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Female Juveniles in Conflict with Law: Identifying the Need for Gender Specific Intervention

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This paper aims to analyse the Juvenile Justice Act, 2015, and the Juvenile Justice Model Rules 2016 from the perspective of its applicability on female juveniles in conflict with the law. The paper limits its purview to female children in conflict with the law and provides an extensive reading of the 2015 Act and Model Rules 2016. We have reviewed prior literature on the juvenile justice system in India and across the globe, with special reference to female children in conflict with the law. It also examines the mechanisms employed by the administrative bodies of this country to provide a holistic development of females in conflict. To elaborate on various lacunae in the present juvenile justice system in India vis-a-vis females in conflict, primarily we have examined the current statute, its recent amendments, and its impact on the system. The focus of the paper is right from apprehension of a female juvenile to their products before the Juvenile Board and ultimately, the detention in Special Homes/Observation Homes. It goes on to identify the provisions which may require prudent application by the agencies while monitoring FCILs. Many administrative flaws such as improper procedure, lack of investment, and no gender specific interventions have been highlighted and suggestions have been rendered thereto.

Keywords: *female, conflict, gender, intervention.*

INTRODUCTION

Around the world, it is an indisputable statistic that young females are far less likely to commit wrong and violate the law than young males. Nonetheless, numerous individuals have come to accept that the issue of female delinquency is growing rapidly than the issue of male delinquency. The juvenile justice system since its inception, the arrangements, and changes with respect to adolescent wrongdoers have concentrated on the conduct, treatment, and change of a populace vigorously led by males. Be that as it may, the ongoing pattern in the adolescent equity situation has brought about a wild increment in the crime percentage of female adolescent juvenile offenders.

This paper aims to analyse The Juvenile Justice (Care and Protection of Children) Act, 2015 [‘the 2015 Act’] and The Juvenile Justice (Care and Protection of Children) Model Rules 2016 [‘Model Rules 2016’] from the perspective of its applicability on female juveniles in conflict with the law.

LITERATURE REVIEW

In 1704, Pope Clement XI first introduced the idea of ‘the correction and instruction of profligate youth’ in the institutional system¹. Elizabeth Fry and her associates established a separate institution for juvenile offenders and as a result, Reformatory Schools Act and Industrial Schools Act were enacted in Britain². In the United States, it was only in 1874 that the move to establish special courts for juveniles³ was initiated, but it could only be established in 1899 in Chicago under Juvenile Offenders Act. On the other hand, Britain established its first Juvenile Court in 1905⁴.

¹ Thorsten Sellin, 'The House of Correction For Boys In The Hospice Of Saint Michael In Rome' (1930) 20 Journal of the American Institute of Criminal Law and Criminology
<<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=2161&context=jclc>> accessed 20 June 2021

² Gillian Carol Gear, *Industrial Schools in England* (Doctoral Theses, University of London, Institute of Education 1999) 1857-1933

³ Sanford J Fox, 'Juvenile Justice Reform: An Historical Perspective' (1970) 22 Stanford Law Review

⁴ *Ibid*

The emphasis on necessary protection and promotion of rights of children has dramatically enhanced over the last century across the globe. The major change in the approach towards child rights, and recognizing the roles of children in the society, economy, governance, and culture, was ushered in by the Convention on the Rights of the Child⁵ in 1989 by the United Nations General Assembly. The Convention along with the optional protocols⁶ (adopted by the General Assembly in 2000 and 2011) stipulated the guidelines for the protection of every child against sexual abuse and exploitation and participation in armed conflicts⁷. India ratified the Convention pledging its allegiance to promote and protect the rights of children.

For the purposes of this paper, our focus remains on the development of the justice system for 'juvenile delinquents' i.e., criminal acts performed by children below the age of eighteen years of age⁸. It is considered a legal term having legal implications (Stullken 1956). United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') 1985⁹ provided for application of the Minimum Rules to all juvenile offenders regardless of their gender, religion, caste, language, or nationality without any discrimination. Initially, delinquency was seen as a process of gaining maturity and becoming an adult. However, it was eventually noted that juveniles could create long-established criminal groups with a corresponding sub-culture and opt for crime as a career. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), as part of the fundamental principles, provides that "...successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents..."¹⁰. It stipulates for in-depth analysis of problems, youth participation, preventive policies

⁵ 'Convention On The Rights Of The Child Text' (*Unicef.org*, 2021) <<https://www.unicef.org/child-rights-convention/convention-text>> accessed 20 June 2021

⁶ 'Strengthening The Convention On The Rights Of The Child: Optional Protocols' (*Unicef.org*, 2021) <<https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>> accessed 20 June 2021

⁷ *Ibid*

⁸ Michael R Gottfredson and Travis Hirschi, *A General Theory Of Crime* (Stanford University Press 1990)

⁹ 'United Nations Standard Minimum Rules For The Administration Of Juvenile Justice ("The Beijing Rules")' (*Ohchr.org*, 2021) <<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>> accessed 20 June 2021

¹⁰ 'OHCHR | United Nations Guidelines For The Prevention Of Juvenile Delinquency' (*Ohchr.org*, 2021) <<https://www.ohchr.org/en/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>> accessed 20 June 2021

facilitating the successful socialization and integration of all children, information and guidance regarding vocation training and employment opportunities, and the need for the government to invest in distinct social policies for juvenile delinquents¹¹.

The abovementioned international instruments resulted in concurrent evolution of the juvenile justice system in India with the Children Acts, the Juvenile Justice Act 1986, the Juvenile Justice (Care and Protection of Children) Act 2000, and subsequent amendments in 2006 and 2011 to it, and the latest Juvenile Justice (Care and Protection of Children) Act, 2015 [‘the 2015 Act’]. The instruments also defined key concepts in the juvenile justice system such as *juvenile*, *offence*, *juvenile offence*, *age of criminal responsibility* which has a crucial bearing on the juvenile justice legislation in India (United Nations 1985).

The term ‘delinquent juvenile’¹² used in India has been substituted by the words ‘juvenile in conflict with law’¹³ and finally to, ‘[a] child in conflict with law’¹⁴. Increasing cases of crimes committed by children in the age group of 16-18 years in recent years¹⁵ transformed the legal dialogue in India with the enactment of the 2015 Act laying emphasis on social and economic reformation and rehabilitation of children in conflict with the law by employing individualised care plans and social investigation reports.

Chapter II of the 2015 Act unequivocally stipulates cardinal principles for the care and protection of children. These sixteen fundamental principles are laid down as a ‘guide’¹⁶ to be followed by the authorities while discharging their duties under the Act. The essential postulates for consideration in this paper are, namely, that all the decisions made within the realm of this Act shall be with the primary consideration of keeping the best interest of the child (the basis of any decision towards the fulfillment of basic rights and needs, social well-being and holistic development¹⁷) in mind; that every child to have a right to be heard and

¹¹ *Ibid*

¹² Juvenile Justice Act 1986, s 2(e)

¹³ Juvenile Justice (Care and Protection of Children) Act 2000, s 2(1)

¹⁴ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(13)

¹⁵ Ministry of Home Affairs, *Crime in India* (National Crime Records Bureau (NCRB) Data 2017)

¹⁶ Juvenile Justice (Care and Protection of Children) Act 2015, s 3

¹⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(9)

participate in all proceedings concerning themselves with basic procedural standards of fairness and natural justice ensured; that every measure is to be ensured to keep the child safe and protected from any harm or abuse while in contact with the system/authorities; that no child shall be discriminated on any grounds including sex, caste, ethnicity, place of birth, disability, and that equality of access, opportunity and treatment shall be provided to every child; and, that the approach in dealing with children in conflict with law without falling back to the judicial proceedings is promoted.

To understand the latest regime of juvenile justice, it is of the essence to review the terminology/definitions now so stipulated. A child in conflict with the law means ‘any 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’¹⁸. It is essential to observe that for juveniles in conflict with the law, the legislation uses a gender neutral term, and consequently, provides for a girl child or female juvenile to be in conflict with the law as well. The Act defines ‘child friendly’¹⁹ as the process and practice, conduct and approach, and behaviour and treatment to be compassionate, thoughtful, and in the best interest of the child. The procedure for the apprehension of children in conflict with law emphasizes the presence of ‘special juvenile police unit(s)’²⁰ and ‘child welfare police officers’²¹ i.e., police officers designated to handle juveniles under section 107.

An interesting feature added in the 2015 Act is the classification of offences into petty, serious, and heinous offences²². Sections 15 and Section 18(3) provide that a minor who has completed or is above sixteen years and is involved in a heinous crime than on the basis of a preliminary assessment by the Board²³, the case can be tried in the Children’s Court²⁴ as adults. The difference in treatment of minors in the age group of 16-18 years has sparked a major debate.

¹⁸ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(13)

¹⁹ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(15)

²⁰ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(55)

²¹ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(18)

²² Juvenile Justice (Care and Protection of Children) Act 2015, ss 2(45), 2(54) and 2(33)

²³ Juvenile Justice (Care and Protection of Children) Act 2015, ss 2(10) and 10

²⁴ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(20) and 19

The Act provides for the children to be maintained in a 'fit facility'²⁵ defined as a facility run by a government or non-government organisation to temporarily own the responsibility of a particular child for a specific purpose. For permanent institutions to maintain children in conflict with the law, the Act envisages 'observation home(s)'²⁶ in every [or group of] district(s) by the State Government or non-governmental organisations, registered as per section 47(1); 'Special Home(s)'²⁷ to be established by the State Government or non-governmental organisation for housing and providing rehabilitative services to children in conflict with the law who have been found to have committed such an offence by the order of the Board; and 'place of safety'²⁸ which is not a police lockup or jail, attached to an observation home or special home wherein children are or alleged to be in conflict with the law by the Board or Children's Court during an inquiry or ongoing rehabilitation after having been found guilty. Evidently, the major focus of the Act is on capacity building, monitoring and evaluation programs, rehabilitative services in the institutions, and the establishment of a wholesome environment for the children in conflict with laws.

As the focus of the paper is on female children in conflict with the law, it is necessary to provide the data and information available in this aspect. As per the United States of America records, the crime rates of male juvenile and male young adult offenders are more than double those of young females. The conviction rates are six or seven times higher²⁹. The number of male juvenile suspects for every 100,000 of a particular age group is more than six times the corresponding figure for females; for those in the young adult category, the male-female suspect ratio is much higher, at 12.5 to 1³⁰.

Female children in conflict with the law have mostly been obscured by male delinquency in terms of research, data collection, quantity, and recognition. Consequently, the available information/statistics on females in conflict are grossly limited. The cultural and ethnic

²⁵ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(27)

²⁶ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(40)

²⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(56)

²⁸ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(46)

²⁹ United Nations, 'Tenth United Nations Congress on The Prevention Of Crime And The Treatment Of Offenders' (2000) <<https://undocs.org/pdf?symbol=en/A/CONF.187/4/Rev.3>> accessed 21 June 2021

³⁰ *Ibid*

diversity in India makes the task of drawing theories and causes of conflict in law among female children. There is a disparity between what society regards as delinquency and females in conflict with the law.

Social structure theorists stipulate that social disorganization, cultural deviance, and social frustration lead to aberrant behaviour among lower class young adults³¹. As the focus in this theory is on social and cultural environments which shape their childhood and association with various sub-cultures, they are majorly associated with identifying factors leading to the life of conflict with the law among young adults³². The status of women in a patriarchal system in society with increasing trends of domestic abuse, family dynamics, sexual assault, and victimization push them into a criminal sub-culture.³³ Interventions to overcome structural inefficiencies in society through legislative enhancements become essential. The 2015 Act, by catering to their basic social, economic, educational, and psychological through child-friendly strategies, upholds the constitutional mandate of protecting women and children through special provisions³⁴.

In the following sections, we analyse the contemporary efforts to understand the provisions for girl children in conflict with the law by looking into some of the prominent provisions in the 2015 Act that have emerged.

METHODOLOGY

The research for the paper has been conducted in multiple stages. Essentially, we have reviewed prior literature on the juvenile justice system in India and across the globe, with special reference to female children in conflict with the law. To elaborate on various lacunae in the present juvenile justice system in India vis-a-vis females in conflict, primarily we have examined the current statute, its recent amendments, and its impact on the system. Emphasis

³¹ Ronald Akers, *Social Learning and Social Structure* (Routledge 2017)

³² *Ibid*

³³ Robin M Hartinger-Saunders and Christine M Rine, 'The Intersection Of Social Process And Social Structure Theories To Address Juvenile Crime: Toward A Collaborative Intervention Model' (2011) 21 *Journal of Human Behavior in the Social Environment*

³⁴ Constitution of India, art 15(3), 39, 45 and 47

has also been given to the precedents set by the Supreme Court of India and various High Courts. It also examines the mechanisms employed by the administrative bodies of this country to provide a holistic development of females in conflict.

Finally, to accustom ourselves to the realities on the ground, we have visited a few Observation Homes/Special Homes dedicated to female juveniles in conflict with the law. We have interviewed many detained female juveniles in conflict, the administrative authorities, and judicial officers. They have enabled us to peek into the lacunes in the current legal system with respect to them. Using their depositions, we have highlighted the various lacunae present in the implementation of paper policies of India.

THE 2015 ACT: FROM THE EYES OF A FEMALE JUVENILE

Due to the institutional focus on male children in conflict with the law, there is a serious want of sufficient and accurate statistics and information on causes of the increase in females in conflict and procedures which can be used to prevent it. There are recognisable differences between the male and female children in conflict with the law and therefore with the rise of crimes committed by female juveniles, there is a demand for gender specific reform programs for juveniles. Dysfunctional families, criminal parents, and structural deficiencies are established causes for the offences committed by juveniles. It is noteworthy that sexual and physical abuse, dereliction of duty by the administration, juvenile detention, and lack of information on female children in conflict leads to their exploitation and further offences committed by them. In order to break this vicious cycle, it is of the essence to recognise the problem with the establishment, policy, and enforcement agencies.

A report '*Children in India 2012 - A Statistical Appraisal*' published by the Social Statistics Division of the Ministry of Statistics and Programme Implementation states that from 2005 to 2011, there has been a tenfold increase of female juveniles in conflict within India from 0.6 percent to 5.84 percent³⁵. In comparison to male children in conflict with the law, female

³⁵ 'CHILDREN IN INDIA 2012 - A Statistical Appraisal' (*Mospi.nic.in*, 2012)
<http://mospi.nic.in/sites/default/files/publication_reports/Children_in_India_2012-rev.pdf> accessed 21 June 2021

delinquency seems mitigated as the ratio of girls to boys arrested for committing IPC crimes during 2011 is nearly 1:19. However, with an increase in the percentage share in total juvenile crimes, the number of apprehension of girls under juvenile crimes to has increased in 2011. The total apprehended girls in conflict with law were highest within the 16-18 years of age group at 1149 during 2011. This dynamic jump in female children in conflict with law can be ascribed to social maladjustment and family disintegration resulting in a state of abandonment and disorientation. The institutional patriarchy entrenched in the social and cultural environment in which the female adolescents grow up may lead to them being victims as well as perpetrators of crime. Thus, a delicate balance is to be maintained while taking charge of a female child in conflict with the law. The substantive and procedural provisions stipulated in the 2015 Act make a serious attempt to intervene in this regard.

For children in conflict with the law, particularly females, the first encounter with the institutions established within the 2015 Act will be from the stage of apprehension, inquiry, and, finally, to institutionalization in observation homes/special homes, as the case may be. For apprehension and detection of crime, police officers are the primary establishment. Section 2(18) and 2(55) of the 2015 Act provide for dedicated police officers to deal with children in conflict with the law. Special Juvenile Police Units are to coordinate all functions of the police related to children. A police officer not below the rank of a Deputy Superintendent and two social workers, one compulsorily woman are to form the Unit³⁶. The child welfare police officer has to be at least of the rank of assistant sub-inspector and be given appropriate training and orientation to deal exclusively with juveniles³⁷. Consequently, as per Section 10 (1), a child so apprehended for being in conflict with the law shall be placed under the 'charge' of the child welfare police officer or the special juvenile police unit. However, there is no provision to have a female child police officer or a female police officer in the special unit. This poses a dilemma for cases wherein FCIL is involved. Thus, compulsorily having a female child welfare police officer designated for physical assistance while apprehending a girl child in conflict with the law and their production before the Juvenile Justice Board [as per Sections 7, 8

³⁶ Juvenile Justice (Care and Protection of Children) Act 2015, s 107(2)

³⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 107(1)

and 10 and Rule 9(6) of the Model Rules 2016] is a must. Such a move shall ensure effective implementation of 'best interest' for the girl child. Another important aspect to be noted is that the training and infrastructural support to the police is not uniform and is negligible. There is inordinate delay in appointing child welfare police officers and special police units, resulting in police officers with no appropriate training apprehending children in conflict with the law, particularly girls, which require gender sensitisation training clubbed with lessons in juvenile justice.

As soon as the child is apprehended, she has to be put in the care of a person deemed fit³⁸ within the contours of the 2015 Act. As per Section 11 of the Act the person in charge of the child after apprehension has the responsibility of the child as if s/he is the parent of the child. Otherwise in scenarios wherein parents are not fit persons, probation officers or child welfare officers are put in charge. It is necessary that in cases of female children in conflict, female officers be given preference so as to minimise the risk of re-victimisation and misuse of their vulnerability. Section 13 provides for the information of the apprehension of the child to be immediately given to the parents/guardians of the child and the probation officer/child welfare officer, who are to prepare a social background report with information about the family background, criminal history and other material necessary for the Board to make an enquiry. In cases of females in conflict, the utmost care has to be taken while appointing the fit person with regard to their gender, experience, reviews of previous juveniles they have cared for, and qualifications while bestowing such an important duty as per Section 11.

During the enquiry, a juvenile in conflict with law is envisaged to be kept in a 'place of safety'³⁹. Rule 9 sub-rule 2 of the Model Rules 2016 specifically states that the Board is obligated to immediately send the child to an observation home or a place of safety or a fit facility that may or may not be attached to an observation home. The spirit of this provision has been reiterated by the Supreme Court in *In Re: Exploitation of Children in Orphanages in State of Tamil Nadu vs. Union of India & Ors.*⁴⁰ wherein it was stated that '...[a] child cannot be kept in

³⁸ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(28)

³⁹ *Ibid*

⁴⁰ *In Re: Exploitation of Children in Orphanages in State of Tamil Nadu vs Union of India & Ors* (2020) 14 SCC 327

jail or police lockup and has to be kept in an observation home or place of safety....'. The Act specifically differentiates between a place of safety and observation homes for two primary reasons. First, the Act clearly differentiates between the children found to have committed a crime as opposed to the ones alleged to have, and consequently, it provides for the child to not be acquainted with other children in conflict with the law during their enquiry. The difference is enunciated in the 2015 Act as per the proviso to Section 18(1)(g) where the Board may house the child in a place of safety rather than a Special Home if the conduct of the child is found to be such by the Board. This poses a huge dilemma when it comes to implementation as the administration sees no difference in a place of safety and an observation home. In Delhi, with reference to the information available in the public domain, there are only five Observation Homes/Places of Safety/Special Homes being run by the Department of Women & Child Development, Govt. of NCT of Delhi⁴¹. It is noteworthy that out of the five institutions mentioned only one is specifically mentioned as a place of safety, which is also listed as a Special Home, with no information as to its location or contact details. It is not even clear if it is a place of safety for girls or boys. Out of the five institutions listed, only one is an Observation Home dedicated to girl children. Thus, due to overcrowding and lack of infrastructure the whole concept of creating a safe space for female juveniles during the pendency of their enquiry is redundant.

The interaction of the child with the judicial system begins with the Juvenile Justice Board (JJB). Section 4 of the 2015 Act provides for the establishment of a JJB which functions as the nodal point for inquiry and hearing of any case where a 'juvenile in conflict with law'. According to the data available with the Delhi State Legal Services Authority, there are only three Boards for the National Capital Territory of Delhi⁴². It is grossly insufficient compared to the sanction of the law which requires one or more for every district⁴³. As stated before, the Board, out of two social workers, appoints one female member as a mandate. Section 7

⁴¹ 'List Of Observation Homes Run By The Department Women & Child Development - Delhi State Legal Services Authority' (Delhi State Legal Services Authority, 2021) <<https://dlsa.org/list-of-observation-homes-run-by-the-department-women-child-development/>> accessed 23 June 2021

⁴² 'JUVENILE JUSTICE BOARD - Delhi State Legal Services Authority' (Delhi State Legal Services Authority, 2021) <<https://dlsa.org/juvenile-justice-board/>> accessed 23 June 2021

⁴³ Juvenile Justice (Care and Protection of Children) Act 2015, s 4(1)

establishes the procedure to be adopted by the Board. Section 7(2) provides that the child in conflict with law can be produced even before an individual member of the Board when the Board is not in sitting. It would serve the interest of FCIL better if the female member of the Board is compulsorily present while enquiry of a female child is being conducted. It has been theoretically established that the presence of same-gender interventionists⁴⁴, especially in positions of authority, can create a positive measure and do justice to the principles of best interest, safety, participation, and natural justice⁴⁵ for the juvenile.

The role of the Board is ubiquitous during the whole process involving a child in conflict with the law. It is to satisfy itself that the child in conflict has not been subjected to any ill-treatment by the police or probation officers. It has the power to take corrective measures in case of ill-treatment⁴⁶. Needless to say, a female member in the Board would be able to break the physiological and social barrier for a FCIL more effectively as opposed to the male members, in case of any maltreatment. Gender specific training for the members of the JJB should be conducted by expert psychologists, sociologists, women's rights activists, and social workers. Continuous training programs can help the Board keep up with the latest developments in various fields with regard to FCIL to create an effective environment and solutions for girls. The JJB makes an assessment regarding the child in conflict by considering the nature of the offence, social background report, and specific needs of the child⁴⁷. It can pass an order as it thinks fit to allow the child to go home, to be released in charge of a fit person, to participate in community services or counselling activities, to be released on probation of good conduct, or direct the child to be sent to a Special Home for not more than three years⁴⁸.

Special Homes are rehabilitation centres/institutions established by the State Government or Non-governmental organisation with the aim of providing rehabilitative services to children in conflict with the law who have been found to have committed an offence⁴⁹. Special homes are

⁴⁴ Leslie D Leve and others, 'Risks, Outcomes, And Evidence-Based Interventions For Girls In The US Juvenile Justice System' (2015) 18 *Clinical Child and Family Psychology Review*

⁴⁵ *Ibid*

⁴⁶ Juvenile Justice (Care and Protection of Children) Act 2015, s 14(5)(a)

⁴⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 18

⁴⁸ *Ibid*

⁴⁹ *Ibid*

bound to provide reformatory services such as education, skill development, psychological assistance, behaviour modification therapy, and recreational support to children in conflict with the law⁵⁰. Rule 29(1)(iii) of the Model Rules 2016 provides for the physical infrastructure mandated for accommodation in Special Homes. Separate Special Homes for girls above the age of 10 years is mandated with the classification of children on basis of age, nature of offence, and mental and physical status. However, Delhi has currently no specific Special Homes for females in conflict with the law but are generally housed in Observation Homes. It may be because FCIL also overlaps with ones who need care and protection. However, the functions of Special Homes as stipulated in the Act is the benchmark of services for rehabilitation and reformation to be delivered to the female children in Observation Homes as well.

Juveniles in conflict with the law are temporarily detained in Observation Homes. The reason for this was to separate the young offenders from seasoned criminals and put them on a reformatory path. However, devoid of proper funds, Observation Homes in some States have become ‘hell holes’⁵¹. A survey conducted by the Ministry of Women and Child Development, Government of India revealed in their report submitted to the Supreme Court that out of 9,589 childcare institutions had revealed 1,575 sex abuse victims⁵². A female child in conflict with law is highly susceptible to significant levels of sexual and physical poly-victimization contributing greatly to the failure of the juvenile justice system. Rule 29(5) provides for the child care institutions to function for children in conflict with law and children in need of care and protection from separate premises. For FCIL, it is clearly not possible as institutions dedicated to girl children are grossly limited and underfunded. For the entire NCT of Delhi, only a single Observation Home exists. A survey of the female Observation Home at Nirmal Chayya Complex, Jail Road, New Delhi, revealed that the Home has over 100 girls⁵³. It has an Observation Home (in a separate building) where FCIL is housed. During the period this study was conducted, FCIL were also in the CHG-I building as the Observation Home was

⁵⁰ *Ibid*

⁵¹ Hetal Vyas, ‘Justice denied in Observation Homes’ *The Times of India* (India, 10 February 2012)

⁵² Gaurav Vivek Bhatnagar, ‘Regular Audits Key to Preventing Exploitation at Shelter Homes: Activists’ (*The Wire*, 2018) <<https://thewire.in/rights/audits-experts-shelter-homes-delhi>> accessed 24 June 2021

⁵³ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (2nd edn, Oxford University Press 2010)

under repairs. This adds to the plight as girls in conflict with law require specific psychological, social, and vocational assistance. There were about ten buildings on this campus including the Home. The girls to the toilets ratio were found to be quite disproportionate. There were 6 rooms on the ground floor including a dining hall, a recreation hall, vocational training rooms for crafts, tailoring, embroidery, and one for non-formal education. The overall tenor of the Home has been described as helpful and sincere towards the requirements and demands of the girls. Other logistical and functional requirements such as computer sets, chairs, and tables for study, and internet facilities seem to be absent. The girls are provided with bare minimum clothing, bedding, and toiletries without regard to the Model Rules 2016⁵⁴.

The task of the administration and institutions does not finish simply by detaining the child to an Observation/Special Home. The focus should be on the restoration and reintegration of the juveniles into society after they are in detention. FCILs should feel that they are in a safe space and would be accepted and need to work towards making a better life. The role of the staff at such homes should be to help the girls bring changes and accept responsibility rather than punishing them for their actions. They should be encouraged to feel remorse or apologetic, and understand how their actions can affect their kin as well as the society at large. Special Homes will not achieve the reformation of children effectively unless it is able to repair the lack of remorse in the minds of the females in conflict. Such homes are not to be used for just the deprivation of liberty of FCILs. Thus, the reception and orientation stage i.e. from the time the child enters the Home need to be positive and facilitate the process.

With this overview of the 2015 Act, it is important for us to move ahead with certain moulding to the policy, administrative actions, and implementation of the juvenile justice system with pointed reference to gender-specific interventions needed for curbing the increasing numbers of females in conflict with laws.

⁵⁴ Juvenile Justice (Care and Protection of Children) Model Rules 2016, r 30, 31 and 33

REVISING THE PATH: A MOVE FORWARD

For the juvenile justice mechanism to improve its status vis-a-vis female juveniles in conflict, the focus should be made on these three broad arenas of policy making, administrative actions, and delivery of justice. Primarily, many lacunae in the system are because of lack of investment. The percentage share of children's budget within the Union Budget has been reduced from 4.76% in 2012- 13 to 4.64% in 2013-14⁵⁵. In the last ten years, the average expenditure of the Central Government on child protection has been under 3 paise out of every 100 rupees it spent. While doing a cost-benefit analysis of an increase in investment in the juvenile system, it may seem like a burden on the public exchequer in the short term. In the long run, it is beneficial for improved human resources in the country. Investment in the idea of improving the juvenile justice system would entail an ardent strive for good policies.

Policy making should focus on the restoration and reintegration of the juveniles into society after they are in custody. The fundamental principle of juvenile jurisprudence is that a juvenile offender is a victim of his circumstance rather than his own passion. Public policy for improving the juvenile justice system has to be transparent, accountable, and effective and function as a 'social therapy'.

In order to derive evidence-based policy recommendations, it is very essential to now shift towards data-based policy making. Data-driven policy making also enables a more rational public debate on sensitive topics. The 2015 Act envisages the same through Section 16 wherein a regular review of pendency of cases before the Board every three months. What may further be needed is having an extensive social audit of the entire mechanism and the officers, right from the point of apprehension of a juvenile till disposal of its matters specifically with regard to female juveniles. In cases of FCILs, it would bode well to review the persons involved such as the fit person, probation officers, Observation Homes, places of safety to ensure that girls are not being ill-treated or subjected to any form of violence. Such data should be released for

⁵⁵ Rajya Sabha, *264th Report on The Juvenile Justice (Care and Protection of Children) Bill, 2014* (Parliament of India 2015)

review by activists, NGOs, think tanks, and public policy experts for new and innovative suggestions.

FCILs are usually apprehended for petty offences such as theft, commercial vices, prostitution, and other non-violent crimes. Many cases where young girls are involved in organized crimes. Criminal gangs involve young girls in their modus operandi to get sexual favours. Needless to say, female children in conflict with the law also are children in need of care and protection. Thus, their psychological and socio-economic determinants need to be carefully analysed in the background report and the Individual Care Plans have to effectively address this overlapping issue. Form- 14 attached with the Model Rules 2016 provides for a rehabilitation chart in consonance with Rules 7(1)(ii), 13(8)(iv)(C)(cd), 17(vi), 19(20), 65(3)(viii) and 69. It is a comprehensive chart to fill in the details of the services availed by the FCIL under the Individual Care Plans ranging from the child's expectation of the Plan to interpersonal relations to independent living skills. The practice of filling out the form should be made after every six months on a regular basis. The filled charts should be reviewed by a senior member of the State Child Protection Unit to ensure the safety and reformation of FCILs.

The 2015 Act incorporates Section 93 to cater to the needs of mentally ill or special-abled children and substance abusers. Section 93 empowers the Board to remove the child to a psychiatric hospital or Integrated Rehabilitation Centres. Currently, there are no homes dedicated to the mentally challenged or drug abusers who are females in conflict. It is duly noted that young girls with strained socioeconomic backgrounds are more susceptible to drug abuse⁵⁶. Substance abuse necessarily creates a pattern of committing criminal activities and thus, being thrust into a sub-culture of such nature. They are highly prone to victimisation and their disregard may leave a harmful void in the implementation of this legislation.

The 2015 Act makes an adequate attempt to resolve the issue of age determination for juveniles. Two provisions are of particular interest to the protection of female juveniles in conflict. Section 9 lays out the procedure to be followed by a Magistrate (not part of the JJB)

⁵⁶ Pratima Murthy, *Women And Drug Abuse: The Problem in India* (Ministry of Social Justice and Empowerment, Govt of India 2003)

when the issue of the age of the person is uncertain. Section 9(2) states that if without any doubt, the person before the Magistrate is a child or was a child on the day of the commission of the offence, the proceedings have to be forwarded to the Board having jurisdiction after making an enquiry, take evidence to the same effect and record the findings. In cases where particularly female juveniles in conflict are involved, the presence of a woman social worker and a woman police officer with experience in juvenile cases should be mandated to make the procedure less daunting and more child friendly for the girl. The presence of a woman police officer has been mandated for girl children while transferring a child to a place of residence (first proviso to Section 95 (2)). A similar approach needs to be taken while handling the charge of a FCIL.

Determination of age by the Board of a person claiming to be a child at the time of the commission of the offence is governed by Section 94 of the 2015 Act. The provision illustrates various documents in the descending order of preference that can be provided as evidence for age determination. However, special consideration needs to be provided while handling matters of FCIL. It has been long established that girls mature faster than boys⁵⁷. It might pose an issue if a traditional approach with reference to the physical attributes/appearance⁵⁸ is taken while determining the age of female juveniles. Another paramount consideration to be noted is that females with strained economic and social backgrounds may not have birth certificates or matriculation certificates which are the primary documents required as per Section 94(2)(i). Ossification test, the results of which are majorly disputed, maybe the last resort for many. Notably, in *Mukarrab vs. State Of Uttar Pradesh*⁵⁹, the Supreme Court held that the ossification test is persuasive and not conclusive. It stated as follows:

“10. 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. The issue of age determination is of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juveniles in conflict with law usually do not have any documentary evidence, age

⁵⁷ Susan Anne Capel, Joanne Cliffe and Julia Lawrence, *Learning to Teach Physical Education In The Secondary School* (Routledge 2007)

⁵⁸ Juvenile Justice (Care and Protection of Children) Act 2015, s 94(1)

⁵⁹ *Mukarrab v State of Uttar Pradesh* (2017) 2 SCC 210

determination, cannot be easily ascertained, especially in borderline cases. Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted."

With the leap in scientific and medical developments across the globe, India needs to embrace new and latest systems as well. One such is the realm of forensic dentistry. This test is specifically concerned with individuals in the range of 15-19 years of age making it absolutely relevant for the purposes of the juvenile system. Administration and enforcement agencies can look into other advanced methods like Gilsanz & Ratibin, Magnetic Resonance Imaging, and Tanner & Whitehouse which are better equipped to determine age rather than the ossification test.

The responsibility of the administrative agencies and legislations simply does not end with the juvenile being sent to a Special Home/Observation Home. A final role to be played by the delivery mechanisms in the juvenile justice system is to take care of systemic issues that play an important role in the rehabilitation of FCIL. Primarily, awareness programs by experts need to be promoted in these institutions. Programs on sex education, sexual abuse, and drug abuse have to launch to recuperate the physical and mental health of the girls. In simple words, young girls need to understand the difference between 'good touch' and 'bad touch'. Only then can they speak out against the wrong committed on them. Legal awareness programs with specific reference to the rights of women in the constitution or various statutes should also frequent juvenile rehabilitation centers. Reminding them about the rights guaranteed to them by the Constitution of India will enable them to fight unethical practices in these homes. Even basic provisions of laws along with rights they have as a juvenile offender should be notified to them.

CONCLUSION

It is necessary to evaluate the juvenile justice system as being friendly and effective for female juveniles in conflict with the law as well. Or else, as a society we would fail to cater to the needs of the highly victimised section of the society. The various flaws in policy-making as well as the implementation of the juvenile justice laws viz a viz female children in conflict with

the law in India highlight the need for change. The focus should be inculcating gender specific interventions, regular social audits and reviews, and keeping the best interests of the child in mind.