HOW DO JUVENILE JUSTICE BOARDS DECIDE THE FATE OF 16-18 YEAR OLDS? PRELIMINARY ASSESSMENT UNDER SECTION 15 OF THE JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2015

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Abstract

A macabre tragedy unfolded on the familiar streets of Delhi when a young female physiotherapy intern was most brutally raped on the night of December 16, 2012 by the most horrific of men including a juvenile offender aged 17 years.[1] This led to a tremendous outcry demanding for a revolutionary change in the juvenile justice laws. Thereafter, the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the Act) was enacted that brought forth an entirely new regime in respect of juveniles above the age of sixteen, accused of committing heinous offences.

The paper analyses the viability of the section 15 of the Act, for it is the game changer in the real sense. It seeks to examine the validity, implementation and the loopholes, if any, of this new system of a preliminary assessment from the eyes of a principal Magistrate of one Juvenile Justice Board[2] (hereinafter referred to as the JJB) set up in New Delhi and the considerations he keeps in mind while applying the section. Further the paper tries to deliberate upon the psychological theories of juvenile delinquency that are applied by the JJBs and the psychologists to understand the psyche of a child in conflict with law and thereby to decide if he should be committed to Children's Court and be tried as an adult. At the end, the researcher also tries to give suggestions to incorporate into the present system better ways by which assessment can be done under section 15.

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[1] Smriti Singh, "Delhi gang rape: case diary" *Times of India,* (Sep. 13, 2013), *available at:* https://timesofindia.indiatimes.com/india/Delhi-gang-rape-Case diary/articleshow/22455125.cms (last visited Mar 29, 2020).
[2] JJB consisting of Arul Verma (Principal Magistrate), Meenakshi Verma (Member/JJB -I) and Vincy Poulose (Member/JJB -I), Seva Kutir Complex, New Delhi.

VIII. Conclusions and suggestions

I. Introduction

IN INDIA, the moral panic created by the Delhi Gang Rape, 2012, followed by the Mumbai Shakti Mill gang rape incident had ably provoked the nation and had acquainted us with the gory facts depicting the horrendous roles played by the juvenile accused in such incidents, which made the government feel morally bound to respond to such a 'public outcry'.

Nevertheless, the Justice J.S Verma committee report[3] categorically rejected the demand for lowering the age of juveniles to sixteen for they argued that the essence of a different system of 'justicing' for juveniles lies in providing and dealing with children in accordance with a system that gives due regard to their faculties and mental capacities. The stock arguments given for the lower cognitive abilities of children throughout the twentieth century actually stem from the psychoanalytic and behaviourist theorists, who were of the belief that children were mentally deficient majorly because of insufficient socialization, lack of domestication, *etc.* Research by the MacArthur Foundation Research Network on Adolescent Development conducted by a team of scholars led by Laurence Steinberg[4] have observed that adolescents act impulsively and the presence of peers increases the risky behaviour.

In India, in the year 2016, there were approximately 35,849 cases reported under the head "Juveniles in Conflict with Law", which evidenced a significant decline from the 38,455 cases reported in the year 2014. Most of the accused were involved in theft and burglary. Many were even involved in rape cases. However, Swagata Raha, senior research assistant, Centre for Child and the Law (CCL), National Law School of India, Bangalore, pointed to the fact that data on crime in India was based on first information reports (FIRs) filed by the police and not actual conviction.[5]

[3]*See generally* Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (Jan. 23, 2013).
[4]Laurence Steinberg, "Should the Science of Adolescent Brain Development Inform Public Policy" 50 *CR* 67,71 (2014).
[5] Revathi Siva Kumar, "We know who killed Pradyuman….but why on Earth?" *Citizen matters*, (Feb. 6, 2018), *available at:* http://citizenmatters.in/juvenile-crime-justice-ryan-international-gurgaon-pradyuman sharma-5740 (last visited Mar. 29, 2020).

Owing to the above number of cases and the demand for stringent laws, the Government of India adverted to a definite shift that was away from the pro child policy. It was somewhere on the lines of what Juan Alberto Arteaga had once remarked,

> "*Federal law makers describing American children as 'hardened criminals' and 'large threat to public safety' rather than 'our future', have sought to enact legislation that would facilitate prosecuting juveniles in criminal courts rather than in the juvenile justice systems*."[6]

Thus, the product of this is the present Act and especially section 15[7] which categorises the children in conflict with law on the basis of their age and the nature of the offence. The paper seeks to examine therefore, the working of the section, how it is and how it ought to be from the eyes of the researcher.

II. The culpability of adolescent criminal choices

There are several dimensions of adolescence that distinguish young offenders from adults in ways that mitigate culpability. These include deficiencies in decision making ability, greater vulnerability to external coercion, and the relatively unformed nature of adolescent character.[8] They are less capable than adults in using their capacities in making real life choices, partly because of lack of information and partly because they are less efficient in processing

[6] Juan Alberto Arteaga, "Juvenile Justice: Congressional attempts to Abrogate, the procedural rights of Juvenile Defendants" 102 *CLR* 1051-53 (2002).

[7] Juvenile Justice (Care and Protection of Children) Act, 2015, s. 15. Preliminary assessment into heinous offences by Board.

1. In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:
   Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.
   Explanation- For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.
2. Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:
   Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:
   Provided further that the assessment under this section shall be completed within the period specified in section 14.

[8] Elizabeth F. Emens, "Aggravating Youth: *Roper* v. *Simmons and Age Discrimination*" 2005 *SCR* 51,55 (2005).

information.[9] Thereby, adolescents are inclined to weigh less lightly the future consequences than the immediate risks and benefits and end up taking impulsive decisions.[10]

But, for offenders aged 16-18 years, it has been seen that the capacities for reasoning and understanding improve significantly from late childhood into adolescence, and by mid-adolescence, most teens are close to adults in their ability to reason and to understand information-called as 'pure cognitive capacities' The adolescents' tendency to achieve higher levels of stimulation than adults may have a hormonal basis.[11] There may also be biological reasons for the same, such as important structural changes take place during adolescence in the frontal lobes, most importantly in the prefrontal cortex.[12] They have more rapid and extreme mood swings (extreme levels of emotional arousal) which are associated with difficulties in self-control.[13] These psychosocial and emotional factors lead to immature judgements and are a key factor for them to commit offences.

It thus becomes easy to imagine that how individuals whose decisions are subjected to these developmental influences – susceptibility to peer influence, poor risk assessment, sensation seeking, focus on immediate consequences and poor impulse control- fall prey to engaging in a criminal misconduct. But of course, not every teen gets involved in a crime, it also depends on a lot of things including social context (like a high crime neighbourhood). Thus, it is the conventional wisdom that teens are more reckless than adults.

Three prominent psychological perspectives on such criminal delinquency are the psychodynamic, the behavioural, and the cognitive.[14] The basis of psychodynamic theory is the assumption that human behaviour is controlled by unconscious mental processes developed early in childhood. Some children, especially those who have been abused or mistreated, may experience unconscious feelings associated with resentment, fear, and hatred. If this conflict

[9] Laurence Steinberg, "Risk taking in adolescence: What changes and why*?*" 1021 *ANYAS* 51-55 (2004).
[10]William Gardener and Jana Herman, "Adolescents' AIDS Risk Taking: A Rational Choice Perspective*"* in William Gardener, Millstein *et.al.* (eds.), *Adolescents in the AIDS Epidemic (new directions for child development)* 17, 25-26 (Winter, 1990).
[11] L.P. Spear, "The Adolescent Brain and Age-Related Behavioural Manifestations*"* 24 *NBR* 417, 420-21 (2000). (Reviewing animal and human research on brain maturation indicating that a type of remodelling of the brain occurs during adolescence among species).
[12] *Id.* at 423.
[13] Reed Larson, Mihaly Csikszentmihalyi *et.al.,* "Mood Variability and the psychosocial adjustments of adolescents" 9 *JYA* 469, 488 (1980).
[14] Spencer Rathus, *Psychology* 11–21 (Holt, Rinehart and Winston, New York, 1996).

cannot be reconciled, the children may regress to a state in which they become id-dominated.[15] This regression may be considered responsible for a great number of mental diseases, from neuroses to psychoses, and in many cases, it may be related to criminal behaviour.[16] Delinquents are id-dominated people who suffer from the inability to control impulsive drives. Perhaps because they suffered unhappy experiences in childhood or had families who could not provide proper love and care, delinquents suffer from weak or damaged egos that make them unable to cope with conventional society.

It is suggested adolescents who have a certain type of antisocial behaviour as discussed above, enjoy higher recognition and status amongst their peers as a consequence, a gratification that is most sought after.[17] Thus, it is not surprising that young offenders are far more likely than adults to commit crimes in groups.[18]Jane M. Healy has also mentioned once that "*Neuroscience increasingly confirms the power of environmental experiences in shaping the developing brain because of the plasticity of its neuronal connectivity."*[19] Thus, a persistent or a continuous exposure to any external stimulus in a child's environment may forcibly impact his mental, physiological and emotional growth by either setting up a circuitry in his brain or by depriving him of certain other vital experiences.

The researcher intends to question that even if adolescents are less mature than adults, why should immaturity not be considered on an individualized basis? This becomes pertinent in the context of juvenile justice policy. To give an illustration on this account, we have evidence that African American youths are viewed as more mature than same- aged white kids. Justice Scalia had also argued that there was no reason to abandon the practice of allowing capital juries to evaluate the immaturity of juveniles on a case-by-case basis. [20]

But there is a problem with such individual assessment in India, for we have a lack of diagnostic tools to evaluate psychosocial maturity and identity formation on an individual basis so as to

[15] The id is the impulsive (and unconscious) part of our psyche which responds directly and immediately to basic urges, needs, and desires.
[16] David Abrahamsen, *Crime and Human Mind* 137 (Columbia University Press, New York,1944).
[17] Terrie E. Moffitt, "Adolescent-Limited and Life Course Persistent Antisocial Behaviour: A Developmental Taxonomy"*,* 100 *Psychol. Rev*. 674, 687-88 (1993) (indicating that normal adolescents' model, who are admired for 'maturity' and autonomy.)
[18] Albert and Farrington, "Advancing Knowledge About Co-offending" 82 *JCC* 360, 361-62 (1991).
[19] Jane M. Healy, "Early Television Exposure and Subsequent Attention Problems in Children"*,* 113 *Pediatrics* 917 (2004).
[20] *Roper* v. *Simmons*, 553 U.S. 620-21. (Scalia, J., dissenting, arguing that individual determination of jury is at the foundation of America's justice system).

separately treat the savvy young criminals who may belong to the same age group (16-18) rather than treating them alike because of this particular age bracket and heinous offence.

III. An analysis of section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 *viz-a-viz* the actual practice in the Juvenile Justice Board (Seva Kutir Complex, Delhi)

The 2015 Act justifies the very transfer of juveniles above the age of sixteen year old to adult courts, if the Juvenile Justice Board (JJB) conclusively opines that the level of maturity of the juvenile indicates that he committed the heinous offence as an adult and not as a child.[21] Section 15 of the Act requires the JJB to conduct a preliminary assessment with regard to "his mental and physical capacity to commit such an offence, the ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence". If the Board finds that the child needs to be tried as an adult, the board may transfer the trial of the case to a children's court. The children's court conducts a trial and passes an appropriate order subject to sections 19 and 21 of the Act and considering the special need(s) of the child and other principles of justice to the child. The children's court does not award any sentence of death or life imprisonment.

This section is therefore based on the premise that now, in the age of increased exposure to all the anti-social elements present in the society, the juvenile court has been transformed from a general rehabilitative social welfare institution into a more scaled down, second class criminal court for the juveniles.[22] This seems to be because of the increasing crimes committed by our young and because of the perception that there is loss of faith in rehabilitation for that age group.[23] Some children have been come to be labelled as 'predators' or 'super predators',[24] rather than persons in need of treatment, and there has been this shift to treat them more severely than what was earlier being done in the juvenile courts. This is also referred to as the system of *judicial waiver*. This is borrowed from the 'Get-Tough' approach is United States (US). There is unanimity in almost all US States on the point of trying juveniles at par with adults on juvenile attaining the age of fourteen years in certain circumstances barring states like Vermont, Indiana, South Dakota where a child of even ten years can be tried as adult if he

[21] *Supra* note 2.
[22] Barry C. Feld, "Abolish the Juvenile Court: Youthfulness, Criminal Responsibility and Sentencing Policy" 88 *JCC* 68 (1997).
[23] Bazelon, " Exploding the Super predator Myth: why infancy is the pre-adolescent's best defence in Juvenile Court*"* 75 *NYULR* 175 (2000).
[24] Elizabeth Cauffman, Jennifer Woolard, *et.al.,* "Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability" 18 *QLR* 403 (1998).

has committed a serious offence.[25] There are three legal mechanisms that permit the juvenile to be tried as an adult in the US:

i. **Automatic transfer laws** require the transfer of a child to adult court when statutory criteria, usually involving the charge and the child's age are met.
ii. **Judicial discretionary transfer laws** let the juvenile court judge decide whether a child should be transferred on the finding of probable cause of the child's guilt; and
iii. **Prosecutorial discretionary transfer laws** put the power in the hands of the prosecutor to decide whether to file charges in juvenile or adult court.

Testing the anvils of the section 15 of the Act:

i What should be the nature of the offence to fulfil the requirements of this section?

For the application of this section, the juvenile should commit a heinous offence which is defined in section 2 (33) of the Act as, "'Heinous offences' includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more."

This category of offences is different from that of petty offences[26] and serious offences[27]. For such heinous offences the Board shall follow the procedure as that of the trial in summons case as under the Code of Criminal Procedure, 1973.[28]

ii What is a JJB? who constitutes it?

The JJB, a multi-disciplinary body, is the one that exercises powers and discharges functions in relation to children in conflict with law under this Act.[29] It consists of metropolitan magistrate or a judicial magistrate of first class not being chief metropolitan magistrate or chief judicial magistrate (hereinafter referred to as principal magistrate) with at least three years of experience and two social workers selected in such manner as may be prescribed, of whom at

[25] *Supra* note 2 , s. 103 (14): The term "serious crime" means criminal homicide, forcible rape or other sex offenses punishable as a felony, mayhem, kidnapping, aggravated assault, drug trafficking, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony.
[26] As defined under s. 2(45) of the Act.
[27] As defined under s. 2(54) of the Act.
[28] S. 15(2) of the Act.
[29] S. 4(1) of the Act.

least one shall be a woman.[30] The social worker must be the person actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.[31]

These persons are not eligible if they have a past record of violating human rights or child rights or have been convicted for moral turpitude or have been dismissed from the government service.[32] The members of the JJB are to be sensitised on the care, protection, rehabilitation, legal provisions and justice for children, though clause 5 only provides for a one-time training, the researcher strongly recommends there should be regular trainings.

The proviso to sub-section (1) also provides for assistance to be taken by the board of certain experienced psychologists, psycho-social workers or other relevant experts. A panel of such experts can be provided by the district child protection unit, either on the assistance requested by the Board itself or could be accessed independently. [33]

Arul Verma[34] had told that in the Seva Kutir Complex, there are four psychologists who interact with the kids on a daily basis and try analysing their psyche by adopting various methodologies such as preparing questionnaires, by asking them to paint, storytelling *etc*. There are different mental health care units where the psychologists interact and do also fill the *psychological evaluation form.* He even illustrated about a picture painted by one of the children in *conflict* with law, where he had sketched a room with no doors and windows. The psychologist in that could make out that the child had always been curbed and confined in boundaries by his father and therefore he never knew the feeling of emancipation. And therefore, one fine day, he killed his own father.

iii How is the preliminary assessment carried by the JJB?

A preliminary assessment conducted in the case of heinous offences under section 15 shall be disposed of by the board within a stipulated time period of three months from the date of first production of the child before the board. [35] The procedure for conducting preliminary

[30] S. 4(2) of the Act.
[31] S. 4(3) of the Act
[32]S. 4(4) of the Act
[33]Juvenile Justice (Care and Protection of Children) Model Rules, 2016, r. 10A (2) (hereinafter referred to as the Rules).
[34] Principal Magistrate, Juvenile Justice Board-I, Seva Kutir Complex, New Delhi.
[35] *Supra* note 2, s. 14 (3).

assessment is enumerated in Rule 10A of the Rules. The board shall in the first instance see if the child is above the age of 16 years. While making an assessment, the child shall be presumed to be innocent unless proven otherwise. He may, for the purpose of conducting this, take assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. The word *may* in the proviso is thus read as *shall* by the Magistrate for he thinks it is a pre-requisite that such experts would only help understand the true picture related to the child which the magistrate himself cannot do. The Board then passes an order for trial as an adult, if he deems fit, and assigns reasons for the same.

Arul Verma writes orders on preliminary assessments under section 15, which is weighed on the four factors, i.e. mental capacity, physical capacity, ability to understand the consequences of the offences and the circumstances under which the alleged offence was committed.

This preliminary assessment is not a trial[36] and therefore is not a detailed, careful and in-depth analysis of the case. So, it does appear to be a prima-*facie* inquiry. For even, Arul Verma, always mention in his orders, that the "below mentioned observations on the four factors of assessment are predicated solely on the facts as alleged by the prosecution, and are not findings on *merits."*

This preliminary assessment takes into the following kinds of reports/evidences into consideration:

- Social Investigation Report: A report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other relevant factors, and the recommendation thereon.[37] Where a child alleged to be in conflict with law is apprehended, the probation officer prepares a report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.[38] It is actually prepared by a Probation Officer or the voluntary or non- governmental organisation, along with the evidence produced by the parties for arriving at a conclusion.

[36] *Id.*, expl. to s. 15 (1).
[37] *Supra* note 33, rule 2(1) (xvii).
[38] *Supra* note S. 13 (1) (ii).

- Social Background Report: A report on a child in conflict with law containing the background of the child prepared by the Child Welfare Police Officer. [39] For gathering the best available information, it shall be incumbent upon the Special Juvenile Police Unit or the Child Welfare Police Officer to contact the parents or guardians of the child.[40] This report is treated as an important document for the welfare of the children while deciding their case. This has been upheld in the case of *Ramachandran* v. *The Inspector of Police, H. 3*[41]
- Physical mental drug assessment report
- Preliminary assessment report: The report containing circumstances of apprehending the child and the offence alleged to have been committed by him.[42] It consists of a psychological evaluation form filled by the psychologist himself.
- Statement of witnesses and other documents prepared during the course of investigation by the child welfare police officer within a period of one month from the date of first production of the child before the board[43]

Now let us go through some of the orders on preliminary assessment passed by Arul Verma under the section taking into account the above mentioned:

a. Order dated July 26, 2016 in the case of *State* v. *J, A and H* [44]

There is a plethora of literature and myriad medical findings which advocate the opinion that a child in conflict with law (hereinafter referred to as CCL) usually commits an offence *inter alia* because of his or her inherent nature of risk taking, impulsiveness, immaturity, lack of foresight, impressionability etc. and/or because of socio economic factors *viz.*, extreme poverty, abuse, exploitation, negative influence *etc.* It is argued that under such circumstances the benefit of doubt should be given to CCLs. But it is observed on the basis of the record and various documents and reports placed before the board, that the above-mentioned grounds were not instrumental in compelling all the CCLs to commit the offence as is pellucid from the following analysis:

[39] *Supra* note 33 r. 2 (1) (xvi).
[40] *Id.,* r.10(7).
[41] 1994 CriLJ 3722.
[42] Supra note 33 r. 10 (9).
[43] *Id.*, r. 10 (5).
[44] Arising from FIR No. 111/16 under ss. 302/201/120B/34 IPC read with ss. 25/27 Arms Act.

Mental capacity

(i) Luring the victim to the crime scene and then murdering him. From the preliminary assessment report (hereinafter referred to PA report), it is clear that the CCLs were aware about the drinking habits of the deceased and they conspired and planned the sequences and manner of the murder as they intoxicated him, knowing his weakness of the psycho active abuse. CCL 'J' revealed that when the victim was 'poori tarah nashe mein', he caught hold of the victim from behind so that his friend CCL 'A' could inflict wounds to the victim.

(ii) As per the Physical Mental and Drug Assessment Report (hereinafter referred to as the PMD report) there were no signs of hallucination or delusion or psychiatric illness as reported in the mental status examination of the CCLs showing there was no mental and psychological disability and disorder. The CCLs were in a normal state of mind and it is not the case that they were pressurized or provoked to commit the act.

(iii) Destruction of evidence, as the CCLs 'J' and 'A' surreptiously disposed the blood-stained knife and clothes in a drain. They were compelled to take this step because they thought of the possibility of the legal implications that may follow.

Physical Capacity

(i) CCL 'A' had stabbed the victim 47 times, this requires sheer physical strength.

(ii) CCL 'J' suffered a stab injury himself accidently, but he still remained there to oversee that the whole act was completed.

(iii) The PMD report also suggests that none of the children were visually challenged, physically challenged, orthopedically challenged, nor suffered from any hearing/speech/ intellectual disability.

(iv) Under the 'occupation column' all the CCLs were employed either as a factory worker or rickshaw driver, which signify they were physically abled.

(v) The post mortem report suggests that the death was caused by haemorrhagic shock as a result of injury to chest and abdomen, that even a single blow was strong enough to cause the death of the person.

Ability to understand the consequences of the offence

(i) CCLs left the park leaving the dead body and put the blood-stained knife and cloth in the drain.

(ii) From the PA report, the CCL 'A' initially had refused to execute the plan fearing the consequences if they are caught. This earlier refusal is indicative of their awareness of what legal proceedings will entail.

Circumstances under which the alleged offence was committed

(i) The social investigation report (hereinafter referred to as the SIR) of the CCLs suggests that there was no acute poverty or financial deprivation that could justify taking such a radical step.

(ii) The PMD report suggests that the CCL 'J' was emotionally attached to his sister and parents and they did not like his negative peers.

(iii) SIR reveals that the CCL 'H' wanted to kill his brother because he used to bully him over finances and other issues. The psychologists concluded that there is a possibility of *sibling rivalry* and therefore the victim was the main reason of constant stress for the CCL. The PA Report under the head 'type of abuse met by the child' showed that CCL was verbally abused by the deceased and under the head 'type of ill treatment met by the child' showed that he was mercilessly beaten by him. A perusal of the *criminogenic factors* of CCL 'H' reveals that he was suffering from family problems, faulty adult supervision and guidance, domestic violence, peer/sibling conflict and was under stress and tension.

Some of the *criminogenic factors* that find a mention in the orders are history of antisocial behaviour, Antisocial Personality Pattern, Antisocial Cognition (attitudes/beliefs/values in favour of crime), Antisocial Associates, family circumstances, school/work (low levels of involvement and performance), leisure (low levels of satisfaction in non- criminal pursuits) and substance abuse.

In the order, Arul talks about what KM Banham Bridges[45] opines on *sibling rivalry* and *i.e.,*

"13. Unhappy relationships with siblings:

The following are among the unhappy relationships which are found to lead to delinquency:

[45] Katharine May Banham was an English psychologist who specialized in developmental psychology.

> Teasing and bullying. The child who is bullied and teased by brothers or sisters because of some inferiority or defect or for some other reason, is constantly being stimulated to express his instincts of pugnacity and self-assertion, if he is prevented from expressing them to his satisfaction, which is usually the case, he will develop a 'get even complex' or an 'inferiority complex' or both, which may ultimately lead to serious delinquency……..".[46]

In an itemised way, Bridges also lists down various other factors such as:

i. **Physical factors** such as malnutrition, lack of sleep, developmental aberrations, sensory defects, speech defects, endocrine disorders, deformities, nervous diseases, other ailments, physical exuberance, drug addiction and effect of weather.

ii. Mental factors such as mental defect, superior intelligence, psychoses, psychoneuroses, psychopathic constitution (including emotional instability), abnormalities of instinct and emotion, uneven mental development, obsessive imagery and imagination, mental conflicts, repression and substitution, inferiority complex, introversion and egocentrism, revengefulness (get-even complex), suggestibility, contra-suggestibility, lethargy and laziness, adolescent emotional instability, sex habits and experiences, habits and association.

iii. Home conditions such as unsanitary conditions, material deficiencies, excess in material things, poverty and unemployment, broken homes, mental and physical abnormalities of parents, or siblings, immoral and delinquent parents, ill-treatment by foster parents, step-parents, or guardians, stigma of illegitimacy, lack of parental care and affection, lack of confidence and frankness between parents and children, deficient and misdirected discipline, unhappy relationship with siblings, bad example, foreign birth or parentage and superior education of children.

iv. School conditions such as inadequate school building and equipment, inadequate facilities for recreation, rigid and inelastic school system, the goose-step, poor attendance laws and lax enforcement, wrong grading, unsatisfactory teacher, undesirable attitude of pupil towards teacher, bad school companions and codes of morals.

[46] KM Banham Bridges, *"*Factors contributing to Juvenile Delinquency*"* 17 *JCLC* 506 (1927).

v. **Neighbourhood conditions** such as lack of recreational facilities, congested neighbourhood and slums, disreputable morals of the district, proximity of luxury and wealth, influence of gangs and gang codes, loneliness, lack of social outlets, over stimulating movies and shows.

vi. occupational conditions such as irregular occupation, occupational misfit, spare time and idleness, truancy, factory influences, monotony and restraint and decline in the apprenticeship system.

Issue of limitation

In this particular case, the counsel on behalf of the CCLs contended that the statutory period of 3 months to conduct the assessment/inquiry had lapsed and therefore they should be tried by the Board itself and not as adults. Arul, while quoting some of the judgements such as that of *State of Punjab* v. *Shyam Lal Murari,*[47] *State of Punjab* v. *Satya Pal Dang*[48] is of the opinion that technicalities should not thwart substantial justice. Merely non-compliance of completing preliminary assessment within the time period prescribed can't be taken to stultify the intention of the Legislature. It was held CCLs to be tried as adults.

b. **Order dated August 16, 2016 in case of *State* v. *'T'*** [49]

The counsel on behalf of the CCLs had argued the psychologists' opinions were arbitrary and lopsided because instead of one, two psychologists prepared two contrary reports and that too on two different dates. Also, it was a consensual relationship and not rape, a relationship that had gone sour on refusal of the CCL to marry the victim.

Mental Capacity

(i) PA Report said that the girl was intoxicated by 'T' and therefore the CCL had planned circumstances that led to the situation where the crime can be committed. He had administered alcohol to the victim, so he had the knowledge that the woman could be better tamed under intoxication.

Physical capacity

(i) There was a complete and forceful penetration resulting in the hymen being torn.

[47] (1976) 1 SCC 719.
[48] (1969) 1 SCR 478.
[49] Arising from FIR No. 282/16 u/ss. 363/328/376 (2) (g)/506/ 120B/34 IPC read with ss. 6/12/17 of POCSO.

Ability to understand the consequences

(ii) CCL fled away to Jaipur soon after committing rape.

Circumstances under which the alleged offence was committed

(i) That there was a consensual relationship as according to the accused.

It was held CCL was tried as an adult.[50]

c. Order dated July 16, 2016 in the case of *State* v. '*O*'[51]

Mental Capacity

(i) The CCL 'O' had attributed the planning and execution of the kidnapping to one Zeeshan and had denied that he was present during the commission of the offence of kidnapping. The psychologist has, while listing the *criminogenic* factors, observed that the CCL had a *blaming* tendency (link with the psychodynamic theory mentioned above). The CCL had participated in the whole act calling the deceased from his home and, taking him to the crime scene and administered him alcohol and later strangulated him with a rope. It is axiomatic that this act requires considerable effort and is not at all impulsive or reckless.

(ii) He did not even attempt to save the victim, which could have meant his tacit participation. He was in a normal state of mind and was not provoked or pressurized to commit the act.

(iii) He made ransom calls to the tune of one crore rupees, which sought to prove that he had the requisite *mens rea* to commit the crime.

Physical Capacity

(i) The post-mortem report shows that the death was caused due to asphyxia as a result of strangulation. Even there were injuries on the face and the nose of the deceased

[50]Unknown, "Try teen as adult in rape case, says JJB", *The Times of India,* (Aug. 18, 2016), *available at:* http://epaperbeta.timesofindia.com/Article.aspx?eid=31808&articlexml=Try-teen-as-adult-in-rape-case-says-18082016002051, (last visited Mar. 30, 2020). (In a first order of its kind, the JJB) has directed that a teenager would face trial as an adult for allegedly raping a 17 year-old girl, saying he had committed the crime "meticulously" and in a "planned manner". JJB presiding officer Arul Verma rejected the submission of the counsel for the boy, whose age was assessed to be 17 years, that it was consensual relationship between him and the girl, saying there was not an iota of evidence that would lend credence to this assertion. "The prosecutrix has taken a consistent stand with respect to the factum of rape by the CCL (child in conflict with law). The injuries on the body of the victim further substantiate this version," the board said).

[51] Arising from FIR No. 92/16 u/ss. 302/201/364A/363/120B/404 IPC.

that show that such injuries could not be inflicted by single person i.e. Zeeshan, it needs the presence of the CCL as well.

(ii) Even the psychologist in his report stated that the CCL had no physical disability, making him fit to be able to dispose off the body in the jute bag at the Dadri by-pass road.

Ability to understand the consequences of the offence

(i) Arul Verma, considers the *psychoanalytic* factors such as the tendency for 'flight' from the scene or 'fight', but some people may demonstrate the tendency of 'freeze' at the moment, while witnessing the occurrence of crime. So, the counsel on behalf of the CCL had put up the freeze defence, which the psychologists had declined believing it to be incredulous and further described his behaviour and demeanour to be manipulative because he also kept changing his version about his role in the commission of the crime. The PMD stated, "he accepted that he was present at the scene of the crime but denied committing the crime."

(ii) The act of disposing off the body to avoid detection is indicative of the thought process that the CCL knew that adverse consequences would ensue if he was caught.

Circumstances under which the alleged offence was committed

(i) The SIR of the CCL shows that he belonged to a good family, a financially well-off family, and he shared a cordial relationship with his family. It is therefore according to the psychologist in his PA report that there are no compelling circumstances justifying the commission of the offence.

It was held CCL was tried as an adult.

d. Order dated December 22, 2016 in the case of *State* v. *B* [52]

Counsel for the CCL had contended that the accused was a first-time offender and it was a consensual relationship and therefore the circumstances be mitigated.

Mental Capacity

[52] Arising from FIR No. 63/16 u/ss. 363/376/506 IPC r/w s.6, POCSO.

(i) The parents of the victim had forced the victim to give false statements against the CCL. The CCL had accepted his involvement but he denied doing it forcefully. He continually averred that he was in a mutual love relationship with the victim.

(ii) The psychologist has also opined that during his sessions with the CCL, he did not observe any intellectual disability, psychiatric illness or any fault in test judgement.

Physical Capacity

(i) The MLC No. A-503/16 dated 08.02.16 revealed that the CCL had full physical capacity to perform a sexual intercourse.

Ability to understand the consequences of the offence

i. The preliminary assessment report in point 2 (g) stated, "when enquired about his understanding the consequences of the offence, he was confused and speechless, so it is hard to comment on his understanding of the consequences of the offence."

ii. The psychologist in his *psychological evaluation form* states that the CCL did not anticipate that he would be prosecuted for any offence, which in his opinion was a consensual sexual act, therefore he had poor knowledge of the consequences of such act.

Circumstances in which he allegedly committed the offence

(i) They were in a love relationship. She has had sexual intercourse before as well.

(ii) The SIR also stated that the victim had requested the CCL to accompany her to her uncle's place in Itawa city, on whose refusal, she filed a case against him. It was held the CCL not to be tried as an adult.

IV. What is the Nature of the *satisfaction* in sub-section (2) of the Section?

The satisfaction in sub-section (2) of the section seems to be very subjective on the face of it, for it seemed a mechanical exercise based on certain conclusions by various reports. Arul Verma still tried to give his best in this *prima facie* inquiry by trying to mention some of the other psycho analysis pointers but he could not deliberate upon them in great detail.

Case Studies: Some hyped cases where such orders have been made

The Pradyuman Thakur case (Ryan International School killing): [53]

The accused was 16.5 years old at the time of the commission of heinous offence. Devender Singh ordered him to be treated as an adult and be tried by sessions court rather than by JJB by virtue of the social investigation report received. The SIR found that the accused was 'aggressive in nature', with some of his teachers claiming that "his attitude towards classmates was aggressive" and that "he was very short tempered". According to the report, a few of the teachers claimed that he had also allegedly been "under the influence of liquor". The order states that the "juvenile himself stated before this board that he is physically and mentally fit and not suffering from any kind of disease," and that "his IQ level is noted to be 95 in category of average intellectual functioning". The final report also referred to the confessional statement of the accused where he had disclosed that he had used his mobile phone for making internet searches about poisoning, their effects and sources. Subsequently after the incident, he had also made searches for removal and changing of finger prints on various websites[54].

> "The search of internet before and after the commission of murder for the above-mentioned purpose sheds light on Bholu's (a fictitious name given to the juvenile offender) conduct before the commission of crime, his intention to commit the crime and his conduct to escape from the clutches of law," the CBI said.

The Nirbhaya Gang Rape case[55]

One of the five accused who committed the heinous offence of brutal rape and murder was seventeen and a half years old on the date of the commission of the offences and therefore was technically a juvenile. In compliance with the legal provisions under the Juvenile Justice Act, 2000, his case was referred to the Juvenile Justice Board where various petitioners argued that the juvenile should be tried as an adult in a regular criminal court.

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[53] Unknown, "Ryan case: Order on plea of accused teenager on January 8" *The Economic Times,* (Jan. 6, 2018), *available at:* //economictimes.indiatimes.com/articleshow/62391519.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, (last visited on Mar.1, 2020).

[54] *Ibid.*

[55] *Subramanian Swamy* v. *Raju Thr. Member Juvenile Justice Board* (2013) 10 SCC 465.

Swamy, in this instant case, had contended that having regard to the object behind the enactment, the Act has to be read down to understand that the true test of "juvenility" is not in the age but in the level of mental maturity of the offender. Specifically, he contended that such a blanket treatment of all offenders below the age of 18 committing any offence, regardless of the seriousness and depravity, is wholly impermissible under our constitutional scheme. The non-obstante provisions contained in section 1(4) of the Act as well as the bar imposed by section 7 on the jurisdiction of the criminal court to try juvenile offenders cannot apply to serious and heinous crimes committed by juveniles who have reached the requisite degree of mental maturity, if the Act is to maintain its constitutionality.

Luthra, on the other hand, had submitted that the Act does not provide a blanket immunity to juvenile offenders, as contended. What the Act contemplates is a different procedure to deal with such offenders. If found guilty, they are subjected to a different scheme of punishment. The court dismissed the challenges to the Juvenile Justice Act and upheld the requirement under the Act that all persons under 18 years of age are to be treated as juveniles, owing to the legislative intent and international obligations India has become signatory to and thus the juvenile court sentenced the juvenile to three years at a reformatory home.

The Jhabua murder[56]

Two teenagers were sentenced to life imprisonment for the murder of a 16-year-old by a sessions court in Jhabua, Madhya Pradesh in what could be the first case under the amended Juvenile Justice Act. The two minors allegedly stabbed Radhu Nana Palia for a meagre Rupees 500 hundred. The two accused were sent to a correction home and after they were declared 'physically and mentally fit' and were found to be 'aware of the consequences of the offence', a charge-sheet was filed against them. They were convicted for life imprisonment.

Murder of a six-year old Ganesh[57]

[56]Unknown, "New Juvenile Justice Act: Two teenagers sentenced to life imprisonment for murder", *First Post,* (Mar. 1, 2017), *available at:* https://www.firstpost.com/india/new-juvenile-justice-act-two-teenagers-sentenced-to-life-imprisonment-for-murder-3308528.html, (last visited on Mar. 20, 2020).

[57] Mahender Singh Manral, " Juvenile's crime and punishment: Murder of a 6 year old Ganesh", *The Indian Express, (*July 11, 2016), *available at:* https://indianexpress.com/article/cities/delhi/juveniles-crime-and-punishment-murder-of-6-year-old-ganesh-2905792/, (last visited on Mar. 20, 2018).

A JJB found the teenager guilty of having kidnapped and murdered Ganesh. The board sent him to a correctional home for three years. JJB Principal Judge Vishal Singh observed the teenager lacks value for human life and the incident revealed the failure of his guardians. Further he said in his order,

> "It seems that the reformation and rehabilitation of the juvenile can be a very long drawn process through institutionalized inculcation of good moral values and psychological counselling for sound mental equilibrium. At this stage, it will not be in the interest of justice to send the juvenile back to the vitiated atmosphere in which he committed the offence. Hence, the juvenile is ordered to be kept at special home… for three years".

Noida Gangrape, 2009[58]

A JJB convicted a man, who was minor when he had gang raped a 24-year-old MBA student in 2009, and sent him to a reformation home for three years for rehabilitation, saying there was "unquestionably a ring of truth" in the prosecution version. JJB presiding magistrate Arul Verma said that the presence of the man, who was over 17 years of age at the time of the offence, at the scene of the occurrence has been established by overwhelming evidence and the witnesses have correctly identified him before the court. The board said it was essential that appropriate psychological and psychiatric interventions be adopted as a reformation strategy for the juvenile. His social investigation report showed that criminal propensities developed in him because of bad company.

V. Criticisms and the Loopholes in the System

Can the mental capacity really be assessed and that too so accurately?

Here, the power given, is nothing but vague and arbitrary. Scientific research shows that individualized assessments of adolescent mental capacity is not possible and the suggestion that it can be done would mean 'exceeding the limits of science'. Evaluation of mental capacity is a complex process which cannot be done accurately by the JJB even with the help of experienced psychologists. Arul Verma tells about the multiple sittings the psychologist does

[58]Unknown, "2009 Noida Gang rape: Juvenile Convicted, sent to three years in reform home" *The Indian Express,* (Feb. 19, 2018), *available at:* https://indianexpress.com/article/india/2009-noida-gangrape-juvenile-convicted-sent-to-three-years-in-reform-home-5070310/, (last visited on Mar. 20, 2020).

with the children in conflict with law. But it does not seem to be fair for the interest of the child, when within a short period of three months such an assessment is to completed. Such assessments will be fraught with errors and arbitrariness and will allow inherent biases to determine which child is transferred to an adult court. Hence, the preliminary assessment by the JJB providing for procedural arbitrariness violates articles 14 and 21 because an accurate assessment of mental capacity for the purpose is just not possible and will result in subjective and arbitrary transfers into the adult criminal system. This goes against the very basis of the Constitution.

According to Andrew Von Hirsch, Honorary Professor of *Penal Theory and Penal Law* at Cambridge University, "young adolescents, the reasoning must be, cannot reasonably be expected to have a full-fledged comprehension of what people's basic interests are and how typical crimes affect those interests – because achieving this kind of understanding is a developmental process. Developing that understanding calls both for cognitive skills and capacity for moral reasoning which develop over time – and does so precisely during the period of adolescence"[59] While the cognitive levels of a 16 or 17 year old may match that of an adult, findings show that they lack psychosocial maturity levels as compared to adults.[60] This short assessment therefore would not be able to bring out the difference and would erroneously hold the 16 or 17 year old on account of cognitive reasoning and take note of the bio -psychosocial reasoning.

Also, the mental capacity is seen generally and not in the context of the particular offence. For, Sh. Arul, he agrees that the section is a loosely drafted section and is vague, but he still says that he is trying to do the best he can. Even the charge sheet framing sometimes takes place more than three months, therefore according to him completing the whole assessment in 3 months is a tedious task and a difficult one.

Against the basic principles of section 3[61] of the Act

[59] Andrew Von Hirsch, "Proportionate Sentences for Juveniles: How Different than for Adults?" 3 (2) *PS* 225 (2001).

[60] Elizabeth Cauffman and Laurence Steinberg, "(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults" 18 *BSL* 759 (2000).

[61] S 3. General principles to be followed in administration of Act: The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:

i. Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

ii. Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

Arul Verma makes it a *prima facie* inquiry, not on merits as what he states in his orders. Therefore, the quick and short assessment merely based on opinions of various experts and few reports, violates the principle of presumption of innocence as it operates on the assumption that the child has committed the offence.

The decision to transfer a child to the children's court or to an adult jail on such quick inquiries cannot be justified in light of the best interest principle. Transfer of juveniles to the adult system will also violate the principle of right to privacy and confidentiality, resulting in them being denied access to the very means by which they can be rehabilitated or re-integrated into the community as persons capable of making a 'meaningful contribution to society'. In addition, many youths face collateral consequences of involvement in the justice system, such as the

iii. Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child views shall be taken into consideration with due regard to the age and maturity of the child.

iv. Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

v. Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

vi. Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

vii. Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

viii. Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

ix. Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

x. Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

xi. Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

xii. Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

xiii. Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

xiv. Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

xv. Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

xvi. Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

public release of juvenile records that follow them throughout their lives and limit future educational and employment opportunities. [62]

VI. Are the functionaries associated with the system competent enough?

The researcher also attempts to throw some light on the fact that the administrative machinery set up to handle the fragile issue of juvenile justice lacks proper infrastructure, manpower and expertise in light of the data presented and current situation, so as to function in the best interest of children who might be in need of care and protection. The following lacunae have been extracted from the report of the standing committee set by the Rajya Sabha[63] and National Commission for Protection of Child Rights' Report: [64]

Juvenile Justice Boards and their members were not in a position to conduct and analyse the physical and mental capacity of the child or the circumstances which led the child to commit a heinous crime.

a) It is rather ironic that most Board members are skeptical about the quality of the social investigation reports. 58% of the board members were not satisfied by the quality of the social investigation report.[65]
b) 48% of the JJB members felt that the probation officers are not well-qualified, well-trained and competent. Forty-three percent said that all police stations do not have juvenile justice officers. Only 18% felt that they were well-trained and had requisite knowledge to deal with the cases of juveniles in conflict with law.[66]
c) Moreover, the training of the members themselves is questionable. In the same report by NCPCR, half of the members said that they had not or only partly undertaken formal training in the juvenile justice system, child and adolescent psychology, rehabilitation process, and related requisites.
d) That there were serious concerns about not just the implementation, but the mere existence of statutory bodies – the Child Welfare Committees and the Juvenile Justice Boards – across all districts. This issue has also been brought up by the Supreme Court in the

[62] The National Academies, "Reforming Juvenile Justice: A Developmental Approach, 2012", *available at*: http://www.njjn.org/uploads/digital-library/Reforming-Juvenile-Justice-A-Developmental-approachbrief_nationalresearchcouncil_11.2012.pdf, (last visited on Mar.12, 2020).
[63] Rajya Sabha, 264th Report on Juvenile Justice (Care and Protection of Children) Bill, 2014 (February, 2015).
[64]National Judicial Academy Bhopal, Report on National Conference on Juvenile Justice Boards (May, 2015).
[65]*Id.* at 52.
[66]*Supra* note 29 at 113.

Sampurna Behrua v. *Union of India,*[67] wherein the court ordered every state to have a JJB in place by a particular date. According to National Commission for Protection of Child Rights report on National Conference on JJB in May, 2016, about 44% of board members interviewed said that less than three sittings were held per week.[68]

VII. Are the factors/ pointers being evaluated in a mechanical fashion?

Social investigation reports sometimes base its arguments on very lopsided factors, for instance in one of the orders, it was mentioned that the probation officer contends that there being no economic deprivation, the accused has no justifiable circumstances to commit a particular offence. Therefore, poverty became the sole guiding factor to dictate whether the juvenile could be tried as an adult or not. The PA reports and PMD reports also appeared to be flawed in the sense, that if the CCL had no disability, intellectual or physical attached, he was assumed to be eligible to be tried as an adult. His emotional instability, his attacks of insanity, though rare and less, but significant to understand his psyche, seem to fade away. There is a ticking of pointers that are mentioned in the SIR form and is being filled without applying a judicial mind.

The psychologists fill out a psychological evaluation form, sometimes without holding more than one sitting. And, even Arul Verma, could not answer that if there are one psychologists who give two polar opposite reports, how do they decide that which report should they rely upon to be really fair to the child?

VIII. Conclusions and suggestions

Cardozo[69] expresses that the will of the State, expressed in decision and judgment is to bring about a just determination by means of the objective sense of justice inherent in the judge, guided by an effective weighing of the interests of the parties. The interpreter must above all things put aside his estimate of political and legislative values, and must endeavour to ascertain in a purely objective spirit what ordering of the social life of the community comports best with the aim of the law in question in the circumstances before him. He must balance all his ingredients, his philosophy, his logic, his analogies, his history, his customs his sense of right,

[67] W.P. (CIVIL) NO. 473 OF 2005.
[68] *Supra* note 61 at 39.
[69] Benjamin N. Cardozo, *The Nature of the judicial process* (Yale University Press, United States of America, 1921).

and all the rest, and adding a little here and taking out a little there, must determine, as wisely as he can, which weight shall tip the scales. He also focusses upon the method of free decision or *libre recherche scientifique* which is necessary for a Magistrate to be able to make while conducting preliminary assessment. The preliminary assessment must thus be more of an objective satisfaction of the JJB and must necessarily be made on merits rather on *prima facie* opinions. The Social Investigation report formats appended at the end of the Rules is a farce mechanical exercise which just provides for ticking of the options. But a child's psyche is not so easy to be understood, and it shall require a lot more than just ticking. At least few comments be given while judging the child on each parameter.

The psychologists must meet more than at least 5 times and interact with the children in law , only then a proper analysis of their mindset is possible, for even in the day to day lives, we do not get to know a person that well, let alone deciding the fate of such children. The probation officers, the members and all the related functionaries should be sensitized towards children in conflict with law and instead of a one- time training, they should be given training at different and regular intervals. Unless the child's experiences and reality are understood, no decision can be taken by any authority on how to ensure their care, protection, treatment, rehabilitation and reintegration.

The statutory period of 3 months should be extended for it is only because of this a mechanical and not a qualitative assessment is not done, it must be extended to atleast a period of one year, like we have in other acts. More than a year extension will cause the unnecessary delay in the proceedings. The orders analysed above, do not find a mention of the various theories of juvenile delinquency in detail. An enumeration of the same along with certain characteristics attached to such psycho-social behaviour will show that the Magistrate has applied his judicial mind and has been sensitive to the child- A recommendation given to Arul Verma by the researcher and he took note of the same.

Thus, the heinous offences do require a closer scrutiny, but not at the cost of jeopardising the interests of the child. If the loopholes mentioned above are corrected, then perhaps the section would no longer be seen to be a draconian law. The orders written should not be seemed as a mechanical exercise, for '*justice should be done and must not seem to have been done.*'