

# Juvenile Justice in India

## Policy and Implementation Dilemmas

3 June 2015

Bharti Ali

Co-Director

HAQ: Centre for Child Rights

[bharti@haqcrc.org](mailto:bharti@haqcrc.org)

[www.haqcrc.org](http://www.haqcrc.org)



# **Two categories of children covered under the law...**

- **Children in Need of Care and Protection (CNCP)**
- **Juveniles in Conflict with Law (CICL)**

## **The law**

**takes care of children in need of care and protection to prevent them from coming in conflict with the law**

# The law provides for:

- Care, Protection and Rehabilitation of CNCs and CILs
- Reducing deprivation of liberty to bare minimum and only in the best interest of the child
- Basing the treatment of CILs on the principles of diversion and restorative justice

Indian Law is less punitive towards juveniles than justice systems in other jurisdictions.

But the minimum age of criminal responsibility remains as low as 7 years.

# Statutory bodies under the law

For Inquiry	For Police Investigation	For Administration of the JJ system
Child Welfare Committee (CWC) in the case of CNCP	Special Juvenile Police Units (SJPU) at the District Level	State Child Protection Society
Juvenile Justice Board (JJB) in the case of CICL	Designated Juvenile Welfare Officers (JWO) in every police station	District Child protection Units

# Some Progressive Measures – India can lead the World

**Juvenile Justice Boards (JJBs) to hear and dispose of cases regardless of the nature of offence committed by a minor.**

*By contrast, in England & Wales, while most minors are dealt with in youth courts, a juvenile's trial may take place in an adult court in matters where the juvenile is charged with homicide, where the juvenile is charged with certain specified offences with maximum sentences of over 14 years, and where the juvenile is charged alongside an adult.*

*(Blackstone's Criminal Practice 2007, Section D-22).*

***No child in the Indian JJ system can be allowed to plead guilty in order to achieve a result which otherwise cannot be obtained for want of sufficient evidence to prosecute a matter.***

**The accused child's right to a fair trial and due process is followed as far as possible.**

This reduces the risk of children being unduly influenced into accepting responsibility for an offence.

# Diversion and Restorative Justice in the Indian Law

- **Use of non-stigmatising terminology** – e.g. no arrest, only apprehension; no trial, only inquiry
- **Erasure of records**
- **Privacy and Confidentiality** of CICL – action against media reports disclosing identity of a CICL
- **No disqualification** from employment or education
- **No FIR against a juvenile for petty offences** that carry a maximum sentence of less than seven years in the case of an adult.
- **No joint proceedings of a juvenile and adult**



- **Dispositional Alternatives – Section 15 of JJ Act:**
  - Releasing the child on advice or admonition
  - Directing him/her to perform community service
  - Putting him/her through counseling process
  - Releasing him/her under probation
  - Directing him/her to pay fine if the child is above the age of 14 years and has been in employment
  - Detention for a maximum period of three years
- **No death sentence or imprisonment which may extend to life.**
  - Here, Indian law is in consonance with the law in some EU countries, e.g. Italy, where imposing life imprisonment on a juvenile is considered "cruel and unusual punishment".  
([http://www.howardleague.org/fileadmin/howard\\_league/user/online\\_publication\\_s/Punishing\\_Children.pdf](http://www.howardleague.org/fileadmin/howard_league/user/online_publication_s/Punishing_Children.pdf))
- **Children cannot be detained in facilities meant for adults.**
  - Many other jurisdictions also impose a strict separation between adult and juvenile detention facilities.

# Rehabilitation and Standards of Care

- **Principle of positive measures** is meant to guide rehabilitation, restoration and social reintegration of children
- **Alternatives to institutionalisation** include sponsorship, foster care and adoption
- **Mandatory registration of child care institutions** and services dealing with children
- **Chapter VI of the 2007 JJ Rules** - Minimum standards of care to be followed by child care institutions on the following aspects:
  - **Infrastructure and space**
  - **Basic civic amenities/facilities**
  - **Clothing and Bedding**
  - **Nutrition**
  - **Medical Care**
  - **Mental Health Care**
  - **Education**
  - **Vocational Training**
  - **Recreation Facilities**
  - **Preparation of individual case files and care plans (pre and post release and follow-up plan)**
  - **Restoration and follow-up (part of care plans; quarterly follow-up post restoration for two years)**
  - **Management of institution**
  - **Children's participation in the management and monitoring of the institution**
  - **Dealing with abuse and exploitation within the institution**
  - **Dealing with children suffering from dangerous diseases or mental health problems**
  - **Appropriate Staffing**
  - **Maintenance of Registers**
  - **Regular visits by CWC Members**
  - **Maintenance of Visitor's Book**
  - **Inspection**
  - **Social Audit**

# What is Lacking if All is Well...

- **Law is not implemented properly.**
  - In practice, counseling services, education, vocational training and rehabilitation of children in the juvenile justice system is still a distant dream.
  - All districts do not have a CWC and a JJB as mandated in law
  - Selection of members to CWCs and JJBs is not fair and transparent
  - In many States, JJBs are headed by Chief Judicial Magistrates, who is supposed to be the monitoring and supervisory authority for the JJB
  - Dearth of Probation Officers, Social Workers, Mental health professionals, Teachers and Instructors, Special educators De-addiction facilities exclusively for children

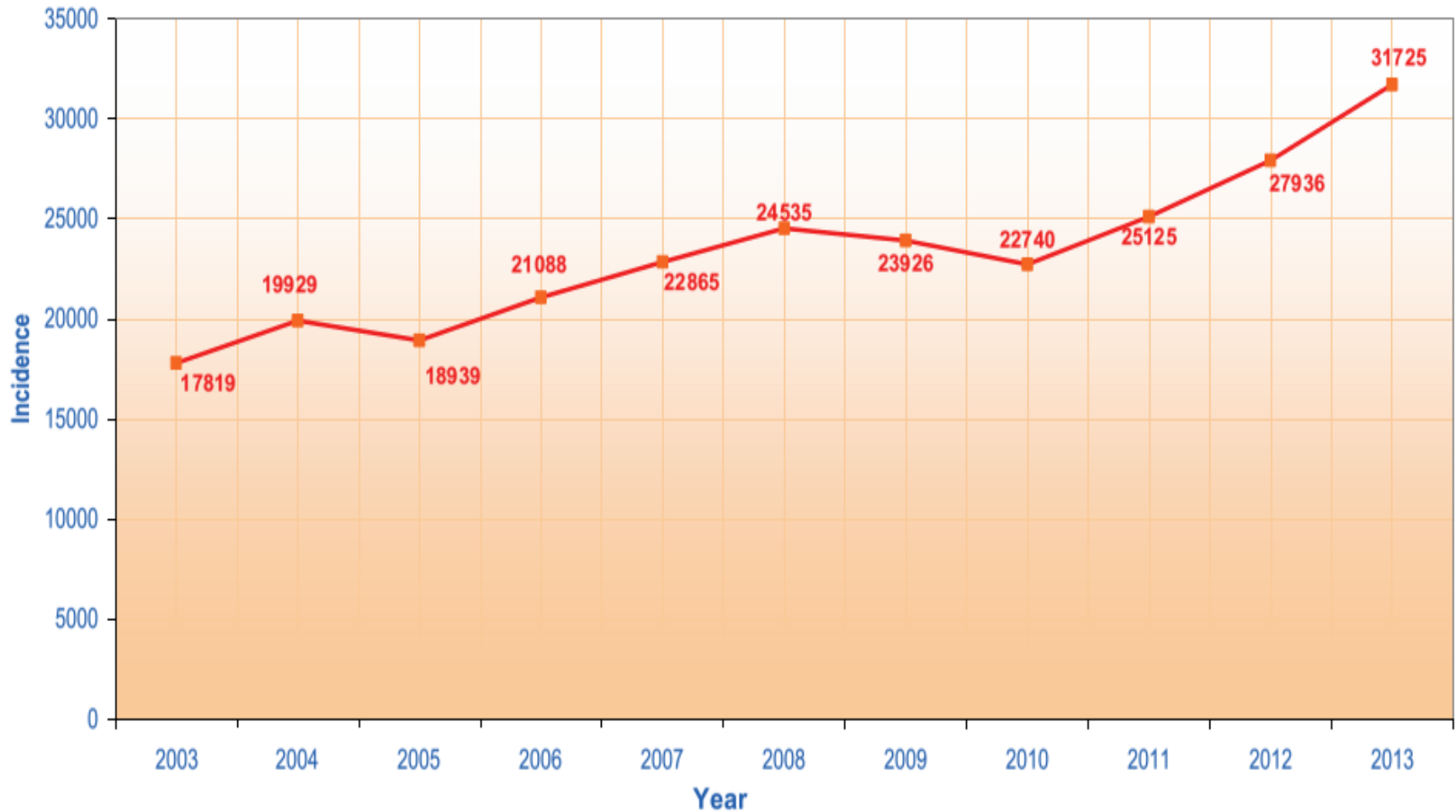
# CNCPs remain the most neglected...

- No vulnerability mapping
- No sponsorship programme at the national level. No rules or guidelines established. States too have failed to develop suitable schemes on sponsorship.
- No national foster care programme.
- Adoption promoted as the main alternative to institutionalisation, ending up as a lucrative trade. Surrender of children by their own parents finds a justification in law. Children continue to be procured illegally or through fraud for adoption.
- Children with special needs are last on the government's priority as this requires huge investment in infrastructure, manpower and other resources.
- In fact children in the 0-6 age category with minor and correctible disabilities are put up for international adoption as a matter of state policy so that the government is not burdened to spend on them.
- No after care programme to help CNCP and CICLs transition from childhood to adulthood smoothly.

**In other words failure to address prevention has lead to increased involvement of children in crimes.**

## Juvenile in conflict with law under IPC crimes during 2003 - 2013

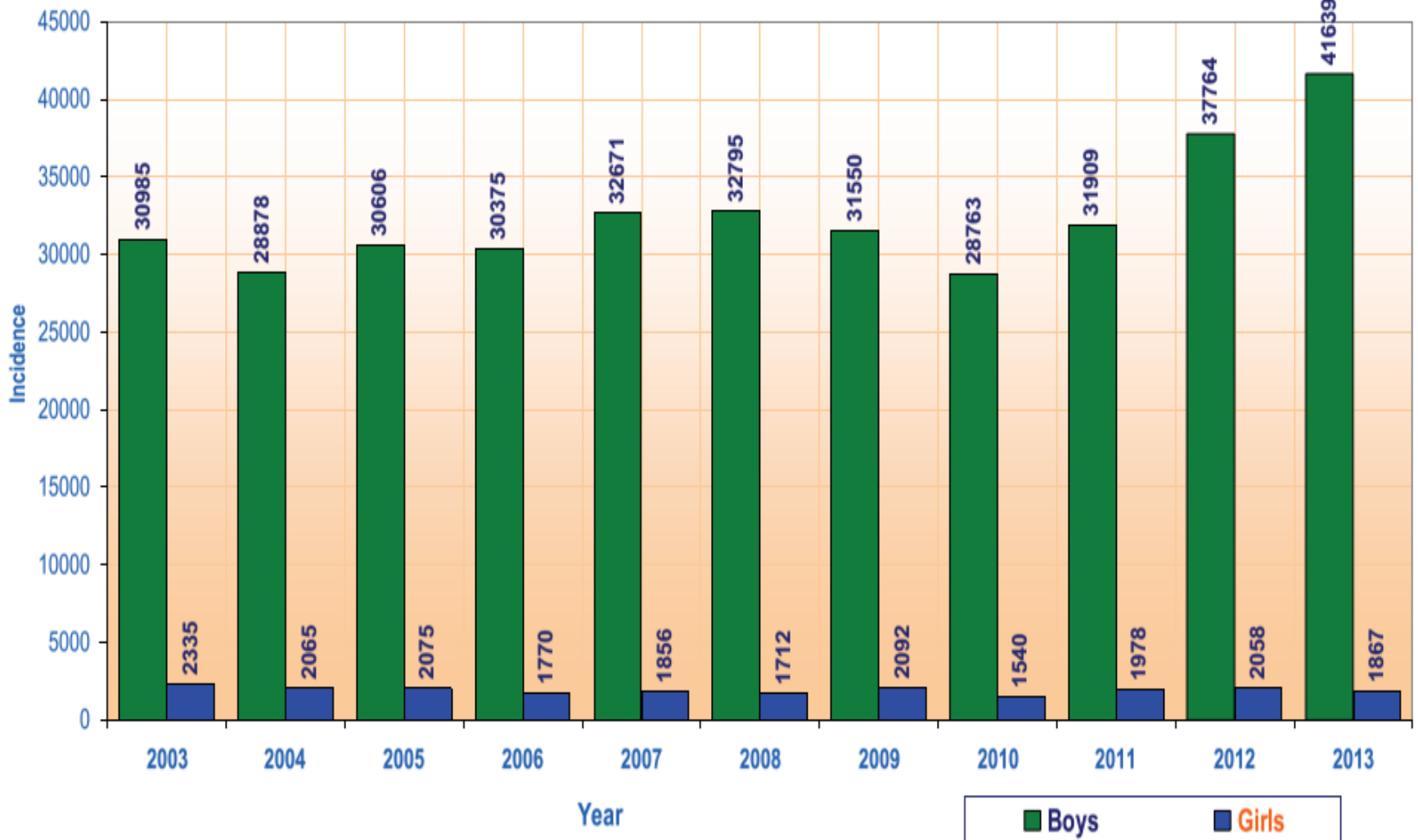
Figure 10.1



Source: Crime in India Publications, 2003-2013, National Crime Records Bureau, Ministry of Home Affairs, Govt. of India

# Juveniles apprehended under IPC & SLL crimes 2003-2013

Figure 10.2

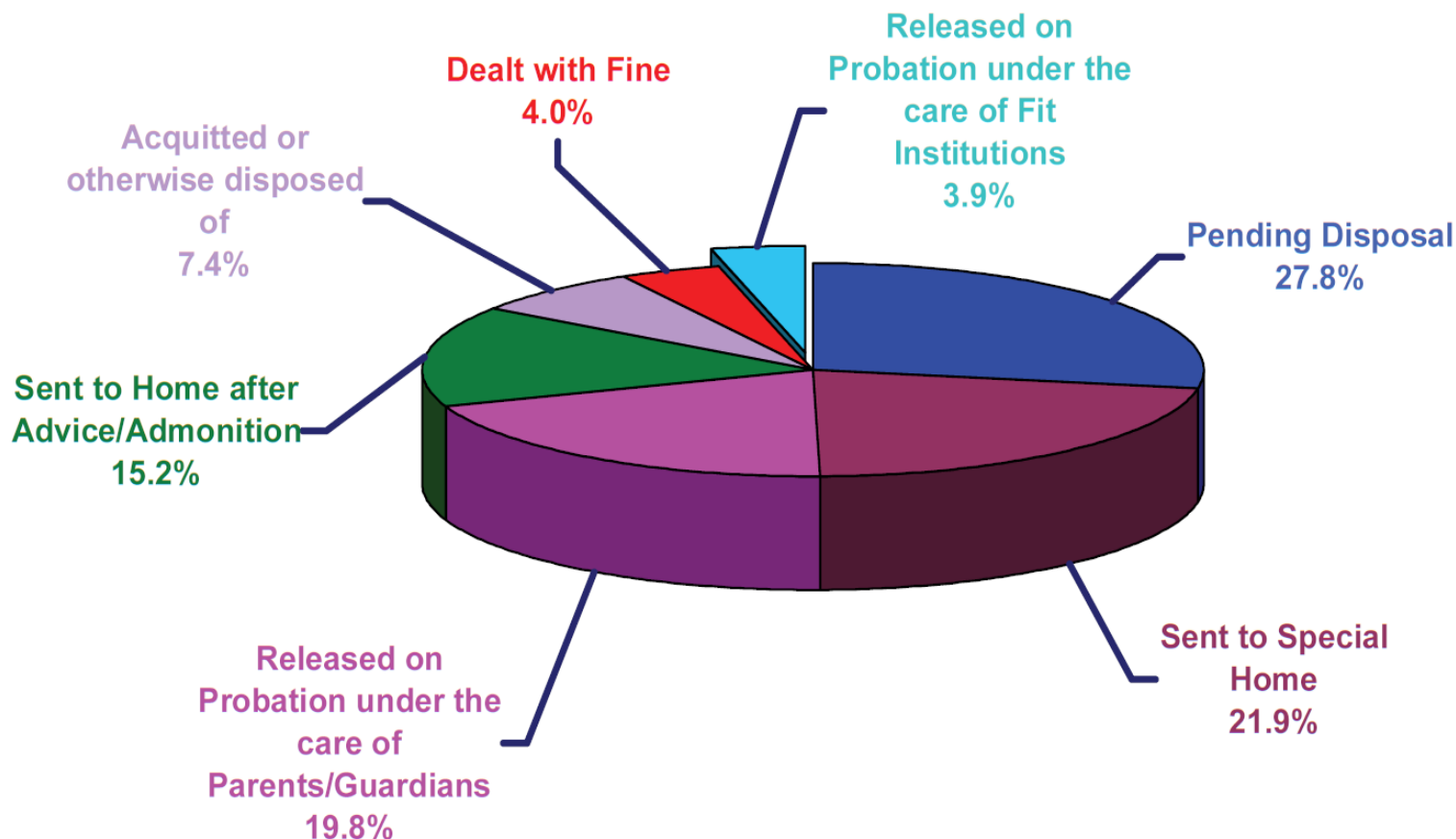


Source: Crime in India Publications, 2003-2013, National Crime Records Bureau, Ministry of Home Affairs, Govt. of India

# Juvenile crimes make 1.2% of all crimes in the country. But even this miniscule number gets a raw deal ...

## Disposal of juveniles apprehended during 2013

Figure 10.3



## The chart shows:

- Poor use of dispositional alternatives
- No information available on use of counselling, de-addiction programmes, orders for community service etc.
- Indeed no information is maintained by the Juvenile Justice Boards on follow-up post release.



## Violations in abundance...

- Parents of the juvenile, particularly older juveniles, are not informed promptly or directed to appear before the Juvenile Justice Board (JJB).
- Children kept in police custody for interrogation even before a case is registered.
- Police and judiciary continue to follow the archaic and rigorous procedures laid down in India's Criminal Procedure Code.
- Children continue to be sent to adult prisons.
- Poor access to and quality of legal aid.

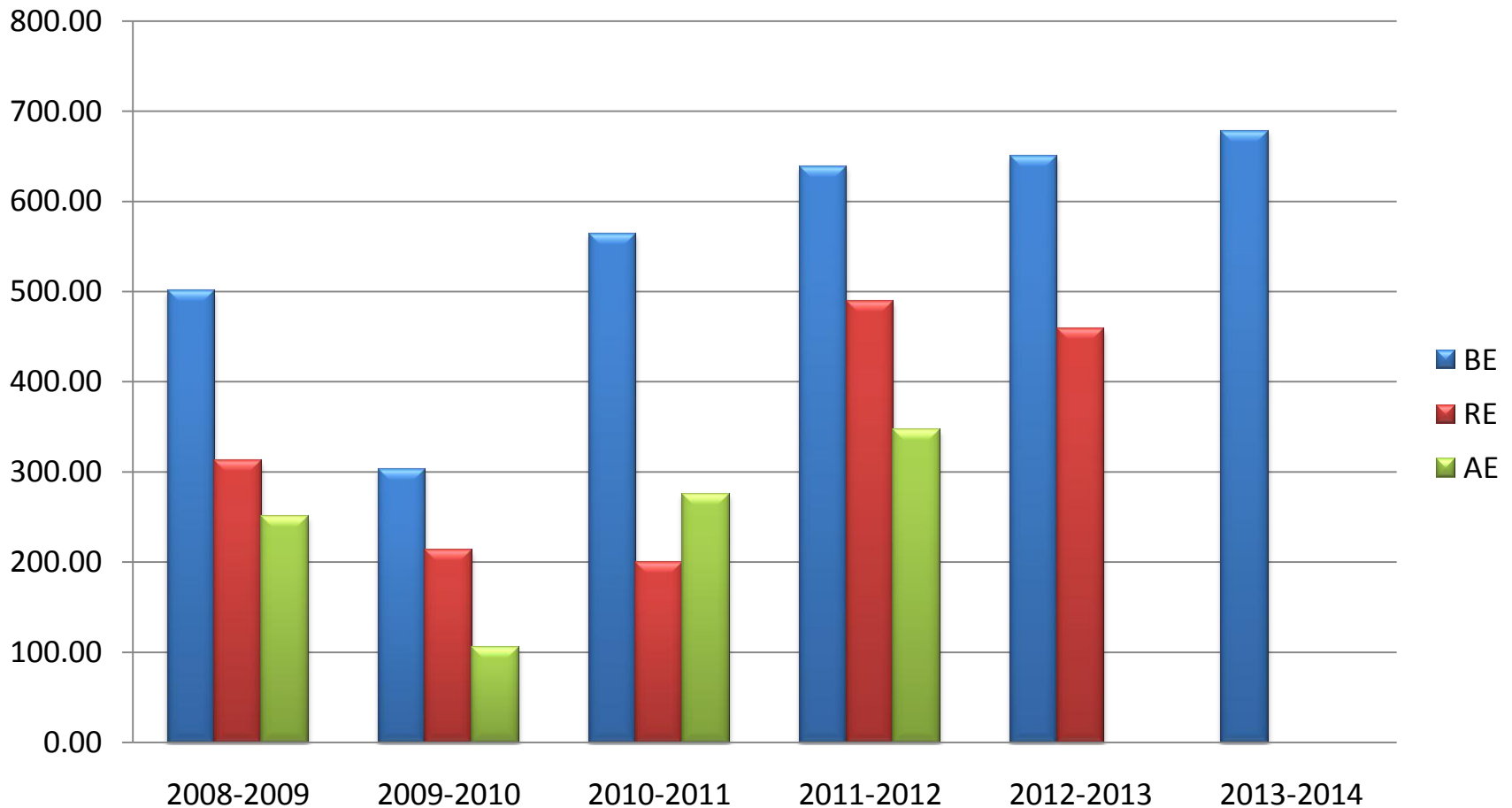
## Larger Policy concerns ...

- Non-achievement of goals of 100% birth registration affects protection rights of children who do not have a birth certificate
  - the proof of identity and age.
- Non-national children continue to languish in institutions due failure on the part of authorities in India and the country concerned to expedite matters.
- Poor investment; underutilisation of funds; huge cuts in schemes for women and children.

While the 300% increase in rapes by juveniles in the last decade became the headline in national dailies and part of common man's dinner table discussion, none talked about how much INDIA as a NATION has invested in juvenile justice.

# What does India invest in child protection...

## BE, RE, & AE in Child Protection (in Crore)



Note: BE – Budget Estimates, RE – Revised Estimates, AE – Actual Expenditure

Source: Budget for Children (BfC) Analysis carried out by HAQ: Centre for Child Rights based on the Demands for Grants of MWCD.

**In the last ten years the average expenditure of the Central Government on child protection has been under 3 paise out of every 100 Rupees it spent.**

“This covers Juvenile Justice System, child labour and provision for orphan and street children. These low investments result in different financial outlays in different states. The training support is not uniform and the secretariat support to CWC and JJB is limited and most importantly the investment into developing infrastructure is negligible. The percentage share of children’s budget within the Union Budget has been reduced from 4.76% in 2012- 13 to 4.64% in 2013-14”

[Department-Related Parliamentary Standing Committee on Human Resource Development, 264<sup>th</sup> Report, para 3.44,



# ICPS – the vehicle for implementing juvenile justice

- The Integrated Child Protection Scheme (ICPS) is the main scheme which provides the financial resources for implementing various child protection laws, including the law on juvenile justice.
- However, budget for the ICPS continues to remain inadequate and underutilisation of existing funds remains a glaring gap.

- In 2013-14, not only did the budget estimates for ICPS go down to about 296 Crore Indian Rupees, even the meagre allocations could not be spent by the states.
- Budget 2015-16 allocates 4022.3 million Indian Rupees for the ICPS - only a 0.5% increase from the allocation made in 2014-15 (INR 4000 million). It is still short of the requirement as per the revised financial norms set out for various components in the scheme.
  - **INR 3633 million needed** just to meet the cost of setting up a State Child Protection Society (SCPS) in the 35 states, and a District Child Protection Unit (DCPU), a Child Welfare Committee (CWC), a Juvenile Justice Board (JJB) in 675 districts
  - **Actual costs far exceed the existing allocations if only the recurring costs of other components of ICPS are added, viz.** Central Adoption Resource Authority (CARA), State Adoption Resource Agencies (SARA), Childline mother NGO, Regional Centres of Childline and Childline services on ground, National Institute for Public Cooperation & Child Development (NIPCCD) and its Regional Centres, various institutions for children, non-institutional care other than adoption such as foster care and sponsorship, and the Central Project Support Unit located in the Ministry of Women and Child Development.

Source: Ministry of Women and Child Development, Government of India, *Revised Integrated Child Protection Scheme (ICPS)*, Annexures, pp 76-140,

Available on: [wcd.nic.in/icpsmon/pdf/icps/final\\_icps.pdf](http://wcd.nic.in/icpsmon/pdf/icps/final_icps.pdf)  
and Budget for Children Analysis carried out by HAQ: Centre for C



## **Under spending has become a trend!**

### **As per the Appropriation Accounts...**

#### **2009-2010**

INR 60 million remained unutilized under schemes for the benefit of North Eastern Region and Sikkim.

INR 113.656 million remained unutilized due to delay in finalization of Memorandum of Understanding with States and Union Territories.

#### **2010-2011**

Saving of INR 37.127 million in GIA (against the sanction provision of INR 220 million) due to non-setting up of Central Project Support Unit and non-receipt of demand from CARA and NIPCCD.

Saving of INR 1466.302 million and INR 45.549 million in State and UT component (against the sanctioned provision of INR 2400 million and INR 80 million) due to delay in signing of MoUs and non-receipt of detailed proposals or receipt of less number of viable proposals from the States and Union Territories.

#### **2011-2012**

Saving of INR 657.063 million in State and UT component (against the sanctioned provision of INR 2430 million) due to receipt of less number of viable proposals from the implementing agencies, States and Union Territories.

## CRC Committee reviewing India's report observed:

### 2000

**13. The Committee recommends the State party to take all necessary measures, including the allocation of the required resources (i.e. human and financial) to ensure and strengthen the effective implementation of existing legislation.**

### 2004

**12. The Committee recommends that the State party:**

- **(a) Make every effort to increase the proportion of the budget allocated to the realization of children's rights to the "maximum extent ... of available resources" and, in this context, to ensure the provision, ...**

### 2014

**17. ... *The budgetary allocations do not adequately take into consideration child protection needs. There is also mismanagement of allocated resources, a problem which is exacerbated by high level of corruption and the lack of effective monitoring and evaluation systems.***

**18. In the light of its Day of General Discussion in 2007 on "Resources for the Rights of the Child – Responsibility of States" and with emphasis on articles 2, 3, 4 and 6 of the Convention, the Committee recommends that the State party:**

- **(a) Increase substantially the allocations in all social sectors, in particular education, health and child protection, including earmarked resources for children at the federal and state level;**
- **(b) Establish a budgeting process, which includes a child rights perspective and specifies clear allocations to children in the relevant sectors and agencies, including specific indicators and a tracking system;**
- **(c) Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention at the federal and state level; and**
- **(d) Take all necessary measures to prevent and combat corruption.**



# Governance of Convenience...

- In countries where morality guides the sense of 'right' and 'wrong' and is a more cherished value than respect for human rights it is the populist vote that charts the course of governance.
- 'Convenience' becomes the rule, putting all human rights commitments and international standards and norms at stake.
- Retributive measures find place in law and are justified as having a deterrent effect.
- Even evidence to the contrary is overlooked.
- Research too is diverted in directions that suit public morality.
- Even the best of democracies fail the most poor and the vulnerable, especially children who have no political vote.

# **For Governments wanting to ensure a safer society by investing in juvenile justice, the Guiding Questions must be ...**

- Is there a clear vision of the outcomes that need to be achieved for children and society?**

Without a clear picture in mind of what we want to accomplish, youth justice policies are vulnerable to emotion and knee jerk reactions that end up having a negative impact.

- **Is there data to understand what the current system looks like in practice, and to understand the baseline point from which we need to move forward?**
- **Do the existing services deliver value for money to the public?**
- **If no, how do we wish to measure the improvements to be made for the children, the level of security felt by the population and the level of youth crime?**
- **How else do we establish where we want to concentrate our resources?**

Source: **Marianne Moore (2013)**, International Juvenile Justice Observatory (IJJO), SAVE MONEY, PROTECT SOCIETY AND REALISE YOUTH POTENTIAL, IMPROVING YOUTH JUSTICE SYSTEMS DURING A TIME OF ECONOMIC CRISIS, The European Council for Juvenile Justice White Paper, July 2013. Available on: [http://www.oijj.org/sites/default/files/white\\_paper\\_publication.pdf](http://www.oijj.org/sites/default/files/white_paper_publication.pdf)

- A 2011 study of the US Department of Justice concluded, “Longer stays in juvenile institutions do not reduce recidivism, and some youth, who had the lowest offending levels, reported committing more crimes after being incarcerated.
- Instead of investing in juvenile justice adequately, countries tend to believe that incarceration will achieve the objective of deterrence necessary to achieve the goal of public safety. But there is little evidence to support this contention.
- Research clearly points out that in the wake of economic crisis, it is only prudent to invest in **prevention of juvenile delinquency, review spending on youth criminal justice systems, and target resources away from detention and towards policies of prevention and diversion.**

**In Toronto, Canada,** PACT (Participation, Acknowledgement, Commitment and Transformation), a Life Plan Coaching Programme showed that for an investment of \$5,000 (Canadian) for turning around the life of one habitual offender it can save society \$2 million (Canadian) over the course of the offender's lifetime.

**In Estonia,** the cost of probation supervision is €30 per month, while the cost of a prisoner is about €300 per month.

**In Romania,** the cost for one probation client is estimated at €143 per year, while the average cost of one prisoner is € 1,685 per year, meaning that probation is at least ten times cheaper than prison.

**In the USA,** the Washington State Institute for Public Policy (WSIPP) found that:

- Every dollar invested in aggression replacement training was estimated to yield almost \$45 in total benefits.
- Every dollar invested in multi-systemic therapy is estimated to yield almost \$28 in total benefits.
- Functional family therapy (FFT), with estimated net cost of \$2,161 per participant, yielded benefits of \$59,067 per participant.
- Multidimensional treatment foster care (MTFC) with an estimated net cost of \$2,052 per participant, yielded benefits of \$87,622.

Source: Marianne Moore (2013), SAVE MONEY, PROTECT SOCIETY AND REALISE YOUTH POTENTIAL, IMPROVING YOUTH JUSTICE SYSTEMS DURING A TIME OF ECONOMIC CRISIS, The European Council for Juvenile Justice White Paper, July 2013, IJJO. Available on: [http://www.oijj.org/sites/default/files/white\\_paper\\_publication.pdf](http://www.oijj.org/sites/default/files/white_paper_publication.pdf)

**What does it mean for any  
Government to invest in diversion  
and restorative justice measures?**

**A simple demonstration shows the  
way out**

<b>Release on Advice and Admonition</b>	<b>NO costs involved</b>
<b>Release on orders of community service</b>	<b>NO costs involved</b>
<b>Education</b>	<b>Convergence and coordination with education ministry/department/private service providers</b>
<b>Vocational Training</b>	<b>Convergence and coordination with skill development or youth empowerment ministry/department/private service providers Tie-up with Business houses/corporate firms to provide vocational training. Therefore, costs can be ZERO or very low.</b>
<b>De-addiction</b>	<b>Convergence and coordination with health ministry/department/private service providers</b>
<b>Mental Health</b>	<b>Convergence and coordination with health ministry/department/private service providers</b>

# Voices of Children

**“Pinna kalathana maadi jailige hoguthivi, chinna kalathana madakke kalakondur barthivi.” (We may go in for stealing only a pin, but when we come out, we would have learnt to steal gold)**

**“We learn everything from adults. From people who take drugs, we learn to take drugs, from people who make bombs we learn to make bombs. And that is what we will learn when you send us to jail. So if you send us to jail, we will become like them.”**

**“Experience is the best teacher. We learn only through experience, the current juvenile justice gives us the opportunity to learn a lesson from that experience and reform”**

**“Nobody asks us our thoughts, feelings or opinions in a friendly or humane manner. Reform can happen only if people who are in the system (police, parents, judges, etc) talk to us, understand our problems and help us find the way out.”**

**“When I look at so many leaders in our country, I feel and know that many of them have made many mistakes – big and small in their lives. Yet, have they not turned their lives around and become leaders, and are they not doing great things for our country? Please give young people a chance and we will also show you what good we can do for this country. Please do not kill our spirit and hopes by sending us to jail. Help us, guide us, advise us, support us and show us the right path – don’t condemn us to a life in jail.”**

**These statements emerged during a focus group discussion and interview with young persons who had been charged with heinous offences by a professional team from the Centre for Child and the Law at National Law School Bangalore, BOSCO and ECHO in Bangalore.**



# What is desperately needed today...

- Political Will
- Knowledge and capacity
- Attitude
- Practice

**THANK YOU!**