

**NATIONAL JUDICIAL ACADEMY**

**REFRESHER COURSE TO EVALUATE AND  
REVIEW PERFORMANCE OF JJBs (P-959)  
DECEMBER 3-6, 2015**

**VERBATIM REPORT**

## SESSION 1

I am Ashit Debnath from the state of Tripura . at the back side good morning madam I am Dayananda from Karnataka Chikmagalur district . I am Ajay Singh Rajput chattisgarh. I am Syed Gufran coming from Uttarakhand I am Mahaveer mahawar acjm Rajasthan . Acha accha chaliye peeche chaliye.namaskar madam im kumari mohsnee kanwar Chhattisgarh Durg district good morning madam I am Rama Jayant Mittal from MP I am Hitesh Garg from Haryana good morning madam I am Vandana Rathore from Rajasthan very good I am Suraj from Kerala very good myself Joji Thomas Kerala sir we will go this way now good Morning maam I am Rahul Sonwane from Maharashtra good Morning maam I am Pravin Shinde from Maharashtra and Hitesh Parikh some Gandhinagar Gujarat Chinta Ram from u p sir did you come before it's the first time I have come your face is familiar myself Faruk inam Siddiqui from u p sir good morning madam I am Siddharth Pandey from the state of Bihar yes we will go from there my name is gracy bawitlung I am from Mizoram wow namaskar madam myself rinjee doma Lama from West Bengal okay good morning madam I am Prashanti from the state of Telangana good morning madam I am shammi from the state Andhra Pradesh good morning to all I am Neelam Shukla from Madhya Pradesh good Morning maam I am benoy Sharma from the state of sikkim. from Sikkim I just came back from Sikkim I went to Sikkim University Gangtok I am in district Mangan okay so I am M P Singh principal magistrate Juvenile justice board Delhi okay very good very good morning I am from Jammu Kashmir chief judicial magistrate district reasi. very good good Morning ma'am I am Manoj Parihar from Jammu and Kashmir welcome to all our director will address you now mam please I was just getting rid of my nervousness by asking them where they have come from let me say I am Aruna broota and I am a clinical psychologist people don't like me because they think a psychologist deals with the mad which I don't and courtesy the director I am here and I am sure I am going to go on a dharna saying please don't call me so often right good morning to you all I will just interrupt you for a minute this is recording you know if you have seen we have given you time in the program schedule all of you have the program schedule 230 to 3:30 on December 5 and then Sunday session 12 session 11 and 12 you see that we have said play by participants so if you can organise yourself into two or three groups and depending on the situations because all of your principal magistrates of Juvenile

justice boards then maybe so many cases that you see. I'm at the play on that situation three different situations three different groups I think all of you can take a car group of 10 persons can be formed so then tell me three groups we are 31 in number right and so you will perform a play so you will take role of witness judge CWC member you know parents everyone will play a different role and organise a play have you seen please actually you have seen please right all of you are well versed with the culture of theatre no some of you are not so there is one who is well versed the culture of theatre what they can do is they can be part of 11 group so that the other person can learn from you what to do enact so so you have to start working now only by Sunday you will present a play 2 us that play will be performed in auditorium also I have a request to make that yes you people do shopping you must go out no doubt about it but also we have this films which are not just merely for the sake of entertainment actually have some message and they are related to your subject so please see that everyday evening there will be a film shown to you followed by dinner in the Auditorium section so please attend the films next year we may have some question answer regarding the same film so I cannot say that no I didn't see that because I was out in the market you have enough opportunity to go to the market also if not then we won't give you those opportunities but see to it that you see this films that we are going to show you we will show it only after 7 o'clock if you want to do some marketing You do before that any other issue ruchi Shruti is there your program coordinator and Mr. SP Srivastava is there. any issues there they will be conducting this program both of them I leave you in their company and also Aruna brootas company today afternoon you will go to SOS village Shruti will be leading your team so you will go 2 SOS village okay Shruti will go she is the principle behind all this so she will take you SOS village then also the purpose is this time we're having this visits because you know you interact with children and she actually ground-level situations indifferent jurisdictions you have come to Madhya Pradesh so you must see in your own tips Toronto restriction but this gives you a chance to also see other jurisdictions and how they are maintaining things thank you so much sorry ma'am I interrupted you please continue your program you're not interrupting good morning everybody I was given the topic can juveniles to rehabilitate it and there was another topic for which one of our speakers Has Fallen ill and could not be with us they asked me to speak on that but I chickened out . it was what was the psychology of medical history for juveniles why it happened but I will try to combine a couple of points programming of it so that

we can give a holistic view the only telephone that you have to pick up is the nurse don't pick up any other phone this is the way to disconnect it I know that you know much more than me the very definition Juvenile I'm not going to get into those basics but I want to introduce you to a whole research array that talks about the development of delinquency and there is a huge debate now that comes to the fact that is delinquency genetic output how many of you are aware of this research coming up that are there genetic structures of delinquents different from normal children have you come across such debate you know I will start that now there is a lot of research in the area of criminality that criminals have different genetic get up as compared to normal human beings and the same research was then brought down at various age levels because it said that criminals have a different genetic endowment it said let's look at kids what happens in their development history and there's this research that something in the gene structure of delinquents is different from the normal people and you know that delinquents are under 18 and criminals are called criminals when they are involved in offences whether they are economic offences or sexual offences or they are other kinds of offences like theft murder whatever people who are over 18 so that's the criminal I will I have not used it here I will also use another word a psychopathic personality are you aware of the psychopath is anyone aware of distance psychopath you know we all have personality right now we can say we have a normal personality now if I say so and so has an abnormal personality all of you will get scared why you calling him mad so the opposite of normal is not always mad the opposite of normal is not always abnormal there are very many different kinds of personalities I was here in another program where I was talking about personality disorders let me just know brush through that say for example person who is constantly thinking that I don't want to sit on this chair because it is dirty and unhygienic someone has sat on my bed cover so I want to throw it in the laundry today is not a good day to wash my hair why did the black cat cross my pathway on my way or my route that I was going to take so every minute you are evaluating some something is going to happen so you are affair full person and when these thoughts become repetitive it is an obsessive personality so what is an obsession an irrational thought which is repetitive in your mind you know from Delhi University gentleman who was referred to me for the admin branch that is work output is very poor he's the one who is to make the checks salary checks these days you have salary is deposited to the bank in those days everybody got a salary check he would not

make more than 5 a day now if he has to make checks of 3 organizations within the university it will take him about 10 months to make one month salary check so what is happening he was referred to me and I asked him why are you so slow and he said I am not slow I'm not slow at all it's just that if I give you if I make your salary check on Friday it's not going to do you good and if it does if I do something which is not good for you it will harm me also so your efficiency is being affected but at the same time you are not into any compulsion what is compulsion a repetitive action act for example how many of you know that there are people who go on washing hands they are washers I know a couple who want to divorce because they moved into their new house but the husband would not allow wife to put clothes in the almirahs because he said I will first watch them without water pipe wooden almirahs because there is infection this is a compulsion this is an act which is repetitive in nature so there is an OCD obsessive compulsive disorder but we are not talking about it I am talking about an obsessive personality it means he is weird he is different from the others he is slow he fears things easily but he is still functional so that is his personality similarly let me not name the various different types of personalities there is a psychopathic personality I'm interested in linking it with delinquency criminality and the psychopath you have heard of Charles Sobhraj have you yes or no yes good now if you look at him outside the jail he is nothing but an actor from some novel or story by the way he dresses so I went to meet him hi mam how are you look at the manners there is no depth in his feelings so he is not guilty of committing any crime all at the same time does not challenge you as compared to the criminal who will say yes what I had killed what will you do defiance this is the difference between a criminal personality and psychopathic personality do you accept that psychopath research still not shown different genetic structure but criminals have definitely shown a different genetic structure turn the normal person do you remember you are too young do you remember the Sanjay Geeta Chopra case in Delhi who was raped and killed and Sanjay was the brother who tried to protect under 2 criminals were Billa Ranga. how many of you have heard of this case. Now Billa Ranga we're also in Tihar Jail I went to look them up an interview them and look at the personality difference Ranga says why have you come here and I say just to understand why you did what you did what are you going to get out of it you enjoy it get out from here okay now you look at Billa I tried to interview him what does he say what can you do to me what will you do what can you do why have you come for

interview interview why have you come to interview me yes yes I killed it is my wish who I kill no guilt psychopath also has said no guilt polish in his behaviour criminal forth right brash rude. uncouth uncultured violent and aggressive language psychopath Charles sobhraj yes yes ma'am so when you see children yes aunty how are you aunty can I carry your veggies up to the fourth floor for you oh my god how do you carry this wait all the time you must call me aunty whenever I can help you now genuinely it can be somebody's personality but will be very careful because such polish people can we just camouflage they are wearing Burkha under there criminality under their criminal intention . he may come and leave the veggies at the dining table and have a look he may make an entry to the house hi auntie you have such a beautiful house come sit let me give you a cup of tea no aunty you will get tired you have just bought veggies

You will get drawn to such a child you will get drawn to such a person it will be attractive you wish my children would like that when you see the truth behind it you will never show children to be like that do you see that so what is common between the delinquents the psychopath and the criminal is the new debate genetic structure and I was hurt I was upset when you read about the Nirbhaya case the under 18 boy the even went through bone age test but never referred him to a psychiatrist and a psychologist . the psychiatrist and the psychologist only deal with mad so no one else should be referred now let us look at the other Yes sir yes sir tell me ..... did you get the genetics test done with the bone age with for him that boy to prove that is under 18 bone age test was done..... bone age application was filed but test was not done whatever it is but you try to prove in every physiological way that he is under 18 did you not the application was filed for his ossification test but that was disallowed whatever it is you thought of it didn't you was it not you did not allow it the demand was made so what is demand made for his psychological profile demand was not made but suo moto we initiate psychological suo Moto the test how many batteries did you do I have gone through the whole file of that boy Dr Manju Mehta and me we asked for the file to see what are the psychological test that has been done psychologically can you determine his age no the personality we are talking about the delinquent the personality the criminal ripe in him okay let me tell you why I have brought this topic up now I will go to the last of my slides first I thought do you know a similar case happened in Chicago a similar case do you know the delinquent was pronounced was sentenced to death and there was a big Hue and cry under

18 what are you doing sentence to death this is the real topic of today are the juveniles rehabilitable. can they be rehabilitated can we move away from the Criminal Mind that they have that is the topic for today and do you know the governor of Chicago Illinois state at Chicago gave statement on BBC nbC on television start all the psychometric test and the genetic test se say that is hard core criminal and he is not Rehabilitable and if I let him go 3 other women will die and god knows how many others will be raped molested and killed further is he not a harm will you not question me next time he commits a crime I let him go in spite of the fact that all the files are telling me that he is hardcore criminal I can't call him a criminal but because he's under 18 I wanted to build my lecture of in such a way that in the end I will say that not everybody a delinquent can be rehabilitated and I was bringing this debate that what are these under 18 offences are these under 18 offences hereditary or as we put it in English hereditary or are they environmental because research data also shows the delinquents come from a family Where are offences to take place they come from a family where the father is an alcoholic mother father is a drug user or womanizer the father is in traffic where there is a history whole lot of history of offences of Condonement or endorsement because when the child challenges the father then the mother says he is your father don't talk to him like that so what signal is she giving him that you can condone it you can endorse it because he happens to be your father so are you getting my point there is a huge debate all over the world is delinquency hereditary origin due to environment it is an old debate any comments of till now any comments I was thinking yes the scientific method adopted in Chicago whether it is foolproof whether it is watertight I don't know this word foolproof because whatever I am talking to you is also not fool proof when I request professor Srivastav that every judge must have 10 psychologist working for him because he has 3000 cases how is it going to manage on a his own they all say where are the psychologist available I said sir create an id I will give you the psychologist in remote areas I said yes in remote areas but if this is the payment you are going to get the psychologist good psychologist are going to come to you that is one thing the other thing I want to answer to you all in one of the Elite persons asked me will they be as good as Dr Trehan who is doctor Trehan cardiac surgeon search all the operation of the heart conducted by doctor Trehan India she carries the name it doesn't mean there are no good cardiac surgeons in the country how can you say that search so that is my answer is it full proof I don't know what is foolproof in the world today I can tell you 3 days back I wasn't escort

heart Institute and 1 doctor for your patience please get this coronary CT scan of the heart I said OK how much does it cost 16000 if you come true CGHS it will be 8000 I said ok fine if you need the test you need the test whatever the cost it showed 70% blockage in the artery in one artery and it showed us 40% blockage in the other artery so the doctor says we have to do angiography okay we are ready for it if you are submitting the Gospel truth when I will get it done so he does the surgery and he says there isn't any blockage so I said what is the test says that 16000 test he says it can say you something wrong it is not a very authentic test why did you refer nothing is foolproof you may respond to 1 antibiotic I'm a response to another antibiotic very different I'm sure as a steam charges you are sure no 2 cases is exactly the same there are variations in circumstances there are variation the crime maybe the same we are ending the life of a person yes we are ending the life of a person I mean it is beautiful to meet people like you were so sensitive but we're also letting a criminal go back to the society and may be a risk to 20000 other people you are looking at one life vs 20000 lives both ways you are correct so I can't say can I give you foolproof I cannot give you full proof answer sir I want you to tell me or something more about boy ins the Nirbhaya case no I mean he was under 18 what did you think of him all the profiles that you made psychological test physiology is personal history is anecdote of what really happened how he got carried away what do we think when a girl cries phone help you get sexually aroused I do not know what tests were done can you use the mic please yes to begin with he belongs to a very poor family from Uttar Pradesh father is mentally ill his mother what does it mean his father is mentally ill yes his father is mentally ill and sorry to interrupt you mental illness could means what there are many types there can be true that can be viral they can be pneumonia asthma bronchitis that can be tuberculosis so mentally ill means what what's the father schizophrenic or what's the father bipolar this two things matter we do not know what kind of mental illness he had I've only read the report which says he is mentally ill nothing beyond that 1 minute so do you think that is a professional report sorry I am not pointing out your mistakes please don't look at me this way that and criticizing you I am saying the kind of psychological reference we do we work on them are and because let me know say there is a disease or disorders call bipolar depressive disorder depression is of many kinds let me stick to bipolar depressive disorder now in your eyes depression is feeling sad feeling low finding life very futile this is depression isn't it in bipolar depressive disorder this is 1 pole that makes you low there is another

pole that makes you high now what is high is mania she's got a Manic attack now in Mania it is just an advertisement that you read the heart wants more add of Coca Cola that you see show the person who is in the phase of Mania he is high he will talk more drink more work more beat up more sex more Romance more kill more mentally ill doesn't need anything there will be so many .... and and this bipolar depressive disorder is a Bio chemical imbalance in the brain which is genetically transmitted from some Active or recessive gene in the family some relative or uncle or aunt grandfather in the family from there the gene has come into the dad what is the guarantee that this boy under 18 is not Manic personality the actual tendencies of everything more it could be that so this is what I'm talking about that's when they are psychological evaluation of a delinquent or a psycopath or criminal we need to understand the entire family history genetic genetically well as psychiatrically so you're going to say something anyone who wants to stop me here and say something madam yes just 2 months before Weavers given training at Maharashtra judicial Academy NFS I just called Dr Harish Shetty yes exactly the same case he has explain before us and you said that because of the age of the boy around 17 to 18 she was more aggressive we couldn't channel his power 2 good things things because of his environment so then would you like to say that new economic group there is delinquency and in the higher economic group there is no delinquency no no I'm not saying that if he was very poor and lift on the very sad Norma conditions there was a he will support me in the world research done it was out the paper 2 years back it was a

There was a research done it was out in the papers 2 years back that a particular region in Delhi Seelampur there are 22 people living in 18 by 18 square foot space and the all ages they see people urinating defecating sexing delivering feeding sir are you with me so the father brings home in that 18 by 18 he brings home two women everyday 1 in the morning 1 in the evening he is a manic so is a Manic only because of the environment I know lots of people who come from that area to work as domestic help all are not like that that was our issue we have all are not like that is so somewhere there is a genetic history to be understood where was this question to doctor Harish Shetty also that there are thousands of people who are child in Delhi but they are not committing rape only this boy who is committed rape so he has said that there may be some kind of genetical problem but that is curable by medication that I don't know I am not going to answer that because neither am I a doctor nor do I know the medical history I'm not a geneticist but if you can do genetic engineering which is which

is fringe science I don't know how it is treatable it is manageable it is manageable see in my last session someone asked is there a cure to all this I I said cure of what what does the secure word mean you will never get a headache again sure means you will never get flu again sure means your diabetes will be out of your body sure means your high blood pressure will be out of your body what is this word cure sure is when ..... he is complete now he has no diabetes has no high blood pressure he has no Mania yes no depression put in your life nothing is QR cured nothing is foolproof things a managed the whole idea is can a Juvenile be managed without being a threat to the society that is the whole concept yes so please be seated and talk you are embarrassing me please there is a General perception that he was the most brutal this is the general perception because after media reporting this is absolutely contrary to the judicial file finding the judicial finding categorically States in the last paragraph that he was not the most brutal the evidences not brought forth he was not most brutal in comparison the brutality but if u remove all the other people was he brutal or not brutal brutal he was that is not to say he was the most brutal out of all no I didn't say that sir we are talking about a juvenile who is possibility of committing the blunder again could not connecting the blunder again why do we blame him look at the circumstances is the state not to blame where was the state all of us are to blame everybody is to blame if you are looking at ethical issues this boy he did not have roof he was living almost on the streets where was the state at that time you have no money to feed himself he has no money sir sir I met her to the juvenile I met him so this is your heart speaking we keep saying the Juvenile was brutal but the circumstances where is the state where is the funds for the Welfare for this and that is it working if it is not to blame I would rather hold the state guilty I would hold everybody guilty I would rather hold we people absolutely I agree with you hundred percent all I am saying is under those circumstances why we people under the circumstances A to Z does everybody be that way as he was under the circumstances if I was under the circumstances in which he had lived even I would be one of them you may have been 1 on the street but you may not be one of them raping no no no I may have been one of them I may have been one of them so now I will address the issue yes I am so glad I was able to get that out of you because you are talking from your heart you are talking about ethics you are talking about morality you are talking about responsibility I say it once again it is the state who is responsible for this I think even I am responsible for that I will honour that responsibility and

let me tell you I talked about it every night when I am sleeping with two quilts and I am sleeping with the hot water bottle we employ them how much to be paid them I feel guilty people on the roadside were not having anything under what conditions they live in do you see the children what to do 1000 rupees 2 2 rupees what you do with it is your responsibility hundred percent we employ child labour are we not responsible we employ child labour we employ people as young as 8 years 10 years yes yes do we tell them that this is an offence you are right sir they should go to school the right to education act is there nothing is done I admit and submit for you that you are right the discourse has to be in a different direction so you have to recommend and that is exactly the pathway I am taking if you'll need to look into the environmental circumstances then we need to look at from where does he come and why he is the way he is how much for genetic role is there and how much of an environmental role is there and how much is the state role over there is one of us playing a role to the making of a criminal because if a person is identified at a very young age that he has the state of mind that can take him to criminality it is not just the impoverished it is a very rich also that can be criminals I know a leading person from an Elite urban area of Delhi Golf Links who paid maybe 20 crores to the family whose child was murdered to protect their child right and that child said why are you protecting me why are you protecting me what harm have I done I just give that man he was good for nothing papa has already killed so many people it came out from his mouth it was language so was he impoverished was on the road was ill treated by the state I am saying justice conditions of environmental state has lot to do with it but we also have a lot to do with it we condone sometimes you tell me politicians are corrupt no we're moving away from the topic I think I am corrupt forget the politician and let me tell you how I do counselling this is my job absolutely I was counseling I was counselling of class 7 girl who refuses to go to school so I asked her so if I don't understand 5 lectures I can never understand the 6th one she says you are outdated you are old I have a tutor he will help me cover up what is your problem right so now I said OK this is not the way to argue with her so I said what are you going to do with your attendance and you know what you said class 7 you people hurt image off Sita when you talk of a girl isn't it so she says precisely why I'm here why don't you tell my mother to give something to the Clerk and get alright with my attendance. you are telling me politicians are corrupt class 7 so you can't say state is responsible for that boy forget the state what are the parents doing in Golf Links Golf Links if you know Delhi is a

very very rich mans Colony so you won't find anything less than a Audi there or Land Rover Mercedes I see the concern in you I see the anger in you and I only want to point out you are not a part of that I conducted a session here and I'm going to conduct it again for the srilankan judges that your own bias your own beliefs your attitude Govern your judgement and not just the evidence thank you for agreeing with me I had a tough time asking the judges to agree with me this is no no that's not the right thing ... sometimes I think he's a very innocent person what is evidence against him how I can let it go you would Probe further if your not convinced do you know how we have a prejudices we are sometimes not conscious of our residences we have a present tenses but it will never come into auditions we cannot go beyond the file this is we do not have the discretion as a trial judge I am saying I don't know how so this is not a platform for me to ask you because if I start arguing on this I promise you I can hold you here spellbound for a week madam let me tell you frankly you are a very good expert in this profession I am a very small expert first itself he said it is not fool proof at least thanks for giving so much propagation of your profession it's true but judges we have a psychological problem that we are stressed we have been told that there is a lot of work so that depressed sometimes but judges let me tell you let me assure you that we are going by what is in the file we will never go beyond that you are speaking for yourself madam we can write a judgement of conviction and acquittal with the same can you go against the procedure can you go against the evidence sir please repeat it once more with the mic on and towards you sir sir please we can write a judgement of conviction and acquittal on the same evidence I feel that thank you for saying it ... more or less s what is the file we cannot go beyond it actually I think what matters is talking about is what is not in the file it is a matter of appreciation how you consider it... and appreciation differs from one person to another supposing I have a file and I think it is in acquittal suppose if I tell my friend heating system case of conviction so there is a disagreement between them evidence same there is a difference of opinion like this Nirbhaya case this is the most brutal but now my brother is saying that it is otherwise search the prejudice is when you enter the court and the evidence is going to come The Way You perceive it is you me Kim absolutely it's your childhood experiences it is your psyche when the evidence comes I'll give you an example there was an evidence and the judge would not give the decision she said no I want to meet the witness again no I want to see this no I want to do that I was there After wards I asked the judge what are you doing why are you doing all

this do you know anything do you have any sense you are old you have no sense he is a Bihari I said that is your prejudice pardon my language I didn't mean you I'll give you the exact prejudice that we have let me drift from judges to landlords don't give your house on rent Punjabi he will never vacate it give the House 2 a South Indian the very nice lot of people these are prejudices do you see it the evidence come later now you are saying look at that boy he came from such a background you are so ethical you are so sensitive you are so humane you are beautiful human being but can I just go on throwing blame at others because I take the perspective and say how many people get sexual pleasure by inflicting pain on the other whether you are 22 people living in and 18 by 18 square foot are you are one person living on 3 acres of land farmhouse the crime can occur anywhere yes the judgement for punishment and rehabilitation should vary that is what is required and I am so happy that you get angry like that because that gives you the human touch therefore when you have that human touch your hands should tremble before giving a judgement what am I giving is it correct is it incorrect can I give humanity besides the punishment not instead of the punishment but besides the punishment when Bill Clinton was here when Obama was here they just pounced on me what is your psychology say what does a your psychology say I don't say don't punish Osama Bin Laden I'm not telling you don't punish him I am asking you to learn from there my quotation is Osama Bin Laden was also somebody's child what happened something went wrong what is it hereditary environment both it is always both because you cannot delete the environment we are not aware what we are borrowing from our family we don't consciously pick it up the other day for 5 years back I had a very severe attack of bronchitis someone was visiting me from the US and said you cough like your mom I am coughing what do you mean like my mum she said look at your structure look at your style I am not conscious that I am aping my mum it is unknowing how many of you past comments on children growing up she walks like his father do you think he purposely Walks Like a father it's an unconscious modelling that is happening so you cannot delete the environment over there madam can we take this discussion to another level healing in time we see Valmiki he was a robber later on he became Valmiki so this is a point can we not ... I do not know about Valmiki so much I am and illiterate but when I start counseling children and the mother and father are saying he is bad she is horrible doesn't sit in one place hits others doesn't write a

diary doesn't finish his homework you know she is impulsive uses bad language he is a pain in the School he is a troubleshooter in the community in the neighbourhood paradigm I'm taking is what do you do on Janmashtami that is Krishna's birthday you getting my Hindi and English mix together you must talk me when you don't understand what I speak you know and ask me then they say oh you know we keep fast can we make a swing Jhula we make Krishna excuse me what was Krishna when he was a child horrible naughty what a lovely word sweet word naughty but for your child the mother will say doctor I am fed up Dr bad rascal daemon look at the verbal protocols and giving you from mothers and fathers I tell them he is nothing but Lord Krishna moving around what is Krishna Krishna stayed in house only with Yashoda there was no 3rd person there and he has the audacity to Chew her head saying I did not eat the butter what a great liar I'll look at his capability being a n psychologist like any other child children are better psychologist they know how to get their way someday parents how to get something out of their parents so he said I know why you are doing this to me I am not your child so she starts crying and says you haven't eaten the butter let's drop it here and then he says I stole the butter I have taken it and if our children do it we curse them What is missing you talked about Valmiki what is missing Yashoda Krishna still there in every house there is a Krishna what was he he had a character disorder he had oh conduct disorders impulse control disorder you know he was throwing stones at those women and there pots you know what about the scarce commodity difficult to have in the house there were no taps in the house and women are so proud the there are songs today someone does the same thing so the child will be brought to the judge article also say he did not get mother's love the state is responsible forgive me sir I'm just giving examples even my heart beats when I see all these things somewhere we have to see things in the perspective so if you are looking at Valmiki as what he was what he became I'm really going off the point I'll tell you this Hanuman serial that comes I don't see but I don't know how I got into it and Ravan calls himself Asura which is ghost Jin a villain but he was so learned what do you want to say that we have done it we are good but there is a bad part in us within the normal the bad part is normal so we are not the offence to society we do naughty things but asura is a guy who is only interested entering wrong tortoise call him criminal call him from Valmiki time call him Asura call him delinquent do you know everybody text in children on the Shoulders show

them Ravan I feel very bad what are you trying to tell the children who are we to put cracker in ravens Delhi stomach Burn It CD out first and feel happy about it you are telling children you can also do that your current address you can also do that because you are enjoying it new college vijaydashmi who are you how can we have the right in our hands to burn somebody like that water principled man he also picked up some buddies women but he did not do anything life was done to Nirbhaya he didn't even take her into his house you are talking about Valmiki if you are talking of mythology only as stories still it gives you a lesson if it happened it happens so so why does it not happen and why does it happen we need to focus on that that is what is important I want to go into the developmental history before I break for for tea but I just want to say that in psychology and psychiatry there is and impulse control disorder in early childhood from home from school you have seen children lifting pencil Boxes from there friends school bag in bigger classes practical files from school bags I have not made my bag I will Steal yours recover it with some other paper and say that's mine impulse control disorders what are the signs lifting things from school listing things from home lifting things from neighbourhood shoplifting and why are you doing because I feel like it is impulse impulsively now I want without any embarrassment to give you my example I was a kid I must have been 8 years old I went to spend the day with to a friend of mines house and after lunch we were playing in parents room unable to study table in that room and on that study table what's her fathers big pen Parker pen that fat very fancy pen I just picked it up I picked it up I liked it mine I want it it is so pretty I want it a word which I have not written immediate gratification off a need when I want any of my needs to be gratified immediately it is impulse control lack of impulse control save water at home somehow and within 1 hour of my arrival at home my friend's father called I spoke to my mum and said Aruna had come to spend the day there is never been anything lost from our house she has taken my pen away my mum said I'll call you back in half an hour so she kept asking me did you lift anything from their house I said no swear to you honest to God how can I do anything like that I had a mother who should have been under CBI she didn't believe me she did not trust me she went to open my school bag because I had gone to her Charm School it was and she said what is this oh this this is a pen she said I used to know that this is a pen where have you got it from it doesn't belong to our house I said I found it somewhere and

I thought it is mine so I brought it back this is Krishna speaking so I said so she said where did you find it so I said maybe somewhere on the floor and found it my mum said no you found it on the table I said okay found it no you found it on your friends father's table yes I found it on his table but he wasn't there so he's not using it so I got it I will use it when I am tired of it I will give it back to him Krishna I did not eat butter I did not take any better so you need to understand is this the first time is the second time is this 10th time is this the 50th time MI condoning it as a parent where am I learning all this from today you learn from the media I didn't has media the only media I had was Akashvani that is my Media defend so where are you learning it from and if this happens too often then it is an impulse control disorder which involves control disorder there is anger aggression violence today we speak about sexual offences so one of the schools of Delhi a boy age 13 was referred to me that he follows girls to the washroom and to the bathroom try to enter there pee9 you know the half Doors if you are getting tall you can jump the girls are complaining not 1 not 2 but 5 girls have complaint temperance car saying we will withdraw children from the school if you don't throw the boy out so its a kind of disorder and conduct disorder character disorder it is an illness and we need to look into it is it in everyone so it is in everyone' but it dies out by the age of 8 it reduces but if it increases see the difference if it is decreasing you are measuring there is moral development but if it is increasing is impulse control disorder conduct disorder if it is sexual in nature is it is ragging harrassing talking come to that let's leave it at impulse control disorder in early childhood that was a very good question if it is diminishing we are born with it if it is diminishing Amit Choudhary if it is increasing then we are moving 2 words impulse control disorder one where we can call a person delinquent right we will pray for tea. she will make the announcement we will hands on short tea break 15 minutes

## **Session 2**

Do you also read that there are people who are pathological liars are you familiar with the term pathological liar where there is no need for any lies they will lie I don't want to go to the psychology behind it because another 20 hours because Liars of those were full of inferiority complex In our books there is nothing known as superiority complex there is huge inferiority complex in personality and in order to cover that up we

wear a Burkha camouflage it by showing superiority by showing grandiosity right and those people with impulse control disorder in early childhood they also use foul language mostly of course the humour of it is that today I do it more what is foul language I really don't know because the concept of foul language is changing this we go down history Pappu cannot dance Sala song and music is art and Sala is becoming part of the art we are self say see the children's language today I heard the child asking her mother what have you made for lunch and she says Saag what else have you made for lunch spinach okay and then he will ask what else and she will say Ghia and dall mix together and he will say f\*\*\* you this is the approved language of youngsters but it is the foul language of oldsters. I will give you an example of my grandson he came back from college and he asked me what is for lunch and so I said paneer he said what else I said curd s\*\*\* so I said where is it why didn't you tell me there is no water in your flush he said you are horrible I said why am I horrible you said s\*\*\* I thought there is s\*\*\* somewhere and it's not been cleaned till now he's not use that word instead of scolding him there are ways of dealing with them so when there is the use of foul language mostly you will say it is a street language why so if it is a street language it is not necessary that people live on the street will use that language people who live in Bungalows also use that language it is the foul language and there is a touch of delinquent behaviour in all the kids when will you declare the delinquent when they have injured somebody in School neighbourhood well for example 7 boys were restricted from school because the made sexual images young female teacher and old female teacher in school and put it on their website the elderly female teacher she said I will resign I will not come to school if this is what the children are doing and thinking about me so the children present for counselling but the teacher was also asked to come and I asked the teacher to come and see me I said if Krishna was studying and he did something like this would you have said that I am not going to talk to Krishna because I think this of me so after all when you tell your mother or your sister for teacher that I didn't do this what is he thinking of you you are a bloody fool and I can fool you so will you stop relating to Krishna you can't stop relating to Krishna unless you swallow the Asura you are only singing without tune something which is out of tune which is not in the so if it isn't tune society will accept us when are we going to declare child delinquent you were asking me about foolproof but you tell me are the books what we read definitions that are given are they not debatable the very definition is debatable and

what do we do we just say yes this is delinquent behaviour this is where the personal prejudice attitude belief stereotype superstition enters our personality the boy I left incomplete who used to be a peeping Tom to the girls in the school he used to beat the mother father was absent from the house because he was living in Germany and never come back for years he would just send money and this boy would pick up a fridge and just over turn it in anger so it is anger and aggression and violence give me 50000 rupees just now OK I will kill you it's anger aggression violence blackmail coercion this is one extreme here some minor one you decide what you are going to call the delinquent parents came and said mam my son doesn't go to school I looked at child I think 6 years old yes I will not go so I just looked at him thesis what you looking at. the father says to me parents are like beggars And The children are like Monsters Ravan called himself Asura look at these kids Ravan was a scholar so I said okay don't go to school I said what is the big deal don't go to school they are very good actors they are black Mailers include that in your list they are black mailers who are you going to call up blackmailer who are you going to call Krishna Avatar who are you going to call delinquent these are all pressure tactics and yes he's a good actor I would send them to acting that is very important to understand but the question is what happens when these little children grow up under entering into puberty look at the offences that come into shape they become perpetual people pleasers I have cases of boys who peep to the bathroom when their mothers go for a bath we are talking about nirbhya I have two boys who have raped their own sister all these offences r never going to be reported no they will never be talked off about there is Eve teasing all the while this will increase what makes you say this will increase how many of you watch the comedy show Comedy Nights with Kapil what does he do he makes fun of his wife and he make fun of his wife family and the message you are given to the public if I can do it you can also do it ... absolutely ..... he comes from south india he cant understand they make fun of him. Tera certain Historical events of your own country that women about for dowry that women are tortured for things if we don't go into the serious offences will be not teased by the Mother's in law at least you can do it India that you make fun of your own wife what is very important to understand if you look at some of the Western programs particular American programs whether husband is making fun of his own wife the wife is equally making fun of the husband the script is a balanced script Kapil script is this skewed one Shruti Singh abusing and challenging what is challenging 9 year old boy telling me what will you do this is the body

language what will you do just because this woman is saying the mother this woman saying I will leave my friends so what is the drink 9 years old not from the pavement is you know what is the greatest concern now even American psychological Association has added category towards diagnostic manual E addictions electronic addictions getting addicted to phone they are not sleeping at night they are on their phones so they are late to the place of work they are late to take place of school because they have slept at 3 in the night how to get up for the 7 o'clock bus I was referred from the corporate 6 boys who joined together the office mam 10:30 in the morning mind shutdown wife what a supervisor says I can't understand I don't know what he's talking I feel like killing him order for coffee 1 coffee to coffee 3 coffee become coffee addict it is happening to us new design Corporates so I said sweetheart you started spending the night under the Garb of studying from class 8 I will study at night I cannot study in the morning that is so much noise in the house there is no noise in the house it is your mind set it is a fashion to be starting at night because papa is on the laptop All Night so he is modelling WeTalk of hereditary we talk of environment and now from 8th to 12 and 12th too IIT and it to IIM MBA and now you are the corporate at 10:30 when you use to sleep you are in the office at 8:30 830 is reporting time your pickup is at 6 7 you are still sleeping at 3 because you do not have a biological clock you have sorted it three of them say what to do man addiction 2 night club sites visit dances Playboy magazine and it has Trickle down 280 year olds 9 your old p\*\*\* addiction is a new thing of course rape and molestation is there I am going to talk a little about sodomy we had held the workshop on pocso and under the JJ act we are looking at pocso so what was that national Commission for child rights there are secretary took us to a Sport School in Patiala NBT to workshop for them the coaches we did workshop for the administration we did a workshop for the students and the students the children said Tuto me if we lose a tournament the coach comes back closes and Bolt in a room And Beats us with his belt when of the taking off our pants and there are two girls in that group do you understand what it is really important to understand what is sodomy I will send you the link they have it we had to work shop here and they show us a documentary where someone was from the admin sodomize the little child and he dies a person like me I don't know my mind is like a Manic I work work work like an alcoholic but I could not get over that movie it was miserable boys dont speak up in remand homes this is what I am coming to

remand homes because delinquents are going to be send to remand homes and not to jail what is the quality of life in remand home you say of 18 by 18 square foot we have remove them from there and now you're sending to remand home he's getting food but what else is he getting he is sodomized he lives in fear so it is not the just molestation and rape between a girl and a boy you just see what what homosexuality and sodomization is doing now with this typically besides offences like stealing stalking running away whatever whatever alcohol look at this why did I bring this up we all exist through our body and if our body is unsafe and if our body is invaded what is self concept are you going to have will you not have a younger violence rejection will you not have that you may have that but these are the experiences that they receive aunty give they both the receivers and the givers both each one of them and therefore we need to understand what I was talking what are the Dynamics of it in the family and where we get delinquents irrespective of rural areas irrespective of urban areas irrespective of economic background irrespective of education and I will quote to authors or rather 2 schools of thought and I will take what happens in the normal growth pattern of the personality awesome individual there is and ID that we are born with and what is it ID is nothing but pleasure we are not socialize as infants where we are we will urinate wherever we are we will defecate where ever we are we will vomit wherever we are we will shout scream cry we are born with an ID it is the instinct and let me tell you love is instinctual but aggression is also instinctual what is the learning process what is civilized process what is social learning what is maturing we want to control our anger we learn to control language we learn to control how we should sit on the chair we learn to control how we eat public all that is the social learning but what happens when you were born have you seen two kids 8 months old mix and sit with each other they will pull each others hair the will poke their finger in the other eyes of course it is exploration but it's also aggression you like to snatch it away and the other one is crying away to glory as you say he is shouting at the top of his voice but you enjoy his shouting this was a hidden impulse this is not poverty this is not the state this was growth pattern retardation not immaturity that someone is crying and you are happy someone is screaming with pain and you are aroused it is pathological it is sick whatever you have seen if that has blunted you whatever you have seen and Pathology you've lived on the street you have seen yourself been raped so you rape someone else you come back to aggression because you are born with it the way I may snatch his

watch and I am enjoying his crying as infants so he has come back as an infant and he is cry she is screaming and he is enjoying today is an ID in US which is disproportionate the moment of a child reaches is one and a half years of age he develops an ego have you seen little girls talking baby will also do dusting she will not say I will do dusting because I has not developed baby will also do dusting baby will also do cooking babies also going to go out baby is going to wear lipstick me also me also I remember my first son he would very often pick up my husbands briefcase which was heavy saying this is mine what will you do with it I will go to office go to university I will also publish a paper where is picking that up growth physical growth mental leading to personality is one of us has a personality and what is this personality the word suggest persona the person I am the person I want to be and after certain age 5 + you start developing super ego what is super ego your moral conscience at the back can you see ok is there a glare on it is the regular on the board can you see the board can you read the board is it ok so what happens you are born with an instinct with the process of socializing you develop an I I will eat I will go I will sleep I want that book I want that cartoon I ego how dare you say no ego I nothing but it will be super ego the moral conscience I will spend this example with you I was doing my ba 2nd year in the year 1961 and we were studying for psychology for the exam so the example of id Ego and superego for my teacher she is still there she taught us and she said look at the bus stop at the University right and there is a big long queue for the special bus to come and take you to some Colony of Delhi Madhya Pradesh whatever and there is a nice young boy very nice so he takes comb out and he combs his hair does all this and puts the comb back why because he sees a beautiful girl standing in front of the queue and he says how lovely oh my God she is so beautiful I wish I could have at least I will make friends with her all this is id instinct you love the other gender it is your choice beauty it is what you think is beautiful so what happens that is a big long queue and when the bus comes everybody break the queue so he is clever enough to run from the crowd I just go behind her so she goes and sits in the front seat and he sits next to her now they are both sitting like this he says no I cant see her like this I want to see her like this right so there comes in elderly women like me and mummy used to say give your chair to the elderly so what will happen she will bless me that I am courteous and I will stand hold that rod unlock the girl oh my God how beautiful puberty ID and then he says I must ask her out no no no I must kiss

her I have to kiss I have to kiss her ID and then he says no no she will hit me my respect will be ruined my honour I will be insulted in front of everybody if she hits me what is it ego ego will be hurt so he is moving away from the Instinct will need of kissing romancing with her and he hears a voice inside it says I want to kiss her and I say no she will hit you right here and you will be in the jail mama is going to kill me I have a sister at home ego suddenly he says how can I kids here why should I kiss her without her permission it is a Immorals to kiss anyone without their permission moral values so that is your super ego your moral conscience your morality your sense of values that is a normal growth of personality you have your ID but it is very much under control you function both from your ego and super ego at the same time we look at another model transactional model so what does the transactional model se that there are different ego States and and when you were born you are born with a seed and that is a child ego state when I was coming here today t by Air India there was a little girl traveling she must have been how to use old so if your mother said now you have to sit on my lap because the aircrafts going to take off and you might have a turbulent in your ear she can't understand all that so she shouts and screams she is not bothered where she is what will people think am I disturbing others there is somebody sitting right next to them learning of a document must be coming for a seminar so she was a child is a state when you grow up from the child you grow up to the adult state right and what is the adult ego state no matter how much and scared of the aircraft I can't hold my mother's hand in front of everyone I must like this advise everybody will see me that is your adult in you that is after socializing after social learning why social learning we learn from each other we learn from each other children learn from each other site but there comes the time when you develop a parent ego state what is the parent ego state what is c always me I want milk I want to so I want potty I want to vomit I want drink I want to walk out oster aircraft into the clouds what is the adult ego state I want all that provided it doesn't hurt you I want all that in social way approved way so that so it doesn't come Obnoxious for the others what is the parent ego state a caring personality you know what is happening caring personalities getting lesser and lesser in urban areas definitely in the urban areas I'll give you an example if you are in Delhi and you ask where is Vasant Vihar take a metro from the station that will drop you there that is the adult Walk straight and then turn left and steak the metro from there and you will reach there you are speaking logically you are giving directions you are giving scientific directions right but in rural areas people will

say let me take you I will show you the way the parent ego status there the caring I will take you let me be with you now this is a normal course of development whether you look at the p a c model or you look at the ID ego super ego state of the body this is the normal growth of the child now tell me does this happen to a delinquent is this so normal for a delinquent I very often you will find super ego does not develop intelligence moral conscience is not there moral conscience is not there the adult and the parent ego States are underdeveloped qhe whether

when a girl comes in your Life you changed it means moral development was dormant`you did not even realise that you are such a moral person.but you are expressing your morality your sensitivity you are touching her your values for life your value for the other gender the value for a companion your love need civilized love need whenever someone enters your life you Express all those if you were a normal human being then in your space life space your wife your girlfriend or the lover the Romance is gentle and it's not rape but me and only me if it hurts you I don't care it hurts you I need somebody today To rape i have to satisfy myself I need that gold which you are carrying I need that tie which were wearing so I will pull you whether you die from your exertion of your next but I want that is my life space it is me and only me now we go round and round and round in circles is this environment or is this hereditary we go back is it possible madam the psychological personality father can be a very good person parents can be very good when is everything... sir we operate from our personality in ways father maybe very good the genetic structure has come from somewhere else for example okay let me tell you I am 18 year old boy repeating class 12 try to sexually abuse his English teacher see this see the Humanity in him the moral development it is beautiful she will not do this so what if she's the teacher I like her I want her now impulse control disorder maybe also anger what you said his life whosoever made him like this somewhere genetics has played a role maybe he has had a very good father he says and how has he developed his personality there has been no modelling in the house the uncle. sheer anger many parents start doting on their daughter and never do anything for their sons they try to crucify their sons . you are useless idiot look at your sister she is so good. he will start hating her. comparisons your aunts son is so smart he doesn't do any wrong you are always on the wrong side of life ok i will be more wrong and show you parenting environment trace the family i would

ask is there anyone in your family who is moody who has mood swings you think i am going to declare somebody mad still that thing is there she is a psychologist no no they talk like that anyone who splurges a lot of money but sometimes asks you for a five rupees account where have you spent those 5 rupees so it is a contrast his father is like grandfather was also like this i will kiss you an example there was a couple coming to me for the treatment of their child who was suffering from a symptomology called Ad HD attention deficit hyperactivity disorder I knew they would never come since the school principle said that either you get treatment done or you take your child out of the school and go anywhere else don't come back to me so they came because in Delhi it is not easy to get admission some School you know so they were taking treatment the first session i asked the parents is there a family history of hyperactivity what is hyperactivity childhood you are running out of the class you are running inside the class you are not able to sit on your desk sometimes you are running into lawns of the school the maid has to pick you up and drop you back to the class this is hyper activities hd children maybe that but they are very attentive in class this is red that is blue this is green but there are some who don't even know what the teacher is teaching that is an attention deficit so i asked the father is there any such history in the family she said no ask mother is there anyone on your side no she said alright she had 20 sessions she was much much better but the streaks hyperactivity were still there so the father asked after 20 sessions she had developed confidence in me aunts the father is asking shall I ask you something I said yes supposing I have not got this boy treated what would happen I said when he grows up he may develop impulse control disorder he may develop violent aggression leading to depression he says I was like this i am alright. I was like this when I was a boy now I am alright when I was asking anyone in the family no he declined. why because he thought i was going to declare him mad or declare someone else family member mad. no it comes difficult for them just help me to understand what the joint family environment is like maybe it is further being reinforced because the uncle might be like that for someone else maybe like that the bigger uncle or smaller uncle and he is aggressive in the family so the child is learning from there right the moment he said that I am like this I did not take anything the wife started crying the child mother what is there to cry don't do drama in front of aunts she's further cried so I say to her Meenakshi why are you crying that is not done share it with me I'm not going to say anything to you share it with me and then the boy says yes tell aunty do drama do theatre and she says no he says ok aunty i will tell you what i did today i beat her up i beat her black and blue i said why he says because the little boy has

pushed my mother she fell down and broke 2 teeth and that is why we are late because we were with the dentist in the morning and my mother said to meenakshi what kind of a mother are you what kind of a son have you brought into this world produced and i asked the father i said did your mother say that yes then why did you beat her she has said what she had to he says i believe my mother so i hit her because i think she is responsible for such a boy so i said you are from the same school arent you you were a science student arent you so are those genes coming from her only or are you given some gene to her yes is it so i said u didnt study the reproductive system now he said i am fine i did not take any treatment was he fine if he was hitting his wife but aggression between parents what is happening to that child it is for us to see that this child who is doing all this is not coming from the 18 by 18 square feet he lives in a huge bungalow now what to do that should be our understanding what programme should you recommend to a delinquent rather than just labelling him a delinquent pronouncing a judgment for what punishment should be given if you give recommendations your words matter as judges research studies have shown that if delinquents do yoga particularly with special reference to pranayam there is a lot of cognitive control thought control thought management is done very well with pranayam occupational therapy is very important no matter what the age dont think we are asking them to work but we are giving them skills skills development occupational therapy basket making tv making no matter how small they are they can learn very small activities within television construction telephone assembly fans assembly they can be put on an assembly line its not that you are using child labour they are studying they are learning they are not there for the whole day but for 2 hours they can be managed with these skills develop. did you know that many of the delinquents were no one else but the school dropouts we have not sent them back to school and the schools that take delinquent children should have trained teachers who have done training in delinquency management why teachers are beating these children today i heard in the morning from the director that you are going to visit some sites as SOS villages or SOS schools there are SOS schools also at the outset if you go and meet them they will paint a beautiful picture to you. but what happens you ask me. i used to get a little angry quite angry with my first child but the day i went to a reformatory home in delhi and actually gave a surprised visit and saw what was happening there to the children i came back and never said anything to my son after that never said anything to my son after that because beating leads to further defiance as it is a delinquent is a defiant definitely a delinquent is a defiant a person that defies society defies law defies morality

and more than that sending them back to school with trained teachers where beating is prohibited such education is very important how grossly we misunderstand this word sex education everybody talks of sex education and says it means making the children understand the psychology and biology of sex no. they will study in any case they should study in any case but it is incomplete. nobody trains boys growing boys during puberty how to handle their sexual arousals nobody teaches boys they are just condemned. you are wild you are bad your mind is polluted it is all a hormonal structure that they go through they are themselves non-plussed they themselves don't know how to handle their sexuality and nobody teaches them that everybody is giving them the academic knowledge that this is sex this is the organ this is how it penetrates and this is how children are born nonsense first teach him how to control how to sit so that no one else judges him as a bad boy this is very very important of course the last word I have said the mode of developing delinquents into normal personalities the modus operandi should be counselling and you can't say like a medical model how much of counselling do they require what will be the cost of it have you ever answered the question that what will be the cost if 1 child is rehabilitated isn't that great but you are looking at the cost of counselling how many sessions will he require how many I said sir I don't know I am not dealing with bacteria I cannot put him in a bucket dip dry hoping against hope that there will be some moral development possible they are not those who live in a very very pathological environment it is not possible before I close I also want to share with you something the incidents of delinquency is slightly on the rise in public schools ever since we have merged the EWS within the public schools the economically weaker sections because they see the contrast the kind of picnics they go to the kind of recently my grand daughter had gone to Spain with her school they charged us a very heavy amount do you think they are going to the school will ever pay that amount for taking just one economically weaker student to Spain they will not so we create a lot of frustration in them that lead to aggression that lead to violence why you why not me that's very painful to see the whole idea of putting economically weaker sections into the public schools was to develop a sense of morality in them a sense of dignity in them because education is important but when they go back to the environment where the father or the mother are pathological what is going to happen. what is going to happen. and mind you even in the richer classes take middle income group the wife will say we need stationary bring it from office. what are you teaching the child you can beg borrow and steal that's very important to understand how we are interacting and what the child is receiving so when you

pronounce your judgment you have to give suggestions it can be a part of your judgment it could be what happened it could be a part of a corollary to your judgements start a new fashion a new trend suggestive measures for rehabilitation if it works it works if it doesnt work you can reevaluate the child every child should be psychometrically reevaluated on an annual basis you call a medical doctor to the school height weight eyes general health teeth dentist you can also call a psychologist sir was saying about that i was propagating my subject who am i to preach im just reminding you you have a mind you have a brain that overpowers you at times and we dont realise whether the brain is working from the id or the ego or the superego. we mistakes what about these kids . i think even judges need these psychological tests. sir the delhi judicial academy has this when supreme court said dont straight away go for divorce attempt reconciliation first mediation so the judicial academy in delhi asked me to conduct counselling skills required for mediation and rehabilitation can i teach psychology in just 2 hours i cant but atleast the effort was being made but judges also very often say why have you come are we mad i say no one is mad you see that part of it. any questions you would like to ask how will you now address the first title are juveniles rehabilitable and i will very very cleverly answer that question no harm trying in a scientific way by producing this infrastructure that i have given right at the end but also re evaluating psychological assessments annually that is very important with this i come to a close i dont know if i have lived upto your expectation if i have hurt anybody if i have said anything i ask for your forgiveness your highness please forgive me thank you very much god bless you.

madam i am thinking i mean very privileged state thinking where i am from tripura people are living and how can i think of implementing those i mean very good suggestions i mean how can i do that practically sir in the psychology department i mean government at delhi university itself forget other universities i can only talk about delhi university we have students in psychology from tripura mizoram and they do so well as compared to the delhi students and they are so giving they are so philanthropic if you ask them what are you going to do after your master they say i would rather go back and work for my state but i also know that from other states people are transferred to all these states why cant you have people from other states come over it has to be added into the judicial system if you dont create it in your system you wont have the finances but if you create it in your system the finances will follow because you will make a notesheet you will make a demand and someone can come on deputation why cant he . very right madam we shall have to make this

point to the hon'ble high court you will have to this is one this is one agency that can make the recommendations. this is needed let a copy be sent to the chief justice maybe somebody will pick up the idea . our chief justice listens to us AND that is a very nice beginning .. you are so lucky that they listen to you the idea should be floated somebody may pick up the idea. ... but the problem with us at the JJB levels is that ... you are right what happens is that the ... yes . it is not risky in the sense you are not letting the delinquent leave the home and go back to the main stream. .... after 5 annual reports on me with detailed .. how can you let the person move out into normal society how. the infrastructure is to be given by the state. in our state we dont have the juvenile justice boards ... you havent raised your voice you didnt cry and shout ... you are talking under very ideal conditions a time has come where judges will have to raise their voice because you matter you are powerful people. .... there is no point in writing the protest letter but in conference when you are meeting the judges of the hon'ble high court judges the point can be floated the idea can be floated. the minutes of what you did at thsi workshop . the state is least concerned . the whole thing is you have to create an awareness state is least concerned about others whatever is being ..... but now the time has come when we will have to assert that these things are very otherwise there are no point in having the JJB Act care and protection is the main word. and we are not doing anything that is the aim and object . sir what i can say is that i mean our governemnt doesnot understand i mean the government doesnot understand what is the requirement of this thing. actually see the persistent demand from your you will make the demand to the high court high court will raise to the chief justice chief mininster and at some point some understanding will develop.but somebody has to assert we cannot think that everything will be done automatically at some point some assertion has to be there that is true even high court judges they suo moto take the notes of such things and they give directions but the directions has to be comprised by themthey take the what you can say they dont have the infrastructure we dont have the money this is the least concern of the . these are the very common pretexts that we dont have the money we dont have remand homes on the contrary punjab and haryana i am told whatever demand is made by the high court immediately the same is made by the government so i am talking about jammu & kashmir Yes you told not for every district it was only because of the directions of the honorable High Court they have meet the rules gradually changes are there you can see the changes Delhi Punjab Karnataka if we demand it will be done but it will take time so constant effort has to be there it is least priority I want to have a very good act but infrastructure they are not concerned so

are audible High Court how to take suo Moto cognizance today's salaries 38 judicial officers in Jammu and Kashmir state 6 months the charges for without salary so it is a very difficult situation we do hear a lot, from participants the situation is bad but the purpose of this conference is In the existing system what can you do what we can do to improve the situation what can you do to achieve the purpose that the act is for when you are supervising the observation homes can you do something to inculcate some of the suggestions that were made by madam can you have daily routine yes you can have can you insist on that you can do that so some suggestions which can be taken forward something that can improve the situation bad as it is if we can do something on our part to make a change . that is what we are trying to bring to you it is up to us we have to do that that is true if some of you are sensitive to Google and access to Google start looking up mental health courts in America just type mental health court and see what you will get where the world has reached where we are are infrastructure is at which level and this is where they still cry for more infrastructure you know but they also would have started from somewhere we are still question what will be the age ok delinquent we're still not satisfied we are still not what should be the age sometimes we eat from South Africa Africa United States other developing countries what we do not have circumstances of the different countries is different from every country agreed we see the Geneva rules convention this Beijing rules we do not formulate our own rules on the circumstances all over India you can see the mental capability of delinquent how he does it we were not related with the the day delinquent child from America the infrastructure is there the facilities we compare between America American child delinquent child and the Indian delinquent child there will be a big difference I will just quote Mr seshan India Election Commission nobody recognise Election Commission before Mr seshan but he started asserting and he is loaded in such a way that's now Election Commission is all important so the most important thing is they should be institutions the there must be persons if these things are there then gradually the things will change otherwise it is difficult to radical changes are not possible the child doesn't cry the mother will not give milk that is true I have written 10 letters hopefully by the 12 letters you will write as I was telling hopefully by the 12th letter you might be getting some something in place yes of course 13 letter I got some results I think we will close here we will go for lunch we will cut short your lunch break a little bit we are going to village an SOS village which is a little far from here so I would suggest

that 1.15 if we can meet at the reception of your guest house and we will go from there ok thank you thank you it may be remis of me if I do not thank Dr broota it has been wonderful beginning our programme and I think the tone has been set so thank you very much maam

### **Session 3 & 4**

#### **Visit to SOS Village**

### **Session 5**

I have nearly 8 minutes 2go let me first introduce myself I am asheem srivastav I am member secretary ncpcr I it's nice to be here warm weather I thought it would be cold atleast pleasant to Cold but it is pretty warm maybe Global cooling inside global warming outside okay can we have an introductory round but .... tripura okay just 1second can we use the mic and please be seated and introduce yourself good morning sir I am Aashit Devnath from Tripura judicial service presently posted at chief Judicial Magistrate cum civil judge Senior division good morning sir I am benoy Sharma I am Dayananda from Karnataka Chikmagalur district . I am Ajay Singh Rajput chattisgarh. I am Syed Gufran coming from Uttarakhand I am Mahaveer mahawar acjm Rajasthan . Acha accha chaliye peeche chaliye.namaskar im kumari mohsnee kanwar Chhattisgarh Durg district good morning I am Rama Jayant Mittal from MP I am Hitesh Garg from Haryana good morning I am Vandana Rathore from Rajasthan very good I am Suraj from Kerala very good myself Joji Thomas Kerala sir good Morning I am Rahul Sonwane from Maharashtra good Morning I am Pravin Shinde from Maharashtra and Hitesh Parikh some Gandhinagar Gujarat Chinta Ram from u p Faruk inam Siddiqui from u p sir good morning I am Siddharth Pandey from the state of Bihar my name is gracy bawitlung I am from Mizoram myself rinjee doma Lama from West Bengal I am Prashanti from the state of Telangana I am shammi from the state Andhra Pradesh I am Neelam Shukla from Madhya Pradesh good Morning I am M P Singh principal magistrate Juvenile justice board Delhi okay

I am from Jammu Kashmir chief judicial magistrate district reasi. I am Manoj Parihar from Jammu and Kashmir

I can see only one on face you were also there Wills anyone who is present both of you were present okay shall we start the or Shall we wait 3 minutes to go how was the visit yesterday okay they got 2 SOS village I have never imagined that they would be such institution in India outside Delhi outside Delhi what was that SOS village and what was there in the village i s o s village basically they take children who are in need of care and protection who are Orphan they create a group of 10 people 10 children the give them mother who is the mother is a single woman the train that mother for about 2 years and then the 10 children along with mother constitute family so they become brothers and sisters and the lady is the mother and then they started education the live in that house as one single unit then they higher education marriages happen we should invite this village ... what they do is actually the adoptive children from the age groups of 6 to 12 the adoptive children 1 once they cross the age of they are the pursuit of Higher Education ticket employed in hotels factories all industries or banks the basic point is to bring them into mainstream society Hotel the age of 25 Pyaar taking care of them different ways up till 12 stay with them in the home and even after that they are at hostel they leave that family they maintain the contact with the mother and brother and sisters this was precisely the CCI should be doing precisely what is expected from them under the jj act I was thinking that we can have such kind of a model at the Observation Home or at least the cwc and all the children homes they can be modelled along the same lines and they are all in open village it is open there are no guards they dont keep any security guards so the fact that dost children are living over there nobody escapes that is very great and they have facility is they have care nobody will escape we need to change the whole concept of Observation Home Observation Home you know in Delhi Sewa Kutir and all they look like big Fort so what we have experienced yesterday we have seen the children over there very happy happiness reflected from their face

**b** ecause they are getting very good care more than the natural parent what we have perceived overthere i would suggest to invite those people to the state judicial academies and with the observation homes so that they can share experiences no i will definitely do that i will find out delhi if yes it has atleast 34 ... i will speak with director there i think that will be good

experience because ... the first institution they have created was in greenfield in delhi they have this time i think they have we have been given to understand that they have 34 these homes all over india and that is the ngo running world over around 134 countries what is interesting is they modelled it on a village community in a village community where families live together in close proximity name says SOS save our souls it is a very nice concept the way have done it is very well .....this is not the .. to carry the day and manage the things they are literally dedicated people ..... working in india tv the owner is working with delhi metro he did his diploma in something i think civil engineering and he is currently working so i think it is you have to guide them provide them an opportunity to a certain stage once they break that barrier then they are on their own and they know the value of life and once they are admired by the society it probably encourages them to become good human beings and that's the end of everything that is what is probably intended under the juvenile justice system sir what we suggest our experience yesterday we have never heard any bad thing or mismanagement of this sos village but ngos run for financial aid just for the public gallery we have seen there are so many of and on we see newspapers and television they are being mismanaged they are subject to many cruelties and torture this is a suggestion you can have the innovative ideas because you are sitting at the very august post and you can help the children i fully agree with you what you are saying and but we have to pick up good examples and publicise them bring them to these forums share their experiences with everyone so that they i have also learnt through interaction with these children and i have as you rightly pointed out i have come across many ngos who are providing drugs to the children and they keep them captive and there is no way they can escape and they keep on receiving grants from foreign aid agency or government or any other source if they the day these children leave their source of funding will be stopped so anyways i mean we have to go for the good examples and suggest new pathways but this sos probably i have heard for the first time i think i would like to visit and see this is a very famous organisation basically what i know little about it shri jayant kaul is the padmabhushan awardee he was the 1st person who has founded it this organisation with the collaboration when the 2nd world war there were destitution and ... there was the concept take care of the children orphans and this organisation was .. we have never heard anything bad about this mismanagement or anything till date i think all of you should join hand together and form a new sos organisation consisting of judicial officers that will be a wonderful example and start doing something good and whatsapp i am willing to take lead yes we will follow rather we will be side by side be a part of that shri are

you willing to take lead lets do that if it needs any monetary help monthly .. obviously we will give from our own salaries and pay for that no issues and copy paste such examples your life will be increased by another 100 years ok coming back to my topic what i decided to discuss with you today morning is how to improve the efficiency and efficacy of the JJB the reason is in may this year we had organised a JJB conference where many of your friends brothers sisters and colleagues they participated included the social members also and during the course of deliberation we came up with many new ideas new suggestion there were many question and i will like to share certain things with you there is a document the book is there you can always download it if the copies are not available it is available on our website you can down load it when you go back or you can provide them soft copies what i have tried to do is that in the next one hour i will go through the main issues and seek your indulgence in those issues if you have any suggestions or comments or criticism or anything about those this was the conference and justice vimla was also there where is she no she is not there her picture is not there ok her picture is missing from here she is the finest person i have seen she is judge in madras high court one of the finest persons in the sense that she speaks from her heart when she sits here and speaks before you all she will speak as a human being not as a judge and thats why what she speaks convinces you and she is pretty knowledgable i think given an opportunity you should invite her again or try and meet her or get in touch with her and she is a person who will always respond ok there were around 54 principal magistrates and 24 social members 3 of them did not provide their designation so i believe they were principal magistrates 58 3 of them that is not very important just to show you the composition of the participants in the terms of experience 2 of them had pretty good experience of more than 6 years but majority 31 joined JJB in 2014 and 21 in 2013 21 were almost freshers and 31 had 1 year experience not much i would say but if you look at the strata many of them were fairly experienced members of JJB 4 particular aspects which we deliberated upon were bottle necks in effective what see everybody knows that jJBs are not functioning effectively and we wanted to understand the reasons for those factors that determine orders under section 15 efficacy of the functionaries there were various functionaries who are associated with the JJB and how effective and efficacious were those functionaries are and lastly the management of the institutions in terms of bottlenecks i hope the last person can see this if you cannot then i will read it out for you the impact of just highlighting the important bottlenecks 1st is knowledge and competence of JJB itself additional responsibilities many of the participants mentioned that since they are holding additional responsibilities they are

not able to do justice with the JJB and its decisionmaking process jjobs are unfriendly the atmosphere the setup of jjb is threatening to the child poor social investigation report and inadequacy of staff now lets talk about the knowledge and competence everybody said that the qualification is fine but in terms of experience there were 3 major groups 1 said that there should be a minimum experience of 7 years the other said minimum experience should be 5 years of the members including the chairperson and 3rd group was almost content by saying that its 3 years is ok 3 years of experience as a judicial officer is fine orientation course obviously everybody suggested that there is a need for regular upgradation of knowledge experience and sharing so that goes with out saying in fact composition when we raised this issue of composition again many people said that the present composition is ok and i would like you to start think whether the present composition is that is something very important member other 2 members sorry other 2 members composition for other 2 members no the composition of JJB itself sir in my argument is that the other 2 members they are from the society but they are choosing of those 2 members should be very heavily yes who is choosing them i have seen that somebody has worked with somebody and he suggests his name so we have no authority i have seen that he has been in my court .... he is a mismanager so those members are bottlenecks actually in that group maybe under the in a hush hush tone probably this issue must have been discussed but since it was a complete group containing the judicial officers as well as non judicial officers so people did not discuss this separately nobody criticised the other part but yes i have the analyses i have the responses to the questions in my computer and i can share that with you as to how many members said what and how many judicial officers said what so the opinions vary what i am trying to reflect is the overall picture that emerges from the discussion there was a suggestion that we should go for retired district judge and 2 district officers the reason is that because of the additional responsibility and many other factors if you have a retired district judge probably he or she can devote full time in managing these cases and 2 district officers they carry lot experience with them they carry lot of sensitivity with them so that was one line of approach the other was retired district judge plus 1 police officer and 1 officer from the women and child department the 3rd was principal magistrate plus child protection expert that means that they wanted only 2 members retired dj and 1 social member and 1 psychologist so these were the different views you think start thinking and try to revalidate these things because if you can give these suggestions concentrate them and revalidate these suggestions in next 2 days we can then take it up through the ministry through the government and

through the honorable supreme court to do something about it if you start the changed process it may take sometime but eventually things get changed unfriendly jjb round table the suggestion was that the present structure of jjb the jjbs are in the form of a court and when the child enters even if an adult enters a court premises or court room you know how you feel like and when you enter as an accused you imagine the mental status of the child so the suggestion was we should have a round table kind of a system where the family member should also be invited to sit along with everybody else to be a part of the round table the other and very important suggestion was that there should be no lawyer chamber in and around jjb premises we all agree with this it has become a big business outside if you quietly go and stand outside the observation home you will find that the lawyer do not allow the parents to enter you don't know anything about the law they try and extract money from the poor parents observation home staff does not allow the parents and brothers and sisters to meet their child to provide food to their child again there was divided opinion 1 group thought that the jjb will serve the purpose particularly when the your holding additional charge and you cannot visit the other district and the child has to be brought from some other district for 1 day and then you give date it causes a lot of harassment so probably in this world you can go for video conferencing through skype or other means which is cost effective and take some decision juvenile to appear only when eye witness is required and then juvenile should not be asked to appear so every time there is a hearing it should not be mandatory for the juvenile to appear before the board this is one picture of JJB this is Ranchi anybody from Ranchi no in fact you know I succeeded in changing the floor first time when I visited there was a stage this a reflection of the court no prior to that this picture I have taken recently some 2 or 3 months back a podium was there no there was a podium during my 1st visit in 2013 when I went there I asked them to remove this podium but the chair and the set up remains the same what they have done is removed the podium now look at this picture and try and enter into it as a child it is quite intimidating .....yes so that is not the suggestion I really like that suggestion that there should be a round table system and my request is in your jjb nobody is going to question all these things you go ahead and start implementing all these things implementing round table system what stops you first of we see what is the rate of these delinquents whether they are from rural area if rural areas children are then we can have an atmosphere that we have experienced yesterday homely atmosphere we cannot feel that I'm offended I have come to some alien place what is /..... that is the sanctions the regulations rules that are provided under this act it should be homely that is

something very important and in order to have that important system i think round table will serve to a very large extent where everybody can sit together where police officers and lawyers and everybody .. and they sit together because most often they are not police officers come in uniform the lawyers are in uniform so it changes the whole game poor social investigation now this is something very very significant i have divided this into 2 components component of probation officer and the social investigation report now the input that we received was the probation officers do not visit the home of juvenile they do not visit the villages their neighbourhoods is that true you validate that ok and it was also mentioned that they demand money at times and therefore the suggestion was sorry you said something ok im in general that was the feedback that we received the suggestion was that the we should have honest sincere and dedicated probation officers social investigation report lacks clarity obviously when you are not doing your job well because if you are not experience you are not competent if you are corrupt then this is bound to happen the reports are incomplete the submissions are delayed many reasons for delay in submission your incompetence or there is deliberate intent on your part to delay it to seek money and there are many information gaps and what is to be done for that is to review and change the SIR format to make it more meaning full and then the other one was essential qualification for there were 3 suggestion for they should be post graduate in criminology social workor behavioural sciences funding to yes this again is an important suggestion that why they arte not visitng the homes is they are not provided additional funding support so they are ttrying to avoid or do whatever so there should be a formal mechanism to provide funding support and they should be after you have provided everything there should be a tiome bound submission for the reports and the time which was suggested was 2 weeks then information gaps the it was suggeted in the information i cant see it so small something very important highlight the source of information when you are preparing the report always mention the source of information it should be made amandatory which you can still when you go back you can implement that if the probation officer is submitting the report ask them what is the source of your information and let them mention the source of information to make the documtn more authentic the other was positive traits of juveniles are not mentioned now poositve traits normally they dont visit the neighbourhoods they dont talk to others to find out you go with a biased mind you will come out with a biased reportso there must be every human being has a positive and negative aspect you should be absolutley unbaised and that is why it is called social investigation repoir and the positivce traits of the

juvenile shall also be included in this and written reports from the school and neighbourhood maybe the sarpanch and the teacher and others also ask them to submit a written report under their signature and that should also form part of the social investigation report on the 2nd aspect on the dispositional order when we raise the issues as to why there are so many cases pending there are many states where thousands of cases are still pending the reasons which were given that non submission or delayed submission of inquiry report by the io that was one important reason but interestingly no participant took the blame upon himself or herself in this everybody knows that there is a delay at the level of the board also while it is true that the reports are delayed by the Io by the probation officers and non availability of staff was also referred to as one of the reasons and non availability of member social worker now these are the reasons but nobody ever mentioned that the board itself is also equally responsible of delaying submission of report the suggestion was sorry the criteria which was adopted for the issuance of order under section 15 social status of the family do you take into consideration while issuing the order the social status the economic status of the family the health of juvenile the disability of the family or the disability of the juvenile and the scope of reintegration with the family the previous offence do you take this aspect or into consideration any of these factors or all of the factors or is it purely based on the argument and the other factors lets be very honest that ... social investigation true but im saying in the current scenario one is the ideal situation the other is the actual ground reality what do you do while while taking decision do you take into account or you dont all these aspects you take care of it good .....

i will speak for myself we dont have any boards so we dont have any experience there is no constitution of board in jammu and kashmir. still rule are framed in the previous year but still no probation officer no juvenile police unit nothing we have written letters to the minister also we have requested him i think they should expedite this process but it is required to be done jammu and kashmir we are getting lot many cases and nothing can be done about it in fact once i had suggested to them that if you want us to come and train them and provide you all other help we are willing to do that whether you have the law or not . we have lot of children in need of care and protection in destitution because of the situation over there yes so that something very unfortunate in maharashtra also some problem.... can you speak into the mic please we have now spoken about the probation officer now what happens is that probation officer is not the independent officer he used to be a class 3 officer of women and child development and he has additional burden of the po so whenever he gets time he goes there or sometimes he doesnt go and write the report on the

basis of his some colleagues working there so this is also in entire maharashtra this is the position in many states not only maharashtra it happens in many states and because we dont have the independent till last 10 years they have not trained anything they get some format and they used to just fill in the blanks how do we set right this situation i really feel agitated sometime yes sir and there is a reason and the reason to me is that on one hand you say that we have to become a developed nation and no developed nation has ever become developed if the society has remained weak and if you are ensuring that crores of children they do not get education they do not get justice they acquire skills how do you expect the gdp to improve and the country the nation to become a developed nation somewhere i think all of us will have to break those barriers and start writing in the orders that the this is being delayed or my if you are writing the order you can say that in the absence of this this this the decision goes in favour even if you know for sure that juvenile has actually committed the act lets see what happens let this go to the higher courts let the more so examine and study there maybe set backs in the beginning courts should say because we are part of it courts are doing their best they are public interest litigation they are issuing order but enforcement is somebody else they are deliberately courts have done more than the desired thing but the point is in the interest of society in the interest of the nation i think needs to be pushed on regular basis you will always find in most of the courts in the country there are a few judges who are very close the issue of child rights and many of them as they progress in age they become more and more sensitive i have not come across even among the politicians also approach them convince them they are willing to help you that is all leaps ahead you are from tripura your chief minister is such a wonderful person he comes and attends the meeting the only chief minister who has attended my meeting normally who bothers he was sitting there with all police officers judicial officers and everybody so you have i think somewhere as human being all of us have to take this lead somewhere he maybe more than a politician may be a human being not a politician all politicians are human being first all officers are human beings first and not only professional later on sir this is a very sensitive issue this issue will take us to heights if we redress it yes and these are future of our country please remember if you do not do this and i keep asking this question to my police officer friends you are creating criminals in society see a person who is remains uneducated will go for work as a daily wager generations after generations they will keep on reproducing children who will again not get educated because the parents do not have enough money because the parents have vices that is a vote bank for them sir you know and every one knows

about that but what I'm trying to say is at least somewhere try and sensitise try and sensitise keep on pushing try and write certain things in your order you know when the supreme court writes its judgment in some of the important cases they go into the history they analyse and that gives the reasons that gives you a lot of food for thought as to why this particular decision has been arrived at and in your order also somewhere the preface should also be there why you have come to this judgment and mention it if you are saying the probation officer is incompetent please go ahead and mention in judgment that the probation officer was incompetent he failed the JWO failed in his inquiry report or the inquiry report was prepared sitting here in the office or the probation officer has not visited the home and as a result of that the whole there has been a delay in issuance of the disposition order sir they know it but who will be ... what I intend to say is please start writing let it remain on record if I speak here nobody takes care of that if I write it it remains in record permanently you may go you may go somewhere else you may become high court judge after sometime but this will remain in the record and all of you start writing it is yes I already started to mention the same in the order that's yes actually in the different cases police person not submitting the final report within the time even they will take more than 3 years why should for due to the police officer they will suffer then I already mentioned there is a clause provision in the CrPc 167 and the clause 3 I already mentioned the 167 due to non submitting of the final reports so they shall be discharged from the case like that this is actually what the group suggested you take advantage of rule 15 sorry rule 13 1 a and rule 13 7 I can read it out for you. 13 1 a says dispose off the case, if the evidence of his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking 13 7 says In all other cases except where the nature of alleged offence is serious, delay beyond four to six months shall lead to the termination of the proceedings terminate all proceedings let the blame go to the IO or the sir let people go in appeal in the higher courts let the higher courts also come to know let the government also come to know because of the failure of their functionaries the case has fallen and if everybody does that then the people will start discussing it in such forums that is how the whole energy has to be built up for this cause sir these are the central rule in Maharashtra 2011 Maharashtra juvenile justice rules are there and there is one very good provision is there that if during the period of 4 months from the production of the juvenile the final report does not get the magistrate can issue warning to the IO as to why he has not issued final report after waiting for 2 months over all 6 months he can pass the order of stop investigation and file the final report as and when it is so that is also good that's very good

but in those states that have copy pasted this central government rules there is provision go ahead and make use of the provision close all cases that are more than 1 year atleast to begin with that are more than 1 year old sit for few sittings continuously and close all the cases and lets see what happens .... i think you should start doing this now they ... there are cases where the juvenile has become adult they are 30 years old and people dont know the whereabouts are also not known so all eventually those cases will be closed so in official records these are still shown as pending cases ok other functionaries 2 important functionaries the juvenile police unit the welfare officer the public prosecutors problems yes samewhich you mentioned additional job poorly trained and sensitised they need to be trained and sensitised whetehr they are holding any additional responsibility i think sensitisation is something which is seriously lacking even in the capital city of delhi there are many officer but most of them are not sensitive when you speak with them they appear sensitive but other wise they in their actions are not summons are delayed then to overcome this issue of delayed summons the suggestion was that you should start sending summons through post or courier is it viable yes start doing that dont wait for the summons to be send by in person ineffective and poor reports dedicated i think there is a gap though the suggestion is there but how to bring in that dedecation is a big question mark and one needs to sensitize them on continuous basis we are trying at our level we are trying bit by bit to sensitise people but again the limitation is you cant travel to the whole country and other things i last infact this year we have sensitize the grp and srp officials in a big way atleast in metropolitan cities and it has brought in some good results for missing children or abandoned children public prosecutors same story they lack knowledge and understanding outcome of the case is obviously going to be affected and the suggestion was why not have amicus but who will take the responsibility for can you notify amicus at jjb level.... you can you have done that there is a national legal services authority providing legal aid free legal service panel we have a panel of very good lawyers if you really nominate good lawyers they will definitely work as an amicus curie but others you dont have any issues with the lawyers with the public prosecutors .. they never come ... then why dont you adopt this go for amicus see they are political posts same story.... prosecution for prosecution can amicus be considered .. we have to see the conviction of the prosecution they are part of the prosecution but there are no rules act you can a private person can be a prosecutor can play role of prosecutor but in criminal procedure code there is a provision he has to seek the permission of the prosecutor appointed by the government for the purpose permission means ... it will be deemed to have given

permission but in such rules there is no such provision. they can it can be amended a private person called amicus curie can act as a prosecutor he can act as helping hand even if he does not appear he can be helping hand good. public prosecutor private person.... ok lets move on now management of institution you see jjb we have already discussed and then ... the situation of special homes ... certain things you can implement ... one very important aspect is transparency i have been raising this point of transparency time and again wherever i visit with limited success because ultimately it is ... but it is your mandate to visit the observation homes you are legally mandated to prepare and submit 6 monthly report to the high court the chief judicial magistrate the cjm you dont have how do you deal with these cases then what happens then to the juveniles ..... so even the juveniles are also kept in the special homes then that defeats the whole purpose actually we have undertaken this exercise of listing down all ccis now and the childline is will shortly be conducting the inspection of all these homes hopefully we should come up with some startling facts in next 6 months or so but that apart transparency even if see something very small you visit there for an hour if you dont have sufficient time just visit your mere presence will make tremendous difference your footsteps will be remembered by everybody and one line dont prepare the report that the food was bad everybody knows that the food is not good money is not trickling in and everything is hun ky dory but if you simply say please provide this report to me everything should be in public domain ask the state sorry the district to put everything in public domain how much money have you provided in the current financial year what happened how that money was utilised let us find out once it comes in the public domain public will help you they will start making allegations that the benefit of transparency rather than saying the food was bad they will say we will try and improve it. let people be aware let people be after the normal public be after these people and i infact i would go to the extent of saying that all observation homes and all cci should be made open to public anybody can enter into the premises at any point in time as a citizen why do you want to restrict my entry as a citizen in observation home it has because we are all scare we are doing wrong things we are scared and thats why we are keeping the gates closed sos you have given the example yourself and that is the advantage governance the suggestion was to improve to the governance of cci exclusively they should exclusively managed by government and not by ngos do you agree with this statement that they should be managed only by and ngos to provide only rehabilitation and correctional services encourage csr for funding yes probably thats bound to improve the situation if you have csr professional training and skill enhancement

facilities mental health legal aid cctvs children committee children committee are there in some mostly dysfunctional and juvenile to be trained in nearby factories and institutions that probably what the you have seen in sos village this is the kind of suggestion just ot make it more and more open and friendly ok i would like to show you some of the outcomes so you have an idea of who did what and who said what observation homes you know when we asked them this question as to where is your board where is your office and they say only 50% said that they have the board in the observation home premises rest other district court premises 23% it is terrifying no answer but cci and any other places any other place maybe rented place or someother governemtn building jjbs as additional responsibilities most of them said yes it is an additional responsibility appointment of rpincipal magistrates done with consent obvioulsy and that gives an indication as to how many people are genuinely interested if the consent is taken how many people will genuinely opt for the position of pm first and fore most he should be eligible even if he is a magistrate no that is right there has to be soome qualifications ... elgibility is one part of it but even after eleigbliity how many.. first and foremost we should see if he is eleigible or not has knowledge about working knowledge aboutmental health of the child psyche of the child little bit of experience even if he is married thenwe can understand that he has some knowledge suppose i will leave this presentation this there are certain hidden slides because of paucity of time i will not you can go through them it will give you fair idea as to who said what a principal magistrate if he is an unmarried person so still you will appoint him he dont have the experience of working with the children the person who has children he is married ... thats right that actually this is this is a part of social justice system its not part of criminal justice system and you have to be adaptive to that it is not retributive it is the social reformation .... it is true everybody says that he is not an accused dont call him accused dont give his name there is a rprovision in the rulkes i have gone through because we dont have any boards but i have done little bit research on that there is a still a blanket ban that there is no name of any victim or accused should come in the public nirbhaya case that is open everybody knows the name of the accused there is a blanket blan 44 or 22 rule so till we done we are not enforcing it day in and day out we are using the see the tv nirbhaya name has been already given over there it goes both ways there is another important aspect you know you may not have joined as principal magistrate your consent was not taken but having served as principal magistrate when we asked this question whetehr you are desirous of going for the second term interesting 44 of them54 % said they are desirous of a joining in the second term also which

shows that even though you may not have the inclination in the beginning but after having served and experienced i give you my example i didnt like when i posted here i had no experience but after having seen the situation i never knew that the person the child who is singing songs when you are travelling in the ac compartment who comes in the morning and starts singing with those stones or who starts cleaning is a child who is a runaway child who is a destitute i never knew the problem was really gigantic when i visited the railway station after joining when i spoke with these children then i understood as to what is the issue behind there is an entirely different story behind this so probably that's why the results reflect this part that initially yes one may not like but having served some people automatically get sensitised minimum experience as i said 15 of them said minimum experience should be 7 years before you joined the board others 19 of them said at least 5 years majority 30 was of the opinion that 3 years is ok formal training in juvenile justice system no but 33 yes and partly you can take the negative side cases pending as i said there are many many cases pending our record speaks very clearly there are thousands and thousands of cases which are pending for several years and this is a reflection whether special home for juvenile and those 18 and less than 21 years are available not available so where do they go quarterly monitoring reports 20 of the participants said that they are not sending the monitoring report observation homes and special homes inspected only 1 46% no answer you can count towards not visited only 2 nil nil is also so this part you can take for negative examination of social investigation reports in depth casual approach now 44% said while examining they have casual approach in depth 36% quite satisfying if 36% are examining it carefully and doing an in-depth analysis reasons for unsatisfactory contribution of social member this is quite interesting you know i went into the detail of each even the social members have also given their own findings and they have agreed that there is lack of confidence lack of interest amongst themselves social members have written have written there is a lack of confidence and lack of interest. lack of sensitivity and orientation these are some of the reflections lack of interest and sensitivity and orientation of the delayed report or delayed judgments whatever police stations had juvenile welfare officers no 43 % and wherever they have you know the quality and the kind of approach of the juvenile welfare officers capacity and knowledge of juvenile welfare officers well trained only 15 of the said they are well trained 33 not trained 29 average sorry again this 33 plus 29 61 majority of them said they are not well trained most rusted and accurate document for age determination now i have a dilemma here the group said its the most trusted document is birth certificate right now we did similar exercise with

the special court judges which happened recently pocso in that this shows matriculation or equivalent certificate 45% i am not able to understand this the special court judges who came pocso they mentioned that it is the matriculation certificate which is the most trusted document i think they went by the law that this is the requirement this question was very specifically asked which is most trusted document my experience tells me that matriculation certificate is not a reliable document for age determination you have mentioned you have done this in your exercise you have mentioned that the most trusted document is the birth certificate provided it is the same is registered within a period.... in your case 17 of you said that matriculation it is not that they people did not mention but the proportion is far less 17 of the 81 participants sir perhaps i have a reason for this discrepancy and juvenile justice boards conduct inquiry in each and every case and perhaps pocso courts don't do so because in a pocso matter supposing there is a child it is a new act only when there is a dispute that they determine age in juvenile justice board we determine age in each and every case we conduct an age inquiry in each case as per the decision and the first and foremost declared a juvenile suppose . in cases of .. juvenile is age of 16 to 18 years.....no but in pocso also age determination is mandatory ..... in case of victim my experience tells me that suppose there is a victim there is a victim he is about let say 10 years of age there is a dispute about his age defence is not disputing that he is a child so ... 10 years ... i we need to analyse this 2 different versions so and they are far apart see one is the birth certificate the other is matriculation nobody is talking in terms of school certificate or anganwadi something like that which should be treated as a our group has gone by this your group has gone by this i just wanted to flag this point whether the ossification test is conducted by medical board or single doctor 19 of them 23% said by single doctor this is that's your group finding sir i have an experience to share in this regard in my board in my board the investigating officer he got a medical age determination done suo motu by a single doctor without taking permission of jjb then he came to me and said that as per the single doctor's opinion he is about 20 or 22 years of age in terms of the judicial decisions we can not rely upon the opinion of a single doctor then i passed an order saying that he be examined by a board of minimum 3 doctors the doctors examined the boy and said he is a juvenile he is less than 18 no whether that you can always question of the judgment of the board but the basic issue how can a single doctor conduct that itself should be thrown into the dustbin the moment you receive the report it should be thrown in the dustbin ok whether state and district has created any fit unfortunately majority 66 said no fit institution or place of safety it is true it is quite scary whether

dcpu has a counsellor to visit the board for counselling of juvenile this validates my point because we have already done this exercise majority of them say that no whether probation officer appointed for conducting social investigation they have probation officer 56% yes and yes we have analysed how the quality and other things so one is you dont have pos and wherever you have its the quality of reporting and other things whether the probation officers are well qualified the principle magistrates in the groups said yes and 35 said no members 18 said yes and 4 said no overall it was 50 50 % your view this is an important slide i have broken it into 3 components i have analysed the responses of the principal magistrates in the group and the members in the group put it here separately its it gives you a different picture altogether and here it is almost 50 50 % i really dont know because something else has come out in the group discussion which is there is the report and entirely different not entirely different but very different things have come up in the analysis to the question whether probation officers are well qualified well trained and competent 50% response was that yes they are if yes then why that i have no answer quality of social investigation report 37% said it revalidates the previous slide 37% saying yes and 58 saying no whether findings of the sir are taken into account while passing order or disposition seldom rarely but majority takes into account uploading the data not uploaded uploading the data regarding what on the track child for missing children no all children all children in the sense all children in the observation home are the children who are ... yes nobody is doing that we are doing that you are doing that good thank you so much because it really helps because track child has been reconfigured and the intent is to ensure that any missing child and any child has been found anywhere it can be matched quickly and the corerectional actions are taken fact otherwise there were many cases where the child stayed in the children home 4 kms away from his home for many many years but sir then i have a small problem with this supposing there is a child in the observation home you are putting information on the net will that not amount to disclosure of no no that has been taken care of that issue was there it has been taken care of in the website itself it is not in public domain there is another website called khoya paya which is in public domain so anybody can have access to that website that point has been taken care of significant age group i think most of them said that i think it is 16 to 18 years and this has been proven otherwise also factors that compel child to commit heinous crimes some very good findings are there lack of education lack of family care lack of sex education peer pressure poverty but poverty social environment in lack of education and family care they stand on top which is fairly well known to

all of us high number of cases reported in terms of offences if we say narcotics it was ranked fourth in that within the whole group rape cases you see 57% murder cases 17% said that it ranks first but again majority in second or third category and kidnapping also very low but rape cases yes on setting up special judicial cadre for posting in juvenile justice boards participants were in agreement that there should be a separate cadre option for effective i have already discussed i just want to show you who voted for what ... majority said that the present composition is effective and does not require change sir the present composition as per the statute that is alright but the kind of members that ... no it was not about the quality it was the composition see the first is the composition is fine there is another group 18 of them said retired district judge with 2 district officials members and .. many of them they did not provide any answer to this they were quite .. quality yes what you say is right sir i have seen members who cannot write who cannot frame a sentence in english i have to tell them as to what to do .....that's right i virtually dictate that ok i am done now any questions any questions that you would like if not thank you very much and honour to be here with you again i would leave with the request that we start what we discussed in the morning lets start that work wherever you are lets have a whatsapp group or a google group or gmail group and start this process lets not aim too high in the beginning but lets start with a very sure ... let us start. thank you very much so thank you so 15 minutes for tea we will be back here thank you

## **SESSION 6**

Just read the problem and when all the members of a group has joined Ben you start giving the response very small problems you have to give your reasons and one of the members in the group can be can represent the group as group leader . 15 minutes to discuss and then present 15 minutes. in Maharashtra they have their own rules so you can do 1 thing go by the Central rules just follow the central rules that will be the best what will be your opinion according to the central rules. we have 1 table 1 problem. Ok are you done ok good every body has done okay try to finish it quickly very simple problems I think you got the simplest problem this is what others may be having it . questions are different. Table a have you done still doing table c try to finish it quickly e ok I think they got the first one. Ok everybody has done it group c and group e still try

to finish it what about d I think let them complete and we will start the discussion ok kindly finish within 2 minutes now 2 minutes then we will start ok sir done ok so group a now just read the problem and answer instead of reading the problem you can tell the gist of the problem kindly listen to what group a is saying. Please what was the problem The problem that was given to our group was that A is a person a juvenile who is accused of an offence under Section 364 IPC and other sections he moved an application before the court That he is the juvenile and produced before the evidence as matriculation certificate it has been proposed by prosecution stating the bank account that while making his bank account he has declared his date of birth and as per that date of birth he is not a juvenile so what is the decision so we have come to the we have discussed this problem and and came to the conclusion that this is a is juvenile because as per rule 12 clause 3 a sub clause 1 office rules 2007 it is a matriculation certificate which should be given the first preference and not any other document if matriculation certificate is not available then only other certificates can be taken into consideration the same has been held by honourable Supreme Court in case of state of Bihar vs Chotu Pandey in in this case the supreme court itself has referred it's all yours judgement and in case of Ashwani Kumar Saxena vs State of MP so everybody this was the problem everybody will say the same thing okay please please now I have a problem please Just turn this side your chair tell us what is your view on this problem sirf we have bank account we are talking about there's a problem no on this problem okay sorry sir your High School matriculation certificate was produced but the prosecution produced another document that there was a bank account and in which the person has declared different age so not difference Nobody's differing okay fine now b a problem is that the juvenile places Reliance upon up Primary School document as per the primary school document he is an adult as per the matriculation certificate he is a juvenile decision is that Juvenile on the basis ok matriculation certificate because of the rules state show Ashwani Kumar says is the matriculation certificate has been obtained by fraud or manipulation but that is not the CaSE here but that is not the case if it is manipulated then we can discuss it but the fact nowhere states that there was doubt about there is a difference of difference in the declaration and certificate that saying one thing and another document kissing another can we say that it is manipulated no I cannot say this manipulated I have written prosecution oppose the petition speak into the mic we can't hear you you are right rules provide like that only but in Ashwini Kumar Saxena case it is a

matriculation certificate it has to be relied but if it is fabricated Oru manipulated the prosecution has not said that the prosecution is not saying that it is manipulated prosecution is showing the bank account in which he has is declared bank account is no document within the rules in the rules the bank account election card nothing can be relied on astrological by Pandit or see some Sarpanch all these documents have no relevance group number C still working so by that time I think we can go to group number e okay d is who is what is d whosoever has completed can start Mr Manoj so problem was was like the boy d the juvenile was trying to take the benefit of juvenility on the basis of a transfer certificate issued by Senior Secondary School where are the prosecution producer certificate from the primary school and according to that d was more than 18 years of age on the date of commission of offence and the issues for discussion given to us were during inspection find the primary school register was not properly maintained and entries were not made against the name of many students endeavours overwriting without any authentication the other issue was what would be the effect of non production of admission form despite order of the court and the decision of the group was that first and enquiry has to be conducted by the Juvenile justice board by calling the primary school record in light of the discrepancy as per issue number 1 and if the court is satisfied that there is no need for further enquiry but if the school authority failed to get the form even ordered by the court , because he juvenile there is no problem authentication has to be overwriting and as per section 7a rule 12 of the act they have to produce the matriculation certificate which he failed or we cannot rely on the transfer certificate produced by d and even the primary school record is having certain discrepancies whatever they have produced and the third one would be they have to get the birth certificate from the panchayat and HCL to get all these documents the only thing left for the court if you go for ossification test buy going to medical board that is hard decision anybody any dissent please not descent I would like to add to2 what she has said in that case there was a school leaving certificate I have found Supreme Court there are two different judgements in this respect Manthan school leaving certificate can be taken into consideration other one says that it cannot be taken into consideration there are discrepancies as such I just wanted to add this rule 12 4 documents have been provided and as per rule 12 school leaving certificate is no document buton 139 Kale set that it was from jharkhand that case was from Jharkhand it said that school leaving certificate can be considered but enough subsequent case state of Uttar Pradesh they said that the

ratio Ranjit Goswami is from Jharkhand that is obiter dicta and and school leaving certificate is not a document we will go strictly by the language of the Zuri and you will not allow any variation no there was no manipulation so is the primary school records I'm not properly maintained it can be discarded and the board can go for the medical opinion ok good e so a problem the problem that we groups ACC is that there is a double night and he I am sorry there is a person and he is claiming to be a juvenile and according to this case he is a Jew and I'll on the date commission of offence because is high school marksheet states that tubegalore 18 yes FH on the date of submission of the offence but he is unable to produce is matriculation certificate before the board saying that he did not clear his examination so he did not clear CBSE examination ICSE examination whatever keep your destination but he did not clear so certificate could not be issued to him so that is the problem that is face by the board so what is this board has decided with no dissenting view that according to Section 12 which was discussed earlier the documents which can be relied on firstly is number 1 matriculation certificate or equivalent certificate show Indore issue what we have decided is that the school whenever you study photography have records is personal biodata and according to which usually the procedure for every date of birth issued by board certificate school examination is that biodata I sent by the school to the certifying board and the certify board accordingly issues the certificate so what this board has decided was that we will call the certifying authority from the school who can let's see who can crosscheck bring his records as well and crossed check on the basis that the document that has been submitted before the board which is the high school marksheet so supposedly the high school marksheet contains that he is below 18 which is quite strange because marksheets usually don't contain age no now a days they are mentioning the age if that is board certified then actually mark sheet issued by the school only no no if you sit for CBSE ICSE marksheetMarksheet is issued by the board so he has not sat for it but he has said that he has high school marksheet so obviously the school maintains a very good biodata of him so we will call the concerned person 2 cross refer the high school marksheet that has been submitted by him weather that is fraud or there is no know what do you say manipulation of documents because ..., or equivalent certificate so matriculation or equivalent certificate just a question if he has appeared for the board can we check with his admit card is it an admissible document not the admit card ..... the record would be what's the record would also contain the admit card so

it would be part of the documents there are cases there are cases where is in marksheet can be admitted admit card Shah Nawaz admit card is also we believe all of these things will Be A part of the document that is called not a single document but I think the safest thing is that if the certificate is not available we can quickly move to the second category that is the certificate is not available the next certificate for the school first attended of course he appeared in the high school examination he must have studied in some other school also so we can go for the school first attended and certificate can be used so this was just 2 1 group is left okay c for a moment let me be confined to the problem which has been posed to us in this case the problem his entries the date of birth entry was registered as by the intervention of the magistrate so we have to go and lift the veil whether it is the role of a magistrate under section 13 off registration of death and birth act this is a entry is always be possible it's not always truth that it is a summary procedure where we can believe the affidavit so what I am the statement of this father all the next so it is always subject to rebuttal so there is room for suspicion for believing that his date of birth is what that has been registered in the Municipal records by the magistrate so in this particular case with humble submission I would request that there is a very heavy duty of the court to find out the truth it is not that casually we will say that the birth has been registered in Municipal records by the intervention of the magistrate under section 13 so I have already said that subject to civil determination date of birth cannot be allowed to be set the records that it is not rebutted. corroboration is required in this case because he seeks protection juvenility protection it is to be declared by the court while having intercourse to other evidence which is The Honorable Supreme Court says in Ashwini kumars case and some other case there are catena of cases if that is not available then we have to go by the medical board CEO medical board will give the correct proposition recording his juvenility .... just read the problem for him what is the problem exercise c what is the issue there are different issues no just read the problem we had a problem that c has committed offence under Section 302 IPC by Juvenile justice board at the stage of appeal c explain the benefit of Juvenile justice care and protection act on the basis of date of birth mentioned in the birth certificate issued by the municipal corporation they have registered the claim of juvenility on the grounds on the grounds that the date of birth has been registered after 10 years office birth on the order of the magistrate after conviction of at trial so the registration was done after conviction ..... there is room for suspicion it may be true it may not be true it may be true it may not be true but

enquiry requires to be there for determination of the age ..... the supreme court holds certified document has been procured after his conviction then that document cannot be considered but there is another judgements of Supreme Court Shantanu Kumar Mishra the same what's the fact that conviction after conviction he moved an application to the magistrate no he can we can seek protection on the order of the magistrate there is a judgement I have a judgement Shantanu Kumar Mishra is it gonna charge phone from the supreme court so they can be opinion there can be opinion procuring a document after conviction one can always become wiser after the event has happened so have become wiser this fact can render the certificate suspect this can read the judgement doubtful but straight away you cannot reject it because it is a certificate according to rule 12 13 but there is a judgement that such documents are .... no you are right you are right outright it should not be rejected but it is always subject to the Civil determination had it been issued by the Civil Court it is to be accepted that is the law it is a summary proceeding so it is always subject 2 rebuttal. so thank you very much for cooperating and now what I propose to do because there is a history why this rule has been enacted no no not in appeal he was convicted by J J b in the appeal juvenility was claimed and at that time he said this certificate was secured but it was procured after the conviction so somehow there can be difference of opinion but the most important question which remains is what is the scope of enquiry after this rule whether any scope is left to the Juvenile justice board or do we to simply follow the rule the certificate whatever is written in the certificate that is binding on us number one question number 2 there is a history if you look at this provision why this position has been enacted so what I propose to do with the help of a few cases I would just discuss something because it has become a very complicated law so many cases are there so age determination is always very complicated issue before the court not only under Juvenile justice act but another jurisdictions also you are required to determine the age of a person how to do it because it is most complicated because because in India registration of birth is very very low not many people go for registration of birth so we don't get a birth certificate most of the cases even if we get the birth certificate it is recorded see after 10 years after the birth after 12 years after the birth sometimes it loses its significance II document with income before the court of the Juvenile justice board is the school certificate the school where the person has taken education the primary education Secondary Education but in schools also it is very common that

in correct date of birth is recorded in some cases this is done deliberately in other cases it is done accidentally because in rural areas what happens when the boy speak into the school the principal would say in which class do you want to study he says I will study in first class accordingly his date of birth will be recorded so that document is also not very reliable horoscope etc also there but they are also not very reliable so ultimately what happens is we are required to go for the medical opinion even the medical opinion not very authentic because you know there are variations there are judgements which say that if the doctors says 18 years he can be 16 years and he can be also 20 years 1 to 2 years but that is also not a absolute rule there are cases from the supreme court with say that this is not an absolute rule inappropriate cases you can ignore all these things situation is very confused one so what I propose to do is 2 discuss what is the conventional method approving the age evolve the jurisdiction and then I will see whether this conventional method has been applied how it has been applied and then we will get why this rule has been enacted so the conventional method is generally what happens either the birth certificate of the school certificate we have to see under which provision this document is relevant we all know in court you cannot prove that every document unless document is relevant unless the fact is irrelevant fact you cannot prove it Section 62 55 of the Indian Evidence Act so can you tell me the school certificate or the birth certificate under which section off the Evidence Act it is relevant section 35 it has been written there 35 Facebook that if there is the register or record maintained by a public authority and any person enjoined by law to maintain and if there is no entry regarding the birth data entry is relevant fact if it is relevant fact then it can be proved otherwise the school certificate the birth certificate they are not evidence of the age the evidence of the date of birth effectively speaking because it is not simultaneously recorded Butter Chicken place somewhere else somebody else is giving the input so section 35 husband of these documents admissible and relevant so is can b proved section 35 if the record is maintained by public servant on any other person enjoined by law to maintain it the record is every and he must maintain the record himself if it is being maintained by somebody else it is not a public servant and he's not enjoying by not maintain the record then it will not have any evidence really value this is very important Brij Mohan vs Priya brat it is one of the oldest cases and it was decided by 7 judges bench at the time Supreme Court and in this case what the fact was that haath chitta..was being recorded it is maintained by the chaukidar of the village he records all the facts that happen in

the village whether there is a birth death marriage all the fact recorded by him what is this case what was the situation it was the chaukidar was illiterate he himself did not record anything he was doing you are asking somebody else to record it so it was being maintained mathavinte Supreme Court Supreme Court said yes there is a document but it has no evidentiary value because it was not being maintained by the chaukidar himself this case proposition which we say natural life false of Ages made by parents to secure advantages the later stage explanation that incorrect date was carried in school record was accepted in this case school certificate produced before the election Tribunal to prove that the age of the person who contested election was less than 25 years but this person said that know this entry was made by somebody conveyed by somebody who wanted to show me off a lesser age Supreme Court accepted to this explanation so 2 things this case is very important number 1 often people given correct date of birth for the schools which is carried the high school certificate also what is required is that that there must be some proof S2 who gave the information if that proof is not coming then Simply because the date is mentioned in the document that will not prove the DOB of the person so this was the first case the second case which is very important again Biradmal Singhvi Vs. Anand Purohit supreme court and again on the election law in this case also not only the high school certificate I think I will provide you a copy of these slides so you need not write the citations not very relevant also because now the rules have been changed im just giving you a historical development how all these things have developed so in this case also there was the high school certificate tabulation etc everything was produced before the court and they said there is an entry and according to the entry the person was less than 25 years of age he contested the election this the officer permitted him to contest the election therefore the entire election is void but again the supreme court gave a distinction that mere proof of the document is not a proof of the content of the document though there was a high school certificate though there was tabulation records though there was so many marksheet etc everything in all these documents age was mentioned but they said the person who gave the information to the school are not examined therefore this document has got no evidentiary value so they drew a distinction between formal proof of the document and evidentiary value of the document they said that you can prove the document you can prove the document formally that this entry has been made by such and such person but that will not prove the content. that this was the age of the person that means the truth of the fact that this was the age of the person i would

like to read just few lines from the judgment because this is very important the birth date of birth mentioned in the scholar register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined the entry contained in the admission form or in the scholar register must be shown to be made on the basis of information given by parents or a person having special knowledge of the date of the birth of the person concerned if the entry in the scholar register regarding the date of birth is made on the basis of information given by the parents the entry would have evidentiary value but if it is given by a stranger or by some one else who has no special means of knowledge of the date of birth such an entry will have no evidentiary value so they laid stress on the fact that who gave THE information and if that is proved then alone the entry in the scholar register will have some evidentiary value. this is the classical approach. there the supreme court in all the cases prior to these rule that not only the record of the school must be proved but it must be proved not only formally that it was recorded that principal is coming and saying this in the handwriting of such and such person this will not suffice this must also be proved who gave the information on the basis of which this entry was made so this was the approach prior to juvenile justice act and this was being applied when juvenile justice act came 1986 1st act and then this act lot of question arose before the court there was no consistency in the approach of the honble apex courts also in some cases mere statement under section 313 of crpc was found to be sufficient balwant singh there was a case so in balwant singh there was just a statement under section 313 of crpc in this statement he gave the age that my age according to declaration he was juvenile this was not accepted in balwant singh. they said that mere statement would not be sufficient but there is another case bhola bhagat where is the another case bhola bhagat Statement of accused under section 313 Cr P C and assessment of age by trial judge was accepted as valid proof of age in absence of any challenge by the state either in HC or in SC. so one approach was bhola bhagat statement under 313 is sufficient there is another case balwant singh this was dissented in this . this was prior to the .... yes yes im jsut trying to trace the history why these rule have been enacted to understand what are the basic features of these rule unless we just try to understand what was the controversy it will be difficult so there was another pradeep kumar case 3 judges decision from supreme court in this case horoscope was used it was accepted by the SC transfer certificate was it was accepted and horoscope was accepted and medical opinion was accepted as an d in these documents were straight way filed before the sc the sc did no require the juvenile justice board or any other authority to get the proof of all these facts so mere documetns

were filed and they were accepted as proof of the age pradeep kumar bhoop ram case again very important case in this case the juvenility was claimed for the 1st time at the stage of supreme court the sc directed an enquiry to be made according to the enquiry the person was juvenile and he was given the benefit. why i am quoting this case because here the session judge held that he was not juvenile and the session judge did not accept the transfer certificate on the ground that it is tendency among the indians to get a lesser age recorded in the records etc though there are 3 sc judgments as i pointed out brijmohan singh and then daya chand case and umesh chandras case which is pradeep kumar gopinath umesh chandra here also 3 judge bench of the supreme court observed that although it is not uncommon for the parents to change the age of the children in order to get some benefit either for appearing in some examination or entering a particular service so there are 4 or 5 supreme court judgments on this point in whihc it has been recognised that paRENTs record incorrect datesoften parents give incorrect dates to be recorded in the schools so there was lot of controversy lot of inconsistency in the approach of the honble apex court also in some cases transfer certificate was accepted in other cases even date of birth certificate was not accepted in some cases statements under section 313 was accepted in other cases in pawan kumar there was a case in whihc transfer certificate was produced before the supreme court on the basis of transfer certificate supreme court even didnt order an inquiry they straight away rejected that this transfer certificate has been obtained after the conviction so therefore we are not going to even order an inquiry to the juvenile justice board to be conducted so in view of all these inconsistencies the parliament thought that the law shoudl be drasticallyamended and a clear cut procedure ashould be laid down in the rule itself. this is how rule 12 has been enacted by the parliament the important thing is still the question is suppose there is a certificate from the age of certificate of age from the school first attende need we summon the principal need we summon the person who gave the information after the rules a question arises because traditional concept has been that docukment has to be proved not only formal it has to be formally proved but its content has also to be proved somebody must come and prove it somebody must prove it the question tarises whetehr after rule 12 .. not needed very correct you are right so the 1st important thing is that we had given we had departed from the traditional evidence act because this is an inquiry this is special inquiry special provision has been made under juvenile justice rules so we need not follow the traditional evidence approach traditional approach still remains the same in other jurisdictions still we go by the same approach that document has to be rproved by he person who executed it and the person who gave

the information he must also be examined but this approach has been given a go by in rule 12 number 1 number 2 rule 12 is also important for a second reason that it limits the evidence the documents you can prove you cannot prove each and every document even if they can be very much relevant so that way what we say that we have incorporated a rule of exclusion exclusionary rule is there if one document is there which can be accepted under rule 12 then all other documents have to be excluded be it the LIC certificate be it the bank certificate anything if you can conclude that whatever document has been produced is not fabricated or manipulated this exception has been provided by the SC in Ashwani Kumar Saxena's case they say that if the document is fabricated or manipulated then you can ignore it you can move to the 2nd document but otherwise if there is a document we have to rely on it and we have to give full weightage to whatever entry has been made in the document. this is again the choice of evidence is there and the 3rd most important thing in the rules which is important for all of us is that it provides an obligation on the board to summon the documents they are using the words by seeking by obtaining no adversarial approach we cannot sit complacent that no the document has not been produced by the juvenile so we are helpless we will not summon anything adversarial approach they are saying no wording is juvenile justice board will conduct the enquiry by seeking by obtaining the following documents so a duty has been cast on the JJ Board itself and the courts also that if the documents are not coming forth with forward by and it is not being produced by the juvenile or not being produced by the prosecution then an obligation has been cast on the JJ board to summon the document suo motu action has to be taken no adversarial approach because we have to see whether the person is a juvenile or not whether the benefit has been claimed or not whether the document has been produced or not but responsibility is on the juvenile justice board now sometimes there arises a question because there is a judgment of the supreme court also and most of the time what happens if the benefit is being claimed for the 1st time at the stage of supreme court then they are directing an inquiry then will say that JJ board will hold an inquiry and return a finding whether person is a juvenile or not in such cases what is the scope of inquiry in Ashwani Chand Saxena we have discussed Ashwani Kumar Saxena they have clearly stated that there is a very limited scope of inquiry and we have to see what date is mentioned in the concerned certificate and we are not concerned whether the date is correct or not a very para 36 I would like to draw your attention age determination inquiry contemplated under JJ Act and rules has nothing to do with inquiry under other legislations there may be situation where the entry made in the

matriculation or equivalent certificate date of birth certificate from the school first attended and even the birth certificate given by the corporation or the municipal authority may not be correct but court jbb or the committee functioning under the jja ct is not expected to conduct such a roving inquiry and to go behind the those certificate to examine the correctness of the document. honble supreme court says if genuineness is not raised honble high court is not justified to go by the roving inquiry if genuineness is not raised genuinness of the certificate naturally they are saying in this case that it was manipulated and fabricated if it was manipulated and fabricated then we cannot travel beyond the document we have to stick to the document but there is another rule ruling again from the supreme court whihch i would like to draw your attention this is jithendra singh v babloo singh that is a very elaborative and directive judgment for the trial judges yes. jithendra ram vs. madan lokur and ts thakur no not this this is not there this is jitender singh vs babloo singh 2010 sc scale 171 in this case marksheet was sorry tc was produced before the supreme court and on the basis of transfer certificate the supreme court directed an inquiry to be conducted to be conducted by the juvenile justice board but at the same time what they observed is important suffice for this stage of directing an inquiry and verification of the facts the order we may i would hasten to add that the material refered to is yet to be verified and its genuineness and credibility determined there are no doubts that certain circumstances that may raise a doubt of the genuineness of the document relied on by the appellant for instance the deceased this was a case under section 304B for instnce the decesased asha devi who was married to the appellant was according to dr ashok kumar shukla district hospital bareilly was aged 19 years of her birth this would mean the appellant was much younger to his wife which is not the usual practice in the indian contect and may happen but infrequently so also the fact the appellant obtained the school leaving certificate as late as 17 novemebr 2009 after the completetion of the trial and disposal of 1st appeal by high court . they call for a close scrutiny and examination of the relevant school records to determine wwhetehre the same is free from any suspicion manipulation or fabrication this is also alleged that the electoral role should showed the age fo the accused to be aroiund 20 years while the extract from the register showed him to be 18 years old all these aspects would call for a careful and closer scrunity by the courts while determining the age of the appellant so no doubt ashwani kumar saxena says that if there is a document and it is in the one of the category prescribed by the rule it has to be relied and whatever is written we have to accept it but in doubtful cases if the genuineness is suspect if the origin is suspect if the timing is suspect then we are duty bound to conduct an inquiry and we have

to see whether the document is genuine and for that purpose I think we can also summon the persons on whose behalf or on whose behalf the entries have been made in the records so though after this judgment Ashwani Kumar and after this enactment the law is fairly well settled still we find that JJB what they do they mechanically accept all the documents they mechanically order the medical examination for the person which is neither required nor expected from the juvenile justice boards. So this is what I wanted to share with all of you that there is a history why this rule has been enacted because earlier traditional approach was being applied and there was no consistency in the approach of the Supreme Court in some cases mere statement was found to be sufficient in others even the certificates were relied by the Supreme Court so a specific rule has been enacted by the Parliament and now there are the cases from the Supreme Court that they are saying that this approach has to be applied in the POCSO cases also though POCSO cases are different and JJ Rule don't apply in POCSO cases my view is that there is the age is border line say about 17 18 years but my view as a presiding officer of a children court would be that in case there is a doubt of the age of the victim the benefit should go to the accused exactly if you will if you will apply JJ Rules in the POCSO cases or in ordinary criminal cases you will interfere with the right of the accused to defend and a fair trial will be affected because the fundamental principle of a sessions trial is that benefit of doubt to the accused here what we are saying is that benefit of doubt should go to prosecution so but there are 3 cases at the Supreme Court 3 cases in which they have said that the same approach has to be applied in POCSO cases and ordinary criminal cases that means the truth of the fact that this was the age of the person I would like to read just few lines from the judgment because this is very important the birth date of birth mentioned in the scholar register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined the entry contained in the admission form or in the scholar register must be shown to be made on the basis of information given by parents or a person having special knowledge of the date of the birth of the person concerned if the entry in the scholar register regarding the date of birth is made on the basis of information given by the parents the entry would have evidentiary value but if it is given by a stranger or by some one else who has no special means of knowledge of the date of birth such an entry will have no evidentiary value so they laid stress on the fact that who gave THE information and if that is proved then alone the entry in the scholar register will have some evidentiary value. This is the classical approach. There the Supreme Court in all the cases prior to these rules that not only the record of the school must be proved but it must be

proved not only formally that it was recorded that principal is coming and saying this in the handwriting of such and such person this will not suffice this must also be proved who gave the information on the basis of which this entry was made so this was the approach prior to juvenile justice act and this was being applied when juvenile justice act came 1986 1st act and then this act lot of question arose before the court there was no consistency in the approach of the honble apex courts also in some cases mere statement under section 313 of crpc was found to be sufficient balwant singh there was a case so in balwant singh there was just a statement under section 313 of crpc in this statement he gave the age that my age according to declaration he was juvenile this was not accepted in balwant singh. they said that mere statement would not be sufficient but there is another case bhola bhagat where is the another case bhola bhagat Statement of accused under section 313 Cr P C and assessment of age by trial judge was accepted as valid proof of age in absence of any challenge by the state either in HC or in SC. so one approach was bhola bhagat statement under 313 is sufficient there is another case balwant singh this was dissented in this . this was prior to the .... yes yes im jsut trying to trace the history why these rule have been enacted to understand what are the basic features of these rule unless we just try to understand what was the controversy it will be difficult so there was another pradeep kumar case 3 judges decision from supreme court in this case horoscope was used it was accepted by the SC transfer certificate was it was accepted and horoscope was accepted and medical opinion was accepted as and in these documents were straight way filed before the sc the sc did no require the juvenile justice board or any other authority to get the proof of all these facts so mere documetns were filed and they were accepted as proof of the age pradeep kumar bhoop ram case again very important case in this case the juvenility was claimed for the 1st time at the stage of supreme court the sc directed an enquiry to be made according to the enquiry the person was juvenile and he was given the benefit. why i am quoting this case because here the session judge held that he was not juvenile and the session judge did not accept the transfer certificate on the ground that it is tendency among the indians to get a lesser age recorded in the records etc though there are 3 sc judgments as i pointed out brijmohan singh and then daya chand case and umesh chandras case which is pradeep kumar gopinath umesh chandra here also 3 judge bench of the supreme court observed that although it is not uncommon for the parents to change the age of the children in order to get some benefit either for appearing in some examination or entering a particular service so there are 4 or 5 supreme court judgments on this point in whihc it has been recognised that paRENTs record incorrect dates often

parents give incorrect dates to be recorded in the schools so there was lot of controversy lot of inconsistency in the approach of the honble apex court also in some cases transfer certificate was accepted in other cases even date of birth certificate was not accepted in some cases statements under section 313 was accepted in other cases in pawan kumar there was a case in which transfer certificate was produced before the supreme court on the basis of transfer certificate supreme court even didnot order an inquiry they straight away rejected that this transfer certificate has been obtained after the conviction so therefore we are not going to even order an inquiry to the juvenile justice board to be conducted so in view of all these inconsistencies the parliament thought that the law should be drastically amended and a clear cut procedure should be laid down in the rule itself. this is how rule 12 has been enacted by the parliament the important thing is still the question is suppose there is a certificate from the age of certificate of age from the school first attendee need we summon the principal need we summon the person who gave the information after the rules a question arises because traditional concept has been that document has to be proved not only formal it has to be formally proved but its content has also to be proved somebody must come and prove it somebody must prove it the question arises whether after rule 12 .. not needed very correct you are right so the 1st important thing is that we had given we had departed from the traditional evidence act because this is an inquiry this is special inquiry special provision has been made under juvenile justice rules so we need not follow the traditional evidence approach traditional approach still remains the same in other jurisdictions still we go by the same approach that document has to be proved by the person who executed it and the person who gave the information he must also be examined but this approach has been given a go by in rule 12 number 1 number 2 rule 12 is also important for a second reason that it limits the evidence the documents you can prove you cannot prove each and every document even if they can be very much relevant so that way what we say that we have incorporated a rule of exclusion exclusionary rule is there if one document is there which can be accepted under rule 12 then all other documents have to be excluded be it the LIC certificate be it the bank certificate anything if you can conclude that whatever document has been produced is not fabricated or manipulated this exception has been provided by the sc in ashwani kumar saxenas case they say that if the document is fabricated or manipulated then you can ignore it you can move to the 2nd document but otherwise if there is a document we have to rely on it and we have to give full weightage to whatever entry has been made in the document. this is again the choice of evidence is there and

the 3rd most important thing in the rules which is important for all of us is that it provides an obligation on the board to summon the documents they are using the words by seeking by obtaining no adversarial approach we cannot sit complacent that no the document has not been produced by the juvenile so we are helpless we will not summon anything adversarial approach they are saying no wording is juvenile justice board will conduct the enquiry by seeking by obtaining the following documents so a duty has been cast of the JJ Board itself and the courts also that if the documents are not coming forth with forward by and it is not being produced by the juvenile or not being produced by the prosecution then an obligation has been cast on the JJ board to summon the document suo motu action has to be taken no adversarial approach because we have to see whether the person is a juvenile or not whether the benefit has been claimed or not whether the document has been produced or not but responsibility is on the juvenile justice board now sometimes there arises a question because there is a judgment of the supreme court also and most of the time what happens if the benefit is being claimed for the 1st time at the stage of supreme court then they are directing an inquiry then will say that JJ board will hold an inquiry and return a finding whether person is a juvenile or not in such cases what is the scope of inquiry in Ashwani Chand Saxena we have discussed Ashwani Kumar Saxena they have clearly stated that there is a very limited scope of inquiry and we have to see what date is mentioned in the concerned certificate and we are not concerned whether the date is correct or not a very para 36 I would like to draw your attention age determination inquiry contemplated under JJ Act and Rules has nothing to do with inquiry under other legislations there may be a situation where the entry made in the matriculation or equivalent certificate date of birth certificate from the school first attended and even the birth certificate given by the corporation or the municipal authority may not be correct but court JJB or the committee functioning under the JJA Act is not expected to conduct such a roving inquiry and to go behind those certificates to examine the correctness of the document. Honble Supreme Court says if genuineness is not raised Honble High Court is not justified to go by the roving inquiry if genuineness is not raised genuineness of the certificate naturally they are saying in this case that it was manipulated and fabricated if it was manipulated and fabricated then we cannot travel beyond the document we have to stick to the document but there is another rule ruling again from the Supreme Court which I would like to draw your attention this is Jithendra Singh v Babloo Singh that is a very elaborate and directive judgment for the trial judges yes. Jithendra Ram vs. Madan Lokur and Ts Thakur no not this this is not there this is Jitender Singh vs Babloo Singh 2010

sc scale 171 in this case marksheet was sorry tc was produced before the supreme court and on the basis of transfer certificate the supreme court directed an inquiry to be conducted to be conducted by the juvenile justice board but at the same time what they observed is important suffice for this stage of directing an inquiry and verification of the facts the order we may i would hasten to add that the material referred to is yet to be verified and its genuineness and credibility determined there are no doubts that certain circumstances that may raise a doubt of the genuineness of the document relied on by the appellant for instance the deceased this was a case under section 304B for instance the deceased ashadevi who was married to the appellant was according to dr ashok kumar shukla district hospital bareilly was aged 19 years of her birth this would mean the appellant was much younger to his wife which is not the usual practice in the indian context and may happen but infrequently so also the fact the appellant obtained the school leaving certificate as late as 17 november 2009 after the completion of the trial and disposal of 1st appeal by high court . they call for a close scrutiny and examination of the relevant school records to determine whether the same is free from any suspicion manipulation or fabrication this is also alleged that the electoral roll should show the age of the accused to be around 20 years while the extract from the register showed him to be 18 years old all these aspects would call for a careful and closer scrutiny by the courts while determining the age of the appellant so no doubt ashwani kumar saxena says that if there is a document and it is in the one of the category prescribed by the rule it has to be relied and whatever is written we have to accept it but in doubtful cases if the genuineness is suspect if the origin is suspect if the timing is suspect then we are duty bound to conduct an inquiry and we have to see whether the document is genuine and for that purpose i think we can also summon the persons on whose behalf or on whose behalf the entries have been made in the records so though after this judgment ashwani kumar and after this enactment the law is fairly well settled still we find that jjb what they do they mechanically accept all the documents they mechanically order the medical examination for the person which is neither required nor expected from the juvenile justice boards. so this is what i wanted to share with all of you that there is a history why this rule has been enacted because earlier traditional approach was being applied and there was no consistency in the approach of the supreme court in some cases mere statement was found to be sufficient in others even the certificates were relied by the supreme court so a specific rule has been enacted by the parliament and now there are the cases from the supreme court that they are saying that this approach has to be applied in the POCSO cases also though POCSO cases are different and JJ

Rule don't apply in POCSO cases my view is that there is the age is border line say about 17 18 years but my view as a presiding officer of a children court would be that in case there is a doubt of the age of the victim the benefit should go to the accused exactly if you will if you will apply JJ Rules in the POCSO cases or in ordinary criminal cases you will interfere with the right of the accused to defend and a fair trial will be affected because the fundamental principle of a sessions trial is that benefit of doubt to the accused here what we are saying is that benefit of doubt should go to prosecution so but there are 3 cases at the supreme court 3 cases in which they have said that the same approach has to be applied in POCSO Cases and ordinary criminal cases also so i think we will develop as the cases will go to the supreme court in future also in other jurisdictions also on the strength of the .. of the supreme court we can apply the same ruling we can insist and priority has to be maintained in delhi it is different they are saying first is the panchayat register first is school record then is birth certificate then matriculation certificate but in other states they are following the to my view to give priority to the first class document should be the birth certificate because once you admit the child into school say at the age of 5 or 6 at that time the chances of manipulation are less once you grow and reach class 10 at that time the chances of manipulation are more yes you are right i know one section 154 registration of ... when it is delayed there will be a suspicion when it is not delayed there is no suspicion the most ideal situation will be contemporaneous recording of the birth with the corporation ewtc or the panchayat that can be the best evidence but unfortunately in most of the cases that is not available so the first record we get is the certificate of the school first attended so it should be the i think delhi rule is more logical that first is the registration of birth then first attended school no no first priority is panchayat register no the priority is like this first is first attended school the birth certificate and then class 12 i think the most logical would be the birth certificate from the corporation and then the first attended school and then matriculation if non of these are available then the medical opinion ... birth certificate i would say basically.. simultaneous it loses much of its efficacy after all. ... the last case kulai ibrahim it was actually infact the police was smart enough there was a certificate produced before the supreme court and police inspector was smart enough he went further and found the application was made to the magistrate but let my date of birth be recorded the Corporation on the basis of the order issued by the magistrate and the date was recorded Indore Corporation Supreme Court said let the age be decided first whether the person is a can claim the juvenility or not and so these things are happening and we have to

be we have to keep our eyes and ears open no doubt we have to accept the certificates as has been prioritised by the parliament in the rule but we have to keep our eyes and ears open if there are suspicious circumstances for the ... and try to see whether the document is genuine or not but only upto this extent whether the document is genuine or not beyond on that Ashwani Kumar says we are not going to test the correctness we are not going to probe the correctness of the fact stated in the document so that way The traditional approach has been given a complete go by in the rules so I think with this yes please I have a one small problem in my JJ board regarding it is a case of 302 ..... giving him the benefit of the rule he's around 20 use of age just one year after these rules just 1 year after medical opinion came he said I have been to school and that is in U P up the record came as per the school record of u p first ended it says he's 13 years of age sir i have ... yes please. in my magisterial capacity as CJM in nagpur i have to deliver the much applications under the births and deaths act every day ..... as you said some areas complete birth certificate is not obtained by giving the information to the authorities and now in the somebody is coming at the age of 25 somebody at the age of 50 somebody at the age of 10 like this in 2 3 cases i have seen there are 2 brothers they have approached me with the same application with the direction for registration of the birth to give the entry the information and give birth certificates to them now in 2 3 cases i have encountered both the brother recorded their date of birth in the application as well as supporting affidavit in the same year having 2 or 3 months gap but medically it is not possible that 2 brothers would be within the same year it is not possible they are reading in same class also then why this has happened and how can i order the competent authority to take the information into their register you can refuse simply by citing this fact that there are 2 persons just 2 months gap so this cannot be true there are giving the false certificate now if i decline that in the process they will suppose that the 2 brothers go to the 10th standard or matriculation standard and have the certificates then they will have the you are right you are right if we go to ascertain the truth in many of the cases you will find that the date of birth recorded is not correct supreme court was very much conversant with this fact therefore they have recorded very clearly that we are not concerned with the truth of the fact because if we go to find the truth then the inquiry will become very cumbersome in fact it was being like that only before this rule in all the cases all possible documents were being filed birth certificate high school certificate first attended age certificate all documents were being filed before the juvenile justice board and all that were being examined witnessed being summoned it was taking about 1 year 2 years to just

conclude the age inquiry therefore the parliament thought that we should depart from the traditional approach and if some date has been recorded maybe we can give the benefit to the person because in some cases the SC said ... no we will go by the traditional approach only unless DOB is conclusively established we will not extend the benefit so it was being very cumbersome and the act was being unoperative unoperational so SC thought and the parliament thought that no we should depart there should be a clear cut rule and whatever is written unless it is a fabricated or manipulated document we should accept it . he has brought one certificate of 7th class he says i have attended this much school and date of birth is mentioned now we have issued publication and some objection came the objection came that the school of which he has got the school leaving certificate is of 7th standard actually that school has only 4 standards. we will call for the principal and principal also given certificate that our school is only for 4 standards and not 7 standards so how to believe. actually people are very very easily they file wrong documents affidavits etc india it is very difficult so to find the correct date this is why the approach was developing that they were conscious that no what is written in the certificate we are not going to accept it unless the person who recorded it is examined or the person who gave the information he is examined but if he will conduct that kind of inquiry no case will be concluded within 5 or 7 years so therefore this departure we know many cases whatever date is mentioned will not be correct and unscrupulous documents are being prepared because now this is very easy move an application to the magistrate sir this is my dob order the person to record my date of birth in the birth and death certificate register and date of birth is being recorded maybe subsequently the supreme court will give some ruling .....school certificate on the basis of the school certificate they are getting the date of birth certificate reordin the birth certificate and it becomes the document which qualifies ... process should have been the opposite. so these are the practical problems atleast the workign has become very easy it appears that more effective rules are available in the state of kerala . see it is the duty of every hospital to inform the birth at the nearest panchayat office immediately after the birth that can be fine but in india north india most of the births they take place inside the house they dont go to the hospital and it is the duty of the parent to obtain the birth certificate from the panchayat concerned within 2 weeks otherwise he will be fined in rustic villages parents dont know they say that on the day he was born it was profusely raining but we dont even know these head master teacher atleast it is a responsibility they are not there indirectly they are writing down names there is fabrication and manipulation this date of birth all along has been very confusing service

matters service in white collared jobs just to evade the superannuation they are trying to lower the age they would file a suit for declaration that his is my correct date of birth so many ... dont name the persons otherwise things will be no names but there are so many persons so let us go for a cup of tea and 15 minutes we will be back thank youi think after the tea break all of you will sit in the same place we have another exercise the opinion that you wrote for your problem can you just hand it over to me. that one sheet that wwas given per group i would like to have that back yes.

## **SESSION 7**

Can be the presenter maybe someone other than the one last another person can be the present and you just write your opinion on these issues that are raised on the problem and 15 minutes so 1.15 we will start the presentations .... others are still discussing finish it quickly everyday you must be handling more than 10 Bail applications so just dispose it off .ok group d done quick quick here you have got more liberty you have got no prosecution no advocate no arguments. can we begin Group C group d okay let's start will follow the same format if you can stay at the brief fact and then give your decision and just use the mic for that pardon this group has been changed nomenclature of the group has been changed it's the same our table there was a we were Group C now labelled as Group e yes a bit of shuffling but the team stays the same somebody has played the Mischief I think no that's me we have kept Group the same we have just change the name so it doesn't matter earlier we belong to group C now I just had a glance Group e okay shall we begin group A ok group b I think we can start with group b group e no group b just the brief facts narrate the fact the facts are that the juvenile along with his father and uncle they have been charged with commission of the offence under Section 302 IPC the Juvenile he is in custody protective custody for the last 1 years the district probation officer has given him adverse report he says that that criminal that he has criminal antecedents in the family of the juvenile so on these grounds the problem is whether bail should be declined or refused we are of the unanimous opinion that there is no dissenting opinion vrrp unanimous opinion that bail should be given bail should be granted because the conditions mentioned under section 12 of the JJ act is satisfied there is no material on record suggest that

there is any danger model physical of psychological interest of Justice interest of Justice is in favour of the juvenile for the reason that he is in custody for the last about 1 year and lastly the fact the apprehension that keyboard coming Association with with unknown criminal that can be addressed by putting a rider that he will be kept under the supervision of district probation officer him self who will constantly monitor him infernus timely reports okay what about the father the father is in custody the father and uncle they are in custody who is moved the application mother mother has moved application she is the guardian of the Juvenile so therefore she is to be given custody of a child with the district probation officer being the person who is supervising but naturally the Juvenile will not remain with the probation officer for all the days no he will not be with the probation officer but the probation officer will maintain a constant vigil constant supervision on the juvenile the moment the probation officer says he's at juvenile he's getting out of control Daniel report the matter to the JJ board and then we will we can think of some other alternative do you think the absence of a male relative to have control over the juvenile no no rather I would say it is a positive. If Mother the submission is that his mother doesn't have control over him rather I would see this as a positive sign where is the history in the family of criminal antecedents so the fact that there's behind bars so this will the mother is there so the chances of the mother getting into all these activities are s lightly lesser okay so that this argument is self defeating argument okay any other opinion from any other group on this problem here is a case where the juvenile is charged with Murder his father and uncle they are also in the jail and now he has moved to bail application he has remained in custody for 1 years in the observation home in fact the custody is too long maybe in my board I would grant bail after say about 3 of 4 or 5 months This is too long because the JJ act face you have to complete the enquiry within 6 month and keep him beyond this period even without completing the enquiry that defeats the purpose after but is there any default bail on this provision there is no such provision so everybody agrees suppose he undergoes training in the Observation Home anagram the person Bail he will not get the benefit of the entire training then what we can do is because hear the custody is ... what we can do is is that till the time his training suppose it takes about 1 year one month more we will say that this bail order will be effective from such andsuch date such and such date this is detention but it is not your punitive detention it is for protective detention we want to protect the person because what the section is saying that is bailable offences you can refuse the Bail

if for the protection of the child detention is required so so you have to see the nature of detention it is protective and the entire purpose will be frustrated if we will consider it as punitive detention so this is not a punitive detention he had been under custody for 1 year is father is behind the bars is uncle is behind the bars the person who could have spoilt the Boy so maybe he can be given to the custody of the mother another question that is and the fact of the case there is this dispute between families will that bear any relevance that he is released he is released is he in any danger would that be relevant victims side can he be attacked revenge yes sir possibility is there but release and rejection of bail is already incorporated in section 12 it self if you minutely go through if you read through this provision between the lines it says be released on bail there is a discretion the discretion as you can you need not be so curious about the discretion when he shall not be released Shall there is a mandatory shall that means you should have 2 comply with that what is the rider but he shall not be released Shall the word written is Shall which means if there is apprehension reasonable apprehension ground to believe that is likely to bring him in Association with any criminal expose him it 2 moral physical and psychological danger madam se there is an appreciation the family will can home family feud and also psychological danger ok that will defeat the ends of Justice we have reply as well as answer to this question and the same profession be released sometimes we are overlooking this provision if we go by the provisions this provision Rituparna justice act has been after very very Thorough deliberations then maybe loopholes but section 12 I had telebrations my colleagues TCS mail it is mandatory in nature is a spectrum of the provisions Under The Criminal Procedure Code where we have 197 a when an offence is carries the punishment of death on life imprisonment then there is a statutory bar search bar is not in this case so we are being swept away by that he needs to be Bailed out no he needs to be released there is discretion the discretion varies subject to yes I'll check 2 discretion and objectives ... so shall not be there is a mandatoriness the magistrate concerned has to be very very concerned with the material he is having on record and he will not bail him out okay 1 second you just have to say something my practical experience at the JJ board is that I have 2 cases of Murder where there was a possibility that the victim may or the family may put him in danger so in those two cases what I did was I released on bail with the rider that he will not stay in the same Colony he will stay at some other place say at the house of the maternal uncle orvsome thing but I just did not disclose that in the

order once I mention that India order they would know it it was kinda verbal insurance that they would ensure that he is safe he can seat there some other place okay I will release to the mother but with a condition that he will stay at some other place some other place this danger prevails even after the trial is concluded .....sentenced.... danger is always there so you have to it fades down with the passage of time immediately after the incident if the person is released there are chances the victim party will attack ..... so everybody agrees that he should be granted bail will go to group A let's hear rupees Just narrate the facts and then tell narrate the facts and tell us what you decided juvenile a is accused of committing the offence under section 376 IPC and bail application before the JJB has been moved on behalf of the Juvenile a prosecution submitted opposite the bail application the grounds were the office was heinous the release of a would have adverse impact on him on the moral psychological side parents of a do not exercise proper supervision of a and in case the delinquent Minor is released on bail was there is likelihood of his repeating the offence the report of probation officer States that is aaa is released on bail then the possibility of him falling into the company of known and unknown criminals and there being physical psychological danger to the safety of the delinquent Juvenile cannot be ruled out on the other hand the counsel appearing for Juvenile is submitted that under section 12 of the JJ act 2000 the juvenile is entitled to get bail secondly the gravity of the offence will not be a guiding factor while considering the bail application 3 the parents of a ready to take custody of the Son with the will to improve his life and forth report of probation officer does not provide any supporting material recording the observations made as to the possibility of minor falling into the company of noon criminals all there been physical psychological danger to the safety of the minor or otherwise secure the ends of Justice this is the problem and issues for discussion should there be granted to first and the group decided it is an affirmative yes Baile should be granted and the fact which are the relevant 2 determining weather to grant bail have been discussed by this group and we discussed that the nature of the offence Or gravity of the offence is immaterial here and parents are willing and ready to take into custody of the Juvenile with will too improve his life report of the probation officer is not supported with materials bail application under section 12 of the act Baile is rule and rejection there off is an exception Hindi exceptional circumstances we have citation relied upon Sachin bhasha verses state of Rajasthan Manu oblique RH oblique 0663 oblique

2000 and further in another case Kamlesh Kumar vs State of U.P. and another Manu oblique U.P. oblique 1492 oblique 2012 it is from the honourable Allahabad High Court apart from the report district probation officer there is no other materials too support in this Kamlesh case it was held by the honourable High Court in our case is also simply stating that there is likelihood of falling into the company of known criminals and so and so there is no supporting material these are the reasons relevant factors we have considered and weight age to probation officers report we have not given any weight age because of lack of material and support and to the nature of offence we have not given any weight age to the nature of the offence as well because it is not required under the law to give anyway it is to the nature of offence at this stage of the case the granting of bail and there is no dissenting opinion on this intergroup thank you you are a good Juvenile justice board because in this actual case the bail application was rejected. the bail application was rejected by the Juvenile justice board not only the juvenile justice board but the first appellate court also rejected the bail application they observed after considering the case rejected the bail application on the ground that in case the juvenile released is on bail his release would have adverse impact on him in his physical morals psychological side besides the Juvenile justice board also observed that the parents of the minor do not exercise proper supervision so this is the original order which was passed by the Juvenile justice board but it appears that the Juvenile justice board was swayed away by the gravity of the offence even the Appellate court rejected the bail application on the same ground but the High Court the High Court has granted bail on the same lines as you have adopted they have released juvenile any comment from any other group this was the case of rape whether bail should be granted In the facts suppose I mean just use the mic just yesterday the offence has been committed like grievous offence like rape or Murder it sometimes becomes incumbent on the JJB to see what will be the social impact of that thing if this person is released kind of in my opinion you are right you are right we have to also. can we just listen to him there is a lot of disturbance if we can hear what he is saying yes. at times it is not mental pressure or that kind of thing that we are human being I mean just being a judge I should in of considered opinion that just being judge we have to strike balance somewhere I mean in one hand we have to see the benefit of the juvenile according to the law and of course what he is entitled to but then society is I mean thing we cannot just ignore at the time of taking decision just sir I'm talking about I mean immediate effect one two remand then alright it dies down. sir in rape cases particularly what I notice is that is that many of

those cases are elopment caszes many of the cases are love affairs no forget those cases in real genuine cases where a genuine genuine rape case i would not say that after just about just after 1 day or 2 day i will not admit the bail application whereas being a presiding officer i also have to think slightly from the viewpoint of the victim ok so victims rights. because what kind of impact that would have on societybecause they will think that he is that they will start losing faith in us sir we can add something more. in this case though it is lacking there is no fact that just on the day of production the bail application was moved to be considered because there is a probation officers report we assume that some gaps were there from the day of prouction an the bail application filed because the probation officers report was not supposed to be on the day of production. so sir in bail applications i think what we while we are dealing with the major offender we take the gravity of the offence that is a consideration for bail. in this case we have to see gravity of the offence has to be left aside but we have to see the safety of the accused delinquent is to be the supreme paramount deliberation which the magistrate at the time of consideration of bail should be taken care of so that is not the gravity of the offence. gravity of the offence if you go by section 12 it says that bail is a rule and rejection is an exception that is too very limited limitation is for the benefit of the [juvenile.in](#) the major offender we say that he is .. he has done heinous offence it is not being taken iun good taste by the society so but there are riders by the honble supreme court this discretion cannot be the arbitrairly we have to go by the economic offence but here its a concern of the juvenile that his safety is paramount thing he is to be protected because even he is not to be punishedso in such cases there is a concerns of justice gravity is no concern let a bit we have though over it but saafewty of the accused person demands his bail is to be rejected. it should be rejected. whether the timing of the bail application is also considered for example if soon after the offence the bail application is moved and after one month the bail application is moved whether your approach will be different. yes approach will be different . time is the best healer so . because soon after the offence maybe we do not have the probation officer report maybe soon after the offence see even if the probation report is there but suppose today incident is taken place and within 1 week the bail application is moved that the report of the probation officer is there and take another case where the bail application is moved say after 2 months he has already remained in the custody for 2 months would it make any difference. si i mean i mean rider has been given in 12 1 itself that his release would defeat the ends of justice this the thing what is the ends of justice the interests of the juvenile must be considered. you are right Ends of Justice I consider in

my view where there is a repeat offender when he is misusing section 12 he has committed robbery ones twice third time is committing can I say you are misusing the provisions of JJ act so to my mind repeat offender would be covered under within the phrase off defeating the ends of Justice so any other view sir the accused point of you then what is the victims point of view ends of Justice weather this is not accommodated there do you think serious Ness the crime in fact because the custody is not punitive custody it is protective custody so you are right that victims concern is not addressed in the Act because we are not seen in fact the approach of the entire purpose of the enquiry is not to punish the person the purpose of the enquiry is why the offence has been committed whether any offence has been committed why was committed and how he can be reformed anywhere in the act you are not punishing the person for that much I mean the modern concept of criminal justice is the Re formation only retributive in other cases somehow or other it is there and victims concern is also there and we are concerned with juvenile justice the approach is that he should not be in the custody if he has to be in custody the custody protective custody and the reformation he has to be reformed that is all so whatever you're thinking you are thinking as a magistrate magistrate always feels just take your point further you're raising about you were talking about granting of bail in certain types of cases right so suppose he has committed the crime that particular kind of crime let's say rape he committed it 1 year ago we're coming to the point of bail now where has happened the case nirbhayas case happens just now so will that have any relevance on your bail application now of a case that happened earlier seeing the surrounding circumstances do you want to send a message out by denying bail kind of you were saying a message to society have to go you cannot grant him immediately bail keeping in mind the offence that he has committed right so we're just taking the argument further just putting another side to it Mike please I mean off this thinking I mean about this being influenced by some other things trying to give message to society nothing of that kind but yesterday the victim didn't ... today I am sending this person out of the custody whatsoever protective punitive not going into those details but will that not act as a indulgence to this person I can do anything and just walked out off the thing having the licence off Being juvenile so ends of Justice I mean still I will see the same point you are validly arguing how can you because there are so many orders in which desi alright but this is a very serious offence and the person if he is released on bails it will defeat the ends of

Justice taking clue from the heinousness of the crime Gardens what is happening the Dheeraj exhibill application first appellate Court will reject the bail application and high court will invariably granted bail discussion and share and in each case there is no clear cut parameters decide whether it will defeat The end justice so I think he has given it to you is it is a repeat offender he can validly argue that it will defeat the ends of Justice this is I think we will move to the next group yes yes you completed. end off justice whether this is one dimensional only does it involve two dimensions there are two dimensions no doubt but again the same thing because we are not sure to punish the person justice act is entirely different act which has to be very different group c just the problem very briefly our problem is c no no we want all these viewpoints to come actually for the purpose of discussion yes so c was apprehended by the police under 18 and 20 ndps act he was produced before the special judge ndps act who found him to be a juvenile transferred him case before the Juvenile justice board now the applicant moved application for releasing him on bail under Section 18 Juvenile justice act 1986 it has been written 86 it is the old act because it was an old case what we have decided group c has decided we are in enlarging the juvenile on bail what is the prosecution sad that opposed the bail application saying that bail application that on the grounds that last 3 years she has been accused in as many as 10 criminal cases including those under section 294 IPC and Gunda act but these are not the grounds for rejection of bail because what is to be looked into in the juvenile justice act is that's the interest of the juvenile and this and that is made for Reef formation of the juvenile not to punish or punitive in nature that is why we have decided to give to enlarge him on bail with the condition that the probation officer is direct to submit monthly reports till the disposal of the case what is the opinion of the Other groups he is a repeat offender and this time he has been arrested under ndps act he is accused India as many as 10 cases what are the previous offences Goonda act 294 307 section 294 307 he is accused as many as 10 cases is accused in them I would not I would rather keep them in custody and make him undergo some vocational training etc at the any other view I will also not granted bail he will undergo vocational training in the Observation Home till the time he turns 18 he turns 18 you can walk out at your own risk and you can do whatever you want the day you turn 18 you can walk out and whatever you want to do YouTube video on risk can I just add to that yes please we have decided that it should be granted because there are three grounds on which you can reject

bail as per section 12 number 1 is if he comes in contact with any known criminal no specific submission has been made who who are the criminals he's coming into contact with number 2 is that if there is going to be any physical psychological or any kind of fear that or danger on his part there is none been submitted and number three is that like we said for the ends of justice c it is not for the ends justice that we put him in jail sorry in the Observation Home because like we my partner has already said its main aim is deformation and not punitive and also with regard to the cases that he has had you have to keep in mind section nineteen of the Juvenile justice act because section 19 specifically deals with disallows any disqualification with regards to any previous conviction when the act doesn't allow disqualification on conviction how can you this disqualified a person accusations just think in the interest of juvenile exactly you cannot no no just one augment because in the you're putting the person and the same environment in which he was committing repeating the offences but then the prosecution have to submit specific reasons as2 what are the conditions that he is exposed to it is not been submitted it can be argued that he will go in the same circumstances in the same situation that is why we are going to put him under the probation officer he will again commit the same crime that's why we are going to put him under the constant surveillance after probation officer and but there are limitations probation officer they cannot physically we are also looking at it from a very idealistic point of view where everyone does the job okay thank you next please d ndps he's got under ndps so it itself speak ok him Being in danger I think unless the court is the position to say that he will not coming to office again and again but I don't think section 37 will apply here Juvenile justice act is a complete code and if the person is on the Juvenile justice act only Juvenile justice act well furnished eanswer so here I am talking about protection of the child exposure to she will come into Association with the drug peddlers and that way you can argue but the dangerous the special conditions under section 37 off ndps act that will not apply the mandate of section 12 so repeat offenders would mean that he is found guilty repeat offender would mean that he was guilty before a Board not he repeat he was not guilty but he was apprehended he was registered there was case against him okay then we may not say repeat offender then that it says reforms we are coming back again the same and seen that he is coming again the object as we discussed is Re formation and no re formation is taking

place because again and again he is committing crime one thing perplexes me is that bill is to be granted rule is grant of bail and the exception is rejection let's say even after he is brought one day before commission of alleged offence we can release him and in 6 months we have to terminate the proceedings maximum is 3 years. maximum period we can monitor him 3 years exceptional cases that's too so I don't think this act will Reform the juvenile it's a very valid point good I will move to the next group we will hear them out and then group d good afternoon sir good afternoon maam good afternoon everybody right now I am going to addressing art problem from the side of group d in our problem d who is the accused of the offence of Murder along with several persons he has applied for bail under section 12 of the JJ act 2000 he belongs to a good family number 2 he has no specific role to play in tlh alleged Murder even as per the case of the prosecution neither d neither did 'D' commit the murder nor did he catch hold the deceased nor was he responsible for the injuries. Under Section 12 of the Juvenile Justice Act, 2000, 'D' is entitled to bail. here we observed that so far as the offence under section 302 IPC is a heinous crimes it is also found that the provisions under JJ act whatever may be the crime whether it is heinous or not Juvenile should get the bail in the first production it is not there is a law so here Indore problem there is a fact the friend circle of d is not good his friend circle is already involved in the offence so according to the section 12 of JJ act bill should be rejected if there is achante involve him into the association with any criminal aur expose him 2 moral physical Oru psychological danger or is released will defeat the ends of Justice so here In our problem we observe that there are every chances to involve in the Anti Social criminals office life will be in danger because might be aggrieved party maybe threatening him to kill like that so we are not in agreed to grant him Bale so we referred to 1 case law case law Sunil Kumar vs State of Haryana Manu PH 208 Oblique 2013 just question the provision itself reads reasonable grounds do you think the fact say they are reasonable grounds justifying that he might come into Association which known criminals is there excuse me Ma'am one of my friend the this is a grease with us please do then we will address this question first of all I am sorry to my group that I am not consenting with your review no no actually every view is important so it must be expressed as per my view the act itself is clear that juvenile justice care and protection act so I am in meeting the delinquent juvenile d on bail although his friends circle was off Anti Social elements and few of them are in judicial custody although the prosecution

said the likelihood of bringing him in contact with the criminals that's the best point in our case is that he belongs to a good family it is admitted by the prosecution itself and his father the best guardian in the eyes of law can be made the surety with some conditions and stipulations they are taking care of the sun that is d and we cannot deny the bail to d because section 12 is itself clear that he should be released on bail with respect to the other part of the section that should not be released but are with respect to some Riders that he is not coming into contact with criminals all physical or psychological all these things to me the father is the best guardian he should be granted bail okay now in that group there is a difference of opinion intergroup so in the facts of the case coming back to the question do you think they were reasonable grounds for the apprehension if he was in the control of his father before the offence ok the anti social circle it prevails I mean there in influence prevails and he committed the offence so father's influence if it were there at all I mean putting fathers custody may not be very much appropriate in this case the issue here is reasonable ground it has to be substantiated with some facts that indicate that yes something might go wrong if he is released whether the facts to indicate yes madam if us kept in protective custody for that while and he comes and thereafter he is handed over to his father maybe it will be a good result original ground ... after sometime Not immediately myview would be that tissue be admitted to bail give custody to his parents and then with direction to the parents but you keep a good control over keep a watch over him his oeer of group and also counselling sessions post release I means post bail counselling session okay so there a difference of opinion but I think the law in the courts reasons is the most important thing there are reasons valid reasons the section says that he will come in contact with known criminals some of the high courts having to protect that known means specific identified people Infosys company he is likely to come the police state that he will come into contact with known criminals that will not suffice in this case there is no such report that he will come in contact with Sachin search person that you will come in contact with known criminals even though offence is 302 but his role was not specific so it is not possible to say that he is a hardened criminal also on the ground I think with some Riders he can be granted bail and one person from the same group is also saying that he should be granted bail so there are different opinions no doubt counselling sessions post bail counselling sessions it is a fit case for you have to keep in mind that interest should be preserved what she should be subjected to in this particular case the what interesting if they had mentioned

was it is not just saying that he will come into contact it is not conjecture that is enough it must be proved that certain identified reasonable grounds what I was point I was trying to make it is not just conjecture it's not just conjecture that he will come into Association with is a criminal easy loan easy identified is this the danger on what basis are you determining that that's what this judgement has actually looked into the last group Group e the facts that was given to us was let me quoteJuveniles X, Y & Z are accused of committing the offence under Section 376D IPC gang rape . They raised the plea that on the date of the offence they were under the age of 18 years. Pursuant to the age determination inquiry X, Y & Z were declared to be juveniles and the case proceeded before the Juvenile Justice Board. Subsequently, X, Y & Z have moved an application for bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Submissions by the Prosecution The prosecution has opposed the bail application on the ground that the release of the juveniles on bail would defeat the ends of justice as The Juveniles are accused of a heinous offence. The facts and circumstances of the present case, as revealed from the material on record, are glaring and the allegations against the accused petitioners are of serious nature. The facts reveal pre-planning by the accused juveniles to commit a serious offence. All the three juveniles have been named in the report and there are specific allegations against each of them If the juveniles are released, it may lead them to commit similar crime. There is reasonable apprehension that the juveniles will come into association of hardened criminals and commit offences.

The counsel appearing for the Juveniles has submitted that as the petitioners are juvenile, they be released on bail in accordance with Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

So are groups decided after hard deliberation the bail application opportunities to be rejected the reason I have already submitted that there are reasonable grounds prosecution there are specific allegation there is a pre planning the offence you have seen in a nirbhya it's a public wrath not in the sense after heinous Ness of the offence but the physical of the accused of this juvenile so re formation and face custody of the juvenile which is in the interest of the Juvenile itself so we have rejected the bail application what do you think Nirbhaya case is before then it is a case of gang rape 3 juveniles dissenting opinion in Nirbhaya case weather

deal application was most no it was never moved no and even if it was moved for the interest of the child I would not have let him come out of this it was perfectly not moved because of the apprehension .... but one point in this case the bill can be rejected only on two grounds the other the prosecution opposed on five grounds but as far as I am concerned Ground number 4 and 5 only available for rejection of bail ends of Justice the main commit similar crimes 4 and 5 ends of Justice you have to apply the principles of ejusdem generis because the ends of justice has been added in the second limb of the section likelihood of committing further crimes it means it will effect the juvenile by his mental and moral character there are judgements where ends of Justice where gravity of offence and it will not will defeat the ends of Justice end of Justice justice doesn't mean means interest of victim ends of Justice if it is in the interest of victim and juvenile yes so again the question arises if you interpret the provision like this then almost all the cases there is a danger the person the victim he will make he will come in contact with the victim and victims people may retaliate so in all the cases you will keep the person in custody it will not be in all the cases to protect them from the danger search in serious offences it has to be deliberated upon the court is bound to deliberate on and it has been made for the security of and protection of juveniles you have no option but to see all these things if after deliberating all these things from the material fact if magistrate come to conclusion no he is to be granted bail gravity of the offence is no supposedly say he has committed heinous offence rape rape rape supposing now a days we don't bailout rapist then it is for the interest it is not taken in good taste by the society so it is considered to be heinous but in that case in the case of the juvenile gravity of the offence is no ground even if it is a murder case I will let him on bail if they are the reasonable Grounds that he will not come the criminal connection with a criminal it is safe in the hands of the parents he is to be bailed the interest of protection of the juvenile ..... just one question based on little bit of that fact what's the strength of the case of the prosecution determine whether you would grant whether there is enough evidence to prove they are involved in the case can you say that ok because it is a clear cut case they are involved no no no ... towards the accused and serious Ness Or the possibility of the conviction has no role 1 test which I often used is that sit as the guardian of the juvenile and not as a magistrate the Civil Court as the guardian of the juvenile then decide what is interesting in this particular case the seriousness of the allegation what's the ground on which bail is checked it by the High Court even High

Court has actually different High Court stating different approaches but the important thing is as you pointed out the responsibility lies with the Juvenile justice board you have to act as a guardian of the person the juvenile very compassionate you have to see whether the person is in safe hands or not if he is in safe hands you should be enlarged on bail If he's not then as a guardian you have to see that is protected he should not be exposed to the all kinds of dangers so I think every fact of each and every case will provide you the guidelines what should be the decision in this particular case what is the report what is the report of the probation officer so that should guide the but we should apply almond without open mind and we should not act like a judge or magistrate India ordinary criminal trial that trappings has to go unfortunately many cases we find that still the hang on that's what the JJ board should be separate from the regular trials exactly in fact it should not be there . at the same time we reject bail and we say that the factors different but the provision is different so .. say something he say something today should be separate so that they can be sensitised it is not always possible because they doing both the functions at one place you are CjM afternoon you have JJ board principal magistrate approach has to be entirely different so we will have to... we can appoint a particular judge for ..... because we are large number of cases large number of cases it should be separated and that will be in the fitness of development of this act development of the country even the thing is going on I mean maybe in the near future you will find there is an entirely different cadre 2 man the Juvenile justice boards but till that time you have to do the function and we have to see that it is operated honestly so guardian act like a guardian with that I think we can conclude yes please I have a situation in my hand we're talking about bail murder case was there in my place and a juvenile was produced and in fact he had been associated with 3 other people in the .... the police has he had been the most brutal out of the 3 he had showed he has been most brutal like nirbhya case murder case and he belonged to adjacent state Assam and that to remote area indices released on bail he will never be able to to be I need the board has no method to bring him too the board again for evidence and all these things what to do in such circumstances think over it I think who moved the application father I mean first day no bail application father lastly grandfather came I handed him over to his grandfather after 1 month grandfather came because if you are releasing him on bail it must be ensured that he will come back if you can not ensure this thing when I think it is better not to release the person on bail if you run away you must know very clearly in whose

custody the person is leaving this provision is not covering that scenario you are releasing the person he is a minor so he must be in the guardianship of somebody that guardianship has to be insured suppose supposed the juvenile has no guardian where you will go you cannot let the person out in society without any guardianship somebody must be there suppose he runs away there is a provision in the Act provision it says that he is to be got back but not warrant coercive method suppose offender runs away the Juvenile runs away his father means control over that kitchen appliance that he is out of my control then we do not have to use any coercive method and then we will direct this remind of probation officer whatever to get him back to get him back yes that is very important the possibility she is to be got back otherwise we cannot just hold him back this is a very sensitive act if you go by the provisions of this act so in my board not many cases are coming because of correspondence of the juvenile some of them had gone to Middle East countries and inner lot many kisses effective cases I do not have I think the person who granted the bail did not take proper precautions proper precautions are being taken it is not that to show that is also there their fathers are there as sureties sometimes dispose it off section 22 you can dispose of the cases if it is petty offence terminate the proceedings petty offence there is no problem after 7 years there is no problem .. so I think we will conclude we will go for lunch it's been quite late after lunch we are going to the Observation Home here in Bhopal so I think 245 shall we meet at the Porche again from your guest house but we will try to make it as fast because the longer we take to go the longer it will take to come back let us meet there after half an hour

## **Session 8**

### **Visit to Observation Home**

## **Session 9**

i like being here you know the fresh faces eager faces in the academy the best thing that happens is that you are not in the court not in session not hearing a case not writing a judgment nobody is watching you with suspicious eyes you know what happens when you enter the class the courtroom you find a crowd in delhi it will be a crowd say of 50 people to 200 people depending on the

jurisdiction you are in and every body is eyeing you closely who is this man or this woman does she have any brains does she understand my case is she going to be fair impartial so those suspicious eyes suspicious you know expecting eyes if she is partial she should be partial towards me in my favour so those eyes are not here you must feel all fresh and free to interact and talk and you are in a academy you know somedays back i was in a ladies womens college and i was speaking to them and i said everything in college is very nice fine you know the gardens the green lawns nice teachers the only thing which is bad about college life is that you have to appear in an examination only if that is not there you know everything is good about college and this academy is such a college you know where everything is student like no exams ok so please if you have any stiffness give it over because it is not necessary to look stiff and frown as you maybe accustomed to do when you are in court ok i am going to give you an exercise dont be afraid its not a very difficult exercise i have called it an exercise but it is basically an introspection basically an introspection dont open the book just see the questions and answer from your heart it is not an examination nobody is going to be marked it is an introspection so far as you are concerned so far as i am concerned it is a study study because i am the chairperson of a committee who has been assigned the task by the supreme court to preprepare a module for training of probation officers so i have to know a lot of things about probation officers i have to see how the juvenile justice board interact or react or relate to the probation officers please answer the question from your heart dont say what should be but say what it is dont write you name or designation or the place of duty or even the state from where you come totally be totally uninhibited and answer these wuestions the introspections for you so you learn i learn because it is a study for me in the process we will also learn and open the book at the appropriate time so shruti can you distribute the questionnaire avoid looking at the books answer from the heart for example i have said first question is who is a probation officer dont open the book and say probation officer is defined like this and then refer to the probation of offenders act and find who the probation officer is maam so far as jammu and kashmir state i belong to to jammu and kashmir state we dont have any of these probation officers these juvenile justice boards which state you are from jammu and kashmir ok rules have been formulated previous year doesnt matter even yesterday honble high court ... but then you can write in your from your imagination who should be a probation officer what kind of a person he is what was he doing who is he after all there maybe questiun in your mind and maybe some answers too we know what we have read in the book otherwise we dont have any experince about

it so you cant .. its entirely up to you its entirely up to you i cant ask you to do i dont know what to write ok ok just keep the questionnaire just keep the questionnaire it will just be a formality to whatever i have heard in the definition i will write that that will not serve the purpose but you give it to your chief yesterday honble high court has been very stern about this state government and they have called the report why this juvenile justice act has not been enforced there is a law student from delhi she has filed a petition before honble supreme court that honble supreme court transfer that public interest litigation to honble high court of jammu and kashmir honble high court has taken cognisance of the matter but it has to be done by the government government are not doing this is not their priority ..for a time being the police officers are getting them before the chief judicial magistrates they will act as special powers not special powers see the summons trial or summary trial when the act is not there then it is a total mess if we go by these provisions have you finished just do it quickly 2 minutes more you need not write full sentences you can simply write points we will now start discussing those of you have not finished just leave it let it be there no need to finish it ok who is a probation officer let us start with that anyone who is a probation officer madam in our state jailor is the probation officer pardon jailor oh jailor is the probation officer see its an eye opener for me jailor is the probation officer in every district in every district he is the probation officer in addition to his task as a jailor i think his hands are too full with this jail who is a probation officer jailor is made a probation officer but who is a probation officer any idea who is a probation officer who is he he makes social investigation report what is his profile who is he probation officer is the person who is appointed under the jj act to perform to assist the juvenile justice board to supervise the juveniles ....ok he is a person appointed by the government to supervise the juveniles brought before the jjbs any other idea as to who is a probation officer is to supervise them guide pardon supervise guide help to settle supervise guide settle a juvenile in mainstream of society ok reintegrate the juvenile in the mainstream social mainstream what else what are the terms of his appointment well you may not answer this because in every state it looks different people like a jailor is really very revealing some times even a police officer is appointed a probation officer and in delhi unfortunately it is outsourced outsourced means its work is given to an ngo it is upto the ngo who is engaged by the ngo to do the work of a probation officer you see how sad if delhi has this picture i cant blame any other state because delhi is under the watch of so many activists and under the watch of the government the high court is very active supreme court is right there and delhi situation is that the probation officer is someone who is working with an ngo to whom the

work is outsourced so there is no probation officer by cadre today it maybe x tommorrow it maybe y and like that ok what are the minimum qualifications of a probation officer bachelor in msw social welfare pardon master in social science master in social science and child psychology which state is this master in social science in your state they are master in social science yes maam child psychology like that masters in child psychology which one any one of the 2 child psychology by itslef is not a subject in which you do master i think it is psychology and child psychology maybe just one paper out of it msw is master of social work pardon some of the probation officers in my state they have the ... they have llb degree they have trained to be a lawyer they are trained to be a lawyer or they have trained to join the corporates nowadays yes students how many of them actually go in for law professions some of them actually go into corporate jobs llbs are not trained to become probation officers i got letter from differnt states but i have brought something to show you this is probation officer coimbatore he is mcom then the probation officer in kanyakumari is ma med the probation officer in perambalur and arayalur he is ma history he is incharge only he may not a full fledged officer the probation officer in tiruvallur is ma the probation officer dindugal is ma in tamil med and phd the probation officer madurai is mcom the probation officer in vellore ma bed the probation officer in karur is ma sociology the probation officer in tirunellveli is ba history the probation officer in krishnagiri is ma history the probation officer in salem is mcom with ma in sociology of course then the probation officer is cuddalore is ba dme and then we have the probation officer in pudukottai ma history the probation officer in thanjavur is ba comes from kerala it looks chennai is dme and bba like this you know no one is from social work background no i have not put this question but in how many states do you think probation officer are given any training as to how to perform his function any training for probation officers you may have attended or invited to speak of participate in some form of training no no the jjbs are trained jjbs get training that is a requirement of now jjbs .. no training maam no training for jjbs also i think all of you have got some training no no but then maam there is no training in fact in my case i will tell you my case ofcourse coming here means training but i though this much at least is being obeyed that before a person starts working as a probation officer he is given some training or exposure maam i was told you have to go and join jjb from tommorrow that is it and you start functioning ok there should be at least 7 days training in fact maam what you say for the probation officers should also training should also be given to the jjbs ok share this may years ago no but in delhi i can vouch for delhi that you know they are sent for a training they no no

no training on 23rd january i was told that you have to join jjb then what did you do i went and joined the jjb and how did you start functioning i started functioning no how did it make a difference for you let me understand how did it make a difference for you for about 1 week i had to try and understand as to i read the act i read the rules and all the night before and then i spoke to my predecessor she gave me little guidance and then for about 2 3 days then i got used to it this is the case with all of us this is the case in every state i think this has to be reported to the supreme court because the supreme court is quite complacent that jjbs are trained probation officers need to be trained and panel lawyers need to be trained and the task is here but i am surprised to see that even jjbs are not trained trained means some exposure to understand your role how is a jjb different from an ordinary court now please answer somebody how is it different because it is going to come to probation officer different in the sense that we have to act as the guardian of the child and not as a judge of the magistrate that is the one guiding principle many years ago when i started my field work 1980 im talking about and i spoke to the juvenile that time it was called the childrens court themagistrate there and said what it says its compulsory that they must have knowledge of child psychology and child welfare he said i have got my children i have got enough training no no your children are not juveniles you see that since 1980 it hasnt changed .. juveniles but that is not reported ok well how is a jjb different from an ordinary court first he said you are a guardian you are always a guardian which ever court you go to you see if a child is before you which ever court you are in even the litigating parties court is the guardian even in a matrimonial court the court assumes the role of guardian the basic difference i think lies in how you treat the child during and not trial we call it inquiry and subsequently on a finding that the child has actually committed the offence ok we dont say he is a convict ok we dont say that you know he is an accused we dont say he is under trial you see if my child breaks a glass what is it he has broken the glass we dont scold him even if he does something worse he may be scolded and told not to do it and we may explain this cost money or parents are working hard to make the 2 ends meet you must be careful about wasting money or other moral education so that he grows into a normal human being a normal citizen so here when the child is found to have done something wrong then he is not imprisonedhe is not punished an order of disposition is passed and apart from the aspect of his reform there is another very interesting thing that is well being of the child this is what i found in the convention on rights of child has this clause i think in article 40 which includes well being of the child see a person who has committed an offence how he has to be treated you see the

retributive consideration is totally absent no retribution reformation is there but plus well being of the child so its not only that he is reformed of his criminal tendencies also we have to see the well being of the child and keeping in mind the best interest of the child so this is how after even after finijndg that the child has committed the offence alleged against himhow he is going to be treated by the court its not simply reformation by keeping him in the jail sorry this home for 3 years but we may see how the child can grow into the best possible person he may have interest in music he may be a good player or maybe good in a particular subject how we can encourage him to achieve the best in that area this is how the child because he is a child he is immature he has done something which we consider to be wrong but the child perhaps doesnt know that it is wrong in a rape case the juvenile says i didnt know that it was so wrong i have seen people do it i have seen my firne d doing it i thought it is fine its ok so we have to see the child like that now therefore i think the role of probation officer will come what jobs do you assign to the probation officer what jobs do you assign to the probation officer first to furnish social investigation report thereafetr when the juvenile is put into probation to supervise guide help the juvenileto settle into mainstream ok how many repors does the probation officer give how may reports i have put this question in 3 is it different from the report regarding antcedents and family background as required in section 13 b of the juvenile justice act there are 2 reports of course he may make many but these 2 are mandatory the first is a report immediately on his arrest this is 13 b ok it is not an investigation reportits a report about his antecedents only but social investigation report is more complex social investigation report is more complex now have you ever realised the difference between he 2 social investigation report and this report regarding antecedents please see 13 b and see social investigation report that perhaps comes later 15 before the disposition order is passed that is an investigation report have you noticed this difference or you are noticing it today that there is a difference between the 2 reports in fact todfay madam .... see the probation officer has no training so the presiding officer who is taking work must know what task is being assigned to him or wwhat he is giving is according to what is required by the law the investigation report is not a repeat of this report social investigation report is something very serious i dont know how they do it without any training and if he is a ba or mcom i dont know....only 1 report no it our duty as presiding judges to work according to law and the law saays before i pass a disposition order i have to take a social investigation report how do i pass a disposition order with out that report in my hand how do i pass that order [00:45:45] that report i have to see because the disposition order has to be based on that

social investigation report disposition order cannot be passed without that report because that report will only tell you how to deal with this child now that he has found to be juvenile who is in conflict with law who do i deal with him do i send him back to his house with stern warning the investigation report may say it is the parents who have forced him to this crime i cannot send the child back to same parents social investigation report may say that the neighbourhood has those criminal elements i cannot send him back to the same neighbourhood how do i pass an order without knowing what the law requires that i should know before disposing off see the difference between the 2 and therefore i have asked this question how does he prepare a social investigation report do you ever see his report do you ever see his field work his field book because there is an element of investigation it is not investigation into crime but it is not an inspection report it is not an interaction report its an investigation report so there is something more in depth to be done by the probation officer and where do we find this what he has to give there is a form given let us see that form we are old timers you know see this form 4 if i am not wrong form 4 well this is my book universal it is in page 101 if you have the same book 98 in this book it is 98 so come here at the bottom of this other near relatives attitude to wards religion ethical code of home social and economic status delinquency record of members of family present living conditions relationship between parents parents children and children especially with juvenile under investigation other factors of importance if any this may be like filling of columns but it calls for a little in depth work ok and then there is a juvenile history his mental condition how do i know his mental condition im not trained to find out the mental condition i am a thoroughly law law from my early days of life iam always in law although i have children that doesnt make me a child specialist or child psychologist then physical condition then habits and interest outstanding characteristics and personlaity traits how do i know this what time do i need to find out his personality traits his outstanding characteristics how do i find what time do i need to find out im a probation officer though disposition order depends on my report companions and their influence school work record neighbourhood and neighbourhood report means its not only the family which the probation officer is required to visit the probation officer is required to study the neighbourhood and speak to the neighbours parents attitude to discipline in home and childs reaction and the come to the result of inquiry most importantly after he has done his inquiry after he has been to the family to the neighbourhood to the relatives to the school the teachers the friends then he has to interalia come to the last ones analysis of the case including reasons for delinquency analysis of the case and

reasons for delinquency this is not required in the first report because then we don't know he is delinquent now we know that he is delinquent and now the probation officer is required to report to the court what is it that has made him delinquent analysis of the case including the reasons for delinquency analysis of the case doesn't mean the investigating officer's file case means the child is the case analysis of the case and the reasons for delinquency at least I don't know the reasons for delinquency if I am made the probation officer I would say how can I know the reasons for delinquency why he has gone delinquent it is the probation officer who is supposed to extract it from his inquiry this is why the child has become no I can write an essay on what are the causes of delinquency drug the broken family you know what should I say the habits of the parents company but in this particular case for this particular child .. what are the reasons it will need a study even if I am not trained even if I do it from common sense or from my experience of being a parent or being an adult citizen I will need time to speak and speak not only the child to other people and examine things and give this very important information reasons for delinquency then opinion of experts consulted because he is required to consult experts also if necessary experts means psychologist or doctors or whoever any expert that he may consult he may go to an expert and find out what is wrong with this child we have seen that movie taare zameen par now in that the child has a medical problem dyslexia is the medical situation and he had to overcome that everybody is thinking that he is a wayward child not interested in studies is a very naughty guy he has to be punished and it was by way of punishment that he was sent to a school away from home but the reason for his delinquency was this dyslexia this medical condition and only a doctor can say this that he has this problem and then the last but not the least recommendation regarding the treatment and its plan by the probation officer is the probation officer giving his recommendation what to do with this child I think are you seeing this .. more than the juvenile justice board absolutely the probation the judge has to see this what the recommendation of the probation officer is how to deal with this child he is a jailor he is too busy with his jail work how does he do it and we are very happy we are passing a disposition order and we are working according to law and this is the statutory form this is the statutory form so he is told some people say no no my probation officer I will show you the reports very well written reports maybe but whether they are correct whether they are correct has he done any work has he done field work I asked him did you see his field book did you see his field book how many people did he consult what did they say what places did he visit how does he say this is the personality trait or his mental condition is fine

how does he arrive at a finding that this is the cause of delinquency and on what basis is he making a recommendation so if we don't assign the task it is our duty to assign the task the law has written it but we have to assign the task look you have to file a report in this form trained or not you have to file a report and give me the field book after all you are the presiding officer you have to see the field book and see what he has done and whether the conclusions he has done the result of inquiry the conclusions drawn can be drawn from the inquiry that he has made if we don't insist upon the task being performed according to law they will not perform and then what happens we forget that this is the task to be given so we don't give the task so we don't need a probation officer therefore we don't need a probation officer and in an interaction with you some of you may have been present in that interaction over video was any one present when there was an interaction on video with all the state JJBS and ok some of the officers said ok we have 1 probation officer in the district it is enough 1 probation officer in the district it is enough i can understand delhi delhi districts are small area wise population wise they are big but area wise they are small because it is a thickly populated city but in madhya pradesh for example the districts are very big rajasthan the districts are very big you take more than a day to travel from 1 end of the district to the head quarter how is one probation officer going to handle this i don't know not only writing this report but subsequent after care because when the disposition order is passed he has to be involved in how to deal with the child hereafter i have to ask for the work or they will not do and when they don't do we think it is not necessary to be done and then we say no need of a probation officer and then let us come to i had so much to talk but the time given is only 1 hour 1 and a half hour thank you ok thank you section 15 2 says the board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise and shall take into account the findings of such report before passing an order and then 3 where an order under d or e or f of subsection 1 is made the board may if it is of the opinion in the interest of juvenile and of the public it is expedient so to do in addition make an order that the juvenile in conflict of law shall remain under supervision of a probation officer named in the order during such period which shall not exceed 3 years so even when we do it under d or e or even f you see d is order the parent to pay fine e is direct the juvenile to be released on probation of good conduct and placed under the care of parent guardian or other fit person and then f is direct the juvenile to be released on probation of good conduct and placed under the care of a fit institution so when we are passing this order we may also ask a probation officer to supervise then on arrest his work begins

from the very beginning the moment the child is apprehended the task of probation officer begins it says where a juvenile is arrested the officer incharge of police station or the special juvenile police unit to which the juvenile is brought shall as soon as possible after the arrest inform the parent or the guardian of the juvenile etc and so it is not only parents and the probation officer of such arrest so there is a probation officer in place so immediately that is the how the law contemplates that there is a probation officer in place i dont have to search for him after the child is brought or after i think that i should grant bail or i should pass an order of disposition the probation officer is in place so as soon as the child is apprehended arrested the probation officer needs to be informed and then the probation officer makes this report to enable him to obtain information regarding antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the board for making the inquiry so this is the first report he has to make antecedents the family background because the court will now determine whether he has to be released on bail and if he has to be released what should be the conditions for such release so it is limited to this because so far there is no finding that he is a juvenile we dont have to find the causes of delinquency so the subsequent report is more serious than the first report then let us move on what is an individual care plan how does it work i will ask whether it works at all tell me give me an example of any individual care plan that you have prepared while disposing off a case what is an individual care plan in every case that care plan has to be made give me some example that you may have passed some individual care plan that you may have prepared ... not prepared so how do you dispose off... i make... i have got 70 cases listed in a day doesnt matter the probation officer has to help you that is the plan i give you consider the plan ..probation officer .. you are very lucky if you have 3 probation officers.....but roughly about 33 juveniles for 1 probation officer .. that is for the present but they may have been in the past who may have already been in his care maybe undergoing that 3 years period of you may call it detention or stay in an observation home 3 years not only 33 there may be 33 previous ones did you ever feel that you do not have sufficient probation officers .. did you ever report to anyone ... madam it was reported and they .. sufficient and efficient it was reported and they said that we are in the process of recruiting they are in the process of recruiting no but then the whole thing is that we as jjb members have to insist on this report we as jjbs have to ask where is the social investigation report and then prepare an individual care plan that this is how i think the child should spend the next 3 years if you are not doing it we are thrown this act i do not know to the winds in delhi we say throw it in the yamuna i do not know

what you say throw it in the lake or throw it out of the window let it go to the winds we are not using this act we have to use this act and make use of the probation officer and then demand it unless we demand because some jobs say we have 1 probation officer it is enough he gives us 2 reports it is enough ma'am in fact this juvenile system it is the least priority for the government least priority we are not hear to you know we are here to introspect you know this is for introspection am i doing my job do i have a probation officer am i giving him the job our duty is work and to take work this is what i was taught in the very first year of my service way back in 1972 when i joined the delhi judicial service in delhi the district judge told me you have 2 works 2 tasks 1 you have to work and second you have to take work from those who are working with you now they are working with you you have to take the work from the probation officer let him say sorry i can't do it i am incapable of doing it so you please you go you are appointed for this purpose you see somebody says you go and perform the heart surgery i will say sorry even if you give me a million dollars i am not going to perform the heart surgery you cannot catch anybody tomorrow you are the probation officer go and give this report cause of delinquency so they are very happy i'm told in some states the probation officer are just filling the forms on their own from their imagination yes ma'am from their imagination or call the child to his table sit down yes yes answer some questions and the report is ready even in delhi it is happening what is the jailor doing jailor is calling him in the jail he does that and he admits i have talked to the family where i asked them i called them in the jail called to the jail and talked to them..... they are like you know we have probation we have those process servers in delhi maybe there is other states who have not gone to place to serve the process he will write i had gone but the house was locked so here is the report so they don't have to go there to see the house was locked they have that divyadrishti they know the house is locked they give the report .. or house was closed ... one person tied the process to a goat and sent it naturally the animal will go around somebody will see that there is a process so the probation officer reduces himself to a process server so what is the jailor doing you know discard his report you must discard his report he has to go to the neighbourhood he has to give this column how does he fill the column neighbourhood report you could also call the parents to your court that would have been better i do not know i'm getting more enlightenment than i can give unless and until these government agencies is put to the .. by honble supreme court .. is likely to ... the only ... there are 2 things very important that is how the disposition is different from punishment the individual care plan after care supervision of the probation officer now we are

reading the newspaper you know how that 16 12 juvenile is to be dealt with i have put this question because it is fresh in our mind the crime is fresh in our mind all things that happened during trial they are all fresh in our mind and he is being released maybe he has already been released today how would you deal with him if you were the jjb this is a question of course hypothetical question what do you think should be done now that he is being released after 3 years he is not you see the act says you can prepare an individual care plan till he is 21 so he is no more a juvenile but he is still below 21 and you can still prepare an individual care plan and still have supervision over what he is doing that will be the probation officers duty no first jjb has the jurisdiction is not it that will be enforced by the jjb but the source .. plan has to be prepared you see plan has to be prepared by the board depending upon what the probation officer has reported now how do you think you will deal with this juvenile this is hypothetical question just give me how he is to be reformed so that he is to be adjusted no how how depends upon the you can say in ... not this not this come to the micro level what order will you pass for this now that 3 years have passed it is his you have to keep in mind his well being you have to keep in mind his security you have to keep in mind the social abhorrence to that person and his act you have to take in mind his well being you know all these factors you have to keep in mind you know his background how do you think you will prepare a plan for him now we already know that he is being released to an ngo we know it it is in the newspapers this is all bogus report no decision has been taken as yet and i am getting phone calls from the media persons as to what you have decided i said we have not taken any decision now you see i dont know from where they have got this report ok this is all incorrect ok incorrect assume this is correct for the present exercise that he is being released to an ngo some people saying why ngo send him to jail now now that he is 21 send him to jail .. and some people are saying change reform programme for juvenile madam may have said you are one of the activists .... you tell yes change reform programme for all juvenile not particularly this now you are the jjb forget he is a jjb concerned everybody is a jjb concerned at this moment what plan will you make for this juvenile and how will you make it first and foremost because this i we know but you all have rape cases those who have raped all of you have those juveniles who have raped isnt it how do you deal with them maam this juvenile at the at the home he has learnt cooking he is a very good cook he makes very good drawing he makes very good paintings and so and i have interacted with him very often he wants to set up a small dhaba he is not very he is class first dropout but the problem is that now he can write his name this is what i read maam he has learnt

something educated to some extent but that is zero education if he can write his name and that is so important to be reported he wants to start a dhaba but the problem is people will lynch him people will lynch him his identity you see the law says his identity will not be revealed but some part of his identity has already got revealed the media persons they know to which village he belongs who is his mother who is his sister they have been to his the media people they know about him the only fact that there is section 21 they do not spill it out in the newspapers what action has been taken by the honorable higher courts we know all that I know from the newspapers right or wrong is that his mother is perpetually sick I know that his father is not mentally stable I know that he has 2 sisters both juvenile who are working in the fields and making some kind of living for the family the mother says I will forgive him if he comes back to family the village elders say we will try to reform this is what I know from the newspapers so I thought you might know this data at least .... no also reform they said .. they the villagers I have the first hand information the villagers say they are ready to accept him they are ready to accept now what individual care plan will you make for him he is already somewhat educated .. in 3 years he has learnt many things counselling ma'am not once but multiple times so much so that we have psychologists from CFSL CBI they counselled him CFSL FSL CBI senior psychologist from the observation home from there is a counsellor at the JJb they counselled him number of times.....assessment of personality is done that was also done detailed reports are there then again .. why.. I don't understand where from this report has come he is the horse's mouth wherefrom the report has come why no action has been taken this is not right to expression this is bizarre he is the right person he says we have not taken any plan we have not taken any plan .. once I go back on the 7th I will start taking rather we me and the 2 members we will take a call no no no you are not the target please don't make yourself as the target this is an exercise suppose forget this is suppose you have a person before whom before you who you have found to have committed a rape now 3 years is there he is still not 21 you are still entitled to make a plan for him can you make a plan for him the law permits what plan will you make and I am giving this because we know the facts we all know the facts of this case but I also have this other question if we start with saying that the JJb magistrate has the responsibility as a guardian then as a guardian of this particular boy who has whoever may have this kind of a boy is it not our responsibility to also think of ensuring his interest so that sense the ban to reveal identity which will lead to revealing identity etc but should not an official statement come from the concerned guardian magistrate

saying these are the facts without identifying identity revealing that these are the processes he has gone through these are the outcomes this is who he is today and therefore dispelling all these kinds of speculation they are going through so iam saying this is not part of the written directions there but i am saying think about it whetehr if you were the father of teh child actually in real life howwould you have tried to secure the interest of this child should you be doing the same things as a jducial magistrate that is my question i am not answering yes maam in fact the media has created a myth that he was the most brutal and this and that no precisely and why should why should maam i will just make apoint and then the juvenile board in its penultimate para of the judgment said that this perception that he was the most brutal is absoltuely incorrect it has not come in the evidence so kidnly desist from doing so an advisory was sent out to the media through the concerned police officer but the media doesnt they dont bother to listen to the ..no i think thats where the activist role of teh judge has to be i am not trying to solve his case no but i think this is a challenge case for al of us[01:18:38] in juvenile justice and unless you sort it out in our own heads individually its not going to be you know this book is not going to be useful my question is how the jjb should ... .. just .... on inquiry you find that he has actually committed the .. the law permits you that if you think of course if the law doesnt permit you you need not you must not but you may so how would you prepare i know it is not visible how do you prepare the individual care plan have you prepared an individual care plan so this shows this part of the act... maam ... have you ever made please tell maam i have maam i have laready started to prepare the individual care plan in my own ways actually in our state in my district i am from calcutta in the howrah district i have only 1 probation officer maam so he always use to engage in the election department by hte district magistrate like that i took the i usually take the help of the ngo they have a lot of probation officers over there i used to contact to them i also have a one legal prb prv means para legal volunteers they also help me for preparing the individual care plan like that and after the final disposals we used to contact with them and we have to do the inquiry whether what he is doing right now what is his whether he is doing right job or not whether he is doing involving in the same cases and like that and we are also doing the counselling sessions and we call them and we are getting and we are giving the feedback some feedback how to lead the life and all like that now the moot question during did you review the case after that period is over the basic thing that you have to now think is whether after that period of 3 years in that home is over do you review that 3 years have now passed he has crossed the age of 21 there is some duty cast on me which i have

not discharged do you call for the person do you review whether he needs more care and protection this is what he is saying is good but this is what ... is good but after that after that also we are in contact with them maam you are in contact with them so this is another aspect first that social investigation report in which he has to come out with his opinion after seeing his and after the ... after the inquiry is over and disposition order has to be passed the disposition order and the individual care plan how to spend those 3 years in fact this should be made for each and every case in England every person who suffers imprisonment he has a plan as to how to spend those years in jail. in our jail manual also there is a plan. this plan for every prisoner can be made ok so this is not our topic but for every child that the care plan for that period has to be made when the period is over.... maybe as professor is saying the child does not require any more care the juvenile is reformed if at all he required reform he is already improved he has done some he has got some education he has learnt to cook so much so that he can start a dhaba he has his confidence he paints maybe he can just be allowed to leave but the problem is there is an angle of security for this child you were saying something madam in my state i come from Tripura in my state there is not a single doctor even to attend my child i have to send my child to Assam to where i belong i mean simple vaccination so this one aspect from Tripura you have to send your family to Assam where i belong to this is 1 aspect second thing no job opportunity Manipur also same thing i mean care plan what should i say how can i prepare i am thinking within this do something at least the man the person can continue his general studies his schooling you can see he is educated upto class 3 let us make some programme so that he can continue his education from class 3 onwards can come upto class 6 class 7 no schools the buildings are there i mean buildings look like palaces no schools the best out of this can we go to others few minutes left how is your child getting educated i have to send my child for education to my place can you send those children to that place i can but economic i mean im just saying because i think that the call of the juvenile justice is that try and be more active in ensuring rights so if you will send your child to somewhere else try the same thing for these children because they are your children yes of course madam im so you can think whether to explore those options the school doesnt accept i can very well the school has to accept no no you tell the school in Delhi no in Delhi we had this reports to your juvenile justice committee of the high court report it to the juvenile justice committee because in Delhi it was the same problem but then we got directions from the high courts saying no you have to admit .... i have tried to put them in good schools tried it ... there so good provisions to discuss but how to be enforced nobody

discussed that how these can be enforced issue a notice of contempt which contempt if the high court has given a direction madam in jammu and kashmir state 38 judicial officers have not been given salary for the last 8 months no no let us not divert from the issue it is the same monetary consideration over there infrastructure shortage yestarday observation home i have told .... do you face these issue aboiut your children and are you able to find solutions for your own children ttell me that if you are able find solutions for your own children sermons are very nice but we should say how those sermons can be no im just asking the question have your children getting the education have they got admitted if they were refused what measures would you take this is a very good measure i will say i will do the same thing but we should come on the practical that is the practical aspect ... the newspaper atleast the newspaper should be booked how he has got the new quickly he is the person here we have not formed any this action plan these things these provisions are to be enforced to maintain these board maam there is totally no infrastructure actually now we are in the judicial academy we have to know our powers ok so the act is giving us some power and one of them is that the juveniles identity will not be revealed his records will not be avaiable for any body's inspection how do people know that this is the juvenile who has committed the offence how can the school refuse the if the school no governmetn school can refuse if you send him to a government school then the governemtn school cannot refuse to take the child on what basis will the governement refuse because he is not supposed to be a criminal at all because there is not supposed to be a record for him all his sins are washed out that is the whole purpose that he will be treated as like any other child and no disqualification is attached to to him because of the case so school cannot say he has had a acase so we will not take him they have to take him... they must understand the school must understand see if i insisit i will be able to make him understand or obey the law even if he doesnt understand but if i dont insist the maqtter ends. .. the public in places like north east where it is still so rural and police stations are being bombarded by the public and literally asking them the superintendent and others are literally being shaken down because they want to lynch a particular criminal and this people are trying how can you expect that schools and institutions be to so forward in their thinking like we have to giver equal representation to children they are not like that maam literally their thinking their inner thinking is like completely wrong you cant tell them they have to do it they will not do it and they dont care that is the thing the apathy as judges we have to pass our orders one thing is that our orders will not be obeyed ok we cant help we pass we know that money will not be recovered that doesnt mean that

i dont pass a decree see the act requires us to pass a few orders and we have to pass those orders and let others be guilty of disobeying the law but we will not be guilty of not performing our duty we will perform our duty isnt it we cannot say our orders will not be obeyed so therefore let us not pass any orders that should not be correct that will never be in the mind of the judge first of all we must go by this book if not by the mission you see it as a mission and you are carriers of that mission this has a mission its not simply any task like a person who is punching out tickets for a train journey this is something very different from doing that kind of clerical job and you are the people who are entrusted with this mission you are trusted with this great job you must perform your part of the work then next stage is implementation but we cant stop halfway because it will not be implemented we cant go by that feeling of frustration nothing happens it goes on like that okay before i conclude it is already time for tea im also looking for tea this one question i will ask what organisational set up for a probation officer do you think is necessary maam first of all there should be a regular cadre yes there should be let others also im asking everybody else what do you think should be organisational set up for him atleast if he have a the people at the back please say something please tell me what do you think the probation officer should have by way of his organisation should he at all have an office should he have an officer and a telephone and car something he needs who is he he is a very important person in this he is a person appointed by the what kind of organisational setup should he have should i not know who is the probation officer of my are probation officer should have an office should have an office number 1 number 2 he should have support staff like doctors he should be a high ranked person he should himself be a high ranked person yes he should have some assistance then in his support there should be doctors psychologist professors of i mean professor teachers social workers for that matter police also yes what facilities where withall should he have transport facilities transportation facilities if not transportation facility then there should be the transportation allowance he should not be less than a civil state civil service officer minimum he should he not have the power to send the child to any school he wants should he not have the power that probation officer has imposed this child on my school therefore the head master says i am bound to take him this is an order any government school why not a private school if there is a good private school to which he qualifies to join why shouldnt the probation officer have the power to put the him in that school he should have some powers because the purpose of the act is to reclaim and in his best interest we have to work and we know this is the school for him why cant i put him in the school if i am the probation officer

why cant the rpobation officer put him in the school should he not have these powers let us dream atleast if today i dream tommorrow i will think and maybe i will pass an order or do something in furtherance of the act madam he should but you cant take your task in routine you are not like any other civil court judge or trial court judge you are somebody very special so we have a probation officer ith a tag and no facilities no training not even the salary the monthly salary and he is required to do this tremendous work so this is made to fail ....by the time you realise your role you are transfered but you have to read the act twice or thrice over you know your role sensitisation is very important work of jjbs is very satisfying than the trial or the civil court rehabilitate a child when i know that about 1 year he has become a very good cook or he has learnt or he has started to read and write it is very satisfying for me personally i have found many juveniles in the home and say after i visit after 1 month or 2 monthand they tell me that i have learnt to write abcd for personally it is very ...whats happening is that additional work .....children can be moulded small these images of lord they can be moulded .. they are doing something it is a social legislation n.. you can do a lot and you are very important you should tel yourself that you are very important because many judicial officers think i have been sent to childrens court i have been sent ot beggard home many say mahila court no becuase some women they get posted in mahila court and then the another court dealing with women and then they say willl we never get tada or pota to do with terrorists or anything will we not get cases of frauds we will not do those cases so you know that kind of feeling is there because when you are in judicial service you always want the challenging work and then feel satisfied that this was cbi matter that you did or this was huge the land acquisition matter with crores and crores of rupees which you handled those .. will also come someday but this is also somethign very important and here also you can show your performancethis is something exemplary that you ahve done we are already burdened with teh court having so much pendency of 300 or more than 300 pendency maam this juvenile board is an additional work given to us this is somethin this is a sin a person who a judicial officer who already has 3000 cases he is in additona to this you are jjb this is something terrible there is no time for us to concentrate more on the juvenile board maam that is what happens this is the high courts sin in most of the states this is the same situation this is the sin of the high court the person who is already very very bbusy court you say in addition you do jjb what is this .... dearth of judges deliberately notproviding the funds for creation of posts for all purposes there unless there is

independence financial independence in the judiciary this will be the same ...t his will always be the same... let us have tea although you need to drink something cold but let us go for a cup of tea

## Session 10

good afternoon i have a request to these 3 tables there are only 3 ok 2 sitting no 3 tables with even numbers of twos if you can get into 2 tables with number of 3 it will be useful we want 3 of you to be constituting full benches we are on orders so you have to pass orders as full benches so who would want to change their seats please no 2 tables of 3 persons each remaining tables have 3 persons each 3 people can come forward shruti is there a password no not now yes it will be useful to move around good afternoon no still not working working ok we kind of had a good conversation about who you are as jjbs but in the list i do realise maybe mistaken some of you have been shown to have charge of jjbs as additional charge but some of you have not shown that in the list so is there people who are not actually working as jjb at this point of time 1 please raise your hands at this point of time yes at this point of time how many of you are not working yes if you are not working as jjb today today means these days so and those who have raised hands have you worked as jjb before ok so some of you have worked but some of you have not worked at jjb at all so ok i think that is a good starting point for use to know what we are faced with there are 2 basic sources of juvenile justice 1 is the mens rea philosophy when we say children are not mature enough to understand to have to have the criminal mind and the other one is the parens patriae philosophy where we say you are the father and when you say you you is inclusive of the state state exercises the jurisdiction of juvenile justice by reference to the parens patriae doctrine where we say when the natural family has failed the state will step in and work as the parent of the child and that is where i was saying in theory as the objection was that practice is different but that is what you are required to do so whatever you do for your own child this is what you are supposed to do for this child who will be before you and you are not alone in this you have got 2 member i was just talking to shruti saying jjbs is not this none of you is jjb here its only 1 member of jjb who is here you are supposed to work with 2 other person how many of you have 2 other person working with you when you are working as jjb yes so its important to understand this that 1 is that you are not responding sometimes the jjb judicial magistrates feel we are superior than the others i think

that is a myth we need to set it aside you are superior only if there is only 1 other person on the board and he has a difference of opinion and then you can cast your veto right but if there are 2 in majority on one side and you are single too bad you cannot override the other 2 members this has to be understood very clearly that the judicial magistrate is not superior that only yes it can be overruled judicial officer if the 2 social workers have got one opinion and judicial magistrate has got the other it is the opinion of the social workers that will succeed and sometimes they are in a row because you have legal knowledge and they don't but they also need to be conveyed that they have the knowledge which you do not have most of you do not have what you call one is the training and the other is exposure to the real children who are in the system you have exposure to these children only 1 set of children in 1 set of circumstances and as a judge when they have committed an offence you are not knowing what they are other than committing an offence every person has not only 1 facet in their life this commission of offence has only 1 facet of their life but that is the only facet you get to know of them and therefore we make a distinction between my child and those juveniles but look at the definition please open your section 2 and look at the definition of juvenile and child is there any difference in the 2 we keep on saying that no no my children are not juveniles why are they not juveniles where is the difference both the definition it only says it is a person below 18 it is in our mind that when you refer to him as a juvenile you are already saying he has committed an offence but that is not what the definition says definition is categorical juvenile and child are the same persons it is only when a child commits an offence that we start referring him not alleged to have actually not committed even alleged but it is again a violation of the fundamental right that you are stigmatising the child before he is even found of committing an offence and that is a huge problem with the legislation itself at that level and we have to work within the limitation of the legislation but as of now we know the first thing is clear that we are sitting there so how do we because our first and ok once we say that true but what does India has done have we followed one or the other or both when you go back to the history of juvenile justice in India we trace juvenile justice to 1850 where we started talking below 15 years of age coming petty offence whether in this category and then we moved on to 1920 where a major change took place in the philosophy and which segregated juvenile from the adult system only exception is saying exceptionally children can be sent to prison then comes 1960 where there is a norm laid down in India that no child will be sent to prison in no circumstance or be kept in police station it was a model in children's act 1960 but many states did not follow that but in

1986 it was landmark that everybody and anybody who was within the juvenile justice act was not to be sent to prison at that time 16 for boys and 18 for girls was the age then came the current legislation 2000 where we said no child till the age of 18 committing any offence will be sent to prison or any sentence for that matter so we have completely accepted the philosophy of *parens patriae* to start with now what about the *mens rea* in England they followed the philosophy of *mens rea* in America they followed the philosophy of *parens patriae* the difference between the 2 was that when it was *mens rea* the constitutional rights were not taken away whether the right to a lawyer you had a right of cross examination notice etc all that was there the only thing was that you are below a certain age therefore you will be treated differently but you still had all the constitutional rights *parens patriae* meant the magistrate is sitting as a father and if the father is sitting there as a judge then you don't require lawyers you do not require notices so all that was done away with in juvenile court model of America and we started in 1920 we followed in 1960 also we followed the same pattern of *parens patriae* we did not permit lawyers in the juvenile court it was 1969 that a constitutional challenge was mounted and in which component of *mens rea* were also brought in saying no no they have to have a lawyer so now we have a model the mixed model of the 2 that we do recognise certain rights but we still supposed to work as a parent of the child and the moment you are the parent then you have to go all out of the way to secure rights of the children best interest of the children like you would as your own you are not the judge anymore you are the father or the mother of child and if you find therefore I was asking the question what will you do for your own child you have to make every effort to secure the best interest of the child as if this is your child anyone of you I mean somebody did say that even when our children when they are juveniles it's not reported why do we not report it and what do we do with that we still protect their interest and that is what we say that this legal system will not take cognisance of this in the sense of negative consequences removal of disqualification so even if a child has committed an offence no disqualification attached to him and he starts with a clean slate till the age of 18 whatever offence it is and of course the *Nirbhaya* case has been a challenge before us it is a case which challenges this that whether this is a right thing so when we say *mens rea* 16 and a half or 17 and a half did not know what he was doing was wrong because *mens rea* indicates to us that children do not know do not have the criminal capacity and Justice Goel in the beginning did say he commits rape and he doesn't know it's wrong not necessarily so he may know it is wrong but the question is if he knows it is wrong and he still does it and he is below 18 so then he will be

treated as adult or as a child because some may say child what is the image we have of a child this small 17 year old is not this he is an adolescent at best he is not a child but the law says he is a child and that is where the conflict happens in our heads between what the law says we should do and what we think is appropriate and just and that is where the conflict is and in my session today i will try and to address some of those aspects to say that why despite knowing that something is wrong a child does it he or she still needs another chance that is my aim for today's conversation and therefore i wanted to set the background and also we need to look at what are the background materials which should guide our judgment we have this section 5 and we have just circulated the copies so you will read them more details this is aims of juvenile justice emphasize well being of juvenile and shall ensure that any reaction to juvenile offender shall always be in proportion to the circumstances of both the offenders and the offence as judicial officers specially sitting in the criminal court how do we decide sentencing we look at the offence and we proportionate sentence if it up to 7 years we decide whether to give 3 or 4 or 5 or 6 or 7 depends on the nature of the offence but in the case of children it is not only the nature of the offence but also circumstances of the offender so there is more duty when looking at the offence when it comes to the juvenile justice also there is the other role guiding principles in adjudication and disposition i have only copied one but there is a whole long list so you should look at all that just now when we do the exercise disposition of the competent authority shall be guided by the following principles a reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society so there are 3 components to be taken note of in deciding what is the order then i think what we also need to know is that the convention of the rights of the child to which we are a party and obliged to follow these principles as well as the beijing rules the one i already referred to they also lay down a guideline which is not available in the legislation but it these 2 are referred in the opening para which says that we have to we are bringing this legislation to bring the local laws in conformity with our international obligations under beijing rules under crc etc it says use of institutions should be a measure of last resort so those of you who are functioning as jjs know that section 15 and 16 gives you a range of orders which may be passed and what i want us to do now is to we can circulate the exercise to them so read section 15 16 beijing rules section 5 ok here is the list of task so read section 15 16 rules 5 and 17 read the task given and individually first try to work out what you think is the appropriate order which you should make in these circumstances

and then of course certain discuss it with the others and when you decide the order not only decide what is the order you want to pass but also work out in your own head the reason why the other orders are not appropriate because what is the difference in manner of giving orders under this legislation is slightly different than the ipc ipc tells you this is the this offence this consequence in some places murder life imprisonment or death penalty is the only choice in some cases you have imprisonment upto 7 years rigorous imprisonment upto 10 years so for every offence there is a designated range of punishment in this legislation you have all the orders open it is not that if it a serious offence you must send the child to the institution if it is a petty offence you must release him there is no such direction you are free to choose any of the orders in section 15 and 16 so with that light please do this you are free to work it out along with yourselves and I am saying every table should have 1 representative who will present the report on behalf of and what we want you to actually focus is what are the questions which were discussed we are concerned with the answer but we are more concerned with whether the right questions which you should ask before passing an order whether they were raised or not because unless we know what are the questions to look for you may not find the right answer [00:20:51] so it has to be yes is the juvenile substitute yes wherever it is wrong [00:24:35] last 2 minutes [00:26:29] hello if there is difference of opinion that is also ok full benches can have majority minority view as well and you can have there are 2 problems one group has exercise 1 the other group has exercise 2 but the questions are the same please quickly you are done good take another 2 more minutes let's see what you got consensus of opinion what done most groups done there are 2 exercises we are doing who all have got can I have your attention please well exercise 1 is done exercise 2 are still doing for those who have exercise 2 these are the facts for the other group which are slightly different from your facts there are 2 sets of facts given half of you have got exercise 2 half of you got exercise 1 so exercise 1 the facts are A was caught by Ms. X while he was running away after stealing scrap iron not very valuable in the market and he claimed to be 15 years of age his age has been proved to be between 15-17 years he lives with his family in the slum A lives with his family in the slum area of the city and goes out with other boys for rag picking and spends most of his days on the streets. His father does odd jobs while his mother looks after his other younger siblings and works as part time house maid in the nearby locality. A spends most of his day on the street. This is the first time he has been caught for any offence. now this is the information you have is there for those of you who have done this exercise are there any information which you may like to know more is there which

is missing do you think it is sufficient for you to make an order think about possible probing question which you could have found out about this person right to education whether was he going has he ever been to school or not qa question we have not provided as yet there is a lot of information which is missing we have provided some information and this may happen to you as well that the probation officer gives you some information your job should be to find out what is the missing information which may be useful for me to find what is the possible order so ok on the basis of this information what is the order this group has taken release after due admonition as their primary category yes you have exercised 1 ok most appropriate dispositional order ok how many of you have done exercise 1 how many tables have decided 15 1 a as the most appropriate sentence this all group 1 ok the 2 benches which haven't raised their hands what are your choices we have no ... I'm asking in exercise 1 who have all which are the benches which have done exercise 1 ok all of you have you chosen 15 1 as your consequence ok you haven't what is your choice madam section 15 1 b direct juvenile to participate in group counselling and similar activities ok ours is section 15 1 a and 1 b ok 1 a 1 b ... ok ok 1a 1b so in terms of counselling ok how do you how will you administer 1 a what will you say listen listen ... this is wrong you should learn something like cooking or some work manage your future .... that is admonition you will give admonition this is advice so is it advice or admonition or advice and admonition rather I would not admonish him I would advise him you will advise him not admonish any of you who will admonish him there is no benefit of admonishing him he probably committed theft because he was hungry or that he did not have money for his needs like for say maybe he required clothing for winters or something alright maybe that kind of situation ok so counselling good counselling how will you do group counselling who will be in the group I would rather we have decided that we would admonish him also we will give him the consequence that you have done this is a mistake he should not have done this because you are running away if you do this again then you will that become admonish if you make this a habit you will go to jail so today we are letting you go we will call the parents we will tell him we are letting him go this time ok so far so good so now the second part group counselling now group counselling how do you administer group counselling who is in the group these 2 groups said group counselling who will be the members of the group whom you will be counselling experts parents experts will give counselling he will participate in the group counselling but who are the members of the group experts no but the experts will give the counselling ok which group will they counsel you will call experts for

counselling so parents and juvenile or siblings siblings or the friends friends friends are very important friends is a very important category in group counselling because most of the adolescents commit offences in the influence of peers so your neighbours friends relatives immediate family these are the set of people who can decide who is influencing so when you say group counselling we should know clearly what do we mean by group counselling because until we understand group counselling includes which persons so it is a good thinking but not necessarily administered in the right manner so therefore we have to be care that the group and the importance of group counselling is that most of the children commit offences in the influence of the people they interact with so who are the people they are interacting with and what kind of counselling they require children the peers would require different kind of counselling than the parents would so you need to address each member why are the relatives important for counselling so what will be the circumstances in which the relatives may also be important suppose it is a case of rape offence maam parents they have the control over the child parents are clear but the other relatives parents are clear if he lives in family then they must be counselled cousin etc so that they can help him rehabilitate both ways accepting the child as well as encouraging and motivating him to lead in the right direction so therefore deciding who are the members of the group is an important category now lets move to exercise 2 it is a little harder case there is a case of murder a dead body was retrieved by dogs from a canal autopsy report showed stab wounds on his chest which were capable of causing death in the ordinary course of nature deceased was last seen in the company of y z y which is a juvenile alongwith 2 others who are 22 years old they were tenants in the house of the deceased on sustained interrogation yz and m confessed to the killing the victim after some dispute with them the confessional statements were recorded by magistrate in which they stated while z and m held the deceased y killed him by repeatedly stabbing him in the chest area later they dumped the body in the nearby canal they were charged with the offence of murder z and m were tried and convicted by the session judge and have been sentenced to life imprisonment it should by y was produced before the juvenile justice board and y it should be y and juvenile justice board has found m y guilty of murder ..... All the three belonged to the same village. Y had come to Delhi six months ago in search of job and was staying with Z and M at their rented apartment where murder took place. Z and M are graduates. Y is a recent so what is the choice of order by group which have done exercise 2 i think some more information is required perhaps we have got exercise 2 so we have pointed out what are these points y killed him repeated by repeated

stabbing in his i mean the he had been the most cruel in the circumstances there is not past record this is also a thing to be considered all the 3 belonged to the same village y came to delhi for earnign he had he is recent school dropout and y's family has no criminal record these are the aspects which we considered and we arrived at the i mean 15 1 f of the juvenile justice act send him to good conduct you are sending him to institution terms will be education ... f or g f what is f direct to be released on probation of good conduct and placed under the care of a fit institution ... so they are going to keep y in the under the supervision of probation officer release on probation and any other 15 1 g what are the other groups doing maam we suggested from our groups that i think community service to perform community service its a good as per the act 15 and .. its also good to involve in the group counselling like that ok we maam we discussed and our view is that it is not fair to deny him his parental care because he attacked he stabbed him repeatedly and therefore we conclude that he can be released on probation of conduct under the care of his parents with a further direction to probation officer to monitor him under 15 e and to realise the real realities of life he shall do some community service maam we have a dissenting opinion in this group one of the members the majority my 2 colleagues are saying they should he should be sent to special home for 3 years i had a dissenting opinion should i mention it yes i like my the bench behind me i feel since we have to take into consideration the fact from he came from a village 6 months ago he has bare minimum education nhe was dependant on 2 graduates who are his guardians and who confessed that he was the main culprit in the whole offence so but we have to take into account what the juvenile has to say regarding this because his confession was also never taken and also we have to see was he did he volunteer to do the entire thing by himself or was he asked to do so taking into consideration the fact that his family also they had no past record all these things i feel like he should be released on probation to his back to his village to his parents because his parents seem to be good with regards to whatever facts has been available and that under the supervision under 15 3 says under the supervision of probation officer so within 3 years it has to be monitored and the supervision order has to be passed..... the information is not enough i would seek some more information .. what ... like i would i would seek information as to what work was he doing at his village and plus ..... without inquiry .. about his parents etc ok how about.... why .. they are boys why should we think so ..... how many assumed that they are boys .. murder then it cannot be girls and im raising this because many a times it happens that we are guided by our assumptions ok so one assumption is that they are boys they are boys yes yes .... would the order be different if

these were girls or one of them was girl or whatever whether gender of the person is a relevant category sex of the person is a relevant category to know before you decide certainly it will not be a case which will happen in front of you because the person will be right in front of you but i kind of played this trick mainly to say that many a times we are caught by our assumptions about the background of the person comes with the information we have there may be lot of information which is still hidden now i have hidden some information very purposely for exercise 1 this is your other additional information and this is what happens most of the time most of the time we think of a lighter punishment by reference to the nature of the offence a more serious punishment by reference to the nature of offence it was started with saying it is not only the nature of the offence you need to look at many other factors circumstances of the offender so if this we have referred to in the problem in the second problem there was some dispute do we know what was the dispute they are referring to the dispute what was the dispute about so many a times actually children who are committing petty offences are usually repeat offenders they may not have been caught earlier but they have been doing it for sometime most of the time a serious offender is a first time offender he got caught into a circumstance where he committed the serious offence and this is a fact of experience this is a fact coming from experience of many juvenile justice magistrates where they find that the repeat offending is not usually of the serious offending it is of the petty offences but in petty offences we let them go do it again in serious offence where they actually themselves also very traumatised we send them to institution this is a standard response guided by the criminal justice system and that's what needs to be examined again to what extent we are asking probing what has been the past what has been the present what is the possible future so we are talking about restoring them to the parents why did the child in the first place come from the village parents were still there so the parents were still there why the child come to the city did he run away did he come with their permission were they not capable of looking after why the 17 year old has left home and then you want to send him home he will leave home again so we need to ask the right questions asking as to what has led to this offence individual the thing justice goel was saying the last time we have to find out every detail the circumstances which has led to the commission of the offence finding out because what happened every time we say tell the truth tell the truth only then we can help you are we violating any law of the land by asking the child to say tell the truth incrimination self incrimination and we all do it in the parens patriae category that tell the truth probation officer also says tell the truth there we forget the rights of the child we

will let you go tell the truth we can act in your best interest only when you tell the truth so we keep on emphasizing something which actually is wrong in the name of *parens patriae* but when it comes to actual protection we forget that we are still to be the parent when we ask them to tell the truth we want to be we want to play the parent role but when it comes to the orders we are again back to the magisterial role then we forget about that role that magistrates are the *parens patriae* parents of the child so when you are taking the role you have to see through that if you put your own child who confesses you have to become the father suppose your own child said that today I made an MMS in school they came to know and he is afraid that he will be rusticated so he comes and tells you now what will you do as a father of the child who says that yes I made an MMS of a girl and circulated it you will say that no the boy is good in studies he did not have previous fights you will have all the justifications to say no no he must be given another chance the same has to find out what else there was about the child this child is not only about the summation of the offence so he might have committed a petty offence but if he has been doing it constantly if he is in the company of others so he has got all these other problems releasing him after due admonition is not a good order but unless we know those facts we do not have these facts these are not there then it is perfectly fine to give him another chance by due admonition and look at the additional facts I have found about the second case these are of course all girls to start with and this is a whole history why they stabbed him to death in this manner this doesn't tell like no you should go into an institution or supervision or all kinds of things certainly counselling would be a good thing to do the adult court has got no choice but to give one of the 2 death penalty or life imprisonment and life imprisonment is fine for the other 2 in case of the child you have a whole range and therefore ask additional questions on what information is available examining the information is very crucial in choosing the right order and I certainly think it was a good thing that we have a difference of opinion in the benches but in practical and it happens you know it is a simulation situation certainly you are more conscious of what the legislation says etc but when you are actually sitting in the courts most likely if it is murder then 15(1)(g) and if it is a 17 year old come back to the Nirbhaya child [00:49:44] I had a very similar case in my board where it was a case of murder the child had come from his village at U.P. and he came to Delhi he was living with his uncle the uncle was alcoholic and he used to go out to work the child and he used to used to physically assault him beat him and then one fine day he picked up a knife and he killed him then I released him on probation yes I mean there will be circumstances you have to actually constantly emphasize on

finding out why did this happen what has led to this unless you find the real causes you cannot find the right solution the legislation gives you a whole discretion it doesn't say if it is murder you must send him institution but and if it is not murder you must not send it's not also there so if it is 17 year old suppose it is the first one exercise 1 the child was 17 and a half and a hardcore drug addict and trafficker and all that maybe you would want to send him to an institution maybe deal with 16 to institution dealing with drug deaddiction yes certainly institution because there maybe possibility if the child is not in the institution he may not go for de addiction you may require institution to get him into de addiction as well so you have to think of the wholistic circumstance everything you would think now think of every child before you as your own son or daughter which has got into trouble and then find out what is the best course of action the legislation gives you that discretion and you need to find that solution certainly we are not living in a utopia society where every thing is fine even in our own homes it is not fine we do not have all the capacity to give to our children and therefore the fact i do not have a probation officer i do not have this etc we do not say this to our own child we go out of our way to find solutions for our childrens growth and development and that is what the legislation requires you to do that is an obligation and that is the importance of being a juvenile justice board principal magistrate you have to find because you are the law persons you can find ways and means to tweak law to give an order in the best interest of the child the other social workers can tell you what are children like what are the possibilities what is the potentials but are the potentials in law you can add to their capacity so you work as a team you can actually find the solutions and our job is to find out solution not to be restrained by the problems because as parents we always have restraints but as parents we also find solutions so i think what i wanted to emphasize was that certainly if we probe into right directions we might get the crucial clues to making the best order i also wanted to focus on this aspect as to why the law says institutions should be used as a measure of last resort what is the rationale and we say that there is an ironical position there we want to send people and this is true for even prisons that we send people to institutions preparing them for freedom by taking away freedom you want them to become responsible citizens and institutions do not give them any responsibilities we want them to be integrated in society by segregating them and even the best of institutions do this so ok i want to focus on this one this is the range of orders you have already found about group counselling because group counselling community service and actually fine are 3 which i want to focus so your group said you will go for community service what will be your

exact order in community service because i think others may understand more easily these are the newer orders and we need to understand how to operationalise them so if you were to make a community order in that case and forget about the additional catch go back to the original position that these are boys and committed this offence actually maam i already passed this type of orders in one case that is the 304 that case is a very contested there is eye witness also there and but there are 2 juveniles both are very good and they are very sincere they also accepted their guilt no no that is fine we are now thinking of what will be the terms and conditions of community order then i passed the orders to appear to attend the rural hospitals rural hospitals of the howrah general no not rural hospital the howrah general hospitals attending to helpign the ward labours helping as a labour worker like that and i also ordered to the superintendent of the howrah general hospitals to provide the reports after completion of their tenure and like that what was their tenure 6 months 6 months completed 5 days 7 days 6 months yes 6 months but how many hours everyday 2 hours yes maa mthey are very happy no no we are trying to flesh out the details of the orders so you are saying 2 hours for 6 months 5 days a week 6 days 7 days 7 7 days ok any other terms and conditions and i also advised them to appear in the group counselling and like that ... how often once in the week like that once in a week who will be the members of the group counselling who are the other members to be counselled myself and my members no again we are going back to the group counselling group counselling doesnt mean me and the counsellor and the child sits no no there are all so many juveniles those who are also related in this types of cases and they are also got conviction order like that i think we need to certainly understand that group counselling doesnt necessarily mean all the juvenile should be in the group but the people related with the juvenile every juvenile has to be given group counselling separately so i think there is a misconception that you can get 5 juveniles together who have committed similar offences for counselling that may be one kind but that may not be the exhaustive category but i certainly think i want to go back and ask the question why did you send him to for community service in a hospital why was that choice made as per their choice maam why didnt before passing the order i why did they want to do that what were the choice given what were the options actually there are they have gone through the internet that there is some recruitment going on in that hospitals and like that so they have gone through that recruitment and so they prefer to go that hospitals for doing the community service and like that yes but i have been think it through more clearly [00:56:58] that if we are choosing a place certainly one thing we will have to be clarified with the superintendent certainly it is a good

thing to coordinate with the supervisory staff when you are doing outsourced what we call as this is a supervision under somebody else so there is somebody else should be in complete conversation with you to know what is to be done what is not to be done we have seen some of these examples in delhi also where children are sent to community service in hospitals and so im curious why hospitals are community service and in the hospital in delhi what they did was gave very clear direction that they must not be given any menial taskjob their identity should not be released should not be revealed no body should know that they are coming under the court order so these were the factors that they did for doing that but i was interested to know that why are we choosing hospitals in this case the justifications was there was a recruitment happening and maybe they would find a better job opening later one maybe one rationale but if you are thinking community service what do we understand should there be a relationship between the wrong they have done and the kind of community service they do i was kind of reminded of a case which was a restorative justice case in which 2 young boys had hit an old woman to get some little money they wanted to go and see the football match in germany so these 2 17 year old hit this woman she fell down they took grabbed some money from her purse and ran away and of course they were caught and then they were put into restorative justice programme which meant that these 2 have to build their bond again and what is the bond between a stranger and a other one is a feeling of non threatening if you see an offender later on you are always afraid of that person you never accept that person so the idea os to restore this relationship so the community service programme these 2 children were put into were they were asked to look after this old woman till her she fractured her leg and she decided to move into an old people home because she was now feeling scared to live alone she was living alone so far so the programme created for them was where these 2 boys will look after the grocery needs of this woman so whatever shopping needs to be done till she is mobile herself these boys will do for her and on the weekends 2 days per week they will go to the old people home and help out the old people there spend time tell stories whatever entertain them and after 2 months review will take place so after 2 months when they came back to the court room for hearing the 2 juveniles were sitting and the woman came and sat next to them because in this 2 months what has happened was that the children realised that the extent of their danger of their offence was not pushing her and taking some money what they did realise was that she has also now a sense of insecurity she is planning to move to an old people home which is not really the best place to be unless absolutely essential so thier exposure to the old people home and the interaction with

the woman they realised the gravity of the offence for the woman she also realised that these were actually just children they did it on the spur so she was able to forgive them so when you think of community service can we think on those lines that somebody is caught for lets say 304a then maybe traffic regulation may be a he must go through this training programme he must regulate training under the supervision of a traffic officer so we can think in terms of on those lines when you say community service we are still not there on restorative justice but atleast we can implement community service in a much organised manner because if we start thinking so when you look at this whole range of orders there is only 1 which is institutionalisation all the range the rest of the range is put the child in the community so you can see that the balance is very categorically in the favour of community placement and if community placement is done effectively community measures are done effectively then we have this whole opening of a new future for this child and we need to ensure that happens as a parent with the child ok i will go back to the fine category anybody who has imposed fine well this the law says if the child is above 14 and is earning then you can impose fine it is not so anybody who has imposed fine yes i have you have imposed fine what were the terms and conditions of the fine i impose fine only if in petty cases if he is repeat offender no that is ok but what is the quantum quantum is nominal these people are very poor so 100 200 250 300 like that ok another concept of the fine has been understood in some circles is day fine system where they would say for the next 2 months on the days you are working you will deposit 5% of the income for the day for 2 months 3 months whatever so it maybe one way of doing it that you impose a petty fine which they can pay and feel it is alright its over but certainly there maybe a question of implementation on that but you are calculating the fine not by referring to the capacity of the child to pay today you are saying im keeping you under supervision also for the next so many days or months and then you will keep paying everyday so you are reminded of your wrong everyday for the next 2 months that this is what you did and thats why you are giving a very petty amount but still from your small income you still giving some more that is where ordinarily you will say fine is a punishment and you will say no punishment under juvenile justice act so how does fine fits into the whole scheme it fits into as a alternative to institution and also if you do it constructively it can be a reminder to him of his wrong so that is one possibility to think about it whether you can bring about this change and what mechanisms you will need to increase so if you suppose when you say fine and probation and has to report weekly as to how many day he worked what he earned and then weekly deposits he will do accordingly so when they are daily

wagers they may not earn anything on Monday but the earnings something then next 30 days whenever they find the work they will pay this much amount or 60 days or 1 year what ever depending on how much supervision you want to continue on that person ok who is a child and i am not asking below 18im back to the question child so even 6 year old child how do we think of this child who is he well you see he is immature how many of you think he is immature a child of 5 years is immature you have a child of 5 years i have 4 years old 4 years old he can manipulate you he knows everything exactly what he wants to get done how is he immature means he is actually very manipulative children are very intelligent they know precisely what they want in life and who will give it to them so certainly immaturity by reference to whom nowadays its the electronic savvy children otherwise no when you say electronics electronic savvy children are very smart the electronics are actually a double edged weapon electronics have given them access to explosion of information all kinds of information and no supervision merely because you have exposure to information does it make you mature it only makes you vulnerable to experiment new things which you are seeing in that they are more creative and they are mature they know no they are not mature they got knowledge and exposure how to get the things they are coercing things from the parents no no that is not the ... the kind of maturity i am talking about is the 6 month old baby also the 6 month old baby knows who is my mother and who is not so therefore their maturity is according to their developing capacities and that developing capacities have to be recognised so it is not that they are immature in all respects they have maturity in some aspects and in some they do not have and that is what distinguishes children from adults so when we say they are vulnerable they are trustworthy they are forgiving all that is fine but also they are very intelligent has to be understood merely because they intelligent does it mean that they should be able to take the consequences of their actions that is where the criminal law comes into at what stage criminal law ipc from the 7 age onwards 7 onwards they are 12 is the no no there is a law section 82 very categorically says any action section 83 says please let me finish 82 very categorically says no act by a child below the age of 7 is an offence 12 says that 83 says 83 says that in exceptional cases a child between 7 to 12 can be shown not to have the maturity so assumption is that everybody is mature at 7 to take criminal responsibility so there is one position and then we have juvenile justice act with says even though they can take the responsibility for the action they must not be punished so if they are responsible and they must not be punished what should we do with them that is the challenge under juvenile justice act it certainly they are

responsible they know what is right and wrong from that age onward of course it is too low in india international acceptable age is 12 many countries have it at 14 16 no criminal action till the age of 16 so we are indian children are smart have been smart since 1860 from the age of 7 we become smart enough to take responsibility number of countries till date say 16 is the criminal age of responsibility so for them it will only be 2 years till juvenile justice we are talking a whole range from 7 to 18 7 to 18 range we need to decide if they are responsible if they are mature enough then how should the state respond one choice is criminal justice system the other choice is juvenile justice system we have chosen juvenile justice system and we need to as magistrate unless we believe in the juvenile justice system we will always have dissatisfaction in implementing the law and that's what the aspect i want to create so one is who is a child our conception of child has to be these are human beings whose capacities are growing day by day they are still not mature enough to have understood who they are they are still discovering their abilities every single day and then how many children are in juvenile justice do we have a sense of how many children in india ok how many children do we have in india below 18 years of age more than 40% population in india is below 18 years of age it is about 44 crore children more than that actually how many of them get arrested for an offence in india what do you think is the crime rate the juvenile delinquency rate out of 1 lakh population.. that's the contribution level that how many juvenile delinquents contribute to the total crime in india what is the crime rate how many children out of 1 lakh commit an offence i will give you the figures but they are the questions whose children are they what is the background are they our children or their children those poor people and all those so poverty and these all are problematic categories so that the another question what criminal justice holds for a child in terms of long term incarceration and life long stigma this i will skip ...so this was a slide supposed to be before .. institution still results in institutionalisation stigmatisation and segregation etc therefore first of all we do not have those kind of institutions and even if we had it will still be problematic and therefore the justification for the ... of institutions restorative justice i have mentioned before briefly and any number of experiments not experiments actually programmes running across the world they are still not there we are still talking in terms of punishing there was another child who has snatched a cell phone from a lady so when he was asked why did you do that and you know it's really bad he said this lady had 2 cell phones i have none and i wanted one i mean she has 2 what is the need for having 2 so i took one that is his justification for taking his cell phone the lady was asked how you are feeling she said i am not really worried

about the cost of the cell phone but the data in the cell phone that is my loss there is a lot of information in the cell phone which I have still not transferred to the other one and therefore I need the other cell phone. The understanding of the 2 was very different but these 2 never get to talk to each other to find out what is the loss actually caused and what is his understanding of the loss he has caused unless he is made to realise that restorative justice is about that the children know they have done something wrong but what is the extent of the damage they have caused that they are not aware of they do not understand the whole gamut of consequence that follows when they commit an offence and unless and that is what most of the offenders are very afraid to face the victim and victims also what are the demands of the victim [01:11:09] what did the victim want because we have all been saying no no no children should be now sent to prison should be given harsh sentence because victims require justice this is the demand in the Nirbhaya case what is the demand of justice for the victim what is required do we do any of this victim compensation rehabilitation the only demand is send him to prison but how many of us have found the ways to provide compensation to the victims in our courts we don't think about that but is there a ban that that you can't do it is there a state scheme available where the victim can be rehabilitated the victim compensation rules are there ... in criminal it is alright have you done it in juvenile justice that is the question we need to expand our horizons to certainly we certainly need to think of the victim and what there are 2 propositions one is protecting the offenders against the state actually in Jammu and Kashmir state there is a provision for legal aid ... we can provide .. certainly we need to think more actively and think of more positive solutions to deal with the whole gamut of offending so not only focus on the juvenile but also focus on the victim and try and find out if there is a possibility of finding some relief to the victim also sometime it can be through the offender sometime it may be through the state system so certainly thinking on those lines can expand the scope of our relief that we grant now come JJ statistics these are very small figures but I needed to put them all out there when you look at the statistics incidence of cognizable crime in 2003 the total cognizable crime in India was 17 lakh 16 thousand 1 hundred and 20 percentage of juvenile crime was 1 % and we have been hearing that juvenile crime has exploded these figures have remained 1 1 1 then 1.1 then finally in 2014 it is 1.2 and the total number of children arrested not convicted arrested for any incident of crime has been 33 thousand 500 and 26 so out of 44 lakhs this is the number totally in India that we are dealing with and I'm quite sure we can do something individualisation plan for this number it's not a huge number that we can't deal with it

we also need to look at total cognizable crime to these are same put into figures you cant even see the top yellows that is the miniscule number that we are talking about now look at the total apprehended for rape and murder we are very very concerned about so the big black is the total rape and murder and the samll yellows are the one done by children and this is 16 to 18 years which is the target of our conversations today it still is a very small number that we are talking about incidence of rape under section 376`by juvenile and its share to total incidence of rape in different age gropus so the age gropu we are concerned about is this one here 4.2 5.1 5.3 6.2 now this 6.2 certainly is an increase from 4.2 in 2010 what do you think is giving rise to this increase.... yes please the age of consent is gone from 16 to 18 yes that is one elopement cases..... and also your pocso definition pocso definition changed in 2012 whatever was considered as rape is no more that limited category as it is now the new definition of rape in 2013 that was introduced in 2012 for childrend so suddenly you had all the anal rape and the oral rape and the object rape and the finger rape etc all allso included.....yes but we are only looking at the rape offence we are not stilllooking at the other categories it is not sexual offence categories it is just rape category so once the definition of rape exceeded widened and the age of consent ioncreased from 16 to 18 lot more consensual sex cases which have now termed as rape cases so certainly the myth being created by the media saying there is a 66% increase in juvenile rape the hindu study shows that 40% of them were consensual categories so number of cases where children wanted to they ran away with their own boyfriends and girlfirends it is gender neutral it can be in ipc it is not gender neutral in pocso it is gender neutral also soi that is .....if it is seen by somebody then it is rape otherwise its not rape.....yes certainly that is another example another thing that you need to think about suppose suppose now just a question on this one only suppose you ahve a case of consensual sex between boy and a girl both of them are 17 years oldand they are produced before you whether both the girls and the boy are committing the offence or only the boyis committing an offence rather i would ... in practice it will eb the boy who will be sent to you and the girl will be sent to the cwc but my question is why if it is consensual and you look at the definition both of them are encouraging each other to get into the sexual act and the section is not about penetration by the male it is saying making him do it to herself so she is also an offender at one level or he is also a victim so my suggestion is always been that when you get a pocso consensual case then you should refer both of them to the cwcthere is no need to deal with them under the jjb at allno rather it should be either both are victims the boy and the girl either treat them both as victims precisely precisely

but why should we treat them as offenders why should we get into a stigma category rather i would not take them as i think both of them should be .. sex at such young age can lead to lot of consequences for the girls and they certainly need protection but the protection should come through cwc not jjb because the moment you say jjb the jjb you see means criminalisation despite whatever the law says the moment you bring both of them before the jjb then you are criminalising both i would say decriminalise both of them so my suggestion has always been because the law gives you that discretion again if you have the sensibility and the commitment to children cause you will say no this child need not be before me transfer the matter to cwc ma'am i if you do not have that then you will certainly deal with it in fact i would not take it to be a criminal behaviour it is not that is why it is cwc in fact i sometime back i was told that in south africa in south african supreme court they had a similar statute like we have in pocso and what they did was elopement cases they said that they are not pocso matter it is a matter of open offer then changes in the law because the law as it is is not allowing you that and no discretion has been given and that is a huge dilemma in fact in fact no the other thing is also that it may be your personal view in this room itself if you were to go around and ask lot of people think and i have come across specially police officers in my training programmes who say anybody who is having pre marital sex should be hanged no no no they have you have a whole of people are there and we as judges have to follow the law the law presently allows us this discretion to deal with them both as cwc children rather than as jjb children and we should recognise that certainly in a more because there may be what's happening in elopement cases is the girl first runs away then the parents file a complaint previously they were filing only kidnapping complaint now they are filing kidnapping and rape because they do not approve of the boy if they approve of the boy because we have got double standards very categorically in the law if she is married then even if the husband actually rapes her it is not an offence no one it is a very very categorically gendered category so rape by the husband is not an offence if she is above 15 years of age but at 16 she is having sex with her own consent she needs protection so we have very categorically said victorian age that you can have sex only within marriage and it can be forced also for men girls have got no choice in that matter so somewhere we need to recognise the reality of today that with the education with the exposure to lots of sexual images commercialisation of women's body there is lot of sexual explicit content available to children because of the school work also they have to necessarily get on the net so there are lots of exposure which is happening and certainly we need to take cognisance of that and then work within

the framework of law to protect children like they are my own so if my own child will be so i am saying about the mms as we know the category which we relate to our children will be involved in those kind of activities and if we can find a defence for them we need to find a defence for each child found in similar circumstance .... nirbhaya child so ok i will quickly run through this one this is again the murder category again the number of look at the actual number of juveniles in 2013 1230 out of 44 crore children we are talking about now look at the background that they come from annual income upto the first highest slab is of the lowest economic strata as the income goes up the number of children getting involved comes down and it may happen not because they are not committing but also because the parents have the capacity to ensure it is not reported they are being reported because high society people they don't ...report yes and anyways even when they get reported they can manipulate the system in their favour so both one is the educational gap and then we see education now look at the 90 % which is matriculation the blue one matriculation and above so if children are in school they don't get into crime activity previously the illiterate no the blue is the illiterate 90% matriculation and above is the 13 % so previously blue used to be a big group but now with the compulsory education and everybody in school this numbers have changed now the majority is coming from the above primary and primary so school dropouts is the problem so what do we need to do is to send them back to school and the conversation is we should make education as a compulsory requirement till the age of 18 not only 14 it is the 14 and 18 age group out of school which is getting into crime situation so you need to general when you look at the macro level causes also we are finding out of school little education exposes them to more children more techniques more knowledge which they misuse and therefore keeping it not that school is the remedy for all but school is the place where you can intervene more easily because the child is in front of you children on the street we do not know what they are doing but if a child does something wrong in the school it gets reported so there for controlling the children's behaviour in school is much easier than regulating their behaviour while they are on the street unsupervised therefore for me we have to work towards getting the children back into school and try to find ways and means to ensure that the school admit whatever we need to do so therefore we cannot just throw our hands up saying schools do not admit we have to find ways to and when ever a child doesn't get admitted in one school do we not turn the table around that one way or the other we are going to ensure that it happens so we have to be creative and find ways and means to get that back the last point i want to make today is this whole question of children not knowing what

is wrong and right and if they know what is wrong and right they better take the consequences in 1920 when we had this laws which said that children committing serious offences maybe exceptionally sent to prison we did not have benefit of adolscent brain science so the the question for us is when the child is an adolcnce and we are talking 12 13 14 onwards till 18 20 when the human beings are in that age gropu you have clear understanding they are notlike children but do we have clear understanding that they are not like adults also because what we are saying today is because they are not like children they shoudl be treated like adults and law says no when they a re in that age gropu they should be treated like children becasue they are still growing in their capacities and this science has given some answers which i have been asking for a long time why what is so sacrosanct about 18 crc says 18 majority 18 so many things say 18 why 18 and what is the rationale what we have come across is now are the nuero scientist in america breought out this evedence before the supreme court of america america till 2005 was giving death penalty also to children for committing offences not as children they were not executed as a child but for offences they committed on ce they grew up for the offences they did as children death penalty was given and this was challegned and upheld to be unconstituional on the basis of this study which i am going to share with you steven ok this are the scan i will tell you the name in the next slide so these are the brain scans from the age of 5 to 21 the new age of adolescence is said to be finishing at 25 not at 18 even and this is showing that the function of because when you look at brains they have got 2 components there one is there are different parts in the brain and different parts has got different functions to discharge and when something happens different parts of teh brainreact so this studies have found that of course the brain is still growing till the age of 21 it is not matured as yet it is still at the stage of growth and lawrence steilberg is teh neuroscientistwho led the team who presented this evidence and they said there is incontrovertible evidence that adolsecnet is a period of significant change in the brain structure and the brain functioning which mean that the different parts of the brain are structured differently than children and adults and also the interaction between teh functioning how is this part stimulated by this part they are alsoconnection is also different it is aperiod where the brain function is very different so the first thing which happens is there is a strengthening of activity in brain system involving self regulation so those of you have adoilsecnt children around your own families you are having a tough time with them one of course is the hormonal changes which happen in the body at that time then there is also this structure of the brain at this point of time the frontal cortex which tells us to do thigs which is

regulatory instinctive it says no do this take this and it is a thrill seeking behaviour and they want to do it themselves they want to decide whether they will go to a party who they will meet when they will come back what clothes they would want to wear what hairstyle they want to have everything they want to because they claim they are adults now they are old enough to do it that's what their claim is and their brains tell them to do it at this point of time so doing the task which requires self control adults employ a wider network of brain regions than children and this because they are able to connect their different parts this children this instinct is there in us but we are able to control that no no this is wrong we will not do it but for them it is slightly difficult age the first part the second is adolescent reward centers are activated more than in children or adults if they know there is an immediate gratification coming their way they are more motivated to do it this hypersensitivity to reward is pronounced when adolescents are with their peers so therefore when you look at serious offending you will not find a child alone he is in the company of others this Nirbhaya child was not alone he was in the company of 5 others adults who should have repressed him and suppressed him and demotivated him to do something but they were the ones who actually said be a man so if you are exhorting and that is a challenge what it means to be a man in our social terms overpowering a woman sexually so that is the call his peers are giving he really wants to prove himself he is also a man he is just 17 so certainly this hyperactivity to reward at that point of time and the influence of the peers is very prominent we know that children at that age listen to their peers than they listen to us and that is where the conflict happens it is happening not because they are bad but because the way they are developing at that age they are no more children but they are still not adults the third thing is the before adulthood there is less cross talk so what we have is this is the frontal cortex which is giving us the desire to take risky behaviour sex drugs speed all that is required we want to do it and the back portion is the one which is the control which helps us decide adults are able to use this part also when this one says do it because there is a connectivity in the 2 what is called a maturation process this process is not there in adolescents so yes this .. growing this .. is also growing but these are not connected so when the stimuli comes the part which would have said stop that is not strong enough for them to stop so it is not that they don't know what is wrong they know that it is wrong but they are still not able to stop themselves because of the manner in which different parts of the brain respond to the stimulus in a sense and it is not only American children it is biological category applicable to children of the whole world and it is on the basis of this study that the American court finally did say that

children are not adults you cannot it will be unconstitutional that teenagers are like adults they are mature enough like adults and are to be treated like adults and its the basis of that they declared death penalty unconstitutional and then declared life imprisonment without parole for homicidal offences unconstitutional then they extended it to non homicidal offences also now 26 states in america are rolling down their system of exclusion and this is the impact of this study i mean this study was not available till 1920 but our mind set is till there we are still support what menaka gandhi is proposing today of saying exclude children from the age of 16 because they know at that age what they are doing is wrong we are not that they do not know i mean a child of 7 also knows what is wrong so why 16 why not 15 the states which have been excluding they have been excluding young children as young as 10 so where will you stop if you say our rationale is only to find out if you are doing wrong and you know it then it is the age of 7 by our ipc even a 10 year child would know what is wrong.. yes they may not know what is the extent of wrong what is the consequence of that wrong its not that they dont know what is wrong but it has to be also when we say criminal liability it has to prove both the components one they should be able to control because what we said 18th century pain and pleasure theory that they... pain and pleasure and people are rational human being and they decide to choose to commit offence but this brain science tell us that children do not choose to commit offence they are they find themselves in the offending situation because of the way their bodies are developing the way their mind is developing in that so certainly physical strength is there mind is also growing but it is growing in a manner which is different for children and adults so the choice is to be made today that when they are different should they be equated with adults or should they be equated with children law says they should be equated with children not with adults and that is a decision we have to make for ourselves that if we believe and i think every time the basic test is actually to think of your own children when you come across a difficult scenario that if this was your own son or daughter what is the way you would want the system to respond and what happens most of the time and i am very intrigued by this when an offence happens in society as a general human being i am not talking as judges as a neighbour in which an offence has taken place we immediately relate to the victim we never relate to the offender we always believe that we are potential victims we never think we are potential offenders also why does that happen what makes us empathise with the victim and not with the offender why we never think that this could have been my son this could have been me this could have been my brother the offender we always think the victim i could have been this

my brother could have been this my son could have been this why does that happen what is the psychological process which happens and i have got a theory on this i dont know how correct i discovered this in a very unrelated programme in that programme what they projected and they kind of made us stand with each other in front nose to nose and we were all standing against each other we were suppose d to not laugh just look at each other and some of us started crying a very strange experience that no this fellow said nothing and you were crying because of fear what fear this man or woman is not posing any fear and then they came out with this that sometimes fears are hidden and we do nt know what we are afraid of and this is a whole long 3 day process because of which this happened later on but ehir whole understanding was that when children are born i kind of combined 2 things one is this experinece and other is .... theory of needs.. is anothe psychologist he has given us a pyramid of needs so thebase level is security food shelter and security is the first level of needs adn tehy are said the pyramid means that if first level isa satisfied you aspire for eh second level second is satisfied thrid fourth there are 5 levels the highest level is self relaisation and we say spirituality and all that has to come once your 5 lower needs are satisfied so yur first lower level is safety thenit is relationship then identity respect and then it is self relaisation so when a child is born before birth wha t is the level of needs which has been satisfied for the child is the first level of needs security shelter and clothing whateevr the child needs to feel secure is there his food is laso there the moment he is born what is the childs first experience of this world certainly tehre is light which wasnt there before and certainly there is no protective water around him and there are these big things around him and the first experience of the chidl is a slap on the butt of course to make him breathe but that is his experience of the world it si a violent palce it shakes up his sense of security and that remains with us for the rest of our life unless we are so preotected by our experiences that we over come our fear that fear is the one which makes us reklate to the victim we are always in the victim of the scenario becasue of our conscious experince of our first experience of this world so i do not know to what experinece this works but for me it works for my understanding i certainly feel that its a very convincing underatnding as to why we very quickly feel quickly able to relate to the victim becasue we are in teh victimhood in our unconscious level and we want to respend to the criminal justice system we want to respond for the victim while for centuries we have been saying that the accused also requires protection against the state so what we are askigntoday is that the victim should be protected by the state and no more the accused requires protection against the state what i think is

that we need both both it is not that now why should the state protect the victims the state the theory of state tells us why did we create a state we had an agreement to ensure that we are protected against individuals who might cause harm to us if we go back to the theory of state etc social contract theory so there are 2 views of human being we are all barabourous and we are all attacking each other the other one is altruistic we are all here to help each other and we want it better regulated either way it is a monopoly of violence and that is the logic by which we say offending is an offence against the state even though my father is killed it is an offence against the state so as a victim the state has failed to protect my interest my right which it has guaranteed when it came into being and therefore the state must compensate me so the whole philosophy of compensation is coming from that understanding that it is the state's failure to ensure my protection that is why state must intervene and it must satisfy me so what i need what is my need so what i need what is my demand as a victim some action must be taken against him it must be ensured that he doesn't do it again my demand is that i must also be rehabilitate and not only in terms of physical rehabilitation but my trauma and fear i have got out of this i must get out of that as well so our system has to respond to both of them both the demands of the accused and children certainly children are more vulnerable because of the whole understanding that we have about children that we need to really think about children children require lot more protection even when they commit an offence and we must not think because i certainly think in criminal justice system generally and much more specifically in case of children there is lot more potential in children because of their growing capacity to deal with it the last fact i would like to leave you with is that adolescence again is an age of growing and majority of the adolescents get out of crime automatically if they are kept outside the company of other offenders other violent people it is just an age because in the manner in which the brain is developing and functions that if you are kept outside away from the negative influences you will just sail on to your ordinary life instead what is unfortunately is proposed we are quite against it it is keep them in the company of other hardened criminals even though they are not children and i don't think that is the understanding i mean countries which have excluded from a long time today tell us from their experience and research that actually sending the children to long term imprisonment results in more serious offending by them in later life we always say bad company results in bad and the law has been saying I keep them away from that that is what the whole juvenile justice system is about so i think there are lots of things to think about and i certainly believe the success of this legislation lies in your accepting the legislation in

its philosophy and words words are not use unless i believe in it and so when you get to the juvenile justice courts certainly you are a judge lot of power empowering legislation but it should become disempowering for the children it should also be empowering for the children and that can happen only if you are able to relate to the children you are able to think of them as your own children if you know that then i am sure there is always a way in the legislations words which can allow you to do that so best interest is our mantra and you the guardians are the best source that we have thank you any question anything you would like to share now ok then we will break for lunch yes you had a question speak into the mic there are sections 29 and 30 presumptions against the offender and the.... and the offender has to prove his case beyond reasonable doubt and not preponderance do you not think this is unconstitutional yes it is somebody should challenge it that is what is happening some legislations are coming as a major creation without thinking without application of mind it is just an emotional reaction in fact in my board there were few cases where children as young as 10 years of age they were playing say doctor doctor under the law it is an offence but these children do not know they are doing is an offence .. now the argument before me is you have section 29 and 30 in that case im in a dilemma as to what you know nowadays i do not find magisterial level or sessions judge level judicial officers make a reference to the court but in 50s and 60s you find so many cases where judicial magistrate referred the matter thinking this is either a supreme court judge meant in their opinion was not right or something so references have been made in those cases maybe a possible option madam why this decline in reference to the high court or supreme court from my experience in the judicial academy i can say that i dont know what was happening earlier but currently i do find that there is lot of hierarchical control and there is less tolerance of the differences with the juniors so maybe maybe not my experience at the academy was that judicial officers did not open their mouth when a high court judge was sitting most of them some judges were very encouraging and the officers but man a times they would snub them if they said something so they will just keep quiet so that may be a possible thing but i certainly think it also certain individual personalities if you know now once you say you are a judge i have heard many times from the judges that i am supreme in my courtroom and if you really believe you are that then you do what you think is right we see that thing in isolation in isolation he sees that i am supreme no but i have heard many supreme court high court judges come and say and encourage actually we had a session in the academy ..... no that is where a little bit of decline of moral strength has happened over the years you know for me as a

teacher that is what i want to emphasize in my students that you have to do something you believe in it will sometime get you adverse consequences but it will give you lot of satisfaction in your life we are known as subordinate judges sub ordinate yes i thinkk no no that is also a conversation that we have had with the constitution itself using subordinate judges but judicial officer whetehr this is consitutional judicial officer sorry the term judicial officer whether this is constitutional i mean britishers called us judicial officers this is a term i learned by the academy experience or i think before that i was calling every body a judge then i was told no no some are judges and some are judicial officers before coming to the academy and i never used the word judicial officer for me everybody was a judge so sometimes i think there are certain internal categorisation and some outside there are n hard and fast sometimes some people are calling us presidn=ing officers... no but whetehr a rpesiding officer would be referred as a supreme court judge or a high court judge also only in india we have so much hierarchy we went to canada they had i mean 3 level judges who had the same perks and salary there was no difference in the 3 and people chose to be the first level judge because there they were interacting with real people so for us it was kind of a discovery that you can have the same pay structure for the what we call as 3 levels of hierarchy within thesystem they have a hierarchy in the terms of level but in terms of income and salaries for them and supreme court judge drove hisown car and carried his own bag as any perosn but here judicaill officer doesnt carry his bag.. so i think there are hierarchies which we ahve accepted and there are certain perks attached to the hierarchy and that has its negative impact in terms of curtailing but you know your bangalore principles categorically say independence within and independence outside you need to be independent within the system also.no no no not only that in one level significant but i think wehat the judiciary has been fighting very vehemently is independence from outside influence but there is very little recognition and acceptance of the within tehre is much less independence and we certainly need to focus on that and we need to foras open where we can self introspect to find out where we can .. independence within the system also there are some problems they dont require programmes like this so it is important to recognise the problem but the focus has to eb to find the solutions for themand then take a decision to find the solution i can take it or notsome of us have so i think some of us should take the those of us who feel strong wnough to take the consequences maam what you have said about canada and other countries maam what i ahve learnt that the trial judiciary is strong in those countries and whreever trial judiciary is stron law and order is always better what happens in india trial judiciary is weak there is appeal to every

order that is not the case with developed countries like Australia Canada there lies the gap what is the problem with orders being challenged how does it make us weak I am always happy when my order is challenged I wish every order of mine gets challenged it gives me strength rather than weakness no ma'am you shouldn't feel weak if your order is subject to challenge what happens you challenge my orders you shouldn't care no no why should you care another judge has another point of view no no let him set aside your order ma'am I have not got objection that my final order got challenged if I were I pass a simple interim order let it be challenged how does it affect if the interim order gets challenged the entire case becomes functious officeio it gets stayed . let my final order be challenged let the suit be stayed you pass the right order according to conscience why should I be afraid if the suit gets stayed the entire case gets stayed let it be it is for the parties to decide if they want this relief or not .. I will pass an order let anything happen to it it is true according to my conscience shall we ewwe break for lunch .. we will break for lunch but first we will have our group photograph on the porch and we will meet at 2 45 1 hour lunch break and we will come back here it is for the participants basically we are giving you some time to prepare and discuss the play you will be enacting tomorrow so you all and me back here ok thank you

## **Session 11**

### **Preliminary Discussions**

## **Session 12**

### *Enactment of Play*

First of all you are wasting your time here you should have been in Bollywood you would certainly have made a career out there yes and lawyer was the best by the way I didn't know because I've never been a lawyer I didn't know how lawyers can make money

okay questions question any reaction any questions when the bail lowest flouted first of all he was relieved when on bail when the bail is granted what you think we have been issuing directions to the concerned person to produce him without warrant and surety is there first notice

should go to the surety yes boss notice whether surety is concerned production of the accused is because that would bring provisions of CRPC which is not applicable used to be produced so what is to be done child friendly atmosphere best practice here when the Juvenile is not produced then in Delhi the practice is to issue a search warrant in Delhi it is a search warrant

So sho like in habeus corpus order so you will direct the sho to find the juvenile and produce what is the other practice in Tripura what we do is ask a juvenile police unit to produce the juvenile by searching him we try to show the aberrations what have been taking place in the jjbs actually in Maharashtra what we do is issue a search warrant against the juvenile if he is juvenile till and if he has become major we issue a bailable warrant but warrant is warrant whether it is bailable or non bailable warrant is warrant so you first issue a search warrant search warrant then bailable warrant and notice to surety is there any difference between this search warrant and direction to police to produce there is a difference of nomenclature because the police if the police has been asked to produce i think the police can also enter can the police enter with that direction because with the search warrant police can enter what is difference between a search warrant and a direction to the police because search warrant police can enter the house of the person search if the police is directed to produce does the police have the right to enter the house of the person search warrant certainly gives him the permission so i think if one can first ask the police to produce if the police fails then the police needs the search warrant then the search warrant can be issued search warrant can be issued with lot of reluctance quickly issue a search warrant so what is the practice in other states first surety nobody tells the surety that his surety will be taken away we do simultaneous notice to surety ... first then after surety fails we go for i mean .. your practice is first surety then police and then warrant search warrant not issued you have never issued a warrant and it has worked i mean notice to sho to produce has worked almost all cases ... he will produce somehow police will manage to produce after all he is not that kind of a hardened criminal that he will run away if the police wants him police will certainly want him get him any other question effect of legal aid in the play in the play the lawyer was exploiting the juvenile ... he had deliberately we all understand don't think it is ... this is not a fault finding exercise this is throwing up questions which we are discussing it is an excellent play that you have put up excellent play that you have put up that is why i said you have a career in bollywood i have also seen that the major mandatory

provision that complainant is to be heard bail application is to be taken care of pardon complainant the victim notice is to be issued to the victim and complainant when his bail application is to be taken care of so in this play i have not heard about the complainant the complainant i mean the victim is dead it is a murder case.. murder.. his legal heirs somebody else on his part should be notice is to be issued provision is there effective hearing then appropriate orders can be passed. Now what is the practice in the general criminal court if the person is dead then he is dead when it comes to compensation we think of the family but during trial the family may approach the prosecutor and... yes .. there is no bar as such if they want to put up their side of the story they can very well yes .. issue notice to the family of the victim we generally don't issue notice at the stage of bail application but if he comes to the board then he will be heard will be heard is there any requirement in the juvenile justice act mandatory no it is not mandatory as such in a lecture in the judicial academy i have heard that complainant is to be heard somebody .. judgment of the honble supreme court .... complainant needs to be heard in these cases also .. we are talking of a situation .. i was just thinking about it when the bail was granted at 6 months why should we take 6 months in the first hearing it should be granted yes.. but the provision is bail should not be denied unless 3 situations so why has it taken 6 months for the bail to be granted that is a depiction no not precisely but it can happen so the question is why should it take 6 months in granting bail... magistrate is seeking this information report and all this i mean we are forgetting about the right of the juvenile yes so the question is whether bail has to be waited till the charge sheet is filed yes because in this case till the charge sheet wasn't filed the bail was refused but can that be done it can be ... as early as possible no the moment bail application my understanding is that the moment the bail application is moved it is only the 3 considerations that are there whether release will be against the interest of justice will it expose the child to moral danger or physical or psychological .. the child is likely to be associated with known hardened criminals there are only 3 considerations there is nothing about chargesheet or report has been filed or not that is not the criteria for refusing and it is irrespective of whether it is bailable or non bailable offence so it can be expeditiously disposed whether he is to be released or he is to be sent to the observation home because in fact in the very first .. in this case the day the child was produced the parents were there the bail application was moved on the very first day so why was there a need to send him to the observation home in the first place i think there was some judgment in which the fact that whether the 3 grounds exist the burden to prove the 3 grounds exist is on the prosecution so if the prosecution is not saying any

of these 3 grounds exist there is no reason to deny bail and send him to observation home ... prosecutor is to play an impartial role in the board or court whatsoever prosecution is not there things are going just like courts not boards .... when bail application is to be heard the complainant party is to be heard there is no doubt about it if they can produce material before the court it will.. ends of justice constitution ... judgments of the court. We will discuss it there is no.. to the complainant. Not in the juvenile court not in the juvenile court it is not in the juvenile court because the directions are if at all bail is refused and in this regard the burden to prove is on the prosecution .....prosecution includes the side of the victim it is not that apart from the prosecutor the victim and family is to be notified ..... hear the complainant only that has been mentioned but here in this play the age was not an issue... school student 15 years old studying in class 10 so this has not been raised as an issue in this play.....that has no reference to that ..... man sitting next to him was probation officer member i think he was the member probation officer was altogether missing in the play and that is what perhaps happened probation officer is an.... member became active with the second magistrate the first one was completely quiet ..... often you find ok ... in our .. our member i have not seen her 1 and a half year from the beginning i have not met her so she is taking her salary i don't know ..... this is for the lady member i have not seen her so i am not going to .. but this has been prepared last time we have to sign then i called her predecessor i have not signed any check see the check register it was not actually issued from the board so these are the things we know but isn't there a rule which says if member doesn't attend 3 consecutive meetings then they maybe dismembered yes that is there . you can disqualify till this chap was produced before me then only i could know that there is a 3<sup>rd</sup> member is this a general complaint that ..... that will be a ... for a month this person hasn't shown up at all then they are ready for disqualification... it is my fault also i did not know much about this provision i waiting the .... called this i mean he is the ex officio authority is it the situation in all the states members are being absent ... very good which state is your Madhya Pradesh himachal Pradesh usually they are present ok the other member is also a practicing lawyer i mean that is also big problem i sometimes feel that he is interested about some party sometimes i have to keep him quiet i do not let him see the records for that matter it happened in one case particularly you cannot share a bench with a person on whom you have no trust . .... my member is app in my court pardon assistant public prosecutor himself is the member in the board i cant understand this this is i cant understand this because i can t ...in the same court and in the other court i am cjm civil judge senior division

so in one case he is a prosecutor in other case he is the member that is that is the bowler comes to bat that is not possible ok the other thing that i have noticed in some courts is if there are 3 members it is possible that 3 cases are going simultaneously if there are 3 members or 2 members sitting as many members sitting those many cases .. it happens i have got 70 80 cases listed in a day ... recording of the argument evidence .. juvenile these cases i tell the member to do all these cases . it happens in the courts also precisely in the regular courts it is not a bench this is a bench and it happened..... in consumer court we take care there is a provision that consumer court there is no provision they pass.... .. we have only been issuing attendance certificate and i myself have opened a register for attendance and only on the basis of signs being recorded i issue certificate the payment is issued by the child welfare department another thing which i have heard is even when you are not present the members may be holding the sitting and in that sitting they grant bail there is a provision they can but the ... has to be certified ..... final order cannot be given in any case ..... final order cannot be ... heinous offences they say i will not take risk by granting bail in heinous cases when i come back we ratify they can but .. yes but we have .. that you can i have heard of it but they can ... to read the files go through the facts being a social member but they do not in fact the juvenile . that is not a surprise whatever jjb training you are having here they are not here they are not made integral to the whole programmes they are always those others they are there neither they have the background nor they have been made to feel they are integral .....

how often magistrates get training and how often they get training not as much and not together they get separate training when will be integral. When i went to bihar they called all of them all the magistrates sat on one side and all the members sat together if benches function like this in delhi also the situation was the same this is supposed to be a team i have a member who cant write one sentence of English English is not necessary in district court he can write in hindi what stops him he can write in hindi . sticking to something which is not required in our state.. in courts is urdu in india in the districts hindi is used it is only at the high court and the supreme court that English is the official language we are recording statements in hindi you can do that but there is no compulsion to do that if he cant write that is not an obstacle i think his hindi .... they are recording statement ..... you have to translate... in our court what happens is that ... in our state what ..... we cant hear all of you... what my friend from Tripura is saying some of the members are almost illiterate no but there has to be a .. i can understand he may have a degree on paper but his understanding of language and the subject is very poor and this seems to be the normal thing

that some people are absent some people don't understand some people are reluctant to read the file even when they are encouraged or asked to read the file .... we cant hear you what my friend from tripura he is saying that the members are almost illiterate so ... there has to be a ... what i can understand he may have a degree on paper but his understanding of language and the subject is very poor and this seems to be the normal thing that some people are absent some people don't understand some people are reluctant to read the file even when they are encouraged they are asked to read the file and do some work they are not willing so should we say that there is a need for improvement in recruitment of the 2 members ma'am honble high courts can take the .. in our honble high court this shruti is very important in yesterdays discourse the other members were not mentioned our honble high court in the selection of ... it means person have education required can be recruited temporarily for limited period of the local area thousands of people are recruited but when honble high court told applicant to write application this essay on cow he did not write so such cases were from universities which were not government recognised universities ma'am sometimes what happens.. in tripura do you have steno etc so the person who cant write can speak he can give dictation to him steno is cjm's steno ... doesnt your steno come with you whe you go to jjb cjm's steno comes but i don't go this is another fact the jjb is held in my chamber there is no separate premises i have written several letters that is ok wherever you sit as a jjb the steno is with you his speaking is also not very good what i am trying to say is language is not correct he is so unmindful he is always thinking of leaving the jjb whenever he comes he gives me kind of notice that i have a wedding to attend i have hearing to make before this court that court he is not interested second thing he does not have capability of dictating that is also sometimes what happens ma'am their term is completed already they are appointed for 3 years only in my jjb it has happened for last 2 years happened that their term has been completed they are not reappointed no other persons have been appointed and they are still sitting also they are still sitting they are still sitting and getting their pay yes if they are suitable why object but if they are not suitable and continuing then another thing in Maharashtra no body member can have consecutive 2 sittings pardon 2 sittings 2 terms oh no member can have more than 2 terms now it is going to happen that within 1 year they will be disqualified there is a need to study this actually because we have 1 group you maybe i guess 1 5<sup>th</sup> of the total strength of the maybe even less of the jjbs and the principal magistrates of jjbs so that is also an area ma'am one thing that happens is that ..... there should be a .. for every member..... ma'am there is one also issue ... what happens is that .. the

second play more questions will come by the time we see the play ..... juvenile that is also hampering to some extent our performance. We have in our subconscious mind that going to jjb is a stage in our time so you are not ready to go to jjb .. second

### *Enactment of Play*

i think i am learning the most im getting completely educated in the juvenile law so questions observations remarks ....is being done here i mean confess confess all the time why should it not take defence rather no defence.. because ....why should at all the board should take that role that tell the truth why should i why should we as we were saying it is also against the self incrimination ... whether we can insist upon him telling us ..... but thats a good point when we say child rights child rights the children have the same rights against self incrimination the probation officers or anybody cannot go on that road and also i think somewhere the other question had been suppose you will he has made a confession there should the probation officers report be considered before the arguments have taken place etc because at that level itself you got a confession earlier and thats the probation officers report is seen before a order has been made after the order has been should it then be revealed that he has confessed etc but the other thing i was thinking in terms of probation officer saying child is to be sent to observation home but that is a special home so there is no difference between a special home and an observation home or they are 2 different homes no i initially said that he should be sent to observation home and then no no everybody said observation home in final disposition i said special home i heard observation home all the time so i was thinking whether there is a this is kind of only a technical question because many time observation cum special homes are the norm these are the norm normally the special home and observation home would be the same place virtually it doesnt make a difference but technically there is a difference that post decision it has to be special home and during pendency it is observation home ....confession .. sidelined .. but that is not part of the report in fact the report ...not the play in actual practice i know the probation officers report is seen before the order and in that report already if there is a confession then how the conversation goes with the probation officer or the counsellor the counsellor is trying to get the truth if that is seen later on after the decision then it is a care plan kind of part. but if it is seen before then it is a violation of fundamental right my view is that you may be having a absence of .., or you may have a ... but we are still invested that criminal justice system and we start from substance of accusation examination cross

313 we in 313 as per crpc we are to put the extenuating circumstances we put the same in juvenile i don't understand we are doing a trial out there but only thing the place is different just like when a charge should come first so if we see that what is said is confession in crpc then we are again bringing that system into juvenile so we these perplexity this remains with all the boards that we do not know actually what we are doing whether there is a difference between inquiry and trial in jjb you are trying to find the guilt because the offence is charged is penal offences the procedure is not so clear that we are bound to bring crpc the established principles of law are not from the JJ Act and not the criminal side so we think in court when ever we are in confusion we look into the precedents the established procedures the case law but these are all the system the laws of the adult system so we bring those things into the juvenile system also and actually i believe i don't know actually what i am doing out there what i'm trying to find out so that happens all the time ... the constitution is there ..... evidence ... what i'm saying is juvenile law is different ... it should have base on i mean .....these are different things no no that different one is the child wants to say something the others were encouraging him to tell the truth so that is wrong that is wrong that is not the the official machinery cannot say ... there is no... yes it should be voluntary .. no one thing which was done good was even when the child is confessing i'm not clear if it was this one or the previous one where the child is confessing i think it was in this only no no tell us are you saying it under pressure so it may be that confession is happening under pressure so that is a good thing which is it merely because the child has confessed doesn't mean that you have to take his words you must ensure that the child is not saying it under pressure because many times the child maybe misguided they say even if you have not done it they say you have done it ... yes if you say you have not done it it will take you longer and if you say you have done it you will be out today so that maybe a misleading kind of happening also legal aid also legal aid was not there ma'am the process of inquiry which we are doing that itself becomes unfriendly to the child the other thing that i wanted to refer also was this whole tension between bringing crpc and saying children's courts are different and this is not the procedure before the CRC the convention of rights of the child it was supposed to be more nonsystematic in the sense whatever you think on the spur is right for the child good to get the justice proceed for the benefit of the child you could do it as a parent patrie but in 1961 in America the first time constitutional challenge was accepted before that the challenges were happening on not securing the rights of children on the principle of parent patrie but then it was found that not all the courts were acting as parent patrie and there was this case in re court it was the case of a

child who had made an obscene call to the neighbours he is a 15 year old and he was found guilty of having made those by the juvenile court he was sent to 5 year in reformatory schools so parents said this is wrong for this offence an adult would have been sent for 3 months maximum imprisonment but the child was sent for 5 years of reformatory so they challenged to the supreme court and then when proceedings were asked as to what happened what were the evidence there was no recording there was nothing there so it was they said the famous line from their judgment is that the children are getting neither of the 2 worlds neither the protection of the parent nor the safeguard of the criminal justice and that was the point where the proceedings changed and then the fundamental rights and the right to a fair trial all that was brought in back so now its a combination of the 2 that the rights have to be secured as well as the parent role of the judge is still there and therefore you have to bring in summons procedure so you crpc is any case written into the procedure unless otherwise prescribed by the legislature itself so the procedure has to be summons procedure and the summons procedure doesn't mean you will have no right against self incrimination or you will not have a right of cross examination all that is still there therefore the role of the judge remains of the it is not an impartial category at all the judge is still in favour of the child but the favour doesn't mean it is... favour means you have to find the best future course of action of the child but the that process will happen only once the guilt is established in the sense he has committed the offence whether he has committed the offence the consequence is not guilt as such it says ok he has been misled misguided he has made a mistake he still has to have a new chance so therefore its a combination of the 2 philosophies at this point of time we still have to follow crpc we still have to be the judge little bit clear by the ashwani kumar saxena versus state of jammu and kashmir and the criminal procedure code trial investigation they have tried to you can say explain for the role of the magistrate and the principal magistrate little bit it will take time atleast we judges are repeatedly saying that i have been saying at the top of my voice that these judges should be different now these judges will be sensitised they will know their jobs in jammu kashmir registration is done by the executive the tehsildars and when we are registering we conduct inquiry as a trial where you got the land .... admitted register it always subject to civil determination in jammu kashmir you will see that registration is very rarely false now we inquire at the time of registration..... show the document ... in pocso cases where 2 children are there so it becomes very difficult to balance between the if we if you are not ... the victim is also small she might .. juvenile so how to deal with this i think pocso cases both children send them to cwc let

them handle in sikkim the cwc are useless madam they are useless we know that if you give to .. that is another thing that was no no i think there is a lot of misconception there we had a workshop of acmms and the cwc members because there was lot of tussle happening at that point of time on custody matters the child had been kidnapped and then produced before the accmms and the acmms will send to somebody or the matter is they were saying that the custody decision should be with use this is a decision.. see as per the law no at that time there was lot of confusion happening so we had a workshop together and that we make sure they work as a team acmmand 2 cwc members in our simulation exercises we made that sure and it was at the end of it that they said actually we have to trust the acmm and the acmm has to trust the cwc they are both efficient before that the cwc did not trust the acmm and the acmm id not trust the cwc i think there is lot of gap because you have not seen the 2 sets of people working therefore to say that cwcs are fraud i do not believe that no no outrightly we cant say that no no that may be a true experience in some places but you cannot make that a generalisation in delhi certainly they are working very effectively and efficiently no maam second thats what i am saying somewhere how often have you actually seen them working do you have any occassion to go see what they are doing ...no but that is here also you are apointed without any training which is a prerequisite so you cant say that they are partially i agree but then at some level the appointment of all these judges is also in that sense not followed by what the statutes says neither is there background information none of you had any training in child psychology or child welfare before you got appointed or after you got appointed so one can make that observation even for hte magistrates and therefore i think sometime the other thing what we have seen over the years in america this is a major discussion should there be a cadre of juvenile courts only and therefore continue there itself and somepeople thought it was good somepeople said it was not because and also it is not only limited to this category alone when you get transferred from a criminal court to a civil agains you face the same situation because it is a differnt court from revenue to family matters its again is a different thing no no there has been a discussion yes that is fine there is a fine difference no there are 2 things also that there is another debate should cases be from cradle to death that should the same magistrate deal with the whole case it is not that you get transferred and some other magistrate comes and takes over so there are all these categories and the arguments are both in support and aagainst if you retain the same judge then judges have got different attitudes and aptitudes therefore you may actually end up with a wrong judge if you are a death penalty judge your case happens to be there

you are going to end up with a death penalty otherwise... there is a lacuna ... .. for the same purpose no no no the conception is in the mind that ... there is no simulation because the same case everyday seeing the same family matters everyday so judges who are because we have talking about that family courts should be a specialised category juvenile courts a specialised category revenue courts a specialised category ipr a specialised category so for the rest of your life that is the only cases you deal with and that may also lead to preconceived notions about what's happening the other is specialisation can happen it is a give and take of both the categories but I am certainly in favour of that no you have to have a cadre of juvenile court judges but unless you have at the full level and some of you said that your work as a juvenile court is not there is no credit given then who will want to be here so unless you create a full ladder system for promotion right till the supreme court then it's not incentive ..... ma'am I would like also to support him because this is not a hypothetical case this is the case before my board what has happened that one 17 and a half year old boy raped a 10 year old girl now what happened that the family of the girl rejected to take her back so now she has been produced before the CWC CWC took her to one home like NGO run children's home now she is there nobody is there to take care this juvenile is taken into observation home and thereafter is on bail but now after 3 or 4 years this has happened long back before I joining the JJJB but now when I see the condition of the juvenile boy and the victim girl I find that the situation of the victim girl is much more worse than the juvenile boy and this is happening and there is no any provision in juvenile justice act to take care of her because her parents are not taking her back no CWC is not that good no that is not good because implementation is not good the law provides the actual practice you have not been able to implement the law there is a distinction between the law provides for it now law does provide for it what the CWC has done now only they sit for sometime and they have some NGO run children homes they are getting heard there the condition of the children home is not much good so that they can take care of her future so everything is a mess up another thing I wanted to raise in the last one you were talking about language in one of the high court cases I saw that at the first level the statement of the child was the man did wrong act to me and judge asked what wrong act so she said what husband and wife do at night this is the statement now how will this be translated in the sense of whether this statement of he did wrong act and the wrong act which husband and wife do at night but that is the whole question that whether there will be a conviction for rape on this first court convicted high court acquitted that penetration has not been proved because husband and wife do a lot of things ranging

from fighting to kissing to intercourse so somewhere the question of language that people of a class understand a particular word in which sense how explicitly will they tell what happened so there is an issue in this so according to me if my maid says wrong act it means rape but the judge in this case felt wrong deed doesn't mean penetration is proved and the judge was bashful so he didn't ask if penetration was done or not so same language but the colloquial understanding of the term differs there are a lot of words which are taboo and not used in social conversation if those words are mentioned so when you translate and write that there is an issue of what the understanding of the word will be to the person reading it that is a problem because the children who come before us speak a different language from us you see I have read the Delhi High Court judgement in which the judges find in normal Hindi speaking person uses the word wrong deed or bad deed to mean sexual intercourse in this judgment that is this Gita J. Justice Gita Mittal's judgment those judgments have not been referred to at all I mean that was not brought to her notice now different states have their own expressions in one of the programmes in Delhi I learnt that in Assam they say body touch kiya is there any one from Assam here so in Assam suppose if somebody says in their language that body was touched they mean sexual intercourse he is from Tripura is that so in Tripura also... so body touch you see in English body touch I touched her body body touch they are actually meaning that he had sexual intercourse so you know when the judge is recording he should know it is not only between the judge and the person who is deposing because between them there is no communication gap but when a third person reads the file this is what happened the High Court said no no I am not convinced because at the trial court it was being recorded everybody there believed or understood the whole thing in the same manner therefore the next question was not put you see it was the failure of the prosecutor to leave it there if the girl says that you see he did to me something that husband does to the wife and people all understand now if it was not enough it was for the prosecutor to go ahead and ask the next question that means the prosecutor was satisfied then because he is there to prove rape and he is satisfied when the prosecutor says that he did this to me I can't understand how this could be read in favour of the accused I am somehow not one with that case that judgment there is something missing there and at least 354 should have been brought that if the girl is offended because he did something husband does to the wife they do many things short of intercourse in that case it will be 354 at least he couldn't have gone scot free altogether I could understand if it is 354 giving the maximum sentence of 2 years I would have to some extent been satisfied I am not satisfied on that so I mean when we

are now we proceed further and learn something out of that so next time when we are recording the statement of the prosecutrix if you are in a case please don't write it as touched my body then somehow or the other it will be read as he touched my body it can be qualified locally it is as good as sexual intercourse intercourse so what do you mean it can be said that this expression means this means this write there you may ask the job of the judge is not to be a mere post office no it is he is not just a tape recorder therefore the judge should ask what do you mean by this expression he touched my body the role of the judge is to be very active please please now you go a step further and please bring it on record because your files are going whether here or in POCSO or in criminal court your files are going right up to the supreme court and in supreme court this file might be read by somebody from Kerala and so one is to be a little more proactive in bringing it on record in one of the cases when I was a session judge when I was taking the testimony of a little girl the girl continued to say that he hit me where did he hit you he hit me on my stomach you see however hard the prosecutor wanted she didn't go ahead and I was taking the testimony in my chamber as it is done in camera so she was standing by me and I was hugging her at times and having casual conversation something which you cannot do you cannot hug a girl being a judge and bring her close to you but I could so I would lapse into casual conversation who did you come with what do you study what do you like gradually she became close to me on the second day of the cross examination after the file was closed after having failed to take it out the file was just kept on the side of my table and the girl says in my ear do you know what he did to me what he did tell me then she narrated everything then I opened the file again that now after closure of the cross examination she makes this statement and I recorded that ....no no she is making a statement I still there I can still re whatever there are so many provisions recall or whatever she is saying it I can't say no no now it is over don't I have to take it on record I can at best say defence do you have anything to ask you can still cross examine I have recorded the statement all over again but it did come out it can come out and there also you can ask those present do you mean this are you satisfied prosecutor I'm not only going to record this I am going to put it in brackets that this means sexual intercourse so at least the record will be satisfied and we have done our part madam when we record 164 CrPc statements or 164(5) CrPc statements of sometimes POCSO victims we cannot be that explicit I mean suppose you see we are the people who write 164 we are the people who write 161 so once our brain is clear once we know the importance of the language we have to be a little more proactive only this normally it is the same language but we do put question even in 161 and

164 we do put questions small questions not in the nature of cross examination but in the nature of elucidation we do put question and why can we put question what do you mean beta when you say he touched your body and where did he touch you how he touched you she will come out she will come out you will tell her look beta its very important we have to write it in the file and you see you have to have the demeanour in which she is not threatened and doesn't feel offended that how is he asking me this you see i understand a girl will not open up like girls open up before mother more than they open up before the father but somehow you are also the mother so if you adopt that attitude she may open up madam if i .. there is a practice that i put my hand like this around her men cannot put their hands like that normally speaking that is correct but what i have seen in role plays the judges have done they make the child sit next to them and give them chocolates it is a good practice giving chocolates to a child witnesses and its not a good practice because the people that abuse them they also entice them in this manner that have a toffee have a chocolate i do it i know and several time in our academy this has come up in role plays but the people speak on child psychology there is no difference between the abusers way of luring her and your way of luring her so that is a very negative category actually so it has to be more conversational and much more trying to make her feel comfortable without these lures in terms of physical have a biscuit have a toffee a chocolate all that that works actually it works very quickly the child immediately comes forward to grab it the child actually she is crying and then you go with sweets or something then she opens up yes but it is a double edged kind of category there since you raised the issue about the observation i think it is quite right if you can share a little bit of your impressions of the observation home that you saw yes please tell in bhopal yes bhopal very specifically about the infrastructure about the children there the staff what do you think the impression was not good there was no .. speak into the mic please impression was not at all good i think everyone would agree here it was not at all good they did not open the gate first what do you think is missing there anything that could have been changed maam many things could have been changed over there they should open up a ground sports equipment should be there there should be a vocational training i do not think there was any vocational training there i have seen it as the worst confinement is the situation the same in all your jurisdictions better than mine worse yours is this one is better than his observation home they had not utilise the entire space they had enough space boundary wall was not there just in one room very less. it was almost like cage madam i sat with them it was a horrifying experience small child i just talked to him he was so

fervent so eloquent what's happening against him ... i did not do it but my friend did it he was in rape i said how long it will take he said i dont know the police comes and takes me to vidisha and they jsut send me back i just gave them confidence there it was horrifying i dont want to reveal such things horrifying and entered into the observation it was like something is cooking over here it was so we have very good atmosphere at this time temperature low but there it was high temperature and i talked to the concerned and he was saying lame excuse we dont have the money that may be true i am always saying at least if we ...there should be reformation observation homes houl be observation home not just child will be sent to that place where he . jail has more space reformation home is a new idea but jail atleast it is reformed but it is better to atleast keep them in the jails they have atleast .. this medical facility doctors these jailors sometime they know that high court supreme court is taking care theyhave visited the they have always been an eye sore these jailors are using service of them i think they are more like caged animals yes maam one intersting this we noted was there was an adult living with them ther was an adult with them yes i talked with him he waqs in a murder case he was much elder .. earlier once he has turned 21 wqhere will you keep him the purpose is lost first of all it should not look as a court we dont have to put any funds into it or raise funds for it if they sit like this what is the need for a podium a judge's respect will not becoem less if he sits in thjis fashion will the power be less we are sitting in in delhi when the jjb 2 was being made we said pdium should be raised but some child pounced on the judge so it was raised again is it still down the judeg felt threatened what i feel that i have been in the judicial service for the last 16 years advocate has every rgiht to cofnuse the judge convince him but the judge should not get confused can we hear from people at aback we have heard anything what is your views about the observation homes is it the same .. in the observation home they were watching movie hera pheri they said it is comedy i said name is enough no no content is also not good it is actually crime being shown with approval there it is a fraud being shown with approval with approval that is wrong i would like to ehar from you also whether the observation home in your jurisdiction is better worse after all it is observation home therefore the atmosphere shall have the feeling of home in my state it is more better than this i am from kerala it appears that his courts were arranged as like in jails we can take the there is nothing wrong in taking the opinion of the inmates in arrnaging furniture what is wrong with that there is provision of a managment cimmittee therefore it would be in such situations it will give more child friendly atmosphere taking this 1 step further can you as a judicial officer do anything to improve the

observation home can you exercise some .... yes please let them we have heard from you we want to converse with them can i take one minute do we check the sanctioned strength of these homes ok do we check the sanctioned amount for these homes do we check whether it is being released at the appropriate and required time these things do we check and another thing whether the legal service authorities periodically routinely visit these homes and make any observation or not to be submitted either to the dlsa or to the member secretary of the concerned state authorities if we look into these issues 50% of the problems remaining in the homes will come down this is my view that reminds me we are all talking of observation home but there is another institution called place of safety whether anyone of you has ever used a place of safety for keeping a child during pendency of proceedings and also that when you have how have you found that place of safety because some places people are saying that the only one observation home is there in the whole state and it takes 6 hours for the child to go there and come back and therefore it is not a very child friendly set up and in those scenarios where there is no observation home in your district what are the options for you to look for if the child does not have a home does not have a family and there is no observation home where can you keep the child during pendency and post decision so there are 3 sets of institutions and options available place of safety observation home and fit person and these are mostly remained unimplemented in most of the most part of the country i think somewhere exploring that that who can be the place of safety where can there be a place of safety who can be a fit person who can be a fit institution where we can keep the child if suppose by observation we realise that the strength in the observation home is full its at full capacity do you want to overcrowd that do you want to go for an alternative i think that is also need to be explored and examined can we break for tea and come back and see the 3rd play and discuss and then in the same you can do your feedback we will finish the third play and feedback third play discussion and feedback ok

### **Session 13**

#### *Enactment of play*

So let us resume our discussion what was very well done and what was not so good what was very well done by the court or the system and what was bad .....final order yes .....what is your view what was done well and what was not ... didnt beat properly... nobody took notice you see if you are a normal criminal and if you are hit then the whole process takes care the system

takes care there is a medical examination when he is taken in custody and all that those procedures are not followed and no effect judge didn't note that he was beaten he noted but didn't take action what else was done wrong with you i think there was an sjpu missing a juvenile police unit was also missing he was handled by a normal policeman in normal.. police uniform ... institutional tendency suppose policeman are holding this ..they hold us responsible when we are holding an act like that we hold policeman responsible probation officers hold an act they will hold us responsible so if a probation officer writes a play then he will show the probation officer as the angel and the court as the villain i can understand whole lot of films are made to show courts as villains those films only run which show courts as villain so what my point is can we not have training programmes i mean in synchronised manner polic or ips state police officers there are very good officers they can change the thing they are not all villains they can in fact in our place they are exceptionally good person im not saying this because he is not friendly to me i would like to make clear and not because you can find out my brother is a police officer this is not also because of this this is because i have understood the institution of police through my brother he was also a lawyer i could understand from his views why they are reduced to this that film ardh satya you have seen the movie no om puri ardh satya is an old film in which it is shown why a police officer becomes what he is how a good police officer is ineffective because of certain things that movie also needs to be shown here so whenever we have some programme we can show particularly to criminal people how the underworld .. criminal people means criminal justice people how underworld actually over powers the police and the political executive and how the bureaucratic executive becomes ineffective and police has to stoop that is another story but the probation officers role is very well shown by the negative play it is a negative play but all the time

we were getting trained in what a probation officer should do or in other words what a probation officer should not do that's very very difficult in the movie in this play what are your reactions ..... they hardly go to the place and quite a few times i have i am told that they demand money that if you give us money i will make a favourable report see this is what in the video conference i found this the probation officer actually black mail the victims that if you don't satisfy me the report is going to be negative so much so that they tell them the outcome of your case depends on my report outcome of the case depends on in any case an officer whatever may the rank be even if a peon im even if a person of that low status comes with an authority to report you then to regard them with awe and a probation officer will naturally have that awe so how does the probation officer

remove this awe to become a real probation officer because that probation officer needs to have some authority some power but in his dealing he must remove that veil and show a friendly face because the moment he assumes that awe the communication will stop ..... you can fill the feedback after the discussion let the discussion be done because this was a very good play and this feedback form which shruti has given little too soon that is taking away the attention ... we can do it later this should be given attention first tell me how many have written this kind of disposition order that you would serve the victims mother victims mother is a victim in a way she is alone in how many dispositiona ordeers is this considered in real life do we pass this kind of order in real life 2 things in this one i wanted to mention it was a very good thing to start thinking about the victim ordinarily without preparing th victim and the offender to meet each other and look after the animosity is not ended just by the order if you remember the moview dushman in that movie the order was to the man dies in an accident with a truck the sole bread earner they tell him to take care of the victims family but they consider him an enemy and when the child grows up calling nhim enemy uncle finally they come together but the porcess of restorative justice requires a stage of handling the victim's anger so that he ac cepts so the process requires this naturally it was a short play so the message was good but in actual practice if you implement this preparing the 2 sides to face each other and then till the victim forgives she will not accept so it is necessary to do this receonciliation process before the 2 families come togethr it is a good point you started thinking of the victim that in the system of community order how you can bring this in even though there is no provision for restorative justice the other thing which i thought was in a play the concept of guardian ad litem which is not explained bu the concept of guardian ad litem .. not necessarily it is a person with whom the child is comfortable it can be a parent a friend or uncle who ever in every proceeding the guardian ad litem is required in most cases the child like in the first play the child is alone sometime the mother or someone accompanies but the requirement is that there must be a guardian ad litem he has 2 roles one is to raise the child confidence and comfort level and second is to guardian ad litem is concerned about the order that is in the best interest of the child we have 2 a defence counsel who is the advocate for the child and second is the guardian ad litem teh difference between the 2 the defence counsel is for the purpose of getting acquittal of protecting rights of the child his focus is on the rights of the child the right to cross examination right to non torture and so on to ensure but the guardian ad litem is to ensure the best interst of the child so he must also be heard but we do not have that in our

system..... the child has to have an equation with that person whether from childline or from the school or from home the child must have an equation with the person it is not for us to create it must be someone who the child already trusts what do you think can the victim be brought in to the system like it was shown in this play what mechanisms do you have to make the 2 friends the victim and the offender advocate .. you cant refuse it is a constitutional right you can forget that it is a constitutional right you have to give it there is no choice about that matter we can give.... legal aid if we stress more on legal aid .. in my board private advocate area hardly about 10% or 15% 80 to 85 % i have about legal aid counsels legal aid counsels....legal counsel it is right that you are providing but the 2 problems of legal aid counsels that i keep hearing is that legal aid counsels sometimes ask money and they dont prepare or not well versed in my board i find that they are competent enough i have trust in them even i am very happy to hear i have trust and faith i have 5 legal aid counsels i have trust and faith that they will not do .. except for maybe 1 but i have not heard any complaint i cant call it ideal but then better than many other places in delhi i have seen the government lawyers also preparing cases very well fighting tooth and nail for the stay which is not there in other we have very effective cross examination in our board in our place novices are actually ... and they paid very handsomely that is the why the legal aid the dlsa is able to bring out good lawyers and we are now training them also lawyers are they is going to be training for your lawyers also the question is who will prepare the victim for restorative justice do you have a mediators approach if you can tap the mediation center if you involve the mediation center the mediators can work with the victim and the offender but mediation basic fundamental is that non compoundable cases we will not give no no this is not acquittal or conviction stage this is after it is found that a disposition order has to be passed after it is found on inquiry that the child has actually committed something then at this stage is there to prevent you from sending it to mediation instead of asking is there a provision i will ask you negatively is there something ...we are not wanting mediation just to bring the parties together whether such an order would be conducive to the ends of justice other wise it may fail you this may be counterproductive also if the parties are not ready to accept each other in this capacity it will be counterproductive she will keep the offender at bay dont come to my house and he will be reluctant to go to the house of the mother and if he comes they may beat him with a stick because she will be so angry having lost a son and so whether it is through an ngo or a mediaotr we have to do the counselling first to the parties and its only mediation is never done without the consent of the 2 parties when we do restorative

Justice both the parties should agree to face each other and the first thing of restorative justice is the remorse of the offender has to be conveyed and accepted by the forgiveness first after that the second level of restoration that how you will provide a mechanism but first inner peace to accept the loss and the circumstance that the child is apologetic only then we can move forward a simple order of yours will not result in the parties coming together automatically.....it will be very difficult and ....madam sometimes i feel in rape cases or like cases of murder and all these maybe in the garb of being pardoning the juvenile if they take advantage of this mediation and all that is all fine pardon that boy and take him and harm him that is a big issue in sometime like murder case people are very agitate in that family and when it comes to murder and rape it is a very when we start we do it from smaller offences it is much later that once we have got the expertise and proper experience in it that you start doing it in other cases initially in petty offence juvenile cases but now it has been extended to rape and murder but in those cases the stage of bringing the 2 together may take 3 to 4 years after the decision so it is not that you do this and you won't go to jail there have been countries which are experimenting in not experimenting but doing this even in murder rape cases but whatever i have read and heard about in actually in Argentina recently and i heard a number of countries talking about the system they have and previously my understanding was that rape and murder they don't do this but there are countries who are doing it in even those cases but the starting point for that conversation starts after 3 years maybe because you need time to heal also so the time is a healer but merely because you have healed yourself but you still not pardoned the other person so after 7 years or 10 years he comes out you are still threatened by the offenders presence in the community after having gone through the sentence so therefore to meet that aspect mediation may start 3 years later perhaps so in smaller petty offences you can do right away but in serious offences you may take some time for example the Nirbhaya case 3 years have happened but we have done no work with the victim so victim is still raw and she is still asking the same thing she was asking 3 years ago but if you had been doing some counselling for her over this period of time maybe she would have settled by now but we did nothing for them and the only focus has been send them to prison send them to hang them kill them so somewhere the time becomes a healer if you are doing a process of healing with that person you do no process of healing with the victim they are still raw with the wound they have suffered any other reaction victims relocation in the society is also necessary we can take the in rape cases can we not take the benefit of this legal service thing there is victim compensation thing

the sessions judges often use no that is alright victim compensation 357 and other provisions what madam is asking about the the feeling from inside monetary compensation even if you give monetary compensation that wound is not healed healing of wound is very distinct from getting the compensation this require in that that you take two independent circles this whole concept called circle meeting and yesterday we did say that when we do group counselling you are getting the whole group of the accused person his friends etc when we do the healing of the victim in the rape cases especially it has to be whole circle because unless this girl is accepted by the family the friends the neighbourhood she is never going to settle and therefore having a circle meetings of all the people who are connected with the victim who have to accept her as an honourable member of the group she herself because in most rape cases the girl blames themselves and they think they have become impure and that has to be addressed in the counselling session and not only her but the whole issue of family honour she is not a bad girl all that has to be addressed if you want the victim rehabilitation so merely giving money is of a very little consequence it has consequence but certain for little and the second compensation category comes much later at when in case of child rapes the child require surgery today if it is a violent rape the medical services is required today compensation will come whenever at the end of the day so these 2 matters have to be looked at what is requirement of the victim today has to be addressed irrespective of the guilt of the offender he might get acquitted the offender is not been traced but she still requires there has been a rape she has suffered physical injury she requires medical attention so therefore the state legal services scheme which is what was that scheme called victim compensation scheme that has to start right from that stage it cannot be .. in maharashtra one good scheme is there that once the FIR of a 376 is lodged they get some amount like 25000 another when she gives her statement under section 64 she gets another installment then at the time of her evidence they question i am raising is to determine 25 i mean she may require surgery which costs 3 lakhs this is atleast some sort of that is true but i am again saying that we need to look at this this is not from court some cases you may not require 25000 some places you may require 50000 so whether fixing the amount whether this is the only amount you will get is that a good practice we need to look at this is from should we look at what is the nature of injury what is the kind of expenses she is expected to spend at this point of time whether she has the capacity to meet that expenditure or not whether she was part of the decision making process that is not done this amount is not from court but from social justice department true but the social justice department should they be strict about this whole amount

that is what i am saying what we are saying is that you have taken a first step so we are giving this amount is that sufficient or should we again review that and say that no this cannot be a fixed amount it has to be determined by reference to the kind of injury and what is the kind of medical service this person required in case of children they require surgery over a period of time as they grow up they might have to have different kind of surgeries over a period of time depending upon how big is the injury in the child's organs and therefore your system has to take note of that because what we have in the compensation scheme is i think 3 lakhs is the maximum that can be given in that and 3 lakhs i think most of the time it is 3 lakhs in rape cases .. you can use pocso cases .. that can also be applied and i think there is no limit in that there is no limit it doesn't have a limit so i think somewhere we have to be kind of and it is in the hands of the court not through anybody else it's from your what happens is that court has no access to the social justice department if the victim is a minor you can use pocso directly you can apply it so you won't have to go to social justice and ask for money under this pocso the powers are wider yes .... another thing madam ..... another thing i want to say i'm very impressed that 2 of the 3 plays took more serious offence as part of their category otherwise in children cases small offences ..but to think in terms of protective care and community service in case of murder and coming it from you i think it is an opening of mind because you are seeing automatically it is a serious offence imprisonment in 3 years in special offence minor offence minor consequence has been the general understanding so i think that you have addressed and i think that is a message which certainly has gone across this group and i'm very happy about that we can take 5 minutes to fill and give back that feedback form. i think one thing one question i will put across before we conclude i would like to just hear from you anything new what you think you are taking back from this conference anything you know once we said ok tell us 3 things you are taking from here in this conference and one of the programmes we asked and one judge wrote saying i am taking nothing more than the material pen and pencil so that is not the answer we are looking for yes but that is not what we are asking as a thought process is there one thing you are talking what have we gained from this conference i will ask at least 10 persons to respond not who have all the time being conversing but some people who have not been forthcoming yes in fact earlier my approach was very much unscientific not only unscientific it was rustic now i realised that the importance of child psychology and how to approach the act and rules the act and rules importance of individual care plan latest case law regarding jj act case law case law counselling you have not used counselling till now any one else report in section 13 and

the report in section 15.... probation officers recommendation he is required to recommend in one of the .....it is the class 3 employee who is given the task of the probation officer he is ... government .. class 3 employee incharge of the ... is asked to become the probation officer this is really undermining the whole idea behind the post of the nprobation officer comepletely undermined so he is a useless .. class 3 maybe a peon go make the report and bring .. our probation officer she is otherwise very sincere and honest but she is given varied nature of duties.....she is given varied nature of duties she is directly under the control of the dc who happens to be the chairperson of the distrcit child protection unit so once we had to attend a conference there was a direction from the high court that we need to identitfy the areas where they need to be given the training i think it came from the supreme court so we called everyone ngo cwc everyone was therethen i called the probation officer and dc had deputed her on protocol dutiesfor a mel and she was there for 3 days then again we could not we had to submit the report and in her absence the meeting was held i got all the information on the phone what is your qualification what are the areas that you need training so may be they can provide a separate probation officer no other work separate for jjbs will you say something maam i do not have experience because i am a regular acjm i am not working in the jjb now nor have i done so before so i cannot ttell about probation officers case status..more comfortable .. definitely i am feeling more confident .. before passing a judgment the report of the probation officers report which we are required to call for i have not called till now i will follow that now and this community service like the role play we did we ahve not passed any order like that till now. ok the purpose of this conference ...juvenilea are committed .. so how to go about that .. i feel it will go to regular criminal court that will go to the childrens court maam 21 to 26 the childrens court that are established under the child commission commisison for protection of child rights under section 25 there is a provision taht all the offences against the children will be dealt by the childrens court the name is childrens court but it is the sessions court but the ground reality is that no where childrens court has been notified it has been done in delhi it is there in delhi it was notified in delhi but thene there was a circular that it was denotifiied when it was notified we had given them training maam when they are not notified what shall we do it will go to the sessions court .. additional charge .. it will got to sessions court in cases where there is no notification of childrens court the normal court will try it sessions court as an acjm you would like to say something what are you taking back there have been cases before jjb ..... recently on 16th of novemeber i have taken charge of this board maam i dont know

what is the act and what is happening 10 days only i hardly 2 benches i have conducted and this is very beneficial for me i learnt so many things how to conduct and everything i used to think like many other people that i have to think only from the perspective of the victim and not from the perspective of the juvenile after the conference after maams class i started thinking i should be more compassionate to the juvenile and also think of the genetic reasons why they committ the crime i think the purpose we had organised this conference with was to give you some food for thought to evaluate where our the juvenile system as a whole is heading do we needa directional change do we need tweaks in teh system to imporve and i hope we have delivered that to you and if you have found soething useful i would urge you to apply it and not just apply it share it with your colleagues back in your state so that it becoems a national change with that i will concluce i will first of all i will say i think you alldeserve a round of applause i think we should congratulate ourselves because the kind of involmment i have seen from this group has been a differnt im saying this from my own experience and i thin k this group has been very very involved in what they have been doing here for the past 4 days so thank you very much and jsut as a parting thing we will be having lunch in guest house 1 for a change ok i would like your feedback forms and the response performa that was given earlier if you can jsut hand it over to me and thank you to our resource persons because it would not have been successful with out you both so thank you maam