

JUVENILE JUSTICE ACT AND REFORMATION OF JUVENILES IN THE OBSERVATION HOMES: A CRITIQUE

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'No child will commit an offence out of his/her will, they are driven by their circumstances'

A child is presumed to be innocent. The nature of crime which he commits reflects the circumstances which prompted him/her to commit such offence. The justice delivery system in every country requires that such child should be reformed through correctional measures which would be provided by the government or nongovernmental institutions in the children care institutions i.e. shelter home, observation home, special homes and place of safety etc. However, juvenile suffers abuses, hunger and lives in unhygienic conditions in these children care institutions. Therefore, sometimes they run away from these homes or turn into more aggressive person. It shows that the purpose for which the observation homes are established have failed in achieving the objectives. Therefore, in this paper the conditions of the 'observation home', where the children who have committed crimes are housed, are analyzed and discussed. An endeavour is also made to find out whether these observation homes really provide the rehabilitation and reformation of the juveniles for which the Juvenile Justice Act is enacted.

Keywords- Juveniles, Delinquent, Observation Home, Assault, Reformation

1. Introduction

With the increase in crimes, a new category of offenders has emerged. They aged below 18 years and mostly, have not completed their studies or have never given the opportunity to study. They are foodless, clothless and homeless. They can easily be tamed in holding weapons and committing offences, the consequences of which they can never analyze. When they commit any offence, their act is considered to be an abnormal behavior, which the society never expected from

them. Therefore juvenile delinquency refers to those children who commit crimes in their tender ages.¹

The Juvenile Justice Act in India was passed in 1986. However, several issues such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in children homes, delays in adoptions, lack of educated, trained and responsible staff led to the repealing of the existing Juvenile Justice (Care and Protection of Children) Act, 2000.² It was re enacted in 2015 while taking into account the standards prescribed in the Convention on the Rights of the Child,³ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, Beijing Rules,⁴ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990,⁵ and the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption, 1993.⁶

The Juvenile Justice (Care and Protection of Children) Act, 2000, which is the primary legal framework for juvenile justice in India, provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. The Act deals with different categories of juveniles. *Firstly*, the Act deals with those children who are without parents, or have run away from their home or have migrated from different places, they are generally called as abandoned⁷ child or orphan.⁸ *Secondly*, it deals with those children who need care and protection⁹ against the society. *Thirdly*, the Act deals with those children who are in conflict with law,¹⁰ and while their case is under consideration or pending they are sent to

¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(35).

² *Id* s. 111

³ Convention on the Rights of the Child available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on 27 May 2016).

⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") available at <http://www.un.org/documents/ga/res/40/a40r033.htm> (last visited on 27 May 2016).

⁵ United Nations Rules for the Protection of Juvenile Deprived of their Liberty available at <http://www.un.org/documents/ga/res/45/a45r113.htm> (last visited on 27 May 2016).

⁶ Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter country Adoption available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> (last visited on 27 May 2016).

⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(1).

⁸ *Id* s. 2(42).

⁹ *Id* s. 2(14).

¹⁰ *Id* s. 2(13).

observation homes. The *fourth* category of juveniles is those who are convicted of a crime and have been ordered to be sent to special homes for three years.¹¹

Under the Act various children homes have been established in every district by the state government, either by themselves or by the nongovernmental or voluntary organizations for the care and protection of these children.¹² The Act specifically provides for child care institutions which mean children homes, open shelter, observation homes, special homes, place of safety and specialized adoption agencies.¹³

So long a juvenile stays in these observation homes, he loses each of his rights day by day. He is not only made the victim of many atrocities but is also compelled to indulge in commission of crimes. Although judiciary has always insisted that children should not be made to stay in the observation homes for too long. And the occupations offered to the child in such homes should be intended to bring about adaptability in life, self-confidence, and development of human values,¹⁴ yet various reported incidents reveals a different story altogether.

In UK, under the Prevention of Crime Act, 1908, the courts are authorized to order special treatment for young delinquents and introduced the borstal system as part of the National Penal Programme in 1908, Under the Children's Act of 1912 Juvenile Courts and Probation Services were established. Borstal institutions grew in number and became more specialized in the nature of their methods of education, vocational guidance and occupation training. Borstal homes were run under the Department of Police and jails. The name 'Borstal Home' was replaced by 'Observation home' and was shifted to social welfare department.¹⁵ In India the concept of borstal is found in observation homes. The observation homes are established under the Juvenile Justice (Care and Protection) Act, 2000. It is placed under the department of Women and Child Development of states, established under the Ministry of Women and Child Development.

2. Condition of a Juvenile in an observation home

¹¹ Geeta Chopra, *Child Rights in India: Challenges and Social Action*, 148 (Springer Publication, 2015).

¹² The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(19).

¹³ *Id* s. 2(21).

¹⁴ *Sheela Barse v. Secretary, Children's Aid Society*, AIR 1989 SC 1278

¹⁵ D. Sarada, *Child Rights and Young Lives: Theoretical Issues & Empirical Studies*, 347 (Discovery Publishing House Pvt. Ltd, 2009).

It is pertinent to mention here that observation homes are established to provide care and protection as well as re-integration, rehabilitation and restoration of the juveniles in conflict with law and children in need of care and protection. Services to the child in these homes include physical and custodial care, medical and dental treatment, recreation, instruction according to the age of the child and the length of his or her stay, and religious services. These homes should try to avoid an atmosphere of fear and repression. However, many observation homes are still far away from meeting these facilities, which require employment of trained personnel, a superintendent, teachers, case workers, group workers and supervisors.¹⁶ Various studies, however, states that inmates in observation homes are subjected to sexual assault and exploitation, torture and ill treatment apart from being forced to live in those conditions. The girls remain the most vulnerable as they fall easy prey of sexual abuses.¹⁷

2.1. Family Background

Broken families, lack of parental affection and security, lack of family ties, divorce and separation of parents are some of the factors that contribute in ruining the life of a child. As per the report of the 'Empowerment of Children and Human Rights Organization' (ECHO)¹⁸ on the observation home of Bangalore, it was revealed that a majority of 94 boys were not under parental care. Also, about 89 per cent of them came from poor economic background. The report states that those facing economic stress in their day-to-day lives are forced to work at a young age where they get in touch with anti-social groups; most of the juveniles are school dropouts and come from families below the poverty line. Migration is also seen as a factor that leads children to delinquent behavior. Another study shows that broken homes are an important factor behind children turning to crime.¹⁹ Therefore, majorly a family plays an important role in making a juvenile into a delinquent.

¹⁶ *Id.* at 348.

¹⁷ India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes: A Report by ACHR in 2013.

¹⁸ 'Root Causes of Juvenile Crimes' : A study conducted by the Centre for Juvenile Justice, Bangalore in collaboration with the Department of Women and Child Development and the UNICEF, available at <http://www.slideshare.net/HAQCRCIndia/root-causes-of-juvenile-crimes-a-study-by-echo-centre-for-juvenile-justice-bangalore> (last visited on 27 May 2016).

¹⁹ Study by Manas foundation, which provides counseling to boys and girls lodged at various state-run observation homes for juveniles in conflict with law, available at

2.2. Assault

The criminal justice system in our country should be reviewed for making it more purposeful and effective. Once a child is taken into custody for committing a crime, he is placed in observation home pending his trial. While he is in observation home he receives two types of assault. The first type of assault is *physical* in nature and the second is *sexual*.

2.2.1. Physical Assault

Torture, usually in the form of severe beatings with fists, lathis, or other instruments, and kicking is a common feature of police treatment of street children.²⁰ The brutality of police in the course of investigating crime, especially in investigations of crimes against property, and as a form of retribution or punishment is acknowledged characteristics of police behavior. There are number of complaints and cases where a juvenile is beaten up by the police authorities as soon as he is brought in an observation home and later by the senior inmates. They are forced to accept their involvement in criminal cases. Many observers have documented the tendency of police to arrest and detain children in inhuman condition without good reason. A study sponsored by the Indian Ministry of Labour and UNICEF on the plight of street children in Bombay noted:

The most common complaint of street children without families was that they are rounded up and locked up by the police for two or three days merely on suspicion.

This they explained was done to fill the 'quota' which police are expected to do.²¹

Further an NGO representative and Human Right Activist stated that 'For their reports and to make money, the police lock up a few children and majors every day, only to release them later after having taken their money and/or beaten them up. A few are also presented to the magistrate to show proof that the police are performing their duties'²²

2.2.2. Sexual Assault

<http://timesofindia.indiatimes.com/city/delhi/Most-delinquents-come-from-broken-families/articleshow/18374776.cms> (last visited on 24th May 2016).

²⁰ Arvind Ganesan, *Police Abuse and Killings of Street Children in India*, 30 (Human Right Watch, 1996).

²¹ *Id.* at 16.

²² *Ibid.*

Sexual assault is the second type of treatment meted by the children in observation homes. In an incident,²³ a 14-year-old juvenile from Jamnagar was sodomised allegedly by the four boys at the observation home on Gondal Road, Rajkot. They allegedly also beat four inmates with polymer pipes and two of the accused forced others to perform oral sex. They also filmed the victims naked. The peon who was on duty when the incident took place at the observation home, did not make any attempt to stop this incident or to report this incident. There are many surveys, and reported incidents of sexual abuse on children in observation homes. Many victims are threatened with knife and blades for sexual abuse. This use of force also results in extensive injuries to victims' genitalia, which facilitate transmission of sexually transmitted diseases (STDs). They are touched in disturbing ways, forced to expose genitalia and finally forced into sex.²⁴

It has been found that in many cases the perpetrators are staff members including caretakers, security guards, etc in the observation homes. In most of the cases, the sexual assault continues for a longer period as victims are not ready to dissent and endure quietly in the absence of inspection. The incidents where, two minor girls were assaulted by the manager in Odisha observation home,²⁵ or boys sodomised by guards and senior inmates at govt. home for boys, Delhi²⁶.

Child rape is a common feature. A 2013 report by the Asian Centre for Human Rights (ACHR), states that juvenile justice homes have become India's hell holes where inmates are subjected to sexual assault and exploitation, torture and ill-treatment, apart from being forced to live in inhuman conditions. It highlights 39 cases of repeated sexual assault on children in juvenile justice homes, including government-run observation homes, children's homes, shelter homes and orphanages.²⁷ Recently, the National Commission for Protection of Child Rights has reported that it has registered 77 complaints/cases concerning child abuse, sexual exploitation, torture, ill treatment, disappearance, running away of children, lack of residential facilities and other

²³"Rajkot: Juvenile sexually assaulted in Observation Home" available at <http://indianexpress.com/article/cities/ahmedabad/rajkot-juvenile-sexually-assaulted-in-observation-home/#sthash.Er2htArY.dpuf> (last visited on 20 May 2016).

²⁴ Deepti Pagare, G.S. Meena, *et al*, "Sexual Abuse of Street Children Brought to an Observation Home", 42 *Indian Pediatrics*, 136 (February 2005).

²⁵"Orphanage staff arrested for 'sexually abusing' inmates", *The New Indian Express*, 4 April, 2013.

²⁶ "9 juveniles booked for sodomy", *The Times of India*, 20 March, 2013.

²⁷ *Supra* Note 17.

irregularities committed in the child care institutions including observation and special homes across the country in four years.²⁸

2.3. Cruelty by other inmates

Another situation which should be seriously considered is the nature and age of inmates in the observation home. Under the Act, juvenile alleged to have committed a bailable or non bailable offence are brought before the Juvenile Justice Board,²⁹ where they are released under the supervision of a probation officer. Those juveniles, who are not released on bail by the Board, are sent to the observation home, pending inquiry.³⁰ The juveniles who were alleged to have committed a serious offence were also housed in observation homes during the period of inquiry, which affect the mindset of junior inmates or those who were not party to serious offences.

It has been reported by the inmates that those juveniles who are alleged of committing offence for the second time or more, takes the position of senior inmates. Therefore in the observation homes there are two categories of inmates, *junior* and *senior*. Once junior inmates are tortured by the police authorities, they are then given to the senior inmates for further beatings and other abuses. As per one of the incident, in December 2013, the National Commission for Protection of Child Rights (NCPCR) received allegations of physical abuse in a juvenile observation home in Meerut, Uttar Pradesh. The allegations were made by a 17-year-old boy, who was among 43 children who escaped from the home. He alleged that the mass escape was prompted by repeated instances of physical and sexual abuse of juveniles by older youths living in the observation home.³¹ Most of them were repeated offenders.

2.4. Hygiene in observation homes

Observation homes take a little care of hygiene. As per the report of Careshare India, it was even called as '*pilla jail*' because of the overburdening of inmates. In sharp contrast with the ambitious

²⁸ "77 cases of crime against children in 4 observation homes," available at <http://indiatoday.intoday.in/story/77-cases-of-crime-against-children-in-observation-homes-in-4/1/617753.htm> (last visited on 19 May 2016)

²⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 12(1).

³⁰ *Id.* s. 12 (2) and (3)

³¹ Ashwaq Masoodi, "Inside a juvenile home", available at <http://www.livemint.com/Leisure/X4DChvj7KCXVjegttegiBI/Inside-a-juvenile-home.html> (last visited on 20th May 2016).

goals outlined by the Indian government in the Juvenile Justice Act, the life of children is more horrifying than the family environment they escaped and often more wretched than the life on the streets. According to one of the study, the food supplied by the government into these observation homes, i.e., three meals a day is considerably a meager portion which is hardly nutritious and largely inadequate. Many of them display obvious signs of malnutrition, when they are consumed out of hunger; they gave them painful stomach cramps.

“The dishes are not always washed after every meal. With the stale rice they are given for lunch and dinner, the children often find worms and cockroaches crawling over the leftovers from previous meals, still stuck to the plates”

The children's health conditions are a major cause of concern. Scarce hygiene, insufficient nutrition, and the lack of space render the children easy prey to a variety of highly contagious diseases. The children are allowed to change clothes very infrequently. The guards do not clean the halls and bathrooms, which are infested with cockroaches and lice. As a result many children develop skin infections, dysentery, herpes zoster, genital warts, and sexually transmitted diseases. The home also does not provide medicines or the manpower to take the children to the Government Hospital. Water shortage, lack of drainage systems, working toilets - all this makes the hygiene levels in the homes extremely low.³²

2.5. Superintendents as perpetrators of crime in observation homes

The Act nowhere defines the meaning of the term ‘superintendent or care taker’. The superintendent, under the Rules³³ however, is a person who is required to stay in the observation home and supervise the overall care of the children or juveniles and take decisions in the case of any crisis and emergency. In case he/she is unable to stay in the home for legitimate reasons than any other senior staff member of the observation home shall stay in the institution. He is the officer-in-charge of the observation home till the release of the person from that home. He is assisted by the staff members of the home. He is entrusted to provide various facilities to the juvenile inmates during their temporal stay which includes, food, clothes, medication in case of

³² Federico Ferrara and Valentina Ferrara, “The Children's Prison: Street Children and India's Juvenile Justice System,” available at <http://www.careshareindia.org/OHome/OHEnglish.pdf> (last visited on 23rd May 2016).

³³ Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 40(4).

illness to the inmates etc. The Act does not prescribe any check on the exercise of these functions by the superintendant. On the contrary, in many cases the superintendent has been accused of committing physical and sexual abuse of the juveniles. As a result many of the juvenile abscond from the observation homes. In one of the case action was taken against the superintendent of observation home for “willfully neglecting the victim and exposing him to physical suffering” by six senior inmates.³⁴ In another incident, a minor boy was allegedly subjected to sexual harassment by a guard on duty at the government observation home in Sukher, Rajasthan, whereby notice was issued to the superintendent.³⁵ Similarly in one such incident children of the observation home at Poojappura alleged routine physical assault by the caretaker against a disabled inmate. The charges were made before a visiting team comprising of the Legislative Committee for the Welfare of Women and Children.³⁶ During interaction with other inmates it was revealed that they were also subjected to caning by the caretakers on a regular basis. The committee responded by stating that action would be taken against the caretakers. But there are many such cases where the ill treatment by the caretakers or superintendents goes unreported.

3. Juvenile Justice Board and determination of age

A Juvenile Justice Board is constituted for each district or group of districts,³⁷ and consists of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Principal Magistrate with at least three years experience and two social workers, of whom at least one shall be a woman.³⁸ It has mainly been done to bring change in the nature of the inquiry and decriminalize the administration of juvenile justice through the presence of the two social workers.³⁹ Once the crime is committed and the child is apprehended, the case is brought before the board. Till the inquiry is pending the child is kept in an observation home, unless otherwise released as per the law. On conviction, the child is sent to the special home or

³⁴ “6 held for sodomy in juvenile home Magistrate orders action against superintendent”, available at <http://www.tribuneindia.com/2005/20050718/delhi.htm#2> (last visited on 24 May 2016).

³⁵ “Rajasthan: Boy stripped & abused by guard at observation home”, available at <http://timesofindia.indiatimes.com/city/jaipur/Boy-stripped-abused-by-guard-at-observation-home/articleshow/33306485.cms?> (last visited on 24 May 2016).

³⁶ Enakshi Ganguly, Bharti Ali, et al, *Still Out of Focus: Status of India's Children*, 168 (HAQ ,2008).

³⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 2(10) and 4

³⁸ *id* s. 4(2),

³⁹ “Juvenile Justice Board (JJJB)”, available at http://www.dpju.com/index.php?option=com_content&view=article&id=54&Itemid=160 (Last visited on 25 May 2016).

place of safety. The major function of the Board is to adjudicate and dispose cases of juveniles in conflict with law.⁴⁰

The Board is expected to expeditiously dispose of an inquiry so that the juvenile facing charge is not unnecessarily disrupted for a long period and his rehabilitation process starts at the earliest. Prolonged incarceration pending an inquiry causes trauma to the juvenile. Observation Homes, generally have no facilities for vocational training nor ways to keep juveniles occupied, thus resulting in juveniles getting restless and desperate. Due to prolonged incarceration there have been instances when juveniles have escaped or tried to escape from Observation homes, or have gone on a rampage causing destruction within the institution.⁴¹ As per a study conducted under the patronage of Juvenile Justice Committee of Gauhati High Court and commissioned by the State Child Protection Society, Assam, UNICEF, "One of the key reasons for overall delays in the system is that police are not directly producing the juveniles in conflict with law before the board. It was found that it is common for the police to record the age of the juveniles as between 18 to 19 years and forward the child to a regular court, although it is clear from appearance or other sources that the accused is a juvenile". Under the Act of 2000, the age of a juvenile must be determined within 30 days,⁴² but in reality it was achieved in just 54 per cent of the cases. In some cases it took more than 90 days to determine the age of the accused. Delay in transferring the records from the courts to the boards and submitting charge sheets were identified as reasons hampering the activities.⁴³ Now under the Act of 2015, the process of age determination has been amended with the provision that the age determination test shall be completed within 15 days from the date of order of the Board.⁴⁴

Another problem is related to the appointment of Principal Magistrates of Juvenile Justice Board, who are either not adequately qualified or are not properly trained. This is a major hurdle in the implementation of Juvenile Justice Act. The Judicial Officers, who are not specially trained in

⁴⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s 8(1).

⁴¹ "An Assessment of the Educational and vocational programmes of Juvenile and Observation Homes in Correcting", available at http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/12/12_chapter%206.pdf (last visited on 26 May 2016)

⁴² The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act 56 of 2000), s 49

⁴³ Sumir Karmakar, "Justice delayed in NE juvenile boards", 8th may 2016, available at http://www.telegraphindia.com/1160509/jsp/northeast/story_84579.jsp#.V0Upt_IEnIU (last visited on 26 May 2016)

⁴⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s 94

child's psychology and issues relating to child, are normally appointed as Principal Magistrates, which results in the Juvenile Justice Board being converted into the Criminal Court. The Judicial Magistrates, who are dealing with criminals under normal circumstances in the regular court, did not have a different mindset to treat the juveniles with love and affection, but to treat them like any other criminals.⁴⁵ Under the amended provision, the Act of 2015, the state government is required to ensure that induction training and sensitization to Principal Magistrate should be provided within a period of sixty days on care, protection, rehabilitation, legal provisions and justice for children.⁴⁶

The Amendment of 2015, has brought another major changes in the functioning of the Board which includes, determination of those juveniles who are the in 16-18 age group to assess if a heinous or serious crime was committed as child or adult.⁴⁷ In such determination physiologist and social experts in human rights has to be consulted. These changes are expected to help in the speedy trial and disposal of cases against the juveniles.

4. Observation Homes and Reformatory measures

The observation homes aim at sheltering young offenders and also reorient and retrain them through counseling and vocational training to lead normal life when they go back to their parents or homes. There are certain measures which can be adopted by the state government in complying with this objective.

4.1. Regular Inspection of the observation homes

Under the Act,⁴⁸ the Juvenile Justice Board has been given the power of conduction at least one inspection every month of residential facilitates for children in conflict with law and then to recommend action for improvement in quality of services provided in these homes to the District Child Protection Unit and the State Government. The main feature of this provision is regularity in conducting such inspection. However, inspection may be conducted into a different manner,

⁴⁵ "Steps being taken to improve condition of juvenile homes: Govt", available at <http://indianexpress.com/article/cities/delhi/steps-being-taken-to-improve-condition-of-juvenile-homes-govt/> (last visited on 24 May 2016)

⁴⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s 4(5)

⁴⁷ *id* 15(1)

⁴⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 8(1)(j).

whereby the performances of observation homes may be evaluated by granting them grades. Recently, carrying with this intent a correctional attempt was made by a government resolution which was issued on July 13, 2015, and which directed the authorities to check observation homes for overall maintenance and rules laid down by the Child Welfare Committee and the Juvenile Justice (Care and Protection of Children) Act, 2000.⁴⁹ To address the abovementioned complaints and fix problems plaguing the functioning of observation homes, the state women and child development department along with the revenue department started grading their performances. Of the total 994 observation homes across the state, officials inspected 874, out of which 421 were given A grade (above 90 per cent) , 250 were given B grade (above 80 per cent), 67 were given C grade (above 70 per cent) and 136 were given D grade (below 70 per cent). The observation homes were judged for overall maintenance, cleanliness, staff and student interaction, attendance, food, shelter, checks on those coming to meet children, overall grooming of children and teaching and behavior.

4.2. Proper utilization of funds under Integrated Child Protection Scheme (ICPS)

The Integrated Child Protection Scheme (ICPS), is a centrally sponsored scheme of the government. The main objective of the scheme is to bring improvement in the well being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations that lead to abuse, neglect, exploitation, abandonment and separation of children from their families.⁵⁰ The scheme is meant to improve conditions of the children observation homes across the country, for which funds are provided. However, in one incident, social justice bench of Justices Madan. B. Lokur and U. U. Lalit, expressed their dissatisfaction on the working of Integrated Child Protection Scheme. They expressed 'shock' over the response of the Centre that it has not conducted statutory 'social audit' of the funds disbursed to states under the Integrated Child Protection Scheme.⁵¹ Merely introducing the schemes might not be a reformative and recreational step. There should be measures for checking the implementation of these schemes. One of the

⁴⁹ "In a first, grade system to assess observation homes", <http://indianexpress.com/article/cities/pune/in-a-first-grade-system-to-assess-observation-homes/#sthash.5chQfw6k.dpuf> (last visited on 26 May 2016)

⁵⁰ Revised Integrated Child Protection Scheme (ICPS) available at http://www.cara.nic.in/writereaddata/uploadedfile/NTESCL_635761170436561995_final_icps.pdf (last visited on 28 May 2016)

⁵¹ "SC shocked over non-auditing of funds to states under ICPS", available at http://zeenews.india.com/news/india/sc-shocked-over-non-auditing-of-funds-to-states-under-icps_1580623.html (last visited on 28 May 2016)

ways may be publishing the entire working of these schemes monthly, through newspapers. The general public would prove to a proper watchdog for implementation of these schemes.

4.3. Follow up by home staff

Though under the Act, the provision of follow up has been given to the probation officer. But in most of the cases the children coming out of observation homes should to be followed up by observation home staff. The home staff here consist of trainers, vocational teachers etc. The follow-up activities include correctional behaviour, counseling to parents and children, provision of rehabilitative services. The follow-up activities are not effectively implemented in majority of the observation homes and therefore most of the inmates in the observation homes are second time or repeated delinquents.

4.4. Sound, secure and safe observation home

In order to ensure safety, security and healthy atmosphere in these homes some other measures can be adopted-

1. The NGO's specifically taking care of children, should be asked to run non-formal education classes in juvenile homes to provide classes in dance, aerobics, sports and meditation to inmates as a means to curb incidents of violence in these homes.⁵² For better welfare of juveniles, games, sports and other functional programmes may be organized in observation home and institutions and the juveniles should be encouraged to participate in these programmes. During festival seasons some cultural programmes should be organized in the homes for the inmates with the assistance of voluntarily organizations.
2. The observation homes should be upgraded by installing CCTV cameras, perimeter cordon and increasing the number of watchtowers.⁵³ The video facility through CCTV should be so linked to facilitate inspection and supervision by the Juvenile Justice Board so as to keep a check on anything done against the best interest of the child. The Board

⁵² *Supra* note 49

⁵³ *ibid*

should also conduct surprise visits so as to prevent and address allegations of torture, abuse or neglect of juveniles residing there.⁵⁴

3. Senior citizens should be involved as community resource person to look after the well being of the children in various homes with their expertise in different fields.
4. Schooling of the children in the observation homes up to the age of 14 should be made compulsory.
5. Juveniles not released on bail and placed in such places should be segregated from those placed there as per final order of the Juvenile Justice Board, and in both these categories, juveniles should be classified and segregated based on age, sex and degree of offence or mental status.
6. For the welfare of juvenile, he must be allowed to go on leave and released on license during examination so that he can continue with his studies. Sponsorships should be provided for the education of juveniles in good institutions. Personality enhancement courses should also be organized.

Across the country, there are approximately 711 Juvenile Justice Homes (observation, special remand and after-care homes) in 25 States and UTs, says a National Commission for Protection of Child Rights report. In 2000, according to Ministry of Home Affairs, there were 3,876 children in conflict with the law in juvenile homes. The number was increased in 2011 to 33,387 children (in the age group of 7-18) who were arrested in the state of Punjab alone.⁵⁵

Most of these children are a product of their environment that is, abusive or absentee parents, wrong peer groups or simply no one to tell them any better. When they commit an offence they are arrested and put under observation in observation homes to realize their mistakes while pending their trial. Therefore, the every observation home should provide a temporary stay to these juveniles with an idea to rehabilitate these children and put them back in the society as stable, healthy and productive members.

⁵⁴ Arlene Manoharan & Swagata Raha, "The Juvenile Justice System in India and Children who commit serious offences –Reflections on the Way Forward" available at <https://www.nls.ac.in/ccl/justicetochildren/intl.pdf> (last visited on 27 May 2016)

⁵⁵ "Juvenile Justice: Inside an observation home" available at <http://www.gobartimes.org/content/juvenile-justice-inside-observation-home> (last visited on 26 May 2016)

5. Conclusion

Children are the future of a society. They should be nurtured with the best of facilities. They do make mistakes and sometimes, serious in nature. They are not hard core criminals but mere miscreants, who rarely understand the consequences of their act. The legislature requires them to be observed and rehabilitated under the 'observation homes'. In these homes, the children who have become juveniles, are observed but, not rehabilitated. Their observation is under the police officials, who do not provide them the space for rehabilitation. In reality, they are ill-treated by the police and senior inmates. They are not provided sufficient food, nutritious food remains a dream. They are given the worst of hygienic conditions, where catching infection is a regular activity. And after few months they are expected to return to the society with correctional behaviors. Acquitted or convicted, a juvenile is not taken by the society with dignity. In most of the cases the juveniles repeat their offence and this time with more aggression. And this is what makes them 'criminals'. In an incident, 17-year-old boy, who had kidnapped and killed a child, was released from a juvenile home for 'good behaviour'. But two months after his release he murdered an elderly woman in her home in South Delhi.⁵⁶ Amending the legislation does not always solve the problem. The present legislation provides for creation of more observation homes with special and trained police officers and a Board to ensure juvenile justice through adjudication. Even then there is no change in the machinery of making more 'criminals'. Nowadays these juveniles are hired for committing serious offences, with new weapons and new techniques. The issue of reforming the juveniles should be taken seriously by the legislatures, administrators of observation homes, parents and society as it is just the beginning and not the end.

⁵⁶ Somreet Bhattacharya, *Released 2 months after committing murder, juvenile kills again*, Time of India, 5th February 2016