

Juvenile Justice: Law & Practice

**[Select orders of Juvenile Justice Board-1, Kingsway Camp,
Delhi]**

(2009 – 2012)

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FOREWORD

HAQ: Centre for Child Rights strongly feels the need to position the role of the Juvenile Justice Boards as central to the administration of juvenile justice. It is equally important to ensure uniformity in praxis across the country. The combination of reliance on procedures laid down under the Juvenile Justice Act (JJ Act) as well as the Criminal Procedure Code only adds to the difficulty in realisation of the core principles of diversion and restorative justice in administration of juvenile justice. Even on the procedures already spelt out in the JJ Act, Boards within the same city and across the country differ in their implementation. This is where orders that conform to the internationally acknowledged principles of juvenile justice need to be publicised.

While orders and judgements of various courts can be accessed through the internet, in the case of Juvenile Justice Boards, this may not be possible as privacy and confidentiality of children in conflict with the law needs to be protected. However, it is hoped that as we evolve in our understanding of juvenile justice and its administration, there will be a time when the Boards will in practice prepare orders that do not disclose the identity of the child and yet there is access to information and valuable insights on practice.

In the history of Juvenile Justice in India, this is perhaps the first ever attempt to publish orders of a Juvenile Justice Board. HAQ hopes to take this forward to compile and publish crucial orders of other Boards too in future. In this we look forward to support from Advocate Anant Asthana and all those working with or for children in conflict with the law. We thank Anant Asthana for compiling this compendium for us.



Enakshi Ganguly Thukral

Co-Director



Bharti Ali

Co-Director

PREFACE

Being a blend of criminal law and welfare law, Juvenile Justice Act (JJ Act) presents complicated issues and unforeseen challenges in terms of law and procedures before Judicial Officers and scholars who are often faced with situations where they need to come up with judicial responses and legal reasoning. Many a times there are no precedents available to take guidance. Some of these orders are historic, as readers will notice when they read through these orders. If not preserved, these orders would have set in oblivion in due course of time. This is the reason why a need was always felt for compiling some of the remarkable orders given by Juvenile Justice Boards (JJBs) in Delhi, a need shared and endorsed by many who had the occasion to be closely involved with the Juvenile Justice System and its administration.

I am not only glad but also thankful to HAQ: Centre for Child Rights for making this idea, which kept floating over past two years a reality. The International Colloquium on Juvenile Justice being organised by HAQ: Centre for Child Rights on 16th, 17th and 18th March 2013 presented an opportunity which I found most appropriate to present these orders in a printed and compiled format to a wider readership of engaged scholars, Judges, lawyers from all over world.

As a practitioner and trainer on juvenile justice law, I had several opportunities to train and interact with Judicial as well as non-judicial members of JJBs and Police across the country, and my general impression so far has been that there is widespread non-awareness about revolutionary provisions of JJ Act. Not many knew that JJBs have powers which are generally not available to criminal courts. Those who knew these powers exercised them to propel implementation as orders in this compilation will show.

JJBs in Delhi have been far ahead on enthusing life and meaning to the JJ Act and it has been a thrilling experience to observe this and to be part of this process. Juvenile Justice Boards of Delhi are reputed for their performance and stand distinguished in the national scene. Their orders have given effect to the provisions which were never used anywhere else. Implementation of a provision which allows JJB to terminate a proceeding on the ground of delay in investigation and

inquiry is just one case. 1986 Judgment of Hon'ble Supreme Court in Sheela Barse case was almost forgotten until JJBs in Delhi started using it. Compelling Governments to accelerate implementation and to create adequate infrastructure is something which is still unknown to many JJBs, despite the fact that Law gives them power to pass orders in this regard. Ground for setting up of a special drug de-addiction treatment centre for Juveniles in Conflict with law was prepared by a JJB order which was challenged by Delhi Government before Hon'ble Delhi High Court and which bounced back to the Government compelling it to set up such a facility.

Prohibition on disqualification of juveniles, taking cognizance of violation of Section 21 which protects a juvenile's identity from media exposure, violations by Police force, illegal detention of juveniles in jails and police lock-ups, lack of required infrastructure, scope of criminal law provisions in Juvenile Justice Act, organised crime etc. are some of the areas which have been duly attended by JJBs in Delhi and these are best practices which need to be shared and circulated among all.

Reading a judicial order has an altogether different impact on our understanding and it is far greater than any amount of training or lecturing. There has been a great demand for these orders. Not only this compilation will serve as a great tool of awareness and training but also it will be an illuminating exercise to read through orders compiled herein.

Most of the orders in this compilation have already been incorporated in the Training Curriculum of National Legal Services Authority (NALSA) for Special Juvenile Police Units and are in extensive circulation across the country among Judges, Magistrates, academicians, lawyers and police officers and are used in trainings on Juvenile Justice.

Role of Hon'ble Delhi High Court in up-scaling the performance of JJ Act in Delhi at precisely every level has been historic. Appointing best Magistrates to JJBs was just a beginning which set the motion. Establishing a model legal aid programme in JJBs in 2008 was another milestone. There are no words to capture the entire gamut of efforts which Hon'ble Delhi High Court has made on accelerating and improving implementation of the JJ Act. Perhaps a separate book is required to document it. Hon'ble Justice A.K. Sikri had once

expressed his desire that judgments of Delhi High Court on Juvenile Justice should be compiled as an exclusive set and now Delhi Commission for Protection of Child Rights (DCPCR) has taken up this task and readers will soon have a separate compilation of Delhi High Court's Judgments on Juvenile Justice.

Not many may be aware that majority of 2006 amendments and entire 2011 Amendment in JJ Act have resulted from judicial proceedings before Hon'ble Delhi High Court. On administrative side, evolution of Juvenile Justice Committee of Delhi High Court deserves a special mention. Implementation of Juvenile Justice Act came up a priority area for Indian Judiciary in year 2006 when Chief Justices' Conference listed it on its agenda for the first time. Delhi High Court was first to implement the resolution which was passed in the Conference and that is how Juvenile Justice Committee of Delhi High Court came into existence under Chairmanship of Hon'ble Justice Madan B. Lokur. Since then, Delhi has been on a path of progression. This single institution itself is credited with significant contribution in the field of Juvenile Justice.

There is tremendous scope to further expand this compilation to include so many other orders which are equally significant. I must acknowledge and thank Mrs. Anuradha Shukla Bhardwaj (the then Principal Magistrate of Juvenile Justice Board-1, Delhi) who is the key author of all the orders included in this compilation. I had the privilege of appearing as a defence counsel for juveniles before the Board presided over by her for almost four years. Thanks are also due to my colleagues Advocate Jacob Zeliang, Advocate Priyanka Das, Advocate Bhupesh Chandra Samad and Advocate Anup Aggarwal who were part of the legal aid team in JJBs. Several orders in cases argued by them are included in this compilation. At last I express my sincere thanks to Advocate Imran Ali who has been kind enough to do technical work on this publication in a very short time and at a very short notice.

While reproducing the content of orders, names of children, details related to their case i.e. case number, name of police station, names of police officers, names of institutions and any other particular which could cause prejudice or unfavourable opinion in the mind of readers towards any person or institution have been omitted.

This compilation may have errors in typing and content, though best efforts have been made to check the content from authentic sources. Any feedback or suggestion from readers will be highly appreciated.

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Chapter -1

Criminal Procedure Code or Juvenile Justice Act?

In *Hariram Versus State of Rajasthan*, the Supreme Court of India observed, "The said law (JJ Act) is yet to be fully appreciated by those who have been entrusted with the responsibility of enforcing the same, possibly on account of their inability to adapt to a system which, while having the trappings of the general criminal law, is, however, different there from." This is so true to the reality of our times. Understanding and appreciation of Juvenile Justice Law has been incremental among duty holders and its complicated relation with criminal law poses a great difficulty in application of its provisions to real time situations. Understanding "trappings of criminal law" inbuilt in the law and practice of juvenile justice is crucial. Once these "trappings" are identified, efforts are to be made to resolve them. Some of these "trappings" have been resolved in the JJ Act itself by the makers of this law but still a lot remains to be identified and resolved.

For instance, use of the word "Warrant" is expressly prohibited by the Juvenile Justice (Care & Protection of Children) Rules 2007 but when it comes to the reality, it is difficult to give effect to this provision. Issuance of bailable and non-bailable "warrant" is a legal tool prescribed under Criminal Procedure Code which enables Courts to compell presence of someone before it. Now when Juvenile Justice Law expressly prohibits use of the word "Warrant", it creates a difficulty. It is one of the classic examples where Juvenile Justice Law clashes with the Criminal Law. What should be the course of action in these intriguing situations? What should a Juvenile Justice Board do when faced with these kinds of questions? A solution to this particular complication was discovered in Delhi in year 2009 by Principal Magistrate of Juvenile Justice Board-2, Delhi Gate, Mrs Ruby Alka Gupta, who started using the term "Order for Production of Juvenile" (OPJ) instead of "Warrant".

A similar issue, but on a bigger scale, arose before Juvenile Justice Board-1, Kingsway Camp in year 2010 when six legal aid lawyers who used to represent children, jointly argued before Ld. Board that practice of issuing process under section 82 of the Criminal

Procedure Code was in direct conflict with the provision related to the confidentiality of the juveniles under JJ Act.

Reproduced below is an order passed by JJB -1, wherein this issue was adjudicated in great detail and decided. By this order, Ld Board completely stopped the practice of issuingailable and non-bailable warrants as well as process under Section 82 of Criminal Procedure Code against children and evolved an alternative which was discovered from within the provisions of the JJ Act. This order is hailed as a significant one as it marked a visible departure from criminal law in JJ proceedings.

BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS ANURADHA SHUKLA PRINCIPAL MAGISTRATE

In the cases of:

<details omitted>

ORDER

Present -Ld APP for the State
Ms Priyanka Das, Advocate
Mr. Anant K Asthana, Advocate
Mr Anil Tiwari, Advocate
Mr Jacob Zeliang, Advocate
All from Delhi Legal Services Authority
Mr. Bhupesh C. Samad, Advocate
Mr. Anup Agarwal, Advocate
Both from Human Rights Law Network

All the aforesaid cases have the same issue in common that the juveniles have stopped appearing in the Board after being granted bail or having been released into the custody of the parents. Non bailable warrants/ Process under section 82 of Code of Criminal Procedure (Cr.P.C) have been issued by the Board against the juveniles in order to secure their presence before the Board.

It was jointly argued by the aforesaid counsels, who represent one or the other juvenile in the listed cases that the issuance of process under section 82 Cr.P.C. is against the spirit of the Juvenile Justice

(Care and Protection of Children) Act 2000 read with Delhi Juvenile Justice (Care and Protection of Children) Rules 2009, hereinafter referred to as JJ Act and Delhi JJ Rules respectively.

It has been argued that the use of accusatory words like “summons”, “warrants”, “arrest”, “remand” etc is prohibited in the process pertaining to the juvenile(s) in conflict with law and the issuance of process under section 82 Cr.P.C. is in direct conflict with the provision related to the confidentiality of the juveniles.

Referring to the Article 40.3 of the UNCRC it was argued that there was a need to have special procedures and institutions meant for the children.

Hitherto the Juvenile Justice Board at kingsway camp has been following the Code of Criminal Procedure in holding the inquiry against a juvenile though in a less formal atmosphere. The procedure of summons triable offences is the recognized procedure for the offences of which the punishment prescribed for an adult is of more than seven years and the offences with lesser punishment are required to be disposed of through summary procedure. The relevant rule is reproduced hereunder:

Rule 13(2) of Delhi Juvenile Justice (Care and Protection of Children) rules, 2009

13. Post-production process by the Board.---

(2) The Board shall take following steps to ensure fair and speedy inquiry, namely:--

(d) cases of petty offences, if not disposed of by the Special Juvenile Police Unit or at the police station itself may be disposed of by the Board through summary proceedings or inquiry, while in cases of heinous offences entailing punishment of 7 years or more, due process of inquiry in detail may follow;

(e) Even in cases of inquiry pertaining to serious offences the Board shall follow the procedure of TRIAL IN SUMMONS CASE.

The Board thus is required to follow the procedure for summons triable cases as laid down in the Code of Criminal Procedure to dispose of the inquiries of the juveniles where they have committed

an offence, which if were committed by an adult he would on being held guilty, have been punished with imprisonment of seven years or more. The procedure that the law prescribes for appearance in a summons triable case is:

Issuance of summons to the accused (juvenile) for his appearance in the Court (Board) at the first stage, if the summons is ignored by the Accused (juvenile) then bail-able warrants are issued to secure his appearance in the Court (Board), where the accused chooses not to appear in the Court despite executing bailable warrants the non bail-able warrants are issued. Where the accused does not appear even after the issuance of Non Bail-able Warrants and the execution thereof is resisted or avoided by the accused the courts issue process under section 82 of Cr.P.C.

Section 82 Cr.P.C. is reproduced here under:-

82. Proclamation for person absconding.—(1) if any court has reason to believe (whether after taking the evidence or not) that any person against whom a warrant has been issued by it has absconded or concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specific place and at specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:--

- (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
 - (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
 - (c) a copy thereof shall be affixed to some conspicuous part of the Court-House;
- (ii) the court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily news paper circulating in the place in which such person ordinarily resides.

It was argued by Ld counsels for the Juveniles that the issuance of process under section 82 Cr.P.C. against a child and its execution in

the aforesaid manner effects adversely the rights of juvenile as guaranteed under the JJ Act and Delhi JJ rules. It was argued that the execution of process under section 82 Cr. P. C. and its publication at all the places as stated in the section, interferes with the right of privacy and confidentiality of the child. All the relevant provisions in the JJ Act and Delhi JJ rules being referred to by the counsels are being reproduced hereunder for ready reference

Fundamental principle of DELHI JJ RULES 2009

II Principle of dignity and worth:

(a)respect of dignity includes not being humiliated, personal identity, boundaries and space being respected, not being labeled and stigmatized, being offered information and not being blamed for their act

(b) The juvenile's..... right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with the law enforcement agencies to the implementation of all measures for dealing with the child

VII Principle of non-stigmatizing, semantics, decisions and actions:

The non-stigmatizing semantics of the act must be strictly adhered to, and the use of words, such as arrest, remand, accused, charge-sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected custody or jail, is prohibited in the process pertaining to the child or juvenile in conflict with law under the Act.

XI Principle of right to privacy and confidentiality:

The juvenile's or child's right to privacy and confidentiality shall be protected by all means and through all stages of the proceedings and care and protection process."

A bare reading of aforesaid provisions would show that there has been something seriously wrong in the procedure being followed by the Board. The difficulty, however is that the law itself wants the Board to follow a procedure laid down for the adult accused and has not provided any procedure/ legislation to apply to the juveniles in conflict with the law. In the issuance of aforesaid coercive process, the Board had no discretion or so was felt. There is no clarity and/ or guidance for the Board as to what order should it pass when a child

stops appearing in the Board. There being no procedure codes to be applied to the juvenile's hearings, the Boards in different places have been evolving their own procedures to deal with the problems faced by them. But under the situation the juveniles remain at the mercy of the Boards.

As stated herein above there is nothing in the JJ Act or Delhi JJ Rules on what course should the Board adopt in the given circumstances. Though there is a lot said about what should not be done, there is practically nothing on what should be done.

There is no doubt that issuance of process under section 82 Cr.P.C. is violent interference with rights of a juvenile guaranteed under the various provisions of the Delhi JJ Rules 2009 and the JJ Act 2000 including his right of privacy, dignity, confidentiality and non stigmatization.

When we talk of right of privacy, it definitely does not go with the provisions of section 82 Cr.P.C. which requires the public reading in conspicuous place in town or village and affixation of the process that too in conspicuous place in the town or village or house/ homestead of the juvenile.

It ends up degrading the juvenile in the eyes of the known ones, the neighbours, relatives and all. It affects the self worth of the juvenile and his self esteem adversely.

The option that the Board sees to some extent is under the provisions of section 22 of the JJ Act 2000.

22. Provisions in respect of escaped juvenile.—

notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed under this Act, and shall be sent back to the special home, or the observation home or that person, as the case may be; and no proceedings shall be instituted in respect of the juvenile by the reason of such escape, but the special home, or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such

steps in respect of the juvenile as may be deemed necessary under the provisions of this Act.

A bare reading of the section would suggest that it is meant for the juveniles having **ESCAPED** from the custody of different homes/ persons. The section refers to **from the care of a person under whom he was placed under this Act.**

If the provisions of the section are extended to the juveniles being granted bail by the Board and 'the persons' being referred to, is considered as the person, who gives undertaking in the Board to produce the juvenile, probably the Board can do away with the process of issuing the warrants of the juvenile and process under section 82 Cr. P. C.

Ld Prosecutor, however, has argued that the issuance of process under section 82 Cr.P.C. is not specifically barred by any provision of the Juvenile Justice Act and that non issuance thereof may have serious repercussions. He argued that the juveniles, who keep appearing in the Board because of these procedures, shall start absenting themselves and we may end up with many inquiries being closed without reaching to a just conclusion and ensuring the rehabilitation and reformation of the juveniles. He also argued that many times the juveniles, who attain the age of 18 years, are released by the Board on personal bonds and these juveniles if they abscond, there is no one, who can be asked to produce them in the Boards as they are not being given into the care of any person. He also argued that the running away of the juveniles is not in their own interest as it hampers with the rehabilitation process taken up by the various agencies involved with the Juvenile Justice System and it also increases the chances of their slipping into deep delinquency as they will end up feeling that they can do anything and get away with it by just running away at their sweet will.

There are definitely two aspects of the situation and each has its own positives and negatives. While keeping a check on the juvenile by following the procedures, it is ensured that he remains under the observation of the different people involved in the system on the other hand adhering to the process results into the violation of the rights of the juvenile guaranteed under the Act.

This is where a need is felt to have a procedure, which can look into both the aspects and brings into a harmony suited to the best interest of the juvenile. Setting up of these procedures have been recommended by the various institutions working for the rights of children.

Article 40.3 UNCRC and other guidelines/ recommendations of different institutions are reproduced hereunder for ready reference:

Article 40.3 UNCRC

“The states government shall take necessary steps.....to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children”

The United Guidelines for the prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990, para 52 asserts the need of “enactment and enforcement of specific laws and procedures to promote and protect the well being of all young persons”

Article 22 of the National Charter for children 2003 requires “All procedures laid down under the juvenile justice system for children in conflict with law to be child friendly.

“**The Blind Alley**” a report prepared by **Haq Center for child rights** says that:

“This cardinal principle of non-stigmatizing semantics and action holds no meaning as long as the procedures of the criminal procedure code are to apply in matters of juvenile justice”.

“.....In a criminal justice system that does not establish distinct and specific legal procedures for children, ensuring justice to children will not be easy. In fact, there is no purpose served by the JJ Act if it continues to rest on criminal procedures for adults.....”

As stated herein above the Board has the realization that the issuance of the process under section 82 of Code of Criminal Procedure interferes with the rights of the juvenile including his right of privacy and confidentiality guaranteed under the JJ Act and Delhi JJ rules. It is, however, also true that the provisions of section 22 of

JJ Act are not worded properly to take care of all the situations of absenting of the children.

The section presumes that the juvenile would always be in custody of some body and does not say anything about the juveniles, who are released on bail on personal bonds having acquired the age of 18 years.

The section says that any police official may apprehend the juvenile and bring him back. How every police officer will come to know that a particular child is running away from the institution or the hearings of the board? There is no system by which the police officials can keep themselves aware about this fact related to a particular child.

Even if the Board sends an information to the concerned police station about the fact of non appearance of a particular juvenile, unless this information is shared with other police stations, the juvenile can easily shift his place of residence into the jurisdiction of some other police station and do whatever he wants to even if it were illegal and against his own interest.

There is nothing on how this information would be shared so that the information is circulated yet the right to confidentiality of the juvenile is taken care of.

There is no doubt that the purpose of the Juvenile Justice Act is not to penalize but to ensure the rehabilitation and reformation of the child, this purpose itself can be achieved only if the Board has a system to ensure that a juvenile appearing before it keeps appearing until it is required in his own interest.

As of now the Board recalls all the orders of issuance of process under section 82 of Code of Criminal Procedure issued against the juveniles in the cases listed today as also in the cases which are not listed today.

The Ahlmad is directed not to issue the warrants and the process under section 82 Cr. P. C. against any juvenile including the ones whose cases are not listed today and wait for the next orders in all cases.

The notices are issued to the parents/ guardians/ sureties of the juveniles in the cases listed today with a direction to each to produce the juveniles before the Board on the next date of hearing. The Juvenile welfare officers of the concerned police stations are also notified that the children in these cases are not appearing and they can take charge of them under section 22 of the Juvenile Justice Act as and when they are found.

Put up again on 12.12.2010.

M.
PM/JJB-I

M.

Chapter 2

Adjudicating on issue of Bail under JJ

Considerations for grant of bail under Juvenile Justice Act are very different from those under criminal law. Under JJ, bail is generally perceived as a matter of right of the child and none of the considerations which are generally applied under criminal law are to be taken into account in a proceeding under JJ Act. Section 12 of the JJ Act deals with the issue of bail. If there is any area in JJ proceedings where “trappings” of criminal law are very apparent in practice, it is “Bail”. In practice, across the country, law on bail under Juvenile Justice Act continues to be dominated by criminal law. One order on bail, presented herein, gives wonderful insights into how the matter of bail needs to be approached under the Juvenile Justice Law, without allowing it to get vitiated by the influence of criminal law.

**BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR
COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS
ANURADHA SHUKLA PRINCIPAL MAGISTRATE**

ORDER

22.09.2011

Pr Ld APP for the State
Juvenile through Mr. Sunil Kumar Advocate

Bua of the child is also present.

The child was produced in the Board on 13.09.2011 and it was informed that the boy takes Ganza, Fluid etc. He was sent to the ‘Sahyog (De-addiction) Centre’ at Sewa Kutir for assessment of his drug status. The centre has recommended a 90 days de-addiction program for the child.

Bail application has been filed on behalf of the juvenile under section 12 of the Juvenile Justice (care and Protection of Children) Act 2000

stating that the juvenile has been falsely implicated in the case. It says that the role attributed to the juvenile is of exhortation (sic). The juvenile is a permanent resident of Delhi. The juvenile is residing with his paternal uncle. It is stated that the child shall not be exposed to any kind of moral, physical and psychological danger.

The application thus is conveying everything that makes it a case fit for grant of bail but is lacking completely in spirit. There is nothing said in the application on how the child came into addiction. What the guardian (paternal uncle with whom the child was living) did to provide the child a treatment for his addiction. They say now that the child shall not be put to any physical, moral or psychological danger-when the child was in fact exposed to all this while living with these guardians. He has been exposed to drugs, he is working as a scrap dealer, and he has not been provided proper education.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act 2000 dealing with bails of juveniles reads as under:

*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**.*

The juveniles thus are to be kept in protective custody if the Board forms an opinion that the release will put him under potential danger of moral, physical or social kinds.

The social behavior report of the boy has been filed in this case by the juvenile Welfare officer, which says that the child is addicted to Ganza and fluid. The child lives with his paternal uncle. It says that the father was a drug addict and he died of the addiction three years ago. The child is in addiction and commits petty thefts. It says that the child has been brought up in a very careless manner.

The Social Investigation report of the boy has been filed by the Probation Officer and it says that the child sometimes lives with his bua and sometimes with his chacha. The S.I.R. also says that the boy is addicted to Cigarette, Beer and Ganza. It says that the Bua provides supervision to the boy but the supervision is poor. She in fact is hiding the fact of present case from her husband. S.I.R. says that the boy needs de-addiction treatment.

Coming to the contents of the application, it has been pleaded that the juvenile has been falsely implicated and he does not have any major role in the offence. Though we will not be relying on it when the case is decided on merits, the juvenile in his S.I.R admitted that he had caught the deceased while the adult accused caused the injury.

Section 12 speaks of bail for the juveniles irrespective of whether the allegation made against them constitutes a bailable or a non-bailable offence. While dealing with the bails of the juveniles the Boards are required to consider not the offence alleged against the child and the gravity thereof but the fact that whether it would be in his (juvenile's) interest to keep him in protective custody. Thus the role of the juvenile, the nature of offence, gravity of offence etc are not considerations before the Board when it entertains the bail application of a juvenile.

The Hon'ble High Court in Master< name omitted> versus State: 129(2006) DLT577 had declined to entertain the plea of State;

".....that the alleged act said to have been committed by the juvenile along with co-accused was one of great moral degradation and the act in itself would demonstrate the perversity of the mind of the juvenile"

*holding that the nature of offence is not one of the ground on which bail can **be granted** or refused **to the juvenile.**"*

The juvenile in this case is into addiction and deeply so, the main consideration before the Board as of now is to address the problem of addiction of the Boy. The board in various cases has found a direct link between the scrap dealers and drug addiction amongst the juveniles.

A report on this issue was prepared and filed when the Board was struggling with the menace of drug addiction in minor boys and

consequential delinquency. Excerpts from a report filed in the Board on the issue are reproduced here under for ready reference:

“Drug Addiction & Delinquency among Children: Role of Waste & Scrap Merchants” prepared and filed by Mr. Anant Asthana. The introduction para of the report said:

“The business of sale and purchase of waste and scrap material is conducted throughout Delhi, mostly in slum areas. This business alone is responsible for bringing a huge number of children into delinquency. There are direct and apparent linkages between delinquency/drug addiction among children and business of waste and scrap material.

Ld. Counsel has written in his report that, **“This report is based on information/ observations received during inquiries of few juveniles. While dealing with these cases, when I made interactions with these juveniles and subsequently got in touch with their parents and family members, It was found that causes of delinquency among all these children are almost on similar patterns and scrap/waste merchants were involved with them in some ways necessarily.**

It has been noticed that the magnitude of juvenile delinquency among street-children, semi-street children and children living in slums and on roadsidesis growing fast due to indulgence of some scrap dealers who bring the children into business of crime very methodically starting from small children being provided job for picking of garbage and then into stealing, robbing and eventually and gradually into being hardened criminals, all through the alcohol, solution (white fluid) or drugs which were first either given to them by scrap dealers/ elder age children already working there or allowed to be given to children through some other people to make their work easy, remain an important factor.”

The juvenile in the instant matter is of the vulnerable category identified by the Board in the series of cases dealt with by it and thus is in the need of Care and Protection under the Act.

The issue of addiction amongst the juveniles is grave issue and has been contested upto the Hon'ble High court. The Hon'ble High Court understanding gravity of the situation had directed the Department of the Women and Child Development to set up Drug addiction Centre with in the premises of Sewa Kutir, accordingly the Drug De-addiction Centre "Sahyog Centre" came into being which is being managed by SPYM and is giving free de addiction treatment to the boys, who are juveniles in conflict with law and who are found to be in addiction.

Coming to the facts of the present case

The juvenile does not have his parents, the father having died and mother having abandoned him. He lives sometimes with his uncle and sometimes with his aunt. His aunt comes to the Board without telling her husband. Thus we are unsure of how her husband will react and how he will treat the child when he comes to know about the present case. The uncle with whom the child was living has not come forward to take the boy's custody; we do not know if he is the right person to take care of the boy.

The juvenile is in addiction of liquor and Ganza and solution. He works as a scrap dealer and it is in the knowledge of the Board that these children are prone to getting into addiction and then to steal. The juvenile though not apprehended earlier, the reports before the Boards suggest that he had been doing petty offences.

The questions which need to be answered, and have not been by the Guardians are:

How the juvenile got into the state of addiction?

Why he was not sent to a school though the family of Bua is appearing to be reasonably good and can easily manage to put the child for education?

How they did not come to know that the child is into addiction?

Where does the money which child earns goes?

Why are they not happy when the juvenile is being given free treatment for addiction right under the supervision of

the Board? It is worth mentioning here that most of the parents whose children are into addiction do in fact ask the Board to keep the child in de-addiction centre and provide them the treatment. Why then the guardians in this case do not want that child should be de-addicted? Do they have an interest adverse to that of the child?

The Bua when she appeared on the last date of hearing was explained that the child is in addiction and that he will be provided treatment. She was told that it is in the interest of the child that he gets de-addicted and starts a fresh life, yet she has chosen otherwise. Why?

In view of above we have sufficient reasons to believe that the so called relatives of the child are not interested in the welfare of the child. The child is in addiction and he will be under all kind of risks if he is released without completing the treatment and this will interfere directly with the development and growth of the boy.

The Hon'ble High court of Delhi while interpreting the words "would defeat ends of justice" as one of the grounds for denying the bail to a juvenile in *Dev Vrat (Minor) Vs The State (Govt of NCT of Delhi):2006[3]JCC1430* referring to *Master Abhishek (minor) Vs State: 2005 VI AD Delhi 18* had held that :

*"The facts for determining as to what amounts to defeat of the ends of justice must be construed in the context of the purpose of the Act. It was indicated in the decision that what needs to be adopted is a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment. What is important is that the court should keep in mind the developmental needs of juvenile and the necessity for his rehabilitation. **Its only if the developmental needs of the child require that he be kept in custody or that keeping him in custody is necessary for his rehabilitation, or care or protection that his release would defeat the ends of justice, not otherwise.**"*

The legal as well as the authoritatively settled proposition of law thus is that if the release of the boy interferes with his developmental needs; the bail is to be declined.

In view of above the bail application of the juvenile is dismissed with an advice to the Guardians to let the child complete his treatment and learn some vocation while his stay at the centre.

Simultaneously considering the overall facts and circumstances, the Board directs Mr. Anil Tiwari Advocate from DLSA to provide assistance to the boy and his family and make them understand the interest of the juvenile. Mr. Tiwari shall interact with the boy at SPYM and also with his guardians. The Guardians are directed to co-operate with Mr Tiwari and provide him necessary information.

Put up the matter on date already fixed.

Sd/
Member

Sd/
Member

Sd/
Principal Magistrate

Chapter 3

Juvenile Justice Board's Role which goes beyond "Court"

Juvenile Justice Boards stand in the category of "District Courts" in the hierarchy of judicial system. But when one looks at the powers available to JJBs, it is noticed that they have greater and different powers and roles than their counterparts in regular criminal courts. This understanding may appear as an over-statement but a careful perusal of various provisions in JJ Act and Rules will confirm this. These powers are available to JJBs due to their role and status which go beyond "Court". Adjudication of the case is just one of the functions of JJBs. It is in this context that it is said that though JJBs are situated at the level of district courts, the quality of justice which is to be delivered by them is similar to that of superior courts. Recognition of this liberates JJBs from the restrictions and limitations in which regular criminal courts function. Here is an example showcasing how a JJB is supposed to rise above such restrictions and limitations. This happens when care and protection of a child is seen as the central concern by JJBs.

There was an incident where a child was treated as adult by the Police and was produced before a criminal court from where he was remanded to the jail. This child was successful in communicating the fact of his arrest by Police to the Legal Aid Team attached to the JJB. The legal aid team was aware of the juvenility of this child from a previous inquiry in which the same child was represented by the legal aid team. This order goes on to show the zeal with which JJB acted in order to rescue the child from the clutches of criminal justice system meant for adults. Had the JJB allowed itself to be suffocated by the constraints of technicalities like jurisdiction etc, it would not have been able to safeguard the child's due process and protection rights under the JJ Act. It is also interesting to observe how JJB took notice of the complete range of issues which emerged while dealing with this incident.

BEFORE THE JUVENILE JUSTICE BOARD I: PRESIDED OVER BY MS ANURADHA SHUKLA BHARDWAJ; PRINCIPAL MAGISTRATE: SEWA KUTIR, KINGSWAY CAMP, DELHI

ORDER

16-9-10

In re:

< case details omitted>

Pr Ld APP (Substitute) for the State

Juvenile <name omitted> on bail with his father

Mr. Anant Asthana Ld Legal Aid Counsel

Mr Afsar : from Centre of Equity Studies

Juvenile <name omitted> was apprehended by the officials of <omitted> police station after he surrendered at the police station concerned. He was sent to central jail Tihar initially. An application was filed by the Ld Legal Aid Counsel Mr. Jacob Zeliang bringing it to the knowledge of the Board that <name withheld> was still a juvenile and sending him to the Central Jail was illegal. I.O. was summoned; the child was produced before the Board, and was transferred to the Observation Home II.

Mr. Anant Asthana Ld LAC filed a report on 26.08.2010 reporting therein the facts related to the present case. He says in his report that the children in the locality where the child lives are being used by the adults for pick pocketing and snatching. One of the persons, who are using the children for these activities, is <name omitted>. This person does not like Juvenile <name withheld> because he feels threatened by the closeness of the children whom he uses for his ulterior purposes, with Juvenile <name withheld>.

The report says that that the complainant was instigated to give a statement against the juvenile. On being hinted by the informer <name omitted> the police had called <name withheld> the mother of the complainant boy and had directed her to give a statement against Juvenile <name withheld> and his elder brother <name withheld>.

He in his application has referred to the previous order of this Board. In the said order dated 12.01.2010 the Board on the application of the juvenile had directed the police to provide child <name omitted> all possible help and to ensure that police does not cause any kind of harassment to the juvenile. The present report says that the police used this case to teach juvenile a lesson for having coming to the

Board (vide earlier application). Expressing his concern over the conduct of the police in taking the side of the exploiters instead of helping the juvenile, he has requested for an inquiry on the issue by an NGO or SJPU.

Ld Counsel further says that the fact that child is a juvenile was well within the knowledge of police yet he was shown to be of 20 years and was taken to adult court and then to the jail, thus the rights of the juvenile guaranteed under the JJ Act , were violated.

On the moving of this application the complainant boy and his mother were summoned by the Board and their statements were recorded. Mother in her statement in the Board, said that she in her statement to the police had not named juvenile <name omitted> as the person having caused injury to her son. The complainant boy said that he had named Juvenile <name withheld> but on the say of <name omitted>, who had threatened him that if he will not name Juvenile <name withheld> and his brother <name withheld>, his mother would be killed. The boy said that he had told his mother that <name omitted> had asked him to name juvenile <name omitted>.

The facts as have come up after the recording of the statement of the mother and the child are self-explanatory.

Without commenting on the merits of the case considering the fact that the investigation is still going on and presuming that police shall do the needful as required under the law, I would consider the issue of the child having been taken by the police to the adult court and being sent to Jail first.

The IO says that it was the child, who surrendered in the police station and gave his age as 20 years. Eight months back in a case related to this police station itself an application was filed by the juvenile before the Board alleging false implication at the instance of a girl, who was teased by some other adult person. The Board has asked for a report making it categoric that the investigation shall be taken up only after responding to the averments made by the juvenile in the Board.

The SHO filed his report on 18.01.2010 and it said that: -

Juvenile <name withheld> being a juvenile was never called in the police station and that the said complaint was also withdrawn by the father of the girl.

SHO < name of Police Station omitted> on 18.01.2010 was aware that <name withheld> was a juvenile as per the Juvenile Justice (Care and protection) Act, 2000. Eight months later, however he permits his subordinate to record the age of the child as 20 years and send him to Central Jail. Plea being that the child himself had told his age to be 20 years.

It is worth commenting that there has been a lot of work on Special juvenile police unit in NCT of Delhi. Regular trainings programmes are being conducted by the Juvenile Justice Unit of Delhi Police for awareness of the provisions of the Juvenile Justice Act. There is standing order no 68 of the Delhi Police; there are guidelines and information on the web sites for sensitizing the police on the provisions of the Act.

Standing Order 68 speaks of its purpose as under:

The purpose of this Standing Order is to clearly spell out the responsibilities of the police station staff and other investigating units under the Juvenile Justice Act, 200 and Rules Juvenile Justice (Care and protection of children) rules 2007.

The standing order goes in details on what and how the police is supposed to do when dealing with a person, who is below 18 years of age. Therefore we shall presume that SHO is in the knowledge of the JUVENILE JUSTICE (CARE AND PROTECTION) ACT 2000 and the DELHI JUVENILE JUSTICE (CARE AND PROTECTION) RULES, 2009.

FUNDAMENTAL PRINCIPLE IX of the rules speaks of non-waiver of rights:

IX. PRINCIPLE OF NON-WAIVER OF RIGHTS:

- (a) No waiver of rights of the child or juvenile in conflict with law, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the juvenile or child, is either permissible or valid.

A clear interpretation of the principle is that juvenile or his father could not have waived the claim of juvenility.

This they could not have done even if the police officials did not know that he was a juvenile. There was obligation on police to ask for the proof of his age considering his physical appearance. In the instant case the situation is graver since the SHO himself was aware that the child was a juvenile eight months back. He could not have grown by two+ years in eight months.

Hon'ble Supreme Court in Gopi Nath Ghosh versus State of W.B. AIR 1984 SC 237 issued guidelines for the magistrate courts holding that:

“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 proceedings with the trail or undertaking any 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... ..this procedure if properly followed, would avoid a journey up to the apex court and return journey to the grass court”

The guidelines apparently are for the courts but there is no reason why the police at its end should not be following it. Since, from the time a child is apprehended till the time he reaches the court many of his rights are already violated and if he or his guardians are not prompt enough he is thrown in Jail, till someone comes and helps him out as was done by Ld. LACs in the instant case.

There has been violation of provisions and principles of the JUVENILE JUSTICE (CARE AND PROTECTION) ACT 2000 and the DELHI JUVENILE JUSTICE (CARE AND PROTECTION) RULES, 2009 on the part of SHO and there can be no justification for this.

DCP <details omitted> shall conduct an inquiry on the lapses, take action against the erring officer and file a report in the Board before the next date of hearing.

The report of Mr. Anant Asthana further says that the adults in the area are patronizing the children of the locality in doing “ZebKatri”. If legal aid counsels are aware of this, the police must also be aware of

this fact. One of the persons has been named in this case itself and it is said that this person is a police informer.

If this were correct the police in fact is itself guilty of patronizing the crime and of permitting the exploitation of the juvenile at the hands of the adults.

It was observed by this Board in one of its previous orders that the preventive and proactive approach of the police in dealing with the issues relating to the children more specifically the reasons and the causes of their getting into delinquency and the protection of the children from exploitation at the hands of adults, is the need of the time.

It is reiterated that "Delhi Juvenile Justice (Care & Protection) Rules 2009 speak of multiple needs of the juvenile, protection from harm, abuse, maltreatment, exploitation and cruelties being few of many and puts a responsibility on the State, as set out in Fundamental Principle of Juvenile Justice No. VII Positive Measures, to take all possible positive measure aimed on reducing vulnerabilities and reducing the need of intervention under the law. The Board vide its order in <details omitted> dated 5.3.2010 had stated that role of the Special Juvenile Police Unit is vital in providing the protection to the children against all kind of abuses and exploitation by introducing a preventive approach in its functioning. Delhi Juvenile Justice (Care & Protection) Rules 2009 speaks of setting up of such Special Juvenile police unit and the functions which they are supposed to discharge and the protection in aforesaid manner finds specific mention under Rule 86 sub rules 5&6.

The special Juvenile Police Unit has an extremely significant role to play if objectives of JJ Act have to be achieved. The expectations of the law are very high from the SJPU's and so it proclaims under sub rules 5&6 of Rule 86, which are produced hereunder: -

RULE 86 (5) Special Juvenile Police Unit at district level shall co-ordinate and function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child or juvenile.
(6) The unit shall take serious cognizance of adult perpetrators of crimes against children and see to it that they are without delay apprehended and booked under the appropriate provisions of the law

and for this purpose the district level units shall maintain liaison with other units of police station.

As per the requirement of the law an inquiry into the allegations made, and the facts emerged is required to be made. The JWO (SJPU) <details omitted >shall conduct an inquiry of the allegations made by the juvenile in light of the statements of the complainant and her mother and shall file a detailed report with the Board within one month specifying

1. The existence of the practice of adults using the children into commission of offences of the nature mentioned specifically in the report and other similar activities in the area.

2. The nature of networking and mode of working, and 3. Mechanism for prevention of this evil, and steps to be taken for protection of the victim children in the area

The Board expects a correct and impartial report and nothing less, is made clear. To ensure this it shall be appropriate that the JWO takes assistance of a local NGO working in the area in the field of child rights or a social worker, also having a background in child rights to be named by the DCP concerned.

It is pertinent to mention that the case of the juvenile came to the knowledge of the Board because of proactive and vigilant Legal Aid system. There may, however be several children like juvenile and the complainant who are caught in this network, and do not get the required support from the system and end up becoming victims and eventually a part of the network.

The juvenile justice system as a whole can be effective only if preventive steps are given due weight for preventing the delinquency amongst children in addition to curing it, for lost of each child to the network of crime and criminality is practically a loss of society and the nation in long run.

As said earlier the Board has its limitations in passing orders for all the suffering children and extend them desired help, it would be appropriate if the cause is taken up by the authorities with larger reach, powers and responsibilities under the law.

The appropriate jurisdiction to handle these evils lies with the child right commissions. It is, therefore considered appropriate to bring this issue to the knowledge of Delhi Commission for protection of Child Rights for taking up the issue and ensuring the results at larger scale. A copy of this order be placed before the Chairperson, Delhi Commission for protection of Child Rights for his consideration. Ld legal aid counsels Mr. Anant K. Asthana and Mr. Jacob Zeliang, who have brought the issue to this stage, shall at their level conduct a study from all the aspects and shall file a report before the DCPCR for the commission's assistance.

A copy of this order be also sent to Member Sectary Delhi Legal Services Authority since the services of legal aid counsels are being utilized in the case in aforesaid manner.

On the aspect of rehabilitation Mr. Asthana says that child can be sent to the Umeed Home being run by Center Equity Studies. Mr. Afsar from the center is present in the Board today. The juvenile is directed to visit the home with Mr. Afsar. Mr. Afsar shall, after discussion with the boy file in the Board the possible rehabilitation plan of the child.

Renotify the matter on 18.10.2010.

M

PM/JJB

Chapter 4

Gravity of offence is no ground for denying bail

Gravity of offence is not a consideration before JJB because it does not award punishment. JJB's work is to decide whether a child has come in conflict with law or not. If yes, then to find out what were the factors which brought the child to a state of delinquency, and then to decide on further course of action which could reform, mainstream and rehabilitate the child.

Here is an order which conforms to this perspective. The Board was dealing with the issue of bail and gravity of offence was raised as a ground for denying bail to the child. Board dealt with this aspect in the order and explained the law in this regard. While dealing with the issue of "Gravity of offence", Board also explained the consequences of institutionalizing a child.

BEFORE THE JUVENILE JUSTICE BOARD I: PRESIDED OVER BY MS ANURADHA SHUKLA BHARDWAJ; PRINCIPAL MAGISTRATE: SEWA KUTIR, KINGSWAY CAMP, DELHI

ORDER

01.08.2011

FIR no. <details omitted>
PS <details omitted>
U/S 302/323/34 IPC

Pr Ld APP for the State

Juveniles from OHB II with Mr. Anil Tiwari Advocate from DLSA.

Mr. Mahesh Makkar was appearing for the complainants.

Complainant in person along with his other family members.

The bail application of the children who have been declared juveniles as per law vide even dated order has been contested by the complainant side. It was argued by the family members of the deceased, who have been appearing and contesting the issue of age

as well as the release of children since beginning- that the juveniles are not children and they cannot and should not be set at liberty considering the heinous act of theirs. It was argued that how the juveniles who have mercilessly murdered a man can be treated as children and then be released on bail.

Argument from the side of juveniles on the age was considered and the juveniles were found below 18 years and were declared juveniles as per the Juvenile Justice (Care and protection of children) Act by separate order.

The issue before the Board now is of the bail of the juveniles. Mr. Tiwari Ld counsel for the juveniles has argued that the juveniles are entitled to bail by the very fact that they are juveniles and it is mandate of law to grant them bail. It was argued that bail can be denied only if the Board concludes that the release is not going to be in the interest of the juvenile. He argued that the juveniles are from a stable family, members of which are willing to take care of them. He further argued that the boys have spent substantial time in protective custody and further detention will not be in their interest.

Section 12 Of the Juvenile Justice (Care and Protection of Children) Act 2000 dealing with bails of juveniles reads as under:

*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**.*

Section 12 thus speaks of mandatory bail for the juveniles irrespective of whether the allegation made against them constitute a bailable or a non-bailable offence. While dealing with the bails of the juveniles the Boards are required to consider not the offence alleged against the

child and the gravity thereof but the fact that whether it would be in his (juvenile's) interest to keep him in protective custody.

The juveniles can be kept in protective custody only if the Board forms an opinion that his release will put him under potential danger of moral, physical or social kinds.

The Act uses words "would defeat ends of justice" as one of the grounds for denying the bail to a juvenile. The words were interpreted by the Hon'ble High Court of Delhi in <name omitted>(Minor) Vs The State (Govt of NCT of Delhi):2006[3]JCC1430. The Hon'ble High Court while referring to Master <<name omitted> (minor) Vs State: 2005 VI AD Delhi 18 held that

*"The facts for determining as to what amounts to defeat of the ends of justice must be construed in the context of the purpose of the Act. It was indicated in the said decision that what needs to be adopted is a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment. What is important is that the court should keep in mind the developmental needs of juvenile and the necessity for his rehabilitation. **Its only if the developmental needs of the child require that he be kept in custody or that keeping him in custody is necessary for his rehabilitation, or care or protection that his release would defeat the ends of justice, not otherwise.**"*

The Hon'ble High Court in Master <name omitted> versus State: 129(2006) DLT577 had declined to entertain the plea of State;

".....that the alleged act said to have been committed by the juvenile along with co-accused was one of great moral degradation and the act in itself would demonstrate the perversity of the mind of the juvenile"

*holding that the nature of offence is not one of the ground on which bail can **be granted or refused to the juvenile.**"*

As per the authoritatively settled proposition of law also the bail can be denied to a child only if his release interferes with his growth, and/ or exposes him to any kind of social, moral or legal danger. The words 'would defeat the ends of justice' cannot be stretched to bring into its ambit the gravity of the offence or the interest of the victim.

The underlying rationales are that youth are developmentally different from adults and that their behaviour is malleable and thus there should always be an effort to help them in understanding and developing a better behaviour and attitude rather than punishing them. Keeping a juvenile in protective custody is not considered the appropriate method for correcting a juvenile for various reasons.

A juvenile while in institution may have to face emotional deprivation, separation anxiety, low self-esteem, failure to trust, developmental delays, excessive routinization/regimentation, physical abuse and trauma, difficulty in main streaming and adjusting when he comes out, inter personal relationship problems, anonymity etc; hampering with his normal development and growth.

In the instant matter Social Investigation Reports of the children are on record. It says that positive report has been found about the children from the neighborhood. The bua of the Juveniles has shown willingness to take the custody of the boys. There is nothing in the S.I.R. to suggest that the protective custody would be of any help to them. The boys have not been found truant by nature. In view of above discussion, the legal provisions and the authoritatively settled law, the juveniles having been held so vide separate order cannot be kept in protective custody as it does not seem appropriate in their own interest.

The juveniles are admitted to bail on furnishing of personal bond in the sum of Rs 5000/ by either parent with one surety of like amount.

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PM/JJB-1

Chapter 5

Responding to the Cruelty on a Child in Institutional Care

India's juvenile justice system remains heavily dependent on institutions (child care homes) and keeping a child in institutions always comes up as a first response from the system, though the law requires institutionalization to be used as an option of last resort. What happens to children in these institutions is almost similar to what was described in "Oliver Twist". Treatment meted out to children after they are referred to these institutions keeps coming to public knowledge through news reports of escapes, abuse and violence. "Protective custody" is the word in law for institutionalization, leaving before us a question as to how and in what manner this "Protection" is to be enforced and what are the ways to keep institutions accountable to children. A child, once in an institution, becomes vulnerable and this vulnerability needs to be addressed not only by those who run these institutions but also by Boards and Committees on whose orders children are kept there. What should be done on the part of Boards or Committees in cases where this assurance of protection and care is breached is the question which is answered in the order produced below. What is striking in this case is the sensitivity shown by the Board in identifying the cruelty. A child may not articulate his/her experience or may not have courage to come forward to register a complaint, which is why a delicate and sensitive approach is required while listening to children. Silence does not always mean peace. It sometimes may also mean suppression. This order puts up an example before us.

**BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR
COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS
ANURADHA SHUKLA PRINCIPAL MAGISTRATE**

**ORDER
28.08.2010**

FIR NO < details omitted >
PS < details omitted >
U/S 380/411/34 IPC

FACTS

The child was produced before the Board on 23.8.2010 along with Ms. Nandini of SAFMA and Mr. Anant K. Asthana, advocate from DLSA.

The child made a complaint in the Board that he was given beatings by the elder children inside the home. He said that he has not reported this to Superintendent of the Home, accordingly it was deemed fit to apprise the Superintendent of the situation and to ask him to file a report. What happened thereafter was in fact beyond the comprehension of the Board. Child appeared before the Board on 25.8.2010 and report of Superintendent was also received. The report of superintendent is reiterated, as its contents are important in explaining the conduct/language used by the juvenile in the Board and Chamber.

Report:

“With due respect, I would like to inform your goodself that juvenile <name omitted> is living in child friendly environment and enjoying his life at < name of institution omitted>. He has gained 10 Kg Weight in a month. As per the Juvenile he told lie to release. No elder children tease him and beat him. We are providing due care, guidance and supervision for his complete development. In future I will take care of this child.”

The moment the child stood before the Board he started saying that nothing had actually happened. He was 30 Kg and has gained 10kg and is now 40 Kg. All the children call him brother and they were all brothers. He is well taken care of by the <name omitted> (Superintendent).

There was something wrong. The body language of the boy was betraying the utterance and he seemed terrified. He was called in the chamber. He was asked to tell the truth. The child put all his power to control his emotions and pain and kept on repeating that nothing in fact had happened, no one had beaten him. He was 30 Kg of weight when he came to the Home and weighs 40 Kg now.

There was still something that the child was trying to hide and terror and tension were apparent in his eyes. We talked and talked - and the child, as he is - broken down.

He said that initially he was beaten by a child who is in custody in a case of murder, <name omitted>, however, blamed him as he had bit the boy (who had beaten him) in hand to save himself from being suffocated. He got serious injuries in his ribs.

Thereafter he explained the incident that took place after he had made the complaint in the Board (regarding the beatings given by the other/elder children). He says that when he went from the Board to the home, the paper (order of the Board) was given to <name omitted>. He went to the room and started playing carom. <name omitted> came there; he showed the paper to everybody and read it over loudly. Then <name omitted> beat him. <name omitted> put his head between the legs and hit on his head by elbow. The boy was told that if he would say anything against him (<name omitted>) the other boys (co-inmates) will not spare him. Thereafter all the children kept on beating him even after <name omitted> left. Child was made to rub his nose in front of <name omitted> and was made to seek apology. He was apologised but on the condition that he would say before the Board as was told to him and the poor boy did the same.

There is an observation in the board proceedings dated 25. 08. 2010 that the child had a swollen hand (right), he could not move his third finger. He says he had bandage over the hands, which were removed in the morning. He has marks of beatings on his back.

LAW

The entire law of Juvenile justice is aimed at providing “CARE AND PROTECTION” to the children whether it be a child in conflict with law or a neglected child in need of care and protection, and the law definitely is not talking about the kind of care and protection which has been given to this particular child in the instant matter. The fundamental rights of the juvenile have been violated and brutally so.

It is worth consideration that whatever be the administrative set up for keeping a child in protective custody / understanding/ memorandum between the government and the non governmental authorities

(<name omitted> in the instant matter), each child is kept under the protective custody by the order of the board. He is in de-jure custody of the board and the ultimate responsibility of his care and protection is of none other than board, logically also because he has been kept there because the Board wanted him to be kept there. The board feels ashamed in having failed to ensure the safety and the protection of the child.

The manner in which the child has been dealt with cannot be tolerated for an adult person; he is a small boy who has seen enough sufferings in his small life.

The child lost his mother at an early age, his father is a drunkard and does not bother where and how his child is surviving. His elder brother is missing for more than a year and there are allegations of he having been murdered- the investigation is going on.

As if this all was not sufficient, the child has been given this ghastly treatment by none other than the person, who was supposed to be his protector under the law.

There is no reason with us to believe that the child would have given a false statement. The injuries on his body were apparent and an observation to the effect has come in the proceedings dated 23-08-2010. There is no reason why the Board should tolerate this brutal act either.

We feel guilty of betraying the faith of the child, which he showed in us when we told him that he is not safe outside and so we are taking him in custody – our custody--- protective custody.

It is pertinent to note that a child is kept in an observation home, or for that reason in any institution, not as a mark of punishment but for his own protection and only if it is in his interest.

Keeping a child in protective custody and giving him this kind of treatment is a crime and the law proclaims so under Section 23 of the JUVENILE JUSTICE (Care and protection of children) ACT, 2000 (herein after referred to as the JJ ACT).

Section 23. Punishment for cruelty to juvenile or child. --

Whosoever, having the ACTUAL CHARGE OF, or control over, A JUVENILE, or the child, ASSAULTS, abandons, exposes or wilfully neglects THE JUVENILE or CAUSES or procures HIM TO BE ASSAULTED, abandoned, exposed, or neglected in a manner likely to cause SUCH JUVENILE or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

The superintendent <name of Institution omitted> was in de- facto charge of the boy, ever since he was sent there by the order of the board.

Being in control over/ having actual charge of the boy, he assaulted the boy himself and led the others to do so. He has violated the provisions of section 23 of the JJ ACT

Section 27 of the JJ Act says that all the offences punishable under section 23 to 26 of the Act shall be cognizable.

Section 60 (2) (iii) further says that the Board may direct the local police station or special juvenile police unit to register a case, take due cognizance of occurrence and conduct necessary investigation.

The knowledge of a cognizable offence having been committed by the Superintendent is brought to the knowledge of the In-charge Special Juvenile police Unit for taking necessary action as stipulated under the law. To register an F.I.R. under section 23 of JJ Act and such other provisions of the Indian Penal Code as may be applicable. Compliance report be filed with the board within five working days.

In addition to above there has been a serious violation of FUNDAMENTAL PRINCIPLES OF JUVENILE JUSTICE CARE AND PROTECTION OF CHILDREN as laid down in The Delhi Juvenile Justice (care and protection of children) rules, 2009; hereinafter referred to as Delhi JJ rules.

Principle II & VI of the fundamental principles speak as under:

II Principle of dignity and worth:

(a) Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice. This principle

reflects the fundamental right enshrined in Article 1 of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights. Respect of dignity includes NOT BEING HUMILIATED, personal identity, boundaries and space being respected, not being labelled and stigmatised, being offered information and choices and not being blamed for their acts.

(b) The juvenile's or child's RIGHT TO DIGNITY AND WORTH HAS TO BE RESPECTED AND PROTECTED throughout the entire process of dealing with the child from the first contact with the law enforcement agencies to the implantation of all measures for dealing with the child.

Respect of dignity has been acknowledged by the act in the fundamental principles and this right to dignity is required to be respected throughout.

VI. Principle of Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment):

(a) at all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter , the juvenile or child or juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, maltreatment,and extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or the child.

The child before us has not only been assaulted but has also been humiliated, and in presence of all the other children- including his friends and not so friends. The trauma which the child has gone through is not easy to be put in words, and all this was done to him merely because he had some complaints with the co-inmates, not from staff or the superintendent. All that was required to be done by the superintendent was to comfort the child and ensure that the he is not beaten by the co-inmates again. This was his duty otherwise even if this complaint was not made by the boy before the board. On the contrary what he has done was the least, which anyone including the board could have thought of, would be done by him.

Both the aforesaid principles have been violated in the instant matter by the superintendent.

Duty of the Board

Rule 10 of the Delhi JJ Rules speaks of the Functions which the board is required to discharge

Rule 10. Functions of the Board. The Board shall perform the following functions to achieve the objectives of the Act, namely: ---

(c) Monitoring institutions for juveniles in conflict with law and seeking compliance from them in case of ANY NOTICEABLE LAPSES and improvements based on suggestions of the Board;

(d) Deal with non compliance on the part of concerned government functionaries or functionaries of voluntary organizations, as the case may be, in accordance with due process of law;

(h) Take suitable action for dealing with unforeseen situations that may arise in the implantation of the Act and remove such difficulties in the best interest of the juvenile.

The rules thus expect the Board, to apart from adjudicating the inquiries –monitor the institutions, take note of (noticeable) lapses, suggest improvements, and Seek compliance based on the suggestions. Deal with non compliance on part of both government and voluntary (organization) functionaries Take suitable action for unforeseen situations and remove difficulties.

In the context the board has the duty to monitor the institution, and the lapse in form of violation of the provisions of the Act and the Fundamental principles is apparent and has been brought into the notice of the Board.

Board has its suggestions, which shall be detailed in the later part of the order.

On the administrative side:-

The Honourable High court of Delhi in Writ Petition (Civil) no. 9680 of 2009 vide order dated 19 .08. 2009 had constituted a committee consisting of joint director technical, magistrates JJB I & II & a nominated representative of DLSA- to supervise the functioning of the observation homes and to conduct inspections and reports to be

forwarded to juvenile justice committee. Later the need of NGO representation was also acknowledged by the Juvenile justice committee and accordingly Ms Bharti of Haq was introduced in the committee.

The aforesaid committee, hereinafter referred to as the supervision committee has been looking into the management and administration of the observations homes for almost a year now, and is without the order of the board liable to inquire into the wrong being done in the observation homes. By this order, however the Board intends to direct the committee to look into the complaint of the juvenile, a fact-finding inquiry be conducted and report thereof be filed in the board by 30th September 2010.

Since the inquiry is going to be addressed mainly against the superintendent of <name of institution omitted>, propriety demands that the person be removed from the present post to ensure that appropriate atmosphere is available to the supervision committee for conducting a free and fair inquiry. Considering the nature of allegations that have been made by the juvenile it is clear that if the superintendent continues in the home, the sufferer boys within the home will not be giving a true version.

The administration <details omitted> shall look into the matter and shall provide a substitute of <name omitted>, the present superintendent within a week, pending inquiry.

On the preventive Side:-

Considering the nature of unrest, which was created by the children in the premises of <name of Institution omitted> and juvenile Justice board II, when action was initiated against this person last time, it shall be the responsibility of the administration of <name of Institution omitted> to ensure that the situation is not repeated. The administration of <name of Institution omitted> shall ensure that the superintendent does not use the children as a medium to prevent execution of this order.

The required help in this regard shall be provided by the concerned SHOs having Jurisdiction over the homes and boards.

A copy of the order be sent immediately to the Juvenile justice Committee for information record and necessary directions.

A copy be sent to Sh Sudhir Yadav Jt Commissioner SJPU for necessary action on his part.

A copy be sent to the <name of Institution omitted> for urgent necessary action.

A copy be sent to the Supervision Committee for the needful to be done.

Announced in open Board on 28.08.2010

M. M.

(Anuradha Shukla Bhardwaj)

Principal Magistrate
Juvenile Justice Board 1
Kingsway Camp, Delhi.

Chapter 6

Use of fetters and handcuffs on Juveniles

Judicial cognizance of lapses and violations by Boards results in systemic reforms. Juveniles in conflict with law who are already victims of circumstances and neglect face stigma, contempt and hatred. Boards have a duty to proactively eliminate these evils from the Juvenile Justice Administration System and the first step is always to take cognizance and only then flows in process of reform.

In this case, an incident of some juveniles being handcuffed was brought to the notice of the Board and swift action set the system correct.

BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS ANURADHA SHUKLA PRINCIPAL MAGISTRATE

ORDER 18.08 2010

FIR NO <details omitted>
PS <details omitted>
U/S 457/ 380 IPC

Ld. A.P.P. for the State.

CCLs from <details omitted>

Mr Anant K Asthana Ld. Legal Aid Counsel

The children were brought from the <details omitted> by ASI <details omitted>.

It was pointed out by the Id LAC that the children were waiting outside the premises of the Board with police officials and were handcuffed. He has shown concern on how the children who are produced from outside places are not kept at the waiting hall but are made to sit outside the board and wait there with the policemen, often handcuffed

in all public glares. He has referred to Rule 76 of Delhi juvenile justice (care and protection of children) Rules, 2009 and says that there is a prohibition on putting of fetters. RULE 76, is reproduced hereunder:-

76. Prohibition on the use of handcuffs and fetters. No child or the juvenile in conflict with law dealt with under the provisions of the Act and the rules made there under shall be handcuffed or fettered.

The Rule corresponds to Rule 76 to the model rules framed by central government: THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES 2007.

The rule is categoric in its terms and puts a clear restriction on use of fetters and handcuffing on the children. The act was not in only violation of the Rules aforementioned but is also against the FUNDAMENTAL PRINCIPLES OF JUVENILE JUSTICE AND PROTECTION OF CHILDREN. Principle II (a) says that the treatment given to the child while he is in the system of care and protection should be consistent with the child's dignity and worth. It further says that respect of dignity includes not being humiliated, personal identity and space being respected, not being labelled and stigmatized...

Unfortunately when the children stood outside the Board, handcuffed all the above rights were violated. The children were demeaned in the eyes of passer-by's, who would have looked at them as criminals in handcuffs. ASI <details omitted> admitted in the Board that the children were handcuffed and stated that he was not aware of the provisions of Juvenile Justice Act and Rules. This again is a very sorry state. If the people on whom is the onus of implementing the law are not aware of it, how the implementation will be ensured. There seems a need of educating these people on the law related to juveniles and sensitization on the issues related to the children.

A copy of this order be sent to the SSP <details omitted> with a direction to ensure that the officials, who deal with the children are conversant with the Provisions of the JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2000 and the Rules framed there under and that they follow it in its true spirit. On the side of Board- Naib court shall take on them the responsibility of taking care and custody of the children whoever are brought in for production before the Board, whether from Delhi or outside. They shall guide the officials

accompanying the children to the waiting hall. They shall ensure that no handcuffs or fetters are used, and shall inform the Board the events of violations. The children whoever are produced from the outside places and do not have a counsel to assist them shall first be taken to the room of Legal Aid as is done with the children from Delhi. Any violation of the above directions to the naib courts shall be viewed strictly. The children have already been directed to be shifted to < name of institution omitted>

Renotify on 21.08 2010.

M /JJB-1

M/JJB-1

PM/JJB-1

Chapter 7

Owning responsibility

In the criminal justice system, it is mostly for an accused to take steps to protect his/her interests. Should the same standard apply in cases of juveniles as well?

In this case, the Board had a juvenile before it who was already convicted by the criminal court as an adult and in a separate case was brought before the JJB as a juvenile. When this fact was noticed by the Board, the Legal Aid Unit was directed to take steps. What is clear in this case that a child's right to be treated as a child under the JJ Act stood violated for some reason and the Board found it appropriate to assume responsibility to get the wrong corrected through measures at its disposal, instead of just leaving it for that child to take up a legal battle on his own.

BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS ANURADHA SHUKLA PRINCIPAL MAGISTRATE

ORDER

12-03-09

FIR NO. <details omitted>

PS: <details omitted>

Present: Ld.App for State.

Both the Children in Conflict with Law are present on bail.

Child in Conflict with law <name omitted> from Central Jail.

Child in Conflict with law < name omitted > was convicted by Ld.Regular Court. Though the child in Conflict with law has not been declared juvenile by this court, his Medical Board Report is on record, according to which the age of Child in Conflict with law on 13-12-07 was between 15-16 years. He has been convicted in FIR No. <details omitted>, If the Child in Conflict with law was 15-16 years of age on 31 December 2007, he could not be more than 18 years of age in 2008. Both the cases are of PS: <details omitted>. The details of juvenile should have been in the knowledge of Special Juvenile Officer of PS. Show cause notice be issued to I.O. concerned, who had conducted the investigation in FIR No. <details omitted>, Special Juvenile Officer as well as SHO <details omitted> to explain the lapse.

Since the order of sentence has already been passed and the same cannot be set aside by this board, Ld.LAC Sh. Anant Asthana is directed prepare and file an appeal in Ld.Sessions Court in this regard at the earliest and do needful to safeguard the rights of Juvenile. Put up the matter on 20-03-09

Chapter 8

Police treatment of Juveniles: JJ or Criminal Law?

How should the police behave with juveniles in conflict with law is the issue addressed in this order. A child approached the Board protesting against the treatment meted out to him and his family by the police in the name of investigation about some crime. The Board not only took cognizance of inappropriate behaviour of police but also issued detailed guidelines for police while dealing with children, approaching their families, visiting their homes and the locality where they live.

**BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR
COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS
ANURADHA SHUKLA PRINCIPAL MAGISTERATE**

ORDER

Ld: APP for the State

Mr. Jacob Zeliang Adv. From DLSA

The juvenile in this matter had surrendered in the Board on 08.12.2011. An application seeking directions to the police not to harass the parents of the juvenile and to deal with Juvenile as per Juvenile Justice (Care and Protection of children) Act 2000 was moved at that time on his behalf.

It was stated in the application that the juvenile when he was granted bail in his previous matter, had as per the undertaking given in the Board gone to his village and came back only in the month of August 2010. The child after he came back started living at < details omitted > and worked with his father coming to his home at < details omitted > on holidays and vacations. It is said in the application that from 26.01.2011 police started visiting the house of the juvenile. The application says that the police officer associated with the investigation of this case came to his house and took him to < details omitted > Police Station wherefrom he was set free in the evening after some inquiry. He says that police was pressurising him to

disclose the whereabouts of <name omitted> (his associate in the other case). The manner in which the police approached the juvenile and his family was very intimidating, insulting and scary.

On 03.02.2011 the counsel Mr. Anant Asthana Advocate received a phone call from the residence of parents of juvenile made by a Head Constable who told the counsel, that the juvenile is needed for the investigation of a case and his parents are not disclosing the whereabouts of the juvenile. He was asked by the counsel to serve a notice on the parents of the juvenile, which apparently was not served. The juvenile surrendered in the Board on 07.02.2011.

The I.O of the case was given a warning to be careful in dealing with juveniles and to follow the law laid down regarding apprehension of juveniles.

Juvenile since then is in protective custody of the Board and is at Observation Home.

He is being counselled by Mr. Shahbaz Khan of Haq center for child rights. While the child is still in our protective custody the police have not mended their ways as is clear from the application filed by the counsel for the Juvenile Mr. Jacob Zeliang. In his application under Rule 3 & Principle XIV of Delhi Juvenile Justice (care and protection of children) rules, 2009 Id counsel has stated that on 22.03.2011 around 9:30 PM one police man named <details omitted>, who was in police uniform visited the house of juvenile and asked for whereabouts of the juvenile. The police tried to enter the house of the juvenile and per chance the father of the juvenile, who is more often out of house because of his job was at home at that time. He told the police that the juvenile is in <name of institution omitted>. The police argued with the father and said there has been a crime in the area and he was to question the juvenile in this regard. The parents have their fear that the police have already started treating the juvenile as "a known offender" and if the child is taken out he may be implicated in other cases as has been done earlier. The father of the juvenile is usually out of Delhi, and the mother and the sisters are alone in the house most of the time. The attitude of the police in entering the house of the juvenile every time there is a crime in the area effects the reputation of the family in the locality adversely. Thus by the application he seeks a direction to the police to stop interfering with

the peaceful living of parents of the juvenile and to give effect to the principle of fresh start.

The juvenile appeared in the Board today he said that he was doing well at OHB but was concerned about the manner in which the police are treating his family members. He discussed this with Mr Shahbaz Khan his counsellor also as is reflected in his counselling report.

Have the police followed the provisions of Juvenile Justice (Care and Protection of Children) Act 2000 or the Criminal Procedure Code is the question before the Board.

The juvenile says that the police ever since he came to Faridabad started visiting his house. They took him to police station <details omitted> and left him after inquiry. Why he was called to the police station is not clear? The juvenile alleges that the police wanted him to tell the whereabouts of one of his associates in other case. If the child was called for inquiry as a witness it was required for the police to have given him a notice under section 160 of Cr. P. C. apparently no such notice was given to the juvenile. Under what provision of law and for what purpose the juvenile was called in the police station needs to be explained. Even after the child was apprehended in this case and was sent to observation home, the police did not stop its unlawful activities in visiting the house of juvenile to inquire about him. This is being done despite the specific and repeated directions of the Board to the police to spare the child, who intends to settle down and is in process of rehabilitation. The anger and the frustration could be seen on the face of child while he spoke about his mother and sisters being harassed by the police. The family is the support of the child and it has been accepted by the JJ Act and Delhi JJ rules in so many terms. No child of the age of juvenile would be happy to lead institution based life, but the juvenile in this matter has surrendered completely and does not want to come out as he fears that police will again harass him and will implicate him in false cases or will try to use him for extracting information whenever a crime takes place in the area.

The juvenile's case is not the only one where the children feel threatened and afraid of police and prefer staying in observation

home -where they find themselves out of reach of police. But what do they do when the police are still not satisfied and go on to harass their families. HOW WOULD WE IMPLEMENT THE PRINCIPLE OF FRESH START as has been questioned by Ld legal aid counsel.

PRINCIPLE XIV. Principle of Fresh Start

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his past records.

The rule when it says removal of past records it does not mean removal from the documents. It intends the removal of these facts from the memories of all the persons involved also, unless it needs to be looked into for the better interest of the child himself. A child will never be able to make a fresh start if the police keep visiting him and intend to use him as an informer merely because they have decided not to remove from their memories the fact of his involvement in an offence once. Not only this they do not shy away to implicate these juveniles in their unsolved cases as has been witnessed by the Board in several cases.

Section 84 of the DELHI JJ RULES says that the police official guilty of torturing a child shall be liable to be removed from service.

Section 84. Special Juvenile Police Unit.—

(11) Any police officer found guilty, after due inquiry, of torturing a child mentally or physically, shall be liable to be removed from service, besides being prosecuted for the offence In the instant matter specifically (and several similar other matters) the police have been found -to have caused the mental torture to the child which has gone to the extent that the juvenile has accepted the observation home as his destiny and does not want to come out fearing similar torture in future - for which an inquiry needs to be conducted and guilty need to be punished.

DCP concerned is directed to conduct an inquiry in the role of police officials in causing the mental torture to the juvenile and driving it to such an extent that juvenile had to decide not to come out of observation home and lead a normal life and despite his having accepted this they have not stopped harassing his family. The

compliance report shall be filed within 20 working days. Simultaneously the Nodal Officer, SJPU as defined under Rule 84 sub rule 10 shall take up the task of educating the Juvenile Welfare officers in specific and Police Officers/ officials in general on:

- How they should deal with child whether in conflict with law or witness.
- That they cannot call a child to Police Stations as a witness without following the procedures laid down under Criminal Procedure Code. As far as possible, any inquiry by police officer from a child should be done at the house of juvenile or child itself in the presence of his family members.
- That a juvenile cannot be asked to come to police station unless accompanied by his parents even if there is information about his involvement in the case
- The custody of juvenile is to be transferred to Juvenile Welfare Officer immediately and inquiry from the child has to be made in presence of JWO
- The inquiry from juvenile if any is to be made shall be made in presence of his parents/ Guardians, preferably at his own house. The content of documents prepared on which signatures of parents/ guardians are obtained or the documents which are prepared in the presence of parents/ guardians should be read over and explained to them by the police officer preparing such documents.
- Immediate information is to be given to probation officer of concerned district.
- They should wait for the probation officer to come to the spot or should themselves bring the child to the probation officer.
- The police SHALL NEVER visit the house of a juvenile in uniform and never in such number which creates a doubt in the minds of his neighbours and thus lowers his and his family's dignity in their eyes. While visiting house of a juvenile, the treatment and attitude of police officers towards women and elderly-aged members of the family should be respectful and civilized.

- It is a crime to use a child for obtaining information and to treat him as secret informer and has to be dealt with strictly under section 23 of the JJ Act and Sub Rule 11 of Rule 84 of Delhi JJ Rules.

Another aspect which needs to be looked into at this stage is the requirement of JJ Act to have Juvenile/ Child Welfare Officers at the Police Stations to take exclusive care of the matters related to Juveniles in Conflict with Law. It is extremely important to have exclusive JWOs if JJ Act has to be implemented in its true spirit. A police Officer burdened with multiple responsibilities will never be able to meet the standards of service expected of JWOs as per the Act. Nodal Officer SJPU Nanak Pura shall take necessary steps to ensure that the juveniles are treated appropriately by the police officers as per the need of their age and the expectation of the JJ Act.

Efforts should be made to have Juvenile Welfare Officers with exclusive domain over the children who should be so well trained that the children's right of respectable living and fresh start can be given effect to in true spirit. In the instant matter the Board is making clear that any complaint from the child or his family in future shall be viewed seriously by the Board and we will not hesitate in initiating criminal cases as per law against the police officers accused by the juvenile or his family members. As of now the Board is merely asking the DCP concerned to do the needful and is giving a warning to the police officers of PS <details omitted> to mend their ways and start treating the children AS CHILDREN.

Put up on 05.05.2011

Chapter 9

Juveniles being treated wrongly as Adults

It is not always easy for a child in conflict with law to avail protection of juvenile justice Act. Here is a case in which Board gave a comprehensive order on this subject dealing with an entire range of issues involved with it. This order was also placed before Hon'ble Delhi High Court in W.P. (C) 8889 of 2011 in which High Court had taken suo motu cognizance of children being lodged in Tihar Jail. Many of the guidelines suggested in this Order of JJB were approved by High Court in its Judgment. Coverage of this order is significant as it took stock of magnitude of child incarceration in jails and documented all efforts made on this issue by the Supreme Court. In this sense, this order becomes a crucial reading for those who want to study this issue and to know as to what all was done to eliminate this practice. In this order JJB has touched upon the issue of misuse of JJ Act by adults, need of maintaining data on age of juveniles as well and has explained the position of law on both these issues.

This order is historic in the sense that idea of evolving "Age Memo" to eliminate manipulation on age inquiry by Police was for the first time floated in this case and was subsequently approved by Hon'ble Delhi High Court.

**BEFORE THE JUVENILE JUSTICE BOARD-I SEWA KUTIR
COMPLEX: KINGSWAY CAMP: PRESIDED OVER BY MS
ANURADHA SHUKLA BHARDWAJ PRINCIPAL MAGISTRATE**

Order

16.03.2012

FIR NO <details omitted>

PS <details omitted>

STATE VERSUS <Name Withheld> & OTHERS

Pr. Ld. APP for the State

Mr. Rohan Alva Amicus Curie

The juvenile has not been produced today as he has his examination as per the report filed by the superintendent- Place of Safety.

This orders deals with the issue of a juvenile having been sent to jail in year 2011 in spite of him having been declared a juvenile being 15 years of age in year 2009 by this Board. This is not an isolated case on this issue.

Facts of the Case

Juvenile <Name Withheld> was produced before us in this case on 24.01.2012 by the order of Ld MM concerned, holding him to be a juvenile on the basis of the medical examination conducted on 08.12.2011, after he was found by the Medical Board to be between 17-18 years of age. He was “arrested” in this case on 07.12.2011 and was produced before regular criminal court, from where he was sent to Central Jail in judicial custody. His age was shown by the I.O. as 18 years. Later on he was found to be juvenile and that is how juvenile came before us.

This child was before us two years back in a case of PS <details omitted> in F.I.R. no <details omitted> of 2009. He was ten medically examined for the assessment of his age by the order of the Board, as he did not have any other documentary proof of his age and was found to be between 15-16 years of age as per the opinion of the Medical Board, which has examined him on 06.11.09 and was accordingly declared to be juvenile. In 2011, the same Police Station i.e. P.S. <details omitted> treated him as an adult and caused him to go to jail.

The IO in present case also had a doubt regarding the age of the boy and had got him medically examined for age on the very next day i.e. 08.12.2011 without any directions or order from the court where he was produced. Juvenile has told us that he himself had told the I.O. that he is a juvenile and this has been the claim of juvenile since the day he was brought before us. **Though now the child has come under Juvenile Justice Administration System but he had to suffer in Jail till 24.01.2012 for one month and seventeen days precisely. Because such miss-happenings are routine, we are compelled to take judicial notice of it and to find out how the system can be put in place to avoid reoccurrence of such unfortunate incidents.**

There is no doubt that injustice has been done to the juvenile. Board receives children from Tihar Jail on a regular basis. Children suffer the incarceration in jails meant for adults and endure suffering and trauma, till some one comes to their rescue. What is striking in this case is the fact that the case of year 2009 and the instant case, both are from same Police Station. This case, as well as other cases of similar nature, suggest that something is missing in system and such violations are, primarily, happening due to absence of an effective system of coordination and linkages and also due to casualness with which young offenders are being dealt with.

Inquiry into the Lapse

We vide order dated 24.01.2012 had asked the I.O. to give an explanation on what steps were taken to inquire about the age of juvenile at the time of apprehension. It does not seem believable that the juvenile would not have informed the police that he was a juvenile of 15-16 years of age two years back and had stayed at <details of Institution omitted>; a home meant for the juveniles in conflict with law who are between 12 to 16 years of age.

The S.H.O. in his explanation given to the Board has said that the juvenile himself had told the I.O. that he was 18 years old but since he was looking like 17-18 years old so the I.O. himself had got the boy examined medically on 08.12.2011. The J.W.O. has also filed a report and has said that the child was medically examined on 08.12.2011 itself, but the report of the medical examination was received only on 21.01.2012, the delay occasioned as the process of declaration of age took its own time.

It is stated in the report of the S.H.O. that the staff of the concerned Government hospital refused to give the report to the I.O. and so the I.O had to formally move an application in the Court asking for a direction to get the child medically examined, for which application was filed on 12.01.2012 and then only on 21.01.12 IO got the Medical Board report.

None of the reports however say that any inquiry was made from the child regarding his previous involvement; which if would have done could have helped I.O. in obtaining the proof of age of the boy in his previous case from the Board. This is admitted by the S.H.O., who is also the chief Juvenile welfare officer of the Police Station that the

boy did look like 17-18 years old. He however claims that the boy was taken to the Adult Court as he himself had told his age as 18 years.

Apparently the I.O. had a doubt that the boy could possibly be a juvenile but even then he chose to produce him before adult court. Relevantly the Circular No. 68 of Delhi Police, dealing with the manner in which juveniles are to be dealt with, requires a person with doubtful age to be given benefit and produced before JJB. Thus IO, if he had doubt regarding age of juvenile, had a duty to produce the child in the Board rather than having taken him to the Court; and even if he had taken the child to the court, he had a duty to inform the Court that he has a doubt about his age and that's why he has got the child medically examined. If this were done, the court concerned itself would have taken appropriate steps to decide where the child should be sent, in the jail or in the Observation Home.

It is only when he failed in getting a report from the Hospital that he applied to the Court for an order to get the child medically examined. The order of the Court dated 12.01.2012 said that the boy be medically examined within four days. The report was filed in the court on 21.01.2012 and the juvenile was sent to the Board thereafter. The order of the Court reads that the juvenile was medically examined on 08.12.2011, which shows that the boy was in fact medically examined before the application for getting him medically examined was formally filed in the court on 12.01.2012.

The child on his first date before us told that when his co-jvenile was being produced in the Board he had requested the I.O. to produce him also in the Board, yet he was made to sit in the police vehicle, and was told that he will be produced in the adult court.

There are many "ifs" which if they had happened or had not happened the child would not have suffered the agony of being sent to adult court and to jail.

- If the I.O. had believed the juvenile that he had a previous case and would have made an inquiry;
- If the age of the juvenile was verified from the Board from his previous case;

- If the I.O. had believed what he himself felt (which is shown by the fact that he got the child medically examined the very next day), and had produced the boy in the Board;
- If only the court was told on first date of production that the boy could be a juvenile;
- If the magistrate had taken note of the age of the juvenile i.e. of 18 years and had followed the guidelines in the case of ***Gopi Nath Ghosh versus State of W.B. AIR 1984 SC 237*** and had made an inquiry from the juvenile;
- Or if the IO had told that he has got the child medically examined and that the court should call for a report;
(The court in aforesaid two cases could possibly have sent the boy to OHB instead of sending him to the jail);
- If the doctors concerned had prepared the report and given it in time to the I.O.;
- And above all if only there was a mechanism in place which could have helped the I.O. in knowing that there was a document in existence by which the child has been declared a juvenile.

While this was being discussed Ld prosecutor put forward the argument from the side of the I.O. asserting that no records of age of the juveniles are maintained at the police stations and that there is in fact a prohibition on retaining and using the records of the juveniles after the disposal of the case and the period of the appeal. Referring to various provisions including section 19 of the JJ Act and the principles related to confidentiality etc, it was argued that since no record of the age of juveniles is maintained at the police station and whatever record is kept is not accessible to anyone except the JWOs and the S.H.O.s, the I.O.s practically have no means to find out if the person before them could possibly be a juvenile, declared so by a Court or Board in any previous involvements. We shall take up the issue later in the order.

Report Filed by the Amicus

Mr. Rohan Alva was appointed as amicus to assist us in finding a solution to this problem by interacting with both the juveniles in this case. He has filed a detailed report on the **“Procedure to be adopted to ensure that juveniles are not sent to jail”**.

In his report Mr. Alva has raised a concern about the casual manner in which the issue of age is dealt with by the Investigating Officers ignorantly, negligently and sometimes even intentionally, and the child in the process is made to suffer the hardships of the Criminal Justice System away from the care and protection of system -- especially enacted for him -- that is the Juvenile Justice System.

Constitutional Safeguards

Referring to the Constitutional provisions -- of Articles 15(3) - entitlement of special treatment being children; Article 39(e)- right to protection against abuse; Article 39(f) right to develop in a healthy manner and in conditions of freedom and dignity and protection of childhood against exploitation and against moral and material abandonment -- Mr. Alva submitted that how State which through its Constitution, Enactments and National Policies has shown its commitment to provide care and protection to its children, is , in practice, failing to act upon the well thought over and worded provisions because of the violations of the kinds under consideration in the present case.

Safeguards in Domestic Laws, Rules and Policies

Juvenile Justice (Care & Protection of Children) Act 2000 was amended in year 2006. One significant amendment was in Section 10 titled "Apprehension of Juvenile in Conflict with Law". This section was amended to include a proviso to it to the effect that "**in no case a juvenile in conflict with law shall be placed in a police lock up or lodged in jail**". It was done to stop the practice of juveniles being kept in jails on the ground that sufficient number of observation homes were not available. Law in 2006 responded to this crisis by way of an amendment.

Principle VI of Delhi JJ rules 2009 very specifically says that a child shall not be put in confinement in jails. *The emphasis no doubt was that no child whatever be the circumstances shall be sent to a jail.*

VI. Principle of Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment):

(a) ***At all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter, the***

juvenile or child or juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or the child.

Further, the Government of India in the '**National Plan of Action for Children (2005)**' specifically addresses the issue of 'Children in Conflict with Law' by enunciating certain goals, objectives and strategies. It recognizes that one of the strategies to achieve the objectives enunciated therein is to ensure that- no child under any circumstances should be lodged in prison.

Safeguards provided under International Law

The Universal Declaration of Human Rights (UDHR), the foundation of Human Rights Law, to which India is a signatory, protects the right of juveniles of not to be sent to jails and ***includes the right of those who may not be aware that they are juveniles to not be sent to jail without a proper preliminary inquiry on age.*** In the case of juveniles, the responsibility of the police is accentuated and they are responsible for ensuring that juvenile do not suffer deleteriously when they come into contact with the legal system.

A perusal of the **International Covenant on Civil and Political Rights 1996 (ICCPR)** reveals that several of its provisions require State Parties to provide for protection of citizens from arbitrary forms of arrest and also specifically protect the interest of juveniles. Article 10.2(b) of the document provides that :

“Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”

Article 10.3 provides that

“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

The issue of treatment of young offenders whose age may not be known has been addressed in “**Guidelines for Action on Children in the Criminal Justice System**” in Resolution dated 21.07.1997 by the Economic and Social Council and it observes as below:

“B. Specific Targets

***12. States could ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment.*”**

It is stated by Mr. Alva in his report that –

“.....in the treatment of juveniles a very careful and vigilant approach has to be adopted to ensure that the apprehension of juveniles is not effected in a mechanical manner; under no circumstances is a child to be sent to jail; and, if due to negligence, arbitrariness or *mala fide* on the part of the police officer, a juvenile is arrested and sent to jail, it would amount to a cruel, inhuman, and an oppressive action which would be wholly destructive of the juvenile’s inalienable right against being sent to jail. Therefore, to take these requirements to their logical conclusion, it would be correct to say that even in cases in which a juvenile *may* appear to be an adult, vigilance at the arresting level itself is required to ensure that a juvenile is not routinely dumped into a jail.”

Supreme Court on “Children in Jail”

Hon’ble Supreme Court has been dealing with this issue since 1980s and through several orders and judgments, significant reforms and improvements have been introduced and several legal and procedural safeguards have been provided.

Way back in 1983, Hon’ble Supreme Court in **Sanjay Suri Versus Delhi Administration 1988 AIR SC 414** had looked into the issue of children being sent to jails. It is an irony that even after 29 years, we have a situation that children are still found in Jails. In Sanjay Suri

(Supra), Hon'ble Supreme Court in its order dated 31.10.1983 had observed that:

“...We would also like to know as what is the procedure being followed by the Courts of Metropolitan Magistrates in Delhi when a young accused is produced before them for the purpose of ascertaining whether he is a child or not within the meaning of the Children’s Act and if he is not a child and is sent to judicial custody then what is the procedure being followed by the Superintendent of the Tihar Jail for determining whether he is juvenile within the meaning of Jail Manual where a juvenile is defined as a prisoner who has not attained the age of 18 years. We are anxious to ensure that no child within the meaning of the Children’s Act is sent to the jail...”

As a result of the aforesaid order in Sanjay Suri (supra) case that a separate juvenile ward was created in Tihar Jail. It was made mandatory for the Magistrates to mention the age of the accused on the custody warrant and it was made clear that warrant without age were not to be respected by the Jails.

Then in year 1983 itself Hon'ble Supreme Court in **Gopinath Ghosh Versus State of West Bengal**, dealing with the similar issue, issued a practice direction for magistrates:

“ 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 under taking an inquiry, an inquiry must be made about the age of the accused on the date of occurrence. This sought to be made 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 Surgeon, as the case may be, for obtaining credit worthy 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 upto the apex court, and the return journey to the gross-root court.”

Then again in year 1986, Hon'ble Supreme Court dealt with this issue in case of ***Sheela Barse versus Union of India 1986(3) SCC 596*** , in which it was observed that :

“....It is an elementary requirement of any civilised society and it had been so provided in various statutes concerning children that children should not be confined to jail because incarceration in jail has a dehumanising effect and it is harmful to the growth and development of children. But even so the facts placed before us, which include the survey made by the Home Ministry and the Social Welfare Department show that a large number of children below the age of 16 years are confined in jails in various parts of the country.”

“.....That is why all the statutes dealing with children provide that child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country as is now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are accused of offences, they must not be kept in jails. ...”

The Hon'ble Supreme Court of India in its judgment in ***Arnit Das v. State of Bihar, 2000(5) SCC488*** had held in the context of The Juvenile Justice Act, 1986 that:

“the purpose of the Act was to create a uniform juvenile justice system and ensuring that juveniles are not lodged in jails or police lock-ups. It also held that those who are entrusted with the responsibility of implementing the Act must show sensitivity and concern to the juvenile.”

In 2007, Hon'ble Supreme Court while examining the status of implementation of Juvenile Justice Act 2000, in ***Sampura Behrua***

Versus Union of India took note of the issue of children in jail again and made following observation in its order dated 03.01.2007:

“It deserves to be noticed at the very outset that it was more than 20 years ago that this Court, concerned with the plight of the children, development of their personality and the appalling conditions in jails, issued various directions. Even in the year 1986, this Court expressed regret that despite statutory provisions and frequent exhortations by social scientists, large number of children are lodged in number of jails. It was observed that even if children are accused of offences, they must not be kept in jails. Rejecting the argument that there are not enough number of homes or observation homes or other places where children can be kept is the reason why they are lodged in jails, in Sheela Barse Vs. Union of India {(1988) 4 SCC 226}, this Court reiterated the earlier decision dated 13th August, 1986 reported in (1986) 3 SCC 632. The Government were again impressed upon to set up the necessary mechanism, i.e., remand homes, observation homes etc. for lodging children.”

In year 2009 Hon'ble Supreme Court in **Hari Ram versus State of Rajasthan 2009(13) SCC 211** remarked that the system will not work till the mindset of the people associated with it changes. It was this Judgment which confirmed the retrospective effect of the JJ Act and extended the benefit of JJ Act to all those who were above 16 but below 18 years of age during the time when 1986 Act was in force. Highlighting the importance of attitudinal change in the minds of duty bearers, It was held that:

“It would be virtually impossible to achieve the objects of the JJ Act without there being a complete change in the mindset of those vested with the authority to enforce the JJ Act.”

We, thus see that it was in 1983 that the Hon'ble Supreme Court had shown its concern on the manner in which the children were sent to and kept in jails and 28 years later in 2010-2011 we still had 113 children, who were sent to Tihar jail over a small period of eleven months. (As per an RTI reply attached with the report of Mr. Alva).

If a child is sent to jail without a sincere effort having been made to look into the aspect of his juvenility or otherwise, apart from violation of his all legislated, recognized, reiterated and formulated rights his very basic right of being recognized a child is violated. All his rights are ancillary to the recognition of the fact of he being a child and all other rights are bound to be violated if system fails to adequately and timely recognize this right.

The harm which is caused to a child, when his right of being identified and treated as a child is violated, cannot be undone by any means. In his report, Mr. Alva has quoted from the law commission (report -177th report on Law relating to arrest, 2001, Page 32) :

“The everyday situation is that wherever the arrest is found to be illegal, unwarranted or unjustified, the man is set free, may be sometimes unconditionally. But that is all that happens. Nothing happens to the police officer who has unlawfully or unjustifiably interfered with the liberty of a citizen and/or has wrongfully confined the person, whether in police custody or elsewhere. This position has indeed emboldened some police officers to abuse their position and harass citizens for various oblique reasons. They feel secure in their knowledge that any wrongful or illegal act on their behalf would not affect them, their careers or their prospects in service; all that would happen is, the person arrested would be let off by the courts.”

The situations being so with the adults where do the children stand, who otherwise because of the age and status are incapable to defend their rights? Often these children have to suffer incarceration for a long time till the help actually reaches them. A recent UN report of **Working group on Human Rights in India** released in December 2011 has also found that children's ages are often falsified and they are tried in adult courts or sent to adult prisons.

In such cases, the family members have to rush to all corners to get their children recognized as children and then declared so legally. Of course legal remedies are available to get the mistake or lapse corrected but by the time mistakes are corrected, the child suffers in silence. It has been our experience that the children who suffer incarceration in Jails acquire contamination and their rehabilitation becomes difficult. In some cases, children incarcerated in Jails have

no body to take care of them. Families are often poor and illiterate and find it difficult to get help.

What do the children like the juvenile in the present case do, who do not have a family to engage a lawyer and to take up the issue of juvenility and fight for it? The child in this case was aware about his rights as he was aware that there is a system meant for him as he was dealt with by this system earlier. Many such children might even not know that they have a right to be treated under a system created by law only to provide care and protection to them.

There are a few issues which are raised every time a situation like present case comes up and are then forgotten. It is the duty of the police officer to record the age of a person the moment he is apprehended and his apprehension memo is prepared. It has been emphasized time and again that the police officers have a duty to conduct a preliminary inquiry into the age of the child. Wherever there is a doubt regarding the age, the Police have to satisfy itself on whether there could be a possibility of him being a juvenile. This inquiry cannot be a formality. It has been stated by this Board earlier in one of its orders that as per fundamental principles a juvenile cannot waive his juvenility and so even if a person is saying that he is a 18 or so and the I.O. feels that he is a juvenile, as has been claimed by the I.O in this case, the I.O. has to treat the person as a child and has to preferably produce him in the Board and let the Board take a decision on his juvenility. In case however such a child is by any reason produced in the Court the I.O. has to inform the said court that the person being produced by him could possibly be a child and give this information to the Court in writing.

Issue of misuse of JJ Act by Adults

We have often heard of the concerns on the adults taking a benefit of the Juvenile Justice System. We do not see much validity in such concerns if every agency concerned does its duty properly. If the adults are brought to the Board in doubtful cases, Boards will conduct an age as per the provisions of the Act and Delhi JJ Rules and they on being found adults are sent to the regular courts as per law. We do not see any harm in bringing a person where there is a doubt regarding his age or where he claims juvenility but cannot immediately prove it by way of a documentary evidence. In case, a person who initially claimed to be a juvenile, is found to be an adult,

he is eventually sent to Adult Court. On the contrary if a child is sent to the jail because he is not able to prima facie establish his juvenility and is then brought into the JJ system after winning his claim of being a juvenile, enormous injustice is caused to the child as he is subjected to the hardships of criminal justice system and jails, which is strictly prohibited under law. Superior Courts as well have given us a mandate to be cautious on this count. **Every possible effort is required to be done to ensure that adults do not manage to take benefit of JJ Act and that children do not land up in jails.** We are required to maintain a cautious balance between the two.

We are of the view that a person who says that he is a juvenile should be treated so initially, after preliminary inquiry be brought before the Board to decide the juvenility on the basis of physical appearance or documents. To do contrary, has a risk of children landing up in jails. The Courts have also been guided by the judgment in Gopinath Ghosh (supra) to be vigilant in cases of young offenders and to undertake an inquiry on age before proceeding further.

Measures to be taken up

Reminding the Board of its duty under rule 10(h) of Delhi JJ rules of removing the difficulties in implementation of the Juvenile Justice Act, Mr. Alva has suggested that the Juvenile Justice Board needs to put in place some guidelines regarding the issue which has come up in this case and has suggested some measures in this regard in his report.

Rule 10. Functions of the Board

The Board shall perform the following functions to achieve the objectives of the Act, namely:--

(h) take suitable action for dealing with the unforeseen situations that may arise in the implementation of the Act and remove such difficulties in the best interest of the juvenile;

We shall also quote here rule 10(e) which speaks thus;

*(f) pass necessary direction to the district authority and police to **create or provide necessary infrastructure or***

facilities so that minimum standards of justice and treatment are maintained in the spirit of the Act.

The Delhi JJ rules have given power to the Board to pass necessary directions to the district authority (i.e. District Child Protection Unit) and the police for creating necessary infrastructure. It also says that the Board may take necessary action to deal with unforeseen situations and to take suitable actions to remove difficulties.

As discussed above the very basis by virtue whereof a person comes under the jurisdiction of the Board and becomes entitled for the beneficial provisions of the Act, is the age. The issue of the age, if not handled sensitively and as per law, does obstruct the implementation of the Act and thus is the need for the Board to take suitable action.

Declaration of Age under JJ Act is to be True Age

It is seen in this case and several cases as well that have come before us that the children -- who have been declared juveniles by the Board once -- are taken to the Jails without first obtaining the record of the age from the Board.

We will, in this regard, refer to the provisions of rule 49 of the Delhi JJ rules which say that the age when it is declared so becomes the age of the child for the purposes of the Act.

“ 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.*

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

Section 49 of the Act speaks of the presumptions which are associated with determination of age. Sub section 2 of the section says that the age of a child once declared by a competent authority (Juvenile Justice Board or Child Welfare Committee) shall remain his age for the purpose of the Act (not merely for the purpose of the inquiry); if subsequent to declaration of the age of the child some other document is produced or is brought, the age declared after due inquiry shall not become invalid. The sub section uses the words 'for the purpose of the Act' meaning thereby that the age once declared in an inquiry becomes the age of the juvenile or the child, which has to be considered for all times to come where an action is recommended/contemplated for the child under this Act. It is this sub section that gives the power to the Board, to accept the age once declared by it in an inquiry, as his age in the subsequent inquiries where he is found involved.

It is despite the existence of this section that the juvenile in the present case had to suffer the custody in a jail. It is despite the fact that there was an order in existence which had declared him a juvenile and yet he was treated as an adult. It is despite the fact that this document of declaration of juvenile unless reversed in appeal had to be treated as the document of age for all the purposes of JJ Act and could not be overruled even by discovery or coming up of a subsequent document. The present case has also raised a question, what if the juvenile in the present case were declared above 18 years by the Medical Board, which we all know is only an opinion. Would then the juvenile have remained an adult and faced the trial in the adult court?

Having understood that the order of declaration of age by the competent authority is final, how do we ensure that all the person who are or may at any point of time to come, have to deal with the age of the child are made aware of or can access as per need this document age of the juvenile. It is for this reason that it has been mandatory under Rules for Board to supply a copy of age declaration to the juvenile or his guardian.

Issue of Maintenance of Data on Age of Juveniles

We now take up the argument advanced by Ld APP, that of inability of police in having access to the record of the juveniles.

It has been argued that no record of age of children is maintained at the police station and whatever record is maintained is also not accessible to all the police officers at the Police Station. We will examine the provisions being referred to by Ld APP.

Section 19 of the JJ Act speaks of removal of record and says that:

(2) 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 provision thus is that if the juvenile is found involved in the commission of an offence, the record of such conviction has to be removed after the prescribed period. This section compliments the subsection 1 which says that the order of the conviction shall not become a disqualification for a juvenile. The purpose attached to the subsection is to provide protection to the juvenile from any disqualification, which may come in his way because of his conviction in a case.

The right to privacy and confidentiality reads as under;

XI Principle of right to privacy and confidentiality

The juvenile's or child's right to privacy and confidentiality shall be protected by all means and through all stages of the proceedings and care and protection processes.

The principle says that a child has a right of privacy and confidentiality and this right is to be protected. We fail to understand as to how these provisions puts a restriction in maintaining the record of a child's age. The prohibition and restriction is aimed at protecting the child from disqualification arising out of conviction or breach of his confidentiality to his disadvantage. If however the record is to be used for the interest of child, it has to be maintained and shared and used by the agencies concerned. We are presuming that this record if maintained shall be only to have the record of the age, for the benefit for the child or it may be used from preventing an adult from exploiting the juvenile justice system and not to be used against the interest of the juvenile for any purpose. This record in any case will be used by the Board or the Court as and when child is brought to the Board or the court.

It is seen thus that there is nothing under the law which prevents the police from keeping records of the age of children who are declared so by the Board at least till such children attain the age of majority. There is again no restriction in using this record as and when a child comes in their contact the second time.

Further if the order of age is retained by the police station within the jurisdiction of which the offence was committed and is not shared further, it will be the same situation as maintaining the record with the Board.

The need therefore is to have the data of age of all the juveniles who are declared so by the Board during inquiry at one place with access of the same to all the police stations. In maintaining this record however it will have to be ensured that this data is not accessed for any purpose except for finding out the possibility of a juvenile having been dealt by the system earlier and in the interest of the juvenile.

The use of this data however can be restricted through proper rules viz the access of the same should be to the S.H.Os and the J.W.Os of the P.S. In every case of apprehension of a person who tells his age up to 21 years, the I.O. would necessarily ask the J.W.O. or the I.O. to check the data and to find if the person had ever been involved in the commission of an offence and if so, what was his age declared by the Board in that involvement.

This shall be for the juveniles who are declared juveniles and are apprehended again in other cases. There are however many cases where the juveniles are taken to the court do not have a previous involvement.

Mr. Alva has pointed out in his report the steps which if taken by the police in every case of disputed age, will help them in handling the issue of age properly and without a hitch we say that if this is done a check may also be put on the misuse of the provisions of the Act by the Adults, which has often remained a concern of the various agencies dealing with these children and the adult offenders.

Role of Special Juvenile Police Unit

While we discuss about maintenance of data on age, it's sharing and accessibility to the other police officers, the principal agency which has to play a crucial role is Special Juvenile Police Unit. Special

Juvenile Police Units have been established in all the districts with requisite staff and training. These District levels units are required to be coordinating with all the police stations in their jurisdiction and to function under supervision the Nodal In-charge of Special Juvenile Police Unit at Nanakpura headed by a Joint Commissioner of Police. We are also aware that Department of Women & Child Development is now set to appoint two paid social workers to the district SPJUS. It comes within the functions of SJPU's to put in place a system of coordination between all the police stations on their dealings with the children.

We are passing some directions immediately, but a concrete and well thought scheme needs to be evolved by the Special Juvenile Police Unit to address the concern being discussed and dealt with here.

Ld. Amicus has explained in great detail the need of introducing "Age Memo" on the line of "Arrest Memo" which was evolved in DK Basu case. Though we may agree to the need of such "Age Memo" to be put in place in cases involving young offenders, we are not the competent to pass any order in that respect.

We are, however, of the view that following precautions if taken by the police in dealing with the issue of the age prima facie will help in ensuring that the juveniles are not sent to jails.

1. **Inquiry on age immediately on apprehension/ arrest of young offenders:** As and when a young person is apprehended / arrested and if he apparently looks or claims that he is below 18 years of age, it should be presumed that he is a juvenile and the J.W.O. should be immediately called and consulted and a proper inquiry specific on age be carried out immediately.
2. The I.O. should record the age of the person apprehended as told by the person him/herself or by parents/ relative or on the basis of any document which is shown to him/her by the person or family members.
3. IO shall however simultaneously, based on his own inquiry, record his own opinion on the age if he feels that the person before him is telling his age

on the higher side as the children may sometimes do as has been claimed by the I.O in the present case.

- A preliminary inquiry should be taken in every case where the child tells his age upto 21 years {Gopi Nath Ghosh (supra)}
- In conducting the inquiry, the:
 - I.O. shall ask the person if he has been a part of formal schooling at any point of and if the child answers in affirmative the I.O. should verify the record of such school at earliest.
 - If the parents of the person are available this inquiry should be made from them. The I.O. should ask the parents if they had got the date of birth of the child registered with the MCD or gram pradhan etc as provided under law and take the answers/ documents on record.
 - Where no such document is found immediately and the I.O. has reasonable grounds believe that such document might be existing he shall produce such person in Board and seek time for obtaining these documents.
 - A preliminary inquiry can be made from the parents of such person about the time of their marriage and the details of how many children do the parents have and after how long of the marriage were these children born.
 - In addition to above an inquiry on previous involvement of the juvenile shall necessarily be made and the effort to find if the juvenile could possibly be declared a child should also be made. For this the data as aforesaid should be maintained.

- The inquiry conducted in each case shall be recorded in writing and shall form a part on investigation report in each case where a child claims his age up to 21 years irrespective of whether he is found a juvenile or an adult.
- Special Juvenile Police Unit shall set up a mechanism in place for necessary coordination and assistance to police officer who may require such information.
- An advisory/ Circular/ Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of Police officer/ IOs/ JWOs for the purpose of assistance on matters related to age inquiry within 3 months from receipt of this order. Such advisory/ Circular/ Standing Order shall also include the procedure which needs to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.
- In each case, where a police officer arrested a person as adult and later on such person turns out to be a juvenile, DCP concerned shall undertake an inquiry to satisfy him/her that a deliberate lapse has not been committed.

We put on record our appreciation for the assistance provided by Ld. Amicus Mr. Rohan Alva to the Board in dealing with this issue and this case as well, and for presenting an excellent report on this subject, which we find of great academic satisfaction.

A copy of this order along with the report of Mr. Rohan Alva, Ld. Amicus be sent to Nodal In charge of SJPU , P.S. Nanakpura for their response.

Sd/
M

Sd/
PM/JJB-1

Chapter 10

Question of Limitation in filing Police Investigation Report

In 1986, Supreme Court in Sheela Barse case ruled that investigation by police in the cases of juveniles will have to be completed within a period of three months and this period will be counted from the date of registration of FIR. JJBs in Delhi have been zealously implementing this judgment and the cases of non-serious nature would not proceed further if police fails to file its investigation report within 3 months period. The underlying reason has been that children should not be kept entangled with the system for long time and there should be speedy disposal of cases which also meant speedy investigation by Police as well.

Certain concerns however started coming up in implementation of this Supreme Court Judgment and by this Order, JJB answered several of such concerns relating to limitation.

**BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR
COMPLEX KINGSWAY CAMP: PRESIDED OVER BY MS
ANURADHA SHUKLA, PRINCIPAL MAGISTRATE**

**ORDER
31.01.2011**

The issue involved in all the aforesaid cases is same i.e. the offences alleged against the juveniles are punishable with imprisonment up to seven years and the final report has been filed beyond the prescribed time frame of ninety days.

The Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009; herein after referred to as Delhi JJ Rules has made a distinction on how the police shall proceed in the cases where the prescribed punishment for adults as per the IPC or the other relevant laws is less than seven years and the cases where this punishment is more than seven years.

Rule 11 of the aforesaid rules reads as under:

11) Pre and post production action of police and other agencies.

1.....

2. The police or the juvenile or child welfare officer from the nearest police station shall exercise the power of apprehending the juvenile only in cases of his alleged involvement in serious offences (entailing punishment of 7 years or more imprisonment for adults).

3. For all other cases involving offences of non serious nature (entailing punishment of less than 7 years imprisonment for adults) and cases where apprehension is not necessary in the interest of the juvenile, the police or the juvenile or the child welfare officer from the nearest police station shall intimate the parents or guardians of the juvenile about forwarding the information regarding nature of offence alleged to be committed by their child or ward along with his socio-economic background to the Board, which shall have the power to call the juvenile for subsequent hearings.....

The law is that a juvenile should not be apprehended if the allegations against him are making out a case of which the prescribed punishment for adults is up to seven years. It wants the Police of the JWO as the case may be to inform the parents about forwarding of the information of the offence to the Board. The child as per the reading of the rule is not required to be produced before the Board by the police/JWO and the discretion has been given to the Board to call him for subsequent hearings.

The rules do not specify any time period for the forwarding of the complaint against the juvenile to the Board/ An understanding perhaps was that it will be forwarded at the earliest. However since no time period was prescribed reference was made to the Judgement of Hon'ble Supreme Court in the case titled Sheela Barse Vs UIO 1986 SC 1773 wherein a direction was issued for completion of the investigation of all the cases related to juveniles-where the punishment prescribed for adults is less than seven years- within three months.

The directions were verbatim copied in the circular by the office of commissioner of police being circular no. 27/2007/C&T; this circular

was later on modified to bring into its ambit the children up to the age of 18 years as against the earlier circular wherein this protection was for the children up to 16 years. Circular no 29/2007/C&T issued a direction:

“that investigation of all the cases of which the prescribed punishment for adults is up to seven years should be completed within three months from the date of filing of the complaint or lodging of first information report and if the investigation is not completed within this time, the case against the child must be treated as closed.”

It is however found that despite specific and categorical terms of the circular the investigation Officers still file the final reports and not the closure reports as they should, leaving it every time on the Board to pass an order for closure of proceedings.

The circular says that period of three months is to be computed from the date of complaint or the date of FIR. The final reports however are filed beyond the period of three months claiming that the same are within the period of three months computed from the date of apprehension of the juvenile, the date of their coming to know the fact of juvenility and often from the date when the documents viz MLC etc are collected / supplied.

It needs to be noted that all aforesaid is part of investigation and when requirement is to complete the investigation in three months apparently this all is required to be done within the time frame.

If the fact of the juvenility comes in the knowledge of the IO on a later date but before the expiry of the date of limitation i.e. three months, there is no reason for him to presume that he will have three more months from the date of his coming to know the fact of juvenility. He still has the time left to complete the investigation within three months and file the report with the Board in the prescribed time.

Similarly, if the juvenile is apprehended at a later stage but within the time period of three months the IO is still duty bound to complete the investigation and file the report in three months. So will be the situation in the cases where documents are delivered later.

It is to be noted that the Hon'ble Supreme Court as well as the circular of the Commissioner of Police is categorical that the investigation is to be completed within three months from the date of complaint or the lodging of the F.I.R.

It is not uncommon that the accused are apprehended on a date after the date of complaint or F.I.R. Finding and apprehending an accused is part of investigation and as per the aforesaid circular and the Judgement this part of investigation in the cases related to the juveniles is to be completed within three months.

Ld APP has argued that if the IOs are not aware of the fact of juvenility how can they presume that the investigation has to be completed within three months. He argued that the limitation is to be computed from the date when the fact of juvenility comes in the knowledge of the IO.

This is not correct interpretation and understanding of the law. Whenever the fact of juvenility comes in the knowledge of IO he should focus himself to complete the investigation within the remaining period of three months. He will always be answerable for - what prevented him from filing the report within the remaining period of three months. Apparently the limit has been provided for the offences which are not serious / heinous in nature. These kind of offences do not require very detailed investigation. The IOs should make efforts to conduct the investigation in such a manner that they are able to complete the same within three months computing from the date of FIR or the complaint. If there are reasons which prevent them from completing the investigation in three months they should file the report of the investigation completed till the last day of third month in the Board and thereafter they may conduct further investigation and file supplementary report with the permission of the Board.

The law in this regard has to be applied in the same manner as is done in the cases where the accused are in judicial custody and they get entitled to bail if the charge sheet is not filed within the prescribed time frame of sixty or ninety days as per Section 167(2) of Cr.P.C.

It is clarified that the report of an offence where the allegations constitute an offence of which the alleged punishment is less than

seven years shall be filed at earliest and under no circumstances beyond three months and if there are reasons that prevent the filing of report the same shall be brought into the knowledge of the Board with in the period of limitation. If the investigation has gone beyond three months the IO shall file a closure report and not the final report.

Copy of order be sent to the concerned DCPs North, North East, North West, West and Outer for necessary directions to their respective subordinates.

All the files be consigned to record room.

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PM/ JJB-1

Chapter 11

Preventive Role of Police & Government

This is an order in which Board has explained the linkages between garbage collection business, drug addiction and delinquency. Board was regularly getting to know from children about how children in Delhi were being methodically made addicted to drugs and substance and were being exploited by waste merchants. The basic learning from this order is whether a JJB should only deal with individual cases of juveniles being brought before it or its role goes beyond this. Here in this case, Board found a pattern in juvenile crime, identified causes and issued directions to various authorities to deal with systemic exploitation of children laying emphasis on preventive functioning by Police on juvenile crime prevention. An order which demonstrates how systemic, organised and deep-rooted may be causes of juvenile delinquency.

**BEFORE THE JUVENILE JUSTICE BOARD PRESIDED OVER BY
MRS. ANURADHA SHUKLA BHARDWAJ, PRINCIPAL
MAGISTRATE, DELHI**

ORDER

20-8-2010

DD No. <details omitted>

PS <details omitted>

Pr. Ld. APP for the State.

Mr. Anant Asthana, Ld. Legal Aid Counsel.

File taken up on application filed by Mr. Anant Asthana referring to order dated 13.10.2009 in the instant matter and order dated 5.3.2010 in FIR No. <details omitted>, P.S. <details omitted> u/s. 380/411 IPC.

Vide order-dated 13.10.2009, the Board had passed an order for constitution of a committee on the application and a report titled as **“Drug Addiction & Delinquency among Children: Role of Waste & Scrap Merchants”** prepared and filed by Mr. Anant

Asthana. The introduction para of the report said:

“The business of sale and purchase of waste and scrap material is conducted throughout Delhi, mostly in slum areas. This business alone is responsible for bringing a huge number of children into delinquency. There are direct and apparent linkages between delinquency/drug addiction among children and business of waste and scrap material.”

Ld. Counsel has written in his report that, “This report is based on information/ observations received during inquiries of few juveniles. While dealing with these cases, when I made interactions with these juveniles and subsequently got in touch with their parents and family members, It was found that causes of delinquency among all these children are almost on similar patterns and scrap/waste merchants were involved with them in some ways necessarily.

His report has further provided a list of some cases in which he has found a pattern and his report has listed the details of such pattern observed by him, which is being reproduced below:

- 1) That all of these children were broken away from their families. Some of them were either not at all staying with their families or were occasionally visiting their parents.
- 2) That all of them were staying at the place provided by scrap/waste merchants.
- 3) That all of them were receiving every possible support and protection from scrap/waste merchants.
- 4) That all of them were in one or other kind of drug addiction.
- 5) That all of them reported that while their stay and work with such scrap/waste merchants, they were never prevented from or advised against using drug. Rather in some case, children were encouraged to try different kinds of drugs.
- 6) That all of them were having peer groups, in which children were in drug

addiction and were involved in delinquency.

7) That in their surroundings, drugs is easily available to children.”

This report aforementioned and various statements recorded by the Board in different inquiries before us makes us understand that some Scrap/ garbage Dealers (Kabadi wala) are working in an organized manner -and misusing the children for making financial gains and to achieve this end, some of them do not mind bringing small children into drug-addiction - separating them from their own families and ultimately bringing them into the state of complete delinquency.

There is apparently a dramatic link between the phenomenon of drug-addiction in the children and their association/ involvement with the business of rag picking, garbage collection and their gradual indulgence in unlawful activities, and the same has been highlighted by the counsel in the said application. It has been noticed that the magnitude of juvenile delinquency among street-children, semi-street children and children living in slums and on roadsides or living with parents who are unable to take adequate care of their children for the reasons of illiteracy, poverty, difficult circumstances like demolitions, evictions, natural calamity or disease etc. is growing fast due to indulgence of some scrap dealers who bring the children into business of crime very methodically starting from small children being provided job for picking of garbage and then into stealing, robbing and eventually and gradually into being hardened criminals, all through the alcohol, solution (white fluid) or drugs which were first either given to them by scrap dealers/ elder age children already working there or allowed to be given to children through some other people to make their work easy, remains an important factor. Ld Counsel in his report-dated 01.09.09 has answered some of the questions, which were important for dealing with issue. The relevant paras from his report are reproduced below:

“Why Children are used by Waste/scrap merchants?”

Profit margin is higher in dealings done with children compared to their adult counterparts. The needs of children are smaller and they give in for smaller money sufficient enough to let them buy their drugs, alcohol and food etc. They do not bargain, not knowing the

value of scrap and waste stuff they bring to waste/scrap merchant, which allows such merchants to maximize their gains .

Why Children are given accommodation by Waste/scrap merchants?

1 There are many reasons for this. Foremost is to ensure constant supply of waste and scrap. Children tend to be loyal to whosoever helps and supports them. If the children get a place where they can stay and are also provided money to fulfill their needs they take is as a support and prefer to sell their stuff to that particular merchant.

2 Second reason is to keep an eye on the work done by these children. By giving them shelter, merchant brings himself in a position to control and be in knowledge of how much waste has been collected by these children. These children are mostly vagrants. The accommodation facility provided by the merchants is a mechanism to keep limited control over the children and monitoring their work in the interest of the merchant only.

3 The place functions as a training and orientation camp where new children are given influences by elder children. Most of the children pick up smoking, alcohol and drug user during their stay at these places in company of the other children who are already into all these things.

4 Merchants have their interest in children. Such accommodation comes handy for reducing the influence and control of families over children. Where the children living with families feel restricted by parental discipline, they opt out of their homes to be with scrap dealer into an atmosphere of more independence.

Why these children are encouraged into addiction?

Drug addiction, alcoholism etc, is a life style for these children. It is encouraged all the time by adults around them. It gives them a feel of high. Drug addiction increases the financial needs of the child and consequential dependence on the provider of the material. They are vulnerable and it gets increases with their increased status of addiction and thus dependence on the provider. Addiction brings them to a stage of no return. Waste/scrap merchants have an interest

in keeping these children into all this for the simple reason of business and money. Child is stuck forever in that vicious circle. Only in few rare cases, like that of Child <name withheld> in F.I.R. 589/2007, children have been able to get themselves restored to their families and normal life. For most of the children who get trapped into this system, it comes as a dead end for their life. They gradually move into deep delinquency and their childhood is lost to crime forever.

What can be done to save these children?

A. Special Juvenile Police has a big role in saving these children, apart from Juvenile Justice Boards / Child Welfare Committees.

B. Juvenile Justice Act prescribes for Special Juvenile Police to adopt a preventive approach for reducing delinquency. Unfortunately, this understanding on prevention and reduction of delinquency is missing from functioning of Special Juvenile Police. For exclusive purpose of this matter at hand, Police needs to evolve a larger strategy which will include area wise survey of these waste/scrap business centers, number and conditions of children working and staying at those places, identifying drug suppliers and taking action on them.

C. Police needs to take action on those adults (waste/scrap merchants, drug suppliers etc.) who are involved in bringing delinquency amongst children.

D. Department of Women and Child will need to come ahead with honest intentions to save these children. These children need to be put in de-addiction programmes, counselling, vocational training, institutional care (wherever needed). Also department needs to provide social workers who will work with Police, children and their families exclusively on this issue for the purpose of effecting ultimate rehabilitation of children. Alternatively, NGOs/individual social workers already working with street children, rag pickers need to be involved in the process of finding a solution for this problem. It will be appropriate if a meeting of senior police officers in charge of Implementation of JJ Act, Hon'ble members of CWCs/JJBs, concerned officials from Department of Women and child Welfare, NGOs/individual social workers having experience on this subject, probation officers etc is called in order to evolve a workable strategy to address this issue. “

The report of Mr. Anant Asthana is quite exhaustive in explaining the nature of this problem and in suggesting concrete measures to address it.

While dealing with the issue at first stage, it was felt that since the orders on judicial side are usually orders in persona, it would not be possible for the Board to provide the required help to all the children who are victims of this menace but do not get any opportunity to come before the Board to disclose their sufferings and find any kind of help. Accordingly, the need was felt for formation of a committee, which could take up this issue exclusively and could provide needed assistance at all the levels.

Once again it has been stressed by Mr. Anant Asthana by way of present application that the issues related to business of scrap/waste/garbage collection, role of scrap-dealers, drug addiction and the juvenile delinquency are so interwoven in certain areas and have gone to such extent that non addressing of the problem at this stage will lead to very damaging consequences for a substantial number of children who are vulnerable and are being misused systematically. He has explained in his application as to how the previous committee has failed to make any progress and has stressed again for rejuvenating this committee, by reconstituting with fresh membership and with a reworked mandate, which will now look into all the aspects of the problem and could find solutions and facilitate execution thereof.

Delhi Juvenile Justice (Care & Protection) Rules 2009 speaks of multiple needs of the juveniles, protection from harm, abuse, maltreatment, exploitation and cruelties being few of many and puts a responsibility on the State, as set out in Fundamental Principle of Juvenile Justice No. VII. Positive Measures, to take all possible positive measures aimed on reducing vulnerabilities and reducing the need of intervention under the law.

The Board vide its order in FIR NO. <details omitted> dated 5.3.2010 had stated that role of the Special Juvenile Police Unit is vital in providing the protection to the children against all kind of abuses and exploitation by introducing a preventive approach in its functioning. Delhi Juvenile Justice (Care & Protection) Rules 2009 speaks of setting up of such Special juvenile police unit and the functions which

they are supposed to discharge and the protection in aforesaid manner finds specific mention under Rule 86 sub rules 5&6.

We are aware and appreciative of the efforts which have been made till now for establishing SJPU and designating JWO/CWOs at the Police Station Level and making them discharge their duties as required under JJ Act by way of rigorous training and sensitization programmes. The results are very apparent in the system. The SJPU in Delhi has been doing commendable job under the guidance of Joint Commissioner of Police Sh. Sudhir Yadav. The Board itself is a witness to changed attitude of the police officials towards the children and also to the increased understanding of law and awareness of the same amongst the police officials. No doubt that the attitude of the police today is changed towards children in how they are supposed to deal with them, if they are apprehended in a case and they are doing good job in it, in most of the cases.

What still needs to be done and is much desired and more important, particularly in the situation, which has been mentioned in the application and is also a standard laid down in the relevant laws and even in International Instruments related to administration of Juvenile Justice, is to adopt and inculcate a preventive approach in Police for providing early and pro-active support and protection to these children so that reasons of their coming into delinquency itself are taken care of, within time. Also, in the context of Delhi and its environment, there has to be a greater understanding and responsibility towards the fact that if timely preventive steps are not taken, then we are at the risk of losing our children to crime, drugs and destruction which is not at all in the interest of society and country.

National Commission for Protection for Child Rights (NCPCR) in its report released in April 2009 titled “**Key Recommendations & Guidelines for Reform in the Juvenile Justice System**” analysing the state of administration of juvenile justice system in year 2008 has given a caution at point no 9 & 10 at page 4-5 and it holds truth even in 2010 that:

“9. Importantly, there was a fundamental lack of recognition within the JJ System that: (i) children in conflict with law are also children in need of care and protection, (ii) children in need of care and

protection are also at the risk of becoming children in conflict with law, and (iii) all “at risk” children are potential entitlement holders of the JJ System.

10. These deficiencies undermined the ability of the system to implement strong preventive and rehabilitative measures.”

The same report at point no 87 while listing key issues and referring to the reality of JJ System in 2008 has remarked that:

“Prevention is not a CORE objective of the juvenile justice system. Child Protection actors, processes and infrastructure currently provide limited support to prevention of child delinquency, abuse, neglect, exploitation etc through targeting of “at risk” families and children and utilization of “early intervention” mechanisms.”

NCPCR has further suggested that there is a strong need to significantly expand the coverage and reach of the JJ System for categories of children who are currently unaddressed or excluded due to procedural and operational barriers. It mentions “Children affected by substance abuse” in the category of such excluded children, who need a much more focused and early prevention strategy.

It is clear from above observations made by NCPCR, also that SJPU has an extremely significant role to play if objectives of JJ Act are to be achieved. The expectations of the law are very high from the SJPU and so it proclaims under sub rules 5&6 of Rule 86, which are reproduced hereunder -:

RULE 86 (5) Special Juvenile Police Unit at district level shall co-ordinate and function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child or juvenile.

(6) The unit shall take serious cognizance of adult perpetrators of crimes against children and see to it that they are without delay apprehended and booked under the appropriate provisions of the law and for this purpose the district level units shall maintain liaison with other units of police station.

The rule is self explanatory as to the nature of expectations that it has from the SJPU. The rule says that it is the duty of the said Juvenile

Police Unit to ensure that the child has legal protection against the cruelties, abuses and exploitations and it is not supposed to wait till a complaint in this regard is made by the child who has already been abused, exploited or dealt with cruelty.

In fact in another inquiry FIR No. 35/10, PS Jahangir Puri, U/s 392/411/34 IPC Board had passed an order-dated 25.01.2010 the relevant paras of which read as follows:

“It is submitted by the Ld. Legal Aid Counsel Sh. Anant Asthana that there are certain areas wherein involvement of children in criminal / anti-social activities is very high viz., Jahangirpuri, Seemapuri etc., he says that there is a need of more focus in these areas. He further says that special attention is required to reduce the delinquency using preventive approach and intervention of Juvenile Wing CAW Cell Nanak Pura, would be of great help. (Giving) Certain suggestions Ld. Legal Aid Counsel Sh. Anant Asthana says the Police may with the help of NGO like HAQ, Butterflies, Human Rights Law Network, Chetna, Baal Abdhikar Abhiyaan and other willing persons of the society may organise programmes for the children in different forms. The programmes can be of providing education to street children, interaction with parents for understanding needs of special care of children etc.

Response of CAW Cell Juvenile Wing be called for 08.02.2010. In this regard concerned officer can also take assistance of Ld. Legal Aid Counsel Sh. Anant Asthana.”

A response to this order was received by this Board from Ms Suman Nalwa, ACP, Juvenile Wing of Special Police Unit for Women & Children. This response was very positive and forthcoming and it said:

“In accordance with Juvenile Justice (Care & Protection) Act & Relevant rules, Delhi Police has created Special Juvenile Police Units in the Districts. As part of SJPU, Juvenile Welfare Officers have also been notified in all the Police Stations of Delhi. However, Social Workers an important component of SJPU is missing, which can help SJPU understand the social dimension of juvenile coming in conflict situation with law as well as helping children in need of care and

protection. Special Juvenile Police Unit for Women & Children, earlier Crime (Women) Cell, being the Nodal Office for the Delhi Police on Juvenile Justice is aware of the roles & responsibilities assigned to Police under the Act, including prevention of juvenile delinquency. The Government of NCT of Delhi has already been requested to attach Social Workers (2) in SJPU as provided under the Act.

Presently, the focus of this unit, established an year ago, is to create necessary awareness & sensitisation amongst the police officers regarding juvenile/children issues including rights of child, rescue of child labour etc. Further it is proposed to impart exhaustive training to JWOs, as per the manual prepared by Juvenile Justice Committee of the High Court of Delhi. Also, the consultations are in progress to associate with internationally reputed NGO working with juveniles involved in violent/serious crime-to work on such pilot project – as a pilot study.

Few NGOs based in Delhi and working on juvenile issues as mentioned in the order, have been helping us in imparting training. Any NGO coming forward for any pilot project with respect to preventive strategies shall be encouraged and facilitated through SJPU & JWOs. Further, it would be appropriate if Department of Social Welfare and Women & Child Development of Government of NCT of Delhi, who have the mandate to take up such activities are given suitable direction in this regard including placement of Social Worker with SJPU to work on such children and organize programmes relevant in this regard.

It is high time that Concerned Department be it Social Welfare or Department of Women & Child provides two social workers, as mandated under the Law to SJPU. It is clear that SJPU in Delhi is more than willing and welcoming to start working from a preventive approach provided they receive adequate support and assistance by other agencies and are adequately assisted by Civil Society Groups and NGOs working for children. This is in the spirit of JJ Act to seek involvement of voluntary sector as mentioned in the Statement of Object and reasons of JJ Act, 2000:

“vi. to spell out the role of the State as a facilitator rather than doer by involving voluntary organisations and local bodies in the implementation of the proposed legislation.

Sub Rule 6, provided above, goes further and says that police has to take cognizance of adult perpetrators of crimes against children and has to ensure that they are booked and punished. How important these two Rules are, in dealing with the issue of menace of scrap dealers in rising child delinquency, is not to be written down in an order by the Board.

Under given circumstances, there is need of a committee now not only to study the issue and make recommendations but also to find out the solution and take appropriate measures for execution of the suggested solutions. Since one of the members of the earlier committee is not available, the Board exercising its power under Rule 10(h) intends to pass an order for setting up of a committee to do the needful in the matter raised in the previous reports as well as instant application filed by Mr. Asthana.

Mr. Asthana in his application and arguments has suggested that Mr. Sanjay Gupta who is active in the work related to Children in Need of Care & Protection in Delhi and Ms Bharti Sharma who is an Ex-Chairperson of Child Welfare Committee may be the persons best suited to be the members of the committee considering the vast experience of theirs in the field of child rights and their close association with SJPU. He has conveyed to the Board that the two have agreed to work on this issue and have given their consent to be a part of the committee. Mr Anant asthana who has been regularly bringing up this issue before Board in several cases should also remain as an advisor-member so that his first hand experience could be utilised by the Committee. Accordingly, Board dissolves the earlier membership of this Committee and re-constitutes the Committee with Mrs. Bharti Sharma as its Coordinator, Mr. Sanjay Gupta and Advocate Anant Asthana as its members.

This Committee, through its Coordinator, shall appraise this Board with the status of work being carried by way of quarterly reports duly signed by all three members and is at liberty to approach this Board in case of any difficulty faced in carrying out its activities at any stage. In terms of Committee's functioning it is suggested that the Committee members keep regular communication with each other and meet periodically to discuss and decide the activities and work of this Committee. Minutes of such meetings be supplied to this Board along

with its quarterly reports. The Committee is at liberty to decide on its own as to what way it has to function. Committee should also coordinate with concerned Department of Government of NCT of Delhi to facilitate appointment of two Social Workers to assist SJPU. As mentioned by Ms Suman Nalwa in her letter-reply to the Board, let this issue be taken up as a pilot project whereby SJPU shall implement preventive strategies as may be suggested by this Committee. Committee will also insure that the community is also involved in finding the solution to this problem and in this regard, Associations of Scrap / Waste Merchants (if they exist) or organisations working among rag-pickers or street children may also play a crucial role in sensitising individuals in the risk involved in engaging children in their work. Board is of the opinion that if efforts are made to call meeting of scarp dealers/ Kabadi walas either by approaching their associations or them individually at Police Station Level, a workable solution can be found. In preventive strategies, involvement of community is important as it is ultimately for the society itself to take care of children. State and agencies or instrumentalities of State can merely facilitate the process. It is in this spirit, that Board feels that scrap dealers/ kabadiwalas's community should also be involved in positive ways in the exercise which this Committee is set to take up with the support of SJPU.

Considering the fact that the role of Juvenile Police Unit is vital under JJ Act in providing all kind of protection to the children and further considering the fact that in absence of proper administration the earlier committee could not give the desired results, Ld. Counsel Mr. Asthana has also made a suggestion to request Sh. Sudhir Yadav, the Joint Commissioner of police, CAW Cell to be the convener of the committee to ensure that the committee works effectively with a smooth interface with Police particularly with SJPU . Admittedly the level and nature of action required, in the context of issue at hand, cannot be taken care of by a committee, which has no support and linkages with the authorities and agencies concerned.

The appropriate course, in Board's opinion, however, would be to request the Joint Commissioner of Police Shri. Sudhir Yadav to help the Committee by nominating senior officials of the level of ACPs in all the districts for providing required support to the members of the committee in doing the needful. The ACPs so directed shall ensure that the SHOs working under them are into the understanding of what

the Committee intends to do and provide them desired support at all the levels. A list of such ACPs which may be nominated to work and coordinate with the Committee may be supplied to the Coordinator Mrs. Bharti Sharma as and when finalised.

Further since larger cause is involved in this case and most of the children who are prey to this practice are under the category of CNCP, it would be appropriate to have the necessary support, coordination and interaction with the Child welfare committees at different stages and levels and as per the need of circumstances. The Committee shall be at liberty to approach and seek such support from the Child Welfare Committees by way of approaching CWC Chairpersons, as and when needed.

Though the major part of activities which may be taken up by the Committee have to be executed by the Police, still there remains a need of some finances to cover those activities in which Police may not be involved and obviously some finances will be needed for travel, communication, record keeping, paper work and logistics for the Committee. We leave it open for the Committee to approach the Concerned Authority for getting desired financial support extended through Juvenile Justice Fund. The Delhi JJ Rules, 2009 under Rule 95 mentions Juvenile Justice Fund which has to be created by the State Government in compliance of Section 61 of JJ Act, 2000. Sub Rule 3 of Rule 95 specifically mentions that such fund shall be applied to implement programmes for the welfare of juveniles or children and for doing all other things that are incidental and necessary for the aforesaid purpose. The work, which such committee has to undertake, is definitely for the welfare of juveniles and children and thus covered by the Rule 95(3). Accordingly, a copy of this order be forwarded to the Director of Department of Women & Child Development to have his suggestion on the best course of action in this regard. Committee is at liberty to get in touch with the Director, DWCD to discuss the issue.

A copy of this order be forwarded to Mrs. Bharti Sharma, Legal Aid Counsel Mr. Anant Asthana and Mr. Sanjay Gupta.

Copies be also forwarded to Juvenile Justice Committee of Hon'ble Delhi High Court, Secretary and Director of Department of Women & Child Development, Joint Commissioner of Police Shri Sudhir Yadav,

Chairpersons of All the Child Welfare Committees in Delhi for their information and expected support and assistance.

A copy be also forwarded to the Chairperson of NCPCR and DCPCR for information and record.

The Committee shall file its first activity and progress report in the last week of November 2010.

Put up the matter again on 29 /November 2010.

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Chapter 12

Role of Probation Officers in Juvenile Justice System

Probation service is considered backbone of juvenile justice system and its role and assistance is crucial at every level, even after the disposal of case by JJB. This order speaks about role and responsibilities of probation officers. Board, in this case, had taken cognizance of poor functioning of probation unit and passed directions detailing the manner in which Probation officers were required to function and discharge their duties towards children.

**BEFORE JUVENILE JUSTICE BOARD-I, SEWA KUTIR COMPLEX
KINGSWAY CAMP, PRESIDED OVER BY MRS. ANURADHA
SHUKLA, PRINCIPAL MAGISTRATE**

**ORDER
10.03.2011**

In FIR No. <details omitted> of 2010 one of the juvenile is in protective custody since 20.09.2010. Ever since the date of his apprehension the efforts were being made to trace out his parents so that his custody could be restored to them. All through it was being conveyed to the Board that the child does not have parents and his grand mother is very old and that she has refused to come to Delhi to take the custody of the boy.

On the persistent efforts of Ms. Priyanka Das Ld. Legal Aid Counsel, the grand mother was finally found, contacted, and she appeared in the Board. The orders on the custody of boy have been passed separately.

By this order the Board is taking cognizance of the concern raised by Ms. Das on inefficiency and casual approach of the Probation unit of the Board. It is said by Ms. Das in her application that restoration of the child is one of the most important issues under the Juvenile Justice Act, and the Probation Officers who, under the Act are the persons responsible to look into this aspect have been a failure. It is

said in the application that till now Legal Aid Counsels have been doing the needful for the rehabilitation as also the restoration of the child when in fact this is the duty of the Probation Officers. She by her application has sought direction to the PO Unit for doing the needful.

FIR <details omitted> relates to an inquiry of the year 2004. The juvenile was held involved in commission of offence alleged against him and his Social Investigation Report was called for today. The probation officer reports that he could not find the juvenile at his address. It does not say that how many times he visited the house of the juvenile from the date of order on 04.03.2011 till yesterday.

It does not even say if the juvenile was not at home, who was available there and what efforts were made by him to find out when the juvenile can be found at his address.

Yesterday in FIR No. <details omitted> of 2009 this very P.O. Reported that the address of the juvenile could not be found without mentioning on what steps he took to trace out the address of the juvenile.

The juvenile Justice Act speaks of duty of probation officer and the Rules lay down in detail what all a probation officer is supposed to do.

Section 13 of the Juvenile Justice (Care and Protection of Children) Act, (hereinafter referred to as 'the Act' speaks about the specific duty of the probation officers as under:

13. Information to parent, guardian or probation officer.- Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform

(a)

(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 the inquiry.

Rule 87 of The Delhi Juvenile Justice (Care and Protection of Children) Rules 2009 (hereinafter referred to as 'the Rules') elaborates the duties of Probation Officers further and says as under:

87. Duties of a Probation Officer or Child Welfare Officer or Case Worker.

(1) Every probation officer or child welfare officer or case-worker shall carry out all directions given by the Board or Committee or concerned authority and shall perform the following duties, functions and responsibilities:

- (a) making social investigation of the juvenile (Form IV).....
- (b) attending the proceedings of the Board..... and submitting reports as and when required;
- (c) clarifying problems of the juvenile..... and dealing with their difficulties in institutional life;
- (d) participating in the orientation, monitoring, education, vocational and rehabilitation programmes;
- (e)
- (f) assisting the juvenile.... to develop contacts with family and also providing assistance to family members;
- (g) developing a care plan for every child in consultation with the juvenile ...and following up its implementation;
- (h) participating in the pre-release programme and helping the juvenileto establish contacts which can provide emotional and social support to juvenile ...after their release;
- (i) establishing linkages with voluntary workers and organizations to facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow-up;
- (j) follow-up of juveniles after their release and extending help and guidance to them;
- (k)... ..
- (l)... ..
- (m)... ..

(2) On receipt of information from the Police or Juvenile or Child Welfare Officer of the Police under clause (b) of section 13 of the Act, 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...

In the scheme of the Act and the Rules-the role of probation officer is of immense importance. The probation officer is supposed to be in the knowledge of the case from the time of apprehension of the juvenile and is required to continue his work even after the disposal of the case.

This is requirement of the Act; however in practice the probation unit working with Juvenile Justice Board¹ is almost dead. The only work which the P.Os are doing in the Board is preparing the Social Investigation report that too when called by the Board. No probation officer in any matter has come up with a rehabilitation plan of a child or has given insight to the Board on the needs of any juvenile. The probation unit thus is not doing the work that the Acts expects from and requires it to do and is as such a complete disappointment.

A probation officer is supposed to come in action the moment a juvenile is apprehended. The police of the Juvenile Welfare Officer as the case may be is required to furnish the details of apprehension to the probation officer immediately after apprehension of the juvenile (Section 13 b).

Apparently the things are not working as per the requirement of the Act and there has been some lack of communication between the police and the probation unit.

The probation unit apart from filing the social investigation report is also required to contribute in the steps taken for restoration of a juvenile and his rehabilitation.

Fundamental principle XIII of the Delhi Rules says that every child has a right to be restored to his family at earliest.

XIII. Principle of repatriation and restoration:

(a) Every juvenile or child or juvenile in conflict with law has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile or child enjoyed before coming within the purview of the Act or... ..

(b) Any juvenile or child, who has lost contact with his family, shall be eligible for protection under the Act and shall be repatriated and restored, at the earliest, to his family... ..

The probation officer is supposed to be the most important contributory in getting the juvenile repatriated and restored.

Hon'ble Mr. Justice R.V. Raveendran in an article on Key responsibilities and approach (of the probation officers) has written that, " The skill and knowledge required to supervise adult offenders on probation are completely different from the skills and understanding required for supervising the juveniles in conflict with law" and quoted A.E. Jones in 'Juvenile Delinquency and the Law' as under:

"...the relationship between the Probation Officer and the probationer shall be of little value if it is regarded as a matter carrying out the terms of a contract for a certain period.... The essential power of the probation officer is in his personality; if he can inspire devotion in his charge; if the probationer becomes filled with a genuine desire to gain his approval; if the parents accept him unreservedly as a wise friend of the family and profit by his suggestions on the upbringing of their offspring; then the probation officer may hope for a true success... The probation officer can only cure delinquency by affecting a change of heart either in the child or the parents."

Such are the expectations from a probation officer working with juveniles in conflict with law and this task is not impossible as the legal aid counsels have been successfully doing it in most of their cases. The point is that this in fact is the duty of probation officer and there is no reason why he should not be doing it.

In view of all above and to give effect to the law it is hereby directed;

1. That the police or the juvenile welfare officer as the case may be shall immediately on the apprehension of the juvenile inform the probation officer of Juvenile Justice Board. (The particulars of the P.O.s are mentioned at the end of the order). On every apprehension memo there shall be mention of the name of P.O. who has been informed of the apprehension.
2. That the concerned probation officer shall come into action immediately on receipt of this information and shall come into action

immediately on receipt of this information and shall not wait for an order from the Board to file an S.I.R.

3. A detailed S.I.R. Of each apprehended child shall reach the Board at the time of his production in the board.

4. In case the P.O. Concerned is not in a position to file S.I.R. at the time of production of the boy, he shall give reasons in writing for not being able to do so and shall file the same as early as possible.

The duty of the probation officer shall not cease at the filing of the S.I.R.

1. In each case the P.O. Shall find out means and ways of establishing contact between the parents/ guardians of the juvenile of the juvenile and the juvenile and shall file the detailed report of steps taken by him in this regard within 24 hours of his receiving the information of apprehension.

2. In each case the P.O. Shall file the rehabilitation plan of the child in maximum seven days of the apprehension.

3. In this regard the P.O. Shall establish a contact with voluntary organizations and workers and shall work in consultation with the legal aid counsels and counselor.

The P.O. concerned shall in case of each juvenile file a monthly report during the pendency of his inquiry and six monthly report post release unless directed otherwise in any particular case.

A COPY OF THIS ORDER BE SENT TO THE CHIEF PROBATION OFFICER WITH A DIRECTION TO ENSURE STRICT COMPLIANCE OF THE ORDER.

A COPY OF THE ORDER BE ALSO SENT TO THE DCP OUTER, DCP NORTH, DCP WEST, INCHARGE CRIME BRANCH FOR THE NECESSARY DIRECTIONS FOR COMPLIANCE TO THEIR SUBORDINATES.

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Chapter 13

Organised gangs and Children

In this order, Juvenile Justice Board has described modus-oprendi of organised gangs who exploit and misuse children from criminal activities. This is probably the only judicial order which has confirmed existence of organised networks of criminals who use children for criminal activities. Board also issued directions to Police explaining how Police needs to improve its investigation strategy in order to be able to identify and uproot these gangs.

BEFORE THE JUVENILE JUSTICE BOARD I SEWA KUTIR COMPLEX KINGSWAY CAMP PRESIDED OVER BY MS ANURADHA SHUKLA PRINCIPAL MAGISTRATE

In the cases of: < Details of cases omitted>

ORDER 25.01.2011

Pr. Ld APP for the State

All the Juveniles on bail

Mr. Anoop k Aggarwal on behalf of Mr. Bhupesh K Samad Advocate

The facts of all the aforesaid cases are more or less the same.

The juveniles were found involved in breaking the glasses of cars and/ or diverting the attention of driver after knocking the glass or the door and then stealing whatever they would found there. The modus operandi is so common that they have been given the name of 'thak thak giroh' on the basis of how they operate. Apparently most of the persons dealing with these juveniles are aware of the existence of a gang which engages the juveniles for the unlawful purposes in an organised manner. The board while struggling with many cases pending before it on the issue was provided assistance by Mr. Bhupesh Samad Advocate from Human Rights Law Network.

It is at this time that the juvenile in < case no. omitted> was produced before the Board. SHO Roop Nagar appeared with the juvenile and informed that while the juvenile was trying to run away after committing the offence, a Santro Car was noticed which was stationed near by to pick the child after the offence. He stated that from the time the juvenile was apprehended phone calls were being made by some advocate (phone number mentioned in the report) to the Investigating Officer of the case to know the whereabouts of the child. For the first time thus with the intervention of the S.H.O. Roop Nagar an explicit information was brought before the Board - confirming what everybody concerned knew was happening.

Mr Bhupesh was already working on the earlier apprehended juveniles. He filed a detailed assessment report of the situation. He has pointed out the similarity in all the cases - in not only how the offences are committed but also on the demeanour of all the persons involved after the apprehension of the juveniles.

He has stated that the juveniles in all the cases would ask the driver of the vehicle to check the leakage in petrol tank and the moment the attention of the driver would be diverted the juvenile would run away with the articles whatever found in the car. After the apprehension the juvenile invariably will tell that he does not have parents or will provide wrong address.

Pointing out the similarities Learned Advocate has written down the identical pattern in all the cases:

- When juveniles are apprehended, they never disclose their correct name, residential address and parent's name
- On the very first date of apprehension one or the other advocate immediately approaches police or the Board
- The male members of the family rarely come up to take the custody of the boys; it is usually the female members, who plead ignorance and mercy. And use specific words: hamne kuchh nahi kia , hame maf kar do, dobara galti nahi karenge

- There exists an organized system where apparently children are used to facilitate the commission of theft from vehicles.
- Juvenile seem under pressure and are tutored

Similarities were also noticed by the Board in all the matters like every juvenile produced before the Board would say that he was beaten by the mother so he left the house in anger, every juvenile would claim that he was out of house for three four days, every juvenile would claim that he was hungry so he committed the offence- None of the mothers would have filed any complaint about her missing child, none of the juvenile could tell how the idea of committing the theft after asking the driver to check the petrol tank came to him, none of the juvenile gave his correct name and address after apprehension.

These many similarities do give a definite idea on how systematically these children are being used by organised gangs and in all probabilities in collusion with the parents

Mr. Samad in his report has stated that the way in which the adults need to be dealt with are all provided under existing provisions and laws and if the authorities work with the right approach the juveniles can be protected from being exploited at the hands of the adults.

He has stated in his report that section 107 of Indian Penal Code provides for booking of any person who instigates another to commit an offence.

Abettor has been defined under section 108 of Indian Penal code as under:

“A person abets an offence, who abets either commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of abettor.

Explanation 3:- it is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of abettor, or any guilty intention or knowledge.

If the children as young as 10- 11 years are being apprehended for the commission of these offences, they are without any doubt doing it at the instigation of the persons who have larger interest than mere stealing of one mobile or one laptop and are the abettors of the crime.

Common Intention and criminal conspiracy are the other two important provisions under which the adults need to be booked as not only they have a common intention but infact it is their intention which is put in action by the juveniles, who of their own are not even capable of understanding the nature and consequences of their act – it's the evil intentions of adults for which they take aid of the children by taking them at the places wherefrom the things are to be stolen, and then to facilitate their running away from the spot after the offence is committed. And there is larger conspiracy than merely facilitating one particular offence. There is a conspiracy to keep using the children for their personal gains. There is a conspiracy against the childhood of these children.

The parents or the guardians should be booked in all these cases. For in almost all the cases the parent's/ guardian's involvement is apparent.

It must also be found that who apart from the parents/ guardians of the juveniles are involved in this organised crime.

Delhi police Act has made provisions for booking of the gang leaders or body of persons by directing them to remove themselves beyond Delhi and restricting their entrance for a specified time. (Section 46 & 47 of Delhi Police Act, 1978).

The juveniles apparently if they are stealing the mobiles and laptops are not doing it for their personal use. Almost all these children are illiterate. Thus the stolen articles are either being handed over to the adult associates who have a direct role in getting the offences committed, which is the possibility in cases of younger boys of the age group of 10 to 15 years - or are sold to the persons who are habitual in dealing with the stolen articles, this is usually done by the older children. Though it cannot be said with certainty that a particular age group would always be involved in a specific kind of operation, yet a broad understanding of the issue can always be made on these bases.

The Juvenile Justice (care and protection of children) Act 2000 when it speaks of the documents/ information to be provided to the Board which the Board is required to consider when a child is produced before it speaks of three documents and the information of offence has been placed at the third place, the first two are Social Background of the juvenile and circumstances of apprehension.

13. Post Production process by the Board.—(1) On production of the juvenile before the Board, the report containing social background of the juvenile and circumstances of apprehension and offence alleged to have been committed provided by the officers, individuals, agencies producing the juvenile shall be reviewed by the Board.....

The rules thus are categoric that the focus of the Board has to be first on social behaviour report and then on the circumstances of the apprehension and then the offence. This therefore has to be the focus of investigating agency as well.

Rule 11 of the rules says as to whenever a juvenile is apprehended

(6) the police or the juvenile or the child welfare officer from the nearest police station, shall also record the social background of the juvenile and the circumstances of apprehension and offence alleged to have been committed.....

The purpose is not to put in- the circumstances in which the child was found at the time of commission of offence but a detailed assessment of the circumstances- as it might turn out that the circumstances were actually the reason for the commission offence. This is actually the situation in the cases of juveniles mentioned hereinabove.

As has also been pointed out by Mr. Samad in his report

-“these children are not the ones who can be held liable for being involved in illegal- unlawful activities, rather they are the victims of unfortunate circumstances.....”

The manner of investigation therefore is required to be re-worked. The case of a juvenile where he is found committing offences as

stated hereinabove, the investigation shall not stop at the apprehension of the juvenile and filing the kalandra in the Board.

A proper investigation in each case must be made -working on the involvement of the adults, role of the parents, role of the gangs and they should necessarily be booked for their part of act in the offence as provided under law (a few of the provisions have been discussed hereinabove, the applicability of each however is to be worked out by the police officer concerned)) in addition to the law related to exploitation of the juveniles provided under section 23 of the JJ Act

Section 23. Punishment for cruelty to juvenile or child. ---

whosoever, having the actual charge of or control over, a juvenile, or the child, ASSAULTS, ABANDONS, EXPOSES OR WILFULLY NEGLECTS the juvenile or CAUSES or procures HIM TO BE assaulted, ABANDONED, EXPOSED OR NEGLECTED in a manner likely to cause SUCH JUVENILE or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

The investigation in each case must focus on how a juvenile of tender an age as 10 years gets to learn the technique of committing the theft in a very systematic manner:

1. In all the cases where a juvenile is booked for having committed theft, a specific investigation should be made regarding involvement of adult associate(s).
2. The role of parents/guardians should always be investigated.
3. If a pattern is seen in the commission of any particular offence by a juvenile investigation should be made regarding existence of a gang or group of people and the information should immediately be shared with senior officials for necessary directions.
4. In case of articles stolen where the juveniles seem older and more independent investigation would focus on who the associate of juveniles are who regularly buy the articles stolen by the juvenile.
5. Wherever a person or a group of person is found involved in more than one case (which will be very frequent if the police adopts the correct method of investigation) the recourse to MACOCA (Maharashtra Control of Organised Crime Act) 1999 can be taken. It is made clear that under no circumstance can a child be booked

under aforesaid Act but the provisions can safely be used against the adults, who are using the juveniles in an organised manner.

It is made clear that the Board henceforth will not accept the incomplete reports, which mention the offences of the nature mentioned hereinabove specifically and other offences of similar nature unless supported with

1. The documents on the steps taken against the adult perpetrators,
2. A detailed assessment report of the circumstances in which the juvenile was found,
3. The role and responsibility of the parents/ guardians,
4. A detailed verification report of the parents and residence and the professions of the parents,
5. If the parents of the child are not in Delhi, a detailed verification report of the person with whom the child was living in Delhi,
6. The possibility of the child being misused by a gang or group of people
7. The steps taken against the gang leaders and its members or the individuals as the case may be.

It is made clear that aforesaid is not the desire of the Board but the mandate of law under rule 86 of the JJ Act:

RULE 86 (5) Special Juvenile Police Unit at district level shall co-ordinate and function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child or juvenile.

(6) The unit shall take serious cognizance of adult perpetrators of crimes against children and see to it that they are without delay apprehended and booked under the appropriate provisions of the law and for this purpose the district level units shall maintain liaison with other units of police station

Delhi Juvenile Justice (Care & Protection) Rules 2009 also speaks of multiple needs of the juveniles including protection from harm, abuse, maltreatment, exploitation and cruelties and puts a responsibility on the State, as set out in rule seven, reproduced hereunder:

VII. Positive Measures

(a).....

(b) the positive measures shall aim at reducing vulnerabilities and reducing the need of intervention under the law.

A copy of this order is being sent to the juvenile wing of CAW cell Nanak pura so that the requirement of law which has not been followed hitherto is made a part of the training of the JWOs and the IOs and necessary directions in this regard are also issued to the JWOs and the IOs.

A compliance report be filed by 08.02.2011.

Chapter-14

Protecting juveniles from facing disqualification

Juveniles in conflict with law carry a great risk of facing stigma and disqualification at every stage of their life and Law provides a guard against it in Section 19. Disclosure of record of a juvenile from Police Station may lead to disqualification and this was exactly the apprehension with which an ex- Juvenile in conflict with law approached Juvenile Justice Board saying that he was apprehensive that his record of being involved with a case may be disclosed by Police which may cause his disqualification. This order was given on such application and it speaks about intent of law behind prohibiting disqualification and has explained as to how authorities need to give effect to this provision. Application in this case was made one year after the disposal of case by Board at a time when applicant became apprehensive about possible disclosure as he was set to explore possibilities of finding a job. His approaching to JJB did not bring in any issue of jurisdiction and matter was settled and relief was granted in a very simple proceeding.

BEFORE THE JUVENILE JUSTICE BOARD I: SEWA KUTIR: KINGSWAY CAMP: PRESIDED OVER BY MS ANURADHA SHUKLA BHARDWAJ

ORDER
12.10.2019

FIR no <details omitted>
PS <details omitted>
U/S 365/376/34IPC

File taken up on an application of applicant/ juvenile under section 19 of the Juvenile Justice (care and protection of children) Act,2000 herein after referred to as JJ Act read with Rule 3 of the Juvenile Justice (care and protection of children) rules, 2007 (we shall, however be referring to the Rule 3 of Delhi Juvenile Justice (care and protection of children)rules 2009 which corresponds to the Rule 3 of model rules mentioned in the application) for directions to delete the records pertaining to the juvenile in the Police Station, Tihar jail, and Observation Home for Boys

1. The juvenile as per the application was acquitted by the Board of all the allegations made against him by the order dated 24 November 2009. The application says that the juvenile, after his apprehension on the suspicion was exposed to the media and public glare prejudicing his rights as a child. The Investigating Officer had collected the proof of age of the boy on the date of his apprehension itself i.e. on 1st January 2006,

yet they produced him in the adult court wherefrom he was taken into judicial custody and was sent to Central Jail, Tihar. The juvenile remained in judicial custody till the trial court concerned took notice of his juvenility and directed his production before the Juvenile Justice Board. He was shifted to Observation Home on 05th June 2006, where he remained till 13th July 2006.

2. The application, says that applicant is a meritorious child and speaks in details of his achievements, academic and other over the period. The application says that the applicant has reintegrated in the main stream of society and has become a constructive and responsible member. The shadow of his past however is disturbing his prospects of employment. It is said that during the period from the time of his apprehension and the time of his release various documents and records were prepared by the investigating agency as also the authorities at Jail and Observation Home. These records come up at various stages of verifications conducted by CRIME RECORD BUREAU and other agencies during the recruitment process and are read against the Juvenile.

The applicant referring to the provisions of law has sought a direction to the authorities concerned to delete all the records pertaining to the juvenile, and wherever not possible classify the documents pertaining to the juvenile as secret so that they are not used against him.

3. There have been violations in the instant matter and the foremost violation has been of the child's right of protection of the Juvenile Justice (Care and Protection of children) Act from the inception. The Board in one of its recent order in <details omitted> has observed that the attitude of the police in taking the issue of juvenility of a child in a casual manner is the worst violation of the provisions of the JJ Act.

We say it once again that it is the duty of the police officers concerned to take note of the juvenility of a child even if it is not claimed. The juvenile and his guardians may in many cases not even be aware of this right of the child. We stress it again that urgent step is required to be taken by the authorities concerned to ensure protection of the rights of the children.

4. From the facts of the present case it can be seen how the careless attitude of the police affects the future of a child in long run -defeating the very purpose of the JJ Act of ensuring the rehabilitation and reintegration of the child into the main stream. Its not a matter of the violation of rights at a particular time and period of the apprehension and retention in custody, it is about the whole future of a child, which is put at stake when his records are prepared and retained with the police and

other authorities only because the concerned official at the relevant time was not bothered to take the note of juvenility of the child (whether claimed or not).

5. Coming to the prayer of the applicant section 19 of the Juvenile **Justice (care and protection of children) Act, 2000** speaks of removal of disqualification attached with the conviction of a juvenile. The section is reproduced hereunder:

19. Removal of disqualification attaching to conviction. ---

(1) notwithstanding anything contained in any other law, 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.

(2). 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.

Chapter II of the **DELHI Juvenile Justice (care and protection of children) rules 2009** is about the FUNDAMENTAL PRINCIPLES OF JUVENILE JUSTICE AND PROTECTION OF CHILDREN. Principle XIV is being reproduced hereunder:-

XIV. Principle of Fresh Start

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his past records.

(b)

Apart from above;

Rule 21 of **UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)** obligates the state parties as under---

21(1) Records of Juvenile Offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

6. All the provisions quoted hereinabove are categorical that a juvenile's record can by no means be seen or referred to or used or read against the interest of the juvenile. The records are not to be made public and the access to the record is permissible only for the people having a direct role in disposing of the case or the persons otherwise authorized.

7. It is noteworthy that the very purpose of creation of a separate justice dispensation system for the children was to treat the children differently from the adult accused committing offences and being tried under criminal justice system for adults and to understand that the mistakes that the children make when they ignore the law is more because of the age factor and inability to distinguish the right from the wrong. The law related to the children is reformative and not punitive and saying this means that Act intends to ensure that the child does not suffer any punishment because of his involvement in any act which is considered a violation of law. The word 'punishment' has a much wider meaning and scope and is not restricted to the punishment to be announced by the Board, when it concludes that the child was in fact involved in a particular offence. The non punitive approach includes- ensuring that the child does not have to suffer any harm, ill-treatment, bias, adverse circumstances or prejudice because of his having come into the situation of conflict with the law and that he gets rehabilitated and reintegrated in the society. This right of the juvenile however is violated when the records that different authorities maintain are permitted to be used against him in the name of necessary verification. In fact this becomes a bigger punishment for the juvenile than can be awarded by the Board under section 15 of the JJ Act.
8. Section 19 of the JJ Act speaks of removal of record in case of conviction of the juvenile while fundamental principle XIV speaks of eraser irrespective of it being a case of conviction or acquittal so that the child can make a fresh beginning.

In view of the above the SHO <details omitted>, Superintendent Tihar Jail and Superintendent Observation Home for Boys Sewa Kutir are all directed to delete the record pertaining to the juvenile maintained at there respective offices, and wherever the law or the rules do not permit the deletion declare categorically that it shall not be shared with or disclosed to any person/ official/ authority/ agency etc against the interest of the child.

A compliance report in this regard shall be filed in the Board within 15 days.

M/JJB-1

PM/JJB-I

Acronyms & Initials

JJ	Juvenile Justice
JJB	Juvenile Justice Board
SHO	Station House Officer
JWO	Juvenile Welfare Officer
DCP	Deputy Commissioner of Police
IO	Investigation Officer
LAC	Legal Aid Counsel
SJPU	Special Juvenile Police Unit
APP	Assistant Public Prosecutor
DLSA	Delhi Legal Services Authority
Cr.P.C.	Criminal Procedure Code
IPC	Indian Penal Code
UNCRC	United Nation's Convention on the Rights of the Child, 1989
Ld.	Learned
M	Member
PM	Principal Magistrate
SPYM	Society for Promotion of Youth & Masses
OHB	Observation Home for Boys
Pr.	Present
S.I.R.	Social Investigation Report
NCT	National Capitol Territory
NGO	Non Governmental Organization
F.I.R.	First Information Report
PO	Probation Officer
PS	Police Station
U/s	Under Section
CAW	Crime against Women
DCPCR	Delhi Commission for Protection of Child Rights
NCPCR	National Commission for Protection of Child Rights
CNCP	Child in Need of Care and Protection
JCL	Juvenile in Conflict with Law
CCL	Child in Conflict with Law
CWC	Child Welfare Committee
SI	Sub Inspector
ASI	Assistant Sub Inspector