

Juvenile Justice Newsletter

Monthly Newsletter of Activities Concerning Child Protection in Assam

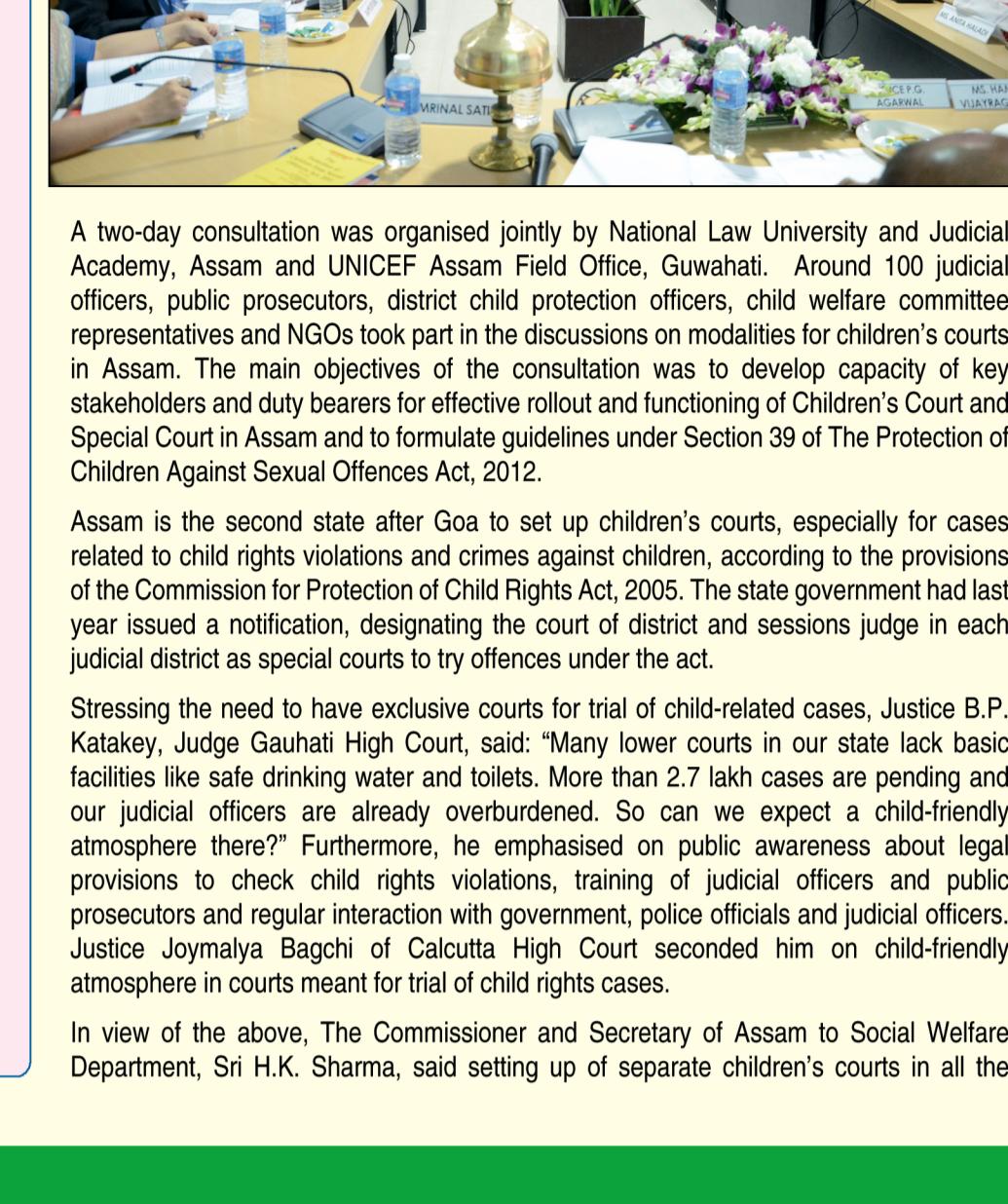
Editorial

Till very recent, the judicial setup and the procedure followed by judicial officers were not very friendly for a child to have access to justice. The stringent processes followed during trial and investigation often leads a child getting victimized again while awaiting judicial remedy. The scenario changed after special legislations like Commission for Protection of Child Rights Act, 2005 and thereafter Prevention of Children from sexual offences Act, 2012 mandated to have special children court in every district to try all cases related to children. but both the Acts were silent on the role of the Children's Court vis-à-vis the existing authorities and bodies such as the Child Welfare Committees, Juvenile Justice Boards, and Commissions for Protection of Child Rights, etc. Government of Assam very recently notified all courts of district and session to function as a Children Court under aforementioned Acts. But there is a lack of adequate clarity on the scope, role and jurisdiction of the Children's Court which is likely to create a confusion and chaos amongst litigants, Courts and advocates.

As such a Judicial Colloquium was envisaged as a platform for the honourable members of the Judiciary to come together and share ideas, thoughts and opinions on this issue, to help contribute to a greater clarity which in turn could guide the proper functioning of Children's Courts in the states, which are already notified. This edition brings news from this judicial colloquium and the key outcomes that were envisaged for holding this colloquium.

Editorial Board,
State Child Protection Society, Assam

CHILDREN'S COURT AND SPECIAL COURT IN ASSAM



A two-day consultation was organised jointly by National Law University and Judicial Academy, Assam and UNICEF Assam Field Office, Guwahati. Around 100 judicial officers, public prosecutors, district child protection officers, child welfare committee representatives and NGOs took part in the discussions on modalities for children's courts in Assam. The main objectives of the consultation was to develop capacity of key stakeholders and duty bearers for effective rollout and functioning of Children's Court and Special Court in Assam and to formulate guidelines under Section 39 of The Protection of Children Against Sexual Offences Act, 2012.

Assam is the second state after Goa to set up children's courts, especially for cases related to child rights violations and crimes against children, according to the provisions of the Commission for Protection of Child Rights Act, 2005. The state government had last year issued a notification, designating the court of district and sessions judge in each judicial district as special courts to try offences under the act.

Stressing the need to have exclusive courts for trial of child-related cases, Justice B.P. Katakey, Judge Gauhati High Court, said: "Many lower courts in our state lack basic facilities like safe drinking water and toilets. More than 2.7 lakh cases are pending and our judicial officers are already overburdened. So can we expect a child-friendly atmosphere there?" Furthermore, he emphasised on public awareness about legal provisions to check child rights violations, training of judicial officers and public prosecutors and regular interaction with government, police officials and judicial officers. Justice Joymalya Bagchi of Calcutta High Court seconded him on child-friendly atmosphere in courts meant for trial of child rights cases.

In view of the above, The Commissioner and Secretary of Assam to Social Welfare Department, Sri H.K. Sharma, said setting up of separate children's courts in all the

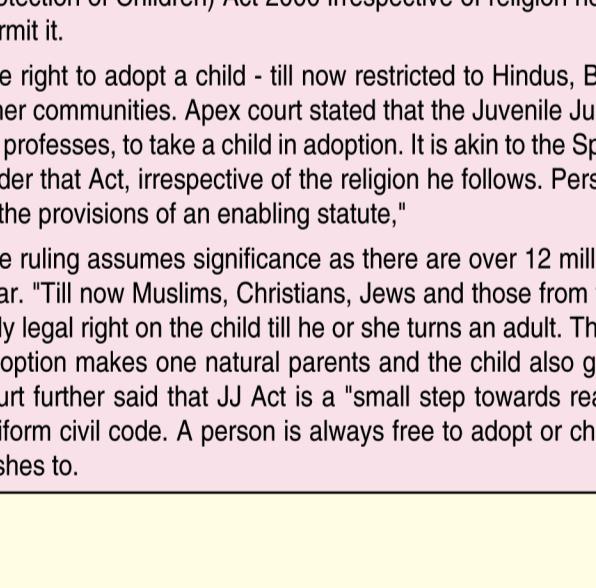
districts is not yet feasible but he said that, "We are planning to have a separate children's court in Guwahati first."

Legal Framework for Children's Court

The Commission for Protection of Child Rights Act, 2005 (CPCR Act) provides for the establishment of the National Commission for Protection of Child Rights, the State Commissions for Protection of Child Rights, and Children's Courts for providing speedy trial of offences against children or of violation of child rights. Section 25 of the CPCR Act requires the State Government to, in concurrence with the Chief Justice of the High Court establish Children's Court at the State or district level. A Sessions Court could be notified as a Children's Court. However, if a Court of Sessions is already specified as Special Court or a special court is already notified for such offences under any other law for time being in force, then Section 25 will not apply.

Rationale for establishing a Children's Court

According to Crime in India, 2010 released by the National Crime Record Bureau for the State of Assam the incidence of crimes against children is as follows: murder - 10, rape - 39, kidnapping and abduction - 17, procuration of minor girl - 75 and other crimes - 53. Given that the rates of crime against children are high, it is suggested that a children's court is established in order to provide speedy justice to child victims.



Furthermore, the delay in the process and procedures of the Court such as recording evidence, cross examination and observing other witness depositions has a huge impact on the victims, especially when they are children. Presently, the absence of child friendly procedures in regular courts makes the matters worse for the child victims. A dedicated Children's Court will help reduce the burden on the existing criminal courts and aid speedy trial of cases involving child victims. It will also make the criminal justice system more accessible and friendly to children and conducive to the protection of their rights. The special courts established in Mumbai under the Immoral Traffic (Prevention) Act, 1956 have shown that an exclusive court to deal with offences arising under that Act have helped improve the conviction rate and resulted in speedy trial under the ITPA Act. Similarly a separate Children's Court which is child friendly and

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sensitive to the needs of the child victim and the family can be expected to provide speedier justice to child victims. Establishing a Children's Court would be a step in reducing the anxiety of the child victim and the family.

Evidence and experience of Children's Court in Goa

Goa is the only state in the country which has had the Children's Court functioning under The Goa Children's Act, 2003 even before the CPCR Act came into existence. The Act provides that the functioning of Children's Court be guided at all times by the 'best interests of the child' and all its procedures, the offices, the dress worn by the members of the legal profession and all others shall consciously and deliberately be child friendly. Although the Children's Court is now notified under the CPCR Act, the procedures specified under the Goa Children's Act continue to be followed.

In Goa, the Children's Court has a very informal set up - it has a table and chair, which is at the ground level and not at an elevated stage like the other Courts. The Judge sits across the victim in order to make him or her feel comfortable. The Goa Children's Act specifically states that during cross examination a child (who is a victim of a crime or a witness to a crime) shall not be exposed to the presence of the accused or the perpetrators of the crime but the advocate for the accused shall be allowed to be present. The Act further states that the tender age and psychological condition of the child should be taken into consideration and the Children's Court should adopt procedure which is fair and suitable.

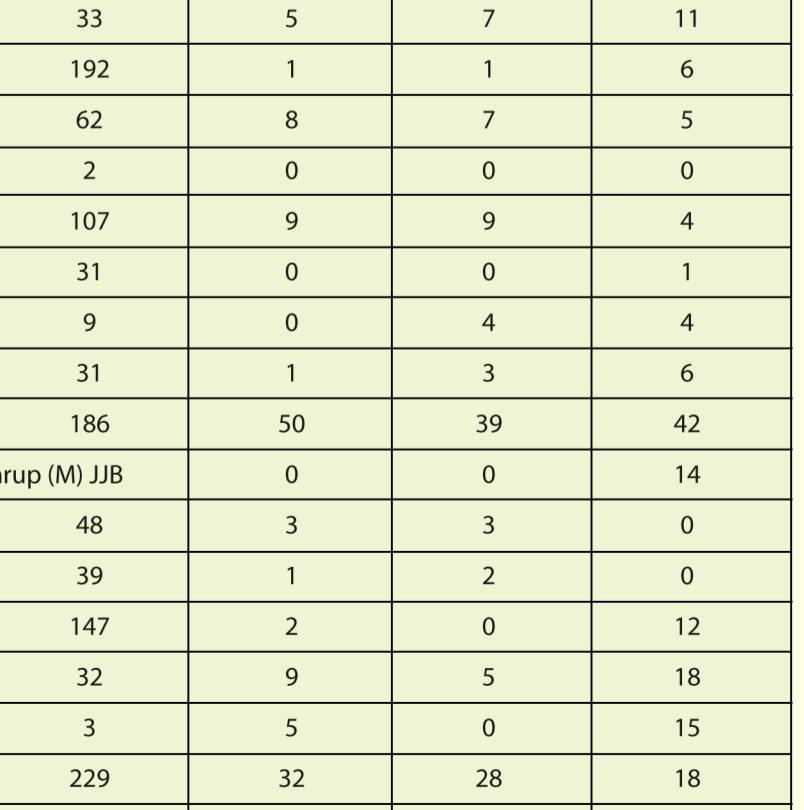
Sittings

The sittings of the Children's Court should be proportionate to the number of the cases being adjudicated.

Training for Judges and Public Prosecutors

Section 26 of the Act provides for appointment of Special Public Prosecutor. The State Government may by notification specify a Public Prosecutor or a Practicing Advocate who has experience of

The valuable inputs gathered from this consultation will reflect on the model guidelines on Special Courts and child friendly procedure thereof which will be notified by the Government of Assam in due course.



MUSLIMS, CHRISTIANS, JEWS, PARSI AND ALL OTHER COMMUNITIES CAN ADOPT UNDER JJ ACT

In a landmark judgement passed by the Apex Court on 19th February, 2014, in the matter of Writ Petition (Civil) No. 470 OF 2005 filed by Shabnam Hashmi versus Union of India, court pronounced that any person can adopt a child under the Juvenile Justice (Care and Protection of Children) Act 2000 irrespective of religion he or she follows and even if the personal laws of the particular religion does not permit it.

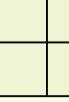
The right to adopt a child - till now restricted to Hindus, Buddhists and Jains - now extends to Muslims, Christians, Jews, Parsis and all other communities. Apex court stated that the Juvenile Justice Act, 2000 is a secular law enabling any person, irrespective of the religion he professes, to take a child in adoption. It is akin to the Special Marriage Act 1954, which enables any person living in India to get married under that Act, irrespective of the religion he follows. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute."

The ruling assumes significance as there are over 12 million orphaned children in India but on an average only 4,000 get adopted every year. "Till now Muslims, Christians, Jews and those from the Parsi community only had the power of guardianship in which one possesses only legal right on the child till he or she turns an adult. The biological parents have a right to intervene during that period.

Adoption makes one natural parents and the child also gets all rights akin to a naturally born child and even inherit property. The apex court further said that JJ Act is a "small step towards reaching the goal enshrined by Article 44 of the Constitution which prescribes a uniform civil code. A person is always free to adopt or choose not to do so and instead he can follow the dictates of the personal law if he wishes to.

Source: MIS Cell, SCPS, Assam

For any feedback, write to :
Chairperson, Editorial Board,
State Child Protection Society, Assam



DSW, Government of Assam

Status Report on the functioning of the Juvenile Justice Boards and Child Welfare Committees in Assam for the month of March 2014

Sl. No.	Districts	Juvenile Justice Boards			Child Welfare Committees		
		No. of cases instituted	No. of cases disposed	Total cases pending	No. of cases instituted	No. of cases disposed	Total cases pending
1	BAKSA	Cases are jointly dealt with Nalbari JJB			2	0	25
2	BONGAIGAON	3	0	41	2	2	7
3	BARPETA	2	5	87	1	0	3
4	CACHAR	5	10	88	3	2	5
5	CHIRANG	0	2	28	6	9	0
6	DARRANG	12	1	154	1	0	8
7	DHEMAJI	1	3	33	5	7	11
8	DHUBRI	3	3	192	1	1	6
9	DIBRUGARH	4	7	62	8	7	5
10	DIMA HASAO	0	0	2	0	0	0
11	GOALPARA	4	2	107	9	9	4
12	GOLAGHAT	10	12	31	0	0	1
13	HAILAKANDI	0	2	9	0	4	4
14	JORHAT	3	4	31	1	3	6
15	KAMRUP (M)	10	14	186	50	39	42
16	KAMRUP (R)	Cases are jointly dealt with Kamrup (M) JJB			0	0	14
17	KARBI ANGLONG	7	0	48	3	3	0
18	KARIMGANJ	5	0	39	1	2	0
19	KOKRAJHAR	5	0	147	2	0	12
20	LAKHIMPUR	1	6	32	9	5	18
21	MORIGAON	1	0	3	5	0	15
22	NAGAON	22	5	229	32	28	18
23	NALBARI	3	0	27	0	1	9
24	SONITPUR	6	2	155	3	2	39
25	SIBSAGAR	1	4	49	5	2	22
26	TINSUKIA	2	4	62	1	2	1
27	UDALGURI	2	1	18	3	2	11
	Total	112	87	1860	153	130	286

Source: MIS Cell, SCPS, Assam

For any feedback, write to :
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State Child Protection Society, Assam

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