

## Juvenile Justice in Asia Pacific within a Human Rights Framework: A Case Study of India

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### Abstract

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*The paper analyzes juvenile justice system in the Asian Pacific countries (Cambodia, India, Papua New Guinea, the Philippines, Thailand, Vietnam, etc.), specifically in India. The paper argues that although the countries in the Asian Pacific region are making efforts to adopt juveniles' rights at the legislative, administrative and judicial level, they still lack the ability and will to enforce them. It explores how well juvenile justice systems comply with the international laws and standards of juvenile justice. Children in conflict with the law continue to face abuse from the justice system, despite the international standards established to combat this issue. The paper identifies flaws in the existing juvenile justice systems and considers initiatives to improve and prevent juvenile delinquency.*

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Advancing justice for children, including juvenile justice<sup>1</sup> by making and implementing national laws, policies and procedures is the most important strategy to protect children's rights in any society. The Convention on the Rights of the Child (CRC) was adopted twenty five years ago, and there is no doubt that the world has made good progress towards promoting children's rights since then. However, it can be argued that the international community still lacks the ability and the political will to protect their rights. These problems exist in high volume in the Asian Pacific countries, namely Cambodia, India, Papua New Guinea, the Philippines, Thailand, Vietnam, etc. This paper will explore the ineffective execution of juvenile justice, specifically in India. This case study will clearly illustrate that the children's rights are not fully protected by the law in India.

While many national governments have adopted the Convention on the Rights of the Child (CRC) by making laws & appropriating legislative, administrative, social, and economic measures to protect children from all forms of physical or mental violence, abuse, abusive treatment, and exploitation, they often fail to implement these laws/policies. Additionally, state endorsement of international human rights such as children's rights is generally not matched by the state's timely and fulsome reporting or by a willingness to respond affirmatively and promptly to critical comments made by the control committees. Although compliance committees are able to make their contribution to long term promotion through socialization and educational initiatives for human rights, states need to report and subject themselves to different types of review (Forsythe, 2012:106).

### The Convention on the Rights of the Child (CRC)

CRC is a binding international treaty adopted by the United Nations in 1989. The speed at which this Convention came into force worldwide was stunning. By 2002, it had 191 state parties which is by far the most of any international human rights treaties (Donnelley, 2003:150). Most widely ratified human rights convention (CRC) currently in existence has 194 state parties with the exception of United States of America, Sudan, and Somalia.<sup>2</sup> As of 2011, compliance committees- the Committee on the Rights of the Child- exists under the CRC convention, however, it has no authority to receive or review complaints from individual.

The Convention established an internationally agreed upon definition of a child as any person under the age of 18 years (Article1).The Convention clearly specifies states that it is the obligation of the state parties to

Take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child (CRC, Article 19).

The other of the Convention articles guarantee:

Best interests of the child: In all actions concerning children, the best interest of the child shall be the major consideration (Article 3). Implementation of rights: The obligation on the State to ensure that the rights in the Convention are implemented (Article 4). Life, survival and development: The right of the child to life and the state's obligation to ensure the child's survival and development (Article 6). Name and nationality: The right from birth to a name, to acquire a nationality and to know and be cared for by his or her parents (Article 7). Abuse and neglect States have the obligation to protect children from all forms of abuse; Social programs and support services shall be made available (Article 19). Economic exploitation: The right of the child to protection against harmful forms of work and against exploitation (Article 32). Sexual exploitation, Abduction, sale and traffic: Protection of the child from sexual exploitation including prostitution. State has an obligation to prevent abduction, child sale and traffic (Article 34, 35).<sup>3</sup>

Torture, Capital punishment: No child shall be subjected to torture or other cruel, inhuman or degrading treatment punishment and unlawful arrest. It also specifies that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37). Recovery and reintegration: State obligations for the reeducation and social reintegration of child victims of exploitation, torture or armed conflicts (Article 39).<sup>4</sup>

Article 40 on the juvenile justice specifies the fundamental due process rights of child offenders. This includes the rights of the presumption of innocence, information about the charges, legal assistance for defense, remain silence, and get an interpreter. The article reinforces that a restorative approach should be adopted to deal with children, instead of opting for punitive measures. It also includes the measure of using alternatives to judicial proceedings and institutional care ensuring the child's best interest and proportionate to their offence and circumstances (UNICEF, UK).

Human Rights Watch argues that the Article 37 requires the national governments to use detention as a measure of last resort and for the shortest period of time. However, according to Human Rights Watch, nearly one million children are detained in prisons on any given time. Many of them are detained without charge, for non-violent or minor offenses. Tens of thousands more are detained only due to their immigration status (illegal immigrant or non-citizens). Furthermore, ninety percent of the world's children population exists in countries where some form of physical violence against children and corporal punishment is still legal<sup>5</sup>. The United Nations Children's Fund (UNICEF) claims that juvenile justice affects children involved in criminal activities, victims of poverty, abuse, and exploitation. Street children and illegal immigrant children are often treated as criminals and the child victims of trafficking and/or sexual exploitation are often re-victimized in criminal justice systems.<sup>6</sup>

### **Juvenile Justice in Asia-Pacific**

"Asia, being large and extremely diverse, not to mention being the locus of much criticism of western models of political liberalism, manifests no intergovernmental organizations for human rights" (Forsythe, 2012:191). All the members of the Association of South East Asian Nations (ASEAN) have ratified and are parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). "However, ASEAN (Association of Southeast Asian Nations) did inch towards some human rights activities, but not very much".<sup>7</sup>

Asia-Pacific region has been experiencing rapid economic and social development, but the region still faces challenges of prompting and protecting the rights of children in conflict with the law. A number of countries of the region are undertaking significant initiatives to address the rights of children in conflict with law, violence against children, child trafficking, witnesses of crime, etc. However, many others countries lack definitive juvenile justice mechanisms to guarantee the rights of children, particularly of those in conflict with the law and order.

### **Juvenile Justice Implementation initiatives**

Based on earlier initiatives taken by New Zealand and Australia, many other countries in the region are adopting "diversion" for juveniles.

Diversion is “an attempt to divert, or channel out, youthful offenders from the juvenile justice system” (Bynum and Thompson, 1996:430), based on the theory that processing certain youth through the juvenile justice system may do more harm than good (Lundman, 1993)<sup>8</sup>. The Asia Pacific Council on Juvenile Justice (APCJJ) report highlights that diversion programs can help the offender get back normal and productive life in the society; divert children away from the formal justice system at the pre-trial stage (by police) (APCJJ, 2013: 23) ; and ameliorate the problem of overburdened juvenile courts and overcrowded corrections institutions including detention facilities.<sup>9</sup>

For Example, in Papua New Guinea (PNG) specialized Police Juvenile Policy and Diversion Protocol, supported by a specialized Juvenile Policy Monitoring Unit within PNG Police, has been instituted. This unit monitors the effective diversion and juvenile processing practices that are undertaken by the police (APCJJ, 2013: 24)<sup>10</sup>. In Vietnam, the Ministry of Justice in collaboration with UNICEF conducted a diversion study and a review of existing laws of diversion. The guidelines have been developed for the usage of juvenile justice officials in implementing various diversion plans. Solomon Islands have recently adopted Prosecution Policy that states: “It is the role of the Royal Solomon Islands Police Force to fairly and transparently dispose of matters involving minor offending by young first time offenders by means other than prosecution (APCJJ, 2013: 24 & 26).

Singapore offers intensive programs such as Singapore’s Guidance Program (GP). This is a six-month counselling and rehabilitative program that helps first-time juvenile offenders referred by the Police to recognize the severity of their actions and the consequences of a repeat offence; educate young people and their families on how to prevent such occurrences through counselling, group work and constructive activities and ensuring programs are tailored to fit the individual therapeutic and developmental needs of the young person<sup>11</sup>.

Most countries in the region are still working towards adopting comprehensive legislative measures to establish specialized and independent juvenile justice systems that are in compliance with the international norms and standards - a system that features prevention, diversion, non-custodial penalties, and smooth transition of children into productive members of the society. However, the lack of public support for accepting diversion measures and alternatives to detention remains a common problem in the region.<sup>12</sup>

In collaboration with twenty two countries in the East Asia and Pacific region, UNICEF organized a study on Juvenile Justice. The study found that despite advancement in legislations, many children are being held in custody and detention without adequate reason. Many of them are convicted or found guilty for minor crimes as first time offenders. Additionally, the study showed that children with previous records of violence (at home, school, and institution), sexual exploitation, trafficking substance abuse, and history of being street children, often wind up in the juvenile justice system. “Contrary to international standards and national legislation, some children are detained with adults; in unhealthy conditions; subjected to inhuman treatment; not provided with access to education; and detained for lengthy periods of time”.<sup>13</sup>

For example, Cambodia, Mongolia, and Papua New Guinea reported that “over 50 percent of accused children are detained at the pre-trial stage and for periods of time that are in breach of international standards and national law”.<sup>14</sup> Such children are at risk of contracting HIV/AIDS, drugs and substance abuse while in detention. In the Philippines, “81 percent of youth offenders were reported to have previous records of abuse”. Another reason for children winding up in jails or custodial institutions is due to the lack of sufficient welfare services, poor relationship between police and social workers, and/or proper records on people.<sup>15</sup>

#### **Asia-Pacific Council for Juvenile Justice (APCJJ)**

To bring the countries in alignment with international standards of juvenile justice system and expansion of reforms, the International Juvenile Justice Observatory (IJJO) formed the Asia-Pacific Council for Juvenile Justice (APCJJ).<sup>16</sup> The council aims to offer assistance in the development and evolution of juvenile justice in Asia Pacific, formulate recommendations on juvenile justice in the region; collects quantitative and qualitative details on the situation of children, adolescents, and youth in conflict with the law; implementation of international standards and norms for juvenile justice to protect children from unfair treatment within the existing juvenile justice system; propose coordinated actions between public administrations, non-governmental organizations, and academic/training centers in countries of this region (APCJJ, 2013).

In 2012, the IJJO in conjunction with the Department of Juvenile Observation and Protection (ministry of Justice of Thailand) organized the first meeting of the Asia Pacific Council of Juvenile Justice (APCJJ). The objective of the APCJJ meeting was to develop strong strategies to guarantee the respect for the rights of juvenile in contention with law and to encourage policies preventing crime.

In March 2013, the IJJO issues the regional report that explored the pivotal outcomes and priorities of actions identified by the members states represented at the first meeting of the council. The report illustrates juvenile justice reform initiatives (restorative justice, prevention, diversion, improving detention condition etc.) taken across the region and recommends additional improvement (APCJJ, 2013).

In the Asian Pacific countries, strides have been made to align with the juvenile justice standards set by the international convention. These countries are attempting to adopt administrative, legislative, and judicial measures to establish an effective protection system for children. However, implementation of juvenile rights remains much below the international standards. In the case of India, the government has issued constitutional rights and provisions to all minors. Despite these measures, there has been a widespread violation of children's rights, particularly, of those who are in conflict with the law. Ultimately, the government is held accountable for ineffective execution of the mandates of the Indian Constitution and international standards.

### **Juvenile Justice System in India**

The juvenile justice system in India is structured in accordance with several International Covenants and the mandates of Indian Constitution. (UN Convention on the Rights of the Child (CRC), UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules) and Article 15(3)<sup>17</sup> of the Indian Constitution. The Indian constitution provides provisions for rights of children as citizens of the country. The Constitution encompasses most rights included in the UN Convention on the Rights of the Child (1989) as Fundamental Rights and Directive Principles. The government has the flexibility to take legislative and administrative measures to ensure children's rights. No court can force the government to ensure these rights, as these are directives. These directives have enabled the judiciary to pass a few landmark judgments leading to Constitutional Amendments. One such example is in the 86th Amendment to the Constitution that upheld the right to Education as a fundamental right (Centre for Child Rights, Delhi).

### **Constitutional rights of children**

The Constitutional rights of children include: Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A). Right to be protected from any hazardous employment till the age of 14 (Article 24). Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)). Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f)). Right to early childhood care and education to all children until they complete the age of 6 years (Article 45) (Centre for Child Rights, Delhi).

According to the United Nations World's Children Report 2012, India has more than 447 million children below the age of 18 years. "The number of children apprehended for any crime during 2010 was a total of 30,303 out of which 28,763 were boys and 1,540 were girls."<sup>18</sup> Their contribution to total crime under the Indian Penal Code was 1%".<sup>19</sup>

Although the Constitution of India provides the basis of the legal framework to protect children's rights, in reality vast numbers of children are completely stripped of their basic rights of freedom and childhood. They continue to be victims of abuse, trade and trafficking, forced labor, etc. Their exposure to deprivation and unfavorable circumstances and lack of proper support by law enforcement agencies can easily make them vulnerable to crime. Lack of coordination between juvenile justice agencies makes the system dysfunctional. Proponents of juvenile rights advocate for the adoption of a systematic and holistic approach to juvenile justice. Supporting agencies (Police, rehabilitation, training institutes, etc.) need to be fully aware of the purpose of juvenile justice system and work towards actual implementation of existing provisions.

The situation of juveniles who are facing the law enforcement machinery is even more poignant. The problem faced by neglected and delinquent children need to be understood and addressed within the wider concept of child rights in accordance with international standards (Haveripeth, 2013). The most pressing reasons that call for a review of existing juvenile justice are the lack of clear understanding and inadequacies of the system that may result in re-criminalizing delinquency.<sup>20</sup> For effective enforcement of juvenile rights, there is a significant need of mobilizing the support from the civil society to closely monitor the action of the law enforcement agencies, social workers, political leaders, and professionals.

## Historical Background

*The Apprentices Act*- the first juvenile legislation for children- was passed in 1850. This act provided that children between the ages of 10 to 18 found committing petty offenses should serve the sentence as apprentices, with an objective of keeping children away from criminal activities and encouraging them to learn a trade to earn their living.<sup>21</sup>

Section 82 of the Indian Penal Code (IPC) provides blanket immunity to children below 7 years of age imbibing the principle of *doli incapax* (incapable of crime).<sup>22</sup> Section 83 of the Indian Penal Code is an extension of section 82 that grants qualified immunity to children between the ages of 7 to 12. The *Reformatory School Act of 1879* empowered the government to establish reformatory schools and to retain young criminals there until they found employment.<sup>23</sup> The *Reformatory School Act 1897* dealt with treatment and rehabilitation of offenders between ages of 7 to 15. The code of Criminal Procedure, 1898 extended imprisonment at reformatory schools for children up to age 18. Later, it was mandated they be placed on probation until age 21 (Kethineni and Braithwaite, 2013:7).<sup>24</sup> On the recommendation of the Indian Jail Committee (1919-1920) the provinces of Madras (1920), Bengal (1922) and Bombay (1924) decided to enact legislations for juveniles.

In 1974, India declared the *National Policy for children* including comprehensive health programs; free and compulsory education up to age 14; proper nutrition; review of existing laws; training and rehabilitation; and protection against neglect, cruelty and exploitation among many other provisions. In 1986, the *Juvenile Justice Bill* was introduced and the Juvenile Justice Act (JJA) was passed. This act mandated for the care, protection, development, treatment, and rehabilitation of neglected/dependent children, and for the adjudication and disposition of delinquency cases throughout the nation. Additionally, Juvenile courts were established for girls under the age of 18 and boys under 16 accused of crimes (Kethineni and Braithwaite 2013: 308-309).

This was followed by a series of Children Acts in many states. However, the uniformity in juvenile justice system was first introduced by the Juvenile Justice Act (JJA) 1986. This act has been replaced by the Juvenile Justice (Care and Protection of Children) Act 2000, which came into force in 2001 with the objective of bringing juvenile justice system in conformity the CRC. This act was amended in 2006, 2010, and 2011. In 2000, the Juvenile Justice (Care and Protection of Children) Act (JJCPA) was passed in India except the state of Jammu and Kashmir. The act specified that the welfare of juvenile population need to be taken into proper consideration in terms of protection, care, education, rehabilitation, and vocational training opportunities.

The act addresses two categories of children- those in conflict with the law and those in need of care and protection. This law created child welfare committees and special juvenile police units, established the rules for monitoring children's residential care facilities, and outlined minimum standards of care. Furthermore, the law required that "every person, school or other such educational institutions" should adhere to the guidelines for the prevention of child sexual abuse (Human Rights Watch, 2013:70).

The Juvenile Justice (Care and Protection of Children) Act emphasized on the involvement of voluntary organization in the juvenile justice process by allowing them to compile social investigation reports and operating homes for different age groups (Kethineni and Braithwaite 2013). The Government of India approved the amendments to the Juvenile Justice (Care and Protection of Children) Act 2000. The amendments to the act cleared by Cabinet in August 2014 have been under the consideration of the parliamentary standing committee. The amendments to the bill propose to "create a framework where children within the age group of 16-18 years, who commit heinous crimes, could also be tried under adult justice system if the circumstances so warranted". "Though the law acknowledges the culpability of juveniles for the crimes committed by them, its object is not to punish but to rehabilitate them. The amendments have been controversial".<sup>25</sup>

Proposed amendments is the result of outrage over the lighter punishment of three years in a reform home given to a minor who was convicted in the Delhi gang-rape case in December 2012. However, the bill established that the juvenile involved in such heinous crimes in no case will be sentenced to death or life imprisonment when tried under the provisions of Juvenile Justice Act or the Indian Penal Code.<sup>26</sup> Currently, if the accused is found to be less than 18 years of age, he/she is tried by the Juvenile Justice Board and, if convicted, is sent to a juvenile home for three years. Whereas, the adult convicted of rape faces life term, and death sentence in case of repeat offence.<sup>27</sup>

### **Enforcement of the Juvenile Justice (Care and Protection of Children) Act (JJCP)**

Given the features of the JJCP, it can easily be argued that there would be a widespread adoption and enforcement of this act to ensure legal and moral obligation of the government/civil society toward children's rights. However, the National-level data on implementation of the provisions of this act is not published 'systematically and regularly'. As a result, the information on children in conflict with law remains inconclusive. Despite the acceptance of the act, there are still significant loopholes demanding close scrutiny and accountability. The role of the state agencies, such as the police handling juvenile delinquency cases and the judicial actions deciding their cases, need to be reviewed carefully and objectively (Kethineni and Braithwait, 2013: 307). Despite the presence of such comprehensive laws in India, one can claim that;

- a) Abuse against juveniles is intensifying
- b) Crime committed by juveniles is increasing gradually

### **Abuse against juveniles**

As per the WHO 2014, 5 (21 per cent) adolescent girls have experienced physical violence since age 15 that is 12 million girls have experienced violence since age 15 (Census 2011 data).<sup>28</sup> The National Crime Records Bureau statistics reported that a total of 48,338 child rapes were recorded from 2001-11 and the country recorded an increase of 336 percent in child rapes from 2001 (2,113 cases) to 2011 (7,112 cases). Following are the findings of the report, *"India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes"* (2013) by the Asian Centre for Human Rights (ACHR).

The report states "children in India have reached an epidemic proportion and a large number of them are being committed in the juvenile justice homes run and aided by the government" systematically and often repeatedly. Asian Centre for Human Rights States: "This is only the tip of the iceberg as the large majority of child rapes are not reported to police while children regularly become victims of other forms of sexual assault too."<sup>29</sup>

The Director of ACHR stated

It will not be an understatement to state that juvenile justice homes, established to provide care and protection as well as reintegration, rehabilitation and restoration of the juveniles in conflict with law and children in need of care and protection, have become India's hell holes where inmates are subjected to sexual assault and exploitation, torture and ill-treatment apart from being forced to live in inhuman conditions. The girls remain the most vulnerable.<sup>30</sup>

The report highlights that out of the 39 cases, 11 were reported from government-run juvenile justice homes (such as observation homes, children homes, shelter homes, and orphanages), in one case a Child Welfare Committees (CWC) member was accused of sexual harassment during counselling sessions, and remaining 27 cases were reported from private or NGO-run juvenile justice homes (shelter homes, orphanages, children homes, destitute homes, etc.). Caretakers, security guards, cooks, senior inmates, and other low-grade employees were found to be the perpetrators in the government-run juvenile justice homes. Regarding privately or NGO-run homes, the perpetrators included managers, directors, owners, founders (their relatives and friends), caretakers, wardens, cooks, drivers, security guards, gate keepers, senior inmates, and outside security forces.<sup>31</sup>

The director of ACHR further elaborated:

In most cases, sexual assault in the juvenile justice homes continues for a long period as the victims are not able to protest and suffer silently in the absence of any inspection by the authorities under the JJ (C&PC) Act. While authorities of the juvenile justice homes are the main predators, the absence of separate facilities, in many cases for boys and girls, and in most cases as per age i.e. for boys and girls up to 12 years, 13-15 years and 16 years and above as provided under Rule 40 of the Juvenile Justice Care and Protection of Children Rules 2007 facilitates sexual assaults on the minor inmates by the senior inmates.<sup>32</sup>

### **Crimes committed by juveniles**

The National Crime Records Bureau (NCRB) revealed that juvenile criminals between 16 and 18 years accounted for more than 60% of the crimes that were registered against minors in India in 2013. Out of the 43,506 crimes registered against minors under the Indian Penal Code (IPC) and the Special Local Law (SLL) by juveniles, 28,830 had been committed by those who were 16 to 18 years old. The statistics show that the number of juveniles in conflict with law (under the IPC and the SLL) rose 13.6% and 2.5% respectively in 2013, compared to 2012. NCRB data for 2013 shows rapes committed by juveniles has increased by 188%.<sup>33</sup>

The NCRB reported that crimes against women committed by juveniles in 2013 was highest in cases such as, assault on women with intent to outrage her modesty (132.3%), insult to the modesty of women (70.5%), and rape (60.3%).<sup>34</sup> 163 juveniles were apprehended on rape charges and 76 in murder cases in 2013 (The Times of India, 2014).

Of many rape cases, two recent cases can be taken into consideration. In Delhi Rape case of 2012, a 23 years old woman physiotherapist was gang raped and brutally beaten to death. In this case, of the 6 accused, the main accused was a juvenile. While the others accused were given death penalty, the minor accused was sent to a remand home only for three years. This particular rape-case sparked massive outrage amongst the citizenry, not only in India but abroad as well demanding stricter punishment for such heinous crimes committed by juveniles. Another rape-case example is of Nashik Shakti Mill rape case (2013), in which a 22-year old woman photojournalist was gang raped by four adults and a juvenile. The juvenile got just three years sentence at a children's correction home.

### **Whom to Blame?**

The ACHR holds the Government of India (ex. the Ministry of Women and Child Development) accountable for the continuing sexual assault on children in the Juvenile Justice homes for the following main reasons:<sup>35</sup>

1. The government organizations intervene only after crimes are reported and there are no preventive mechanisms or regular inspections. At the state level, most states have not even formed inspection committees mandated to inspect the juvenile justice homes and report finding. No separate budgetary allocation has been made under Integrated Child Protection Scheme (ICPS) for the functioning of the inspection committees

2. Despite repeated governmental efforts, hundreds of unregistered children homes are operating in the country. Juvenile Justice Act 2006 made it mandatory for the organization/facility to register within six month of establishment. Unregistered homes, where most gruesome abuses take place, are rarely inspected by the government/regulatory agencies. In most cases state governments provide funds even if these institutions are unregistered. There is no punitive provision for non-registration of the institutions other than the Section 23 of the Juvenile Justice Act. Although this act allows the authorities to act against the abuse of children at these homes, but they rarely take actions.

3. Although there are 462 District Child Welfare Committees (CWCs) in 23 States mandated to verify fit institutions, majority of them exist only on paper. The state government of Karnataka in October 2010 put the conditions that "members of the CWCs cannot visit child care institutions, when they are not holding a sitting, without prior permission of the heads of these institutions". This prohibits random and surprise inspections.

4. Juvenile Justice (Care and Protection of Children) Rules 2007 provides for separate facilities for boys and girls according to age (i.e. for boys and girls up to 12 years, 13-15 years and 16 years and above), however, this provision has not been complied with. "The lack of segregation on the basis of gender, nature of offences and age facilitates senior inmates to commit the offences against minor inmates including girls" (ACHR, 2013).

Based on these grim findings, the ACHR like many other human rights organizations made the following recommendations (ACHR):<sup>36</sup>

- Immediate establishment of inspection committees in all the districts and mandatory inspection of the juvenile justice homes in every three months;
- Block funding unless inspection reports are submitted;
- Separate budgetary allocations for the functioning of the Inspection Committee;
- Ban on posting of male staff in girls' homes;
- Provision of separate residential facilities based on the nature of offences, gender, and age;
- Completion of inspection of all unregistered homes within six months; and
- Registration of cases against unregistered juvenile justice homes (ACHR, 2013)

### **Current debate on the Juvenile Justice**

Delhi gang-rape case has fostered a central debate on key questions, but with no simple answers. Whether juveniles should be treated as adults in the criminal justice system? Whether a 17-year-old has less reasoning power than an 18 year-old? Is the juvenile accused less capable of understanding the ramifications of his/her actions one year before?

Laurence Steinberg, a distinguished Temple University professor helped draft an American Psychological Association brief for a 2005 case in which the U.S. Supreme Court outlawed the death penalty for crimes committed before age 18. He explains why juveniles lack control, understanding of long-term consequence, and are more susceptible to peer pressure.

Steinberg stated, “The teenage brain is like a car with a good accelerator but a weak brake, “with powerful impulses under poor control, the likely result is a crash.”<sup>37</sup>

His statement clearly illustrates one argument for why juveniles should not be treated as adults in the criminal justice system. His recommendation is to try rehabilitating young offenders in the juvenile justice system, which is better than sending them through the adult system. This can disrupt their development so severely that “they're never going to be able to be a productive member of society”, this way, “You're not doing society any favor at all”.<sup>38</sup> Steinberg’s recommendation supports the argument being made in favor of juveniles involved in crimes, not be sentenced to death or life imprisonment (when tried under the provisions of JJ Act or the IPC), as juveniles transfers to criminal court will divert the focus from rehabilitation to punishment.

Moreover, when a juvenile winds up in adult prison, he has a high likelihood of subject to attack or sexual abuse by other inmates, and that environment cannot foster rehabilitation. For deterrent purposes a juvenile can be treated as an adult. If juveniles know that “the law is lenient on them, it could cause them to end up in the system, simply because they are not deterred by the fear of punishment”.<sup>39</sup> For example, “gang members are often aware that juvenile courts are more lenient than criminal court and may, as a result, recruit younger members to carry out criminal acts”. Additionally, sending juveniles to adult criminal court can increase the risk of the juveniles to re-offend.<sup>40</sup>

Although aforementioned arguments clearly suggest that juveniles should not be treated as adults, there is a major concern about punishment for a crime, particularly where there is a victim involved. When a juvenile commits a heinous crime (batter, assault, rape, murder or carries out a violent act against a victim), it becomes challenging to maintain a balance between punishment and rehabilitation for the juvenile and retribution for the victim and/or his/her family.<sup>41</sup>

Some juveniles are so close to 18 years of age that they may have very slim chance for rehabilitation, as in the case of 17 year old juvenile accused of murdering 23 old girl in 2012 Delhi gang-rape case. The juvenile after the rape brutalized the girl with the iron rod, pulled out her intestine and cleaned the bus.<sup>42</sup> This particular case evokes outrage amongst victim’s family, friends, and in the society in general. Additionally, the nature of his crime makes it difficult to believe that he could benefit from rehabilitation.

According to this argument, the more heinous the crime and the older the juvenile, the more adult criminal court seems like a viable option. The case of particular juvenile criminal seems to be perfect example in which treatment as an adult seems absolutely proper and required. If he was only a few month older, he would have been tried as an adult, like his fellow criminals involved in criminal acts. Another major concern is that his freedom after three years will pose a bigger threat to public safety. Moreover, this case supports the notion that the juvenile justice system needs to be remodeled. A new category of youthful offenders should be implemented for older offenders who are unlikely to be rehabilitated (Baruwa, 2013).

## Conclusion

“Most children who get involved with the system never get a chance to be rescued from further crime because treatment is limited. Addressing this deficiency could make a difference”<sup>43</sup>. It is up to us as a society to stride towards making a positive impression on children that can prevent them from becoming delinquents. Although the Asian Pacific countries are making efforts to adopt juveniles’ rights at the legislative, administrative and judicial level, they clearly lack the ability and will to enforce them. Children in conflict with the law continue to face abuse from the justice system, despite the international standards set to combat this issue. Although there have been ongoing efforts to address this dilemma, juvenile justice systems in many countries of Pacific Asia remain underdeveloped, lack sufficient funding, monitoring, and active support from the society.

Without any doubt, youth crime is increasing in India. It is engrained in the Indian criminal justice system that juveniles must be treated differently than adults. There are some juveniles who pose as serious threats to public safety; as in the recent case of juvenile accused of brutal gang-rape in Delhi 2012. This case highlights the differences between children and adults and raises the basic question as to why juveniles should not receive the death penalty or be sentenced to life without parole for such violent crimes.



The involvement of a 17-year-old in this brutal offence has led to demands to modify the existing Juvenile Justice Act to exclude minors committing serious offences from the purview of the Juvenile Justice Act or lowering of the age of juvenility (Kumari, 2013). Another debatable question is that if 16-18 years old juveniles cannot be tried as adults, can harsher punishment be given by incorporating special provisions in the existing Juvenile Justice Act itself?

The paper does not propose that all juveniles can be rehabilitated. It offers recommendations for major improvements in the prevention measures and administration of Juvenile justice systems and embraces the international standards of children's rights in true spirit. The article identifies that there are major flaws in the existing juvenile justice systems in the Asia Pacific region, particularly in India, and considers initiatives to improve and prevent juvenile delinquency.

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## Endnotes

<sup>1</sup> The United Nations Children's Fund defines "Juvenile justice as all the offences committed by children and young people below the age of 18. Whether those offenses are discovered or not; reported or not to the police or any other law enforcement agency; brought before a judicial, administrative or other body; sentenced or not. Children may also be considered an offender for acts that would not be punishable if committed by an adult (e.g. status offences; vagrancy)". See at [http://www.unicef.org/protection/files/Justice\\_for\\_Children\\_Detention.pdf](http://www.unicef.org/protection/files/Justice_for_Children_Detention.pdf)

<sup>2</sup> See, Human Rights Watch. 2014. *25th Anniversary of the Convention on the Rights of the Child*. Accessed December at 18 2015, <http://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child>.

<sup>3</sup> See, United Nations Children's Fund (UNICEF) UK. Accessed January 18, 2015 at [www.hrea.org](http://www.hrea.org)

<sup>4</sup> *Id.*

<sup>5</sup> *Supra* note 2.

<sup>6</sup> United Nations Children's Fund (UNICEF). *Justice for Children: Detention as a Last Resort- Innovative Initiatives in the East Asia and Pacific Region*. Accessed January 10, 2015 at [http://www.unicef.org/protection/files/Justice\\_for\\_Children\\_Detention.pdf](http://www.unicef.org/protection/files/Justice_for_Children_Detention.pdf)

<sup>7</sup> Kenneth Christie, (2012) "Association of Southeast Asia Nations (ASEAN)", in *Human Rights in International Relations*, ed. David. Forsythe (Cambridge University Press, 2012), 191. In, David Forsythe, *Human Rights in International Relations*, Cambridge University Press, 2012, p. 191.

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<sup>9</sup> National Crime Record Bureau, Government of India. 2010. *CRIME IN INDIA 2010*. Accessed December 15, 2014 at <http://ncrb.nic.in/>

<sup>10</sup> The Asia Pacific Council on Juvenile Justice (APCJJ) 2013. *A voice for the Future of Juvenile Justice in Asia-Pacific: Introduction to the Asia-Pacific Council for Juvenile Justice and Leading Juvenile Justice Reforms in the Region*, p.24. Accessed January 20, 2015 at [http://www.oijj.org/sites/default/files/a\\_voice.pdf](http://www.oijj.org/sites/default/files/a_voice.pdf)

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<sup>12</sup> United Nations Children's Fund (UNICEF). 2006. *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*. In The Asia Pacific Council on Juvenile Justice (APCJJ), 38, 2013.

<sup>13</sup> United Nations Children's Fund (UNICEF). *Justice for Children: Detention as a Last Resort- Innovative Initiatives in the East Asia and Pacific Region*. Accessed January 10, 2015 at [http://www.unicef.org/protection/files/Justice\\_for\\_Children\\_Detention.pdf](http://www.unicef.org/protection/files/Justice_for_Children_Detention.pdf)

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> APCJJ inaugural meeting included representatives of public administrations in juvenile justice, Universities/academic centers, NGOs (with expertise in legislation, project implementation and supervision, research and evaluation, and methods of intervention in the field of juvenile justice) from 19 countries: Australia, Bangladesh, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Singapore, South Korea, Thailand and Vietnam.

<sup>17</sup> See Article 15(3) Constitution, India: Nothing in this article shall prevent the State from making any special provision for woman and children.

<sup>18</sup> See Ved Kumari, "JUVENILE JUSTICE SYSTEM IN INDIA – BRIEF INFORMATION", *The International Juvenile Justice Observatory (IJJO)*, accessed January 20, 2015, [http://www.oijj.org/sites/default/files/documental\\_10190\\_en.pdf](http://www.oijj.org/sites/default/files/documental_10190_en.pdf)

<sup>19</sup> *Id.* Also see the report, *CRIME IN INDIA 2010*, National Crime Record Bureau (Government of India) at <http://ncrb.nic.in/>

<sup>20</sup> Devashish Konar, "Juvenile Justice as a Part of Child and Adolescent Care", *JACAM*, Vol. 1: No. 3, Article 3, 1-6, accessed January 20, 2015, [http://www.academia.edu/3702938/Juvenile\\_Justice\\_as\\_a\\_Part\\_of\\_Child\\_and\\_Adolescent\\_Care](http://www.academia.edu/3702938/Juvenile_Justice_as_a_Part_of_Child_and_Adolescent_Care)

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- <sup>25</sup> Himanshi Dhawan, “2 juveniles likely to get off lightly”, *The Times of India*, December 26, 2014, accessed January 19, 2015, <http://timesofindia.indiatimes.com/city/delhi/2-juveniles-likely-to-get-off-lightly/articleshow/45644296.cms>
- <sup>26</sup> See “Cabinet clears amendments to Juvenile Justice Act paving way for harsher punishment”, *The Times of India*, August 6, 2014, accessed Jan. 10, <http://timesofindia.indiatimes.com/india/Cabinet-clears-amendments-to-Juvenile-Justice-Act-paving-way-for-harsher-punishment/articleshow/39767899.cms>
- <sup>27</sup> Supra note 25.
- <sup>28</sup> UNICEF to collect data on violence against children in India, IBNLive.com <http://ibnlive.in.com/news/unicef-to-collate-data-on-violence-against-children-in-india/503052-3.html>
- <sup>29</sup> “336 per cent jump in child rape cases in a decade, says report”, *India Today*, April 20, 2013, accessed Jan 20, 2015, <http://indiatoday.intoday.in/story/child-rape-cases-336-pre-cent-jump-in-a-decade-child-abuse-sexual-assault/1/266829.html>  
Also available at; [www.achrweb.org/reports/india/IndiasHellHoles2013.pdf](http://www.achrweb.org/reports/india/IndiasHellHoles2013.pdf)
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- <sup>31</sup> *Id.*
- <sup>32</sup> *Id.*
- <sup>33</sup> See Supra note 27.
- <sup>34</sup> “Culprits of 66% juvenile crimes in India last year were over 16”, *Hindustan Time, Mumbai*, August 12, 2014, accessed January 20, 2015, <http://www.hindustantimes.com/mumbai/culprits-of-66-juvenile-crimes-in-india-last-year-were-over-16/article1-1252914.aspx>
- <sup>35</sup> See: ACHR Press Release at <http://www.achrweb.org/press/2013/IND13-2013.html>
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- <sup>37</sup> Stephanie Chen, “States rethink ‘adult time for adult crime’”, *CNN New*, US Edition, January 15, 2010, accessed January 20, 2015, <http://www.cnn.com/2010/CRIME/01/15/connecticut.juvenile.ages/>  
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- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.* at 118-119.
- <sup>42</sup> Aparna Vishwanathan, “Balancing the Juvenile Act”, *The Hindu*, September 9, 2013, accessed at January 15, 2015, <http://www.thehindu.com/opinion/lead/balancing-the-juvenile-act/article5107620.ece>
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