# CHILD PROTECTION AND JUVENILE JUSTICE SYSTEM

## for Juvenile in Conflict with Law

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AND
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for Juvenile in Conflict with Law

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Towards a new dawn

"A nation-wide phone outreach emergency helpline for children in need of care and protection. Project supported by the Union Ministry of Women and Child Development. "

## FOREWORD

CHILDLINE India Foundation (CIF) was born out of a field action project of the Tata Institute of Social Science, and has been implementing the CHILDLINE 24 hour toll-free, outreach based tele-helpline (1098) across the country since 1996. As of March 2008, the service is present in 81 cities/towns across 25 states. With over 11 million calls serviced to date, CHILDLINE 1098 is the single largest collection of the voices of children in distress in India. The CHILDLINE service has been presented by the Government of India as a response to the Child Rights Convention (CRC) of the United Nations, ratified by India in 1992.

India has a progressive record on legislations relating to Human Rights including Child Rights and Child Protection. The Juvenile Justice Act 2000 (JJA) was enacted in keeping with the standards for child protection provided by the UN Convention on the Rights of the Child. The recent amendments through the Juvenile Justice Amendment Act of 2006 have further strengthened the JJ process. However, the JJA is a central legislation that requires each state in India to set up the infrastructure and protocols to ensure that the JJA provisions are implemented at the ground level. But the gap between intent and practice is very wide. The factors responsible are many, ranging from ignorance to attitudinal blocks.

As a national network, CHILDLINE works with children on the ground and we face the brunt of the lack of knowledge of the JJ Act and its processes amongst the various stakeholders. It is precisely this need that we address in presenting a set of two Resource Manuals. First, Child Protection and Juvenile Justice System for Children in Need of Care and Protection by Dr Nilima Mehta, Consultant, Child protection & adoption and former Chairperson, Child Welfare Committee, Mumbai. The second one, Child Protection and Juvenile Justice System for Juvenile in Conflict with Law by Ms Maharukh Adenwalla, Child Rights Activist and Advocate who was appointed to provide legal-aid to children in the Observation Home at Mumbai.

The two authors are stalwarts in the field of child rights and child protection. In commissioning them we ensured that the two manuals are comprehensive, reflect the perspective of NGOs engaged in grassroots level work with children and also reviews the judicial perspective.

We expect these manuals to provide social workers engaged in working with children, a better understanding of the laws while enabling them to make use of all the provisions in the best interest of the concerned child. In addition, the manuals will help empower them to strengthen the enforcement process and elicit greater accountability of all stakeholders.

As always we hope to receive your feedback on the manuals and will endeavor to update future editions to make the manuals hand books for all stakeholders in Child Protection and Juvenile Justice.

Kajol Menon
Executive Director

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## LIST OF ABBREVIATIONS

| | |
|---|---|
| Anr. | Another |
| APP | Additional Public Prosecutor |
| BCA | The Bombay Children Act |
| CAS | Children's Aid Society |
| CRC | The United Nations Convention on the Rights of the Child |
| CrPC | Criminal Procedure Code |
| CWC | Child Welfare Committee |
| JJA 1986 | The Juvenile Justice Act 1986 |
| JJA 2000 | The Juvenile Justice (Care and Protection of Children) Act 2000 |
| JJB | Juvenile Justice Board |
| IPC | Indian Penal Code |
| NGO | Non-Governmental Organisation |
| Ors. | Others |
| PO | Probation Officer |
| PP | Public Prosecutor |
| SIR | Social Investigation Report |
| SJPU | Special Juvenile Police Unit |
| TIP | Test Identification Parade |
| UOI | Union of India |

## INTRODUCTION

Much has been written about victim children, and children in need of care and protection, but very little about juvenile offenders who are the truly neglected children . The state machinery hides them in institutions where no outsider is allowed to tread, and leaves them to their own devise with scant attention being paid to their well-being and rehabilitation. On completion of their sentence they are flushed out, ill-equipped to handle life outside of the institution. This treatment meted out to juvenile offenders is most deplorable, especially when juvenile legislation recognizes that juveniles in conflict with law also require care and protection. It should be borne in mind that the Juvenile Justice (*Care and Protection* of Children) Act 2000 [emphasis added], as did the Juvenile Justice Act 1986 and the Children Acts before it, deal with both children in need of care and protection and juveniles in conflict with law, and as the title of the 2000 legislation suggests, it is both the categories of children that require "care and protection".

A separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. They are not to be treated in the same manner as are treated adult offenders. The reason for this being that a young person is believed to be less blameworthy than an adult, as he is prone to act in haste due to lack of judgment, easily influenced by others.

"...from their inception, youth justice systems have proceeded from the assumption that children and young people, by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of their offences and less able to foresee the consequences of their actions. Linked to this is the belief that the culpability of many young offenders may be further mitigated by the poverty, cruelty or neglect they have suffered."[1]

Furthermore, the punishment meted out to adults is perceived to be too harsh to be borne by a young person.



1. *Youth justice in England and Wales,* John Pitts, contained in *The New Politics of Crime and Punishment,* edited by Roger Matthews & Jock Young, Willan Publishing, pg.71.

The focus of juvenile legislation is on the juvenile's reformation and rehabilitation so that he also may have a chance to opportunities enjoyed by other children. But there is a contrasting view that loudly states that juvenile offenders are committing violent crimes from which society should be protected, and that the juvenile justice system is mollycoddling them. It is apprehended that this latter strain of thinking will gather momentum and pressure will be created to treat juvenile offenders on par with adult offenders or toughen juvenile legislation, especially in respect of serious offences.

A child is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. Juvenile legislation attempts to cure his illness by treating the juvenile without doing anything to treat the causes of the illness. It is naïve to believe that poverty, unemployment, inequalities and changing values will not impact children existing in its midst, and that they will grow unaffected. The juvenile justice system as it is currently envisaged, at its best, can only help the child to cope and tolerate the maladjusted and dysfunctional society. If the state genuinely has the interest of children at heart, it should not only look after its children, but also take measures to improve the situation faced by their family and other support structures.

Working with juveniles in conflict with law is not an easy task. The majority of juveniles within the juvenile justice system are without families and homes; they have migrated to a different region where they are earning a livelihood. They perceive the juvenile justice system as a hindrance. They abhor this "protection" as they have been on their own since many years, with nobody to depend on or advise them. They have been making their independent decisions, and are "little adults". The juvenile justice system aims at converting these "little adults" into children. Is it possible to do so? Dr. Yug Mohit Chaudhry[2] who in the course of his legal practice has seen juveniles in the Mumbai Central Prison and in the Observation Home, Dongri, Mumbai has this to say, "Juveniles whilst in jail behave like adults imitating the older prisoners, but once shifted to the Observation Home, within a few days the child in them comes to the fore, shouting and playing and fighting with



2. Dr. Yug Mohit Chaudhry was appointed as Duty Counsel under the Maharashtra State (Visits to Jail and Homes for Children) Project Rules 1993 to visit Mumbai Central Prison, an undertrial prison in Mumbai. Between January 2003 to February 2005, he through legal intervention shifted to the Observation Home 80 juveniles who had been denied the protection of juvenile legislation and were unlawfully incarcerated in prison.

their peers, doing all the things that a child is expected to do. They suddenly turn impish. They even look younger." Dr. Chaudhry's observations fortifies ones belief that juvenile legislation, if not in all cases, in some, allows the child to think and act his age.

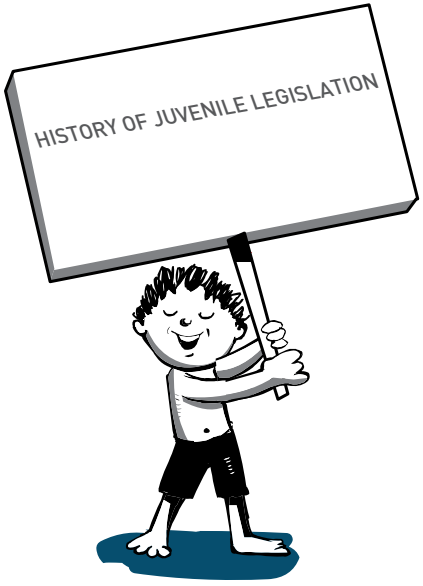
This book attempts to look at juveniles in conflict with law, and the manner in which they are treated within the juvenile justice system. Not only does it examine the law on juvenile justice and its journey since the early 20th century, but also the different challenges faced by a juvenile who to satisfy his needs or because of his infantile behaviour gets into trouble with the law. A section briefly narrates judgments passed by the courts in respect of different issues relating to juveniles. The author has also set-out a few hypothetical cases and a step-by-step guide to legally assist juveniles in a similar situation.

Throughout this book, the masculine pronoun has been used to refer to a juvenile in conflict with law, not only because of section 8 of IPC which states that "the pronoun 'he' and its derivatives are used for any person, whether male or female", but consciously as boy juveniles in conflict with law outnumber girl juveniles in conflict with law within the juvenile justice system. "The ratio of girls to the boys arrested for committing IPC crimes during 2001 was nearly 1:20."[3] The Model Rules referred to in this book are the Juvenile Justice (Care and Protection) Rules, 2007 issued by the Ministry of Women and Child Development vide Notification dated 26th October 2007.



3. Crime in India 2001, National Crime Records Bureau, Ministry of Home Affairs, Government of India.

# CHAPTER 1




## HISTORY OF JUVENILE LEGISLATION

From the early 20th century, the different Indian States had enacted their own Children Acts. The Madras Children Act 1920 was the first Children Act to be enacted, closely followed by Bengal and Bombay in 1922 and 1924, respectively. Though the Bombay Children Act was enacted 4 years after the Madras Children Act, it was the first Children Act to become functional. In February 1924, a voluntary state-aided agency, viz., the Children's Aid Society, was formed to implement the provisions of the Bombay Children Act within the municipal corporation limits of Bombay. CAS established institutions for the care and protection of children, and even today manages these institutions.

The State's Children Acts brought within its ambit two categories of children, viz., (i) youthful offenders, and (ii) destitute and neglected children. Both these categories of children were to be handled by the Juvenile Courts. During this period throughout the world, children were dealt with under the "welfarism" mode. The well-being of the child was at centre stage for both these categories of children and adjudication of guilt was not stressed, hence Probation Officers played an important role and legal representation was unheard of.

The Government of India passed the Children Act 1960 to "provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union Territories." Under this Act, a child is a boy below 16 years of age and a girl, below 18 years of age[1].

1. Section 2(e) of the Children Act 1960.

The Child Welfare Board handled neglected children, and the Children's Court, delinquent children. This statute was a precursor to the JJA 1986.

State governments had not only enacted their separate legislations for children, the provisions contained in each State's Children Act were also varied. Even the definition of the term "child" differed from State to State. This prompted the Supreme Court in 1986[2] to observe,

"4. ...we would suggest that instead of each State having its own Childrens' Act different in procedure and content from the Childrens' Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Childrens' Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resources ready to take its place in the forward march of the nation."

The General Assembly on 29th November 1985 adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice[3], and for the first time the word "juvenile" was used in international law, and the term "juvenile justice" was coined. This change in terminology was then reflected in domestic law with the passing of the JJA 1986. M.S. Sabnis has given the reasons for the change of terminology on the international platform as being twofold : (1) to denote that juvenile offenders need to be treated differently from adult offenders due to "the special problems he (or she) is constrained to face in traditional adult-oriented criminal justice system", and (2) at



*2. Sheela Barse vs. Union of India* : (1986) 3 SCC 632; (1986) SCC (Cri) 352; 1986 CriLJ 1736 (SC).

3. Also known as the Beijing Rules.

the same time to caution against pure welfarism that denies a child due process and the basic legal safeguards[4].

With the advent of the Beijing Rules, the "welfarism" era gave way to the "justice" paradigm.

"1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society."

The concentration was to be divided between the well-being of the child and justice. Justice not only to the child, but also to those aggrieved by his deed. This was necessitated by the growing cynicism towards "welfarism" amongst politicians and the public, as well as civil libertarians. The former was of the opinion that children beyond a particular age should be made responsible for their actions; if they can act as adults do, why should they not be treated as adults. Whereas the latter believed that "welfarism" led to irrational indiscriminate treatment being dispensed amongst juveniles placed in a like situation, thus they should be accorded the Constitutional and procedural precautions guaranteed to adults, especially as juveniles too are deprived of their personal liberty.

Nations introduced separate legislations for juvenile offenders and children requiring care and protection. With the enactment of JJA 1986, though there continued to be a single law, two distinct machineries were set-up to deal with "neglected juveniles" and "delinquent juveniles". Pending their inquiries before their respective competent authorities, both these categories of children were kept in the Observation Home. JJA 2000 for the first time provided for "juveniles in conflict with law" and "children in need of care and protection" to be kept separately pending their inquiries. This segregation aims to curtail the corruption of the innocent child from the influence of the "criminal juvenile". The vulnerable misguided child is now perceived as a conniving violent juvenile from whom society, including other children, require protection. This change in perception is because juvenile crime is today more noticeable, mostly occurring on the streets where the young attempt to survive without family or societal support. The media too has



*4. Juvenile Justice and Juvenile Correction : Pride and Prudence,* M.S. Sabnis, Somaiya Publications Pvt Ltd. (Bombay & New Delhi-1996). Pg 31.

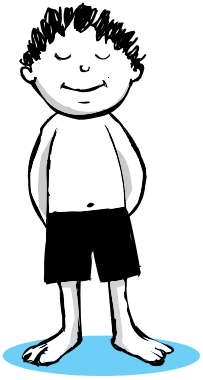
played a major role in portraying juveniles in conflict with law as the perpetrators of barbaric acts who get away lightly due to their age.

Juvenile legislation in India has attempted to balance "welfarism" and "justice" with the conceptualisation of a "welfare court" that provides a child his Constitutional and procedural safeguards at the inquiry stage, and thereafter, decides his treatment mode keeping in mind the child's interest and his comprehensive rehabilitation. That a person below 18 years of age who has committed an offence also requires protection continues to be reflected in our law, and it is wished that it will always continue to do so. The same law, JJA 2000 still governs both "juveniles in conflict with law" and "children in need of care and protection". Our Juvenile Justice Boards have thankfully not yet been transformed into lesser criminal courts for youthful offenders, and have persisted with a socio-legal approach, giving the social aspect of juvenile delinquency the importance it deserves. The United Nations Convention on the Rights of the Child, while assuring a child certain guarantees[5], also obligates that "the best interest of the child shall be a primary consideration"[6] in all actions concerning children. The Model Rules too have regarded the Principle of Best Interest as being fundamental for the application, interpretation and implementation of JJA 2000, and is to be of primary consideration while administrating juvenile justice.



5. Article 40 of CRC.
6. Article 3.1 of CRC.

# CHAPTER 2



## WHO IS A JUVENILE

A "juvenile" or "child" means a person who has not completed eighteenth year of age. A boy or girl under 18 years of age is a juvenile or child under section 2(k) of JJA 2000. The age of juvenility of a boy child under JJA 1986 was below 16 years and that of a girl child was below 18 years of age[1]. Those working in the field of children had campaigned to increase the age of boy juveniles to bring it on par with girl juveniles.

The age of a boy juvenile has been increased to 18 years by JJA 2000 mainly to bring juvenile legislation into conformity with the CRC which the Government of India had ratified[2] on 11th December 1992. The Statement of Objects and Reasons of JJA 2000 has indicated this non-conformity as being a ground for amending JJA 1986 :

"2. In this context, the following further proposals have been made-

...

(iii) to bring the juvenile law in conformity with the United Nations Convention on the Rights of the Child;

(iv) to prescribe a uniform age of eighteen years for both boys and girls;

..."

Article 1 of CRC states that, "For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier."

So currently both boys and girls below 18 years of age enjoy the protection of juvenile legislation. Whatever be the reason for increasing the age of the boy juvenile, it was vital to do so and is welcomed.



1. Section 2(h) of JJA 1986.
2. Ratification is the act by which a country shows its willingness to be bound by an international instrument.

It is argued by some, mainly the Superintendents and staff of Observation Homes and Special Homes, that due to the increase in the age of boy juveniles under the 2000 Act, a much larger number of juveniles in conflict with law are entering the juvenile justice system, therefore, the existing infrastructure is insufficient to cope with this added burden. Some officials have publicly demanded that the age of the boy juvenile be reduced to 16 years. This demand is irrational and defeatist and can never be entertained. It is essential to understand that reducing the age to 16 years is not an option. Furthermore, statistics belie this contention. Statistics denote an initial growth in the juvenile crime rate[3] in 2001[4], but the same soon thereafter stabilised . The following figures have been reproduced from Crime in India published annually by National Crime Records Bureau, Ministry of Home Affairs, Government of India :

| YEAR | JUVENILE CRIME RATE | OFFENCES COMMITTED BY JUVENILES TO THE TOTAL CRIME REPORTED |
|---|---|---|
| 1999 | 0.9 | 0.5 |
| 2000 | 0.9 | 0.5 |
| 2001 | 1.6 | 0.9 |
| 2002 | 1.8 | 1.0 |
| 2003 | 1.7 | 1.0 |
| 2004 | 1.8 | 1.0 |
| 2005 | 1.7 | 1.0 |



The above table shows an increase in juvenile crime rate in 2001 when the age of juvenility was increased to 18 years, and also indicates that the increase remained almost constant the following years. The data published by the National Crime Bureau Records reflects that the share of juvenile crime to the total IPC crimes has in fact marginally decreased from 1.2% in 1989 to 1.0% in 2005. The number of juveniles apprehended has also fallen.

3. Crime rate is defined as the "incident of crime" per 1,00,000 population. Juvenile crime rate is the number of juvenile crimes per 1,00,000 population.

4. JJA 2000 came into force on 1-4-2001.

"A decrease of 9.0% in the number of juveniles apprehended in the age group (16 – 18 years) was noticed in 2004 as compared to 2003. At the national level the overall decrease in juveniles apprehended was 7.1% in 2004 as compared to 2003."[5]

This belies the argument that the number of children involved in criminal activities is steadily on the rise.

The infrastructure was inadequate and required upgrading even under JJA 1986, when the age of boy juvenile was 16 years. It is imperative that the State governments upgrade and streamline the prevailing infrastructure. It is not a difficult or impossible task. It merely requires some application of mind and the political will to set an improved system in place. It is necessary to ensure that vacancies in institutions are filled, the strength of the institutional staff and POs increased, appropriate posts created, educational and vocational training provided, and the spirit of juvenile legislation adhered to. Granting of bail and increasing the sittings of or constituting additional JJBs is a viable solution to check the backlog of pending cases. Recognising the importance of speedy disposal of juvenile cases, the legislature has in 2006 inserted section 14(2) :

"The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards."

With the increase in age of boy juvenile it was also envisaged that there would be a significant rise in the number of juveniles committing offences of more serious nature, such as murder and rape. Statistics also puts to rest this prediction. The data published by the National Crime Records Bureau show that in 1999, 2.7% of the total IPC crimes were murder and 2.1% were rape; in 2000, 2.6% of the total IPC crimes were murder and 1.8% were rape; in 2001, 2.2% of the total IPC crimes were murder and 2.1% were rape.



5. Crime in India 2004, National Crime Records Bureau, Ministry of Home Affairs, Government of India.

## WHO IS A JUVENILE IN CONFLICT WITH LAW

Section 2(l) of JJA 2000 has defined "juvenile in conflict with law" as a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

This amended definition[6] has put to rest the debate as to the relevant date at which juvenility is to be determined. The courts, including the Supreme Court, had continuously held that the date of offence was the relevant date. In 2000, the Supreme Court, in *Arnit Das vs. State of Bihar*[7], shifted from this oft held view, and observed that the relevant date at which juvenility was to be determined was the date on which the juvenile was produced before the competent authority, viz., the JJB. *Arnit Das*' case raised the question about "reference to which date the age of the petitioner is required to be determined for finding out whether he is a juvenile or not". The two-Judge Bench of the Supreme Court held that "So far as the present context is concerned we are clear in our mind that the crucial date for determining the question whether a person is a juvenile is the date when he is brought before the competent authority." This judgment as deserved was widely critiqued. It was criticised as it diverted from a well-settled principle of law thereby depriving young persons of the beneficial provisions of juvenile legislation. Many felt that the judgment had failed to interpret the law in its correct spirit. Moreover, it did not consider a 1982 three-Judge Bench decision of the Supreme Court[8] that had unambiguously held that the relevant date was the date of offence. In *Umesh Chandra's* case the Supreme Court had held :

"As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place...We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial."



6. Brought into effect from 22-8-2006 by the Juvenile Justice (Care and Protection of Children) Amendment Act 2006 (33 of 2006).

*7. Arnit Das vs. State of Bihar :* (2000) 5 SCC 488; 2000 SCC (Cri) 962; AIR 2000 SC 2264; 2000 CriLJ 2971 (SC).

*8. Umesh Chandra vs. State of Rajasthan* : (1982) 2 SCC 202; 1982 SCC (Cri) 396; AIR 1982 SC 1057; 1982 CriLJ 994 (SC).

Lawyers and academicians decried the non-consideration of *Umesh Chandra's* three-Judge Bench judgment whilst deciding *Arnit Das'* case[9]. A review petition was filed and referred to a larger Bench "to resolve the conflict between the two opinions."[10] But the Supreme Court demurred from resolving the issue then, because on facts *Arnit Das* was not a juvenile on the date of offence, and the court was not inclined to answer academic questions only.

Ultimately a five-Judge Bench settled this issue in *Pratap Singh vs. State of Jharkhand & Ors.* [(2005) 3 SCC 551; 2005 SCC (Cri) 742; AIR 2005 SC 2731; 2005 CriLJ 3091 (SC)] reverting back to the seasoned findings that had been incorrectly overturned in *Arnit Das'* judgment. The Apex Court in *Pratap Singh's* case was faced with a query as to "Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the court / competent authority." All five Judges unanimously opined, "The reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in the court." The decision in *Umesh Chandra's* case was held to be correct law, and it was established that "the decision rendered by a two-Judge Bench of this Court in *Arnit Das* cannot be said to have laid down a good law."

In the *Arnit Das* judgment of 2000, the Supreme Court had observed that the legislature had been vague whilst defining the term "delinquent juvenile" in the 1986 Act :

"22. All this exercise would have been avoided if only the legislature would have taken care not to leave an ambiguity in the definition of 'juvenile' and would have clearly specified the point of time by reference to which the age was to be determined to find a person to be a juvenile."

Fortunately the legislature heeded this comment of the Apex Court, and to remove any misunderstanding, the definition of juvenile in conflict with law was amended in 2006. At this stage it is essential to examine the evolution of the term "delinquent juvenile" or "juvenile in conflict with law" under juvenile legislation in relation to the point in time at which juvenility is to be determined. The 1986 Act defines "delinquent juvenile" as a juvenile who has been found to have committed an offence[11]. It was this



9. Relevant date for applying the Juvenile Justice Act, Dr. Ved Kumari, (2000) 6 SCC (Jour) 9.
10. Arnit Das vs. State of Bihar : (2001) 7 SCC 657; 2001 SCC (Cri) 1393; AIR 2001 SC 3575.
11. Section 2(e) of JJA 1986.

definition that in *Arnit Das' case* was found to be ambiguous. In order to remove the uncertainty, the 2000 Act redefined "juvenile in conflict with law"[12] to mean a juvenile who is alleged to have committed an offence. This alteration clarified that juvenility was to be ascertained with reference to the point in time when it was assumed that an offence had been committed. It is only on the date of occurrence that an offence is assumed to have been committed. After *Pratap Singh's case*, the legislature through the 2006 amendment removed any doubt by setting-out in the definition itself that "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence[13]. In case of continuous offence, i.e., an offence committed over a period of time, juvenility is to be determined on the date of commencement of the offence and if the juvenile thereafter crosses 18 years, he is still to be dealt with under juvenile legislation irrespective of when the FIR is registered.



## RETROSPECTIVE LEGISLATION

There was also confusion as to whether the provisions of the 2000 Act would apply to a person who had committed an offence prior to 1st April 2001, i.e., before the 2000 Act came into force, and such person was on the date of offence above 16 years and below 18 years of age. The Supreme Court scrutinized this issue in *Pratap Singh's* case, and held that the 2000 Act would only so apply if the person was below 18 years of age on 1st April 2001, i.e., when the 2000 Act came into force, and his case was pending. By this reasoning a person under 18 years of age on the date of offence would not enjoy the protection guaranteed to a juvenile if he had crossed the age of 18 years on 1st April 2001. This partial retrospectivity argument undermines the object of the Act, viz., to protect the young against their immature action. This confusion too has been erased by the 2006 amendment. It is now categorically stated, "In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if

12. In the 2000 Act, the term "juvenile in conflict with law" replaced the term "delinquent juvenile".
13. Section 2(l) of JJA 2000.

the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."[14] Hence, the 2000 Act governs all persons who had not completed 18 years of age on the date of offence irrespective of when the offence was committed. The JJA 2000 is a retrospective piece of legislation. It affects that which had occurred prior to its coming into force. Though the provision in the 2000 Act increasing the age of juvenility came into force on 1st April 2001, it will also be applicable to offences that took place before 1st April 2001. Retrospective legislation is one which is applicable to acts and facts that took place prior to enactment of the legislation. "One that relates back to a previous transaction and gives it a different legal effect from that which it had under the law when it occurred."[15]

The newly inserted section 7-A allows a person to raise a plea of juvenility even after final disposal of the case, and obligates the court to conduct an inquiry to ascertain such person's age as on the date of offence and if found to be a juvenile on that date, to transfer the case to the JJB for appropriate orders. Section 64 of JJA 2000 extends the ambit of the Act to those persons undergoing a sentence of imprisonment at the commencement of the Act and who were below 18 years of age on the date of offence. It is imperative for State governments to expeditiously establish a mechanism to identify persons who were below 18 years of age on the date of offence and have been convicted as adults and are undergoing their respective sentences in different jails. Prompt identification of such persons is necessary to ensure that no irreparable damage is caused to them, and that they are not punished for acts done at an age when legislation intends them to be treated differently from an adult, and that they are able to avail of section 64 which provides for their treatment in accordance with juvenile legislation. Criminal courts could have sentenced such persons with life imprisonment or death, and they could be on the death row awaiting execution.



## AGE OF CRIMINAL RESPONSIBILITY

The domestic laws of all countries have laid down a minimum age below which a person is exempt from prosecution and punishment. The rationale for such exemption is the absence of mens rea, i.e., not to criminalise the acts of those who at the time of commission of the crime did not know the

14. Explanation to section 20 of JJA 2000.

15. Black's Law Dictionary, West Publishing Co., 6th Edition, Pg 1317.

right from the wrong. Persons below that age do not realize nor intend the consequences of their acts. Article 40(3)(a) of CRC requires State Parties to promote "the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law".

The age of criminal responsibility in India is fixed at 7 years by IPC. Section 82 IPC :

"Nothing is an offence which is done by a child under seven years of age."

Hence, under Indian law a child below 7 years of age cannot be prosecuted and will not enter the juvenile justice system as a juvenile in conflict with law. If such child falls within the definition of child in need of care and protection[16], he could be produced before the Child Welfare Committee for his care, protection and rehabilitation.

Most European countries have fixed the age of criminal responsibility between 13 to 15 years; France, Poland, Germany, Italy and Finland have fixed it at 13, 13, 14, 14, and 15 years, respectively. Seven years is a very low age of criminal responsibility, and requires to be raised.

The law has recognized that a person between the age of 7 and 18 years is less culpable than an adult, and has set-out different levels of criminal responsibility depending upon the child's maturity and age.

Section 83 IPC :

"Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

The accused child to avail of this defence will have to prove that he is below 12 years of age and that he has not attained adequate maturity of understanding therefore he did not know that what he was doing was wrong.

Under the Indian law children between 7 to 12 years of age having sufficient maturity and between 12 to 18 years who have committed an offence are responsible for their criminal acts, but are not to be treated or sentenced in the same manner as an adult. Such children will be dealt with under juvenile legislation, and the focus will be on reforming and rehabilitating them.

16. Section 2(d) of JJA 2000.

Article 37 of CRC deals with the mode of treatment of juvenile offenders :

State Parties[17] shall ensure that :

"(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

All countries who have ratified CRC are obligated to enact legislation in conformity with Article 37 to safeguard the interests of juvenile offenders.



17. State Parties are the governments of those countries that have ratified an international instrument.

# CHAPTER 3

## OVERRIDING EFFECT OF JUVENILE LEGISLATION

The procedure prescribed under JJA 2000 will govern cases concerning juveniles in conflict with law irrespective of the offences they have committed. Juvenile offenders are not to be treated in the same manner as adult accused. Juveniles are to be treated differently as they are less culpable and less capable of looking after themselves[1]. Juvenile legislation lays down a distinct custodial, adjudicatory and sentencing mechanism. The severity of the offence is of no consequence, nor that the offence is covered under a special law[2] or local law[3].



The Supreme Court and different High Courts have held that juvenile legislation shall reign supreme in juvenile cases no matter the nature of offence committed[4]. To avoid any doubts in this respect, JJA 2000 unequivocally states :

"Section 1(4) : Notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law."

Hence, whatever crime the juvenile is alleged to have committed, on ascertaining that he is a juvenile his case should be brought before JJB and his custody be with the Observation Home. Thereafter the course taken should be that as set-out under juvenile legislation.

1. Relevant date for applying the Juvenile Justice Act, Dr. Ved Kumari, (2000) 6 SCC (Jour) 9.
2. Special law is a statute relating to a particular subject, and creates offences that are not covered under IPC. For example, the Immoral Traffic (Prevention) Act 1956, the Narcotic Drugs & Psychotropic Substances Act 1985, the Arms Act 1959.
3. Local law is a statute that is applicable within a specific region. For example, the Bombay Police Act 1951, the Maharashtra Control of Organised Crime Act 1999.
4. Raj Singh vs. State of Haryana : (2000) 6 SSC 759; 2000 SCC (Cri) 1270.

# CHAPTER 4

## DETERMINATION OF AGE

Despite existing juvenile legislation, persons below the age of 18 years are treated as adults and deprived the benefits of the statute. It is the police who at the first instance incorrectly depict a juvenile in conflict with law to be an adult. The Magistrates and Judges thereafter continue to so treat the juvenile to his detriment. Due to this apathy, children are incarcerated in prisons and sentenced to life imprisonment in absolute violation of the law.

The police are known to deliberately portray a juvenile as an adult in order to retain his custody. Once shown to be a juvenile, the accused's custody is shifted to the Observation Home and his control to the JJB. Moreover, the police are inconvenienced by repeated visits to the JJB which is a change to their regular routine. Hence, it is preferred to add a few years to the age of the accused. Magistrates and Judges are too busy to notice that the person produced before them is a juvenile. The accused juvenile due to monetary constraints has no legal representation till the trial stage when a legal-aid lawyer is appointed, and he himself is personally unaware of juvenile legislation to be able to raise the plea of juvenility. The lawyer too often does not suitably advise his client. So many years pass as the juvenile languishes as an undertrial in jail in the company of hardened criminals before his section 313 CrPC statement is recorded. This stage is reached on completion of trial when the court directly asks the accused his age, but several years have passed before this stage is reached and the accused could have crossed the age of juvenility. The Magistrate

or Judge fail to discern that the young accused was below 18 years of age on the date of offence, and go on to sentence him as an adult.

The Supreme Court has in *Raisul's* case[1] relied upon the age given by the accused in his section 313 CrPC statement in preference to the estimation of the Sessions Court and the High Court.

There have been cases where the criminal justice system has not recognized an accused to be a juvenile, and the claim of juvenility is raised for the first time before the Supreme Court. This practice, resulted in the Apex Court in 1984[2] instructing Magistrates to conduct an inquiry about age when it appeared that the accused was under 21 years of age. The onus is upon the court to take measures to determine the age of the accused. *The Criminal Manual issued by the High Court of Judicature (Appellate Side) Bombay for the guidance of the Criminal Courts and their Subordinate Officers*[3] states:



"All Courts should, whenever a youthful offender or a party is produced before them, take steps to ascertain his age. If the age given by the Police does not appear to be correct from the appearance of the offender or party, and if the Police cannot produce satisfactory evidence regarding the age, the Court should consider the desirability of sending the offender or party to the Medical Officer for the verification of his age before proceeding with the case.... At the time of the examination of the accused, the Sessions Judge or Magistrate should therefore, specifically ask such accused person his or her age for the purpose of recording it. If the Sessions Judge or Magistrate suspects that the age stated by the accused, having regard to his or her general appearance or some other reason, has not been correctly stated, then the Sessions Judge or Magistrate should make a note of his estimate. The Court may also, when it so deems fit or proper, order a medical examination of the accused for the purpose of ascertaining his correct age. If any documentary evidence on the point of age is readily available, the prosecution may be asked to produce it."

The Criminal Manual in Chapter VIII (pg.198) which deals with *Child and Young Offenders* obligates the Magistrate to ascertain the age of an accused produced before him. The police are required to state the age of the accused and to produce evidence in support of the same. "The best evidence of age is the entry in the Births and Death Register. Where

*1. Raisul vs. State of U.P.* : (1976) 4 SCC 301; 1976 SCC (Cri) 613; AIR 1977 SC 1822; 1977 CriLJ 1555 (SC).
*2. Gopinath Ghosh vs. State of West Bengal* : 1984 Supp SCC 228; 1984 SCC (Cri) 478; AIR 1984 SC 237; 1984 CriLJ 168 (SC).
3. A.K. Gupte & S.D. Dighe, Hind Law House, 2001, Fifth edition, Chapter VI, pg.149.

this is not available, the accused person should be got medically examined and a medical certificate obtained in regards to his age. A definite finding with regard to his age should be recorded in every case." If the accused is found to be a juvenile, he is to be produced before the JJB along with his case papers.

In *Bhola Bhagat's* case[4] , the Supreme Court instructs courts before whom a plea of juvenility is raised to hold an inquiry for ascertaining the age of such accused, and return a finding about his age.

Ascertainment of age plays a very important role as it ensures that a juvenile enjoys the protection he is entitled to under law.

The best proof of age is the Birth Certificate, but the rate of registration of births in India is very low. The registration of births at the national level in 1995 was 55%[5] . This rate of registration of birth fluctuates from one State to another; in Tamil Nadu it was 90.3% whereas in Rajasthan it was 23.7%. The next best proof of age is the School Leaving Certificate. More persons will possess a School Leaving Certificate than a Birth Certificate as school enrolment rates are high. The gross enrolment ratio in primary education for the year 2002 – 2003 for boys is 100% and for girls 93%[6] . Even if a child has been merely enrolled in a school and never attended, he will be able to obtain documents that will record his date of birth, such as admission form and entry in school register, and such date will also be reflected in the School Leaving Certificate.

Birth Certificate and School Leaving Certificate is the only documentary evidence that is considered for the purpose of determining age. Age mentioned in Ration Cards, Family Cards, Identity Cards issued by the Election Commission of India, etc., is not proof of age, and should not be treated as such by the courts. A Birth Certificate or School Leaving Certificate produced by the accused to denote his age may be gotten verified in the event of the court doubting its veracity. Verification is generally done by police's scrutiny of the original registers from which the extracts have been issued, or by the court examining a representative of the authority that has issued the document or the child's parents/relatives. Even otherwise, the recording of parent's/ relative's evidences



*4. Bhola Bhagat vs. State of Bihar* : (1997) 8 SCC 720; AIR 1998 SC 236.

*5.* Report of the Working Group on Registration of Births, Deaths and Marriages constituted by the National Commission on Population.

*6.*Press Note dated 13th February 2006 issued by the Ministry of Statistics & Programme Implementation, Government of India.

in certain cases is important to assist the court in determining the age of the accused. All possible efforts should be made to ensure that a juvenile is treated as such.

In the absence of documentary evidence, the opinion of a medical practitioner may be called for. The juvenile is sent to a public or police hospital for medical examination to determine his age. "The principle means, which enable one to form a fairly accurate opinion about the age of an individual, especially in early years are teeth, height and weight, ossification of bones and minor signs."[7] Ossification test is performed by radiological examination of several main joints, and the opinion of age is based on the extent of fusion of the bones. The age as ascertained by medical examination is not conclusive proof of age, and judicial notice has been taken that it is a mere opinion of a doctor and the margin of error could be of 2 years on either side[8]. The foundation of the Indian criminal justice system is that any doubt or ambiguity should support the accused. Hence in borderline cases the accused is to be treated as a juvenile. Moreover, the Supreme Court has held that the approach of the courts should not be hyper-technical whilst determining juvenility[9]. In case of conflict between documentary evidence and the medical examination report, the age shown in an authentic document will be treated as the correct age of the accused[10]. A "doctor is not always truthful", a professional witness is prone to side with the party who seeks his service was the observation of the High Court in a case where medical examination to determine age was sought by a private party[11]. More circumspection is required when it is the police that escorts a juvenile in conflict with law to a medical officer. In the event of a medical examination report indicating a person apparently a juvenile to be over 18 years of age, an application should be made before the court for conducting through another hospital a second medical examination, and in case of conflicting results, the doctors testimony should be recorded by the court to make certain which of the two medical examination report depict a correct estimate of the accused's age. The Bombay High Court in it's judgment dated 18th February 2007 passed in Criminal Writ Petition No.1694 of 2003 (PRERANA vs. State of Maharashtra & Ors.), whilst dealing with the issue of commercial sexual exploitation



*7. Modi's Medical Jurisprudence & Toxicology,* Butterworths India, New Delhi (22nd Edition), pg.49.
*8. Jaya Mala vs. Home Secretary, Govt. of J&K* : (1982) 2 SCC 538; 1982 SCC (Cri) 502; AIR 1982 SC 1297; 1982 CriLJ 1777(SC).
*9. Rajinder Chandra vs. State of Chattisgarh* : (2002) 2 SCC 287; 2002 SCC (Cri) 333; AIR 2002 SC 748; 2002 CriLJ 1014 (SC).
*10. Bhoop Ram vs. State of U.P.:* (1989) 3 SCC 1; 1989 SCC (Cri) 486; AIR 1989 SC 1329; (1989) 2 Crimes 294.
*11. Smt. Kamlesh & Anr. vs. State of U.P.* : 2002 CriLJ 3680 (Allahabad).

of woman and children has instructed Magistrates and Sessions Judges "to order a second medical examination to ascertain the age of the victim to be conducted by a medical officer attached to another public hospital, in case the result of the first medical examination are under doubt."

Under JJA 2000, the JJB is to conduct an inquiry to determine age when a person is brought before it, but such inquiry need be conducted only in cases where the person is not apparently a juvenile.

"49. Presumption and determination of age.-(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be."

Sub-section (2) of section 49 states that once the JJB has treated the person as a juvenile and disposed of the case, no subsequent proof showing the person to be an adult can be considered to set-aside an order passed by the JJB. There is no need for the JJB to conduct an inquiry about age when the juvenile is produced before it under orders of a court that has reached a finding of juvenility.

The claim of juvenility could be raised for the first time by the accused before the Magistrate or the Sessions Judge, or before the High Court or Supreme Court. The courts have repeatedly held that the court before whom the plea of juvenility is raised must conduct an inquiry or direct an inquiry by a subordinate court, and record a finding with regards to age. This judicial trend has more recently been diverted from in *Surinder Singh's* case[12] when the Supreme Court rejected a plea of juvenility that was for the first time raised before the Apex Court. Legislature intervened by amending JJA 2000[13] to assure juveniles the envisaged treatment. Section 7-A was inserted to clarify that courts should entertain at any stage, even after final disposal of the case, a plea that an accused was below 18 years of age at the time of occurrence of the crime.

"7-A. Procedure to be followed when claim of juvenility is raised before any Court.-(1) Whenever a claim of juvenility is raised before



*12. Surinder Singh vs. State of U.P.* : (2003) 10 SCC 26; 2004 SCC (Cri) 717; AIR 2003 SC 3811.
13. 2006 amendment.

any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act."

Section 7 provides for the measures to be taken by the Magistrate when a juvenile is wrongly produced before him. The Magistrate is to record his opinion, and forward the juvenile and the proceedings before JJB. Initially there was confusion as to the manner in which the Magistrate is required to "record his opinion". Some believed that the age determination inquiry should be conducted by the Magistrate, whilst others, that the Magistrate should merely transfer the case of a supposed juvenile to JJB for conducting an age determination inquiry under section 49 of JJA 2000. The former position was adhered to by most Magistrates and correctly so in view of the Supreme Court's observations in *Bhola Bhagat's* case. The insertion of section 7-A has settled this issue as it categorically states that the court before which the claim of juvenility is made should conduct an inquiry to determine the age of the accused. Hence, the Magistrate is obligated to conduct an age determination inquiry and arrive at a finding of juvenility before transferring the accused to the Observation Home and his case to JJB.



## JUDICIAL ACTION TO BE TAKEN ON AN ACCUSED BEING DETERMINED A JUVENILE

The next consequential question is what is to be done when an accused on court's inquiry is found to be a juvenile.

In case juvenility has been ascertained by the criminal court before the trial has commenced, the criminal case should be transferred and the police instructed to file the charge-sheet before the JJB. If there are adult co-accused, the court is required to "direct separate trials of the juvenile and the other person."[14] But if the trial has

commenced before the criminal court, to prevent delay, the court may continue with the trial and record a finding of guilt or otherwise, and if the juvenile is found to have committed the offence, the court "instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence." The transferring of the case to JJB for sentencing has been incorporated in the law with regards to proceedings in respect of a juvenile pending in any court on the date on which this Act came into force[15], but the same can also be conveniently applied to cases where a juvenile has been wrongly treated as an adult and his trial has proceeded before a criminal court.

What is to happen in cases where the accused has been held to be a juvenile after he has been sentenced by the trial court? In *Bhoop Ram's* case, *Bhola Bhagat's* case, *Jayendra's* case[16], *Pradeep Kumar's* case[17], *Umesh Singh's* case[18], *Upendra Kumar's* case[19], and *Satya Mohan Singh's* case[20], the Supreme Court has upheld the conviction, quashed the sentence, and directed that the appellants be released forthwith as they were juveniles on the date of offence and they had ceased to be juveniles on the date of the Apex Court's decision. There was no point in remanding the matter to the Juvenile Court, as it was then called, because the appellants had been incarcerated in jail for long periods of time, and now at this late stage sending them to an approved school or Special Home would not serve any purpose.

This view has been repeatedly adopted by courts whist granting relief to persons who though juveniles had been treated as adults and accordingly sentenced. Due to the belated determination of juvenility, the accused has spent several years in jail, often in excess of the maximum period prescribed under juvenile legislation, and had since crossed the age of juvenility. The courts in such situation have quashed the sentence passed and have released the accused forthwith. Any divergence from this oft held view would cause additional hardship to a juvenile.



14. Section 18 of JJA 2000.
15. Section 20(l) of JJA 2000.
16. Jayendra & Anr. vs. State of Uttar Pradesh : (1981) 4 SCC 149; 1981 SCC (Cri) 809; AIR 1982 SC 685.
17. Pradeep Kumar vs. State of Uttar Pradesh : 1995 Supp(4) SCC 419; 1995 SCC (Cri) 395; AIR 1994 SC 104.
18. Umesh Singh & Anr. vs. State of Bihar : (2000) 6 SCC 89; 2000 SCC (Cri) 1026; AIR 2000 SC 2111; 2000 CriLJ 3167 (SC).
19. Upendra Kumar vs. State of Bihar : (2005) 3 SCC 592; 2005 SCC (Cri) 778.
20. Satya Mohan Singh vs. State of Uttar Pradesh : (2005) 11 SCC 395.

Firstly, it is the criminal justice system that neglected to recognize the accused as a juvenile and denied him the benefit of juvenile legislation which has been particularly enacted to protect him. Secondly, if the juvenile had been handled under juvenile legislation, the inquiry would have been expeditiously completed, and even if found to have committed an offence and placed in a Special Home, his term of incarceration would have been long over. Thirdly, producing him before the JJB for retrial or sentencing would further retard his return to normal life due to no fault of his own. Fourthly, any of the modes of disposition imposable upon a juvenile would not in any ways positively affect an adult.



Though it is only the JJB that has jurisdiction to entertain matters of juveniles in conflict with law, including sentencing them, section 6(2) of JJA 2000 confers upon the High Court and the Sessions Court powers exercisable by the JJB when the proceeding comes before them in appeal, revision or otherwise. Hence, in the best interest of the juvenile, the High Court or the Sessions Court can pass appropriate orders when confronted with the case of a juvenile.

The newly inserted section 7-A necessitates courts to record a finding whenever a plea of juvenility is raised. It further states that a person so declared a juvenile should be forwarded to the JJB for passing of orders under section 15 of JJA 2000 and any sentence earlier passed by the trial court or appellate court shall have no effect[21].

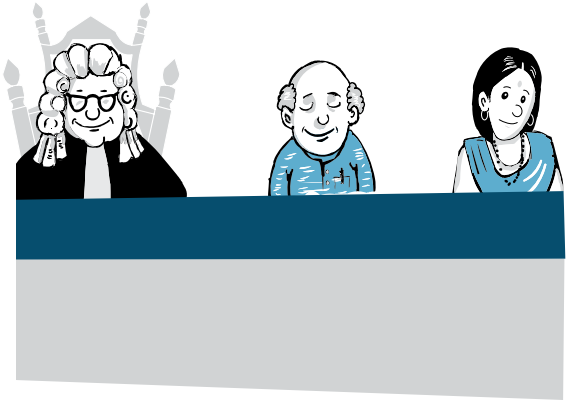
21. Section 7-A(2) of JJA 2000.

# CHAPTER 5

## JUVENILE JUSTICE BOARD

"The center of interest in the juvenile court is always the juvenile and his welfare, and not the act or its consequence which might have resulted in his (or her) being brought before the court."[1]

Criminal cases of a juvenile in conflict with law are to be dealt with by JJB, and not the regular criminal courts. This is the mandate of juvenile legislation, enacted since the turn of the 20th century, as well as the Criminal Procedure Code 1898 and 1973. Section 27 of CrPC 1973 states :



"Jurisdiction in the case of juveniles.- Any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears or is brought before the Court is under the age of sixteen years, may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders."

A like provision was also there in the 1898 Code[2]. It is most surprising that though the Criminal Procedure Code has been amended in 2005, section 27 was not altered to bring it in conformity with existing juvenile legislation. With the enactment of juvenile legislation this provision of CrPC has become redundant.

The first Juvenile Court in India was established in Bombay in 1927. Initially it was presided over by a Presidency Magistrate who used to sit for a few hours on fixed days. Thereafter, since 1942, the Juvenile Court was manned by a full-time stipendary Magistrate who was assisted by a team of



1. *Juvenile Justice and Juvenile Correction : Pride and Prudence,* M.S. Sabnis (Somaiya Publications Pvt. Ltd., Bombay & New Delhi-1996), pg. 81.
2. Section 29-B.

experts, such as POs, psychologists. The Children Acts provided for establishment of Juvenile Courts to handle cases of youthful offenders and neglected children. This system of a single authority handling cases of both juvenile offenders and neglected children was diverted from in 1986, when on the international arena, adjudicating the guilt of a juvenile took precedence over "welfarism". The Indian law, fortunately continued to recognize the importance of social work intervention in juvenile cases. Juvenile Welfare Boards were constituted under the 1986 Act to exclusively deal with cases of neglected juveniles, and the Juvenile Court, to have sole jurisdiction over delinquent juveniles. The Juvenile Courts were to "be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the State Government. "[3] It was the POs who used to double as the social workers. The Juvenile Courts, under the JJA 1986, were supposed to consist of a Bench of Magistrates[4], i.e., two or more Magistrates, one of whom was to be designated as a Principal Magistrate. But in most cases a single Magistrate constituted the Juvenile Court.



The chief purpose for distinct handling of a juvenile's case is that such case requires a socio-legal approach as reformation and rehabilitation, and not punishment is the goal. Under JJA 2000, JJB is the "competent authority" in relation to juveniles in conflict with law[5] . The constitution of the JJB reflects this objective of juvenile legislation. The JJB has to tread a fine path; juveniles are culpable for their criminal acts, but they should not be penalised for such action, instead the aim should be to persuade them away from the enticements of a life of crime. The 2000 Act has given equal importance to the Magistrate and the social workers, they jointly constitute the competent authority to deal with juvenile cases.

The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class in a non-metropolitan area, and 2 social workers one of whom at least should be a woman[6]. The Magistrate and the social workers are to function as a Bench, i.e., together, but their roles are distinct. The Magistrate plays an important role in deciding whether the juvenile has committed an offence or not. When the JJB is satisfied that an offence has been committed, then the social workers play an important role in deciding what should be done for the comprehensive rehabilitation of

3. Section 5(3) of JJA 1986.
4. Section 5(2) of JJA 1986.
5. Section 2(g) of JJA 2000.
6. Section 4(2) of JJA 2000.

the juvenile, keeping in veiw the circumstances in which the offence was committed. It has been rightly put by Barry C. Feld that the Magistrate takes care of the deed and the social workers of the needs of the juvenile[7].

The JJB is bestowed with the powers conferred upon a Magistrate under CrPC[8]. The Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be, is designated as the Principal Magistrate[9]. In the event of any difference of opinion amongst the members of JJB whilst passing any order, the majority opinion shall prevail[10]. The view of the Principal Magistrate will prevail when no majority opinion is possible[11].

JJBs are required to be constituted in every district by 21st August 2007[12]. The JJB is to have fixed place, days and timings of its sittings. The frequency of its sittings will depend upon the pendency of cases before a particular JJB. Expeditious completion of an inquiry by JJB is vital so that the juvenile's life is not unnecessarily disrupted for a long period, and his rehabilitation process starts at the earliest. Prolonged incarceration pending an inquiry causes trauma to the juvenile, which can be easily avoided. Observation Homes, generally have no facilities for vocational training nor ways to keep juveniles occupied, thus resulting in juveniles getting restless and desperate. Due to prolonged incarceration there have been instances when juveniles have escaped or tried to escape from Observation Homes, or have gone on a rampage causing destruction within the institution.

The law recognizing the importance of speedy inquiry has mandated the JJB to complete an inquiry within 4 months from the date of its commencement, and if the same is not possible due to the special circumstances of a case, the JJB is required to extend the stipulated period for completion of inquiry by a reasoned order[13]. When is a juvenile case said to have commenced; is it when the juvenile is produced before the JJB or is it when the charge-sheet is filed or is it when the juvenile's plea is recorded. The Supreme Court in 1986[14] has directed the state machinery to ensure the expeditious filing of a charge-sheet and completion of a juvenile's inquiry :



7. *Bad Kids : Race and the transformation of the Juvenile Court,* Barry C. Feld, Oxford University Press (1999).
8. Section 4(2) of JJA 2000. 9. Ibid. 10. Section 5(4) of JJA 2000. 11. Ibid.
12. Section 4 of JJA 2006. 13. Section 14(1) of JJA 2000.
14. *Sheela Barse vs. Union of India* : (1986) 3 SCC 632; 1986 SCC (Cri) 352; 1986 CriLJ 1736 (SC).

"3. We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the first information report and if the investigation is not completed within this time, the case against the child must be treated as closed..."

The judgment continues to say that the inquiry should be completed within 3 months from the date of filing of the charge-sheet. Thus by this judgment the case against the juvenile, under the 1986 Act, must be disposed of within 6 months at the latest. The 1986 Act provided, "An inquiry regarding a juvenile under this Act shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its commencement, unless, for special reasons to be recorded in writing, the competent authority otherwise directs."[15] The 2000 Act has increased this period to 4 months, and has allowed for the time to be extended by the JJB "having regard to the circumstances of the case and in special cases". So in accordance with the prevailing law a juvenile case should generally be disposed of within 7 months from his arrest at the latest.

No period has been laid down under juvenile legislation with regards to the time period within which a charge-sheet should be filed in a juvenile case. It is understood that when a different procedure is not laid down in a criminal statute, the procedure stipulated under the CrPC will apply[16]. The CrPC does not lay down the period of time within which a charge-sheet should be filed, but states that an accused should be released on bail if charge-sheet is not filed within 90 days of arrest if the offence is one punishable with death, life imprisonment or imprisonment for a term of 10 years or more, and in case of any other offence, if not filed within 60 days of arrest[17]. In case of a juvenile, Section 167 CrPC should be read as governing the time period within which the charge-sheet should be filed, if the charge-sheet is not filed within the stipulated period, the case against the juvenile should be quashed.

Certain JJBs, especially those functioning in metropolises, have huge back-log of cases. A method for curbing this accumulation of cases is by increasing the sittings of the JJB. The back-log of cases before the Mumbai JJB

15. Section 27(3) of JJA 1986.
16. Section 54 of JJA 2000.
17. Section 167 of CrPC.

was checked by gradually increasing its sittings. Initially the JJB sat once a week, which was increased to thrice a week and then to all working days. The Bombay High Court directed the State government to constitute an additional JJB for Mumbai Suburban[18] so that the pendency of cases is reduced. Section 14(2) which has been inserted by the 2006 amendment has cast a duty upon the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to "review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards." The law obligates the members of JJB to regularly attend the sittings. The services of a member may be terminated if "he fails to attend the proceedings of the Board for consecutive three months without any valid reason or *he fails to attend less than three-fourths of the sittings in a year*."[19] The intention of the legislature has been confusingly portrayed in the emphasised portion of the preceding sentence, and it requires to be amended. The legislature intends that the services of a member of JJB who attends less than three-fourths of the sittings in a year should be terminated.

Moreover, the atmosphere in the Observation Home is elated when the JJB works proficiently, systematically manages its daily cases and expeditiously proceeds with matters. Unfortunately, the functioning of the juvenile justice system is dependant on individuals and their abilities. Therefore, effort must be taken to ensure that the right person is appointed on the JJB. A Selection Committee must be constituted for the choosing of JJB members, including the Magistrate. Presently, the Magistrate is appointed by the State government in consultation with the Chief Justice of the High Court. The Juvenile Justice (Care and Protection of Children) Rules 2007[20] provide for selection of social workers for the Board by a Selection Committee[21], but with regards to the Magistrate it merely mentions, "A Magistrate with special knowledge or training in child psychology or child welfare shall be designated as the Principal Magistrate of the Board", and if no such Magistrate is available, the State government is to provide short-term training in child psychology or child welfare[22]. It is imperative to optimize the functioning of JJBs by selecting a Principal Magistrate who is truly interested in holding such post. This requires a change from the current mode of



18. Orders dated 12th & 20th October 2006 passed in Suo Motu Criminal Writ Petition No. 585 of 1985.
19. Section 4(4)(iii) of JJA 2000.
20. Commonly known as "Model Rules".
21. Rule 5(4) of the Model Rules.
22. Rule5(3)(i) & (ii) of the Model Rules.

selection It would be appropriate, in the best interest of the child, to explore the constituting of a Selection Committee under the Chairmanship of a Judge of the High Court for selection of the Principal Magistrate. The other members of the Selection Committee could include the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, the Secretary Woman and Child Development Department, and faculty of a social work college.

## PRODUCTION BEFORE JJB

1. It is generally the police or Special Juvenile Police Unit who produces a juvenile before JJB. Any person or other agency so producing the juvenile must inform the concerned Police Station or SJPU about such production.

2. The juvenile is to be produced before JJB within 24 hours of his arrest.

3. If the JJB is not sitting, the juvenile may be produced before a single member. Rule 11(4) of the Model Rules requires the order passed by a single member of the JJB on the juvenile's production to be ratified by the JJB at its next sitting.

4. The SJPU or any other police personnel who produces a juvenile before the JJB must submit a report before the JJB indicating the particulars of the case, viz., the name, age and address of the juvenile; the circumstances in which the juvenile was apprehended; that the juvenile was not lodged in police lock-up or jail; that the parents or guardian and PO have been informed about the juvenile's arrest; the reasons for delay, if production is after 24 hours of arrest; etc.

5. The SJPU or police may take the assistance of a voluntary organisation having the requisite skill, to prepare the report containing the social background of the juvenile, and to take charge of the juvenile pending production before JJB[23].

## INQUIRY PROCEDURE BEFORE JJB

1. Pending inquiry, the juvenile is to be lodged in the Observation Home.

2. The JJB should release the juvenile on bail except in certain prescribed circumstances.

3. The case is to be regularly placed before the JJB. If the juvenile is not released on bail, the JJB should give short dates, and in no

23. Rule 11(12) of the Model Rules.

event should the next date extend beyond 15 days of the previous date.

4. Once the juvenile is lodged in the Observation Home, the SJPU or the concerned police station should not be given custody of the juvenile without the prior consent of the JJB. The JJB too should not give custody of the juvenile to the SJPU or the police, except supervised custody in extraordinary situations. In the event of the SJPU or police desiring to interrogate the juvenile or conduct a Test Identification Parade, an application for such purpose should be made before the JJB, and the JJB is to pass appropriate orders thereon. In case such application of the SJPU or police is allowed, the JJB shall direct that the interrogation or TIP should be conducted in the presence of the Superintendent of the Observation Home or the PO.

5. The JJB has to keep in mind the interest of the juvenile, and play a pro-active role to ensure that the SJPU or police fittingly perform their functions. For example, the JJB should direct the police to file the charge-sheet at the earliest; produce prosecution witnesses when instructed to do so.

6. The culmination of the investigation is by the SJPU or police filing a police report or charge-sheet[24] before the JJB. The charge-sheet contains the name of the complainant; the nature of information; the name of the juvenile in conflict with law; witness statements; etc. It is on the perusal of the charge-sheet that the court determines whether there is a prima facie case against the accused. If further evidence is obtained after filing the charge-sheet, a supplemental charge-sheet may be filed by the SJPU or police.

7. On the charge-sheet being filed, the JJB seeks the PO's report, i.e., Social Investigation Report. The PO whilst preparing the SIR is to meet with the juvenile and his parents or guardian, and if necessary to visit the juvenile's home. The PO should mention in the SIR about the background of the juvenile, whether the parents or guardian are suitable to be given charge of the juvenile, and what should be done to assure the juvenile's proper rehabilitation. The SIR plays a vital role at the time of sentencing; the JJB is required to consider this report prior to passing any order with regards to rehabilitation of the juvenile[25]. An SIR may also be sought from a recognized voluntary



24. Section 173 of CrPC.
25. Section 15(2) of JJA 2000.

organization or any other means, especially in the event of the juvenile hailing from a region outside the territorial jurisdiction of the JJB entertaining the juvenile's case.

8. The next stage is to record the plea of the juvenile, i.e., the juvenile is asked whether he has or has not committed the offence. The juvenile is briefly informed about the prosecution's case prior to recording his plea.

9. If the juvenile admits to having committed the offence, the JJB may hold that the juvenile has committed the offence, and pass appropriate orders as prescribed under section 15 of JJA 2000. Even if the juvenile pleads guilty, the JJB may continue with the inquiry after passing a reasoned order as to why it chose not to accept the juvenile's plea. Generally a plea of guilt is accepted by the JJB except if the JJB is of the opinion that it is not in the interest of the juvenile to accept his plea of guilt, or that the juvenile has been coerced by some person or persons into entering a false plea. The practice whereby the JJB, the PO, or the Superintendent or staff of the Observation Home pressurizes the juvenile to plead guilty should be discouraged. Often the juvenile pleads guilty because he or his parents or guardian are told that pleading guilty is the only recourse for quick disposal of his case. Compelling a juvenile to submit to a false plea of guilt causes him great distress even if he is released as a consequence, mainly because the juvenile feels that he is branded as a criminal though he has not done any wrong.



10. A juvenile who has pleaded not guilty may be allowed by the JJB to alter his plea and plead guilty if it is in the interest of the juvenile to do so, and he has acted so voluntarily. A juvenile may after his plea of not guilty is recorded feel repentant and wish to change his plea, hence, there should be no impediment to such request by the juvenile.

11. When the juvenile pleads not guilty or his plea of guilt is not accepted by the JJB, the juvenile's case is ready for the recording of evidence. The prosecution witnesses are to be summoned and their evidence to be recorded. JJBs should follow the practice of directing the APPs to scrutinise the charge-sheet, and only summon the necessary witnesses so that the case is not needlessly prolonged.

12. Whilst conducting an inquiry, the JJB should follow the procedure laid down in CrPC for trials in summons cases[26]. In cases involving serious offences, to safeguard the rights of the juveniles, the JJB should record the evidence in detail as in a warrant case.

13. The prosecution witnesses are examined by the APP on behalf of the prosecution and cross-examined by the juvenile's lawyer. The evidence is recorded by the JJB, and copy of the Notes of Evidence should be contemporaneously given to the juvenile's lawyer.

14. The JJB must do all in its power to see that prosecution witnesses are present to give evidence on the notified date, and if not, to seek a report from the police for such absence. If a prosecution witness fails to attend, the JJB should issue a bailable or non-bailable warrant to guarantee the witness' presence, or else call upon the prosecution to close their case.

15. After the prosecution closes its case, the section 313 CrPC statement of the juvenile is recorded by the JJB. Questions will be put by the JJB to the juvenile to enable him to explain any portion of the evidence that incriminates him. No oath is administered at the time of recording the section 313 CrPC statement of the juvenile, nor is he liable to punishment for giving a false answer. The statement of the juvenile cannot be a substitute for the prosecution's evidence; the prosecution has to independently prove that the juvenile has committed the offence. The juvenile's statement has to be considered by the JJB in conjunction with the evidence adduced by the prosecution.

16. The juvenile is given an opportunity to lead defense evidence if he so desires. Defense witnesses are cross-examined by the prosecution.

17. Thereafter the prosecution and the defense put forth their respective oral arguments. Written arguments in support of their case, including the judgments they rely upon, may be submitted by either party to the JJB[27].

18. On the basis of the evidence garnered and the arguments advanced, the JJB will pass an order disposing the case. If the JJB is satisfied that the juvenile has committed an offence, an opportunity should be given to the defense to make arguments on the point of sentencing prior to the passing of an order.

26. Section 54 of of JJA 2000.
27. Section314 of of CrPC.

The atmosphere during the inquiry should be such that the juvenile is at ease and is not overwhelmed or intimidated. The sitting arrangement should be informal with the JJB placed at the same level as the juvenile. The JJB should speak slowly and in a language and manner that the child understands. The State government must provide the JJB with proper infrastructure and human resource support, such as PO, steno-typist or computer operator, peon, safai karmachari[28].



28. Rule 83 of the Model Rules.

# CHAPTER 6


## APPREHENSION

Under juvenile legislation, the word "apprehension" replaces the word "arrest". The precautions and safeguards contained in the Constitution of India and Supreme Court judgments with regards to the rights of an accused on arrest also apply to juveniles in conflict with law. The Constitutional provisions in this respect are reproduced hereunder :

"Art. 22(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

The Supreme Court in *Dilip K. Basu vs. State of West Bengal & Ors.*[1] issued guidelines to be followed in all cases of arrest or detention till legal provisions were made in that behalf as a measure to prevent custodial violence. Police personnel "should bear accurate, visible and clear identification and name tags with their designation" during arrest and interrogation. Furthermore, the police at the time of arrest should prepare a memo of arrest attested by at least one witness and countersigned by the arrestee. An arrested person shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place.

1. (1997) 1 SCC 416; 1997 SCC (Cri) 92; AIR 1997 SC 610.

Section 10(1) of JJA 2000 provides for a juvenile to be produced before the JJB within twenty-four hours of his arrest. Detaining a person in custody beyond this period amounts to illegal detention. The Bombay High Court in *Baban Khandu Rajput vs. State of Maharashtra*[2] imposed compensation of Rs.10,000/- upon the state for keeping the Petitioner in detention for a period of two and a half days without producing him before the appropriate authority with mala fide intention without giving any explanation justifying the said detention.

Under section 13 of JJA 2000, the police "as soon as may be after the arrest, inform-

"(a) the parent or guardian of the juvenile, if he can be found of such arrest and direct him to be present at the Board before which the juvenile will appear; and

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making inquiry."

Similar provisions were there in BCA 1948[3] and JJA 1986[4]. If the juvenile's parent or guardian cannot be instantly informed, any person of the juvenile's choice should be informed of his arrest.

The JJB on first production should seek a police report with regards to the date and time of the juvenile's arrest and his admission to the Observation Home, and whether a parent or guardian or person of juvenile's choice and the PO has been informed about the juvenile's arrest. Moreover, the particulars so furnished by the police should be gotten confirmed from the juvenile.



2. 2002 AllMR(Cri) 1373.
3. Sections 66 and 67 of BCA 1948.
4. Section 19 of JJA 1986.

# CHAPTER 7

## BAIL

Bail is the release of an accused person pending investigation and/or trial, whilst at the same time ensuring his future attendance in court at the trial stage. The CrPC divides offences into bailable and non-bailable offences. Whether an offence is bailable or not is denoted in the First Schedule to the CrPC, or under the special or local law that deals with a specific offence. In bailable offences, the grant of bail is a right of the accused, and may be granted by a police officer or by a court before which the accused is produced[1]. In case of a non-bailable offence, the grant of bail is not as of right; it is for the court to decide whether bail should be granted or refused depending upon the facts and circumstances of each case[2]. The gravity of an offence, the chances of an accused absconding or tampering with prosecution witnesses are some of the circumstances that the court keeps in mind when deciding a bail application. Certain instances have been stipulated in the CrPC where bail is to be granted even if the offence is non-bailable, such as the accused is a woman, or sick, or infirm.



The position with regards to bail is very different under juvenile jurisprudence. Since the enactment of different Children Acts, the grant of bail has been mandatory under juvenile legislation except in certain prescribed instances that could cause harm to the child if so released. For example, BCA 1948 provides for a child who has committed a non-bailable offence to be released by a police officer[3] or a court [4], except if releasing the child on bail is "likely to bring the child into association with any reputed criminal or

1. Section 436 of CrPC.
2. Section 437 of CrPC.
3. Section 64 of BCA 1948.
4. Section 64-A of BCA 1948.

shall expose him or her to moral danger or where his or her release would defeat the ends of justice." Releasing a juvenile on bail is essential as it prevents the disruption of his life.

Section 18 dealt with "Bail and custody of juveniles" under the 1986 Act, and is reproduced hereunder :

"(1) When any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.



(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home or a place of safety in the prescribed manner (but not in a police station or jail) until he can be brought before a Juvenile Court.

(3) When such person is not released on bail under sub-section (1) by the Juvenile Court it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

Hence, even under the 1986 Act, it was obligatory upon the Juvenile Court to release the juvenile on bail except in certain prescribed instances. This provision also clarifies that a juvenile under no circumstances can be kept in a police lock-up or jail. A similar provision for bail existed under the 2000 Act[5] with minor modifications, viz., (i) a juvenile could not be released on bail if such release exposed him to "moral, physical or psychological danger", and (ii) the police were obligated to place a juvenile only in the Observation Home, and not in a "place of safety".

5. Section 12 of JJA 2000.

The bail provisions remained on paper; the reality was very different. A vast number of juveniles were refused bail or could not avail of the bail granted as JJBs were conservative, and did not adhere to the essence of juvenile legislation. Though bail was mandatory, in most cases it was not granted on grounds such as severity of offence or apprehension that he may abscond, which grounds though relevant in the case of an adult offender are not applicable in the case of juveniles. Furthermore, in the event of bail being ordered, the Juvenile Court or JJB always imposed a condition that the juvenile should furnish sureties for large amounts. This, though the law allows the granting of "bail with or without surety". As most juveniles have no family or organisational support, they are unable to find a suitable person to stand surety, and are therefore unable to avail of the bail granted. Moreover, JJBs insist that a parent or local guardian files a bail application and takes charge of the juvenile when he is released on bail, and those having neither are unable to seek protection of the mandatory bail provision. Some juveniles with family support are unable to apply for bail as their families are unable to engage the services of a lawyer for want of financial resources. So juveniles continued to languish in Observation Homes till completion of their inquiries, despite legislature intending that they be released on bail at the earliest.

Taking note of this dichotomy, the 2006 amendment to the 2000 Act has inserted that a juvenile may when released on bail be "placed under the supervision of a Probation Officer or under the care of any fit institution or fit person." [6]

"12. Bail of juvenile. - (1) When any person accused of a bailable or non- bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.



6. Section 12(1) of JJA 2000.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."



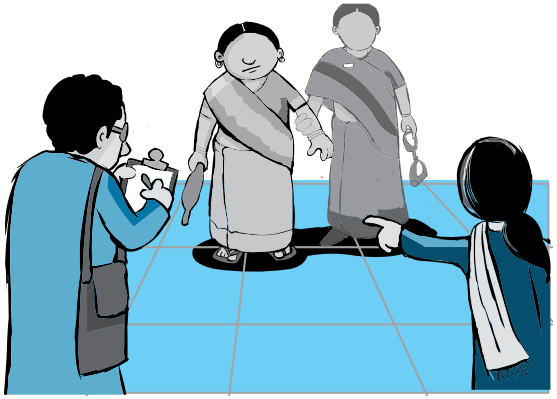
It is hoped that this amendment results in a greater number of juveniles being released on bail : those not having parents or local guardians, or those unable to furnish surety can take advantage of this new insertion in the law. A fit institution or a fit person willing to take temporary care of a juvenile pending inquiry may file a bail application before JJB. JJBs should not wait for a bail application to be filed on behalf of a juvenile, they should be pro-active and suo-moto grant bail on befitting conditions.

The Beijing Rules provide that "Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time"[7] and "Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home."[8] At clause 10.2, the Beijing Rules provide that upon apprehension of a juvenile, a judge or other competent body should without delay consider the issue of release of the juvenile.

The Indian courts have repeatedly held that bail can only be refused to a juvenile on the three prescribed grounds[9], and not on the grounds of heinousness of offence[10] or prima facie proof of guilt[11] .

7. Clause 13.1 of the Beijing Rules.
8. Clause 13.2 of the Beijing Rules.
9. *Dattatray G. Sankhe vs. State of Maharashtra & Ors.* : 2003 AllMR(Cri) 1693 (Bombay); *Ranjit Singh vs. State of H.P.* : 2005 CriLJ 972 (H.P.).
10. *Vikky alias Vikram Singh vs. State of U.P.* : 2003 CriLJ 3457 (Allahabad); *Vijendra Kumar Mali, etc. vs. State of U.P.* : 2003 CriLJ 4619 (Allahabad).
11. *Rahul Mishra vs. State of M.P.* : 2001 CriLJ 214 (M.P.).

# CHAPTER 8



## ORDERS THAT MAY BE PASSED BY JJB AGAINST JUVENILE

"A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."[1]

Juveniles in conflict with law are subject to the same substantive law[2] as are adult criminals, but their treatment is different. The juvenile justice system stresses on future welfare of the juvenile rather than on punishment for past misdemeanours. As reformation and rehabilitation is the main intent of the juvenile justice system, on being satisfied, after inquiry, that a juvenile in conflict with law has committed an offence, the JJB is required to pass orders that adhere to the spirit of juvenile legislation. Section 15 of JJA 2000 provides for various sorts of orders that the JJB can pass depending on the individual juvenile's situation. Section 16 of JJA 2000 categorically states that "no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security". Similar provision was contained in the different Children Acts. For example, section 68 of BCA 1948 prohibited the sentencing of a youthful offender to (i) death, (ii) transportation, (iii) imprisonment.

Section 15(1) of JJA 2000 has a wide range of orders that the JJB can pass from admonition and counselling to confinement in a Special Home, and is reproduced hereunder :



1. Article 40(4) of CRC.
2. Substantive law is the "basic law of rights and duties (contract law, criminal law, tort law, law of wills, etc.) as opposed to procedural law (law of pleading, law of evidence, law of jurisdiction, etc.)" : Black's Law Dictionary, West Publishing Co., 6th Edition, pg.1429.

"15. Order that may be passed regarding juvenile.- (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;



(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years :

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit."

If a juvenile is released under section 15(1) (d), (e) or (f) of JJA 2000, the JJB may direct that the juvenile in conflict with law shall remain under the supervision of a PO and may impose conditions for the supervision of the juvenile[3] , e.g., the juvenile may be directed to attend before the PO once a week. Due to the wide range of dispositions offered by juvenile legislation, there should be checks to ensure that there is some conformity in the orders passed and that they are not subject to the philosophy, biases and preferences of the JJB member. Hence, juvenile legislation mandates that at least

3. Section 15(3) of JJA 2000.

two members, one of whom should be the Principal Magistrate, should be present at the time of final disposal of the case[4]. The disposition imposed upon the juvenile should be commensurate with the circumstances of the offender, and not only with the crime committed, hence the importance of the social work member to be present at the time of final disposal.

Majority of the juveniles adjudged delinquent by JJBs are released on probation to the care of a parent or guardian. Release of a juvenile on probation of good conduct allows him to serve his sentence in the family setting, sometimes under the supervision of the P O. Community orders, as probation orders are sometimes called, contain an implied threat that if the juvenile's behaviour is not as promised, the PO may take action proportionate to the breach, viz., warn the juvenile, seek orders to increase the intensity of supervision, institutionalise the juvenile. A study of Observation Homes and Special Homes in Maharashtra conducted by Neela Dabir and Mohua Nigudkar[5] reflects that in 1999 out of the 1,683 juvenile cases disposed, in 680 cases juveniles were released on probation under the care of their parents or guardians, and in 241 cases under the care of fit-institutions. In 2000, out of the 1,622 cases disposed, in 663 cases juveniles were released on probation to their parents or guardians and 142 juveniles to fit-institutions. In 2001, out of the 2,154 cases disposed, 679 juveniles were released on probation to their parents or guardians and 75 to fit-institutions. For the years 1999, 2000 and 2001, the study showed that 313, 418 and 456 juveniles were ordered to be placed in Special Homes.

Prior to the 2006 amendment, there was some ambiguity in the law as to the period for which a juvenile could be detained in a Special Home, but the judicial trend[6] was that a juvenile who had crossed the age of 18 years should not be incarcerated in a Special Home. This gave rise to a situation where a juvenile who on the date of offence was 17 years 10 months of age and on completion of inquiry had crossed the age of 18 years could not be placed in a Special Home though such detention was in the opinion of the JJB an appropriate mode of treatment for that juvenile. By the 2006 amendment, such juvenile can be detained in a Special Home for a maximum period of 3 years.



4. Proviso to section 5(3) of JJA 2000.

5. *Children in Conflict with the Law and the Juvenile Justice (Care and Protection of Children) Act 2000 –A Study of Observation Homes and Special Homes in Maharashtra,* Neela Dabir and Mohua Nigudkar (Sponsored by Dorabji Tata Trust, Mumbai-April 2004), pg.21.

6. *Gurpreet Singh vs. State of Punjab* : (2005)12 SCC 615; 2006 CriLJ 126 (SC).

It is important to note that it is internationally documented that incarceration of a juvenile in a detention facility should be resorted to only in exceptional cases and for a minimal period. Clause 9.1 of the Beijing Rules emphasizes, "The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period." The United Nations Guidelines for the Prevention of Juvenile Delinquency[7] also states accordingly, and the relevant portion is reproduced below :

"46. The institutionalisation of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations :

(a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization."

Hence, it is only in the absence of parents or guardian, or when the parents or guardian are not found fit to be given the care of the juvenile, or when non-institutional modes of disposition could cause physical or psychological danger to the juvenile, that the juvenile should be institutionalised.

Instead of confining a juvenile to a Special Home, in cases where the juvenile requires special care and attention, the juvenile could be released under the charge of a fit institution under section 15(1)(f) of JJA 2000. Special Homes are overburdened, and therefore, may not be in a position to provide a particular juvenile with the required care and attention. In such a case it would be appropriate to place the juvenile with a fit institution that is willing to take charge of the



7. Also known as the *Riyadh Guidelines* was adopted by the General Assembly on 14th December 1990.

juvenile and is equipped with the requisite facilities. "Fit institution" is defined under the 2000 Act as amended in 2006 to mean "a governmental or a registered non-governmental organization or a voluntary organization prepared to own the responsibility of a child and is found fit by the State Government on the recommendation of the competent authority."[8] Thus any organization that has a suitable programme and is willing to take responsibility of the juvenile may be given the charge of a juvenile if the JJB believes that such programme will aid in the rehabilitation of the juvenile. It is not that the organization in order to be approved as a fit institution must have a closed residential structure. The organization to be so accepted must be innovative to conceptualise a good rehabilitation plan to benefit a particular child who is to be given in its charge.

If a fit institution under whose care a juvenile is placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile, the fit institution may bring the same to the notice of the JJB; the JJB has the power, after inquiry, to transfer the juvenile to a Special Home[9]. The 2006 amendment has altered the previous definition of "fit institution" in as much as it is now for the State government to declare on the recommendation of the JJB, an organisation as a fit institution, whereas earlier it was for the JJB alone to declare an organisation as a fit institution. By the 2006 amendment, the JJB is required to place a juvenile only with an organisation that has been declared a "fit institution" by the State government. In case the JJB is of the opinion that a juvenile be placed with an organisation having an approriate programme for his rehabilitation, the JJB will have to seek approval of the State government, and it is only after the approval is granted that the juvenile can be placed with such organisation. This process is time consuming and will result in inordinate delay in the rehabilitation of a juvenile. To circumvent this procedure, a representative of an organisation may seek the care of a juvenile as a "fit person" under section 15(1)(e) of JJA 2000. Moreover, State governments may under their respective Rules delegate to the JJB the power to declare an institution as fit institution. It is also apprehended that juveniles will be foisted on fit institutions by the JJB or State governments, thereby defeating the raison d'etre of catering to the special needs of a particular child.

8. Section 2(h) of JJA 2000.
9. Proviso to section 15(3) of JJA 2000.

As earlier mentioned, the preferred mode of disposition is releasing the juvenile on probation of good conduct under section 15(1)(e) of JJA 2000, i.e., to the care of a parent or guardian. Does that mean that in the absence of a parent or guardian, the only disposition mode for a juvenile is institutionalisation. Section 15 (1) (e) itself covers such a situation. In such case, the care of the child may be handed over to a fit person. A fit person could be an adult relative or friend of the juvenile or a representative of an organisation who is eager to take responsibility of the juvenile and whom the JJB finds suitable for such purpose[10]. A juvenile when released to the care of a fit institution or fit person is generally placed under the supervision of a PO, and the PO may be called upon to periodically file progress reports with the JJB. The fit institution or fit person is also directed to submit periodic reports to the JJB detailing the progress of the juvenile under their charge. The JJBs should identify fit persons and fit institutions who are willing to receive juveniles, and have appropriate programmes for their rehabilitation. It is always in the interest of the juvenile to be exposed to a good rehabilitation programme so that on release he is able to earn a living, and not lured into a life of crime.



The JJB may pass an order whereby a juvenile may be detained in a place of safety instead of a Special Home. "Place of safety"[11] means any place or institution (not being a police lock-up or jail), the person in charge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile. It is only in rare cases that a juvenile may be confined in a place of safety instead of a Special Home, and that too only in the following conditions:

"(i) the juvenile has attained the age of 16 years; and

(ii) the offence committed is of a serious nature or the juvenile's conduct is improper; and

(iii) that it would not be in the interest of the juvenile or of the other juveniles in the Special Home to send him there; and

(iv) the period of detention shall not exceed the period stipulated under section15(1)(g) of JJA 2000; and

(v) the place of safety should not be a police lock-up or jail; and

10. Section 2(i) of JJA 2000.
11. Section 2(q) of JJA 2000.

(vi) the person in-charge of the place of safety should be willing to temporarily receive and take care of the juvenile; and

(vii) the JJB approves of such detention facility as being a 'place of safety'"[12].

It is not that every juvenile who has committed murder or rape should be kept in a place of safety. Incarceration in a place of safety should be ordered only if it would be dangerous to keep the juvenile with other juveniles because of the peculiar nature of the offence committed or the behaviour of the juvenile.

"Fine" as a sentencing option was introduced due to the belief that it hits where it hurts most, i.e., in the pockets. Its applicability to juvenile legislation should hence be limited only to those cases where the juvenile is earning an income. A parent or guardian paying a fine in no manner affects the juvenile. "Reparation" is an important part of reformation. The accused is made to do something that is socially useful; which in turn expresses his willingness to give of himself to society as also his respect for fellow human beings. Unfortunately, the performing of community services is an order rarely passed by the JJB. The juvenile could be ordered to report once a week for two hours before an NGO involved in community service and the NGO assures that the juvenile will be engaged in some public activity. The Chennai JJB has under section 15(1)(c) of JJA 2000, ordered juveniles on the weekends to teach children in the Observation Home and Children's Home to read and write.

Any order passed by the JJB should be in writing, and should state the reasons as to why the JJB has so decided. If any member of the JJB does not agree with the order passed by the majority, such member's dissent along with his justification should be recorded in the order.



## CONSTITUTIONAL AND PROCEDURAL SAFEGUARDS

Merely because a juvenile is not treated severely under juvenile legislation does not mean that he should be deprived of basic Constitutional and procedural safeguards that an adult is entitled to. The relevant clause of the Beijing Rules that deals with this aspect is reproduced below :

12. Section 16 of JJA 2000

"7.1.Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings."

But care should be taken that the juvenile justice system with an emphasis on Constitutional and procedural safeguards does not loose its essence and turn into a less harsh form of the criminal justice system. The Supreme Court has observed in Kent vs. United States [383 U.S. 541, 546 (1966)], "the child receives the worst of both worlds : he gets neither the protection accorded to the adults nor the solicitous care and regenerative treatment postulated for children."[13] Fortunately, juvenile legislation in India has tried to maintain the balance.



13. *Bad Kids : Race and the transformation of the Juvenile Court,* Barry C. Feld, Oxford University Press (1999), pg. 109.

# CHAPTER 9

## APPEAL

"The word 'appeal' means the right of carrying a particular case from an inferior to a superior Court with a view to ascertain whether the judgment is sustainable."[1] It is an "application for the judicial examination by a higher court of the decision of any inferior court."[2] The statute prescribes the court or authority before which an appeal is to be preferred, and the time within which the appeal is to be filed.

Under JJA 2000, any order passed by the JJB may be challenged in appeal before the Sessions Court. The appeal is to be filed within thirty days of the JJB's passing the order.

"52. Appeals.- (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session:

Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

An appellant is the party who files an appeal as he is aggrieved by the JJB's order.

Section 52(2) of JJA 2000 bars the filing of an appeal from an order passed by the JJB acquitting the juvenile. Hence, an order of acquittal is a final order that cannot be challenged in appeal before the Sessions Court. Section 52(3) of JJA 2000 bars the filing of a second appeal from an order passed in appeal by the Sessions Court. Hence, an order of conviction can only be challenged once by the juvenile.

The Limitation Act 1963 deals with the computation of the stipulated period within which the appeal is to be filed. The period of thirty days is to be calculated from the day after that on which the JJB passes its order.[3] The days spent for obtaining certified copy of



1. *The Code of Criminal Procedure*, Ratanlal & Dhirajlal (Eighteenth Edn.) 2006, Wadhwa&Co.– Nagpur, pg.1329.
2. *A Concise Dictionary of Law – Second Edition*, 1990, Oxford University Press, pg.24.
3. Section 12 of the Limitation Act 1963.

JJB's order is to be excluded whilst computing the limitation period, but the days prior to making an application for certified copy is to be included[4] . Thus, an application for certified copy of the order should be made as soon as the order is passed. For example, the JJB passes its order on 1st March 2006, an application for certified copy is made on 5th March 2006 and the certified copy of the order is received on 15th March 2006 : in such case the limitation period expires on 7th April 2006. A copy of an order authenticated by the court or any authority as being a true copy of the order passed by it is called a "certified copy" of the order. If the limitation period expires on a day when the appellate court is shut, the appeal may be preferred on the day the appellate court reopens[5]. The party aggrieved by the JJB's order, or his advocate may make an application before the JJB seeking a certified copy of the order passed by it. Furthermore, the appellant is required to attach to the appeal application, a certified copy of the JJB's order that is being challenged.

As under the provision of section 52(1) of JJA 2000, section 5 of the Limitation Act also gives the superior court the power to condone delay when satisfied that there was adequate reason for the delay.

A provision identical to section 52 was contained in JJA 1986[6] . Under BCA 1948, only the final order passed by the Juvenile Court or the Court having the powers of a Juvenile Court could be challenged in appeal[7], and the appeal was to be preferred within 90 days[8]. Subsequent juvenile legislation allows the preferring of an appeal before the Sessions Court within thirty days from any order passed by the competent authority.

## REVISION

Under juvenile legislation, the High Court has been empowered with revisional jurisdiction to examine the legality or propriety of any order passed by the JJB or the Sessions Court.

"53. Revision. – The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court Session has passed an order for the purpose of satisfying



4. Ibid.
5. Section 4 of the Limitation Act 1963.
6. Section 37 of JJA 1986.
7. Section 94 of BCA 1948.
8. Section 96(1) of BCA 1948.

itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:
Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

A provision identical to section 53 was contained in JJA 1986[9].

Ordinarily, a finding of guilt passed by the JJB is challenged in appeal before the Sessions Court, thereafter the order passed in appeal by the Sessions Court may be questioned by either party before the High Court in revision. However, any person aggrieved by an order passed by the JJB may directly file a revision application to the High Court. In so doing, the party aggrieved by a finding of guilt loses the opportunity to challenge the order twice, once in appeal and next in revision.

A revision application before the High Court may be filed by the juvenile from an order passed by the Sessions Court confirming the JJB's order.

## POWERS OF THE HIGH COURT AND SESSIONS COURT UNDER JUVENILE LEGISLATION

Section 6(2) of JJA 2000 :

"The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise."

This provision allows the High Court and the Sessions Court to determine issues and pass orders regarding a juvenile when the same is brought before them in appeal, revision or otherwise. The word "otherwise" is very wide and empowers the High Court and the Sessions Court to entertain any petition or application dealing with juveniles in conflict with law and pass orders thereon without remanding the issue for reconsideration to the JJB. A provision similar to section 6(2) was contained in JJA 1986[10] .



9. Section 38 of JJA 1986.
10. Section 7(3) of JJA 1986.

# CHAPTER 10

## APPLICATIONS BEFORE JJB ON BEHALF OF JUVENILE



Different types of applications may be filed before JJB on behalf of juveniles. Such applications may seek reliefs pending inquiry, or on completion of inquiry, i.e., during the juvenile's stay in the Special Home.

## BAIL APPLICATIONS

Section 12 of JJA 2000 deals with "Bail of juvenile", and has been dealt with in detail under Chapter 7.

## DISCHARGE APPLICATIONS

If no case has been made out against the accused in the charge-sheet submitted by the police, the accused may file an application seeking that he be discharged from the case. In a summons case triable by a Magistrate, the Magistrate can stop proceedings at any stage and acquit or discharge the accused under section 258 CrPC.

A discharge application can be filed for a juvenile before JJB under section 258 CrPC. Section 54(1) of JJA 2000 provides for JJB to "follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases" whilst conducting an inquiry under the Act. Section 4(2) states that JJB "shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class".

Section 258 CrPC :

"Power to stop proceedings in certain cases.- In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

Hence, JJB having the powers of a Magistrate is empowered to stop the inquiry at any stage after the submission of charge-sheet and acquit or discharge the juvenile. The JJB can act in such fashion suo-moto or on an application being filed on behalf of the juvenile. For example, if the prosecution continuously fails to present their witnesses before the JJB, the Board may invoke section 258 CrPC to stop the inquiry. Another example, the charge-sheet reflects an adult as being the main accused, and the juvenile to have abetted or aided the offence, and the Magistrate acquits the adult accused, the JJB may stop the proceedings and acquit or discharge the juvenile depending upon the stage of inquiry. The invoking of section 258 CrPC by JJB results in expeditious disposal of juvenile cases, especially when an inquiry is not going to yield any evidence against the juvenile.

## LEAVE OF ABSENCE APPLICATIONS

A juvenile in an Observation Home or Special Home may in special circumstances be permitted by JJB to temporarily leave the institution.

Section 59(2) of JJA 2000 :

"The competent authority may also permit leave of absence to any juvenile or the child, to allow him, on special occasions like examination, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature, to go on leave under supervision, for a period generally not exceeding seven days, excluding the time taken in journey."

A leave of absence application is to be filed by or on behalf of juvenile, and JJB may allow the application on certain terms and conditions. For example, the juvenile may be

granted leave of absence on a parent executing a bond and undertaking that the juvenile will return to the Observation Home or Special Home on expiry of the period specified in the JJB's order. A leave of absence application may be filed pending the juvenile's inquiry or on completion of inquiry, during his incarceration in the Special Home. The reasons prescribed in section 59(2) of JJA 2000 is not an exhaustive list for granting leave of absence to a juvenile. Leave of absence may be granted to a juvenile for any purpose found fit by JJB.

## RELEASE OF JUVENILE INCARCERATED IN SPECIAL HOME



Under JJA 2000, a juvenile found to have committed an offence and placed in a Special Home may be released by JJB under the care of parent or guardian or any other person named in JJB's order.

Section 59(1) of JJA 2000 :

"When a juvenile or the child is kept in a children's home or special home and on a report of a probation officer or social worker or of Government or a voluntary organization, as the case may be, the competent authority may consider, the release of such juvenile or the child permitting him to live with his parent or guardian or under the supervision of any authorized person named in the order willing to receive and take charge of the juvenile or the child to educate and train him for some useful trade or calling or to look after him for rehabilitation."

Thus, the parent or guardian or any other person willing to take charge of the juvenile who has been placed in a Special Home may so submit to JJB through the PO or social worker or voluntary organization or Women & Child Development Department of State government for release of juvenile.

## TRANSFER OF JUVENILE FROM ONE SPECIAL HOME TO ANOTHER

Section 56 of JJA 2000 :

"Power of competent authority to discharge and transfer juvenile or child.-The competent authority may, notwithstanding anything contained in this Act, at any time, order a child in need of care and protection or a juvenile in conflict with law to be discharged or transferred from one children's home or special home to another, as the case may be, keeping in view the best interest of the child or the juvenile, and his natural place of stay,

either absolutely or on such condition as it may think fit to impose.

Provided that the total period of stay of the juvenile or the child in a children's home or a special home or a fit institution or under a fit person shall not be increased by such transfer."

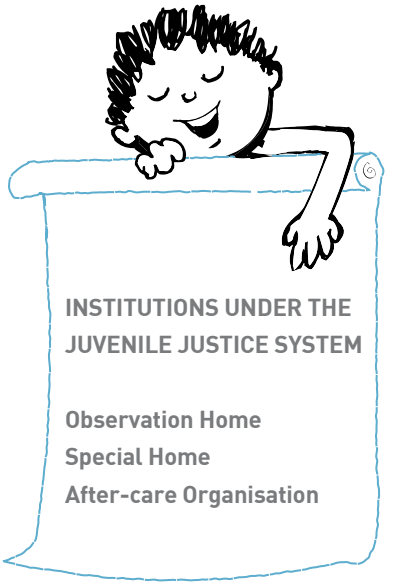
An application for transfer of a juvenile from one Special Home to another is to be made before the JJB in the interest of the juvenile, and not as an administrative measure. For example, a juvenile whose family resides in Nagpur is found to have committed an offence in Mumbai, and is ordered to be placed in a Special Home in Mumbai for two years; the juvenile's parent may file an application before the JJB seeking that the juvenile be transferred to a Special Home in Nagpur.

Section 57 of JJA 2000 :

"Transfer between children's homes under the Act, and juvenile homes of like nature in different parts of India.-The State Government may direct any child or the juvenile to be transferred from any children's home or special home within the State to any other children's home, special home or institution of a like nature or to such institutions outside the State in consultation with the concerned State Government and with the prior intimation to the Committee or the Board, as the case may be, and such order shall be deemed to be operative for the competent authority of the area to which the child or the juvenile is sent."

It is incumbent that the interest of the juvenile be considered whilst passing such transfer order, and to ensure this end, JJB's prior consultation is a prerequisite.

# CHAPTER 11






## INSTITUTIONS UNDER THE JUVENILE JUSTICE SYSTEM

Whatever be the noble reasons for institutionalising a child, a child perceives the loss of freedom as punishment in itself. Juveniles, most of whom have been on their own and making their choices since a very young age, do not welcome the protection advanced by the juvenile justice system, and look upon it as an intrusion.

Traditional reasons for sentencing juveniles to institutions was for their rehabilitation, it was believed that academic and vocational training will result in those released being less delinquent[1] . The Beijing Rules, reflect this philosophy when it deals with the objectives of institutional treatment.

"The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society."[2]

And the Beijing Rules further go on to state, "Juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex, and personality and in the interest of their wholesome development."

Lundman observes that the reason for institutionalisation of juvenile offenders has since changed; the focus now is on revenge, incapacitating the juvenile from continuing a

1. *Prevention and Control of Juvenile Delinquency,* Richard J. Lundman, Oxford University Press, 2001, 3rd Edn., pg.29.
2. Rule 26 of *the Beijing Rules.*

life of crime and deterrence. Institutionalisation is being advocated not for reformation or rehabilitation of juveniles, but that, "Doing time in a juvenile correctional facility is painful and it almost certainly is the pain, rather than the treatment all institutions provide, that makes the lasting impression." By institutionalising juveniles the state sends a message into society that it intends to deal strictly with juveniles, especially those who have committed serious offences, such as murder and rape. Incarceration is a means to placate the fearful public that strong action is being taken against juvenile offenders, and at the same time rationalize it by propounding that treatment within the institution is for the future welfare of the institutionalised child.

The preamble to the 2000 Act spoke of "ultimate rehabilitation through various institutions established under this enactment". This preamble has been altered by the 2006 amendment in as much as rehabilitation of the juvenile is the ultimate goal, but it is to be attained via different modes, not only through institutions.

It is documented that institutions rarely provide conditions favourable for rehabilitation. Maintenance of discipline is inherent in an institutional setting, and could result in the use of force or threats; such an environment is not conducive for rehabilitation of a child. Therefore, to ensure that a juvenile does not undergo prolonged institutionalisation, bail is to be granted at the earliest in most juvenile cases and there is a wide range of orders, other than institutionalisation, that a JJB can pass at the time of final disposal. Furthermore, juveniles perceive institutionalisation as punishment, hence there have been cases of juveniles escaping from the confines of an Observation Home or Special Home, or from the care of a fit person. In such case, under section 22 of JJA 2000, the juvenile has to be sent back to the custody of the Observation Home or Special Home or fit person. The juvenile is not to suffer any proceedings on account of his escape.

Child psychologists believe that 10 to 18 years is the formative stage. The inputs and exposure during these years will instruct the child's personality development. Therefore, it is necessary to examine the techniques and means employed by institutions in their treatment programmes. The test of these programmes is whether the intervention will assist children to overcome the forces that push them into a life of crime, and check recidivism.

Institutions having distinct roles are to be established for the treatment of juveniles during their journey through the juvenile justice system.

## JUVENILES NOT TO BE KEPT IN POLICE LOCK-UP OR JAIL

Under no circumstances is a juvenile to be kept in a police lock-up or jail. This has been the sentiment of juvenile legislation since the enactment of the Children Acts. Separate detection facilities were established for placement of youthful offenders under BCA 1948; pending enquiry they were to be detained in Approved Centres and those found to have committed an offence were to be kept in Classifying Centres. Distinct institutions for the placement of juveniles continued under JJA 1986 and JJA 2000.



Reformation and rehabilitation, instead of penalising the child, is the essence of juvenile jurisprudence. Towards this end it is necessary to place the juvenile in a specialised setting where his development is of paramount importance. If adult offender and juvenile are kept together there is a danger of the juvenile being corrupted by hardened criminals or being abused by them. The harsh treatment meted to inmates in police lock-ups and jails is not commensurate with the juvenile's age and is likely to scar him.

## OBSERVATION HOME

An Observation Home is an institution established for the temporary reception of juveniles in conflict with law during the pendency of their inquiry before the JJB[3] .

The law provides for an Observation Home to be set-up in each district or a group of districts by the State government or by a voluntary organization under an agreement with the State government. The establishment of Observation Homes by voluntary organizations should not be advocated as the maintenance of correctional institutions is an integral part of law and order and should remain the responsibility of the state. At the same time voluntary organizations should be encouraged to provide their expert services to benefit the juveniles housed therein.

It is preferable for the JJB to hold its sittings at the Observation Home. This prevents delay in disposal of juvenile cases because the presence of the juvenile not released on bail is guaranteed on each JJB date; he is not at the mercy of police escort for production before the JJB.

3. Section 8 of JJA 2000.

Juveniles are to be segregated in an Observation Home according to their age : 7 to 12 years, 12 to 16 years and 16 to 18 years. This separation is essential to curtail bullying of the younger juveniles at the hands of the older ones, and to protect the young juveniles from the influence of the older juvenile offenders, who may have committed violent offences or have been consistently engaged in criminal activities. This segregation takes place pursuant to preliminary inquiries that are conducted in the Reception Unit of the Observation Home where the juvenile is initially kept for classification according to age, and physical and mental status. Separate Observation Homes are to be maintained for boys and girls.

"Children in Observation Homes should not be made to stay long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self-confidence and picking of human virtues."[4]

It is hoped that very few juveniles would remain in the Observation Home pending their inquiry as most would have been released on bail. It is also hoped that the period of stay in the Observation Home would be short as the inquiry is to be expeditiously completed. Unfortunately, the actuality is very different. Observation Homes are filled to the brim as many juveniles are unable to avail of the bail provisions, mainly because they are migrants having no family or monetary support, and therefore unable to access legal representation or provide surety to the satisfaction of the JJB. Furthermore, JJBs rarely dispose of juvenile cases within the period contemplated by law and juveniles continue to languish in the Observation Home for long periods. Hence, it is imperative to provide the juvenile with educational and vocational training in the Observation Home so that his stay there is not wasted. State governments in their respective Rules framed under juvenile legislation are to prescribe the standard to be maintained in Observation Homes, and the measures to be taken for the rehabilitation and social integration of the juvenile. In most Observation Homes the juvenile is merely waiting for his inquiry to be completed with no capacity-building inputs, such as life-skill or vocational or educational training. When questioned about the apathy, the answer unfailingly is that there is no need for such programmes in the Observation Homes as under law the juvenile's stay there is a very limited one.



4. *Sheela Barse vs. Secy., Children's Aid Society :* (1987) 3 SCC 50; 1987 SCC (Cri) 458; AIR 1987 SC 656.

It is necessary to recollect the affirmations made in the Beijing Rules :

"13.1. Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home."

Under clause 13.5, it is set-out that "While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality."



## SPECIAL HOME

A Special Home is to be established "for reception and rehabilitation of juvenile in conflict with law under this Act."[5] On completion of inquiry, if the JJB is of the opinion that a juvenile should be institutionalised, he is required to be placed in a Special Home for his treatment.

The State government is required to set-up Special Homes in a district or group of districts by itself or under agreement with a voluntary organization. Under the 1986 Act, only the State government could establish Special Homes and Observation Homes[6]. The entry of voluntary organizations in the establishment or management of these detention facilities is vociferously opposed because the potential for abuse in a close institution is very high and the levels of accountability of private entities would be very low.

Placement of a juvenile in a Special Home is under the law restricted to a period of 3 years. During their stay in the Special Home a juvenile should be able to avail of education or vocational courses depending upon the child's aptitude, as also facilities for sports and co-curricular activities such as music, painting, reading, drama, yoga, etc. An incarcerated juvenile must benefit from his stay in a Special Home as otherwise his detention will amount to punishment and the object of juvenile legislation will be defeated.

5. Section 9 of JJA 2000.
6. Section 10 and 11 of JJA 1986.

Moreover, the stay in the Special Home, as also the Observation Home, should lead to realization in the child that what he had done was wrong. It is not only education or vocational training that can bring about this change. He should whilst in the institution be under the guidance of a PO, and in certain cases intensive counselling, and at the same time undergo life-skill training to help him face the challenges he will face in the big bad world.

## AFTER-CARE ORGANISATION

After-care organisations are for the care, guidance and protection of juveniles in conflict with law or children in need of care and protection who have completed their term in the Special Homes or Children's Homes, and their rehabilitation process is not completed. After-care is the means and rehabilitation is the end[7] .

"The objective of these organisations shall be to enable such children to adapt to the society and during their stay in these transitional homes these children will be encouraged to move away from an institution-based life to a normal one."[8]

It is the PO who will refer a juvenile to the After-care Home, and monitor his progress in such facility. As a juvenile's stay in an After-care Home is to advocate independence and prepare him to face the world without institutional support, the law envisages that such stay should not exceed 3 years[9].

A juvenile cannot against his wish be admitted to an after-care programme.

## INSPECTION OF INSTITUTIONS ESTABLISHED UNDER THE JUVENILE JUSTICE SYSTEM

Observation Homes and Special Homes are closed institutions, hence, it is essential that some checks be put in place to ensure transperancy and accountability in their functioning in order to ensure that the institutions are not mal-administered and that the children housed therein are not ill-treated. The 1986 Act provided for the nomination by the State government of 3 non-official Visitors for each home established under the Act; these Visitors were required to periodically visit the homes and submit their reports to the State government[10] . The 1986 Act had sought the establishment of 4 types of institutions : Juvenile Homes, Special Homes, Observation Homes and After-care



7. *Juvenile Justice and Juvenile Correction : Pride and Prudence*, M.S. Sabnis, Somaiya Publications Pvt. Ltd. (Bombay & New Delhi-1996), pg.344.
8. Rule 38 (5)of the Model Rules.
9. Proviso to section 44 of JJA 2000.
10. Section 54 of JJA 1986.

organisations. The Special Homes, solely housed delinquent juveniles, whereas the Juvenile Homes housed neglected children, on completion of their inquiries. Observation Homes and After-care organizations housed both the categories of children. Victims were to be appointed for each of these institutions, hence facilities for both the categories of children were monitored.

The 2000 Act has replaced Visitors with Inspection Committees[11] to be constituted at the State, district and city levels, and social auditing[12] to be conducted by parties appointed by the Central government or State governments. But these Inspection Committees and Social Auditing is only with regards to Children's Homes, and not Observation Homes and Special Homes. Under the 2000 Act, children in need of care and protection are to be placed in the Children's Homes "during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation"[13]. Surprisingly no such inspection or social audit is mandated under JJA 2000 for institutions that house juveniles in conflict with law. This is a frightening phenomenon. Are our lawmakers implying that juvenile offenders deserve what they get, even if it amounts to gross abuse. It is necessary to amend the law to open Observation Homes, Special Homes and After-care organizations to inspection and social audits.



## SPONSORSHIP

The JJA 2000 has inserted a chapter that deals with "Rehabilitation and Social Reintegration", mainly to portray that juvenile legislation does not only offer institutionalisation as a mode of rehabilitation. Chapter IV presents (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization as a rehabilitation alternative[14]. The first three options endeavour to keep a child in a family-setting to encourage his holistic growth. The first two alternatives may not be appropriate for a juvenile in conflict with law, but the third one should be resorted to in cases where the child can be treated within his family. Moreover, sponsorship could play a pivotal role in preventing delinquency.

Dabir and Nigudkar, in their study, *Children in Conflict with Law and the Juvenile Justice (Care & Protection of Children) Act 2000* have explained the concept of sponsorship as being "...a supplementary service provided to families in need. The objective of sponsorship

11. Section 35 of JJA 2000.
12. Section 36 of JJA 2000.
13. Section 34(1) of JJA 2000.
14. Section 40 of JJA 2000.

is to reach out to the family through different kinds of assistance such as monetary assistance for the children's education, school related expenses, medical help, counselling and guidance to family members and loans for small business. Thus sponsorship enables a child to stay with his / her family and is another important measure along with adoption and foster care to prevent institutionalisation of children in difficult situations."

The administrative costs of running an institution are huge. Sponsorship does away with these overheads, thus should be perceived as an attractive alternative. It has not taken off in India because of the suspicious approach of the state. The state often espouses that if monetary aid is given to the family, it will be misused and will not in any ways help the child. This view is strongly countered by those who believe that parents wish the best for their children, hence the money will be expended towards the needs of their children. To satisfy their doubts, the State governments can formulate an arrangement whereby there is monitoring of the manner in which the financial aid is utilized by families elected for sponsorship.

The few sponsorship schemes that have been formulated cover children in need of care and protection. Sponsorship schemes should be extended to juveniles in conflict with law as it will support their rehabilitation, especially when data shows that most juvenile offenders belong to the lower income group. Crime in India 2001[15], gives the family income break-up of the 33,628 juveniles arrested during the year 2001 : 23,420 juvenile offenders belonged to families whose annual income was less than Rs. 25,000/-; 5,325 to families whose annual income was between Rs. 25,001/- and Rs. 50,000/-; 4,082 to families whose annual income was between Rs. 50,001/- and Rs. 1,00,000/-; 569 to families whose annual income was between Rs. 1,00,001/- and Rs. 2,00,000/-; 150 to families whose annual income was between Rs. 2,00,001/- to Rs. 3,00,000/-; and 82 belonged to families whose annual income was above Rs. 3,00,000/-. Moreover, 7,898 of them were illiterate, and only 15,943 of them had attended primary school.

The aim of sponsorship is to prevent the plucking of children from their familiar environment and their consequent placement in institutions, whilst at the same time ensuring that their essential needs are met. If the parents or guardians due to monetary constraints are unable to fulfill children's

15. Published by National Crime Records Bureau, Ministry of Home Affairs, Government of India.

essential needs, it is necessary for the state to step-in so that the child's development is not hindered, without removing the child from a surrounding of familial love and protection.

The authors of JJA 2000 have unwisely twisted and converted this concept of sponsorship into a programme for the funding of institutions.

"43. Sponsorship.-(1) The sponsorship programme may provide supplementary support to families, to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life."

Often government functionaries have been heard to say that sponsorship is the funding of individual children in institutions by private parties, i.e., private subsidy for the upkeep of the child in an institution. Pay Rs.500/- per month and "adopt" a child. The institution guarantees to send you a smiling picture of the child once a year along with a thank-you card made by the child himself. This is a total misinterpretation of "sponsorship" and its purpose. The concentration should be on support to families so that children are not torn apart from their parents under the guise of correction or rehabilitation. Under the Model Rules, State governments are to "identify families and children at risk and provide necessary support, services in the form of sponsorship for child's education, health, nutrition and other development needs."[16]



16. Rule 37 (2) of the Model Rules.

## VISIT TO THE JUVENILE DETENTION CENTER FOR BOYS AT WERRINGTON, ENGLAND

I visited the juvenile detention center for boys at Werrington, Staffordshire, England during the summer of 2004. It was a most humbling experience. I took a bus from Keele to Werrington. The driver looked most surprised when I asked him to drop me at the bus-stop closest to the detention center. The bus had emptied out by the time it reached Werrington. Now it was just me and a wrinkled woman. It was a sleepy village at 2.00 in the afternoon when I attempted to alight at Werrington behind the wrinkled woman. The bus driver stopped me saying that my destination had not yet arrived. I watched the houses get sparser and then disappear to rolling green meadows. I was told by the bus driver that Werrington was scantly populated with a retired residency, and the institution where I was headed was on the outskirts of the village.

The bus stopped. I was told that I had reached my destination and should walk away from the road on its left side. I could see nothing on the left of the road except for a green grassy undulating landscape. I alighted and watched the bus turn back. Now it was just me and the undulating foliage and the wind. I walked up and down the waves of greenery and suddenly at a distance saw this high grey wall topped with twirling barbed-wire. It reminded me of the shots of high security American prisons I had watched in Hollywood films. For a moment I halted, but then walked briskly towards the looming wall to witness what was within. Ten minutes later I reached the gate, wrong word, the iron door. No person was manning the iron door on the outside. In fact I had not passed a single person since I left the warmth of the bus. I was early for my appointment, so I walked back and sat myself down on a stone bench that faced the institution. The stone bench was cold and I was cold. The wind got stronger as I waited for 3 o'clock.

At three I picked myself from the cold stone bench and walked back to the iron door. This time I rang the bell and waited...one minute... two minutes...three minutes...four minutes... and then a small portion on the upper part of the door slid open. I could only see a bit of a face that asked me who I had come to meet. I gave the name of my inviter. The open portion slid shut, and I was alone again. One minute... two minutes...three minutes...four minutes... five minutes...six minutes...should I go back. The upper portion slid open again. The same face or may be another asks me my name. I give it. The face asks me to repeat my name. I repeat it. I hoped my name was Anne or Jane, may be then I would have gotten entry quicker. The open portion once again slid shut.

One minute...and a grating sound...and the door opened. He was tall, burly and uniformed. A guard. A few feet behind him was the second iron door and on his left, a glass pane behind which watching were three to four uniformed male and female guards. I was told to wait as "burly" joined the others. One minute...two minutes...three minutes... four minutes... when will it end so I can return to civilization...and the second iron door in front of me opened, of course with a grating sound, and I saw the only smiling face , my inviter. He asks me to follow him. With a large bunch of keys we walk down a corridor. Every few feet he opens an iron door...the third iron door...the fourth iron door...the fifth iron door...the sixth iron door...the umpteenth iron door, and then on the left he turns and

opens another iron door, we have reached his sanctum. I slump onto a chair across him, harried, not knowing what to say. He doubts, I am sure, my bona fides, and that I had ever before entered a juvenile detention center. I hesitantly ask him where are the boys, and he smilingly answers that he will take me around. I nod in the hope to get out of the corridor and the never ending iron doors. Back down the same corridor and through the umpteenth and the first iron door...the umpteenth and the second iron door...the umpteenth and the third iron door. On the left I see another iron door but with a difference, the upper half of the door is barred and I can see into a room. There are 4 uniformed boys, aged between 16 to 18 years seated on chairs with magazines or books on their laps and they staring at the walls, whilst uniformed male guards, who outnumber the uniformed boys, stare at them. This was the reading room. We continue down the corridor and through the umpteenth and the fourth iron door...the umpteenth and the fifth iron door... the umpteenth and the sixth iron door...and suddenly into blinding sunshine and a large courtyard. On either sides of the courtyard separated by a green hedge were pretty one storied cottages all painted white with prettily curtained barred windows. This was the residential quarter. I was told that each juvenile had a room to himself. Part of the day was spent in educating oneself. The rest of the day is spent either in the gym or in the reading room, before they return to their respective rooms. Each room had a bed, a closet, a desk and a chair. At meal times the food was left on a tray outside the room. Their lives were regimented. Along one edge of the courtyard a narrow path was demarcated. The path was drawn to ensure that no boy walked alongside another. When the boys left their rooms to go to their class-rooms or work-shops, the attendants would shout "en route" and all the boys walked in single file within the narrow lane...talking was prohibited both inside and outside of classrooms.



No "namby-pamby" treatment at Werrington. It's the pain, they believed, that makes a lasting impression. Or is it actually the state's way of appeasing society's vengeance by demonstrating that they deal stringently with children who have committed a brutal offence. Today reformation and rehabilitation takes a back seat to deterrence and retribution, not only in punishing adults, but also in correcting juveniles.

Welfare of the juvenile is the principle on which all juvenile justice systems are based,

but there is variance as to how welfare is to be attained. Can one confidently say that what children are subjected to in juvenile justice systems in different parts of the globe is in the child's "best interest"...or is it in the "best interest" of society to institutionalise a child who has committed a grave crime so that he is no longer a threat. Will the treatment at Werrington, allow the child to adjust into the community on his release, or will he always remain on the periphery unable to achieve the social and economic goals venerated by the social system.

My inviter just could not fathom the problems faced by a juvenile in conflict with law in India. Why is determination of age so difficult? Why does it take an inquiry more than four months to be completed? Why do 50 boys sleep together in one room? Though he did agree that his system totally de-socialised the juvenile.

I am relieved to return to the Observation Home at Dongri, Mumbai. I peep through the wooden door manned by the attendant wearing a green pant and red checked shirt into the courtyard beyond where some boys in blue are running around, whilst others are squabbling, and yet others in classrooms talking more with each other than listening to the teacher...all doing children things. Does the contact with the juvenile justice system contribute to their leading an honest, industrious and useful life, that being the rationale for intiutionalisation in our country. I cannot say. Is it better than the treatment (or punishment) meted to the juveniles at Werrington. I cannot say. Though I can surely say that they are two different philosophies pretending to achieve the same end, to program the child to perform within the set societal norms.

# CHAPTER 12



## ROLE OF POLICE

It is mostly the police who arrests the juvenile and produces him before the JJB. It is rarely, if at all, that a juvenile is produced before the JJB by a private party or voluntary organisation. Hence, a juvenile's first contact with the juvenile justice system is through the police. A private party or voluntary organisation producing a juvenile before the JJB should preferably inform the police about such production. It is the police who investigates a juvenile case, and submits the charge-sheet before the competent authority.

The dispensing of distinct treatment to juveniles as obligated under juvenile legislation is defeated if the police treat juveniles in the same manner as they treat hardened criminals. So the Statement of Objects and Reasons of JJA 2000 includes "to create special juvenile police units with a humane approach through sensitization and training of police personnel". Accordingly, JJA 2000 envisages the setting-up of the SJPU in every district and city, and the designation of at least one police officer attached to a police station as "the juvenile or the child welfare officer".

"63. Special juvenile police unit.-(1) In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.

(2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in co-ordination with the police.

(3) Special juvenile police unit, of which all the police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children."

The Model Rules[1], visualise the SJPU at the district level to function under a juvenile or child welfare officer (of the rank of Inspector of Police) and two paid social workers, of whom one shall be a woman, having experience of working in the field of child welfare. This ensures social intervention in a juvenile case from the time of arrest. It would be optimum if the social workers appointed to assist SJPUs are trained in child psychology. In 1952, the Juvenile Aid Police Unit [JAPU] was created in Greater Mumbai, and continues as a special cell within the police force to mainly handle destitute and neglected children.

Different methods have been innovated for the establishment of SJPUs. In Karnataka State, the SJPUs are to be assisted by recognized voluntary organisations[2]. In Bangalore, SJPUs are established in two zones. Each SJPU is assisted by an organisation working with children. The SJPUs are situated at police stations, headed by a senior level police officer, and its members are the Child Welfare Officers (also called "Designated Police Officers") attached to different police stations within that zone. As soon as a juvenile offender is arrested the relevant voluntary organisation will be informed. The voluntary organisation ensures that the provisions of juvenile legislation are adhered to, and that the child enjoys the rights guaranteed to him within the juvenile justice system. In case of a minor offence, the endeavour is to "divert" the juvenile with the permission of the JJB[3]. Diversion is a process by which a juvenile offender, in appropriate cases, does not enter the juvenile justice system, and hence, is not compulsorily made to face an inquiry before the JJB.



It is necessary to examine the role of the police under juvenile legislation.

1. It is the police who apprehends the juvenile suspected of having committed an offence.

2. Immediately upon apprehension, the juvenile is to be placed under the charge of SJPU or juvenile welfare officer[4].

1. Rule 84(1) of the Model Rules.
2. Rule 12(1)(b) of the Karnataka (Juvenile Justice Care and Protection of Children) Rules 2002.
3. Rule 11(2) &(3)of the Karnataka (Juvenile Justice Care and Protection of Children) Rules 2002.
4. Section 10(1) of JJA 2000.

3. Within 24 hours of apprehension, the SJPU or the juvenile welfare officer, as the case may be, is to produce the juvenile before the JJB[5].

4. Pending production before JJB, the juvenile is to be kept in the Observation Home. Under no circumstances should a juvenile be kept in the police lock-up or jail[6].

5. The SJPU or juvenile welfare officer must inform the parent or guardian[7] or any other person of the juvenile's choice about the juvenile's apprehension.



6. The SJPU or juvenile welfare officer must also inform the PO[8] about the juvenile's arrest so that information may be obtained "regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry."

7. Section 12(2) of JJA 2000 gives the police the authority to immediately on apprehension release a juvenile on bail. The same provision was contained in JJA 1986[9] and BCA 1948[10]. But the police, however insignificant the crime alleged to have been committed, do not release a juvenile on bail as they would, an adult, alleged to have committed a bailable offence. This is the correct practice. In the case of a juvenile it is not the offence that determines whether he should be released on bail or not, but the juvenile's situation, and that can only be determined by a body having the requisite expertise and assistance. Moreover, the police's decision to grant bail may be based on extraneous reasons, and result in arbitrariness.

8. The JJB whilst considering a bail application will seek the police's response to the same. Sadly, the police almost always file their report opposing the grant of bail on some pretext or another in absolute contravention of the spirit of juvenile legislation. It has been observed that most police responses habitually oppose the grant of bail on grounds other than those prescribed under JJA 2000. Gravity of offence or likelihood of tampering with prosecution witnesses or difficulty to obtain juvenile's presence during inquiry are the reasons generally pleaded by the police to deny bail to a juvenile. It must be noted that the three conditions set out in juvenile legislation are in existence only in rare cases, but the police lack the magnanimity to accept the actuality.

5. Ibid.
6. Proviso to section 10(1) of JJA 2000.
7. Section 13(a) of JJA 2000.
8. Section 13(b) of JJA 2000.
9. Section 18(1) of JJA 1986.
10. Section 64 of BCA 1948.

9. In the absence of documentary proof of age, and juvenility not being apparent, the JJB directs the police to take the person produced for medical examination to ascertain his age. It is imperative that the PO or any other functionary of the Observation Home also accompanies the juvenile.

10. The SJPU or juvenile welfare officer investigates the matter, and files a charge-sheet before the JJB. At this stage it is essential to recall that every police station will be embodied in the SJPU through its juvenile welfare officer, and hence, assistance of the relevant police station will be taken to carry out the investigation.

11. Under juvenile legislation, the juvenile in conflict with law will always be under the charge of the JJB, and there is nothing like "police custody". Once a juvenile is produced before the JJB, the police loses control over the juvenile. If the police require to interrogate the juvenile or conduct a TIP, they will have to seek the prior permission of the JJB. Granting of such permission is at the discretion of the JJB, and if permission is given, the JJB will ensure that the interrogation or TIP is done in the presence of the PO or any other functionary attached to the Observation Home.

11. Rule 75 of the Model Rules.
12. Rule 76 of the Model Rules.

12. During inquiry, it is the police who are directed to produce the prosecution witnesses before the JJB.

13. On completion of inquiry, it is the police who escort the juvenile to the Special Home, or to his place of residence when below 18 years of age.

The police while dealing with a juvenile case should be in plain clothes, and not in uniform[11]. A juvenile should never be handcuffed[12] when brought to the Observation Home or otherwise. Such was also the case under the 1986 Act as most States had incorporated alike provision under their respective Rules framed under JJA 1986.



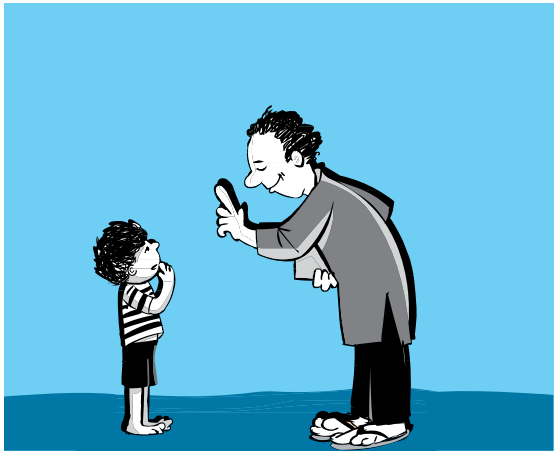
It is imperative for State governments to ensure that juvenile justice forms part of the police's training curriculum. That the law treats juveniles not in the same manner as an adult criminal, and the reasons for such distinct treatment, should be engraved in the mind of every police personnel. This will be a step towards assuring a juvenile his rights. It will also curtail the police's prevailing practice of treating juveniles as adults. It is only time that will reflect whether training changes the perspective of a police officer who is typified into believing that those who

commit crimes deserve to be treated stringently, and punished. It is not only the public, it is also policemen who believe that juvenile legislation deals leniently with those from whom society requires protection. The Model Rules provide, "Any police officer found guilty, after due enquiry, of torturing a child , mentally or physically, shall be liable to be removed from service besides being prosecuted for the offence."[13] It is hoped that the above Rule will deter physical abuse of children at the hands of the police.



13. Rule 84(11) of the Model Rules.

# CHAPTER 13



## ROLE OF PROBATION OFFICERS

As repeatedly mentioned, reformation and rehabilitation of the juvenile is the end hoped to be attained by the juvenile's contact with the juvenile justice system. It calls for balancing the juvenile's care with the control of his future behaviour. There is a fine, but distinctive difference between reformation and rehabilitation. Reformation is founded in the belief that a juvenile is capable of changing his attitudes and recognising that what he did was wrong. Rehabilitation is founded in the belief that circumstances resulted in the juvenile committing the crime, therefore the concentration is on setting right these circumstances. The focus is entirely on the juvenile and his particular circumstances. This calls for concerted attention towards an individual juvenile, and his existing familial and social environment. That's why the "principle of proportionality" underlies the decision of the JJB, and the demand for a socio-legal approach : "reaction to any case of delinquent act and to the offender should be dictated not only by the gravity of the offence but also by the circumstances of the offender and those in which the offence was committed by him."[1] The circumstances could relate to the juvenile's family situation, social status, etc.

A PO is appointed by the State government or recognized as such by the State government, or in any exceptional case, any other person, who, in the opinion of the court, is fit to act as a PO in the special circumstances of the case[2]. The Model Rules[3] authorise the competent authority to co-opt as POs, voluntary organisations and social workers found fit to render probation services. The Probation Offenders Act 1958 enumerates the "Duties of Probation Officers"[4] as

1. *Juvenile Justice and Juvenile Correction :* Pride and Prudence, M.S, Sabnis, Somaiya Publications Pvt. Ltd. (Bombay & New Delhi-1996), pg.86.
2. Section 13 of the Probation of Offenders Act 1958.
3. Rule 85 of the Model Rules.
4. Section 14 of the Probation of Offenders Act 1958.

follows:

"(a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;

(b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;



(c) advise and assist offenders in the payment of compensation or costs ordered by the court;

(d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4; and

(e) perform such other duties as may be prescribed."

The role of a PO is twofold within the juvenile justice system :

(a) to assist the JJB whilst making decisions or passing orders with regards to the juvenile; and

(b) to be a friend to the juvenile, and to assist and advise him during the probation period so that he fulfils his promise not to re-offend during this period, and, hopefully, ever again.

POs provide the JJB with information about the child, and also supervise the juveniles whom the JJB has returned to the community. The Probation Officer's Report is sought by the JJB whilst entertaining a bail application and also at the time of final disposal of the case. The main purpose of this report is to examine the juvenile's background so as to identify the reasons for commission of the offence. The order of the JJB should treat the reasons as a doctor treats an illness. This report is a social worker's evaluation of a juvenile in his familial or social environment, and whether such environment is conducive for his reformation and rehabilitation. Section 87 of the Model Rules deals with the "Duties of a Probation Officer or Child Welfare Officer or Case Worker", and states that "the probation officer shall inquire into the antecedents and family history of the juvenile or the child and such other material circumstances, as may be necessary and

submit a social investigation report as early as possible." Further, the PO is to do "follow-up of juveniles after their release and extending help and guidance to them" and to visit "regularly the residence of the juvenile or child under their supervision and also places of employment or school attended by such juvenile or child" and submit fortnightly reports. Depending on the Probation Officer's suggestions, recommendations and reports, the JJB will decide what treatment plan should be prepared for the juvenile's comprehensive rehabilitation. Hence, the Probation Officer's Report or the SIR is an important document that will determine the future treatment of a juvenile who is found to have committed an offence. Though the Probation Officer's Report has only recommendatory value, it is imperative for the JJB to peruse the same prior to taking any decision in respect of the juvenile, and to chalk its action accordingly. If the juvenile does not hail from within the jurisdiction of the JJB, the PO may take the assistance of (i) the PO having territorial jurisdiction over the place where the family resides, or (ii) an NGO working in that area. Generally, the PO interacts with the juvenile and his parent, guardian or relative whilst preparing the report. The Beijing Rules have also stressed the importance of Social Inquiry Reports :

"16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority."

Section 15 of JJA 2000 deals with orders that the JJB can pass on reaching a finding that a juvenile has committed an offence, and sub-section (2) of section 15 states as under :

"The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order."

The PO has always played a pivotal role under juvenile legislation. When BCA 1948 was in force, the youthful offender was not permitted legal representation, and it was the Juvenile Court and the PO who decided the fate of the child. The Report of the Child Welfare Officer (Probation) had to be considered by the Juvenile Court when passing orders[5]. The JJA 1986 also included "the reports made by

the probation officer" to be one of the circumstances to be considered whilst passing an order in respect of a juvenile[6]. Section 57(2) of JJA 1986 enumerated the duties of a PO as under:

"(a) to inquire, in accordance with the direction of a competent authority, into the antecedents and family history of any juvenile accused of an offence, with a view to assist the authority in making the inquiry;

(b) to visit neglected and delinquent juveniles at such intervals as the probation officer may think fit;



(c) to report to the competent authority as to the behaviour of any neglected or delinquent juvenile;

(d) to advise and assist neglected or delinquent juveniles and, if necessary, endeavour to find them suitable employment;

(e) where a neglected or delinquent juvenile is placed under the care of any person or institution on certain conditions, to see whether such conditions are being complied with; and

(f) to perform such other duties as may be prescribed."

Moreover, the PO was also empowered to visit institutions established under JJA 1986 and submit inspection reports to the State government[7]. It is felt by some that the 2000 Act has tokenized the role of a PO in favour of due process and legal procedures, and that this shift in focus could in future result in an increase in recidivism, caused due to minimal contact with POs.

"Probation is non-institutional social treatment of the adjudged juvenile or youthful or adult offender."[8] The social treatment will be prescribed by the adjudicating authority. Probation is an alternative to institutionalisation, and is the most often utilised sentencing option for juveniles. The juvenile makes a promise before the JJB that he will not re-offend. His word is accepted by the JJB, and he is released on the assumption that he will fulfil his promise and not re-offend during a stipulated period of time. Section 15(1)(e) and (f) of JJA 2000 provides for release of the juvenile on probation for a period not exceeding 3 years. The promise is made by the juvenile's parent or guardian or the fit person in whose care the juvenile is being released, by such person executing a

5. Section 21 of BCA 1948. 6. Section 33(d) of JJA 1986. 7. Section 57(3) of JJA 1986.
8. *Juvenile Justice and Juvenile Correction : Pride and Prudence"*, M.S. Sabnis, Somaiya Publications Pvt. Ltd. (Bombay & New Delhi-1996),pg.251.

written bond. During the period contained in the order, the juvenile who is released on probation is coerced into good behaviour as otherwise he could face institutionalisation in a Special Home. There is no specific provision under juvenile legislation for the juvenile to be released on his personal bond, the argument being that the juvenile has not attained the age of majority, and hence cannot contract. Though not specifically provided in the Act, a juvenile who has ceased to be a juvenile at the time of final disposal of the case, can be released on his personal bond, i.e., on his own assurance of good behaviour.

The JJB whilst passing any order may direct that the juvenile shall remain under the supervision of the PO. A supervision order may be passed by the JJB at the time of granting bail[9] or final disposal of the juvenile case[10]. If during the period of supervision, the PO reports that the juvenile has not been of good behaviour, the JJB may after making inquiry, order the juvenile's placement in a Special Home. Similar provisions for release of a youthful offender under the supervision of a Child Welfare Officer (Probation) existed under BCA 1948[11].

It is not only a juvenile who can be released on probation of good conduct, adults too can be so released. Section 360 CrPC deals with releasing an accused on probation of good conduct or after admonition instead of sentencing him to imprisonment, and the Probation Offenders Act 1958 also deals with the same issue. Both of them lay down the circumstances under which an accused may be released by the court on probation. Under these laws, probation cannot be claimed as of right by the accused, it is a discretionary power of the court whether or not to release an accused on probation of good conduct.

Contact with a PO is essential for the well-being of a juvenile. It is submitted that even if a juvenile is released on bail, pending inquiry his contact with the PO should continue. It is the PO who will be the juvenile's guide, and lead to the juvenile's self-realisation of his wrongs and the will not to repeat the same on release after completion of inquiry. The test of a proficient PO is that the juveniles whom he has worked with continue to remain in touch, and seek his guidance, especially when faced with a difficult situation.



9. Section 12(1) of JJA 2000.

10. Section 15(3) of JJA 2000.

11. Section 75 of BCA 1948.

# CHAPTER 14



## ROLE OF SOCIAL WORKERS AND NGOS IN THE JUVENILE JUSTICE SYSTEM

Though since the 1980s there has been a shift from welfarism to the justice approach, social workers continue to play a crucial role in the treatment of juvenile offenders.

As earlier mentioned the JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class and two social workers. The social workers should have "been actively involved in health, education, or welfare activities pertaining to children for at least seven years."[1] The Model Rules has prescribed the criterion necessary for appointment as a social worker on the Board, "The social worker to be appointed as a member of the Board shall be a person not less than 35 years of age, who has a post-graduate degree in social work, health, education, psychology, child development or any other social science discipline and has been actively involved and engaged in planning, implementing and administering measures relating to child welfare for at least seven years."[2] The two social workers are to "be appointed by the State Government on the recommendation of the Selection Committee."[3] The Selection Committee has as its members, amongst others, "two representatives of reputed non-governmental organizations working in the area of child welfare."[4] The social worker members on the JJB must be assertive, and not get overwhelmed by the Magistrate, as they have an important role to play in the rehabilitation of the juvenile. Under section 5(4) of JJA 2000, the social worker members can overrule the Magistrate. They should familiarize themselves with the provisions of juvenile legislation, as also with the papers and proceeding of each case pending before

1. Section 4(3) of JJA 2000.
2. Rule 7(1) of the Model Rules.
3. Rule 5(4) of the Model Rules.
4. Rule 91(c) of the Model Rules.

the JJB to ensure that justice is done to the juvenile. It is for the social worker members to gain the confidence of the juvenile, whilst at the same time to portray to him that though his best interest is on their minds, he is going to be dealt with sternly. It is under the orders of the JJB that the juvenile is placed in an institution. Hence, it is imperative that the JJB, especially the social worker members, regularly visit the Observation Homes, the Special Homes and other institutions where juveniles are referred, to ensure that the objective of reformation and rehabilitation is satisfied.

The 1986 Act also recognised the importance of social workers whilst dispensing justice to juveniles. The Juvenile Court was to "be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the State Government."[5] The 2000 Act elevated the social worker to being part of the Bench that constitutes the JJB, instead of merely assisting the Magistrate. Despite, social work intervention playing an important role, the same is always voiced alongside words such as "honorary", "voluntary" and "charitable". Not only under the 1986 Act were "two *honorary* social workers" (emphasis added) assisting the Juvenile Court, but a similar trend continues under the 2000 Act. The social worker members on the JJB are to be paid "travel and sitting allowance"[6] as may be fixed by the State government. It is high time that governments recognise that social workers are professionals, playing a crucial role, and the importance of whose work requires to be accepted and appreciated.

POs are qualified social workers. The Superintendents of child-care institutions are also academically trained social workers, as is also the other senior staff employed in the homes. POs and the staff attached to institutions have several critical parts to play in the lives of juveniles. Their role has great significance as delinquents often indicate that their families are not concerned about their welfare[7]. Firstly, that of a friend so that the child feels comfortable to speak freely with him. Secondly, that of an advisor and guide so that the child has confidence to approach him when in need. Thirdly, that of a reformer so that the child understands that what he did was wrong. Fourthly, that of a healer who helps the child accomplish his full-potential, and directs him towards his future. The setting-up of a Child Guidance Clinic in an institution is vital as repeated

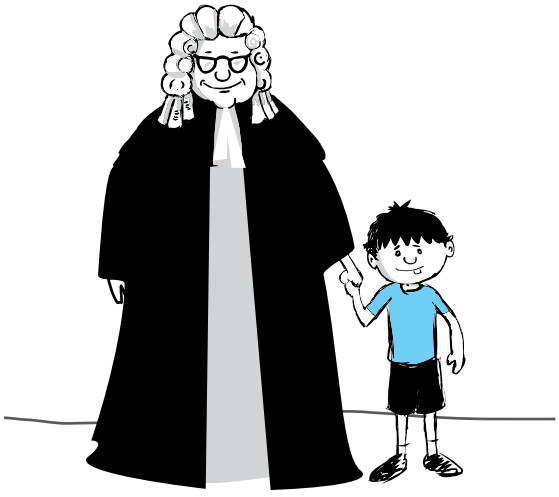


5. Section 5(3) of JJA 1986.
6. Rule 8 of the Model Rules
7. *Juvenile Jusitce - An in-depth study on matters relating to children,* Asutosh Mookerjee, Ajoy De of S.C. Sarkar & Sons Pvt. Ltd. (Calcutta- 1989), pg.69.

sessions with the juvenile are crucial to bring about a change in his attitude. It is a qualified and trained child psychologist or psychotherapist in a Child Guidance Clinic who can bring about a positive change in the juvenile's future.

NGOs too play a pivotal role. They under JJA 2000, can seek charge of juveniles pending or on completion of inquiry in the capacity of a "fit person" or "fit institution". The 2000 Act has empowered voluntary organisations under agreement with State governments to establish and maintain Observation Homes and Special Homes. Moreover, voluntary organisations need to provide services within institutions established and maintained by the State government, such as counselling, imparting education and vocational training, etc., to secure the juvenile his comprehensive rehabilitation.

# CHAPTER 15



## ROLE OF LAWYERS

When the welfare philosophy was the strength of juvenile legislation, lawyers were not welcome. "Judges regarded the presence of lawyers and other criminal procedural safeguards as both irrelevant in a welfare setting and impediments to their child saving mission. Conversely, practising lawyers did not view the juvenile court as a 'real' court."[1]

Under the BCA 1948, a youthful offender did not have the right to be defended by a lawyer[2].

"Appearance of legal practitioners before Juvenile Courts.:- Notwithstanding anything contained in any law for the time being in force, a legal practitioner shall not be entitled to appear in any case or proceeding before a Juvenile Court, unless the Juvenile Court is of opinion that in public interests the appearance of a legal practitioner is necessary in such case or proceeding and authorises, for reasons to be recorded in writing a legal practitioner to appear in such case or proceeding."

Legal intervention was necessitated in "public interest" and not in the "interest of the child". The child was at the mercy of the Juvenile Court who would decide his fate after considering the report of the Child Welfare Officer (Probation). This resulted in arbitrariness and unpredictable treatment that was dependant upon the Juvenile Court's ideology or fancy.

The opponents of the welfare philosophy decried the subjectivity of juvenile decisions, and propounded that juveniles too should be covered by Constitutional and procedural precautions that were granted to adult accused. Thus was born the concept of



1. *Bad Kids : Race and the transformation of the Juvenile Court"*, Barry C. Feld, Oxford University Press (1999), pg.69.
2. Section 14 of BCA 1948.

"juvenile justice". Sabnis[3] has elucidated the term "justice" as meaning fairplay. "It means giving everyone his or her due, and ensuring a fair and equitable distribution of the services, facilities and resources held in common by the community and the nation.... Real justice ensures or ought to ensure that every individual gets, in time, the opportunity he needs to exercise his or her natural and acquired rights and, what is more important, the right to access to the wherewithal to make good the opportunity and, thereby, to derive satisfaction of his physical, social, intellectual and psychological needs."



Representation by a lawyer is imperative to assure a juvenile, justice. It is preferable for a juvenile to be represented by a competent lawyer who is familiar with juvenile jurisprudence and its essence. Juveniles due to their age, in the absence of lawyers are unable to meaningfully participate in their inquiry. They do not understand the legal language, its procedures and nuances. The Beijing Rules for the first time on the international platform dealt with "juvenile justice", and the need for legal representation in juvenile proceedings.

"15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country."

In conformity with international practice, JJA 1986 allowed for the presence of a "legal practitioner"[4] as of right before the Juvenile Court. Currently, the Additional Public Prosecutor puts forth the prosecution's case, and the defence lawyer represents the juvenile before the JJB.

Article 39A of the Indian Constitution[5] provides that, "The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." Pursuant to this Constitutional provision, the Legal Services Authorities Act 1987 has been enacted by the Government of India, and States have formulated their respective legal-aid schemes, including those for juveniles. The Maharashtra State has

3. *Juvneile Justice and Juvenile Correction : Pride and Prudence*, M.S. Sabnis, Somaiya Publications Pvt. Ltd. (Bombay & New Delhi-1996), pg.41.
4. Section 28(1)(b) of JJA 1986.
5. Inserted by the Constitution (42nd Amendment) Act 1976.

formulated the Maharashtra State (Visits to Jails and Homes for Children) Project Rules 1993 that provides for legal assistance to children[6]. Under these Rules, a Duty Counsel is to be appointed to Children's Homes by the District or Taluka Legal-Aid and Advice Committee for the purpose of providing legal-aid to children. Moreover, the Duty Counsel is also required to verify the conditions in which children are kept, whether they are provided with educational and vocational facilities, whether they have been produced before the JJB, their grievances, etc. The Supreme Court too has directed the State Legal Aid Boards to provide the facility of lawyers to child delinquents[7]. Rule 14 of the Model Rules provides for legal aid to be made available to juveniles, and has placed the responsibility upon the JJB to assure a juvenile enjoys this entitlement.

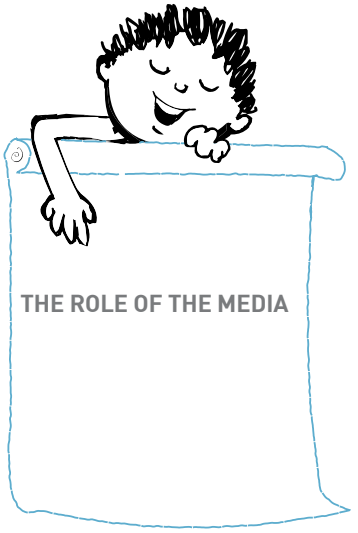
As most juveniles are not in a position to engage a lawyer, to avoid delay, it is ideal if a legal-aid lawyer attends all the sittings of the JJB so that juvenile cases can immediately be referred to that lawyer and proceeded with. It is most unfitting of a JJB to proceed with the inquiry of a juvenile who is not represented by a lawyer or to ask the juvenile to cross-examine a prosecution witness in the absence of his lawyer. The Supreme Court has held that if a poor accused is not provided with free legal services, "the trial itself may run the risk of being vitiated as contravening Article 21."[8] Furthermore, the Supreme Court has held that "...the State is under a Constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time."[9] It is only then that an accused person pending his trial is able to avail of legal advise, and file bail applications, juvenile applications, discharge applications, etc. The same practice should be followed before JJB.



An APP should be appointed to attend before the JJB. When an APP is not attached to the JJB, he does not regularly attend and constantly changes, and juvenile cases do not proceed on their given dates on the ground that the APP is absent or requires time to get acquainted with the matter.

6. Chapter V of the Maharashtra State (Visit to Jails and Homes for Children) Project Rules 1993.
7. *Sheela Barse vs. Union of India* : (1986) 3 SCC 596; 1986 SCC (Cri) 337; AIR 1986 SC 1773.
8. *Husainara Khatoon vs. State of Bihar* : (1980) 1 SCC 108; 1980 SCC (Cri) 50; 1979 CriLJ 1052 (SC); AIR 1979 SC 1377.
9. *Khatri (II) vs. State of Bihar & Ors.* : (1981) 1 SCC 627; 1981 SCC (Cri) 228; AIR 1981 SC 928.

# CHAPTER 16






## ROLE OF MEDIA

Media is a double-edged tool. On the one hand it plays an important role in moulding public opinion, and on the other, its character is to sensationalise issues to attract readers.

In furtherance of its objective to reform a juvenile and not penalize him, section 19 has been incorporated in JJA 2000. This section ensures that "a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law." An identical provision was contained in JJA 1986[1]. Furthermore, sub-section (2) of section 19 states, "The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be." The Model Rules provide for the records or documents relating to a juvenile to be preserved for 7 years, and thereafter to be destroyed by the Board[2]. The law, thus, sends a clear message that the future of a child is not to be adversely impacted due to his past conduct.

Despite the inclusion of section 19 in the statute, juveniles in conflict with law find it difficult to re-join mainstream society. Schools have been known to expel juveniles in conflict with law claiming that they would be a bad influence upon the other students. Their employment opportunities dwindle as the stigma follows them into the job market, and they are compelled to depend upon the underpaid unorganised sector for earning a livelihood. To curtail this victimisation,

1. Section 25 of JJA 1986.
2. Rule 99 of the Model Rules.

juvenile legislation protects the juvenile's right to privacy by restricting media reportage.

"21. Prohibition of publication of name, etc., of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act.-

(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published :

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees."

Such provision was also included in the BCA 1948[3] and the 1986 Act[4]. But the 2006 amendment has increased the penalty from Rs.1,000/- to Rs.25,000/-, and has also covered within its ambit "children in need of care and protection". Similar provision constraining the media is also contained in the Beijing Rules :

"8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published."

Moreover, records of juvenile offenders are to "be kept strictly confidential and closed to third parties"[5] and "not be used in adult proceedings in subsequent cases involving the same offender."[6] These provisions are inserted to avoid stigma, and to enable a juvenile offender to enjoy opportunities offered to other children his age. Nor should an unlawful act committed due to immaturity of judgment be treated as his antecedents.



3. Sections 23 & 62 of BCA 1948.
4. Section 36 of JJA 1986.
5. Rule 21.1 of the Beijing Rules.
6. Rule 21.2 of the Beijing Rules.

Nevertheless repeatedly photographs of juveniles are splashed in newspapers with detailed description of the juvenile offender and the crime he is alleged to have committed. The juvenile and his support system, if any, is most concerned with the case pending before the JJB, and take no action against the errant media. So the media continues to exploit the situation to the detriment of the juvenile. To deter unmindful media reporting, the JJB and the High Court should take suo-moto action under section 21(2) of JJA 2000. The Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002 prescribes, "The Board shall initiate action against any media for publishing any matters relating to the children in conflict with law which would lead to the identification of the Juvenile."[7] Moreover, those working in the field of child rights should bring such publications to the notice of the judiciary, as well as dialogue with the media, and apprise them of the law and the effect their reporting could have on a young life.



Section 21 in no manner fetters reporters and journalists from bringing to the attention of readers the conditions prevailing in child-care institutions, the apathy of the government towards children, the illegal detention of juveniles in prisons, the back-log of cases before the JJB, and other such topics. On the contrary such reports or articles should be encouraged as media coverage could improve the situation for children. Pro-active journalism has played a positive role in changing the appalling position of children. Ms. Sheela Barse, a journalist, in the 1980s and 1990s has petitioned the Supreme Court and Bombay High Court, in public interest, to bring to light the incarceration of children in prisons, the long pendency of juvenile cases, etc., and she was also instrumental in establishing a uniform juvenile justice system throughout the country.

It is also not that the media should blank out crimes committed by juveniles, but currently only gory crimes committed by juveniles are highlighted which has resulted in the public believing that all juvenile crimes are violent crimes. It is imperative that the media portrays the true picture in respect of juvenile crime. In 2001, out of the 33,628 juveniles apprehended throughout the country, 539 were alleged to have committed murder, 38 alleged to have committed culpable homicide not amounting to murder, 506 alleged to have committed rape, the majority had been arrested for theft[8].

7. Rule 6(20) of the Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002.
8. *Crime in India – 2001,* National Crime Records Bureau, Ministry of Home Affairs, Government of India.

### SANJAY SURI & ANR. VS. DELHI ADMINISTRATION, DELHI & ANR. : 1988 Supp SCC 160; 1988 SCC (Cri) 248; AIR 1988 SC 414; 1988 CriLJ 705 (SC).

This matter dealt with the incarceration of children in Tihar jail, and resulted in a separate structure being erected to keep juveniles. The Supreme Court had appointed the District Judge to inquire into the conditions prevailing in the juvenile ward of Tihar jail. The inquiry revealed, amongst other things, that juvenile prisoners were sexually assaulted by adult prisoners. The Supreme Court lamented, "We are anxious to ensure that no child within the meaning of the Children's Act is sent to jail because otherwise the whole object of the Children's Act of protecting the child from bad influence of jail life would be defeated." This judgment instructed "every Magistrate or trial Judge authorized to issue warrants for detention of prisoners to ensure that every warrant authorizing detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age – not necessarily by a trial – and every warrant must specify the age of the person to be detained." Further the jail authorities were also instructed, "We call upon the authorities in jails throughout India not to accept any warrant of detention as a valid one unless the age of the detenu is shown therein. By this order of ours, we make it clear that it shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated."

### SANAT KUMAR SINHA VS. STATE OF BIHAR & ORS. : 1991 (2) Crimes 241.

This public interest petition was filed with regards to juvenile cases pending for long period of time.

"4. From the facts called out from the reports received from various courts by the efficient efforts of the counsels appearing in this case it appears that not only in some cases investigations are pending but trials are going on for a period extending upto five years and in large number of cases juveniles are still in prisons. This state of affairs indicates a pathetic indifference to all concerned. We, therefore, direct that all criminal trials pending since three years or

more be quashed to the extent as far as the trials of juveniles in custody are concerned and they are directed to be acquitted. They be released forthwith from custody or detention, as the case may be. Further, in relation to trials that are pending since less than 3 years the court should act in accordance with the provisions of the Juvenile Justice Act and dispose them of, in relation to where punishment is upto seven years, in accordance with the direction of the Supreme Court in *Sheela Barse's* case (supra). In other cases, the court concerned should after giving the prosecuting agency final opportunity to procure evidence as also to the defence to lead evidence, should close the case and proceed to dispose them of in accordance with law."



The Patna High Court also instructed that orders should be passed to release juveniles on bail pending their trials. Furthermore, the High Court reminded the government and society of its duty to ensure that the juveniles being so released are not picked-up by criminals, by assuring them a proper education in boarding schools so that they grow-up in a normal environment.

### STATE OF KARNATAKA VS. HARSHAD : 2005 CriLJ 2357 (KARNATAKA).

The question before the High Court was whether the Sessions Court or the Fast Track Court has jurisdiction to entertain a juvenile case. The court categorically held that in view of section 6(1) of JJA 2000, the Juvenile Justice Board "has the exclusive power of dealing with the trial of Juveniles in conflict with law and to that extent, the jurisdiction of any Court including that of the Sessions Court or Fast Track Court be barred."

Furthermore, upon the submission of the Public Prosecutor that "only five Juvenile Justice Boards have been constituted to deal with the entire State", and that each Juvenile Justice Board handles juvenile cases of a group of districts, the High Court directed "the State Government may consider the necessity of establishing one Juvenile Justice Board for each district".

### EX. GNR. AJIT SINGH VS. UOI : 2004 CriLJ 3994 (DELHI).

The Petitioner, a juvenile, was enrolled in the army, and in Court Martial proceedings was sentenced to suffer rigorous imprisonment for 7 years under the Army Act 1950. The

High Court held that the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000 overrides the provisions of the Army Act 1950, hence the General Court Martial did not have the jurisdiction to handle the case of a juvenile.

### RAJINDER CHANDRA VS. STATE OF CHHATISGARH & ANR. : (2002) 2 SCC 287; 2002 SCC (Cri) 333; AIR 2002 SC 748; 2002 CriLJ 1014 (SC).

In this case the Supreme Court was faced with the question as to how an accused on the border of 16 years[1] was to be dealt with, and held in favour of holding the accused to be a juvenile. In its judgment whilst referring to *Arnit Das' case*, the Supreme Court held that

"...this court has, on a review of judicial opinion, held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases."

1. This case was entertained under the 1986 Act.

### BHOLA BHAGAT VS. STATE OF BIHAR : (1997) 8 SCC 720; AIR 1998 SC 236.

Bhola Bhagat claimed to be 18 years of age in his section 313 CrPC statement which was recorded 4 years after commission of the offence, and his co-accused Chandra Sen Prasad and Mansen Prasad claimed to be 17 years and 21 years, respectively. The High Court did not avail him the protection of juvenile legislation, viz., the Bihar Children Act 1970, on the ground that other than the statement of the accused there was no other material to support that Bhola Bhagat and the others were juveniles on the date of occurrence of the offence. The Supreme Court opined that "If the High Court had doubts about the correctness of their age as given by the appellants and also as estimated by the trial court, it ought to have ordered an enquiry to determine their ages. It should not have brushed aside their plea without such an enquiry."

The Supreme Court held Bhola Bhagat and his co-accused to be juveniles, "The correctness of the estimate of age as given by the trial court was neither doubted nor questioned by the state either in the High Court or in this Court. The parties have, therefore, accepted the correctness of the

estimate of age of the three appellants as given by the trial court. Therefore, these three appellants should not be denied the benefit of the provisions of a socially progressive statute. In our considered opinion, since the plea had been raised in the High Court and because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants squarely fell within the definition of the expression 'child'. We are under these circumstances reluctant to ignore and overlook the beneficial provisions of the Acts on the technical ground that there is no other material to support the estimate of ages of the appellants as given by the trial court, though the correctness of that estimate has not been put in issue before any forum."



Whilst quashing the sentence of life imprisonment and releasing Bhola Bhagat, Chandra Sen Prasad and Mansen Prasad, though upholding their conviction, the Apex Court observed,

"18. Before parting with this judgment, we would like to re-emphasise that when a plea is raised on behalf of the accused that he was a 'child' within the meaning of the definition of the expression under the Act, it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an inquiry to be held and seek a report regarding the same, if necessary by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the Court when such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefits of the provisions to an accused. The Court *must* hold an inquiry and return a finding regarding the age one way or the other. We expect the High Courts and the subordinate Courts to deal with such cases with more sensitivity, as otherwise the objects of the Acts would be frustrated and the efforts of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated. The High Courts may issue administrative directions to the subordinate Courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding

regarding the age of the accused concerned and then deal with the case in the manner provided by law."

### BHOOP RAM VS. STATE OF U.P. : (1989) 3 SCC 1; 1989 SCC (Cri) 486; AIR 1989 SC 1329; (1989) 2 Crimes 294.

The only question before the Supreme Court in this case was whether the appellant, the original accused, was a juvenile on the date of offence and should have been dealt with under the provisions of the U.P. Children Act 1951. There was a conflict between the age recorded in the School Leaving Certificate and the age opined in the Medical Examination Report. As per the School Leaving Certificate, the appellant was a juvenile on the date of offence, but according to the Medical Examination Report, the appellant had crossed the age of juvenility on the date of occurrence. The Supreme Court after considering the arguments of the Counsels for the appellant and the State, held that Bhoop Ram was a juvenile on the date of offence.

"We are persuaded to take this view because of three factors. The first is that the appellant has produced a school certificate which carries the date June 24, 1960 against the column 'date of birth'. There is no material before us to hold that the school certificate does not relate to the appellant or that the entries therein are not correct in their particulars...The second factor is that the Sessions Judge has failed to bear in mind that even the trial Judge had thought it fit to award the lesser sentence of imprisonment for life to the appellant instead of capital punishment when he delivered judgment on September 12, 1977 on the ground that the appellant was a boy of 17 years of age. The observation of the trial Judge would lend credence to the appellant's case that he was less than 10 (sic 16) years of age on October 3, 1975 when the offences were committed. The third factor is that though the doctor has certified that the appellant appeared to be 30 years of age as on April 30, 1987, his opinion is based only on an estimate and the possibility of an error of estimate creeping into the opinion cannot be ruled out."

The conviction of the appellant was sustained, but the sentence of life imprisonment imposed upon the accused was set-aside and he was immediately released.

**JAYA MALA VS. HOME SECRETARY, GOVERNMENT OF JAMMU & KASHMIR : (1982) 2 SCC 538; 1982 SCC (Cri) 502; AIR 1982 SC 1297; 1982 CriLJ 1777 (SC).**

In this case the Apex Court took "judicial notice that the margin of error in age ascertained by radiological examination is two years on either side".

**MASTER RAJEEV SHANKARLAL PARMAR & ANR. VS. OFFICER-IN-CHARGE, MALAD POLICE STATION & ORS. : 2003 CriLJ 4522 (BOM).**



The accused was declared a juvenile by the Sessions Court, but was not shifted to the Observation Home nor was his case transferred to the JJB. It was only the High Court's intervention that resulted in Rajeev being shifted to the Observation Home three months after having been declared a juvenile. "Thus, there was a gap of more than three months in carrying out the order passed by the learned Additional Sessions judge. The order dated 7th March 2003 was implemented and effected only on 13th June 2003."

The excuse of the jailor for not complying with the court's orders was the non-availability of escort. Rajeev was awarded compensation of Rs.15,000/- by the High Court. The State challenged this order before the Supreme Court, but to no avail.

**MASTER SALIM IKRAMUDDIN ANSARI & ANR. VS. OFFICER-IN-CHARGE, BORIVALI POLICE STATION, MUMBAI & ORS. : 2005 CriLJ 799 (BOM).**

In this case the excuse of the jailor for not transferring the accused to the Observation Home was that the order of the Sessions Court declaring Salim a juvenile, though transmitted by the Registrar of Sessions Court and received by the jail, was misplaced. Under the High Court's order, Salim was transferred to the Observation Home on 9th July 2004, i.e., seven months after the Sessions Court order. Salim was awarded compensation of Rs.1,00,000/- .

The Bombay High Court examined the granting of bail under section 12 of JJA 2000, and observed, "According to this section, the first petitioner can be released on bail with or without surety. Looking to the peculiar facts and circumstances, we direct the Juvenile Justice Board to release the first petitioner on his executing personal bond only."

**GOPINATH GHOSH VS. STATE OF WEST BENGAL : 1984 Supp SCC 228; 1984 SCC (Cri) 478; AIR 1984 SC 237; 1984 CriLJ 168 (SC).**

The accused claimed before the Supreme Court for the first time that he was below 18 years of age on the date of occurrence and entitled to the benefits of the West Bengal Children Act 1959, thus his conviction and life sentence under section 302 IPC be set-aside. The Supreme Court framed the following issue for consideration of the Sessions Judge:

"What was the age of the accused Gopinath Ghosh (appellant) on the date of the offence for which he was tried and convicted?"

The Sessions Judge conducted a detailed inquiry; the accused was sent for medical examination, the accused's mother and the Headmaster of the school he attended were examined by the court, and Gopinath Ghosh was declared a juvenile.

The Supreme Court in its judgment also dealt with the late raising of the claim of juvenility by the accused, "...we consider it proper not to allow a technical contention that this contention is being raised in this Court for the first time to thwart the benefit of the provisions being extended to the appellant, if he was otherwise entitled to it." The conviction and sentence was held to be unsustainable and set-aside. Gopinath Ghosh was granted bail, and his case was transferred to the competent authority for proceeding in accordance with the law applicable to juveniles. Gopinath Ghosh was in prison for almost 10 years, but the Supreme Court chose not to release him itself because "neither his antecedents nor the background of his family are before us. It is difficult for us to gauge how the juvenile court would have dealt with him."



In this judgment the Apex Court has taken "notice of a developing situation in recent months in this Court that the contention about the age of a convict and claiming the benefit of the relevant provisions of the Act dealing with juvenile delinquents prevalent in various States is raised for the first time in this Court and this Court is required to start that inquiry afresh." The Supreme Court, hence, felt the need to identify a solution :

"We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or

undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with juvenile delinquents are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeons, as the case may be, for obtaining creditworthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the Learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey up to the Apex Court and the return journey to the grass-root court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."



### RAVINDER SINGH GORKHI VS. STATE OF U.P. : (2006) 5 SCC 584; 2006 CriLJ 2791 (SC).

As in *Gopinath Ghosh's case*, in this case too the contention of juvenility was raised for the first time before the Supreme Court. Ravinder Gorkhi claimed before the Supreme Court to be a juvenile on the date of offence, i.e., 15th May 1979, under the then prevailing U.P. Children Act 1951. The question with regards to the age of the accused was referred to the Sessions Judge. A School Leaving Certificate was relied upon by the appellant wherein the date of birth was recorded as 1st June 1963, hence, the Sessions Judge returned a finding of juvenility. Ravinder Gorkhi was just under 16 years on the date of offence, which made him a juvenile under the U.P. Act.

The Supreme Court rejected the finding of the Sessions Judge and the appeal was dismissed. The Supreme Court observed that, "The entries made in the school leaving certificate, evidently had been prepared for the purpose of the case." The "second Copy" and not the original school leaving certificate was produced in court. Moreover, the Headmaster who gave evidence did not produce the admission register. This was the undoing. "The original register has not been produced. The authenticity of the said register, if produced, could have been looked into."

### SUNIL RATHI VS. STATE OF U.P. : (2006) 9 SCC 603; (2006) 3 SCC (Cri) 351.

The question before the Supreme Court was whether the appellant on the date of occurrence was a juvenile. The High Court had on examination of the documentary

evidence held that the same did not conclusively prove that Sunil Rathi was a juvenile. The Supreme Court set aside the order of the High Court and directed that the appellant be examined by the Medical Board to ascertain his age.

"4. We have perused the order of the High Court. The High Court came to the conclusion, after considering the certificates produced, that they did not conclusively prove that he was a juvenile. However, when this objection was raised, the petitioner was not sent for examination by the Medical Board to ascertain his age. Normally, in a case where the evidence is not clear and convincing, the report of the Medical Board is of some assistance."

### RAISUL VS. STATE OF U.P. : (1976) 4 SCC 301; 1976 SCC (Cri) 613; AIR 1977 SC 1822; 1977 CriLJ 1555 (SC).

The Supreme Court in this case held that the age of an accused cannot be determined by the estimate of the courts, and preferred to rely upon the age mentioned by the accused in his section 313 CrPC statement. The accused claimed to be 18 years old in his section 313 CrPC statement which was recorded almost a year after the offence. Though Raisul was not a juvenile under the U.P. Children's Act 1951, due to his young age, the death sentence awarded to him was commuted to one of life imprisonment.

"It is true that the learned Sessions judge on looking at the appellant thought that he must not be less than 24 years of age, and the High Court also, on seeing the appellant personally, took the view that the estimate of age given by the Sessions Judge was correct, but we do not think that the learned Sessions Judge as well as the High Court were right in substituting their own estimate in regard to the age of the appellant and on the basis of such estimate, rejecting the statement as to his age made by the appellant. Appearances can often be deceptive."



### JAYENDRA & ANR. VS. STATE OF U.P. : (1981) 4 SCC 149; 1981 SCC (Cri) 809; AIR 1982 SC 685.

In this appeal a plea was raised on behalf of the appellant that he was a "child" and should have been dealt with under the provisions of the U.P. Children's Act 1951. The Supreme Court got Jayendra medically examined, and on the basis of the Medical Examination Report declared him to be a child on the date of offence. Whilst disposing of the appeal, the

Supreme Court upheld the conviction, quashed the sentence and forthwith ordered Jayendra's release as he had ceased to be a child on the date of the Apex Court's judgment.

"S.2 provides, in so far as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so."



**PRADEEP KUMAR VS. STATE OF U.P. : 1995 Supp (4) SCC 419; 1995 SCC (Cri) 395; AIR 1994 SC 104.**

All the three appellants were declared to have fallen within the definition of "child" under the U.P. Children's Act 1951 on the date of occurrence. The appellants, viz., Pradeep Kumar, Krishan Kant and Jagdish, had in support of their respective claims, a medical examination report, a horoscope and a School Leaving Certificate. As the appellants had ceased to be children, the Supreme Court observed "there is no question of sending them to an approved school under the U.P. Children's Act for detention. Accordingly, whilst sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith."

**UMESH SINGH & ANR. VS. STATE OF BIHAR: (2000) 6 SCC 89; 2000 SCC (Cri) 1026; AIR 2000 SC 2111; 2000 CriLJ 3167 (SC).**

In this case the contention of juvenility was not raised before the Trial Court or the High Court. The Apex Court declared the appellant Arvind Singh a juvenile on the basis of a "report of experts" which indicated that Arvind was "hardly 13 years old" on the date of the incident. This "report of experts" was supported by "the school certificate as well as the matriculation certificate". The Supreme Court confirmed the conviction, but set-aside the sentence imposed upon him and released Arvind Singh forthwith.

**UPENDRA KUMAR VS. STATE OF BIHAR : (2005) 3 SCC 592; 2005 SCC (Cri) 778.**

In this case too the Supreme Court upheld the conviction and quashed the sentence. "Resultantly, the appellant is directed to be released forthwith if not required in any other case."

**SATYA MOHAN SINGH VS. STATE OF U.P. : (2005) 11 SCC 395.**

The Trial Court convicted the appellant to life imprisonment for having committed an offence under sections 302, 307 IPC. The sentence was upheld by the High Court. No claim of juvenility had been raised before the Trial Court, but "when the question of awarding sentence was being considered, on behalf of the appellant, it was pointed out that he was fifteen years of age in December 1980 when the judgment was being delivered by the trial court. The trial court assessed the age of the appellant in December 1980 between sixteen to seventeen years. The occurrence had taken place in December 1979. Therefore, even according to the estimate of the trial court, the age of the appellant on the date of the occurrence was fifteen or sixteen. This observation of the trial court clearly shows that on the date of the occurrence, the appellant was a child within the meaning of section 2(4) of the Act." Stating thus, the Apex Court declared the appellant a "child", i.e., below 16 years of age, under the U.P. Children's Act, upheld the conviction and quashed his sentence.

**SAHABUDDIN ALIAS SHABOO VS. STATE OF U.P. : 2002 CriLJ 4579 (ALLAHABAD).**

Apprehending that a juvenile's incarceration is detrimental to his well-being, the boy juvenile was released on bail on his father's executing a bond for his son's good conduct.

"It shall be futile to say that constant incarceration of a juvenile is a greater threat to him than his constructive release. There is every likelihood of his coming into contact of known criminals than his being released on bail on the father furnishing bond for his better upkeep and for maintaining good behaviour towards the society."

**VIJENDRA KUMAR MALI, ETC. VS. STATE OF U.P. : 2003 CriLJ 4619 (ALLAHABAD).**

The High Court whilst dealing with the subject of a subordinate court having refused bail to a juvenile on the ground that the offence was a serious one, observed;

"This court in a number of judgments has categorically held that bail to the juvenile can only be refused if any one of the grounds existed. So far as the ground of gravity is concerned, it is not covered under the above provisions of the Act. If the bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the juvenile accused shall be released."



## DATTATRAY G. SANKHE VS. STATE OF MAHARASHTRA & ORS. : 2003 AllMR(Cri) 1693 (BOMBAY).

By this judgment, a juvenile was released on bail on the condition that he report to the Juvenile Justice Board once a week till charge-sheet is filed, and thereafter once in two weeks. The Bombay High Court whilst passing this judgment dealt with the granting of bail under juvenile legislation;

"5. From the perusal of the said section it is clear that in case it is found that the juvenile is involved in any criminal offence, the normal rule would be to grant bail and the Board is empowered to release the juvenile on bail unless it comes to the conclusion that by releasing such a person on bail, he would come in contact with known criminals or that his life is likely to be in danger. This particular provision is made to ensure that large number of juvenile delinquents who do not have a regular place of residence or a family or abode are not brought to the mercy of known criminals and are as a result exploited by these criminals for their own ends."

## ABHAY KUMAR SINGH VS. STATE OF JHARKHAND : 2004 CriLJ 4533 (JHARKHAND).

The Petitioner, a juvenile, had spent 3 years 8 months in detention. He was ordered to be forthwith released on bail without executing any bond or furnishing surety. It was further directed that Abhay Kumar Singh's inquiry under the Juvenile Justice Act 1986 be completed within 3 months, and if not so completed, the criminal proceedings against him should automatically stand quashed.

**RANJIT SINGH VS. STATE OF H.P. : 2005 CriLJ 972 (H.P.).**

A juvenile was released on bail by the High Court on the ground that "In reply, filed by the prosecution, or in the police file, there is nothing to show that juvenile, if released on bail, would be exposed to criminal or moral or physical or psychological danger nor it can be said that his release will defeat the ends of justice."

**KALYAN CHANDRA SARKAR VS. RAJESH RANJAN : (2005) 2 SCC 42; 2005 SCC (Cri) 489; AIR 2005 SC 921; 2005 CriLJ 944 (S.C.).**

This judgment deals with the right of an accused to file a subsequent bail application when earlier bail application(s) have been rejected by subordinate or higher court.

"But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so."

The Supreme Court held that subsequent bail application(s) can be filed "if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete."



**PRATAP SINGH VS. STATE OF JHARKHAND & ANR.: (2005) 3 SCC 551; 2005 SCC (Cri) 742; AIR 2005 SC 2731; 2005 CriLJ 3091 (SC).**

One of the questions before the 5-Judge Bench of the Supreme Court was, "Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court / competent authority."

The Supreme Court whilst holding that the reckoning date for determination of the age of the juvenile is the date of offence, observed, "It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation."

*Courts that once accorded juveniles the benefits of juvenile legislation are gradually changing their stance. A claim of juvenility raised for the first time before the Supreme Court is being looked upon with suspicion. Death sentences are confirmed inspite of ambiguity as to whether the convict is a juvenile. Opening of bank accounts decide the age of a person, and statements made by the accused are no longer believed.*



**SURINDER SINGH VS. STATE OF U.P. : (2003) 10 SCC 26; 2004 SCC (Cri) 717; AIR 2003 SC 3811.**

"8. The jurisdictional issue based on purported ages of the accused needs consideration first. The question relating to the age of the accused was never raised before the courts below, necessitating a decision in this regard ...Further, at no point of time during trial or before the High Court this question was raised. Further, the necessity of determining the age of the accused arises when the accused raises a plea and the court entertains a doubt. Here, no claim was made by the accused that he was a child and, therefore, the question of the court entertaining a doubt does not arise...In the aforesaid background, plea based on purported age raised by the appellants has no merit and is rejected."

**OM PRAKASH VS. STATE OF UTTARANCHAL: (2003) 1 SCC 648.**

The age recorded in the section 313 CrPC statement showed Om Prakash to be a juvenile on the date of offence. The claim of juvenility was rejected by the Supreme Court only on the ground that the appellant had opened a bank account a few months before commission of the offence; "..the appellant would not have been in a position to open the account unless he was a major and declared himself to be so." The Supreme Court upheld the death sentence awarded by the Trial Court and confirmed by the High Court.

## RAM DEO CHAUHAN VS. STATE OF ASSAM : (2001) 5 SCC 714; AIR 2001 SC 2231.

In this case a 3-Judge Bench of the Supreme Court did not reduce a sentence of death penalty to one of life imprisonment, despite dissention from one Judge. The defense led evidence before the Trial Court to prove that Ram Deo was a juvenile at the time of the offence. The father of the petitioner was examined as well as the Headmaster to prove the school register that showed the petitioner to be below 16 years on the date of offence. An associate professor in forensic medicine who had examined the petitioner for ascertaining his age was called as a Court witness, in the doctor's opinion Ram Deo would have been between 15 to 16 years on the relevant date. This evidence was not able to swerve the majority view, they instead paid credence to the fact that (i) on the basis of Ram Deo's father's cross-examination, the prosecution calculated the age of the petitioner as 26 years on the date of occurrence; (ii) a former employer gave evidence as a prosecution witness that prior to the incident, the petitioner had told him that he was 20 years old; (iii) the petitioner had described himself as 20 years old when his statement was recorded on the date of offence; (iv) the accused was shown as 25 years 6 months in his statement recorded by the Trial Court 6 years after the date of incident.

The dissenting judgment gives detailed reasons as to why the prosecution's contention cannot be accepted.

"19. We are unable to act on any one of the materials projected by the prosecution for the purpose of reaching a conclusion regarding the age of the petitioner as on the relevant date. The exercise of hatching or brewing up possible date or year of birth with the help of scattered answers given by the father of the petitioner, all during cross-examination, is very unsound course to be adopted. At any rate such an exercise cannot be sustained to the detriment of the person concerned. Nor can I rely on the testimony of PW-4 who said that the accused told him in 1991 that his age was 20. Such a statement cannot be regarded as reaching anywhere near the proximity of reliability for fixing up the correct age of a person. The statement recorded under Section 161 of the Code is not permitted by law to be use except for contradicting the author of the statement. Hence it is impermissible to look into that material also. The sheet on which the statement of the accused was recorded under

Section 235 of the Code contains some columns in the prefatory portion, one among them was regarding the age. The statement of the accused actually starts only after making such entries in those prefatory columns. Unless the person who filled up such prefatory columns is examined for showing how he gathered the information regarding all such columns the entries therein cannot be regarded as legal evidence. At any rate, We cannot proceed on a presumption that such columns were filled up by the accused himself."

The dissenting Judge whilst commuting the death sentence to life imprisonment, though agreeing that the "petitioner did not succeed in proving that that he was aged below 16 years on the date of occurrence", went on to say :

"12. But I am inclined to approach the question from a different angle. Can death sentence be awarded to a person whose age is not positively established by the prosecution as above 16 on the crucial date. If the prosecution failed to prove positively that aspect, can a convicted person be allowed to be hanged by neck till death in view of the clear interdict contained in Section 22(1) of the Juvenile Act."



## STATE OF HARYANA VS. BALWANT SINGH: 1993 (1) SCC Supp 409.

The State challenged before the Supreme Court the finding of the Punjab & Haryana High Court that Balwant Singh was a juvenile at the time of commission of the offence. The Apex Court allowed the appeal of the State, "When it is not the case of the respondent that he was a child before the trial court, it is very surprising that High Court, based merely on the entry made in the Section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a 'child' within the definition of the Act [Haryana Children Act 1974] on the date of the occurrence though there was no other material for the conclusion." In this case the fact that the respondent gave his age as 17 years at two different stages, viz., at the time of framing of charges and recording of section 313 CrPC statement, went against him.

# CASE STUDIES

## CASE NO.1

*X, a 5 year old boy, throws a stone at his classmate Y. Due to the injury sustained Y loses his eye-sight. Police have arrested X under section 326 IPC, viz., for having caused grievous hurt with a weapon.*

- Seven years of age is the age of criminal responsibility under section 82 IPC. Hence, the act committed by X does not amount to an offence. The police were wrong to have arrested X.

- The parents or guardian of X should immediately submit proof of X's date of birth to the concerned police station. In the absence of any documentary proof of birth, the police should send X for medical examination to ascertain his age. Once a finding is reached that X is below 7 years of age, the police should release X and close the case.

- If the police refuse to close the case and produce X before the JJB, an application to close the case should be made before the JJB on behalf of the parent or guardian of the child, along with proof to show that X is 5 years old.

- If X has no parent or guardian, X should be produced before CWC as child in need of care and protection.

## CASE NO.2

*M, an 11 year old boy, is employed with N as a domestic worker. N does not allow M to go out for recreation in the evenings. On repeatedly being so refused, one day M gets angry and hits N with a heavy iron pan. N dies due to the injury, and a criminal case under section 302 IPC is registered against M.*



- The police must produce M before the JJB within twenty-four hours of his arrest, and must also inform the parents or guardian of M, or any other person of M's choice that M has been arrested.

- The JJB will conduct an inquiry to determine the age of M, and come to a finding that he is 11 years old.

- The defense will raise a plea that M has not attained sufficient maturity of understanding, and therefore is not culpable. They will be required to examine witnesses to prove the same, such as the parents, relatives, teachers

or any other person who regularly interacts with M, and expert witnesses, such as child psychologists. The prosecution will attempt to reflect that M knew what he was doing was seriously wrong and an offence, and the consequences of his act.

- The JJB will then have to decide whether M has or has not "attained sufficient maturity of understanding to judge the nature and consequences of his conduct". If the answer is in the negative, M will be excused of his deeds. If the answer is in the affirmative, M will have to face an inquiry before the JJB as would any other juvenile in conflict with law.

- The defense may raise this plea prior to the commencement of the inquiry or during the inquiry.



### CASE NO.3

*The police arrest Z for murder. Z tells the police that he is 15 years old.*

- The police must record the age of Z as 15 years in the FIR and memo of arrest.

- Z should be produced before the JJB within twenty-four hours of his arrest.

- The JJB in case of doubt, should under section 49 of JJA 2000 conduct an inquiry to ascertain the age of Z. Attempts should be made to procure documentary proof of age. In the absence of documentary proof, Z should be sent for medical examination.

- The age ascertained by medical examination is not conclusive proof of age, it is a mere opinion of a doctor, and a margin of error of two years on either side is to be estimated. The benefit of doubt should be given to Z.

- With regards to borderline cases, the doctor who medically examined the juvenile, the juvenile's parents and / or relatives of the juvenile may be examined in support of juvenility.

- The JJB has to arrive at a finding with regards to Z's age. If Z is found to have been below 18 years on the date of offence, his case will continue before the JJB. If Z is found to have crossed the age of 18 years on the date of offence, his case will be transferred to the regular criminal court.

## CASE NO.4

*The police produce B before a Magistrate for having committed theft. B informs the Magistrate that he is 17 years old.*

- On B informing the Magistrate that he is 17 years old, the Magistrate is obligated under section 7 of JJA 2000 to "record his opinion" about B's age.
- For the Magistrate to arrive at an opinion that B is a juvenile, the Magistrate will have to conduct an inquiry to determine B's age.
- The Magistrate should give B an opportunity to submit documentary proof of age. In the absence of documentary proof, B should be sent for medical examination to determine his age.
- The Magistrate should come to a clear finding about B's age. If B is found to be below 18 years old, his case will be transferred to the JJB and his custody to the Observation Home. If B is found to be above 18 years of age, B's criminal case will continue before the Magistrate.

## CASE NO.5

*P has committed rape. P's case is committed to the Sessions Court after charge-sheet is filed. P for the first time before the Sessions Court raises the plea that he was 16 years old on the date of offence.*

- The Sessions Court is obligated to deal with P's plea under section 7-A of JJA 2000.
- The Sessions Court should "make an inquiry" and "record a finding" whether B is a juvenile or not. As previously mentioned, the Sessions Court will first seek documentary proof, and only in the absence of such proof, will P be sent for medical examination to ascertain his age.
- On inquiry, if B is found to be below 18 years old on the date of offence, his case will be transferred to the JJB and his custody to the Observation Home. If B is found to be above 18 years of age on the date of offence, B's criminal case will continue before the Sessions Court.

- It is necessary to recall that the proviso to section 7-A of JJA 2000 states that "a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case".

## CASE NO.6

*F on first production informs the Magistrate that he is 17 years old. F further informs the Magistrate that he had been to school in the village, though he is presently not in possession of a School Leaving Certificate.*



- The Magistrate must give F an opportunity to obtain the School Leaving Certificate.

- If F has no family that is willing to procure the School Leaving Certificate, the Magistrate should ensure that F is provided with the services of a legal-aid lawyer who will write to the Principal and obtain the School Leaving Certificate.

- If the school does not respond to the request of the legal-aid lawyer, the Magistrate himself should pass an order directing the school or Principal to send F's School Leaving Certificate.

- The Principal should be summoned before the Magistrate with the original school records, such as Admission Register, and examined to test the veracity of the School Leaving Certificate.

- The Magistrate should thereafter come to a clear finding about F's age. If F is found to be below 18 years old, his case will be transferred to the JJB and his custody to the Observation Home. If F is found to be above 18 years of age, his case will continue before the criminal courts.

## CASE NO.7

*K is incarcerated in jail as an undertrial for allegedly having committed murder. The offence had taken place two years ago, and the case has been committed to the Sessions Court. K informs an NGO working in the jail that he is today 19 years old. K's family resides in a village, not in the State where K is incarcerated.*

- All efforts should be made to obtain K's documentary proof of age. A letter seeking such proof should be written to K's family in the village or to the Principal of the school K attended.

- The NGO should thereafter immediately assist K in drafting an application to be handed to the Sessions Court. An NGO representative should attend the Sessions Court on the day K is to tender his juvenility application so that K is not intimidated by the court atmosphere.

- If the Judge is not supportive, K should be assisted to make an application before the Sessions Court to seek the services of a legal-aid lawyer so that the lawyer may agitate K's claim of juvenility.

## CASE NO.8

*T resides with his parents. T has been arrested for having committed robbery, and his case is pending before the JJB. T's parents apply for bail, but the bail application is rejected by the JJB.*

- Bail is mandatory under section 12 of JJA 2000 except if "release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

- T resides with his parents, and there is nothing on record to show that T's release would cause him any injury. Hence, the JJB should have released T on bail.

- T's parents should challenge the order passed by the JJB before the Sessions Court under section 52 of JJA 2000. An appeal may be preferred before the Sessions Court within thirty days of the order passed by the JJB. An appeal may also be preferred after the lapse of the stipulated thirty days if the appellant is able to convince the Sessions Court that he "was prevented by sufficient cause from filing the appeal."



- Instead of appealing the JJB order, a fresh bail application may be filed before the Sessions Court under section 437 CrPC by the parents of T.

- Any order passed by the Sessions Court may be challenged before the High Court in revision.

- If appropriate, T may be advised to file another bail application before the JJB on the ground of changed circumstances. For example, if the charge-sheet had not been filed or stolen articles not recovered

at the time of rejection of bail, another bail application may be filed before JJB after the charge-sheet is filed or the stolen articles recovered.

## CASE NO.9

*A bail order has been passed by the JJB to release G on furnishing surety of Rs.15,000/-. G's parents are very poor, and unable to furnish surety of Rs.15,000/-. Two months have lapsed since the passing of the bail order, but G continues to remain in the Observation Home for want of surety.*



- Prolonged incarceration in the Observation Home for want of surety is not in conformity with the essence of juvenile legislation.

- An application should be made before the JJB to reduce the bail amount or release G on the parent executing a bond. Under section 12 of JJA 2000, a juvenile may be released on bail "with or without surety".

- If felt necessary to do so, the JJB may release G on the bond of his parent under the supervision of a PO.

- It is imperative for the JJB to be pro-active. If the JJB notices that a juvenile has not been able to avail of bail for want of surety, it should modify the bail order to ensure that the juvenile is released from the Observation Home at the earliest.

- In *Master Salim Ikramuddin Ansari's case* [2005 CriLJ 799 (Bom)], the Bombay High Court released the juvenile on bail "on his executing personal bond only." In this case the Sessions Court had granted Salim bail in the year 2002, "but he could not be released on bail because he could not fulfill the financial condition attached to the bail order." The High Court, whilst releasing Salim on bail three years later, directed that "...in all cases in which bails are granted, the Sessions Courts and Magistrates' Courts must get the compliance report of their orders after a period of six weeks. That would ensure whether their orders have been complied with or not or because of financial difficulties or otherwise, the accused could not be released. This would also ensure that similar unfortunate cases are not repeated."

## CASE NO.10

*Q, a juvenile, is arrested for dacoity along with 4 other adult co-accused, and is produced before the Magistrate. On inquiry by the Magistrate, Q's juvenility is ascertained.*

- The Magistrate has no jurisdiction to deal with Q's criminal case, therefore he shall separate Q's case from that of the adult co-accused.

- Section 18(1) of JJA 2000 categorically states, "no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile."

- The Magistrate shall direct the police to produce Q before the JJB, and shall transfer Q's custody to the Observation Home.

- Q will thereafter be dealt with by the JJB in accordance with the provisions of JJA 2000.

## CASE NO.11

*The police have initiated proceedings under section 107 CrPC against R, who has a Birth Certificate to show that he is 16 years old.*

- Section 107 CrPC is contained under Chapter VIII of CrPC titled, "Security for keeping the peace and for good behaviour", and requires any person who "is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility" to execute a bond for keeping peace for a period not exceeding one year.

- Under section 17 of JJA 2000, "...no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code." Sections 106 to 124 fall under Chapter VIII of CrPC.

- Hence, the police should drop the proceedings initiated against R under section 107 CrPC.

- The Aurangabad Bench of the Bombay High Court in *Riyaz @ Ahmad & Ors. vs.*

*State of Maharashtra & Ors.* [2006 AllMR (Cri) N.O.C. 211] awarded compensation of Rs.5,000/- to a juvenile against whom preventive action under sections 107 and 111 CrPC was initiated.

- It is strongly contended that the application of section 17 of JJA 2000 should be expanded to cover all provisions of law relating to preventive detention and externment.

## CASE NO.12

*V has been sentenced by the Sessions Court to life imprisonment for having committed murder on 1-12-1999. V was born on 1-12-1982. V's appeal is pending before the High Court.*



- V was 17 years on the date of offence, and at that time JJA 1986 was in force. As the age of juvenility was 16 years for a boy juvenile under the 1986 Act, V was treated as an adult and not offered the protection of juvenile legislation.

- The 2000 Act came into force on 1-4-2001 whereby the age of juvenility for a boy juvenile was raised to 18 years.

- By the 2006 amendment which came into force on 22-8-2006, any person who was below 18 years of age on the date of commission of the offence shall be accorded the protection of juvenile legislation irrespective of when the offence was committed. See sections 2(l) and 20 of JJA 2000.

- An application, raising a claim of juvenility, should be taken out by V in the appeal pending before the High Court.

- On ascertaining V to be below 18 years of age on the date of offence, the High Court should immediately release V on bail in accordance with the provisions of juvenile legislation. Under section 6(2) of JJA 2000, the High Court has all the powers conferred on JJB "when the proceeding comes before them in appeal, revision or otherwise."

- The appeal should be expeditiously heard and disposed of. Even if the High Court comes to a finding that V had committed the offence, V should be released as he has been in custody for more than the maximum years prescribed under JJA 2000. In accordance with precedents, the High Court in such event should uphold the conviction, but quash the sentence passed by the Sessions Court.

## CASE NO.13

*J has been sentenced on 11-3-2001 by the Sessions Court to life imprisonment for having committed murder on 1-12-1999. J was born on 3-3-1982. J has not filed an appeal before the High Court.*

- J was 17 years 9 months on the date of offence, and 19 years on the date of conviction by the Sessions Court.

- As J has not preferred an appeal against the order of the Sessions Court, J may bring the fact that he was below 18 years of age on the date of offence to the notice of the High Court through a Writ Petition. J is not challenging his conviction, but is seeking that the sentence passed against him by the Sessions Court be quashed.

- The High Court is required to conduct an inquiry to ascertain J's age on the date of offence.

- On inquiry, if J is found to have been below 18 years of age on the date of commission of offence, the High Court is required to sentence him under section 15 of JJA 2000. If J has been in custody beyond the maximum period prescribed under juvenile legislation, he ought to be released forthwith.

- Instead of filing a Writ Petition before the High Court, J may bring his being below 18 years of age on the date of commission of the offence to the notice of the State government as mandated under section 64 of JJA 2000. The State government is empowered to take measures to ensure that the juvenile is accorded the benefit of juvenile legislation.