CHAPTER 8
CRITICAL VIEW ON IMPLEMENTATION OF JUVENILE JUSTICE ACT

The Indian Jurisprudence of Juvenile Justice is the wayward victim of legislative chaos and statutory slumber. And even when a fine piece has been put on the statute book, meaningful execution is distances away.

V.R. Krishna Iyer

8.1 Introduction

The most consequential thing for any legislation is the implementation in its letter and true spirit and to achieve the objectives enshrined under the legislation. The best legislation may fail its beneficiaries if not implemented properly.

Vineet Saran, J., in his article, discuss that the crux of the juvenile justice system (JJS) lies in its implementation. The problem of implementation was the most discussed issue during Parliamentary debates on the bill relating to care and protection of juveniles. It can never be overemphasized that the implementation of the law is hallmark of the commitment of its makers. He further states that judicial magistrates, caretakers and other dealing for the welfare of children must take due care that the provisions of the Act and the Rules are implemented in their true spirit so that the objectives of this beneficial legislation are full achieved.

The overview of literature on the operations under the Children Acts reveal a wide gap between the theory and practice of juvenile

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598 Former Judge, Supreme Court of India.
justice in India. As observed in case of the Children Acts that children under the system have not been getting the promised care. Reported in one of the famous newspaper regarding the non-implementation of Children Act, it states that:

Non-implementation, lack of resources, inappropriate personal, substandard services, and other problems, have been pointed out among the causes for unsatisfactory implementation. The Government itself had long back conceded that the services under the Children Acts suffered from various deficiencies.\footnote{The Hindustan Times, 2 October 1987, at 18, Vol. 1, (DAVP 87/372).}

In short the following deficiencies observed in the Children Act:

Apart from the shortage of juvenile/children courts and child welfare boards to cover all the districts, the institutional facilities were devoid of any well-defined criteria and norms to regulate capacity, staff, programmes, etc. No minimum standards for basic needs living conditions or therapeutic services existed to apply equally to both governmental and non-governmental correctional institutions. In most of the states, neglected children are huddled together with juvenile delinquents at various stages of institutional care. While institutionalization because of its inherent limitations was deemed to be the last measure, it was actually practiced as the main recourse for want of suitable alternatives in the community.\footnote{Kumari, Ved, The Juvenile Justice System, from Welfare to Rights, (2004) at 229.}

The impassiveness approach towards the children did not change much even after the JJA 1986 that was proposed to rectify the above situation. The annual report of the Ministry of Welfare mentions the number of juvenile welfare board, juvenile courts and various

\footnote{600 The Hindustan Times, 2 October 1987, at 18, Vol. 1, (DAVP 87/372).}
categories of Homes functioning under the JJA. However, the reports indicating the quality of their functioning are far from satisfactory and have not been heartening or complementary. It was observed that the irregularity and unawareness of the law are endemic in the functioning of each of the component of the juvenile justice system. The magistrates to the juvenile’s courts were appointed without any background in child psychology and welfare in clear violation of the statutory directions. Relatively young and inexperienced magistrate are appointed who lack sufficient maturity and skill to handle more serious and complex offences.

The JJA was aimed at protecting juveniles against stigmatization but it found that irregularities, malfunctioning and maladministration pervaded the functioning of JJA. Thus the JJCPCA 2000 has replaced the JJA with the same objective. Now the question that came for consideration is whether JJCPCA 2000, would able to rectify the situation? But the same remained unexplained, as the whole responsibility of implementation in the JJCPCA has been left upon the states. Even NCPCR in its report expresses various gap that availing to the non-implementation of the legislation in its true spirit.

In 60s, the government had appointed a committee for the preparation of a programme for Children under the chairmanship of Ganga Sharan Sinha (here in after referred to as Sinha Committee). The Sinha committee presented a detailed report way back in 1968

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602 In the year 1995-97, 271 Juvenile Welfare Boards, 189 Juvenile Courts, 280 Observation Homes, 251 Juvenile Homes, 36 Special Homes and 46 After Care Organization were functioning under the JJS in India.

603 See infra 604, the Sinha Committee Report.


on the needs of children in the fields of health, nutrition, education, labour, and social adjustment. The report quantified its recommendations on the remedial actions required immediately under the Fourth Five Year Plan and provided guidelines for future action. Recommendations of this report have been taken as the benchmark to indicate the gaps in implementation and it is relevant in today JJS.

The JJCPCA 2000 and 2006 Amendment have a wide implication with much scope for alternative family and community based practices and new initiatives in the area of child protection. They mandate proper care, protection and treatment of children by catering to their development needs and adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. So it's important to understand who all are supposed to be involved in the implementation of the JJCPCA, 2000. The Act itself mandates the setting up of various statutory institutions and bodies and along with the model rules Model Rules 2007 sets forth the duties of the same. Further, the Act and Rules, refer to various other institutions that are to act in support of these institutions to ensure good and proper implementation of the Act. Also, the Act envisages a substantial role for civil society to participate in roles such as the 'fit person' as it is quite clear that law and statutory institutions alone cannot solve the problem all alone, therefore, a combine efforts is required form the judicial machinery, society and institutions.

It may be noted that there are 5 government bodies, the judiciary, 29 statutory institutions, 2 types of voluntary organization

\[\text{Government bodies}^\text{605}\]
1. Central and State Government,
2. Labour Department - Act against organizations/companies /factories employing child labour

\[^{605}\text{Government bodies}\]
and 8 classes of the civil society or individuals or other organizations involved. The sheer number of institutions/bodies involved mean that implementation of the Act in its true spirit requires great coordination and effort from one and all especially the state government.

Hence, the present chapter analyses the implementation of the JJCPA 2000 and 2006 amendment in every sphere considering the official reports, publications, and documents available on the subject.

**Requirement of Implementation**

The foremost requirement for implementation is the existence of the legislation that is to be implemented. The sine qua non for proper implementation of the legislation are:

(i) its provisions should lay down a consistent scheme;

(ii) they should be formulated in a manner so as to communicate clearly the scope of each provision and the action required to be taken under.

3. Government Schools- Provide free education to all children and in this context, specifically to those children who are lodged temporarily in institutions. Sec 47 (but govt. schools not explicitly mentioned.)

4. Social Welfare Boards (Central and state) - Rule 64 Participate in social audit instituted by central or state govt. to monitor implementation of the Act by reviewing establishment / functioning of all bodies / institutions

5. Police.

1. Hospitals / Leper Asylums / De-Addiction Centres / Mental Health Institutions Etc.

2. Fit persons

3. Lawyers

4. Any Public Spirited Citizen

5. Social Worker


7. Schools Of Social Work Participate In Social Audit Instituted By Central Or State Government, Rule 64 - To Monitor Implementation Of The Act By Reviewing Establishment / Functioning Of All Bodies / Institutions

8. Schools of Law

The first step towards the implementation of the legislations is its enforcement. Since the Children Acts was passed it has been seen it was never enforced in all states. It was enforced in 236 districts out of 324. These figures increased to 402 out of 444 districts in mid-1980s. The parameter required for the implementation of the JJCPA 2000 includes framing of rules, juvenile court/ JJB, homes for juvenile, police, probation officers, voluntary organizations and community resources and financial resources. In this chapter we will discuss the implementation done by the states evaluating it on the abovementioned parameters.

**Juvenile Justice Board/CWC**

The JJA 1986 required constitution of juvenile court for dealing with the juvenile delinquents juveniles and a juvenile welfare board for the neglected juveniles. As specifically laid down in the Act that person shall be appointed as a magistrate in JJB or CWC only if have special knowledge of child psychology. The same provision is followed in JJCPA 2000, similar position was under Children Acts 1960 and other acts enacted pursuant to it.

In 1968, the Sinha Committee mentioned that there should be “at least on juvenile court and juvenile welfare board in each district” to deal with the cases. It was stated in the Fourth Plan that 244 more juvenile courts and 327 welfare boards are required. According to the statistical survey published by the NISD the number of juvenile courts in 1976 stood at 95. Sixteen years later 1984-85 the official figure of districts without a juvenile court stood at 230 and without board at 419. The data published for the same year by NISD

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609 Supra note 604.

gave the total of 175 juvenile courts /boards against the 227 pointed in the official statement. In the Ninth Five-Year Plan 202 mentioned setting up of districts and constitute 260 Juvenile Welfare Board (JJB) in different part of country.

In the year 2001, however the figure mentioned by the Prayas Juvenile Institute were 189 juvenile courts and about 90 CWC. It was mentioned under the JJCPA 2000 that the JJB/CWC shall be set up within the premises of observation homes/ children’s homes. No more data is available on the setting up of the juvenile boards /CWC. It has been observed that now in the courts social workers are being appointed. But again the major factor is there role, which is always under question. It has been mentioned that the working of these social worker is unsatisfactory and moreover they are not allowed by the presiding officer to take decisions. Their role in the court is just mockery of the system. No information or data is available as of all states of India whether the juvenile boards under JJCPCA 2000, have mandatory two social officers with one magistrate.

Overworked Judicial System

It has been observed that when law seems adequate, the law enforcement machinery and justice delivery mechanism are unable to keep pace with it. One more thing that is important when we compare position of juvenile boards for the year 1983-4 and 1984-5 as

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611 Statistical survey Juvenile courts for the year 1985-6, Table 1, 101, Social Defence, 60 (July, 1990).
612 Figure retrieved from the Agenda of Welfare Minister Conference, (21 January 1987).
613 Report of the working group on Children in especially difficult circumstances, p. 28, submitted to the Department of Women and Child Development, HRD Ministry by Prayas Institute of juvenile justice, New Delhi (year not specified)
614 The papers circulated at the consultation Meet on the JJCPA 2000 organized by Prayas Institute of Juvenile Justice in collaboration with the ministry of social justice and empowerment in 2001 mentioned that the number of special children to be covered under the JJCPA was unknown.
published by the NISD, shows that no correlation between the number of juvenile courts and the number of the magistrate appointed. The available data have no indication whether full-time magistrate constitutes the existing juvenile courts or how many of them are authorized to function as juvenile courts by the Act. After the directions of Supreme Court in *Sheela Barse Case*, most of the states had notified chief judicial magistrates or equivalent as the juvenile court under the Act. Furthermore it has been observed that high pendency of the cases inspite of the time limit prescribed under the Children Acts, JJA and JJCPCA 2000. The CRC emphasizes the importance of conducting proceedings involving juveniles "without delay". So the JJCPCA 2000 specifies that proceedings "shall be completed within a period of four months from the date of commencement," but with exceptions if the "period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension". Thus cases languish in the system indefinitely, affects the children. Although it is not even possible to know how many cases are delayed beyond four months, the existence of any such case that does not have proper justification should violate the JJCPCA 2000. In the year 2008 a report submitted by The National Commission for Protection of Child Rights (NCPCR).

In India has informed that over 5,000 cases against juveniles have been pending in the courts with many of them languishing for over 12 years.

In a speech on judicial reforms in February 2008, Chief Justice of India K.G. Balakrishnan pointed out that even with a network of

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615 [Convention on the Rights of the Child, Supra note 20, Article 40.](#)
616 [Supra note 600.](#)
617 The report was published on 02/18/2008 in [www.jGovernment.in/human/rights/](http://www.jGovernment.in/human/rights/)
about 14,000 functioning courts and a working strength of 12,500 judges handling 40 million cases, each judge in India was required to deal with a record number of 4,000 cases a year, clearly a Herculean feat.\textsuperscript{618} In July 1987, the Law Commission recommended that India ought to have 107 judges per million of population by 2000, the ratio achieved by the USA in 1981.\textsuperscript{619} A Parliamentary Standing Committee endorsed these in 2002. Yet, India still has only about 12 judges for every million people—even Britain has 51 per million—and the total case backlog is estimated at 29.2 million. In Delhi, the High Court had a backlog of 74,599 cases as of March 2008, which will take 466 years to clear, if the numbers of judges remain at the present 32, instead of the required 48, says the Chief Justice’s Annual Report on the Delhi High Court.\textsuperscript{620} No wonder, if this is the state of the principal justice system, it is not difficult to foresee that the juvenile justice system, being comparatively nascent, would be even less equipped to meet the needs of all children requiring care, protection and justice. According to Crime in India, 32,681 children were apprehended in 2005. Of which, 13,778 cases, or over 42 per cent, were still awaiting trial at the end of the year. The situation hardly improved two years later. In 2007, 14,297 cases, or 41.4 per cent of a total of 34,527 were “pending disposal”.

The latest figures are even more disturbing. Although NCRB statistics say 441 cases are pending, Delhi actually had about 4,000 juvenile cases pending at its two JJB at end 2008. Haryana and Punjab have 6,326 cases, while in Mumbai, about 450 new cases of juvenile crime are recorded each year, and there is a backlog of about

\textsuperscript{618} http://www.combatlaw.org/information.php?article_id=1138&issue_id=40
\textsuperscript{619} http://lawcommissionofindia.nic.in/101-169/Report120.pdf
\textsuperscript{620} http://www.timesonline.co.uk/tol/news/world/asia/article5748288.ece.
900 pending trial since 2004. The lack of an adequate number of JJB is the reason for the steep rise in the number of pending cases.\textsuperscript{621}

Has the situation improved? Not remarkably, going by the official figures. At Delhi’s JJB no 1 at Kingsway Camp, the backlog of cases as of 31 July 2008 ran to as high as 2,100. At JJB no. 2 at Delhi Gate, there were 1,859 cases pending, some from as early as 1998. Although since the High Court committee started working, many more children are being released on bail, reducing pressure on the homes, the total backlog of the cases in Delhi has reduced only slightly, from 4,550 as of 1 January 2008 to 3,554 on 1 November 2008.\textsuperscript{622}

Expressing concerns over the plight of juveniles in the country, the NCPCR Chairperson Dr Shanta Sinha stressed on following points,

The need to make the government, police and Judiciary more sensitive about the protection and welfare of children. He further made an observation that there was almost no provision for or linkage to remedial bridge school education for children with limited or disrupted education. Our imperative must be to ensure that all children coming into juvenile justice system are sent back to school and their families. He believed that the extension of the right to education through appropriate remedial mainstreaming is one of the most important factors that can fight criminalisation and institutionalisation of these children. Due to the lack of implementation in the actual practice of the Act, the NCPCR has established independent expert committees focused on children’s homes and the Juvenile Justice Boards to identify the gaps in the delivery of justice and implementation of

\begin{footnotesize}
\begin{enumerate}
\item Crime in India, National Crime Records Bureau, Ministry of Human Affairs, 2008.
\item Id. at 26-27.
\end{enumerate}
\end{footnotesize}
Juvenile Justice Act, and the tendency towards either treating them as criminals or putting them into homes and forgetting about them. The studies have shown that the length of the time spent in institution is too long most of the time and rate of restoration to the families is not satisfactory. It was observed that the rehabilitation of children with proper education and their protection from abuse require greater attention. It further mentioned that the national studies have also revealed that more than 50 per cent of children's homes do not provide any counselling services across the country. In addition that more than 80 per cent caretakers do not have any proper training to handle children, besides physical punishment is a dominant method to discipline the children at these children homes. It was emphatically stated that the need is to sensitize the judiciary, police and government machinery to protect children.

The critical aspect was non-implementation of the Act and the prime thing of non-implementation was non-compliance of the provision of JJCPCA by the states. The objective of the Act was for the best interest of the children and the parameter for the successful implementation the JJCPCA was enforcement of the Act in each state, district and the duty was on states to frame rules and implement the same. It was observed that the states were lacking far behind and they showed no hurry in working for implementation of the Act.

It has been observed that at several occasions higher judiciary took keen interest in welfare of children. Recently Supreme Court in the year 2010 pulled up the government for not doing anything to co-ordinate with the state governments and union territories for
implementation of the JJCPA 2000. A stringent observations made by the court state that, “We had indicated to the central government to co-ordinate with the states and union territories for implementation of the Act. Unfortunately till date there is no channel to co-ordinate with the states”.

In 2006, a Writ petition was filed before the Honble Supremo Court to brings to fore the non-implementation of the JJCPA 2000. The petition filed under Article 32 of the Constitution of India seeking the strict implementation of the JJCPA 2000. The petition outlines a detailed study in twelve states of India (Punjab, Bihar, Orissa, Madhya Pradesh, Uttar Pradesh, Rajasthan, West Bengal, Maharashtra, Manipur, Gujarat, Karnataka and Uttaranchal), which highlighted that the JCPCA was not being implemented. Most of these states failed to establish the following mandatory provisions: the establishment of Juvenile Justice Boards (JJB), Child Welfare Committees (CWC) and special Juvenile Police Units. The Act also requires State Governments to establish Observation Homes, Special Homes and Children’s Homes, which are to provide facilities of care, treatment, education, training and ultimately restore them to a family environment. The importance of these provisions is that they afford protection of the rights of young offenders. The attitude and ignorance of the State towards the care, protection and rehabilitation of neglected or delinquent juveniles was appalling.

The following recommendations were put forth to ensure that the rights of juvenile offenders are not violated, and to rehabilitate the offenders:

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623 news.in.msn.com/national/article.aspx?cp-documentid=4422801
624 Sampurna Behrua v Union of India & others, Writ Petition (Civil) No. 473 of 2005.
• That Police and government officials ensure the implementation of the JJCPCA in the respondent states. Officials who fail to implement the Act should face due punishment.

• Mandatory institutions to be set up, within the specified time frame.

• To provide basic amenities in the homes to child offenders.

• Respondent States to involve reputed NGOs in the implementation of the orders.

This petition seeks to enforce the implementation of the JJCPCA 2000 with the aid of the recommendations put forth. It was observed that only four states (Gujarat, Orissa, Manipur, and Uttaranchal) have complied with the provisions of the JJCPCA. In the year 2007, the Apex Court directed all the states to produce responses explaining their failures and the steps being taken for the implementation. As usual, the states hedged and delayed their reporting, perhaps because no further attempts were made to implement the act. Fed up with the states non-responses and after waiting for more than two years, finally the Supreme Court directed all the Chief Secretaries of the non-compliant states to scramble the responses. It was thought that this will bring fore the facts but it took another two years to bring the true picture of the states in front of the Court. Eventually in the year 2010-11 the Court persuasion resulted in states response, which gave the true picture of the implementation of the JJCPCA. Table-1 given below is based on the order passed by
the Apex Court regarding the compliance of the requirement of JJCPA. The 9 states till now have submitted the detailed report.

**TABLE-1**

<table>
<thead>
<tr>
<th>States</th>
<th>Districts</th>
<th>JJB</th>
<th>CWC</th>
<th>SJPU</th>
<th>SH</th>
<th>CH</th>
<th>OB</th>
<th>ACH</th>
<th>SPL.H</th>
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<tr>
<td>West Bengal</td>
<td>19</td>
<td>19</td>
<td>1</td>
<td>1</td>
<td>26</td>
<td>17</td>
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<td>Delhi</td>
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<td>4</td>
<td>14</td>
<td>6</td>
<td>77</td>
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<tr>
<td>Maharashtra</td>
<td>35</td>
<td>35(only 31 functional)</td>
<td>35</td>
<td>1076</td>
<td>60</td>
<td>4</td>
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<td>Tamil Nadu</td>
<td>32</td>
<td>8</td>
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<td>Himachal Pradesh</td>
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<td>Madhya Pradesh</td>
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<td>Orissa</td>
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<td>Karnataka</td>
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<tr>
<td>Uttarakhand</td>
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From the abovementioned table we can state that most of the states have compliance by establishing the JJB/CWC but still there is no clear view on whether they have formed the Children homes, special homes, shelter homes, after care homes, observation homes. Few of the states have establishes these homes. The court has given further more time to states like Arunachal Pradesh, Bihar, Chhattisgarh, Jharkhand, Pondicherry and Andaman & Nicobar Islands to file there response. It seem from the above study of the case that court is taking keen interest but state governments are not interested in fulfilling their duty toward the youth of country. It is pertinent to mention here that after almost five years of continuous coercion by the court the states filed their responses regarding the implementation of JJCPA 2000. This cannot be denied that during this long period of five years the states must have managed to
establish requisites for the compliance of the Act. So we can imagine the work done in hurry just to show the data before the court how effective that would be? The real implementation is yet to be seen by watching the working of these institutions in practicality.

Homes For Juvenile

The main objective of juvenile justice system and CRC and other international standards in regards to the juvenile in conflict with law and children in need of care and protection is of preventing juveniles from coming in conflict with the law in first place as well as a complete rehabilitation by the time they leave the juvenile justice system. The JJA makes provision for the establishment and recognition of a necessary number of observation homes, juvenile homes, and special homes by the state. A ‘fit person’ and ‘fit institution’ along with a ‘place of safety’ are persons, institution, place found fit or safe, as the case may be, by the competent authority. The Sinha Committee in 1968 had recommended.\(^{625}\)

As an immediate measure, during the Fourth Plan period, one Remand Home should be set up in each district with minimum capacity of 25 children, two Children’s home in each district, one for girls and one for boys, two certified schools for group of five district (one commissioner area), one for girls and one for boys... in each state.

The official figure for 1985-6 mentioned 232 observation homes, 87 juvenile homes and 114 special homes, this short by 1025 homes as per the Sinha committee recommendation. After lot of persuasion, in 1987, the total number of official recognized homes turned out to be 1399. In the year NISD reported 280 observation homes, 251 juvenile homes, 36 special homes, and 46 after care

\(^{625}\)Supra note 604 at 211.
institutions in the country, that is, a total of 613 homes for whole of India, a shortfall of 786 homes by the time the JJCPCA came into force.

It is important to mention here that due to lack of data as the official data available is outdated, incomplete, misleading and bereft of any qualitative analyses make it impossible to give full picture prevailing in all states. The total number of 224 juvenile homes and forty-two observation homes covered 401 out of 415 districts in India in 1990-1 and 1991-2 while 278 special homes covered 472 out of 486 districts in 1992-3. The total capacity of these homes in these three years was 40,434 with daily average population of the institutions at 7,475. The absence of data available leads to incomplete assessment of the situation.

After going through the limited data available and by comparative analysis it can be stated that there does not appear any correlation between the number of homes and their capacity.

As per the JJCPCA 2000, amendment in 2006 and Model Rules 2007, it is specifically mentioned that every district or group of districts must establish and maintain the home. The duty is on the State Government to establish the homes and thereafter have CPU and advisory boards for monitoring the same. From the Table 1 we can state that as per the requirements of the act the same is not fulfilled by the state. The National Human Rights Commission (NHRC), which had been monitoring the status of the implementation of the JJCPCA, 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

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626 “Children in need of care and protection” 145 Social Defence, p1 at 5 (July 2000).
expeditiously take up cases relating to juveniles and children in need of care and protection.\textsuperscript{628} “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 catering to the needs of juveniles, 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 JJA within three months and ask them to constitute Child Protection Units in every district to take up such issues.\textsuperscript{629}

The JJCPCA mandates at least an observation home and special home in each and every district of the country. Section 4 of the 2006 amendment says all these must come up within one year of notification of this Act, or by the end of 2007. But in reality it seems that government failed to provide even the basic to the children.

**Police**

In a civil society the police force plays a dominant role. The police are involved in crime detection, crime prevention, maintain law and order and various other tasks. The relationship between juvenile offenders and police a precarious one. When police apprehend a child for alleged committing an offense, it is generally the first point of contact between the child and juvenile justice system. The U.N Standard Minimum Rules for the Administration of juvenile Justice (Beijing Rules) advise that interactions between juvenile and police should “promote the well being of the juvenile and avoid harm to her

\textsuperscript{628} http://nhrc.nic.in/qisparchive.asp?fno=1411

or him”. The Riyadh Guidelines go further, suggesting that police “should be trained to respond to the special needs of young persons”.

The police were the primary agency to bring children under the purview of the Children Acts and continue to do so despite some other individuals and organizations being authorized under the provisions in the JJA enacted 21 years later. According to JJCPA 2000 under the Section 63 envisages the creation of a Special Juvenile Police Unit (SJPU) in every district and city to handle cases relating to children. Also, every police station should have a juvenile /child welfare officer and every police district should have a juvenile police unit consisting of these officers. All these officers should have special training to deal with all kinds of children in trouble. As we know that police are one who first encounters these children so the behaviour and attitude of the police is very important.

The importance of the role of police in relation to juvenile delinquency has been recognized since long ago. The Children Act not the police manual had recommended any special measures to be adopted by the police in the investigation of juvenile offenders. In the report of the seminar on Juvenile Delinquency it recommended, looking to the specialized needs of the job, it is now urgently necessary that police departments set up Juvenile Aid Bureau in all important cities and towns . . . Training in juvenile field work should be a pre-condition for the establishment of such services. The recommendation of the Sinha Committee was similar. It has suggested that, “Wherever possible, special juvenile police, oriented

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631 Report on Juvenile Delinquency, Role of Police, New Delhi, (25-7 November 1965) at 14-16.
632 Ibid.
in child welfare, should be provided. Special care should be taken so that the child is not subjected to harsh treatment during the period of investigation.\textsuperscript{633} No concrete data is available due to which development on the subject is not known at national level. Under JJCPA 2000, 704 special juvenile police units are needed and the number of police officers needing training is estimated to be 2112.\textsuperscript{634} Due to limited data and lack of accuracy it is difficult to say how many SJPU is made and whether the police is given proper training as per the Act.

**Probation Officers**

The JJA 1986 conceived of an individualized treatment programme for each child and included specific provisions for the probation officer's report in making orders. Similar provisions have been omitted from the JJCPA 2000, though its Section 51 continues to provide that reports by the probation officers shall be confidential.\textsuperscript{635}

Reports prepared by the probation officers about the background of child is the most important tool in the hands of the competent authority for deciding the best course of action for the child. The Sinha Committee also suggested that boards in reaching decision should take the help of the probation services available. It was observed that as per the direction given by the Supreme Court in sheela barse case\textsuperscript{636} to appoint probation officers, shows that majority of the states notified the existing district welfare officers or the probation officers

\textsuperscript{633} Supra note 604 at 211.
\textsuperscript{634} Report of the working group on Children in especially difficult circumstances, p. 28, submitted to the department of women and child development, HRD ministry by Prayas Institute of juvenile justice, New Delhi (year not specified)
\textsuperscript{636} 1986 SCC (Cri) 337.
functioning under the Probation of Offenders Act 1958 as the probation officers under the JJA also.\textsuperscript{637}

As we know that the probation officer has to investigate the case, required to talk to the child, record is view, prepare SIRs (Social Investigation Reports). For making the SIR the P.O. visits the juvenile’s place of residence and interviews the parents. Beyond this there seems to be no procedure for interviewing the peers, teachers or employers. In an article by Dasguta, Meghna\textsuperscript{638} she brings out the fact of cases before the JJB and the way judges handle them. One of the Juvenile Justice Board member when asked about SIR, the statement made thereof is shocking to learn the nature and the sensitivity of Judges in handling cases related to the children. How can be they so casual in approach? The judge stated, “All that I refer to the SIR is for any habits that the child might have and the neighbour’s report. The rest I can easily find out by asking the juvenile directly during the JJB proceedings”. So where is the holistic report of the juvenile which is what the SIR boasts of being?

One more factor that is even more alarming is that the juvenile in question might not even have committed the offence. But because of lack of knowledge and proper guidance they take the easiest way to get out of the situation and to avoid lengthy proceedings by admitting the offence. The possibility of this happening increases more when reality check is done. Many times NGO has reported such thing that is the POs do not check up on the accounts given by the juvenile and his family with anyone else. Preparing of the SIR while filling this basic information gathered from the juvenile the probation

\textsuperscript{637} Kumari, Ved; The Juvenile Justice System, from Welfare to Rights, (2004).

officers tend to be very vague and often leave parts of the SIR blank. All this has resulted in there dundancy of the role of the SIR.

The work of probation for purposes of the JJCPCA is assigned to different departments in different states. In 2006 amendment it did not provide for a separate cadre of Probation Officers concentrating exclusively on matters relating to the release of children in conflict with law on probation, their supervision and rehabilitation. In some states, probation service is placed under the Social Welfare Department, while in others it functions under the Panchayat Department or the Home Department. The task of the probation officers does not receive the necessary importance and as a result the cadre remains a mere formality. Not surprisingly, they are not adequately trained. They are recruited young, between 20 and 26 years, with little effort made to assess their interest in social service, which is the basis of probation services, and are given to handle the huge number of cases. The probation programme that is already lagging behind, has received a setback due to paucity of personnel and funds.

The reality shows that the problem begins with the very process of recruitment of probation officers. Although there is a special law for the appointment and duties of Probation Officers attached to courts as per the Probation of Offenders Act, 1958, all the Probation Officers in Delhi are appointed by the Department of Social Welfare and are part of the regular pool of social workers or appointed by NGO Prayas (which runs the Delhi Gate OHB) which has been assigned this job. Since they can be called back to the department any time, they are not trained in providing any specialized probation services. Again,

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because they are not strictly part of the judicial service and staff of the Department of Social Welfare, the JJB finds it hard to exercise supervisory authority over them.

In Delhi, there were only 10 such Probation Officers handling more than 4,700 cases. The Probation Officers are expected to cover cases across the city, but are expected to travel by public transport, which makes them reluctant workers. Not surprisingly, the SIRs are delayed or cursorily done, even faked. The after probation services too are not very effective because even when a sentence of probation has been passed and the offender is placed under supervision it is nothing more that a regular visit to the officer, if that at all.641 The situation is not different in all states, the working of the probation officer lack in efficiency, accountability and lack of training which lead to the delays in the proceedings before the JJB. The real condition can be described by having a glance at the state Bangalore, where there are many files—350 according to one Probation Officer642 for which the JJB staff have received all documentation, including the charge-sheet, but have yetto prepare the files to bring before the JJB. During hearings, the JJB in Bangalore spends more than half of its time waiting for cases to be called, because the staff does not properly prepare files for hearings, resulting in unreadable files or failure to bring the correct files at all.643 In one instance, although approximately twenty-one of the thirty-eight boys in the home were

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641 Supra note 628.
643 Ibid. Observation of Juvenile Justice Bd. hearing, in Bangalore, India (July 18, 2007).
scheduled to have hearings on July 18, 2007, the JJB heard only five cases that day, for seven boys total.644

The Probation Officers blame their delays and inefficiency on a lack of training. They have all recently transferred from various departments (since January 2007), and have no training in proper courtroom procedure. However, the Chief Municipal Magistrate of Bangalore and other JJB staff attribute Probation Officer in competence to a lack of accountability.645 Both of these assertions are likely to be true, as staff members are working without training and without any external motivation. The JJB does not have supervisory authority over the Probation Officers, and therefore cannot compel them to work. There is currently no other form of supervision or accountability for the Probation Officers.

As discussed earlier the Probation officer has an important role towards the children and the report filed by them is the crucial document. Recently the question regarding the inefficiency and casual approach of probation officer again brought forth in one of the case before the JJB is Delhi. An FIR No. 193 of 2010 one of the juvenile is in protective custody since 20.09.2010. Ever since the date of his apprehension the efforts were being made to trace out his parents so that his custody could be restored to them. In this matter the Legal Aid Counsel filled an application that restoration of the child is one of the most important issues under the JJCPA, and the Probation Officers who, under the Act are the persons responsible to look into this aspect have beena failure. It is said in the application that till now Legal Aid Counsels have been doing the needful for the rehabilitation as also the restoration of the child when in fact this is the duty of the

644 Id
Provision Officers. It was found that the SIR report filed by the Probation Officer lack in giving clear details about the finding of the case. As per the duties mentioned under the Section 13 of JJCPA and Rule 87 of Delhi JJ Rules 2009, the report was incomplete and did not mention the details of the inquiry.

The Rule 87 of The Delhi Juvenile Justice (Care and Protection of Children) Rules 2009 (hereinafter referred to as ‘the Rules’) elaborates the duties of Probation Officers further and it is reproduced herein below:

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

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

(a) making social investigation of the juvenile (Form IV).

(b) attending the proceedings of the Board . . . and submitting reports as and when required;

(c) clarifying problems of the juvenile..... and dealing with their difficulties in institutional life;

(d) participating in the orientation, monitoring, education, vocational and rehabilitation programmes;

(e) . . .
(f) assisting the juvenile... to develop contacts with family and also providing assistance to family members;

(g) developing a care plan for every child in consultation with the juvenile ...and following up its implementation;

(h) participating in the pre-release programme and helping the juvenile ... to establish contacts which can provide emotional and social support to juvenile ... after their release;

(i) establishing linkages with voluntary workers and organizationsto facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow-up;

(j) follow-up of juveniles after their release and extending help and guidance to them;

(k) . . .

(l) . . .

(m) . . .

(2) On receipt of information from the Police or Juvenile or Child Welfare Officer of the Police under clause (b) of Section 13 of the Act, the probation officer shall inquire into the antecedents and family history of the juvenile or the child and such other material circumstances, as may be necessary and submit a social investigation report as early as possible. . .
In the scheme of the Act and the Rules- the role of probation officer is of immense importance. The probation officer is supposed to be in the knowledge of the case from the time of apprehension of the juvenile and is required to continue his work even after the disposal of the case.

JJ Board, apparently irked on these kind of repeated incidents, observed in its order: "... in practice the probation unit working with Juvenile Justice Board is almost dead. The only work which the P.Os are doing in the Board is preparing the Social Investigation report that too when called by the Board. No probation officer in any matter has come up with a rehabilitation plan of a child or has given insight to the Board on the needs of any juvenile. The probation unit thus is not doing the work that the Acts expects from and requires it to do and is as such a complete disappointment".

From the above incident and study it clearly shows the real situation of the working of the probation unit while practicing under the Act. Thus it is not doing the work in accordance to the Acts expects from and requires it to do and is as such a complete disappointment. A probation officer is supposed to come in action the moment a juvenile is apprehended. The police of the Juvenile Welfare Officer as the case may be is required to furnish the details of apprehension to the probation officer immediately after apprehension of the juvenile (Section 13 b).

Apparently the things are not working as per the requirement of the Act and there has been some lack of communication between the police and the probation unit. The probation unit apart from filing the social investigation report is also required to contribute in the steps taken for restoration of a juvenile and his rehabilitation.
Fundamental principle XIII of the Delhi Rules says that every child has a right to be restored to his family at earliest.

XIII. Principle of repatriation and restoration is reproduced:

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

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

The probation officer is supposed to be the most important contributory in getting the juveniles repatriated and restored. Hon’ble Mr. Justice R.V. Raveendran in an article on Key responsibilities and approach (of the probation officers) has written that:

The skill and knowledge required to supervise adult offenders on probation are completely different from the skills and understanding required for supervising the juveniles in conflict with law” and quoted A.E. Jones in ‘Juvenile Delinquency and the Law’ as under:

... the relationship between the Probation Officer and the probationer shall be of little value if it is regarded as a matter carrying out the terms of a contract for a certain period . . . The essential power of the probation officer is in his personality; if he can inspire

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646 Order passed by the JJB 1 Principal Magistrate Anuradha Shukla dated 10.03.2011. A copy of this order be sent to the chief probation officer with a Direction to ensure strict compliance of the order. A copy of the order be also sent to the DCP outer. DCP north, DCP West, incharge crime branch for the necessary directions for Compliance to their subordinates.

647 Ibid
devotion in his charge; if the probationer becomes filled with a
genuine desire to gain his approval; if the parents accept him
unreservedly as a wise friend of the family and profit by his
suggestions on the upbringing of their offspring; then the probation
officer may hope for a true success... The probation officer can only
cure delinquency by affecting a change of heart either in the child
or the parents.

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

By this order, Principal Magistrate of JJB 1 in Delhi, has taken
the Probation Unit to task, pointing out their pathetic way of working,
expressing complete disappointment, terming it as “almost dead”. While making the above observation the JJB also laid down law and
duties to be followed by the Probation Officer in each matter while
dealing with children. Same is enacted here in below and at some
time it shows the keen interest taken by the JJB in Delhi for the
welfare of the children which is appreciated all over the NGO working
for child right and welfare.

The court directed and to give effect to the law it is stated
hereby:

1. That the police or the juvenile welfare officer as the case
may be shall immediately on the apprehension of the
juvenile inform the probation officer of Juvenile Justice
Board. On every apprehension memo there shall be
mention of the name of P.O. who has been informed of the apprehension.

2. That the concerned probation officer shall come into action immediately on receipt of this information and shall come into action immediately on receipt of this information and shall not wait for an order from the Board to file an S.I.R.

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

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

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

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

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

3. In this regard the P.O. Shall establish a contact with voluntary organizations and workers and shall work in consultation with the legal aid counsels and counselor.
The P.O. concerned shall in case of each juvenile file a monthly report during the pendency of his inquiry and six monthly report post release unless directed otherwise in any particular case.

The efforts are being made in the JJS but they are too minimal, as shown from the above analysis it is stated that still lot more is required to be done. As stated by the JJB in Delhi the working of PO is almost dead, this cannot be denied. What more we can expect from the state that are far from the glare of the public, press, NGO and government, when the condition in the capital is so disappointing. Though efforts are made in positive direction but it seems another two-decade will passed if it continue in such a pace. It would be appreciating if Supreme Court, government and other monitoring mechanism expedite in the process of implementation of the Act successful.

Community Participation

Under the JJCPA community participation is the vital factor. The role of community in the rehabilitation of children had been duly emphasized in relation to the JJA as well. The state government may involve the individuals and voluntary agencies at various stages of apprehension, treatment and rehabilitation of child under the JJA. Never to forget that the Children Act to had made provisions for community participation, though they differed in respect to the extent of community involvement in their operations. The Sinha had committee observed, ’Although the main responsibility for the provision of services for delinquent and neglected children rest with the government, it would be desirable to utilize to the utmost the
services of well established voluntary organizations for providing specialized institutional and after care services.  

The involvement of the voluntary workers and organizations has been marginal in the implementation of the JJCPCA, JJA as well as Children Acts. There are only limited data available homes run by voluntary organizations recognized as the homes, fit person, or fit institution for the purpose of JJS. The voluntary organizations have been encouraged throughout these years to provide institutional care to juveniles, rehabilitation etc.

The 2006 amendment, it was hoped, would create fresh methods of rehabilitation, and see institutionalisation as the last option. As rehabilitation of a child in an environment conducive to its growth and development is the primary objective of the JJCPCA, chapter IV has been incorporated to exclusively deal with rehabilitation and social reintegration. As stated by the Maharukh Adenwala in his article that in backdrop it is disheartening that the phrase “ultimate rehabilitation through various institutions” occurs in the preamble of the Act, though fortunately different options have been considered in the main text. Institutionalization is still the first option depriving children of their right to liberty. Ratna Saxena, former Superindentent of Prayas OHB at Delhi Gate, says, “The state government is simply not interested in diversion, restoration or innovative alternate care methods. There is just too much of a preference for status quo.”

One more thing that come into light while analyzing that there are no mechanisms highlighted in the JJA for selection, monitoring

648 Supra note 604 at 212.
and evaluation of foster care or sponsorship programmes, after care and adoption. There are very few aftercare homes in the country. Delhi has three, but children from homes run by NGOs don’t find room there. Mostly, at 18, if he doesn’t have a family, the child is let loose on the streets, with little education and few skills, to undertake life’s difficult journey helpless and on his own. In the case of children whose families are far away, the JJ system makes little effort to trace them for restoring the child. Repatriation of children to their home states or countries, especially of those belonging to neighbouring countries like Nepal and Bangladesh – and their number is quite high – is very poor.

Adoption and foster-care is the other alternative to be considered by the CWC in appropriate cases. The CWC is to declare a child free for adoption. While the amendment to the law in 2000 gave power to the JJB to carry out investigations and give the child in adoption, this power has subsequently been taken away through the 2006 amendment. This is following the Supreme Court’s intervention on adoption matters. Only a District or High Court is now empowered to give a child in adoption.

In the year of development in area of rehabilitation and social reintegration it was observed that when compared to foster care, adoption, both intra-country and inter-country, has caught on better. One unexpected impact of the new policy has been that inter-country adoptions have become a fertile ground for child trafficking. The Delhi state WCD department says it allowed 235 domestic adoptions in 2007 and 230 in 2008. Kerala, the best performing state in this regard, saw 300 adoptions in 2006. Still, a vast number of children in need of care and protection are waiting to be adopted. Even the list of parents who are keen to adopt them is growing longer every year. D. Githa, an
advocate based in Chennai and an adoptive mother herself, says, “About eight lakh children are orphaned every year, putting them in need of permanent substitute families. But a huge vested interest group is at work to keep children in institutions, denying them a chance to lead a happy family life”. India has no centralised list of children offered for adoption nor is it possible to know how many families are waiting patiently in the queue. According to Githa, only 18 states in India have a good adoption programme. States such as Bihar are practically virgin states in terms of adoption, with few agencies registered for the purpose.

The Central Adoption Resource Agency (CARA), under the Union Ministry of WCD, which has been working as a centralized coordinating agency since 2003, tells us that 3264 adoptions took place in 2007, including 770 inter-country adoptions, compared to 3831 adoptions (including 1298 inter-country ones) in 2001. Unfortunately, that’s about all the figures it has. Also, this figure doesn’t include other domestic adoptions conducted through licensed adoption agencies recognized by state governments. The main issue surrounding adoption is the role and legitimacy of the adoption agencies, most of who continue to function without licenses or registration, never bringing in the child through the JJS. This is the biggest challenge before the JJS today. In this connection, the recent Gillani case in Delhi holds out a lone beacon of hope for adoptable children and the use of the JJA in facilitating such adoptions. Syed Gillani and wife Pallavi’s two-year attempt to adopt a baby girl from the childcare home run by the Church of North India finally met with
success when the final order clearing the adoption was passed in October 2007.  

Financial Resources

The funds are one of the important resources necessary for the implementation of the infrastructure under the JJS. Lack of it has been mentioned reason for non-implementation. Under Children Acts the responsibility was of states for providing infrastructure. Even in JJA and JJCPA the primary responsibility for their implementation is on the states.

The available data on expenditure by the states on juvenile justice machinery is limited on the homes established under the Children Acts and JJA. The is insufficient in many aspects like showing repetitive figures in numerous cases, sometimes acknowledged to be relating to an earlier year, at other times without such acknowledgement. Also, the grand total did not add up to the break-up given in other columns in many cases. Reason can be printer or the states may have given incomplete details. From the data it can be said that few states are sending regular data about the institutions under Children Act/JJA.

Despite the limited statistic available form the research and study it can be stated that the Government funds reach only a few big states. A report by the NCPCR gives the true picture of the funds:

The flagship centrally-sponsored scheme, A Programme for Juvenile Justice, run by the Ministry of Women and Child Development, had a revised budget allocation of Rs 23 crore in 2006-

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651 Church of North India v Syed J M Gilani and others, Guardianship Petition No. 497 of 2006.

652 In many cases, the grand total of expenditure on homes printed in “Statistical Survey”, 144 Social Defence, at 43 (April 2000); “Statistical Survey,” 117 Social Defence, at 43 (July 1994); “Statistical Survey”, 114 Social Defence, at 54 (October 1993); is not the sum total of the expenditure mentioned in other columns.

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07, of which Rs 21.7 crore was utilised. The scheme reaches 39,962 children living in 711 homes in 25 states and Union territories. The cost is shared equally between the states and the Centre. Being the only one of its kind, the scheme is popular. Utilisation of funds was 89.5 per cent in 2002-03, 102 per cent in 2003-04 and 94 per cent in 2006-07. Yet, the scheme served to promote huge disparity in use of central funds.

Only 70 per cent of the states have been able to make use of these funds. Arunachal Pradesh, Himachal Pradesh, J & K, Jharkhand and Manipur could not use the funds because of their inability to contribute a matching share of 50 percent. Maharashtra alone received more than 35.5 per cent of the total funds released in 2002-03 and 45.31 per cent in 2003-04.

In 2006-07, 65 per cent of the budget was spent on only four states Maharashtra, Uttar Pradesh, Andhra Pradesh and Madhya Pradesh. Maharashtra, a state with 35 districts, had 273 fully funded homes under the JJ scheme, while Uttar Pradesh with 60 districts had only 47 homes.653

Recent Development Regarding Funds

After continuous persuasion from the agencies working for the child welfare the funds given to the institutions and has little improved in one way and malfunction on the other hand is eating the system. As we have observed earlier also lack of resources can be a huge roadblock in enforcing the mandate of the law. The allocated budget for all interventions that are required for children in need of care and protection as well as those in conflict with law in 2008-09 was Rs

262.7 crore. Yet, the specific programme for Juvenile Justice, called Prevention and Control of Juvenile Social Maladjustment, received less than Rs 22 crore, not even 10 per cent of the total. Observation made by one of the prominent NGO HAQ working for the welfare of the children and especially juveniles has calculated that just one day’s expenditure on all the CWC and JJB members, were they to be in place in full strength, would amount to Rs 2,13,800 for a single day (based on the norm of Rs 500 per member per sitting, with a minimum number of three sittings a week). Add to this other administration costs, as well as the salaries of all the principal magistrates, and it is no wonder that posts remain unfilled at so many levels.654

A lot of hope is riding on the new Integrated Child Protection Scheme (ICPS), designed by the Ministry of Women and Child Development to be a solution to the many implementation concerns, through an entirely new bureaucratic structure State and District Child Protection Units (CPUs) and increased expenditures for child protection. The CPUs are intended to be both supervisory bodies as well as the chief funding resource for all Observation/Special Homes, JJB and Special Juvenile Police Units. Although some allocations were made in the past two fiscal years (2007-09), little money was spent as the scheme was waiting for approval from the full Planning Commission, which came only in February 2009. The scheme will hopefully get a realistic budget allocation after a new government takeover at the Centre and passes a full budget. The allocation of Rs 60 crore (including Rs 6 crore for the north-east) in the Interim Budget

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for 2009-10 would have to be substantially hiked for the scheme to make any impact at all.\textsuperscript{655}

Lets have a look on the Budget that has been sanctioned in past few years for the implementation of the juvenile justice system.

**Budget for implementation of Juvenile Justice (in Crore)**

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<td>18.90</td>
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<td>38.50</td>
<td>180.00</td>
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<tr>
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<td>54.49</td>
<td>51.06</td>
<td>57.03</td>
<td>64.90</td>
<td>62.07</td>
<td>164.1</td>
<td>114.58</td>
<td>262.70</td>
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Source: HAQ: Centre for Child Rights

For the proper implementation of the Act, it has been observed that only 20 states have constituted the three types of homes prescribed under the Act. Most of the states have not framed their own rules after 2006 amendment. Many states have yet to set up the Juvenile justice funds under the Act or have not set up the fund and not began utilizing it. Delhi set up a Rs 20 lakh fund in 2008 but has not spend anything out of it.\textsuperscript{656}

**Mismanagement of The Fund**

The mismanagement of funds at the institutional level has been particularly connected with the purchase of provisions and other

\textsuperscript{655} The 2009-10 Budget has allocated Rs 60 crore for this scheme, which is not enough at all.

\textsuperscript{656} Supra note 649.
materials for children. The lack of a proper monitoring and auditing system increases the risk of the funds allocated for child welfare being misused and misappropriated.

Herein below a report published by the NCPCR is reproduced to the apathy of the system,

The stocks and stock register in the homes reflect poor accountability as they are rarely updated and have been an issue throughout the visit to the institutions. The quality of food materials, especially vegetables and fruits, were found by the visiting NCPCR sub-committee member to be extremely poor in many institutions especially in Bihar and UP especially. In contrast, the quality of food items in Maharashtra where the NGOs were part of the management and in Assam where children were part of the kitchen management was much better. There is a lack of transparency and accountability within the system. The financial information is not accessible and open. This leads to certain malpractices that continue to go unchecked. In Bihar for eg, the sub committee member observed during his visit, account books and the stock registers were beyond access due to the absence of the staff concerned and also because the books were not updated. There appeared to be mismanagement of the stocks as there was very minimal stock available in the kitchen which seemed barely sufficient for the number of children in care. A review of accounts submitted by a home in Bihar revealed that the bills for the purchase of coal and provisions over a month had serial numbers running in order. This indicates the possibility of the bill books being fraudulently printed and used for accounting purposes.

To prevent corruption in the homes, NGO Pratidhi in Delhi has used the Right to Information Act to gain access to financial
information within institutions. They have unearthed gross
misappropriation of funds meant for children in several instances.

In Alipur Children’s Home for Boys, for instance, they found that
the annual budget for purchase of undergarments amounting to
around Rs 20 lakh was misappropriated against a forged quotation
from Kendriya Bhandar.657

The above observation was made on the different parameters
to see the actual implementation of the JJCPA 2000.

Non Implementation By States

The JJCPA and JJ Rules clearly put the onus of
implementation of Act on states. It is duty of each state to frame their
Rules and make effective implementation of the Act. Until state make
their own Rules the Central Model Rules 2007 to be followed by them.
There are many factors that lead to the non-compliance by the states.

The role of the government/ state can be classified under three
basic heads-

• Setting up infrastructure;
• outlay of funds;
• Monitoring the system.

Infrastructure

It is the duty of state to provide the basis necessities, which are
required for the implementation and effective working of the system.
The State Governments to bear the cost of infrastructure and services
development under the Juvenile Justice Act in order to ensure that in
no circumstances the child in conflict with law and child in need of

care and protection remain unattended. State shall ensure minimum quality standards in the juvenile justice services, should provide adequate services for prevention of social maladjustment and rehabilitation of socially maladjusted juveniles. The state should ensure the building for Juvenile to be used as observation homes, special homes etc. Unless we have proper infrastructure the real goal cannot be achieved as the person on question are children who are vulnerable and need amply care and protection and place of safety. Infrastructure includes following:

1. Identification of Sites and purchase of suitable Land in Districts for creation of Observation Homes, Special Home, Children Homes, JJ Boards, Child Welfare Committees, Place of safety and After Care Homes.


3. Expenses on salaries, Honorarium of members of JJB, CWC, their staff and manpower required for the all the statutory Homes.

4. Expenses on purchase of Vehicle & Ambulance, office equipments, computerization, furniture / fixtures, stationery items, electricity, water charges, telephones charges, day-to-day maintenance charges and Conveyance charges.

5. Expenses on food, clothing, education, vocational training, medical care, rewards /awards, sports materials, security etc.
Other important thing by which state can achieve the target is by ensuring the participation of community and other organizations into the care and protection of children in conflict with law who are perhaps more vulnerable than other groups of children. In Delhi it is the Ministry of Women and Child Development which is responsible for the implementation of the JJA. It is responsible not only for setting up the entire infrastructure right from the notification of JJCPCA to the notification of the JJBs to the setting up the homes. But it is also responsible for improving the delivery mechanism of the entire system set up. One of the best examples of India’s new partnership approach is the Prayas Observation Home for Boys in Delhi which is owned by the government, but managed by Prayas, a national children’s NGO, through a partnership agreement. The Government provides grants to Prayas to run the institution, which is staffed entirely by Prayas personnel. With the help of this facility, Prayas made significant changes to the physical environment to make it less prison-like and more child-friendly. Prayas has a team of counsellors and probation officers on staff who assess the children and conduct family tracing and family reunification. All children participate in education and vocational training, and regularly take part in recreational and cultural activities, including regular outings and sporting activities in the community. This is one of the best examples that is stepping stone towards the welfare of children and help them to become better human being.

What more can be done to make the system effect. For enabling an effective rehabilitation mechanism it is vital to delineate the roles of different ministries including Departments of Health, Education, Social Welfare, Urban Basic Services, Backward Classes & Minorities, Youth Services, Police, Judiciary, Labour. Once these roles are properly defined, the different departments must then work in
tandem for improving the standard of institutional and non-institutional services. In 2009 a centrally sponsored scheme called Integrated Child Protection Scheme (ICPS) was introduced. The central government has provided an outlay of Rs 1,073 crore during the XI Plan period towards implementation of this scheme. This scheme aims to bring the different schemes of child protection under one window and improve the delivery of the system. It aims to improve access to and quality of services, higher public awareness about the reality of child rights, situation and protection in India, articulate responsibilities and enforce accountability for child protection, establish functional structures at all levels for delivery of statutory and support services to children in difficult circumstances and evidence based monitoring and evaluation.

One of the major requirements under the scheme is the provision for setting up dedicated service delivery structures; i.e. State Child Protection Society [SCPS]; District Child Protection Society [DCPS] and State Project Support Unit [SPSU] to manage and monitor the implementation of the scheme and ensure convergence with other line departments; wherever required. However these are yet to be set up by the states. But the efforts towards the better working of the system can be assumed from the above set up of ICPS. But still the real implementation is far off until the each state on priority makes the enforcement of these enactment which are more on paper and less in practical. Now at glance lets have a true picture of the states regarding the enforcement of the JJS and the Rules. The Ministry of Woman and Child Development publish the report. The report is updated on
March, 2010 which give the clear view on the Status of the Implementation of the JJCPA 2000 in the States/UTs.  

1. Andhra Pradesh  
   a) Rules under JJCPA 2000 notified on 8.5.2003  
   b) JJBs constituted in all 23 districts of the State.  
   c) CWCs constituted in all 23 districts of the State.  
   d) Observation Homes for Boys. Three Observation Homes for Girls.  
   e) Three Special Homes for Boys and Girls namely Hyderabad, Vishakhapatnam and Tirupathi are functioning in the State.  
   f) Under Section 37 of the Act, State Govt. has recognized 18 NGOs for running Shelter Homes and 2 NGOs for running After Care Homes.  
   g) Applications of 11 NGOs for issuing Certificate of Fit Institution under Section 37 of JJCPA 2000, is under process.  
   h) Department of Women and Child Welfare is dealing with Adoption procedures and Foster care of infants.  
   i) Under the Act, State Govt. is competent authority to carry out the various schemes of sponsorship for children and is dealt with in the Department of Women and Child Welfare.  
   j) The State Advisory Board constituted.

\[659\] Wcd.nic.in/projasanc//jjimpstatus-100310.pdf; wcd.nic.in/childprot/jjimp.htm.

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k) City Advisory Boards constituted at Hyderabad, Vizag, and Vijayawada where CHILDLINE services are also functioning.

l) Juvenile Welfare Fund has been created and contributions to the funds are exempted under Section 80G of the I.T. Act.

m) Special Juvenile Police Units have been constituted

n) For effective implementation of the Act and Rules Department has recognized 16 Training programmes and workshops both at State and South Regional level covering all southern states. Special officer is appointed to deal with any problems and for effective implementation of the JJCPA & Rules.

2. **Andaman & Nicobar Islands**

a) Rules notified on 7.10.2002.

b) One Observation Home and Special Home/Children home are being maintained by the Social Welfare Department of UT Administration.

c) Inspection Committee for Children Home will be appointed.

d) Constituted one JJB and CWC both for Andaman and Nicobar on 19.3.03.

e) Recognition of capable voluntary organization for setting up of shelter home is under process.

f) Creation of funds for welfare and rehabilitation under process.
g) State level Advisory Committee set up.

h) Designated Juvenile Police Officer in each Police Station to deal with juveniles in conflict with law and children in need of care and protection.

3. Arunachal Pradesh


   b) JJBs and CWCs have been constituted in 8 districts namely:

      (i) Papum Pare District, Yupia,

      (ii) West Kameng District, Bomdila

      (iii) East Siang District, Pasighat

      (iv) Upper Subansiri District, Daporijo

      (v) Tawang

      (vi) Upper Siang District, Yingkiong

      (vii) West Siang District, Aalo

      (viii) Lower Subansiri District, Ziro

   c) District Advisory Board/ Distt. Inspection Committee constituted in 7 districts namely,

      (i) Papum Pare District, Yupia

      (ii) West Kameng District, Bomdila

      (iii) East Siang District, Pasighat

      (iv) Tawang

      (v) Upper Siang District, Yingkiong
(vi) West Siang District, Aalo

(vii) Lower Subansiri District, Ziro
d) One Juvenile Delinquents Home constructed in East Siang District Pasighat with the capacity of 20 inmates.
e) Inspection Committee for Children Home constituted (where Juvenile Home is constituted) in East Siang District Pasighat.
f) Monitoring and Evaluation Team constituted in Papumpare District.
g) The Deputy Commissioner of concerned districts are has been authorized to notify the names of Board/ Committee members from time to time the event of change of incumbency as per the composition approved by the Govt.
h) In the State of Arunachal Pradesh there is only one NGO – namely Oju Welfare Association, Naharlagun registered and run institution for the children in need of carte and protection as per the guidelines prescribed by the State Government/ Central Government.
i) Reviews the pendency of cases by the Boards and Committees.
j) Recognition of Adoption Agencies – One recognized NGO

k) Constitution of child protection unit – State Government has not yet constituted a Child Protection Unit. However, there is a child Welfare Committee constituted in each
district and shall be act as a ‘Child Protection Unit’ in the State.

4. Bihar


b) Juvenile Justice Board set up in all the 38 districts of Bihar.

c) State Government has Sanctioned 38 Child Welfare Committees. Out of which 12 Child Welfare Committees (CWCs) has been constituted.

d) Steps have been taken to constitute remaining 26 CWCs in the remaining districts.

e) State Government has sanctioned 19 Observation Homes in the State. Out of which 10 are functioning in following districts namely: Patna, Muzaffarpur, Bhagalpur, Gaya, Darbhanga, Chapra, Purnia, Arrah, Betiah and Munger.

f) Remaining 9 Observation Homes have been sanctioned for following places namely: Saharsa, Jamui, Sitamarhi, Siwan, Sasaram, Nalanda, Lakhisarai, Begusarai and Araria.

g) One Special Home is functional at Patna.

h) Three Children Homes have been set up at Patna (2) and Begusarai (1). One Children’s Home, each for Girls and Boys has been setup at Patna.

i) Two NGO run Shelter Home / Drop-in- center have been given recognition at Motihari and Samastipur.
j) Two After Care Homes for Girls are functioning in Patna and Muzaffarpur.

k) State Government has sanctioned one State Child Protection Unit and 38 District Child Protection Units. All these Units are functional in the State.

l) Special Juvenile Police Unit has also established in all the 40 Police districts of the State.

m) Inspection Teams have been constituted in 8 districts of the State.

n) For the speedy disposals of the cases involving Children in conflict with law, Bal Samvad Adalats are being held on last Saturday of every month.

o) Training programmes for the stakeholders such as members of JJB, CWC’s, Home Functionaries, Officer in Charge of District Child Protection Units, Police Personnel, other N.G.O’s etc. are being organized in association with Administrative Training Institute, Police Training Institute and Judicial Training Institute.

5. Chhatisgarh

a) Draft Rules prepared and notified.

b) 16 JJ Boards and 16 Child Welfare Committees have been constituted in respect of all the 16 districts of the state.

c) 7 Observation Homes and two Special Homes – one for girls and one for boys at Bilaspur and Durg, for the reception of children in conflict with law.
d) After care homes for girls and boys have been set up in two districts, namely, Raigadh and Sarguja, respectively.

e) One Children’s Home for girls has been set up in Kaker district.

f) 5 Children Homes are being run by the Chattisgarh State Council for Child Welfare.

6. Chandigarh

a) Rules notified on 15.3.2002

b) Two JJ Boards and one Child Welfare Committee constituted.

c) Observation cum Special Home has been set up for reception of children in conflict with law.

d) Children Home set up for reception of neglected male juveniles and declared Nariniketan for reception of female juveniles.

e) Inspection Committee has been constituted for inspection of homes.

f) Four Shelter Homes are being run by the recognized NGOs in the UT of Chandigarh namely Juvenile Home, Sector-25, Nari Niketan Society, Sector-15, Bal Niketan Society, Sector-15 and Don Bosco Navjeevan Centre, Sector-47.

g) Missionaries of Charity, an NGO has been recognized as adoption agency for doing adoption work. Balniketan Society, another NGO is working for orphan and destitute children.
h) No separate rules for providing foster care services and sponsorship services have been notified. There is no after care organization in the UT of Chandigarh.

i) Child Welfare Fund has not been created so far.

j) Keeping in view the small size of the UT, there is hardly any necessity to constitute Advisory Board.

k) Women & Child Support Unit has been designated as Special Juvenile Police Unit. Special Juvenile Police Officers headed by an NGO have been deputed in each Police Station with one Head Constable and one lady constable as assistant juvenile officer under Section 63 of the JJCPA 2000. With regard to providing training to the Police Officers on juvenile crime, it is provided at Mahatma Gandhi State National Institute of Administration, Sector-26, Chandigarh.

7. Daman & Diu

a) Model Rules have been adopted by the U.T. Govt.

b) Child Welfare Committee will be formed soon.

c) Action initiated for constituting Juvenile Justice Boards.

8. NCT of Delhi


b) Two JJ Boards and 4 Child Welfare Committees constituted.

c) 41 NGOs have been granted recognition for running child care institutions under Sections 34, 37 & 41 of the Act.
d) The Department of Women and Child Development is maintaining 24 child care institutions under Sections 8, 9, 16 & 34 of the JJCPMA 2000.

e) 3 Observation Homes (one by an NGO and 2 by the State Govt. – one each for boys and girls) set up. 1 Special Home and 1 Place of Safety are run by the Govt.

f) 6 Children Homes for boys and 3 Children Homes for girls being run by the State Govt.

g) 10 District level inspection committee constituted.

h) 5 Shelter Homes set up (3 for boys and one for girls) by the govt. and 5 Shelter Homes are being run by the NGOs.

i) Under Section 42, the department itself runs the foster care services where the children may be placed in another family for a short or extended period of time depending upon the circumstances.

j) Sponsorship programme is taken up by the non governmental organizations for rehabilitation and further development.

k) 2 After Care organizations run by the department – one each for boys and girls, after attaining the age of 18 years.

l) State level Advisory Board constituted.

m) State Government has created a Child Welfare Fund with initial contribution of Rs.5.00 lakhs and the State Advisory Board is the administrator.

n) Training of police officers organized.
The Department is providing all the services free of cost to the rescued children who are housed in the govt.run institutions through the CWCs.

9. Dadra & Nagar Haveli
   a) Rules, 2001 notified on 5.4.2002.
   b) One JJ Board and one Child Welfare Committee constituted.
   c) There is no observation home and special home in the UT of Dadra and Nagar Haveli but in consultation with Govt. of Gujarat arrangements made for reception of juvenile in Remand Home at Navsari, Distt. Valsad, Remand Home at Surat and State Home for Women at Surat.
   d) Police Department of the Territory has been requested to organize training for police officers.

10. Goa
    a) Framing of State Rules under process.
    b) 1 JJ Board constituted for entire State.
    c) 1 CWC constituted for entire State.
    d) 2 Observation Homes, 2 Special Homes and 2 Children Homes for boys and girls run by Govt. and one NGO run Children home set up.
    e) Special Juvenile Police Units created.

11. Gujarat

c) 23 Observation Homes (16 Govt. and 7 NGO), 13 Govt. Special Homes and 63 Children Homes (33 Govt. and 30 NGO) notified. 13 Government Organizations have been notified as Special Homes.

d) State notified 23 NGOs capable for setting up Shelter Homes.

e) State given license to 11 government and 9 NGOs for Incountry adoption.

f) Government notified 14 government institutions (3 for boys and 11 for girls as After Care organizations.

g) Two training programmes have been organized by the State Governments for police officers.

h) Appointment of Inspection Committee under consideration.

i) After Care Institutions to act as Shelter Homes

j) Good network of machinery for adoption related matters exists.

k) Creation of Fund for welfare and rehabilitation of juveniles under process.

l) State Advisory Board constituted.

m) Training of functionaries taken up.

n) Setting up of JJ Police Unit under consideration Mahila Police Station/ Mahila Cell are working as Special
12. Haryana

This report is of April 2009.


b) JJ Boards have been set up in 20 districts out of 21 districts [except Palwal].

c) 20 Child Welfare Committees constituted in each district under the Chairmanship of Deputy Commissioner.

d) 3 Observation Homes functioning in Sonepat, Faridabad and Karnal. Karnal Home is for girls with intake capacity of 25 set up by Govt. at State After Care Home, Karnal.

e) Children Homes at Chhachhrauli and Rewari notified.

f) Inspection Committees for Children Home approved and case under submission for nomination of social workers.

g) JJ Fund set up.

h) Advisory Board at State level set up.

i) Crime against Women Cells functioning in each district nominated to act as special juvenile police units.

j) Training courses organized for police officials. Trg. Of official functionaries of different Department workers/officials of NGOs is organized time to time through Haryana Institute of Public Administration Gurgaon.

k) Shelter Homes at Chhachhrauli and Rewari have been set up through respective District Councils of Child Welfares.
Draft Model Rules under JJCPCA 2000 2006 have been received and initiated action to register all NGOs as children homes under the Act.

Construction of Observation Home at Ambala and Hisar with intake capacity of 50 Juveniles each under process.

Inspection Committee for Children Home, Chhachhrauii & Rewari have been set up under the Chairmanship of Deputy Commissioners of the concerned district.

13. Himachal Pradesh
   a) Rules notified on 4.5.2002.
   b) Juvenile Justice Boards have been constituted at Shimlaand Una.
   c) 12 Child Welfare Committees set up.
   d) Special School at Una declared as Observation cum Special Home.
   e) Juvenile Home at Sundernagar notified as Children Home.
   f) Inspection Committees constituted.
   g) Bal/Balika Ashrams run by HPCCW at Sarahan, Tissa, Kullu and Suni declared as Shelter Home -cum-drop in centers.

14. Jharkhand
   a) Rules notified on 7.11.2003
   b) 21 JJBs have been constituted. Constitution of 3 more JJBs in remaining 3 districts is under process.
c) 11 CWCs has been constituted in the State and constitution of CWCs in remaining districts is under process.

d) 8 Observation Homes set up in 8 districts of the State and action is under process for setting up 4 more observation homes.

e) Observation Homes at Jamshedpur and Deoghar are being partially used as Children Homes for the children in need of care and protection of the State.

f) 18 Inspection Committees have been constituted in districts of the State.

g) No Shelter Home has been established so far.

h) Some schemes have been implementing by the State Governments from its own source of funds, for the welfare & rehabilitation of children.

i) State Advisory Board has been constituted and for districts, Inspection Committees have been authorized to act as Advisory Board.

j) Juvenile Police Unit has been constituted in each district of the State.

k) NGOs have been recognized to provide care and protection to children.

l) Identification of NGOs as Adoption Placement Agency is under process.

m) State Government vide letter dated 3.7.2008 requested the High Court of Jharkhand for necessary actions for review of pending cases at every six months.
n) Establishment of Child Protection Unit at State and District level is under process.

15. Karnataka
   a) Rules notified on 26.9.2002
   b) State level Advisory Board constituted.
   c) District level inspection committees constituted.
   d) 8 JJ Boards constituted in 5 districts namely, Bangalore, Mysore, Shimoga, Dharwad, Bellary, Bijapur, Manglore and Gulbarga covering all the 27 districts of the state.
   e) Action has been taken for starting 21 new JJBs in remaining 21 districts.
   f) 29 Child Welfare Committees are constituted and are functioning in 25 districts.
   g) 8 Observation Homes 2 Special Homes (one for boys and one for girls) and 17 and 26 Children’s Homes for girls and boys respectively are functioning in the State.
   h) 21 NGOs have been recognized as adoption placement agencies.
   i) Special Juvenile Police Units set up in all 29 districts of the State and in 9 zones of the city commissionerates.
   j) A ‘Shishu Mandir’ (a home for children below 6 years) has been started in Bangalore.
   k) Constitution of Selection committee is under process.
16. Kerala
   a) JJB has been constituted in all the 14 districts of the State.
   b) CWCs constituted in all the 14 districts of the state.
   c) 13 Observation Homes are functioning for both child in need of care and protection and child in conflict with law.

17. Lakshadweep
   a) There is no problem relating to juveniles in the Territory. However, they have earmarked a room in Working Women's Hostel at Kavaratti to accommodate such cases, if required.
   b) JJB has been constituted vide notification F.No.40/3/2003- SJEC dated 1.11.2006, consisting of six board members, to deal with the cases relating to juveniles in conflict with law.
   c) CWC has been constituted vide notification number F.No. 40/3/2003-SJEC dated 1.11.2006, consisting of seven members to deal with cases relating to juveniles in need of care and protection.

18. Madhya Pradesh
   b) 50 JJBs and 50 CWCs have been set up in all 48 districts of the State. In addition, 46 probation services are in operation to assist the JJBs/CWCs.
c) 18 Observation Homes and 3 Special Homes functioning in the State.

d) 3 Children Homes and 2 After Care Institutions are functioning in the State.

e) Police Deptt. has constituted Special Juvenile Police Units in every district in the State.

f) 35 District Advisory Boards have been established under Section 62 of the Act. This Board shall also function as Inspection Committee in the district.

g) “Nitya Seva Society Bhopal” has been recognized to work as Shelter home by the State Government Guide lines and schemes for rehabilitation & Social reintegration of Children are specified in JJ rules 2003.

h) State Govt. has created a fund named as “Juvenile Welfare Fund” under Section 61 in the State and “State Advisor Board” constituted under the Act is empowered for the Administration of this fund. Deptt. is organizing training programmes for the officials who are engaged for the implementation of JJCPGA at various levels, including police officers, JJBoard/CWC members Officers of JJ Institutions and representatives of NGO.

i) State Govt. has recognized 12 NGO’s as adoption agencies.

19. Maharashtra

a) Rules under JJCPGA notified.
b) 56 Observation Homes (14 –Govt., 42 run by NGOS), 148 Children Homes (32– Government 116 NGO run) 4 Special Homes (3 Government 1 NGO run).

c) 30 Juvenile Justice Boards and 37 Child Welfare Committees functioning in the State.

d) City Advisory Boards are set up at some places for monitoring children services.

20. Manipur

a) Rules notified.

b) One JJ Board and one Child Welfare Committee constituted for the entire State.

c) One Observation Home and one Special Home set up by the State Govt.

d) 12 Children Homes being run by NGOs, out of which few will be declared as Children Homes for reception of children in need of care and protection.

e) 5 Specialized Adoption Agencies being run by the Government and 1 being run by NGOs in the State.

21. Mizoram

a) Rules notified on 1.8.2003

b) 8 Juvenile Justice Boards constituted in Aizawl, Champhai, Kokasib, Serchhip and Mamit, Lunglei, Saiha and Lawngtlai districts.

c) Two observation homes and two special homes being run by the State Govt.

d) State level Advisory Board constituted.
e) 8 Child Welfare Committee constituted in Aizawl, Champhai, Kolasib, Serchhip, Mamit, Lunglei, Saiha and Lawngtlai districts.

f) State Government declared/recognized 5 NGOs as fit institutions for running institutions/homes for children in need of care and protection.

g) As regard review of pending cases, activities of CWC shave been regularly reviewed and the frequency of the sitting of CWC is found to be sufficient at present –once in a week.

h) The Chief Judicial Magistrate or Chief Metropolitan Magistrate is not yet empowered to review the pendency of cases of the Board. However, with regard to pending cases, frequency of its sitting is sufficient.

i) State Government has recognized 3 institutions as ‘Licensed Adoption Placement Agencies’ for the placement of orphan, abandoned or surrendered children for adoption.

j) Inspection Committee constituted on 31.4.2005 in Aizawl district, Mizoram to make suggestions for the improvement and development of the Children Homes/Institutions run by the various NGOs.

k) State Advisory Board constituted to inspect various institutional and non-institutional services and made recommendations in relation to development of juvenile justice services, development of facilities for education, vocational training and rehabilitation of various categories
of juveniles and establishment and maintenance of juvenile homes, etc.

I) Child Protection Unit in the State has not yet been constituted.

22. Meghalaya


b) 4 JJBs constituted at East Khasi Hills, West Khasi Hills, Jaintia Hills and Ri-Bhoi districts.

c) 7 CWSs have been constituted in 7 districts namely

(i) East Khasi Hills Districts

(ii) Ri Bhoi District

(iii) West Khasi Hills District

(iv) Jaintia Hills District

(v) East Garo Hills District

(vi) South Garo Hills District

(vii) West Garo Hills District

d) Observation cum Special Homes for boys (Juveniles in conflict with law) has been established with a capacity of 40 in mates in a rented house.

e) One Observation Home for Girls (Juveniles in conflict with law) has been set up with the capacity of 10 inmates.

f) One Observation Homes for Boys (Juveniles in conflict with law) has been constituted at Tura which will cover 471
e) Special Home, Children Home and After care Organization for the children who were discharged from the Special Home and children Home are run in the same premises by the Social Welfare Department at Ariyankuppam.

f) The Children Home, Observation Home and Special Home run by the SWD have been modernized and infrastructure created in consonance with the provision of the new JJCPCA and the provision of the new JJCPCA and the Rules framed there under. Employment orientation training is being given to the Juveniles in conflict with Law.

g) Cluny Sissu Illam and the Immaculate Joy Home have been recognized as fit institutes by the Government of Pondicherry for adoption;

h) The Special Police unit has already been created in the UT of Pondicherry.

26. Punjab

a) Draft rules was framed and under process of notification, however the state draft rules are being reviewed by the department in the light of Juvenile Justice Rule 2007 notified by Govt. of Indian as on 26.10.07

b) 20 JJBs have been constituted in 20 districts of the State.

c) 5 Child Welfare Committees at district headquarter of Gurdaspur, Patiala, Bhatinda, Ropar and Jalandhar

d) Two Observation Homes and Two Special Homes and 7 Children Homes have been established.
e) Constitution of Juvenile Justice Boards in place of Juvenile Courts has been referred to the Registrar, Punjab & Haryana High Court.

f) Constitution of Advisory Boards at State, District and City level is under progress.

g) 26 Special Juvenile Police Units have been constituted in the State.

27. Rajasthan

a) Rules notified on 23.7.2002.

b) JJ Boards and Child Welfare Committees constituted in 9 districts and remaining districts have been attached to these boards. Thus all the districts have been covered.

c) Homes one each at Ajmer and Kota declared as Observation Homes., 4 Juvenile Homes (Jaipur, Jodhpur, Udaipur and Bikaner), and Children Home for girls at Jaipur recognized as Children Homes. State Women Centre, Jaipur recognized as Special Home for girls. However, in total 35 homes are being run by the Government and 28 homes being run by the NGOs under the JJCPCA .

d) State Advisory Board constituted

e) Special Juvenile Police Unit and Child Welfare Officer in all Police Stations designated.

f) Action being taken for constitution of inspection committees.

g) The Child Welfare Fund set up under the previous Act being proposed to function as the JJ Fund.
28. Sikkim

a) Rules notified on 13.03.2003

b) One Juvenile Justice Board, a Child Welfare Committee and Inspection Committee constituted.

c) One Observation Home at Gangtok with residential facility for 25 inmates maintained by the State Govt. in a rented building. Another OH proposed to be set up at Nanchi (South).

d) There is no Children Home in the State.

e) Constitution of JJBs for North, South and West are under process.

f) Constitution of district-wise Child Welfare Committees has been notified.

g) Advisory Board has been constituted.

h) In Country Adoption is processed under the J.J Act provisions. No recognized Inter-Country adoption Agency exists in the State.

i) After Care Organization proposal to set up Children’s Home-cum-Shelter Home is being taken up in the next Financial Year.

j) Special Juvenile Police Unit and Juvenile of the Child Welfare Officer are to be implemented.

29. Tamil Nadu


b) 8 Observation Homes, 2 special homes (one for boys and one for girls), 32 children homes (11 Govt. institutions &
21 NGO run institutions) and 3 Govt. After Care Organizations established & running under JJCPA.

c) 8 Juvenile Justice Boards constituted and 18 Child Welfare Committees to be constituted.

d) District level Advisory Committees which are also the inspection committees established.

e) Constitution of State Advisory Board under consideration.

f) Child Welfare Officers approved for all Police Stations, and DSP (District Crime Record Bureau) designated as officer in charge of Special Juvenile Police Units.

g) Orientations on JJCPA 2000 given to all Police personnel.

h) Social Welfare Fund for Women and Children set up by the Govt. could be used as Juvenile Justice Fund.

30. Tripura

a) Rules notified on 23.3.2002

b) One observation home is functioning at Narshingarh in Agartala and another is proposed to be constituted.

c) JJ Boards constituted for North, South, West and Dhalai districts of Tripura.

d) Child Welfare Committees constituted for West, South, North and Dhalai districts.

e) A Committee constituted for monitoring and evaluation of running of homes.

f) Constitution of Advisory Board at State, District and city level under process
g) The State Govt. has notified the 6 Government run children homes as special adoption agency both for scrutiny and placement of children for adoption, foster care & sponsorship namely Foundling Home, Narsingarh, Children Home for Boys, Khilpara, Ramnagar, Children Home for Girls Unit-I & Unit-II, Abhoynagar. Children Home for Boys, Ampura, Khowai.


31. Uttar Pradesh

a) Rules notified on 31.3.2004

b) There are 17 JJBs and 10 CWCs are functioning in the State, covering rest of the districts of the State.

c) Till the formation of CWC in each district. District collectors shall be responsible for exercising the role of the CWC.

d) 17 observation homes for boys and 5 for Girls are functioning in the State.

e) 12 Children Homes for boys, 5 children homes for infants (shishu), and 4 children homes for girls functioning. No proposal from any NGO received.

f) 15 NGOs has been registered under JJB Act for running child care institutions.

"With the support of NGOs Adoption cells are functioning in 5 districts of the State."
h) Formation of Child Protection Commission is under consideration.

i) Four after care Homes are functioning in four districts of the State.

32. West Bengal

a) Rules notified under the JJCPA. However, framing of Revised Rules for the State as per the Model Rules, 2007 is under process.

b) 19 Juvenile Justice Boards have been constituted for all Districts of the State including Kolkata.

c) 19 Child Welfare Committees have been constituted covering all Districts of the State including Kolkata.

d) 6 Observation Homes run by Government

e) 5 Special Homes set up & run by the Government – [3 for girls and 2 for boys]

f) 14 Children Homes have been established and are run by Government – 9 for girls and 5 for boys.

g) 28 Shelter Homes run by the recognized NGOs.

h) 9 After Care Homes have been established – 7 for girls and 2 for boys under Section 44 of the JJCPA.

i) Special Juvenile Police Unit is functioning in Kolkata and establishment of such SJPU in all districts is under process.

Evaluation of Implementation

The discussion here in above elucidates under the different parameters the cause of non-implementation of the Juvenile Justice
System in India. While going through it becomes essential how and where the system actually lacks. Throughout the research work one of the thing, which restricted one from bringing out the clear picture of working of the system, is limited, inadequate and misleading data. Lets take one example from the above discussion, as we have seen that SC is taking ardent interest in the implementation of the JJCPCA. In the writ petition filed before the Apex court where the last order gives the data regarding implementation of JJCPCA in 9 states which includes establishing the JJB, CWC, homes as per the Act. And on other hand the data about the status of implementation of the Act displayed on the site of WCD. A comparison of both these data shows difference like in case of Maharashtra in the Supreme Court order it shows that they have 35 districts in all district JJB established but working only in 31. The CWC is established in all districts i.e 35 as per the Supreme Court order and 60 observation homes. But in case of status given by the WCDit shows 30 JJB and 37 CWC and 56 Observation homes. This is not enough the other states data when compared shows the lacunae in the system. The question is which data to be trusted, the reliability of these figures is questionable as these figures do not tally with the WCD data and Supreme Courts data, and one is left wondering which are more authentic.

The malfunctioning of the machinery set up under the JJS is caused, to a great extent, by structural lacunae in decision-making.\textsuperscript{660} It is observed that the decision-making process set the pace and tone of the operations of various organs of the JJS. The decision relating to the various categories determine the quality of personal selected for the work. One of the reasons for malfunctioning of the system could be the defect in decision-making process. If we see in broader sense the whole system work on the decisions made by the people given

\textsuperscript{660} Supra note 649.
authority to implement the Act. The information, integrated administrative framework, training of personnel, and rules detailing their functions, responsibility, procedure and standards for various functionaries are among the essential for decision-making that leads to the effective implementation of the those decisions. The lack in performing these duties and taking proper decision as required by the Act reveals these inadequacy that leads to the shaken implementation of the Act.

**Gap In Information And Lack of Clarity Regarding Role**

The biggest problem in the implementation process is the absence of adequate information on even the key issues and aspects relating to the juveniles. The Sinha Committee in 1968 said, “Available data for assessing the nature and size of the problem of the socially handicapped children are at present very inadequate. A number of surveys and studies should be organized to fill the gaps in the present information.” The JJCPA directs that states must have in each district or more districts jointly as many homes as necessary. How to determine the necessity if the information provided is insufficient. The joint secretary, ministry of welfare, Government of India, twenty-two years later stated, “No firm estimates of destitute and delinquents are available.” So, the important thing is to have adequate resources and information regarding the juveniles.

Further, the data available does not seem to have been scientifically analyzed for making necessary changes on the basis of data feedback to bring operations in conformity with the objects to be achieved. For example, year after and from state to state the data

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shows that insignificant expenditure is incurred for therapeutic operations in the homes. Once it is clearly accepted that these homes are there not only for food, shelter and clothing purpose but also to provide all other facilities necessary for their all-round development and growth, it is necessary to question such low expenditure on the latter.663

As in case of JJA 1986 the Government of India initiated process to keep track of the progress of implementation of the Act. They have to send checklist to all the states for reporting the progress of implementation of the JJA. It was observed that if the duly furnished checklist sent on time, could have provided invaluable information on the progress.664 In JJCPCA also government has made many provision to keep a track on the implementation of the Act. Various institutions to be formed like CPU, Advisory board to keep check on the progress of implementation of the Act. Nothing has change in last so many years even after passing of JJCPCA 2000. The situation is from minus to one that improvement we can say in implementation of the Act. The reason is definitely the lack of data due to which cross check is not possible and what further steps to be taken is also gets tough. Even if the infrastructure is established the question rises is does it working? Or mere establishment of the infrastructure amounts to the functioning of the same and that to a qualitative functioning. As we have observed the initiative taken by the Supreme Court in the case of Sampurna Behrua v Union of India and others, where direction was given to the 12 states to furnish there report on the establishment of JJB, CWC and homes to check the implementation of the JJCPCA in all these states. The most surprising thing that came into limelight by this endeavor of apex court that took six years

663 Supra note 660.
664 Ibid.
rigorous persuasion by the court to make states file there compliance with various requirements of JJCPCA 2000. After so many efforts in the month of January 2011, out of 12 states 9 states has filed these replies relating to the compliance with JJCPCA 2000. The reply filed of some state is complete but majority of the reply don’t have the full details regarding the homes, JJB etc. due to this insufficient information provided by the states the courts made following observation:

Having regard to the provisions of the Act, setting up of the JJBs and CWCs is only a preliminary step. The Act contemplates setting up of Observation Homes, Special Homes, Children Homes, Shelter Homes, and Special Juvenile Police Units etc. Further, setting up of JJBs and CWCs and merely following the letter instead of object and spirit of the Act will not be sufficient. It would, therefore, be appropriate if the National Commission for Protection of Child Rights ('NCPCR' for short), which is already concerned with these matters, is also involved in the implementation of the provisions of the Act. We, therefore, direct NCPCR to be impleaded as respondent.

In the absence of quality and timely feedback from the states, the record of the progress of implementation of the JJCPCA continued to be inadequate as was the case in JJA 1986 and Children Acts.

The Working Group on the CEDC recommended,\textsuperscript{665}

That the urgent task of the ministry is to understand the magnitude of the problem in relation to children in need of care and protection. An in-depth national study needs to be undertaken. The focus of this study should be on the volume of such children, their specific needs, identifying the geographical areas of high concentration, and other related subjects. The government within a

\textsuperscript{665} Supra note 649.
specific time frame can undertake such study by involving local, regional, and national level NGOs. Such study will provide the necessary intervention strategies to the government and voluntary sector to address the problems of the children in a more objective situation.

While going through the process of research one more thing is important to be raised is the lack of clarity about their role among the persons working in the field of juvenile justice system which includes all the people whether they are in government or working for the NGO or in district or even those working at the grass root. The responsibility to create various structures for juvenile justice rests with the different departments in different states and there are no functional arrangements for coordinating their activities. Further more the official in different department working for child welfare have no specific clarity regarding their role and their duties. Which make the process more vague.

In practically following observation made in aspect of the working of judicial system (JJB/CWC). Apart from a judicial magistrate, the JJB consists of two social workers. This is aimed at bringing about a change in the very nature of the inquiry and decriminalising the administration of juvenile justice. In reality, however, the two social workers play a limited role. A study on child protection found that in Delhi, the social workers are hardly ever present for 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. 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 communicating with the children regularly nor cognizant of their best interests. There are JJBs in the country that have no social worker member or the members have either left or choose to abstain from attending, because there was no clarity on their role and they felt redundant. The government is supposed to address these various problems through training, sensitisation 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’.

Furthermore the lacunae in system can be seen when speed in settling cases can come only with more courts to try those cases under the JJCPCA 2000. When the JJB finds the child has indeed violated the law, it may pass any of the following orders: release after

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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 flouted with impunity. 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 \(^\text{667}\) and less than 13 percent in 2007. \(^\text{668}\) 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. In the current progressive legal climate, when the Supreme Court itself favours allowing bail to all adults involved in minor offences, partly to reduce the pressure on prisons, why should children be denied it at all? 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.

\(^{668}\) Ibid.
As mentioned above the Board while working face many issues while complying the provisions of JJCPCA. One of the issues that has been raised again and again is the before the board is what to do when juveniles have stopped appearing in the board after being granted bail or having been released into the custody of the parents. The issue is regarding the provision under Section 82 of Cr.P.C. which board has issued in order to secure the presence of juvenile before the court. The argument is that the Section 82 of the Cr.P.C. is against the right of juvenile as guaranteed under the JJCPCA and Model Rules 2007. The Section 82 Cr.P.C. requires the publication at all places that interferes with the right of privacy and confidentiality of the child. The problem is with the law itself, under the JJCPCA Section 22 there is no clarity for the board as to what procedure to be followed when a child/juvenile stops to appear before the board.

The Sinha Committee, in no certain terms, had pointed out that, in absence of an integrated new and proper arrangement for coordination, the tendency for working in set grooves and for individual programmes to be treated as ends in themselves is likely to asset itself. Such a development should be avoided at all costs by bringing into existence from very beginning suitable machinery for co-ordination and assessment.669

The JJA introduced the provision relating to an advisory board in each state to give coordinated advice to the government on various matters relating to juvenile justice. The state shall constitute advisory board at central, state, district, city level for the period of 3 years. In the JJCPCA to make the system more effective a new provision came to from linkage and coordination among the different departments. But

669 Report of the committee for the preparation of a programme for children, Ganga Sharan Sinha, Chairman, department of social welfare, Govt. of India, (1968) at 223.
in practice it was found that there was hardly any linkage. In the 2006 amendment Section 62A introduced which says that CPU should be constituted in each and every district. The main role of CPU is to ensure the implementation of the Act that includes establishment and maintenance of the homes and rehabilitation and co-ordination among various officials and non-official agencies. The statistics is not available to show how many states after this amendment has constituted the CPU. As usual the problem is same and vague but with hope that it is changing but at slow pace. The Supreme Court is playing vital role in checking the working of states in regard to the implementation of Act.

Lack of Sensitivity And Knowledge

One of the most troubling discoveries is the general absence among government officials of a sensible, innovative and empathetic attitude towards the children they come in contact with. This situation is from the time system came for the children, the Children Acts and JJA not spared with this problem. We cannot deny that there are a few sincere and proactive members in the JJS, but they appear to be rare and change in attitude has been very slow in coming. As we all know the home are in pathetic conditions the officer who work there are more like police man who make the life of children hell in homes. According to a report the officials serving at children's homes, which are virtually untouched by the rapidly changing globalising India, things have started improving only in the past year or so. Even this is more an impact of the Supreme Court directive, and in Delhi the monitoring by the High Court Committee, rather than a sense of justice and empathy for the children.
The report published by the NHRC in November 2007 shows the real state apathy towards child offenders. A little has changed while reviewing the implementation of the JJCPA,

The Juvenile Justice Board should protect the best interests of the juveniles and in no way function as a criminal court. Under no circumstance, a juvenile or a child should be lodged in a police lockup or a jail and at least one police officer should be designated as the juvenile or childwelfare officer and trained suitably. The Special Juvenile Police Unit should be in touch with a member of JJB, the probation officer, the parents/ guardian of the juvenile placed under their charge.

The insensitivity and lack of interest is reflected in many insidious ways throughout the system, from the jargon used to the way children are picked up for care or justice and to the way laws and programmes are implemented. Under law, the JJB magistrate must have special knowledge or training in child psychology or child welfare and the social workers must be actively involved in health, education, or welfare activities pertaining to children at least for seven years. In practice, these could be political or bureaucratic appointments. The magistrates usually belong to the regular judicial system—there is no effort to make a separate stream as in the case of SJPUs. Many see being on the board as “punishment posting” and a hindrance to improved career prospects. Because there is no special training that they need to undergo before taking on this position, they learn on the job, experimenting as they go along. By the time they have somewhat understood their role and are ready to deliver, it is time to leave.

http://nhrc.nic.in/disparchive.asp?fno=1372

670 http://nhrc.nic.in/disparchive.asp?fno=1372
A few of them are interested and initiate innovative interpretation and creative implementation of law, while the rest simply mark time till they can swing a posting out of the board. One magistrate in Delhi has experimented with using art as a medium of expression for children and peer counselling for children in conflict with law, another has consistently tried to hear and decide cases with empathy and occasional creative interpretation of law. Both have since moved on, leaving the incumbents to experiment on their own. One cannot expect consistency nor ensure a "quality control".

A Report by HAQ Centre for Child Rights an NGO working for the child especially the juveniles brings the following true picture of the system.

A visit to the Juvenile Justice Boards across the country is adequate to gauge the apathy meted out to children by the very structure and functioning of the Boards. To be child friendly, and not a "Court" but a special mechanism for children, it must appear to be such. How can it be child friendly if the Magistrates in most boards continue to sit on an elevated platform, as in adult courts? Or the police are in uniform and the lawyers come in their black coats and white neckbands? Worse, children are brought in vehicles meant for adult prisoners and have to wait till they are called in, in a waiting room that resembles a prison with iron grill, often the entire day till all the cases are heard, and carted back to their institution. This defies the very reason the juvenile justice boards were formed, that is to give children an opportunity to get into the reform process so that they move back into society, in a friendly environment, as opposed to criminals brought in a court. The story of Meena, a seven-year-old who was raped, tells how even the judiciary is often insensitive to the

fundamental principles of the JJCPCA 2000. This incident happened in 2007. The application for recording the statement of the girl was moved, for the first time, on June 6 in the court of the Metropolitan Magistrate, Rohini. This was however transferred to another MM, who postponed the hearing of the statement two days later. Both these magistrates were women. Between June 8 and July 18, the statement recording was postponed six more times. In between, the MM even asked the child to be sent to Nari Niketan, which is strictly for girls above 18 years of age. What happened with Meena was in blatant violation of the law, which says the statement in a sexual abuse case should be recorded as soon as possible, and also caused untold harassment to the girl who was actually the victim, not the perpetrator of the crime!

In the case of sexually abused children, the whole process of denial of justice begins well before a victim of crime reaches the court. The medical examination itself scares children and their families. For girls, it is even more humiliating. The gynaecological examination continues to follow the traditional methods of insertion of fingers to examine hymen tear and internal injuries. Imagine the fear and trauma of a child, often as small as four to five years and one who has already gone through agony and humiliation of physical abuse, during such an examination. But she cannot refuse a medical test because in the present criminal justice system, the medical examination report establishing sexual abuse is the bedrock on which the guilt of the offender can be established and justice given to the abused child.

The other traumatic experience happens when child victims are taken to the Court for recording of their first statement in the same vehicle along with the accused. The law says that at no time should
the child and the accused should come in contact with each other, so that the victim’s trauma is not compounded. But police never have adequate vehicles for their use or they do not see the necessity to take them in separate vehicles. Instead of creating an enabling environment to ensure that the child is able to present her case without fear and further humiliation, the very first journey of the child to the Court puts her one step behind in her journey towards justice.

Even societal attitudes influence the quality of the child’s participation in the judicial system. In Indian society, children are often found to be tongue-tied, nervous and shaky in front of an adult, especially people in uniform, and children from poorer and disadvantaged families more so. In the case of sexual abuse as well as conflict with law, children and their families are usually intimidated by their interaction with the system, especially when asked for physical proof of abuse and harm on the body, or are pressured to withdraw the case. Police often do not file a report in cases where no physical damage is seen. This has forced the Supreme Court to say, in a judgment on 23 February 2006, that ‘genuineness or credibility of the information is not a condition precedent for registration of a case’. Quoting an earlier decision, they said a police officer should register a case on a complaint of a cognizable offence and the police could not pre-judge the issue. “At the stage of registration of a crime or a case on the basis of information disclosing an offence, a police officer cannot embark upon an enquiry whether the information is reliable or not,” the Bench said.672

Two cases brought to an NGO by the police, are typical examples of how crucial evidence can be lost, making it difficult for sexual abuse victims to get justice.

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672 Supra note 649; and http://www.hindu.com/2006/02/23/stories/2006022313540100.htm
Ten-year-old mentally challenged Babita was called into the house by the 40-year-old neighbour and raped. She came running home crying and told her 16 year old sister. The parents were not at home. In her wisdom, this sister gave her a bath and washed the clothes to clean her of the filth (gandagi) of the rape, without realising that she was washing off vital evidence. Similarly, when a teenaged neighbour raped nine-year old Manju, her parents gathered up the courage to report the incident only after a month, partly due to embarrassment and partly due to intimidation by the neighbour, by which time the evidence was lost. Lack of knowledge in poor families and fear often leads to the victim being washed or not reporting the assault for a day or two. Even if the evidence is available and collected (a genital swab, for instance), it is physically carried, often uncovered, by the police officer for submission. There have been several instances where the HAQ team has found the Investigating Officer being handed over an uncovered slide by the hospital to be carried to the laboratory, and who knows how long it lay there unattended! This is not only scandalous and negligent but also ensures that the victim never gets justice or must fight a particularly tough battle for it.

Absence of Training

There is no dearth of evidence in the field of juvenile justice of the large scale unawareness of the law itself among the very personnel of the states who are supposed to function and operate under it. The Sinha Committee recommend.

The training of the social workers working with the children’s organizations and institutions has to be related to the requirements of children and the welfare services necessary for their rehabilitation. Adequate provision for offering opportunities of training to field
workers and administration and organizers should be made in the budget of the central and state departments of Social welfare, the Central Social welfare Board as well as in the budget of each agency. The provision for training of child welfare workers has to be built into the programme of child welfare.

The need for training of personnel has been recognized long back but the provisions made thereafter are not adequate and no efforts are been taken to make it happen. One of the reasons of non fulfillment is the lack of funds. The UNICEF had promised to give financial assistance for two years for holding training programmes and creating infrastructure for training. The conferences and workshop conducted, the success of these training programmes required that training actually work under JJA in the post training. In JJCPCA 2000 an estimate was taken for the training of personnel’s. It states that 10,000 functionaries of the Homes, 2112 police officers, and 721 social workers voluntary organization associated with JJCPCA need to be trained.673

Confusion On Interpretation of Law

The statutes of the law, as they are currently drafted, lend themselves 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 judgement on May 6, a Supreme Court bench comprising Justices Altamas Kabir and Cyriac Josephsaid 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

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673 "Improving the Protection of Children in Conflict with Law in South Asia", UNICEF, 2007
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 JJCPCA 2000 and the amended one of 2006, would have automatically taken precedence over the old Act. But lawyers and activists welcomed this judgement 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 on or before the commencement of the Act and were undergoing sentence upon being convicted”.674

Similarly, the Delhi High Court has recently passed a judgement 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.675

Even more confusion is created with the JJCPCA requiring children’s homes being run by private agencies or NGOs as fit institutions. Children in need of Care and Protection need to be housed in a protective and child-friendly environment. Many NGOs have been running care institutions with different philosophies for many years, one of which is children must not be confined to a “lock and key” institution but be located in an open house where they are

675 WP (C) No. 8801/2008. Court on its Own Motion v. NCT of Delhi.
free to come and go. However, the JJCPCA clearly lays down certain parameters that must be complied with for any institution to be fit institution, and complying with them clearly calls for it to be run as a custodial home.

**Stigmatisation**

Rehabilitation of the children in conflict with law is not an easy task as their record travels with them all their lives. In fact children especially girls involved in sexual cases most of the time it is found that their parents are reluctant to take them back home. The children after their release form homes have to tackle with this label throughout their life. Inspite of the clear provision under Section 19\(^676\) of the JJCPCA, which says that a person due to his conviction or even if he has been dealt under the provision of the Act cannot lead to the disqualification still they have to suffer. Rehabilitation of a child doesn't mean just to give him a place to live in and teach him some kind of vocational training. Its main purpose is to make a child stand again in front of people high headed. If due to their one act they have to suffer for whole life than the purpose of this whole Act gets defeated and the social integration becomes a failure. Recently, in a matter before the Madras High Court\(^677\) the Petitioner was informed that the Petitioner was successful in the written test for the post of Police Constable Grade-II, for which selections were held in the year 2006. The police enquired his character and antecedents and it was found that the Petitioner was involved in a criminal case in Crime No.

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\(^{676}\) 19. Removal of disqualification attaching to conviction- (i) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

221 of 2004 under Sections 147 and 364A IPC r/w 149 IPC. However, the Petitioner was juvenile and the Juvenile Justice Board dealt with his case, by order-dated 01.10.2007, in C.C. No. 42 of 2007 acquitted the Petitioner holding that there was no material to punish the Petitioner. In spite of this the Petitioner was denied the employment. The reason of his denial was that he conceal by not disclosing the material facts. However the petition was allowed and respondent was directed to comply with the order. Such instance force us to think again Are we able to give right-based approach to the children or that is just on papers?

**Absence of Rules**

The rules are the pre-requisite to the implementation of an Act as the actual functioning, responsibility, powers, procedures, and standards under its various provisions have been left to be governed by rules to be framed under it. In past there had been instances when Children Acts not enforced for want of rules. The responsibility to frame rules under the JJA was that of state government as the case in JJCPCA 2000.

The Model Rules under the JJCPCA has been framed to work as a model and the states are in process of framing rules. Accurate information on the number of states that have framed rules is not available. It is the utmost responsibility of the states to frame the rules and implement the same. As we the data is insufficient, inspite of that if we consider the report given by the WCD it seems that majority of the states has notified the rules exceptions are there like Goa framing

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678 For example, information taken from the paper book of *Sheela Barse* Case points out that the AP Childrens Act 1979 was not enforced till mid-eighties as rules were not framed thereunder. The deputy secretary of Manipur reported in his affidavit dated 11 July 1988 that the Home Department was then undertaking steps for training rules under the Manipur Children Act 1978 with a view to enforce the said Act.

679 1986 SCC (Cri) 337.
of rules under process and regarding Kerala no information. Rest all states and union Territories has framed their rules.

8.2 Issues in the cases

The Supreme Court has played vital role for the children in need of care and protection and children in conflict with law. Many times the various issues came before the court one of the most important case that change the scenario towards the welfare of children. Sheela Base, a journalist, filed a petition for the release of 1400 children incarcerated illegally in jails in various states. The petitioner pursued the matter for release of these children with the central government at various level but went in vain. She then filed the writ petition in the Supreme Court. This petition resulted in country wide exercise of ascertaining the number of juveniles in the jails, the number of various custodial homes for children, the facilities in such homes and issuing of remedial orders therefore. The impact of the case was that it led passing of JJA and Supreme Court undertake the responsibility of getting the JJA implemented and to monitor the progress in this respect. Numerous orders of Supreme Court in the Sheela Barse case led to implementation of infrastructure under the JJA. Further we will examine the issues that raised and implementation of the orders.

In 1986, Sheela Barse, a social activist, filed a writ petition in the Supreme Court against the Union of India and prayed for the release of children below 18 years from jails. The Chief Justice heard this petition and he directed all the District Judges to furnish the relevant information and also directed all District Judges to visit jails in their jurisdiction at least once in every 2 months. From the reports submitted by the District judges, it was found that there were at least

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680 ibid.
1,400 children lodged in various jails of the country, as there were no Children’s Homes. Further, the conditions of the jailed children were pathetic. Ultimately it led to the passing of a uniform single legislation. Thus, the Juvenile Justice Act, 1986 came into force. This Act introduced a uniform juvenile justice system throughout India as it extends to the whole of the country. However, the problem was more severe, as the case progressed the response of various state agencies to the orders of the SC pointed out that the issues in the case were not limited only to the juveniles in the jails or their release or the conditions of their detention either on jails or other institutions. The problem was more deep-rooted in the apathy, ignorance and insensitivity of the state to the needs of children. When JJA was enforced, the Supreme Court emphasized that

About 30 corers of young boys and girls come within the preview of the Act. There can be no two opinions that these children of today are the citizens of tomorrow’s India and country’s future would necessarily depend upon their proper hygiene-physical and mental. The problem is, therefore, gigantic, at the same time, there is demand for immediate attention . . . unless the importance of the matter is properly perceived and the response is adequate both in regard to sufficiency of actions and immediacy of attention, the purpose of the Act cannot be fulfilled. . . It is one of the paramount obligations of those who are in charge of governance of the Country today to attend to the children to make them appropriate citizens of tomorrow.681

Issues Raised

The petitioner prayed to the court for an order releasing all the children below 18 years of age detained in various states and to direct

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681 Supreme Court Legal Aid Committee v Union Of India, JT 1989 (I) SC 548.
district judges to visit jails and police lock-ups to identify the release children and to ensure follow up action after release. She requested that the respondent states be directed.

a) to file within two weeks, information on number of children in jails, nature of their offence, period of detention, legal aid rendered, existence of juvenile courts, and number of homes and schools for housing children,

b) to immediately requisition necessary buildings to provide for housing children facing trials before that juvenile courts, and number of homes and schools for housing children,

c) in the interim to make use of existing observation/protection homes for the purpose.

The petitioner also wanted the court to direct the respective state legal aid boards and district legal aid committees through appointment of 'duty counsel' to ensure protection of fundamental rights of children housed and to be housed in such homes. Lastly, she prayed for any other order or orders as the court may deem fit and proper in the facts and circumstances of the case.

The Supreme Court was of an opinion that implementation of the JJA needed overseeing by the court in view of the implementation scenario and the response of various state agencies so far. In the case various issues raised relating to the implementation of the Children Acts. Further the order passed by the SC in this case and its effect on the system is analyses in this chapter.

Orders Passed By The Court

The petition was filed on 10 September 1985 and it was finally decided on March 1994, during these 9 years period the court passed
12 orders of which five are reported. Notices were issued to 25 respondent states, but as the issues raised by the petition concerned children of the whole country, the remaining states and Union of India were impleaded as parties by the court’s order. In its subsequent orders SC sought information on various important aspects relating to institutionalization of juveniles and implementation of services under JJS and made orders for its improvement.

The first order was passed on 15 April 1986 the court directed the district judges throughout the country to nominate chief judicial magistrates, judicial magistrates and other appropriate judicial officers to visit jails and sub-jails in the district and report by 10 June 1986

- the number of children in jail or sub-jail;
- the offences they are charged with;
- whether in same jail or transferred;
- conditions in jails and custodial institutions;
- whether legal aid given; may more directions

In its subsequent orders, Supreme Court asked for information on certain other matter also that includes conditions of homes under Children Acts, reasons for non-enforcement of the Children Acts etc.

Herein below judgment passed by the court is reproduced therefore highlighting the important parts of the order.

1. The right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of

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time, it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. 

Hussainara Khatoon & Ors. v Home Secretary, State of Bihar, [1979] SCR 169, relied upon

2. Every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of Judges and providing them the necessary facilities. It is also necessary to set up an Institute or Academy for training of judicial officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts.

3. So far as a child-accused of an offence punishable with imprisonment of not more than 7 years is concerned, a period of 3 months from the date of filing of the complaint or lodging of the First Information Report is the maximum time permissible for investigation and a period of 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the
prosecution against the child would be liable to be quashed. Every State Government shall give effect to this principle or norm in so far as any future cases are concerned.

4. So far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, it is directed that every State Government shall complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of chargesheet and if a chargesheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed.

5. The State Governments must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail.

6. Instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, the Central Government should initiate Parliamentary Legislation on the subject, so that there is
complete uniformity in regard to the various provisions relating to children in the entire territory of the country.

The Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost.

8.3 Implementation of Orders of the Court

At first instance we will take the response of the respondent states towards the court seeking information regarding the removal of juveniles in jails. In the order the state counsel, the district judges (DJs), the advocates deputed by the Legal Aid and Advice Board (LAAB) and others, had an equally important role to play and discharge duties in exercise for removal of juveniles from regular jails and also for the implementation of the JJA. It was observed that none of the states ever replied in the first instance. The positions of responses of different respondents as on 11 December 1986 (prepared by the original petitioner) showed that out of the original 25 respondent states only nine had filed their affidavits by 11 December 1986, a year after notices returnable on 7th October 1985 were served.\textsuperscript{683} It was observed that all the report whether to be filed by the DJs, LAAB, or the social welfare department they were filed after repeated reminders and even than most of them did not contained complete information as asked for in order of the court. Ignorance of law and contradictory or differential responses were all pervading whether the respondent were judicial officers or high officials in the

\textsuperscript{683} Id. at 275.
government, or whether the information related to the Act in operation, or the number of homes for juveniles.

Further any analysis of these responses showed the widespread lack of awareness of even the existence of basic norms and standards, leave alone the norms and standards themselves, among the very people who had to operate or function under them. For instance, Tamil Nadu presented the unique case of five sets of rules under the JJA, compounding ignorance with confusion. The state affidavits and six DJs did not answer the query at all. Four of its DJs said that no rules had been framed under the JJA, while one said that the rules had been framed. Almost similar situation was of other states unawareness whether the rules had been framed or not.684

The position of the states can be imagined as pointed by Ved Kumari, the statement of the under secretary, social welfare department, Government of Madhya Pradesh was most extraordinary. He stated, “Madhya Pradesh Juvenile Justice Act, 1988 (sic) has been prepared and published in the light of JJA, 1988 (sic) which are in operation in the state since 16th December 1988 (sic)”. One wonders if the statement is the result of typing error, translator’s fault or plain ignorance.685

The court in the order directed the states to establish homes for juveniles, as specified under the JJA. The states notified wide of homes as per the Act. However, the categories of homes so notified by the states were questionable from the point of view of adequate facilities for care, protection and rehabilitation of juveniles.

As per the JJA Section 53 advisory board had a important role but that can be done only if regular meetings are held reviewing the

684 Id. at 276.
685 Ibid.

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progress. It was observed that the constitution of advisory board and their meeting has been ignored by the states.

From the above discussion it can be stated that the there was complete lack of ignorance of law and unawareness among the official assigned under the Act more over the states lack of interest towards the children. Now further would like to evaluate the implementation of orders in different categories of juveniles in jails, as also the state of homes for juveniles. The court passed the orders for the transfer of juveniles in jails and also for proper implementation of the JJA.

**Juveniles In Jails**

Juveniles were found in vary numbers in regular jails of all states. The review of the states affidavits and reports filed by the DJs in the year 1986 showed the highest number of children in jails in West Bengal (643), followed by Bihar (240), Assam (124), Maharashtra (86), Punjab (63), Orissa (56), Uttar Pradesh (34), Andhra Pradesh (26), Haryana (23), Manipur (8), Madhya Pradesh (7), Kerala (4), Sikkim (3), and the Andaman and Nicobar Islands (3), Goa, Karnataka, Rajasthan, Tripura, and Chandigarh each reported one child in jail. Gujarat, Himachal Pradesh, Tamil Nadu, Delhi, and Lakshadweep reported that there were no children in jail. No information available in case of J&K, Nagaland, Arunachal Pradesh, Dadra and Nagar Haveli, Daman and Diu, Mizoram and Pondicherry.

The picture that emerged from the reports filed in 1988-9 showed that juveniles continued to be kept in jails n some places.

Quite a few children were either released or transferred to alternative homes for children pursuant to the court’s orders and intervention. The courts order dated 17th March 1989, recorded 614,247,60,63, and 437 children in the jails of Assam, Bihar, Orissa, Punjab and West Bengal respectively. In other states, however the
number did not exceed 30-5. Orders for their transfer to homes for juveniles resulted in further reduction of these numbers. Two months later the court noted the salutary effect in regard to housing of juvenile delinquents in regular jails after this court made a direction prohibiting such housing. The last position is that in no state except the Union Territories of Andaman and Nicobar islands juveniles are kept in regular jails. From several hundreds, the number got reduced to nil in some of the states.

The sole defaulting UT was directed to make arrangements for transfer of the delinquent children from jails to separate homes for them as required by the JJA and to file compliance.

Implementation of The JJA

It should be noted that available information did not present the actual and accurate picture because the information was not available for all states in all aspects. The reports filed by the DJs, High Court registrars and from affidavits filed by the respondent states it found that the information given there were contradictory and different moreover, it was found that information given by the separate bodies or persons of same state were conflicting. Given below is brief description of all India implementation of JJA.

Advisory Board

It was seen that seven states given information regarding the constitution of an advisory board. The states like Kerala, UP, Daman and Diu and Goa reported constitution of advisory board. Haryana, Delhi and Assam had an advisory board. Some of the states even confirmed the first meeting held by the advisory board. Haryana reported holding of a meeting of its advisory board on 11 January 1989 under the chairmanship of the minister for social welfare. The
minutes of the meetings mentioned various important decisions taken, including approval for setting up of various new homes, recognition of certain existing homes, identification and unauthorisation of three non-governmental organizations for running some homes, and setting up of the juvenile justice fund with Rs 5 lakh.

**Juvenile Justice Boards**

The information received regarding the existence of JJB (Juvenile courts) shows that most of the states took recourse to Section 7 (2) of the JJA. District magistrates, judicial magistrates of the first class and CJMs were authorized to exercise powers and discharge the functions of a juvenile court/board. Apart from Delhi, only Chennai reported the constitution of a juvenile welfare board.

**Homes For Juveniles**

In one of the affidavit filed by the Union of India of state-wise details regarding the institution set up under the JJA was given. The number of homes established under the JJA differed from state to state. It was observed that the court direction to establish homes under Section 2 (f) and (o) had been ignored by most states. Information on ‘place of safety’ or ‘fit person/fit institution’ was available only rarely.

Reports of visits to homes for juveniles sent by some CJs and advocated by LAAB painted a picture of dilapidated buildings without playgrounds, lack of sanitation, monotonous food, substandard or absent educational/vocational training and rare after care programmes. The affidavit of the state of Andhra Pradesh regarding the dilapidated condition of a home pointed towards reasons other than mere lack of funds for this state of affairs. It expressed its

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inability to undertake repair work because the observation home was in a rented building.

Probation Officers

It observed that very few states filled information about the probation officer under the JJA. Further observed that majority of states declared welfare officers as the probation officers and inspite of the courts order rarely any state made fresh appointment of probation officer under the JJA.

Rules Under The JJA

The twenty-three states and UTs framed and enforced the rules under the JJA. Tamil Nadu framed as many as five different sets of rules under the JJA.

Impact of The Sheela Barse Case

The most important effect of sheela barse case on juvenile was the introduction and enactment of a uniform legislation for the care and protection of the children of the whole country except J&K. We cannot ignore the impact of the case that proved to be boon for hundreds of children illegally detained in various jails all over the country. The effect of the case was that all these children either released or transferred to homes established under the Children Acts or the JJA.

Another important achievement of the case was the acceptance by the state of J&K of the scheme for overseeing the implementation of the JJA by the Supreme Court. Though the JJA did not extend to the state of J&K, the Supreme Court was successful in persuading it to accept the scheme to ensure protection to its children. It implied that the state of J&K had agreed to implement the orders as and when
passed by the Supreme Court for the implementation of the provisions of the JJA.687

The monitoring scheme suggested for essential measures to be taken immediately by each state for ensuring protection to children, namely:

(i) recognition/establishment of institution/places for keeping children falling under the JJA,

(ii) ensuring that such institution functioned in a manner conducive to the development and all round growth of children kept therein,

(iii) provision for special training of the personnel who decide the future course of action for the child, and

(iv) appointment of an appropriate number of probation officers to function under the JJA.

For the implementation of the JJA the scheme suggested the constitution of the Advisory board at the state level, review and implementation committees at the district level and identification of voluntary social workers at the district level to be integrated in the review and implementation committees or to function as independent watch-dog committees.

Not only this but many more things were featured and raised voice in this matter like speedy trial, is fundamental right implicit in the Article 21 of the Constitution, training of judicial officer so that to provide efficiency in the courts. The case had some divergent point of view in the order that passed in August 1986 it introduced differential rules for investigation and disposal of cases of children charged with

687 Id. at 283.
commission of offences punishable with imprisonment of not more than seven years compared to others.

The sheela Barse case played a very important role in the history of JJS. Inspite of the changes that came in the JJA 1986 it seems that it failed in achieving the objective of the Act and was not in total welfare of the children. The courts were flooded with the numerous petitions raising different issues under the Act. Meanwhile the JJA has been re-enacted as JJCPA 2000 in view of primary responsibility imposed on the state, under Articles 15(3), 39 (e) and (f), 45 and 47 of the constitution of India, of ensuring that all needs of children are met with and their basic human rights are protected.

In the process various orders had been passed by the courts that brought the changes and gave new dimension in the juvenile justice system. Herein below some of the important case that brought changes in the system are highlighted, appraisal of whether the implementation exercise followed the court orders and what had been the response of the states to the courts initiative?

The one of the most important question raised in the JJS was about the applicability of the Act that brought a remarkable change in the entire system. From the order passed by the Supreme Court it shows the confusion among the orders passed by the court at different occasions and finally the issue got settled in the matter of Pratap singh case. A three Judge Bench decision of Supreme Court in case of Umesh Chandra.\textsuperscript{688} in most categorical terms wrote that as regards the general applicability of the Children Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. The decision was made on the

bases that the Children Act is enacted to protect the young children from the consequences of their criminal acts on the footing that their mind at that stage could not be said to be mature for imputing *mens rea* as in the case of an adult.

In 2000, there appeared to be a shift in the view of the Hon’ble Supreme Court it observed it decided in the case of *Arnit Das v State of Bihar*,\(^{689}\) that:

> So far as the present context is concerned we are clear in our mind that the crucial date of determining the question whether a person is a juvenile is the date when he is brought before the competent authority.

The decision rendered in the case has evoked a new controversy regarding the effective date when the provisions may benefit; of JJA 1986 have to be extended to an offender. Many socialites and people working for welfare of children stated that,\(^{690}\) the relevant date should be the date when the offence is committed and not the date when the offender is put to trial.

The question which fell for decision in *Arnit Das* case again fell the consideration of this court in the case of *Pratap Singh*,\(^{691}\) where the decision of this court in *Umesh Chandra*’s case, which expressed a view which was contrary to that expressed in *Arnit Das*’s case was brought to the notice of the Court, which referred the case to the Constitution Bench to settle the divergence of views. The Constitution Bench formulated two points for decision, namely, whether the date of

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\(^{691}\) 2005 SCC (Cri) 742.
occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the Court/Competent Authority whether the JJCPA 2000 will be applicable in a case whose proceeding is initiated under the JJA 1986 and was pending when the Act of 2000 was enforced.

While considering the first question, the Constitution Bench considered the decision of the three Judge Bench in Umesh Chandra’s case, wherein it was held that the relevant date for the applicability of the Act so far as age of the accused, is concerned, is the date of occurrence and not the date of trial. Consequently the decision in Armit Das’s case was over-ruled and the verdict of the Umesh Chandra’s case was declared to be the correct law. On the second point, after considering the provisions of Section 3 and Section 20 of the JJCPA 2000, it was said that an offender who was being proceeded with in any Court/ Authority initiated under the JJA 1986 and had not completed the age of 18 years as on 1.4.2001, shall be governed by the provisions of JJCPA 2000.

This decision in Pratap Singh’s case led to the amendment of Section 2(l), 39 by introduction of Section 20 and the introduction of Section 7A to the Act and Rule 12 in the Model Rules 2007. In a nutshell it was the impetus behind the 2006 amendment brought under JJCPA 2000.

This view was again upheld in case of Satbir Singh v State of Haryana, Jameel v State of Maharashtra, Ranjeet Singh v State of Haryana. The Supreme Court on 5th May, 2009 has again came up with another landmark judgment. The appeal in Hari Ram v State

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2005 AIR SC 3546.

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of Rajasthan, raised certain questions which are fundamental to the understanding and implementation of the objects for which the JJCPCA 2000 was enacted. The judgment said that the implementation of the said Act therefore, requires a complete change in the mindset of those who are armed with the authority of enforcing the same, without which it will be absolutely impossible to achieve the objects of the JJCPCA. In this case Hari Ram was arrested along with several others on 30.11.1998 for alleged commission of offences under various provisions of IPC. According to appellant’s father the date of birth of the appellant was Kartik Sudi 1, Samvat year 2039, which was equivalent to 17th October, 1982 and the alleged offence was said to have been committed on 30th October, 1998 on which date the appellant was supposed to have completed 16 years and 13 days. The additional Session judge by his order dated 3rd April, 2000 declared the age of the accused to be below 16 years on the date of commission of the offence and therefore directed that he tried in the JJB, Ajmer Rajasthan. In the Revision Petition No. 165 of 2000, filed by the State of Rajasthan, it was held that the appellant was not a juvenile and the provisions of the JJCPCA 2000, were not, therefore applicable to him. The High Court based on the available facts as to the date of birth and a medical examination conducted on the appellant by a Medical Board also indicated that the age of the appellant at the relevant time was between 16 and 17 years also held that the accused on the date of the offence was above 16 years of age and was therefore not governed by the provisions of the JJA 1986. This order of the High Court was appealed against. The Apex Court held that in the instant case there was no controversy that the appellant was of sixteen years of age on the date of commission of the

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alleged offence and had not completed eighteen years of age when
the JJCPCA 2000 came into force. In view of Section 2(k), 2(l), 7A, 20
and the amended Model Rules 2007 the court held the accused to be
a juvenile within the parameters of the respective law and directed the
matter to the Juvenile Justice Board of Ajmer for disposal of the
matter in accordance with law, within three months from the date of
the receipt of the copy of this order.

The said judgment of Hon'ble Mr. Justice Altamas kabir and
Hon'ble Mr. Justice Cyriac Joseph referred to an earlier view of the
Constitution Bench which said that the provisions of the JJCPCA 2000
have prospective effect and not retrospective effect, except in cases
where though the male offender was above 16 years of age at the
date of commission of the offence but was below 18 years of age
as on 01.04.2001. Thus, the said Act would cover earlier only where a
person has not completed the age of 18 years on the date of it's
commencement and not otherwise.

The same difficulty is faced by the judiciary while dealing the
applicability of the provisions of probation for young offenders below
the age of 21 years. In Ramji Missar and another v State of Bihar,698
it was held that the crucial date must be that upon which the trial court
had to deal with the offender. The court shall therefore have to see
whether on the date the judgment was passed by the trial court, the
accused was or was not of 21 years of age. Most of the courts had
opined that the age of 21 is relevant at the time of the pronouncement
by the trial court, because this is the time when the court finds him
guilty as contemplated under Sections 4 and 6 of the Probation of
Offenders Act. But in Darshan Kumar’s699 case the Supreme Court
held otherwise. In this case reliance was shown on the birth certificatel

698 AIR 1963 SC 1088.
produced which showed that the appellant was below 21 years of age at the time of the commission of the offence.

So, we find that the Supreme Court has always generally expressed sensitivity and concern over the age of the accused keeping in mind the need of treating the juveniles differently from the adult offenders. This trend and responsible approach is expressed by the Supreme Court even before the passing of the JJA. The judiciary has always tried to live up to the objective of welfare of the child keeping in mind the psychological and biological elements.

**Documents relevant for computation of age**

Rule 12 (3) of the Model Rules 2007 provides an exhaustive list of documents that are to be considered for the purposes of determination of age of a juvenile. Before these rules were framed and notified there were various decisions of the Apex Court which laid down the relevant guiding principles to be kept in mind while dealing with this issue.

This issue also came up before the Hon'ble Supreme Court in *Santenu Mitra v State of West Bengal*, it was held that entry in register of births and deaths, recorded by an official in performance of his duties cannot be doubted merely on ground that it was not contemporaneous with the suggested date of birth. LIC Policy and Matriculation Certificate also mentioned the same date of birth as mentioned in register of births and deaths though an application form filled by father of the appellant at the time of later's admission in school was different. The entry recorded by an official in performance of his duties was given preference over the application form filled in by the father of the appellant. The same issue came before the court was

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700 AIR 1999 SC 1587.
also discussed in detail in *Jyoti Prakash Rai v State of Bihar*,\(^{701}\) accused claimed that he was a juvenile. He produced school certificate and horoscope same were found to be forged and fabricated. It was held that in such a case court has no other option but to determine the age on basis of medical reports even though they are not conclusive". Similarly in the matter of *Pappu v Sonu & Anothers*,\(^ {702}\) the accused claimed to be a juvenile. School record and evidence of mother of the accused showed that he was not a juvenile. Trial Court relied upon certificate of doctor to hold that accused was juvenile. The Hon'ble Supreme court observed that since the Doctor had failed to indicate the basis on which his observation with regard to radiological age of accused as 18 years, the same could not be relied upon to discredit mother's evidence and school record.

The plea of juvenility raised for the first time in Supreme Court in the case *Gurpreet Singh v State of Punjab*,\(^ {703}\) it was held that "it appears that this point was not raised either before the trial court of the High Court. But it is well settled that in such an eventuality, this Court should first consider the legality of otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of occurrence, he was juvenile but on date this Court is passing final order upon the report received from the trial court, he no longer continues to be juvenile, the sentence imposed against him

\(^{701}\) AIR 2008 SC 1696.  
\(^{702}\) 2009 (2) RCR (Cri) 293.  
\(^{703}\) (2005) 12 SCC 615.
would be liable to be set aside. Reference in this connection may be made to a decision of this Court in Bhoop Ram v State of UP.\textsuperscript{704} in which at the time of grant of special leave to appeal report was called for from the trial court as to whether the accused was juvenile or not which reported that the accused was not a juvenile on the date of occurrence but this Court, differing with the report of the trial court, came to the conclusion that the accused was juvenile on the date of offence was committed and as he was no longer a juvenile on the day of judgment of this Court, sentence awarded against him was set aside, though the conviction was upheld”.

Similarly in the case of Munney \textit{v} Rahat Jan Khan v State of UP,\textsuperscript{705} while challenging the order of High Court which upheld conviction U/S 302 read with Section 34 IPC and sentence of imprisonment of life imposed by first Addl. Sessions Judge, the appellant also took a plea that he was a juvenile as on the date of incident, which took place on 11.11.78. The appellant was convicted by Ld. ASJ on 26.02.80 and at that time Uttar Pradesh Children Act, 1951 was applicable which afforded protection to a child and defined a child u/s 2(4) to be a person under the age of 16 years. The court considered the fact that appellant in his statement u/s 313 Cr.P.C. recorded on 19.01.80 has given his age as 18 years and claimed to be studying in 12th Class which reflected his age to be nearly 17 years at the time of occurrence. No plea that appellant was child was taken during the course of trial or in appeal before High Court and hence it was concluded that appellant was not child at the time of commission of offence.

\textsuperscript{704} 1989(1) RCR (Criminal) 573 : (1989)3 SCC.
\textsuperscript{705} AIR 2006 SC 2902
In *Chandra Shekhar Bind v State of Bihar*,706 “plea of juvenility was not taken at any point of time before the Trial Court and the High Court. Even an SLP filed before Supreme Court, such a plea was not taken. The Apex Court declined to consider the plea which was raised for the first time in the court during the course of arguments”. Again in the year 2007 the same question raised before the court in the matter of *Murari Thakur & Another v State of Bihar*,707 and decided that plea to claim benefit of the JJCPCA 2000 cannot be raised for the first time before Supreme Court as question of age is a question of fact on which evidence, cross examination etc. is required and, therefore, it cannot be allowed to be taken up at a late stage.

The provisions of Section 1 (4) of JJCPCA 2000 have an overriding effect on all other legislations irrespective of the nature of offence committed by a child who is less than 18 years of age as on the date of commission of offence.

In case of *Raj Singh v State of Haryana*,708 it was held that juvenile legislation should reign supreme in juvenile cases no matter the nature of offence committed. Thus irrespective of the provision/Act under which a case is registered against a juvenile, the juvenile is to be dealt with only under the JJCPCA and not any other special Act for the purposes of inquiry and any final order pursuant thereto.

Another crucial issue that was discussed here in above about when can the plea of juvenility be raised. The same is now a decided and has been settled position that the plea of juvenility can be raised at any stage, even after a person has been sentenced by trial court. The important decisions laid down by the court regarding the abovementioned issue in some of following cases are *Jayendra &*  

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706 AIR 2001 SC 4024.  
707 AIR 2007 SC 1129.  

There is yet another aspect to be kept in mind and that relates to expeditious filing of charge sheets and completion of inquiry of juveniles. This issue was dealt with in the case Sheela Barse case it was held that we would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment shall be completed within a period of three months from the date of filing of the complaint or lodging of the first information report and if the investigation is not completed within this time, the case against the child must be treated as closed . . .

Apprehension of a child alleged to have come in situation of conflict with law. Section 10(1) of JJCPA 2000, which provides that a juvenile should be produced before Juvenile Justice Board within 24 hours of his arrest. Detaining a person in custody beyond this period would amount to illegal detention. Section 13 of JJCPA 2000 further provides that the police as soon as may be after the arrest, inform-

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

b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material

709 (1981) 4 SCC 149.
710 1996 (Cr) 396.
711 (2000) 6 SCC 89.
circumstances likely to be of assistance to the Board for making inquiry.

Therefore with the implementation of the amendments to the definition of a juvenile in conflict with the law and the inclusion of Section 7A, a set standard has been created which one hopes shall not leave such an important issue to unpredictable judicial interpretation.

Conclusion

The JJS has gone through various changes since the time of Children Acts, but the major and the positive influence towards the children welfare can be seen from the time of JJA 1986. Though the Act had lot of lacunae and drawbacks at the same time it brought lot of changes and with the Sheela Barse case the reality of the people working in the field of children’s rights and welfare came into light.

While considering the Sheela Barse case it stated that there was widespread ignorance of the concept as well as the content of the JJS in India. There was a complete lack of knowledge and absence of empathy among the enforcement agencies dealing with children. Further the case revealed there is a range of reasons for the imprisonment of juveniles, illegal practices and absence of empathy and understanding children’s problem. Detention is always coupled with the juvenile being, in all aspects, included within the criminal justice system. Juveniles are declined the safeguards of juvenile legislation, such as socio-legal approach of the juvenile justice board, completion of inquiry within four months, and mandatory granting of bailexcept in certain prescribed circumstances. Officials often under the influence of the physical appearance of the child determine their age and cause grave injustice to the juvenile and the entire criminal justice system. The need for the development of responsible
consciousness among the officials and the entire criminal justice mechanism to identify the juveniles to bring them within the folds of juvenile justice system has increased even more, specially after the introduction of the 2006 amendment to the JJCPCA, which now defines a "juvenile in conflict with law" to mean a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence. The present status of the legislation is such that though it is prospective in nature but it can acquire retrospective character in order to ensure benefit to the juvenile irrespective of when the accused is produced before the court, or whether their cases are pending or disposed of. Hence, persons above 16 years of age who had been treated as adults under the JJA 1986 are to be identified and brought under the ambit of juvenile legislation, even if the offence was committed prior to the 2006 amendment.