



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 1024 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No
5	To be circulated in the J.J.Boards and Children's Courts of the State	Yes

CHILD IN CONFLICT WITH LAW THROUGH GUARDIAN
 Versus
 STATE OF GUJARAT

Appearance:

MR. NISARG N JAIN(8807) for the Applicant(s) No. 1

MS JIRGA JHAVERI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 1

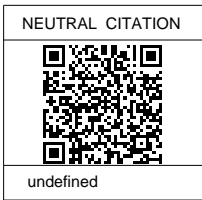
CORAM: HONOURABLE MS. JUSTICE GITA GOPI

Date : 15/09/2023

ORAL JUDGMENT

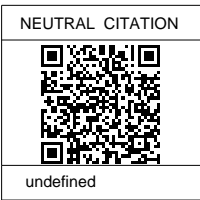
1. **Rule.** Learned APP waives service of notice of rule on behalf of respondent State.

Rule is fixed forthwith.



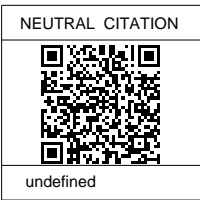
2. The child in conflict with law through guardian, his father, has preferred the Revision Application under section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act, 2015' for short), challenging the order passed by the learned appellate Court, Vadodara dated 08.07.2023 in Criminal Appeal No.263 of 2023 and order dated 12.01.2023, passed by the learned Juvenile Justice Board, Vadodara, (hereinafter referred to as 'J.J. Board' for short) declaring the need for trial of the applicant-revisionist as an adult in Children's Court.

3. The child is in conflict with law in connection with CR No.11196004220608 of 2022 registered at Gotri Police Station, Vadodara for the offence punishable under sections 452, 394, 395, 397, 120B read with section 114 of IPC and Section 25(1) of the Arms Act.



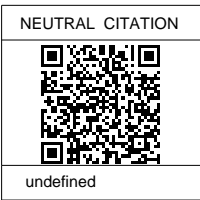
4. The F.I.R. alleges that the accused had entered into the house of the complainant, committed the offence of dacoity, threatened the complainant with dire consequences. 41 Tolas Gold ornaments worth Rs.16,40,000/-, 200 gram silver valued at Rs.10,000/-, cash amount of Rs.40,000/- in total, the loot of 16,90,000/- alleged to have been committed.

4.1 The facts of the case indicate that a complaint was given by Dipakkumar Jaisinhbhai Patel, alleging that three persons had entered his house, and one of them started giving him fist blows. He received blows on his face, left eyes and cheek and was also kicked by the said person. Another man was standing in front of him with black colour pistol and third person, short in stature had tied his hands and legs with adhesive-tape, who too had beaten him. His wife's hands and legs were tied with adhesive-tape by a



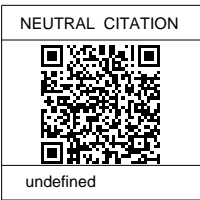
thin man and her mouth was shut with adhesive-tape. That man too had beaten him, who told him "Tijori Ka Chavi Do Muddamal Kaha Rakha Hai Wo Batao Nahi To Tum Aaj Marega", after having said that, that man entered the bedroom of the house, while another man had made him lie-down in the living room, and two persons had taken his wife to the bedroom, where they asked for the keys, and after taking the keys, they had entered another bedroom and had removed a D-Mart Bag from the cupboard and had placed it on the teapoy in the living room.

4.2 Thereafter, the complainant states that, one man with lean body, with another man had removed the gold chain of 'Rudraksh', gold bracelet and three finger rings from his person, and had taken Rs.40,000/- cash from his pocket, and had snatched a gold chain and a pendant from his wife's neck, and during that process, pendant from the chain had fallen down, and they had



removed four gold rings from her fingers, and thereafter had taken both of them in the bedroom, and had made them lie-down on the floor, and pillow was put on their heads. It is stated that after staying there for about half an hour, they all left the house. The complainant thereafter had given details about the ornaments in the FIR, which were there in the D-Mart bag, and in total, he had valued the ornaments as of Rs.16,90,000/-.

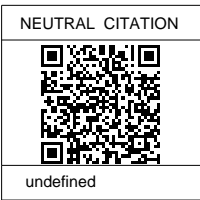
4.3 According to the complainant, on 07.10.2022, at about 20 to 20:30 hours, three persons had entered his house in black colour clothes with black mask on their face, out of them, one aged about 25 to 30 years was of short stature, another of 20 years, and third person aged between 25 to 35 years, who was wearing a blue colour jeans and had netted boots. Thereafter, on 09.10.2022, the complainant - Dipakkumar Jaisinhbhai Patel referring to three persons had informed the police that he had given



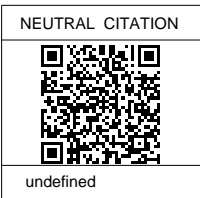
a complaint for the loot of 41 Tolas Gold valued at Rs.16,40,000/- and 200 Grams Silver of Rs.10,000/- and cash of Rs.40,000/-, in total, loot of Rs.16,90,000/- was committed, and had also stated about the loot of a tablet of i-phone company of Rs.20,000/-.

4.4 Again a statement of the complainant was recorded on 17.10.2022, to further inform the police about loot of currency in Euro, since he was staying at Germany. While surprisingly on that day i.e. on 17.10.2022, when the police had shown him the muddamal, he informed that the things looted on 07.10.2022, were imitation jewellery, but as he was afraid, he could not inform the same to the police.

4.5 By way of panchnama on 14.10.2022, one of the accused – Anil @ Ravankalubhai Kanogiya had volunteered to show the place, where they had



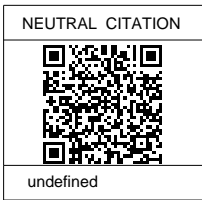
thrown the bag of the imitation jewellery. The police accordingly went alongwith him at a place known as Vaghodiya. The police had also seized one motorcycle used in the commission of offence, during the course of the panchnama, which was sent to the police station, and thereafter all had left for Vaghodiya, and on the side of Modager Road, a white colour chain bag was found from the bush, and in presence of panchas, when it was opened, the bag was noted to have on it impression written as Bagasera Gold Plated, wherein the articles and two small purses were found. These were taken to Bhadra Office, where in presence of the goldsmith, panchas and accused Anil @ Ravankalubhai Kanogiya, the yellow plated metal ornaments were observed to be imitation jewellery with 0% gold, and only an earring measuring 00.740 miligram was found to be of gold. Except one earring of Rs.2,600/-, the value of other imitation jewellery was considered as



Nil.

4.6 The charge-sheet has been filed against six persons. Identification parade of three accused were conducted; accused Anil @ Ravankalubhai Kanogiya, aged 24 years, and Biky @ Viky Shivkumar Bechuram Ghosh, aged 31 years, were identified, while third person remained unidentified.

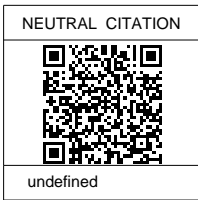
5. The learned Children's Court, affirming the order of J.J. Board declaring his trial to be conducted as adult, had observed that the juvenile is physically and mentally fit and knows the consequences of committing the crime. The juvenile had gone sitting on a two wheeler with the co-accused Hira Mama. Thus, according to the appellate Court it cannot be said that the juvenile does not know the consequences of the crime and that he has not mistakenly reached at the place of offence. In this circumstance, it



was observed, that the juvenile has committed the offence, and, therefore, confirmed the order of Board to be tried as an adult.

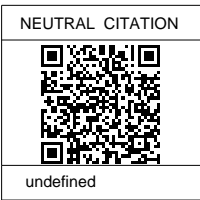
6. Learned advocate Mr. Nisarg Jain for the revisionist – applicant stated that the complainant had not described the present child in conflict with law alleged to have entered his house for the commission of offence, this major fact, Advocate Mr. Jain submitted, has gone unnoticed by both Board and the appellate Court.

6.1 Referring to the contrary observations made by the Additional Sessions Judge, Vadodara in order dated 17.11.2022, in Criminal Appeal No.372 of 2022, and order by 3rd Additional Sessions Judge, Children's Court on 08.07.2023 in Criminal Appeal No.263 of 2023, Advocate Mr. Nisarg Jain stated that Criminal Appeal No.372 of 2022 was moved by the child in conflict with law under section 101 of the J.J. Act for his bail,



and the learned Judge had referred to the case papers to observe the statement of the present applicant – revisionist, and, according to observation the juvenile had come in contact with one Hirabhai, three to four months ago.

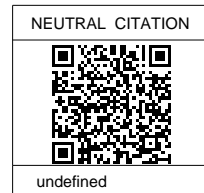
6.2 Mr. Nisarg Jain, learned advocate for the child in conflict with law, submitted that the investigation revealed, that most of the ornaments were found not of original gold and silver, and were imitation jewellery. After investigation, value of the looted gold ornament articles, was shown as Rs.2,600/-. Advocate Mr. Jain stated that juvenile has been alleged with the fact that he came in contact with adult-accused through one Hira Mama, who is also a co-accused to the case. The said Hira Mama had taken the juvenile with him for dacoity, and the role of the juvenile, as could be found, is that he stood at the door and kept the door closed. After the incident, he was given Rs.200/- to hire a



rickshaw to reach back home, Advocate Mr. Jain stated that, the material/ornaments alleged were not recovered from the juvenile.

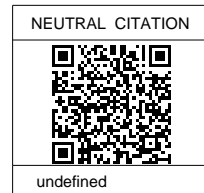
6.3 It is the contention of Advocate Mr. Nisarg Jain that the reasoning of the J.J. Board is without any application of judicious mind. Both the courts have been carried away with own self imagine facts, belief and personal conviction of punishing the offender. Both the courts have majorly relied upon the confessional statement of juvenile, which Advocate Mr. Jain states only discloses his presence at the place of offence, and the fact that he was given Rs.200 to return to his home after the incident.

6.4 Advocate Mr. Jain submitted that the inquiry under section 15 of the J.J. Act is not just to take confession to declare the juvenile as a culprit under personal belief. Advocate Mr. Jain submits that the learned courts are not



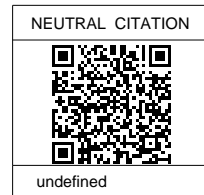
supposed to find whether the juvenile reached at the place of offence, mistakenly or otherwise. While, it was incumbent on the learned courts to find (1) whether the juvenile, who is alleged to have committed the crime, had done so intentionally; and; (2) whether the juvenile knows the consequences of crime, and (3) further was required to find whether juvenile was physically and mentally fit to commit such offence, even without the involvement of other adult-accused; and (4) what are the circumstances under which the crime was committed. Mr. Nisarg Jain submitted that the learned courts were required to make an inquiry under presumption of innocence, and the courts were required to make a preliminary assessment keeping in mind three criterias, which are necessarily incorporated in section 15 of the J.J. Act, 2015.

6.5 Advocate Mr. Nisarg Jain submitted that the reasoning of the courts are purely confession

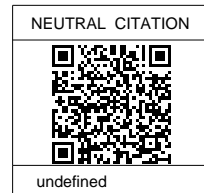


centric and the reasons are tainted with the confession of the juvenile. The Social Investigation Report ('SIR' for short) and Social Background Report ('SBR' for short) discloses that the juvenile was influenced by one co-accused, Hira Mama, who was from the neighbourhood. The report indicates that juvenile is a disciplined person and repents for the involvement. Advocate Mr. Jain also stated that the Courts were also required to appreciate the fact that the juvenile was to appear in standard 10th repeater examination.

6.6 Advocate Mr. Nisarg Jain laid emphasis on the law of foreign nations in relation to the J.J. Act, relying on Rule 226 of the Arizona Court Rules, which is for Transfer for Criminal Prosecution, effected from July 1, 2022, which states that every document relied upon for the process of inquiry must be provided to the

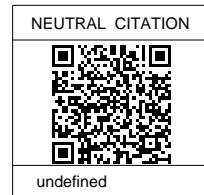


juvenile, and, that the referred rule provides for the criteria of mental and physical capability and understanding of consequences even referring to past history of the crime of the juvenile. Advocate Mr. Jain submitted that Chapter-11, Article-7 of the Code of Virginia (USA), notes transfer and waiver, which envisages that the factors for determining the transfer of the juvenile to adult court or not, are his past criminal antecedents, punishment of the offence is more than 20 years, usage of serious weapon, the participation of the juvenile in the crime; whether juvenile can be rehabilitated or not, and the physical and mental capacity, disability or illness of the juvenile. Mr. Jain submitted that, Part-5, sections 22A to 29 of the Young Offenders Act, 1994 of Western Australia, Australia, deals with two opportunities to be given to the juvenile, instead of sending to the adult court. Advocate Mr. Jain submitted that for the first



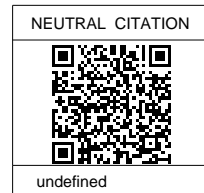
offence, the juvenile is usually referred to J.J. Team and not to Court for Adult, as noted in section 29. Advocate Mr. Jain also relied on sections 34(1), 71, 72 to 79 of the Canada-Youth Criminal Justice Act, 2002, to submit about the assessment of mental and physical capacity of juvenile, the past criminal antecedents of juvenile. opportunity of hearing and fair process and the onus upon the state.

6.7 Advocate Mr. Jain in support of his submissions relied on the judgment of Foreign Court rendered in **J.M. (A Minor) v. Runeckles, (1984) 79 Cr.App.R.255**, contending that the participation of juvenile in the offence and then his understanding of offence will decide whether he/she shall be transferred to Adult or Juvenile Court. Mr. Jain also relied on the case of **IPH V. The Chief Constable, South Wales Police Headquarters, (1987) Criminal LR 42**, to submit



that the participation of juvenile in the offence, his understanding of the crime as a serious wrong and not only moral wrong (mischievous or naughty act) will decide whether he/she shall be transferred to Adult or Juvenile Court. Mr. Jain further relied on the judgment of **The Queen Vs. Michael ALF McCormick, (2002) QDC 343**, and stated that the juvenile was given the benefit of doubt because of the inappropriate reporting of the response of the juvenile by the police officer. Mr. Jain submitted that had the juvenile being given the questionnaire to answer in detail or the police officer reported the actual detailed answer, the learned Court could have evaluated it properly.

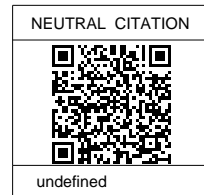
6.8 Advocate Mr. Nisarg Jain contended that the judgment of the Hon'ble Supreme Court in **Barun Chandra Thakur Vs. Master Bholu & Anr.**, in Criminal Appeal No.950 of 2022, was declared on 13.07.2022. In compliance of the direction issued



by the Apex Court, the National Commission for Protection of Child Rights (hereinafter referred to as 'NCPCR' for short) has laid down guidelines for conducting preliminary assessment under section 15 of the J.J. Act, 2015, in July 2023.

6.9 Advocate Mr. Jain submitted that J.J. Board had failed to consider the judgment of Barun Chandra Thakur(supra), and the appellate Court too, has not considered Barun Chandra Thakur (supra) as well as guidelines issued by NCPCR. Advocate Mr. Jain submitted that it is a duty of the courts while making the preliminary assessment under sections 15 and 19 of the J.J. Act, to adjudge the magnitude of participation of the juvenile in crime:

- (1) Whether he was physically and mentally capable to commit the entire crime without the presence and role of adult accused;



(2) In case of juvenile's personal interest for committing the crime, if yes, what bounty/money/outcome did the juvenile receive;

(3) Whether the juvenile was driven away for committing the crime under the influence of some person or co-accused.

(4) Whether the juvenile, at the time of committing the crime:

(a) knew the consequences of his act on his life;

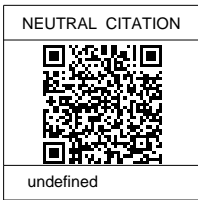
(b) his family's future;

(c) the impact on the complainant and his family;

(d) the litigating consequences;

(e) outcome of the act;

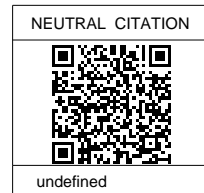
(f) the juvenile's understanding of whether he was committing serious wrong, or it was just a mischievous



act and moral wrong;

Mr. Jain submitted that the learned courts have not mentioned about any circumstances, whether the surrounding or social, political and financial, under which, the offence came to be committed.

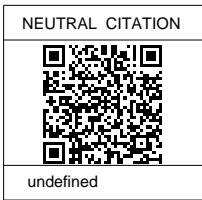
6.10 Advocate Mr. Nisarg Jain submitted that though the Hon'ble Apex court in Barun Chandra Thakur (supra) had interpreted the provision of section 15 of the J.J. Act; surprisingly, the juvenile was never furnished with any material, statements, SIR and SBR reports. Even the J.J. Board's order was not given to the juvenile after inquiry under section 15 of the J.J. Act. Mr. Jain, thus, stated that there was violation of Rule 10(5) as well as 10A(4) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as the 'Model Rules, 2016') by the learned Courts. Thus,



contended that the impugned orders of the Board/appellate Court are against the principle of natural justice, as well as, are unfair, since opportunities was not accorded to the juvenile to defend his case.

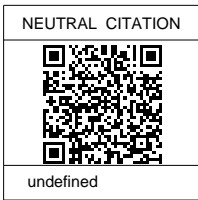
6.11 Advocate Mr. Jain contended that that the children through out the world are to be equally protected and any assessment of the child should be with the principle of presumption of innocence. Mr. Jain submitted that the task of preliminary assessment under section 15 of the J.J. Act being very delicate, it requires an assistance of an expert, since it has its own implication as regards the trial of the case.

6.12 Learned Advocate Mr. Nisarg Jain submitted that, to meet with three criteria incorporated in section 15 of the J.J. Act, the courts are required to have three satisfactions viz. (i) Objective Satisfaction, (ii) Subjective



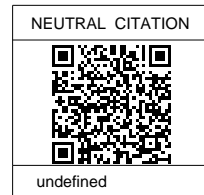
Satisfaction and (iii) Judicial Satisfaction.

6.13 Advocate Mr. Jain would submit that Objective Satisfaction is based upon the original and natural material and not evaluative. While Subjective Satisfaction is the evaluative material of Psychiatrist/ Psychologist/ Probation Officer, wherein the interactive satisfaction of such officer with the juvenile would become a document. While referring to the necessity of Judicial Satisfaction, Advocate Mr. Jain stated that the courts would have to interpret and evaluate the material collected during the process of Objective and Subjective Satisfaction, and personal interaction of the learned J.J. Board with the juvenile. Mr. Jain, thus, stated that it is only after following three processes, the court is required to pass an order to consider, whether the juvenile's case, meets the requirement of three criteria, as laid down in section 15 of the J.J. Act.



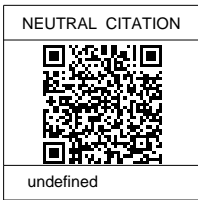
6.14 Mr. Jain submitted that Subjective Satisfaction is statutorily provided, since section 15 of the J.J. Act mandates the courts to take the assistance of psychologist or Psycho-social worker or other experts, and the explanation to the proviso in sub-section (1) of section 15 clarifies that preliminary assessment is not a trial, but is to assess the capacity of such child to understand the consequences of the alleged offence, and, thus the J.J. Board has to conduct the preliminary assessment, with regard to the physical and mental capacity of the juvenile to commit such offence, ability to understand the consequences of the offence, and the circumstances in which he allegedly committed the offence, and thereafter only should pass an order in accordance with the provision of sub-section (3) of section 18 of the J.J. Act.

6.15 Advocate Mr. Jain submitted that during



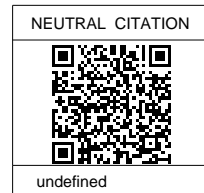
the process of recording of an interactive response and evaluating the material, the J.J. Board and the Children's Court shall have to keep in mind the common factors for the satisfaction of three criteria, as incorporated under section 15 of the J.J. Act, and such satisfaction must be for the relevant period when the juvenile has committed the offence or prior to the said period and not later when the juvenile is exposed to the police authorities, media and people at large. The past offences of the juvenile, which are not trivial or petty in nature, would be sufficient to consider for assessment regarding the ability to understand the consequences as well as for the understanding of the surrounding circumstances.

6.16 Advocate Mr. Jain suggested that the factors, which are to be borne in mind while considering the criteria of mental and physical capacity, for the Court would be to see whether the juvenile has taken serious participation in



the offence, in a way that the juvenile is mentally and physically fit and capable to commit such offence, even if, the other adult co-accused, in case of group offence, have not participated in the commission of offence.

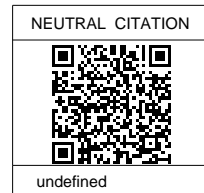
6.17 Advocate Mr. Jain stated that to appreciate the factum of ability to understand the consequences of offence, the satisfaction should be that the juvenile has committed a serious and conscious wrong and not moral wrong in mischievous or naughty childish mindset; or whether the juvenile is intentionally lying in front of the J.J.Board or Children's Court under the influence of the fear of the police or other person, or the society, or in case of personal gain, dishonestly lying, to escape from the process of law. Mr. Jain submitted that the confessional statement must not be taken into consideration during the course of preliminary assessment, as the purpose of law under section



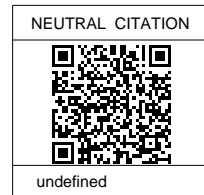
15 is not to adjudge the crime, but the capability, understanding and the circumstances in which juvenile allegedly committed the offence.

6.18 Advocate Mr. Nisarg Jain, thus, stated that to assess the circumstances in which the juvenile is alleged to have committed the crime, the factors necessary for the Court would be to see, whether the offence has been committed under some influence; whether the co-accused or any other person had taken disadvantage of the juvenile by taking the benefit of his immature understanding, in committing the crime; whether, in a situation of private defence, the juvenile had committed the crime, or the purpose of achievement of the juvenile in committing the crime, was immature and influenced by the external factor or person.

6.19 Advocate Mr. Jain submitted that section



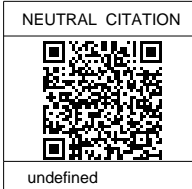
99 of the J.J. Act, 2015, Rule 10(5) and Rule 10A(4) of the Model Rules, and Chapter 3 of the Guidelines of NCPCR, if read together, the legislative intent of the parliament is to provide the fair opportunity of hearing to the child in conflict with law. Thus, Mr. Jain submitted that section 99 of the J.J. Act is to be given purposive interpretation, and the word 'confidential' and expression 'if it so thinks fit' need to be read down under the 'Doctrine of Purposive interpretation'. Mr. Jain, thus, stated that, in case, when the J.J. Board in juvenile's case between the age of 16 to 18 years, even in heinous offences, after going through the papers and Psycho./Psychi. Reports, is of the view that the juvenile is to be tried by the J.J. Board only, then in such cases the reports related to the child, considered by the Committee or the Board should be treated as 'confidential'. While otherwise, to grant juvenile fair opportunity of



hearing, following the principle of natural justice, the copy of each documents, readable and legible, relied upon as well as referred by the J.J. Board should be supplied to the child in conflict with law for his active participation in the process of preliminary inquiry to consider his case to be tried as an adult in the Children's Court.

7. In the case of Barun Chandra Thakur (supra), the Hon'ble Supreme Court while dealing with section 15 of the J.J. Act for preliminary assessment of child in conflict with law, observed as under:

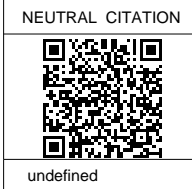
"65. While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies. It must be mentioned here that from a neurobiological perspective, the development of cognitive,



behavioural attributes like the ability to delay gratification, decision making, risk taking, impulsivity, judgement, etc. continues until the early 20s. It is, therefore, all the more important that such assessment is made to distinguish such attributes between a child and an adult.

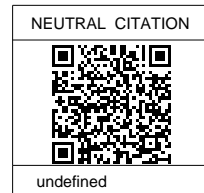
66. Cognitive maturation is highly dependent on hereditary factors. Emotional development is less likely to affect cognitive maturation. However, if emotions are too intense and the child is unable to regulate emotions effectively, then intellectual insight/knowledge may take a back seat.

70. A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence. For example, risky



driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his intellectual understanding.

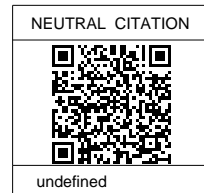
71. Children may be geared towards more instant gratification and may not be able to deeply understand the long-term consequences of their actions. They are also more likely to be influenced by emotion rather than reason. Research shows that young people do know risks to themselves. Despite this knowledge, adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour). While they do consider risks cognitively (by weighing up the potential risks and rewards of a particular act), their decisions / actions may be more heavily influenced by social (e.g. peer influences) and/or emotional (e.g. impulsive) tendencies. In addition, the lack of experience coupled with the child's limited



ability to deeply understand the long-term consequences of their actions can lead to impulsive / reckless decision making.

7.1 In Barun Chandra Thakur (supra), the Hon'ble Apex Court has referred to the factum of Cognitive maturation, observing intense emotion, likely to affect the cognitive maturation, the child with average IQ will have intellectual knowledge of the consequences of his action, but whether or not, he will be able to control himself or his actions will depend on his level of emotional competence.

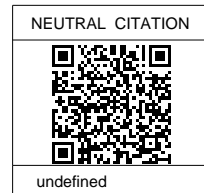
7.2 Emotional Intelligence otherwise known as quotient-EQ., is the ability to understand, use and manage emotions in positive ways to relieve stress, commensurate effectively, empathize with others, overcome challenges and defuse conflict.



7.3 While IQ-Intelligence Quotient is a measure of your ability to solve problems and think logically. EQ- Emotional Intelligence Quotient, measures your ability to understand and manage emotions.

7.4 The whole concept of emotional intelligence (EQ) was originally introduced by Psychologist Daniel Gokman in his 1995 book "Emotional Intelligence : why it can matter more than IQ", which is now considered a milestone achievement in the categorization and study of human emotions.

7.5 Poor EQ is linked to crime and other unethical behaviours. Unfortunately, there is a direct connection between poor emotional skills and the rising crime rate. Children who have poor emotional skills become social outcasts at a very young age. They might be the class bully because of a hot temper. They may have learned to reacts



with fists rather than with reason. The path to crime starts early in life, while there is no doubt that family and environment are strong contributors, the common threat is poor emotional and social skills. Emotional Quotient as the product of wisdom (w) and IQ, the relationship can be expressed mathematically as $EQ = W \times IQ$.

7.6 In Barun Chandra Thakur (supra), while appreciating the world acknowledgment of treating children in conflict with law differently than adult in conflict with law, the Apex Court has dealt with the aspect of 'child psychology' and need to conduct a meticulous psychological evaluation in following paragraphs:

74. The world acknowledges that children in conflict with law should be treated differently than adults in conflict with law. The reason is that the mind of the child has not attained maturity and



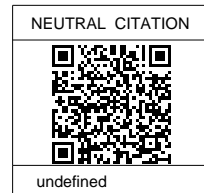
it is still developing. Therefore, the child should be tested on different parameters and should be given an opportunity of being brought into the main stream if, during his juvenility, has acted in conflict with law. To understand psychology of the child, huge rounds of studies have been made not only recently but from age old times and child psychology is a subject which is being studied world over and there are institutes specifically dealing with the developments and research on the said subject. The enactments dealing with children are enacted world over.

75. It is to be noted that child psychology is a specialised branch of development psychology, its genesis is based on the premise that children and adults have a different thought process. The individualised assessment of adolescent mental capacity and ability to understand the consequences of the offence is one



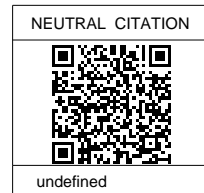
of the most crucial determinants of the preliminary assessment mandated by section 15 of the Act, 2015. The report of the preliminary assessment decides the germane question of transferring the case of a child between 16 to 18 years of age to the Children's Court. This evaluation of 'mental capacity and ability to understand the consequences' of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. The process of taking a decision on which the fate of the child in conflict with law precariously rests, should not be taken without conducting a meticulous psychological evaluation.

7.7 The Apex Court thus, expressed the need of formulating the guidelines, to assist the J.J. Board making preliminary assessment under section 15 of the J.J. Act, by the authority concern, in following lines:

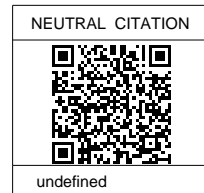


87. Before concluding, we may indicate that the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place. Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015."

8. It would be required to be noted that expression 'preliminary assessment into heinous offences by the Board' used in section 15 of the J.J. Act, 2015, imposes upon the Board to pass an



order, to consider, whether there is a need for a trial of the said child as an adult. Under section 18(3) of the J.J. Act, the Board shall transfer the trial of the case to the Children's Court having jurisdiction to try such offences. As has been observed in paragraph no.75 of the Barun Chandra Thakur (supra), the assessment of adolescent mental capacity and ability to understand the consequences of the offence of the child in conflict with law is one of the most crucial determinants of the preliminary assessment mandated by section 15 of the J.J. Act. This evaluation of 'mental capacity and ability to understand the consequences' of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. The process of taking a decision on which the fate of the child in conflict with law precariously rests, should not be taken without conducting a meticulous psychological evaluation.



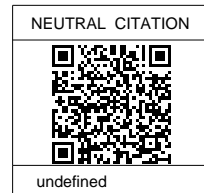
8.1 The conclusion arrived at in Barun Chandra Thakur(supra) in context with sections 15 and 19 read with section 18(3) of the J.J. Act, is as under:

"81. We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children's Court under sections 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to under section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children's Court. This Court cannot delve upon the exercise of preliminary assessment. This Court



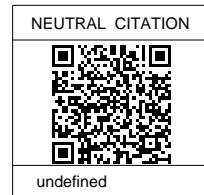
will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under section 102, would test the decision of the Board or the Children's Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision."

8.2 The power to make preliminary assessment is vested in the Board as well as Children's Court under section 15 and 19 respectively. The Children's Court, on its own also, upon a matter being referred to, under section 18(3) would examine, whether the child is to be tried as an

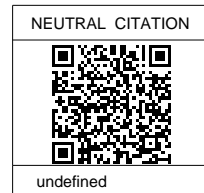


adult or not. The very provision under section 18(3) uses expression "need for trial of the said child as an adult". The preliminary assessment would not consider the child as an adult, but the assessment is for the purpose of sending the child to be tried in the Court as an adult and the transfer of trial of the case is also to a specific Court designated as Children's Court having jurisdiction to try such offence. The trial of the said child in conflict with law is sent to the Children's Court, where the Children's Court has to exercise its powers as granted under section 19 of the J.J. Act. The fact that the trial of the child in conflict with law is sent to the Children's Court, is with the significance, that the said child does not leave his status as that of the child, since his trial is conducted in the Children's Court.

8.2.1 Children's Court after the receipt of preliminary assessment from the Board under



Section 15 is again mandated to decide whether there is a need for the trial of a child as an adult as per the provisions of Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provision as laid down in the said section 19 and section 21 considering the special need of the child, the tenets of fair trial and maintaining a child friendly atmosphere. In case, where the Children's Court comes to a decision that there is no need for trial of a child as an adult, then the Children's Court may conduct an inquiry as a Board and pass appropriate orders in accordance to the provisions of section 18. This specific authority, which has been entrusted at the hands of the Children's Court itself clarifies that the preliminary assessment under section 15 is not a simple routine task, since preliminary assessment decides the fate of the child in conflict of the law. The Board, so as the Children's Court each

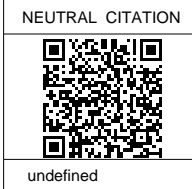


has to conduct the preliminary assessment in a very meticulous way with the psychological evaluation taking the assistance of experienced psychologist and medical specialist.

8.3 In Barun Chandra Thakur (supra) case, the Apex Court has specifically emphasised on the expression "may" in proviso to section 15(1) of the J.J. Act and has laid down that the expression "may" would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologist or psycho social worker or other expert. In the said case, it has been also further clarified that in case, where the Board consists of one member, who is a practicing professional with a degree in child psychologist or child psychiatric chooses not to take such assistance, it would record specific reasons thereof. In Barun Chandra Thakur (supra) case, Paragraph nos.76 and 79 clarifies the said aspect, which read as under:



76. As already noticed, the Board consists of three members, one is a Judicial Officer First Class and two social workers, one being a woman. The social worker appointed as a member could be having a degree in child psychology or psychiatry but it is not necessary. As such, the constitution of the Board may not necessarily be having an expert child psychologist. It is for all the above reasons that it has been provided not only in sections 15 and 101(2) but also under the Model Rules that assistance may be taken from an expert psychologist. Having regard to the framework of the Act, 2015 and the Model Rules and the purpose of preliminary assessment in terms of Section 15 as also looking to the varied composition of the Board, we are of the view that where the Board is not comprising of a practicing professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to section 15(1) would



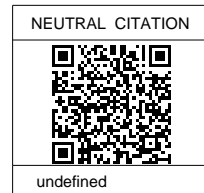
operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psycho-social workers or other experts. However, in case the Board comprises of at least one such member, who has been a practicing professional with a degree in child psychology or child psychiatry, the Board may take such assistance as may be considered proper by it; and in case the Board chooses not to take such assistance, it would be required of the Board to state specific reasons therefor.

79. Therefore, looking to the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression "may" in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises

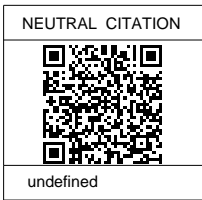


of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practicing professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor."

8.4 In Barun Chandra Thakur (supra) case, the Hon'ble Supreme Court had expressed anxiously, referring in detail, the kind of analysis or assessment required to be made under section 15, to note that the J.J. Act, 2015 or the Model Rules, 2016, do not lay any guidelines or framework to facilitate the Board in making a proper preliminary assessment on the relevant aspect, and the only liberty to the Board is to obtain assistance of an experience psychologist or psycho-social worker or other expert, and the

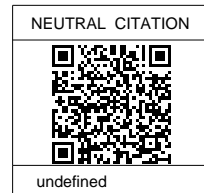


only assistance taken is to get the mental IQ of the child, and in Barun Chandra Thakur's case, it was observed with great concern that, with regard to ability to understand the consequences and also the circumstances in which the alleged offence was committed, no report was called for, from any psychologist, and it was indicated that the task of preliminary assessment under section 15 of the J.J. Act is a delicate task with requirement of expertise and has its own implications as regards trial of the case, and, therefore the Hon'ble Supreme Court was of a view that it was expedient that appropriate and specific guidelines in this regard be put in place, and, thus it was left open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board

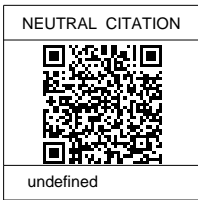


in making the preliminary assessment under section 15 of the J.J. Act.

9. Ms. Jirga Jhaveri, learned APP for the State by way of communication of the Head of Department of Psychiatry, Civil Hospital, Ahmedabad, has submitted that the guidelines for preliminary assessment under section 15 of the J.J. Act published by NCPCR in April-2023, has been put in force in State of Gujarat, and the Apex Institute in the field of mental health being National Institute of Mental Health and Neurosciences (NIMHANS), Bangalore, under the SAMVAD initiative in collaboration with the Ministry of Women and Child Development, prepared a detail guidance documents, for assessment of children in conflict with law, and in accordance with the guidance documents, the general outline of Psychiatric Assessment of a child in conflict with law as followed at Civil Hospital, Ahmedabad, refers:



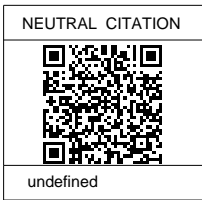
1. Detailed history taking and Mental status examination.
2. Detailed Psychological assessment by RCI REGISTERED clinical Psychologist-
 - IQ testing by Binet-Kamath Test OR Bhatia Battery is administered if the expert judges that the child may have intellectual disability.
 - Rorschach test for mental stability.
 - If the patient is not cooperative, a second appointment can be given. Alternative tests like VSMS (Vineland Social Maturity Scale) and TAT (Thematic Apperception Test) may be applied.
3. If further clarification is required, or



if the child has been brought from another district, they can be admitted to the hospital for detailed evaluation.

9.1 The Annexures, referred to are with the communication, as under:

- 1) Guidelines for Preliminary Assessment under Section 15 of the Juvenile Justice Act, 2015, published by National Commission for Protection of Child Rights (NCPCR) in April-2023.
- 2) Guidance Notes on Psychosocial and Mental Health Assessment for Children in Conflict with Law (published by Department of Child and Adolescent Psychiatry, NIMHANS, in collaboration with Department of Women and Child Development,

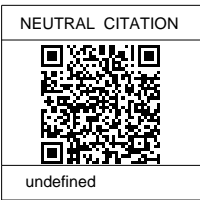


Govt. of Karnataka).

3) Proforma for Psychosocial and Mental Health Assessment for Children in Conflict with Law (published by Department of Child and Adolescent Psychiatry, NIMHANS, in collaboration with Department of Women and Child Development, Govt. of Karnataka).

4) Guidance notes on Preliminary Assessment Report for Children in Conflict with Law (published by Department of Child and Adolescent Psychiatry, NIMHANS, in collaboration with Department of Women and Child Development, Govt. of Karnataka).

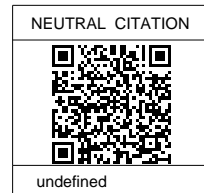
5) Proforma for Preliminary Assessment Report for Children in Conflict with Law (published by Department of



Child and Adolescent Psychiatry, NIMHANS, in collaboration with Department of Women and Child Development, Govt. of Karnataka).

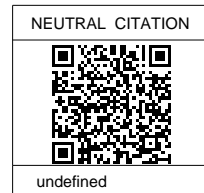
10. The National Commission for Protection of Child Right-April-2023, Guidelines for conducting preliminary assessment under section 15 of the J.J. Act, 2015, in introductory context, refers to the judgment of Barun Chandra Thakur (supra) passed by the Hon'ble Supreme Court, as referred hereinabove, and as per indication of the Hon'ble Supreme Court, it has observed that the task of preliminary assessment under section 15 of the J.J. Act, is a delicate task with requirement of expertise and has its own implications as regards trial of the case.

10.1 In view of the Hon'ble Supreme Court's direction NCPDR has developed guidelines prescribing the key procedure that will enable



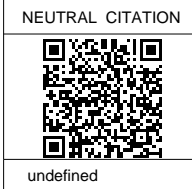
the JJB to conduct the preliminary assessment in consonance with the guiding principles and other provisions of the Act, and as per the guidelines, during their consultation carried out with experts and SCPCRs, it had been noted that the existing mechanisms such as SIR and SBR are exhaustive in nature. While the course of assessment, especially psychological assessment, would differ from child to child. Therefore, NCPCR framed the guidelines to include the essential components and basic mechanism involved in preliminary assessment to address the ambiguity in understanding of the process and steps to be followed.

10.2 The said guidelines lay down the principles which are dealt as guiding principles, noting that fundamental principles of care and protection of children that guide the implementation of J.J. Act, are significant for these guidelines. The guiding principles laid



down in section-3 of the J.J. Act, refers to:

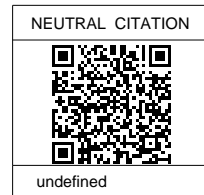
- (i) Principle of presumption of innocence;
- (ii) Principle of dignity and worth;
- (iii) Principle of participation;
- (iv) Principle of best interest;
- (v) Principle of family responsibility;
- (vi) Principle of safety;
- (vii) Positive measures;
- (viii) Principle of non-stigmatizing semantics;
- (ix) Principle of non-waiver of rights;
- (x) Principle of equality and non-discrimination;



- (xi) Principle of right to privacy and confidentiality;
- (xii) Principle of institutionalization as a measure of last resort;
- (xiii) Principle of repatriation and restoration;
- (xiv) Principle of fresh start;
- (xv) Principle of diversion;
- (xvi) Principle of natural justice;

10.3 The guidelines in Chapter-2 under the heading of '*Nature and Purpose of Preliminary Assessment*' has referred to the categorization of the offences as defined under sections-2 of the J.J. Act, of (i) heinous offences, (ii) Petty offences and (iii) serious offences.

10.4 Having observed the need to follow the steps to ensure fair and speedy inquiry and the



fact that the initiation of the inquiry into the heinous crime, has been differentiated based on the age of the child, specifically noting section 14(5)(f)(ii) of the J.J. Act, which lays down that, the child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15 of the J.J. Act, the guidelines highlight the point, that the aim of preliminary assessment is not to seek confession from the child, nor to reach at a conclusion of any sort. In the guidelines, the aim and criteria for conducting preliminary assessment, have been laid down in the following manner:

"2.1 Aim of conducting preliminary assessment- *The sole aim of preliminary assessment is to determine whether the child in the age of 16-18 years should be tried as an adult in case of heinous offence. This should not be considered an inquiry into the*

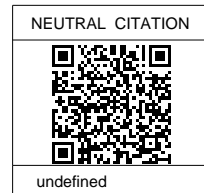


offence or a prelude to the trial by Children's Court or JJB. Also, while making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise [Rule 10A (3)].

2.2 Criteria for conducting preliminary assessment- *There are two essential conditions that calls for preliminary assessment under section 15 of the J.J. Act, 2015. First, the crime that has taken place is in the category of heinous crime as defined in the JJ Act, 2015. Second, the child who has allegedly committed the crime is in the age group of 16-18 years.*

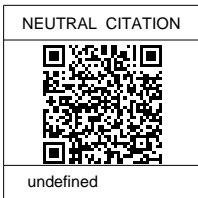
If the offence is allegedly committed by more than one child, preliminary assessment of each child will be carried out separately."

11. When the child in conflict with law is brought before the J.J. Board, the most important step for the Board is to determine the age of the



child, to proceed further with regard to the preliminary assessment in context of the child alleged to have committed an offence, which falls in the category of heinous crime. Section 94 of the J.J. Act, deals with presumption and determination of the age and the Board shall, therefore, undertake the process of age determination by seeking evidence obtaining:

- i. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- ii. the birth certificate given by a corporation or a municipal authority or a panchayat;
- iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest



medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

11.1 Sub-section (3) of section 94 clarifies that the age recorded by the Board to be the age of the person so brought before it, shall for the purpose of the J.J. Act, be deemed to be the true age of that person. The proviso mandates the age determination test to be completed within 15 days from the date of the order of the Board.

12. The guidelines of the NCPCR, thereafter deals with four determinants to conduct the preliminary assessment, which are as under:



“(a) physical capacity of the child to commit alleged offence- Child’s locomotor abilities and capacities, particularly with regard to gross motor functions (such as walking, running, lifting, throwing...such abilities as would be required to engage in most antisocial activities due to which children come into conflict with the law). The expert shall not delve into assessing the physical age of the child as a part of the preliminary assessment. The age determination is concluded before the initiation of preliminary assessment by the JJB and therefore, the experts shall not repeat the process at this stage. The role of the experts with regard to assessing physical capacity of the child to commit the alleged offence is only limited to assessing the aspects as have been mentioned



above in light of the physical capacities that may be required to carry out the offence.

(b) mental capacity of the child to commit alleged offence- Child's ability to make social decisions and judgments, for these are the critical executive functioning abilities that operate in the social context that offense takes place in. Thus, reporting on the child's "mental capacity" would draw on all the variables in the mental health and psychosocial assessment including substance abuse problems, life skills deficits, neglect or poor supervision by family or poor role models; experience of abuse and trauma; mental health disorder or other (neuro) developmental disabilities such as attention deficit hyperactivity disorder; intellectual disability.

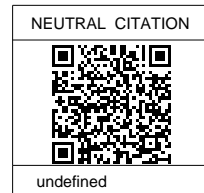


(c) the circumstances in which the child allegedly committed the offence- Psychosocial vulnerabilities, including life events and mental health problems that the child is afflicted with, i.e., factors relating to family, school, peer relationships, trauma and abuse, mental health, and substance use. Circumstances, therefore, do not refer merely to the immediate circumstances of the offense itself, i.e., the last event that occurred and led the child into conflict with the law. In fact, the offense behavior, including its immediate circumstances, is a (cumulative) consequence of a whole plethora of other circumstances that have been occurring over relatively long time periods of the child's life (perhaps since early childhood). Thus, we take a longitudinal



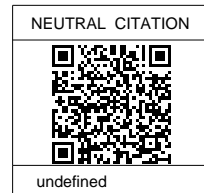
(versus a cross-sectional perspective of circumstances of the offense.

(d) ability to understand the consequences of the offence-Child's knowledge and/or understanding of social consequences (what other people will say or how they will perceive the behaviour and consequently what opinion society would form about the child including labelling and stigmatization), interpersonal consequences (how the behaviour might affect personal relationships in terms of loss of trust, affection and respect of family and friends) and legal consequences of their actions (knowledge of relevant laws on sexual abuse/rape/robbery/dacoity etc. and violation of rules leading to serious consequences for the child in terms of punishment)."



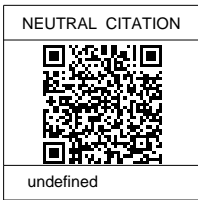
12.1 Learned advocate Mr. Nisarg Jain, while dealing with his argument had laid emphasis on the interactive session with the child, with psychologist/probationer officer for the subjective satisfaction in the course of preliminary assessment. The guideline, thus, lays down for such assessment through in-patient or out-patient setting as deemed appropriate. Point 2.5 deals with sittings for conducting preliminary assessment, which is reproduced hereunder:

"2.5 Sittings for conducting preliminary assessment- The psychologists and other experts must be given optimal opportunity to interact with the child. It is important that appropriate time and space is given for building rapport with the child and for carrying out the assessment by admitting the



child through in-patient or out-patient setting as deemed appropriate. However, in case the expertise is availed from outside District, the child should be assessed through in-patient facility."

13. Advocate Mr. Jain had heavily disapproved, the conduct of the Board of not providing any documents to the child in conflict with law in the present matter under the ground of confidentiality, which according to Mr. Jain has deprived the child of his right of active participation in the inquiry, where Mr. Jain has raised the issue of non-availability of the order of J.J. Board transferring the child in conflict with law to the Children's Court, as was not permitted to obtain the certified copy of the order dated 12.01.2023 in Criminal Appeal No.263 of 2023.



14. The guidelines of NCPCR refers to Rule 10A(4) of the Model Rule, where Rule 10A sub-rule (4) clearly lays down that the Board after preliminary assessment under section 15 of the Act passes an order that there is a need of trial of the said child as an adult, it shall assign reason for the same and the copy of the order shall be provided to the child forthwith. The points 4.1 to 4.3 in context with completion of preliminary assessment in the guidelines are reproduced hereunder for assistance:

“4.1 Period of completion of preliminary assessment- Preliminary assessment in case of heinous offences is to be disposed of by the JJB within a period of three months from the date of first production of the child before the Board [section 14(3)].

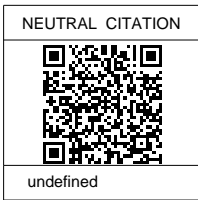
In accordance with the Rule (10A (4) of the JJ Model Rules 2016, the Board after preliminary assessment, shall assign the reason for the



same and the copy of the order shall be provided to the child forthwith.

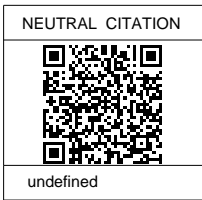
4.2 Final Report of preliminary Assessment- *It is important to note that the report prepared by psychologist or psycho-social workers or other experts based on their analysis cannot be submitted as final Preliminary assessment Report.*

4.3 Transfer of Trial- *The Board shall pass an order that there is a need for trial of the said child as an adult, and order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences. The copy of the order shall also be provided to the child. Thereafter, upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders [Rule 13(4) of JJ Model Rules, 2015]."*



15. In post production processes of the child in conflict with law, Rule 10(5) deals with providing copies or statement of the witnesses recorded and other documents prepared during the course of the investigation to the child or parents or guardian of the child within a period of one month from the date of first production of the child before the Board. Sub-rule (5) of Rule 10 refers as under:

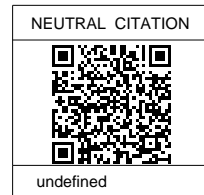
"10(5)- In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child."



15.1 The referred sub-rule 10(5) makes provision for giving the copy of the statement of witnesses recorded by the Child Welfare Police Officer and other documents prepared during the course of investigation and Rule 10A(4) puts an obligation on the Board after preliminary assessment under section 15 of the Act to pass an order assigning reasons for the need of trial of the said child as an adult and the said sub-rule mandates to give the copy of the order to the child forthwith. Sub Rule 10A(4) reads as under:

Rule 10A(4)- Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

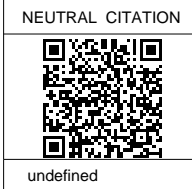
16. The need to supply copy of the order to



the child, child's family and the counsel as laid down on the J.J. Board has been emphasized in Marginal Note Chapter-3 of the guidelines of NCPCR.

17. In Barun Chandra Thakur (supra), the Apex Court while dealing with the concept of natural justice and reasonable opportunity under sections 99 of the J.J. Act has elaborated on the context of confidentiality to be mentioned in paras 50, 51 and 52, which are reproduced as under:

"50. The Board and the Children's Court have relied upon section 99 of the Act, 2015 to hold that they were not required to provide the copies of the material on record available in the form of SIR, the report of the psychologist, and other material. On the other hand, the High Court relied upon rule 10(5) of the Model Rules to hold that the documents ought to have



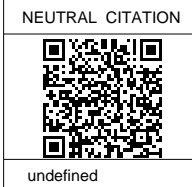
been provided to the child or his guardian or his lawyer as the case may be, and this having not been done, it was a case where reasonable opportunity had been denied.

51. Section 99 provides that all reports relating to the child and considered by the Committee or the Board are to be treated as confidential. The proviso to section 99(1) gives the power to the Committee or the Board to communicate the substance thereof to another Committee or Board or the child, his parents or guardian, and may also give such Committee or Board or the child or parent or guardian, an opportunity to produce evidence as may be relevant to the matter stated in the report. Section 99(2) states that the victim would not be denied access to the case record, relevant documents and papers.

52. Maintaining confidentiality has a different purpose but in no case



can it be said that to maintain confidentiality, the relevant material would not be provided to the child or his guardian or parents. It would be in complete contravention of the settled principles of criminal jurisprudence. Concept of confidentiality used in section 99 is to prevent the reports from coming in public domain or shared in public. Its availability will be confined to the parties to the proceedings and the parties should also refrain from sharing it with third parties. Section 99(2) begins with the non obstante clause and proceeds to direct that the victim should not be denied access to the case report, orders and relevant papers. Once the legislature's intention is to provide material to the victim there could never be an intention in the name of confidentiality to deny such access to the records to the child or his parents or guardians. The Board and the Children's Court committed an illegality in not providing the



documents as demanded by misinterpreting section 99 of the Act, 2015."

18. The Guidelines of NCPCR in regard to role of J.J. Board and other experts are described in the following points:

3.1 The Juvenile Justice Board (JJB) is solely responsible for conducting preliminary assessment as per section 14 (5) (f)(ii) and Section 15(1) of the Act.

3.2 In case the Board does not have at least one member who is a practicing professional with a degree in child psychology or child psychiatry, the Board shall take assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. In such cases the Board would record specific reason(s) for the same.

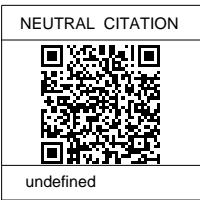


3.3 In cases where the Board needs to consult experts for preliminary assessment, the Board may take assistance from experts associated with any District Mental Health Programme or an expert from a Mental Health Institution in the District or outside the District. District Magistrate (DM) will provide the list of such experts and Institutions.

3.4 Qualification of experts-The psychologists and other experts who are asked to assist JJB in conducting the Preliminary assessment, shall be possessing qualification as required to be a Member of the JJB under the JJ Act, 2015, that is as follows-

■ a practicing professional with a degree in child psychology or psychiatry.

■ No expert shall be included in the process of conducting the preliminary



assessment, if he —

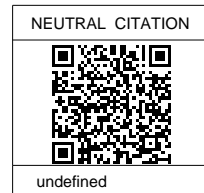
■ *has any past record of violation of human rights or child rights;*

■ *has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;*

■ *has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;*

■ *has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.*

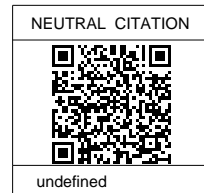
19. In case of non-availability of the



expert in the District, services of In-patient Departments, are directed to be made available from other districts. The said aspect has been expressed in guideline 3.5, which reads as under:

3.5 Non-availability of experts in the District- In case trained psychologists and experts are not available within a given District, services of In-Patient Departments may be availed from other Districts. The State Child Protection Society (SCPS) with help of the Health Department shall issue a list of Institutes.

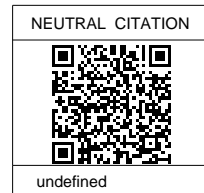
20. Guideline in point 3.7 has expressed the need of the presence of legal aid counsel to be provided from District Legal Aid Service Authority, who shall have the responsibility to be present with the child when the preliminary assessment takes place. The child is also granted the liberty to have his private Advocate made available to accompany the child and the legal



aid counsel/private Advocate shall have the responsibility to assist the child as per J.J. Act and its Rules. The said requirement is expressed in following terms:

3.7 Presence of a legal-aid counsel- The child must be provided with a legal-aid counsel through the District Legal Aid Service Authority, who shall have the responsibility to be present with the child when the preliminary assessment is taking place. The child may also be accompanied by the private advocate if available with the child. The Legal Aid counsel/Private Advocate shall have the responsibility to assist the child as per the J.J. Act and its Rules.

20.1 The guidelines also emphasize on imparting regular training to the experts, who have the required qualification to assist the J.J. Board in conducting the preliminary

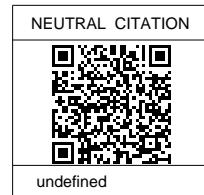


assessment. Such training are made to be provided by National Institute of Public Co-operation of Child Development or the respective Child Protection Society.

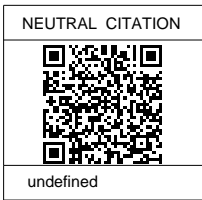
20.2 The J.J. Board has to assign reason for passing an order of requirement of the need for trial of the said child as an adult. Sub-rule (3) of Rule 10A of the Model Rules, 2016 very specifically lays down that while conducting the preliminary assessment the child shall be presumed to be innocent unless proved otherwise. Sub-rule (3) of Rule 10A reads as under:

"10A(3)- While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise."

21. Advocate Mr. Nisarg Jain expressing dissatisfaction towards the appellate Court order in Criminal Appeal No.263 of 2023 and Criminal



Appeal No.372 of 2022 moved under section 101 of the J.J. Act for bail, stated that while considering the bail application, the appellate Court has placed reliance on the statement of the child in conflict with law and has reproduced the extract of the statement in the order; while in context with, the appellate Court in an order rejecting the appeal which was filed under section 101(2) of the J.J. Act, challenging the order of the J.J. Board declaring the need for trial of the said child as an adult, contended that the facts of the case, which were not relevant in connection to the present child in conflict with law were relied upon, and even part of statement of the child in conflict with law dated 15.10.2022 was referred to, Mr. Jain stated that only the aspect of mental capacity of the child to commit the alleged act was considered, while no importance was given to the physical capacity of the child to commit the alleged



offence, or the circumstances in which the child allegedly committed the offence and the ability of the child to understand the consequences of the offence. Mr. Jain submitted that any assessment without specifically assigning reason to all the four aspects as incorporated in section 15 of the J.J. Act, would do great disservice to the society apart from injustice caused to the child. Mr. Jain referred to the provisions of section 15 of the J.J. Act in support of his submission.

21.1 Section 15 bears relevance, hence, is reproduced hereunder:

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

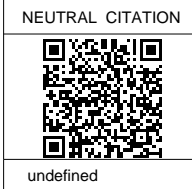


capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

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

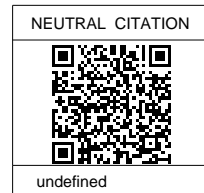


Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be [applealable] 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.

21.2 The preliminary assessment as explained under proviso to section 15(1) of the J.J. Act, clarifies that preliminary assessment is not a trial, but it is conducted to assess the capacity of such child to commit and understand the consequences of, the alleged offence. Thus, while making a preliminary assessment, the J.J. Board / Children's Court has to specifically deal with all four criteria by assigning reasons to explain the capacity of such child to commit offence. Such assessment of capacity is in terms of



physical capacity of the child to commit alleged offence and mental capacity of child to commit alleged offence. The facts of the case has to be dealt with to understand the circumstances in which the child allegedly committed the offence. The circumstances to be referred are not merely the immediate circumstances of the offence itself, but also to other circumstances cumulative in nature to have led to the immediate circumstances related to a long period occurring in the child's life, and finally the ability to understand the consequence of the offence.

21.3 Other information, to be considered out while carrying out preliminary assessment, has been dealt with in point-4.4 of the guidelines of the NCPCR. The marginal note with point-4.4 in guideline very specifically lays down that any confessional statement from SIR must not be taken into consideration while conducting preliminary assessment. Point-4.4 is reproduced hereunder:



"4.4 Other information to be considered while carrying out preliminary assessment- During the preliminary assessment, the Board and experts shall also analyze and take into consideration the following-

■ *Social Investigation Report (SIR)- The Board directs the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report, within a period of fifteen days from the date of first production before the Board [section 8(3)(e)]*

■ *Social Background Report- Child Welfare Police Officer of the police station, or the special juvenile police unit*



to which such child is brought, shall, as soon as possible after apprehending the child, inform the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation 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 [Section 13(1)(ii)]

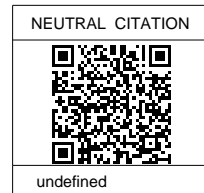
■ *Individual Care Plan (ICP)- The Board should also consider the Individual Care Plan (ICP) for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the*



basis of interaction with the child and his family, where possible. Thereafter, at the time of final orders an amended/updated ICP may be submitted to the Board/Children's Court.

■ *Witness report by CWPO— In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child [Rule 10(5)].*

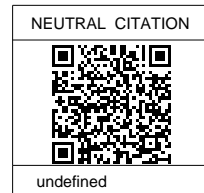
■ *Interaction with parents/*



guardians; staff of school or other institution attended by the child; peer group; neighbours or any other person deemed appropriate for giving insights regarding the child within the scope of four determinants as given at point 7 of the guidelines.

21.4 Here, in the present matter, while dealing with the order challenging section 15 order of J.J. Board, the appellate court has placed reliance on the confessional statement, which is against the principles to be followed in the administration of the Act while examining the criteria under section 15, and against the principle of presumption of innocence, as specifically expressed in Rule 10A(3) of the Model Rules, 2016.

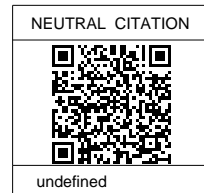
21.5 The essential element for the final report of the J.J. Board, as per the guidelines,



should not include any kind of statement or documents that could be incriminating in nature. It has been explained in point 4.5 in following terms:

“4.5 Essential elements of the final report by JJB- The final report prepared by the JJB to be submitted to the Children’s Court should include-

- *JJB’s decision on transfer of trail;*
- *socio- demographic details of the Child;*
- *whether the child also qualifies as a child in need of care and protection;*
- *details of the procedure followed by the JJB, psychologists and other experts (if any) including the psychological tests administered;*
- *reason for including or excluding the observations recorded in the SIR, SBR,*

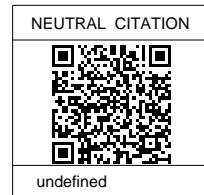


witness report;

The final report should not include-

- *written/verbal statement of the child or other persons interviewed;*
- *details of observations made during the assessment;*
- *any kind of statement or document that could be incriminating in nature."*

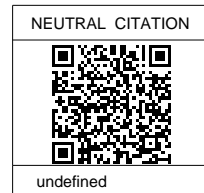
22. The appellate Court after referring to the facts of the case, in the impugned order dated 08.07.2023 passed in Criminal Appeal No.263 of 2023, has referred that the child in conflict in law was examined by clinical psychologist under the order of the J.J. Board and the chief examination of the clinical psychologist was noted on 10.11.2022. On 05.01.2023, the cross examination was recorded and thereafter on 12.01.2023, the order was passed by the J.J. Board. The order of transferring the case of the



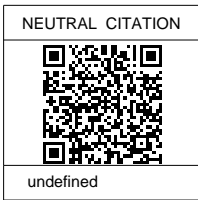
child to the Children's Court came up for challenge under section 101(2).

22.1 The clinical psychologist – Nikitaben Sandipbhai Veryani had made the preliminary assessment of the child in conflict with law on 17.01.2022, and during the course of preliminary assessment, the child was produced with L.R.D., Kalpeshbhai Bhusinhbhai of Gotri Police Station. In the cross-examination, the Doctor was put up with a question that the child in conflict with law would get frighten seeing the police and the Doctor has answered in affirmative. The examination by psychologist was in presence of L.R.D. Kalpeshbhai Bhusinhbhai.

22.2 It was argued before the appellate Court that since the child in conflict with law was presented along with the police, the confession of the crime was on the basis of fear and threat of the police to make his statement before the



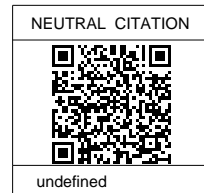
clinical psychologist. In the cross-examination, the Doctor was also asked the question with regard to separate test to examine the IQ level, accordingly except V.S.M.S., no other test was conducted to test the IQ level of the child. It was argued before the appellate Court that during the course of preliminary assessment, the history was noted regarding the offence alleged to be committed by the child, which was argued, should be the matter of evidence, as during the preliminary assessment, the mental situation of the child has to be examined, and Doctor cannot come to the conclusion of any commission of offence by the child. The range of examination was between 90 to 95%, no definite result could be declared, and it was argued that the report was on the basis of presumption, and under incomplete examination, only considering the seriousness of the offence, the case of the child has been transferred to the Children's Court, and



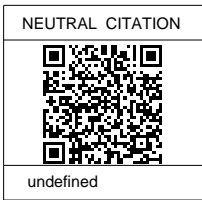
except the Doctor, neither any expert opinion nor any guidance has been taken. It was also argued that there was no evidence to show that the child in conflict with law was aware of the circumstances.

22.3 The order of the appellate Children's Court refers to the statement of the child in conflict with law dated 15.10.2022 and two reports of the Legal-cum-Probation Officer dated 01.11.2022 and 11.01.2023, to observe that the officer has noted the personal details of the child and as per the opinion of the Probation Officer, the child has expressed remorse about the offence, and further has noted that he would be appearing as a repeater student for standard 10, and his parents would send him for tuition and would take special care.

22.4 The evidence of Doctor Nikitaben Sandipbhai Veryani – clinical psychologist, who

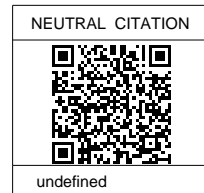


was referred to, observed that according to her, the mental capacity of child from his birth was inconsistent with development and education qualification (V.S.M.S.), and that the child could relate to the circumstances and the consequences of the offence, and during the interaction, the child has accepted his offence and has repented for the same. His IQ capacity was considered to be normal within the range of 90 to 95%, and that according to the said range, the child was aware of all the circumstances; there were no any symptom of mental illness and was matured enough as per his behaviour. As per the current situation, there were all elements as of adult, and further the child was also knowing about the further processes of the offence. The learned Judge found that the report has been prepared on the basis of the answers given to the questions during the interactive session, and accordingly the child's IQ capacity, as per his



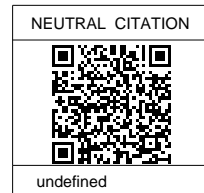
age, was found to be of maturity level.

22.5 The Children Court has further observed from the evidence of the clinical psychologist and the report, that the child is coming from a good family and is having an average understanding. The learned Judge has observed that the report, as referred in the Certificate from the office of Medical Superintendent, S.H.G. Hospital, Vadodara dated 18.10.2022, indicates that the patient was clinical fit and, therefore the learned Judge came to an opinion that, in that circumstances, it is not believable that the child had gone at the place of offence without any knowledge of commission of offence of loot. The learned Children's Court has referred to the facts of the case and attributed that the child had entered the house and had given hand blows to the complainant and had tied the complainant with adhesive-tape and had uttered the expression "Tijori Ka Chavi Do Muddamal Kaha Rakha Hai Wo



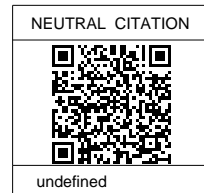
Batao Nahi To Tum Aaj Marega", and thereafter the keys were taken by him and the act of removing the ornaments from 'Tijori', was attributed to the child in conflict with law.

22.6 These observations of the Children's Court of attributing the total offence, to the child in conflict with law is contrary to the F.I.R., and the further statement of the complainant. The complaint refers to three persons, while the charge-sheet is against six persons. The record suggests that the learned Judge has also referred to the statement of the child as was noted on 15.10.2022 to refer Hirabhai, who was called as 'Hiramama'. The child had come in contact with him, three to four months prior to the incident, more specifically, prior to 'Navratri', Hirabhai had informed him that after a meeting, personally, they were to go for committing theft, and Hiramama had asked him to remain present and the child had agreed to do



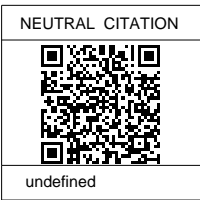
so.

23. The guidelines of NCPCR very specifically laid down that any confessional statement from Social Investigation Report (SIR) must not be taken into consideration while conducting preliminary assessment. The final report, which is submitted by the J.J. Board to the Children's Court shall include J.J. Board's decision for transfer of trial, socio-demographic details of the child, whether the child also qualifies that the child in need of care and protection, details of procedure followed by J.J. Board, psychologist and other experts, if any, including the psychologist test administered, reason for including and excluding the observations recorded in SIR, SBR and witness report. It is specified in the guidelines that the final report should not include written/verbal statement of the child or other persons interviewed; details of observations made

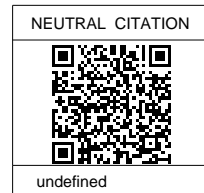


during the assessment; any kind of statement or document that could be incriminating in nature.

23.1 The impugned order of the Children's Court reflects that the learned Judge has relied upon statement of the child in conflict with law, and has made reference of the statement of the child during the interaction with the clinical psychologist, which are incriminating in nature, not warranted as per guidelines of the NCPCR. The aim of the preliminary assessment is not to seek confession from the child, nor to reach at any conclusion of any sort. The sole aim of the preliminary assessment is to determine whether the child in the age of 16-18 years should be tried as an adult in case of heinous offence, and such assessment should not be considered as an inquiry into the offence or prelude to the child by the Children's Court or J.J. Board.



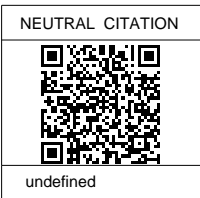
24. Here, in this case, the facts suggest that the child in conflict with law was proposing to appear in standard 10 repeater examination. He appears from good family. The Facts suggest that he came in contact with Hirabhai known as 'Mama' in the locality. The complaint does not suggest that the child in conflict with law had entered into the house of the complainant. The chargesheet paper shows that the child was made to stand outside the door and Hiramama has given him Rs.200 to go back home. The bounties of the loot was not shared by the child in conflict with law. The muddamal was discovered at the instance of one of the accused - Anil @ Ravankalubhai Kanogiya, which were later on found, as imitation ornaments. The complainant's version itself has become doubtful. The police was also required to inquire about the authenticity of the complaint, since initially the allegation was made of loot of original gold and silver ornaments, and



thereafter the complainant registered his statement that the looted articles were imitation ornaments.

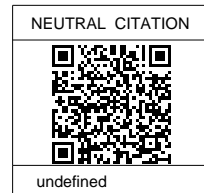
24.1 The learned Children's Court and the J.J. Board had referred to the statement of the child in conflict with law, which was confessional in nature. It has been brought to the notice that when the child was taken to the clinical psychologist, he was accompanied by L.R.D. - Kalpeshbhai of Gotri Police Station. How and in what circumstances, the statement of the child in conflict with law was recorded on 07.10.2022, also becomes questionable, when the child was taken before the clinical psychologist.

24.2 In post-production processes by the Board, Sub-rule (8) of rule 10 makes provisions of giving a child-friendly atmosphere and to encourage the child alleged to be in conflict with law to state the facts and circumstances

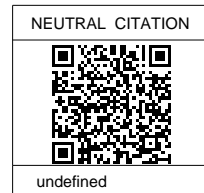


without any fear. The provisions, thus, provides to deal with not only in respect of the offences alleged against the child, but also in respect of home and social surroundings, and the influence or the offences to which the child might have been subjected to. Sub-rule (8) of Rule 10 reads as under:

"10(8) While examining a child alleged to be in conflict with law and recording his statement during the inquiry under section 14 of the Act, the Board shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which has been alleged against the child, but also in respect of the home and social surroundings, and the influence or the offences to which the child might have been subjected to."

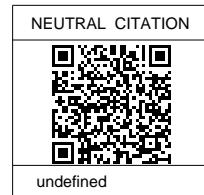


25. Learned advocate Mr. Nisarg Jain referring to the facts of the present case, submitted that the learned Board was required to encourage the child to state the facts and circumstances without any fear, thus, the Board was required to ensure that the child in conflict with law when produced before the Board was not accompanied by any police and the atmosphere ought to have been child friendly while putting the child at ease to have ensured that he is disclosing the facts and circumstances without any threatful atmosphere before the Board. Advocate Mr. Jain contended that home and social surroundings of the present child in conflict with law shows that he has come from a respectable family, however, was influenced by one Hiramama, probably having failed in standard 10th exam was, not attending the school, the circumstances, which were to be examined, were of the relevant time of the offence and of other



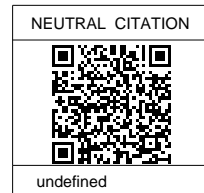
circumstances prior in the life of the child, which might have ultimately culminated into any form of conduct of the child, and under preliminary assessment the judicial discretion is to be exercised by examining any *malafide* or criminal intent.

26. For the purpose of conducting the preliminary assessment, as laid down in Barun Chandra Thakur(supra), it is imperative to take the assistance of psychologist or psycho-social worker or other experts, who are experienced in working with children in difficult circumstances. The most important aspect, which has been very specifically embolden under sub-rule 10A(2) is while making preliminary assessment, the child shall be presumed to be innocent unless proved otherwise. The Board while passing the preliminary assessment order regarding the need for trial of the said child as an adult, shall have to assign reason for the same. The Board



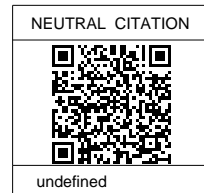
decides whether the child should be transferred on the finding of probable cause of the child's guilt. Clause (xvi) of section 3 of the J.J. Act, for general principles for the administration of the Act, makes it clear that the basic procedural standard of fairness shall be adhered to, including the right to a fair hearing, rule against bias etc. The decision passed by the Board must necessarily be supported by reason, in as much as, assigning reason is the best way out to demonstrate the application of mind.

26.1 Order under section 15 of the J.J. Act needs to demonstrate satisfaction regarding the mental and/or physical capacity of the child to commit the heinous offence; the ability of the child to understand the consequences of the offence and the circumstances in which the alleged offence has occurred.



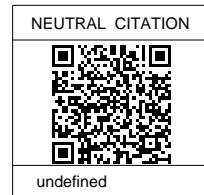
26.2 Learned Advocate Mr. Jain has stressed upon the requirement of three satisfactions to be demonstrated for giving the reasons to the criteria incorporated under section 15. The three satisfactions, as has been rightly submitted by Advocate Mr. Jain, would be (i) Objective Satisfaction, (ii) Subjective Satisfaction and (iii) Judicial Satisfaction, which start from presumption of innocence and the whole exercise for the judicial discretion would be for finding of probable cause of the child's guilt.

26.3 The Court while determining; whether a juvenile is a proper person to remain within the jurisdiction of the Juvenile Court, after having considered the juvenile's case, the seriousness of number of alleged offences, would be required to take into consideration including the fact; (i) whether the alleged offence was committed in an aggressive, violent, premeditated or willful manner (ii) whether the alleged offence was

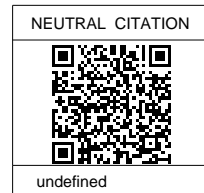


against persons or property, with greater weight being given to offences against the person, especially dead or bodily injury resulted, (iii) whether maximum punishment for such offence is as define under section 2(33) of the J.J. Act, to consider it as a heinous offence, which includes offence for which minimum punishment under the Indian Penal Code (45 of 1816) or any other law for the time being in force is imprisonment for 7 years of more. (iv) Whether the alleged offence involved the use of a fire arm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such offence; (v) the nature of juvenile participation in the alleged offence.

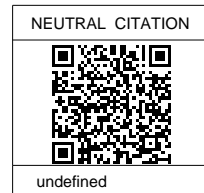
27. Here, in the present case, the appellate Court has referred to the complaint of the matter; however, had failed to enter into the details to gather the exact role of the present applicant as child in conflict with law to the alleged offence. The guidelines for conducting



preliminary assessment by NCPCR refers in the Marginal Note in point 2.1 that the aim of preliminary assessment is not to seek confession from the child, nor to reach at a conclusion of any sort. The criteria for conducting preliminary assessment deals with two essential conditions, as observed in the guidelines; *(i) the crime that has taken place is in the category of heinous crime as defined in J.J. Act, 2015 (ii) the child who has immediately committed the crime is in the age group of 16-18 years and if the offence is allegedly committed by more than one child, preliminary assessment of each child will have to carried out separately.* The guideline, point-2.4, deals with determinants of preliminary assessment. Those four determinants have been dealt with in detail under point 2.4, while trying to bring in maximum understanding of the four determinants, to be dealt by the Board as well as the Children's Court.

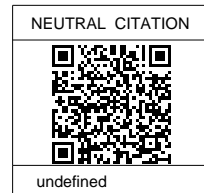


27.1 The exercise of preliminary assessment has to be made with the assistance of Psychiatric/ Psychologist/ Probation Officer. The Court while, dealing with the objective satisfaction has to consider the material supplied by the Child Welfare Police Officer, as noted under Rule 10(5), who would produce the statement of the witnesses recorded by him and other documents prepared during the course of the investigation, and such material are to be produced within a period of one month from the date of first production of the child, with a copy to be supplied to the child or parents or guardian of the child. The Board shall direct the Probation Officer, or in case Probation Officer is not available, the Child Welfare Officer or a Social Worker to undertake the social investigation into the case and submit a Social Investigation Report (SIR) within a period of 15 days from the date of first production before the



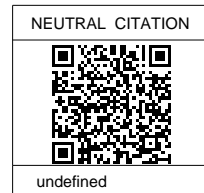
Board, as laid down under section 8(3)(e) of the J.J. Act, 2015.

27.2 Rule 10(8) of the Model Rules, 2016 deals with the aspect that when an inquiry is conducted by the Board under section 14 regarding the child in conflict with law, the Board shall have to address the child in a child friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which has been alleged against the child, but also in respect of the home and social surroundings, and the influence or the offences to which the child might have been subjected to. Such inquiry under section 14 of the J.J. Act, would permit the Board to inquire the facts and circumstances going beyond the statements of witnesses and documents prepared by Child Welfare Police Officer, as the real facts and circumstances, could be discerned



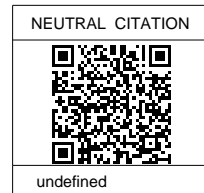
during the interactive talk with the child. The confessional statement from SIR or SBR shall not be taken into consideration while conducting preliminary assessment, and reasons has to be given in dealing with four determinants; (a) physical capacity of the child to commit the alleged offence; (b) mental capacity of the child to commit alleged offence (c) circumstances in which the child allegedly committed the offence (d) ability to understand the consequences of offence. The judicial satisfaction, thus, while dealing with the four determinants, takes into consideration the objective satisfaction, subjective satisfaction and even the satisfaction of the Board, as referred in Rule 10(8) of the Model Rules, 2016, while dealing with the inquiry under section 14 of the J.J. Act, encouraging the child to state the facts and circumstances within fear.

28. It is to be kept in mind that though



statute permits the child of 16 years and beyond to be tried in a heinous offence as an adult, it does not mean that the statute intends that all those children should be subjected to adult punishment, and therefore while dealing with the preliminary assessment, all the statutory criteria must be fulfilled. There may be cases, where juvenile confesses to the crime, and the SIR or SBR may record that the child has been manipulative, evasive and even contradictory; and perhaps the gravity of the offence and the public outcry may have received greater predominance in the report, still the evaluation must always start with presumption of innocence.

28.1 The explanation to section 15 of the J.J. Act clarifies that the preliminary assessment is not a trial. This is an exercise to assess the child's capacity to commit and understand the consequences of the alleged crime. The Board, thus, has to be very careful while



making a preliminary assessment, and should not mechanically rely on SIR or SBR without analysing the juvenile case. Seriousness of the offence is not the sole factor, which could control the decision.

29. In case of **Shilpa Mittal Vs. State of NCT of Delhi and Another**, reported in **AIR Supreme Court 405**, the Hon'ble Supreme Court was dealing with lacuna in the enactment raised an issue "Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a 'heinous offence' within the meaning of section 2(33) of the Act. Paras 30, 31, 33 to 35 of the said judgments reads as under:

"30. We must also while interpreting an Act see what is the



purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum' .

31. *No doubt, as submitted by Mr.*



Luthra there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be



protected. Treating children as adults is an exception to the rule. It is also a well settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.

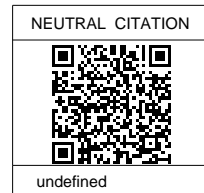
33. It was urged by Mr. Luthra that while defining 'heinous offences' the word 'includes' has been used which would mean that the definition is an inclusive definition and includes things not mentioned in the definition. We are not impressed with this argument since the definitions of 'petty offences' and 'serious offences' also use the word 'includes'. In fact the word 'includes' is a surplusage. The word 'includes' in the three definition clauses does not make any sense. There is nothing else to be included. The definition is complete in itself.

34. From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried



as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.

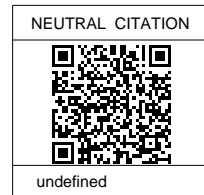
35. Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two



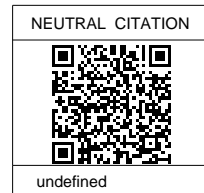
views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'."

30. The children are treated as an adult offenders because of offence category. Thus, the provisions of the section invoked, would also require consideration during the course of preliminary assessment alongwith, the record and previous history of the child in the present jurisdiction or other jurisdiction including:

- (i) the number and nature of the previous cases of the child with the Board;



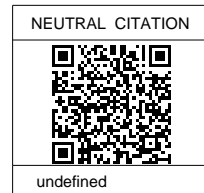
- (ii) The number and nature of prior period of probation;
- (iii) the number and nature of prior commitments to child correctional centers;
- (iv) the number and nature of previous residential and community - based treatments;
- (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and;
- (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- (vii) Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;



- (viii) The degree of intellectual disability or mental illness;
- (ix) The juvenile's school record and education;
- (x) The juvenile's mental and emotional maturity; and
- (xi) The juvenile's physical condition and physical maturity.

30.1 Suggestive questions proposed to be covered in the report are noted at Annexure-I of the Guidelines of NCPCR – April 2023, which are over and above the points noted in the guidelines. The suggestive questions are reproduced herein below to given a full understanding of the level to which the preliminary assessment exercise has to be carried forward:

i. whether the child has himself been a



victim of any offence in the past;

ii. if yes, what is the nature of offence;

iii. whether the child have ever been put to extreme mental trauma;

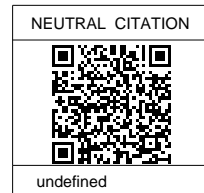
iv. whom does a child sees as their role models;

v. what are child's ambitions in life;

vi. whether the child is associated with any group formed by adults;

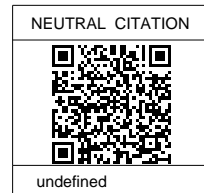
vii. whether the child is the control of adults, or group of adults, and if so, the Board shall consider the aspect whether independent of the influence of the adults, the child may not have committed the offence;

viii. whether the child suffers from any kind of disability as listed in



Rights of Persons with Disabilities Act, 2016; specify;

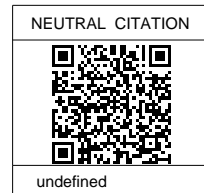
- ix. whether the child is prone to taking drugs or alcohol;*
- x. whether the child is under the influence of peer groups or associates with those who present risk of harm e.g. sexual offenders, drug peddlers etc. or criminals;*
- xi. whether the child has suicidal tendencies or of harming own self;*
- xii. whether the child has been recruited or used or forced by any non-State, self-styled militant group or outfit declared as such by the Central or the State Government and whether such child was in a position to desist influences and pressures excreted by such actors in the given circumstances of his or her life*



etc.

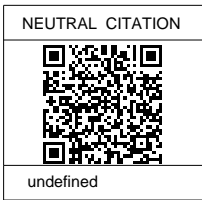
31. Upon finding of probable cause, pursuant to a preliminary assessment, to the reasons noted in the order, the order of the trial as an adult would be passed under section 18(3) of the J.J. Act, and if the Board does not find probable cause to believe that juvenile has committed such heinous offence, then, as noted in section 18(1), after the preliminary assessment, may continue to inquiry of heinous offence, and the matter would be disposed of by the Board.

31.1 As was observed in Barun Chandra Thakur (supra), there were no guidelines for the Board to justify the orders of preliminary assessment. By and large the criteria adopted in the judgment of **Kent V. United States, 383 U.S. 541 (1966)**, decided on 21.03.1966, were referred. The facts were, Kent, a 16 year old was arrested for



various charges. For about 24 hours he was kept in police custody. He was questioned and he admitted of some offences, then, Kent was subjected to "exclusive jurisdiction" of the District Juvenile Court, which could "only waive jurisdiction after a "full investigation" of question of waiver." In Kent's case the Juvenile Court waived its jurisdiction without a hearing or allowing Kent's counsel to access important Court Social Service files. The U.S. District Court dismissed Kent's claim and tried him as an adult, and later he was convicted as an adult. When Kent's challenge, eventually reached the U.S. Supreme Court, thereafter laid down certain factors for the courts to consider before transferring the juvenile to the criminal Court. According to Kent's judgment, the Judges must assess these below mentioned factors thoroughly before waiving a juvenile to criminal court.

1. The seriousness of the alleged



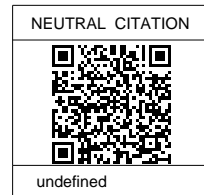
offense to the community and whether protecting the community requires waiver;

2. Whether the alleged offense was committed in an aggressive, violent, premediated, or wille manner;

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

4. The prosecutive merit, i.e., whether there is evidence upon which a [court] may be expected to return an indictment;

5. The desirability of trial and disposition of the entire offense in

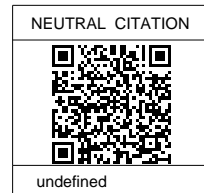


one court when the juvenile's associates in the alleged offense are adults;

6. The sophistication and maturity of the juvenile by consideration of his home, environmental situation, emotional attitude, and pattern of living;

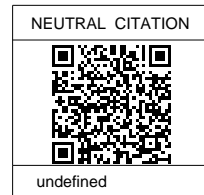
7. The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions;

8. The prospects for adequate protection of the public and the likelihood of reasonable



rehabilitation of the juvenile (if he found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the juvenile court.

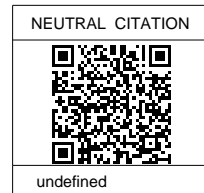
32. Here, in the impugned order, the Children's Court has placed reliance on the reports placed before the J.J. Board. The Children's Court while dealing in appeal under section 101(2) of the J.J. Act, can independently deal with the case of child by taking assistance of experienced psychologists and medical specialists other than those, whose assistance, has been obtained by the Board in passing the order under the section 15 of the J.J. Act. The appeal provision makes, thus, clear that the Sessions Judge are not bound by the report of the psychologist or medical specialists obtained by the Board and can independently call for



assistance of experienced psychologists and medical specialists, to deal with the order passed under Section 15 of preliminary assessment by the Board.

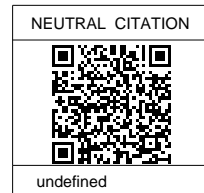
32.1 Section 101(2) requires reproduction here for clarity of the understanding of the provision:

“(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.”



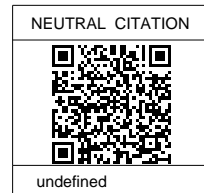
32.2 In the present matter, the learned Children's Court in appeal has relied upon the observation made by the Juvenile Justice Board and has also placed reliance on the evidence of clinical psychologist in context with the conduct of the child, in relation to the offence, and has also relied upon a certificate from the police record of Medical Superintendent, H.S.G. Hospital, Vadodara.

32.3 The very fact that the Sessions Court can independently take the assistance in deciding the appeal, clarifies that the Court of sessions can call for further assistance at the appellate stage. Section 19 of the J.J. Act envisages, the power to the Children's Court, that even without any challenge to the order of the Board of the preliminary assessment under section 15 of the J.J. Act, the Children's Court has to decide, whether there is a need for trial of the child as



an adult and pass appropriate orders as per the provisions of the Code of Criminal Procedure and pass appropriate orders after trial subject to the provisions of section 19 and section 21 of the J.J. Act, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere. It is not only the J.J. Board, who is to provide the child friendly atmosphere, but the duty is also cast upon the Children's Court to consider the special needs of the child, with a further discretion under section 19(1(ii)) that if the Children's Court come to the conclusion that there is no need for the child to be tried as an adult, then the Children's Court would conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18 of the J.J. Act.

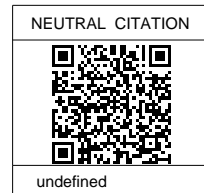
32.4 Section 21 of the J.J. Act, clarifies that no child in conflict with law shall be



sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of the J.J. Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

32.5 Rule 13 of the Model Rules, 2016 deals with the procedures in relation to the Children's Court and Monitoring Authorities, which makes it clear that upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders. Sub-rule (2) of Rule 13 amplifies that where an appeal has been filed under sub-section (1) of section 101 of the Act against the order of the Board declaring the age of the child, the Children's Court shall first decide the appeal.

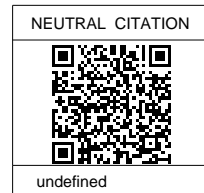
32.6 Sub-rule (4) of Rule 13 clarifies that,



when the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per section 19 of the Act and Rules.

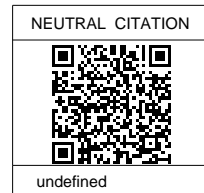
32.7 Sub-rule (5) of rule 13 of the Model Rules, 2016 adds that when the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that the child should be tried as an adult, the children's Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and Rules.

32.8 The children's Court, as specified in sub-rule (6) of Rule 13 shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child. As



per sub-rule (8) of Rule 13 of the Model Rules, 2016, where the Children's Court decides that there is a need for trial of the child as an adult, it shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and by maintaining a child friendly atmosphere; the final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form-7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

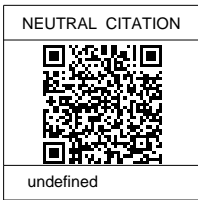
32.9 Rule 14 of the Model Rules, 2016 notes about the destruction of records. The records of conviction in respect of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer, and thereafter be destroyed by the Person-in-charge or Board or Children's



Court, as the case may be. The said Rule is with the proviso, which clarifies that in case of a heinous offence, the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19 of the Act, the relevant records of conviction of such child shall be retained by the Children's Court.

33. In view of the above observations in the judgment of Barun Chandra Thakur(supra) with the Guidelines of the National Commission for Protection of Child Rights (NCPCR) along with Model Rules, 2016, the J.J. Board and the Children's Court would be able to get necessary assistance in conducting the preliminary assessment to decide the necessity of sending the trial of the child in conflict with law to the Children's Court.

34. To the reasons given hereinabove, the impugned orders passed by the J.J. Board and the



Children's Court are not judicious, hence, the preliminary assessment of the present child in conflict with law requires assessment afresh by J.J. Board, as contemplated under section 15 of the J.J. Act, as this Court under revisional jurisdiction of section 102 would have no power to carry out the preliminary assessment.

35. In the result, the revision application is allowed in above terms. The order dated 08.07.2023 passed in Criminal Appeal No.263 of 2023 by the 3rd Additional Sessions Judge & Special (Children Court), Vadodara and order dated 12.01.2023 passed by the Juvenile Justice Board at Vadodara are quashed and set aside. Rule is made absolute to the aforesaid extent.

(GITA GOPI,J)

Pankaj