

## **ELDER SISTER ON VIOLENCE AGAINST CHILDREN: J. J. ACT 2015 IN HALFWAY**

*Dr. Onkar Nath Tiwari*<sup>1</sup>

### **I. Theoretical Construct**

‘Child is father of man’ and ‘future of a country can never be secured where future of a child is insecure’ are two trite saying of the savan which dogmatically reflect the relevance of tender years in its entirety. Even our apex court too spoke in quite comprehensive manner depicting the interplay of traditional institutions including the parents in the changed socio cultural perspectives and also emphasised the balanced development of children to make them socially valuable segment.<sup>2</sup> Being inherently vulnerable they are susceptible to social vicitudes in their life and there is no denying the fact that the way children are treated with, needs relook. India has approximately 500 million children constituting 44% of its population. Social triggering is condition precedent for the overall development of such strata of the society. Global concern about children is on the rise and the entire machinery has been geared to strengthen her role in a positive manner Sensing the gravity of the matter child protection issues come on the forefront while service delivery oriented policy initiative suddenly got a jolt and the institutionalized protective measures appeared on the scene. Till Seventh Five Year period child protection issues relate directly to the health, poverty, nourishment and mortality rate. Integrated Child Protection Scheme was designed to cover all these after taking holistic approach for the betterment of children and even their lactating mothers. Till then child and child rearing system was taken as ideal for the future of the Country. And testimony to the fact is the plurality of laws and Govt. policies framed in his regard during seventies and eighties.<sup>3</sup>

In the second half of eighties national and international community perceived a new paradigm shift and the emphasis was laid on the right oriented approach leading to enactment of policy and laws accordingly. The Convention on the Right of the Child (CRC) 1989 adopted by the world community happened to be milestone and accepted as bench mark for the child protection. It sowed the seed of right based approach asking states to adopt measures in her respective states to suitably adjust the national domain what is dictated in this standard setting document. There have been good

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<sup>1</sup> Associate Professor, St. Andrews College Gorakhpur UP 273001, Member, Rule Framing Committee, Govt. of UP under J.J. Act 2015.

<sup>2</sup> Rosy Jacob v. Jacob Chakramakkal, Supreme Court on April 5,1973

<sup>3</sup> Encyclopedia of Social Work in India, Vol. 1, Delhi, Publication Division, Govt. of India (1987) p. 95.

number of documents at international level in the form of treaties and agreements (bilateral and multilateral) concerning children's rights but the CRC happened to be peculiar and unique in respect of child protection. Being comprehensive in nature it ensures civil, political, economic, social and cultural rights of children. It is universally applicable to all children in all the situations in the entire community of nations. Furthermore, it is unconditional calling on even those govt. with scarce resources to take action to protect all the children in term of their rights and the Convention is holistic asserting that all right are essential, indivisible, interdependent and equal.<sup>4</sup> Magna Carta on Children Right scattered over in 54 Articles Convention delineates various rights to children bracketing as right to life, security, to development, to protection and the participation. This quadruple of right went little ahead of 1959 General Assembly on the declaration of the Right of the Child and the Universal declaration of Human Right of 1948. Govt. of India did not lag behind and even well before 1989 come out with National Policy on Children in the year 1974 which aimed at providing adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development.<sup>5</sup> Since then Govt. of India came out with numerous policy statements. Right based approach of child protection was adopted in National Plan of Action for Children 2005 which was strongly endorsed in the National Policy for Children 2013. Enactment of Juvenile Justice Act of 1960 was an outcome of paradigm shift in the field of child protection measures. Now we have nearly 250 enactments dealing with children of different age group on different issues. In the aftermath comprehensive policy and legislative document Govt. aesthesia did not allow insipidity on the issue rather reflected deep concern. Recognising the right shifted approach 2013 Policy document endorses:

- Every child has universal, inalienable and individual human rights.
- Right of children are interrelated and interdependent and each one is equally important and fundamental to the well being and dignity of the child.

Every child has the right to a dignified life, free from exploitation, safety and security which is integral to the well being of children. It is further delineated that right to life, survival and development goes beyond the physical existence of the child. Thus, child has been in the fore front of Govt. initiatives<sup>7</sup> in order to extend all the indices of protective limb. CRC dictates that state parties shall take appropriate legislative, administrative, social and educational measures to protect child from all forms of physical

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<sup>4</sup> UNICEF, Statement on the Convention on the Rights of Child (1999)

<sup>5</sup> National Policy for Children 1974, Policy statement, q. in Encyclopedia of Social Work, *ibid.* p. 95

or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse while in the care of parent, legal guardian or any other institutions which has to take care of the child.<sup>6</sup> We are quite familiar with routine classification and conceptualization either of violence or abuse in respect of children in the existing scenario. Children either category as specified under Juvenile Justice Act 2015 do face a peculiar nature of violence during the completion of proceeding adopted against them by either of the institutions under the Act. This paper advocates about innovative nature of violence against children, i.e., process violence. A child has to face painful situation and the rigid procedure during the pendency of inquiry. Thus the function of the roll of such institution has to be scrutinized very modestly in this paper. What these institution should do in preventing violence against children has also been evaluated.

## **II. Betide**

In this backdrop of theoretical security layering baffling figures backfired the Govt. sincerity on child protection. India is home to 19% world children with nearly 500 million constituting approximately 44% child population below 18 years of age. Violence against children is on the rise and present alarming scenario on international as well as domestic level. Child abuse and violence against children are shrouded in secrecy and there happened a conspiracy of silence around the subject.<sup>7</sup> In fact there in one more argument and well entrenched belief that there is no child abuse in India and certainly there is no sexual abuse in the country as such. However, certain kinds of traditional practices that are accepted across the country unknowingly or knowingly amount to child abuse. Existing socio-economic conditions also render some children vulnerable and more at risk to abuse, exploitation and neglect. It has to be accepted rather more honestly that lack of empirical evidence and qualitative information on the dimension of child abuse and neglect makes difficult to have a comprehension on the subject.<sup>8</sup> At the outset it needs to be clarified that words abuse, violence and the crime in respect of children have been used inter changeably and synonymously in this opus. Degree of harm to a child is the touchstone to test the adjectives to be used at this juncture. Criminal behavior has already been classified as an offence and the parameters have already been prescribed under the penal law of the country but the parameters of violence and abuse have been defined under the policy document in an obscure perspective. The premise of abuse and violence do overlap in actuality therefore, figure used in the documents

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<sup>6</sup> Article 19 of International Convention on the Right of the Child (hereinafter used as CRC)

<sup>7</sup> Child abuse Report of WCD, Delhi, Govt. of India, 2007

<sup>8</sup> Renuka Chaudhary, Ibid, Preface Statement

needs to be taken accordingly. Further the available data reflect the magnitude and indices of abuse of different nature as compared to violence. According to WHO report more than 60 million children around the world suffer abuse and maltreatment.<sup>9</sup> It further defines as to what constitutes abuse. The report defines abuse of a child;

“all forms of physical, or emotional maltreatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual and potential harm to the child’s right to health, survival, development or dignity in the context a relationship of responsibility trust or power.”<sup>10</sup>

Violence against children occurs in a number of ways i.e. physical, sexual, verbal, emotional and even economical. Physical violence means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb or health or impair the health or development of aggrieved. Sexual violence includes;

- an adult exploring his/her genitals to a child or persuading a child to do the same,
- an adult touching a child genitals with hand or any other object or making a child touch genitals,
- an adult having oral, vaginal or anal inter course with a child with or without penetration,
- an adult making any verbal or other sexual suggestion to a child,
- an adult persuading a child to engage in sexual activity,
- an adult making a child witness any sexual act,
- an adult encouraging a child to hear, view or read any pornographic material,

Moreover, after coming into force of POCSO Act 2012, sexual offence against children have been classified as criminal act liable to be punished under the provision of the present Act. It defines sexual offence under different heads i.e. penetrative sexual assault and aggravated penetrative sexual assault, sexual assault and sexual harassment. These

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<sup>9</sup> WHO Report (1999) (On the Consultation on Child Abuse Prevention Geneva); see also Pinheiro, P.S., World Report on Violence against Children, New York, U.N. (2006); Int. Society for Prevention of Child Abuse and Neglect, World Perspective on Child Abuse, 6<sup>th</sup> Edi (2006) (www.ispcan.org.); Also [www.who.int/vilence injury-prevention/violence/neglect/en](http://www.who.int/vilence injury-prevention/violence/neglect/en).

<sup>10</sup> Ibid.

terms have been defined under respective sections of the Act.<sup>11</sup> Emotional violence includes, inter alia insult, ridicule, humiliation, bad name calling, depriving from love and affection, avoidance in fulfilling the reasoned demands of the child, not allowing the child deliberately to participate in peer group relationship, suspecting the child all the time without having any cogent reasons, judging the child as inferior or worthless based on his school or domestic performance, breaking the self confidence of child, scolding, degrading his/her mother in the name of the child etc or any overt or covert act, performance aiming at the child which emotionally hurts him. According to the study Report on Child Abuse in India published by Ministry of Women and Child Development, Govt. of India 2007 following figure reflect the true picture of abuse in relation to children. Though the study suffers from two peculiarities, i.e. data have been received on the basis of sample study and that too during last decade. As such much water has been flown in the field of child protection and many institutions are working to ensure violence free atmosphere for children. Thus, the relevance of the data which is 10 years old is obviously to be questioned. However, since we have no other study report made by any agency reliance on the data needs to be placed for any conjectured discussion. Report categorically says:

**On physical abuse :**

Two out of every three children were physically abused;  
out of 69% abused children physically abused 54.68% were boys,  
over 50% children were being subjected to one or the other form of physical abuse;  
out of those children physically abused in family situations 88.6% from parents;  
65% of school going children faced corporal punishment;  
52% children worked seven days a week;  
most children did not report the matter.

**On sexual abuse**

55.2% children reported having faced one or more forms of sexual abuse;  
21.90% reported facing severe forms of sexual abuse and 50.76% other forms of abuse;  
50% abusers are known to the child or in a position of trust and responsibility.

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<sup>11</sup> Sec 2 (a, b, f, i, j) sec. 5,9,3,7 and 11 of POCSO Act 2012 which defines such terms. These are aggravated penetrative sexual assault, aggravated sexual assault, aggravated sexual assault, sexual assault, sexual harassment.

**On emotional abuse and girl child neglect:**

every second child reported facing emotional abuse;

In 83% of the cases parents were abusers 48.4% of girls wished they were boys.

Two things are common to all the abuse scenario. Assam reported highest rate of physical and sexual abuse and most of the children did not report the matter to anyone. Crime against children where the child is victim, may be seen in the following table.<sup>12</sup>

Sl. No	Crime Head	Year			%Variation in 2014 over 2013
		2012	2013	2014	
(1)	(2)	(3)	(4)	(5)	(6)
1.	Murder	1597	1657	1817	9.7
2.	Attempt of commit murder	-	-	840	-
3.	Infanticide	81	82	121	47.6
4.	Rape	8,541	12363	13766	11.3
5.	Assault on Women (girl children) with intent to outrage their modesty	-	-	11335	-
6.	Insult to the modesty of women and children	-	-	444	-
7.	Kidnapping & abduction	18,266	28167	37854	34.4
8.	Foeticide	210	221	107	-51.6
9.	Abetment of suicide	144	215	56	-74.0
10.	Exposure & abandonment	821	930	983	5.7
11.	Procuration of minor girls	809	1224	2020	65.0
12.	Importation of girls from foreign country (below 18 years)	-	-	2	-
13.	Buying of girls for prostitution	15	6	14#	133.3

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<sup>12</sup> NCRB Report 2013

14.	Selling of girls for prostitution	108	100	82#	-18.0
15.	Prohibition of Child Marriage Act	169	222	280	-
16.	Transplantation of Human Organs Act	-	-	1	-
17.	Child Labour (Prohibition and Regulation)				-
18.	Immoral Trafficking (P) act	-	-	86	-
19.	Juveniles Justice (C&P of Children) Act			1315	-
20.	Protection of Children Act	-	-	8904	-
21.	Un-natural offences	-	-	765	-
22.	Other Crimes	7411	13037	8484	-34.9
23.	Total	38,172	58224	89423	53.6

Included for the first time in 2014 # data collected under minor in place of girls only

There is no gainsaying the fact that the incidence of violence against children is alarming at the domestic level and it invites serious attention and concern to make a violence free atmosphere for the children.

### III. Designing Mechanism

As has been said earlier laws are in the offing to take care of the interest of children. Laws also deal with the sectoral issues of the children to bring International change or ensure privileges and the rights thereof. Beginning of 21<sup>st</sup> century met with quite comprehensive and innovative laws to guarantee every possible security to the children. These are, i.e., Juvenile Justice (Care and Protection) Act 2000, Commission for Protection of Children Act, 2005, Elementary Education Act 2009 and the recently enacted Juvenile Justice (Care and Protection) Act 2015 and the Model Rules 2016.<sup>13</sup> Since discussion is focused on Juvenile Justice Act 2015 (herein after referred as JJA) mere mention of all such laws is suffice at this Juncture.

Any codified law like present one has three specific features, i.e., Philosophy or the objectives, institution and the rule which are in broader

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<sup>13</sup> See the Text objects and the reasons of these laws for better comprehension.

sense called standards. Judging from the angle JJA has been enacted with a view to consolidate and amend the law relating to children alleged and found to be in conflict with law and those in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration by adopting a child friendly atmosphere in the adjudications and disposal of matter in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established there under and for matter connected there with or incidental there to.<sup>14</sup> Present legislation has overriding effect in respect of children as it shall apply irrespective of the provision contained in any law for the time being in force, to all matters concerning children in need of care and protection and those who are in conflict with law. Matters which the law covers are apprehension, detention prosecution, penalty or imprisonment, rehabilitation and social reintegration of children in conflict with law. Regarding those who are in need of care and protection it deals with procedures and decision or order relating to rehabilitation, adoptions, reintegration and restoration.<sup>15</sup> Thus the enactment has broad perspective about these two groups of children. Basic premise of the Act is the best interest of child and the child friendly atmosphere while dealing with any child under the provisions of the Act.

It ensures every protection and safeguard to all the children (a person below the age of 18 year) who are covered therein. Good number of institutions have been stipulated to advance these ends. Juvenile Justice Board (here in after called Board) has been enjoined with the duty to deal exclusively child in conflict with law and the task in respect of child in need of care and protection has been assigned to Child Welfare Committee (here in after called as Committee). Power to dispose of the matter of children of both these groups lies exclusively with these two institutions. However large number of other institutions are also meant for support and cooperation as an integral part to cater to the need of justice for such children. These are Special Juvenile Police Units, child welfare police officer, child welfare officer, probation officer, case worker, House father and mother of child care institutions based on the issue and the gender as well, state and district child protection units, resource agencies for adoption etc. All these have their own role and responsibility either independently or in coordination with other agencies to achieve the ends of the Act. Since the topic directly linked with discussing the matter keeping in view of North Eastern State including Sikkim it would be desirable to limit in the same context.

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<sup>14</sup> See object and reasons of Bill 2014 on Juvenile Justice (Care and Protection). The Bill received Presidential nod on Dec. 31 2015 and became J. J. Act 2015

<sup>15</sup> Sec 1 (4) of Juvenile Justice (Care and Protection) Act 2015.

Act provides that state Govt. shall constitute for every district Juvenile Justice Board (JJB) consisting of judicial magistrate of first class and two social workers of whom at least one shall be women.<sup>16</sup> Such Board shall have power to deal exclusively with all the proceeding under the Act relating to children in conflict with law.<sup>17</sup> Function and power of the Board inter alia include:

- ensuring that the child's rights are protected throughout the process of apprehending, inquiry, after care and the rehabilitation,
- adjudicate and dispose of case of children in conflict with law, and
- order the police for registration of FIR for offences committed against either a child in conflict with law or that who is in need of care and protection.<sup>18</sup>

It further provides that state Govt. shall constitute for every district one or more Child Welfare Committees for exercising the power and to discharge the duties in relation to children in need of care and protection.<sup>19</sup> Committees so constituted shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of such children and to provide for their basic needs and protection. Besides this it has also the power to deal with all the proceeding under the Act regarding such children. There is long list of twelve groups of children who are in need of care and protection.<sup>20</sup> Act prescribes specific provisions regarding offences likely to be committed against children including the punishment to perpetrators therefore. Offences are largely in the nature of physical abuse of children for specified purpose by the respective groups. The law talks about child offenders and the victim equally. Offences prescribed under the Act include disclosure of identify of children of both the groups against whom proceeding is in progress,<sup>21</sup> cruelty against a child,<sup>22</sup> employing a child for begging,<sup>23</sup> administering intoxicating liquor, narcotic drug or psychotropic substance<sup>24</sup> using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance<sup>25</sup> exploitation of a child employee,<sup>26</sup> receiving or offering a child in adoption

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<sup>16</sup> Ibid. Sec. 4

<sup>17</sup> Ibid. Sec 8(1)

<sup>18</sup> Ibid. Sec. 8(3) (d, f, i)

<sup>19</sup> Ibid. Sec. 27

<sup>20</sup> Ibid. Sec. 2(14)

<sup>21</sup> Ibid. Sec. 74

<sup>22</sup> Ibid. Sec. 75

<sup>23</sup> Ibid. Sec. 76

<sup>24</sup> Ibid. Sec. 77

<sup>25</sup> Ibid. Sec. 78

<sup>26</sup> Ibid. Sec. 79

without following proper procedure<sup>27</sup>, sale or procuring a child for any purpose<sup>28</sup> corporal punishment for discipline a child<sup>29</sup> using a child for militancy<sup>30</sup>, kidnapping and abducting a child<sup>31</sup> offences committed on disabled children,<sup>32</sup> abetment of any of these offence.<sup>33</sup> If such offences are committed by child be shall be considered as a child in conflict with law.<sup>34</sup> Where the offence invites punishment for a term of more than seven years of imprisonment such offence shall be cognizable non bail able and triable by Children's Court. Where offence under the act in punishable with imprisonment for a term of three years and above but not more than seven years shall also be cognizable non bail able and triable by a Magistrate of First Class and offence under the act punishable with imprisonment for less than three years or fine only shall be cognizable, bail able and triable by any Magistrate.<sup>35</sup>

#### **IV. Procedural Normative**

As has been depicted in the earlier pages that the Act deals with two groups of children for which different agencies have been speculated. Board is constituted to dispose of the cases of a child in conflict with law which mean a person below 18 years of who has committed any offence punishable under any penal law. And for a child of the same age group who is in need of care and protection Committee has been constituted. The process to be adopted by both the agencies has to be narrated separately as these work in separate promise. A child in conflict with law (CCL) on apprehension by a child welfare police officer of police station has to be handed over to the special juvenile police unit. (SJPU) at the district headquarter who in turn will produce the child before Board within 24 hours of apprehension.<sup>36</sup> Certain safeguards have been prescribed, under the Act such as non hand cuffing or otherwise fetter, Police in civil dress except at the time of arrest, child friendly approach, no police lock up, no compulsion either to confess the guilt or to sign any document or statement, information to child about charges levelled against him through guardian or the parent and information to the probation officer and parents about his apprehension.<sup>37</sup> On

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<sup>27</sup> Ibid. Sec. 80

<sup>28</sup> Ibid. Sec. 81

<sup>29</sup> Ibid. Sec. 82

<sup>30</sup> Ibid. Sec. 83

<sup>31</sup> Ibid. Sec. 84

<sup>32</sup> Ibid. Sec. 85

<sup>33</sup> Ibid. Sec. 87

<sup>34</sup> Ibid. Sec. 89

<sup>35</sup> Ibid. Sec. 86

<sup>36</sup> Ibid. Sec. 10

<sup>37</sup> Ibid. Sec. 13; Sec. 8(2) of the J.J. Rules 2016

apprehension the child in conflict with laws has essentially to be bailed out, with or without surety no matter the offence is bailable or non bailable.<sup>38</sup> Such bail may be granted even at the time of apprehension by the concern Police officer or by the Board if the child appears apparently a juvenile.<sup>39</sup> Bail to such offender may be refused on three grounds specifically mentioning the reasons there for.<sup>40</sup> Such grounds are reasonable apprehension that release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or his releases would defeat the ends of justice. If the juvenile is not released on bail either by the officer-in-charge of the police station<sup>41</sup> or by the Board then he shall be kept only in an Observation Home for such period during the pendency of the inquiry<sup>42</sup>. Releasing a juvenile from police stations is a dream. Crisis situation for a child starts from here as he has to cross various barriers of rigid procedures. Board embarks upon to declare him/her juvenile for which law prescribes no time limit and in many cases the procedure breaks the confidence of an innocent child and crushes his future career. Sec. 94 of the Act gives concession at least to those children who apparently appears to be juvenile but Board hardly cares the spirit of law and starts asking to produce documents to certify his age. The necessity of evidence and its verification especially of documents produced in support of claim of juvenility compels the child to remain in fetters. The prescribed time frame under the Act or the Rules for respective inquiries in respect of the juvenile in conflict with law may be seen in the following table:

Table

Nature of enquiry / process	Time	See
Bail	At the earliest even at time of apprehension	12
Declaration of juvenility	No time prescribed	
Preliminary assessment (in case of juveniles committed heinous offences and are between 16-18 yrs. of age)	3 months	15
Inquiry about the charges	4 months	14
Extended time	2 months	14
Inquiry in respect of petty offences not concluded within Six months	6 invites termination	14

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<sup>38</sup> Ibid. Sec. 12(1) of the Act

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. Sec. 12(2)

Inquiry if remains unconcluded in matters of serious and heinous offences even during extended period of time Chief Judicial Magistrate may grant more time. Unfortunately Act puts no limit on such extension. Law expects certain mandates to be followed by the Board to ensure fair and speedy enquiry namely:

- satisfy that CCWL has not been ill treated by the police or by others,
- proceeding follow in a simple manner and in the child friendly atmosphere,
- petty offence be dealt on the pattern of summary proceeding,
- proceeding in respect of serious offences follow the procedure prescribed for summons cases,
- inquiry of heinous offences for children below 16 yrs of age follow the pattern of summons cases.<sup>43</sup>

Where a child above 16 yrs of age has committed heinous offence Board shall conduct a preliminary assessment as to the capacity of understanding the nature and consequence of his act. On finding him matured the matter shall be transferred to a Children's Court where proceeding will take place treating him as adult.

"I hate quotation tell me what you know, is a famous dictum of a scholar which appeals to juvenile justice system. Figure and the provisions are often quoted with authority arguing either in favour or the against. Ornamental words no doubt with high hopes in the legislative and policy documents reflect sympathy with the millions of children below 18 yrs of age either for the purpose of distributive justice or for rehabilitative process. Children are meant to suffer and one may discuss on its magnitude and the dimension. Hilarity goes off while reaching at the destination. Journey of juvenile justice has been a story of ups and downs rather topsy turvy. Violence, abuse and crime against children is on rise. Basic premise of the study is the study of violence against children with special reference to the states of North Eastern region including Sikkim and the role of disposition mechanism and the institution.

#### **V. Status of the J.J. System: North Eastern States**

All the states of northern region have constituted Board and Committee in their respective districts before coming into force of the J.J. Act of 2015 and the Central Govt. Rules of 2016. States have been enjoined with a duty to enact their own rules for the implementation of the provisions of the Act in an effective manner. But quite a few states have come out with her own rules under the present Act. Many states have started to complete

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<sup>43</sup> Ibid. Sec. 14(5)

the task. Its just a coincidence that none of the North-Eastern State has come out with rules resultantly Central Rules 2016 in vogue.

Concern about the J.J. system reflects in embarking upon the actual implementation of the Act. Let us begin with the constitution of JJB / CWC in such states.

S N.	Name of the State	District Total	Districts Covered by JJB	District Cover by CWC
1	Assam	33	28	28
2	Arunachal Pradesh	20	16	16
3	Mizoram	8	8	8
4	Meghalaya	11	11	11
5	Manipur	14	9	9
6	Trupura	8	8	8
7	Nagaland	11	11	11
8	Sikkim	4	4	4

It may be noted that majority of the districts in these states are covered with JJB/CWC. What is more painful is the time consuming and lengthy procedure adopted by these institutions resulting in frustrating the objectives of Juvenile Justice. Children are ill treated during their stay in the institution, over stay, unnecessary mental physical and even economical harassment is common feature, long hectic disposition procedure, false implication in the crime, detained for passive criminality and family rivalry are some of the awful features of the existing juvenile justice framework. Cases are pending before various Boards for long time. Pathetic situation of the system reflects from the fact that finding real fact about the pending cases in which a child to be treated by the Board in respect of his criminal behavior is rather not a cake walk. Still on the basis of reports published either in the news prints or in the institutional reports or NGO's endeavour unreliable data and contradictory figure come to one's knowledge.

State	Pendency before JJB	Pendency before CWC
Assam	1632(31.3.2016)	596(31.12.2012)
Arunachal Pradesh	43(18.1.2016)	2(18.12.2016)
Manipur		3000(22.2.2011) ALHR 2012
Meghalaya		
Mizorum	1699 NCRB 2011	19
Nagaland		
Tripura	25(15.9.2016)	No pending
Sikkim		

Without going in to the intricacy and reliability of data on juvenile offender pendency of the cases is not the only misery to be faced by the children. Violence has taken a new shape in the justice delivery system. The purpose of the newly enacted law on juvenile justice is to ensure fair and speedy justice to a juvenile offender and this was principally the reason to carve out the legislative corpus from the arena of criminal law and the procedure. The kind of violence this research paper seeks to indentify is certainly puzzling. The focus is on the harassment which juvenile is supposed to face during various stages of inquiry which creates an adverse impression in his mind rupturing his psyche.

The magnitude of torture which is rather simmering is acutely difficult to judge in the long journey of his future life. Feeling snarly in a complete web of judicial rigidity the child looses all the high hopes of his life. Sometimes it results in deep irreparable loss for which no one else but the system contributes.

To begin with the apprehension process violence comes into play. Child Welfare Police Officer wears the dress at the time of so doing which law strictly prohibits.<sup>44</sup> Simple procedure of informing parents or guardian and the probation officer is hardly complied with.<sup>45</sup> Apprehended child meets with the same behavior which an adult offender faces as the considerable amount of discretion Police personnel use. Accepting that the child does not encounter unpleasant situation in all the cases but the apprehension irrespective of the nature of offence usually follows. Though law prohibits the apprehension if the offence committed does not invite punishment of less than seven years of imprisonment.<sup>46</sup> A child who has not committed such an offence has to be bailed out at the initial stage of apprehension. If the child has not been bailed out by the police officer the Board on production is enjoined with a duty to release him on bail even if the offence committed is non-bail able.<sup>47</sup> More so these authorities may or may not ask for surety.<sup>48</sup> Bail which is rather right of a child often denied and the application being treated in a routine manner and all that is strictly prohibited happens to happen. Classification of bail able and non-bail able hardly matters, sureties are required, verification of surety follows, disproportionate amount is fixed by the Board or even High Court. Situation becomes more alarming in cases of juvenile offender having no parent or guardian or parents with poor strata as even if the bail is granted detention follows as furnishing sureties become challenging task.

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<sup>44</sup> Ibid. Sec. 8 (4) of the Rules 2016

<sup>45</sup> Ibid. Sec. 8(2) of the Rules and See 13 of the Act.

<sup>46</sup> Ibid. Sec. 8(1)

<sup>47</sup> Ibid. Sec. 12 of the Act

<sup>48</sup> Ibid.

Act prescribes detention of such juvenile in an Observation Home till inquiry concludes.<sup>49</sup> And now the another journey of violence begins, Boards starts assuming jurisdiction for which the age has to be ascertained. The purpose of the article is not to pinpoint the weakness of the system but to evaluate the process and the impact of the same on a juvenile. Time required in ascertaining the age has not been prescribed under the Act, a walkover to the Board or Committee to apply sea shore discretion. Juvenile is asked to follow the technical procedure prescribed irrespective of his physical appearance which is not needed at least in more than 50% cases. However this may be misused by professional and tricky offenders and in such situation or in border line cases adducing formal evidence in support of the age is required.<sup>50</sup> Law considers only documentary evidence and nothing else. Date of birth shown in matriculation certificate which is though original but secondary in nature is given precedence and in absence thereof certificate issued by Panchyat, Nagar Nigam or Agency of like nature regarding proof of age matters.<sup>51</sup> Such certificate has to be authenticated by the issuing authorities for which they have to be examined before the Board or the Committee as the case may be. Such process takes time and involves monetary consideration though law does not speculate such things and the child feels psycho logical pressure as he is behind the bar, though in Home as we all know. Medical examination comes in rescue to support the claim of juvenile but the manner and the system of examination is equally painful. Money matters and instances do suggest that a child who by any stretch of imagination can never be judged a person of more than 18 yrs is certified by the Doctors as a person of approximately 20 yrs and the vice-versa. Orphans, destitute and children of poor parents do suffer and hardly meet with justice.

Story of inquiry before the Board is necessarily interesting. Tall claims of reformatory justice to millions shatters. Present law classifies offences under three heads for the purpose of disposition of cases against the juveniles, i.e., petty serious and the heinous. It prescribed brackets of procedure mentioned partly in Criminal Procedure Code and partly in the present Act. While initiating inquiry Board has to adopt its course based on the nature of offence. In the matter of heinous offences committed by a child between 16 to 18 yrs of age Board happens to be paralysed except conducting preliminary assessment to verify the jurisdiction on the psychological grounds, i.e., mental maturity to understand the nature and consequence of offence and ensuing calculation to commit the crime.<sup>52</sup> On finding the child / juvenile perfectly matured the matter is being adjudged to be disposed off by the Children's Court. Law permits 120 days for any order

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<sup>49</sup> Ibid. Id Cl. (2)(3)

<sup>50</sup> Ibid. Sec. 94

<sup>51</sup> Ibid.

<sup>52</sup> Sec. 15 of the Act

on they application of preliminary assessment which is subject to appeal and option are both ways. Inquiry in respect of charges levelled against the juvenile has to be concluded within four months with a grace period of another two months justified on the sufficient reasons given there for. Non appearance of witnesses even after repeated summons and further what is technically called warrants frustrate the very purpose of speedy and fair justice to children. Pendency goes high in such situation leaving the child to lament in the Home (virtually a jail) in worst situation and the open secret of such Homes is less said the better throughout the country including North-Eastern region. According to one report 146388 cases are pending before the Board throughout India on January 01, 2016. Many studies conducted by either of the agency working in the field of child protection do suggest in common about insufficient and over crowded homes and the poor services given to children therein. Rough and rude behavior of govt. officials in the Homes meant to introduce reform in the attitude, habit, perception and the response of juvenile towards people in general in the society received major setback and the institutional violence in the name of law and order is not uncommon. And perhaps this is the most unfortunate situation in the life of a juvenile in the name of reform. It sounds well but only in the academic discussion of the scholars on the forums and in the pages of books or the writings. Law shoulders Board with the responsibility to complete the task of inquiry after following summary proceeding in cases involving petty offence and summons proceeding in serious offences. Again termination of proceeding in cases of petty offences has been recommended by the law if the same is not concluded within the prescribed time limit. But this provision has sparingly been used otherwise the data on pendency might not have swollen. Authorities are tethered with a hump and routine treatment with the cases ward off the charms of beneficial law on children. Year after years pass in the arms of Board and a child languishes either in the fetters of bar or suffer mental agony in the society. This is the another feature of violence which breaks the confidence of a child who is spotted as offender in the society. Matters disposed off by the Board are appealable except where the juvenile is acquitted of the charges. Thus there are cases in which entire life of the child comes to an end in the premise of judicial chambers. Board which is the ultimate authority of a juvenile some where appears to be a perpetrator of process violence against him and this is the fallacy of juvenile justice. There can be numerous reasons for judging the working of Board as faulty to which this paper is least concerned but the ultimate effect result s violence in the mind of an innocent person of tender age. Thus the retroactive performance by the Board culminated the miserable failure of the J.J Act in its spirit. As regards Committee things are comparatively satisfactory that too not because of the efficiency of the institution but nature of cases do not involve rigid procedure in disposition. Furthermore the

members working on the panel are not trained to perform their role by adopting technical process.

Board may and should play its proactive role to take cognizance of cases which constitute offence against children as prescribed under the Act.<sup>53</sup> It prohibits certain activities either involving or aiming at the child and declare all these an offence punishable by the Act. This invites deviation in the traditional role of Board not only as adjudicator but initiation of proceeding against such persons who are offender or perpetrator of criminal behavior against children. List of such offence is long and needs to be enforced in reality with true spirit and there is no room of conjecture that if the Board embarks upon shouldering the responsibility child abuse or violent activities against them will come to a stand still creating a new regime of child protection. Forums are in vogue with enough power, role and responsibilities and its positivism may change the future of the child. Creative role of Board and CWC definitely bring the children of both the categories in a new regime of rights and violence free society. Proper constitution, qualified social workers, induction and in service training for capacity building, proactive and innovative intervention of social worker member on the panel, vigour and enthusiasm to ensure one's beingness are the hallmark of strong institutional mechanism and the violence free atmosphere for the children.

## **VI. Concluding Remarks**

Violence against children has now become a common feature and it is on rise though preventive mechanism is responding correspondingly. Laws and policy framed by the Centre as well as state govt. do address the issue in a manner said to be satisfactory and appropriate. Agencies have been geared and put in motion to bring things in order. A child is supposed to be quite safe and secured in the lap of the mother in a given family surroundings. Figure presented and reflected in the Govt. studies and report present a very gloomy picture in respect of bright future of the nation. Data show that abuse and violence within the family institution is quite alarming. Given the facts Assam is pioneer in case of sexual abuse. Irrespective of the nature of violence against a child his tender years are brutally crushed leaving a ruptured life no matter on whose initiative. Designed system either at the international or even at domestic level reflected an honest effort to ward off any ensuing danger in respect of the child but more a thing changes more in remains the same.

Numerous standards with right based approach have been formulated and violence persists. More so jargon of Indian laws of which present Act 2015 is an important component could hardly overcome the

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<sup>53</sup> Sec. 74-89 of the Act.

problems of children. Institutions created under the Act, i.e., Board, Committee and the juvenile police unit are the backbone and the role as well responsibilities defined under the Act is very clearly suggest a proactive and innovative approach. What is miserable and perhaps the Northern-Eastern states are no longer an exception that a child of any category has to face violence during the adjudication or disposition process. So forget about the physical, sexual and emotional abuse, the abuse which he meets with just after apprehension till the inquiry in respect of charges levelled against him is rather more serious. Bail even at the initial stage of apprehension is a matter of right irrespective of the technical classification of cognizable or non cognizable but that is denied in majority of cases, police in regular dress is prohibited but the child is forced to face since arrest till production before the Board and thereafter even during proceeding. Sureties are demanded even the Act does not warrants so, amount fixed by the court or the Board in a good number of cases are so high as economically unpleasant and sometimes child is forced to remain in custody because of non furnishing of surety and the amount. Juvenility is to be decided and the Board takes its own time in order to complete the age inquiry process and Act is rather silent about the time within which the same has to be completed. Parameters of preliminary assessment under section 15 of the Act in respect of heinous offences committed by a child between the age group of 16 to 18 are vague and opaque resulting into frustrating beneficial purpose of the Act, completion of inquiry mandatorily completed within 4 months to be extended for another two months is a dream resulting spoilage of an innocent person. These issues lead to a peculiar kind of violence or abuse against a child which seems to rather more pernicious for his future and this process violence is to be takled with. Board has also been enjoined with a duty to take cognizance of offences against children and that is the most important aspect of the recently enacted law but hardly meets with situation where Board embark upon his role. Large number of children working with restaurants, hotels, shops and even as domestic servants are unattended by Board or the Committee. Parents use the children for economic earning depriving them from their right of schooling is another phenomena to be quoted. In nut shell institutions provided under the Act must shoulder responsibility to enable a violence free society and close vigil out side and fair procedure inside will bring light to the millions of children of our country.