



Government of Assam



REPORT **Study on Pendency of Cases before the Juvenile Justice Boards in Assam**

July 2015 to May 2016

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children

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LIST OF ABBREVIATIONS

Abbreviations	Full Forms
ARC	Adoption Recommendation Committee
AIDS	Acquired Immune Deficiency Syndrome
AP	Arunachal Pradesh
CD	Case Diary
CR	Case Record
CRC	Convention on Rights of the Child
CCL	Children in Conflict with the Law
CNCP	Children in Need of Care and Protection
CWC	Child Welfare Committee
CCI	Child Care Institutions
CJM	Chief Judicial Magistrate
CMM	Chief Metropolitan Magistrate
Cr. P. C	Code of Criminal Procedure
CDPO	Child Development Project Officer
DEO	Data Entry Operator
DCPU	District Child Protection Unit
DLSA	District Legal Aid Services Authority
DCPO	District Child Protection Officer
DIG	Deputy Inspector General of Police
DSP	Deputy Superintendent of Police
DSW	Director of Social Welfare
FIR	First Information Report
HIV	Human Immune Deficiency Virus
ICPS	Integrated Child Protection Scheme
IO	Indian Penal Code
IO	Investigating Officer
IEC	Information, Education and Communication
JJA	Juvenile Justice Act
JJS	Juvenile Justice System
JJB	Juvenile Justice Board
JCL	Juvenile in Conflict with Law
JMFC	Judicial Magistrate First Class
KII	Key Informant Interview
NDPS	Narcotic Drugs and Psychotropic Substances
NCRB	National Crime Record Bureau
NA	Not Applicable

Abbreviations	Full Forms
NGO	Non-Government Organization
NCPCR	National Commission for Protection of Child Rights
NIPCCD	National Institute of Public Cooperation and Child Development
OC	Officer in Charge
OH	Observation Home
PM	Principal Magistrate
PI Court	Prosecuting Inspector Court
PO	Probation Officer
ROSA	Regional Office for South Asia
RIPA	Recognized Indian Placement Agency
SCPS	State Child Protection Society
SARA	State Adoption Resource Agency
SC	Scheduled Caste
ST	Scheduled Tribe
SIR	Social Investigation Report
SBR	Social Background Report
SJPU	Special Juvenile Police Unit
SDJM	Sub-Divisional Judicial Magistrate
SP	Superintendent of Police
SFCAC	Sponsorship and Foster Care Approval Committee
SLL	Special and Local Laws
SoP	Standard Operational Procedure
SLSA	State Legal Services Authority
SAA	Specialised Adoption Agency
UN	United Nations
UNCRC	United Nations' Convention on Rights of the Children
UNICEF	United Nations Children's Emergency Fund



EXECUTIVE SUMMARY

Study on the pendency of cases before juvenile justice boards in Assam

This document captures the principal findings of the study titled "Study on Pendency of Cases before the Juvenile Justice Boards in Assam". This document is only the crux of the major findings relating to deficiencies in infrastructure and bottlenecks in the processes. The readers are requested to consult the full final report for a more detailed analysis, especially on the inter-relationships of the process failures and the supporting facts and figures

I.Background of the study & Methodology

The study was commissioned by the State Child Protection Society (SCPS), Assam with support from the Hon'ble Gauhati High Court & UNICEF, Assam and was executed with technical support from Jayaprakash Institute of Social Change, Kolkata, for the purposes of identifying the major causes for delays in the disposal of cases by JJBs in Assam. The approach adopted for this was two fold: (1)

to make an evaluation of the infrastructural and human resources deficiencies faced by the boards; and (2) conduct a detailed process documentation, with the cases pending as on 31st March 2015 as the universe of the study. The documentations were conducted with the JJ Act, Assam State Rules and the directions of Hon'ble Gauhati High Court as the standards for reference.

II.Principal Findings on Infrastructure and availability of Human Resources

- While nearly all the Boards are functioning from outside the court premises (84% of them), only one Board functions from the premises of an Observation Home. About 12% of the Boards continue to operate from the chambers of the Principal Magistrate.
- In some districts the same room is being used by the CWC as well as the JJB.
- Materials/Posters for making the premises child friendly are available only in 12% of the Boards.
- 98% of the Boards have no counseling area available. 28% of the Boards have no waiting area (even for many of those Boards where it is available, the verandas etc. are being doubled as waiting area).
- Separate rooms for the PM and Members were not available in any of the districts.

- In general, space constraint is a problem observed in almost all the districts.
- There are no Probation Officers assisting the boards in 56% of the districts. Even in those eleven districts which has a Probation Officer, they hold additional charges apart from their responsibility as a PO under the Probation of Offender's Act/Code of Criminal Procedure. In many districts, the DCPO is given the additional charge of the Probationary Officer.
- Counsellors have not been appointed at any of the Boards in Assam and at present, the Board Members along with social workers play the role of the counsellor.
- There are several posts of Social Workers lying vacant.
- Data entry operators have been appointed in all the districts. It is however, observed that they perform more than the role of a data entry operator: most of them fill in the role of a bench clerk and stenographer too. There is a general lack of dedicated Group-D staff for the Boards.

III. Principal Findings on processes-related Delays in the working of the JJ system.

- It is only in about 28% of the cases that the appended JCL is produced before a judicial authority within 24 hours of arrest. In general, it is seen that the process can take up to 7 days.
- In 80% of the cases, the apprehended JCL was not directly produced before the Board. There appears to be a common practice to record the age of the apprehended person as 18/19 years and produce them before a regular magistrate. Incorrect reporting of age of the apprehended juvenile as a person above 18 years of age in close to 50% of the cases leads to enormous delay in the overall process.
- Most of the JCLs so produced before a regular magistrate are, in general, remanded in judicial custody and housed in the jails. They are recognized as Juveniles by the system only if (1) their guardians raise that claim before the court, in general through their counsel; or (2) if the magistrate orders an age determination, based on his belief drawn from appearances. The latter is however a rare event. Thus majority of the JCLs reach the board only after their cases are referred to the Board by an ordinary trial magistrate.
- Age determination, where that is an issue, is completed within 30 days only in less than 20% of the cases. Depending on the nature of evidence produced, the process can take up to 3 months. Birth certificates, where they are made available is immediately accepted as evidence. School certificates, however, require validation by the head Masters deposing before the board – this can be a time consuming process. Bone ossification tests take the longest time – as not all districts have the necessary facilities/ human resources support for the same.
- Filing of the occurrence report within 30% of apprehension is achieved only in less than 10% of cases. It generally takes more

than 90 days before final report is filed. It is seen from the records that even after the report is prepared, it is not forwarded to the PI Court for several days - in 23% of the cases it took more than 30 days.

- The final reports are routinely filed before a regular magistrate's court, often without the indication that the case pertains to a JCL. In such cases, till the JCL enters appearance (on summon/warrant from the court) and points out that the case is already transferred to the board, the relevant record does not reach the Board. It is only in about 14% of the cases that the chargesheet is filed directly before the Board.
- Even after the Court orders transfer of records to the Board, in close to 50% of the cases, it was seen that the transfer was effected only after more than 30 days. It is only in 30% of the cases that the records are transmitted from the regular trial court to the Board on the same day.
- In cases where the JCL is a co-accused with adults (45%), an authenticated copy of the charge sheet is not automatically given to the Board. The need to Boards repeatedly write to the concerned courts/officials for a copy before it is finally given one.
- It is observed that there are delays in the preparation of a copy (to be served to the JCL) of the charge sheet: in 22% of the cases, this took more than 45 days. It takes between 1-15 days only in 5% of the cases.
- At the trial stage, lack of attendance of parties, especially the witnesses and the JCLs are the prime reason for delays. On multiple occasions, in the same case, an adjournment is the only option as atleast one of the crucial parties is not present. Interviews across actors have revealed a

number of possible reasons for this. One of the reasons is that, on many occasions when the JCLs are present, no business is seen transacted for want of records or want of completion of investigation or the absence of other actors. When this experience becomes a recurrent one, the impression sets in that appearing before the Board is a pointless exercise – thus lowering the enthusiasm to attend. Another reason is that considerable costs are incurred for each visit (payment for the lawyer/travel costs/ loss of wages for a day) and hence there is a reluctant to appear multiple times.

- Overall, it is only in about 12% of the cases that there were adjournments on account of absence of a magistrate –between 1-5 days. This is, however, not a uniform pattern of events across all districts. It is seen that the absence is primarily in a handful of districts. On many occasions proceedings were adjourned as the magistrate was away for training.
- Social Investigation Report (SIR) is not made available to the Board on time. They are found submitted only in 25% of the cases, that too, usually on repeated reminders from the Magistrates.
- Social Background Reports (SBR) are not being submitted by the police in almost all the districts (it is seen not submitted in 95 % of the cases)
- The frequency of postings of a case are also quite low – in 40% of the cases, the frequency is more than a month and in 39% of the cases it is more than two weeks.
- The frequency of the sittings is also not adequate – 80% of the boards sit only twice a week, that too only for 2-4 hours. None of the boards have a dedicated Principal Magistrate.

III.Overall Conclusions

From our analysis it is clear that there are multiple factors that are responsible for the overall delays in the system, with each actor making its own share of contributions. While many of these problems/short comings can be rectified only over a period of time, and some of them will involve significant policy changes in the way the Board conducts its proceedings, there are a

few avenues – principally in documentation and documentation management practices – where some immediate changes can be brought about with little or no cost at all and substantial savings of time can be achieved. Most of these involve only some coordination being developed across actors and rectifying the information asymmetries.

To address these issues, actions across six broad themes are required:

- Training and Sensitization of stake-holders and capacity building programmes for support staff.
- Development of Standard Operating Procedures, especially for data management and transfer of records.

- Ensure a court management system.
- Improvement of monitoring mechanisms.
- Addressing Human Resources and Infrastructural concer



AJIT SINGH

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MESSAGE

I am delighted to pen this message for the State Child Protection Society, Department of Social Welfare, Government of Assam. The Society has taken the Pain to compile and publish the report of the study conducted by Juvenile Justice Committee of Gauhati High Court with the help of UNICEF and Government of Assam, in its first-of-its kind Report.

The conclave held on 7th and 8th may, 2016 projected the core issues relating to the juveniles-in-conflict with law vis-à-vis their rehabilitation and I believe that such issues should further be taken up, discussed with open minds and the issues should be resolved for implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 in its true spirit.

The efforts taken by the UNICEF and State Child Protection Society, Department of Social Welfare, Government of Assam as well as the other stockholders in organizing such a conclave is worth praising.

I believe that Report would be very helpful for all concerned.

(Ajit Singh)



NISHITENDU CHAUDHURY

Judge
Gauhati HighCourt

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MESSAGE

It is a matter of satisfaction that a comprehensive study on pendency of cases relating to children in conflict with law in the State of Assam was completed by the Department of Social Welfare, Government of Assam, in collaboration with UNICEF, Assam.

The exercise is the first of its kind in India. Hope, this endeavour will help a long way in addressing the hindrances to effective implementation of the Juvenile Justice laws including timely disposal of pending cases before the JJBs of Assam.

With best wishes-

Nishitendu Chaudhury
Judge
Juvenile Justice Committee
Gauhati High Court



Government of Assam

Ravi Kapoor, IAS
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MESSAGE

Recognition of the rightful place of the child in the societal fabric, a paradigm shift from a need-based approach to a right-based approach, aspiring development and mainstreaming of the child, was a high water mark of progressive democracies in the last century. Child-centric human rights jurisprudence has become pivotal in the law's role in social engineering. Juvenile justice is the legal system that aspires to protect all children, bringing within its ambit the children in need of protection, besides those in conflict with law.

The Juvenile Justice (Care & Protection of Children) Act 2015 is the major law in India that represents the Juvenile Justice System in India. The Act provides for a system whereby instead of imprisonment in adult system they are subjected to advice / admonition

Though the Act reiterates on the rehabilitation and social integration of the child, in many occasions it is observed that children are often stigmatized because of their entry into JJ System. It is also observed that many such children, having no access to societal care, become recidivist. Unfortunately, many of the children belonging to this category do not have the adequate and appropriate support system that can play a remedial role in their future thus leading to the same vicious cycle of criminality. Experience shows that in many cases, children who have been in contact with the justice system have been stigmatized for life as "criminal", even when their cases are dismissed due to lack of evidence or because their innocence has been proven. Stigmatization might lead to the violation of other fundamental rights of the child, as it may imply a limited access to education or training. In many other cases, confrontation with the justice system has ends in deprivation of liberty, whether in detention centres or in special facilities.

It gives me immense pleasure to introduce the Report of the Study of Pendency of Cases Before Juvenile Justice Boards in Assam, a research study into the implementation of the Juvenile Justice System in Assam is actually a path breaking step taken out by the State Child Protection Society, Assam under the support of Hon'ble Gauhati High Court. The final study Report has revealed the major findings of the study relating to the deficiencies in infrastructure and bottlenecks in the processes. This study is the first of its kind study in the entire Country & I sincerely hope that the findings of the Report will help all related stakeholders of Juvenile Justice System, to make the system more vibrant & outcome based.

At the end i would like to thank UNICEF, Office of Assam, for their constant support in creating protection environment for our children.

With best wishes

(Ravi Kapoor, IAS)
Additional Chief Secretary to the Govt. of Assam
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MESSAGE

UNICEF promotes the strengthening of all parts of the child protection system, including the justice mechanisms, to operate in the best interest of the child. UNICEF also promotes alternatives to detention, including diversion and restorative justice that emphasizes repairing the harm caused or revealed by criminal behaviour. UNICEF supports the training of police, prosecutors, judges, lawyers, social services and health professionals to effectively protect children in contact with the justice system. UNICEF encourages the establishment of child sensitive courts and police procedures that give primary consideration to a child's right to protection and are consistent with the Convention on the Rights of the Child and other non-binding international standards, guidelines, and rules.

Children and young people are subjected to legal intervention when they commit an offence. On the macro level, in India in general and in Assam in particular, juvenile offenders mostly come from economically disadvantaged sections of the society and on micro level most of the juvenile offenders come from households where parents or other adults do not effectively monitor their actions, fail to generate interest in education among them, and to keep them away from a bad peer group.

Juvenile Justice (Care and Protection of Children) Act 2000 and the re-enacted version in 2015 recognizes that committing offence by a juvenile is the natural consequence of societal failure and establishes an alternative justice standard for them. Though the Act reiterates about the rehabilitation and social integration of the child, in many occasions it is observed that children are often stigmatised because of their entry into the JJ System. It also observed that many such children, having no access to societal care, becomes recidivist. Unfortunately, many of the children belonging to this category do not have the adequate and appropriate support system that can play a remedial role in their future thus leading to the same vicious cycle of criminality.

This context of rights violation of children gets further exacerbated by the delay that the child faces in the juvenile justice system, because of a phenomenon called 'Pendency of Cases' in India. Such 'pendency' affects all aspects and the very spirit of the Juvenile Justice Laws in India.

The support from the Juvenile Justice Committee of Gauhati High Court, the active partnership from State Child Protection Society (SCPS, under the aegis of the Department of Social Welfare, Govt. of Assam) and the able technical work done by JPISC, Kolkata led this incisive probe to be completed and the report to see the light of the day. On behalf of UNICEF we would like to share our sincere gratitude and appreciate to all who have been involved in this process.

I would like to offer our sincere condolences on the demise of Justice (Late) Nishitendu Choudhury on 12 November 2016. Justice Choudhury has been a constant Friend, Philosopher and Guide to all of us in Assam working for the cause of the rights of children. His easy presence, childlike simplicity, in-depth scholasticism on a range of issues, and his unavoidable humour made him a keenly encouraging and loving personality. Justice Choudhury will be highly missed by one and all who had the opportunity to know him.

This report is sincerely dedicated to the cherishing memory of the Child- Friendly Judge, which Late Justice Choudhury personified by his words and action.

Dr. Tushar Rane
Chief of Field Office
UNICEF Assam

CHAPTER - I

JUVENILE JUSTICE FRAMEWORK

"There can be no keener revelation of a society's soul than the way in which it treats its children".

Nelson Mandela, Former President of South Africa.

1.1. Introduction and Background:

The term 'criminal justice system' describes the legal processes applied to those who commit an offence or fail to comply with the criminal law. 'Juvenile justice' is the term used to describe a criminal justice system developed for children. It covers a vast and complex range of issues from prevention through first contact with the police, judicial process, conditions of detention and social reintegration, and involves a wide range of actors¹.

Juvenile justice is the legal system that is meant to protect all young people. Juvenile comes from the Latin word 'juvenis' meaning young. But over the years, the word has come to be used together with and often even interchangeably with "delinquency" – which describes children or young persons who are in conflict with law -- thereby harking to an association with crime and violence. Therefore, even though the word juvenile and child refer to persons in the same age group, they conjure different images. While the word child relates to the image of 'innocence',

'vulnerability' and the need for protection, the word juvenile, due to its association with 'court' and 'delinquency', replaces the image of innocence with that of a 'criminal'. It is precisely why child rights groups in this country have been strongly arguing for the need to do away with the term juvenile and use the less judgmental one, child, instead. However, international and national laws on children tend to approach this issue in a broader sense to include all children who may have committed statutory offences (actions considered offences by the law of the land) and therefore infringed the law, and also children who need to be cared for in special institutions. They may be street children, children rescued from trafficking, disabled children, victims of abduction or/and rape and then abandoned by the family, or those living in special family circumstances such as refugee camps.

"Juvenile Justice" is commonly understood as a notion of fairness or justness and also an alternative system of dealing with children

¹Improving the Protection of Children in Conflict with the Law in South Asia-A regional parliamentary guide on juvenile justice, 2007

through laws. Considering the impressionable mind and formative behaviour patterns of children and young adults, the justicing system needs to be different from those meant for adults. The idea of justness and fairness concerning children is the fundamental ideological premise of juvenile justice. The goal of juvenile justice system is to ensure right to justice to all least advantaged children anywhere in the world (Brenda Geiger et al, 1995). The new reformative system of justice which is a departure from the earlier retributive system is committed to the proposition that juvenile law violations is the natural result of familial, community, and broader environmental factors to which the child has been continually exposed.

This understanding would greatly assist in bringing about changes in the child's life and circumstances by creating an enabling environment so that the child would no longer need or wish to continue in law-conflicting behaviour.

Juvenile Justice System is an alternative law-based system for children that takes into account their special mental and physical needs, takes them away from the formal justice system for adults and provides them protection and restoration, enabling their re-integration into society and making 'things right as much as possible'. Almost every country has a juvenile justice process, though the quality and maturity vary from country to country.

1.2. The International Framework

International standards require countries to promote the establishment of laws, procedures, authorities and institutions that respect the rights of children in conflict with the law and are directed towards their rehabilitation and reintegration into society. The primary instrument guiding the development of juvenile justice is the United Nations Convention on the Rights of the Child (CRC), of 1989, which has been ratified by every country in South Asia. State parties are obliged to give effect to the Convention by means of laws, policies and practices designed to further its goals. The CRC is complemented by relevant international standards such as the UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines'), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Under these instruments, children should be treated by the justice system in a manner consistent with their rights, their inherent dignity as human beings and which

takes into account their needs and targets their reform. The administration of juvenile justice should be directed towards their rehabilitation and reintegration into society and not their punishment.

Torture or other cruel, inhuman or degrading treatment or punishment is prohibited. The death penalty and life imprisonment without possibility of release cannot be imposed for offences committed by persons below 18 years. Deprivation of a child's liberty should never be unlawful or arbitrary and should only be a measure of last resort and for the shortest appropriate period of time. In any judicial or administrative proceeding affecting them, children have the right to be heard and to have their views taken seriously. Alternatives to court procedures and to detention or institutionalization are encouraged. When detained, every child should have contact with his or her family and access to prompt legal or other appropriate assistance. Application of the death penalty for those under 18 is unequivocally prohibited

1.3. Juvenile Justice National Framework:

The preamble of the JJA says the Act provides for the “proper care, protection and treatment (of children) by catering to their development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation”. In its true spirit, the Act outlines the roles to be played by the government, represented by the judiciary, police, probation and social welfare services, local government bodies, including the Panchayati Raj Institutions, as well as non-government organizations and social workers.

The Juvenile Justice System (JJS) in India is designed to address two categories of children, those in conflict with the law (hereafter referred to as CCL), and those in need of care and protection (hereafter referred to as CNCP), which includes children who are begging, in prostitution, neglected children, abused children and street children, all with different needs and vulnerabilities. The Child

in need of care and protection (“CNCP”) is the broad conceptual category that denotes children who are in need of foster care, are being subjected to abuse, are forced to labour or are in a vulnerable situation. The Child Welfare Committee (“CWC”) is the authority responsible for the welfare of the “child in need of care and protection”. A number of other institutions, created under the Act (such as the Children’s Home & the Shelter Homes) are central to the effective functioning of the CWC – each playing a significant role in different stages of dealing with a CNCP. The Juvenile Justice Boards (“JJBs”) deal with the children in conflict with law. They perform the functions analogous to that of the criminal justice mechanism, with respect to those children who have been accused of being a part of any criminal activity. While it is true that the CWC and the JJBs perform functions that are distinct, very often they do overlap and both these institutions may have to come together to discharge obligations under the Act. Thus they do not function as islands and



the cooperation of other state actors such as the police and government departments are essential for their smooth functioning.

The Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 is a comprehensive legislation to provide for the care, protection, treatment, development and rehabilitation of neglected children and children engaged in law violating activities. The Act operationalizes the provisions of the Constitution of India and conforms to the UN Convention on the Rights of the Child (UNCRC) 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985, the UN Rules for the Protection of Juveniles deprived of their Liberty (Riyadh Guidelines, 1990) and all other relevant national and international instruments. The Juvenile Justice (Care and Protection of Children) Act 2000 along with all its amendments and the Central and State level rules, constitutes the legal framework of the Juvenile Justice System in the country. The Act provides for the care, protection, treatment, development and rehabilitation of CCL and CNCP and has introduced greater conceptual distinction between the two categories. It also aims to create a separate system of justice for children at every stage, distinct from the criminal justice system. The essence of the Act is to ensure that the justicing system for the children operates in accordance with the Universal Rights of the Child.

While JJA 2000 is a Central Government Legislation, implementation lies with the state governments, which have powers to make Rules, establish Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs), establish homes, set up Special Juvenile Police Units (SJPUUs) and develop rehabilitation and social integration programs. The Amendment in 2006 obligates the state to establish CWC and JJB in every district within a period of one year from the date of commencement of the Act and also to have District Child Protection Unit in each district vide insertion of Section 62A in the Act.

The Act provides for wide range of dispositional alternatives with preference to family and community based placement. A systematic effort is made to restore the child to its family. Only if the family is not found conducive, the child is sent to institutional care. All these institutions are not penal but correctional centers aiming at the reformation of the child. These institutions have a setting of control, care, protection, rehabilitation and treatment, which a child may not have experienced before, the absence of which might have led to his deviant behaviour. The Juvenile Justice (Care and Protection of Children) Amendment Act 2006 (JJ Act) envisages a comprehensive approach toward justice for children in situations of crisis, abuse, exploitation and social dysfunction. The 2006 amendments attempt to strengthen and widen the juvenile care and justice framework as well as establish the premise that the best of institutions cannot substitute for care in a family, with the ultimate aim of promoting a child-centric rehabilitation and family restoration-focused system².

This Act broadens the ambit of the law to groups of children who may need care and protection in view of the fast changing socio-economic conditions, and includes in its scope such categories of children who could be street children, child labourers, child victims of the flesh trade, children affected by conflict, child victims of natural disasters and children affected by drugs and HIV/AIDS. Importantly, the Act encourages partnerships with voluntary agencies and outlines mechanisms for monitoring its implementation. While providing for institutional care for children in conflict with law and the abandoned, destitute and orphaned, it stipulates mobilization of community support for outreach programmes and sponsorship for the needy, to strengthen the capacities of families to provide better care and protection. The Act also advocates for a system of partnerships with local communities and local governments to implement the legislation.

²HAQ Institute for Juvenile Justice, 2009



1.4. Juvenile Justice System: Some inherent Lacunae

The JJ Amendment Act, 2006 seems to have fulfilled a long standing demand for a uniform Juvenile Justice System throughout the country. However, there are still many hurdles to overcome for its proper implementation. A number of factors are found to be inhibiting the full fledged working of these mechanisms, thus inhibiting delivery of services. Lack of proactive role owing to poor infrastructure of these bodies to respond to the emergency needs of the children and lack of standards in delivering services for care, support and rehabilitation of the children are broadly the reasons for failure (NCPCC, 2013). Moreover, the facilities for care giving are, in most cases, not manned by the quantity and quality of personnel envisaged under the Act.

Children separated from their families as a result of the parents' death, conflict, displacement, abandonment, trafficking, discrimination, endemic poverty and many other reasons need consistent care and support for their survival. Given these bare realities, the need for institutionalized care as the last resort and for a minimum possible

period cannot be undermined. Various types of abuse of children in institutions are occasionally reported, and most lack adequate facilities for education, vocational training, counselling and reintegration. Facilities for the children with special needs also do not have uniform standards.

This leads to the logical conclusion that the conditions of such institutions need improvements to ensure a protective environment for such children. The atmosphere within the Child Care Institutions (CCI) needs to be facilitative for wholesome growth of these children.

Though the Beijing Rule mandates that the age of criminal responsibility "shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity" it is fixed at as low as seven years (Sec182 IPC) in India which is much lower than some other South Asian Countries e.g. Afghanistan (10 years), Bhutan and Nepal (9 years) and Bangladesh (8years)³.

In practice, determining the age of an apprehended child is a serious concern. It is often difficult to find any formal birth registration. Children whose births have not been registered or those who have never attended school do not possess any valid record of their age. Police reportedly either fail to record the child's age or deliberately note an increased age to avoid having to comply with procedural protections.

Deprivation of Liberty is an important premise on which the Act is based upon. It means placement in any kind of establishment - penal, correctional, educational or protective - from which a child cannot leave at will. It affects not only children who have been sentenced after being convicted but also children in need of protection⁴. While the JJ Act, 2000, governs both children in conflict with the law and children in need of protection, it has introduced a conceptual distinction between the two categories. Sometimes, the system wrongfully does not differentiate between a child as the perpetrator of a crime and a child as the victim of a crime and both are often lodged together in Child Care Institutions (CCIs).

Diversionary practices, as mandated in Beijing Rule, to refer cases away from formal criminal justice proceedings towards community support to avoid the negative effects of being implicated in such proceedings are hardly observed in our country. Given the huge number of pending cases with the JJBs across the states, this practice of alternative to formal adjudication would have been successful in reducing the

case loads especially the minor and non-serious offences. The family conferencing model followed in Maldives⁵ may be pursued to create space for community involvement to repair the harm caused by offence and ensures social mainstreaming of the offender. Mechanisms to resolve minor juvenile offences outside the formal system through mediation or community conferencing pilot projects can help establishing the rationale for restorative justice for children.

JJ Act mandates the police to make efforts to locate and inform parents of their child's arrest and they must also notify a probation officer to enable the gathering of information about the juvenile's background and circumstances. In practice, parental notification poses a significant challenge, particularly in urban areas where children are displaced from their families, and the police often lack time and resources. Legislation should be reviewed to ensure that the arrest of children and the detention of child victims, for 'status offences' as well, are restricted, the use of physical force in the arrest of children is limited and parents are notified of an arrest and their presence at questioning is assured. Consideration should be given to establishing specialized police units in all districts across the country and to develop binding protocols and handbooks for the police, prosecutors and judges relating to the arrest and detention of children. It is observed from various research studies⁶ that children are mainly arrested for petty offences u/s IPC 379, 395, 394, 380, 457, 506 and a very few children are framed for serious crime like rape (sec 376) and murder (sec-302) and majority of them are first time offenders.

³South Asia and The Minimum Age of Criminal Responsibility, UNICEF ROSA, 2005

⁴UNICEF (2006) Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law

⁵Improving the Protection of Children in Conflict with the Law in South Asia (2007) P.19 states "Under the country's Strategic Plan for the Reform of the Juvenile Justice System, the police and prosecutors are given discretionary powers to divert majority of the children in conflict with the law from the formal justice system. Formal investigation and court proceedings should only be used for children who commit serious offences (murder, manslaughter, armed robbery or other serious violent crimes) or who are repeat offenders or who do not admit the offence or where previous diversion attempts have been unsuccessful. All other children should be dealt with informally through police cautioning or referral to a Community Conference (family mediation), where the child comes face-to-face with the victim to discuss his/her offending behaviour and to develop an agreed plan for repairing the harm done".

Bail is granted to most of the children who are apprehended for non-serious offences with or without a surety from the parents/guardians. However, after granting bail, the cases continue for years together. This results in huge numbers of pending cases with most of the JJBs. Major reasons for pending cases were: absence of parents/guardians, non-appearance of witness, non-appearance of accused person in the court, delay in sending case diaries by IOs, medical report, forensic report, juveniles becoming untraceable and lack of scientific mechanism for age determination (especially in border line cases) of children etc⁷. As a result, final orders for disposal get delayed although it is mandated vide Rule 13 sub-rule 7 of JJ Act that '...in all other cases except where the nature of alleged offence is serious, the delay beyond four to six months shall lead to the termination of the proceedings'.

CRC article 37 mandates that depriving children of their liberty, either while they await trial or as a sentence should be a measure of last resort and should be restricted to the shortest possible period of time. Due to limited court resources, these time limits are reportedly not always respected. Though we have specific limits on the length of pre-trial detention of children but there is no time limits for each stage of the process from arrest to the issuance of the court's decision as observed in Afghanistan. In the recent times the number and condition of children subject to pre-trial detention have received significant attention, leading High Courts to issue directives requiring the release of children detained illegally or for lengthy periods of time. It is obvious that the Court procedures should be adapted to ensure the imposition of binding time limits for reviewing children's cases and the recognition of the right of the child

to attend proceedings and to express his/her views.

The Beijing Rule mandates that a child's background and circumstances be taken into consideration when deciding a penalty. Probation Officers have a specific role in this regard. However, courts do not consistently request these reports, and probation officers across the states generally lack the skills and resources to conduct comprehensive assessments. Delays in the preparation of social reports contribute significantly to children's extended pre-trial detention. Reportedly, the number of probation officers in many states is highly inadequate. Following Sri Lanka's⁸ model for community based corrections system, the JJBs may opt for non-custodial dispositions for child offenders which includes performing community service work, participating in educational, vocational training and personal development programmes, or undergoing treatment for drug or alcohol addiction.

Beijing Rule's mandate that efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance in order to facilitate the rehabilitative process by establishing the necessary collaborative arrangements with the community to ensure the delivery of prescribed services, probation and supervision. Unfortunately, under the persisting concept of rehabilitation, children are placed in institutions, with emphasis on secure containment by restricting their movement. The preference appears to be for large-scale institutions, rather than a home-like environment, which impose a strict regime. Most lack adequate facilities for education, vocational training, counselling and reintegration. Consideration should be given to the development of standards,

⁶Assessment of Juvenile Justice System in Assam and West Bengal by Jayaprakash Institute of Social Change, 2008

⁷J.Mazumdar "Impact Evaluation of Project Shakti in Orissa", 2011

⁸Improving the Protection of Children in Conflict with the Law in South Asia (2007) P.38

procedures and services permitting the referral of children to community-based mechanisms or non-residential programme. Trained and

resourceful probation officers and social workers are essential to the implementation of community-based rehabilitation.

1.5. Juvenile Justice System in Assam:

1.5.1. Juvenile Justice Infrastructure:

In Assam, Department of Social Welfare is the nodal agency for implementation of Juvenile Justice (Care and Protection of Children) Act 2000 and the Directorate of Social Welfare operationalizes the implementation process. The State Govt. has notified the State Rules on JJA 2000 in 2013. In perusal to various provisions of the JJA 2000, the Government of Assam has constituted Juvenile Justice Boards to deal with children in conflict with law [section 4 (1)] and Child Welfare Committees in all districts to provide care, protection, treatment, development and rehabilitation of children in need of care and protection [section 31(1)]. The State Government has also established various categories of homes namely Observation Homes for temporary

reception of juveniles during the pendency of inquiry and Children's Home for restoration of and protection to the child in the districts of Kamrup (Urban), Kamrup (Rural), Nagaon and Jorhat. Altogether there are __ Homes for the children in the State. Till now, there is no Special Home for the children and no NGO certified Observation Homes in the State of Assam. The State has introduced Integrated Child Protection Scheme (ICPS), a centrally assisted scheme under the Ministry of Women and Child Development, in 2009 and established the State Child Protection Society (SCPS) and State Adoption Resource Agency (SARA) at the state level and formed District Child Protection Units (DCPU) in all districts.



TABLE: 1 JJ INFRASTRUCTURE IN ASSAM AS ON APRIL, 2015

Types of Institution/Statutory Bodies	
CWC	27
JJB	26
SJPU	27
Children's Home (Govt.)	03
Children's Home (NGO)	21
Observation Home (Govt.)	05
Observation Home (NGO)	00
Special Home (Govt.)	00
After Care Home (Govt.)	00
After Care Home (NGO)	00
SAA/RIPA	07
Open Shelter	03
SLIM/SLIT (vide section 35 and 62 of JJA) at the State level	
State Child Protection Society(SCPS)	Yes
State Adoption Resource Agency (SARA)	Yes
District Child Protection Unit (DCPU)	27
Adoption Recommendation Committee (ARC)	Yes
CHILDLINE (Districts)	Kamrup(M),Nagaon, Cachar,Dibrugarh & Lakhimpur
State Commission for Protection of Child Rights	Yes
Sponsorship and Foster Care Approval Committee(SFCAC)	No
State Advisory Board	Yes

1.5.2. Juvenile Crime in Assam:

The State of Assam has been consistently ranking top in juvenile delinquency among the eight north eastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim. In 2014, Assam topped the list with 487 cases (466 of IPC crimes and 21 SLL crimes), followed by Meghalaya with 120 IPC crimes, Arunachal

Pradesh with 77 IPC crimes, Tripura with 64 IPC crimes, Sikkim with 19 IPC crimes, Mizoram with 44 IPC crimes and Manipur with 20 IPC crimes. The administration of juvenile justice remains a major concern primarily because of the shortage of Observation Homes. It may be noted that there is no Special Homes in the state of Assam.

TABLE:1.1. JUVENILES APPREHENDED UNDER DIFFERENT CRIME HEADS (IPC) IN NE STATES DURING IN 2014

Sl. No	Crime Heads	Assam	A.P.	Manipur	Meghalaya	Mizoram	Nagaland	Tripura	Sikkim
1	Murder (Sec. 302)	27	03	01	02	07	01	02	00
2	Attempt to commit murder (Sec. 307)	11	00	00	02	00	01	00	00
3	CH not amounting to Murder (Sec.304, 308)	00	00	00	00	01	00	00	00
4	Rape (Sec. 376) (Total)	58	11	07	11	15	02	24	03
5	Attempt to Commit Rape (Sec. 376/511)	01	00	00	00	00	00	01	00
6	Kidnapping & Abduction (Sec. 363, 364, 364A, 366)	53	10	05	10	01	00	03	00
7	Dacoity (Sec. 395, 396 & 398)	04	02	00	04	00	00	00	00
8	Making Preparation and Assembly for Committing Dacoity (Sec. 399 & 402)	01	00	00	00	00	00	00	00
9	Robbery	13	02	00	03	00	00	00	00
10	Criminal Trespass/ Burglary (Sec. 457-460)	52	03	03	08	03	00	01	02
11	Theft (Sec. 379 - 380)	152	15	01	65	12	02	13	09
12	Unlawful Assembly (Sec. 143, 144 & 145)	00	00	00	00	00	00	00	00
13	Riots (Sec. 143 – 145, 147 – 151, 153, 153A, 153B, 157, 158, 160)	08	01	01	00	00	00	00	00
14	Criminal Breach of Trust (Sec. 406 – 409)	00	00	00	00	00	00	00	00

Sl. No	Crime Heads	Assam	A.P.	Manipur	Meghalaya	Mizoram	Nagaland	Tripura	Sikkim
15	Cheating (Sec. 419, 420)	01	00	00	00	00	00	02	01
16	Counterfeiting (Sec. 231 – 254, 489A, 489D)	00	00	00	00	00	00	00	00
17	Arson (Sec. 435, 436, 438)	03	00	00	00	00	00	00	00
18	Grievous Hurt (Sec. 325, 326, 326A & 326B)	17	02	02	05	01	01	03	01
19	Dowry Deaths (Sec. 304B)	00	00	00	00	00	00	01	00
20	Assault on Women with intent to Outrage of her Modesty (Sec. 354)	07	04	00	01	00	02	07	02
21	Insult to the Modesty of Women (Sec. 509)	00	00	00	01	00	00	00	00
22	Cruelty by Husband & Relatives (Sec. 498A)	00	00	00	00	00	00	01	00
23	Importation of Girls from Foreign Country (Sec. 366B)	00	00	00	00	00	00	00	00
24	Causing Death by Negligence (Sec. 304 A)	00	00	00	00	01	00	00	00
25	Extortion	07	00	00	02	00	00	00	00
26	Causing Injuries under Rash Driving / Road Rage	00	02	00	00	00	00	00	00
27	Unnatural Offences	00	00	00	00	00	00	00	00
28	Other IPC Crimes	51	22	00	06	03	01	06	01
	Total	466	77	20	120	44	09	64	19

(Source: NCRB, 2014)

TABLE NO 1.2 JUVENILE CRIMES UNDER DIFFERENT SLL CRIME HEADS IN ASSAM IN 2014

Sl. No	Crime Heads	2014
1	Arms Act, 1959	05
2	Narcotic Drugs & Psychotropic Substances Act, 1985	02
3	Gambling Act, 1867	00
4	Excise Act, 1944	00
5	Prohibition Act	00
6	Explosives & Explosives Substances Act	00
7	Immoral Traffic Prevention Act, 1956	00
8	Railways Act, 1989	00
9	Registration of Foreigners Act, 1939	00
10	Protection of Civil Rights Act, 1955	00
11	Indian Passport Act, 1967	00
12	Essential Commodities Act, 1955	00
13	Antiquities & Art Treasurers Act, 1972	00
14	Dowry Prohibition Act, 1961	00
15	Indecent Representation of Women (Prohibition) Act, 1986	00
16	Copy Right Act, 1957	00
17	Commission of Sati Prevention Act, 1987	00
18	SC / ST Prevention of Atrocities Act, 1989	00
19	Forest Act, 1927	00
20	Prohibition of Child Marriage Act, 2006	01
21	Protection of Women from Domestic Violence Act, 2005	00
22	Information Technology Act, 2000	00
23	Official Secrets Act, 1923	00
24	Wildlife Protection Act, 1972	01
25	Narcotic Drugs & Psychotropic Substances Act, 1985	12
	Total	21

(Source: The NCRB Record, 2014)

1.5.3. Juveniles Apprehended Under IPC Crimes by Age Group & Sex during 2013 in Assam

A total of 648 juvenile apprehended during the year 2013. The sex-wise distribution shows that out of 648 juveniles, 640 (99%) are boys and only 8 (2%) are girls. During 2013, 19 juveniles were apprehended in the age group of 7-12 years, 230 juveniles were

apprehended in the age group of 12-16 years and 399 juveniles were arrested under the age group of 16-18 years. Assam contributes to 1.5 percent of the total juvenile crime in India. Crime rate among girls is, however, very low. The percentage share of juveniles

apprehended under the age group of 7-12 yrs, 12-16 yrs and 16-18 yrs was 3%, 35% & 62% respectively. The corresponding percentage share of juveniles apprehended in India was 3%, 31% & 66% respectively.

TABLE NO 1.3: JUVENILES APPREHENDED UNDER IPC CRIMES BY AGE GROUP & SEX DURING 2013 IN ASSAM

Sl. No.	State	7 - 12 Years		12 - 16 Years		16 – 18 Years		Total for all Age Groups		Total (Boys + Girls)
		Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys Girls
Assam		19	00	224	06	397	02	640	08	648
Total (All-India)		839	97	11550	475	24920	884	37309	1456	38765

1.5.4 Socio-economic Background of CCL Apprehended (IPC & SLL) in 2014:

Out of the total juveniles involved in various crimes (553) in Assam, 163 were illiterate and 240 had education up to primary level. These categories have accounted for 73% of the total juveniles apprehended during the year 2014. Children living with parents/guardians (540) have accounted for 98% of the total juveniles apprehended. The share of homeless children

(13) who were involved in various crimes was negligible. An overwhelming majority of juveniles belonged to the poor families whose annual income was up to Rs.25, 000/- . Though most of the CCL (97%) has committed the offence for the first time, percentage of the habitual offenders (3%) is also a matter of concern.

TABLE NO 1.4 SOCIO-ECONOMIC BACKGROUND OF CCL APPREHENDED (IPC & SLL) IN 2014

Education			Family Background		
Education	Assam	All India	Family Background	Assam	All India
Illiterate	163	10530	Living with parents	490	38693
Primary	240	15004	Living with guardians	50	7905
Above Primary but below Matric / H. Secondary	142	17637			

Education			Family Background		
Education	Assam	All India	Family Background	Assam	All India
Matric / H. Secondary & Above	08	5059	Homeless	13	1632
Total	553	48230	Total	553	48230

Economic Status (Annual Income)			Recidivism		
Economic Status	Assam	All India	Recidivism	Assam	All India
Up to Rs. 25000/-	418	26809	Juvneilles apprehended for the first time	537	45621
Rs. 25001/- – Rs. 50000/-	108	10813			
Rs. 50001/- – Rs. 100000/-	16	6887			
Rs. 100001/- – Rs. 200000/-	04	2506	Apprehended juvenilles convicted in the past	16	2609
Rs. 200001/- – Rs. 300000/-	02	776			
Above Rs. 300000/-	05	439			
Total	553	48230	Total	553	48230

Prevalence of committing offence is common amongst both literates and non-literates. It is interesting to note that a very high percentage (89%) of crime committed by children is found to live within families. It seems that the emotional and physical support required for a child to build a positive self-image has been lacking in the families they live in. Poor

economic condition of the family and the resulting sense of insecurity seem to have a bearing in the impressionable minds of the children and young persons in committing offences. Almost 76% of the families of the apprehended juveniles have the annual income level below Rs. 25000.00.

1.6. Background and rationale for the Study on Pending Cases before JJBs:

Children and young people are subjected to legal intervention when they are apprehended for committing an offence. On the macro level, juvenile offenders mostly come from economically disadvantaged sections of the

society and on micro level most of them are not effectively taken care of by their parents or other adults. They fail to generate interest in education among them, and to keep them away from a bad peer group. Juvenile Justice

(Care and Protection of Children) Act 2000 recognizes that committing offence by a juvenile is the natural consequence of societal failure and establishes an alternative justicing standard for them. Though the Act reiterates on the rehabilitation and social integration of the child, in many occasions it is observed that children are often stigmatised because of their entry into the JJ System. It is also observed that many such children, having no access to societal care, become recidivist. Unfortunately, many of the children belonging to this category do not have the adequate and appropriate support system that can play a remedial role in their future thus leading to the same vicious cycle of criminality.

Though the idea of Juvenile Justice as an alternative system of justice has become well known, from the reality, both at the level of pre-trial detention and adjudication stages, one can hardly claim that such a system has been attained in practice. Official statistics, national studies and/or estimations indicate that many children are reported every year to police or other law enforcement agencies for having committed a crime. Although there are some cases of serious offences, most of the offences tend to be of a petty nature and limited in number. In addition some children who are engaged in criminal behaviour have been used or forced by adults. In many cases, children who have been in contact with the justice system have been stigmatized for life as "criminal", even when their cases are dismissed due to lack of evidence or because their innocence has been proven. Stigmatization might lead to the violation of other fundamental rights of the child, as it may imply a limited access to education or training. In many other cases, confrontation with the justice system had ends in deprivation of liberty, whether in detention centres or in special facilities.

It is observed from various research studies (JJ Assessment in Assam, West Bengal and Orissa by JPISC) that children are mainly framed for petty offences u/s IPC 379, 395,

394, 380, 457, 506 and a very few children are framed for serious crime like rape (sec 376) and murder (sec-302) and majority of them are first time offenders. Bail is granted to most of the children who are apprehended for non-serious offences and with or without a surety from the parents/guardians. However, after granting bail, the cases continue for years together. This results in huge numbers of pending cases with most of the JJBs. Some earlier studies inform that major reasons for pending of cases were varied e.g. absence of guardians, non-appearance of witness, non-appearance of accused person in the court, delay in sending case diaries by IOs, medical report, forensic report, juveniles becoming untraceable and, lack of scientific mechanism for age determination (especially in border line cases) of children etc. As a result, final orders for disposal get delayed although it is mandated vide Rule 13 sub-rule 7 that '... in all other cases except where the nature of alleged offence is serious, the delay beyond four to six months shall lead to the termination of the proceedings'.

In Assam, since inception of JJBs in 2009 in 9 districts and thereafter in all districts, there is dearth of information available in the public domain about the nature of juvenile offences, average number of children handled by the JJBs, nature of pending cases, how long these are pending, factors responsible for such pending cases, quality of social integration of these children during adjudication and post-disposal and many other important information pertaining to restorative justice for the children.

The present study is aimed at documenting and creating an authentic data base of the pending cases produced before JJBs in all districts in Assam since their formation in 2009. The information will help both the Judiciary and the concerned Govt. Department to devise a realistic plan of action for early disposal of the pending cases and to facilitate their social reintegration.



CHAPTER - II

Methodology

The present study commissioned by the State Child Protection Society (SCPS), Assam with support from UNICEF, Assam and conducted by Jayaprakash Institute of Social Change, Kolkata is aimed at documenting and creating an authentic data base of the pending cases

produced before JJBs in all districts in Assam since their formation in 2009. The information will help both the Judiciary and the concerned Govt. Department to devise a realistic plan of action for early disposal of the pending cases and to facilitate their social reintegration

2.1. Pending cases with JJBs in Assam

According to Child Protection Bulletin of April, 2015 published by the State Child Protection Society, Assam, as many as 1935 cases were pending before different JJBs across Assam

as on March, 2015. The district wise breakup of the pending cases is shown in the following table:

Name of the District	No of Pending cases as on March, 2015
Kokrajhar	139
Dhubri	176
Goalpara	120
Barpeta	102
Morigaon	15
Nagaon	262
Sonitpur	136
Lakhimpur	27
Dhemaji	28
Tinsukia	61
Dibrugarh	69
Sivasagar	63
Jorhat	48
Golaghat	25
Karbi Angong	55
Dima Hasao	05
Cachar	67
Karimganj	58

Name of the District	No of Pending cases as on March, 2015
Kokrajhar	139
Dhubri	176
Goalpara	120
Barpeta	102
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Dibrugarh	69
Sivasagar	63
Jorhat	48
Golaghat	25
Karbi Angong	55
Dima Hasao	05
Cachar	67
Karimganj	58
Hailakandi	12
Bongaigaon	33
Chirang	45
Kamrup Rural	Cases are jointly dealt with Kamrup (M) JJB
Kamrup Metro	193
Nalbari	35
Baksa	Cases are jointly dealt with Nalbari JJB
Darrang	140
Udalguri	21
Total	1935

2.2. Objective:

2.2.1 Broad Objective:

The broad objective of this review is to understand the whole method of operation of the system in terms of alternative justicing standard, treatment and procedures for children produced before JJBs.

2.2.2. Specific Objectives

- Study the gamut, nature, factors and trends of pending cases before each JJB and the role of the existing mechanism to address the problem of CCLs;
- Develop an information system on pending cases that will aid the Govt. and Judiciary to better monitor (and subsequently improve) the situation of such children within the care jurisdiction;
- Provide specific and substantial recommendations for immediate action for speedy disposal of cases pending with JJBs.

2.3. Scope of the Study (Major Research Questions):

The study looked into the operational mechanism for dealing with CCL, access to support services, status regarding disposal of cases, the factors responsible for delayed disposal of cases of those children who were

granted bail etc. The analysis was done on all such pending cases till 31.03.2015 produced before the JJBs since inception of the bodies. The present study inter alia explored the following areas of investigation:

Objective – I

- Profile of children produced before JJB, their age and gender distribution, economic conditions etc;
- Number of cases pending before each JJB disaggregated in terms of duration of pendency;
- Nature of offences/ level of conflict with law disaggregated in terms of nature of crimes e.g. petty/non-serious/serious under IPC and SLL;
- Reasons for delayed disposal of cases, both infrastructural and procedural, and in contravention to time line as laid down in the law;
- Factors leading to commission of an offence by the children (as available from the social Background Report);
- Time lag between the date of

apprehension and bail granted and between bail granted and disposal of the cases;

- Factors responsible for increased pendency e.g. infrastructure facilities available with JJB, functioning of JJB focusing on working hours, manpower, liaisoning with police and District Legal Aid Services (DLA), absence of guardians, non-appearance of witness, non-appearance of accused person in the court, delay in sending case diaries by IOs, medical report, forensic report, juveniles becoming untraceable and lack of scientific mechanism for age determination (especially in border line cases) of children etc;
- Consequences of pendency on the expressed best interest of children e.g. lack of support from the family and community, social stigma.

Objective –II

- Frequency of Review of pending cases before JJBs by Chief Judicial Magistrate (CJM) and the actions taken thereof.
- No of cases referred to DLSA. How effective is the involvement of DLSA in delivering legal aid to the JCLs?
- Status regarding cooperation from Police and Probation Officer;
- Reporting Mechanism, frequency of submission of reports to Court and DCPS; action taken thereof;
- Reasons for not ‘terminating the proceedings’ in cases of non-serious offences;
- Children’s access to support services including education and vocational training during their stay in Observation Homes;
- Number of children overstaying their term of stay in the Observation Home and the reasons thereof;
- Did the children get any support from the Probation Officer? Professional counsellors of NGOs or any other sources for social integration?
- Monitoring of the status regarding Time line mainly, but not limited, on the following:

Activities	Average Time for submission
Social Background Report by Police	
Age determination	
Social Investigation Report by Probation Officer	
Sec 173 Cr. PC Final Report by Police on completion of Investigation	
Sec 251 Cr. PC notice	
Prosecution of Evidence	
Statement of Juvenile under Section 281 Cr. PC	
Defense Evidence	
Final arguments	
Dispositional(Final) Order	
Post Dispositional Review	

Objective – III

- Measures required for improved infrastructural facilities of JJBs;
- Major constraints faced by the Judiciary in timely disposal of cases;
- Need for full time Principal Magistrates in the JJBs;
- Measures to plug the delay in submission of SBR and Charge sheet(offence report) by the Police

2.4. Methodology

The universe of the study comprises all pending cases produced before the JJBs since inception till 31.03.2015. The information about such children was collected from the

JJBs. All JJBs were covered to collect the basic information about the pending cases from JJBs as outlined in the scope.

2.4.1. Roll-out Meeting:

To start with, a roll out meeting was organized with the Director of Social Welfare, Govt of Assam, Honb'le Mr Justice Chowdhury, Chairman, Juvenile Justice Committee, Gauhati High Court, Mr Ved Prakash Gautam,

Child Protection Specialist, UNICEF, Assam on 22nd July, 2015 to explore and finalise the operational methodology and tools of the study.

2.4.2. Sampling Procedure:

The sampling frame of the proposed study comprises 1935 pending cases as on 31.03.2015 before the JJBs across all districts in Assam. The present study actually covered about 1300 cases as the remaining cases were disposed of before the field work started i.e. by July, 2015. Further, even though the universe of the study were the 1935 cases pending on 31st March'2015 across all the JJBs in Assam, the number of JCLs covered by the study is quite more than that, as many of the cases has more than one JCL arrayed as an accused. A database of all pending cases disaggregated in terms of duration, level of conflict with law, underlying factors for delayed disposal of cases, demographic profile of the children apprehended etc was prepared and compiled by administration of

a pre-coded structured questionnaire which was used for quantitative analysis at the first stage. The nature of crime was further subdivided into petty, non-serious & serious crimes.

In the second stage, five percent of the total number of pending cases was selected for deeper scrutiny on the basis of purposive sampling method based on nature of crime. The duration of pendency is also another indicator which was taken into account. Children staying in the Observation Homes in Jorhat, Nagaon and Boko were also interviewed to know about the level of conflict with law and their views about the procedures of JJB. Ethical considerations were followed while interviewing these children.

2.4.3. Collection of Data:

2.4.3.1. Searching of Secondary Sources:

The research team reviewed all available documents/reports on JJB to frame appropriate tools for the assessment from the sources listed below:

- Reports/ documents prepared by Asian Human Rights Commission;
- Study reports on CCL prepared by HAQ centre for Juvenile Justice;
- Improving the Protection of Children in Conflict with the Law in South Asia-A regional parliamentary guide on juvenile justice, 2007;
- Juvenile Justice in India: Policy and Implementation Dilemmas by Dr Bharti Ali, HAQ Centre
- Root Causes of Juvenile Crimes- A study by Eco-centre for Juvenile Justice, Bangalore;
- Assessment of Juvenile Justice System in Assam conducted by JPISC with support from the DSW, Govt of Assam and UNICEF, Assam;
- Case records available in JJBs, Observation homes, Police departments.

2.4.3.2. Primary Sources:

- Administration of the structured questionnaire to capture all relevant information as outlined in the scope of the study from all JJBs in the state. Hence, visit to all JJBs would be necessary for the purpose of the study.
- Administration of a semi-structured questionnaire for capturing views of the children whose cases are pending for more than a year.

2.4.3.4. Key Informant Interviews (KII):

KIIs were conducted using an interview guide with the following level of informants mainly to understand the reasons for delay in disposal of cases:

- Principal Magistrates/Social Workers of JJB, Probation officers, DLSA;
- Police personnel from SJPU and local Police;
- DEOs attached to JJBs.

2.4.3.5. Case Study

Some case studies of the CCL were prepared to get a wide range of insights into the situation of CCLs, determinants of delayed disposal of cases, consequences of pendency of cases etc

2.4.4. Review Meeting:

Review meeting with JJ Committee, Gauhati High Court, SCPS and UNICEF took place somewhere in the mid course of the study to discuss about the responses from the field work and also to incorporate changes if necessary, in the framework of the study.

2.5. Dissemination Workshop:

Final findings and recommendations will be presented in a workshop with UNICEF, Judiciary, State Govt., SCPS, Police and other stake holders.

2.6. Outcome of the Study:

- Create evidence on the pending cases before the JJBs disaggregated in terms of duration and nature of crimes;
- An analysis of the causals for pending cases under three specified crime heads e.g. Petty, Non-serious and Serious;
- Generate awareness among the Police and Judiciary about the judicious application of the law;
- Influencing state policy on coordination and convergence of actions for speedy disposal of cases;
- Develop an information system about the CCLs whose cases are pending for long for bringing about rational changes in the adjudication practices;
- Create scope for intervention of duty bearers e.g. Police, Judiciary, DLSA, DCPU etc to facilitate the process of speedy disposal of cases;
- Specific actions for reducing pendency of cases by JJBs by creating a SOP in this regard.

2.7. Deliverables

- A final report on the analysis of pending cases before the JJBs in the state of Assam along with a plan of action. The report will also comprise of case studies of children

with the purpose to disseminate the effects of pendency of case in JJB in child's rights and entitlements as enshrined in Indian Constitution and its various laws, policies

- and guidelines pertaining to the welfare of children;
- A document on the current status regarding children whose cases are pending with JJBs disaggregated in terms of duration and nature of offences;
 - A document on future possibilities for intervention under ICPS and creating structures for strengthening JJS;
 - Specific actions for reducing pendency of cases by JJBs by creating a SOP in this regard.

2.8. Time Plan

July to September, 2015

2.9. Plan for the Study:

Sl No	Activities	Time Frame
1	Desk review of all literatures available from various sources	1st week of July
2	Roll out Workshop for Finalization of Methodology and Preparation and pre-testing of Tools	1st week of July
3	Data Collection, KII	Phase-I: 10 -15 July, 2015 (Piloting) Phase-II: 22nd July to 14th Aug, 2015. Phase-III: 20th Aug to 15th Sept, 2015. Phase-III: 12-15 Oct, 2015. Phase-IV: 24- 29 Nov, 2015
4	Collation, Compilation and Analysis	15th Oct to 15th Nov, 2015 (excluding the Puja Holidays)
5	Draft Report Submission	30th Nov, 2015
6	Review Meeting	First Week of Dec, 2015
7	Final Workshop	1st/2nd Week of Jan, 2016
8	Submission of Final Report	By 15th Jan, 2016

2.10. Major Constraints:

- Flash flood in Lower Assam districts and also in Lakhimpur and Dhemaji districts;
- Political unrest in Dibrugarh area;
- Very limited time for Field work
- Poor documentation



CHAPTER - III

Infrastructure and Human Resources of JJB

This section of the report presents findings from our evaluation of the availability of infrastructure, support staff and general working conditions of the boards. The report here is based on our field observations across all the districts. The approach taken here is to evaluate the support systems available in the light of the Assam Rules. The findings presented here are mostly assessments at the state level, with limited references to specific districts. For more detailed information on the specific conditions in each district, please refer to Annexure – I of the report

The JJ Act and Rules place an onerous responsibility on the Boards to dispose of cases before it within a short time span of four months from the date of the first summary enquiry¹. This can be extended for another two months, provided there are exceptional circumstances at play such as “trans-national criminality, large number of accused persons [or] inordinate delay in the production of witnesses and any such extension of times requires the board to record reasons for the same². If the proceedings go on beyond this stipulated time, they are to be discontinued unless it involves a serious offence³. In any case where the proceedings go on for more than six months, the board shall send a periodic report to the CJM/CMM regarding the reasons for delay and steps taken to expedite the matter⁴.

Optimal functioning of the boards to meet this mandate thus requires that there be adequate

human resources and infrastructural support. The link between adequate infrastructure and human resources support has been well noted by now : The National Commission to review the working of the Constitution has observed that judicial administration in the country suffers from deficiencies due to lack of proper, planned, and adequate financial support for establishing more Courts and providing them with adequate infrastructure⁵. The Parliamentary Standing Committee on Law and Personnel in its report on “Infrastructure Development and Strengthening of Subordinate Courts” has also identified infrastructural deficiencies to be one of the significant causes for judicial delays⁶.

The Assam Rules provide for the basic infrastructural and human resources facilities that are to be made available to a board. The relevant stipulations are that:

¹Rule 13 (6) The Assam Juvenile Justice Care and Protection Rules, 2011

²Ibid.

³Ibid. Rule 13(7)

⁴Ibid. Rule 13 (8)

⁵Lawmin.nic.in, (2015).Report of The National Commission to Review the Working of the Constitution, CHAPTER 7, para 7.6.1. [online] Available at: <http://lawmin.nic.in/nrcrwc/finalreport/v1ch7.htm> [Accessed 26 Oct. 2015].

⁶Department-Related Parliamentary Standing Committee On Personnel, Public Grievances, Law And Justice, 67th Report: Infrastructure Development and Strengthening of Subordinate Courts, (2014).

3.1. Place of conduct of proceedings:

3.1.1 The board shall hold its sittings in the premises of an observation home or at a place that is proximate to an observation home. Another option provided is that the board may function from one of the institutions under the JJ Act. There is also a specific prohibition against running the board from the court premises⁷.

3.1.2 The board premises need to be “child friendly”⁸. The rules emphasize that the board room must not resemble a court room in any manner (thus, raised platforms, witness boxes etc. are to be avoided)⁹. The mandate established by the rule is not only to ensure that the board room does not resemble a court, but also that such measures are to be taken which will make the board room a child friendly setting. This is usually achieved by keeping the rooms bright, decorated and tidy.

3.2. Infrastructure and support staff:

3.2.1 Every board is to have the following amenities for its functioning¹⁰ :

- Board Room
- Waiting room for children,
- A room for Principal Magistrate and Members,
- A record room,
- Room for Probation Officers,
- Waiting room for parents and visitors,
- Safe drinking water facility; and
- Toilets.

3.2.2 The State government is responsible for providing “necessary human resource support for every board”¹¹. The following staffs are specifically identified by the rules:

- Probation officer,
- Steno-typist or computer operator,
- Peon/ and
- Safai karamchari

In addition to these, the Rules mandate that the Boards are to meet on all working days of a week, unless the rate of pendency in a district justifies a lesser number of days.

Further, the rules also stipulate that every member of the board shall attend a minimum of five hours per sitting¹³.

⁷Rule 9 (1), *Ibid* Rules.

⁸“Child friendly” is defined by the Rules to mean “any process and interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child;”

⁹Rule 9 (2), The Assam Juvenile Justice Care and Protection Rules, 2011

¹⁰Rule 83 (1), *Ibid* Rules.

¹¹Rule 83 (2) *Ibid* Rules.

¹²Rule 9 (3) *Ibid* Rules.

¹³Rule 9 (5) *Ibid*

In addition to what the Rules mention, it can be safely stated that a full time magistrate dedicated to the board is another important factor that can improve the general efficiency of the board. The lack of adequate number of judicial officers and the overwork of existing judicial officers has been well accepted as

one of the reasons for large rates of pendency before the Indian courts, in general¹⁴.

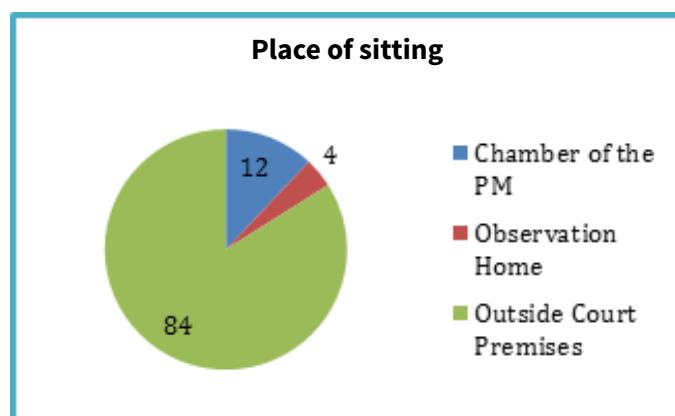
Judged against these parameters, it can be seen that the general infrastructural and human resources support available to the board is minimal and often it does not meet the standards prescribed by the Rules

3.3. Infrastructural Support

3.3.1. Child Friendliness: Place of Sitting, General Atmosphere & Support Services

While nearly all the boards are functioning from outside the court premises (84% of them), only one board functions from the premises of an observation home. About 12% of the boards continue to operate from the chambers of the principal magistrate.

At Dima Hasao, the board is chaired by an executive magistrate, who is also the administrative head of the district. Even as the office of the DCPO has the necessary facilities for holding the proceedings of the board, the proceedings are held at the chambers of the



executive magistrate owing to his preference to do so.

At Chirang, the designated office space for the board is at the district headquarters, within the premises of the office of the DCPO. However, proceedings are not usually held here as the principal magistrate of the board holds an additional charge over and above his responsibilities as an SDJM at Bijni, which is located at about 20 Kilometres away. Since

it is difficult for the magistrate to travel a total of 50 kilometres a day during office hours, the proceedings of the board are held in the chambers of the PM at Bijni. The proceedings here are thus held within the court premises, which is clearly in contravention of the JJ Act and Rules.

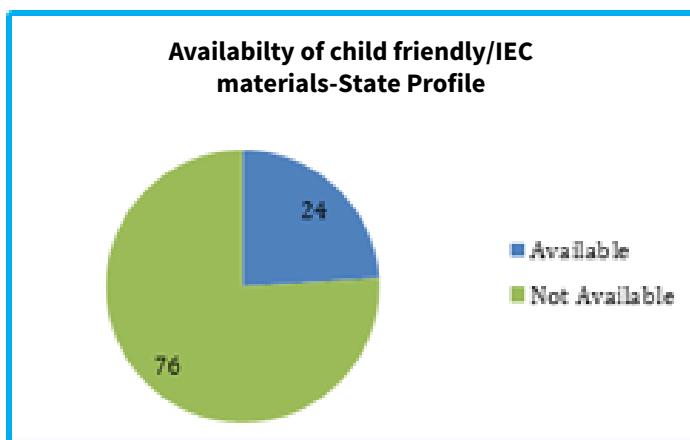
The rules mandate that the place where the proceedings are held must be child friendly. Apart from avoiding court room atmosphere,

¹⁴Supreme Court of India, Annotated Agenda-Chief Justices Conference, 2009, pp. 3-11, [online] Available at: <supremecourtofindia.nic.in/cjiconference/cjconference2009resolutions.pdf> [Accessed 26 October 2015]

this also calls for making the premises colourful and devoid of a formal air. While constructing and maintaining such facilities would require a considerable allocation of funds, and that this can be attained only over a period of time, a simple and inexpensive way in which child friendliness is achieved is by providing posters, paintings and other IEC materials that helps make the surroundings colourful. Such materials are at present available only in 6 boards – which in percentile terms is a little less than a quarter.

Children brought before the board will require to be counselled at a variety of instances. The CRC identifies counselling to

be one of the measures that are to be taken for the rehabilitation of the JCL¹⁵. Section 15 of the JJ Act identifies counselling for the child individually and with the guardians as one of the final orders that may be passed by the board¹⁶. The Assam Rules also mentioned about counselling procedures, where it is the final disposition made by the board¹⁷. Apart from a counsellor being available (counsellors are yet to be appointed at any of the boards in Assam) it is also important to have adequate space for counselling. Counselling is a process that needs to be carried out in an atmosphere of confidence and privacy for which a separate counselling room is essential. Such separate rooms for the



Amidst this grim picture, there are however some districts such as Darang, Morigaon, & Lakhimpur where extra efforts have been put in to make the JJBs child friendly. At Morigaon the JCLs are provided with lunch on the hearing dates and a small library with books on moral science other short stories have also been set up. At Jorhat & Hailakandi care has been taken to ensure that the child friendly posters are in regional language, At Darrang the posters used were made by the DEO and the social worker themselves.

¹⁵Article 40 (4) Convention on the Rights of the Child.

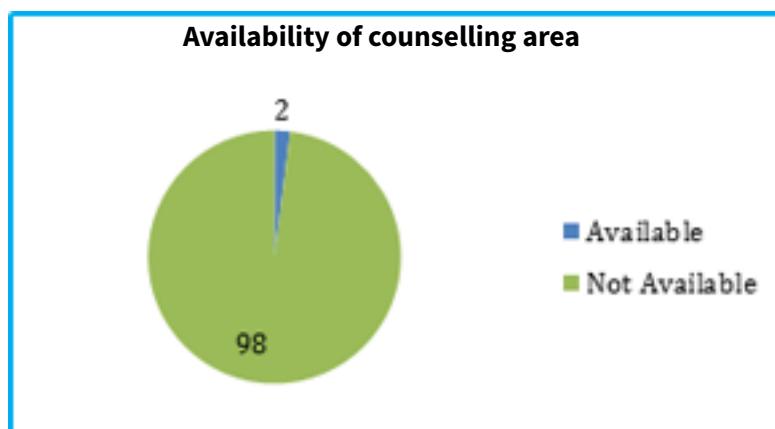
¹⁶Section 15 (a) &(b) of the JJ Act.

¹⁷Rule 15 (4), Assam Rules.

counsellor or a counselling area is available only in two districts and thus for 98% of the districts, this requirement is not met.

From that point from which a case reaches the board, the child will have to appear/be produced before the board on numerous occasions, at different stages of the trial process. From the field observations, it has

been seen that the children, whether they are brought from the observations homes or by the guardians, have to wait for considerable lengths of time for their case to be called. This is particularly so since on most days there would be more than one cases posted. Further, with the lack of a full time magistrate [see Annexure-I], the children produced would often have to wait for the arrival of



the magistrate. It is essential, thus to have such space and arrangements that make their waiting process less tiring.

Though the Assam Rules only demand that there be waiting rooms for children, considering the nature of our society, it is desirable to have separate waiting areas for boys and for girls. Waiting rooms for children are available in 72% of the districts and they are not available only in seven districts, which, however, is a matter of urgent concern. Children are often forced to stand or sit on the floor for long durations of time, in the absence of such facilities.

For the same reasons as for children, it is essential that there be separate waiting area for the guardians too. Separation of waiting areas for the JCLs and other visitors are important also because often it is essential that the victim of the crime be kept away from the perpetrators or other witnesses as their contact may traumatize their child. This facility

is available only in Morigaon & Lakhimpur – thus 98% of the districts do not satisfy this criterion.

It is to be noted that even in those districts where such space is available, often it is inadequate and not well maintained: in several districts the verandas adjoining the board room or other small spaces which are cordoned off by way of temporary separators are used as waiting rooms by installation of fans and chairs. In Kokrajhar, Sonitpur, Udaguri, roofed verandas (fitted with fans and having chairs) are being used as waiting areas. , Separate rooms for boys and girls were available only in Darang and in all the other 24 districts separate waiting area was not available. However, considering that in general the number of female JCLs is quite low, there may not be an urgent need for providing this in all the districts.

Since long waiting periods are common, it is important that the visitors be provided with

Availability of waiting rooms for children



adequate drinking water supply and toilet facilities. Drinking water is available in all the districts but for Dhemaji. While 76% of the districts covered have toilet facilities, in bulk of the situations, it was not adequate. Often the board members, other staff and the visitors are forced to use the same toilet. In some of the districts, while the toilets were there, the water supply was not proper and

hence they were not fully functional. A first aid box with medicines is another important facility that is required at all the boards. Sadly, this facility was available only in four districts and the bulk (84%) of the districts did not have access to first aid at the board. Only the board at Darang had a complaint box installed for receiving any complaints or inputs from the public.

3.4 Availability of office space

For optimal functionality, it is essential that the officials of the board have adequate working space made available to them. Thus, separate rooms for the PM & other members & the probation officer is a requirement for the comfortable working of the board.

Separate rooms for the PM and members were not available in any of the districts

barring. The members and the PM sit in the board room during the whole time that they are the Board. At Karimganj, Nagaon, Dhemjai, Tinsukia & Barpeta, the JJB and the CWC use one and the same premises for their sittings – this is made possible by ensuring that their scheduled sittings do not overlap.

Only about half the districts have separate

Rooms for Probation Officers



rooms available for the probation officers – in the others, the POs are forced to share space with the other general staff.

Even as the Assam Rules specifically mentioned records room to be one of the facilities that must be available at the board, in eleven districts (about 44%) this facility is not available at all. Even in those districts where the facility is available, it is not a full fledged room – almirahs are allotted within the office of the DCPO or the support staff for maintaining records. In those districts where

the board and the CWC functions from the same room, the magistrates hesitate to keep the records at the same premises for safety reasons too. In fact Except for Dhemaji no district has separate record room. In all other districts there are steel almirahs, either in the room where DCPO sits or in the room where JJB sits. Nagaon district doesn't even have an almirah allotted and hence, records are kept in trunks. In many districts, the records are kept at the court and every day, the relevant records are brought to the board from the court by a support staff.

3.5. I.T. Support

With the onerous documentation and reporting facilities placed on the board, it is essential that they are provided with adequate IT infrastructure to perform these functions. Computers, internet access, printing and photocopying facilities are IT facilities that contribute greatly to speed and efficiency.

In all 25 districts the boards have access to computers with printers/scanners, internet facility and access to photocopying facility. However, at Karimganj, the board shares a

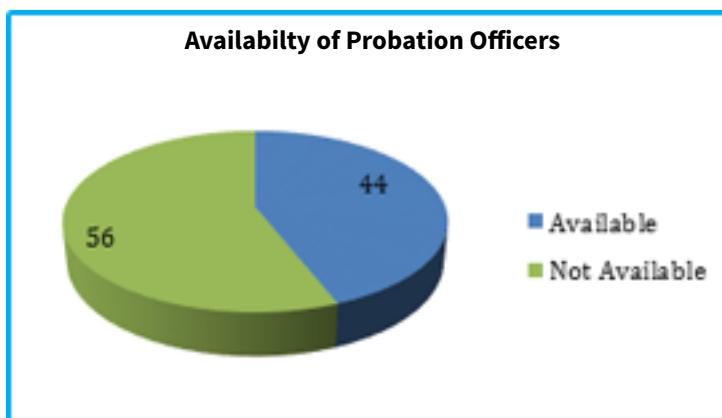
computer with the CWC and hence this slows down the general efficiency of the board. At Goalpara, while more than one computer is available, only one of them is functional at present.

Display boards are also available at all the districts. At Dimahasao, the board has a display board facility, however, since the proceedings are held at the chamber of the executive magistrate, this facility is not being put to use

3.6. Human Resources

Apart from the board members, a number of other specialized service personal are required for the proper functioning of the Boards: Probationary officers (who are to prepare the SIR), professionally trained counsellors (who are essential if counselling is the dispositional order that the board considers appropriate) social workers, Bench clerks, data entry operators and Group-D support staff are personal without which the board cannot effectively discharge its functions. Perhaps at the top of the priorities would be

the requirement of a full time magistrate. Full time magistrates can devote all of their time to the board – which will, in general improve the efficiency of the board a lot. Unfortunately, all of the boards in Assam lack a full time magistrate. Responsibilities at the board are an additional charge that they hold, apart from their responsibilities as a Judicial First Class Magistrate/Metropolitan Magistrate. The workloads at the regular court themselves are quite high and Assam is one of the states with the lowest rates of



disposal of cases in India¹⁸. Responsibilities at the board are thus an additional workload for the magistrates, who are already strained by the large rates of pendency and workload at the regular courts.

Probation Officer is one of the most important functionaries at the board. He is responsible for the preparation of the Social Investigation Report – an important document without which the final dispositional orders cannot be meaningfully made within the spirit of the JJ Act and system. The PO also has a role to play in ensuring the long term rehabilitation of the child and in post dispositional review. The PO is thus placed with onerous responsibilities under the Act. POs are available only in 11 districts and in the other districts the boards function without their services¹⁹.

Even in those eleven districts which has a probation officer, they hold additional charges apart from their responsibility as a PO under the Probation of Offender's Act/ Code of Criminal Procedure. In many districts, the DCPO is given the additional charge of the probationary officer. Such additional charges only place strain on the general efficiency of

these officers – it is difficult to expect the degree of efficiency contemplated under the JJ system from such persons who are overworked.

Similarly, while it is seen that services of a social worker are available at almost all the boards, a general trend observed has been that they work both for the CWC as well as the JJB. In all the districts there are two posts for social workers – one male and one female – and in some of the districts, the position (mostly the female one) is lying vacant. Another general trend observed is the informal division of labour undertaken by the social workers wherein the female social workers deals with locations close to the town areas and the male social worker deal with the distant/rural places. At the time of writing this report the board at Dima Hasao lacks the support of any social worker and at Barpeta, the social worker is on maternity leave and no one else has been deputed in her role.

Counsellors have not been appointed at any of the boards in Assam and at present, the Board Members along with social workers play the role of the counsellor. While it is commendable that such initiatives are being taken, despite

¹⁸National Crime Records Bureau, Disposal of cases by Police & Courts – Chapter 4 (2014) [Online] available at :<ncrb.gov.in/CD-CII2012/cii-2012/Chapter%204.pdf> [Accessed 27 October 2015].

¹⁹Section 15 (2) of the JJ Act mandates that the Board shall obtain a social investigation report and take it into consideration before making a final order. In the absence of reference to an SIR, the final orders passed are hence of suspect legality and in any event in violation of the spirit of the JJ Act.

their strenuous schedules, it needs to be remembered that the board members/social workers are not professionally qualified to deliver counselling services. Most of the board members admitted their limited capacity to counsel children and expressed the strong need to have a counsellor at the board. Owing to the lack of a counsellor, at almost all the districts, the JCLs who are produced before the board are allowed to remain absent from the board proceedings till the receipt of the offence report by the police. The Boards are forced to adopt this stand as it is otherwise impossible for the board members, especially the magistrates to find time for counselling each and every JCL who is produced before the board. A fall out of this practice is that the board is not able to full

fill its monitoring and rehabilitation functions, as conceived under the JJ Act.

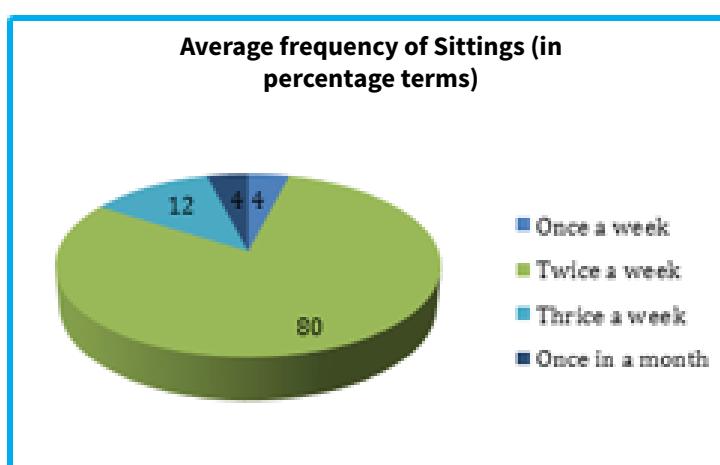
Data entry operators have been appointed in all the districts. It is however, observed that they perform more than the role of a data entry operator: most of them fill in the role of a bench clerk and stenographer too. There is a general lack of dedicated Group-D staff for the boards and the general trend observed is that there would be a single dedicated staff to the board and the rest are shared from the office of the DCPO. At Kokrajhar, however, there are no group-D staffs available at all and at Jorhat the available staffs are illiterate and hence there are severe limitations on the nature of responsibilities that can be entrusted to her.

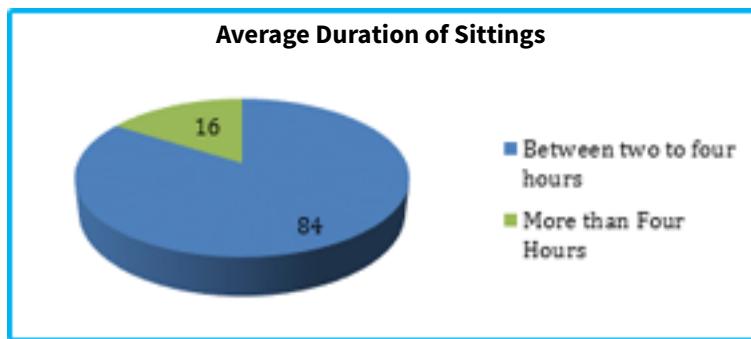
3.7. Frequency of Sittings & Duration

The frequency of sittings, without doubt would have direct bearing on the rates of disposal of cases. Though the Rules mandate that the boards are to meet every day (and four five hours on each occasion), unless the workload justifies the contrary, in practice, it is understood that this would be hard to achieve as the magistrates are over worked at the regular courts and the responsibilities at the board is an additional responsibility that they are charged with. Further, in some of the districts, the Board and the CWC use the same premises for holding the sessions,

in which case they work on an understanding that their schedules sessions do not overlap. In circumstances such as these, holding sittings everyday is not possible.

It is however to be noted there isn't a single board that sits on every working day of the week (i.e. for six days). The vast majority of the boards generally meet only for twice a week, a handful of them a little less or a little more than that and the board at Dima Hasao meets only once a month.





While the rules maintain that every meeting of the board must last for at least five hours, in the absence of a full time magistrate, this rule can never be implemented in practice at present, the boards are able to meet and conduct business only for a few hours every day, mostly after the magistrates discharge their responsibilities at the regular courts. Board sittings are hence, usually held in

the afternoon on an average for 2-4 hours per sitting. A very small number of boards operate for more than four hours in a sitting. When read together, the vast majority of the boards effectively meet only for between 4 to eight hours in a week to transact its business – a factor which is responsible for the general slow pace at which these institutions are able to function.

Some other information related to JJB Infrastructure

- Display boards are available in all districts; however at Dima Hasao, it is not being used
- Computer, Internet & Photocopying Facilities are available in all the districts
- Drinking Water is available in all the districts except Goalpara & Dhemaji.
- Complaint Box is seen installed only at Darang.
- None of the districts have a full time Magistrate chairing the Board.
- All the Districts have a data entry operator appointed.
- Kamrup (M) has the highest no of sitting days (147) and Dima Hasao the lowest (12) for the period from April, 2014 to March, 2015.
- The state average of sitting days during the period from April, 2014 to March, 2015 ranges between 80 and 90.
- The male Social Worker in Karimgunj and female social worker in Morigaon joined in February, 2015. The post for one social worker remained vacant from July, 2014 to January, 2015 in Karimgunj district and April, 2014 to Jan, 2015 in Kokrajhar district.
- Female Social Workers' attendance is poor in the districts like Morigaon (13), Darrang (63), Dhemaji (65), Dhubri (62), Nagaon (63) given the total no of sitting days.

- At Dima Hasao, the Board is chaired by an executive magistrate, who is also the administrative head of the district.
- At Chirang, the designated office space for the board is within the premises of the office of the DCPO, but the PM (also the SDJM of Bijni at a distance of 10 km away) cannot attend and run from the chamber.
- At Karimganj, Nagaon, Dhemjai, Tinsukia,& Barpeta, the JJB and the CWC use one and the same premises for their sittings by ensuring that their scheduled sittings do not overlap.

Some good practices:

- At Morigaon, the JCLs are provided with lunch on the hearing dates and a small library with books on moral science other short stories have also been set up.
- At Jorhat & Hailakandi child friendly posters in regional language are displayed.
- At Darrang the posters used were made by the DEO and the social worker themselves.

Ref: Annexure-I for district wise information.

Sl.No	District	Place of Sitting	Child Friendly posters/IEC materials	Separate sitting area for girls/boys produced	Room for counsellor/ counselling area	Waiting Room for Children	Waiting Room for parents of CCLs/ Other visitors
1	Karimganj	PM's Chamber	Not Available	Not Available	Not Available	Available	Not Available
2	Dima Hasao	Administrative Building	Not Available	Not Available	Not Available	Available	Not Available
3	Hailakandi	Outside Court Premises	Available	Not Available	Not Available	Available	Not Available
4	Dibrugarh	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
5	Cachar	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
6	Sivasagar	Outside Court Premises	Available	Not Available	Not Available	Available	Not Available

Sl.No	District	Place of Sitting	Child Friendly posters/IEC materials	Separate sitting area for girls/boys produced	Room for counsellor/counselling area	Waiting Room for Children	Waiting Room for parents of CCLs/ Other visitors
7	Goalpara	Outside Court Premises	Not Available	Not Available	Not Available	Not Available	Not Available
8	Nalbari	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
9	Jorhat	Premises of Observation Home	Available	Not Available	Not Available	Available	Not Available
10	Tinsukia	Outside Court Premises	Not Available	Not Available	Not Available	Not Available	Not Available
11	Golaghat	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
12	Bongaigaon	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
13	Chirang	PM's Chamber	Not Available	Not Available	Not Available	Not Available	Not Available
14	Dhubri	Outside Court Premises	Not Available	Not Available	Not Available	Not Available	Not Available
15	Barpeta	Outside Court Premises	Not Available	Not Available	Not Available	Not Available	Not Available
16	Morigaon	Outside Court Premises	Available	Not Available	Not Available	Available	Available
17	Dhemaji	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
18	Darang	Outside Court Premises	Available	Available	Not Available	Available	Not Available
19	Udalguri	Outside Court Premises	Not Available	Not Available	Not Available	Not Available	Not Available
20	Sonitpur	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
21	Nagaon	Outside Court Premises	Not Available	Not Available	Not Available	Not Available	Not Available
22	Karbi Anglong						
23	Kokrajhar	Outside Court Premises	Not Available	Not Available	Not Available	Available	Not Available
24	Lakhimpur	Outside Court Premises	Available	Not Available	Not Available	Available	Not Available
25	Kamrup	Outside Court Premises	Not Available	Not Available	Not Available	Available	Available

Sl.No	District	Waiting Room for parents of CCLs/ Other visitors	Separate Room for P.M	Separate Room for Members	Room for Probation Officer	Toilet	First Aid Box	Record Room
1	Karimganj	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Available
2	Dima Hasao	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Available
3	Hailakandi	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Not Available
4	Dibrugarh	Not Available	Not Available	Not Available	Available	Available	Not Available	Available
5	Cachar	Not Available	Not Available	Not Available	Available	Available	Not Available	Not Available
6	Sivsagar	Not Available	Not Available	Not Available	Available	Available	Available	Available
7	Goalpara	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Available
8	Nalbari	Not Available	Not Available	Not Available	Available	Available	Available	Available
9	Jorhat	Not Available	Not Available	Not Available	Available	Available	Not Available	Available
10	Tinsukia	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Not Available
11	Golaghat	Not Available	Not Available	Not Available	Available	Not Available	Not Available	Not Available
12	Bongaigaon	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Available
13	Chirang	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Not Available
14	Dhubri	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Not Available
15	Barpeta	Not Available	Not Available	Not Available	Available	Not Available	Not Available	Available
16	Morigaon	Available	Not Available	Not Available	Not Available	Available	Available	Available
17	Dhemaji	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Available
18	Darang	Not Available	Not Available	Not Available	Available	Available	Available	Not Available
19	Udalguri	Not Available	Not Available	Not Available	Not Available	Available	Not Available	Available
20	Sonitpur	Not Available	Not Available	Not Available	Available	Available	Not Available	Not Available
21	Nagaon	Not Available	Not Available	Not Available	Available	Not Available	Not Available	Not Available

Sl.No	District	Waiting Room for parents of CCLs/ Other visitors	Separate Room for P.M	Separate Room for Members	Room for Probation Officer	Toilet	First Aid Box	Record Room
22	Karbi Anglong	Not Available	Not Available	Not Available	Available	Not Available	Not Available	Available
23	Kokrajhar	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available
24	Lakhimpur	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available	Available
25	Kamrup	Available	Not Available	Not Available	Available	Available	Not Available	Not Available

Note:1. Computer, Internet & Photocopying Facilities are available in all the districts. Drinking Water is available in all the districts except Goalpara & Dhemaji. 2. Display boards are available in all districts; however at Dima Hazao it is not being used. 3. Complaint Box is seen installed only at Darang.

Sl.No	District	Probation officer	Social worker from DCPS	Group-D staff
1	Karimganj	Vacant	All posts filled up	Shared with CWC
2	Dima Hasao	Vacant	VACANT	Shared with CWC
3	Hailakandi	Vacant	All posts filled up	Shared with CWC
4	Dibrugarh	In Charge	All posts filled up	Shared with CWC
5	Cachar	In Charge	All posts filled up	Shared with CWC
6	Sivasagar	In Charge	All posts filled up	Shared with CWC
7	Goalpara	Vacant	All posts filled up	Shared with CWC
8	Nalbari	In Charge	One post Vacant	Shared with CWC
9	Jorhat	In Charge	One post Vacant	Shared with CWC
10	Tinsukia	Vacant	All posts filled up	Shared with CWC
11	Golaghat	Vacant	All posts filled up+cwc	Shared with CWC
12	Bongaigaon	Vacant	All posts filled up+cwc	Shared with CWC
13	Chirang	Vacant	One post Vacant	Shared with CWC
14	Dhubri	Vacant	One post Vacant	Shared with CWC
15	Barpeta	In Charge	All posts filled up	Shared with CWC
16	Morigaon	Vacant	All posts filled up+cwc	Shared with CWC
17	Dhemaji	Vacant	All posts filled up	Shared with CWC
18	Darang	In Charge	All posts filled up	Shared with CWC
19	Udalguri	Vacant	One post Vacant	Shared with CWC
20	Sonitpur	In Charge	All posts filled up+cwc	Shared with CWC
21	Nagaon	In Charge	All posts filled up	Shared with CWC
22	Karbi Anglong	Vacant	All posts filled up	Shared with CWC
23	Kokrajhar	Vacant	All posts filled up+cwc	Vacant
24	Lakhimpur	In Charge	All posts filled up	Shared with CWC
25	Kamrup	In Charge	All posts filled up	Dedicated Staff

Note : 1. None of the districts have a full time Magistrate chairing the Board. 2. All the Districts have a data entry operator appointed

Sl.No	District	Frequency of sitting/ week	Average Duration of Sitting	Usual Timings
1	Karimganj	Twice a Week	2-4 Hours	2:00-5:00
2	Dima Hasao	Once in a month	2-4 Hours	11:30-3:30
3	Hailakandi	Once a Week	2-4 Hours	2:00-4:00
4	Dibrugarh	Twice a Week	2-4 Hours	2:00-4:00
5	Cachar	Twice a Week	More than 4 Hours	2:00-6:30
6	Sivsagar	Twice a Week	2-4 Hours	2:00-4:00
7	Goalpara	Twice a Week	More than 4 Hours	3:00-7:00
8	Nalbari	Twice a Week	2-4 Hours	12:00-4:00
9	Jorhat	Twice a Week	2-4 Hours	2:00-5:00
10	Tinsukia	Twice a Week	2-4 Hours	2:00-5:00
11	Golaghat	Twice a Week	More than 4 Hours	10:00-2:00
12	Bongaigaon	Twice a Week	2-4 Hours	1:00-4:00
13	Chirang	Twice a Week	2-4 Hours	12:00-4:00
14	Dhubri	Thrice a Week	2-4 Hours	1:00-4:00
15	Barpeta	Twice a Week	2-4 Hours	12:00-3:00
16	Morigaon	Twice a Week	More than 4 Hours	2:00-6:00
17	Dhemaji	Twice a Week	2-4 Hours	1:00-3:00
18	Darang	Thrice a Week	2-4 Hours	2:00-5:00
19	Udalguri	Twice a Week	2-4 Hours	2:00-5:00
20	Sonitpur	Twice a Week	2-4 Hours	2:00-4:00
21	Nagaon	Twice a Week	2-4 Hours	2:00-5:00
22	Karbi Anglong	Twice a Week	2-4 Hours	12:00-3:00
23	Kokrajhar	Twice a Week	2-4 Hours	2:00-4:00
24	Lakhimpur	Twice a Week	2-4 Hours	1:30-4:30
25	Kamrup	Thrice a Week	2-4 Hours	2:00-4:00

Status regarding attendance in JJB from April, 2014 to March, 2015

Name of District	PM	Male Social Worker-I	Female Social Worker-II	Total no of sitting days
Nalbari	75	95	77	96
Hailakandi	37	36	0	45
Bongaigaon	89	78	74	89
Barpeta	95	95	94	96
Udalgiri	48	57	54	58
Lakhimpur	84	91	93	100
Darang	90	88	63	96
Dhemaji	62	90	65	90
Morigaon	83	70	13	90

Name of District	PM	Male Social Worker-I	Female Social Worker-II	Total no of sitting days
Dhubri	94	92	62	94
Chirang	69	69	51	69
Tinsukia	82	85	79	89
Sivsagar	88	84	76	92
Jorhat	82	80	76	83
Kamrup	117	132	122	147
Nagaon	75	63	63	90
Dima Hasao	12	12	12	12
Karbi Anglong	80	97	97	98
Dibrugarh	69	78	78	89
Cachar	85	83	83	96
Kokrajhar	93	85	85	93
Kokrajhar	93	85	85	93
Golaghat	82	77	77	89
Goalpara	78	14	14	94
Sonitpur	62	67	67	74
Karimganj	85	40	88	99

Note: There was no Male Social Worker from July, 2014 to Jan, 2015 in Karimgunj district, The new Social Worker joined on February, 2015. The post for one social worker remained vacant from July, 2014 to January, 2015 in Karimgunj district and April, 2014 to Jan, 2015 in Kokrajhar district



CHAPTER - IV

Systemic Delays in the Working of the JJ System in Assam

4.1. Introduction: Speedy disposal of cases as a human right and delays in the Indian legal system

The right to speedy trial is a well established and recognized human right¹. The Supreme Court of India has, on more than one occasion stated that a speedy trial is an integral aspect of the “right to life”, guaranteed by Article 21 of the constitution of India². In the context of the child in conflict with law, on one hand, a speedy disposal of the proceedings against him is a constitutional guarantee and on the other, timely interventions (in the form of final dispositional orders) are critical for achieving the objectives of the law – i.e. rehabilitation and restoration³. It has been observed that “There is little question those unnecessary delays in case processing may increase the likelihood of a juvenile’s

subsequent involvement with the court as well as the likelihood that the juvenile’s law-violating behavior will continue to escalate. When delays do occur, the chances of even first-offenders being referred to the court again are considerable⁴.”

Despite these, delays in the Indian Legal system, especially the criminal justice system is the acknowledged normal state of affairs, including in the Juvenile Justice Boards⁵. There is a considerable amount of literature⁶, especially law commission reports that have explored the reasons for delays and their probable solutions⁷. Overall, literature has identified several causes for the courts-

¹See generally Anthony G Amsterdam, Speedy Criminal Trial: Rights and Remedies. 27(3) Stanford Law Review 525 (1975).

²Hussainara Khatoon v. State of Bihar, 1979 AIR 1360, Katar Singh v. State of Punjab, 1994 SCC (3) 569, Abdul Rahman Antulay v. R.S. Nayak, 1988 AIR 1531.

³Kären M. Hess, JUVENILE JUSTICE, Cengage Learning (2005), p. 279

⁴Gene Siegel and Gregg Halemba, The Importance of Timely Case Processing in Non-Detained Juvenile Delinquency Cases, National Center for Juvenile Justice (2006), p.2.

⁵Report on National Conference on Juvenile Justice Boards, National Judicial Acadamy: Bhopal (20150, available at :<<http://ncpcr.gov.in/showfile.php?lang=1&level=1&sublinkid=596&lid=1012>> last accessed on 12 January 2016.

⁶See Generally: C.L. Aggawwal, ‘Laws’ Delay and Acccumulation of arrears in the High Courts. 7(1):The Journal of Bar Council of India 41 (1978); K.G. Balakrishnan , Efficient Functioning of India’s Justice Delivery System, (2007) 4 SCC J-15 ; A.S. Anand, Indian Judiciary & Challenges of 21st century. XLV (3) (July-Sept)The Indian Journal of Public Administration 299 (1999); R.C. Lahoti, Envisioning Justice in the 21st Century, 2004(7) SCC J- 13; R. Moog, Delays in the Indian Courts: Why the Judges Don’tTake Control, 16 (1).The Justice System Journal 19 (1992)

⁷The Law Commission has, on more than one occasion, conducted studies on this issue: the 77th report was dedicated to “Delay and Arrears in Trial courts”; the 79th report focused on delays in appellate courts and high courts; the 124th and 125th reports focused on the High Courts and the 245th report, once again made an elaborate study on all aspects pertaining to delay. The Reports are available at <<http://lawcommissionofindia.nic.in/>> last accessed on 4th January 2016

system related delays – such as that there are frequent adjournments, that there is lack of man-power to hear so many cases and that there is inadequate infrastructural support. Several solutions to overcome these limitations have also been suggested, many of them which are currently being implemented⁸. However, as acknowledged by the law commission of India, in its 245th report, many of these suggestions are “based on ad-hoc prescriptions rather than grounded

in empirical analysis and observation⁹”. This section of the report makes an empirical study of delays in the process of the Boards and the system for administration of criminal justice. While the result of the study confirms that the causes that we know of are indeed contributing to delays, it also throws up other reasons, particular to the working of the boards, for which solutions, apart from those that are currently articulated are required.

4.2. Issues in Documentation and the gaps and limitations in the data.

According to the information received from the SCPS, as on 31st March 2015, there were a total of 1935 cases pending before the Juvenile Justice Boards in Assam. The Universe of the study, as mentioned in the proposal, was hence 1935. However, by the time the research team got down to collect data (which was between the 12th of July and 15th of September, 2015), a few of these cases were disposed of and hence the Universe of the study decreased to 1308. Thus, the total number of cases that were studied in detail is 1308.

It needs to be noted however, that, from our field visits it has been learned that the total number of pending cases would in fact far exceed the initial estimated figure of 1935. There have been numerous errors seen in the maintenance of records which has resulted in incorrect reporting of the pending number of cases. Further, none of the Boards, except for Kokrajhar & Karbi Anglong, acknowledge those cases as “pending” to which the final report/ offence report is awaiting. Hence, a

good number of cases where the JCLs have been produced and enlarged on bail are not included in the monthly reports as a pending case, until the police files the offence report (the Charge Sheet/Final Report). There are a few districts, such as Barpeta, Jorhat & Goalpara which maintain a separate record for such cases, however, most districts does not even have such a practice – making monitoring of such cases very difficult.

A significant challenge that was experienced by the researchers was that all documentations, which are ideally expected to be a part of a case record was not available in the files. As will be explained in the sections below, there are very few cases that reach a Board directly – bulk of the cases before the Boards have reached them after being referred to by a regular court. In this process of references and transmission of records from one court to the other, not all documents reach the Board on time, and some, do not reach the Board at all. This is particularly so where the case is a “split case” (i.e. cases where the JCL

⁸Ministry Of Law, Government Of India, Committee On Reforms Of The Criminal Justice System (Malimath Committee P. 164 13.3 (2003).; Law Commission Of India, 77th Report On Delay And Arrears In Trial Courts (1979); Law Commission Of India, 79th Report On Delay And Arrears In High Courts And Other Appellate Courts 9-10 (1979); Law Commission Of India, 230th Report On Reforms In Judiciary Some Suggestions 1.61 (2009).

⁹Law Commission Of India, 245th Report On Arrears And Backlog: Creating Additional Judicial (Wo)Manpower 6 (2014)

is a co-accused with other adults who were also involved in the criminal acts). In such cases, documentation is even poorer and many crucial documents do not reach the board at all (as they are filed only before the regular courts), despite the Boards repeatedly requesting for the certified copies. Overall, the records maintenance in most of the districts have been found to be quite poor, so much so that, in several cases, even locating the name of the JCL is in itself a task. The confusion is more significant in “split cases” where it is often the case that the names of the JCL are

not clearly marked for identification! While proceedings that have happened, post the case reaching the Board can be clearly deciphered from the order sheets, the proceedings and events prior to this are extremely hard to reconstruct, especially information such as date of arrest, date of production before a regular court & of proceedings relating to age determination (where it is not done before the board). There are then delays also caused by the poor nature of maintenance of records, in general.

Lack of clarity in the records

A case from Nagaon district is illustrative of the challenges that poor maintenance of records can cause. Case No 1405/00 pertains to one Ramu (name changed). However, more than 80% of the records pertained to Shamu (name changed). On closer examination of the records, in detail, it was found that Shamu is in fact a co-accused and that the JCL is Ramu. Quite surprisingly, even the Hazira and Bail bonds are however in the name of Shamu! There was nothing in the records to show that Shamu was declared a Juvenile at any point of time. As such all the orders of the Board only makes a reference to one ‘JCL’ and nowhere his name is mentioned by the Board. And also the data entry operators and social workers remember the case to be that of Shamu. From the records, it is thus quite difficult to identify who is in fact the JCL

Amidst this, it is also however, important to mention that there were several districts which had excellent record and data management practices. Tinsukia, Karbi Anglong & Kokrajhar are districts which has been found to have relatively better record maintenance practices, which can be replicated elsewhere: In Tinsukia, especially, orders and steps are kept separately as file A and file B under the same GR no., making it easier to trace documents and understand the case history.

At present, even the numbering of cases before the Board does not have a uniformity in practice. In most of the districts, the GR number, based on which the case originates

is used as the case number too. In Dhubri district, the practice of numbering the JJB files separately was started by one magistrate, however, this was stopped on the instructions of another magistrate.

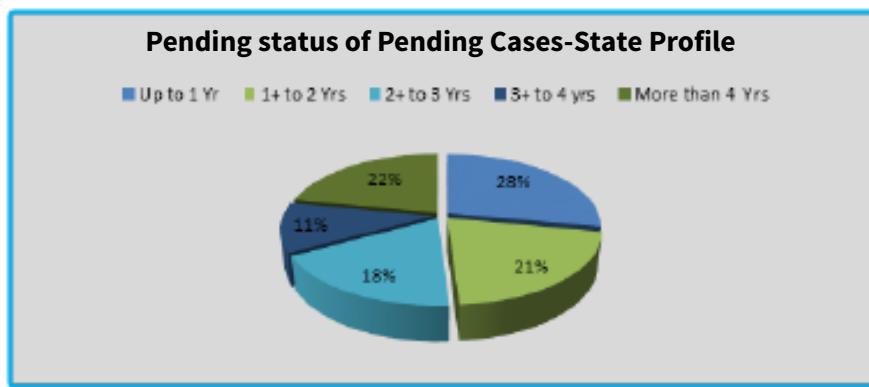
Overall, it appears that at present there are no standard rules or practices on the maintenance of records (i.e. the documentation to be found in each file) and hence there is a wide variance on the depth of documentation available in the different case records. The consequence of this is that for several variables on which data was collected remain incomplete. As it can be observed, there is hardly any space of quantitative analysis for a certain number of cases for which there is “no data”. While this

Lack of data is not acute for all points of focus, so as to inhibit generalizations on the same trends at the level of the State, scope for generalization of trends within some of the districts is a difficult proposition

Pendency of Cases in Assam as on 31.03.2015

At the State level

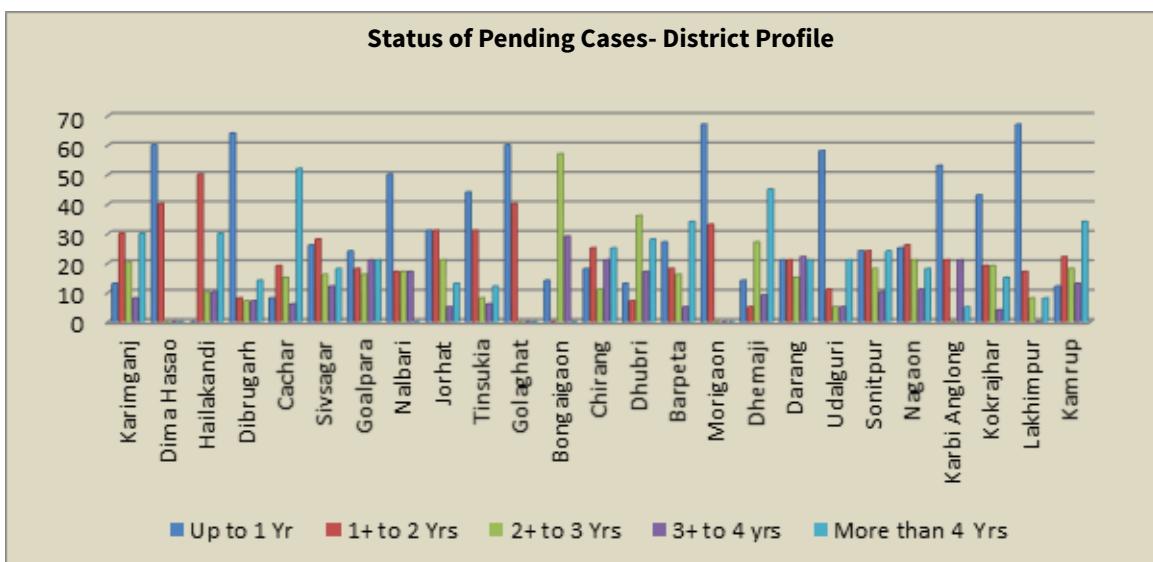
Status of Pending Cases										
Up to 1 Yr	%	1+ to 2 Yrs	%	2+ to 3 Yrs	%	3+ to 4 yrs	%	More than 4 Yrs	%	Total
366	28	277	21	229	18	144	11	292	22	1308



At the District level

District	Status of Pending Cases										
	Up to 1 Yr	%	1+ to 2 Yrs	%	2+ to 3 Yrs	%	3+ to 4 yrs	%	More than 4 Yrs	%	Total
Karimganj	5	13	12	30	8	20	3	8	12	30	40
Dima Hasao	3	60	2	40	0	0	0	0	0	0	5
Hailakandi	0	0	5	50	1	10	1	10	3	30	10
Dibrugarh	38	64	5	8	4	7	4	7	8	14	59
Cachar	4	8	9	19	7	15	3	6	25	52	48
Sivasagar	13	26	14	28	8	16	16	12	9	18	50
Goalpara	19	24	14	18	13	16	17	21	17	21	80
Nalbari	9	50	3	17	3	17	3	17	0	0	18
Jorhat	12	31	12	31	8	21	2	5	5	13	39
Tinsukia	24	44	16	31	4	8	3	6	6	12	52

District	Status of Pending Cases										
	Up to 1 Yr	%	1+ to 2 Yrs	%	2+ to 3 Yrs	%	3+ to 4 yrs	%	More than 4 Yrs	%	Total
Bongaigaon	1	14	0	0	4	57	2	29	0	0	7
Chirang	5	18	7	25	3	11	6	21	7	26	28
Dhubri	9	13	5	7	26	36	12	17	20	28	72
Barpeta	28	27	19	18	16	16	5	5	35	34	103
Morigaon	2	67	1	33	0	0	0	0	0	0	3
Dhemaji	3	14	1	5	6	27	2	9	10	45	22
Darang	18	21	18	21	13	15	19	22	18	21	86
Udalguri	11	58	2	11	1	5	1	5	4	21	19
Sonitpur	26	24	26	24	19	18	11	10	26	24	108
Nagaon	56	25	58	26	47	21	24	11	40	18	225
Karbi Anglong	10	53	4	21	0	0	4	21	1	5	19
Kokrajhar	50	43	22	19	22	19	5	4	17	15	16
Lakhimpur	8	67	2	17	1	8	0	0	1	8	12
Kamrup	10	12	18	22	15	18	11	13	28	34	82
Total	366	28	277	21	229	18	144	11	292	22	1308



As it can be seen from the table above, while the profiles across most the districts are quite similar, a few of them stand out from the general: For instance, Cachar and Dhemaji are two districts where there are close to 50% of the cases pending for more than four

years. Hailakandi district, on the other hand does not have a single case pending for less than a year. At the other end of the spectrum districts like Lakhimpur, Udalgiri, Morigaon, Dibrugarh & Dima Hasao have vast majority of the cases pending for less than a year.

4.3. Systemic Delays in the functioning of the Juvenile Justice System

4.3.1. Introduction

The Act and the Rules as such stipulate that a case before the Board needs to be disposed of within four months from the date of summary enquiry. In the light of this, it would have been ordinarily sufficient to examine the delays that arise from this point. However, it is important to examine the question of delays in the Juvenile Justice System (JJS) in broader context, starting from the point at which the offence was committed. This is because, considering that the purpose of the Act is to make an intervention, in the best interests of the child, bringing a child offender within the JJS at the earliest possible opportunity is essential to achieve the objectives of the Act. Further, the true contact of the child with the JJS begins with apprehension by the police and production before a judicial authority within 24 hours of apprehension is a constitutionally guaranteed fundamental right – the implementation of which also deserves attention here.

For this reason, this study has examined the question of delays right from the juncture at which a child has committed an offence.

4.3.2. Systemic delays in the course of police Action, prior to the case reaching the Board.

Apprehending the JCL at the earliest possible opportunity (unless it is not mandated by the law) after the crime has been considered crucial to achieving the objectives of the Act, because the best interests of the child requires that child brought into the JJS at the earliest. This is to ensure that the rehabilitative mechanisms are triggered at the earliest and that the child is kept away from further deviant behavior. It is however seen that it is not often that the police are able to apprehend the JCL within 24 hours of

Further, since the provisions of the JJ Act and Rules are silent about appropriate periods of time for completion of a process, often there is a vacuum of standards. In such cases, the standards mentioned in the Code of Criminal Procedure are taken as the appropriate time period for completion of these actions.

This section of the report is hence divided into the following broad sub-sections: (1) Events before the child is produced before the court; and (2) Events after the child is produced before the court, which is sub-divided into pre-evidence procedures and procedures during the evidence stage. The first section deals with the causes and consequences of delays in police actions relating to apprehension and production before the board and the second sub-section deals with the systemic delays caused in the course of the proceedings before the Board. The general approach taken is to focus on the patterns that emerge from the analysis of the data at the level of the State of Assam as a whole, however, where it is found appropriate, the situations in the districts are referred to.

the occurrence of the crime (24 hours being the theoretical frame of time that the Code of Criminal Procedure envisages for completion of the investigation and arrests, if any to be made). In general, the date of commission of the offence could be deciphered from the FIR¹⁰. Table 4.1 presents the state wise trends (in percentage) of the delays between the occurrence of the crime and apprehension by the police and table 4.2 presents the district wise data on apprehension.

¹⁰GR 35/11 case in Dhemaji, GR- 3/14, GR-4/14 in Dima Hasao, JC-2/14 in Hailakandi, GR 422/12 in Nagaon and GR 513/15 in Dibrugarh, are for instance, cases where this information was missing.

TABLE 4.1 DELAYS IN APPREHENDING THE JCL – STATE PROFILE

On the same day	%	1 to 3 Days	%	3 to 7 Days	%	More than 7 days	%	NA	%	Not Found	%	Total
148	11	382	29	106	8	314	24	39	3	319	24	1308

It is seen that in the vast majority of cases, the arrest occurs within a period of 1 to 7 days, which is not a huge delay. There are a number of cases where the delay in apprehension has been as high as 2850 days (ref GR No 91/03 in Jorhat district); however, such cases are very few in numbers and it is not indicative of any general trends in this direction. It is thus safe to conclude then that in the vast majority of cases, there are no significant systemic delays involved in the apprehension of the JCL, once it comes to the knowledge of the police that a crime has been committed.

Figure 4.1a, however, reveals that this picture is not a uniform one across all districts. For instance, in Nagaon, it is only in 30% of the cases that the children are apprehended on the same day and in Morigaon, Golaghat, Bongaigaon, Dhemaji, Karbi Anglong not even a single child was apprehended within 24 hours of the commission of the offence. Similarly, in more than half of the cases in Bongaigaon, the JCL was apprehended only after more than 7 days of the commission of the offence.

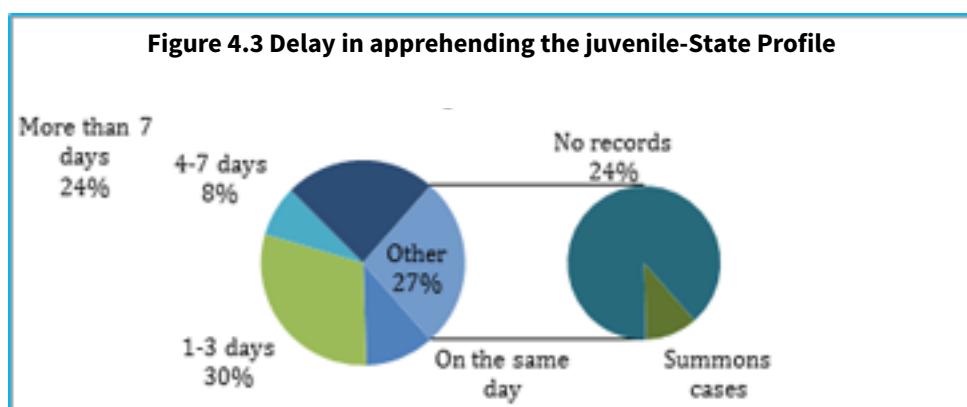
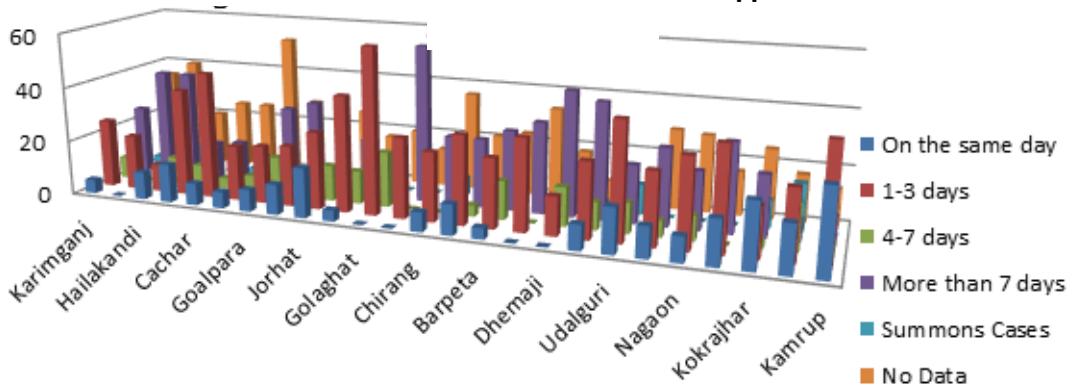


TABLE 4.2 DELAY IN APPREHENDING THE JUVENILE – DISTRICT PROFILE: (N=1308)

District	Status of Pending Cases												
	On Date	%	1 to 3 days	%	3 to 7 days	%	More than 7 days	%	NA	%	Not Found	%	Total
Karimganj	2	5	10	25	3	8	10	25	1	3	14	35	40
Dima Hasao	0	0	1	20	0	0	2	40		0	2	40	5
Hailakandi	1	10	1	10	1	10	4	40	1	10	2	20	10
Dibrugarh	8	14	23	39	5	8	8	14	0	0	15	25	59
Cachar	4	8	22	46	2	4	7	15	1	2	12	25	48

District	Status of Pending Cases												
	On Date	%	1 to 3 days	%	3 to 7 days	%	More than 7 days	%	NA	%	Not Found	%	Total
Goalpara	6	8	17	21	11	14	24	30	0	0	22	28	80
Nalbari	2	11	4	22	2	11	6	33	0	0	4	22	18
Jorhat	7	18	11	28	5	13	6	15	0	0	10	26	39
Tinsukia	2	4	22	42	6	12	11	21	2	4	9	17	52
Golaghat	0	0	3	60	1	20	0	0	0	0	1	20	5
Bongaigaon	0	0	2	29	0	0	4	57	0	0	1	14	7
Chirang	2	7	7	25	0	0	7	25	2	7	10	36	28
Dhubri	8	11	23	32	3	4	18	25	5	7	15	21	72
Barpeta	4	4	26	25	14	14	30	29	5	5	24	23	103
Morigaon	0	0	1	33	0	0	1	33	0	0	1	33	3
Dhemaji	0	0	3	14	3	14	10	45	2	9	4	18	22
Darang	8	9	23	27	9	10	36	42	3	3	7	8	86
Udalguri	3	16	8	42	2	11	4	21	2	11	0	0	19
Sonitpur	12	11	28	26	7	6	30	28	0	0	31	29	108
Nagaon	21	9	73	32	20	8	48	21	0	0	63	28	25
Karbi Anglong	3	16	7	37	0	0	6	32	0	0	3	16	19
Kokrajhar	25	22	20	17	3	3	28	24	10	9	30	26	116
Lakhimpur	2	17	3	25	2	17	1	8	2	17	2	17	12
Kamrup	25	30	34	41	4	5	8	10	0	0	11	13	82
Total	148	11	382	29	106	8	314	24	39	3	319	24	1308

Figure 4.4. District wise profile(in percentage terms) of the time lag between the date of commission of an offence and apprehension



However, it is a matter of concern that there are a significant number of cases (up to 40%) in which, the data regarding the date of apprehension could not be gathered from the case files as documents such as the apprehension memos or the forwarding letter of the Investigation officer were not found at all (or they were not duly filled in with all the required details). This is particularly so in the case of “split cases” (i.e. where the juvenile is a co-accused with other adult persons) where documentation of procedures prior to the case reaching the board is sketchy, or if not, all together not available¹¹. One of the responsibilities of the judicial authority before whom JCL is produced is to verify whether the police have produced the arrested in a reasonable period of time and for this a duly filled in apprehension memo is essential.

In many cases across all districts either the apprehension memo was incomplete or not available. In absence of an apprehension memo, CDs were scrutinized to know the date of apprehension but that too remain incomplete in many cases. Sometimes the date mentioned in the Apprehension Memo was at variance with the date mentioned in the CD as the date of apprehension.

While considering the date of apprehension mentioned in the CD followed by analysis of CR, it is observed that there are cases where the child was not produced before the Board/Court within 24 hours of apprehension. Such a practice has been found in many districts like Nagaon, Sonitpur, Goalpara, Dhubri, etc.

In the absence of the records on date of apprehension, it is difficult to know if the child was produced before the Board/Court within the stipulated time of 24 hours or before whom the child was first produced. Moreover, the copy of the apprehension furnished to the guardian were not available in the case records maintained by JJB except in a few cases for districts like Sonitpur, Nalbari, Kokrajhar, Udaguri. It is thus mandatory that the complete information regarding a case history is made available to the forum that is called on to determine the fate of the alleged JCL produced before it. The data here, once again points towards the need to improve the records management and transmission practices, so as to ensure that all documentation that relates to the history of a case is available before the Board, for their consideration.

4.3.2.2. Production of an apprehended JCL before a Judicial Body.

Another important phase during the process that Indian Police is historically known to abuse its powers is the phase between apprehension and production before a judicial authority. Production before a judicial authority within 24 hours of apprehension is constitutionally protected fundamental right (and further guaranteed under the Code of Criminal Procedure). The spirit of the JJ Act also makes it clear that an apprehended JCL needs to be produced before the Board at the

earliest possible opportunity. Whether this mandate has been observed is something that the forum of first production must necessarily examine. The primary document that the forum can refer to for this determination is the apprehension memo, which the police is expected to produce before the forum of first production¹². Thus, the first issue that is examined is regarding the filing of apprehension memos.

¹¹For instance in the district of Kamrup, GR 1557/08 in the case of Rahul Amin, GR 7097/09 case of Ajit Narzary and GR 729/07 in the case of Debesh Das, there were no Apprehension Memo, even the date of apprehension was not mentioned in the CD

¹²D.K.Basu Vs State of West Bengal (AIR 1997 SC 610)

4.3.2.2.1. Filing of Apprehension Memos

4.3.2.2.1. Filing of Apprehension Memo by the Police – State Profile

TABLE: 4.3 FILING OF APPREHENSION MEMO BY THE POLICE – STATE PROFILE

Yes	%	No	%	Not Found	%
802	61	233	81	273	21

It is commendable to note that apprehension memos are seen as filed (either the memo itself could be found in the record or documents that speak of the memo could be traced) in more than 60% of the cases (See Figure 4.3). They are not seen filed only in 18% cases and in 21% of the cases there was no documentation of any sort regarding this. Overall, it appears that the police are ensuring that apprehension memos are duly filled and filed before the Courts. While this appears to be the common practice in almost all the districts (Table 4.4), it can be seen that Golaghat district significantly lags behind in ensuring that apprehension memos are filed – it was seen that the record was missing

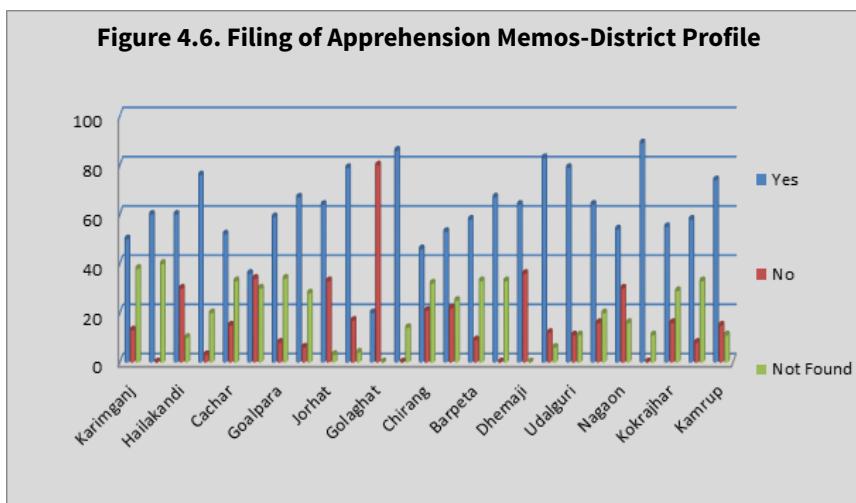
or not mentioned in more than 80% of the cases. In general, however, the trends across all districts on this issue are more or less the same that the police are filing apprehension memos in most of the cases. However, it needs to be noted that the apprehension memos that are often filed are not dully filled up. As pointed out previously, there is more than one case where the facts stated in the apprehension memo do not match with those mentioned in the case diary or other records, such as the FIR. This may points towards a conclusion that it is altogether not uncommon for the memos to be doctored to suit the exigencies of the situation.

Figure 4.5. Filling of Apprehension Memos-State Profile



TABLE 4.4.FILING OF APPREHENSION MEMOS -DISTRICT PROFILE: (N=1308)

District	Filing of Apprehension Memos -District Profile						
	Yes	%	No	%	Not Found	%	Total
Karimganj	20	50	5	13	15	38	40
Dima Hasao	3	60	0	0	2	40	5
Hailakandi	6	60	3	30	1	10	10
Dibrugarh	45	76	2	3	12	20	59
Cachar	25	52	7	15	16	33	48
Sivsagar	18	36	17	34	15	30	50
Goalpara	47	59	6	8	27	34	80
Nalbari	12	67	1	6	5	28	18
Jorhat	25	64	13	33	1	3	39
Tinsukia	41	79	9	17	2	4	52
Golaghat	1	20	4	80	0	0	5
Bongaigaon	6	86	0	0	1	14	7
Chirang	13	46	6	21	9	32	28
Dhubri	38	53	16	22	18	25	72
Barpeta	60	58	9	9	34	33	103
Morigaon	2	67	0	0	1	33	3
Dhemaji	14	64	8	36	0	0	22
Darang	71	83	10	12	5	6	86
Udalguri	15	79	2	11	2	11	19
Sonitpur	69	64	17	16	22	20	108
Nagaon	122	54	67	30	36	16	225
Karbi Anglong	17	89	0	0	2	11	19
Kokrajhar	64	55	18	16	34	29	116
Lakhimpur	7	58	1	8	4	33	12
Kamrup	61	74	12	15	9	11	82
Total	802	61	233	18	273	21	1308



4.3.2.2.2. Delays in Production before a Judicial Authority

An examination of the data however reveals that production before the magistrate within 24 hours of apprehension (as mandated by

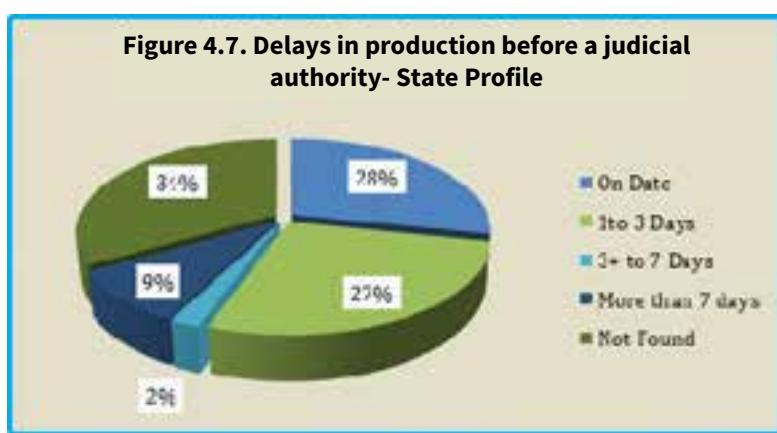
the law) is practiced only in less than 30% of the cases (Ref. Table 4.5).

TABLE 4.5 DELAYS IN PRODUCTION BEFORE A JUDICIAL AUTHORITY – STATE PROFILE

On the same day	%	1 to 3 Days	%	3 to 7 Days	%	More than 7 days	%	Not Found	%	Total
369	28	359	27	30	2	119	9	431	33	1308

While it appears that, overall, productions are taking place within three days of apprehension in more than 60% of the cases¹³, it is more important to note that data regarding this has not been found in close to 33% of the files. This meant that, despite the best efforts of the data enumerators, not a single document that spoke about when the JCL was produced before a competent authority was found in the records. This further means that the Board, which is also to ensure that the rights of the child are protected in the police process, is unable to ensure that the police produce the children within a reasonable time of

apprehension. Reasonable time means the time that the police takes for questioning/investigations and the time required for travel, if the time required to travel from the place of apprehension is more than 24 hours of travel away from the nearest magistrate. Interviews with the JCLs have revealed that they have often been kept in police custody, in the station lock-ups for more than 24 hours. It is thus reasonable to infer that the police have been keeping the apprehended JCLs in custody, often in the police station, in violation of the law, in a significant number of instances.



¹³Except for the Districts of Dhemaji and Chirang, where productions, in bulk of the cases, occur only beyond seven days after apprehension (see table 4.4)

Sonitpur District, GR No. 901/13

The JCL was initially was produced before the SDJM and remanded in jail for 14days. Later, he was declared Juvenile, based on a petition filed by his father on 10/1/14 and the case was transferred to the JJB. It then took another seven days before he was produced before the Board, and all this while he continued being in judicial custody. From the order sheets, it appears that the court has not applied its mind over this issue. This incident points towards the need for further sensitization of both the judges and the police about the spirit of the JJ Act.

4.3.2.2.1. Lack of adequate data owing to poor management of records

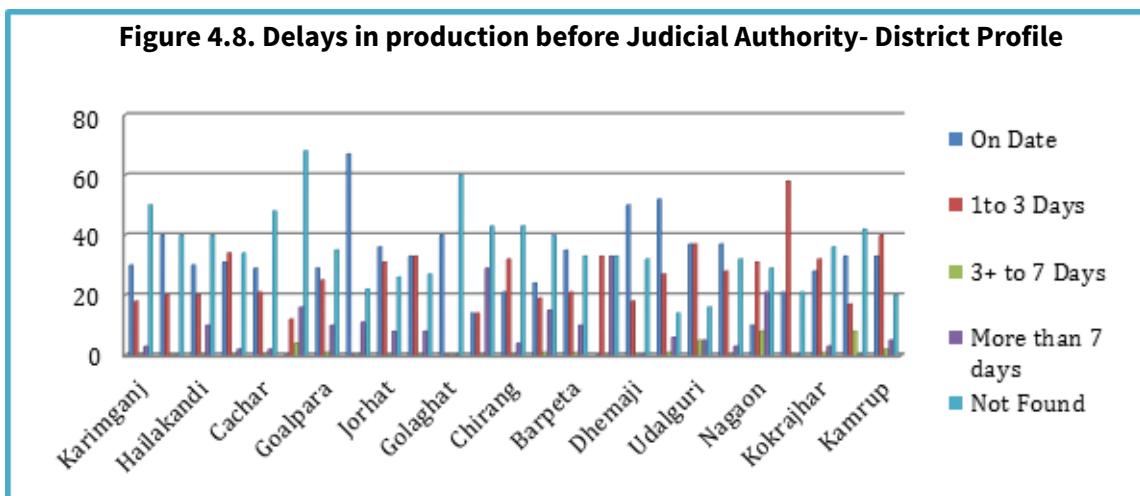
The case of lack of adequate data is particularly worrying in the case of Karimganj, Sivsagar and Golaghat where the information regarding the date of first production cannot

be deciphered from 50, 60 and 68 percent of the files – indicating the poor state of records management in those districts (see table 4.6).

TABLE 4.6 DELAYS IN PRODUCTION BEFORE A JUDICIAL AUTHORITY- DISTRICT PROFILE: (N=1308)

District	Delays in Production Before a Judicial Authority – District Profile										
	On Date	%	1 to 3 days	%	3 to 7 days	%	More than 7 days	%	Not Found	%	Total
Karimganj	12	30	7	18	0	0	1	3	20	50	40
Dima Hasao	2	40	1	20	0	0	0	0	2	40	5
Hailakandi	3	30	2	20	0	0	1	10	4	40	10
Dibrugarh	18	31	20	34	0	0	1	2	20	34	59
Cachar	14	29	10	21	0	0	1	2	23	48	48
Sivsagar	0	0	6	12	2	4	8	16	34	68	50
Goalpara	23	29	20	25	1	1	8	10	28	35	80
Nalbari	12	67	0	0	0	0	2	11	4	22	18
Jorhat	14	36	12	31	0	0	3	8	10	26	39
Tinsukia	17	33	17	33	0	0	4	8	14	27	52
Golaghat	2	40	0	0	0	0	0	0	3	60	5
Bongaigaon	1	14	1	14	0	0	2	29	3	43	7
Chirang	6	21	9	32	0	0	1	4	12	43	28
Dhubri	17	24	14	19	1	1	11	15	29	40	72
Barpeta	36	35	22	21	1	1	10	10	34	33	103
Morigaon	0	0	1	33	0	0	1	33	1	33	3
Dhemaji	11	50	4	18	0	0	0	0	7	32	22

District	Delays in Production Before a Judicial Authority – District Profile										
	On Date	%	1 to 3 days	%	3 to 7 days	%	More than 7 days	%	Not Found	%	Total
Darang	45	52	23	27	1	1	5	6	12	14	86
Udalguri	7	37	7	37	1	5	1	5	3	16	19
Sonitpur	40	37	30	28	0	0	3	3	35	32	108
Nagaon	22	10	70	31	19	8	48	21	66	29	225
Karbi Anglong	4	21	11	58	0	0	0	0	4	21	19
Kokrajhar	32	28	37	32	1	1	4	3	42	36	116
Lakhimpur	4	33	2	17	1	8	0	0	5	42	12
Kamrup	27	33	33	40	2	2	4	5	16	20	82
Total	369	28	359	27	30	2	119	9	431	33	1308



It is encouraging to note that in Nalbari district, for close to 70% of the cases covered, it was seen that productions have been happening on the same day of apprehension,

with Dhemaji and Darang being two other districts where this is so for more than 50% of the cases.

4.3.2.2.3. Lack of direct production of the JCL before the Board.

One of the key reasons for overall delays in the system is that police are not directly producing the JCLs before the board. Interviews with the magistrates have revealed that it is common for the police to record the age of the juvenile as between 18/19 and forward the child to the regular court, even when it is clear from appearance or other sources that the accused

person is a juvenile. The picture emerging from the documents is also a very similar one: Out of the 1308 cases covered, it is only in 968 cases that the forwarding letter from the IO mentioned the age of the produced person, out of which in 571 cases, it was mentioned as above 18 years [See table 4.7 and figure 4.7]

TABLE 4.7 JUVENILITY AS STATED IN THE FORWARDING LETTER OF THE IO – STATE PROFILE

Below 18 years	%	Above 18 years	%	Not Found	%	Total	%
389	30	571	44	348	27	1308	100

District Jorhat- CR 59/11

This is a case where the full trial was completed and just before judgment, the magistrate, on perusal of the records noticed that at the time of recording of the 313 statement, the accused was 20 years of age and thus, at the time of commission of the offence he was a juvenile. The case was then immediately transferred to the board. This incident demonstrates that even the community needs sensitization about JJ Act and its separate procedures –so that the beneficiaries of the Act too will make a claim at the appropriate time

Figure 4.9. Juvenility according to the forwarding letter of the I.O, at the time of production-State Profile

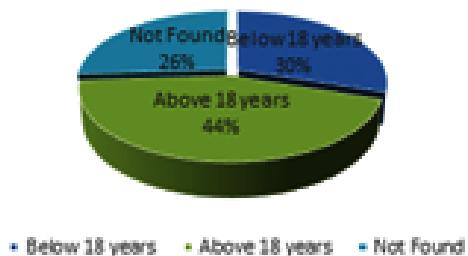
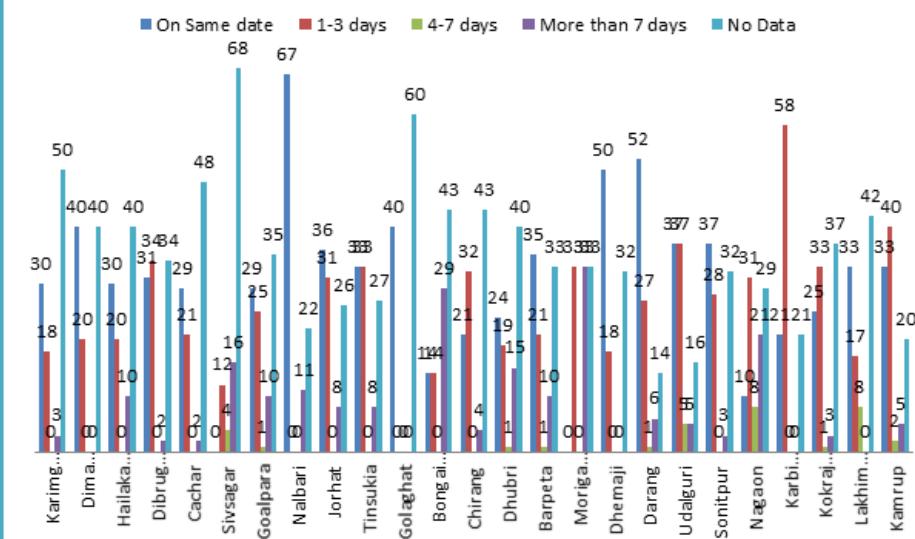


TABLE 4.8 JUVENILITY AS PER I.O.S FORWARDING LETTER – DISTRICT PROFILE: (N=1308)

District	Juvenility as per I.O.s forwarding letter – State Profile							
	Below 18 years	%	Above 18 years	%	Not Found	%	Total	%
Karimganj	3	18	17	43	20	50	40	100
Dima Hasao	3	60	2	40	0	0	5	100
Hailakandi	1	10	5	50	4	40	10	100
Dibrugarh	8	14	30	51	21	35	59	100
Cachar	8	17	24	50	16	33	48	100

District	Juvenility as per I.O.s forwarding letter – State Profile							
	Below 18 years	%	Above 18 years	%	Not Found	%	Total	%
Sivsagar	23	46	8	16	19	38	50	100
Goalpara	13	16	38	48	29	36	80	100
Nalbari	1	6	4	22	13	72	18	100
Jorhat	22	56	13	33	4	10	39	100
Tinsukia	28	54	20	38	4	8	52	100
Golaghat	1	20	2	40	2	40	5	100
Bongaigaon	3	43	3	43	1	14	7	100
Chirang	6	21	7	25	15	54	28	100
Dhubri	30	42	23	32	19	26	72	100
Barpeta	13	13	63	61	27	26	103	100
Morigaon	0	0	3	100	0	0	3	100
Dhemaji	5	23	3	14	14	64	22	100
Darang	12	14	61	71	13	15	86	100
Udalguri	4	21	11	58	4	21	19	100
Sonitpur	45	42	47	44	16	15	108	100
Nagaon	64	28	94	42	67	30	225	100
Karbi Anglong	9	47	5	26	5	26	19	100
Kokrajhar	47	41	62	53	7	6	116	100
Lakhimpur	8	67	3	25	1	8	12	100
Kamrup	32	39	23	28	27	33	82	100
Total	389	30	571	44	348	27	1308	100

Figure 4.10. Time taken for production of juveniles before a competent Judicial Authority from the time of arrest (in percentage)- District Profile



This means that, it is only in about 40% of cases (for which there are records) that the system recognizes a juvenile as one, right at the time of his apprehension [See figure 4.7 and table 4.7].

The order sheets of the Board also failed to mention the age of the produced juvenile (which points towards a record indicating the judicial application of mind on this issue). There were instances when the case records

did not reveal as to how the forum determined the produced person as a JCL, except for the forwarding letter of the I.O. This refusal/inability to recognize the status of juvenility then translates into his production before an authority other than the board (see table 4.9). In the vast number of cases, the child is produced before a regular trial magistrate and it is only in about 17% of the cases that a direct production before the board is achieved.

4.3.2.2.3.1 The Forum before which the JCL is first produced

TABLE 4.9 : FORUM BEFORE WHICH THE APPREHENDED JCL WAS FIRST PRODUCED – STATE PROFILE

Below 18 years	%	Above 18 years	%	Not Found	%	Total	%
389	30	571	44	348	27	1308	100

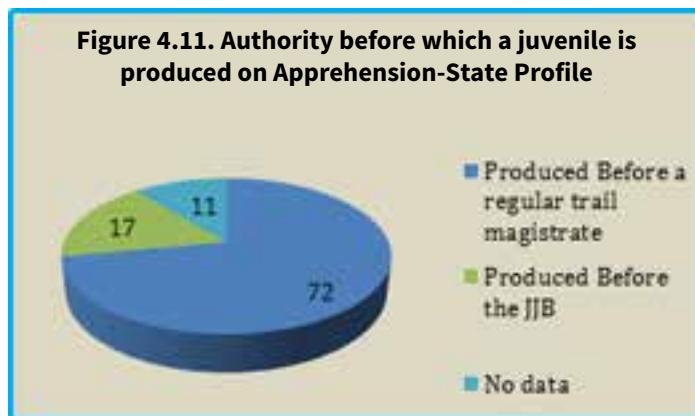


TABLE 4.10. FORUM BEFORE WHICH THE APPREHENDED JCL WAS FIRST PRODUCED – DISTRICT PROFILE: (N=1308)

District	Forum Before which the apprehended JCL was first produced – District Profile								
	Any Magistrate		%	JJB	%	Not Found	%	Total	%
Karimganj	37	93		3	8	0	0	40	100
Dima Hasao	3	60		2	40	0	0	5	100
Hailakandi	10	100		0	0	0	0	10	100
Dibrugarh	56	95		3	5	0	0	59	100

District	Forum Before which the apprehended JCL was first produced – District Profile							
	Any Magistrate	%	JJB	%	Not Found	%	Total	%
Cachar	40	83	6	13	2	4	48	100
Sivasagar	41	82	8	16	1	2	5	100
Goalpara	57	71	22	28	1	1	80	100
Nalbari	12	67	5	28	1	6	18	100
Jorhat	29	74	10	26	0	0	39	100
Tinsukia	40	77	9	17	3	6	52	100
Golaghat	3	60	2	40	0	0	5	100
Bongaigaon	5	71	2	29	0	0	7	100
Chirang	26	93	2	7	0	0	28	100
Dhubri	69	96	2	3	1	1	72	100
Barpeta	85	83	18	17	0	0	103	100
Morigaon	3	100	0	0	0	0	3	100
Dhemaji	19	86	3	14	0	0	22	100
Darang	69	80	16	19	1	1	86	100
Udalguri	18	95	1	5	0	0	19	100
Sonitpur	90	83	16	15	2	2	108	100
Nagaon	191	85	34	15	0	0	225	100
Karbi Anglong	16	84	1	5	2	11	19	100
Kokrajhar	73	63	29	25	14	12	116	100
Lakhimpur	11	92	1	8	0	0	12	100
Kamrup	54	66	27	33	1	1	82	100
Total	1057	81	222	17	29	2	1308	100

A closer look at the district wise practices (see table 4.10) reveals that the trend is along these lines in almost all the districts, except at Golaghat, where it appears that the productions before the Board are higher in number. However, it needs to be remembered that this is a picture revealed out of studying merely five cases (out of which there was no data available for two cases), and hence making a sound assertion about its generalization is indeed difficult. The situation appears to be particularly worrying in districts like Hailakandi, Karimganj and Tinsukia (where there isn't even a single direct

production before the Board) and Dibrugarh, Chirang, Dhubri, Dehaji, Ugalgiri and Nagaon where it is seen that in more than 80% of the cases, the JCL on apprehension is produced before a regular trial magistrate.

There are a few districts like Sonitpur, Karimganj where the police have produced a JCL before the regular magistrate, even as the forwarding letter of the IO clearly mentions the age of the apprehended persons to be below 18! It appears that there was a practice of producing the apprehended person before a trial magistrate – seeking his

orders to transfer the child to the Board. This point out the lack of sufficient knowledge and clarity on the part of the Police regarding the appropriate procedure to be adopted.

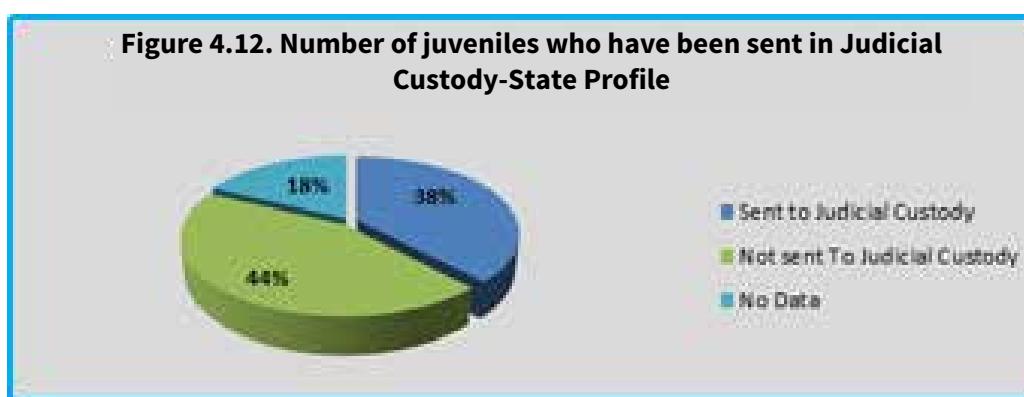
The forum before which the JCL is first produced has a distinctive bearing on the pace at which the case proceeds further. This is because, once a JCL is produced before a forum other than the Board, there are significant lengths of time spent before the child and the records pertaining to his case reach the board—an aspect covered in more detail in the next section of this report. In Districts like Karimganj, Dhubri, Tinsukia, none of the JCL are directly produced before the JJB. The case records are transferred only after age determination and submission of Final Report by the IO from the Ld. CJM/ SDJM/JMFC court. Sometimes, for bail, the case is transferred on papers, but actually

the Case Records reaches JJB only after the Final Report is submitted. The situation in Lakhimpur, Dhemaji, Kokrajhar, Sonitpur, Darrang, Cachar districts is better than others as the IOs follows the practice of producing the JCLs directly before the Principal Magistrate.

It is also quite interesting to note a close relationship between the forum where the JCL is first produced and the chances that he will be remanded into judicial custody, to be sent to the regular jail meant for adult criminals. Figure 4.10 clearly demonstrates that when produced before the regular courts meant for adults, the chances are mostly that the child will end up with the regular criminals. In fact, data, currently, indicates that close to 40% of all apprehended JCLs have been remanded in judicial custody and has hence ended up in the sub-jail along with regular criminals.

TABLE 4.11 : NUMBER OF JUVENILES WHO HAVE BEEN SENT IN JUDICIAL CUSTODY – STATE PROFILE

Sent to judicial custody	%	Not sent To Judicial Custody	%	No data	%
494	38	577	44	237	18



This event is of some notable consequences: Apart from violating the objective of the Act, which is to prevent the JCLs being in contact with the regular criminals, it has been observed that those JCLs who came in contact with the regular criminal system and were housed in jails are more reluctant

to turn up for trials, post his release on bail. It is reasonable to make an inference here that the fears of being housed in jails once again prompts the children to try and avoid any further contact with the justice system, by way of avoiding the process altogether.

TABLE 4.12 SENT TO JUDICIAL CUSTODY – DISTRICT PROFILE: (N=1308)

District	Sent to Judicial custody – District Profile							
	Yes	%	No	%	Not Found	%	Total	%
Karimganj	12	30	6	15	22	55	40	100
Dima Hasao	2	40	3	60	0	0	5	100
Hailakandi	6	60	1	10	3	30	010	100
Dibrugarh	30	51	29	49	0	0	59	100
Cachar	21	44	9	19	18	38	48	100
Sivsagar	8	16	21	42	21	42	50	100
Goalpara	34	43	41	51	5	6	80	100
Nalbari	4	22	8	44	6	33	18	100
Jorhat	18	46	15	38	6	15	39	100
Tinsukia	20	38	28	54	4	8	52	100
Golaghat	0	0	3	60	2	40	5	100
Bongaigaon	2	29	3	43	2	29	7	100
Chirang	13	46	11	39	4	14	28	100
Dhubri	25	35	30	42	17	24	72	100
Barpeta	41	40	47	46	15	15	103	100
Morigaon	3	100	0	0	0	0	3	100
Dhemaji	9	41	13	59	0	0	22	100
Darang	24	28	39	45	23	27	86	100
Udalguri	11	58	8	42	0	0	19	100
Sonitpur	45	42	45	42	18	17	108	100
Nagaon	77	134	121	54	27	12	225	100
Karbi Anglong	11	58	5	26	3	16	19	100
Kokrajhar	51	44	53	46	12	10	116	100
Lakhimpur	4	33	7	58	1	8	12	100
Kamrup	23	28	31	38	28	34	82	100
Total	494	38	577	44	237	18	1308	100

Figure 4.13. Authority before whom a juvenile first produced on Apprehension: District wise

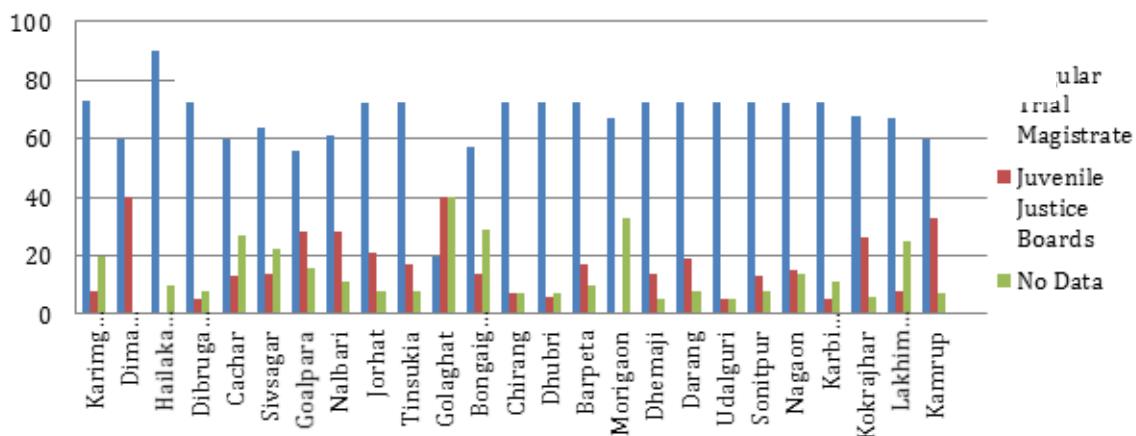
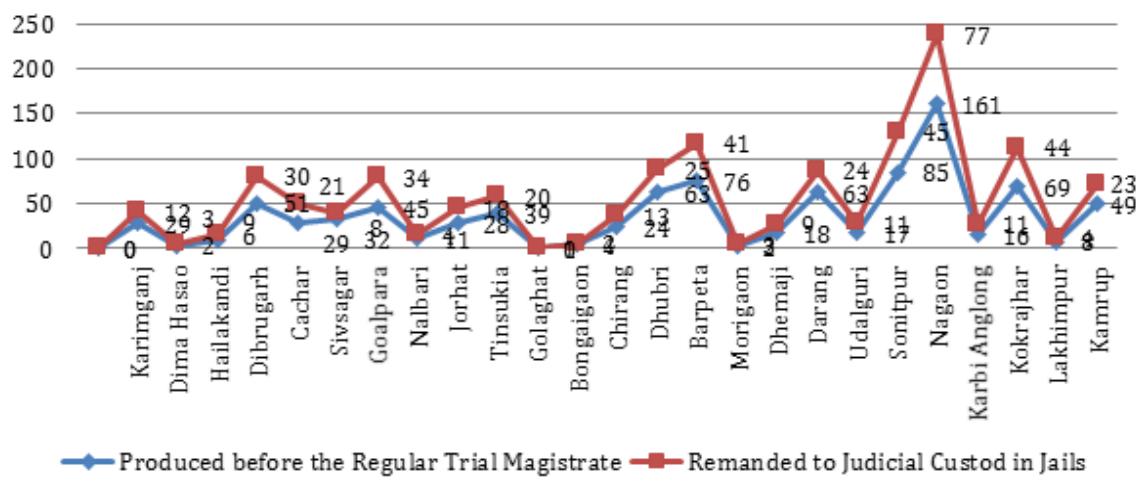


Figure 4.14. Relation between production before a regular court and remand to a jail



4.4. Delays in procedures after production before a Judicial Authority.

As noted earlier, in the vast majority of the cases the JCLs are first produced before the general courts of law, before the Magistrate who has jurisdiction over the place of occurrence of the crime. This then means that, until the magistrate before whom the child is produced finds (or has sufficient reasons to believe that he may be a juvenile) the case continues to languish before the regular courts. The general pattern of events that follows in such cases is represented in Figure 4.11.

There are thus multiple stages through which the records of the case need to pass through, before it eventually reaches the board. There is a marked difference that one can observe regarding the pace at which cases where the first production was made directly before a board in contrast to those where it was before a regular court, with the latter ones being more slowly paced. Precisely in those cases where the final report omits to mention that the accused person is a juvenile, transmission of records have taken up to a year's time.

The situation is even worse in those cases where the JCL is a co-accused with other adult accused persons which is about 45% of the cases (see Table 4.13)

TABLE 4.13. CASES WHETHER JCL IS A CO-ACCUSED WITH OTHER ADULT ACCUSED PERSONS

Cases where is a co-accused with other adult accused person	%	Cases where all accused persons are below 18 years of age	%
587	45	721	55

In such cases, which is locally known as “split cases”, most of the records do not reach the court on time and there are hardly any cases where all the relevant records can be found in the case files. It is quite common to observe that proceedings in such cases are stalled, since the certified copies of the documents do not reach the Board in a reasonable length of time. This is particularly true of the final reports – only one formal copy is filed before the regular courts and the Boards have to wait for considerable lengths of time before a certified copy is made available. In such cases, the board has no option, but to wait till the certified copies are filed before it. Since it is seen that in more than 45% of the cases surveyed, the JCL is a co-accused with

other adult accused persons, a considerable number of cases are put through this lengthy process, which thus significantly contributes to the overall number of pending cases in the system.

It appears to be a common practice in most districts that the offence reports are not directly filed before the board, even where the first productions were before the board. In Dhubri and Karimganj, there wasn't a single case where the final reports were directly sent to the Board. Invariably these are filed before a regular court which takes some time to identify that the matter has already been referred to the Board – and order transmission of records to the appropriate forum.



FIGURE 4.13 : GENERAL PATTERN OF EVENTS BEFORE THE JUDICIAL AUTHORITIES

JCL is produced before a regular Court

- If the claim of Juvenility is not immediately raised/ if the magistrate does not determine, from appearance that the procued person is a juvenile, an order of remand is passed.
- There are several postings before the magistrate where the remand order is extended, unless he determines that it is appropriate to Grant Bail.
- In the course of proceedings before the magistrate, the accused is declared as a juvenile, usually on application by the defence.
- In a small number of cases, from appearance of the JCL, the magistrate determines that the accused is a juvenile and orders a transfer of case to the board for further enquiry

Proceedings Before the JJB

- The Board, on consideration of evidence, decilares the accused to be a juvenile (if the magistrate has not already declared him to be so).
- the general practice observed is that bail is immediently granted, except in a few cases where it is not possible to do so.
- The case does not proceed any further, as the final report from the police is awaited.

Transmition of Final Report

- As and when the charge sheet is prepared, it is forwarded by the IO to the PI Court.
- The PI Court, after verifications, almost invariably file the final report beofre a regular court. It is only in a miniscule number of cases that the final reports are directly filed before the board.
- It is rarely that the court before which the final report is filed is able to identify that the case has already been referred to the Board. Till the time the system does not take note of this event, the charge sheet remains on the files of the court before which it was presented.
- In a few cases cases, the final report itself clearly states that the accused person is a juvenile - in such cases the transmition happens soon.
- In many of the cases,the final report omits to state that the accused is a juvenile (particularly so in “split cases. The magistrate usually issue process and trasnmitioin occurs only after the defence, on appearance, points out that the matter has already been transferred to the board.

The Records eventually reach the board

It is curious to observe that there are several cases where the final report omits to mention that the accused person is a JCL and the magistrate, proceeds to initiate coercive process against them too. There have been several instances noted where non-bailable warrants of arrest have been issued against JCLs, simply because the magistrates are not informed that the accused is a Juvenile. In most of such cases, the defense enters

appearance and points out that the accused has already been declared a juvenile (and that he is on bail) and then the court passes order that the records are to be transmitted to the board. Apart from the delay that these anomalies cause, the courts are being forced to be a party to an avoidable act of non-bailable warrants of arrest being issued against a Juvenile.

4.4.1 Time taken for grant of Bail to the JCL

Because of the aforementioned anomalies in procedure, it takes significant lengths of time before a JCL is finally enlarged on bail. The Act and the Rules prescribe a clear mandate that the JCL is not to be denied bail irrespective of the nature of offence, except for the limited set of grounds enumerated under the Act and that where a guardian is available, he must be released on bail, as soon as he comes in contact with the judicial system. This mandate makes no distinction based on the nature

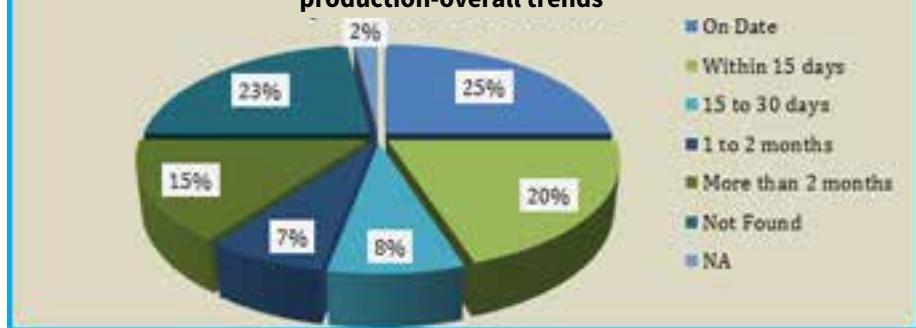
of the offence that child is alleged to have committed an offence.

However, this mandate of the law is being followed only in about 25% of the cases. Table 4.14 and Figure 4.14 presents the overall trends with respect to the time taken for granting of bail. It is seen that generally granting of bail takes anywhere between 15 days to over two months before the apprehended is enlarged on bail

TABLE 4.14: TIME TAKEN FOR GRANT OF BAIL, FROM THE DATE OF PRODUCTION – STATE PROFILE

On Date	%	Within 15 days	%	15 to 30 days	%	1 to 2 months	%	More than 2 months	%	Not Found	%	NA	%	Total
323	25	265	20	111	8	93	7	191	15	301	23	24	2	1308

Figure 4.15. Time taken for grant of bail, from the date of production-overall trends



While the trends across most of the districts closely resemble the state averages (See Figure 4.15), it is notable that at Dima Hasao, in more than 60% of the cases, the JCLs have been released on bail on the same day as that of production – however, the data regarding the remaining set of cases could not be found in the case records! Similarly, Karimganj district is notable, along with Cachar, Shivasagar and Lakhimpur for the relatively

large number of cases in which records could not be traced. Figure 4.15 shows us that there exists no particular relationship between where the child is first produced and the time taken to grant bail. It does appear that once the claim of juvenility appears to be a palpable one, the courts are enlarging them on bail, without any further delays – except in a very few cases where a grant of bail defeats the best interests of the child.

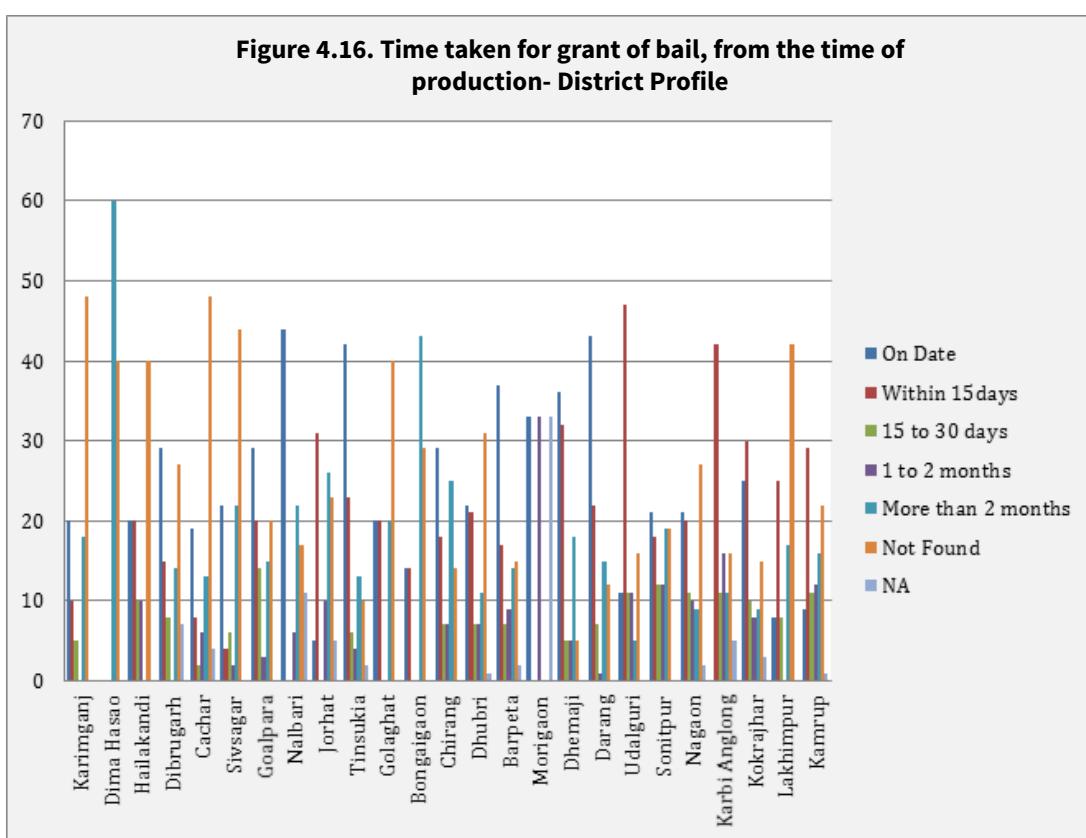
Karbi Anglong, GR 421/13

There are few cases where considerations other than those mentioned in the JJ Act would be involved in decisions regarding the pace at which the case proceeds. The accused-JCL in this case was picked up by the police in connection with what should have been a small incident following a strife between two people. Unfortunately the events that followed the incident took the dimensions of an ethnic strife and the JCL is now one of the persons who is at the centre of the strife between two groups. The proceedings of the case are closely watched by the warring communities and further incidents are feared to occur, once the trial is complete. The case has been pending for so many years now and the JCL is unable to move outside the district for higher studies. It is learned that the JCL was good at studies and academics; however, his education has now come to a halt. Despite the fact that the child was good in academics, he performed poor in examinations as he had to face threats and intimidation from police whenever any incident of crime was reported in the area

TABLE 4.15:TIME LAG BETWEEN PRODUCTION AND BAIL – DISTRICT PROFILE

District	Table 4.15:Time lag between Production and Bail – District Profile														
	On Date	%	Within 15 days	%	15 to 30 days	%	1 to 2 months	%	More than 2 months	%	NF	%	NA	%	Total
Karimganj	8	20	4	10	2	5	0	0	7	18	19	48	0	0	40
Dima Hasao	0	0	0	0	0	0	0	0	3	60	2	40	0	0	5
Hailakandi	2	20	2	20	1	10	1	10	0	0	4	40	0	0	10
Dibrugarh	17	29	9	15	5	8	0	0	8	14	16	27	4	7	59
Cachar	9	19	4	8	1	2	3	6	6	13	23	48	2	4	48
Sivsagar	11	22	2	4	3	6	1	2	11	22	22	44	0	0	50
Goalpara	23	29	16	20	11	14	2	3	12	15	16	20	0	0	80
Nalbari	8	44	0	0	0	0	1	6	4	22	3	17	2	11	18

District	Table 4.15: Time lag between Production and Bail – District Profile														
	On Date	%	Within 15 days	%	15 to 30 days	%	1 to 2 months	%	More than 2 months	%	NF	%	NA	%	Total
Jorhat	2	5	12	31	0	0	4	10	10	26	9	23	2	5	39
Tinsukia	22	42	12	23	3	6	2	4	7	13	5	10	1	2	52
Golaghat	1	20	1	20	0	0	0	0	1	20	2	40	0	0	5
Bongaigaon	1	14	1	14	0	0	0	0	3	43	2	29	0	0	7
Chirang	8	29	5	18	2	7	2	7	7	25	4	14	0	0	28
Dhubri	16	22	15	21	5	7	5	7	8	11	22	31	1	1	72
Barpeta	38	37	18	17	7	7	9	9	14	14	15	15	2	2	103
Morigaon	1	33	0	0	0	0	1	33	0	0	0	0	1	33	3
Dhemaji	8	36	7	32	1	5	1	5	4	18	1	5	0	0	22
Darang	37	43	19	22	6	7	1	1	13	15	10	12	0	0	36
Udalguri	2	11	9	47	2	11	2	11	1	5	3	16	0	0	19
Sonitpur	23	21	19	18	13	12	13	12	20	19	20	19	0	0	108
Nagaon	48	21	45	20	25	11	22	10	21	9	60	27	4	2	225
Karbi Anglong	0	0	8	42	2	11	3	16	2	11	3	16	1	5	19
Kokrajhar	30	25	30	30	12	10	10	8	14	9	17	15	3	3	116
Lakhimpur	1	8	3	25	1	8	0	0	2	17	5	42	2	2	12
Kamrup	7	9	24	29	9	11	10	12	13	16	18	22	1	1	82
Total	323	559	265	486	111	158	93	172	191	435	301	620	24	76	1308



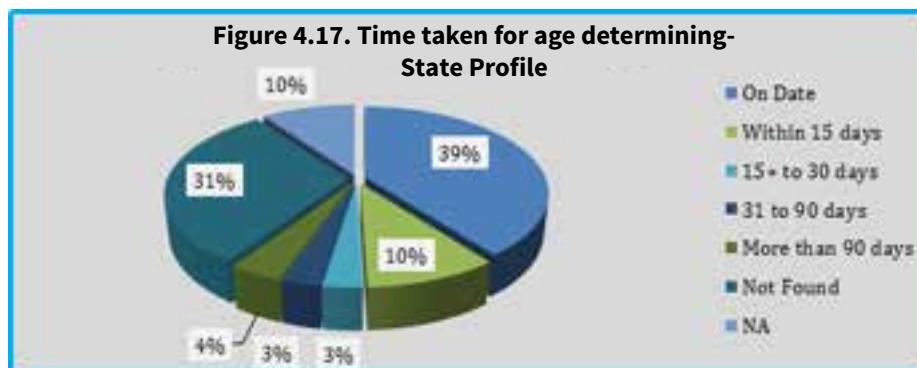
4.4.2. Time taken for determining the age of the JCL.

The most significant departure from the rule is with regard to the time taken for determination of age. The law demands that once a claim of juvenility is raised, it needs to be decided within 30 days of the demand. However, state wise trends indicate that this is achieved only

in about 53% of the cases (See Table 4.16). Once again, here, the data regarding 31% of the cases could not be gathered from the files, especially in 'split cases' the full records are not available before the board

TABLE 4.16. TIME TAKEN FOR DETERMINING AGE – STATE PROFILE

On Date	%	Within 15 days	%	15+ to 30 days	%	31 to 90 days	%	More than 90 days	%	Not Found	%	NA	%	Total
521	40	137	10	37	3	36	3	46	4	403	31	128	10	1308



It is, however, encouraging noting that, overall in about 40% of the cases, the petition is decided on the same day and it is in mere 13% of the cases that it takes between 1 and 30 days. What emerges from the data is

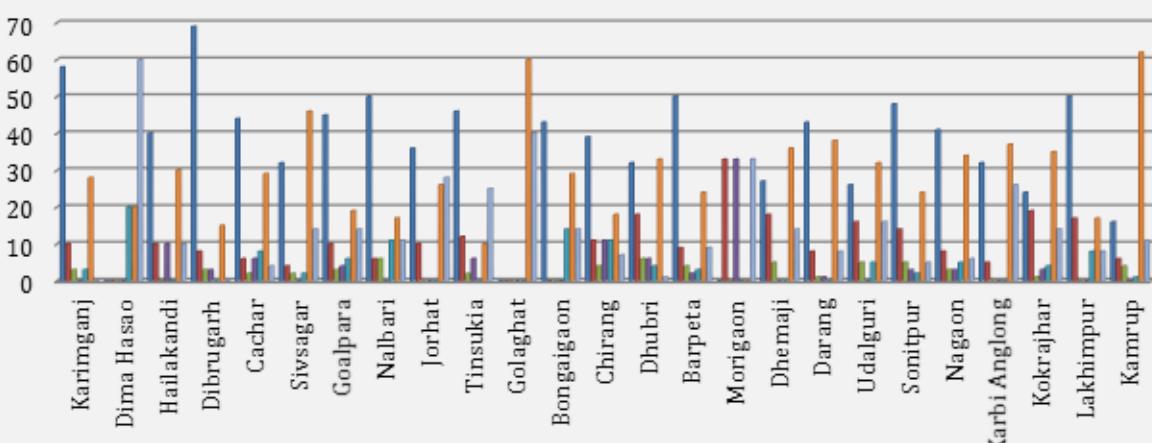
that the time taken to decide the petition for determining the age is influenced mostly by the nature of evidence that is sought to be adduced in support of the claim

TABLE 4.17. TIME LAG BETWEEN PETITION FOR AGE DETERMINATION AND DECLARATION OF JUVENILITY- DISTRICT PROFILE: (N=1308)

District	Time lag between Petition for age determination and Declaration of juvenility – District Profile														
	On Date	%	Within 15 days	%	15+ to 30 days	%	31 to 90 days	%	More than 90 days	%	Not Found	%	NA	%	Total
Karimganj	23	58	4	10	1	3	0	0	1	3	11	28	0	0	40
Dima Hasao	0	0	0	0	0	0	0	0	1	20	1	20	3	60	5
Hailakandi	4	40	1	10	0	0	1	10	0	0	3	30	1	10	10

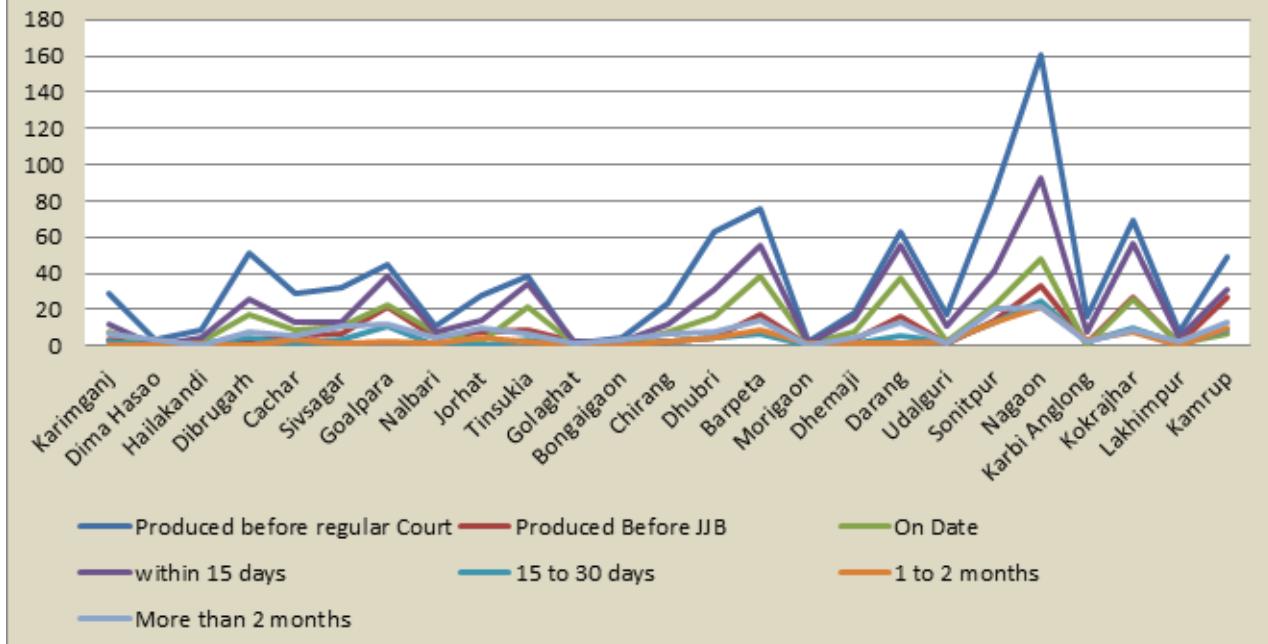
District	Time lag between Petition for age determination and Declaration of juvenility – District Profile														
	On Date	%	Within 15 days	%	15+ to 30 days	%	31 to 90 days	%	More than 90 days	%	Not Found	%	NA	%	Total
Dibrugarh	41	69	5	8	2	3	2	3	0	0	9	15	0	0	59
Cachar	21	44	3	6	1	2	3	6	4	8	14	29	2	4	48
Sivsagar	16	32	2	4	1	2	0	0	1	2	23	46	7	14	50
Goalpara	36	45	8	10	2	3	3	4	5	6	15	19	11	14	80
Nalbari	9	50	1	6	1	6	0	0	2	11	3	17	2	11	18
Jorhat	14	36	4	10	0	0	0	0	0	0	0	26	11	28	39
Tinsukia	24	46	6	12	1	2	3	6	0	0	5	10	13	25	52
Golaghat	0	0	0	0	0	0	0	0	0	0	3	60	2	40	5
Bongaigaon	3	43	0	0	0	0	0	0	1	14	2	29	1	14	7
Chirang	11	39	3	11	1	4	3	11	3	11	5	11	2	7	28
Dhubri	23	32	13	18	4	6	4	6	3	4	24	33	1	1	72
Barpeta	51	50	9	9	4	4	2	2	3	3	25	24	9	9	103
Morigaon	0	0	1	33	0	0	1	33	0	0	0	0	1	33	3
Dhemaji	6	27	4	18	1	5	0	0	0	0	8	36	3	14	22
Darang	37	43	7	8	1	1	1	1	0	0	33	38	7	8	86
Udalguri	5	26	3	16	1	5	0	0	1	5	6	32	3	16	19
Sonitpur	52	48	15	14	5	5	3	3	2	2	26	24	5	5	108
Nagaon	92	41	18	8	7	3	7	3	12	5	76	34	13	6	225
Karbi Anglong	6	32	1	5	0	0	0	0	0	0	7	37	5	26	19
Kokrajhar	28	24	22	19	1	1	3	3	5	4	41	35	16	14	116
Lakhimpur	6	50	2	17	0	0	0	0	1	8	2	17	1	8	12
Kamrup	13	16	5	6	3	4	0	0	1	1	51	62	9	11	82
Total	521	40	137	10	37	3	36	3	46	4	403	31	128	10	1308

Figure 4.18. Time taken for determining age-District Profile



■ On Date ■ Within 15 days ■ 15+ to 30 days ■ 31 to 90 days ■ More than 90 days ■ Not Found ■ NA

Figure 4.19. Comparison of the time taken for grant of bail, from the date of production & Forum where the JCL is first produced



In general, it can be seen that where the evidence adduced is a birth certificate or a municipality certificate, the process is quick and the petition can be disposed of on the same date of its presentation. There are

very few exceptions to this rule, and it is occasioned where the records show different names, on account of the practice of having another name (and alias) for some of the accused persons.

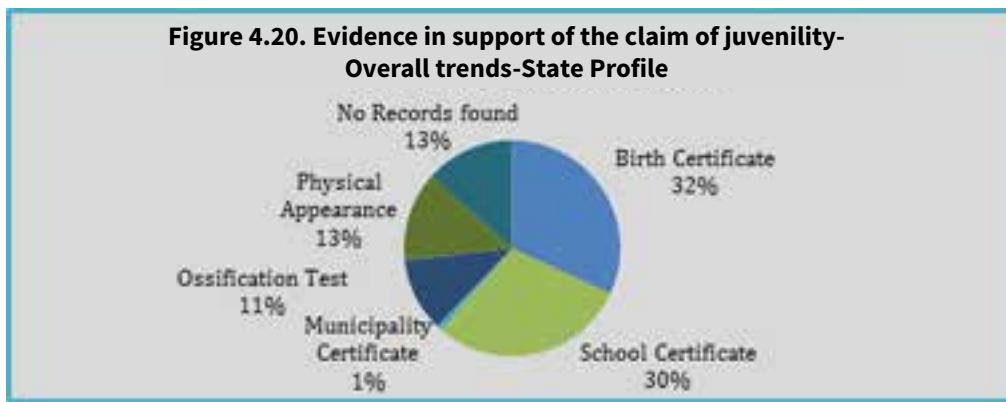
TABLE 4.18 EVIDENCE RELIED ON TO DETERMINE THE AGE OF THE JCL – STATE PROFILE (MULTIPLE RESPONSES)

Birth Certificate	%	School Certificate	%	Municipality Certificate	%	Ossification	%	Physical Appearance	%	Not Found	%
441	32	382	30	11	1	154	11	186	13	185	14

The process is however much longer where the evidence is a school certificate. In such cases, the headmaster or a responsible official from the school needs to be examined and this is, in most cases, takes more time than stipulated..The summons to the headmasters is not often served on time and even when it is served, their absence on more than one occasion is a common phenomenon. There have been instances where even coercive processes had to be issued against them – which is however only an eventual step taken after the witness does not turn up on multiple

instances. In such cases, the general pattern observed has been that the procedure can be completed in 15-30 days.

There have been cases where it has been found that even though the JCL's age has been determined by the SDJM and he has been declared a juvenile and the Magistrate has directed the Case Record to be sent to JJB, but the JCL was produced before the JJB after a lapse of some days from judicial custody.



Dist- Sonitpur, GR no.901/13 case of Nogen

The JCL was first produced before the SDJM on 28/12/13. The forwarding letter of the I.O. showed his age as above 18 and he was remanded in judicial custody for 14 days. On 6/1/14 a petition was filed by his father pointing out that the apprehended person is a juvenile. On 10/1/14 the Head Master appeared with the admission register and he was declared a juvenile. The case record was directed to be split up and sent to the JJB. However, the JCL was transferred from jail to the JJB on only 17/1/14. This shows that he was illegally kept in judicial custody for 7days even after being declared a juvenile.

TABLE 4.19. EVIDENCE FOR AGE DETERMINATION – DISTRICT PROFILE: (N=1308) (MULTIPLE RESPONSES)

District	Evidence for age Determination – District Profile											
	Birth Certificate	%	School Certificate	%	Municipality Certificate	%	Ossification Test	%	Physical Appearance	%	No Data	%
Karimganj	23	58	2	5	2	8	2	5	6	15	8	20
Dima Hasao	1	20	1	20	0	0	2	40	0	0	2	40
Hailakandi	3	30	3	30	1	10	2	20	0	0	1	10
Dibrugarh	34	58	11	19	0	0	11	19	6	10	0	0
Cachar	24	50	12	25	0	0	5	10	8	17	5	10
Sivsagar	7	14	10	20	0	0	2	4	8	16	2	4
Goalpara	29	36	34	43	0	0	7	9	9	11	12	15
Nalbari	3	17	11	61	0	0	2	11	3	17	0	0
Jorhat	6	15	15	38	0	0	8	21	9	23	4	19
Tinsukia	21	40	12	23	0	0	11	21	7	13	6	12
Golaghat	5	100	2	40	0	0	0	0	0	0	0	0
Bongaigaon	3	43	3	43	0	0	1	14	1	14	0	0
Chirang	7	25	12	43	3	11	2	7	7	25	2	7

District	Evidence for age Determination – District Profile											
	Birth Certificate	%	School Certificate	%	Municipality Certificate	%	Ossification Test	%	Physical Appearance	%	No Data	%
Dhubri	29	40	28	39	0	0	9	13	7	10	6	8
Barpeta	33	32	43	42	2	2	15	15	17	17	5	5
Morigaon	1	33	2	67	0	0	0	0	0	0	0	0
Dhemaji	11	50	7	32	0	0	0	0	3	14	1	5
Darang	41	48	10	12	0	0	1	1	9	10	28	33
Udalguri	7	37	10	53	0	0	2	11	1	5	3	16
Sonitpur	30	28	36	33	0	0	7	6	21	19	13	12
Nagaon	55	24	78	35	2	1	46	20	37	16	20	9
Kokrajhar	12	63	3	16	0	0	2	11	0	0	3	16
Karbi Anglong	43	37	23	20	0	0	11	9	11	9	17	15
Lakhimpur	1	8	6	50	0	0	1	8	1	8	3	25
Kamrup	12	15	8	10	0	0	5	6	15	18	44	54

Age determination takes the maximum length of time where the evidence relied on is an ossification test. Though this is seen ordered only on a small number of cases, it can be said with a great degree of generalization that the process could hardly be completed within 30 days. In fact, the bulk of the cases where the procedure has taken more than 30 days were referred for an ossification test. The primary factor responsible for delay here is that the facilities for conducting the test are not available in the district. The test can be performed only by a radiologist and not every district has access to such facilities. In such cases, the cases are referred to another district which has such facilities which is a time taking process. The School certificate and the birth certificate are the evidence presented in more than 62% cases and hence so much of delay is immediately accounted for.

Table 4.17 demonstrates that the average time taken for declaration of juvenility, across the districts, bears a close resemblance to the state level averages. The only exception to this, as seen from the data, is Morigaon. While in about a third of cases in Morigaon, the process is completed within 15-30 days,

in a little more than a third of them it takes between 30 and 90 days.

As it can be seen from the same table, there is not a single case where the data regarding age determination procedure or time taken is available at Golaghat. There is no district where all the necessary records/information can be gathered from the files before the board. In all, in 31% of the cases covered, this information was missing/not available and Golaghat, Kamrup topped the list – where the figures exceeded 60%. Morigaon and Lakhimpur are in fact the only two districts where the figures slide below 20%.

The name of the JCLs also at times contributes to delay the process of age determination. The alias name of the JCLs in particular delays the process of age determination. It is more common among the Muslims children e.g. Md. Sutu and Sutu Mia is the one and the same person. In such cases, it takes long time to determine their age in absence of documents to prove that both the names are the same JCL. It makes difficult for the JJB to issue order in absence of supporting documents. One such case in Hilakandi is narrated in the box below:

District: Hailakandi, JC 7/14 Case of Ram Gogoi (name changed)

The JCL was produced as an adult before the Ld. JMFC and remanded in judicial custody. On 6/12/12 a Bail petition was rejected by the court as the Birth Certificate (which was produced) stated the name as Rana Gogoi and but in the FIR it was stated as Ram Gogoi. Another bail application was filed pointing out that both of these are infact one and the same person. The court then ordered the police to make an enquiry on this issue. It was on 9/1/13 that the police filed a report; confirm this assertion to be true. The case was then transferred to the board, immediately, and the JCL was released on bail.

Against the backdrop of incorrect reporting of age, the parents/guardians produce the actual age to the notice of the court through their appointed counsel by producing documentary evidence. However, the doubts

on the veracity of the documents e.g. school certificate or admit card sometimes delays the process of age determination, which is explained in the box below:

District : Karbi Anglong, GR 26/2015 case of K

K had submitted the admit card issued by the State Education Board of Assam, but the board was not convinced of its authenticity. It was much later, on the orders of the High Court that the JCL was released on bail.

In another case of Karbi Anglong, the JCL had submitted an Admit card as evidence of age. In order to verify its authenticity, the PM wrote to the Education Board, which however, received no response. The PM then called the State Education Board of Assam in Guwahati and enquired if they issued the admit card in the name of the JCL. Once the Board confirmed that they had done so, he was declared a juvenile

There has also been some notable cases where the Magistrates themselves (vide section 7 and 7(a) of the JJ Act, 2000) had taken the initiative for determining the age of the JCL. The magistrates needs to be

further sensitized with respect to this – i.e. to err on the side of caution, if required, and order a determination of age, where there are reasons to believe that the person produced before him is a juvenile.

Nagaon District, GR 322/07 case of A and B

The JCLs were 14-15 years old at the time of occurrence of the offence, but were produced as adults before the CJM and were sent to judicial custody for remand. The Ld. CJM ordered the I.O. to submit ossification test report because of their physical appearance. On submission of the report, he was declared as a juvenile and sent to JJB.

Karimganj GR. 2183/13 case of V and GR-797/03 case of K

In the District Karimganj GR. 2183/13 case of V and GR-797/03 case of K in both the cases during the evidence stage the Magistrate realized from the statement of the witnesses that these particular accused persons are actually juveniles.

District (Karimganj) GR. 1219/11, JCL- B

The JCL, B, was first produced before the SDJM on 20/8/2011 and was directed to be sent in judicial custody and after about 20 productions before the magistrate, about a year later, the 3/7/2012 SDJM declared him to be juvenile based on his physical appearance.

In some cases the conflict of opinion between Magistrates also contributes to delay, for instance,

District Jorhat GR- 359/08 case of M.

The CJM on the day of production i.e, 3/4/2008 suspected him to be a JCL and directed the I.O. to conduct an Ossification test. The test report showed that the JCL was above 18 years. The case was later committed to the Session Judge.

On 12/6/2008, a petition for age determination was submitted by the counsel of the accused along with a school certificate. The Session Judge forwarded the case for age determination to the CJM. On 13/6/2008, CJM replied that the Ossification test already confirmed he is above 18 and that a re-determination of age is unnecessary. After receiving the charge sheet U/S 304, the Session Judge called on the Headmaster, who issued the school certificate, to appear before the court and his statement was recorded. On the basis of the documentary evidence, M, was declared a JCL on 3/5/2013. On the same day CR was directed to be transferred to the JJB. The entire process took a total of 1830 days, and he was in judicial custody for 91 days and was released only after he completed the statutory period

In many cases, even where the JCL has submitted a valid document from a proper authority, there is a practice of ordering further enquiries, without recording any reason as to why the authenticity of the produced document is suspected. Making this a routine practice, without application of mind over the necessity of doing so, results

in wastage of judicial time. As for example in Tinsukia, the JJB makes an order for age determination, even in those cases where the Court has made a determination of the accused status as a juvenile. Since this inquiry is time consuming, the overall speed at which the case proceeds before the board is affected significantly. In Karimganj JJB, every case is

seen referred to the CJM. The practice they follow appears to be that the age of the JCL should be always determined by the CJM and then the case will be transferred to JJB and no case reaches the JJB directly. Hence all the JCLs are by default produced before the CJM and then sent to JJB. This is absolutely in contrast to what has been prescribed in JJ Act.

Ossification test, where ordered, takes time to be completed and the delays therein are primarily due to administrative inertia and infrastructural constraints. If that process is streamlined, the test results can reach the board in 48 hours from the ordering of the test. The case narrated below shows how the administrative and infrastructural lacunae delayed the age determination procedure:

District: Hailakandi, JC 2/14 case of S

S was produced before JMFC, Hailakandi. The forwarding letter of the I.O. Showed his age as 20 years & JMFC remanded him in judicial custody for 14 days. On 5/8/2013, petition for age determination was submitted by the counsel for S. On 6/8/2013 he was sent back to Judicial custody for another 14 days as the photocopy of the certificate was not accepted as authentic documentary evidence. An ossification test was ordered to make a conclusive determination, which however took a long period of time. The records show that the medical board pointed out that there was no radiologist at the district hospital and hence S had to be sent to the Silchar Medical College, despite their finding that the child much be between 16-18 years of age. The JMFC, then requested the board to reconsider their report, pointing out that they were indeed medical experts. Based on the report of the Board, he was then declared a juvenile by the Magistrate.

An interesting case on how the confusion about the date of birth of the child in Sonitpur district delayed the process of age determination is narrated below:

District: Sonitpur GR 903/07 case of M U/S 302 IPC

M was first produced before the Ld. JMFC on 3/6/2007 alleged to be an adult. During the trial stage before the Session Judge a petition for age determination was filed. On 27/6/2013 the statement of the Head Master, who has issued the School Certificate, was recorded and the case was sent to JJB on 27/6/13 for the said age determination. JJB has received the case record on 6/7/2013. After reminder by the Ld. Session Judge on 14/8/13 , JJB sent a report on 12/9/13 after due enquiry. The Ld. Session Judge finally declared him a juvenile on 9/12/13. A supplementary case record was received by JJB 27/12/13. But on 22/1/2014 again a question on the juvenility of the JCL was raised. As the date of birth mentioned in his school certificate (25/3/1990) and school admission register (1/6/1991) are different. Hence, the OC is directed to hold an enquiry and submit a report. After the submission of the report, M was finally declared a juvenile by the JJB on 5/2/2014.

District- Karimganj GR no. 5/12 case of A

On 10/1/2012 A was first produced before the Magistrate in the court and he was remanded in judicial custody till 22/2/2012. On 22/2/2012 plea of juvenility was raised and the CR was transferred to the JJB with a direction to the Jail Superintendent to produce A before the JJB on 27/2/12. On the same day, JJB ordered for medical test to ascertain his age. On the following dates 12/3/2012, 21/3/2012, 30/3/2012, he was produced and sent back to jail. On 7/4/2012 JJB waited for the report and finally decided to enlarge A on interim bail. Despite 35 hearing dates between 26/4/2012 and March 2015, report is still awaited and the JCL is also absent for a long time.

It is also important to note that the claim for declaration as a JCL is often not raised immediately on apprehension or, on occasions, even within 7 days of apprehension. Perhaps it is the lack of community awareness about

the beneficial procedure that is preventing the accused persons from raising the claim of juvenility. This once again points towards the need for increasing community awareness about the law, in every part of the state

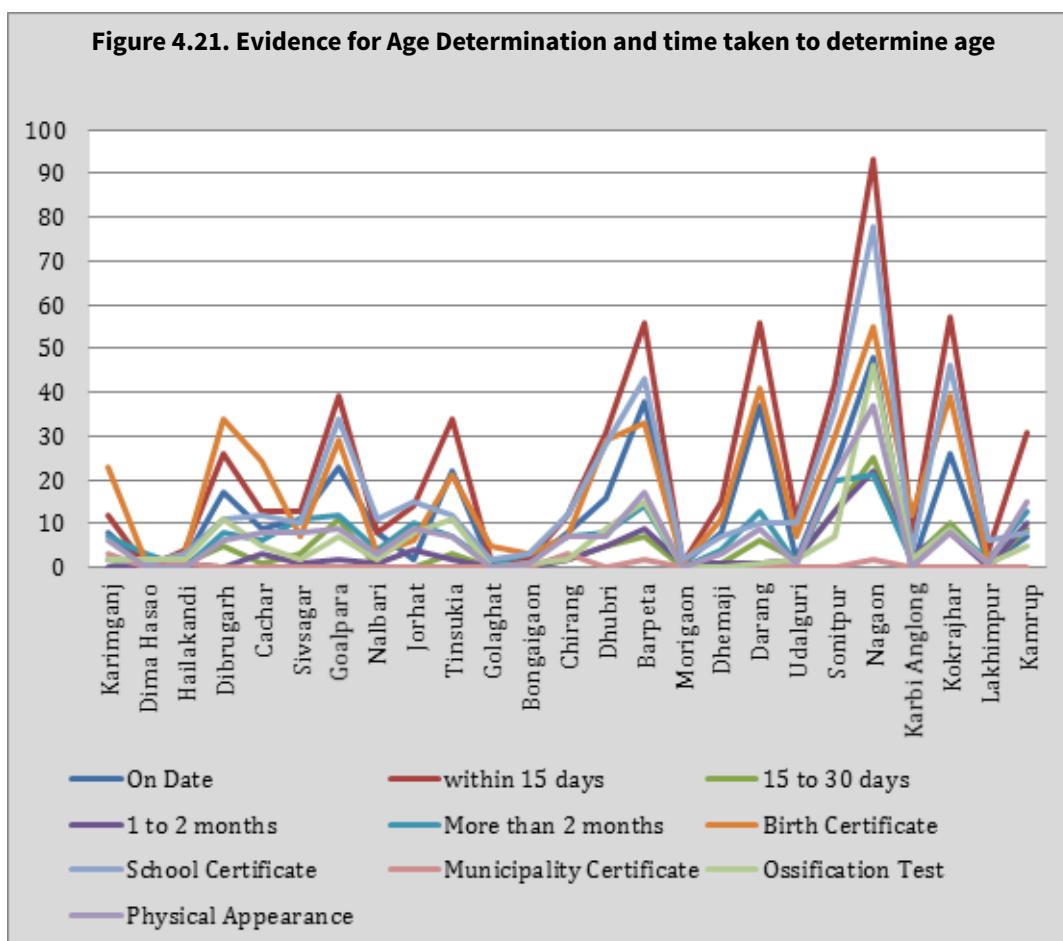
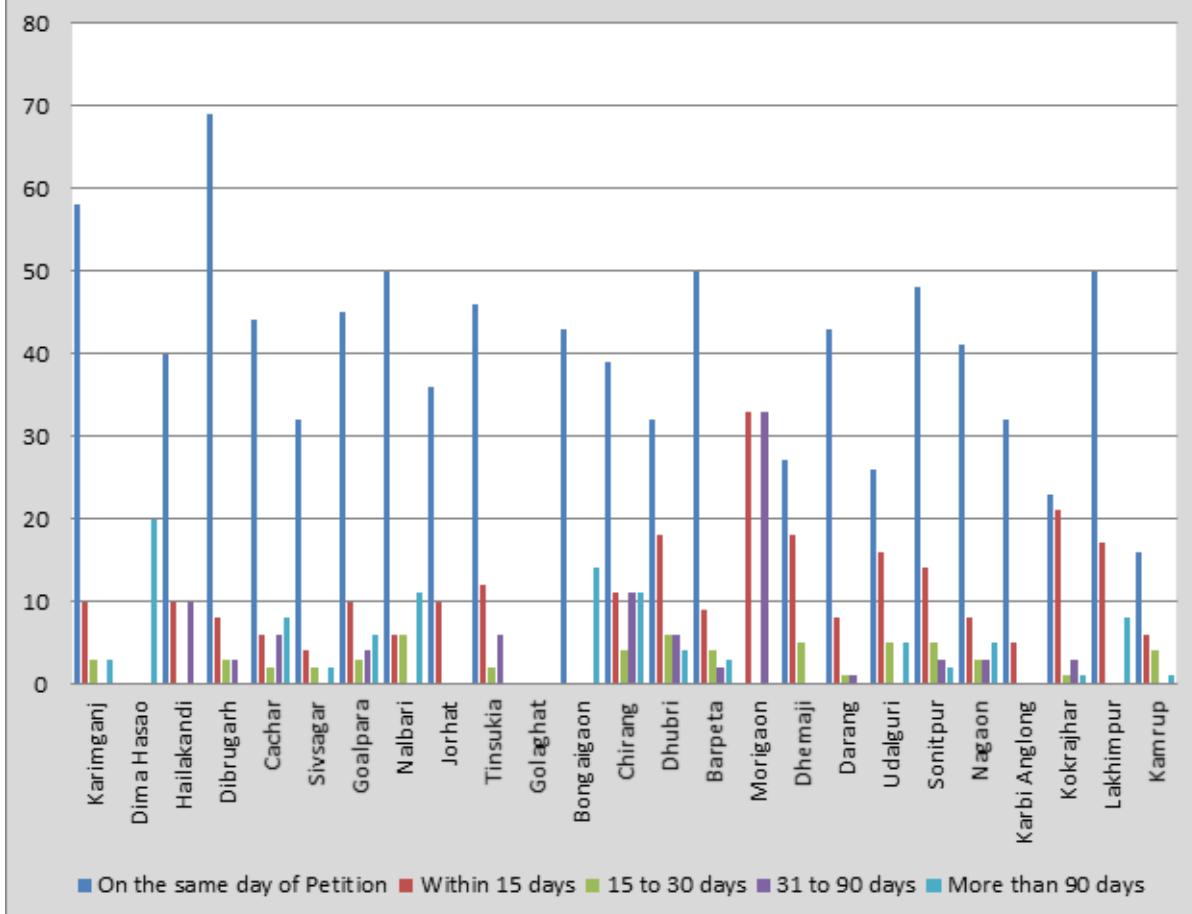


Figure 4.22. Time lag between Petition for age determination and declaration of juvenility-District Profile(percentage terms)



4.4.3 Delays in Transfer of Records between courts.

While it is expected that once a declaration of juvenility/ an order to transfer the records to the Board is made, it will be complied with in a reasonable period of time, in practice, this

happens only in about 40% of the cases (that too, if we take 3 days as a reasonable length of time for this).

TABLE 4.20 : TIME TAKEN FOR THE RECORDS TO REACH THE BOARD - STATE PROFILE

On Date	%	Within 3 days	%	4 to 7 days	%	8 to 30 days	%	More than 30 days	%	NA	%	NF	%	Total
395	30	130	10	30	2	120	9	409	31	133	10	91	7	1308

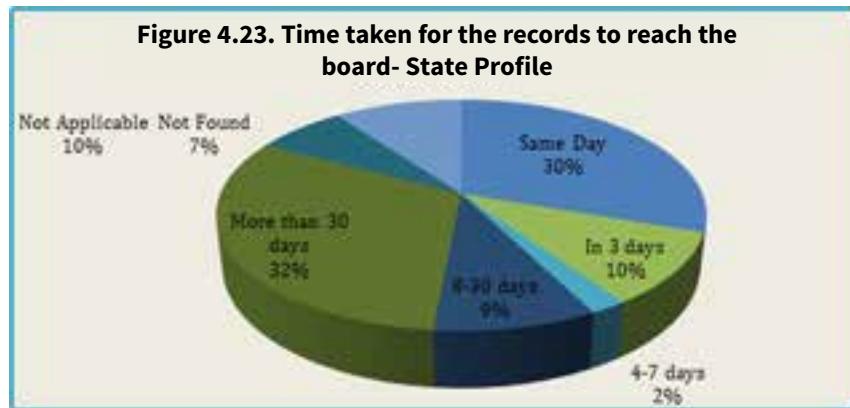


TABLE 4.21:TIME LAG BETWEEN FILE REFERRED TO JJB AND RECEIVED BY JJB

District	Table 4.21:Time lag between file referred to JJB and received by JJB														
	On Date	%	Within 3 days	%	4 to 7 days	%	8 to 30 days	%	More than 30 days	%	NA	%	NF	%	Total
Karimganj	17	43	3	8	2	5	6	15	19	23	0	0	3	8	40
Dima Hasao	0	0	0	0	0	0	0	0	1	20	3	60	1	20	5
Hailakandi	6	60	1	10	0	0	0	0	0	0	0	0	3	30	10
Dibrugarh	28	47	2	3	2	3	10	17	14	24	3	5	0	0	59
Cachar	17	35	8	17	2	4	2	4	14	29	2	4	3	6	48
Sivsagar	33	66	3	6	0	0	4	8	7	14	1	2	2	4	50
Goalpara	26	33	11	44	1	1	7	9	31	39	0	0	4	5	80
Nalbari	6	33	0	0	0	0	4	22	8	44	0	0	0	0	18
Jorhat	10	26	5	13	2	5	3	8	10	26	4	10	5	13	39
Tinsukia	9	17	2	4	0	0	5	10	35	67	0	0	1	2	52
Golaghat	2	40	1	20	0	0	0	0	1	20	0	0	1	20	5
Bongaigaon	3	43	2	29	1	14	0	0	0	0	0	0	1	14	7
Chirang	10	36	2	7	4	14	5	18	6	21	0	0	1	4	28
Dhubri	22	31	6	8	3	4	9	13	30	42	0	0	2	3	72
Barpeta	23	22	15	15	1	1	15	15	46	45	0	0	3	3	103
Morigaon	1	33	0	0	0	0	1	33	0	0	1	33	0	0	3
Dhemaji	6	27	2	9	0	0	2	9	12	55	0	0	0	0	22
Darrang	18	21	3	3	1	1	8	9	48	56	0	0	8	9	89
Udalguri	8	42	3	16	1	5	1	5	5	26	0	0	1	5	19
Sonitpur	25	23	14	13	1	1	11	10	48	44	0	0	9	8	108
Nagaon	38	17	20	9	7	3	13	6	18	8	105	47	24	11	225
Karbi Anglong	7	37	3	16	0	0	2	11	6	32	0	0	1	5	19
Kokrajhar	52	45	18	16	1	1	5	4	21	18	13	11	6	5	116
Lakhimpur	4	33	2	17	0	0	0	0	6	50	0	0	0	0	12
Kamrup	24	29	4	5	1	1	7	9	33	40	1	1	12	15	82
Total	395	30	130	10	30	2	120	9	409	31	133	10	91	7	1308

Figure 4.24. Time taken for transfer of records from regular court to the Board- district profile.

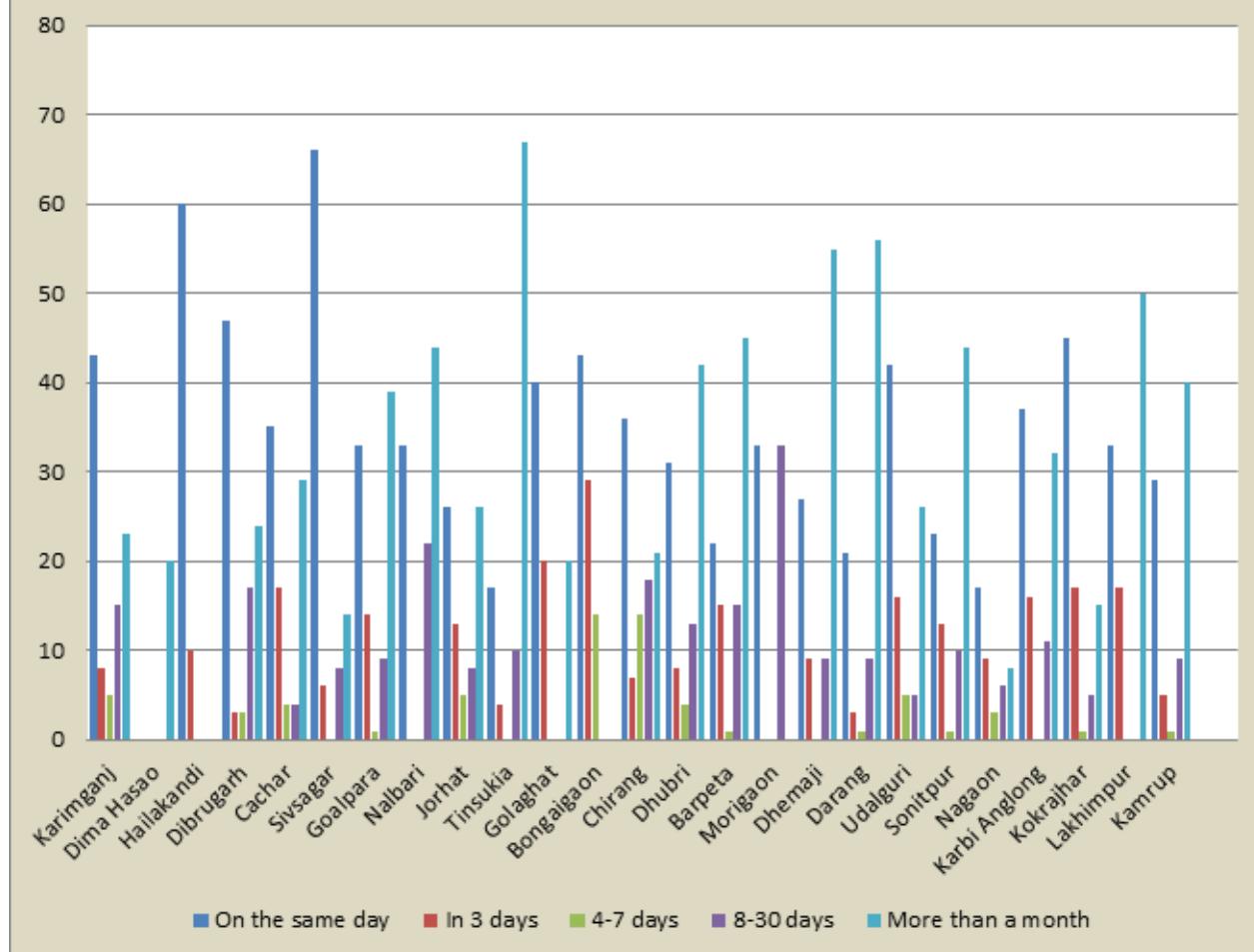


Table 4.20 shows us the state wise breakup of the data and Figure 4.23 displays the district-wise break-up of data on transfer of records from the regular court to board. It is seen that in close to 30% of the cases, the process takes well over a month time. It is only in less than one third of the cases that the records reach the board on the same date. It can be observed that the situation in Tinsukia is the worst – in more than 67% of the cases, the records

reach the board only after a month time. Unnearly half of the cases in Darang, Dhemaji and Dhubri the records are transferred only after a month. Amidst this sorry state of figures, Sivasagar and Hailakandi are the only districts where the records reach the Board on the same date of the order of transfer – but this too is only in close to half the number of cases.

4.4.4 Delays in the preparation and transmission of the charge sheet (offence report)

As such, once the board formally takes cognizance of a case, apart from instructing the police and the POs to submit the SIR/SBRs, no other step can be taken unless and until the police submit the occurrence report

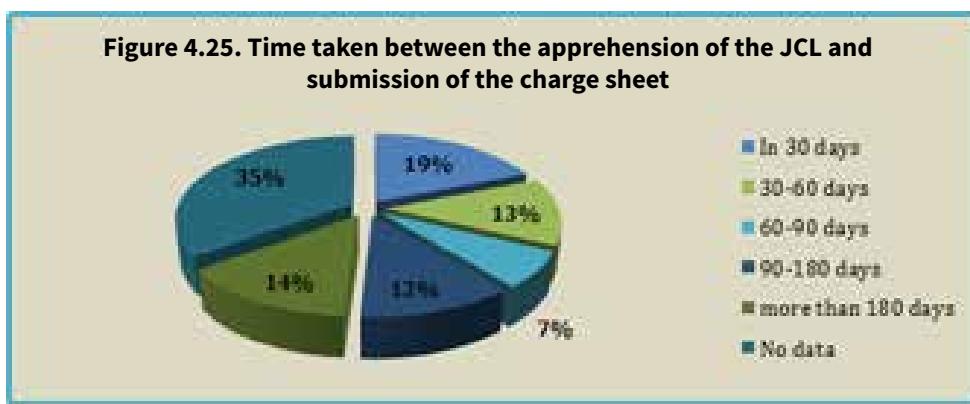
(i.e. the final report/charge sheet). As such the Act and Rule are silent about the time-frame within which the occurrence report is to be submitted. A notification issued by the Gauhati High Court pertaining to monitoring

the work of the Boards states that this process needs to be completed in 30 days, however, it is not clear from what point of time are these 30 days to be counted¹⁴. Since the overall mandate is to complete the proceedings

within four months from the date of the first summary enquiry by the Board, it is safe to count these four months from the date of apprehension of the JCL.

TABLE 4.22 : TIME TAKEN TO SUBMIT THE CHARGE SHEET FROM THE TIME OF APPREHENSION – STATE PROFILE

Within 30 days	%	30+ to 60 days	%	60+ to 90 days	%	90+ to 180 days	%	More than 180 days	%	NF	%	Total
248	19	176	13	95	7	151	12	186	14	452	35	1308



Overall, it is seen that such submission of charge sheet within 30 days of apprehension achieved only in a mere 19% of the cases and on an average, it takes between 2-3 months. It is also not uncommon that this process takes more than six months and beyond (14%). A look at the district profiles (Table 4.23) however reveals a more exact picture – in that the situation is not the same in all

the districts. While in bulk of the districts, the time line does not exceed six months, in some districts namely, Hilakandi (30%), Nalbari(28%), Kamrup(30%) the time taken for the process exceeds six months. Similarly, two districts, namely, Dibrugarh and Sonitpur are notable for having a substantial number of cases in which the investigations have been completed within 30 days.

¹⁴The Gauhati High Court, Circular Regarding Monitoring & reporting Mechanism for Juvenile Justice Boards, Form JJB-1 at p.16, available at: <<http://ghconline.gov.in/Document/CircularJJB.pdf>> last visited on 1/2/2016/

TABLE 4.23.TIME LAG BETWEEN DATE OF APPREHENSION AND SUBMISSION OF CHARGE SHEET- DISTRICT PROFILE: (N=1308)

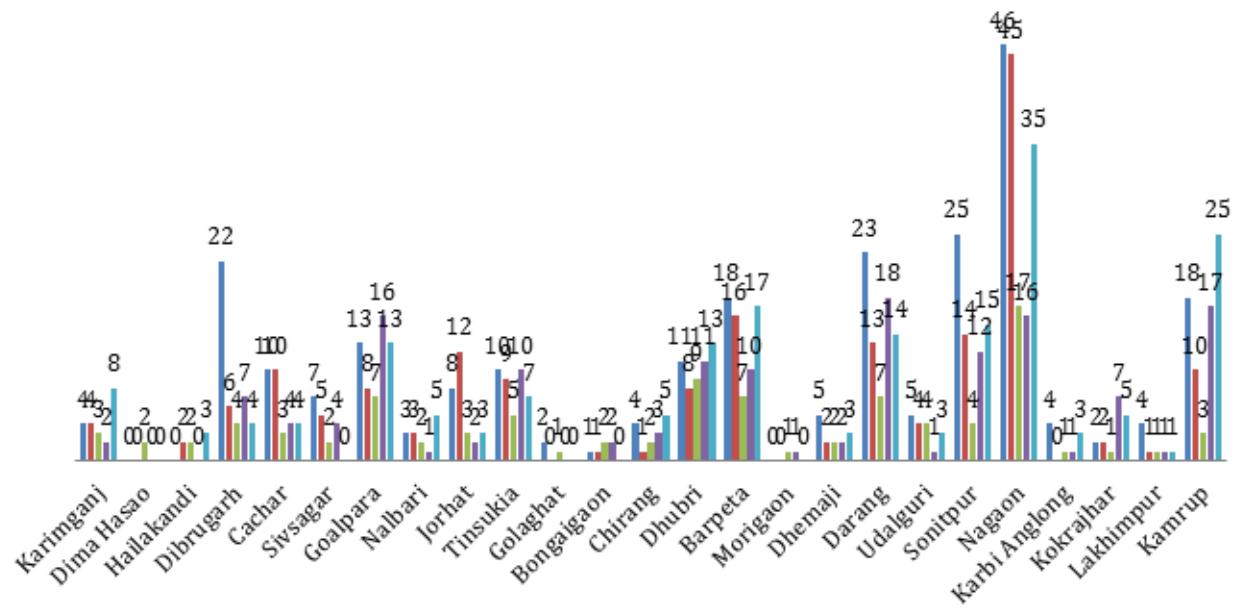
District	Time lag between date of apprehension and submission of chargesheet – District Profile												
	Within 30 days	%	30+ to 60 days	%	60+ to 90 days	%	90+ to 180 days	%	More than 180 days	%	NF	%	Total
Karimganj	4	10	4	10	3	8	2	5	8	20	19	48	40
Dima Hasao	0	0	0	0	2	40	0	0	0	0	3	60	5
Hailakandi	0	0	2	20	2	20	0	0	3	30	3	30	10
Dibrugarh	22	37	6	10	4	7	7	12	4	7	16	27	59
Cachar	10	21	10	21	3	6	4	8	4	8	17	35	48
Sivsagar	7	14	5	10	2	4	4	8	0	0	32	64	50
Goalpara	13	16	8	10	7	9	16	20	13	16	23	29	80
Nalbari	3	17	3	17	2	11	1	6	5	16	23	29	18
Jorhat	8	21	12	31	3	8	2	5	3	8	11	28	39
Tinsukia	10	19	9	17	5	10	10	19	7	13	11	21	52
Golaghat	2	40	0	0	1	20	0	0	0	0	2	40	5
Bongaigaon	1	14	1	14	2	29	2	29	0	0	1	14	7
Chirang	4	14	1	4	2	7	3	11	5	18	13	46	28
Dhubri	11	15	8	11	9	13	11	15	13	18	20	28	72
Barpeta	18	17	16	16	7	7	10	10	17	17	35	34	103
Morigaon	0	0	0	0	1	33	1	33	0	0	1	33	3
Dhemaji	5	23	2	9	2	9	2	9	3	14	8	36	22
Darrang	23	27	13	15	7	8	18	21	14	16	11	13	86
Udalguri	5	26	4	21	4	21	1	5	3	16	2	11	19
Sonitpur	25	23	14	13	4	4	12	11	15	14	38	35	108
Nagaon	46	20	45	20	17	8	16	7	35	16	66	29	225
Karbi Anglong	4	21	0	0	1	5	1	5	3	16	10	53	19
Kokrajhar	5	4	2	2	1	1	10	9	5	4	93	80	116
Lakhimpur	4	33	1	8	1	8	1	8	1	8	4	33	12
Kamrup	18	22	10	12	3	4	17	21	25	30	9	11	82
Total	248	19	176	13	95	7	151	12	186	14	452	35	1308

It is interesting to note that in Golaghat and Dibrugarh districts the charge sheet was filed within 30 days in close to 40% of the cases, as mandated by the Circular.

Another notable feature is that all districts, except Kokrajhar, the police is submitting a regular charge sheet before the Board, in contravention to the stipulation that what needs to be submitted is an offence report

Figure 4.25. Time taken for submission of charge sheet- District profile

■ Within 30 days ■ 30+ to 60 days ■ 60+ to 90 days ■ 90+ to 180 days ■ More than 180 days



4.4.4.1. Delays in the transmission of Charge Sheet (Offence Report)

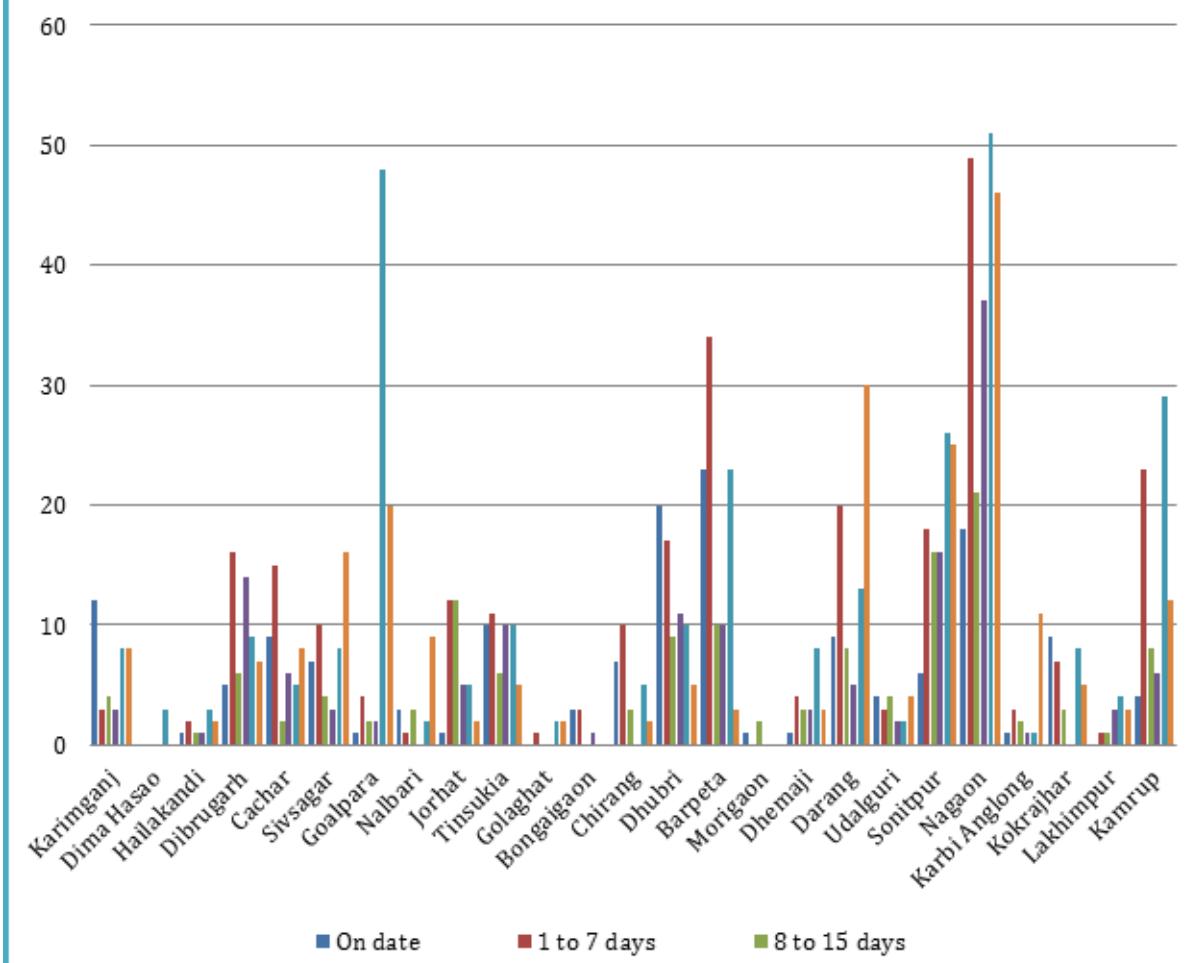
On closer examination of the records, it was found that there are substantial delays in between the time a charge sheet is prepared and it is forwarded to the appropriate PI court by the police. There is then some more time taken by the PI court to verify the charges and finally submit it before the court. When one looks at the state-profile, it is seen that the

forwarding of the charge sheet to the PI court on the same day happens in a mere 12% of the cases. On an average, it is seen that it takes between a week and a month time for the act of the forwarding of charge sheet from one officer to another! It is an area of concern that this takes more than a month's time in about 30% of the cases

TABLE 4.24. TIME TAKEN FOR THE FORWARDING OF THE CHARGE SHEET – STATE PROFILE

On date	%	1 to 7 days	%	8 to 15 days	%	16 to 30 days	%	More than 30 days	%	NF	%	NA	%	Total
157	12	272	21	130	10	140	11	284	22	231	18	94	7	1308

Figure 4.27. Delays in forwarding of charge sheet- District Profile



Once again, it is curious to observe the district wise trends (Figure 4.26) in this regard. While the picture is quite the same in most of the districts, a few of them stand out for significant variations: Goalpara, Kamrup & Nagaon has an exceptionally large number of cases where it takes more than 30 days. It is also curious to observe that Nagaon in general is the district where the delay on this aspect seems to be highest.

Though mandated in the law, none of the district is following the practice of submitting offence report for JCLs with the exception to

Kokrajhar where proper offence reports and not regular charge sheets are submitted for JCLs. In many districts a photocopy of the regular charge sheet is submitted marking the name of the juvenile in red ink. In the absence of proper authentication, the Board would not be able to proceed to the trial of the Juvenile. This practice is quite common in Cachar, Karimganj, Kamrup, Darrang. In the absence of submitting split/separate charge sheet for the alleged juvenile in co-accused cases, the children has to languish in the regular court for long time. One such instance is narrated below:

District: Hailakandi JC-4/14 case of C

C was produced before the Ld. CJM on 19/11/11 as an adult, and the Ld.CJM ordered to remand him for 14 days. The Ld. Defence counsel submitted his birth certificate on the same date. The CR was referred to the JJB, and immediately he was enlarged on bail. After more than 2 years on 10/1/14 Ld. Ld. CJM (who is officiating as PM) received the CS and as it was not mentioned that Tayabur was declared a juvenile, the CS was transferred to Ld. JMFC where the case of the co-accused in this case was being heard. Ld. JMFC received the CS after three and half a month and as per rule summoned the all the accused. On 6/6/2014 the JCL appeared and prayed for bail and also informed the Ld. JMFC that he has been declared a juvenile by the Ld. CJM and then the case was immediately transferred to the JJB.

A similar case in Kamrup:

District : Kamrup GR- 1856/06 I.O.'s forwarding letter dated 21/4/2006 mentioned Md. Khurshed Ali, Md. Rijjik Ali, Md. Nazrul Ali to be JCLs and they were sent to the Observation home and later released on bail. On 25/4/2008 CJM receives the Charge sheet and as in the CS it was not mentioned that the accused persons are JCLs CJM transferred the case to the court of JMFC. From 31/10/08 till 22/1/13 the JCLs were absent even warrant of arrest was issued against them. On 22/1/2013 JMFC on perusal of the case record, it was realised that the accused persons are JCLs. The CR was immediately directed to be transferred to JJB, Kamrup

On analysis of the above-mentioned cases, it may be inferred that If the charge sheet is forwarded directly to the PM through the

P.I. Court, then time elapsed in declaring the juvenility of the accused would be minimized to a large extent.

4.4.4.2 Delays in the forwarding of the Charge Sheet to the Board:

As it was observed earlier, it is curious to note that not all prosecutors are submitting the charge sheet directly in court. All over the state, it is in a mere 14% of the cases for which there was data that the charge sheet was found submitted directly before the board. In close to 70% of the cases, it is filed before

a regular magistrate's court. In DimaHasao and Hailakandi, in none of the cases the charge sheet was filed directly before the board. Dhubri, Barpeta & Nagaon are three other districts where there are far too many cases where the charge sheet is filed before a magistrate and not the Board

TABLE 4.25: JUDICIAL BODY TO WHICH THE CHARGE SHEET IS FIRST FORWARDED TO – STATE PROFILE

Any Magistrate	%	JJB	%	Not Found	%	NA	%	Total
846	65	187	14	196	15	79	6	1308

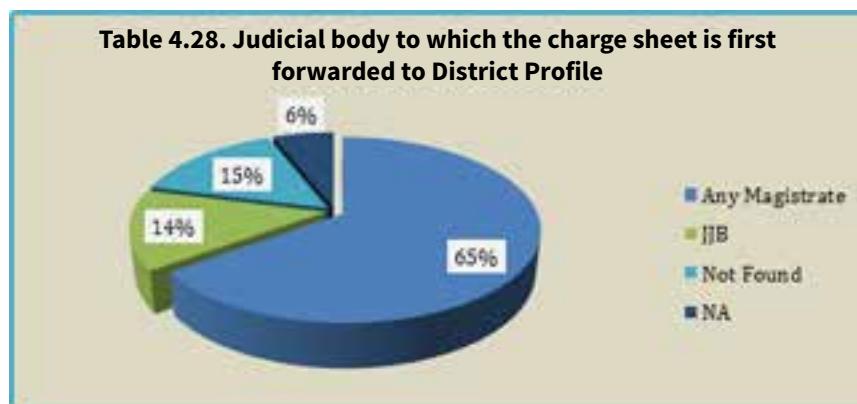
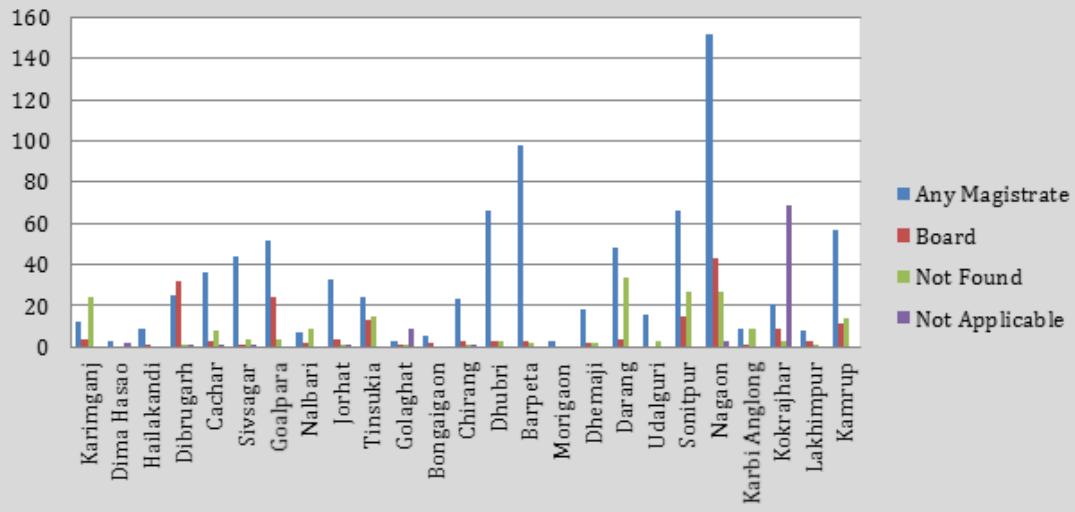


TABLE NO.2.26 AUTHORITY TO WHICH CHARGE SHEET IS FIRST FORWARDED (N=1308)- DISTRICT WISE DISTRIBUTION

District	Charge sheet forward to								
	Any Magistrate	%	JJB	%	Not Found	%	NA	%	Total
Karimganj	12	30	4	10	24	60	0	0	40
Dima Hasao	3	60	0	0	0	0	2	40	5
Hailakandi	9	90	1	10	0	0	0	0	10
Dibrugarh	25	42	32	54	1	2	1	2	59
Cachar	36	75	3	6	8	17	1	2	48
Sivasagar	44	88	1	2	4	8	1	2	50
Goalpara	52	65	24	30	4	5	0	0	80
Nalbari	7	39	2	11	9	50	0	0	18
Jorhat	33	95	4	10	1	3	1	3	39
Tinsukia	24	46	13	25	15	29	0	0	52
Golaghat	3	60	1	20	1	20	0	0	5
Bongaigaon	5	71	2	29	0	0	0	0	7
Chirang	23	82	3	11	1	4	1	4	28
Dhubri	66	92	3	4	3	4	0	0	72
Barpeta	98	95	3	3	2	2	0	0	103

District	Charge sheet forward to								
	Any Magistrate	%	JJB	%	Not Found	%	NA	%	Total
Morigaon	3	100	0	0	0	0	0	0	3
Dhemaji	18	82	2	9	2	9	0	0	22
Darang	48	56	4	5	34	40	0	0	86
Udalguri	16	84	0	0	3	16	0	0	19
Sonitpur	66	61	15	14	27	25	0	0	108
Nagaon	152	68	43	19	27	12	3	1	225
Kokrajhar	29	25	12	10	6	5	69	59	116
Lakhimpur	8	67	3	25	1	8	0	0	12
Kamrup	57	70	11	13	14	17	0	0	82
Total	846	65	187	14	196	15	79	6	1308

Figure 4.29. Forum before which the charge sheet is submitted- District Profile



The non-filing of the charge sheet directly before the Board causes an overall delay in the system as it takes a month's time before the charge sheet reaches the board. Once again, Nagaon is the district where the situation is the worst – in the vast majority of the cases; it takes more than a month time for the charge sheet to reach the board. Dhubri, Barpeta and Goalpara districts also closely follow a similar practice. There are a number of reasons why the process is delayed: for one thing, the

charge sheet often fails to mention that the accused person is a juvenile. In such cases, the Magistrate orders a transfer of the charge sheet to the board, only after the counsel for the JCL points out that the case has already been transferred to the board. Even in those cases where the charge sheet mentions that the accused is a JCL, oversight most often causes delays in the transfer of the case! The situation is even worse where it is a 'split case'. An authenticated copy of the charge

sheet is not filed before the board and the board has to make numerous requests for an authenticated copy before it finally receives

one. This process, ultimately adds several weeks significantly contributing to the overall delay

TABLE 4.27: TIME TAKEN FOR THE CHARGESHEET TO REACH THE BOARD – STATE FIGURES

On date	%	1 to 7 days	%	8 to 15 days	%	16 to 30 days	%	More than 30 days	%	Not Found	%	NA	%	Total
34	3	69	5	61	5	94	7	633	48	296	23	121	9	1308

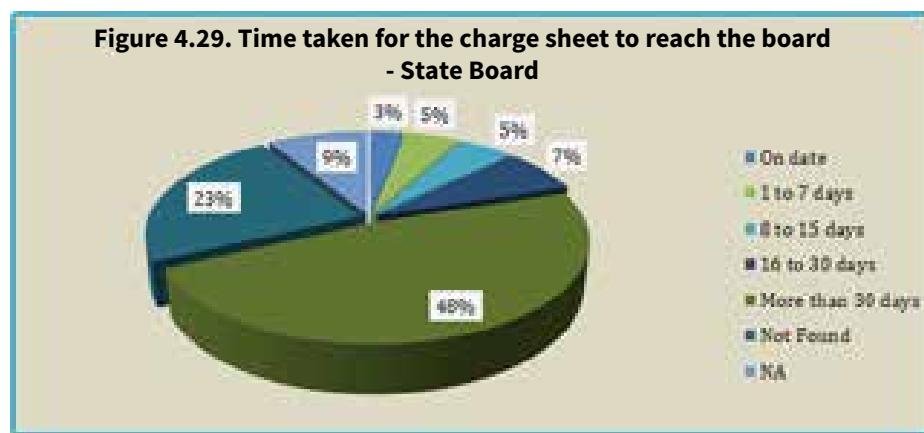
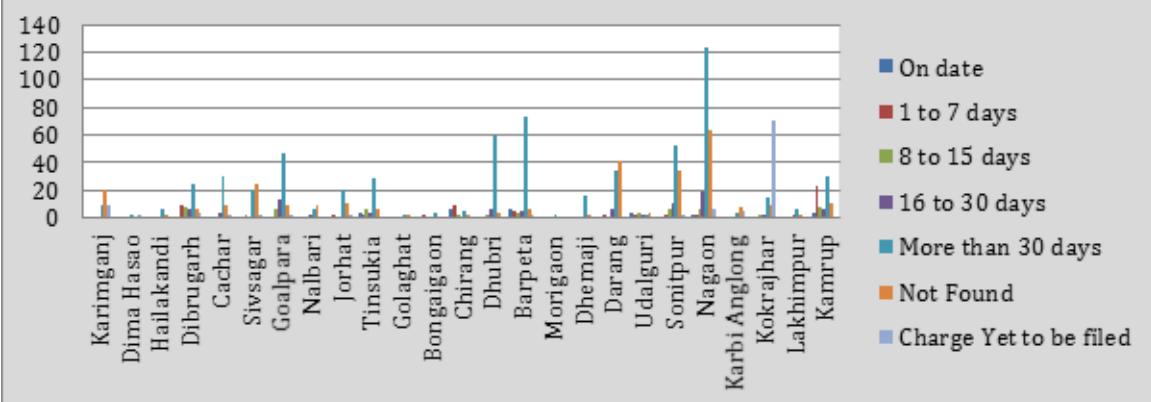


TABLE 4.28: TIME TAKEN FOR THE CHARGE SHEET TO REACH THE BOARD - DISTRICT PROFILE: (N=1308)

District	Time taken for the Charge Sheet to reach the board - district profile														
	On date	%	1 to 7 days	%	8 to 15 days	%	16 to 30 days	%	More than 30 days	%	Not Found	%	NA	%	Total
Karimganj	1	3	0	0	0	0	0	0	9	23	21	53	9	23	40
Dima Hasao	0	0	0	0	0	0	0	0	3	60	0	0	2	40	5
Hailakandi	1	10	0	0	0	0	0	0	7	70	2	20	0	0	10
Dibrugarh	1	2	10	17	8	14	6	10	24	41	6	10	4	7	59
Cachar	1	2	1	2	0	0	4	8	30	63	9	19	3	6	48
Sivsagar	0	0	0	0	2	4	1	2	21	42	24	48	2	4	50
Goalpara	1	1	1	1	6	8	13	16	47	59	10	13	2	3	80
Nalbari	0	0	0	0	1	6	2	11	6	33	9	15	0	0	18
Jorhat	0	0	2	5	1	3	1	3	21	54	11	28	3	8	39

District	Time taken for the Charge Sheet to reach the board - district profile														
	On date	%	1 to 7 days	%	8 to 15 days	%	16 to 30 days	%	More than 30 days	%	Not Found	%	NA	%	Total
Tinsukia	4	8	2	4	6	12	4	8	29	56	7	13	0	0	52
Golaghat	0	0	0	0	0	0	1	20	2	40	2	40	0	0	5
Bongaigaon	0	0	2	29	0	0	0	0	4	57	1	14	0	0	7
Chirang	7	25	10	36	3	11	0	0	5	18	2	7	1	4	28
Dhubri	0	0	0	0	2	3	7	10	59	82	4	6	0	0	72
Barpeta	7	7	5	5	4	4	5	5	73	71	7	7	2	2	103
Morigaon	0	0	0	0	0	0	0	0	3	100	0	0	0	0	3
Dhemaji	0	0	1	5	0	0	1	5	17	77	3	14	0	0	22
Darang	0	0	3	3	0	0	6	7	34	40	43	50	0	0	86
Udalguri	4	21	3	16	4	21	2	11	2	11	4	21	0	0	19
Sonitpur	0	0	2	2	6	6	11	10	52	48	34	31	3	3	108
Nagaon	2	1	3	1	7	3	19	8	124	55	63	28	7	3	225
Kokrajhar	1	1	0	0	3	3	2	2	20	17	12	10	78	67	116
Lakhimpur	0	0	0	0	0	0	2	17	7	58	3	25	0	0	12
Kamrup	4	5	23	28	8	10	6	7	30	37	11	13	0	0	82
Total	34	3	69	5	61	5	94	7	633	48	296	23	121	9	1308

Figure 4.31. Time taken for the charge sheet to reach the board- District Profile



These are in fact delays that are fully avoidable by ensuring that the police submit the finalized charge sheet without any delay and that the PI court is appraised and instructed to file it before the Board, directly. The current sequence of events is purely a product of information asymmetry – as neither the IO nor the PI Court is informed of the fact that the

case has been transferred to the Board and that the charge sheet needs to be filed there. What is required is to develop a mechanism to ensure that in split cases, an automatic process for sending an authenticated copy of the charge sheet to the board needs to be put in place.

District : Kamrup GR- 1856/06 I

The forwarding letter of the Investigation officer, dated, 21/4/2006 had mentioned A,B and C to be JCLs and they were sent to the Observation home and later released on bail. The charge filed before the CJM, which failed to specifically mention that the accused persons were juveniles. The case was then transferred to JFMC and from 31/10/08 to 22/1/13 the JCLs were not present before the court despite several summonses and even a warrant of arrest was issued against them. On 22/1/2013 the JMFC on perusal of the case record, realized that the accused persons were JCLs. The CR was immediately directed to be transferred to the Board.

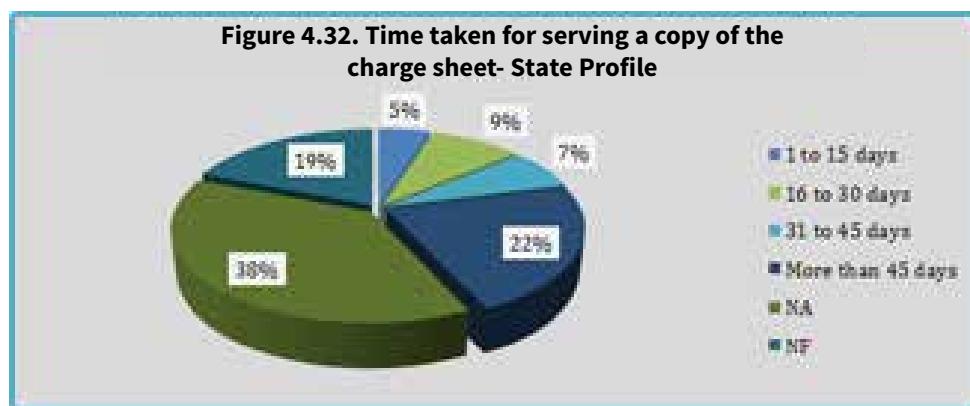
4.4.4.3 Delays in serving a copy of the charge sheet and explaining the charges.

Once the charge sheet is finalized, the Board then needs to complete the procedure of explaining the charge to juvenile and his parents as mandated under Sec 251 of the Cr. PC within 15 days of submission of charge sheet. It is however, seen that this is achieved

only in a very few cases. There are two factors that affect the pace of this event: (1) whether the JCL is appearing before the Court (2) whether the copy of the charge sheet, which is to be served to the JCL, is ready.

TABLE 4.29: TIME TAKEN FOR SERVING A COPY OF THE CHARGE SHEET – OVERALL FIGURES

1 to 15 days	%	16 to 30 days	%	31 to 45 days	%	More than 45 days	%	NA	%	NF	%	Total
66	5	112	9	93	7	290	38	497	38	250	19	1308



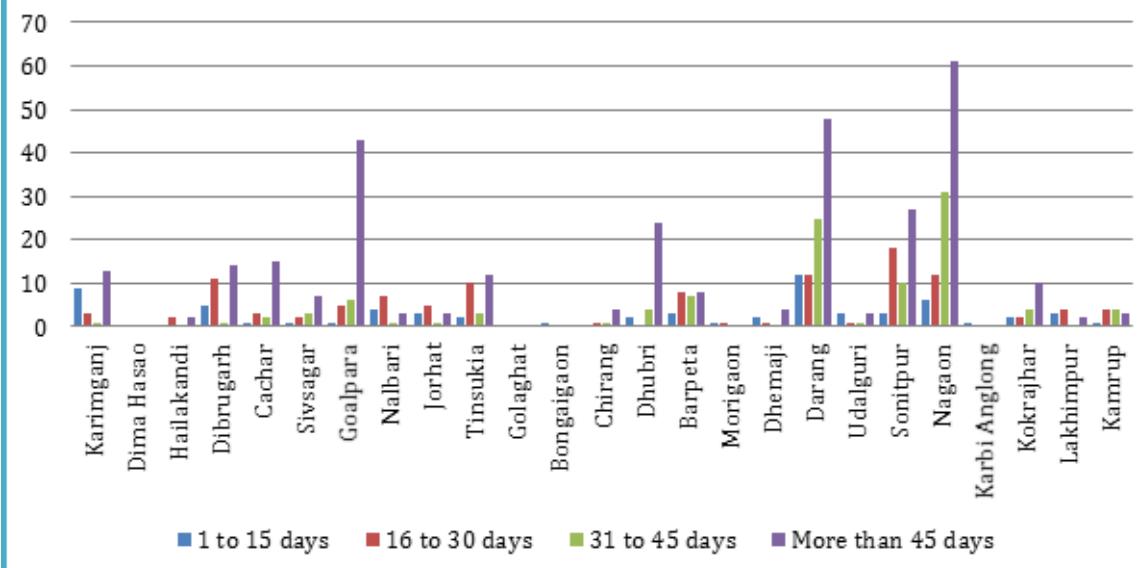
On receipt of the charge sheet, the Board, orders a copy to be served, if the JCL is already present. In such cases, it is only a question of the delay in the preparation of the copy. Time taken for serving the copy of the charge sheet generally takes anything between 15 and 45 days. Delay can be for various reasons e.g. the bench assistant being busy and over worked, could not prepare the copy, JCL or his counsel or his parents no one being present on the dates called for receiving copy, the

gaps between two dates varies from district to district from 30 days to 45 days. In case the JCL misses one date, the copy will be served only on the next day of the hearing. In fact, it is only in about 5% of the cases that it was ready in less than 15 days. This is indeed an avoidable delay – by ensuring that the preparation of the copy is an automatic process along with the receipt of the charge sheet – a step that is done without a formal judicial order for the same.

TABLE 4.30 TIME TAKEN FOR SERVICE OF COPY OF CHARGES – DISTRICT PROFILE: (N=1308)

District	Time taken for service of copy of charges – District Profile												
	1 to 15 days	%	16 to 30 days	%	31 to 45 days	%	More than 45 days	%	NA	%	NF	%	Total
Karimganj	9	23	3	8	1	3	13	33	14	35	0	0	40
Dima Hasao	0	0	0	0	0	0	0	0	3	60	2	40	5
Hailakandi	0	0	2	20	0	0	2	20	6	60	0	0	10
Dibrugarh	5	8	11	19	1	2	14	24	27	46	1	2	59
Cachar	1	2	3	6	2	4	15	31	21	44	6	13	48
Sivsagar	1	2	2	4	3	6	7	14	15	30	22	44	50
Goalpara	1	1	5	6	6	8	43	54	13	16	12	15	80
Nalbari	4	22	7	39	1	6	3	17	2	11	1	6	18
Jorhat	3	8	5	13	1	3	3	8	13	33	14	36	39
Tinsukia	2	4	10	19	3	6	12	23	18	35	7	13	52
Golaghat	0	0	0	0	0	0	0	0	3	60	2	40	5
Bongaigaon	1	14	0	0	0	0	0	0	2	29	4	57	7
Chirang	0	0	1	4	1	4	4	14	14	50	8	29	28
Dhubri	2	3	0	0	4	6	24	33	31	43	11	15	72
Barpeta	3	3	8	8	7	7	8	8	35	34	42	41	103
Morigaon	1	33	1	33	0	0	0	0	1	33	0	0	3
Dhemaji	2	9	1	5	0	0	4	18	15	68	0	0	22
Darang	12	14	12	14	13	15	29	34	20	23	0	0	86
Udalguri	3	16	1	5	1	5	3	16	11	58	0	0	19
Sonitpur	3	3	18	17	10	9	27	25	30	28	20	19	108
Nagaon	6	3	12	5	31	14	61	27	49	22	66	29	225
Kokrajhar	2	2	2	2	4	3	13	11	85	73	10	9	116
Lakhimpur	3	25	4	33	0	0	2	17	3	25	0	0	12
Kamrup	1	1	4	5	4	5	3	4	52	63	18	22	82
Total	66	5	112	9	93	7	290	22	497	38	250	19	1308

Figure 4.33. Time taken for service of copy charges-District Profile



It is seen that in Goalpara, Dhubri, Darang and Nagaon it takes more than 45 days for mere preparation of the copy of the charge sheet –

an unreasonable delay which can altogether be avoided.

4.4.5. Delay due to lack of appearance of parties at the evidence stage.

4.4.5.1. Lack of presence of the JCL

While the earlier section identified the administrative impediments that cause delays in the system, a more serious impediment to speedy trial is ensuring the appearance of the JCL for trial. It is seen that it is only in about 23% of the cases that the JCL would be present on that day the charge sheet reaches the office of the board and the records are put up for the first time before the board. In

about 24% of the cases, the first appearance of the JCL is more than two months after the submission of the charge sheet (see Table 4.31). Where the JCL is not appearing, the court has to issue summons (and if there is no response to the summons, the summons is usually issued two more times, along with notice to the bailee) and it is on repeated absence that a warrant is issued.

TABLE 4.31: TIME TAKEN FOR FIRST APPEARANCE ON SUBMISSION OF CHARGESHEET- STATE PROFILE

On date	%	1 to 15 days	%	16 to 30 days	%	31 to 60 days	%	More than 60 days	%	NF	%	NA	%	Total
301	23	22	2	61	5	101	8	309	24	132	10	382	29	1308

Figure 4.34. Time taken for first appearance on submission of charge sheet- State Profile

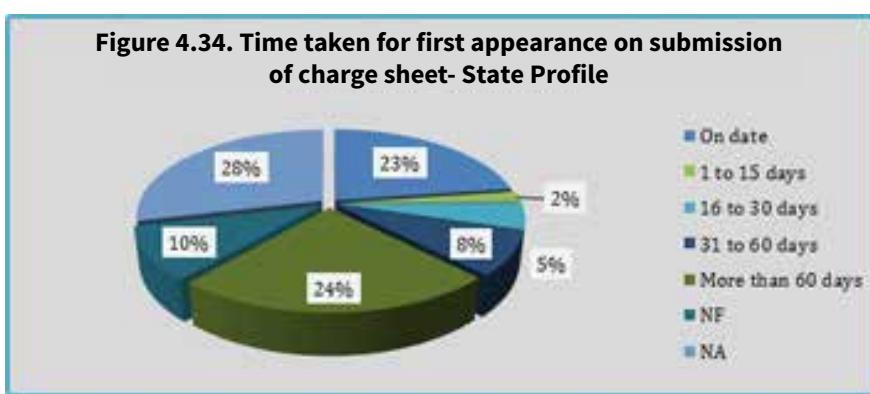
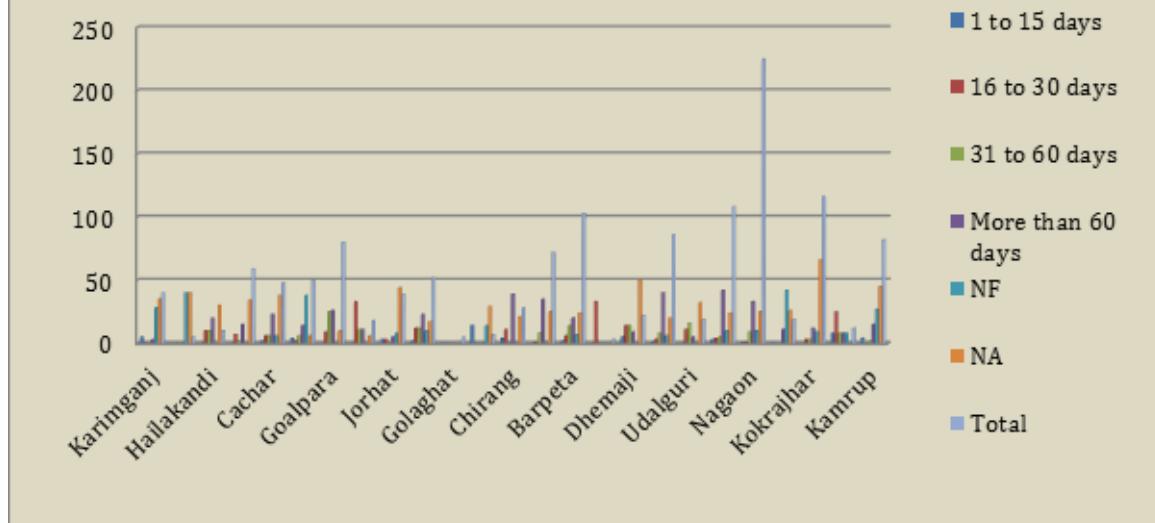


TABLE NO.4.32. TIME TAKEN FOR FIRST APPEARANCE ON SUBMISSION OF CHARGE SHEET- DISTRICT PROFILE: (N=1308)

District	Time taken for service of copy of charges – District Profile															Total
	On date	%	1 to 15 days	%	16 to 30 days	%	31 to 60 days	%	More than 60 days	%	NF	%	NA	%		
Karimganj	12	30	2	5	0	0	0	0	1	3	11	28	14	35	40	
Dima Hasao	1	20	0	0	0	0	0	0	0	0	2	40	2	40	5	
Hailakandi	3	30	0	0	1	10	1	10	2	20	0	0	3	30	10	
Dibrugarh	25	42	0	0	4	7	1	2	9	15	0	0	20	34	15	
Cachar	9	19	1	2	3	6	3	6	11	23	3	6	18	38	48	
Sivsagar	15	30	2	4	1	2	3	6	7	14	19	38	3	6	50	
Goalpara	24	30	0	0	7	9	20	25	21	26	0	0	8	10	80	
Nalbari	7	39	0	0	6	33	2	11	2	11	0	0	1	6	18	
Jorhat	15	38	1	3	1	3	0	0	2	5	3	8	17	44	39	
Tinsukia	13	25	1	2	6	12	6	12	12	23	5	10	9	17	52	
Golaghat	5	100	0	0	0	0	0	0	0	0	0	0	0	0	5	
Bongaigaon	3	43	1	14	0	0	0	0	0	0	1	14	2	29	7	
Chirang	7	25	1	4	3	11	0	0	11	39	0	0	6	21	28	
Dhubri	22	31	0	0	1	1	6	8	25	35	0	0	18	25	72	
Barpeta	28	27	2	2	6	6	14	14	21	20	7	7	25	24	103	
Morigaon	2	67	0	0	1	33	0	0	0	0	0	0	0	0	3	
Dhemaji	2	9	1	5	3	14	3	14	2	9	0	0	11	50	22	
Darang	19	22	1	1	3	3	7	8	34	40	5	6	17	20	86	
Udalguri	7	37	0	0	2	11	3	16	1	5	0	0	6	32	19	
Sonitpur	14	13	3	3	4	4	5	5	45	42	11	10	26	24	108	
Nagaon	46	20	2	1	2	1	21	9	74	33	23	10	57	25	225	
Karbi Anglong	4	21	0	0	0	0	0	0	2	11	8	42	5	26	19	
Kokrajhar	7	6	0	0	4	3	3	3	14	12	11	9	77	66	116	
Lakhimpur	5	42	1	8	3	25	1	8	1	8	1	8	0	0	12	
Kamrup	6	7	3	4	0	0	2	2	12	15	22	27	37	45	82	
Total	301	23	22	2	61	5	101	8	309	24	132	10	382	29	1308	

Figure 4.35. Time take for first appearance on submission of charge sheet- District Profile



Some qualitative observations on non-appearance or irregular appearance would help in understanding the causals of delay at the trial stage. Firstly, it is notable how in several cases the JCLs are regular in appearing before the board in the initial stages of the proceedings. On numerous occasions, the JCLs appear and the cases are adjourned as the investigations are not complete/the records are not made available to the board. Eventually, the enthusiasm to appear diminishes and by the time the records are available; the JCL loses his interest in the matter and does not appear before the board, except when a coercive process compels him to do so. A more significant observation that can be made is that in those cases where the JCL was remanded (i.e. he spent time at the regular jails), the willingness to appear in the subsequent stages is noticeably much lesser than in those cases where there was no such

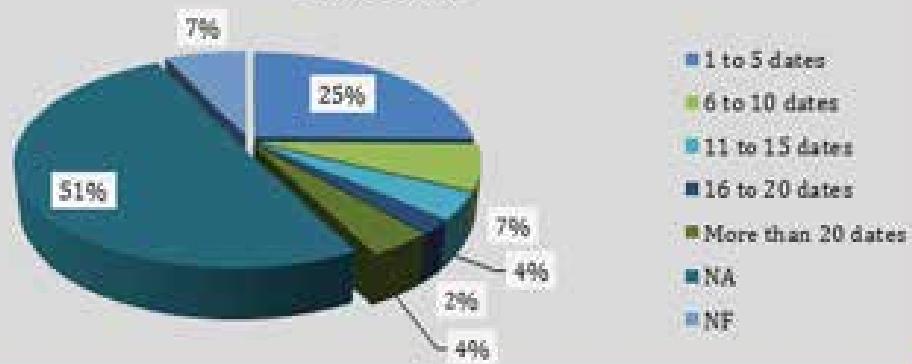
remand. This could possibly be because of the negative experience that a jail has given to the JCL and his unwillingness to entertain the possibility of being met out with that treatment again. Majority of the JCLs starts working. And also some had to travel for work. It is also observed that most of them are engaged as daily wage earners and appearing before the Board means losing a day's earning.

The profile across districts is more or less similar (Figure 4.34), with two exceptions: Nagaon – where in the vast majority of cases, the first appearance is only after 60 days and in Kokrajhar, there is large number of cases where the JCL is yet to appear before the board. At the other end of the spectrum, in 70% of the cases in Morigaon the JCL is present on the same date as that of submission the charge sheet.

TABLE 4.33 : ABSENCE OF THE JCL FROM PROCEEDINGS, AT THE EVIDENCE STAGE – STATE PROFILE

1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	NA	%	NF	%	Total
328	25	93	7	58	4	32	2	50	4	659	50	88	7	1308

Figure 4.36. Absence of the JCL from proceedings, at the evidence stage-State Profile



The absence of JCLs for trial is in fact one of the major reasons for overall delay in the system. In the vast majority of cases (60%), it is common for the child to be absent for 1-5 postings of a case. While the averages centre around 3-4 postings for which a child is absent, it is not uncommon for the number to go up. The district profiles for this are also predictably along the same lines for almost all districts. However, the order sheet of many of the districts were not adequately

reflecting whether the JCL was present or not – hence inhibiting a realistic analysis of the situation. However, from the available data, it appears that the trends are more or less similar in all the districts. Nagaon, however, seems to be emitting some warning signals – in that there are far too many cases where the data is missing and a sizeable number of cases where the number of dates of absence exceeds the average.

Figure 4.37. Absence of JCLs from the proceedings post submission of charge sheet-State Profile

■ 1-5 postings ■ 6-10 postings ■ 11-15 postings
 ■ 16-20 postings ■ more than 20 postings



Interviews across actors have revealed a number of possible reasons for this. One of the reasons is that, on many occasions when the JCLs are present, no business is seen transacted for want of records or want of completion of investigation or the absence of other actors. When this experience becomes a recurrent one, the impression sets in that

appearing before the board is a pointless exercise – thus lowering the enthusiasm to attend. This can partially be remedied by ensuring that some business is transacted or appear to have been transacted at each posting. The latter can be achieved by ensuring that at each appearance the JCL is counseled/interviewed by the counselor/social workers

of the board and his status is documented. Such a practice would additionally assist the board when it comes to deciding on the dispositional order, if he is found guilty. Another reason for absence is that lawyers often counsel the JCL and their parents that there aren't many consequences to absence from the board proceedings. There are also vested interests that a lawyer has in the delays in the system. An intervention is required at the level of the JCL and parents itself to appraise them about the nature and purpose of the proceedings and how it is beneficial for them to complete the proceedings as soon as possible.

In the course of the study, it was revealed that there are about 88 cases where the JCL is yet

to appear before the courts and it is clear from the proceedings that they are absconding (though such a formal declaration is yet to be made). Curiously, the concerned boards treat these as disposed cases and are not pursuing any action! This is however, not a phenomenon seen in all districts. The table below indicates the districts and the number of such cases. While it is true that these cases cannot move forward unless the police are able to trace the JCLs, it is not appropriate to treat them as disposed cases, unless, the court, decides to end the proceedings in those cases, in accordance with the law. These cases are in fact, to be counted towards the total number of pending cases in the state.

NUMBER OF CASES WHERE THE JCLS ARE YET TO APPEAR

Sl No	Name of the Districts	Number of cases where the JCLs are yet to appear
1	Kokrajhar	3
2	Lakhimpur	12
3	Dibrugarh	1
4	Dhemaji	1
5	Kamrup	7
6	Cachar	1
7	Nagaon	2
8	Nalbari	1
9	Goalpara	2
10	Darang	23
11	Sonitpur	13
12	Sivsagar	3
13	Chirang	4
14	Jorhat	2
15	Golaghat	3
16	Dhubri	10

4.4.5.2 Long absence of the Juvenile at the evidence stage/ absconding cases:

Sl.No	Name of the district	No of children Absent	Percentage
1	Karimganj	1	3
2	DimaHasao	0	0
3	Hailakandi	0	0
4	Dibrugarh	1	2
5	Cachar	3	6
6	Sivsagar	4	8
7	Goalpara	9	11
8	Nalbari	0	0
9	Jorhat	6	15
10	Tinsukia	4	8
11	Golaghat	0	0
12	Bongaigaon	2	29
13	Chirang	4	14
14	Dhubri	17	24
15	Barpeta	14	14
16	Morigaon	0	0
17	Dhemaji	2	9
18	Darang	15	17
19	Udalguri	13	16
20	Sonitpur	7	6
21	Nagaon	7	3
22	Karbi Anglong	0	0
23	Kokrajhar	2	2
24	Lakhimpur	0	0
25	Kamrup	5	6
Total		106	100

Overall, there are not many cases (except for Bongaigaon, where the figure touches close to 30%) where the proceedings are stalled as the JCL is absconding from proceedings. In

fact, it is only in about 8 districts where the percentage of cases touches a double digit figure (which too, in bulk of the cases is below 20%).

Major causes of Non-appearance of the JCL or absconding, as understood from interviews of the JCLs are that

- JCLs who has been under judicial custody for a few days are more unwilling to appear in the evidence stage – probably because of the negative experience that a prison interaction has brought about.
- Most of them are working and coming to JJB at frequent intervals would cost them a day's wage – especially when experience has shown them that no business is transacted on several occasions where they appeared.

- Transport cost involved in attending JJB
- They had to pay Rs 200-300 to the Lawyer for every appearance and when no business is transacted, it is a wasteful expenditure.

4.4.5.3 Absence of witnesses from the proceedings

It is not the JCL alone who can be blamed for the delay in the system – other actors in the system, such as witnesses and at times the

magistrates themselves are not present on many occasions, which adds to the delays in the system

TABLE 4. 34 ABSENCE OF THE INVESTIGATING OFFICER

1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	NA	%	NF	%	Total
28	2	5	0	5	0	0	0	1	0	17	1	1251	96	1308

The investigating officer would also have to often appear before the board as a witness and there have been instances where proceedings had to be adjourned on account of his absence. This is however, in fact a rare event – As is seen from table 4.34, the absence of the IO is not a regular pattern of events and repeated absence beyond 5 occasions is nearly non-existent.

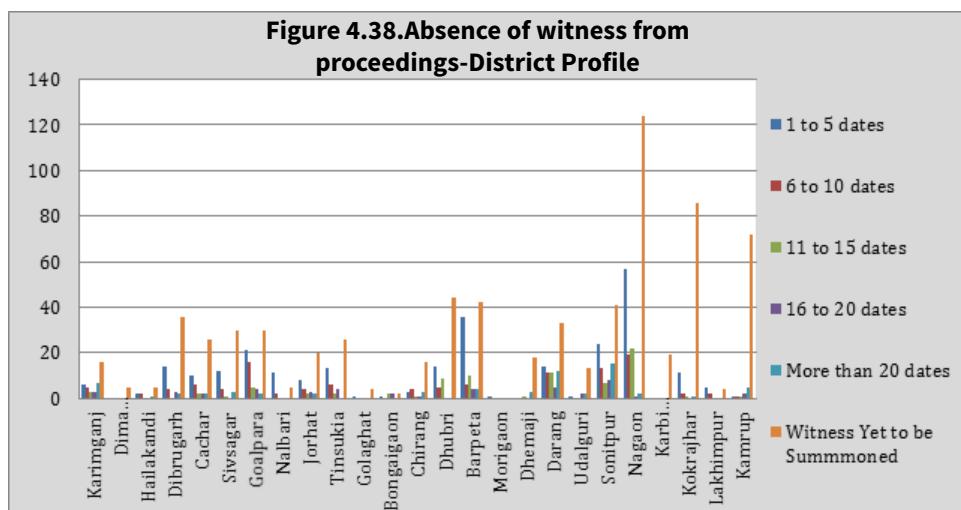
While in the majority of the pending cases, the witnesses are not even summoned as yet, in those cases where the trial has commenced, it is observed that it is common for witnesses

not to be present for at least 5-6 postings in every case. There are even cases where they are absent for up to 20 cases. Very often, their absence is on account of the summons/other processes not being served. On several occasions, there has been cases where they have been present, but proceedings have not taken place because of the absence of one of the other necessary parties or because the lawyer has sought for adjournments. When such instances repeat themselves, the witness is eventually disincentivised from participating in the proceedings.

TABLE NO.4.35 ABSENCE OF WITNESSES FROM PROCEEDINGS - DISTRICT PROFILE: (N=1308)

District	Absence of witnesses from proceedings - District profile														
	1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	None	%	NA	%	Total
Karimganj	0	0	0	0	0	0	0	0	0	0	0	0	40	100	40
Dima Hasao	0	0	0	0	0	0	0	0	0	0	0	0	5	100	5

District	Absence of witnesses from proceedings - District profile															
	1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	None	%	NA	%	Total	
Hailakandi	0	0	0	0	0	0	0	0	0	0	1	10	9	90	10	
Dibrugarh	2	3	0	0	1	2	0	0	0	0	0	0	56	95	59	
Cachar	5	10	0	0	0	0	0	0	0	0	0	0	43	90	48	
Sivsagar	0	0	0	0	0	0	0	0	0	0	0	0	50	100	50	
Goalpara	3	4	1	1	0	0	0	0	0	0	0	0	76	95	80	
Nalbari	1	6	0	0	0	0	00	0	0	0	4	22	13	72	18	
Jorhat	0	0	1	3	1	3	0	0	0	0	0	0	37	95	39	
Tinsukia	2	4	0	0	0	0	0	0	0	0	0	0	50	96	52	
Golaghat	0	0	0	0	0	0	0	0	0	0	0	0	5	100	5	
Bongaigaon	0	0	0	0	0	0	0	0	0	0	4	57	3	43	7	
Chirang	1	4	0	0	0	0	0	0	0	0	0	0	50	96	52	
Dhubri	0	0	0	0	0	0	0	0	0	0	0	0	72	100	72	
Barpeta	6	6	1	1	2	2	0	0	0	0	4	4	90	87	103	
Morigaon	0	0	0	0	0	0	0	0	0	0	1	33	2	67	3	
Dhemaji	0	0	0	0	0	0	0	0	0	0	1	5	21	95	22	
Darang	0	0	0	0	0	0	0	0	0	0	0	0	86	100	86	
Udalguri	1	5	0	0	0	0	0	0	0	0	1	5	17	89	19	
Sonitpur	2	2	2	2	0	0	0	0	1	1	0	0	103	95	108	
Nagaon	5	2	0	0	1	0	0	0	0	0	0	0	219	97	225	
Karbi Anglong	0	0	0	0	0	0	0	0	0	0	0	0	19	100	19	
Kokrajhar	0	0	0	0	0	0	0	0	0	0	0	0	116	100	116	
Lakhimpur	0	0	0	0	0	0	0	0	0	0	0	0	12	100	112	
Kamrup	0	0	0	0	0	0	0	0	0	0	0	0	82	100	82	
Total	28	2	5	0	5	0	0	0	1	0	17	1	1252	96	1308	



Information Asymmetry and lack of mechanisms to ensure flow of information, Sonitpur, GR 22/09

District : Kamrup GR- 1856/06 I.O.'s forwarding letter dated 21/4/2006 mentioned Md. Khurshed Ali, Md. Rijjik Ali, Md. Nazrul Ali to be JCLs and they were sent to the Observation home and later released on bail. On 25/4/2008 CJM receives the Charge sheet and as in the CS it was not mentioned that the accused persons are JCLs CJM transferred the case to the court of JMFC. From 31/10/08 till 22/1/13 the JCLs were absent even warrant of arrest was issued against them. On 22/1/2013 JMFC on perusal of the case record, it was realised that the accused persons are JCLs. The CR was immediately directed to be transferred to JJB, Kamrup

Reflections of this can be found in the data regarding the number of postings in the evidence stage, in those cases where it has commenced (Figure 4.38). As it is visible,

there are between 6-10 postings that are required for the evidence to be completed in most cases, with multiple adjournments in between that slow down the overall process

Figure 4.39. Number of postings in the evidence stage

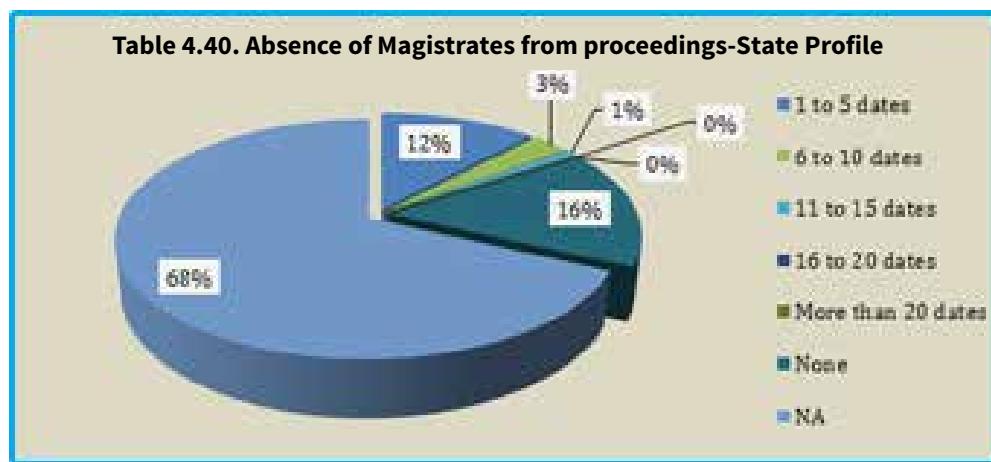


4.4.5.4 Adjournments on account of absence of Magistrates

Though not in a major way, absence of magistrates from the courts is also another reason for delays in the system.

TABLE 4.36 : ABSENCE OF MAGISTRATES FROM PROCEEDINGS – STATE PROFILE

1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	None	%	NA	%	Total
157	12	34	3	11	1	4	00	1	0	213	16	888	68	1308



Overall, it is only in about 12% of the cases that there were adjournments on account of absence of a magistrate –between 1-5 days. This is, however, not a uniform pattern of events across all districts. It is seen that the absence is primarily in a handful of districts (Figure 4.40)–Goalpara (which tops the list), Udaguri, Nagaon (both of which with high number of such cases) and Chirang, Kokrajhar, Karimganj and Hailakandi which has significant number of adjournments. Many of these adjournments are on account of unavoidable circumstances – such as

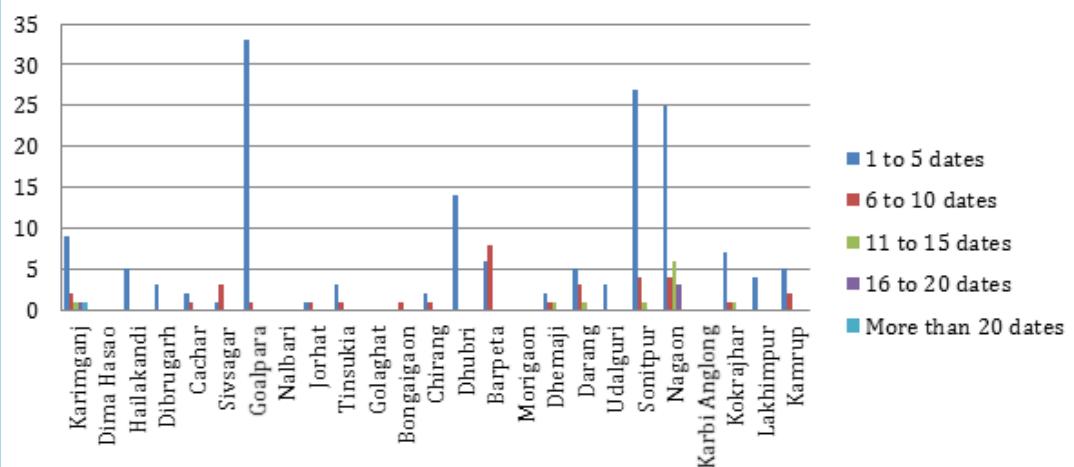
frequent bandhs or law and order situations. Another noticeable reason was that the magistrates were away for training purposes. While bandhs etc. are not planned in advance, training programmes are known in advance and it is important to inform the other parties about the adjournment in advance so that they are not forced to appear on a day when no business can be transacted. This is important as parties being made to appear on a day when no business can be transacted create a negative impression about the working of the board to the participants in the processes.

TABLE NO- 4.37. ADJOURNMENTS ON ACCOUNT OF ABSENCE OF MAGISTRATES - DISTRICT PROFILE: (N=1308)

District	No. of days PM absent														
	1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	None	%	NA	%	Total
Karimganj	9	23	2	5	1	3	1	3	1	3	1	3	25	63	40
Dima Hasao	0	0	0	0	0	0	0	0	0	0	0	0	5	10	5
Hailakandi	5	50	0	0	0	0	0	0	0	0	0	0	5	50	10
Dibrugarh	3	5	0	0	0	0	0	0	0	0	2	3	54	92	59
Cachar	2	4	1	2	0	0	0	0	0	0	1	2	44	92	48
Sivasagar	1	2	3	6	0	0	0	0	0	0	10	20	36	72	50
Goalpara	33	41	1	1	0	0	0	0	0	0	12	15	34	43	80

District	No. of days PM absent														
	1 to 5 dates	%	6 to 10 dates	%	11 to 15 dates	%	16 to 20 dates	%	More than 20 dates	%	None	%	NA	%	Total
Nalbari	0	0	0	0	0	0	0	0	0	0	7	39	11	61	18
Jorhat	1	3	1	3	0	0	0	0	0	0	1	3	36	92	39
Tinsukia	3	6	1	2	0	0	0	0	0	0	21	40	27	52	52
Golaghat	0	0	0	0	0	0	0	0	0	0	0	0	5	10	5
Bongaigaon	0	0	1	14	0	0	0	0	0	0	4	57	2	29	7
Chirang	2	7	1	4	0	0	0	0	0	0	8	29	17	61	28
Dhubri	14	19	0	0	0	0	0	0	0	0	5	7	53	74	72
Barpeta	6	6	8	8	0	0	0	0	0	0	41	40	48	47	103
Morigaon	0	0	0	0	0	0	0	0	0	0	3	10	0	0	3
Dhemaji	2	9	1	5	1	5	0	0	0	0	0	0	18	82	22
Darang	5	6	3	3	1	1	0	0	0	0	24	28	53	62	86
Udalguri	3	16	0	0	0	0	0	0	0	0	3	16	13	68	19
Sonitpur	27	25	4	4	1	1	0	0	0	0	21	19	55	51	108
Nagaon	25	11	4	2	6	3	3	1	0	0	31	14	15	6	69
Karbi Anglong	0	0	0	0	0	0	0	0	0	0	0	19	10	0	19
Kokrajhar	7	6	1	1	1	1	0	0	0	0	4	3	10	3	89
Lakhimpur	4	33	0	0	0	0	0	0	0	0	1	8	7	58	12
Kamrup	5	6	2	2	0	0	0	0	0	0	13	16	62	76	82
Total	157	12	34	3	11	1	4	0	1	0	213	16	888	68	1308

Figure 4.41. Adjournments on account of absence of magistrate-District Profile



Inadequate Support to the Magistrate and poor maintenance of records, District Sonitpur GR 1215/0

The prosecutors/defense lawyers not giving adequate support to the magistrate and poor maintenance of records (the handwritings in many of the case files are next to impossible to decipher) can also result in delays! The quoted case was transferred to Sonitpur from another district. On receipt of case files, the magistrate ordered that a copy of the required documents be served and it took about three months for the copy to be prepared. Finally, when it was about to be served, it was noticed that a copy had in fact already been served and the procedure contemplated under section 251 of the Code was already complied with. This was not discoverable because of the poor conditions of the records.

4.5. Frequency of Hearing Dates

Frequency of the hearing dates is another factor that determines the pace at which the case proceeds. It has been observed earlier, in the chapter on Infrastructure and Human

Resources that that the majority of the boards only meet about twice a week, with about two hours being dedicated per sitting

TABLE 4.38: GAP BETWEEN TWO HEARING DATES – STATE PROFILE

1 to 5 dates	%	16 to 30 days	%	More than 30 days	%	NF	%	NA	%	Total
104	8	511	39	525	40	50	4	118	9	1308

Figure 4.42. Gap between two hearing dates- State Profile



TABLE 4.39: GAP BETWEEN TWO HEARING DATES – DISTRICT PROFILE: (N=1308)

District	Gap between two hearing dates – District Profile										
	1 to 15 days	%	16 to 30 days	%	More than 30 days	%	NF	%	NA	%	Total
Karimganj	2	5	31	78	4	10	3	8	0	0	40
Dima Hasao	1	20	0	0	0	0	2	40	2	40	5
Hailakandi	1	10	7	70	2	20	0	0	0	0	10
Dibrugarh	9	15	28	47	22	37	0	0	0	0	59
Cachar	3	6	25	52	19	40	1	2	0	0	48
Sivsagar	11	22	7	14	19	38	9	18	4	8	50
Goalpara	10	13	35	44	32	40	0	0	3	4	80
Nalbari	6	33	10	56	2	11	0	0	0	0	18
Jorhat	5	13	18	46	13	33	3	8	0	0	39
Tinsukia	1	2	33	63	14	27	1	2	3	6	52
Golaghat	3	60	2	40	0	0	0	0	0	0	5
Bongaigaon	0	0	5	71	2	29	0	0	0	0	7
Chirang	0	0	8	29	19	68	0	0	1	4	28
Dhubri	1	1	16	22	54	75	0	0	1	1	72
Barpeta	10	10	32	31	45	44	1	1	15	15	103
Morigaon	3	100	0	0	0	0	0	0	0	0	3
Dhemaji	3	14	16	73	3	14	0	0	0	0	22
Darang	5	6	53	62	25	29	1	1	2	2	86
Udalguri	7	37	10	53	1	5	0	0	1	5	19
Sonitpur	5	5	72	67	24	22	3	3	4	4	108
Nagaon	8	4	46	20	156	69	9	4	6	3	225
Karbi Anglong	1	5	3	16	8	42	6	32	1	5	19
Kokrajhar	4	3	24	21	22	19	3	3	63	54	116
Lakhimpur	3	25	7	58	2	17	0	0	0	0	12
Kamrup	2	2	23	28	37	45	8	10	12	15	82
Total	104	8	511	39	525	40	50	4	118	9	1308

It is also seen that the average gap between two postings of a case exceeds a month's time (40%) of cases or between two weeks and a months' time (39% of the cases). In most districts, there is a predominant visible pattern of practice that is seen followed, without giving due consideration to the nature of each case. It is the opinion of the

researchers that rather than following a pattern, attention must be paid to the nature of each case while deciding on the appropriate frequency of postings. In a case where all the witnesses are from the nearby locality and the documents are available, readily, there is no need to have a longer date between two concurrent postings.

4.6 Overall Conclusions

The detailed study of the procedures before the board has revealed that the board functions very much along the lines in which a regular criminal court functions, as mandated by the Code of Criminal Procedure. While, basic considerations that illuminate the mechanism in the code – such as fairness – must continue to inform the procedure that the board follows, in light of Rule 13 (3) of the Assam JJ Rules, there are revisions in procedure that can be brought about to bring it in line with the inquisitorial spirit of proceedings that the board must follow¹⁵. At present, there are however no operational guide-lines on how this can be achieved and this would require long term work.

Apart from the question of delay, it is also important to note that the Board is not receiving all the inputs that it requires for its effective functioning from all the actors. The police and the POs are, by law, required to submit SIRs and SBRs in all the cases and the information therein is essential for deciding on the appropriate dispositional orders to be made.

Social Investigation Reports (SIR) are also not frequently made available to the board on time. SIRs are usually submitted only if the

magistrate specifically calls for them. There are districts where it is not seen submitted, even if there are repeated calls from the board. Absence of the SIR limits the knowledge that the board has about the demographic profile of the child. It is only in the districts of Dibrugarh, Nalbari, Barpeta, Karbi Anglong and Tisukia that most of the cases have SIR submitted.

Social Background Reports (SBR) are not being submitted by the police in almost all the districts except for Kokrajhar and a very few in Udaguri. Though the PMs do call for the SBRs, it is rarely seen complied with. Many of the staff associated with the boards have often not even heard of the expression SBR and often it is confused with SIR. PM of Nalbari calls for SIR from the P.O., the day the JCLs are enlarged on bail. So that, the system can remain in touch with the JCL until the 173 Cr.PC report is submitted by the I.O. Also the SIR helps to verify JCL's address and other family details can be cross checked.

In fact, orders made without considering the SIRs and SBRs are of doubtful legality. Data has revealed that it is only in a minuscule number of cases that the SIRs and SBRs are made available before the Board.

TABLE 4.40: SUBMISSION OF SBRS – STATE PROFILE

Submitted	%	Not Submitted	%	Total
71	5	1237	95	1308

¹⁵Rule 13 (3) of the Assam JJ Rules, which is a replica of the Central Model Rules reads "When witnesses are produced for examination in inquiry relating to a juvenile in conflict with law, the Board shall keep in mind that the inquiry is not to be conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872) so as to question the juvenile and proceed with the presumptions that favour the juvenile's right to be restored". On the nature of non-adversarial proceedings under the JJ Act, see Report of the Judicial Colloquium on Children's Court,

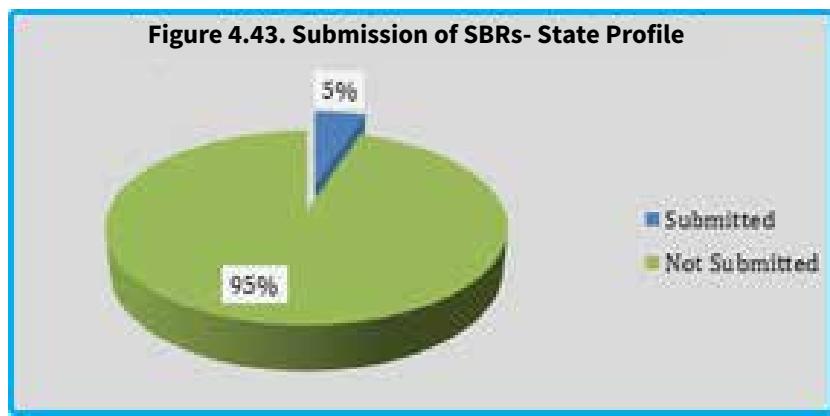
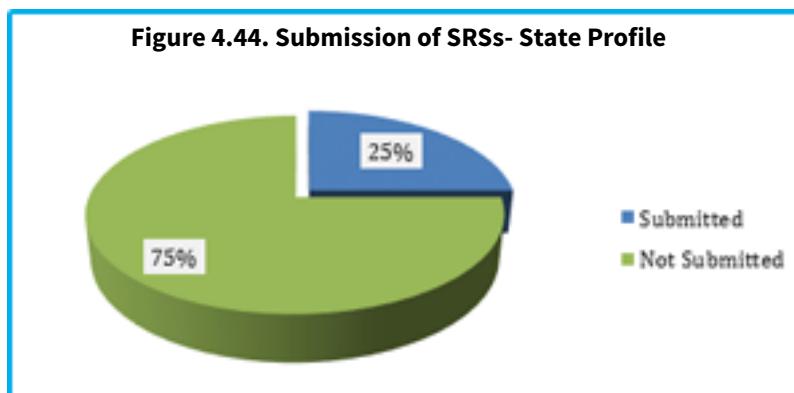


TABLE 4.41: SUBMISSION OF SBRs – DISTRICT PROFILE: (N=1308)

Name of Districts	Submission of SBRs – District Profile					
	Yes	%	No	%	Total	%
Karimganj	1	3	39	98	40	100
DimaHasao	0	0	5	100	5	100
Hailakandi	0	0	10	100	10	100
Dibrugarh	0	0	59	100	59	100
Cachar	0	0	48	100	48	100
Sivsagar	0	0	50	100	50	100
Goalpara	0	0	80	100	80	100
Nalbari	0	0	18	100	18	100
Jorhat	0	0	39	100	39	100
Tinsukia	0	0	52	100	52	100
Golaghat	0	0	5	100	5	100
Bongaigaon	0	0	7	100	7	100
Chirang	1	4	27	96	28	100
Dhubri	2	3	70	97	72	100
Barpeta	1	1	102	99	103	100
Morigaon	0	0	3	100	3	100
Dhemaji	0	0	22	100	22	100
Darang	1	1	85	99	86	100
Udalguri	1	5	18	95	19	100
Sonitpur	0	0	108	100	108	100
Nagaon	4	2	221	98	225	100
KarbiAnglong	60	52	56	48	116	100
Kokrajhar	60	52	56	48	116	100
Lakhimpur	0	0	12	100	12	100
Kamrup	0	0	82	100	82	100
Total	71	5	1237	95	1308	100

TABLE 4.42 : SUBMISSION OF SIRS – STATE PROFILE

Submitted	%	Not Submitted	%	Total
325	25	983	75	1308



The submission of SIRs/SBRs is a statutory mandate cast upon the POs and the Police. It is, however, observed that they are not confirming to this mandate. In general it is seen that unless there is a specific order calling for these documents from the Board, they are not submitted. It is not uncommon, however, for these documents not to be submitted, despite an order from the Board. From interviews it has come out that it is the excessive workload (both these authorities in general hold multiple portfolios) of these authorities that prevents them from fulfilling this mandate. There are however, three districts: Dibrugarh, Nalbari and Tinsukia – where SIRs are seen submitted in majority of the cases. Further, in Barpeta it is reported that over the past six months, there have been efforts taken to ensure that SIRs are being submitted. However, it needs to be noted that the quality of SIRs needs a sea of improvement. In those cases where it is submitted, it is seen that they are following a general pattern of contents with very little case specific details.

Similarly, at present it is observed that the involvement of the DLSA is quite minimal.

Though it is not in law mandatory to engage a DLSA lawyer and parties are free to choose their lawyers, considering the general background from which most of the JCLs are from, it is quite surprising that their levels of involvement are quite minimal barring Hilakandi, Dibrugarh, Nalbari, Tinsukia, Barpeta and Karbi Anglong. The involvement of DLSA was found effective in Hilakandi and Dibrugarh. In Hailakandi on the direction of the CJM all the JJB cases are dealt by the DLSA. Very recently the involvement of DLSA is getting stronger in districts like Golaghat, Jorhat and Dhubri. The payment of legal aid counsels is a major area of concern, for exp, the legal aid counsel in Chirang informed that he didn't receive any amount till date.

While data shows that a large number of pending cases are those in which proceedings could have been terminated, there appears to be reluctance on the part of magistrates to do so. The primary reason for this is that the magistrates, who perform duties at the regular criminal courts, are brought up in a mould of adversarial criminal trials and often it does not occur to them that the spirit of the JJ Act places a different mandate.

There is thus a reluctance to terminate the proceedings in a “criminal case” on account of delays in prosecution – an act that cannot be thought of in any regular criminal processes. Some magistrates also pointed out that an automatic cessation of proceedings would also not be in line with the purposes of the Act

– which is to ensure that the child does not go back to criminal behavior. It was pointed out that there must be some form of institutional oversight over the child for some time and an automatic cessation of all proceedings will fail this purpose.

TABLE 4.43: SUBMISSION OF SIRS – DISTRICT PROFILE: (N=1308)

Name of Districts	Submission of SIRs – District Profile					
	Yes	%	No	%	Total	%
Karimganj	1	3	39	98	40	100
DimaHasao	0	0	5	100	5	100
Hailakandi	0	0	10	100	10	100
Dibrugarh	0	0	59	100	59	100
Cachar	0	0	48	100	48	100
Sivsagar	0	0	50	100	50	100
Goalpara	0	0	80	100	80	100
Nalbari	0	0	18	100	18	100
Jorhat	0	0	39	100	39	100
Tinsukia	0	0	52	100	52	100
Golaghat	0	0	5	100	5	100
Bongaigaon	0	0	7	100	7	100
Chirang	1	4	27	96	28	100
Dhubri	2	3	70	97	72	100
Barpeta	1	1	102	99	103	100
Morigaon	0	0	3	100	3	100
Dhemaji	0	0	22	100	22	100
Darang	1	1	85	99	86	100
Udalguri	1	5	18	95	19	100
Sonitpur	0	0	108	100	108	100
Nagaon	4	2	221	98	225	100
KarbiAnglong	60	52	56	48	116	100
Kokrajhar	60	52	56	48	116	100
Lakhimpur	0	0	12	100	12	100
Kamrup	0	0	82	100	82	100
Total	71	5	1237	95	1308	100

Similarly, at present it is observed that the involvement of the DLSA is quite minimal. Though it is not in law mandatory to engage a DLSA lawyer and parties are free to choose their lawyers, considering the general background from which most of the JCLs are from, it is quite surprising that their levels of involvement are quite minimal barring Hilakandi, Dibrugarh, Nalbari, Tinsukia, Barpeta and Karbi Anglong. The involvement

of DLSA was found effective in Hilakandi and Dibrugarh. In Hailakandi on the direction of the CJM all the JJB cases are dealt by the DLSA. Very recently the involvement of DLSA is getting stronger in districts like Golaghat, Jorhat and Dhubri. The payment of legal aid counsels is a major area of concern, for exp, the legal aid counsel in Chirang informed that he didn't receive any amount till date

TABLE 4.44 : INVOLVEMENT OF DLSA – STATE PROFILE

Involved	%	Not Involved	%	Total
190	15	1118	85	1308

Figure 4.45. Involvement of DLSA- State Profile

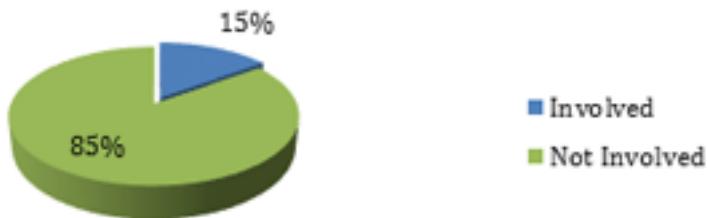


TABLE 4.45: INVOLVEMENT OF DLSA- DISTRICT PROFILE: (N=1308)

Name of Districts	Submission of SIRs – District Profile					
	Yes	%	No	%	Total	%
Karimganj	1	3	39	98	40	100
DimaHasao	0	0	5	100	5	100
Hailakandi	0	0	10	100	10	100
Dibrugarh	0	0	59	100	59	100
Cachar	0	0	48	100	48	100
Sivsagar	0	0	50	100	50	100
Goalpara	0	0	80	100	80	100
Nalbari	0	0	18	100	18	100
Jorhat	0	0	39	100	39	100
Tinsukia	0	0	52	100	52	100
Golaghat	0	0	5	100	5	100
Bongaigaon	0	0	7	100	7	100

Name of Districts	Submission of SIRs – District Profile					
	Yes	%	No	%	Total	%
Chirang	1	4	27	96	28	100
Dhubri	2	3	70	97	72	100
Barpeta	1	1	102	99	103	100
Morigaon	0	0	3	100	3	100
Dhemaji	0	0	22	100	22	100
Darang	1	1	85	99	86	100
Udalguri	1	5	18	95	19	100
Sonitpur	0	0	108	100	108	100
Nagaon	4	2	221	98	225	100
KarbiAnglong	60	52	56	48	116	100
Kokrajhar	60	52	56	48	116	100
Lakhimpur	0	0	12	100	12	100
Kamrup	0	0	82	100	82	100
Total	71	5	1237	95	1308	100

There is thus a need to pay more attention to sensitize the other actors who are associated with the board to improve their association and support that they render to the boards.

From the analysis it is clear that there are multiple factors that are responsible for the overall delays in the system, with each actor making its own share of contributions. While many of these problems/short comings can be rectified only over a period

of time, and some of them will involve significant policy changes in the way the board conducts its proceedings, there are a few avenues – principally in documentation and documentation management practices – where some immediate changes can be brought about with little or no cost at all and substantial savings of time can be achieved. Most of these involve only some coordination being developed across actors and rectifying the information asymmetries.

4.7. Monitoring Mechanisms & their functioning

Monitoring meeting by CJM/Dist. Judge

Considering the multi-stakeholder coordination that is required to work the provisions of the Act, the Rules & the Gauhati High Court has mandated the conduct of a periodic review and reporting of the status of pending cases. There are quarterly and yearly reports to be sent to multiple agencies, and there are also prescribed forms in which the information must reach these agencies.

It has been observed that between April 2014 and March 2015, out of 25 districts only 14 districts has complied with the mandate to conduct a monitoring or review meeting. Out of these 14 districts only 4 districts had conducted meetings quarterly, four districts had conducted three meetings and the rest of the 6 districts had conducted meeting only once

Conduct of Periodic Review Meetings

Districts where meetings have been held		Districts where no meetings have been held
Name of the District	No. of meetings	Name of the District
Barpeta	4	
Bongaigaon	1	
Cachar	3	
Darrang	3	
Dibrugarh	1	
Golaghat	4	Chirang, Dhemaji, Dhubri Dima Hasao, Goalpara
Hailakandi	3	Kamrup, Nagaon, Tinsukia Udalguri, Sivsagar, Morigaon
Jorhat	4	
Karbi Anglong*	4	
Karimganj	1	
Kokrajhar	1	
Lakhimpur	3	
Nalbari	1	
Sonitpur	1	

In these meetings, generally the CJM, Additional District judge, SDJM/PM, JJB members, representatives from SJPU, Addl. Superintendent of Police, District Commissioner/Magistrate, Counsels from DLSA, Asst. Public Prosecutors, DCPO, DSWO, CWC Chair-person and representatives from local NGOs are present. However, JJB, Barpeta has a good practice of inviting the Joint Health Director and Medical Officers to attend their quarterly meetings. In Sonitpur, the meetings draw attendance from the senior police officers, however, the NGOs, DLSA, DCPO & the representatives of the DSWO are not invited/attending the meetings.

Since Dima Hasao and Karbi Anglong do not have a judicial magistrate, no such monitoring meetings have been conducted. However in Karbi Anglong a District Child Protection Committee meeting had been conducted in every quarter which are attended only by the PM, JJB members and the DCPO.

In general, the primary points of discussion in such meetings in regard to JJB were

different cases of JCLs pending before the JJB, their current status, etc. Most common topics of discussions, as reflected in the minutes of the meeting are: improvement of infrastructure, provision for observation homes in all the districts, inadequate funds, proper infrastructure in Govt. Hospitals so that the process of ossification is not delayed (districts like Sonitpur, Hailakandi either do not have a functioning X-Ray machines or radiologist), The need for general awareness of the common people on JJ system and child rights, Awareness and trainings for SJPU and CWOs etc.

Questions are being raised on delay in disposal of long pending cases and also petty cases. Police are advised on many occasions in different districts to be proactive in collecting all information and documents for ascertaining the age of the juveniles and also to speed up the process of submitting Final Report especially in petty cases. Across districts the police officers also expressed their confusion of where to keep the child at night when there are no night-shelter homes

or observations. They also explained the reason for their inability to timely execute W/A and P/A , due to shortage of adequate staff and constant law and order issues within the state, especially in districts where there are problems of insurgency. Issues like lack of funds also pop up in these meetings: in case of unavailability of police vehicles, the police personnel have to pay for the travel expenses of both himself and the JCLs. The reason for delays on the part of the police to produce the child before a judicial forum, in reasonable time can be well explained by this.

The districts that could not conduct such monitoring cited fund crunch as the primary

reason. Another most common reason cited was absence or transfer of Principal Magistrate, the in-charge PM being over burdened with two roles to play could not arrange such meetings. But the information and data as per JJB Form 2 have been sent to the CJM in every quarter.

The minutes of the motoring committee meetings provide both a macro and micro pictures of the reasons for poor service delivery. A mechanism that consolidates the minutes of the meetings and its circulation to all concerned authorities would be of immense assistance in ensuring that the system can function optimally



SUMMARY OBSERVATION ON MAJOR REASONS FOR DELAY IN DISPOSAL OF CASES

Delays in police actions & actions of the supporting authorities:

- Delays in production before a Judicial Authority - Production before the magistrate within 24 hours of apprehension is practiced only in less than 30% of the cases.
- Incorrect reporting of age of the apprehended juvenile as a person above 18 years of age in close to 50% of the cases leads to enormous delay in disposal of the cases.
- Lack of direct productions before the Board: 72% of the apprehended juveniles are first produced before a regular trial magistrate, meant to try adults.
- Non-submission of SBRs (submitted only in 5% of the cases) and SIRs (submitted only in 25% of the cases)
- Delayed submission charge sheet – Charge sheet is submitted in 30 days only in 19% of the cases. In 28% of the cases, it takes more than three months.

Delays caused by poor data management and flow of information

- It is only in 30% of the cases that the records are transmitted from the regular trial court to the Board on the same day, in 32% of the cases, it takes more than 30 days.
- Even after the charge sheet is drawn up, there are delays in the forwarding of the charge sheet to the PI court - in 23% of the cases it takes more than 30 days.
- Charge sheets are unnecessarily filed before the regular magistrate's court (in 65% of the cases) and not directly sent to the board. It then takes considerable lights of time before the charge sheet is forwarded to the appropriate board (in 48% of the cases it took more than a month).
- There are unnecessary delays caused in the preparation and service of the copy of the charge sheet (in 22% of the cases it took more than 45 days)

Delays in the judicial process:

- Delays are caused where the evidence in support of the age petition is a school certificate (which involves calling the headmaster of the school as a witness) or bone ossification test (as not all districts have the necessary infrastructure/human resources needed to perform the test)
- The absence of the JCL from the trial process is another major reason for delay – in 25% of the cases; a JCL is absent for 1-5 postings.
- Absence of witnesses is another reason for delays – in 20% of the cases, they are absent for 1-5 postings.
- In general, the evidence stage is a long process – as adjournments due to absence of parties are quite high.
- The frequency of postings of a case are also quite low – in 40% of the cases, the frequency is more than a month and in 39% of the cases it is more than two weeks.
- The frequency of the sittings is also not adequate – 80% of the boards sit only twice a week, that too only for 2-4 hours. None of the boards have a dedicated principal magistrate.
- In 12% of the cases, there has been between 1-5 adjournments on account of absence of magistrates from the court.

Delays due to Infrastructural Lacunae:

- Inadequate infrastructural and human resources support for the boards, which makes the overall process slow. Only 56% of the boards have the services of a PO available. . There is a general lack of dedicated Group-D staff for the boards and the general trend observed is that there would be a single dedicated staff to the board and the rest are shared from the office of the DCPO

4.8. Compliance with the Mandate of the Law

What is mandated by the Rules	What is Observed in practice
INFRASTRUCTURE	
Place of Sitting Not to be in Regular Court and preferably near the premises of an observation room	While nearly all the boards are functioning from outside the court premises (84% of them), only one board functions from the premises of an observation home. About 12% of the boards continue to operate from the chambers of the principal magistrate
The place where the proceedings are held must be child friendly.	Posters, paintings and other IEC materials that helps make the surroundings colourful are available only in 6 boards
Space for Counseling	Not Available at any of the Boards
Separate Waiting rooms/area for children	Waiting rooms for children are available in 72% of the districts and they are not available only in seven districts. Even in those districts where such space is available, often it is inadequate and not well maintained
	Separate waiting areas for the JCLs and other visitors available only in Morigaon & Lakhimpur Separate rooms for boys and girls were available only in Darang and in all the other 24 districts separate waiting area was not available.
Drinking Water	Drinking water is available in all the districts but for Dhemaji & Goalpara
Toilet facilities	76% of the districts have toilet facilities, in bulk of the situations, it was not adequate Often the board members, other staff and the visitors are forced to use the same toilet. In some of the districts, while the toilets where there, the water supply was not proper and hence they were not fully functional.
Office Rooms for PM and Board Members	Separate rooms for the PM and members were not available in any of the districts The members and the PM sit in the board room during the whole time that they are the Board. At Karimganj, Nagaon, Dhemjai, Tinsukia & Barpeta, the JJB and the CWC use one and the same premises for their sittings – this is made possible by ensuring that their scheduled sittings do not overlap.
Records Room	Even as the Assam Rules specifically mentioned records room to be one of the facilities that must be available at the board, in eleven districts (about 44%) this facility is not available at all. Even in those districts where the facility is available, it is not a full fledged room – almirahs are allotted within the office of the DCPO or the support staff for maintaining records. In fact Except for Dhemaji no district has separate record room, in all other districts there are steel almirahs, either in the room where DCPO sits or in the room where JJB sits

What is mandated by the Rules	What is Observed in practice
HUMAN RESOURCES	
Probation Officer	POs are available only in 11 districts and in all these 11 districts the P.O. Holds more than one office and in the other districts the boards function without their services
Social Worker	Services of a social worker are available at almost all the boards, a general trend observed has been that they work both for the CWC as well as the JJB. At the time of writing this report the board at Dima Hasao lacks the support of any social worker and at Barpeta, the social worker is on maternity leave and no one else has been deputed in her role
Counsellor	Counsellors have not been appointed at any of the boards in Assam and at present, the Board Members along with social workers play the role of the counsellor
FREQUENCY AND DURATION OF SITTINGS	
Rules mandate that the boards are to meet every day (and four five hours on each occasion), unless the workload justifies the contrary	No board that sits on every working day of the week (i.e. for six days). The vast majority of the boards generally meet only for twice a week, a handful of them a little less or a little more than that and the board at Dima Hasao meets only once a month. the boards are able to meet and conduct business only for a few hours every day, mostly after the magistrates discharge their responsibilities at the regular courts. Board sittings are hence, usually held in the afternoon on an average for 2-4 hours per sitting.
POLICE ACTIONS	
Production within 24 hours of Arrest	Complied with in 28% of the cases. Largely it takes between 1-7 days.
Filing of Apprehension Memos	Seen filed in close to 60% of cases.
Production of a JCL directly before the JJB.	Achieved only in 40% of the cases. The rest are produced before a regular trial magistrate.
Submission of 173 report in 30 days	Achieved only in less than 10% of cases. It generally takes more than 90 days before final report is filed
JUDICIAL ACTIONS	
Age determination within 30 days	Achieved only in 54% of cases.
Submission of Social Investigation Report in 30 days	Submitted in 25% of the cases, Not submitted on time.
Submission of Social Background Report in 30 days	Submitted only in 2% of the cases, not submitted on time.
Completion of 251 (Cr.PC) Notice within 15 days of receipt of charge sheet.	Not complied with in any case
Evidence to be completed within 90 days of first summary enquiry	Not complied with in any case.

Some Key Observations

- The disposal rate of cases is the lowest in Nagaon while the district has the highest no of pending cases. AS on 7th Aug, 2015, only 26 cases were disposed.
- In cases where the JCL is a co-accused with adults, the alleged JCL is produced before the regular courts as the I.O. shows the JCL above 18 in the forwarding letter. As a consequence, the process of age petition, age determination and bail all are done at the regular courts in contravention to the mandate of the law. The regular court instead of granting bails to JCLs should immediately refer these cases to JJB, if a *prima facie* case is made out and JCLs should be enlarged on bail only by the JJB.
- Age mentioned in the forwarding letter in many cases are incorrect and the child is produced at a regular court. This trend is high in the cases where they are arrayed as a co-accused along with adults. This is done presumably because it becomes easy for the IO to produce the JCL as an adult in the regular court, and then it is left to the Magistrate to determine his age or to remand him in judicial custody for 14 days.
- Incorrect reporting of age by the police is also due to lack of observation homes and other infrastructural facilities like vehicle, fuel etc to put the child in the observation home. The Magistrates of Kokrajhar, Cachar, Dhubri, Karimganj, Chirang are also of the opinion that absence of observation homes and shelter homes are the primary reason behind manipulation of age of the JCLs. Moreover, it is a common practice to produce the co-accused before the regular court and thereby leaving the onus on the Magistrate to determine his age and to remand him in judicial custody for 14 days.
- Age determination is delayed primarily for two reasons: firstly lack of documentary evidence and secondly administrative lapses. Another most striking reason for delay in the age determination is the non-appearance of the Head Master who issued the school certificate to the alleged accused. Most of the time the Head Master do not appear soon after being summoned (possibly because the summons itself is not served on time) and it takes months for the Head Master to appear in some cases. There are instances, where the Head Master appeared only after BWA has been issued against him. Also there are instances reported by the Magistrates that in some cases the Head Masters while giving their statement confessed that they were forced to issue the certificate.
- Children who are produced before the court and granted bail are required to pray for bail once their cases are transferred to JJB because the bail petition or order or bail bond being furnished are not found in the particular Case Record sent to JJB. In case of bailable offence, the bail is given by the police station, but it is nowhere mentioned in the order sheet.
- Sometimes there is no signature or seal in the order sheet and it becomes very difficult to understand who has given the order or before whom the case was produced first time. In Nagaon, most of the signatures and seals are of JJB social workers making it difficult to understand if the PM was really present, though the attendance register shows that he was present. The DEO informed that to save time the members put the seal and the signature in some of the order sheets in presence of the PM.
- Illegible handwriting makes it difficult to understand the intricate details of the cases especially in Cachar, Kamrup, Nagaon. The facility for digitization of records must be extended to the Boards also.

- In absence of proper maintenance of records, it becomes difficult to understand who the JCL is especially in cases where there are co-accused or co-alleged.
- Proper numbering of cases and files, along with an index of documents helps save time of the magistrates and the board.
- In the absence of the SIR and SBR, the socio-economic background of the children is not a part of the record. The final orders in such cases are hence of questionable legality.
- Often the police finds it difficult to transfer/accompany the child to the Observation Homes or the Boards as adequate funds and travel support has not been rendered to them.
- In cases of charges under the NDPS or Explosive Substance Acts, the JCLs are sent to observation home, because the PM thinks that it is safe from them to be in the observation home than being with their family. Because of insurgency issues in Dima Hasao, sometimes the JCLs are not enlarged on bail as their families request the PM to keep the child away from the area, or he might get in contact with the miscreants, or he might be kidnapped by them. This points out that in the best interests of the child, the courts would often have to take into account considerations other than that what the letter of the law mandates.
- As such there is no uniform practice in transferring the Case Records from court to JJB. The case records are sometimes referred to JJB to inquire and ascertain the age of the JCL, the trend is more in cases where the offence is serious in nature. Sometimes the CR is transferred soon after a JCL has been declared a juvenile and granting of bail by the court. There are cases where after being declared a juvenile the case is transferred to JJB to grant bail to the JCL. It has also been observed that the CR is transferred to the JJB for disposal of the case after the charge sheet has been submitted by the I.O. to the CJM.
- The CR is received by JJB on the same date or within 4 to 5 days, especially when the JCL is due to be enlarged in bail by the JJB. But it has been observed that when the Charge sheet is sent to JJB for disposal of the case along with the CR, it takes more than a week, sometime even months for the CR to reach JJB.
- A very common phenomenon around charge sheet is that it is rarely forwarded directly to the PM. It is issued on a particular date and seen forwarded to the court on another date. Then the particular court which receives the report transfers it to the board. This causes unnecessary delays.
- Lot of confusions are created in a case where there are co-accused. Because after the CJM transfer the charge sheet to the court of any other magistrate (JMFC/SDJM/Addl Session Judge) the court follows its regular procedure and summons the JCL like any other accused. Sometimes, even NBWA is also seen issued, if in the charge sheet it is not mentioned that the particular person is a juvenile). Once he appears, he shows the order of being declared as a juvenile and then a copy of the offence report is sent to the JJB. This again contributes to delaying the process.
- There is no uniform procedure in following the mandate of section 251 Cr.PC in explaining charges to the JCL for instance, in Cachar offence is not explained unless the copy of consideration of charges is being furnished to the JCL or his guardian or his counsel, Whereas in districts like Chirang and Sonitpur offence is explained first and then copy of the same is furnished. Primarily what contributes to lot of delay in this stage is that the Copy of the offence is not being duly prepared on time by the Bench

Assistant or it cannot be furnished to the JCL or his guardian or his counsel being absent. Change of address or shifting to a different location also makes it difficult for the JJB for timely submission of summons for explaining the charges.

- It has also been observed that good record keeping also helps in quick disposal of cases. In certain cases it has been observed that cases may get unnecessarily dragged on simply because some records are not available. It is more common among split up cases (i.e. cases where the juvenile is a co-accused with other adults). In some districts as the bail bond was nowhere found in the split up case record sent to the JJB, even though the JCL was enlarged on bail by JMFC, he again had to submit a petition for bail before the JJB and the same was granted by the PM.
- Missing bail orders is harassment to the JCL as they again have to file a bail petition.
- It has been found that the offence has never been explained to the JCL and without following the procedure mentioned U/S 251 CrPC witness is being examined and cross examined. Occurrences of such incidence have been found in quite a few cases across districts.
- In Sonitpur it is found that, in the forwarding letter of the I.O., the person to be produced is mentioned as a JCL but still produced before the CJM/SDJM/JMFC requesting the Magistrate to give necessary order in regard to the case. Then the CJM/JMFC/SDJM refers the case to the JJB. It is more commonly practiced in case where there are co-accused. For such a practice no concrete reason has been found except that the procedure is convenient for the I.O. to get the GR no. from the GR section at the CJM court. In Tinsukia, similar situation has been observed, even though the forwarding letter is addressed to the PM but the sign and seal is of the CJM/JMFC/SDJM. This may be because of the fact that the SDJM is also deputed as the PM and in some cases CJM/JMFC function as the I/C PM as observed in Barpeta, Hilakandi, Dhemaji districts, But a similar trend has also been found that it is more convenient for the I.O.s to get the GR no. if the JCL is produced first at the regular court.
- In some districts as the bail bond was not found in the split up case record sent to the JJB, JCL again had to submit a petition for bail before the JJB, even though the JCL was enlarged on bail by JMFC,
- The dates of subsequent hearing are spaced far apart, for example in districts like Dhubri, Nagaon dates are given on an average of 45-60days which is not only in contravention to the provisions of the law but a major factor for pendency of cases.
- No case has been disposed in the district of Barpeta since 31st March till Sept, 2015. The PM is in maternity leave and the JMFC is in charge PM, who holds the hearing but didn't dispose any case since the time he is in charge.

Observations from KI with the Magistrate.

- Serving as a PM and SDJM on a same day is reported as a challenge. Nearly all the PMS suggested that it is more sensible to dedicate and entire days work at the board – that will enable speedier disposal of cases and also enable them to be more child friendly.
- Lack of infrastructure and lack of training about JJ Act among the JJB and JJB members and police personnel are also contributing are the challenges they face. Officials of JJB should be properly sensitised regarding the need and importance of documents like forwarding letter, apprehension memo, SIR etc. If they are well versed record keeping and maintaining will be better.
- Not having observation homes in all the districts is reported as another big hindrance for smooth functioning of the JJB. If after sun down a JCL has been apprehended then, the PMs are clueless where to shelter the JCL till his parents appear to take his custody. The I.O.s do not want to take the responsibility and at night it is also difficult and unsafe to commute to the nearest Observation Home.
- District which are troubled by insurgency like Kokrajhar, Udalguri, Chirang or highly flood prone districts like, Dhemaji, Lakhimpur, Kokrajhar, Dhubri or had to cross Bramhaputra like Dhubri (where jetty services are stopped after sun down) are finding it difficult locate/inform the guardians or escort the JCL to the nearest Observation Home.
- Some more Observation Homes need to be established in strategic locations of the State.

Some Good Practices

- In Dhubri and Kokrajhar a sizeable no. of cases (more than 100 cases) have been disposed from 1st April'15 to 15th Sept'15 because of the initiative of the newly joined PMs.
- In Dhemaji, and Barpeta the social workers and DEOs take initiative in tracking the JCLs if the summon is not returned or the JCL is absent and do not appear before the JJB for long time.
- Morigaon JJB is the most children friendly, they provide small snacks to the JCLs and the PM has initiated a small library where some books on moral education has been arranged for the JCLs who can read while they wait for their turn at the JJB.
- Nalbari and Barpeta too have an impressive record of submitting SIRs and the current social workers submit SIR on time in almost every case.
- Both electronic and manual records are very well maintained in Kokrajhar, Sonitpur, Barpeta, Tinsukia, Darrang, Dhemaji, Lakhimpur. Files in Small districts like Morigaon, Dhemaji, Karbi Anglong, Nalbari, Lakhimpur are exceptionally well maintained.

- The Infrastructure of almost all the JJBs are in good shape, along with shaded sitting area for the JCLs and their families, but district like Nagaon, and Dibrugarh needs overall improvement in infrastructure. The sitting area of JCLs and their families needs some improvement in Kokrajhar and Goalpara, Dhubri districts.
- In districts especially those of upper Assam e.g. Jorhat, Tinsukia, separate charge sheet is being submitted by the I.O. for the JCLs, where no reference of any other co-accused is mentioned.
- The PM of Lakhimpur along with the DEOs and other staffs devote time till late evening at the JJB, they take extra initiative for speedy disposal of the cases. The PM often discusses issues concerning JJB with the SP and the CJM to ensure timely disposal of cases.
- DLSA has been functioning well in the districts like Hilakandi, Sonitpur, Dibrugarh Chirang etc. However, the DLSA counsels are very ill paid or work without remuneration. In Chirang, the DLSA counsels are yet to be paid any amount for their services to JJB.
- In the case of Abhisekh Saikia in Jorhat district (GR 423/12), he was sent to judicial custody. But the Jail Superintendent realised him to be a juvenile by appearance immediately ordered for ossification test.
- In Sonitpur, the monitoring committee meetings draw participation from the district medical officers too.



CHAPTER - V

The Profile of JCLs in Assam

5.1. Introduction: Causes of Juvenile Crime

As early as in 1919, the Indian Jail Committee, which was appointed by the British establishment, had gone on to observe “the ordinary healthy child criminal is mainly the product of **unfavorable environment** and that he is entitled to a fresh chance under better surroundings. There is a general consensus of the opinion that as youth is the times when habits have not become fixed, the **prospects of reformation are then most hopeful**. From both points of view it has come to be agreed that the child offender should be **given different treatment** from the adult.” This understanding, which was based out of observational data from the field, along with some intelligent guesses, now stands supported by scientific research and evidence. It is now observed that the pre-frontal cortex, which is responsible for important functions such as planning, reasoning, judgment, and impulse control, is the **slowest to mature**, a process that completes at the age of 25. Our present science establishes that younger people engage in risky behavior precisely because of an underdeveloped brain. Juveniles are thus more **susceptible** to negative influences and peer pressure, are **less likely to focus on future outcomes**,

are **less risk-averse** than adults, have **poor impulse control**, and evaluate risks and benefits differently all of which pre-dispose them to make poor decisions. **Adolescence is a transient phase** and “most young people **grow out of delinquency on their own as their brains mature** – if they are spared the trauma and lasting stigma of juvenile incarceration.”

Young people who are at risk of becoming delinquent often live in difficult circumstances². Children who for various reasons—including parental alcoholism, poverty, breakdown of the family, overcrowding, abusive conditions in the home, the growing HIV/AIDS scourge, or the death of parents during armed conflicts—are orphans or unaccompanied and are without the means of subsistence, housing and other basic necessities are at greatest risk of falling into juvenile delinquency.

³Statistical data in many countries show that delinquency is largely a group phenomenon; between two-thirds and three-quarters of all juvenile offences are committed by members of various groups. Even those juveniles who commit offences alone are likely to be associated with groups.⁴Juvenile group crime is most prevalent among 14-year olds and

¹India. Jails Committee. Report of the Indian Jails Committee, 1919-1920. Simla: Superintendent, Govt. Central Press, 1920, available at: <<https://archive.org/details/eastindiajailsco01indi>>

²United Nations, “Report of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000” (A/CONF.187.15).

³United Nations, The World Youth Report – 2003, Chapter 7: Juvenile Delinquency, p. 189, available at : <<http://www.un.org/esa/socdev/unyin/documents/ch07.pdf>>

⁴Ibid, p. 193.

least prevalent among 17-year-olds. The rates are higher for theft, robbery and rape, and lower for premeditated murder and grievous bodily harm⁵.

Available data show that delinquency and crime have strong gender associations. Police records indicate that the crime rates of male juvenile and male young adult offenders are more than double those of young females, and conviction rates are six or seven times higher⁶. There are a number of reasons why more young men than young women are involved in violent or criminal behaviour. Various restrictive and stimulative factors encourage women to conform to social norms that do not apply to men, one example being the fear of sexual assault. Girls are subject to stronger family control than are boys. Cultural concepts are such that society at large is less tolerant of deviant behaviour among young women than among young men. In addition,

aggression and violence play an important role in the construction of masculinity and sexuality in patriarchal societies, the primary objective being to reinforce and maintain the status and authoritative position of men. The male perception of violence can be minimized, forgiven, denied or justified. Men often do not consider such acts as verbal or sexual insults to constitute violent behaviour.

Juvenile delinquency is also driven by the negative consequences of social and economic development, in particular economic crises, political instability, and the weakening of major institutions (including the State, systems of public education and public assistance, and the family)⁷. Socio-economic instability is often linked to persistent unemployment and low incomes among the young, which can increase the likelihood of their involvement in criminal activity⁸.

5.2. Juvenile Crime in Assam – A Profile

It is significant to remember here that crimes committed by Juveniles are only a small percentage of the total number of crimes committed. In India, Juvenile crime forms a mere 1% of the total crime committed and this figure has largely remained unchanged over the years - From 2003-2014, the percentage of juvenile crimes to total crimes has only marginally increased from 1.0% to 1.2%. Even with respect to serious crimes such

as rape and murder, the number of JCLs (who are between 16 and 18 years of age – the age group that we now consider to be increasingly turning deviant) has remained marginal (figure 5.2). It is significant to note that the figures in Assam closely resemble the National Averages, with respect to these issues - incidence of Juvenile Crime in Assam is indeed quite low (figure 5.3).

⁵*Ibid*, p. 197.

⁶S. Venkatesh, "The social organization of street gang activity in an urban ghetto", American Journal of Sociology, vol. 103, No. 1 (July 1997), pp. 82-111.

⁷United Nations, Department of Public Information, News Coverage Service, "Effects of armed conflict, youth participation in economic development, media influence discussed at Lisbon Conference", press release: statement by Agung Laksono, Minister for Youth and Sport Affairs of Indonesia (Lisbon, 10 August 1998) (SOC/4468).

⁸United Nations, "Draft plans of action for the implementation during the period 2001-2005 of the Vienna Declaration on Crime and Justice: meeting the challenges of the twenty-first century: report of the Secretary-General", tenth session of the Commission on Crime Prevention and Criminal Justice, Vienna, 8-17 May 2001 (E/CN.15/2001/5).

Figure 5.1. Incidence of Juvenile Crime in India

■ Juvenile Crimes ■ Crimes in India

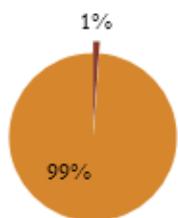


Figure 5.2. Juveniles apprehended for Murder in 2013 in India

■ Juvenile between 16 and 18 years apprehended for murder

■ Others arrested for murder

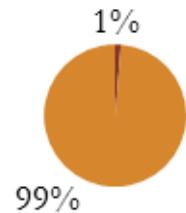


Figure 5.3. Juveniles apprehended for rape in 2013 in India

■ Juvenile between 16-18 apprehended for rape ■ Others arrested for rape

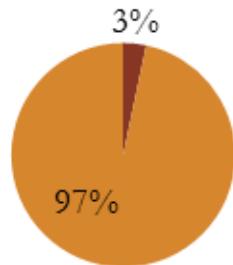


Figure 5.4. Incidence of Juvenile Crime in Assam, 2014

■ Total number of apprehended persons
94337

■ Cases involving juveniles



466

Cognizable IPC Crimes

3064

Cognizable SLL Crimes

21

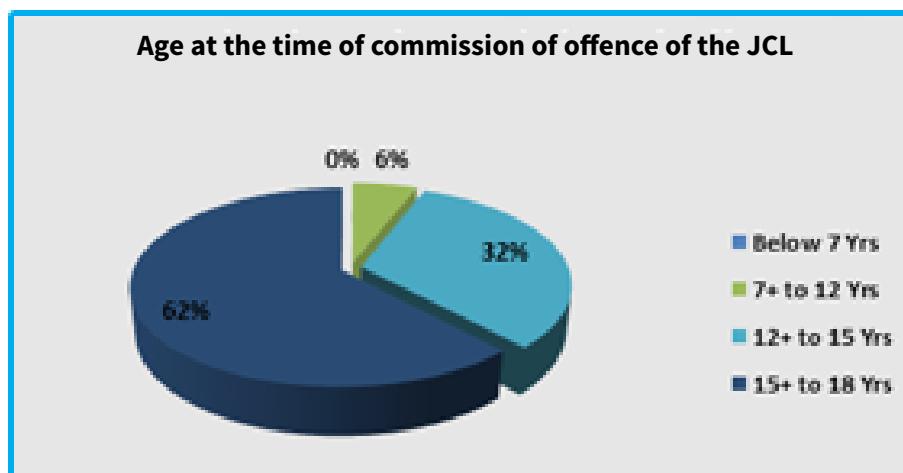
5.3. Profile of JCLs in Assam: General Observations

5.3.1 Demographic profile:

5.3.1a. Age at the time of commission of offence of the JCL: (N=1640)

TABLE 5.3 NATURES OF OFFENCE RESPECT THEIR AGE OF OFFENCE

Age- Gender Distribution																Total			
Below 7 yrs				7+ to 12 Yrs				12+ to 15 Yrs				15+ to 18 yrs				Total			
M	%	F	%	M	%	F	%	M	%	F	%	M	%	F	%	M	%	f	%
0	0	0	0	77	5	20	1	512	31	21	1	663	61	17	1	1582	96	58	4



As the data reveals, bulk of the JCLs are males (96%), who are between 15-18 years of age (61%). In general, juvenile delinquency amongst the girl child appears to be extremely low. The age wise distribution of the apprehended juveniles shows that 62% belong to the age group 15+ to 18 years.

TABLE 5.2 EDUCATION STATUS OF THE JCL: (N=1640)

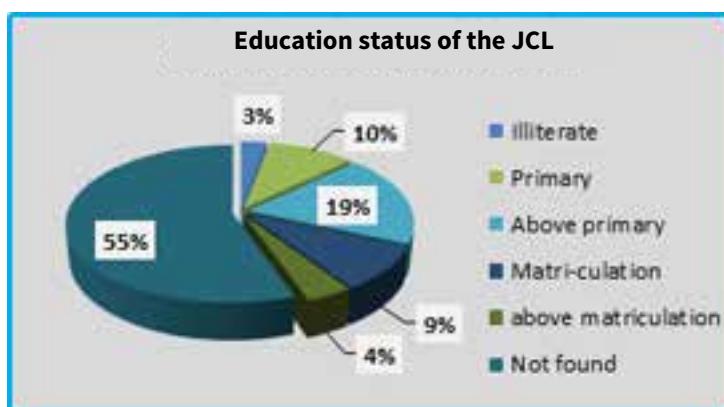
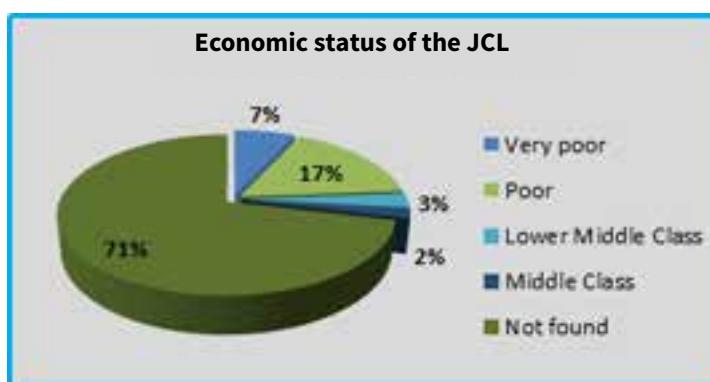


TABLE 5.3 ECONOMIC STATUS OF THE JCL: (N=1640)



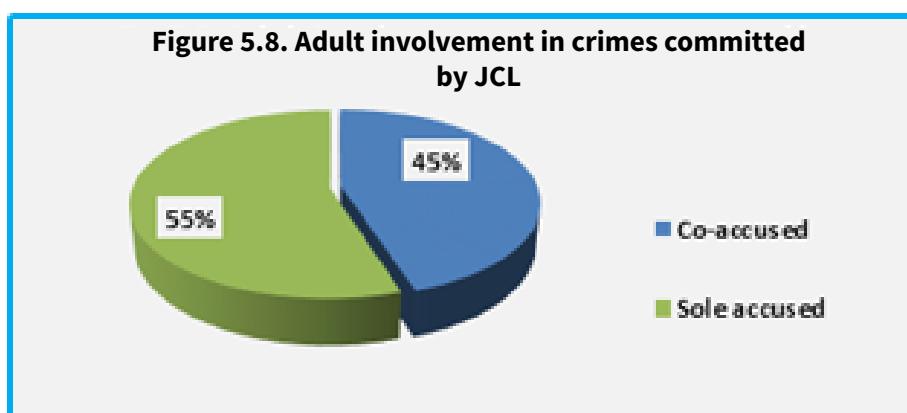
5.4. Crimes in Association with adults:

It is observed that a significant percentage of cases are those in which the JCL had committed crime in association with other adult accused persons. Observations from the filed by way of interviews with children housed in the observations home, interviews with the judicial officers & probation officers reveals that even in those cases where the JCL is the sole accused, there were presence of

'invisible hands' that dictated the behavior of juveniles and lead them to criminality. It has been pointed out that criminal gangs often employ juveniles for their activities as it is now well known, at least amongst them that the JCLs will be let off with lesser punishment. This further point towards the need for better community monitoring of children and employing preventive mechanisms.

TABLE 5.2 : ADULT INVOLVEMENT IN CRIMES COMMITTED BY JCLS

Cases where the JCL is a co-Accused	%	Cases Where the JCL is sole accused	%
587	45	721	55



5.5. Level of Conflict with law:

The age groups to which the JCLs belong to is also an interesting thing to examine. When one sees the data (RefTable 5.2) with respect to the serious offences – i.e., murder and rape, it is important to note that majority of the JCLs are above 15 years of age. However, the vast majority of crimes committed, even by them, are crimes of less serious nature. Juvenile apprehended for committing heinous offences like rape and murder is about 32 percent which is indeed a matter of concern. Given the 45% co-accused cases,

the involvement of adult accomplice may be major reason behind higher percentage of heinous crimes. The district profiles (figures 5.5-5.7) show that the patterns of incidence are more or less the same amongst most of the districts with few exceptions. It is seen that Nagaon and Sonitpur has slightly higher levels of crime reported – however, no conclusion that there are higher levels of crime in those two districts can be made from the present data.

TABLE 5.3 NATURES OF OFFENCE RESPECT THEIR AGE OF OFFENCE

Assam State Profile	Below 7 yrs		7+ to 12 Yrs		12+ to 15 Yrs		15+ to 18 Yrs	
	Number of cases	% of total Crime	Number of Cases	% of total Crime	Number of Cases	% of total Crime	Number of Cases	% of total Crime
Heinous (Rape & Murder)	0	0	33	2	176	11	304	19
Serious	0	0	38	2	174	11	362	22
Non-Serious	0	0	26	2	183	11	344	22

Figure 5.9. Nature of offences by age

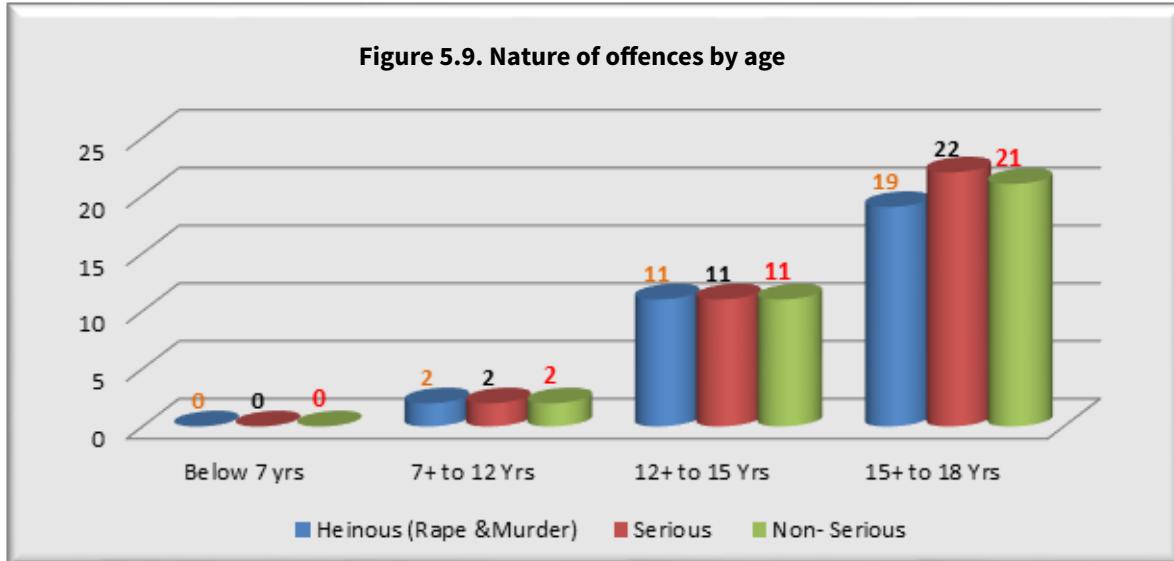


TABLE 5.4: NATURE OF OFFENCE RESPECT THEIR AGE OF OFFENCE – DISTRICT PROFILE (N=1308)

District	Below 7 Yrs						7 + to 12 Yrs					
	Heinous	%	Serious	%	Non Serious	%	Heinous	%	Serious	%	Non Serious	%
Karimganj	0	0	0	0	0	0	1	2	0	0	0	0
Dima Hasao	0	0	0	0	0	0	0	0	0	0	0	0
Hailakandi	0	0	0	0	0	0	0	0	0	0	0	0
Dibrugarh	0	0	0	0	0	0	0	2	2	0	0	0
Cachar	0	0	0	0	0	0	2	3	3	4	0	0
Sivsagar	0	0	0	0	0	0	0	0	0	0	3	5
Goalpara	0	0	0	0	0	0	5	5	2	2	1	1
Nalbari	0	0	0	0	0	0	1	5	3	15	0	0
Jorhat	0	0	0	0	0	0	1	2	1	2	1	2
Tinsukia	0	0	0	0	0	0	3	4	0	0	0	0
Golaghat	0	0	0	0	0	0	0	0	0	0	0	0
Bongaigaon	0	0	0	0	0	0	1	8	0	0	0	0
Chirang	0	0	0	0	0	0	1	3	0	0	0	0
Dhubri	0	0	0	0	0	0	0	0	2	2	2	2
Barpeta	0	0	0	0	0	0	2	2	3	2	3	2
Morigaon	0	0	0	0	0	0	0	0	0	0	0	0
Dhemaji	0	0	0	0	0	0	2	9	0	0	0	0
Darrang	0	0	0	0	0	0	5	5	5	5	1	1
Udalguri	0	0	0	0	0	0	0	0	0	0	0	0
Sonitpur	0	0	0	0	0	0	3	2	1	1	0	0
Nagaon	0	0	0	0	0	0	4	2	11	4	6	2
Karbi Anglong	0	0	0	0	0	0	0	0	0	0	0	0
Kokrajhar	0	0	0	0	0	0	2	1	2	1	5	3
Lakhimpur	0	0	0	0	0	0	0	0	0	0	0	0
Kamrup	0	0	0	0	0	0	0	0	3	3	4	4
Total	0	0	0	0	0	0	33	2	38	2	26	2

12 + to 15 Yrs						15 + to 18 Yrs							
Heinous	%	Serious	%	Non Serious	%	Heinous	%	Serious	%	Non Serious	%	Total	
3	7	3	7	3	7	11	24	7	16	17	38	45	
1	20	0	0	1	20	1	20	1	20	1	20	5	
2	14	1	7	1	7	3	21	6	43	1	7	14	
2	2	8	10	12	15	20	25	16	20	21	26	81	
11	16	9	13	7	10	10	15	12	18	14	21	68	
5	9	6	10	12	21	6	10	11	19	15	26	58	
25	26	13	13	3	3	18	18	19	19	12	12	98	
2	10	1	5	2	10	4	20	4	20	3	15	20	
4	8	5	10	8	16	7	14	14	27	10	20	51	
7	9	8	10	12	15	12	15	17	22	20	25	79	
1	17	1	17	2	33	0	0	0	0	2	33	6	
2	17	2	17	0	0	5	42	2	17	0	0	12	
2	5	3	8	5	13	16	40	4	10	9	23	40	
8	9	4	4	9	10	24	27	14	16	26	29	89	
7	6	20	16	12	10	28	23	23	19	24	20	122	
0	0	0	0	0	0	2	67	1	33	0	0	3	
3	13	1	4	2	9	4	17	4	17	7	30	23	
15	16	9	8	10	9	23	25	15	16	12	13	93	
2	8	2	8	0	0	4	17	8	33	8	33	24	
18	13	9	7	15	11	31	23	27	20	32	24	136	
26	10	40	15	28	11	38	14	66	25	46	17	265	
4	16	2	8	2	8	3	12	8	32	6	24	25	
17	10	14	9	21	13	21	13	48	30	32	20	162	
3	23	0	0	1	8	6	46	2	15	1	8	13	
6	6	13	12	17	16	7	6	33	31	25	23	108	
176	11	174	11	183	11	304	19	362	22	344	21	1640	

Though the Figures Associated with serious offences to be a bit higher, it needs to be remembered that A significant number of cases of rape and kidnapping include 'love' cases and consensual elopement and the parents filing for charges of rape. A recent analysis by The Hindu of 600 cases of sexual

assault before the Delhi District Courts revealed that "Of the cases fully tried, over 40% dealt with consensual sex, usually involving the elopement of a young couple and the girl's parents subsequently charging the boy with rape. Another 25% dealt with "breach of promise to marry"⁹".

⁹The many shades of rape cases in Delhi, The Hindu, <http://www.thehindu.com/data/the-many-shades-of-rape-cases-in-delhi/article6261042.ece> (last visited Jan 17, 2016)

5.6. Children in the Observation Homes

5.6.1. Brief Profile of Observation Homes in Assam:

Section 4 (1) of the Juvenile Justice (Care and Protection) Act of 2000 (as amended in 2006) provides, " Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this act." Section 4 (1) of the Juvenile Justice (Care and Protection) Act of 2000 (as amended in 2006) mandates that the State Government constitutes at least one Juvenile Justice Board (JJB) in every district within 1 year of

amendment of the Juvenile Justice Act, 2000 which came into force on 22nd August 2006. Initially during 2010, Assam constituted only 9 JJBs in the districts namely, Bapeta, Cachar, Dibrugarh, Goalpara, Jorhat, Kamrup (Metro), Kokrajhar, Sonitpur, Tinsukia. However, JJBs were subsequently constituted in all the districts.

Assam with 27 districts is most populated state in the north east India but there are only 4 Observation Homes. These homes are confined to Kamrup, Nagaon, Cachar and Jorhat district. While the Jorhat Observation Home set up in 1987 caters to over 11 districts –Jorhat, Golaghat, KarbiAnglong, Dibrugarh, Tinsukia, Sivasagar, Lakhimpur, Darrang, Udalguri and Sonitpur. The Observation Homes in Assam are as under:

Observation Homes in Assam					
Type of Home	District	Place	Capacity	Whether for Boys / Girls	Strength on date of visit
Observation Home	Jorhat	Lichubari	50	Boys	24
	Kamrup (R)	Bamunigaon, Boko	50	Boys	19
	Cachar	Meherpur, Silchar	10	Boys	01
	Kamrup(M)	Sundarbora, Jalukbari	50		02
	Nagaon	Panigaon	50		Nil
Special Home	None				

The sanctioned capacity of the observation home for boys at Bamunigaon, Boko is 50 inmates. As on August, 2015, there were 23 inmates in the Home. This home has one building; one learning and training centre; 10-15 bathrooms and toilets; one

recreation hall; one prayer room; open space and play ground. The sanctioned capacity of the observation home for girls at Jalukbari, Guwahati is 50. There were only 2 inmates in the Home. This home has one building; one learning and training centre; 10-15 bathrooms

and toilets; one recreation hall; one prayer room; open space and playground. The sanctioned capacity of the observation home for girls at Panigaon, Nagaon is 50. There was no inmate at the time of visit in Sept, 2015.

This home has one building; one learning and training centre; 10-15 bathrooms and toilets; one recreation hall; one prayer room; open space and playground. The Observation Home at Jorhat was established in 1987 and is run from its own building. The sanctioned capacity

of the observation home is 50 inmates but at the time of his visit there were only 23 inmates in the home. The number of inmates sometimes increases beyond the sanctioned capacity. Inmates are segregated on the basis of age. The infrastructure of the Observation Home consisted- 2 office building; 3 class rooms; 1 recreation room; 1 big Dining Hall; 1 Library Room which is also used as counsel and guidance room; 5 bathrooms and 5 toilets; 1 kitchen and sick room. The Home has a playground

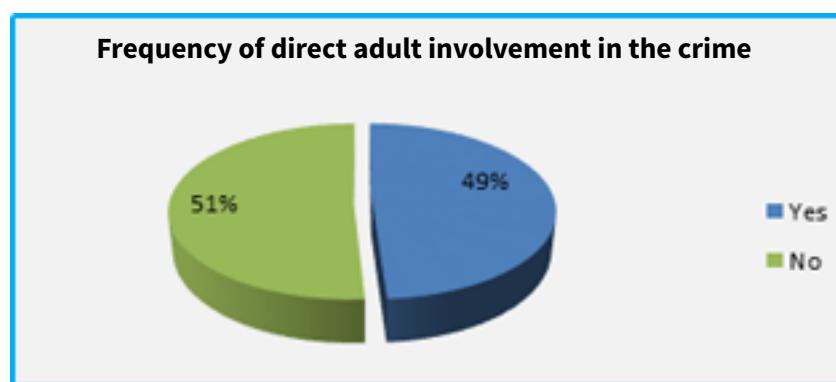
5.7. Findings from Interviews with children in OH

The research team had visited all the observation homes in Assam and interviews a total of 24 children who were housed in these homes. These children were interviewed on a number of issues pertaining to demographic profile and their interaction with the Juvenile Justice System. The results of their interviews are presented herein and they reveal interesting insights into the working of the JJ system, its impacts and effectiveness.

Though the number of children interviewed are merely 24, it is curious to note how on many counts the data that emerges from them is similar to the data gathered from the 1308 cases that were studied earlier: For instance, it is seen that the rates of direct adult involvement in the crimes is 42% which is very close to the figures that emerged from the records. Despite the small sample size, there are some generalizations that can be made from this data

TABLE 5.5: FREQUENCY OF DIRECT ADULT INVOLVEMENT IN THE CRIME (N=43)

Description	Frequency	%
Cases where there are other adult Co-accused	21	49
Cases with no direct adult involvement	22	51
Total	43	100



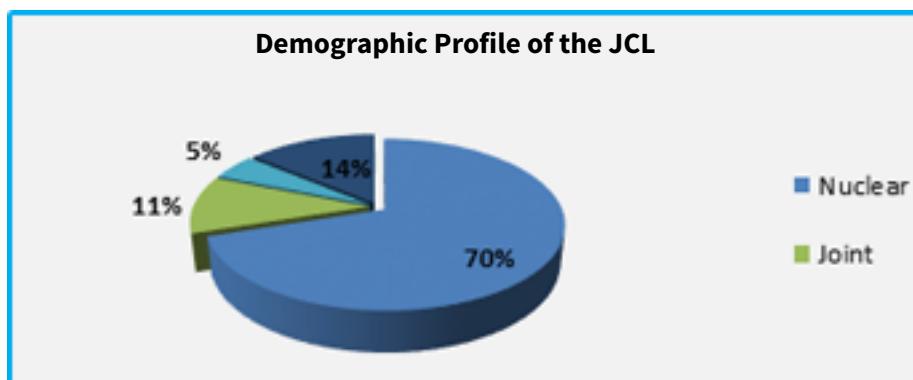
5.8. Types of Families and Occupational Pattern

It is seen that the vast chunk of the respondents are from Nuclear families. There is a large body of research that shows children from non-intact homes show higher rates of juvenile

delinquency than children from intact homes, partially due to weaker parental control and supervision in non-intact homes¹⁰.

TABLE NO 5.6 TYPES OF FAMILIES (N=43)

Sl. No	Family Status	Frequency	%
1	Nuclear	30	70
2	Joint	5	11
3	Abundant	2	5
4	Orphanage	6	14
Total		43	100



It has been observed that Changes in family time and parental attachment account for a portion of the family formation effect on delinquency, and prior parental attachment and juvenile offending significantly condition the effect of family formation on offending. Research has also shown that adolescents from cohabitating families have greater odds of engaging in nonviolent delinquency compared to those from 2- biological-parent families, although reaching only marginal significance¹¹. Another way of looking at this data is that this is only reflective of the nature

of households – i.e. there are more nuclear families in comparison to joint families and hence the skewed distribution. However, from the interviews that we had with the JCLs in the observation home, it is seen that nearly all of them are from families that has experienced some significant break down – such as death of at least one of the parents. In general it is observed that nearly all of these children are from backgrounds where there was no one to oversee the child and take care of his development.

¹⁰Schroeder RD et al., Family transitions and juvenile delinquency, *Sociol Inq.* 2010;80(4):579-604.

¹¹Parks, Alisha B., "The Effects of Family Structure on Juvenile Delinquency" (2013). Electronic Theses and Dissertations.Paper 2279. <http://dc.etsu.edu/etd/2279>

GR NO. 2455/15 – Jorhat Observation Home – Broken Family and Poverty

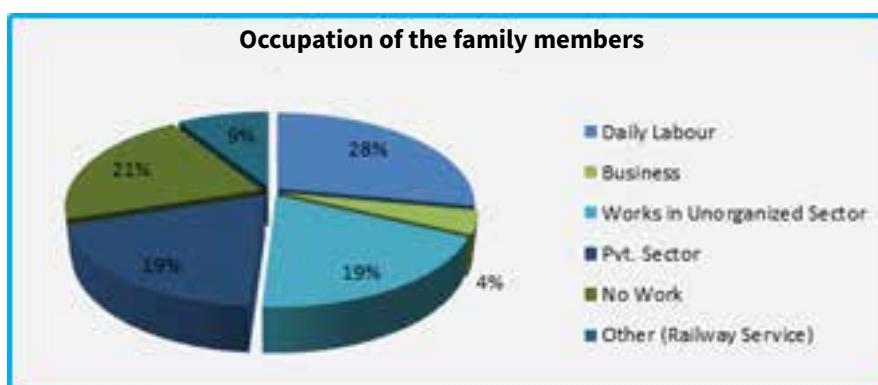
The JCL is 9 years old and is the youngest among the 4 siblings. The child used to live in a joint family, however, after death of his paternal grandfather, there was a property dispute and his family had to move out to rented premises. But after few months, his family was thrown out of the rented accommodation as his father couldn't pay the rent. After they were thrown out and had no roof to shelter they landed in the railway platforms and the family starved.

His father is a sweeper by profession who seldom goes to work & his mother works as a domestic help so does one of his elder brother. The second brother is a rickshaw puller and he has a sister who has been married long ago.

The child hates his father, as he is a drunkard who beats his mother regularly – domestic violence is something that he has witnessed every day. The child has studied only till class II. According to the child, on that fateful day, he found two brass utensils in the dustbin, but the shop owner near the station caught hold of him and handed him over to the police. The child likes it in Observation home, as he gets adequate food and can play and watch TV. He is also undergoing primary education. He informed the counselor and other staffs never scold him and now he has realized it's a bad practice to steal. He longs to meet his mother.

TABLE NO 5.7 FAMILY OCCUPATION (N=43)

Occupation of the family members	Frequency	%
Daily Labour	12	28
Business	2	4
Works in Unorganized Sector	8	19
Pvt. Sector	8	19
No Work	9	21
Other (Railway Service)	5	9
Total	43	100



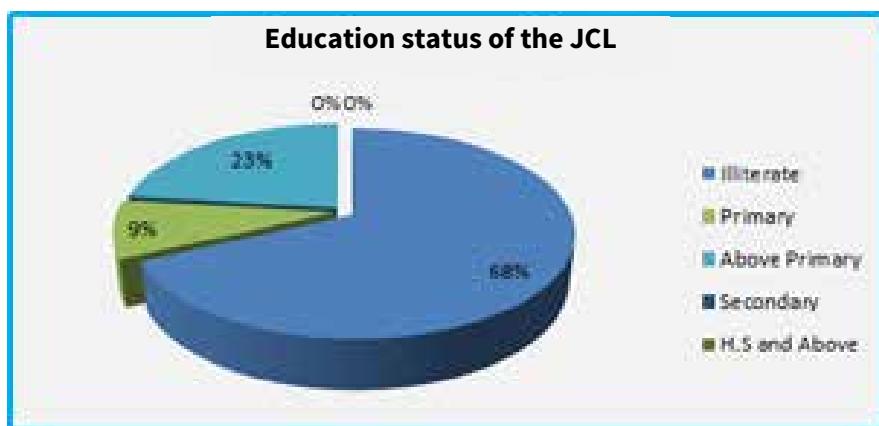
It is more significant to note that majority of the respondents have parents that work in the unorganized sector/ as daily waged laborers – thereby indicating the poorer backgrounds

from which these children come. This is in line with the understanding that deprived circumstances are responsible for juvenile delinquent behavior.

5.9. Education and Occupation of the JCLs

TABLE NO 5.8 EDUCATION STATUS OF THE JCL (N=43)

Education status of the JCL	Frequency	%
Illiterate	29	68
Primary	4	9
Above Primary	10	23
Secondary	0	0
H.S and Above	0	0
Total	43	100



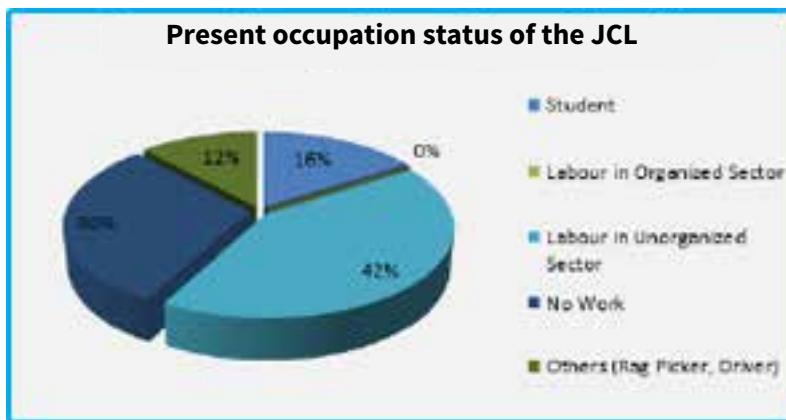
Data regarding educational status (Ref Table 5.9) of those apprehended lends further support in this direction – the majority (about 60%) of the JCLs was illiterate ad there was no one who had completed secondary

education. Further, about 30% of them were working in the unorganized sector as laborers and nearly half of them had no work at all (Ref Table 5.10).

TABLE NO 5.9 CURRENT OCCUPATION STATUS OF THE JUVENILE (N=43)

Present Occupation status of the JCL	Frequency	%
Student	7	16
Labour in Organized Sector	0	0
Labour in Unorganized Sector	18	42

Present Occupation status of the JCL	Frequency	%
No Work	13	30
Others (Rag Picker, Driver)	5	12
Total	43	100



5.10. Recidivism of Juvenile Offences

It is however important to note that most of these are first time offenders and recidivism is quite low. However, it is important for us to note that preventing recidivism is the primary

purpose of the JJ system and more efforts are required to strengthen the system in this direction. There were altogether 6 cases of recidivism spread across the following districts:



Sl No	Name of the District	No of recidivism cases
1	Jorhat	2
2	DimaHasao	1
3	Cachar	1
4	Nagaon	2

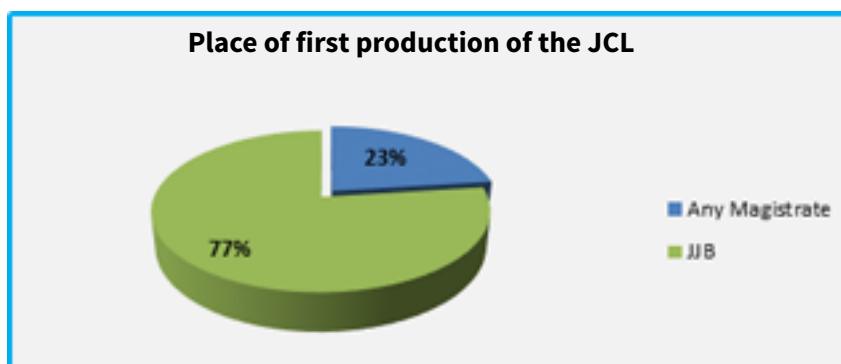
GR NO. 1972/15– Jorhat Observation Home – The case of a CNCP

The JCL is about 15 years old and is the youngest of three siblings. He has never seen his father and doesn't know much about him. His mother expired too and he has very faint memory of his mother. He has an uncle who is a rickshaw puller and drunkard. His brother is a driver and sister has been married for some years. His basic needs are catered to by his uncle. He is illiterate and used to work in a small hotel. He has never went to school and roamed around the streets with his few friends and whatever little he earned he used to spend eating street foods as that meant freedom to him. He is accused of having committed trespass and hence housed in the observation home where now he receives basic education. He has had no contact with his family since the time he has been at the OH and nobody has come to visit him. He speaks to the counselor, who teaches him how to express himself and meditate and also about good and bad behaviors. He also finds the behavior of the Principal Magistrate and the JJB members good towards him. The child in fact fits the description of a CNCP, who has not brought into the system

5.11. Interaction of the JCL with the JJ system

TABLE NO 5.10 PRODUCTION BEFORE COMPETENT AUTHORITY (N=43)

Where was she/he first produced	Frequency	%
Any Magistrate	10	23
JJB	33	77
Total	43	100



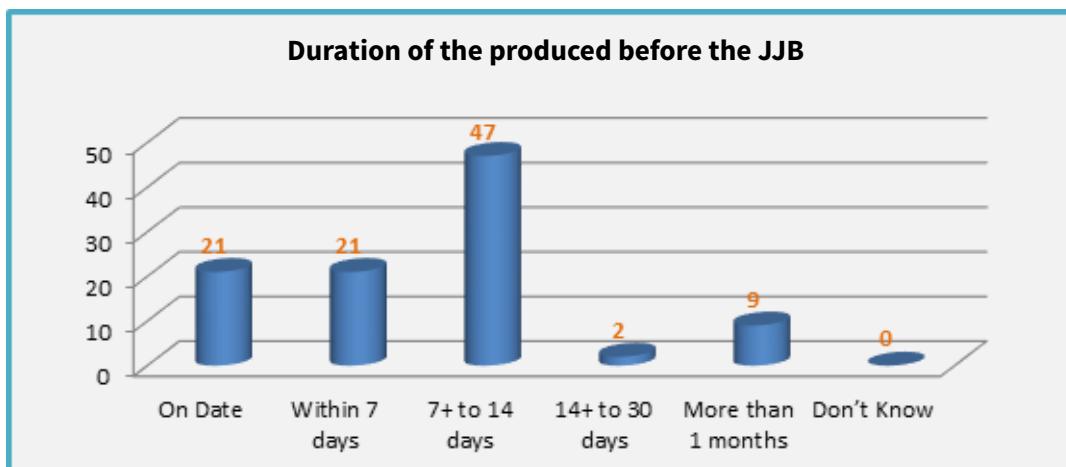
5.12. Time lag between commission of offence and production before the JJB

It is seen (Ref Table No 5.11) that nearly half the respondents were produced first before a regular court and it is after some length of time their status as a juvenile was acknowledged by the system. While most of

them were produced before a board in less than a week's time, there have been cases where it has taken up to two weeks for the process (RefTable No 5.12).

TABLE NO 5.11

Time lag between commission of offence and production before the JJB (N=43)	Frequency	%
On Date	9	21
Within 7 days	9	21
7+ to 14 days	20	47
14+ to 30 days	1	2
More than 1 months	4	9
Total	43	100



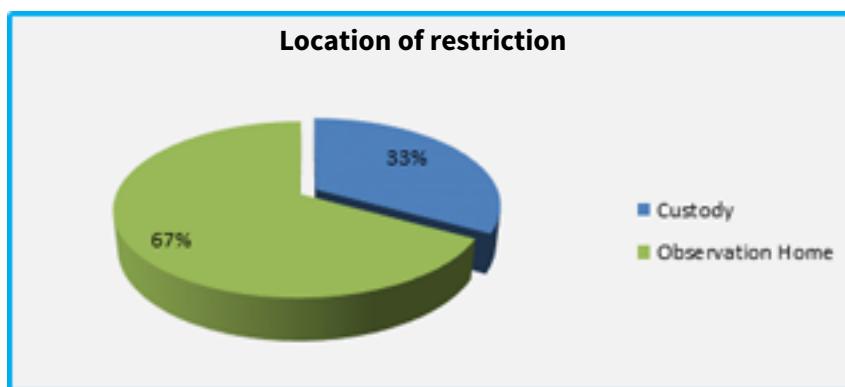
5.13. Places of Custody:

Close to 60% of the residents were kept in Judicial custody, in the jails meant for regular criminals, before they were eventually transferred to the observation home – an

alarming figure- considering the fact that one of the purposes of the JJ system is to prevent their interaction and mixing up with regular criminals (RefTable No 5.13).

TABLE NO 5.12

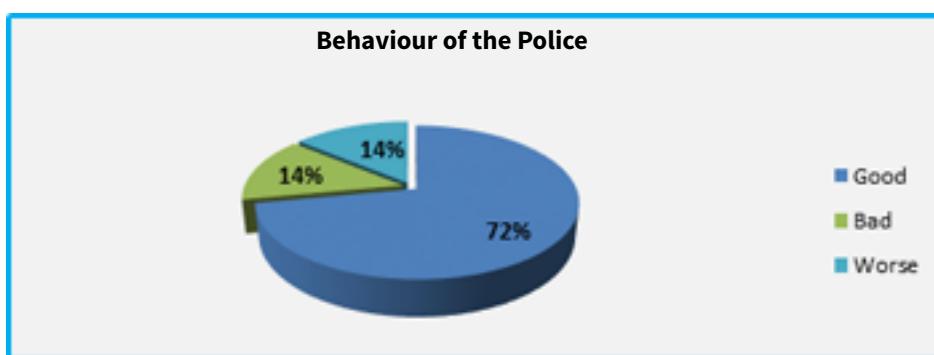
Location of restriction (N=43)	Frequency	%
Custody	14	33
Observation Home	29	67
Total	43	100

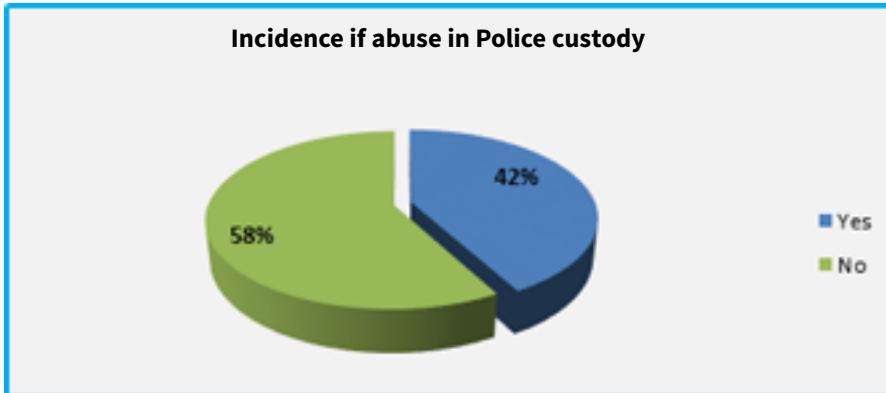


5.14. Experiences with Police

TABLE NO 5.13

How was the behavior of the police (N=43)	Frequency	%
Good	31	72
Bad	6	14
Very Bad	6	14
Total	43	100





Stayed in police custody

The child is 17 years old and is from Assam. Both his parents are dead and he has a sister who is married and a brother (who is a co-accused) who runs a grocery shop.. He had studied till class VIII, but after his mother's demise, he dropped out of school.

He is in the observation home since 13/5/15 and he is in touch with his elder sister over phone. But till date nobody has come to take his custody.

He was kept in police custody for 2 days and 2 nights and was physically assaulted by the police men before he was first produced before the Trial Magistrate. He was in judicial custody for 1 month 16 days and during that time, he was produced before the Magistrate thrice. On the third day he was asked for his age and he informed he is 17 years old. Soon an ossification test was directed by the Magistrate and after that he was declared a juvenile.

As nobody came to take his custody he was sent to Jorhat Observation home. DLSA Nagaon is dealing with his case. He likes being at the Observation Home he has made many friends and plays cricket and volleyball with them. He is however, sad that nobody has ever come to meet him. The Magistrate in Nagaon never spoke to him, and the members each time asks the question, if anyone has come from his family? The police is always in uniform when he is being escorted from Jorhat to Nagaon. He likes the counselor and shares his problems and confides in her.

Though all the respondents reported that the behavior of the JJB members were good, it is surprising that there is no documentation which shows that the mistreatment from the police was brought to the notice of the board or that the board took cognizance of the same. Our interviews with the JCLs housed in the observation homes confirms that the magistrates do not speak much to the JCLs

nor do they scorn upon them. Compared to the attitude and behavior of the police, it is possible that this is taken as good behavior and hence so reported. However, it is expected that the magistrates must interact more with the JCLs, especially to determine the nature of their problems and to ensure that there is no mistreatment from the police.

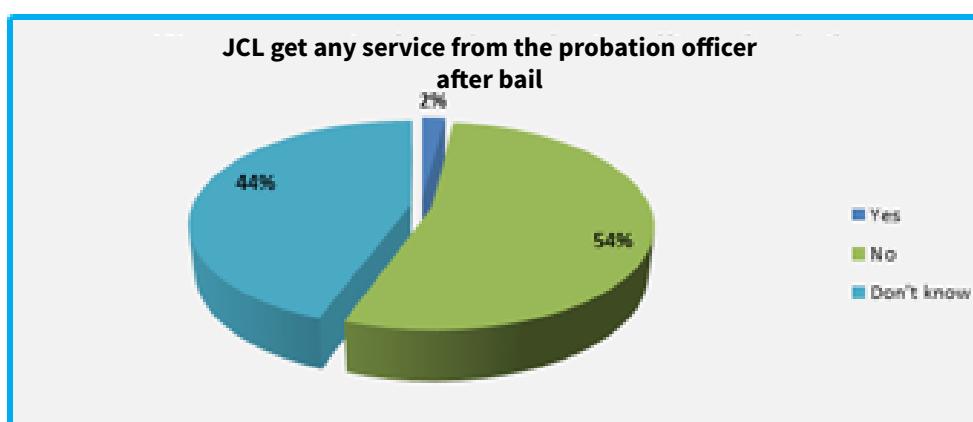
Mr. Y (aged 22 years, Jorhat)

The JCL is now undergoing undergraduate education and also has a part time job. He has father, mother and an elder sister in family. He travels by bike. He is from a lower middle class background. He has been to the CJM court once and on that day he had gotten bail. He has never been to the P.S. or jail or OH. He informed that the Magistrate or the members do not speak to him much and he feels hesitant to come to court. Only a few close friends know about the case. He doesn't know why it is taking so long for the case to be disposed. Also he doesn't know if they have support of the DLSA, as his father deals with the counsel.

5.15. Lack of Probation Services

As stated before, the primary purpose of the JJ system is the rehabilitation of the child and preventing him from committing further crimes. The probation officer, thus plays an important role in ensuring that this objective is achieved. Nearly all the respondents (96%) reported however that they received

no attention or services from the probation officers. Considering the limited resources available to the POs and that all of them are holding multiple responsibilities, it is evident that they are unable to perform their mandate under the Act.



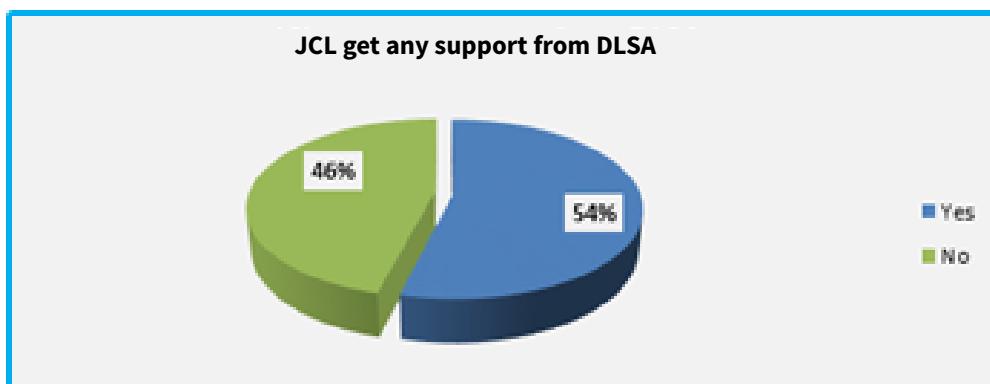
5.16. Access to Legal Aid from DLSA

The picture regarding support from the DLSA is also a similar one: it is only 4% of the respondents who knew about the DLSA/ receives any support from them. Once again, this points towards the need for the JCLs and their families to be informed of their right

to legal aid – which is a duty that the Board must take up. The services of the DLSA must be made available to the JCL right at the time he is produced before the Board. Similarly, more community education programmes on the work of the DLSA needs to be undertaken.

TABLE NO 5.14

Access to Legal Aid from DLSA (N=43)	Frequency	%
Yes	23	54
No	20	46
Total	43	100



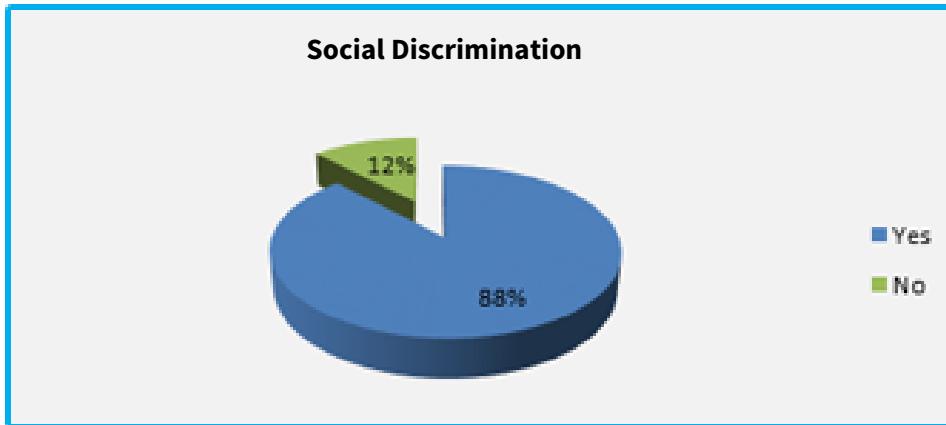
5.17. Social Discrimination

The effectiveness of the JJ system needs to be judged also from the perspective of the impact that it leaves on the future life of the child. The respondents have stated that the major problems that they face are negative responses from the family and peer groups and their education being affected. The reformative ethos of the Act can be fulfilled only with community engagement at the

macro level (by educating the people about the philosophy and need for the Act) and micro level (by working with the family and community of the particular child). The Macro level intervention needs to be spearheaded by the state through appropriate educational programmes and the micro level intervention must be lead by the Probation Officer and other officers associated with the board.

TABLE NO 5.15

Impact on regular life (N=43) (Multiple Responses)	Frequency	%
Left Work	17	40
Rebuke from family member	27	63
Isolation from peer group	6	14
Doesn't hamper	8	19
Others (Hamper his Education)	1	2



The delay in the working of the system is also affecting the lives of the juveniles in significant ways. For one thing, most of them are people

who also work to earn their daily bread and continuous appearances before the board eats into their work time and their income

Mr. X (age 22 years) – Dhubri. Delay increases financial burden

The accused is now 22 years old – the case was registered five years back. He now works as a bus driver, is married and has a son. His parents are also living with him. He was apprehended and spent the night at the police station, next morning he was produced before the Regular court. He was sent to jail for 17 days. Though the School certificate was submitted but the Magistrate wasn't convinced and ordered for ossification test. He also said that he was released on bail before the ossification test report was submitted. The major reason for delay in disposal of his case is non appearance of witness. Till date no witness from the prosecution side has appeared. No he has not appointed any govt. lawyers. He doesn't know about DLSA. His counsel charges him 400-500/- per hearing – which is causing too much of financial burden on him. Moreover for every hearing he has to take a day's leave.

The case narrated below explains the stigma attached to juvenile offence:

Stigma attached to offence

X of Goalpara district, aged 18 years, studying in Under graduate classes staying with his father who is a teacher in a higher secondary school and mother is a house wife. He has a brother who is also a student. The case is running since 2013. He was apprehended and had to spend a night in the police custody, next morning he was produced before the Magistrate in a regular court. Magistrate granted bail with the

help of legal aid. His mother took his custody. Charges considered against X are U/S 325/ 366(A)/376/342 IPC. He feels the main reason for delay is non attendance by the prosecution witness. He said that he tries to appear regularly. He feels dejected as the charges are very serious and the delay in disposal of the case is seriously hampering his studies. He has to miss classes to attend court hearings. During exams he has to take special permission for absence. He cannot lead a normal life, as he cannot share his agony with his friends who are not aware of the case. He fears if they come to know they will look down upon him. He wants an early disposal of the case.

5.18. Lack of support from the Family

Some children in the observation homes are forced to languish for a long period even after disposal as either they do not have any family support or the family members are unwilling

to take them back to families. The case of Mujibar (not real name) in Cachar observation home explains the level of deprivation he has to suffer.

Mujibar's dream of getting back to home shattered..

The case was of Karimganj District GR. No. 76/15 of MujiburRehman a Bangladeshi child, who was disposed on 03/03/2015. He was booked that U/S 14 of Foreigners Act Rws Sec of Passport (entry to India) Rule 1950 for begging in Indian Territory. He didn't realise when he had crossed the border. But even after disposal of the case, he was kept in the Observation Home as the S.P. Border was responsible to send him back to Bangladesh. Even after repeated reminders from PM Karimganj, no reply was received from the S.P. As he was already disposed, he should have been declared a Child in Need of Care and Protection as per the provisions of the JJ Act and should have been sent to CWC for rehabilitation and reintegration. Mujibur Was alone, malnourished and sick and physically challenged (didn't have hands). He was twice hospitalised and quite often suffered from pain. There is no cook in the Cachar Observation home, the Superintendent in Charge (who is already handling two more posts - CDPO and Superintendent of Central Destitute Home) arranged food from his home. No NGO wanted to take his responsibility as he was unwell and for the recurring expenses for his treatment. Mujibar came to know that the papers for his repatriation to his country of origin was getting ready but the process was too long to fulfill his dream, Majibur expired on 21/10/2015.

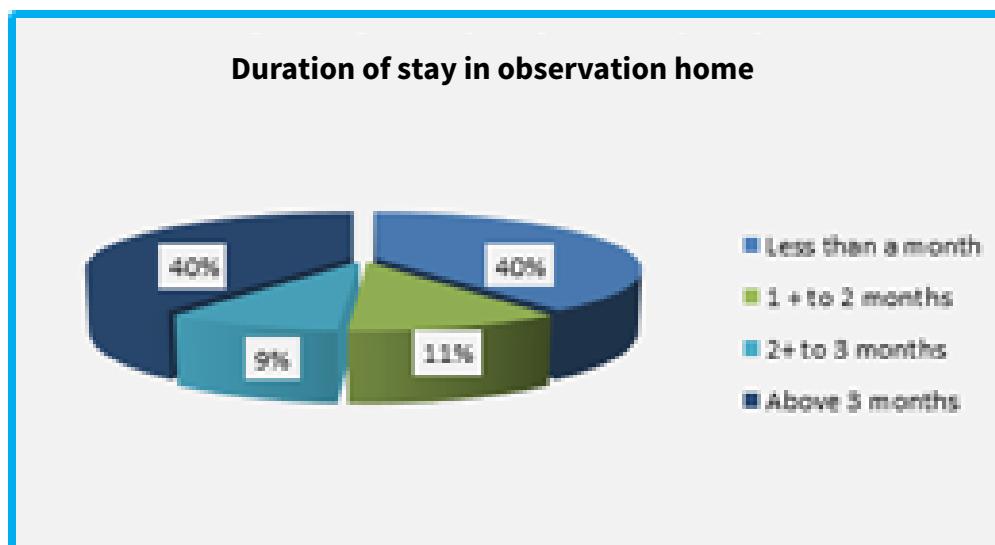
No one from the family came to take custody: the case of Brijesh Kumar, District Jorhat GR 489/15

The JCL is in OH since 3/3/15 and till 28th Aug'15 when our team interviewed him he was still in the OH. Brijesh is from Bihar, and his only relative in Assam was his brother-in-law with whom he used to stay till he fled. Brijesh was held twice U/S 436. Even after repeated notice, no one from his family came to take his custody.

5.19. Average Duration of stay of the JCL in the OHs.

5.16. DURATION OF STAY IN OBSERVATION HOME: (N=43)

Sl. No	Duration of stay	Frequency	Percentage
1	Less than a month	17	40
2	1 + to 2 months	5	11
3	2+ to 3 months	4	9
4	Above 3 months	17	40
Total		43	100



It is observed that 40% of children in the Observation Home have been languishing there for more than 3 months of which 2 children in Boko Observation Home have been overstaying for more than 6 months.

Likewise in Jhorhat Observation Home 6 children have been staying more than 3 months of which 2 children have been staying more than 3 months and 1 child for nearly 6 months. Overstaying in the OHs is primarily

due to the fact that they did not have any legal guardians/ the legal guardians could not be traced yet or the documents required to

execute their bail orders were lacking/ could not be produced.

5.20. Access to education/vocational training in the OHs

All children in Boko Observation Homes are imparted vocational training mainly in three trades namely, Bamboo artefacts training, Mask Making or Clay Modelling. The Superintendent of Boko Observation Home informed that local artisans render great support in organizing the bamboo craft training. In Jhorhat Observation Home the two most popular trades are: clay modelling and cutting /tailoring.

None of the children from the OHs however attend schools outside the Home. The homes are running Non-Formal Schools, with Teaching, Learning and Material (TLM) support from SSM. In both the homes, teachers from SSM have been provided. Since the duration of stay of about 40% of children is less than a month, it is difficult to impart a full fledged curricula, which satisfies the "right to education"

5.21. Overall Impressions and Conclusions OHs

Interviews with the residents of the observation homes and the JCLs who were appearing in court shows that majority of them were from families that were broken or from poor background. In general, it is seen that the JCLs from the poorer backgrounds are more likely to end up in a n observation home, while those from the middle class backgrounds are likely to be released on bail.

While stories of mistreatment by the police were common, most of them reported that they were happy with the treatment received at the boards. However, it is also significant to note that it was commonly told that the magistrates and at times the board members spoke very little to them and the atmosphere at the board did not give them the confidence to speak out. Many of the persons interviewed

were people who were entitled to the service of the DLSA, however, they were not receiving any aid from them. They did not even know that they were entitled to the service of the DLSA.

Overall, it is clear that the delays in the system are affecting their lives in more than one ways : those in the Observation homes are not receiving adequate education and those who are on bail experience frequent break down of their daily schedules and disruption of work. Many of them who are undergoing trial now are young adults with families and jobs and the purpose of continuing the proceedings against them are questionable.

For the system to be achieving the ends that it professes, it is essential that the cases be disposed off within a reasonable period of time.



CHAPTER - VI

Recommendations

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
1. Addressing Delays in the actions of the police & other supporting agencies			
Delays in Production before a Judicial Authority within 24 hours of arrest	<p>Sensitization of the Police and sensitization of Magistrates in that :</p> <ul style="list-style-type: none"> a. They must insist on production within a reasonable period of time. b. They must verify with the JCL how long was he kept in custody 	Orders to be issued by the High Court & Sensitization programmes by the judicial academy.	DSW
Lack of sensitivity on the part of the Police leading to production of a huge no of cases before the Regular Court	<p>Sensitization of the Police and sensitization of magistrates in that :</p> <ul style="list-style-type: none"> a. They must push the police to verify and produce JCLs only before a board. b. That the benefit, in the event of a doubt must be given to the JCL c. Training and Sensitization by the State Home Dept. in partnership with the DSW; d. Developing mechanisms for coordination between Police, PI Court and Boards. e. Police to ensure production of JCLs directly before the JJBs 	Orders to be issued by the High Court & Organise capacity building/sensitization programmes by the judicial academy	DSW, Police Training School, UNICEF, NIPCCD
Lack of public awareness about Juvenile Justice System	Sensitization of the public about the JJ system and rights under the Act	Programmes for public instruction through the mass media, especially the radio and schools. The DLSA can also be requested to organize camps for the public	I&CA, DLSA, DSW

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
1. Addressing Delays in the actions of the police & other supporting agencies			
Recording of age by the IOs	<p>a. Establishment of more observation homes will plug the chances of age manipulation;</p> <p>b. Training for the police</p> <p>c. Authorizing the Jail authorities to initiate the procedures for age determination, where they have a reason to believe that the detainee is a JCL.</p>	Home Dept.	DSW, Judicial Academy
IOs are not informed when a child is granted bail	<p>a. IOs and police should be informed that the child is declared juvenile</p> <p>b. Co-ordination between the Courts, Board and the Police need to be strengthened</p>	JJB, CJM Court	
Strengthening of SJPU	<p>a. Social Workers are appointed in the DCPUs and expected to extend their services to SJPU which is not practical. Hence, exclusive social workers for SJPU to ensure timely intervention as and when cases of juvenile reported.</p> <p>b. TA/DA needs to be provided to police personnel for producing JCLs from observation homes and to be released on time.</p>	DSW	Police
2. Addressing Delays on account of poor data management and flow of information			
Delayed transmission of records from the Trial Court to the Board	<p>a. Develop a plan for daily transmission of records to the JJB</p> <p>b. Develop a Standard Operational Procedure (SoP) to ensure coordination between Police, PI Court and the JJBs to ensure speedy transmission of records</p> <p>c. Filling up the case monitoring sheet and drawing up the time schedule for disposal of the case to be fixed on the first date of hearing</p>	District Court, JJB	DSW, Home Dept
Delays in submission of charge sheet to the Board on account of it being submitted before the regular trial court	When an accused is declared a JCL, the IO and the PI court must be informed of the same. The IO must clearly mention in the charge sheet that the accused is a JCL. The PI court must file the charge sheet directly before the Board.	Home Dept. & the High Court	

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
2. Addressing Delays on account of poor data management and flow of information			
Delays in the preparation and service of the charge sheet	<p>a. As and when the board receives a copy of the charge sheet, a copy may be prepared automatically without waiting for judicial order for the same.</p> <p>b. Handwriting of IOs needs to be legible.</p>	State Government to notify.	JJB
Delay in the co-accused cases	<p>a. Actions for authenticated copy of the records in co-accused cases to be given to JJBs</p> <p>b. Minimize instances of “awaiting original record” (where a case involves adult and CCL) by requesting for certified copies from the concerned courts</p>	Police	District Court
3. Addressing Delays in the Judicial process			
Frequent adjournments on account of lack of records reaching the courts/absence of parties.	Ensure a court management system	Judicial Academy to work in consultation with the National Judicial Academy to implement the “list system”	
Adjournments on account of absence of magistrates that are known in advance.	Make advance notice of training programmes so that cases are not posted to that day.	Judicial Academy and the High Court.	
Increased number of days of sitting	Ensure that the sittings of the JJBs are held regularly as provided under Rule 9 (3) of the Assam Juvenile Justice (Care and Protection of Children) Rules, 2011 in order to deal with pendency of cases.	High Court	
Increased frequency of postings	Ensure that a case is posted every 15 days	High Court	DSW
Availability of Trained Public Prosecutors	<p>a. State should appoint exclusive Prosecutors for JJBs having knowledge and understanding of laws relating to children and Juvenile Justice;</p> <p>b. State Judicial Academy should organize training programme and take up the matter with the Director of Prosecution to nominate Prosecutors in training courses.</p>	High Court Committee on Juvenile Justice, State Judicial Academy	Director of Prosecution, DSW, UNICEF,

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
3. Addressing Delays in the Judicial process			
Need for Performance Appraisal	<p>a. The disposal of cases of JJB should be clearly reflected in the performance appraisal of the PMs and should be equated at par with adult cases.</p> <p>b. Some kind of a reward may be introduced for innovative/good practices in dealing with cases of JCL.</p>	Gauhati High Court, DSW	State Home Dept
Requirement Additional JJB	Given the larger incidence of cases, setting up of additional JJB may be considered in the district of Kamrup(M), Nagaon	DSW	High Court
Greater involvement of DLSA	<p>a. The panel of lawyers under DLSA has to be formed especially for dealing with pending cases and the panel should at the disposal of the PM.</p> <p>b. The SLSA and DLSA should have an exclusive fast track cell dedicated to aggrieved JJ Act victims, their parents, members of the immediate and extended family for providing legal aid and assistance, especially to the weaker sections of the society.</p> <p>c. Para Legal Volunteers (PLVs) may be appointed in each district to help in serving the summons to the prime accused and witnesses and also to mobilize them to attend the Board on the date of hearing.</p> <p>d. DLSA to organise awareness among common people on JJ act and Child Rights and encouraging civil society organisations to support issues related to the juvenile justice system.</p>	SLSA, DLSA	DCPU, NGOs
4. Strengthening of Juvenile Justice Infrastructure and procedures			
No Observation Homes in lower Assam districts	<p>a. At least one Observation Homes should be established in lower Assam districts under ICPS</p> <p>b. Strengthening the infrastructure needs such as buildings, bathrooms/toilets, sick room, study centers, playground as well as adequate staff like educators, vocational trainers and other staff to the existing juveniles homes</p>	DSW	District Administration

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
4. Strengthening of Juvenile Justice Infrastructure and procedures			
Improving standards of care in OH	<ul style="list-style-type: none"> a. Liaison with de-addiction centres to de-addict CCLs who are into drug & substance abuse b. Facilitate the coaching of children studying through arranging free tutorials for deserving candidates c. Arrange admission of children who are school drop-outs / those engaged in work to Open Schooling – Rabindra Mukto Vidyalay (RMV); National Institute Of Open Schooling (NIOS); Madrasa etc 	Home Dept	DSW
Age determination	<ul style="list-style-type: none"> a. Radiologist to be available in all state hospitals/ information about the availability of radiologist to be made available to the Board; b. All reports of Ossification test shall be sent to the appropriate competent authority for recoding of age of the juvenile; c. Birth/Aadhaar registration should be made compulsory; d. Creating and maintaining a data base of birth may be done at the district level. 	Health Dept	AWWs, ASHA workers, SSM, NGOs
Strengthening Probation System	<p>SIRs to be prepared and submitted on time. To ensure accuracy and reliability of SIRs, the following points are suggested:</p> <ul style="list-style-type: none"> a. Some additional issues e.g. family values, emotional bonding of family members, ambition of juvenile, traits and skill attainment of juvenile etc may be incorporated in the SIR; b. Written documents of the representatives of the Local Bodies, neighbor, schools that PO has contacted may be submitted to ensure authenticity of SIR; c. Name of source from where the information was collected should be mentioned in the SIR; 	DSW	UNICEF, Judicial Academy

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
4. Strengthening of Juvenile Justice Infrastructure and procedures			
Strengthening Probation System	<p>d. SIRs are to be submitted within 1 to 2 weeks;</p> <p>e. Training modules should be prepared for the POs and the sessions should be facilitated by the Psycho-social experts.</p> <p>f. POs are to be provided vehicle/fund for visit to various places for preparing the SIR</p>	DSW	UNICEF, Judicial Academy
5. Strengthening Monitoring and Supervision of the JJBs			
Reviewing pendency of cases at regular intervals	<p>a. Ensure regular review of the pendency of cases of the JJBs by the Chief Judicial Magistrate or CMM as required under section 14(2) of the JJ (Care and Protection of Children) Amendment Act, 2006;</p> <p>b. Quarterly meetings should be organised be in presence of CJM, PM, JJB members, DLSA representatives, DWSO, DCPO, PO, NGOs, CWC chairperson along with SJPU. Attendance of the police personnel is mandatory in the monitoring meeting</p>	District Court	JJ Committee
Regular Inspection of Observation Homes and Jails	<p>a. Appoint Inspection Committees at the District and City Level and make the State Advisory Board, Inspection Committees at the District and City Level properly functional to ensure regular inspection of juvenile homes in Assam;</p> <p>b. PO(IC) of DCPU should visit home regularly to examine individual case files in preparing Individual Care Plan suitable to the juveniles based on individual needs and availability of resources.</p> <p>c. The High Court Committee on Juvenile Justice or through the District judge/CJM shall inspect the observation homes and Jails in regular manner to observe the care standards and also to identify children who were languishing in the homes for a long period</p>	High Court Committee on Juvenile Justice, DSW	DCPU

Core Issues/ Problems:	Actions to be initiated	Nodal Agency	Supporting Agencies
6. Capacity Building of the social workers of JJBs and Data Entry Operators (DEO)			
Need for increased capacity of the members of JJBs and DCPU staff	<ul style="list-style-type: none"> a. Conduct capacity building and training for all members of JJBs, staff members of DCPU Inspection Committees at the State, b. District and City level, the Probation Officers and the law enforcement officials in the state; c. DEOs and Social Workers of DCPU may be given orientation on the Court Procedures and documentation 	DSW	Judicial Academy, UNICEF
Training of CWOs	Organise modular training focusing on child psychology, behavioural sciences, laws on child protection, communication, networking, programmes and schemes for child protection etc for the CWOs.	Dept of Home	DSW, UNICEF

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DSW(G) 184/2015/1

No. To: **The Hon'ble Judges**
Juvenile Justice Monitoring Committee
Gauhati High Court

Dated.....23/4/15.....

Sub: Requesting support to undertake a Study on the Pendency of cases before the Juvenile Justice Boards across Assam.

Your Honour,

I take the privilege to inform you that the Department of Social Welfare, Government of Assam is the nodal department in the State to implement the Juvenile Justice (Care and Protection of Children) Act, 2000 as Amended in 2006 and 2011, to ensure the rights of children in need of care and protection, and those in conflict with the law.

The Juvenile Justice (Care and Protection of Children) Act, 2000 and The Assam Juvenile Justice (Care and Protection of Children) Rules, 2011 lays down a child friendly system to secure the rights of all children, based on the cardinal principle of best interest of children.

State Child Protection Society (SCPS) is being established under the aegis of the Department of Social Welfare to manage various matters pertaining to the implementation of Juvenile Justice Act in the state. SCPS publishes a monthly newsletter titled: "Child Protection Bulletin" which is a reincarnation of the "Juvenile Justice Newsletter" initiated by the Law Research Institute (LRI) of Gauhati High Court.

A summary of cases of the two district level statutory bodies under JJ Act: Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs) is collated by SCPS Assam from all districts on a monthly basis and published in the 'Child Protection Bulletin' for information of all stakeholders, apart from reporting to the Ministry of Women and Child development, Government of India on a quarterly basis.

As per the summary of cases for the month of February 2015 which is published in the March 2015 issue of Child Protection Bulletin, there is a total of 1922 pending cases before 25 JJBs across Assam. The concerned Bulletin is enclosed herewith for your ready reference.

Given The Juvenile Justice (Care and Protection of Children) Act, 2000, as Amended in 2006 u/s 14- **Inquiry by Board regarding Juvenile**, sub section(1) states that: *Provided that an inquiry under this Section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.*

And given The Assam Juvenile Justice (Care and Protection of Children) Rules, 2011u/s 13- Post Production processes by the Board, lays down the following under its sub-sections:

(6) Every inquiry by the Board shall be completed within a period of four months after the firstsummary inquiry and only in exceptional cases involving trans-national criminality, largenumber of accused and inordinate delay in production of witnesses, the period of inquiry may beextended by two months on recording of reasons by the Board.

(7) In all other cases except where the nature of alleged offence is serious, delay beyond four tosix months shall lead to the termination of theproceedings.

(8) Where the proceedings are delayed beyond six months on account of serious nature of the Offence alleged to have been committed by the juvenile, the Board shall send a periodic report ofthe case to the Chief Judicial Magistrate or Chief Metropolitan Magistrate stating the reason fordelay as well as steps being taken to expedite the matter.

The State Protection Society (SCPS) working under the aegis of the department of Social Welfare, Government of Assam proposes to address this issue of pendency of cases across JJBs in Assam in a concrete and informed manner, in order to ensure that the Juvenile Justice Act is implemented in letter and spirit, keeping its above mentioned expressed principles in perspective.

In this regard, the Department of Social Welfare with technical support from UNICEF, Office for Assam proposes to conduct a rapid assessment on pendency of cases of children in conflict with law before the JJBs in Assam. This study will be helpful to both the Government as well as various Stakeholders of the Juvenile Justice System to address the issue of pendency of cases in an informed and coordinated manner.

The study will be commissioned by the Department of Social Welfare through its State Child Protection Society, and will broadly delve into the following aspects:

- Number of cases pending before each JJBs disaggregated in terms of duration of pendency;
- Analyse the nature of offences of cases disaggregated in terms of petty/ non-serious and serious/ heinous offences;
- Range of reasons for pendency of cases beyond the statutory time limit laid out in Juvenile Justice Act;
- Consequences of pendency of cases on the expressed best interest of children and effective adjudication of Juvenile Justice Act by JJBs.
- Key action points to address the pendency of cases by key duty bearers.

Given such a study cannot be done without due support and collaboration from the Principal Magistrates of all JJBs, this is to request your honor to issue an advisory to all Principal Magistrates of JJBs to provide necessary support, including sharing of JJB Case Records to the Department of Social Welfare and its State Child Protection Society for smooth and effective conduct of this study.

We would like to assure your honor that the Department of Social Welfare and State Child Protection Society, and its commissioned agencies will take all necessary measures to

ensure that full confidentiality will be maintained in the course of this study in keeping with the principles and statutes as laid down in Juvenile Justice Act and related case laws.

Sincerely look forward to your esteemed support and guidance in this matter.

Thanking you.

Yours faithfully

*Ranjan
23/4/15*
Director
Directorate of Social Welfare,

Enclosures:

Child Protection Bulletin- January, February and March 2015 issues.

DSW(G)/ dated, Guwahati the 23rd April 2015

Copy to:

1. The Commissioner and Secretary to Government of Assam, Social Welfare Department, Assam Secretariat, Dispur, Guwahati- 781006
2. Office Copy

Sekh
Director
Directorate of Social Welfare



By Special Messenger

THE GAUHATI HIGH COURT AT GUWAHATI

(HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL PRADESH)

NO. HC.VII/186/ 2606 /2010 (Pt-II)/A dated 07.05.2015

From: Shri B.K. Chetri,
Registrar (Judl.)
Gauhati High Court, Guwahati
-cum-
Secretary, Juvenile Justice Committee.

To: The Director, Social Welfare, Assam,
M.G. Road, Uzanbazar, Guwahati-1

Sub: Study on the pendency and nature of offence of cases before the
Juvenile Justice Boards, Assam.

Ref: Your letter vide No. DSW(G)184/2015/1 Dated 23/04/2015.

Sir,

With reference to the subject cited above, I have been directed to inform you that Hon'ble the Committee to monitor and look into the functioning of Juvenile Justice Boards in respect of the States of Assam, Nagaland, Mizoram and Arunachal Pradesh of this High Court has been pleased to allow the Directorate to conduct the study as prayed for subject to the condition that all enquiries pertaining to the case records shall be made either in presence of the Principal Magistrate, JJB or any officer of the Court authorised by the Principal Magistrate during Office hours and on completion of such survey to furnish the reports to the High Court.

Yours faithfully

REGISTRAR(JUDL.)

-CUM-

SECRETARY, JUVENILE JUSTICE COMMITTEE

Memo NO. HC.VII/186/ /2010 (Pt-II)/A dated .05.2015
Copy for information:

The Principal Magistrate, Juvenile Justice Board, Kamrup (Met'l),
Guwahati/ Kamrup, Amingaon/ Nalbari/ Barpeta/ Bongaigaon/ Dhubri/

Kokrajhar/ Goalpara/ Darrang, Mangaldoi/ Udaguri/ Sonitpur, Tezpur/
Lakhimpur, North Lakhimpur/ Dhemaji/ Dibrugarh/ Tinsukia/ Jorhat/ Sivasagar/
Golaghat/ Nagaon/ Morigaon/ Cachar, Silchar/ Karimganj/ Hailakandi/ Chirang.

Enclo: Copy of the letter vide No. DSW(G)184/2015/1
dtd:23.04.2015 of the Director, Social Welfare, Assam.

Sol✓

REGISTRAR(JUDL.)

-CUM-

SECRETARY, JUVENILE JUSTICE COMMITTEE



STATE LEVEL CONCLAVE ON JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 WITH SPECIAL FOCUS ON CHILDREN IN CONFLICT WITH LAW

The State Level Conclave on
The Juvenile Justice (Care & Protection of Children) Act, 2015
with special focus on Children in Conflict with Law



7th & 8th May 2016
**Assam Administrative Staff College,
Khanapara, Guwahati**

The Department of Social Welfare presented Final Report of the study on Pendency of Cases before JJBs in Assam before the Juvenile Justice Monitoring Committee of Gauhati High Court. The Report was also presented to One Man Monitoring Committee on Juvenile Justice of Supreme Court of India & on the direction of Hon'ble Justice, Supreme Court of India, Justice M.B Lokur, who have gone through the draft Report of the pendency of cases, the newly appointed Hon'ble Chief Justice of Gauhati High Court & JJMC proposed SCPS Assam, Social Welfare Department to have an orientation of all concerned stakeholders, especially the judiciary on the newly enacted Juvenile Justice (Care &

Protection of Children's) Act 2015 along with the dissemination of final report of the mentioned study. Accordingly it was decided that a two days State Level Conclave on Juvenile Justice (Care & Protection of Children's) Act 2015 with special reference to Children in Conflict with Law will be organized where the dissemination of the study Report on pendency of cases will also take place.

Accordingly the State Level conclave was organized by the Gauhati High Court in collaboration with State Child Protection Society Assam, 7 & 8 May 2016 in Guwahati. The Conclave was fully supported by UNICEF Assam.

Though the Conclave is termed as State Level Conclave, but Participants from State Legal Services Authority, District Sessions Courts, Principal Magistrate of JJBs, Social Welfare Department, SCPS of Arunachal Pradesh, Mizoram & Nagaland also participated & concerned govt. Representatives presented the status of progress of JJ Act with special reference to Child in Conflict with law. Considering the importance of the Conclave, there was an elaborate inaugural session graced by dignitaries including the

Hon'ble Justice of Supreme Court of India, Justice M.B Lokur & Chief Secretary to Government of Assam, Shri V.K Pipersenia IAS. The focus of the inaugural session was to simultaneously set the

context for the deliberations over the two days, and to draw media attention to the issue of new changes that has been introduced by new JJ Act with regard to CICL. The technical sessions were thematically organized to ascertain focused exposure to different issues related to Children in Conflict with Law, including some procedural aspect of the JJ Act, with each technical session consisting of two or more presentations by relevant experts, followed by open house interactions. Each session was chaired by a Judge of Hon'ble Gauhati High Court as moderator, who introduced the resource persons; summarized the key points from their presentations; regulated the open house discussions; and presented the key recommendations emerging from each session.

The thematic areas covered in the Conclave were as follows:

- 1. Status update on functioning of JJBs :**
 - a) Assam,
 - b) Nagaland
 - c) Mizoram
 - d) Arunachal Pradesh
- 2. Dissemination of the final Report of the study titled “Study on Pendency of Cases before the Juvenile Justice Boards in Assam”**
- 3. Juvenile Justice (Care & Protection of Children) Act 2015- Changes in Law & new challenges.**
- 4. Issues and good practices with regard to Rehabilitation of Children in Conflict with Law.**
- 5. Understanding the psycho-social issues and approaches of interventions with children in Conflict with Law.**
- 6. Way forward session to ensure effective Juvenile Justice System, wherein remedial measures were suggested by all the concerned participants & through an interactive session participants have feed in and finalize the way forward on the key action points that emerged from the earlier sessions.**

The Two Days Conclave ended with a vote of thanks offered by Hon'ble Mr. Justice Nishitendu Choudhury, Judge, Guwahati High Court by honouring everyone for their presence





Commissioned by:
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