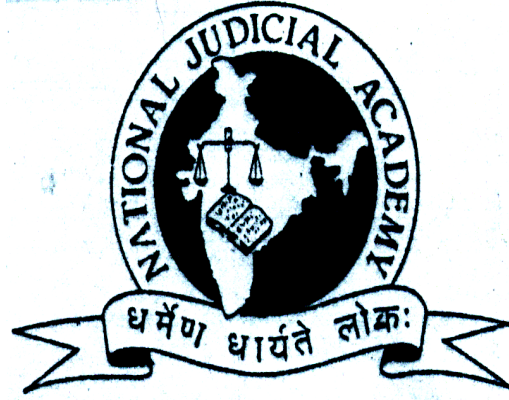


# NATIONAL JUDICIAL ACADEMY



**NATIONAL CONFERENCE FOR THE MEMBERS OF  
JUVENILE JUSTICE BOARDS ORGANIZED JOINTLY BY  
NATIONAL JUDICIAL ACADEMY AND NATIONAL  
COMMISSION FOR THE PROTECTION OF CHILD RIGHTS**

**27-28 May 2015**

**PROGRAMME REPORT**

**By**

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## ABBREVIATIONS USED IN THE REPORT

CCI	Child Care Institutions
CrPC	Code of Criminal Procedure, 1973
CWC	Child Welfare Committee
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
IPC	Indian Penal Code, 1860
JCL	Juvenile in Conflict with Law
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2000
JJB	Juvenile Justice Board
JJ Bill	Juvenile Justice (Care and Protection of Children) Bill, 2014
JJ Rules	Juvenile Justice (Care and Protection of Children) Rules, 2007
JWO	Juvenile Welfare Officer
NGO	Non-Governmental Organisation
NCPCR	National Commission for the Protection of Child Rights
POCSO Act	Protection of Children from Sexual Offences Act, 2012
POCSO Rules	Protection of Children from Sexual Offences Rules, 2012
POCSO Courts	Special Courts designated under Section 28 of the POCSO Act
PO	Probation Officer

SJPU

Special Juvenile Police Unit

## INTRODUCTION

### **Speaker – Dr. Geeta Oberoi**

Dr. Geeta Oberoi welcomed the participants to the conference and introduced the purpose and objectives of the conference. Dr. Oberoi introduced the objective of the conference i.e. to learn about the problems faced by the JJBs which either result in delay in dispensing justice or give rise to other problems with respect to giving justice.

Dr. Oberoi shared a study that is being undertaken at National Judicial Academy which points out that what is true for the general actually is also true for the special courts like the JJB. The trainings undertaken at National Judicial Academy have highlighted that judges at the District court level are reluctant to give bails, and for the same set of facts where bail is refused by the judge or magistrate of the district court, later on, the high courts in appeal grant the bail. The study that is being undertaken at NJA proves that the same holds true for JJBs as well. In about 62 cases, it has been found that where the JJB refuses the bail, the High Court grants the bail in the same case. There is a need to learn from the discussions in this conference that, apart from other things, why there is a reluctance on the part of the JJBs to give bail under Section 12 of the JJ Act.

Dr. Oberoi urged the participants to contribute wholeheartedly in the group discussions and provide every set of issues that the JJBs face in achieving objectives of the Act. Dr. Oberoi commenced the discussions by introducing the panel of resource persons and initiating a round of self-introduction of the participants.

## II

### STATUS OF CHILDREN IN INDIA – AN OVERVIEW

#### Speaker – Mr. Asheem Srivastava

Mr. Asheem Srivastava presented an overview of the status of children in India with the aid of a power point presentation. Mr. Asheem Srivastava first raised the question as to the understanding of the word 'Adult'. Once the understanding of the word 'adult' is achieved, the term 'child' will be clear. A participant expressed his view that the person who has attained the age of majority is an adult. Mr. Srivastava then added that if a person who has attained majority is an adult, then the person who hasn't attained majority will be defined as a child. The next question that follows would be 'what is the age of majority?' The participants stated that 18 years would be the age of majority.

Mr. Srivastava shared a dictionary definition of the word 'Child' which is – "The young of the human species without distinction of sex and generally under the age of puberty; A foetus having the shape of human being".

A participant expressed the view that this definition was limited to the biological aspect and hence was not a comprehensive definition as it did not consider the social aspects of the term 'child'.

Mr. Srivastava then presented the definitions of 'child' as given in the various statutes in India. The various definitions are –

S.No.	Statute	Definition
1	The Beedi and Cigar Workers (Conditions of	<ul style="list-style-type: none"><li>Sec. 2 (b) "Child" means a person who has not completed <u>fourteen</u> years of age.</li></ul>

	Employment) Act, 1966	<ul style="list-style-type: none"> <li>• Sec.2 (q) "Young person" means a person who has completed fourteen years of age but has not completed eighteen years of age.</li> </ul>
2	The Factories Act, 1948	<ul style="list-style-type: none"> <li>• Sec.2 (c) "child" means a person who has not completed his <u>fifteenth</u> year of age.</li> <li>• Sec.2 (d) "Young person" means a person who is either a child or an adolescent</li> </ul>
3	The Minimum Wages Act, 1948	<ul style="list-style-type: none"> <li>• Sec.2 (a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year.</li> <li>• Sec.2 (bb) "child" means a person who has not completed his <u>fourteenth</u> year of age.</li> </ul>
4	The Plantation Labour Act, 1951	<ul style="list-style-type: none"> <li>• Sec.2 (a) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year.</li> <li>• Sec.2 (c) "child" means a person who has not completed his <u>fifteenth</u> years.</li> <li>• Sec.2 (l) "young person" means a person who is either a child or adolescent.</li> </ul>

5	The Juvenile Justice (Care and Protection of Children) Act, 2000	<ul style="list-style-type: none"> <li>• Sec 2 (k) "Juvenile" or "child" means a person who has not completed his <u>eighteenth</u> year of age.</li> </ul>
6	The Right of Children To Free And Compulsory Education Act, 2009	<ul style="list-style-type: none"> <li>• Sec.2 (c) "child" means a male or female child of the age of <u>Six to Fourteen</u> years.</li> </ul>
7	The Prohibition Of Child Marriage Act, 2006	<ul style="list-style-type: none"> <li>• Sec.2 (a) "child" means a person who, if a male, has not completed <u>twenty-one</u> years of age and if a female, has not completed <u>eighteen</u> years of age.</li> </ul>
8	The Young Persons (Harmful Publications Act), 1956	<ul style="list-style-type: none"> <li>• Sec.2 (c) "young person" means a person under the age of <u>twenty</u> years.</li> </ul>
9	The Indian Majority Act, 1875	<ul style="list-style-type: none"> <li>• Sec.3 Age of majority of persons domiciled in India –</li> <li>• Every person domiciled in India shall attain the age of majority on his completing the age of <u>eighteen</u> years and not before</li> </ul>
10	The Child Labour (Prohibition And Regulation) Act, 1986	<ul style="list-style-type: none"> <li>• Sec.2 (ii) "child" means a person who has not completed his <u>fourteenth</u> year of age.</li> </ul>

11	The Protection of Children from Sexual Offences Act, 2012	<ul style="list-style-type: none"> <li>• Sec.2 (d) "child" means any person below the age of <u>eighteen</u> years.</li> </ul>
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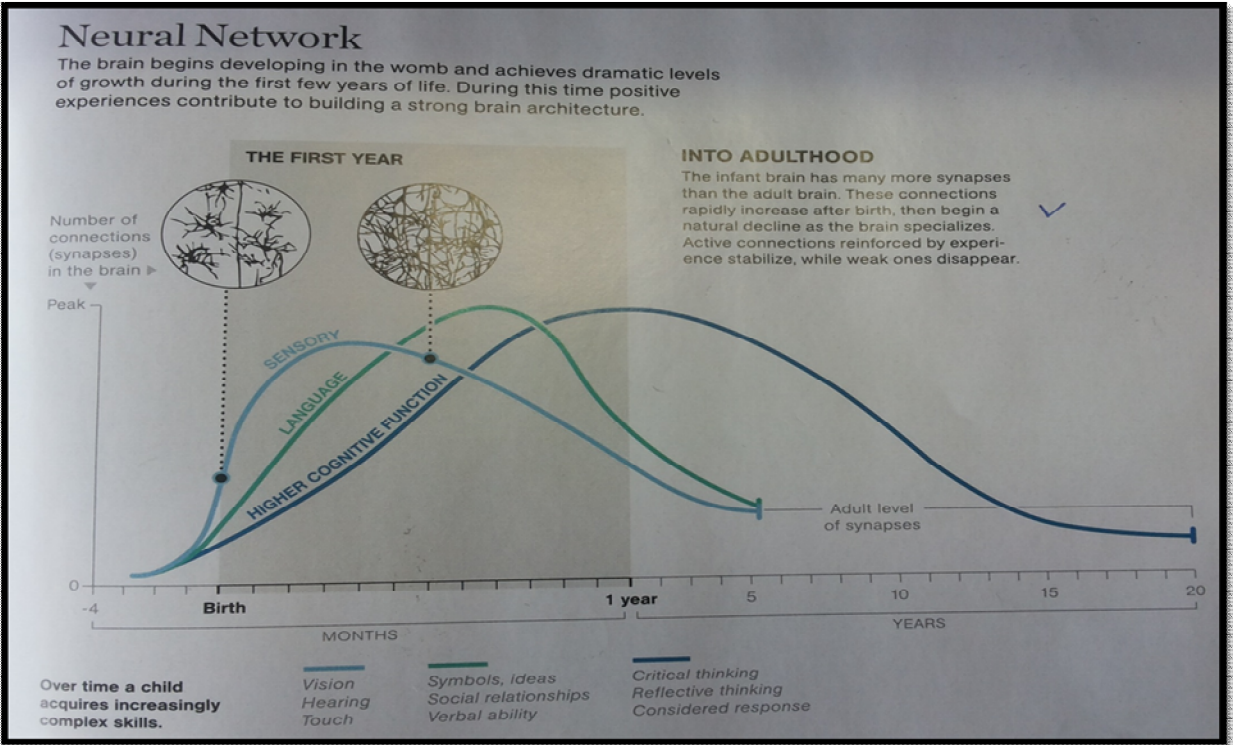
These laws define children in some form or the other. Eleven different acts and the age variation is from 14 to 25 years. As a common man it would be very difficult to understand. The question that arises is can a person of 18 years who understands the world well say with absolute certainty that he/she is a child? And can a child of 14 years definitively say /she is a child? After going through the definitions in these laws, one cannot be sure.

Looking at the social definition or the social concept of a child or the biological concept of a child and the legal concept of a child, the second question is 'Should children have separate rights?' A participant was of the view that rights should be equal and not separate. Another participant expressed his opinion that children do not need separate rights but a few additional rights. A third participant was of the opinion that children do need separate rights like the right to compulsory education etc. Mr. Srivastava concluded that the general consensus was that children should have some rights that are separate.

A participant raised the question as to why children should have separate rights. To which Mr. Srivastava replied that his argument would be why not. Mr. Srivastava shared a recent neuroscience study which states that the neurons in the human body are formed as early as 3 to 4 months before birth. At the time of birth these cells are disjoint and are not joined together. At 4 months of gestation, the sensory system starts evolving and the researches have also proved that the foetus of 6 to 7 months old can understand the external world. If the parents are interacting with each other, if music is played in



the house, the foetus understands and responds. The sensory cells are developed at the time of birth. At birth, most of the children don't know how to speak, many of them don't open their eyes but they understand the sense of touch. The neuron cells start evolving developing, along with that the sense or the perception of language evolves slowly and then the third point is the cognitive functions – they go on evolving gradually and continues till the age of 20 years. These neuron cells which are separate at the initial phases, as the senses evolve, they start joining with each other. This process continues and as the cognitive functions evolve all those functions where the cells which are strengthened gradually; when the learning process is more, they remain strengthened, other neuron cells which are not used gradually disappear.



The process of joining of the cells, the creation of the network of neurons is a continuous phenomenon which joins and disintegrates. In simple terms what it means is if one tries to evolve a particular cognitive function, the neuron cells involved in that process will evolve further and if the person does not exercise the cognitive function, the neuron

cells will disappear. For instance, is for any reason the child does not continue with the phenomena of the sense of touch or for some reasons the body is not able to respond to the sense of touch, these cells will start degenerating.

Another research which was shared by Mr. Srivastava is the study which was undertaken in Romania in the 1990s after the overthrow of the Ceausescu regime. The Romanian dictator Ceausescu started the policy of increasing the population and encouraged the younger generation to have more and more children. In order to revive the economy he moved the people from the rural to the urban areas. The couples moving to the urban areas put in their children into the institutionalized care. After the overthrow of the Ceausescu regime, it was observed that the behavior of the children in institutionalized care was abnormal. A study was undertaken and the Electro Encephalo Gram of the children indicated that the institutionalized children who were moved to good foster care before the age of 2 years had better electrical conductivity in their neurosystem than the institutionalized children who were moved to foster care after the age of 2 years.

The third point raised by Mr. Srivastava was that childhood memories are permanent and they do not disappear overtime. One may forget events and things later in life but a person always remembers his/her childhood.

Mr. Srivastava stated that the juvenile justice system was evolved by the USA and UK when the situation of children was very bad in their country. The four points which form the fulcrum of the juvenile justice system are protection, care, survival and development. The question that arises is 'Why we should have separate juvenile system'. These studies are the reason. The juvenile justice system has evolved with the greater scientific understanding of this issue.

Mr. Srivastava briefly discussed the relevant constitutional provisions –

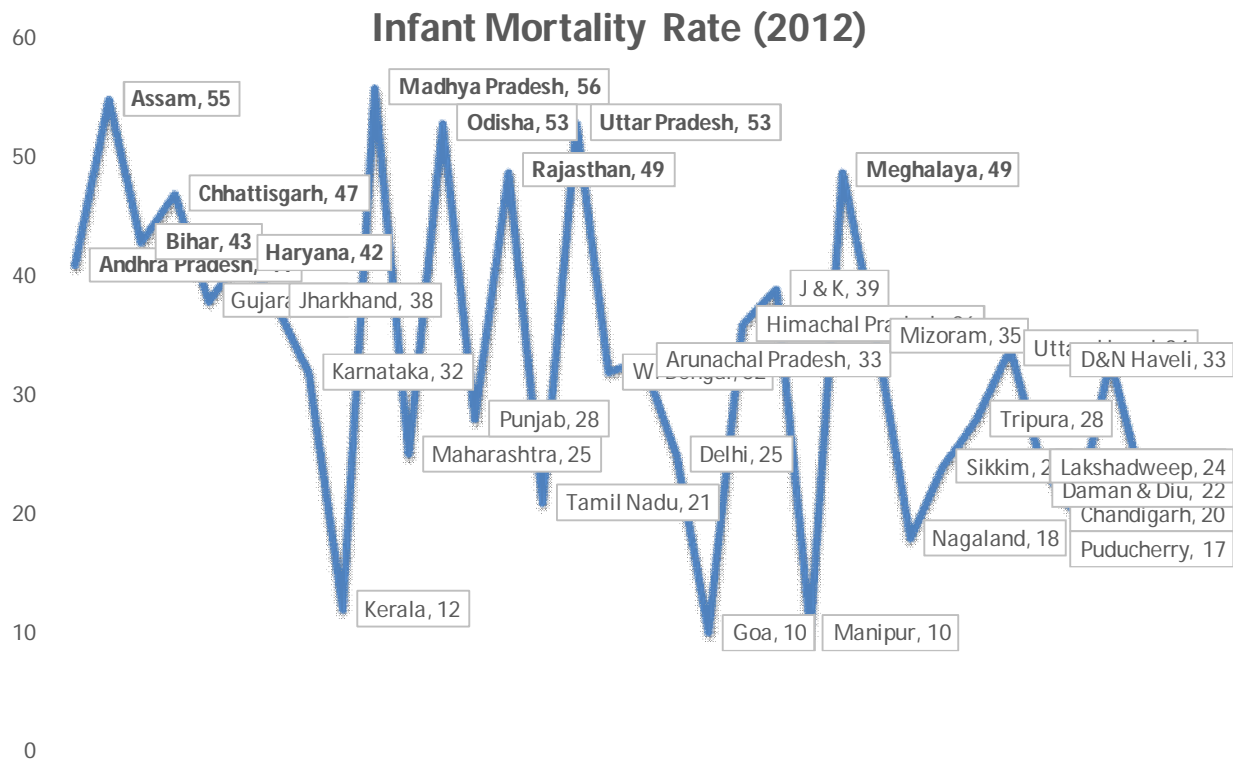
Article 15	<ul style="list-style-type: none"> <li>• Nothing in this article shall prevent the state from making any special provision for women and children</li> </ul>
Article 21A	<ul style="list-style-type: none"> <li>• The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.</li> </ul>
Article 24	<ul style="list-style-type: none"> <li>• No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment</li> </ul>
Article 39	<ul style="list-style-type: none"> <li>• ....The tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength</li> <li>• Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.</li> </ul>
Article 45	<ul style="list-style-type: none"> <li>• The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years</li> </ul>
Article 51-A	<ul style="list-style-type: none"> <li>• It shall be the duty of every citizen of India –</li> <li>• who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years</li> </ul>

Mr. Srivastava raised the question as to how would compulsory education be provided to the children under Article 21A of the Constitution of India. Under Article 21A the directive has been given to the State to provide compulsory education. Furthermore, under Article 24, children are not to be employed in any hazardous employment. What is hazardous? How is this issue to be decided? Can we definitively say that agriculture or domestic work would not be hazardous to a child? Article 39 refers to avocations unsuited to the age and strength of children. The issue that arises is who determines the suitability and what are the parameters to decide the suitability of avocations for children. With reference to the constitutional duty cast upon the parents under Article 45, Mr. Srivastava expressed his opinion that parents have failed in their responsibility in providing protection, care, development and survival of their own children. Mr. Srivastava briefly mentioned the Guiding Principles of National Child Policy, 2013 as it is common knowledge.



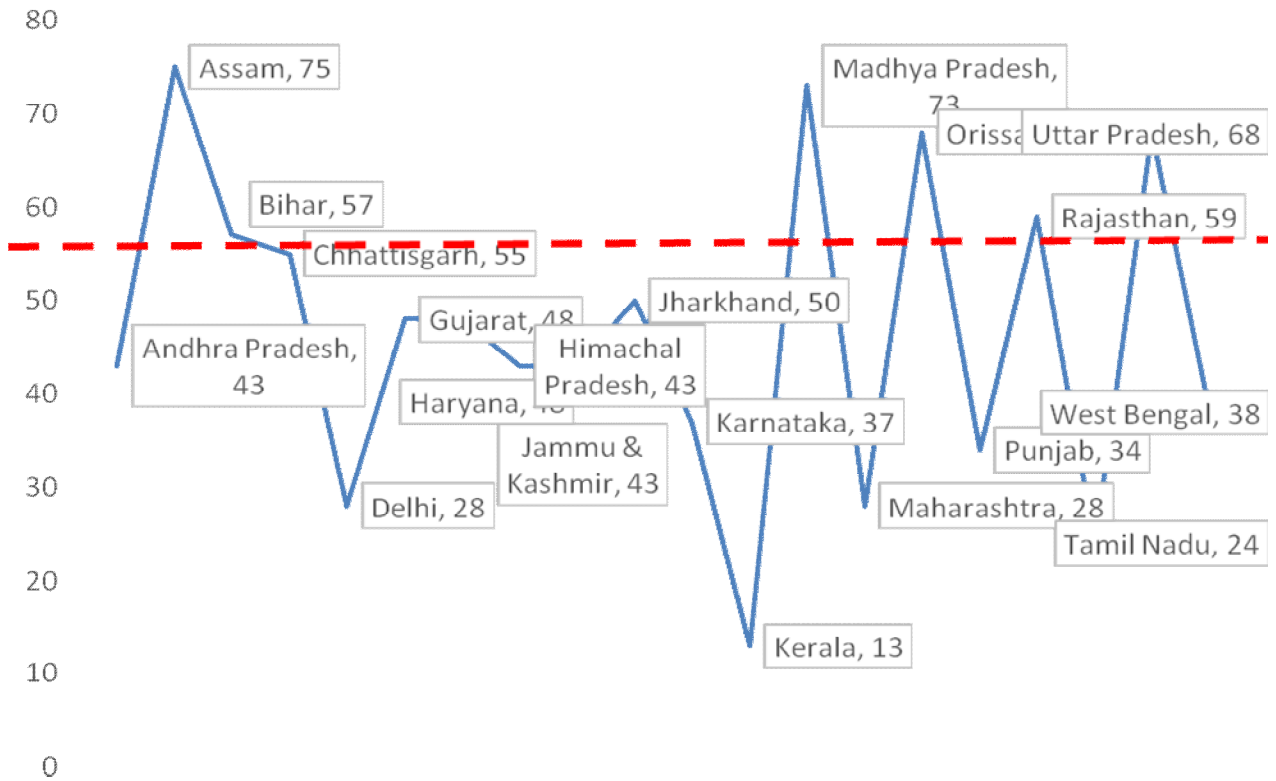
With this discussion on the law relating to children, Mr. Srivastava dwelt the status of children in India as is observed through the statistical information.

Infant Mortality Rate in India according to the 2012 data is 42 per 1000 which is around 4%. The states like Andhra Pradesh, Assam, Chhattisgarh, Bihar, Haryana, Madhya Pradesh, Odisha, Uttar Pradesh, Rajasthan and Meghalaya are above the average line. The best states in the infant mortality would be Kerala, Goa and Manipur. 80% of the deaths happen in the first month. The reasons for Infant Mortality are prematurity, low birth weight, neonatal infections, birth asphyxia and birth trauma. In the view of the speaker these were simple things which could be taken care of to address the problem of infant mortality.

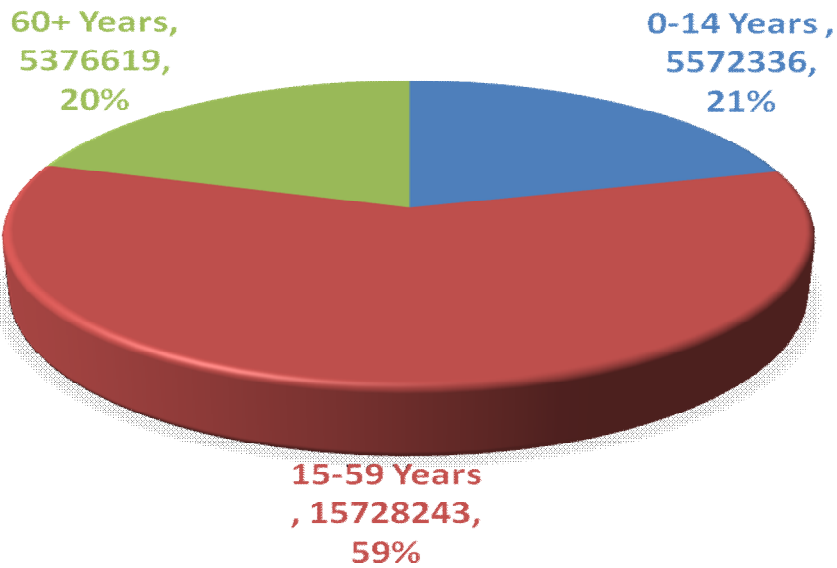


Under Five Mortality in India is 52 per 1000. The situation is the same as it was in the Infant Mortality. The states that have low infant mortality rate are also performing well in Under Five Mortality Rate. Kerala has the lowest Under 5 mortality. Very simple things like timely immunization, good food, good environment, non polluted environment can address this problem.

## Under Five Mortality (2012)



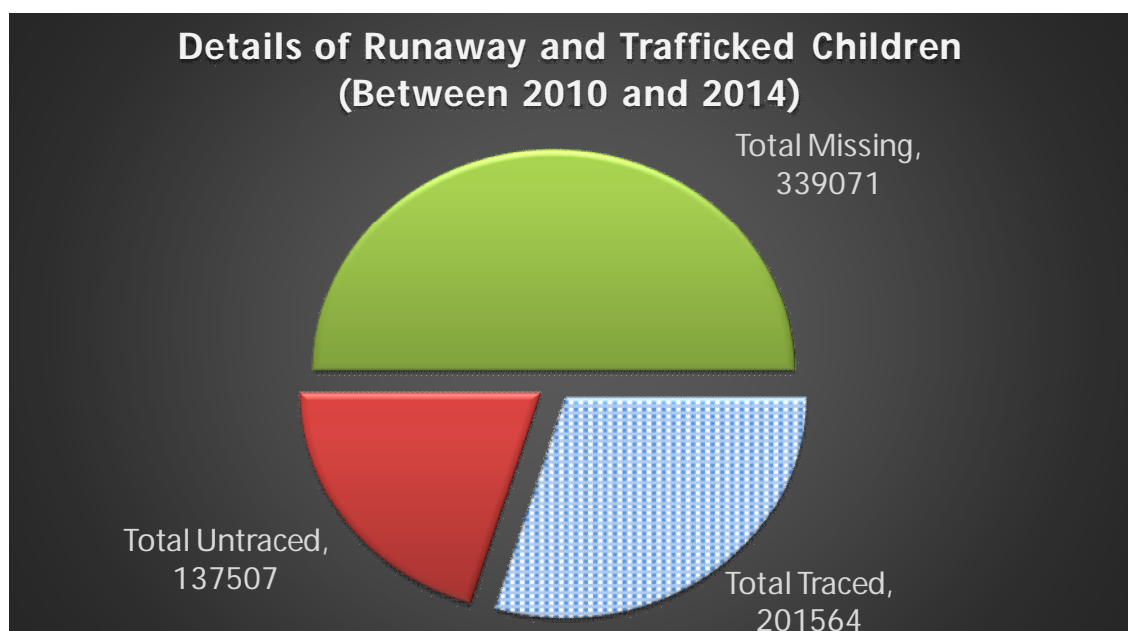
## DISABLED POPULATION IN DIFFERENT AGE GROUPS



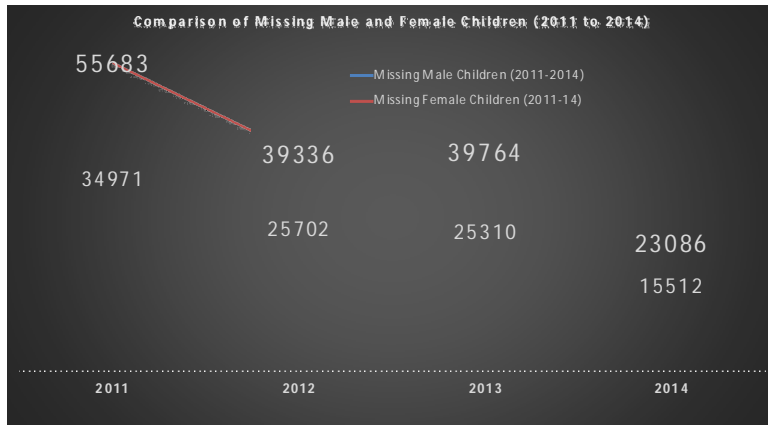
The percentage of the incidence of Disability in India is high. 21% of the people in this country who are disabled belong to 0 to 14 year age group. So if a child survives infant mortality and Under Five mortality, there is a good chance that he might be disabled. This indicates the failure of parents and also the state to provide care and protection to children.

Mr. Srivastava dwelt on the concept of Parens Patriae and its evolution. The concept of Parens Patriae has evolved from US when they said that in the absence or in the case that the parents fail it shall be the duty of the State and within the State it will be the duty of the judiciary to care for the children. The State more particularly the judiciary took upon themselves this responsibility of taking care of the children. But what happens when the parents and the Parens Patriae fail? The parental factors of family discord, neglect, poverty and abuse result in children running away from their homes. Abandonment and displacement make the children vulnerable to traffickers and they end up being sold for various purposes, married or driven out for labour uses.

The status from 2010 to 2014 is that about 1,37,507 children are still missing and this is only from the reported cases. There is no reported data about the people who have gone missing and they have not been reported. If you analyze the data of reported cases, the disappearance of girl child is much more and there is a consistent pattern.







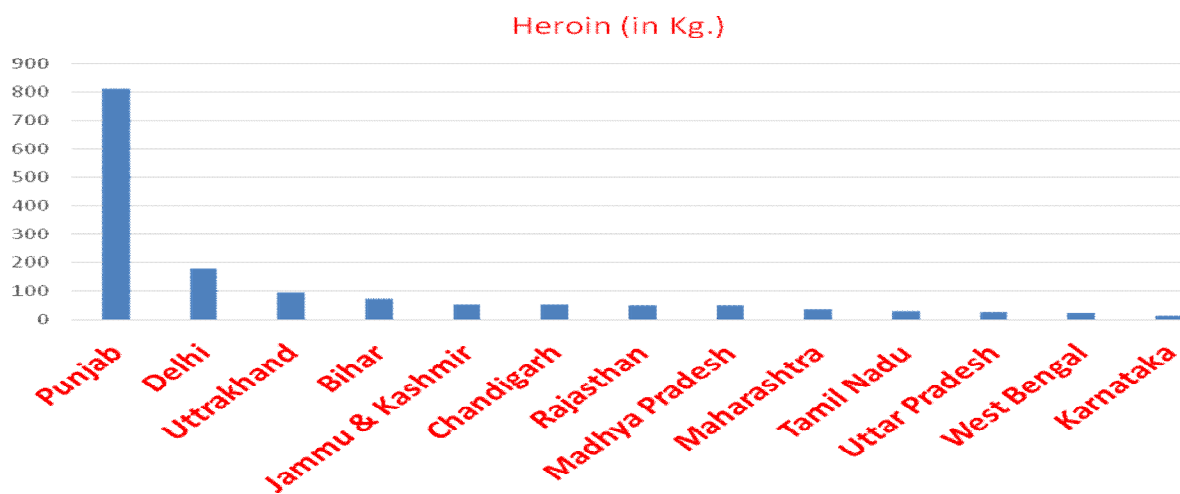
### Comparison of Missing male and Female Children (2011 to 2014)

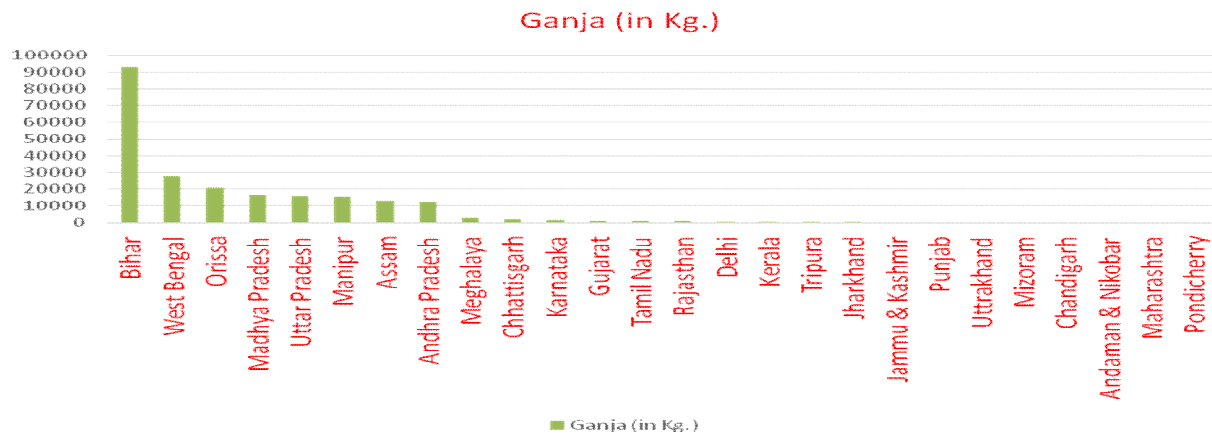
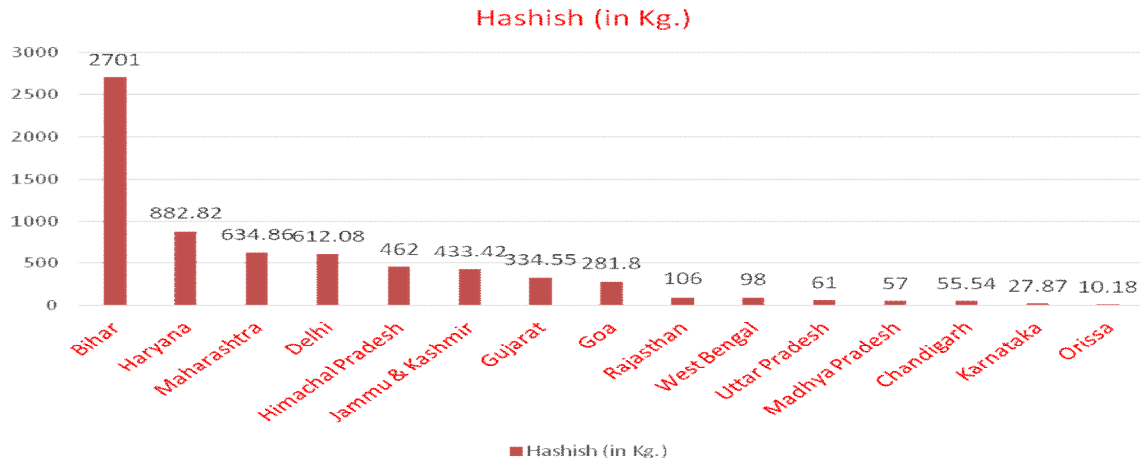
Children are being targeted and sold from different parts of the country. Runaway and trafficked children are sold and trafficked from Rajasthan, North East, Nepal, Bangladesh, West Bengal, Bihar, Jharkhand, UP and MP to New Delhi. From Delhi they are trafficked to Gulf countries for sex trade, to Punjab and UP as labour for the brick kilns, Haryana as labour and to Mumbai as bar girls. The supply route for the purposes of procuring children for prostitution, marriage and domestic help is from different districts of Andhra Pradesh to Delhi, Mumbai and Kolkata. The North Eastern states and West Bengal are a major source of trafficked children who are trafficked to Andhra Pradesh for massage parlors, friendship clubs and prostitution. From Assam children are trafficked to Delhi, Rajasthan and other places for domestic work and are also forced into marriage. Bihar is a source of child labour to the states of Maharashtra,

Delhi, UP, Haryana, Punjab, Rajasthan and Gujarat, while Chhattisgarh is a source of child labour to Delhi, Mumbai, Punjab, Gujarat and Chennai. The point that Mr. Srivastava stressed on was that children are being traded across the country. The cost of trading a child is as low as Rs. 1500. This state of affairs is an indicator that there is something amiss in our approach to human beings and society.

In trafficking, railways are the most important point of contact for the traffickers. Most of the runaway children find solace at the railway station. It is at the railway station that they come into contact with the traffickers. The process of vulnerability, abuse and mental and physical torture begins at the railway station. From survival the children are introduced to crime. The mode or evolution of crime is simple. The children are introduced and addicted to tobacco which is cheap and readily available. Gradually the children are introduced to higher drugs. The addiction to drugs is a major reason for children being introduced to crime.

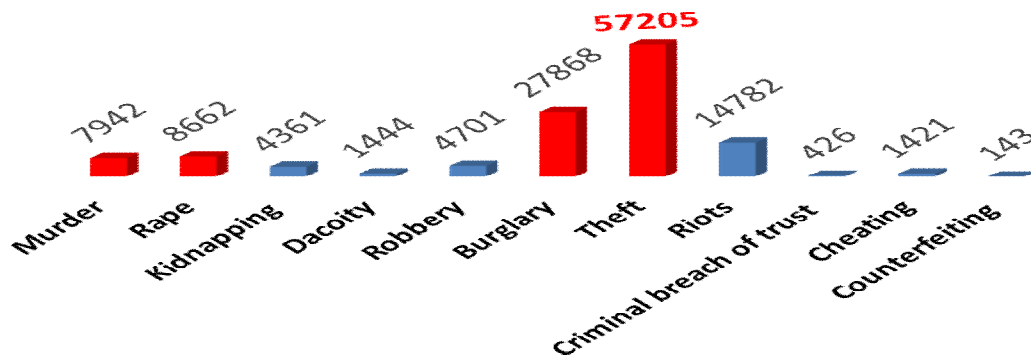
The statistics of drug seizures in India reveals that Heroine is seized in huge quantities especially in Punjab while huge quantities of Hashish has been seized from Bihar, Haryana, Maharashtra and Delhi. These figures indicate the drug consumption in these states. There are reports that children in schools in Punjab are already taking drugs. Drugs can be a factor responsible for promotion of crime.



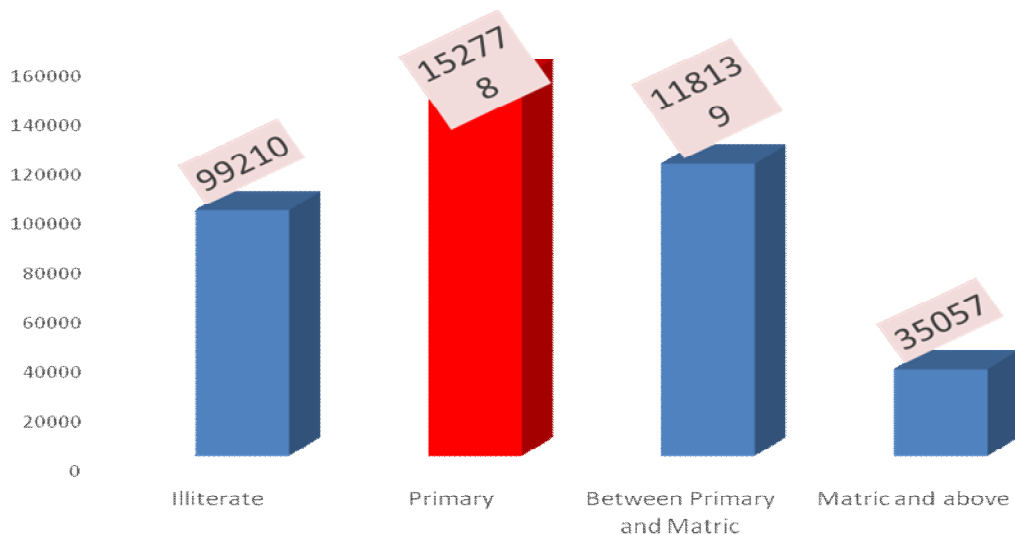


The juvenile crime for the period from 2001 to 2012, as indicated by the NCRB data, reveals that children are mostly involved in burglary and theft. A lesser percentage of crimes committed by juveniles are Murder, Rape and Riots.

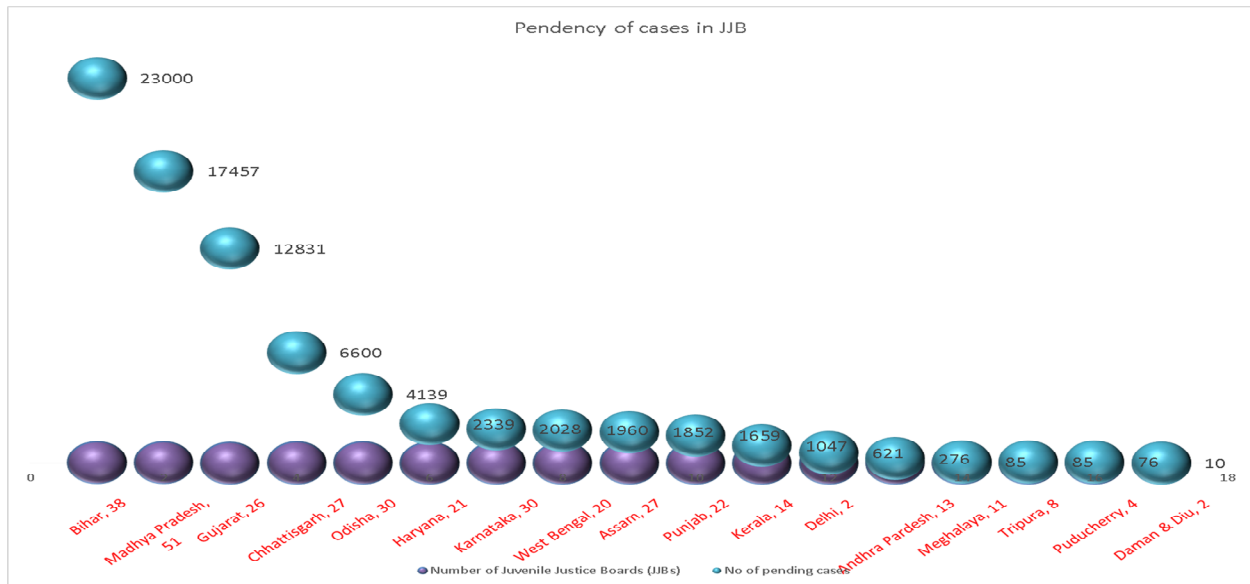
## Juvenile Crimes (2001-2012. NCRB data)



The educational background of delinquent juveniles reveals that the education received by the child has an impact on his involvement in criminal activities. The NCRB data for the past 10 years indicates that when the child is educated the criminal involvement is reduced. Children who are illiterate or are only educated till primary level account for a major percentage of the juveniles who commit crime. But with the persons who are Metric level educated and above, the crime rate suddenly falls. This leads to one conclusion that it must be ensured that children are educated and are sent to schools.



The next issue that Mr. Srivastava discussed is the pendency of cases before the JJBs in order to highlight the issues within the JJB system. The data discussed by Mr. Srivastava was collected from the states and relates to the year 2014.



The data relating to the incidence of crime against juveniles shows an alarming rise. There is a 336 % jump in child rape cases in the period from 2001 to 2011. 25% of the child rape cases involve girls younger than 16 years of age. 90% of the child rape victims under the age of 12 years are raped by a family member or a close relative or friends. 87% of the children were repeatedly abused. The states of concern in this regard are Madhya Pradesh, Maharashtra, UP, Andhra Pradesh and Delhi. In the period 2001 to 2011 -

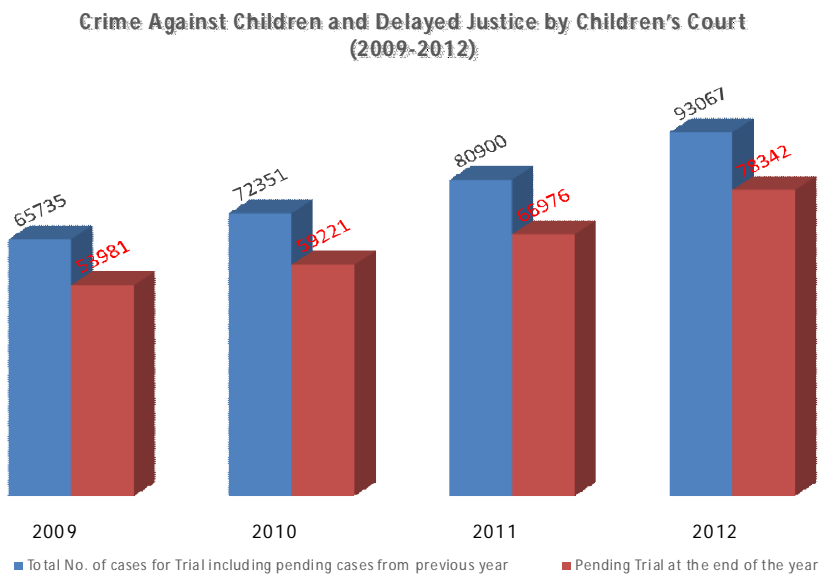
- Madhya Pradesh has recorded highest number of child rape cases – 9465;
- Maharashtra has recorded 6868 cases;
- UP has recorded 5949 cases;
- Andhra Pradesh as recorded 3977 cases;

- Delhi has recorded 2909 cases.

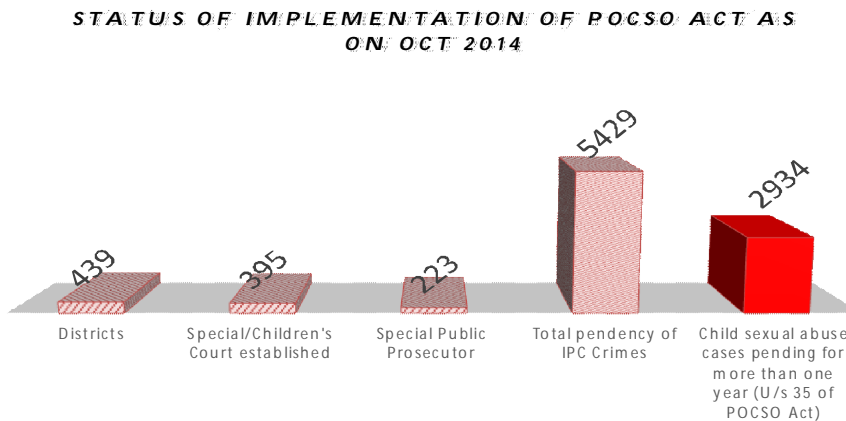
The consequences of child abuse are cognitive impairment, violent and other risk taking behavior, depression and other anxiety, eating and sleep disorder, feeling of shame and guilt, poor interpersonal relationship, poor self esteem and self harm and suicidal behavior.

Mr. Srivastava stressed on the need to deliberate on this state of affairs, the reasons for the same and the persons who are responsible for this situation. Is punitive action the solution for this situation or should we look for another remedy?

The data regarding the pendency of cases of crimes against children in the Children's Court reveals that in the year 2012, around 93,000 cases were pending from the previous year and the end of the year 2012 more than 78,000 cases were pending trial. The point raised was what happens to the child during the pendency of the case. It is applicable to both situations whether it is the JJB or the Children's Court.



The status of the implementation of the POCSO Act as per the data available on October 2014 is that there are 2934 child sexual abuse cases under Section 35 of the POCSO Act which are pending for more than one year.



Mr. Srivastava was of the view that no child is born delinquent. Mr. Srivastava narrated the story of a child who was found on the streets of Delhi and a boy who was a drug addict and a criminal. These children were picked up by an NGO, reformed and rehabilitated. There are many similar stories of children who have been reformed. No child is born delinquent and can be reformed and rehabilitated if efforts are made.

Mr. Srivastava stated that to rehabilitate and reform children a few simple things need to be done. On the legal front the following things need to be done –

- There is need for a clear definition of child;
- All child laws need to be harmonized for better understanding at field level
- The CCI need to be reformed
- The CWC and JJBs need to be strengthened

- There should be a time bound disposal of cases by Children's Courts

On the administrative front the following actions need to be taken -

- Registration of birth;
- All birth registration should be uploaded and updated monthly on district website;
- Health report of each child to be uploaded on district website;
- Unique Identification Number (UID) should be made mandatory for every child entering class 1;
- Any dropout/migration must be reported.
- Track every child till the age of 18 years.

Mr. Srivastava expressed his opinion that all of us are lacking in fulfilling our responsibility towards children and because of that children are becoming delinquent. Once they commit the crime we impose harsh punishment and have them put in jail. What happens after the punishment is that the child becomes a hardened criminal. He concluded by showing a picture of a child studying under the streetlight and expressing his view that if there is a will to improve the situation, the means and ways to do so will emerge.

### **Views Expressed by the Participants**

1. Children and juveniles are included in a single category. This practice in the view of a participant is erroneous. Children and juveniles should not be treated the same. Juveniles cannot be given the status of children. There should be three



distinct categories i.e. Child, Juvenile and Adult, and there should be different and separate laws for each category.

2. A participant from Kerala stated that the data regarding the pendency of cases before the JJB in Kerala as per his information are different than the data quoted by Mr. Srivastava. Mr. Srivastava replied that the data for this presentation is collected officially from the States and requested the participant to provide the data he had with him.
3. The JJ Act has been enacted for the welfare of the child and for the purposes of reformation and restoration of the juvenile to society. But in most cases the JJBs receive cases of adults who are claiming benefit of the JJ Act. The question that arises is why the JJBs should give the benefit of the JJ Act to adults. In the opinion of the participant, the JJ system is failing to fulfill the purpose it was meant to achieve.

It was suggested by Mr. Srivastava that the JJBs can exercise their authority to close such cases where much time has elapsed and the juvenile in question has already become an adult. The participants stated that they were bound by the procedures and are not empowered to do so. Justice Khetrapal stated that these cases must be prior to the amendment to the JJ Act. Now the JJBs are required to dispose the case as early as possible. Mr. Srivastava asked the participants to deliberate on this issue in the group discussion and to evaluate whether such types of cases can be disposed off in 4 months and the ways to achieve that.

4. The investigation by the PO takes a lot of time and is a cause for delay. In most districts there is only one PO who holds many charges and is doing many other works. Hence, there is a delay in dealing with the investigation under the JJ Act.

5. It has been noticed that the incidence of juvenile crime in any area rises with the rise in the number of children dropping out from school. In the experience of the participant, most of the dropout children come from the minority community and the state of development in that community is poor. Where the dropout rate is high, the incidence of juvenile delinquency is also high.

### III

## PHILOSOPHY OF JUVENILE JUSTICE SYSTEM IN INDIA

### Speaker – Justice S. Vimala

Justice S. Vimala commenced the discussion on the philosophy of the juvenile justice system by stating that a child is the best gift to mankind. But what needs to be considered is where these gifts have been left and the condition that the children have been left in. The focus of this issue is 'Where the children should be and where they are in reality'. Parents raise children with love and affection, and sometimes by chance, mistake or deliberate actions by another, the child is removed from the custody of the parents and the child is employed for various purposes and the plight of the child would be unimaginable. In this conference the biggest resource would be the experienced persons who man the JJBs. Justice Vimala credited the participants for taking time to attend and contribute in this conference and that the participants rather than celebrating the summer vacation with their family are celebrating the children of the world.

Justice Vimala stressed on the need to study the philosophy of law especially of the juvenile justice law. Justice Vimala explained the concept and genesis of philosophy. Philosophy means the love of wisdom or the search for wisdom. Generally it refers to the intellectual probing of any idea.

Justice Vimala defined the 'Philosophy of Law' as a branch of philosophy and jurisprudence that studies basic questions about law and legal systems, such as "what is law?", "what are the criteria for legal validity?", "what is the relationship between law and morality?", and many other similar questions.

Justice Vimala raised the issue of the need and justification for the juvenile justice system and why India requires a separate juvenile justice system. Justice Vimala also

dwelt on the authority of the State to come into the picture in matters relating to juvenile justice. In other words, what is the competence and power of the legislature to enter into matters relating to juvenile justice?

The concept of *Parens Patriae* means that the State is considered to be the father of all the children of the nation. The State takes on the role of the parent. *Parens patriae* is Latin for "parent of the nation" (lit., "parent of the fatherland"). In law, it refers to the public policy power of the state to intervene against an abusive or negligent parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection. For example, some children, incapacitated individuals, and disabled individuals lack parents who are able and willing to render adequate care, thus requiring state intervention. Under law if the parents are incapacitated or for some reason are not able to provide care for their children, then the State steps into the shoes of the parent and the State is considered to be the parent of the children.

In U.S. litigation, *parens patriae* can be invoked by the state to create its standing to sue; the state declares itself to be suing on behalf of its people. For example, the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (15 USC 15(c)), through Section 4C of the Clayton Act, permits state attorneys general to bring *parens patriae* suits on behalf of those injured by violations of the Sherman Antitrust Act.

Justice Vimala quoted a poem to highlight the need for ensuring adequate care, protection and developmental opportunities to children. This poem provides a justification for the Juvenile Justice System. This poem was quoted by the Supreme Court of India in *MC Mehta v. State of Tamil Nadu*[(1996)6SCC756].

"I am the child.

All the world waits for my coming.

All the earth watches with interest to see what I shall become.

Civilization hangs in the balance,  
For what I am, the world of tomorrow will be.

I am the child.

You hold in your hand my destiny.

You determine, largely, whether I shall succeed or fail;  
Give me, I pray you, these things that make for happiness.  
Train me, I beg you, that I may be a blessing to the world."

Justice Vimala discussed the import of the poem and said that the coming of a child is the most anticipated event. The future depends on the children and what the children are today determines what the world will be tomorrow. Therefore to secure the future of the child there is a need for a juvenile justice system. Justice Vimala stressed on the need to evaluate the approach taken to correct a child for the wrongs he/she commits and how one accuses the child. Justice Vimala stated that act of accusation itself is a wrong approach to take with children.

There are two theories for crime progression. As per the first theory, it is believed that it is an independent decision taken by the mind to commit crime. In order to seek pleasure people commit crime. The second theory is that independent of the control of the mind the crime is also committed. So far as a child concerned the question is that whether a child has an independent mind to think of what is right and what is wrong while deciding to commit a crime. Whether input is given to the child and who gives such input? Mostly it is found that the input is given by adults to the child. The way in which the child is brought up is mainly decided by the parents, thereafter by the school, the education system and then also by the learnings the child derives from the society.

There is a saying that 'children are born through us and not to us'. This provides a justification for the juvenile justice system and answers the question as to whether children should have rights. Children cannot be treated as property and have an

independent mind. Parents' responsibility is to nurture and direct their independent minds.

The necessity to protect child rights has been recognized by many leaders all across the world. Kofi Annan has said that "There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace." It is the duty of each person to ensure that the children's rights are respected and protected, and also to ensure a world and environment that is conducive to the healthy development of children. Justice Vimala also quoted song lyrics which indicate the gaps in understanding the minds of children.

The judiciary is expected to have different approaches to three classes of persons i.e. the persons at the dawn of life (the children), the persons who are in the daylight of life and the persons who are at the shadow of life (the aged). Not treating the categories differently would mean that a failure to understand their distinct problems. When the State fails to understand the needs and concerns of a class or section of society it is to be blamed and not the persons themselves. With changing times come changing concerns and there is a need for a change in the methodology, approach and the attitudes of the people.

Justice Vimala shared her findings on the perusal of the records of the JJBs in Tamil Nadu with reference to the functioning of the JJBs. In some of the JJBs in Tamil Nadu, the magistrates function as regular magistrates and are holding an additional charge of the JJB as well. Possibly due to this factor or due to reasons of overwork or due to the mindset that is already developed, as soon as a JCL is produced, the question asked is whether the juvenile has committed the offence in question as if the juvenile is a criminal and has done this act with full understanding of what is right and wrong and as if the juvenile has a duty to answer the questions put to him by the JJB. The questions that should be asked to the juvenile are 'what is the act done by the juvenile?', 'What are

the reasons that motivate the child to do such an act ?' etc. It must be considered whether the child really understands the term 'offence'.

Another issue is the call for the report of the PO. Invariably the children are sent with their parents with a direction to the PO to monitor the child's behavior for a year or two. This practice is followed in most states. When the magistrates are posted as Presiding Officers of JJBs without any training the approach taken in normal courts is adopted in the JJBs and the juveniles are treated as if they are offenders and ultimately the purpose of the juvenile justice system is defeated. The Juvenile Justice system is different from the criminal justice system and the approach in the juvenile justice system has to be different as well. Children are sensitive and should not be put behind bars. Efforts must be made to correct them.

With the change in the global scenario, society and family relationships have undergone a huge change. Children are exposed to many influences like media, technology. There is no restriction on publication of materials. With working couples there is no one to monitor the child and there is no in-built security for them. In the absence of persons to guide the child in differentiating between what is right and wrong, children are tempted to commit crime.

Justice Vimala addressed the question raised by Mr. Srivastava as to the meaning of the term 'compulsory' in Article 21A of the Constitution of India and said that 'free' means that the parents are not required to pay. But this exists only in the statute books. In reality the parents are required to pay huge amount to provide quality education to their children. 'Compulsory' means that it is compulsory on the part of the parents to send their children for education. The reality is that parents are willing to send their children to schools but they are forced to run from pillar to post and stand in queues outside the schools to get admission for their children.

The current education system is a mere test of the memory skills of a person. The evaluation system is a test of the memorization and reproduction of memorized things. This education system does not help the children but in fact drives the children to commit suicide. The purpose of education should be to teach a child to live a dignified, purposeful and useful life. In such situation, the child cannot be considered as the offender but it is the society that must own responsibility for not providing the necessary requirements to the children.

Justice Vimala quoted Maria Montessori on the topic of the education of children – “Humanity shows itself in all its intellectual splendour during this tender age as the sun shows itself at the dawn, and the flower in the first unfolding of the petals; and we must respect religiously, reverently, these first indications of individuality. If any educational act is to be efficacious, it will be only that which tends to help toward the complete unfolding of this life.”

Justice Vimala also quoted Gabriela Mistral of Chile – “We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait, the child cannot. Right now, is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer tomorrow. His name is today.”

Justice Vimala stated that the care and protection that children are provided falls short of the standards of care and nurture that are expected. The governments at the Centre and the States are not doing enough to provide adequate care and protection to the children. The State is required to provide a child friendly atmosphere, but in reality the Children Homes, Observation Homes and Shelter Homes are worse than jails. If the State is the substitute for the parents and the Observation Homes are a substitute for their parental homes then why do children run away from the observation homes? The crux of the issue is that the system in place is faulty. The issue is when are these faults going to be corrected and whose responsibility it is to correct these faults? The JJBs have



the power to visit all the institutions. Justice Vimala requested the participants to take the initiative to visit the children homes and observation homes and to send reports on them. This is in view of the PIL that has been filed before the Supreme Court of India seeking enforcement of the JJ Act. The writ petition has been admitted and it has been placed before Hon'ble Justice Madan B. Lokur and Hon'ble Justice UU Lalit. The reports have been called from the States and the matter has been posted in July 2015. So it is a fit time to provide the Supreme Court of India with a true picture of the state of the homes under the JJ Act.

Justice Vimala said that the home which is supposed to be the best place for a child is now becoming the worst place because of the broken families. Justice Vimala narrated an incident where a child in a matrimonial dispute had good understanding of the situation and requested that the parents should not be put in the same house together. There is need for counseling of parents and couples who are married or about to be married about interpersonal relations, child rearing etc. Children are being made to suffer on account of the broken marital relations and the inequalities in society. Therefore the juvenile justice system is justified. The issue that needs deliberation is the functioning of the stake holders in the juvenile justice system, i.e. the Magistrate, the Police unit, the members, the social workers and the NGOs.

Justice Vimala concluded by narrating a story published in NY Times in April 2015 titled 'A Boy, a Dog, a Decision' in which a boy who has not been exposed to guns in real life wants a gun to kill a dog. In this story a child wants to take revenge on a stray dog for killing his favourite hen. How did a child grasp the concept of revenge and killing? In the story the parents teach the child to forgive and to understand that good people do bad things but it doesn't mean that the person is bad. From this story the lesson that can be learnt is that the parent's responsibility to direct the child and to provide care and nurture to the child. The stake holders in the Juvenile Justice System need to introspect whether they are providing the required nurture, care and direction

to the children. As *Parens Patriae*, the juvenile justice system must make concerted efforts to correct, direct and teach the child and also learn to forgive the child for the wrongs committed. The juvenile justice system needs to provide individualized justice, i.e. justice, care, protection, rehabilitation and reintegration into society for each child. The ways and means to achieve this individualized justice is the substance that the deliberations in the conference would be based on.

### **Views Expressed by the Participants**

1. The philosophy of the juvenile justice system is preventive, corrective and reformatory. Too much pressure/emphasis is placed on the corrective and reformatory aspects. Why are these objectives taken in abstraction? The objectives need to be emphasized on in equal measure. The preventive aspect need to be taken care of as well.

Justice Vimala – The preventive aspect must be taken care of and the State is expected to do much on that. However, there are several things that need to be taken care of at the family level. There is need for intervention at home and family level. If things are corrected at the family level then there would be no need for a juvenile justice system.

2. Dr. Vidya Shankar shared her experience of working with children. Dr. Vidya recommended that the participants read the book 'Education and Peace' which was written by Maria Montessori at the time of war. The book discussed the impact of war and strife on the children. Dr. Vidya urged the participants to look at the issues discussed from the perspective of the child

## IV

### **SALIENT FEATURES OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) BILL, 2014**

#### **Speaker – Justice Reva Khetrapal**

Justice Khetrapal stated that she did not have much knowledge of the JJ Act and her experience with the juvenile justice system is from cases that she has dealt with. Justice Khetrapal shared her experiences as a judge of dealing with the juvenile justice system and some cases relating to Juvenile Justice which would be food for thought. Justice Khetrapal narrated the Nirbhaya gang rape case which was the catalyst that changed the course of law in India. Justice Khetrapal had handled the Nirbhaya case when it came in appeal before the Delhi High Court. This case brought the debate and discussion on rights of women to the forefront. In this case, one of the persons accused of the gang rape was a juvenile. The facts as narrated by Justice Khetrapal were that the accused in this case had got intoxicated and decided to go around the city in the school bus that one of the accused drove for a living. The accused pretended to ferry passengers and picked up a couple who were returning from the theatre after watching a movie. In the gang rape that followed, Ram Singh and the juvenile were the worst offenders. The point that Justice Khetrapal wanted to highlight from this was that on account of the fact that the juvenile in this case would come under the JJ Act, he would be released in 2015 and would be out free. This juvenile could be a future perpetrator of heinous offences and he has already gotten away with it. The issue that needs consideration in this case was that keeping in mind the nature of the offence, can it be said that the 15 year old boy was a juvenile who did not understand the nature of the crime committed. Should this juvenile have been allowed to get away with this crime? Is this going to set a future trend for commission of offences by the so-called juvenile.

Another issue that needs consideration is whether these juveniles would be used by gangs to commit crimes and to avoid punishment through the juvenile justice system. It is possible that gangsters would pick up juveniles and make them commit crime at their behest with the assurance that they would get a maximum of 3 years in an observation home. What is needed is to understand and gauge the mental status of the juvenile. It is doubted whether all children under the age of 18 years can be considered to have a child-like mind.

The major flaw in the JJ Bill is that children and juvenile have been included in one category. There is a need to differentiate between a child and a juvenile. Furthermore, the Bill does not give any discretion to the court to assess the mental status to understand if the person is mentally mature or not. Puberty is one test to assess if the person is a grown-up, but that is a physical test. The manner in which the crime is committed would also be a test to assess the mental makeup and the maturity. Attendant circumstances in which the crime is committed should also be considered to assess the mental maturity of the person claiming to be a juvenile. It is necessary to have a test to assess the mental makeup of the person. Another concern is that the rights of the victims and their family need to be considered while giving the benefit of juvenility to the offender.

Justice Khetrapal narrated about another case which Justice Khetrapal dealt with as a Special Judge (Narcotics). In this case a person who by appearance itself appeared to be under the age of 18 years was charged for carrying 1 gram of Heroine from one supplier to another and was liable to be punished with imprisonment of 10 years. There was no claim of juvenility from the side of the person. The concern in this case was that a person who was most obviously a child would be put in jail with adult offenders for 10 years. It was most likely that the child would come out from jail as a hardened criminal and a menace for society.

Justice Khetrpal stressed on the need for judges to be attuned to the concerns of children. There is vast difference between the case of a child stealing jewellery and the case of a child stealing medicine from a medical store. Attendant circumstances of the crime should be considered and taken into account while deciding a case. Keeping in mind the attendant circumstances the punishment should also be graded. Another concern with the JJ Bill is that it does not take the attendant circumstances into consideration.

Justice Khetrpal discussed the major differences between the JJ Act and the JJ Bill to highlight the changes that the JJ Bill proposes to make to the existing Juvenile Justice System in India. Firstly, in the JJ Act, the term 'juvenile or child' is defined in Section 2 (k). In the JJ Bill the definition has been bifurcated into 'child' (Section 2(12) of the JJ Bill) and 'child in conflict with law' (Section 2(12) of the JJ Bill). In JJ Act, the definition referred to a 'juvenile in conflict with law' (Section 2(l) of the JJ Act). A distinction has been made in the JJ Bill as they refer to a child in the provisions and not a juvenile or child. Section 2(35) of the JJ Bill defines 'juvenile' as a child below the age of 18 years. The significant achievement of the JJ Bill is that it categorizes a child separately from a juvenile. Justice Khetrpal stated that it is important to treat a child and an adolescent as separate categories.

Secondly, the JJ Bill classifies the offences as petty, serious and heinous on the basis on the punishment prescribed (defined in Section 12 sub clauses 45, 54 and 33 respectively). However, the JJ Bill fails to grade the crime on the basis of the age of the juvenile. The issue that needs to be considered is the mental understanding and awareness of the juvenile about the nature of the crime committed. It may be possible that a child of 10 years age may commit a serious offence without understanding the nature or the consequences of the act. Hence, the attendant circumstances like the child's upbringing, personality, education, the nature of the offence, the impetus

causing the child to commit the offence and the circumstances in which the offence was committed need to be considered. This discretion need to be provided to the judge.

Thirdly, the JJ Bill in Chapter II Section 3(i) which lays down the Principle of the presumption of innocence states that any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years. This provision again takes the age of juvenility back to 18 years. Justice Khetrpal was of the view that the provision could have stated that a child upto the age of 7 -10 years would be presumed innocent and thereafter the culpability would be determined on the basis of the circumstances. This provision takes the presumption of innocence till the age of majority. The other fact alluded to by Justice Khetrpal was the varying ages of majority that exist in the India statutes. There are various ages of majority under the laws dealing with marriage, juvenile justice law, labour law etc. Justice Khetrpal was of the view that a juvenile who commits an offence like the Nirbhaya gang rape cannot be said to be an innocent infant and should not be punished. It cannot be said that at the exact age of 18 years a person becomes mature. There is need for rational gradation of the age and the offences committed by a juvenile.

Justice Khetrpal was of the opinion that though one wants the best for children. However, as Rabindranath Tagore said that you may house their bodies but not their souls. Justice Khetrpal narrated a story of a child who stole in his childhood and gradually became a thief, to stress on the role of parents in directing children. Justice Khetrpal also stated that there are children who despite having good parental guidance end up committing crimes. Justice Khetrpal concluded by the following quote-

O thou, who Man of baser Earth didst make,  
And ev'n with Paradise devised the Snake:  
For all the sin wherewith the Face of Man  
Is blacken'd -- Man's forgiveness give -- and take!

There is a baser instinct in all men as well as a divine instinct. It is the baser instinct in man that needs to be suppressed in children from the time that they are born through guidance and instruction.

### **Views Expressed by the Participants**

1. A participant was of the view that there was an overlap in the classification of offences under the JJ Bill. Serious offences are defined in Section 2 (54) to include the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years. Heinous offences are defined in Section 2 (33) to include the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. It is unclear whether, in the case of offences where the sentence prescribed is seven years, the offence would be a serious offence or a heinous offence. Justice Khetrupal replied that it was merely a means to categorize the offences but serious offences would include offences for which the maximum punishment is seven years.
2. A participant raised the question as to whether a principal magistrate having a background of law would be equipped to judge the mental state and maturity of a juvenile. Khetrupal replied that it is important for the judge to be perceptive and to understand whether he is dealing with a serious offence or a heinous offence. The person judging the case has to be sensitive to the type of person standing before him. What is needed is the application of judicial experience, perception and sensitivity. The needs of children vary from one to the other. Some children need help while some need punishment. The participant raised a further question as to how selection can be made between the juveniles in the same age category and whether this was permissible.

3. A participant raised the question as to what had happened in the past three to four years to warrant a complete overhaul of the existing Juvenile Justice system. The participant also questioned if the crisis could be resolved by increasing the powers of the JJBs. Justice Khetrpal replied that Menaka Gandhi's speech in the Parliament provides the reasoning for the need to change the juvenile justice system. Menaka Gandhi had stated that the crime rate for juveniles between the ages of 16-18 years has increased stupendously over the past years as the juveniles have become wise enough to know that they cannot be punished. The participant further stated that 70% of the offences committed by juveniles are petty offences.
4. A participant expressed his disagreement with the reduction of age of juvenility to 16 years. The experience of the participant was that the juveniles between the ages of 16 to 18 years who come before the JJBs are not psychologically able to comprehend the act they have committed and it cannot be said that they are mentally mature. Justice Khetrpal replied that it was not merely a question of age but was a question of the mental status and the social circumstances of the child. A child may murder a person who he has seen raping his mother and murders the person to save his mother. On the other hand a child commits the thefts for a gang. The cases cannot be said to be on the same footing. There is a need to factor in the various attendant circumstances relating to the commission of the offence.

Another participant shared the statistics of crimes by juveniles in Delhi. He stated that only 3700 cases in the year 2014 came before the JJB. Out of these 3700 cases, a larger proportion of the crime by juveniles is petty theft and heinous offences committed by juveniles amounted to only 10% of the total crimes committed by juveniles.



5. A participant was of the view that to categorize children of the same age group on the basis of their social background would be wrong. It is wrong to differentiate between rich and poor children.
6. Ms. Bharti Ali stated that after 15 years of the enactment of the JJ Act there are thousands of age determination inquiries pending against persons housed in the Tihar Jail. It is most likely that they are juveniles. The NCPCR conducted inspections after receiving frequent reports of transfer of jail inmates to the juvenile justice homes. This is an issue for concern as the juveniles are still being sent to jail with adults.

Ms Bharti Ali also stated that from the evidence and from her interactions with the Magistrates and the juvenile offender in the Nirbhaya case, it was her understanding that there was nothing to show that the juvenile was the worst offender in the case. It was a creation of the media frenzy around this case. Ms Ali was of the opinion that there is a need to avoid deciding cases on the basis of the media frenzy. Furthermore, there is a need to implement restorative justice even in the most heinous offences. Another issue of concern is how should juveniles be held accountable? Should juveniles be held accountable by exposing them to the adult criminal justice system or by strengthening the existing juvenile justice system? Section 15 of the Act provides a series of options to deal with the juvenile in conflict with law. Probation services have not been strengthened and community service measures have not been undertaken. There is not a single place of safety for juveniles except in Delhi. Most of the provisions of the JJ Act are not implemented and rehabilitation measures are not adopted. In the last ten years, only 3 paise out of 100 rupees on the juvenile justice system and other child protection schemes. As a nation, India has spent only 3 paise out of 100 rupees on its children. A participant added that in his experience, 50% of the rape cases involving juveniles are cases of elopement. Justice Khetrpal

added that it is in cases like these that the judicial sensitivity and experience would come into play. Ms. Bharti Ali further added that the neuroscience studies have revealed that mental development continues till the age of 20 years. The frontal cortex develops till the age of 20. Till this development is achieved a person is unable to control his impulses. Hence reducing the age of juvenility under the JJ Bill would be contrary to the neuroscience studies in this regard. Furthermore, if under the JJ Bill we are required to make the assessment of mental status of the child, there are no tools at hand to judge the same. How would the court be competent to assess the mental capacity of the person? This assessment of mental capacity also means that the court has already concluded that the person has committed the crime.

7. A participant shared that in Haryana, a juvenile committed 5 murders using the protection of the JJ Act. In another case, a 17 year old boy committed rape of his cousin of 12 years age. Under the POCSO Act, the boy was arrested but as he was a juvenile he got away with a punishment under the JJ Act. If the same case involved a boy over the age of 18 years the punishment would be much harsher. Under the JJ Act, the responsibility of the juvenile towards the victim cannot be fixed. Justice Khetrapal added that in many cases the victims themselves are juveniles and hence there is a need to maintain a delicate balance between the objectives of the criminal justice system and the rights of children. For this reason, the juvenile justice system must make room for application for judicial sensitivity to the cases and also for graded punishments according to the age and circumstances of the commission of the offence.
8. A participant suggested that the term of the JJB should be enhanced from 3 years to 7 years.
9. A participant suggested that rather than copying definitions from other countries it would be better to define a juvenile according to the understanding and the

situation in India. It was suggested that functional independence should be made as a criteria for majority and the juvenility should be determined on this basis.

10. It was suggested that the juvenile justice system should make provision for penalizing parents and holding them accountable in cases where the children under their care and protection are involved in crimes. There is need for making the parents and guardians accountable for the children.

Mr. Asheem Srivastava concluded the session by thanking Justice Khetrpal for putting the other side of the issue and for providing food for thought. Mr. Srivastava stated that this kind of debate should have been held at the time of the introduction of the JJ Act in the year 2000 and at the time of its amendment in 2006. These laws are based on human psychology and behavioral sciences and the law should come out after much brain storming is done on the subject and the peripheral issues. If this exercise had been done in the past 15 years the situation of the juvenile justice system would have been very different. It must be remembered that there is no single solution for any issue. Any juvenile justice system will have its own challenges and these challenges need to be recognized and resolved.

## V

### **SALIENT FEATURES OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

#### **Speakers – Mr. Ranjit Malhotra and Ms. Bharti Ali**

**Mr. Ranjit Malhotra** - Mr. Ranjit Malhotra discussed the background and the crisis that resulted in the enactment of the POCSO Act in the year 2012. He stated that with the string of rapes of children being reported across the nation and a public outcry raging on the streets like molten lava flowing uncontrolled from a bursting volcano brought the issue of child abuse to the fore. With the social stigma and the lack of awareness on this issue the victimised and abused child hitherto suffered in silence. These children were traumatised, dejected and the family members of such unfortunate victims found themselves helpless, confused and unable to cope up with the heinous crime.

On 22nd May 2012, the Parliament passed the POCSO Act which came into force on 14 November 2012. This special law provided protection to children from offences of sexual assault, sexual harassment & pornography. However, the current situation is that the provisions of this law still remain unimplemented, unknown to most & beyond knowledge/information of those who need to apply it.

The result is that the POCSO Act, which is a necessity in India, where 40 percent of the population is below the age of 18 and where over 53 percent of children reportedly surveyed in 2007 stated that they had experienced one or more forms of sexual abuse, is not complied with despite being on the statute book. Though the public outcry still demands stiff penalties for such crimes, expeditious new laws and fast track courts, it seems to have gone unnoticed that the POCSO Act is a wholesome law that if implemented in its letter and spirit would be a wholesome law to deal with this crisis.

Until recently, various provisions of the IPC were used to deal with sexual offences against children as the law did not make a distinction between an adult and a child. The POCSO Act is a significant step to protect the children as a distinct class as it deals exclusively with sexual offences against persons below age of 18 years.

The major features of this Act are –

- A child has been defined as a person below the age of 18 years.
- The POCSO Act defines “Penetrative sexual assault,” “sexual assault” and “sexual harassment” making the offence aggravated if it is committed by a police officer, public servant, staff member of jail, remand, protection or observation home, staff of a hospital or an educational institution or by a member of the armed or security forces.
- The intent to commit an offence defined under the POCSO Act is also punishable besides abetment or aiding the sexual abuse of a child.
- The POCSO Act also provides for relief and rehabilitation as soon as the complaint is made to the Special Juvenile Police Unit or the local police who are required to make immediate arrangements for care and protection.
- Special emphasis has been provided for trial in special children’s courts with speedy disposal and special procedures to avoid child not seeing accused at time of testifying.

Mr. Malhotra also briefly discussed the child friendly procedure incorporated in the POCSO Act which are–

- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector. Evidence has to be recorded within 30 days.

- No child to be detained in the police station in the night for any reason.
- Police officer to not be in uniform while recording the statement of the child.
- The statement of the child to be recorded as spoken by the child.
- Assistance of an interpreter or translator or an expert as per the need of the child.
- Child not to see accused at the time of testifying. The evidence of the child shall be recorded within a period of 30 days of the cognizance of the offence.
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
- In case the victim is a girl child, the medical examination shall be conducted by a female doctor.
- Child not to be called repeatedly to testify and frequent breaks to be given to the child during the trial.
- No aggressive questioning or character assassination of the child.
- Trial to be in the special court in camera.

Mr. Malhotra stated that despite the POCSO Act directing the Central and State Governments to take measures to give wide publicity through media including television, radio and print media and imparting periodic training to all stake holders on the matters relating to implementation of provisions of the Act, the POCSO Act is relatively unknown.

Mr. Malhotra also discussed the child abuse case of the Apna Ghar Rohtak shelter home in May 2012. In this incident, despite rampant allegations of child sexual abuse of over 100 inmates, the provisions of POCSO were not stated to have been invoked against the accused. It was opined by Mr. Malhotra that most child sex abuse cases are not booked under the POCSO Act and the child sex offenders get away despite a stringent law.

The concerns with regard to the POCSO Act are –

- The Act is relatively unknown.
- Indoctrination, training, familiarisation and actual application by police officers and other stake holders still remains a far cry.

Despite the issues of implementation and publication of this law, the passing of the POCSO Act is a step forward and is significant for a variety of reasons. Firstly, it defines exclusively the crime of sexual offences against children and fulfils the mandatory obligations of India as a signatory to the United Nations Convention on the Rights of The Child, acceded to on December 11, 1992. Secondly, for the purposes of monitoring and implementation of the provisions of POCSO, the Act enjoins that the National Commission and State Commissions for Protection of Child Rights to ensure the effective implementation of the provisions of POCSO.

Mr. Malhotra highlighted the important action taken by the Supreme Court of India in WP(CrI) 102 of 2007 whereby the Supreme Court of India has directed all States are to ensure that the regulatory and monitoring bodies are constituted and made functional. Despite such a mandate given by the Supreme Court of India, till date, the fully functional Commissions are non-existent or effectively non-functional.

Mr. Malhotra discussed a judgment delivered by the Punjab & Haryana High Court on April 9, 2013 in a writ petition - CWP 13137/by the National Commission for Protection of Child Rights. In this case direction has been given to the States of Punjab

and Haryana as well as Union Territory of Chandigarh to ensure, that, State Commissions for Protection of Child Rights should become fully functional by appointing Chairpersons and six members appointed through a transparent selection process. In this judgment the High Court directed mandatory registration of all children homes, constitution and notification of children's courts and appointment of special public prosecutors besides constituting a proper selection committee to make further selections of various committees to be set up for child welfare. Furthermore, in this case a further direction has been issued that the National Commissions and State Commissions shall start discharging their functions under the POCSO Act for implementing its provisions and modules/ training programmes for sensitizing all stake holders on child rights and for dealing with cases in Children's Court be also initiated in all Judicial Academies in the country. Mr. Malhotra was of the view that the impact of this judgment would be to galvanise the entire machinery of monitoring child rights.

Mr. Malhotra discussed the impact of the POCSO Act and quoted the Justice Verma Committee Report wherein one of its conclusions on child sexual abuse the Committee holds "*there is an urgent need to audit the performance of all institutions of governance and law and order. It is indeed necessary that we must now have external social audit for the sake of transparency. We also wish to make it clear that every case of a missing child must be registered as FIR*". The Committee further make suggestions of constituting "*an oversight mechanism*" through the High Court, special training needs programmes, sensitizing officials on sexual abuse of children and strict implementation of various enactments of child laws.

Mr. Malhotra was of the view that that rather than enacting new legislations the efforts and focus need to be on implementing and strengthening the existing laws. In so far child sex abuse is concerned, the POCSO Act is a wholesome law. What is required is



that the Government must make efforts to create the machinery to implement the law and educate its officers besides all stake holders on what the POCSO Act contains.

In conclusion, Mr. Malhotra discussed a laudable step taken by the Chandigarh Police where in a case of child abuse by a school bus conductor, the FIR was also registered against the school and the transport authorities. In his view such action was required to make the school authorities accountable for the care of the children.

### **Views Expressed by the Participants**

1. The provisions of the POCSO Act that relate to the JJBs is limited to the creation of a child-friendly atmosphere in courtroom proceedings. Mr. Malhotra stated that the child friendly procedures would also be relevant to the function of the JJBs.
2. The POCSO Rules state that the court need not look if the case goes into conviction or acquittal. In a case where the case resulted in acquittal and the JJB has recorded a suspicion of commission of offence/occurrence of incident with the child. The victim demands compensation from the State. The difficulty is as to whether the compensation can be awarded. Mr. Malhotra stated that an interim application should be moved in this regard. Justice Khetrapal stated that there is a recent Supreme Court judgment on this issue where the Supreme Court has held that even where the case ends in acquittal, compensation can be granted. So where the commission of offence is doubtful, compensation can be granted.

**Ms. Bharti Ali**

Ms Bharti Ali drew the attention of the participants to the provisions relating to Victim Compensation under the CrPC. As far as compensation is concerned, it is the discretion of the JJB to take suo motu cognisance of whether victim compensation has to be given. The POCSO Courts have the authority to pay more compensation than the amount under the Victim Compensation Scheme of the State. Justice Vimala drew the attention of the participants to Rule 7 of the POCSO Rules - "The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any." Hence, the discretion is given to the Court to give compensation in appropriate cases and not all cases. Justice Khetrpal further added that the sub rule is very clear and states that the court may on its own or on an application filed on behalf of the victim recommend the award of compensation where the case results in conviction or acquittal on the grounds that the accused cannot be traced or is not identified and if the court is of the opinion that the child will suffer loss or injury as a result of the offence.

Ms. Bharti Ali stated that there are certain difficulties in the POCSO Act. The first is the issue of presumption. In the POCSO Act the presumption is that the offence has been committed by the person. The implication of this presumption on the burden of proof for the prosecution needs to be considered. In other statutes the presumption is rebuttable. In cases under the POCSO Act will they prosecution have a role to play in the court or will the role be more for a defence lawyer as there is no need for a prosecution. The implications would be that there would be no need to prove the offence. This situation is also with most cases brought before the JJBs. This would be challenged before the courts in the future.

A participant raised a question as to if after an FIR is registered, the basic merit of the case does not stand and the case remains pending for several years with the social costs

being borne by the child, whether there is any remedy in law for the child. Ms. Bharti Ali replied that there are several judgments where in cases like these compensation has been awarded to the child. The participant raised the concern about false cases against juveniles. Ms. Bharti Ali stated that the POCSO Act deals with false cases as well and the said provision can be used to ensure action against persons instituting false cases against children. A participant shared about a case alleging rape against a 6 year old child. Ms. Bharti Ali clarified that nothing is an offence committed by a child below the age of 7 years.

Another issue that Ms. Bharti Ali highlighted is that as per the definition of penetrative sexual assault, penetration to any extent would constitute sexual assault. There is potential for misuse of this provision.

A participant stated that under Section 357 of the CrPC the duty has been cast on the State to provide compensation to the victims. Ms. Bharti Ali added that under the POCSO Act the court is empowered to go beyond Section 357 and can award more compensation in cases. There are cases where the child victims require medical care. In such cases the court can award compensation to take care of the financial requirements for immediate medical care.

Ms. Bharti Ali stated that the POCSO Act talks about punishment in Section 42 and states that the person found guilty as per the requirements of this Section would be liable to punishment which is greater in degree. Hence, it talks of awarding punishment in the terms of whichever is higher. Ms. Bharti Ali pointed out the difference in the punishments between the IPC and the POCSO Act.

Offence	Section in POCSO Act	Punishment in POCSO Act - Imprisonment	Punishment in POCSO Act - Fine	Punishment in IPC - Imprisonment	Punishment in IPC - Fine
Penetrative Sexual Assault	3 & 4	7 years to life	Mandatory	7 years to life	Mandatory
Aggravated Penetrative Sexual Assault	5 & 6	RI – 10 years to life	Mandatory	<ul style="list-style-type: none"> <li>• If by a person in uniform or authority etc. - RI – 10 years to rest of natural life</li> <li>• Resulting in death or vegetative state/Gang rape: RI – 20 years to rest of natural life</li> <li>• By person in authority: 5 to 10 years</li> <li>• Repeat Offence: Rest of natural life</li> </ul>	Mandatory

Sexual Assault	Section 7 and 8	3 to 5 years	Mandatory	<ul style="list-style-type: none"> <li>• 354 A - Unwanted physical contact and advances: Up to 3 years</li> <li>• 354 B - Assault with intent to disrobe: 3 to 7 years</li> </ul>	Optional  Mandatory
Aggravated Sexual Assault	Section 9 and 10	5 to 7 years	Mandatory	-	-
Sexual Harassment	Section 11 and 12	Up to 3 years	Mandatory	<ul style="list-style-type: none"> <li>• 354 A - Making sexually coloured remarks: Up to 1 year</li> <li>• 354 D - Stalking:</li> <li>• Fist Conviction – Up to 3 years</li> <li>• Second &amp; Subsequent conviction – Up to 5 years</li> <li>• 354 A - Demand for sexual favours or showing pornography: Up to 3 years</li> <li>• 354 C - Voyeurism: First conviction - 1 to 3 years</li> <li>• Second &amp; subsequent conviction – 3 to 7 years</li> </ul>	Optional  Mandatory  Optional  Mandatory

				<ul style="list-style-type: none"> <li>• 509 - Word, gesture, act to outrage modesty: Up to 3 years</li> </ul>	Mandatory
Using Child for Pornography	13 & 14	<p>First Offence: Up to 5 years</p> <p>Subsequent Conviction: Up to 7 years</p> <p>Participating in PSA: 10 years to life</p> <p>Participating in Aggravated PSA: RI for life</p> <p>Participating in Sexual Assault: 6 to 8 years</p> <p>Person participating in Aggravated Sexual Assault: 8 to 10 years</p>	Mandatory	<ul style="list-style-type: none"> <li>• 354 C - Voyeurism: First conviction - 1 to 3 years Second &amp; subsequent conviction – 3 to 7 years</li> </ul>	Mandatory

Storage of CP for Comm.	Section 15	Up to 3 years	Optional		
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The issue that arises is if the offender under this Section is a juvenile will the JJ Act take precedence over the POCSO Act or will the juvenile be liable to be punished as per the terms of Section 42 of the POCSO Act. The participants were of the view that as per Section 4 of the JJ Act, for all matters relating to juveniles the JJ Act will prevail.

Ms. Bharti Ali raised a question as to whether the courts allow arguments at the time of framing of charges. Ms. Ali pointed out that the child has certain rights as specified in the POCSO Act including the right to legal representation. The victim who is a child as per the POCSO Act has certain rights including the right to legal representation and the right to access the documents pertaining to the case. The dilemma that arises is that whether the rights of the child victim can be curtailed or denied to protect the juvenile under the JJ Act. Can the JJB deny access to documents pertaining to the case to a victim under the POCSO Act, in the name of protecting privacy and confidentiality of the juvenile?

Ms. Ali also discussed the judgment of the Delhi High Court in *X v. Govt. Of NCT (MANU/DE/4861/2013)* which lays down the rights of a minor victim. Mr. Malhotra highlighted the fact that the POCSO Act does not define which offences are bailable and which are non-bailable. For this aspect one is required to refer to the CrPC. Ms Ali also stressed on the need to strike a balance between the POCSO Act and the JJ Act. This balance will only come when cases are decided and good practices are established by the JJBs.

Ms. Ali stated that the two finger test in cases of sexual assault has been done away with. The new guidelines by the Ministry of Health and Family Welfare on medical examination of victims of sexual assault ban the two-finger test. In fact, since new provisions talk of penetration to any extent, two-finger test becomes irrelevant. The Supreme Court of India - held in *State of Uttar Pradesh v. Pappu*, (2005) 3 SCC 594, *State of Uttar Pradesh v. Munshi*, (2008) 9 SCC 390, *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421, *Narayanamma v. State of Karnataka*, (1994) 5 SCC 728, and *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421, that the results of the two finger test cannot be used against the prosecutrix and whether the victim is habituated to sexual intercourse is not relevant for the purposes of rape.

Ms. Ali discussed the standards of proof under the POCSO Act. As per the POCSO Act, the testimony of the witness is enough and the presumption is required to be rebutted by the accused. Justice Vimala added that the testimony of the witness is enough provided that it is convincing, probable and satisfying to the judicial conscience. Ms Ali raised a question as to how the testimony of the victim is recorded by the JJBs, what weightage is given to the witness's testimony and how the victim is treated under the JJ Act. Justice Vimala stated that the testimony of the victim is taken at a later stage. The primary focus under the JJ Act inquiry is to the circumstances of the juvenile in conflict with law and the factors and reasons that led him to commit the crime. The question of believing or disbelieving the statement of the witness does not arise under the JJ Act. Ms. Ali stated that if the process of inquiry is not conducted properly, if the procedures established under the POCSO Act are not followed and if the rights of the victim are not kept in mind, this would create a huge problem. Ms. Ali stressed that the JJBs need to be conversant with the procedure specified under the POCSO Act and must apply these procedure in the proceedings of the JJB. Ms. Ali pointed out the procedures that can be applied by the JJBs including –



- Creation of a child friendly atmosphere by allowing a family member, guardian, friend or relative in whom the child has trust to be present in the court. [Sec 33(4)]
- Recording of the statement of the child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.[Sec 36 (2)]
- Non-disclosure of identity of the child except if in the interest of the child [Sec 33 (7)]
- In camera proceedings and in presence of the parents of the child or any other person in whom the child has trust.[Sec 37]
- Examine the child at a place other than the court if the child needs.[Sec 37]
- Permit frequent breaks.[Sec 33 (3)]
- Child not to be called repeatedly to testify in the court.[Sec 33 (5)]
- Dignity of the child to be maintained at all times during the trial. Special Court shall not permit aggressive questioning or character assassination of the child. [Sec 33 (6)]
- Child not to be exposed to the accused at the time of recording of evidence.[Sec 36]
- The Public Prosecutor/counsel for the accused shall communicate the questions during examination, cross-examination or re-examination via Special court. [Sec 33 (2)]
- Assistance of a legal counsel of their choice.[Sec 40]
- Immediate rehabilitation of the child in appropriate cases [Sec 33 (8)]

A participant from West Bengal shared that the judicial officer holds several charges. In the first half of the day the judicial officer completes the magisterial work and in the second half of the day they sit in the JJB. The participant was of the view that if all parties and the social worker members of the JJB are present in the first half of the day, the proceedings of the JJB should be allowed to continue to complete some of the required work of the JJB. Section 5 of the JJ Act states that the JJB can act even in the absence of any member of the JJB and the Principal Magistrate is only required at the time of the final disposal of the case. So, in the absence of the principal magistrate, the members of the JJB can utilize the time to record the evidence and deal with the matters except for the final disposition of the case.

## **VI**

### **GROUP DISCUSSION & PRESENTATION**

On Day 1 of the conference, the participants were involved in group discussions. Each group comprised of about 18 participants. Each group discussion was chaired by a resource person and the proceedings were recorded by a rapporteur. The group discussion was for a duration of 3 hours. Each group was given a theme to discuss and was required to provide their collective views of the issues, concerns, problem areas and bottlenecks in the specified area of juvenile justice. The discussions were guided with a list of identified issues within the theme. The participants were also encouraged to provide constructive suggestions to improve the existing system of juvenile justice in India. On day 2, the groups presented the summary of the discussions and the points identified by the group on the theme of discussion.

### **GROUP 1**

**Theme – Bottlenecks in Effective Functioning of the Juvenile Justice Boards**

**Chair – Hon’ble Justice s. Vimala**

**Rapporteur – Mr. Premoday Khakha**

- a) Is the composition of JJB appropriate and adequate? If not, what shall be the composition?**

The participants expressed the following views –

- There is a need for adequate and appropriately qualified social workers as members of the JJBs. At least one of these members must have a degree in Child Psychology.
- The Members of the JJBs have not been appointed in the States of Rajasthan, Jharkhand, Gujarat and Uttarakhand.
- In order to fill up the posts that are lying vacant in the JJBs, the appointments must be made in anticipation of the vacancy. This would ensure continuous functioning and effective functioning of the JJBs.
- The Selection Committee shall maintain panel of eligible members so that without any delay vacancy can be filled.
- It was recommended that the Principal Magistrate of the JJB should be given exclusive charge of the JJB and should not be given additional responsibilities. This will ensure that their focus would be to the juvenile justice matters and their approach to these cases will be in accordance with the requirements of the JJ Act.

**b) In your view, what is the best qualification/ special knowledge which make the Board Members (including you as Principal Magistrate) competent to deliver the most appropriate orders for juveniles to protect them from delinquency.**

The qualifications of the Principal Magistrate of the JJB should be –

- Five Years working experience as a Judicial Magistrate.
- 1 month training at the time of induction into service for all Judicial Magistrates at Judicial Academy.

The qualifications of the Members of the JJB should be -

- Masters Degree in Social Work or Psychology
- Field knowledge of at least 5 years, and
- Training prior to their posting in the Board.

**c) Do you think that the Social Investigation Report and the deposition of PO are helpful in understanding the factors of delinquency and to decide on rehabilitation alternatives?**

The group was of the opinion that the Social Investigation Report and the deposition of PO are helpful in understanding the factors of delinquency and to decide on rehabilitation alternatives. The Social Investigation report provides a mirror to look into life and circumstances of the juvenile. It provides the background - educational, social, cultural etc of the JCL.

Some participants shared that in some districts in the States of Assam, Odisha and Punjab, the POs have not been engaged or linked with the Board.

The participants shared that in many cases, the report of the PO is useful. But in some cases, report of the PO is repetitive and no investigation has been undertaken by the PO.

The participants were of the opinion that the POs need to be trained.

**d) What are the elements that determine the child friendly environment while holding the proceedings of the Board?**

- Compassionate communication between the Board and juvenile is the first step to make him comfortable in the Board environment. It opens the scope of understanding the individual requirements of the juveniles.
- The participants suggested that there should not be a raised platform in the room where the JJB proceedings are held. This would eliminate the court room appearance and make the environment more child-friendly.
- It was recommended that uniforms should be dispensed with for lawyers, police and judges attending the JJB proceedings.
- The participants shared that the JJ Rules prescribed are not followed in the states of Jharkhand and Uttar Pradesh.
- Procedure adopted by the JJB should be made simple
- Lawyers should not be allowed to set up their chambers in the premises where the JJB sits or even outside.
- The appearance of the JCL is required when eye witness is examined and wherever identity is not under dispute in other presence of JCL may be dispensed with.
- A suitable waiting room should be made available to the juveniles and their relatives/ parents when they are present for the hearing of their matters.

**e) What additional attributes are required to ensure that dispositional order is issued in stipulated four months time?**

- The Principal Magistrate of the JJB should be given exclusive charge of the JJB and should not be given any additional charge.

- There should be separate staff members for JJB including stenographers in sufficient number.
- Timely service of summons/ notices through special juvenile police units is a necessity to ensure quick disposal of matters.
- Exclusive appointment of trained Public Prosecutor to the JJB.
- Frequency of hearing should be enhanced and inquiry should be on a day to day basis.
- Delay in submission of Forensic reports should be avoided.
- No additional charge for the regular police and exclusive special police should be dedicated for JJB matters.

**f) Do you think that there should be a Standard Operating Procedure for juvenile crime investigation? If yes, what shall be the guiding factors?**

The standard operating procedure is recommended only for the purpose of handling the juveniles but standard operating procedure is not required for investigation purpose as every case is unique in its own way.

**g) Will it be useful to have an amicus curie appointed by the Board?**

The Participants were of the view that the amicus curie should be provided in cases where the amicus curie is indispensable or the facts of case warrant the appointment of an amicus.

**h) How does presence of a Women Member - Social Worker influence the proceedings of the Board and in decision making?**

The Participants were of the view that the presence of a women member in the JJB is useful on the proceedings of the JJB as the juveniles feel free to open and discuss their problem with woman members. The Woman Member of the JJB has better understanding and better capability to understand the causes of Juveniles in Conflict with Law and appreciate the circumstances. Thus, their views are helpful in decision making process. They are capable to develop emotional connect with the JCLs

**i) In case of vacation in the Board, which authority deals with the juveniles and whether the Petitions/ applications for Bail or disposition are also heard?**

The participants stated that the juveniles can be produced before any of the Members and they can consider the matter of Bail application during vacation in the Board.

**j) Specify the factors which contribute to delay in the disposition of the cases.**

The factors that contribute to the delay in the disposition of the cases by the JJB are

–

- Lack of infrastructure and manpower
- Support services for rehabilitation are not made available by the State
- Delay in return of services



- Production of materials and objects delayed from the Court where an adult accomplice is tried.
- Delay in submission of the forensic report.

**k) What are the motivating factors that will attract Judicial Officers to opt for JJB on a regular long term basis?**

The factors that will attract the judicial officers to opt for JJB are –

- Introduction of the Point System to the disposal of JJB cases.
- The disadvantage is suffered on accounts of additional charge either on account of distance or on account of less disposal in the original Court should be recognized and adequate remuneration and recognition at the time of promotion and at the time of writing annual confidential report (ACR) should be done.
- Presence of efficient and adequate support staff will be a motivating factor.
- Sense of social fulfilment/ satisfaction is a factor that would draw judicial officers to opt for JJB as they would be contributing to the building of society.

**l) Will it be useful to have e-JJBs? If yes, how?**

- It will be useful to have e-JJBs as delay can be avoided by making inquiry regarding social status of juveniles and also personal production of juvenile can be dispensed with.
- e-JJBs will also facilitate the consultation with experts.

- POs/ JWOs DCPOs can also be consulted through the system of e-JJBs
- e-JJBs will also facilitate the creation of a paperless functioning of the JJBs.

**m) What prevents the Member - Social Workers in conducting monitoring/ inspections of the Homes for juveniles?**

- The participants were of the view that lack of interest and knowledge of the Members is the reason why the members of the JJB do not conduct inspections and monitor the homes for juveniles.
- Another reason cited by the participants was that the remuneration to the members is not paid in time.

**n) There are many States where a large number of cases are pending for many years and the juveniles have become adults. In your view how such cases can be dealt.**

- The participants were of the view that in order to deal with cases of juvenile who have become adults, a liberal use can be made of Rule 13(1A) and 13(7) of the JJ Rules for termination in cases of petty offences.
- The participants also suggested that the examination of formal witnesses can be dispensed with in such cases.
- Another suggestion was that the assistance of special and exclusive juvenile police units will be helpful in speedy completion of the inquiry.

**o) Problems faced in age determination and practical suggestions for overcoming.**

The participants identified the following problems faced in the determination of age of a juvenile by the JJBs -

- Non-availability of document regarding the age determination
- Doubtful report of the Investigating Officer regarding age of Juvenile
- Contradictory documents being produced before the JJBs
- Medical Boards are not constituted to medically determine the age.

The participants suggested the following solutions to overcome the problems faced in determination of age –

- Birth registration of all children with the Registrar's office
- AADHAR registration of all persons including children
- Creation of a data base of children by uploading birth information on the website maintained by DCPU.

## GROUP 2

**Theme – Bottlenecks in Effective Functioning of the Juvenile Justice Boards**

**Chair – Ms. Bharti Ali**

**Rapporteur – Ms. Neha Mam**

**a) Is the composition of JJB appropriate and adequate? If not, what shall be the composition?**

The participants were of the view that the current Composition of the JJBs i.e. 1 Principal Magistrate + 2 Social Worker – Members, is appropriate. The recommendations by the participants to improve the composition and functioning of the JJBs are –

- Principal Magistrates
  - Training for Principal Magistrates is required before joining the JJB. The training should be for minimum 1 to 2 years, which can be extended to 3 years.
  - The Social Welfare Department should create a different cadre of judicial officers for Principal Magistrates, for a period of 3 years.
  - As soon as the Principal Magistrate assumes office, training should be given on child rights and child protection including laws and procedures, child psychology, judgments by Supreme Court and High Courts, aspects of child welfare. The training should be conducted for 1 week after joining. Subsequent refresher trainings should be conducted after every 6 months.

- Members of JJB
  - The JJB should have at least 1 woman social worker as a Member. Members should be selected from different professions.
  - The qualification of the members should be Post-Graduates, preferably from social science disciplines or Graduates where qualified PGs aspirants are not available.
  - Age: 35 to 65 years.
  - Experience: 7 years, essentially on child related issues.
  - The members should be appointed for a tenure of 5 years.
  - The Members of the JJB should have similar entitlements as Principal Magistrates, e.g. travel allowance, facility of car, etc.
  - The honorarium given to the Members of the JJBs should be decent amount. Should be given on per sitting basis plus travel allowance.
  - Social Worker Member should also undergo trainings concerning criminal and social justice system.
- Number of sittings should be in proportion to the number of cases before the JJB.
- Dedicated team of legal aid lawyers should be attached to the JJB from SLSA (exclusive empanelment) for conducting inquiry and providing legal aid.
- Extension of tenure by way of performance appraisal and appraisal format should be provided in the Rules.

- b) In your view, what is the best qualification/ special knowledge which make the Board Members (including you as Principal Magistrate) competent to deliver the most appropriate orders for juveniles to protect them from delinquency.**

The participants were of the view that the issue had already been addressed in the discussion to Issue 1. The participants were also of the view that

The best qualification which the Board Members should have to deliver the most appropriate orders is that they should be post-graduates preferably from social science disciplines. Furthermore, the members should be given training as soon as they assume office on child rights and child protection including laws and procedures, child psychology, judgments by Supreme Court and High Courts, aspects of child welfare.

- c) Do you think that the Social Investigation Report and the deposition of PO are helpful in understanding the factors of delinquency and to decide on rehabilitation alternatives?**

- Generally the Social Investigation Report is reliable but quality can be improved with having trained POs.
- POs should also have refresher courses from them. Must receive travel allowance(s) for the travel within their district. If the family is in another district, Social Investigation Report should be obtained from the POs of another district.
- POs should not be given any other tasks. They should also receive training.
- The number of cases per PO should be fixed. Ideally it should be 20-30 cases per PO per month.

**d) What are the elements that determine the child friendly environment while holding the proceedings of the Board?**

The participants were of the view that the integrated efforts by all the stakeholders including the concerned Government Department would help to create a child friendly environment. The major actions that can be taken to create a child friendly premises of the JJB are –

- Setting up of a JJ Cell in every police station.
- JJB should not be in a court complex. System of elevated platform/dais should not be there. There should be a normal/ordinary interaction oriented seating arrangement.
- Separate waiting and counselling rooms for juveniles.
- Washroom and drinking facilities should be made available.
- Ramp facilities for persons with disabilities. Procedure of JJ Act should be in compliance with the provisions of Persons with Disabilities Act. Provision of interpreters also to be made available.
- Judgments related to juveniles should not be uploaded on the official websites of the Board and Courts.

**e) What additional attributes are required to ensure that dispositional order is issued in stipulated four months time?**

The Participants made the following suggestions to ensure that the dispositional order is issued in the stipulated time -

- The procedure should be well defined. Clear guidelines for the process of inquiry to be done by the JJB should be specified.
- Efforts to ensure transparency between the principal magistrates and the members with respect cases and other official records.
- Efforts for compounding of an offence should be made after using tools of mediation in cases of petty offences.
- Where age inquiry is required, final report/police investigation report (chargesheet) should be filed in ideally 2 months time to be provided for filing the final report/police investigation report (chargesheet).
- Where age inquiry is not required, it should be filed within 1 month from the date of production/surrender before the JJB.
- Preferential treatment should be given to juvenile related inquiry and challans by the police.

**f) Do you think that there should be a SOP for juvenile crime investigation? If yes, what shall be the guiding factors?**

- There should be clear guidelines on how JJB should conduct an inquiry. There are many confusions and delay is caused because of summary nature of proceedings (specifying time as 4 months), adversarial proceedings, etc. Specified manner in which inquiry is to be conducted.
- The participants suggested that a central server should be created to procure information through various stakeholders, by the JJB and other agencies.



- The procedures of Cr.P.C. which relate to the cases before the JJBs should be shortened.
- Clear distinct procedure needs to be specified for juvenile cases.
- Proper system of maintaining official files and records by all the departments, including judiciary and that should be accessible to all the members of the Board.

**g) Will it be useful to have an amicus curie appointed by the Board?**

The participants were of the view that a legal aid lawyer to represent the juvenile would be more suitable than an amicus. If it is not possible to have a dedicated legal aid unit attached to the JJB, then amicus can be appointed.

**h) How does presence of a Women Member - Social Worker influence the proceedings of the Board and in decision making?**

The participants were of the view that the women members of the JJB help in counselling the child and the family. The women members also assist in recording evidence in child abuse cases under the POCSO Act. Children open up more freely in front of women members. It was also suggested that the opinion of members should be incorporated separately in the orders.

**i) In case of vacation in the Board, which authority deals with the juveniles and whether the Petitions/ applications for Bail or disposition are also heard?**

The participants stated that in case of the vacation of the JJB, the procedure of evidence continues in the absence of Principal Magistrates. The Members pass orders and the Principal Magistrates are necessary only for final disposition order.

**j) Specify the factors which contribute to delay in the disposition of the cases.**

The factors that contribute to delay in the disposition of the cases are –

- The official communication is mainly restricted to the Principal Magistrates only.
- There is no specific inquiry process in cases of juveniles in conflict with law.
- The Principal Magistrates give less focus and concentration to the cases of the JJB because he/she is given many additional charges.
- Delay is also caused due to zero travel arrangements.
- The age verification process consumes time.
- There is no provision of issuing notice to the parents of the juvenile(s).

**k) What are the motivating factors that will attract Judicial Officers to opt for JJB on a regular long term basis?**

The participants were of the view that decent honorarium, adequate travel allowance, requisite staff and a specified inquiry procedure would be motivating factors for judicial officers to opt for JJB on a regular long term basis.

**l) Will it be useful to have e-JJBs? If yes, how?**

The participant opined that e-JJBs would be useful and will save time and monetary resources. It will be especially useful in cases where commuting is a problem.

**m) What prevents the Member - Social Workers in conducting monitoring/ inspections of the Homes for juveniles?**

The following factors prevent the Member-Social Workers in conducting inspections of the Homes for the Juveniles -

- Travel expenses and honorarium.
- Lack of interest.
- It should be clear as to where the reports are to be given and who is accountable for taking action. This should be spelt out in the Rules clearly.

**n) There are many States where a large number of cases are pending for many years and the juveniles have become adults. In your view how such cases can be dealt.**

The cases where the juveniles have become adults can be dealt with by –

- Using Rule 13 (7) JJ Rules to terminate proceedings where it is a petty offence.
- In other cases, the person can be released using the options under Section 15 of the JJ Act.

- Methods like group counselling, community service, talking to the victim and attempting to close the proceedings mutually (in cases of heinous offence), etc.

**o) Problems faced in age determination and practical suggestions for overcoming.**

- The participants were of the opinion that the determination of age should be done using latest technology apart from the regular ossification test.
- The participants also suggested that the implementation of the directions given W.P. (C) No. 8889/2011 DHC matter. (*Court on its Own Motion v. Dept. of Women & Child Development - Jail visit matter*) wherein detailed guidelines are given for medical boards, DLSA, NCPCR, and other stakeholders should be done.
- Further investigation to be done only if required for verification of the age proof document.
- A problem faced by the JJBs which hinder the proceeding is the lack of staff/ helpers in the Board

## GROUP 3

**Theme - Factors that determine orders under section 15 of the JJ Act.**

**Chair – Ms. Mohua Nigudkar**

**Rapporteur – Mr. JB Oli**

### **a) What is the current status of application of section 15?**

The participants were of the view that the effectiveness of orders under Section 15 depends upon other factors such as role and functioning of authorities for implementation of the orders of the JJB.

The participants shared instances where the other systems for example the DCPUs are not fully functioning everywhere. In some places the JJB is not constituted to its full strength. Furthermore, the probation system is not linked with JJB. Such circumstances hinder proper compliances of orders.

The participants were also of the view that the application of a particular section of the JJ Act cannot be linked with the offence only and other circumstances also have to be taken in to consideration.

### **b) The current status of application of provisions under section 15 of the JJ Act**

- i. **Section 15 (a) (allowing the juvenile to go home)** - This section is applied in cases of negligent driving or if the offence is under Section 294 (b) of the Indian Penal Code. Section 15(a) is not applied if it is found that the offence committed under influence of the parents.

- ii. **Section 15 (b)(Group counseling)** - This section is applied in most cases where the JCL and the parents of the said Juvenile are present before the JJB.
- iii. **Section 15 (c) (Community services)**- This section is applied by the JJBs to involve the Juvenile in conflict with law in community services like working for traffic regulation at signals, working at homes for elderly and providing coaching to underprivileged children under supervision of NGOs.

In cases where the Juvenile in Conflict with law is ordered to do community service, supervision is required after such order for community services. Therefore, the final order includes supervision by NGO/DCPU/PO. The Board obtains weekly supervision report. In case the orders are not complied, notice can be issued to the reporting authority.

- iv. **15(d) (Payment of Fine)** – The orders under this Section are based on the social and economic condition of the parents. In some cases the parents also find it convenient to pay the fine. In case the JCL is above the age of 14 and is earning money, the JJBs make the JCL pay the fine. In some cases, the JCLs themselves volunteer to pay the fine. Section 15(d) is also used in petty cases or in case the JCL is already a major on the date of order.
- v. **Section 15(e) (Probation of Good Conduct)** – This section is applied in cases where the JCL is first time offender or is a school dropout. In such cases, the JJBs seek the social background report/monitoring report from PO and pass orders on the basis of report. A register of cases under Section 15 is maintained for post order supervision, record, control. Section 15(e) is also used in cases of allegations of outraging the modesty of a woman.

- vi. **15(f) (Placing juvenile under the care of fit institution)** – This section is not applied as no fit institution exist. In the state of Tamil Nadu, teachers are recognized as fit persons under this provision.
- vii. **15(g) (Sending Juvenile to Special Home)** – This section is used in case of repeat offenders, including the repeat offenders involved even in petty offences. The section is also used in cases where the child himself is willing to stay in the institution or if the child needs special attention for example the child needs de-addiction treatment.

**c) At what stage does the application of Section 15 begin?**

The application of section 15 should begin from the time when the juvenile is apprehended and produced before the JJB (as the process of rehabilitation begins from there).

These provisions are sufficient to ensure process/procedure, interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child and no need to make amendments.

**d) Requirements for effective implementation of the provision of Section 15 of the Act**

The requirements for effective implementation of the provisions of Section 15 are–

- The attitude of the implementing authorities of the order (POs, JWO, JJB, CCI functionaries and others) needs to be changed.
- There is need to appoint dedicated fulltime POs, counselors, and typist for JJBs for effective implementation of the order.

- DCPUs need to be set up properly and should be made fully functional as envisaged under Section 62 of the JJ Act.
- Differences in the opinion of the members of the JJB should also be recorded.
- The minimum number of days of sitting of the JJB should be strictly followed by the members.
- Better coordination must be achieved among JJBs within each State and also from one State to another.
- For better compliance of the orders, a monthly coordination meeting should be organized by the JJB with the District Child Protection Unit.

**e) Are the options prescribed u/s 15 relevant and practical in view of the legislative intent of the JJ Act? (E.g. child friendly approach, in the best interest of the child and for ultimately rehabilitation of children)?**

The options prescribed under Section 15 are relevant, practical and applicable provided that all stakeholders fully comply with their mandate.

**f) Which is the best option in order of priority and why?**

The orders are based on fact and circumstances and are different from one case to another. The offence/charges are not the only criterion for deciding the sub sections u/s 15. Many other factors need to be taken into consideration along with offence charge such as age, sex of the child, family background, circumstances, special situations etc

**g) Factors that are considered while making orders**

The factors that are considered by the JJBs while making orders are –



- Economic condition of the family of the child
- Health of the child
- Disability of the child or in the family of child
- Social status of family
- Scope of social reintegration/mainstream
- Future opportunities for education including skill development/vocational training
- Future plans (employment)
- Record of previous offences, if any

**h) What are the real issues that affect social reintegration of a child after dispositional order?**

The issues that impact social reintegration of a child are –

- The attitude and condition of the family
- Attitude of the society in reaccepting such children
- Attitude of the functionaries
- Lack of clarity of rehabilitation
- Non acceptance by schools and other authorities
- Resources (Material and human) available to the child

**i) What other option should be available in place of directing the juvenile to be sent to special home?**

Fit institutions, place of safety or institution in other district should be made available as an option in place of directing the juvenile to be sent to a special home.

It is the experience of the participants that it is very challenging to enlist the help of the family and community in the rehabilitation of the child.

**j) What are your suggestions for providing individualized assessments to rehabilitate and prevent further delinquent behavior of the juvenile?**

The participants made the following suggestions for providing individualised assessments of juveniles –

- Professional counselling from experts having special knowledge of child psychology and child mental health should be available.
- Regular interaction and communication follow up with the juvenile and family by JJB and all other associated with the case of juvenile.
- Networking with institutions providing skill development courses as per the interest and aptitude of the child. JJB may have list of such institutions and pass order for enrolment of the child in such institutions.
- Quality care in the Child Care Institution with the Juvenile Justice System.
- Disposal order should include individual care plan and including admission in school.
- Disposal order should include 'No disqualification' either during the trial or after the final order although there is no specific provision that during the trial



## **GROUP 4**

**Theme – Functioning and Efficacy of Various Stakeholders in the Juvenile Justice System in India**

**Chair – Justice Dalip Singh**

**Rapporteur – Ms. Nidhi Sharma**

**a) Do you think that an additional JJB is required in your District for expeditious disposal of cases?**

The Participants were of the view that additional JJBs are required in some districts as there is high pendency of cases. Furthermore it was suggested that the ideal number of cases given to the Board on daily bases should be around 10. The Principal Magistrate should be given exclusive charge and the Social Members should be appointed for full time.

**b) Will it be useful to have e-JJBs?**

E-JJBs can be initiated as a pilot project as it may help in the speedy disposal of cases. However, e-JJBs may have some limitations such as it will lack the personal interaction comfort for both the Board and the juvenile.

**c) Any suggestions for making a child friendly JJB?**

- The participants were of the opinion that there is need for child friendly language, proceedings, and ambience. The JJB premises can be beautified and made

appealing to the children by putting up some good thoughts/sayings on the walls to inspire and give positive environment .The juveniles can also be provided facilities to draw/ sketch and can be provided with some chocolates/candies.

- Sitting arrangements should be changed. There should be no dais and the proceeding should preferably be conducted on a round table system between the child and the Board.
- The participants suggested that the monthly allowance for maintenance of JJBs should be increased.
- The participants also recommended the appointment of full time counsellor/psychologist and that the ICPS scheme can be fully utilised in this regard.

**d) Whether do you comply with the principles and provisions of JJ Act while granting bails?**

The participants stated that they comply with the principles and provisions of the JJ Act while granting bails. The juveniles are informed about their right of bail and legal aid, etc. The principles contained in Sec.12 of JJ Act are considered while granting bail. Furthermore, the circumstances are considered and not nature and gravity of offence is considered while granting bail.

**e) Do POs functions independently or hold additional charge?**

The participants stated that the POs do hold additional charge though they should not be holding additional charge. This additional responsibility affects the quality of

reports and also timely reports. The individual care plans are not properly prepared and sometimes even not annexed. Follow up after probation is not properly carried out/not at all carried out in some cases. Therefore, it was suggested that the State Government should appoint exclusive POs for JJBs.

**f) Whether any delay is caused by police in serving of summons while dealing with juvenile cases?**

The Participants were of the opinion that there is delay caused by police in most of the cases. To combat this there should be separate system/mechanism for service of summons/notices. It was the experience of the participants that sometimes reports/notices are not properly made and served. In this regard, it was suggested that the summons/notices should be sent through courier/ emails or telephone.

**g) Are JWOs adequately trained to deal with juvenile delinquents' cases?**

It is the opinion of the participants that in most of the cases JWOs are not adequately trained or even possess proper understanding of child laws. Furthermore, they are given additional charges.

It was suggested by the participants that the police officers should be sensitized and given trainings. It was also suggested that the police officers be given exclusive charge in their police stations as JWOs and should not be over burdened.

**h) Whether the Public Prosecutors with required knowledge, skills and training are timely available?**

The participants suggested that the State should appoint exclusive Prosecutors for JJBs. Training must be provided to them to deal with such cases and they should possess good understanding of child laws and child psychology. In this regard the Directorate of Prosecution should be addressed by the concerned State Judicial Academy's to conduct exclusive training for them.

**i) Do you think that paid Social members in SJPU are effective in preventing juvenile crimes?**

The members in the SJPU are not available at every place. Hence, considering the same it is difficult to say that it will be effective to prevent the juvenile crimes. In Tamil Nadu the Juvenile Aid Police Unit functions but they feel that they are only posted to deal with the Children in need of care and protection like going to the railway stations to pick up the roaming children and begging children. They are not aware of the fact that the child welfare officers attached to the police stations are a member of the Juvenile Aid Police Unit.

The participants shared that trainings have been conducted by the JJB by addressing the COP. It had become ineffective because it was found that CWO were not sent but some police who are grade I and I Police constables were sent to show some crowd. Therefore, the intervention of the Juvenile Justice Committee and the Judicial Academy would serve the purpose.

**j) Does the SJPU prepare the list of juveniles in conflict with law in consultation with NGOs, Panchayat, Gram Sabhas or Resident Welfare Association?**

The participants stated that the SJPU do not prepare the list of juveniles in conflict with law in consultation with NGOs, Panchayat, Gram Sabhas or Resident Welfare Association

**k) How can the performance of SJPU be enhanced to prevent Juvenile crimes and improve the Handling of juveniles**

The participants were of the opinion that the SJPU do not work as a unit or as team; they work individually (only one person is given a charge as SJPU). Therefore, it was suggested that there should be a unit/team in every police station to deal with the cases of juveniles in conflict with law. It was also suggested that the SJPU should be properly trained/ sensitized to deal with such cases.

**l) How the ideal Individual Care Plans should be?**

The Individual Care Plan should be made from the day child is sent to the observation home or granted bail, upto maximum of 1 year or till his rehabilitation (*whichever is later*). It should be followed up by the PO/DCPU on regular intervals; PO/DCPU shall be trained to prepare the individual care plan and to give follow up reports. Services of NGO can be taken to prepare the Individual Care Plan.

**m) Whether the findings of Social Investigation Report are accurate. (For example how does PO arrive at finding in respect to emotional factors, intelligence, etc.)**

The Social Investigation Reports are neither accurate nor proper, as it requires the PO to visit the home of juvenile to gather the accurate information. But, what PO do is they just provide information in it by interviewing. It has also been seen in



some cases that POs have demand money from the parents of juvenile to prepare the Social Investigation Report.

**n) Shall the Social Investigation Report be modified to have an accurate assessment of the juvenile?**

Some additional things can be incorporated to make it more workable for example family values, emotional bonding of family members, ambition of juvenile, positive traits/ skills of the juvenile should be highlighted, written documents of pradhan, neighbour, school that the PO has contacted must be provided to give report authenticity.

**o) Does it require time to make Social Investigation Report?**

Social Investigation Reports require time to make because field visit have to be done by the PO, but the same should be done and submitted before the Board within the time frame of 1 or 2 weeks.

**p) The general impression is that the Social Investigation Report is prepared by PO in a casual manner. How can we improve the quality of Social Investigation Report?**

The accuracy of Social Investigation Report can be improved by

- Providing the name of source, from where the information was gathered, in the report;

- The module should be prepared/trained by experts coming from psycho- social background;
- The positive traits/skills of the juvenile should be highlighted.

The timeliness of the submission of the Social Investigation Report can be assured by fixation of a time limit of 1 or 2 weeks.

Furthermore, the POs are not adequately paid conveyance allowance for field visits and others by the State Government. They should be given allowances for same.

**q) Similarly, how can the performance of JWO be improved**

- The accuracy of Social Background Report can be improved by ensuring that the said report is done immediately at the time of apprehension of juvenile.
- The timeliness can be improved by requiring the Social Background Report to be submitted at the time of first production of juvenile before the Board
- The PO should inform parents at the time of apprehension;
- Police stations must be provided with the printed necessary forms for intimation of parents.

**r) Some other relevant issues discussed**

- The participants were of the opinion that that the stakeholders in the Juvenile Justice System in India have failed to implement the JJAct. Failure of all stakeholders in implementation of JJ Act

- It was also felt that there was need for sensitisation and imparting training to all the stakeholders.
- Another issue raised was there are no identified places of safety under the JJ Act.
- The Observation and children home run in same premises and nothing has been done in many cases by the Government to separate them.
- It was suggested that the Government take initiative to declare the NGOs as fit institutions under the JJ Act.
- It was also expressed that no Rehabilitation/Reformation Plans are being made as required under the JJ Act and Rules
- It was suggested that while granting bail, certain conditions shall be imposed such as that the juvenile should attend the school or shall take some vocational training, etc.
- It was also recommended that individual attention shall be given to each and every individual juvenile by the Board and other stakeholders.
- It was suggested that the observation homes should be privatised.
- Efforts should be made to liaison with Corporates for providing vocational training to juveniles for skill development and enhancement
- There is a need to create awareness of the fact that the juveniles in conflict with law are not criminals per se but, are themselves victim of crime.

## GROUP 5

**Theme – Management of Institutions**

**Chair- Dr. Vidya Shankar**

**Rapporteur – Mr. Dhani Ram**

### **a) Whether Additional JJB is required in your District?**

- It was shared by the participants that there is no JJB in the State of Jammu & Kashmir.
- In most of the Boards across the country, there is only one/three sitting(s) in a week.
- There is no dedicated support staff in some JJBs.
- The participants suggested that more sittings of the JJB should be held in a week to clear the pendency of cases.

### **b) Do you think that e-JJB can replace existing JJB?**

The participants recommended that the existing system should continue with adequate support staff. The staff should include Stenographer/Clerk, 4 Constables, dedicated PO and trained JWO). The participants also shared that the Boards in Jammu & Kashmir, Himachal Pradesh and Bihar (Kaimur) are functioning from the court's premises, which is in clear violation of JJ Act, 2000.

### **c) Whether girls who committed heinous crimes should be kept in observation Home?**

The participants recommended that girls should be sent to parental/guardian home on probation. In case of non-availability of the parental or guardian, some other alternative should be considered.

The participants stated that in most of the Districts of Uttar Pradesh, Himachal Pradesh and Chhattisgarh, the districts do not have an observation home. In such situations the juveniles are sent to homes of adjoining Districts.

**d) Whether Social Investigation Report is made in casual manner?**

In the group it was found that only three JJBs have exclusive POs while nine JJBs do not have POs. It was also the view of the participants that the Social Investigation Reports were not up to the mark. Furthermore, the Social Investigation Reports are not submitted in time.

**e) How can we improve the transparency in the functioning of Observation Homes?**

In the discussion, it was found that except Manipur, the JJBs and the Observation Homes did not have any networking facilities due to various reasons including non-availability of I.T. facilities and regular supply of electricity. Therefore, there was no transparency in the functioning. The participants recommended that frequent Regional Meet should be organized where JJB, CWC, JWO and PO can share their knowledge and data.

**f) Please suggest a workable daily routine.**

The participants recommended that the following activities like yoga, prayer, music, sports and library facility should be included in the daily routine of the Observation/Special Homes.

**g) Whether the concept of Observation Homes / Special Homes has succeeded in reforming the child / making him a good human being?**

The participants were of the view that the Observation/Special Homes have not succeeded in reforming the child/making him a good human being. In order to be more successful, the JJ Act should be implemented effectively. The participants recommended that job oriented training like computer hardware & mobile mechanics, based on individual care plan should be provided to juveniles.

#### **h) Other Issues Discussed**

- The participants suggested that the JJBs should be provided Rs 1.00 lakh per year to meet the contingency expenditure.
- It was also suggested the efforts should be taken to sensitize the Social Workers, JWO and the public on issues relating to children to make the Juvenile Justice System more effective.

A participant shared his experiences of inspecting the institutions for juveniles and the actions that can be taken by JJBs to ensure proper management of these institutions.

## VII

### PANEL DISCUSSION

**Speakers – Mr. Ranjit Malhotra, Mr. Anant Asthana and Ms. Bharti Ali**

**Ms. Bharti Ali** - Ms. Bharti Ali commenced the discussions by stating that the JJBs are empowered and can take several steps to ensure proper management of the juvenile justice institutions. The JJBs can intervene in several aspects from the institutions to the police and so on. In order to undertake such actions, the support of the District Magistrate is needed. There is need to bridge that gap, and the link between the District Magistrate and the JJBs must be established. Ms. Ali also raised the question whether the juvenile justice institutions have a daily routine as required under Rule 43 of the JJ Rules and urged the JJBs, in their supervision of the institutions, to ensure the adoption of a daily routine in the institutions. Ms. Ali suggested that the JJBs before undertaking inspections should make a list of requirements under the JJ Rules and ensure that these requirements are fulfilled by the institutions. The JJBs should make this as a checklist during inspections and require the institutions to submit a monthly report as to the fulfillment of the requirements.

The next issue raised by Ms. Ali was that very few institutions have a home management committee. Ms. Ali stated that this indicated that the JJBs are not monitoring the institutions effectively. The JJBs are not required to be present in person everyday but can require the constitution of a home management committee to look after the management of the institution. The JJ Rules also prescribe for a Children's Committee. However, they are not set up and there is need to monitor these committees to ensure that it does not create a gang within the institution. There is need for fostering responsibility in the children placed in these institutions. They must develop ownership

and responsibility for the institution and their views must be taken. They must be constructively engaged in the institution. Ms. Ali also suggested that rather than placing the female juveniles in Nari Niketans, there should be residential schools set up for girls like Kasturba Schools. There is also a need to contemplate on how Section 15(f) (releasing the juvenile on probation of good conduct and placing under the care of a parent, guardian or a fit person) is applied. The provision should be used to ensure that the child is placed in an environment that is conducive to the positive development of the child and where the parent or institution can be accountable for the development and well being of the child. There are several monitoring mechanisms provided under the JJ Act and the JJ Rules. However, too many monitoring agencies create more confusion and it is best if, as prescribed in Rule 10 of the JJ Rules, the JJB in addition to judicial work also undertake the monitoring of institutions for juveniles and to seek compliance from the institutions in cases of lapses.

**Mr. Ranjit Malhotra** - Mr. Malhotra dwelt on the working of the juvenile justice system in India and made suggestion to improve the efficacy of the JJ Act and the POCSO Act. Firstly he stressed on the need to create awareness about the provisions of law especially the JJ Act and the POCSO Act. Sensitization of the public and creation of mass awareness as to the existence of the JJ Act especially percolating to the grass root level; will be the biggest challenge in a vast country like India. In his view, the awareness of JJ Act and the POCSO Act should become as popular the provisions of the Preconception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. There is also a great need for training to the police authorities, especially in police stations on the provisions of the JJ Act and the POCSO Act.

On a policy level and on institutional basis, there should be a central level agency to be the centre point in the implementation of the JJ Act so as to facilitate the collective responsibility of Government stake holders. The Government of India should provide for setting up of a nodal agency comprising of representatives of various Ministries i.e.



Ministry of Women and Child Development, Law Ministry, Legal and Treaties Division and from the National Commission for Women, National Commission for the Protection of Child Rights and Indian Council of Medical Research who should monitor the working of JJ Act, and submit reports to the Government of India with a view to further enhancing the effective and efficacious working of the said legislation. Furthermore, the juvenile justice system in order to be successful needs to reorient itself to look at reformatory justice rather than punitive justice. One such good example in this regard is the way the CARA Guidelines that have been monitored and substantially modified from time to time, which were in fact born pursuant to the directions laid down by the Hon'ble Supreme Court of India in the case of Laxmi Kant Pandey in 1986. Mr. Malhotra also stated that there is a need in such cases for mutual international co-operation with bodies like the Hague conference on Private International Law. In his opinion, collaboration/deliberation with international member States on issues regarding children can always be meaningful.

Mr. Malhotra was of the view that the Concept of locus standi should be given a broad and sweeping interpretation by the Hon'ble Courts with a view to a positive meaningful recourse to aggrieved persons, rather than a narrow technical restrictive interpretation, much to the disadvantage of aggrieved victims. Positive meaningful third party intervention in favour of aggrieved juveniles should be allowed so as to further and promote the concept of reformatory justice.

Mr. Malhotra also stated that in order to achieve the purposes of the JJ Act, there should be fast track time bound adjudication of all JJ Act / POCSO complaints. Mr. Malhotra also stated that there should be separate additional provisions for select accredited volunteer groups to conduct regular inspections on Juveniles especially with regard to living conditions, protocols etc.

Mr. Malhotra suggested that similar to the judges designated by High Courts to exercise supervisory administrative control over various allocated districts, there should be a

designated JJ Act / POCSO Judge additionally on the administrative to oversee the overall working of the JJ Board and the State Commission for Protection of Child Rights constituted under Section 17 of the Commission for Protection of Child Rights Act, 2005.

The authorities under the Legal Services Authorities Act, 1987, should have an exclusive separate dedicated fast track cell for aggrieved JJ Board / POCSO victims, their parents, members of the immediate and extended family for providing legal aid, assistance especially to the weaker sections of the society and where members of the public are handicapped for want of financial resources and/or otherwise.

Mr. Malhotra stated that the JJ Act and the POCSO Act should have extra territorial application to deal with cases involving persons residing outside India. He also stated that in respect of matters under the JJ Act and the POCSO Act involving persons who residing outside India, the foreign missions in India should not be allowed to use the plea of Data Protection legislation to obstruct, thwart or stall the enquiry process. Furthermore, on an institutional basis, the JJBs along with the National Commission for Women, NCPCR and state level authorities should also be empowered and authorized to correspond, liaise and coordinate with foreign missions so as to take to task offenders resident and domiciled overseas.

**Mr. Anant Asthana** – Mr. Asthana dwelt on the status of the juvenile justice system in India and the reasons for the current situation. Mr. Asthana stated that lack of funds cannot be cited as a reason for the non-implementation of the JJ Act. There are many instances where the funds have lapsed on account of non-utilization. There is studious lack of implementation by the government in many sectors including child related institutions, medial institutions etc. Government hospitals across the country are not up to the mark. Similarly the government educational institutions leave much to be desired. As a result, there is heavy privatization in these sectors. Many of the essential functions of the government like provision of educational facilities, medical health etc are privatized. The State is gradually withdrawing very subtly from its obligations of

social welfare. This is happening not only in India but also in other countries. Despite many directions from the courts the JJ Act largely remains unimplemented.

In the Supreme Court judgment on missing children (*Bachpan Bachao Aandolan v. Union of India*), Justice Kabir has stated that inspite of the fact that the problem of missing children has risen to such great proportions; there is no state response to the crisis. The State's response was so poor that in this case the officers of the State did not appear before the Supreme Court until they were summoned. There is a huge crisis because the laws are not being implemented.

Mr. Asthana stated that in the past 5 years the engagement of the JJ Act has gone very deep. 5 years ago, there was not much public knowledge and awareness as to the provision of the JJ Act. Now matters have gone beyond the stage of sensitization. However, there still much to be accomplished in bringing the juvenile justice system upto the mark.

The question that arises is who is to undertake the responsibility of implementing the JJ Act. Mr. Asthana stated that the responsibility needs to be taken as those who have been given authority under the JJ Act to act in various capacities must exercise that authority to achieve the objectives of the JJ Act. Every agency that is involved in the juvenile justice system must play its role in accordance with the provisions of law.

Mr. Asthana quoted from a book on the Australian juvenile justice system which says that the quality of justice which is to be delivered in children's legislation though may be administered by a lower court but the quality of justice must be of highest standard. Rule 10 of the JJ Rules gives to the JJBs the same powers that are given to a High Court. The JJBs are the most empowered authority under the JJ Act to give effect to the JJ Act. It is just the question of how to get things done. What is needed is to establish a network of JJBs in the country and to share the solutions evolved by the JJBs. The JJBs

should find out and compile the best practices and assimilate them into their functioning.

Mr. Asthana stated that in view of the subtle withdrawal of the State from the social welfare arena, the JJBs need to be prepared to be the agency that is responsible for the implementation of the JJ Act. It may be observed that the Supreme Court and the High Courts are virtually entering into the area of implementation of juvenile justice. There are juvenile justice committees set up by the High Courts to look into the implementation of the JJ Act. The current trend is that the judiciary is taking up the responsibility of establishing a functional juvenile justice system in India.

There are two approaches to the implementation of the JJ Act – one, to wait for some other authority to take address the issues in the juvenile justice system, or two, the JJBs to act as authorities under the JJ Act and to address the issues through the exercise of the powers given under the JJ Act and the JJ Rules.

### **Views Expressed by Participants**

1. A participant narrated a case where a child had complained that his picture was put up at the bus stop by the police. The participant had taken cognizance of this matter and taken the issue up with the police authorities. Similarly cases where the identity of the child was disclosed by newspapers etc. This highlighted the lack of awareness on the part of the police and various authorities regarding certain legal requirements such as the requirement of not posting name, photograph, identity etc. of the child. In this case the participant stated that in her capacity as a principal magistrate of the JJB she has taken action to ensure the requirements of the JJ Act are complied with.
2. A participant narrated about a case where a child who was working as a domestic servant was physically abused by her employers and kept confined.

Can the JJB intervene in such cases? Another participant stated that a similar case had been reported in the State of Manpur. In this case the JJB suo motu took cognizance of the matter under Section 26 of the JJ Act (Exploitation of juvenile or Child employee) and sent the matter to the police for further inquiry. Thereafter, an FIR was registered. However, the case cannot be tried by the JJB as it is beyond its jurisdiction.

**Ms. Bharti Ali** – The law relating to juveniles may undergo a change if the JJ Bill is passed. However some things will remain the same. The institutions under the JJ Act, provisions relating to evidence will remain the same. The situation regarding these aspects can be improved through constructive solutions.

A system of e-juvenile justice system would be a step forward for the juvenile justice system in India. The system can be improved by the use of video conferencing for certain aspects of the proceedings of the JJB such as recording evidence of doctors, experts. This will dispense with the requirement of physical presence of experts and will speed up the process. Ms. Ali requested the participants to make suggestions to improve the juvenile justice system

A participant stated that inherent powers need to be given to the JJB to deal with matters that have been pending for a long time. Ms. Ali stated that Rule 13 of the JJ Rule, if used effectively would be a solution for cases pending for a long time. Rule 13 (7) specifies that proceedings should not be delayed for more than 6 months.

A participant suggested that there should be frequent interaction between the stakeholders under the JJ Act to monitor the implementation of the JJ Act and to identify problem areas for intervention.

It was also suggested that the JJB should ideally conduct its proceedings at the observation homes and not in the court premises. The JJBs should not be in the court premises and should not resemble a court in its functioning.

A participant suggested that the place of safety under the JJ Act needs to be identified in each district.

A participant was of the view that there is need to engage the government machinery in the implementation of the JJ Act. There must be effective action on their part to provide the basic requirements for the JJBs to function and for providing a suitable juvenile justice system.

A participant shared that in the State of Odisha, the JJBs do not face any problems with regard to funding. They receive the funds regularly and the same is deposited directly into the account of the JJB. The funds are given by the Child Welfare Committee and are transferred directly to the fund of the JJB. In order to make the JJB more child friendly, adequate food arrangements and toys and other engaging activities have been arranged at the premises of the JJB. The problem that is faced is that in many cases, the juvenile has attained majority by the time he/she is brought before the JJB. Since it is not suitable to send such person to the observation home with the minor children, it would be suitable if a place of safety is identified where such persons can be sent.

In reply to the question raised by Mr. Asheem Srivastava regarding channelizing of funds transfer to the JJB, a participant stated that earlier the funds would be sent by the Government to the Integrated Child Protection Scheme which in turn would send it to the District Court. The District Court would then send the funds to the JJB. But now it is directly sent by the Integrated Child Protection Scheme to the JJBs. In some places it is sent to the District Magistrate directly from the Central Government who then send it to the JJB. A participant shared that in the State of Bihar the funds are not received in time. The funds are sent to the District Magistrate. When the JJBs have any requirement they

send a request to the District Magistrate to supply the items required. The participants suggested that if the funds are given directly to the JJBs, they would be willing and capable of managing the accounts. A participant stated that in order to manage the accounts in such a situation, it would be helpful if an accountant is provided to the JJB.

A participant stated that in the State of Rajasthan, the full time JJBs have their own separate staff. In his opinion, there is a need to provide a separate staff to all JJBs to assist them in their work. Another participant from Rajasthan stated that where there is more pendency of cases, the JJBs should be made full time JJBs to tackle the pendency. There is a need to constitute exclusive JJBs and the principal magistrates of the JJBs should not be given any other additional charge. Also appropriate credit must be given to the principal magistrates in the ACRs for the work done in the JJBs.

A participant shared his opinion that the laws enacted are good but the problem area is in the execution of the law. While crediting the organizers for the initiative taken, the participant was of the view that the situation will not change overnight. It falls on the JJBs to manage things effectively in the current scenario and to execute the JJ Act in its letter and spirit.

Mr. Malhotra stated that many issues have been brought to light in the course of the discussions and that he appreciates that the time of the JJB cannot be spent in chasing after executing authorities under the JJ Act, He stated that a very active social justice bench has been set up by the Supreme Court of India and suggested that the JJBs can send a simple letter to the Social Justice Bench of the Supreme Court to bring these matters into the notice of the Supreme Court.

Mr. Asheem Srivastava concluded the Conference by thanking the participants for their commitment to the cause of children and for giving their valuable time to attend the conference and for providing their suggestions to the organizers.

