn., 2009).

²⁰ Beijing Rules, 1985, Rule 2.2(a). 12 *available at*: <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (last visited on June 9, 2021).

juvenile and in a setting of mutual understanding that enables the juvenile to engage and express themselves freely.²¹

The Beijing Rules²² are divided into six parts:

- (i) General Principles (Rules 1 to 9);
- (ii) Investigation and prosecution (Rules 10-13);
- (iii) Adjudication and Disposition (Rules 14-22);
- (iv) Non-Industrial Treatment (Rule 23);
- (v) Institutional Treatment (Rules 26-29); and
- (vi) Planning, Research, Formulation, and Evaluation of Policies (Rule 30).

Juvenile justice must be viewed as a vital part of every country's process of national development, functioning within a complete framework of social justice for all juvenile offenders, according to Rule 1.4 under fundamental viewpoints. This strategy will promote the maintenance of social harmony and order while simultaneously protecting youth.²³ The following Standard Minimum Rules, which apply to juvenile offenders, shall be applied impartially and without regard to any factors, including race, colour, sex, language, religion, political opinions, national or social origin, property, birthplace, or any other factor.²⁴ The rules provide guidance to the state that was development of separate and specialized system of the juvenile justice system.²⁵ For the purposes of these Rules, Member States shall apply the following definitions under Rule 2.2, in conformity with

²¹ *Id.*, Rule 14.2.

²² Beijing Rules, 1985 *available at*: <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (last visited on June 12, 2021).

²³ *Id.*, Rule 1.4.

²⁴ *Id.*, Rule 2.1.

²⁵ Suman Nalwa and Hari Dev Kohli, *Commentary on The Juvenile Justice Act 1159* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2011).

their own legal systems and conceptions, as per the corresponding legal frameworks, a minor.²⁶

- a) A minor who might receive different treatment for a crime than an adult;
- b) Any action (act or omission) that violates the laws of the separate legal systems is considered an offence; and
- c) A child or person who has been found guilty of an offence or who is being suspected of committing an offence is considered a juvenile offender.

Rule 3.1 further expands the set of rules. The pertinent provisions of the Rules shall apply to juveniles who may be prosecuted for any particular activity that would not be penalised if committed by an adult as well as juvenile offenders.²⁷ The most recent neuroscience research on emerging adults' brains has been cited as adequate justification for expanding juvenile courts' jurisdiction to include emerging adults.²⁸

In legal systems that acknowledge it, the age at which juveniles become legally responsible for crimes shouldn't be set too young, considering their level of emotional, mental, and intellectual development. The juvenile justice system has two basic objectives: to ensure that responses are always suitable for the offence and the circumstances of the juvenile offenders; and to prioritise the welfare of juvenile offenders.²⁹

According to Rule 6, the body in charge of the juvenile offenders must be held accountable for all aspects of the juvenile justice system, including the investigation, prosecution, adjudication, and disposition follow-up.³⁰ Rights of Juveniles, Rule 7 gives the fair trial principle. It declares that basic procedural rights such as the presumption of innocence, the

²⁶ *Id.*, Rule 2.2.

²⁷ *Id.*, Rule 3.1.

²⁸ Elizabeth S. Scott and L. Steinberg, *Rethinking Juvenile Justice* (Harvard University Press, 2008).

²⁹ *Id.*, Rule 5.1.

³⁰ *Id.*, 1985, Rule 6.

right to know the charges against oneself, the right to counsel, the right to remain silent, the right to have one's parent or guardian present, the right to cross-examine and question witnesses, and the right to appeal to a higher authority must be respected at every stage of the legal process. The juvenile's right to privacy must always be maintained in order to shield them from harm caused by excessive publicity or the branding process.³¹ In order to prevent harm from being done to the juvenile by excessive publicity or the labelling process, the juvenile's right to privacy must be respected at all times.³² In conceptual terms, no material that could be used to identify a Juvenile offender is allowed to be released.³³

1. Initial Contact- According to Rule 10, if a minor is apprehended, their parents or legal guardian must be notified as soon as practicable, or as soon as possible if that notice cannot be made immediately. A court or other suitable individual or body must evaluate the release issue right away. Interactions between law enforcement and a juvenile offender must be managed to respect the child's legal status, advance their welfare, and avert harm, taking into account the particulars of each case as needed.³⁴
2. Diversion- Rule 11 states that the authorised authorities must consider the possibility of managing juvenile offenders without a formal trial where appropriate. Upon application, a competent authority will review the decision to refer a matter. Any diversion that entails a referral to a suitable community program or other programs requires the approval of the juvenile, her or his parents, or guardian. In an effort to facilitate the discretionary resolution of juvenile cases, community programs including victim compensation, restitution, and interim monitoring and

³¹ *Id.*, Rule 7.

³² *Id.*, Rule 8.1.

³³ *Id.*, Rule 8.2.

³⁴ *Id.*, Rule 10.

mentoring shall be offered.³⁵ Purposefully, this has been included to prevent the juvenile criminal from being stigmatized and imprisoned. An authority with greater competence will, however, assess the diversion. This will in fact stop frauds like kids for cash and the capricious use of discretion.³⁶

3. Specialization within the Police- Rule 12 states that police personnel who deal with minors on a regular or exclusive basis, or who work primarily to prevent juvenile criminality, must undergo specific training and teaching. Major cities should establish specialised police units as a result.³⁷
4. Detention Pending Trial- Detention before trial should only be used as a last resort and for the shortest period of time possible, according to Rule 13. Adolescents held pending trial shall be entitled to all the rights and protections under the United Nations Standard Minimum norm for the treatment of Prisoners. Considering their age, sex, and personality, juveniles in detention are entitled to all the care, protection, and individual support they may require. This assistance includes social, educational, vocational, psychological, medical, and physical needs.³⁸
5. Competent Authority to Adjudicate- Rule 14 states that the proper authority (court, tribunal, board, council, etc.) will conduct a juvenile offender's case in compliance with the fair and just trial criteria if it hasn't been redirected. The juvenile will be able to engage in the procedures and freely express themselves if they are conducted in an environment of understanding and in the juvenile's best interests.³⁹

³⁵ *Id.*, Rule 11.

³⁶ Alida V. Merlo and Peter J. Benekos et al., *The Juvenile Justice System: Delinquency, Processing, and the Law* 118 (Pearson, 8th edn., 2016).

³⁷ *Id.*, Rule 12.

³⁸ *Id.*, Rule 13.

³⁹ *Id.*, Rule 14.

6. Legal Counsel, Parents and Guardians- Rule 15.1 provides that during the legal proceedings, the minor is entitled to legal representation by a counsel or, if available in their country, to ask for free legal aid.⁴⁰

Under Social Inquiry Reports Rule 16.1, the juvenile's background and circumstances, or the circumstances surrounding the offence, must be thoroughly explored before the competent authority makes a final decision prior to sentencing, with the exception of cases involving minor infractions. This will facilitate the case processing procedure and provide the competent authority with the information they need to make an informed conclusion.⁴¹

7. Guiding principles in adjudication and disposition- Under Rule 17.1 the following principles will guide the competent authority's decision-making:⁴²
- a) Reactions should always be commensurate with the offense's circumstances and intensity, as well as with the requirements of the juvenile and society at large;
 - b) Any limitations on the minor's personal freedom must be used sparingly and with caution; and
 - c) A juvenile's personal liberty cannot be revoked unless it is determined that they have repeatedly committed additional significant offences or committed a serious act involving violence against another person, and there is no other suitable course of action;
 - d) The juvenile's wellbeing must come first when assessing their circumstances.

Rule 17.2: No offence committed by a minor is subject to the death penalty.⁴³

⁴⁰ *Id.*, Rule 15.1.

⁴¹ *Id.*, Rule 16.1.

⁴² *Id.*, Rule 17.1.

⁴³ *Id.*, Rule 17.2.

8. Various disposition measures- Rule 18.1 Numerous disposition processes that allow for flexibility and, to the greatest degree possible, prevent institutionalisation will be available to the responsible authority. Orders for care, guidance, and supervision; probation; community service; fines, damages, and restitution; intermediate treatment and other treatment orders; group counselling and related activity orders; orders pertaining to foster care, living communities, or other educational settings are some of these actions, some of which can be combined.⁴⁴

Rule 19.1, which states that institutional treatment should be the final option, calls for the least amount of institutionalisation.⁴⁵ Rule 20.1: To prevent needless delay: Every matter needs to be handled right away, without any holding up.⁴⁶

Records pertaining to juvenile offenders must be kept totally confidential and unreadable by other parties. These materials will only be accessible to individuals who are directly involved in the case's resolution or to other parties who are allowed by law.⁴⁷ Rule 21.2 states that when the same criminal is involved in multiple cases, the records of juvenile offenders cannot be used in adult proceedings. To exhibit the much-needed professionalism and training, juvenile justice staff members must reflect the diversity of teenagers who engage with the juvenile justice system.⁴⁸ Ensuring equitable representation of women and minorities in juvenile justice organisations will be a priority.⁴⁹ To ensure that the dispositional instructions issued by the appropriate adjudicatory authorities are implemented effectively.⁵⁰ As stated in Rule 14(1) above, the competent authority may designate another authority or, in accordance with Rule 23.1, it may decide to enact the necessary measures for its

⁴⁴ *Id.*, Rule 18.1.

⁴⁵ *Id.*, Rules 19.1.

⁴⁶ *Id.*, Rules 20.1.

⁴⁷ *Id.*, Rules 21.1.

⁴⁸ *Id.*, Rules 21.2.

⁴⁹ *Id.*, Rules 22.2.

⁵⁰ *Id.*, Rules 23.

own implementation.⁵¹ According to Rule 23.2, it is necessary to include provisions that give the appropriate authority the authority to modify the instructions whenever they see fit, provided that the modifications are made in accordance with the guiding principles outlined in these Rules.⁵² The states ought to endeavour to furnish juveniles at every phase of the proceedings with essential support, including housing, schooling or career guidance, jobs, or any other useful and feasible aid, to expedite the healing process. Children require assistance,⁵³ For the juvenile to be successfully supported in a community setting and, to the maximum extent possible, inside the family unit, help for their rehabilitation needs to come from volunteers, nonprofits, neighbourhood organisations, and other community resources.⁵⁴

9. Objectives of institutional treatment- Rule 26.1 delineates the objectives of training and treatment programs for adolescents institutionalised, which encompass the provision of care, protection, education, and vocational skills.⁵⁵ Rule 26.2 offers adolescents living in institutions care, protection, and all necessary support—social, educational, vocational, psychological, medical, and physical. This support is important due to the juveniles' age, sex, and personality, as well as for their overall well-being.⁵⁶ Children jailed in institutions are required by Rule 26.3 to be kept separately from adults and to be housed in an institution or a separate component of an institution.⁵⁷

According to Rule 26.4, young female offenders who are placed in an institution should get special consideration for their individual needs and issues. They will

⁵¹ *Id.*, Rules 23.1.

⁵² *Id.*, Rules 23.2.

⁵³ *Id.*, Rules 24.1.

⁵⁴ *Id.*, Rules 25.1.

⁵⁵ *Id.*, Rules 26.1.

⁵⁶ *Id.*, Rules 26.2.

⁵⁷ *Id.*, Rules 26.3.

never receive any less care, attention, safety, support, or training than young male offenders. We'll see to it that they receive just treatment.⁵⁸ Parents or guardians have access rights for the purpose of ensuring the wellbeing of their institutionalised juvenile, as per Rule 26.5.⁵⁹ In order to guarantee that juveniles who are institutionalised obtain suitable academic or, when applicable, vocational training and do not leave the institution having undergone a disadvantageous educational experience, Rule 26.6 encourages interministerial and interdepartmental cooperation.⁶⁰

10. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations- The Standard Minimum Rules for the treatment of Prisoners and related guidelines shall apply to the treatment of juvenile offenders in institutions, including those who are imprisoned pending trial.⁶¹ In order to meet the different needs of teenagers that are specific to their age, sex, and personality, efforts will be made, to the maximum extent possible, to put the relevant principles in the Standard Minimum Rules for the Treatment of Prisoners into reality.⁶²
11. Frequent and early recourse to conditional release- When someone is granted conditional release from an institution, the appropriate authority should make use of it as soon as is practical.⁶³ Juveniles who are conditionally released from an institution need the full support of the community in addition to help and oversight from the appropriate authorities.⁶⁴ Establishing semi-institutional environments that can aid in young people's reintegration into society, such as halfway homes,

⁵⁸ *Id.*, Rules 26.4.

⁵⁹ *Id.*, Rules 26.5.

⁶⁰ *Id.*, Rule 26.6.

⁶¹ *Id.*, Rule 27.1.

⁶² *Id.*, Rule 27.2.

⁶³ *Id.*, Rule 28.1.

⁶⁴ *Id.*, Rule 28.2.

- educational homes, day training centres, and other appropriately constructed spaces, will be a top focus.⁶⁵
12. Research as a basis for planning, policy formulation and evaluation- Rule 30.1 stipulates that in order to facilitate effective planning and policy formation, it is necessary to organise and promote the relevant research.⁶⁶ Apart from the distinct needs of young people detained, there is a need to consistently research and assess the patterns, problems, and origins of youth criminality and delinquency.⁶⁷ As required by Rule 30.3, steps must be done to establish a consistent framework for evaluative research that is integrated into the juvenile justice administration system. Relevant data and information must also be gathered and assessed in order to properly analyse the situation and inform future administration reform and development.⁶⁸ One essential element of national development initiatives must be the meticulous planning and execution of services related to the administration of juvenile justice.⁶⁹
13. The United Nations Convention on the Rights of the Child (1989)- The United Nations Convention on the Rights of the Child, or UNCRC for short, outlines the civil, political, economic, social, health, and cultural rights of children. Any individual under the age of eighteen is considered a child under the Convention (CRC), unless their nation's laws designate an earlier age of majority.⁷⁰ The Convention was adopted and made available for signature by the UN General Assembly on November 20, 1989, which also happened to be the Declaration of

⁶⁵ *Id.*, Rule 29.1.

⁶⁶ *Id.*, Rule 30.1.

⁶⁷ *Id.*, Rule 30.2.

⁶⁸ *Id.*, Rule 30.3.

⁶⁹ *Id.*, Rule 30.4.

⁷⁰ Office of the High Commissioner for Human Rights, "Convention on the Rights of the Child" available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last visited on January 2021).

the Rights of the Child's 30th anniversary.⁷¹ After the requisite number of countries approved it, it became effective on September 2, 1990. At the moment, 196 nations have signed it.⁷²

According to Article 1, a child is defined as any anyone under the age of eighteen for the purposes of this Convention, unless their legal system indicates that they acquire majority earlier.⁷³

Article 3 states that any decision concerning children, whether it is made by public or private social welfare institutions, courts of law, administrative agencies, or legislative bodies, must always prioritise the best interests of the child.⁷⁴ States Parties agree to take all necessary legislative and administrative measures to protect and care for the child in a way that is essential to their wellbeing, taking into account the rights and responsibilities of the child's parents, legal guardians, and other parties with parental responsibility.⁷⁵ The state parties guarantee that the establishments, services, and facilities in charge of the upbringing or safeguarding of minors adhere to the guidelines set forth by competent authorities. This includes paying particular attention to matters of health and safety, staffing levels and suitability, and competent oversight.⁷⁶

Article 12(2) states that the child, in particular, should have the right to a hearing in any judicial or administrative processes that impact them, either directly or through a representative or other appropriate authority, and in a way that complies with the procedural rule of the national law.⁷⁷ According to Article 20(1), a child who is taken from their

⁷¹ United Nations General Assembly Session 44, *Resolution 25. Convention on the Rights of the Child A/RES/44/25* (20 November 1989).

⁷² United Nations Treaty Collection. *Convention on the Rights of the Child Archived* (September 2, 1990) available at: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800007fe> (last visited on February, 2021).

⁷³ Convention on the Rights of the Child 1989, Article 1.

⁷⁴ *Id.*, Article 3(1).

⁷⁵ *Id.*, Article 3(2).

⁷⁶ *Id.*, Article 3(3).

⁷⁷ *Id.*, Article 3(3).

familial setting, either permanently or temporarily, or who is judged to be too fragile to stay there, is entitled to special protection and assistance from the State.⁷⁸ By virtue of Article 20(2), States Parties are obliged to provide such a child with alternative care that complies with their domestic legal frameworks. Some examples of this kind of care include adoption, foster placement, the kafalah mandated by Islamic law, and, if necessary, placement in suitable daycare centres. When devising solutions, it is crucial to consider a child's ethnic, religious, cultural, and linguistic background in addition to the necessity of maintaining continuity in their development.⁷⁹

By virtue of Article 20(2), States Parties are obliged to provide such a child with alternative care that complies with their domestic legal frameworks. Some examples of this kind of care include adoption, foster placement, the kafalah mandated by Islamic law, and, if necessary, placement in suitable daycare centres.⁸⁰ When devising solutions, it's critical to consider a child's ethnic, religious, cultural, and linguistic background in addition to the necessity of maintaining continuity in their upbringing so that their freedom isn't taken away from them in an unjust or arbitrary way.⁸¹ A minor can only be legally detained, arrested, or imprisoned as a last resort and for the shortest period of time that is reasonable. Children who are robbed of their liberty must be treated not only with kindness and respect for the inherent dignity of every human being, but also with.⁸²

Every kid who is denied their own freedom has the right to prompt access to legal counsel and other necessary assistance. They are also entitled to a fast judgement regarding any action they take, including the right to contest the legality of the takeover in court or before another capable, impartial, and independent body.⁸³

⁷⁸ *Id.*, Article 20(1)

⁷⁹ *Id.*, Article 20(2).

⁸⁰ *Id.*, Article 37 (a).

⁸¹ *Id.*, Article 37(b).

⁸² *Id.*, Article 37(c).

⁸³ *Id.*, Article 37(d).

The States Parties recognise that any child who is accused of breaking the law has the right to be treated in a way that upholds their sense of worth and dignity, reinforces their respect for others' human rights and fundamental freedoms, takes into account their age, and helps them assume constructive roles.⁸⁴ Additionally, no child shall be charged with violating the penal code for actions or inactions that at the time of the offence were not forbidden by local, state, federal, or international law.⁸⁵ The concept of innocence established in Article 40(2)(b)(i). The accused person must be informed of the charges against them as soon as feasible through their parents or legal guardians in accordance with the principle of a reasonable opportunity to be heard. They must also get any necessary legal or other support in order to prepare and present their defence.⁸⁶ A competent, independent, and impartial authority or judicial body shall promptly decide whether or not the accused child's case is in the best interests of the child, taking into account the child's age, circumstances, parents, or legal guardians. The accused child shall also have the right to a fair hearing conducted in accordance with the law, with legal representation or other appropriate assistance, and prompt decision-making.⁸⁷

At the time of the offence, no accused child may be forced to testify against themselves or be forbidden by national or international law.⁸⁸ A guilty accused child has the right, before a higher responsible body, to appeal or rescind the subordinate authority's decision.⁸⁹

There must be a range of alternatives to institutional care available, including care, guidance and supervision orders, counselling, probation, foster care, education, and vocational training programs, to ensure that children receive treatment that is both appropriate for their well-being and in line with the offence.⁹⁰

⁸⁴ *Id.*, Article 40(1).

⁸⁵ *Id.*, Article 40(2)(a).

⁸⁶ *Id.*, Article 40(2)(b)(ii).

⁸⁷ *Id.*, Article 40(2)(b)(iii).

⁸⁸ *Id.*, Article 40(2)(b)(iv).

⁸⁹ *Id.*, Article 40(2)(b)(v).

⁹⁰ *Id.*, Article 40(4).

2.2. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF CHILD AFTER 1989

2.2.1. The United Nations Convention on the Rights of the Child, 1989⁹¹

The Declaration of the Rights of the Child, 1924, also known as the Geneva Declaration, was formulated by the "Save the Children International Union," a non-governmental organization founded by Eglantyne Jebb⁹² and serves as the foundation for the Convention on the Rights of the Child, 1989 (henceforth CRC). In 1924, the League of Nations accepted it.⁹³ The purpose of the declaration's adoption was to address the post-World War I needs of children. "Mankind owes the child the best that it has to offer," according to this assertion. The Declaration also contained the following significant points.⁹⁴

1. The child must be provided with the resources necessary for its normal development, both materially and spiritually.
2. The hungry child must be fed; the sick child must be nursed; the backward child must be assisted; the delinquent child must be reclaimed; the orphan and the waif must be sheltered and succoured.
3. The child must be the first to receive assistance in times of need.
4. The child must be placed in a position to earn a living and must be shielded from all forms of exploitation.
5. The child must be raised with the understanding that its abilities must be devoted to the service of other people.

⁹¹ The United Nations Convention on the Rights of the Child, 1989 *available at*:<https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-rights-child> (last visited on August, 2020).

⁹² The Save the Children Organization was founded by the English social reformer Eglantyne Jebb.

⁹³ Kumar Askand Pandey, *Juvenile Justice: A Commentary 1*(Eastern Book Company, 2019)

⁹⁴ Geneva Declaration of the Rights of the Child, 1924 *available at*: <http://www.un-documents.net/gdrc 1924.html> (last visited on August, 2020).

The declaration, which was universalistic, emphasized that everyone should always try to do what is best for the young children. The UN first formally recognized children's rights in 1959 when it adopted a more comprehensive version of the Geneva Declaration as the Declaration of the Rights of Child, 1959 (henceforth referred to as the UNDRC, 1959). This signified a change in strategy toward the children from a "purely welfare" approach to a "blended rights-cum-welfare" one. This declaration of ten principles declares:

A child can have a happy childhood and benefit from the rights and freedoms outlined in the Declaration for both his own and societal benefit. It calls on parents, men and women individually, as well as on nonprofit organizations, local governments, and the national government to acknowledge these rights and work toward their enforcement through progressive legislation and other safeguards.

In remembrance of the UNDCR's twentieth anniversary in 1959, 1979 was designated as the "International Year of the Child." Poland suggested an international child rights treaty that would be legally binding, while the previous one was merely declarative. A draft of the Convention on the Rights of the Child was to be prepared by the Commission on Human Rights. In an effort to reach "Target 1989," the Working Group delivered a draft in 1988 following a lengthy meeting and period of work. The Western bloc objected to the first draft, which was based on the Polish model that was presented to the Commission on Human Rights in 1979, since it was thought to place more emphasis on social, economic, and cultural rights than on civil and political rights. The final draft was a more comprehensive version that took into account all ideologies. Additionally, the drafters added legal validity to the idea of a totality of rights as outlined in the Universal Declaration of Human Rights in addition to the principles of the 1959 Declaration of the Rights of the Child by integrating so many of the child's specified basic rights.⁹⁵ In 1989, the UN finally ratified the Convention.

⁹⁵ Cynthia Price Cohen, "United Nations: Convention on the Rights of the Child" 28(6) *International Legal Materials* (November 1989) available at: <https://www.jstor.org/stable/20693385> (last visited on July, 2020).

Numerous rights are also safeguarded by various international agreements and declarations. Some nations even objected to the new convention's exclusive application to minors, arguing that earlier international agreements already guaranteed these rights. Following the adoption of the CRC, certain universal rights were specifically extended to children. Juvenile justice standards, the relationship between the child, family, and state, the child's right to privacy, and the extent to which other civil and political rights belong to children⁹⁶ are some of the problems that were given more attention under the CRC. The best interests of the child⁹⁷ theory will guide the application of the entire Convention.

A comprehensive multinational agreement including several philosophies regarding the political, civil, social, economic, and cultural rights of children, the UN Convention on the Rights of the Child was established in 1989. With guidelines to safeguard all children's rights and to make sure that the child's best interests are the first consideration in all decisions, the Convention has granted children legal standing on an international scale.⁹⁸ The United Nations Children's Fund, or UNICEF, has praised the Convention as the most comprehensive declaration of children's rights till date.⁹⁹ The United States of America opposes the CRC on two grounds: parental authority would be compromised and national and state sovereignty would be jeopardized.¹⁰⁰ The Convention covers a variety of rights and concepts that are most appropriate for children and can be broadly divided into four categories: participative, developmental, protective, and survival. These guidelines are applicable to all kids, regardless of their situation, and many of them are especially relevant to kids who are in legal difficulties.¹⁰¹ The UN Committee on the Rights of the Child was

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ UN Convention on the Rights of the Child, 1989, art. 3.

⁹⁹ Arabella Lang, "UN Convention on the Rights of the Child: A Brief Guide" Briefing Paper Number 7721 *House of Commons Library* (29 November 2016) available at: <https://researchbriefings.files.parliament.uk/documents/CBP-7721/CBP-7721.pdf> (last visited on September, 2020).

¹⁰⁰ Jenni Gainborough and Elisabeth Lean, "Convention on the Rights of the Child and Juvenile Justice" 7(1) *The Link* (2008) available at: <https://files.eric.ed.gov/fulltext/ED504480.pdf> (last visited on September, 2020).

¹⁰¹ *Ibid.*

created to make sure that the countries that have ratified the CRC are appropriately adhering to and implementing it. Although the humanistic Convention has been widely praised and has a strong oversight structure, no international agreement should be viewed as a cure-all for all the problems that affect children.¹⁰²

The Preamble to the CRC emphasizes the significance of certain pertinent clauses found in various international agreements, especially the Declaration of the Rights of the Child, 1959, which states that a child requires special protections and care, including suitable legal protection, both before and after birth due to his physical and mental immaturity.¹⁰³ According to the Convention, a child is any anyone under the age of eighteen, unless the majority is reached earlier under the prevailing legislation.¹⁰⁴

The Convention also stated that states are prohibited from discriminating against children based on their parents or legal guardians' race, color, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth, or other status. Additionally, children are protected from all forms of punishment or bias based on their status, activities, or expressed opinions.¹⁰⁵ Every choice pertaining to the child must be made with the idea that the child's best interests should come first.¹⁰⁶

The two most significant articles of the Convention that have a direct bearing on juvenile justice idea are 37 and 40. The juvenile justice systems of the various countries hold in high regard the values, rights, and safeguards outlined in these two parts. Additionally, they have reaffirmed several protections and rights that were originally included in the Beijing Rules. Both Articles, in contrast to the Beijing Rules, are obligatory for the signing

¹⁰² Michael Jupp, "The UN Convention on the Rights of the Child: An Opportunity for Advocates" 12(1) *Human Rights Quarterly* (February 1990) available at: <https://www.jstor.org/stable/76217> (last visited on September, 2020).

¹⁰³ Preamble to the Convention on the Rights of the Child, 1989 available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last visited on October, 2020).

¹⁰⁴ Convention on the Rights of the Child, 1989, art. 1.

¹⁰⁵ *Id.*, art. 2.

¹⁰⁶ *Id.*, art. 3.

countries. The child's immaturity and young age must be taken into consideration. Physical torture and other cruel, inhuman, or humiliating punishment or treatment have been outlawed in absolute terms, regardless of the offense committed or the age of the child. It prohibits the death penalty and life in prison without the prospect of parole, but it is silent on the maximum sentence that a child may receive. The article obviously relies on the idea that youngsters are impressionable and can be reformed.¹⁰⁷

Specifically, any kid who is deprived of their freedom must be kept apart from adults until it is deemed to be in their best interests. They also have the right to stay in touch with their family through visits and communication, unless there are special circumstances.¹⁰⁸

Delinquent offenders, whether convicted or accused, must receive treatment that upholds their fundamental freedoms and human rights. The child must be treated in a way that is child-friendly, taking into account their age, with the goal of facilitating their reintegration into society so they may contribute positively. Status offenders are granted protection, and no one should be considered a delinquent unless they have broken the applicable penal code at the time of the offense.¹⁰⁹

2.2.2. The United Nations Guidelines for the Prevention of Juvenile Delinquency, The Riyadh Guidelines 1990

A conference on the United Nations Guidelines for the Prevention of Juvenile Delinquency, often known as the Riyadh Guidelines, was held at the Arab Security Studies and Training Centre in Riyadh. As such, it is referred to as the Riyadh Guidelines. The United Nations General Assembly recognised and proclaimed it in 1990.¹¹⁰ It was stated that the Juvenile

¹⁰⁷ *Id.*, art. 37.

¹⁰⁸ *Id.*, art. 37(c)

¹⁰⁹ *Id.*, art. 40.

¹¹⁰ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines): Resolution 45/112 of 14 December 1990, *available at*: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh> (last visited on January 2, 2022).

Delinquency prevention is crucial part of crime prevention in the society. It comprises 66th core principles, including the following: a child-centred approach should be taken, and all members of society must work together to ensure that adolescents develop harmoniously and that their personalities are respected and fostered from an early age in order to successfully prevent juvenile delinquency. They ought not to be viewed as merely tools for control or socialisation.¹¹¹ The guidelines primarily concentrate on early protection and preventive intervention, giving special consideration to situations involving social risk. The guidelines prioritise early protection and preventive intervention, with a particular focus on social risk circumstances. A qualified authority defines social risks as children who, because of their circumstances and situations, plainly pose a risk to their health, safety, and education and require non-punitive actions.¹¹²

Young people can develop non-criminogenic attitudes by participating in legal, socially beneficial activities and embracing a humanistic perspective on life and society.¹¹³ The guidelines state that for juvenile delinquency to be successfully prevented, society as a whole must work to guarantee that adolescents develop harmoniously and that their personalities are respected and fostered from an early age.¹¹⁴ In order to reduce crime in society, the essential principles advocate for a child-centered approach that concentrates on preventing juvenile delinquency. The guiding idea of the guidelines is that preventing juvenile delinquency calls for a child-centered approach because it helps reduce crime in society. Preventive mechanisms should be in place at all levels of the child's interaction with the external world in a coordinated and interdisciplinary manner. The prevention of juvenile delinquency depends heavily on the family, the community, educational

¹¹¹ *Ibid.*

¹¹² Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* (Oxford University Press, 3rdedn., 2017).

¹¹³ Rule 1. of Fundamental Principles, Riyadh Guidelines, *available at*: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh> (last visited on January 2, 2022).

¹¹⁴ *Id.*, Rule 2.

institutions, and the mass media working together to socialise the child effectively. The recommendations also emphasise the requirement of community-based programs, the government's implementation of policies and initiatives that are in the best interests of the child, and the idea that institutionalisation of children should only be used as a last resort. In order to prevent juvenile delinquency, the government should also implement child-friendly legislation for the administration of juvenile justice and conduct research to influence policies related to children and their development. These are suggestions that nations might implement to advance children's rights and establish a safeguarding.

2.2.3. UN Rules for the Protection of Juveniles Deprived Of their Liberty: Havana Convention, 1990.¹¹⁵

The Havana Convention was enacted by the UN in 1990, and it was approved in Havana, Cuba. These restrictions are also known as the JDL regulations or Havana Rules. The rules apply to the police stations where the youngster is being held.

The first international document to define juvenile in terms of age is the Havana Rules. Any individual younger than eighteen is considered a juvenile.¹¹⁶ The Havana Rules, which govern the juvenile justice system, state that the system's objective is to safeguard the rights of young people while promoting their physical and mental well.¹¹⁷ Furthermore, in order to lessen the negative effects of all forms of detention and encourage social integration, The Havana Rules are meant to set the minimal requirements that the UN suggests for the protection of youths deprived of their liberty in any way, in accordance with human rights and fundamental freedoms.¹¹⁸

¹¹⁵ Ian Brownlie & Guy S. Goodwin-Gill, *Basic Documents on Human Rights* (Oxford University Press, 2nd edn., 1981).

¹¹⁶ Havana Rules, 1990, Rule 11(a) available at: https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf (last visited on March 9, 2022).

¹¹⁷ *Id.*, Rule 1.

¹¹⁸ *Id.*, Rule 3.

Deprivation of liberty is prohibited by the Havana Rules. Deprivations of liberty include any form of confinement or detention as well as placing someone under an order from a court, administrative body, or other public authority in a public or private correctional setting from which they are unable to escape at their discretion.¹¹⁹ The regulations also ensure that minors residing in correctional facilities will be provided with valuable programs and activities that promote and preserve their physical and mental health, foster a sense of responsibility in them, and develop the skills and dispositions necessary for them to fulfil their potential as contributing members of society, grants the ability to file an appeal¹²⁰ and confers the right to appeal.

The accused individual is given the principles of fair trial. It says: Juveniles who are being held before trial or under arrest are assumed innocent and will be treated as such until their guilt is established beyond a reasonable doubt.¹²¹ The fair trial principle is prescribed under Rule 18(a). It ensures that kids can ask for free legal aid when it's available, have access to legal representation, and can communicate with their attorneys on a regular basis. Privacy and confidentiality must be ensured for these types of communications.¹²²

The regulations pertaining to the elimination of the stigma associated with juvenile delinquency fall under the purview of juvenile facility administration. It states that juvenile delinquent records should be kept private and that third parties should only be granted access in accordance with the procedures outlined therein. The record ought to be destroyed when the juvenile offender is released from the facility at the proper time.¹²³

Appropriate settings and accommodations are necessary to guarantee that minors deprived of their freedom have access to facilities and services that meet their fundamental human

¹¹⁹ *Id.*, Rule 11(b).

¹²⁰ *Id.*, Rule 12.

¹²¹ *Id.*, Rule 17.

¹²² *Id.*, Rule 18(a).

¹²³ *Id.*, Rule 19.

dignity and health needs¹²⁴ and also ensures, that every juvenile detention institution must make sure that all of its inmates get nutritious food that satisfies the requirements of dietetics, hygiene, and health, and that it is appropriately prepared, presented, and served at regular mealtimes.¹²⁵

The right to education is granted by Havana rules. Juveniles who are older than the legal school age should be allowed to continue their education, and every effort should be made to ensure that they have access to appropriate educational programs.¹²⁶ Further ensures, that there should be a library available to juvenile detainees in every facility. It should be sufficiently supplied with books and periodicals that are appropriate for them to read for leisure as well as instruction, and they should be allowed to utilise it without restriction.¹²⁷ Every minor has the right, under the regulations, to vocational training infields that are likely to assist them obtain employment in the future.¹²⁸

Adolescents who are deprived of their freedom are bound by all national and international regulations that safeguard juvenile workers and child employment.¹²⁹ The right to remuneration, Every young person who works should be entitled to fair wages¹³⁰ other provision ensures the right medical care, a sufficient level of preventive and remedial medical treatment, including care for mental, dental, and ocular health issues, as well as prescription drugs and specialised diets when necessary, must be provided to every juvenile.¹³¹

One important rule confers, every minor the right to a medical examination as soon as they are brought into a detention institution. This is done to make sure that any physical or

¹²⁴ *Id.*, Rule 31.

¹²⁵ *Id.*, Rule 37.

¹²⁶ *Id.*, Rule 39.

¹²⁷ *Id.*, Rule 41.

¹²⁸ *Id.*, Rule 42.

¹²⁹ *Id.*, Rule 44.

¹³⁰ *Id.*, Rule 46.

¹³¹ *Id.*, Rule 49.

mental health issues that need to be treated are found and to document any evidence of past abuse.¹³² Other rules include the guidelines for socially reintegrating young people into the community after they are released from juvenile detention. It says as follows: Every juvenile has the right to appropriate communication with the outside world, since this is crucial to their preparedness for reintegration into society and a fundamental component of their right to fair and decent treatment.¹³³

Apart from the above-mentioned provisions the regulations specify clauses that are comparable to parole and licencing while receiving inpatient care. Every juvenile, under conditions that respect their right to privacy, contact, and unrestricted communication with their family and legal representation, has the right to frequent and regular visits, ideally once a week and no less than once a month.¹³⁴ Further, unless otherwise prohibited by law, every minor should be allowed to speak with the person of their choice by phone or in writing at least twice a week. They should also be given the assistance they need to exercise this right. Any children ought to be entitled to receive correspondence.¹³⁵

2.2.4. Guidelines for Action on Children in the Criminal Justice System: Vienna Guidelines, 1997

Resolution 1997/30 on July 21, 1997, by the Economic and Social Council, recommended guidelines for action with children in the criminal justice system.¹³⁶ The expert group was made up of 29 professionals from eleven nations in various parts of the world, along with participants included observers from nongovernmental organisations involved with juvenile justice as well as members from the UN Secretariat's Centre for Human Rights, the UN Children's Fund, and the Committee on the Rights of the Child.

¹³² *Id.*, Rule 50.

¹³³ *Id.*, Rule 59.

¹³⁴ Havana Rules, 1990, Rule 60.

¹³⁵ *Id.*, Rule 61.

¹³⁶ Guidelines for Action on Children in the Criminal Justice System Economic and Social Council resolution 1997/30, *available at*: <https://www.ohchr.org/EN/Professionalinterest/Pages/CriminalJusticeSystem.aspx> (last visited on June 6, 2022).

The Vienna Guidelines for Action are addressed to various stakeholders, such as

- a) The UN Secretary-General;
- b) Pertinent UN organisations and initiatives;
- c) The states that are signatories to the Children's Rights Convention;

Member states with regard to the application of the United Nations Standards and Norms for the Administration of Juvenile Justice, also referred to as the Beijing Rules, the Riyadh Guidelines, the Havana Rules, and the United Nations Standards and Norms in Juvenile Justice.¹³⁷

The Guidelines state that respect for the child's opinions, non-discrimination (including treatment of gender equality), the child's best interests, and the child's right to life, survival, and development are the four general principles of the Convention that all parties involved in juvenile justice must uphold. The Guidelines also mention the necessity of adopting a rights-based perspective on juvenile justice and a holistic implementation strategy that makes the most of available resources and efforts.

The Vienna Guidelines for Action set out its aims and obligations as follows:

- a) The Convention on the Rights of the Child should be put into effect;
- b) make use of and adhere to other international rules and standards; and
- c) Make sure they are implemented successfully.¹³⁸

It emphasised the need for better cooperation between governments, pertinent UN entities, NGOs and all professional groups, media, academic institutions, children and other

¹³⁷ Annexed to the Economic and Social Council Resolution 1997/30, 21 July 1997, *available at*: https://digitallibrary.un.org/record/271316/files/A_52_3_Rev-1-EN.pdf (last visited on June 24, 2022).

¹³⁸ *Ibid.*, Para 4.

members of civil society in order to guarantee successful utilisation of the 1997 Guidelines.¹³⁹

Every nation's national and local policy and practice should fully reflect the principles and provisions of the CRC as well as the UN standards and norms in juvenile justice (such as the Beijing Rules, Riyadh Guidelines, Havana Rules, and Vienna Guidelines for Action). This is stated in the Guidelines, which outline measures related to law and policy formulation, decision-making, leadership, and reform. More specifically, these guidelines and directives seek to:

1. Establishment – creation of a juvenile justice system that protects children's rights and is just and compassionate;
2. Prevention: stopping minors' rights from being violated and stopping juvenile delinquency;
3. Fostering a sense of worth and dignity in youngsters; and
4. Respect: for the age, developmental stage, and right of children to meaningful participation and contribution to society.¹⁴⁰

According to the Guidelines, the following factors should be taken into consideration in order to ensure that the Convention on the Rights of the Child is implemented effectively, as well as how international standards are used and applied through programs for technical cooperation and advisory services:

- a) Support for legal reform;
- b) Enhancing infrastructure and capacity at the national level;
- c) Training courses for all officers handling juvenile justice matters;

¹³⁹ *Ibid.*, Para 5.

¹⁴⁰ *Ibid.*, Para 11(a).

- d) Getting ready for training manuals;
- e) Creating educational materials and information to teach kids about their rights in the juvenile justice system; and
- f) Support for the creation of management and information systems.¹⁴¹

The Vienna Guidelines are a valuable set of guidelines for nations to better understand how their domestic formulation and application of these standards can satisfy their CRC obligations. Given India's history, which has seen a number of changes to its juvenile justice legislation, the Guidelines offer helpful advice on how Indian juvenile justice legislation can keep up with and meet international norms.

2.2.5. SAARC Convention on Regional Arrangement for Promotion of Child Welfare, 2002

The South Asian Association for Regional Cooperation is composed of eight countries: Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka, and the Maldives. One of the goals of SAARC, which was established in 1985, is to promote the welfare of South Asians in order to enhance the standard of their life. Child rights is an issue on which the SAARC nations have united and developed regional standards.

From 2001 to 2010, SAARC commemorated the Decade of the Rights of the Child. In this decade, the Convention on Promotion of Child Welfare in South Asia was adopted by the SAARC member countries in 2002.¹⁴² This Convention was developed with the intention of solidifying and combining the promises made by South Asian states to UN bodies in order to properly fulfil those commitments. The core of the Convention is Article VII, which is concerned with Promotion of the Rights and Well-Being of the Child. The

¹⁴¹ *Ibid.*, Para 28.

¹⁴² SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (2002). *available at*: http://saarc-sec.org/digital_library/detail_menu/saarc-convention-on-regional-arrangements-for-the-promotion-of-child-welfare-in-south-asia (last visited on July 21, 2022).

following are the key elements of this Convention, which are applicable to all countries in South Asia, including India¹⁴³:

1. According to the Convention, a person who is a national of the region and has not reached the age of 18 is considered a child.
2. It guarantees that the state parties would implement efficient programs for the reintegration and rehabilitation of kids who have run afoul of the law. It acknowledges the necessity of creating juvenile justice systems that are kid-friendly.

The pledges made by states under the SAARC Convention are in addition to and do not replace those commitments made under the CRC or other international norms. However, the SAARC Convention is notable as a developing regional human rights standard on juvenile justice, which has embraced the core concepts of juvenile justice that support international normative standards. An essential component of this Convention will be to encourage and develop regional cooperation on the topic of juvenile justice.

To bring the country's child delinquent laws into compliance with numerous international standards, they have been passed, revised, and re-enacted. An all-powerful declaration that the jurisprudence of juvenile offenders is that "child is different and needs different treatment" is the first principle of the presumption of innocence in the juvenile justice system. The idea that a kid should never be disregarded throughout the legal process is supported by the acknowledgment and expansion of due process rights to juvenile offenders. Making this legal standards work is all that is needed, and it can be done with everyone's genuine and sincere cooperation.

The JJ Act, 2015, includes the core principles with this idea in mind, serving as a constant reminder to all parties involved that "children are above the criminal law" and need special care and attention. The JJ Act of 2015 specifies how juvenile offenders must be dealt with

¹⁴³ *Ibid.*

from the moment of their apprehension in a way that is kid-friendly and free from stigmatization or coercion to give any kind of incriminating statement.

2.3. JUVENILE JUSTICE SYSTEM IN DIFFERENT COUNTRIES

Today, practically every nation in the world acknowledges that children are distinct from adults and are not subject to the same punishment for breaking the law as adults. However, the best technique to handle dangerous and violent juvenile offenders is still a topic of debate on a global scale. In order to get insight into current methods, the researcher thinks it is crucial to investigate how other nations' legal systems handle young offenders.

2.3.1. Juvenile Justice System in Canada

No one shall be found guilty of an offence based on a violation of section 13 of the Criminal Code of Canada, according to the Youth Criminal Justice Act of 2003. According to the Youth Criminal Justice Act, the act or omission committed by an individual while they were under the age of twelve determines how criminal and correctional laws apply to them if they were 12 years old or older but under 18 at the time of the offence. Juveniles between the ages of 14 and 17 may be tried as adults and/or sentenced as adults under the act's later provisions, depending on the circumstances.

All trials under the Youth Criminal Justice Act will take place in juvenile courts. However, the court does have the authority to impose an adult sentence in extremely serious cases. If an adult sentence is imposed, the Criminal Code penalties for adult offenders are applied to the young person.¹⁴⁴

2.3.2. Juvenile Justice System in United States of America

The 1974 Juvenile Justice and Delinquency Prevention Act. In North Carolina, the age of children is six. Numerous states rely on the common law age of seven as they don't have a

¹⁴⁴ Department of Justice Canada, "Youth Justice"(2021) *available at*: <https://www.justice.gc.ca/eng/csj-sjc/just/11.html?wbdisable=true> (last visited on May, 2022).

clear norm. On June 25, 2012, the US Supreme Court ruled that the mandatory life without parole (LWOP) penalty for offences committed by adolescents was unconstitutional. The judgement was vague as to whether it applied prospectively to young offenders or retroactively to those already in custody. Only mandatory life without parole punishments for murderers under the age of 18 were outlawed by the court; such sentences were not entirely abolished. Provisions that would permit states to trial juveniles as adults for some serious offences and firearms offences were added to the 1974 JJDPA. Judges of juvenile courts have the option to request that a youngster's case be heard in an adult criminal court in 45 states. For certain acts, or due to the age or prior records of the offender, judges in juvenile court are required by law in 15 states to transfer a youth's case to adult criminal court automatically.

It's essential to keep in mind that there are at least 51 distinct juvenile justice systems in the US, not just one.¹⁴⁵ No matter how terrible the crime, three states Connecticut, New York, and North Carolina automatically prosecute 16 and 17-year-olds as adults. No chance exists for the court to consider unique circumstances. Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin are the ten states that automatically prosecute 17-year-olds as adults. Children under the age of 12 may be treated as adults for criminal justice reasons in more than half of the states. In 22 states and the District of Columbia, juveniles as young as 7 years old can be charged and tried in adult court. If found guilty, they could face harsh adult consequences such lengthy jail sentences, mandatory sentencing, and incarceration in an adult facility. Children as young as seven years old may be sentenced to life in prison without the possibility of parole in Florida and Pennsylvania.

¹⁴⁵ Joan McCord, Cathy Spatz Widom, and Nancy A. Crowell, eds. Committee on Law and Justice and Board on Children, Youth, and Families. "Juvenile Crime, Juvenile Justice" *Washington, DC National Academy Press* (2001) available at: <https://nap.nationalacademies.org/read/9747/ chapter/7>(last visited on March, 2022).

2.3.3. Juvenile Justice System in England and Wales

There are numerous Acts from 1933 that regulate the juvenile justice system in Wales and England. These Acts work to guarantee that minors accused of crimes receive a fair trial and treatment. Section 16 of the Children and Young Persons Act of 1963¹⁴⁶ amends the Children and Young People Act of 1933 (1). Ten is now the minimum age of criminal liability in England and Wales. People under this age are considered *doli incapax*, meaning they are unable to form criminal intent.

The juvenile justice system then functions as a Youth Court, which considers cases of children between the ages of ten and eighteen, for minors for whom preventive techniques do not apply, for example, due to the nature of the offence, or who have exhausted them. In order to keep children and adolescents away from adult suspects during any stage of a trial, this youth court was created.

A detention and training order (DTO) that lasts between four months and two years may be imposed to a person between the ages of twelve and seventeen. The other half of the time is spent in the community. When dealing with a persistent offender, the Home Secretary may make the DTO available to those between the ages of eleven and twelve.

Young offenders can get a variety of different penalties from the court, such as supervision orders with a variety of conditions or an Action Plan Order, a rigorous, three-month community-based programme.

Detention and training orders are more severe forms of confinement punishment. Children who represent a high level of risk to the public, have a strong criminal past, or are persistent offenders and where no other sentence would properly manage their risks are typically granted these orders. They may receive a sentence of no less than four months and no more

¹⁴⁶ Children and Young Persons Act of 1963 *available at*: <https://www.legislation.gov.uk/ukpga/1963/37> (last visited on April, 2023).

than two years, of which half would be served in prison and the other half would be served in the community while being closely monitored by a youth offending team.

However, this latter restriction does not apply to minors aged ten and over who have been found guilty of murder. Only those offenders over the age of fifteen may be sentenced to confinement in a juvenile offenders' institution.

Children are prosecuted in the Crown Court for very serious crimes. Children between the ages of ten and eighteen who have committed a crime punishable by fourteen years or more in prison for adult offenders may receive a sentence from the Crown Court. Children who have committed murder or certain sexual offences may receive a sentence up to the adult maximum for the same crime. The juvenile offenders may be kept in secure training facilities, secure children's homes, or young offenders' institutions rather than adult jails.

A life sentence is imposed for murder. Indefinite confinement in a secure facility run by social services is the first step for murderers under the age of eighteen. At the ages of 18 and 21, the individual is then moved to a young offender institute and a prison, respectively. The Lord Chief Justice decides how long the young person will be detained, and the Parole Board decides whether or not they should be freed.

A person under 21 cannot get a whole life tariff in England and Wales, which is the same as a life without parole sentence, because Schedule 21, Section 269(4) of the Criminal Justice Act 2003 limits such periods to those aged 21 or older.¹⁴⁷

2.3.4. Juvenile Justice System in New Zealand

Children, Young People, and Their Families Act of 1989 (CYPF Act). A 13 years old juvenile, with the exception of murder and manslaughter, for which the age restriction of 10 years is in effect.

¹⁴⁷ Criminal Justice Act 2003, s. 269(4).

The New Zealand Youth Justice system deals with all children (included of ages 10 to 13) and teens (inclusive of ages 14 to 17) whose actions give the police cause to suspect they've committed a crime. However, the Youth Court is limited to dealing with minors. As per the Act, an individual's age during the commission of the offence establishes their eligibility as either a child or a young person.

If a minor is charged with murder or manslaughter, a preliminary hearing is held before the Youth Court. If the Youth Court determines there is sufficient evidence to proceed with a full trial, the case is transferred to the High Court.

In the other 16% of situations, a charge is brought in Youth Court and the young person is arrested. As previously mentioned, diversionary measures work to keep young people out of the Youth Court except in instances of significant or repeated offending. This is made possible, in part, by the strong limitations placed on the police's ability to detain young people. A summons is generally not considered sufficient to: prevent further offences, prevent the loss or destruction of evidence, or prevent witness interference; ensure appearance before the Court, for instance in situations where the young person refuses to give his or her name and address to the police. The CYPF Act strictly limits arrest, and in most cases a young person cannot be arrested unless it is necessary. In New Zealand, it is believed that there is a higher chance of an offender not committing the same crime again if they confess to their crime, attend a Family Group Conference, show regret, and make a commitment to not committing it again.¹⁴⁸

2.3.5. Juvenile Justice System in Belgium

The Youth Protection Act of 1965 in Belgium was amended on May 15th, 2006, and the Law of June 13th, 2006, took control of juveniles who had done an act that qualified as an

¹⁴⁸ Stephen J. O'driscoll, "Youth Justice in New Zealand: A Restorative Justice Approach to Reduce Youth Offending" (From UNAFEI: Annual Report for 2007 and Resource Material Series No. 75, P 55-80, 2008, Grace Lord, ed. See NCJ-229038) *available at*: https://www.unafei.or.jp/publications/pdf/RS_No75/No75_10VE_O'Driscoll.pdf (last visited on May, 2023).

offence. Youngsters under the age of eighteen are not prosecuted for crimes. Instead of punishments like in adult courts, the juvenile court uses educational measures. The youth court has the authority to hear matters involving children who need care and deviant behaviour in addition to criminal offences (i.e., truancy). In reality, the police frequently ask young people to attend instructional programmes like traffic school or make minor repairs.

The juvenile judge can, on rare occasions, decide to refer a juvenile offender over 16 to the Public Prosecutor with the intention of prosecuting and sentencing the minor in adult court (referred to as a transfer to adult court).¹⁴⁹ Despite the fact that the majority of delinquent minors appear before youth court.

2.3.6. Juvenile Justice System in China

The Law on the Protection of Minors was passed during the 21st session of the Seventh National People's Congress in September 1991. The Law on the Prevention of Juvenile Crimes was passed during the 10th session of the Ninth National People's Congress in June 1999.

China has held more than 60% of adolescent offenders in custody for 14 years—either in prison or administrative detention—while only placing 30% on probation.

According to China's Criminal Procedure Law, adolescents who receive sentences of less than five years in prison must have their records sealed as of January 2013.

It is often known that the Chinese system places a high priority on education-based rehabilitation, the use of unofficial channels, and the vital role that society plays as the first step in reintegrating juvenile offenders.¹⁵⁰ Although sentences of up to life in prison for

¹⁴⁹ Scott. H. Decker and Marteache Nerea, *International Handbook of Juvenile Justice* (Springer International Publishing 2nd edn. 2016).

¹⁵⁰ Anqi Shen, “The age of criminal responsibility and juvenile justice in mainland China: a case study” 67(3) *Northern Ireland Legal Quarterly* 357–71 (Autumn 2016) available at: <https://nilq.qub.ac.uk/index.php/nilq/article/download/123/90/172> (last visited April, 2023).

adolescents who commit very serious crimes are possible, using the maximum terms is discouraged by national policies that emphasise combining mercy and severity and education first, punishment second. The maximum sentence for adolescents under China's Criminal Law was changed in 1997 from death with two-year respite to life imprisonment. The latter is a death sentence that is changed to either a life sentence or a fixed-term sentence of 25 years, both of which have the potential to be reduced provided no deliberate offence is committed within the first two years of imprisonment.

2.3.7. Juvenile Justice System in Japan

1949's Juvenile Law (amended in 2000, 2007, 2008), criminal responsibility begins at the age of 14. Therefore, the treatment of delinquent youngsters under the age of 14 complies with educational and welfare viewpoints.

But according to the Child Welfare Law, children under the age of fourteen are typically handled by the child guidance centre when they engage in behaviours that, if carried out by an adult over the age of fourteen, would be considered crimes.

The court may select one of the following options:

1. Dismissing the case;
2. Forwarding the issue to the director of the child guidance centre or the prefecture governor;
3. Putting the minor on probation or enrolling them in a program for juvenile offenders.
4. Referring the matter to the public prosecutor. The last choice can be made if the minor was fourteen years old or older when the crimes were committed and the judge determines that it is appropriate to treat the minor according to the ordinary criminal procedure. Generally speaking, the court recommends the juvenile to the public prosecutor when the juvenile is sixteen years old or older and caused death

by a criminally motivated act. The juvenile may submit an appeal of the case to the higher court if the court choose decision (3).

In an effort to promote the healthy development of young people, the Japanese legislation aims to apply particular measures for juvenile criminal cases and to expose juvenile offenders to protective measures that will alter their surroundings and rectify their personality traits.¹⁵¹ The Family Court in Japan's juvenile justice system puts protective measures on minors in order to educate and protect them, not to punish them.¹⁵²

The international guidelines have been composed with the understanding that children and childhood are crucial to the development of a prosperous society. The youngster is seen as the destiny of the nation in the modern era, and as such, they require humane treatment, appropriate care, as well as safety under all circumstances. According to the law, the state and parents cannot abandon a kid. A youngster has rights. A significant position for children in legal standards has been established by the paradigm change in philosophy from child welfare to child rights. Every time a choice that affects his or her life is made, his or her voice must be heard and given the significance that is needs. According to the Beijing Rules, nations must set up a distinct system for youngsters who are delinquent. It emphasizes improving the quality of life and the kids' well-being. The protection of the liberty of young offenders is the fundamental goal of the Havana Rules. Bearing in mind that the rules emphasize detention as a last resort, depriving youth of their free will. Once more, a comprehensive document, the Riyadh Guidelines seek to implement measures to prevent young people from engaging in illegal practices. The Guidelines emphasize the development of advanced delinquency reduction efforts and the non-criminalization of youthful offenders.

¹⁵¹ Tokikazu Konishi, "History, Aim, and Structure of the Juvenile Justice System in Japan" 4 *Waseda University Law Review* (2018) available at: <https://core.ac.uk/download/pdf/286965201.pdf> (last visited on April, 2023).

¹⁵² *Ibid.*

CHAPTER- 3

CHILDREN IN CONFLICT WITH LAW AND THE LEGAL FRAMEWORK OF JUVENILE JUSTICE SYSTEM IN INDIA

3. INTRODUCTION

This chapter examines the Juvenile Justice (Care and Protection of Children) Act 2015 and concentrates on the sections that deal with the Act's title, enforcement, and scope of application, also examines the Act's definitions that are important for comprehending the meanings of the numerous terms that are used in it. In addition to highlighting the issues brought before the Higher Courts for adjudication, an evaluation of the Supreme Court's and High Courts' decisions has been carried out to determine the Indian judiciary's extent of knowledge and reaction routine regarding the legal framework and philosophy of the juvenile justice system in the country, the analysis of higher courts' decisions in dealing with the young person's age determination, the juvenile's assessment process, and the juvenile's right to be released on bail, and the impact of judicial decisions on the care protection and rehabilitation of children in dispute with the law.

The President granted the Juvenile Justice Act, 2015 his assent on December 31, 2015. After being signed into law, it was released on January 13, 2016, and on January 15, 2016, it became operative.¹ Juveniles in the state of Jammu and Kashmir will continue to be controlled by the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, unless the state legislature introduces new legislation, as the parliament extended the JJA 2015 for that state.²

¹ Gazette of India, Extraordinary, Part II, Section (3) sub-section (ii) dated 13th January 2016.

² Juvenile Justice (Care and Protection of Children) Act, 2015, It reads, "(2) It extends to the whole of India except the State of Jammu and Kashmir".

The Juvenile Justice Act, 2015 provides extremely rational definitions for all important phrases, some of which even give previously used language new meanings. The Juvenile Justice Act of 2015 includes sixty definitions under Section 2, compared to only 25 under the JJ Act of 2000. The definitions of child and juvenile are among the most vibrant. The JJ Act of 2015 made an attempt to define child in a fairly reasonable way, yet it was still a controversial definition. It is noteworthy that the Act's goals are intended to be accomplished by all organisations and entities constituted under it, as well as by all adopted procedures.

The Preamble serves as the standard by which all other clauses pertaining to procedures, organisations, and bodies must be evaluated.

There are ten chapters in the JJA 2015. Preliminary issues including the Act's title, scope, beginning, applicability, and broad definitions are covered in the first chapter. Chapter 2 provides a comprehensive set of rules for the care and protection of children that all agencies must follow during the Act's implementation. Laws pertaining to the establishment, jurisdiction, and responsibilities of the Juvenile Justice Board, which is in charge of making decisions about children who are in legal trouble as well as their rehabilitation, may be found in chapters three and four. Chapters Five and Six contain similar rules pertaining to the child welfare committee that is in charge of handling children that require care and protection. The main focus of Chapter 7 is on the rehabilitation and social reintegration of both groups of youngsters. Comprehensive guidelines for adopting children covered by this law are outlined in Chapter 8. Chapter 9 outlines offences against minors and their associated penalties. Numerous ancillary provisions, including those pertaining to age determination, special police units, implementation bodies, child transfers, rule-making authority, repeal and saving clauses, etc., are included in Chapter 10.

3.1. DEFINITIONS UNDER THE ACT

Various words and terms used in the Act have been defined Under Section 2. While some of the definitions in the old enactment of 2000 are retained and some new definitions are

added. Some important definitions and provisions relevant for the present study are discussed here:

The Juvenile Justice Act defines a child as an individual who has not reached the age of eighteen and is classified as such under its provisions.³ This definition is not relevant to any aspect of the JJA 2015 and should be discarded. There is no justification for its inclusion in the differentiated formulation. As far as we are aware, different Acts use various standards to ascertain a child's age. The JJA 2000's definition of a child remains the same. The JJA 2015 does not, against common belief, lower the age of juvenility to 16 years old. Instead, it maintains the 18-year-old cut off point for implementing the JJA 2015 for minors who are in legal trouble. It is better to use the wording not completed 18 years of age instead of attained the age of... as it was in the JJA 1986 and earlier Children Acts.

The JJA, 2015 defines a Child in conflict with law as a juvenile who is under the age of eighteen on the day of the offence and who is suspected or found to have committed an offence. The act appropriately underlines this description.⁴ Children who are accused of having committed crimes are nonetheless stigmatised in the traditional sense of the word, even though replacing the word juvenile with child lessens the stigma and societal baggage that come with the term. If a child is said to be in legal trouble, it will be considered that the child has broken the law, unless the child knows the definition of law as stated in the Act. Before child/juvenile in conflict with the law was adopted, the term juvenile delinquent was in use.

‘Most of the clauses of the Juvenile Justice Act 2000 have retained the phrase child in need of care and protection, although some have been added, withdrawn, or altered.’⁵ There are

³ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(12) “child” means a person who has not completed eighteen years of age.

⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of Commission of such offence?

⁵ *Id.*, s. 2(14).

twelve clauses in it. Currently, a child who needs care and protection is defined as one who is: as per clause (i) identified without a house, a permanent residence, and any apparent means of support. This provision, which is consistent with the Juvenile Justice Act of 2000, covers youngsters who are discovered to be without a home, a fixed place to live, or any apparent means of survival.

Clause (ii) states who is living on the streets, begging, or working in violation of current employment regulations. Nevertheless, it does not cover all children who labour; rather, it only covers those who do so in contravention of labour regulations. Child living on the streets could be interpreted differently than the previous phrase, street child. The phrase street child can refer to children who live on the streets with or without parents, as well as children who live on the streets and very infrequently interact with them, even if it can also apply to children who spend the majority of their day on the streets. The phrase living on streets might not be appropriate for the group of children who go home at night but spend the daytime hours wandering the streets unattended.

Clause (iii) declares: Anybody who resides with someone (regardless of whether they are the child's guardian) and that person has either broken any laws that are currently in place to protect children, or they have hurt, abused, or neglected children; or they have threatened to kill or injure children and there is a reasonable possibility that the threat will be carried out; or they have murdered, mistreated, neglected, or exploited children, and there is a reasonable chance that the child in question will also be subject to these acts.

Clause (iv) covers children who are mentally ill, physically or mentally challenged, or suffering from a terminal illness and who are either alone or unable to receive care from their parents or guardians. if it is determined by Board or Committee. Regarding children covered by this clause, the Committee or the Board will concentrate on evaluating whether the child's parent or guardian is unfit or incapable of providing the child with the necessary care, and they will issue the required orders to ensure the child receives the care that the child needs.

The Committee may arrange for sponsorship or other forms of support that the parent or guardian may require in order to care for the child, or if necessary, place the child in a children's facility, in order to enforce that the child remain under the supervision and care of the same parent or guardian. If interpreted in this way, the purpose of this section is to bring children who are suffering from any kind of disability, terminal illness, or incurable disease within the jurisdiction of the JJA 2015 so that they can receive the appropriate care, and the parents or guardian's guardianship rights stays as it is.

Clause (v) deals with a child whose parent or guardian is determined by the Committee or the Board to be unable or incompetent to provide for the child's safety and well-being. The phrase unfit in this sentence refers to a parent or guardian who purposefully mistreats and uses the kid for illegal purposes, as defined by Section 76(2). However, being incapacitated does not always mean that someone should bear the blame; a parent's incapacity could be from a medical condition, a mental disease, a personal limitation, or from incarceration. Nevertheless, the Committee or the Board's investigation goal is always to issue the required directives to guarantee the child's safety and wellbeing, not to select a parent who is seen to be a fit guardian. Even if the Board finds that a child has not committed an infraction but nevertheless needs care and protection and meets any of the requirements of Section 2(14), the Committee may nonetheless choose to transfer the child.

Clause (vi) refers to abandoned and orphan child. Clause includes a kid who has gone missing or run away, or whose parents have made a reasonable effort in a manner that may be required but still cannot be found(vii). A new set of youngsters is included in the definition of children in need of care and protection in this section. The unique issue of the missing child in this phrase is that they are neither present nor traceable. A child is considered missing until they are located. Once located, they cease to exist as missing. No one may act under this Act unless the child is located, for the purposes of this Act. If children are likely to be mistreated, tortured, or used for illicit purposes, then clause (viii) applied.

The wording of the clause makes no indication that it will only apply in situations where the people who actually have charge and authority over the child are the source of the fear. In the event that this is true, all of those kids needed care and protection, and the Child Welfare Committee should have seen them. The JJA 2015 prohibits detaining children in trouble with the law at a police station, even if they are accused of committing heinous crimes. This clause applies to all children who have been, are, or may be sexually abused in addition to being mistreated physically or sexually. The term sexual abuse shall be interpreted to include all of the acts listed in the Protection of Children against Sexual acts Act of 2012. The POCSO Act of 2012 includes, among other offences, sexual assault, aggravated sexual assault, penetrative sexual assault, aggravated penetrative sexual assault, sexual harassment, and pornography. It also includes the attempt or abetment of any of these acts.

The categories of children covered by clauses (ix) and (x) are the same as those that were present in the JJA 2000; these include children who are considered to be at risk of being involved in drug misuse or trafficking, as well as those who are being or are likely to be mistreated for unethical purposes. Clause (xi) includes any child affected by or a victim of armed conflict, civil upheaval, or natural disaster. This clause is comparable to the previous one in the JJA 2000, with the exception that civil unrest has been used in lieu of civil commotion.

Clause (xii) refers Individuals who are in danger to getting married before reaching suitable age for marriage, and whose guardian, parents, or other close relatives are likely to be in charge of making sure the marriage is formally performed. This is a brand-new category added to the list of children in need of care and protection in recognition of the issue of child marriage.

What's best for the child best interest of the child is defined in JJA, 2015, section 2(9). The term describes decisions taken regarding a child's identity, fundamental needs, social and

emotional development, as well as their physical, mental, and intellectual progress.⁶ Both basic rights and needs are used in the definition. It should be emphasised that the rights-based approach demands the State to defend the child's essential needs as their right, but the need-based approach abandons the children to the mercy and good will of the State. This concept must be understood to acknowledge that children have a positive right to have their basic needs fulfilled by the State and that all State authorities who come into contact with children have a duty to do everything within their power to guarantee that children's needs are met. This is because the JJA 2015 acknowledged India's obligation under the CRC. The universal best interest concept further enhances this definition.

The term child friendly is used in Section 2(15) to describe humane behaviour, attitudes, treatments, practices, and surroundings.⁷ These elements are crucial since they shape a person's personality. Given that the Juvenile Justice Act of 2015 is both wider and more sensible than the Juvenile Justice Act of 2000, one could legitimately argue that it is more child-friendly. The juvenile justice model rules 2007's rule 2(d) takes these elements into consideration.

3.2. CATEGORISATION OF OFFENCES

Three new categories as petty, serious, and heinous offences for legal classification of offences were added by the JJA 2015. Prior to this, neither the criminal court system nor the juvenile justice system accepted this classification. This is the first time that a distinction has been made in the juvenile justice system of India based on the mandatory punishment for the offence in order to send minors to adult criminal court trials.

⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2 (9) “best interest of child” means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

⁷ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(15) means “any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child”. This definition has widened the scope of operations that should be child friendly.

The JJ Act, 2015 defines the terms as follows:

- 1) **‘Petty offences’** comprises the offences for which a maximum sentence of three years in jail is prescribed under the Bhartiya Nyaya Sanhita, 2023 or any other currently in effect statute.⁸
- 2) **‘Serious offences’** comprises offences for which the Bhartiya Nyaya Sanhita, 2023 or any other currently enacted statute imposes a sentence of three to seven years in prison.⁹
- 3) **‘Heinous offences’** comprises offences for which a minimum sentence of seven years or more in jail is prescribed under the Bhartiya Nyaya Sanhita, 2023 or any other currently in effect statute.¹⁰

It is important to note that these classifications encompass not only the offences listed in the Bhartiya Nyaya Sanhita, 2023 but also any special or local laws that were in force on the day of the offence. Additionally, the word includes is used in all three definitions, indicating that the lists of types of offences included by each definition are not all-inclusive. It is also important to note that the terms maximum and minimum, which are used in the definitions of petty and heinous offences to refer to the minimum and maximum sentences required for the offence to fall under that category, are not included in the definition of serious offences. The initial review of the three definitions some points should be kept in mind because it is evident that offences carrying a three-year sentence are included in the definitions of both petty and serious offences, while offences carrying a sentence of more than seven years in prison are not included in any of the three definitions.

It is also commonly known that in order to prevent the accused from being held more liable, strict and restrictive interpretation must be utilised when reading clauses that impose criminal

⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(45).

⁹ *Id.*, s. 2(54).

¹⁰ *Id.*, s. 2(33).

responsibility. Therefore, no offence that is not covered by the qualifying phrases found in the definition of petty and heinous offences may be included in these categories when interpreting these three criteria. Consequently, it's critical to accurately classify the offences into the appropriate categories. It is commonly known that when provisions conflict, a harmonic interpretation is required in order to resolve the issue. In its 283rd report, the twenty- second Law Commission of India made recommendations on the age of consent to sexual activities.¹¹

When the boy is also less than eighteen, the situation might be rather dire. Due to the conviction of a minor in the Nirbhaya gang rape, the Juvenile Justice (Care and Protection of Children) Act, 2000 was amended in 2015¹², allowing certain youths between the ages of sixteen and eighteen to be tried as adults. Two absurdities have resulted from similar experiments since then. First, whereas boys in the same age range are recognized as adults, young girls under the age of eighteen have had their liberty violated under the pretence of "protection." Second, because the POCSO Act¹³ is gender-inclusive, both boys and girls under the age of 18 should be regarded as victims. In reality, though, boys are frequently viewed as the aggressors and girls as the victims.

The Commission has appropriately recognized this as a challenge. However, its suggestions don't do much to help teenage boys deal with these issues in their everyday lives. We anticipate that the Commission will take it a step further and suggest that the Juvenile Justice Act provision that recognizes some minors as adults in criminal cases be repealed. Considering the unique circumstances surrounding their biological, emotional, mental, and social development, it contradicts the entire goal of having a separate legislation for teenagers who are accused of

¹¹ Ministry of Law and Justice, Govt of India. 22nd Law Commission of India. Report No 283. Age of consent under the Protection of Children from Sexual Offences Act, 2012. 2023 *available at*: <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf> (last visited on Dec. 10, 2023).

¹² Ministry of Law and Justice. Govt of India. The Juvenile Justice (Care and Protection of Children) Act, 2015. 2015 Dec 31 *available at*: <https://www.indiacode.nic.in/bitstream/123456789/8864/1/201602.juvenile2015pdf.pdf> (last visited on Dec. 10, 2023).

¹³ Ministry of Law and Justice. Govt of India. The Protection of Children from Sexual Offences Act, 2012. 2012 Jun 20 *available at*: <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA 2012-32.pdf> (last visited on Dec. 10, 2023).

crimes. As previously stated, teenagers from the most marginalized groups are also likely to be impacted.

3.3. INSTITUTIONS UNDER THE ACT

Children homes, open shelters, observation homes, special homes, places of safety, specialised adoption agencies, and appropriate facilities approved by this Act to care for and protect children who need these types of services are among the locations where children can be housed that are referred to as child care institutions.¹⁴

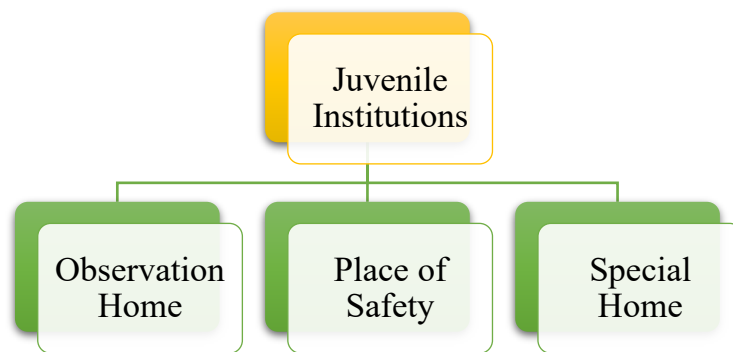


Image shows the different type of facilities (Institutions) for children approved under the legislation.

Observation Home refers to the creation and maintenance, either directly or through a non-governmental organisation, of an observation home by the State Government in each district or set of districts. It is registered as such for the temporary reception, care, and rehabilitation of any child suspected of being in conflict with the law, while any inquiry under this Act is ongoing, as specified in sub-Section (1) of Section 47.¹⁵

An institution established by a State Government, either directly or through a non-governmental organisation registered under Section 48, is referred to as a Special Home when it comes to housing and providing rehabilitative services to children in conflict with

¹⁴ *Id.*, s. 2(21).

¹⁵ *Id.*, s. 2(40).

the law who are sent there by Board order after an investigation reveals they have committed an offence.¹⁶

Any location or establishment that is not police lock-up or jail is considered a place of safety. To differentiate it from the previous Act of 2000, the phrase established separately or attached to an observation home or a special home is inserted in this context. The location must be where the person in charge accepts and looks after children who are deemed to be in violation of the law by a Board or Children's Court order, both during an inquiry and during continued rehabilitation after a conviction.¹⁷

3.4. OFFICIALS FOR CHILDREN

A unit of the police force of a district or city, or, as the case may be, any other police unit like railway police, that deals with children and is recognised as such for managing minors under section 107, is referred to as a special juvenile police unit.¹⁸ Child Welfare officer refers to an official who works at a children's home and is tasked with following any instructions from the Committee or, in some cases, the Board, as well as any other duties that may be assigned.¹⁹ Child Welfare Police Officer refers to an officer appointed in accordance with Section 107, subsection 1, Probation Officer refers to an official designated by the State Government as a probation officer under the District Child Protection Unit or the Probation of Offenders Act, 1958, or the Legal-cum - Probation Officer appointed by the State Government.²⁰ District Child Protection Unit refers to a unit for a district that was created by the state government under Section 106 and serves as the main point of contact for the district's implementation of this Act and other child protection measures.²¹

¹⁶ *Id.*, s. 2(56).

¹⁷ *Id.*, s. 2(46).

¹⁸ *Id.*, s. 2(55).

¹⁹ *Id.*, s. 2(17).

²⁰ *Id.*, s. 2(48).

²¹ *Id.*, s. 2(26).

3.5. APPLICATION OF THE JUVENILE JUSTICE ACT

To properly carry out its mandate, the JJ Act, 2015 suggested creating the State Child Protection Society, District Child Protection Unit, Special Juvenile Police Unit, and Commissions for Protection of Child Rights. To better defend the interests of children, additional responsibilities have been given to the commission for the protection of children's rights. The Act also calls for an assessment of how well the different Act-mandated structures are operating. The 2015 JJ Act is primarily implemented by the State Child Protection Society and the District Child Protection Unit, two essential entities. Any officers and other staff members designated by the government to handle any child-related issues throughout the Act's implementation will make up the SCPS and DCPU.²² Under this legislation, the National Commission for the Protection of Children's Rights and the State Commission for the Protection of Children's Rights are responsible for supervising the Act's execution. These Commissions are especially in charge of keeping an eye on how the Act is being implemented.²³

3.6. POLICE OFFICIALS

An important part of the JJA 2015 is performed by the Special Juvenile Police Unit. The Special Juvenile Police Unit is the first State agency to introduce a kid to the official juvenile court system, regardless of whether the youngster is in violation of the law or only requires care and protection. Under Section-107²⁴ each district must establish a Special Juvenile Police Unit. Child Welfare Police Officers from each district police station will work with two social workers, one of whom has to be a woman. Its function is to coordinate every police operation that has associated with children. Its efficient operation is necessary to guarantee the children who interact with the formal juvenile justice system have a favourable opinion of it.

²² Ved Kumari, *The Juvenile Justice (care and protection of children) Act, 2015-Critical Analysis* 215 (Universal Law Publication, New Delhi, 1st edn. 2017).

²³ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 109.

²⁴ *Id.*, s. 107.

Every police station must have a child welfare police officer who holds at least the position of sub-inspector. Only those with the necessary skills, education, and experience ought to be designated as child welfare police officers. Postings are typically made by senior officers without consulting subordinate officers, who are thought to have the final decision on certain duties. However, in the case of children, it could be preferable to request that officers apply to become Child Welfare Police Officers. This way, those who possess the necessary skills can be named as such, and it won't be seen as a position that is imposed upon them against their will. In addition to having the necessary skills to work with children, the CWPO needs to have a positive outlook on this position. In the event that the officer lacks the necessary skills and background in juvenile justice, training and orientation should be provided.

The JJ Act of 2015 grants the Central and State Governments the power to conduct independent assessments of the functioning of certain establishments, including the Board, Committee, special juvenile police units, and registered institutions. The government maintains control over the review procedure. In these situations, both governments perform separate evaluations; however, the Central Government's evaluation will always prevail.²⁵

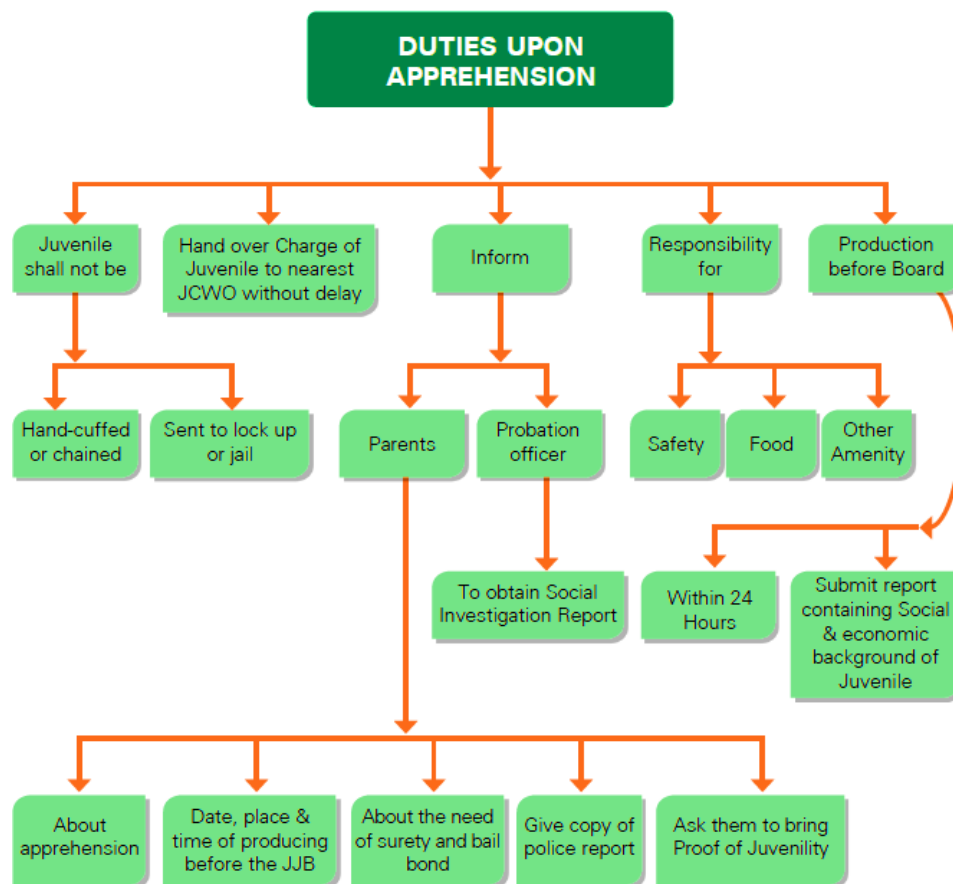
3.7. ADJUDICATORY BODIES UNDER THE JUVENILE JUSTICE ACT

Only four adjudicatory bodies have initial jurisdiction over all issues involving children who are in legal trouble or who require care and protection: the Committee, the Children's Court, the Juvenile Justice Board, and the civil court that handles adoption cases. The JJB is made up of two social workers who serve as board members, one of whom must be a woman, and one magistrate who serves as principal magistrate. Chapter three and four deals with the constitution, procedure, powers and functions of the board. To fulfil its obligations for children who are in trouble with the law, the State should establish at least one JJB for each district.²⁶

²⁵ *Id.*, s. 55.

²⁶ *Id.*, s. 4.

One Metropolitan Magistrate or Judicial Magistrate First Class, who is not the Chief Judicial Magistrate or Chief Metropolitan Magistrate and has at least three years of experience—referred to as the Principal Magistrate—must meet the requirements in order to be appointed as a member of the board. Two social workers appointed according to the procedures outlined in the rules. There needs to be a female social worker at least. Individuals who have been actively involved in child-related health, education, or welfare activities for a minimum of seven years, or professionals in practice with a degree in child psychology, psychiatry, sociology, or law, are eligible for appointment as social workers.



Source of image- Legal Aid Forum, Delhi.

The act's provisions outline the board's duties and obligations, but they are not all-inclusive, and the board may be charged with additional duties. It entails making certain that the

parent or legal guardian of the child participates in each stage of the procedure, Children's rights are upheld during the investigation process, during follow-up and rehabilitation, where legal assistance is available, If the individual is unable to understand the language spoken during the hearings, the Board will furnish an interpreter. If the Probation Officer is not available, the Child Welfare Officer or a social worker will investigate the circumstances surrounding the alleged offence and decide how to handle situations involving children who are in conflict with the law in accordance with the investigation process. The Board has directed the Probation Officer to conduct a social investigation and provide a report to the Board within 15 days of the initial production. It is acknowledged that a child in conflict with the law may also be a child in need of care at the same time, and that the Committee and the Board must be involved in both situations. Matters pertaining to the child who is allegedly in conflict with the law and who is stated to need care and protection at any point are transferred to the Committee, resolving the matter and rendering a decision that include a customised care plan for the child's rehabilitation and any follow-up visits that may be required from the DCPU, the probation officer, or an official from a non-governmental organisation. Board Make an investigation to determine whether someone is deemed fit for care. At least once a month, residential facilities for children in legal trouble are monitored, and recommendations are made to the State Government and the District Child Protection Unit regarding how to improve the quality of care and commanding the police to register an F.I.R. for offences against children involved in any conflict with law.

The board also has the authority to instruct police officers to file a F.I.R for any offences against a child who is in need of care or protection. Check adult prisons on a regular basis to see whether any kids are being held there. If so, relocate the child to an observation home right away and take care of any other responsibilities that need to be done.

Section 5 of the JJ Act, 2015 states that in the process of placing a juvenile during proceedings, a child who was under the age of eighteen at the beginning of the procedure but turned eighteen during the pendency must be treated as a kid. Section 6 proceeds in the

same manner, it refers to children who commit crimes before turning eighteen and are brought before the Board for the first time after that date. For the purposes of the investigation, the person in such cases should also be considered as a child.²⁷

3.7.1. Bail

According to the Juvenile Justice (Care and Protection of minors) Act, 2015, minors who are involved in legal issues are typically granted bail instead of being placed in an institution. All children who are detained for violating the law shall be freed on bail, with the exception of the following three situations: initially, where it is believed that releasing the child will put them in contact with criminals, secondly, when there is fear of moral, physical, or social risk and when someone fears that their release might compromise justice.²⁸

The 2015 Act mandates that the Board record the circumstances behind a bail denial as well as the reasons why the decision was made. If the Juvenile Justice Board is not there at the district level, the bail petition may be filed under Section 437 Cr PC 1973 before the Magistrate with jurisdiction over the matter. If rejected, it may be filed under Section 439 Cr PC before the Sessions Judge and the High Court. A youngster who is in trouble with the law must appear before the Board to have their bail conditions modified if they are unable to follow the requirements of their order within seven days of obtaining it.²⁹ An offense under this Act that carries a sentence of more than seven years in prison is considered cognizable and is not subject to bail.³⁰ An offense under this Act that carries a sentence of three years or more in prison, but not more than seven years, will not be subject

²⁷ *Id.*, s. 5.

²⁸ *Id.*, s. 12.

²⁹ *Id.*, s. 12(4).

³⁰ Ministry of Law and Justice. Govt of India. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 *available at*: [https://cara.wcd.gov.in/PDF/JJ%20Amendment% 20Act%20-2021_27.pdf](https://cara.wcd.gov.in/PDF/JJ%20Amendment%20Act%20-2021_27.pdf) (last visited on Sep. 2022).

to recognition or bail.³¹ An offense under this Act that carries a sentence of less than three years in jail or a fine alone will be considered non-cognizable and subject to bail.³²

3.7.2. Process of Juvenile Justice Board

The process outlined in section 7 of the Act for the JJB to adhere to. When dealing with a minor in trouble with the law, a magistrate who is not permitted to do so must adhere to the guidelines outlined in Section 9. In particular, Section 7 addresses the requirement that the board meet as often as specified and adhere to the guidelines established for conducting business during meetings.³³ Section 16 mandates that every three months, the Board report on the progress of cases to the Chief Judicial Magistrate, Chief Metropolitan Magistrate, and District Magistrate. The Magistrates will review these reports. These reports will be examined by the Magistrates. If the board does not meet in person, a child may appear before a specific board member. The location of the meeting must be non-threatening and not resemble a traditional court. A solitary board member has the authority to lead proceedings and issue directives.³⁴ According to Section 14(4), the investigation into petty offences is not finished within six months. This termination of the proceedings occurs even in the absence of a Board order to that effect.³⁵ Section 14(5), (d), (e), and (f) of the JJ Act, 2015 specifies that distinct procedures are to be followed for minor, major, and heinous acts. For minor infractions, the board uses summary trial³⁶ the procedure prescribed under CrPC. In situations when a minor under 16 years old is accused of a serious offence or a heinous offence, the board applies summons trial proceedings. When an adult over 16 is charged of a heinous offence, summons trial procedures are also applied. To determine whether to transfer or not, the board must begin the initial examination.

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.*, s. 7.

³⁴ *Id.*, s. 16.

³⁵ *Id.*, s. 14.

³⁶ Bhartiya Nagarik Suraksha Sanhita, 2023, s. 260-265.

However, it is disappointing that the JJ Act, 2015 says nothing regarding the process that the children's court must take in order to try a child in as an adult.

3.8. SPECIAL PROCEDURES

The JJ Act, 2015 forbids joint prosecution of minors who break the law with any other adult, just like the earlier laws did. This rule applies not just to board procedures but also to proceedings before the children's court. Even while Section 23(2)'s provisions provide that the board must determine the age of individuals presented before it at the outset—and that age is presumed to be the person's real age for Act requirements—it is not entirely clear that the board must do so.

3.8.1. Board inquiries on children on conflict with law

The Board is responsible for initiating the first two investigations on minors who are in legal trouble. Determining whether the minor who is alleged to have violated the law was younger than 18 on the day of the offence is the first matter the court must decide. If the response is affirmative in this case, the Board must carry out a second investigation to determine if the kid actually committed the alleged offence and to issue the proper order regarding that child.

3.8.2. Determining the age of Juvenile

The JJ Act, 2015's provisions regarding age determination by the Board and Committee have been discussed in all cases. Sections that pertain to both the Committee and the Board are outlined in detail in Chapter five. The Committee or the Board must record the observation expressing the child's age as precisely as feasible and not wait for further verification of the age in order to proceed with the investigation under section 14 or section 36, as appropriate.³⁷

³⁷ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 94.

Depending on the situation, the Committee or the Board will get a birth certificate from an authorised agency, the matriculation certificate, or other comparable documents from the appropriate examination board to start the age determination process. If neither of the two aforementioned certificates is provided, or if a birth certificate is required to determine age, an ossification test will be performed under the Committee's or the Board's orders; this test must be finished within 15 days of the order date.

3.8.3. The provisions pertaining to the Committee and the Board

The main question is whether or not the alleged juvenile offence is heinous, and if the answer is yes, whether or not the juvenile in question is close to turning 16 years old. The JJ Act, 2015 sets a fifteen-day period from the date of first production, which is not worthy of the one-month period under the JJ Act, 2000, which gave preference to a child's birth certificate or school certificate.

3.8.4. Procedure after completion of inquiry

To close the case, the Board must document that it has determined the child did not commit the offence after conducting the inquiry mandated by Sections 17 and 37. The board is responsible for recording all findings, regardless of any conflicting provisions in other laws that are now in effect, since this Section's provisions cannot be superseded by other legislation. In cases where the acquitted child was accused of committing a terrible crime and was between the ages of 16 and 18, the board's decision to acquit them is final and cannot be challenged.

When the minor, who was found not guilty, was claimed to have been between the ages of 16 and 18 on the day the horrible act was committed. If the Board determines that the child committed the alleged violation, it may impose any of the directives listed in Section 18. The legislative goal of the legislation is based on reformatory efforts. The act's intent is clear: rather than punishing the kid, it offers opportunities for growth, reform, and rehabilitation, giving the youngster another chance at life.

The type of offence, the specific need for monitoring or intervention, the specifics of the social investigation report, and the child's prior behaviour will all be taken into consideration when determining the board's order. The aforementioned elements must be combined and taken into account while determining the best interest in each situation.

As per the regulation, the juvenile shall be allowed to return home after receiving advice or correction and after consulting with the child's parent or legal guardian. This is the first order listed under Section 18. The board is given the authority to oversee group counselling and related activities under the second order. However, the group that is required to get counselling under this section has not yet been determined, and the boards are unsure about the best time to carry out this directive. The third board order, which deals with community service under the supervision of a specified institution, organisation, or person, is an important one that has been included in the law but is rarely followed and its purpose is not well understood.

These provisions specifically grant the boards the power to take kids to parks, hospitals, temples, or mosques in order to help keep these places tidy. The infractions that the kids had committed had nothing to do with these activities. The terms and conditions of these orders restrict the minor from participating in any other activity during the community service period.³⁸

In particular, the fourth order listed under Section 18 addresses the fine that must be paid by the child, their parent, or legal guardian. It is crucial to highlight that while fines are listed among the penalties of the Bhartiya Nyaya Sanhita, 2023, they are excluded from this list under Section 18 of the JJ Act, 2015. The JJ Act, 2015's clause (e) gives the board further jurisdiction to release a child under probation for good behaviour and give them to a parent, guardian, or other suitable individual. To guarantee the child's well-being and

³⁸ Ved Kumari, *The Juvenile Justice (care and protection of children) Act, 2015-Critical Analysis* 225 (Universal Law Publication, New Delhi, 1st edn., 2017).

good behaviour in return, the parent, guardian, or other suitable individual must create a link. Probationary periods cannot be longer than three years.

The final order under 18 specifically addresses special homes. A house that is classified as a special home must provide inmates with reformatory services during their stay, including education, skill development, counselling, behavioural change treatment, and mental health support. In addition, other orders must be based on the following topics: In addition to being forced to attend school, a child may also be ordered to attend a therapy centre, vocational training services, be barred from often visiting a specific location, and take part in a de-addiction program.

3.9. PROCEDURE FOR 16-18 YEARS OLD CHILDREN UNDER THE ACT

A 16–18-year-old kid accused of a heinous offence must follow certain procedures, as outlined in JJ Act, 2015, Section 15. The Board is tasked with conducting an initial assessment when a 16–18-year-old juvenile is charged with a serious offence, with the goal of determining whether to transfer the juvenile to the Children’s Court for an adult trial. Prior to finalising the decision, the Board must conduct a few inquiries. First and first, the Board must ascertain the age of the minor in violation of the law, regardless of whether the minor was sixteen or younger on the day the act was committed.

In such a situation, the Board proceeds to ascertain whether the claimed act committed by the kid is heinous or not if it is satisfied that the child was less than 16 but under 18 on the day of the offence. In this case, the board will determine whether the child's claimed offence qualified as a heinous offence if it is satisfied that the juvenile was less than 16 but under 18 on the day of the offence. The board follows these three easy steps if it finds that the offence is heinous in nature. The Board will first look at the specific section under which the minor is alleged to have committed the crime and whether the offence carries a minimum mandatory penalty. If the response is in the affirmative, find out if the offence entails a minimum term of seven years in prison or more. Thirdly, if the offence entails a minimum penalty of seven years in jail or more, carry out the preliminary evaluation. If not, in accordance with the procedure outlined for dealing with grave offences committed

by minors. According to the JJ Act, 2015, the JJBs must finish the initial evaluation to decide whether to transfer a 16–18-year-old child within three months. This period of time raises severe concerns regarding the timeliness of the process as well as its legality. Once the police file their final report in the case, indicating that there is prima facie evidence of a horrific act against the child, the evaluation is not required to be finished within this time frame. Preliminary examination of heinous offences as provided by Section 15 of the JJ Act.³⁹

The Board will first assess the child's mental and physical competence to conduct the crime, as well as his understanding of the circumstances and potential repercussions, whether he or she is accused of committing a heinous crime and has reached or is older than sixteen years old. The Board may, if necessary, issue an order in compliance with section 18's subsection (3), but only after doing an initial evaluation. Psycho-social workers, licensed psychologists, and other specialists may be consulted by the Board. Following a preliminary evaluation, if the Board decides that the problem should be resolved by the Board, the summons case trial shall proceed in compliance with the 1973 Code of Criminal Procedure, including appeals under section 101, paragraph Furthermore, given that the evaluation conducted in accordance with this section must be finished within the time frame given in section 14.

3.10. CHILDREN'S COURT

The State Government may, by notification and with the approval of the Chief Justice of the High Court, designate for each district a Court of Session to serve as a Children's Court to try the aforementioned offences in order to expedite the trial of crimes against children or violations of their rights. As long as a Court of Session has already been designated as a special court or a special court has already been established for such offences under any other currently passed legislation, then nothing in this section will apply.

³⁹ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 15.

A cursory reading of this clause makes it evident that the Children's Court will have jurisdiction over all offences against children, even those for which a punishment has been stipulated for the offence committed against the child. The courts will need to resolve this conflict of jurisdiction because the JJA 2015's Section 1(4) overriding effect provision only applied to children who were in legal trouble or in need of care and protection. It did not extend to adult offenders who committed crimes against children. Under the general rules of the Commissions for Protection of Child Rights Act, 2005, all adult criminals who commit crimes against juveniles are subject to a trial in the Children's Court, regardless of the kind of offences or the imposed sentence.

Following receipt of the case from the board, the children's court is required to follow the particular process outlined in Section 19 of the JJ Act of 2015. Furthermore, it's critical to keep in mind that the main objectives of children's court are to attend to children's needs and maintain a child-friendly environment. For this reason, the children's court is not permitted to apply section 19's prescribed penalty for the offence. In the end, it is clear that children's court is a unique type of criminal court that considers cases involving adult criminals who have wronged minors. A session judge presides over the court.

A periodic follow-up report, as required, by the District Child Protection Unit, a social worker, or the probation officer will be provided annually by the Children's Court to evaluate the child's progress in the place of safety and ensure that the child is not being mistreated in any manner.⁴⁰ A person must be sent to adult prison by the children's court upon reaching the age of 21, per Section 19 of the JJA 2015.⁴¹

3.11. CHILD WELFARE COMMITTEE

Section 27 of the Juvenile Justice Act of 2015 requires the establishment of child welfare committees in each district to oversee and care for children who require protection and care. There are five members of the committee: the chairperson and the other four

⁴⁰ *Id.*, s. 19.

⁴¹ Ved Kumari, *The juvenile justice (care and protection of children) Act, 2015-critical analysis*, 240(Universal Law Publication, New Delhi, 1st edn., 2017).

members. Every committee member will be required to complete training as of the committee's notification date. There will be at least one women member, who is expert in issues related to children.⁴²

The Act also specifies the committee's authority, duties, and responsibilities. Section 29 of the Act specifies the Committee's authority. The committee's primary jurisdiction is on issues involving children who require care and protection. The development, safety, and rehabilitation of children in need of care and protection should all be taken into account when using such authority.⁴³

3.11.1. Procedure of the committee relating to children in need of care and protection

In order to evaluate the institution's operations and the wellbeing of the children, section 28 stipulates that a minimum of one meeting must be held every twenty-one days. A kid may be produced in front of just one committee member, even when the group is not meeting. The committee may pass orders and conduct business as usual in the absence of a member. The committee's decision will be made by majority, but the chairperson's decision will be binding in the event that a majority is not reached.⁴⁴

3.11.2. Inquiry

Whenever it comes to inquiries, the committee has two duties: Identifying the child's age is the first step, and figuring out whether the child needs to be looked at is the second. Age determination of juvenile compliance with section 94 of the Act.⁴⁵

3.11.3. Orders

Orders: During the course of the investigation, the committee may issue both final and temporary orders for the production of children. If the committee finds that the child

⁴² Juvenile Justice (Care and Protection of Children) Act, 2015, s. 27.

⁴³ *Id.*, s. 29.

⁴⁴ *Id.*, s. 28.

⁴⁵ *Id.*, s. 94.

requires care and protection, it may issue temporary orders directing the child to be placed in a foster home, appropriate facility, or the children's home until suitable means of permanent rehabilitation are found or the child turns eighteen. If the child is younger than six, they will be sent to a specialised adoption agency.

3.11.4. Rehabilitation and Social Integration

Sections 39 through 55 of Chapter VII address the social integration and rehabilitation of children. Section 39 states that the rehabilitation and integration of children under this Act must be carried out in compliance with the child's individual care plan, ideally through family-based care such as sponsorship, adoption, foster care, or reintegration with family or guardianship with or without supervision. Siblings should be put in institutional or noninstitutional care together wherever possible.

The rehabilitation and social integration process for a child in custody must take place in observation houses if the child is not released on bail. The Board may also decide to place the child in a special home, a place of safety, with a fit individual, or in a suitable institution. When they turn eighteen, children who are leaving foster care or who are in legal difficulty and are leaving a safe haven may be eligible for financial aid to help with their reintegration into society. Section 40 states that any parent, guardian, or other carer may be given the right to return a child only after it has been determined that they are suitable and capable of giving the child the required direction. Section 41 requires the State Government to designate child care facilities as Children's Homes, Open Shelters, Special Adoption Agencies, Observation Homes, Special Homes, Places of Safety, etc. after determining their capacity and purpose. The registration is valid for 5 years and must be renewed after that time. According to Section 42, failing to register child care services can result in a fine of at least one lakh rupees, a year in jail, or both. Every 30 days that the application for registration is delayed will be considered a new offence.

Section 47 mandates that every district or group of districts create and operate observation homes for the temporary reception, treatment, and rehabilitation of minors who are purportedly in violation of the law. These residences need to be registered. The Any

registered institution or home may be approved by the state government to temporarily receive such a child. Every child who is sent to an observation house is separated into age and gender groups based on their age, after considering their physical and mental health as well as the seriousness of the alleged act. Section 48 outlines the creation and maintenance of specific homes necessary for the rehabilitation of children in legal trouble. In order to facilitate the rehabilitation of a child who has broken the law and has been sent there by the Juvenile Justice Board under Section 18, the State Government may build special residences on its own or through nonprofit or volunteer organisations.

Rules governing the administration and supervision of these special homes, such as the services and obligations they must fulfil and the criteria for separating and segregating children according to their age, gender, type of crime they committed, and physical or mental state, may be established by the State Government According to Section 49 of the Constitution, a kid in dispute with the law who is between the ages of 16 and 18 and has been accused of or found guilty of committing horrible crimes shall be placed in at least one place of protection, which must be registered under Section 41. For the purpose of both housing children or adults who have been found guilty of a crime and providing a different environment for them to remain in while an investigation is ongoing, each of these shelters have must have a distinct setup. In the process of rehabilitating and reintegrating children, Section 53(1) specifies the services that institutions registered under this Act must provide. In compliance with predetermined standards, these services may include basic essentials including clothing, food, housing, and medical attention. wheelchairs, prosthetic appendages, hearing aids, braille kits, and any other suitable devices and assistance required for kids with exceptional requirements. Given that children between the ages of six and fourteen will be covered by the Right of Children to Free and Compulsory Education Act of 2009, adequate education—which includes special education, supplementary education, and proper education for children with special needs—is essential instruction in skill development, occupational therapy, and life skills. mental health services, including counselling tailored to each child's needs. sports and cultural

events as well as recreational activities, legal assistance as needed. Referral services are available for education, career training, addiction treatment, and medical care as necessary. Case management entails creating and monitoring individualised care plans. Birth registration, help acquiring identity evidence when needed, and other services are available to the State Government, registered or suitable individuals or institutions, referral services, and any other service that may reasonably be offered to ensure the child's well-being. The State Government will form inspection committees that must examine all child-housing institutions at least once every three months. These committees must consist of at least three members, at least one of whom must be a woman and one of whom must be a medical officer. Within a week of the visit, the reports detailing the findings must be turned in to the State Government or the District Child Protection Unit. A month later, the relevant action must be taken by the State Government or the District Child Protection Unit, and a compliance report must be turned in to the State Government.⁴⁶

3.12. ADOPTION

According to the statute, adoption is the process through which a child is legally adopted and granted all the rights, privileges, and responsibilities of a biological child—along with the permanent separation from his biological parents. According to Section 63, adoption has the following effects: the adoptive father will become the child's parent after the adoption. The kid will be treated as though they were born to adoptive parents for all reasons, including inheritance, as of the date the adoption order is placed into force. The child's biological family will no longer have any contact with him or her; instead, new relationships will be developed through adoption. The adopted child will continue to be the owner of any property that was vested in them immediately prior to the adoption order going into effect, subject to any obligations that may be associated with such ownership, such as maintenance obligations for biological family members.

⁴⁶ *Id.*, s. 54.

Hindu adoptions and maintenance act's inapplicability. The Juvenile Justice Act of 2015 is exempt from the provisions of the Hindu Adoptions and Maintenance Act of 1956, according to Section 56 of the Act. Therefore, Hindus have the choice of using the Hindu Adoption and Maintenance Act or the Juvenile Justice Act. This Act does not imply that adoption of children by Hindus is prohibited. When adoptive parents already have a natural born child of the same sex, HAM Act forbids them from adopting another child of the same sex. Adoptive parents are permitted to adopt a child of the same sex even if they already have one, as the JJA does not impose this restriction. If adoption is the most JJA-compliant way to safeguard the child's interests. Identifying orphans, surrendered, and abandoned children who are eligible for adoption: The Act classifies children into three groups based on their suitability for adoption under the law. They are listed in the following order: Both biological parents and parents who are unable to care for their biological offspring are considered parents of an orphan. Secondly, surrendered child, who has been abandoned by parents who refuse to care for them implies that the parents can be traced. The parents must first be deemed unfit for adoption before the child can be removed from them. Although the Act does not specify a procedure for this kind of action. Abandoned refers to a situation in which the parents of a child are discoverable but do not choose to care for them. Children who have been abandoned or surrendered in are covered by sections 38 and 35 of the Act.

The Act contains provisions for determining an adoptive parent's eligibility. There are requirements outlined in Section 57 of the JJA in order to become the child's adoptive parents. These are: The potential adoptive parents must be in good physical and financial health, cognitively aware, and strongly motivated to adopt a child in order to provide him a proper childhood. In the event of a couple, adoption must have the approval of both the spouses. A person who is unmarried or divorced may also adopt after fulfilling the requirements and follow the guidelines set forth for adoption by the authorities concerned. Adopting a girl child is not possible for a single male, and any other requirements that might be mentioned for adoption by the authorities.

Under the JJA, there are three types of child adoption. The country adoption, among the Indians. The second is NRI adoptions that happen between Indians and non-resident Indians, these are adoptions that take place beyond borders. Thirdly, adoption that occurs between an Indian and a foreigner takes place outside of their own country. Religion as a concept itself is not restricted. The District Magistrate and the Deputy District Magistrates were granted the authority to approve the adoption process in the new bill of 2021. The child is restricted to the adoptive parents under the prior act's adoption process, which was issued by the courts.⁴⁷

3.13. CRITICAL ANALYSIS OF THE ACT OF 2015

Although every effort has been taken to ensure that the Act is comprehensive and that it fills in the gaps in the outdated laws by addressing all identified issues related to juvenile justice, it could not avoid criticism on a number of different fronts. Some of these issues raised are listed below:

1. The laws threw India back more than a century, substituting the criminal justice system for the Children Acts' protective framework, which led to a rise in the number of minors being tried as adults. It was stated that the Act has chosen a method 100 years old when children were sent to jail in extreme situations and ignored improvements in other areas including criminology in addition to, rehabilitation and restorative justice. Though many other countries had successfully implemented restorative justice even in cases of serious offences, leading to a decrease in the number of juvenile repeat offenders, the Indian Parliament yielded to the emotional and political pressure generated by a single case of brutal gang rape in which one of the accused was a child. Parliament chose to develop a retributive method for young children, despite the experience of other countries showing otherwise.

⁴⁷ Ministry of Law and Justice. Govt of India. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 *available at*: https://cara.wcd.gov.in/PDF/JJ%20Amendment%20Act%20-2021_27.pdf (last visited on Sep. 2022).

2. It was also noted that the basic premise that all people should be treated as children until the age of 18 is violated by splitting juveniles into two groups, one below 16 and one above 16. This contradicts the text of Article 14 of our Constitution, the age that has been set by a number of countries, and the UN Convention on the Rights of the Child, which is based on studies on the behaviour of children.
3. Future calls to lower the legal minimum age and expand the list of charges will be made easier by the classification that permits varied treatment of different youngsters. If this is done, a significant number of children will be denied the protection provided by the Act.
4. The Children's Courts were originally intended to hear trials for crimes committed against children rather than by them. It is against the intention to establish a Children's Court in order to automatically move certain minors between the ages of 16 and 18 into the adult criminal justice system, as stated in Section 19(3). The clause eliminates the distinction between children in conflict with the law and child victims by granting the courts, under the POCSO Act 2012, the authority to decide cases involving children in conflict with the law.⁴⁸
5. The Act is criticised for being at odds with worldwide standards and for the fact that most children who grow up to commit crimes come from low-income, illiterate families, who would benefit more from education than punishment.
6. Also, it is feared that the Act may be contested as unconstitutional due to the arbitrary nature of child transfers to adult courts, the bias of judicial personnel, and the lack of scientific standards to establish a child's transferability. The emphasis needs to move to victim-offender mediation programmes, restorative justice, victim and juvenile offender rehabilitation, and victim-offender mediation.

⁴⁸ Gitanjali Ghosh, "Stocktaking of the Juvenile Justice Mechanism in India: A Long Overdue Need" Vol.1: No II *NLUA Law & Policy Review* 97 (2015).

3.14. JUVENILE JUSTICE AND INDIAN JUDICIARY

The Indian courts is highly influential and has rendered numerous key rulings supporting the rights of children. The Juvenile Justice (Care and Protection) Act, 2000, the Juvenile Justice Act, and the Children Acts are the sources of the juvenile justice system in India. However, there are additional laws that have also provided specific protection for neglected and delinquent children.⁴⁹ Children under the age of seven were specifically free from all criminal culpability under Section 82 of the IPC, and children between the ages of seven and twelve were similarly protected under Section 83 of the same code, if they could prove *doli incapax*. As a result, the IPC only allowed questions about *mens rea* and the child's age.

In *Emperor v. Wali Mahommad and another*⁵⁰ According to the court, children who threw stones at a train between the ages of five and eight would normally be protected by Sections 82 and 83 of the IPC and would not be prosecuted.

In *Emperor v. Dharam Prakash*⁵¹ according to judicial rulings, very young should not be incarcerated.

In *Parbati Dasi v. Emperor*⁵² The court decided that these young children should be freed as soon as possible, but only under the supervision and care of their parent or legal guardian. Before transferring a person to a reformatory school, the court must have unambiguous evidence regarding the individual's age.

In *Nawab Dheru Gul v. Emperor*⁵³ It was made clear that the time of a child's stay at a reformatory school could not be reduced from what the regulations stipulated and that the child could not be brought there without an order of institutionalisation, or imprisonment.

⁴⁹ For example, the Apprentices Act 1850, the Indian Penal Code 1860 (IPC), the Reformatory Schools Act 1897, the Code of Criminal Procedure 1898 (CrPC. 1898), the Code of Criminal Procedure 1973 (CrPC.), and the Borstal Act, 1928.

⁵⁰ AIR 1936 (Sind) 185.

⁵¹ AIR 1926 (Lah.) 611.

⁵² AIR 1921 (Cal.) 190.

⁵³ AIR 1934 (Pesh.) 29.

In *Emperor v. Dharam Prakash*⁵⁴ under the Reformatory Schools Act, the judiciary has repeatedly affirmed the protective attitude that underpins the specific legislative provisions pertaining to minors. According to court rulings, very young children should not be placed in jail. Their parent or legal guardian should be in charge of them when they are released. Before putting a child in a reformatory school, the court must take his age into account. It was abundantly evident that a court order was required before students could be sent to their reformatory school. The directive must specify that the length of the reformatory school cannot be more than the allotted maximum time.

In *State v. Jahlu*⁵⁵ The Himachal Pradesh High Court ruled that unless an order of institutionalization—that is, an order of imprisonment—was made, a child could not be sent to a reformatory school, and the duration of stay could not be altered from what the laws prescribed.

In *Ramgopal v. State*⁵⁶ The Madhya Pradesh High Court has ruled that juveniles convicted of crimes carrying a death or life sentence are entitled to special treatment under the Borstal Acts, the Reformatory Schools Act, and the CrPC. The matter came up in front of the High Courts. Regarding this matter, the views held by the High Courts diverge significantly from one another. Several High Courts maintained that juvenile offenders ought to be sentenced to life in prison or the death penalty, irrespective of the Reformatory Schools Act and the Borstal Act. However, only few of them were in favour of life in prison and the death sentence.

But the primary worry under the Borstal Acts was how to care for young criminals who were handed life sentences when they reached a particular age and could no longer attend borstal schools. The conundrum was whether to release them immediately or carry out the remaining term of their sentence in a regular prison²⁸⁰ in line with Section 433-A of the

⁵⁴ AIR 1926 (Lah.) 611.

⁵⁵ AIR 1953 (HP) 40.

⁵⁶ 1968 Cri LJ 1178 (MP).

CrPC. The AP Borstal Schools Act of 1926 does not apply to an individual assigned to a borstal school, according to the Supreme Court's ruling on Section 433-A.⁵⁷

A similar approach taken in *Hava Singh v. State of Haryana*⁵⁸ reversed a similar approach in *Hava Singh v. State of Haryana* because the Punjab Borstal Act's definition of offence did not encompass crimes punished by death. The debate over whether the juvenile court or the session's court had exclusive jurisdiction over these types of issues under the CrPC was resolved in support of the juvenile court's jurisdiction.⁵⁹

3.14.1. Expeditious disposal of cases

It is critical for the reformation and rehabilitation of children that issues involving them are resolved expeditiously. In *Umesh Chandra v. State of Rajasthan*⁶⁰ The Rajasthan Children Act, 1970, applies to the age of the accused, who claims to be a child, based on the date of the occurrence, not the date of the trial, as the entire Supreme Court bench decided in *Umesh Chandra v. State of Rajasthan*, despite what is clear from sections 3 and 26 of the Act.

The date of initial appearance is the important date for implementing the JJA, according to R.C. Lahoti, J. in *Arnit Das v. State of Bihar*⁶¹ the division bench found that the JJ Act's Section 32(a) clearly demonstrated the age of the accused at the time of their presentation before the court by using the word is in two different contexts in connection with a person brought before it. Therefore, the date of initial appearance is crucial for implementing the JJA. It argued, in contrast to Dilip Saha, that if the Act's applicability was determined using the date the inquiry or trial began, then the right protected by Article 20 of the Constitution would be intact. A lot of people were critical of the pier in curium decision.⁶²

⁵⁷ State of AP v. Vallabhpuram Ravi, AIR 1985 (SC) 870.

⁵⁸ AIR 1987 (SC) 2001.

⁵⁹ Raghbir v. State of Haryana, 1981 Cri LJ 1497(SC).

⁶⁰ 1982 Cri LJ 994.

⁶¹ AIR 2000 (SC) 2264. The division bench was consists of K.T. Thomas, R.C. Lahoti.

⁶² Arnit Das v. State of Bihar: A Rejoinder', (2002) 2 SCC (Jour) 15.

Since it was established that the accused in this case was not a minor at the time the offence was committed, the case was not even given a verdict. A review was submitted, with the sole focus being on the pertinent date for the JJA's applicability. A bench consisting of two judges was asked to take up the case, recognising that the previous ruling by a three-judge bench had been disregarded by the two judges. The accused in this instance was determined not to be a child even on the day the act was committed, hence the constitution bench declined to respond to a merely academic matter. Insofar as this petition was concerned, it stated that it made no difference whether the accused's initial court appearance during the investigation process or the date the offence was committed was significant for the purposes of the 1986 Act.

3.14.2. Status of the child

The Supreme Court has allowed the argument of child status to be presented before it both in prior cases⁶³ and in the latest ones.⁶⁴

In the case where the plea of child status was raised as the plea was not raised before the trial court or the High Court or even in the original grounds of special leave petition but was added long afterwards, the court believed the plea to be an afterthought and dismissed the petition, the justices wrote in *Sushil Kumar v. Uttar Pradesh State*.⁶⁵ Again, in *Hari Om v. State of UP P Sawant*, S Mohan JJ., the Supreme Court swiftly dismissed the plea of being a child because no evidence was produced during the trial or earlier before the High Court. It said that it would be useless to bring a certificate to this court after the deadline.

In *Krishna Bhagwan v. State of Bihar*,⁶⁶ N. Singh J. said that Section 32 of the Children Act contained a similar provision. According to Section 32, the juvenile court has the authority to properly investigate the accused's age on the day the offence was committed,

⁶³ Dharam Pal and others v. State of UP, AIR 1975 (SC) 1917.

⁶⁴ Umesh Singh v. State of Bihar, 2000 (4) SCALE 511.

⁶⁵ AIR 1984 (SC) 1232.

⁶⁶ 1991 Cri LJ 1283 (Pat) (FB).

gather any relevant evidence, and record a determination of whether the accused was a juvenile. It is not necessary to mention that this Court is unable to ascertain an accused person's age on the day the act was committed because that information must be ascertained from the evidence that will be presented as well as other written opinions of the doctors that were presented to this court should not be the exclusive basis for this decision. To show that the accused was not a minor on the day the offence was committed, the prosecution is entitled to cross-examine any forensic or medical experts who have provided an opinion regarding the accused's age.

Considering the extent of this widespread ignorance, it makes sense that children shouldn't be excluded from the protection of beneficial legislation merely for not bringing up the issue of child status at the proper moment. The majority of children who fall under the JJS's coverage are marginalised, uneducated, and unaware of their rights or the obligations of others towards them. It is not reasonable to expect them to be aware that a legislation like this exists for their advantage and that they ought to request its implementation as soon as possible. To guarantee that children whose cases do not include the argument of child status are protected by the law and the procedural flexibility is essential.

3.14.3. Determination of the age

Children in conflict with law typically lack documentation, it can be difficult to determine their age, particularly in circumstances when the facts are ambiguous. Even when several joints are subjected to an ossification test, a medical examination allows for a two-year margin of error on each side.

It is crucial to ascertain the child's age under the JJA for two reasons. In order to ascertain if the beneficiary is under the minimum age needed by JJA, it is first necessary to make this age assessment. Second, determining the length of institutionalisation requires as precise and near-accurate an age record as possible.

The Supreme Court in *Mukarrab v. State of U.P.*⁶⁷ said that Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act, since few children covered by the Juvenile Justice Act have birth certificates, determining the age of the kid is a crucial issue.

In *Anita v. Atal Bihari and others*⁶⁸ The Registrar is regarded as a public servant for the purposes of Section 21 of the Indian Penal Code, as described in Section 26, if they act or appear to act in accordance with the terms of the Act of 1969 or any rule or order made thereunder, according to the ruling. The document, or the certificate, was admissible under Section 35 of the Evidence Act because it fully satisfies the three requirements, which are that the date of birth be entered in a public record, that it be an entry stating a fact in dispute, and that it be made by a public servant in the course of performing his official duties.

The Patna High Court held in *Shyam Narayan Singh v. State of Bihar*⁶⁹ that the accused was a juvenile based on the age he gave in his own testimony before the judge, which was undisputed. In a different case, it was made clear that the High Court's or Court of Sessions' ruling would not be legally enforceable if it was promptly recorded without conducting a visual perception-based evidentiary examination. The Delhi High Court ruled that it was incorrect to deny the accused's application, which claimed to be a child, based only on a visual inspection.⁷⁰ The word appears in the Acts may be the source of the judges' decision

⁶⁷ AIR 2014(SC)117.

⁶⁸ 1993 Cri LJ 549 (MP).

⁶⁹ 1993 Cri LJ 772 (Pat).

⁷⁰ *Manoj & Munna v. State*, 1993 Cri LJ NOC 454 (Del). However, this is not the only occasion when the age was determined by mere facial examination. The crime branch of Delhi Police conducted a raid on the brothels on G. B. Road on 15 March 1990. The police took charge of 111 persons considered by them to be children, in that raid. All these persons were produced before the Juvenile Welfare Board under the JJA. The chairman of the Board was of the opinion that they were above the age of eighteen years and released a majority of them. His opinion was based on 'facial examination' of the children. No medical examination was ordered, as that would have taken at least a week. The police too had formed its opinion that they were children by facial examination only in the circumstances of a raid. Hence, one has been left wondering as to how facial examination alone by the Board constituted 'adequate and proper evidence' for determining their age. Ved Kumari, 'Age Determination Hurdle' *Times of India*, 30 March 1990.

to assess age solely based on visual inspection. The Punjab High Court held that the word appears included something obvious and revealing about a person's external appearance.⁷¹

The Allahabad High Court ruled in *Milap Singh v. State of UP*⁷² that, absent circumstantial evidence indicating that the date of birth was fraudulently inflated or that the age listed on the school leaving certificate was fabricated, the age on the certificate should have taken precedence over the Medical Officer's report.

In the case of *Raja Singh v. State of Bihar*⁷³ the first medical board determined the accused was older than eighteen, while the second medical board that was later formed determined, he was between sixteen and eighteen. The Patna High Court dismissed his claim that he was a child, citing the previous medical board's ruling in addition to the determination of the session judge that he was twenty years old. Using the previous medical board's ruling in conjunction with the determination of sessions judge that he was twenty years old, the Patna High Court denied his plea of being a child.

The Patna High Court ruled in *Kumar Satyanand v. State of Bihar*⁷⁴ that documents such as matriculation certificates, school leaving certificates, or entries made in various school records that are available should be regarded as authentic and reliable. The reason for this is that since the entries were unquestionably made years before, they cannot be contested or attacked on the grounds that any record was prepared for the benefit of the accused after the event.

In the case of *Umesh Chandra v. State of Rajasthan*⁷⁵ the appellant's date of birth is recorded as June 22, 1957, on two records from two separate schools. His father has signed both of these documents, which were in existence ante litem motam. Therefore, there

⁷¹ Borstal Inmate Narjit Singh v. State of Punjab, ILR (1975) 2 Punj 251 (DB).

⁷² 2000 Cri LJ 3059 (All).

⁷³ 2000 Cri L J 3388 (Pat).

⁷⁴ 1983 Cri LJ 1532.

⁷⁵ 1982 Cri LJ 994.

would be no reason to question the authenticity of these documents. When the appellant's age was initially stated on the admission form, there was no question about his birthdate, and since it was his first admission to a school at a young age, there may not have been any reason for the parents to provide a false date of birth. The appellant received admission into an authentic school with an excellent reputation.

The Supreme Court overturned the sessions judge's decision in *Bhoop Ram v. State of Uttar Pradesh*⁷⁶ ruling that the person was older than the designated age based on medical advice and that it was common for schools, age to be understated by one or two years for future benefits. The Supreme Court concluded that the genuine documentary evidence took precedence over the medical opinion, stating that the medical evidence was merely an estimate based on physical characteristics and radiological testing, and it was not impossible for an estimate error to find its way into the conclusion. It also restated the rule that, in the absence of any evidence raising questions about the entry's authenticity, school credentials should be taken as trustworthy and valid.

In *Ramdeo Chauhan v. State of Assam*⁷⁷ the Supreme Court, however, sounds an entirely discordant note about the accused's age. The accused was sent for a medical examination by the session court in order to determine their age. The accused presented a school register entry from many years prior to the incident as proof that he was a child on the day of the offence, the principal of the school and his father were questioned to corroborate this. Both the medical opinion and the school registration indicated that he was a child on the day of the incident. Nevertheless, the session court maintained that the accused was not a child based on the inconsistent oral testimony provided by his father during both the chief and cross-examination. Since the record in the school register was based on a transfer certificate that the other school had provided and it was unknown how the student got into that school, it was denied. The medical certificate was denied due to an odd method of computing the

⁷⁶ 1989 (1) SCALE 799.

⁷⁷ 2001 (5) SCC 714.

two-year margin of error. The sessions judge stated, if we apply the variation of margin of two years on lower side, the accused must be eighteen years at present, in paragraph 56 of his ruling. Given his current age of eighteen, he would have had to have been twelve years old at the time of the alleged incident, which is completely impossible given the evidence shown by the defence that he was older than fifteen at the time of the alleged incident. The accused could currently be twenty-three years old if we apply the two-year margin of variation to the other side. Since the claimed incident occurred prior to six years, the accused cannot have been younger than sixteen at the time of the alleged incident in order for the Juvenile Justice Act of 1986 to be applicable. He opted to include the one-year cushion to the upper age but disregard it from the lower age calculation in this calculation. While the Supreme Court's ruling allowed a four-year range, it expanded the accused's age range from twelve to seventeen, a five-year difference. Furthermore, he presented his calculations as though the Supreme Court ruling required the courts to arrive at a conclusion that was either two years lower or two years higher. Only the margin of error had been mentioned by the Supreme Court. In his reasoning, Sethi, J. relied on the statement that the investigating officer had recorded in addition to not finding this approach to be at contradiction with previous Supreme Court rulings.⁷⁸

The court will conduct an investigation and use medical records and other data to determine the age. The Calcutta High Court held in *Dilip Saha v. State of WB*⁷⁹ that the person bringing the accused before the court must notify it of its requirement to make a reasonable inquiry regarding the accused's age. The court then has the responsibility to ascertain the accused's age and record a finding regarding it. For the purposes of the trial and sentencing, the age so reported will be considered the accused's actual age. When the Supreme Court observed in *Gopinath Ghosh* that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or

⁷⁸ Even though barred from admission under Section 162 of the Code of Criminal Procedure, 1973 except for the purpose of contradiction.

⁷⁹ 1979 Cri LJ 88(WB).

undertaking an inquiry, an inquiry about the age of the accused on the date of the occurrence must be made, it was an explicit direction to the magistrate to obtain the evidence of age. This should be especially true in areas where special laws pertaining to juvenile offenders are in effect. If it's required, the magistrate may send the accused to the Civil Surgeon or the Medical Board, depending on the situation, to get reliable age testimony. The accused may also be called upon by the magistrate to provide testimony regarding his age. After that, the knowledgeable Magistrate can move forward in compliance with the law.

The Supreme Court ruled in *Bhola Bhagat v. State of Bihar*⁸⁰ that, given the advantageous nature of socially conscious legislation, courts have an obligation to carefully consider pleas of this kind. They cannot simply throw up their hands and refuse to grant an accused party's request for benefits unless they can provide an authoritative ruling on the petition. Ultimately, the court has to make a determination about the age after conducting an investigation. It is expected that the High Courts and lower courts will handle these cases with greater tact, as failing to do so could harm the goal of the Acts and the Legislature's attempt to turn the delinquent child back on track and restore him to his appropriate place in society.

In *Arnit Das v. State of Bihar*⁸¹ the Supreme Court made it clear that a hyper technical approach should not be used when evaluating the evidence presented by the accused to support his claim that he was a juvenile. In borderline cases, the Court should lean towards holding the accused to be a juvenile if there are conflicting views on the same piece of evidence. In *Balbair Singh v. State of Rajasthan*⁸² the Rajasthan High Court established that a competent body must conduct the age determination inquiry and provide the parties with a chance to present both oral and written evidence. It must also grant the other party the

⁸⁰ 1998, Cri LJ 390.

⁸¹ AIR 2000 (SC) 2264.

⁸² 1994 Cri LJ 2750 (Raj)

opportunity to cross-examine them after the summons case procedure. If authorised, the magistrate may conduct an inquiry. If not, he has to refer the matter to an appropriate authority. After the case has been committed, the High Court or the Court of Sessions may use their investigative powers in proceedings involving appeals, revisions, or other matters.⁸³

The primary conclusions to be drawn from these cases on age determination are that age should only be determined based on sufficient and appropriate evidence. Contradictory evidence that is currently available could be explained by oral testimony. Genuine documentation proof is favoured over physical characteristics and radiological analysis. If there is no evidence to raise doubt on the accuracy of the entry, then school certificates should be accepted to be reliable and valid. To get the most accuracy of age, every effort must be taken. In circumstances where age determination in borderline cases is uncertain, the courts ought to lean on the side of declaring the accused to be a child. These rules do represent the protective attitude of the higher judiciary as well as the inadequate knowledge of the concerns by the lower judiciary. The lower judiciary must be aware of these standards or act in accordance with them if it is to provide protection to the large number of impoverished and illiterate children who come before it.

In *Ram Vijay Singh v. State of Uttar Pradesh*⁸⁴ it was noted that the ossification test is not the only factor used to determine an individual's age and that a blind and mechanical assessment of an individual's age cannot be made based just on a radiological examination and medical opinion. Even while radiological examination is a helpful tool for estimating an individual's age, the results are not absolute and are prone to disagreement. Even though medical data about an individual's age can be a very helpful guide, it is not conclusive and must be taken into account in conjunction with other factors.

⁸³ Aquil Alvi v. State of UP, 1996 Cri LJ 103 (All).

⁸⁴ 2021 Cri. LJ 2805.

In *Salil Bali v. Union of India & others*⁸⁵ the Supreme Court evaluated the reasoning behind the mentioned age restriction and noted that the 18-year-old had been decided in accordance with the knowledge of professionals in child psychology and behavioural tendencies. Therefore, the court rejected the appeals, ruling that there was no need to interfere with the JJ Act, 2000's provisions until enough information was provided.

The grounds for assessing the age of a juvenile have been clarified by the supreme court in a recent ruling in the case of *Rishipal Singh Solanki versus State of Uttar Pradesh and others*⁸⁶ the court upheld, the JJ Board or committee has the right to ascertain the age of the person presented before them if they have reasonable doubts about that person's age, and that age will be regarded as the person's actual age

3.14.4. Children committing serious offence

In the 1932 case of *Lakhi Sahu v. Emperor*⁸⁷ the Calcutta High Court considered whether a juvenile court had the authority to handle cases involving crimes punishable with death or life sentence and up to the 1990s it becomes the main topic in many more instances. A provision in both the 1973 Criminal Procedure Code and the Code of Criminal Procedure 1898 caused the disagreement⁸⁸ establishing that any child-committed crime that is not punishable by death or life in prison may be tried by a juvenile court, a court of chief judicial magistrates, or any other court specifically authorised by the Children Act, or by any other law currently in effect that addresses the treatment, education, and rehabilitation of young offenders.

⁸⁵ Writ Petition (C) No. 10 of 2013.

⁸⁶ LL 2021 SC 667.

⁸⁷ AIR 1932 (Cal) 437. One Lakhi Sahu alias Kahu, a boy of 13 or 14, was produced before Mr. Mukherji on a charge of culpable homicide under Section 304, I.P.C., (an offence which is exclusively triable by a Court of Session) alleged to have been committed in Howrah.

⁸⁸ The Code of Criminal Procedure, 1898, s. 29B and The Code of Criminal Procedure, 1973, s. 27.

In *Rohtas v. State of Haryana*⁸⁹ the case made it all the way to the Supreme Court. According to the Supreme Court, the High Court miscalculated when decided that the appellant should have been tried in accordance with the Code of 1973 rather than the Haryana Act. The Sessions Judge made the right decision in this regard, and the appellant's case ought to have been sent to the relevant magistrate so that it may be tried in compliance with the Haryana Act.

But the issue was brought up again in *Raghubir v. State of Haryana*⁹⁰ on the grounds that the Rohtash ruling was rendered without taking into account the implications of Section 27 of the CrPC's terminology. In *Rohtas*, the Supreme Court upheld its ruling. It stated that Section 27 is not a specific provision to the contrary in the sense of Section 5, which alone could have excluded the operation of the special law relating to children, because it does not contain any language such as notwithstanding anything contained in any Children Act passed by any State Legislature. The appellant's attorney had rested his case on Article 254 of the Constitution, which guaranteed the supremacy of federal law over state law to the extent of repugnancy.

The argument was rejected by the Supreme Court, which supported it by citing Verma J.'s dissenting opinion in *Devi Singh v. State of Madhya Pradesh*.⁹¹ It stated that the issue of whether to apply Article 254 only came up when the two laws' provisions were unable to coexist. In this case, the central legislation prevented the specific state legislation from functioning. As a result, Article 254 was not drawn, and the Children Act's provisions—which grant juvenile courts sole jurisdiction to try all crimes, including those punishable with a life sentence or the death penalty—would come into effect. The Bal Adhiniyam is a special local Act, whereas the new Code is a general enactment applicable throughout the nation; therefore, the special local Act would apply within this State in preference to the general law on the subject, the Supreme Court explained. This conclusion is further

⁸⁹ AIR 1979 (SC) 1839.

⁹⁰ 1981 Cri LJ 1497.

⁹¹ 109 1978 Cri LJ 585.

supported by this fact. Juvenile courts have the authority to hear cases involving minors, regardless of how serious or minor the offence. As planned by its creators, the Children Act of 1960 became the most progressive policy thanks to the Supreme Court's attitude, which was definitely a step in the right direction.

In *Sheela Barse and Anr. v. Union of India and Ors.*⁹² the Supreme Court recommended that the Central Government draft a Parliamentary Legislation on the matter in order to bring uniformity to the various provisions relating to juveniles throughout the nation, rather than each State having its own Children's Act that differs in procedure and content. To address the issue of juvenile delinquency in India, the Central Government passed the Juvenile Justice Act,

The issue appeared in the case of a juvenile's rape and other charges against a girl who belonged to a Schedule Tribe, as heard by Judge Kalpetta⁹³ in re Sessions. Will the minor's trial follow the guidelines set forth in the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act?

The Madras High Court's decision in *Ramchandran v. Inspector of Police*⁹⁴ provides additional evidence that children are not to be excluded from the JJA's jurisdiction. The question in this case was not whether the accused child had committed a major crime, but rather whether the accused had been labelled a goonda because of past crimes that led up to the current offence. The court determined that it was not necessary to investigate the overriding effect of the detention power under the relevant Act⁹⁵ because, in its view, a child could not meet the definition of a goonda and the Act was only applicable to goondas, bootleggers, drug offenders, and similar cases.

⁹² AIR 1986 SC 1773.

⁹³ 1995 Cri LJ 330 (Ker).

⁹⁴ 1993 Cri LJ 3722 (Mad).

⁹⁵ Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982.

If the police carried out their duties in a timely and appropriate manner, the child will never grow up to be a goonda. In order to ensure that a child who commits a serious crime has little chance of engaging in future criminal activity that could jeopardise law and order, the police must move quickly to place him in custody and provide him with appropriate care.

Since the JJ (C&P) Act was a later special enactment and does not specifically exclude any category of acts committed by juveniles even when they are aware of the special Acts, it may be viewed as putting an end to this debate. It says nothing about it, though, therefore the matter will probably still be decided by the courts and attorneys' compassion and understanding.

3.14.5. Issues related to the procedure

The JJA had adopted various procedural changes contained in the Children Act 1960 relating to the proceedings concerning children. These included designated courts to deal with children, differential principle of bail, summons procedure, exclusion of public in the proceedings, prohibition against joint trial, procedure of the competent authority, role of a lawyer, limited right of appeal, and so on. The constitution of a separate juvenile court culminated in the process of segregation of children from the ordinary criminal justice system.

In *Mata v. State of Rajasthan*⁹⁶ the court determined that the order was inappropriate since it denied bail based on the magnitude and nature of the offence. The Court stated that regardless of the type of offence claimed to have been committed, it is evident that a delinquent adolescent must typically be released on bail unless there are reasonable grounds as specified in Section 18.⁹⁷

⁹⁶ 1996 Cri LJ 743 (Raj).

⁹⁷ A contrary approach is reflected in the observation of the court in *Antaryami Patra* when it said, 'I have no hesitation to come to the conclusion that release of an accused involved in commission of an offence under the NDPS Act would defeat the ends of justice and the drug traffickers would pursue their objective of drug trafficking through such juvenile delinquents.' 1993 Cri LJ 1908 (Ori) at 1914.

In the case of *Amit v. State of Uttar Pradesh*⁹⁸ the session judge dismissed the bail request, stating that the accused's age alone was not sufficient to justify bail. The High Court made it clear that decisions about age and bail must be made by granting short-term bail. Section 8 of the JJA requires the session's court to either submit the case to the juvenile court or consider the bail question itself in compliance with Section 18.

The High Court's brief examination in *Shokat Ali v. State of Rajasthan*⁹⁹ concerned whether the juvenile, who had been brought before the session's court rather than the juvenile court, could be granted bail. The Sessions Court was one of the courts that might use the juvenile court's authority in cases that came before it for appeal, revision, or other reasons, therefore the court responded in the affirmative. The terms of Section 37 of the NDPS Act were not specified, despite the fact that Section 33 of the Act allowed the discharge of a criminal under the age of eighteen on probation. Concerns were raised about the necessity of a lawyer and the clause prohibiting them from appearing in juvenile court.

The sole argument made in *Mohomed Alan v. The Crown*¹⁰⁰ on appeal was that the trial had mistaken because the attorney who appeared in front of the juvenile court was not permitted to cross-examine the subject. In fact, the appellant's counsel acknowledged that the decision made was in the child's best interest, but he was unable to demonstrate that the appellant suffered any harm in this case. In this regard, the following observations made by then Chief Justice Tyabji J. at the time of the case are noteworthy: The intention of the Juvenile Courts appears to be that juvenile offenders should be dealt with under conditions clear of the atmosphere of the criminal court. The presence of members of the Bar on behalf of the accused in such petty matters as are brought before the court, whose functions are corrective rather than penal, would, with the resultant long, often times tedious cross

⁹⁸ 1999 Cri LJ 1878 (All). Bail prayer on behalf of the applicant is pressed on the ground that he is assigned the role of exhortation and conspiring with actual assailants and that the applicant's age is below 16 years and thus he is juvenile.

⁹⁹ 1992 Cri LJ 1335 (Raj).

¹⁰⁰ 136 AIR 1950 (Sind) 16.

examination, tend to frustrate the intention, more specially as the aid of lady members of the public has been listed in this corrective work.

Under *Kario alias Man Singh Main and others v. State of Gujarat*¹⁰¹ the clause restricting solicitors from appearing in children's courts was contested as being unconstitutional under Article 22 (1) of the Constitution on a reference made by the session's judge, Rajkot. Interestingly, despite receiving a notice from the High Court, neither the Advocate General nor the advocates who had filed an appearance on behalf of the accused appeared before the High Court. The Assistant Government Pleader was the only one to speak. He claimed that the Children Act controlled the provisions of the CrPC relating to the right to be presented by a pleader, which was made in the larger interest of the child offender, the ban on the presence of an advocate before a juvenile court was not absolute and could be lifted in the interest of the public and the prohibition was not invalid because no child delinquent could be sentenced to death, transportation, or imprisonment. The accused was not prejudiced by the denial of an advocate and the goal of Children Act was to help the juvenile delinquent rather than punish him.

The division bench rejected all of these arguments by largely citing the Supreme Court's majority ruling in *State of Madhya Pradesh v. Shobharam*.¹⁰² It was decided that the Saurashtra Children Act's restriction on a lawyer's appearance in a juvenile court went against Article 22(1) of the Constitution's guarantee of the fundamental right to legal representation. The Constitution's guarantee could not be limited by a law provision, and the right embodied in Article 22(1) was unrestricted and absolute. The purpose of the Act was irrelevant because, in contrast to the fundamental rights protected by Article 19 and

¹⁰¹ (1969)10GLR66.

¹⁰² AIR 1966 (SC) 1910 The respondents were arrested by the police for the offence of trespass and were released on bail. They were tried and sentenced to pay a fine by the Nyaya Panchayat, a court established under the Madhya Bharat Panchayat Act, 1949, with powers to impose only a sentence of fine. The conviction was set aside by the High Court on the ground that s. 63 of the Act, which provides that no legal practitioner shall appear on behalf of any party in a proceeding before the Nyaya Panchayat, violated Art. 22(1) of the Constitution and was therefore void.

Article 22(1) of the Constitution had no restrictions. Regardless of whether someone was granted bail or not, their rights started the moment they were placed under arrest and continued until they were made to answer for the events that led to their incarceration. The accused could be institutionalised, which would mean giving up their freedom. The application of a fine in this case can be considered a criminal conclusion. It would be unlawful for any law to restrict the children's right to self-defence by preventing them from defending themselves with the help of legal counsel.

Unlike the CrPC, the Acts have provided for summons procedure to be followed by the competent authority in all proceedings before it, including those for determination of age.¹⁰³ While affirming that the differentiated procedure is constitutional, the higher courts have not allowed any deviation from the standard procedure that is set forth in summons cases. Article 14 of the Constitution was deemed to permit the discriminatory procedure in the case of *re Anthony*.¹⁰⁴ Since the distinction allowed for a more informal and compassionate approach dealing crimes committed by juvenile offenders, the Madras High Court declared that the decision was eminently rational and had been made with the child's best interests in mind.

However, informality in the process is not what the summons method implies. A ruling based only on the probation officer's report was overturned because it was issued with complete contempt for the prescribed procedure.

It was decided in *Sultan Singh v. State of MP*¹⁰⁵ that the chief judicial magistrate's finding of age was incorrect since the juvenile court was not formed up of him alone. It was emphasised again, citing *Sunil Kumar*, that orders made by a single magistrate creating a juvenile court were erroneous and that all magistrates must make inquiries and orders once

¹⁰³ Balbir Singh v. State of Rajasthan, 1994 Cri LJ 2750 (Raj).

¹⁰⁴ AIR 1960 (Mad) 308.

¹⁰⁵ 1997 Cri LJ 657 (MP-Gwalior). Curiously the accused seems to be less than six years of age on the date of offence. His date of birth was mentioned as 1 July 1987 and that of the offence was 8 April 1993 in the case.

the juvenile court has been established. An initial investigation was not permitted by the summons procedure. As a result, the magistrate's committal decision regarding the child was overturned by the Madras High Court since it was unlawful.¹⁰⁶

Nonetheless, after a trial is over and a sentence is imposed, the courts usually always set aside the sentence but keep the trial standing.¹⁰⁷ The court upheld the accused's conviction in *Shyam Narayan Singh and others v. State of Bihar*¹⁰⁸ despite acknowledging that the accused was underage at the time of the incident. However, the court also ordered the accused to be set free on probation and pay a fine to make up for the losses of victim's relatives.

The JJA/JJ (C&P) Act and the Children Acts prohibit the combined trial of a child and an adult, even though they may normally be tried together in accordance with the CrPC's provision. This is a significant procedural deviation. The legality of a child's joint trial with an adult was called into doubt in appeals and by many judicial officers in their references. It was anticipated that the provision would cause protracted delays because a decision in one case would not be made until the trial in the other case was finished as well. This exact directive was issued by the Madras High Court in *Sessions Judge, Tirunelveli v. Perumal*.¹⁰⁹ It was decided that a session judge presiding over the separate trials of an adult and a minor for the same offence ought to reserve judgement in either case until after the conclusion of the respective trials. The joint trial of a minor with an adult was ruled by numerous courts to be unlawful and against the Children Acts. These rulings were made unanimously. In *Vinod v. State of UP*¹¹⁰ on the other hand, the court determined that the child's trial, which included his father and guardian, was not tainted because it could not be demonstrated that the joint trial had prejudiced the child. In *Mukhtiar Singh v. State of*

¹⁰⁶ In re Keralan, (1972) Mad LW (Cri) 195.

¹⁰⁷ Chandrika Kumar and others v. State of Bihar, 2002 Cri LJ NOC 38 (Pat).

¹⁰⁸ 1993 Cri LJ 772 (Pat).

¹⁰⁹ 1974 Cri LJ 261 (Mad) (FB).

¹¹⁰ 1999 Cri LJ 3729 (All).

*Punjab*¹¹¹ it was decided that the East Punjab Children Act's provisions did not invalidate the combined trial of a child and an adult.

There was also some investigation of the process concerning cases that were ongoing when the new laws were implemented. The court explained in *Lallan Singh v. State of UP*¹¹² that Section 20 of the JJ (C&P) Act made it plain that the ongoing proceedings had to proceed as though this statute had never been enacted. If the accused was found guilty, only then would the case be submitted to the juvenile justice board for disposition in compliance with its rules. The JJ (C&P) Act's Section 64 only applied to children who were incarcerated; it had no bearing on cases that were still pending.

The primary concern raised by the cases before the higher courts is the failure to distinguish between instances involving children and those involving who are not children. None of these instances have addressed further concerns regarding conflicting rulings from two forums dealing the same case, duplication of court work, or discrimination resulting from one forum's conclusions influencing another in the absence of a joint trial.

A number of procedural questions pertaining to children who have been neglected have been brought up. The locus standi of the individual filing the appeal was the subject of the first two cases involving neglected children that were heard by the higher courts.

The putative father was found to have none in the first case,¹¹³ but the child's appeal through her aunt was found to be maintainable in the second.¹¹⁴ An application under the Guardians and Wards Act 1890 against the Child Welfare Board was deemed misconceived in *Om Prakash v. Child Welfare Board*,¹¹⁵ as the proper course of action was to file an appeal with the court of sessions under the Children Act. The legitimacy of the summons sent by

¹¹¹ 152 1992 Cri LJ 2968 (P&H).

¹¹² 156 2002 Cri LJ 1242.

¹¹³ In re Anandi Mahar, AIR 1937 (Bom.) 388.

¹¹⁴ Public Prosecutor, Mad. v. Geetha (1964) MLJ (Cri.) 313.

¹¹⁵ AIR 1980 (Delhi) 137.

the child's Welfare Board President to the parent to provide justification for why the children should not be treated as a neglected child under the Children Act was maintained in the case of *Shila Bhalla v. Bhagwan Dass*.¹¹⁶ Under the Act, an interim order could be passed without the presence of every member of the Board. It was decided that the juvenile court's decision to send the girl to an out-of-state school was unlawful and without authority.

3.14.6. Propriety of orders relating to children

The JJS mostly takes a protective rather than a punitive stance. Questions about the proper conduct of the juvenile courts or any other court's orders pertaining to minors offer an opportunity for emphasising this fundamental distinction between the JJS and regular criminal courts, as well as fostering a greater awareness, acceptance, and application of the JJS's noble goals. Under the Children Acts, the higher courts heard several challenges to the validity of the lower courts' punitive orders pertaining to children, which were only partially upheld. In a particular case, it was determined that a jail sentence imposed without considering the inmate's age was unlawful.¹¹⁷ The Supreme Court also ruled that the Children Act's provisions could not be applied to a life sentence without a correct age determination, and they ordered the accused to be released on probation.¹¹⁸

In other cases, even for serious crimes like murder and rape, it was determined that an order of probation, placement in a juvenile facility, or custody with parents was more appropriate. As a result, the institutionalisation sequences were adjusted to operate concurrently. In several instances, the courts had to deal with an order that sent the child, incorrectly, to either an institution inside or outside the state.

¹¹⁶ AIR 1965 PUNJAB 384.

¹¹⁷ *Hiromal s/o Chuhamal v. Emperor*, AIR 1948 (Sind) 63 (DB).

¹¹⁸ *Sri Krishan v. State of UP*, AIR 1991 (SC) 43.

In *Public Prosecutor v. Rajam Ammal*,¹¹⁹ Since there were no borstal schools for keeping girls, the public prosecutor filed a revision against an order directing a girl to be detained in such school. In *Rajesh Khaitan v. State of West Bengal*,¹²⁰ the Calcutta High Court found normal abandoned children kept with abnormal children and declared such confinement improper. It also declared a sentence of imprisonment passed against a child as being without jurisdiction. The higher courts were called upon to decide on the validity of orders of custody of children in borstal schools after they attained the age of 21-23, beyond which they could not be kept in the juvenile institution.¹²¹ In *Karuppayee and Another VS State Represented By Inspector of Police Tirupur Rural Police Station, Tirupur*,¹²² the court held that the order directing the juvenile to be sent to jail, on completion of their stay in an approved school, to serve the remaining period of life sentence imposed upon them was illegal and contrary to the decision of the Supreme Court. It approved the approach taken in *Rajan & Thiruvengada Karthigean v. State*,¹²³ in this judgment where the JJ Act followed a liberal approach.

The Children Acts provided for continuation of inquiry when the child ceased to be so during the pendency of proceedings and for passing orders as if the child continues to be so. However, the provision relating to institutionalization specified an upper age limit beyond which no child could be kept in a home under the Act. The higher courts chose different courses of actions for dealing with children who had crossed the prescribed upper age limit by the time final orders were made in the case. In *Superintendent, Central Jail, Hyderabad v. C. Narsimhulu*,¹²⁴ the Andhra Pradesh High Court held that persons between 16 and 21 years of age on the date of conviction may be sent to borstal school. In *State of MP vs. Ashok Kumar*,¹²⁵ the MP High Court held the trial of a juvenile by a session's court

¹¹⁹ AIR 1942 (Mad) 674.

¹²⁰ 1983 Cri LJ 877.

¹²¹ Peter Gill v. State of Punjab, 1983 Cri LJ 231 (Punj).

¹²² 1997 Cri LJ 1627 (Mad).

¹²³ 1993 MLJ (Cri) 257.

¹²⁴ 1999 Cri LJ 1425 (AP).

¹²⁵ 1995 Cri LJ 3955 (MP).

to be without jurisdiction but did not remit the case for retrial as fifteen years had elapsed. The accused was acquitted for not being guilty on evidence. In *Jayendra v. State of Uttar Pradesh*,¹²⁶ the Supreme Court directed the proceedings to be dropped as the child had become twenty-five years of age during the pendency of the proceedings. In *Umesh Chandra v. State of Rajasthan*,¹²⁷ however, it referred a child of comparable age, back to the juvenile court for appropriate orders. While the Allahabad High Court considered such a case fit to be sent to the state government for appropriate orders,¹²⁸ In *Budha Singh v. State of Punjab*, the High Court of Punjab ordered that such child be released on probation for good conduct.¹²⁹ In *Sunita v. State*,¹³⁰ the accused was a child when she committed murder by sprinkling kerosene and setting the deceased on fire. The plea of child status was taken before the High Court. She had become 25 years of age by the time her appeal was decided. Following the earlier precedents, the court, without disturbing her conviction, set aside her sentence of life imprisonment and ordered her release. In *Lalit Mohan Ghose v. State of Tripura*,¹³¹ the court directing other orders like one for release on probation that may be passed by the juvenile Court, it has to be born in mind that more than a decade has elapsed since he was convicted.

In *Bhudha Singh v. State of Punjab*,¹³² the session's judge sent a child to judicial custody as the list of certified schools to which he could be sent was not available.

Operations under the Acts are replete with instances of injustice caused to children due to the apathy and ignorance of various agencies involved there under.

The UP Children Act permitted imprisonment of children till they attained the age of 18 years in case they were found to be of such a depraved character that it was not advisable

¹²⁶ 1982 Cri LJ 1000.

¹²⁷ 1982 Cri LJ 994.

¹²⁸ Ghanshyam v. State, 1982 Cri LJ 138(A11.). Overruled in Ghanshyam v. State, 1983 Cri LJ 439(SC).

¹²⁹ 1979 Chand LR (Cri) 114 (Punj).

¹³⁰ 1998 Cri LJ 4249 (P&H).

¹³¹ 1999 Cri LJ 609 (Gau).

¹³² 1979 Chand LR (Cri) 114.

to deal with them under its provisions. In *Lakshmi v Sub-Inspector*, N. P. Police Station,¹³³ the juvenile delinquent was arrested on suspicion of involvement in a theft and was kept for some time in the police station and then remanded to judicial custody. The court found both to be illegal and invalid in view of Sections 18 and 21 of the JJA. The state government was ordered to invest Rs 25,000 in an approved scheme for five years in the name of the child. The amount was to be made available to him in a vocation in which he would be rehabilitated by the state.

These few cases referred to here of grave bad form, caused to kids because of the numbness of legal officers, is just the tip of the chunk of ice. A hint of something better over the horizon can be found in the cases making the police responsible for infringement of the law. In any case, if there should be an occurrence of infringement of the legitimate commitments by the individuals from legal, neither any strictures were passed against them nor were the kids given any remuneration, either by the High Court or the Supreme Court.

3.14.7. Landmark Judgements

The judicial process at the higher courts level is marked with three main characteristics. First, the higher courts have used the protective philosophy behind the Juvenile Justice Services (JJS) in the cases before them, sometimes for the purpose of educating the unaware implementers of the law, the judicial officers, and institutional personnel. Secondly, they made various departures from the rules and principles of the criminal justice system and established judicial practices to extend the protection of the JJS to children in need. Thirdly, the states, as well as members of judiciary, have played a proactive role to promote and protect the interests of children by initiating cases and by their active involvement in public interest litigation. However, Krishna Iyer, J. in *Satto v. State of Uttar Pradesh*¹³⁴ lamented at the existing state of juvenile justice. He said: Regrettably our

¹³³ 1991 Cri LJ 2269 (Mad).

¹³⁴ AIR 1979 (SC) 1519. the appellants should be released on probation of good conduct and committed to the care of their respective parents and if no surviving parents, then their guardian, executing a bond each without sureties to be responsible for the good behaviour of the youthful offender for a

juvenile system still thinks in terms of terror, not cure, of wounding, not healing, and a sort of blind man's bluff is the result. This negative approach converts even the culture of juvenile homes into junior jails. From the reformatory angle, the detainees are left to drift, there being no constructive programme for the detainees nor correctional orientation and training for the institutional staff. I highlight these drawbacks largely because the state's response to punitive issues relating to children has been stricken with illiteracy and must awaken to a new 'enlightenment'. The learned judge recapitulated at length the principles to be followed by courts in dealing with children. Welfare of the child was the paramount consideration. The courts should, in proper cases, take steps to remove children from undesirable surroundings and for securing that proper provision was made for their education and training. If the past history did not show that they were naturally of a criminal type and that they were capable of reformation, they should be released on probation. Sentencing in large part is concerned with avoiding future crimes by helping the defendant learn to live productively in the community which he has offended against.

Iyer J. further said that Juvenile detention needs a new focus and a new rationale. The detention period ought to be used to begin to draw together resources necessary for constructive change, whether or not the juvenile is adjudicated. There is abundant evidence that detention has failed as an isolated interlude between those more dramatic parts of the juvenile justice system-arrest and trial or disposition.

In *Sunil Kumar v. State*,¹³⁵ the Kerala High Court outlined the scheme of the Children Act to emphasize the protective nature of various homes for children and the constitution and procedure of the juvenile court. The Calcutta High Court in *Rajesh Khaitan v. State of West*

period of two years from the date of release and for the observance of a condition namely that the child shall be put to school or continue its studies if it is already at school and attend any recreational or meditational centre, if any, of the parents' choice regularly. The Reformation Officer enjoying jurisdiction in the locality will have supervision over each of the appellants and shall make a report once every three months to the Trial Court. The Reformation Officer will explain to the appellants and their parents the import of this order.

¹³⁵ Sunil Kumar v. State, 1983 Cri LJ 99 (Ker).

Bengal,¹³⁶ clarified that under no circumstance should a child of tender age, who was normal but had been abandoned, is confined in a prison with abnormal children. This would certainly retard their mental growth and affect them both mentally and psychologically.

The courts relied heavily on the object of punishment in case of children, namely, to reform and reclaim them to society, for reducing the rigors or duration of incarceration. In *Munna v. State*¹³⁷ the Supreme Court pointed out that the inhibition against sending a child to jail did not depend upon any proof that the person was a child 'but as soon as it appears that a person arrested is apparently under the age of 16 this inhibition is attracted. The law throws a cloak of protection around children and seeks to isolate them from criminal offenders because the emphasis placed by the law is not on incarceration but on reformation' In their effort to ensure protection to children, the higher courts have imposed various duties on the magistrates, such as, to hold due inquiry and determine the correct age of the child;¹³⁸ to secure the attendance of the parent, guardian, or legal adviser of the child during all stages of proceedings or in their absence, to explain to the boy the charge and the consequences of pleading guilty to the charge;¹³⁹ to introduce rehabilitative training in institutions housing children.¹⁴⁰

The High Courts of Assam and Rajasthan went further and deemed the failure to enforce the Children Act to be a violation of the Directive Principle found in Article 39(f) of the Constitution.¹⁴¹ The higher courts bemoaned the lack of Children Acts in numerous cases and urged the state governments to enact or enforce it. The Supreme Court recommended passing a consistent law to stop the incarceration of minors in *Sheela Barse* as well.¹⁴²

¹³⁶ 1983 Cri LJ 877.

¹³⁷ 1982 Cri LJ 620.

¹³⁸ *Pritam Singh and others v. State of Punjab*, 1977 Cri LJ 51 (DB).

¹³⁹ *Ashvini Kumar Bose v. Emperor*, AIR 1931 (Cal) 522.

¹⁴⁰ *Vishwanathan Nair v. State of Kerala*, 1952 Cri LJ 1701.

¹⁴¹ *Nuruddin v. State of Assam*, 1984 Cri LJ 1724 (Gau).

¹⁴² *Sheela Barse v. Union of India and others*, AIR 1986 (SC) 1773.

While High Courts possess the inherent authority to amend cases suo moto, the courts rarely use this power. After firsthand observation of the terrible circumstances in which children were sent to and maintained at the Children's Home at Trivendrum,¹⁴³ the Kerala High Court began revision procedures suo moto. The Calcutta High Court expressed disapproval of the practice of keeping young, healthy children with violent and lunatics together.¹⁴⁴

In order to provide safety for children, certain members of the lower judiciary also started appeal procedures in the High Courts. Judges of the learned session in certain situations asked the High Courts to overturn the magistrates' decisions to commit children to them, when the children in question ought to have been dealt with in accordance with the Children Acts. In the case of *re Chinnathambi*¹⁴⁵ the magistrate asked for the transfer of some students who had been unintentionally transferred to a senior certified school to a junior certified school.

The session's judge's referral also led to the landmark case of *Kario alias Mansingh Main*¹⁴⁶ it was his recommendation that the children court's ruling, which had denied the accused's request to be represented by an advocate, be set aside. Judicial authorities asked the High Courts to weigh in on significant issues, such as the venue for the accused child's trial and the critical period for determining whether the Children Act applies.

The Government counsels who ordinarily are expected to file appeals for enhancement of sentence, filed revision petitions for setting aside sentence of imprisonment as being illegal because the accused was a child.¹⁴⁷ Another public prosecutor filed a petition to set aside the order of the juvenile court ordering detention of minor girl in a government home for

¹⁴³ Sunil Kumar v. State, 1983 Cri LJ 99 (Ker).

¹⁴⁴ Rajesh Khaitan v. State of West Bengal, 1983 Cri LJ 877 (Cal).

¹⁴⁵ (1961) MLJ (Cri) 671.

¹⁴⁶ (1969) 10 Guj LR 66.

¹⁴⁷ Public Prosecutor v. Shaik Valli and others, 1971 Cri LJ 1229 (AP) (DB).

children outside the state.¹⁴⁸ The revision petition filed by the state against the consecutive sentences ordered by the sub-magistrate in case of a child found to have committed two offences shows their protective approach towards children.¹⁴⁹

The judicial process relating to juvenile justice is dotted with public interest litigation (PIL) in recent times, beginning with focusing on the exploitation of children in jails. Disposing of the PIL six years later,¹⁵⁰ the court re-emphasized its earlier order that magistrates must be extremely careful to see that no person, apparently a juvenile, was sent to jail and that such children should be detained in children's homes or other places of safety.

The Supreme Court's orders from the 1980s demonstrate their increasing commitment to the cause of children and its disassociation from the legal system's architecture, lack of clarity, and technicalities while providing relief. *Dharam Pal and others v. State of UP*,¹⁵¹ in the Supreme Court hearings, the plea of child status was brought up for the first time. The panel, which was made up of Judges M. H. Baig, P. N. Bhagwati, and R. S. Sarkaria, stated that 'if the question had been addressed in time, proper action under the Children Act could have been taken in this case.' Ten years later, the Children Act was implemented when the same scenario came up before D. A. Desai and A. N. Sen, JJ. They claimed that the Children Act was a social protection law and that children should not be denied its protection by hiding behind the legal terminology, as this is the first time the issue has been brought up before it.¹⁵²

At various points in time, the esteemed judges of the Supreme Court expressed their regret over the lack of a Children Act in the states and their incapacity to deal with cases involving children. stating that judicial legislation cannot compensate for the absence of legislation. P. N. Bhagwati, C. J. and R. N. Misra, J., initiated judicial legislation in *Sheela Barse v.*

¹⁴⁸ State of Kerala v. Subbalakshmi, 1959 Ker LR 1446.

¹⁴⁹ State v. Natrajan, 1971 Cri LJ 1479.

¹⁵⁰ Order dated 15 March 1989 in Writ Petition (Cri No. 6) of 1982.

¹⁵¹ AIR 1975 (SC) 1917.

¹⁵² Gopinath Ghosh v. State of WB, 1984 Cri LJ 168 (SC).

Union of India and ordered the termination of proceedings if they continued past the time frame set by the court for concluding the investigation and disposing of it, but according to the Madras High Court, these principles are merely recommendations rather than strict formulas. A number of factors should be considered while making the judgement, including whether or not the accused was free on bond, the cause of the delay, the occurrence of reasonable proceedings, and more.¹⁵³

The Supreme Court began an extensive information-gathering exercise into the plight of children in jails and correctional facilities in *Sheela Barse*, extending its brief to provide relief to children incarcerated there. The Supreme Court ordered the Union of India and other states to deposit funds for the purpose. In the past, the courts had issued orders directing the creation of certain Children Act organisations or urging the states to pass and implement the Children Acts. The Supreme Court assumed responsibility for supervising the JJA's implementation due to its slow execution. But the 1990s Supreme Court is at times been so forgiving to juvenile offenders. The Children Act and the JJA offer protection from child offenders, but the courts have often declined to grant it.

In *Sheela Barse v. Union of India*¹⁵⁴ the Supreme Court gave the state government instructions to establish the required observation homes where juveniles who have been charged with a crime can be placed while their case is investigated and their juvenile court hearing is expedited.

The Supreme Court offered its opinions on the establishment of special juvenile courts, the appointment of special judges, and the appropriate care and safeguarding of children residing in observation homes in the case of *Sheela Barse v. Secretary Children Aid Society*.¹⁵⁵

¹⁵³ Bharatnatyam v. State, 1994 Cri LJ 3546 (Mad).

¹⁵⁴ AIR1986 SC1733.

¹⁵⁵ AIR1987 SC656.

In *Vishal Jeet v. Union of India*,¹⁵⁶ The Supreme Court issued appropriate directions on a PIL to the state Governments and all Union Territories for eradicating the evil of child prostitution and for evolving programmes for the care, protection, treatment, development and rehabilitation of the young fallen victims.

In *M.C. Mehta v. State of Tamil Nadu*,¹⁵⁷ Supreme Court pronounced upon the constitutional perspective of abolition of Child labour and issued appropriate guide lines to the Government of India with respect to compulsory education, health, nutrition, etc of the child labourers.

In *Sakshi v. Union of India*,¹⁵⁸ Supreme Court directed the government or Law commission to conduct a study and submit a report on the means of curbing child abuse.

Nirbhaya Case juvenile offender- Incidence of 16th December, 2012- Fire person brutally assaulted young lady, sexually and physically- One of the five people identified was under the age of eighteen when the offence was committed. His case was referred to the Juvenile Justice Board for investigation. The other accused was tried in a regular sessions court. A determination was made. Does the Juvenile Justice Board have to look into the alleged offense(s) committed by the juvenile, or does that juvenile have to appear in a regular criminal court to be tried. J.J. Act considered individuals under the age of 18 as a distinct group for the purpose of treating them differently when it came to committing crimes, petitioners argued otherwise based on the strength of their reasoning and actions in other jurisdictions. Relevantly held, there is no issue in this particular situation involving sending the minor to stand trial again. The appellant argued that the relevant sections of the Juvenile Justice (Care and Protection of Children) Act, namely Sections 1(4), 2(k), 2(1), and 7, should be interpreted to mean that juveniles (children under the age of 18) who have committed serious offences and are sufficiently mature intellectually, emotionally, and

¹⁵⁶ AIR 1997 SC 699.

¹⁵⁷ (1999) 6 SCC 591.

¹⁵⁸ AIR 1999 SC 1412.

mentally to understand the consequences of their actions are not covered by the Act. These minors may be dealt with by IPC as well as the regular court hierarchy within the criminal justice system run by the Indian government. This is what the Legislature meant but a plain reading reveals an inadvertent omission that needs to be supplied or filled up by the court. It is further argued that if the Act is not read as above, the consequences would violate Article 14 because all juvenile offenders, regardless of their mental and intellectual development, would be lumped together in one homogenous group despite their major distinctions and would be classified as having committed any crime, regardless of severity.

The petitioner argues that this classification goes beyond what would be allowed under Article 14 because it fails to further the intended goal of the Act—namely, providing the benefits of the Act to individuals under the age of 18 who are not criminally responsible due to their low level of mental maturity attained. Essentially, this is also the position of the petitioner's knowledgeable attorney, who has further argued that the Act substitutes a system that is not even close to the nation's criminal justice system. The replaced plan is wholly incompatible with the fundamental elements of the constitution, such as the presence of a criminal justice system. When a statute's meaning is obvious and the legislative intent is evident, it is not appropriate to resort to reading down its provisions. This can be used to summarise the reading down doctrine's central tenet. In the first instance, courts must interpret the law literally. The courts must investigate if there has been an inadvertent legislative omission if, after reading and comprehending this, the vice of unconstitutionality is drawn. To prevent the Act from being unconstitutional, it may be read down if it is fairly possible to infer such an intention without engaging in what would clearly be a legislative exercise.

The above is a fairly well established and well accepted principle of interpretation which having been reiterated by the Supreme Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress*

*and others*¹⁵⁹ The various Act sections are easily understood in this case due to their obvious and plain meaning. What the Legislature wanted to convey by the phrases they employed is clear and unambiguous. The Act places all individuals under the age of eighteen into a single class or group in order to provide a distinct system of inquiry, prosecution, and punishment for acts they have committed. It is intended to create a class of people who receive distinct treatment. As a signatory to the several conventions and accords already mentioned, India has shared the views of the international community, which are being furthered and implemented by this action.

There may be disparities among the people included within a given class, and classification or categorising need not be the result of mathematical or arithmetical precision in the similarities of the persons included in a class. Article 14 will not prohibit such a course of action as long as the general characteristics of the categorization are recognisable and discernible and the categorization is appropriately related with the object addressed. Differences between and within the under-18 categories may exist if the inclusion of all individuals under the age of 18 into a class known as juveniles is defined in the aforementioned manner. Nonetheless, Article 14 will accept the aforementioned stance. There won't be any precision or mathematical accuracy in any classification.

However, Article 14 does not take such exactness and precision into consideration. As long as the Act complies with constitutional requirements and its contents demonstrate the legislative purpose in light of the nation's international duties, the court does not need any other interpretation of the law. Assuming a clear reading and understanding of the Act, its overall impact is in full compliance with Article 14. Therefore, the Act does not need to be interpreted down as stated in order to avoid being unconstitutional. That the situation in some other foreign jurisdictions—details of which have already been discussed in order to provide clarity and comprehensiveness to the issues raised—would hardly be significant in terms of our nation. Even if it is presumed, opposing international opinion, thought, or

¹⁵⁹ 1991 AIR 101.

practice does not control a sovereign nation's laws. The court's investigation must conclude if the Legislature has determined that the age of 18 defines the boundary between juveniles and adults and if this decision is constitutionally admissible. However, a significant percentage of the global population believes that everyone under the age of 18 should be treated like a juvenile and should receive special punishment for any crimes they commit. The stated goal is to guarantee the juvenile offenders' rehabilitation in society and provide them with the tools they need to contribute to society as adults. India has acknowledged the aforementioned viewpoint, and as a result, the JJ Act was enacted in its current form by wise legislators. The Supreme Court does not see how the petitioners' arguments that the contrary is supported by the thought and practices of other jurisdictions can be relevant if the Act has treated all individuals under the age of 18 as a distinct category for the purposes of differential treatment with regard to the commission of offences.

In *Chanderjeet Kumar & Kishan v. State*¹⁶⁰ In their ruling, Justices Gita Mittal and J. P. S. Teji noted the courts' indifference to the case, which had violated the rights of the juvenile appellants Chanderjeet Kumar and Kishan, who were both convicted of crimes committed while they were minors, and had also been denied access to services meant for them under the Juvenile Justice Act. There has been no change in the appellant's whereabouts since his detention on January 13, 2007, according to the court's statement. He has served more than nine years of his sentence. According to the JJ Act, the appellant has served a term that exceeds the maximum that may be imposed. Whatever the situation may be, the appellant was confined to the observation home, not the adult prison, and could only remain there for a maximum of three years.

In its landmark decision on the subject of child exploitation in Tamil Nadu orphanages, the Supreme Court has handed down important mandates to both the federal and state levels of government. The government has been urged by a panel of Justices Madan B. Lokur and Deepak Gupta to finish registering all child care centres by the year's end. The court noted

¹⁶⁰ CrI.M.A. No. 14463/2016 in CRL.A. 371/2015.

that within six months after the Juvenile Justice Act's beginning, all facilities housing children in need of care and protection, whether managed by state governments or by voluntary organisations or NGOs, are required to register.

The JJ Act came into force on 15th January, 2016, but we were informed that the process of registration is underway and not yet complete, the court said.

Referring to a report by Anjali Sinha about sexual abuse faced by children in child care institutions, the bench observed: If activities of the nature mentioned by Ms. Anjali Sinha in her article are carried out in government-run institutions, one can only imagine what possibly can go wrong in unregistered institutions, which are managed beyond the law.

The court also noted that many of the necessary statutory amenities are lacking even in licensed childcare centres. In such case, the court made the observation that it is difficult to fathom the living circumstances of children in unlicensed facilities. According to the court, state officials' risk being found negligent and even violating the human rights of children if they do not make sure that child care facilities adhere to minimal standards of care.

It is clear that child care establishments cannot be overseen if their registration is incomplete. Based on the incidences of child abuse in institutions that were brought to light by Ms. Anjali Sinha, the court emphasised that a mistake in the first stage might lead to devastating repercussions in some circumstances.

The following directives were issued to Union and state governments: By December 31, 2017, make sure that all childcare institutions' registrations are finalised and that all data has been verified and approved.

All of the relevant officials should have access to the information regarding the institutions. A monthly update to the database listing all children in need of care and protection should be part of the registration procedure. Concerns about privacy and secrecy must be considered by the relevant authorities when maintaining the database.

On or before December 31, 2017, firmly enforce the minimal standards of care as mandated by and in accordance with the JJ Act and the Model Rules.

As required by the JJ Act and the Model Rules, establish inspection committees to carry out routine inspections of child care facilities and to compile inspection reports in order to improve the living circumstances of the children residing there. These inspection committees ought to be established by July 31st, 2017 at the latest.

By December 31st, 2017, at the latest, these inspection committees should have completed the initial examination of the child care facilities under their purview and turned in a report to the relevant state and federal territory governments.

The Delhi Commission for Women's plea to challenge the release of the juvenile convicted in the Nirbhaya case was rejected by the Supreme Court's vacation bench today. The court stated that, though it shared the society's concern, the current Juvenile Justice Act did not permit the juvenile to remain in the observation home for longer than three years.

Everything has to be done in accordance with the law. We have to follow the law. Without legislative sanction our hands are tied. We cannot go beyond any statute. Can we? then what is the interim order you expect from us? a bench of Lalit JJ. told lawyer Guru Krishna kumar who represented DCW Chairpeson. The juvenile who was released from the observation home in Majnu Ka Tila on Thursday, that is three days in advance due to security reasons, was shifted to When Additional Solicitor General Pinky Anand rose to support DCW and said we support their stand, justice Goel asked her how can you? you have not made any law. There has to be some legislative sanction.

DCW told the court that it was not pressing for sending back the juvenile to the observation home and said he only may be subjected to an independent assessment of his mental state to ascertain if the criminal has reformed and was safe to be released into the society. There is no reformation programme in place even on the lines of what the High Court had directed. In that view his stay in the place where he is presently lodged, with an NGO should be extended, Krishna Kumar argued.

Ryan International School student Pradyuman Thakur, who was seven years old when he died, will be prosecuted as an adult, according to a ruling by the Juvenile Justice Board (JJB) on Wednesday.

The kid was mature enough to know the repercussions of his alleged crime, according to Principal Magistrate Davender Singh, who allegedly expressed his opinion that the crime was heinous when handing down the sentence.

Pradyuman Thakur, seven years old, is alleged to have been killed by a sixteen-year-old teenager at Ryan International School. The Juvenile Justice Board decided that the youngster will face an adult trial. Principal Magistrate Davender Singh is said to have stated during the verdict delivery that the adolescent was sufficiently mature to fully understand the consequences of his alleged act, that the offence was heinous.

The JJB drew upon the reports provided by Ms. Nisha Saini, the legal-cum-probation officer from the district child protection section in Gurgaon, and clinical psychologist Dr. Jogender Singh Kairo. Pradyuman's father's attorney, Sushil Tekriwal, claims that the report indicated the accused was hyper-aggressive and need to be treated like an adult. But the JJB made it clear that if found guilty, he will serve out the rest of his term in a jail after being housed in a correctional facility until he turns 21. Unless he is granted bail, the accused would be housed in the Faridabad observation home throughout the trial.

The adolescent is anticipated to appear before the Sessions Court of Gurgaon on December 22, at its subsequent session. On September 8, the class 11 student is accused of slitting Pradyuman Thakur's throat in the school lavatory. The Central Bureau of Investigation (CBI) has apprehended the minor after disputing the Gurgaon Police's claim that a bus conductor was responsible for the crime. According to the CBI, the adolescent killed Pradyuman in an attempt to force the school to close in order to postpone a test and a planned parent-teacher conference.¹⁶¹

¹⁶¹ Ryan International School Case (2017) *available at*: <https://www.livelaw.in/ryan-international-school-case-juvenile-justice-board-directs-16yr-old-accused-to-be-tried-as-an-adult/> (last visited on April 18, 2023).

In *Sampurna Behura v. Union of India*¹⁶² the Supreme Court asked all High Court Chief Justices to seriously consider creating vulnerable witness courts and child-friendly courts in each district.

The bench, which included Justices M.B. Lokur and Deepak Gupta, noted: Conducting enquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012, the Prohibition of Child Marriage Act, 2006, trials for sexual offences under the Indian Penal Code, and similar laws requires a great deal of sensitivity, care, and empathy for the victim. A victim of a sexual assault or a juvenile accused of a crime is supposedly a traumatic

All people, including minors, have a right to a presumption of innocence when they are in legal trouble; one way the justice system can respond to alleviate this right is by creating special courts for children and vulnerable witnesses. Because adult female victims of sexual assaults are just as likely as any kid to suffer trauma at the hands of our justice system, child-friendly and vulnerable witness courts provide an additional benefit in these cases.

The Court was hearing a Petition filed by activist and human rights defender Dr. Sampurna Behura, who had highlighted the virtual non-implementation or tardy implementation of Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015. Acknowledging the veracity of the accusations, the Court further opined that it would be appropriate for High Courts to initiate Suo motu proceedings for better implementation of the Acts.

The judgment begins by tracing the resolutions passed during Chief Justices' conference since 2006. It then acknowledged that while it may be criticized for judicial activism and overstepping its boundaries, it nevertheless rapped the State Governments for not implementing the Act in its true spirit, noting:

¹⁶² Writ petition (civil) no. 473 OF 2005, February 9 2018.

...State Governments and Union Territories have failed to completely adhere to a legislation that Parliament solemnly passed for the welfare of children over the last ten years or more. Officials have shown little interest in helping children who lack a voice since, in many cases, only superficial improvements have been implemented at the grassroots level.

Still, it's hard to deny that the Indian government's Ministry of Women and Child Development (or MWCD) has made some courageous moves towards protecting children's rights and elevating their status. But while we plod down this meandering route, the big picture regarding children's rights acknowledgement and their actualisation is far from good and remains bleak. In order for the National and State Commissions for Protection of Child Rights to carry out their duties, the Court has given the following instructions. These are following:

- (i) Appropriate staffing levels and timely filling of all vacant positions are crucial for the NCPCR and SCPRs to carry out their mandated functions effectively and efficiently for the benefit of children. This should be ensured by the Union Ministry of Women and Child Development in collaboration with the respective state governments of India.¹⁶³
- (ii) The NCPCR and SCPCR's ought to approach their roles, responsibilities, and obligations with utmost seriousness, bearing in mind the trust that Parliament has placed in them. Being employed by these legally mandated organisations is not a guarantee. These organisations have a big and proactive part to play in enhancing children's lives all around the nation.¹⁶⁴
- (iii) Child Protection Societies at the state level and Child Protection Units at the district level have a heavy burden of responsibility to guarantee the effective

¹⁶³ *Id.* para no. 95(1).

¹⁶⁴ *Id.* para no. 95(2).

- implementation of the JJ Act and the management and maintenance of child care institutions that promote the overall well-being of children in all areas, including but not limited to nutrition, education, medical benefits, skill development, and living conditions. To ensure that the JJ Act achieves its purpose, these two groups should seek the help of non-governmental organisations and civil society.¹⁶⁵
- (iv) In accordance with the Model Rules or other regulations developed by the State Government, the State Governments must ensure that any vacant seats in JJBs and CWCs are filled promptly. Since postponements in filling the positions might negatively impact children, it is preferable to prevent them.¹⁶⁶
 - (v) In order to ensure that no juvenile in confrontation with the law goes unpunished and that children in need of care and protection obtain social justice, it is crucial that the JJBs and CWCs know the need of holding frequent sittings. The constitution mandates this.¹⁶⁷
 - (vi) Research on a range of topics, with strict time constraints, must be conducted by the NCPCR and the SCPCRs in accordance with the JJ Act. After reviewing these results, the federal government and the individual states must act to rectify the situation.¹⁶⁸
 - (vii) It is imperative that the NCPCR and the SCPCR undertake research to determine the optimal number of probation officers to carry out the JJ Act. According on the results of this research, the State Government will decide how many Probation Officers are needed. The Model Rules and any other regulations formulated by state and union territory governments must be given the weight they deserve, because

¹⁶⁵ *Id.* para no. 95(3).

¹⁶⁶ *Id.* para no. 95(4).

¹⁶⁷ *Id.* para no. 95(5).

¹⁶⁸ *Id.* para no. 95(6).

probation officers play an essential role in the rehabilitation and social reintegration of youths who have run afoul of the law.¹⁶⁹

- (viii) In addition to gathering data and information, the MWCD is required to keep up with innovative ways to use information and communication technology for other JJ Act-related concerns, like maintaining a database of missing children, trafficked children, and adoption case follow-up, among other things. When technology is used to its maximum potential, administrative efficiency will increase significantly, improving the lives of children.¹⁷⁰
- (ix) The police should recognise that they are often the first to respond to reports of crimes against and by minors, and they should value their position as such. Therefore, in accordance with the JJ Act, it is imperative to establish functional Special Juvenile Police Units and appoint Child Welfare Police Officers as soon as possible, and not just on paper. For the benefit of children, it is imperative that in this situation, the roles and responsibilities of such Units and Officers be made crystal clear. When needed, advice from the experts in the field—the National Police Academy, the Bureau of Police Research and Development, or non-governmental organizations—must also be sought.¹⁷¹
- (x) Child rights must not be treated as an isolated incident but must be consistently included into the curriculum of the National Police Academy and State Police Academies.¹⁷²
- (xi) It would be wise for state and union territory governments to mandate registration of all child care centers so that children may live in these places with respect and

¹⁶⁹ *Id.* para no. 95(7).

¹⁷⁰ *Id.* para no. 95(8).

¹⁷¹ *Id.* para no. 95(9).

¹⁷² *Id.* para no. 95(10).

safety, and so that authorities can combat child trafficking and cases of missing children.¹⁷³

- (xii) It is recommended that State Governments and Union Territories designate distinguished individuals from the civil society as Visitors to oversee and keep an eye on the Child Care Institutions throughout each district. Maintenance and administration of these institutions will be taken care of as a result. There is no doubt in our minds that the State and District Legal Service Authorities will provide the government authorities involved in this endeavour with their whole support and cooperation, along with the Visitors.¹⁷⁴
- (xiii) The JJ Fund is a little embarrassing because neither the Union Territories nor the State Governments have responded to it in a meaningful way. If funding isn't allocated for the children's welfare, we have to consider how the funds could be utilised more effectively.¹⁷⁵
- (xiv) The three-part Report that NALSA compiled shows that it did an outstanding job gathering data and information about the JJ Act. In order to help the policy-making and decision-making authorities plan out their affairs, we ask NALSA to continue the effort and complete a comparable Report, ideally by April 30, 2018.¹⁷⁶
- (xv) There is no way to overstate the importance of training. Understanding and upholding children's rights depend on it, as does the effective implementation of the JJ Act. It is essential that all individuals holding positions of responsibility, such as JJBs, CWCs, probation officers, child welfare police officers, members of child protection units, Special Juvenile Police Units, and administrative staff in child care facilities, be educated about their rights and get the appropriate training. This is an

¹⁷³ *Id.* para no. 95(11).

¹⁷⁴ *Id.* para no. 95(12).

¹⁷⁵ *Id.* para no. 95(13).

¹⁷⁶ *Id.* para no. 95(14).

encouraging development, and we expect the NCPCR to keep pushing for genuine implementation of the JJ Act with the help of the SCPCRs, as NALSA has already done.¹⁷⁷

- (xvi) When it comes to protecting children's rights and making sure the JJ Act is properly implemented, it's important for each state's high court and its juvenile justice committee stay involved. This is because the involvement of both the state and union territories is vital. To make the Juvenile Justice (Care and Protection of Children) Act, 2015 more meaningful, we urge the chief justices of all high courts to take the initiative to start proceedings when they see fit, so that the law may be effectively put into practice. As a result, after hearing from the appropriate government agencies, the Juvenile Justice Committee of the High Court and statutory authorities will be able to tackle any problems they encountered. Each High Court's Registrar General should get a copy of this verdict and order from the Secretary General of this Court. The Chief Justice of each High Court may then initiate suo moto processes using this document.¹⁷⁸

The current laws governing minors who are in legal trouble are more of a synthesis of several ideas. It is both stern and deterrent while also being gentle and compassionate. Its unique character is far more reliant on the kind will of shareholders as opposed to its provisions. The juvenile justice legal system is highly valued for its rules, which appropriately acknowledge that youngsters are distinct. The way the entire system functions, such as a criminal court, has changed with the setting up of juvenile courts that offer young offenders all the procedural safeguards they need.

¹⁷⁷ *Id.* para no. 95(15).

¹⁷⁸ *Id.* para no. 95(16).

CHAPTER - 4

JUVENILE INSTITUTIONAL SETUP IN THE STATE OF HARYANA CONCERNING CHILDREN IN CONFLICT WITH LAW

4. INTRODUCTION

Once a child becomes resident in a children's home or other type of special home, their rehabilitation and reintegration process start. All efforts are being made to help the juvenile offenders to get rid of this misbehaviour so that he or she may not turn to be a chronic or major/adult criminal of tomorrow or any further. Therefore, Women & Child Development Department, Haryana has joined hands with the legal authorities to escape the children from the clutches of crimes and to get rehabilitate them into the mainstream of being good citizens of tomorrow. A number of discussions, debates and seminars cum workshops have been made at the national as well as international level. The whole nation's Ministry of Women and Child Development is responsible for implementing the JJ ACT 2015. The Child Protection Unit, which is part of the Department of Women and Child Development, is in charge of its execution in Delhi.¹

The overarching plan is known as a programme for Juvenile Justice or the Scheme for the Prevention and Control of Juvenile Maladjustment. (Department for the Advancement of Women and Children). Indian authorities introduced the Integrated Child Protection Scheme (ICPS) in 2009. Improving the Juvenile Justice System's Delivery-mechanism is one of the primary goals of this plan. As per Beijing Rules to provide care, protection, education and professional skills; with a view to enabling them to establish socially constructive and useful roles in society is the declared goal of institutionalization. It is

¹ Rehabilitation of children in conflict with law available at: https://wcd.nic.in/sites/default/files/SOP%20ON%20REHABILITATION%20OF%20CHILDREN%20IN%20CONFLICT%20WITH%20THE%20LAW_0.pdf (last visited on May 16, 2023).

evident that the teaching of learners with diverse needs requires teachers with specific knowledge and skills to enable them to identify and help learners, thus cultivating a positive attitude and willingness to accept them in class and assist them. It is evident that the teachers do not conceptualize their roles clearly as the Inclusive Education policy requires them to perform some duties to which they were not accustomed.

4.1. INTEGRATED CHILD PROTECTION SCHEME (ICPS)²

Is a centrally sponsored umbrella scheme under which various schemes for children in need of care and protection, and children in conflict with law are covered. The programme is being implementing through Haryana State Child Protection Society (HSCPS). The children in need of care and protection are being provided Institutional as well as Non-Institutional Care under the scheme. For providing non-Institutional Care State Adoption Resource Agency (SARA) has been set up at State level. At the district level the District Child Protection Unit (DCPU) and District Child Protection Committee under the chairmanship of Deputy Commissioner has been constituted. The Integrated Child Protection Scheme (ICPS) is mainly an instrument to implement the provisions of J.J. Act, 2000 which has been amended as Juvenile Justice Act, 2015 and came into force w.e.f. 15.01.2016. The State has created a Juvenile Justice Fund for providing facilities to the juveniles. Child Welfare Committees (CWC) and Juvenile Justice Board (JBB) have been set up in all the district for the effective implementation of Juvenile Justice (Care & Protection of Children) Act 2015.

4.2. JUVENILE JUSTICE MONITORING COMMITTEE³

Secretariat under the Jurisdiction of Punjab and Haryana High Court. The committee consists of one chairperson and two members. High Courts have established Juvenile

² “Integrated Child Protection Scheme” *available at:* <https://wcdhry.gov.in/schemes-for-children/icps/#> (last visited on July 18, 2023).

³ “Juvenile Justice Monitoring Committee” *available at:* <http://mediationcentrephhc.gov.in/jjmc/> (last visited on July 26, 2023).

Justice Committees, which carry out their duties in accordance with the JJ Act (the old legislation from 2000 and the current law from 2015). The JJC's of the several High Courts currently operate without any set guidelines, and each one does so in accordance with its own unique interpretation of its responsibility in carrying out the JJ Act. Although there are benefits to a flexible understanding of the JJC's' tasks and responsibilities, one disadvantage can be a sense of restriction about their actual mandate.

4.3. JUVENILE JUSTICE BOARD

Juvenile Justice Board (JJB) is the concerned authority to deal with Juvenile in Conflict with Law (JCL). JCL means a child who is alleged to have committed an offence.

- a) The State Government may establish one or more Juvenile Justice Boards for a district or a group of districts designated in the notification by notification in the Official Gazette. These boards will then be responsible for carrying out the responsibilities and exercising the powers assigned to them with regard to juveniles in conflict with the law under this act.
- b) A Board will be composed of a bench of social workers, at least one of whom must be a woman, and a metropolitan magistrate or judicial magistrate of the first class, as applicable.
- c) Any child in and with conflict law is produced before JJB within 24 hours of custody. JJB further does enquiry of the case and takes the decision in best interest of the Child.
- d) Children in conflict with law who enter the juvenile justice system through JJB, require residential care and protection during pendency of any inquiry are facilitated in Observation Homes.
- e) And the children in conflict with law committed by JJBs who requires long term rehabilitation and protection are sent to Special Homes.

The Juvenile Justice Board consists of a Principal Magistrate, members of juvenile justice board, one District child protection officer and one Legal cum probation officer. Special juvenile police officer (Unit) is there. Child welfare committee is also there. There are 21 Juvenile Justice Boards in different districts in the state of Haryana and the districts are Ambala, Bhiwani, Charkhi Dadri, Faridabad, Fatehabad, Gurugram, Hisar, Jhajjar, Jind, Kaithal, Karnal, Kurukshetra, Narnaul, Nuh, Palwal, Panchkula, Panipat, Rewari, Rohtak, Sirsa, Sonapat and Yamuna Nagar. To Place of Safety as under:

Table No. 4.1 Status of existing institution for juveniles in the State of Haryana

Total number of Observation Homes and Place of safety in Haryana				
Sr. No.	Total number of Districts	Observation Homes run by Government		Place of Safety run by Government
		In existence	Not in existence	In existence
1	22	4	18	1

Observation Home, Ambala (Boys) With Capacity of 44

Observation Home, Faridabad (Boys) with Capacity of 25

Observation Home, Hisar (Boys) with Capacity of 44

(Nari Niketan Campus for Girls) with Capacity of 25

Place of Safety, Karnal with Capacity of 75

4.4. HARYANA STATE CHILD PROTECTION SOCIETY⁴

Was set up in 2010 under Women and Child Development Department, Haryana for implementation of Integrated Child Protection Scheme (ICPS). It aims to help Children in need of care and Protection and Children in Conflict with the law and provide all the

⁴ Haryana State Child Protection Society available at: <https://hscpsry.in/> (last visited on July 27, 2023).

necessary assistance from the government for efficient and effective implementation of the ICPS scheme.

Child Protection is about keeping children safe from a risk or perceived risk to their lives or childhood. It is about recognizing that children are vulnerable and hence reducing their vulnerability by protecting them from harm and harmful situations. It is about ensuring that children have a security net to depend on, and if they happen to get trapped in the ill practises of the society or fall as victims of crimes, the system has the responsibility to provide the child with the necessary care and rehabilitation to bring them back into the safety net and also to take adequate preventive measures.

The Children form a very vital part of the nation and it is the collective responsibility to protect children from abuse or neglect, prevent impairment of their health and development, and to ensure their growth in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully.

Preventing and responding to violence, exploitation and abuse is essential to ensuring children's rights to survival, development and well-being. The development, care and protection of children need to be ensured by facilitating access to learning, nutrition, institutional and legislative support for enabling them to grow and develop to their full potential into well-nurtured children with full opportunities for growth and development in a safe and protective environment. Main objectives are: -

1. To maximize the overall development of children in need of care and protection and children in conflict of law.
2. To ensure overall behaviour upgradation in Children under Child care Institutions.
3. To maximize justice for Juveniles and the Victims Rehabilitation, Restoration and social integration of Children in need of care and protection and Children in Conflict with the law.

4. Reduction of crime rate among children through a targeted awareness generation campaigns and Trainings.
5. To ensure the maximum information reach of the child rights, legal facilities and assistance and schemes/ policies / programmes of the government.
6. To derive and recommend policies and programmes for the improvement of the plight of children.

4.5. CHILDREN IN CONFLICT WITH LAW⁵

Means under the age of 18 who is accused of committing a crime. Section 47 of the Juvenile Justice (Care & Protection of Children) Act 2015 provides for the placement of children in residential care and protection during the pendency of any inquiry into a juvenile justice system case involving a Juvenile Justice Board (JJB). Section 48 of the same act specifies the placement of children in special homes for long-term rehabilitation and protection. To take care and to protect these children, state govt. is running four Observation Homes (Ambala, Hisar, Faridabad (Boys) and Karnal (Girls) and one Special Home (Boys at Sonipat). Special Home Sonipat has been made functional on 26.12.2016. 66 inmates from Observation Home, Ambala have been shifted to Special Home, Sonipat.

4.6. INSTITUTIONAL CARE⁶

For Providing institutional care to these children, currently a total of 89 Child Care institutions are set up in Haryana These Child care institutions include the following institutions and Homes for children in need or protection:

1. **Observation Home (OH):** Observation Home provides adequate residential care and protection services to Children in conflict with law who enter the juvenile

⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(13).

⁶ “Institutional Care” available at: <https://wcdhry.gov.in/schemes-for-children/icps/> (last visited on July 26, 2023).

justice system through the Juvenile Justice Boards (JJBs) during the pendency of any inquiry regarding them under the Juvenile Justice (Care and Protection of Children) Act 2015

2. **Special Home:** A State Government or a Non-Governmental Organisation (NGO) that is registered under Section 48 may establish a Special Home. Children who are in trouble with the law, who have been investigated and found guilty of a crime, and who are sent to such an institution by the Board of Directors are housed there and provided with rehabilitative services.
3. **Place of Safety :** Any place or institution that is not a police lockup or jail, that is established separately or attached to an observation home or a special home, depending on the circumstances, and that the person in charge of it is willing to receive and care for children who have been alleged or found to be in conflict with the law, by an order of the Board or the Children's Court, both during the inquiry and ongoing rehabilitation after having been found guilty for a period of time and for a purpose that is specified in the order, is considered a place of safety.

4.7. STATE LEVEL TRAINING⁷

Haryana State is the first State in the country to launch a massive public awareness campaign for Protection of children from Sexual Offences Act (POCSO), 2012 at all levels. Total of 1871 awareness camps have been organized till January, 2017 in all the districts of Haryana in which 263148 participants have been participated. In Haryana, total 1122 cases have been registered from 01.01.2016- 31.12.2016 under Protection of Children from Sexual Offences Act, 2012 as per reports received from Police Department, Haryana.⁸

⁷ “State level training” *available at:* <http://164.100.86.208/schemes/icps.html> (last visited on August 02, 2023).

⁸ “Integrated Child Protection Scheme (ICPS)” *available at:* <https://wcdhry.gov.in/schemes-for-children/icps/> (last visited on August 02, 2023).

During the Ik Aur Sudhar programme on July 12, 2018, the Hon. Chief Minister of Haryana, Shri. Manohar Lal Khattar, and the Minister for Women and Child Development, Smt. Kavita Jain, launched a POCSO-based booklet called Meri Suraksha Meri Zimedari that also promoted the Childline-1098, foster care, and the Sponsorship Scheme under the ICPS. On April 19, 2018, Smt. Kavita Jain, the Hon'ble Minister of WCD Haryana, officially launched the POCSO Act, 2012-based Snake and Ladder Game.

On June 18 and 19, 2018, in collaboration with the National Human Rights Commission, a two-day national conference on the Implementation of Juvenile Justice (Care and Protection of Children) Act 2015, Protection of Children from Sexual Offences Act, 2012, and Restorative Justice (Victim Compensation and Rehabilitation) was held.

On April 27, 2018, the Juvenile Justice Board and Child Welfare Committees organised a one-day state-level training programme for protection officers (NIC) and assistant-cum-data entry operators on the National Tracking System for Missing and Vulnerable Children.

On April 20, 2018, the District Child Protection Officers, Project Coordinators (Specialized Adoption Agencies), and Protection Officers participated in a one-day state-level training programme on the Caring Portal (NIC).

On January 19, 2018, in cooperation with the Haryana Institute of Public Administration, a one-day state-level training programme on the Right to Information Act was organised for district child protection officers in Haryana and state-level ICPS officials (HIPA).

4.8. INCIDENTS INSIDE OBSERVATION HOMES AND PLACE OF SAFETY IN THE STATE OF HARYANA

Escapes and accusations of abuse are examples of incidents that occur in observation homes and draw attention to security flaws and the system's capacity to rehabilitate young offenders.

In year 2019 at Place of Safety, Karnal, two detainees got into a violent argument. Inside the facility, the majority of the detainees attacked one another. They burned documents and

computers and looted CCTV cameras and furniture. With the use of a shattered almirah, several prisoners even attempted to jump the wall to get out of the centre, but failed. According to centre supervisor, the case's complainant, the offenders lit the documents and furniture on fire at midnight, forcing them to call in extra help, including a fire tender.⁹ 33 inmates have been booked by the police. The preliminary magistrate's investigation into a fight amongst adolescents awaiting trial at Madhuban detention centre on that night shows that the facility's personnel are insufficient to handle 105 inmates, the majority of whom are charged with heinous crimes.¹⁰ Another incident took place in June, 2020, when a juvenile committed suicide inside the institution. According to authorities, a 17-year-old detainee at a juvenile observation home in Karnal killed himself by hanging himself from a ceiling fan. The youngster from Sonipat, who was held under the Pocso Act, was sent to the juvenile centre, "Place of Safety," in June. The incident happened on Wednesday night while he was by himself in the quarantine centre, according to the superintendent the boy hanged himself with a bedsheet.¹¹

An inspection of the observation home in Ambala City was conducted in 2019 by Suman Rana, a member of the Haryana State Commission for Protection of Child Rights (SCPCR). Though the rooms felt hotter because of the huge number of children, she thought most of the arrangements were good here. Also, there were lack of ceiling fans for the inmates.¹²

⁹ Neeraj Mohan, "33 Karnal juvenile home inmates booked for vandalising barracks, office" *Hindustan Times* April 1, 2019 available at: <https://www.hindustantimes.com/india-news/late-night-clash-at-juvenile-home-33-inmates-booked-for-vandalism/story-eMrfTwWhHhEUIEYSYz0oVM.html> (last visited on April, 2023).

¹⁰ Parveen Arora, "Clash at detention centre result of 'inadequate staff'" *The Tribune* April 2, 2019 available at: <https://www.tribuneindia.com/news/archive/clash-at-detention-centre-result-of-inadequate-staff-751935> (last visited on April, 2023).

¹¹ HT Correspondent, "Karnal juvenile centre inmate commits suicide" *Hindustan Times* June 4, 2020 available at: <https://www.hindustantimes.com/chandigarh/karnal-juvenile-centre-inmate-commits-suicide/story-SN1EHszKsXClq40iv0YUsK.html> (last visited on April, 2023).

¹² Amar Ujala Bureau, "बाल सुधारगृह के अवलोकन कक्ष का निरीक्षण, मिली खामियां" *Amar Ujala* May 23, 2024 available at: <https://www.amarujala.com/haryana/ambala/inspection-of-observation-room-of-juvenile-home-flaws-found-ambala-news-c-36-1-amb1002-123508-2024-05-23> (last visited on August, 2024).

Children fought among themselves in the observation home in 2019. Two adolescents from Panipat and Kaithal attacked a 17-year-old Kaithal resident who was under custody in a murder case with a sharp object, injuring him. He received treatment at the district civil hospital. Regarding this, a case has been filed at the city police station based on the superintendent of the home's complaint.¹³ The home can only house 44 juveniles, but at that time, 78 were housed there. It is normal for fighting incidents to arise here after sometime in such circumstances. Many were sent to another residence following a dispute between minors here. The Sessions Judge visited the house two days earlier the incident happened and inquired about the needs and issues of the youngsters residing there.¹⁴

According to authorities, a 14-year-old kid at the Ambala Observation Home for Juveniles allegedly hanged himself from the ceiling fan in his room on January 15, 2022.¹⁵

In February 2018, nine young people broke out of the Ambala City observation home. According to the police, the majority of the young people who ran away were between the ages of 12 and 18, and several of them were charged with major crimes. When several other inmates reported children were missing, the observation home authorities became aware of the event. SP (Ambala) went to the observation home after learning about the incident. The inmates had escaped using a ladder. Once the barrack's lock was broken, the inmates made their way to the roof and climbed a ladder to the observation home's 20-foot-tall boundary wall. To get out, the prisoners went through two levels of security at the observation home.¹⁶

¹³ Bhaskar News, “ऑब्जरवेशन होम में भिड़े नाबालिग, दो पर केस” *Dainik Bhaskar* 2019 available at: <https://www.bhaskar.com/haryana/ambala/news/haryana-news-minor-clashed-in-observation-home-case-on-two-071506-5304872.html> (last visited on June, 2022).

¹⁴ *Ibid.*

¹⁵ Tribune Web Desk, “Juvenile found hanging at Ambala observation home” *The Tribune* Jan 16, 2022 available at: <https://www.tribuneindia.com/news/haryana/juvenile-found-hanging-at-ambala-observation-home-361564/> (last visited on June, 2022).

¹⁶ Swati Bhasin, “Nine Juveniles Escape From Observation Home In Ambala” *NDTV* February 11, 2018 available at: <https://www.ndtv.com/india-news/nine-juveniles-escape-from-observation-home-in-ambala-1811333> (last visited on June, 2022).

In October, 2020, Jyoti Bainta, the chairman of the Haryana State Commission for Protection of Child Rights (HSCPCR), accused the management and employees of "severe lapses" at an observation home in Hisar from where 17 juveniles had fled after hurting three security guards.¹⁷ Nine of the 17 fleeing inmates were charged with murder, three were charged with attempt to murder, two were charged under the Protection of Children from Sexual Offenses Act, and two more were charged with theft and rioting. Of these, eight were from the district of Jhajjar, two each from Delhi, Hisar, and Rohtak, and one each from Bhiwani, Dadri, and Karnal.¹⁸

Six young undertrials escaped from the observation home Hisar in June, 2017. They went through two levels of security without encountering any obstacles before arriving at the main gate. The official claimed that in order to complete their escape, they grabbed the keys and used an iron pipe to harm the security guard. Three staff members were hurt inside the detention facility. One of the seed farm workers was attacked, and his motorcycle was taken. An effort was made to loot a car by assaulting the driver. According to the sources, they appeared to have scattered in different ways after leaving the observation residence.¹⁹

4.9. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) MODEL RULES, 2016²⁰

A notification of the Model Rules, 2016 was issued by the Ministry of Women and Child Department on September 21, 2016, in accordance with the Juvenile Justice (Care and Protection of Children) Act, 2015. After receiving permission from Chief Minister

¹⁷ Sunil Rahar, "Serious lapses by Hisar observation home management: Haryana child rights panel" *Hindustan Times* October 15, 2020 *available at*: <https://www.hindustantimes.com/cities/serious-lapses-by-hisar-observation-home-management-haryana-child-rights-panel/story-rG9WtArHul6zCDO5zY01AP.html> (last visited on May, 2022).

¹⁸ *Ibid.*

¹⁹ Tribune News Service, "6 juveniles flee Hisar observation home" *The Tribune* June 13, 2017 *available at*: <https://www.tribuneindia.com/news/archive/haryana/6-juveniles-flee-hisar-observati-on-home-421378/> (last visited on May, 2022).

²⁰ The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0> (last visited on November 16, 2023).

Manohar Lal Khattar, the State of Haryana decided to implement the Centre Juvenile Justice Model Rules, 2016.

A) Definitions

Some important definitions under the Model Rules of 2016 are as follows:

‘Individual care plan’²¹ means a thorough action plan for the development of a kid that takes into account the child's age, gender, requirements, and previous experiences. For the purpose of restoring the kid's sense of self-esteem, dignity, and self-worth, as well as assisting him in maturing into a contributing member of society, this plan needs to be developed in conjunction with the child. As a consequence of this, the plan must take into account the following, including but not limited to, the needs of a child. These needs include the child's health and nutrition needs, as well as other special needs such as emotional and psychological needs, as well as the need for additional educational and training opportunities. Protection against any and all forms of abuse, neglect, and maltreatment is included in the plan, along with opportunities for play, creativity, and leisure. Additionally, the personalized care plan includes services for restoration and follow-up, as well as social mainstreaming measures.

What is meant by the term Medical Examination Report is the report of the child given by a physician who is properly licensed.²²

‘The phrase person-in-charge refers to an individual who has been designated for the purpose of controlling and managing the Child Care Institution.’²³

The term rehabilitation-cum-placement officer refers to an officer assigned in every Child Care Institute for the purpose of restoration of children.²⁴

²¹ The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 2(ix).

²² *Id.*, Rule 2(xi).

²³ *Id.*, Rule 2(xii).

²⁴ *Id.*, Rule 2 (xiv).

A committee constituted by the State Government in accordance with rule 87 of these rules is what is meant by the term Selection Committee.²⁵

‘A social background report is defined as the report of a child who is in conflict with the law, which contains the background of the child and is prepared by the Child Welfare Police Officer for the child.²⁶

The report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social, and other relevant factors, and the recommendation thereon, is what is meant by the term social investigation report.²⁷

Social worker refers to a person with a postgraduate degree in Sociology or Social Work or Child Development or Psychology or a graduate with a minimum of seven years of experience in child education and development or protection issues. Additionally, a social worker is someone who is employed by a child care facility or who has been granted permission through the District Child Protection Unit, State Child Protection Society, State Adoption Resource Agency, or Central Adoption Resource Authority to create social investigation reports, private care plans for children, child study reports, home studies of potential adoptive parents, or foster family members, in addition to providing post-adoption services or carrying out any other tasks that are related to the Act or these rules. Explanation: For the purpose of this definition, it is further specified that the qualifications of the social worker member of the Board should be in accordance with section 4 of the Act of 2015.²⁸

²⁵ *Id.*, Rule 2 (xv).

²⁶ *Id.*, Rule 2(xvi).

²⁷ *Id.*, Rule 2 (xvii).

²⁸ *Id.*, Rule 2(xviii)

The phrase special educator will be understood in the same manner as it is described in the Protection of Children from Sexual Offences Rules, which were enacted in 2012.²⁹

‘An organisation that was established in accordance with section 106 of the Act of 2015 is referred to as the State Child Protection Society.’³⁰

B) Juvenile Justice Board

There is a need that every district has a Board, which will be established by the State Government by the publication of a notice in the Official Gazette. Two social workers, one of whom must be a woman, and a main magistrate who must be a metropolitan magistrate or a judicial magistrate of first class with at least three years of experience will make up the Board. The chief magistrate must demonstrate that they have the necessary qualifications. A Selection Committee will be constituted in line with these regulations, and the State Government will be responsible for appointing members of the social worker community based on the recommendations of that committee. It is required that the members of the social worker team be at least 35 years old and have a minimum of seven years of experience working with children in the domains of education, health, or welfare. Another requirement is that they must be working professionals who have degrees in child psychology, psychiatry, sociology, or law. It is important that the two social worker members who are selected for a Board in this way come from as many different professions as is practically possible. Each and every member of the Board, including the Principal Magistrate, is required to undergo induction training within sixty days of their appointment.

The tenure of a Board member who is a social worker cannot exceed three years from the date of appointment. A social worker may be appointed for a maximum of two terms, none of which may be continuous. Members may resign at any time by providing the State

²⁹ *Id.*, Rule 2(xix).

³⁰ *Id.*, Rule 2(xx).

Government with a written one-month notice. Any vacancy on the Board must be filled by selecting a new member from the list of candidates compiled by the Selection Committee.

The Board's meetings must be held on the premises of an observation home, a nearby location, or a facility within any child care institution intended for children in conflict with the law and operated in accordance with the Act.³¹ The Board will take measures to ensure that the only persons who are authorised to be present during the sitting are those individuals in whom the child is able to achieve a state of comfort. The meeting of the board should take place in a location that is designed to accommodate children and should not in any way resemble a courtroom. Additionally, the layout should make it possible for the board to engage in face-to-face communication with the kid. During the course of communication with the kid, the Board need to have a child-friendly approach with respect to body language, facial expression, and eye contact. Additionally, the Board is required to hold meetings on a daily basis for a minimum of six hours, which is equivalent to the working hours of a magistrate court. The members of the Board who are social workers shall be paid a remuneration of at least Rs. 1500 each sitting. This compensation should include a sitting allowance, travel costs, and any other benefits that the State Government may stipulate. The State Government will be responsible for providing the Board with both the necessary infrastructure and people.

The Board shall also carry out the following additional functions: When necessary, the Board shall assign a translator, interpreter, or special educator, who shall be paid not less than Rs. 1500 per day and, in the case of a translator, not more than Rs. 100 per page. The District Child Protection Unit shall maintain a panel of translators, interpreters, and special educators for the stated purpose, who shall submit their credentials to the Board in accordance with the requirements of the POCSO Act, 2012 and the rules promulgated thereunder. Whenever necessary, the Board shall issue proper instructions for the child's readmission or continued enrolment in school if the child has been prohibited from doing

³¹ *Id.*, Rule 6(1).

so due to ongoing investigations or a significant amount of time spent at a child care facility. The Board shall communicate with Boards in other districts to promote speedy investigation and resolution of problems in accordance with the law, including sending a child to a Board in another district or state for the purpose of an inquiry or rehabilitation. Additionally, the Board shall inspect child care institutions for children who are in conflict with the law, provide instructions in the event of any apparent shortcomings, suggest enhancements, encourage compliance, and recommend appropriate action, including measures against any employee found to have breached their duty, to the District Child Protection Unit. The Board shall maintain a suggestion box or grievance redressal box on its premises to ensure that the Children's Committees in the Child Care Institutions for Children in Conflict with the Law are functioning properly, facilitating children's participation in the operations and management of such institutions. At least once a month, the Board shall review the Children's Suggestion Book and ensure that the District Child Protection Unit's Legal Cum Probation Officer and the State or District Legal Aid Services Authority provide free legal services to a child. If necessary, the Board shall deploy the services of student volunteers or volunteers from non-governmental organisations for paralegal and other tasks, such as contacting the parents of a child in conflict with the law and collecting pertinent social and rehabilitative information about the child.

C) Procedure followed for children in conflict with law

The method that is followed in relation to children who are in conflict with the law is discussed in Chapter III of the Model Rules.

1. Apprehension of child by the police

According to Rule 8 of the Model Rules, a First Information Report is not to be filed unless a child is accused of committing a serious crime or if the kid and some adults are accused of committing the crime jointly. In either of these cases, the child is not required to file a report. Regarding all other matters, the Special Juvenile Police Unit or the Child Welfare Police Officer shall record the information regarding the alleged offence in the general daily diary, followed by a social background report of the child in Form 1 and, where

applicable, the circumstances surrounding the child's apprehending, and forward it to the Board prior to the first hearing.

Subject to the condition that the power to detain may only be used in extreme situations involving serious offences and under certain conditions where it is in the best interest of the child to do so. In all other cases involving minor or serious offences, or when it would not be beneficial for the child to be taken into custody, the police, Special Juvenile Police Unit, or Child Welfare Police Officer is responsible for notifying the Board of the date the child is supposed to appear in court. Along with the kid's social background report in Form 1, the Board also needs to know what kind of crime the youngster is accused of committing. The Special Juvenile Police Unit or the Child Welfare Police Officer must be notified whenever a juvenile offender is taken into custody by a law enforcement official. After that, these authorities must inform the kid's parents or guardians promptly of their detention, the location of the Board where the youngster will be brought before them, and the exact time and date of their mandatory in-person appearance before the Board.

Within twenty-four hours of the kid's arrest, the Special Juvenile Police Unit or the kid Welfare Police Officer is required to present the child to the Board. There must also be a Child Welfare Officer or a Case Worker present during this presentation. This is done in order to provide the concerned probation officer with the opportunity to obtain additional information regarding the child's social background as well as any pertinent issues that may assist the Board in their investigation.

Whenever a law enforcement officer discovers a child who is in violation of the law, they are obligated to promptly transport the child to the child welfare police officer located at the nearest police station. They are not permitted to retain the child in jail. According to subsection (2) of section 12 of the Act, the police officer is only permitted to place a person who has been apprehended in an observation home for the period of time that is necessary for him to appear before the Board. This period of time is twenty-four hours from the time that the person was apprehended, and it continues until the necessary orders are obtained in accordance with rule 9 of these rules.

The child should not be restrained in any way, shape, or form. The child's parent or legal guardian is required to be provided with a copy of either the police report or the First Information Report before the youngster can be released. The right medical care or any other help that the child might need should be given in accordance with their needs, where applicable. It is only permissible to question the child in the Special Juvenile Police Unit, on a facility that is child-friendly, or in a police station area that does not have the atmosphere of a police station or a custodial interrogation. Coercing a minor into accepting responsibility is unacceptable. The child's parent or legal guardian is allowed to accompany them during the questioning by the authorities. The availability of legal representation for the minor is critical.

The child welfare officer will be wearing casual clothing instead of an official outfit. Form 1, which describes the kid's social history and the circumstances surrounding their arrest, must be sent to the Board without delay if a child is believed to have committed a crime by a kid Welfare Police Officer. A child welfare police officer or the Special Juvenile Police Unit will need to speak with the kid's parents or guardians to get the most up-to-date information.

Every single police station must prominently display the contact information of all individuals designated as Child Welfare Police Officers, probation Officers, Para Legal Helpers, District Legal Service Authorities, enrolled voluntary and non-governmental organisations in a district, Principal the judge and members of the Board, members of the Particular Juvenile Police Unit, and Childline Services.

Whenever a child is released from custody in a situation where it is not necessary to apprehend the child, the parent(s) or guardian(s) of the child, or another adult who is deemed appropriate, are required to sign an undertaking on a non-judicial paper in Form 2 committing to attend any hearings or investigations that the Board may hold. Within twenty-four hours and while the proceedings are still ongoing, the State Government is required to keep a panel of individuals or organisations that are either non-governmental or volunteer in nature. These individuals must be affiliated with the Police, Special Juvenile

Police Unit, or Child Welfare Police Officer, and they must be qualified to assist in the physical production of the child before the Board.

In order to guarantee the security of children, the State Government must provide monies to several entities, including the police, the Special Juvenile Police Unit, the Child Welfare Police Officer, the Case Worker, and others. While the kid is in their care, these money will also cover the child's basic needs, such as food, shelter, clothing, transportation, and medical attention in the event of an emergency.

2. Production of the child before the Board

A child who is suspected of being in violation of the law is required to appear before the Board within twenty-four hours after the arrest, as stipulated by Rule 9 of the Model Rules. The child along with a report detailing the police arrest's circumstances must be brought to the meeting. When the juvenile is brought before the Board, the Board has the authority to issue directives, which may include placing the child in an observation home, a place of safety, an appropriate institution, or with a person who is suitable for the youngster.

Section 83 of the Act applies to children brought before the Board. This includes children who have surrendered. After a thorough examination, if the Board finds the child's circumstances suitable, they may transfer the kid to the Committee as a child in need of care and protection so that the Committee may take the appropriate measures. Alternatively, the Board may issue rehabilitation directives, such as orders for the child's safe custody and protection, as well as transfers to a facility that is suitable for the purpose and is approved for the purpose of providing the necessary protection. In addition, the Board may take into consideration the possibility of relocating the kid to a different state or perhaps out of the district altogether in order to ensure the child's safety and protection.³²

The kid must be brought before the Board as soon as possible so that rehabilitative measures may be taken if needed, even if the final report can be submitted later, as indicated

³² The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 9(3).

in Rule 9 (4). When the authorities (such as the Special Juvenile Police Unit or the kid Welfare Police Officer) report that a kid is believed to be involved in a legal dispute but has not yet been located, this is the position that the Board is faced with.³³

If the Board is not in session, the child accused of a crime must be presented before one of its members in compliance with paragraph (2) of section 7 of the Act.³⁴

In order to comply with rule 69 D of these rules, the child welfare police officer must hold the child in the observation home or another appropriate facility. Within twenty-four hours after the child's apprehending, the child must be brought before the Board.³⁵ The Board will not have the authority to hear the matter if the accused juvenile cannot be brought before the Board or any member thereof because the juvenile was taken during inconvenient hours or from afar. Whenever a child is presented to a specific Board member in order to get an order, the order will be approved at the next Board meeting.³⁶

3. Post-production process by the Board-

Under Rule 10, the Board shall review the report regarding the child's social background, the circumstances surrounding the child's apprehension, and the alleged offence committed by the child as provided by the officers, individuals, and agencies presenting the child before the Board. This rule stipulates that the Board must review the report. After that, the Board has the authority to issue any orders concerning the child that it considers to be appropriate, including orders granted in accordance with sections 17 and 18 of the Act, specifically:

The case will be dismissed in accordance with Rule 10(1) if, after evaluating the records and papers that were supplied at the time of the child's initial appearance, it appears that the child's conflict with the law is unjustified or if it is thought that the kid committed a

³³ *Id.*, Rule 9(4).

³⁴ *Id.*, Rule 9(5).

³⁵ *Id.*, Rule 9(6).

³⁶ *Id.*, Rule 9(7).

minor infraction. When the Board is of the opinion that the child requires care and protection, the child is referred to the Committee, and an order is issued in Form 3 to release the child to the care or custody of a fit person, fit institutions, or probation officers, depending on the circumstances. The child is also given instructions to appear or present the child for an inquiry on the following date, and if necessary, the child is held in the Child Care Institution.

In accordance with Rule 10(2), the Board is required to request a social investigation report from the probation officer, or in situations where a probation officer is not available, from the child welfare officer or social worker concerned, by means of an order in Form 5. Additionally, the Board is required to notify the next date of hearing no later than fifteen days after the initial summary inquiry.³⁷ Further under Rule 10(3) The Child Welfare Police Officer and the Person-in-Charge of the Police Station must be given directions to produce the child if the child who is alleged to be in conflict with the law fails to appear before the Board on the date decided for hearing after being admitted to bail and no application has been made on his behalf for exemption or there is insufficient justification for doing so.³⁸

If the Child Welfare Police Officer still refuses to bring the child before the Board after the directions for their production have been issued, the Board is required to issue orders as necessary under section 26 of the Act instead of filing a case under section 82 of BNSS, 2023. The Child Welfare Police Officer is obligated to submit the recorded statements of witnesses and any other documents generated during the investigation in cases involving a juvenile accused of serious crimes within one month from the date the juvenile was first brought before the Board. The minor and his or her legal guardian must each get a duplicate of these papers.

Within two months of the date of information to the police, whether the offence was minor or major, the Board must get the final report. The Board has the authority to extend the

³⁷ *Id.*, Rule 10(2).

³⁸ *Id.*, Rule 10(3).

deadline for submitting the final report if it was reasonably unknown that the juvenile offender was engaged in the crime. An extension of time may be granted by the Board in this case. The Board must guarantee that the investigation into a minor who is suspected of breaking the law does not include traditional adversarial procedures whenever witnesses are called upon to be interviewed as part of the inquiry. Section 165 of the Bhartiya Sakshaya Adhiniyam, 2023 grants the authority to interrogate the minor and to continue with the child's favored presumptions.

The Board must examine children who are alleged to be in conflict with the law and record their statements during the inquiry required by Section 14 of the Act. This will help put the child at ease and encourage him to speak freely about the facts and circumstances surrounding the alleged offence, as well as the impact of his home and social environment and any previous offences that may have affected him (Rule 10(8)). The goal is to shield the youngster from any potential impact of the crimes perpetrated on him. For the purpose of making a determination under Rule 10(9), the Board will examine the evidence given by the parties, the social investigation report in Form 6 prepared by the probation officer or the non-governmental organisation, and the report outlining the events leading up to the child's arrest and the reported crime.

4. Assessment by Board when the child commits heinous offence

The Board is required to first determine, in accordance with Rule 10 A, whether the kid is at least sixteen years old; if it is not, it is required to follow the standards that are outlined in section 14 of the Act. In cases when horrific actions have been perpetrated, the Board may seek the advice of professionals with expertise in dealing with children from disadvantaged backgrounds, such as psychologists or psychosocial workers, to conduct an initial evaluation. The District Child Protection Unit may be able to arrange for a group of such experts to be accessible if the Board or an individual requests their help.

The child will be assumed to be innocent during the initial assessment unless it can be proved otherwise. After conducting a preliminary examination in accordance with Section 15 of the Act, the Board is required to provide the child with a copy of the order and provide

an explanation for its decision if it determines that the child in question must be tried as an adult.

5. Completion of Inquiry

Any of the dispositional orders listed in section 18 of the Act may be issued by the Board to end the matter in cases where a minor is accused of committing horrific actions. Following a preliminary evaluation in line with section 15 of the Act, the Board has reached this conclusion. In compliance with the instructions, the probation officer, child welfare officer, or social worker must submit a social investigation report to the Board before an order may be issued. The Board must then assess the report's conclusions.

The Board must provide a personalised care plan for the child involved in every dispositional order it issues. Probation officers, child welfare officers, or other certified volunteer organisations are required to develop this plan, which should include family and child interactions whenever feasible. In cases where the Board determines that keeping a child in a special home would not be beneficial for both the child and other children, it might issue a directive to put the child in a safe place according to its best judgement.

In the event that the child is ordered to undergo counselling or reprimand, participate in a group session, or is released by the Board, the District Child Protection Unit may also receive instructions from the Board about the establishment of the counselling and community service programs. The District Child Protection Unit may be provided with these instructions. If the Board decides to remove a juvenile offender from probation and place him with a parent, guardian, or other appropriate adult, that adult may be asked to sign a document promising to look out for the juvenile's best interests for up to three years. When the Board chooses to release the kid, this is what happens.

If a juvenile offender is of legal age and able to post a personal bond without a guarantor, the Board may release them from custody. Unless it would be detrimental to the child's best interests, the Board will consider the location of the facility or special home in relation to the parent's or guardian's house when deciding to place the child there.

The Board can request that a probation officer supervise a minor for no more than three years if it decides to remove a juvenile from probation and places him with a parent, guardian, or other appropriate adult, or if it decides to remove a juvenile from probation and place him in a suitable facility. The Board has the authority to transfer a child to a special home or another safe location for the rest of the monitoring period if it determines that the child has not complied with the probation requirements. It may also order the child's appearance before the Board.

Protocols Concerning the Juvenile Court and the Oversight Agencies the Children's Court has the authority to determine whether the juvenile should be tried as an adult or as a juvenile, as well as to make any necessary orders, after receiving the Board's preliminary assessment. According to subsection (1) of section 101 of the Act, the entity responsible for making the first judgement on an appeal against the Board's order specifying the child's age is the Children's Court.³⁹ If a party files an appeal challenging the results of the Board's preliminary assessment as per subsection (2) of section 101 of the Act, the Children's Court will first rule on the appeal.⁴⁰ If the appeal under subsection (2) of section 101 of the Act is rejected by the Children's Court because it is determined that the child does not need to be tried as an adult, the court must follow section 19 of the Constitution and these rules to dismiss the appeal.⁴¹ The Children's Court must request the case file from the Board before dismissing the matter in accordance with the Act and these rules when it dismisses the appeal under subsection (2) of section 101 of the Act because it determines the child ought to be tried as an adult.⁴²

The Children's Court is required to provide its arguments before making a decision regarding whether or not to treat the child as an adult or as a child. When the Children's Court decides that it should decide the issue on its own and that the kid does not need to be

³⁹ The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 13(2).

⁴⁰ *Id.*, Rule 13(3).

⁴¹ *Id.*, Rule 13(4).

⁴² *Id.*, 13(5).

tried as an adult, Rule 13(7) describes the circumstances that fall under this provision. When the Children's Court decides that there is no need for the kid to be tried as an adult and that it will manage the case on its own, the following are the circumstances that occur:

- (i) If the Children's Court decides that the juvenile does not require an adult trial but rather should decide the case independently, it can investigate as if it were a Board and make a decision in accordance with the Act and these rules.
- (ii) Whenever a summons case trial is to be held, the Children's Court must adhere to the rules laid down by BNSS, 2023.
- (iii) A kid who is in violation of the law will not be tried alongside an adult in a combined trial. This is because joint trials are not permitted. The treatments will be carried out in a setting that is suitable for children and will be conducted behind closed doors.
- (iv) It is the responsibility of the Children's Court to ensure that the investigation is not conducted in a manner that is characterised by stringent adversarial proceedings. Additionally, the court is obligated to make use of the authority that is allowed by section 165 of the Indian Evidence Act, 1872, whenever witnesses are brought up for examination (1 of 1872).
- (v) It is imperative that the Children's Court maintains a child-friendly tone while interrogating and recording the statements of juvenile offenders. The goal is to make the youngster feel comfortable enough to open up about everything that's going on, including the alleged crime, his family life, his social circle, and any outside factors that might have had an impact.

As per Rule 13(8) of the rule, if the Children's Court decides that the child should be tried as an adult, it must follow the rules of the Code of Criminal Procedure, 1973 regarding trial by sessions while also making an effort to create a child-friendly environment. If at all feasible, the Children's Court's final ruling should include a detailed plan for the child's care. Following consultation with the family, this plan must be prepared by a registered

volunteer group, child welfare officer, or probation officer. If it is determined that a minor has committed a crime, they may be confined to a secure facility until they are twenty-one years old.

When a minor turn 21 but hasn't finished their stay, the Children's Court requires them to have contact with the court. The goal of this meeting is to find out whether the kid has gone through any kind of transformation and if he can have a positive impact on the world. Furthermore, they must also evaluate any monthly reports on the child's development that may be provided by the District Child Protection Unit, a social worker, the probation officer, or both, depending on the situation. Furthermore, they could provide you further directions.

After the evaluation, the Children's Court can decide to: release the child right away; release the child after a personal bond is executed with or without sureties for good behaviour; release the child and give instructions for learning, apprenticeship, job, counselling, and other therapeutic interventions to help them be more adaptive and positive; release the child and assign a monitoring authority to keep an eye on them for the rest of their prescribed stay; or release the child and give instructions for anything else. Records destruction the individual in charge, the board, or the children's court, whichever applies, is responsible for destroying the conviction records of a juvenile offender after the appeals period has ended or for no more than seven years, whichever comes first. Nevertheless, the Children's Court must preserve the relevant records of a juvenile offender's conviction in the case that the child is found to have violated the law as per clause I of sub-section (1) of section 19 of the Act. If it is determined that the minor has committed a particularly heinous crime, this will be the case.

(D) Rehabilitation and social re-integration-

The registration of child care institutions, the management and supervision of child care institutions, the physical architecture of child care institutions, as well as the provision of sanitary, medical, and other amenities within the institutions are all topics that are covered in Chapter VI of the Model Rules created in 2016.

All institutions that offer residential care for children in trouble with the law or in need of protection must be registered in compliance with subsection (1) of section 41 of the Act. This requirement applies regardless of whether the institution is already registered or licensed under another statute that is currently in force. Whether the organisation is for-profit or managed by the government, this remains true. After the State Government confirms that the institution meets all the requirements for child care, safety, education, housing, vocational training, and rehabilitation as outlined in the Act and regulations, the institution can be granted a registration certification under subsection (1) of section 41 of the Act.

Prior to making a decision regarding whether or not to grant the registration, the State Government may take into consideration the following:

- i. The organization's registration under any law that is currently in effect pertaining to the organisation,
- ii. The choice made by the establishment's governing board to either run the institution or an open shelter;
- iii. Specifics regarding the physical infrastructure, including recreation facilities, water and electrical facilities, sanitation and hygiene facilities, and other amenities;
- iv. The organization's financial situation and the preservation of documentation, in addition to an audited statement of accounts for the three years prior to the current one;
- v. In the event that additional applications are received, make a plan to offer services to children, including those that are educational, vocational, medical, and counselling in nature;
- vi. Arrangements pertaining to transportation, including safety and security;
- vii. Additional information regarding the various support services that are provided by the organisation;

- viii. For the purpose of providing children with services that are based on their needs, information regarding linkages and networking with other community-based organisations, including corporate, non-governmental, and governmental organisations;
- ix. Detailed information regarding the current members of the staff, including their qualifications and extensive experience;
- x. Specifics on the registration process in accordance with the Foreign Contribution Regulation Act and any potential funds that may be accessible;
- xi. The person or organization's declaration about any prior convictions, participation in unethical conduct, child abuse, or child labour;
- xii. any further criteria set by the State Government; and
- xiii. any other requirements that the State Government may impose.

Care for Children After They Leave Institutions: - When they reach the legal age to leave a child care institution, these children will be eligible for a program that helps them reintegrate into society by covering costs such as housing, schooling, and placement services. The State Government will be in charge of developing this program. After leaving a child care facility, every kid is entitled for aftercare until they are twenty-one years old, and in certain cases, for two more years after they become twenty-one. The Committee, the Board, or the Children's Court, whichever is relevant, may issue an order governing this. Furthermore, it is mandatory for the District Child Protection Unit to compile and update a roster of entities and persons committed to provide aftercare services. Education, medical assistance, nutrition, vocational training, and related fields may be the focus of these groups and individuals' selection processes. Everyone involved in child care, including the board or committee, needs a copy of this list for their records. A post release plan must be developed and submitted to the board or committee by the child welfare officer, social worker, probation officer, or caseworker at least two months before to the child's scheduled

departure from the child care facility. Based on the child's needs, the plan should propose aftercare services.

The Board, Committee, or Children's Court will assess the aftercare program's efficacy as they oversee the post-release plan. Specifically, they will assess the program's efficacy in meeting its intended goals and the child's development as a consequence of their involvement in the aftercare program. Children enrolling in aftercare programs need financial assistance from the state government to meet their expenses. Please ensure that these funds are sent straight to the children's bank accounts.

A wide range of services are available via the after-care program. Temporary community group housing for six to eight people, financial aid for individuals pursuing vocational or higher education, assistance until employment is found, and plans for skill training and job placement in collaboration with organisations like the Indian Institute for Skill Training and the National Skill Development Program are all examples of the services that may be provided. Having a therapist who can get in contact with them often to talk about their recovery objectives and providing them with creative outlets to channel their energy and get through challenging moments.

4.9.1 Management and monitoring of child care institutions

In order to establish an appropriate staffing level for a creche, one must think about the roles, duties, hours worked each week, and sorts of children that will be under the care of the employees. The Person-in-Charge is tasked with maintaining comprehensive management and supervision over the Child Care Institution's workforce. The use of an order outlining their precise obligations in line with the provisions of the Act and these rules allows for this to be achieved. The number of jobs available in each staff category should be proportional to the capacity of the institution, and the number of postings should be determined by considering the capacity of the institution. Facilities that house female-only child care must employ only female-identifying person-in-charge and workers.

No one associated with a child care institution may have a criminal record, have engaged in unethical behaviour (such as child abuse or child labour), or have been a member of a political party while working in that capacity. Anyone seeking employment or employment with a child care facility must first undergo a background check.

Therefore, in accordance with Rule 26, a child care facility that has the ability to accommodate one hundred children may adopt the prescribed staffing pattern as follows:

Table 4.1 Suggested Staffing Pattern

S. No.	Personnel/ Staff	Numbers
1.	Person-in-charge (Superintendent)	1
2.	Probation Officer/Child Welfare Officer/Case Workers (NGOs) A Child Welfare Officer may be designated as Rehabilitation-cum-Placement Officer	3
3.	Counsellor/ Psychologists/mental health expert	2
4.	House Mother/ House Father	4
5.	Educator/ Tutor 2(Part time)	2(Part time)
6.	Medical Officer (Physician)	1(On call)
7.	Para-medical staff/ Staff Nurse/Nursing Orderly	1
8.	Store Keeper cum Accountant	1
9.	Art & Craft & activity teacher	1(Part time)
10.	PT Instructor-cum-Yoga trainer	1(Part time)
11.	Cook	2
12.	Helper	2
13.	House keeping	2
14.	Driver	1
15.	Gardener	1(Part time)

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴³

⁴³ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>*

The table states the staffing pattern of the Homes where the juvenile inmates are kept for rehabilitation and reformation. Superintendent is the in charge of the home, and all the other staff members mentioned in the table above should be appointed for the fulfilment of the requirements as per the Model Rules stated. The recommended pattern of staffing for an institution that can accommodate one hundred children. Each staff category's number of positions will be determined by the institution's capacity, and it will rise proportionately as the institution's capacity increases. No one may be hired or employed by a child care facility without first obtaining police verification. The security officers who will be hired or engaged must possess the necessary training and orientation to handle children with sensibility. Preferably, they should be retired paramilitary members or ex-servicemen, or they may be selected by the Director General of Resettlement. The security staff will not carry weapons or be armed; instead, they will be specially trained to manage violent situations, stop child escape, and handle crisis situations.

1. **Physical infrastructure-** As per Rule 29(1) The accommodations of each institution must meet the following standards, specifically:
 - (i) Observation Home:
 - (a) Different observation homes for males and females respectively;
 - (b) Categorisation and separation of children into age groups, preferably between the ages of 7 and 11 years, 12 and 16 years, and 16 and 18 years, while taking into consideration the physical and mental health of each child as well as the sort of crime that was committed.
 - (ii) Special Home:
 - (a) A separate special house for boys between the ages of 11 and 15 and 16 and 18 and for females beyond the age of 10; special homes for younger children;
 - (b) Classification and segregation of children based on their age, the type of offences committed, and their physical and mental health.

(iii) Place of Safety:

- (a) Pertaining to minors between the ages of 16 and 18 who are accused of committing a serious crime while an investigation is still being conducted;
- (b) For teenagers between the ages of 16 and 18 who, when the investigation is over, are found to have been involved in a horrific crime they have committed;
- (c) For adults over the age of 18 who are suspected of committing a crime while under the age of 18 while an investigation is ongoing;
- (d) For adults who were discovered to have committed the offense after the investigation was finished;
- (e) For minors, in line with the orders issued by the Board in accordance with paragraph (g) of sub-section (1) of section 18 of the Act.

(iv) Children's Home:

- (a) Although it is permissible to house children of both sexes who are younger than ten years old in the same house, separate bathing and sleeping facilities must be maintained for boys and girls who are between the ages of five and ten years old;
- (b) Separate houses for children comprised of both males and females who are younger than seven years old and older than twelve years old;
- (c) Separate facilities for children younger than 6 years old with suitable facilities for infants.

Child care facilities that are child-friendly must not be designed in a manner that is reminiscent of a jail or a lock-up, and they must be designed with children in mind. For the benefit of their employees and the children in their care, all child care centres must have on file copies of the Act and any regulations put out by the relevant state agencies. Every creche must have a management committee that keeps tabs on daily operations and records each student's progress towards milestones. According to the specified requirements, child care centres that serve both at-risk and underprivileged children must be located in separate buildings.

As an example, the following are some of the recommended specifications for buildings or accommodations in every institution that has fifty children involved:

Table 4.2 Building and Accommodation

1.	2 Dormitories	Each 1000 Sq. ft. for 25 children i.e., 2000 Sq. ft.
2.	2 Class rooms	300Sq.ft. for 25 children i.e., 600 Sq. ft.
3.	Sickroom/First aid room	75 Sq. ft. per children for 10 i.e., 750 Sq. ft.
4.	Kitchen	250 Sq. ft.
5.	Dining Hall	800 Sq. ft.
6.	Store	250 Sq. ft.
7.	Recreation Room	300 Sq. ft.
8.	Library	500 Sq. ft.
9.	Bathroom	25 Sq. ft. each i.e., 125 Sq. ft.
10.	5 Toilet	25 Sq. ft. i.e., 200 Sq. ft.
11.	8 Office Room	(a) 300 Sq. ft. (b) Person-in-charge room 200 Sq. ft.
12.	Counselling and Guidance room	120 Sq. ft.
13.	Workshop	1125 Sq. ft. for 15 children @ of 75 Sq. ft. per trainee
14.	Residence for Person-in-charge	(a) 2 rooms of 250 Sq. ft. each (b) Kitchen 75 Sq. ft. (b) bathroom cum toilet 50 Sq. ft.
15.	2 rooms for Juvenile Justice Board or Child Welfare Committee	300 Sq. ft each i.e., 600 Sq. ft.
16.	Playground	Sufficient area according to total number of children
	Total	8495 Sq. ft.

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴⁴

⁴⁴ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

The necessary requirements for the physical infrastructure have been established in Rule 29, which mandates the separation of children according to their ages, taking into account their physical and mental conditions as well as the type of offence that they have committed.

A total of 8,495 square feet should be the recommended built-up space for each institution. A playground, classrooms, sick rooms, kitchen, dining hall, store, recreation room, library, five bathrooms, eight toilets, offices, guidance and counselling room, seminars, the person in the driver's residence, two spaces for members of the juvenile justice board, and a residence for the person in charge are all part of this specialised area.

2. **Clothing, Bedding, Toiletries and other Articles-** It is necessary to select the clothing and bedding so that they are appropriate for the scale and the weather conditions. The following are lists of the standards that must be met for every child in terms of minimal requirements for clothing and bedding:

Table 4.3- A. Bedding

No.	Article	Quantity per child
1.	Mattress	1 at the time of admission and subsequently 1 after every 1 year.
2.	Cotton Durry	2 at the time of admission and subsequently 2 after every 2 years.
3.	Cotton bed sheets	2 at the time of admission and subsequently 1 after every 6 months.
4.	Pillow (Cotton stuffed)	1 at the time of admission and subsequently 1 after every 1 year.
5.	Pillow covers	1 at the time of admission and subsequently 1 after every 1 year.
6.	Cotton blankets/ Khes	2 at the time of admission and subsequently 1 after every 2 years.
7.	Cotton filled quilt	1 at the time of admission and subsequently 1 after every 2 years (in cold region in addition to the blankets).
8.	Mosquito net	1 at the time of admission and subsequently 1 after every 6 months.
9.	Cotton towels	2 at the time of admission and subsequently 1 after every 3 months.

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴⁵

⁴⁵ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

Table 4.4- B. Clothing for Girls

S. No.	Article	Quantity per child
1.	Skirts and Blouse or Salwar Kameez or Half Sari with Blouse and Petticoat	5 sets per year for girls depending on age and regional preferences.
2.	Age-appropriate undergarments	3 sets every quarter.
3.	Sanitary Towels	12 packs per year for older girls.
4.	Woollen Sweaters (full sleeves)	2 sweaters yearly.
5.	Woollen Sweaters (Half sleeves)	2 sweaters yearly.
6.	Woollen Shawls	1 per year.
7.	Nightwear	2 sets every 6 months.

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴⁶

Table 4.5- C. Clothing for Boys

S. No.	Article	Quantity per child
1.	Shirts	2 at the time of admission and subsequently 1 after every 6 months.
2.	Shorts	2 at the time of admission and subsequently 1 after every 6 months for younger boys.
3.	Pants	2 at the time of admission and subsequently 1 after every 6 months for older boys.
4.	Age-appropriate undergarments	3 sets every quarter.
5.	Woollen jerseys (full sleeves)	2 yearly.
6.	Woollen jerseys (half sleeves)	2 yearly.
7.	Woollen Caps	1 in 1 year.
8.	Kurta Pyjama for night wear	2 sets every 6 months.

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴⁷

⁴⁶ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

⁴⁷ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

Table 4.6- D. Miscellaneous Articles

S. No.	Article	quantity
1.	Slippers	1 pair at the time of admission and subsequently after every 6 months.
2.	Sports shoes	1 pair at the time of admission and subsequently 1 pair after every 1 year.
3.	School uniform	2 sets every six months for children attending schools.
4.	School bag	1 every year for children attending schools.
5.	School shoes	1 pair at the time of admission in school and subsequently 1 pair after every 6 months.
6.	Handkerchiefs	2 at the time of admission and subsequently 2 after every 2 months.
7.	Socks	3 pairs every six months.
8.	Stationery	As per need.

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴⁸

Each child will receive the above-mentioned clothes once every three years, along with a suit that includes a white shirt, trousers, shoes made of canvas and a suit for ceremonial occasions. The women's outfit consists of a jacket, a pair of white canvas shoes, a skirt, a blouse, a salwar kameez, and a white half sari.

The following scale will be used to determine the amount of oil, soap, and other materials that will be distributed to each and every resident of the Child Care Institution:

⁴⁸ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

Table 4.7- E. Toiletry

S. No.	Items	Quantity to be issued per child
1.	Hair Oil for grooming the hair	100 ml per month.
2.	Toilet soap/handwash	2 bars of 100gm per month.
3.	Tooth brush	1 in every 3 months.
4.	Toothpaste	100gm (a tube) per month.
5.	Comb	1 in every 3 months.
6.	Shampoo sachets	8 in a month (10ml/ per sachet).
7.	Bathing soap	2 bars of 125gm per month.
8.	Hair clip/ band	2 bands in 3 months.
9.	Moisturiser or cold cream (during winters)	250 ml in a month.

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁴⁹

Table 4.7. F. Nutrition and Diet Scale

S. No.	Name of the articles of diet	Scale per head per day
1	Rice/Wheat/Ragi/Jowar	600 gms, (700 gms for 16-18 yrs age) of which at least 100 gms to be either Wheat or Ragi or Jowar or Rice.
2	Dal/ Rajma/ Chana	120 gms.
3	Edible Oil	25 gms.
4	Onion	25 gms.
5	Salt	25 gms.
6	Turmeric	05 gms.
7	Coriander Seed Powder	05 gms.
8	Ginger	05 gms.
9	Garlic	05 gms.
10	Tamarind/ Mango powder	05 gms.
11	Milk (at breakfast)	150 ml.

⁴⁹ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at:* <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

12	Dry Chillies	05 gms.
13	Vegetables Leafy Non – leafy	100 gms. 130 gms.
14	Curd or Butter Milk	100 gms/mil.
15	Chicken once a week or Eggs 4 days	115 gms.
16	Jaggery& Ground Nut Seeds or Paneer (vegetarian only)	60 gms each (100 gms for paneer) Once in a week
17	Sugar	40 gms.
18	Tea/Coffee	5 gms.
19	Sooji/Poha	150gms.
20	Ragi	150 gms.
Following items for 50 Children per day		
21	Pepper	25 gms.
22	Jeera Seeds	25gms.
23	Black Gram dal	50 gms.
24	Mustard Seeds	50 gms.
25	Ajwain Seeds	50 gms.
On Chicken Day for 10 Kg. of Chicken		
26	Garam Masala	10 gms.
27	Kopra	150 gms.
28	KhasKhas	150 gms.
29	Groundnut Oil	500 gms.
For Sick Children		
30	Bread	500 gms.
31	Milk	500 ml.
32	Khichadi	300 gms.
Other Items- 33 LP Gas for Cooking only		

Source: The Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁵⁰

⁵⁰ The Juvenile Justice (Care and Protection of Children) Model Rules, (2016) *available at*: <https://wcd.nic.in/acts/juvenile-justice-care-and-protection-children-model-rules-2016-0>

Institutions that provide care for children are required to conform to the nutrition and diet scale that is presented in the table. It is imperative that the youngsters receive a total of four meals every day, including breakfast. The minimum nutritional standard and diet scale are essential guidelines that must be strictly adhered to by every child care facility. In order to provide a diet that is both well-balanced and varied in terms of flavour, the menu requirements must be designed with the assistance of a nutritionist or a physician.

3. **Mental Health-**Rule 35 states that in order for children to adapt and restore their self-confidence, institutional environments must be free from abuse. The responsibility of providing a nurturing atmosphere and, when necessary, working in tandem with therapists, falls on all those responsible for the care of children in institutional settings. To ensure that children have regular and specialised individual therapy, it is mandated that all institutions either employ qualified counsellors in-house or form partnerships with external organisations like child guidance centres, psychology and psychiatric departments, or comparable public and private organisations.
4. **Education-** Under Rule 36 All children within and outside of the institution must receive education in accordance with their age and ability, as necessary. Traditional inclusive schools, alternative educational models, open enrolment, non-traditional learning environments, and learning on the spot will all be on the table. In situations where it is deemed necessary, additional coaching will be made available to students enrolled in the institutions through the recruitment of volunteer assistance or the establishment of agreements with tutoring facilities or coaching centres. The hiring of professional trainers and experts is required in order to fulfil the educational requirements of children who have special needs, regardless of whether such needs are physical or neurological. Identification, evaluation, and reporting of learning problems are required for the individual care plan. The child will receive additional assistance from qualified professionals. The children's attendance and

the regularity of the educational programme must be guaranteed. Scholarships, grants, programmes, and sponsorships ought to be available to children.

5. **Vocational Training-** As per Rule 37, according to the children's age, aptitude, interest, and ability, every child care institution must offer them productive vocational training, either inside or outside the child care institution. It is important to note that occupational therapy, training that is based on skills and interests, and appropriate placement at the conclusion of the course are all components of vocational training. Upon successful completion of the programme, the institute, preferably one that is recognised by the government, will issue a certificate. Children must be escorted for any programmes that offer vocational training outside of the Child Care Institution's walls with sufficient security planning and assistance, especially for at-risk children. Every child participating in the programmes must have a record, and each child's development must be evaluated. In this regard, the report is required to be submitted on a quarterly basis to either the Board, the Committee, or the Children's Court, depending on the circumstances.

6. **Recreational Facilities-** Examples of recreational facilities include, but are not limited to, the following: indoor and outdoor games, yoga and meditation, music, television, picnics and outings, cultural programming, gardening, libraries, and other activities. Outdoor sports and games must have access to enough space. The picnic may include visits to a science or education fair, a museum, a planetarium, a botanical or zoological garden, etc.

It is required that a cultural event or sporting competition be organised once every three months in order to showcase talent on vacations or on the days that are designated as national holidays. A child-friendly environment is required to be present in the library. There will be a wide variety of resources available, including books written in regional languages, newspapers, magazines geared towards children, puzzle books, picture books, braille books, audio and video equipment, and more. The home must have space for gardening, and children will get

professional guidance from a gardener. The list of leisure activities may be expanded to include art therapy, dance therapy, and music therapy in order to facilitate the healing process for each individual child. If necessary, institutions and non-governmental organisations can help keep the activities on schedule. This is followed by the submission of a report to either the Board, the Committee, or the Children's Court on a quarterly basis, depending on the circumstances.

7. **Management Committee**-For the purpose of overseeing daily operations and documenting each child's progress, it is mandatory for all daycares to form a management committee. Age, type of offence or care needed, physical and mental health, duration of stay, and other factors will be used to classify children into groups that will be provided with the care and treatment that is appropriate according to their individual care plans. As per Rule 39, the management committee is comprised of the following individuals: the District Child Protection Officer (District Child Protection Unit) as chairperson, the Person-in-Charge as member-secretary, the Probation Officer, child welfare officer, caseworker, medical officer, psychologist, counsellor, workshop supervisor, vocational instructor, teacher, social worker, two children's committee representatives, and anyone else who may be needed. Each institution must have a grievance and resolution procedure established by the Management Committee. Furthermore, every establishment must have a Children's Suggestion Box. The box should be placed in a convenient area near the children's homes, rooms, or dorms, and not in the office setup, so that youngsters may readily reach it.
8. **Children's Committees**- From six to ten years old, eleven to fifteen years old, and sixteen to eighteen years old, there must be separate children's committees made up entirely of children. Facilitating the establishment of children's committees should be a top priority for the person in charge of any organisation that provides services to children. The following are some of the things that this children's committee is encouraged to do: improve the facility's condition; assess the care standards being

followed; make daily schedules and diet scales; strategise educational, vocational, and recreational programs; respect and assist each other during crises; report instances of abuse or exploitation by peers or carers; express themselves creatively through newsletters, paintings, music, or theatre; oversight of the institution by the Governing Body.

9. **Inspection**-State and district inspection committees will be established by the State Government in accordance with Rule 41. No more than seven state government officials may serve on the State Inspection Committee. Members of the State Commission for the Protection of Child Rights, the State Human Rights Commission, the State Adoption Resource Agency, and the Board or Committee will all be among these persons. The group will also include of well-respected social workers, charity organisations, and medical professionals. State Inspection Committee leadership will be provided by the Member-Secretary of the State Child Protection Society. Care facilities for children in the state are required to undergo inspections by the State Inspection Committee under the requirements of paragraph (21) of section (2) of the Act.

Organisations that provide refuge for children must undergo random inspections by the State Inspection Committee to see whether any vulnerable youngsters are being kept there. A report must be sent by the State Inspection Committee to the Secretary of the Department responsible for carrying out the Act. Per the Act and its regulations, the State Inspection Committee shall make recommendations for the development and improvement of the Institutions and shall forward the same to the State Child Protection Society or the District Child Protection Unit for appropriate action. The State Inspection Committee is obligated to speak with the children during its visits to the facility so that it may assess their welfare and hear their viewpoints.

The district's child care centres are required to undergo inspections every three months. Following the guidelines set forth by the Act and its regulations, the

District Inspection Committee must propose changes to existing child care centres. Beyond informing the District Child Protection Unit or the State Government of its findings, there is an additional expectation. As part of their facility inspection, members of the District Inspection Committee will speak with the kids to gauge their well-being and get their thoughts. In response to the report that was submitted by the District Inspection Committee, the District Child Protection Unit will follow through with any extra actions that are required.

- 10. Evaluation-** According to the Act, the Board, Committee, special juvenile police units, registered institutions, or acknowledged suitable facilities and persons may be evaluated every three years by either the Central Government or the State Government. Organisations such as prestigious universities' schools of social work, management institutes, interdisciplinary committees set up for the express aim of conducting such an assessment, and similar bodies may do so. Consequently, the respective state and federal governments must exchange details on the assessment conducted in accordance with the previously mentioned sub-rule (1) if we are to enhance and fortify the operation of many buildings. Household Jobs Done by Mothers and Fathers It is the responsibility of the house father or mother, under Rule 63, to act in compliance with the directions issued by the authority figure. Any parent who stays at home with their children has the following broad duties and obligations:

Show love and affection to every child in the institution. Take good care of the child and protect his health, as soon as a child is given supplies, make sure they have everything they need, including clothes, toiletries, and other everyday necessities. Ensure that children are in order and also ensure that every child practice good personal hygiene and cleanliness. To Make certain that the surroundings are hygienic and attend to upkeep and sanitation. Make sure that children participate in their daily routines and carry them out in an efficient manner. Supervise the safety and security protocols of the child care facility. If a child

departs from the institution for any purpose other than to appear before the Board, Committee, or Children's Court, your presence is necessary. It is necessary for you to be with the youngster. You should notify both the person in charge and the child welfare officer about the youngster who has been allocated to you. Their duties necessitate that they maintain certain records.

- 11. Duties of a Probation Officer-** Subsection (1) of section 13 of the Act requires the Probation Officer to investigate any factors pertaining to the child that might influence the Board's investigation after receiving information from the police or child welfare police officer (clause (ii) of sub-section (1)). The Probation Officer must also submit a Form 6 report detailing the social investigation to the Board. Because of this, the Probation Officer must act without first obtaining the Board's official approval. In the social investigation report, there should be a risk assessment and a discussion of the factors that made people vulnerable. These factors could include things like the presence of adult gangs, drug users, easy access to weapons and drugs, and exposure to inappropriate content and behaviours for their age.

The Probation Officer is responsible for carrying out the Board's directives and performing the following tasks, functions, and obligations by conducting a social investigation on the child. Participating in Board and Children's Court hearings and submitting reports as requested and required. Addressing the child's issues and challenges in an institutional setting. Elucidating such matters; taking part in educational, vocational, monitoring, orientation, and rehabilitation initiatives; and encouraging collaboration and understanding between child and carer. To foster mutual respect and collaboration between the youngster and the carer. To assist the youngster in reaching out to and assisting family members. Participate in the pre-release program and offer assistance to the child in establishing relationships with people who might be able to provide the child with emotional and social support after they are released from prison. for the purpose of establishing contacts with

probation officers in other districts and states in order to obtain the results of social investigations, as well as to supervise and follow up on those investigations afterwards. In order to ensure that the required follow-up is carried out, it is necessary to establish ties with organisations and volunteers who can assist with the rehabilitation and social reintegration of children. Continuous follow-up with the child after they have been released, throughout which they are provided with guidance and direction, and their return to social mainstreaming is enabled and supported. The child should have a post-release plan as well as an individual care plan created for them. In accordance with the specific care plan, supervision of children who have been placed on probation is required. The child's dwelling, which is under his control, as well as the child's place of job or school, should be visited on a regular basis, and periodic reports should be provided. Children should be accompanied from the Board's office to the observation home, special home, safe location, or appropriate institution whenever it is possible to do so. In order to be submitted to the Children's Court, it is necessary to compile a report on the children's development in a secure setting on a regular basis, which should include information regarding their psychosocial development. A monitoring authority is someone who is appointed by the Children's Court to carry out the obligations associated with that position. must maintain a notebook or log of his daily actions, including visits made, social investigation reports prepared, follow-ups made, and supervision reports prepared, among other things related to his activities. The goal of this initiative is to help rehabilitate and reintegrate children into society by identifying alternative community services and establishing connections with the nonprofit sector.

- 12. Rehabilitation cum-Placement Officer**-Every single agency that deals with children, including shelters, must designate a rehabilitation-cum-placement chief. A master's degree in social work or human resources management is suitable for the rehabilitation-cum-placement officer. They should also have at least three years

of experience working in the fields of rehabilitation, job creation, and resource mobilisation.⁵¹

As part of their responsibilities, the Rehabilitation-cum-Placement Officer is accountable for carrying out the following tasks:

- (i) Using the proper procedure and in consultation with the Child Welfare Officer, Case Worker, Counsellor, and Vocational instructor, ascertain the capacities and proficiency levels of the children housed in child care facilities;
- (ii) In order to get employment upon completion of the course, it is essential to locate and establish relationships with all of the companies that provide vocational and training services;
- (iii) Form a system of partnerships with people, corporations, reputable NGOs, and other funding organisations to collect funds for training programs and self-employment assistance;
- (iv) Collaboration and coordination between various financing agencies, businesses, people, and respectable non-governmental organisations (NGOs) is essential for the successful launch of vocational training programs in daycare centres. The best way to structure these classes or seminars is based on participants' ages, interests, aptitudes, and abilities.
- (v) Promoting the development of entrepreneurial skills and simplifying the provision of financial and marketing support for job opportunities;
- (vi) at order to organise training sessions at child care institutions, it is necessary to recruit volunteer vocational instructors who would provide their skills.

⁵¹ The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 65(2).

- (vii) The child's personality features, the nature of the offence, and the Rehabilitation Card should all be taken into consideration when developing rehabilitation plans for young people.
- (viii) Keep track of the child's progress on a regular basis;
- (ix) Make it easier for the child to receive certificates after completing educational or vocational training programmes;
- (x) Efforts should be made to guarantee that every child who is eligible and has received training is accurately placed;
- (xi) Workshops should be held focused on rehabilitation programs and services provided by the Central and State Government Schemes, with the goals of increasing knowledge of these programs and making them more accessible.
- (xii) Encouraging children to attend workshops that focus on developing their personalities, life skills, coping mechanisms, stress management abilities, and other soft skills can help them grow into responsible and productive adults.;

13. Staff Discipline- Any infringement of rules and regulations, as well as any negligence of duty, must be taken very seriously, and the Person-in-Charge is obligated to either take or advise severe disciplinary action against the authorities who are responsible for the violation. It is strictly forbidden for employees of the child care facility to be present in any part of the facility that is not specifically designated for their use. Employees of the child care centre are not permitted to bring any products that are prohibited inside the facility. No employee of the Child Care Institution, regardless of whether they were on duty at the time in question or not, is permitted to consume any addictive substances on the premises of the Child Care Institution. These substances include alcohol, bidi, cigarettes, tobacco, and any other psychotropic substance. This policy is in place to ensure a safe and healthy environment for the children in care. Furthermore, no employee is permitted to report for duty while under the influence of any intoxicant, as this

could impair their ability to provide proper care and supervision. In addition to the prohibition on addictive substances, employees of the child care facility are strictly forbidden from engaging in any business dealings with the child, their parent, or legal guardian. This rule helps maintain professional boundaries and ensures that the primary focus remains on the welfare of the child. Employees are also prohibited from discussing topics that are inappropriate for children of their age, thereby safeguarding the children's mental and emotional well-being. Employees are not allowed to watch pornographic content or read obscene literature on the property of the facility, as such behavior is wholly incompatible with the values and responsibilities of a child care institution. To further protect the children from exploitation, employees are forbidden from selling or renting anything to a child for money. These comprehensive rules are designed to create a secure, respectful, and nurturing environment for all children under the institution's care.

In order to guarantee efficient coordination between the different organs, which would give the Act and Rules purpose and viability. The government is responsible for creating the necessary support systems to guarantee the efficient operation of every other participant in the system. Nevertheless, until the government takes action and generates enough funding to incur expenditures for program implementation, rehabilitation, assistance to NGOs, and to meet the costs associated with Homes, SJPU, JJB, and other statutory bodies in order to ensure the efficient operation of the Juvenile Justice System, the various duties outlined in the Act and the Rules cannot be carried out effectively. Since the justice system for youths depends on the facilities and funding provided by the State to function, the government's role is therefore extremely important.

CHAPTER-5

INSTITUTIONALIZATION AND THE CHILDREN IN CONFLICT WITH LAW: AN ENPIRICAL STUDY IN THE STATE OF HARYANA

5. INTRODUCTION

State of Haryana is located in the northern part of India. On 1 November 1966, it was formed out of the old state of East Punjab on the basis of language. With less than 1.4% (44,212 km²) of India's total land area, it is placed 21st in terms of size.¹



¹ “Haryana”, Wikipedia, *available at*: <https://en.wikipedia.org/wiki/Haryana> (last visited on April 23, 2023).

The state has a well-developed economy, national and state highways, and is rich in history, monuments, heritage, flora, wildlife, and tourism. The State shares its borders with Rajasthan to the west and south, Punjab and Himachal Pradesh to the north, and Uttar Pradesh and the Yamuna River to the east. Delhi, the nation's capital, is surrounded on three sides by Haryana (north, west and south). As a result, for planning and development purposes, a significant portion of Haryana state is included in India's economically beneficial National Capital Region.²

5.1 INSTITUTIONS FOR CHILDREN IN CONFLICT WITH LAW IN THE STATE OF HARYANA

Before a kid may begin the process of rehabilitation and reintegration into society, they must first be housed in a children's home or a special facility. In order to prevent juvenile offenders from developing into substantial or chronic offenders or criminals in the future, it is imperative that every effort be made to assist them in changing their negative behaviours by providing them with assistance. To rescue the children from the grasp of crime and to get them back into society as responsible citizens of the future, the Women & Child Development Department of State of Haryana has teamed up with the legal authorities. Haryana, a State of India which is divided into 6 revenue divisions i.e., Ambala, Hisar, Karnal, Rohtak, Gurugram and Faridabad which are further divided into 22 districts. It is stated in the Juvenile Justice (Care and Protection of Children) Act, 2015 that for the purpose of handling juveniles involved in legal disputes, the State Government is required to establish Juvenile Justice Boards in each district. These boards will have the authority to make decisions and carry out their responsibilities.

There are 21 Juvenile Justice Boards in different districts in the state of Haryana and the districts are Ambala, Bhiwani, Faridabad, Fatehabad, Gurugram, Hisar, Jhajjar, Jind,

² *Ibid.*

Kaithal, Karnal, Kurukshetra, Narnaul, Nuh, Palwal, Panchkula, Panipat, Rewari, Rohtak, Sirsa, Sonapat and Yamuna Nagar. To take care and to protect these children, state govt. is running four Observation Homes in Observation Home, Ambala (Boys) With Capacity of 44, Faridabad (Boys) with Capacity of 25, Hisar (Boys) with Capacity of 44, Karnal (Girls), (Nari Niketan Campus) with Capacity of 25 and one Place of Safety in Karnal.

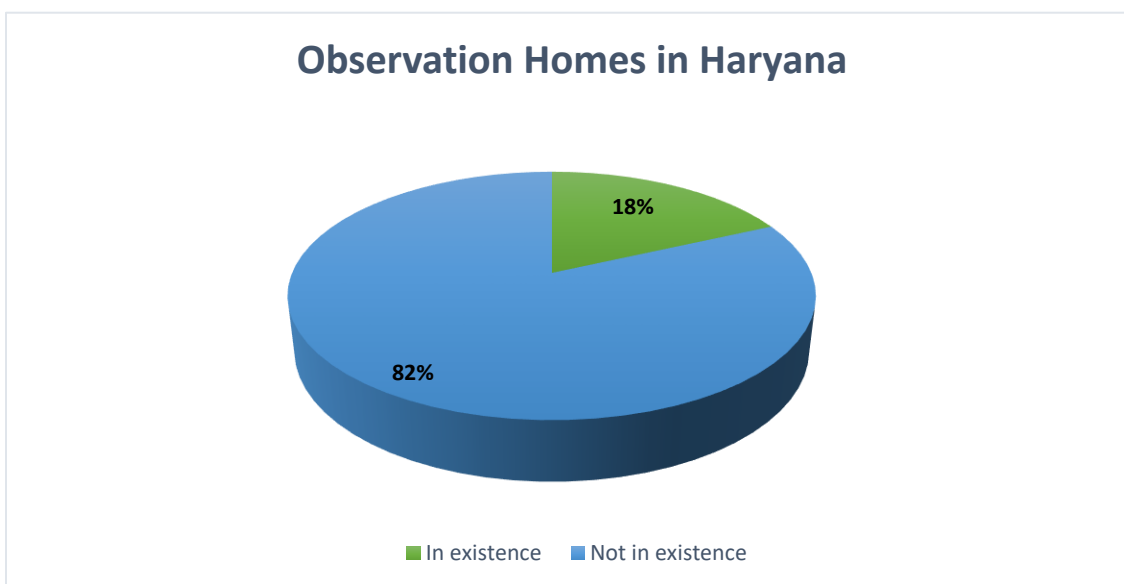
In the year 2010, the Haryana State Child Protection Society was founded by the Women and Child Development Department of Haryana. This was done in order to ensure that the Integrated Child Protection Scheme was properly administered. It works to provide assistance to children who are in need of care and protection as well as children who are in conflict with the law, and it provides all of the necessary assistance from the government in order to ensure that the ICPS plan is carried out in an effective and successful manner. It is the role of the system to give the kid with the required care and rehabilitation in order to reintegrate them into society, as well as to take the necessary precautions to avoid more cases from occurring.

Section 47 (1) – While investigations under this Act are underway, the State Government must set up and maintain observation homes in every district or group of districts to provide temporary reception, care, and rehabilitation to any child suspected of being involved with the law. The State Government may initiate the establishment of these houses alone or in partnership with non-profits or volunteer groups. Section 41 of the Act mandates the registration of observation residences.³

³ Juvenile Justice (Care and Protection of Children) Act, 2015, s. 47(1).

Table No. 1 / Graph No.1 Total number of Observation Homes and Place of safety in Haryana

Total number of Observation Homes and Place of safety in Haryana				
Sr. No.	Total number of Districts	Observation Homes run by Government		Place of Safety run by Government
		In existence	Not in existence	In existence
1	22	4	18	1



The above Table reveals that in Haryana, there are total 22 districts where all observation homes are in existence in 04 districts and 18 districts yet do not have any observation homes and there is one Place of safety in Karnal. There is one observation home in Sonipat which is under construction.

5.2 FIELD REPORT

There is total 22 districts in the State of Haryana and out of 22 districts of the State of Haryana, three Observation Homes/ Place of safety in Haryana are selected for in depth study. These are Ambala, Hissar and Karnal. For the collection of data three categories of respondents have been chosen. These are 276 inmates of the Observation Homes/Place of Safety, 68 staff members of these institutions and 9 members of Juvenile Justice Boards of the three selected Districts, from Observation Home Ambala total 26 inmates are selected, 90 from Observation Home Hisar and 160 inmates from the Place of Safety Karnal. The staff members selected are 17 from Ambala, 19 from Hisar and 32 from the Place of Safety Karnal respectively.

Category of the Respondent	Description of the Respondent	Total Numbers of Respondents		
Category I	Inmates of the Observation Homes/Place of Safety	Ambala	–	26
		Hisar	–	90
		Karnal	–	160
		Total	=	276
Category II	Staff Members	Ambala	–	17
		Hisar	–	19
		Karnal	–	32
		Total	=	68
Category III	Juvenile Justice Board Members	Ambala	–	03
		Hisar	–	03
		Karnal	–	03
		Total	=	09

To carry out the research, the researcher got permission to conduct survey from Women and Child Development Department (Haryana). The researcher visited the institution in person and made a direct observation of the institutions.

For the doctrinal research study, the researcher emphasis on the available primary sources including international instruments, national instruments, legislations, case laws etc. the study also place considerable reliance on secondary sources.

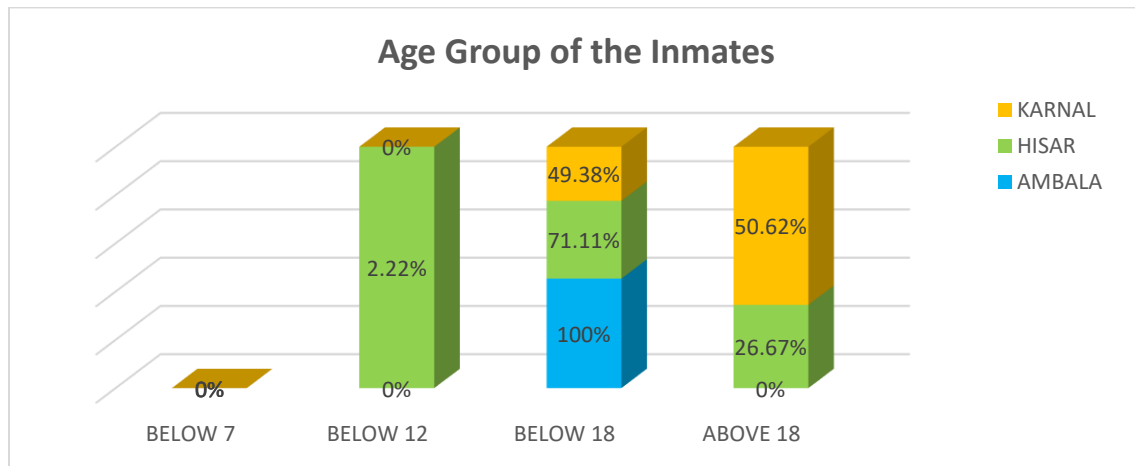
Questionnaire method is adopted for the subject in hand. Pre-structured questions are used. Separate set of questions were prepared for different categories of respondents. The first category of respondents are the inmates of the institutions and second category are the Juvenile Justice Board members inmates of the Intuition homes. The third category respondents are the staff members of the 3 selected districts.

There are socioeconomic characteristics, the quality of service that is offered by the institution, and performance indicators for officials that are included in the questions. The findings of this study can be used to enhance the service and environment of these homes, improve the rehabilitation process of juvenile and elevate the in-homes training and vocational facilities of institutions. Graphs, Charts, Tables have been used to represent the data.

5.3. DATA ANALYSIS OF THE QUESTIONNAIRE -1 (THE INMATES INSIDE THE OBSERVATION HOME/PLACE OF SAFETY)

For this study, the researcher has visited and made a direct observation of the Observation homes, Place of safety and Juvenile Justice Boards of the three districts Ambala, Hisar and Karnal. Information collected from the inmates has been analysed as follows:

Table/Figure No. 2 Age group of the inmates.



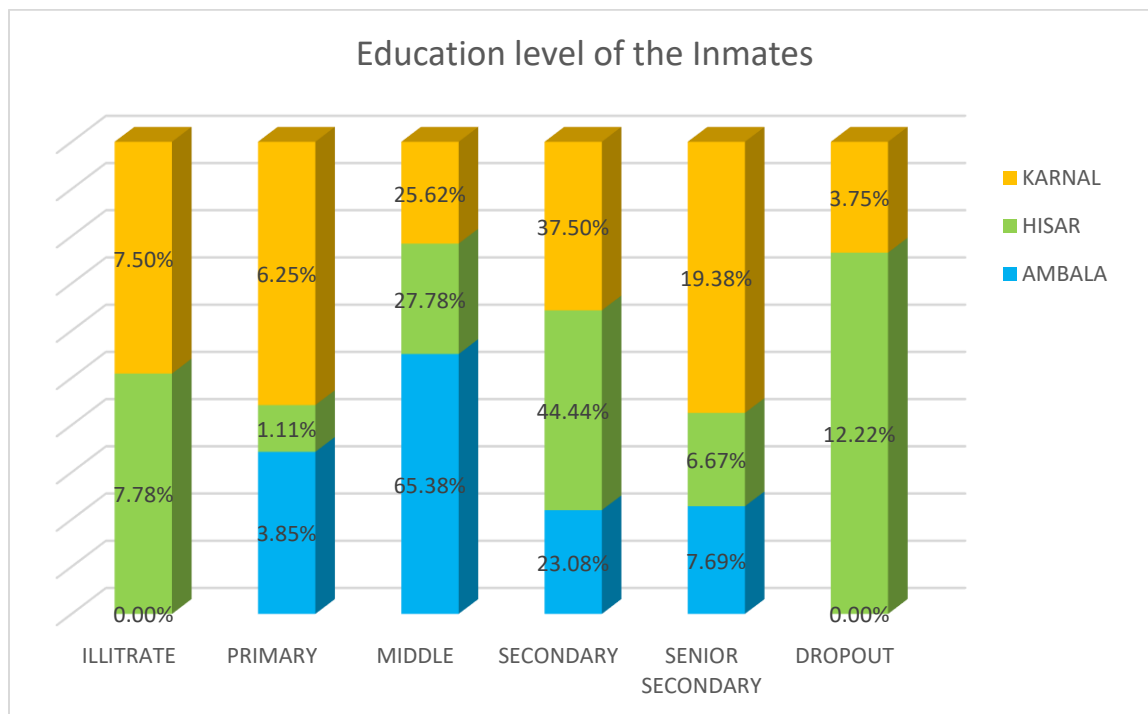
	AMBALA	HISAR	KARNAL	Total
BELOW 7	0	0	0	0
BELOW 12	0	2 (2.22%)	0	2 (0.73%)
BELOW 18	26 (100%)	64 (71.11%)	79 (49.38%)	169 (61.23%)
ABOVE 18	0	24 (26.67%)	81 (50.62%)	105 (38.04%)
TOTAL	26	90	160	276

Table No. 2 indicates the age group of the inmates residing inside the Observation Home/ Place of safety. Out of total 276 inmates of the three districts 169(61.23%) were below 18 years, 2(0.73%) were below 12 years, no inmates were below the age of 7 years in any of the districts and 105(38.04%) of the inmates were above 18 and above 18 years.

District wise a majority of inmates fell below 18 years as 26(100%) in Ambala, 64(71.11%) in Hisar and 79(49.38%) in Karnal. Only 2(2.22%) inmates in Hisar fell below 12 years. In Karnal 81(50.62%) were above 18 years followed by, 24(26.67%) in Hisar. No inmates were below 7 years.

Therefore, in light of the current circumstances, the data serves as a representation of the relationship between age and criminal behaviour. The data demonstrates that the rate of criminal behaviour increases during the adolescent years, reaching its highest point during the early adult years. Those inmates who were older than eighteen years and between sixteen and eighteen years old and who had been convicted of committing a serious crime were transferred to the Place of Safety Karnal.

Table/Figure No. 3 Education level of the inmates



	AMBALA	HISAR	KARNAL	TOTAL
ILLITRATE	0	7 (7.78%)	12 (7.50%)	19 (6.88%)
PRIMARY	1 (3.85%)	1 (1.11%)	10 (6.25%)	12 (4.35%)
MIDDLE	17 (65.38%)	25 (27.78%)	41 (25.62%)	83 (30.07%)
SECONDARY	6 (23.08%)	40 (44.44%)	60 (37.50%)	106 (38.41%)
SENIOR SECONDARY	2 (7.69%)	6 (6.67%)	31 (19.38%)	39 (14.13%)
DROPOUT	0	11 (12.22%)	6 (3.75%)	17 (6.16%)
TOTAL	26	90	160	276

Table No. 3 reveals the education level of the inmates. Out of 276 inmates only 19(6.88%) were illiterate, 12(4.35%) have education level up to primary, 83(30.07%) had studied until the middle level. The secondary school category has the maximum number of respondents 106(38.41%) followed by, senior secondary 39(14.13%) and only 17(6.16%) of the respondents were dropout.

District wise analysis reveals that there was no illiterate inmate in Ambala, 7(7.78%) were illiterate in Hisar and 12(7.50%) were in Karnal. Only 1(3.85%) in Ambala, 1(1.11%) in Hisar and 10(6.25%) inmates in Karnal had education level up to primary.

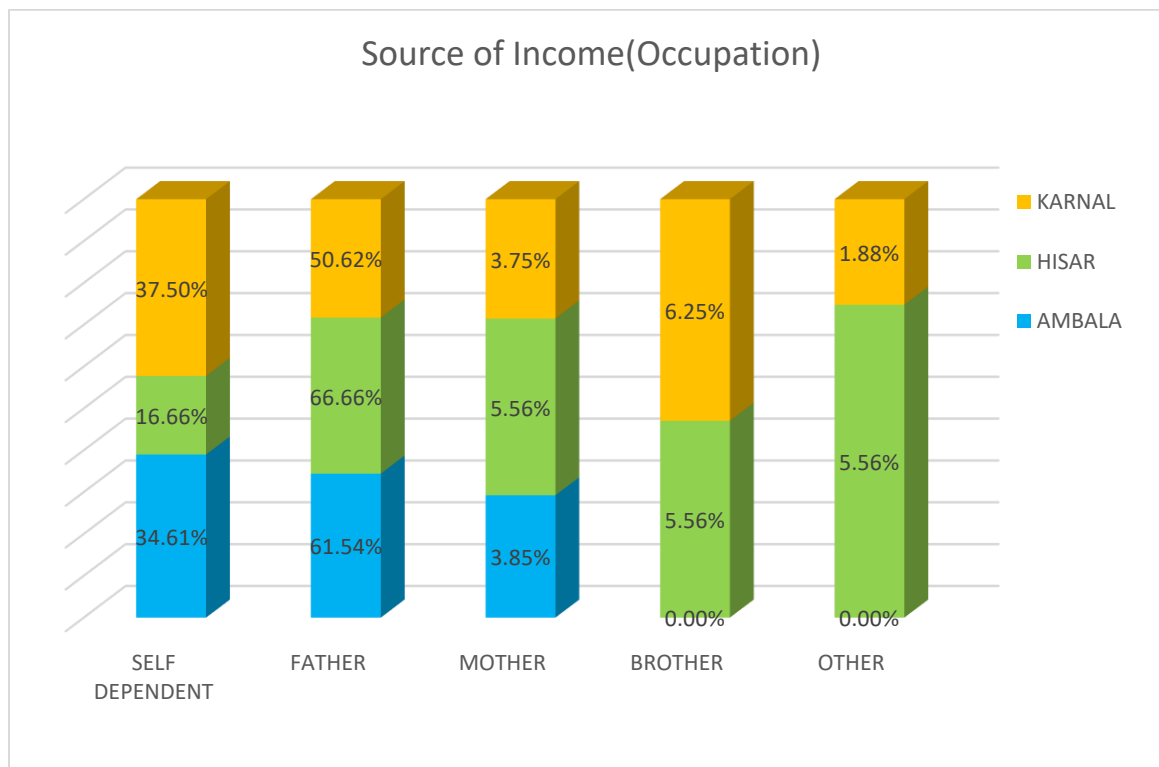
Those who had studied up to middle were 17(65.38%) in Ambala, 25(27.78%) in Hisar followed by 41(25.62%) in Karnal.

Inmates with secondary level of education were 6(23.08%) in Ambala, 40(44.44%) in Hisar and 60(37.50%) in Karnal. Inmates who had senior secondary level of education were 2(7.69%) in Ambala, 6(6.67%) in Hisar and 31(19.38%) in Karnal. There was no dropout inmate in Ambala, only 11(12.22%) dropouts were in Hisar and 6(3.75%) were in Karnal.

This indicates that a majority of inmates had some form of education, the percentage of illiterate juveniles is less as compared to literates. The maximum number of inmates were literate and had education level up to secondary school. It is important to check dropout rates in school to prevent delinquents.

Thus, in schools, the teachers and other school authorities should monitor the company children keep and encourage them to learn and perform well in a cordial environment in schools. The parents should also monitor their wards and inspire them to focus on career advancement and future employment.

Table/Figure No. 4 Source of income



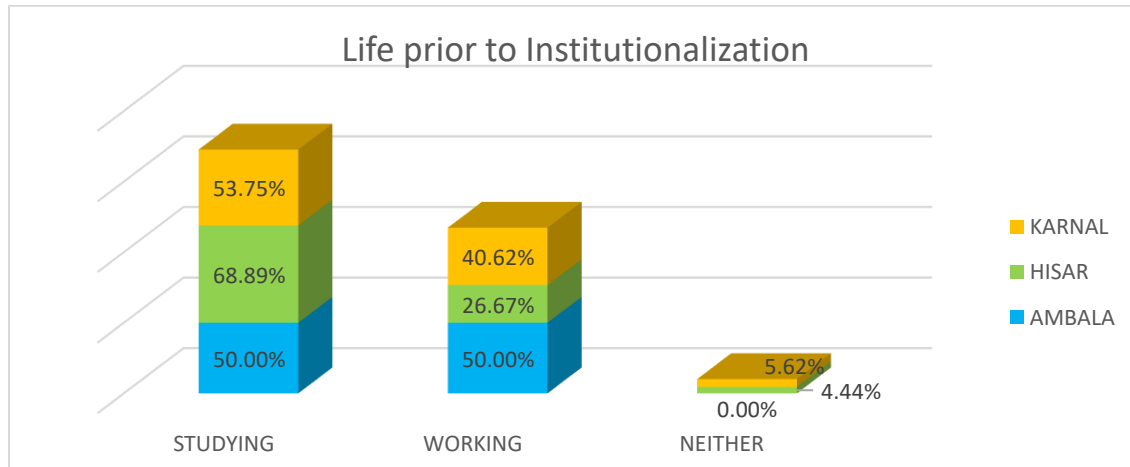
	AMBALA	HISAR	KARNAL	TOTAL
SELF DEPENDENT	9 (34.61%)	15 (16.66%)	60 (37.50%)	84 (30.43%)
FATHER	16 (61.54%)	60 (66.66%)	81 (50.62%)	157 (56.88%)
MOTHER	1 (3.85%)	5 (5.56%)	6 (3.75%)	12 (4.35%)
BROTHER	0	5 (5.56%)	10 (6.25%)	15 (5.44%)
OTHER	0	5 (5.56%)	3 (1.88%)	8 (2.90%)
TOTAL	26	90	160	276

Table No. 4 shows that out 276 inmates the maximum percentage of respondents were dependent on their father 157(56.88%), while 84(30.43%) were self-dependent, 12(4.35%) were dependent on mother, 15(5.44%) were dependent on brother and only 8(2.90%) were dependent on other source of income like rent and agriculture income.

District wise analysis reveals that the self-dependent inmates were 9(34.61%) in Ambala, 15(16.66%) in Hisar and 60(37.50%) in Karnal. Ambala representing 16(61.54%), Hisar shows 60(66.66%) and Karnal representing 81(50.62%) of the respondents who were dependent on their father. Only 1(3.85%) respondent in Ambala, 5.56% in Hisar and 3.75% in Karnal were dependent on mother. Those respondents who were dependent on brother were 5.56% in Hisar, 6.25% in Karnal. In Hisar 5.56% respondents depends on other source of income followed by 1.88% in Karnal.

The data demonstrates the role of fathers in financially providing for the juveniles because majority of the inmates were dependent on father. Those who were self-dependents, were not salaried workers but daily wage labourers and were engaged in labour as factory worker, painter, waiter, carpenter, house help, plumber etc. Several studies revealed that there is a link between socioeconomic status and delinquency but findings have varied. The analysis states that both low and high socioeconomic status were linked to delinquency.

Table/Figure No. 5 Life prior to Institutionalization



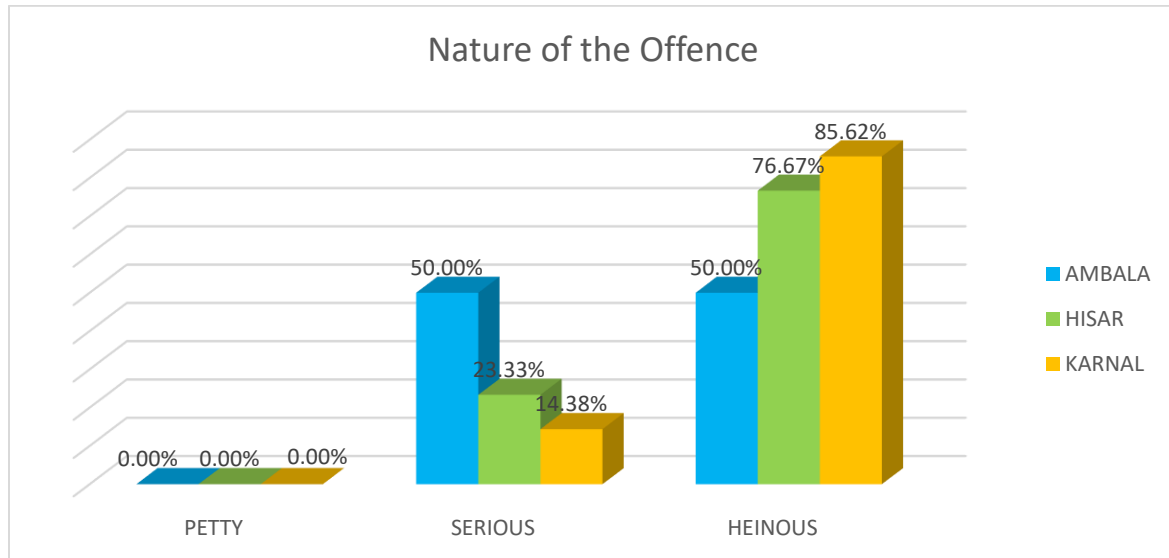
	AMBALA	HISAR	KARNAL	TOTAL
STUDYING	13 (50%)	62 (68.89%)	86 (53.75%)	161 (58.33%)
WORKING	13 (50%)	24 (26.67%)	65 (40.62%)	102 (36.96%)
NEITHER	0	4 (4.44%)	9 (5.63%)	13 (4.71%)
TOTAL	26	90	160	276

Table no. 5 depicts the life of inmates prior to institutionalization. Out of total 276 inmates from three districts 161(58.33%) were studying, 102(36.96%) were working and 13(4.71%) were neither studying nor working.

The district wise analysis shows that in Ambala 13(50%) of the inmates were studying and 13(50%) of the inmates were working before entering in the institution. In Hisar 62(68.89%) were studying and 24(26.67%) were working and in Karnal 86(53.75%) were studying and 65(40.62%) were working. In Hisar 4(4.44%) and 9(5.63%) were neither working nor studying.

Prior to being institutionalised, the majority of the inmates were engaged in academic pursuits or the pursuit of an education, while others were working for the goal of remuneration. A minority of the convicts were not engaged in either of these activities. This provides a platform to rehabilitate them inside the institutions.

Table/Figure No. 6 Nature of Offence



	AMBALA	HISAR	KARNAL	TOTAL
PETTY	0 (0%)	0 (0%)	0 (0%)	0 (0%)
SERIOUS	13 (50%)	21 (23.33%)	23 (14.38%)	57 (20.65%)
HEINOUS	13 (50%)	69 (76.67%)	137 (85.62%)	219 (79.35%)
TOTAL	26	90	160	276

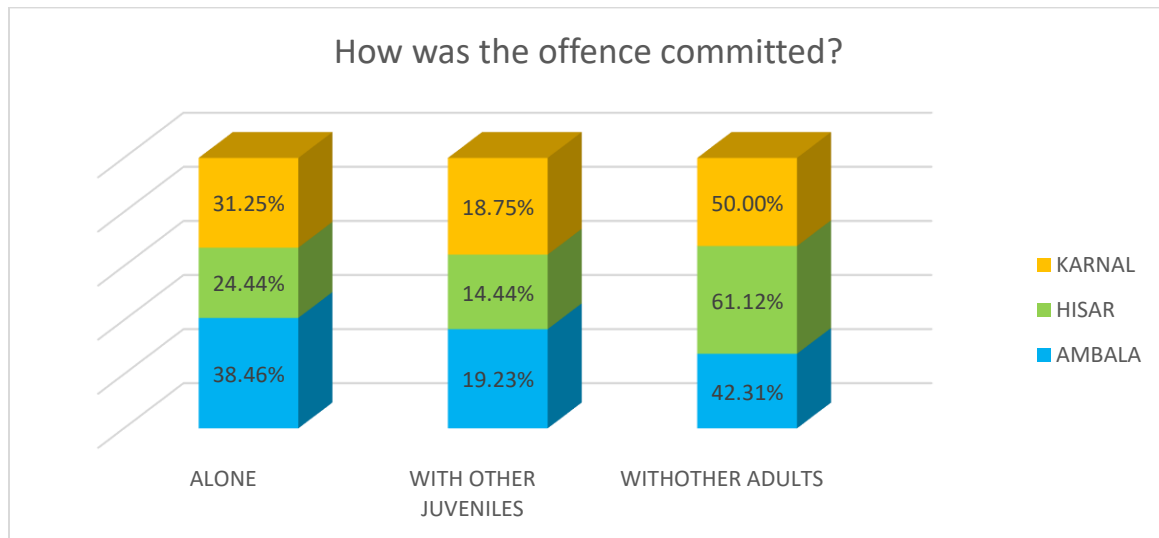
Table no. 6 shows out of total 276 inmates the percentage of juveniles charged with heinous offences was maximum 219(79.35%) followed by those charged with serious offences 57(20.65%).

District wise 13(50%) in Ambala, followed by 21(23.33%) in Hisar and 23(14.38%) in Karnal were charged with serious offences. 13(50%) in Ambala, 69(76.67%) in Hisar and 137(85.62%) in Karnal were charged with heinous offences.

No case was found in any of the three districts where juveniles were charged with petty offences.

The majority of respondents had committed heinous offences, although all other serious type of offences were also present among the youth.

Table/Figure No. 7 How was the offence committed by the juvenile

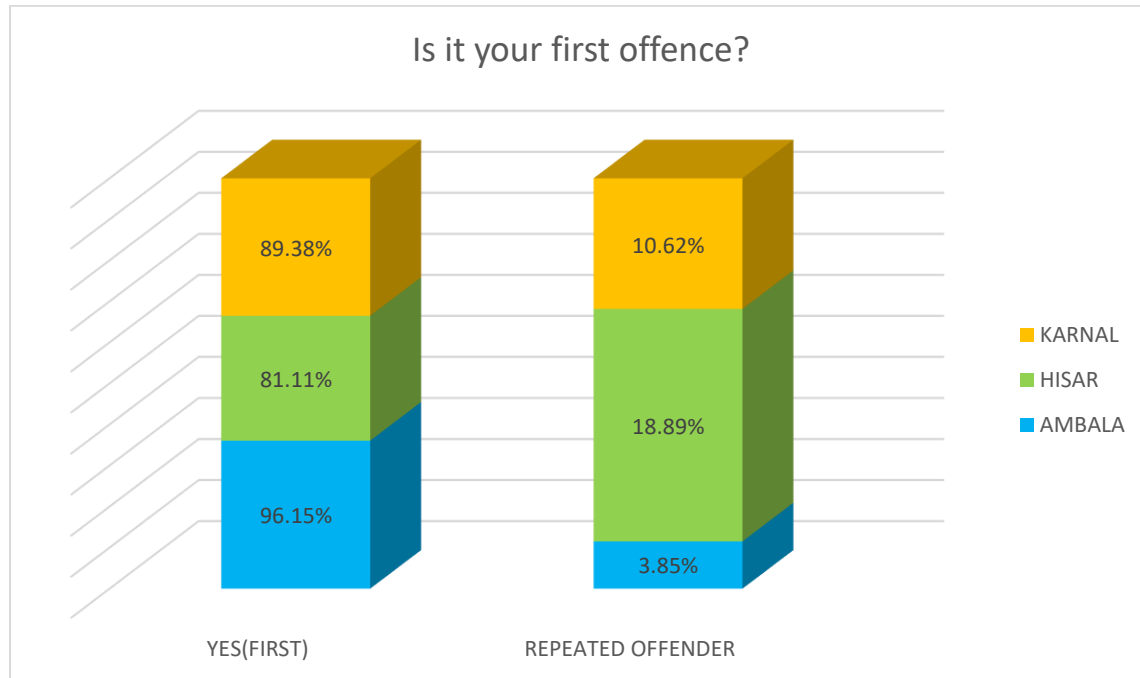


	AMBALA	HISAR	KARNAL	TOTAL
ALONE	10 (38.46%)	22 (24.44%)	50 (31.25%)	82 (29.71%)
WITH OTHER JUVENILES	5 (19.23%)	13 (14.44%)	30 (18.75%)	48 (17.39%)
WITH OTHER ADULTS	11 (42.31%)	55 (61.12%)	80 (50%)	146 (52.90%)
TOTAL	26	90	160	276

Table no. 7 reveals that out of 276 inmates of the three districts most juveniles committed the offence with other adults 146(52.90%) whereas 82(29.71%) juveniles committed the offence alone and 48(17.39%) of the juveniles committed the offence with other juveniles. District wise analysis shows that the inmates who had committed offence alone were 10(38.46%) in Ambala, 22(24.44%) in Hisar and 50(31.25%) in Karnal. In Ambala 5(19.23%), 13(14.44%) in Hisar and 30(18.75%) in Karnal had committed the offence with other juveniles. Inmates who had committed offence with other adults were 11(42.31%) in Ambala, 55(61.12%) in Hisar and 80(50%) in Karnal.

The data gives a clear idea about the impact of peer influence on juvenile delinquents. Adolescents who did not receive proper parenting and emotional support had more antisocial friends and indulged in antisocial behaviour. The data indicates that most juveniles committed offences in groups (with other adults). The adult influence on juveniles in committing offence, far greater than juvenile influence.

Table/Figure No. 8 Recidivism

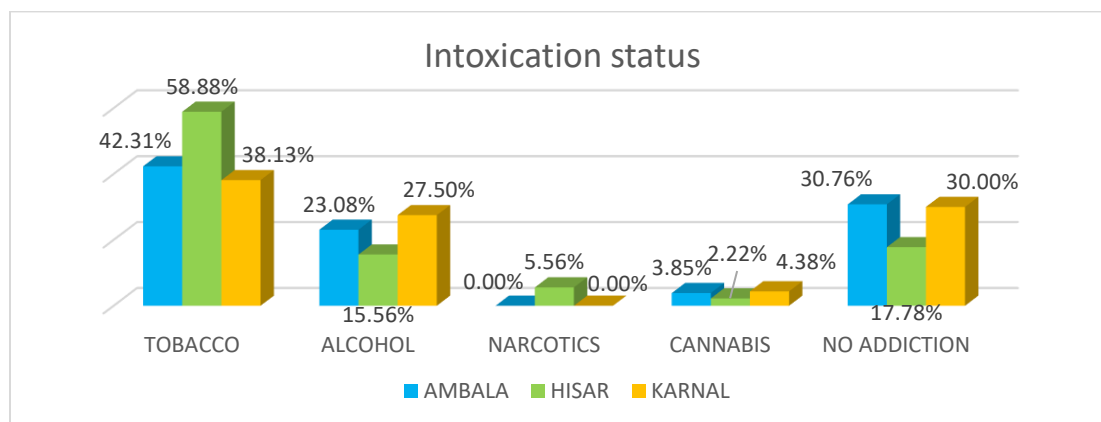


	AMBALA	HISAR	KARNAL	TOTAL
YES(FIRST)	25 (96.15%)	73 (81.11%)	143 (89.38%)	241 (87.32%)
REPEATED OFFENDER	1 (3.85%)	17 (18.89%)	17 (10.62%)	35 (12.68%)
TOTAL	26	90	160	276

Table No. 8 demonstrates that out of a total of 276 respondents, 241 (87.32%) were first-time offenders, while 35 (12.68%) were recurrent offenders due to the fact that they had previously been charged with and convicted for other offences. District wise analysis shows that 25(96.15%) respondents in Ambala, 73(81.11%) in Hisar and 143(89.38%) in Karnal were first time offenders. In Ambala 1(3.85%), 17(18.89%) in Hisar and 17(10.62%) in Karnal were repeated offenders.

Most of the juveniles were first time offenders and a few were recidivists. There is a link between socioeconomic background and reoffending as well, where those from poorer background were at a greater risk of reoffending.

Table/Figure No. 9 Intoxication Status

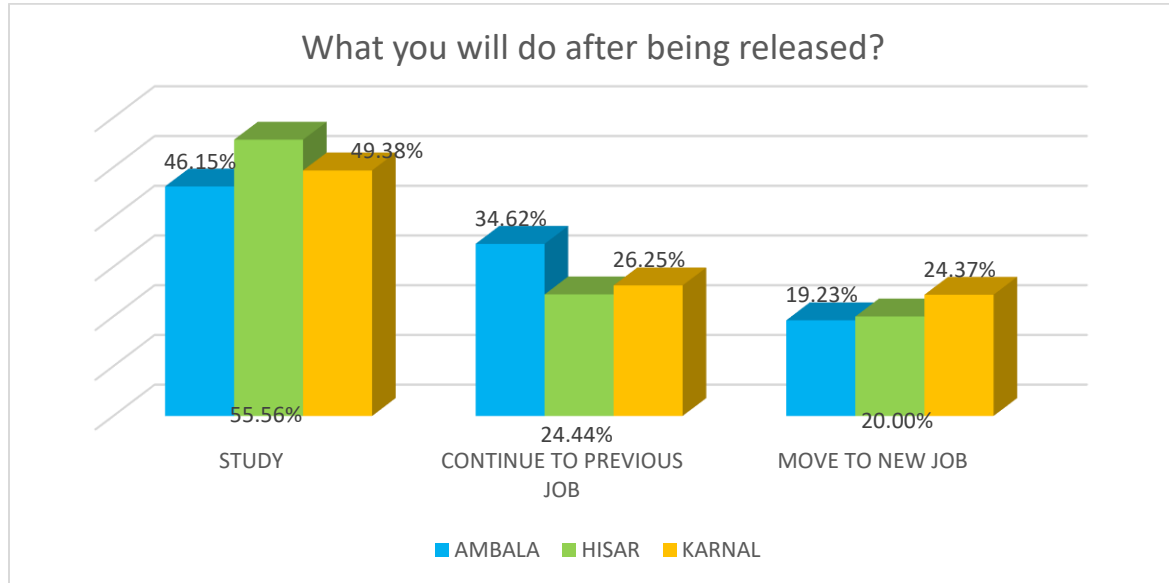


	AMBALA	HISAR	KARNAL	TOTAL
TOBACCO	11 (42.31%)	53 (58.88%)	61 (38.13%)	125 (45.29%)
ALCOHOL	6 (23.08%)	14 (15.56%)	44 (27.50%)	64 (23.19%)
NARCOTICS	0 (0%)	5 (5.56%)	0 (0%)	5 (1.81%)
CANNABIS	1 (3.85%)	2 (2.22%)	7 (4.38%)	10 (3.62%)
NO ADDICTION	8 (30.76%)	16 (17.78%)	48 (30%)	72 (26.09%)
TOTAL	26	90	160	276

Table No. 9 represents that out of 276 respondents from the three districts the majority of respondents 125(45.29%) were addicted to tobacco, 64(23.19%) were to alcohol, 5(1.81%) to narcotics, 10(3.62%) to cannabinoids and 72(26.09%) of inmates did not have any addiction. District wise data analysis depicts that 11(42.31%) in Ambala, 53(58.88%) in Hisar, followed by 61(38.13%) respondents in Karnal were addicted to tobacco. 6(23.08%) in Ambala, 14(15.56%) in Hisar and followed by 44(38.13%) in Karnal were addicted to alcohol. Only 5(5.56%) respondents in Hisar were addicted to narcotics. In Ambala 1(3.8%) respondents, in Hisar 2(2.22%) respondents and in Karnal 7(4.38%) respondents were addicted to cannabis. Respondents having no addiction were 8(30.76%) in Ambala, 16(17.78%) in Hisar and 48(30%) in Karnal.

The data represents that addiction was present, which is a cause of concern because it indicates exposure to addictive substances at the early age. Also, different form of addictions were seen, such as tobacco and alcohol which are openly available as compared to narcotics and cannabinoids.

Table/Figure No. 10 Post release Plan



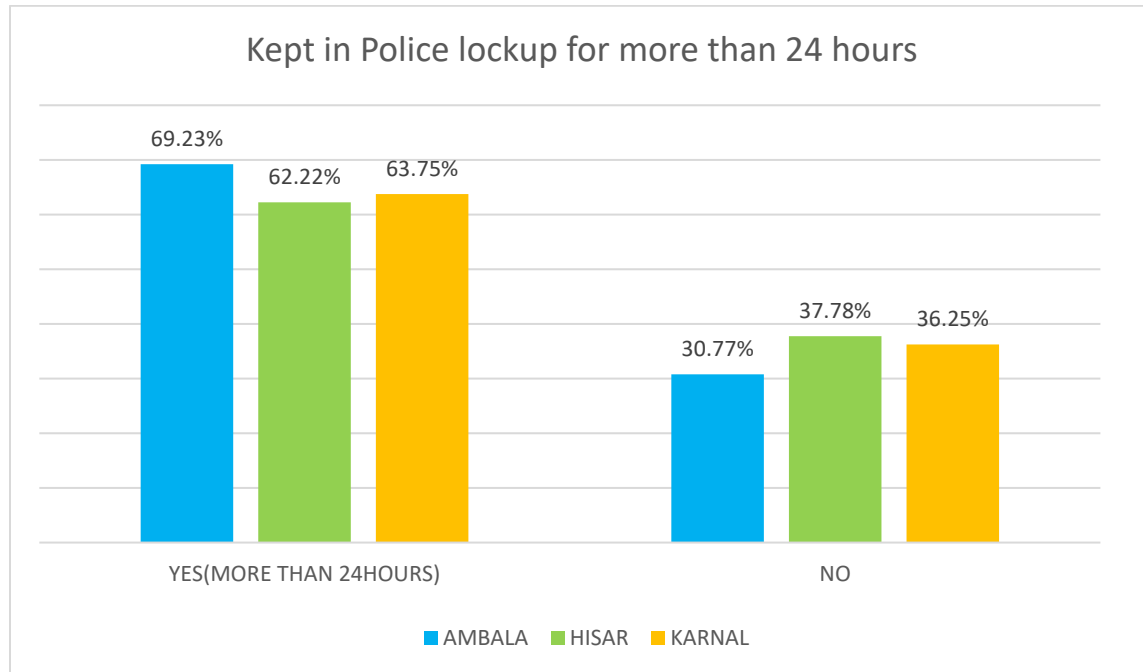
	AMBALA	HISAR	KARNAL	TOTAL
STUDY	12 (46.15%)	50 (55.56%)	79 (49.38%)	141 (51.09%)
CONTINUE TO PREVIOUS JOB	9 (34.62%)	22 (24.44%)	42 (26.25%)	73 (26.45%)
MOVE TO NEW JOB	5 (19.23%)	18 (20%)	39 (24.37%)	62 (22.46%)
TOTAL	26	90	160	276

Table No. 10 depicts that out of 276 respondents 141(51.09%) will continue the studies after being released, 73(26.45%) will continue to their previous job and 62(22.46%) will move to new job when they will be released from the homes.

District wise analysis shows that 12(46.15%) respondents in Ambala followed by 50(55.56%) in Hisar and 79(49.38%) in Karnal will continue their studies after release. 9(34.62%) in Ambala followed by 22(24.44%) in Hisar and 42(26.25%) respondents in Karnal will continue to the previous job after release. 5(19.23%) in Ambala followed by 18(20%) in Hisar and 39(24.37%) respondents will move to new job after release.

Most of the respondents replied that they will continue their study after being released from the institution, this indicates that there are possibilities of rehabilitation of these inmates with the efforts of the authorities inside the institutions.

Table/Figure No. 11 Juveniles kept in Police Lockup



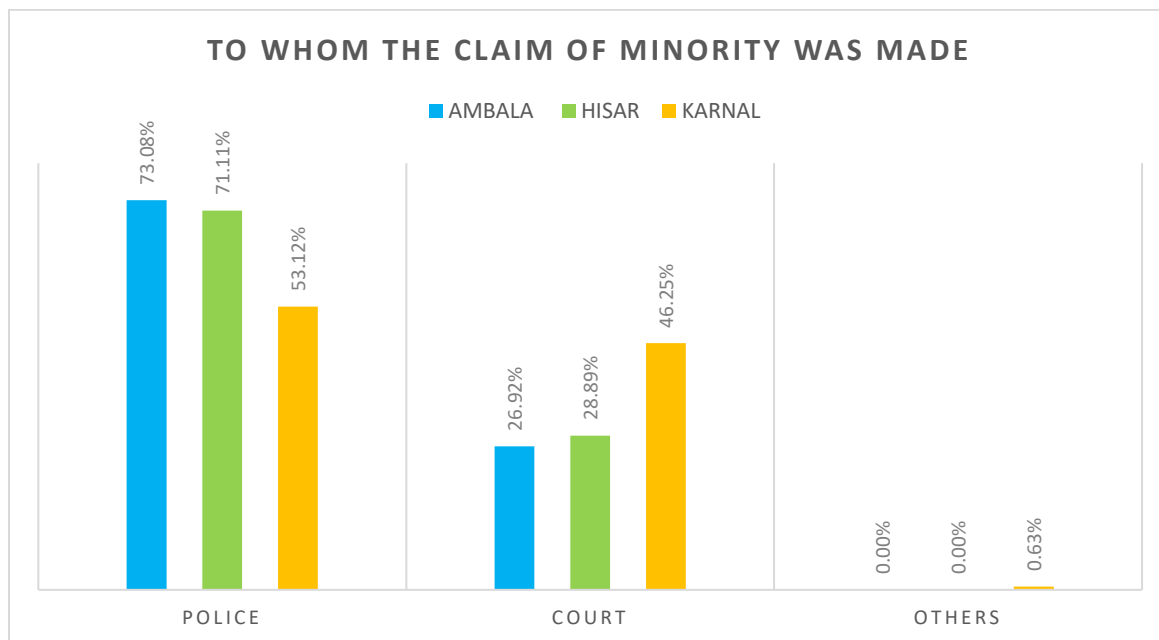
	AMBALA	HISAR	KARNAL	TOTAL
YES (MORE THAN 24HOURS)	18 (69.23%)	56 (62.22%)	102 (63.75%)	176 (63.77%)
NO	8 (30.77%)	34 (37.78%)	58 (36.25%)	100 (36.23%)
TOTAL	26	90	160	276

Table No. 11 shows that out of 276 respondents 176(63.77%) cases were found where the respondents had been confined in police custody for more than 24 hours before being sent to the homes or before JJB. 100(36.23%) of the respondents were sent directly to the homes.

The data collected by districts reveals that 18 (69.23%) of the respondents in Ambala were held in police custody before being released to their homes, followed by 56 (62.22%) of the respondents in Hisar, and 102 (63.75%) of the respondents in Karnal. Those respondents who were sent directly to the homes were 8(30.77%) in Ambala followed by 34(37.78%) in Hisar and 58(36.25%) in Karnal.

It came to light that a higher percentage of inmates were confined in custody, for more than twenty-four hours before presented in the court. Only a few inmates' states that they were sent directly to home.

Table/Figure No. 12 Claim of Minority

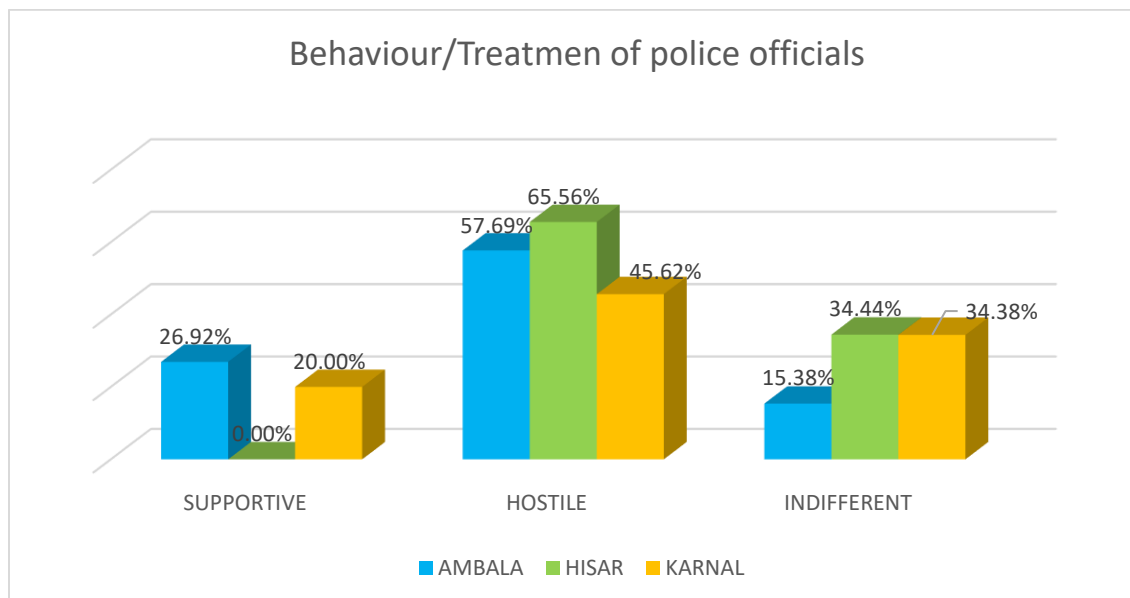


	AMBALA	HISAR	KARNAL	TOTAL
POLICE	19 (73.08%)	64 (71.11%)	85 (53.12%)	168 (60.87%)
COURT	7 (26.92%)	26 (28.89%)	74 (46.25%)	107 (38.77%)
OTHERS	0	0	1 (0.63%)	1 (0.36%)
TOTAL	26	90	160	276

Table No. 12 represents that out of total 276 respondents 168(60.87%) made their claim of minority before the police officials, 107(38.77%) of the respondents made their claim of minority before the court and only 1(0.63%) of the respondents made his claim of minority before others (Lawyer).

District wise analysis shows that respondents who had made their claim of minority before the police were 19(73.08%) in Ambala followed by 64(71.11%) in Hisar and 85(53.12%) in Karnal. 7(26.92%) in Ambala followed by 26(28.89%) in Hisar and 74(46.25%) respondents in Karnal had made their claim of minority before the court. Only 1(0.63%) respondent in Karnal had made his claim of minority before others (lawyer).

Table/Figure No. 13 Behaviour of Police Officials

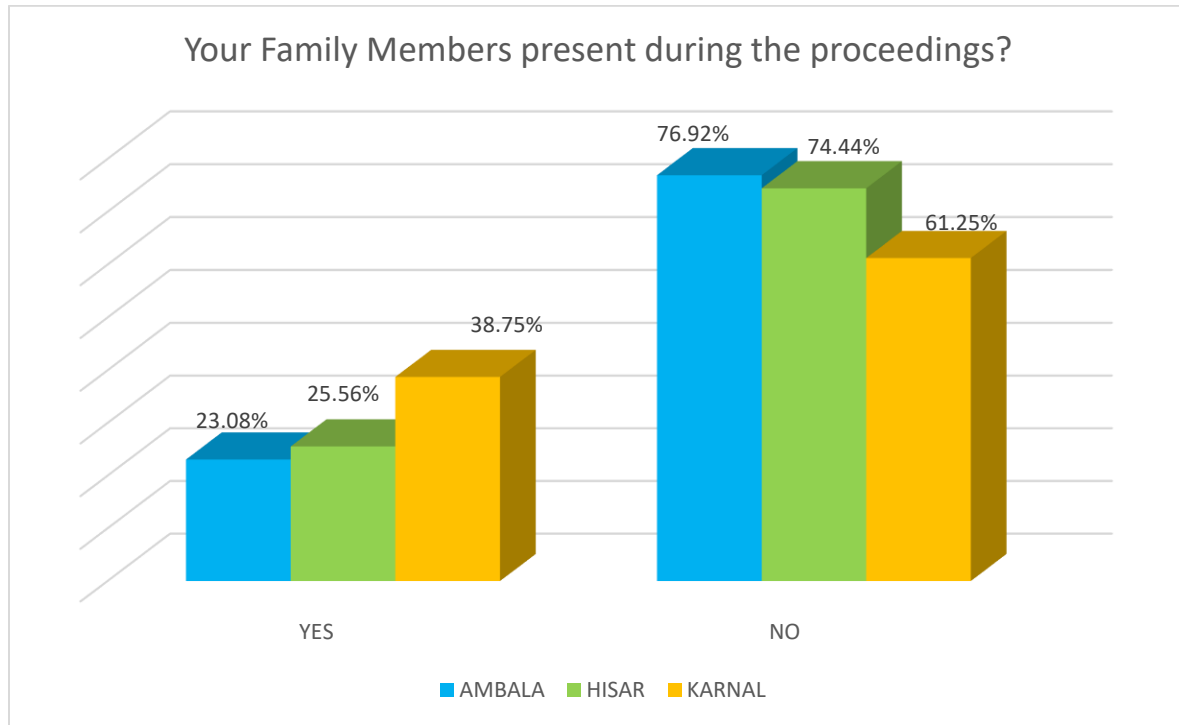


	AMBALA	HISAR	KARNAL	TOTAL
SUPPORTIVE	7 (26.92%)	0	32 (20%)	39 (14.13%)
HOSTILE	15 (57.79%)	59 (65.56%)	73 (45.62%)	147 (53.26%)
INDIFFERENT	4 (15.38%)	31 (34.44%)	55 (34.38%)	90 (32.61%)
TOTAL	26	90	160	276

Table No. 13 depicts that out of 276 respondents 147(53.26%) cases reveals that the behaviour of the police was hostile. The vast majority of individuals stated that they had been tortured. Supportive police officers were found in fewer cases 39(14.13%) and in 90(32.61%) cases were indifferent.

District wise analysis shows that behaviour of police was supportive in 7(26.92%) cases in Ambala and 32(20%) in Karnal. 15(57.79%) cases in Ambala followed by 59(65.56%) cases in Hisar and 73(45.62%) cases in Karnal the behaviour was hostile. Those cases where the behaviour was indifferent were 4(15.38%) in Ambala followed by 31(34.44%) in Hisar and 55(34.38%) in Karnal.

Table/Figure No. 14 Family members present during proceedings

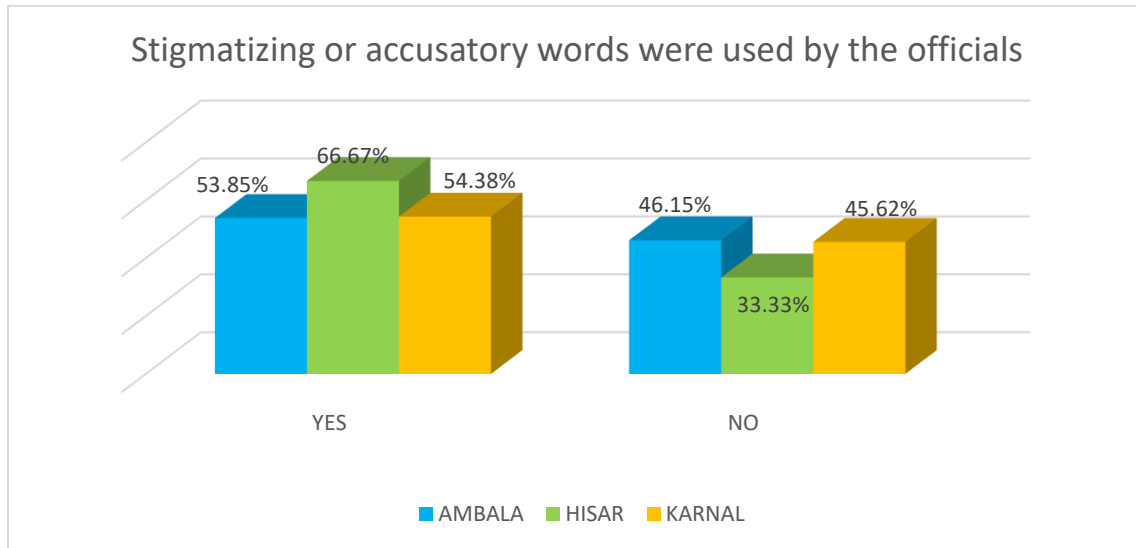


	AMBALA	HISAR	KARNAL	TOTAL
YES	6 (23.08%)	23 (25.56%)	62 (38.75%)	91 (32.97%)
NO	20 (76.92%)	6 (74.44%)	98 (61.25%)	185 (67.03%)
TOTAL	26	90	160	276

The results shown in Table No. 14 indicate that out of a total of 276 respondents, there were 185 cases (67.03%) in which the family members were not present with the juvenile throughout the proceedings. On the other hand, there were 91 cases (32.97%) in which family members presented themselves.

District wise analysis shows that there were 6(23.08%) cases in Ambala following by 23(25.56%) cases in Hisar and 62(38.75%) cases in Karnal, where the family members were present during the proceedings. 20(76.92%) in Ambala followed by 6(74.44%) in Hisar and 98(61.25%) in Karnal, were the cases where the family members were not present during the proceedings.

Table/Figure No. 15 Stigmatizing words used by the officials

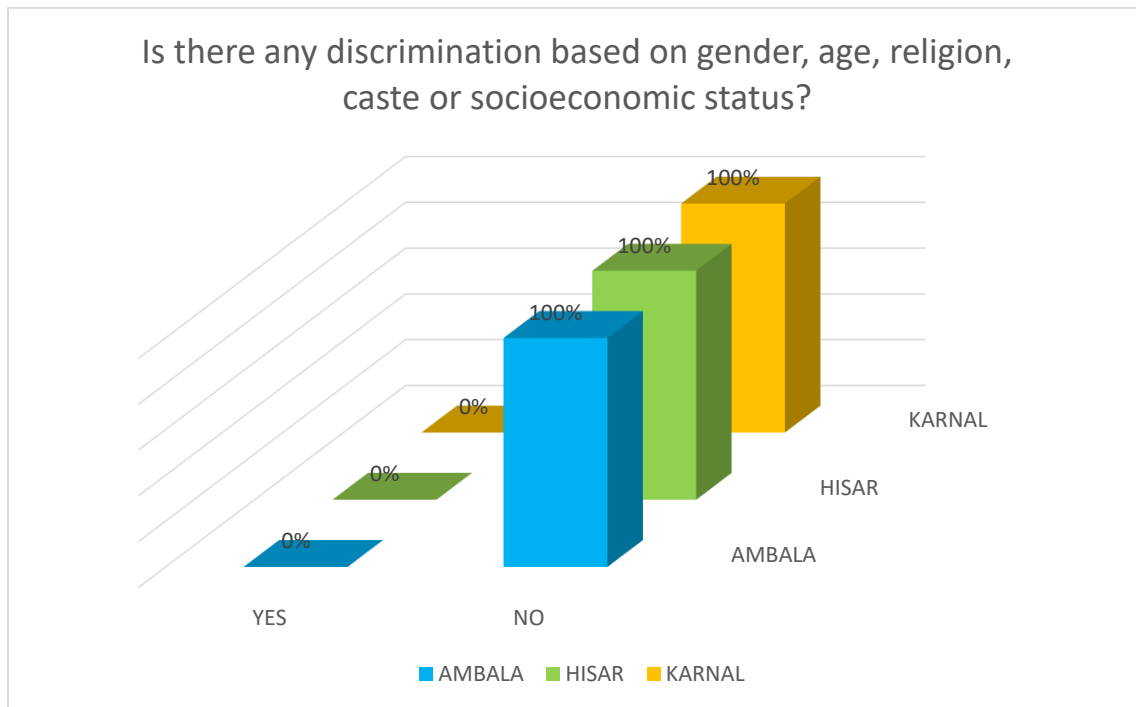


	AMBALA	HISAR	KARNAL	TOTAL
YES	14 (53.85%)	60 (66.67%)	87 (54.38%)	161 (58.33%)
NO	12 (46.15%)	30 (33.33%)	73 (45.62%)	115 (41.67%)
TOTAL	26	90	160	276

The words that were utilised by the officials when they were stigmatising or accusatory are revealed in Table No. 15. There was a total of 276 respondents from three different districts, and an overwhelming majority of 161 (58.33%) of them indicated that the officials had used phrases that were stigmatising or accusatory. On the other hand, 115 (41.67%) of the respondents mentioned that no such terms were used before the convicts.

Karnal depicts 87 (54.38%) of the respondents, whereas Ambala displays 14 (53.85%) of the respondents. Hisar depicts 60 (66.67%) of the respondents, while Karnal depicts 87 (54.38%) of the respondents. The District wise analysis shows that the largest number of respondents has claimed that the authorities used phrases that were stigmatising or accusatory. Respondents mentioning that there were no such words were used, were 12(46.15%) in Ambala followed by 30(33.33%) in Hisar and 73(45.62%) in Karnal.

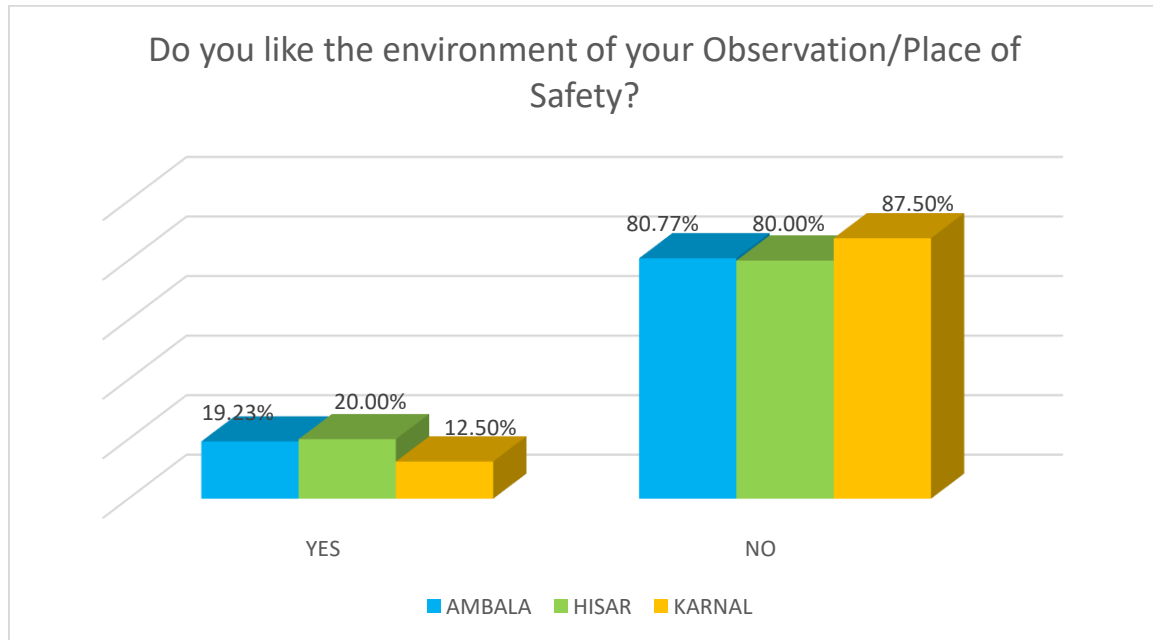
Table/Figure No. 16 Discrimination based on gender, age, religion, caste or socioeconomic status



	AMBALA	HISAR	KARNAL	TOTAL
YES	0	0	0	0 (0%)
NO	26 (100%)	90 (100%)	160 (100%)	276 (100%)
TOTAL	26	90	160	276

Table no. 16 depicts that there are no such cases in any of the three districts, where there was any discrimination based upon gender, age, religion, caste or socioeconomic status. The total 276 respondents stated that they do not feel any kind of discrimination.

Table/Figure No. 17 Likeability for the Institution

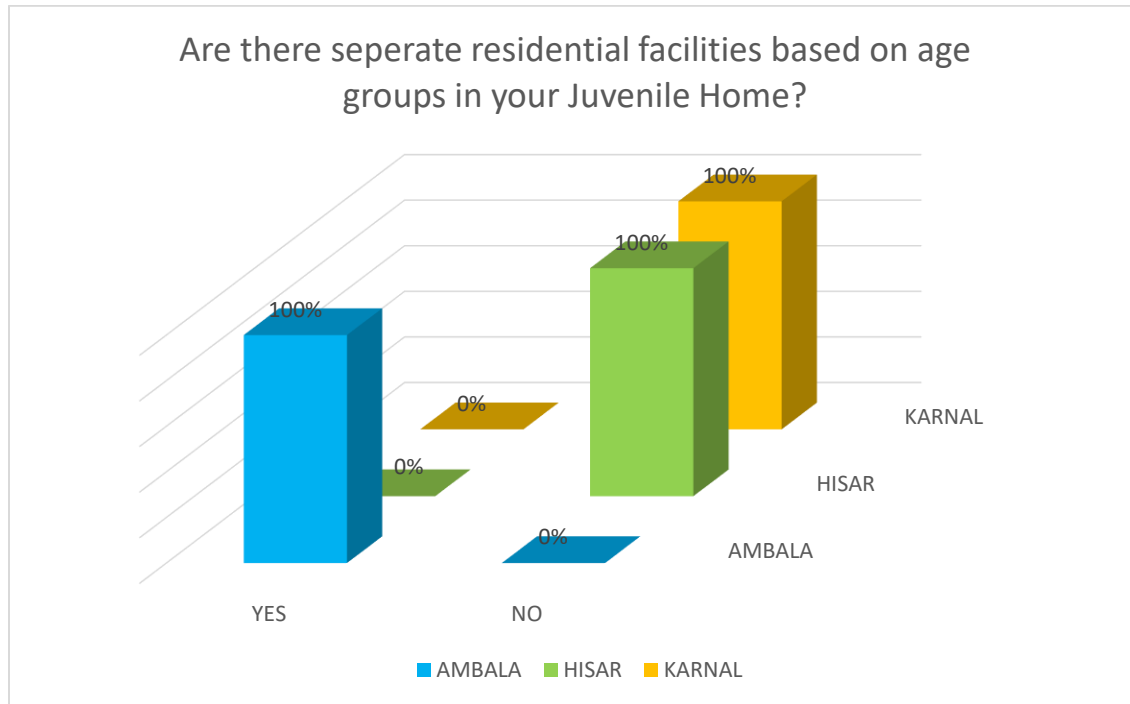


	AMBALA	HISAR	KARNAL	TOTAL
YES	5 (19.23%)	18 (20%)	20 (12.50%)	43 (15.58%)
NO	21 (80.77%)	72 (80%)	140 (87.50%)	233 (84.42%)
TOTAL	26	90	160	276

Table No. 17 shows the liking of the juveniles for their institution. Out of total 276 respondents of the three districts, a majority of 233(84.42%) respondents stated that they do not like the environment of the Juvenile Home and only 43(15.58%) mentioned that they like the environment of the home.

District wise analysis reveals that respondents who do not like the environment of the Observation Home/Place of Safety were 21(80.77%) in Ambala followed by 72(80%) in Hisar and 140(87.50%) in Karnal. In Ambala 5(19.23%) followed by 18(20%) in Hisar and 20(12.50%) in Karnal stated that they like the environment of the home.

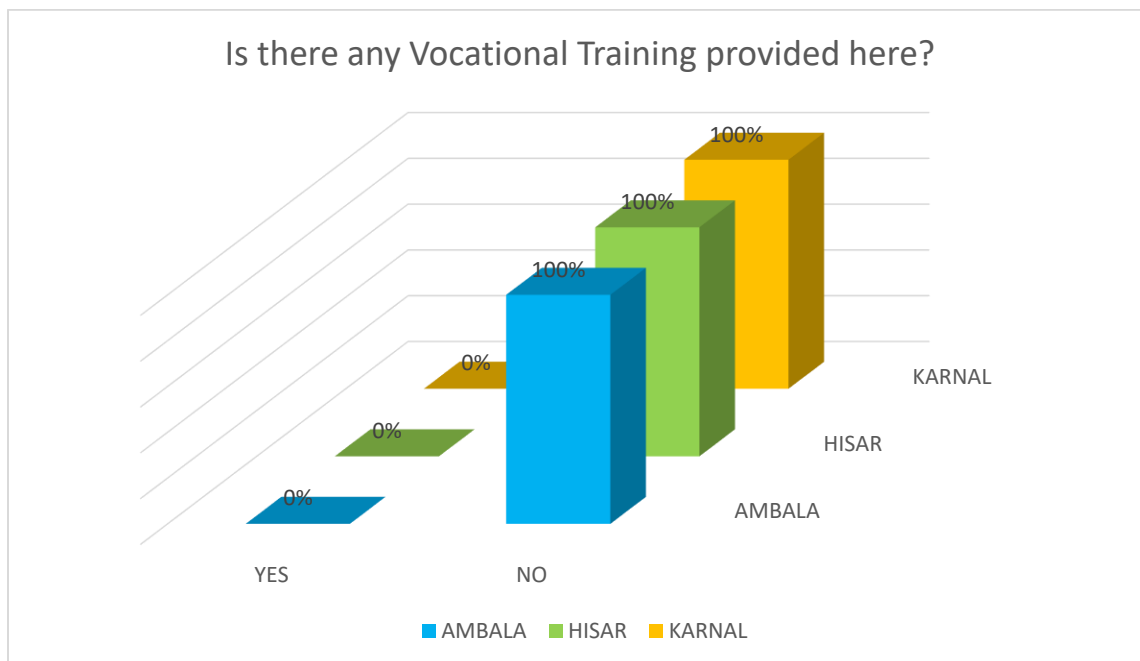
Table/Figure No. 18 Availability of separate residential facility



	AMBALA	HISAR	KARNAL	TOTAL
YES	26 (100%)	0	0	26 (9.42%)
NO	0	90 (100%)	160 (100%)	250 (90.58%)
TOTAL	26	90	160	276

Table No. 18 depicts that out of total 276 only 26(9.42%) respondents mentioned that there is separate residential facility based on the age groups and 250(90.58%) stated that there are no separate residential facilities based on the age groups in their institution. Data analysis reveals that Ambala is the only districts where the respondents stated that there is separate residential facility based on the age groups. Respondents in Hisar and Karnal stated that there are no such facilities available.

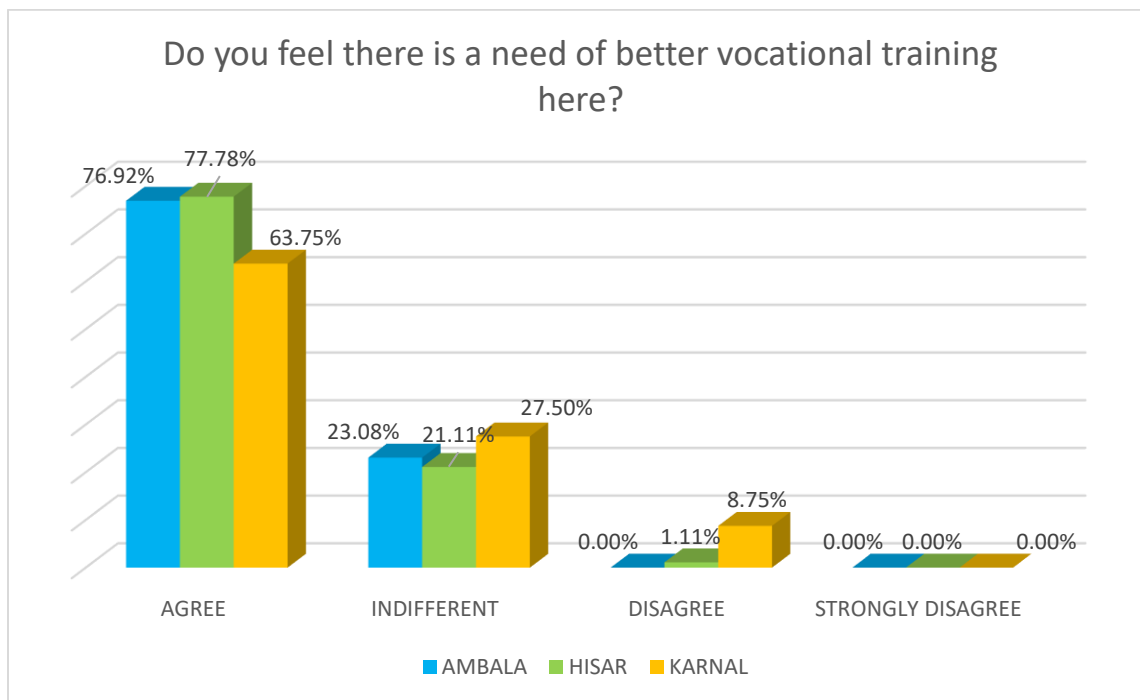
Table/Figure No. 19 Status of Vocational Training



	AMBALA	HISAR	KARNAL	TOTAL
YES	0	0	0	0 (0%)
NO	26 (100%)	90 (100%)	160 (100%)	276 (100%)
TOTAL	26	90	160	276

Table No. 19 represents that all the 276 respondents of the three districts mentioned that there is no vocational training provide to them.

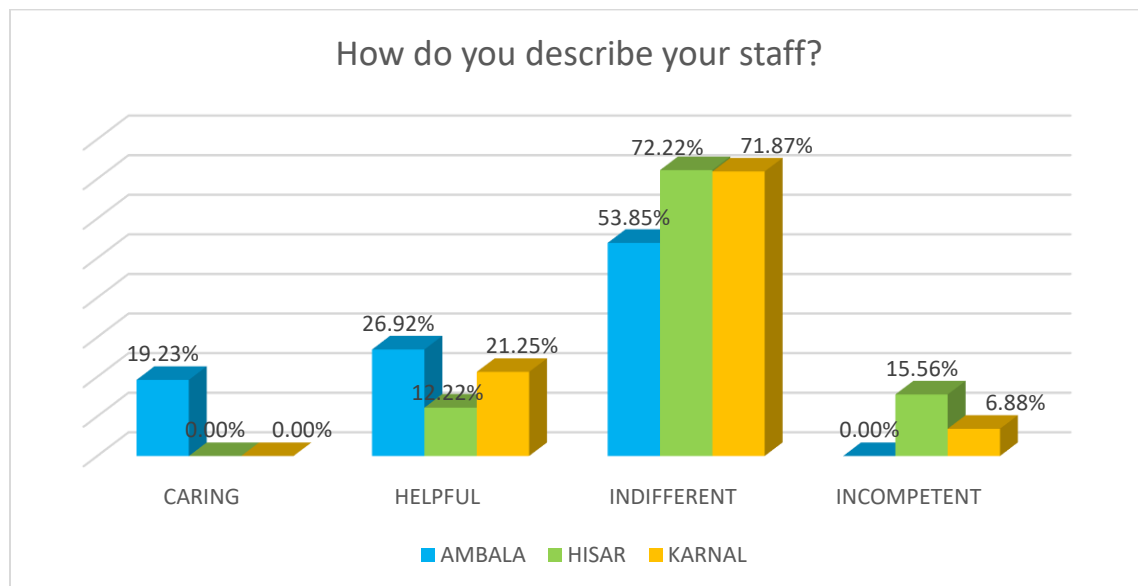
Table/Figure No. 20 Need of better Vocational Training



	AMBALA	HISAR	KARNAL	TOTAL
AGREE	20 (76.92%)	70 (77.78%)	102 (63.75%)	192 (69.57%)
INDIFFERENT	6 (23.08%)	19 (21.11%)	44 (27.50%)	69 (25.00%)
DISAGREE	0	1 (1.11%)	14 (8.75%)	15 (5.43%)
STRONGLY DISAGREE	0	0	0	0
TOTAL	26	90	160	276

Table No. 20 shows that out of total 276 respondents of the three districts 192(69.57%) respondents agreed that there is a need of better vocational training here, 69(25%) were indifferent and 15(5.43%) disagreed. District wise analysis depicts that the respondents who agreed that there is a need of better vocational training were 20(76.92%) in Ambala followed by 70(77.78%) in Hisar and 102(63.75%) in Karnal. The respondent who disagreed were 1(1.11%) in Hisar and 14(8.75%) in Karnal. Those who were indifferent were 6(23.08%) in Ambala followed by 19(21.11%) in Hisar and 44(27.50%) in Karnal.

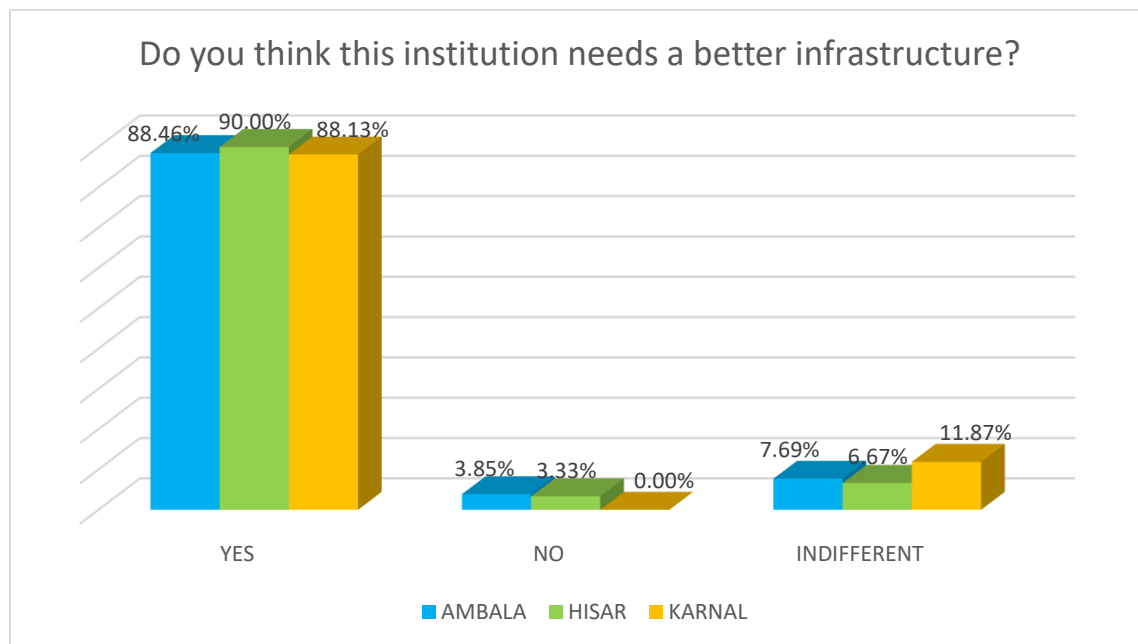
Table/Figure No. 21 Nature of the Staff Members



	AMBALA	HISAR	KARNAL	TOTAL
CARING	5 (19.23%)	0	0	5(1.81%)
HELPFUL	7 (26.92%)	11 (12.22%)	34 (21.25%)	52 (18.84%)
INDIFFERENT	14 (53.85%)	65 (72.22%)	115 (71.87%)	194 (70.29%)
INCOMPETENT	0	14 (15.56%)	11 (6.88%)	25 (9.06%)
TOTAL	26	90	160	276

Table No. 21 represents that attitude of the staff members towards the inmates. Out of total 276 respondents 194(70.29%) found that the attitude of the staff members towards inmates to be indifferent. Around 52(18.84%) respondents found the staff to be helpful, 25(9.06%) stated the staff members were incompetent and a very low 5(1.81%) respondents found them to be caring. District wise analysis depicts that only 5(19.23%) respondents in Ambala stated that the attitude of the staff was caring in nature. 7(26.92%) respondents in Ambala followed by 11(12.22%) in Hisar and 34(21.25%) in Karnal found the attitude to be helpful. Those who found the attitude to be indifferent were 14(53.85%) in Ambala followed by 65(72.22%) in Hisar and 115(71.87%) in Karnal and those who stated the staff to be incompetent were 14(15.56%) in Hisar and 11(6.88%) in Karnal.

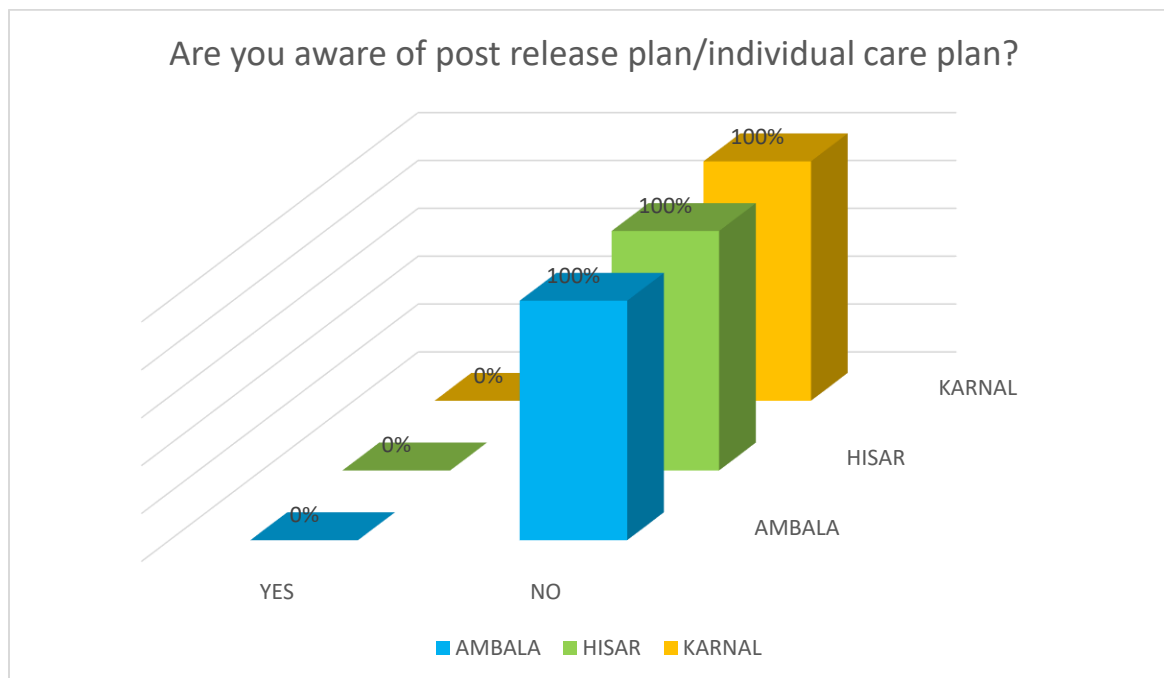
Table/Figure No. 22 Need for Better Infrastructure



	AMBALA	HISAR	KARNAL	TOTAL
YES	23 (88.46%)	81 (90%)	141 (88.13%)	245 (88.77%)
NO	1 (3.85%)	3 (3.33%)	0	4 (1.45%)
INDIFFERENT	2 (7.69%)	6 (6.67%)	19 (11.87%)	27 (9.78%)
TOTAL	26	90	160	276

According to the data represented in Table No. 22, out of a total of 276 respondents, 245 (or 88.77%) said that there was a requirement for improved infrastructure. In a simple manner, only four people (1.45 percent) said that there is no such necessity, while 27 people (9.78 percent) responded indifferently. District wise analysis represents that 23(88.46%) of respondents from Ambala, 81(90%) from Hisar and 141(88.13%) from Karnal felt a requirement for better infrastructure with their homes. Only 1(3.385%) in Ambala followed by 3(3.33%) in Hisar stated that there is no such need. 2(7.69%) in Ambala followed by 6(6.67%) in Hisar and 19(11.87%) in Karnal replied indifferent.

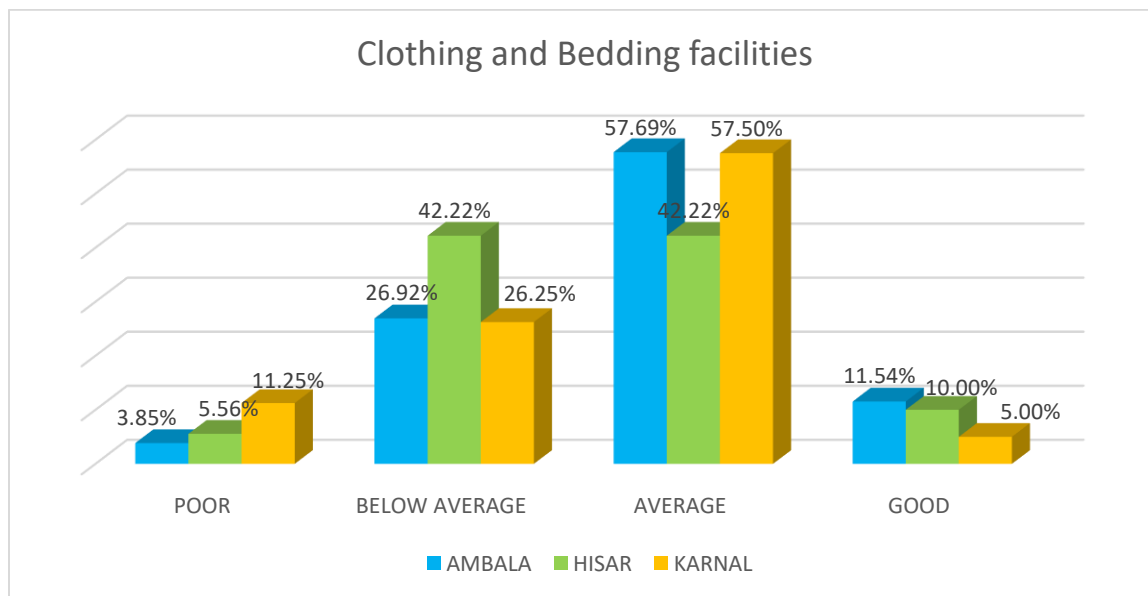
Table/Figure No. 23 Awareness about Post release/Individual Care Plan



	AMBALA	HISAR	KARNAL	TOTAL
YES	0	0	0	0 (0%)
NO	26 (100%)	90 (100%)	160 (100%)	276 (100%)
TOTAL	26	90	160	276

Table No. 23 shows that out of total 276 respondents from three districts nobody was aware of post release/ individual care plan.

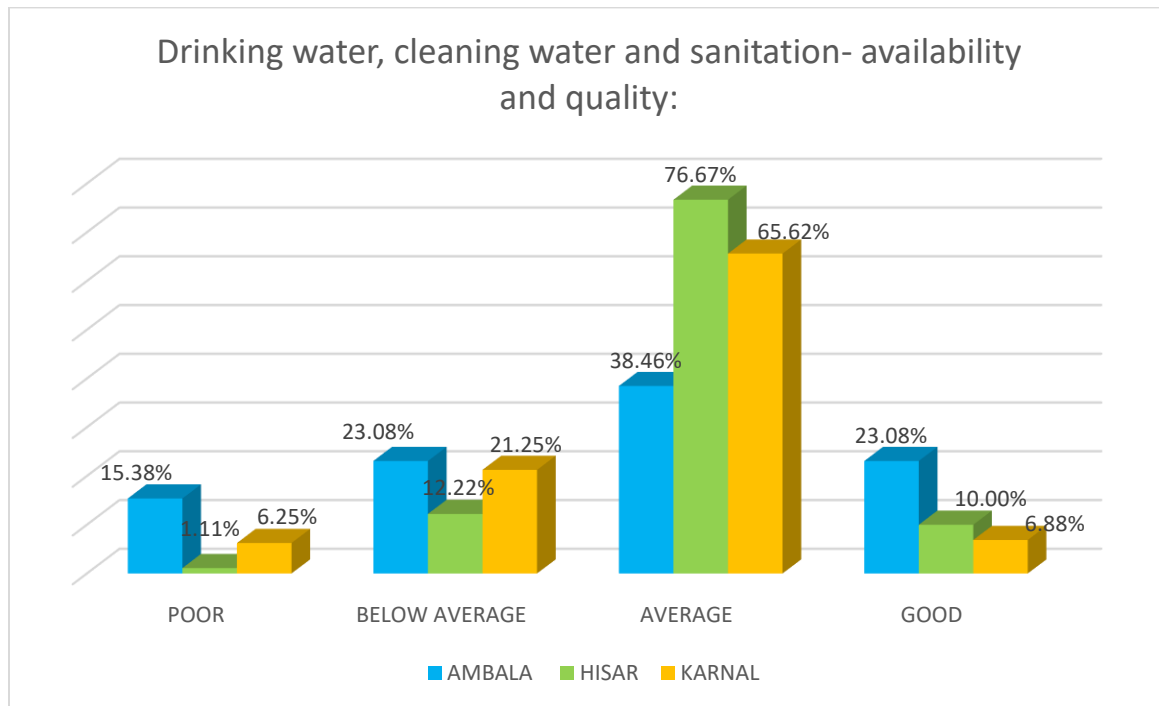
Table/Figure No. 24 Clothing and Bedding facilities



	AMBALA	HISAR	KARNAL	TOTAL
POOR	1 (3.85%)	5 (5.56%)	18 (11.25%)	24 (8.69%)
BELOW AVERAGE	7 (26.92%)	38 (42.22%)	42 (26.25%)	87 (31.52%)
AVERAGE	15 (57.69%)	38 (42.22%)	92 (57.50%)	145 (52.54%)
GOOD	3 (11.54%)	9 (10%)	8 (5%)	20 (7.25%)
TOTAL	26	90	160	276

According to Table No. 24, out of a total of 276 inmates, 145 (52.54%) of the juveniles responded that the quality of the clothing and bedding that was provided was average. 87 (31.52%) of the juveniles responded that the quality was below average, 24 (8.69%) reported that the quality was poor, and only 20 (7.25%) stated that the quality was exceptional. An examination of the data based on districts reveals that around 15 individuals (57.69%) from Ambala, 38 individuals (42.22%) from Hisar, and 92 individuals (57.50%) from Karnal said that the quality of clothing and bedding was average. This was followed by those who said the quality was below average, it was 7(26.92%) from Ambala, 38(42.22%) from Hisar and 42(26.25%) from Karnal.

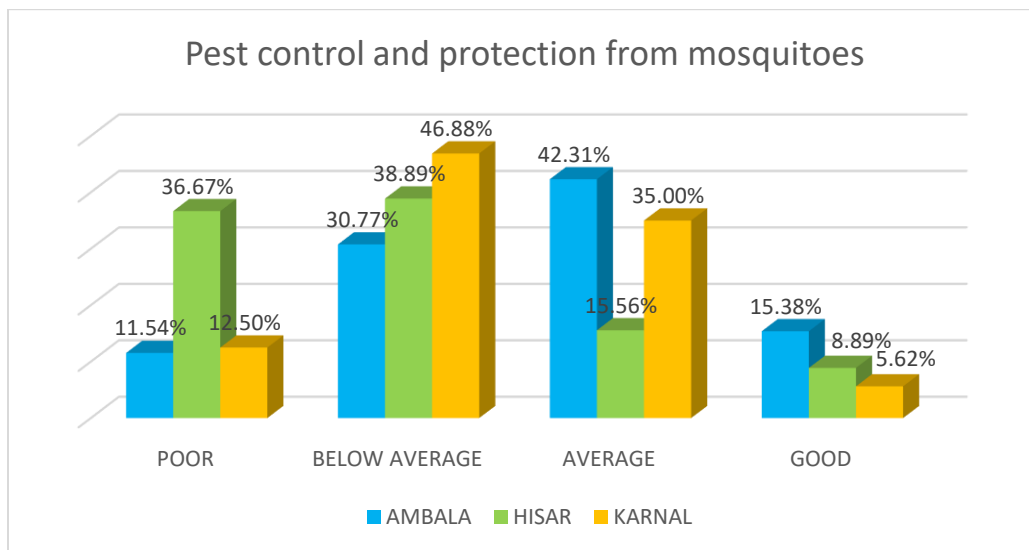
Table/Figure No. 25 Quality/Availability of Drinking Water and sanitation



	AMBALA	HISAR	KARNAL	TOTAL
POOR	4 (15.38%)	1 (1.11%)	10 (6.25%)	15 (5.43%)
BELOW AVERAGE	6 (23.08%)	11 (12.22%)	34 (21.25%)	51 (18.48%)
AVERAGE	10 (38.46%)	69 (76.67%)	105 (65.62%)	184 (66.67%)
GOOD	6 (23.08%)	9 (10%)	11 (6.88%)	26 (9.42%)
TOTAL	26	90	160	276

Table No. 25 demonstrates that out of a total of 276 convicts, 184 (66.67%) responded that the quality of the water was average, 51 (18.48%) discovered that it was below average, 26 (9.42%) decided that it was good, and 15 (5.43%) claimed that the quality of the water was terrible. By district, it was determined that around ten (38.46%) people from Ambala, sixty-six (65.62%) people from Hisar, and one hundred and fifty-six (65.62%) people from Karnal said that the quality of the water within their homes was average. Only six people, or 23.08 percent, from Ambala indicated that the water quality was below average. This was followed by eleven people, or 12.22 percent, from Hisar, and then 34 people, or 21.25 percent, from Karnal.

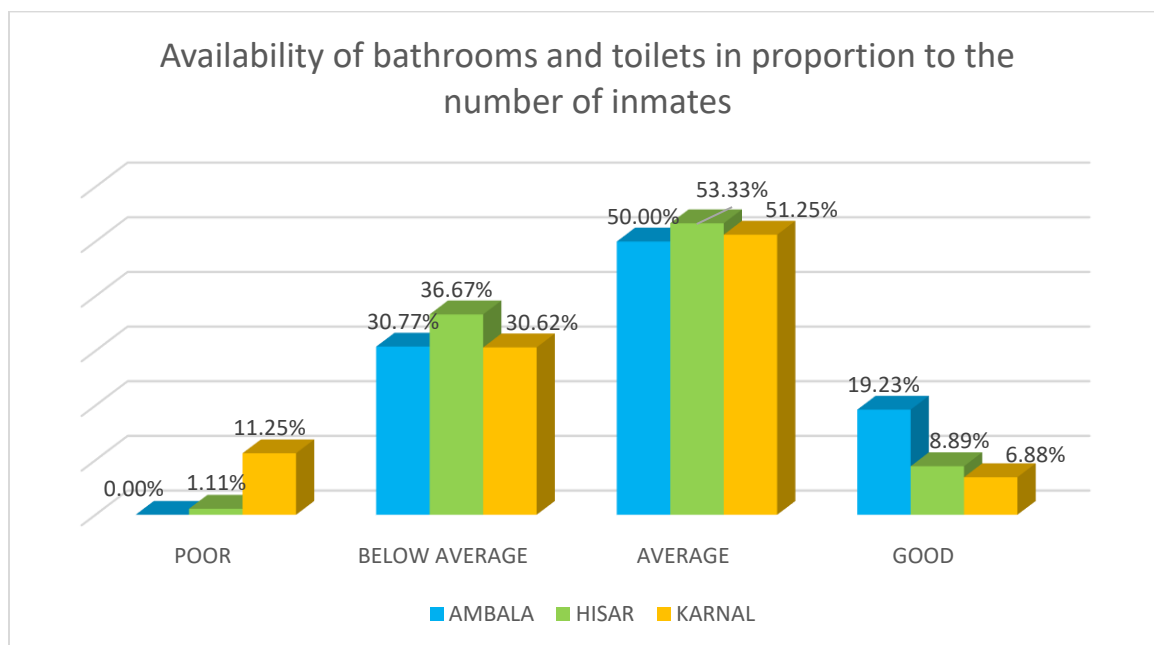
Table/Figure No. 26 Status of Pest Control



	AMBALA	HISAR	KARNAL	TOTAL
POOR	3 (11.54%)	33 (36.66%)	20 (12.50%)	56 (20.29%)
BELOW AVERAGE	8 (30.77%)	35 (38.89%)	75 (46.88%)	118 (42.75%)
AVERAGE	11 (42.31%)	14 (15.56%)	56 (35%)	81 (29.35%)
GOOD	4 (15.38%)	8 (8.89%)	9 (5.62%)	21 (7.61%)
TOTAL	26	90	160	276

The status of the pest and insect control measures taken inside the residence is detailed in Table No. 26. Out of total 276 inmates a majority of 118(42.75%) replied that the quality was below average, 81(29.35%) felt that the quality was average, 56(20.29%) stated that the quality was poor and only 21(7.61%) reported that quality was good. District wise analysis shows that 8(30.77%) from Ambala, 35(38.89%) from Hisar and 75(46.88%) from Karnal replied that the quality was below average. About 11(42.31%) from Ambala followed by 14(15.56%) from Hisar and 56(35%) felt that quality was average. Nearly, 3(11.54%) from Ambala followed by 33(36.66%) from Hisar and 20(12.50%) from Karnal reported that quality was poor. A few 4(15.38%) from Ambala, 8(8.89%) from Hisar and 9(5.62%) said that the quality was good.

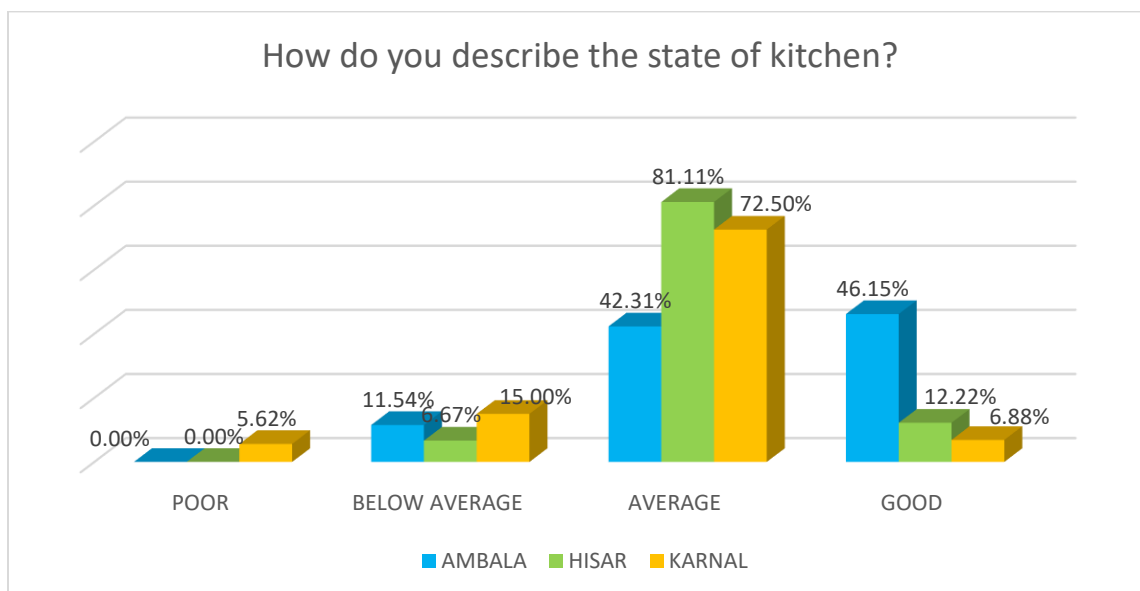
Table/Figure No. 27 Availability of Bathrooms



	AMBALA	HISAR	KARNAL	TOTAL
POOR	0	1 (1.11%)	18 (11.25%)	19 (6.88%)
BELOW AVERAGE	8 (30.77%)	33 (36.67%)	49 (30.62%)	90 (32.61%)
AVERAGE	13 (50%)	48 (53.33%)	82 (51.25%)	143 (51.81%)
GOOD	5 (19.23%)	8 (8.89%)	11 (6.88%)	24 (8.70%)
TOTAL	26	90	160	276

Table No. 27 depicts the quality and sufficiency of bathrooms. Out of total 276 inmates 143(51.81%) felt that quality of bathrooms was average, 90(32.61%) felt that the quality was below average followed by 19(6.88%) said that the quality was poor and 24(8.70%) replied the quality was good. According to the findings of the district-wise analysis, thirteen individuals from Ambala (50%) and forty-eight individuals from Hisar (53.33%) reported that the quality was average. There were eight (30.77%) people from Ambala who believed that the quality was below average, followed by thirty-three (36.67%) people from Hisar and forty-nine (30.62%) people from Karnal. 18(11.25%) inmates from Karnal stated that the quality was poor. Only a few 5(19.23%) from Ambala, 8(8.89%) from Hisar and 11(6.88%) from Karnal reported that the quality was good.

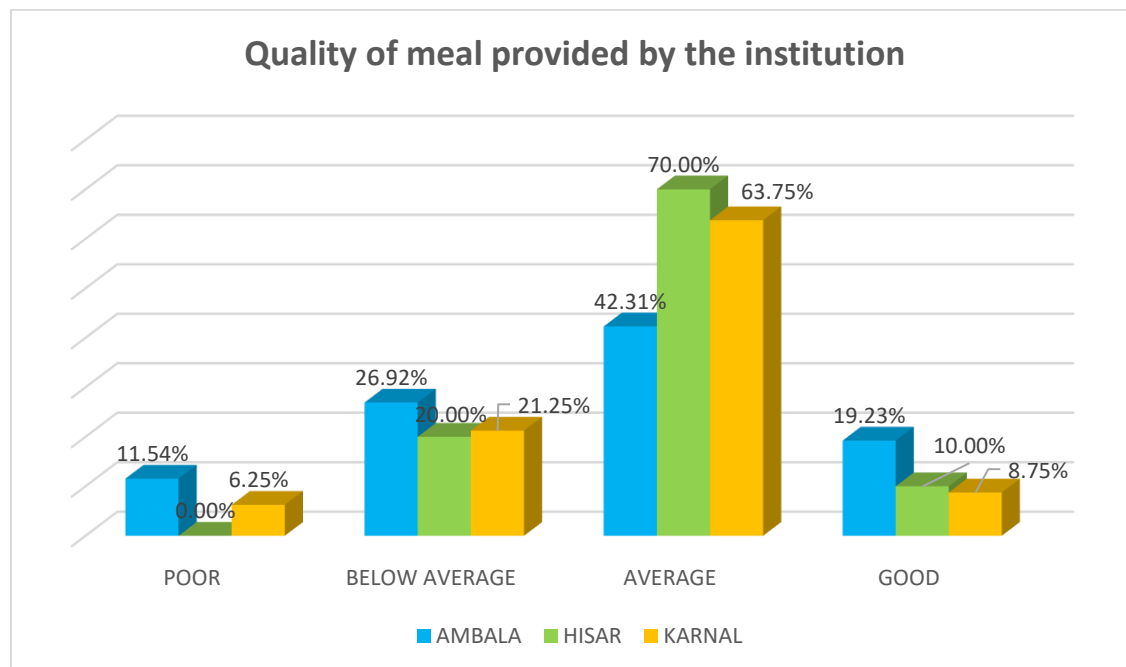
Table/Figure No. 28 State of Kitchen



	AMBALA	HISAR	KARNAL	TOTAL
POOR	0	0	9 (5.92%)	9 (3.26%)
BELOW AVERAGE	3 (11.54%)	6 (6.67%)	24 (15%)	33 (11.96%)
AVERAGE	11 (42.31%)	73 (81.11%)	116 (72.50%)	200 (72.46%)
GOOD	12 (46.15%)	11 (12.22%)	11 (6.88%)	34 (12.32%)
TOTAL	26	90	160	276

Table No. 28 reveals the state of Kitchen. Out of total 276 inmates 200(72.46%) felt that quality and cleanliness of kitchen was average, 33(11.96%) felt that the quality was below average followed by 9(3.26%) said that the quality was poor and 34(12.32%) replied the quality was good. A district-by-district examination reveals that 11 individuals from Ambala (42.31%), 73 individuals from Hisar (81.11%), and 116 individuals (72.50%) reported that the quality was average. Three individuals from Ambala, 11.54%, believed that the quality was below ordinary, followed by six individuals from Hisar, 6.67 percent, and twenty-four individuals from Karnal, 15%. 9(5.92%) inmates from Karnal stated that the quality was poor. As many as twelve people from Ambala (46.15%), eleven people from Hisar (12.22%), and eleven people from Karnal (6.88%) indicated that the quality was satisfactory.

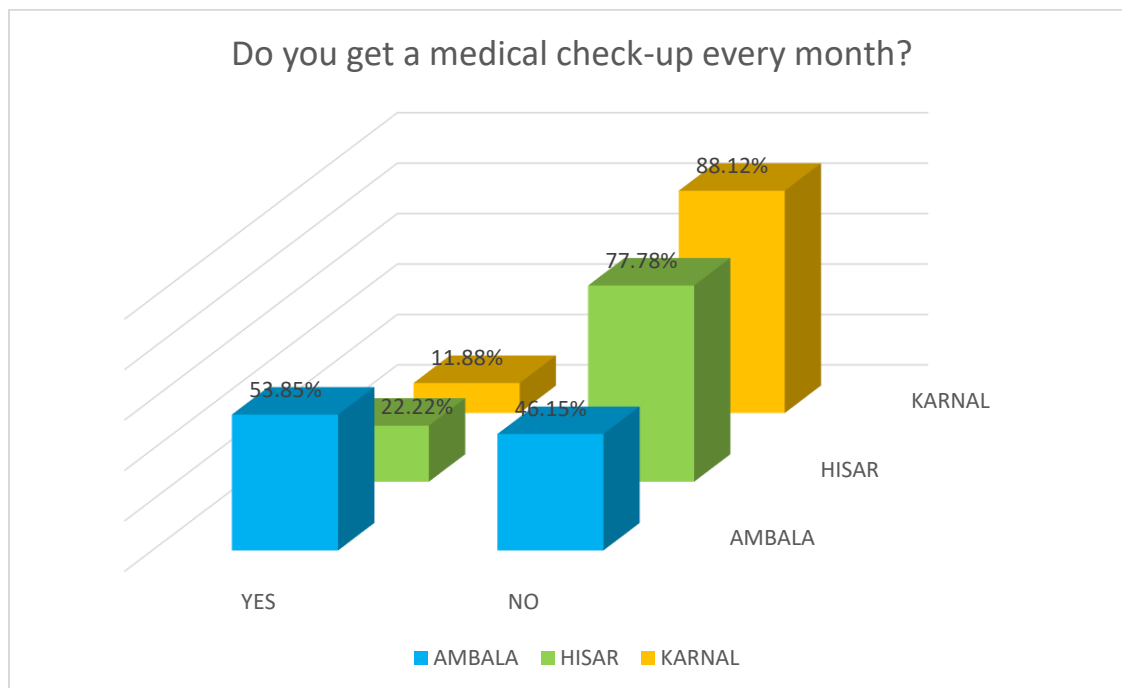
Table/Figure No. 29 Quality of Meal



	AMBALA	HISAR	KARNAL	TOTAL
POOR	3 (11.54%)	0	10 (6.25%)	13 (4.71%)
BELOW AVERAGE	7 (26.92%)	18 (20%)	34 (21.25%)	59 (21.37%)
AVERAGE	11 (42.31%)	63 (70%)	102 (63.75%)	176 (63.77%)
GOOD	5 (19.23%)	9 (10)	14 (8.75%)	28 (10.15%)
TOTAL	26	90	160	276

Table No. 29 represents the quality of meal provided to the inmates. Out of total 276 inmates 176(63.77%) felt that quality of meal was average, 59(21.37%) felt that the quality was below average followed by 13(4.71%) said that the quality was poor and 28(10.15%) replied the quality was good. District wise analysis shows that 11(42.31%) from Ambala, 63(70%) from Hisar and 102(63.75%) stated that the quality was average. The individuals who believed that the quality was below average were seven (26.72%) from Ambala, followed by eighteen (20%) from Hisar, and then thirty-four (21.25%) from Karnal. 10(6.25%) inmates from Karnal stated that the quality was poor. About 5(19.23%) from Ambala, 9(10%) from Hisar and 14(8.75%) from Karnal reported that the quality was good.

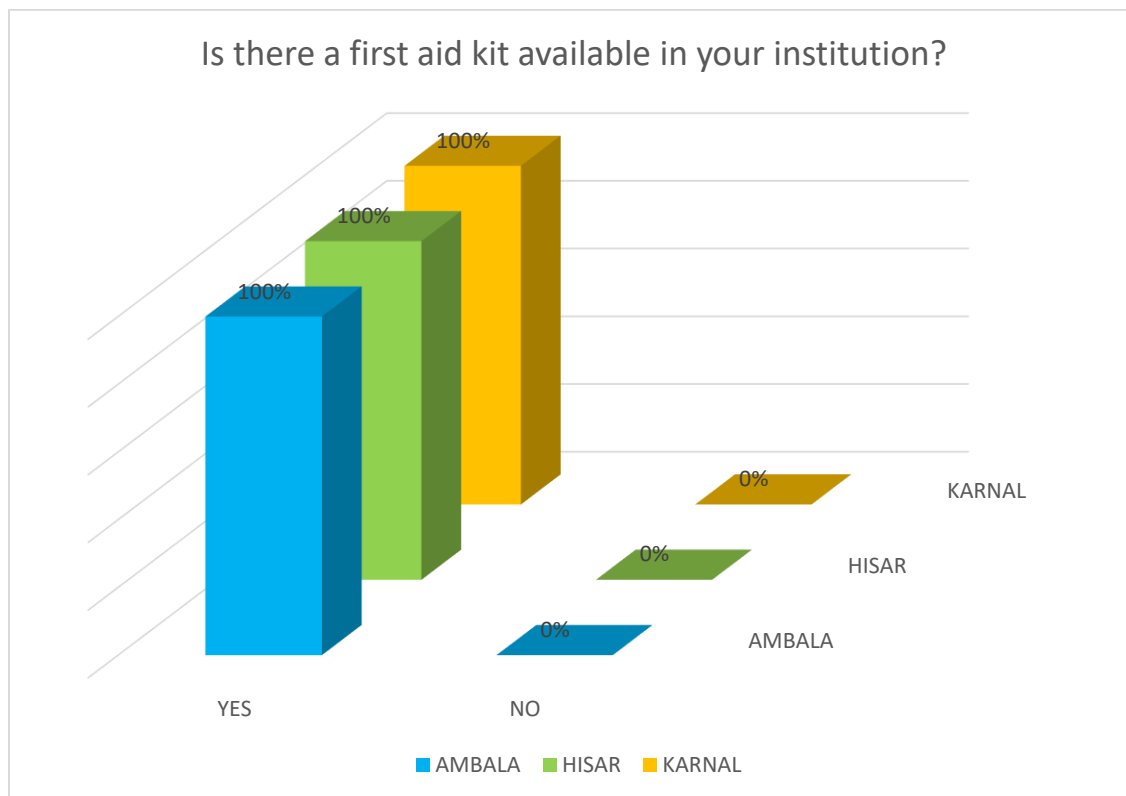
Table/Figure No. 30 Status of Medical Check-ups



	AMBALA	HISAR	KARNAL	TOTAL
YES	14 (53.85%)	20 (22.22%)	19 (11.88%)	53 (19.20%)
NO	12 (46.15%)	70 (77.78%)	141 (88.12%)	223 (80.80%)
TOTAL	26	90	160	276

Table No. 30 depicts the monthly medical check-ups. Out of total 276 inmates 223(80.80%) stated that no medical check-ups were done monthly. Only 53(19.20%) put on record that such check-ups were conducted. The rate of monthly medical check-ups was highest in Ambala 14 (53.85%), while only 20(22.22%) from Hisar 19(11.88%) from Karnal stated the same. 12(48.15%) from Ambala), 70(77.78%) from Hisar and 141(88.12%) from Karnal reported that no medical check-ups were done monthly.

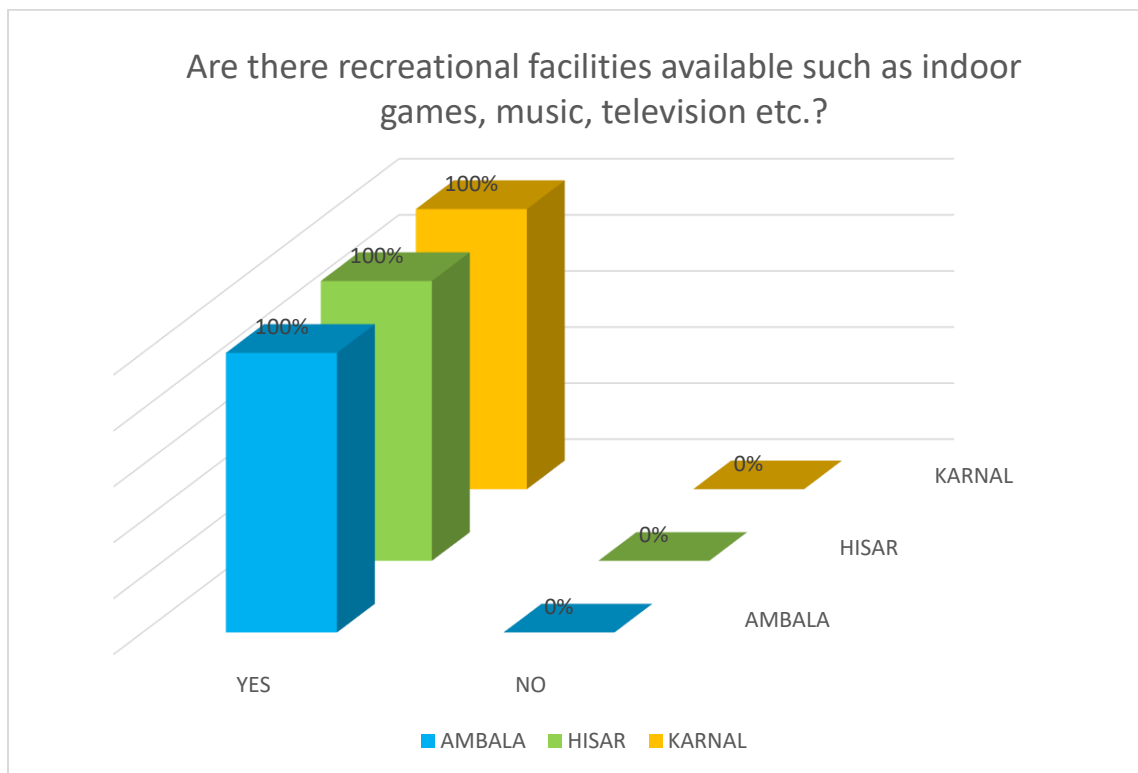
Table/Figure No. 31 Availability of First Aid Kit



	AMBALA	HISAR	KARNAL	TOTAL
YES	26 (100%)	90 (100%)	160 (100%)	276 (100%)
NO	0 (0%)	0 (0%)	0 (0%)	0 (0%)
TOTAL	26	90	160	276

Table No. 31 shows that the first aid kit was available within all the three homes of the respective districts.

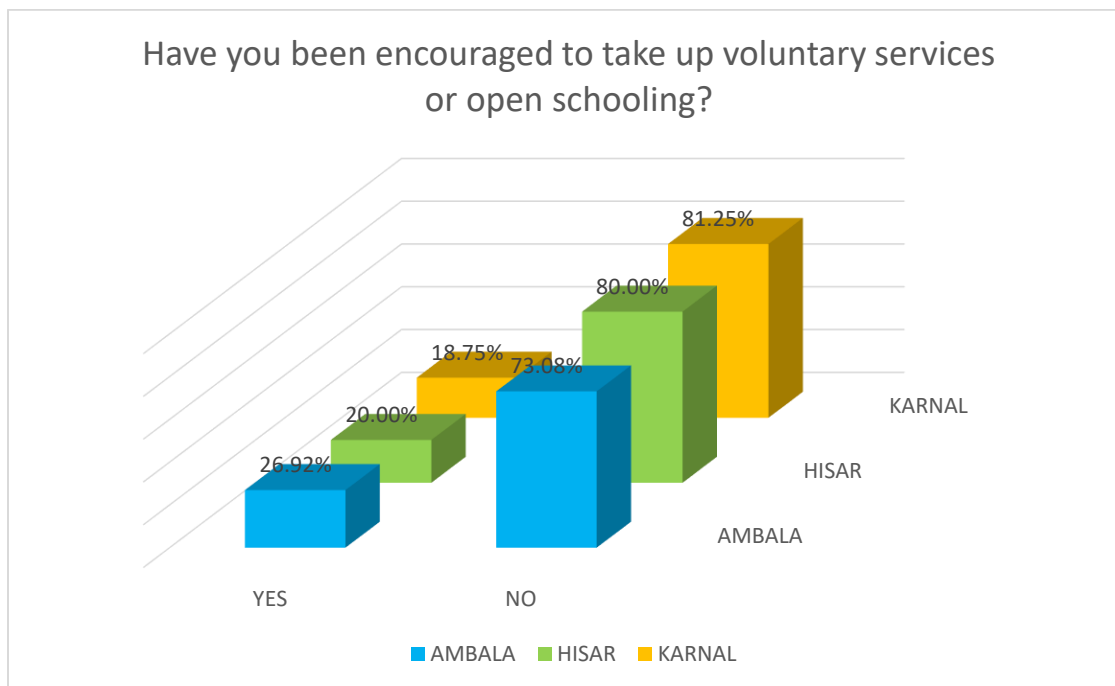
Table/Figure No. 32 Availability of Recreational Facilities



	AMBALA	HISAR	KARNAL	TOTAL
YES	26 (100%)	90 (100%)	160 (100%)	276 (100%)
NO	0	0	0	0 (0%)
TOTAL	26	90		160

Table No. 32 shows that the recreational facilities like indoor games, television etc. were available within all the three homes of the respective districts.

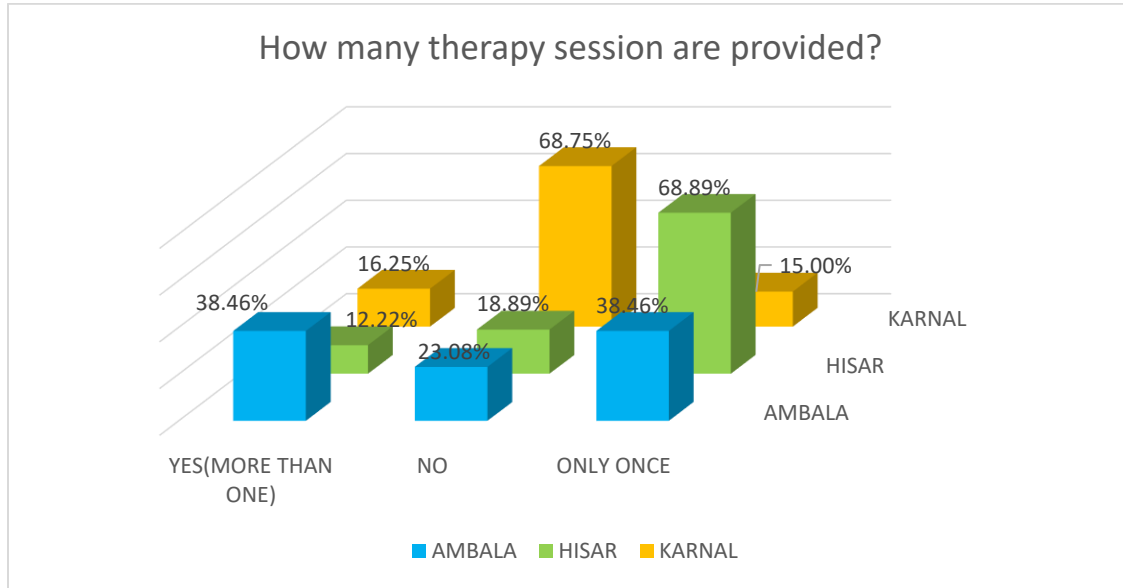
Table/Figure No. 33 Status of Open Schooling



	AMBALA	HISAR	KARNAL	TOTAL
YES	7 (26.92%)	18 (20%)	30 (18.75%)	55 (19.93%)
NO	19 (73.08%)	72 (80%)	130 (81.25%)	221 (80.07%)
TOTAL	26	90	160	276

Table No. 33 represents that out of total 276 inmates 221(80.07%) reported that they were not encouraged to take up voluntary services or open schooling. Only 55(19.93%) stated that were encouraged to take up voluntary services or open schooling. District wise analysis shows that 19(73.08%) from Ambala followed by 72(80%) Hisar and 130(81.25%) from Karnal were never been encouraged to take up voluntary services or open schooling. Only a few 7(26.92%) from Ambala followed by 18(20%) from Hisar and 30(18.75%) from Karnal stated that they were encouraged.

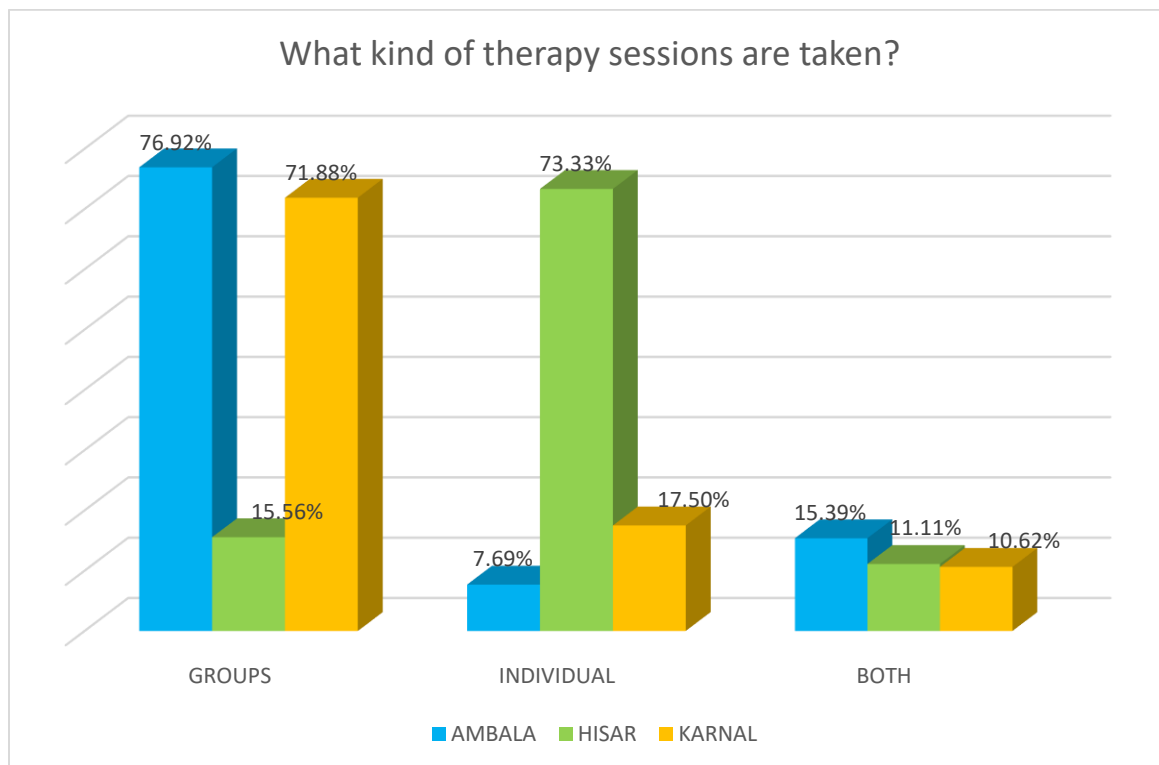
Table/Figure No. 34 Status of Therapy sessions



	AMBALA	HISAR	KARNAL	TOTAL
YES(MORE THAN ONCE)	10 (38.46%)	11 (12.22%)	26 (16.25%)	47 (17.03%)
NO	6 (23.08%)	17 (18.89%)	110 (68.75%)	133 (48.19%)
ONLY ONCE	10 (38.46%)	62 (68.89%)	24 (15%)	96 (34.78%)
TOTAL	26	90	160	276

Table No. 34 represents that out of total 276 inmates a majority of 133(48.19%) respondents stated that regular therapy/counselling sessions were not provided to them. 96(34.78%) reported that they were provided with therapy/counselling only once during their stay in home and only 47(17.03%) reported that they were provided with therapy/counselling more than once. District wise analysis depicts that counselling/therapy sessions provided to them more than once were 10(38.46%) in Ambala followed by 11(12.22%) in Hisar and 26(16.25%) in Karnal. Those who never provided with therapy/counselling sessions were 6(23.08%) in Ambala, 17(18.89%) in Hisar and 110(68.75%) in Karnal. 10(38.46%) in Ambala followed by 62(68.89%) in Hisar and 24(15%) in Karnal stated that therapy/counselling sessions were provided to them only once.

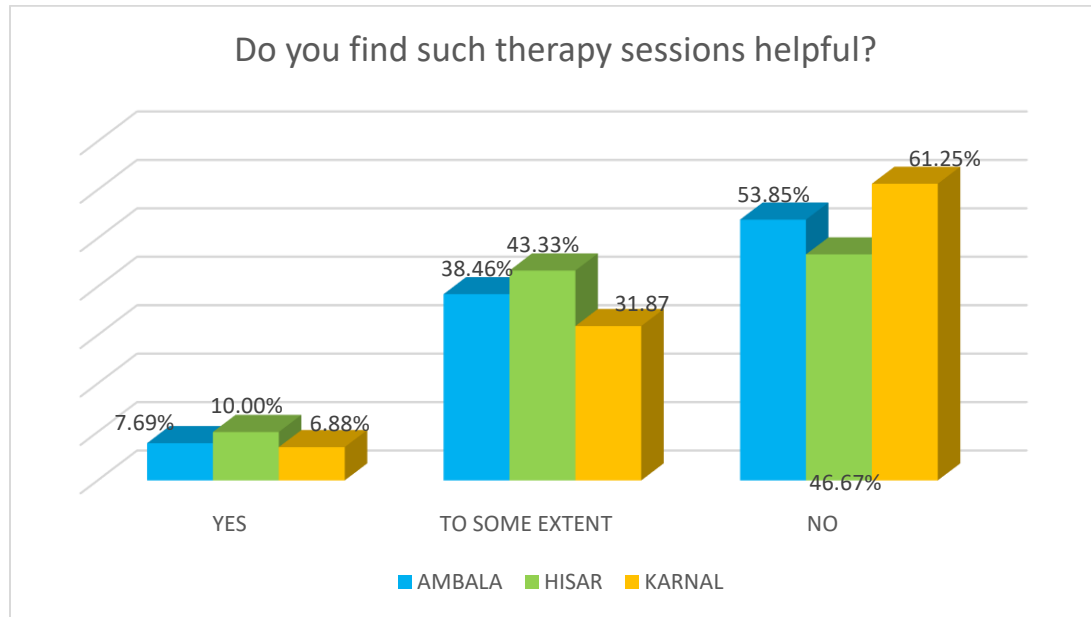
Table/Figure No. 35 Kind of Therapy sessions taken



	AMBALA	HISAR	KARNAL	TOTAL
GROUPS	20 (76.92%)	14 (15.56%)	115 (71.88%)	149 (53.99%)
INDIVIDUAL	2 (7.69%)	66 (73.33%)	28 (17.50%)	96 (34.78%)
BOTH	4 (15.39%)	10 (11.11%)	17 (10.62%)	31 (11.23%)
TOTAL	26	90	160	276

Table No. 35 shows that out of total 276 inmates from three districts 149(53.99%) had attended group sessions, 96(34.78%) had attended individual sessions and 31(11.23%) had attended both kind of sessions. District wise analysis represents that in Ambala 20(76.92%) followed by 14(15.56%) in Hisar and 115(71.88%) had attended group sessions. Those who had attended individual session were 2(7.69%) from Ambala followed by 66(73.33%) from Hisar and 28(17.50%) from Karnal. 4(15.39%) from Ambala followed by 10(11.11%) from Hisar and 17(10.26%) inmates from Karnal had attended both the sessions.

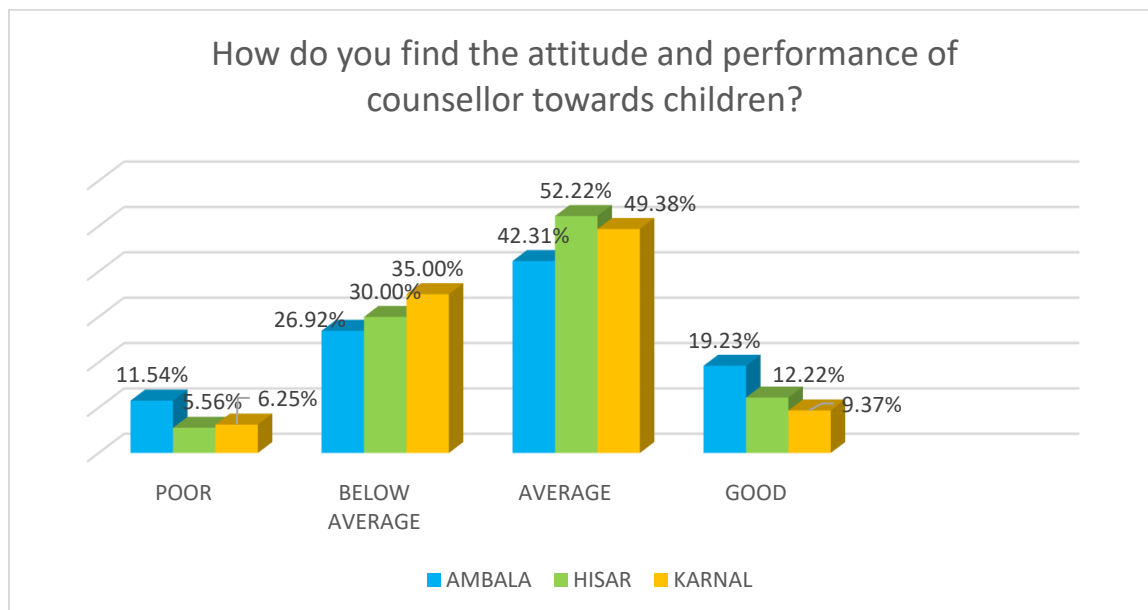
Table/Figure No. 36 Effect of Therapy sessions



	AMBALA	HISAR	KARNAL	TOTAL
YES	2 (7.69%)	9 (10%)	11 (6.88%)	22 (7.97%)
TO SOME EXTENT	10 (38.46%)	39 (43.33%)	51 (31.87%)	100 (36.23%)
NO	14 (53.85%)	42 (46.67%)	98 (61.25%)	154 (55.80%)
TOTAL	26	90	160	276

Table No. 36 depicts the effect of therapy sessions. Out of total 276 inmates a majority of 154(55.80%) replied that they do not find the sessions helpful, 100(36.23%) found the sessions helpful to some extent only and only 22(7.97%) reported that the sessions were helpful to them. District wise analysis represents that in Ambala 2(7.69%), 9(10%) in Hisar and 11(6.88%) inmates in Karnal found the session helpful. Those who felt that that sessions were helpful to some extents were 10(38.46%) from Ambala followed by 39(43.33%) from Hisar and 51(31.87%) from Karnal. 14(53.85%) from Ambala followed by 42(46.67%) from Hisar and 68(61.25%) from Karnal reported that they do not find the sessions helpful to them.

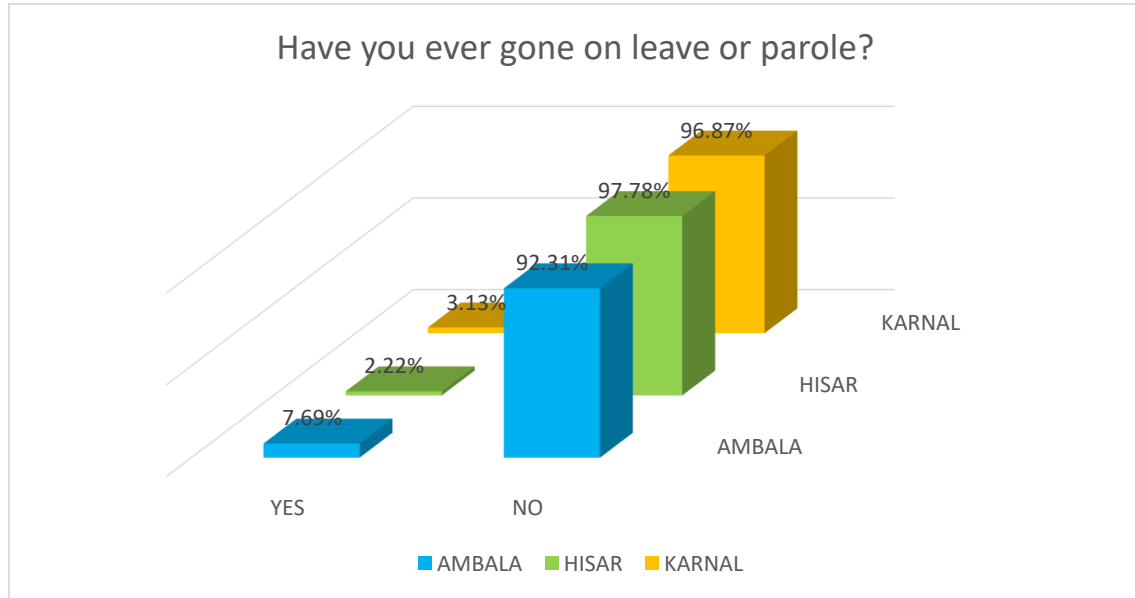
Table/Figure No. 37 Attitude and Performance of the Counsellor



	AMBALA	HISAR	KARNAL	TOTAL
POOR	3 (11.54%)	5 (5.56%)	10 (6.25%)	18 (6.52%)
BELOW AVERAGE	7 (26.92%)	27 (30%)	56 (35%)	90 (32.61%)
AVERAGE	11 (42.31%)	47 (52.22%)	79 (49.38%)	137 (49.64%)
GOOD	5 (19.23%)	11 (12.22%)	15 (9.37%)	31 (11.23%)
TOTAL	26	90	160	276

Table No. 37 reveals the attitude and performance of counsellor. Out of total 276 inmates a majority of 137(49.64%) found the attitude and performance to be average, 90(32.61%) found it to be below average. A few 18(6.52%) found it to be poor and 31(11.23%) found the performance and attitude was good. District wise analysis states that in Ambala 11(42.31%) followed by 47(52.22%) in Hisar and 79(49.38%) in Karnal stated that the attitude and performance of counsellor was average. 7(26.92%) from Ambala followed by 27(30%) from Hisar and 56(35%) from Karnal stated that the performance was below average. 5(19.23%) from Ambala, 11(12.22%) from Hisar and 15(9.37%) from Karnal reported that the performance was good. 3(11.54%) from Ambala followed by 5(5.56%) from Hisar and 10(6.25%) find the performance was poor.

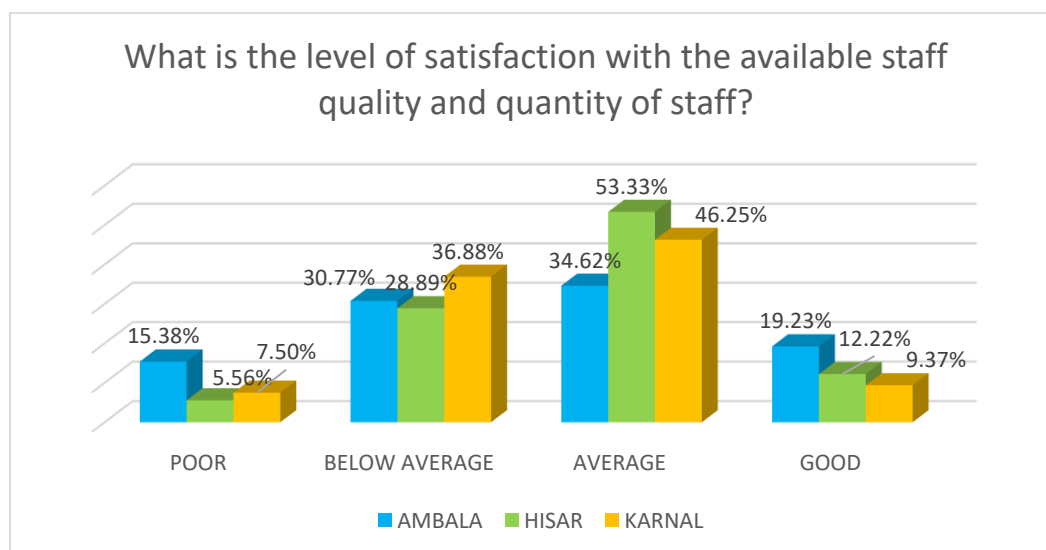
Table/Figure No. 38 Allocation of Leave/Parole



	AMBALA	HISAR	KARNAL	TOTAL
YES	2 (7.69%)	2 (2.22%)	5 (3.13%)	9 (3.26%)
NO	24 (92.31%)	88 (97.78%)	155 (96.87%)	267 (96.74%)
TOTAL	26	90	160	276

Table No. 38 depicts that out of 276 inmates, leave and parole was granted to 9(3.26%) inmates and 267(96.74%) were never granted leave or parole. District wise analysis reveals that in Ambala 2(7.69%) followed by 2(2.22%) in Hisar and 5(3.13%) in Karnal were granted leave or parole. Those to who the leave or parole was never grated were 24(92.31%) in Ambala followed by 88(97.78%) in Hisar and 155(96.87%) in Karnal.

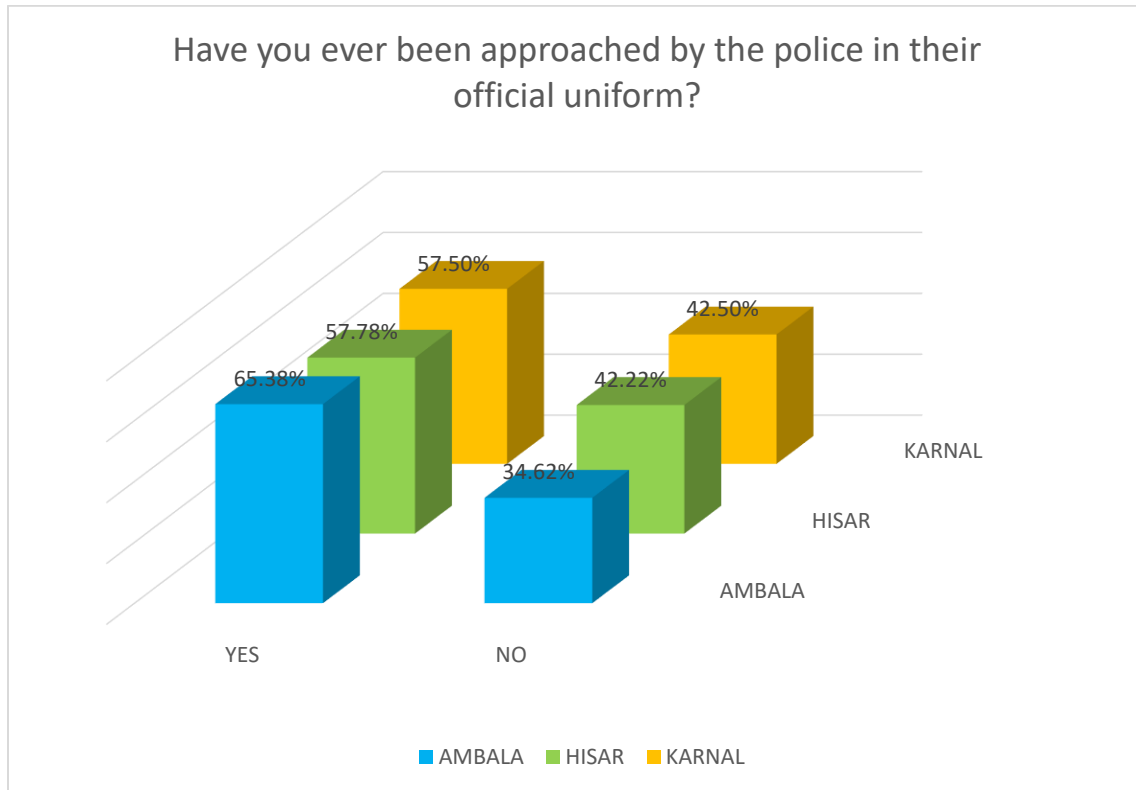
Table/Figure No. 39 Level of satisfaction with Staff members



	AMBALA	HISAR	KARNAL	TOTAL
POOR	4 (15.38%)	5 (5.56%)	12 (7.50%)	21 (7.61%)
BELOW AVERAGE	8 (30.77%)	26 (28.89%)	59 (36.88%)	93 (33.70%)
AVERAGE	9 (34.62%)	48 (53.33%)	74 (46.25%)	131 (47.46%)
GOOD	5 (19.23%)	11 (12.22%)	15 (9.37%)	31 (11.23%)
TOTAL	26	90	160	276

Table No. 39 depicts the level of satisfaction with the available staff. Out of total 276 inmates of the three districts most inmates 131(47.46%) found the quality of staff to be average, 93(33.70%) stated that the quality of staff was below average. 31(11.23%) replied that the quality was good and 21(7.61%) deemed it to be poor. District wise data analysis represents that 4(15.38%) in Ambala, 5(5.56%) in Hisar and 12(7.50%) in Karnal reported that the quality was poor. Those who replied that the quality was below average were 8(30.77%) in Ambala, 26(28.89%) in Hisar and 59(36.88%) in Karnal. 9(34.62%) in Ambala followed by 48(53.33%) in Hisar and 74(46.25%) in Karnal reported that the quality was average. Only 5(19.23%) in Ambala followed by 11(12.22%) in Hisar and 15(9.37%) in Karnal stated that the quality was good.

Table/Figure No. 40 Apprehended by Police in Official Uniform



	AMBALA	HISAR	KARNAL	TOTAL
YES	17 (65.38%)	52 (57.78%)	92 (57.50%)	161 (58.33%)
NO	9 (34.62%)	38 (42.22%)	68 (42.50%)	115 (41.67%)
TOTAL	26	90	160	276

Table No. 40 shows that out of total 276 inmates from three districts 161(58.33%) stated that they were approached by the police in official uniform and 115(41.67%) stated that they weren't approached by police in uniform. District wise analysis depicts that 17(65.38%) from Ambala followed by 52(57.78%) from Hisar and 92(57.50%) from Karnal were approached by the police in official uniform and those who weren't approached by police in uniform were 9(34.62%) from Ambala followed by 38(42.22%) from Hisar and 68(42.50%) from Karnal.

5.4. DATA ANALYSIS OF QUESTIONNAIRE 2- JUVENILE JUSTICE BOARD AT AMBALA, HISAR AND KARNAL

Data was collected from the Juvenile Justice Boards of the Ambala, Hisar and Karnal has been analysed as follows:

Table No. 41 Infrastructure available with the Juvenile Justice Board

Particulars	AMBALA	HISAR	KARNAL
Board Room (run by Government)	YES	YES	YES
Waiting room for Juvenile in custody	NO	NO	YES
Waiting room for Parents	NO	NO	NO
Room for Principal Magistrate	NO	YES	YES
Room for Members	NO	NO	NO
Record Room	NO	YES	YES
Room for Probation officer	NO	NO	NO
Working Computers	NO	NO	YES
Drinking water facility	NO	NO	YES
Toilet facility	NO	NO	YES

The researcher made an appraisal of the Juvenile Justice Boards observed at Ambala, Hisar and Karnal. An overview of infrastructure and facilities of these Juvenile Justice Boards is given below.

All the considered Juvenile Justice Boards Ambala, Hisar and Karnal are run by Government of Haryana. Waiting rooms for Juveniles is available at Karnal but there is no waiting room available at Ambala and Hisar. There is no waiting room for parents in any of the Juvenile Justice Boards.

Rooms are not available for the members of the board and the probation officer in either of the Juvenile Justice Board. Room for Principal Magistrate is not available at Ambala. Similarly, the toilets and drinking water facilities are not available for parents, lawyers and visitors in the Juvenile Justice Boards of Ambala and Hisar.

SITTING OF THE BOARD

Table No. 42 Sitting/Duration of sitting

Particulars	Ambala	Hisar	Karnal
Schedule sitting (in a week)	Once in a week	Twice in a week	Twice in a week
Duration per sitting	7-8 Hours	7-8 Hours	7-8 Hours
Premises	In the Observation Home	In the Observation Home	Board room at Mini Secretariat, Karnal
Total No. of sittings during the month	8 days	4-5days	8days

The schedule sitting of the Board at Ambala was once in a week, at Hisar and Karnal was twice in a week respectively. The duration per sitting of these boards was between 7 to 8 hours. The Premises of Juvenile Justice Boards of Ambala and Hisar were inside the Observation Homes.

PROCEDURE OF JUVENILE JUSTICE BOARD

Table No. 43 : Difference of Opinion among the Board members on determination of punishment

Ambala	Hisar	Karnal
No	No	No

There is no difference of opinion and disputes among the Principal Magistrate and the members of the Board on the determination of the punishment.

Table No. 44 : Nature of the cases come before the Juvenile Justice Board?

Ambala	Hisar	Karnal
Broadly Serious cases	Broadly Heinous cases	Broadly Heinous cases

The Juvenile Justice Boards stated that the nature of cases that come before the Juvenile Justice Boards are Serious cases at Ambala, Heinous cases at Hisar and Karnal.

Table No. 45 : Dispute over determination of age of the Juvenile

Ambala	Hisar	Karnal
No	No	No

There is no dispute among the members over the age determination in either of the Juvenile Justice Boards. But sometimes they found difficulties in age determination due to unavailability of documents of the juvenile, in that case first the birth certificate is considered as age proof after that the age-related document provided by the school of the juvenile is considered and both are not available then a medical test is conducted to determine the age.

Table No. 46 Hours/minutes spent on hearing a case

Ambala	Hisar	Karnal
15 to 20 minutes	20-30 minutes	20-30 minutes

Time spent on hearing a case by the Juvenile Justice Board was 15 to 20 minutes at Ambala, 20-30 minutes at Hisar and Karnal respectively.

Table No. 47 Average number of cases come before the Board in a month

Ambala	Hisar	Karnal
15 approximately	20 approximately	20 approximately

The average number of cases come before the Juvenile Justice Board were 15 in Ambala, 20 in Hisar and Karnal approximately.

Table No. 48 Determination of the best interest of the Juvenile

Ambala	Hisar	Karnal
On the basis of social investigation report	Nature of the crime committed	Nature of the crime committed

The members and the Principal Magistrate of the Juvenile Justice Boards expressed that the best interest of the juvenile was determined on the basis of the social investigation report and the nature of the crime committed by the juvenile. If the board found reasonable grounds, bail is granted in petty offences but in serious and heinous offences.

Table No. 49 Opinion of the Board regarding adequate rehabilitation facilities provided in the Observation home

Ambala	Hisar	Karnal
Facilities are adequate to some extent	Facilities are adequate to some extent	Facilities are adequate to some extent

All of the Juvenile Justice Boards of Ambala, Hisar and Karnal expressed that the facilities provided in the Observation Homes are adequate to some extent but not fully adequate, there is a need of improvement.

Table No. 50 Improvement of the Juvenile Institutions

Ambala	Hisar	Karnal
Counselling and vocational programs	Basic needs and vocational programs	Vocational programs

The Juvenile Justice Boards said that the basic needs, vocational programs and counselling should be provided properly in the Observation Homes.

Suggestions of the Juvenile Justice Boards of Ambala, Hisar and Karnal

Particularly looking at the inadequacies or loopholes in the infrastructure and facilities of the observation homes the Juvenile Justice Boards of Ambala, Hisar and Karnal stated that there is (i) lack of staff members with the Observation Homes (ii) lack of security guards (iii) lack of vocational training and teachers (iv) lack of Medical Board (v) lack of infrastructure. The juveniles inside the homes should obey the rules and maintain discipline. Counselling provided in the observation homes should be improved as well as there should be vocational training inside the observation homes. Yoga and educational facilities should be provided to the juveniles. The inmates and the staff of the observation home are facing the problem of transportation for taking inmates from one place to another for medical check-ups and proceedings.

Social workers suggested that the staff concerned should make proper arrangements of separate residential facilities, cleanliness of the bathrooms and fresh food for the juveniles.

5.5. DATA ANALYSIS OF QUESTIONNAIRE 3- STAFF MEMBERS OF THE OBSERVATION HOMES/PLACE OF SAFETY

Assessment of the Observation Home/ Place of Safety in the State of Haryana

Table No. 51 Infrastructure of the Juvenile Homes

	Total Numbers		
	AMBALA	HISAR	KARNAL
Establishment Year	2010	2010	2018
Room for Boys	5	4	7
Toilet Rooms	5	9	14
Bathrooms	5	9	14
Kitchen	1	1	2
Office Rooms	1	1	2
Room for Juvenile Justice Board	1	1	2
Number of security guards	6	0	4
Number of staff members	17	19	32
Number of temporary Counsellor	0	0	2
Number of children in a room	5	22	26
Total capacity of Juveniles	44	44	75
Actual number of Juveniles	26	90	160
Number of incidences escaped	0	2 times	0

For this study, the researcher has visited and made a direct observation of the Observation homes, Place of safety of the three districts Ambala, Hisar and Karnal. Information collected from the staff members of the Observation homes/ Place of safety has been analysed as follows:

On the basis of Juvenile Justice (Care and Protection) Model Rules, 2016, an assessment of facilities and services available with the observation homes of Ambala, Hisar and Karnal

has been made. A brief description of the facilities available at these Observation Homes/ Place of Safety is given below.

The Observation Home of Ambala, Hisar and Place of Safety Karnal are established in the year 2010, 2010 and 2018 respectively.

Rooms available for boys in Ambala, Hisar and Karnal were 05, 04 and 07 respectively. Similarly, the bathrooms and toilets available in Ambala Hisar and Karnal were 05, 09 and 14 respectively.

Kitchen available with the observation Home of Ambala, Hisar and Place of Safety Karnal were 01, 01 and 02 respectively. Office rooms and room for Juvenile Justice Board in Ambala, Hisar and Karnal were 01, 01 and 02 respectively.

There were no security guards at the Observation Home Hisar and at Amala there were 06 security guards and at Karnal there were 04 security guards. The number of staff members at Observation/ Place of Safety Karnal were 17, 19 and 32 respectively.

There were no temporary or permanent counsellor at Observation Home of Ambala and Hisar, at Karnal 02 temporary Counsellors were available.

The total capacity of the Observation Home Ambala is of 44 inmates and the actual number of inmates residing are 26. The total capacity of the Observation Home Hisar is of 44 inmates and the actual number of inmates residing are 90.

The total capacity of the Place of Safety Karnal is of 75 inmates and the actual number of inmates residing are 160 respectively which is much overcrowded than the actual sanctioned strength.

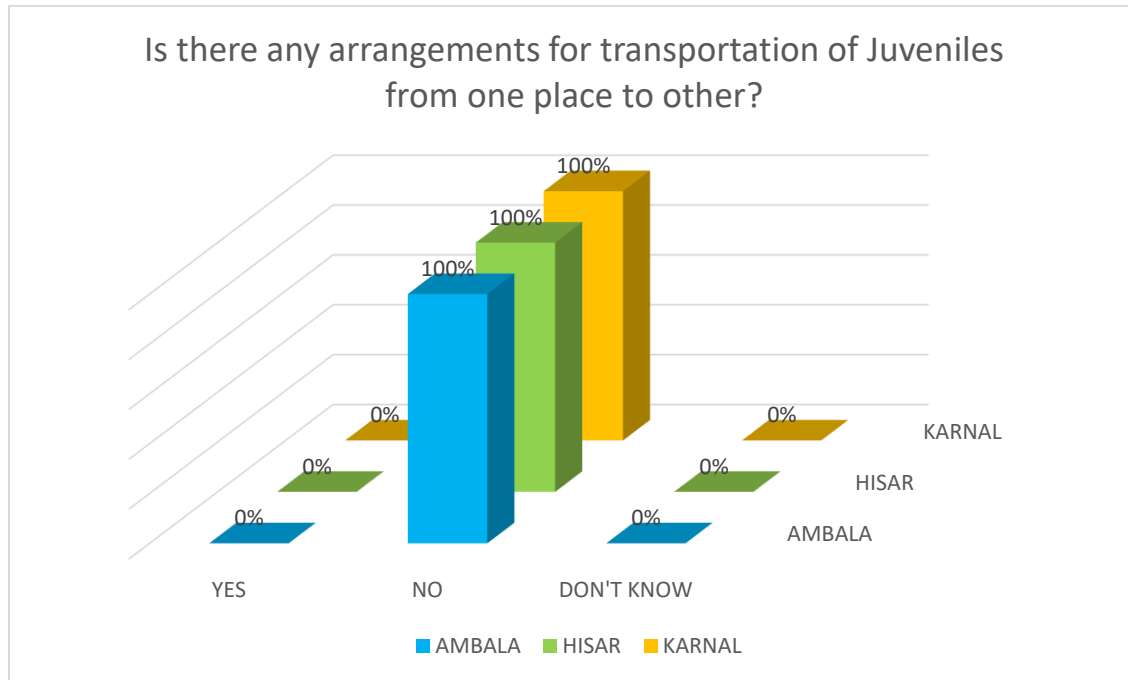
Total number of juveniles in a room at observation Home of Ambala, Hisar and Place of Safety Karnal were 05, 22 and 26 per room respectively. Two times at Hisar Observation Home, juveniles escaped.

Table No. 52 Availability of the Staff in the Observation Homes/ Place of safety

	YES/NO		
Particulars	AMBALA	HISAR	KARNAL
Vocational training programmes	NO	NO	NO
Yoga Teacher	NO	NO	NO
Teacher for Vocational training	NO	NO	NO
Music Teacher	YES	NO	NO
Permanent counsellor	NO	NO	NO
Play ground	YES	YES	YES
Indore Games	YES	YES	YES

There was no vocational training provided to the inmates by any of the Observation Home/ Place of Safety. Yoga teacher and Vocational trainer were not available in any of the Observation Home at Ambala, Hisar and Karnal. Music teachers were not available for inmates at Hisar and Karnal. Permanent counsellors were not available with any of the Observation Homes/ Place of Safety. The playground for outdoor games were available in all of the Observation Homes/ Place of Safety. Some of the indoor games are available with these Observation Homes/ Place of Safety.

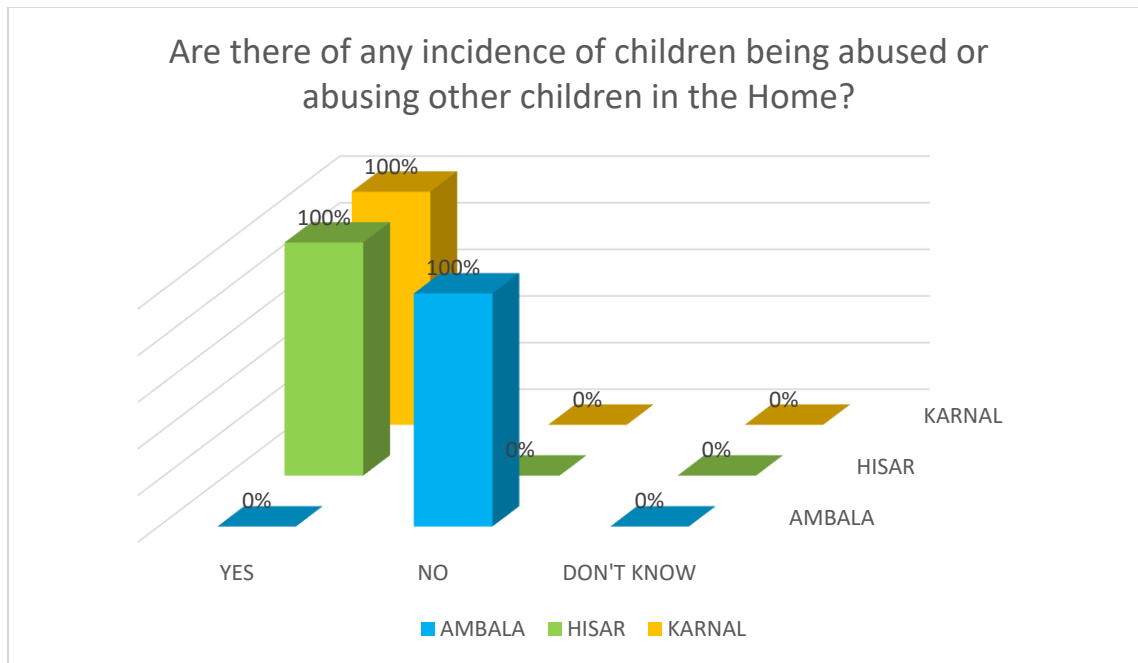
Table/ Figure No. 53 Transportation arrangements



	AMBALA	HISAR	KARNAL	TOTAL
YES	0	0	0	0 (0%)
NO	17 (100%)	19 (100%)	32 (100%)	68 (100%)
DON'T KNOW	0	0	0	0
TOTAL	17	19	32	68

Table no. 53 reveals that out of total 68 staff members of the three districts, all the staff members 68(100%) stated that there was no transportation facility available with any of the Observation Home/ Place of Safety for taking Juveniles from one place to another for proceedings and for medical check-ups etc.

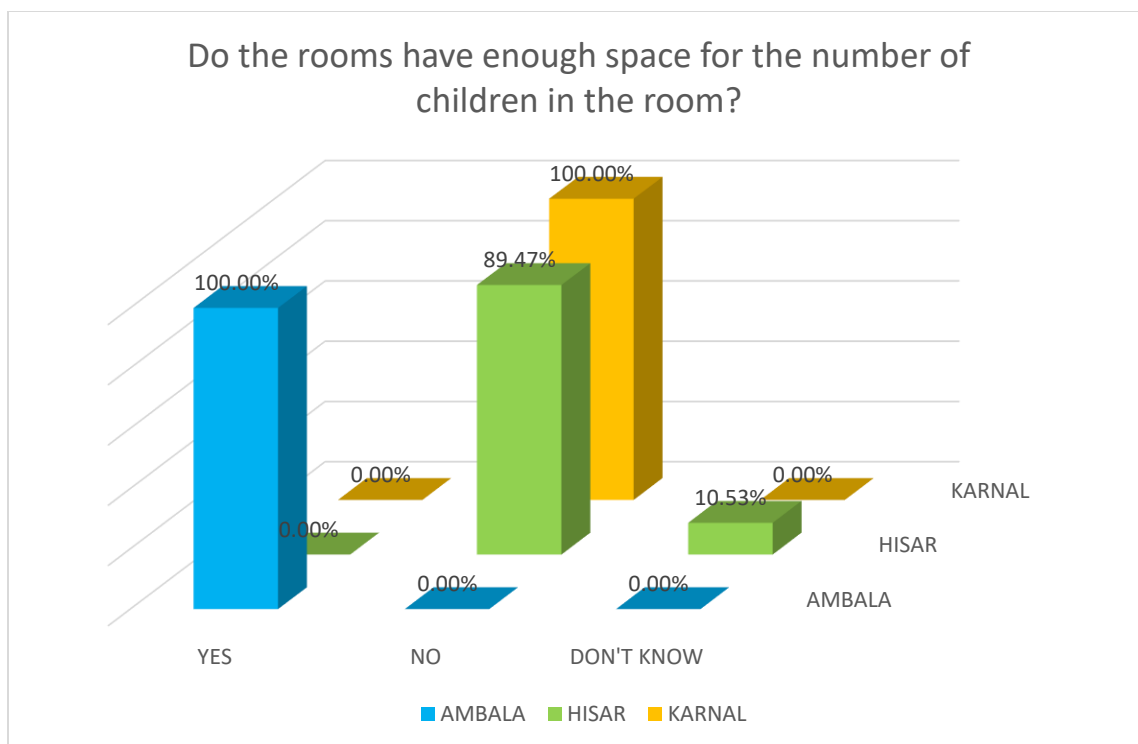
Table/ Figure No. 54 Status of Incidence of abuse(verbal/physical) among children in the homes



	AMBALA	HISAR	KARNAL	TOTAL
YES	0	19 (100%)	32 (100%)	51 (75.00%)
NO	17 (100%)	0	0	17 (25%)
DON'T KNOW	0	0	0	0
TOTAL	17	19	32	68

Table no. 54 depicts that out of total 68 staff members of the three districts, 51(75%) of the staff members mentioned there were incidence of children being abused or abusing other children in the homes and 17(25%) staff members stated that there was no such incidence happened. 19(100%) at Hisar and 32(100%) at Karnal responded that there was incidence of children being abused or abusing other children. 17(100%) at Ambala stated that there was no such incidence happened.

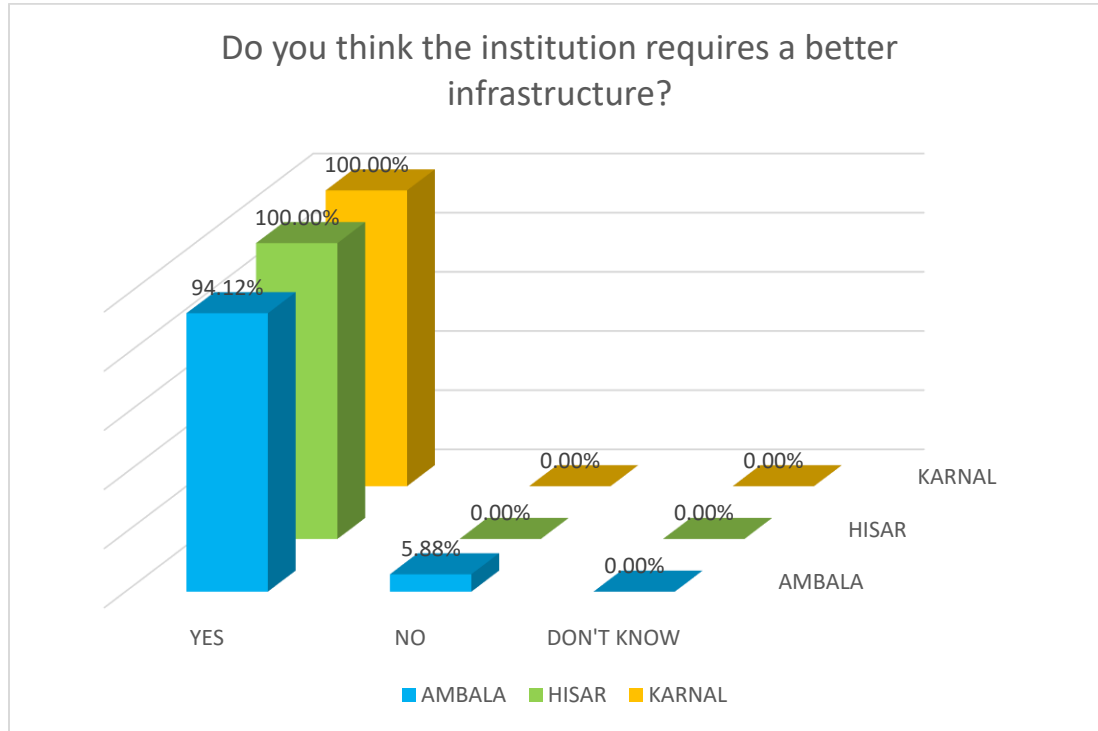
Table/ Figure No. 55 Availability of enough space for the number of children in the room



	AMBALA	HISAR	KARNAL	TOTAL
YES	17 (100%)	0	0	17 (25.00%)
NO	0	17 (89.47%)	32 (100%)	49 (72.06%)
DON'T KNOW	0	2 (10.53%)	0	2 (2.94%)
TOTAL	17	19	32	68

Table no. 55 shows that out of total 68 staff members of the three districts, 17(25%) stated that there is enough space for the numbers of juveniles in the room, 49(72.06%) expressed that there is no enough space for the number of juveniles in the room and 2(2.94%) replied don't know. 17(100%) from Ambala stated yes for the availability of enough space, 17(89.47%) from Hisar and 32(100%) from Karnal said that there is no availability of enough space. Only 2(10.53%) replied that they don't know about the availability of enough space.

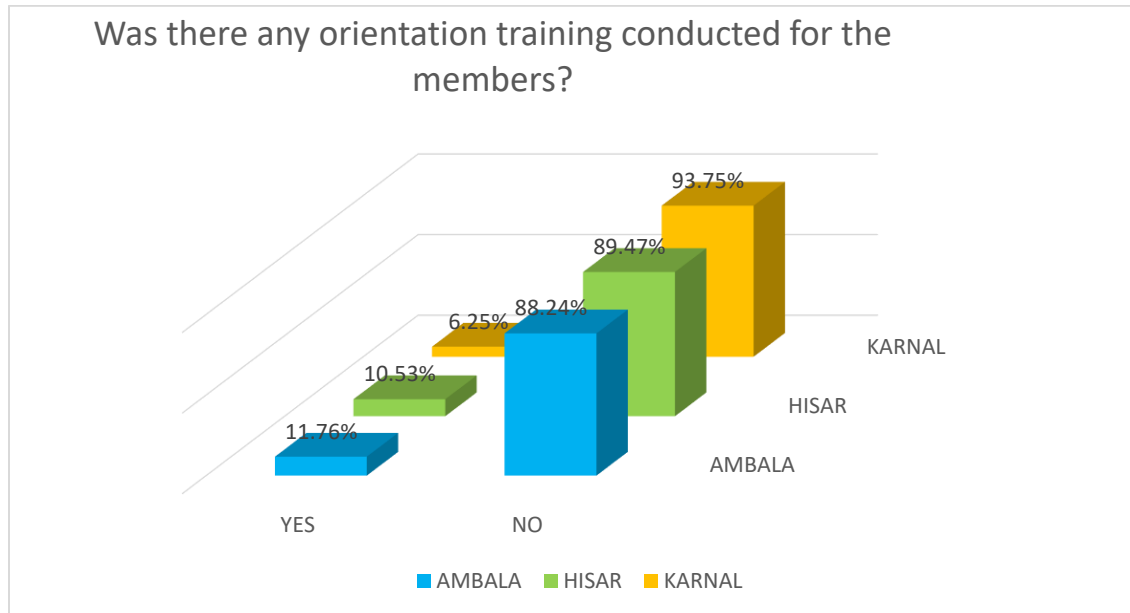
Table/ Figure No. 56 Need for better Infrastructure



	AMBALA	HISAR	KARNAL	TOTAL
YES	16 (94.12%)	19 (100%)	32 (100%)	67 (98.53%)
NO	1 (5.88%)	0	0	1 (1.47%)
DON'T KNOW	0	0	0	0 (0%)
TOTAL	17	19	32	68

Table No. 56 represents that out of total 68 staff members, 67(98.53%) of the members expressed that the institution requires a better infrastructure and only 1(5.88%) said that there is no such requirement. 16(94.12%) from Ambala, 19(100%) from Hisar and 32(100%) from Karnal stated that there is a need of better infrastructure and 1(5.88%) from Ambala stated that the institution do not require a better infrastructure.

Table/ Figure No. 57 Status of Orientation Training conduct for Staff Members

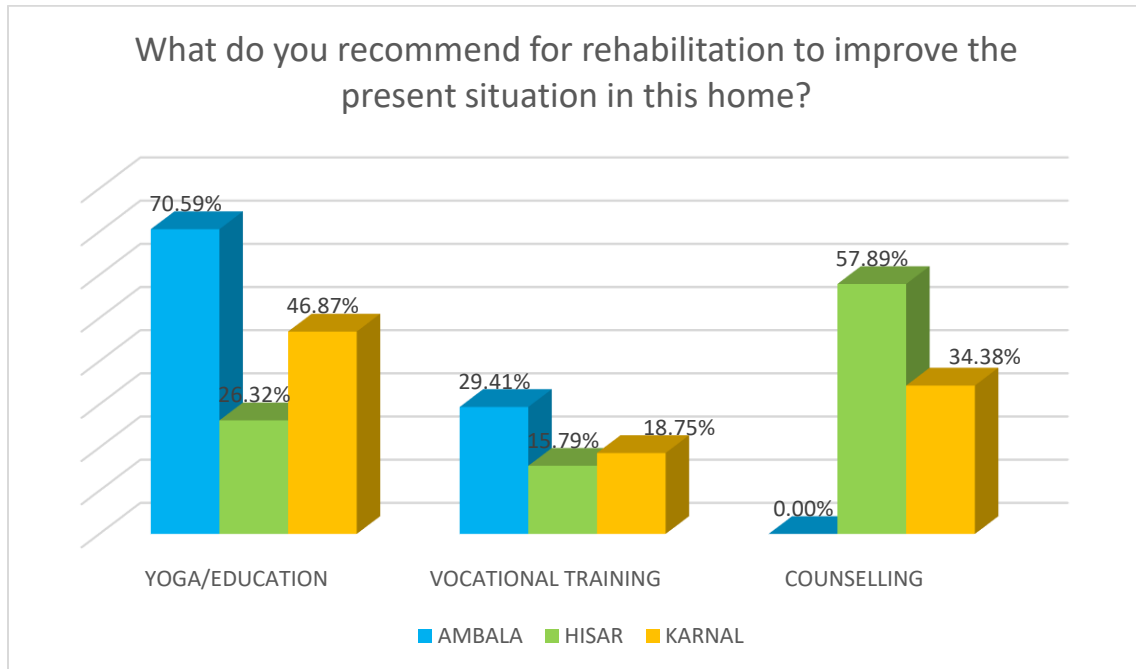


	AMBALA	HISAR	KARNAL	TOTAL
YES	2 (11.76%)	2 (10.53%)	2 (6.25%)	6 (8.82%)
NO	15 (88.24%)	17 (89.47%)	30 (93.75%)	62 (91.18%)
TOTAL	17	19	32	68

Table No. 57 shows that out of total 68 staff members, 62(91.18%) revealed that there was no orientation training conducted for the staff members and 6(8.82%) stated that orientation training was conducted for them 2(11.76%) from Ambala, 2(10.53%) from Hisar and 2(6.25%) from Karnal said that that orientation training was conducted and 15(88.24%) from Ambala, 17(89.47%) from Hisar and 30(93.75%) replied that the orientation training was not conducted for the staff members.

For those the orientation training was conducted were the superintendents of the Observation Homes and the House Fathers only, there was no training provided to the other staff members.

Table No. 58 Recommendations by the Staff Members



	AMBALA	HISAR	KARNAL	Total
YOGA/EDUCATION	12 (70.59%)	5 (26.32%)	15 (46.87%)	32 (47.06%)
VOCATIONAL TRAINING	5 (29.41%)	3 (15.79%)	6 (18.75%)	14 (20.59%)
COUNSELLING/ PHYSICOLOGIST	0 (0%)	11 (57.89%)	11 (34.38%)	22 (32.25%)
TOTAL	17	19	32	68

Table No. 58 depicts that out of total 68 staff members, 32(47.06%) recommended that for the purpose of rehabilitation of the juveniles, yoga/education facilities should be improved, 14(20.59%) recommended that Vocational training should be improved and 22(32.25%) recommended that Counselling should be improved.

12(70.59%) from Ambala, 5(26.32%) from Hisar and 15(46.87%) from Karnal expressed that yoga/education facilities should be improved, 5(29.41%) from Ambala, 3(15.79%) from Hisar and 6(18.75%) from Karnal expressed that Vocational training should be improved and 11(57.89%) from Hisar and 11(34.38%) from Karnal said that Counselling should be improved.

5.6. FINDINGS OF THE STUDY

1. Age of the Juvenile

A kid is not clearly defined under Indian law. Both the 2011 Indian Census and the Indian Constitution, namely Articles 23 and 45, use the age of fourteen as the cutoff for what is considered a kid. In contrast, Indian females reach adulthood at the age of 18 and boys at the age of 21. If you believe Section 82 of the Indian Penal Code from 1860 and currently Section 20 of Bhartiya Nyaya Sanhita, 2023, nothing done by a child under the age of seven constitutes an offence. The age of criminal culpability is increased to twelve years old under Section 83, now Section 21 under BNS if a minor has not yet attained the cognitive maturity to comprehend the gravity of his or her actions and their potential consequences. As of 1986, the minimum age to be considered a juvenile was 16. Section 15 of the Juvenile Justice Act, 2015, modifications treat all juveniles under the age of 18 equally, with the exception of those who commit horrific crimes between the ages of 16 and 18, who may be punished as adults. The age limit was increased to 18 in 2000.

For all safety reasons, it is strongly recommended that the minimum age be set at 18 years old. Among them is the employment age, which means that there are legal repercussions for anyone who employ someone under the legal age of 18.

2. Profile of Juveniles

The socio-demographic profile of the juveniles indicates that those who were vulnerable to delinquency, were sixteen years old and above. An extensive section of children in conflict with law were adolescents.

Most of the juveniles were literate but they lack of higher education. A vast section of children in conflict with law were mostly educated and above 16 years of age. Thus, as a prevention strategy the dropout rate may be checked and opportunity should be provided to continue education for those released from home.

A majority of cases, the juveniles were dependent upon their father and others were the daily wage labourers and were engaged in labour as factory worker, painter, waiter, carpenter, house help, plumber etc.

A majority of juveniles were studying and working before entering the institutions. This indicates that there is a possibility to rehabilitate them so that they can study or work post their release. There is an opportunity to enhance the skills inside the home for who were doing nothing so that they can look for employment opportunity after their release.

Majority of juveniles responded that they will study after the release from home. The juveniles may be provided with educational opportunities inside the homes so that they can continue their study after the release without long gaps.

Addiction was also found among the juveniles. Preventive measures should be taken by the authorities so that the addicts do not go back to the same way after they will be released. There is a link between addiction and delinquency, juveniles are more vulnerable to delinquent acts because of addiction and peer influences.

3. Nature of Offence

Although the majority of respondents were found guilty of serious offences that would have rendered them liable to adult trials under the JJ Act of 2015, the investigation into these cases is still ongoing due to the fact that the act of 2015 does not specify a deadline for the extension of such enquiries.

4. Company at the time of Commission of offence

Most juveniles committed the offence with other adults and solo offending was also found. Delinquency is often concluded to occur with another peer. The juveniles were vulnerable to commit crime at the command of adults. However, it is observed that relationship with other peer reduces with an increase in age. There is a slight drop in offending with other juveniles.

5. Recidivism

Most of the juveniles were first time offenders and a few were recidivists. There is a link between socioeconomic background and reoffending as well, where those from poorer background were at a greater risk of reoffending.

The juveniles with a history of stealing were the recidivist as compared to other offences.

6. Confinement in Judicial/Police Custody

Under section 10 of the JJ Act of 2015 lay out that a child can never be kept in police lockup or regular jail, the police must bring the juvenile before the JJB within 24 hours of apprehension. In the study, majority of cases were found where the respondents had been confined in police custody for more than 24 hours before being sent to the homes or before JJB. It was the violation of the principles of presumption of innocence, dignity and safety of the child.

When the inmates were confined in police custody, majority of juveniles had made their claim of juvenility before the police and a few of them had made their claim before the court.

7. Behaviour of Police Officials

The bulk of the minors who came forward claimed to have been tortured at the hands of the aggressive police officers. The statute from 2015 mandates the immediate transfer of the kid to the Special Juvenile Police Unit upon capture. Even though the authorities should have received training on how to handle minors, the Central Intelligence Agency has been known to torture the majority of the children held at the facility. Human rights are being violated.

Any police officer engaging with a minor must be wearing civilian clothing, not a uniform, under Rule 86(5) of the Model Rules 2016. It is contentious that uniformed police officers contacted the vast majority of the minors.

When dealing with juveniles, police officers are expected to talk gently and politely in order to respect the children's dignity and self-esteem, as stated in Section 86 (6) of the Model Rules 2016. Results demonstrate that most respondents experienced accusatory and stigmatising language, regardless of age or kind of crime. According to Section 3(viii) of the Juvenile Justice Act, 2015, Principle of non-stigmatizing semantics: Adversarial or accusatory words are not to be used in the process pertaining to a child. In their interactions with the juveniles, police officials used abusive language and terms such as arrest, remand, accused, chargesheet, delinquent, jail, etc.

8. Provisions of Legal Aid

The obligation for ensuring that minors get legal assistance via legal service agencies is placed on the JJB under Section 8(c) of the Act of 2015. Regardless of their socioeconomic situation, the researcher sees that most adolescents did not get legal help.

9. Likeability of the Environment

A child-friendly atmosphere that supports the child's growth and development is the duty of the institution, according to the 2016 Model Rules. The houses must not give the impression that they are prisons.

Upon entering the residence, the majority of the minors immediately said that they dislike the atmosphere there. Given that many of the youths were economically disadvantaged, it's not surprising that several of them expressed a preference for the safety and stability of home life over the challenges they faced outdoors.

10. Discrimination based upon gender, age, religion, caste or socioeconomic status

All of the juveniles stated that they do not feel discrimination based upon gender, age, religion, caste or socioeconomic status.

11. Lack of separate residential facility based on the Age Groups

Juveniles are segregated inside institutions according to age, mental competence, and kind of offence, as emphasised in Section 47 of the JJ Act of 2015 and Section 29 of the Model Rules of 2016.

There was no effort made in this regard, all of the inmates inside the homes were housed together in dormitories except in Ambala where the number of inmates were 26 only.

12. Requirement of Better infrastructure

Rule 29 of the Model Rules of 2016 lay down the minimum requirement that must be adhered to in the homes. With the minimum area requirements, the dormitories, bathrooms, toilets, kitchen, dining halls, sickrooms, libraries, recreational rooms, stores, office rooms, counselling and guidance room, workshops, residence of the superintendent, Boards and committees' room to be set up inside the institutions. Not only the majority of the inmates but the staff of the institutions stated that the institution requires a better infrastructure.

13. Quality of water for Drinking and Sanitation

The majority of inmates who lived in the houses said the water was of ordinary quality.

14. Quality of Pest Control

A yearly pest control facility is required in all residences under Rule 31 of the 2016 Model Rules for Sanitation and Hygiene. The survey indicated that most of the convicts thought the quality of the pest control was below average, and the fact that it's only done once a year is even more surprising.

15. Quality of Clothing/Bedding

According to the Model Rules of 2016, clothing and bedding must be appropriate for the size and weather. Sanitation and hygiene measures include washing bedding twice a week and disinfecting it once a year. However, most juveniles and inmates felt that the provided

clothing and bedding was of average or below-average quality. In these houses, the quality of the linens and apparel is not a priority.

16. Quality and Adequacy of Bathrooms

A well-lit and airy facility with one bathroom for every ten children and one toilet for every seven children is required under the Model Rules of 2016. On the other hand, most convicts thought the restrooms were adequate. Overcrowding and insufficient toilet facilities were among the issues highlighted by the results.

17. Quality of Kitchen

According to the regulations of 2016, it is necessary to wash vegetables and prepare meals in a sanitary way. Cleaning the floor, slabs and gas (burner) after each meal is a must. The youths' opinions on the kitchen's cleanliness and quality were mixed, with the general consensus being that it was mediocre.

18. Quality and Quantity of Meals

The 2016 Model Rules make the institution's dietary requirements very clear. The given dietary guidelines and minimal nutrition standard place more emphasis on quantity than quality. A large portion of the detainees thought the food was below ordinary, while the majority said it was of average quality. The youngsters are required to be given four meals a day, including breakfast, according to the rules. But everyone who took the survey reported getting only three-square meals a day.

19. Individual Care Plan and the Post-release Plan

An individual care plan that seeks the rehabilitation and reintegration of the child is to be established for the kid who is in conflict with the law, as stated in Rule 11 (3) of the Model Rules of 2016. In order to help the juvenile become a responsible adult, it is important to develop a plan that takes into account his physical and mental health as well as his emotional and social requirements. This plan should be discussed with the juvenile and his family. According to the researcher, every single responder said that they were unaware of

any kind of individual or post-release plan. It follows that the juveniles were not included in the process of developing their individual care plans, which would have meant that the Act's requirements would have been disregarded.

20. Dearth of vocational training

In order to guarantee that the children are prepared to support themselves upon release, the Act of 2015 mandated vocational training under many sections. The current state of implementing these regulations is terrible, despite the fact that they are an integral aspect of rehabilitation, reintegration, and reformation.

None of Haryana's observation homes or places of safety offered training. Without exception, every single responder said that they were not given any kind of vocational training.

21. Need of open schooling

The provisions of encouraging inmates for open schooling and formal education are a sure way to boost confidence of children so that they can live a better life outside the institution after release. There was no formal education provided by any of the homes and the juveniles were also not encouraged to take up open schooling. Majority of respondents reported that they were not encouraged to take up voluntary services or open schooling. Moreover, tutors were not available in any of the Observation/ Place of Safety.

22. Therapy/Counselling

The foundational component of Act's success is therapy and counselling. Each juvenile receiving individualized care for the purposes of assessing his mental health and rehabilitating, reforming, and reintegrating is a cornerstone of the Act's regulations for treatment and counselling. Counsellors, psychologists, and therapists seldom worked together during trials involving horrific crimes, and there weren't enough resources to deal with the influx of children into the system.

No treatment was administered to the majority of the minors. Fewer than 5% of the youths had repeat sessions of treatment. Although some youths had participated in both group and individual treatment, the vast majority had only participated in group sessions. Many people who have tried therapy in the past have said that they have not benefited from it. The majority of the offenders rated the counselor's attitude and performance as ordinary.

23. Poor infrastructure of Juvenile Justice Board

The Government of Haryana operates all three of the Juvenile Justice Boards that are under consideration in Ambala, Hisar, and Karnal. While there were waiting areas for juveniles in Karnal, none were present in Hisar or Ambala. Juvenile Justice Boards/ Place of Safety of all the three districts does not have a waiting room for parents, they were waiting either in the corridors and grounds of the Observation Homes.

In neither of the Juvenile Justice Board, there are rooms available for the board members and the probation officer. At Ambala, there is no room for the Principal Magistrate. The Juvenile Justice Boards in Ambala and Hisar similarly do not have toilets or drinking water facilities available for parents, attorneys and visitors.

24. Opinion and suggestions of JJB regarding Observation Homes/ Place of Safety

The facilities offered at the observation homes, according to the Juvenile Justice Boards of Ambala, Hisar, and Karnal, to a certain extent adequate but need to be improved. According to the Juvenile Justice Boards of the three selected districts, the observation homes should appropriately provide for its residents' basic necessities, vocational training, and counselling.

The Juvenile Justice Boards of Ambala, Hisar, and Karnal stated that there is a lack of (i) staff members with the observation homes, (ii) security guards, (iii) vocational training and teachers, (iv) medical board, (v) infrastructure, specifically looking at the deficiencies or loopholes in the infrastructure and facilities of the observation homes. Both the counselling offered, and the vocational training offered inside the observation homes need to be enhanced. For the juveniles, yoga and educational should be available. Social workers

advised the responsible staff to set up separate residential facilities, clean restrooms, and fresh meals for the juveniles.

25. Lack of arrangement of transportation

All the staff members from three districts stated that there was no transportation facility available with any of the Observation Home/ Place of Safety for taking Juveniles from one place to another for Board proceedings and for medical check-ups etc.

26. Child Abuse inside Observation Homes/ Place of safety

Majority of staff members of the three districts mentioned there were incidence of children being abused or abusing other children in the homes which include physical abuse and verbal abuse. This effects the discipline inside the home.

27. Lack of orientation training for staff members

Majority of staff members revealed that there was no orientation training conducted for the staff members. The only staff members who received orientation training were the House Fathers and the superintendents of the Observation Homes, no other staff members received any training. The staff members were not fully trained to deal with juveniles in conflict with law.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

6. MAJOR INSIGHTS AND RESEARCH OUTCOMES

According to the Indian Legal System, Juvenile Justice refers to the legal system that establishes justice for children and adolescents. This method protects juvenile crime or delinquency in addition to giving the adolescent a specific treatment. Juvenile Delinquency refers to crimes or wrongdoings committed by someone under the age of 18. Juvenile crime rates are currently rising, which has sparked a national discussion on the need to change how age is determined for juvenile justice cases. The suspected juvenile's age is a key factor in assessing his or her maturity level.

The subject of whether or not, adolescent offenders should be treated as adult criminals has also been highlighted by the rise in crime rates. The appropriate response to this is the JJ act. Additionally, Lawrence Steinberg contends that while the crimes done by teenagers are the same as those perpetrated by adults, young people should be punished less severely since they are seen as naturally more culpable.¹ In accordance with the definition of a child in conflict with the law, juvenile offenders charged under Section 2 of the Act's Subsection 13 should not be tried in court as adults and instead be sent to a child care centre or other rehabilitation facility until they turn 21 years old, at which point they may be transferred to a prison.

Therefore, it can be said with certainty that the current juvenile act considers the accused person's age when determining whether the case falls under the ambit of the Juvenile Justice Act. In many regions of India, reports of adolescents being put through Intelligence

¹ Steinberg Lawrence, "Should the Science of Adolescent brain development inform public policy?" 50 *Court Review* 70, 74 (2012), available at: <http://aja.ncsc.dni.us/publications/courtrv/cr50-2/CR50-2Steinberg.pdf> (last visited on 17 May 2023).

Quotient (IQ) tests to determine their cognitive ability to commit the alleged heinous crimes have already surfaced, indicating uncertainty and inconsistency in the early assessment procedure.²

The delivery method gets murky because Rehabilitation and social Reintegration are not clearly defined by the legislation. R&R is the primary goal of the JJ Act of 2015, but even though it is mentioned in the Preamble of the Act, the exact mechanism by which capacity building and rehabilitation services will be provided, as well as what social reintegration must entail and in what form, are left up to the discretion of the authority and stakeholders. The Legislature's delivery method suffers as well from the lack of a precise description.

The process of rehabilitation and reintegration is one that involves multiple agencies, calls for time, careful planning, and close contact with the child. When imagining the circumstances of a Child in Conflict with Law (CCL), there are numerous aspects that need to be taken into account. These include peer, familial, and sociopsychological effects. CCL need to be rehabilitated and integrated back into society, which can be done by finding the correct sponsorship, placing them in foster care, and providing effective aftercare. The UNCRC, which the Indian State adopted in 1992, acknowledges the significance of making sure that CCL are excluded from the usual formal system of criminal jurisdiction. India agreed to provide the necessary diversion provisions and procedures for CCL as it joined the CRC as a party. Such compliances must also follow the minimal approach standard.

The process of rehabilitation requires all child care facilities, as well as the other agencies involved, to make a systematic, structured, and planned effort to intentionally stress on the kid's self-development and future prospects. The social reintegration of such CCL back into an active community is a crucial component.

² Bhavya Dore, *A year since the new Juvenile Justice Act came into being, chaos rules its implementation* Scroll.in (15/01/2017), available at: <https://scroll.in/article/826668/a-year-since-the-new-juvenile-justice-act-came-into-being-chaos-rules-its-implementation> (last visited on 12 Aug, 2023).

The rehabilitation process can be strengthened by preventing juvenile offences and implementing appropriate, timely interventions. When a child enters the juvenile system, it is important to ensure that all of their basic developmental needs are met. This includes seeing to it that not only are their physical needs met in order to promote healthy growth, but also that their mental and emotional needs are met in order to foster their intellectual and creative potential. A CCL should experience healing and positivity in the institutional homes where there is a strong spiritual and interpersonal link. As a result, while CCL is being rehabbed, attitudes must change from a need-based approach to a rights-based approach.

In order to prevent a kid from becoming a repeat offender, it is essential that they get early and comprehensive rehabilitation and reintegration services after being placed in a child care facility after an encounter with the law. As first-timers, it is important to take precautions to prevent recidivism as children often attend these institutions for little offences.

Therefore, while the institutional structure for child care needs to be completely changed for successful and effective rehabilitation and reintegration, it is important to keep in mind the new issues of urbanisation that could have an impact on recidivism and relapse.

It should be stressed that proper careful preparation is necessary to guarantee the greatest results may be achieved from them using a defined technique. Indeterminate sentencing is predicated on the idea of rehabilitation, whereas determinate sentencing is predicated on the desire for punishment or vengeance.³ It is imperative that the CCL's special homes, observation homes, and houses of safety remain really safe places and do not harbour lifelong offenders.

Researchers have linked the Act of 2015's main results to its provisions in order to identify gaps and difficulties in the law's application and effects. Making a socioeconomic profile of the youths who join the system requires an examination of their lives prior to

³ Barry C. Feld, *Case and materials on Juvenile Justice Administration* 890 (American Book series 2nd edn. 2004).

institutionalisation. Research on youths involved with the justice system provides a window into their lived experiences, including the factors that lead to their involvement with the system and the care they get from institutions, in relation to the requirements outlined in the Act.

Information gathered from the youths living in the home's sheds light on their current circumstances and analyses the rehabilitation and reintegration programs that were made available to them. According to the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, the focus is on the quality of services rather than the number. All along the conclusion, we have gone back to the initial hypothesis and checked them to see how strong they are.

Haryana does not yet have all of the necessary institutions in place to comply with the JJ Act. The current systems lack the necessary personnel and resources to properly execute the JJ Act. Employees fail miserably in their roles because they lack the necessary attitude and ability. The juvenile justice system's efforts at rehabilitation and reform are hindered by this scenario.

6.1 GROUNDS FOR HYPOTHESIS JUSTIFICATION

Hypothesis- That lack of trained officials and well-equipped infrastructure has defeated the objective of the legislation.

Findings: - The enumeration proves the truth of the hypothesis.

Reasons: -

1. Overcrowding prevented the Hisar and Karnal Observation Homes from following the requirement of section 47(4) of the Juvenile Justice (Care and Protection) Act 2015, which states that all children suspected of being in conflict with the law must be separated into separate facilities based on their age, gender, physical and mental status, and the type of the offence they are accused of committing. There is a

significant disparity between the total number of convicts staying in Haryana's observation homes and their ability to house them.

There was not enough space in rooms for boys, number of beds were insufficient, availability of bathrooms, toilets etc were average in the Observation homes which is in contravention to the Model Rules, 2016 of Juvenile Justice Act, 2015.

2. The majority of the youths surveyed felt that the clothes and bedding given was of ordinary quality, and they also expressed dissatisfaction with the cleanliness and hygiene of the drinking water, toilets, and other communal areas of the observation homes. Pest management and mosquito protection were not up to par. The Observation Homes' kitchens were not so good in condition, and the meals served there were of average quality. The 2016 Model Rules make it crystal clear that the institution must adhere to a specific diet plan. Dietary guidelines are offered, with a minimal requirement that emphasizes quantity and quality. The inmates said that the meal quality was ordinary, with a large segment reported that it was below average. In accordance with the Rules, children must receive four meals per day, including breakfast. All of the respondents, However, respondents said that they only received three meals daily.
3. Although most inmates feel that the Observation Homes and Places of Safety should provide vocational training, none of them is getting any training right now. Adequate measures for rehabilitation and reintegration of Juveniles are included in the Juvenile Justice (Care and Protection) Act 2015, the principal legislation for children in conflict with the law. There is a dearth of resources for vocational training and skill development inside Haryana's observation homes and places of safety, despite the fact that this is a requirement of the JJ act 2015 (section 53). Additionally, none of the Places of Safety or Observation Homes had yoga or music instructors on staff.
4. The rules that encourage inmates to pursue formal education and open schooling are a reliable approach to increase children's self-confidence so that they can lead

better lives once they are released from the institution. None of the homes offered formal education, and the juveniles weren't even encouraged to join open schooling. The majority of respondents stated that they were not encouraged to participate in volunteer work or open schooling.

5. Rule 38(8) of the Rules of 2016 requires three permanent counsellors for the capacity of 100 inmates and two counsellors for the capacity of 50 inmates, despite of that there were no permanent counsellors available in Observation Home Ambala, Hisar and Place of Safety Karnal. The juveniles should be counselled regularly by well expert counsellors to change their mental state.
6. There was no transportation facility available with any of the institutions of the three districts of the State of Haryana.
7. There are several duties assigned to the staff members of the Observation Homes/ Place which includes handling children with love and affection, taking proper care of children and their welfare, to maintain discipline among children, looking after the safety and security arrangements etc. but data reveals that staff members were not fully trained to deal with juveniles.
8. In order to carry out their jobs properly, police personnel who interact with minors are required under the JJ Act, 2015 to undergo specialised training. In several cases, the police behaved inappropriately against minors. The police were unfriendly towards the minors, they wore uniforms when they arrested them instead of civilian clothing, and they held the minors for almost 24 hours before releasing them to Observation Homes. Along with violating the adolescents' human rights, the police officers' use of stigmatising language that violates their best interests, safety, the assumption of innocence, and the ideals of dignity and self-worth. Inadequate training and orientation prevented the police from internalising the fundamental concept of law.

6.2 SUGGESTIONS BASED ON FINDINGS

On the basis of the testing of hypothesis and conclusion, following suggestions are put forward-

1 Efficacy of Juvenile Justice System

All relevant parties, including the State, guardians, parents, society, and those who are responsible for carrying out the Juvenile Justice Act, should cooperate on the subject of the effectiveness of the juvenile justice system.

2 Child-friendly environments should be provided

Homes should not be constructed like prisons. The entire setup should work to create a child-friendly atmosphere, and staff members should be familiar with the rules and regulations that pertain to children. Such a setup would satisfy the special requirements of children, and the staff should also have additional training and expertise in good communication with the children. Games, sports, and other useful programmes may be arranged in observation homes and institutions for the benefit of juveniles, and the children may be encouraged to take part so that they can connect with society. With the aid of volunteer organisations, various cultural events should be organized in the homes during festive seasons.

3 Role of Police officials

The duty of the police department in ensuring the safety of children is equally crucial. The terms of the JJ Act, however, are not well understood among police officials. Consequently, the Principal Magistrate, Juvenile Justice Board members, child welfare committee members, and non-governmental organisations (NGOs) should all take part in awareness efforts that take place at the police station level.

Each state should have its own juvenile police unit, and those units should be required to undergo extensive training in child psychology and social work. The public prosecutors in charge of the cases should undergo sensitivity training and

work closely with the juvenile police. Upon arrest, a minor who is in conflict with the law must be immediately transferred to the designated juvenile police unit or another officer.

4 Child law should be a basic skill for all justice professionals

All the professionals should have a basic understanding of the legislation pertaining to children, which is highly desired. The training of the justice sector on human rights should include all actors of justice, including the magistrate, prosecutors, police, social welfare officers, probation officers, staff members, and superintendent of observation homes. This will ensure coordination and cooperation of local government and will make the judicial system more sensitive to the rights of children.

5 Vocational training and education should be provided

Regular educational services or vocational training are not provided by the observation home/Place of Safety in Karnal, Hisar, and Ambala. While youngsters reportedly involved with the law may find temporary refuge in observation homes, the researcher argues that it would be more beneficial to provide them with short-term skill development programs so they may engage in productive activities during their leisure time.

According to the study, gainful vocational training combined with job placement in fields like healthcare, computer technology, office administration, skilled trades, etc. can significantly lower the possibility of reoffending among young people. According to the Observation Home's superintendent, the State Government should provide job-oriented vocational training in fields like welding, hotel administration, and car mechanics to be given to children in the Special Home in accordance with their interests and age.

The government must make every effort to give amenities, particularly educational facilities, to the juveniles released from institutions. In this regard, the government

may also think about providing juveniles preference in government jobs and making provisions for financial assistance for self-employment. This would aid in the juvenile's social rehabilitation and reintegration into society.

6 Training standards and Capacity building for Juvenile Justice Personnel

A sufficient number of dedicated, committed, and professionally competent probation officers must be recruited if the objective of rehabilitation and reintegration of children in conflict with the law is to be accomplished. Additionally, to ensure quality, only certified probation officers with a degree in social work, psychology, or a related social science and extensive introductory training in child-related issues may create social investigation reports.

The Observation Homes, Special Homes, and Places of Safety must employ qualified personnel. These employees must receive training when they are recruited. The staff members sent from different departments to these homes are not committed to functioning in the children's best interests. Dedicated personnel must be identified, provided with the necessary training, and only then integrated into the homes for children.

7 Establishment of more Observation Homes in the State of Haryana

There are only four observation homes and one place of safety in the State of Haryana. The existing homes are overcrowded as compared to the sanctioned strength. More homes would prevent overcrowding of children in existing Observation Homes and also keeps their families close.

8 Hygiene and sanitation and other facilities should be improved

Every child deserves to grow up in a safe and clean environment. Children are not only able to thrive but also get off to a healthier start in life when they have access to clean water, basic toilets, and excellent hygiene habits. The basic needs like drinking water, cleanliness of bathroom/ toilets, bedding facility inside the child

care institutions should be improved. Moreover, a number of infectious diseases are less likely to spread when regular cleaning and disinfection procedures are used.

9 Legal assistances

Children who are in ‘conflict with law’ should receive priority legal aid from the legal authorities.

10 Individual care plans

The individual care plan is the backbone of the juvenile justice system's initiatives to rehabilitate and reintegrate youth who have had interactions with the law. Individual care plans are no longer to be prepared by probation officers, child welfare officers, or recognised non-profit organisations, but rather by a multidisciplinary team consisting of the adjudicating authority (JJB), mental health specialists, experienced psychologists/counselors, and staff members of the place of safety/special home (Superintendent of the house, Probation Officer, and Counsellor).

The child must be evaluated on a regular basis by the same team, which must also decide whether or not to release the child after rehabilitation. This interdisciplinary team, which includes a wide range of subject-matter experts, is likely to create effective individual care plans (ICP) and reach unbiased release choices. This interdisciplinary team, which includes a wide range of subject-matter experts, is likely to create effective individual care plans (ICP) and reach unbiased release choices. Given that they are more knowledgeable about the behavioural issues their children are having, parents and families may also be involved in the creation of the ICP. To enable the JJB to easily use their services whenever necessary, the aforementioned panel of experts must be kept up to date by the respective District Child Protection Units (DCPU).

11 Accountability of Child Care Institutions

The numerous juvenile justice system components that deal with children who are in conflict with law must be overseen by an independent body. It would be preferable to avoid any conflicts of interest if an independent authority were established to inspect child care institutions on a regular basis. It also makes it possible to provide an unbiased report in cases involving child care institutions run by the State Government. A committee of judges must be established who can conduct unexpected inspections to make sure the children are residing in a safe environment, and the child care institutions must be placed under the legal supervision of the High Court. These institutions are probably going to become more effective, safe, and accountable if they have an established complaint procedure.

12 Public Awareness-

Raising public awareness of the plight of juvenile offenders is crucial if we are to empathise with these kids and assist in their smooth readjustment to society. Religious organisations, educational institutions, colleges, NGOs, and the media must take action to educate the public on this issue.

13 Regular Inspection of Juvenile Homes

For the juvenile justice system to function properly, the juvenile homes must be operational. The place of safety, special home, and observation house should all be subject to regular inspections by the monitoring authority to prevent juvenile offenders from using them as safe havens to research and perpetrate new crimes. The administration is required to form inspecting committees to oversee the regular inspection of all juvenile homes. These committees will inspect all facilities used by the juveniles and keep an eye on them.

14 Psychological Therapy

Children need to be handled carefully due to their young age. They are particularly susceptible to influence from flimsy things and often act in exactly the same ways in real life. However, such behaviour can be curbed by the use of appropriate psychological treatment, which should be provided by the institutions. The juveniles inside the homes must learn to follow social norms and moral principles. Therefore, such psychological counselling can be crucial in shaping their conduct and transforming them into helpful citizens.

15 Need for Proper Infrastructure

Adequate and accurate infrastructure is crucial for achieving long-term justice, according to the juvenile justice system. In order to ensure that the juvenile justice system has enough teachers, social workers, probation officers, and counsellors, it is necessary to evaluate the number of youths housed in juvenile homes. Once again, it's not enough to just have enough staff; you must also ensure that they are well trained. Based on the results of the empirical investigation, nevertheless, it seems that Haryana is short on infrastructure.

6.3. GENERAL SUGGESTIONS

1. A particular training programme must be developed, and the Board's officers, including the Principal Magistrate, shall receive training in child psychology and child welfare, as required by Section 4 of the Act.
2. The Board should be provided with a roster of advocates, psychologists, counsellors, clinical psychologists, mental health specialists, institutions, persons, special needs homes, observation homes, and non-profits that are committed to child welfare. You may employ the services of these people. Officers staffing juvenile courts and boards need to be cognisant of the developmental requirements of juvenile offenders if society is to adapt to new social science research and be prepared to fund the trial of possible new treatments for offenders.

3. Age determination is an important consideration for effective implementation and juvenile relief. Many children in India do not have birth certificates for a variety of reasons, so it is important to implement the registration of children's births and deaths fully.

It is exceedingly subjective and occasionally quite wrong to determine whether a juvenile between the ages of 16 and 18 committed the offence while still a juvenile or while still an adult. Furthermore, under the new law, children are now being tried in children's courts, which defeats the purpose of these courts as they were originally created to handle crimes committed against children.

Additionally, the Children's Court will decide the person's fate once they reach the age of 21. The Court will determine whether a person has "undergone reformative adjustments" or "can be a productive member of the community" in accordance with Section 21 of the Act. A highly subjective and arbitrary enquiry of this nature violates Article 14 of the Indian Constitution.

4. For the purpose of debating the programme for the welfare and improvement of children, a monthly group meeting of all departments involved in their welfare, such as the District Judge, Juvenile Justice Board members, welfare officers, and superintendents of observation homes, should be organised.
5. Up until the age of 14, all children living at home should be required to attend school. By making a course in moral science and civics required for individuals who are living in homes, they should be provided with the best resources and opportunities available at any boarding school (hostel). Juveniles must be granted leave time and released from custody for exams for their welfare in order to continue their education. Juvenile education in reputable institutions should be sponsored. Courses on personality development ought to be set up.
6. Games, sports, and other useful programmes may be established in observation homes and institutions for the benefit of young people, and the young people may

be encouraged to take part so they can interact with society. With the aid of volunteer organisations, various cultural events should be planned in the prisoner houses during holiday seasons.

7. As the major goal of JJS is to protect children, it is necessary to take steps to maintain the child's integration into the family and society at large. To facilitate the integration of the children with the family, an advisory board should be constituted at the federal, state, local government, and municipal levels. Infrastructure and facilities must to be offered to the advisory boards so that they can deliver the desired quality of output.
8. Alternative approaches to dealing with children must be developed. It serves no value to merely rename the current structures as by done the JJ Act. The government should begin testing out other methods of dealing with children, and following a positive appraisal, they should be incorporated into the law.
9. To prevent juveniles from becoming criminals, the greatest way is to give them the right care and assistance. The complete Juvenile Justice Act, if honestly executed, can prevent situations like the Delhi gang rape by giving young people who might become criminals prompt assistance. The act itself is not the issue; rather, it is how it is being implemented.
10. It is important to pay immediate attention to India's rising juvenile delinquency rate. Although the government has passed numerous rules and regulations to lessen the frequency of juvenile infractions, the results are ineffectual, and the legislative objective is not being fulfilled. This is because present juvenile laws do not have a deterrent effect on juveniles. Everyone has a responsibility to address the problem of juvenile delinquency, including society, parents, treatment centres, and so on. This real-world issue will be resolved quickly if all of these elements come into play.

6.4. LEGISLATIVE SUGGESTIONS

The government has made significant improvements to the juvenile justice legislation of 2015; it is still necessary to reexamine it in light of other relevant laws. The present juvenile justice statute can be modified in a few ways

1. Convictions for petty, heinous, and serious offenses must be made more clearer under the current JJ Act.
2. Degree in child psychology should be mandatory for the selection of the members of the board under section 4(3) of the JJ Act, 2015.
3. In accordance with this act's section 13(1), it is necessary to notify the parents of the child who violates the law. The circumstances that will arise in the event that the parents cannot be located must also be mentioned.
4. Section 15(1) requires a precise explanation of the credentials of experienced psychologists, social workers, and other experts.
5. According to Section 18(1)(g), the Board may transfer a child to a "place of safety" rather than a "special home" if the child's behaviour and conduct have been such that doing so would not be in the child's or other children's best interests. This is extremely dangerous since the Board's discretion must be exercised carefully and not arbitrarily. Under this clause, a young child who is found to have committed any "petty" offense may also be transferred to a "place of safety," which is essentially designed for 16 to 18-year-old youngsters who have been accused or proven to have committed "heinous" offenses. The older inmates at the "place of safety" may abuse the young child if he is placed with them, or he may become a harsh criminal under their influence. This clause should therefore be removed completely. Such a child may be placed in the "special home" itself, where he will be kept apart from other people and receive counselling and other support.

The future of this nation would be saved if policymakers used these recommendations to further enhance the juvenile justice delivery system. In a nutshell, India's juvenile justice delivery system has become more popular. Changes must be made in attitudes and perceptions about children's rights. India has made significant progress in the legislative area, but the implementation aspect still needs work. Enacted laws must be properly applied in order to fulfil the intended purpose of promoting the welfare of children. Since providing services to children is no longer a charity, society must encourage children to participate in issues that affect their rights. Adolescents' susceptibility to break the law can be considerably reduced by deliberate legislation that is fairly and correctly applied with theoretical vision in interpretation. Then, as future leaders, the young people would make the world a better place for us to live.

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ANNEXURES- I

QUESTIONNAIRE FOR INMATES

A) General

Name: _____

Age: _____

Place of Residence: _____

Family Members: _____

1. Age Group

i. Below 7 []	ii. Below 12 []
iii. Below 18 []	

2. Education Level

i. Illiterate []	ii. Primary []
iii. Middle []	iv. Secondary []
v. Senior Secondary []	vi. Dropout []
vii. Graduate []	

3. Life prior to institutionalization

i. Studying []	ii. Working []
iii. Neither []	

4. Source of Income (Occupation)

i. Self-dependent []	ii. Father []
iii. Mother []	iv. Brother []
v. Others	

5. Is it your first offence?

I Yes []	ii Repeated offender []

6. How was the offence committed?

i. Alone []	ii. With other juveniles []
iii. With other adult []	

7. Nature of offence

i. Petty []	ii. Serious []
iii. Heinous (Rape) []	

8. Intoxicating addiction status

i. Tobacco	[]	ii. Alcohol	[]
iii. Narcotics	[]	iv. Cannabis	[]

9. What do you want to do after being released?

i. Study	[]	ii. Continue previous job	[]
iii. Move to a new job	[]	iv. Vacation	[]

10. During the proceedings, where you ever sent to jail or a police station lockup?

i. Yes (three days)	[]	ii. No	[]

11. Behavior and treatment of officials during your interaction with police:

i. Supportive	[]	ii. Hostile (torture)	[]
ii. Indifferent	[]		

12. Any legal aid provided?

i. Yes	[]	ii. No	[]

13. Were any stigmatizing or accusatory words used by the officials, such as remand, arrest, warrant, charge sheet, trial, prosecution, etc.?

i. Yes	[]	ii. No	[]

14. Do you like the environment of your observation/special home?

i. Yes	[]	ii. No	[]

15. Are there separate residential facilities based on age groups in your juvenile home?

i. Yes	[]	ii. No	[]

16. Is there vocational training being provided here?

i. Yes	[]	ii. No	[]

17. Do you think this training will help you with your life outside the institution?

i. Agree	[]	ii. Neutral	[]
iii. Disagree	[]	iv. Strongly disagree	[]

18. Do you feel the need of other options in vocational training?

i. Agree	[]	ii. Neutral	[]
iii. Disagree	[]	iv. Strongly disagree	[]

19. How would you describe your trainers?

i.	Caring	[]	ii.	Helpful	[]
ii.	Indifferent	[]			
iv.	Incompetent				

20. Do you think this institution requires better infrastructure?

i.	Yes	[]	ii.	No	[]
ii.	Indifferent	[]			

B) Facilities, hygiene and sanitation

21. Clothing and bedding:

i.	Poor	[]	ii.	Below average	[]
ii.	Average	[]	iv.	Good	[]

22. Drinking water, cleaning water and sanitation availability and quality:

i.	Poor	[]	ii.	Below average	[]
ii.	Average	[]	iv.	Good	[]

23. Pest control and protection from mosquitoes:

i.	Poor	[]	ii.	Below average	[]
ii.	Average	[]	iv.	Good	[]

24. Availability of bathrooms and toilets in proportion to the number of inmates and cleanliness:

i.	Poor	[]	ii.	Below average	[]
ii.	Average	[]	iv.	Good	[]

25. Have you been to the kitchen? If yes, then describe the state:

i.	Poor	[]	ii.	Below average	[]
ii.	Average	[]	iv.	Good	[]

26. How many meals are provided in a day?

27. How do you feel about the quality of the meals?

i.	Poor	[]	ii.	Below average	[]
ii.	Average	[]	iv.	Good are you	[]

- 28 **Are you provided with a special diet as needed in sickness?**
i. Yes [] ii. No []
- 29 **Do you get a medical check-up every month?**
i. Yes [] ii. No []
- 30 **Is there a first-aid kit available in your institution?**
i. Yes [] ii. No []
- 31 **Have you been encouraged to take up voluntary service or open schooling?**
i. Yes [] ii. No []
- 32 **Do you attend any kind of school or teaching or formal education?**
i. Yes [] ii. No []
- 33 **Are there any recreational facilities available such as indoor games, music, television, etc.?**
i. Yes [] ii. No []
- 34 **Do you attend regular therapy session?**
i. Yes [] ii. No []
iii. Once []
- 35 **What kinds of sessions are taken?**
i. Groups [] ii. Individual []
iii. Both []
- 36 **Do you find such sessions helpful?**
i. Yes [] ii. To some extent []
iii. No []
- 37 **How do you find the attitude and performance of counsellors/therapists towards children?**
i. Poor [] ii. Below average []
iii. Average [] iv. Good []
- 38 **Have you ever gone out on leave or parole?**
i. Yes [] ii. No []

39 Are you allowed to meet your family and parents?

- i. Yes [] ii. No []

40 What is the level of satisfaction with the available staff quality and quantity of staff?

- i. Poor [] ii. Below average []
iii. Average [] iv. Good []

41 Have you ever been approached by the police in their official uniform?

- i. Yes [] ii. No []

ANNEXURE- II

QUESTIONNAIRE FOR JUVENILE JUSTICE BOARD

GENERAL INFORMATION

Name of interviewer _____

Date and time of interviewee _____ Location _____

INFORMATION ON RESPONDENT

- Designation of the respondent _____
- Gender of the Respondent Male [] Female []
- Qualifications _____

1. Infrastructure/Sitting available with the Board

Particulars	Yes ✓	No X	Remarks
Board Room (run by govt.)			
Waiting rooms for Juvenile in custody			Waiting rooms for Parents
Room for Principal Magistrate			Room for Members
Record Room			
Room for probation officer			Working Computers Drinking Water Facility Toilet
Facilities			
Typist, Photocopy for juvenile and parents			
Schedule sitting (in a week)			Daily Twice in a week
Duration per sitting			Full day _____ Hours
Premises			Outside Court Regular court room
Total no. of sitting during the month			
Number of training (P.M.)			
Number of training (Social Worker)			

2. How many members are there in the present Board?

3. What is the procedure regarding sitting of the Board? How many times does it meet and how often and where? Who convenes the meeting?

4. Was there any orientation training conducted for the members? If yes, by whom?
-
5. Have you ever encountered a difference of opinion among the members on determination of punishment?
- What are the reasons for it?
- (A) Yes [] (B) No []
- Reasons _____
6. When there is a dispute over age how it is determined? What is the provision until determination of age?
- (A) Yes [] (B) No []
- Provisions _____
7. How many cases on average come before the Board in a month?
-
8. How many hours/minutes are spent on hearing a case?
-
9. Are there any difficulties while hearing the case? What kind of difficulties?
- (A) Yes [] (B) No []
- Kind of difficulties _____
10. Broadly what are the nature of cases that come before JJ Board?
- (A) Petty [] (B) Serious []
- (C) Heinous []
11. Is there any mechanism to monitor and follow up the cases of juveniles when they are convicted?
-
-
12. How do you determine the best interest of the Juvenile?
- (A) On the basis of social investigation report
- (B) Nature of the crime committed

- 13. How do you ensure that children in conflict with law gets an idea that they are not criminals and their social integration is made properly?**
-

- 14. What Improvements should be made in the Child Care Institutions?**

- (A) Basic needs [] (B) Vocational programs []
(C) Yoga [] (D) Counselling []

- 15. How would you suggest improving upon the institutions on your experience, particularly looking at the inadequacies or loopholes in the infrastructure and facilities of the Observation homes?**

ANNEXURE-3

**QUESTIONNAIRE FOR STAFF OF THE JUVENILE
INSTITUTION OBSERVATION**

HOME _____

GENERAL INFORMATION _____

INFORMATION OF RESPONDENT _____

Name of interviewee Designation of the respondent _____

Date and time of interview _____ Qualifications _____

Location _____ Gender of the Respondent Male [] Female []

ADMISSION, REGISTRATION AND MOVEMENTS

1. What kind of information or details do you register from a child?

2. What kind of information do you provide to children upon entering the Home?

3. Is there any arrangements for transportation of the juvenile from one place to the other, such as to the court or, back to their homes?

(i) Yes [] (ii) No []

(ii) Don't know []

4. Are there any incidences of children being verbally abused or Quarrelling with each other children in the Home?

(i) Yes [] (ii) No []

(ii) Don't know []

PHYSICAL ENVIRONMENT AND ACCOMMODATION

Total Number		
Establishment Year		
Room for Boys		
Toilet Rooms		
Bathrooms		
Kitchen Rooms		
Office Rooms		
Room for JJB		
Number of Security Guards		
Total Capacity of Juveniles		
Actual number of Juveniles		
	YES	NO
Vocational training programs		
Yoga Teacher		
Teacher for Vocational Training		
Music Teacher		
Permanent Counsellor		
Number of Temporary Counsellor		
Play Ground		
Indore Games		
Number of Child in a room		
Number of incidences escaped		

5. Are there separate residential facilities based on age group in your Juvenile Home?

- (i) Yes [] (ii) No []
- (iii) Don't know []

6. Do the dormitories have enough space for the number of children in the room?

(i) Yes [] (ii) No []

(iii) Don't know []

7 Do you provide the children with sufficient clothing?

(i) Yes [] (ii) No []

(iii) Don't know []

8 How many meals are provided to the children inside the home per day?

(i) One [] (ii) Two []

(iii) Three [] (iv) More than three []

9 Do you think this institution requires better infrastructure?

(i) Yes [] (ii) No []

(iii) Indifferent []

10 Was there any orientation and training conducted for the staff members

(i) Yes [] (ii) No []

11 What are your recommendations for improving the present situation in this Home?

ANNEXURE-4

PERMISSION LETTER TO CONDUCT SURVEY IN OBSERVATION HOMES BY THE WOMEN AND CHILD DEVELOPMENT DEPARTMENT (GOVT. OF HARYANA)

**HARYANA STATE CHILD PROTECTION SOCIETY
INTEGRATED CHILD PROTECTION SCHEME (Govt. of Haryana)
WOMEN & CHILD DEVELOPMENT DEPARTMENT
Bay No.15-20, Pocket-II, Sector-4, Panchkula-134112**

Ref.No. 6956/ICPS/2021

Dated: 17/09/2021

From

Member Secretary (HSCPS) cum Director
Women & Child Development Department
Haryana.

To

Ms. Mausam (Research Scholar)
House No. 846/12
Professor Colony, Thanesar-136118

Subject: Seeking permission to conduct survey in Observation Homes.

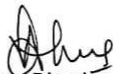
Kindly refer to your request letter dated 08.09.2021 on the subject cited above.

It is intimated that permission is hereby granted to visit following Observation Homes/Place of Safety and Juvenile Justice Boards in the districts Ambala, Karnal and Hisar to fill up questionnaires and conduct survey for Ph.D:

Sr. no.	Name of the OH/POS	Contact no. of the Incharges of the CCIs
1	Observation Home, Near Distt. court , Ambala city (Boys)	Sh. Dipti lal 9034671709
2	Observation Home, 5 Km stone, Barwala road, Hisar (Boys)	Sh.Roshan Lal 9468048008
3	Place of safety-I, Madhuban ,Karnal (Boys)	Sh. Krishan kumar 9991110161

Further, it is directed to follow the provisions of section **74 (1)** of Juvenile Justice (Care & Protection of Children) Act, 2015 "No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a

child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published. (3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both."


Deputy Director (CW)
for Member Secretary (HSCPS) cum Director
Women & Child Development Department
Haryana. 

Endst No. 6957-65 dated: 17/09/2021

A copy of the above is forwarded to the following with the directions to check ID Card before entrance in the CCIs and follow all necessary COVID-19 protocol at the time of visit.

1. District Programme Officers Ambala, Hisar and Karnal.
2. District Child Protection Officers Ambala, Hisar and Karnal .
3. Superintendents of the CCIs of Observation Home, Ambala and Hisar and Place of safety-I, Madhuban ,Karnal.


Deputy Director (CW)
for Member Secretary (HSCPS) cum Director
Women & Child Development Department
Haryana.