# Navigating Juvenile Transfer Laws

## The Application of Vulnerability, Mental Health, and Rights Frameworks in Psycholegal Assessments of Children in Conflict with the Law

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S. Okpaku (ed.), *Innovations in Global Mental Health*,
https://doi.org/10.1007/978-3-319-70134-9_142-1

**Abstract**

The problem of children coming into conflict with the law may be understood as part of normative adolescent growth and development as well as in terms of mental health disorders that form pathways to offense. The juvenile transfer law in India has been controversial. Public opinion has been in favor of stricter punishments for adolescents accused of serious offenses. Child rights and mental health activists argue against this legal provision based on how it tends to ignore issues of child rights and procedural justice, adolescent neurodevelopment, adversity and vulnerability, and the consequent mental health problems that lead children to come into conflict with the law. Juvenile transfer to the criminal justice system could result in decisions that place children at further risk of antisocial behaviors, in addition to hindering their access to necessary rehabilitation and treatment opportunities. However, given that the law has come into force, there is also an imperative, through psycholegal assessments that the law mandates, to retain children in the juvenile justice system. This would be in keeping with the care, protection, and rehabilitation agendas of the Juvenile Justice Act and in line with the tenets of children's rights to assistance for mental health treatment, rehabilitation, and transformation. This chapter presents a methodology that was developed in the context of the Indian juvenile justice system, demonstrating how a law that is essentially retributive in its essence, and against the philosophies of child rights and procedural justice, can be implemented in ways that support child rights and procedural justice, through incorporating neurodevelopmental and mental health issues in adolescence as well as psychosocial factors of risk and vulnerability, and steering psycholegal assessment decisions towards rehabilitation and reformation instead of transfer.

## Introduction

Children in conflict with the law (CICL), like in many parts of the world, present one of the greatest challenges, both to the child care and protection and legal system in India. On the one hand, their behaviors may be understood as part of the normative growth and development during adolescence (Arnett 1992; Scott and Grisso 1998; Iselin et al. 2009); on the other hand, there is the ever-present concern that a sub-group of these children may continue their antisocial behaviors into adulthood, thereby posing a problem regarding which of these young people will continue their behaviors into adulthood and which ones may desist. CICL also tend to have several psychiatric disorders (Kazdin 2005), such as hyperactivity (Lynam et al. 2000), conduct disorders, and emotional disorders (Paquette Boots and Wareham 2009); studies also indicate that mental health disorders are correlated with delinquent behavior (Espinosa et al. 2013).

Many mental health professionals and legal decision-makers feel therefore that they need to address the challenges of identifying those CICL whose antisocial behaviors would be treatable and

managed through rehabilitation programs versus in crime control-focused systems, and those who may be less responsive to such treatments – in order to then determine whether a given child's antisocial behaviors are better addressed within the juvenile justice or the adult criminal justice system (Leistico and Salekin 2003). Systemic preoccupation with this aspect of juvenile justice persists despite its acknowledgment of the fundamental differences between adult criminal justice systems and juvenile justice systems: that adult criminal justice systems are developed on the premise of retributive approaches, deterrence, and incapacitation of offenders, wherein antisocial behaviors should receive punishment, including forced confinement (Fagan and Deschenes 1991); and in contrast, the juvenile justice systems are based on societal and legal beliefs that adolescents and youth lack maturity or criminal intent (Grisso 1998) and that since behavior and personality characteristics in childhood and adolescence are amenable to change and interventions, children and adolescents engaging in antisocial behaviors must be provided with rehabilitative interventions (Leistico and Salekin 2003).

Like in North America and Europe, India's juvenile justice system has moved, in recent years, through the enactment of its new Juvenile Justice Act 2015, to more retributive approaches vis-à-vis CICL. As per this new law, the Indian Juvenile Justice Board is mandated to conduct what is known as a preliminary assessment for children between 16 and 18 years alleged to have committed heinous offenses, to evaluate the child's mental capacities to commit the offense, the ability to understand the consequences of the offense and the circumstances in which the offense was committed; they may, based on their decisions, particularly relating to the child's maturity, transfer the child to the adult justice system for trial (Ministry of Law and Justice 2016).

This provision in the law, relating to preliminary assessment and transfer, has been contentious because it is perceived, particularly by child rights activists and mental health professionals, as being inherently anti-child rights. While not all child mental health professionals may have disagreed with Section 15 as it appears in JJ Act 2015, many have, for reasons pertaining to neurobiological, psychological, and sociological, all of which together have a bearing upon the rights of CICL. Neurobiological reasons pertain to issues of adolescent brain development and functioning, and are responsible for adolescents' (relatively high levels of) impulsivity, susceptibility to peer influence, reward-seeking, and a tendency to focus on immediate consequences of decisions versus future ones, and how these factors, in turn, influence adolescent decision-making (Steinberg and Scott 2004) and their risk of coming in conflict with the law. Psychological and sociological reasons pertain to a plethora of individual and social vulnerabilities that CICL are subjected to: social vulnerabilities are the life circumstances of CICL, by way of socioeconomic status, family dysfunction, problems with educational abilities and opportunities, and child labor; individual and psychological vulnerabilities may pertain to experiences of trauma and abuse, mental health morbidities, and life skills deficits. Child rights activists and many child mental health professionals, therefore, are against the juvenile transfer law and, as a result, also against the implementation of preliminary assessments.

Such positions, of child rights activists and mental health professionals, are also further legitimized by what happens, in the Indian system, to a child who is transferred for trial in the criminal justice system and the parameters applied in the ensuing decision-making processes. A child may, following transfer, if he/she does not receive bail or acquittal, be placed in an adult prison. While the aims of modern prison systems are protection of society, retribution, deterrence, reformation, and rehabilitation of the convicted prisoners (Okoza et al. 2010), the situational realities of limitations of facilities and staff (Okoza et al. 2010) are unlikely to allow the achievement of these aims; in fact, prison environments, in many parts of the world, play a significant role in the development of stress and psychiatric problems among prison inmates (Mansoor et al. 2015). Given that prisons are not often geared to cater to the reformative needs of adults, it is extremely unlikely that they would be able to address the needs of children and adolescents. Research has

increasingly pointed to the negative effects of incarcerating youth offenders, particularly in adult facilities, because incarceration fails to meet the developmental and criminogenic needs of youth offenders and is limited in its potential for provision of appropriate rehabilitation (Lambie and Randell 2013).

There is also evidence to show that detention in locked custody has adverse impacts on youth: detained youth (including adolescents) are physically and emotionally separated from families and communities who might be the most invested in their recovery and success; they are often housed in overcrowded, understaffed facilities, engendering environments of neglect and violence (Holman and Ziedenberg 2006); their mental health and well-being are negatively impacted (Lambie and Randell 2013) with studies showing that about a third of them develop depression after being incarcerated (Kashani et al. 1980) and that adolescents are more likely to engage in self-harm and suicide behaviors (Mace et al. 1997); their chances at completion of education are also severely affected as many already have a learning disability and will face significant challenges returning to school after they leave detention (Holman and Ziedenberg 2006). A strong case has thus been made frequently, against child imprisonment, with reference to the damage and harm that it causes, the tremendous failings of youth crime prevention (Goldson 2005) – and in India's case, this would also refer to the country's child protection system which has been slow in realizing that every child in conflict with the law was once a child in need of care and protection. The severe behavioral problems of CICL are a consequence of complex and interactive individual and environmental factors, which prompt and maintain offense behaviors, and hence the resolution may lie in effective treatment that addresses criminogenic needs and the multiple "systems" from which a child or adolescent comes from (Lambie and Randell 2013).

In addition to the mental health and rehabilitative issues that the preliminary assessment provision under Section 15 fails to take into cognizance, there are also challenges pertaining to the implementation of the law. Section 15 does not contain specific procedural details as to how to go about the preliminary assessment, i.e., the constructs of mental capacity and understanding of the consequences and circumstances of the offense are neither defined nor are there suggested methods to measure them. The measurement of mental capacity, the child's understanding of consequences, and the (child's) circumstances of the alleged offense are all suggestive of mental health assessments, with a potential role for child mental health professionals; however, the law states that the Juvenile Justice Board "may" and not "shall" take the assistance of mental health professionals to conduct preliminary assessments, which implies that the Board itself may undertake the assessment – this, despite the relative lack of depth child mental health knowledge and skill in Board members.

Such lacunae in the law have exacerbated the risk of injustice for CICL and, indeed, increased the risk of transfer to the (adult) criminal justice system, because a substantial amount of discretion is vested in the Juvenile Justice Boards and inadequately oriented mental health professionals (when the Board so decides to get advise from mental health services) with regard to the interpretation of the above-mentioned criteria for preliminary assessments. While some autonomy and discretionary scope for the Board and for mental health professionals is certainly desirable, the lack of a systematic assessment pro forma and method has resulted in individualistic and whimsical ways of conducting preliminary assessment and arbitrary decisions regarding transfer of CICL, thereof.

The authors of this chapter are fundamentally in disagreement with transfer of CICL to adult criminal justice systems and consequently with preliminary assessment processes. However, the fact is, that at least for the present, the law is here to stay; and until this law is reformed or amended, it will have a bearing on an individual child's case, whatever our professional opinions and ideological disagreements maybe. Thus, considering the importance of the preliminary assessment, it is incumbent upon child protection and mental health workers to engage with the law. Such engagement, if conducted through forensic psychological assessments informed by

developmental and mental health considerations, enabling the system to preserve children's agency and direct them to mental health and rehabilitation services, is most likely to promote the rights and best interests of some of the most vulnerable and stigmatized subgroup of children in adversity.

The purpose of this chapter is thus to present a methodology that was developed in the context of the Indian juvenile justice system, regarding making decisions about juvenile transfer. It demonstrates how a law that is essentially retributive in its essence, and contrary to the tenets of child rights and procedural justice, can be implemented in ways that support these tenets, by taking into consideration neurodevelopmental and mental health issues in adolescence as well as psychosocial factors of risk and vulnerability. The methodology thus developed aims to steer preliminary assessment decisions towards rehabilitation and reformation instead of transfer.

## Methodology

A qualitative methodology was used to develop the preliminary assessment pro forma and method of implementation in five phases, as described below.

### Phase 1: Examination of Historicity of Youth Transfer Laws

A brief historical examination was undertaken through a review of literature in order to understand in which countries laws and policies first adopted youth transfer to adult criminal court as a measure in dispensation of juvenile justice and why these countries had chosen to introduce such laws. The countries selected to understand the history and trajectories of youth transfer laws were the United States and Canada; this is because these were some of the earliest countries to adopt such laws. Similarly, a brief course of history was traced in India on when, how, and why India moved from more reformative to retributive approaches in juvenile justice and how the reasons for introduction of transfer laws were different from other countries. Learning about history of a law enables an understanding of both the general public's and law makers' perceptions of and relationship with society – in this case with children in conflict with the law. It was important, in the development of our preliminary assessment methodology, to appreciate the objectives and underlying thinking and philosophy of the legislature in passing transfer laws, so that we could examine these philosophies, in order to be able to critique and counter them, through our methodology.

### Phase 2: Analysis of Existing Assessment Measures of Psycholegal Capacities in the Context of Juvenile Justice

Two key psychological instruments[1] that have been applied in the United States for making decisions on youth transfer were analyzed, namely, (i) the Risk-Sophistication-Treatment Inventory (RST-I) (Salekin 2004), used with juveniles for decision-making as well as for psychological evaluations pertaining to transfer to adult court, and (ii) the Structured Assessment of Violence Risk in Youth (SAVRY) to evaluate violence risk in order to make intervention and management decisions (Borum et al. 2002). An analysis of these instruments was undertaken in order to (a) understand whether they were developed based on considerations of developmental neuroscience and its consequences on adolescent behavior; (b) examine their incorporation of principles of child rights and procedural justice; and (c) consequently decide whether such instruments could be used or adapted to fit the juvenile justice youth transfer decisions in the Indian context.

### Phase 3: Development of Derivative Theoretical Frameworks

The theoretical frameworks used for the development of the preliminary assessment are drawn,

[1]To the best of our knowledge, these are, thus far, apart from the one we have now developed; no other instruments or psychological assessment exist (in the literature) in the context of juvenile justice and youth transfer.

broadly speaking, from two disciplines – that of law and mental health. Legal and rights-based constructs included drawing from principles of child rights and procedural justice as well as the key principles enshrined in the Indian Juvenile Justice Act 2015; the latter was of particular importance, given that Section 15 and the juvenile transfer provision are contained in the Juvenile Justice Act 2015, and so, logically, a provision within an Act should not contradict the essential objectives and principles on which the Act is predicated.

Mental health considerations drew upon the extensive body of knowledge on neuroscience perspectives on adolescent development and its consequences for behavior, particularly in CICL, on the evidence for the vulnerability to and prevalence of Adverse Childhood Experiences (ACEs) in CICL and its negative impacts on mental health; additionally, the evidence that suggests the need for rehabilitative and reformative (rather than retributive) approaches to address the problems of CICL was drawn upon to link mental health concerns with issues of procedural justice.

## Phase 4: Field Applications: Direct Interventions with CICL

The preliminary assessment, as per Section 15 of the Juvenile Justice Act, requires that the child's mental capacity and understanding of the consequences of his/her alleged offense be evaluated, including the circumstances of the offense. Our approach to developing the preliminary assessment methodology, therefore, draws upon mental health considerations relating to adverse experiences and vulnerability and required that we first undertake a detailed mental health and psychosocial assessment of an individual child.

The development of the preliminary assessment methodology was part of a community-based child and adolescent service project that the principal authors were implementing for one of the state governments of India. The project was located in a specialized department of child and adolescent psychiatry in a tertiary mental healthcare facility. Thus, a detailed psychosocial and mental health pro forma was developed, based on the existing clinical assessment pro formas used in the department's child services.

The project's services were located in a state-run observation home, which is a residential facility for CICL. The detailed assessment pro forma was administered to the children, as part of the treatment and intervention services provided within the institution to nearly 200 boys[2] between ages 13 and 18 years. The assessment was conducted through individual child interviews that were embedded in counseling approaches. Thus, the interviews, unlike an inquiry, engaged a given child in conversation and dialogue, in gentle and non-judgmental ways, validating the child's experiences and emotions and enabling him to reflect on the pathways that led him into conflict with the law. The administration of this assessment was followed by another 40 minutes to an hour's dialogue with the child to provide

[2]It did not include girls because there was no Observation Home for girls in the project location.

[3]Interventions for children include insight facilitation, developing a basis for motivation for change and enabling the child to develop future orientation (the impact of current behaviors on their future plans/ambitions) and life skills training, to address deficits in emotional dysregulation/coping with peer pressure/assertiveness and negotiation skills/problem-solving/conflict-resolution/decision-making; it was also implemented in great depth, using creative and cognitive behavior therapy methods and focusing on examining consequences and decision-making processes in behaviors such as stealing, violence, and substance abuse and high-risk sexual behaviors (pros and cons of actions); impact on health and relationship with family and friends; anger and anxiety management and control strategies; conflict resolution; empathy building; frameworks for sexual decision-making; and trauma-informed care as required.

[4]Parent and family interventions focused on enabling an understanding of parenting styles and attachment relationships; improving ways to communicate with children; building quality relationships with children such as spending time doing leisure and recreational activities, i.e., being part of children's life in meaningful ways (versus merely providing for basic needs and material comforts); appropriate monitoring and supervision of children; methods of response to children's emotional and behavioural issues; assuming active roles in the process of reintegration of children through educational and vocational training activities; and referral of parents to relevant mental health services to address their own issues of marital conflict, substance abuse, and/or mental illness.

interventions by way of first-level responses to the child's mental health and behavioral issues. For CICL with moderate to severe problems, referrals were made to the (inpatient and/or outpatient care facilities of) department of child and adolescent psychiatry located at the tertiary care facility. Thus, the principal authors and their team continued to work with several of the children in greater depth, also providing further child[3] and family mental health services,[4] as necessary.

The understanding and insights gleaned from direct individual engagement and interventions with CICL played a crucial role in the development of the preliminary assessment pro forma, particularly with regard to understanding CICL's vulnerabilities and pathways to offense. This understanding fed into the response in the preliminary assessment with regard to "circumstances of the offense." An understanding of the circumstances of the offense influences judicial decisions on the proportionality-culpability debate, i.e., the seriousness of the circumstances versus the seriousness of the offense, which has a bearing on decisions related to transfer. Furthermore, the experience of direct interventions also consolidated our understanding of the types of mental health treatment and rehabilitation measures that are useful for assisting CICL with behavior transformation and informed the preliminary assessment methodology on aspects of recommendation for rehabilitation.

### Phase 5: Defining and Operationalizing the Evaluative Criteria of Preliminary Assessment

Interestingly, while Section 15 lays out the (erstwhile mentioned) three questions regarding capacity, circumstances, and consequences, it did not unequivocally define the terms, such as "physical and mental capacity," "ability to understand the consequences. . .," or "circumstances." There could be multiple ways of defining these terms – which has also been one of the challenges in implementing Section 15 in a uniform and standardized manner. Since the JJ Act 2015 did not elucidate these terms, the principal authors interpreted them, with the help of a legal advisory, to ensure that the interpretations were in accordance with the law.

### Phase 6: Validation Processes through Deliberations and Vetting of Methodology by Judicial and Legal Personnel

Given the controversies surrounding preliminary assessments under Section 15, and the varied responses of child rights activists, mental health professionals, and legal and judicial personnel, discussions and deliberations with such stakeholders informed the development of the preliminary assessment methodology. Such discussions and deliberations occurred in public forums and professional meetings and also in the judicial education and training programs that the principal authors conducted in various state judicial academies across the country, for juvenile justice magistrates. The emergent questions, concerns, and critiques were reflected upon and used to amend and refine the methodology.

Thus, considering the importance of the preliminary assessment and the bearing it would have on an individual child's case, the methodology was developed with due consideration to all opinions and concerns, along with advice and guidance from legal experts, to ensure that the questions in the JJ Act were answered but in a manner that ensured that best interests of the child. The (unpublished) monograph (Ramaswamy et al. 2019), for child care and protection staff, and judicial personnel, engaging with CICL, in which the preliminary assessment was initially written up, was vetted by a (former) judge and chairperson of the Juvenile Justice Committee of the Supreme Court of India.

## Results

### History of Youth Transfer

#### A Shift in Paradigm: Youth Transfer to Adult Criminal Court

In the late nineteenth century, in countries such as the United States, a separate justice system was created on the largely universal and accepted premise that children and adolescents are different from adults in their developmental abilities and, consequently, in their culpability and potential,

and in their capacities to participate in legal proceedings (Borum and Grisso 2007). In recent years, however, the notion that juvenile justice should take into consideration developmental differences in adolescents, lost public acceptance and was replaced with the opposite perspective – that adolescents and youth should be punished, rather than being rehabilitated, and treated like adults, when they engage in misdemeanors and offenses (Borum and Grisso 2007). A similar shift in perception, about adolescent culpability, has also occurred in recent years, in India, and is reflected by the new Juvenile Justice Law that was enacted in 2015.

Violent juvenile crime increased in the 1980s and the 1990s in the United States, causing the public to raise concerns about the effectiveness of the rehabilitative function of the juvenile justice (JJ) system (Leistico and Salekin 2003); in particular, the public felt that the JJ system failed to provide prompt, effective, and strong treatment responses to those juveniles involved in serious offenses (Feld 1981; Sanborn 1994; Woolard et al. 2001). Such issues resulted in new imperatives for the JJ system, prompting juvenile court judges, prosecuting attorneys and correctional facility administrators to respond to CICL as adults, and suggesting that they have criminal intent, maturity, and a poor prognosis for treatment (Leistico and Salekin 2003). Most American states thus shifted towards punitive approaches, making it easier to transfer young persons to adult systems, and creating mandatory minimum sentences in contradiction to the "best interests" principle established by the first juvenile court in Chicago in 1899 (Muncie 2008). According to Muncie (Policy 2001), the American "punitive turn" was thereafter reflected in the juvenile policies of the United Kingdom, as indicated by "the doubling of child population detained in the 'juvenile secure estate' following American experiments with curfews, naming and shaming, zero tolerance, dispersal zones, parental sin-bins, fast tracking, coupled with the abolition of the presumption of doli incapax and the targeting of pre-criminal disorder and incivility, all of which suggest an American-inspired 'institutionalised intolerance' towards those aged under 18" (Muncie 2008). Western Europe also followed suit, with political systems lending legitimacy to punitiveness and its associated ideas of retribution, individual responsibility, and offender accountability (Muncie 2008).

Like other countries, India also previously applied reformatory approaches to dealing with young person offenses but later moved towards more retributive ones. The Apprentices Act 1850 was the first attempt to assist children in conflict with the law. Later, the Reformatory Schools Act 1897 provided that children up to the age of 15, sentenced to imprisonment, may be sent to reformatory schools rather than prison. The Madras Act then initiated the establishment of separate juvenile courts and residential institutions in 1920, and these policies were then followed by many other Indian states. The first central legislation, namely, the Children Act 1960, became the model law in the country. This law established separate adjudicatory bodies to deal with children in conflict with law and children in need of care; however, it prohibited imposition of death penalty or sentence of imprisonment or use of jails or police station for keeping children under any circumstance. It also did not recognize the right to appoint a lawyer in the proceedings before the children's court (Aatif 2019).

It is therefore evident that India moved, over the years, from more retributive to more reformative and rehabilitative forms of justice, over the years, in the context of children in conflict with the law. Despite the separate categorization of children in conflict with the law, this shift towards reformative justice continued as the Juvenile Justice Act 2000 was enacted. Under this Act, no child, for any reason, could be lodged in a police lockup or in jail, and the Committee or any police officer or special juvenile police unit or the designated police officer had to hold an inquiry in the prescribed manner; after the completion of such inquiry, if the Committee was of the view that the said child has no family or ostensible support, it could allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of 18 (Aatif 2019). Thus, the position that individuals below 18 years should be dealt with or treated as children, i.e., by providing them with psychosocial

support and opportunities to reform, continued through time, until the year 2015.

While the basis of changes in the American JJ system was increase in violent juvenile crime in general, in India a shift in the dispensation of juvenile justice, with regard to CICL, occurred in 2015, following the Nirbhaya incident; in this, a juvenile was part of a gang rape of a 23-year-old woman in Delhi, in December 2012. Issues pertaining to juvenile offense, particularly those of proportionality and culpability, were propelled into the Indian public discourse, into domains of child rights, protection, mental health, and law. The rights of CICL, how their behaviors should be understood and how juvenile justice should be administered when adolescents allegedly commit such offenses, were thus hotly debated in the country, almost pitting child rights against women's (safety) rights, although in actual fact they are not separate or contradictory agendas.

Consequently, in 2015, there were dramatic changes in children's law, with the passing of the new Juvenile Justice (Care and Protection) Act 2015, under much public and media pressure in favor of retributive frameworks of justice, but against the will of many child rights activists. Section 15 of this new law allows children in conflict with the law between ages 16 and 18 years, based on a preliminary assessment conducted by the Juvenile Justice Board, of the child's mental status and circumstances of the offense, to be transferred to and potentially tried in the adult justice system for heinous offenses[5] such as rape and murder but which also include other offenses, which though non-violent in nature, are designated to be heinous, by the law.

The debates around the culpability of children, including issues of seriousness of circumstances versus crime and proportionality thereof, have thus resulted in fresh complexities in the dispensation of juvenile justice in India. Those working in the Juvenile Justice system are confronted with the challenges of straddling public opinion and pressure, which is to punish adolescents, based almost solely on the severity of their offense, on the one hand, and their role as juvenile justice service providers, on the other, wherein they are expected to act in accordance with child rights and principles of restorative justice, in keeping with the spirit of the Juvenile Justice Act. Section 15 with its provisions on the implementation of the preliminary assessment and its implications for youth transfer to adult criminal justice systems has thus been at the center of child rights, law, and mental health debates.

## Youth Transfers as an Imperative for Assessing Children and Youth in the Juvenile Justice System

The legal procedures through which youth transfer can be executed vary across countries. In the United States, there are three legal procedures through which youth may be transferred to criminal court, with individual state laws mandating one or more of the following options: (a) **statutory exclusion** wherein each state's laws describes specific age and offense criteria that if a youth fulfils automatically places him/her criminal jurisdiction (Leistico and Salekin 2003) – for instance, in over half of the US states, older youth committing more violent offenses (such as rape and murder) are automatically considered to be outside the jurisdiction of the JJ system and are placed under adult jurisdiction (Grisso 1998); (b) **prosecutorial direct file** wherein state prosecutors decide whether to initiate legal proceedings in juvenile or adult court, with some states specifying limits to the provision, asking prosecutors to consider criteria in landmark cases (Leistico and Salekin 2003); and (c) **judicial waiver**, which permits the juvenile court to decide which system will have jurisdiction over the youth, with the power to transfer a youth to the adult criminal court only with the passing of a formal order by the juvenile court judge. Unlike the first two provisions, wherein legal proceedings are initiated in the (adult) criminal justice system, the last transfer mechanism, legal proceedings are initiated in the juvenile court (Leistico and Salekin 2003).

The Indian juvenile justice system has adopted a transfer mechanism that is akin to the judicial waiver option in the United States. As per the Juvenile Justice (Care and Protection) Act 2015,

[5]Heinous offenses are those which are punishable with imprisonment of 7 years or more.

in case of adolescents between ages 16 and 18 years who are alleged to have engaged in heinous offenses, the Juvenile Justice Board (JJB), that comprises of a magistrate and other members who are social workers, ascertains as to whether the CICL is required to be tried as an adult by a Children's Court; this is done by conducting a preliminary assessment that employs three evaluative criteria, namely, the mental and physical capacity (to commit a heinous offense), the ability to understand the consequences of the offense, and the circumstances in which he/she allegedly committed the offense.

According to the literature, which is largely focused on the American context, the field of child's psycholegal capacities emerged in the 1970s, with a sharp shift towards studying the capacities of juveniles in the contexts of delinquency and criminal law, between 1990 and 2010 (Grisso 2018), possibly coinciding with the 1980s and the 1990s reforms that promoted punishment of juveniles as if they were adults. The issues of defense of juveniles that then arose directed attention to juveniles' developmental capacities, their culpability from the perspective of the law, and their legal competencies, i.e., their capacity to make decisions in legal contexts. Therefore, the developmental and clinical perspectives that emerged in the 1990s focused on questions relating to adolescents' risk-taking and relative developmental immaturity with regard to legal decision-making, prevalence of mental disorders in juveniles, and forensic assessments in the context of juvenile justice. The emergent studies then had a profound influence on policy and practice in the United States, including in its Supreme Court, which took a position that given the developmental immaturity of adolescents and youth, there would be constitutional limits on the sentencing of juveniles even for serious offenses (Grisso 2018).

Thus, it is in the context of youth transfer that the role of mental health professionals emerged – with Grisso, Tomkins, and Casey (Grisso et al. 1988) being the first, in the 1980s, to examine the psychological issues associated with court transfer and also to suggest that transfer decisions are based on youth's dangerousness and amenability to treatment. The examination of psychological factors included individual characteristics, peer supports, youth's history of delinquency, and behavior in legal and academic settings (Grisso et al. 1988).

Soon after, in 1990, Ewing developed guidelines for psychologists on juvenile transfer assessments, using three core psychological constructs of risk, sophistication-maturity, and treatment amenability (Ewing 1990) – his work laid the foundations of parameters for mental health professionals conducting transfer assessments. Kruh and Brodsky (Kruh and Brodsky 1997) used Ewing's frameworks but also reviewed various assessment tools and psychological constructs used to assess risk, sophistication-maturity, and treatment amenability; they recognized the under-development of such tools and the lack of standardized assessments tools in court transfer decisions. To strengthen the frameworks developed by Ewing and Kruh and Brodsky, Salekin, Rogers, and Ustad (Salekin et al. 2001) examined the ratings of youth characteristics associated with dangerousness and sophistication-maturity, by child psychologists, in transfer decisions. Their findings on high prototypical items for these paradigms found their way to the Risk-Sophistication-Treatment Inventory (RST-I) (Salekin 2004), subsequently described.

Therefore, it appears that the systemic changes in juvenile justice systems, pertaining to youth transfer, in India, as in other countries, has provided a major impetus for the development of psycholegal assessments of children in conflict with the law. With the passing of the Juvenile Justice Act 2015, and its provision under Section 15 on the potential for transferring adolescents to the adult system, came the imperative to conduct preliminary assessments to make this decision relating to transfer.

## Assessment Measures for Psycholegal Capacities in the Context of Juvenile Justice

It may be reasonably assumed that the transfer law in India has evolved in a manner similar to that of

the United States and Canada, with a retributive stance mandating that transfer decisions serve the goal of community protection (Penney and Moretti 2005) – which in India's case has been interpreted as women's safety. Canada's Young Offenders Act 1984, however, also introduced the principle of holding youth "accountable" for their crimes – this has been interpreted by some as the need to introduce punitive methods that could encourage the use of adult sentencing (Penney and Moretti 2005); and there were demands on the Canadian law to introduce sentencing principles of "deterrence and denunciation," which could further increase the use of adult sentencing (Spice et al. 2010). While courts in the United States and Canada consider legal criteria such as youth's age and severity of offense, case law and legislation also include factors that relate more to the psychological functioning of the adolescent. US case law specifies that the transfer decision should be informed by the criteria of maturity, amenability to treatment, and community protection (Kent v. US, 1968; YCJA, 2003; YOA, 1984), and Canadian law includes principles of maturity, societal protection, and rehabilitation of the youth (YOA, 1984).

Given the need to consider such psychological parameters, courts began consulting clinicians with regard to understanding risk, maturity, and amenability to treatment, in order to make decisions regarding transfer (Grisso et al. 1988). However, despite the stated importance of these psychological dimensions in the law, historically, there has been little procedural guidance on how clinicians should interpret and implement these assessments (Spice et al. 2010). The Indian Juvenile Justice Act 2015 and its Section 15 provisions on preliminary assessment and youth transfer also appear to draw upon the criteria and principles used in American and Canadian law, and as in those countries, the challenges of implementing preliminary assessments of CICL are now being experienced by clinicians and relevant stakeholders in the Indian juvenile justice system.

In response to the challenges of assessing children's psycholegal capacities, also to make decisions regarding transfer, two key psychological instruments emerged: the RST-I or Risk-Sophistication-Treatment Inventory (Salekin 2004) and the SAVRY or Structured Assessment of Violence Risk in Youth (Borum et al. 2002). The Risk-Sophistication-Treatment Inventory (RST-I) (Salekin 2004) was designed for the use of mental health professionals to be able to provide depositional and transfer assessments in juvenile courts and also to design treatment and intervention plans. This tool addresses three psychological constructs, namely, juveniles' level of dangerousness (or juveniles' likelihood of committing acts of violence in the future), maturity or sophistication (or emotional and cognitive maturity), and the level of amenability to treatment (or likelihood of juveniles' response to treatment). Each of these 3 constructs is comprised of 3 clusters, with a total of 15 items per construct (Salekin et al. 2005). Entailing a 60- to 90-minute interview with a child (between ages 9 and 18 years), the scale gathers information through a semi-structured interview that is scored. Raw scores for each cluster are obtained and compared to normative sample of juvenile offenders, to categorize each child in terms of "low," "medium," or "high" (Salekin et al. 2005).

The Structured Assessment of Violence Risk in Youth (SAVRY) (Borum et al. 2002) is also geared to measure violence risk in adolescents between ages 12 and 18 years. Based on a structured professional judgment model, the tool aims to assist professionals to evaluate violence risk in order to make intervention and management decisions (Meyers and Schmidt 2008). It comprises of a 30-item measure to assess violence risk in adolescents, including 10 historical risk items (e.g., early initiation of violence), 8 social/contextual risk items (e.g., peer delinquency), 8 individual risk items (e.g., low empathy/remorse), and 6 protective items (e.g., strong attachments and bonds). All the risk items are rated on a 3-point scale (low, moderate, high), and protective factors are scored as absent or present. Taking risk and protective factors into account, the evaluation provides for a risk rating of low, moderate, or high violence risk (Spice et al. 2010).

There are, however, several concerns with the above-described scales. Such concerns pertain to whether adolescents understand their rights

enough to waive their constitutional right to self-incrimination, whether there is adequate evidence to meet the legal requirements that determine risk for dangerousness, and what psychological evidence existed to determine an adolescent's amenability to or motivation for treatment (Grisso 2012). Evaluation of the RST-I and SAVRY has also raised questions about how maturity should be weighed in transfer/adult sentencing decisions, with studies suggesting that there is a lack of clarity on legal definitions of maturity, with courts failing to make distinctions between prosocial and antisocial maturity in sentencing decisions; furthermore, the term maturity may have different meanings in different legal contexts, for instance, competence evaluations versus transfer evaluations, and so this construct requires a clearer definition to ensure that it is measured and considered in a consistent manner in the juvenile justice processes (Spice et al. 2010). The evaluation of the two scales have also revealed that measures of risk and treatment amenability are highly inversely correlated (Spice et al. 2010). This is problematic from a legal perspective because in situations where the (violence) risk is assessed to be high and amenability to treatment is deemed to be low, the possibility of a transfer decision is likely to be high – whereas as already pointed out, risk for dangerousness and amenability to treatment are subjective measures, thus placing an adolescent at risk of a transfer decision that may not be reasonable or fair.

Thus, the above-described instruments were not strongly reflective of having considered developmental neuroscience and its consequences on adolescent behavior or of the principles of child rights and procedural justice. In the light of the challenges posed by the existing psychological instruments, the risk of (further) injustice that may accrue to the child due to the nature of the psychological dimensions, and their relative openness to subjective interpretations, the authors decided against adopting them in the Indian juvenile justice context of preliminary assessments and transfer. It was believed, therefore, that a different assessment pro forma and method was called for, in order to ensure a more just way to conduct preliminary assessments and to make juvenile transfer decisions–methods that would reduce and not increase the risks for transfer, and that would truly uphold child rights and allow for this vulnerable child and adolescent subgroup to receive the necessary psychosocial care and assistance.

## Theoretical Frameworks

### Legal and Rights-Based Constructs

#### Child Rights and Procedural Justice

One of the emerging criticisms of juvenile justice procedures and outcomes has been that the child in the child care system is "reduced to a mere object of interventions" (Bernuz Beneitez and Dumortier 2018). This view was also put forth at the start of this decade, by Verhellen, a Belgian child rights advocate, who claimed that children were reduced to "objects of law" (Verhellen 2000) by child protection laws, although they should instead be viewed as "subjects of rights" (or holders of rights). Judges, probation officers, and other experts make decisions about the child's best interest, but the child has little say in these decision-making processes that are based on professionalism and expertise that are essentially rooted in their adult status (Christiaens 2015). Such views also draw from the UN Convention on the Rights of the Child Article 12 which states that children's views must be "given due weight in accordance with the age and maturity of the child" (The United Nations 1989). In a legal analysis of this article, Lansdown interprets this provision to mean that it is not only necessary to listen to children but also to seriously consider their views when making decisions, which must be informed by children's concerns and perspectives and ways in which their lives are affected (Lansdown 2011).

An issue that is closely linked to (child) rights is that of procedural justice. Bottoms and Tankebe claim that procedural justice comprises of two distinct but complementary issues (Bottoms and Tankebe 2012). The first is the issue of "quality in decision-making" which pertains to appreciation of principles and procedural safeguards as

contained in national and international laws; these also include the right of persons to be heard, independence, and neutrality of the decision-maker and the motivation of decisions. The second issue pertains to the "quality of treatment," which is to do with treatment of persons with respect and dignity. The two are related because if the focus of decision-making is purely on quality but ignores the treatment aspect, then the idea of protection of rights can become a tokenistic action (Bernuz Beneitez and Dumortier 2018).

The preliminary assessment methodology developed ensures that it is drawn from direct interviews with children, wherein they have full opportunity to be heard and to not only provide an account of what transpired at the time of their offense but their insights into their problems and difficulties, i.e., their pathways to vulnerability and motivations for (behavior) change. The interviewing techniques, which are based on key principles of child counseling, namely, rapport building, empathic listening, validation of emotions and experiences, acceptance, and nonjudgmental attitude, allow children to provide their narrative through creation of spaces of respectful and empathic listening.

## Key Principles of the Juvenile Justice Act 2015

Section 3 of the Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act, 2015) prescribes that all stakeholders, while implementing the provisions of the Act (and that includes Section 15 on preliminary assessment and transfer issues), be guided by certain fundamental principles (Ministry of Law and Justice 2016), as below:

- *Principle of Presumption of Innocence*

  According to the JJ Act, any child below the age of 18 years must be presumed to be innocent of any mala fide or criminal intent. This statutory prescription stipulates that no child below the age of 18 years can be said to possess criminal intent. This principle is not qualified by severity of the crime. This presumption is not rebuttable in respect of children below the age of 18 years. It is in accordance with the objectives on which the JJ Act is based, i.e., in keeping with obligations under international law such as the UN Convention on the Rights of the Child which stipulate the age of majority as the determinant of juvenile/adult status, i.e., there is a statutory bar on attribution of criminal intent to any child below the age of 18 years.
- *Principle of Participation*

  The principle of participation stipulates that the child must have the right to be heard and participate in proceedings affecting the child's interests. This is a cardinal principle of the implementation of the JJ Act and is a key element reiterated in the process of inquiry in other sections of the Act.
- *Principles of Safety and of Best Interest of the Child*

  The provisions of the Act (including preliminary assessments and transfer) must be implemented in ways that ensure the safety and best interests of the child. This may also be interpreted to mean that the law needs to ensure actions towards rehabilitation and reformation of the child; any creation of permissive conditions for the trial of a child under the harsh punitive approach of the adult criminal justice system would be against the safety and best interests of the child.
- *Principle of Positive Measures*

  Similar to the principle of best interests of the child, that of positive measures necessitates that all family and community resources be mobilized for promoting the growth and well-being and reducing the vulnerability of children in need of intervention under the JJ Act. A rehabilitation focus (instead of a transfer focus) adopted in the preliminary assessment methodology we have developed is in accordance with this principle.
- *Principle of Natural Justice*

  This principle of the JJ Act requires stakeholders, especially those acting in a judicial capacity, to adhere to procedural standards of fairness, including the right to a fair hearing, rule against bias, and the right to review. In accordance with this principle, the preliminary assessment methodology is aimed at a uniform procedure to ensure standardized ways to

implement the law, thus ensuring greater procedural justice to CICL.

The underlying "no transfer" position that the preliminary assessment methodology we have developed is based on the above principles, for any method that allowed even the possibility of transfer to adult criminal justice systems would automatically obliterate the principles on which the Juvenile Justice Act 2015 is built upon.

## Adolescent Development, Mental Health, and Rehabilitation Considerations

### Neuroscience Perspectives on Adolescent Development

Most studies on adolescent development have compared adolescents with children, so it is only in recent years, particularly due to juvenile justice policies, that the focus has shifted to the distinction between adolescence and adulthood (Steinberg 2009). Perspectives on risk-taking (including antisocial risk-taking) have now been informed by advances in neuroscience (Casey et al. 2008), according to which risky behavior in adolescence is a result of the interaction between changes in two distinct neurobiological systems, namely, those that govern the socio-emotional functioning and cognitive control (Steinberg 2007).

According to developmental neuroscience, the temporal gap between puberty, which drives adolescents towards sensation seeking, due to the arousal of the socioemotional system and the relatively slow (and later) maturation of the cognitive control system, which regulates these impulses, renders adolescence as a period of heightened vulnerability and risky behaviors (Steinberg 2007, 2008). There is also a differential development of the limbic reward systems relative to the cognitive control systems, and such developmental patterns may be exacerbated in adolescents with a predisposition toward risk-taking, thus increasing the risk for poor outcomes (Casey et al. 2008). Risk-taking thus increases from childhood to adolescence, with the brain's socio-emotional systems leading to increased reward-seeking, especially in the presence of peers; and risk-taking declines between adolescence and adulthood due to changes in the brain's cognitive control system, for this enhances individuals' capacity for self-regulation (Steinberg 2008).

In the light of the above, it is evident that factors such as impulsivity, susceptibility to peer influence, reward-seeking, and a tendency to focus on immediate consequences of decisions versus future ones majorly influence adolescent decision-making (Steinberg and Scott 2003). These are attributable to normal adolescent development and brain functioning; since adolescents are not fully mature, they tend to be predisposed to high-risk behaviors. Since developmental influences play a major role in adolescent criminal activity, most youth are also likely to outgrow their tendency to get involved in crime, unless the juvenile justice interventions hinder their successful transition into socially appropriate adulthood (National Research Council 2013). Furthermore, adolescence is a transitional stage in which individuals acquire skills and capacities to prepare them to assume adult roles. Hence, a socially healthy environment with sufficient developmental opportunities for (life) skill acquisition is important for adolescents. For CICL, the types of opportunities, i.e., programs and facilities, they are provided with access to, for growth, learning and development, including for rehabilitation and reform, are critical (National Research Council 2013).

In the light of the such adolescent neurodevelopmental issues, merely administering a preliminary assessment for purposes of deciding whether the adolescent should be transferred to the adult trial system is thus not a proactive stance that supports healthy adolescent development. In fact, if adolescents transferred to the adult trial system do not receive bail, they may be placed in adult prisons; if they do receive bail, they return home to homes and communities or neighborhoods. Both situations are not conducive to facilitating either (life) skill acquisition or healing and (behaviour) transformation opportunities for adolescents. If preliminary assessments are used

instead to ensure that children remain within the juvenile justice system and receive requisite counseling and mental health interventions, the risk of re-offending is likely to decrease. Thus, such neuroscience-based perspectives on adolescent brain development and its impact on adolescent (risk) behaviors have strongly influenced the reformative and rehabilitative focus of the preliminary assessment methodology.

### CICL and Mental Health Consequences of Adverse Childhood Experiences

Adverse childhood experiences (ACEs) refer to childhood experiences researchers have identified as risk factors for mental health problems in adolescence and adulthood, namely, emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, violent treatment towards mother, household substance abuse, household mental illness, parental separation or divorce, and having an incarcerated household member (Baglivio et al. 2014).

Studies have shown high prevalence of ACES in CICL highlighting the need to screen for and address ACEs in CICL (Baglivio et al. 2014; Basto-Pereira et al. 2016), and multiple types of adverse childhood experiences should be considered as risk factors for a spectrum of violence-related outcomes during adolescence (Duke et al. 2010); they have shown how a history of childhood trauma, abuse, neglect, and other risk factors impacts CICL, with each additional adverse experience increasing the risk of becoming a serious, violent, and chronic juvenile offender (Fox et al. 2015; Baglivio et al. 2015). One study also found that child sexual abuse to be a strong predictor for juvenile offending, and that (Basto-Pereira et al. 2016). Research also reflects that ACES have both a direct and indirect effect on recidivism, with ACES operating through negative emotionality, to significantly affect re-offense (Wolff and Baglivio 2017).

As per Section 15 of the JJ Act, preliminary assessments require that a child be evaluated on the circumstances of the offense. This essentially refers to pathways to offense. The methodology developed for preliminary assessment and transfers thus focuses substantially on understanding CICL's vulnerabilities, particularly their adverse childhood experiences, and analyzing how these may have contributed to their offense behaviors. Consequently, the emphasis on treatment and rehabilitation (subsequently discussed), in the preliminary assessment methodology developed, is also predicated on a nuanced assessment of these vulnerabilities.

### Rehabilitation and Reformation, Not Retribution

The objective of procedural justice is to engender a feeling that justice has been done and, consequently, to promote greater adherence to rules and institutional decisions (Bernuz Beneitez and Dumortier 2018). Inherent in procedural justice is thus the idea that people are more likely to accept and support the decisions of legal systems and authorities, when they feel that they have been treated with fairness and respect (Woolard, and M. p.p SH, Ph.D SG 2008). It therefore follows that anticipatory injustice, or the extent to which persons expect unfair or discriminatory procedures and outcomes, influences the behavior of individuals vis-à-vis the compliance desired by legal systems (Shapiro and Kirkman 2001). It is suggested that persons who expect injustice are more likely to perceive injustice in their interactions (Shapiro and Kirkman 2001); this notion is also supported by social psychology theories about self-fulfilling prophesies and confirmation bias (Bell et al. 2004).

According to Agnew's general strain theory, a social psychological interpretation of juvenile delinquency, if people, especially young people, are treated badly, they react with aggression, crime and other deviant behaviours; he refers to the negative relationships thus created as a 'strain' (Agnew and White 1992). According to him, strain occurs in "relationships in which others are not treating the individual as he or she would like to be treated," causing adolescents and young people to engage in antisocial behaviors that are essentially a result of anger, resulting from such relationships (Agnew and White 1992). Angew also suggested a list of certain strains that are most likely to be associated with crime – such as parental rejection, inconsistent and harsh discipline,

child abuse and neglect, and negative experiences in the school setting (Angew et al. 1997). Anger, resulting from negative relationships and such strains, is akin to feeling wronged or that injustice has been done. Children and adolescents drawn from backgrounds where they experience such strains are thus more likely to perceive injustice in their interactions with legal authorities, especially if the outcomes of legal procedures relate to punishment; consequently, they are likely to be less compliant with legal orders that are retributive in nature.

Thus, based on issues of procedural justice and the tenets of strain theories, how CICL perceive and experience the processes within the juvenile justice has important implications on how receptive they are to the judgments and decisions of the juvenile justice system. If these judgments and decisions are retributive in nature, how likely are children to comply with demands for behavior change? CICL are often labelled and stigmatized; they are frequently targeted for punishment due to their difficult behaviors (in fact, being in the observation home itself is a punishment), starting from families in which these children have been victims of parental neglect and abuse (both emotional and physical) to schools where these children have been victims of bullying and corporal punishment and to the police who allegedly engage in some of the most severe forms of physical violence; as such, these children have been almost continually punished for behaviors may or may not be responsible for. Even the most sympathetic and well-intentioned people end up being judgmental and critical by giving them (moral) advice and instruction, emphasizing to them the need to improve themselves and "be good." As a result, CICL already have a deep mistrust of the (adult) world, which they have often experienced as being unjust, un-empathetic, hierarchical and patriarchal, powerful and dominating, violent, judgmental, and critical. Such attitudes and interactions exacerbate the retributive and punitive experiences of CICL, making them less amenable to adherence to social rules and behaviour change.

Furthermore, there is evidence to show how retributive approaches have not been successful in facilitating behavior change in CICL; research has shown that juveniles who are transferred are more likely to recidivate than those retained in juvenile court, after controlling for risk-related variables (Lambie and Randell 2013; Bishop et al. 1996; Fagan 1996; Winner et al. 1997; Fagan et al. 2003; Lanza-Kaduce et al. 2005), suggesting that criminalizing adolescent, offending, and transferring CICL to adult court with the expectation of more severe punishment not only act as deterrents but may in fact be counterproductive.

Studies have also shown that since the severe behavioral problems, including the offending behaviors of CICL, are consequences of complex and interactive individual and environmental factors, response must entail effective treatment to address the vulnerabilities of young people (Lambie and Randell 2013). Our responses to children, particularly as child mental health professionals and child rights activists, must therefore be predicated on two ideological premises: (i) an innate belief that all children including those who have emotional disorders, as well as children who have allegedly committed offense and are in conflict with the law, have the potential for (behavior) transformation. Inherent in this is that any treatment or therapeutic intervention also assumes that children and adolescents have the potential for transformation. (ii) A clear understanding that whether (or not) transformation can occur, can only be determined after adolescents receive requisite mental health treatment and interventions, including opportunities for process-oriented reflection and life skill acquisition and training. Not providing for such opportunities is akin to child right violations, and is also contradictory to the care and protection objectives as envisaged by the Juvenile Justice Act.

Thus, based on the above tenets of procedural justice, and the contexts of injustices that CICL are frequently drawn from, any juvenile justice system must provide for opportunities for treatment, rehabilitation, and behavior transformation; therefore, any methodology developed for implementing preliminary assessment must place treatment, rehabilitation, and behavior transformation as key objectives to be served by the outcomes and decisions of the assessment.

## Development of Psychosocial and Mental Health Assessment Pro Forma

The detailed psychosocial and mental health assessment pro forma (also developed on the community-Based child and adolescent mental health service project) was administered to each child by way of individual assessment. This assessment pro forma elicited detailed information from the child in areas described in Table 1.

## Interpretations of Evaluative Criteria of Preliminary Assessment under Section 15

Based on our interpretations of the key evaluative criteria under Section 15, the definitions for these criteria, for use in the proposed preliminary assessment, are stated in Table 2.

## Development of the Preliminary Assessment Pro Forma

Based on the above-described conceptual frameworks and interpretations of the evaluation criteria of Section 15, a preliminary assessment pro forma is developed. Refer to Table 3 below for details on the items/variables contained in the proforma, including their descriptions and interpretations, and the sections of (individual/detailed) mental health and psychosocial care assessment the information for each item/variable needs to be obtained from.

## Administration and Reporting of Preliminary Assessment Findings

Upon development of the above-described pro forma and methodology, preliminary assessments were conducted initially by the principal authors and mental health professionals from the department of child and adolescent psychiatry of the concerned tertiary mental healthcare facility, since they were trained in the use of the relevant approaches, methodology, and child interviewing techniques required by the assessment. The preliminary assessment pro forma was (and continues to be) administered to children between 16 and 18 years, as mandated by the law, only if the mental health team receives a request/order from the Juvenile Justice Board to conduct this assessment, i.e., mental health professionals do not initiate or provide this assessment otherwise; this is because, as mentioned at the outset, we are only in favor of requisite assessments for mental health intervention purposes and not for forensic purposes that are inclining towards transfer of adolescents to the adult criminal justice system court.

The preliminary assessment pro forma is not directly administered to the child. It is completed by using information from the detailed psychosocial and mental health assessment (that therefore needs to be completed prior to the preliminary assessment under Section 15). Table 4 clarifies the differences between the mental health-psychosocial assessment and preliminary assessment.

Like the detailed mental health and psychosocial assessment pro forma, the preliminary assessment must, ideally be implemented within the first couple of weeks of the child being apprehended and/or placed in the child care institution for CICL. (The JJ Act states that the preliminary assessment must be completed within 3 months of the date on which the child was first produced before the Juvenile Justice Board). Timely (and immediate) administrations of assessments serve two main purposes: (i) understanding the child's background and circumstances may speed up processes of bail and release, so that the child does not spend unnecessarily long periods of time in the institution, and (ii) early identification of adverse circumstances and individual vulnerabilities (including mental health problems and life skills deficits) would allow for treatment and rehabilitation measures to be put in place sooner, so that the child has speedy access to opportunities for (behavior) transformation.

**Table 1** Information elicited through individual psychosocial and mental health assessments of CICL

| | |
|---|---|
| Family issues identified | Child's living arrangements/parental relationships/child's emotional relationship and attachment to parents/illness and alcoholism in parents/single parenting |
| Schooling history | Child's school attendance, truancy and school refusal behaviors, motivation (or lack of it) to continue education, including reasons for dropping out of school (as applicable) |
| Child labor experiences | Reasons for child joining child labor activities, child's exposure to (older) peers in work place, work hours and conditions, including experiences of abuse and exploitation |
| Peer influence | Quantum of time spent with peers, types of activities engaged in with peers, extent of influence of peers in the context of high-risk behaviors |
| Trauma and abuse | Loss and grief experiences; physical, sexual, and emotional abuse experiences |
| Mental health issues | Symtoms of common mental health disorders, such as anxiety, depression, ADHD, conduct disorder (through use of standardized validated symptom checklists and structured diagnostic interview instruments for children and adolescents) |
| | Screening for substance abuse through use of standardized validated tool |
| Potential for transformation | Child's account of offense (circumstances of coming to the institution, including offense for which he came into conflict with law) |
| | Child's insight (child's understanding of the problem/offense behaviors) |
| | Motivation for change (child's willingness for behavior change and reasons for decisions towards transformation) |
| | Skills to avoid (re)offending (if any) – Or life skills deficits (WHO life skills, such as emotional regulation/empathy/assertiveness/problem-solving/decision-making, etc.) – That led child into conflict with law |

**Table 2** Definitions of evaluative criteria in preliminary assessment under Section 15

| | |
|---|---|
| Physical capacity | Child's locomotor abilities and capacities, particularly with regard to gross motor functions (such as walking, running, lifting, throwing. . .such abilities as would be required to engage in most antisocial activities due to which children come into conflict with the law) |
| Mental capacity | Child's ability to make social decisions and judgments, for these are the critical executive functioning abilities that operate in the social context that offense takes place in. Thus, reporting on the child's "mental capacity" would draw on all the variables in the mental health and psychosocial assessment that pertain to mental health disorders, including substance use, and life skills deficits. |
| Circumstances of offense | Psychosocial vulnerabilities, including life events and mental health problems that the child is afflicted with, i.e., factors relating to family, school, peer relationships, trauma and abuse, mental health, and substance use. Circumstances, therefore, do not refer merely to the immediate circumstances of the offense itself, i.e., the last event that occurred and led the child into conflict with the law. In fact, the offense behavior, including its immediate circumstances, is a (cumulative) consequence of a whole plethora of other circumstances that have been occurring over relatively long time periods of the child's life (perhaps since early childhood). Thus, we take a longitudinal (versus a cross-sectional) perspective of circumstances of the offense |
| Knowledge of consequences | Child's knowledge and/or understanding of social consequences (what other people will say or how they will perceive the behaviour and consequently what opinion society would form about the child), interpersonal consequences (how the behaviour might affect personal relationships in terms of loss of trust, affection and respect of family and friends) and legal consequences of their actions (knowledge of relevant laws on sexual abuse/rape/robberyt/dacoity etc). |

**Table 3** Preliminary assessment pro forma: items, interpretation, and reference to relevant sections of (individual) mental health and psychosocial care assessment

| Item | | Description and interpretation | Reference to Relevant Sections of (Individual) Mental Health and Psychosocial Care assessment |
|---|---|---|---|
| **A. Physical capacity** | | Presence of locomotor or sensory disabilities that affect the child's mobility, particularly those impacting his/her gross motor functions. | As recorded under 'observations of the child'. |
| **B. Mental capacity (Child's ability to make social decisions and judgments)** | **Life skills deficits** | World Health Organization (WHO) defines life skills as "adaptive and positive behaviors that enable individuals to deal effectively with the demands and challenges of everyday life." –and consequently impact adolescents' situational responses and behaviours. Core life skills for the promotion of child and adolescent mental health include decision-making, problem-solving, creative thinking, critical thinking, effective communication, interpersonal relationship skills, self-awareness, empathy, coping with stress and emotions. | Sections on 'life skills deficits' and 'other observations of the child' |
| | **Neglect/poor supervision by family/poor family role models** | Adverse childhood experiences, whether in the form of neglect and poor supervision or role models that legitimize violence and other antisocial behaviors, in the family context, adversely impact the child's emotional regulation abilities as well as social learning, thereby hindering the child's ability to make appropriate social judgments and decisions. | Section on 'Family Issues Identified' |
| | **Experiences of abuse and trauma** | Childhood trauma, whether due to death/loss/grief experiences or neglect and physical/emotional/sexual experiences, results in emotional dysregulation leading children to then develop behavior problems; for instance, anxiety and depression that occur in contexts of trauma lead children to high-risk behaviors such as substance use. Children who are physically or sexually abused are less likely to have a sense of personal boundaries and may be more likely (along with also having poorer emotional regulation) to encroach upon the boundaries of others. | Section on 'Trauma Experiences: Physical, Sexual and Emotional Abuse Experiences'. |

(continued)

**Table 3** (continued)

| Item | | Description and interpretation | Reference to Relevant Sections of (Individual) Mental Health and Psychosocial Care assessment |
|---|---|---|---|
| | **Mental health disorder/ other (neuro) developmental disabilities (such as attention deficit hyperactivity disorder)** | Internalizing disorders such as anxiety and depression may lead to emotional dysregulation and substance use and other high-risk behaviors (especially when they occur in the backdrop of trauma experiences), consequently leading the child at risk of poor decision-making; ADHD is a neurodevelopmental disorder characterized by poor social skills, inadequate social judgment, and high impulsivity; conduct disorder is a psychiatric problem that is itself characterized by persistent patterns of antisocial behaviors. As such, these mental health disorders are viewed as vulnerabilities that act as pathways to coming into conflict with the law, mediated by aggression and/or poor decision-making that characterize these disorders. | Section on Mental Health Concerns which contains the Mini-International Neuropsychiatric Interview for Children and Adolescents (MINI-kid) used for screening used in screening axis-I DSM-IV disorders. |
| | **Substance abuse problems** | Children may make poor social decisions, that lead them to engage in antisocial activities, when in a state of intoxication, or if they are addicted to substances, i.e., for instance, stealing in order to procure substances. In either case, the issue relates to substance use and related addictions – which are also considered to be mental health issues or vulnerabilities requiring treatment and intervention. | Section on 'Substance Use' which uses the Adolescent Alcohol and Drug Involvement Scale (AADIS). |
| | **Intellectual disability** | Children with intellectual disability, by virtue of their condition, lack the cognitive and socio-emotional developmental abilities for appropriate social judgment. As an extremely vulnerable subgroup in themselves, they may often be prevailed upon by peers and others to engage in antisocial activities and do not have the capacity to exercise judgment or refuse, due to their developmental deficits. | Clinical impression based on interaction with the child during the process of administering the assessment proforma; to be confirmed with relevant IQ tests. |

(continued)

**Table 3** (continued)

| Item | | Description and interpretation | Reference to Relevant Sections of (Individual) Mental Health and Psychosocial Care assessment |
|---|---|---|---|
| | **Treatment/interventions provided so far** | If treatment and interventions have not been provided by mental health and child protection services, then children continue to be vulnerable to one or more of the above-described vulnerabilities and conditions (and their consequences), thereby continuing to be vulnerable to poor social judgments and decision-making, and consequent conflicts with the law. | Notes made during the mental health assessment regarding interventions received. |
| **C. Circumstances of offense** | **Family history and relationships** | Child's living arrangements, parental (marital) relationships, child's emotional relationship and attachment to parents, illness and alcoholism in the family, domestic violence, and family conflicts – as erstwhile discussed, such factors constitute adverse childhood experiences that form the basis of children's vulnerability to emotional and behavior problems, some of which may increase their risks of coming into conflict with the law. | Section on 'Family Issues Identified' |
| | **School and education** | A child who does not attend school or has dropped out (whether due to financial issues or lack of motivation, anxiety, or corporal punishment reasons) is considered to be in vulnerable circumstances – because he/she has large amounts of unstructured time and no access to the safety and routine that school spaces provide, thereby placing him/her at higher risk of exposure to antisocial peer (and youth) groups. | Section on 'Schooling History' |
| | **Work experience/child labor** | Forced trafficking, long hours of work under difficult conditions, inadequate remuneration, violence and other forms of exploitation, and long periods of separation from family may lead to trauma and emotional stress and dysregulation, thus making for vulnerable circumstances. Child labor contexts also expose children to older peers and young adults who engage in criminal behaviors and coerce children to engage in such behaviors, again placing them in vulnerable circumstances. | |

(continued)

**Table 3** (continued)

| Item | | Description and interpretation | Reference to Relevant Sections of (Individual) Mental Health and Psychosocial Care assessment |
|---|---|---|---|
| | **Peer relationships** | Adverse peer influence in the context of substance use/rule-breaking/inappropriate sexual behavior/school attendance) may lead children to problematic decisions and antisocial behaviours, due to which they come into conflict with the law. | |
| | **Experiences of trauma and abuse** | Physical, sexual, and emotional abuse experiences–these experiences not only influence the child's mental capacity in terms of their resulting in poor cognitive capacities and decisionmaking, but by way of being a factor in adverse childhood experiences (ACES), they also form a context or circumstance for heightening emotional and behavioural risks and vulnerabilities in children and adolescents. | |
| | Mental health disorders and developmental disabilities | Mental health disorders and developmental disabilities that the child may have also contribute to vulnerable circumstances and risk pathways. For instance, adolescents with mild intellectual disability, or with ADHD, egged on by deviant peers, are at risk of committing offences and coming into confict with the law i.e. individual deficits and disabilities are exacerbated by high risk social situations, thus making for vulnerable circumstances. | Section on 'Mental health Disorders' |
| **D. Knowledge of consequences of offenses** | Social and interpersonal consequences | Social consequences refer to the child's social self and skills, specifically, whether the child understands how people/society may (negatively) perceive his/her actions and behaviours, including labelling and stigmatizing him/her. Interpersonal consequences refer to the child's sense of empathy and understanding of how his/her actions would (negatively) impact his/her relationship with family, friends, and others, in terms of trust, affection, friendship etc. | Sub-sections on 'insight' and 'motivation for change' under the section on 'Potential for Transformation' section |

(continued)

**Table 3** (continued)

| Item | | Description and interpretation | Reference to Relevant Sections of (Individual) Mental Health and Psychosocial Care assessment |
|---|---|---|---|
| | Legal consequences | This refers to the child's understanding of his/her actions as being a boundary violation/ breaking of rules with serious negative consequences for himself/ herself, including punishment and coming into conflict with the law– including his/her knolwedge of relevant laws such as those pertaining to sexual abuse, rape, dacoity, robbery etc. | |
| **Other observations and issues** | | Observations recorded may be negative or positive and may include the child's demeanor, or any views or ideologies that the child may have expressed regarding problem behaviors such as violence or abuse – which may better help understand who he/she is (and help the judicial personnel or Juvenile Justice Board view the offense behavior from varied perspectives). They may also include "odd" behaviors that help substantiate the evidence on mental health disorders and developmental disabilities. | Sections on 'Life Skills Deficits' and 'Other Observations of the Child' |
| **Recommendations** | | These refer to recommendations for treatment and rehabilitation interventions for the child, based on the psychosocial and mental health assessments but also the interests and desires of the child. They could pertain to placement, living arrangements, education and schooling, counseling for parents, referral to a tertiary facility for further mental health and psychosocial care and treatment, particularly life skills education and training. This subsection is critical as it provides the Board or judicial personnel with clear direction on what assistance the child requires, thus creating an imperative for the system to consider options and respond in ways that are supportive and proactive (versus making decisions of transfer to the adult justice system). | Section on 'Individual Care Plan' |

WHO, Life Skills Education for Children and Adolescents in Schools: Introduction and Guidelines to Facilitate the Development and Implementation of Life Skills Programs. 1997, World Health Organization: Geneva

**Table 4** Differences between mental health-psychosocial assessment and preliminary assessment

| Mental health-psychosocial assessment | Preliminary assessment |
|---|---|
| Administered to all children who come into conflict with the law and used to plan treatment and rehabilitation interventions for them. | Applicable only for those who are between ages 16 and 18 years, for heinous crimes (as defined by law), upon request by the juvenile justice magistrate. |
| Conducted first (before preliminary assessment) and directly with the child. | Developed (filled out) based on the detailed psychosocial-mental health assessment and does not require any further inquiry with the child. |
| Among other things, it contains an account, i.e., the child's version, of the alleged offense committed. | Does not include any details of the offense incident; it focuses only on the broader psychosocial contexts and circumstances or vulnerabilities of the child (that may have led to vulnerability and to committing the offense). |
| Primarily for use to design care plans/interventions to assist the child – So, from a psychosocial perspective, the child's confidentiality needs to be maintained. | Any details that the child has disclosed in confidence in the mental health psychosocial assessment (especially regarding the offense) are not shared in the preliminary assessment report. |
| Even in cases where preliminary assessments are not done, the information from this pro forma is summarized into a letter and shared with the JJB. | Submitted to the Juvenile Justice board, when requested. |

## Discussion

### Initial Results of Implementation of the Preliminary Assessment Method

Since members of the Juvenile Justice Committee of the Supreme Court of India have whetted and agreed on the above-descrobed methodology for implementation of Section 15 of the Indian Juvenile Justice Act, 2015, they may be, principally in favour of the approach and methodology developed for conducting preliminary assessments. However, the procedural aspects that we have developed are not reflected in the law itself. Indeed, the development of this method is relatively new and, in the absence of other methods and procedures, the only one currently presented or taught (at least by the principal authors of this paper and their team) at training workshops for child protection workers, judicial personnel, mental health professional, and Juvenile Justice Board members across the country. The training workshops have not yet comprehensively covered all relevant stakeholders in the country, and no evaluations have, as yet, been undertaken, on the use of these preliminary assessment methods.

That said, the process of training relevant stakeholders across the country has now intensified, with the recently started national initiative for integrated resources for child protection, mental health, and psychosocial care. This initiative, under the Ministry of Women and Child Development, Government of India, and of which the principal authors are a part, is executed by a tertiary-level mental health facility that is an institute of national importance; the facility, in addition to providing clinical services, also provides training and teaching programs and advanced academic degrees in mental health-related disciplines, in which this methodology is included as part of working with CICL. Given that this tertiary facility houses the country's only specialized department of child and adolescent psychiatry and has incorporated into the routine clinical practice with CICL, the above-described preliminary assessment protocol, there have been ample opportunities to understand how this method and protocol has been received by legal personnel.

Over the last few years, since the inception of this protocol and methodology, it is observed that the Juvenile Justice Board of the state where this tertiary facility is located refers large numbers of CICL for preliminary assessment to its department of child and adolescent psychiatry. To the best of our knowledge, the Board tends to follow the treatment and rehabilitation recommendations provided; while the board's decision to retain the child within the juvenile justice system, i.e., to not transfer the child to the adult justice system, may

be attributable to factors other than the preliminary assessment reports provided, our observations show that children referred to the department of child and adolescent psychiatry for preliminary assessment have generally not been transferred.

Other than the fact that the preliminary assessment protocol and methodology has found legitimacy in the clinical practices of the department of child and adolescent psychiatry, there have been some positive changes within the system of one of the states wherein extensive training of child protection workers was implemented. The child protection workers, now having developed a strong understanding of the vulnerabilities of CICL, are better able to represent these in their reports, which, due to their careful detail, are now reportedly more useful to the JJB magistrates. This state also reports that the number of transfers of CICL to the adult system has reduced to some extent post the training of the child protection workers.

## Challenges in the Implementation of Preliminary Assessment Method and Ways Forward

### Reliance on Children's Self-Reporting

The preliminary assessment pro forma we have developed is completely reliant on the detailed mental health and psychosocial assessment that is administered to the child; the latter is most often based almost entirely on interviews with children themselves (although any additional information provided by institution staff or parents/caregivers, if available, may be recorded). While most parts of that pro forma elicit information in a fairly objective manner, including through use of standardized child mental health assessment tools, there are some sections, namely, on peer influence and mental health problems, where children provide subjective reports on the extent to which they are influenced by peers in various sphere of life and on symptoms pertaining to anxiety, depression, attention deficit hyperactivity disorder, substance use, and conduct issues. Subjective reports result in risks of underreporting or inaccurate reporting especially as children may not always have insight into their problems.

The quality and accuracy of the information elicited from children is heavily dependent on the child interviewing skills of the child care worker/judicial officer. Subjective narratives, such as on the child's insight and motivation for change, feed into the preliminary assessment report, into the legal questions pertaining to whether the child had knowledge of the consequences of the offense. Eliciting accurate subjective narratives requires communication skills that are both empathic and non-judgmental. The acquisition of such skills by relevant child care staff and judicial personnel is dependent on adequate training and capacity building programs for them–an effort that is a gradual and long-term process, given the scale of operation in a country like India.

### Dependence on Knowledge and Skills of Child Care Workers

Child care professionals, in general, whether from mental health or legal/policy/child rights disciplines, engaged in the implementation of Section 15 have varied and relatively limited capacities, at present, to address the needs of this vulnerable child population. Thus, the implementation of Section 15 has been somewhat random and scattered, dependent almost wholly on the subjective understandings of child protection, mental health, and law. So, the development of a protocol and methodology for preliminary assessments would not in itself be sufficient in ensuring a fair and child-centric system for dispensation of juvenile justice.

Given the transdisciplinary nature of work with CICL, and how it entails straddling knowledge and practice of law, child rights, child development, and mental health, as also suggested above, intensive capacity building of relevant stakeholders, such as the Juvenile Justice Board members, and mental health professionals, would be essential for implementing the preliminary assessment method developed, in a uniform or standardized manner – and in ways that it achieves its objectives, i.e., to direct the system towards

children's needs for reformation and rehabilitation (rather than towards transfer).

### Implications for Self-Incrimination

Article 20 (Iselin et al. 2009) of the Indian Constitution provides immunity to an accused against self-incrimination under – "No person accused of an offence shall be compelled to be a witness against himself" (Government of India 1950). One of the limitations of the preliminary assessments, in practice (also a concern expressed by child rights activists), is that it could be used for further (and longer-term) detention of the child – that evidence on substance abuse or life skills deficits, for instance, could be "self-incriminating" or work against the child if a JJB magistrate decided to transfer the child to be tried as an adult.

As per the rules of the juvenile justice system, children who have allegedly committed offenses have lawyers appointed for them. We know (anecdotally) from the children that they are told by their lawyers not to admit to the crime they have committed, "no matter who asks, no matter for what purpose." Such inputs from the children's lawyers are legitimate – that is, from a perspective of the constitutional right against self-incrimination, and in line with children's interests of receiving bail or being released. However, from a mental health perspective, the absence of children's admission of offenses is counterproductive to the agendas of recidivism and a "crime-free" society – unless the system allows for children to freely "admit" to the offense behavior, treatment and rehabilitation measures, towards enabling behavior transformation in the child, would be exceedingly difficult.

While we acknowledge the intrinsic differences between the two disciplines, i.e., of law and mental health, especially as they play out in field practice, given the objectives of the juvenile justice law, i.e., care, protection, and rehabilitation, it may be important to consider a differential role for lawyers working within the juvenile justice system. The concept of self-incrimination is not a useful one within the juvenile justice system – in fact, it runs counter to the basic ideology of juvenile justice, which relies on acknowledgment of problems and vulnerabilities, in order to then implement protective and rehabilitative actions that would be in the best interests of children.

Given the need to reconcile the above challenges with the implementation of the law and current field realities, therefore, it would be helpful if legal personnel are trained to take a different perspective when defending CICL clients. Lawyers' positions could be against transferring the child to the adult criminal justice system, based on arguments that highlight risk and vulnerability pathways, to advocate for psychosocial care and rehabilitation of the child, instead of focussing on decisions of culpability and transfer.

## A Comparison of the Preliminary Assessment Methodology Developed with Other Tools

There are some fundamental differences between the preliminary assessment and evaluation methodology developed for adult transfer by us versus the psychological instruments (RST-I and SAVRY) developed in other countries with similar transfer laws. First, the developers of the other psychological instruments validated their tools, thus ensuring use of rigorous scientific methodology than perhaps we did, at one level. The nature and development of their psychological instruments reflect a more open position on transfer, i.e., the tools were designed to assess risk, and the results determine whether or not it is advisable to transfer the offending adolescent.

Our methodology, however, does not allow for such openness in transfer decisions – because it is inherently based on ideologies of child rights and scientific knowledge of brain physiology, in particular the limitations of adolescent social judgment and decision-making due to the nature of adolescent neurodevelopment; it is also predicated on available scientific evidence on how transfers to adult criminal justice system are counterproductive to goals of reducing juvenile crime and recidivism. The purpose of our methodology, therefore, is not to evaluate risk but to acknowledge risks and vulnerabilities and make a strong case for (i) retaining the adolescent within the

juvenile justice system and (ii) facilitating actions for (mental health) treatment and rehabilitation.

To this end, our methodology is developed to support the position that no child/adolescent should be transferred to the adult criminal justice system, and so the pro forma seeks to elicit information that reflects children's vulnerability and consequent compromised capacity to engage in offenses and understand their consequences. Thus, our methodology conducts risk assessment primarily for treatment and therapeutic purposes, and presents it in forensic contexts, but with the clear intent of steering legal and judicial personnel in the direction of treatment and rehabilitation. In other words, the purpose of forensic engagement (other than compliance with the laws of the land) is to advocate in the juvenile justice system, for child rights and recognition of vulnerabilities and risks, which requires interventions and rehabilitation assistance.

## The Question of Reasonableness, Objectivity, and Fairness

Finally, given that the discipline of law relies heavily on the principle of reasonableness, so as to ensure delivery of justice, issues of child and law, including that of juvenile transfer there arises the question of whether the processes adopted in the implementation of the preliminary assessments are reasonable, objective, and fair. The complexity of using what is ostensibly a forensic assessment, to advocate for the child and guide judicial personnel towards therapeutic and rehabilitative measures, may elicit criticism that the methodology lacks objectivity. However, it may then be argued that there is also a lack of objectivity, an inherent bias in fact, when in a controversial context such as CICL, psychological instruments are being developed to aid forensics in such a manner that they have the potential to be used to make decisions against child rights and against the fundamental principles that universally govern juvenile justice work, such as those of safety and best interests of the child. Desmond Tutu (1931) once said "If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality." Is it possible, therefore, to develop a forensic evaluation tool that assumes a position of neutrality to a child mental health and rights issue? And if it is indeed possible, as evidenced by the development of forensic assessment tools for juvenile transfer, what does such a position of neutrality mean for advocacy of child rights and child mental health? A psychological instrument that can be used to potentially cause harm to children (as is likely to happen if they were transferred to adult criminal justice systems, with the types of sentences and punishments meted out to adults) is clearly neither objective nor neutral – at best, it is apathetic to children's safety, best interests, and mental health, and at worst, it facilitates harm to them.

In the light of this, the question is not merely one of methodology or its scientific rigor of how it was developed even; it is one that pertains to the ideological and ethical basis for developing a methodology as well as the scientific basis for the question that led to the development of methodology. After all, given our knowledge of adolescent brain physiology and neuroscience, the question of whether an adolescent (who has allegedly committed a heinous offense) has the maturity of an adult is in itself an erroneous one. Hence, any responses to such a question must counter the question itself and, if mandated by laws and enactments, must at least circumvent and subvert those, to stay within the frameworks of child rights and ethics and be true to science and its evidential purpose.

## Conclusion

Juvenile transfer decisions are made in legal and judicial spaces, in accordance with the prevailing laws of a country and its juvenile justice system. However, as erstwhile discussed, adolescents who commit serious offenses experience a range of psychosocial problems, pertaining to dysfunctional families and decreased educational, occupational, and social opportunities, and consequently experience a range of mental health problems; and legal and child protection personnel, as often observed in the Indian context also, have considerable difficulty making the connections between

psychosocial and mental health concerns and the origin and maintenance of serious juvenile offense and recidivism (Keogh 2002).

The requisite complex navigation of the fields of law and mental health, as highlighted by the experience of development of methodology in adolescent forensic mental health, is only possible through the use of a transdisciplinary approach, so that legal, judicial, and child care and protection systems recognize the multiple composite needs of CICL (Stathis and Martin 2004); that is, in order to resolve issues and find solutions, we need to transcend traditional boundaries that a single discipline would confine us to, thereby applying a transdisciplinary approach, i.e., one that integrates an understanding of legal concerns and requirements, child rights and procedural justice, as well as mental health issues and related treatment and rehabilitation actions is essential. Such an approach not only acknowledges the complexities and contradictions in the implementation of juvenile transfer to adult court but also ensures that despite the existence of such anti-child rights laws, this marginalized subgroup of children and adolescents at least has opportunities for protection, mental health treatment, and rehabilitation.

Moving forward, as our efforts around the country continue in promoting the use of this preliminary assessment methodology, by child protection and mental health functionaries and judicial personnel, it would also be critical to undertake research studies to develop culture-specific understandings of CICL in India, particularly with regard to the trajectories that unfold for children who are transferred versus those who are not transferred, in terms of rehabilitation and behavior transformation – this would enable us to evaluate the outcomes of the methodology, as yet relatively newly developed, in terms of whether it achieves its objectives of rehabilitation, reformation, and consequent prevention of recidivism.

**Acknowledgments** Saurabh Sashi Ashok, Policy & Law Officer, SAMVAD, National Institute of Mental Health & Neurosceinces, Bangalore, India, for additional legal perspectives and inputs pertaining to the Juvenile Justice Act, 2015.

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