

To ,
The Hon'ble Justice J S Verma Committee
Room No. 213-214
Vigyan Bhawan Annexe,
New Delhi-110003
Email: justice.verma@nic.in

Sub: Suggestions for possible Amendments to Criminal Laws Relating To Safety & Security of Women and to keep Juvenile Justice Law intact

Dear Hon'ble Justice J. S. Verma (Committee),

In continuation with the previous representation, I am sending herewith an additional representation which is primarily concerned about keeping the Juvenile Justice (Care & Protection of Children) Act 2000/2006, alongwith its legal mechanism, unchanged. There is complete consensus amongst the child rights, child protection, juvenile justice, activist, organization, experts and practitioners on the subject. May kindly read it alongwith the Joint Representation, dated 5th January, 2013 that I have submitted with others.

Role of the Juvenile Offender in Gang-rape of 23-year old woman in the Bus in Delhi

The issues pertaining to the heinous crimes committed by the juveniles have been highlighted like never before, and there is strong demand for bringing about radical Amendments in the Juvenile Justice (Care & Protection of Children) Act 2000/2006. The changes being suggested, inter-alia, include reduction in the age of culpability in the childhood from 18 to 16 years. Perhaps, the legal and practical implications on several counts have not been correctly understood. We intend to flag the following points before Justice J. S. Verma Committee to assist in taking an appropriate, un-emotional and pragmatic view:

On the subject above, responding to the nation-wide public out-cry, media reports and some statements made by the senior political, bureaucratic and police officials, we sent the following Joint Representation to the Hon'ble Justice J. S. Verma Committee:

“We, the undersigned individuals, having long standing experience and expertise on child rights, child protection & juvenile justice, human rights and public policy, are horrified by the dastardly crime committed on 23 year girl in the capital city of this country. We strongly believe that correctional measures are needed in order to bring justice in this case and also to upgrade existing safety mechanism to ensure that women enjoy a fear-free and safe environment in the society.

We are, however, concerned about the reactionary demand from a section of society for amending the Juvenile Justice (Care & Protection of Children) Act 2000 in the background of one alleged accused being a probable juvenile and would like to urge upon you to consider our views while finalizing your recommendations on required amendments in the relevant laws.

The Juvenile Justice Act, 2000, in its present form has come about after years of deliberation and an attempt to bring it in conformity with international standards. The demand to reduce the age of childhood or to create an exception for certain serious offences like rape and murder, appears to be based on the facts which may not give complete picture about the juvenile (child) in question and, if accepted, it will have serious and adverse consequences on the acknowledged principles and practices of juvenile justice which have been duly adopted by us at the highest levels in the Parliament and Judiciary, besides its actual effect on the crime prevention and well-being of children in this country. It may indeed prove to be a regressive move. About the juvenile in the given case, it has been reported that he was separated from his family at the age of 13 and practically remained a street, homeless and working child under extremely hazardous and exploitative circumstances and the influence of the elders who might have misled him. His family conditions, including his mentally disturbed father and six siblings some of whom he hasn't met, present the typical profile of a child in need of care & protection turning a juvenile offender.

As you are aware, India is a signatory to the United Nation's Convention on the Rights of the Child (UNCRC) 1989. It is therefore committed to uphold it in its domestic legislations. The UNCRC defines a child as person upto the age of 18 years. In its Concluding Observations the Committee on the Rights of the Child on 28 January 2000 had very categorically recommended:

“The Committee recommends the State party to review its laws in the administration of juvenile justice to ensure that they are in accordance with the Convention, especially, articles 37, 40 and 39 and other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

.... In accordance with non-discrimination under article 2 of the Convention, the Committee recommends article 2(h) of the 1986 Juvenile Justice Act be amended to ensure that boys under 18 years are covered by the definition of juvenile, as girls already are. (CRC/C/15/Add.115)

It is in this backdrop that the Juvenile Justice Act of 1986 was re-enacted to give way to a much more progressive law for care, protection, development, rehabilitation and social reintegration of the ‘Juveniles in conflict with Law’ and ‘Children in need of Care & Protection’, now called the Juvenile Justice (Care & Protection of Children) Act, 2000 as amended in 2006.

This law, inter alia, defined childhood upto 18 years to bring it in conformity with other laws in the country under which the various legal entitlements of the adults, such as, rights to vote, property, legal action, driving, marriage etc. are denied to the juveniles/children, necessitating the protective umbrella under the Juvenile Justice & Child Protection System.

A uniform age for childhood was set as below 18 years and it continues to be so since past 13 years now. One incident cannot be a reason to disturb the well thought-out changes in the law and the historical continuity and to make a deviation from universally accepted International as well as domestic laws on this point. India is among the most progressive countries in its constitution and legal systems and it is not appropriate to turn regressive now.

The answer to juvenile delinquency is not in reducing the age of childhood but in the effective enforcement of the various provisions of the Juvenile Justice Act and create a system to deal with the ‘Juveniles in conflict with Law’ and ‘Children in need of Care & Protection’, who are being hugely neglected in the country. It is an irony that despite 13 years having lapsed since the law was re-enacted, our governments have not been able to accord due priority to children which they deserve given to the fact that 42% of total population of our country are persons below the age of 18 years.

It needs to be appreciated that, proportionately, the children commit much less crimes in India (about 1% of total crimes) compared to other countries and the existing legal apparatus and systems are adequate to deal with them, if enforced properly. Sending children to jail or subjecting them to harsher punishments or prolonged incarceration is definitely not the appropriate way to deal with juvenile crime. Judicial pronouncements from Apex courts as well as from High Courts have been in constant confirmation of this experience. Younger offenders, particularly juveniles only turn out to be hardened criminals in jails and for them the appropriate legal, correctional and rehabilitative processes are laid down under the JJ Act, 2000/2006. It has now been universally accepted that the treatment for juvenile in conflict with law must be restorative and reformatory and not penal. The General Comment Children's rights in juvenile justice

(General Comment No. 10 (2007) to the UN Convention on the Rights of the Child <http://www.unhcr.org/refworld/docid/4670fca12.htm>) extrapolates in great detail what the treatment of a child in conflict with law should be.

This particular incident should not be stretched to the extent that it becomes an excuse for introducing regression and deviation from unanimously agreed upon the principles of law and human rights and we are sure that you will consider this aspect carefully.

Introducing regression into the existing juvenile justice law will not only disturb the momentum of efforts to up-scale protection to our children but will also open a Pandora's box where similar demands will be made for several other offences which are considered serious in nature.

A perusal of Sections 15 & 16 of the JJ Act shows that there are multiple provisions to take care of the young offenders including 3 years of institutionalization in a 'Special Home' besides special consideration being given in exceptional cases wherein the juvenile can be sent to another kind of 'Remand Home' for longer period called 'place of safety'. During our experience with the Observations and Special Homes which are being run according to the letter and spirit of the law, it has been found that the overwhelming majority of juveniles are not only reformed but they are also productively reintegrated in their families and society.

We do hope that good sense and sanity will prevail and as a society we will be able to see the foresightedness of our Juvenile Justice Act and this case will become a reason for accelerating the effective implementation of beneficial provisions contained in the JJ Act. The answer to juvenile delinquency is not in reducing the age of childhood but in correct interpretation of the law and the effective implementation of the Juvenile Justice Act. Any knee jerk reaction based on a particular incident will derail a process of juvenile justice reform that has only recently begun to be understood and set in motion in the country.

We therefore request you to consider our views while finalizing your recommendations on required amendments in relevant laws before you.

Should you so require, we will be happy to clarify further and also submit detailed evidence in support of our joint submission.

Bharti Ali, HAQ: Center for Child Rights
Enakshi Ganguly Thukral, HAQ: Center for Child Rights
Amod K Kanth, Former Chairperson, Delhi Commission for Protection of Child Rights (DCPCR) and General Secretary, Prayas
Anant Kumar Asthana, Advocate
Mohammad Aftab, Save the Children"

Some more suggestions for Hon'ble Justice J. S. Verma Committee:

- 1. Majority of agitated people from the cross sections of the society are not appreciating the distinction between the Criminal Justice System and the Juvenile Justice System, the latter being faithfully and progressively translated in India under the JJ Act, 2000/2006. The value of a distinct JJ System in this country is all the more significant since the Criminal Justice System is practically collapsing and is not able to serve even the adults, let alone the children, minors and adolescents.**
- 2. JJ Act, 2000/2006 and JJ system encompasses two categories of children, namely, the children in need of care & protection' - who constitute over 95% of the clientele and juveniles in conflict with law – who constitute less than 5% of the legal outreach. Children in need of care & protection are officially estimated to be nearly 35 million in the country and, ipso-facto, they also include juveniles in conflict with law. For instance, the child offender in the**

instant case, a homeless, destitute and working child, vagabond since the age of nine year, presents the typical profile of a 'child in need of care & protection turned a juvenile'.

3. JJ Act, 2000/2006 is a direct outcome of our constitutional commitment as well as the International Instruments, namely, UNCRC, UN Standard Minimum Rules for Administration of Juvenile Justice 1985 (Beijing Rules) and UN Rules for the Protection of Juveniles Deprived of Liberty (1990). Having ratified and converted these commitments into Domestic Law, can we become regressive straightway?
4. No doubt the gang-rape and murder of the 23 year old woman participated by a juvenile, is a most horrendous and unpardonable crime. The young offenders world-over, including in India, are becoming a serious problem. However, it needs to be appreciated that compared to their counterparts in other countries, the Indian children are far less criminal. Whereas, the children (below 18) constitute 42% of population, the juvenile offenders constitute just about 1% to 1.50% of the total offenders as per past 8 to 10 years of the National Crime Records Bureau (NCRB) Reports.
5. The reduction of age from 18 to 16 years would entail multiple legal problems and wholesale changes in the law. A child upto 18 year is denied all the rights and entitlement of majority, right to vote, right to drive, right to marry, right to full employment, right to legal action (engagement of a lawyer) etc. which may empower him/her to defend during investigation and trial under the Criminal Justice System. Are we going to give him all rights and entitlements with the reduction of age?
6. Do we seriously think that a child of 16 years who commits a crime can be subjected to India's cruel, alien and pernicious legal system, which includes investigation, trial and incarceration? Do we really believe that instead of reforming the child upto 18 years, we must send him to a jail where, by all accounts, he is bound to turn into a hardened criminal.
7. The objective of the JJ system being the care, protection, development, welfare, rehabilitation and social re-integration, do we believe that all these are not required for our own children upto 18 years if they happen to go wrong in the eyes of law? In any case, there are multiple similar reformist and correctional provisions for the adult offenders as well, like, Probation of Offenders Act, Open Jails, Community Services etc. Do we intend to exclude a juvenile offender in a serious crime from the correctional and rehabilitational programs?
8. The JJ Act 2000/2006 has several provisions to distinguish between the serious and non-serious crime offenders. For instance, the juvenile committing a crime carrying less than seven years of punishment need not be subjected to investigation through an FIR case, a simple report to the Juvenile Justice Board by the police would suffice. The punishments provided u/s 15 & 16 of the JJ Act gives multiple choices, from simple warning to custodial disposition upto three years, which may extend upto 20 years of age. Similarly, a juvenile can be kept in the 'Special Home' or a 'place of safety', depending upon his conduct and behaviour.



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