

# LET ME BE A BUTTERFLY! 2.0

STUDY MATERIAL FOR

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

SEPTEMBER 2022







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### **DIRECTOR'S NOTE**

This Study Material is prepared by the Tamil Nadu State Judicial Academy [TNSJA], under the guidance and as per the directions of the Hon'ble Patron-in-Chief, TNSJA / Hon'ble the Chief Justice of the Madras High Court; the Hon'ble President and Hon'ble Members of the Board of Governors, TNSJA.

This publication is brought out on the occasion of the Workshop organised for The Secretaries of District Legal Services Authorities, Principal Magistrates, Members and Panel Lawyers of The Juvenile Justice Boards.

When a child goes astray, it reflects the neglect of society. Thus, a child in conflict with the law should be seen not merely as a trouble maker who needs to be punished, but as a victim of failed social responsibility. Such a child is in dire need of care and protection, just as a child survivor of crime, through legislative and judicial intervention. The Juvenile Justice Act (Care and Protection of Children Act, 2015) [JJ Act] was enforced to ensure that no child is neglected or left wanting for care and protection. This programme is designed to enable the participants to engage a closer analysis of the new amendment to the JJ Act, 2015 and the role of various stakeholders in the juvenile justice system.

We acknowledge and appreciate the cooperation of the Deputy Directors, Research Assistants and Staff of the Academy, in bringing out this publication in short time. We extend our heartfelt thanks to UNICEF for always supporting the cause of children.

24<sup>th</sup> September 2022

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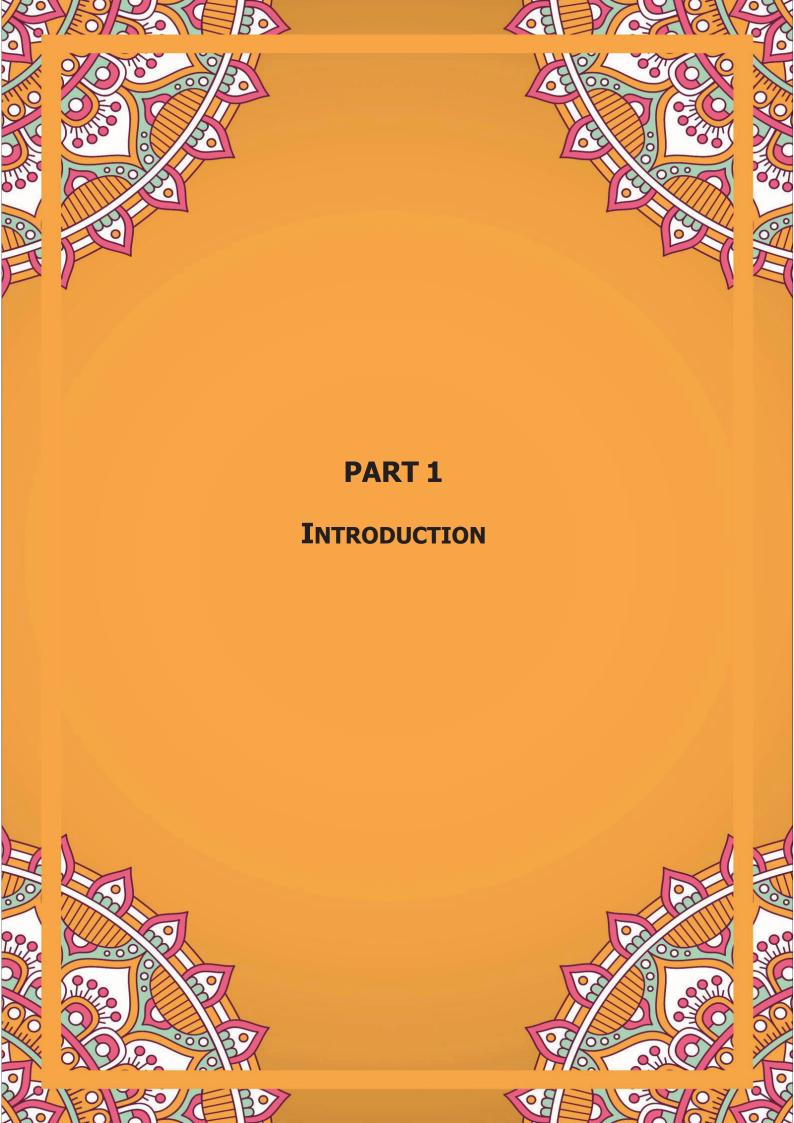
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#### **PART 1: INTRODUCTION**

எந்த குழந்தையும் நல்ல குழந்தை தான் மண்ணில் பிறக்கையிலே அவர் நல்லவர் ஆவதும் தீயவராவதும் அன்னை வளர்ப்பினிலே

Even as we claim that children are the future of our nation, there are significant lapses in ensuring justice to the child. When a child goes astray, it reflects the neglect of society. Thus, a child in conflict with the law, should be seen not merely as a trouble maker who needs to be punished, but as a victim of failed social responsibility. Just like a child victim, the child in conflict with law too, is in dire need of care and protection, through legislative and judicial intervention.

### **Importance of Child Rights**

Children are small but they are entitled to big rights. We often argue on the grounds of inter-generational equity that, "we must leave a better planet for our children". It is equally important that, we also leave better children for our planet. Therefore, child should not be denied the care and protection guaranteed by law.

Importance of child rights is primarily connected to the doctrine of *parens patrie*. It is important to cater to the basic needs of children through proper care, protection, development, treatment, and social re-integration. This is only possible by adopting child friendly approaches and mechanism that is in the best interest of children.

The underlying philosophy is that, if a child has gone astray, it is the parents and caretakers who have failed. The JJ Act 2015 attributes responsibility upon the Court as a constructive parent. The duty of the court is not to blame the child, but to identify and treat the delinquency of the child. The heart of JJ Act, 2015 envisaged a 'healthy social reconstruction of childhood'. Children should come in minimum contact with the edges of the system and such contact should result in a positive impact over the children. The JJ Act, 2015 tends to create an inclusive and enabling environment to children reducing the vulnerabilities they face in life.

#### **Backdrop of Juvenile Justice**

Juveniles are those children who are below the age of 18 years. In India, there are two main categories of juveniles:

- a) Child/Children in conflict with law;
- b) Child/Children in need of care and protection.

Juvenile Justice refers to the laws that govern the juveniles. The concept of need for protection of juveniles in India is not a new one, it has been in existence since the 1850s. The first ever legislation that dealt with juveniles was the Apprentice Act, 1850. The Apprentice Act, 1850 dealt with juveniles under the age of 15years, who were petty offender or run-aways. The Reformatory Schools Act, 1876 (modified in 1897) was enacted to deal with youthful offenders i.e., a boy under the age of 15 years, who has been convicted of an offence punishable with transportation or imprisonment would be sent to reformatory schools instead of undergoing their sentence of imprisonment or transportation.

# The Age of Distinguishing Children as Delinquent Children and Neglected Children

The formation of Jail Committee in 1919 by British Raj led to massive changes in the structure of criminal justice administration, where the inclination towards reformation of juvenile offenders began, thus departing from the universal approach of punishing them. The Madras Province was the first to enact an exclusive Children's Act in 1920, followed by Bengal in 1922 and Bombay in 1924. The State Children's Act dealt with two kinds of children, i.e., the 'child offender' and the 'neglected child'. These two categories of children were dealt by the Children's Court. The Children's Act was intended to provide facilities for the care, treatment and punishment of young offenders as well as to protect children and young persons. It also provided facilities to house children and young people.

#### **Post-independence Scenario**

The Children's Act, 1960 was enacted after independence, which provided care, protection, maintenance, welfare, training, education, and rehabilitation for neglected or delinquent children and for the trial of delinquent children in the Union Territories. Since the enactment of this legislation, gender-based distinctions were made, with a child defined as a boy under 16 years of age and a girl under 18 years of age. Under this Act, there were two different institutions, namely, the Children's Court for juvenile offenders, and the Children's Home for children in need of care and protection. Delinquent children were also expressly prohibited from being sentenced to death or imprisonment under any circumstances.

### The Need to have Child Specific Laws

- 1. Recognition of the inherent dignity, equal and inalienable rights of children in the family keeping in mind freedom, justice and peace.
- 2. To promote social progress of children.
- Not to discriminate children on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 4. To give children special care and assistance.
- 5. To holistically equip children to be responsible citizens.
- 6. To embrace harmonious development of children, by developing personality, family environment, creating an atmosphere of happiness, love and understanding.
- 7. To equip children to be fully prepared to live an individual life in society.

#### **Need for a Centralized Legislation**

The Children's Act, 1960 had its own downsides as it was applicable only to the Union Territories, few states had their own state legislation to deal with juveniles. The Apex Court taking note of these irregularities, in *Sheela Barse Vs. Union of India [(1986) 3 SCC 632]* pointed out that, "...we would suggest that instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented..."

Therefore, in 1986, Juvenile Justice Act that provided for the protection, development, rehabilitation, and adjudication of certain judicial matters associated with delinquent children was enacted as a uniform national legislation. Its purpose was to give effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by U.N. countries in November 1985.

In *Arnit Das Vs. State of Bihar [(2000) 5 SCC 488]*, the Supreme Court held that the age of the accused on the date on which he's produced before the court has relevancy for determining applicability of the JJ Act. However, this decision was overruled in the case of *Pratap Singh Vs. State of Jharkhand [(2000) 5 SCC 488]*, which held as follows: "The reckoning date for the determination of the age of the juvenile is that the date of the offence and not the date once he's made before the authority or within the court". As a result, the rationale in *Arnit Das* (supra) has no relevance today.

#### **Juvenile Justice in the New Millennium**

In the year 2000, Parliament enacted the Juvenile Justice Act, 2000 to reflect the standards prescribed within the Convention on the Rights of the Child, 1989, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990. The Act envisioned to espouse a child friendly approach while adjudicating and disposing matters in the best interest of children and for their ultimate rehabilitation. The Act defined both a 'child' and a 'juvenile' as a person who has not completed eighteen years of age.

It covered two categories of children, i.e., *juveniles in conflict with law* and *children in need of care and protection*. The Act transformed the way how the two categories of children were received by the system. Juveniles in conflict with law were housed in observation homes while children in need of care and protection were housed in children's homes during the pendency of proceedings before the competent authority.

### **Recommendations of the Justice Verma Committee Report, 2013**

The Justice Verma Committee was formed in 2013 to inspect criminal law legislations and to make recommendations in consideration of the ill-fated event which took place on 16th December 2012 [Delhi Gangrape case]. The Committee got a room of recommendations, including the proposal that "the time of juvenile blamed for egregious wrongdoing to be characterized together under 16 years old and therefore the individuals who are 16 years or more should be treated as an adult during in a courtroom proceeding". On this specific issue, the board of trustees held extensive consultations with the prosecutors, women rights activists, child experts, psychologists and child rights activists and the Juvenile Justice Act, 2015 was thus enacted.

### **Constitutionality of Juvenile Justice Act, 2015**

The Committee Report concluded that the existing juvenile system is not only reformative and rehabilitative in nature but also recognises the fact that, the age of 16-18 years is an extremely sensitive and critical age requiring greater protection. The committee looked at available statistics, scientific evidence on recidivism and also took into account India's international commitment on protecting the Rights of Children.

The principle of equal protection does not take away from the state the power of classifying persons for the legitimate purpose. Article 14 envisages equality before law and equal protection of laws. Supreme Court has aptly observed that "Equal Protection of Laws is corollary to Equality before Law".

In *Subramanian Swamy Vs. Raju* [(2014) 8 SCC 390], Supreme Court observed that "so long as the broad features of the categorization are identifiable and distinguishable, Article 14 will not forbid such a course of action". The court ruled that "categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of persons included in a class".

Such a juvenile is known as Child in Conflict with Law (CCL) according to the JJ Act, 2015. This meaning of 'Juvenile' is obscure and bears no solid importance and requires more further discussion. Further, the act done by a child under seven years old is found in strife with the law and not treated as an offence and is not culpable under any law and such a child is certifiably not a criminal according to Section 82 of Indian Penal Code. Thus, a child whose age is under seven years old cannot be known as a juvenile and is not convicted of any crime. The Juvenile Justice Board and its partners need to control the juvenile offences as well as wrongdoings.

# Juvenile Justice (Care and Protection) Act, 2015 [JJ Act, 2015] – Highlights

The swelling number of cases of juvenile crimes in the last decade has forced the law makers to come up with a new law which exclusively deals with juvenile wrongdoers. The 2000 Act was quickly replaced by The Juvenile Justice (Care and Protection) Act, 2015.

As per the preamble the JJ Act, 2015, it was enacted to consolidate and amend the law relating to children alleged and found to be in conflict with law. The JJ Act, 2015 provides for strengthened provisions for both 'children in need of care and protection' and 'children in conflict with law'. The child needs to be provided care and protection by taking into account their essential needs through legitimate consideration, assurance, advancement, treatment, social re-integration, by embracing a child-friendly approach in the mediation and removal of issues to the most progressive growth of the child and for their restoration through procedures given, and organizations and bodies as mentioned in the JJ Act, 2015. Special provisions for 'heinous offences' committed by children above the age of 16 years, clarity in powers, functions and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC) have been provided for.

The child needs to be provided with legitimate consideration, assurance, advancement, treatment, social re-integration, by embracing a child-friendly approach.

The 14 notable changes in the JJ Act, 2015 are mentioned below:

- i. Depending on the cruelty of crime, like a crime committed appallingly and viciously, the children between the ages of 16 to 18 years may be tried as an adult in the Children's Court.
- ii. Any child who is convicted of any crime will be sent for a preliminary evaluation for a time of "quarter of a year" (3 months).
- iii. A clause on fair trial is included, where the evaluation or assessment period will investigate the special needs of the child, in a child-friendly atmosphere.
- iv. The child will not be faced with any form of disqualification or elimination either in education or jobs for being convicted of any crime under the Act.
- v. The conviction records shall be destroyed after the completion of appeal, except in the case of brutal crimes.
- vi. The time period to rethink the decision of adoption is changed from one to three months.
- vii. The aftercare of a child shall be unhindered to one month in institutional care.
- viii. Receive financial aid more than once after evacuating institutional care.
- ix. Priority given for disabled children in interstate adoption.
- x. Increase in the time period for neglected children kept under observation in child care facilities from 30 days to 60 days.
- xi. In the case of an inevitable situation, wilfully giving up the child by biological parents it will not be considered as on purpose.
- xii. If an order passed against the child, there must be consultation and advice from experienced psychologists and medical specialists.
- xiii. Training of special juvenile units in the police force.
- xiv. For observing proper implementation, the exposure of the Amended Act, and to investigate cases that emerge out of the Act, the National Commission for Protection of Child Rights and State Commission for Protection of Child Rights will be the nodal specialists.

# Protection of Children form Sexual Offences Act, 2012 and Juvenile Justice Act, 2015

The POCSO Act and JJ Act are complimentary to each other, and are considered vital to the protection of children in India. The POCSO Act, avows to protect children from child sexual abuse to penalize any person who commits offences such as "sexual harassment", "sexual assault", "penetrative sexual assault", and "aggravated penetrative sexual assault". Such offences shall be reported to either the local police or the Special Juvenile Police Unit who has to report the matter to the Special Court within 24 hours. In case a person fails to report a case, they shall be penalized. As per Section 34, POCSO Act, when an offence under the POCSO Act is committed by a child, such child shall be dealt with under the provisions of the JJ Act, 2015. These are the key aspects of the relationship between the POCSO Act and JJ Act, that seek to protect the interests of children (both as a survivor and as a child in conflict with law).

Offences & Punishments under POCSO Act, 2012

Offence	Definition	Punishment	
Penetrative Sexual Assault	Section 3	Section 4	
Aggravated Penetrative Sexual Assault	Section 5	Section 6	
Sexual Assault	Section 7	Section 8	
Aggravated Sexual Assault	Section 9	Section 10	
Sexual Harassment	Section 11	Section 12	
Use of child for pornographic purposes	Section 13	Section 14, 15	
Abetment	Section 16	Section 17	
Attempt to commit an offence		Section 18	
Failure to report or record a case		Section 21	
False complaint or False information		Section 22	
Media revealing identity of child	Sections 23(1) &23(2)	Section 23(4)	
Alternate punishment		Section 42	

### **Mandatory Reporting of Offences under POCSO Act, 2012**

Sections 19 and 20 of POCSO Act entrusts all persons including media personnel with the responsibility to report cases even if they have a mere apprehension of knowledge regarding the commission of an offence. Failure to report or record cases attracts punishment under Section 21. In *Dr. Sr. Tessy Joe Vs. State of Kerala [(2019) 3 SCC Crl. 164]*, the Supreme Court held that "The expression used under the Section is knowledge, which meant that information was received by such person of the offence being committed, but does not extend to an obligation to conduct an investigation in order to gather such knowledge".

### **Presumption & Reverse Burden of proof under POCSO Act, 2012**

In case of offence under Sections 3, 5, 7 & 9, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, unless the contrary is proved (Section 29, POCSO Act). In any prosecution under the POCSO Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state. This presumption can be rebutted by the accused through his defence. (Section 30, POCSO Act)

Sitaram Das v. State of W.B., 2020 SCC OnLine Cal 522- "It is only on proof of foundational evidence being led, the onus gets shifted to accused to prove the contrary in order to discharge the reverse burden of proof, as contemplated in Section 29 of the POCSO Act.... It has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. The statutory presumption thus cannot be taken to be absolute." (paras 33-35)

After looking into the legislative backdrop of the Juvenile Justice Act and its interrelationship with the POCSO Act, it is fundamental to recognize that a child that indulges in delinquent behaviour is a victim of their circumstance. In this regard it is important to understand the socio-economic and psycho-social factors that constitute to such delinquent behaviours in children that needs to be addressed by the Juvenile Justice System.

# Socio-economic and Psycho-social Factors Leading to Delinquent Behaviour in children

Children coming before the Juvenile Justice System face the greatest challenge in their tender age, yet their predicaments are frequently overlooked. Mis-handling of children by the police is one common issue concerning the Juvenile Justice System. Children grieve in the framework for quite a long time, either as inhabitants of decrepit detention facilities without access to mainstream schooling and education, or as the subject of unlimited procedures that draw them away from training or work.

### **Maslow's theory of Hierarchy of Needs**

The impact of neglect, emotional abuse and physical abuse can have a harmful and damaging effect on a child. This finds relevance with Abraham Maslow's Hierarchy of Needs. If one's physiological needs such as food, shelter and clothing are not being met they cannot reach their safety needs such as health and family security or reach a sense of belongingness. Children need love, support and affection to grow to be confident and happy adults. This can also be related to the social disorganisation theory of criminology which suggests that strong social interactions prevent crime and delinquency, and that when members of a society fail to achieve united values or to solve mutual problems, it leads to greater incidence of crime.

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<sup>&</sup>lt;sup>1</sup> Gawel, J., Herzberg's Theory of Motivation and Maslow's Hierarchy of Needs (1997) (Available: http://files.eric.ed.gov/fulltext/ED421486.pdf)

### **Self-actualization**

desire to become the most that one can be

### Esteem

respect, self-esteem, status, recognition, strength, freedom

# Love and belonging

friendship, intimacy, family, sense of connection

# Safety needs

personal security, employment, resources, health, property

# Physiological needs

air, water, food, shelter, sleep, clothing, reproduction

# Maslow's hierarchy of needs

An investigation was made on the psycho-societal causes of juvenile delinquency in Turkey. The researchers concluded that, "Crime is a phenomenon that has continued since the emergence of civilisation. The phenomenon of child being dragged into crime has been widely used in our country's agenda. It is clear that children are victims rather than perpetrators." According to Prof. Cyril Burt, "Among social conditions by far the most potent is family life, and next to it, the friendships formed outside the home."

According to JPB Starker, a researcher from Zimbabwe, "the key factors in preventing delinquency are, father's discipline, mother's supervision, father's affection, mother's affection, and family cohesiveness." Shortcomings in any of

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<sup>&</sup>lt;sup>2</sup> Aslı Yayak, Burcu Turk, Nurcan Hamzaoglu, A Psycho-Social Investigation On The Causes Of Juvenile Delinquency, International Journal Of Humanities And Social Development Research, Volume 3, No 2, 2019, 50-64

<sup>&</sup>lt;sup>3</sup> Cyril Burt, The Young Delinquent (1925)

these may produce personality disorders falling short of mental illness according to him.<sup>4</sup>

### **Poverty as a Factor**

Ms. Abhinanda Choudhury and Dr. M. Sreedevi Xavier in their article on Juvenile Delinquency in India: A Socio-Psychological Analysis, discuss that, "If the child does not get love, affection and support from the parents or the child is rejected then it is definitely going to lead to some kind of delinquency. Economically poor families can hardly provide the material needs of the children. Deprived of such needs drive children to secure them through wrong means. The people from the low-caste group are poor compared to other caste groups. Some of the ethnic groups suffer from discrimination. They are deprived of the rights by the government and also other citizens of the nation. They are also deprived of guidance from their parents as well as from teachers as many do not even experience schooling. Thus, poverty leads to more delinquent behavior."<sup>5</sup>

Kavita Sahmey, A Study on Factors Underlying Juvenile Delinquency and Positive Youth Development Programs, finds that "Due to the immaturity of the child, he/she easily gets motivated by what he/she sees around him/her. It is the environment and social context that provokes his actions. In a developing country like India, juvenile crimes are steadily rising due to the persistent poverty, unemployment, inequalities and changing values, etc., inspite of these factors that are shown on the television, media, increasing population, adverse effects of peer pressure, lavish lifestyle, too much freedom from the parents, social maladjustment, and family disintegration. Juvenile delinquency is a problem which

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<sup>&</sup>lt;sup>4</sup> JPB Starker, Zimbabwe Law Journal (1966)

<sup>&</sup>lt;sup>5</sup> Ms. ABHINANDA CHOUDHURY, DR. M. SREEDEVI XAVIER, Juvenile Delinquency in India: A Socio-Psychological Analysis, Vol.4(4) https://www.worldwidejournals.com/international-journal-of-scientific-research (IJSR)/fileview.php?val=April\_2015\_1427978877\_\_162.pdf

despite of different and varied cultural backgrounds is found with common characteristics universally..."

Poverty is one of the significant factors behind juvenile delinquency. The vast majority of delinquents originate from underprivileged families. Poverty compels sometimes both of the guardians to be outside the home for a very extensive stretch to gain their everyday bread, to full fill basic needs, like hunger. In this process, the child is neglected. Such youngsters may deliberately or unwittingly hold hands with hoodlums and become delinquents. This occurs in slum zones and regions in which most regular workers individuals live.<sup>7</sup>

### **Literacy and Delinquency in Children**

A link between literacy, positive youth and adult outcomes has been established, especially as related to the juvenile justice context. Emerging research suggests that "using systemic and intensive reading interventions can have a positive impact on youth during incarceration, which may improve their attitudes towards reading, further influencing academic and vocational outcomes following incarceration. One of the characteristics of juveniles incarcerated in correctional and detention facilities is their poor experience with elementary and secondary education. For many, difficulties in reading underlie their poor academic achievement. However, it has been demonstrated that with effective instructions like the reading levels of incarcerated youth can improve dramatically.<sup>8</sup>

#### Trauma and Children in Conflict with Law

Many children in conflict with law tend to have experienced one or more types of trauma, including high rates of physical or sexual abuse, witnessing domestic violence and exposure to violence in school or the community. Children may cope

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<sup>&</sup>lt;sup>6</sup> Kavita Sahmey, A Study on Factors Underlying Juvenile Delinquency and Positive Youth Development Programs (2013) Department of Humanities and Social Sciences, National Institute of Technology Rourkela-769008, Odisha, India

<sup>&</sup>lt;sup>7</sup> K. Parihar, Social Factors Leading to Juvenile Delinquency in Indian Context, (2020), https://legaldesire.com/social-factors-leading-to-juvenile-delinquency-in-indian-context/

<sup>&</sup>lt;sup>8</sup> Jane Hodges, Ed.D., Nancy Giuliotti, and F.M. Porpotage II, Improving Literacy Skills of Juvenile Detainees, JUVENILE JUSTICE BULLETIN, U.S. Department of Justice (1994) https://www.ojp.gov/pdffiles/lit.pdf

with traumatic stress in ways that increase their risk of arrest, including using drugs to avoid distressing memories, running away from an abusive home, and carrying a weapon or joining a gang to prevent re-victimization.<sup>9</sup>

By properly addressing and treating issues surrounding substance abuse, school, home environment, and mental health, specifically trauma, the child is less likely to reoffend later on in life. To achieve this end, it is important to acknowledge that a punitive, coercive, unhelpful and anti-therapeutic juvenile justice system, does more harm than good.

It was reported that children in conflict with law, with strong peer social supports can strengthen positive relationships and recovery through mentoring, coaching, recovery groups, or community building. Thus, children in conflict with law suffering from trauma can ultimately become successful if they are properly assessed at frequent intervals using reliable measurements, the services they are connected to appropriately match their needs, and they create and maintain positive social supports.<sup>10</sup>

# Statistics of Pendency of Cases before the Juvenile Justice Boards in Tamil Nadu

A conceptual and theoretical analysis of the law cannot give the practical and logical difficulties faced by the stakeholders. Stakeholders should have a clear picture how much efficiency is expected for serving the best interest of children. to further such understanding TNSJA carried out a survey regarding the pendency of cases in Juvenile Justice Boards in Tamil Nadu and Puducherry. Data was collected from 2021 and 2022, and the inferences are presented through graphs.

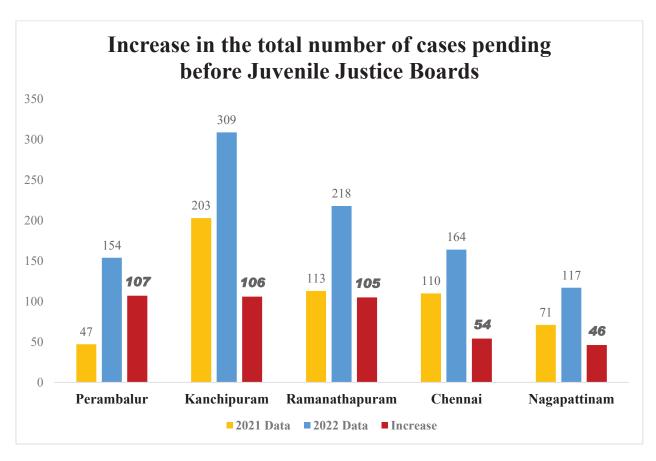
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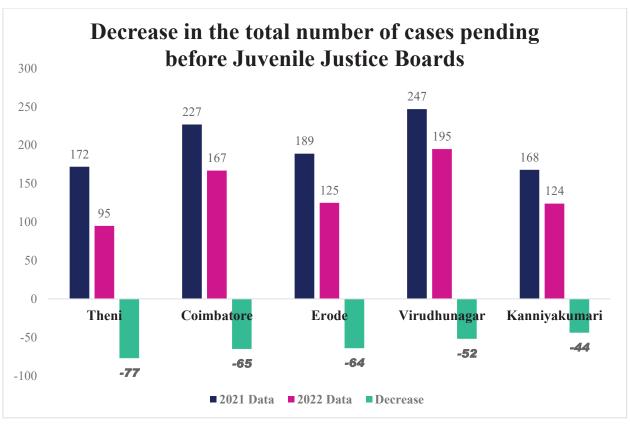
<sup>&</sup>lt;sup>9</sup> Branson CE, Baetz CL, Horwitz SM, Hoagwood KE. Trauma-informed juvenile justice systems: A systematic review of definitions and core components. Psychol Trauma. 2017 Nov;9(6):635-646. 10.1037/tra0000255. Epub 2017 Feb PMID: 28165266; PMCID: PMC5664165 (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664165/)

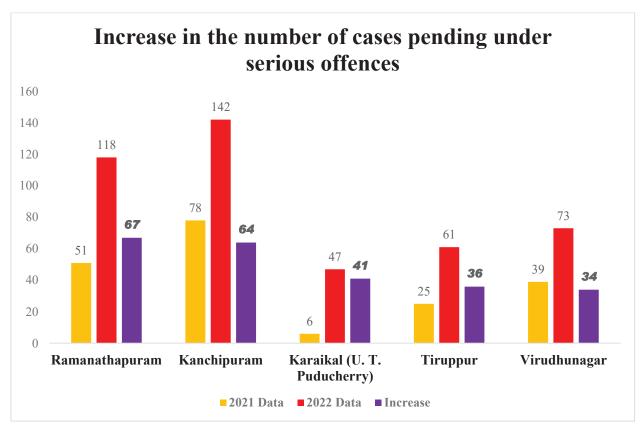
Melinda Plucknette, Trauma in juvenile offenders, (June 2020) (https://sites.bu.edu/daniellerousseau/2020/06/21/trauma-in-juvenile-offenders/)

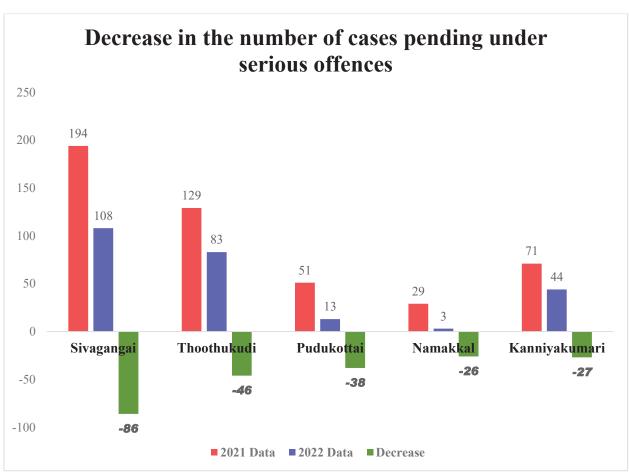
- A. Total no. of cases pending in Juvenile Justice Board
- **B.** No. of Cases pending under Serious Offences
- **C.** No. of Cases pending under Heinous Offences
- D. No. of Cases Pending under Preliminary Assessment Stage
- **E.** No. of Cases pending under Other Offences against Children

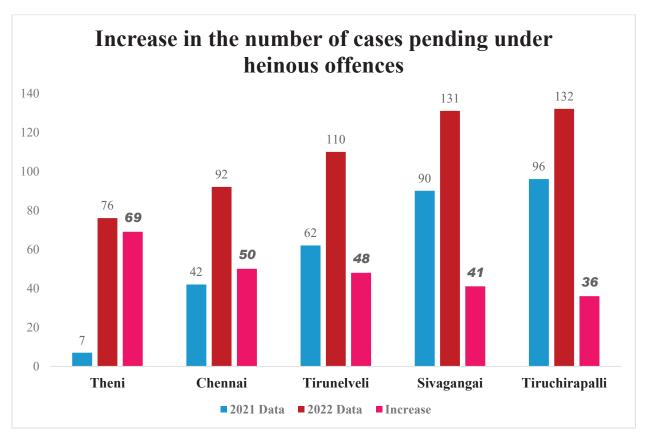
	Dat	a of 20	021		District	Data of 2022			Comparison of 2021 & 2022						
Α	В	С	D	Е		Α	В	С	D	Е	Α	В	С	D	Е
122	52	50	0	20	Ariyalur	92	48	26	12	18	-30	-4	-24	12	-2
110	37	42	6	0	Chennai	164	33	92	7	39	54	-4	50	1	39
227	60	40	5	118	Coimbatore	162	45	75	25	42	-65	-15	35	20	-76
183	42	80	34	61	Cuddalore	211	61	90	8	60	28	19	10	-26	-1
65	8	28	9	29	Dharmapuri	85	7	39	23	0	20	-1	11	14	-29
85	25	46	6	14	Dindigul	88	23	40	19	25	3	-2	-6	13	11
189	47	47	2	95	Erode	125	73	36	2	16	-64	26	-11	0	-79
203	78	92	40	30	Kanchipuram	309	142	125	0	42	106	64	33	-40	12
168	71	45	7	52	Kanniyakumari	124	44	58	3	22	-44	-27	13	-4	-30
46	26	1	1	0	Karur	12	7	3	0	0	-34	-19	2	-1	0
44	8	26	2	10	Krishnagiri	50	8	33	0	9	6	0	7	-2	-1
225	62	149	111	14	Madurai	252	39	179	4	34	27	-23	30	-107	20
71	32	22	0	17	Nagapattinam	117	49	14	2	0	46	17	-8	2	-17
76	29	34	2	11	Namakkal	50	3	36	0	11	-26	-26	2	-2	0
58	19	12	26	1	Nilgiris	41	20	13	11	0	-17	1	1	-15	-1
47	15	28	0	5	Perambalur	154	23	63	0	0	107	8	35	0	-5
65	51	11	0	3	Pudukkottai	51	13	20	0	18	-14	-38	9	0	15
113	51	29	0	33	Ramanathapuram	218	118	39	11	0	105	67	10	11	-33
156	31	68	0	57	Salem	201	28	102	5	71	45	-3	34	5	14
266	194	90	7	30	Sivagangai	251	108	131	1	44	-15	-86	41	-6	14
102	24	47	15	31	Thanjavur	126	26	19	10	71	24	2	-28	-5	40
172	1	7	0	0	Theni	95	17	76	0	46	-77	16	69	0	46
400	129	160	160	111	Thoothukudi	368	83	144	126	141	-32	-46	-16	-34	30
212	60	96	0	56	Tiruchirappalli	171	36	132	44	3	-41	-24	36	44	-53
307	133	62	0	112	Tirunelveli	351	115	110	0	126	44	-18	48	0	14
114	25	31	2	58	Tiruppur	129	61	27	0	0	15	36	-4	-2	-58
76	14	44	8	18	Tiruvallur	73	22	46	3	1	-3	8	2	-5	-17
74	14	38	5	22	Tiruvannamalai	83	36	38	0	9	9	22	0	-5	-13
96	20	29	29	18	Tiruvarur	91	26	46	11	8	-5	6	17	-18	-10
121	23	81	8	17	Vellore	122	18	76	3	0	1	-5	-5	-5	-17
372	170	155	131	0	Villupuram	367	172	183	5	7	-5	2	28	-126	7
247	39	156	1	52	Virudhunagar	195	73	74	54	48	-52	34	-82	53	-4
207	106	50	21	0	Puducherry	165	100	60	12	0	-42	-6	10	-9	0
44	6	6	1	3	Karaikal (pud.)	88	47	8	1	0	44	41	2	0	-3
0	0	0	0	0	Yanam (pud.)	2	0	1	1	1	2	0	1	1	1
8	0	0	0	0	Mahe (pud.)	14	12	0	0	2	6	12	0	0	2

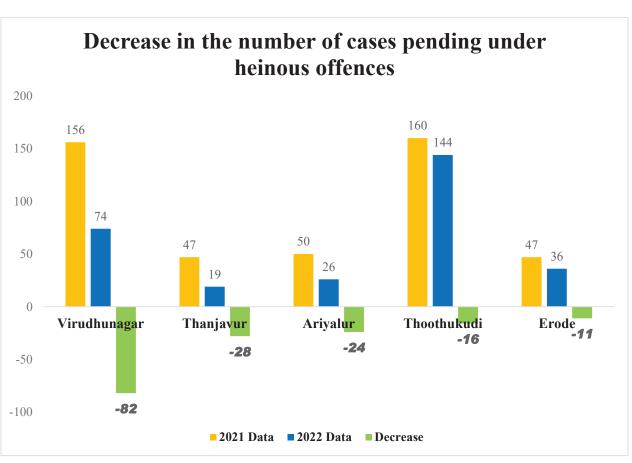


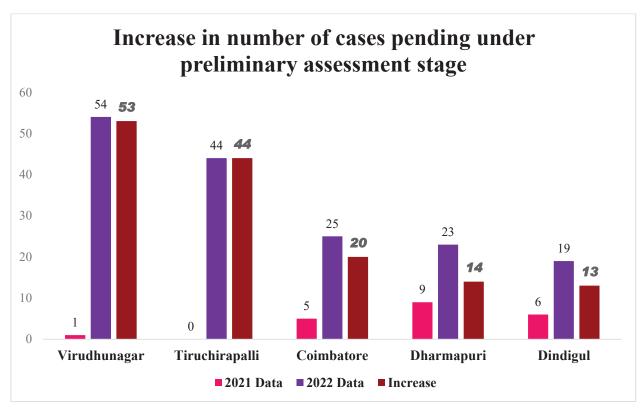


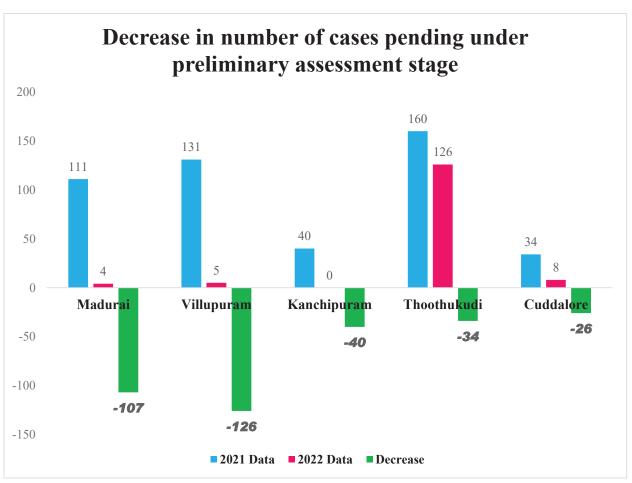


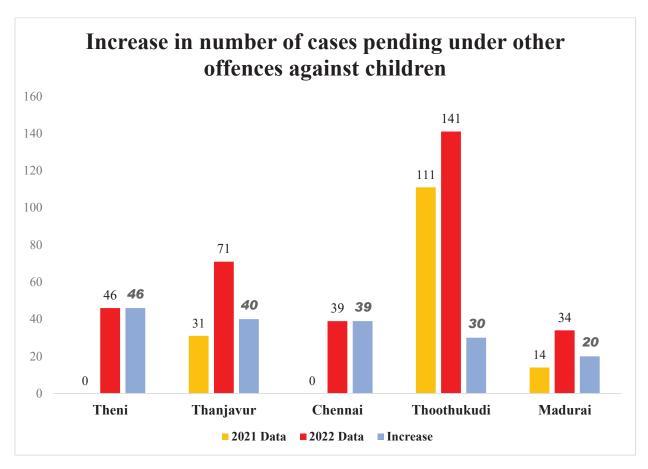


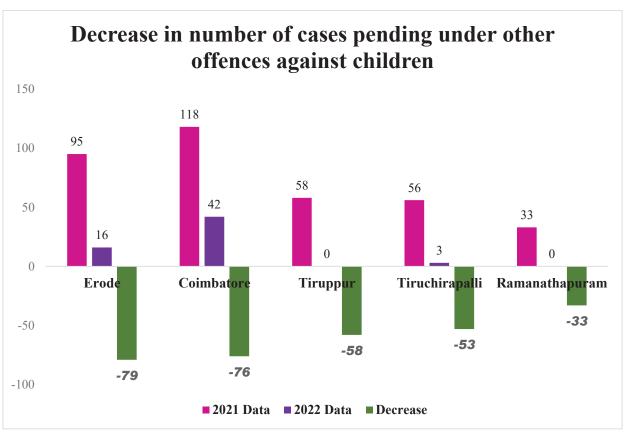


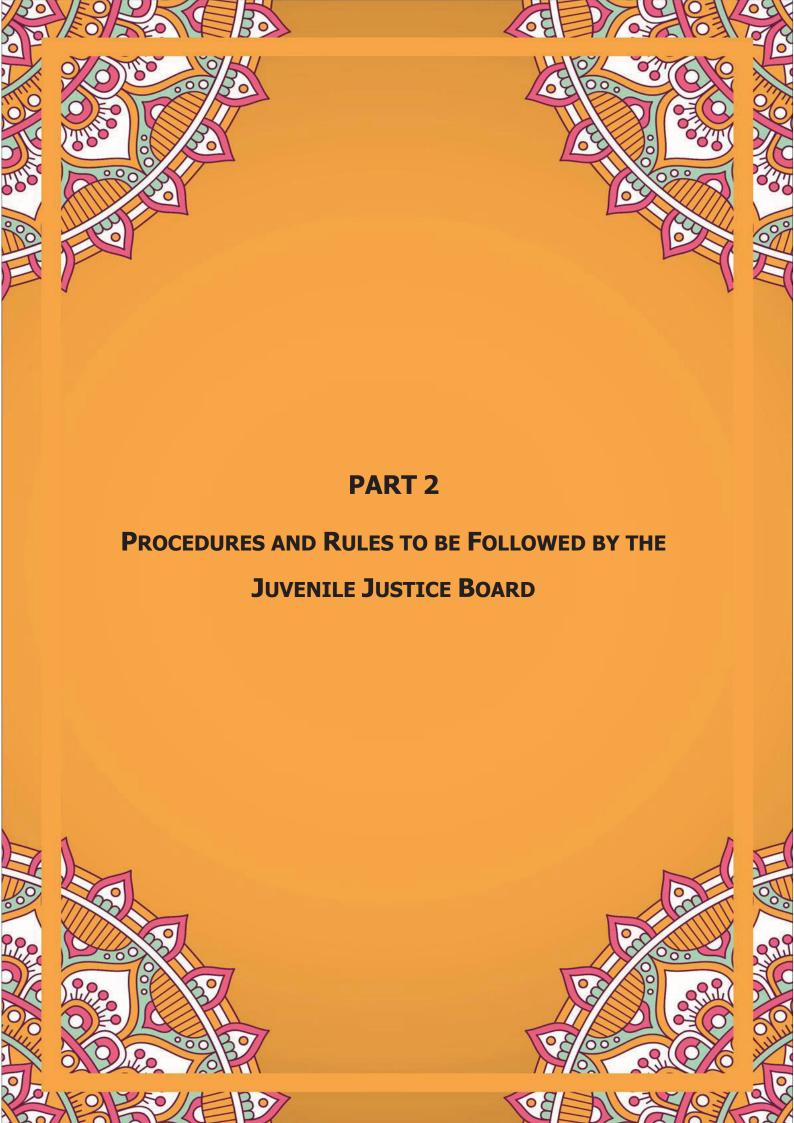










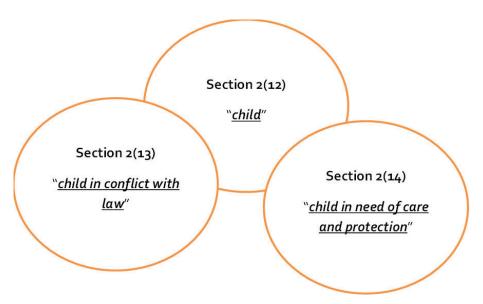


# PART 2: PROCEDURES AND RULES TO BE FOLLOWED BY THE JUVENILE JUSTICE BOARD

#### **Objective of the JJ Act, 2015**

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of <u>care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.</u>

Important Definitions under the JJ Act, 2015 "Children" under JJ Act, 2015



Section 2(12) "child" means a person who has not completed eighteen years of age
Section 2(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

#### "child in need of care and protection" means a child—

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

- (a) has injured,
  exploited, abused or
  neglected the child or
  has violated any other
  law for the time being in
  force meant for the
  protection of child; or
- (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
- (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

# "Offences" under JJ Act, 2015

**Section 2(45)** "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years;

**Section 2(54)** "Serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is, -

- (a) minimum imprisonment for a term more than three years and not exceeding seven years; or
- (b) maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.

**Section 2(33)** "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

In the case of Exploitation of Children in Orphanages, In re, (2017) 7 SCC 578, The Supreme Court has emphasised on, "Who is a child in need of care and protection? The provisions of the Protection of Children from Sexual Offences Act, 2012 (for short "the Pocso Act") do not provide any definition of a child in need of care and protection. But no one can deny that a child victim of sexual abuse or sexual assault or sexual harassment is a child in need of care and protection. Similarly in a given case, a child accused of an offence and brought before the Juvenile Justice Board or any other authority might also be a child in need of care and protection."

Further, Supreme Court held that, "The definition of the expression 'child in need of care and protection' under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection."

Though the legislations use the word 'juvenile', in common practice the word carries a stigma. The tag tends to create bias in the minds of the stakeholders and other persons. Further, it brandishes a child in conflict with law as a wrongdoer. Therefore, it is necessary that the phrase 'child in conflict with law' is used at all times when dealing such children, and constantly bearing in mind that all children can be reformed.

The definition of "place of safety" under Section 2(46), the phrase "the person incharge of which is willing" has been omitted. The law has clarified that, any place or institution established separately or attached to an observation home or a special home, as the case may be can only receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

Section 2(15) "Child friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.

# **General Principles of Care and Protection of Children**

# Implementation of the provisions of the Act shall be guided by the following fundamental principles

✓ Principle of presumption of innocence					
✓ Principle of dignity and worth					
✓ Principle of participation					
✓ Principle of best interest					
✓ Principle of family responsibility					
✓ Principle of safety					
✓ Positive measures					
Principle of non-stigmatizing semantics					
✓ Principle of non-waiver of rights					
✓ Principle of equality and non-discrimination					
✓ Principle of right to privacy and confidentiality					
✓ Principle of institutionalization as a measure of last resort					
✓ Principle of repatriation and restoration					
✓ Principle of fresh start					
Principle of frestristart					
✓ Principle of diversion					

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The General principles to be followed in administration of Act are also now made applicable to the Committee under Section 3.

Although the above principles are simple in understanding, they are crucial when it comes to implementation. The following precedents can be borne in mind in implementing these principles.

In *Bhola Bhagat Vs. State of Bihar,* [1997] 8 SCC 236, it was observed that in enacting JJ Act 1986, the effort of legislature was "to reform the delinquent child and reclaim him as a useful member of the society". In *Salil Balil Vs. Union of India* [(2013) 7 SCC 705], it was observed that "The essence of JJ Act, 2000 and Rules is restorative and not retributive, providing for rehabilitation and reintegration of CICL into mainstream society."

In *Krishna Bhagwan Vs. State of Bihar [AIR 1989 Pat 217]*, the Patna HC, referring to Bihar Children Act, 1982 and JJA, 1986 held that "The basic approach seems to be curative instead of punitive."

In *Imityaz Hussain Mumtiyaz Sheikh Vs. The State of Maharashtra [2008 [116] Bom LR 1645]*, the Bombay High Court, when dealing with JJ Act, 2000, stated that "In the statement of objects & reasons it was set out that the Act proposes amongst others to make the juvenile system meant for a juvenile/child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults; to minimize stigma and in keeping with the developmental needs of the juvenile/child".

In *D. Srinivasan S/o DuraiNaicker Vs. The Secretary Home [Prisons], Govt of Tamil Nadu, 2008*, Madras High Court, when referring to JJ Act, 1986 and JJ Act, 2000, stated that, "...both the Acts being the benevolent legislation, they have to be interpreted in the manner as to advance the object of the Act." In *A. ThangalKunju Musaliar Vs. M. Venkitachalam Potti [AIR 1956 SC 246]*, it was stated that "The Preamble of a statute has been said to be a good means of finding out its meaning and as it were a key for the understanding of it."

# **Strengthening The System Through Stakeholders**

The JJ Act, 2015 identifies several stakeholders who are key in realising the rights of children. The Court *In Re Exploitation of Children in Orphanages in the State of TN (W.P. (Crl) No. 102 of 2007),* at para 51, observed that "We must emphasize, at this stage that it is absolutely necessary for all stakeholders having interest in the welfare of children to work together towards a common goal. This teamwork would include not only the government machinery but also the police, civil society and the judiciary -Juvenile Justice Committee."

### **Stakeholder Table**

Stakeholder	Powers	Functions	Responsibiliti es
Juvenile Justice Board	Sec.8(2)	Sec.8(3) Rule 7	Sec.8(3)
		Rule 8 (TN)	
Children's Court	Sec.19	Sec.19	Sec.19
Child Welfare	Sec.29	Sec.30	Sec.30
Committee		Rule 17	Rule17
Police – Special Juvenile	Rule 86	Rule 86	Rule 86 and
Police Unit, Child Welfare Police Officer	Rule 11 (TN)	Rule 11 (TN)	Rule 62
Wellare Folice Officer			Rule 11 (TN)
District Magistrate	Rule 21, 21A	Rule 25, 27, 28, 37,41	Rule 12, 24
Legal Services Authorities	Art. 39-A	Art. 39-A	Art. 39-A
Probation Officer	Rule 64	Rule 64	Rule 64
	Rule 36 (TN)	Rule 36 (TN)	Rule 36 (TN)
Child Care Institutions	Rule 61	Rule 61 Rule	Rule 61
	Rule 25 (TN)	25 (TN)	Rule 25 (TN)
District Child Protection Unit	Rule 85	Rule 85	Rule 85
Special Child Protection Society	Rule 84	Rule 84	Rule 84
NCPCR, SCPCR	Rule 91	Rule 91	Rule 91

<sup>\*</sup>Sec. refers to Sections of Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>\*</sup>Rules refers to rules of Juvenile Justice (Care and Protection of Children) Model rules, 2016.

<sup>\*</sup>Art. Refers to Article of Constitution of India.

<sup>\*</sup>The Rules mentioned with "(TN)" denotes the rules in the Tamil Nadu JJ Rules 2017

#### **Diversion**

"The first idea that should be grasped concerning the juvenile court is that it came into the world to prevent children from being treated as criminals."

- Miriam Van Water

A central objective of those who created the juvenile court was to protect young delinquents from the destructive punishments of the criminal justice system diversion has been an important motive in juvenile justice from the beginning, and became the dominant purpose of a separate juvenile court after In Re Gault in 1967.

The emphasis on probation and community-based supervision fits nicely with a diversionary justification for juvenile courts. The job of the court is first not to harm the youth and then to attempt to help in community settings. This same programmatic emphasis does not mesh well with the romantic rhetoric of child saving. Probation is at its essence an incremental social control strategy, one that relies on the basic health and functionality of the subjects' community life.

This diversionary rationale is a policy goal of tremendous durability, humbler in its ambitions and closer to institutional reality than the interventionist agenda of juvenile justice ever was. The diversionary theory of juvenile court jurisdiction was never an alternative to helping juvenile offenders, but it was a more particular and more limited kind of help than plenary child saving. It was a modest, focused way of helping young offenders survives both adolescent crime and the experience of social control with their life chances still in-tact. Diversion means the conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable the children to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.

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

Diversion has been identified as a positive and cost-effective contribution towards the rehabilitation and reduction of re-offending of child offenders. Depending upon the severity of the offence committed, the law mandates the system to explore options where judicial proceedings may not be used. Section 3(xv), JJ Act, 2015 enshrines the principles of diversion, by stating that "measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

In this context, the Model Juvenile Justice Rules of 2016 has provided for non-filing of FIR for petty offences.

Section 8(3)(g) of the JJ Act 2015 provides for "transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved"

The aim is to divert children into diversion programmes where they can learn various life or vocational skills and are subsequently integrated into the community. Diversion can happen at any stage of the juvenile justice process. This principle seeks to establish a formal framework for dealing with children in conflict with law throughout the criminal justice process, with a view to ensuring that detention or institutionalisation is a measure of last resort.<sup>11</sup>

In a success story from Cambodia, it was observed that the seemingly simple process to keep children out of prison has a lot of moving parts. Social agents, prosecutors, and police officers must understand their role and cooperate for

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<sup>&</sup>lt;sup>11</sup>Principles of JJ System, E-Pathshala, INFLIBNET (<a href="http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp">http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp</a> content/S001608/P001809/M027659/ET/1520850656Final PrinciplesofJJsystem.pdf)

juvenile justice to be rightfully served. Up until 2019, low awareness on the law and its application resulted in growing numbers of children interrogated and detained like adults. In 2019 alone, there were nearly 2000 children in detention in Cambodia.<sup>12</sup>

Juvenile diversion programs and approaches hold child accountable for their behaviour without resorting to legal sanctions or the threat of confinement. The goal is for children to mature into adulthood without being thrown off track by the negative effects of involvement with the justice system, including a criminal record that can seriously damage the child's opportunities for future employment and higher education.

Diversion differs from probation in several fundamental ways.

- Diverted children should never be assigned to probation or supervised by a probation officer.
- There should be no possibility of placement or confinement for failure in diversion.
   This means that diverted youth should never be subject to court-ordered conditions. Except in rare cases involving chronic offending and significant risk to public safety, they should not face court-imposed consequences for failing to comply with a diversion agreement or contract.
- There should be no court-imposed contact standards to guide how often diversion program providers meet or speak with diverted youth or their families.<sup>13</sup>

#### **Key Points**

Diversion can be instigated from the time of apprehension (before arrest) to any point up until the final disposition hearing (including after pre-trial detention) –

<sup>&</sup>lt;sup>12</sup> Cambodia Stories, UNICEF (<a href="https://www.unicef.org/cambodia/stories/diversion-juvenile-justice-success-story">https://www.unicef.org/cambodia/stories/diversion-juvenile-justice-success-story</a>)

What is Diversion in Juvenile Justice?, The Annie E. Casey Foundation October (2020) (https://www.aecf.org/blog/what-is-juvenile-diversion)

either as a generally applicable procedure or on the case-by-case decision of the police, prosecutor, court or similar body.

Diversion should take place as soon as possible in the process, although national legislation varies on this issue.

Diversion must comply with human rights/child rights and legal safeguards as established in CRC Art. 40.3.

#### Aims of Diversion

- To hinder the potential negative effects of formal judicial proceedings
- ❖ To avoid 'over-reacting' to an offence by applying the principle of proportionality / minumum intervention
- ❖ To facilitate the child's social reintegration and provide a constructive response to the child's offending.
- ❖ To reduce the number of children detained in police custody and pre-trial detention facilities such as remand centres, and the number of children appearing before the court.

In theory, diversion can be used for children committing any kind of offence (though in practice this is rarely used for the most serious crimes or for persistent offenders).

In some cases, diversion may not be appropriate or in the best interests of the child. For example, persistent offenders who have already experienced diversion in the past, but which has failed to address the offending behaviour, may require formal judicial intervention to help them get back on track. Diversion is also not appropriate for children who do not admit responsibility for an offence (see the 'ground rules' below).

Diversion can take the form of no action, a simple caution or warning, an apology to the victim/survivor, payment for damage done, or it may involve referral to a structured diversion programme (e.g. community work or a life skills or competency development programme) or to a restorative justice process (e.g. dialogue / mediation or family group conference) amongst other things.

The structures involved may vary. They may include police, statutory services, administrative bodies, commissions, NGOs, community-based organisations and faith-based organisations. In practice, diversion options often involve some form of formal or informal community support.

In some contexts, where provision or discretion for diversion already exists, it may be relatively simple to implement. In other contexts, it may require major systemwide reform. In all cases, however, it requires coordination and collaboration amongst stakeholders.

Diversion programmes may be of varying duration and intensity and there must be clear guidelines in place as to who has the authority to determine this.

Diversionary measures should allow for diversion to be suspended and judicial proceedings to be restarted if the child fails to comply with the agreed terms and conditions of diversion.

Diversion options are not, per se, 'restorative justice' options. For example, in theory a child in conflict with the law could be 'diverted' away from judicial proceedings by being given a warning by police and then released. This option does not include elements to 'restore the harm caused' by the offence, nor does it necessarily involve the child taking responsibility for his or her actions in a positive way.

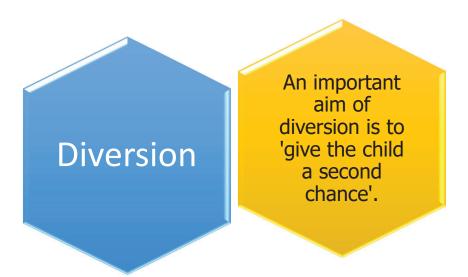
Diversion options are also not, per se, 'child rights-based' options. For example, in theory a child in conflict with the law could be 'diverted' away from the formal justice system by being sanctioned instead to corporal punishment by a community leader. This is technically 'diversion' but it is also contrary to child rights. Although the CRC promotes the use of measures for dealing with children in conflict with the

law without resorting to judicial proceedings (i.e. diversion), it specifically adds "providing that human rights and legal safeguards are fully respected" (CRC Art. 40.3(b)). This is generally interpreted to mean that the 'ground rules / legal safeguards' listed below must be respected.

Diversion options must be based on child rights and in accordance with principles of restorative justice.

# **Ground Rules/Legal Safeguards**

Diversion is to be used only where the child admits to an offence and consents to a non-judicial response. This must be an 'informed decision', made of their own free



will, without pressure or undue influence, and based on an understanding of the pros and cons of the options available. Those who maintain their innocence have the right to a full and fair trial. The child's parent or guardian should also be involved in the decision-making process.

The case can be referred to a regular court system if no solution acceptable to all can be reached or if the measures at the disposal of the diversion system are not deemed appropriate by the authorities mandated to assess cases for diversion. If the child fails to fulfil the terms of the diversion measure, the prosecution retains the right to restart judicial proceedings. The accused always retains the right to a court hearing or judicial review.

Corporal punishment and public humiliation as well as any other measures contrary to the CRC cannot form part of a diversion programme. Deprivation of liberty in any form - i.e., where the child is not free to leave - (including in 'rehabilitation centres' or 'special schools') cannot form part of a diversion programme.

Some diversion programmes incorporate a residential component (e.g., treatment for substance abuse or 'wilderness' programmes). In such cases, the child who has given their informed consent to participate in this aspect of the programme and is free to leave. In such cases, leaving the programme would constitute a failure to complete the terms of the diversion measure and may result in reverting to judicial proceedings but this is the choice of the child. These 'residential' components of diversion programmes should not be confused with the placement of children in facilities where they are not free to leave (which is prohibited as a diversion measure).

The content, conditions and the period of time that a child is required to attend a diversion programme should take into account his / her age, maturity, religious and cultural background as well as any other needs and circumstances to prevent any further offending. It should also address the needs of any victims/survivors involved. The child has the right to be heard and should be given the opportunity to participate in the decision-making process.

The measures imposed through diversion should be proportionate to the violation and should not be more severe or restrictive than the sanction the child would have received through judicial proceedings.

In an initiative to bring the child justice system into line with international standards, Zambia came up with its National Diversion Framework in 2018. It sets out the scope, criteria, process and options for the use of diversion in Zambia. It aims to assist all stakeholders, including the law enforcement agencies, Social Welfare, Public Prosecutors, Magistrates and NGO service providers to respond to child offending by way of diversion out of the formal court proceedings, in

accordance with the UN Convention on the Rights of the Child (UNCRC). The National Diversion Framework is also part of the ongoing reform in child justice system in Zambia. Diversion is explicitly included in the Children Code Bill currently before Parliament.<sup>14</sup>

# **Need for Guidelines to Implement Diversion in India**

In the Indian scenario, under the JJ Act, 2015, though the principle has been mentioned in the Act, there is no specific provision or rule which states how a child in conflict with law is to be diverted from unnecessary exposure to the juvenile system. Right from the first instance of coming in contact with a Child Welfare Police Officer, who is essentially a police officer, and throughout the time the child is produced before the JJB and is made to stay in Observation Homes, the child most often does not receive the benefit of diversion. Therefore, there is a need to develop a guideline consisting of strategies, methods and procedures, for the stakeholders to implement the principle of diversion.



<sup>&</sup>lt;sup>14</sup> https://www.unicef.org/zambia/reports/juvenile-justice-national-diversion-framework-2018

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# **Functions and Responsibilities of the Juvenile Justice Board [JJB]**

One of the most important and progressive features of the Act is the establishment of Juvenile Justice Boards. Each board is inquired to decide the age of the child, the question of bail, and the subject of a commission of the offence, and pass proper orders. The composition of the board incorporates a Principal Magistrate and two social workers, in this way guaranteeing not only are legitimate complexities secured, however, the financial, psycho-social and familial conditions are also considered to be secured. The social workers engaged with the juvenile justice system are called correctional social workers globally.

#### **Establishment of JJB**

The Juvenile Justice Board is an institutional body constituted under Section 4 of the JJ Act, 2015. According to the division of powers, the subject of administration of criminal justice has been included in the State List (List II, Schedule VII) of the Indian Constitution. Therefore, one or more than one Juvenile Justice Board(s) are established by the State Government for each district. The Board exercises its powers and discharges functions relating to the 'child in conflict with law' as has been defined under Section 2(13) of this Act.

Section 4 is an enabling provision, begining with a 'saving clause' which means that an overriding effect over the Code of Criminal Procedure, 1973 has been given to this provision. The 'notwithstanding clause' has been discussed in the case of *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram [AIR 1987 SC 117].* 

#### **Constitution of JJB**

The JJB, a multi-disciplinary body, is the one that exercises powers and discharges functions in relation to 'children in conflict with law'. It consists of a Principal Magistrate and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman. A social worker is a person who has been actively involved in health, education, or welfare activities pertaining to children for at least seven years. The social worker must be a practicing professional with a degree in child psychology, psychiatry, sociology or law. The members of the JJB

are to be sensitised on the care, protection, rehabilitation, legal provisions and justice for children. These persons are not eligible if they have a past record of violating human rights or child rights. The proviso to sub-section (1) also provides for assistance to be taken by the JJB of certain experienced psychologists, psychosocial workers or other relevant experts.

It was held by the Himachal Pradesh High Court in the case of *State of Himachal Pradesh Vs. Happy [(2019 SCC OnLine HP 700)]* that judgment passed by a single member of the Juvenile Justice Board is void ab initio. In this case, the impugned order was passed by a single Magistrate, without fulfilling the criteria of the composition required for the functioning of the Juvenile Justice Board. Therefore, the order was set aside.

Once a member has been selected to the JJB, Under Section 4(5), the onus of sensitizing and providing training to all the Board Members lies on the State Government. It is to be ensured that the induction training is provided within a duration of 60 days from the date of appointment.

Under Section 4(6) of the Act, the tenure of office for the Board members and the manner in which they may resign has been discussed. Under Section 4(7), the appointment of any Board member, except the Principal Magistrate, may be terminated post an inquiry by the State Government if they were found guilty of misuse of power bestowed upon them under this Act; or failed to attend the Board proceedings consecutively for three months without valid reasons; or failed in attending less than three-fourths of the sittings in a year; or have become ineligible under sub-section 4 during their tenure as a member.

#### **Procedure followed by the JJB**

Under Section 7 of the Act, the procedure in relation to the Board has been laid down. The Board shall meet and carry out transactions of business as may be prescribed. It is the duty of the Board to ensure that all procedures are child friendly and the venue is not intimidating. If a difference of opinion arises among the Board members in the interim or final disposal stage, then there are two options: Either the majority opinion will prevail or if there is no majority, then the opinion of the Principal Magistrate will prevail. In those circumstances when the Board is not sitting, a child in conflict with law may be produced before an individual member. Further, the Board can pass orders even if any Board member is absent and such orders cannot be held invalid by the only reason that any member was absent during any stage of proceedings.

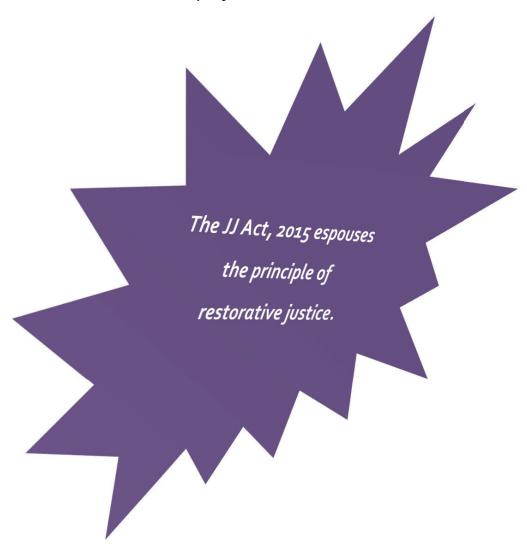
#### **Powers of the JJB**

As per Section 8(1), JJ Act, 2015, the Bench shall have all the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or a Judicial Magistrate First Class. The Board constituted for any district shall have the power to deal exclusively with the proceedings under the Act: In the area of jurisdiction of the Board, In matters relating to children in conflict with the law.

These powers may be exercised by the High Court or the Children's Court, when proceedings under Section 19 come before them or in appeal, revision or otherwise. It was held in the case of *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad (2007) 2 SCC 355* that an order passed by a magistrate beyond his jurisdiction would be considered *void ab initio*.

When an alleged child in conflict with law is produced before the Board, it shall exercise its power to hold an inquiry according to the provisions of this Act and may pass orders as it deems fit under Section 17 and 18 of the JJ Act, 2015. The Board is also empowered to inquire into heinous offences under Section 15 of the Act. Such preliminary assessment has to be disposed of within a period of 3 months

from the date of first production of the child before the Board. In the case of *Puneet S. Vs. State of Karnataka (2019 SCC OnLine Kar 1835)*, the Karnataka High Court held that only the Juvenile Justice Board has the power to decide whether an offence committed by a juvenile is heinous or not.



#### **Role and Responsibilities of JJB**

A primary responsibility of JJB is to cater developmental needs, care, protection, and treatment, case procedure, inquiry and final order for ultimate rehabilitation of children conflict with law in the best interest of child. The role of JJB in Juvenile Justice System is as follows:

The Juvenile Justice Board (JJB) has the power to transfer juvenile cases to a children's court. If the JJB finds that the child needs to be tried as an adult, the trial of the case may be transferred. Children's court does not award any sentence of death or life imprisonment, without the possibility of release.

Social Investigation Report: A report of a child containing detailed information pertaining to the circumstances of the child. It is prepared by a Probation Officer or a voluntary or nongovernmental organisation, along with the evidence produced by the parties for arriving at a conclusion. Where a child alleged to be in conflict with law is apprehended, the probation officer prepares a report on the child's antecedents and family background.

Social Background Report: A report on a child in conflict with law containing the background of the child prepared by the Child Welfare Police Officer. This report is treated as an important document for the welfare of the children while deciding their case. For gathering the best available information, it is incumbent upon the Special Juvenile Police Unit (SJPU) to contact the parents or guardians.

Stakeholders should have a clear picture how much efficiency is expected for serving the best interest of children.

- Section 8(3) The functions and responsibilities of the Board shall include—

  (a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;
  - (b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;
- (c) ensuring availability of legal aid for the child through the legal services institutions;
- (d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;
- (e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;
- (f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;
- (g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;
- (h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
- (i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;
  - (j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;
- (l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;
- (m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and
  - (n) any other function as may be prescribed.

# Procedure to be followed by a Magistrate who has not been empowered under this Act

Normally, the police are expected to produce the child before the JJB and not any other magistrate. Section 9, JJ Act, 2015, however, provides double protection to children, by imposing a duty on the magistrate who is not empowered by the JJ Act to examine the question of age before exercising jurisdiction over persons produced before them. The provision conceives of two situations that may be faced by a magistrate not empowered to function under the Act. First, when the person alleged to have committed an offence and produced before them is apparently a child, and second, when the person produced before them claims to be a child, or claims to be a child on the date of commission of offence.

In such cases, if the Magistrate is of the opinion that the person suspected of an offence is a child, they shall record such opinion and forward the child to the JJB having jurisdiction. If a person suspected of an offence, claims that they are a child or was a child on the date of offence, or if the court is itself of such opinion, the court shall make an inquiry, take evidence (but not an affidavit), and record a finding stating the age of the person as nearly as may be. Such a claim can be raised before any court at any stage, even after final disposal of the case, and shall be determined in accordance with the provisions of the JJ Act and Rules, even if the person has ceased to be a child on or before the date of commencement of the JJ Act.

As per Section 9(3), JJ Act, 2015, in case where the court finds that a convict was a child on the date of offence, it shall forward the child to the JJB for appropriate orders. Consequently, the sentence passed by the court shall be deemed to have no effect.

As per Section 9(4), JJ Act, 2015, in necessary cases, the person, whose claim of being a child is being inquired into, may be placed in a place of safety.

#### **Procedure in Relation to Child in Conflict with Law**

The JJ Act, 2015 espouses the principle of restorative justice. A child in conflict with law has a number of rights beginning from the stage of apprehension by the police up to the release from the Child Care Institutions. The procedure to be followed in case of a child in conflict with law is prescribed under Chapter IV of JJ Act, 2015, vide Sections 10 to 26, and Chapter III of the JJ Model Rules, 2016, vide Rules 21 to 53, and Chapter III of the Tamil Nadu JJ Rules, 2017, vide Rules 9 to 15.

# Apprehension of Child Alleged to be in Conflict with Law

A child may be apprehended on the ground of committing an offence. However, while doing so, due care and caution must be undertaken by the police and other authorities so as to not violate the rights of the apprehended child. Section 10, JJ Act, 2015 and Rules 8 to 10 of the JJ Model Rules, 2016 provide for the manner of apprehension of a child and their production before the JJB.

Section 10 of the JJ Act, 2015 provides that:

*firstly*, the police who apprehends a child for having allegedly committed an offence shall hand them over to the SJPU or the designated CWPO, following which,

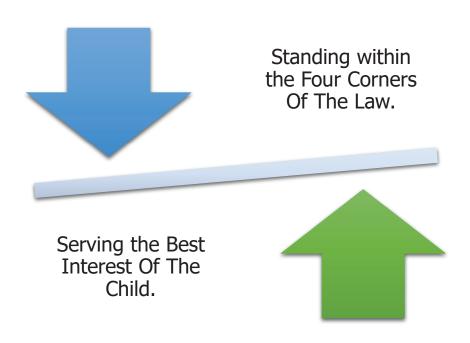
secondly, the concerned SJPU or CWPO shall produce the apprehended child before the JJB, immediately within 24 hours (excluding the duration of travel), and

thirdly, a child alleged to be in conflict with law shall never be held in police lockup or jail.

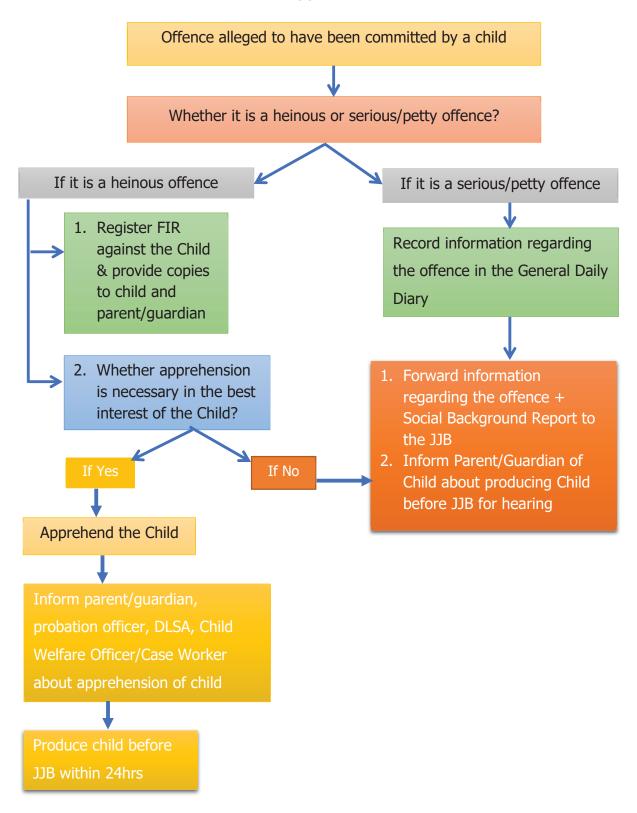
Rule 8 pertains to the procedure to be followed before producing the child before the JJB. Rule 9 applies during the stage of producing the apprehended child. Rule 10 is to be followed after producing the child before the JJB. The sum and substance of the Rules are:

- The apprehended child shall be kept in the secure custody prior to the production before the JJB. appropriate orders are obtained as per rule 9 of the Rules.
- The child shall not be handcuffed or fettered.

- No force or coercion shall be exerted upon the child.
- The child shall be promptly and directly informed of the charges levelled against them, through their parent or guardian, and shall also be provided a copy of the FIR, if any.
- The child shall be provided the required assistance, be it medical or from an interpreter or special educator.
- The child shall not be compelled to make a confession and shall be interviewed only at the Special juvenile Police Unit or at child-friendly premises, along with presence of their parent or guardian, if necessary.
- The child shall not be asked to sign any statement.
- The child shall be provided free legal aid by the District Legal Services Authority.



#### Flow chart: Apprehension of a Child



Section 11 prescribes the role of the person in whose charge child in conflict with law is placed. Such person shall have responsibility of the child, as if they are the child's parent. This responsibility shall continue for the period stated by the JJB, unless the JJB is of the opinion that the parent or any other person are fit to exercise charge over such child.

#### Procedure in case of run-away child

In case the child has run away from the Child Care Institution or the person in whose charge they were placed, the procedure under Section 26 needs to be followed.

# JJ Act, 2015

Section 26. Provision with respect of runaway child in conflict with law. — (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge of a child in conflict with law who has run away from a special home or an observation home or a

place of safety or from the care of a person or institution under whom the child was placed under this Act.

- (2) The child referred to in sub-section (1) shall be produced, within twenty-four hours, preferably before the Board which passed the original order in respect of that child, if possible, or to the nearest Board where the child is found.
- (3) The Board shall ascertain the reasons for the child having run away and pass appropriate orders for the child to be sent back either to the institution or person from whose custody the child had run away or any other similar place or person, as the Board may deem fit:

Provided that the Board may also give additional directions regarding any special steps that may be deemed necessary, for the best interest of the child.

(4) No additional proceeding shall be instituted in respect of such child.

The Madras High Court in *K. Vignesh Vs. State* [2017 SCC OnLine Mad 28442], observed that, on a conjoint reading of Sections 2(13) and 10 of the JJ Act, 2015, it is crystal clear that "no police officer has been empowered to arrest a child in conflict with law and instead he has been empowered only to apprehend a child in conflict with law", and hence held that "an application seeking anticipatory bail"

under Section 438, Cr.P.C. at the instance of a child in conflict with law is not at all maintainable".

In Ramachandran Vs. The Inspector of Police, 1994 CriLJ 3722 the Madras High Court held as follows, "A Juvenile's freedom is one of a proper custody of a guardian, either a natural guardian, a de facto guardian, or a de jure guardian appointed by a Court. Detention in judicial custody or otherwise is a task discharged by the Courts and other competent detaining authorities to put a person in custody, where he is not free to act at his will and resort to unlawful activities. Since a juvenile is always in custody and that custody is deliberately chosen by the Juvenile Justice Act, it is difficult to think that his delinquency will make him a habitual offender and a goonda in that sense. ... It is clear discretion of the police and the Court, after complying with the requirements of law in this behalf, to choose the custody of the juvenile, except in jail, if proper care is taken and the age of the offender is ascertained and when he is found a juvenile, care is taken to see that he is not left in the custody of the parents, who are likely to expose him to the dangers of the social evils and all such other conditions are met with concern for the welfare of the child (juvenile), there will be no occasion for anybody to resort to action of preventive detention of such person."

# Procedure in case of run-away child under Tamil Nadu JJ Rules, 2017

As per Rule 11(7) When the child in conflict with law is released on bail but fails to appear before the Board, on any date fixed for hearing without reason or representation made for exemption, the Board shall, issue directions to the Child Welfare Police Officer and the Person in charge of the Police Station for production of the child.

As per Rule 11(8) when a Child Welfare Police Officer fails to produce the child before the Board even after the issuance of the directions for production of the child, the Board instead of issuing process under section 82 of the Code of Criminal

Procedure, 1973 pass appropriate orders under section 26 of the Act and such child shall also be treated as a missing child.

As per Rule 12 when a child in conflict with law, runs away from a child care institution, the following action shall be taken within twenty-four hours-

- (i) Officer-in-charge of the child care institution shall send a report immediately along with the details and description of the child, the identification marks and a photograph to jurisdictional Police Station or Special Juvenile Police Unit or Child Welfare Police Officer, with a copy marked to the Board or the Children's court as well as to the Director of Social Defence;
- (ii) immediately inform the parents or guardians to be;
- (iii) Officer-in-charge of the child care institution shall hold an inquiry and send his report to the Board, the Children's court as well as to the Director of Social Defence. The details of the child shall also be uploaded on the Track Child portal.

As per Rule 12(2) When the run-away child is apprehended again, the same shall be notified to all the persons concerned.

As per Rule 12(3) untraceable child shall also be treated as a missing child.

The Hon'ble Madras High Court recently in *Zahiruddin Mohammed Vs. The State of Tamilnadu and Anr.* (W.P.No.25913 of 2021 and W.M.P.No.27384 of 2021) has disallowed the Rules 16 and 17 of the Tamilnadu Juvenile Justice Rules, 2017 as the rules are illegal to the extent that, they do not conform to the Model Rules and offend the proviso to Section 110 of the Juvenile Justice Act, 2015. The Rules are now struck down and till they are re-enacted by the State Government, it would be governed by Rule 88(5) and Rule 87 of the Model Rules of 2016.

# **Bail for Child Alleged to be in Conflict with Law**

#### JJ Act, 2015

Section 12. Bail to a person who is apparently a child alleged to be in conflict with law.— (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appear reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

- (2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home, or a place of safety, as the case may be, in such manner as may be prescribed until the person can be brought before a Board.
- (3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.
- (4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

The Rajasthan High Court in *Anita Kumari Padam Singh Vs. State of Rajasthan [2017 Cri LJ 2480]*, observed that where the Petitioners are children in conflict with law and there is no material either in the report of the Probation Officer or any other material placed before the JJB or the Appellate Court that their release is likely to bring them in association with known criminals or subject them to moral, physical or psychological danger or would otherwise defeat the ends of justice, they have to be granted bail. In *Anil Kumar Vs. State of U.P. [2007 Cri LJ 200]*, it was

held that order refusing bail to the child in conflict with the law merely on the basis if presumption and guess work without any substance is not sustainable.

The nature of offence is not one of the conditions on which bail can be granted or refused to the child in conflict with the law. Unlike the usual cases where bail is applied for by an accused and he has to make out a case for grant of bail, the position is the reverse in the case of a bail for a child in conflict with law. Here, it is not for the child in conflict with law to make out a case why they should be granted bail, but it is for the arresting authority to satisfy the JJB that such child should not be released on bail because of the existence of any one of the three circumstances mentioned in the *Proviso* to Section 12(1).

The first and second circumstances are clearly intended to ensure the safety of the child in conflict with law, while the third circumstance is to prevent the defeat of the ends of justice. The onus therefore is a reverse onus and is more akin to the prosecution asking for a remand of an accused into custody rather than a prayer by the accused for being released from custody. This principle was followed in *Naisul Khatun Vs. State of Assam & Ors. [2011 Cri LJ 326]*.

In *Manoj @ Kali Vs. State (NCT of Delhi) [2006 Cri LJ 4759]*, it was held that the question whether the ends of justice are being defeated has to be considered in the context of welfare of the child in conflict with law.

"What needs to be adopted is a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment. What is important is that the court should keep in mind the developmental needs of juvenile and the necessity of his rehabilitation. It's only if the developmental needs of the child require that he be kept in custody or that keeping in custody is necessary for his rehabilitation, or care or protection that his release would defeat the ends of justice, not otherwise. Thus, if the release of the child interferes with his developmental needs, the bail can be declined by the Court on the grounds of

defeat of ends of justice. Gravity of offence etc. cannot be considered as a ground for declining the bail; putting them under the head "would defeat the ends of justice".

Section 12 incorporates a non-obstante clause which clearly indicates that the provision has an overriding effect not only on the Cr.P.C but also on other laws for the time being in force. In *Praveen Kumar Maurya Vs. State of U.P. [2011 Cri LJ 200]*, where the case concerned an offence under the NDPS Act, it was held that since the revisionist was a juvenile on the date of occurrence, his bail matter was liable to be governed by Section 12 of the JJ Act and not Section 37 of the NDPS Act, due to the overriding effect.

In *Prahalad Gaur Vs. State of U.P. [2009 Cri LJ 153]*, it was held that a single instance of a child delinquent joining the company of some known criminal or criminals would not be sufficient to satisfy the definition of the word "association" used in Section 12. If his past conduct had been of such a nature, which indicates his continuous association with known criminal or criminals then there would be justification for inferring that there would be likelihood that his release may bring him in association with known criminal(s).

In *Shimil Kumar Vs. State of Haryana [2014 (1) Crimes 74 (Del.)]*, it was held that, "Factors preceding the commission of an offence, his collaborators and accomplices would be the indices for a person being endangered by evil influence, and likewise the Board and the Court have to imaginatively conceive of succeeding consequences to the offence, to conclude regarding the safety of a juvenile."

The Madras High Court in *Ajith Kumar Vs. State [2016 SCC OnLine Mad 4351]*, on appraising Section 1(4), JJ Act, 2015 found that "the source of power for grant of bail to a juvenile in conflict with law is not traceable to the Code of Criminal Procedure, but to Section 12 of the Act. ... Section 482, Cr.P.C cannot be used to foreclose the power of the Board to conduct a full-fledged enquiry under Section 12 of the JJ Act, 2015."

A child in conflict with law is entitled to bail, even without sureties, as the Rules provide for an undertaking to be received from the parents. However, the Public Prosecutor shall be given an opportunity to object the bail petition, in the lines of centring the best interest if the child.



# **Inquiry regarding Child in Conflict with Law**

Sections 14 to 18 deal with the conduct of inquiry of a child in conflict with law. Section 14 categorizes the types of offence depending upon how it is committed.

The Supreme Court in *Sampurna Behura Vs. Union of India* [(2018) 4 SCC 433], observed in paragraph 73 that, "a Probation Officer has a very important role to play in ensuring that a juvenile in conflict with law is given adequate representation and a fair hearing before the JJB and the enquiry is conducted in a manner that is conducive to the rehabilitation of the juvenile in conflict with law. In this regard, the preparation of an individual care plan and post-release plan gain immense significance and a Probation Officer has an important role to play in this."

As per Section 14(2), an inquiry to determine whether the child has committed the alleged offence or not must be completed within four months from the date of first production of the child before the JJB. This period may be extended for the maximum of two months by the JJB for reasons to be recorded regarding the circumstances requiring such extension. The Preliminary Assessment when required is to be completed within three months and the age inquiry within fifteen days. There is no cap on the number of extensions on the duration for which the Chief Judicial Magistrate and Chief Metropolitan Magistrate may extend the period of inquiry in these cases. However, care needs to be taken to ensure that no unreasonable delays are permitted while granting extensions.

Section 14(4) suggests that no formal application needs to be made by the child seeking termination of such proceedings. The proceedings stand terminated even if no such order is passed by the JJB. Any other order except closure of the matter is not permitted by the language used in this provision.

Section 14(5) provides for steps to be followed by the JJB in order to ensure a fair and speedy inquiry. The JJB is specifically charged with the responsibility of satisfying itself that the child has not been subjected to any ill-treatment by any person including the police, lawyer or probation officer.

The classification of offences as under Clauses (d), (e) and (f) of Section 14(5) provides for different procedures to be followed by the JJB while conducting inquiry. Cases of petty offences are to be disposed by the JJB following summary proceedings as provided under Sections 262 to 264 of the Cr.P.C. Cases of serious offence by any child, or heinous offence by children below the age of sixteen years are to be disposed by following the summons procedure as provided under Sections 251 to 255 of the Cr.P.C. In cases involving heinous offence by a child above the age of sixteen years, the JJB has to first conduct a preliminary assessment to decide whether or not to transfer the child to the Children's Court. If the JJB decides to dispose the case itself, summons procedure as per the CrPC has to be followed. The procedure under Rule 11, JJ Model Rules, 2016, needs to be followed by the JJB in the completion of its inquiry.

The Placement of Persons under the JJ Act, 2015 has been divided into two categories in accordance with Sections 5 and 6, which shall be incorporated by the JJB in the conduct of its inquiry.

Section 5, JJ Act, 2015 provides that, when a person ceases to be a child during the course of the inquiry, the JJB shall continue the inquiry as if such person had continued to be a child. This provision is notwithstanding anything contained in the JJ Act, or any other law.

Section 6, JJ Act, 2015 provides that where a person has been apprehended for committing an offence when they were below eighteen years, such person shall be treated as a child during the inquiry. If such person is not released on bail by the JJB, they shall be kept in a place of safety during the process of inquiry.

#### JJ Act, 2015

**Section 14.** Inquiry by Board regarding child in conflict with law. — (1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

- (2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.
- (3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.
- (4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

- (5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:
  - (a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;
  - (b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;
  - (c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;
  - (d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
  - (e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);
  - (f) inquiry of heinous offences,
    - (i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);
    - (ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

#### JJ Model Rules, 2016

- Rule 11. Completion of Inquiry. (1) Where after preliminary assessment under section 15 of the Act, in cases of heinous offences allegedly committed by a child, the Board decides to dispose of the matter, the Board may pass any of the dispositional orders as specified in section 18 of the Act.
- (2) Before passing an order, the Board shall obtain a social investigation report in Form 6 prepared by the Probation Officer or Child Welfare Officer or social worker as ordered, and take the findings of the report into account.
- (3) All dispositional orders passed by the Board shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible.
- (4) Where the Board is satisfied that it is neither in the interest of the child himself nor in the interest of other children to keep a child in the special home, the Board may order the child to be kept in a place of safety and in a manner considered appropriate by it.
- (5) Where the Board decides to release the child after advice or admonition or after participation in group counselling or orders him to perform community service, necessary direction may also be issued by the Board to the District Child Protection Unit for arranging such counselling and community service.
- (6) Where the Board decides to release the child in conflict with law on probation and place him under the care of the parent or the guardian or fit person, the person in whose custody the child is released may be required to submit a written undertaking in Form 8 for good behaviour and well-being of the child for a maximum period of three years.
- (7) The Board may order the release of a child in conflict with law on execution of a personal bond without surety in Form 9.
- (8) In the event of placement of the child in a fit facility or special home, the Board shall consider that the fit facility or special home is located nearest to the place of residence of the child's parent or quardian, except where it is not in the best interest of the child to do so.
- (9) The Board, where it releases a child on probation and places him under the care of parent or guardian or fit person or where the child is released on probation and placed under the care of fit facility, it may also order that the child be placed under the supervision of a Probation Officer who shall submit periodic reports in Form 10 and the period of such supervision shall be maximum of three years.
- (10) Where it appears to the Board that the child has not complied with the probation conditions, it may
- order the child to be produced before it and may send the child to a special home or place of safety for the remaining period of supervision.
- (11) In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (q) of sub-section (1) of section 18 of the Act.

#### JJ Act, 2015

Section 15. Preliminary assessment into heinous offences by Board.— (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. — For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

#### JJ Model Rules, 2016

Rule 10A. Preliminary assessment into heinous offences by Board. - (1) The Board shall in the first instance determine whether the child is of sixteen years of age or above; if not, it shall proceed as per provisions of section 14 of the Act.

(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board

may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

- (3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise.
- (4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

#### **Preliminary Assessment by JJB**

The Juvenile Justice Board under section 15 of the Act has the power to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. The basis for determining whether trial of the juvenile will be conducted as is for an adult is a preliminary assessment of his mental and physical capacity. Section 15 of the Juvenile Justice Act, 2015 states that, in case of 'heinous crimes', the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Rule 9 sub-rules (xvii), (xviii), (xix) and (xxiii) of the Tamil Nadu JJ Rules, 2017 prescribes the procedure for preliminary assessment by the Board.

A preliminary assessment conducted in the case of 'heinous offences' under section 15 shall be disposed of by the board within a stipulated time period. While making an assessment, the child shall be presumed to be innocent unless proven otherwise. The Board then passes an order for trial as an adult, if he deems fit, and assigns reasons for the same. Section 15– Preliminary assessment into heinous offences by Board it deals with inquiry (I) if a child beneath the age of sixteen years as on the date of commission of an offense will be discarded by the Board under proviso (e); (ii) for a child over the age of sixteen years as on the date of commission of an offense will be managed in the way recommended under section 15.

In *Gangajali Education Society Vs.Union of India, (2017) 16 SCC 656*) the Supreme Court while discussing about an oversight committee vested with the powers of the Court held as follows, "the Competent Authority is not expected to give elaborate reasons but is certainly bound to advert to the relevant factors noticed by the Oversight Committee (OC) and record its clear finding that it was disagreeing with the same for some tangible reasons discernible from the record before it. It is also possible that the Competent Authority may have additional reasons or advert to some material which has been glossed over by the OC, but then, the decision-

making process would require the Competent Authority to not only advert to such matter but also record its reasons to come to a different conclusion."

In Jaya Mala Vs. Home Secretary, Government of Jammu & Kashmir AIR 1982 SC 1297 the Supreme Court held as follows, "Growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert in October, 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true. However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side. Undoubtedly, therefore, the detenu was a young school going boy. It equally appears that there was some upheaval in the educational institutions. This, young school going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law. It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, and may be a little more enthusiastic, with a sledge hammer."

In Gopinath Ghosh Vs. The State of West Bengal [AIR 1984 SC 237], the Supreme Court held as follows, "whenever a case is brought before the Magistrate and the accused appears to be aged 21 years as below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining credit worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey upto the Apex Court and the; return journey to the grass-root

court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."

Rule 10A of the JJ Model Rules, 2016 prescribes the procedure for preliminary assessment into 'heinous offences' by the Board. According to sub-rule (3), while making the preliminary assessment, the child shall be presumed to be innocent.

The crux is that the formulation of the opinion must, therefore, be by the JJB itself and none else. It is trite law that no authority can abdicate its decision-making power to another authority.

As per the 2021 Amendment to the JJ Act, Section 16(4) has been inserted to give wider powers to the District Magistrate. *The District Magistrate may, as and when required, in the best interest of a child, call for any information from all the stakeholders including the Board and the Committee.* 

Under Section 55, District Magistrates are also given powers to independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government.

While making an assessment, the child shall be presumed to be innocent unless proven otherwise.

# Barun Chandra Thakur Vs. Master Bholu & Anr. [Crl.A.No.950 of 2022, dated 13-07-2022]

The Hon'ble Supreme Court was called upon to examine the proceedings arising out of preliminary assessment made under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Apex Court discussed pertinent points on effect of an order of preliminary assessment, timelines, fair opportunity, and, social investigation report (SIR).

Child psychology is a specialized branch of development psychology, its genesis is based on the premise that children and adults have a different thought process. The individualized assessment of adolescent mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment mandated by Section 15 of the Act, 2015. The report of the preliminary assessment decides the germane question of transferring the case of a child between 16 to 18 years of age to the Children's Court. This evaluation of 'mental capacity and ability to understand the consequences' of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. The process of taking a decision, on which the fate of the child in conflict with law precariously rests, should not be taken without conducting a meticulous psychological evaluation.

The assessment regarding the circumstances in which the offence is alleged to be committed is again an attribute which could have many factors to be considered before such an assessment could be made. There could be a number of reasons for a person to commit a crime. It could be enmity, it could be poverty, it could be greed, it could be perversity in mind and many others. There could be coercion. There could be threat to one's life and property. There could be allurement in terms of the material and physical gains. Crime could be committed on account of stress or depression also. It could be on account of the company that one keeps. One could commit crime in order to help his family and friends. All these and many more could be termed as circumstances leading to the commission of crime.

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

A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his intellectual understanding.

The language used in section 15 is "the ability to understand the consequences of the offence". The expression used is in plurality i.e., "consequences" of the offence and, therefore, would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far reaching consequences in future. Consequences could be in material/physical form but also affecting the mind and the psychology of the child for all times to come. The consequences of the offence could be numerous and manifold which cannot be just linked to a framework; and, for this purpose, the overall picture as also future consequences with reference to the facts of the case are required to be consciously analysed by the Board. Consequences for the victim

could be his death, or permanent physical disability, or an injury which could be repaired or recovered; the impact of the offence on the mind of the victim may be prolonged and continue for his lifetime; the impact on the family and friends of the victim, both mental and financial; consequence on the child going into incarceration; mental impact on the child, it could be repentance or remorse for life, the social stigma cast on the child and his family members; the consequences of litigating and so many other things which would be difficult to adumbrate.

Further assessment ought to have been carried out once the psychologist had recommended so and had also suggested the name of the institute. The Board and the Children's Court apparently were of the view that the mental capacity and the ability to understand the consequences of the offence were one and the same, that is to say that if the child had the mental capacity to commit the offence, then he automatically had the capacity to understand the consequences of the offence. This, in our considered opinion, is a grave error committed by them

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

While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies. It must be mentioned here that from a neurobiological perspective, the development of cognitive, behavioural attributes like the ability to delay gratification, decision making, risk taking, impulsivity, judgement, etc. continues until the early 20s. It is, therefore, all the more important that such assessment is made to distinguish such attributes between a child and an adult.

The obligation of the Board in making the preliminary assessment on the four counts mentioned in section 15 of the Act is largely dependent upon the wisdom of the Board without there being any guidelines as to how the Board would conduct

such preliminary assessment. In the absence of any such framewwork or guidelines, the Board has to use its discretion in taking into consideration whatever material it deems fit for assessing the four attributes.

The timeline given under the various provisions as referred to above, has a rationale. The SIR to be submitted within fifteen days would facilitate the Board in taking a decision on the request for bail at the earliest. The period of one month given under rule 10(5) is to facilitate the Board to take a decision may be on a pending bail matter or for preliminary assessment for which three months' time is provided. The completion of inquiry within four months or any extended period is to ensure that a child is not subjected to unnecessary long and lengthy processes of trials and inquiries and that the matter is taken to its logical conclusion at the earliest.

Preparation of SIR is a statutory requirement for every child in conflict with law, which is to be prepared by the Probation Officer or any other agency as may be directed by the Board. Its format is also provided in Form 6 to the Model Rules. The object of getting an SIR prepared is to obtain as much as possible information about the background of the child. It has as many as 48 columns to be filled up and thereafter, the Probation Officer is to submit his opinion also.

The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be tried as an adult by the Children's Court or by the Board itself, treating him to be a child. There are two major consequences provided in the Act, 2015, if the child is tried as an adult by the Children's Court. First, that the sentence or the punishment can go up to life imprisonment if the child is tried as an adult by the Children's Court, whereas if the child is tried by the Board as a child, the maximum sentence that can be awarded is 3 years. The second major consequence is that where the child is tried as a child by the Board, then under section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas the

said removal of disqualification would not be available to a child who is tried as an adult by the Children's Court, as per the proviso to section 24(1). Another consequence, which may also have serious repercussions, is that as per section 24(2), where the Board or the Children's Court, after the case is over, may direct the police or the registry that relevant records of such conviction may be destroyed after the period of expiry of appeal or a reasonable period as may be prescribed. Whereas, when a child is tried as an adult, the relevant records shall be retained by the relevant Court, as per the proviso to section 24(2).

The apex Court reiterated the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression "may" in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psychosocial workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practicing professional with a degree in child psychology or child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor.

The power to make the preliminary assessment is vested in the Board and also the Children's Court under sections 15 and 19 respectively. The Apex Court held that, "the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place. Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015."

## **Determination of Age of Child Section 94 Presumption and Determination of Age**

Where it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry u/S. 14 or u/S. 36 as the case may be, without waiting for further confirmation of the age. In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining [i] date of birth certificate from school, matriculation certificate, [ii] birth certificate from corporation of municipal authority or panchayat, [iii] ossification test, latest age determination test. The test should be completed within 15 days from the date of the Order. The age of the person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

The Supreme Court in *Parag Bhati v. State of U.P. [(2016) 12 SCC 744]* held that, "It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in *Abuzar Hossain v. State of W.B., (2012) 10 SCC 489*, an enquiry for determination of the age of the accused is permissible which has been done in the present case."

In *Rishipal Singh Solanki Vs. State of Uttar Pradesh, [2021 SCCOnLine SC 1079]*, the Supreme Court observed that, Section 94 of the 2015 Act does not give precedence to the matriculation and other certificates, to determine the age of person, since the said section only deals with the matter of procedure. The Hon'ble Apex Court held that *lex non cogit ad impossibilia* (law does not demand the

impossible) and when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person and other available certificates may be taken into consideration.

The Supreme Court in Ram Vijay Singh Vs. State of U.P., [2021 SCC OnLine SC 142] held that, "As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the Child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. This Court in Arjun *Panditrao* Khotkar v. Kailash Kushanrao Gorantyal held, in the context of certificate required under Section 65B of the Evidence Act, 1872, that as per the Latin maxim, lex non cogit ad impossibilia, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident."

In Sanjeev Kumar Gupta Vs. State of Uttar Pradesh [(2019) 12 SCC 370] the Supreme Court was called upon to decide the credibility and authenticity of a matriculation certificate for the purpose of an age determination enquiry of the accused. The Hon'ble Apex observed that the matriculation certificate provided by the Central Board of Secondary Education was purely on the basis of records

maintained by the Senior Secondary School, where the accused was a student from Class 5 to Class 10. It emerged that the records maintained by the school were without any underlying documents. The court held that the plea of juvenility could not be accepted because there was clear and unimpeachable evidence as to the date of birth of the accused which had been recorded in the records of another school.

The Hon'ble Apex Court in *Sri Ganesh Vs. State of T.N. [(2017) 3 SCC 280]* held that, in the face of relevant documentary evidence there could be no medical examination to ascertain the age and any such direction passed by the court would be unwarranted.

### In re, Exploitation of Children in Orphanages [(2017) 7 SCC 578]

The Supreme Court observed that "a child accused of an offence and brought before the Juvenile Justice Board or any other authority might also be a child in need of care and protection."

#### **Prohibition of Disclosure of Identity of Child**

Section 74 talks about non-disclosure of the identities of children including child in conflict with law child in need of care and protection and those child victims and child witnesses. The newspapers, magazines, media, etc., cannot publish any content disclosing the name, address, school or any other particulars which may lead to identification of such children. Only the board or committee after recording reasons in writing may disclose the identity of the child only in the best interest of the child. Even the police cannot disclose the identity or any record of the child for the purpose of character certificate or otherwise where the case is closed or disposed. Those who do not adhere to the provisions shall be punished with imprisonment up to six months or maybe imposed with fine upto ₹2 lakh or both.

According to the amended Section 74(2) Prohibition on disclosure of identity of children., The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in the pending case or in the case which has been closed or disposed of.

The Supreme Court in *Shilpa Mittal v. State (NCT of Delhi) [(2020) 2 SCC 787]*, directed the High Court to comply with the provisions of Sec. 74 of JJ Act. "*37. In passing we may note that in the impugned judgment the name of the child in conflict with law, has been disclosed. This is not in accordance with the provisions of Section 74 of the 2015 Act, and various judgments of the courts. We direct the High Court to correct the judgment and remove the name of the child in conflict with law."* 

In the case of *AjithKumar Vs. State represented by Inspector, AWPS Avadi, [2022 SCC OnLine Mad 1961]*, The Hon'ble Madras High Court has stated as follows; "55. With a view to maintain secrecy of the identity of the petitioner, it is directed that the law journals, press and media shall refer the name of the petitioner as "Agavai" and not by real name, making a mention that name has been changed [including in the cause title]."

#### **Pendency of Inquiry**

Section 16, JJ Act, 2015, read with Rule 12, JJ Model Rules, 2016, provides for the Review of pendency of inquiry proceedings before the JJB. Section 16 of the JJ Act, 2015 was amended.

Section 16 entails review of pendency of inquiry. The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards. The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high-level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non-governmental organisation to be nominated by the Chairperson. The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.

Section 16 (4) was inserted with effect from 1<sup>st</sup> September 2022. Section 16(4) The District Magistrate may, as and when required, in the best interest of a child, call for any information from all the stakeholders including the Board and the Committee. The corresponding JJ Model Rules 2016 was also amended with effect from 1<sup>st</sup> September 2022. Rule 12 entails pendency of inquiry. According to Rule 12(2) Board's duty to submit report in Form 12 about pendency are inserted with three more provisions as reproduced herewith below.

- (2A) The District Magistrate shall on the basis of the quarterly report submitted in sub-rule (2) examine the reasons for pendency, discrepancies observed during visits to the Observation Homes and the like and shall make its recommendations to the authorities like Police, Medical, District Legal Services Authority or any other concerned authority, for reduction of pendency of cases before the Board and to take appropriate action against the authorities as deemed fit.
- (2B) Where the review by the District Magistrate discloses the reasons for pendency due to the members of the Board, then the District Magistrate shall inform the State Child Protection Society.
- (2C) The State Child Protection Society shall on the basis of the report submitted by the District Magistrate recommend for appropriate action to the State Government.

In Tamil Nadu, according to Tamil Nādu JJ Model Rules 2017, Rule 10 entails quarterly report from the board to the Chief Judicial Magistrate.

Section 16, JJ Act, 2015, read with Rule 22, sub-rules (ii), (viii), (x), (xiv) and (xv) of the Tamil Nadu JJ Rules, 2017, provides for the Review of pendency of inquiry proceedings before the JJB.

Rule 15, Tamil Nadu JJ Rules, 2017 provides for procedure in relation to Children's court and Monitoring Authorities, upon receipt of the Preliminary Assessment Report of the JJB, further determine whether the child in conflict with the law is to be tried as an adult.

## Powers And Responsibilities of Juvenile Justice Board Members Under The Tamil Nadu Juvenile Justice Rules, 2017

#### When and where shall the sitting of the Board be?

According to Rule 8 of the Tamil Nadu Juvenile Justice Rules, 2017, the Board shall hold sitting for a minimum of three days in a week in the premises of an observation home or a place in proximity to the home or at a premise in child care institution established under the Act and under no circumstance operate from or within a court or jail premises.

The Board shall hold its sittings in child friendly premise which has no resemblance to an actual court. The sitting arrangement must be such that there can be face to face interaction with the child.

#### Where to produce a child in conflict with law?

A child in conflict with law shall be produced in the Juvenile Justice Board. According to Rule 9(ii) of the Tamil Nādu Juvenile Justice Rules, 2017; When the Board is not in sitting, the child may be produced either before the Principal Magistrate or a social worker member at their residence. When a child is placed in observation home or place of safety when the Board is not in sitting, either by the Principal Magistrate or a social worker member, such child shall be produced before the Board at its first sitting, immediately thereafter.

#### Rule 11(3) TN JJ Rules, 2017

- In case of an offence committed by an adult, that entails an imprisonment of seven years or more, when alleged to have been committed by a child, the police shall register FIR against the child.
- The police shall register FIR in case of an offence committed by the child jointly with adults.
- In case of any other kind of offence alleged to have been committed by the Child, the SJPU or CWPO shall record the information regarding the offence in the general daily diary.
- This information shall be followed by the social background report of the child, which should be prepared by the CWPO.
- For the purpose of preparing the social background report, the CWPO shall contact the parents/guardian of the Child to avail the best information regarding the child.
- The CWPO shall forward the information regarding the offence, and the social background report, along with the circumstances of apprehension to the JJB before its first hearing.

# What are the procedures to be followed by the Board do when a child is produced before it?

- According to Rule 9(iii) of the Tamil Nādu Juvenile Justice Rules, 2017; the members of the Board shall interact with the child on one-to-one basis to-
- a) Gather information on the background of the child,
- b) inform the child regarding the case filed against him and availability of free legal aid,
- c) help in understanding the process of proceeding,
- d) enquire on the point of view of the child about the alleged offence,
- e) take cognizance of any dereliction committed by police or any authority.
- As per Rule 9(xiii), In all cases of pending inquiry, the Board shall fix the next date of hearing not later than fifteen days.

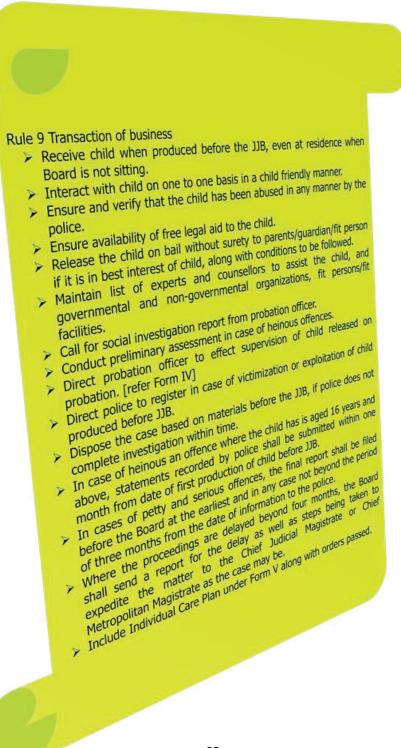
- As per Rule 9(xv), A Social investigation report from the probation officer shall be obtained and a Separate report from professionals or experts on cases pertaining to psychological or psychiatric problems of the child may also be called for if necessary.
- Rule 9(xxxvi), in cases of petty and serious offences, the final report shall be filed within a period of three months from the date of information to the police.
- As per Sec 14(2) JJ Act and Rule 9(xxxvii) (TN JJ Rules) When there is delay without any reason, the Board shall issue a notice to police for appearance and fix a hearing date for final disposal. As mentioned earlier the Board shall complete the inquiry within 4 months unless extended for a further period of two months and dispose the case on the basis of materials available before it.
- If the Police justifies the delay to the satisfaction of the Board, the Board may extend time limit to complete the investigation and file the necessary report and a copy may also be sent to the concerned Commissioner or Superintendent of Police.
- As per Rule 9(xxxvii), If the Police do not complete the investigation even after the time granted, the Board is free to adjudicate the final disposal of the case as it deems fit.
- As per Rule 9(xx), The Board shall take into account the report of investigation, statements of witnesses, recorded by the child Welfare Police Officer, medico-legal report, forensic report and other documents prepared during the course of investigation filed by the police before it.
- As per Rule 9(xxxvi), In cases of petty and serious offences, the final report shall be filed before the Board at the earliest and in any case not beyond the period of three months from the date of information to the police.
- As per Rule 9(xxxiv), While examining a child alleged to be in conflict with law and recording his statement, the Board shall address the child in a child friendly

manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence alleged to have been committed, but also in respect of the home and social surroundings and the influence to which the child might have been subjected to.

- As per Rule 9(xxxv), In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statements of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board.
- As per Rule 9(xix), For conducting a preliminary assessment, the Board shall interact with the child alleged to be in conflict with law and his family wherever possible. The child may, in addition be represented through his counsel and the submissions on behalf of the child be considered.
- As per Rule 9 (xviii), In cases of heinous offences, the Board shall call for a report for preliminary assessment of a child in conflict with law from the Department of Paediatrics or Psychiatric medicine of the Medical college or hospital under the Government or willing private medical college or hospital or the Department of Psychology in a Government or willing private college or University for the purpose of section 15 of the Act and wherever necessary obtain a second opinion.
- As per Rule 9(xxiii), The Board, after preliminary assessment under section 15 of the Act, passes an order where there is a need for trial of the said child as an adult and also assign reasons for the same. A copy of the order shall be provided to the child.
- As per Rule 9(xxviii), When any complaint on exploitation or victimisation of child during the enquiry by the Board is brought by the child or medical officer or the probation officer, the Board shall direct the police to register a case, investigate

and report for further proceedings within a fixed time. However, such proceedings shall not delay the disposal.

As per Rule 9(XL), All dispositional orders passed by the Board shall necessarily include an individual care plan in Form V for the child in conflict with law concerned, prepared by a probation officer.



#### The Responsibilities of the Board are, to;

- Be satisfied that the child alleged to be in conflict with law was not kept in police lock up or jail prior to the production before the Board and that the child was produced before the Board without any loss of time, but within twenty-four hours of taking charge of the child excluding travel time by the police through a declaration either in writing or otherwise;
- enquire the child privately and record the views and expressions of the child. The proceedings shall take place based on the views and expressions of the child;
- be satisfied from the police in writing that, on taking charge of they have informed the Probation Officer as per Form II and parents or guardians as per section 13 of Juvenile Justice act 2015.
- Be satisfied that the child prior to being produced before the board was not harassed or ill-treated either by the police or any other authority who had taken charge of the child;
- ensure that the State or District Legal Aid Services Authority extends free legal services to a child, whenever required;
- initiate action against any media or institution for publishing any matter relating to children which would affect the interest of the child;
- consider the report of the probation officer while deciding on bail for the child in conflict with law and also consider the conditions recommended by the probation officer;
- ensure that no girl child is taken charge by police between sunset and sunrise. In case of such circumstance, only a woman police personnel shall be permitted to take charge of a girl child and immediately without any loss of time be sent to an observation home for temporary accommodation;
- by obtain a declaration from police that the child was dealt with decency;

- release the child on bail with or without surety to the parents or legal guardians or fit person, if it is in the best interest of the child after considering the report of the probation officer upon conditions to be followed during the bail period or such other relevant material;
- maintain a list of experts in the field of law, psychology, counselling and guidance, psychiatrists and psychiatric institutions who are willing to provide such services. The list can be prepared in consultation with the probation officers and District Child Protection Officer in the concerned District;
- maintain a list of Government, non-governmental organisations, fit persons, fit facility in consultation with the probation officer and District Child Protection Officer for the purpose of providing care and protection, supervision during the period of bail or on community service or on probation or during the period of community-based correction in order to utilise the community resources effectively.
- > take into account medical reports and mental health reports including an assessment of the cognitive maturity of the child;
- commit a child to any child care institutions, contrary to the report of the probation officer as contemplated under section 6 of the Probation of Offenders Act, 1958 (central Act 20 of 1958), the reasons for the same shall be recorded in writing;
- direct the probation officers to effect intensive probation supervision on specific cases whose accountability can be ensured by frequent supervision;
- explain the conditions of probation to the child and if a breach is reported by the probation officer, the board may order to send the child to a special home or place of safety for the remaining period of supervision.
- As per Rule 10, The Board shall send the quarterly report in FORM VI to the Chief Judicial Magistrate or Chief Metropolitan Magistrate, District Magistrate and the Director of Social Defence.

- As per Rule 13, The records or documents of a child in conflict with law shall be kept in a safe custody for a period of seven years and thereafter be destroyed with the orders of Children's court or Juvenile Justice Board.
- In case of a heinous offence where the child is found to be in conflict with law as under clause (i) of subsection (1) of section 19 of the Act, the relevant records of conviction of such a child shall be retained by the Children's court.

### Barun Chandra Thakur Vs. Master Bholu & Anr. [Crl.A.No.950 of 2022, dated 13-07-2022]

"The power to make the preliminary assessment is vested in the Board and also the Children's Court under sections 15 and 19 respectively. The Apex Court held that, "the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place.

Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015."

#### **Interviewing a Child in Conflict with Law - Techniques**

"My father was continuously abusing me, I was erupting to tell this to someone, but nobody was there to listen, I had no choice to escape from home, for a few days I shadowed in the streets from those gleaming eyes and from all who were trying to catch me... I was hungry when I stole and did petty crimes for money... at least now please listen to me."

- Anonymous

To interview children is an art in itself. It takes great mature experience to understand the mind of a child. It is unfortunate that, the fundamental reason for perpetuating delinquent behavior among children is due to lack of enough care and necessary emotional support. The manner of an interaction matters a lot for children. The influence of digital technology has reduced humanity's social interaction to a great extent. The role played by anyone interviewing a child has a potential role in the child's life. Thus it is true to affirm that, what we know and do not know about children ought to have a real impact on how we go about educating them.

The stakeholders who come in contact with children in the juvenile justice system needs to be very careful while interviewing a child. The child before them may think far ahead and assess with great precision. It is not advisable to hurt the emotional mindset of the children before you or create gap between you and the child, unplugging the possibility for the child to feel free and open up with you as a serving stakeholder in the juvenile justice system. Serving the best interest of the child begins from the time when any stakeholder comes in contact with the child and it continues until the child's best interest is served completely. Therefore it is important that, the interview with child in conflict with law relies far less on inference than on observational techniques and does not require the child in conflict with law to be able to read or write.

Scholars categorize age of children into four groups for ease of channeling the interviewing techniques. Each categories of age group has different traits and may respond differently to the interviewing stakeholder. The stakeholder should be very much vigilant about this. Any lapse on the part of the stakeholder in interviewing the child can fundamentally affect the child's mental state as well as it may affect the case at hand to delay more further. Four age categories that are based on normative development are preschool, middle childhood (6-12 age groups), early adolescence (13-14 age groups), and middle adolescence (14-16 age groups).

### Variables in Child Interviewing Techniques are:

- [1] The child's ability to comprehend language;
- [2] The child's ability to articulate subjective experience;
- [3] The child's willingness to articulate subjective experience;
- [4] The affective relationship between the adult interviewer and the child respondent.

The personal characteristics of the interviewer can have a significant effect on what the respondent will tell an interviewer. Children tend to attribute people before them into characters which they can easily relate from their surroundings. Therefore, it is important that the entire stakeholder must be aware of this fact. All stakeholders coming in contact with children should strive to sneak into the list of characters which the child assumes to be heroes of their life. As a stakeholder you should take out the child in you before the children before and never showcase the rudeness before the children. This is gradually contributing the child to close down on you and not share valuable information to you. Thus the interview could be a fundamental failure of time money and effort.

It is not new in India to affirm that, age, racial, and religious background, sex, and socioeconomic level of the interviewer have been found to influence responses of the child. This is an unattended problem faced by many children in conflict with law. The reason for this is implicit bias. It is important for all the stakeholders to vacate their implicit bias while attending to children. Every child in conflict with law is a child in need of care and protection. The environment which the child in conflict with law enters should comfort the child rather than suppress their mental state in emotional regret and remorse against the delinquent behaviour that they have showcased and was being charged for.

The environment within which the child in conflict with law is interviewed is also very important. A busy police station or a busy court hall wherein the child in conflict with law have to wait for his turn may witness a rude police officer or a rude judge which can inculcate a pre-interview bias amongst the child in conflict with law not to open up to any police or judge in that respective police officer or Court. It is well said by a scholar that, "An environment or context that will unavoidably shape its content like a container shapes the liquid within it." The entire stakeholder coming in contact with the child should be the container to fit in all the contents which the child wishes to pour in and share with you. There can be no discomfort acceptable for the child. The child can only work their way out with

supportive stakeholders and children tend to become more social intrusive from the society with less friendly stakeholders they come in contact with.

The child's responses will be shaped by the situation. For many children, it may be a rare event indeed to have the eager and undivided attention of an adult. The famous quote "necessity knows no law" could be a reason which is most often ignored by the stakeholders while interviewing the child. It is important to listen to the child fully and completely. It is important that the child shouldn't be interrupted while the child is sharing their thoughts or the child shouldn't be cut away from their conversations. There are many situations wherein children in conflict with law are least heard and they tend to suppress their views to themselves rather than sharing their views with the stakeholders who could help them serve their best interest at the earliest and maybe free them from the shingles of the law and juvenile justice system through diversion.

The critical attribute which distinguishes the skilled interviewer from those who are merely well-intentioned is the ability to perceive how and when the interview stimuli-the questions, the interviewer's behavior, and the situation may be purposefully adjusted to suit the idiosyncrasies of the situation and the respondent while not biasing the data being sought. It is a challenge too elicits information from the unable or unwilling child in conflict with law and the stakeholder interviewing the child shouldn't stop or ignore the loath showcased by the child. Each child would have their own emotional breakpoint. It is the duty of the stakeholder to identify this and serve the best interest of the child to the fullest possible extent. The real skill of the interviewer is showcased when the stakeholder is able to fundamentally understand the child to the fullest possible extent and read their mind. A skilled interviewer shall take a trauma informed approach. What is meant by trauma informed approach is very abstract and subjective and varies from one stakeholder to other. However, at the end it is only expected out of a shareholder whether the best interest of a child is served or not.

**Trauma-Informed Approach for Stakeholders before Interviewing CCL** 



A stakeholder interviewing the child should be mindful of such children who are found victims of particular situations which they couldn't help cope. These cases have to be dealt with more care and diligence. A research scholar Parker, Walter Chalmerse promotes a checklist for interviewing children,

The interview technique has the promise and peril of a surgeon's knife. The skillfully designed and justified interview is a valuable to enhance the reliability and validity of knowledge about children.

#### CHECKLIST FOR INTERVIEWING CHILDREN<sup>15</sup>

The interviewer should be demonstrably non-judgmental, both verbally and non-verbal.

The interviewer should use clear, age-appropriate props to enhance precision of the interview.

The interviewer should ask the child to feel more free to render descriptions.

To help reduce the child's self-consciousness, the interviewer should let him/her represent a peer group rather than only him-or herself (e.g., "We want to know how girls your age feels about lying, "rather than, "How do you feel about lying?"

The interviewer should use carefully planned and rehearse questioning so that the clarity of the response is enhanced.

The interview is an intrusion into the child's life; its side-effects must be anticipated and corrected.

<sup>&</sup>lt;sup>15</sup> Parker, Walter Chalmerse. "Interviewing Children: Problems and Promise." The Journal of Negro Education, vol. 53, no. 1, 1984, pp. 18–28. JSTOR, https://doi.org/10.2307/2294981. Accessed 19 Sep. 2022.

#### Orders passed by the JJB

The orders passed by JJB are dictated by Section 17, 18, 21, 22 and 23. Section 17 entails Orders regarding a Child not found to be in conflict with law. Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.

Section 18 of the JJ Act 2015 is amended. The Amendment inserts that, where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, or a child above the age of 16 years has committed a heinous offence and the Board has, after preliminary assessment under Section 15 disposed of the matter, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit...

- (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- (b) direct the child to participate in group counselling and similar activities;
- (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- (d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

- (e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;
- (f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;
- (g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Section 18(1) also provides a proviso that, if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

According to Section 18(2), if an order is passed under clauses (a) to (g) of subsection (1), the Board may, in addition pass orders to —

#### (i) attend school; or

- (ii) attend a vocational training centre; or
  - (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
  - (v) undergo a de-addiction programme.

Section 21 of the JJ Act, 2015 entails, order that may not be passed against a child in conflict with law., *No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.* 

Section 22 of JJ Act, 2015, Proceeding under Chapter VIII of the Code of Criminal Procedure not to apply against child, begins with a non-obstante clause. No proceedings shall be instituted against any child under Chapter VII of the Code of Criminal Procedure, 1973 (2 of 1974). Section 23 of the prohibits joint proceedings of child in conflict with law and person not a child. Section 23 also entails a non-obstante clause and envisage that, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child. If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

Section 101 Appeals, was amended. According to the amended Section 101(3) *No appeal shall lie from any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years.* 

The Supreme Court *In re, Exploitation of Children in Orphanages [(2017) 7 SCC 578]*, observed that "a child accused of an offence and brought before the Juvenile Justice Board or any other authority might also be a child in need of care and protection."

Therefore, care must be taken in dealing with the child in conflict with law.

Section 18(1) has been improvised as follows, "Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence or a child above the age of sixteen years has committed a heinous

offence and the Board has, after preliminary assessment under section 15, disposed of the matter, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may..."

Under Section 55, District Magistrates are also given powers to independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government.

The interview technique has the promise and peril of a surgeon's knife. The skillfully designed and justified interview is a valuable to enhance the reliability and validity of knowledge about children.

#### **Children's Court**

The JJB after doing a preliminary assessment and in its own discretion decides if the case needs to be heard in the JJB or should be transferred to the Children's Court. The Children Court is established under The Commission of Protection of Child Rights Act, 2005 or Special Court established under The Protection of Children from Sexual Offences Act, 2012 and the Court of Sessions/Mahila Court where above special courts are not established.

Section 19 of the JJ Act, 2015 elucidates the powers of the Children's Court that, after the receipt of preliminary assessment from the board under Section 15, the Children's Court may decide the need for trial of the child as an adult. The Children's court shall ensure that the final order of the CCL shall include an individual care plan for the rehabilitation of child, and shall ensure that the child who is found to be in conflict with law is sent to a place of safety till the child attains 21 years of age and thereafter may be transferred to jail. The Children's Court shall ensure periodic follow up report every year by the probation officer or the DCPU or a social worker.

The Supreme Court in *Shilpa Mittal Vs. State (NCT of Delhi) [(2020) 2 SCC 787]* in paragraph 18, observed that, "The Children's Court should also take into consideration the special needs of the child, tenets of fair trial and maintaining child-friendly atmosphere. The Court can also hold that there is no need to try the child as an adult. Even if the Children's Court holds that the child has to be tried as an adult, it must ensure that the final order includes an individual care plan for rehabilitation of the child as specified in sub-section (2) of Section 19. Furthermore, under sub-section (3) such a child must be kept in a place of safety and cannot be sent to jail till the child attains the age of 21 years, even if such a child has to be tried as an adult. It is also provided that though the child may be tried as an adult, reformative services, educational services, skill development, alternative therapy, counselling, behaviour modification, and psychiatric support is provided to the child during the period the child is kept in the place of safety.

Rule 13, JJ Model Rules, 2016 provides that the Children's Court shall, upon receipt of the Preliminary Assessment Report of the JJB, further determine whether the child in conflict with the law is to be tried as an adult. The JJ Act is silent about the procedure to be followed by the Children's Court when it decides to try the child as an adult, although generally the provisions as per the Cr.P.C with reference to the offence charged would be followed. Even in such cases it is required to follow the tenets of fair trial and maintain a child friendly atmosphere while conducting the trial in terms of Section 19(1)(i).

#### **Removal of Disqualification and Destruction of Records**

Section 24 provides for the removal of disqualification on the findings of an offence. Section 24(1) states that, except in cases involving a child aged sixteen years and above who has been found to be in conflict with law by the Children's Court under Section 19(1)(i), the child who has committed an offence shall not suffer any disqualification attached to a conviction for the offence under the concerned law. As per Section 24(2), the conviction records are to be destroyed after the expiry of the period of appeal or as prescribed. An order to this effect is to be passed by the JJB directing the police, or by the Children's Court directing its registry.

However, in case the conviction records are to be retained by the Children's Court. This provision is to be read with Rule 14, JJ Model Rules, 2016, which provides for destruction of records. Rule 13, of the Tamil Nadu Rules 2017 provides for destruction of records. Records pertaining to a child in conflict with law to be kept in a safe custody for 7 years and thereafter destroyed with the orders of the JJB / Children's Court. However, in a case of a heinous offence, where the child is found to be in conflict with law, the relevant records of conviction shall be retained by the Children's Court.

Section 25 is a special provision applicable to cases pending before the JJB or Court prior to the JJ Act, 2015. It states that the continuity of such proceedings pertaining to a child alleged or found to be in conflict with law shall not be affected by the enactment of the JJ Act, 2015.

#### **Child Welfare Committee [CWC]**

The CWC is one of the key stakeholders in dealing with children in need of care and protection. The establishment and functioning of the CWC is dealt with under Chapter V of the JJ Act, 2015 vide Sections 27 to 30, and Chapter IV of the JJ Model Rules, 2016 vide Rules 15 to 17.

Section 27(1) imposes the responsibility on the State Government to establish at least one CWC in every district, and also provide training and sensitisation for all its members. Sub-sections (2) to (7) of Section 27 provides for the composition of the CWC as well as the eligibility criteria and termination of its members. Rule 15, JJ Model Rules, 2016 also governs the composition and qualifications of members of the CWC.

As per Section 27(8), the functioning of the CWC shall be reviewed every quarter by the District Magistrate, who is empowered under Section 27(10) to handle grievances petitioned by anyone connected with the child. Section 27(9) enables the CWC to function as a Bench, and grants powers equivalent to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class, as conferred by the Cr.P.C.

Section 28(2) is the same as Rule 16(2), which states that a sitting of the CWC also includes visits to a Child Care Institution for the purpose of evaluating its functioning. Section 28(3), and Rule 31, JJ Model Rules, provides that a child can be produced by any of the stakeholders specified under Section 31, JJ Act, 2015, before a single member of the CWC when there is no sitting. Sections 28(4) and (5) prescribes the manner of decision-making by the CWC.

Rule 16 prescribes the manner of holding the sittings of the CWC, and also provides for flexibility when the child cannot be produced before the CWC. A conjoint reading of the Rules reinforces the principle of centring the best interests of the child, and enabling participation of the child.

Section 29 read with Section 1(4) makes it clear that notwithstanding anything contained in any other law for the time being in force, the CWC has the exclusive power to dispose of all matters concerning children in need of care and protection. In *Child Welfare Committee Vs. Govt. of NCT Delhi [152 (2008) DLT 586]*, it was held that "The CWC is given wide powers and has been entrusted with the responsibility and duty for providing care, protection, treatment, development and rehabilitation of the Children."

In exercise of its powers under Section 29, the CWC embarks on two kinds of inquiries, one for determining the age of the person produced before it, and the other, for determining whether the child produced before it is in need of care and protection. For the former, the procedure for age determination under Section 94, JJ Act, 2015 has to be employed.

The powers, functions and responsibilities of the CWC are not limited to disposing of the matters relating to children in need of care and protection, but extend to ensuring that the children are not subject to any harm or violence at any stage either during proceedings, or during their stay in Child Care Institutions.

The other functions and responsibilities as mentioned in Section 30(xviii), are provided under Rule 17, JJ Model Rules, 2016 and Rules 20, 21 and 22 of Tamil Nadu JJ Rules, 2017. Thus, the powers, functions and responsibilities of the CWC are further explicated in Chapter VI of the JJ Act, 2015, which provides for the procedure in relation children in need of care and protection.

The Standards of appointment of Child Welfare Committees has been improved. Section 27(4) was substituted and Section 27(4A) is inserted by the 2021 Amendment to the JJ Act. *The Committee shall submit a report to the District Magistrate in such form as may be prescribed and the District Magistrate shall conduct a quarterly review of the functioning of the Committee.* Under Section 27(8) wider powers are given to the District Magistrate and responsibilities have been cast upon the CWCs. According to the updated Section 27(10), "*The District*"

Magistrate shall be the grievance redressal authority to entertain any grievance arising out of the functioning of the Committee and the affected child or anyone connected with the child, as the case may be, may file a complaint before the District Magistrate who shall take cognizance of the action of the Committee and, after giving the parties an opportunity of being heard, pass appropriate order."

#### **Section 31 - Production before Committee**

Any child in need of care and protection may be produced before the committee by any of the following persons, namely- police officer, special juvenile police unit, designated child welfare police officer, district child protection unit, inspector appointed by any labour law, public servant, child-line services, NGOs recognized by the State Government, child welfare officer, probation officer, social worker, public spirited citizen, child himself, nurse, doctor, management of a nursing home, hospital, maternity home). The child shall be produced before the committee without loss of time, within 24 hours excluding the time necessary for the journey.

The Committee after interaction with the child may issue directions for placing the child with the parent or guardian or Children's Home, or in safe custody of a fit person, upon an undertaking, or a fit facility. The Committee shall order immediate medical examination of the child if required. In the case of abandoned or lost or orphaned child, the Committee, before passing an order granting interim custody of the child pending inquiry, shall see that, the information regarding such child is uploaded on a designated portal.

### Section - 37 Orders passed regarding a child in need of care and protection

The Committee upon satisfaction that, the child before the committee is a child in need of care and protection, taking into account (social investigation report, child's wishes in the case the child is sufficiently mature to take a view) pass the orders, pertaining to restoration or placement of the child, foster care u/S. 44, sponsorship orders u/S. 45, directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need based

counseling, occupational therapy or behavior modification therapy, skill training, legal aid, educational services, and other developmental activities, as required as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies, [h] declaration that the child is legally free for adoption u/S. 38. The Committee may also pass orders for [i] declaration of fit persons for foster care, [ii] getting after care support u/S. 46, [iii] any other order related to any other function.

## Section 32 - Mandatory reporting regarding a child found separated from guardian

Any individual (police officer, functionary of any organization, a nursing home, hospital, maternity home,) who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support shall within 24 hours (excluding the time of journey) give information to the Child-line Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act. The information regarding such a child shall be uploaded by the CWC or the DCPU or a Child Care Institution as the case may be, on a portal as may be specified by the Central Government in this behalf.

#### **Section 33 - Offence of non-reporting**

If information regarding a child is required u/S. 32 is not given within the period specified, then such act shall be regarded as an offence, which is punishable under Section 34, with imprisonment up to 6 months or fine of Rs. 10,000/- or both. The Committee, after making inquiry, shall issue an order in Form 25 declaring the abandoned or orphan child as legally free for adoption and send the same information to the Authority. Where the parents of the child are traced, the procedure for restoration of the child shall be as per Rule 82A (in case of child in conflict with law) and Rule 82B (in case of child in need of care and protection), of the JJ Model Rules, 2016.

#### 82A. Restoration and Follow-up for children in conflict with law-

- (1) The Board or the Children's Court may make an order in Form 44 for the release of the child placed in a Child Care Institution after hearing the child and his parents or guardian, and after satisfying itself as to the identity of the persons claiming to be the parents or the guardian.
- (2) While passing an order for restoration of the child, the Board or the Children's Court shall take into account the reports of the Probation Officer Worker or the designated officer of the District Child Protection Unit or nongovernmental organisation, including report of a home visit prepared on the direction of the Board or the Children's Court in appropriate cases, and any other relevant document or report brought before the Board or the Children's Court.
- (3) When a child expresses his unwillingness to be restored back to the family, the Board or the Children's Court shall interact with the child to find out the reasons for the same and record the same and the child shall not be coerced or persuaded to go back to the family.
- (4) The child would also not be restored back to the family where the parents or guardians refuse to accept the child back and in all such cases, the Board or the Children's Court shall provide alternative means for rehabilitation.
- (5) The child may not be restored back to the family where the social investigation report prepared by the Probation officer or designated officer of the District Child Protection Unit or the Child Welfare Officer or the nongovernmental organization establishes that restoration to family may not be in the interest of the child.
- (6) The order of restoration shall include an individual care plan prepared by the Probation Officer or the designated officer of the District Child Protection Unit or the non-governmental organisation.
- (7) The Board or the Children's Court, while directing restoration of the child, may pass order for an escort in Form 45, where necessary.
- (8) Besides police, the Board may seek collaboration with the District Child Protection Unit to accompany the child back to the family for restoration.
- (9) In case of girls, the child shall necessarily be accompanied by female escorts.
- (10) The copy of the restoration order along with a copy of the order for escort shall be forwarded by the Board or the Children's Court to the District Child Protection Unit which shall provide funds for the restoration of the child, including travel and other incidental expenses.
- (11) A follow-up plan shall be prepared as part of the individual care plan by the Child Welfare Officer or the Case Worker or the social worker or the non-governmental organisation.
- (12) The follow-up report shall state the situation of the child post restoration and the measures necessary in order to reduce further vulnerability of the child.

#### 82B. Restoration and Follow-up for children in need of care and protection-

- (1) The Committee may make an order in Form 44 for the release of the child placed in a Child Care Institution after hearing the child and his parents or guardian, and after satisfying itself as to the identity of the persons claiming to be the parents or the quardian.
- (2) While passing an order for restoration of the child, the Committee shall take into account the reports of the social worker or Child Welfare Officer or Case Worker or designated officer of the District Child Protection Unit or non-governmental organisation, including report of a home visit prepared on the direction of the Committee in appropriate cases, and any other relevant document or report brought before the Committee.
- (3) When a child expresses his unwillingness to be restored back to the family, the Committee shall interact with the child to find out the reasons for the same and record the same and the child shall not be coerced or persuaded to go back to the family.
- (4) Where the child refuses to go back to the family or the family refuses to take back the child due to reasons of financial constraints, the District Magistrate shall explore all possibilities of providing all Central and State sponsored schemes including sponsorship under section 45 of the Act, Juvenile Justice Fund under section 105 of the Act, Corporate Social Responsibility funds or any other scheme to strengthen the family financially in the best interest of the child.

Explanation: For the purpose of this sub-rule, financial capability of the family may be ascertained through any income documents such as bank statement of past one year or Income Tax returns of the past three years or property registration of the family or income certificate, whichever is available.

- (5) The child would also not be restored back to the family where the parents or guardians refuse to accept the child back and in all such cases, the Committee may provide alternative means for rehabilitation.
- (6) The child may not be restored back to the family where the social investigation report prepared by the Child Welfare Officer or the social worker or the Case Worker or the non-governmental organisation or designated officer by

the District Child Protection Unit or management of Child Care Institution, as the case may be, establishes that restoration to family may not be in the interest of the child.

- (7) The District Child Protection Unit shall submit the report regarding restoration plan for eligible children and its implementation and the District Magistrate may facilitate restoration of children and intervene wherever required.
- (8) The order of restoration shall include an individual care plan prepared by the social worker or the Child Welfare Officer or the Case Worker or the non-governmental organisation.
- (9) The Committee, while directing restoration of the child, may pass an order for an escort in Form 45, where necessary.
- (10) Besides police, the Committee may seek collaboration with the District Child Protection Unit to accompany the child back to the family for restoration.
- (11) In case of girls, the child shall necessarily be accompanied by female escorts.
- (12) The copy of the restoration order along with a copy of the order for escort shall be forwarded by the Committee to the District Child Protection Unit which shall provide funds for the restoration of the child, including travel and other incidental expenses.
- (13) Where the child has not been declared legally free for adoption, all efforts must be made to restore the child with their guardian or relatives, if they are deemed to be fit by the Committee.
- (14) The District Magistrate shall explore all possibilities to provide benefit under all Central and State sponsored schemes including Sponsorship under section 45 of the Act and the Juvenile Justice Fund under section 105 of the Act.
- (15) A follow-up plan shall be prepared as part of the individual care plan by the Child Welfare Officer or the Case Worker or the social worker or the non-governmental organisation.
- (16) The follow-up report shall state the situation of the child post restoration and the measures necessary in order to reduce further vulnerability of the child.

#### Offences against Children

Chapter IX of the Act exclusively deals with the offenses that are committed against children. Sections 74 to 89 under this chapter deals with the offences that are committed against children. The corresponding Rules to such offences are given under Chapter VIII of Juvenile Justice Care and Protection of Children Rules 2016. This chapter provides for stringent punishments to those offenses committed against children.

Section 75 prescribes punishment for cruelty to child. Any person having charge or control over the child assault/ abandon/ abuses/ exposes or neglects the child or causes the child any such unnecessary mental or physical suffering shall be punished with imprisonment of the three years or fine of ₹1lakh or with both. If the abandonment of child by biological parents is due to unavoidable circumstances beyond their control, then such abandonment cannot be deemed wilful and penal provisions under this Section cannot be imposed. If such an offence is committed by any person who is employed or is managing an organization which is entrusted with the care and protection of the child then they will be punished with rigorous imprisonment which may extend up to five years and fine which may extend up to ₹5 lakhs. If the child is physically incapacitated or develops any mental illness or is mentally unfit to perform regular task due to the unfortunate account, then such persons shall be punished with the rigorous imprisonment not less than three years which may extend up to 10 years and will also be liable for fine of ₹5 lakhs.

The Kerala High Court in the case of *Suresh Raj Purohit v Director, Vigilance & Anti-Corruption Bureau [2017 (2) KHC 853]* opined that there must be a situation of abandonment or abuse or exposure or neglect of a child or a juvenile by the person having actual charge of or control over the child in order to prosecute the offender under Section 75 of 2015 JJA.

In the case of *Priyanka Nikam v State of Maharashtra [Crml Anticipatory Bail Appln No. 2143 of 2016, decided on 15<sup>th</sup> December, 2016]*, the Bombay High Court rejected the anticipatory bail application of the appellant on the ground of cruelty by a person in charge of child care institution and opined that the need for regulation of child care centres to prevent such incidents of cruelty in para 17 of the judgment-

"In fact, the applicant was the custodian of the child during the day and the safety of the child was her responsibility. Applicant cannot simply shirk the blame on the maid. The act of the applicant in giving callous reply to the parents that it can be a self-inflicted injury speaks volumes for itself. In fact, applicant ought to have informed the parents about the injury sustained by the child and not wait for an inquiry by the parents. The conduct of the applicant was extremely insensitive. It is in these circumstances that this Court is of the opinion that it is high time that the State of Maharashtra frames Rules for issuing licence in respect of such facility homes/care taking homes which are called as creche. In fact, these are facility homes for working women. There is an urgent need to regulate the functioning of such institutions. In the absence of any Rules, such institutions would crop up at every nook and corner without shouldering any responsibility towards the infants and children admitted in such homes."

Section 76 deals with employment of child for begging. Any person who employees or uses child for begging or causes any child to brake will be punished with imprisonment up to five years and maybe imposed with fine of ₹1 lakh. If any person amputates or maims the child for the purpose of begging then he shall be punished with imprisonment for a term not less than seven years and which may extend up to 10 years and imposed with fine of ₹5 lakhs. Any person having the actual charge or control over the child abets the commission of this offense shall be punished with the same punishment as prescribed above.

Section 77 prescribes penalty for those who intoxicating liquor or narcotic drug or psychotropic. Any person who gives, or causes to give to any child intoxicating liquor or narcotic drugs or psychotropic substances or tobacco products, except by the orders of qualified medical practitioner, maybe punished with rigorous imprisonment which may extend upto seven years and shall also be imposed fine which may extend upto ₹1 lakh. Rule 56, JJ Model Rules, 2016, states that where such a child is found, the police shall enquire how the child came into possession with the liquor, drug or psychotropic substance and register an FIR, and produce the child before the JJB. Upon production, the JJB shall transfer the child to the CWC, if the child is also in need of care and protection.

The JJB shall pass appropriate orders regarding rehabilitation and de-addiction of the child. In case child is found to have been administered intoxicating liquor or narcotic drugs or psychotropic substances or tobacco products in a Child Care Institution, the child shall be produced immediately before the Board or the Committee, except in such cases where the child is not in a position to be produced before the Board or the Committee and requires immediate medical attention.

The JJB shall on its own or on complaint received from the Committee, issue directions to the police to register an FIR immediately. The JJB or the Committee shall also issue appropriate directions for inquiry as to the circumstances in which such product entered the Child Care Institution and reached the child and shall recommend appropriate action against the erring officials and the Child Care Institution.

The JJB or the Committee may also issue directions for transfer of the child to another Child Care Institution as the case may be. Giving or selling of intoxicating liquor, narcotic drugs or psychotropic substances or tobacco products within 200 meters of a Child Care Institution or any other home registered or recognised under the Act, or the office of a Committee or a Board shall be deemed to be an offence under section 77 of the Act.

Section 78 prescribes punishment to whoever uses a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance with rigorous imprisonment which may extend upto 7 years and shall also be imposed with fine which may extend upto ₹1 lakh.

In *Bachpan Bachao Andolan v Union of India* [AIR 2017 SC 754], the Supreme Court emphasized the need for comprehensive policy to tackle the drug abuse among children by establishing a standard operating procedure to enforce Section 77 and Section 78 of the Juvenile Justice (Care and Protection of Children) Act, 2015 in paras 1 to 22.

Section 79 talks against exploiting the child employee. Any person who engages and keeps a child in bondage for employment, withholds the earning of the child or uses it for his own purpose will be punished with rigorous imprisonment which may extend upto 5 years and shall also be imposed with fine upto ₹1 lakh.

Section 81 deals with sale and procurement of children for any purpose. Those who buy the child for any purpose will be punished with rigorous imprisonment which may extend upto 5 years and shall also be imposed with fine upto ₹1 lakh. As per Rule 59, JJ Model Rules, 2016, where the JJB shall ensure that the directions issued by the JJB to the management of any institution with respect to any incident of corporal punishment, are being complied with. In the event of non-compliance, the JJB shall direct registration of FIR under Section 82(3), JJ Act, 2015.

Section 82 prescribes punishment to those who are in-charge of or employed in child care institution subject the child to corporal punishment with the object of disciplining the child, upon conviction will be impose with fine of ₹10,000 and for subsequent offence, will be imprisoned which may extend upto 3months or fine or with both. If any person employed in child care institution, upon conviction under sub-section (1) shall be liable for dismissal from service and will also be barred from working directly with children. Where any corporal punishment is reported in any institution referred under sub-section (1), the management of such institution

do no cooperate with any inquiry or orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be imprisoned for a term not less than 3 years and will be levied fine which may extend upto ₹1 lakh.

In the case of *Bhramanand Mishra v. PIO, KVS Lucknow [MANU/CI/0205/2016]* the Central Information Commissioner stressed on removing the employees who are involved in cases of giving corporal punishment to children from working with children. The same has been emphasised in paras 18-20 of the judgement;

"18. According to this provision a teacher proved to be guilty cannot be given any work associated with children. It's mandatory to dismiss him. ... The Parliament took serious note of the corporal punishment and does not want such teachers to be associated with students any more. The institutions, like KVS, shall take note of the same. National Commission for Protection of Child Rights (NCPCR) has prepared Guidelines for Eliminating Corporal Punishment in Schools, which is available on http://www.ncpcr.gov.in/view\_file.php?fid=108.

19. ... Effective reparation should include restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. It is pertinent therefore that the State Governments which have to ensure their State rules provide for better implementation of the RTE, 2009, make suitable legal provisions for 'effective reparation' in cases of corporal punishment. ... along with the school teacher, warden or the staff of the school/institution that has inflicted violence on the child, the management/administration of the school/institution and their respective education administrators/managements at the higher levels should also be held responsible.

20. In every case of violence against children the respective management/administration should conduct an independent investigation, thus taking responsibility for what goes on in school/institution and not rely simply on enquiries conducted by the school/institution. In any case of child abuse, if the

parent withdraws the case, the designated authority should take cognisance of the offence and proceed without harming the child and taking strict action against the accused."

Section 83 talks about using child by militant groups and adults. Any self-styled militant group outfit declared as such by the central government recruits or uses any child for any purpose will be punished with rigorous imprisonment which may extend up to seven years and they will also be levied fine of ₹5 lakh. Any adult or adult group uses any children for illegal activities individually or as a group shall also be liable for rigorous imprisonment for a term which may extend up to seven years and will also be levied with fine of ₹5 lakh.

Section 84 deals with kidnapping and abduction of the child. The provisions of section 359 to 369 of Indian Penal Code will apply to those below 18 years of age and all the provisions shall be construed accordingly.

Section 85 deals with offences committed on disabled children. Any person who commits any offenses under this chapter 9 on a child who is certified by a medical practitioner as a disabled child then that person shall be liable why is the penalty provided for that offence.

Section 86 talks about classification of offences and designated Court. If the offense under this act is punishable with imprisonment for more than seven years then such offense shall be cognizable non-bailable and should be tried by the children's court. If an offence under this act is punishable with imprisonment for a term more than three years but less than seven years then such offense should be cognizable non-bailable and tried by magistrate of first class. If an offence under this act is punishable with imprisonment less than three years or with fine only then such an offense shall be non-cognizable bailable and tried by any magistrate.

Section 86, **Classification of offences and designated court**. Have been substituted, the amended provision is reproduced below for convenience.

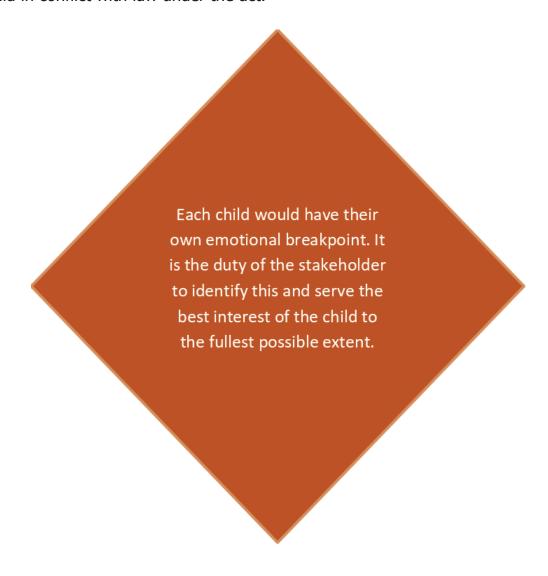
- 86. (1) Where an offence under this Act is punishable with imprisonment for a term of more than seven years, then, such offence shall be cognizable and non-bailable.
- (2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be non-cognizable and non-bailable.
- (3) Where an offence, under this Act is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable and bailable.
- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or the Commission for Protection of Child Rights Act, 2005 or the Protection of Children from Sexual Offences Act, 2012, offences under this Act shall be triable by the Children's Court.

Section 86(1)	Punishable with imprisonment for a term of more than seven years	cognizable and non- bailable
Section 86(2)	Punishable with imprisonment for a term of three years and above, but not more than seven years	non-cognizable and non-bailable
Section 86(3)	Punishable with imprisonment for less than three years or with fine only	non-cognizable and bailable

Section 87 deals with abetment, which is ascribed the meaning as given in Section 107, CrPC.

Section 88 deals with alternative punishment. If an act or omission constitutes an offense punishable under this act or any other law for the time being in force then anything contained in any such law, the offender found guilty of the offence shall be punished under law which prescribes for punishment greater in degree.

Section 89 talks about the offence committed by child under this chapter. If any child commits an offense under this chapter, then the child should be considered as a child in conflict with law under the act.



#### **Miscellaneous**

#### Section 90 Attendance of parent or guardian of child

The Committee or the Board before which a child is brought may, whenever it so thinks fit, require any parent or guardian having the actual charge of the child to be present at any proceeding in respect of that child.

#### Section 91 Dispensing with attendance of child

If at any stage during the course of an inquiry, the Committee or the Board is satisfied that the attendance of the child is not essential for the purpose of the inquiry, the Committee or the Board shall dispense with the attendance of a child and limit the same for the purpose of recording the statement and subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise. Where the attendance of a child is required before the Board or the Committee, such child shall be entitled to travel reimbursement for self and one escort accompanying the child as per actual expenditure incurred, by the Board or the Committee or the District Child Protection Unit.

# Section 92 Placement of a child suffering from disease requiring prolonged medical treatment in an approved place.

When a child, who has been brought before the Committee or the Board, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the Committee or the Board as the case may be send the child to any place recognized as a fit facility as prescribed for such period as it may think necessary for the required treatment.

# Section 93 Transfer of a child who is mentally ill or addicted to alcohol or other drugs.

Where it appears to the committee or the Board that any child kept in a special home or an observation home or a Children's Home or in an institution in pursuance of the provisions of this Act, is a mentally ill person or addicted to alcohol or other drugs which lead to behavioral changes in a person, the Committee or the Board, may order removal of such child to a psychiatric hospital or

psychiatric nursing home in accordance with the provisions of the Mental Health Act, 1987 (14 of 1987) or the rules made thereunder. In case the child had been removed to a psychiatric hospital or psychiatric nursing home, the Committee or the Board may on the basis of the advice given in the certificate of discharge of the psychiatric hospital or psychiatric nursing home, order to remove such child to an integrated rehabilitation center for addicts or similar centers maintained by the State Government for mentally ill persons and such removal shall be only for the period required for the inpatient treatment of such child.

# Rule 80 Child suffering from disease requiring prolonged medical treatment in an approved place and transfer of a child who is mentally ill or addicted to alcohol or other drugs.

The Board or the Committee or the Children's Court may send the child to a fit facility for such period as may be certified by a medical officer or mental health expert or on the recommendation of the Person-in-charge or Probation Officer or Child Welfare Officer or Case Worker, as necessary for proper treatment of the child who is mentally ill or addicted to alcohol or drugs or any other substance which lead to behavioural changes in a person for the remainder of the term for which he has to stay. When the child is cured of the disease or physical or mental health problems, the Board or the Committee or the Children's Court may, order the child to be placed back in the care from where the child was removed for treatment and if the child no longer requires to be kept under further care, the Board or the Committee or the Children's Court may order him to be discharged. The State Government may set up separate Integrated Rehabilitation Centres for child addicts on the basis of appropriate age groups.

#### **Section 95 Transfer of a child to place of residence**

If during the inquiry it is found that a child hails from a place outside the jurisdiction, the Board or Committee, as the case may be, shall, if satisfied after due inquiry that it is in the best interest of the child and after due consultation with the Committee or the Board of the child's home district, order the transfer of the

child, as soon as possible, to the said Committee or the Board, along with relevant documents and following such procedure. Such transfer can be made in case of a child in conflict with law, only after the inquiry has been completed and final order passed by the Board. In case of inter-State transfer, the child shall be, if convenient, handed over to the Committee or the Board, as the case may be, of the home district of the child, or to the Committee or the Board in the capital city of the home State. Once the decision to transfer is finalized, the Committee or Board, as the case may be, shall give an escort order to the Special Juvenile Police Unit to escort the child, within fifteen days of receiving such order. A girl child shall be accompanied by a woman police officer. Where a Special Juvenile Police Unit is not available, the Committee or Board, as the case may be, shall direct the institution where the child is temporarily staying or District Child Protection Unit, to provide an escort to accompany the child during travel. The State Government shall make rules to provide for travelling allowance to the escorting staff for the child, which shall be paid in advance. The Committee or the Board, as the case may be, receiving the transferred child will process for restoration or rehabilitation or social re-integration, as provided in this Act.

# Section 96 Transfer of child between Children's Homes, or special homes or fit facility or fit person in different parts of India

The State Government may at any time, on the recommendation of a Committee or Board, as the case may be, notwithstanding anything contained in this Act, and keeping the best interest of the child in mind, order the child's transfer from any Children's Home or special home or fit facility or fit person, to a home or facility, within the State with prior intimation to the concerned Committee or the Board. For transfer of a child between similar home or facility or person within the same district, the Committee or Board, as the case may be, of the said district shall be competent to issue such an order. If transfer is being ordered by a State Government to an institution outside the State, this shall be done only in consultation with the concerned State Government. The total period of stay of the

child in a Children's Home or a special home shall not be increased by such transfer. Orders passed shall be deemed to be operative for the Committee or the Board, as the case may be, of the area to which the child is sent.

#### Section 97 Release of a child from an institution

When a child is kept in a Children's Home or special home, on a report of a probation officer or social worker or of Government or a voluntary or nongovernmental organisation, as the case may be, the Committee or the Board may consider, the release of such child, either absolutely or on such conditions as it may think fit to impose, permitting the child to live with parents or guardian or under the supervision of any authorised person named in the order, willing to receive and take charge, educate and train the child, for some useful trade or calling or to look after the child for rehabilitation. If a child who has been released conditionally under this Section, or the person under whose supervision the child has been placed, fails to fulfil such conditions, the Board or Committee may, if necessary, cause the child to be taken charge of and to be placed back in the concerned home. If the child has been released on a temporary basis, the time during which the child is not present in the concerned home in pursuance of the permission granted shall be deemed to be part of the time for which the child is liable to be kept in the children or special home. In case of a child in conflict with law fails to fulfil the conditions set by the Board the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

#### Section 98 Leave of absence to a child placed in an institution

The Committee or the Board, as the case may be, may permit leave of absence to any child, to allow him, on special occasions like examination, marriage of relatives, death of kith or kin or accident or serious illness of parent or any emergency of like nature, under supervision, for a period generally not exceeding seven days in one instance, excluding the time taken in journey. The time during which a child is absent from an institution where he is placed, in pursuance of such permission

granted under this section, shall be deemed to be part of the time for which he is liable to be kept in the Children's Home or special home. If a child refuses, or has failed to return to the Children's Home or special home, as the case may be, on the leave period being exhausted or permission being revoked or forfeited, the Board or Committee may, if necessary, cause him to be taken charge of and to be taken back to the concerned home. When a child in conflict with law has failed to return to the special home on the leave period being exhausted or on permission being revoked or forfeited, the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

#### **Section 99 Reports to be treated as confidential**

All reports related to the child and considered by the Committee or the Board shall be treated as confidential. The Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report. Notwithstanding anything contained in the Act, the victim shall not be denied access to their case record, orders and relevant papers.

#### Court on its Own Motion v. State, 2018 SCC OnLine Del 10301

Clearly, the reports relating to a child which were placed for consideration before the Child Welfare Committee or with regard to the child in need of care and protection or before the Juvenile Justice Board with regard to a child in conflict with law are required to be treated as confidential. The substance thereof only can be communicated in terms of the proviso to Section 99(1). The confidentiality thus attached to the report by any person or expert is absolute. So far as the victim is concerned, other than the police or the magistrate, no person or authority is authorized to take any forensic interviews. For this reason as well, it would be the

grossest illegality for any of the person, experts and authorities under the POCSO Act or the JJ Act to make reports which could have any bearing on the case.

#### Jayan K.S. v. Manju S., 2021 SCC OnLine Ker 1539

The Committee or the Board has the power to communicate the substance of the report to the child or child's parent or guardian, if it so thinks fit. The parent or guardian who has the right to protect the interest of the minor has every right to at least know the contents of the report especially when the said report relates to the safety and well-being of the child. When such a report is called for before a court of law in a dispute related to the parent or guardian of the child or involving the interest of the minor, the access to the contents of the report cannot be denied to parent or guardian of the minor relying on the confidentiality clause under Section 99(1) of the JJ Act, especially in a case where the contents of the report are relevant for adjudication of the said report.

In *Barun Chandra Thakur Vs. Master Bholu & Anr.* [*Crl.A.No.950 of 2022, dated 13-07-2022*], the Supreme Court perused Section 99 and observed that "Maintaining confidentiality has a different purpose but in no case can it be said that to maintain confidentiality, the relevant material would not be provided to the child or his guardian or parents. It would be in complete contravention of the settled principles of criminal jurisprudence. Concept of confidentiality used in section 99 is to prevent the reports from coming in public domain or shared in public. Its availability will be confined to the parties to the proceedings and the parties should also refrain from sharing it with third parties. Section 99(2) begins with the non obstante clause and proceeds to direct that the victim should not be denied access to the case report, orders and relevant papers. Once the legislature's intention is to provide material to the victim there could never be an intention in the name of confidentiality to deny such access to the records to the child or his parents or guardians. The Board and the Children's Court committed an illegality in not providing the documents as demanded by misinterpreting section 99 of the Act, 2015.

The Supreme Court noted that reasonable opportunity should be given to the Respondent to go through the documents including the Social Investigation Report and psychologist's report, and to lead evidence in rebuttal.

The Supreme Court held that rule 10(5) of the Model rules should be read down as being in conflict with section 99 of the Act, 2015 and secondly, that no material collected during investigation could be provided to the accused till such time the police report under section 173(2) Cr.P.C. is filed and the cognizance is taken by the Magistrate under section 190 and the stage of section 207/208 Cr.P.C. is reached. The Act, 2015, being a special Act, will have an overriding effect over general procedure prescribed under the Cr.P.C. The provisions of the Cr.P.C. would be applicable so long and so far as they are not 65 in conflict with the special provisions contained in the Act, 2015.

### Section 106 - State Child Protection Society and District Child Protection Unit

Every State Government shall constitute a Child Protection Society for the State and Child Protection Unit for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children with a view to ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed. Rule 84, states the functions to be performed by the State Child Protection Society. Rule 85, describes the functions to be performed by the District Child Protection Unit.

In Sampurna Behura v. Union of India, (2018) 4 SCC 433, it was discussed in this case that children have the right to live with dignity under Article 21 of the Constitution and other statutory rights under the JJ Act. The court, noted that it is quite evident that with the type of observation homes that the children are kept in,

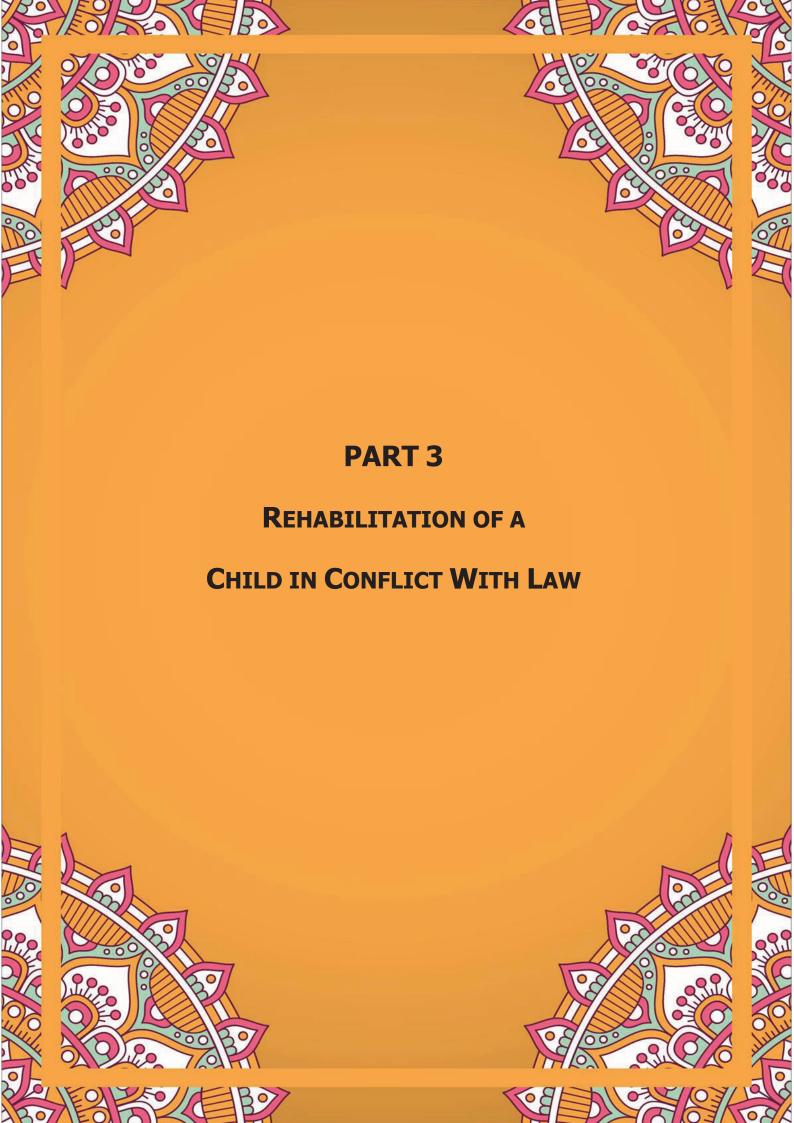
they're not given a proper opportunity of being nurtured, which ultimately goes against the aim of the JJ Act.

If there are a large number of inquiries pending, the court added, 'it is the obligation of the JJB to sit on a daily basis so that the inquiry is concluded within the time limit prescribed by the JJ Act'.

Further, taking note of the importance of technology in the administrative functioning of JJBs and Child Welfare Committees (CWCs), it asked the central and state governments to provide all necessary hardware and software to them, and also directed states to regularly update their information on the online Central Level Monitoring System once every quarter. Addressing the lack of safe shelters for children in conflict with the law, the court urged every state to evaluate the condition of their Child Care Institutions as well as to provide education, healthcare, and proper nutrition to its residents. The court reiterated that government registration in accordance with the provisions of the JJ Act was compulsory for child care institutions run by individuals or NGOs to avoid incidents of trafficking or child sexual abuse. Finally, the court hoped that audits would be carried out every six months to supervise the implementation of the JJ Act across the country. It directed NALSA to prepare a report on the JJ Act before April 30, 2018, to 'assist all policy making and decision-making authorities to plan out their affairs'.

### Section 107 - Child Welfare Police Officer and Special Juvenile Police Unit.

In every police station, at least one officer, not below the rank of assistant subinspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organizations.



#### PART 3: REHABILITATION OF A CHILD IN CONFLICT WITH LAW

It is pertinent to note that reform and rehabilitation- and not punishment- are the guiding principles of the JJ Act, 2015. Recognition of and respect for rights as human being and as a child is an important first step in the rehabilitation of a child in conflict with law, followed by extending the cause of social reintegration by providing for institutional care and other services to children. The provisions pertaining to rehabilitation and social reintegration are incorporated in Chapter VII of the JJ Act, 2015, vide Sections 39 to 55, as well as in Chapter VI of the JJ Model Rules, 2016, vide Rules 21 to 43 and Chapter VI of Tamil Nadu JJ Rules, 2017 vide Rule 23 to 50.

In *Court on Its Own Motion v. Dept. of Women and Child Development*, the Delhi High Court spoke about the role of rehabilitation within the juvenile justice system: It cannot be overlooked that youth offenders often have psychological or social issues that need to be addressed as part of the rehabilitative process. Adult facilities/prisons often lack the staff to address the needs of young incarcerated persons. In effect, what will happen is that if the youth is sent to an adult prison, then it is more likely for him to re-offend and escalate into violent behaviour than their peers who go to juvenile system, where rehabilitative services are far more extensive.

Section 39 of the JJ Act 2015, specifically entails the process of rehabilitation and social re-integration. The process of rehabilitation and social integration of children shall be undertaken, based on the individual care plan of the child, preferably through family-based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care. that all efforts shall be made to keep siblings placed in institutional or non-institutional care, together, unless it is in their best interest not to be kept together.

According to Section 39(2), for children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if

the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.

According to Section 39 (3) the children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.

According to Section 39(4) The Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.

Section 40 entails restoration of child in need of care and protection, in children's homes and shelters. In Section 40 of the Act there is a new amendment effective from 1<sup>st</sup> September 2022. Section 40(4) is inserted. According to Section 40(4), The Committee shall submit a quarterly report regarding restored, dead and runaway children to the State Government and the District Magistrate in such form as may be prescribed.

The Supreme Court *In re, Exploitation of Children in Orphanages* [(2017) 7 SCC 578], observed that, "There cannot be any meaningful rehabilitation, particularly of a child in conflict with law who is also a child in need of care and protection unless the basic elements and principles of restorative justice are recognised and practised."

Section 27, Cr.P.C. prescribes the jurisdiction in the case of juveniles. It states, "Any offence not punishable with death or imprisonment for a life committed by any person who at the date when appears or is brought before the Court is under the age of sixteen years, maybe tried by the Court of a Chief Judicial Magistrate, or by any court specially empowered under the Children Act, 1960 (60 of 1960), or

any other law for the time being in force providing for the treatment, training, and rehabilitation of youthful offenders."

The reformatory approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending communal conscience and to secure social justice. This rationale was held by the Supreme Court in *Kakoo v. State of H.P. [(1976) 2 SCC 215]*.

Rules 34 and 35 of JJ Model Rules, 2016 and Rules 46 and 48 of Tamil Nadu JJ Rules, 2017, prescribes the manner of health and medical facilities to be provided. Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

The above provisions are to be read in conjunction with Section 53 which prescribes the manner of providing of rehabilitation and re-integration services by the Child Care Institutions recognised and registered under the JJ Act, 2015. The stakeholders are obligated to coordinate with each other and ensure that the child is benefitted from these services.

Thus, the purpose of rehabilitation is to ensure that the child has overcome the circumstances that led to them being in conflict with law, and that they do not become prey to the vices of society.

Under Section 41(2), in cases of registration of child care institutions, the State Government shall, after considering the recommendations of the District Magistrate, determine, and record the capacity and purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be. Additional role has been adorned to the District Magistrates in this regard to give recommendations to the State.

#### **Regulation of Child Care Institutions**

Sections 41 and 42 pertain to the registration of Child Care Institutions under the JJ Act, 2015. Section 41 incorporates a non-obstante clause and provides that any institution, whether governmental or otherwise, which is wholly or partially meant for housing children, whether in need of care and protection or in conflict with law, shall be registered regardless of whether they receive grants from the Central or State government.

Under this provision, the State government has the responsibility to determine and record the capacity and purpose of the institution, and register it accordingly. Section 41(3) enables grant of provisional registration. As per Section 41(5), failure to dispose the application for registration is regarded as dereliction of duty on part of the concerned officer, and warrants initiation of departmental proceedings. As per Section 41(6), the period of registration is five years and shall be subject to renewal. Section 41(7) empowers the State government to cancel the registration of a Child Care Institution and takeover its management for non-compliance with Section 53.

As per Section 42, failure to register in compliance of Section 41(1) attracts a penalty of one year of imprisonment and/or fine of not less than Rupees one lakh.

Further, every thirty-day delay in applying for registration is considered as a separate offence. Rule 21 of the JJ Model Rules, 2016 provides for the manner of carrying out the registration of Child Care Institutions. The criteria followed by the State government in considering the application for registration is provided under Rule 21(5). Similar provision is given under Rule 33 of the TN JJ Rules 2017.

As per Section 41(9), the power of an inspection committee appointed under Section 54 extends to inspection of non-registered Child Care Institutions as well. The Child Care Institutions are regulated under Sections 54 and 55 and Rules 26, 41 and 42, JJ Model Rules, 2016 and Rules 42 and 43 of Tamil Nadu JJ Rules, 2017.

The various kinds of Child Care Institutions envisaged under the JJ Act, 2015 are as follows:

S.No.	Child Care Institution	Provision under JJ Act, 2015	Provision under JJ Model Rules, 2016
1	Open Shelter	Section 43	Rule 22
2	Observation Home	Section 47	Rule 29(1)(i)
3	Special Homes	Section 48	Rule 29(1)(ii)
4	Place of Safety	Section 49	Rule 29(1)(iii)
5	Children's Home	Section 50	Rule 29(1)(iv)

Further, Section 45, JJ Act, 2015, along with Rule 24, JJ Model Rules, 2016 and Rule 53 of Tamil Nadu JJ Rules, 2017 provides for sponsorship facility. Section 44 along with Rule 23, JJ Model Rule 2016 and Rule 54 of TN JJ Rules 2017, provides for foster care facility. Apart from the above, the State Government shall also set up place of safety as per Section 49.

Under Section 54, Inspection of institutions registered under this Act., inspection committees appointed by the State ought to submit their report to the District Magistrate for further action, according to Section 54(2). The District Magistrate shall within a month of the submitted inspection report take appropriate action and submit a compliance report to the State Government.

#### **Rehabilitation through Education**

Holistic education serves to protect and empower the child, and thus, the right to education is the cornerstone of child rights. However, this right is significantly eroded by child marriage, which is a much prevalent social evil, wherein the child is robbed of their innocence and is imposed with adulthood without due regard to its disastrous consequences.

Therefore, the Prohibition of Child Marriage Act, 2006 needs to be read together with the Fundamental Right to Education enshrined in Article 21-A of the

Constitution of India, which has led to the Right of Children to Free and Compulsory Education Act, 2009. Rule 36 of JJ Model Rules, 2016 and Rule 30 of TN JJ Rules 2017, provide for rehabilitation through education, which is the responsibility of the Child Care Institution.

The Supreme Court in *Bachpan Bachao Andolan Vs. Union of India [(2016) 13 SCC 683]*, observed that Special attention would be provided to groups at high risk. School children are highly impressionable and are influenced largely by the peer group behaviour. Appropriate interventions in the form of curricular/co-curricular contents will be put in place in the schools and colleges for awareness generation. Interventions will be evidence based and supported by sustainable strategies.

#### **Effective and Speedy Disbursal of Victim Compensation16F**<sup>16</sup>

Making compensation an integral aspect of right to life<sup>17</sup> in Rohtash @ Pappu Vs. State of Haryana (2008)<sup>18</sup>, the court raised an apt question, "Should justice to the victims depend only on the punishment of the guilty? Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed?... the victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the state in a society governed by rule of law. But if the state fails in discharging this responsibility, the state must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated". Dr. Jacob George Vs. State of Kerala, 4 SCC 430 (Supreme Court 1994).

<sup>&</sup>lt;sup>16</sup> Note: This Part has essential reference to the Article written by, Dipa Dube, Victim Compensation Schemes in India: An Analysis, International Journal of Criminal Justice Sciences Vol 13 Issue 2 July – December 2018 Access link: <a href="http://www.sascv.org/ijcjs/pdfs/DubeVol13Issue2IJCJS.pdf">http://www.sascv.org/ijcjs/pdfs/DubeVol13Issue2IJCJS.pdf</a>

<sup>&</sup>lt;sup>17</sup> Bhim Singh Vs. State of Jammu & Kashmir 4 SCC 577 (Supreme Court 1985); Dr. Jacob George Vs. State of Kerala, 4 SCC 430; Manju Bhatia Vs. N.D.M.C. AIR 1998 SC 223; Paschim Bangal Khet Mazdoor Samity Vs. State of West Bengal & Ors., (1996) 4 SCC 37; People's Union for Democratic Rights Thru. Its Secy. Vs. Police Commissioner, Delhi Police Headquarters, n.d.; People's Union for Democratic Rights Vs. State of Bihar, (1987) 4 SCC 730.

<sup>&</sup>lt;sup>18</sup> Rohtash @ Pappu Vs. State of Haryana, No. Cri.Appeal. No.250 Of 1999 (Punjab & Haryana 2008) Retrieved from http://rajasthanjudicialacademy.nic.in/docs/juds/42130.pdf.

In *Hari Krishnan and State of Haryana Vs. Sukhbir Singh [AIR 1988 SC 2127]*, Justice Krishna Iyer stated that, "while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty and victimology must find fulfilment not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn Maru Ram Vs. Union of India, 1 SCC 107 (Supreme Court 1981)".

In *Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 1 SCC 770*, the Supreme Court found that, "...the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system".

In *M/s. Tata Steel Ltd. Vs. M/s Atma Tube Products, 1 PLR 1 (Punjab & Haryana 2014)*, the court held that, "for the purposes of VCS, only those dependents who have suffered loss or injury due to the crime and need rehabilitation are eligible and the "legal heir" do not have anything to do with sec 357A of the Code."

#### **Access to Legal Aid for Children**

Access to justice is the overarching principle ensuring the realisation of child rights. Access also implies availability and affordability, and in this light, the realisation of the right to free legal aid, and the expedient disbursal of the victim compensation fund, are crucial. The District Legal Services Authority has been instrumental in realising the former right of all needy sections of society including children, as required by the Legal Services Authorities Act, 1987 enacted in furtherance of Article 39-A of the Constitution. The Hon'ble Supreme Court has reinforced this ideal vide its decisions in *Hoskot Vs. State of Maharashtra [AIR 1978 SC 1548]* and *Common Cause Laws Vs. Union of India [AIR 1996 SC 1619]*, holding that legal aid is not a mere formality.

#### Role of advocates in furthering the Right to Legal Aid

An Advocate is accountable for presenting the child's cause before the court. The role of an Advocate in the Juvenile Justice System has progressed as a challenging skill set, which requires a critical understanding of what it means to be an advocate representing a child before the Court of Law. For Advocates, it is important to have day-to-day interactions with their child client. An Advocate should understand and analyse the child using child friendly approaches.

An Advocate representing children cannot assume that they know what is best for their client, and should instead assess and be informed about the child client, their background and surroundings to ensure that the Court informed on these aspects before taking a decision.

Every Advocate as a specialized practitioner of juvenile justice should bear in mind that children are different from adults, not just physiologically but also psychologically. Advocates must be alert to the special needs or challenges of children and in the meantime also try to identify the child's strengths and weakness. The role of an Advocate specializing in juvenile justice is multifaceted and challenging. It requires extraordinary sensitivity as well as all the legal knowledge and courtroom skills.

Legal Aid Advocates are provided by the Tamil Nadu State Legal Services Authority through the District Legal Services Authority. Every child is entitled for free legal aid as per the Act. In case the Board finds after inquiry with the child that the Child requires free legal assistance, the Board appoints and instructs the legal aid Advocates to assist the Child.

#### **Principle of Convergence**

Be it the Juvenile Justice (Care and Protection) Act, 2015, or the Protection of Children from Sexual Offences Act, 2012, child related legislations entail multiple stakeholders from various disciplines. These stakeholders have their own purpose and manner of functioning. A car with four functioning wheels cannot make the car run properly, unless all the four wheels rotate in unison and in the same direction. Likewise, for the best interests of the child to be secured, it does not suffice that the stakeholders perform their functions in tandem with the law. It is just as crucial for the stakeholders to work in unison with seamless coordination. This is what is referred to as the principle of convergence.

According to UNICEF, Convergence is the coming together and integration of two or more distinct entities (e.g., sectors, programmes, departments, agencies, or levels of implementation) to work towards a common goal.<sup>19</sup>

The role of international organisations such as UNICEF also play a vital role in convergence by bringing together the various machineries of the State, for serving the best interest of a child survivor by conducting experience sharing and sensitization programme etc. The idea of convergence is also welcomed by the Supreme Court in a plethora of its decisions.

The United Kingdom is a worthy example of the efforts undertaken to foster interdepartmental coordination in their child protection services. During the 1970s the UK had setup an interagency mechanism which mandated coordination between the police, and other governmental departments including social welfare, education and healthcare. There was a need for a more balanced agenda, covering all of the concerns of child protection equally, i.e., prevention, investigation and treatment. This would involve the contribution of all agencies including health and education as well as the police and social services.

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<sup>&</sup>lt;sup>19</sup> Technical Note on Convergent Programming, UNICEF (<a href="https://www.unicef.org/media/68221/file/GP-2020-Technical-Note-Convergent-Programming.pdf">https://www.unicef.org/media/68221/file/GP-2020-Technical-Note-Convergent-Programming.pdf</a>)

A study conducted in the UK during the 1990s<sup>20</sup> referred to the Maria Colwell Report of 1974, which had recommended the establishment of Specialist Assessment Teams, which would draw on a senior social worker, an approved medical practitioner and a police officer of authority, to coordinate an investigation.

What was proposed in the 1970s took almost two decades to stabilise, with smoother relationship between police and other professionals involved in child abuse and child protection including social workers, materialising in the 1990s. This coordination between stakeholders from diverse disciplines and with distinct objectives and methods of working was possible due to two significant factors. Firstly, there was considerable attitude change on the part of practitioners in each field and secondly, this change was supported by the context within which child protection work was undertaken.

Lack of coordination among the stakeholders not only threatens the protection of child rights, but the very core of our social fabric. Therefore, unification of efforts of the stakeholders is essential in order to ensure that children are protected against abuse and exploitation, and are given facilities to develop in a healthy manner, in conditions of freedom and dignity. For an effective child protection system and a sustainable juvenile justice system, the efforts of all stakeholders need to be coordinate and converge. Through such coordination, the police officers are well-prepared and are equipped to deal with any situation concerning children.

As the saying mentioned at the beginning of the study material goes, whether such child becomes a good or bad person depends on their upbringing by their mother. This material urges all the stakeholders under the JJ Act, 2015 to function with cooperation, coordination and convergence to play the role of such a mother that ensures that a child grows up to be a well-functioning adult in our society.

<sup>&</sup>lt;sup>20</sup> Sanders, Robert & Jackson, Sonia & Thomas, Nigel. (1996). The police role in the management of child protection services. Policing and Society: An International Journal. 6. 87-100. 10.1080/10439463.1996.9964743. (https://www.researchgate.net/publication/232941192)







#### PROGRAMME SCHEDULE

# TAMIL NADU STATE JUDICIAL ACADEMY and TAMIL NADU STATE LEGAL SERVICES AUTHORITY

### In association with

### **UNICEF**

### Let Me Be A Butterfly! 2.0

Workshop on Children in Conflict with Law and Child Survivors
For the Secretaries of District Legal Services Authorities,
Principal Magistrates, Members and Panel Lawyers of the Juvenile Justice Boards

Date	Place	For the Districts of
24.09.2022	TNSJA, Headquarters, Chennai	Chennai, Cuddalore, Kancheepuram, Krishnagiri, Nagapattinam, Thanjavur
25.09.2022		Tiruvallur, Tiruvannamalai, Tiruvarur, Vellore, Villupuram, Puducherry
16.10.2022	TNSJA Regional Centre, Madurai	Ariyalur, Kanniyakumari, Madurai, Perambalur, Pudukkottai, Ramanathapuram
30.10.2022		Sivagangai, Theni, Thoothukudi, Tiruchirappalli, Tirunelveli, Virudhunagar
26.11.2022	TNSJA Regional Centre,	Coimbatore, Dharmapuri, Dindigul, Erode, Karur
27.11.2022	Coimbatore	Namakkal, Nilgiris, Salem, Tiruppur

### **Programme Schedule**

10.00 a.m. – 10.10 a.m.	Scope and Object of the Programme
10.10 a.m. – 11.30 a.m.	Principles for Principal Stakeholders under the JJ Act, 2015 This session discusses the essence of the JJ Act, 2015 which are the fundamental principles enshrined in Section 3 of the Act. This session would enable the participants entrusted with various responsibilities to cooperate and coordinate with each other seamlessly, to realise the aims and objectives of the JJ Act, 2015.
11.30 a.m. – 11.45 a.m.	Tea Break
11.45 a.m. – 01.00 p.m.	Care Cures Conflict This session discusses the role of the JJB in serving the Best Interests of a Child in Conflict with Law, by treating them with kindness and giving them adequate care and protection as mandated under the JJ Act, 2015.
01.00 p.m. – 02.00 p.m.	Lunch Break
02.00 p.m. – 03.00 p.m.	Alleviating Delinquency through Individual and Social Responsibility  This session enables the participants to identify the various factors which contribute to juvenile delinquency, such as poverty, illiteracy and other socio-economic and cultural factors. Participants would be better equipped to counter these factors in a responsible manner and prevent exploitation of children, with the help of laws pertaining to Right to Education and Prohibition of Child Marriage.
03.00 p.m. – 04.00 p.m.	The Road to Rehabilitation - Take Diversion  This session discusses the measures to be taken by the participants to rehabilitate a child in conflict with law. The session highlights the significance of diversion, which is the first step towards rehabilitation of a child. The session also discusses the techniques which help reintegrate a child survivor of sexual abuse in mainstream society.
04.00 p.m. – 04.15 p.m.	Tea Break
04.15 p.m. – 05.00 p.m.	Discussion and Interaction

#### **R**EFERENCES

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- NALSA Guidelines for Police

[Available at: <a href="https://nalsa.gov.in/acts-rules/guidelines/guidelines-for-training-the-designated-juvenile-child-welfare-officers-attached-to-every-police-station-and-the-members-of-the-special-juvenile-police-unit-established-under-section-63-of-the-juvenile-justice-care-and-protection-of-children-act-2000]</a>

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