

A SENSE OF BELONGING

The Use of Counselling to Restore and Rehabilitate
Children in Conflict with the Law

2020

HAQ: Centre for Child Rights
New Delhi

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PREFACE

HAQ has been counselling children in conflict with the law (CICLs) since 2005. At a time when there were no other counsellors in Delhi, our team had to learn on the job. Building on those learning and experiences, today, the HAQ team has developed its own understanding of what is needed when working with CICLs.

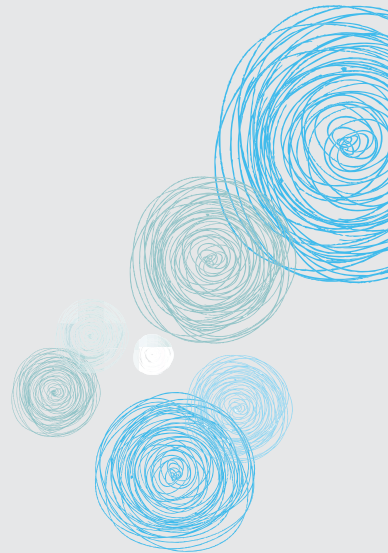
Needless to say, each case is different as is each child. Each one of them open for us new dimensions and understanding. When we first began, the legal team would double up as counsellors. Soon we felt the need for specialists and HAQ appointed its first trained psychologist.

Since then, many have joined and moved on. Each contributed to our shared understanding. We felt, given how few organisations and individuals work with CICLs across the country, it is important to share HAQ's experience with other who might be interested in taking up this work.

A Sense of Belonging, is an attempt to heighten critical awareness of counselling as a means to favourably turn around the lives and destinies of CICL across the country. It relies primarily on HAQ's own field-based experiences in Delhi and draws upon the expert views of its counsellors who have been part of the HAQ team over the years. While it uses its own cases, the names of all children have been changed to protect their identity. We hope that this effort will help to press for better access to counselling.

We understand, of course, that counselling alone is not sufficient to help CICL. Nor do we condone crimes. But we believe that counselling is a process of social reintegration, one that ideally must begin much ahead of the child's entry into a world of crime and continue long after the CICL is released into the community. We believe that instead of punishment, concentrating on reshaping the children in the JJ system by building their strengths; helping them overcome their weaknesses; aiding them to make social connections through a supportive socio-cultural environment that includes family, school, and peers and the society at large; and giving them social guidance is the most effective way of reducing delinquency.

This book is based on a draft by Chitra Gopalakrishnan. We have to thank her for accepting our challenge. It needed not just skills of documentation and writing, but learning the legal and technical dimensions of juvenile justice, as well as mental health issues and its language.



We would like to thank all our counsellors - Shahbaz Sherwani, Namita Bhutani, Rhea Sharma, Priya Tiwari, Chaitali Sinha and Pratiksha Tewari - for sharing their experiences and opinions with Chitra.

We thank the external experts for their personal interviews with Chitra. We specially thank Kalpana Purshottam who not only spoke in detail to Chitra, but also reviewed and enriched the text with her valuable suggestions and comments.

But most of all we thank Meenakshi Ganguly for the final shape this book has taken.

As always, it is the children who continue to inspire us, make us believe that it is possible. They teach us something new every day, enabling us to create praxis and theory. This book would not have been here, if it were not for the children who allowed us into their lives.

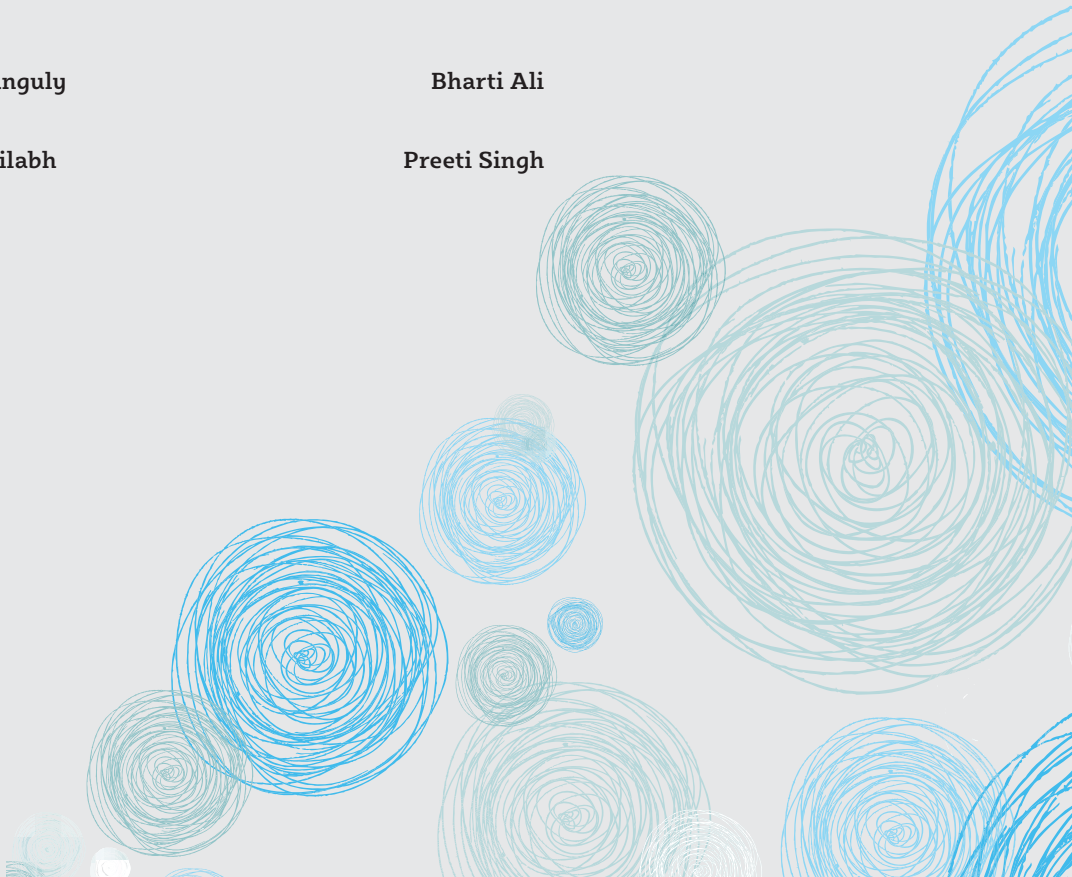
We also owe gratitude to all the JJB Magistrates and Members who entrusted us with children. They have moved on to different positions, but their faith in us has been very heartening.

Enakshi Ganguly

Bharti Ali

Kumar Shailabh

Preeti Singh



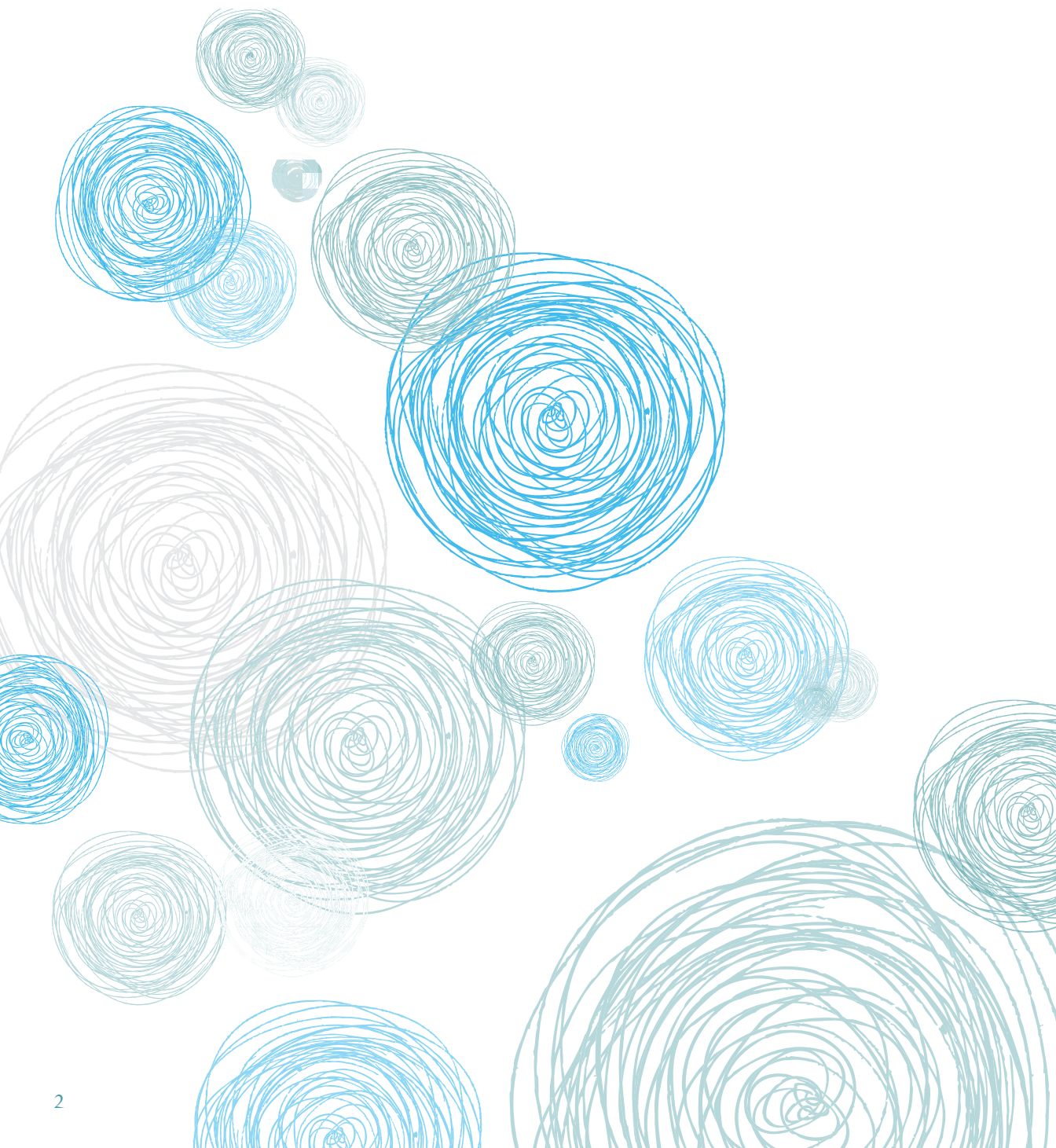
LIST OF ACRONYMS

AIIMS	All India Institute of Medical Sciences
BACP	British Association of Counselling Psychologists
BSCC	Butterflies School of Culinary and Catering
CARA	Central Adoption Resource Authority
CCI	Child Care Institution
CCL	Centre for Child and the Law
CICL	Child(ren) in conflict with the law
CNCP	Child(ren) in need of care and protection
CRC	Convention on the Rights of the Child
CRPD	Convention of the Rights of Persons with Disabilities
CWC	Child Welfare Committee
DISE	District Information System for Education
DSLSA	Delhi State Legal Services Authority
DWCD	Department of Women and Child Development
JJA	Juvenile Justice Act
JJB	Juvenile Justice Board
HAQ	“HAQ” Centre for Child Rights
ICCPR	International Covenant on Civil and Political Rights
ICDS	Integrated Child Development Services
ICP	Individual care plan
ICPS	Integrated Child Protection Scheme
IPC	Indian Penal Code
IHBAS	Institute of Human Behaviour and Allied Sciences
JJMR	Juvenile Justice Model Rules
NALSA	National Legal Aid Services Authority
NCRB	National Crime Records Bureau
NCPCR	National Commission for Protection of Child Rights
NFHS	National Family Health Survey
NIMHANS	National Institute of Mental Health and Neuro Sciences
NIPCCD	National Institute for Public Co-operation and Child Development
NLUA	National Law University Assam
NLSIU	National Law School of Indian University
NMHP	National Mental Health Policy

NSDC	National Skills Development Council
POCSO	Protection of Children from Sexual Offences Act
RCI	Rehabilitation Council of India
SIR	Social investigation report
SJPU	Special Juvenile Police Unit
SPYM	Society for the Promotion of Youth and Masses
TISS	Tata Institute of Social Sciences
UNCRC	United Nations Convention on the Rights of the Child
UNGACC	UN Guidelines for the Alternative Care of Children
VIMHANS	Vidya Sagar Institute of Mental Health and Neurosciences

The background is a solid teal color. It is decorated with numerous circular patterns of varying sizes. These patterns are composed of multiple concentric, slightly irregular lines that create a spiral or ripple effect. The colors of these patterns are white and light blue, contrasting with the teal background. The patterns are scattered across the page, with a higher density in the upper and lower portions, framing the central text.

Introduction



“Every child who comes in contact with the juvenile justice system is a child in difficult circumstances who has fallen out of the protective net at some point and has been robbed of an opportunity of a safe and secure childhood.”

– Ministry of Women and Child Development¹

¹ Rehabilitation of Children In Conflict With The Law Possibilities and Opportunities http://www.wcd.nic.in/sites/default/files/SOP%20ON%20REHABILITATION%20OF%20CHILDREN%20IN%20CONFLICT%20WITH%20THE%20LAW_o_o.pdf

The term 'children in conflict with the law' (CICL) refers to anyone accused of an offence while under 18 years of age at the time of commission of the alleged offence. The juvenile justice machinery, guided by principles of 'best interests of the child', 'right to be heard', 'fresh start' and 'positive measures' is designed somewhat differently from the procedures of adult justice systems. The juvenile justice system focusses primarily on the reformation, restoration and rehabilitation of children who come into contact or conflict with the law.

India has always adopted a welfarist model of juvenile justice that has both a preventive and curative aspect to it. That is why it deals with both children in conflict with the law as well children who are in need of care and protection and hence may be vulnerable to offending because of their circumstances.

“Children in conflict with the law (CCL) are called by many names: criminal, thief, murderer, rapist. When people look at them, if they look at all, all they see are the faces of young criminals - fierce, vicious, and rough. When people speak of them, their voices are often full of contempt, scorn and even condemnation. These children are given names that speak only of their crimes and not of their intrinsic humanity. Society often wishes to be rid of such useless, hopeless creatures thinking that these children will always lead a life of crime throughout their lives. What many do not know, or do not care to know, is that these wicked faces are, sadly, often only masks— masks that children have put on themselves to hide their pain, anger, and fear, or masks that we, in our indifference and even revulsion, have actually put on them. Because we mistake their masks for their faces, we forget who these children are. We forget that they are children, who have much to learn, much to do, and much to hope for. In believing the masks to be real, we undermine children’s capacity for growth and change.”

Rehabilitation Of Children In Conflict With The Law Possibilities And Opportunities
https://wcd.nic.in/sites/default/files/SOP%20ON%20REHABILITATION%20OF%20CHILDREN%20IN%20CONFLICT%20WITH%20THE%20LAW_o.pdf

A justice system for young offenders hinges on the very basic fact that they are children. While their crimes cannot be condoned, the focus should go beyond punishment and deterrence and towards building skills and coping mechanisms so that the children develop their strengths to make good choices, handle pressures, live productively and become responsible members of society. It is based on the 'principle of fresh start'.

Towards this end, a principal role of the juvenile justice system is to provide specialized and preventive treatment services for children and young persons as a means of 'secondary prevention, rehabilitation and improved socialization'.² The system needs to acknowledge and address the fact that children and adolescents are vulnerable to several psychosocial and economic pressures that can lead them into contact or conflict with the law. A failure to address these risk factors in a timely manner is only likely to result in recidivism by children for whom the juvenile justice system is probably the last chance.

The juvenile justice system should thus enable children to discover an identity that is over and above what is imposed by society whether by their economic or social status, or their entering a world of violence and crime. Often these children may feel incapable and unvalued, have a strong sense of disassociation, having lost societal connections.

2 Ved Kumari, The Juvenile Justice System in India: From Welfare to Rights. OUP. 2004 p.1

If understood in its true spirit, the rehabilitative work envisioned for CICLs must begin when they enter the juvenile justice system, continue till the closure of their cases, and stretch to supervision until the children are anchored safely within their families and community.

A Juvenile Justice Board (JJB), the name used in India for what is known in many parts of the world as Juvenile Courts, is made up of a three-member bench with one magistrate and two social workers, of which at least one is legally mandated to be a woman. They are meant to focus on the child – not just the offence – understand the circumstances that led to the offence, and make recommendations to ensure rehabilitation, reformation and restoration of the child with the community.



Yet despite the legal intent, the current system, a shift from the JJA 2000 and its amendments in 2006, continues to operate on the conventional principles of detention and punishment. All too often, children are taken into custody and held indefinitely. Children, both those released on bail and those held without bail, are to appear every fortnight before the JJB. They are denied individual rights such as access to proper schooling or vocational training, adequate health facilities, and to rehabilitative and developmentally appropriate programming.

Under law, separate institutions are provided for children in conflict with the law and they cannot be detained in jails, police-lock ups, or with adults. However, since 2015, a provision has been included in the law that allows for children above 16 years and below 18 years to be treated as adults for particularly heinous crimes. Some of these children, may be sent to jail (adult prisons) at the age of 21³.

Till 2015, 'Crime in India' statistics of the National Crime Records Bureau (NCRB), Ministry of Home Affairs, would provide the family income of the juveniles who were apprehended. Since then this data is not provided in the Crime in India reports.

It is pertinent to note 53.5% CICL in Delhi come from families whose annual income is Rs. 25,000 or below, according to the 2015. While it is true that not all poor people take to crimes,⁴ it is equally true that this very low economic situation makes them more vulnerable to being drawn into it. According to Parackal and Panicker:

"..data shows that offending/ deviance is an issue prevalent in all socio-economic classes of people but only those from the lower classes are likely to be incarcerated , charged or convicted. The evidences and experiences strongly contest the premise that poverty is the root cause of all offending behaviour..... However, this does not mean that all deviant/offending acts of children delink itself from the influence of poverty / economic strain but emphasise that it is not an exclusive factor but a distant risk factor for juvenile deviance."⁵

3 The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

4 Saju Parackal and Rita Panicker. Children and Crime- The Story Behind. Butterflies. New Delhi. 2016. P.xiv

5 Saju Parackal and Rita Panicker. Children and Crime- The Story Behind. Butterflies. New Delhi. 2016. p.xiv

Perhaps if there was more effort made to strengthen these families economically, they would not be as vulnerable. This is something that the government at all levels, especially at the local levels must address as prevention measure both to prevent criminalisation of children, as well re-offending.

In a paper titled 'Counselling Children in Conflict with the Law: Experiences and Lessons', 2012, (updated 2014), HAQ identified poverty; inadequate living spaces; high drop-out rates from schools (due to overcrowding, violence, poor quality of teaching and corporal punishment); lack of family structures and support; family inattention to children's psychological needs and their deviations (like substance abuse and criminal behaviour); children's poor understanding of responsible actions and behaviour; an absence of avenues for vocational training and recreational outlets; and the lack of conversations or sensitising to issues of sexuality as major reasons for children committing crime.⁶

A recently released comprehensive study titled 'Juvenile in Conflict with the Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan'⁷ commissioned by the National Commission for Protection of Child Rights (NCPCR) and conducted by the Tata Institute of Social Sciences (TISS), Mumbai, reiterates crimes committed by children to be the result of an interplay of several factors at the level of the individual, the family, neighbourhood, community and the society. While the study indicates there is no one identical profile of juveniles or uniform family characteristics, it identifies the responsible factors for child crime to be economic, educational and familial and age-peer equation related. It also points to the lack of adult monitoring, supervision and guidance, improper environment (school, family, neighbourhood and workplace), addiction, inadequate daily living conditions (be it facilities and amenities at home and school or human relationships with trusting and caring adults) and the neglect of mental health of children as the foremost reasons.

The study shows a majority of the children apprehended to be: first time offenders, between 16 and 18 years of age, from lower socio economic backgrounds, equipped with middle school education (92% children) with continued enrolment (46%) and living with families (97.1%). These children face conflict at home (14%) and addiction (40%), witness fights in the neighbourhood (54%), have been caught largely for theft and robbery, apprehended with friends (59%) and taken away by police from outside their home (24%).

Other studies point to easy access to weapons as well as alcohol and substances, poor police presence in the slums or colonies the children live in and the adverse influence of films and the media as noteworthy causes.⁸

A study by B. R Sharma, Sangeeth Dhillon and Sarmadi Bano identify individual factors or personality traits like submissiveness, defiance, hostility, impulsiveness, insecurity, fear, lack of

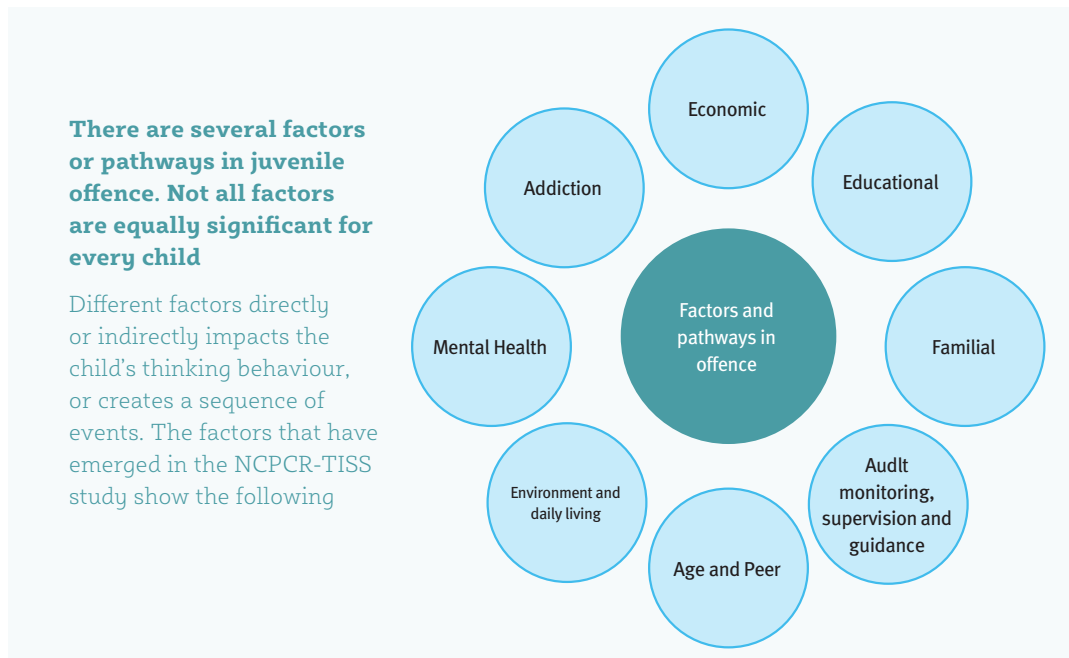
6 Counselling Children in Conflict with the Law: Experiences and Lessons, 2012, HAQ, New Delhi

7 Juvenile in Conflict with the Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan, 2017, Tata Institute of Social Sciences, Mumbai, <http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=951&lid=1284>

8 Ronad SV, Kori AS, Kosagi S, Obanaik P, Patil P, Children in Conflict with Law in India, 2017, Nurse Care Open Access J 2(3): 00039. DOI: 10.15406/ncoaj.2017.02.; Prakash Haveripet, Causes and Consequences of Juvenile Delinquency in India, 2013, Science and Technology, 5(3): 29-31 ISSN: 2076-5061, available online: <http://recent-science.com/>, <http://scienceflora.org/journals/index.php/trst/article/viewFile/1038/1022>; and Dr Sanyal, Reformation and Reintegration of Juveniles in Conflict with Law, 2011, Study for the Ministry of Women and Child Development, New Delhi, <http://wcd.nic.in/Schemes/research/StudyReportonReformationandReintegrationofJuvenilesinConflictwithLaw.pdf>

self-control and emotional conflicts and situational factors like family, companions, movies, school environment and work environment as causes for children's criminality.⁹

Peer influence has been isolated as a major factor that predisposes most children to criminal behaviour by several studies. The fact that many children are in a severe state of deprivation encourages the formation of gangs. It is through these gangs that the young people acquire criminal behaviour. There is high likelihood of delinquency among the young people belonging to a gang than those who do not belong to a gang.¹⁰



Richa Arora, in the 'Study of Children in Conflict with Law in Delhi' for TISS, while heeding to all the above factors in her dissertation adds one more element. She spotlights residence as a key determinant of child delinquency. A child who witnesses crimes in his surroundings and neighbourhood becomes accustomed to such actions and learns from them. The area where s/he lives, the surrounding conditions and the socio-economic status of people around play an important role in determining what the child is exposed to and what his/her actions might be.¹¹

It is pertinent to point out here that children and adolescents, more than at any time before, (due to social media and other forms of communication) know how much worse off they are than others and manifestations of their rage and desperation could get more aggressive, diffuse and unpredictable. Sadly, this will only create a downward spiral as aggression is unlikely to gain them social acceptance. Table 1 succinctly captures some of the risk and protective factors for children.

⁹ Sharma BS, Dhillon, Juvenile Delinquency in India: A Cause for Concern, 2009, J Indian Acad Forensic Med 31(1): p. 68-70

¹⁰ Malvika Tyagi, Understanding Juvenile Crime: Notes from the Field, Economic & Political Weekly, January 9, 2016, Vol No 2: p. 17-21

¹¹ Richa Arora, A Study on Children In Conflict with Law, A Delhi Based Study, Centre for Equity and Justice for Children and Families School of Social Work, Tata Institute of Social Sciences, Mumbai, 2017, <http://dspace.tiss.edu/jspui/bitstream/1/9127/1/Richa%20Arora.pdf>

Table 1. Risk and protective factors for children

	Risk factors	Protective factors
Family factors	<ul style="list-style-type: none"> - Low socio-economic status - Parents, siblings or other family members with offending and anti-social behaviour - Harsh and inconsistent parenting - Poor parent-child relationships - Early victimisation (physical, sexual and other abuse) - Violence in the home - Passive or condoning attitudes to anti-social and criminal behavior 	<ul style="list-style-type: none"> - Better socio-economic status - Parents who provide pro-social role models - Consistent parental support and supervision - Strong bonds to parents - No early trauma or abuse - Safe home - Clear moral guidance from parents regarding anti-social and criminal behaviour
School factors	<ul style="list-style-type: none"> - Weak attachment to school - Low educational achievement - Organisational weakness in the school 	<ul style="list-style-type: none"> - Strong bonds to teachers - Strong educational attainment - Well-functioning school - Good relationships with classmates
Community factors	<ul style="list-style-type: none"> - Lack of attachment to the local community - Ready availability of drugs - Disadvantaged area - High turnover of the population - Gangs operating in the area 	<ul style="list-style-type: none"> - High community involvement - Drug-free neighbourhood - High socio-economic area - Stable population - No gang networks operating
Individual/peer factors	<ul style="list-style-type: none"> - Association with delinquent peers - Substance abuse - Aggression and impulsivity - Attitudes sympathetic to offending 	<ul style="list-style-type: none"> - Pro-social peers - Social skills - Self-control - Attitudes against offending

Source: Adapted from Stephenson et al., *Protecting Children's Rights in Criminal Justice Systems: Effective Practice in Youth Justice*, 2013, Penal Reform International, UK, <https://www.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%2%ADHR.pdf>

Restorative justice: a pipe dream?

Restorative justice is defined as an approach that recognises how crime affects the victim, the community and the offender. Its primary focus is to repair the damage caused by the offence, to make reparation to the community and to the victim, and to return the offender to a productive place in the community. For justice to be truly restorative, the community, the victim and the offender must take active roles.¹²

The seeds of a distinct juvenile justice system for dealing with CICL were sown in 1919-1920, when the Indian Jail Committee found prisons unsuitable for children, including adolescents under the age of 18 years, recognised their vulnerability and categorically recommended a separate justice system for young offenders so that they can be brought under 'reforming influences'.

¹² http://www.ipu.org/PDF/publications/chil_law_en.pdf, pg17

Over the years, the juvenile justice system in India has worked around the belief that young people are capable of reformation and must be given that chance. Its bedrock is the idea that young people are different from adults, have a potential for development and rehabilitation as also significant developmental needs and rights that are distinct from that of adults.

While many countries such as New Zealand, South Africa, several European Countries and even the USA have included Restorative Justice as part of their criminal justice system, India has still to explore this.

The focus in restorative justice is on the offender accepting responsibility for their behaviour and work to restore the loss to the victim, which is sometimes the community itself. If the victim wishes for mediation, then the offender should be encouraged to participate. By actively participating in a service role that improves quality of life in the community, the offender is provided with new experiences and life skills, helping them become positively productive. This is an uncharted terrain for India.

In recent times, experts from other countries have been brought to India to expose some key personnel in the juvenile justice system to the concept of restorative justice. However, in the current atmosphere of heightened hostility against children in conflict with the law, it is highly unlikely for any authority to take the bold step of trying out restorative justice processes, even as it gains significance in the Asia Pacific region. As a fast disintegrating society and a highly moralising culture, deeply rooted in and thriving on the politics and interplay of patriarchy, ethnic, caste and religious identities and other power dynamics, it is difficult to say if we will ever be ready for initiating restorative justice the way it is practiced in the west.

It would be sad if the process fails even before it can take off, and we need to be conscious as well as cautious about this. Restorative justice should not become the synonym for mediation between the victim and the offender as is currently practiced in cases of domestic violence, or divorce and custody matters. Not disputing the importance of bringing restorative justice into the juvenile justice system in India, perhaps what is needed is a set of guidelines and protocols that could ease the adoption of this approach and intensive training and exposure to other countries where it has been in practice.

Mainstream criminal justice systems are based on the idea of retribution: that is, punishment for an offence committed. Restorative justice on the other hand emphasises the importance of restoring the balance of a situation disturbed by crime or conflict and making good the harm caused to the individuals concerned.

The four guiding principles are:

- repairing the harm done and restoring the balance within community and society restitution for the victim
- ensuring that the offender understands and is willing to take responsibility for his or her actions
- helping to change and improve future behaviour of the offender concerned

How far along the way are we towards this vision of restorative justice?

The Jyoti Singh Pandey, or the Nirbhaya case as it is referred to, can be used to best illustrate this point. Involved in the gang rape and fatal assault of this 23-year-old female physiotherapy intern, in December 2012, the six offenders of this crime came into sharp public scrutiny and condemnation. But what seemed to come under the greatest public scrutiny and ire was the Juvenile Justice law of India following the information that one of the alleged rapists was under the age of 18 years and hence would not receive the same punishment as his adult compatriots in the offence.

Completely misguided by the media, the public was led to believe that the young offender would 'walk free'! The maximum punishment of three years for young offenders too came under public scrutiny as too little or lenient a punishment for such a horrific and heinous, violent offence. Hang the offender was the demand by the parents of the victim and the public.

The release of the young offenders after a stay in a 'juvenile reformation home', as the media called it, (but in reality a 'Special Home', named thus to take away the element of criminality from the juvenile justice system and practice) for merely three years, sparked even more vitriolic national outrage.

The Shakti Mills rape case only fueled the public angst. The two juveniles, one of whom was a 'repeat offender' only strengthened the public perception that the juvenile justice system did nothing to 'punish the offenders' and was therefore not a deterrent. Here again the media, formal and social media, played a critical role. Once again sending the offenders off to 'reform school' was not seen as the punishment they deserved.

These two cases marked the watershed in the history of JJ in India.

As a result of the outcry, India passed the Juvenile Justice Act (Care and Protection of Children) 2015, (JJA, 2015), that could in cases of heinous crimes, like rape and murder, try 16-year-olds as adults. In such cases, the JJBs have the discretion to decide whether the offender should be tried and sentenced like adults or whether the alleged CICL should be tried as a child before the JJB.

While the public animosity is understandable given the extreme heinousness of the crime, the fact that public opinion seldom gives credence to the fact that reform and rehabilitation are the primary aims of our legal system is to be noted. The baying for punitive action and a get-tough approach towards children committing crime drowns all concerns for diversion and rehabilitation that the law espouses and overrules all research evidence that finds few gains, in terms of reduced rates of recidivism, from simply incapacitating youth without any attention to treatment or rehabilitation.

HAQ believes sending delinquents aged between 16 and 18 years to adult prisons for seven years or more and leaning towards retributive justice will likely ensure that there is no chance of their reformation. Spending prolonged periods in jail with other criminals will make it hard for young adolescents to come out of the cycle of crime and punishment. This especially so as children and adolescents are different from adults. Their brains are not fully developed and changes during adolescence lead young people to search for excitement and instant reward and gratification, especially in the presence of peers.

Locking adolescents up as a means of teaching them a lesson and to ensure they refrain from offending in the future is hence largely futile. What it results in, on the contrary, is profoundly harmful for

children: intellectual disabilities and low levels of education, poor mental and physical health, exposure to violence and other mistreatment and a sharp sense of shutters drawn on their lives.

Existing research in neuro-science and brain development also affirms that the part of the brain that provides the ability to control oneself does not develop until late adolescence or even early adulthood. Most adolescents hence do not have a full sense of personal autonomy and are not certain about the extent they can make choices for themselves as they are not adults. They are still struggling with personal identity.¹³

Dr. Shekhar P. Seshadri and Dr. Preeti Jacob, Department of Child and Adolescent Psychiatry, National Institute of Mental Health and Neurosciences (NIMHANS) explain this with clarity in an article by Afsan Yasmeeen. They say that children may not fully understand the consequences of their actions or may not be able to resist impulses like adults. According to them:

“Adolescence is a transitional period – they cannot be treated on a par with adults. The adolescent brain is undergoing significant changes especially in areas that are responsible for impulse control, response inhibition and decision making. This psychosocial immaturity could further fail in heightened states of emotion and stress. Many of these children come from disadvantaged circumstances both economically and socially and often have undergone significant physical, sexual or emotional abuse themselves.”¹⁴

Arlene Manoharan and Swagata Raha¹⁵, even while arguing about the JJA 2000 which was entirely rehabilitative in its approach to dealing with CICLs, maintained that:

“... lowering the age of children committing crime or incorporating a waiver system to enable JJBs to transfer children alleged to have committed serious crime to the adult criminal justice system will not help in better protection of women from crime committed by children or in the reform of serious child offenders. The most urgent and critical area of reform therefore, is not of the law, but of the way it is being implemented. If the law is implemented in letter and spirit, and services are designed and delivered by dedicated professionals from various disciplines, children alleged to or found to have committed serious crime can indeed be reformed, rehabilitated and re-socialised.”¹⁶ A study published in the Economic & Political Weekly (January 2016)¹⁷ stated that not a single child who had committed a serious crime knew of the relatively lenient juvenile justice system. “They are aware of Tihar. But they are not aware of the provisions of the Juvenile Justice Act. They did not expect to get away easy upon committing crime. This flies in the face of those who advocate lowering of age as a deterrent of heinous juvenile crime. If juveniles do not know the legal system, how can solely and simply changing the system have a desired impact?” argues Malvika Tyagi.

The TISS study, quoted in the previous section of this chapter, shows when children living in the Observation Homes in the two states of the study, namely Maharashtra and Rajasthan, were questioned,

13 Reforming Juvenile Justice: A Developmental Approach, 2013, National Research Council, The National Academies Press, Washington DC, <https://www.nap.edu/read/14685/chapter/6>

14 Afsan Yasmeeen, Experts Disappointed over Trying Juveniles as Adults, January 7, 2016, The Hindu, <http://www.thehindu.com/news/cities/bangalore/experts-disappointed-over-trying-juveniles-as-adults/article8075467.ece>

15 Former team members of the Centre for Child and the Law (CCL), National Law School of India University (NLSIU), Bangalore,

16 Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children Who Commit Serious Offences – Reflections on the Way Forward, 2013, <https://www.nls.ac.in/ccl/justicetochildren/intl.pdf>. This paper draws from contributions made by Geeta Sajjanshetty, Kalpana Purushothaman, Shruthi Revankar and Anuroopa Giliyal, members of the Juvenile Justice Help Desk Team and the official Position Paper of CCL NLSIU submitted to the Justice J. S. Verma Committee on 14th January 2013, a copy of which is available at <http://www.nls.ac.in/ccl/cclpositionpaper.pdf>

17 Malvika Tyagi, Understanding Juvenile Crime: Notes from the Field, Economic & Political Weekly, January 9, 2016, Vol no 2)

a majority of them (43.6%) children said they planned to work. Of them 20% wanted to continue with their education/vocational course/training and 7.3% were keen to take care of family/stay with family, demonstrating a deep sense of family, community and life plan-rootedness.¹⁸

TABLE 2. UNDERSTANDING RETRIBUTIVE AND RESTORATIVE JUSTICE

Retributive justice	Restorative justice
Crime defined as violation of the law of the state	Crime defined as violation of the rights of one person by another
Focus on establishing blame, on guilt, on the past (did they do it?)	Focus on problem-solving, on liabilities and obligations in future (what should be done?)
Adversarial relationships and process	Dialogue and negotiation
One social injury replaced by another	Focus on repair of social injury
Responsibility for action directed from state to offender:- victim ignored-offender passive	Victim's and offender's roles recognised in both problem and solution:-victim's rights/needs recognised - offender encouraged to take responsibility
Offender accountability defined as taking punishment	Offender accountability defined as understanding impact of action and helping decide how to make things right
Response focussed on offender's past behavior	Response focussed on harmful consequences of offender's behaviour

Source: Juvenile Justice, Modern Concepts in Working with the Law, 2004, Save the Children, United Kingdom, https://www.essex.ac.uk/armedcon/story_id/save_jj_modern_concepts.pdf

What are children detained for?

A look at data of 2018 show children have been apprehended under 51 different IPC sections along with 37 Special Local Laws (SLL Crimes). They include: Arms Act, 1959; Narcotic Drugs & Psychotropic Substances Act, 1985; Excise Act, 1944; The Prohibition Act (as existing in certain States to proscribe the manufacture, storage, and sale and consumption of alcoholic beverages), Explosives & Explosive Substances Act, 1884 and 1908; Immoral Traffic (Prevention) Act, 1956; Protection of Civil Rights Act, 1955; Passport Act, 1967; Protection of Children from Sexual Offences Act, 1987; SC/ST (Prevention of Atrocities) Act, 1989; Forest Act, 1927; Prohibition of Child Marriage Act, 2006; Protection of Women From Domestic Violence Act, 2005; Information Technology Act, 2000; Official Secrets Act, 1923; Air (Prevention & Control of Pollution) Act, 1981; Wildlife Protection Act, 1972; and the National Security Act, 1980.

In 2018, A total of 38,256 juveniles were apprehended in 31,591 cases, out of which 35,380 juveniles were apprehended under cases of IPC and 2,876 juveniles were apprehended under cases of SLL crimes.

Source: National Crime Records Bureau (NCRB), Ministry of Home Affairs, 2018

¹⁸ Juvenile in Conflict with the Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan, 2017, Tata Institute of Social Sciences, Mumbai, <http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=951&lid=1284>

DISQUIETING FACTS ABOUT INDIA'S CHILDREN

444 million children in India, who form 37% of the country's total population, are under the age of 18, according to the census undertaken in 2011. Here are some disturbing facts on their current situation.

- 99 million children in total have dropped out of school (Census 2011)
- India has 33 million working children between the ages of 5 and 18 years. (Census 2011)
- There are 10.13 million child labourers between 5 and 14 years in India (Census 2011)
- Out of every 100 children, only 32 children finish their school education age-appropriately (District Information System for Education (DISE) 2014-15)
- Only 2% of the schools offer complete school education from Class 1 to Class 12 (DISE 2014-15)
- 19.8 million children below age six in India are undernourished (Integrated Child Development Services (ICDS) 2015)
- Only 9.6% of children between 6 and 23 months in the country receive an adequate diet (National Family Health Survey (NFHS) 4, 2015-16)
- 38% (1 in 3) of children between 0 and 5 years are stunted in the country (NFHS 4, 2015-16)
- 21% (1 in 5) of the children in the country suffer from wasting (NFHS 4, 2015-16)
- 36% of children under 5 years of age are underweight in India (NFHS 4, 2015-16)

Source: Census 2011, District Information System for Education 2014-15, Integrated Child Development Services 2015 and National Family Health Survey 4 2015-16

STATE COMES SECOND IN THEFTS COMMITTED BY JUVENILES

Pradeep Kumar. V. TNN. December 1, 2017

CHENNAI: Lack of intervention programmes to prevent at-risk youth from taking to a life of crime is reflected in Tamil Nadu's numbers for juvenile offences in 2016. With 667 theft cases, Tamil Nadu ranked second in the country (behind Maharashtra) in terms of juveniles caught committing petty crimes. This is 30% of total juvenile crimes recorded in Tamil Nadu and nearly one-tenth of all theft cases in the country. There was a 22% increase in total juvenile crimes in the state from 1,814 (2015) to 2,217 (2016). In Chennai, the number of juvenile crimes rose by 45%, from 270 in 2015 to 391 in 2016. As many as 307 of the 391 cases (78.5%) in Chennai involved juvenile offenders caught stealing.

Police suggest that poor socio-economic condition is one of the

primary reasons for juveniles attempting theft. "No one steals for luxury. In most juvenile theft cases I have handled, the cause happens to be sustaining day-to-day existence," said P Sundaravadivel, deputy commissioner of police, Madras High Court security.

A pattern noticed when factoring in this observation is that, in Chennai, of the 485 juveniles penalised for various crimes in 2016, at least 43% dropped out of schools at some point below the matriculation (Class X) level. Around 37% offenders had completed primary schooling but another 20% were illiterate. Incidentally, 27% of the juvenile offenders in Chennai were also homeless.

But painting all children from disadvantaged communities in a negative shade is unacceptable,

says Vanessa Peter, a city-based housing policy and social stigma researcher. "There is a lack of data specific for marginalised communities to suggest that children from these families alone resort to a life of crime. So, it is absolutely wrong to say offenders are likely to emerge from such communities as we end up criminalising them," she said.

What these patterns point to is the lack of targeted intervention for early adolescent period, she said, before adding that central government intervention programmes had diversified targets and were always executed in silos by the various departments. "A coordinated execution is absent," she said

http://timesofindia.indiatimes.com/articleshow/61874471.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

The childcare institutions in which children in conflict with the law can be kept are briefly described below:

1. Observation Homes



An Observation Home is a child care institution “for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of an inquiry.”¹ The State Government should establish and maintain Observation Homes in every district or group of districts, either by itself, or through voluntary organisations or NGOs.² There should be separate homes for boys and girls and age-based segregation with consideration to physical and mental status and nature of offence committed.³

If due to odd hours or distance, a child cannot be produced before the JJB or a single member, the a child welfare protection office Child Welfare Police Officer (CWPO) should keep the child in the Observation Home or fit facility and produce the child before the JJB within 24 hours of apprehension.⁴ A child who is denied bail can be directed to be placed in an Observation Home.

2. Special Homes



A Special Home is an institution for “housing and providing rehabilitative services” to children who have been found to have committed an offence and ordered to be sent to such an institution by the JJB or the Children’s Court.⁵ The State Government should establish and maintain Special Homes in every district or group of districts, either by itself, or through voluntary organisations or NGOs.⁶

There should be separate Special Homes for girls above 10 years and boys between 11 to 15 years and 16 to 18 years.⁷ Children in the Special Home

should be segregated based on nature of offences and their mental and physical status.⁸

3. Place of Safety



A ‘Place of Safety’ is a child care institution meant for children alleged or found to be in conflict with the law.⁹ It cannot be a police lockup or jail.¹⁰ It can be established separately or attached to an Observation Home or Special Home.¹¹ The State Government should establish at least one place of safety in the State.¹² The person in-charge of the place of safety should be willing to receive the child based on an order of the JJB or Children’s Court.¹³ Persons can be kept in a place of safety during the pendency of inquiry and ongoing rehabilitation after having been found guilty.¹⁴

Separate arrangement and facilities should be made for children or persons whose inquiry is underway and children or persons convicted.¹⁵

There are six situations in which a person can be ordered to be sent to a place of safety by the JJB or Children’s Court:

- a. for children in the age group of 16 to 18 years alleged to have committed heinous offence pending inquiry¹⁶;
- b. for children in the age group of 16 to 18 years found to be involved in heinous offence upon completion of inquiry¹⁷;
- c. for persons above 18 years alleged to have committed offence when they were below the age of 18 years pending inquiry¹⁸;

1 JJ Act, 2015, Section 47(1).

2 JJ Act, 2015, Section 47(1).

3 JJ MR, 2016, Rule 29(1)(i).

4 JJ MR, 2016, Rule 9(6).

5 JJ Act, 2015, Section 2(56).

6 JJ Act, 2015, Section 47(1).

7 JJ MR, 2016, Rule 29(1)(ii)(a).

8 JJ MR, 2016, Rule 29(1)(ii)(b).

9 JJ Act, 2015, Section 49(1).

10 JJ Act, 2015, Section 2(46).

11 JJ Act, 2015, Section 2(46).

12 JJ Act, 2015, Section 49(1).

13 JJ Act, 2015, Section 2(46).

14 JJ Act, 2015, Section 2(46).

15 JJ Act, 2015, Section 49(2).

16 JJ Act, 2015, Sections 19(3) and 49(1); JJ MR, 2016, Rule 29(1)(iii)(a).

17 JJ Act, 2015, Sections 19(3) and 49(1); JJ MR, 2016, Rule 29(1)(iii)(b).

18 JJ Act, 2015, Section 6(2); JJ MR, 2016, Rule 29(1)(iii)(c).

- d. for persons above 18 years found to be involved in offence upon completion of inquiry¹⁹;
- e. for children as per the orders of the Board under clause (g) of sub-section (1) of Section 18 of the Act whose conduct and behavior is such that in the JJB's opinion it would not be in the child's interest, or the interest of other children to keep the child in a Special Home²⁰;
- f. for a person whose claim of being a child is being inquired into and is required to be kept in protective custody.²¹

4. Fit facility

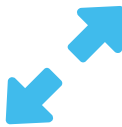
A "fit facility" is defined to mean "a facility being run by a governmental organisation or a registered voluntary or non-governmental organisation, prepared to temporarily own the responsibility of a particular child for a specific purpose, and such facility is recognised as fit for the said purpose, by the Child Welfare Committee²², as the case may be, or the Juvenile Justice Board, under sub-section (1) of section 51". The JJB, after due inquiry into the suitability of the facility and the organization to take care of a child, can recognise the facility as a fit facility.²³ Recognition can also be withdrawn by them for reasons recorded in writing.²⁴

Upon finding a child to be in conflict with law, the JJB can under Section 18(1)(f), "direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding

three years". Based on the JJB's recommendation and bearing the child's best interest, the State Government can transfer a child from the Special Home or fit facility to a fit facility or Home within the State with prior intimation to the concerned JJB.²⁵ A child can be transferred outside the State only after consultation with the concerned State Government.²⁶ The total duration of the child's stay cannot be increased by such transfer.²⁷

If a child is suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the JJB can send the child to a recognized fit facility for required treatment.

If the child requires therapeutic treatment, an advocate can request for a list of recognized/registered organizations providing such therapeutic services in the District from the District Child Protection Unit (DCPU), and move an application before the JJB for an order to send the child to such a facility. If such facility has not been registered/recognized as a fit facility, the advocate could even request the JJB to recognize as a "fit facility".²⁸



¹⁹ JJ Act, 2015, Section 49(1); JJ MR, 2016, Rule 29(1)(iii)(d).

²⁰ JJ Act, 2015, Section 18(1)(g) proviso; JJ MR, 2016, Rule 29(1)(iii)(e).

²¹ JJ Act, 2015, Section 9(4).

²² The Child Welfare Committee is the authority constituted in pursuance to Section 27 of the JJ Act, 2015 -vested with the power of a judicial magistrate of the First Class, and empowered to pass orders as to whether a child is a child in need of care and protection by the State or not, and also on what kind of care and protection would be in the child's best interest. The CWC is also empowered to recognize facilities as fit facilities for children in need of care and protection.

²³ JJ Act, 2015, Section 51(1).

²⁴ JJ Act, 2015, Section 51(2).

²⁵ JJ Act, 2015, Section 96(1).

²⁶ JJ Act, 2015, Section 96(2).

²⁷ JJ Act, 2015, Section 96(3).

²⁸ JJ Act, 2015, Section 2(27), read with 51(1).

Recognizing the role of counselling in the Juvenile Justice Act 2015

The importance and significance of counselling and mental health interventions for children in conflict with the law is established in the JJ Act and Rules to meet different objectives of law. These include use of counselling as:

- i. a measure of diversion that may be exercised by the Juvenile Justice Board while deciding a case
- ii. a service directed at reform and rehabilitation of children
- iii. a standard of care and protection to be guaranteed by every institution housing children

Unfortunately, experience shows that despite legal provisions highlighting the need for counselling services for children in conflict with the law, in practice, CICLs rarely receive counselling of any kind, leave alone, specialized and individualized services.

Counselling as Part of the JJB Orders: A Second Chance

Counselling is used as a measure of ensuring accountability from the CICL, where instead of punishment by sending them to a detention facility, the Board can release the child on the orders that they and his/her parent(s)/guardian(s) undergo counselling individually or that the child participates in group counselling until such time as may be required.¹⁹

The JJB can order the Probation Officer to submit a Social Investigation Report (SIR) while deciding a case, requiring the officer “to consult an expert in child psychology, psychiatric treatment or counselling or any other expert for their expert opinion if necessary and submit such report along with the Social Investigation Report.”²⁰

Even in the case of a CICL who is prosecuted as an adult for a heinous offence, the Children’s Court may review its decision and instead of directing the CICL to be sent to jail for the remaining period of sentence, may release the child and “issue directions regarding education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.”²¹

Counselling as a Service for Reform and Rehabilitation

Counselling is a necessary service for ensuring reform, behaviour modification and rehabilitation of a child while an inquiry is pending against them, or when the child is serving a sentence in a detention facility. Even in the case of most heinous offences, while the new JJ Act of 2015 introduces possibility of trying those 16 to 18 as adults, such children are entitled to mandatory counselling services and therapy, including psychiatric support while serving a sentence in a detention facility like the place of safety.

¹⁹ Section 18 (1) (a) and (b) of JJ Act, 2015.

²⁰ Form 5, Rule 10 (2) of Model JJ Rules, 2016.

²¹ Rule 13 (8) (vi) (cc).

According to Rule 35 (3) of the JJ Model Rules, 2016, “Milieu based interventions and individual therapy are must for every child and shall be provided in all institutions”. The term “milieu based intervention” is explained as “a process of recovery, which starts through providing an enabling culture and environment in an institution so as to ensure that each child’s abilities are discovered and they have choices and right to take decisions regarding their life and thus, develop and identify beyond their negative experiences, such intervention which has a critical emotional impact on the child”

Individual therapy on the other hand is explained as “a specialised process” to be provided by each institution on a regular basis “as a critical mental health intervention” [Rule 35 (4)] either through “trained counsellors” on its staff or in collaboration with “external agencies such as child guidance centres, psychology and psychiatric departments or similar Government and non-Governmental agencies” [Rule 35 (5)]

The State Government is required to maintain a panel of voluntary or non-governmental organisations or persons who are in a position to provide the counselling services and forward the list to the Board [Rule 8 (8)]

It is the responsibility of the District Child Protection Unit to arrange for individual or group counselling as ordered by the Board and maintain a data base of counselling centres [Rule 11 (5), Rule 85 (1) (ii) and 85 (1) (ix)]

Counselling as a Standard Practice in Institutional Care and Protection

Every institution that seeks registration under the JJ Act or that is already registered under the JJ Act should have the capacity to provide counselling services for children.²² This is also true for institutions seeking to be or are recognised as a “fit facility” by the Board for keeping CICL.²³

All child care institutions (CCI) are expected to “provide or arrange for regular counselling of every child and ensure specific mental health interventions for those in need of such services, including separate rooms for counselling sessions within the premises of the institution and referral to specialised mental health centres, where necessary.”²⁴ All persons involved in taking care of the children in an institution have to facilitate “an enabling environment” and “work in collaboration with the therapists”.²⁵

The case file of every child in an institution must include psycho-social profiling, regular counselling reports, any other mental health intervention report.²⁶ The counsellor at a CCI is required to maintain a counselling register and the person in-charge of the institution is the custodian of that register.²⁷ The suggested staffing pattern for an institution with a capacity of 100 children includes two counsellors/psychologists/mental health experts.²⁸ Providing a counselling and guidance room is part of the norms laid down in the JJ Model Rules of 2016 for every CCI.²⁹ Counselling and guidance is part of the monthly review of management of an institution and in monitoring the child’s progress by the management committee.³⁰

22 Rule 21 (5) (v).

23 Rule 27 (11) (ii).

24 Rule 34 (3) (xi).

25 Rule 35 (2).

26 Rule 73 (3) (xiii).

27 Rule 77 (1) (7).

28 Rule 26 (7) (3).

29 Rule 29 (6) (xii) and 29 (10) (i).

30 Rule 39 (4) (x).

‘Blind Alley: HAQ’s Report on Juvenile Justice in India’ and ‘My God is a Juvenile Delinquent:’ Insights into Lives of CICL

HAQ began working on the issue of juvenile justice in 2005. *‘My God is a Juvenile Delinquent,’*³¹ written by Ruzbeh N Bharucha, a volunteer with HAQ, and *‘Blind Alley, HAQ’s Report on Juvenile Justice in India,’*³² uncovered the increase in the number of CICL living in troubled conditions, and the heightened levels of recidivism among them.

These reports identified the causal relationship of these trends to a lack of basic education, chronic poverty, growing unemployment, substance abuse, weakening of familial structures and the absence of awareness among children, caregivers and families about child rights. The books argued that it is not that children from the middle class and the elite do not commit offences, but that the more privileged children simply do not enter the juvenile justice system and in instances that they do, are ‘maneuvered’ or ‘rescued’ out of it. Hence, it is the already disadvantaged that enter the system and are more often than not, are further disenfranchised by it.

These books document the lack of efficiency and effectiveness of the juvenile justice system, and the failure to uphold national and international standards. They found an abject lack of facilities and infrastructure within Observation Homes and Special Homes (meant for reception and rehabilitation of CICL); irregularities in their everyday functioning; overcrowding; illegal housing of children within adult jails along with career criminals; rounding up of children without informing their families or guardians; and acute shortages of human resources including insufficient counsellors, probation officers and staffs to cater to the needs of CICL.

They highlighted the absence of systematic monitoring systems to prevent abuse of children, lack of sensitivity among the police towards the children, poor coordination between probation officers and the police, and the lack of proper enabling mechanisms to effectively reintegrate CICL into society. They also touched upon violations of CICL’s rights and fundamental freedoms by highlighting the lack of adequate legal representation; delays in release although, under the law they cannot be kept in judicial custody for more than 14 days at a time and their cases needed to be ideally closed within four or in exceptional cases six months; lack of proper access to basic rights especially those of nutrition, education, healthcare, safety and dignity; lack of dedicated skilled and trained probation officers that result in the absence of detailed, well-considered SIRs, mental assessments and ICP’s; the absence of child-friendly hearings and participation; and the setting adrift of these children after years without education or adequate skills to find employment.



31 Ruzbeh N Bharucha, *My God is a Juvenile Delinquent*, 2008, Sainathann Publications, New Delhi.

32 Paromita Shastri and Enakshi Ganguly Thukral, *Blind Alley: HAQ’s Report on Juvenile Justice in India*, 2009, HAQ, New Delhi.

HAQ's International Colloquium on Juvenile Justice in 2013

HAQ, in partnership with Penal Reform International and UK-Aid, UNICEF India, Save the Children-India, and ChildFund India, organised an international colloquium on juvenile justice in March 2013. The colloquium brought together 60 participants from 14 countries representing statutory bodies, academics, lawyers and practitioners. The purpose was to reflect upon the variety of problems different countries face in implementing international standards of juvenile justice and how best to respond to them within their national context. The conference provided a forum to compare legislation, policies and practices of implementation.

The colloquium stated the importance of considering a child as an individual, with his/her own will and faculties, even though not fully developed. The participants reiterated the need to focus on the "offender" and not the offence while dealing with crimes by children. There was a unanimous agreement that appropriate responses to certain crimes are imperative, but they must be taken into account within a restorative juvenile justice system.

The participants agreed that restoring the sense of justice in the victim is as important as the treatment of a young offender, but underlined that placing rights of victims to oppose or weaken juvenile justice will not help either the victim or the offender. Both need to be treated according to the rule of law.

The colloquium also stated that CICAL are not just offenders. Almost always, they are also Children in Need of Care and Protection (CNCP), needing support and planned attention. The responsibility to provide opportunities for reform and enabling CICAL to become an integral and active part of society falls on different stakeholders, starting from governments and extending to the civil society, including the private sector and the media. Every actor has an important role in building these opportunities and nurturing young people to their fullest potential as well as in shaping public opinion.³³

Refinements within the juvenile justice system as a result of HAQ's efforts

HAQ's advocacy and writings over the years have drawn attention to the urgent need of remedying the juvenile justice system especially in the context of CICAL. Some improvements have come about as result.

When HAQ began its interventions with CICAL, it was by providing them legal representation and then after a few years it began counselling. There is now a legal aid unit attached to every JJB to ensure that no child goes unrepresented. Unlike other legal aid lawyers empanelled by the Delhi State Legal Services Authority (DSLISA), the legal aid lawyers attached to these units deal exclusively with cases of CICAL.

Bail for CICAL has been made a real possibility as a result of HAQ's efforts.

Special mention must be made of the interest taken by the Supreme Court as well as the High Courts in setting up the Juvenile Justice Committees, monitoring the implementation of the JJA and deliberating on challenges and the way forward.

HAQ's highlighting the importance of counselling has led JJBs to acknowledge this and allow HAQ's counsellors to work with CICAL. But HAQ believes that counselling still remains inadequate and unavailable as their numbers are small.

33 International Colloquium of Juvenile Justice, A Report, March 2013, HAQ, New Delhi, <http://haqrc.org/wp-content/uploads/2016/07/international-colloquium-on-juvenile-justice-a-report-16-18-march-2013-new-delhi-india.pdf>

Positive Change and Way Forward

HAQ has been counselling CICLs in Delhi since 2005 and acknowledges that the juvenile justice system has made incredible headway in methods and processes in the ensuing decade. This is, to a large part, because of interventions of the court as well reform-minded government officials.

HAQ's experience shows that the main challenge CICL face is making sense of their varied and distressing experiences after being apprehended, while in custody, at the time of release and while attempting to re-enter society. These children find it hard to process their feelings, their social abandonment and adjust to a world that is rapidly constricting. Most often, they also return to conditions of poverty and the lack of access to resources and public services.

Yet the children or their parents are rarely able to identify psychological and social neglect as their priority concerns, tangled as they are in the chaos that follows the detention and the pressing legalities of their situation. However, children's psychological imbalance (as a result of a diminished sense of self) and the hostility of their social environment (as they are often shunned by their community) have an enormous impact on their physical and mental wellness, their ability to function and return to society as responsible young persons and future adults.

While the Juvenile Justice Act (Care and Protection of Children) Act, 2015, (JJA), recognises the value of counselling, its Rules (laid down by the Centre or individual States) or Model Rules, 2016 (that serve as guidelines on how to take forward the law as concrete action) do not clearly delineate roles and responsibilities of counsellors and psychologists. There is no clarity on how counsellors can help in the social reintegration of CICL once released. And, there are no ethical codes or protocols to help counsellors work within an evidence-based framework.

Going forward, there needs to be proper guidelines on how counsellors are expected to counsel CICL to well-being during their period of detention, aid probation officers in filing well-considered social investigation reports (SIRs), file mental assessments of CICL within SIRs, and how to contribute to individual care plans (ICPs).



NOTEWORTHY JUVENILE REHABILITATION INTERVENTIONS IN INDIA

There are some remarkable youth development and rehabilitation programmes in India run by Pravah, Butterflies, Salam Balak Trust, YP foundation, ECHO-Center for Juvenile Justice in Bangalore and Prayas JAC Society.

ECHO has a variety of projects aimed at effective rehabilitation of delinquents who are children, including the running of an Observation Home and a Protection Centre. These offer participatory and community-based programmes aimed at educational, personal and professional development of the child.

Prayas JAC society offers skills development programmes in its Shelter Homes and Observation Homes.

Butterflies has adopted a participatory and rights-based approach towards rehabilitation and development of street children. They started the Butterflies School of Culinary and Catering (BSCC) in 2009, which educates, trains and places adolescents in prestigious catering agencies and restaurants. BSCC offers internship opportunities to their participants in these companies and most of these internships are then converted into fulltime jobs. Butterflies has experienced significant success in this programme.

Salam Balak Trust has vocational training programmes for children from difficult backgrounds. Children are trained in craft forms such as candle making, stitching, etc. and technical skills such as electrical work or IT skills. They have been successful with placements of these children within a three month period.

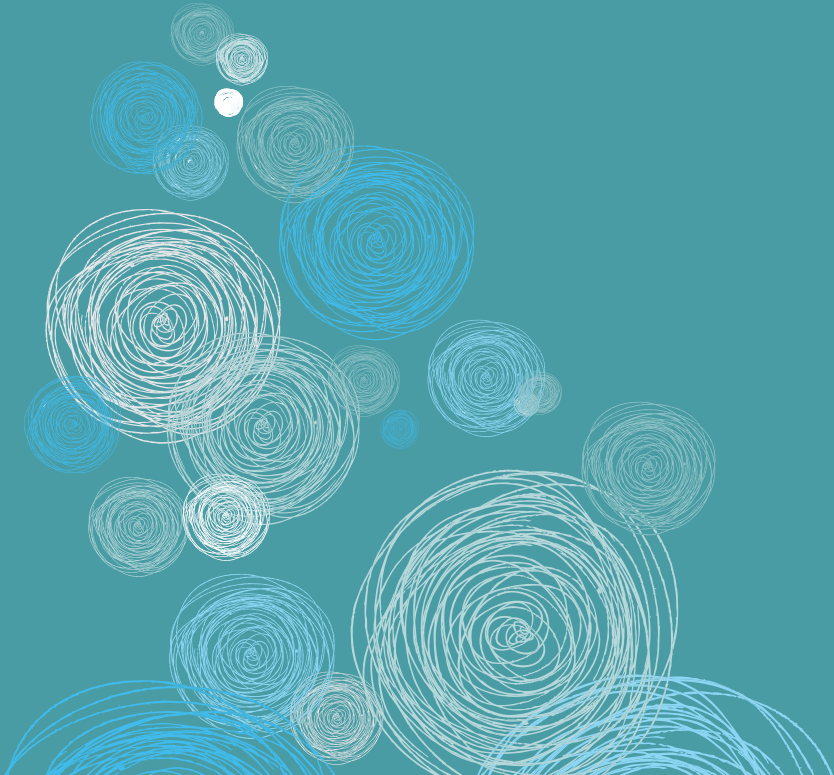
Focusing on all-round development of children and adolescents, both Butterflies and Salam Balak Trust have also initiated programmes such as learning through sports, art and craft and mental health interventions.

A few Observation Homes in the country have Yoga and Art of Living programmes for the children, however, access to these facilities is fairly limited.

Source: Position Paper on Skills Development and Rehabilitation Project for Children in Difficult Situations, HAQ, 2008, New Delhi)

1

Social Rejection Aches



Social rejection aches in many ways.

This is what Abdul, Kunal, Jatin, Kartik, Bitu, and Raja³⁴, boys between the ages of 10 and 17, say in their private conversations with counsellors from HAQ.

They each say this differently. Yet they say it repeatedly.

Living in an Observation Home for Boys (OHB) in Delhi, accused of physical assault, this assorted group of adolescent boys had never previously met with counsellors until the Juvenile Justice Board (JJB) in Delhi ordered them to speak to one of the counsellors from HAQ.

Letting down their defences, laying bare their experiences and complex range of emotions to complete strangers and getting to the truth of their 'situation' (a euphemism for the act of violence they have allegedly committed) has by no means been easy. It has been tough for them to explain why they used force to resolve conflict, why their notions of masculinity were linked to dominance and aggression, and why they succumbed to male peer groups fostering violence.

It has been as difficult for them to come to the realisation that they need to take responsibility for their actions and that they cannot simply blame the influence of friends, the society, or alcohol. More important, it has been hard for them to accept that there are alternate ways of behaviour that are mindful of others' safety and dignity.

There is, however, also a real possibility that some of these boys never committed the crimes they have been held for. It explains why their stories are fluid and ever-changing and why distillation of the actual details takes time.



³⁴ All names changed

Case Study: Backstory and Aftershocks

ABDUL, 17, admits to attacking his brother-in-law after a family dispute. He says his response to the world is one of anger. Abdul and many others like him, become part of family feuds that expect them to act with violence and protect the 'family honour'. Anything less will make them less a 'man'!

KUNAL who at 15 years was bound and gagged by men and then attacked a boy in turn, talks of his recurring nightmares. He says they spill into his daytime routines as visions.

JATIN, 17, says he is ashamed to have hit a younger boy because he was forced to do so by some older boys.

KARTIK, 10, says he had anger simmering within him from childhood as he felt helpless when his father assaulted his mother. He is a mixture of false bravado and caution.

BITU, 16, and **RAJA**, 17, who are apprehended for allegedly stabbing people, say anything and everything is a trigger for rage. Raja's father died during his confinement in the OHB forcing him to handle double disasters.

Their first impulse has been to resist and withhold the details from their counsellors about the peculiarities of their lives and the incident that has forced them into confinement.

That is understandable. With the life as they knew it broken apart, the boys' aversion to counsellors was to be expected. Introduced to the children as people who will do more 'pooch-thach' (interrogation), the children later admitted to the counsellors that they took instant dislike to them.

Already subjected to the probation officer's questions for the social investigation report (SIR), a mandatory component of their case file before an order can be rendered, and in some cases questioning by the police as well, the children said they were wary and resentful of what in their minds they saw as 'prodding and searching' by counsellors. They believed this was being done to 'ascertain their guilt and punish them'.

The children's initiation into the juvenile justice system has been rough: committing an offence-sometimes under peer pressure, a brush with the police, separation from their families or their freewheeling lives on streets and being barricaded into a place called Observation Home.

It is also evident in talking to Abdul, Kunal, Jatin, Kartik, Bitu and Raja that they are not really aware that they could have been led away from lives of crimes if their energies had been diverted to productive pursuits through early interventions by the government under the juvenile justice system. Nor do they know they have rights that allow them to receive the services and sanctions that are appropriate to their age and the offence that they may have committed. They are oblivious to vital, immediate rights they have: their parents being informed of their custody, which in some of their cases has not been done, and of their right to access lawyers.

What keeps them in a state of hyper vigilance is something else. It is a minute-to-minute anxieties or challenges that emerge in their everyday lives in the facility. Things that begin to add in their insular world of the Observation Home, a warehouse for troubled children, till the situation becomes unbearable. It is well established that CICL have fewer psychological resources to help them manage such stress, anxiety and discomfort.

‘Diversion’ and ‘best interest of the child’ have remained a far-fetched ideal

If diversion as a prevention strategy, with a focus on preventing delinquent behaviour, had been successfully adopted over these years, may be their lives could have turned out differently. They could have escaped being called ‘children in conflict with the law’.

The JJAct 2015 addresses two categories of children: Children in need of Care and Protection (CNCP) and Children in Conflict with the Law (CICL). It says that *Principle of Diversion*, that is measures for dealing with children in conflict with law without resorting to judicial proceedings, shall be promoted unless it is in the best interest of the child or the society as a whole.³⁵ This implies that the social welfare system should have identified them as children who needed care and protection, and should have reached out to them with support services.

Measures of diversion include the fact that the law gives the powers to the police to release children who commit petty offences under supervision³⁶ and says that no First Information Report (FIR) shall be registered except where a heinous offence is alleged to have been committed by the child.³⁷ Moreover, under the 2007 Rules, once a child in conflict with the law is treated as a child in need of care and protection, the JJB had no jurisdiction over such child.

Now, under the 2016 JJ Rules, the child is treated as both and has to face both the Child Welfare Committee (CWC) and the JJB in simultaneous proceedings. This causes dual burden and trauma on children who see themselves being subjected to two different sets of authorities. This goes against the very philosophy of diversion. However, restorative justice as a measure of diversion is not yet popular in the country.

Further, the juvenile justice machinery guided by principles of ‘best interests of the child’, ‘right to be heard’, ‘fresh start’ and ‘positive measures’ is meant to differentiate the JJ system from the procedures of adult justice systems. The juvenile justice machinery focusses on restoration and rehabilitation of children rather than on punishment and incarceration.

If understood in its true spirit, the rehabilitative work envisioned for children in conflict with the law must begin much **before** the children enter the juvenile justice system through preventive programmes for at-risk children in the community. When that fails, and children still come into contact and conflict with the law, there is a need for focussed and specialized programmes offered within and through the juvenile justice system that continue till the closure of their legal cases and stretch to supervision till the children are anchored safely within their communities.

As per the philosophy of Juvenile Justice, the JJBs, are meant to focus on the child – not just the offence – understand the circumstances that led to the commission of the offence and make recommendations to ensure rehabilitation, reformation and restoration of the child with the community. Before the passing of the new law in 2015, the nature of proceedings was the same for every child alleged to be in conflict with the law irrespective of their age and nature of offence. Determining the gravity of offences guides all criminal law, and in India it is the Code of Criminal Procedure which classifies seriousness of crimes in terms of cognizable/non-cognizable and bailable /non-bailable offences.

³⁵ Section 3 (XV).

³⁶ Section 12 (91).

³⁷ JJ Model Rules 8.

For the first time in the country, responding to the emotional demands made by the public, following the Nirbhaya gang rape, the new juvenile justice law of 2015 defines and classifies offences in terms of quantum of sentence into three categories, namely, “petty”, “serious” and “heinous.” Additionally, the new law allows 16 to 18 year-old children to be tried as adults when alleged to have committed a heinous offence entailing minimum punishment of more than seven years.

While the critical principles of juvenile justice have become part of the principal legislation as revised in 2015, some have been diluted to reduce the scope for diversion as well as rehabilitation and reform. Here are a few examples:

Principle of fresh start:

As per JJ Act of 2015, “All past records of any child under the Juvenile Justice system should be erased **except in special circumstances**” (these being cases where 16-18 year olds are tried as adults and found guilty). On the other hand, in the JJ Model Rules of 2007 recommended erasure of past records but also a system that **“promotes new beginning for the child”**, and required the State to “seek to promote measures for dealing with children alleged or recognized as having impinged the penal law, **without resorting to judicial proceedings.**”

Institutionalisation as a measure of last resort:

The erstwhile **“Principle of last resort”** stands changed to the **“Principle of institutionalisation as a measure of last resort”**, indicating a clear shift in approach. Although it states that “A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry”, the words **“for the minimum possible duration”** that existed in the JJ Model Rules of 2007 have been deleted because children aged 16 to 18, if found guilty of heinous offence can be subjected to higher sentences going up to life imprisonment, though not without a possibility of release.

Although the law mandates one JJB per district, it is perhaps still not adequate to address the true, rehabilitative needs of children. Individual care plans and their follow-up have become mandatory, but there are no competent professionals to prepare these care plans and ensure follow-up, and the investment of financial resources to back up such provisions is on a decline.

CASE STUDY: MISGIVINGS

ABDUL, KUNAL, JATIN, KARTIK, BITU AND RAJA told their counsellors that they are daunted by the odd mixture of inmates at the Observation Home. This because there are constant bursts of temper and violence. Some of the children face charges of murder and rape. Other have been in and out of the JJ system several times. As a place prone to disorder it is not uncommon to be caught in violent incidents that can range from broken limbs, a busted face, or being sexually assaulted. They also have to shield themselves against stigmatisation, of being tagged as ‘little criminals’, ‘thieves’, ‘assaulters’ and ‘menaces to society’ by those who are meant to protect and look after them. Over and above their heightened vulnerability to physical and emotional harm, they are frustrated by the endless appearances required at the JJB. As children accused of a crime or detained for a crime, under the JJ Act, they have to be presented before the JJB every 14 days with an escort from the Special Juvenile Police Unit (SJPU). The boys’ fears deepen when they see that their fellow residents at the Observation Home remain incarcerated for years as their proceedings last well beyond the mandated maximum limit of four-months.

The JJB does ensure that children are questioned in a child-friendly manner-- there is no interrogation by police unless very necessary, and this also only in the presence of the probation officer or the social worker. Several also get bail, which results in their going home and coming to the JJB every 14 days for hearings. But the truth is that hearings can drag on because of a lack capacity to handle the enormous case load, which leads to dispiritedness among the CIL.

HAQ counselors: making connections despite children's disaffection and dread

Introduced to the children as people who will do more '*pooch-thach*' (interrogation), the children later admitted to the counsellors that they took instant dislike to them. Subject to the probation officer's questions for the social investigation report (SIR), a mandatory component of their case file, and in some cases questioning by the police as well, the children were wary and resentful of what in their minds they saw as further 'prodding and searching' by counsellors. They believed this was being done to 'ascertain their guilt and punish them'. Hence, 'counselling' them was not easy.

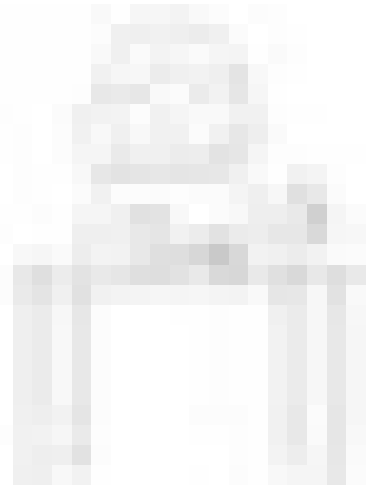
Over the years, despite such dissuading factors, HAQ's counsellors managed a breakthrough with this group of children. They have to often contend with frayed tempers, vengefulness, deep despair, irresolution, lack of ability to form friendships, distrust, loneliness, shame and inadequacy. On the other hand, many CICL also exhibit extraordinarily deep friendships with inmates, despite the seeming lack of other social relationships, and fierce tenderness towards them.

Yet once they drop their inhibitions, the children gently persuaded to talk, have begun to lend voice to their terrors of being deprived of parental care and their homes for the first time in their lives, which they say it feels like a safety layer removed. They talk of the disorientation of finding themselves alone, of feeling abandoned and doomed. They talk of how they feel uprooted and disconnected from everyone and everything, of the hollowing out their socio-cultural moorings, of the alienation from their communities, that is nudging them closer and closer to the vacuum of social despair and economic dispossession.

They describe the pain of social exclusion as being physically difficult to manage, almost like a body ache. They speak at length of the resultant anger, anxiety, sleeplessness, depression, jealousy, substance abuse, poor impulse control, and varying manner of emotional damage. But while they draw out their stories from this reservoir of experience and emotion, they do not necessarily make connections between their physical, emotional and social afflictions. Nor do they understand that they are coping with such distressing realities over and above adolescent mood swings, angst and the volatility of reactions.

In this situation, there is a real danger of escalation as a deprived sense of belonging and coping skills begins to become entrenched.

Arvind, was temperamentally gentle and subdued but exhaustion and hunger combined with relentless nagging from his elderly employer led him hit her in a fit of rage – only to find she had died. When the husband of the woman came running in, Arvind panicked and killed him too. Sitting in the observation home he deeply regrets every moment of that action – but can do little to change the circumstances or his action. He was ridden with guilt, sorrow and shame and so barely talked to anyone.



Sunil was an 8-year-old watching violence on TV where he was unable to separate reality from fiction and assumed it was all a game, that people did not die. So, when he got into a fight over a ball with his friend, Sunil brandished a knife as he had seen enacted on television. Except that it all went wrong. He got into a scuffle with his friend and ended up stabbing him to death. Did he think his friend would die? No. Sunil is consumed with guilt and shame. When the HAQ counsellors met him, he was depressed.

It is evident these children's current life is riddled with a sense of helplessness. Not knowing how to handle their anger. Or their visceral shame of being labelled criminals. Or their sense of being outcasts. Or their lack of self-efficacy. Or their feeling unconnected with everyone and everything. Or the constant shifting of the ground beneath their feet. They struggle through their childhood and adolescence feeling unsteady and at odds with their families, community, peers, home personnel, police, lawyers, probation officers, social workers, the judicial magistrate and the world outside. Darkness follows them like shadows.

They end up living mostly in the present and rarely think of the future. When they are asked to anticipate a future by the counsellors, they see only uncertainty, complications, and widening social and class divisions. Since many of them dropped out of school, they don't see themselves as working in regular jobs. As many of them lack family structures and support, or have witnessed disintegration of social relations, they see a daily life that would bind them inevitably to criminal activities.

All they see is a lifetime of social rebuff, peer bullying, personal helplessness and turmoil ahead of them. And an emotional reality of slow-burn trauma. The finality of such a reality, a foreclosed future, can be severely disillusioning to an adult. To a child, the enormity of this truth can be much worse, paralyzing efforts towards self-improvement.

CICL, especially those from poor and marginalised families, often find themselves alone after being apprehended. While a few children do have the support of their families and others in the community, these children are exceptions.

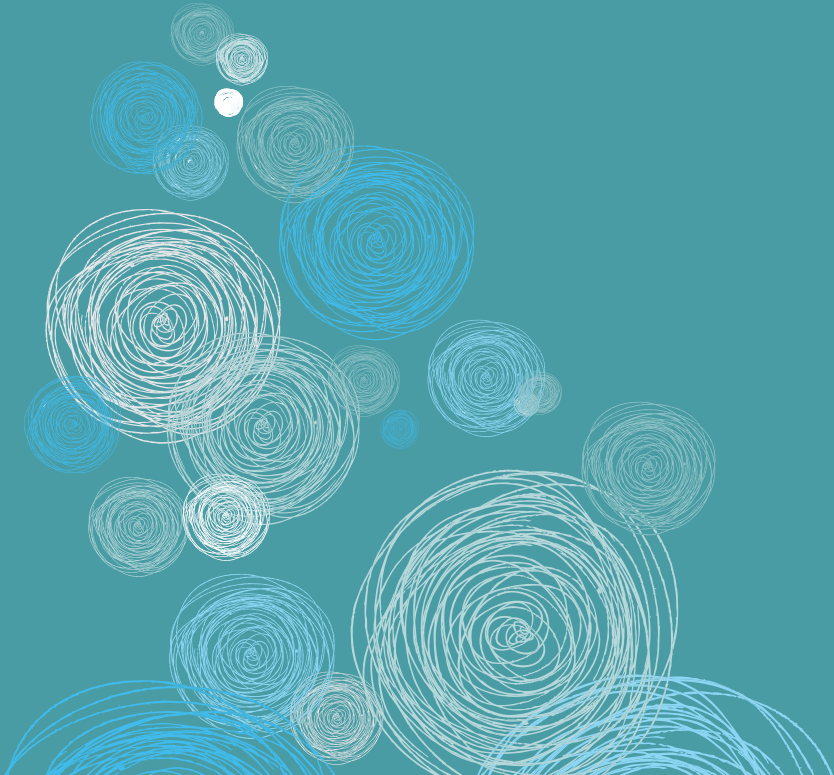
A majority live with confrontations with their families, peers, neighbours, police, staff of Observation Homes and the law, who begin to see these children as errant. This deepens their despair and acute sense of inferiority. Education could compensate for their insecurities, but many children drop out of schooling.

A struggle to gain recognition and power within this social environment, where the security nets of the family, peers, schools and the community have been withdrawn, very often tip the scales in the opposite direction. The striving for acceptance and recognition becomes so intense and such an impatient enterprise for many CICL, that it often manifests as violence and conflicts within society. The danger of a re-entry of such CICL into the juvenile justice system is heightened.

When we hold children in barricaded institutions because there are no alternatives, when we deprive them of a future because they have come in conflict with the law, when we don't allow them to find work to support themselves by not giving them employment or apprenticeship opportunities, and when we deny them protection because neither approaches nor laws are in place, these children struggle with a crisis of faith.

2

Nurturing Change



Here are some stories gathered from HAQ's efforts at counselling in the last ten years, which bring alive how several CICL have emerged out of their situations and managed to change the way they think, feel and behave.

Each child has changed for the better in his/her own way. We see how each of their lives are filled with expectations of a better life for themselves and their families. However long their ordeals have been, they have come out stronger. This as they have offset a multitude of risk factors by using counselling to their change behaviours that help them move away from a criminal career path.

Many other children are still trying.

The foundation for empowerment through counselling in HAQ is the strong belief that children have a right to manage their own lives. The focus is on building the capacities and strengths. HAQ's counsellors forgo any intervention which places children in positions of dependency.



A Recovery from Disconnection

The story of Asif, 9, is one of recovery from disconnection. From his family, society and from himself.

Asif's family comprises of his mother and two sisters. His mother worked as a waste segregator and he and his two sisters worked as rag pickers. Long hours of work meant no family bonds, no schooling, disengagement from everyone around, and raising himself to a large extent.

But his feeling of not being wanted, his sense of being flawed, and the lack of emotional bonding, cut off from his feelings, the idea that something is missing and the feeling of hollowness inside, only emerged after several sessions of counselling. And mostly from non-verbal indications of suppressed feelings. He first met counsellors in the Observation Home. Later he attended sessions from his home as he waited for a verdict on his case.

Asif was detained for alleged gang rape. Though he was not a party to rape, he told the counsellor he was inebriated. In his counselling sessions, he admitted to stealing, breaking into homes, and roaming the streets in search of fresh avenues to make money. Street connections, he said, became central to his everyday survival and identity. In subsequent sessions, he talked of evolving coping strategies, mostly violent, as a means to handle life.

A visit to his home exposed the HAQ counsellor to many other grim realities of Asif's life. Having being thrown out from their slum near ITO, the family had sheltered in another slum in east Delhi. His home was run down, open to the onslaught of nature's elements and the city traffic, with no water, toilet, sanitation or security of any kind. Here too the eviction by the landlord was a real fear, one that ran parallel to the turmoil of survival.

Picking on the things he did not say, the counsellor helped him delve into his fears of disengagement, his disappointment in not having a father to protect him, his lack of emotion (be it fear or the inability to introspect, “*didi, mein kuch nahin sochta*”, “*mujhe darr nahin lagta*” (I don't think much, I am not afraid), his disgust of rag picking as a profession and his complete lack of interest in studies.

By acknowledging his uncomfortable feelings and facing his inadequacies, Asif was able to understand that he could overcome them by affirming to himself what he was and what he wanted to do. He told the counsellor he was keen to study. And that he felt his needs should be met. Feelings that he repressed all these years came to the fore. He began to understand its subtle nuances and the consequences of denying them.

Since Asif could never be part of the formal schooling system, having lost years of study, HAQ's counsellor initiated him into an alternate education programme in East Delhi with the help of the NGO which spearheaded this initiative.

Asif now attends school regularly; enjoys the structure it is giving his life and the identity of a school-goer that he has attained. But adjusting did not come easy as he had never been to school. Even the informal schooling system took a huge amount of coping. But he seems to have understood the importance of self-care and self-appreciation. His relationship with his family is much better.

What was clear from engaging with Asif was that unless his family circumstances – the immediate ‘world’ around him changed, Asif would not be able to sustain the life he was choosing. HAQ therefore began efforts to get his mother to enroll his sisters in school and also get her to avail the benefits of special schemes for marginalised women. These efforts are still work in progress. Counsellors say they need to keep encouraging Asif to stay on in school, so he remains focused on education through periodic visits and supervision.

Standing in His Truth

Umesh was around 16 when he was arrested on murder charges. He was lodged in Tihar Jail in 2009 and then sent to the Observation Home the same year.

Umesh started his counselling sessions in 2011 as a 17-year-old. In the course of the sessions it emerged that Umesh is from Nepal, but his family shifted to Delhi 35 years ago. He was sent back to study in Nepal after class five when he was found using recreational drugs. When he returned after a few years, his family could not adequately care for him.

His father at the time of the incident was 60 years old and drove a rickshaw in order to make ends meet. His mother worked as housemaid. He had six siblings. They all lived in a one-room accommodation in West Delhi. The eldest brother who lived in Nepal was 30 years old at the time of the incident and the youngest brother was 10 years old and went to school.

According to Umesh, the murder occurred at the home of a man from his village in Nepal. Umesh had accompanied his older brother and his friends to the victim's house. While some of the boys were busy cooking a meal for everyone, his brother was playing a game of cards with some other boys and men. He was drinking and soon began to cheat in the game.

Predictably, a fight broke out. Just as the boys and men began to scuffle with one another, there was a power outage. Umesh who had a knife with him said he panicked and brandished it as everyone was using their arms and legs wildly. He said it perhaps went through the stomach of a

man who was there, but could not be sure as it was pitch dark. “*Andhere mein kisne kisko maara yeh pata nahi* (I don't know who stabbed whom in the dark)”.

He says he rushed home to tell his parents. The police came almost immediately and arrested Umesh and his brother. While he was sent to the Observation Home after a few months in the adult jail and advised counselling, his older brother is in Tihar Jail.

Umesh's coping mechanisms during his counselling appeared to be adequate. He was open to discussing the incident, acknowledge his role and take responsibility for it and seemed calm and in control of his emotions. He was also at ease with his daily routines and showed no signs of being depressed.

An inquiry into his life before the arrest revealed him to be a gentle child, not prone to anger or violent outbursts and that he was training to be a plumber. He continued to train under a plumber at the Observation Home. He expressed willingness and desire to continue with this as a profession and saw it as a viable livelihood option.

In all the sessions he constantly expressed deep remorse and a desire to get back to a normal life, one that was structured. He understood there was no justification for what he did. His family was supportive of him and were keen that he re-enters society. His deep attachment to his family and the need to follow the path they hoped for him is something he spoke of time and again.

While he expressed a keenness to study, he wavered in intent. HAQ's attempts to link him to an NGO yielded little results. It just may one day.

HAQ's faith in his willingness and capacity to change and improve remains steadfast. Another factor in his favour is he has never displayed emotional, social, and psychological challenges or a tendency to engage in destructive and violent behaviour. He is also willing to invest in counselling.

Instead of subjecting him to a further stay within the juvenile justice system, HAQ recommended that giving him a chance in the community outside and nurturing him will heighten his capacity for positive change.

An Ordered Person, A Disordered Mind

Despite showing no maladaptive behaviours in his childhood or before the murder he committed, Arvind in all probability suffered from the ill-effects of poor familial and social interactions and the unsatisfying village environment that forced him to seek employment outside it as a child. And this simmered within him for years, without him or anyone else being conscious of this discontent. Until it erupted.

Arvind belongs to Jalpaiguri in West Bengal. In 2002 he came in search of employment to Delhi. A placement agency secured him a job with a doctor. He worked for eight months and went back to his village. He came back in 2006 and found employment with an aged couple. After a brief stint, he murdered them in a fit of rage. He was arrested as he stepped out of the train in Jalpaiguri after the incident.

After being in the Observation Home for two years, Arvind was recommended counselling in 2008 as he looked withdrawn and depressed. After five sessions with him from March through April 2008, it became clear that this child was in need of psychiatric treatment.

What struck the counsellor in the initial meetings was his sense of quiet, his restraint, and his inability to make eye contact. He seemed withdrawn. But despite his seemingly anti-social behaviour, he responded to rules governing family and social structures. He spoke of the importance of looking after parents, truth telling and identified them as values he cherished.

Arvind was vocal about things that made him sad. He said he was disappointed with himself for not finishing his studies despite his parents urging him to do so. What distressed him deeply was the fact that his parents never came to his rescue after he was accused of murder. Though he did not elaborate, the counsellor could pick on the non-verbal cues that showed a deep sense of abandonment.

Arvind was never hesitant in speaking of his having murdered his employers and how he did it. He told the counsellor that he did it because they were extremely rude and offensive to him, gave him very little food and found fault with him for little things. On the day he murdered them, he maintained, they were unusually discourteous with him and had denied him food all day. He says he could not bear the hunger, the victimisation, and the corrosive insults they flung without a care for his feelings.

While his earlier employer told the counsellors that Arvind was calm, well-mannered and uncomplaining, his father (who did finally come to see him in April 2008) said he would lose his cool when he was hungry.

It is well known that adolescents in correctional facilities are at a higher risk of suffering from psychosis. There is enough documented evidence of the association between psychiatric disorders and recidivism. Keeping this in mind the HAQ counsellor recommended to the Judicial Magistrate that Arvind be sent for psychiatric care at Vidya Sagar Institute of Mental Health and Neurosciences (VIMHANS).

A Preoccupation With Sex

Rohan's life was one lived on the streets after he was orphaned at age 11, losing his parents in quick succession. His three married brothers and two married sisters could offer him no familial or emotional anchors. Or education. An existence on the street became a way of life for him. This was around Delhi's Jama Masjid area and the by lanes of Meena Bazar.

He grew up with very little food, clothes, shelter or healthcare. He has poor social skills. The pavements he lived on were mostly sites of squalor, poor hygiene and ill health. Such chronic poverty and illiteracy also meant vulnerability to abuse and violence, delinquent behaviour, substance abuse, and having unprotected sex with multiple partners. He boasted of his addiction to psychotropic substances in the form of tablets and also to sniffing shoe polish.

He was arrested for theft, lodged in the Observation Home and recommended counselling. He was about 14 or 15 years old by then.

In his counselling sessions, he was preoccupied with describing his sexual exploits in great detail. He called his sexual liaisons 'settings' and often went into lurid details. He had scant respect or attachments with these women/girls. And none of them lingered in his life.

In one session, he was sullen and silent, refusing to speak. When the counsellor gently asked him why, he confessed to being attracted to her and fantasising about her. He wanted that she be intimate with him, that she become his 'setting'. Trying to divert him through games, or explaining to him that this was a professional relationship and that it is possible that boys and girls to be

friends without intimacy, did not persuade him. He dismissed her arguments and demanded that she understand him and fulfill his needs. This continued over several sessions.

When she did not respond, he began banging his head on the wall. The counsellor surmised that this was not the first time he did that as she had noticed scars on his forehead before.

Rohan was deprived of traditional bonds in his infancy and growing years, be it with his parents or siblings, and it precluded him from building healthier relations based on love and trust. As he experienced broken emotional communication, he grew up with little understanding of his own emotions or feelings of others. It limited his ability to build or maintain successful relationships.

So his trysts with the opposite sex were not emotional bonding, but just meant to be transitory in nature as that was what he knew of relationships. While intimacy required commitment, something he knew nothing about, objectifying was an easy, familiar road for him, one that gave him moments of connection and pleasure but ruled out the potential of rejection. And rejection is something he dreaded, having been abandoned by his family.

It is well established that early sexual intercourse among youth leads to risky sexual behaviours and hinders psychological and social development. Which is the case with Rohan.

Counselling in his case needed to focus on enabling him to develop meaningful connections with others by aiding him to understand the value of family and societal bonds, find an occupation to pursue, minimise risky sexual behaviours and understand the value of consent in a relationship. And that is what the counsellor recommended to the JJB.

Bringing A Voice to the Pain and Suffering of A Mother

This story of a young boy provides a window to show how children could be lost forever within the juvenile justice system, never to return to their parents.

The police picked up this young boy from his house at 4 am on the pretext of enlisting his help to crack a case. The police did not tell his mother from which police station they had come. All they told her was her son would be back in an hour. Five hours later an anxious mother contacted HAQ for help.

After enquiring with the nearby police stations, when the child could not be traced, a telegram was sent to the Commissioner of Police and the Chief Justice of Delhi High Court. This was followed by a habeas corpus petition filed in the Delhi High Court. It ensured that the child was produced before the Court.

Police told the court that the child was detained under Section 25 of the Arms Act. It came to HAQ's knowledge that this child was kept in police custody for two days, beaten, forced to confess to a crime and then sent to Tihar Jail after being booked under the Arms Act.

However, the date of FIR filed against him did not match the date on which the child was picked up from his home. The FIR had a date that was two days after the child was picked up, while he was already in the custody of the police. The police completely ignored the fact that the boy was still a child and HAQ produced documentary evidence of his age on the basis of his school records. Ultimately the case made out by the police did not stand in court and the FIR had to be quashed.

Yet this child could have easily been lost if HAQ had not intervened. His mother was unaware of the physical location of her child. She was confused about how and when juvenile probation and court proceedings would be conducted. Nothing was done to compensate the child for the trauma he suffered at the hands of the police and inmates of the Observation Home. Or ensure there was no discontinuity in his schooling.

This experience demonstrates that intervention using just counselling will not help unless it is combined with legal aid and rehabilitation support in the form of education or vocational training and employment opportunities for these children. Another disheartening reality is that counselling will fail when families are dysfunctional or disregard the value of this exchange.

Equal parts of child and family, equal parts of hope and affirmation

Family relationships, duties, privileges, and the amount of control exercised over children all play roles in influencing behaviour. The structure within the family household often determines the extent of delinquency. When a child enters the juvenile justice system very often parents and families give up on them. Others are deterred by poverty and a lack of knowledge of the law and the rights their children have.

Some parents however show resolve and work as a team with their children and counsellors to help them recover. We bring you some stories of how families have used counselling as a lifeline and pulled their children out of the legal and socio-economic quagmire.

The Secret to Taming A Rebellious Teen: Working As One Team With One Dream

If you have issues with your teenager son's failing grades, returning home late, refusing to give explanations as to where he was, insisting on acquiring things you cannot afford, and you want him to change, that is possible-- by changing yourself first.

This is what the mother of a 16-year-old boy realised when her son was arrested for grievously injuring a 75-year-old woman due to his rash driving.

As this child lost his father when he was five, both his mother and grandparents tried to compensate by indulging him and giving him what he wanted. Unsurprisingly, it resulted in the boy demanding all that he could, breaking rules, playing truant from his boarding school, coming home at the hour he chose to, socialising with boys far older than him, refusing to eat the food cooked at home and threatening to physically harm himself if anyone said anything to him.

It caused many an inflamed fight at home between him and his mother.

When he repeatedly demanded a bike, his mother gave it to him despite her reservations. He injured an older woman due to negligence while riding his bike. The accident agonized his family, but not the boy. He neither displayed remorse nor changed his erratic lifestyle. He was apprehended and let off on bail. He continued to ride his bike and stay out late.

His mother saw the counselling sessions he had been prescribed as a lifeline as nothing else seemed to work. Not the law nor her remonstrations. As her in-laws were too old to come, she came along with her son.

The thrust of HAQ's counselling was to make both of them aware of the roots of the boy's rebellion, understand each other and their responses to one another and reiterate the need to work

together as a family unit (keeping in mind issues of joint decision-making at home in order to move towards the setting of mutually agreed upon ground rules for effective disciplining).

Five sessions were held on a bi-monthly basis. The mother came to realise her overly permissive style of parenting meant the message that went across to her son was that he doesn't have to play by society's rules. By redefining the meaning of discipline to her son (and herself as well) as a trait to develop self-control, she made the concept less complicated and personal and more neutral. She realised that her son was amenable to this idea and even welcomed it. So she followed up with being consistent and firm in her decisions and ensuring adult supervision and authority. She achieved this objective of the processing of things without losing her compassion and love towards him. It enabled her to see her son change before her eyes.

In the initial sessions it was apparent that her son considered himself unique and a cut above the rest. He said his bike was a symbol of his individual style. He maintained that it gave him a sense of power, thrill, freedom and control over life, something he did not get at home. On the issue of refusing to follow his mother's rules about household responsibilities, schoolwork, entertainment, activities, and choice of friends, he said home and its rules bored him. He talked of the lack of motivation, a role model and interesting activities to pursue. All of this even as he resisted talking about the accident.

As the sessions evolved, the child became a little more open to talking of the incident saying he panicked and lost control and was sorry for causing harm to an innocent person. But he has refused to open up any further since. It will perhaps take many more sessions for him to be ready to handle this crisis that turned his life in ways he never imagined.

In an encouraging move, he expressed willingness to talk to the family, spend time at home, focus on his studies and contribute towards making decisions at home. He even volunteered to attend tuition classes. Picking up the thread, the counsellor worked with him to incorporate structure into his life by encouraging him to go for tuitions every day, exercise and learn a sport, something he has been averse to.

This came about because the counsellor ensured he was not pitted against his mother, giving him the right conditions to talk, going to his spot on the road...the place he is at in his journey...and not giving up when he was uncommunicative and petulant.

But this is only the start of his journey. One can be only guardedly optimistic about his progress as reaching the salvation line will take time. Though the fact of his trying makes its possibility alive.

His mother is happy as she is more empowered and has improved her relationship with her son by leaps and bounds. But she too is aware that the road ahead is long. She says she will not give up. She talks of the many unresolved issues they both need to sort through.



Let us walk together

Group counselling helps CICL understand that they are not alone and that each child can directly or indirectly help another. We present an instance of teachers getting counselled to help children they teach, the school and themselves as well. The children they teach are from under-served populations who are likely to cross societal boundaries and step into a world of crime.

Using group therapy to build inner strength

Section 18 (1)(b) of the JJAct provides for the option of ordering group counselling as a dispositional order by the JJB.

HAQ first came in contact with the Samarpan Foundation after they were brought in to work with an 8 year old girl. HAQ felt isolating the girl child for counselling would make it awkward for her so they undertook counselling of several children. It was during this time that several teachers requested counselling as well. They felt ill-equipped to handle teaching children from the slums who were susceptible to delinquent behaviour. Apart from several socio-economic restraints that posed as barriers, most of these children were disinclined towards studies and promptly absented themselves when scolded. The parents were equally un-cooperative and hindered effective teaching processes.

HAQ decided on group counselling 11 teachers to induce shared learning. As the group members were asked to make a commitment to protect each other's confidentiality, the conversations opened up. Seven sessions were staggered over two months. HAQ is confident that these exercises helped teachers perceive themselves and the children they teach differently, perceptions that are more tolerant and mindful of dignity. And that they will be better at offering guidance to these children who stand in danger of living perilous lives.

ALONE, TOGETHER

Children who fall through societal structures are in need of community help. The successful prevention and redress of child crime involves the whole community and children playing an active role in stemming the crisis. Also, therapy is most successful when partnered with other services as well, such as employment opportunities, education and training, and, importantly, mental health counselling. Child-focussed prevention programmes which involve education and positive activities are a common way of preventing and addressing anti-social behaviour.

We present an instance of how the community, police, CWC, and NGOs stepped in to help a child.

Seeking Help Across Borders and Margins

Sunil, 12, is an orphan from Saharanpur. His younger brother disappeared one day, and his paternal uncle adopted his sister. He was left to fend for himself. His neighbour helped him get admitted to a boarding school. But Sunil ran away as, he says, he was beaten by his teachers. His neighbour then brought him back and through his friend approached HAQ for help.

HAQ sought assistance of the child welfare committee (CWC), which proposed that Sunil be placed with an NGO that offers shelter to children. While the NGO said they would take the child, they required a written authorization from the CWC. HAQ followed up and approached the CWC. Despite the child not being originally from Delhi, the CWC was sensitive to the child's needs as they were familiar with his case. The CWC issued the letter. The CWC asked HAQ to complete several police formalities. The police too showed kindness as they were familiar with HAQ's work and had undergone several sensitisation trainings from them.

Despite the assistance and cooperation from the authorities, the procedures took a while. It helped us recognise that another NGO perhaps would have to face an enormous struggle.

What emerges from this case study is how difficult it is for orphans to survive on their own in the city and how the community – be it the shelter home, the CWC, the police or the NGO – have a crucial role to play in rehabilitating a child. Their cooperation or non-cooperation may be an administrative matter for them but for a child it is a matter of life and death. And also perhaps a life of safety and security versus one riddled with crime and insecurity.

Sahil's Story- the Path to Restoration

Sahil, who was 15 in 2013 and a resident of Sultanpuri in Delhi, was apprehended by the police for allegedly sodomising a child in his neighbourhood.

In his first session with the counsellor in October 2013, things were slow. Sahil began talking after a lot of trepidation and a great deal of hesitation. He was unsure how counselling would help him and was anxious about divulging information. After a level of comfort came about, in the following sessions, he admitted to a sexual relationship with the boy and paying him Rs 10 for it. As the boy did not protest, he said he was surprised when his mother came by later in the day to slap him for the 'act' and by the police descending on him, close on her heels, to detain him. How did the police get to know? Why were they detaining him when all the neighbourhood boys indulged in similar activities day in and out? Sahil said he was mystified by these questions.

It was apparent Sahil was not remorseful. He 'normalised' the act arguing it was a common occurrence in his neighbourhood. In the absence of a familial structure, a role model to infuse values of being mindful of others' consent and dignity and an absent mother, who had to work long hours to support the family, Sahil maintained he was dependent on his peers for guidance and said that this was one act they all indulged in.

However, by January 2014, there was a significant change. Sahil sought out counselling. He initiated a conversation on sexuality and was keen to understand how to address his sexual needs without hurting another. He began to show signs of reform, outlining the changes in his life. He said he no longer teased girls or indulged in substance abuse or sex but said he was finding it hard to cope with emotions of rage, angry as he was with his friends and his mother. He continued to express further disquietude over long hours of work, lack of time for hobbies (that the counsellor advised he take up), lack of a father to guide him, the perpetual absence of his mother in his daily life, and being a butt of ridicule for the boys in his neighbourhood for being apprehended for something they do every day. He said he felt dwarfed by everything he knew and didn't know. As an aside, he also admitted to some boys looking up to him with new respect for being on the other side of law.

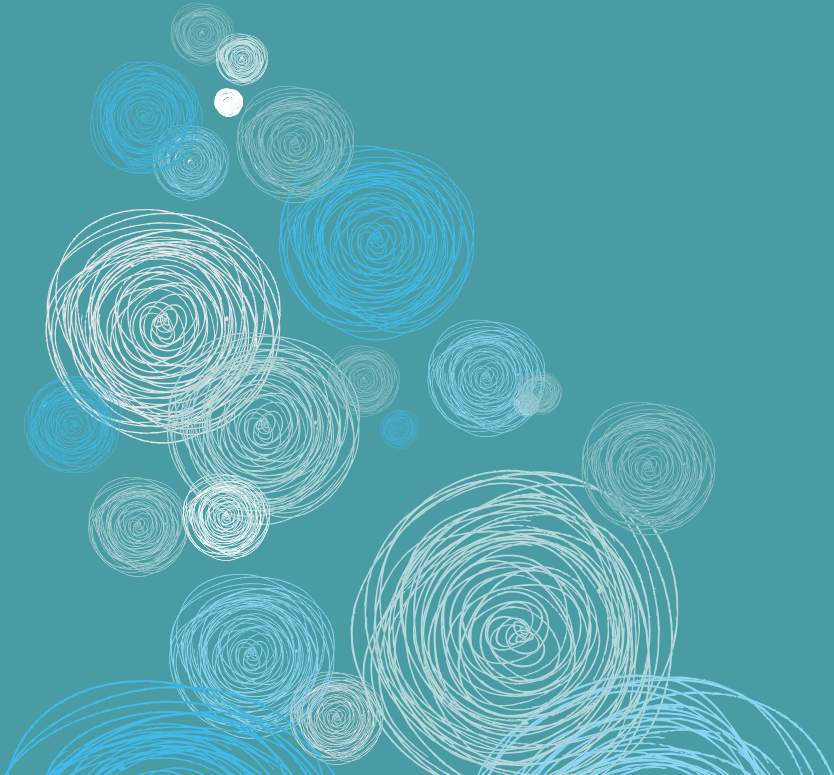
In his session in July, Sahil said he had enrolled in a computer course having followed up on some leads given to him by the counsellor. He said he had done some thinking about his 'act', the boy and his family. He said he felt a sense of unease, understood that he had wronged the boy and was keen to make amends.

There were setbacks, but by September, there was definite improvement. Sahil came with news that he had found a job in Bawana. He said life was different there and the boys did not indulge in sexual harassment or substance abuse. He said he now could see that such a worldview and attitudes could exist and that he could be part of it. He said he now truly understood what he did was not correct as he did not pay heed to the other boy's consent or feelings and that he recognised what taking responsibility for his action really meant.

Subsequent telephonic conversations showed Sahil to be well on the path of recovery and rehabilitation though his mother remained reluctant to come for counselling. Seeing this change in Sahil in a year, HAQ is confident that by persisting with counselling other boys can escape the confines of economic and social dispossession, understand the values of equal relationships in life and find a new identity, purpose and lives for themselves.

3

Effective Intervention



HAQ has made significant headway to help many CICL in the capital overcome their present day challenges and lead them away from the *cul de sac* of social rejection and abandonment. Working both within and outside the Observation Homes with CICL, interacting and cooperating with the family members, with other staff in the juvenile justice system, and helping children foster ties with the community through a variety of networks, HAQ is trying to help children reach their growth and well-being and lead crime-free lives.

By using several counselling techniques and therapeutic processes, HAQ's counsellors have allowed many CICL to adapt to a new normal and discover a new identity by tapping into their dormant and invisible power within. The use of this strengths-based approach has made way for gradual social rehabilitation and community integration.

Table 3. HAQ's Progress With Counselling Of CICL

Year	Counselling of CICL (Individual Counselling)		
	Male	Female	TOTAL
2005	0	1	1
2006	1	3	4
2007	2	1	3
2008	3	1	4
2009	45	4	49
2010	46	1	47
2011	53	4	57
2012	109	1	110
2013	157	3	160
2014	166	0	166
2015	114	0	114
2016	125	4	129
2017	79	2	81
2018-19	34	0	34
Total (13 Years)	934	25	959

The counselling process

It must be understood children sometimes commit crimes during a tumultuous stage in their development marked by profound biological, psychological, emotional and social changes. Yet the malleability of an adolescents' brain development means that these adolescents may be amenable to change and rehabilitation and that course corrections can occur before they attain adult levels of development.



Elizabeth S. Scott and Laurence Steinberg, erstwhile members of the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent and Juvenile Justice expounded on this theme some years ago with clarity albeit in the context of USA. “The problem with individualised assessments of immaturity is that practitioners lack diagnostic tools to evaluate psychosocial maturity and identity formation on an individualised basis. Recently, courts in some areas have begun to use a psychopathy checklist, a variation of an instrument developed for adults, in an effort to identify adolescent psychopaths for transfer or sentencing purposes. This practice, however, is fraught with the potential for error; it is simply not yet possible to distinguish incipient psychopaths from youths whose crimes reflect transient immaturity. For this reason, the American Psychiatric Association restricts the diagnosis of psychopathy to individuals aged eighteen and older. Evaluating antisocial traits and conduct in adolescence is just too uncertain.

(Elizabeth S. Scott and Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, *The Future of Children*, 2008, Vol 18 No. 2, p.15 at 24-25)

Keeping this in mind, HAQ focused on helping CICL regain a sense of safety and control over their lives.

Ideally, within the juvenile justice system the counsellors should assist the child at the time of being apprehended, be involved in pre-trial solutions (by taking responsibility to recommend the most appropriate programme or setting for CICL and see if diversionary measures are possible), help with mental health assessment within SIRs (in order to help the JJBs determine the most appropriate course of action regarding that particular child in response to the offence), and counsel the CICL during custodial sentences (whether at the Homes or within JJB premises).

Apart from this, they must work with the child’s family, help in the preparation of the child’s release by working on detailed inputs to the ICPs that probation officers can incorporate in their final analysis (to ensure that the prospects of CICL both in custody and upon release are as positive as possible), offer continued counselling and mentoring post-release and support children who have no families through counselling at after care centres (where CICL who have no family are sent to) and help in rehabilitation by putting the child in touch with educational institutions and vocational services.

All these services are invaluable in enabling the child to avoid reoffending, and also ensure a positive environment of family, friendships and community. Apart from this, HAQ sees the need for counsellors to give primacy to counselling to prevent children entering the world of crime

There are no set protocols for counselling of CICLs in India. In the absence of standard protocols, counsellors develop their own protocols. However, they are bound to differ depending upon their training and understanding.

Based on the actual experiences of HAQ’s counsellors and their perspectives, we point to a frame of reference for rapport-building with children. HAQ’s counsellors (both past and present) point to specific counselling skills and their characteristics based on their many sessions of counselling CICL.

Explaining the role of the counsellor and easing children into conversations

Communicating with CICL and building a relationship with them, to give them a voice in their proceedings, advocate for their best interests, is a long process.³⁸

CICL have an abrasive initiation into the juvenile justice system and their distrust of adults is high. As they come with no real comprehension of a counsellor's role and see them as yet another adult set to dissect their story, counsellors need to provide the child with a safe and conducive environment. There is need to extend physical, psychological, emotional and cultural safety to the children to allow them to begin the process of rebuilding a sense of control, resilience and empowerment.

The start of the journey begins by making clear to the child that counsellors are here to help 'them' rather than the JJB. As part of the child-centered interviewing, it is best that the counsellor specifies at the very start his/her role within the juvenile justice system, how they intend to help the child and what long term benefits the child can expect. It is important for counsellors to explain how their role differs from that of other adults they have and will encounter, such as police, lawyers, judges, probation officers, social workers and Home staff. The processes of counselling must be explained in detail to the child.

One HAQ counsellor says that she uses the first four sessions to build a sense of comfort with the child and assure him/her that theirs is an equal partnership and that this is a safe space. She says she retains the child's trust by putting his/her mind at rest about not divulging the details of their conversations to their parents, unless the child gives her explicit permission to do so. She says she also makes it a point to reassure the parents about what counselling will entail so they don't interrupt sessions, besieged as they are with worry.

As there is limited time (30 to 45 minutes) and often a lack of absolute privacy in counselling rooms at the JJB, rapport-building can be ensured by picking a relatively quiet spot and following the child's lead. Very often the counsellors make do with a corner or an open space in the Observation Home. When a child does several sessions at the Home or the JJB premises and wants to pursue counselling, when on bail or after release, they are asked to come to HAQ's office where privacy and comfortable settings are assured.

HAQ's counsellors say that ensuring children are physically comfortable while speaking by helping them choose a spot where they feel untroubled, fidget if they feel like and not force them to make eye-contact may appear as small, irrelevant gestures but they can help bridge distances. Not taking notes in the presence of the child is key to making the child feel at ease. Yet it is important to document critical information about the child post the interview for subsequent interviews and for well-reasoned inputs into SIRs and ICPs.

It is best, say the counsellors, to discuss a topic that the child wants to talk about, give the child time and space to open up at his/her own pace and maintain a weekly or fortnightly continuity of the sessions.

³⁸ This section draws upon the experiences and learnings shared by HAQ's counsellors over the years: Namita Butani, Shahbaz Khan, Rhea Sharma, Priya Tiwari, Pratiksha Tiwari and Chaitali Sinha

Child-counsellor confidentiality privilege must be explained

HAQ's experience has shown that the counsellor must keep in mind that the core effort should be to earn the child's trust, by being responsive to his/her needs, and to gradually work towards a collaborative recovery plan with the child. This even as they co-relate the paperwork that documents vital information about the CICL (from FIRs and SIRs) to their counselling processes so that they elicit the necessary information that benefits the child.

Hence, HAQ's counsellors insist the idea of the child-counsellor confidentiality privilege must be explained and the child must know exactly what details he/she divulges will be reported in the documentation to the Judicial Magistrate. The child needs to understand the counsellor cannot always keep the information he/she divulges confidential. The use of clear and simple language that the child understands can help convey this information.

Essentially HAQ's counsellor updates to the Judicial Magistrate are about the child's regularity in attending counselling, the structure of the counselling sessions, and the progress made. The confidentiality of the child is broken only in cases where the counsellor suspects the child will cause self-harm or third party harm. And this is done only after informing the child.

THE IDEA BEHIND A COUNSELLOR BRIEF IS TO :

- determine the shift in the child's behaviour, evaluate the progress towards goals that the child has set for himself/herself to give his/her life direction, as also see if there is a boost to their motivation and self-confidence levels.
- recording the child's progress as to highlight the opportunities that can be tapped into to help the child move on
- take into account the challenges before the child, understand how to help the child overcome these hurdles, ascertain the child's aspirations and determine how to ensure that he/she works towards them. These briefings are also opportunities to point to the need for referrals for mental health in the cases of some children
- report on the child's progress in detail when a Judicial Magistrate requests it. It means extending all information as counselling is judicially mandated. It also means that the counsellor has to maintain a fine balance between the best interest of the child, the principle of confidentiality and the what is needed for the smooth functioning of the judicial process. The job of the counsellor is to help the child attain the necessary mental strength to be able to depose before the JJB and to present to the JJB what the child's needs and difficulties are. GATHERING EVIDENCE THROUGH COUNSELLING IS NOT THE ROLE OF THE COUNSELLOR In other words it is not the role of the counsellor to determine and report to the JJB if the child has committed the offence. That is the role of the police, the lawyers and the JJB.

Active listening: a critical skill in the counselling tool kit

It might take a long time for a child to open up. Some are shy or quiet, others reluctant or traumatized and still in shock. A counsellor needs to tread cautiously, encouraging the children to unburden their worries and stopping when the child is not ready to go on. It requires that the counsellor fully concentrates, understands, responds and then remembers what is being said. Active listening to children, as this is called, takes a lot of practice and demands a lot of patience. It is all about forming an authentic person-to-person relationship with the child.

Active listening is also a way that counsellors can tell the child that there is *no judgment or evaluation* of what he/she is saying. And that there is just acceptance. This is not to be confused with agreeing with the child or approving his maladaptive behaviour. Rather it is getting acquainted with the child's world as he/she sees it.

Counsellors must remember that just by hearing out the CICL they are conveying to them that they are deserving of attention. By hearing their stories, they are demonstrating that their view of the world has merit. And by allowing them time to decide their course of action they are indicating their trust in the child's ability to solve problems.

It is also important to pay attention to what the child says as much as to his/her body language. If the child is slumping or looking away it is a clear signal that the child is not yet comfortable about opening up. In cases where very young children are being counselled, it helps not to sit across the table but at an angle of 90 degrees as it is less intimidating for a child.

Listening to the child, finding solutions

Assessing the child's problems can be done through the course of the conversations by asking questions, observation, the use of alternate tools (playing, drawing and sentence completion tests, for instance), understanding the child's living environment and arriving at a holistic view of the child's life and influences.

Counselling sessions will never be as marvelously precise or follow this neat sequence of issues. The children will tell their stories the way they want to and when they want to. A counsellor should hence begin at the point the child directs him/her to and join the dots. The ability to adapt to the child's needs and show flexibility is a mark of a true counsellor, say HAQ's counsellors.

Listening to what the child's problems are, the help they are asking for and the solutions they have come up with lies at the heart of counselling. It is important to move at the pace the child is comfortable with and work with him/her towards goals while making use of the internal and external resources available and stretching it to include those he/she does not possess.



THE FUNNEL TECHNIQUE TO BUILD A THERAPEUTIC ALLIANCE: A PART OF ACTIVE LISTENING

The counsellor should see the time of active listening as a time not to object, teach, ask a barrage of questions or help children to solve problems. They should view it as a period to let children talk without interruption or judgment, while listening to what they have to say.

When used properly, the funnel technique, a part of the active listening technique, is an invaluable tool to gather information from the child's perspective and also a way of drawing in the whole picture in stages. HAQ's counsellors believe it entails allowing children to tell their story from start to finish without any interruption. The counsellor needs to keep in mind the first time the child tells his/her story, it may not make sense, and there may be several holes.

During this stage, the role of the counsellor is to encourage the child to speak. To that end, the counsellors could use phrases as "tell me more" or "what happened next". Counsellors must bear in mind that children think differently from grown-ups. There are a lot of things they don't know about and a lot of things for which they don't have the 'words' or the vocabulary to express themselves.

The counsellor must have the ability to match the pace of the session to the child's needs and not pre-diagnose or rush to assist in a decision or move in a specific direction before the child is ready. The attributes that counsellors need to develop are the ability to wait in silence and a trust in the counselling process so that children make their own self-discoveries.

Looking for conversation openers

All counsellors need to let the child set the pace of therapeutic change. Some micro-skills a counsellor can use to break the reluctance of CICL and ensure an easy flow of conversation are: *showing attentiveness (by nodding and making facial expressions)*, repeating key phrases the child uses, paraphrasing, reflecting on meanings, using conversation building blocks, utilising open ended and closed questions, asking about the favourite things of a child, their interests, their day at school and family, focussing on their strengths, and building their self-esteem.

This process is important as the child has not learnt to 'mentalise', a process defined as one by which we make sense of each other and ourselves. It is important the counsellors be patient and help them think their way through the incident. It is also true that these children are not attuned to 'emotionalising their feelings', that is, they don't have the ability to express themselves. There have often been no attempts by the family or school or people in the child's neighbourhood to understand what the child is feeling or wants. So there needs to be tremendous forbearance on the part of counsellors to enable this process within the children.

Other than such invitational verbal skills, some non-verbal skills that counsellors could use to get the children to relax and communicate are: play, role play, drawing, painting, drama and journal writing.

While probing for information it is important to understand that if the counsellor asks the same questions in many different ways it may suggest to the child that he/she has given the wrong answer and cause him to change it. The counsellor's body language also could suggest the right or wrong answer. These approaches should be avoided.

Empathy and cultural competence

Counsellors need have empathy that is not to be confused with sympathy. It really means a willingness and ability to place oneself in the child's situation, feel the child's feelings, understand the child's problem and reflect it back to him/her through verbal or non-verbal communication and a supportive attitude.

Effective counselling and building empathy within the HAQ's frame of reference require counsellors to be self-aware and respectful of the full context in which the CICL live. Cultural competence or the contextualised understanding of CICL is important as there may often be vast socio-economic gaps between the counsellors and the children. Very often the counsellors 'middle class values' are alien to the child who has internalised values of his/her milieu. So a counsellor's approach could unwittingly open up dangers of victimising the child all over again with attitudes and actions that deepen their anguish and stigmatisation.

Cultural competence is defined as "a set of knowledge, attitude, behaviour and policy that interact to enable effective work in cross-cultural situations." A culturally competent counsellor hence consciously strives to work within the cultural context of the child and enables CICL to develop skills that allow them to benefit from services in ways that fit the context of their lives.

We've grown up with strict moral codes where it's easy to banish or diminish someone once they have committed a crime, and make that act the sum of their entire life. There's more richness to their stories. The same child who is now in conflict with the law is capable of loving someone, caring for a parent, has been curious about the world and wanted things deeply. He/she has been just as human as all of us. Empathy is a feeling, a feeling in the child's gut – his/her fears, anger, confusion, remorse and the belief that there is more to them than merely this act.

HAQ Counsellor

Helping children find their own strengths and become their own agents of change in the recovery process

The first step towards children's awareness is self-acceptance. Once children are able to understand and accept their problem, they can move to the next step of finding solutions. Counsellors can guide the process toward progress through goal-setting and eventually lead up to larger issues like finding their purpose in life by tapping into their strengths. Children are also encouraged to review their own progress, and find ways to improve their behaviour. These serve as opportunities for them to take responsibility of their actions, which is a very important component of counselling.

HAQ strongly feels the purpose of counselling, while being non-judgmental, is also to take CICL to a space where they are able to understand the consequences of their actions, take responsibility for them and imbibe this knowing that there is a life ahead. This is what ensures that there is no recidivism, or repeat of an offence.

Educating children constantly about the power they have over their recovery can go a long way to establish rapport. All too often, children are used to adults telling them what to do and not. Collaborating with them or allowing them to take decisions is one way to get them to take responsibility for their actions, and hence their lives. This approach is enormously restorative as children are given the power and choice to decide the course of their life.

Showing appreciation, praising and encouraging them, allowing them to identify their competencies and helping them deal with failure with positivity are ways that counsellors can build the self-image of these children.

It is very important that the children be allowed to understand how to work towards a solution, who will help them to arrive at them and what are the barriers. This so that there is a realistic roadmap in front of them. When children arrive at their own solution/s, it is important they be made to reflect on its pros and cons and its consequences – both on them and others around – so that they take this decision/s keeping this in mind.

They must also be made aware of the external resources that they can rely on for self-advancement.

Looking at what has been blotted out or hidden under the surface

Seeking out the particular nature of each child's stress – be it a predominance of loneliness, sadness, anger or helplessness, distrust of others, difficulties in forming friendships or hostility to the opposite sex – can help counsellors understand the other behavioural, psychological and social anxieties that besiege children. These are most often expressed in the form of feelings and emotions. Counsellors must discern if these are survival mechanisms for the child.

In simple terms, these efforts help these children take appropriate action in their own life space by setting objectives and using their coping strategies as also the help of a counsellor to get to them. All the counsellor's methods and role should be mostly non-directive so that the child decides solutions to their own problems

Particular emphasis must be laid on psychological disorders like mental illness, post-traumatic stress disorder, depression, dissociative disorders, sexual difficulties, sleeplessness, social distress and issues arising out of violence and substance abuse.

HAQ believes these behavioural therapy efforts help CICL by using their inner strengths. This helps improve their social skills, means-ends problem solving, critical reasoning, moral reasoning, cognitive style, self-control, impulse management and self-efficacy.

Brainstorming is a powerful technique to help the child look at his/her problems from a different perspective. It opens up the child's coping strategies and solutions to problems.

The focus of the counsellor should also be on lending emotional support that is especially effective in cases where children suffer from low self-esteem, depression and helplessness ; problem management (where the children relate to their emotions, explore alternate behaviours and make changes in their behaviour); collaboratively formulating counselling goals with children, harnessing the strengths of the child and aiming for holistic care (that can be achieved through help from family, the community and organisations who extend education, skill building and other relevance assistance like de-addiction, for instance).

Helping children arrive at self-determination and tapping into their strengths

HAQ feels it is key to invest time in supporting the child understand his/her actions (both good and bad) and its consequences to enable him/her take responsibility .

To begin with, the child has to be taken through a process wherein he/she understands that it is just as important to own up to actions that may not be appropriate, as it is to seek accolade. Discussions on 'appropriate' and 'inappropriate' behaviour and 'legal' and 'illegal' actions become part of this process.

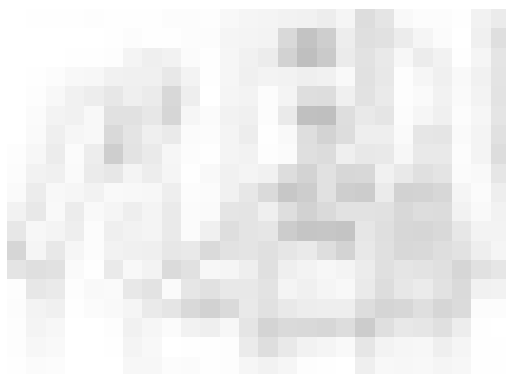
Allowing a child dignity, worth, and uniqueness can open up the child's right to socially responsible self-determination which lies at the very core of counselling.

Identifying strengths of children will also help as the counsellors can use it as a starting point to help the child establish self-esteem and confidence.

Reinforcing positive behaviours will get children to do the right thing.

Is the child a quick learner? Does he/she have a sense of humour? Is kindness a noticeable trait? Unravelling these truths, HAQ believes, can help delve into and strengthen children's coping behaviours and also aid in figuring out the resources that the child depends on in crisis situations. This will include family, friends and the larger socio-economic environment of the society.

Taking stock of what the child feels, his/her rationalisations and recognising the triggers for wrongdoing would take a counsellor anywhere between four and six weeks. Then the aim should be to work together with the child towards goals that children think they can reach on their own. Motivational therapy must be used (holding out the lure of possibilities and opportunities that lies ahead of these children) as it can help these children see beyond their shattered present to a future that could be intact. The merits of schooling can be grounded so that the children see it as a ladder to future goals.



Dealing with admittance of guilt during the counselling process and its impact on the legal outcome of the case

Innumerable papers and books have puzzled over this issue, looking at ethical dilemmas with regard to child confidentiality and court mandates. They have looked at these issues through the prism of their country's juvenile justice and criminal justice systems and laws.

Looking at confidentiality in the context of court referrals to mental health professionals, David J. Popiel, Esq. explains how clients referred by courts and allied agencies present therapists with problems of confidentiality, allegiance, and the integrity of the therapeutic process. Does the therapist lay bare the details a child has revealed or the parents? What does s/he do when they are asked to evaluate parent's fitness to raise a child? The paper argues that a greater role for therapists and clients in defining the nature of the judiciary's relation to the therapeutic process can significantly ameliorate the dangers. If courts and allied agencies can be persuaded, that all parties will benefit by a separation of therapy from information-gathering, then the dangers can be largely eliminated.³⁹

In the absence of such protocols in the country, this is the issue that confounds most counsellors. There are differing perspectives on it. There are some who believe that they must reveal to the JJB what they know of the crime so that the JJB can take an informed decision.

HAQ sees the purpose of counselling as not to arrive at a finding on the commission of the offence by the child in question, but to help the child understand the situation, make an objective assessment of himself/herself as well as his/her circumstances and actions in order to decide present and future course of action.

The ground rule indeed is that each individual and agency in the process understands each other's role, the counsellor or therapist informs the child about the Board's order and the need for the counsellor to present a report to the JJB as much as the counsellor's commitment to maintain confidentiality to that extent. It is important for the therapist or counsellor to discern what part of the information shared by the child or the parent needs to be reported to the JJB in the child's best interest and how, while ensuring at the same time that the child is kept informed about it.

It is important to understand that the role of the counsellor is to aid the child and not to get the child to 'confess'. In fact, the counsellor's loyalties lie with the child and the job of a counsellor is to help the child move forward. Confidentiality should be only broken in cases where there is danger of self-harm or harm to a third party. This is because the child looks at the space provided by the counsellor as a safe one and breaching this trust is harmful to the child.

The interests of CICL would be best served if counsellor briefs to the Judicial Magistrate highlight the current challenges of the child, his/her aspirations/and how they can be guided towards these. These reports can red flag children who need urgent referrals to mental healthcare and bring to attention the possibility of their harming others or themselves.

At the same time, it is imperative that the counsellor aid the child to see the gravity of his/her crime, understand their rationalisations and moral framework, and gauge if they are admitting to guilt only because they have been told it will fasten their release or because the JJB send signals that they will be held guilty.

In case the child completely denies involvement in wrong doing it is important the counsellor gets the child's version of the story to understand its merits or lack thereof.

What must guide the Counsellors in all cases, is the best interest of the child and it is their responsibility to guide the JJB to arrive at decision that would be in the interest of the child.

39 Popiel, D. J. (1980). Confidentiality in the context of court referrals to mental health professionals. *American Journal of Orthopsychiatry*, 50(4), 678-685. <http://psycnet.apa.org/doiLanding?doi=10.1111%2Fj.1939-0025.1980.tb03331.x>

Making sense of the norms of the family, friends, school and the society

Counselling should integrally factor in the child's age and cognitive development, social background, familial realities and exposure to violence to understand the nature of the child's offence. Childhood experiences that emerge during the counselling process must be factored in to guide the sessions and course of action, even if it bears no direct relation to the event.

HAQ underlines the need for a counsellor to understand how the norms of their family, friends, school and society impinge on the child's behaviour.

Some of the pertinent issues to be kept in mind include: How is the child's relationship with the family? Does the child bond with the parents, lean to them for love, care and guidance? What is his/her daily routine? Does he/she get fed on time? Are the child's illnesses attended to? Are there arguments in the family? Does the family get the child's point of view? Is there violence at home? Are there bruise marks on the child? Have any close relatives passed away? Has it impacted the child? Has the child run away from the family? If so, what circumstances led to this? Does the child have friends? Are friends his/her support system? Do friends incite the child into violence, sexual activities and substance abuse? Does the child go to school? Are the classes overcrowded? Is the child beaten at school? Does the child enjoy studies? Does he/she understand what is taught? Does the child work? If so, does he/she prefer a work life over schooling or vice versa? Are their parents aware of his/her petty crimes? Are they aware that this is done to fund substance abuse? How is the child's neighbourhood? Are there many unemployed people around? Is substance abuse rampant? Are there civic amenities? Are there organisations who support skill building?

Different problems, different approaches

In cases of a sexual offence, the counsellor should gently explore details about sexual history of the child, sexual exposure, and experience of sexual violence.

Former Principal Magistrates say that contrary to popular perception that boys between 15 and 18 are involved in sexual offences, their experiences show children in the 10-12 age group to be majorly involved in sexually abusive behavior on account of curiosity, lack of sensitisation to issues of sexuality, being exposed to pornography, living within one room tenements where sexual activities happen in the open (due to constraints of space and privacy and hence normalised) and because their peer group commits such violence. Counsellors must hence make them understand that such behaviour is not socially or legally acceptable and has social, physical, psychological and legal consequences.

Experience of working with the CICLs who have been apprehended for sexual violence shows that ideas of crossing boundaries, consent and respecting another's dignity have never been broached with these children. Common stereotypes abound in their characterisation of the individuals they hurt. The victim is perceived as an object, someone to be used to play out their fantasies.

Given the dominant presence of patriarchy around them, that many of these children witness and experience growing up, consent as an issue is often difficult to break down and fully explain to them, given their lack of exposure to it. Most children have often been exposed to sexual imagery

only through misogynistic and sexist pornography which never raises the issue of consent. There is also the lack of engagements between the genders within our society that makes the conversations even more awkward. And the absence of safe spaces to talk about sex or a frame of reference for discussing sex or sexuality makes this a hugely taboo subject.

A lot of the work being done by HAQ in this area revolves around creating games and exercises that can lead to a deeper absorption of the negotiations and consent frameworks. HAQ's consent and empathy-building exercises focus on humanising the victim and thickening her/his story and context so that the child is compelled to see her/him as a multi-dimensional being (similar to him), as opposed to just a collection of body parts.

In cases where boys are charged for kidnapping and/or rape when it is a consensual relationship and they are confused about why they are being criminalised, it becomes vital for a counsellor to explain the law to the child as well as their parents and the legal age of consent. Time should be spent with the child explaining issues like setting boundaries, respecting self and others equally, importance of consent, dealing with sexual arousal, masturbation and healthy sexual practices and the social and legal consequences of having sexual relationships before completing 18 years of age.

In a case of murder, the counsellor would need to deal with aggression and stress on impulse control techniques and anger management.

In cases where children are repeat offenders, counsellors must invest efforts in explaining the juvenile justice law to the children and their families. They must emphasise that the juvenile justice law gives them a second chance, which they will not receive within the adult justice system. It must be made clear to children that if they are even a day over the age of 18 years at the time

of commission of crime, they would be considered adults and treated harshly. Using examples of distressing realities faced by those in police and legal custody would serve as a deterrent by forcing them to introspect in some cases.

But it does not always work. Counsellors at HAQ say they have to contend with a lot of CICTL who say *"Is baar bus ek gadbad ho gayi... is baar hum pakade gaye. Nahin pakade jaate toh ye sab jhamela hota hi nahin"* (This time just one thing went wrong...we got caught, If we were not caught, none of this would have happened). The fact is that they have seen many adults even some young offenders evade justice. There is a sense of normalisation of crime and an invincibility attached to it that they begin to believe in it. Counsellors say they spend a lot of time trying to change this mindset.

Successful interventions with children in conflict with law who are mentally ill should include services tailored to the needs of individual children and their families. It should include psychiatric evaluation, treatment (accompanied by supportive counselling), adequate monitoring of the effectiveness of treatment and aggressive case management (which is typically the most crucial element in a well-integrated system of care).

Substance abuse and addiction is often the trigger for children coming into conflict with the law. It could mean offences related to theft and robbery or even result in violent behaviour. Having identified this, counsellors could work with the child and the family, if they are available. It may need the child to be placed in de-addiction rehabilitation facility, which will have to be through the orders of the JJB.

A well-integrated system of counselling will also address issues of substance abuse. In the case of the former, the counsellor sensitises the child about addiction and the tools of recovery, makes them acknowledge their addiction and works towards recovery (analyses symptoms of relapse and provides support and encourages development of a support network). While the main goal of addiction counselling is to help the child achieve and maintain abstinence from addictive chemicals and behaviours, its secondary goal is to help the child recover from the damage the addiction has caused to his/her life.

When dealing with children with addiction, the first step is to assess whether the child is merely 'dependent' on drugs or 'addicted' to it. Then the idea is to move on to understand why the child is abusing substances using reflective listening techniques. The third step is to ask the child whether he/she needs help. If the answer is yes, then the question that follows is would he/she like to be part of a recovery programme at a de-addiction centre. Only when the child extends an informed consent does she begin the process of informing the Board.

Intervening when a crisis breaks out or handling a child who is prone to aggression requires the counsellor to do several things: maintain a calm demeanour, provide reassurance, assess the situation, defuse the tension with equanimity, be attentive and responsive to the child/children's outburst and reasons for it, show empathy without being emotionally involved in the crisis and move towards a crisis treatment plan with the child.

The last three interventions may require specialised counsellors.

The psychologists at HAQ employ multiple structured models (such as the HELPING model for anger management) and also work through the child's rationalisations for hurting another individual. They attempt to probe into the causes of the child's emotional upheavals and why the child felt the need to be aggressive on that occasion.

HAQ's counsellors engage with multiple conflict resolution exercises and role plays to constantly assess the child's threshold for inhibiting their anger and address it. This is because anger becomes easier to manage with healthier life choices and with tools provided to the child to stave off any incoming bursts of rage such as mindfulness and impulse control exercises.

It must be kept in mind that behavioural therapy must be balanced with educational interventions and outreach, specialised vocational services, after-school programming and social competency services for a true recovery of the child.

A good start to counselling: a good place, regularity and building on sirs

Counselling sessions must ideally be short (40 minutes at most) keeping the child's attention span in mind; held in a separate room made available; conducted at regular intervals that do not exceed 15 days; fixed on days the child is required to appear before the Board, and as per the convenience of the child/ parents/guardian (who must also be informed of any change in the session schedules in advance).

While the counsellor is given details of the sections under which the child is held, it is important for the counsellor to be aware of or build on the child's SIR with details of name, age, address, level of education, the child's critical problem at the time of the referral, the child's perception and solution to the problem, the complete history of the problem, a complete socio-cultural background of the child and the history of the child. Relevant details of the child's family, their ages, occupational details, educational levels, education and history of psychiatric problems are necessary for a proper appraisal of the child's situation.

This assessment is aimed at obtaining information about the child, which will assist the counsellor's recommendation to divert the case, whether the child can go home to parents or guardians, and what an appropriate temporary placement would be. It is a means to ensure the competent authority is informed of relevant facts about the child, such as their social and family background, schooling and educational experiences, peer influences, and their emotional and mental health. This is the best way for a counsellor to present a human story of the child to the JJB, one that is relatable.

It is also in a way a kind of risk assessment that looks at both static factors contributing to risk (gender, low socio-economic status, instability of family environment, school problems, childhood abuse/neglect, substance abuse, and a history of crime and violence (exposure to and victimisation by as well as perpetration of violence)) and dynamic risk factors (factors that have the potential to change CICL through planned intervention, rehabilitation, or other influences).

SIR's also act as a vital lead-in to ICP's that are crafted as mandated by law. ICP's are premised as much on the age of the child, nature of offence, social background, level of cognitive development, exposure to violence as the self-understanding and acceptance of responsibility for the consequences of their actions that has been arrived at within counselling through the processes of negotiation and problem solving and mental health assessments.

Getting to view the real odds

Displaying utmost sensitivity, the counsellor needs to slide into happenings of the event in which the child has been involved and held for. There is need to get a clear sense of the child's thinking about what happened and how he/she rationalises it.

The story of the child may not be consistent, may not have a linear progression and could be incomplete even. Often when the child talks of what a significant other said, counsellors need to be alert to the fact that it could be the voice of an internalised reality of the child which may or may not be real.

The strength of a counsellor lies in understanding that a child will relate different versions because he/she: is not comfortable in dealing with the situation, wishes to block it, sees it differently now from what they saw earlier or because the full import of the situation becomes clear to him/her only as time passes by. The counsellor needs to be alert to these finer nuances.

While getting the child to reflect, articulate and grapple with the situation is important, what is far more significant is to understand the conditions that led to it. The counsellor's critical insights into the child's socio-economic constraints, familial structures and community ties can help understand the triggers for the act. It will also help understand the child's internal realities prior, during and post the act. These gleanings can help the counsellor formulate an effective mediation therapy and plans for the future.

Extending inputs or designing individual care plans

Just like counsellors extend inputs of mental assessments in SIRs, they must give well-considered inputs into ICPs and design them when requested. This must be done *in a structured way by using concrete steps of action*.

Ideally, ICPs must be prepared for all children within one month of their admission into an institution for individualised attention in their journey towards reformation, rehabilitation, social mainstreaming and restoration back into the community. The JJBs are required to pass final orders based on these ICPs and on the basis of interaction with the child and his family where possible.

Family counselling

Family counselling is a valuable method to resolve a child's problem situation as the family is the cornerstone of the child's development.

The intervention can be both preventive and curative.

The relationship of the counsellor and the family must be one of collaboration with the idea of resolving the conflicts in a child's life. The interventions must be action-based and focussed on the needs of the family. At the same time, families must be supported to learn to be sensitive to the children's needs, both practical and emotional, and convince the child that it is important they see a counsellor.

It must be kept in mind that parents and families undergo trauma when their children are detained as they are terrified as to what will happen to them. Their fears intensify as they are ignorant of the law. They are also equally unsure of the role of counsellors.

Families should be supported by the counsellors to provide love, care and nurturing to their children, help them with socialising skills (norms, values and practices) and the development of their personality.

They must also be reoriented to: acknowledge their children's problems; help them cope with stress; find alternate and positive ways to redress their current problems; learn to affirm inter-personal skills to deal with one another in the family and communicate better; hone communication skills by consciously learning not to interrupt, dominate, probe, judge or advise their children all the time; appreciate the differences within individual members of the family; understand the value of negotiation to resolve conflicts; sensitise their children against the use of violence and to issues of sexuality and substance abuse; and set goals for the betterment of their children that they can achieve.

Dealing with families comes with challenges. Many parents (especially mothers) sometimes refuse to believe that their children have committed the acts they have been detained for. They hence resist counselling for their children and themselves. When they do recognise their child's guilt, the legal processes scare them so much that they beg for an early closure of the case and insist on bypassing the counselling processes, one way or another.

Frustrating as it may sometimes appear, it is important for the counsellors to be empathetic to the plight of the families. It is hugely intimidating for families to face the police and the JJB authorities. This is especially so as there may be no spaces in their family life where discussions of crime and sexuality are undertaken with seriousness. Sex in particular may never be discussed. Mothers often say their awkwardness about it has stopped them from sensitising their children to the fact that relationships must always be equal and consensual. Even if they as mothers are physically abused at home, they don't bring the subject up with the children or make them understand that violence is unacceptable in any and all circumstances.

The responses of mothers is key because they most often show up for counselling or are more open to it. The same principles are applicable to fathers who do show up, albeit rarely. A headway can be made if counsellors keep persisting with the opening up of channels of communication with the parents. This will help counsellors to enable them to help their children in turn.

One of the main challenges for counsellors is to convince the parents that they should not see counselling as the last-ditch effort to diffuse the crisis in their children's lives.

Group counselling

Group counselling helps its participants in a variety of ways. People in groups communicate more comfortably and effectively with one another, identify and explore their inner feelings with the encouragement from others, and receive instant feedback from others. They also learn to be sensitive to the ways other people communicate, learn about closeness and intimacy and also experiment with new ways of relating to others. More important, they realise they are not the only ones singled out by fate or the 'system' and that there are other people in the same boat as themselves.

However, group counselling has seldom been experimented with within the JJB settings so there is little understanding of how it works or could work to meet the objectives of law or touch the lives of children positively.

HAQ's counsellors say the greatest advantage is that group counselling is conducted within a framework of consent. They teach children the art of negotiation and show them the possibility of alternate solutions to a problem. It also ensures that one child is not singled out which means the children feel comforted by the strength in numbers.

The NALSA module for training of legal services lawyers and probation officers attached to the JJBs, in its chapter on counselling for CIOL and their families, says that during group counselling, children may be allowed to formulate their own rules, like:

- Only one child will speak at a time
- A child can pass on the chance to another child, if he/she does not wish to talk
- Each child will keep private and not share outside the group, all the discussion that takes place in the group
- No child participating in the group counseling shall be criticised by other children in the group
- All children will respect each other's views, even if they do not agree with such views

(Training Module for Probation Officers and Legal Services Lawyers attached to the Juvenile Justice Boards, 2016, NALSA, New Delhi)

In this kind of counselling, there is need to be careful about children reflecting consensus when there is none, or becoming influenced by the views and opinion of the most dominant person in the group. Counsellors ought to be cautious about how to organise groups and create homogeneity as a very dissimilar group can mean dissonance. They also need to keep in mind that the awareness children arrive at here may be short lived. It could be toppled by the dynamics of other groups that children belong to, say within the Home or within their neighbourhood.

Community-based intervention strategies

HAQ sees the role of a counsellor to be key in the social integration of a child. They can continue to counsel and guide a child after release, help in their self-development, open up avenues for training and employment for them through tie-ups with government and private organisations and ensure their continual mentorship by training adult volunteers.

By linking the child gradually to external resources: parents, siblings, friends, teachers, community, social workers and organisations, the counsellor provides children with anchors that children can depend on. The process may be long in some cases, shorter in others and could even be aborted in a great many cases as the child gets overwhelmed. But it is important to keep on trying.

Community-based intervention strategies deploy the help of the government, groups and organisations and the community to collectively help the children. It means productively utilising the systems, resources and formal and informal structures to improve the lives of the children.

This intervention recognises that each system and resource plays a critical role to improve the quality of life for children and their families.

This intervention has the advantage of bringing people together to work for CICL, of them learning together and empowering children together (by bringing structural and behavioural changes in their lives).

Counsellors must direct these processes so that they benefit the child. They must attempt to enable participation by all agencies, accommodate all viewpoints and curtail attempts of agencies to intimidate or threaten one another or the child. There must also be attempts to redress the missing links in terms of resources and organisations that could help CICL.

Wide-lens approach: seeing the whole ecosystem around the juvenile justice system

HAQ believes counselling must begin with a keen understanding of different categories of CICL, knowledge about delinquencies along with related sociological, psychological theories and criminological aspects of delinquent behaviour, causes for their situation, the strengths and weaknesses of each group, the stages in a child's development and adolescent functional and dysfunctional behaviour.

Alongside this it is imperative to have an understanding of human rights, rights-based and child rights approaches for a variety of reasons. One, so the response to crimes committed by children is fair, age-appropriate and reflective of an understanding of developmental psychology. Two, to sensitise CICL to the fact that everyone is entitled to certain basic human rights and such rights must not be violated. This applies to even adults involved in crimes. And, three, to help counsellors deal with personal biases and conflicts pertaining to crime and CICL.

A knowledge of law and the juvenile legal framework is important as the role of the counsellor in dealing with CICL is within the web of laws pertaining to juvenile justice.

Knowing the law

Experience shows that when a counsellor engages with CICL without understanding the essence of juvenile justice, the objectives of law remain unmet.

Under the juvenile justice law, when a child is alleged to have committed an offence, the response to the child has to be similar to the one extended to a victim. This is because a child is presumed to be innocent and the crime proven against him/her is to be taken as a serious situation demanding coordinated efforts by several stakeholders to bring changes that can keep the child away from a life of crime and bring back his/her lost childhood. And also so that he/she grows up to be a responsible and contributing citizen of the country. Only a person familiar with the objectives of law can aid in meeting these objectives.

Often enough when a child and his/her family builds rapport with the counsellor, they expect the counsellor to provide them information pertaining to the judicial process, tell them about their rights and entitlements and give them an update on their case. This is where the

knowledge of law and the legal process becomes important. As does the knowledge of the rights and entitlements of a child within the juvenile justice system that will enable the counsellor to help a child better by directing him/her to the relevant person or agency.

In almost all cases the CICL are in desperate need of free legal aid. The counsellor is in a position to connect the child to lawyers who have been made available in all the three JJBs by the Delhi State Legal Services Authority (DSLISA). In many other cases children get thrown out of school when a criminal case is lodged against them. If the counsellor is aware that education is a fundamental right for children aged between six and 14 years, sharing this information with the child's family could help them take it up with the concerned authorities. The counsellor does not have to fight people's battles and live their struggles, but can surely guide them to fight for themselves and empower them with knowledge of law.

While counselling, it is important for the counsellor to know why the child is detained, the nature of the offence he/she is being accused of and the circumstances of the child. While most counsellors prefer to rely on information given by the child first, they do look at the FIRs to correlate the child's version of the incident.

A crucial point to be made here is this: while counselling it is important the counsellor remain non-judgmental. The purpose of counselling is not to arrive at a finding on the commission of the offence by the child in question, but to help the child understand the situation, make an objective assessment of himself/herself as well as his/her circumstances and actions in order to decide present and future course of action.

This is especially pertinent in a situation where a child insists that s/he did not commit the crime and has been falsely booked. For a counsellor to invest time in a case like this to make the child realise the consequences of his action, the harm caused to others etc. would be futile. In a case like this, therapy or counselling has to focus more on reducing the trauma caused by being charged falsely and the stigma attached to arrest and detention.

The introduction of a psychological assessment of a child aged 16 to 18 years, who is alleged to have committed a heinous offence, has created a new hurdle for counsellors. This assessment, under Section 15 of the JJ Act is required to decide whether or not the child should be tried as an adult.

While there are no tools presently to differentiate and distinguish between a 'child's' mind and an 'adult's' mind, the legislators have found it convenient to rest the onus of making this distinction on specialists. NIMHANS in Bangalore has developed tools for *Psychosocial & Mental Health of Children in Conflict with the Law (Age 16 to 18 Years) Preliminary Individual Assessment Report for Juvenile Justice Board*⁴⁰

However, given that this assessment is to be undertaken soon after apprehension, and before the child has been proved guilty of having committed the offence, HAQ is of the view the use of counselling techniques at this stage amounts to abuse of power and also breaches the ethics of counselling. It also violates the principles of justice. Across the world, mental health screening and evaluation of this nature is done at the stage of deciding the quantum of sentence. And this after the person is found guilty of committing an offence. It is never undertaken before a trial.

An expert who fails to understand the jurisprudence behind this global practice and trend is bound to do more injustice to the cause of juvenile justice and to the child who is to be assessed or counselled.

40 Community Child & Adolescent Mental Health Service Project Dept. of Child & Adolescent Psychiatry, NIMHANS-DWCD

Different kinds of therapy for CICL

Handling children's anxieties are a challenge. Counsellor's need to grapple with their worries, sense of shame, worthlessness and their bottoming out. HAQ counsellors use a variety of approaches for differing categories of CICL. Here are some of the more oft-used therapies:

Cognitive behavioural therapy

helps a child challenge negative patterns of thought about the self and the world in order to alter unwanted behaviour patterns or treat mood disorders.

Interpersonal therapy

looks at resolving a child's interpersonal problems and symptomatic recovery using a structured and time-limited approach.

Psychodynamic therapy

focusses on the unconscious processes of a child manifested in their present behaviour. The idea behind this kind of therapy is to foster self-awareness of the influence of the past on present behaviour.

Systemic behaviour family therapy,

also referred to as systemic therapy, is an approach that works with families and those who are in close relationships with the child to foster change. These changes are viewed in terms of the systems of interaction between each person in the family and their relationship with the child.

Attachment-based family therapy

is a type of family therapy which aims to help a parent and a child repair ruptures in their relationship and work to develop or rebuild an emotionally secure relationship.

Multi-systemic therapy

is a family-and-community-based treatment that addresses all environmental systems that impact CICL -- their homes and families, schools and teachers, neighbourhoods and friends. It recognises that each system plays a critical role in a child's world and each system requires attention when effective change is needed to improve the quality of life for youth and their families.

Basic pre-requisites for a counsellor

The British Association for Counselling and Psychotherapy (BACP) in its booklet *'Ethical Framework for Good Practice in Counselling and Psychotherapy'* identifies being trustworthy, a respect for child's right to be self-governing and commitment to promoting the child's well-being as basic pre-requisites for a counsellor.⁴¹

It sees the fundamental values of counselling and psychotherapy to include: respecting human rights and dignity; protecting the safety of clients; ensuring the integrity of practitioner-client relationships; enhancing the quality of professional knowledge and its application; alleviating personal distress and suffering; fostering a sense of self that is meaningful to the person(s) concerned; increasing personal effectiveness; enhancing the quality of relationships between people; appreciating the variety of human experience and culture; and striving for the fair and adequate provision of counselling and psychotherapy services.

○ Counsellor disposition

Counsellors must ease the children into conversations with utmost sensitivity and calm rather than with invasiveness. To ensure the child is at ease, counsellors must ensure that their disposition is welcoming.

The posture, eye contact, and the general disposition of the counsellor must communicate that he/she is paying attention to the child. The counsellor should face the child directly, maintain eye contact, ensure an open posture and lean towards the child. There is also need to speak to the child in an age-appropriate way.

According to the National Legal Aid Services Authority (NALSA) module for training of legal services lawyers and probation officers attached to the JJBs⁴², ideally, there should be no physical object between the counsellor and the child and a comfortable distance between them needs to be maintained. To make the child feel safe, it is necessary that the counsellor do not touch the child without asking his/her permission, allow the child to decide where the child would like to sit and leave then door open, if the child so desires.

A former Principal Magistrate, says, in her experience, counsellors who come with a 'motivation', 'an attitude' and an 'intensely singular focus to help the child achieve self-actualisation' (by helping them build on their social and life skills) and 'a firm belief in the rights of these children' are the ones who are truly effective in affecting turnarounds in a child's future. Such counsellors are also very aware that CICL are also CNCP and that they need to walk the line between realising that they have committed an offence but also need to be loved and cared for.

⁴¹ British Association for Counselling and Psychotherapy, *Ethical Framework for Good Practice in Counselling and Psychotherapy*, 2002, BACP House, Leicestershire, UK, https://www.bacp.co.uk/docs/pdf/15512_ethical%20framework%202013.pdf

⁴² Training Module for Probation Officers and Legal Services Lawyers attached to the Juvenile Justice Boards, 2016, NALSA, New Delhi

○ Genuineness in the relationship with the child

One more valuable asset in a counsellor: the importance of 'genuineness' in a counselling relationship. Counsellors should come across as real people to the child and not as persons playing a role or being a mirror or a sounding board to the child. As the counsellor might share his/her emotional reactions to a child's problems and experiences to show genuine understanding of the child's circumstances, this requires maturity on the part of the counsellor. It must be remembered that this skill must be used only for the benefit of the child and his/her self-disclosure and not the counsellor. It must never take the focus off the child and be used only in cases where it can enhance the therapeutic relationship.

Used carelessly, this skill of a counsellor can have deleterious effects on the child. So the counsellor needs to be aware of his/her strengths and limitations and a genuine counsellor is one who is at home with himself/herself, can examine negative criticism honestly and also does not have one set of values for each situation he/she is confronted with.

○ Faith in the child's capacity to 'reform'

A deep commitment to CICL and their future as the starting point of a counsellor's journey. At its core, counselling is about helping the child through his/her immediate crisis and enabling them to re-settle into society, fully and completely so as to transition into responsible adulthood. A counsellor needs to walk with the child through this entire journey if therapy is to take effect, she says. Counselling is as much about the child learning to deal with the situation and go past it to make decisions for themselves as it is about counsellors learning from the child. So anybody coming with an idea that this is a job, perhaps won't make a great counsellor. Counsellors need to marry a long term vision, one that coheres idealism with the practicalities of daily counselling routines, if they want to help the child gain emotional maturity and re-enter the world.

○ Importance of setting boundaries

It is important to understand boundaries – physical and emotional – and only make connections at the level the children are comfortable with.

While the counsellors establish a degree of familiarity with the children to gain trust, they also need be aware of establishing boundaries so the children do not form undue emotional attachments or have unrealistic expectations of them.

This is important because many of these children are not clear what is right and wrong, have poor social skills and societal bonding. And when the counsellor establishes a rapport with them, these children feel an intense desire to connect. Counsellors need be heedful of this fact and maintain an appropriate distance. Yet a distance that is not dismissive. It can prove to be a tightrope walk for the counsellor and requires an intense amount of learning to arrive at this level of equanimity.

One essential element of managing expectations is avoiding making promises that are not honest and responsible.

Counsellors need be aware that many children involved in the juvenile justice system may have emotional, behavioural, social, learning and perhaps even other disabilities. And that issues of anger management and impulse control, hyperactivity, attention-seeking behaviours,

interpersonal conflicts, substance abuse, sexual violence, mental health challenges, ongoing recollections of trauma, problems in adjusting while in custody and post release, transition assistance, and reoffending will surface constantly.

○ Minimising counsellor bias

In a therapeutic setting, a counsellor's personal biases might influence his or her understanding of the child's problems and alter the recommendations he or she makes on the child's behalf.

Recognising one's own biases is often the first step to eliminating it for counsellors. It is important the process of self-appraisal and self-correction be constant. Counsellors should be alert to factors like negativity, suspicion, dissatisfaction and disgruntlement settling into their persona because of the nature of the job. It is not only the mind that gets affected by bias.

The counsellor's body language too reflects distrust and disenchantment. Both these developments can be damaging for the child. If a session with the child does not go well, a counsellor must in all honesty also turn the questioning inward and seek to understand if their attitude was the real problem and try to resolve these in subsequent sessions so that there is no lasting impact on the child.

○ Coming full circle: ending counselling sessions

The counsellor can end counselling when a child can move on independently without assistance and gives consent to ending the sessions.

However, before deciding to end counselling and informing the Board of this decision, the counsellor must carefully evaluate if the child is emotionally ready to end the counsellor-child relationship, the preparedness of the family to offer continued support, the presence of other coping structures (be it other family members, friend, peer group or community structures) and whether the weaning away process from counselling has occurred in a gradual manner (by making the counselling sessions less frequent).

○ Transition planning

International agreements and instruments specify young people who are in custody should receive a full programme of education, sports, vocational training and other purposeful activities, which take into account the age, gender and developmental stage of the individual child. Article 28 of the UNCRC defines education as a right of all children, and requires that primary education be compulsory and available free to all. The JJA, 2015, also recognises it as a right.

It is important counsellor's work on 'transition planning' before attempting to re-integrate the children into society. Thrusting children abruptly back into society could cause more harm than good.

Orders for 'conditional bail' where the child and the family are directed towards vocational training and rejoining education (as part of the conditions to be fulfilled by the child and family during bail) help in the process of rehabilitation of the child before release. Such orders also ensure that the child's progress is ascertained both by the Board and by the family who then show

attentiveness towards the immediate needs of the child. This in turn then helps the child begin the process of responsible behaviour.

Although difficult, enlisting of community participation and support before the dismissal of a child's case in the JJB is important. But more important is to ensure the safety nets provided by the family.

There are a few vocational training courses that are on-going at the Observation Homes in Delhi and the National Skills Development Corporation (NSDC) of late has been initiating a few courses with the help of its partners. Many CICL have shown interest and the trainers have also committed to facilitate employment after the successful completion of the course. These initiatives must be sustained so that the children find it easier to secure jobs when they re-enter society.

It is important for counsellors to recognise that many of these children have had decisions taken for them most of their lives. It would be difficult for them to go from this environment to one where a number of choices need to be made. So the process of empowerment like the weaning off from counselling must be gradual.

○ Taking care of oneself

The nature of a counsellor's job entails burnout, stress and compassion fatigue in the natural course of things. This is an inevitable part of the job, say HAQ's counsellors.

Counsellors need to be able to control their emotions and stay grounded during and after work if they are to do justice to the CICL.

They can relieve stress by harnessing the power of calming breathing techniques, shedding work while at home, meeting their friends at regular intervals, vacationing when they find time and discussing and de-briefing professional concerns with colleagues who can understand and help.

Some say that as a matter of rule they close their mind to work after office hours, indulge in hobbies and never discuss work at home so that their tensions do not get transferred to others.

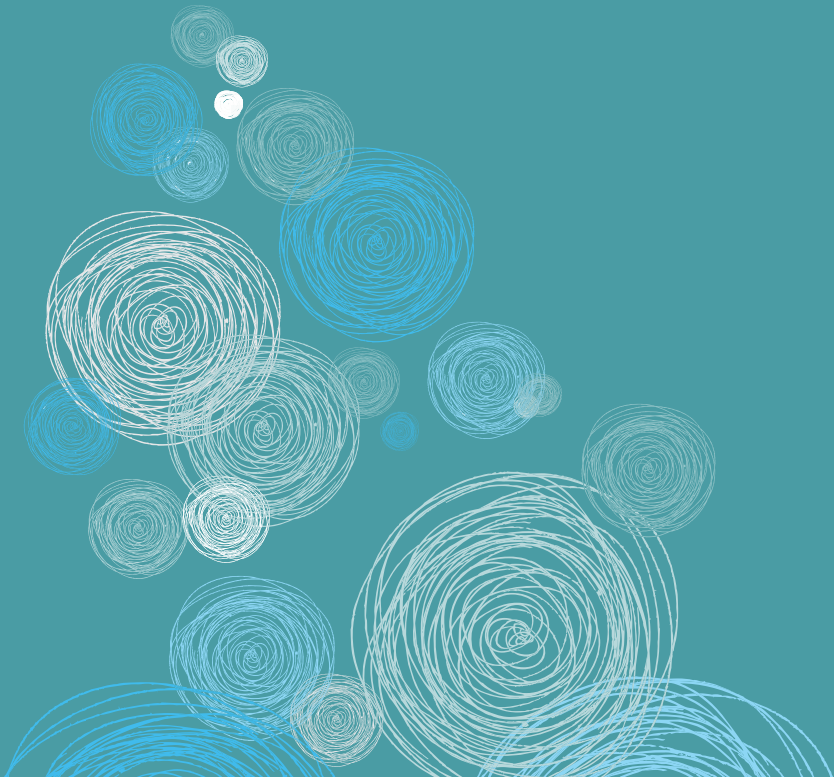
DON'TS FOR COUNSELLORS

Developing and perfecting the intricacies of counselling skills takes time. To avoid causing harm to self or their clients, counsellors should avoid certain behaviours on their part.

They should not: Intimidate • Be judgmental or critical • Deny the child's feelings • Force them to handle emotions and situations they are not ready to • Show excessive curiosity • Make promises that they cannot keep • Extend unwarranted reassurance • Encourage dependence • Impose their own solutions • Show sympathy • Give advice • Provide incorrect information • Interrupt while the child is talking • Use negative reinforcement • Think they can control the child's behaviour • Label and diagnose •

4

Effective Child Sensitive Counselling



Though counselling has been mandated in the JJA from 1986, and within JJA, 2000, and JJA, 2015, the only real conversations that happen with CICL on the whole are those with the investigating officer (the police) and the probation officer who assesses the child's social background. Both have little time for planned, structured dialogues with CICL or for cooperative processes to help children identify sources of difficulties or concerns that he or she is experiencing.

While professional counsellors from HAQ and some other organisations are now being entrenched in the system in the capital and are making a difference to the lives of CICL, their numbers are small and there is a very long way to go. And this is not the same in all of India.

The gamut of activities to be undertaken as the starting point of counselling remains unsatisfactory till date. Two important indicators of indifferent counselling are SIRs and ICPs for CICL that are almost always incomplete and indifferent to detail and exactitude.

While the probation officers are directed to seek the help and suggestions of trained counsellors for drafting the mental assessment component of SIRs and future plans for children that are reflected in the ICPs, their reports restrict the counsellor's contributions to making mental health assessments of CICL and in most cases even this is skipped.

SIRs that have the probation officer's recommendation to the courts to enable them to determine whether or not bail/probation are to be granted, and if so under what conditions specified by the statute, are not undertaken with the seriousness that it requires.⁴³ The TISS report in fact points to the fact that children who are given bail and allowed to go home have minimal or sometimes even no interaction with the probation officers.⁴⁴

HAQ's experience shows that ICPs, which are holistic, analytical, needs-assessed reports of CICL for the JJB, meant to ensure the growth and well-being of child during and post release, are prepared with as much haste and with little preparation by the probation officers or the Child Welfare Officer. They are nowhere near to a personalised growth plan for each CICL that should have specifications of a progress plan for the child, a definite set of goals and identification of necessary resources, especially educational and vocational requirements.

Another confounding fact is that CICL speak to a range of counsellors. CICL may have to undergo counselling with the counsellor assigned by the JJB, then with the counsellor in the institution where the child is kept and finally post-release (which may be the same counsellor as assigned by the JJB or the one in the institution). Often, there is no sharing of reports or a comprehensive collation of the child's progress.

Children aged between 16 and 18 years and alleged to have committed a heinous offence have to, under the recent JJA, 2015, speak to a counsellor during their pre-assessment phase where the counsellor determines whether the child is to be sent to the JJB or an adult court for trial. Mental health experts like Dr. Harish Shetty (psychiatrist and counsellor), Dr. Achal Bhagat (who heads Saarthak, a group of organisations providing mental health and training) maintain it is not possible to assess and state that an act was performed in an 'adult state of mind'.⁴⁵

43 Form 5 in the JJMR, 2016 is used by the JJB to direct the probation officer to prepare an SIR. It contains a direction to the probation officer to consult a psychologist/expert and attach their report to the SIR.

44 Juvenile in Conflict with the Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan, 2017, page 85, Tata Institute of Social Sciences, Mumbai, <http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=951&lid=1284>

45 Conversations with Dr. Harish Shetty and Dr. Achal Bhagat

Former Principal Magistrates also say that many counsellors who are called to conduct these assessments have no experience in conducting such tests, persist only in asking the child whether he/she is guilty and declaring the child guilty if he/she seems to show no remorse on the surface.

But since it is now in the law, there definitely needs to be some very good way of assessing this or at least some standard operating procedures (SOPs) need to be laid down.

Counselling within the JJB

While the JJA clearly specifies that counselling services - individual, family and group - should be offered for CICL and the law makes it possible for the civil society to play an active role in ensuring rights for CICL by allowing non-state stakeholders and professionals to directly engage with CICL, the overburdened JJB is not in a position to invoke its potential or institutionalise counselling.⁴⁶

As the JJB thus continues to struggle in working out a compromise between reformatory, deterrent and retributive action about punishment, the focus on creating a supportive environment to build skills, strengthen positive behaviours (by making CICL comprehend the consequences of their behaviour) as also strategies for decreasing undesired behaviours using counsellors is missing. It is only a few JJBs in the country who place a high premium on the value of counselling and reformatory/restorative approaches.

HAQ holds that in not truly harnessing the usefulness of counselling, the JJBs are losing out on a host of opportunities. This includes: preventing many tens of thousands of children at risk from entering the juvenile justice system; addressing the distress of increasing numbers of children's social abandonment and the resultant psychological challenges; protecting the rights of children who are currently being processed by the system; affecting behaviour change among them; ensuring a fair trial to CICL by ensuring their right to be heard and participate in all decisions affecting their lives by ensuring that counsellors reflect their concerns; and grounding comprehensive rehabilitation opportunities to those who have been released.

It is the initiative of some Judicial Magistrates and their belief in the restorative powers of counselling that has allowed counselling and the use of therapy for some children. It is their foresight that has allowed counsellors from HAQ to work with the children and for systems of counselling to be put in place. Other magistrates prefer to overlook this component as their case loads are enormous and counselling becomes one more hurdle to be crossed in the process of disposing cases, thereby increasing pendency. This is where the role of the social work members becomes crucial --- they can and must insist on and influence decisions/orders to include counselling. Unfortunately, many a times they find themselves helpless before the magistrate.

⁴⁶ The relevant provisions are: Section 18 (1) (a), (b), (g) and (h), Section 18 (2) (iii) and (v) and Section 19 (3) of the JJA, 2015 read with Rule 35 (5) and Rule 8 (8) of JJ Model Rules, 2016. For more information see: http://wcd.nic.in/sites/default/files/JJ%20Act%2C%202015%20_o.pdf, pages 14 and 15 of JJA, 2015 and for Final Rules see <http://wcd.nic.in/sites/default/files/171861.pdf>, pages 180 and 207 of JJ Model Rules, 2016

LEVELS OF MONITORING PENDENCY OF THE JJBS



The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months [Section 16 (1) JJA, 2015 and Rule 12 (2) JJMR, 2016]



The National Commission for Protection of Child Rights, or as the case may be, the State Commission for Protection of Child Rights shall, also monitor the implementation of the provisions of this Act, in such manner, as may be prescribed. (Section 109 (1) JJA, 2015)



The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee (Section 16 (2) JJA, 2015)



The information of such pendency shall also be furnished by the Board to the District Magistrate on quarterly basis (Section 16 (23) JJA, 2015 and Rule 12 (2) JJMR, 2016)

Responsibilities of counsellors not defined

The JJA and Model Rules are not very forthcoming on the roles and responsibilities of counsellors. While the law recognises probation officers should prepare SIRs with the assistance of psychologists, counsellors and experts and that counselling is a specialised service to be provided by those with requisite qualifications and training, there are no more specificities within its Rules.

It is as if the law is based on the assumption that the counsellors will come from NGOs or such other specialised agencies who know their job well. In fact it is primarily because the law is not very forthcoming on the roles and responsibilities of counsellors that HAQ has felt the need to document its own experiences through this report and provide some basic guidance for those who are likely to engage and interact with children as counsellors and for others who need to understand the significance and importance of counselling services for CICL.

A grave omission is the non-recognition of psychotherapists, counselling psychologists, community mental health workers, counsellors and psychoanalysts in the Mental Healthcare Bill (MHCB) 2016 passed in March 2017 by the Lok Sabha. HAQ's counsellors as well as many mental healthcare professionals decried the Bill's vision of mental illness as a bio-medical condition by neglecting the social milieu in which it occurs as well as the role of a variety of healthcare givers in the area of preventive care and action. The Bill makes mention only of psychiatrists, clinical psychologists, psychiatric social workers, psychiatric nurses and ancient systems of medical knowledge, such as Unani, Ayurveda, Homeopathy, Naturopathy and Siddha. Mental health professionals and organisations like HAQ sent multiple petitions to the Parliament to revise this definition and include the missed out categories of professionals, but in vain.

There is no governing body, licensure and registration process to bring uniformity to methods employed by counsellors and working guidelines.

The qualifications of counsellors within the JJB is also not mandated. There is concern on the lack of statutory oversight of their competence and a disquiet that some practitioners lack the qualifications and professional training needed to work with such vulnerable children. There is hence a need to disseminate disciplinary rules, policies, and procedures related to CICL and lay down minimum qualifications to work within the JJB. Both aptitude and attitude are equally important, which necessitates a screening process to be put in place.

Recognising the need to build the capacity of probation officers and legal services lawyers attached to the JJBs to carry out the responsibilities assigned to them, the NALSA has developed a comprehensive training module. It has been mandated this module be used as a guiding tool by all probation officers as well as the state governments and judicial academies. It has a chapter on counselling for CICL and their families which describes its basic concepts.

In a programme, organised by the Maharashtra Judicial Academy and NALSA on 27-30 August, 2016, to test this module before finalisation, Justice Madan B. Lokur observed:

“Although the rights of children encompass several aspects, what is of immediate importance is the reintegration into society of those children who have perhaps gone stray and are accused of committing an offence. For the reintegration and rehabilitation of these children, Probation Officers play an extremely important role in that they are the ones in touch with the children and they are the ones who can provide effective guidance not only to decision makers but also to the children to facilitate their restoration to society. It hardly needs to be said that no one is born a criminal. Therefore, it is important to understand why some children actually come into conflict with law. There could be several circumstances beyond the control of a child and there could also be created circumstances which compel a child to violate the law, such as drug addiction...It is important for a Probation Officer and indeed for all members of the society to make efforts to bring children on the right track when they go astray or are in conflict with law for reasons beyond their control or have found themselves in conflict due to created circumstances like the use of drugs. This is where communication skills and counselling gain importance.”⁴⁷ (Excerpts from the foreword written by Honourable Mr. Justice Madan B. Lokur, dated 07.10.2016, for the “Training Module for Probation Officers and Legal Services Lawyers attached to the Juvenile Justice Boards”, developed by NALSA)

The then Chief Justice of India Honourable Mr. Justice T.S. Thakur in a similar vein maintained, “Every child in this large country has the right to not only dream about his/her welfare but also to pursue the same. It is therefore imperative that the State plans strategies and takes concrete steps for their protection, safeguard and well-being...There is, therefore, an urgent need to train Legal Services Lawyers and Probation Officers to make the system sensitive to the demands of Child Welfare and to ensure unimpaired functioning of the Juvenile Justice Boards.”⁴⁸

But there is no such separate and comprehensive module for counsellors.

⁴⁷ Excerpts from the Message of the then Chief Justice of India Honourable Mr. Justice T.S. Thakur, carried in the “Training Module for Probation Officers and Legal Services Lawyers attached to the Juvenile Justice Boards”, 2016, developed by NALSA

⁴⁸ Ibid.

Lack of Ethical Codes and Protocols for Counsellors

While there are general guidelines about providing counselling to children and their families there are no prescribed standards, models or a framework for providing developmentally-appropriate and culturally-sensitive counselling.

A meeting in New Delhi in September 2016 to discuss the National Mental Health Policy (NMHP) document of 2014 and to rethink the MHCB passed in the Rajya Sabha on 8th of August 2016 saw 45 mental health professionals as attendees. Organised by the Centre of Psychotherapy and Clinical Research and the School of Human Studies, Ambedkar University, Delhi, the experts discussed the variety of approaches used by counsellors and emphasised on the need to have some basic minimum standards and ethical codes as non-negotiables. This meeting was the culmination of several meetings of subgroups of psychotherapists who have been actively deliberating on salient omissions and oversights in the Mental Healthcare Bill 2016 (now the Mental Healthcare Act 2017).

While most Indian educational institutions look to BACP and the American Psychological Association⁴⁹ for a structure, the JJBs have no set protocols. There are a generic set of principles that was also approved by the General Assembly of the International Union of Psychological Science which is the closest we come to having an international code. However, as any text will point out, ethics is a contextual study because of which international standards can be limiting in terms of guidance.⁵⁰

In the absence of protocols, most counsellors evolve protocols on their own to make sure that they are addressing the needs of the children to the fullest, but this is not enough. Guidelines will lay firmer and surer contours to their functioning.

The lack of protocols leads to confusion. One of the most poignant examples of this is the extreme confusion within the JJB on the issue of confidentiality. Does the counsellor reveal the disclosures of the child to the Board? Or is the child-counsellor confidentiality privilege sacrosanct and not to be compromised on any count? The situation on the ground is that each counsellor has an opinion on this and sticks to their conviction. If there were accepted ethical codes, this dilemma would never arise.

THE CORE ETHICAL PRINCIPLES COULD INCLUDE:

- | | | | |
|--|---|--|--|
| a. Respect for the dignity of persons (to be self-governing, autonomous and honoring their trust in the service) | b. Competent care for the well-being of persons (No harm, exploitation and the accordance of services in the best interest of the client) | c. Integrity (in the form of safety, confidentiality and openness) | d. Professional and scientific responsibilities to society (adding to the fostering of knowledge within the community) |
|--|---|--|--|

49 https://www.bacp.co.uk/docs/pdf/15512_ethical%20framework%202013.pdf
<http://www.apa.org/ethics/code/>

50 <http://www.iupsys.net/about/governance/universal-declaration-of-ethical-principles-for-psychologists.html>

It would also help counsellors if there were clear protocols on all the processes of counselling for clarity on all issues. At present the counsellors are unsure where to counsel; how long the sessions should ideally be; what information is required to be shared with the Board; with whom in the Board the information should be shared with; how many people will be privy to the information given to the Board; what to report and how to report, among several other issues.

There is also apprehension about the negative cultural beliefs and social value systems of counsellors within the juvenile justice system. Discrimination, or actions or behaviours taken against children as a result of prejudiced beliefs, can create feelings of shame, anger, and sadness in children.

The Western Region Round Table Conference on Juvenile Justice held in Gujarat on 22-23 April 2017, did recognise all these missing links and made strong recommendations to rectify these shortcomings and institutionalise counselling to overcome them.

Misunderstanding the purpose of counselling

As the child has come into conflict with the law, a focus on legalities becomes unavoidable. The focus at the JJB as we said earlier is on the CICL being produced, questioned, given bail or sent to the Observation Home or a Special Home or a place of safety (if the offence is heinous), ascertaining evidence, recording his/her statement, presenting the final argument (where both sides of the case are understood), passing judgement, hearing the child again if the offence has been proved, and follow ups post release. A sad fallout is that sometimes much of the counselling revolves around legalities and it is this aspect that gains precedence.

While the law has to take its own course based on facts and circumstances of each case, it is important to insist and reiterate that counselling is part of the due process of law principle that applies to the juvenile justice system. Counselling ought to be treated with deserving seriousness for its process, recommendations and outcome.

It's sad that the true merit of counselling is still to be understood by the majority of JJBs. Rather than see it as a process that will reintegrate CICL into society by building a firm child-counsellor rapport over a prolonged period of time, it is seen by many within the system as a quick fix solution to either get the truth out of children or change their behaviour by advising them.

In many cases, the children and parents are not aware that counselling is free. As many parents avail of the services of private lawyers (forgoing the lawyers provided by the JJB and in some cases because of non-availability) in the hope of an easy disposal, they assume the counsellors will charge too.

The lack of a child-friendly environment for counselling

Though there are no witness boxes or dais, or uniforms, the JJB is still an intimidating place. There is need to look at strategies, activities and tools to create a child-friendly environment.

All CCIs are expected to "provide or arrange for regular counselling of every child and ensure specific mental health interventions for those in need of such services, including separate

rooms for counselling sessions within the premises of the institution and referral to specialised mental health centres, where necessary” [Rule 34 (3) (xi)].

Yet the spaces for counselling are appalling. The poor infrastructure (physical space) and resources (privacy, comfortable settings, provision of water, electricity and toilets) allotted for counselling indicates how little importance it is accorded. Very many counsellors counsel in the open grounds in the Observation Home that is next to the JJB or in a dingy room in the JJB.

As the numbers of children requiring counselling are larger than the available counsellors, only about half an hour can be given to each child. The counsellors are also expected to turn in reports to the Board after these brief interludes, an issue that needs redress. There is also need to hear the children, their stories and their concerns. While children are encouraged to speak up at their hearings at the Board, their concerns raised at the Home go unaddressed. This as counsellors other than those stationed in a Home are not routinely allowed inside and there are no effective complaint or monitoring mechanisms in place. There is an acute need to address children’s social abandonment and resultant psychological challenges and ensure through counselling their right to be heard and participate in all decisions affecting their lives.

Paucity of counsellors a serious concern

From a time when there were only five counsellors catering to the requirements from three JJBs in Delhi, today there are a total of seventeen counsellors. Delhi, however, is among the better equipped in the country. There is a greater demand for counsellors if mental health care plans and individual care plans for every child are to be prepared with the seriousness implied in law. Service care provision ratios are anomalous and not representative of the current scenario, which is otherwise an improvement over the past.

Huge Paucity of Mental Health Professionals

- In India, 150 million Indians suffer from mental illnesses, says the latest National Mental Health Survey of India 2015-2016, and nearly 80% of them had not received treatment despite suffering from the ailment for more than 12 months.

(National Mental Health Survey of India 2015-2016, 2016, NIMHANS, Bangalore, <http://indianmhs.nimhans.ac.in/Documents/reports/Summary.pdf>)

- According to a reply by the Ministry of Health and Family Welfare in the Lok Sabha in December 2015, there are 3,800 psychiatrists, 898 clinical psychologists, 850 psychiatric social workers and 1,500 psychiatric nurses nationwide. (<http://www.indiaspend.com/cover-story/nearly-60-million-indians-suffer-from-mental-disorders-68507> and <http://164.100.47.234/question/annex/237/As253.pdf>).

- Dr Rajesh Sagar, Associate Professor of Psychiatry at New Delhi’s All India Institute of Medical Sciences (AIIMS), says there is just one psychiatrist for four lakh Indians, and Dr Mathew Varghese, Professor and Head of Psychiatry, NIMHANS, adds there are only about 4,000 psychiatrists, 1,000 psychologists and 3,000 social workers for the whole of the country.

(<http://www.dnaindia.com/health/report-finally-a-national-survey-on-mental-health-disorders-in-india-184>(<http://www.caravanmagazine.in/perspectives/mental-healthcare-act-premature-celebration8694>)

- The figures may vary but the truth does not. The ratio between those in need of mental health services and those who can extend care are grossly disproportionate and dismal and only one percent of the healthcare budget is allocated to mental health.

(Pranav J Sharma, Miles to Go, 1 June 2017, Caravan Magazine, Delhi Press, New Delhi (<http://www.caravanmagazine.in/perspectives/mental-healthcare-act-premature-celebration>)

Lack of coordination

HAQ has repeatedly pointed to the lack of cohesive efforts among government ministries that deal with children's issues and rights, JJBs, CWCs, NALSA, police officers dealing with children, local district officials, NGOs and local community structures that hamper the institutionalising of counselling.

Let's examine the confusion within the JJB itself to make this point. When a child is apprehended, a special juvenile police unit or a child welfare police officer handles cases pertaining to children involved in minor crimes, and such offences are recorded as general diaries. (The police cannot register FIRs against children in connection with minor offences, according to the new Rules for the juvenile justice law. However, the new provision leaves room for authorities to book underage offenders if the crime attracts a prison term of more than seven years, or if an adult is also involved in the crime).

The probation officer is expected to prepare a detailed SIR based on police entries. Yet we often see that there is no coordination between the probation officer and the police and this report is only drafted in cases where the magistrate requests it. It is often written out in front of the magistrate even though there has been a significant time lapse of the event. The probation officers often don't survey the child's neighbourhood and homes through home visits or meet with the parents for a comprehensive understanding of the child's circumstances. Follow-ups after the report is made are rare.

It is often on the probation officer's recommendation that counsellors are appointed. But they do so in very few cases which is a cause for concern.

When the counsellors come in, they have little knowledge of the child's background as this is not reported adequately in the SIRs. They spend a lot of time trying to understand this perspective as it is vital to the child's development. Many even make several home visits and set up interviews with parents. When the counsellors submit their assessments after prolonged counselling of these children to the magistrate very often the only questions posed to them are whether they need to continue with the sessions. Only magistrates interested in the processes of counselling pay attention to the counsellor's recommendations and insights. Very often cases are closed without the counsellor's opinion. And there is no monitoring of their work which could lead to dangerous trends.

Another example is that of lawyers. As per the NALSA, when a child is produced before the Board by the police, JJB members should introduce the child and the family to a lawyer and tell them they need not pay a fee for their services. This seldom happens. And as lawyers are deputed by the DSLSA, they leave when the tenure ends. This could be in a middle of a child's case, which means a fresh lawyer takes over and the process begins all over.

The lack of a uniform plan of interaction between the functionaries and the children at all levels is evident and interactions mostly depend on the approach and understanding of every functionary.

These confusions within the JJBs need to be overcome if they are to effectively coordinate with other stakeholders.

Lack of government accountability towards CICL and counselling

International standards expect countries to promote laws, procedures, authorities and institutions that respect the rights of CICL and their right to rehabilitation and reintegration into society. The UNCRC of 1989, which has been ratified by India, obliges it to give effect to the Convention by means of laws, policies and practices.

India still falls short of expectations as many of the CRC pre-requisites – raising the minimum age of criminal responsibility to an internationally acceptable level, diversion and restorative justice, preference for community-based rehabilitation and community involvement and providing formal training for judicial professionals, especially in the area of rehabilitation and reintegration, for instance.

“At one point of time, despite our country being a signatory to the Convention on the Rights of the Child, issues relating to children were not being given due importance they deserved. The Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted but again despite the progressive legislation, its implementation was not being given due importance. Now that the Juvenile Justice (Care and Protection of Children) Act, 2015, has been enacted and being a legislation of comparatively recent origin, it is expected that the rights of children will be recognised and given due importance,” observed Honourable Mr. Justice Madan B. Lokur in 2016.

(Excerpts from the Foreword written by Honourable Mr. Justice Madan B. Lokur, dated 07.10.2016, for the "Training Module for Probation Officers and Legal Services Lawyers attached to the Juvenile Justice Boards", developed by NALSA)

Under-utilising counsellor abilities in drafting of SIRS and ICPS

SIRs and ICPS are poorly drafted, lack detail and comprehensive assessments as the probation officers have several other duties. They often don't incorporate the details and suggestions of the counsellors. It is oftentimes the social workers who actually incorporate some of the counsellor's suggestions. This as the counsellors submit their reports to the Board and the social workers use pertinent details from them when they in turn submit their reports to the Board.

There has been practically no training on how to develop an ICP. Now that it is mandated in law and must form part of every dispositional order of the Board, there is a huge challenge before every authority. The NALSA has developed a module for probation officers to carry out their responsibilities. But this is not sufficient.

A while ago HAQ conducted extensive trainings of probation officers on the request of an ex-Principal Magistrate of a JJB. As part of this training a few SIRs of probation officers were randomly selected for a group study. It was found that all their SIRs read the same, completely overlooking the specific situations of children and their families, individual personality traits and characteristics and the different circumstances of every offence. HAQ requested all the probation officers to revisit their SIRs. It was an interesting exercise but never got repeated once that Principal Magistrate left.

The former Principal Magistrate says prior to the training, while probation officers did give fairly detailed reports and meticulously covered all the information parameters required of them

what they visibly lacked was a sense of perspective. There was little perception among them as to why these details were needed or how it could help the child. Post the training there was a marked difference in the way they filed SIRs, aiding the Magistrates in a variety of ways. As these reports presented sharper and more detailed information and were written out with much more rigour, the Magistrate could in turn ask for definitive follow-ups in terms of specific information needed from them. Two, with such comprehensive inputs, Magistrates could chalk out well-considered and purposive future plans for the child.

Lack of assessments on the prevalence of mental illness among CICL and methods to address such disorders

Adolescents' entrance into the juvenile justice system may also be a consequence of behaviours resulting from an undiagnosed, untreated mental health illness. There are no efforts to evaluate the developmental stage of the child, medical status, personal history, decision-making abilities and ability to understand consequences.

HAQ retains the view that screening mechanisms for mental illnesses, ensuring the presence of qualified mental health professionals to carry out mental health assessment and identifying counselling needs remains a huge challenge. One that needs to be addressed with urgency. This as counselling is part and parcel of issues relating to mental illness.

HAQ's counsellors have seen several cases of children with impaired intellectual abilities who have been detained for crimes that they don't seem aware of committing or if they do they do not see the gravity of it and the adverse impact it has on others' lives.

HAQ's experience has been that within the JJB mental assessments are only done to determine whether the child needs psychiatric help at the Institute of Human Behaviour and Allied Sciences (IHBAS) and needs to be directed there.

Children, aged between 16 and 18 years who are alleged to have committed a heinous offence, are put through a psychological assessment to decide whether or not the child should be tried as an adult. But the children are often not told that they are being examined for culpability which is a grave error.

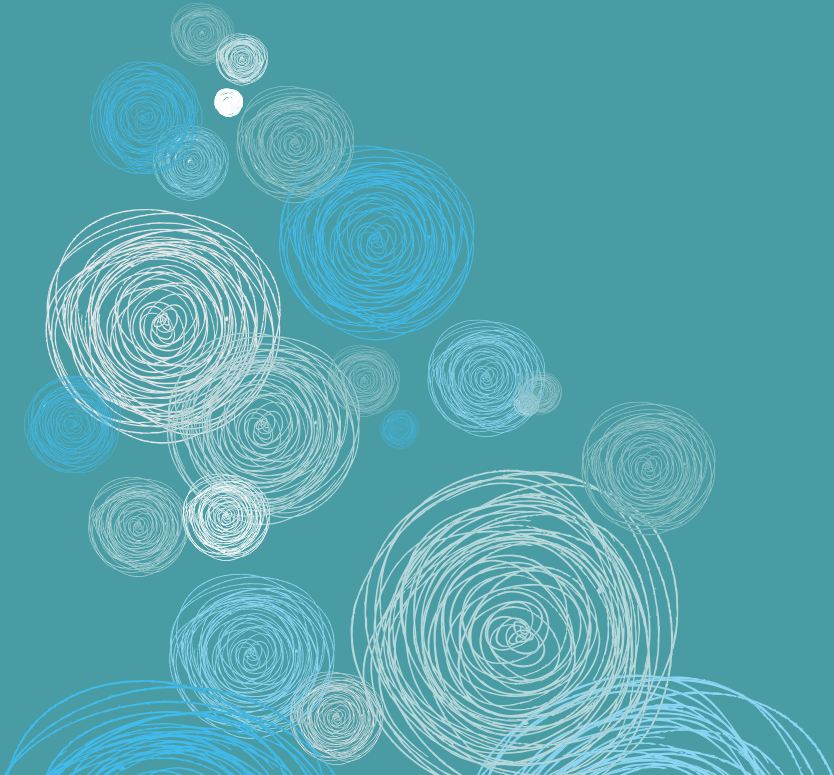
Poor data collection

There is a grave lack of data on CICL. The NCRB provides statistics on the number and the type of offences committed by children as also on recidivism. The numbers however are incomparable over the years as the methodology for computing crime data keeps changing, particularly when there is a change in the law. There is no reliable information on number of children within the juvenile system and rehabilitation across the country. Data on social background of children in the juvenile justice system is also not available. At best the NCRB gives information on the education level of CICL and family income. The Department of Women and Child Development does not disaggregate data on CICL. Sociological research that ought to throw light on other aspects such as children's migrant status, refugee or non-citizen status, their

dwelling and living conditions etc is missing. Research on sociology of delinquency has come to a standstill. Forensic psychology is a relatively newer domain in India and when evidence was being searched to allow or dispel the need for introducing treatment of children as adults based on the nature of offence, nothing was available from Indian experience or research in the field of psychology. All this precludes meaningful assessments for improving the situation on the ground and policy change.

5

Reflections on the Way Forward



HAQ believes the key to a real and vigorous recovery and reintegration into society lies in tapping into CICL's strengths and competencies; in encouraging the children's own role in terms of self-determination and motivation. These efforts should be rooted in a clear understanding that children hold rights that must be extended and respected at all costs. Prioritising their choice and control over issues is, thus, of vital significance.

Building recognition for counselling

All too often, the juvenile justice system in India wavers between adopting a protective approach towards juvenile justice and the traditional punitive approach towards dealing with crime.

A law that subjects children in some measure to the same criminal justice system as adults means CICL are held to the same standards of culpability as adults. It is perhaps inevitable in such a scenario that the legal processes for CICL are far more sharply defined than the role of counselling and counsellors.

Says Kalpana Purushothaman, counselling psychologist, with long expertise in juvenile justice: "Every child who comes into the juvenile justice system needs, deserves and is entitled by law to receive counselling. We have to understand that counselling – of any kind – since it is within the juvenile justice setting has to be within the scope of what is laid down in the law. At least the basics of what is required by the law has to be provided."

So what does the law say we should provide by way of counselling? It talks of individual, group and family counselling. Yet details of how exactly this should be provided, who has to provide it, and when/where it should be provided is not defined by the law. Some of it is in the Rules, which provide the guidelines of how to implement the law.

HAQ feels attention to the ten points it advocates below will strengthen the foundations of counselling within the juvenile justice system, improve perceptions about its role and the power it holds for social transformation, establish the identity and role of counsellors within the system and expand the reach of counselling to CICL.

1. There must be efforts to ensure permanent qualified counsellors and child psychologists in the Observation and Special Homes and the JJBs.
2. There is need to highlight the role of counselling in improving, restoring and rehabilitating the lives of CICL. It is important that those within the juvenile justice system understand the value of child-friendly therapeutic process to give a voice to the needs, concerns and rights of CICL; effectively intervene in cases of delinquencies committed by children; foster a sense of self that is meaningful to the child, increase the self-efficacy of the child; address children's social abandonment and resultant psychological challenges by enhancing relationships with people; affect behaviour change amongst them; reduce their involvement in crime; and ensure their reintegration into society. It is important to underline that counselling is meant to help the child and not the JJB or the Judicial Magistrate.
3. Each and every child must have information and awareness of all major aspects of the juvenile justice system and the rights they hold.

4. There is a need to arrive at a precise definition for counselling within the Rules, delineate roles and responsibilities of counsellors and establish common standards, selection procedures and appointment criteria, protocols and models of practice based on evidence, ethical and child-sensitive practices.
5. In the absence of licensure or a governing/regulatory body for counsellors and a standardised syllabus for counselling, the JJB could perhaps as a first step undertake training for everyone counselling within the JJB so that certain basic ethical codes and techniques are understood and adhered to. Former Principal Magistrates insist that everyone who counsels CICL must have an understanding of child psychology and the particulars of the CICL situation. This, as apart from counsellors, sometimes even social workers undertake counselling. It is also important that the guidelines be arrived at by the JJB in consultation with the counsellors. Also, it is needed that each and every person engaged with the juvenile justice system has an orientation as well as periodic trainings to ensure better functioning. All of them need to understand child related laws, amendments in current laws, various government schemes, rehabilitation resources at hand, innovative ideas of rehabilitation, social work practices and the nature of child related issues at the global level as well.
6. HAQ agrees with the Tata Institute of Social Sciences model of developing a protocol of practice within the JJBs. This includes creating a team, ensuring regular communication and collaboration with the State to direct effective implementation of the Juvenile Justice Act (primarily infrastructure, staff training, developing protocols of positive communication and youth skill building opportunities), making sure of regular interactions with juvenile justice functionaries and developing a format for recording Board proceedings and critical points regarding rehabilitation.⁵¹
7. The JJBs through the State Governments need to ensure a process/a certification course for counsellors within the juvenile justice system, which can be created with the help of reputed bodies or institutes already working within this field. This is an easily implementable step. All JJBs across the country need to be on the same page on this issue.
8. There is also need to streamline the work of counsellors within the system (so that each counsellor does not duplicate the work of an earlier counsellor who has worked on recovery with a child) and ensure coordination between them (to better address the individual needs of CICL).
9. Many mental health professionals who gathered at a meeting organised by the Centre of Psychotherapy and Clinical Research and the School of Human Studies, Ambedkar University, Delhi, in September 2016 to debate the Mental Healthcare Bill 2016 sought an identity for counsellors and psychotherapists in the country under the auspices of an Association of Indian Psychotherapists. The Association, these professionals argued, will facilitate the formation of a Psychological Council of India where psychotherapists, clinical psychologists, counsellors, community mental healthcare workers and those devoting their efforts to sustain NGOs in the arena of mental health could seek membership and raise common concerns. HAQ and many others across the country support such demand, which holds good even now as the Bill stands translated into a law. Neither the Mental Healthcare Act 2017 nor the rules and frameworks under it that were finalised on October 20, 2017 have addressed it.

⁵¹ Juvenile in Conflict with the Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan, 2017, page 159, Tata Institute of Social Sciences, Mumbai, <http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=951&lid=1284>

10. Psychotherapists in particular also feel that the RCI should not be the body that regulates their functioning as the nature and essence of their work is very different from the mandate of the RCI.

TO BUILD RECOGNITION FOR COUNSELLING THERE IS NEED TO:

- ensure counselling for CICTL within the scope of the law
- highlight the role of counselling in improving, restoring and rehabilitating the lives of CICTL
- arrive at a precise definition for counselling within the JJA and JJ Rules, delineate roles and responsibilities of counsellors and establish common standards, protocols and models of practices based on evidence, ethical and child-sensitive practices
- undertake training for everyone counselling within the JJB so that basic ethical codes and techniques are adhered to
- ensure training for every functionary within the juvenile justice system
- ascertain a process/a certification course for counsellors with the help of reputed bodies or institutes
- streamline the work of counsellors within the system to avoid duplication
- roll out a protocol of practice within JJBs
- seek an identity for counsellors and psychotherapists through an independent association other than RCI

Embedding the Processes of Counselling within the Everyday Functioning of Jjbs

In Kalpana Purushothaman's opinion in the case of CICTL, the law places the responsibility for both the legal and psycho-social outcomes on the JJB. Therefore, a few ways in which the JJBs can carry out this responsibility through the processes laid down within the legal framework are:

- 1. Ensuring the presence/availability of a counsellor:** First check – is there a counsellor at the Observation Home and the Special Home? Has the vacancy even been filled? If not, directions for the action on the same within a specified timeframe could be issued by the JJB
- 2. Incorporating counselling in dispositional orders passed by the JJB:** The law already lays down that counselling has to be provided. JJBs have to ensure this by actually mandating counselling as part of all their orders – preliminary, interim and final.
- 3. Monitoring progress made by child:** It is not enough for JJBs to simply write details of a child's progress in their final orders, they should monitor the functioning and effectiveness of the child's progress by asking for status and progress reports on a regular basis.
- 4. Mandating submission of SIRs for every child:** Often, SIRs are not drafted despite the law mandating it. The JJBs don't insist on it and on occasions it is drafted the perspective is entirely legal or superficial. JJBs must demand a counsellor's report within the SIRs with suggestions and recommendations. The counsellor has to be asked to submit this report in every case.

5. **Mandating ICP for every child:** The role of the counsellor in drafting ICPs is central. The JJB could insist on ICPs with the counselor's inputs for every final order at least. Also, if JJBs were to periodically review the ICPs and monitor progress made, it would help to institutionalize ICPs.
6. **Monitoring the quality of counselling:** The JJB has to ensure the quality of the counselling being provided. This can be done through the use of an open house/feedback mechanisms/ grievance redressal process or through Children's Management Committees so that children's feedback on counselling is elicited. The critical insights of parents can similarly be sought. If the idea behind the JJB is reform, it is crucial to pay attention to this factor.
7. **Partnerships and collaborations:** JJBs should seek the involvement of NGOs and mental health institutions who can offer counselling services of their trained and experienced personnel to the children within Observation Homes and Special Homes. In these cases, their responsibilities must be clarified.

Providing counselling and other psycho-social interventions is imperative not only because of the risks of recidivism for the child, increased mental health burden for the State and negative consequences for the community, but also because under the current JJA children (between 16 to 18 years old) who are charged with heinous offence run the risk of being waived into the adult criminal justice system on the basis of a 'preliminary assessment' conducted by 'mental health experts'.

This entails serious legal consequences for children, which include being transferred to the adult criminal justice system to be tried and sentenced as an adult in addition to possible incarceration. This can be prevented to a large extent by providing developmentally- appropriate, evidence-based and sensitively implemented interventions at the right time to every child who enters the juvenile justice system.⁵²

TO INGRAIN THE PROCESSES OF COUNSELLING WITHIN THE EVERYDAY FUNCTIONING OF JJBs THERE IS A NEED TO:

- ensure the presence/availability of a counsellor
- incorporate counselling in all dispositional orders passed by the JJB
- monitor progress made by child by asking for status and progress reports on a regular basis
- mandate submission of SIRs for every child with a counsellor's report containing suggestions and recommendations
- mandate ICP for every child with counsellor inputs
- monitor the quality of counselling through the use of several mechanisms
- encourage partnerships and collaborations with NGOs and mental health institutions to elicit counselling services for the children within Homes and define their responsibilities

52 Kalpana Purushothaman, counselling psychologist and presently JJB Member of Bangalore Urban .Personal communication, June 13, 2017)

Promoting counselling as a right for every CICL

HAQ is keen to widely disseminate and advocate the fact that counselling is a right of CICL for self-improvement. There is need for each and every child be counselled rather than just a few of them as is currently being done.

Underlying this premise is its firm belief that each and every child counts and is of value to society; its conviction that change is possible if one accepts the child and not the crime; and its determination to ensure each child's right to participation, self-determination and development which are the key principles of juvenile justice.

Coming into contact with the JJB can be a very intimidating experience for children. HAQ pushes for probation officers to play enablers and tell CICL about the importance of counselling. When this idea is made amply clear to the children and their families, HAQ is certain that children will approach counsellors of their free will rather than being directed towards them.

Some counsellors within HAQ feel it will not help if counselling is forced or mandated for every child. Counselling can only work if there is willingness on the part of the child to engage with a counsellor. So ideally, it must be advocated as a right, one that children can choose to exercise or not. Another counsellor within HAQ explored the option of mandating a few sessions so that every child gets an idea of what counselling is all about and sees for himself/herself whether it is helping in moving forward. Then the child can be given a chance to decide whether or not she/he wish to continue. This method may or may not work but a trial could be attempted.

HAQ advocates examining counselling contribution to social accountability for CICL. Social accountability as a mechanism can help remove barriers to service access and quality (be it that of lawyers or counsellors, for example) and extend opportunities to CICL and their families who may otherwise have been excluded. Using social accountability initiatives (that many more NGOs can take on, like HAQ, as part of their core agenda) to empower CICL must be actively considered. The role of counsellors is to enable CICL to monitor the implementation of laws, policies and budgets meant for them and generate a demand for improvements should be explored.

Kalpana Purushothaman makes another significant point. Counselling, she states, is part of a larger basket of mental health services. The law already says that mental health has to be provided for each and every child, so it means that every child has the right to claim it. However, the gap is in implementing the law and ensuring that right for these children. Counselling has thus to be understood in the larger context of mental health. Counselling has to be combined with other mental health services like programmes on de-addiction for children with substance abuse problems, life skills training, vocational training, family support, and rehabilitation. This is meant to prevent a relapse into alcohol or drugs, and to ensure access to psychiatric treatment for children suffering from mental illness like depression or post-traumatic stress. So just providing counselling alone is not effective.

In this regard, the role of the mental health community is key. We cannot just hold the JJBs singularly responsible for ensuring the rights of the children within the juvenile justice system. The mental health community that comprises counsellors, psychologists, social workers, psychiatrists, pediatricians, child specialists and experts must engage more pro-actively with the juvenile justice system. They must be willing to provide services, train personnel, create awareness on issues relating to these children and advocate on their behalf, Purushothaman adds.⁵³

53 Kalpana Purushothaman, counselling psychologist and presently JJB Member of Bangalore Urban. Personal communication, June 13, 2017)

TO PROMOTE COUNSELLING AS A RIGHT FOR CICL, EACH AND EVERY ONE OF THEM, THERE IS NEED TO:

- strongly advocate counselling as a right of CICL, each and every one of them
- widely promote the purpose of counselling to be the enabling of self-determination in a child through probation officers
- foster willingness on the part of the child to engage with a counsellor
- mandate a few sessions for children and leave it to them to continue or discontinue with it
- explore counsellor contribution to social accountability
- combine counselling with other mental health services like programmes on de-addiction for children with substance abuse problems, life skills training, vocational training, family support, and rehabilitation for it to be truly effective
- encourage mental health experts to provide services, train personnel, create awareness on issues relating to these children and advocate on their behalf

Ensuring CICL have easy access and availability to counselling services

Arlene Manoharan, Programme Head, Juvenile Justice, CCL, NLSIU, Bangalore, chalks out a normative framework to ensure access and availability of counselling services to every CICL, proposing:

1. establishment of panels (*as provided for under Rule 8(8), JJ Model Rules (JJMR) 2016*) of voluntary or non-governmental organisations or persons who are in a position to provide the services of probation, counselling, case work and also associate with the police
2. signing of MoUs between recognised educational institutions providing academic courses in psychology and social work and the Department of Police as well as the nodal departments responsible for the implementation of the JJA in the States so as to gradually build in a system for trained practitioners and faculty to work with senior students/volunteers. The idea should not be only to spread awareness about the importance of mental health and the availability of mental health services but to also develop and professionalise this critical service, beginning from the time the child is first apprehended and continuing till the child is rehabilitated and integrated into the community, no matter how many years it takes
3. encouraging of counsellors/psychologists attached to every CCI to be proactive in enabling the establishment and effective functioning of the Children's Committees. Since the counsellor will be a member of the Management Committee that is to be established in every home (*as provided for under Rule 8(8), JJMR 2016*), he/she should be accountable to ensure that every child in the home has access to mental health services, present monthly reports to the Management Committee (containing details about the kinds of services provided and the challenges faced), and underline measures that need to be taken in this regard (*as required under Rule 39(4)(iv), JJMR 2016*)

4. persuading JJBs to pass orders (where professional counselling services are available) requiring children found to have committed an offence to meet the counsellor (*an option provided under Section 18(1)(b), JJ Act, 2015*) and orally explaining to the child that this is not a punishment but a service that he/she could utilise in order to aid the process of re-integration into the community
5. ensuring every CCI has the help of mental health practitioners (*as provided for under Rules 35(3)(xi) and 35(5), JJMR 2016*) either employed as staff, or available on call, such that every child has access to timely and quality mental health intervention
6. ascertaining children eligible for after care and those released from a CCI (*as provided for under Rule 25 (7)(iv), JJMR 2016*) are provided timely information about trained counsellors in the community where he/she is likely to reside after release and encouraging them to access these services
7. confirming that non-governmental organisations working with children, particularly those applying for registration (*see Rule 21(5)(v), JJMR 2016 under the JJ Act*), have a system in place to provide professional mental health services so that CICL can easily access them
8. influencing individuals and corporates to contribute towards the Juvenile Justice Fund which could be used to engage a suitable number of trained counsellors as staff/empanelled counsellors, thereby ensuring that every child has access to a trained counsellor (*as provided for in Rule 83(4)(xiv), JJMR 2016*)
9. sensitising the JJBs, the Children's Courts and all functionaries working with CICL to the value of mental health services and how this is linked to achieving the rehabilitative goals of the JJA. They should be encouraged to speak to each and every child who is produced before them, to ask them not only whether they have access to a lawyer, but whether they would like to speak to a trained counsellor about what they are feeling and get help for the emotional problems as well. The JJB in particular needs to be made accountable for its duty to ensure the smooth functioning of the Children's Committees in every CCI (*as provided for in Rule 7(1)(vii), JJMR 2016*)
10. prompting the JJB to use this as an opportunity to ask children about whether they have access to regular and quality mental health services and address these concerns on priority.⁵⁴

⁵⁴ Arlene Manoharan, Fellow, Programme Head, Juvenile Justice, Centre for Child and the Law (CCL), National Law School of India University (NLSIU), Bangalore, personal communication, June 2017

To ensure counsellors spearhead social reintegration there is need to:

- persist with behaviour modification, capacity building, career development and mentorship among children till such time as they are fully integrated into society
- explore tie ups with social workers
- pay attention to informal education, numeracy skills, improving cognitive and emotional functioning and planning and financial management skills
- make skilling meaningful and aspirational for children so that they rise to their highest potential and out of poverty
- ensure the tapping into the right skills and entry level jobs in sectors such as hospitality, beauty, textile, retail and construction
- harness the survival skills that CICL pick up (and demonstrate their creativity and resilience) by helping children find access to clubs and sports training centres
- explore the efficacy of para counsellors who can work with children
- build positive role models for children
- ensure States prepare Action Plans for rehabilitation of CICL
- design effective rehabilitation programmes for children who commit heinous crimes
- establish community-based intervention centres to help parents deal with children who do not listen to them
- work with a larger vision of involving entire communities to help restore CICL

Fostering an understanding of counselling as a process that begins much ahead of a child's detention and continues after release

Reintegration of CICL requires the creation of a seamless set of systems across formal and informal social networks as well as the creation of a continuum of community services to prevent the re-occurrence of anti-social behaviour.⁵⁵

HAQ advocates the process of reintegration of CICL through counselling that begins much ahead of a child's detention, continue after the CICL is confined and extend beyond the release of the child into the community.

Primary or pure prevention programmes should normally look at community-based mental health care programmes to address the problem where it starts - in the family and the community.

Counsellor intervention under the ambit of prevention could include awareness and capacity building for family, school and neighbourhood; aiding in the setting up of community vigilance teams (to detect and stop children committing crimes) and counselling units; helping in the strengthening of youth clubs, recreational centres and youth volunteers; enabling the creation of differential learning programmes and centres for children of varying age groups and ensuring

⁵⁵ Goldson, B., Dictionary of Youth Justice, 2008, Cullompton, UK

regular meetings of Child Protection Committees constituted at the village/*mohalla*, block/ward and district level, among other measures to find viable community-based alternatives to detention.

As a majority of the CICL are adolescents, friends and peers are an important part of their lives. It is important to divert them from the negative influences of peer groups towards positive relationships with persons of his/her age as well as ensure they have adults who will guide as and when required. Counsellors could play a role in this.

When children get apprehended, the skills of counsellors can help the child regain a sense of self and social responsibility (a process that has been described in detail in this book). Diversionary measures can come into play even here as a generally applicable procedure or on the decision of the police, counsellor, court or similar body. Though in India there is little attempt to do this.

Young adults in after care facilities in the country (that houses children living in Observation Homes when they get past the age of 18) also require counselling. Probation officers are meant to keep track of the progress of the child and counselling forms a part of this progress report. Counsellors need to be involved far more earnestly than they are now. As of now there is also very little provision for children who have never lived in an Observation Home but require care and protection after they are 18 years of age. Attention must be paid to this aspect.

Dr Mohua Nigudkar, Faculty, School of Social Work, Tata Institute of Social Sciences (TISS), who has also been an intrinsic part of the JJB as a former social worker member of the JJB (Mumbai Suburban) for seven years and who started her career as a probation officer in the state's Children's Home, says it is important that the juvenile justice system and everyone who is a part of it never forget that while crime is equated to harm, justice should be equated to repairing that harm. This in no way means we condone crime but it is important that we never forget why the child is vulnerable to crime and reach out to each one of the children. We have to look behind the curtain and understand why the child is in the JJB. If the source of the delinquency is in the family, community and schools then strategies must target all these sections rather than just the child. If the challenge is integration and rehabilitation all these agencies need to be focussed upon rather than just the isolation of the children. There hence needs to be a continuum of activities -- prevention, early intervention, addressing the needs of a child while in custody and guidance post release as well as the inclusion of family and the society in the process of accepting the child back into society.⁵⁶

To foster an understanding of counselling as a process that begins much ahead of a child's detention and continues after release there is need to:

- maintain a continuum of activities that include prevention, early intervention, addressing the psycho-social needs of a child while in custody and guidance post release
- strengthen counsellor's inputs into: preventing children from entering the world of crime, directing them away from the negative influences of peer groups, building psycho-social skills to help the child regain a sense of self and social responsibility when in custody and providing services in after care facilities
- make sure prevention and reintegration strategies focus on the family, community and schools rather than just the child

⁵⁶ Dr Mohua Nigudkar, Tata Institute of Social Sciences, Faculty, School of Social Work, personal communication, 15 June, 2017

Counsellors should spearhead social reintegration

Social reintegration is often understood as the support given to young offenders during their re-entry into society following their tenure in custody. HAQ sees its ambit to be multi-disciplinary with includes:⁵⁷

- » Counselling, behaviour modification and career guidance
- » Self-development and social reintegration through capacity building, counselling, peer and individual-based activities
- » Livelihood development through skills training and placements
- » Mentorship where committed mentors will be adult volunteers who impart continued personal and career guidance to the child till such time when the child is integrated with the society

Counsellors could officially spearhead these efforts or play a large part of social reintegration of CICL. As detailed above it should include education, training, counselling, working with children individually, working with families as well as networking and mobilizing resources for children.

Yet non-institutional care, after care and rehabilitation and reform of children within the juvenile justice system, including conditional release and supervision of CICL, remain areas of concern as very little has been done by way of experimenting and trying out new ideas. HAQ knows that while counsellors do make some efforts in this direction, their focus remains on counselling the children in custody. This is understandable as they are few in number and their workloads are enormous. But HAQ maintains far more emphasis needs to be placed on social integration. As counsellors have already established a rapport with children, they are in the best position to help CICL.

HAQ envisions a counsellor-social worker tie up for effective social integration efforts. Both of them together need to address skills deficits that make it difficult for CICL to compete and succeed in the community. As a significant number of the children are in the age group of 16-18 years, they also need to pay attention to CICL's poor levels of inter-personal skills, lack of formal education, illiteracy and innumeracy, poor cognitive and emotional functioning, and a lack of planning and financial management skills that make re-entry into society arduous.

HAQ insists the first connect to open up choices for CICL and move towards the goal of child restoration should be between basic education (be it formal or informal) and skilling (to generate competencies that ensure a certain work-readiness). Access to Open School and other educational courses run by the Government of India (the National Institute of Open Learning, for example) should be sought. For children who have studied beyond class 10, provisions for advanced courses, such as those for the BPO sector may be made. Basic English language and IT skills are areas that must be focussed upon.

It is also important, HAQ believes, that skilling for CICL be meaningful so that they rise to their highest potential and out of poverty. So the right skills need to be tapped into so that the young have lucrative jobs that keep them economically anchored and also steer them away from crime. And, more importantly, there is a need to build aspirational value for skilling so that the young take pride in vocational learning. Entry level jobs in sectors such as hospitality, beauty, textile, retail and construction are possibilities.

57 Source: Position Paper on Skills Development and Rehabilitation Project for Children in Difficult Situations, HAQ, 2008, New Delhi

To impart skills training and develop curriculum, HAQ sees enormous potential in collaborations with the National Skills Development Council (NSDC), the Industry Association and relevant NGOs and organisations such as Pravah, Basix and Skills Academy who can extend courses to these children. These children could be placed in these programmes on the orders of the JJBs. At the end of the course, HAQ envisages a proficiency certificate for those who complete the course. Additionally, depending on the requirements of organisations, it foresees placements in collaboration with identified partners. In some cases, in consultation with the JJB, a basic amount for travel expenses incurred by the child to attend this programme could perhaps also be provided.⁵⁸

Another area that needs to be looked into by counsellors is strengthening ties of CICL towards the family and community (as the two powerful forces to draw children back into the fold of society). The role of the family is often underestimated in addressing the problems of CICL. But many families can become part of the problem-solving process if their abilities to protect and care for their children are strengthened.

Collaborations with community agencies and organisations will equip counsellors to help children establish ties with community institutions and lessen the number of challenges that hinder their ability to become law-abiding citizens. The counsellors need to ardently advocate that every JJB/probation officer have a resource list of available facilities, services, any information that would be relevant for rehabilitation. Monthly follow up meetings with the parents, children and the NGOs can heighten motivation and participation in the rehabilitation process and such regular counselling will also help identify interest areas and capabilities of each child.

HAQ understands these tasks envisioned for counsellors may not be as easy as they sound. Take the re-entry of CICL into education. The discontinuity of their education is a cause for misgiving as many schools do not have facilities for these children to make up for lost study. Counsellors hence need to be on an active look out for solutions. One, informal schooling systems that train CICL with context-specific, participatory learning methods should be used to firm up their competencies in reading, writing, numeracy and vocational skills training. The challenge is also retaining the children in these schools as many of them find it difficult to cope even in these easy settings. Two, harnessing the survival skills that CICL pick up (and demonstrate their creativity and resilience) is a potent tool. Inducting these children into local sports clubs, recreational centres (where there is dance, music and theatre) and community clubs will help channelise their energies and re-instill a sense of familiarity and bonding with the community and its activities.

Many organisations push the concept of para counsellors for CICL, one that is gaining acceptance. A team of lay counsellors, also known as para-counsellors, who offer frontline counselling for these children within the community can effectively address their concerns right at their doorstep or within their schools. The para counsellors can serve as role models and steer children away from crime. The recruiting of ex-CICL as para counsellors and hence role models can help instill a sense of purpose and hope within those who have just entered the juvenile justice system.

While agreeing with this concept, HAQ strongly advocates the building of role models for children, something that all CICL lack, to help ground these children into society. These children,

58 Position Paper on Skills Development and Rehabilitation Project for Children in Difficult Situations, HAQ: Centre for Child Rights, 2008, New Delhi

HAQ believes, are greatly helped by having discipline, a structure to their lives and someone who lends them an ear. Role models can help CICL develop positive peer structures, discover hidden capacities, enable them to work on them and find direction in life. This measure could go a long way also in fostering a sense of belonging thereby firming up personal bonds and ties not only with the peers, but with community members too.

It would help if every state prepares a comprehensive Action Plan for reformation and rehabilitation of CICL and creates adequate facilities for education, skill enhancement and rehabilitation.

Greater investments are required in designing evidence-based rehabilitation programmes. The Ministry of Women and Child Development must, in collaboration with the Commissions for Protection of Child Rights, NGOs, doctors, psychologists, social workers, and other experts undertake extensive research on rehabilitation programmes for all CICL, with special focus on the effective means of dealing with children who commit serious offences. Research has shown that appropriate rehabilitation outcomes can be achieved by taking into account the characteristics of the programme, the offender, and the settings in which it is delivered.⁵⁹

Community-based correctional intervention centers should be established where counsellors could cater to the needs of family, especially in cases where parents/guardian are unable to exercise control over the CICL.

Dr Mohua Nigudkar says, the setting up of multidisciplinary efforts and teams to help CICL mentioned above will only bear fruit if there is a larger vision behind these discrete efforts, one to integrate all these stand-alone endeavours and institutionalise them. If public safety can be ensured through competency development and enhancing the accountability of CICL, then communities can be co-opted into this process of restoring the child with far more ease.⁶⁰

59 Arlene Manoharan and Swagata Raha, *The Juvenile Justice System in India and Children Who Commit Serious Offences – Reflections on the Way Forward*, 2013, <https://www.nls.ac.in/ccl/justicetochildren/intl.pdf>. This paper draws from contributions made by Geeta Sajjanshetty, Kalpana Purushothaman, Shruthi Revankar and Anuroopa Giliyal, members of the Juvenile Justice Help Desk Team and the official Position Paper of CCL NLSIU submitted to the Justice J. S. Verma Committee on 14th January 2013, a copy of which is available at <http://www.nls.ac.in/ccl/cclpositionpaper.pdf>.

60 Dr Mohua Nigudkar, Faculty, School of Social Work, Social Tata Institute of Social Sciences, personal communication, 15 June, 2017

To ensure counsellors spearhead social reintegration there is need to:

- persist with behaviour modification, capacity building, career development and mentorship among children till such time as they are fully integrated into society
- explore tie ups with social workers
- pay attention to informal education, numeracy skills, improving cognitive and emotional functioning and planning and financial management skills
- make skilling meaningful and aspirational for children so that they rise to their highest potential and out of poverty
- ensure the tapping into the right skills and entry level jobs in sectors such as hospitality, beauty, textile, retail and construction
- harness the survival skills that CICL pick up (and demonstrate their creativity and resilience) by helping children find access to clubs and sports training centres
- explore the efficacy of para counsellors who can work with children
- build positive role models for children
- ensure States prepare Action Plans for rehabilitation of CICL
- design effective rehabilitation programmes for children who commit heinous crimes
- establish community-based intervention centres to help parents deal with children who do not listen to them
- work with a larger vision of involving entire communities to help restore CICL

Enhancing the value and efficacy of counselling and tapping into good practices

We have to understand counselling in the context of CICL is what is often described as 'correctional counselling', a specialised form of counselling that combines interdisciplinary competencies as well as core counselling skills. Counsellors need to know the laws that operate with regard to children, social work practices, mental illnesses that require psychiatric interventions and be skilled at networking with the State as well as civil society, individuals and organisations that provide different kinds of services for CICL – preventive, treatment and rehabilitative.

"No matter what tools or techniques or school of counselling or psychotherapy is followed, I think one should look for some common indicators for effectiveness," says Kalpana Puroshothaman.

Six key indicators for effectiveness in counselling for CICL includes:

- Attendance:** Is the child sticking through the programme of counselling? Does he/she turn up for the sessions at all? Does he/she attend all the sessions? If the answer is yes then it means something is working
- Family involvement/feedback:** Is the family engaged and invested in the counselling process? If so, that means something is working. We have to recognise that the child cannot

'reform' or 'rehabilitate' by himself/herself. He/she needs several support mechanisms and the family is probably one of the most crucial one.

- c. Emotional self-regulation:** Has the child's awareness of himself/herself, his/her emotions and his/her behaviour improved through the counselling process? Is he/she able to identify and express his/her emotions appropriately? For example, if a child was hitting others or breaking things when he/she came in, after few sessions, is he/she able to identify that he/she is angry/upset and talks about it rather than actually hitting others or breaking things? If so, this is indicative of a positive change.
- d. Pro-social behaviours:** Has the child's range of pro-social behaviours increased? For example, is there a decrease in using abusive language, or bullying and an increase in holding social rules and boundaries? Have the counselling sessions helped the child learn behaviours that are more likely to build and sustain positive relationships – with himself/herself and others? If they have, then one can count it as success.
- e. Empathy:** For CICL, I believe one of the key goals of the counselling process should be to build skills of empathy. The child has to be helped to learn how his/her actions have an effect on himself/herself, his/her family and other people, especially the victim and their families. And the good news is that empathy is a skill that can be taught. If it has been, the counsellor has done exceedingly well.
- f. Accountability:** Along with empathy, the counselling process has to enable the child to take responsibility for his/her behaviour, cope and deal with the consequences and more importantly try and make amends for his/her past actions and behaviour by understanding what is legally, morally and socially appropriate behaviour. If this process has been activated, counselling has indeed helped.

All of these are independent of whether the child is guilty of the offence or not. Every child entering the juvenile justice system has to be provided counselling to help him with these areas.⁶¹

In USA there are innovative, effective prevention and treatment strategies for children with substance abuse issues like establishing mental health courts.

The four models underlined below as good practices can be incorporated into the counselling processes within the JJBs in some measure.

Counsellors in the US have been trained in a five-phase functional family therapy that targets children between the ages of 11 and 17 who exhibit signs of substance abuse, delinquency, behavioural disorders, and co-occurring depression. The first phase relies on individual and family protective factors that seek to decrease the likelihood of dropping out of the programme, and the second focusses on motivation where changing negative emotional patterns and belief systems as well as improving positive emotional and psychological factors that promote long-term change is aimed for. The third phase explores relationships in the youth's life and how they can impact long-term change. The fourth phase leans on behaviour change, which focusses on teaching or improving communication, parenting, problem solving, and other important family management skills. The final phase of generalisation applies the new emotional patterns, belief systems, behaviours, and skills to all life situations and social interactions. This intervention has seen reductions in recidivism.

61 Kalpana Purushothaman, counselling psychologist. JJB Member, Bangalore Urban. Personal communication, June 13, 201

Two, the use family empowerment interventions, that involve home-based services and are focussed on improving family functioning, including hierarchy, setting boundaries, rules, and communication, have helped as well. This as parenting skills, adult guidance, nurturance and monitoring have been forged as well as enhanced.

Three, multi-systemic therapies that provide home-based services to children and their families to increase parental efficacy and build upon the strengths inherent in each child and their respective families, have yielded results. This as it has improved caregiver discipline practices; enhanced family relations; decreased youth association with deviant peers; and increased their association with peers with social skills.

And, four, the system of care approach is effective as it is family-based and culturally sensitive to individual and family needs and uses family collaboration for healing.⁶²

HAQ espouses good practices that rehabilitate children using multi-axial models; frameworks that attempt to engage CICL with everyday activities, strengthen their family-peer-community support systems, provide safe spaces which give them shelter and food and build their coping and life skills. It believes these structures along with the presence of processes that prompt further introspection can ensure behaviour change.

BACK TO NATURE AND THE KITCHEN

Dr Harish Shetty, a counsellor and psychiatrist, who works intensively with children has a simple yet potent idea to open up shrinking spaces for children and address the weakening of family bonds that affect them deeply.

In my experience I have found the kitchen in the house to be the 'calming force' for the teenager more than the prayer room. Those boys who spend time in the kitchen calm down drastically. There is something in vegetables and fruits that when handled, cut, minced and felt, changes the way one behaves. No, it is not the skills here but the feel that makes a big difference. Maybe it takes the young back to the fields, orchards and grass that is so sparse and unavailable. I have seen tribal children in different parts of the country much calmer than their city counterparts as they are in deep conversation with nature moment to moment in their life. I have sent many 'wild' teenagers to volunteer with organisations and then there is a sea change in their lives. Not by observing, but by actually doing with their hands, legs and their being is what brings them closer to themselves. Genuine volunteering without a photo op helps discover compassion and assists soul building.

(Source: <https://oneindiaonepeople.com/our-poor-children/>)

To enhance the value and efficacy of counselling and tap into good practices there is need to:

- ensure child and family attendance in counselling
- promote pro-social behaviours, empathy and accountability of the children so that they take responsibility for their actions
- pay heed to good practices of establishing mental health courts and initiating models like the five-phase functional family therapy, family empowerment interventions, multi-systemic therapies and system of care approach that have been used in the US with good results
- promote multi-axial models that attempt to engage children with everyday activities, strengthen their family-peer-community support systems, provide safe spaces which give children shelter and food and build their coping and life skills

62 Journal of Knowledge and Best Practices in Juvenile Justice and Psychology, 2013, Vol. 7, No. 1, 55-64, College of Juvenile Justice and Psychology, Texas Juvenile Crime Prevention Center at Prairie View A&M University, http://www.baylorisr.org/wp-content/uploads/11171_full.pdf

Addressing the paucity and capacity of counsellors

HAQ sustains its conviction that tie-ups between universities/colleges running courses in psychology and social work and the juvenile justice system will help meet the human resource crunch. It will also help expose these students to the realities of CICL within Homes and their trials during detention as also practical tools for developing ICPs and how to undertake specialised interventions.

Judicial Academies along with institutions like NIMHANS and other experts must form a committee to design a course and curriculum for persons holding the responsibility of preparing ICPs.

All social work colleges in the country must also invest in giving practical exercises to their students in dealing with CICL and developing ICPs, especially when their students are attached to the child protection system as part of their internships or field work.

All trained counsellors must know how to contextualise their work. They must show sensitivity towards the systemic factors for child vulnerability in the country, have a gendered understanding of the issue, be sensitive to the unique context and social milieu of a child and well informed of the laws.

Former Principal Magistrates say in the acute shortage of counsellors in the present system, probation officers can be trained better to double up as counsellors for the present. Permanent solutions can come in the guise of a pool of counsellors who can be empaneled by the Department of Women and Child Development and they can be assigned to JJBs, CWCs, Observation Homes and Children's Homes after mapping the need of each of these centres.

HAQ also advances the idea that given the lack of institutions advancing quality post graduate and M Phil programmes in counselling in the country, it would make eminent sense to train people within the community as para counsellors. This also because registered counsellors do not opt to work with CICL leading to a severe crisis in the numbers of counsellors available for children. Para counsellors could be people within the community who the children trust and respect. They could be school pass outs or graduates trained in particular kinds of therapy. They can counsel, make regular (perhaps weekly) home and school visits to check on the children's progress or lack thereof and look out for signs of recidivism under the guidance of an able supervisor.

HAQ finally recommends the effectiveness of counselling in meeting the goals of juvenile justice be regularly evaluated so as to improve the kind of services required of them as well as the number of counsellors within JJBs.

Kalpana Purushothaman pinpoints five immediate ways to address the shortage in counsellors:

- 1. Attract the best professional talent by making it financially viable and a socially respectable profession:** The paying of a low remuneration for a profession such as this that demands such a high degree of specialisation is deterring the inflow of talent. For example, in the medical profession, professionals in the ICU are paid more than their counterparts. They receive special training and are expected to deliver something more than the others. Their job is understood to be more challenging and demanding and hence they are also paid more. Counsellors in the juvenile justice system have to be recognised as such. A start should

be made with the government appointed counsellors at the Observation Homes and Special Homes.

- 2. Make counselling a sustainable career choice by creating a special professional cadre of juvenile justice professionals:** There has to be a definitive career planning for the counsellors who choose to work with CICL. We have to think of out-of-the-box solutions. Why not create a cadre of mental health professionals for the juvenile justice system – including professional probation officers, social workers, child care specialists, child rights professionals and correctional counsellors, – all qualified, trained, experienced and grounded in child rights principles and practice? This must be a cadre with a professional selection, recruitment, training, promotion, compensation and growth, etc. This would build aspirational value to the profession and encourage people to join, work and take forward their careers. The fate and future of CICL cannot be left to the kindness or charity of well-meaning individuals or organisations. It has to be institutionalised by the government.
- 3. Initiate post graduate courses on correctional counselling:** There needs to be serious thinking on including training, degrees and professional courses relating to correctional counselling at the post graduate level. We need to start specialised courses within national and regional institutes of mental health, law and social work.
- 4. Train the current crop of counsellors:** We need to build capacities of existing counsellors on an on-going basis through interactions with experts, child rights organisations as well as individuals and organisations working in the area.
- 5. Invest in research on correctional counselling in India and issues related to mental health of CICL:** Practice on the field has to be informed by the best in research from across the world – in real time. Childhood cannot wait for India to catch up with practices already being used and found effective elsewhere. (*Kalpna Purushothaman, counselling psychologist, personal communication, June 13, 2017*)

TO ADDRESS THE PAUCITY AND CAPACITY OF COUNSELLORS THERE IS NEED TO:

- accelerate tie-ups between universities/colleges running courses in psychology and social work and the juvenile justice system
- design a course and curriculum for persons holding the responsibility of preparing ICPs by taking help and collaborating with judicial academies and NIMHANS
- urge social work colleges in the country to invest in giving practical exercises to their students in developing ICPs and understanding how to undertake specialised interventions for CICL
- train people within the community as para counsellors
- attract the best professional talent by making it financially viable and a socially respectable profession
- make counselling a sustainable career choice by creating a special professional cadre of juvenile justice professionals
- initiate post graduate courses on correctional counselling
- train the current crop of counsellors
- invest in research on correctional counselling in India and issues related to mental health of CICL

Addressing the lack of specialised counselling services within jjs

We have talked about the acute lack of specialised counselling for interventions in issues like addiction, child sex offenders, child recidivists, girls who commit serious crime, and children who suffer from disabilities within the JJBs.

We highlight one remarkable endeavour in the area of de-addiction for boys whose model can be replicated in some measure within the JJB itself and by other NGOs as well.

When children apprehended are suspected/found to be abusing substances, they are directed to de-addiction centres. One such centre for boys in Kingsway Camp in Delhi is run by the Society for the Promotion of Youth and Masses (SPYM).

“Inattention to young children who start abusing drugs means that as the habit gets pronounced these children will invariably come into conflict with law. The consequence of this is the abrupt loss of childhood, a hugely traumatic and often life-altering experience. Energies need to be directed to early detection of substance use in schools and homes and early detox, counselling, rehabilitation and reintegration. It is well established that unresolved pain from childhood gets recreated and acted out in adult relationships. It is important that the body and mind be healed together.”

If we don't invest **now** in redeeming our children and adolescents from substance abuse and rehabilitating and reintegrating them into society, we will be actively contributing to increased numbers of child addicts, deepened children-criminal nexus, and an overburdening of our health, policing and judicial systems, says Dr. Rajesh Kumar, Executive Director, SPYM. (*Dr Rajesh Kumar, executive director, SPYM, personal communication, 2017*)

Children who are directed by the Judicial Magistrate to go to the SPYM Centre are routed to it through the Observation Home. The child goes equipped with a magistrate order, medical examination report, psychological assessment report (that contains the case history and mental status examination report) and other counselling reports.

The Centre first undertakes a drug use test and if this reveals the child is abusing drugs, he is admitted. When the child is admitted, a separate intake file is created. It contains the child's name, parent's name, age, address, contact number, educational qualifications, religion, case history (FIR No, U/s Police Station, concerned JJB), type of substance abused, history of drug use, sources of earning money to sustain drug dependency, residency details of child when he abuses drugs and date of admission. This personal, social, physical, and psychological information is updated on a regular basis from date of admission to date of discharge.

The child is then sent to be detoxed at the Centre's headquarters. The process lasts anywhere between three and seven days, depending on the severity of substance abuse. The child is then sent back to the Centre where he falls into its routines for anywhere between 30 and 90 days, or longer in some exceptional cases.

SPYM works through an integrated set of activities of recreation, therapeutic interventions, firming up education and developing life skills. The average age of children at the Centre is between 15 and 18 years.

In the middle of their recovery process, the boys work together with therapist to develop and maintain a balanced lifestyle. Past behaviour is addressed and work is done to overcome obstacles

to substance abuse. The focus is on re-establishing self-esteem and personal identity away from chemical dependency, repairing damaged relationships, stepping into society productively and on engaging in vocational services.

SPYM also facilitates regular meetings of the child, parents and the counsellor for each of the parties to gain a nuanced understanding of the situation, concerns and possible recovery routes. Two, the counsellors meet the family separately to address the queries the parents may have, that they do not wish to discuss in front of the child. Three, group family sessions are organised so parents can know that their families are not alone in this crisis and that they can work alongside this group for better synergy and impact. SPYM ensures that where the families live close to each other, productive exchanges become possible.

“Such a framework, one that uses daily diversionary creative group processes, learning, developing life skills, as well as direct and indirect psychological counselling methods, is a disciplined and structured way to work towards rehabilitating and reintegration of the boys. As the focus is on building the strengths and competencies of boys within a clear framework of protecting children’s rights, it has had a huge impact,” says Ambreen Khan, Programme Coordinator. (Ambreen Khan, programme coordinator, SPYM, personal communication, 2017)

To address the lack of specialised counselling services within JJBs there is need to:

- tap into the learnings of programmes doing remarkable work in the fields of addiction, child sex offenders, child recidivists, girls who commit serious crime, and children who suffer from disabilities

Streamlining processes within the JJBS for counselling to gain root

Mohua Nigudkar underlines that if counselling is to take root within the JJBs, much more needs to be done to even out its internal processes, delineate the roles of each and every functionary within its ambit and how they are to cooperate with one another.

Take this simple example, she says: when a child stands before the Judicial Magistrate with parents and lawyers, the Magistrate says several things to the child. Sometimes the child is too scared to understand. Or cannot hear what is being said due to the confusion around. The result of this is the child does not appear for the next hearing or follow up on things required. Who should help the child in such situations? There is nothing laid down. If there is a clear documentation of how such situations are to be handled and who should handle them, on how the functionaries should integrate their efforts and balance their roles so that the overall attempt is one of cohesion, the processes within the JJB could get that much simpler. Only when these basic issues are sorted can we move on to ensure counselling is a part of JJB functioning.

TISS has made an attempt to demystify the processes of JJBs by developing six simple booklets for CICL, parents, police, JJB, NGOs and Observation Homes. As there is ambiguity on the roles of functionaries and children and parents don’t know what rights they have and are often misguided, this initiative has helped in both dissemination of information and stemming

malpractices. Many more attempts should be made in this direction and particularly so by the JJBs, and more so in the area of counselling, one that has been neglected so far.⁶³

HAQ is clear that allowing for the recognition of the services of counsellors and improving their situation within the juvenile justice system in the capital requires the collective efforts and collaborative pursuits of a variety of people such as government officials in the Department of Women and Child Development, the Government of NCT Delhi, Delhi High Court's Juvenile Justice Committee, JJBs and its functionaries, policy makers, NGOs working with CICL, and of course, the counsellors themselves. They all need to acknowledge the inseparableness and congruity of counselling to the progress and well-being of the child within the JJB. These efforts should be undertaken by States as well with their respective institutions playing a key role.

A systems-building approach to child protection, one that emphasises coordination between sectors and integrated responses that benefit all children, will not only galvanise the system but also ensure long term structural change, implementation that will enable the institutionalising of counselling. Again the emphasis must be on clarity of roles and functions.

There is need in particular, according to HAQ, to open up multi-professional forums so that probation officers, judicial magistrates and counsellors can collectively look at targets, strategies and solutions, improve their combined efforts within the JJBs and evolve practice guidelines and protocols through an analysis of good practices.

A protocol on communication at every level of the JJB is needed so that uniform and standardised messages are conveyed to every child as also to ensure child-specific interactions.

An important aspect that is often missed out is the lack of a full bench at the JJB (of one Magistrate and two social worker members) and regular training within the JJBs (of Magistrates, probation officers and social workers). HAQ advocates attention to these areas.

The reason for institutionalising counselling and psychotherapy for CICL is simple: it is needed to achieve results at scale by consolidating efforts and sustained investments as well as create accountability systems that hold stakeholders to their responsibilities.

63 Dr Mohua Nigudkar, Tata Institute of Social Sciences, Faculty, School of Social Work, personal communication, 15 June, 2017

TO STREAMLINE PROCESSES WITHIN THE JJBS FOR COUNSELLING TO GAIN ROOT THERE IS NEED TO:

- even out the processes and systems within the JJBs
- ensure the collective efforts and collaborative pursuits of a variety of people such as government officials in the Department of Women and Child Development, Government of NCT Delhi, Delhi High Court's Juvenile Justice Committee, JJBs and its functionaries, policy makers, NGOs working with CICL, and of course, the counsellors themselves in the capital
- initiate similar efforts in other States
- disseminate information about the processes of JJB to make it less intimidating for children and parents and also to sensitise the police, Observation Homes and NGOs to their roles and responsibilities
- ensure a systems-building approach to child protection, one that emphasises coordination between sectors and integrated responses, to ensure long term structural change, implementation that will enable the institutionalising of counselling
- open up multi-professional forums so that the probation officers, judicial magistrates and counsellors can collectively look at targets, strategies and solutions, improve their combined efforts within the JJBs and evolve practice guidelines and protocols through an analysis of good practices
- achieve results at scale by consolidating efforts and sustained investments
- create accountability systems that hold stakeholders to their responsibilities
- establish a protocol of communication
- ensure the presence of a full bench at the JJB and training of all functionaries

Strengthening accountability of the jpbs vis-à-vis its counselling services and its use of child-friendly services to institute counselling

HAQ is of the strong belief that there is need to increase accountability of JJBs vis-à-vis counselling by ensuring they provide safe spaces for counsellors to counsel CICL, allow counsellors to listen to CICL's versions of the story and their concerns (rather than expect them to advise the children), acknowledge and make use of their briefing updates, ensure that counsellor inputs derived by several sessions of counselling get reflected in SIRs and ICPs and that their recommendations for the children are taken with seriousness and used to espouse programme and policy change for CICL.

The NCPCR in its report on the National Conference of JJBs, undertaken by the National Judicial Academy, Bhopal, in 2015 considered the following elements as crucial to maintain a child-friendly environment at JJBs: (i) the Board shall have a round table sitting arrangement instead of a dais system; (ii) children as well as accompanying family members should be allowed to be a part of the round table; (iii) the police, lawyers and judicial officers/members should be in plain clothes during the round table hearings; (iv) lawyer chambers in the Board premises should not be allowed; (v) the Board should require the appearance of child only when the eye witness is examined and wherever identity is not under dispute, the child's presence may be dispensed with.⁶⁴

64 Report of the National Conference on Juvenile Justice Boards, National Judicial Academy, Bhopal, 2015, National Commission of

To step up efficiency of the JJBs, some of the report's recommendations include: no additional charge be given to the Principal Magistrate; a one month training capsule in juvenile justice system be made mandatory for all judicial magistrates at the time of induction; JJBs be provided with adequate and permanent support staff such as constables for serving summonses; the powers provided under Rule 13 (1A) and Rule 13 (7) of the JJ Rules be used to clear pendency of cases and timely disposition and to terminate cases of petty offences; police stations be provided with necessary forms for intimation of parents; SIRs be done immediately at the time of apprehension of the child; woman members be appointed to deal with cases under the Protection of Children from Sexual Offences Act (POCSO) Act; probation officers be made accountable for delayed SIRs; the disposal of cases be clearly reflected in the performance appraisal of the principal magistrates; monitoring/inspection of Homes be regular; children be apprised about their right of bail and legal aid, and the overcoming of problems in establishing the age of a child (by ensuring birth registrations be made mandatory and creating and maintaining data base of birth at the district level.)

HAQ agrees that only when these steps are put in place can counselling, as is truly needs to be taken forward and embedded with the JJB, be possible.

It also seeks attention to issues relating to the final order and closure of children's cases (so that the time period for closing a case and keeping a child in detention is not over stepped) and full-time functioning of JJBs (this as in many states JJBs do not function full time).

HAQ is equally keen that JJBs strengthen rights-based national child protection systems (by adopting the basic principles on child rights included in international standards such as the CRC and other relevant documents related to juvenile crime prevention) and stem malpractices within the juvenile justice system. There have, for instance, been several cases where government appointed legal aid lawyers charge the families hefty fees (despite the fact that they are to work free of charge for the children).

Piggy backing on the Integrated Child Protection Scheme (ICPS) that brings together multiple existing child protection schemes of the Ministry of Women and Child Development under one comprehensive umbrella and integrates additional interventions for protecting children and preventing harm could help. As the focus of the programme is to secure the rights of all children, with a special emphasis on CNCP, CICL and other vulnerable children, it can be used to institutionalise essential services, strengthen structures for CICL, enhance capacities at all levels, create data and knowledge bases for child protection services, strengthen child protection at family and community level and ensure appropriate inter-sectoral response at all levels.

To strengthen the accountability of the JJBs vis-à-vis its counselling services and its use of child-friendly services to institute counselling there is need to:

- » ensure JJBs provide safe spaces for counsellors to counsel CICL, allow counsellors to listen to CICL's versions of the story and their concerns (rather than expect them to advise the children), acknowledge and make use of their briefing updates, ensure that counsellor inputs derived by several sessions of counselling get reflected in SIRs and ICPs, and that their recommendations for the children are taken with seriousness and used to espouse policy change for CICL

- » follow up on the vital suggestions of the NCPCR in its report on the National Conference of JJBs, undertaken by the National Judicial Academy, Bhopal, in 2015 to provide a child-friendly environment that will in turn allow for counselling as it is envisioned
- » strengthen rights-based national child protection systems and stem malpractices within the juvenile justice system
- » piggy back on the Integrated Child Protection Scheme (ICPS) that brings together multiple existing child protection schemes of the Ministry of Women and Child Development under one comprehensive umbrella and integrates additional interventions for protecting children and preventing harm

Lending momentum to multi-disciplinary efforts within jjbs

The fact that counselling alone is not enough to ensure the well-being and social integration of CICL has been repeated often, and the other efforts required have been underlined as well.

Arlene Manoharan compellingly pulls together all the multi-disciplinary measures (along with arguments of why) needed to lay the foundation for counselling within the JJB and make it consequential to the betterment of the lives of CICL.

In her words, “the JJB is a unique multi-disciplinary body that is vested with judicial power to pass rehabilitative orders for children alleged and found to be in conflict with law after a multi-disciplinary inquiry. This inquiry is to be conducted based on what should be a nuanced study of the child and his/her circumstances through what is erroneously termed as the ‘Social’ Investigation Report (*defined under Rule 2(xvii) of JJMR 2016 and provided for under Sections 8(3) (e), 13(1) (ii) and 18(1) of JJ Act 2015*) as this is much more than an inquiry into the ‘social’ issues affecting the child. The findings of this inquiry are meant to inform an ICP (*as provided for under Section 8(3) (h), JJ Act 2015*) that is mandatory for each and every child. This is intended as a plan or a road map for the child to be effectively re-integrated into his family and community. The JJBs are unfortunately under tremendous pressure to reduce pendency which is why little or no time or effort is given to ensuring that the SIRs and ICPs are prepared meaningfully. Tragically, this becomes a lost opportunity for a vulnerable child to receive the mental health services that he/she is entitled to under the law - a service that can not only enable him/her to heal from the trauma of being involved in a crime, including the system-induced trauma but to also prevent him/her from going down that road again. The JJB, particularly the social work members, need to be sensitised and trained to spend time with each child so that they can help these children realise their rights.

Justice is not only for the victim of crimes committed by children, but also for children alleged and found to be in conflict with law themselves. Unless mental health services are recognised as vital for ensuring ‘care’, ‘protection’, ‘development’, ‘rehabilitation’ and ‘social re-integration’, words that are enshrined in the long title of the JJ Act, 2015, justice will not be done to these children or their families. This particularly given that a majority of children who get into situations resulting in them being in conflict with law hail from deprived backgrounds where the State has failed to realise the Constitutional goals and its *parens patriae* role. **The State has particularly failed to ensure their right to live with dignity, which in itself implies the right to education, right to housing and right to health, etc. A nuanced approach to**

engaging with the idea of what ‘justice’ entails needs to be discussed as an essential part of all curricula that deal with the children and adolescents, be it in the area of health, law, psychology or social work.

Counselling CICL and their families requires a nuanced understanding of the juvenile justice system, the psycho-social issues facing children and families journeying through the system, relevant legal provisions and a professional system to supervise and support counsellors in this field. It is hard to find any academic institution providing a certificate course in counselling CICL and/or their families, or even a module dealing with this subject. This is why counsellors too find it extremely challenging to offer these services, and do not see this as a career path. The CCL, NLSIU, initiated a process by which the Parivarthan Counselling Centre was invited to provide counselling services to children in the Observation Home, Bangalore. The idea behind working with this credible NGO was to consider offering a short course in counselling to this group of children and families, given the dearth of counsellors in the field. A handbook for counsellors working with CICL is also being published shortly to support this endeavour. While similar efforts need to be initiated in other parts of the country, it is hoped that this subject attracts the attention of institutions of higher education, so that the mental health needs of this vulnerable group of children and families gets the attention it deserves through mainstream educational institutions.

Families of CICLs often suffer equally, if not more, while journeying through the juvenile justice system. Many are compelled to shift their homes and jobs due to the stigma attached to them and sometimes also compelled to seek admission for their children into other schools, given that the child has been suspended or targetted (though this applies only in cases where the child is actually in school in the first place!).

Although family strengthening was part of the Integrated Child Protection Scheme as it was conceived, it has not translated into a deliverable component backed with a clear financial commitment.

Most functionaries in the system tend to focus only on the child and not the child within his/her family, failing to address the root causes that threaten the family's ability to function as protective and caring support system for the child. Family Social Work and Family Counselling do not get the attention they deserve, which is why many children too are unable to sustain engagement with the counselling process.

Monthly follow up meetings with the parents and children should be encouraged for accountability and to step up their motivation to participate in the rehabilitation process.

Social media needs to be used more effectively to build the narrative around CICL through an evidence-backed approach, one that includes stories of the remarkable resilience of these children and their capacity to turn around despite the challenges faced during adolescence, their often debilitating psycho-socio-economic circumstances and the failure of the state to meet their developmental and other needs. Though the focus has increasingly been on child victims of abuse, it is now time to also understand how CICL are largely victims of family neglect, apathy and even abuse/exploitation, driven into circumstances that led them to acts of crime. It is time to awaken the minds and hearts of policy makers and citizens to how the lives of each of these children are intricately linked to public safety and national development. And that greater human and financial

investment in understanding and rehabilitating CICL is not only in the interest of this group of children, but of families and the wider society as a whole.”⁶⁵

TO LEND MOMENTUM TO MULTI-DISCIPLINARY EFFORTS WITHIN JJBS TO LAY THE FOUNDATION FOR COUNSELLING AND MAKE IT CONSEQUENTIAL TO THE BETTERMENT OF THE LIVES OF CICL THERE IS NEED TO:

- sensitise and train social workers so that they spend the time that each child needs to realise his/her right to mental health in light of the fact that the JJBs are overburdened and under tremendous pressure to reduce pendency
- ensure the right of CICL to live with dignity which in itself implies the right to education, right to housing and right to health
- ascertain all curricula that deal with the children and adolescents, be it in the area of health, law, psychology or social work, talk of the rights of CICL
- push for attention to mental health within courses in mainstream educational institutions
- enable families and children who are counselled to counsel others in turn as there is a dearth of counsellors
- extend to Family Social Work and Family Counselling the attention they deserve
- use social media to effectively build positive narratives around CICL
- awaken the minds and hearts of policy makers and citizens to how the lives of each of these children are intricately linked to public safety and national development

Arlene Manoharan along with Swagata Raha, CCL, NLSIU, Bangalore, make a strong argument for the list of orders that could be passed by the JJBs in cases where children commit heinous crimes. They include placement of children within mental health institutes (central and state) for special therapeutic treatment and facilitating detailed risk assessments.

They say a focus on Specialised Juvenile Offender Rehabilitation Programmes will help in cases of juvenile sex offenders. These models could then be anchored by the counsellor at the Observation Home/ Special Home with help from local mental health institutions and specialists.⁶⁶

To widen the ambit of the JJBs when dealing with children committing heinous crimes there is need to:

- advance the list of orders that could be passed by the JJBs in cases where children commit heinous crimes like placement of children within mental health institutes (central and state)
- evolve specialised Juvenile Offender Rehabilitation Programmes in cases of child sex offenders

65 Arlene Manoharan, Former Fellow, Programme Head, Juvenile Justice, Centre for Child and the Law (CCL), National Law School of India University (NLSIU), Bangalore, personal communication, June 2017

66 Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children Who Commit Serious Offences – Reflections on the Way Forward, 2013, <https://www.nls.ac.in/ccl/justicetochildren/intl.pdf>. This paper draws from contributions made by Geeta Sajjanshetty, Kalpana Purushothaman, Shruthi Revankar and Anuroopa Giliyal, members of the Juvenile Justice Help Desk Team and the official Position Paper of CCL NLSIU submitted to the Justice J. S. Verma Committee on 14th January 2013, a copy of which is available at <http://www.nls.ac.in/ccl/cclpositionpaper.pdf>.

Addressing the neglect of mental health assessments of cicl

While the prospect of transforming the mental health system for CICAL will be overwhelming, there are many preliminary steps that can be undertaken with the help of counsellors and mental health specialists to address neglect of assessments of the mental health status of CICAL and a lack of specialised counselling services.

HAQ endorses: early identification and intervention through mental health screenings among CICAL; promotion of a comprehensive array of individualised formal and informal services that address CICAL's physical, emotional, social and educational needs; delivery of services in a safe and comfortable environment; partnering with parents to develop treatment plans; crafting individualised education plans and after care plans; providing families with regular progress reports on all medical, mental health and educational services their children receive; building requisite relationships with state and community agencies and organisations concerned about children's mental health, educating policy makers about children's mental health needs, and learning about the availability of existing services.

As many CICAL suffer from a variety of psycho-pathological issues, counsellors need to employ standardised global tools and assessment methods. It would help to work with score cards for children to make periodic progress assessments.

To address the neglect of mental health assessments of CICAL there is need to:

- ensure early identification and interventions through mental health screenings among CICAL
- promote a comprehensive array of individualised formal and informal services that address CICAL's physical, emotional, social and educational needs
- craft individualised education plans and after care plans
- build requisite relationships with state and community agencies and organisations concerned about children's mental health
- provide families with regular progress reports on all medical, mental health and educational services their children receive
- educate policy makers about children's mental health needs
- adapt and employ standardised global tools and assessment methods
- work with score cards to enable periodic progress assessments

Changing societal attitudes to accept CICL as citizens

Perhaps the greatest challenge ahead of counsellors is getting people to accept these children as citizens, the social inclusion of CICL. Being one of the most vulnerable, deprived and discriminated against groups of children, CICL's sense of being abandoned by the community, their sense of un-belonging, is strong.

Can we break the fear and isolation around CICL?

HAQ says the process of changing societal attitudes towards CICL must begin by helping the children develop a different image of themselves. If they persist in looking at themselves as 'criminals' the society will reflect their self-image back to them. Counsellors should enable the children to come to a place where they stop judging themselves as children not deserving of love, respect, dignity and attention.

HAQ believes changing attitudes towards these children within the JJB community is something counsellors can actively do. There is a lot of skepticism, for instance, among lawyers who believe the children they are paid to defend will never mend their ways. Counsellors can point out to them that very few CICL they counsel re-enter the world of crime.

On an average, between 2009 and 2014 recidivism among CICLs at the national level was 11.10%. In Delhi, it was 10.14%. In the case of 624 CICLs who received counselling from HAQ during the same period, recidivism was less than half the national and state average, coming to a figure of about 3.85%.

Even the general, ingrained belief within the JJB that these children have an obstinately uncooperative attitude towards authority and discipline must be debunked.

Former principal magistrates say that it is important to stress time and again that CICL are as much offenders as victims. There is need for people within JJBs and otherwise to say this repeatedly for the message to filter down to the ground. They must emphasise that re-offending is not that common for it to become commonplace knowledge.

Lacking direct contact with CICL, public perceptions of them are disproportionately shaped. Counsellors must focus on strategies that bring the community in contact with CICL to counter these negative perceptions and reduce public anxieties.

Section 15 of the JJA has community service as one of the rehabilitative options wherein the child is directed towards some voluntary or social service. In its final orders, the Board could use this provision more often. It can direct the child towards community service so as to help them gain confidence and dignity while at the same time pave way for their acceptance within the community...a symbolic restitution to society for the reparation of harm done as it were. It could involve the counsellors to ensure their orders gain shape. In Maharashtra and Rajasthan, the JJBs have been directing CICL to plant trees, work in institutions for the elderly and help traffic police in traffic management.⁶⁷

67 Juvenile in Conflict with Law and Administration of Juvenile Justice System in States of Maharashtra and Rajasthan, A Study Commissioned by National Commission for Protection of Child Rights, 2016, Tata Institute of Social Sciences, <http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=951&lid=1284>

Counsellors can also highlight the efforts being made by the local authorities to tackle anti-social behaviour to reassure people and restore the faith of families, communities and the society in recovery, rehabilitation and reintegration of CICL. A faith that these children can indeed transform into responsible, caring adults and improve their quality of life.

Kalpana Purushothaman elucidates on the role of the media to begin with and moves on to make other valid arguments. "If we could get an entire nation to believe that the child in the Nirbhaya case was 'the most brutal' – even though nowhere in the evidence or court records did it emerge that that was factually true – and that the child should therefore be hanged, I am sure if there is the willingness, the media can play a huge role in changing social perceptions and build empathy for CICL," she argues.

"I think if Amir Khan makes one movie on this issue, social perceptions can be changed. I mean look at what '*Taare Zameen Par*' did for dyslexia, what '*Dangal*' did for gender equality, and what '*Pink*' did for consent for sex in a relationship. Media can be a powerful change agent and for that perhaps one of our CICL should be trained to become a cricketer in our national team or become a hero in the movies. In a country that appreciates cricket and movies, this would probably work.

We, as the child rights community have to engage with the media. Not believe that they are "the other". We have to invite them to know and share our stories and that of the children we work for. We have to help the media see CICL as human beings rather than a social problem or a cause that 'activists' are fighting for.

I also think the way we teach our children and the way society learns about these children has to change. If our education is more rights-based then children can understand that people who are discriminated against, who are disenfranchised and who have been exploited and abused are vulnerable to make mistakes because of their socio-economic and life's circumstances. While they do cause harm to themselves and others, it is important that such children be given a second chance to reform and make amends for their mistakes and behaviour. Education is not just about who built the Taj Mahal or what is simple interest and compound interest," she adds⁶⁸.

HAQ also underlines the crucial role of schools in extending recreational and vocational activities to keep children busy in positive self-appraisal, gaining skills and staying rooted so that they don't venture into the world of crime. It also recognises its role in working actively with parents, community organisations and agencies concerned with the activities of young people (so that they lead fulfilling societal lives) as well as with counsellors (to identify children who have behavioural problems and are at risk).

68 Kalpana Purushothaman, counselling psychologist, personal communication, June 13, 2017

To change societal attitudes to accept CICL as citizens there is need to:

- help CICL develop a different image of themselves so that the society does not reflect a negative image back to them
- debunk the general belief within the JJB that CICL have an obstinately uncooperative attitude towards authority and discipline
- focus on strategies that bring the community in contact with CICL to counter their negative perceptions and reduce public anxieties
- ensure the Board uses the provision of directing children towards community service in its final orders to pave way for acceptance of CICL within the community
- use the media to play a huge role in changing social perceptions and build empathy for CICL
- use education to change perceptions about CICL and other disadvantaged groups
- step up the role of schools and ensure they work with parents and agencies as well as counsellors

Enhancing data collection to improve counselling services and assess the number of counsellors required

The National Crime Records Bureau, the State and District Child Protection Units, the National Institute for Public Co-operation and Child Development (NIPCCD), academia and research institutes need to take on responsibility for collecting and analysing data on CICL to inform policy and law.

Policies, programmes and strategies based on such prognostic studies need to be monitored and carefully evaluated during the course of implementation.

JJBs should make efforts to create a database of programmes, services, facilities and resources available for children as well as of institutions providing skill development courses. This will enable the Board to pass an order for enrolment of the child in such institutions as per the individual interest and aptitude of the child.

There must be upgradation of computer technology for report writing, record keeping, and documentation within all institutions of the juvenile justice system: that includes Observation Homes, Special Homes or the JJB.

To enhance data collection to improve counselling services and assess the number of counsellors required there is need to:

- encourage several government bodies, academia and research bodies to take on the responsibility for collecting and analysing data on CICL to inform programme, policy and law
- regularly evaluate the effectiveness of counselling in meeting the goals of juvenile justice so as to see where improvements are required
- ensure JJBs make efforts to create a database of institutions providing skill development courses
- ensure upgradation of computer technology for documentation

Paving the way for consortiums to address the problems of cicl far more effectively

Consortium settings where a large number of organisations and entities come together mesh the value of networks and the strengths of expertise.

HAQ advocates for such a platform to address the concerns of CICL so as to further participatory consultative processes that build consensus; reach children, stakeholders and donors with the right set of competencies; expand domains (as each partner works in a different area and brings that expertise to the project); entail deeper impact (due to a comprehensive set of interventions that work towards economies of scale as opposed to stand alone efforts); and allow for cross learning and stronger advocacy measures, especially in relation to counselling.

To pave the way for consortiums to address the problems of CICL far more effectively there is need to:

- advocate for the setting up of consortiums to entail deeper impact, work towards economies of scale and allow for cross learning and stronger advocacy measures, especially in relation to counselling

