

# PAYING LIP SERVICE TO THE SILENCED: JUVENILE JUSTICE IN INDIA

## I. BACKGROUND

As a State Party to the Convention on the Rights of the Child (“CRC”)<sup>1</sup> and various other rules and guidelines on children’s rights, the Government of India is bound to fulfill the duties set out in these instruments.<sup>2</sup> International agreements on children’s rights, as they concern juveniles in conflict with law,<sup>3</sup> promote a holistic approach, concerned with the development, care, and protection of children throughout their interactions with the juvenile justice system. Juvenile justice is more concerned with the rehabilitation of its charges than is adult criminal justice.<sup>4</sup> When discussing juveniles in conflict with law, international agreements generally emphasize the importance of preventing juveniles from coming into conflict with the law in the first place,<sup>5</sup> as well as an expectation of complete rehabilitation by the time they leave the juvenile justice system. Throughout the proceedings within the system, “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”<sup>6</sup>

India’s original Juvenile Justice Act (1986), written before many of these international instruments were promulgated, did not align with their requirements. In response to the U.N. Committee on the Rights of the Child’s recommendation that India incorporate the aims of the Convention on the Rights of the Child into domestic legislation, a new law was passed.<sup>7</sup> The Juvenile Justice (Care and Protection of Children) Act (2000) (“JJ Act”), amended in 2002 and 2006, covers all aspects of interaction between

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1. India ratified the Convention on the Rights of the Child as of January 11, 1993. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Status of Ratifications of the Principal International Human Rights Treaties*, 6, (June 9, 2004), available at <http://www.unhcr.ch/pdf/report.pdf>.

2. See, e.g., Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, Annex, U.N. GAOR, 40th Sess., Supp. No. 53, U.N. Doc. A/40/53/Annex (Nov. 29, 1985) [hereinafter Beijing Rules]; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, Annex, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49/Annex (Dec. 14, 1990) [hereinafter JDL Rules]; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, Annex, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49/Annex (Dec. 14, 1990) [hereinafter Riyadh Guidelines].

3. “Juveniles in conflict with law” is a term used by international conventions and the Government of India alike, in an effort to reduce the stigma placed on children by the terms ‘juvenile delinquent’ or ‘juvenile offender.’ The word ‘juvenile’ has a negative connotation in society today. However, this Recent Development uses the terms “children” and “juveniles” interchangeably.

4. GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 170 (2006).

5. See, e.g., Riyadh Guidelines, *supra* note 2, arts. 1–2.

6. Convention on the Rights of the Child, *supra* note 2, art. 40.

7. Interview with Arlene Manoharan, Research Officer, Ctr. for Child and the Law, Nat’l Law Sch. of India Univ., in Bangalore, India (Aug. 8, 2007). See also U.N. Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: India*, ¶ 11, U.N. Doc. CRC/C/15/Add.115 (Jan. 28, 2000).

children and the legal system.<sup>8</sup> From adoption to abuse and neglect to children in conflict with the law, the Act is far-reaching in its scope and intent. The provisions within the JJ Act, like its international predecessors, are intended to preserve the dignity and best interests of the child.<sup>9</sup>

## II. FROM IDEAL TO IMPLEMENTATION<sup>10</sup>

### A. *Legal Proceedings*

According to the JJ Act, the rights of juveniles conform to the general rights of the accused under Indian criminal procedure. The international community is concerned with the standard litany of “[b]asic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority.”<sup>11</sup> In addition to these basic protections, particular attention must be paid to the special needs of the juvenile. As stated by the Karnataka Rules, which implement the JJ Act, juvenile justice proceedings shall be conducted “in an informal and child friendly manner.”<sup>12</sup>

To address the particular needs of children, the Government of India has devised entities separate from the traditional justice system: Juvenile Justice Boards (“JJBs”).<sup>13</sup> The second three-year term of Juvenile Justice Boards just began in January 2007, and the JJBs have not yet been established in all districts. Each JJB consists of a three-person panel, with one magistrate and two social workers. The goal of this composition is to have a legally recognized body that is also sensitive to the needs of children. To some degree, this has been successful, but there are also limitations; by assembling these groups of people, the government has absolved itself of much responsibility in terms of training. As a result, the magistrates have

8. MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, BUILDING A PROTECTIVE ENVIRONMENT FOR CHILDREN 23 (2006). See also The Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000; India Code (2000) [hereinafter JJ Act.]

9. One criticism of the Act focuses on its ongoing failure to incorporate the standards set out in international instruments. See Arvind Narrain, *The Juvenile Justice Act 2000: A Critique*, ALTERNATIVE LAW FORUM, <http://www.altlawforum.org/PUBLICATIONS/The%20JJ%20Act%202002> (last visited Dec. 19, 2007).

10. This Recent Development draws primarily from research that the author began in June 2007 while working at Concerned for Working Children, a nonprofit organization in Bangalore, India. The article consists of observations and interviews conducted primarily within the state of Karnataka, but according to government officials within Karnataka, much of the implementation is the same throughout the nation.

11. Beijing Rules, *supra* note 2, R. 7.1. See also Convention on the Rights of the Child, *supra* note 2, art. 40.

12. Karnataka Juvenile Justice (Care and Protection of Children) Rules, 2002, Notification No. WCD 40 SBB 2001(P) (India) R. 13.7 (on file with *Harvard Human Rights Journal*) [hereinafter Karnataka Rules].

13. JJ Act, *supra* note 8, arts. 4–7.

limited understanding of child welfare and child psychology, and the social workers rarely have any legal expertise.

The JJB is intended to be a non-adversarial, child-friendly environment.<sup>14</sup> This implies that each Board acts as both prosecutor and arbiter, a difficult combination that the state attempts to justify on the basis that juvenile proceedings are not intended to be criminal proceedings, but rather records of offenses that took place.<sup>15</sup> Juvenile judicial proceedings differ notably from ordinary criminal proceedings. The room is typically occupied by the following: the three JJB members hearing the case; probation officers serving as courtroom clerks; a court reporter; a guard from the Observation Home (where children are provisionally incarcerated);<sup>16</sup> a police officer or two; possibly the victim and his or her family; and the child, sometimes with his or her family. Some districts have shifted proceedings from courthouse to Observation Home; rather than make the proceedings more child-friendly, however, this simply removes trained courtroom staff from the proceedings and replaces them with (usually untrained) probation officers.<sup>17</sup> These alternative proceedings do not significantly diminish the sense of formality and criminal suspicion. Regardless of the location of the proceedings, the overwhelming feeling imposed on the child is that of intimidation and fear.<sup>18</sup>

### 1. *The Issue of Innocence*

The JJ Act classifies all children who interact with the legal system together, which alleviates some of the stigma attached to those in conflict with law. Furthermore, although the age of criminal responsibility is approximately seven years old, because juveniles<sup>19</sup> are not considered capable of the requisite *mens rea* according to ordinary criminal procedure, they are

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14. Karnataka Rules, *supra* note 12, R. 13.7.

15. Interview with Bobby Kunhu, Consultant, HAQ: Ctr. for Child Rights, in New Delhi, India (July 26, 2007).

16. Observation Homes are the locations where juveniles in conflict with law are incarcerated pending disposition of their cases or bail release. These Homes are each connected to a Juvenile Justice Board, and hold children from up to four districts within a state. Observation Homes are designed to be less punitive or stigmatizing than a jail, and staff members are prohibited from using weapons or handcuffs on the children.

17. This is a problem in Bangalore, where the shift has already been made out of the courtroom. In Shimoga, the proceedings still take place within the courtroom. However, according to Mr. Vasudev, from the Shimoga District Department of Women and Child Welfare, court clerks and other supporting staff cost the state too much, so the state is planning to withdraw them. The Department will now have to deputize substitutes every Friday. Interview with Mr. Vasudev, Deputy Director, Department of Women and Child Welfare, Shimoga District, Shimoga, India (July 12, 2007).

18. Interviews with boys and girls, as well as the author's first-hand observations, indicate that children are not comfortable before their respective JJBs. In Shimoga, for example, children are made to remove their shoes, and generally stand with their hands clasped before them, a gesture not exhibited by any of the adults in the room. The JJB in Bangalore was less rigid and intimidating, but children there said they do not feel comfortable confiding in the JJB members, particularly about issues like abuse.

19. Those under the age of 18. JJ Act, *supra* note 8, art. 2(k).

not considered capable of guilt.<sup>20</sup> Juvenile Justice Board inquiries therefore merely endeavor to create a record of offense and offender.<sup>21</sup> To that end, the records of JJB proceedings are not kept permanently, and do not follow the children into adulthood, to prevent any child from being labeled as a criminal based on offenses committed before the age of eighteen, regardless of the offense.

The presumption of innocence is a crucial element of criminal judicial proceedings in India, but becomes complicated in juvenile proceedings. Per the Committee on the Rights of the Child, the presumption of innocence “means that the burden of proof of the charge(s) brought against the child is on the prosecution.”<sup>22</sup> This is a conundrum for the JJB, which does not generally have a separate prosecutor. The JJB therefore acts as both arbiter and prosecutor. Moreover, the fact that guilt and retribution are not intended to be elements of the proceedings means that for any crime, all children receive the same punishment (if any). The impotence of the JJB and the insignificance of its outcomes are criticized by government officials, and have also led to an indifference on the part of all actors in the system as to whether the child actually committed the offense in question. As a result, children generally cannot be found innocent of a crime. In addition, because juveniles are not punished, there is no perceived need to create a probation system or diversion opportunities. The orders that Juvenile Justice Boards may issue with respect to children include detention in a Special Home, probation, and community service, but these are rarely utilized. The vast majority of cases end with a disposition of “admonish and release.” All juveniles, regardless of guilt or innocence, undergo the same experience: waiting, either on bail or in an Observation Home, to be processed and released.

## 2. Delay

The CRC emphasizes the importance of conducting proceedings involving juveniles “without delay.”<sup>23</sup> The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (“JDL Rules”) further underscore, “[w]hen preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.”<sup>24</sup> To ensure speedy proceedings, the JJ Act specifies that proceedings “shall be completed within a period of four months from the

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20. Model Rules under the Juvenile Justice (Care and Protection of Children) Act 2000, 2007, Gen. S. R. & O. 679(E), available at [http://wcd.nic.in/Final\\_JJ\\_Module\\_appd\\_by\\_law-25\[1\].10.pdf](http://wcd.nic.in/Final_JJ_Module_appd_by_law-25[1].10.pdf) [hereinafter Model Rules].

21. Interview with Bobby Kunhu, *supra* note 15.

22. U.N. Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, ¶ 42, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007).

23. Convention on the Rights of the Child, *supra* note 2, art. 40.

24. JDL Rules, *supra* note 2, art. 17.

date of [their] commencement,” but with exceptions if the “period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.”<sup>25</sup> This discretion permits cases to languish in the system indefinitely.<sup>26</sup> Due to a lack of reporting mechanisms, the percentage of cases that last longer than four months is unknown. However, the existence of any such case that does not have proper justification violates the JJ Act.

Because the proceedings do not primarily determine guilt or innocence, children who did not commit an offense are subject to the same lengthy delays, sometimes longer, as they are often unwilling to admit to offenses. Admission enables the JJB to proceed to admonition and release.<sup>27</sup>

### 3. *Bail*

Delayed proceedings raise problems for all, but particularly for those who are institutionalized without the possibility of release on bail. While JJBs release a majority of juveniles in conflict with law to their families, provided they appear every few weeks to stand before the Board, many are left in residential Observation Homes throughout the duration of the proceedings, sometimes even after their cases are closed.<sup>28</sup> Of 33,320 juveniles arrested and brought before Juvenile Justice Boards in 2003, 12,049 cases (over a third of the total) were still pending disposal by the end of the year.<sup>29</sup>

The JJ Act intends for bail to be granted as frequently as possible, regardless of the nature of the offense, only allowing exceptions in those situations where the child’s release is “likely to bring him into association with any known criminal or expose him to moral, physical or psychological dan-

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25. JJ Act, *supra* note 8, art. 14.

26. This may change under the new Model Rules. According to Model Rule 7.1(a), the Board, at the summary (preliminary) inquiry, can: “Discharge the case, if the evidence of [the juvenile’s] conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking.” Model Rule 7.6 states: “Every inquiry by the Board shall be completed within a period of four months after the first summary inquiry. Only in exceptional cases involving trans-national criminality, large number of accused and inordinate delay in production of witnesses, the period of enquiry may be extended by two months on recording of reasons by the Board. In all other cases, delay beyond four to six months would lead to termination of the proceedings.” Model Rules, *supra* note 20.

27. An example of this occurred in JJB proceedings in Shimoga. A boy in his first year of college was accused of petty theft. All parties in the JJB proceeding agreed that he was innocent of the crime, but the Chief Judicial Magistrate urged the boy to admit to it anyway, in order to end proceedings that day rather than returning after the charge-sheet had been filed. The boy refused, and the JJB scheduled his next hearing in October. Observed at Juvenile Justice Bd. proceeding, in Shimoga, India (June 13, 2007).

28. JJ Act, *supra* note 8, art. 12(3) (“When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.”).

29. Enakshi G. Thukral, HAQ: Centre for Child Rights, Status of Children in India Inc. 128 (2005).

ger or [where] his release would defeat the ends of justice.”<sup>30</sup> Despite this provision, magistrates are reluctant to grant bail when they do not have proof of residence, as they have no way of ensuring that the children will return to future hearings.<sup>31</sup> Magistrates grant bail to schoolchildren and those with parents who can provide landed surety, but are less likely to grant bail to children of day laborers; children are rarely granted bail if only extended family, rather than parents, come to claim them.<sup>32</sup> These implicit bail and surety restrictions have resulted in the institutionalization of children along socio-economic lines, in violation of international conventions expressing anti-discrimination principles.<sup>33</sup>

### B. Accountability Concerns

Children have difficulty developing their own political voice, and often adults charge themselves with acting in the best interests of children, which presumes that adults can determine what the best interests of children actually are. In the criminal justice context, children cannot hold the system accountable because they have no voice or representation of their own. The system as devised under the JJ Act does not adequately address this issue, as few mechanisms exist to ensure accountability.

One severely under-utilized mechanism of accountability is the court system itself. As India’s is a common law system, appellate courts should hear cases brought on appeal from Juvenile Justice Board proceedings. However, owing to the scarcity of resources for appeals proceedings, and the fact that few children are represented by lawyers at the initial proceedings (making the prospect of an appeal unlikely), significant case law has yet to develop.<sup>34</sup>

Under the JDL Rules as well as the United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”)—instruments addressing the protection of persons subject to detention or imprisonment—an independent body that oversees the various institutions responsible for juveniles in conflict with law is a crucial mechanism for maintaining the best interests of children.<sup>35</sup> The Government of India has

30. JJ Act, *supra* note 8, art. 12. This rule is another cause for delay, as assuring that a child’s release will not lead to criminal association implicitly necessitates a Probation Officer report prior to granting bail. Juvenile Justice Boards generally do not strictly follow this regulation.

31. Interview with Aarti Mundkur, Bd. Member, Juvenile Justice Bd., in Bangalore, India (June 7, 2007).

32. *Id.* According to Mundkur and corroborated by the author’s observations, bail is refused in approximately one-third of cases in Bangalore. *Id.*

33. Beijing Rules, *supra* note 2, R. 2.1 (“The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to . . . property, birth or other status.”).

34. Interview with Bobby Kunhu, *supra* note 15.

35. JDL Rules, *supra* note 2, art. 72 (“Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of

not embraced this concept, as Observation Homes and probation officers remain vaguely subject to oversight by the Department of Women and Child Development,<sup>36</sup> a national administrative agency that is minimally involved in observing probation officers or Home staff at the local level. The JJ Act also establishes home inspection committees and state-level advisory boards to oversee the administration of juvenile justice, but they have no authority or required meeting dates.<sup>37</sup> These committees, in fact, generally do not conduct meetings or reviews of Homes.<sup>38</sup> The police, meanwhile, are only held accountable within their own departments, and are subject to limited supervision combined with unlimited discretion as to when to get involved and what course of action to take.

One of the more pernicious of the Government of India's flaws, lack of oversight, flourishes in the juvenile justice system. Physical abuse, corruption, and abuse of power dominate the system, from police to incarceration to legal proceedings.

### 1. *Police Brutality and Abuse in Observation Homes*

The relationship between police and juvenile offenders is a precarious one. When the police apprehend a child for allegedly committing an offense, it is generally the first point of contact between the child and the juvenile justice system.<sup>39</sup> The U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") advise that interactions between police and juveniles should "promote the well-being of the juvenile and avoid harm to her or him."<sup>40</sup> The Riyadh Guidelines go further, suggesting that police "should be trained to respond to the special needs of young persons."<sup>41</sup>

However, rather than avoiding harm, police interactions with juveniles tend to involve abusive interrogation techniques, sometimes bordering on torture.<sup>42</sup> As the children who undergo such interrogations understand it,

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their liberty, to all juveniles and to all records of such facilities."). *Id.*, art. 77 ("Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements."). See also Riyadh Guidelines, *supra* note 2, art. 57 ("Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made.").

36. At the state level, it is referred to as the Department. At the national level, it is the Ministry.

37. Karnataka Rules, *supra* note 12, R. 25 (home inspection committees), R. 43 (state advisory boards).

38. Interview with Father Anthony Sebastian, Director, ECHO Center for Juvenile Justice, in Bangalore, India (Aug. 1, 2007).

39. The word "apprehend" is used throughout the Indian juvenile justice system in place of "arrest," as "offense" is used in place of "crime." These changes in language are intended to minimize the culpability and stigmatization associated with the juvenile who is "in conflict with law."

40. Beijing Rules, *supra* note 2, R. 10.3.

41. Riyadh Guidelines, *supra* note 2, art. 58.

42. In Shimoga, interrogation techniques allegedly include police rolling instruments along the thighs, then hanging the children by their wrists with their big toes tied together, forcing their bodies into one straight line. Police also allegedly place rods on children's shoulders, and beat them on the

police want them to confess to other crimes.<sup>43</sup> Police are reputed to have an arrest quota, so they pin cases on children they can torture without repercussions. These children are generally targeted based on their poverty and vulnerability. The common refrain from children is that if they “make one mistake” by committing one crime, they can expect to be brought in for questioning by police indefinitely, for any or no cause.<sup>44</sup>

Police discretion under the JJ Act is intended to reduce the number of children that are brought into the system, but that is not how it is being utilized. According to the Model Rules, which were established by the Government of India to direct implementation of the JJ Act at the state level, police should only apprehend children in cases of serious crimes.<sup>45</sup> However, the demographics of the children in Observation Homes throughout the country clearly demonstrate that the vast majority of juveniles have been arrested for petty theft,<sup>46</sup> and police arrest many of those on far less than a reasonable suspicion.<sup>47</sup>

Abuse of children occurs within the Observation Homes as well. Lack of supervision and limited staff, combined with a lack of training, strain relations between Home staff and children. Boys in an Observation Home in Shimoga report that all but one of the staff at the Home are verbally and physically abusive, and the boys and guards are mutually distrustful of one another.<sup>48</sup> The guards fear the older boys, who are similar in size to the guards, but the younger boys receive beatings on a regular basis. Abuse in Madivala Home, Bangalore, is likewise pervasive. Human Rights Watch documented some of these abuses in a 1996 report.<sup>49</sup> According to a source within the Indian juvenile justice system, the staff member described in the report as particularly abusive<sup>50</sup> still works at the Home today.<sup>51</sup>

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bottoms of their feet. Children also reported having a rod placed under their legs while they are frog-tied with their hands under their legs, and being pulled up by the rod and made to sit on chairs in that position. Police also allegedly use a pulley system by which children have their hands secured behind their backs, their wrists attached to a rope, and are then slowly raised and lowered by the pulley. The officers are allegedly verbally abusive as well, calling children under interrogation names and saying bad things about their families. Children reported being beaten for approximately thirty minutes straight, until they “open[ed] up.” Interview with boys, Shimoga Observation Home, in Shimoga, India (July 12, 2007).

43. *Id.* Girls interviewed in Bangalore were not forthcoming with information about police violence.

44. *Id.*

45. Model Rules, *supra* note 20, R. 6.4.

46. Ten of the thirteen boys in the Shimoga home were accused of petty theft; more than thirty of the thirty-eight boys in Madivala had been arrested for theft. Interview with Mr. Chandrappa, Supervisor and Prob. Officer, Shimoga Observation Home for Boys, in Shimoga, India (July 11, 2007).

47. Children in Shimoga and Bangalore related several tales of police arresting children for unsolved crimes. Interview with boys, Shimoga Observation Home, in Shimoga, India (July 12, 2007); Interview with boys, Bangalore Observation Home, in Bangalore, India (July 18, 2007).

48. Interview with boys, Shimoga Observation Home, in Shimoga, India (July 12, 2007).

49. HUMAN RIGHTS WATCH, POLICE ABUSE AND KILLINGS OF STREET CHILDREN IN INDIA (1996).

50. *Id.* at 33–34 (“At the observation home, I was stripped and a guard with a crippled hand was there. He told us to call him ‘Daddy.’ He made us face a pool of water, then he told us to look at all the pictures of Gandhi, Nehru, etc. on the wall. While we were doing that, he would walk behind us and

## 2. Probation Officers: Incompetence and Delay

Lack of accountability and lack of training also contribute to the inefficiency of staff during legal proceedings, leading to much of the delay that occurs in JJB proceedings. Responsibilities of the Probation Officers include investigation of the juveniles' homes, preparation of case files, and unofficial duties within the Observation Home, such as driving girls to and from JJB hearings and assisting the guards.<sup>52</sup> Delays occur with both investigations and clerical tasks. In Bangalore, for example, there are many files—350 according to one Probation Officer<sup>53</sup>—for which the JJB's staff have received all documentation, including the charge-sheet, but have yet to prepare the files to bring before the JJB. During hearings, the JJB in Bangalore spends more than half of its time waiting for cases to be called, because the staff does not properly prepare files for hearings, resulting in unreadable files or failure to bring the correct files at all.<sup>54</sup> In one instance, although approximately twenty-one of the thirty-eight boys in the home were scheduled to have hearings on July 18, 2007, the JJB heard only five cases that day, for seven boys total.<sup>55</sup>

The Probation Officers blame their delays and inefficiency on a lack of training. They have all recently transferred from various departments (since January 2007), and have no training in proper courtroom procedure. However, the Chief Municipal Magistrate of Bangalore and other JJB staff attribute Probation Officer incompetence to a lack of accountability.<sup>56</sup> Both of these assertions are likely to be true, as staff members are working without training and without any external motivation. The JJB does not have supervisory authority over the Probation Officers, and therefore cannot compel them to work. There is currently no other form of supervision or accountability for the Probation Officers.

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kick us into the pool of cold water to make us clean. Later he would just make us stand while he kicked us and we could not move. When 'Daddy' was tired of beating us he gave the younger boys to the older boys—they get the boys of their choice. The older boys are called monitors and they beat and molest the younger boys. I was in the remand home for about three months and then let go.”)

51. Interview with anonymous source, Indian juvenile justice system, in Bangalore, India (Aug. 2007).

52. Model Rules, *supra* note 20, R. 9.2 (“Before passing an order, the Board shall obtain a social investigation report prepared either by a probation officer or a recognized voluntary organisation and take the findings of the report into account.”). Note that this rule suggests that local NGOs should be involved in JJB proceedings.

53. Interview with Sheshi Kumar, Prob. Officer, Juvenile Justice Bd., in Bangalore, India (July 19, 2007).

54. Observation of Juvenile Justice Bd. hearing, in Bangalore, India (July 18, 2007).

55. *Id.*

56. Interview with Chief Municipal Magistrate, in Bangalore, India (July 19, 2007).

### III. SOLUTIONS

As of September 2007, the Government of India is drafting two bills that will hopefully offer solutions to the present problems. The Ministry of Women and Child Development is creating Model Rules as an addendum to the Juvenile Justice Act, with the intention that all states will adopt and comply with them.<sup>57</sup> The Ministry is also overhauling the Department of Women and Child's organizational structure and policy, creating an Integrated Child Protection Scheme ("ICPS").<sup>58</sup>

#### A. *The Model Rules*

The Model Rules are mildly controversial among children's rights non-governmental organizations ("NGOs") in India, as the Ministry did not consult with NGOs during the drafting of the Rules.<sup>59</sup> One of the primary criticisms of the Rules is that they invest too much authority in the police, something that most child-friendly legislation seeks to minimize. The Rules also limit the pool of people that will be eligible to serve on the Juvenile Justice Boards, for example by requiring that Board members be at least thirty-five years old, hold a post-graduate degree in social science, and have seven years of experience in child welfare.<sup>60</sup> NGOs are concerned about excessive restrictions, as Juvenile Justice Boards already have difficulties filling positions. One oddity of the Model Rules is that they have a set of "principles," as if the document were a Convention or Act, as opposed to a set of procedures or protocols. It is unclear who will enforce these principles, which is of concern because enforcement and implementation of legislation were a key problem in the first place.

Despite these criticisms, the Model Rules may have a tremendous impact on ameliorating the current problems within the system. The Rules advocate for a stronger relationship between NGOs and government agencies, an acknowledgement of the positive impact NGOs can have within the Observation Homes and throughout the system. There are also two key changes that may prove important: the elimination of the charge-sheet require-

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57. All states currently operate under their own Rules on juvenile justice, and it appears that the Model Rules are intended to supersede the state Rules in cases of conflict.

58. Interview with Arlene Manoharan, *supra* note 7. See also MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, DRAFT INTEGRATED CHILD PROTECTION SCHEME (27th drft. 2006), available at <http://wcd.nic.in/drafticps.pdf> [hereinafter ICPS].

59. However, they had an opportunity in the summer of 2007 to make suggestions that may be incorporated in the Rules before they are finalized. Interview with Bobby Kunhu, *supra* note 15.

60. Model Rules, *supra* note 20, R. 3.7.

ment,<sup>61</sup> and the clarified requirement of ending case proceedings after a maximum of six months.<sup>62</sup>

The elimination of the charge-sheet may lead to significant improvements in the efficiency of proceedings, although this may come at the expense of accuracy. The charge-sheet, which is submitted by the police and is currently required for the case to move forward, contains all the information relevant to the case, but can take up to three months for the JJB to receive.<sup>63</sup> Moving to a general daily diary, as the Rules stipulate, may mean less information is provided to JJB members, but has the potential to significantly alleviate delays and allow children to exit the system sooner. However, it is unclear whether magistrates and police officers will follow this change in procedure, and whether it would involve a complete transition from charge-sheet to general daily diary, or whether such a determination would be on a case-by-case basis.

“Openness and transparency” is a new goal emphasized by the Model Rules.<sup>64</sup> As such, one form of independent oversight that will be established by the Rules that may generate change is a social audit, essentially a detailed review of the workings of individual Observation Homes, to be conducted by the government in conjunction with NGOs.<sup>65</sup> In order for the social audit to work, the process will need a government official (not an independent body) to oversee it<sup>66</sup>, as well as strong initiative and significant resources contributed by those conducting the audit.

The recognition of the right to legal representation for all juveniles<sup>67</sup> may alleviate the problems of the lack of child participation and accountability of the judicial proceedings by providing juveniles with an advocate who can object to inordinate delays or inappropriate behavior on the part of the Board, as well as through the establishment of a body of case law. Children are likely to be represented by free legal aid, such as a district legal services authority, not all of which may have the time or resources to be able to appeal cases. However, an increase in attorneys required to be involved in juvenile proceedings may mean an increase in support from either the Government of India or NGOs. This may lead to more challenges and appeals, bringing the juvenile justice system increased attention from the courts.

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61. *Id.*, R. 6.8 (“In dealing with cases of juveniles in conflict with law the police shall not be required to register an FIR or filing a charge-sheet. Instead it shall record information regarding the alleged offence committed by the juvenile in the general daily diary followed by a social background report to be forwarded to the Board before the first hearing.”).

62. *Id.* R. 7.6.

63. Interview with Mr. Chandrappa, *supra* note 46.

64. Model Rules, *supra* note 20, R. 78.

65. *Id.* R. 48.

66. *Id.*

67. *Id.* R. 8.1, 8.2.

### B. *Integrated Child Protection Scheme: ICPS*

The problem with these changes is that they are still at the legislative level, and may not actually be implemented. The Integrated Child Protection Scheme will hopefully address implementation concerns, through an entirely new bureaucratic structure and increased expenditures for child protection.<sup>68</sup> Set to be completed over the course of the next Five-Year Plan (2007-2012),<sup>69</sup> the ICPS will create new offices known as State and District Child Protection Units.<sup>70</sup> These Units are intended to be both the supervisory bodies as well as the chief funding resource for all Observation Homes, Juvenile Justice Boards, and Special Juvenile Police Units.<sup>71</sup> However, it is unclear whether these Units will be able to be independent, as they are still under the Ministry's umbrella and organizational hierarchy. The Ministry has attempted to increase their independence by hiring staff for the Units on a short-term, contractual basis.<sup>72</sup> NGOs fear this to be an ineffective solution, as it will tend to lead to political appointments of people who may not have the proper training or commitment to the position.<sup>73</sup> This is currently the only solution the Ministry has proposed to the problem of accountability throughout the entire system.<sup>74</sup>

Both the Model Rules and the ICPS are currently in draft form, and the implementation and outcome of these changes is unclear. The Government of India is advancing these solutions in order to improve a failing system, but both require significant commitment and engagement from both state governments and civil society. In order to see real change, the Government will need feedback from the NGO community and the public at large to create the necessary external motivation that will transform these documents into reality.

—Erika Rickard\*

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68. ICPS, *supra* note 58, at 1.

69. Interview with Arlene Manoharan, *supra* note 7.

70. ICPS, *supra* note 58, at 29 (district level), 31 (state level).

71. Model Rules, *supra* note 20, R. 65 (Units as supervisory bodies); Interview with Arlene Manoharan, *supra* note 7 (Units as chief funding resource).

72. Interview with Bobby Kunhu, *supra* note 15.

73. Interview with Arlene Manoharan, *supra* note 7.

74. Interview with Bobby Kunhu, *supra* note 15.

\* J.D. Candidate, Harvard Law School, 2009; B.A., Mills College, 2005.