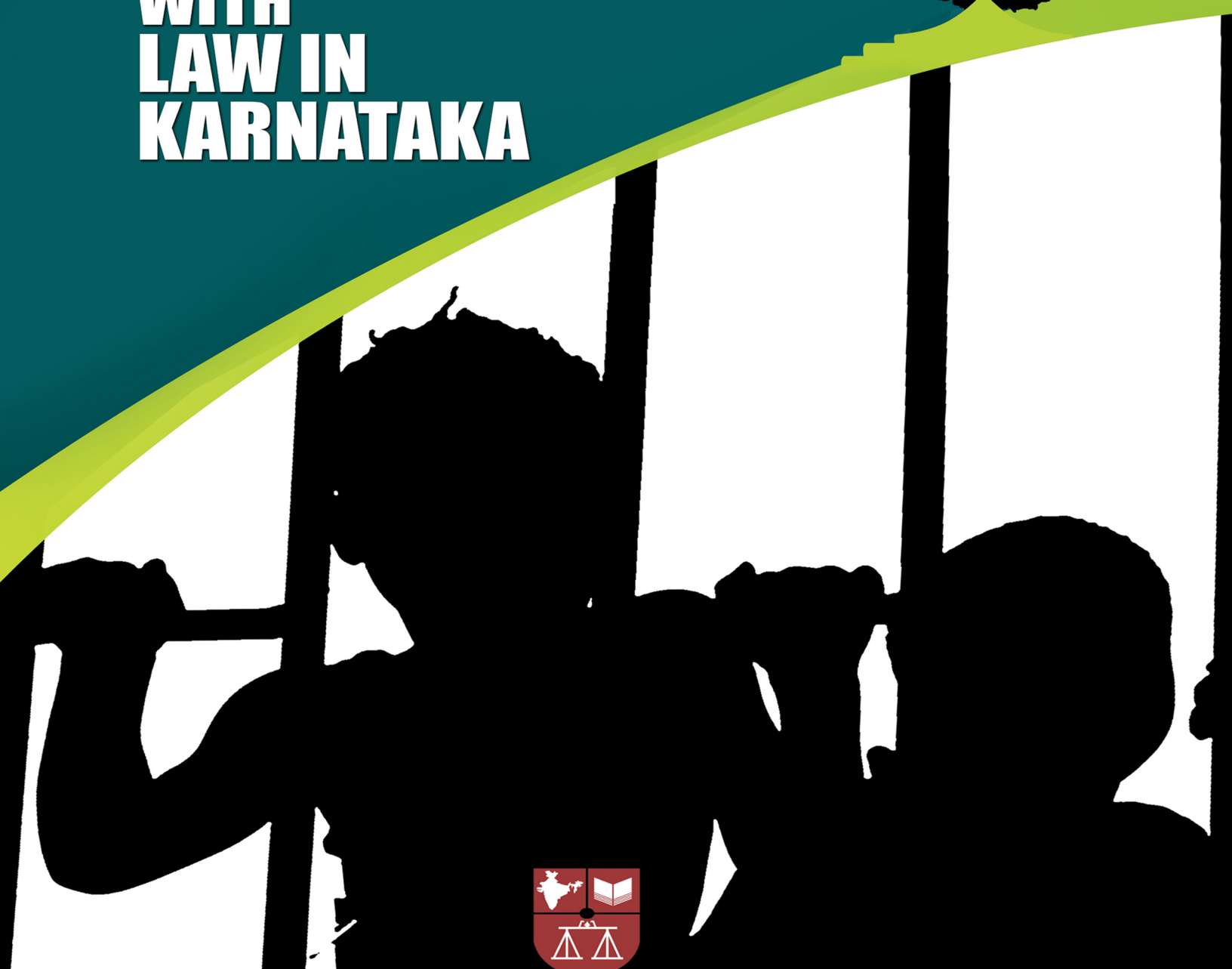


# **ACCESS TO LEGAL AID AMONG CHILDREN IN CONFLICT WITH LAW IN KARNATAKA**



**CENTRE FOR CHILD AND THE LAW  
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY  
NAGARBHAVI, BENGALURU.**



The Centre for Child and the Law, National Law School of India University (CCL NLSIU) is a specialised multi-disciplinary research centre of NLSIU, established in 1996. Over the years the Centre has played a strategic role in the arena of law, policy and social change, to effectively protect marginalized children and their families. The centre integrates quality research, direct field action and teaching on child rights law; and uses law and socio-legal strategies as tools for transformative social change to enable children to live with dignity.

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*“Exclusion is never the way forward on our shared paths to freedom and justice.”*

- Desmond Tutu

## **Access to Legal Aid among Children in Conflict with Law in Karnataka**



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NAGARBHAVI, BENGALURU.**

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## **PREFACE**

For someone who is poor and is accused of having committed a crime the greatest concern would be the cost of fighting the case in court. Without free legal aid such a person will be greatly disadvantaged in her pursuit of justice for herself. In this scenario imagine a child who is in conflict with the law, and as quite a bit of available data suggests, many of these children come from marginalised communities, living in poor conditions and with little or access to even knowledge of the law, leave alone to legal representation. Given the fact that they are children and that they are children from marginalised communities and in conflict with the law makes them the most vulnerable.

Keeping such situations in mind is the reason why our legislators have included Article 39A in the Indian Constitution to ensure that no one is denied legal representation merely because she cannot afford to retain a lawyer. The entire aid of Legal Aid is an important part of the judicial system in India. It is for this very reason why the Legal Services Authority at different levels in our country is headed by a judicial officer at that level. The Legal Services Authority do retain lawyers with the express purpose of providing legal aid to those who come from the poorer and marginalised sections of our society. However, no study has been undertaken to evaluate the practical access to and availability of quality legal aid.

The work of the Centre for Child and the Law in the Observation Home in Madiwala, Bangalore, has brought us face to face with some of the children in conflict with the law and the challenges they face on their way to justice. There are many stories we have heard and there have been reports of the abuse they have faced at the hands of law enforcers but very little if not no documentation. If we need to improve the access to justice and better representation for such children we need to first of all gather what is the available service on the

ground. This study has been done with the objective of gathering data about the prevalent situation. The research methodology adopted for this study is spelt out in detail, as we believe that the means are as important as the end and therefore caution has been exercised in determining the methodology and rigour in carrying out the study itself.

With the above objective in mind the current report first presents the available legal provisions, international and national regarding access to justice for children in conflict with the law, and then the findings relating to the children in conflict with the law, the data has been desegregated on the basis of gender. The study reveals the dismal situation that prevails in the State of Karnataka with reference to the CICLs access to justice in terms of the violations of their rights and uneven and unequal access to legal aid.

The study, though small, makes a call of immediate action so as to ensure that one of the most vulnerable groups of Indian citizens is not denied justice simply because they are children and children of the poor who due to various factors, including their family and social conditions, having been accused of being in conflict with the law. I congratulate Dr. Bincy and her team for the study and hope that all those who read this report will be spurred on to take the necessary action to bridge the gap that this study exposes. This is only a preliminary study. We need more studies covering all districts and a much larger number of children who are detained in the observation home and other such institutions in order to get a comprehensive picture of the state of access to justice for children in conflict with the law. If this very limited study alone reveals such a dismal picture, I dread to imagine what larger, more comprehensive, studies may reveal.

However, given the fact that our courts have been proactively striving to strengthen the judicial system so as to ensure justice to the children in conflict with the law, I end this preface dreaming of a time when children of our country will be able to live their childhood enjoying all the conditions necessary for their healthy development in every way and live with dignity.

V.S. Elizabeth  
Professor and Coordinator  
Centre for Child and the Law  
National Law School of India University



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- The advocates, Juvenile Justice Board, Karnataka State Legal Services Authority and Department of Women and Child Development Karnataka, Observation/ Special Home staff, and experts who work with children in conflict with law and provided valuable insight into the challenges that they and the children face everyday.
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- The participants of two consultations, one in the beginning to assist with designing the research framework<sup>1</sup> and one in the end to share the preliminary findings of the study.<sup>2</sup>

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<sup>1</sup>Maharukh Adenwalla (Advocate, High Court of Bombay), Geetha Ramaseshan (Advocate, Madras High Court) Geeta Sajjanshetty (Advocate &JJB Member), Prof. Abdul Aziz (Visiting Faculty, NLSIU), and Dr. Sarasu Thomas (Professor, NLSIU).

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<sup>2</sup> Hon. Justice Ashok B. Hinchigeri (Retd. Justice, High Court of Karnataka & Former Chairperson, High Court Committee on Juvenile Justice), Dr. Kripa Alva (Chairperson, Karnataka State Commission for Protection of Child Rights), Mr. C Rajeevagowda (Department Secretary, KSLSA), Ms. Shylaja (Program Manager, ICPS), Ms. JaganMohini (Program Officer, Child Protection ICPS), Ms. Savitha H.G. (Program Officer, ICPS DWCD), Mr. Chetan A Kumar (JJB Member – Bengaluru Rural), Ms. Jyothi Lakshmi (DLSA Bengaluru Urban), Adv. D.K. Sandarshini, Ms. Shwetha B.K (Counselor, OH), Ms. Rovina Bastian (Gender Sensitisation Police Project), Mr. Vasudev Sharma (CRT Bengaluru), Mr. Basavaraju (SJPU, BOSCO), Ms. C.R. Nagarathna (SJPU, ECHO), Ms. Meenakshi (SJPU, APSA), Ms. Susan Thomas (SJPU, APSA), Dr. Vishnuprasad R (Legal Services Clinic, NLSIU) and Mr. Gurfateh Singh Khosa and Mr. Avinash (LSC Students, NLSIU).

## **EXECUTIVE SUMMARY**

When children from socio-economically backward and broken families are drawn into the criminal justice system, without appropriate support they face the risk of being unfairly detained, facing disproportionate charges, and a lack of sympathy from a system that is designed to punish rather than rehabilitate. Although a number of rights and entitlements are put in place for children entering criminal justice system, no effort has been made to assess empirically whether these rights and entitlements have reached them. As one of the most vulnerable and marginalized sections of the population, children's access to justice is largely dependent on assistance from external players, in particular, effective legal counsel. Therefore, denial of these essential rights to children alleged to be in conflict with the law can, in fact, amount to a failure of justice itself.

### **Legal Framework**

- The United Nations Convention on the Rights of the Child (UNCRC) guarantees certain rights to children under Article 2 (right to non-discrimination), Article 3 (best interest of the child), Article 6 (the right to life, survival and development) and Article 12 (right to be heard).
- Fundamental principles for a fair trial under UNCRC are Article 40(2)(b)(iv): Right to participate fully in the proceedings, and understand the charges, procedures and likely consequences, Article 40(2)(b)(ii): Right to legal counsel during the preparation and presentation of his defence, 40(2)(iv): Free assistance from an interpreter at every stage, and Article 37(d): Prompt access to legal and other assistance.
- Article 39A, Constitution of India, 1950 obligates the State to ensure that the operation of the legal system promotes justice on an equal

basis, and take measures to provide free legal aid through legislations and schemes, or in any other way.

- Sec 12 (c) of Legal Services Authorities Act, 1987 recognises women and children as the most vulnerable and marginalized categories, deserving of state support in navigating the legal system.

## **Key Findings**

This study presents the findings on the status of free legal-aid in Karnataka among children in conflict with law (CICL), with a view to analyze the extent to which it is accessible, and child-friendly.

### **Overview of the Situation of CICL in Karnataka**

- Percentage of CICL receiving legal aid in 22 districts of Karnataka was found to be 4.95%. This indicates that over 95% CICL either have to pay to hire private lawyers, which they often cannot afford, or go through the criminal justice system without representation.
- Majority of the cases brought before the Juvenile Justice Board (JJB) in Bengaluru Urban were against boys (99%), and a very small minority was against girls (1%).
- A vast majority of the children were in the age group 16-18 years (84.5%), followed by 12-15 years (15.3%).
- Majority of the cases were for petty offences (50%), followed by serious offences (29%), and a relatively small percentage of heinous offences (12%). 23% of the cases were found to be unclassifiable as per categories provided in the Juvenile Justice (JJ) Act.
- Of the total number of cases before the JJB between January 2015 and August 2017, a guilty verdict was reached in only 3 cases, while others ended in acquittal or disposal. Alarminglly however, there is a pendency of over 500 cases in all three years.

- No preliminary assessments or transfers have been done in the Bengaluru Urban JJB during this period.
- Of the CICL interviewed from the Observation Home (OH) and Special Home (SH), their mean years of schooling were found to be 8.5 years, most were employed either as daily wage labourers or in sales/service oriented jobs, came from poor or low middle class families, and with an average of only one person generating income in the family.
- It was found that 92% of the children who had been booked for the first time were in the OH, whereas 60% of the children who had been charged with multiple offences were in the SH.
- Most of these children suffer from behavioral problems such as addictions, anger management problems, impulsive behavior, being shortsighted about their future, running away from home, stealing and self-injurious behavior, and so on.

### **Experience with the Police**

- In a flagrant violation of the provisions of the JJ Act, a vast majority of the children (97%) were found to have been detained in the police station for an average for 5 days.
- 45% of the children apprehended by the police were also not allowed to contact their families. The right to legal counsel was also denied to these children.
- Of the respondents who answered questions about ill treatment at the hands of the police, 64% stated that they had experienced varying degrees of torture at the hands of the police. The children also confirmed that they did not interact with CWPOs or police from SJPU, throughout the detention and torture phase.
- Two children were also detained in adult prisons, for time periods ranging from weeks to months, on the presumption that they are adults,

in direct contravention of the NALSA Guidelines for the Police, which state that in case there is a doubt as to the age of the child, it must be presumed that he is a minor, and treated accordingly.

### **Provision of Legal Aid**

- A vast majority (80%) of the parents interviewed did not know about their right to access free legal aid, and the children came to know of this only after having been brought to the OH, indicating they were denied access to legal aid at the crucial stage of apprehension, and a severe lack of reach of the awareness programmes conducted by the DLSA.
- 52% of the children interviewed were being represented by legal aid lawyers, and 36% by private lawyers - showing an increase trend in these families approaching private lawyers despite their economic condition. A few them (9%) were not represented at all, reflecting a violation of JJ Act on the part of JJB in carrying out their functions and responsibilities.
- 59% of the children got access to a lawyer only after coming to the OH, although the time frame for access to representation varied from a week to nine months. 12%, for instance received representation only towards the end of the inquiry before the JJB.
- 41% children received representation from private lawyers (arranged by their families) immediately after being apprehended by the police. In most of these cases (66%), the parents approached the lawyer based on the information received from the police station, indicating a potential nexus between private lawyers and the police.

### **Experience with Lawyers**

- Only a handful of parents (10%) were found to have some background information about the lawyer representing their child, such as the court

where the lawyer practices or the number of years of practice experience of the lawyer in providing legal counsel.

- It appeared that no criteria was laid down by the KSLSA or NALSA for empanelment of lawyers to provide free legal aid, meaning that anyone, irrespective of capability, experience and aptitude could be empaneled as a legal aid lawyer or para legal volunteer.
- It was found that 95% children and 33% parents were not explained any of the legal procedures by their lawyers, whether private or legal aid. Even amongst the 67% parents who were explained the procedures, hardly any understood what they actually meant. Similarly, only 50% of the parents were consulted about the strategy to be followed in the case, with the children being completely ignored in this process.
- 45% (13 out of 29) of the parents of CICLs had made some payment to lawyers, most of whom were private lawyers (77%, 10 out of 13). 48% (14 out of 29) of them had not made any payment to their lawyers for legally representing CICL, most of whom were legal aid lawyers (12 out of 14). However, since most of these CICLs are still in the OH, it is possible that payment may be demanded at a later stage.
- Children whose case has been closed and have paid the legal aid lawyers (3 out of 13), mentioned having paid amount ranging from Rs. 1000 to Rs. 8000. While the experience with private lawyers has been such that the amount paid for their services has ranged from Rs. 5000 to Rs. 2,00,000.
- The overall mean satisfaction among those receiving services from the private lawyers ( $X = 5.4$ ) was found to be higher compared to those receiving services from the legal aid lawyers ( $X = 4.7$ ).

- The interaction of children with the lawyers representing them was found to be minimal (48%, 10 out of 21) or absent (38%, 8 out of 21), a vast majority of these being empaneled lawyers.
- The children are not even aware of their rights and are afraid or sometimes even ashamed of speaking about the case to their lawyer, and even if anything is explained to them, are unable to understand. The children are also afraid of revealing about the torture experienced at the police station to their lawyers, especially in those cases where the private lawyer is appointed through police referral. Even in a few cases, where the children have revealed their experience to the lawyers, there has been no follow up action to hold the police accountable for their actions.
- There was stark difference observed between empaneled lawyers and NGO lawyers in their interest in handling CICL cases, trainings received, approaches, fact gathering mechanism, definition of a successful case, response to police torture, decision making process, role of a lawyer according to them, and collaborative approach adopted for the case, where the latter adopted a much more child centric approach.

#### **JJB Inquiry Proceedings**

- 62% children and their parents recount feeling afraid and confused, in the presence of the JJB and the legal proceedings, although under the Act these proceedings are meant to be child friendly.
- A vast majority of them (82%) were not asked if they had legal representation at any stage during their inquiry, even when some of the children did not have legal representation, which reflected a violation of JJ Act on the part of JJB in fulfilling their functions.



- The children are made to stand on the side throughout their case proceedings. Even when children (n=2) have mustered the courage to share their experience with the JJB members about police torture in the police station or situation at the OH, no visible action was taken.
- Children often have to wait between 4 and 25 days for their first hearing, contrary to the mandate of the JJB to ensure a speedy trial.
- A handful of respondents (n=5) did have a positive experience with the JJB, where they felt good and comfortable interacting with the members.

### **Life in Institutional Settings**

- The children staying in OH did acknowledge the presence of services such as counseling, teaching, medical care and vocational training in the home. However, there is a need to regularize these services and allow the concerned staff to fulfill their responsibilities.
- While children are only meant to be sent to SH after the inquiry has been completed against them and they have been found to have committed an offence, it was observed that two children had been sent to the SH despite the inquiry still pending against them.
- The services in the SH were found to be more rehabilitation driven and regularized.
- With regard to legal counsel post-conviction and admission into SH, it was observed that none of these children had filed for an appeal with the help of legal aid lawyers due to various reasons such as – unwillingness of parents, where they felt this was an opportunity for their child to be rehabilitated, child's acceptance of the crime committed and feeling that they deserve the punishment, and no information or external motivation to challenge the disposition.

## **Challenges**

### **Failure of Systems and Mechanisms**

- Poor implementation of schemes and legal provisions.
- Lack of monitoring by the DLSA
- Nexus between the police and private lawyers
- Delay in filing charge sheets, producing witnesses, and receiving forensic and other reports, resulting in pendency.
- Lack of human resources - for instance, in Bengaluru Urban, there is only one PO, and in most districts there are very few empaneled lawyers.
- JJB proceedings are not conducted in a child-friendly manner as stipulated under the JJ Act, 2015 and Model Rules.
- Although the JJ Act requires the JJB to make regular visits to jails to ensure no child is kept in the jail, this was not implemented on the ground.
- Lack of monitoring over the OHs.
- Bias towards child victims rather than CICLs, even though both categories may be children in need of care and protection.

### **Inefficient of Inadequate Services**

- Poor reach of awareness programmes regarding legal aid by the DLSA, resulting in a lack of awareness of their right to free legal aid amongst CICL and their families.
- No list of translators and interpreters readily available.
- The OH does not provide a space for rehabilitation since services are not properly oriented and regularized.

### **Lack of Qualified Personnel**

- There is no periodic training or sensitization programmes conducted for the empaneled lawyers or other government functionaries, including the members of the JJB and especially the police.
- There is an acute lack of knowledge among government officials about the extent of the problem, which is the number of children alleged to be in conflict with law in each district.
- Many lawyers representing CICL before the Board do not have a good understanding about the JJ Act or JJ System.
- The DLSA also experiences a shortage of staff to organize legal awareness programmes and monitor OH/SH on a regular basis. There are insufficient empaneled lawyers willing to work pro bono for the marginalized sections in all the districts of Karnataka. In addition, no paralegal volunteers are listed or involved in handling CICL cases, although there is a huge need for free legal services across the State.
- The staff turnover in the OH is high, with no proper training and guidance, they experience burn out and are unable to deal with the challenging situation.

### **Key Recommendations**

#### **Legal Services Authority**

- Increased and consistent awareness programmes to be conducted, about CICL's right to legal aid services and how to avail them, in the communities, especially in slums and Observation/Special Homes.
- Paralegal volunteers and students from legal service clinics could be involved in conducting awareness programmes, rather than empaneled lawyers to prevent any conflict of interest.
- Certain key criteria (commitment to child rights, concern for marginalized and weaker sections of the society, understanding of JJ

Act and Model Rules, service oriented, should have taken pro-bono cases in the past) must be mandatory to be an empaneled lawyer representing CICL.

- Legal services authority must proactively empanel more lawyers to assist CICL. They must be well trained and remunerated.
- Empaneled lawyers representing the child in conflict with law must spend time interacting with the child, keeping the best interest of the child as the key focus.
- Empaneled lawyers must be sensitized about their role to connect with the child and the family through a multidisciplinary approach, by collaborating with other professionals in strategizing the case.
- Legal services authority must proactively engage paralegal volunteers to assist CICL. Legal services clinics attached to Law Colleges and Universities, and the students could be engaged as paralegal volunteers.
- Empaneled lawyers representing a child in conflict with law must have a fixed term during which they are allowed to represent CICL before JJB.
- Performance monitoring criteria must be on quality of services delivered by the lawyers. Information must be sought on the number of cases represented, the arguments presented, and the type of applications filed, as everything needs to be documented. Success must be defined as the rehabilitation of the child in its ultimate meaning.
- Feedback and suggestions must be sought systematically from the CICL and their families about the performance of empaneled lawyers.
- Cases brought before JJB must may be closely monitored and reported on a regular basis to the High Court Committee on Juvenile Justice.

### **Juvenile Justice Board**

- Inquiry process must be child friendly, where the child must be encouraged to engage in the process and ask for clarifications from the JJB and lawyer at any point.
- JJB must make efforts to clear the cases on a fast track basis within a year.
- A multidisciplinary approach of seeking opinion from counselor and other professionals dealing with the child is to be adopted, before passing judgment.
- JJB must strictly adhere to their functions and responsibilities, such as inquiring if all the children appearing before them have legal representation and ensuring access to the same, demanding for an SIR before making decisions about the CICL, conducting regular inspections of jail to ensure no child is imprisoned in adult jails, and preparing a quarterly report on the performance of legal aid lawyers.
- For children who do not have parents/guardians, special care must be taken to address their needs, and refer them to CWC for care and protection.

### **Department of Women and Child Development**

- Atleast two POs must be hired to work exclusively with the CICL in each district, to conduct SIR and prepare Individual Care Plan.
- Make funds available to develop programmes that are geared towards bringing reformative and rehabilitative changes in the children in the OH/SH.
- There is a need for adequate number of staff in the OH, to function normally. Recruit officers and staff who are positive and concerned about the well-being of CICL, and provide them capacity building training in a regular manner.

- An orientation on the JJ Act and JJ Model Rules, Child Rights, child psychology and protection concerns to all staff of OH is a must.
- Staff could be trained on how to share basic information about the right to legal aid among children in conflict with law and their families.

#### **Police and Special Juvenile Police Unit**

- Need to be sensitized to adopt child friendly investigation procedures, and not adopt torture as a tool to engage with the child or restraining the child in police lock up.
- Police must provide information about free legal aid services offered by the legal services authority, rather than referring CICL and families to private lawyers.
- If unable to determine the age of the child in conflict with law, always give benefit of doubt to the person as a child rather than treating as an adult and sending them to jail.
- Regular trainings must be offered to police officers, and especially SJPU and CWPO regarding JJ Act, JJ Model Rules and rights of CICL.

#### **State Government**

- Coordination between Police and the Legal Services Authority, to ensure that the cases coming to the police are first of all referred to SJPU, and thereafter referred to the legal aid lawyers, so that free legal assistance can be provided at the initial stage.
- Department of Women and Child Development and Legal Services Authority must regularly interact to discuss how to proceed with social investigation or rehabilitation and how to provide legal aid, to all CICL who require.
- There is a need for JJB to develop mechanisms that bring parents and children together with the professionals in a regular manner to provide

awareness, for continuous counseling and explaining the services available, and engaging in the rehabilitation plan of the child.

- Regular training and capacity building (atleast once a quarter or half yearly) of government functionaries involved in delivering justice – judiciary, police, SJPU, staff in OH/SH, child protection teams, health/education/rural development/police/labour departments. Time for them to introspect and analyze the cases on a regular basis, through cross learning and sharing of experiences rather than being buried in paper work and blame game.

## INTRODUCTION

Studies across the world have shown that children are excessively represented in statistics on crime, both as victims and as perpetrators. The age at which children commit crimes has also been recorded to have declined steadily over time.<sup>3</sup> This may be because of the frustrations of rapid urban growth, due to the desperations of impoverishment, or the lack of an enriching home environment, among others. The situation of children in conflict with the law (CICL) in a Tanzanian study revealed that a large majority of children who come in conflict with the law face certain risk factors such as lack of parental care, or a poor educational background.<sup>4</sup> Similarly in India, a study by the Delhi Commission for Protection of Child Rights in 2015 observed that a large number of children alleged to be in conflict with the law in Delhi had migrated to the city from nearby regions, and were socio-economically backward.<sup>5</sup> Another study released in the same year on socio-demographic characteristics of CICL in three cities of India – Hyderabad, Lucknow and Pune, also revealed that a large majority of children who come in conflict with the law are from broken homes, have addictions, jailed family members and suffered physical and sexual abuse.<sup>6</sup>

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<sup>3</sup>See the UNICEF Fact Sheet on Juvenile Justice, *available at* <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf> (Last visited on December 3, 2017)

<sup>4</sup>Kirsten Anderson (Coram Children's Legal Centre, UK in collaboration with UNICEF and the National Organisation for Legal Assistance), *Analysis of the Situation of Children on Conflict with the Law in Tanzania* (January, 2012). Retrieved on April 15th 2017 from <http://www.childrenslegalcentre.com/userfiles/file/CCLC%20Tanzania%20Juvenile%20Justice%20Report.pdf>

<sup>5</sup> Delhi Commission for the Protection of Child Rights, *Why Children Commit Offences: Study on Children in Conflict with Law in Delhi* (June 2015), *available at* <http://www.butterflieschildrights.org/admin/resource/Why%20Children%20Commit%20Offences-DCPCR.pdf> (Last visited on January 21, 2018).

<sup>6</sup> Gupta, A., Biddala, O.S., Dwivedi, M., Variar, P., Singh, A., ... Shankar, S. (2015). Sociodemographic characteristics and aggression quotient among children in conflict with the law in Indi: A case control study. *National Medical Journal of India*. 28(4), 172-175. Retrieved on February 2018 from <https://www.ncbi.nlm.nih.gov/pubmed/27132723> <http://www.childrenslegalcentre.com/userfiles/file/CCLC%20Tanzania%20Juvenile%20Justice%20Report.pdf>



As a result, when such children are drawn into the criminal justice system without appropriate support, they face the risk of being unfairly detained, facing disproportionate charges, and a lack of sympathy from a system that is designed to punish rather than rehabilitate. The right to access quality legal aid at every stage of the criminal justice system has been widely recognised as an essential human right. In doing so, it is understood “that when a person's fundamental rights to liberty and life are put at risk by the State, that person has a right to legal assistance to ensure that the State properly meets the burdens and obligations imposed by law to do so, and further, has not violated the rights of the individual in the process.”<sup>7</sup>

A number of rights and entitlements have been put in place, both in International Law and the Indian Legal System, to ensure that children who come into the criminal justice system and the juvenile justice system receive legal aid and counsel. However, no effort has been made to assess empirically whether these rights and entitlements have reached their target population. As one of the most vulnerable and marginalized sections of the population, children's access to justice is largely dependent on assistance from external players, in particular, effective legal counsel. Therefore, denial of these essential rights to children alleged to be in conflict with the law can, in fact, amount to a failure of justice itself.

A study examining the status of legal aid among CICL in Tanzania reports that almost all of them interviewed had not received any legal assistance, including at the first hearing where the charges are laid.<sup>8</sup> Only children charged with

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<sup>7</sup> UN Office on Drugs and Crime, Access to Justice: Legal Defence and Legal Aid, available at [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/4\\_Legal\\_Defence\\_and\\_Legal\\_%20Aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/4_Legal_Defence_and_Legal_%20Aid.pdf) (Last visited on December 3, 2017).

<sup>8</sup>Kirsten Anderson (Coram Children's Legal Centre, UK in collaboration with UNICEF and the National Organisation for Legal Assistance), *Analysis of the Situation of Children on Conflict with the Law in Tanzania* (January, 2012). Retrieved on April 15th 2017 from

murder received legal aid, but only during inquiry. The lack of legal aid resulted in children being wrongly charged, serving time in detention on remand where it could have been avoided, being held on remand in adult prisons, and spending extended periods of time on remand. While there is no literature available on the access to and quality of free legal aid among CICL in India, certain state-level and regional studies indicate that these children are often treated harshly by the police and largely abide by the procedure laid down in the Code of Criminal Procedure, 1973, rather than the Juvenile Justice (Care and Protection) Act (herein after JJ Act).<sup>9</sup> Therefore, this study aims to examine the status of free legal-aid in Karnataka, with a view to analyze the extent to which it is accessible to children, and child-friendly. The understanding gained from the study will be used to make recommendations for strengthening the system of free legal aid for CICL in Karnataka.

## **Research Objectives**

The research objectives of this study are:

- (i) To examine the access to free legal aid among CICL in Karnataka.
- (ii) To understand whether the quality of free legal aid provided to CICL is child-friendly.
- (iii) To identify challenges in the provision of quality free legal aid services to CICL.
- (iv) To develop recommendations for practice guidelines for various stakeholders and creating mechanisms.

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<http://www.childrenslegalcentre.com/userfiles/file/CCLC%20Tanzania%20Juvenile%20Justice%20Report.pdf>

<sup>9</sup> ECHO: Centre for Juvenile Justice, *Juvenile Crimes: A Peep into Reality* (2014).

## **LEGAL FRAMEWORK SURROUNDING RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW**

### **International Instruments**

The term “legal aid” has been defined under the *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 2013* to include:

“legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes”

The United Nations Convention on the Rights of the Child (UNCRC) enshrine the general principles which must be adhered to when dealing with children with conflict with the law. These are the right to non-discrimination (Art. 2), the principle of the best interest of the child (Art. 3), the right to life, survival and development (Art. 6), and the right to be heard (Art 12). In addition to these, certain fundamental principles must be followed to ensure that the child receives a fair trial. As per Art. 40(2)(b)(iv), a fair trial requires that the child alleged to be in conflict with the law be able to participate effectively in the proceedings against him. This means that he must understand the charges against him, the likely consequences and penalties, and the options available to him. While the General Comment No. 10 of the UNCRC lists these as essential

for the child to be able to effectively instruct his legal counsel,<sup>10</sup> it must be noted that a clear and appropriate understanding of these aspects of the trial can only come from having competent legal counsel from the very beginning. This is captured in Art. 40(2)(b)(ii) of the UNCRC which states that the child must have access to effective legal counsel in the *preparation and presentation* of his defence. Another important provision essential to effective legal aid, as defined in the 2013 Guidelines is Art. 40(2)(vi), UNCRC, which lays down that the child must have free assistance from an interpreter at every stage of the juvenile justice process if he does not speak the local language/language of the Court.

Article 37(d) of the UNCRC further provides,

“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Article 14(3) of the International Covenant on Civil and Political Rights provides,

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

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<sup>10</sup>United Nations Convention on the Rights of the Child, General Comment No. 10 on Children’s Rights in Juvenile Justice, 14 (April 25, 2017), *available at* <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (Last visited on January 21, 2018).

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”<sup>11</sup>

The Guidelines for Action on Children in the Criminal Justice System recommended by the Economic and Social Council,<sup>12</sup> specifically highlight the importance of providing legal aid to children who become embroiled in the criminal justice system:

“Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.”<sup>13</sup>

### **Indian Legal System**

These international principles have been adopted by India, and are reflected in Article 39A, Constitution of India, which obligates the state to ensure that the operation of the legal system promotes justice, in particular by facilitating access to free legal aid through legislation, schemes or other means.<sup>14</sup> The

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<sup>11</sup> Art. 14(3)(d), ICCPR, 1976.

<sup>12</sup> Economic and Social Council resolution 1997/30 of 21 July 1997.

<sup>13</sup> Guideline 16, Guidelines for Action on Children in the Criminal Justice System recommended by the Economic and Social Council, 1997.

<sup>14</sup> Article 39A, CONSTITUTION OF INDIA, 1950: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that

Legal Services Authorities Act, 1987 (LSA Act) was enacted in furtherance of this directive principle, and defines legal service to include “*the rendering of any services in the conduct of any case or other legal proceedings before any Court or Authority or Tribunal and the giving of advice on any legal matter*”.<sup>15</sup> The National Legal Services Authority (hereinafter NALSA) was established under the LSA Act as the nodal body providing access to free legal aid to the most vulnerable sections of society.

The population of children in conflict with the law (CICL) in India is overwhelmingly poor and socio-economically deprived. Out of the CICL apprehended for crimes under the Indian Penal Code, 1860 (hereinafter, IPC) and Special Local Laws (SLL) in 2015, 70% belonged to families either with an annual income below Rs. 25000 (42%) or between Rs. 25000 and Rs. 50000 (28%), and 46% had either primary level of education (34%), or were illiterates (12%).<sup>16</sup> According to the NCRB data for 2016, this figure rose to 59.72% of the CICL apprehended having either primary level of education or being illiterate. In most cases, such children have neither the means nor the ability to secure legal counsel, particularly private legal counsel, which might be expensive.

As per S. 12(c) of the LSA Act, children (along with women) have been identified as one of the most vulnerable and marginalized categories of society, deserving of state support in filing or defending cases in a court of law,

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opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

<sup>15</sup>Section 12 (c), Legal Services Authorities Act, 1987.

<sup>16</sup> National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2015 Compendium*, Sep 2015, page 135, available

at <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf> (Last visited on December 3, 2017).

notwithstanding other social marker such as caste or financial status.<sup>17</sup> This position is further endorsed by the NALSA (Child-Friendly Legal Services to Children and their Protection) Scheme, 2015, which provides guidelines for legal services institutions such as State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs) to follow when handling cases involving children.<sup>18</sup> The scheme aims to ensure legal representation to child victims and CICL, and strengthen legal services, counseling and support services at all levels. It also aims to create an environment in the juvenile justice (JJ) system where children are valued, and awareness is created amongst the stakeholders of the child protection system and the public at large regarding the rights of children.

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<sup>17</sup> S. 12, Legal Services Authorities Act, 1987: Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –  
(c) a woman or a child;

<sup>18</sup> Sec 5.1 and 5.3, NALSA (Child-Friendly Legal Services to Children and their protection) Scheme, 2015.

## METHODOLOGY

**Design:** The study adopted a mixed design, where both quantitative and qualitative information was obtained. Quantitative information was obtained through Right to Information (RTI) applications made to relevant departments, and qualitative information was obtained through interview mechanism from two different sources – children in conflict with law (alleged or found to have committed an offence) and their parents as well professionals and functionaries who provide services. The data was obtained from two different sources to facilitate triangulation of the findings, as data received from only one source would provide biased information, and not provide a complete picture of the phenomenon studied.<sup>19</sup>

**Sample:** The RTI applications requested for information about CICL throughout the state of Karnataka for the period January 2015 to May 2017, except for one source where due to the delay in receiving response to the RTI application, the data obtained was until August 2017. With regard to the qualitative data gathered for the descriptive and exploratory part of the study, 16 children from the Observation Home (OH), 7 children from the Special Home (SH), and 10 family members (father, mother or sibling) of CICL were interviewed. The OH in Bengaluru Urban district caters to children from four other neighboring districts too - Ramanagara, Tumkur, Chikbalapur, and Bengaluru Rural. Children admitted in the OH are typically those who are alleged to have committed *serious* or *heinous* offences and denied bail. Similarly, the SH in Bengaluru Urban caters to children from across Karnataka, being the only one in the State, and houses children found to be guilty. Permission to interview these children was obtained from the Government of Karnataka, Department of Women and Child Development, post that the research team requested the Superintendents of each of these

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<sup>19</sup> <http://www.qualres.org/HomeTria-3692.html>



institutions to allow children who were interested in participating in the study. All the interviews were conducted in person by researchers within the premises of the institution.

However, for the selection of families of CICL to participate in the study, a list of names of children admitted in the OH, names of their parent/guardian and phone numbers was obtained for the period Jan 2015 to Jan 2017. This list included children from five districts - Bengaluru Urban, Ramanagara, Tumkur, Chikbalapur, and Bengaluru Rural. This list was randomized using an algorithm and families were contacted to ascertain their interest in participating. Out of the 147 parents that were attempted to contact, only 10 participated in the study (7%). The rest of them did not participate for various reasons – number was not reachable, wrong number, phone switched off, busy at work, not comfortable answering over phone and disinterested in participating.

As for the professionals and functionaries, those who interact with these children during the process of their inquiry or are part of the JJ system were contacted. Out of the professionals and functionaries (legal professionals, government officials from Karnataka State Legal Service Authority and Department of Women and Child Development, and judicial officers) that were attempted to contact, majority of them (59%, 13 out of 22) agreed and participated in the study. The mean age of the group was 48 years, with a vast majority being females (77%). The professionals and functionaries that participated had an average of 6.5 years of experience working with children in conflict with law, with experience ranging from 1 to 15 years.

The research team made a conscious attempt to interview children and families who are legally represented by legal aid lawyers and those represented by private lawyers, to examine if there was any difference in the quality of legal services provided to the two groups. Another selection criteria the research intended to adopt was to include male and female children in conflict

with law. However, on receiving information through RTI applications, it was observed that the number of female children entering the JJ system was very minimal and thus was difficult to access. In order to maintain the confidentiality of the children and the families, only a verbal consent was obtained from them, after reading out the information sheet. This was done because any form of signed consent could result in associating them back to the JJ System and possible reprisal that the children may face as an outcome of their engagement. However, the professionals and functionaries participating in the interview were asked to sign a consent form.

***Method of data collection:*** RTI applications were sent to three departments – Karnataka State Legal Services Authority (KSLSA), Karnataka State Crime Records Bureau, and Government of Karnataka, Department of Women and Child Development, to obtain information about the CICL in Karnataka and the number of children availing legal aid. Structured interview schedules were used to gather data from children and families, with open and close-ended questions. The children's interview was pilot tested with someone who had exited the JJ system after having stayed in the OH as well as SH, in fulfillment of the final orders passed against him. Each interview lasted for 45-60 minutes. However, for the professionals and functionaries, semi-structured interview schedules were used, with open-ended questions, each lasting between 20-50 minutes. Although the interview schedules were primarily developed in English, it was translated into Indian languages (Hindi and Kannada) for the purpose of administration. The research team involved in recruiting, obtaining informed consent, and conducting the interviews had no prior interaction with the participants. Therefore, the possibility of influencing the participant response was minimal.

**Analysis:** The information obtained through RTI applications for each district was compiled to identify total number of CICL under IPC, SLL and JJ Act 2015, as well as determine the total number of cases where the District Legal Services Authority provided legal aid. Also, all the quantitative data obtained was compiled to obtain descriptive information, such as frequencies, percentages, means and standard deviations. As for qualitative information, the close-ended data obtained were coded and entered into a statistical package for missing data analysis, generating descriptive statistics, and bivariate analysis. The detailed information from the interviews were coded line-by-line, to determine the categories and themes arising, which were clustered for similar responses. Attempt was made to identify if there were variances in legal services based on the type of lawyering services (offered by legal aid lawyer vs. private lawyer). Where possible the data obtained from the professionals and functionaries was triangulated with the data obtained from children and families, to confirm the findings for credibility and dependability. Also, consultations were held with the children alleged to be in conflict with law, professionals and functionaries to re-confirm and strengthen the preliminary findings of the study.

**Ethical consideration:** The research team engaged in data collection through interviews only after obtaining permission from the Ethics Advisory Committee constituted at the Centre for Child and Law, National Law School of India University. At each stage of data collection the safety of the participants was given utmost importance. No identifying details were gathered, especially from the children and families to prevent them from being associated with the study. The participants were informed that if they feel upset at any point, they are free to exit the study. All information collected from them was treated confidentially and de-identified in the presentation of results. Although there was no direct benefit to the CICL and their families

participating in the study, they expressed that this study provided them an opportunity to share their experiences of availing legal aid services and their hope for some reforms in the way these services are provided.

***Limitation:*** Research studies conducted with vulnerable and stigmatized populations, such as CICL generally face certain methodological challenges, and these challenges were encountered in the current study as well. Accessing the children who are out on bail was nearly impossible. Moreover, efforts aimed at accessing families of CICL only resulted in a 7% response rate. Thus, the study was not able to directly interview children whose case was pending inquiry and was out on bail. Details of such CICL were accessed only through families. Moreover, the number of children and families interviewed being small, it was difficult to arrive at statistically significant conclusions about some of the findings. The lack of participation from female or transgender children makes it difficult to generalize the findings of this study to those groups.

## FINDINGS

### I. Overview of the situation of CICL in Karnataka

#### *Apprehension and access to legal aid in Karnataka*

RTI applications were made in all 30 districts of Karnataka, to obtain information regarding the total number of children in conflict with law apprehended under IPC, SLL and JJ Act 2015 and the total number of children provided legal aid through District Legal Services Authority (DLSA) during the period January 2015 to May 2017. However, the information regarding total number of children who received legal aid from DLSA was obtained only from 22 districts, as the remaining 8 districts did not respond to the RTI application (*See Table 1*).

*Table 1: District wise statistics on the number of CICL apprehended under IPC, SLL & JJ Act 2015 and number of children receiving legal aid*

Sl. No.	District	CICL under IPC & SLL	CICL under JJ Act 2015	Total number of CICL	Cases provided legal aid by LSA	% of CICL receiving legal aid
1	Kalaburagi	610	1	611	2	0.33
2	Dharwad	252	12	264	0	0.00
3	Bangalore Urban	1793	157	1950	172	8.82
4	Bangalore Rural	224	2	226	22	9.73
5	Belagavi	505	0	505	25	4.95
6	Bidar	416	0	416	0	0.00
7	Chamarajanagar	130	0	130	0	0.00
8	Chikkamagaluru	189	0	189	0	0.00
9	Chikkaballapura	178	0	178	6	3.37
10	Davangere	372	0	372	34	9.14
11	Gadag	163	0	163	0	0.00

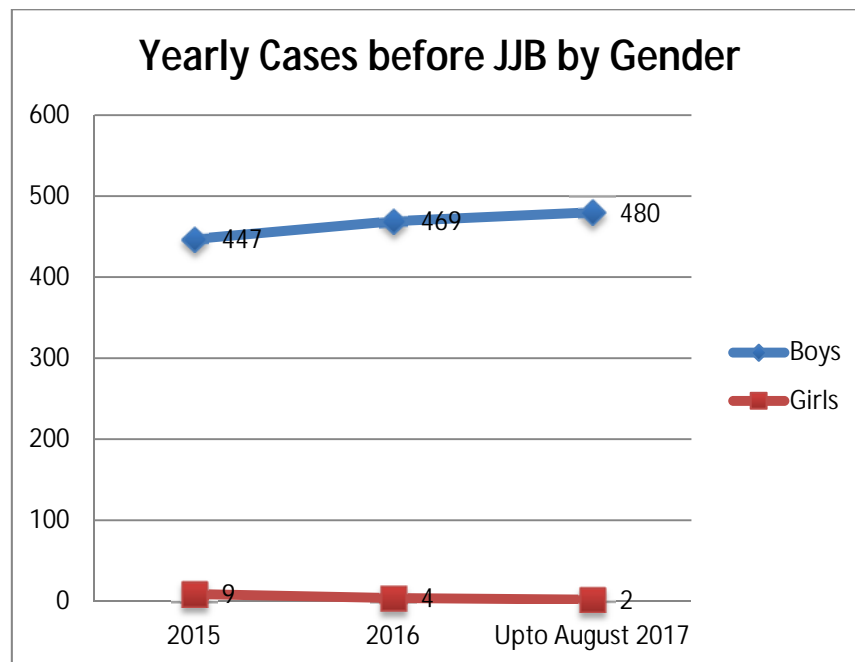
12	Haveri	166	0	166	3	1.81
13	Koppal	193	0	193	4	2.07
14	Uttara Kannada	130	4	134	0	0.00
15	Kodagu	101	0	101	8	7.92
16	Mysuru	577	11	588	58	9.86
17	Dakshina Kannada	453	7	460	15	3.26
18	Ramanagara	164	2	166	0	0.00
19	Raichur	199	0	199	0	0.00
20	Udupi	161	0	161	0	0.00
21	Vijayapura	210	0	210	16	7.62
22	Yadgir	132	0	132	6	4.55
<b>Sub total</b>		<b>7318</b>	<b>196</b>	<b>7514</b>	<b>371</b>	<b>4.94%</b>
23	Ballari	246	0	246	-	-
24	Bagalkot	178	0	178	-	-
25	Chitradurga	183	1	184	-	-
26	Hassan	349	0	349	-	-
27	Kolar	106	0	106	-	-
28	Mandya	310	8	318	-	-
29	Shivamogga	581	0	581	-	-
30	Tumakuru	250	4	254	-	-
<b>Sub total</b>		<b>2203</b>	<b>13</b>	<b>2216</b>		
<b>Total</b>		<b>9521</b>	<b>209</b>	<b>9730</b>		

*Table 1* clearly indicates that only 5% of the total number of CICL are receiving legal aid services from the 22 DLSAs, while a vast majority of the children (95%) are either availing legal services from private lawyers or have no legal representation. However, the NCRB 2015 data and the sample characteristics from the demographics section (below) suggests that most of these children belong to poor or low-middle income families and cannot afford

to pay remuneration for the services rendered by the private lawyers. Among the 22 districts that provided information about the legal aid services, a few districts were found to be comparatively better in providing legal aid through DLSA than the rest, such as Mysuru (9.86%), Bengaluru Rural (9.73%), Davengere (9.14%), and Bengaluru Urban (8.82%). The worst districts, where the police, Juvenile Justice Boards (JJBs) and DLSAs have collectively failed in extending free legal aid, despite the CICL having been apprehended, are Dharwad, Bidar, Chamarajanagar, Chikkamagaluru, Gadag, Uttara Kannada, Ramanagara, Raichur, and Udupi.

### ***Cases before JJB in Bengaluru Urban District***

The data was obtained from the OH in Bengaluru Urban district about the cases brought before the JJB for the period January 2015 to August 2017, given the predominance of children apprehended in the district compared to the rest of the districts in Karnataka. A total of 1411 cases were brought before JJB during this period, where almost all the cases were concerning boys (99%, n=1396) and only a handful were girls (1%, n=15). A statistically significant interaction was observed [ $\chi^2$  (2, n = 1411) =5.73, p =.057] in the number of cases brought before JJB each year and gender of the children (*See Figure 1*). There was an increasing trend in the number of cases of boys being brought before JJB, and a decreasing trend among the girls.



*Figure 1: Trend in the number of cases before JJB and gender*

A vast majority of the children were in the age group of 16 to 18 years (84.5%, n=1034), followed by 12 to 15 years (15.3%, n=188) and only a handful were in the below 12 years (7 to 12) age group (0.2%, n=2). A bivariate analysis between the gender and age group of children revealed a statistically significant difference [ $\chi^2$  (2, n = 1224) =14.98, p =.001] in the distribution of children (See Table 2). Among boys most of them (74%) fell in the 16 to 18 years category, but among girls it was spread between both 12 to 15 years (47%) as well as 16 to 18 years (40%), with more number of children in the former age group. From an intervention point of view, although the primary concern is to intervene and prevent children from getting involved in crimes by providing them care and protection under the JJ Act, for those involved there is an urgent need to consider designing reformative and rehabilitative programmes that cater mostly to boys and particularly to the 16 to 18 years age group.



*Table 2: Distribution of children in conflict with law as per gender and age*

Age	Gender		Total
	Boys n (%)	Girls n (%)	
Below 12 years	2 (0)	0 (0)	2
12 to 15 years	181 (13)	7 (47)	188
16 to 18 years	1028 (74)	6 (40)	1034
Missing information	185 (13)	2 (13)	187
<b>Total</b>	<b>1396</b>	<b>15</b>	<b>1411</b>

**Classification of Offences:** The data regarding the offences children were charged with was also examined, to understand the number of cases under each type of offence alleged to have been committed by CICL. An attempt was made to classify as per the categories provided in the JJ Act 2015 - petty, serious and heinous offences (a classification severely criticised by experts for lack of clarity).<sup>20</sup> In this classification, a distinction has been made based on the punishment prescribed for the offence. A simple classification based on this definition was difficult, as many of the sections in the IPC and other legislations do not have a clear minimum punishments. Therefore, the research team classified the cases using an adapted version of the definition.

- Petty offences - Sections where maximum imprisonment is less than or equal to 3 years.
- Serious offences - Sections where minimum imprisonment is more than 3 years and maximum is less than 7 years, or where maximum punishment is 10 or 14 years and minimum number of years of

<sup>20</sup>Kumari, Ved. (2016). The Juvenile Justice Act 2015 - Critical Understanding. *Journal of Indian Law Institute*.58 (pg 83-103).

imprisonment is not explicitly provided (Also endorsed by experts in JJ Act).<sup>21,22</sup>

- Unclassifiable –Sections where maximum punishment is upto 7 years and minimum number of years of punishment is not explicitly provided.
- Heinous offences –Sections where minimum imprisonment is more than or equal to 7 years, or where number of years of punishment is not mentioned but the section only says death or life imprisonment.

*Table 3: Classification of number of cases as per offences and age group*

Age	Type of Offences			
	Petty <i>n</i> (%)	Serious <i>n</i> (%)	Unclassifiable <i>n</i> (%)	Heinous <i>n</i> (%)
Below 12 years	1 (.2)	-	-	1 (.6)
12 to 15 years	96 (13.8)	55 (13.5)	58 (18)	28 (16.2)
16 to 18 years	602 (86)	354 (86.5)	261 (82)	144 (83.2)
<b>Total</b>	<b>699 (50)</b>	<b>409 (29)</b>	<b>319 (23)</b>	<b>173 (12)</b>

Each case brought before the JJB was examined to see the different sections applied. The classification of offences in *Table 3* is not mutually exclusive in

<sup>21</sup>*iBid.*

<sup>22</sup>Manoharan, A. & Raha, S. (Forthcoming in 2018) A Handbook for District Child Protection Units Under The Juvenile Justice (Care and Protection Of Children) Act, 2015 & Juvenile Justice (Care and Protection Of Children) Model Rules, 2016. Centre for Child and the Law, National Law School India University, Bengaluru.

terms of the number of cases, as the same case may have different sections which may appear in more than one type of offences. The above table clearly displays that most of the cases brought before the JJB fall under the category of petty offences (50%), followed by serious (29%), unclassifiable (23%) and heinous (12%). The heinous cases were mostly under Sections 302, 304-B, 376, 397, and 398 of IPC, as well as Sections 3, 4, 5 and 6 of POCSO Act 2012. The unclassifiable cases were mostly under Sections 134, 247, 317, 325, 363, 380, 381, 387, 393, 402, 420, 435, 454, 457, 468, 506 and 511 of IPC, and Sections 3 (a) Railway Property (Unlawful Possession) Act 1966, 14 of Foreigners Act, 3 of Immoral Traffic Prevention Act 1956, 67-B of Information Technology Act 2000, and 15 of Environment (Protection) Act 1986. Also, the data on the age group reveals that a vast majority of the cases (82% - 87%) belong to the age group 16 to 18 years.

*Table 4: Status of disposition of cases of CICL charged with violation of IPC and SLL during the period January 2015 to August 2017 in Bengaluru Urban district.*

Status	2015 (Jan-Dec)	2016 (Jan-Dec)	2017 (Jan-Aug)
<b>Found guilty</b>	3	0	3
<b>Acquittals</b>	64	57	76
<b>Disposed cases</b>	178	281	318
<b>Pending cases</b>	586	548	515
<b>Preliminary assessments conducted</b>	0	0	0
<b>Cases transferred to Children's Court</b>	0	0	0

Table 4 suggests that although a huge number of children are apprehended, most of the cases are otherwise disposed or acquitted. The pendency of cases has remained more or less stagnant for the past three years. One of the respondents within the JJ system highlighted the lack of convergence between various stakeholders resulting in high pendency rates, despite efforts taken.

*We cannot decide deadlines, it is difficult. We need police support, in isolation we cannot do anything. Sometime witness delays. When we interact with police, that month we will get witnesses but again the next month the same delays recur.* ~ Judicial officer.

With regard to the very low rate of conviction, the professionals working with these children had the following to say.

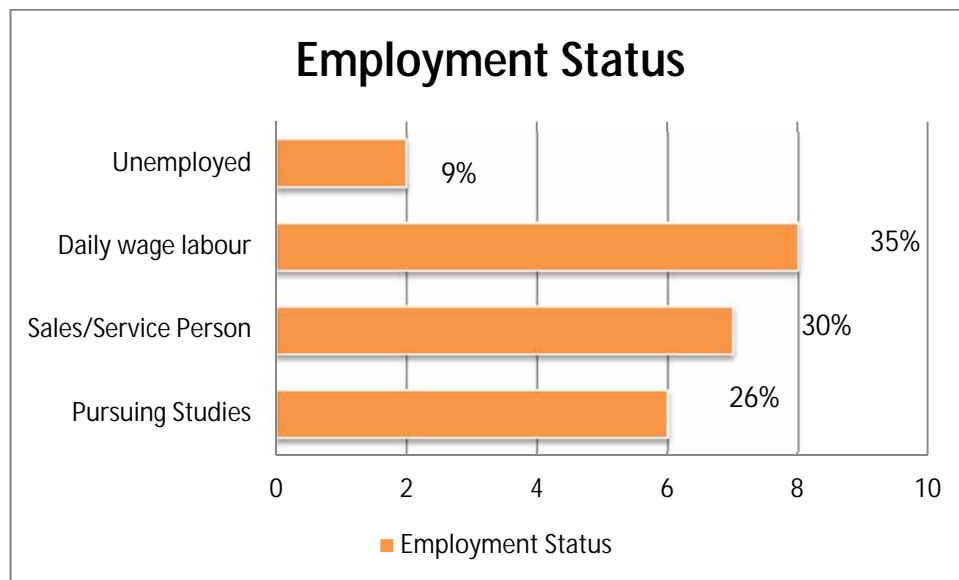
*90% of the cases are fixed. The children might not be involved, but they [cases] are fixed. So all of them [children] get acquittal and conviction is very rare.* ~ Legal professional.

With regard to the transfer of children in the age group 16 to 18 years, alleged to have committed a heinous offence and to be tried as adult, neither any preliminary assessments nor decisions to transfer such cases to Children's Court have been made in Bengaluru Urban district since the passage of JJ Act 2015.

### **Profile of Children in Conflict with Law**

A total of 23 children in conflict with law (70% from OH and 30% from SH), and 10 families of CICL (70% fathers, 20% mothers and 10% siblings) were interviewed for the qualitative part of the study. The average age of the children in conflict with law was 17.52 years (SD=1.7), with age ranging from 15 to 23 years, and all of them were male. The mean years of schooling among these children was 8.5 years (SD=3.13), with years of schooling ranging from

2<sup>nd</sup> standard to doing second year of technical course or 12<sup>th</sup> standard. The employment status (See Figure 1) revealed that majority of these children (65 percent) were employed either as daily wage labourers (construction, driver/cleaner, tent house, welding, coolie, garage helper) or in sales/service oriented job (printing items delivery, furniture showroom, computer hardware shop, hotel industry).



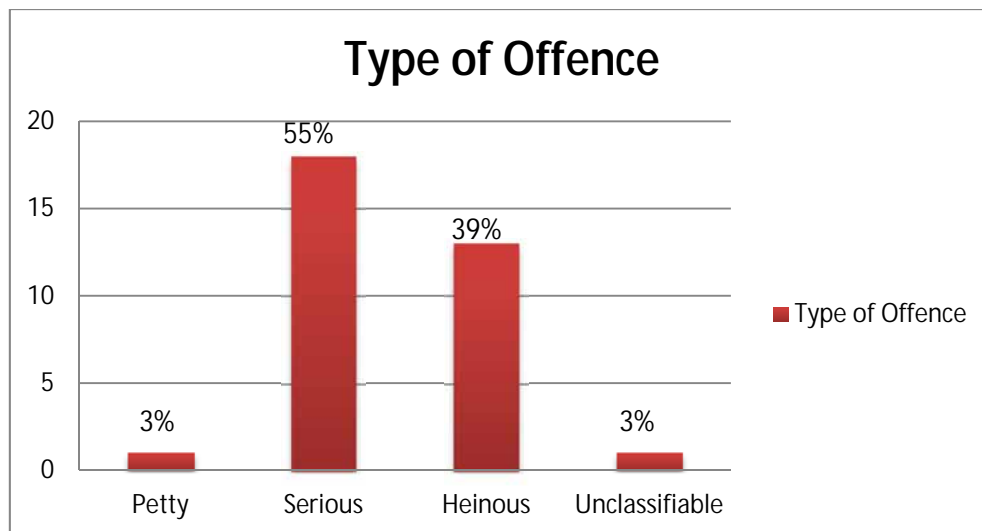
*Figure 1: Employment Status*

On an average there were 3.36 (SD=1.48) members in the family, with numbers ranging from 1 to 7. Most of the children came from poor or low-middle class families, with an average of only one person generating income. A few of them were children of single mothers (n=5) and some children did not have a family (n=2). Most of these families engaged in daily wage labour like driving, unloading, coolie, painting or construction work.

*These children are often not supervised by parents and there is no one to interact with them. They live in congested places, with no place to*

*sleep. With no basic facilities at home, these children obviously spend most of their time outside. ~ Judicial officer.*

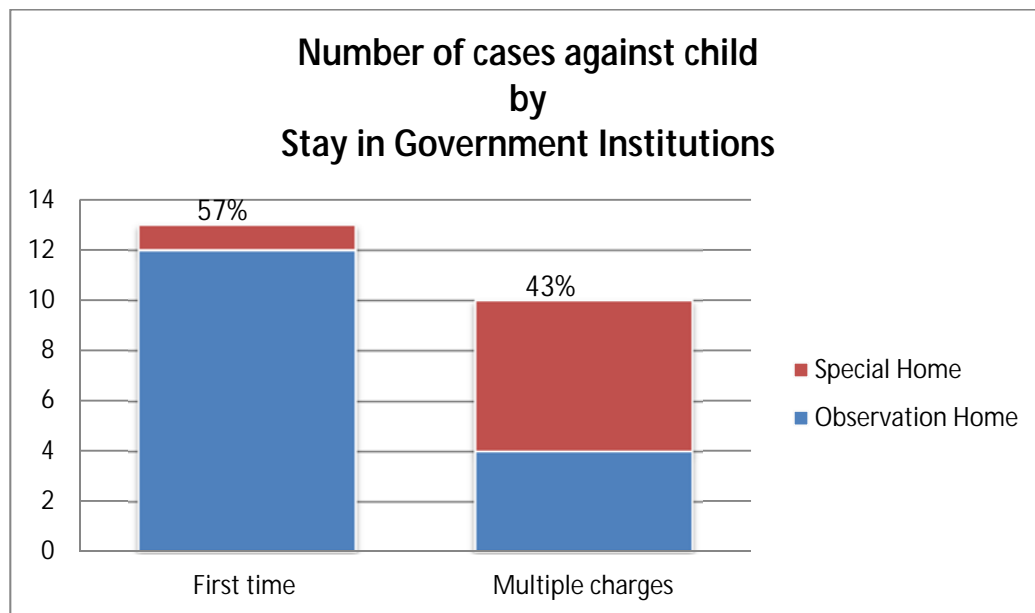
**Offences:** Classification of CICL (*See Figure 2*), as per the adapted version of the definitions provided in JJ Act 2015 (*Discussed in detail in Classification of Offences section*), on the type of offence alleged to have been committed revealed that a vast majority apprehended and detained in the OH and placed in the SH, after they were found to have committed the offence, were charged for serious offences (attempt to murder, robbery, railway theft, riot, or kidnapping), followed by heinous offences (rape, murder, or under POCSO). However, one child booked under Section 380 IPC was not classifiable as per the definitions provided JJ Act 2015, since a minimum number of years of punishment was not available for the same.



*Figure 2: Classification of CICL based on type of offence*

On examining the previous crime records of children (*See Figure 3*), it was observed that majority of the children in the sample were booked for the first time (57%, n=13 out of 23) and the rest were charged multiple times. A

bivariate analysis to understand the relationship between the number of offences against children and their stay in government institutions for CICL revealed a statistically significant difference in the relationship [ $\chi^2(1, n=23) = 7.30, p < .01$ ]. A higher percentage of children who were booked for the first time were staying in the OH (92%, 12 out of 13) and only a handful were in the SH (8%, 1 out of 13). However, among children who had been charged multiple times, most were in the SH (60%, 6 out of 10), compared to those in the OH (40%, 4 out of 10).



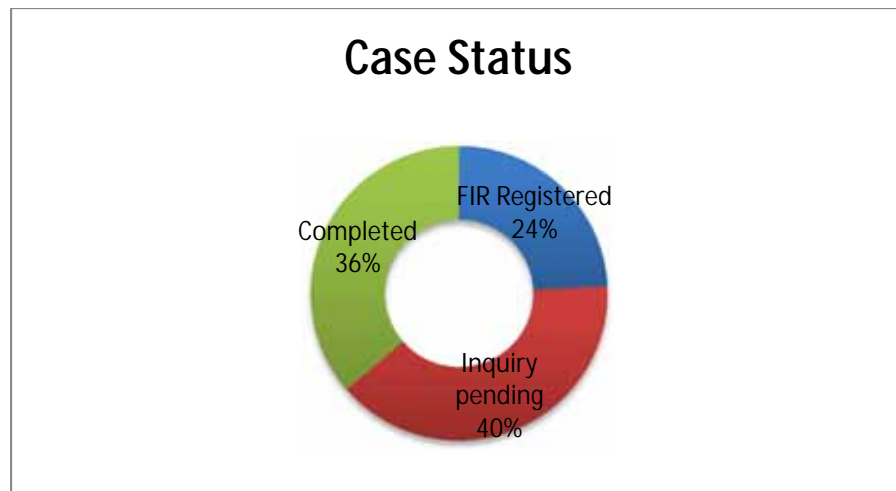
*Figure 3: Number of cases against child by stay in government institutions*

Therefore, it is important to consider this information while designing interventions for children who are alleged to be in conflict with law for the first time and those who have been charged multiple times, as more targeted interventions in and after release from the OH for first timers could potentially reduce their risk of recidivism. Similarly, the interventions for children who have been charged multiple times must be different from those offered to first

timers, if any behavioral change is expected. Most of the children in the SH being booked on multiple charges signifies that the more a child gets entangled in multiple cases, the likelihood of him being found guilty is higher.

Also, interviews with most of these CICL revealed that they suffered from behavioral problems such as addictions, anger management problems, impulsive behavior, being shortsighted about their future, running away from home, stealing and self-injurious behavior, which must be addressed through intense trauma informed treatment practices. From an intervention standpoint it is vital to provide access to mental health interventions in preventing children from entering into crime. For those who have already entered the JJ system, there is a need for their legal aid lawyers to present evidence that may assist the JJB in passing appropriate orders, which take into account information about the mental health condition of CICL.

**Case Status:** A look at the case status (See Figure 4) of the 33 respondents revealed that majority of them (40%, 13 out of 33) were under inquiry, or those whose cases were registered (24%, 8 out of 33) but the charge sheet was still pending. Only 36% of them had completed their cases, and were either found guilty or released out of the JJ system.



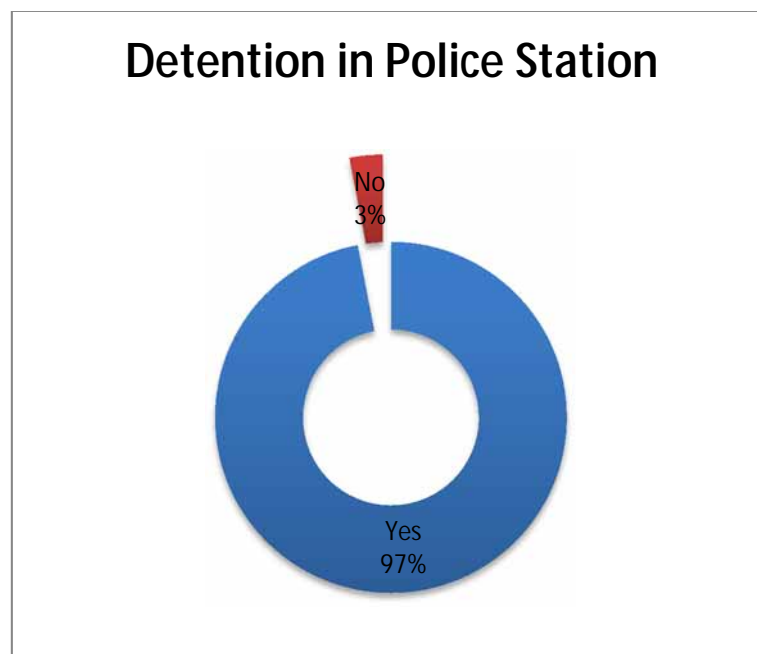
*Figure 4: Case Status*



## II. Experience with Police

### *Detention*

Although the JJ Act 2015 clearly states that the child alleged to have committed an offence is required to be produced before the JJB without any loss of time (within 24 hours of apprehension) by the Special Juvenile Police Unit (SJPU) or the designated Child Welfare Police Officer (CWPO),<sup>23</sup> where apprehension is needed only in cases of heinous crime or in the best interest of the child,<sup>24</sup> the interviews with CICL and their families revealed a stark contrast. A vast majority of the children (97%, 32 out of 33) were detained in the police station (*See Figure 5*) on an average for 5 days. This is in direct violation of the proviso to Section 10(1) of the JJ Act, 2015 that states, “In no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.”<sup>25</sup>



*Figure 5: Detention in police station*

<sup>23</sup> Section 10(1) Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>24</sup> Rule 8 (1) Juvenile Justice (Care and Protection of Children) Model Rules, 2016

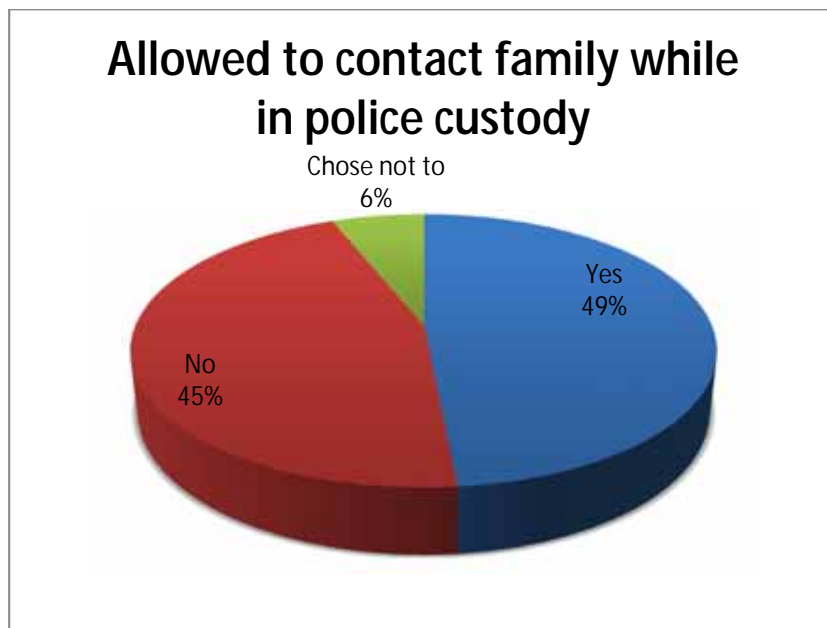
<sup>25</sup> Section 10(1), Proviso, Juvenile Justice (Care and Protection of Children) Act, 2015.

In addition, the JJ Act 2015 and the JJ Model Rules clearly state that the CWPO or SJPU should immediately inform the parents or guardian of the child that the child has been apprehended,<sup>26</sup> and provide the address of the Board where the child will be produced along with the date and time when the parents or guardian need to be present before the Board.<sup>27</sup> This is based on the assumption that the child is produced before the Board immediately. However the interviews with the children and families revealed that the children were not only detained in the police station, but many were not even allowed to contact their families (45%, 15 out of 33 – *See figure 6*). These parents had to figure out where the child was, as no information was provided to them, eventually meeting the child only after he was shifted to the OH. It is important to note here that although majority of these children were allowed to contact their family while in police custody (49%), all the parents were not informed within 24 hours, nor were the children immediately released with their parents, but rather continued to be detained and tortured, which ranged from 1 to 7 months. A few (2 out of 33) chose not to contact their family during the detention due to the disconnect between them and their family. Also, the fundamental right to counsel under the Constitution of India by virtue of Article 22 (1) was denied for these children, while in custody.

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<sup>26</sup>Section 13 (1) (i) Juvenile Justice (Care and Protection of Children) Act, 2015.

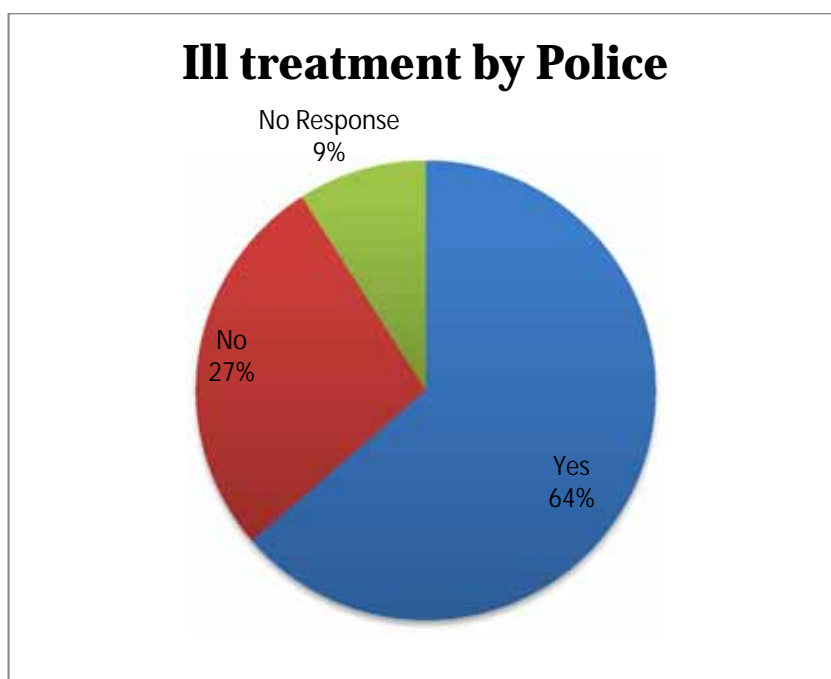
<sup>27</sup>Section 8 (2) (i) Juvenile Justice (Care and Protection of Children) Model Rules, 2016.



*Figure 6: Allowed to contact family while in police custody*

### ***Ill treatment***

Out of the 30 respondents that answered the question about the ill treatment meted out by police, majority of them (64%, 21 out of 30) had experienced varying degree of torture at the hands of the police (*See figure 7*). Although 27% (9 out of 30) of these children said that they were not tortured, there is a high possibility that, even if they did experience torture, they may not have revealed the truth to the research team due to fear of reprisal. Three of them choose not to discuss about their experience at the police station.



*Figure 7: Ill treatment by police*

The children, who did confirm about experiencing torture while in custody, narrated being beaten up in *Bombay cut* style (the child's hand and legs are tied to a wooden stick, hung upside down and beaten up on the joints with a stick), stripped naked, pulled out toe nails, lost a tooth, verbally abused, kept in a hydro cell, given electric shock, chilly powder rubbed into the eyes, chained with cycle chain, deprived of sleep and even hit in their groin, making them unable to walk for few days. The children are incessantly subjected to such torture during their stay in the police station, and forced to confess to crimes they might not even be aware of. All these experiences reflect violation of JJ Model Rules 2016, which prohibits the police officer from using force or coercion, compelling the child to confess or interviewing the child in a non-child friendly manner.<sup>28</sup> Children shared their lived experience of public

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<sup>28</sup> Section 8 (3) (ii) not hand cuff, chain or otherwise fetter a child and shall not use any coercion or force on the child; Section 8 (3) (v) not compel the child to confess the guilt and he

humiliation, where they were apprehended by police in uniform, handcuffed and dragged in public. Some even had the police in uniform visiting their schools, and revealing the case details to the school authorities. These actions of the police again are in clear violations of the Section 8 (3) (ii) and Section 8 (4)<sup>29</sup> of the JJ Act 2015, which mandates police not to wear uniform while apprehending CICL. Children also shared being arrested at night after 10 pm. With regard to the experience of torture and harassment, “*once in the system, forever in the system*” is true for some of these children.

*Three months back I was picked up for a petty case. After one and half months a local goon in the area was murdered, and I was seen in the CCTV footage in the area prior to the murder, based on this I was accused of murder charges. ~ Child alleged to be in Conflict with Law*

Even after being released on bail the police has continuously hunt down some of these children by visiting their homes once in two weeks, asking the child to come to station to put signature, monitor their Facebook posts, and even instill fear in the parents by suggesting that the child will be picked up again for some other case. The children also confirmed that they did not interact with CWPOs or police from SJPU, throughout the detention and torture phase.

The interaction of CICL with the police clearly exhibits violation of several legislations. The fundamental right to live with human dignity as mentioned under Article 21 of the Constitution, is also violated. The mandatory procedures and the fundamental principles of care and protection as laid down in the JJ Act 2015, are also observed to be violated, such as *Principle of*

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shall be interviewed only at the SJPU or at a child friendly premises or at a child friendly corner in the police station, Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

<sup>29</sup>Section 8 (4) The CWPO shall be in plain clothes and not in uniform, Juvenile Justice (Care and Protection of Children) Act, 2015.

*presumption of innocence, Principle of dignity and worth, Principle of best interest of the child, Principle of safety, Principle of non-stigmatising semantics, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of fresh start, Principle of diversion and Principle of natural justice.*<sup>30</sup>

The interaction with parents revealed that they are usually unaware of the details of the child's experience in the police station. Entering into the JJ system creates a barrier between them, resulting in minimum interaction, where the child is hesitant to speak about the torture to the parents. However, some mothers revealed that they did notice the child being weak and tired, and inferred that the child must have been beaten up by the police. Legal professionals interacting with these children on a daily basis suggest that often innocent children are accused of crime, where the cases are fixed and they get picked up as the accused is not traceable.

*There are cases where the children are falsely accused either due to their circumstances or friendship. In one case, one boy was tortured very badly. He was beaten up by the police. The police asked him who was with him at the time of committing crime, and the boy didn't understand the question. He ended up telling all his friend's names, and all of them were picked up by the police. ~ Legal professional*

### ***Detained in jail***

NALSA guidelines 4 (s) for police states that "... in case of doubt regarding the age of a person in border line cases, benefit of doubt should be given, and

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<sup>30</sup>Section 3 Juvenile Justice (Care and Protection of Children) Act, 2015.

the person concerned should be treated as a juvenile.”<sup>31</sup> Yet, there have been instances of children (2 out of 23 CICL) being sent to adult jail on the presumption that they are adults, without determining their age. These children have spent time in jail, ranging from a few weeks to months, until their families succeeded in getting them out.

*There was a case of a 10<sup>th</sup> standard boy murdered by his friends. One of the two boys was produced here. But the second one, who was also of the same age, came before the JJB only after 6 months of staying in the adult jail. Although a certificate was attempted to be produced by the parents, the police were not ready to listen. We felt very upset because children living in judicial custody even for a day is wrong. ~ Judicial officer.*

*There was one boy with no birth certificate and was put in jail. I tried very hard to assist his relatives get a birth certificate, but they were least interested. That boy is still in jail. ~ Legal professional.*

### **III. Provision of Legal Aid**

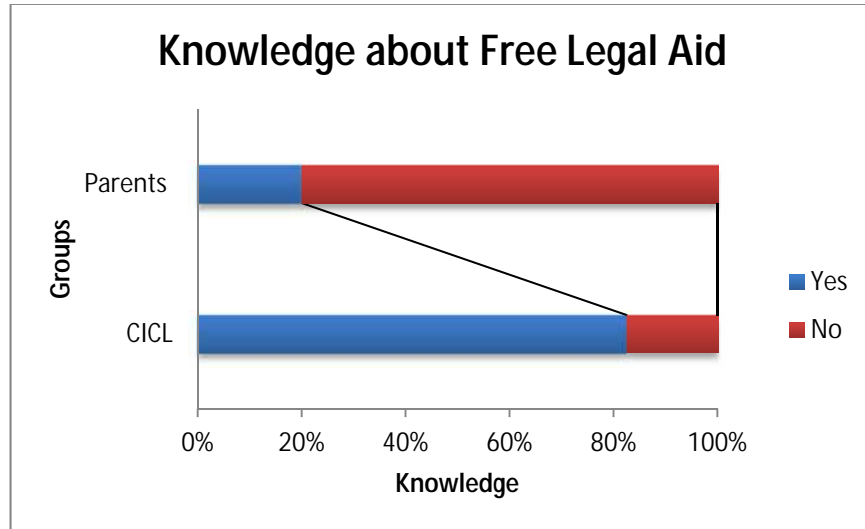
#### ***Knowledge about free legal aid services***

A vast majority of the children in conflict with law (19 out of 23) knew about the existence of free legal aid, compared to parents’ knowledge of the same (2 out of 10 – *See figure 8*). However, it is important to note that most of these children learnt about the free legal services only after getting admitted in the OH, through staff and other boys living at the home. A handful of them mentioned having learnt about the availability through some NGO workers

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<sup>31</sup>NALSA guidelines for training the designated Child Welfare Officers under Section 63 Juvenile Justice (Care and Protection of Children) Act 2000. Retrieved in December 2017 from <https://nalsa.gov.in/sites/default/files/document/NALSA%20Guidelines%20for%20Police%20Training.pdf>

who visited the police station while they were apprehended or by personal initiative and reading about the juvenile justice system prior to their apprehension.



*Figure 8: Knowledge about free legal aid*

As per the directions of NALSA and the objectives of Legal Services Authorities Act 1987, the DLSA and Taluk Legal Services Committees (TLSC) are responsible for creating legal awareness among general public, including children on topics that concerns the respective districts. These activities are overseen by a Member Secretary appointed for each district, and in Karnataka around 21 districts have a full time personnel appointed in this position. Also mechanisms are developed for information about free legal aid to reach those who need it, through police, SJPU, hospitals, CWCs, JJBs and empaneled lawyers. However, *figure 8* above reflects a clear lack of the information among the general public, especially those affected, and the culminating poor implementation of the JJ Act, the Commission for Protection of Child Rights Act 2005 and the LSA Act.

*In the past one year, only two legal awareness sessions have been conducted by the DLSA in the Observation Home, that too for 15*



*minutes. This is definitely insufficient! During the session the judges and JJBs members gave a speech, which is not effective at all. This would benefit someone who knows the law or is well read, not the layman. Awareness must be provided in the form of a video or a story. It must be done regularly, probably once a month, then atleast 5 out of 100 will understand, which is better. ~ Government official.*

### ***Legal representation***

The JJ Act<sup>32</sup> and Model Rules 2016<sup>33</sup> and the NALSA have created mechanisms to ensure CICL are provided appropriate legal aid in a timely manner, through functionality of JJB and police officer apprehending the CICL. JJB could also go one step further in ensuring children's access to free legal aid by following the guidelines issued by NALSA, in connection with the compliance of the order dated 19.08.2011 of Hon'ble Supreme Court of India in *Sampurna Behrua v. Union of India & Ors*,<sup>34</sup> which states that the JJB has to call the legal aid lawyer and introduce the child and his/her family, make them understand their right to have a free legal aid lawyer. The distribution of children and families based on who legally represented them revealed that majority of them (52%, 17 out of 33) were represented by legal aid lawyers, followed by private lawyers (36%, 12 out of 33 – *See figure 9*). Three children (out of 17), who were represented by private lawyers during their first case opted for a legal aid lawyer when they were booked under another case for the second time. However, one child (out of 12) who was represented by a private lawyer during his first case, opted again for a private lawyer.

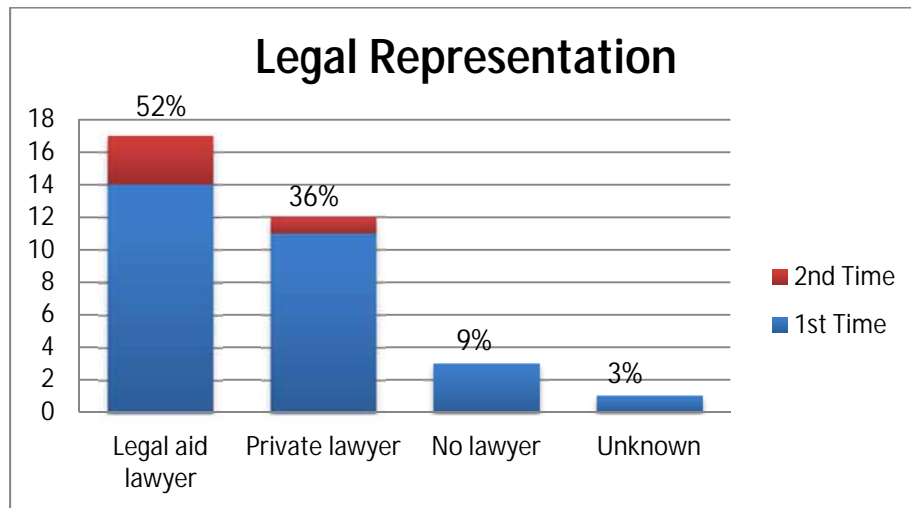
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<sup>32</sup>Sec 8 (3) (c) of JJ Act, Functions and responsibilities of JJB includes ensuring availability of legal aid for the child through legal services institutions.

<sup>33</sup>Sec 8 (3) (vii) of JJ Model Rules, Police officer shall inform the DLSA for providing free legal aid to the child.

<sup>34</sup>W.P.No. (C) No.

473/2005 <https://nalsa.gov.in/sites/default/files/document/Guidelines%20JJB.pdf>



*Figure 9: Legal representation of CICL*

A few of them (9%, 3 out of 33) were not legally represented at all. One of whom has been in the OH for more than a fortnight and yet was not legally represented since he was an orphan, one child refused to have a lawyer since he did not trust either private or legal aid lawyer and was estranged from his family, and one child had unfortunately died during the course of the inquiry due to his involvement in the crime. The fact that these children did not have legal representation is a clear violation of Section 8 (3) (b), (c) and (g) of JJ Act 2015<sup>35</sup> on the part of the JJB towards carrying out their functions and responsibilities.

**Access:** On exploring at what stage of the case these children got access to lawyers, it was observed that for many of them (59%, 17 out of 29) it was only after coming to the OH, although, the time frame ranged from one week upto

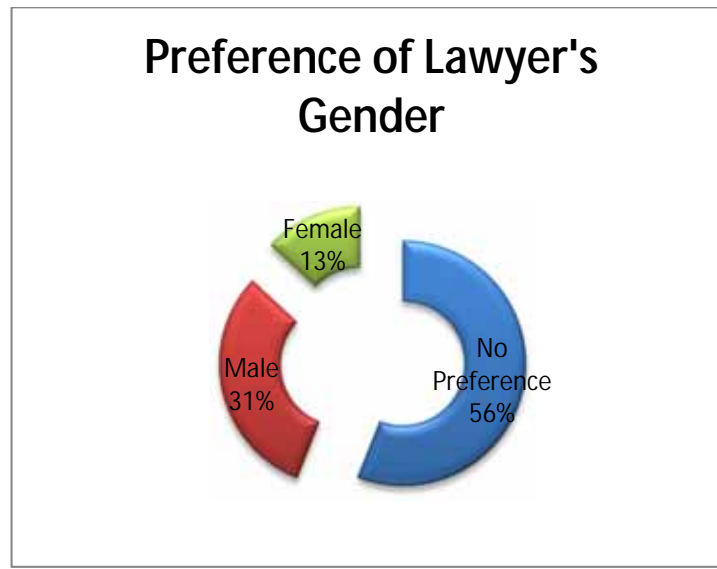
<sup>35</sup> Sec 8 (3) (b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation; Sec 8 (3) (c) ensuring availability of legal aid for the child through legal services institutions; Sec 8 (3) (g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognizing that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved.

nine months. The delay in access to legal counsel indicates that these children were not legally represented when the JJB decided to deny bail and place the children in the OH. These children got legal representation on their first hearing before JJB in the OH, during interaction with the JJB members while in the OH, or even towards the end of their inquiry (12%, 2 out of 17). Some of these children who did not have legal counsel for many months either did not have parents or their parents were untraceable, which caused a delay in the child being represented. All this information clearly indicates a violation of the provisions meant to protect CICL by the JJB.<sup>36</sup> The other group of children (41%, 12 out of 29) had their families arrange for a lawyer as soon as they got apprehended and were detained in the police station.

In most of these cases (66%, 19 out of 29), the parents approached the lawyer based on the information received from the police station (where 37%, 7 out of 19 explicitly mentioned receiving information about private lawyer from the police station), JJB members or through their own contacts. The number of cases being referred to the private lawyers through police station indicates a significant nexus between police and private lawyers, where CICL are denied access to information about their right to free legal aid. The rest were instances of legal aid lawyers approaching the children on their own (17%, 5 out of 29), JJB directing the legal aid lawyers to take the case (10%, 3 out of 29), or OH staff requesting the legal aid lawyers to take up the case (7%, 2 out of 29).

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<sup>36</sup>*iBid.*



*Figure 10: Child's preference of lawyer's gender*

The children were asked about their comfort with the gender of the lawyer, to examine if there was any preference among them (*See figure 10*). A vast majority of 56% (9 out of 16 who responded) shared that they did not have any preference in terms of gender of the lawyer who legally represents them, as long as they can enable quick release from the OH on bail. However, 31% expressed comfort being represented by male lawyers, as they could “*connect with them better, without any discomfort*”. Similarly, 13% expressed comfort in being represented by female lawyers, as “*women are more considerate and fight for the rights of the child compared to the male lawyers, who may not argue much with the judge*”.

#### **IV. Experience with lawyer**

##### ***Lawyer's Background***

Most of the children and the parents (69%, 20 out of 29) had no knowledge about the lawyer providing legal counsel, followed by some (21%, 6 out of 29) who only knew that their lawyer regularly represents children before the JJB. It was interesting to note that many did not even know their names, due to

minimal interaction with the lawyer. Only a handful of them (10%, 3 parents out of 29 respondents) had some background information about the lawyer representing their child, such as the court where the lawyer practices or the number of years of practice experience of the lawyer in providing legal counsel. Even the interaction with the judicial officers revealed that there was no criteria laid down by the KSLSA nor NALSA, for the selection of lawyers to be an empaneled as free legal aid lawyer or for a paralegal volunteer, which makes the arena open to anyone, irrespective of proper training or aptitude.

### ***Procedures***

On enquiring about whether the lawyer explains the procedures and outcomes of the inquiry, it was observed that almost all the children (95%, 20 out of 21) and one-third parents (33%, 3 out of 9) were not explained anything about the legal process by their lawyers (both private and empaneled) representing the child (*See figure 11*). Although 67% of the parents conceded to being explained the legal procedures by their lawyers, their response on the understanding of the case status showed the contrary. The only thing that mattered to the lawyers, as well as the children/parents given their limited knowledge about the legal process, was getting the child released on bail from the OH. However, when the empaneled lawyers were enquired about their efforts to familiarize the child, a contrary view was obtained, which is clearly refuted by the response received from the children and parents.

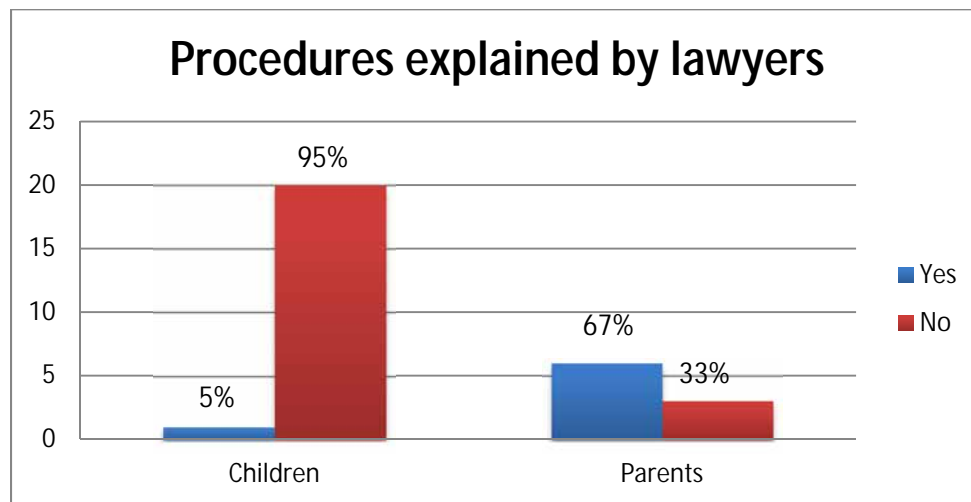


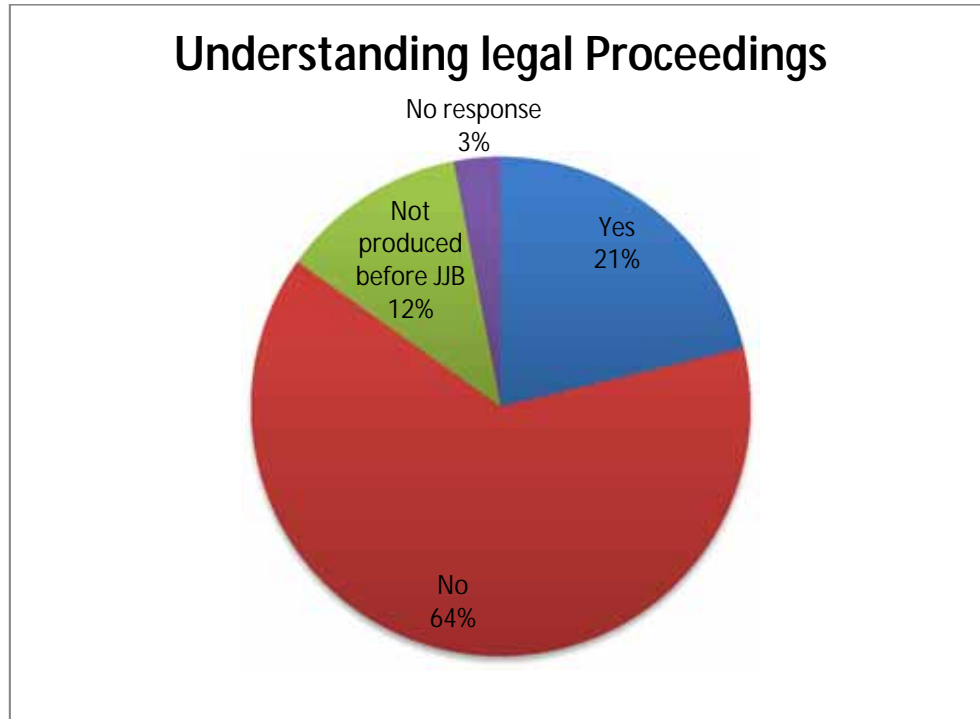
Figure 11: Legal procedures explained by lawyers to children and parents

Even with regard to seeking the views of parent or child for case strategy, all the children expressed never being consulted even once by their lawyers (both private and empaneled), to discuss how to strategise their case. However, among parents it was a split opinion where 50 percent felt they were consulted with while making decisions about how to proceed with the case, and the rest felt the absence of the same.

*The lawyers take the children for granted. They [lawyers] don't take the opinion of children before filling an application. They [lawyers] don't inform the child and parents but rather handle the case in a routine manner, which is not a good practice and this needs to change... We always have to remember that the person we are representing is the child, and the child is our client. ~ Legal professional*

On exploring how many of the participants understood the legal proceedings (see figure 12), irrespective of the lawyers explanation, it was observed that

out of the total respondents a vast majority of them (64%, 21 out of 33) did not understand any part of it, and only 21 % (7 out of 33) claimed to have understood something. It was interesting to note that 12 % (4 out of 33) of them have not been produced before the JJB for the hearing as a bench, although they have been in the OH for more than a week.



*Figure 12: Respondent understanding of the legal proceedings before JJB*

Although legal aid as per *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 2013* includes legal education and access to legal information, the CICL and their families are clearly deprived of the same, making them incompetent to understand the situation and make informed decisions, such as filing for an appeal, ask for the child to be transferred to a fit facility for treatment among others.

### ***Payment***

When enquired about the payment for the legal services rendered by the lawyers, it was observed that 45% (13 out of 29) of them had made payment to lawyers, most of whom were private lawyers (77%, 10 out of 13). At the same time, 48% (14 out of 29) of them had not made any payment to their lawyers for legally representing CICL, most of whom were legal aid lawyers (12 out of 14). However, it is important to observe here that most of these children represented by legal aid lawyers were still in the OH (67%, 8 out of 12) during the interview, which does not confirm that their lawyers would not take money at a later point when the child gets released on bail or when the case is disposed. Two respondents (CICL) were unaware of any amount being paid by their parents to the lawyer.

*Table 5: Payment made for legal services by type of lawyer*

	Yes	No	Don't Know
<b>Legal aid lawyer</b>	3	12	2
<b>Private lawyer</b>	10	2	
<b>Total</b>	13	14	2

The payment pattern observed with regard to private lawyers has been that they take money upfront for their services prior to the first hearing of the case, while the legal aid lawyers who did receive money, have done so only after the case is closed. The children and parents were therefore unclear, if any requests would be made by their legal aid lawyers in the future. Some of them were of the opinion that even if their lawyer does not request, they would volunteer to offer some amount as a token of their appreciation for the services. Children



whose case has been closed and have paid the legal aid lawyers (3 out of 13), mentioned having paid amount ranging from Rs. 1000 to Rs. 8000. While the experience with private lawyers have been such that the amount paid for their services has ranged from Rs. 5000 to Rs. 2,00,000.

*The lawyer took Rs. 50000 upfront for taking my case. Another Rs. 20000 would have to be paid during the release. After coming to the Observation Home I learnt about the free legal aid lawyers, I wish I had known earlier. Now I cannot do anything. ~ Child alleged to be in Conflict with Law.*

The government officials who interact with these children on a daily basis had angst about the situation of paying lawyers exorbitant amount of money to legally represent them, especially when access to legal aid is the right of the child.

*Nobody complaints, most of these children come from below poverty line families, single parents, broken families or alcoholic parents. Parents are scared of the repercussion on their child, if they complaint against their lawyer... This has become a business for both legal aid lawyers and private lawyers. A lawyer charged 80000 for a case and because the parents didn't pay the money, the case was delayed for many months making some other excuses... Some [lawyers] ask us not to tell the parents the dates of their child's case because they haven't paid them their fees. Nobody wishes well for these children. ~ Government official.*

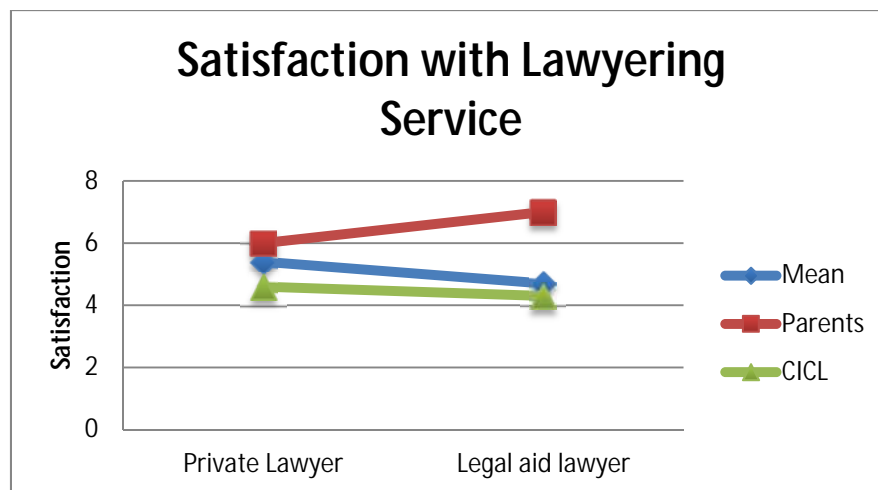
*There are children who actually commit these crimes, because the parents of these children would have borrowed money from somebody in order to pay the lawyer's fees, and now in order to clear that loan*

*children have to do something, thus they commit crimes. It becomes a vicious cycle, where the children get entangled.* ~ Government official.

Although the legal aid lawyers revealed that their payment from the DLSA is made only on case basis, the government officials from KSLSA revealed that a nominal amount (Rs.750 to Rs.1000) is paid for every sitting, for pleading and active hearing of each case, which is a considerable progress from the previous situation. Also travel allowance is paid for those traveling to difficult terrain. However, it would be good to reconsider these perks and make it more viable, where qualified and committed lawyers are encouraged to engage more meaningfully with the children, and are strictly advised not to receive anything from CICL and families, in cash or kind.

### ***Satisfaction***

The assessment of satisfaction with the lawyering services among children and their families clearly revealed that there was a difference of opinion in the level of satisfaction between the two groups. The overall mean satisfaction among those receiving services from the private lawyers ( $X= 5.4$ ) was higher compared to those receiving services from the legal aid lawyers ( $X= 4.7$ ).



*Figure 13: Satisfaction with lawyering service*

However, a separate examination of the level of satisfaction among parents revealed a higher mean satisfaction score with the legal aid lawyer ( $X = 7$ ) compared to private lawyer ( $X = 6$ ). This may also be resulting from the amount of money that parents approaching the private lawyers have had to shell out, just to get their child released on bail.

*The lawyer really didn't support us, we were of the opinion that a private lawyer will be able to help us better. But eventually we had to do the entire running around by ourselves. The lawyer didn't guide us. I certainly feel a government lawyer is better. Given the experience we had with our child's case, I would certainly recommend a government lawyer.* ~ Parent of a Child alleged to be in Conflict with Law.

The mean satisfaction among children revealed a similar preference for both private lawyer ( $X = 4.6$ ) and legal aid lawyer ( $X = 4.3$ ). The narratives shared by children expresses a frustration with both category of lawyers, as neither of them respects the child nor feels the necessity to keep the child informed about the legal procedure.

*The lawyer has never spoken to me about the case, about how to plead, the consequences or case strategy. It's only about release, that the lawyer needs ID proofs and surety. Nobody explains anything to me. The lawyer has not explained what will happen if I am found guilty. I am not very fond of my lawyer, just want to be released [getting out on bail] at the earliest.* ~ Child alleged to be in Conflict with Law.

Children who have exited the juvenile justice system also have a very cynical view about both private and empaneled lawyers.

*Private lawyer takes more money and will release you on bail. However, they may not close the case. But the government lawyer wants the case, he does not want you to go out, he wants you to keep*

*coming to the court, or they will not get you bail and keep you inside. That's why I don't like both.* ~ Child in Conflict with Law.

A child in conflict with law, who had discontinued his studies in aeronautical engineering, chose not to be represented by any lawyer and is in the SH for the crime committed had the following opinion:

*If I went for a lawyer, especially a government lawyer who gets regular salary, they will not be worried about closing the case. At the same time if I argue and accept the crime, some punishment will be ordered and the case gets closed. So I chose not to take any lawyer's assistance.* ~ Child in Conflict with Law.

### ***Interaction with children and parents***

The interaction of children with the lawyers representing them is often minimal (48%, 10 out of 21) or absent (38%, 8 out of 21). A vast majority of these being empaneled lawyers, this is a violation of the NALSA's Standard Operating Procedure on Representation of Persons in Custody 2016,<sup>37</sup> which indicates that the panel lawyers are required to regularly interact with CICL, to get a better understanding of the case, as well as identify those not represented and inform DLSA so that a legal aid lawyer can be appointed. Most of the lawyers do not take time out to meet with the child prior to the hearing, to build a rapport with the child, rather their interaction is only limited to the day of hearing. The lawyers do not even ask the children about the alleged crime, read out the contents of the charge sheet, or have a conversation about the process, and consequences. This was also confirmed from the narrative provided by a legal professional that represents CICL.

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<sup>37</sup>[http://www.humanrightsinitiative.org/download/1495539478NALSA%20Standard%20Operating%20Procedures%20on%20Representation%20of%20Persons%20in%20Custody%202016%20%20\(English\).pdf](http://www.humanrightsinitiative.org/download/1495539478NALSA%20Standard%20Operating%20Procedures%20on%20Representation%20of%20Persons%20in%20Custody%202016%20%20(English).pdf)

*I handle around 20 cases on average per day. I am prepared before itself. Whenever the charge sheet comes, I go through the charge sheet and I prepare for it... It doesn't take much time on each case, in 3 to 4 sitting the case is closed. ~ Legal professional.*

The children are not even aware of their rights and are afraid or sometimes even ashamed of speaking about the case to their lawyer, and even if anything is explained to them, are unable to understand. The children are also afraid of revealing about the torture experienced at the police station to their lawyers, especially in those cases where the private lawyer is appointed through police referral. Even in a few cases, where the children have revealed their experience to the lawyers, there has been no follow up action to hold the police accountable for their actions. The child is often left with no agency to make decisions about his own life, how to plea, whether he should get released on bail or continue to stay in the OH, these decisions are made by the lawyer, and sometimes in consensus with the parents. The experience of children with no parents/guardian has been bitter, with no legal representation nor anyone interested in their well-being, often going unnoticed even by the JJB.

A handful of children (14%, 3 out of 21) did share some positive experiences with their lawyers (both private and empaneled), where the latter had taken interest in the well-being of the child, had advised them against hanging out with friends that get them in trouble, had represented the child before the JJB even when the child failed to appear after bail, had explored what the child is interested in, explained about being placed in the Special Home and to look at the experience positively. The children who have come before the JJB for the second time, definitely knows the process better and did not have any expectation from the lawyer other than getting them out on bail.

The children did not know the specifics of their lawyer's interaction with parents, as most of them were not involved in the interactions, if any. Given the limited interaction of the child with their lawyer, they believed the lawyers were interacting at least with their parents. The parent respondents in this study felt that their lawyers (75% private and 25% empaneled) did explain the process and how to obtain bail, and also advised them about their final plea. Few parents even disclosed information about the torture experienced by their child in the police station to their lawyers, and were disappointed to see lack of action on their part. Most of these lawyers ensured the children received bail, and continued to represent the child even after their release on bail, during the inquiry. However, one parent narrated an incidence of a private lawyer repeatedly not turning up for the hearings before JJB where parents had to eventually engage an empaneled lawyer.

From the information received from children and families of CICL, no difference was observed between empaneled and private lawyers. However, the interaction with the legal professionals themselves revealed a stark difference in various factors between empaneled lawyers and lawyers associated with social welfare organizations (herein after referred to as NGO lawyers).

*The legal aid from state is quite poor. It is also because the remuneration that is paid is very low, it doesn't match the requirement of a qualified legal aid lawyer. From the NGO side I have seen that there is always [good] quality legal aid, as they are paid well and monitored closely. ~ Legal professional.*

Table 5, has listed the differences observed between the two groups, based on the interviews with the legal professionals from each of the category – empaneled vs. NGO lawyers, on factors such as their interest in handling CICL

cases, trainings received, approaches, fact gathering mechanism, what defines a successful case for them, response to complaints by children about police torture, decision making process, role of a lawyer according to them, and collaborative approach adopted for the case. However, none of the children or families participating in the study were receiving services from the NGO lawyers to corroborate these differences, which could be examined in future research studies.

*Table 5: Differences between empaneled lawyers and NGO lawyers*

	<b>Empaneled Lawyers</b>	<b>NGO Lawyers</b>
<b>Interest in CICL cases</b>	<ul style="list-style-type: none"> <li>• Not interested in children specifically, but in criminal law</li> <li>• Defend the adult and the child in the same manner</li> </ul>	<ul style="list-style-type: none"> <li>• Learn from these cases as they are complex.</li> <li>• Feel very satisfied assisting vulnerable children, especially when they change in life and find meaning.</li> </ul>
<b>Trainings</b>	<ul style="list-style-type: none"> <li>• Empaneled lawyers had no training in JJ legislations nor any experience dealing with children prior to taking up CICL cases.</li> <li>• Even post engagement in CICL cases trainings are not conducted regularly.</li> </ul>	<ul style="list-style-type: none"> <li>• Has experience dealing with children or CICL and training in JJ Act.</li> <li>• Continuous inputs on handling the case from the organizations they are associated with.</li> </ul>
<b>Approach</b>	<ul style="list-style-type: none"> <li>• Immediate concern is to get the child out on bail.</li> <li>• Always plead not guilty irrespective of whether the child has committed the</li> </ul>	<ul style="list-style-type: none"> <li>• First conduct a home visit to evaluate the case. Select the case, if CICL is poor, has a single parent, is an orphan, or has committed a heinous offence.</li> <li>• Rehabilitation is the central</li> </ul>

	crime or not.	theme. Assess the child, the circumstances and the crime.
<b>Fact gathering mechanism</b>	<ul style="list-style-type: none"> <li>• Rely more on the charge sheet and police documents than interacting with the child and understanding the situation</li> </ul>	<ul style="list-style-type: none"> <li>• Talk to the parents and child.</li> <li>• Study the case file, and home visit report.</li> <li>• Assess the risk to the child, if released on bail.</li> <li>• Gather facts from counselor, superintendent or house father/mother, and all who has dealt with the child.</li> </ul>
<b>What defines a successful case?</b>	<ul style="list-style-type: none"> <li>• Charge sheet, evidence and witness deposition before the court.</li> <li>• Presenting the case well</li> </ul>	<ul style="list-style-type: none"> <li>• Long term rehabilitation and reformation, where the child does not come back into the system, and is integrated back into the society.</li> <li>• Primary concern not about getting acquitted or getting out of the case, it is that the child should not repeat it.</li> </ul>
<b>Response to police torture</b>	<ul style="list-style-type: none"> <li>• Mostly remain passive and does not feel it is their responsibility to take any action.</li> <li>• At the most may bring up the matter before JJB.</li> </ul>	<ul style="list-style-type: none"> <li>• Take immediate action, if it comes to their knowledge. If learns about the torture post 15 days from apprehension, bring it to the notice of JJB.</li> <li>• Has filed a PIL in the past before the Hon'ble Chief Justice, High Court of Karnataka, and asked JJB to conduct an inquiry.</li> <li>• Has complained before State Human Rights Commission.</li> </ul>
<b>Decision making process</b>	<ul style="list-style-type: none"> <li>• Decide if CICL must be released immediately on bail or retained for a while in OH to 'learn a lesson'.</li> <li>• In petty cases, child is asked to plead guilty, pay penalties and close the case,</li> </ul>	<ul style="list-style-type: none"> <li>• Explain the entire process, consequences and enable the parents and child to make decisions regarding bail/plea.</li> <li>• A multidisciplinary approach is adopted where expert opinion is sought from counselors, psychologists, lawyers and child rights activist, and the expert</li> </ul>



	and not explained any legal procedures or consequences.	opinion is presented before the child, so that the child can make apt decision.
<b>Role of a lawyer</b>	<ul style="list-style-type: none"> <li>• Conduct the case and defend the CICL before JJB, and not be concerned about their rehabilitation.</li> <li>• Defend an adult and juvenile in the samemanner.</li> <li>• Advice the child not to repeat such mistakes.</li> <li>• Not be concerned with any violations in the institution where the CICL lives.</li> <li>• Not be concerned with referring orphans or children with no support system to CWC.</li> </ul>	<ul style="list-style-type: none"> <li>• Talk to the child frequently, enquire about child's status in OH, take prompt action, if need be.</li> <li>• Speak to parents of CICL to understand the circumstances and also to ease their anxieties.</li> <li>• Interact with police to file the charge sheet in a timely manner, and ask for witnesses to be brought before JJB for early disposal of case.</li> <li>• Understand the situation of the child and assist with rehabilitation.</li> <li>• Request JJB to pass an order to refer the child for professional counseling services, as per need.</li> <li>• Prepare the child and parent for the proceedings, and how to speak before JJB</li> <li>• Making alternate stay arrangements, if the child is not safe once out on bail.</li> </ul>
<b>Collaboration with other professionals</b>	<ul style="list-style-type: none"> <li>• Do not see Social Investigation Report nor ask for it.</li> <li>• Do not collaborate with any other organization or professionals interacting with the child.</li> </ul>	<ul style="list-style-type: none"> <li>• Seek professional help for psychological assessment, addictions issues, counseling and other mental health problems.</li> <li>• Work in partnership with social worker (to conduct home visit) or counselor to develop a case study.</li> <li>• Coordinate with the PO in getting benefits from schemes for economically</li> </ul>

backward children, preparing SIR, contacting parents, finding alternate living arrangements for children.

- Seek inputs from the Superintendent of OH, or anyone else who is in charge of the child and also interacts with the child.

## V. JJB inquiry proceedings

The interaction with the JJB has not been very friendly for many children and their parents, as reported by them. Many (62%, 18 out of 29) recount feeling afraid and confused, in the presence of the JJB and the legal proceedings, although under the Act these proceedings are meant to be child friendly.<sup>38</sup>

*I've never gone to the court earlier. I was very scared. I just stood in front of the judge, bowed my head down, folded my hands and responded only if asked something.* ~ Parent of Child in Conflict with Law

Although Section 8 (3) (c) of JJ Act, 2015 states that it is the responsibility of the JJB to “ensure availability of legal aid for the child through legal services institutions”, only 18% (6 out of 33) mentioned having been asked by the JJB if they had legal representation. A vast majority of them (82%) were not asked if they had legal representation at any stage during their inquiry, even when some of the children did not have legal representation. Two children, in fact

<sup>38</sup>Section 14 (5) (b) Board shall take the following steps to ensure fair and speedy inquiry - in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child friendly atmosphere during the proceedings; Section 14 (5) (c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry, Juvenile Justice (Care and Protection of Children) Act 2015.

got a lawyer to represent them only when the JJB decided to send them to Special Home, after the child pleaded guilty. One of the child (among the 18%) narrated the experience as follows.

*The judge asked if I had a lawyer, I said “no”. Then after a month I requested the judge to give me a lawyer. Thereafter I was informed by the judge to bring my mother. I said she will not come, as I have been away from home for 2 years. ~ Child in Conflict with Law*

A vast majority of the respondents shared not having interacted with the JJB at all, during the proceedings and JJB visits to OH, except for a few. The respondents did not understand the proceedings before the JJB nor was any effort made to explain the same to them. The children are made to stand on the side throughout their case proceedings. Even when children (n=2) have mustered the courage to share their experience with the JJB members about police torture in the police station or situation at the OH, no visible action was taken. The children believe that if they speak the truth they will be released, and plead guilty, however in the end they are sent to the SH without any preparation. Children alleged to be in conflict with law and with no families were not referred to Child Welfare Committees (CWC) for care and protection, which clearly reflects violation of the Act by the JJB.<sup>39</sup>

*They speak in English and I don’t understand. The lawyer and the judge interact with each other in English. The doctor came and spoke in English. I didn’t understand what anyone of them said, except for the victim’s statement, as she spoke in Kannada, and she said that I*

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<sup>39</sup> Section 8 (g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved, Juvenile Justice (Care and Protection of Children) Act 2015.

*misbehaved with her. Nobody explained anything to me. ~ Child alleged to be in Conflict with Law*

*They [JJB members] are not concerned about me. They [JJB members] don't know that I don't have a family. I informed the counselor that I do not have family. But I'm not sure if JJB knows. ~ Child alleged to be in Conflict with Law*

Although the children are retained in the OH, there is a delay in the JJB meeting them, where children shared having been waiting for a period ranging from 4 to 25 days for their first hearing. This is a clear violation of the Act, which states that the JJB must ensure a fair and speedy inquiry.<sup>40</sup> All these experiences confuse the parents and the children and make them afraid, as they are not communicated about the reason for delay.

*JJ Act says the case has to be disposed in four months, from the date of production of the case to disposal. But till date nothing of that sort has happened, not a single case has been disposed in six months... Charge sheets do not come, evidence will not come, even if charge sheet comes, the witness will not come in time. Without evidence and witness, we cannot dispose the case too... Police do not serve the summons properly, when all this is done, the public prosecutor does not prosecute properly... in the middle the public prosecutor might change or the judge might change, and then you do it all over again. They don't have the best interest of the child in mind, they do it as they practice criminal law, that does not work here. ~ Legal professional*

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<sup>40</sup>Section 14 (2) the inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board; Section 14 (5) Board shall take steps to ensure fair and speedy inquiry, Juvenile Justice (Care and Protection of Children) Act 2015.

However, it is important to mention that a handful of respondents (n=5) did have a positive experience with the JJB, where they felt good and comfortable interacting. In fact, one parent shared with the JJB her dissatisfaction with the private lawyer. In response, one of the JJB member obtained a *No Objection Certificate* from the current lawyer and took over the case, as the member was a practicing lawyer who was completing his term as a JJB member. Although in this case the parent and the child feel grateful to the JJB member, there appears to be a conflict of interest on the part of the JJB member.

According to the children present in the OH during a consultation to discuss the preliminary findings of the study in early 2018, the JJB inquiry proceedings has changed in Bengaluru Urban district, with newly appointed JJB members taking charge since the end of 2017, where all the children are presented before the JJB for first hearing within a week of their admission into OH. Also, some JJB members spend time interacting with each child individually to understand their background and make informed decision during inquiry.

## **VI. Life in institutional settings**

### ***Observation Home***

As per Section 47 (1) of JJ Act, OH are established and maintained by the State government in every district or a group of districts, either by itself, or through voluntary or non-governmental organisations, and registered under section 41 of the Act, for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under the Act. The children staying in OH did acknowledge the presence of services such as counseling, teaching, medical care and vocational training in the home. However, there is a need to regularize these services and allow the concerned staff to fulfill their responsibilities. A vast majority (75%) of the children in the OH shared having met the counselor only once (or never),

during which certain case related information was taken from them. Similarly, the teacher has not been able to keep the children engaged on a daily basis in educational activities. Moreover, some children felt that the level of education provided does not cater to their varied needs – where the spectrum ranges from children coming with absolutely no schooling to those who are pursuing technical ITI courses. There are no vocational trainings provided to the children in the OH, as they are supposed to be present for a short period, moreover the only training provided is that of plumbing which is only theoretical without any practical guidance. The only regular service provided is medical care, where the doctor visits every week, while the nurse is available every day for any emergencies. The counselor and teacher are consumed in completing clerical work of a probation officer (due to the vacant position) and preparing the records for the JJB hearings.

*There are two kinds of children coming into the Observation Home, one who would want to reform and other who thinks I should continue committing crime and earn fame in this line. I wanted to reform. But the environment here [OH] did not facilitate that. ~ Child in Conflict with Law.*

The children in the OH would benefit from comprehensive set of services that look beyond legal services, and assisting them with their case and being represented before the JJB. As these children come from poor economic background, dysfunctional families, lack guidance, and have behavioral problems, causing their entry into crimes, it is essential for the time spent in OH to provide them space to introspect, get encouragement and reform.

### ***Special Home***

According to Section 2 (56) JJ Act 2015, special home is an institution established by a State Government or by a voluntary or non-governmental organisation, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board. However, interaction with children in SH revealed that two of them were admitted in SH despite having ongoing cases against them, as they had multiple cases against them – some were completed and children found guilty while other cases were ongoing. The experience of children in the SH has been more driven towards rehabilitation, where the counselor meets with each child on a weekly basis, and in case the child appears disturbed then more often. The educational services are segregated for children based on their level of understanding, those who have been to school are encouraged to give their 10<sup>th</sup> or 12<sup>th</sup> exam, and for those who have never been to school they teach basics and general knowledge. Children good at studies are encouraged to teach and assist other children in learning, or prepare to appear for competitive exams (such as Karnataka State Reserve Police, Food Corporation, Excise department, Armed Police) that might fetch them employment once outside the JJ system.

*I am a different person now because of being here at Special Home.~*  
Child in Conflict with Law

*I have become so close to the staff here, that I can share with them things I cannot share with my parents. ~* Child in Conflict with Law

Medical care provided to children also includes de-addiction treatment for those struggling with substance abuse problem. Vocational training programmes offers a variety of trainings such as traffic police, farming,

gardening, *agarbatti* making, statue painting, and making papads among others. The children follow a very structured routine in the home, with time for yoga, games, physical training, and relaxation. Although the JJB allows parents visitation only once a month, the SH is flexible with the frequency depending on the need of the child and family. However, it is important to consider that in the SH the children live for a longer duration, and is a smaller group, compared to the floating and huge group in OH. Thus, the programmes suitable for SH may not necessarily suit children in OH, given their context.

With regard to legal counsel post conviction and admission into SH, it was observed that none of these children had filed for an appeal with the help of legal aid lawyers due to various reasons such as – unwillingness of parents, where they felt this was an opportunity for their child to be rehabilitated, child's acceptance of the crime committed and feeling that they deserve the punishment, and no information or external motivation to challenge the disposition.



## **CHALLENGES**

These were identified as challenges and were compiled predominantly based on the responses of professionals and functionaries, including a few from children and parents participating in the study.

### **Failure of Systems and Mechanisms**

- Although there are systems in place where a poor man can come and claim his right to legal aid, there is very low level of awareness about free legal aid services among general public and usage of these services.
- There are many guidelines issued to protect CICL, however what is missing is the effective implementation of the same.
- The DLSAs do not monitor the performance of empaneled lawyers, number of cases handled by each lawyer, or the quality of legal aid services rendered. There is no maximum term for an empaneled lawyer, which must be reviewed. Even if someone learns about an empaneled lawyer taking money from family, there are no mechanisms in place to make a complaint to the DLSA.
- There is a growing nexus between police and private lawyers, where the former informs the latter about any case that might come to the station, instead of informing or referring the families to the district legal services authority as per Rule 8(3)(vii), JJ Model Rules, 2016.
- There is a delay in complete reporting of case by police as they do not file the charge sheet within the stipulated period. Even if a charge sheet is filed, witnesses are not brought in time before the Board. There is also a delay in receiving forensic report, in case of rape or murder. This lack of efficient convergence between different stakeholders (such as JJB and law enforcement) in processing the case is identified as a reason for delay, resulting in the inquiry proceedings extending for two

to three years. The ramification being delay in disposing the cases quickly and a high pendency rate.

- In Bengaluru Urban district there is only one Probation Officer (PO – under the Probation of Offenders Act 1958) to handle all the cases of offenders in the entire district, who is required to provide probation services under a range of laws and make submissions before a number of courts, including the JJB. In general, the POs do not engage in understanding the child's situation or preparing an Individual Care Plan by interacting with the CICL, rather they only interact with parents. The Social Investigation Report (SIR) is either not provided or is delayed, moreover it is not even prepared in the format as prescribed in the JJ Act 2015. The JJBs in certain districts of the State do not insist on receiving SIRs, although they should not pass orders without SIRs. Even the SIRs that come are of poor quality, which do not really assess the risk for the child, and JJBs rarely make decisions regarding bail and final orders based on these SIRs.
- The JJB proceedings are not conducted in a child friendly manner, by engaging the CICL, rather once a defence lawyer is appointed the interactions occur between the lawyer and Board and not the child or the family, which is akin to Code of Criminal Procedure. The child often goes cold in the presence of the JJB, and the lawyer does not interact with the child to explain the proceedings. No consideration is given to counselor's report and advice while passing order. In districts such as Bengaluru Urban where the proportion of CICL cases are high, the JJB listens to 50 to 80 cases in one sitting, which reflects the burden on the JJB as well as the quality of time they would be able to spare for each child and the case brought before them.
- Although Sec (3) (m), JJ Act requires the JJB to make regular visits to jail, to monitor and ensure no children are kept in jail, the

implementation of the same has clearly failed. This has resulted in many children being sent to and retained in adult jails. Few fortunate ones have made their way to OH within a couple of days, but some have remained there for weeks, if not months.

- There are no mechanisms to ensure children's rights are not violated within the OH, as the children are not segregated based on their age, or on the number of times the child has been admitted into the OH (first timers versus children charged with multiple cases). Also there are no mechanisms for children to make complaints about any violations, in case of occurrence.
- The child protection staff implementing the JJ Act within the system itself have an unconscious bias of being more nurturing towards children in need of care and protection and less concerned about children in conflict with law. This approach and attitude must change among the officials, which can be done only through more direct interaction with CICL and understanding them.

#### **Inefficient or inadequate services**

- Most people are unaware of the free legal aid services. Whatever little legal awareness programmes are conducted by DLSA, especially for the children in conflict with law and their families is often done prior to a JJB sitting. During this time it is very difficult to get full attention of the parents or the children, as they are perturbed about the case, and to engage them in such way that the information provided is retained is a challenge. The legal awareness programmes organized within communities are also held at times when the general public is out at work. However, efforts are being made to reach out during large public gatherings such as festivals and processions, more of such initiatives

must be made, along with scheduling events on public holidays or Sundays.

- Limited number of empaneled lawyers does not give much of choice to the children, even though they may sometimes want to discontinue with a lawyer, they are forced to be represented by them since there is no one else offering free legal services.
- There are no lists of translators or interpreters readily available and vetted prior to using their services.
- A handful of organizations work for the rights of CICL, resulting in a huge service gap, especially when even those few organizations cease to get funds to work with this group of children. This has resulted in lack of regular provision of vital services such as counseling, group activities among others.
- The OH does not provide a space for rehabilitation, no regular counseling services to the children, no adequate and effective vocational training programmes, no recreational activities, by and large there are no mechanisms to engage them constructively. The children in the OH, mostly being 16 to 18 years, need to be provided value education and life skills training, which is absent. OH must design different types of programmes for children who are in for the first time versus those who have come to OH on multiple charges. Moreover, each child's needs being different, and with the floating nature of their stay, it becomes very difficult to provide continuous inputs that suits each child.

#### **Lack of qualified personnel**

- There are no periodic trainings organized for these empaneled lawyers, on how to interview the children in a child friendly manner, or about child psychology. There is a need for sensitization on these aspects,

which will assist in delivering a more holistic set of services, and discuss practical concerns arising thereafter.

- Similarly, government functionaries dealing directly with the children are also not provided any training prior to induction, and for most they do not receive any training even post joining. This often results in poor engagement of these professionals with the CICL, rather than assist in realizing the rights of the apprehended child, reform or rehabilitation.
- There is an acute lack of knowledge among government officials about the extent of the problem, which is the number of children alleged to be in conflict with law in each district. Although almost half of the districts in Karnataka have more than 100 cases of CICL every year, many districts have either insufficient legal aid lawyers or none appointed by the legal services authority. Some of the high-ranking judicial officers are not even aware of the NALSA guidelines, or about the police mandate to refer cases to LSA. This lack of knowledge at the higher level results in failure of implementation of existing guidelines.
- Many lawyers representing CICL before the Board do not have a good understanding about the JJ Act or JJ System, such lawyers being allowed to represent children will not ensure usage of child friendly procedures.
- The DLSA also experiences a shortage of staff to organize legal awareness programmes and monitor OH/SH on a regular basis. There are insufficient empaneled lawyers willing to work pro bono for the marginalized sections in all the districts of Karnataka. In addition, no paralegal volunteers are listed or involved in handling CICL cases, although there is a huge need for free legal services across the State.
- The staff turnover in the OH is high, with no proper training and guidance, they experience burn out and are unable to deal with the challenging situation. The staff meant to engage with children are

burdened with administrative work and no time to engage with children, identify those who need legal aid, and assist them with understanding the case status. Moreover, outsourcing of certain positions like home guards on contract basis results in personnel with no inherent interest or knowledge dealing with these children very closely on a daily basis, resulting in the children being ill-treated and misunderstood.

### **Ethical dilemma**

Although according to the empaneled lawyers there were no ethical dilemmas that they experienced while representing CICL, the NGO lawyers did share some difficulties they experienced during the course of their engagement, such as - difficulty in determining the best interest of the child when the child wants to go out of OH but has suicidal tendencies, if left alone; representing a CICL when the victim is also a child and ensuring the proceedings are conducted in a child friendly manner for both; and when the charge sheet and evidences clearly indicate the child has committed the offence, but the child claims he did not commit the crime. The reason why these were identified as dilemma only by NGO lawyers could also be due to the intensity of their work with the CICL compared to the empaneled lawyers (*discussed in detail in Table 5*).

### **General Misconceptions**

Certain misconceptions were observed while interacting with judicial and DWCD officials, which was debunked by the responses from the children and families of CICL in the study sample. These misconceptions at higher level can impact decision-making and programme designing efforts.

*Table 6: Myth and Fact Check*

<b>Sl. No</b>	<b>Myth</b>	<b>Fact</b>
<b>1</b>	Most of the parents appoint the lawyers prior to coming to the OH.	Study sample revealed that 66% of the respondents got lawyers only after coming to the OH.
<b>2</b>	Legal aid lawyer's services are not as valued as private lawyers.	52% availed services from legal aid lawyers. Parents' level of satisfaction with services rendered by legal aid lawyers was higher than private lawyers.
<b>3</b>	Parents are aware of the availability of free legal aid	80% of the parents did not know about free legal aid services. Even the children learnt about free legal services only after coming to the OH.

## **RECOMMENDATIONS**

### **Legal Services Authority**

- ❖ Increased and consistent awareness programmes to be conducted in the communities, especially in slums and Observation/Special Homes on CICL and their right to legal aid services, and how to avail such services, using interactive or engaging tools such as videos, street plays or information stalls. Reach out and empower the existing groups within communities like self-help groups and youth groups, where many people at the grassroots level could be given awareness. These programmes must ensure effective dissemination of the information, and methods must be adopted to evaluate the same.
- ❖ Preferably lawyers engaged in raising legal awareness among the general public and families in OH/SH must not also be providing direct legal counsel themselves, to prevent any conflict of interest. For instance, empaneled lawyers providing direct services may avoid sharing information regarding the right of CICL to free legal aid services. Therefore, paralegal volunteers and students from legal service clinics could be involved in awareness programmes.
- ❖ Certain key criteria must be mandatory to be an empaneled lawyer representing CICL. The person giving legal aid services must be committed to child rights and keenly aware of the difference between juvenile jurisprudence and criminal justice jurisprudence. Must have the attitude, orientation and concern towards children, especially from the marginalized and weaker sections of the society. Must be service oriented and not expect monetary benefits from the CICL and their families, rather give their best – not only while conducting the case or filling the application, or getting bail, but also when they know that the child has committed the offence. They should have taken pro-bono cases in the past.



- ❖ Legal services authority must proactively empanel more lawyers to assist CICL. These empaneled lawyers must be trained on the objective of the legislation, child development/protection/reintegration, on a regular basis. They should be well remunerated, and strict instructions must be given to legal aid lawyers not to take anything, in cash or kind, from the CICL or their families. Disciplinary actions must be taken, if found to violate this mandate.
- ❖ The empaneled lawyers representing the child in conflict with law must spend time interacting with the child, understand the details of the alleged crime, and explain the procedures, child rights, juvenile justice system, inquiry, process, final judgment and the implication of the disposition to both the child and the parent in detail. This would assist the child and parent in making an informed decision about the plea and understand the consequences of the child's actions and what is good in the long-term. Also, information about the transfer system under the JJ Act<sup>41</sup> must be provided, should they even think about committing heinous crime in future. The best interest of the child must be the key focus for the lawyer representing the CICL.
- ❖ Empaneled lawyers must be sensitized about their role to connect with the child and the family through a multidisciplinary approach. Collaborating with other professionals assists in strategizing, and intervening in the case better. For instance, working closely with the Probation Officer (PO) and seeking SIR prepared by them to work on

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<sup>41</sup>Section 15 (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of 18; Section 18 (3) where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences, JJ Act 2015.

the case, would aid in getting an understanding of the social environment of the child prior to deciding the case strategy or bail application. Also, in cases of children with no parents, extra care must be taken to ensure the child gets care and protection, rather than being discriminated or neglected, by recommending the matter to be dealt with by the CWC simultaneously. Further, if these children are found innocent, the child could be transferred to CWC under Section 17 (2) JJ Act.

- ❖ Legal services authority must proactively engage paralegal volunteers to assist CICL. There is a huge need for paralegal volunteers in every district of Karnataka, to assist with rendering legal awareness and legal aid services. The legal services clinics attached to Law Colleges and Universities, and the students could be engaged as paralegal volunteers, in assisting the children and parents get a legal understanding of the procedures, process and outcomes of their case. Paralegal volunteers can reduce the burden on the JJB, many a times only an application needs to be filed and it does not require a lawyer to be present. For instance, to recall when the CICL is unable to come before the JJB for a hearing, a warrant is issued and the child needs to be called back on another date, which requires an application to be filed.
- ❖ The empaneled lawyers representing a child in conflict with law must have a fixed term during which they are allowed to represent CICL before JJB. Apart from that the performance of all the empaneled lawyers representing CICL must be monitored regularly and extension/renewal of term could be granted based on the performance. Also, Karnataka JJ Rules could have a mandate for legal aid lawyers representing CICL, that they can have only a specific number of cases at any given point, to ensure good quality of services.

- ❖ NALSA guidelines on monitoring are at a macro level, where the criteria is based only on the number of cases receiving legal aid on a monthly basis or how many were released, however this alone will not give input on the quality of legal aid provided. Emphasis must be on quality of services delivered by the lawyers. Monthly reports must be sought from lawyers about the number of cases represented, the arguments presented, and the type of applications filed, as everything needs to be documented. Success must be defined as the rehabilitation of the child in its ultimate meaning.
- ❖ Feedback and suggestions must be sought systematically from the CICL and their families about the performance of empaneled lawyers, apart from reviewing regular reports submitted by the JJB members and the empaneled lawyers. A quarterly visit to the institutions to interact with the staff and oversee the activities is mandatory.
- ❖ Regular monitoring mechanisms provided for under Sec 16 (1) and (2) of JJ Act 2015,<sup>42</sup> to ensure speedy disposal of cases, must be strictly adhered to. Also, cases brought before JJB must may be closely monitored and reported on a regular basis to the High Court Committee on Juvenile Justice (HCC-JJ), where the Secretariat attached to the HCC-JJ could assist with monitoring.
- ❖ All the guidelines issued by legal services authorities must ensure children are treated respectfully, without patronizing, without being infantilised, without being stigmatized or bullied. Every child deserves a second chance. Therefore, the society must understand the

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<sup>42</sup>Sec 16 (1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards, Sec 16 (2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non-governmental organization to be nominated by the Chairperson, JJ Act 2015.

circumstances, situation and psychological condition of CICL and adopt child-friendly procedures. All the children must be equally respected and prioritized.

### **Juvenile Justice Board**

- ❖ As far as possible diversion programmes must be offered to the CICL, to prevent children from being brought before the JJB and going through the process of inquiry.
- ❖ Inquiry process must be child friendly, where the child must be encouraged to engage in the process and ask for clarifications from the JJB and lawyer at any point.
- ❖ JJB must make efforts to clear the cases on a fast track basis within a year, rather than delaying the process for 2 to 3 years, as this affects the lives of these children. The time for completion of inquiry as per the JJ Act is four months.<sup>43</sup> The lawyers could use the provisions under Sec 14 (4) to argue for termination of proceedings in such cases.<sup>44</sup> Currently the status of each case is not monitored apart from the dates given by JJB, despite provisions under Section 16 of JJ Act. Better ways of tracking each case brought before JJB is required with more administrative assistance to the Board.
- ❖ A multidisciplinary approach of seeking opinion from counselor and other professionals dealing with the child is to be adopted, before

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<sup>43</sup>Sec 14 (2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension, JJ Act 2015.

<sup>44</sup>Sec 14 (4) if inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated: Provided that for serious and heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing, JJ Act 2015.

passing judgment. This approach of engaging and seeking inputs from different stakeholders would assist in making effective decisions about the rehabilitation plan for the child.

- ❖ JJB must strictly adhere to their functions and responsibilities,<sup>45</sup> such as inquiring if all the children appearing before them have legal representation and ensuring access to the same, demanding for an SIR before making decisions about the CICL, and conducting regular inspections of jail to ensure no child is imprisoned in adult jails. Also, preparing a quarterly report on the performance of legal aid lawyers, which is to be submitted to the legal services authority for performance evaluation, would ensure good quality of legal services is rendered before the Board.
- ❖ For children who do not have parents/guardians,<sup>46</sup> special care must be taken to address their needs, and refer them to CWC for care and protection.
- ❖ The interaction of people in position of power and who can take action, such as JJB, with CICL should be genuine and gather the concerns shared to take it forward or result in a solution, else it would be difficult for the children to trust the personnel and share their experiences in future.

### **Department of Women and Child Development**

- ❖ Atleast two POs must be hired to work exclusively with the CICL in each district, to conduct SIR and prepare Individual Care Plan. One could assist at the bail stage and the other at the final disposal stage. They should not be involved in doing JJB's documentation work such

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<sup>45</sup> Sec 8 (3), JJ Act 2015

<sup>46</sup>Also children coming under the purview of Sec 2 (14) of JJ Act 2015 may be referred to CWC.

as seeing files, writing summons, or writing warrants, but rather engage with CICL, their families and communities in a constructive manner.

- ❖ Recruit officers and staff who are positive and concerned about the well-being of CICL, and provide them capacity building training in a regular manner. Sensitize them to understand the concept of reform, rehabilitation and comprehensive services.
- ❖ Make funds available to develop programmes that are geared towards bringing reformatory and rehabilitative changes in the children in the OH/SH. Keeping the children constrained and confined in small spaces is not productive, rather encourage them to explore their interests and provide resources to nourish them.
- ❖ There is a need for adequate number of staff in the OH, to function normally. The counselor, social worker, teacher are positions that must be solely engaged in conducting their specific task of catering to the children and their needs instead of being involved in doing administrative work.
- ❖ An orientation on the JJ Act and JJ Model Rules, Child Rights, child psychology and protection concerns to all staff of OH is a must, not only during their induction but also at regular intervals. As they interact with them on a daily basis from the time of admission to exit. Also, trainings at regular intervals would create a forum for the staff to share their challenges faced on a daily basis and learn strategies to address the same by creating a child friendly environment.
- ❖ Staff could be trained on how to share basic information about the right to legal aid among children in conflict with law and their families. When the child has not been called before the JJB, despite their admission into the observation home, an orientation needs to be provided to the child about the JJ system and why there could be delays in first hearing.

- ❖ Flexibility must be adopted to allow the CICL to meet with parents, as being in a new place and locked up, can cause tremendous anxiety.
- ❖ The programmes conducted at the OH must engage the children in life skills education, discuss topics such as duties & responsibilities, envy, relationship with one another, respect, sharing, adjusting and so on. Children must be oriented to different vocational training options that they can pursue once out of the OH. Systemic changes must be brought about through involvement of NGOs with expertise in dealing with CICL.

#### **Police and Special Juvenile Police Unit**

- ❖ First point of contact within the system for a child or his family is the police, thus they need to be sensitized to adopt child friendly investigation procedures, and not adopt torture as a tool to engage with the child or restraining the child in police lock up.
- ❖ Police must provide information about free legal aid services offered by the legal services authority, rather than referring CICL and families to private lawyers. If any officer is found violating this mandate, disciplinary action must be taken.
- ❖ If unable to determine the age of the child in conflict with law, always give benefit of doubt to the person as a child rather than treating as an adult and sending them to jail.
- ❖ Regular trainings must be offered to police officers, and especially SJPU and CWPO regarding JJ Act, JJ Model Rules and rights of CICL.

## **State Government**

- ❖ Coordination between Police and the Legal Services Authority, to ensure that the cases coming to the police are first of all referred to SJPU, and thereafter referred to the legal aid lawyers, so that free legal assistance can be provided at the initial stage.
- ❖ Department of Women and Child Development and Legal Services Authority must regularly interact to discuss how to proceed with social investigation or rehabilitation and how to provide legal aid, to all CICL who require.
- ❖ There is a need for JJB to develop mechanisms that bring parents and children together with the professionals in a regular manner to provide awareness, for continuous counseling and explaining the services available, and engaging in the rehabilitation plan of the child.
- ❖ Regular training and capacity building (atleast once a quarter or half yearly) of government functionaries involved in delivering justice – judiciary, police, SJPU, staff in OH/SH, child protection teams, health/education/rural development/police/labour departments. Time for them to introspect and analyze the cases on a regular basis, through cross learning and sharing of experiences rather than being buried in paper work and blame game.



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