CHAPTER 6

CHALLENGES IN THE FIELD OF JUVENILE JUSTICE

6.1 Introduction

For many young people today, traditional patterns guiding the relationships and transitions between family, school and work are being challenged. Social relations that ensure a smooth process of socialization are collapsing; lifestyle trajectories are becoming more varied and less predictable. The restructuring of the labour market, the extension of the maturity gap (the period of dependence of young adults on the family) and, arguably, the more limited opportunities to become an independent adult are all changes influencing relationships with family and friends, educational opportunities and choices, labour market participation, leisure activities and lifestyles. It is not only developed countries that are facing this situation; in developing countries as well there are new pressures on young people undergoing the transition from childhood to independence. Rapid population growth, the unavailability of housing and support services, poverty, unemployment and under employment among youth, the decline in the authority of local communities, overcrowding in poor urban areas, the disintegration of the family, and ineffective educational systems are some of the pressures young people must deal with.

Youth nowadays, regardless of gender, social origin or country of residence, are subject to individual risks but are also being presented with new individual opportunities— some beneficial and some potentially harmful. Quite often, advantage is being taken of
illegal opportunities as young people commit various offences, become addicted to drugs, and use violence against their peers.\textsuperscript{408}

In this chapter a brief description on Juvenile delinquents, why and how they become delinquents there by focusing on many aspects like the factors behind the delinquency, like the sociological factor etc.will also discuss the measures for prevention of the juvenile delinquency. Why monitoring of the JJA is essential and during the process what problem one faces and how they can be improved?

6.2 Prevention of Juvenile Delinquency

The term juvenile delinquency is very often used in common man’s vocabulary. The dictionary meaning of ‘juvenile’ is a ‘young person’ or a child and of ‘delinquency’ is failure in or ‘omission of duty’ or ‘fault’ or crime. Juvenile delinquency indicates any failure in or omission of duty or fault or crime on the apart of a child. Likewise delinquent according to dictionary means an individual who fails or leaves his duty or a transgressor. So it refers to a offender or a transgress or who is a child. That is to say that by juvenile delinquency, one should bear in mind the offences committed by the individuals who are under certain ages as specified in the law of the land. Though the age varies from society to society and even among the different strata of the society it has been noticed that the majority of the nations in the world fix the age, with little variations at 18 years approximately. Thus the concept juvenile embraces both the children and adolescents.So in brief, delinquent propensities or acts of children as well of adolescents are treated as juvenile delinquency.\textsuperscript{409}


\textsuperscript{409} For example, the second United Nations Congress on the prevention of crime and treatment of offenders in 1960 stated that juvenile delinquency should be
Young people who are at risk of becoming delinquent often live in difficult circumstances. Children who for various reasons—including parental alcoholism, poverty, breakdown of the family, overcrowding, abusive conditions in the home, the growing HIV/AIDS scourge, or the death of parents during armed conflicts—are orphans or unaccompanied and are without the means of subsistence, housing and other basic necessities are at greatest risk of falling into juvenile delinquency. The number of children in especially difficult circumstances is estimated to have increased from 80 million to 150 million between 1992 and 2000.

Delinquency simply is the first step on the road to adult crime or it is a gateway to adult criminality. It concerns us because it is a sign part of danger. One can easily say that today's delinquent child will be tomorrow's criminal. The problem of juvenile delinquency is becoming more complicated and universal, and crime prevention programmes are either unequipped to deal with the present realities or do not exist. Many developing countries have done little or nothing to deal with these problems, and international programmes are obviously insufficient. Developed countries are engaged in activities aimed at juvenile crime prevention, but the overall effect of these programmes is rather weak because the mechanisms in place are often inadequate to address the existing situation.

understood by the commission of an act which, if committed by an adult would be considered as a crime.

Juvenile Delinquency In India

Statistics on juvenile delinquency in India reveal that the problem is not as grave as in western world. But the impact of the western civilization and temptation for luxuries and pompous life has greatly influenced the modern Indian youth, with the result there has been a considerable growth in crime committed by juvenile.

The problem is something different in nature as compared to other societies. For example, vandalism is treated as an expression of juvenile offence. In our country one can find that urchins are destroying public properties like street bulbs, buses, school property, and so on. Then theft is also prevalent. Different types of cases are found. To give an example there are youngsters who are employed in households as servants or cooks. Generally these boys if they get opportunities depart secretly with valuables. There are also pilfering cases. In fact the most vulnerable part is railways, juveniles are doing pilfering of whose property generally. A large number of neglected or destitute children take shelter in railway stations. It is the valuables of railway station very often tempt a common sight that neglected child. Neglected children, who are allowed to hawk in the streets, learn smoking and get addicted to cinema and bad literature and like. So in order to get money for this, they try to steal, cheat, and thereby involving themselves in many other wrongful activities.

Another reason is that they are more often very easily tempted by social elements and are being used for circumventing law. These children who are in need of basic needs want money even for their bread. They get money by involving themselves in minimum of labor. In this way, the anti-social, corrupt their morals and they in the long run develop delinquent propensities.
Causes For Formation of Juvenile Delinquents

The intensity and severity of juvenile offences are generally determined by the social, economic and cultural conditions prevailing in a country. There is evidence of a universal increase in juvenile crime taking place concurrently with economic decline, especially in the poor districts of large cities. In many cases street children later become young offenders, having already encountered violence in their immediate social environment as either witnesses or victims of violent acts. The educational attainments of this group are rather low as a rule, basic social experience acquired in the family is too often insufficient, and the socio-economic environment is determined by poverty and under- or unemployment.413

The causes of and conditions for juvenile crime are usually found at each level of the social structure, including society as a whole, social institutions, social groups and organizations, and interpersonal relations. A wide range of factors, the most important of which are described below, fosters considerable rise in the incidence of juvenile delinquency. Juveniles' choice of delinquent careers and the consequent perpetuation of delinquency.

Economic and Social factors

Juvenile delinquency is driven by the negative consequences of social and economic development in particular economic crises, political instability, and the weakening of major institutions (including the State, systems of public education and public assistance, and the family). Socio-economic instability is often linked to persistent

413 United Nations, World Programme of Action for Youth to the Year 2000 and Beyond, adopted by General Assembly resolution 50/81 of 14 December 1995.
unemployment and low incomes among the young, which can increase the likelihood of their involvement in criminal activity.\textsuperscript{414}

**Culture Factors**

Delinquent behaviour often occurs in social settings in which the norms for acceptable behaviour have broken down. Under such circumstances many of the common rules that deter people from committing socially unacceptable acts may lose their relevance for some members of society. They respond to the traumatizing and destructive changes in the social reality by engaging in rebellious, deviant or even criminal activities. An example of such a setting would be the modernization of traditional societies and the accompanying changes wrought by the application of new technologies; shifts of this magnitude affect the types and organization of labour activity, social characteristics, lifestyles and living arrangements, and these changes, in turn, affect authority structures, forms of obedience, and modes of political participation— even going so far as to influence perceptions of reality.

In country like India, consumer standards created by the media are considerably beyond the capacity of most families to achieve. Nevertheless, these ideals become a virtual reality for many young people, some of whom will go to great lengths to maintain a lifestyle they cannot afford. Because not all population groups have access to the necessary resources, including education, professional training, satisfactory employment and income, health services, and adequate housing, there are those who are unable to achieve their goals by legal means. The contradiction between idealized and socially

approved goals and the sometimes limited real-life opportunities to achieve them legally creates a sense of frustration in many young people. A criminal career becomes one form of addressing this contradiction. One of the reasons for delinquent behaviour is therefore an excessive focus on proposed goals coupled with insufficient means to achieve them. Some time to earn money fast to fulfill their wishes and spend lavishly is also a cause to join hands in crime. Many young people retreat into the confines of their own groups and resort to drug use for psychological or emotional escape. The use of alcohol and illegal drugs by juveniles is one cause of delinquency, as they are often compelled to commit crimes (usually theft) to obtain the cash needed to support their substance use.415

Urbanization

The industrial development and economic growth in India has resulted into urbanization which has given rise to new problems such as housing, slum dwelling, overcrowding, lack of parental control and family disintegration and high cost of living in urban areas.

Geographical analysis suggests that countries with more urbanized populations have higher registered crime rates than do those with strong rural life styles and communities. This may be attributable to the differences in social control and social cohesion. Rural groupings rely mainly on family and community control as a means of dealing with antisocial behaviour and exhibit markedly lower crime rates. Urban industrialized societies tend to resort to formal legal and judicial measures, an impersonal approach that appears to be linked to higher crime rates. Cultural and institutional differences

are such that responses to the same offence may vary widely from one country to another.\textsuperscript{416}

**Family**

The family is generally considered among the most important environmental influences on personality development. Coolay and others have laid emphasis on face to face relationship in the primary group family as the determinant factor of character formation and group behavior. According to this approach deviations from normal family setting should be examined repeatedly for their bearing on delinquency.\textsuperscript{417} Studies show that children who receive adequate parental supervision are less likely to engage in criminal activities. Dysfunctional family settings—characterized by conflict, inadequate parental control, weak internal linkages and integration, and premature autonomy—are closely associated with juvenile delinquency. Children in disadvantaged families that have few opportunities for legitimate employment and face a higher risk of social exclusion are over represented among offenders. The family as a social institution is has gone substantial changes; its form is diversifying with, for example, joint family system has now replaced into nuclear families.

The warm relationship between child and his parents is of great significance in developing a whole some set of ideals.\textsuperscript{418} A child who does not experience the warmth of love and sympathy and feels that he is not wanted tends to become a behaviour problem. Reviewing the affectional relationship in the family, Glucks saw that the delinquents boys were more deprived of affection by their fathers,

\textsuperscript{416} Paul C. Friday and Xin Ren, *Delinquency and Juvenile Justice Systems in the Non-Western World*, (2006).

\textsuperscript{417} Id. at 58.

\textsuperscript{418} Sheth, Hansa, *Juvenile Delinquency in an Indian Setting*, (1961) at 188.
mothers, bothers and sisters and that they, in turn, did not have a warm feeling towards their parents and other members of the family as did the non-delinquents.419

Success in school depends greatly on whether parents have the capacity to provide their children with expensive gadgets etc, adolescents from low-income families often feel excluded. To raise their self-esteem and improve their status they may choose to join a juvenile delinquent group. These groups provide equal opportunities to everyone, favourably distinguishing themselves from school and family, where adults occupy positions of authority. When young people are exposed to the influence of adult offenders they have the opportunity to study delinquent behaviour, and the possibility of their engaging in adult crime becomes more real.420

The Mass Media

Communication lies at the foundation of all organised society. In present world, man’s communication processes have become tremendously vital to him. Professor Burt’s study revealed that the incidence of crime was high in areas most remote from open spaces, where there are no parks, no playing fields and no recreation grounds.421 Children’s learning processes are influenced by what they read, hear, observe, when they are provided with materials which run counter to the desired norms in a civilized society.

Many researchers have concluded that young people who watch violence tend to behave more aggressively or violently, particularly when provoked. This is mainly characteristic of 8 to 12 years old boys.

419 Sheldon and Gluck, Eleanor, Juvenile Delinquent Grow Up, (1940).
421 Cyril Burt, The Young Delinquent, at 156.
who are more vulnerable to such influences. Media bring an individual to violence in three ways.

First, movies that demonstrate violent acts excite spectators, and the aggressive energy can then be transferred to everyday life, pushing an individual to engage in physical activity on the streets. This type of influence is temporary, lasting from several hours to several days.

Second, television can portray ordinary daily violence committed by parents or peers (the imposition of penalties for failing to study or for violations of certain rules or norms of conduct). It is impossible to find television shows that do not portray such patterns of violence, because viewer approval of this type of programming has ensured its perpetuation. As a result, children are continually exposed to the use of violence in different situations—and the number of violent acts on television appears to be increasing.

Third, violence depicted in the media is unreal and has a surrealistic quality; wounds bleed less, and the real pain and agony resulting from violent actions are very rarely shown, so the consequences of violent behaviour often seem negligible. Over time, television causes a shift in the system of human values and indirectly leads children to view violence as a desirable and even courageous way of reestablishing justice. The American Psychological Association\(^\text{422}\) has reviewed the evidence and has concluded that

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television violence accounts for about 10 per cent of aggressive behaviour among children.423

Peer Influence

Youth policies seldom reflect an understanding of the role of the peer group as an institution of socialization. Membership in a delinquent gang, like membership in any other natural grouping, can be part of the process of becoming an adult. Through such primary associations, an individual acquires a sense of safety and security, develops knowledge of social interaction, and can demonstrate such qualities as loyalty or leadership. In “adult” society, factors such as social status, private welfare, race and ethnicity are of great value; however, all members of adolescent groups are essentially in an equal position and have similar opportunities for advancement in the hierarchical structure. In these groups well-being depends wholly on personal qualities such as strength, will and discipline. Quite often delinquent groups can counter balance or compensate for the imperfections of family and school. A number of studies have shown that juvenile gang members consider their group a family. For adolescents constantly facing violence, belonging to a gang can provide protection within the neighbourhood. In some areas those who are not involved in gangs continually face the threat of assault, oppression, harassment or extortion on the street or at school.

Prevention of Juvenile Delinquency

Violence against children endangers their fundamental human rights. It is therefore imperative to convince individuals and institutions to commit the time, money, expertise and other resources needed to

423 Id. at 197.
address this global problem. A number of United Nations instruments reflect a preference for social rather than judicial approaches to controlling juvenile delinquency. The Riyadh Guidelines assert that the prevention of juvenile delinquency is an essential part of overall crime prevention in society, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) recommend instituting positive measures to strengthen a juvenile’s overall well-being and reduce the need for State intervention. It is widely believed that early-phase intervention represents the best approach to preventing juvenile delinquency. Prevention requires individual, group and organizational efforts aimed at keeping adolescents from breaking the law.

Identification of Potential Delinquency

The timely identification of potential delinquents is implicit in the concept of crime prevention. Efforts have been made by some criminologists to devise methods for predicting delinquency in appropriate area. According to Sheldon and Eleanor Gluck by employing actuarial methods the quality of a particular set of circumstances made it possible to differentiate between future delinquents and non-delinquents.

Kinds of Programme

Different Prevention programme shall be made focusing on an individual and programme having environmental orientation. Some of the programme that is important in controlling and prevention juvenile delinquency is explained below.

425 General Assembly Resolution 45/112.
426 Beijing Rules.
427 Supra note 419 at 15.
Educational Programmes

It helps young people learn how to engage in positive self-appraisal, deal with conflict, and control aggression. The programmes debunk the myth of gang glamour and help young people find alternatives to illegal behaviour. Some work with troubled youth to help them develop the social and cognitive skills necessary to avoid conflict and control aggression. Children raised in strong families, quality schools and healthy communities typically develop these skills as a matter of course.

Recreation and youth development activities are directly encouraged in the Riyadh Guidelines: “A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.”

Psychiatric Clinics

The object of psychiatric aids through psychiatrist, clinical psychologists and psychiatric social workers, is to help the potential delinquents by understanding their personal problem and thereafter treating and counseling them at appropriate times. The functions of clinics are:

1. To participate in the discovery of “Pre-delinquents”.
2. To investigate cases selected for study and treatment.
3. To treat cases itself or to refer cases to other agencies for treatment.

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429 Riyadh Guidelines
4. To engage in behavioral research of children.
5. To cooperate in the training of students intending to specialize in the treatment of the behavioral problem.

Recreational Programmes

Often it is possible to reduce the level of juvenile delinquency by changing an urban environment. It is believed that the energies of the youth can be very well channelized into pursuits like sports games and other healthy activities. There is general belief that unorganized and unsupervised recreations lead to delinquency, whereas organized and supervised recreations tend to inhibit delinquency. Utmost discretion is, however, necessary in establishing clear-cut etiological relationship between recreation and delinquency.\textsuperscript{431}

Community Programmes

A community based prevention and treatment program can be defined as any program that attempts to mobilize the resources of the community in efforts to prevent and treat delinquency.\textsuperscript{432}

The strategies discussed above are mainly directed to individuals with a view to eliminating the factors responsible for their social maladjustments. Besides these, there are programmes involving community and group participation where efforts are made in terms of environmental factors. The basic strategy of such programmes is to reach the people in the need of help instead of people approaching the workers and agencies. Another significance of such programmes is that the participation of the local community is

\textsuperscript{431} Supra note 428.
\textsuperscript{432} Trojanowicz, Robert C., Juvenile Delinquency Concepts and Control, (1992).
considered to be more important and the role of professional leadership is to be kept at the minimum level.\textsuperscript{433}

Marshall B. Clinard has outlined the key assumptions of these programmes as follows:\textsuperscript{434}

- Local people will participate in factors to change neighbourhood conditions.
- Because they do not accept an adverse social and physical environment as natural and inevitable; and
- Because self-imposed changes in the immediate environment will have real significance to the residents and consequently will have more permanent effects.

Conclusion

The current situation with regard to juvenile crime and delinquency can be characterized by the following basic facts and trends:

- There has been an observed increase in violent and aggravated crimes among youth.
- The number of drug-related crimes is growing.
- The process of globalization and the greater mobility of large population groups have led to an increase in criminal activity associated with intolerance towards members of other cultures.
- The difficulties encountered by immigrants and their descendents in certain countries are sometimes related

\textsuperscript{434} Johnson, Elmer Hurbert: Crime, correction and Society, (1974) at 553.
to the high levels of group crime deriving from the activities of ethnically based delinquent groups.

- In many cases juvenile crimes are linked to less obvious sources of motivation; various actions may reflect, for example, the standards of particular subcultures, teachings or traditions deriving from religious radicalism.

- Quite often, aggressive and criminal behaviour is positively portrayed in the media, creating a confused picture of acceptable societal norms within some youth subcultures.

- Children and adolescents in difficult circumstances constitute ready reserves for organized crime, participation in armed conflicts, human and drug trafficking, and sexual exploitation.

- The disintegration of families, poverty, and the death of parents in conflict, calamities, floods, or from HIV/AIDS etc has led to the forced independence of many young people.

- There is overall deterioration of law and order situation.

If delinquency policies are to be truly effective, higher priority must be given to marginalized, vulnerable and disadvantaged young people in society, and issues relating to youth in conflict with the law should be a central focus of national youth policies. The administration of juvenile justice should be decentralized in order to encourage local authorities to become actively involved in preventing youth crime and reintegrating young offenders into society through support projects, with the ultimate aim of fostering responsible citizenship.
6.3 Monitoring Of Enforcement of Juvenile Justice Act

Prior to the enactment of the JJCPCA 2000 the policy was based on the JJA 1986 and various State legislations dealing with the rights and welfare of children. However, a review of the working of the said legislations indicated that much greater attention was required and a distinction had to be drawn between the treatment of ‘children in conflict with the law’ and those ‘in need of care and protection’. In this regard, one of the key objectives of the JJCPCA 2000 was to create a separate system of justice-dispensation for instances where children are accused of committing offences, distinct from the criminal justice system for adults. The Act also contemplates the effective involvement of informal social arrangements at the level of the family, voluntary organizations and the community.

The National Commission for Protection of Child Rights (hereinafter referred as NCPCR) says “criminalization and deinstitutionalization and ensuring the basic dignity of children remain unmet objectives”, because of “incomplete, inconsistent and inadequate application and implementation of the juvenile justice system” as well as pervasive cultural and systemic roadblocks.\(^{435}\) It was widely perceived that even the JJCPCA 2000 failed to achieve the desired results and the main cause of it was lack of proper implementation of the Act. The physical abuse, corruption, and abuse of power dominate the system, from police to incarceration to legal proceedings. The justice-delivery system for juveniles continues to suffer from neglect and apathy. Furthermore, monitoring by voluntary sector organizations regularly indicated that the infrastructure in many of the government-run homes where the children are kept does not meet the minimum standard required for a human living.


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Before we proceed to the amendment made by the parliament in the year 2006 for the proper function of the Act, let have a glance on relevant statutory provisions that entrusted the State Government, there sponsibility for smooth functioning of juvenile justice system. It is the State Government that has to provide necessary infrastructure and ensure that all the concerned persons discharge their duties efficiently in the best interest of the child.

Improving the accountability of the system has always been one of the major objectives of the JJS and now the ICPS. To improve the monitoring mechanism of the entire system the State Government is entrusted to establishing Homes, they must constitute various statutory bodies like Advisory board, Selection Committee, Inspection committee, Child Welfare Committee, Child protection unit, etc. and also recognize those NGOs who can render service for effective implementation of juvenile justice system and the same should be monitored by these board and committee. Keeping in mind the concept of “the best interest of child”, the State Government must prepare and conduct programmes such as Sponsorship programme, After-care plan, Counseling, Community service etc. for proper rehabilitation and reintegration of the juvenile.

As per the Model Rules 2007 Rule 93 “Advisory Boards shall inspect the various institutional or non-institutional services in their respective jurisdictions, and the recommendations made by them, shall be acted upon by the Central Government and the State Government”.

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In Delhi, the Advisory Board was set up by 2003, till 2006 it had not started functioning properly and five non-official members of the board completed a term without exercising their responsibilities even once. However in the last couple of years the Advisory Board has been holding meetings twice a year to discuss issues concerning the proper implementation of the Act. It is the duty of the State Government to make all required support system for the purpose of ensuring effective functioning of all the other players under the juvenile Justice System. However, various duties envisaged under the Act and the Rules cannot be implemented effectively unless and until the Government take initiatives and create 'Juvenile Justice Fund' with sufficient amount for incurring expenditures for implementing programmes, restoration, aiding NGOs, to meet expenses of Homes, Special Juvenile Police Unit, Juvenile Justice Board and other statutory bodies for the purpose of ensuring effective functioning of all the stakeholders under the Juvenile Justice System. Therefore the role of the Government is very crucial in the juvenile justice system as functioning act revolves around the infrastructure and facilities made available by the State.

It is unfortunate to say that our Central/State Government failed to implement the act as prerequisite objective of the JJCPA 2000. That prompted the Parliament to intervene again and an amendment was made to the Act in 2006, with the primary intent of speeding up the administration of justice for juveniles. Due emphasis was also placed on the integration of children from deprived Sections into the social mainstream. With amendment new Section 62A was introduced which states that every State Government shall constitution Child
protection unit for every state, district to ensure the implementation of the act. The amendment also reflected the legislature’s concern that the various duties and responsibilities cast on State Governments by the JJCPCA 2000 were not being met and many States had not framed the requisite rules under the same. This concern was addressed by inserting a proviso to Section 68, wherein the ‘Model Rules’ that were to be framed by the Central Government were made applicable to the States until such point of time that the State Governments made rules which were to be in conformity with the Central Model Rules.

Subsequently the Model Rules were framed by the Central Government in 2007. They prescribe and restate the fundamental principles involved in the administration of Juvenile Justice and the protection of Children – such as the ‘presumption of innocence’, ‘principle of dignity and worth’, deference to the ‘best interests of the child’, principle of ‘family responsibility, positive measures, principle of repatriation and restoration, and the idea of ‘fresh start’ among others.

Lets have a glance at the progress of the Juvenile institutions in the country. Due to lack of data, it is impossible to give the full picture prevailing in all the states but below, a try made to give as much detail as possible for some states where no data was available. The table below gives the clear picture of the states government that how much they have tried to implement the act as per the Act and the rules. The JJCPCA was passed in 2000 and till now many states don’t even framed their Rules as per the Model Rules, and the same is case of SJPU, advisory board, committees etc whose duty is to see the function of the institution and whether the act is being implemented.
When these essential bodies are not made than how they can monitor
the system and check the implementation of the Act.

### Progress of JJ Institutions In the Country

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<th>State/UT</th>
<th>JJ rules notified on</th>
<th>No. of districts</th>
<th>Total number of JJ institutions</th>
<th>Total no. of government-run homes</th>
<th>JJ funds (Rs Lakhs)</th>
<th>Districts/state/Advisory Boards/committees, SJPUs, adoption agencies</th>
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326
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<td>3</td>
<td>Yes SJPU in 6 districts, rest under women cell</td>
</tr>
<tr>
<td>Punjab</td>
<td></td>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>23.7.2</td>
<td>32</td>
<td>32</td>
<td>16</td>
<td>2</td>
<td>Yes SJPU in all districts, SAB</td>
</tr>
<tr>
<td>Sikkim</td>
<td>13.3.2</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Yes SAC</td>
</tr>
</tbody>
</table>
Compiled by the HAQ from the state government reports submitted to NCPCR, Ministry of WCD and own sources.

Note:

1. In above table OH-observation homes, Spl H- Special homes, SH-Shelter homes, CH-Children homes, ACH-After care homes.

2. In many states, OB and Spl H are the same.

3. Out of six UT of Chandigarh, Dadra, and Nagar Haveli, Puducherry, Andaman & Nicobar, Daman & Diu and Lakshadweep, the first three have one JJB and a government-run multipurpose home each. Information is not available on the rest.

Various problems, relating to children, who come in conflict with law, cannot or should not, therefore, be viewed independent of, or divorced from, each other, because a child is, after all, nothing, but a genesis of future society. No enactment, far less an enactment relating to juvenile in conflict with law, can be successful if suitable mechanism, with logistic support, is not in place for implementation of the objectives, which the enactment seeks to achieve. It is sad, but true, that in our country, we have no scarcity of laws; what we suffer from is the logistic (administration) support so as to ensure proper
implementation of the objects of law and the logistic support has to come from the State Government.\textsuperscript{436}

In above paragraph we talk about the administration support that is important for the proper implementation of the object of law. The State Government is assigned that task that can be achieved if suitable mechanism, with logistic support, is provided. In the act the duties and functions of the government has been mention. A brief description of the committees, board and SJPU is given ahead who are particularly formed in act for monitoring proper implementation of the act.

A. Selection Committee

The State Government shall constitute a Selection Committee for selecting and recommending persons for appointment as members of:

- Juvenile Justice Board,
- Advisory Committee, and
- Inspection Committee and for dealing with complaints against the above persons.\textsuperscript{437}

Selection Committee shall be constituted for a period of 5 years comprising of the following:

- Chairperson - a retired judge of High Court.
- Member Secretary - representative from the State Government not below the rank of Director.


\textsuperscript{437} Model Rule 92 r/w Rule 63 (1) & Rule 93 (8).
• Members –2 representatives from reputed NGO working in the area of child welfare;
• 2 representatives from academic bodies;
• 1 representative of the National or State Human Rights Commission or National or State Commission for Protection of Child Rights or National or State Commission for Women [Rule 91]

B. Juvenile Justice Board

State Government shall constitute for every district one or more Juvenile Justice Boards for conducting inquiry against juvenile within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, i.e. latest by 22.8.2007.

C. Advisory Boards and Inspection Committee

The State Government shall constitute Advisory Boards at State, District and City levels through the Selection Committee for 3 years to advise the Government on matters relating to –

• establishment and maintenance of Homes;
• mobilisation of resources;
• provision of facilities for education, training and rehabilitation of juvenile;
• co-ordination among various official and non-official agencies concerned. (Section 62 r/w Rule 93).

For details refer the chapter on 2 Juvenile in Conflict with Law, 2.2 Juvenile Justice Board at 88.

Section 4 r/w Rule 4 and 83.

For details refer the chapter on 5: Enforcement of Juvenile Justice Act at 161.
The District or City level Advisory Board constituted in terms Section 62(3) shall also function as the Inspection Committee under Section 35 of the Act. [Rule 93 (9)]

The main functions of the Advisory Boards while acting as the Inspection Committee are as below:

- carry out inspection of Homes at least once in three months 63(5)
- interact with children to determine their well-being and uninhibited feedback [Rule 63]
- visit and oversee the conditions in the institutions and look into the functioning of the Management Committee and Children’s Committee. [Rule 63 (2)]
- Making suggestions for improvement and development of the institution (Rule 63 (3)]

D. Child Protection Unit (CPU)

Every State Government shall constitute a Child Protection Unit for the State and, such Units for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children in need of care and protection and juvenile in conflict with law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and co-ordination with various official and non-official agencies concerned as per Section 62A of JJCPA 2000.
In the administrative hierarchy of the Government, district headquarter is the prominent centre of administration. It is the connecting link between the ground level officers, social workers and other concerned persons, who actually interact with the children on a day-to-day basis and implement the policies of the Government. District CPU therefore plays the most pivotal role in actual implementation of the provisions of the Act and the Rules.

State Child Protection Unit

Section 62A Constitution: State Government shall constitute a Child Protection Unit (CPU) for the State consisting of such officers and employees as may be appointed by that Government

Primary Duties

- implementation of the Act and supervision and monitoring of agencies and institutions under the Act;
- set up, support and monitor the District Child Protection Units;
- represent State Child Protection Unit as a member in the Selection Committee for appointment of members of Boards or Committees;
- make necessary funds available to the District Child Protection Units for providing or setting up required facilities to implement the Act;
- network and coordinate with all government departments to build linkages on child protection issues;
- training and capacity building of all personnel - Government and Non-government;
- establish minimum standards of care and ensure its implementation in all institutions set up under the Act;
- review the functioning of Committees; and
- all other functions necessary for effective implementation of the Act. [Rule 80]

**District Child Protection Unit**

Constitution: The State Government shall constitute a Child Protection Unit (CPU) for every District consisting of such officers and employees as may be appointed by that Government.\(^{441}\) [Section 62A]

**Primary Duties**

- ensure effective implementation of the Act at district or city levels by supporting creation of adequate infrastructure, such as, setting up Boards, SJPU and Homes;
- periodic and regular mapping of all child-related services at district for creating a resource directory and making the information available to the Board from time to time;
- implement family-based non-institutional services including sponsorship, foster care, adoption, and after care;
- ensure setting-up of District, Block, and Village-level Child Protection Committees;
- facilitate transfer of children for their restoration;

\(^{441}\) JJCPCA Section 62 A.
network and coordinate with all government departments to build linkages on child protection issues;

develop parameters and tools for effective monitoring and supervision of agencies and institutions in the district in consultation with experts in child welfare;

supervise and monitor all institutions or agencies providing residential facilities to children in the district;

train and build capacity of all personnel - Government and Non government;

organize quarterly meeting with all stakeholders at district level including Childline, Specialized Adoption Agencies, Officers in-charge of homes, non governmental organizations and members of public;

Liaison with the State Child Protection Unit, State Adoption Resource Agency at State level and District Child Protection Units of other districts. [Rule 81]

Linkages and co-ordination

District or State CPU shall help the State Government to identify the roles and responsibilities of each department at district or State level for effective implementation of the Act and the Rules.\textsuperscript{442}

District or State CPU shall arrange for appropriate training and sensitization of functionaries of various departments from time to time

\textsuperscript{442} Model Rule 2007: Rule 39(2).
in coordination with National Institute of Public Cooperation and Child Development (NIPCCD) and its Regional Centres.\textsuperscript{443}

**Social workers for SJPU**

District CPU or State Government shall provide services of two social workers to the Special Juvenile Police Unit for discharging their duties.\textsuperscript{444}

**Special Juvenile Police Unit (SJPU)**

State Government shall constitute Special Juvenile Police Unit (SJPU) in each District within 4 months of the notification of the Central Model Rules i.e. latest by 26.2.2008.\textsuperscript{445}

Establishment of the Homes is also under the power of State Government. For detail please see the chapter 9.

**Social Auditing**\textsuperscript{446}

The State Government shall monitor and evaluate the implementation of the Act\textsuperscript{4} annually by reviewing matters concerning establishment and functioning of Board, Special Juvenile Police Unit, Institutions and any other matter concerning effective implementation of the Act.\textsuperscript{447}

The social audit can be carried out with support and involvement of NGOs and autonomous bodies like the National Institute of Public Cooperation and Child Development (NIPCCD), Indian Council for Child Welfare, Childline India Foundation, Central and State level Social Welfare Boards, School of Social Work and School of Law under Rule 64(2).

\textsuperscript{443} Id. Rule 39(3).
\textsuperscript{444} Id. Rule 84(2).
\textsuperscript{445} JJCPCA Section 63 r/w Rule 84.
\textsuperscript{446} For detail refer Chapter 3.
\textsuperscript{447} JJCPCA Section 36 r/w Rule 64(1).
After Care Programme

State Government shall set up an after care programme for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution based life to mainstream society for social re-integration.\(^{449}\)

Adoption

The State Government may issue various guidelines for adoption from time to time and the court giving the children in adoption have to conform to those guidelines as per Section 41 (3) Of JJCPA 2000.

Foster Care

The State government may make rules for the purposes of carrying out the scheme of foster care programme of children and every State Government shall design its own foster care programme so as to reduce institutionalization of children and enable a nurturing family environment for every child.\(^{452}\)

Creation of Juvenile Justice Fund

The State Government shall create a ‘Juvenile Justice Fund’ at the State level for the welfare and rehabilitation of the juvenile which shall be administered by the State Advisory Board. [Section 61 r/w Rule 95(1)]

The assets of the Fund shall include grants and contributions from:

\(^{448}\) For details refer the chapter 4 on ‘Rehabilitation and Social Re-integration’.

\(^{449}\) JJCPA Sections 40 & 44 r/w Rule 38.

\(^{450}\) For details refer the chapter 4 on ‘Rehabilitation and Social Re-integration’.

\(^{451}\) Id.

\(^{452}\) JCPCA Section 42(3) & Rule 34 (2)
- Central Government;
- State Government;
- Statutory or non-statutory bodies set up by the Central or State Government; and
- Voluntary donations from any individual or organization. [Rule 95(2)(5)].

The Fund shall be applied for following purposes:
- To implement programmes for the welfare, rehabilitation and restoration of juveniles or children;
- To pay grant-in-aid to non-governmental organizations;
- To meet the expenses of State Advisory Board and its purpose; and
- To do all other things that is incidental and necessary for the above purposes. [Rule 95(3)]

A breakdown of the Union Child budget reveals the low priority given to ‘Child Protection’ in an already low allocation for children. The total share on child protection was .03% of the total union budget in 2006-07 i.e. for every Rs 100 spent by the Central Government only 3 paise was spent for Child Protection.\(^{453}\)

This outlay is not just for the Programme for Juvenile Justice; but includes other schemes for child welfare such as street children etc., scheme for rescue of victims for trafficking; improvement of conditions for working children, short stay homes, Swadhar, and the

initiative to develop skills, ITI and elimination of child labour. This means that the actual outlay for Juveniles in Conflict with law is much lesser than the .03% of the total Union Budget. This has implications for the rehabilitation process of JICL that besides social and other constraints also faces financial constraints.

Funds for JICL are released from the Central Government under the Programme for Juvenile Justice. Under this scheme, the Ministry of Women and Child Development provides 50% assistance to State Governments and UT administrations for establishment and maintenance of various levels of institutions for juveniles in conflict with law and children in need of care and protection. Most of the budgetary heads of the government grants has little focus on strengthening family involvement, offering children personalized care and protection and promoting family and community based services. It is ironic that while the JJA stresses on the importance of minimum institutionalization, there is little focus in both the legislation as well as the funding mechanism to strengthen the non-institutional services for the rehabilitation of JICL.

The primary intervention under the scheme is thus, for institutional care. Funds are released according to the yearly budget prepared by the Observation Homes, which in turn are required to give an account of their monthly expenditure to the government. The funds released are more than adequate, so much so that often the Observation Homes end up surrendering a substantial portion of their

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455 Supra note 453.
457 Supra note 454.
funds to the Government at the end of the year. For example, OHB-II in 2010 returned more than 7.63 lakhs of unutilized funds for the year 2009. So funding clearly does not seem to be a problem for such institutions.\textsuperscript{458}

However, on analyzing the funding system for these Observation Homes, it can be seen that the funds are rarely released under the heads of formal education, vocational training, counseling, and drug de-toxification which form the backbone of rehabilitation process.\textsuperscript{459} For example, for Observation Home for Boys-II, a breakdown of their budget of 2010 revealed that the only provision, which was explicitly mentioned, was tailoring.

The model rules also provide for the creation of a State Juvenile Justice Fund “to implement programmes for the welfare, rehabilitation and restoration of juveniles”.\textsuperscript{460} The Delhi juvenile Justice Fund was created last year. Rs 5 lakhs have been deposited in it. But in spite of pressing infrastructural requirements, it remains unused.\textsuperscript{461}

**Present Scenario**

The report of National Human Rights Commission (NHRC), which had been monitoring the status of the implementation of the JJA, said at a conference on juvenile justice in February 2007, “There is an urgent need to ensure that appropriate bodies are constituted in every district of every state and Union territory to expeditiously take up cases relating to juveniles and children in need of care and...”

\textsuperscript{458} Supra note 455.
\textsuperscript{460} Model Rules 2007, Rule 95.
\textsuperscript{461} Supra note 456.
NHRC felt that a majority of the states had neither constituted or reconstituted the required number of institutions or boards under JJA nor framed the rules. The number of homes/institutions, their capacity and the financial allocations were not in tune with the requirement. The amount spent on vocational training, health and recreation was negligible and there was a need to converge all the resources for this purpose. The Commission decided to direct all the state governments and Union territories to frame the required Rules under JJCPCA within three months and ask them to constitute Child Protection Units in every district to take up such issues.

The Supreme Court made the same observation in 2006. It issued notices to all High Courts asking them to appoint a Judge to monitor the functioning of the Juvenile Justice system in their states. The Delhi High Court ordered a three-member committee to be set up under Justice Madan B. Lokur to look into the working of the Juvenile Justice system in detail. Since then, workers from both NGOs and government homes admit, there has been a notable improvement in the affairs of these children. In Maharashtra too, the High Court exercises direct control over juvenile justice matters. Justice Ranganath Desai has been given the charge of reviewing the implementation of the JJCPCA and submitting quarterly reports to the High Court. Justice Mohan S Gouda was appointed by the Karnataka High Court to oversee the functioning of the JJCPCA and institutions and Justice V. Gopala Gowda, Executive Chairman, Karnataka Legal Services Authority (KLSA) was to assist him. Officials working at government homes as well as NGOs, more so in Delhi, admit in personal interviews that the 2006 amendment and the central rules notified in October 2007 have made the juvenile process simpler and

462 [http://www.nhrc.nic.in/disparchive.asp?fno=1411](http://www.nhrc.nic.in/disparchive.asp?fno=1411)
speedier. Their contention is partly true. But while the latest Act has smoothed quite a few wrinkles of the care and justice process for both categories of children, HAQ an eminent NGO working for the child rights made an observation that several problems still exist in interpretation and implementation of law and in the attitude of the police, judiciary and the care system where bureaucratic red tape prevails. In the following chapters will review in detail the many obstacles-legal as well as non-legal-in the wide swathe of the implementing system.  

On 23rd April, 2010 National Consultation on Monitoring Mechanism for Juvenile Justice System was held at India International Center, New Delhi. The meeting was presided over by Hon’ble Judges from Supreme Court of India, Delhi and other High Courts, Principal Magistrate and Members of Juvenile Justice Board, Special Juvenile Police Unit, Delhi Commission for Protection of Child Rights (DCPCR), National Institute of Public Cooperation for Child Development (NIPCCD), Social Welfare Department, NGO’s and Advocates. They shared views and gave suggestions on the present and proposed Monitoring Mechanism for Juvenile Justice System.

Hon’ble Justice Sathasivam, made the following observation where he mentioned that in 2009 Conference the Chief Justices of India decide to setup a Judge committed on Juvenile Justice in every High Court to oversee the functioning. Some points were suggested by him like Probation officers should be trained properly as they act as reformers and heelers while dealing with Juveniles; the NGO’s should be encouraged to provide services like training, teaching and counseling, media should be proactive and participate in the system, extension of schemes for street children, Special Homes etc.

Hon'ble Mr. Justice P.V. Reddi, Chairperson, Law Commission of India, also expressed his concern towards the children and explained the measures and steps that may be taken for the rehabilitation and social reintegration of the Juvenile in conflict with law. He emphasized on having a proper institutions and persons working for the children. He further mention that we should look at ground realities like pending proceedings, number of Special Homes, number of JWO's, JJB’s and frequency of periodical review meetings etc.

Hon'ble Mr. Justice Madan B. Lokur, High Court of Delhi, briefly explained about steps to be taken for proper monitoring. He suggest firstly to draw ‘Awareness’ among all the stake holders about the Juvenile Justice System, secondly ‘Knowledge of Rights’ where every person involved in this system should have the knowledge of Child Rights, thirdly ‘Rehabilitation’ for the children in conflict with law and also for the children in need of care and protection, fourthly ‘Training’, every stake holder should be given proper training for handling the Juveniles which is very important, and finally ‘Legal Aid System' should be well established for the Juveniles.\(^{464}\)

From the above discussion and various reports we came across, we can bring out to few major reasons for ineffective implementation of the law. The major factor is inadequacy of state government to follow the objective of the act and failure in making the rules for their states, districts. It has been observed that the government remained unsucessful in constituting the number of institutions, JJB, CWC, SJPU, CPU, DCPU etc. Some other reason is the unnecessary and often prolonged delay in settling the

complaints. And of course, another reason is the perennial lack of funds as well as the will to commit them. The practical problem one faces for monitoring of enforcement of the act.

**Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 (hereinafter referred as D Rules)**

Delhi is one of the few cities that have complied by making its own Rules on basis of the Model Rules 2007. The D Rules have made minor changes from the original Model Rules. Herein discussing only those Rules where changes have been made.

- The Rule 7 of D Rules specifies the maximum age of the members of the board is limited to 65 years of age. D Rules also specifies that the social work for a sitting will get minimum of Rs 1000, which Model Rules state as Rs 500.

- D Rules 11 (3) has brought a new concept of filing apprehension memo (Form XIV) in cases involving offences of non-serious nature (entailing a punishment of less than 7 years imprisonment for adults) and cases where apprehension is not necessary in the interest of the juvenile. It further states that personal search of the Juvenile shall be conducted and Form – XXVI shall be filled with relevant information. When a juvenile or child requires to be medically examined, request for Medical Examination Report in Form - XXIV shall be prepared.

- Rule 5 (C) of the D Rules talks about in case a juvenile is apprehended by the police the Investigating Officer shall record the child version of the incident in the presence of Juvenile Welfare Officer/ fit person/ parents/ guardian.
The child version of the incident shall be verified and if it comes to notice that an adult has caused the juvenile to be in the conflict situation an action against such adult shall be initiated keeping the interest of juvenile in mind and to ensure that he keeps away from such influence. The child version of the incident along with the verification of the same shall be produced before the Juvenile Justice Board.

- Rule 17 of d Rules deal with the release of juvenile. The D Rules under sub-rule 6 specifies that in case parent or guardian fails to come and take charge of the juvenile on the appointed date, the juvenile shall be taken to his parent or guardian by the escort of the juvenile police unit and in case of a girl, she shall be escorted by a female escort, who shall hand over her custody to her parent/guardian.

- D Rule 18 sub-rule (3) states that the offence against a juvenile in conflict with law or a child specified in Section 23 shall be cognizable and bailable. When an Officer-in-Charge of an institution owned and run by the State Government is accused of an offence under Section 23 alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence nor shall the Officer-in-Charge be arrested, except with the previous sanction of the State Government.

- D Rule 27 is about production of the child before the committee. It further specifies under sub-rule (2) that whenever the above mentioned person/s takes charge of
Child in need of care & protection, the information shall be given to the Police Control Room and Child Line as soon as possible, giving the details of the child, the situation from which rescued, the time at which the person took charge of the child including the place. The person taking charge of the child shall also give his details like Name, Address and Organizations for which he is working and other relevant details of members of the rescue team.

- The Rule 34 of D Rules that relates to the foster care has gone far from Model Rules 2007 by specifically mentioning the role of CWC, engagement of voluntary organization and recognition of fit persons for foster placement. The Rule sub-clause (2) is reproduced herein below:

**Role of the Child Welfare Committee**

1. To select appropriate voluntary organization/s who shall assist the committee in all reports about the foster care programme including first social investigation report in form XVI, periodical follow up reports etc.

2. To declare fit person for foster placement of the child.

3. To send the child to the children home for an initial period of one month for speedy inquiry.

4. To order placing of the child in foster care if found appropriate, in form XVII, initially for a period upto one year. A copy of the order shall be sent to the officer incharge of the institution concerned, voluntary organization, foster parents and the State Govt.
5. Follow up and supervision of the child with the foster parents shall be done by the committee at such intervals as may be prescribed. Form XVI may be used.

6. To periodically review the foster care placements on the basis of any information received by it including the periodical reports (which should not be less than four in a year) of a probation officer or case worker or social worker or voluntary organization, as the case may be.

7. On the basis of the aforesaid review and after giving the foster parents proper opportunity, the committee may extend the period of foster placement or may revoke the foster placement of the child in the foster family, duly explaining the reasons in its order. The committee may also consider issuing orders under Section 23 to 28 of the Act, if necessary.

8. To encourage and arrange pre-foster placement meetings of the foster parents and the child with appropriate linkage and co-ordination with the probation officer or case worker or social worker concerned.

9. To maintain complete records regarding foster placements.

10. The child placed in foster care may be encouraged to spend few days in the children home to relate his experiences.

11. To order the Drawing and Disbursing Officer concerned to release the supplementary maintenance grant to the foster parents and also the prescribed fees to the voluntary organizations, as per the existing norms.
12. Foster parents who wish to provide long term foster care for the child may be encouraged legal guardianship of the child if the committee is satisfied with the progress of the child in the first two years of foster placement.

13. Siblings, if any, shall be placed together with the same foster parents.

Sub-rule (3) Engagement of Voluntary Organization

1. Any organization desiring engagement under these rules shall make an application together with a copy each of the rules, by laws, articles of association, list of members of the society or the association running the organization, office-bearers and a statement showing the status and past record of specialized child care services provided by the organization to the Child Welfare Committee who shall after verifying the capacity of the organization, in this regard may approve the engagement of the voluntary organization under these rules on the condition that the organization shall always comply with the standards of services laid down under the Act and the rules framed thereunder, from time to time.

2. The voluntary organization shall submit to the Child Welfare Committee concerned all reports as directed by the committee in connection with the foster care placement, in the time prescribed by the committee. These reports shall give all necessary details including the points covered in form XVI.

3. The Child Welfare Committee shall ensure payment of the prescribed fee to the voluntary organization for all
Recognition of fit persons for foster placement

1. Any person desiring recognition under these rules as foster parent shall make an application to the Child Welfare Committee. He/she shall enclose (with the application) consent of the other spouse, if any, a certificate from a registered medical practitioner about the health condition of all members of his/her family, a certificate of income from the employer or an affidavit about the income attested by a magistrate in case of self-employed person, a character certificate from a gazetted officer or recommendations from the local resident welfare association. ii) The decision to grant or withdraw the above recognition shall be taken by the committee after thorough examination of the reports submitted by the welfare officer and/or voluntary organization.

2. The committee may transfer the custody of a child kept in foster care from one fit person to another duly explaining reasons therefor. The person concerned shall transfer custody of the child within 48 hours of such order by the committee, failing which the committee shall take appropriate action under the law.

3. The foster parents shall
   a) treat the child with love and affection and ensure a suitable atmosphere conducive to the child overall growth and development.
   b) ensure that the child is provided proper education.
c) allow the visits of biological parents of the child and respect their views on the child’s care and development.

d) comply with the directions given by the Child Welfare Committee and the State Government with due urgency.

e) attend the Child Welfare Committee whenever called to discuss the future plan in respect of the child.

f) submit to the Welfare Officer or the authorized voluntary organization information about the child’s health, education, behaviour, conduct and any such matters concerning the child as may be required from time to time.

g) return the child to the Child Welfare Committee whenever so directed by the committee.

h) intimate immediately the welfare officer, Child Welfare Committee and the voluntary organization in case the child is seriously ill.

i) intimate about the change of residential address to the Child Welfare Committee and the voluntary organization concerned.

j) take written permission of the Child Welfare Committee before taking the child out of station for more than a week.

k) Immediately inform the Police and the committee if the child placed in foster care goes missing.
4. D Rules under rule 35 that relates to criteria for selection of families for foster care has inserted sub-rule (xii) which states that only those families can be foster families who are residing in NCT Delhi for past 3 years.

5. D Rules has inserted sub-rule (c) to Rule 48 which relates to vocational training. It states that the superintendent of the institution shall make reasonable efforts for placement of children of 16-18 years of age as an apprentice.

These are some of the changes that D Rules have made, which is a recommendable job, as the rules seem to be an improved version of the Model Rules 2007.

6.4 Practical Problems

The irony is that act made and modified several time just to make the implementation effectively but still not able to achieve the positive result. As we have seen so far, the failure of the Juvenile Justice system across the country can be blamed on several reasons, ranging from inadequacies in law, lack of knowledge of the law and confusion in its interpretation to lack of infrastructure to debilitating attitude of the implementing persons and bodies and many more. Here in below trying to highlight few of the points that seems to be real cause of the no implementation of the act.

Lack of knowledge of law and precedents:

Even two years after the 2006 amendment to the JJCPA, 25 years of passing of JJA, finds several instances of ignorance of the law and rules. This cuts across all levels of administrators and all arms of the JJ system. Form the Report of the HAQ, we can see the situation of officers working for the children. Some of the instances

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465 Supra note 463, at 45.
that are reported are shared here. It was observed in a case where
the Police Officer writing “JUNYLE JUSTICE” on the whiteboard
during a HAQ training session to, as in the Suraj case, a magistrate
ordering a child to be kept in a place of safety inside the Tihar jail.
Further stated that, it is indeed surprising that magistrates and
sessions judges are not immune to the general ignorance. Some of
them are not familiar with provisions relating to treatment of child
victims or the JJA. Often they have to be provided with copies of the
relevant judgments. Not surprisingly what can we say about the lower
court even the Apex Court failed to made reference to the 2006
amendment and Model Rules 2007 under the JJCPA in cases like
Jyoti Prakash,466 Jameet,467 Bijender Singh,468 Balu469 when the both
were in force on the date of judgement.

In a reply to an RTI plea filed by Delhi-based NGO Pratidhi in
August 2008, where in a senior official in the Delhi WCD replied that
CWC had “no role in the process of placing children in after care
homes”, this displays the shocking ignorance of the law. In a cases of
two boys, as reported by HAQ in 2005, both convicted and living in a
special home and charged with sexual abuse of another inmate is a
good example of the ad hoc application of law. While one boy was
released on bail, the other’s plea was denied. As per the JJCPA bail
is a right can be denied only in three cases as specified in Section 12
of Act. So, it is mandatory to first release the child on bail in four
months, instead of extending judicial remand. Even Beijing Rules state
that detention in any case should be the last resort. But the law is
implemented.

467 Jameel v State of Maharashtra, (2008) 1 SCC (Cri) 748.
468 Bijender Singh v State of Haryana, 2005 (3) SCC 685.
Sloth Police

This is clear from the way police deal with children in need of care and protection. It can be seen in their refusal to register complaints, shoddy follow-up and investigation, collection of evidence or follow-up in court, all of which leads to lack of conviction and derailment of justice. The fact that young boys are picked up and held in police lock-ups, girls are treated badly in police stations, or subjected to harassment and even abuse, too reflect police apathy. The children first came into contact with police and probation officer their role and behaviour is very important. There is dire need of proper training and sensitisation of JJ functionaries, which can be done as specified in Model Rule 39 (3).

Lack of proper training and monitoring

The effectiveness of what we do depends upon how we interpret the law and the Rules to serve the best interest of the child. But members who have served the government are loath to take even calculated risks. They are too cautious and think only in terms of protection of their job or own backs. The lack of proper training and monitoring, compounded by the insensitivity of competent authorities, leaves little space for proper implementation of the act.

Confusion about interpretation of the law

The statutes of the law, as they are currently drafted, lead to confusion and interpretation. The result is petitions in the high court and Supreme Court seeking clarifications or modifications of court orders as well as issue of repeated court orders on thorny Sections.

For instance, in a judgment on May 6, a Supreme Court bench comprising said all accused in the age group of 16-18 years convicted or still facing trial as criminals across the country, would now be
treated as juveniles. This was done to explicitly clear the confusion that still prevails over treatment of children below 18 whose cases are still pending under the JJA 1986. One would have thought that the new laws, the JJCPA 2000 and the amended one of 2006, would have automatically taken precedence over the old Act. But lawyers and activists welcomed this judgment as it cleared all doubts that “all persons who were below the age of 18 years on the date of commission of the offence, even prior to April 1, 2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years or before the commencement of the Act and were undergoing sentence upon being convicted”.470

Similarly, the Delhi High Court has recently passed a judgment saying that a child (person below 18 years) cannot be made to sign a confession or statement before the police under Section 161 of the Cr.P.C, given their status as minor. This was based on a suo moto notice taken by the High Court on the basis of a letter received from two child welfare workers stating that police was compelling the children to sign statements made to the police officers, and further, is relying upon these statements before the JJB. The court reiterated the provisions of the law regarding production of the child in conflict with law “without any loss of time” before the JJB and that the child cannot be kept in a jail or lock-up.471

**Lack of Sensitivity**

The general absence among government officials of a sensible, innovative and empathetic attitude towards the children they come in contact. There are few sincere and proactive members in the JJ system, but they appear to be rare and change in attitude has been significant:

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471 WP (C) No. 8801/2008. Court on its Own Motion v NCT of Delhi.
veryslow in coming. Even according to officials serving at children’s homes, which are virtually untouched by the rapidly changing globalising India state that things have started improving only in the past year or so.

Lack of Clarity Regarding Role

The JJB consist of a judicial magistrate and two social workers. The aim of appointing two social workers was to bring about a change in the very nature of the inquiry and decriminalizing administration of juvenile justice. In reality, however, the two social workers play a limited role. The author personal visit to the board in Delhi I found that the social workers most of the time absent from the judicial proceedings. Even when they are present, they are usually silent. Nor are they encouraged to be active by the Magistrate whose is the only voice to be heard and who takes the ultimate decision.

A report472 by HAQ a reality check, in Orissa, the Magistrate would send the final order to be signed by the Social Workers, even though the order was made without any consultation, because “that was the proper way”. Since the social worker member of the Board refused to sign an order for which she had not been consulted, there was a lot of tension forcing her to ultimately resign. In most cases however, the members say that they have no authority or role for themselves as the JJB deals with criminal legal matters and the social worker members are not empowered to undertake judicial proceedings or pass orders, although their signature on the final order is a requirement. Clearly, they do not follow the statutes or don’t know how to read and interpret the statutes. They are completely at sea in matters of law and its interpretation by the Magistrate or its legal and social implications for the child. Neither are they very enterprising in

472 Supra note 463 at 73.
communicating with the children regularly nor cognizant of their best interests. There are many JJB's in the country that have no social worker member or the members have either left or choose to abstain from attending, because they have no clarity on their role and they felt redundant. Moreover, as per Act the magistrate and the social worker shall have special knowledge or training in child psychology or child welfare. But in reality no such rules are followed.

The government is supposed to address these various problems through training, sensitization and other capacity building programmes at various levels. However, in practice it has only been able to follow up with training of the Judicial Magistrates through the National/State Judicial Academies. For the rest of the people involved in the delivery of justice, such training is rare and ad hoc. This frustrates the very objectives of the law, leaving children with a feeling of anger and hatred for the 'system'.

Judiciary Concede to Problem

Members of the judiciary concede the problems. There are many reasons, one of the reason for such decision-making, they say, could be lack of sufficient experience or authority in a magistrate trying serious crimes. For instance, in Delhi, as a rule, serious offences are tried at the session courts and magistrates at the JJB, who are junior to the session's judges, may not have sufficient experience to try such cases when these are shifted to them. Also, in respect to such crimes, especially murder, judges outright rule out the possibility of completing the trial in four months, as mandated by law, or even a year, because there are many procedures to follow. Also, they say, speed in settling cases can come only with more courts to try those cases.

In practically what JJB can do, when board finds the child has indeed violated the law, it may pass any of the following orders:
release after due admonition and counselling for him/her and the family; keep the child under the supervision of parents/guardian/probation officer/fit person/fit institution; impose a fine; send for community service; order group counselling; send to a special home. No child may be sent to prison in default of payment of fine or producing sureties. If the child is above 16 years and is found guilty of a very serious offence, and thus cannot be kept with other children in their interest as well as his/her own interest, the JJB can order him to be in a Place of Safety instead of a Special Home. In principle, a child dealt with by the JJB does not suffer any disqualification attached to conviction for an offence.

In reality, all these provisions are regarded as freedom from imprisonment. Use of provisions requiring release of children on advice or admonition is sparse. Only 11.6 per cent of the apprehended children were so released in 2005\(^{473}\) and less than 13 percent in 2007.\(^{474}\) Statistics indicate that 20.8% of the juveniles were released on probation in 2008, a figure, only below the number of cases pending.\(^{475}\) Even in the case of bail, a matter of right, law is erratic. Some magistrates are reluctant to grant bail or grant it after much deliberation because they say this would result in the boy getting involved in anti-social activities. These are the instance of Delhi, which is always under the glare of Courts and other high authorities. We can imagine the situation of other states and districts that hardly cares for the welfare or children and don’t pay any heed to the frame the rules and follow them as per the act.

In the current progressive legal climate, when the Supreme Court itself taking keen interest in the implementation of the act. A


\(^{474}\) Ibid.

\(^{475}\) Supra note 454.
survey by one of the prominent NGO who workers for the Child found that child spend over three years in the home, the bail pleas were turned down by the JJB for no apparent reason. In some of these cases that are still pending, has been forced to shift the matter to the sessions court. It is as if these unfortunate children have no option but to serve time in an observation home for three years, whether or not they have committed any offence, before they can be free. And even then, that freedom is rarely available automatically; it has to be accessed with legal assistance and cooperation from a child-friendly organization outside the system.

**Lack of Legal Representation**

The JJCPA provide bail irrespective of the seriousness of the alleged offence. Even though the Model Rule 14 provides for free legal aid, but still they have to work too hard to find a lawyer to defend themselves. Children do not have the legal capacity to sign on their own vakalatnama, but the Cr.P.C allows appointment of a lawyer as 'amicus curiae' to take the case forward. This provision can be applied where parents are not available. Somehow the JJBs have failed to do so and the law is silent on how long the JJB should wait for parents or guardians to be traced. Even the system outside is vulnerable. The personal experience shows how difficult it is to find lawyers willing to dedicate enough time to children’s cases in lower courts or matters connected to juvenile justice. The few that agree want to restrict their appearance to the minimum in order to devote more time to more paying clients. One of the problems faced by children stuck in long-running cases is the lack of continuity posed by frequent change of lawyers arguing their case, moreover lawyers absent themselves from appearing in court and ask the child to take adjournment, which
contributes to the delay in deciding the matter and often weaken their case.

**Efforts of an NGO**

HAQ NGO for the Child raised the issue of free legal aid services at the Kingsway Camp JJB before the High Court committee against the poor quality of services offered by the lawyers empanelled on the Delhi Legal Services Authority and failure to network. This resulted in the setting up of FLAG (Free Legal Aid Group), with a few lawyers motivated by senior judges. Even though there is a need to set up another such group at the second JJB at Delhi Gate, it transpires that the FLAG lawyers at Kingsway Camp were not following up a case till the end and their services are limited to the stage of bail. Clearly, juvenile justice for children already bypassed by society is not an attractive option for lawyers. Indeed, pro-bono representation seems to have become a thing of the past with more and more legal firms going corporate. This underscores the urgent need to encourage and build a dedicated legal cadre at the level of colleges and institutions and for concerted efforts by the government as well as the judiciary towards this end.476

**Linkage and Coordination**

Lack of coordination among the government bodies is one of the reasons of non-implementation of the act. The whole act is divided into different departments at state, district and city level for the proper monitoring of the act. If there is no coordination between them, than whole system will collapse. In reality they work but with no linkage among them that leads to the bad function of the system. The government must be made accountable for not implementing the act.

476 Supra note 456.
and they must take definite measures for implementing them successfully.

From the above discussion we can state that just by making and enforcing an act is not sufficient, the major thing is its proper implementation and monitoring of the act. From the above practical problem description it seems we are far from achieving the object of the act. It should be implement at the grass root level to make it successful.