

# FAIR AND SPEEDY INQUIRY UNDER THE ACT

NJA April 2017

When a child pleads guilty is a child voluntarily waiving his right to trial?

- ▣ A fair trial process is guaranteed under the Constitution. Fair trial process implies that a person charged with an offence is assured of certain rights both at the pre trial and the trial stage.
- ▣ These include the right not to be compelled to give evidence against oneself and the right to be produced before a competent authority within twenty fours. ( article 21 and 22)

- ▣ The right to legal aid and speedy trial.

*(Hoskot vs State of Maharashtra AIR 1978 SC 1548,  
Common Cause Laws vs Union of India AIR 1996  
SC 1619)*

- ▣ Delay in investigation and commencement of trials violates the Constitutional right of the individual to a speedy trial. *(Pankaj Kumar vs State of Maharashtra AIR 2008 SC 3077)*

# Some Reasons for delay

- ▣ Evidence to be recorded twice-*When an adult is charged along with the juvenile, the witnesses give their evidence in the case relating to the adult and do not come to give evidence once again*
- ▣ non availability of witnesses in cases such as complaints of thefts by strangers, railway passengers etc

# JJAct and POCSO

- ▣ All sexual contact between young persons are offences under POCSO
- ▣ By treating all acts of sexual behaviour of those in the age of 16 to 18 as an offence, the Act causes an increase in prosecution of young persons who are experimenting, dating, etc.
- ▣ Since sexual assault and harassment includes touch and non touch behaviour, even acts such as holding hands or hugging in a theatre or park can be offences between young persons.

- ▣ Young persons become more vulnerable in inter-caste / inter-religious / inter-community relationships
- ▣ The agency of young persons, in decision-making on issues affecting them, is taken away as all persons between 0 and 18 years of age are considered as infants.
- ▣ The difference between sexuality and sexual violence must be clear.

# Certain Factors in sexual offences

The age and level of maturity. Children and young people are less emotionally developed than adults;

offences can arise through inappropriate sexual experimentation;

gang or peer group pressure to engage in sexual activity;

or a lack of understanding regarding consent, exploitation, coercion and appropriate sexual behaviour



# Certain mitigating factors

- ❑ Victim of neglect or abuse (sexual, physical or emotional) or has witnessed the neglect or abuse of another.
- ❑ Exposure to pornography or materials which are age inappropriate.
- ❑ Involvement in gangs.
- ❑ Associated with child sexual exploitation.
- ❑ Unstable living or educational arrangements.
- ❑ Communication or learning disabilities or mental health concerns.
- ❑ Part of a peer group, school or neighbourhood where harmful sexual norms and attitudes go unchallenged.
- ❑ A trigger event such as the death of a close relative or a family breakdown

# Factors to be considered

- ▣ assess the seriousness of the offence.
- ▣ This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself.  
*The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.*

