

# Children in Conflict with the Law India

**Workshop: Equality and Non-Discrimination in the Child Justice System  
– Principle, Practice and Global Perspectives  
World Congress on Justice with Children**

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## Intersection between CICL and CNCP

- India has always recognised the intersection between children who are marginalised and vulnerable to falling in conflict with the law.
- That is why it includes both categories of children in the Juvenile Justice Act.
- Prevention of child offending is built into the law, as is reform and rehabilitation

# Two Categories of Children included in the Law

**Children in Need  
of Care and  
Protection [CNCP]**

**Rehabilitation  
Adoption  
Re-integration  
Restoration  
Procedures and decisions  
in all of the above**

**Children in Conflict  
with the Law  
[CICL]**

**Apprehension  
Detention  
Prosecution  
Penalty or  
imprisonment  
Rehabilitation  
Social re-integration**

# Children in Need of Care and Protection

Implementation of the JJ Act intersects with several other laws - dealing with child labour, child marriage, child sexual abuse etc. as well as adoption.

In fact, the systems and structures, most of which are at the district level, are provided for within the juvenile justice law in India.

# What will we dwell on ?

- How the law in India for CICL itself discriminates? (The thin line between differential and discriminatory - most often the first turns into the other)
- How some laws create CICLs because of the way they are constructed?
- How practice and system discriminates and stigmatises?
- What are the areas that require global consideration and consensus?

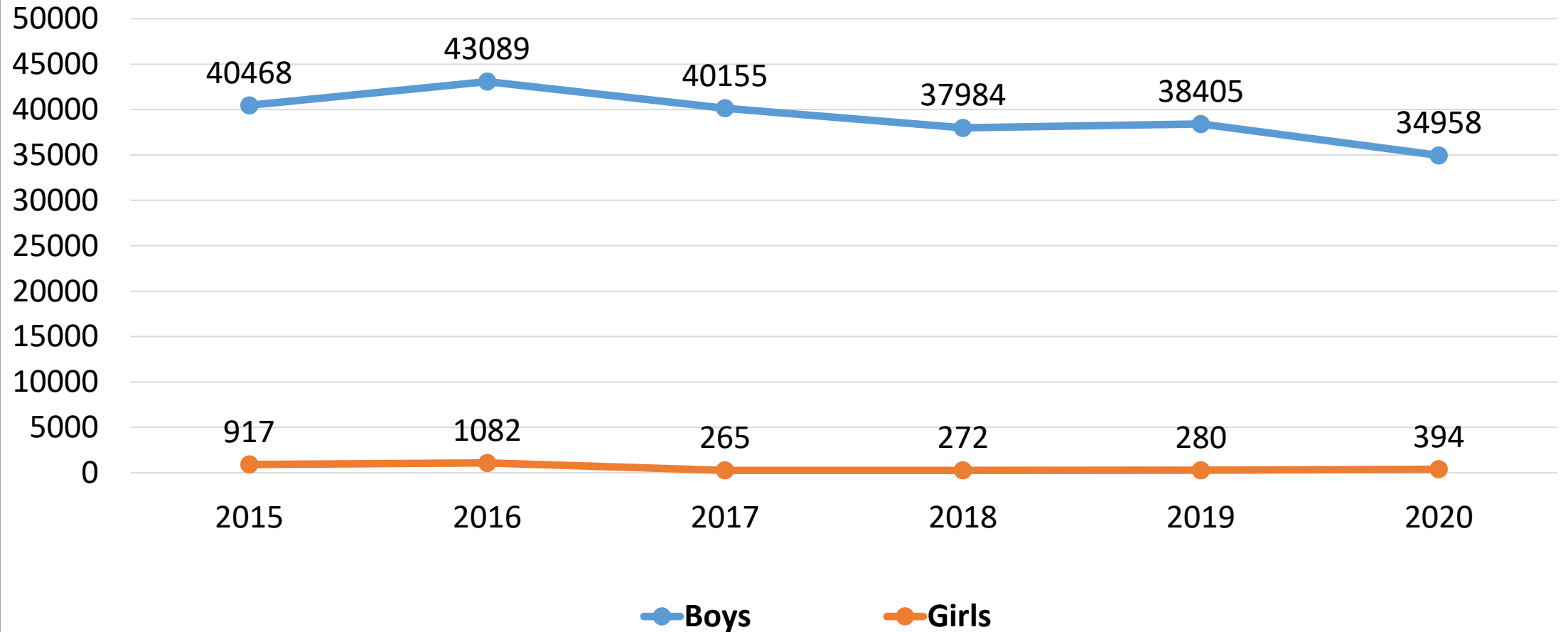
# **Who are Children in Conflict with the Law (CICL)?**

# CICLs are prejudged by all...

- Assume they are all children without families
- Assume they are illiterate and hence will not understand anything (so why share details of their complaint or case papers)
- Assume they all 'look a certain way' and are dangerous
- Assume that children of certain religions offend more

**This is what leads to discrimination in practice.....**

**Apprehension of Children in Conflict with the Law  
Gender Break-up  
(2015 - 2020)  
Source: NCRB**





# Over representation of some children in the JJ System

There is very limited data on social and economic categories - this is both a boon and a bane.

- **A bane** - because it hides the vulnerability of certain sections of children who find themselves over represented.
- **A boon** - because in an environment of othering and stigmatisation, this may lead to further stigmatisation, naming and shaming

*“Poverty, broken homes, family tensions, emotional abuse, rural-urban migration, break down of social values and joint family system, atrocities and abuses by parents or guardians, faulty educational system, the influence of cinema and TV besides the unhealthy living conditions of slums and such other conditions contributes to the explanation of the phenomena of offences by children.”*

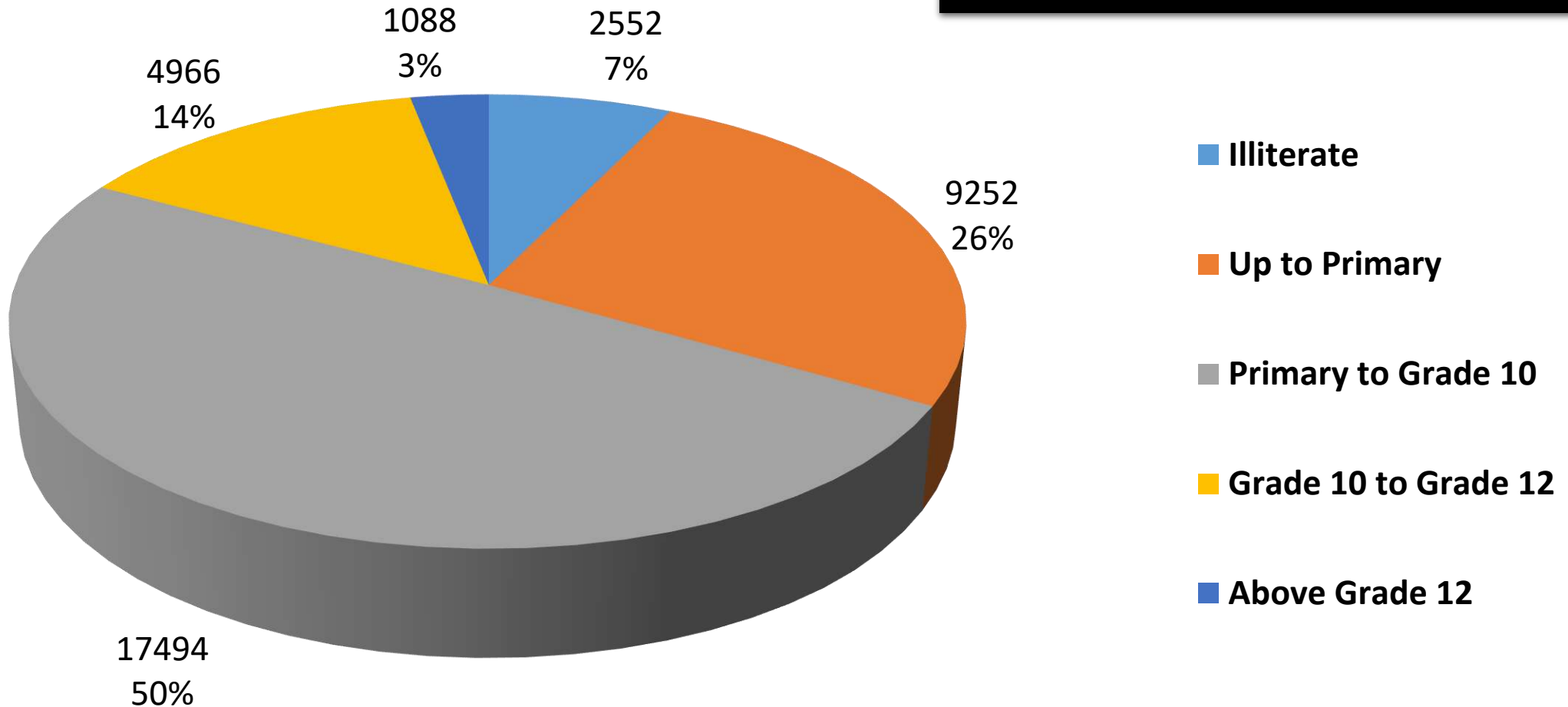
- Mahendra Tiwari and Mohan Shakti, “Analytical View on the Concept of Juvenile Delinquency, ‘International Journal of Research in Economic and Social Sciences. Vol.5, no.9  
September 2015

*“ ..it would be misleading to make an inference that children from higher castes are not involved in offences or unlawful acts. Their representations are missing in detention centres because of the fact most of these children’s cases are settled before reached the police station...”*

- Parackal, Saju and Rita Panicker. Children and Crime. The Story Behind. 2016. Page 29

# Education Level of CICL - Crime in India, 2020 NCRB

**26% dropped out of school after Grade 5**  
**50% dropped after Grade 10**  
**In other words...**  
**76% never studied beyond Grade 10**



# Family Background of CICL

Family Background	Percentage of CICL			
	2017	2018	2019	2020
Living with Parents	83.4	84.8	79.5	78.4
Living with Guardians	8.7	9.0	9.1	10.0
Homeless	7.9	6.3	6.4	6.2

Source: Crime in India Reports, NCRB, Government of India

# Economic Background of CICL

## Nationally, in 2015...

- **42.4%** CICL belonged to families with **annual income** up to ₹25,000 [**< \$340**]
- **28.2%** CICL were from families with **annual income** between ₹25,000 and ₹50,000 [**\$336 to \$674**]
- **25.9%** CICL were from families with an annual income of ₹50,000 - ₹2,00,000 [**\$674 to \$2696**]

Source: Crime in India Reports, NCRB, Government of India

**Note: 2016 onwards Crime in India reports stopped providing data on economic background of CICL**

# More on Economic Status


- A study<sup>[\*]</sup> of data collected from observation and special homes in Delhi, Haryana and Punjab from 30 officers and 300 children shows...
  - Among the providers of children –
    - 46.7% were skilled labour - factory worker, carpenter, farmer, plumber, etc;
    - 29.8% were daily wage labour;
    - 9.9 % had small business like vegetable or fruit vending;
    - Only 6.3% were salaried, forming the so called upward mobile middle class.

**[\*] Bajpai, GS. Juvenile Justice: Impact and Implementation in India. Bloomsbury. 2019. pp 109-110, 131.**

**How do they fare in the legal system?**

# Contrary to popular belief, children who offend don't walk away free!

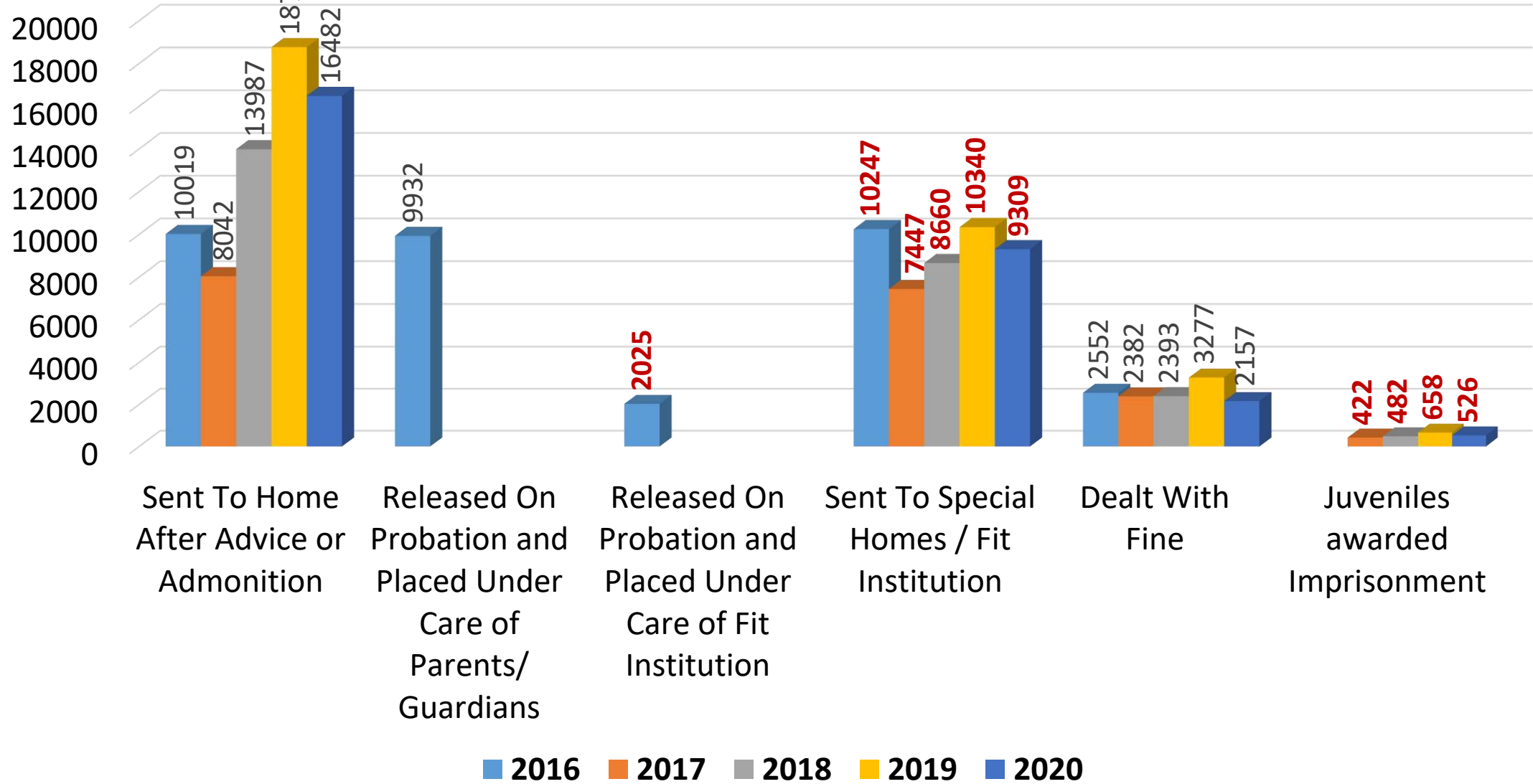
- In 2006, 91% were held guilty despite the law being lenient in public perception.
- In 2016, 86% were held guilty.
- In 2017, 84% were held guilty and pendency increased by almost 27 percentage points between 2016-17.
- In 2018, 87% were held guilty but fortunately, pendency declined by 8.5 percentage points.
- In 2019, it was 86.8% for children as against 66.5% for adults and juveniles combined.



In 2020 the conviction rate for CICL was 91.6% as against 73.4% for adults and children combined



## Disposition Over the Years



## Children Deprived of Liberty among those Found Guilty

Year	No. of Children Deprived of Liberty	No. of Children held Guilty	Percentage
2015	11583	30357	38.2
2016	12272	34775	35.3
2017	7869	18275	43.1
2018	9142	25522	35.8
2019	10998	33040	33.3
2020	9835	28474	34.5

**Note: Number of Children Deprived of Liberty = Number of Children Sent to Special Home + Number of Children Released on Probation and Sent to a Fit Facility/Institution + Number of Children Awarded Imprisonment.**

**This data does not include children who languish in institutions pending inquiry.**

**Source: Crime in India Reports published for different years by the NCRB.**

# This is only tip of the iceberg!

**Official data only captures data for those who are caught and convicted.**

- Children sent to adult prisons languish inside till they miraculously catch the attention of some authority or figure in the replies given to applications filed by activists and journalists under the Right to Information (RTI) Act.
- Children living in areas or situations of conflict and civil unrest are detained illegally with no records in the books.

# Children in Adult Prisons

**We know children are often sent to adult prisons...but this information has to be extracted from the 'system' through Right to Information (RTI applications)**

**Data received for the National Capital...**

- **In 2011:** 114 children were shifted from jail to observation homes in Delhi between October 2010 and August 2011.
- **In 2019-20:** At least 123 prisoners in Delhi were declared juveniles.

This despite detailed directions from the High Court of Delhi for the Police, Magistrates, Doctors, State Legal Services Authority and other authorities in May 2012.

Not difficult to imagine what it must be like in the hinterlands of India!

# No JJ system for Some Children: Discrimination De Facto

## The National Register for Citizens (NRC) in Assam –

- To oust immigrants from Bangladesh who have settled in the state after March 24, 1971. Detention centres attached to jails have been functional in the state for years to keep those who do not make it to the NRC and are treated as “foreigners”.
- Children who do not make it to the NRC end up in these detention centres instead of the JJ system. That is why the 2017 and 2018 reports of the NCRB say that no child was detained in the JJ system under the Foreigners Act, 1946
- A 2018 report by Amnesty International suggests that 31 children were held in detention centres in Assam as they did not make it to NRC. It required intervention in the Supreme Court to stop detention of 60 children whose names have been excluded from the NRC list brought out in August 2019 even though their parents had the certificate of Citizenship.

## Citizenship Amendment Act (CAA) 2019 and Nationwide Protests –

Reports of Illegal detention of Muslim Children and Police Brutalities from Uttar Pradesh, Delhi, Karnataka and other states

# Use of Draconian Laws against Children in the name of Preventive Detention

## Kashmir:

The JJ Act prohibits prevention detention of children but there are draconian laws like the Armed Forces Special Powers Act (AFSPA), 1958 and Public Security Act (PSA) enacted to protect national interests and security that can be used and have been used for preventive detention of children in Kashmir and other conflict affected areas for many years.

**2019:** In the wake of apprehensions of backlash on abrogation of Article 370 of the Indian Constitution that took away the independence and autonomy of the state of Jammu and Kashmir, hundreds of children as young as 9 years old were picked up and illegally detained by police. Even intervention in the Supreme Court did not help as the report submitted by police and confirmed by the erstwhile State's Juvenile Justice Committee was accepted, giving a clean chit to the police.

## Over 123 Juveniles in Tihar: Why Children End Up in ‘Adult Jails’

Despite the court’s directions, hundreds of juveniles still end up being incarcerated in Delhi’s adult jails.

[KARAN TRIPATHI](#)

Updated: 27 Jul 2021, 6:47 PM IST <https://www.thequint.com/news/law/how-delhi-incarcerates-juveniles-in-adult-prisons#read-more>

“Most of the juveniles I dealt with were extremely vulnerable to the forces of the society. ...They were **mostly arrested for petty offences such as theft.**”

A legal aid lawyer from South District of Delhi

Around **85 percent of the prisoners** who approached legal aid lawyers **claiming juvenility**, claimed that they **were not represented by a lawyer** when they were **brought before the magistrate.**

An overwhelming **94 percent of the prisoners who approached legal aid lawyers claiming juvenility**, were unaware of their rights at the time of arrest. They **stated that arresting officers did not inform them about their rights** under the Juvenile Justice Act, or of the fact **that they had to produce age proof.**

“**How can you expect a homeless boy to show Aadhaar? How do you expect an illiterate boy to show a school leaving certificate?** That too, as they are being arrested!”

A legal aid lawyer empanelled in West District of Delhi

# Legal Aid ???

**From a study<sup>[\*]</sup> of 300 children in observation homes and special homes in Delhi, Haryana and Punjab ...**

- Maximum respondents did not receive legal aid (81%)
- Majority of those who received legal aid were from Delhi (54.4 %)
- Majority of those who did not receive legal aid were from Punjab

## **Legal aid for different economic categories of children:**

- 89.5% children whose providers were salaried workers did not receive legal aid
- 87.9% children whose providers were skilled labourers did not receive legal aid
- 74.4% children whose providers were daily wage labourers did not receive legal aid

**[\*] Bajpai, GS. Juvenile Justice: Impact and Implementation in India. Bloomsbury. 2019. pp. 128, 131, 169 and 258.**



# High Pendency implies Bleak Future for Children

Year	Pendency
2015	62%
2016	62%
2017	37%
2018	45%
2019	51%
2020	46%

Source: Crime in India Report, NCRB, Government of India

# Even Pendency in Petty Offences is High

## Suo Moto PIL in Delhi High Court (2020) –

- **Petty Offences alleged against children –**
  - **1108 cases** pending for more than a year
  - **795 cases** pending for more than six months to a year.
- This despite the **law** requiring such **cases to be terminated after six months if the inquiry cannot be completed** in such time.
- And this too in the National Capital!

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“it is the collective failure and apathy of the institutions of care and informal social control - family, neighbourhood, and school - that pushes children towards delinquency. ...An **overwhelming majority of cases are of theft**. In most cases, the **crime was committed under the influence of drugs, alcohol, or under the orders of a "dada"** (petty crime gang boss). The **common denominator** in all such cases is a **marginalised socio-economic background.**”

**Failed, Jailed & Forgotten**  
on <https://www.thequint.com/news/law/failed-jailed-forgotten-the-pains-of-delhis-juvenile-justice-system#read->

# Deprived of liberty or not, pendency leads to more discrimination....

- Forced to drop out of school
- Stigma spills over to family- siblings education may get affected
- No employment or viable livelihood alternatives (during pendency or after)
- The overhang of the 'case' causes mental trauma
- Can lead to addiction
- Slowly the young person loses motivation to move on...."give up" ...
- They really see little future for themselves... are pushed to the margins
- This is how they get into a cycle of crime ....

# Discrimination De Jure

**Introduction of Judicial Waiver in 2015** - for 16-18 year olds alleged to have committed a heinous offence entailing minimum punishment of imprisonment of 7 years or more.

## What does it do?

- **Violation of the principle of presumption of innocence**
  - Preliminary assessments to decide the question of transfer **pre-judge the child** and **establish guilt even before the police investigation and inquiry** by the Juvenile Justice Board is complete
- **Violation of principles procedural rights**
  - **Over reliance on psychological assessments** for judicial transfer
  - **Absence of reliable assessments**
  - **Even use of standardized tools** for psychological assessments **does not eliminate the possibility of violation of principles of natural justice and procedural rights**
  - Subjecting children to **intrusive psychological assessments without their consent**
  - Such psychological assessments allow **self-incrimination**
- **Compromise with children's right to privacy and confidentiality**
  - **Disqualification** from employment and education
  - Their **records cannot be destroyed** unlike their peers who are not tried as adults - **takes away their right to fresh start**

# Discrimination De Jure (Contd.)

**Laws meant for protection of children end up criminalizing them...**

The case of teenage consensual sex and increased criminalization of adolescents resulting from –

- Raising age of consent
- Mandatory reporting
- Minimum mandatory sentences that take away the discretion of the judge

**The CRC Committee in GC No. 24 (IV.A.12) urges States parties to remove status offences from their statutes.**

# Other Human Rights Violations in the JJ System that affect the Disadvantaged Children the most

- **Denial of Right to be informed –**
  - The right to know the reason for criminal action against a person and the procedures to follow does not hold good for the poor and feeble.
- **Punitive approach to age determination and lack of seriousness to address the procedural problems –**
  - The law mandates that **even in the case of suspicion about the age** of the accused, he should be **produced before the Juvenile Justice Board instead of a criminal court**. The punitive approach for the poor, illiterate and disadvantaged becomes primary.
  - **Age determination takes ages** because most often **children lack proper birth certificate or** for that matter **school certificate**.
- **Low MACR –**
  - Brings more children from poor socio-economic backgrounds into the JJ system
- **Lack of Adequate Investment in Rehabilitation and Reintegration –**
  - Having **structures in place does not solve the problem** if there is no investment in programmes that can lead to rehabilitation and reintegration
  - **Poor implementation** implies **poor results** – and the **axe falls on the poor children**

# So what do we have:

- Laws that 'create' discrimination
- A system that perpetuates it
- Social norms that stigmatise and 'other'
- Not enough infrastructure or budgetary provisions
- Birth registration and certificate remains elusive

## Hence what do we need:

### General:

- Build cohesive understanding leading to collective demand on status offences
- More discussions on age of consent and age of discretion
- Raise minimum age of criminal responsibility (MACR). India is still at 7 years!

### Specific:

- Implementation of birth certificate for more efficient age determination
- Streamlining systems for age determination with clear time limits and procedures
- Global Discussion on Judicial waiver – taking away protections at the stage of trial or at the stage of sentencing?

Thank You !!