



Judicial Colloquium on Juvenile Justice

July 7-8, 2018

Organized by :
Centre for Child Rights
National Law University Odisha

Collaboration with:

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Prepared by :
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Consultant



Introduction

The law relating to children in conflict with the law has evolved over a century in India. From trying and punishing children as adults by adult courts, the legislative landscape has changed significantly to recognize the developmental immaturity and vulnerability of children in conflict with the law. While under international human rights law, the term “juvenile justice” essentially relates to children in conflict with the law, in India, children in need of care and protection also fall within the rubric of juvenile justice.

India's legislative regime related to children in conflict with the law has been shaped by judgments of the Supreme Court of India, as well developments at the international level. India's accession to the UN Convention on the Rights of the Child, 1989 (UNCRC), on 11 December 1992 was a turning point. Articles 37 and 40 of the UNCRC articulate the rights of children in juvenile justice. In February 2000, the Committee on the Rights of the Child (CRC), the treaty-body responsible for monitoring the implementation of the UNCRC, had expressed concern about incompatibility of India's juvenile justice system with the UNCRC, as well as “the possibility of trying boys between 16 and 18 years of age as adults.” This served as a trigger for the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act, 2000), which defined the term “juvenile” or “child” to mean “a person who has not completed eighteenth year of age.”

The JJ Act, 2000, was a progressive piece of legislation as it prohibited not just the imposition of the death penalty or life imprisonment without the possibility of release, but also imprisonment of any kind. It also provided for a unique composition of a Juvenile Justice Board (JJB) to adjudicate matters relating to children in conflict with the law. The JJB consisted of a magistrate and two social worker members with an active involvement in health, education, or activities pertaining to children. The JJ Act, 2000 was amended in 2006 to comply with the concluding observations of the Committee on the Rights of the Child in 2004, in which it expressed concern about the Supreme Court's rulings that the date on which the offence was committed was irrelevant to the determination of a person's juvenility.

The amendment clarified that “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence”.

The Delhi gang-rape case of 2012 served as a trigger for repeal and replacement of the earlier Juvenile Justice Act, 2000 with the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015). The preamble of the JJ Act, 2015 contains references to the UNCRC as well as soft law instruments such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990). The JJ Act, 2015 expressly recognises that children in conflict with the law can also be children in need of care and protection.

One of the key changes introduced by the JJ Act, 2015 having a bearing on children in conflict with the law was the introduction of the “transfer system”. The JJB is required to conduct a preliminary assessment in cases of children aged 16 or above and below 18 years, alleged to have committed a heinous offence to determine whether they should be transferred to a Children's Court to be tried as an adult. For this purpose, the JJB should assess the child's mental and physical capacity to commit the offence, the child's ability to understand the consequences of the offence, and the circumstances in which the offence was allegedly committed. The Children's Court does have the option of not trying the child as an adult and dealing with child as the JJB would. However, there is no reported case of this option having been exercised by a Children's Court. On being found guilty after trial as an adult, a child will be sent to a place of safety till the child attains 21 years. Before the child completes 21 years, the Children's Court is required to assess whether the child has undergone reformatory changes and can be a contributing member of the society. If the person is not found to have rehabilitated, the person will be transferred to a jail to complete the rest of the sentence. At the drafting stage, the transfer system was contested by organisations and individuals working on juvenile justice, for being violative of the guarantee of equality under the Indian Constitution and incompatible with the UNCRC. These concerns were also endorsed by the Parliamentary Standing Committee which examined the Bill.

To ensure the highest standards of rights and protection to children in conflict with the law at the domestic level, there is a need to engage with the international human rights law standards as well as the jurisprudence of the Committee on the Rights of the Child, alternatives to detention, and emerging practices relevant to juvenile justice. The judicial colloquium on juvenile justice served as a platform for deliberation on normative standards at the domestic and international level. The colloquium consisted of seven sessions spread over two days. Participants examined restorative justice and diversion – two practices that are increasingly being effectively used by several countries to respond to children in conflict with a law – with a view to understand the possibilities of their application in India in keeping with international standards.

Participants also engaged with the existing implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 vis-à-vis children in conflict with the law. The discussion was structured around the themes of legal aid, rehabilitation, preliminary assessment, rehabilitative dispositions, working of a multi-disciplinary JJB, Social Investigation Reports, and Individual Care Plans.

Finally, participants of the colloquium also provided feedback on the modules developed by National Law University, Odisha in collaboration with University of Geneva, Switzerland and IDE, Sion, Switzerland, for an International Course on Juvenile Justice.

Inaugural Session



Prof. (Dr.) Srikrishna Deva Rao, Vice Chancellor, National Law University Odisha, Cuttack welcomed the esteemed judges and participants to the Judicial Colloquium on Juvenile Justice. Prof. Rao emphasized the important influence of the decisions of the Supreme Court and international human rights law on India's juvenile justice law. Since 2014, the “justice for children” approach has been strongly advocated by the Supreme Court Juvenile Justice and the High Court Juvenile Justice Committees. The “justice to children” approach requires that children are better served and protected by the justice system at various levels. Prof. Rao informed the gathering about the partnership between the National Law University Odisha with IDE, SION and the University of Geneva to offer the international executive course in Juvenile Justice. This course offers specialization in area of juvenile justice with an interdisciplinary approach based on best practices in the context of international perspective. The Judicial Colloquium was envisaged as a platform to deliberate on the course modules and the manner in which they can be contextualised in light of the Indian legal framework. The colloquium also aimed to discuss the current standards of juvenile justice at the domestic and international level and to examine the applicability of restorative justice and diversion in India.



According to **Ms. Henriette Ahrens, Deputy Representative, UNICEF, India**, by bringing judges, national and international experts together, the Judicial Colloquium is a forum to earnestly examine outcomes for children all over India. The “Justice for Children” approach is to ensure that all children have access to justice not merely as a recipient but also as a participant of the system and to be better served and protected by the system within



the ambit of international norms and standards. Recognizing the need for the special treatment of the children, several international standards of juvenile justice have been adopted such as the UN Standard Minimum Rules for the Administration of Juvenile Justice adopted by the General Assembly in 1985, The UN Guidelines for the Prevention of Juvenile Delinquencies adopted by the General Assembly in 1990 and many others. The most significant instrument is the UN Convention on the Rights of the Child which is binding on India since it acceded to it in 1992. Children who are dependent on the justice system may find themselves victimized unless the system meets the requirements of the children who are either in need of care and protection or are in conflict with the law. A robust system cannot function in isolation because it is interdependent on the services necessary for child protection.

Ms. Paolo Riva Gapany, Director, IDE, Sion, Switzerland,

informed the audience about the International Institute for the Rights of Child, or IDE in French, which is a Centre for Studies for Child Rights, which aims at conducting training activities and raising awareness activities in Switzerland. The institute does not train parents or children, but the professionals who work with children. The institute has two main characteristics, firstly, the institute's work is at the academic level in an interdisciplinary way and secondly, they have a very keen interest in juvenile justice. These two characteristics are explained

through a historical reason: that is the institute was founded by two entities, International Association of Youth and Family Judges and Magistrates and University Institute Kurt Bösch, of which Hon'ble Ms. Justice Renate Winter was President. An example at the academic level is a certificate course offered to Judges, Lawyers and Magistrates of South America. Given the good ties between the government of Switzerland and India, the Swiss Government is providing support for the international course in juvenile justice.



Hon'ble Mr. Justice Vineet Saran, Chief Justice of Odisha High Court and Chancellor of National Law University Odisha,

observed if a child goes wrong in want of proper care, protection and nurture, it is indeed the fault of the society at large. Children need proper protection, nourishment and a conducive environment to become a useful and responsible citizen to serve the nation. Juvenile justice is the system which aspires to protect all the children and to bring them into the ambit of protection besides those who are in conflict with law. Despite constitutional remedies, legislations and civil rights, children face widespread discrimination. In 1989, the UN

General Assembly adopted the Convention on the Rights of the Child which has prescribed several standards for all nations for securing the best interests for children. It also emphasizes non-judicial ways for rehabilitation of children. Juvenile justice, in India, has shown remarkable growth from the pre-independence era, from the Apprentice Act, 1850 to the current Juvenile Justice (Care and Protection) Act, 2015. In 1974, the Government of India made a national policy towards children, that the state shall provide adequate services to children both before and after birth to ensure physical, mental and social development. The Supreme Court of India, too, has given national importance to the juvenile justice system through a plethora of remarkable decisions. Children are very vulnerable, especially those who come from the lower strata of the society, which puts them in risk and enlarges their insecurity. If a person is abused in his childhood, it will lead to loss of capability. The world will be a better or worse place to live depending upon how we treat our children today. Better care and protection is the best way the nation can ensure that the future will be in the hands of responsible adults contributing to the well-functioning of the society. Therefore, the vulnerable children need to be ensured nurture and protection. We have the duty to follow the rules set by laws and



international human rights standards while dealing with a child in conflict with the law. We must also remind ourselves that in this journey we are bound by a constitutional promise to ensure that children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity. It is understandable that there are many obstacles in reaching our goal, but with time, it could certainly be overcome.

Hon'ble Ms. Justice Renate Winter, Chairperson of the UN Committee on the Rights of the Child, began her address by thanking Ms. Enakshi Ganguly, Co-Director, HAQ Centre for Child Rights for bringing together the two Universities for this program. She expressed her happiness to be in the presence of judges and not only the academia, as the discussion in the two-day colloquium would not remain as theory, but be put into practice.



According to Justice Renate, in India, it is not the laws that are problematic, though there are few aspects that require change, but the implementation of the laws is a problem. The UN Committee of Child Rights is the watchdog of the UNCRC. Like any treaty body, this Committee too does not have the ability to compel Member States to follow its recommendations. The recommendations could be rejected, but if it is put forth in the General Assembly, the situation could be unpleasant for the Member State.

Justice Renate emphasized that juvenile justice does not exist in a vacuum, it exists in a social environment of people and without that social environment, no judge, worldwide, can give a good judgment without taking into consideration the environment of the child. To understand the environment of the child, the judge needs assistance - a juvenile justice judge without people to assist is like a fish without water. The UNCRC is particular about a Juvenile Justice judge as a regular non-specialized judge will not have sufficient time for children. Time is a critical factor for children as children are often starved of time from their parents and schools and if the juvenile justice judge also does not make time for children, the children will keep coming back into the system because their problems and issues are unresolved. Justice Winter emphasized the need to work with the Ministry of Finance to help realize the costs involved in addressing the problems of children and the heavy costs that will be incurred as a society if the problems are not regulated. A well-trained prosecutor can be of assistance to a juvenile justice judge, a person who should know that stealing a candy from a shop is not a crime and should be bothered by the court at all due to other possibilities. Since the prosecutor decides to send a case to court, the prosecutor must be trained to make the choice more efficiently. There must also be trained police, because they are the first point of contact of the child with the government. If a police officer does not treat the child as one, but as a criminal, the child would never trust the government and would despise it because the first encounter with the government was a bad one and sometimes a really threatening one. This problem does not only exist in India but exists worldwide. There are three types of policemen who must be given training regarding juvenile justice. First, the patrol police, who would have the dilemma of what to do with a child if the child is found on the streets, about where he should go with that child. Second, the neighborhood police who knows where there is a problem in his district and can keep a watch over the child and the child's family to ensure that there are no problems. Third, the investigation officers, who has the child, but also needs to solve the case. In the absence of time, the officer may physically abuse the child for getting the work done and send the matter over to the prosecutor.

The probation officer is another important functionary and without a probation officer or any assistance, if the child is sent on probation to the same society that he came from, no change can be expected of the child. There must be a trained group of one prosecutor, one policeman, one psychologist, one social worker and one probation officer with a juvenile justice judge for approaching for assistance for solving problems within the family or the neighborhood. Such a program has been successful in other countries, even countries which are not rich. In Georgia, a small country of 4 million

people, there were about 800 children in jail before this program was implemented and six years after its implementation, there are only 22 children in jail. The training given must be continuous, as the problems that children faced 20 years ago will not necessarily be the same now. 20 years ago, we did not have to deal with the problem of children joining terrorist groups, but now, the need to deal with it arises. There is no doubt that the officers, judges, etc. know the law, but it is the soft skills of how to treat children which must be taught. For instance, a police officer may know the procedures, but may struggle to speak to a four year old child raped by her father.

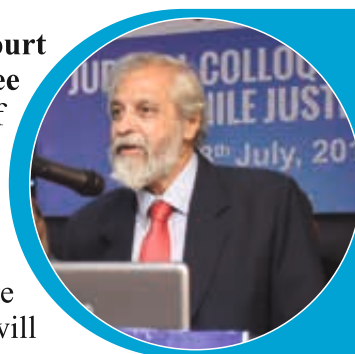
Justice Winter stated that restorative justice is another important concept which must be explored. The infrastructure to enable its application must be in place before a judge can order it.

According to Justice Winter, the transfer system under the juvenile justice system in India, under which a child between 16 and 18 who has allegedly committed a heinous offence may be sent to an adult court for trial, is problematic. She stated that there is no psychiatrist in the world who can give a 100 percent assurance that when the child did that crime, the child was aware of the consequences and his actions. This transfer system is not in keeping with Article 2, UNCRC on the right against non-discrimination and it cannot be said that a child between 16 and 18 years has acquired maturity to know the consequences of committing the said crime.

Justice Renate also touched upon the age of consent, which is 18 years under Indian law. If a 16-year-old girl comes together with her boyfriend of 17 years, it constitutes a heinous crime. But India had not recognized the one exception that is present in other countries where the age of consent is 18 years, which is that if the age difference of the partners is less than 2 years, then it cannot be considered a crime. According to statistics, many such cases are before the courts in India not only because of the law, but also because parents would not like to accept that their daughter did this consensually. Parents would rather accuse the boy of raping her to protect the honor of the family. There is no justice in such a situation, as rather than settling the problem between the families, they approach the court.

The last issue that Justice Winter addressed was the introduction of death penalty for rape. As sad and terrible the situation would be for parents of victims, this should not have been the reason to change the law. This is because there are consequences due to such a change such as the survivors or witnesses of the incident would not come forward because everyone would tell them that if they give a statement affirming the penalty, the blood of the accused would be on their hands and that they would not be able to live with the guilt.

Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India and Chairperson, Juvenile Justice Committee began his address by saying that there has been recognition of rights of child in India, but there is still more to be done, such as in the areas of diversion, restorative justice, rehabilitation, alternatives for detention and more. While it is true that some things are lacking and some aspects need to be reconsidered, including the impact and effects of those aspects, and there are many challenges and hurdles on the way, and tackling these will not be easy, but, something can be done for its facilitation.



Judges of the Juvenile Justice Board must look at the future, unlike regular judges who look at the past. The origin of the actions of the juvenile might be in the past, but the future must be considered for delivering better judgments. The point of view that must be taken by the judges is to restore the child to the society and examine the root causes that led the child to commit such an act. The judges alone would not be able to do it, but they need the assistance of counsellors, psychologists to remedy the situation and solve it in future.

Justice Lokur also emphasized the need to be sensitive to implementation and realities at the ground level. The problems that the parents and society face must also be considered, but few cases cannot be the basis of the conclusion that the law should be changed. Law-making is not something which comes from emotions, but it is done keeping in mind the betterment of the society. Proper field studies must be considered and implementation of laws must be looked at in a positive manner, and implementation of good laws and bad laws must also be considered.

Justice S.K. Mishra, Judge, Odisha High Court and Chairperson of Juvenile Justice Committee

delivered the Vote of Thanks. He congratulated the National Law University Odisha for tying up with international bodies for conducting the two-day Colloquium on Juvenile Justice that has not been held anywhere else in India. He expressed congratulations to Hon'ble Mr. Justice Madan B. Lokur and reminisced about a round table conference that took place in 2014 in the premises of the Supreme Court in which they both participated and stated that since then they have come a long way. At that time, the juvenile justice system was not properly functioning and there were a lot of concern and that conference was an eye-opener. He thanked Justice Lokur on behalf of children of India for making juvenile justice a movement in India. He then concluded the address by thanking all of the participants for attending the Colloquium.



Session- I International and Domestic Framework on Juvenile Justice



In this session, Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India and Chairperson, Supreme Court Juvenile Justice Committee spoke about the “Principles and Practices of Juvenile Justice: International and National Dimensions” and Hon'ble Ms. Justice Renate Winter, Chairperson of the Committee on the Rights of the Child spoke about the “Functions of the Committee on Rights of Children and Children's Rights in Juvenile Justice-Normative Standards under International Human Rights Law.” The session was moderated by Ms. Enakshi Ganguly, Co-Director, HAQ Centre for Child Rights.

The session commenced with the moderator, Ms. Enakshi Ganguly, expressing her gratitude on behalf of the Colloquium to Ms. Winter for her presence. She mentioned that the last time a Chairperson of the United Nations Committee on the Rights of the Child visited India was in 2003, and Ms. Winter's presence was vital for the deliberations on the current status of juvenile justice in India. Ms. Ganguly stated that the Indian Juvenile Justice law was one of the most progressive and comprehensive laws in the world – including within its fold children in need of care and protection and children in conflict with law- and it has been influenced by the Beijing Rules and Riyadh Guidelines and the UNCRC. The general principles of the UNCRC are now a part of the Juvenile Justice (Care and Protection of Children) Act, 2015 and lay down the philosophy and basis of the system. The manner these principles are applied by Juvenile Justice Boards and Children's Courts as part of their orders and functioning needs to be discussed. However, a 'tremor', in India's juvenile justice system was created in 2014 and 2015 with the introduction of the system of 'transfer'. Till 2015, all children in conflict with the law were dealt with equally. The transfer system allows the treatment of some children alleged to have committed heinous offences as adults because they were assumed to have an 'adult frame of mind'. The translation of this system into practice and its relation to international standards need examination.

Principles and Practices of Juvenile Justice: International and National Dimensions

Hon'ble Mr. Justice Madan Lokur began by underlining the significance of international human rights law conventions in domestic law. In *Visakha v. State of Rajasthan*, in the absence of a law addressing sexual harassment at the workplace, the Supreme Court placed reliance on the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and India's obligations thereunder, and framed the *Visakha* guidelines. It took 15 years for Parliament to legislate on sexual harassment of women in the workplace and this illustrates the significance of international conventions. The UNCRC, Beijing Rules, Riyadh Guidelines, Havana Rules, and other international standards cannot thus be ignored because India has a legislation on juvenile justice.

Certain principles in the UNCRC and international standards have been incorporated in the JJ Act, 2000 and J JJ Act, 2015. In majority of the areas, there is no conflict between the Indian juvenile justice laws and the international conventions and standards, excepts aspects of transfer and death penalty.

Prevention of juvenile delinquency was the focus of the Riyadh Guidelines, 1990. As judicial officers and social workers, when one is faced with a situation where a police officer produces a child in conflict with the law before a JJB, their role is not confined to merely assessing whether the offence was committed by the child, but entails an inquiry into why the offence was committed and the alternatives available other than deprivation of liberty. There are a variety of reasons why children come before a JJB – problems within the home prompting the child to run away or the neighbourhood or the company the child falls into among other factors – all of which make the child vulnerable to exploitation for survival or commission of a crime. Children are often driven and influenced into committing crimes by their surrounding circumstances and the utmost need is to take preventive steps to tackle this. Children may also be involved in 'victimless crimes' such as drug offences, and may be viewed as being in conflict with the law although they are victims themselves. Such children need counselling and de-addiction.

Justice Lokur reflected on the functioning of the Juvenile Justice Board and its multi-disciplinary composition. He highlighted the importance of the role of Social Worker Members who have an experience in handling issues concerning children. The Round Table Conferences on Juvenile Justice have brought to light complaints that Social Worker Members are not given due importance by the Principal Magistrate. Although the Principal Magistrates know what the law is, but the law alone is not the answer to every problem concerning children in conflict with the law. The appreciation of the child's economic, psychological, and social conditions and the determination of best interests are areas where the Social Worker Members can offer guidance. Justice Lokur also urged Directors of Judicial Academies to give sufficient important to Social Worker Members when trainings are conducted.

JJBs need to bear in mind that it is not mandatory for the child to be detained. In Justice Lokur's view, the JJ Act reverses the onus and it is the child's safety and not tampering with evidence that can be the basis of detention. JJBs need to consider alternatives to detention in view of the JJ Act, 2015, Riyadh Guidelines and the Beijing Rules, as per which detention is an exception.

With respect to the issue of transfer, how can it be determined whether the child had the mind of an adult when the crime was committed. There is not a single reported decision where the Children's Court has determined that the child does not have to be tried as an adult. On the other hand, as per an article in the Hindustan Times, in Gurugram 38 cases were transferred by the JJB to the Children's Court and the trials were expedited in these cases, unlike trials for adults raising question about the legal representation of the child.

Justice Lokur recounted personal experiences from his visits to observation homes which highlighted overcrowding, lack of adequate nutrition, skill training, electricity, and basic facilities in Observation Homes and places of safety. He also highlighted the importance of taking Social Investigation Reports

seriously and preparing individual care plans based on counselling and discussions with the child to capture the child's interests and capabilities.

Reflecting on whether every child needs to go through the juvenile justice system, Justice Lokur said that 'diversion' provided under the Beijing Rules and Section 3 of the JJ Act, 2015, needs to be explored. Like the concept of 'plea bargaining' for adults, can diversion not be applied for children in conflict with the law instead of having them enter the juvenile justice system and languish in the homes for long periods of time. Mediation can also be helpful in this regard and although they are available to children, it is not being applied.

Rehabilitation and reintegration are the philosophical underpinning of the JJ Act. Havana Guidelines and the General Comment No.10 by the Committee on the Rights of the Child elaborate on rehabilitation and reintegration and there is equal emphasis on these in the JJ Act, 2015. In case of any lacuna, the international standards and practice can be relied upon to fill the gap.

Justice Lokur then highlighted the importance of training at all levels and should be imparted to Principal Magistrates, social workers, probation officers, counsellors, prosecutors, and judges. He also noted that several child friendly courts have been set up across the India because it has been realized that a child victim needs to be comfortable. The JJBs also need to be child-friendly vis-à-vis the child in conflict with the law as the presumption of innocence would mandate such treatment. The BHAROSA unit in Hyderabad which functions as a one-stop centre needs to be considered.

Justice Lokur then spoke about the 'issue of proportionality', which find mention in the Beijing Rules, which requires that the punishment should always be proportionate to the crime committed. The host of reformative alternatives available under the JJ Act needs to be utilized bearing in mind the proportionality principle. Sending a child to a Special Home is not the alternative.

Justice Lokur summed up by saying that India is bound by international conventions and needs to put into practice international standards on juvenile justice. Barring a few areas, India's laws pose no conflict with the international conventions. In conclusion, the child should be looked at from the point of view of his future and not just the child's act in question, because young children are the citizens of tomorrow.

Functions of the Committee on Rights of Children and Children's Rights in Juvenile Justice-Normative Standards under International Human Rights Law

Justice Winter started by emphatically stating that the position of a Magistrate for children should be occupied only by a person who enjoys working with children as they will otherwise bring their apathy to their work with children. She said that everyone, including children, have done something wrong in their lives but that should not be the only reason to bring before a court of law. The questions 'who has done?', 'where has it been done?', 'when has it been done?' and 'what has been done?' must be asked, and only after that should the question 'how was it done?' be asked. A reasonable answer to all these questions must be looked for, and only then should a judgment be pronounced.

Justice Renate said that as watchdog of the UNCRC, the United Nations Committee on Rights of Children is against 'transfer' as it is 'illegal'. First, its implementation will require the judge to be 100% sure that the child was a child at the time of commission of the crime. In the absence of birth certificates and a two-year margin for age determination, this becomes difficult to establish. Secondly, there are no psychologists who can determine with certainty and good faith that a child had a particular frame of mind at the time of commission of offence. Although it may be in the law, the legality of its application has to be considered by a Magistrate.

Justice Winter said that if a child commits a crime, the victim's family may desire revenge, but that cannot be equated to justice by a Magistrate, who as a person of the law, should ensure that the decision is legal.

Referring to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, she emphasized India's obligation in offering protection to children fleeing from neighbouring countries because of war. With respect to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, India is a receiving, sending, and transit country and it raises the question on how a child involved in prostitution should be dealt with – as a child in conflict with the law or a child victim? Police, prosecutors, and judges need to be trained in this regard.

She observed that India's Juvenile Justice law is based on the UNCRC and the General Comments by the Committee on the Rights of the Child offer guidance on the interpretation of children's rights in juvenile justice and should be relied upon by judges while decision-making. While discrimination on various grounds such as caste may be rife in society, the justice system can ensure non-discrimination in the eyes of the law pursuant to Article 2, UNCRC. She also spoke of what she calls 'hidden discrimination', and explained it with an instance: if both a child from a middle class well to do family and a poor child are involved in the same offence, are they likely to be treated in the same manner?

She emphasized that the best interest of the child should be at the heart of all decisions related to children in conflict with the law. When can it be in the interest of the child to be sent to a closed institution? She stressed on the need to make visits to institutions for children regularly and unannounced. While countries may not have prisons for children, do the detention centres for children provide the same education and health system as what is available outside, and visits of families is possible any time and socializing is possible? There are few countries that have such settings, the large majority do not. Unless we have institutions that offer services at par with the world outside, it cannot be said to be in the best interest of the child to be institutionalized.

Justice Winter also referred to the Minimum Standards for Child Protection in Humanitarian Action, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. With death penalty on the statute, she inquired about the protection available to child victims and witnesses appearing in courts, especially when the accused is a family member, neighbor, or belongs to a higher caste or class?

Referring to Article 6, UNCRC, she emphasized that the right to life and development requires equal emphasis on the development of the child. Every child who is within the territory of a country should be protected, be it a Rohingya child or a child from Bangladesh.

Article 12, UNCRC is the most difficult right to implement because of patriarchal structures that expect children to obey, but do not allow children to express their views. This provision does not mean that a judge should do what the child says. As a judge, one should follow the law and the law requires that a child be heard. The child's views need to be evaluated like any other evidence and to be considered when a decision is made.

Ms. Ganguly reflected on the common assumptions about the physical, economic status, and other attributes of children in conflict with law which make the application of the prohibition against non-discrimination difficult. She cited the example of a judge from Netherlands who weighed whether a particular decision would be good for her child before deciding the case of a child before her.

During the discussion following the session, **Hon'ble Mr. Justice S. Talapatra, Judge, High Court of Tripura**, shared that the few judgments he had seen of transfer of children between 16-18 years to the adult courts reflected a mechanical application of mind. The Social Investigation Report had not been considered and transfer appears a safe option to avoid criticism from media and society. They prejudge that the child has committed the offence and must therefore have an adult mindset. Training programs should focus on the mindsets of the Principal Magistrates, especially because they continue to sit in

adult courts and devote only 2-3 days to JJB. The prejudicial mindsets of judges towards children in conflict with the law needs to be challenged. It is also important that an experienced judge be appointed to the JJB.

Hon'ble Mr. Justice Sandeep Mehta, Judge, High Court of Rajasthan highlighted that the JJ Act refers to experienced psychosocial experts in the context of preliminary assessment. Only a child psychologist can provide an opinion and not any other psychologist.

Two Principal Magistrates from Odisha shared the process followed by them during preliminary assessments. One Magistrate shared that a psychologist and social worker visited the child in the Observation Home and submitted a report that the child was capable of understanding the consequences of the offence. The Magistrate subsequently spoke to the child and then transferred the child to the Children's Court. **Hon'ble Mr. Justice Sandeep Mehta, Judge, High Court of Rajasthan** remarked that single line reports without providing any information about the background of the child are a cause of concern. He also noted that advocates are not experienced to cross-examine the psychologist raising concerns about the legal defence of the child.

Another point of view was that it is important for the JJB to assess the parameters based on which the conclusion was arrived at by the psychologist and whether they were relevant to the determination. Whether the psychologist has any exposure to child psychology is also relevant. The material supporting the decision also needs to be examined.

Responding to a question on the extent to which international conventions are relied upon by domestic courts, **Hon'ble Ms. Justice B.V.Nagarathna, Judge, High Court of Karnataka**, stated that international conventions are referred to by the High Court and this is recognized under India's Constitution.

Mr. Surinder Rathi, Director, National Legal Services Authority shared the NALSA Child Friendly Legal Services to Children and their Protection Scheme, 2015 which recognizes several principles of juvenile justice. He also referred to the Vulnerable Witnesses Guidelines in Delhi and explained the support person program for child victims of sexual offences in Delhi who handholds the child during evidence. He shared that the Victim Protection Scheme, 2018 had been drafted with the Bureau of Police Research and Development, but the additional vulnerabilities of child victims and witnesses has not been included. He invited suggestions on this aspect.

Dr Ved Kumari made the point that from a very young age, a child knows the consequence of their act and what is right and wrong, but can it be said that they are acting with an adult mind? When decisions are taken in a split second – can it be said if the decision was taken with a child-like mind or an adult mind? Knowledge of consequences of an offence cannot be the basis of arriving at the conclusion that the child has an adult like mind. There is no science in the world that can tell us exactly what the state of mind was at the time and to apply such a standard is questionable.

Session-II

Restorative Justice and its Application in Juvenile Justice: International Standards and Practice



This session was chaired by **Hon'ble Mr. Justice Vikram Nath, Judge, Allahabad High Court and Chairperson, Juvenile Justice Committee**. He introduced the session by briefly explaining restorative justice, and commented on the lack of restorative measures available in India. The essence of restorative justice was recognized to be embedded in the victim, the family and the community.

Restorative Justice and its application in Juvenile Justice: International standards and practice - Ms. Renate Winter, Chairperson of the UN Committee on the Rights of the Child

The discussion commenced with Ms. Justice Renate Winter expounding the need for restorative justice, primarily arising from the failure of a system focused on the prevention of crime for more than six thousand years. She went on to state that restorative justice is a triangle comprising i) the offender and the family of the offender, ii) the victim and the family of the victim and iii) the community that they cohabit.

Justice Winter highlighted that instead of aspiring to solve the problem of crime, the current criminal justice system focusses on revenge. However, it is imperative that we realize that far more crucial than the violation of the law, is the violation of the person and the relationship, when crimes are committed. Our attention should evolve from enforcing guilt to encouraging responsibility, and consequently from punishment to restoration.

While considering the principle of proportionality of the punishment to the crime, it is essential for the Judge to bear in mind the circumstances of the case, the child's individual needs, the facts of the case and the solution should focus on the goal of maintaining the best interests of the child. For this, according to Justice Winter, you need extra information and investment in the child, which can be derived from the child's participation in the process.

Restorative justice is anchored on the victim. In a normal case, we are very occupied with the nature of the crime, and the legality. Whereas, while adopting restorative justice with a juvenile, we should be actively engaged in the practical repercussions for the child and how we can meaningfully help the child.

Justice Winter further encouraged finding the solution by a peaceful and interactive dialogue procedure between the victim and the offender, to keep the process sans the fear of revenge by the offender. While retributive justice functions post the violation of the law followed by establishment of guilt and finally imposition of the prescribed punishment, reformatory justice functions by equating the reasonability of assigning consequences of the offence with the need to prevent children from committing the crimes of the same or any nature, in the future. Restorative justice mends the violation of law along with the guilt for violation of responsibility. She stated that there must be an attempt to uphold understanding of responsibility. She further clarified that, at no stage should the efforts reach a cul-de-sac and proposed the principles of proportionality.

Justice Winter concluded by emphasizing that the system of restorative justice requires investment and a firm belief in its efficacy. The fixation on punishment and the carrot and stick theory needs to be replaced with the acknowledgement of the ability and competence of children to understand and contribute. Broken children will result in broken citizens. We thus need to reevaluate the purpose of justice and align our systems accordingly.

Following the interventions, it was debated whether the correctional or vocational work done by children as a means of ensuring reformatory justice would amount to forced labour, for which it was clarified that the acts must not qualify as forced labour in the eyes of law to be included as correctional activities.

Pathways to Restorative Justice within India's Juvenile Justice System - Prof. Ved Kumari

Dean & Head, Faculty of Law, University of Delhi

While raising the issue of breach of trust of the victim by an offender, Prof Kumari presented a hypothetical situation before the participants and sought views on the difference in response when a trusted helper commits a theft, as opposed to a stranger. The general consensus was that when a trusted helper commits an offence, one is able to understand the reasons why the act may have been committed due to the relationship existing between the employer and the helper. Along similar lines, it was argued, a relationship exists between a perpetrator who is unknown and the victim based on the understanding of doing no harm. However, the current legal system does not allow the victim to talk to an offender and seek answers. Our legal system does not take into consideration the violation of trust and the relationship. As stated by Professor Kumari, a relationship exists between a victim and an offender who is a stranger as well, and the breach of trust is the violation of the belief that a stranger will not harm you. Unless the cycle of crime is addressed, our fear of crime will never end.

In our criminal justice system, the victim has a secondary position. Restorative justice puts the victim at the heart of the process and acknowledges breach of trust as a consequence of the crime. The moment a child commits a serious offence, we quickly liken the child to an animal. Professor Kumari explains that our understanding is that a child is pure, simplistic, and vulnerable. We fail to acknowledge the mental capacity and intelligence of a child. Their maturity grows with them, and is relevant to their age.

To understand the appropriateness of punishment, sections 302, 304, and 304-A of the Indian Penal Code were identified in the context of commission of heinous offences and orders under Section 18, JJ Act, 2015. The discussion revolved around the three types of offences which a child in conflict with law may be charged with namely, petty offence, serious offence and heinous offence, and the principle that law does not discriminate between children below the age of 16 years. The orders prescribed for children under the age of 16 included sending them to community service and for group counselling. Various participants shared instances where children were asked to do community service. It emerged

during discussion that often children end up missing school while doing community service and this hampers the growth and development of the child. While community service was beneficial in reforming the child, it should not come at the cost of the child's education.

It was recognized that while heinous offences committed by those falling between 16-18 years were to be selectively transferred to Children's Court after a preliminary assessment, proving a heinous offence carried a burden that had to be discharged with appropriate caution. During the deliberations, it was pointed out that the clause regarding heinous offences was to be applied to offences where the minimum punishment under the law was 7 years or more. Emphasis was laid upon the fact that the term 'minimum' was glossed over most of the times and when interpreting heinous offences, it should be understood to include only those offences which carried a minimum term of seven years imprisonment. Upon raising the question as to whether it was necessary to try and punish the child as an adult as per section 19 of the JJ Act, 2015, in case of heinous crimes being committed, the deliberations resulted in an understanding that Section 19 did not mandate such a step. On the contrary, Section 19 prescribes that the best interest of the child be followed and the children need to be secured while keeping in mind their needs and the principles of fair trial which are embedded in Section 19 of the Juvenile Justice Act.

Professor Kumari pointed out that a sense of commitment and understanding of the law on the part of Judges will reveal opportunities to bring in restorative justice. For example, 'appropriate orders' under Section 19 of the Juvenile Justice Act does not necessarily allude to punishment. The orders prescribed for children include sending them to community service and include group counseling, which are well within the scope of restorative justice. The fixation that a child can only be educated through retributive punishment needs to change.

The concern raised was whether there was any reasonable classification between children who were categorized as below 16 and those above 16. This concern was viewed in the light of the scientific research on the growth of a child's brain. The evidence pointed to the fact that maturation occurs from back to the front of the brain and this maturation occurs from 5-20 years of age. The prefrontal cortex, which is responsible for planning, reasoning, and impulse control, is not fully developed during adolescence and this is the reason why children take more risks than adults. Further evidence also pointed out that even after the age of 16, there are various changes that the brain of an adolescent goes through including changes to the metabolism and blood flow thus placing emphasis on the fact that the assumption drawn by law regarding the age of maturity of a child was not backed by science.

Prof Kumar identified four major approaches to dispensing justice namely, punitive, restorative, neglectful and permissive systems. While the neglectful approach scored low in control and supportive aspects of justice, punitive scored high in control but did not offer support while permissive approach offered high support but low control. It was, therefore, evident that the restorative form involved both high control and a high support system. Further, the benefits of restorative justice were shown to drastically change recidivism rates. These measures strengthened the position that restorative justice was in the best interests of all the parties involved and affected due to the commission of an offence.

Session-III

International Executive Course on Juvenile Justice



Ms. Aline Sermet, IDE and Ms. Swagata Raha, Consultant NLUO presented the design, methodology, and modules of the International Executive Course on Juvenile Justice. The partnership between NLU Odisha, University of Geneva via the Centre for Children's Rights Studies (CIDE), and International Institute for the Rights of the Child (IDE) with the support of HAQ Centre for Child Rights, New Delhi, laid down the foundation for the International Executive Course on Juvenile Justice. The partnership between two universities—one in Switzerland (CIDE) and one in India (NLU Odisha)—and a training centre (IDE) represents a unique opportunity to bring together academia and an institution with field experience specialised in training those involved in juvenile justice.

The course is professional-oriented with a multidisciplinary approach also equivalent to 4 European Credit Transfer (ECTS) credits. The objectives of the course are as follows:

- Provide an understanding of the complexities of what children's rights encompass by approaching this subject from different, multidisciplinary angles (legal, social, psychological, political and educational);
- Offer students specialisation in the area of juvenile justice, with an interdisciplinary approach and best practices;
- Identify the standards, principles and values of restorative juvenile justice and introduce them into their professional activities;
- Provide an understanding of juvenile justice law and policies in India in the context of international perspectives;

- Enhance students' competencies related to taking action with children in contact with the law and/or in conflict with the law;
- Recognise the work of others and collaborate in practical ways;
- Develop reflection in the areas of prevention, support and reintegration of children in conflict/in contact with the law or at risk of being in that position;
- Understand the international dimensions of the rehabilitation of children in conflict with law and various alternative care systems.

The course will be offered to a maximum of 25 participants, consisting of Members of Juvenile Justice Boards, functionaries within the Juvenile Justice System, lawyers, Law teachers, persons working on child rights and juvenile justice, social workers and others. The duration of the program is for two weeks and the methodology will be interactive, based on case-studies, presentations, short films, group activity, role-play, and include exposure visits.

The course consists of two modules:

Module 1: General Framework and Specific Features of Juvenile Justice

- I. Overview of the Convention on the Rights of the Child, 1989 (UNCRC) and its optional protocols: Key definitions, overview of provisions and general principles of the UNCRC.
- II. Relevant international standards on Juvenile Justice (Beijing Rules, Havana Rules, Riyadh Guidelines, Tokyo Rules, and Guidelines on Justice in Matters involving Child Victims & Witnesses of Crimes)
- III. Overview of Indian Juvenile Justice system: Objectives, key definitions, fundamental principles, age of criminal responsibility, procedures, rehabilitative dispositions, significance of Individual Care Plan, transfer system, appeals and relevant authorities and functionaries.
- IV. Domestic implementation of international obligations and standards in respect of juvenile justice: Impact of the UNCRC and Concluding Observations of CRC Committee on juvenile justice legislation in India. Reliance by judiciary on UNCRC. Compatibility of transfer system with international standards on juvenile justice.
- V. **Profile of Children in Conflict with the Law:** Socio-economic and psychological profile, neuroscience findings on adolescence



VI. Models in Juvenile Justice (organisation of Juvenile Justice in different contexts): Significant historical developments, evolution from welfare to rights-based model of juvenile justice, and restorative justice model.

VII. Multi-disciplinary approaches: Practical exercise to emphasize the significance of interdisciplinary work to ensure rehabilitation and reintegration of children and

Module 2: Rights of Children in Juvenile Justice, Restorative Justice and Prevention of Juvenile Delinquency

- I. Rights of children in juvenile justice: Overview of rights under Articles 37 and 40 of the UNCRC, other international standards, and Chapter III of the JJ Act with emphasis on its operationalization.
- II. The deprivation of liberty and alternatives: Psychological effects of deprivation of liberty on children. Examination of alternatives to imprisonment/institutionalization under international standards and JJ Act, particularly if they are available to children who commit heinous offences. Exploration of diversion and the forms in which it is practiced in India.
- III. Role of the Police and collaboration between police and the judicial system: Procedures to be followed during apprehension and investigation. Role of the JJB in ensuring that the child's rights are respected by the police.
- IV. Significance of Social Inquiry Reports (SIRs): Significance of SIRs under Beijing Rules and the JJ Act. Standards for its preparation by Probation Officers and Social Workers. Appreciation of SIRs by JJBs.
- V. Restorative justice: Concept, models, and its application to children in conflict with the law in different jurisdictions. Possibilities of introduction in India.
- VI. Prevention of juvenile delinquency: International standards and best practices.

The expected learning outcomes are as follows:

On completing the training, participations will be in a position to:

- Be familiar with the fundamental notions of juvenile justice.
- Analyse, evaluate and identify the principal issues relating to juvenile justice and the factors of risk and protection within children's rights.
- Take action with children and adolescents in conflict and/or in contact with the law, or at risk of being in that position
- Identify the standards, principles and values of restorative juvenile justice and introduce them into their professional activities
- Work on the basis of an interdisciplinary approach and of networking with actors in the area of justice
- Engage in critical reflection on their own practices, ethics, and professional obligations
- Communicate and negotiate with the different actors involved in children's rights in general (protection, education, health, etc.)

After the presentation, the participants were divided into four groups and requested to deliberate on the following questions:

- Does the course outline meet the objectives of the course?
- Do the topics comprehensively address the themes?
 - Do the topics touch upon the gaps in implementation of domestic and international standards?
 - Should any other relevant topic be included?
- Does the training meets the professional's needs?
- How can it be ensured that the course contents are applied by those attending the course?

Valuable feedback was received from all groups on the objectives, content, and design of the course. The feedback has been analysed and presented as follows:

A. Objectives

Clarity is required on whether the primary objectives of the course is knowledge creation or if it also includes skill development, attitudes, and ethics. Is it an applied course? To what extent is skill-building infused in the course? The course should be application-based and hand-holding will have to be offered to participants during and after the completion of the course.

B. Participant Profile: Care should be taken to ensure that Social Worker Members of JJBs should be offered this course at the start of their tenure. The course should also be offered to the officers of the nodal department. Diversity of the learning group could pose a challenge in executing the course. Participants pointed out that the difference in mandate, roles, knowledge, and skills of different functionaries within the juvenile justice system have to be considered when designing a course that will be offered to all. The content will have to be customized based on the role of each stakeholder participating in the course. Application form will have to be devised and applications will have to be scrutinized carefully to avoid huge disparity in learning levels.

C. Content

- Related laws such as the Legal Services Authorities Act, 1987, Protection of Children from Sexual Offences Act, 2012, Code of Criminal Procedure, 1973, etc should be included.
- Juvenile Justice in India brings within its fold children in conflict with the law as well as children in need of care and protection. Without the inclusion of the latter category of children, a course offered on “juvenile justice” in India, will be incomplete.
- The course should address attitudes towards crimes and children in conflict with law.
- Geographical mapping of vulnerabilities may also be considered under Topic V of Module I.
- Emphasis should be placed on the evolution of the juvenile justice system within India.
- The facilitation of cross-learning among functionaries of Child Care Institutions may be considered under the sub-topic on “Multi-disciplinary approaches”
- The course should consider imparting skills to participants on interacting with children in conflict with the law.
- Language of the topics and sub-topics should reflect Indian law standards. For instance, the term “freedom from self-incrimination” should be reconsidered.

- The course should address investigation role of the police and police behaviour with children.
- Focus on the significance of the Individual Care Plan should be much stronger in the course.
- Reading material should include best practices from other countries.
- Restorative justice perspective should be broadened to restorative approaches.
- The rights of child victims also needs to be addressed.

D. Methodology

A suggestion was received to require participants to complete some modules online before they arrive for the contact classes. It was also suggested that mentors be identified for handholding the participants during and after the course. Post-learning audit should be conducted to assess the application of the knowledge gained during the course. The participants may be asked to report about the course six months after its completion.

Prof Rao, Ms. Paola, Ms. Ganguly, and Ms. Raha appreciated the feedback of the participants. They clarified that this was a pilot project that aimed to bring together actors from different professional fields, social positions, and knowledge with a view to promote interdisciplinary working. The course did not seek to substitute training programmes for various stakeholders under the JJ system. The aim of the course was to facilitate the translation of international standards into domestic practice. The blended model of online module and contact classes will be considered. Since the duration of the course is two weeks, it will focus only on the standards pertaining to children in conflict with the law. The title of the course may be modified to reflect this concentration.

The session concluded with **Hon'ble Justice Madan B. Lokur, Judge, Supreme Court Of India and Chairperson, Supreme Court Juvenile Justice Committee**, emphasising the need for a careful and strategic selection of participants keeping the contents of the course in mind, inclusion of impact assessment, and the need of intervention from judicial academies due to their rich experience in the field.



Session-IV

Diversion in Juvenile Justice



The speakers for this session were Ms. Aline Sermet, Scientific Collaborator & Project Director, IDE, Sion, Switzerland, and Ms. Arlene Manoharan, Social Worker & Child Rights Specialist. The session was chaired by **Hon'ble Ms. Justice Harsha Devani**, Judge, High Court of Gujarat and Chairperson, Juvenile Justice Committee.

International standards on alternatives to detention diversion and good practice - Ms. Aline Sermet, Scientific Collaborator & Project Director, IDE, Sion, Switzerland

Ms. Sermet began her address by stating a very important fact, the fact that out of all the children, only 2% were affected by the juvenile system. The need for proper international standards arose as a result of "Reflex" of security. There is a clear and a mandatory obligation on the States to use detention for juveniles as a last resort.

Ms. Sermet said that the term 'Alternative' referred to measures that may be imposed on children who are being formally processed through the criminal justice system that do not involve deprivation of liberty. On the other hand, 'diversion' referred to measures for dealing with children accused of infringing the penal law without resorting to judicial proceedings. Care, counselling probation, educational and training programs, juvenile penal mediation, among many others were listed down as some of the examples of such measures.

The International Standards for Juvenile Justice have primarily been laid down in Beijing Rules (1985), Tokyo Rules (1990) and Convention on the Rights of the Child (1989). The Beijing Rules recommend the provision of viable alternatives to juvenile justice processing in form of community-based diversion and promote alternative measure to detention. The Tokyo Rules promote the use of noncustodial measures and greater community involvement and take into account a proper balance between the rights of individual offenders, the rights of victims and the concern of society for public safety. The Convention on the Rights of the Child states that detention must be a measure of last resort and for the

shortest appropriate period of time. Apart from that, General Comment No. 10 (2007) recommends promoting the use of alternative measures such as diversion and restorative justice.

The general principles that must be taken care of while implementing alternative and diversion measures were also elaborated upon by Ms. Sermet. Firstly, such measures could be implemented at all stages of the administration of criminal justice and should be applied without any kind of discriminations. She said that the criminal justice system should provide a range of non-custodial measures and should be resorted to only when there is convincing evidence that the child had indeed committed the alleged offence. The child should be allowed to give his/her own consent, freely and voluntarily, and be given the opportunity to consult with legal or other appropriate assistance. Finally, the child's right to privacy should be respected.

Juvenile Penal Mediation is a process whereby the victim and the offender are enabled, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator). Cases such as fights between groups of young people, violence against the police, violence within the family, are few examples of cases where this kind of mediation can be applied.

Mediation in penal matters should only take place if parties consent freely and they can withdraw such consent at any stage of the process. Mediation in penal matters should be a generally available service and be available at all stages of the criminal justice process. Standards of competence and ethical rules, training and assessment of mediators should be developed. There should be legislations in place facilitating mediation in criminal matters and be given sufficient autonomy.

Ms. Sermet concluded her presentation by providing a brief insight about the rules surrounding community service. She said that it is supposed to be an educational sanction and be fitted to the age and skills of respective children. The maximum term of community service has to be 10 days for offenders under the age of 15 years, and 3 months for older juveniles. She said that the Swiss juvenile sanctioning practice is marked by a clear predominance of community service, i.e., 45% of all sanctions. It involves ordinary community services such as appointment at the library. It is considered to be highly efficient and a cost-effective-alternative.

Application of Diversion in India's Juvenile Justice System - Ms. Arlene Manoharan, Social Worker & Child Rights Specialist

According to Ms. Manoharan, the juvenile justice system in India was a 'diversion' from the formal criminal justice system and was based on the rehabilitative philosophy. According to her, diversion refers to an extra-judicial form of settlement and falls within the realm of restorative justice approaches. It can contribute to reduction of incarceration, more individualized child friendly justice, reparation of harm, and greater involvement of the community in addressing juvenile delinquency. However, although the legal regime and socio-economic context in India provides an enabling environment, it also provides a restrictive environment for diversion. It was emphasized that diversion procedures must ensure that such recourse to extra-judicial settlement did not mean lesser legal protection for the children involved, given the rights enshrined in Article 40 of the UN Convention on the Rights of the Child.

Through elaborate discussions, the enabling provisions of the Juvenile Justice Act, 2015 and the fundamental principles contained therein were discussed. One such provision was Section 3 (xv), where the principle of diversion states that measures without resorting to judicial proceedings shall be promoted. Similarly, under Section 3 (xii), it is stated that the principle of institutionalisation should be taken as a measure of last resort, after making a reasonable inquiry. Section 17 states that when the Juvenile Justice Board is satisfied that the child has not committed any offence, and it feels that the child is in need of care and protection, it may refer the child to the Committee with appropriate directions.

Towards the end of the session, Ms. Manoharan put forth before the participants the grounds for consideration while evolving a policy/ law/ program in India. For this, issues such as the basic purpose and the primary objectives of diversion that should inform policy, were discussed, along with the guidelines laid down in juvenile diversion guidebook.

Session V: Role of Juvenile Justice Boards in the Administration of Justice

This session was chaired by **Hon'ble Mr. Justice M. N. Bhandari, Judge, High Court of Rajasthan and Chairperson, Juvenile Justice Committee**. The speakers for this session were Hon'ble Mrs. Justice B. V. Nagarathna, Judge, High Court of Karnataka and Chairperson, Juvenile Justice Committee, and Prof. (Dr.) Srikrishna Deva Rao, Vice Chancellor, National Law University Odisha.

Role of Multi-disciplinary Juvenile Justice Boards in Ensuring Rights of Children in Conflict with the Law - Hon'ble Mrs. Justice B.V. Nagarathna, Judge, High Court of Karnataka and Chairperson, Juvenile Justice Committee

Hon'ble Mrs. Justice B. V. Nagarathna highlighted the lacuna in the present law regarding to the status of a minor and an adult. She was skeptical about how the difference of a single day could drastically change the mentality of a child. For instance, when the child is one day short of 18 years, he/she is considered a minor in the eyes of the law. But when he/she is one day older than 18, he transforms into an adult. She opined that the growing levels of science and technology have added to the levels of maturity of juveniles, but the unequal access and availability of such resources projects creates a divide between the two. Speaking on the issue of the Juvenile Justice Boards, she believed that a comprehensive list of do's and don'ts should be provided to them so as to ensure uniformity in the treatment of children in conflict with law across the nation.

The UN Convention on the Rights of the Child (UNCRC) was acceded to by India on 11th December 1992. From that day, India has undertaken the obligation to make laws to promote the welfare of the children across the nation. Justice Nagarathna added that if judges assimilate the objectives laid down in the UNCRC in their working, it would be very beneficial in the justice delivery mechanism. When a child in conflict with law is made to face the law, dignity of the child and his/her worth as a human being should be handled with utmost caution. Justice Nagarathna enumerated the principles enshrined in the JJ Act, 2015, which range from presumption of innocence, best interests, non-waiver of rights, privacy, repatriation and restoration, fresh start in their lives, and observation of the principles of natural justice.

Justice Nagarathna pointed out that the very composition of JJBs is multidisciplinary, wherein the statute itself provides for one magistrate and two social workers, atleast one of whom is a woman. The legal system should also encompass social dimensions to include psychology of the child, the psychiatry, and the moral support that is required by a child in conflict with the law. Highlighting the power and the functions of the JJBs, she further added that providing legal aid to the child in conflict with the law should be the first concern of the JJB.

On the issue of working between the various members of the JJBs, she asserted that increased co-operation must prevail between the Magistrates and the social workers, which would be instrumental in providing justice to the victim. The Social Investigation Report that has to be submitted by a probation officer within fifteen days has to be non-mechanical, she added. The JJB must prepare a list of counselors, medical experts and psychologists to be present to assist them in their functioning. Justice Nagarathna remarked on the importance of JJBs having dedicated judges who sit regularly to decide on such matters. She concluded by highlighting how the appraisal of mental and physical capabilities of children in conflict with law has to be done to determine if they were capable of understanding the consequences of the heinous crimes that they indulged in.

Rehabilitative Dispositions by Juvenile Justice Boards, Prof. Srikrishna Deva Rao, Vice-Chancellor, NLUO

Professor Rao started his address by mentioning a Bollywood movie from the late 1950s which depicted the story of a homeguard who undertook the task of reshaping the lives of six hardened criminals. With this anecdote, he emphasized that the process of resocialization is indispensable to social integration of children in conflict with law. He cited the case of *Rakesh Kaushik v B L Vig, Superintendent, Central Jail, New Delhi and Another*, wherein Justice Krishna Iyer observed that Tihar Jail was a perfect place for criminals to secure a degree in crime as a specialisation. He further added that Juvenile Justice is not about stigmatization at all, but rather about reintegration.

Professor Rao added that social workers working in the JJBs must be equally sensitized in their responsibility towards the justice delivery mechanism.

In the question and answer session, some Principal Magistrates of the JJBs in Odisha shared that some social workers pushed for increasing the numbers of sittings which is directly proportionate to the remuneration that they receive for their services. The Magistrates highlighted how the families of the victims play the role of pseudo prosecutors which hamper the functioning of the Juvenile Justice Boards. The lack of child-friendly infrastructure is rampant across the nation and there is a dire need to address it. However, the inspiring stories of various juvenile justice crusaders working with limited or scarce resources go on to prove that willingness is the primary ingredient which can surpass any shortcomings.

Professor Rao further added that minimum standards of care and protection must be observed while dealing with the children who are in conflict with law. He cited cases wherein the police force was being used to exploit and torture the young children in Child Care Institutions, and how those who are entrusted with the duty of protecting the child are instead torturing them. The sensitization of officials in this regard can be helpful to change the mind set and thus promote the welfare of the children on a larger scale.

The session rested with consensus on the aforementioned opinions and the stakeholders vowed to observe good practices in the best interests of the child.

This session was chaired by **Hon'ble Mr. Justice M. N. Bhandari, Judge, High Court of Rajasthan**

Session-V

Role of Juvenile Justice Boards in the Administration of Justice



and Chairperson, Juvenile Justice Committee. The speakers for this session were Hon'ble Mrs. Justice B. V. Nagarathna, Judge, High Court of Karnataka and Chairperson, Juvenile Justice Committee, and Prof. (Dr.) Srikrishna Deva Rao, Vice Chancellor, National Law University Odisha.

Role of Multi-disciplinary Juvenile Justice Boards in Ensuring Rights of Children in Conflict with the Law - Hon'ble Mrs. Justice B.V. Nagarathna, Judge, High Court of Karnataka and Chairperson, Juvenile Justice Committee

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mechanical, she added. The JJB must prepare a list of counselors, medical experts and psychologists to be present to assist them in their functioning. Justice Nagarathna remarked on the importance of JJBs having dedicated judges who sit regularly to decide on such matters. She concluded by highlighting how the appraisal of mental and physical capabilities of children in conflict with law has to be done to determine if they were capable of understanding the consequences of the heinous crimes that they indulged in.

Rehabilitative Dispositions by Juvenile Justice Boards, Prof. Srikrishna Deva Rao, Vice-Chancellor, NLUO

Professor Rao started his address by mentioning a Bollywood movie from the late 1950s which depicted the story of a homeguard who undertook the task of reshaping the lives of six hardened criminals. With this anecdote, he emphasized that the process of resocialization is indispensable to social integration of children in conflict with law. He cited the case of *Rakesh Kaushik v B L Vig, Superintendent, Central Jail, New Delhi and Another*, wherein Justice Krishna Iyer observed that Tihar Jail was a perfect place for criminals to secure a degree in crime as a specialisation. He further added that Juvenile Justice is not about stigmatization at all, but rather about reintegration.

Professor Rao added that social workers working in the JJBs must be equally sensitized in their responsibility towards the justice delivery mechanism. In the question and answer session, some Principal Magistrates of the JJBs in Odisha shared that some social workers pushed for increasing the numbers of sittings which is directly proportionate to the remuneration that they receive for their services. The Magistrates highlighted how the families of the victims play the role of pseudo prosecutors which hamper the functioning of the Juvenile Justice Boards. The lack of child-friendly infrastructure is rampant across the nation and there is a dire need to address it. However, the inspiring stories of various juvenile justice crusaders working with limited or scarce resources go on to prove that willingness is the primary ingredient which can surpass any shortcomings.

Professor Rao further added that minimum standards of care and protection must be observed while dealing with the children who are in conflict with law. He cited cases wherein the police force was being used to exploit and torture the young children in Child Care Institutions, and how those who are entrusted with the duty of protecting the child are instead torturing them. The sensitization of officials in this regard can be helpful to change the mind set and thus promote the welfare of the children on a larger scale. The session rested with consensus on the aforementioned opinions and the stakeholders vowed to observe good practices in the best interests of the child.



Session-VI

Challenges in administration of Juvenile Justice in India and Possible Solutions



The penultimate session of the Colloquium was chaired by **Hon'ble Mr. Justice Sandeep Mehta, Judge, High Court of Rajasthan**. The two speakers for the session were Ms. Enakshi Ganguly, Co-Director HAQ Centre for Child Rights, New Delhi, and Mr. Anant Asthana Advocate, Supreme Court of India, New Delhi. Justice Mehta introduced the discourse by identifying the broad challenges faced in the administration of juvenile justice in India. According to him, one of the prime challenges is the anomaly in understanding the statute coupled with the challenges of the Juvenile Justice Act 2015. He also mentioned the importance of meeting the requirement of the stakeholders by improving the infrastructures and the facilities required for efficient administration. Further, he narrated the importance of including the civil societies and commercial companies to operate on level playing field for deriving mutual benefits and strengthening the administration of the Juvenile Justice System.

Strengthening the Functioning of Juvenile Justice Systems vis-à-vis children in conflict with the law:

Ms. Enakshi Ganguly, Co-Director HAQ Centre for Child Rights, New Delhi

Ms. Ganguly elucidated upon the strengthening of the functioning of juvenile justice systems vis-à-vis children in conflict with the law and invited suggestions from all the principal magistrates present during the discussions for a detailed analysis in the practical dimension.

After deliberating on the challenges enlisted by the Principal Magistrates, Ms. Ganguly identified the main challenge to be the issue of application of the fundamental principles, which is the bedrock of the law. According to her, the solution to all challenges can be found if principles are affirmed to. The three main principles she enlisted were, the principle of fresh start, the principle of non-discrimination, and the principle of right to be heard. She stated, that the first principle is a requisite for restorative justice and with counseling of the parties and their families, the offender and the victim may commence their lives sans any guilt and fear of revenge. The second principle is essential in dispensing justice by not discriminating the offenders or the victims based on their behaviour and appearances. The final

principle is of primal importance as the right to be heard is paramount, especially for children in conflict with the law. This would strive to prevent the tendency of children to make self-incriminatory statements.

The floor was then opened to suggestions. The critical suggestions that were debated and discussed included increasing the tenure of the Magistrates to facilitate a holistic development of the system, retraining of the Magistrates on dealing with special and sensitive cases, increasing the remuneration of the social workers, bolstering their tendency to work in multi-disciplinary teams, enhancing the infrastructure available by creating Observation Homes in every district, and appointing panel of child psychologists. A few suggestions also stressed upon the strengthening of the probation services, requirement of a guardian ad litem to protect the best interests of the child. They also discussed on the course of action to be taken to decide romantic cases under the POSCO Act, 2012 (Protection of Child from Sexual Offences Act, 2012) and transfer of such cases to the Children's Court.

Preliminary Assessments by Juvenile Justice Boards – Mr. Anant Kumar Asthana, Child Rights Advocate, New Delhi

As Mr. Anant Asthana sought to bring to light various issues which assailed the system, including questions which are often overlooked by judicial officers and other members of the Juvenile Justice Board. The discussion centered around preliminary assessment by JJBs during which he provoked thoughtful discussion by posing 16 challenges.

He introduced the process of preliminary assessment under section 15 of the JJ Act as a provision which allows for the child who has allegedly committed a heinous offence and who is above the age of 16 to be transferred by the JJB to the Children's Court to determine whether the child can be treated as an adult or not. Posing the first challenge before the participants, he pointed out that various stakeholders believe that the age of the child in conflict with law has been reduced from 18 to 16. This misinformation often comes from sources one implicitly trusts and he suggested that there should be awareness and training of officers to ensure that such misconception does not continue. The second challenge revolved around the definition of 'heinous offence' defined under Section 2(33) of the Juvenile Justice Act, 2015. The section prescribes crimes with a 'minimum' punishment to be included within the ambit of heinous crimes, however, it was pointed out that many offences do not specify this minimum period and nor do they fall in the categories of petty or serious offences and therefore fall into a legal vacuum. He then stated that this vacuum is then sought to be filled by innovative approaches or by strict implementation of law, both of which do not bring respite to the children.

As the discussion moved towards section 15(1) of the Juvenile Justice Act which allowed for the JJB to seek assistance from experienced psychologists or psycho-social analysts, it was pointed out that most of these reports are delegated to these experts who then submit their reports as preliminary examination reports. It was understood that the law did not prescribe such delegation and that the experts merely had the power to assess while the preliminary assessment report should be prepared by the JJB. It was said that this delegation was often done because it was easier to rely on other's opinion but this would lead to delays, increased expenses and pendency. Further, the flip side of the coin was also presented where the preliminary assessment report is prepared without taking any assistance from the experts which further hurts the child and his best interests are not considered. In the same vein, the dilemma which was presented before the audience was whether this report could be challenged by the child and whether his lawyers could cross-examine the witnesses.

Taking up the issue of granting bail to children, the concern raised was that the JJBs are often hesitant in granting bail to the child while the preliminary assessment report is pending or in some cases, while the bail is intact, the child is taken into custody based on a new order passed, both of which do not have any basis in law.

The aspect of the alleged commission of an offence by a child was brought into perspective. It was noted that to assess the mental and physical capacity of a child it was necessary to examine it in the context of the particular crime that was allegedly committed and not in general. Raising the issue of presumption of innocence in the context of the circumstances of the offence committed which presupposes the child to be an offender, the audience were reminded of Model Rule 10(5) which requires that the witness statements and other documents be submitted to the child. It was asked if the child could contest the expert report which assessed the mental health of the child. Taking up the issue of the timeframe of three months prescribed for the submission of the final report by the police, it was stated that this time-period is discretionary and there was no penalty imposed for a delay in submitting the report. Therefore, it was suggested that the preliminary report could be taken even pending the submission of the final report.

Further, the issue of appeal was raised before the audience. The question posed was whether the order was an appealable and if it could be appealed how would one resolve the dilemma whether it should be sent to the Children's Court or to be sent to the Court of Sessions which was not a Children's Court. Finally, the audience was reminded that the JJ Act created a third category of offender who was neither a child nor an adult but a child as an adult. The concern raised was that this third category was not guided by any law including the Code of Criminal Procedure, the penal laws or even exclusively by the JJ Act. The only directions provided were that the Children's Court was to pass appropriate orders for the child as an adult after conviction and that had to include an Individual Care plan, however, this needed to be better dealt with by the law.



Session-VII

Significance of Social Investigation Reports and Individual Care Plans



This session was chaired by Mr. Hon'ble Mr. Justice S.K. Mishra, Judge, High Court of Orissa & Chair, Juvenile Justice Committee. It involved discussions on the significance of Social Investigation Reports and Individual Care Plans. The speakers for the session were Mr. S. Kannayiram, Senior Programme Coordinator, CCR, National Law University Odisha and Ms. Arlene Manoharan, Social Worker & Child Rights Specialist.

Appreciation of Social Investigation Report by Juvenile Justice Boards - Mr. S. Kannayiram, Senior Programme Coordinator, CCR, NLUO

Mr. Kannayiram started his presentation by introducing the concept of Social Investigation Reports and its contents. He said that if the possibility exists, the JJB may avail itself of a Social Inquiry Report which is prepared by a competent, authorized official or agency. The report should contain social information on the alleged offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report should be factual, objective and unbiased, with any expression of opinion clearly identified.

The purpose of the report is to facilitate the adjudication body's decision. It provides additional information, beyond the records from police, on crime and delinquency and its relationship with offenders' circumstances that led the person to commit crime. It is also considered as the appropriate means for social reintegration. Mr. Kannayiram highlighted the importance of these reports. They are scientific documents which spell out different dimensions of offence and the child in conflict with the law. It is a multilayer assessment and documenting which involves a multidisciplinary team approach or agency involvement in treatment process.

The primary objectives of the SIRs are to explore alternative care and avoid institutional care to the possible extent. Such reports result in reduction in reoffending, ensures public safety and victims'

satisfaction. It facilitates restorative justice through restitution, compensation and community service. More importantly it helps in social reintegration of the child.

The specific contents of such reports need to include proper risk assessment, that is criminogenic needs or dynamic risk factors which are found to be associated with faulty thinking (pro-criminal attitude, interpersonal problems solving incapacitation, rigid thinking, tendency to blame others etc.). It needs to highlight any sort of substance abuse and any such associated risks. Static risk factors, such as criminal history, family factors, peer association and gang involvement are important to be noted. Similarly, non-criminogenic factors are equally important such as social class and social exclusion, personal distress, self-esteem, anxiety, depression, psychological discomfort and group cohesion. Further, the SIR needs to specify the treatment process and the types of agencies or organizations that could be involved along with a treatment plan.

In the end, Mr Kannayiram discussed about method of probation. Probation is a method of dealing with the offender within the community. It is a judicial function and involves conviction, suspension of the sentence, and the court's approval for living in the community upon specific conditions to be observed such as, restrictions and regulations in movements, periodical monitoring and evaluation, reports to court, review and change. The administration of probation is the responsibility of the judge. The professional relationship between the judge and the probation officer in each of the administrative structure is important. The judge is responsible to the community. It is also imperative that the disposition is to the satisfaction of the victim and also to the requirements of the community.

Methods of Preparation of Individual Care Plans – Ms. Arlene Manoharan, Social Worker & Child Rights Specialist

Ms. Manoharan, commenced her presentation by highlighting the two important outcomes that are expected from orders/sentences by Juvenile Justice Boards and Children's Courts: (i) whether or not the child has committed the offence alleged, and (ii) orders/ sentences that enable rehabilitation and re-integration of the child, as envisaged in the Preamble and Fundamental Principles.

Individual Care Plan is a comprehensive development plan for a child based on age, gender specific needs, and case history of the child, prepared in consultation with the child, in order to restore the child's self-esteem, dignity and self-worth and nurture him/her into a responsible citizen. The plan should address the issues such as, health and nutrition needs, emotional and psychological needs, educational and training needs, restoration and follow up, and social mainstreaming. These provisions are laid down in the Juvenile Justice (Care and Protection of Children) Model Rules of 2016.

The Preamble of the Juvenile Justice Act requires realization of the child's right to 'protection', 'treatment', 'development', 'rehabilitation', and 'social re-integration.' The process of rehabilitation and social integration of children shall be undertaken, based on the Individual Care Plan, preferably through family based care, according to Section 39 (1) of the Act. According to Section 2(9), an Individual Care Plan is the means by which the needs and rights of the child are clearly stated, assessed, addressed, monitored, and revised based on progress achieved or additional needs identified, etc.

The Individual Care Plan is a mandatory part of final orders/sentences for children in conflict with law as laid down in the Act for the Juvenile Justice Board in section 8 (3) (h) and for the Children's Court under section 19 (2). The Individual Care Plan is therefore legally binding on the state, the child and the family members or other actors (where specifically mentioned in the final order).

The purpose of the Individual Care Plan is to achieve the goals of enabling comprehensive planning for rehabilitation & re-integration (through state intervention) and preventing recidivism by addressing the root cause of delinquency. It enables monitoring the child's progress and the revision of the Individual Care Plan, based on the child's progress. Most importantly it helps in enabling the fulfilment of the legislative goals of rehabilitation and re-integration.

The features of a good Individual Care Plan require for it to be responsive to the evidence provided in the Social Investigation Report. It needs to be individualized by identifying the resources of the child, and respond to child's developmental needs and rights. It should be comprehensive yet practical and be responsive to current as well as future needs of the child. It should include recommendations for skill building and attitudinal change and focus on strengthening family. It requires the identification of milestones for evaluating progress. It should be objective, independent, and be substantiated with good arguments/evidence and inputs from the Social Investigation Report.

Ms. Manoharan said that the important skills and methods that are required in preparing an Individual Care Plan involve engaging with the child, family, and significant others. The child has to be counselled and trained to understand the predisposing and precipitating factors, and develop alternate positive responses so as to refrain from engaging in crime again. The JJBs are required to be regularly updated on resources available.

Ms. Manoharan explained how any gaps between leaving custody and effective rehabilitation can further alienate the child and result in re-offending, either as a pure survival strategy, or because of re-connections made with negative influences/triggers, resulting in a high risk of re-entry into the Juvenile System. Therefore, she emphasized, that pre-release planning (rule 69 K (1) and section C of Form 7) is vital in paving the way for a smooth re-integration into the community with dignity and preventing recidivism.

Further, she placed the challenges identified through Round Table Consultations organized by the Supreme Court Committee on Juvenile Justice, with support of the United Nations Children's Fund (UNICEF). The challenges were highlighted to be systemic, attitudinal and operational challenges. Individual Care Plans are found to be rarely prepared and when prepared, the right of the child (and the family) to be heard is not respected. It is also found to be rarely included in the order, and when it is included, it is not effectively implemented or monitored. Similarly, on the rare occasions when these plans are prepared, they are found to be neither scientific nor comprehensive. Government welfare schemes are not taken into account while drafting the recommendations. The lack of dedicated skilled probation officers who can prepare Social Investigation Reports and the legal probation officers with legal background are contractual employees, overburdened with multi-tasking, training programs that do not build such kind of competence.

Ms. Manoharan concluded by explaining that the Individual Care Plans are not static documents as children continue to develop and evolve. Neuroscience findings that the human brain continues to grow until 24 years.

Concluding remarks by Hon'ble Mr. Justice Madan B. Lokur, Judge Supreme Court of India & Chair, Juvenile Justice Committee

Justice Lokur began by seeking views of representatives of various Judicial Academies if they found the Colloquium beneficial. Many Directors of State Judicial Academies stated that while the programs of the judicial academies are more inclined towards the statutory alignments in cases of Juvenile Justice, the Colloquium also discussed the various practical issues. The Colloquium opened up a host of ideas for improving the existing programs on juvenile justice in the judicial academies. Besides just the magistrates, the inclusion of social workers and other functionaries related to the Juvenile Justice Boards in the training programs was an important idea that emerged. Preliminary assessment only by a qualified child psychologist may be incorporated in the trainings programs for the magistrates. A large part of trainings are confined to the statutory study of Indian law and the relevant case laws, but the Colloquium emphasized on the importance of the subjective philosophy behind the existing laws, the international conventions in this regard and the various practical problems that arise in the implementation of the existing laws. The Colloquium discussed the lesser looked into aspects of juvenile justice such as diversion, restorative justice, and ICPS. It was further observed that instead

social workers and child psychologists should also be a part of such programs for more holistic discussions on the issues. Further, it was suggested that the curriculum of the training programs can be made multi-dimensional by including the UNCRC and international standards such as Beijing Rules and Riyadh Guidelines etc.

Justice Lokur invited representatives of the law universities to share their views. The representative from Dr. Ram Manohar Lohiya National Law University, Lucknow (RMLNLU) said that RMLNLU has conducted various voluntary social audits of the child care institutions immediately before the Supreme Court made such audits compulsory. RMLNLU submitted a report of its findings along with guidelines for improvement to the State Government which was accepted and incorporated in its existing development programs. The Colloquium has given numerous more ideas that can be worked on. The representative from National University of Study and Research in Law, Ranchi (NUSRL) said that their institution, which is a relatively new one, had established a Centre for Child Rights six months ago, which is now associated with UNICEF. Making audits in Jharkhand's child institutions and analysing the working of the JJB is an idea that is currently being mulled over. Further an important observation which is a derivative of the deliberations of the Colloquium was the idea of employing good human resources such as child psychologists, social workers etc. Furthermore, it is important to sensitize the Magistrates to treat the matters of juvenile justice with a different mind-set when compared to other dealing with other matters. This can be extended to include identifying and trying to remove the inherent biases and stereotypes that may infiltrate the minds of judges when dealing with the cases of children in conflict with the law besides being more reformatory and restorative, rather than retributive. A representative from the Sardar Patel University shared that an online Master of Social Work (MSW) programs and offline courses for training the police officials for dealing with juveniles has been initiated. The representative from Chanakya National Law University, Patna (CNLU) said that besides improving the human resource and sensitization of JJB members including the social workers and child psychologists, as law teachers much can be improved with research as well. Juvenile justice has always been a lesser ventured into area in terms of research. Research can open up various dimensions for juvenile justice in India and bridge the existing legal gap between the laws and the existing practical problems. Further, child rights can be an optional subject and internships at institutions dealing with juvenile justice and child rights can be made compulsory. This will create a league of lawyers dedicated to the cause of child rights and juvenile justice.

Justice Lokur then explained that one of the reasons that made him ask this question to the judicial academies and the universities was the uniqueness of the event. Such Colloquiums are not organised often, and thus the opportunity to collectively deliberate upon juvenile justice is rare as well. It is important to make the most out of such opportunities. The content, he added, was well structured and it was indeed a learning experience for him. New ideas, thoughts and questions have come up that need to be worked on. He further said that in an academy, one can teach the Indian laws and foreign conventions but it is important to look beyond that. Venturing into active research is important for a more realistic understanding of the issues. Further the Universities can endeavor to take home certain ideas from the colloquium and incorporate them into their existing curriculum. He further said that it is important to look at the issues of Juvenile Justice not only from the point of view of the child, probation officers and people closely related to the JJB but also from other point of views like that of child welfare centers, views of parents on restorative justice etc. Child rights jurisprudence in India is evolving so one might agree or disagree with Justice Winter, but we have to indeed think about her ideas. The Colloquium, to him, had been an eye opener and is something that should be carried forward in institutions and judicial academies.

Concluding remarks by Ms. Paola Riva, Director, IDE, Sion, Switzerland

The concluding remarks by Ms. Paola Riva, Director, IDE, Sion, Switzerland were positive and uplifting. She was thankful to the University and all the participants for reminding all of the objectives of law and was deeply impressed with the depth and details that the laws in India harbor. She observed

the extent of implementation of the recommendations of the Committee on the Rights of the Child in India and the gaps that exists.

She also mentioned the grey areas of law that exist in India and how their risks can be transformed into benefits. She said that the most important need for proper implementation of the values discussed in the two-day Colloquium is multi-disciplinarity. She also distinguished between disciplinarity, inter-disciplinarity and trans-disciplinarity. Further, she stated the importance of proper training of officials and gave an account of the Authority of Protection of Adult and Children in Switzerland and the trials and tribulations that they face. She also mentioned the importance of the age factor in determining the sensitivity of the cases and stressed on the importance of transparent implementation of the general and procedural laws all over the world.

She concluded her remarks by thanking the participants and the volunteers for the successful event organized by National Law University Odisha and requested everyone to strive with enthusiasm.

Following Ms. Paola's remarks, Hon'ble Mr. Justice Vineet Saran, Chief Justice of Orissa High Court and Chancellor, National Law University Odisha, extended this warm wishes and thanked the delegates for impeccable participation and the Vice Chancellor of National Law University Odisha, Prof. (Dr.) Srikrishna Deva Rao University for organizing the event and requested all the participants to blend their approaches with sheer optimism and positivity.

The Colloquium ended with the vote of thanks delivered by Dr. Ananya Chakraborty, Assistant Professor of Law, National Law University Odisha. She thanked all the delegates from India and abroad, Hon'ble Mr. Justice Madan Lokur, Judge, Supreme Court of India and Chairperson of the Juvenile Justice Committee, the Hon'ble Judges of the High Courts of various states, the moderators, the Vice Chancellor of National Law University Odisha, Prof. (Dr.) Srikrishna Deva Rao, the UNICEF Child Rights Committee of National Law University Odisha, the Faculties, staff, students and the volunteers of National Law University Odisha, for making the event a success.

