



SPECIAL JUVENILE POLICE UNIT

Its constitution, training, powers and procedure in relation to the juveniles in conflict with law

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I. ABBREVIATIONS

Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, adopted by General Assembly resolution 40/33 of 29-11-1985
CICL	‘Child in conflict with law’, as defined in Section 2(1), JJA
CNCP	‘Child in need of care and protection’, as defined in Section 2(d), JJA
CRC	Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20-11-1989 and entered into force on 02-09-1990
CrPC	Code of Criminal Procedure, 1973
CWC	Child Welfare Committee
CWO	‘Juvenile or Child Welfare Officer’, designated under Section 63(2), JJA
DLSA	District Legal Services Authority
DPO	Designated Police officer
ECOSOC Guidelines	‘Guidelines for Action on Children in Criminal Justice System’ recommended by UN Economic and Social Council vide Resolution 1997/30 of 21-07-1997
Havana Rules	United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by UNGA Resolution 45/113 on 14-12-1990

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ICPS	Revised Integrated Child Protection Scheme adopted by Ministry of Women and Child Development on 6-01-2014
IPC	Indian Penal Code
JJA	Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by Amendment Act 33 of 2006
JJB	'Juvenile Justice Board', constituted under Section 4, JJA
Model Rules 2007	Model Rules under the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended by the Amendment Act 33 of 2006) to be administered by the States, notified on 26-10-2007
NALSA	National Legal Services Authority
NALSA Guidelines	Guidelines for training CWOs and SJPU's issued by NALSA on 9-12-2011
NCPCR	National Commission for Protection of Child Rights
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency, Resolution 45/112
Serious offence	Offence entailing a punishment of more than 7 years imprisonment for adults
SJPU	'Special Juvenile Police Unit', as defined in Section 2(w) read with Section 63, JJA
SLSA	State Legal Services Authority
Tokyo Rules	United Nations Standard Minimum Rules for Non-Custodial Measures adopted by UNGA Resolution 45/110 dated 14-12-1990
TOT	Training of trainers programme organized by SLSAs and DLSAs
UNGA	United Nations General Assembly
UT	Union Territory

II. CONSTITUTION OF SPECIAL JUVENILE POLICE UNIT

Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter, "JJA") is the primary legislation in India consolidating law relating to children in conflict with law (hereinafter, "CICL") and children in need of care and protection (hereinafter, "CNCP"). As is manifest from Clause 2(vii) of JJA's Statement of Object and Reasons, the cornerstone of JJA was the creation of Special Juvenile Police Unit (hereinafter, "SJPU") "*with a humane approach through sensitization and training of police personnel.*" Section 2(w) of JJA defines SJPU as a State police force unit, constituted under Section 63, specially designated for handling of juveniles. Section 63, while laying down the mandatory requirement

of special instruction and training of SJPU for its efficient functioning, elaborately defines it to be comprising of “*police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act.*” Thus, the defining factor of SJPU is its exclusivity in handling juveniles coupled with specialized training propitious to such tasks.

Section 63(2), JJA directs that the State *may* designate at least one officer with ‘appropriate aptitude, training and orientation’ as ‘Juvenile or Child Welfare Officer’ (hereinafter, “CWO”) to handle the juvenile in coordination with the police. CWO must be motivated by proclivity in upholding juvenile rights, propensity to discern CICA vis-à-vis CNCP, and a sense of duty in securing the best interest of a child. Vide Section 63(3) of JJA, all such police officers designated as CWOs in one district shall be the members of SJPU at that District level. For better implementation and administration of provisions of JJA in their true spirit and substance, Central Government, by virtue of its powers conferred by proviso to Section 68(1) of JJA, notified **Model Rules on** October 26, 2007 (hereinafter, “Model Rules 2007”). These Model Rules 2007 elaborated on the procedural requirements and devised the fundamental principles in relation to the administration of juvenile justice in accordance with JJA. Rule 84(1) states that the SJPU at each District level shall consist of CWOs of the rank of Police Inspector and two paid social workers, at least one of whom shall be a woman, both having working experience in the field of child welfare. Services of these two social workers are provided by the District Child Protection Unit or the state government to SJPU for discharge of its duties [Rule 84(2)]. As a statutory requirement, these social workers are provided under **Revised Integrated Child Protection Scheme** (hereinafter, “ICPS”) to the District Child Protection Unit which appoints these social workers and deutes their services to the SJPU as and when necessary.¹ Financial support for these social workers under DCPU is provided under ICPS only.² By virtue of being the *ex officio* head of the SJPU, Superintendent of Police in a district is entrusted with periodically overseeing its functioning [Rule 84(9)]. Thus, vide sub-sections (2) and (3) of Section 63 of JJA read with sub-rules (1), (2) and (9) of Rule 84, SJPUs are constituted at each District level, headed by Superintendent of Police of such district, and its members are the CWOs (also called ‘Designated Police Officers or DPOs’) of the rank of Police Inspector attached to each Police Station within that District. A Nodal Officer of Police not less than the rank of Inspector General of Police is designated in each State to coordinate among SJPUs and engage in building multiple skill-set and upgrading role of each SJPU [Rule 84(10)].

¹ Clause (ii) of Section C, Chapter 11, ICPS, Ministry of Women and Child Development (MWCD), available at http://wcd.nic.in/icpsmon/pdf/icps/final_icps.pdf (Last accessed 3rd September, 2014).

² Supra note 1, at Annexure I, Table 5.1, S.N. 3.

Individual states/UTs have framed their Rules under the JJA with varying degrees of contradistinction to Rule 84, Model Rules, 2007. States like Karnataka³ and Maharashtra⁴ have diverged from Rule 84 in forsaking the involvement of two social workers from DCPU/state government in SJPU and, instead have mandated seeking the assistance of recognized voluntary organizations. Others like Delhi,⁵ Andhra Pradesh⁶ and Orissa⁷ have substantially adopted Rule 84 with insignificant changes. Yet others like Tamil Nadu⁸ neither provide for any social intervention nor for any form of assistance from voluntary organizations. **Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001** merely mandate the establishment of SJPU in all districts or select cities with every designated CWO as its member. Apart from variation in the degrees of social intervention in SJPU, some states/UTs like Delhi, Orissa, Karnataka etc., have designated police officers different from Superintendent of Police and Inspector General of Police as Head of District, SJPU and Nodal Officer in relation to CNCP respectively. However, it is humbly submitted that a significant variation of Juvenile Justice Rules of individual State/UT from the Model Rules, 2007 in completely forsaking the participation of social workers and voluntary organizations from juvenile justice system, or in discounting the necessity of women representation in SJPU, violates the spirit of the Beijing Rules which JJA seeks to implement. Liaison of police personnel with social workers and voluntary organization is also emphasized in ICPS.⁹ It is further submitted that a distinct department of SJPU comprising only of women must be constituted for handling girl juveniles for enhancing understanding of their concerns. In similar terms, Sections 12(6) and 99(e) of **Draft Model Police Act 2006** prepared by Police Act Drafting Committee, commonly known as the Soli Sorabjee Committee, stipulated constitution of a separate “[W]omen and Child Protection Desk, staffed, as far as possible, by women police personnel, to record complaints of crimes against women and children and to deal with the tasks relating to administration of special legislations relating to women and children.”

III. APPOINTMENT OF SPECIAL JUVENILE POLICE UNIT

As stated before, Section 63(3) of JJA envisages that the State *may* create SJPU in every district and city to coordinate and to upgrade the police treatment of the juveniles. Corresponding to Section 63(3), Rule 84(1) of the Model Rules 2007 asserts that each state government *shall* appoint SJPU at the District

³ Rule 12(1)(b), Karnataka Juvenile Justice (Care and Protection of Children) Rules 2002.

⁴ Rule 76, Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002.

⁵ Rule 84, Delhi Juvenile Justice (Care and Protection of Children) Rules 2009.

⁶ Rule 84, Andhra Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2009.

⁷ Rule 49, The Juvenile Justice (Care and Protection of Children) Orissa Rules 2002.

⁸ Rule 93, Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001.

⁹ Clause SJPU (II para), Section II Statutory Support Services, Chapter III ICPS Programmes and Activities, ICPS.

level within four months of notification of these rules, i.e. by 26th February, 2008. While ordinarily ‘may’ indicates an enabling provision conferring discretionary power, it may be construed as ‘shall’ mandating the exercise of such power, if such interpretation is in furtherance of the intention of the legislature, and purposively facilitates the attainment of its underlining object of effectuation of a legal right.¹⁰ To ascertain the intent of legislature, one must examine the context in which the provision is employed, the purpose it seeks to achieve, and the consequences of its non-compliance.¹¹ In light of this, it is humbly submitted that ‘may’, as used in sub-sections (2) and (3) of Section 63, should ideally be construed as ‘shall’, thereby mandating the states to designate a police officer as CWO and to constitute SJPU in each district. Such an interpretation would facilitate the attainment of children’s right to life, dignity, protection against abuse or exploitation, and holistic growth, all guaranteed to them under Constitution of India and several International instruments. It would be in furtherance of legislative intent manifest in Statement of Object and Reasons of JJA, for otherwise the whole purpose of humanizing and sensitizing the police treatment of CICL shall be defeated. It is with this gumption that the three-Judge bench of Hon’ble Supreme Court of India directed in *Bachpan Bachao Andolan v. Union of India*¹² that each State must set up a SJPU (if not set up already) and ensure that at least one officer of said SJPU is deployed at every police station within two months from date of decision, i.e. by 17th March, 2013. Similarly, in the landmark case of *Sampurna Behrua v. Union of India*¹³, Supreme Court ordered “*the Home Departments and the Director Generals of Police of the states/Union Territories to ensure that SJPU comprising of all police officers designated as CWO be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in Section 63(3) of JJA.*” The aforementioned direction of Supreme Court came in light of the state governments’ neglect of their statutory duty under Section 63 of the JJA read with Rule 84 of the Model Rules 2007 to constitute SJPU in every district in a time-bound manner. For instance, even after unequivocal directions of several High Courts, including Sikkim and Patna High Court in *Sonam Palden Bhutia v. State of Sikkim*¹⁴ and *Shashank Shekhar v. State of Bihar*¹⁵ respectively, to expeditiously constitute SJPU in every district and appoint CWO in every Police Station, respective state governments had resorted to exhibiting utter laxity in constituting SJPU. Now, the position has been radically enhanced with respect to constitution of SJPUs

¹⁰ Rangaswami v. Sagar Textile Mills (P) Ltd., (1977) 2 SCC 578 : AIR 1977 SC 1516, L. Hirday Narain v. ITO, (1970) 2 SCC 355 : AIR 1971 SC 33 at 36, Julius v. Lord Bishop of Oxford, (1880) 5 AC 214 : (1874-80) All ER Rep 43 (HL).

¹¹ May George v. Tahsildar, (2010) 13 SCC 98.

¹² Bachpan Bachao Andolan v. Union of India, 2013 SCC OnLine SC 464, See Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551; Hari Ram v. State of Rajasthan, (2009) 13 SCC 211.

¹³ Sampurna Behrua v. Union of India, (2011) 15 SCC 232. Order passed by Division Bench of Hon’ble Supreme Court on October 12, 2011, available at judis.nic.in/supremecourt/imgs1.aspx?filename=38742 (Last visited on September 3, 2014). (“Sampurna Behrua”).

¹⁴ Sonam Palden Bhutia v. State of Sikkim, 2010 Cri LJ 491 (Sikkim).

¹⁵ Shashank Shekhar v. State of Bihar, (2012) 1 PLJR 35 (Pat).

at the district level owing to the proactive approach taken by the judiciary. As manifest from the affidavit submitted by the National Commission for Protection of Child Rights (hereinafter, “NCPCR”) in April 2011 in *Sampurna Behrua*, out of thirty three states/UTs, thirteen have an overwhelming number of SJPU (even more than the number of districts), sixteen have constituted SJPU in number same as their districts, and four, which are Andaman and Nicobar Islands, Haryana, Maharashtra and Puducherry, fall short of SJPU to the extent of two, one, three and three districts respectively.¹⁶

It is pertinent to note that the SJPU, being defined as a ‘unit of the police force of a State’ under Section 2(w) of JJA does not qualify as an ‘All-India Service’ under Article 312 of the Constitution of India; rather, it comes within the purview of Entry 2, i.e. ‘Police (including railway and village police)’, of List II (State List) of Seventh Schedule annexed to Article 246(2) of the Constitution. Ideally therefore, SJPU should be within the exclusive jurisdiction of state government *dehors* any power of Parliament to mandate states to constitute SJPU. However, notwithstanding Article 246, Article 253 of the Constitution of India empowers Parliament to make any law for the whole or any part of the territory of India for implementing any international treaty, agreement or convention. As manifest from its preamble, JJA aimed to implement the standards prescribed in international instruments including the ‘**United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985**’ (hereinafter, “the Beijing Rules”). Clause 12.1 of the Beijing Rules asserts the necessity of establishing special police units and imparting them specialized training for facilitating their dealings with juveniles and prevention of juvenile crime. The commentary annexed to Clause 12.1 reasserts the indispensability of special police units for smooth administration of juvenile justice system and implementation of Fundamental Perspectives, contained in Clause 1 of the Beijing Rules. Clause 1.6 mandates the systematic development and coordination of juvenile justice services through improvisation of methods, approaches and attitudes of personnel involved in such services, including police. Complementary to the Beijing Rules are the ‘**Guidelines for Action on Children in the Criminal Justice System Recommended by Unites Nations Economic and Social Council**’ **vide Resolution 1997/30 of 21 July 1997** (hereinafter, “ECOSOC Guidelines”). Clause 44 of the said ECOSOC Guidelines directs states to establish specialized officers and units to deal with cases involving offences against children. Thus, by joint reading of the Beijing Rules and ECOSOC Guidelines, the constitution of a specialized police unit becomes inevitable for dealings with both CICA and CNCP. Therefore, it is submitted that the provision for establishment of CWO and SJPU in Section 63 of JJA for dealing with juvenile offenders and juvenile victims is a translation of the Beijing Rules and ECOSOC Guidelines by the

¹⁶ *Sampurna Behrua*, (2011) 15 SCC 232. Affidavit filed pursuant to order dated March 11, 2011, available at <http://nlrd.org/wp-content/uploads/2012/02/Affidavit-On-Behalf-Of-NCPCR-with-Annexure-.pdf> (Last visited on September 3, 2014).

Parliament of India in exercise of its power under Article 253 of the Constitution of India.

Beside this, Article 355 of the Constitution of India confers a duty upon the Union to ensure that the government of every state is carried on in accordance with the constitutional provisions. As evident from its preamble, JJA sought to amalgamate the objectives underlining the Constitution of India in securing a 'child-friendly approach' and 'best interests of child'. It is humbly submitted that the constitution of SJPU and their specialized training for humanizing their approach towards CICL and CNCP is pursuant to the constitutional goals imbibed within Articles 15(3), 21, 39(e) and (f), 47 and 51(c). Article 15(3) of the Constitution of India enables the State to make any 'special provision' for children. One may argue that JJA in empowering police to apprehend and detain children, thereby restraining their usual enjoyment of life and liberty, fails to qualify within the contours of 'special provision'. Quite contrarily, in *Yusuf Abdul Aziz v. State of Bombay*¹⁷, a constitutional bench of Supreme Court of India observed that the 'special provisions' under Article 15(3) are not confined to provisions which are beneficial in strict sense. Therefore, in JJA and Model Rules 2007, even though the police has been empowered to apprehend CICL, the inbuilt special safeguards of SJPU and CWO and their functioning as watchdogs of human rights of children are 'special provisions' under Article 15(3) of the Constitution. By conjoint reading of Article 15(3) with the Right to Equality guaranteed under Articles 14 and 15(1) of the Constitution of India, it is manifest that no less favorable treatment may be meted to juveniles as compared to adults.¹⁸ Therefore, the specific safeguards of JJA pertaining to functioning of SJPU and police operate in addition to, and not in derogation of, the general safeguards under the Constitution of India, Code of Criminal Procedure, 1973 (hereinafter, "CrPC"), Universal Declaration of Human Rights (hereinafter, "UDHR") etc. As will be elaborated hereinafter, the functions of SJPU and CWO as prescribed in JJA and the Model Rules 2007 correspond to Articles 21, 39(e) and (f), and 47 of the Constitution of India. Article 51(c) directs the State to endeavour to foster respect for international law and treaty obligations, undoubtedly including within its ambit commitments made in the Beijing Rules and ECOSOC Guidelines. In essence, therefore, the designation of CWO, constitution of SJPU, impartation of specialized training to SJPU and conferment of special functions to SJPU for vindication of rights of children is in furtherance of constitutional and international objectives and thus, in pursuance of Articles 253 and 355, unbarred by any restriction under Article 246 of the Constitution of India. Therefore, despite the fact that SJPU is within exclusive control of respective state governments, it was within the legislative competence of the Parliament to mandate states to appoint SJPU.

¹⁷ *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321.

¹⁸ See *Air India Cabin Crew Assn. v. Yeshaswinee Merchant*, (2003) 6 SCC 277 at 302.

IV. SPECIAL TRAINING OF SPECIAL JUVENILE POLICE UNIT

The emphasis on specialized training of SJPU in the preamble to JJA is translated in the mandate of Section 63(2) of JJA read with Rule 84(3) of Model Rules 2007. These provisions assert the impartation of such specialized training to CWOs as would be appropriate to their handling of juvenile cases in accordance with, and in the spirit of, JJA. Similar emphasis on sensitization and training of police personnel is included within ICPS.¹⁹ Rule 90(1) of the Model Rules 2007 states that the training programme of personnel of each category of staff in an institution operating under JJA must be formulated keeping in mind their statutory responsibility and specific job requirements. Sub-rules (2) and (3) of Rule 90 mandate organizing regular training and capacity building sessions including orientation and induction training for novices, refresher training courses, skill enhancement programme, staff conferences, seminars and workshops. It is humbly submitted that these training requirements under Rule 90 should ideally be applicable for SJPU and other police personnel also. Thus, SJPU must be imparted regular training and orientation as would facilitate its functioning and corresponding discharge of its responsibility and specific job-requirements under JJA. This interpretation would also be in furtherance of international instruments which JJA seeks to implement. Clause 12.1 read with Clause 1.6 of the Beijing Rules outlines the requirement of special training and instruction of SJPU, for systematically improving their methods, approaches and orientation, sustaining their competence in discharge of their functions, and enhancing coordination between independent juvenile justice services. Elaborating further, Clause 22.1 of the Beijing Rules necessitate maintaining professional competence of all personnel (including police) through professional education, in-service training, refresher courses and other appropriate modes of instruction as appropriate to handling juvenile cases. Similarly, Clauses 24 and 44 of ECOSOC Guidelines direct inculcation of education and training in human rights, CRC and other UN standards and norms in juvenile justice system as an integral part of training programme of police personnel dealing with CNCP or CICL.

In the landmark case of *Sampurna Behrua*, the Supreme Court directed

“the Home Departments and the Director Generals of Police of the states/UTs to ensure that at least one police officer in every police station with aptitude is given appropriate training and orientation and is designated as CWO, who will handle the juvenile in coordination with the police as provided under Section 63(2) of JJA. The required training will be provided by the District Legal Services Authorities under the guidance of

¹⁹ Specific Objective, Clause 2.2 (ii), Chapter 2, Integrated Child Protection Scheme, available at <http://wed.nic.in/schemes/icps.pdf> (Last visited on September 4, 2014).

the State Legal Services Authorities. National Legal Services Authority will issue appropriate guidelines to the SLSA for training and orientation of police officers, who are designated as CWO. The training and orientation may be done in phases over a period of six months to one year in every State/UT”.²⁰

In pursuance thereof, guidelines were issued by NALSA on December 9, 2011 (hereinafter, “**NALSA Guidelines**”) elaborating the role of DLSA and SLSA in imparting training to the designated CWOs, and other members of SJPU.²¹ Upon request from SLSA, DLSA identifies two to three lawyers having work experience in juvenile justice as resource persons in the state-level ‘training of trainers programme’ (hereinafter, “TOT”) organized yearly by SLSA for Police officers, SJPU, and CWOs. For similar training programmes organized half-yearly by DLSA, SLSA procures and distributes all necessary resources including books, films etc., and undertakes periodic review, appraisal, revision and upgradation of such programmes. Model training curriculum containing relevant constitutional, statutory, and international provisions is appended as Annexure-2 of said NALSA Guidelines. Police department and SLSA must be consulted prior to finalization of any such curriculum for addressing grassroot concerns and inculcating special local requirements. In pursuance of Clause 58 of **UN Guidelines for the Prevention of Juvenile Delinquency** (hereinafter, “Riyadh Guidelines”), police personnel including SJPU and CWOs must be trained to “*respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.*” Thus, training programme includes specific instructions on preventing juvenile delinquency, reducing vulnerabilities faced by children, understanding circumstances in which children may come into conflict with law, necessity of non-disclosure of identity of children in the best interest of children, and the circumstances that may lead to disqualification of errant police officers. Their training also entails optimization of techniques whereby a child may be comforted and pacified. For instance, Rule 75 of Model Rules 2007 mandates the police (including SJPU) to wear plain clothes and not the police uniform while dealing with a juvenile under JJA or corresponding Rules, except at the time of apprehension or arrest of the juvenile. Similarly, while interrogation, the child may be offered food articles, like chocolates, sandwiches etc. to soothe him out of any conceivable anxiety. Capacity building in TOTs is through role-plays and problem-solving wherein trainees try to anticipate and understand problems faced by CICL, and are then encouraged to arrive at probable solutions under the guidance of a resource person who is usually a specialist in children’s psychology and child psychiatry.

²⁰ Sampurna Behrua, (2011) 15 SCC 232, Order passed by Division Bench of Hon’ble Supreme Court on October 12, 2011.

²¹ NALSA Guidelines for Police Training, available at <http://nalsa.gov.in/Schemes/Police/NALSA%20Guidelines%20for%20Police%20Training.doc> (Last visited on September 3, 2014).

V. FUNCTIONS OF SPECIAL JUVENILE POLICE UNIT

Rules framed by individual states/UTs under JJA consolidate the functions to be performed by SJPU, CWOs and other police personnel. These functions are motivated by the 'best interest of the child' to secure a 'child-friendly approach' for upholding the constitutional, statutory and international directives. As defined in Rule 2(c) of the Model Rules 2007, any decision taken in 'best interest of the child' is the one which ensures 'physical, emotional, intellectual, social and moral development of the juvenile.' In this context, Rule 2(d) of the Model Rules 2007 defines 'child-friendly approach' as any process, attitude, treatment, orientation, or environment that is 'humane, considerate, and is in best interest of the child.' Therefore, functions of SJPU include, *inter-alia*, preventing circumstances in which juveniles may come in conflict with law, understanding the circumstances in which they actually came in conflict with law, addressing socio-legal concerns of such juveniles and, striving to secure their human rights and constitutional and statutory rights. These functions may be broadly categorized as:

A. Prevention of circumstances in which a juvenile may come in conflict with law or may become a victim to a crime:

As stated in the preamble to **the Police Act, 1861**, prevention prior to detection of crime is elemental to the expediency and efficiency of police.²² Generally therefore, vide Section 23 of the Police Act 1861, it is the duty of every police officer to promptly prevent the commission of offences. Specifically, Section 63 of JJA, NALSA Guidelines 4(i), and Clause 12 of the Beijing Rules focus on imparting training to SJPU and CWOs on strategies for prevention and control of juvenile crime. As a corollary, Rule 84(5) of Model Rules 2007 provides that "*SJPU shall function as watchdog for providing legal protection against all kinds of cruelty, abuse and exploitation of child.*" The activities of NGOs and other voluntary organizations are monitored by SJPU and efforts to prevent crimes against children, specifically trafficking, illegal adoption and detention of children, are taken through effective liaison between police and other government and non-government functionaries.²³ Nevertheless, it is humbly submitted that both national and international instruments lack vigour in extensively laying down the role of SJPU in striving to prevent juvenile delinquency or victimization. For instance, while its Clause 1 unequivocally states that "*the prevention of juvenile delinquency is an essential part of crime prevention in society*", Riyadh Guidelines merely focus on family, community, schools, peer groups, voluntary organizations and the like as the only stakeholders in the same, while ignoring any role of police including SJPU in preventing juvenile delinquency. The

²² Preamble, Police Act 1861, available at http://www.humanrightsinitiative.org/publications/police/police_act_1861.pdf (Last visited on September 5, 2014).

²³ Clause (f), Functions of the Special Juvenile Police Unit, Delhi Police Juvenile Justice Unit (DPJJU), available at http://www.dpju.com/index.php?option=com_content&view=article&id=289&Itemid=247 (Last visited on September 5, 2014).

preventive role of SJPU is pivotal especially for children as they are presumably incapable of defending themselves, and the police, being an instrumentality of the State, must proactively extend its protection to children in the capacity of *parens patriae*.

B. Interrogation of Juveniles:

SJPU has to adopt a humane approach, with firm kindness, towards CICL to protect and respect or her inherent dignity. SJPU must sensitively take into account the needs of persons his/her age.²⁴ Thus, any interrogation of CICL must neither be at a police station nor under such circumstances which may give an impression of his or her being under custodial interrogation.²⁵ SJPU must attempt to make the child comfortable by offering him food, or otherwise, and ease him out of anxiety. If the parents of the CICL so desire, the child may be interviewed at his home itself, unless considered inexpedient to goals of investigation.²⁶ The summary of interrogation must be recorded in the form of the 'version of the child in conflict with law' and in case the same reveals that the child has been subjected to any neglect/abuse/ill treatment by anyone, forcing the situation of conflict upon the child, then necessary action should be immediately initiated against perpetrator(s) of such acts.²⁷ The U.S. system of giving a Miranda warning to criminal suspects is futile in India for any statement made before police is nevertheless inadmissible in evidence unless distinctly relating to discovery of any fact vide Section 162 of CrPC read with Sections 25, 26 and 27 of Indian Evidence Act 1872 (hereinafter, "IEA"). These provisions are a product of guarantee against self-incrimination of accused in criminal proceedings imbibed within Article 20(3) of the Constitution of India. In fact, in *Court on its Own Motion v. Govt. of NCT of Delhi*²⁸ the Delhi High Court judiciously held that the police must not compel any juvenile to sign any statement recorded under Section 161, CrPC even when it corresponds to the discovery of any fact under Section 27 of the IEA. This was in light of the fact that police were adopting illegal practices like use of torture in forcing juveniles to sign statements recorded under Section 161, CrPC, especially in relation to confessions exhorted. It is important to note that Rule 7.1 of the Beijing Rules asserts that every child has the right to remain silent. In this backdrop, it is submitted that during interrogation, CICL must be informed of his right to remain absolutely silent. He must not be bound to answer even those questions related to the commission of offence which do not tend to incriminate him, unlike Section 161, CrPC, which is applicable to

²⁴ Article 37(c) of CRC.

²⁵ Rule 14, Guidelines for Police Officers of the Special Juvenile Police Unit, Department of Women and Child Development (1st edition, 2009), at 17, available at [http://wcddei.in/Guidelines\[1\].pdf](http://wcddei.in/Guidelines[1].pdf), (Last visited on September 9, 2014).

²⁶ Id.

²⁷ Supra note 25.

²⁸ *Court on its Own Motion v. Govt. of NCT of Delhi*, WP(C) No. 8801 of 2008, decided on 3-3-2009 (Del), available at < <http://www.dpjju.com/images/stories/courtorders/8801of2008.pdf> (Last visited on September 10, 2014).

adults. Beside this, in furtherance of the right to legal counsel and the right to be defended by a legal practitioner of choice as imbibed within Article 22(1) of the Constitution of India and Rule 7.1 of the Beijing Rules, it is humbly submitted that CICL must also have the right to meet an advocate of his choice during interrogation by police.²⁹

C. Determination of age by Police while apprehending juveniles:

Police is naturally inclined to misrepresent CICL as adults and follow the apparently less burdensome adversarial criminal procedure as applicable to adults. Then, unless the offender doggedly claims to be a juvenile, police need not strive to extend guarantees prescribed under JJA during pre-production stage. This is akin to fraud with the spirit of JJA. Ideally, therefore, in furtherance of Article 12(1) of CRC, the police must accept child's reply qua his age and produce him before JJB, unless no reasonable person could infer the offender's age as below 18 years from his/her natural looks. However, flagrant violation of this natural rule has led judiciary to frame specific guidelines qua *prima facie* determination of age while apprehending a juvenile. In *Court on its Own Motion v. Deptt. of Women and Child Development*³⁰, the Delhi High Court, while taking cognizance of irregularities in procedure followed by police in handling majority of juveniles as adults, laid down that the investigating officers, while making arrest shall reflect the age of the accused in the Arrest Memo upon inquiry from the accused if he is in possession of any age proof etc. Such age is to be recorded in 'Age Memo' to be evolved in the line of 'Arrest Memo' by SJPU. In cases where the accused indefinitely represents his age as 21 years or less, and in other cases, if accused from appearance appears to be juvenile and the police officer has belief that the accused is a juvenile, he shall be produced before the JJB instead of the criminal court. Further, SJPU shall provide necessary coordination and assistance support to the Investigating Officer making an inquiry about the age of any juvenile.

D. 'Diversion' for petty offences:

Article 40(3)(b) of CRC and Rule 11.1 of Beijing Rules state that wherever appropriate and desirable, CICL must be handled without resorting to judicial proceedings, while fully respecting human rights and legal safeguards. In short, it advocates enabling police/CWO to duly and reasonably exercise his discretionary power to dispose of the petty cases without resorting to proceedings before JJB.³¹ It is also termed as 'diversion' where a competent official, including police officer, promptly considers the issue of release.³² Any such diversion

²⁹ See Section 41-D of CrPC, 1973.

³⁰ *Court on its Own Motion v. Deptt. of Women and Child Development*, (2012) 129 DRJ 73.

³¹ Rule 11.2 of the Beijing Rules.

³² Rule 10.2 of the Beijing Rules.

often involved release of CICL with referral to appropriate community or other services, which is subject to consent by the concerned juvenile or his parents/guardian and, review by the competent authority upon application.³³ As highlighted by Rule 5.1 of the Tokyo Rules, the preconditions for exercise of any such power by police/SJPU are: a) it must be compatible with the legal system; b) formal proceedings before Court/Judge must not be necessary, reasonable or justifiable in the instant case, with due regard given to the “*protection of the society, crime prevention or the promotion of respect for the law and the rights of victims*”; c) for deciding the appropriateness of diversion, established criteria and specific guidelines must be laid down and followed; and d) for petty offences, certain non-custodial measures may be imposed. Further in relation to petty offences, Clause 5 of Riyadh Guidelines states that a child must not be penalized “*for behaviour that does not cause serious damage to his development or harm to others.*” Such petty offences are running away from the custody of a parent/guardian or escaping from the special home or observation home or from the care of a person under whom the CICL was placed under JJA. In relation to the latter, Section 23 of JJA states that any police officer may take charge without warrant of such juvenile and cause him to be sent back to the respective home or custodian, without the institution of any proceeding by reason of such escape. It is beyond doubt that diversion at pre-trial stage seeks to hinder the negative effects of detention and inquiry including restraint on holistic development of child through non-access to quality education, personal liberty, parental affection etc. In Rule 13(2)(d) of the Model Rules 2007, it is provided that JJB may dispose of cases of petty offences, if not already disposed of by SJPU or at the Police Station itself, through summary inquiry. Therefore, in indicating that SJPU is empowered to dispose of cases involving petty offences, it seeks to incorporate the internationally recognized principle of ‘diversion’. However, arguably, since JJA doesn’t contemplate exercise of any such power of diversion by SJPU/Police, in conferring this substantive power of diverting petty cases involving juveniles to SJPU, Model Rules 2007 are *ultra vires* the parental statute itself, and thus void to that extent.³⁴ Hence, it is humbly submitted that a requisite amendment in JJA along with the Model Rules be brought in stipulating and canalizing the power of SJPU/Police to divert and dispose of the juvenile cases involving *petty offences*, subject to review by JJB. Assistance from the ‘**Youth Offender Case Disposal Gravity Factor Matrix**’³⁵, as prepared by Association of Chief Police Officers (ACPO), U.K. for discerning whether to charge, caution or conditionally caution a youth for an offence under the **Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)**³⁶, may be adopted under JJA for guiding the

³³ Rules 11.3 and 11.4 of the Beijing Rules.

³⁴ Kerala Samsthana Chethu Thozhilali Union v. State of Kerala, (2006) 4 SCC 327 : AIR 2006 SC 3480.

³⁵ ACPO Youth Offender Case Disposal Gravity Factor Matrix, ACPO, available at <http://cps.gov.uk/legal/assets/uploads/files/Gravity%20Matrix%20May09.pdf> (Last visited on September 8, 2014).

³⁶ Section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”) which inserts Sections 66ZA and 66ZB into the Crime and Disorder Act 1998 (“the 1998 Act”)

discretion of police in assessing whether ‘diversion’ should be adopted for the offence in question.

E. Conditions of Arrest/Apprehension:

Section 23 of the Police Act 1861 confers general duty upon the police “*to detect and bring offences to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists.*” Rule 11(7) of the Model Rules 2007 empowers police or CWO to apprehend the juvenile only upon his alleged involvement in an offence entailing imprisonment of 7 years or more for adults (hereinafter, “serious offence”). Contrary to Rule 11(7), Rule 11(9) of the Model Rules 2007 states that in cases involving commission of non-serious offences (entailing imprisonment of less than 7 years for adults) or where apprehension isn’t in interest of the juvenile, the parents or guardian of the juvenile shall be intimated by the Police/CWO “*about forwarding the information regarding nature of offence alleged to be committed by their child or ward along with his socio-economic background to the JJB, which shall have the power to call the juvenile for subsequent hearings.*” This dichotomy between sub-rules 7 and 9 of Rule 11 of the Model Rules 2007 is perceivably based on the ‘principle of proportionality’ [imbibed within Rule 5.1 of the Beijing Rules] in relation to the offence committed. Therefore, while a serious offence is met with immediate apprehension, such restraint on freedom isn’t entailed qua non-serious offences.

Rule 11(7) of the Model Rules 2007 may be read with Section 41(ba) of CrPC 1973. Section 41(ba) empowers the police to arrest any person allegedly involved in commission of a serious offence without an order from the Magistrate and without a warrant only if credible information is received incriminating such person and the police “*has reason to believe on the basis of such information that the person has committed the said offence.*” Under Section 26 of Indian Penal Code 1860 (hereinafter, “IPC”), “*a person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise.*” Since the Model Rules 2007 are devoid of any similar provision, it is humbly submitted that a police officer (including CWO) may apprehend a child only upon receipt of credible information which, coupled with reason to believe that the child has committed a serious offence, incriminates such child. In other words, existence of the reasonably sufficient and credible information must be elemental to apprehending the juvenile in serious offences, for preventing misuse and arbitrary exercise of such power by police. Such an interpretation is in furtherance of Article 37(b) of CRC which mandates that no juvenile shall be subject to arbitrary or unlawful deprivation of his liberty. ‘Reasonability’ and ‘sufficiency’

Act”), provides for Youth Cautions as formal out-of-court disposals, an alternative to prosecution for young offenders (aged 10 to 17) in certain circumstances, and abolishes reprimands and warnings that together were known as the Final Warning Scheme.

of information received is a factual question, the answer to which must be based not on mere chance or suspicion but, on honest belief of commission of an offence based on the facts assessed with due care and caution. It is only when apprehension of juvenile is made on such bona fide belief formed after due care and caution that the action is presumed to be taken in 'good faith'³⁷ and the officer making arrest is protected from any legal action vide Section 67 of JJA. Otherwise, under Section 220, IPC, the officer must be liable to be prosecuted for keeping juvenile in confinement (for howsoever small duration may be) in maliciously acting contrary to law.

It is further submitted that JJA may be amended to state that even in case of existence of reasonably sufficient and credible information qua commission of any serious offence; the juvenile must not be arrested without an order from the JJB unless the arrest is immediately necessary:

- a) in the best interest of the child (for e.g., preventing the circumstances which are likely to being the child in association with any criminal, or expose him to moral, physical or psychological turpitude),³⁸ or
- b) to prevent such juvenile from committing any further offence, or
- c) to prevent such juvenile from violating the evidence, or dissuading witness to make a deposition, or
- d) unless such juvenile is arrested, his presence before JJB whenever required cannot be ensured.³⁹

It may also be noted that Section 41A of CrPC states that whenever arrest under Section 41 of CrPC is not required but credible information has been received of the commission of cognizable offence, the accused is to be served with a notice of appearance before police or at such other place as specified, non-compliance of which may result in his arrest. It is submitted that a similar provision may be made with respect to juveniles. Model Rules 2007 may be amended to state that in cases where the apprehension of juvenile is not immediately necessary in his best interest and so on (*above*), the juvenile and his parent/natural guardian must be served with a caution notice requiring his attendance along with parents/natural guardian before JJB which shall pass appropriate order in relation to the apprehension of juvenile. Only upon passing of such order by JJB should a juvenile be apprehended. Failure to comply with such notice should

³⁷ Section 52, IPC defines 'good faith' as "nothing is said to be done or believed in good faith which is done or believed without due care and caution."

³⁸ Rule 11(8) of the Model Rules 2007 state that where apprehending the juvenile is in his best interest, the police/CWO must treat him as CNCP and seek appropriate order from JJB under Rule 13(1)(b) for transfer of such juvenile to Child Welfare Committee (CWC).

³⁹ See Section 41(b)(ii) of CrPC.

also be a ground for apprehending juvenile and production before JJB seeking appropriate orders.

It is no exaggeration to state that the errant police officials resort to arbitrarily arresting juveniles, especially the ones loitering in the streets, often as a part of deliberate strategy to meet the number of arrests, colloquially called as *quota* usually set by the officer-in-charge of the concerned area, as required to exhibit their *vigilance* necessary for securing job-promotions.⁴⁰ The argument that such grotesqueness will be meted with punishment under Section 220 IPC is legally plausible yet ignorantly idealistic. Fabricating the essentialities of arrest may present no considerable hurdle to police, especially when a juvenile is concerned. Thus, protection against non-arbitrariness (under Article 14 of the Indian Constitution), or safeguarding right to life and liberty (under Articles 19 and 21 of Indian Constitution) of juveniles require the aforementioned built-in safeguard of seeking order from JJB to apprehend a CICL. It is submitted that Rule 11(7) as it presently stands violates Article 37(b) of CRC, which mandates that arrest shall be used only as a measure of last resort.

F. Manner of Arrest/Apprehension of CICL:

The foremost interaction of juveniles with the justice system is through the police. Hence, adoption by police of a humane and sensitized approach while handling juveniles is crucial for building the latter's belief in the rule of law, especially in Indian society where police is usually perceived as a victimizer. Beside this, Article 21 of the Constitution of India mandates that "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" It is well settled that the 'procedure established by law' under Article 21 must be just, fair and reasonable.⁴¹ In fact, in addition to procedural due process in Article 21, constitutional bench of Supreme Court in *Mithu v. State of Punjab*⁴², relying on *Bachan Singh v. State of Punjab*⁴³, also brought in substantive due process by holding that the 'law' under Article 21 must be 'valid', i.e. just, fair and reasonable. Further, 'life' under Article 21 of Indian Constitution

⁴⁰ Juvenile Justice, UNICEF International Child Development Centre, Innocenti Digest (Issue 3, January 1998), available at <http://www.unicef-irc.org/publications/pdf/digest3e.pdf> (Last visited on September 5, 2014).

⁴¹ *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545 : AIR 1986 SC 180; *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3 : (1974) 1 LLJ 172; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : (1978) 2 SCR 621; *M.H. Hoscot v. State of Maharashtra*, (1978) 3 SCC 544 : 1978 Cri LJ 1678; *Sunil Batra (1) v. Delhi Admn.*, (1978) 4 SCC 494 : 1978 Cri LJ 1741; *Sita Ram v. State of U.P.*, (1979) 2 SCC 656 : 1979 Cri LJ 659; *Hussainara Khatoon (4) v. State of Bihar*, (1980) 1 SCC 98 : 1979 Cri LJ 1045; *Hussainara Khatoon (2) v. State of Bihar*, (1980) 1 SCC 91; *Sunil Batra (2) v. Delhi Admn.*, (1980) 3 SCC 488 : 1980 Cri LJ 1099; *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 : (1980) 2 SCR 913 at 921-922; *Kasturi Lal Lakshmi Reddy v. State of J&K*, (1980) 4 SCC 1 : (1980) 3 SCR 1336; and *Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 Cri LJ 306.

⁴² *Mithu v. State of Punjab*, (1983) 2 SCC 277 : (1983) 2 SCR 690.

⁴³ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

has been given purposive and wide interpretation by the judiciary. Earlier constitutional benches of the Supreme Court have settled that ‘life’ is more than mere animal existence and includes ‘finer graces of human civilization’ which make human life qualitatively meaningful, complete and worth living.⁴⁴ Thus, any power to apprehend the juveniles must be exercised in a ‘just, fair and reasonable’ manner. Neither unnecessary restraint should be imposed nor force be employed in apprehending/arresting juveniles.⁴⁵ The principle of proportionality imbibed within Beijing Rule 5.1 must be adopted. Submission to custody on an oral intimation of apprehension shall be presumed⁴⁶; any type of force or beatings must not be employed⁴⁷; handcuffs, fetters etc. must not be used; a girl CICL can be apprehended only by a lady police officer; girl CICL must not be arrested after sunset and before sunrise unless exceptional circumstances exist wherein the CWO must obtain the prior permission of JJB within whose jurisdiction the offence is committed or the apprehension is to be made.⁴⁸

It is well established that the Fundamental Rights (including Article 21) have to be interpreted and given effect to in conformity with recognized sources of international law, especially in furtherance of Article 51(c) of Constitution.⁴⁹ Alternatively, protection afforded to juveniles by international covenants like CRC, Beijing Rules, etc. may constitute their human rights, even if not a part of their fundamental right to life and personal liberty. This is because, **Protection of Human Rights Act, 1993** defines “human rights” in Section 2(d) as “*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable*

⁴⁴ Kharak Singh v. State of U.P., AIR 1963 SC 1295; See Sunil Batra (1) v. Delhi Admn., (1978) 4 SCC 494 : AIR 1978 SC 1675; Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545 : AIR 1986 SC 180; P. Nalla Thampy Terah v. Union of India, 1985 Supp SCC 189 : AIR 1985 SC 1133; Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621.

⁴⁵ See Section 49, CrPC.

⁴⁶ Section 46(1)(proviso) of the CrPC states the same in relation to women offenders. It is submitted that the provision’s application be extended to children also.

⁴⁷ National Human Rights Commission Guidelines regarding Arrest, available at <http://nhrc.nic.in/Documents/Publications/guidearrest.pdf> (Last visited on September 8, 2014); Citizens’ Charter, Delhi Police, available at <http://delhipolice.nic.in/home/about/dpcharter.aspx> (Last visited on July 21, 2015). This has been adopted by almost all states/UTs in their respective Citizen’s Charters issued by Police Department.

⁴⁸ See Section 46(4), CrPC. It is submitted that its application in appropriate terms be extended to juveniles also.

⁴⁹ Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608; M. Nagaraj v. Union of India, (2006) 8 SCC 212; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; V.O. Tractoroexport v. Tarapore & Co., (1969) 3 SCC 562; Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360; Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534; Vellore Citizens’ Welfare Forum v. Union of India, (1996) 5 SCC 647; Vishaka v. State of Rajasthan, (1997) 6 SCC 241; People’s Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301; People’s Union for Civil Liberties v. Union of India, (1997) 3 SCC 433; Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759; Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551; People’s Union for Civil Liberties v. Union of India, (2005) 2 SCC 436; Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd., (2008) 13 SCC 30; Selvi v. State of Karnataka, (2010) 7 SCC 263.

by courts in India.” For instance, besides Article 5 of **UDHR**, Article 37(a) of CRC mandates that “*no child shall be subjected to torture or other cruel, inhuman or degrading treatment*” especially when being arrested. Similarly, Rule 10.3 of the Beijing Rules mandates management of contact between police and juveniles in a manner which respects rights of juveniles, promotes his/her well-being and pre-empts infliction of undue harm, including usage of any harsh language or physical violence. Compassion with kind firmness must be the guiding principles. Thus, in fact, police/CWO must refrain from using stigmatizing/accusatory diatribe like ‘criminal’, ‘delinquent’, ‘offender’ etc. for juveniles.⁵⁰ In furtherance of Article 37(c) of CRC, every child shall be treated humanely in a manner which takes into account his/her needs and respect for his/her human rights. Thus, any resistance offered by child while being arrested mustn’t be reciprocated by force; rather, Police/CWO may, for pacifying the child, be associated with respectable citizens, coordinate with juvenile’s parents, child psychologist etc. so that the child is not terrorized. In fact, Rule 63 of ‘**United Nations Rules for the Protection of Juveniles Deprived of their Liberty**’ (hereinafter, “Havana Rules”) states that “*recourse to instruments of restraint or force for any purpose should be prohibited...they should not cause humiliation or degradation, and should be used restrictively.*”

G. Post Apprehension:

Generally, the police/CWO isn’t required to register an FIR or file a charge-sheet against CICL, rather is merely required to maintain General Diary Entries (GDE). Registration of an FIR is, however, compulsory when the crime is of serious nature like rape, murder etc. or when it is allegedly committed jointly with adults.⁵¹ Police must provide a copy of FIR to CICL, his parents and/or guardian at the earliest to enable the child to explain the circumstances in which he came in conflict with law.⁵² In furtherance of Article 40(2)(ii) of CRC, the juvenile should be promptly informed of the full particulars of the charges against him either directly or through his parents/guardian, if appropriate. Right to be informed of the grounds of his apprehension and the charges against him is the fundamental right of a juvenile guaranteed under Article 22(1) of the Constitution of India besides Rule 7.1 of the Beijing Rules.

Meanwhile, upon apprehension of juvenile, the CWO/Police shall immediately inform the parents/guardian about the apprehension of the juvenile, about the address of JJB where the juvenile will be produced and the date and time when the parents/guardian need to be present before JJB.⁵³ If notification to parents/guardian/relative is not possible immediately, then they must be notified within

⁵⁰ Principle VIII, Rule 3(2) of the Model Rules 2007.

⁵¹ Rule 11(11) of the Model Rules 2007.

⁵² Rule 11(11) of the Model Rules 2007.

⁵³ Section 13(1) of JJA read with Rule 11(1)(b) of Model Rules 2007.

shortest possible time and reasons for delay are to be duly recorded.⁵⁴ This is in furtherance of juvenile's right to family protection, to the presence of parent/guardian⁵⁵, and to maintain contact with his family through correspondence and visits, save in exceptional circumstances.⁵⁶

Vide Section 10(1) of JJA read with Rule 11(1)(a), 11(2) and 11(3), CICL is to be placed under the charge of SJPU/CWO/DPO *immediately* upon his/her apprehension by police. Preferably, the girl CICL must be kept under the charge of a female CWO/SJPU. The juvenile, in no circumstance, can be lodged in a police jail or detained in lock-up.⁵⁷ Further, vide Article 37(c) of CRC, confinement of juvenile is to be separate from adults save in exceptional circumstances when considered appropriate in his/her own best interest. 'Detention' for juveniles is defined in Rule 2(f) of the Model Rules 2007 as "*protective custody in line with principles of restorative justice.*" Hence, they may be detained in an Observation Home, established under Section 8 of JJA for temporary reception of CICL pending grant of bail or completion of inquiry.⁵⁸ The police or CWO from SJPU or voluntary organization recognized under Rule 11(12) of Model Rules 2007 is exclusively responsible for the safety, maintenance, provision of food and basic amenities to CICL during the period for which such juveniles are kept under their charge/control.⁵⁹ During this period, causing any act of torture, assault, abandonment, exposure or willful neglect in a manner *likely* to cause such juvenile unnecessary mental or physical suffering is a cognizable offence⁶⁰ punishable under Section 23 of JJA. It is important to note that mere likelihood of such act resulting in suffering is sufficient for conviction, not the proof of actual suffering. In fact, Rule 13(2)(a) urges JJB to take corrective steps before initiation of inquiry in case of ill-treatment being meted out by police or by any other person, including providing a lawyer or probation officer to CICL at any point of time.

It is important to note that a CICL must be produced before JJB, either by CWO/DPO of SJPU or arresting police officer, without any loss of time but within a period of twenty-four hours of his/her apprehension excluding the time necessary for the journey from the place where the juvenile was apprehended to JJB. This is in furtherance of the juvenile's fundamental right guaranteed under Article 22(2) of the Constitution of India, recognized by JJA under Section 10(1) read with Rule 11(2) of the Model Rules 2007. When JJB is not sitting, the CICL may be produced before an individual member of the Board.⁶¹

⁵⁴ Rule 10.1 of the Beijing Rules.

⁵⁵ Rule 7.1 of the Beijing Rule.

⁵⁶ Article 37(c) of the CRC, Clause 17(b) of the National Charter for Children 2003.

⁵⁷ Section 10(1) of JJA read with Rule 11(3) of Model Rules 2007.

⁵⁸ Section 12(2) of JJA.

⁵⁹ Section 11 of JJA read with Rule 11(13) of the Model Rules 2007.

⁶⁰ Section 27 of JJA.

⁶¹ Section 5(2) of JJA read with Rule 11(10) of the Model Rules 2007.

Immediately upon apprehending juvenile, police/SJPU has to also inform the concerned probation officer to enable him to obtain information regarding the social background of the juvenile and other material circumstances likely to be of assistance to JJB for conducting the inquiry.⁶² The police report is then prepared by SJPU/Police, containing the social background of the juvenile and circumstances of apprehension and the alleged offence, which is forwarded to JJB before first hearing.⁶³ If the juvenile was apprehended in his best interest under Rule 11(8) of the Model Rules 2007, the police report must give details as to why such juvenile is to be treated as CNCP and seek appropriate order from JJB for transfer of such juvenile to CWC. In addition to Police Report, a social investigation report (S.I.R.) detailing the background and circumstances in which the juvenile is living, circumstances in which the juvenile came in conflict with law and the other factors in relation to such offence, though extraneous from positivist legal stand but socially relevant (viz. school career, educational experiences, etc.) and thereby deducing his best interest, is to be prepared by CWO/voluntary organization and submitted to JJB.⁶⁴ These social reports are of indispensable aid in legal proceedings and facilitate “*judicious adjudication of the case.*”⁶⁵ Any report including S.I.R. sought by CWO/SJPU/Police by JJB has to be submitted promptly and duly within the minimum possible time duration, for otherwise any delay would amount to infringement of right to speedy trial imbibed within Article 21 of the Constitution of India.⁶⁶ SJPU shall seek assistance from recognized voluntary organizations in matters concerning apprehension, preparation of reports including S.I.R., taking charge of juveniles until production, and at the time of producing juveniles before JJB.⁶⁷

H. Bail:

Custody of the apprehended CICL may not be handed over to its parents/guardian if: a) the bail is not granted, or b) it is averse to the best interest of juvenile. Grant of bail is the rule and its refusal an exception under Section 12 of JJA. Notwithstanding anything contained in CrPC, officer-in-charge of the Police Station is mandated to release any juvenile accused of bailable/non-bailable offence on bail “*unless such release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or otherwise defeat the ends of justice.*”⁶⁸ The said exceptions are exhaustive with respect to the aforementioned general rule regarding grant of bail.⁶⁹ If not bail, other alternatives to pre-trial detention must be adopted (save in exceptional

⁶² Section 13(b) of JJA read with Rule 11(1)(c) of Model Rules 2007.

⁶³ Rule 11(11) of the Model Rules 2007.

⁶⁴ Rule 16.1 of the Beijing Rules, read with commentary annexed thereto.

⁶⁵ Id.

⁶⁶ *Sheela Barse (2) v. Union of India*, (1986) 3 SCC 632 relying on *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 81 : (1979) 3 SCR 169.

⁶⁷ Rule 84(8) of the Model Rules 2007.

⁶⁸ Section 12(1) of JJA.

⁶⁹ *Mohd. Feroz v. State*, (2005) 4 RCR (Cri) 205 (Del).

circumstances aforementioned) viz. placing juvenile under the supervision of a probation officer or under the care of any ‘fit institution’ or ‘fit person’, as defined in Sections 2(h) and 2(i) of JJA respectively.⁷⁰

Nevertheless, scope and operation of aforementioned exceptions are to be strictly construed, for non-grant of bail and corresponding pre-trial detention is a measure of last resort which should be avoided to the maximum extent possible and if used, must be limited to exceptional cases for minimum necessary period.⁷¹ Reliance on any such exception is to be justified on grounds of fairness, reasonability, credibility and objectivity for preventing misuse of such power. Mere apprehension without any objectively reasonable basis that apprehended juvenile, if released on bail, will commit further offence(s)⁷², or will not be able to be traced or produced before JJB, must be no ground for rejection of bail, for otherwise arbitrary violations of juveniles’ right to bail under Section 12, JJA will ensue.⁷³

Similarly, gravity of the alleged offences is not a relevant consideration for the grant of bail.⁷⁴ In *Abhishek v. State*⁷⁵, the Delhi High Court purposively interpreted ‘ends of justice’ under Section 12(1), JJA in light of preamble, statement of object and reasons, and other provisions of the JJA. Thus, the Court held that:

“[T]he purpose of JJA is to meet the need of care and protection of children and to cater to their development needs. Therefore if there is a factor which requires the Court to keep the child in custody for meeting the developmental needs of the child or for his rehabilitation, or for his care and protection then only it can be said that his release would defeat the ends of justice.”

It is submitted that such an interpretation is in contradistinction to the Rule 6.1 of ‘**United Nations Standard Minimum Rules for Non-custodial Measures**’ (hereinafter, “Tokyo Rules”) vide which pre-trial detention may be used if the release of apprehended juvenile will be harmful for protection of society or victim, or to the goals of investigation. Nevertheless, in restricting further the scope of exceptions to grant of bail, and in furthering the juvenile welfare in sync with spirit of JJA, CRC and several other international instruments, it is submitted that the said interpretation of Delhi High Court was welcoming.

⁷⁰ Section 12(1) of JJA read with Rule 6.2 of Tokyo Rules.

⁷¹ Rules 2 and 17 of Havana Rules, Rules 6.1 and 6.2 of Tokyo Rules, Article 37(b) of CRC.

⁷² Navin Panwar v. State, (1994) 3 RCR (Cri) 577 (Del).

⁷³ Juvenile Justice, supra note 40.

⁷⁴ Manoj v. State, (2006) 4 RCR (Cri) 584 (Del); Nand Kishore v. State, (2006) 4 RCR (Cri) 754 (Del); Niku Chaubey v. State, (2006) 3 RCR (Cri) 372 (Del); Sandeep v. State of NCT of Delhi, (2008) 1 RCR (Cri) 146 (Del).

⁷⁵ Abhishek v. State, (2005) 119 DLT 556 (Del).

I. Facilitating provision of Legal Aid:

Right to legal aid is judicially interpreted as imbibed within free and fair trial as part of the due process under right to life and personal liberty in Article 21 of the Constitution of India.⁷⁶ Section 13(1) read with Entry (c) in Section 12 of **Legal Services Authorities Act 1987** (“LSAA”) entitles every child to obtain quality ‘legal services’ for free so that the opportunity of securing justice is not denied to such child. ‘Legal Services’ is defined in Section 2(c) of LSAA 1987 as including “*rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.*” Thus, legal aid for children is not limited to mere representation through counsel before JJB; rather, it includes getting any advice on any legal matter qua interrogation, inquiry, etc. Vide Article 40(2)(ii) of CRC, CICL is entitled to legal or other appropriate assistance in the preparation and presentation of his defence. Under Article 37(d) of CRC, “*every child deprived of his liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*” Thus, CICL must be provided with prompt quality legal aid service and also ‘other appropriate assistance’ including medical aid, interpreter (if the child cannot understand language), etc. However, incomplete statistics with respect to CICL are a hindrance to a progressive approach towards effectuating provision to legal aid to each and every CICL. Therefore, in *Sampurna Behrua*⁷⁷, Supreme Court, vide its order dated 19th August 2012 observed the need for CWO/SJPU to religiously maintain information relating to the number of CICL in each district, the nature of offences they are accused of, the period which they have spent in detention and other corresponding particulars so as to effectively plan and implement a scheme for providing legal aid.

J. Protection of juveniles:

It is the general duty of the police to guide and assist helpless children, and deal with any child, be it CICL or CNCP with strict regard to decency, reasonable gentleness, humanity and sensitivity.⁷⁸ Article 39(e) and (f) of the Constitution of India direct the State to ensure that childhood and youth are protected against exploitation and abandonment. Section 58(f) of the Draft Model Police Act, 2006 mandates police to render all requisite assistance to children against criminal exploitation by any person or organized group. Ideally, the police must adopt a

⁷⁶ *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 81.

⁷⁷ *Sampurna Behrua*, (2011) 15 SCC 232, Order passed by Division Bench of Hon’ble Supreme Court on August 19, 2012.

⁷⁸ Section 60(l) in Delhi Police Act 1978, Section 66(e) in Bombay Police Act 1951, Sections 58(a) and (b) of Model Police Act 2006, Sections 44(4) and (8) of the Model Police Bill, National Police Commission.

proactive approach in striving to protect juveniles from victimization for juveniles are presumably incapable to defend themselves. Frequent patrolling by police officers of SJPU in crime prone areas, special emergency response qua any police complaint in relation to potential victimization of juvenile, serious cognizance of adult perpetrators of crimes against children⁷⁹, prompt, thorough and impartial investigation into such allegations⁸⁰, etc. are elemental to reinforcing juveniles' trust in the criminal justice system. Such measures require full mobilization of all possible resources including state instrumentalities (viz. police, government organizations etc.), and community institutions (viz. family, volunteers, community groups, schools, etc.) for not only protecting juveniles and preventing such circumstances in which they may come in conflict with law, but also to minimize the need for intervention of law and criminal justice system.⁸¹ Beside this, access to SJPU/CWO must be improvised through prominently displaying all DPO/CWO in a district and members of SJPU with their contact details in every police station.⁸² Lastly, it must be noted that securing the right to privacy and confidentiality of child through all stages of implementation of the provisions of JJA is fundamental to the spirit of juvenile justice.⁸³ Therefore, it shall be the duty of the CWO concerned that the records of the CICL must be kept confidential, no information that may lead to identification of CICL be published or made public directly or indirectly and that no stigmatic exposure or publicity or labeling is caused to CICL.

VI. CONCLUSION:

While the academic discussion pertaining to SJPU and its constitution, training and functions has been elaborately discussed, the ground realities outside the scope of the present study have still not surfaced. On records, SJPU are deputed in police stations of almost each district of thirty three states and UTs; however, many of these are either non-existent or dormant in practicality. It needs to be remembered that SJPU were constituted as a humanized and a sensitized buffer between juveniles and police (since police is presumably ruthless in its approach). Therefore, if the SJPU are not proactive or passionate about upholding the rights and dignity of juveniles, the system is bound to be unsuccessful. JJA and corresponding Model Rules 2007 also speak of selecting a police officer with *appropriate attitude, training and orientation* as CWO/DPO; presumably because such aptitude and orientation as makes CWO/DPO passionate about the cause of juveniles is indispensable. Nevertheless, it needs to be noted that no elaborate guidelines have been framed on how such aptitude or orientation may be assessed and thus, propitiously rewarded.

⁷⁹ Rule 84(6, 11) of the Model Rules 2007.

⁸⁰ Guideline 25 of the ECOSOC Guidelines.

⁸¹ Rule 1.3 of the Beijing Rules.

⁸² Rule 11(4) of the Model Rules 2007.

⁸³ Rule 3(2)(XI) of the Model Rules 2007.