JUVENILE COURT
A STRUCTURAL STUDY

- Genesis of JJS
- Structure under CA and WBCA
- In-flow and out-flow analysis of business of JC in West Bengal
- Jurisdictional tussle
- Short Perspective model: a Suggestion
- Upgrading JC
- Need for separate treatment to neglected children
- Appeal Court
Chapter V

STRUCTURAL STUDY OF JUVENILE COURT

"He alone can claim to have obtained a real vision of law, of justice and of injustice, to whom life has revealed itself in its fullness."

- Rudolph Sohm

5.1.1 In the previous Chapter we have discussed the present position of law, procedure and treatment dealing with juvenile delinquents and neglected children. Like any other legal system, in the JJS the most important institution to put life into the dead words of law, is the Juvenile Court (hereinafter called JC). In fact, a proactive JC can go a long way to humanise the whole course of action. Let us first examine how our JCs are structured and how the structure is suitable to proactivate the law and legal prescription,

5.2.1 GENESIS OF THE JUVENILE JUSTICE SYSTEM.

Before we turn to our system, it will be better if we take stock of the history of the whole Juvenile Court philosophy. The Juvenile Court philosophy started
late in America, was fundamentally based upon the 'special treatment to the child offender' in the English Common Law System. In 13th and 14th Century there emerged Chancery Court for protecting the interest of the children from the stringent operation of legal process and its consequential rigidity in punishment. This court used to operate on the principle of 'Parens Patriae' acting on the special authority and the clemency power of the king. The court had the privilege of deviating from all the 'due process of law' and as a benevolent parent could exempt the children from the penalties imposed for criminal offences. It could also protect children involved in vagrancy, idleness, incorrigibility and ill-association. In the 19th Century social philosophers in USA like Mr. Antony Plat, Mr. J. Adams, Mrs. Louise Dekoven etc. emphasized the need for separate court creation for treating the juvenile offender in order to protect and rectify them for the purpose of rehabilitation. They sought to advance the welfare of the children through various processes of public education, elimination of child labour and solicitation of public support for the cause of dependent and neglected children. In 1899 however, the first Juvenile Court was established in Chicago. The idea of Juvenile Court philosophy
caught the public sympathy and support so quickly that by 1932 there were more than 600 juvenile courts in USA and by 1945 all the states of USA had Juvenile Courts. The spirit underlying the 'Juvenile Court Philosophy' was "the premise that it was court's right and duty to intercede on the child's behalf in order to eliminate undesirable social situations leading to his anti-social behaviour".

5.2.2 In India the concept of special jurisdiction in cases of juveniles was introduced in the Reformatory Schools Act, 1897. But the Juvenile Court Philosophy was first introduced in the Madras Children Act, 1920. Soon the Criminal Procedure Code was amended in 1923 inserting Sec. 29 (b) that provided for a special procedure for adjudicating in criminal cases concerning a child offender. Gradually many states have passed Children Acts divesting ordinary criminal courts of its power of dealing with child-offenders and creating separate Juvenile Courts. The Central Children Act, (hereinafter CA) 1960 and so also West Bengal Children Act 1959 (hereinafter called WBCA) have provided separate judicial systems to deal with child and young offenders. The Code of Criminal Procedure, 1973 vide Section 27 has also provided for holding of a separate trial
in Chief Judicial Magistrate's Court where a child offender is to be prosecuted. Thus emerges different court systems and obviously court craft as follows:

i) Where the Children Act is notified to be applicable the appropriate court to try all offences is the JC constituted under the provision of the appropriate Children Act;

ii) Where the Children Act is not applicable, CJM's Court is the appropriate court to try juvenile delinquents for all offences excepting those punishable with death or life imprisonment;

iii) Where the Children Act is not applicable, Sessions Court is the proper venue to try all offences punishable with death or life imprisonment;

iv) Where the Children Act is made applicable but JC is not constituted, all offences committed by juveniles can be tried by High Court or Court of Session or by a Metropolitan Magistrate or magistrate of first class.

At present in West Bengal the whole situation has become confusing due to application of all the above systems at various places. In this confused state of
affairs concerning State Children Acts and Criminal Procedure Code there are some pertinent questions involving the constitution of Juvenile Courts for the trial of the Juvenile accused; these being:

a) That the Criminal Procedure Code has not provided for any separate Juvenile Court but has only empowered the CJM or special Court constituted under Children Act, 1960 or under any other law for the time being in force to try all such cases excepting where the offence is not punishable with death or imprisonment for life. These exceptions though specifically mentioned in the Code of Criminal Procedure, are not provided in various Children Act including the Central Children Act, 1960 creating conflicting situations on the constitutionality of the JC.

b) Section 27 of the Code of Criminal Procedure is merely a permissive Section, not a prohibitory one. By using the word 'may be tried' the code has merely recognised courts specially constituted under Children Act and also the

1. Section 8 to 10. of the Reformatory Schools Act 1897
2. Same as Sec. 27 of the Code of Criminal Procedure
special status of the Court of CJM to have juvenile jurisdiction. The question therefore arises is, "does the provision divest the ordinary Criminal Courts of all its power to try a juvenile offender?"

This enabling and permissive provision has a direct conflict with the exclusive provision for trying all juvenile offenders under various Children Acts.

c) Where a child offender is involved along with adult offenders in a case, the process of separation of the trial has been kept only as a matter of judicial policy and the Code is silent on this affair excepting providing under Sec. 27 that a juvenile under 16 years may be tried in the Court of CJM. Contemporary Children Act of States and also the Central Children Act, 1960, however, categorically prohibited joint trial of a child and an adult.

d) In the metropolitan city a Juvenile Court is appointed since 1960 and it is presided over by a Metropolitan Magistrate. Till 1980 other Districts of West Bengal excepting the metropolitan city and some adjacent areas, WBCA was not applicable and hence Sec 27 of the Code used to govern the constitution of the Court to try offences committed by juveniles. CJM's Court was given the power under Sec. 27 of the Code to try all such offences excepting those which are punishable with death or life imprisonment.
In the later case Court of Session was the trying Court. But after the promulgation of WBCA there is a conflict as to which provision shall prevail, Sec. 5 of WBCA or Sec. 27 of the Code ! The constitutional validity of the state laws in this connection has been tested in number of leading cases that we shall discuss hereinafter.

5.2.3 In this Chapter the structuralism of the Juvenile Courts system in India and specially in West Bengal has been discussed thread-bare specially in the light of the above legal hegemony.

5.3.1 STRUCTURAL MODELS AND COMPOSITION OF THE COURT.

i) Ideal Japanese model that makes an impact on JCs of some States:

One of the basic ingredient of Juvenile Court Philosophy is the Juvenile Court itself. There are various structural models of the composition of the Court, the best model, ofcourse, as it is prevalent in Japan, being a separate cadre of Juvenile Court judges having a formal education in Child Psychology and Criminal Behaviour as well as an intensive inservice training. In Japan, as for example, the Supreme Court conducts "Two Years' Training Programme" for senior judges, who are to be
appointed as judges for the Family Courts which include Children Court. In some of the Indian States like Haryana, it has been prescribed in the law relating to Juvenile Court system that the Judicial Magistrates should have a special aptitude and training in the subject. Law, in general, therefore, enjoins upon the State to select proper Judicial Magistrates with suitable academic background, having regard to the interest in the nature of this job and at the same time obligates the High Court to impart suitable training to the Magistrates manning the Juvenile Courts.

The Central Children Act, 1960 (hereinafter, CA) has not, however, provided for any such qualification or training for the Judicial Magistrates to be appointed in the Juvenile Court.

According to Sec. 5 (2) of CA, a children's Court shall consist of such number of Magistrates forming a bench as the Administrator thinks fit to appoint, of whom one shall be designated as the Senior Magistrate and not less than one shall be a woman; and every such bench, shall have the powers conferred by the Code of Criminal Procedure, as a Magistrate of the First Class. So the CA tries to punch the latent motherly instinct of sympathy and compassion of a woman with patent legal accumen of a Magistrate.
ii) British Model is the basic frame-work of the Indian System.

British Juvenile Courts are essentially law Courts. All legal procedures are scrupulously followed and the system is stream lined on professional speciality. The only difference made is at the time of punishment of the juvenile delinquents. Police does not make much difference at the investigational stage. Legal profession plays in the same fashion. Social studies of the social workers about the cases get a low priority in the court processes. Indian Juvenile Judicial System is also modelled in the same pattern. The structure of the only JC under WBCA is identically modelled. This JC has no liability to obtain the social study report of the probation officer. The police is also not obligated to refer the probation officer any such cases for socio-psychological study. The court craft is almost identically same like an ordinary court of law.

With the introduction of WBCA in the whole state British model can quickly cope with the situation throughout the state. In each District/Sub-Division a First Class Magistrate may be appointed to preside over JCs constituted under the provision of WBCA.

5. Section 5 (3) of the Haryana Children Act.
Such courts may carry on the job one/two days per week or per fortnight depending upon the work load, at the same court room premises, though the congested, dirty, unspacious and formal look of most of the magisterial courts in India is not only unsuitable for such a job but is also unsuitable for any type of court functioning.

iii) American Model is what is to be aimed at

American curative JC model is more of a social welfare avenue than of a court. The whole system is very different from the British model. It is less legalistic. In spite of all the legal due processes being guaranteed, the court functions with distinct objectivity. Social workers like Probation Officers get a prior hand in investigation of a case. The functioning of the JC is informal and, as such, the presiding judges require special knowledge and expertise. Objectively this is an ideal working though in USA itself the functioning is not beyond criticism and Allen has very rightly pointed out that these JCs can not properly function due to lack of proper financial resources and want of properly trained personnel. Obviously, such a costly system may be only used at a limited scale confined to a few cities which are infected with high density of juvenile delinquency. But WBCA has failed to provide any scope for structuring its JC model in such ideal type. It has prescribed a very legalistic model. Even for treating neglected children WBCA has prescribed the same JCs and has not constituted any Board as provided in CA.
West Bengal Children Act (hereinafter, WBCA) has, therefore, made, unfortunately, the situation more fluid. Section 4(2) of WBCA states that, a Magistrate of the First Class or a Presidency Magistrate who is considered to be suitable by the State Government, shall be appointed by the State Government to preside over a Juvenile Court. Since as per WBCA, no rule has so far been made, there is no guideline for the State Government to assess subjectively and objectively, whether or not a Judicial Magistrate of the First Class/Presidency Magistrate is suitable for the job. In fact, since the creation of the only Juvenile Court in West Bengal having its jurisdiction over Calcutta and suburbs, the Court has functioned for nearly 22 years and as many as 23 Metropolitan Magistrates have presided over the Court so far. None of them had any formal academic background of interest, nor they had any functional in-service training for motivation and expertise after or before being sent to the Court. All of them were transferred to preside over JC when they had picked up 5-7 years' magisterial experience and at a time when they mark for their first promotion. There is no provision for any in-service training before being transferred to this Court. In fact, in the matter of transfer and

posting to and out of the Court, there seems to be no clear-cut policy. The consideration of experience as is given in case of posting to the Special Court is also not extended in case of posting to the Juvenile Court. This has reduced the Juvenile Court to any other ordinary Court. The proceedings in this Court are also hardly of any difference from that of any other Magisterial Court.

5.4.2 A Juvenile Court is primarily concerned with the tender mental phenomena of children in their formative stage, which is much more complicated to be understood than the matured psychology of a grown up criminal. Naturally, the treatment of a Juvenile Court has to be different, with more understanding, compassion and affectionate disposition. All these qualities can be acquired either by fundamental education followed with motivated training or with wide practical experience in handling children. It is most distressing to note that a welfare Act like WBCA has overlooked the need and oversimplified the constitution of its most important organ, namely, the Juvenile Court. While appreciating the difficulty of finding out the right type of person for such a Court, the following lacunae can not but be specified:

a) WBCA silent about the requirement of training:

WBCA is silent and not supplemented by rules with clear provision of requirement of inservice training for the presiding officer of such Court
before he takes up the job. It has been an overexaggeration of belief that a person who is a judge is always a judge and he does not require any formal training or course. Any sort of dealing with human being is a complicated affair and that requires a thorough training and motivation. It is more so, when a person is asked to deal with the children, because in that case a minor mistake may cause a heavy damage, irreparable throughout the life of the person involved. Section 4 (2) of WBCA provides for an *apriori* suitability of the presiding judge before he is assigned to the task. Such *apriori* suitability can only be determined when there are number of formally qualified and properly trained personnel. It is to be noted that there is no formal course or training given to judicial officers at the beginning when they are taken into the service. They are straight pressed into service under probation and are put under various grades of Courts for gaining practical procedural training for about a few months before they are posted as judicial officers. This type of formal and non-motivated training makes the judicial offices a mere passive partner of a legal system. In order to appreciate the law as a weapon of social engineering, a concerted and adequately motivated training programme is required that may sufficiently condition the minds of the judicial officers. This is a basic sine qua non of a pro-active process of law. When we talk about the administration of welfare statute like WBCA, such type of foundational course and motivated training
programme becomes imperative.

b) WBCA has not prescribed for any a-priori selection criteria:

The Act is not only silent about the a-posteriori programme of training and motivation, it has been made a non-necessity. The Act has, likewise, not indicated any subjective or objective index of deciding a-priori suitability. It is most unfortunate that in course of the last 23 years of WBCA being in operation, neither any comprehensive rule is made in this regard nor the rule making power made adequately comprehensive to enable the Executive to make rules on this behalf. A stipendiary Magistrate who presides over such a Court is a product of the usual legal system, and his reactive temperament is most unsuitable for pro-active administration of a welfare statute like WBCA. Obviously then, much can not be expected from such a Court which has both a latent and a patent defect in the composition itself. The Court Room Administration of professionalism is identically the same as in any other Magisterial Court.

c) WBCA has not made provision for supplementary aid:

The Central Children Act (CA) has provided for a bench in a Juvenile Court with at least a woman judge and one judge having wide experience in social service. This is a supplementary provision. But West Bengal Children Act has not provided for any
supplementary provision to plague the inadequacy in constituting the Juvenile Court. The Court is not to take any assistance of any expert in the field. At the beginning, there was an attempt of supplementing the Court with non-stipendiary magistrate taken from social workers and women. But the system has fallen into disuse almost from the inception because the act does not provide for such assistance to be taken by the Court. It has become an oblivious history that a woman non-stipendiary magistrate of the status and wisdom of Mrs. Mamata Adhikari used to come to help the Court in the early years of 1960's, just after this Court was first introduced.

d) WBCA has not provided for any socio-cultural and psycho-economic phenomenal study of a case to unearth the condition in which a juvenile is forced to commit an act of crime. Both in USA and as well as in Soviet System more emphasis is given in such cases to unearth the condition in which the juvenile accused has been forced to commit the act of crime. It is not enough to investigate into the incident and proving the act of crime, the investigation has also to place before the Court all types of complete phenomenal and socio-psychological study by experts in the line. CA has also ensured such types of investigational reports before the Court decides for any thing.
5.5.1 In-flow out-flow analysis

The result is obvious. One of the dangers of our Judicial System that threatens the existence of the whole Judicial System has also raised its ugly head in the JC. This relates to the congestion in the work load. The following table shows the monthly flow analysis in the functioning of the only JC at Calcutta in West Bengal.

Table 28

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<th>Month</th>
<th>Year</th>
<th>No. of brought forward cases</th>
<th>No. of fresh cases</th>
<th>Total</th>
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<th>Acquitted</th>
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Table 28

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<th>Month</th>
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<th>Acquitted</th>
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All the above figures relate to cases on matters relating to Indian Penal Code. Juvenile offences under other Acts tried in this Court are not included in the figure. Number of cases on other laws are not many in number and does not disturb the mathematical trait shown in the above figures.

5.5.2 The above figure shows that in the last 26 months up to May '83, the JC could dispose 63 cases, that shows the JC has the capacity of disposing 2.42 cases per month. 2 and 3 are modal number of cases disposed of during the period, both number occurring 5 times in the table. This
clearly indicates that the capacity of the JC lies between 2 to 3 cases per month. During the same time 71 cases were registered. That means in an average about 2.7 cases are registered per month. Obviously then in every month 28 cases are piled up inflating the back-log. This shows that the Court is incapable of disposing the back-log and is not capable of coping with the inflow of cases. The average of disposal would have been considerably less if we do not take the figures of disposal during February to April 1983 when the JC was presided over by a temporary incumbent, Sri P. N. Bhaduri, whose mentality was ideally suited to the conditions required for being the Judge of the JC. It is only during this time, the JC showed a definite sign of demonstrating its capability of handling with the inflow of cases in the Court. Yearwise the inflow outflow chart of the JC at Calcutta is as under:

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<tr>
<th>Year</th>
<th>No. of cases registered</th>
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<td>1980-81</td>
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The figure clearly shows that the Court is incapable of handling the registered number of cases and in all probability the number of cases shall pile up gradually till the figure shall itself eat up the vitality of the whole system.
5.6.1 JURISDICTIONAL TUSSLE

WBCA though passed in 1959 has not come into operation outside Calcutta till recently. By Government Notification No. 13128 - SW/4A-3/79 dated 26.11.79 notified in the Calcutta Gazette on 27.3.80 this Act has come into operation throughout the whole of West Bengal from March 27, 1980. The Juvenile Court Philosophy has been thus introduced in the whole state, belated though. There are four essential institutions that are needed to be floated under WBCA, namely –

1) Juvenile Court,

ii) Reception Centre,

iii) Borstal/Industrial Schools,

iv) 'After Care' Institution.

As soon as WBCA has been made applicable, the operation of Criminal Procedure Code has been ceased by application of Section 5 of the Cr.P.C.

7. Saving - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.
Obviously then, Section 6, 26 and 27 of the Cr.P.C. concerning clauses of Criminal Courts by which offences are triable and jurisdiction in the case of juveniles respectively are to be replaced by Section 5 of the WBCA for the purpose of criminal cases concerning juvenile offenders. It may be noted that there is an apparent

8. Classes of Criminal Courts - Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely -

i) Courts of Session;

ii) Judicial Magistrates of the First Class and, in any Metropolitan area, Metropolitan Magistrates;

iii) Judicial Magistrates of the Second Class; and

iv) Executive Magistrates.

Corresponding Law: S. 6 of Act V of 1898.

9. Courts by which offences are triable - Subject to the other provisions of this Code -

a) Any offence under the Indian Penal Code (45 of 1860) may be tried by -
disharmony between the provisions of Section 27 of Cr.P.C. and of Section 5 of W.B.C.A. Section 27 gives the power to CJM where no Court is specially empowered under W.B.C.A.

But in Section 5 of the W.B.C.A there is no separate status attached to the office of CJM. Under this Section any Court of a First Class Magistrate having the jurisdiction to try the case can exercise the

i) the High Court, or

ii) the Court of Session, or

iii) any other Court by which such offence is shown in the First Schedule to be triable,

b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by -

i) the High Court, or

ii) any other Court by which such offence is shown in the First Schedule to be triable.

Corresponding Law : Ss. 28 and 29 of Act V of 1898.
power conferred by Section 5 of WBCA. Since such a vesting of power in the Court of a First Class Magistrate is not declared by notification under Section 4 of WBCA, the vesting of power may be explained either in the following two ways:

a) That a Magistrate of First Class having jurisdiction shall have the power to try the case in the usual manner as is done in any other case.

b) That as far as Section 27 of the Cr.P.C. is concerned the CJM may be deemed to be specially empowered with the consideration that the provision of Section 27 of the Cr.P.C. fills up the gap created by non-promulgation of the notification relating to constitution of Juvenile Court or vesting of power in a First Class Magistrate, on

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

Corresponding Law: S. 29 - B of Act V of 1898.
in pari materia interpretation. In this respect, it may be pointed out that the practice of referring to CJM in all juvenile cases remained generally in vogue upto 1981. This was done due to ignorance of the Magistrates in the Districts. But situation started shifting in 1982. At present such cases are tried in all First Class Magisterial Courts.

The disharmony between Sec. 5 of WBGA and Sec. 27 of the Code has been brought to light in many recently decided cases. The constitutional validity of Sec. 5 of WBGA was also in question. Ultimately it was decided in Raghbir v. State of Haryana that Section 27 of the Criminal Procedure Code is an enabling provision only and does not affect the relevant provision of the Children Act of the States. At present, after the promulgation

11. The powers conferred on Courts by this Act shall be exercised -

a) in any area for which a Juvenile Court has been established by such Court only,

b) in any other area, by -

i) the High Court, or

ii) a Court of Session, or
of WBCA but there having no facility made available by constituting JC under Sec. 4 of WBCA, all First Class Magistrates including the newly appointed, started trying such cases in an ordinary manner. The Code had atleast ensured a fair compassionate and separate trial by a very senior and experienced First Class Magistrate of the rank of CJM having an experience of at least 15-18 years in the line. But now all First Class Magistrates are trying such cases irrespective of their placement and experience. It is indeed a half-hearted step to implement WBCA in whole of West Bengal without providing for the first essential institutional facility namely, the Juvenile Court, or a Magisterial Court specially empowered for the purpose.

5.6.2 According to Section 5 of WBCA therefore, where a Juvenile Court is constituted, it is the only Court that is empowered to deal with such cases. By implication, therefore, the power of other Courts as given in 5 (b) of WBCA as well as Section 26 and Section 27 of Cr.P.C. are ousted in so far as trial of

iii) a Presidency Magistrate, or

iv) a Magistrate of the First Class, having jurisdiction to try the case.

such cases are concerned. As such, all Juvenile Crimes whatsoever is the magnitude, are triable only in the Juvenile Court. This has been decided in *State of U.P. v. Fulmati*.  

In *Raghbir v. State of Haryana* it has been held that the accused who was less than 16 years of age at the time of committing the murder and was prosecuted under *Section 302 of the Indian Penal Code*, was entitled to the benefit of *Haryana Children Act*. And this trial and conviction by the Court of Session under *Cr.P.C.* was held to be beyond jurisdiction. In this case a close examination has been made and points of conflicting provisions between the *Haryana Children Act* and the *Criminal Procedure Code*, were looked into. The same question was also examined in *Rohtus v. State of Haryana*.  

According to Article 254 Clause 1 of the constitution, in case of conflicting provisions between the Centre and the State Laws, State Laws stand


16. Article 254(1) of the Constitution of India.

If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to
automatically repealed. The matter of conflict in Rohtus case was regarding the question of jurisdiction of the Court. The appellant Rohtus was prosecuted under Section 302 of I.P.C. having caused the death of one Subhas on 23rd December, 1974 when he (Rohtus) was below the age of 16. This was discovered while the case was in the Session's Court. The Session's Court referred the matter to the Committing Magistrate with an instruction to enquire about the age of Rohtus. Finding that the appellant was a child at that time, the Magistrate proceeded to try the case under the provisions of Haryana Children Act. His brother appealed to the High Court for quashing the proceedings on the ground that the Session's Judge and the Committing Magistrate were wrong in holding the case that the appellant fell within the purview of section 4 of the Haryana Act. The contention raised by the appellant was based on the fact that although the Criminal Procedure Code of 1973, contained provisions some of which were in indirect conflict with the Haryana Act ..., the one of the matters enumerated in the concurrent list, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

17. Rohtus Case - Supra note 15.
Code of 1973 would prevail and the State Acts would stand overruled by virtue of the provisions of Article 254 of the Constitution of India.

A Larger Bench of the Supreme Court decided that the accused was entitled to the benefit of the Haryana Children Act. This matter was also examined and explained in a full bench decision of Madhya Pradesh High Court reported in 1978, Cr.L.J. page 585. The majority decision of the Madhya Pradesh High Court however made a wrong conclusion holding that a Juvenile Court has exclusive jurisdiction on a delinquent child for all offences except those punishable with death or imprisonment for life. In minority decision Justice Verma has given a different but correct assessment of the situation. In the decision of Raghbir Case Mr. Justice Baharul Islam has made a copious reference to the observation given by Mr. Justice Verma in Devi Singh's Case.


19. Raghbir Case - Supra note 15.

20. Supra note 18.

"The only question before us is whether the provisions of the New Code have brought about any change in this position. There can be no doubt that if there is an irreconcilable conflict between the provisions of the
Therefore, as the matter stands, where a Juvenile Court is constituted under Section 4 (1) of VJBCA and a First Class Magistrate/Presidency Magistrate is empowered to try such cases the Juvenile Court or the Court of the First Class Magistrate/Presidency Magistrate so empowered shall be the only Court for trying all cases concerning a juvenile accused. Section 5 (a) of WBCA stated that powers conferred under the WBCA shall be exercised only by the Juvenile Court where such a court has been constituted. Obviously then, where a Juvenile Court is not constituted under Section 4 (2), according to Section 5 (b) the power under WBCA can be exercised by the High Court or Court of Session, Court of a Presidency Magistrate, or by a Magistrate of First Class having new Code and those of the Bal Adhiniyam, then the new Code being the later Central enactment it will supersede Bal Adhiniyam, the earlier State enactment, to the extent of repugnancy by virtue of Clause (1) of Article 254 of the Constitution. The real question, therefore, is whether there is any such repugnancy between the two enactments so as to attract Article 254. It is equally clear that in case there is no such repugnancy and the relevant provisions of the two enactments are capable of co-existence, then Article 254 would not be attracted and the provisions of the Bal Adhiniyam conferring exclusive jurisdiction on the Juvenile Courts to try all offences including those punishable with life imprisonment or death would
jurisdiction to try the case. In West Bengal there is only one Juvenile Court as stated earlier situated at Salt Lake, Calcutta. By Notification No. 13128-SW/4A-3/79 dated 26.11.79 and published in the Official Gazette on 27.3.1980 WBCA has been given effect to throughout the territory of West Bengal. But since in no district any Magistrate has been specially empowered so far, and since there is no clear instruction from the High Court there are wide differences in practice in the Districts as discussed hereunder:

a) Section 27 of the Code is an enabling provision and according to same, if it is read with Section 5 (b) of WBCA it may supplement the provision and mean that in any area where there is no Juvenile Court, a first class magistrate of the rank of CJM may hear the case. During the early period of 1980-82 District Courts used to trade in the same path referring all cases concerned with juveniles to CJM.

b) First Class Magistrates are now entitled to try such cases. In cases where a juvenile is

continue to operate. Such a conclusion is supported also by the fact that the Bal Adhiniyam is a special Local Act while the new Code is a general enactment applicable throughout the country on account of which the special local Act would apply within this State in preference to the general law on the subject. It
charged along with other adult accuseds, the trying Magistrate does not go for separation inspite of the fact that age of some/any accused are/is apparently found to be below 18. In the Magistrates' Courts of Burdwan there are at present several such cases where the trying Magistrates do not go for separation due to: 1) he being himself empowered to try the cases both against the adult accuseds and the child accuseds, he is unable to appreciate the reasons of duplication by separating the cases and consequently, conveniently he overlooks the provision of UPOCA against joint trial; 2) he himself being not the registering authority he has to refer the matter back to the SDJM for separating the case after enquiring and enlisting a separate case

is in this light that the question has to be examined with a view to determine whether there is any such irreconcilable conflict so as to attract Article 254 of the Constitution. This is the real question for decision....

"Applying the tests indicated by the settled principles, I have no hesitation in holding that there is no real conflict between the provisions of the new Code, particularly S. 27 thereof, and the provisions of the Bal Adhiniyam. In short, the provisions of the new Code clearly save any special or local Law like the Bal Adhiniyam and Section 27 of the new Code is merely
for the juvenile accused/s, The original case during the enquiry by SDJM as to whether the accused is a juvenile or not, remains pending meanwhile. This delays the whole process by even a year which the trying Magistrates think unnecessary on account of absence of infrastructural facility and motivation of the whole JJS; 3) hazards involved in duplicating the whole process and connecting papers.

c) In the District of Hooghly such cases are tried now by all First Class Magistrates. In a case if a juvenile is involved with adult accused the same Magistrate try the juvenile separately keeping the same registered number. This is then a separate trial under the same registered case. The arguments are very interesting to note:

an enabling provisions which does not express any contrary intention to undo the saving provided in Section 5 of the new Code. There being thus no conflict or repugnancy, the question of Article 254 of the Constitution being attracted does not arise. " -

i) Section 28 (1) has prevented joint trial but there is no clear provision anywhere as to the separate registration;

ii) Separate registration is neither necessary nor possible because all the documents and evidences are same;

iii) Separation de novo shall require referring back to SDJM and arrangements for duplication of all documents and processes requiring unnecessary time.

In view of these thoughts, First Class Magistrates are to try the juvenile accused separately if he is apparently found to be below 18 without disturbing much in the present structure.

In this approach only one point is overlooked. According to Section 28 (1) of WPCA even the juvenile cannot be jointly charged with adult accuseds. This means, the whole case against a juvenile accused must be separated from the very beginning.

5.7.1 A model suggested at the shortest perspective under the present structure.

JJS has not developed as a distinct and separate system of justice so far, mainly because it is tagged as an appendix to our system of criminal justice, the tag being dependence on Indian Penal Code and the Code.
of Criminal Procedure. In order to activate a self-contained system, specially due to economic constraints and priority determination in a developing country like ours, long term and short term programming is necessary. A short term programming often becomes mere a cosmetic operation achieving an apparent brightening of the face instead of doing some real and positive development. It is already experienced that West Bengal is not in a position to establish any distinct system of justice for the juvenile, at present, with adequate infrastructural facilities. But unless some minimum steps are taken welfare statutes like WBCA becomes irrelevant. As such, a workable model, in practice in U.K., is suggested for adoption by the Government of West Bengal in the shortest perspective.

5.7.2 A first class magistrate in each sub-division having sufficient experience may be specially empowered to try all juvenile cases one day each week. According to present work-load one day per week would be sufficient, which can be increased with the view of work-load. He may be given that day a bigger room so that he may attempt for an informal trial with all parties seating together. This will involve no additional expenses immediately, but with the introduction of this model, all hegemony regarding uncertainty and arguments about separation or no separation, registration of separate case or no registration shall be sorted out.
5.8.1 NEED FOR UPGRADING THE JUVENILE COURT

Of course, under the present state of affairs, the consequence of operation of WBCA shall lead to some inconsistencies, like:

Where there is a Juvenile Court the Presiding Officer is either a Magistrate of First Class or a Presidency Magistrate who is transferred to preside over the Court, under the provision of Section 4 (2) of WBCA. It is to be remembered that a First Class Magistrate has the power to pass a sentence of imprisonment for a term not exceeding 3 years or a fine not exceeding five thousand rupees or both. Of course, the CJI may pass any sentence authorised by law except the sentence of death or imprisonment for a term exceeding 7 years. A Metropolitan Magistrate has the same power of a First Class Magistrate. Since the Juvenile Court has the full power to try all cases concerning Juvenile delinquents it is to be noted in this connection that once a First Class Magistrate or a Presidency Magistrate is transferred to preside over such a Court he possesses the right to pass any sentence authorised by WBCA.

5.8.2 Section 24 of WBCA restricts the power of passing a sentence putting the following provisions:

1) No Juvenile delinquent shall be sentenced to death.

21. Section 29 of Cr.P.C.
11) No juvenile delinquent shall be sentenced to imprisonment or committed to prison in default of payment of fine or in default of furnishing securities, provided that where the court is satisfied with the fact that the juvenile delinquent is of so serious a nature or that he is so unruly or of so depraved a character that he is not a fit person to be sent to a reformatory or borstal school, the court may sentence him to imprisonment for a period not exceeding the maximum period of imprisonment to which he could have been sentenced for the offences committed and the Court shall report to the State Government and direct the juvenile delinquent to be detained in such manner as it may think fit.

5.8.3 It seems that Section 26 of WBCA has replaced Section 29 (2), (3) & (4) of the Cr.P.C. There is therefore, no restriction on the term of imprisonment that a Juvenile Court may pass if the Court is satisfied that the offence committed by the juvenile delinquent is of so serious a nature or that he is so unruly or is so depraved a character that he is not a fit person to be sent to a Reformatory or Borstal School. After Raghbir case it is established law that the First Class Magistrate who is empowered to try juvenile cases shall be the only authority to try such cases. And naturally he will have all the powers. This seems to be an apparent contradiction. There is a stipulation of maximum power of a First Class
Magistrate in Section 29 of Cr.P.C. to pass sentence of imprisonment up to 3 years or fine up to 5,000 rupees or both, because regard being had to the training and experience of a judicial officer of that rank, that is considered to be the safe power for carrying justice. The power has been very proportionately linked up with the training and experience of the presiding judicial officers. But once the First Class Magistrate is transferred to a Juvenile Court or is specially empowered to try such cases his power becomes almost unlimited under the provision of WPCA. It is to be noted in this connection that the corresponding section to Section 24 of WPCA in the Central Children Act, 1960, is Section 22. Section 22 of CA has given the same power to a Juvenile Court. But Juvenile Court according to CA is a bench of more than one First Class Magistrate and obviously may call for a wider power. The woman Magistrate in the bench, however acts as a filament.

5.8.4 From the above discussion it follows, that a Juvenile Court trying a case under 302 IPC, as for example, has all the power of a Session's Court. This means that in any such case, whereas an ordinary adult accused has a right to demand the insight and experience of a Session's Court, a child delinquent for the charge of the same offence can avail of the experience of a First Class Magistrate only. It is true that discrimination is possible on the basis of age. But such a discrimination has to be always in the interest of the classes. Here,  

22. Supra note 12.
apparently, the composition structure of a Juvenile Court seems to be against the interest of the juvenile delinquent, specially where offences are usually triable in a Higher Court, namely, Court of Session. As such, it is necessary to upgrade a Juvenile Court at least to the level of a Special Court, requiring that the Presiding Judge would have the experience to be appointed as a Session's Judge.

5.8.5 There is another reason for the necessity of upgrading the Juvenile Court. A Juvenile Court has got the types of powers under WBCA like under CA, that are concerned with high degree of discriminative sense as well as judicial prudence because Section 26 of WBCA which prescribes the positive power of a Juvenile Court has given a wide range of power and states that the Juvenile Court may order in the event of having been satisfied that the child has committed an offence:

i) discharge the Juvenile delinquent after due admonition;

ii) direct the juvenile delinquent to be in probation of good conduct under the care of parent and guardian;

iii) direct the juvenile delinquent to be released on probation with or without securities for good behaviour and proper training;

iv) direct the juvenile delinquent to be sent to Reformatory or Borstal School;
v) impose fine on the parent or guardian not exceeding rupees 100;

vi) impose fine on the juvenile delinquent himself if he is above 14 and is employed;

vii) direct the juvenile delinquent to be placed under probation of a Probation Officer;

5.8.6 These powers show a very wide range of latitudinal discrimination as well as require a high degree of commitment to reformatory and rehabilitative objective. The exercise of all these wide powers depends upon the socio-phenomenological study of individual case that entails insight into the socio-cultural habitation of the delinquent.

5.8.7 Allen has very rightly pointed out that Juvenile Court both in theory and practice, is an institution of remarkable complexity, it is called upon to perform a bewildering variety of function. On the one hand it administers what are essentially welfare functions such as the exercise of its dependency jurisdiction, on the other it may be required to provide forum for criminal prosecution. He has further continued that wisdom of the institution in this area can not be purchased cheaply. The enquiry of critical annalysis demands the contribution of many disciplines and much time, ingenuity and resources.

There is a possible scope provided to the Juvenile Court constituted under the Central Children Act, 1960 because the benches situated with more than one judges of whom one must be woman and one social worker. This plurality in composition of the Court ensures a proper appreciation. But a single Magisterial Juvenile Court provided by WBCA, of course, having the power of seeking experts' advice which are seldom asked for, can hardly do justice to the situation. Juvenile Court under WBCA has no obligation of taking advice of leading social workers, psychologists and persons having knowledge in delinquent behaviour. There is an expert scientific officer who is himself a psychologist having his office in the same building where the Juvenile Court meets and who is incharge of the institutions meant for the juvenile delinquents and child destitutes. It is indeed unfortunate that even his advice and suggestion as an expert has also not been taken by any Presiding Magistrate at any time. Naturally, such a Court is comparatively less capable of treating children with rehabilitative objective due to lack of personnel, proper motivation, and lack of enterprise to gear up the Juvenile Court movement. The rehabilitative objective itself is a very consuming demand of motivation and commitment. If the fundamental is absent the whole Juvenile Court

24. Ibid p. 45.
philosophy is bound to crack from within. This is actually what has happened right from the composition of the Juvenile Court itself. Sehraman in his philosophy of Juvenile Court has very rightly pointed out:
"Juvenile Courts are the least understanding and the most misunderstanding of the Courts of our land." 25

5.9.1 WHY TREAT NEGLECTED CHILDREN ALIKE

The second incongruity in the WBCA is the power of the Juvenile Court to handle the neglected children. Section 2 (i) of WBCA has defined a neglected child as follows:

A child who—

i) is found in any street or place of public resort begging or receiving alms; or

ii) has no home or settled place of abode or is found wandering without any ostensible means of subsistence, or is found destitute, whether he is an orphan or not; or

iii) has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child or forces, persuades, encourages or abets the child to lead an immoral or deprived life; or

iv) lives in a brothel or with a prostitute or frequents a place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken, depraved or criminal life.

5.9.2 It is therefore, needed to be understood that these neglected children have not committed any crime themselves but are only products of social oppression. In the situation, treating him in the court process, being presented by the police officer, is a very questionable jurisdiction. Specially when these children during the court process may be kept in the same reception centres where juvenile delinquents are kept. Treating a neglected child is an administrative function of the State, not a judicial one. A child who is a neglected one has not committed any crime under the Indian Penal Laws only because that he is neglected. Article 21 of the Indian Constitution has provided a fundamental right to every Indian assuring that no person shall be deprived of his life or personal liberty according to the procedure established by law.

A neglected child apprehended ( taken into custody, as is otherwise named ) by a Police Officer and presented before the Court is deprived of his liberty without causing an act of crime. He is treated in a Juvenile Court almost in the same manner under the same interrogative phenomena of the Juvenile Court as is faced by any juvenile accused. This is a gross violation of the guarantee of the fundamental right given to every
Indian, be he child or adult. Central Children Act from that point of view seems to be rational. It provides in Section 4 that a Child Welfare Board shall be constituted to treat the neglected children. Of course the members of the Board have power of a First Class Magistrate under the Code of Criminal Procedure but the functioning of a Board is more informal than the functioning of a Court. This Board, according to CA, has to consist with more than one member of whom one must be woman. In West Bengal under WBCA the Juvenile Courts (including a First Class Magistrate/Presidency Magistrate specially empowered) only, have authority to treat the neglected children.

5.9.3 The argument in keeping the same authority for both delinquent and neglected (pre-delinquent) child may be that a neglected child is the symptom of a delinquent one. This presumptive meaning of a neglected child may hold good in a country like U.S.A. where children feel neglected due to breaking social order and usually fall prey to delinquent gang. But in India neglected children often have strong social tie but become astray on account of economic condition. Under the situation neglected children cannot be taken as symptoms of delinquent children in all cases. Due to a very strong social tie and a process of dehumanisation on account of heavy socio-economic oppression, neglected children are often found living on left-over food particles in the garbage, without feeling an agitation.
for extracting food in howsoever manner. The problem of neglected children in advanced countries is absolutely different. There the children become neglected owing to emotional detachment and such children have a strong feeling against the society that is reflected in social violence of any form.

These are children alienated from the legitimate institutions of the society, lacking in opportunities for employment and goal satisfaction, victims of discrimination and cultural deprivation, 26 Francis A. Allen said. Obviously the tasks of administration of welfare to the children has been kept in the hands of the same Juvenile Court. There the problem of the neglected and of the delinquent children are of the same nature.

5.9.4 In India the case is not so. None of the Central or State Acts have made neglected children an offence by itself. Obviously, therefore, the authority for treating must not be alike for both delinquents and neglected children.

5.9.5 Neglected and delinquent children in India are deprived of a bare economic necessity as well as the social & cultural harmony that are needed to develop the progressive personality of the children. The working group of the Fifth Five Year Plan 27 have very rightly suggested.
i) The child should enjoy special protection by law to enable him to develop physically, mentally, morally, spiritually and socially in a healthy normal manner.

ii) The child needs love and understanding for the full and harmonious development of his personality. He shall, whenever possible, grow up under the care of his parents in an atmosphere of affection and of moral and material security. A child of ten years shall not, save in exceptional circumstances, be separated from his mother. Society and public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support.

iii) The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be subject to traffic in any form. He shall not be admitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development.

iv) Steps for the prevention of begging, truancy, vagrancy and delinquency are very important.

v) Specialized institutions with facilities such as Courts and correctional institutions are needed for the proper training, rehabilitation of juvenile delinquents and youthful offenders.

5.9.6 At the same time the Central Advisory Board on Correctional Services has time and again called upon the State Governments to adequately expand and strengthen the services contemplated under the Children Act, so that no child, for any reason, is exposed to the baneful influence of prison life.

5.9.7 This entails a different philosophical and institutional development than we have in the Juvenile Court movement of the Western World specially in U.S.A. It is not possible to extend all the facilities that are needed in a conventional Juvenile Court movement, in a poor and developing country like India. Even in U.S.A. the working of the Juvenile Court movement is of a limited success because of limits of scientific knowledge because of the inadequacies of the facilities and personnel available to it and because the particular problem of adolescent misconduct are of the sort that give rise to issues no Court can adequately confront or resolve. 28 Through a formal Court proceedings such an informal necessity of love and affection and understanding is very

difficult to achieve specially for those who are neglected. It is therefore needed that for treating the neglected children WBCA be immediately amended and a Welfare Board be constituted at each District level with persons of high social standing, sound knowledge in children behaviour and good and responsible teachers of the locality, giving them First Class Magisterial power under the Code. The Board so constituted with local responsible persons must have at least 3 persons in the Board of whom one must be woman and one a dedicated social worker. The Board is to periodically meet and treat these neglected children with compassion, love and affection. The whole time Board at the District level on the present condition is felt not needed because of less of work on the problem. But the Board has also to administer the provisions of various child labour Act and regulate the conditions of work for the children. In case the Board forms an opinion that a neglected child has all the traits of a delinquent one the Board may have the power to send him to Juvenile Court for a formal handling of the situation.

5.10.1 APPEAL COURT

According to Section 48 of WBCA appeal against an order made by a Court under the provisions of this Act shall lie :-

a) if passed by a Magistrate other than a Presidency Magistrate to the Sessions Judge.
b) if passed by a Court of Session or by a Presidency Magistrate to the High Court.

The appeal must be made within 30 days from the date of order if the appeal is filed to the Court of Session and 60 days if it is to be filed in the High Court. Section 5 to Section 12 of the Union Limitation Act of 1978 shall apply to such appeal. Appeal may be made by any aggrieved party. Section 48 of WBCA thus has not replaced all the provisions given in Chapter XXIX relating to appeal of the Code of Criminal Procedure 1973. It has only replaced Section 374 of the Code. Other provisions of the said Chapter is still treated to be in vogue. As for example, appeal may be made against orders requiring security or against refusal to accept or reject surety for keeping peace for good behaviour as per Section 373. Where the accused pleads guilty and has been treated on the plea, there shall be no appeal as provided in Section 375. No appeal lies in petty cases as provided in Section 376. Section 377 authorises the State Government to make an appeal in any case of conviction. Section 378 provides appeal in case of acquittal. Section 379 provides for an appeal against conviction by High Court. Section 380 gives a special right of appeal in certain cases. Section 381 gives the procedure as to how an appeal is to be heard in a Court of Session. Section 382 gives the procedure of making an appeal.
Section 383 states the procedure of making an appeal when the appellant is in jail. Section 384 gives grounds for summary disposal of appeal. Section 385 provides for procedure of hearing appeal, not summarily dismissed. Section 386 enlist the power of the appellate Court. The procedure of judgement of the sub-ordinate Appellate Court is outlined in Section 387. Section 388 prescribes that the order of the High Court on appeal is to be certified to lower Court. Section 389 prescribes suspension of sentence pending the appeal and releasing the appellant on bail. Section 390 authorises the accused to be arrested in appeal from acquittal. Section 391 empowers the appellate Court to take further evidence or direct it to be taken. Section 392 outlines the procedure where the bench of judges in the Court of appeal is equally divided. Section 393 sanctifies the finality of judgement and orders on appeal, and finally, Section 394 states the ground of abatement of appeals.

5.10.2

WBCA has not provided for any procedure for reference and revision. This absence of provision for revisional application creates another confusion. According to same, no revisional application lies against the order of the JC or of the appeal Court. But Chapter XXX of the Code is applicable, there having no alternative prescribed by WBCA. Section 395 to 405 of the Code outlines the references to be made to High Court, disposal of cases according to decisions of High Court,
calling for records to exercise powers of jurisdiction, power to order enquiry, Session's Judges power of revision, power of Additional Session's Judge for revision, High Court's power of revision, power of High Court to withdraw or transfer revision cases, option of Courts to hear parties, statement by Metropolitan Magistrate of grounds of his decision to be considered by High Court and High Court's order to be certified to the lower Court respectively.

5.10.3

The provision of Central Children Act however on the above ground of appeal and revision is different from that of WBCA. Section 37 of CA provides:

1) Subject to provision of this Section, any person aggrieved by an order made by a competent authority under this Act may, within 30 days from the date of such order prefer an appeal to the Court of Session:

Provided that the Court of Session may entertain the appeal after the expiry of the said period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

2) No appeal shall lie from:

a) any order of acquittal by the Children Court in respect of a child alleged to have committed an offence or,
b) any order made by a Board in respect of a finding that a person is not a neglected child.

3) No Second appeal shall lie from any order of a Court of Session passed in an appeal under this Section.

5.10.4 Section 38 of CA provides for the revisional jurisdiction of the High Court. The Section states: "The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this Section prejudicial to any person without giving him reasonable opportunity of being heard. Section 39 of CA outlines the procedure to be followed in enquiry, appeal and in revision proceedings. It provides that:

1) Save as otherwise expressly provided by this Act, a competent authority while holding any enquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal procedure, for trials in summons cases."
2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act, shall be as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973.

Therefore, there are obvious distinctions between the provisions of Section 48 of WBCA and Sections 37 to 39 of CA as outlined in the following passages:

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<th>Provisions regarding appeal and revision in WBCA.</th>
<th>Provisions regarding appeal and revision in CA.</th>
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<tr>
<td>i) Any aggrieved party may go for appeal.</td>
<td>i) Prosecution can not go for appeal against an order of acquittal.</td>
</tr>
<tr>
<td>ii) Session Judge is the Appellate Court if the order is passed by a Magistrate other than a Presidency Magistrate and the High Court is the Appellate Court if the order is passed by a Presidency Magistrate or by a Court of Session. (Presidency Magistrates are now designated as Metropolitan Magistrate).</td>
<td>ii) Court of Session is the Court of appeal.</td>
</tr>
</tbody>
</table>
iii) There is no restriction on second appeal.

iv) 30 days is the period of limitation to make appeal to the Court of Session and 60 days to the High Court.

v) No special provision has been made for revision petition and therefore Chapter XXX, that is Section 395 to 405 of the Code of Criminal Procedure is applicable without any refinement.

vi) Procedure regarding appeals, references and revisions as laid down in Chapter XXIX and XXX of the Code is applicable without any restriction.

5.10.6 It is observed in the provisions of West Bengal Children Act that there are many incongruities and discriminatory provisions regarding the formation of the Court of appeal. Section 48 provides that against an order passed by a Magistrate, appeal shall lie in the Court of Session, whereas against an order of the Presidency Magistrate
appeal shall lie in the High Court. It is to be noted that a Juvenile Court may be constituted with either a Magistrate of First Class or a Presidency Magistrate. It is to be further understood that the Code of Criminal Procedure has not made any distinction regarding the power of the First Class Magistrate and of the Metropolitan Magistrate. Both of them have the maximum power of passing a sentence for a term not exceeding 3 years or of a fine not exceeding Rs. 5,000/- or both. It is to be noted here that there is a nomenclature difference between the provisions of WBCA and the Code. Excusing this, it is very hard to understand the rationale of a discriminatory prescription regarding the Court of appeal specially when a Juvenile Court can be constituted both by a First Class Magistrate or a Presidency Magistrate.

5.10.7 The Court of Session is a trial Court. Obviously where WBCA or CA or equivalent State Law is applicable the Court of Session has got no status of a trial Court in any case concerning juveniles. The Juvenile Court is the only competent Trial Court. This has been provided in WBCA, or in that matter, in all Children Acts of any country, because Juvenile Court is a Special Court having a special objective. It is a reformatory approach in dealing with JCs which is highly discriminative in character. Reformation means an individual treatment.
Therefore, in individualising the whole process of the Juvenile procedure, technique and temperament, the Court makes a departure from the usual look of a Criminal Court. Juvenile Court has different background, distinctive commitment and relaxed procedure, quite so, for the purpose of creating an atmosphere of treatment, not punishment. Now under the provision of Section 48 of WBCA if the Juvenile Court is kept under the jurisdiction of the Court of Session, for the purpose of appeal and revision, the basic purpose of discriminatory treatment and individualised approach of a Juvenile Court shall be lost. It is to be understood in this connection that the power of a Juvenile Court judge under WBCA is made co-extensive with Court of Session only with an objective that ordinary Criminal Courts must not interfere with the whole system. Of course, so long WBCA was not in application, the code of Criminal Procedure was to be followed and in that case a Juvenile delinquent up to the age of 16 was to be tried in the Court of the Chief Judicial Magistrate provided the offence did not attract punishment of either death sentence or life imprisonment. Here, of course, the whole treatment is the same as is in any other Criminal cases, and the Court of Session acts as a trial Court in all offences which are punishable, either by death sentence or life imprisonment. The question is therefore whether Acts like WBCA is or is not in application at a place.
If it is not applicable usual criminal law of the land shall be in operation and a juvenile is treated alike with any other accused. But the question is, Children Act brings a new objective and purpose for treating the juveniles. That being so the system has to remain distinct and separated, and individualised approach can in no way mix up at any stage with the formality of formal procedure, usually known as collective approach. In our criminal Courts we see the accused through the crime, whereas in our Juvenile Court philosophy we want to see the crime through the person. With this objective, the form of appeal under Section 48 of WBCA and Section 37 of CA does not go hand in hand. Juvenile Court has to be given a status, for only status purpose, too, of a Special Court and a Court of Session. The appeals and revisions against the order of the Juvenile Court has to lie in a special bench of the High Court which has to act as the highest appellate body against all orders of the Juvenile Court. Such a bench has also to look into the whole affair in the same informal and individualised manner having commitment to reformatory ideas.

The second incongruity in WBCA is that it has given an otherwise unrestricted power of appeal to the prosecution. From that point of view Section 37 (2) of CA stating that no appeal shall lie against the acquittal order or finding a child not neglected seems to be most reasonable.
5.10.10 According to the present situation a juvenile proceeding has to become formalised at the appeal stage even if the non-formal character can be maintained at the trial and enquiry stage of the JC. Of course Juvenile Court is run in the same formal manner as if it is one of many other ordinary Criminal Courts. But at least the legal prescription of converting it to an informality is in the mood of the system prescribed by the Children Act. In appeal prescription the same naked character of the colonial formality again become apparent. An impact of the formality can be noticed.

5.10.11 It is interesting to note in this connection that the total unawareness and careless attitude of the senior judicial officials of the state regarding the provisions of the WBCA. It seems many of them are ignorant about the existence of the Act. The ignorance of the Bar in many such cases about the provision of Children Act has been alarming. One example shall make the thing clear. The only JC of Calcutta is presided over by a Metropolitan Magistrate and the JC is a Metropolitan Court. The Act provides in Section 48 that in such a case the Appeal Court is the High Court. But very recently two appeals have been allowed in excise matters by the City Session's Court against the order of the JC. On enquiry it was


that such instances are many. It is most unfortunate that judicial officers of the higher judicial service are having such culpable ignorance about the provision of such a welfare legislation for the children. Where it is a gang offence like smuggling, involving children with the offence, usually appeals are made in such cases to release those children from Borstal/Reformatory Schools for two purposes, namely, to use those children in further criminal acts and secondly to destroy all evidences against those gang offenders. Here a child tried in a Juvenile Court under the charges and sent to Borstal/Reformatory Schools are exposed to criminal situation once again and they are converted gradually into confirmed criminals or they are simply removed from the world due to the possibility of gang offence being detected. It may be noted in this connection that incidents of child murder have increased rapidly in the recent past in and around Calcutta and in all cases it was found to have a detailed planning in the incidents of murder. Naturally, punching of noncommittal formality of the appeal court, as provided presently, with commitment and informality of JC, does not go hand in hand and often may create more confusion than had it been through all formalities of Courts from the lowest level.
A bare minimum legal necessity

It is therefore suggested that the WBCA be suitably amended or suitable Rules are prescribed, where possible, under Section 50 of WBCA to incorporate the following: -

i) It has to be indicated as to how the Juvenile Court Judge is to be selected based upon definite determinative index of suitability. The matter may better be made through Rules. In that case the Government must be authorised to make Rules in this respect by amending Section 50 of WBCA.

ii) A pre-posting training has to be made a necessary ingredient.

iii) Juvenile Court Judges are to be transferred to a Juvenile Court only for at least a period of 4 to 5 years and unless he is replaced by a suitable trained judge, no Juvenile Court Judge is to be transferred.

iv) The Juvenile Court has to be upgraded to a Special Court and a Court of Session.

v) There has to be a Juvenile Court in every District or cluster of Districts either for full time or on the basis of 1/2 days a week on the basis of work load.
vi) A Social Welfare Board has to be constituted for the purpose of dealing with neglected child. A special bench of the High Court is to be the only appeal and revision forum against the order of Juvenile Courts and Social Welfare Boards.

vii) Non-Stipendiary Experts have to be associated with the Juvenile Courts' proceedings.
### Table No. 28

**NUMBER OF JUVENILE/CHILDREN COURTS AND CHILD WELFARE BOARDS WITH THEIR LOCATION IN 1976**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>States/Union Territories</th>
<th>No. of Juvenile/Children Courts/Child Welfare Boards</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>1</td>
<td>Hyderabad.</td>
</tr>
<tr>
<td>3.</td>
<td>Haryana**</td>
<td>1</td>
<td>Ambala.</td>
</tr>
<tr>
<td>10.</td>
<td>Tamil Nadu</td>
<td>-</td>
<td>No separate Juvenile Court exist since 1-4-1974.</td>
</tr>
<tr>
<td>11.</td>
<td>Uttar Pradesh</td>
<td>-</td>
<td>There is no separate Juvenile Court in Uttar Pradesh. Judicial Magistrates here have been empowered to act as Magistrates of Juvenile Courts under the Uttar Pradesh Children Act, 1951.</td>
</tr>
<tr>
<td>12.</td>
<td>West Bengal*</td>
<td>1</td>
<td>Calcutta.</td>
</tr>
<tr>
<td>14.</td>
<td>Pondicherry</td>
<td>1</td>
<td>Pondicherry</td>
</tr>
</tbody>
</table>

**Notes:**
- *Detailed statistics is not available.
- **Nil Report has been received.
Figures relate to the year 1974.
**Figures relate to the year 1973.
Notes: *Figures relate to the year 1974.
**Figures relate to the year 1973.
Data not available

### Number of Juvenile/Children Courts and Child Welfare Boards, Number of Magistrates and Number of Children Brought for Trial during the Year 1976

<table>
<thead>
<tr>
<th>Sl.</th>
<th>States/Union</th>
<th>No. of Magistrates</th>
<th>No. of children whose cases were pending at the beginning of the year</th>
<th>No. of children whose cases were received during the year</th>
<th>No. of children whose cases were disposed of during the year</th>
<th>No. of children whose cases were pending at the end of the year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>Boys</td>
<td>Girls</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>Total</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Stipendiary</td>
<td>Honorary</td>
<td>Total</td>
</tr>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>244</td>
<td>55</td>
<td>60</td>
<td>1005</td>
<td>1005</td>
</tr>
<tr>
<td>2.</td>
<td>Gujarat</td>
<td>19</td>
<td>99</td>
<td>99</td>
<td>895</td>
<td>895</td>
</tr>
<tr>
<td>3.</td>
<td>Karnataka</td>
<td>24</td>
<td>62</td>
<td>62</td>
<td>672</td>
<td>672</td>
</tr>
<tr>
<td>4.</td>
<td>Kerala**</td>
<td>14</td>
<td>53</td>
<td>53</td>
<td>58</td>
<td>58</td>
</tr>
<tr>
<td>5.</td>
<td>Madhya Pradesh</td>
<td>18</td>
<td>528</td>
<td>528</td>
<td>633</td>
<td>633</td>
</tr>
<tr>
<td>6.</td>
<td>Maharashtra</td>
<td>27</td>
<td>54</td>
<td>54</td>
<td>614</td>
<td>614</td>
</tr>
<tr>
<td>7.</td>
<td>Punjab*</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>8.</td>
<td>Tamil Nadu</td>
<td>6</td>
<td>630</td>
<td>630</td>
<td>670</td>
<td>670</td>
</tr>
<tr>
<td>9.</td>
<td>Delhi</td>
<td>11</td>
<td>429</td>
<td>429</td>
<td>468</td>
<td>468</td>
</tr>
<tr>
<td>10.</td>
<td>Pondicherry</td>
<td>4</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td><strong>TOTAL (1976)</strong></td>
<td>333</td>
<td>104</td>
<td>9883</td>
<td>862</td>
<td>10745</td>
<td>42303</td>
</tr>
</tbody>
</table>

**Notes:**
- Figures relate to the year 1974.
- Figures relate to the year 1973.
- Data not available.