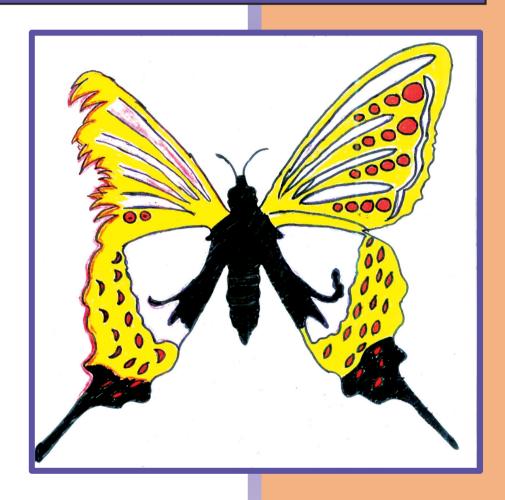






## LET ME BE A BUTTERFLY!



A PUBLICATION OF
TAMIL NADU STATE JUDICIAL ACADEMY

THE JUVENILE JUSTICE (CARE AND PROTECTION)
ACT, 2015

STUDY MATERIAL SEPTEMBER 2021

WORKSHOP ON CHILD IN CONFLICT WITH LAV	W
STUDY MATERIAL, SEPTEMBER 202	1

### **LET ME BE A BUTTERFLY!**

THE JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

STUDY MATERIAL
SEPTEMBER 2021







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

# Study Material September 2021

Prepared by: The Directors

Research Assistants

and Staff,

Tamil Nadu State Judicial Academy,

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044-24958595 / 96 / 97 / 98

Fax: (044) 24958595

Website: www.tnsja.tn.gov.in

E-Mail: tnsja.tn@nic.in / tnsja.tn@gmail.com

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#### Sanjib Banerjee



"Chief Justice House" 17 (Old No.23), Greenways Road, Chennai - 600 028.

Phone: 044 - 2534 2240 (O) 044 - 2495 4222 (R)



#### **FOREWORD**

Juveniles in conflict with law need to be handled with sufficient care and circumspection so as to afford them the opportunities that the ordinary adolescent approaching adulthood enjoys.

The study material compiled by the Tamil Nadu State Judicial Academy charts out the history of the governing statute which is still in its infancy and may require refinement. Secretaries of the District Legal Services Authorities, Principal Magistrates, Panel Lawyers and Juvenile Justice Boards should find the study material and the case laws referred to therein helpful.

I congratulate the Tamil Nadu State Judicial Academy in its endeavour, particularly its emphasis in certain critical areas like the Juvenile Justice system where empathy and sensitivity should be the guiding principles.

Not all children in this country are fortunate to have the love and affection that every child deserves. Not every child in this country has enough to eat or a secure roof over her head. If society cannot provide the most basic needs of the most tender and vulnerable, it may have no authority to punish when the child, in such circumstances, goes awry. It requires specialisation to handle juveniles in conflict with law. The motto should be course correction, as much of the study material instructs.

I wish that the training programme is helpful to all.

Jaga Bunj

September 15, 2021

JUSTICE T.S.SIVAGNANAM, PRESIDENT, BOARD OF GOVERNORS, TAMIL NADU STATE JUDICIAL ACADEMY



JUDGE, MADRAS HIGH COURT, CHENNAI – 600 082.

15/09/2021



**FOREWORD** 

"History will judge us by the difference we make in the lives of Children"

The quote by Nelson Mandela holds true and the prime responsibility lays on the shoulders of Legal Fraternity. In recent years, the number of children in conflict with Law is ginormous. Majority of children in conflict with law have little understanding of their actions and are likely to become habitual offenders if they are not properly channelized in early years. The prime object of Juvenile Justice Legislation is to Reform and Rehabilitate the young offenders and not subject them to punitive treatment. Such punitive treatments are more likely to aggravate the young mind and make them insensitive towards Society. The Nirbhaya Incident threw light on the Limitations of the Legislations and it revealed how the latter did not serve the prime object of the enactment. Therefore to enhance the effectiveness, 2015 Act was enacted, which has recently been amended.

This Study Material prepared by Tamil Nadu State Judicial Academy in association with UNICEF focuses on various areas of interest for the stakeholders and legal fraternity to work in tandem. It enumerates the roles and responsibilities of every stakeholder and sensitizes them in dealing with Children. This material elaborately deals with Juvenile Justice System in India. It is highly informative, enlightening and therefore all stakeholders are recommended to make use of this material.

I congratulate the Directors, Research Assistants, Officers and Staff of Tamil Nadu State Judicial Academy on bringing out this wonderful Study Material.

15<sup>th</sup> September, 2021

T. S. SIVAGNANAM

## Justice P.N. Prakash Judge, High Court of Madras



"Lalithalaya"
No. 32, I Cross Street,
Kilpauk Garden Colony,
Chennai-10.
Ph.No. 044-2644 5731



15<sup>th</sup> September, 2021

#### **FOREWORD**

Twinkle, twinkle, little star How I wonder what you are?

- asked Jane Taylor and our reply to her is "Let me be a butterfly".

Why do we compare a child to a butterfly? The answer is axiomatic. In the birth of the butterfly, the metamorphosis from the egg to the adult *via* larva and pupa happens publicly. So too, the infant metamorphoses innocently into a juvenile, right under the gaze of the society. After the innocence sheds, the adolescence appears.

Juvenility is the age when impressions leave footprints in the mind that would mould the body and thought. Hence, no society can ill-afford to ignore the juveniles and on the contrary, the society has a moral duty to protect them like how the eyelids protect the eyes, so that, they, on becoming adults, in turn, would keep alive the human specie on earth. This is the dictate of evolutionary science.

The two laws, viz., the Juvenile Justice (Care and Protection) of Children Act, 2015 and the Protection of Children from Sexual Offences Act, 2012, are intended to achieve these objectives and we, who have been entrusted with the noble task of implementing them, are required to work with sensitivity.

This compendium contains the essence of the aforesaid two enactments, copiously alluding to judicial precedents of significance, so that, it would be a ready reckoner for judicial officers on the dais.

Justice P.N. PRAKASH
Chairman,
POCSO Committee
&
Juvenile Justice Committee

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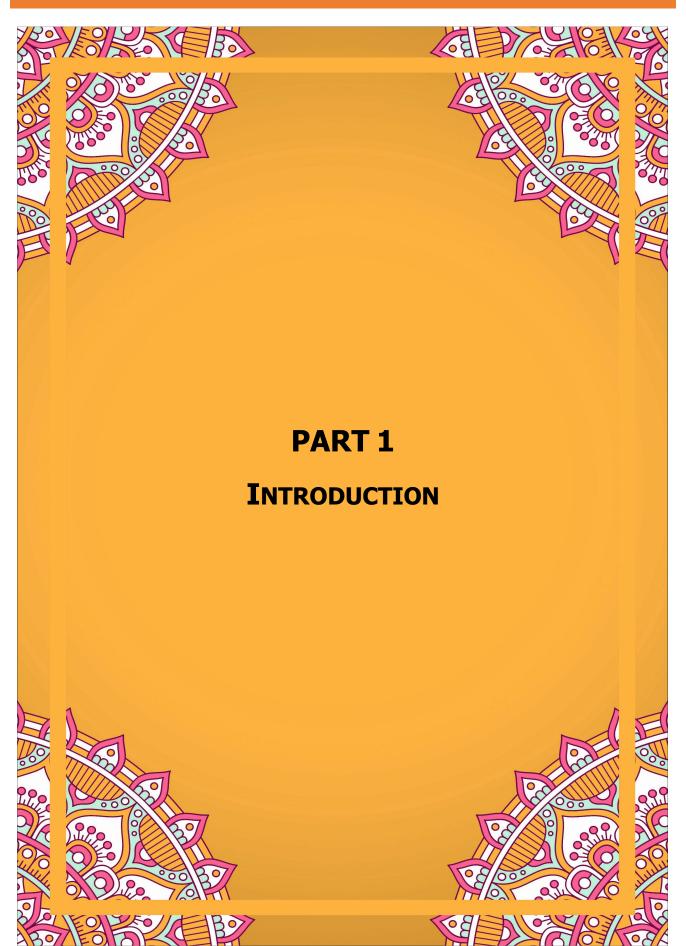
Cases	Citation
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Anil Kumar Vs. State of U.P.	2007 Cri LJ 200
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Bachpan Bachao Andolan Vs. Union of India	(2016) 13 SCC 683
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Court on its Own Motion Vs. State	2018 SCC OnLine Del 10301
D. Sudhakar Vs. Panapu Sreenivasulu	2013 CriLJ 2764
Dr. Jacob George Vs. State of Kerala	1994 SCC (3) 430

In re., Exploitation of Children in Orphanages	(2017) 7 SCC 578
Gangajali Education Society Vs.Union of India	(2017) 16 SCC 656
Geetanjali Dogra Vs. State	2019 SCC OnLine Del 10009
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Hari Krishnan and State of Haryana Vs. Sukhbir Singh	(1988) 4 SCC 551
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Maru Ram Vs. Union of India	1980 AIR 2147
Naisul Khatun Vs. State of Assam & Ors.	2011 Cri LJ 326
Parag Bhati Vs. State of U.P.	(2017) 3 SCC (Cri) 819
Paschim Bangal Khet Mazdoor Samity Vs. State of West Bengal & Ors.	(1996) AIR SC 2426
People's Union for Democratic Rights Thru. Its Secy. Vs. Police Commissioner, Delhi Police Headquarters	(1989) 4 SCC 730
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Prahalad Gaur Vs. State of U.P.	2009 Cri LJ 153
Pratap Singh Vs. State of Jharkhand	(2000) 5 SCC 488
Praveen Kumar Maurya Vs. State of U.P.	2011 Cri LJ 200
Priya Yadav Vs. State of M.P.	2017 (2) MPLJ 404
Priyanka Nikam Vs. State of Maharashtra	Crml Anticipatory Bail Appln No. 2143 of 2016, 15th December, 2016
Puneet S. Vs. State of Karnataka	2019 SCC OnLine Kar 1835
Ram Phal Vs. State	2019 (5) ADJ 649
Ramachandran Vs. The Inspector of Police	1994 CriLJ 3722
Rohtash @ Pappu Vs. State of Haryana	No. 250 of 1999 1.4.2008
Sampurna Behura Vs. Union of India	(2018) 4 SCC 433 (Paras – 47-51, 64-78, 94.4-94.8)
Sanjeev Kumar Gupta Vs. State of U.P.	(2019) 12 SCC 370
Shah Nawaz Vs. State of U.P. & Anr.	(2011) 13 SCC 751
Sheela Barse Vs. Union of India	(1986) 3 SCC 632
Shilpa Mittal Vs. State (NCT of Delhi)	(2020) 2 SCC 787
State of Himachal Pradesh Vs. Happy	2019 SCC OnLine HP 700
Subramanian Swamy Vs. Raju	(2014) 8 SCC 390
Suresh Vs. State of Haryana	AIR 2015 SC 518
Suresh Raj Purohit Vs. Director, Vigilance & Anti- Corruption Bureau	2017 (2) KHC 853
Thankamma Nelliyaniyil Vs. State of Kerala	2017 SCC OnLine Ker 10962

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WORKSHOP ON CHILD IN CONFLICT WITH LAW STUDY MATERIAL, SEPTEMBER 2021



#### **PART 1: Introduction**

The famous proverb, "It takes a village to raise a child" rings true to this day. 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**

Importance of child rights can be 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.

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.

The JJ Act, 2015 is a significant piece of legislation on this aspect. It recognizes the socio-legal and economic issues of our children. The underlying philosophy is that, if a child has gone astray it is the parents 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. It is important to have child specific laws in India.

#### The Need to have Child Specific Laws

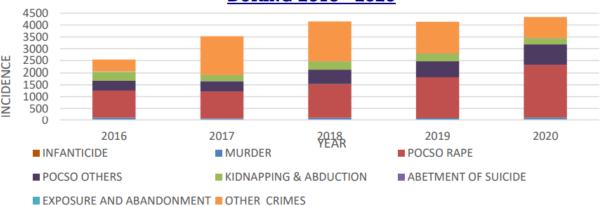
- 1. Recognition of the inherent dignity, equal and inalienable rights of children in the family keeping in mind freedom, justice and peace.
- 2. To promote social progress of children.
- 3. Not to discriminate children on the basis of race, colour, sex, language, religion, political or other opinion, 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.
- 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.

#### POCSO Act, 2012 and Juvenile Justice Act, 2015

These two laws are considered vital to the protection of children in India. These two legislations are complimentary to each other. The POCSO Act, avows to protect children from offences such as sexual assault, sexual harassment and pornography and to penalize any person who commits offences such as "sexual harassment", "sexual assault", "penetrative sexual assault", and "aggravated penetrative sexual assault". A person commits "sexual harassment" if he uses words or shows body parts to a child with sexual intent, shows pornography to a child or threatens to depict a child involved in sexual act through the media would be offence committed under this Act. This 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. The police also have to make special arrangement for the care of the child. In case a person fails to report a case, he shall be penalized. These are the key relationship between the two legislation that tend to, protect the interests of children (both as a victim and as an offender).

#### Statistical Data from Tamil Nadu Crime Review 2020 CHART- 8.3

## CRIME HEAD WISE INCIDENCE OF CRIME AGAINST CHILDREN DURING 2016 - 2020



<sup>\*</sup> RAPE Case from 2016 (includes rape under POCSO Act).

CHART-9.3

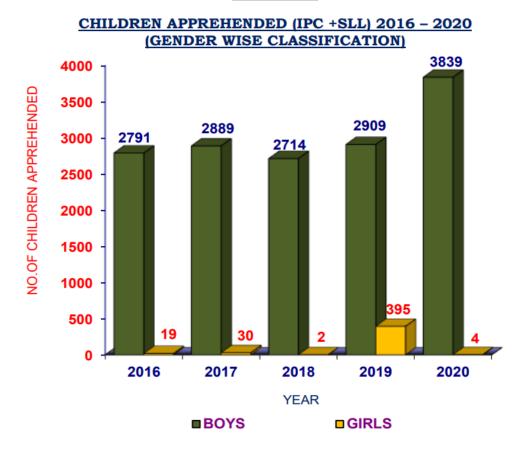


TABLE 9.1
Crime Committed by Children In Conflict with Law (IPC+SLL) - 2018-2020

S. No.	Districts	2018	2019	2020	Percentage State Share to State (2020)	Mid-Year Projected Children Population (In Lakhs)# (2020)	Rate of Total Crime by Children In Conflict with Law (2020)++	
	Ariyalur	30	33	75	2.2	8.7	8.62	
	Chennai	502	647	773	22.8	100.4	7.70	
$\overline{}$	Coimbatore	0	5	9	0.3	24.7	0.36	
-	Coimbatore City	62	30	27	0.3	15.2	1.78	
	Cuddalore	46	113	22	0.6	29.9	0.74	
-	Dharmapuri	9	14	8	0.2	17.3	0.46	
	Dindigul	22	68	74	2.2	24.8	2.98	
$\overline{}$	Erode	0	0	3	0.1	26.0	0.12	
_	Kanchipuram	57	0	0	0.0	11.2	0.00	
	Kanyakumari	4	50	22	0.6	21.4	1.03	
$\overline{}$	Karur	0	28	0	0.0	12.4	0.00	
	Krishnagiri	16	15	2	0.1	21.7	0.09	
	Madurai	96	76	1150	33.9	18.2	63.19	
	Madurai City	115	124	86	2.5	16.8	5.12	
$\overline{}$	Nagapattinam	26	54	33	1.0	18.6	1.77	
-	Namakkal	15	18	21	0.6	19.8	1.06	
-	Nilgiris	14	10	9	0.3	8.5	1.06	
$\overline{}$	Perambalur	12	16	66	1.9	6.5	10.15	
_	Pudukottai	33	44	30	0.9	18.6	1.61	
	Ramnathapuram	45	81	13	0.4	15.4	0.84	
	Railway Chennai	38	56	31	0.9	0.0	0.00	
	Railway Trichy	19	9	3	0.1	0.0	0.00	
	Salem	22	37	24	0.7	29.4	0.82	
	Salem City	34	55	17	0.5	10.6	1.60	
	Sivagangai	87	189	54	1.6	15.4	3.51	
	Thanjavur	17	49	94	2.8	27.6	3.41	
27	Theni	62	31	49	1.4	14.3	3.43	
28	Thirunelveli	225	188	77	2.3	23.2	3.32	
29	Thirunelveli City	142	18	8	0.2	5.7	1.40	
30	Thiruvallur	25	34	45	1.3	15.1	2.98	
	Thiruvannamalai	60	45	25	0.7	28.4	0.88	
32	Thiruvarur	19	63	20	0.6	14.6	1.37	
	Thoothukudi	129	115	214	6.3	20.0	10.70	
34	Tiruppur	19	24	6	0.2	23.5	0.26	
	Tiruppur City	11	7	9	0.3	4.9		
	Trichy	37	84	90	2.7	19.5		
	Trichy City	27	53	62	1.8	11.7	5.30	
	Vellore	147	101	41	1.2	18.0		
	Villupuram	6	53	29	0.9			
-	Virudhunagar	74	49	33	1.0	22.3		
	Cyber Cell	0	0	0	0.0	0.0		
	Other Units	0	0	0	0.0	0.0		
	Chengalpattu	0	0	0	0.0	34.3		
-	Kallakurichi	0	0	0	0.0	14.8		
	Ranipet	0	0	1	0.0	12.1	0.08	
	Tiruppattur	0	0	12	0.4	13.2	0.91	
	Tenkasi	0	0	27	0.8	24.3		
	TOTAL	2304	2686	3394	100.0	829.20	4.09	

Note: i) '#' Due to non-availability of Children Population, Projected population of 2020 is adopted.

ii) '++ Crime Rate is calculated as Crime per one lakh of population.

#### Consolidation of Juvenile Justice Cases Statistics as on 31.07.2021

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

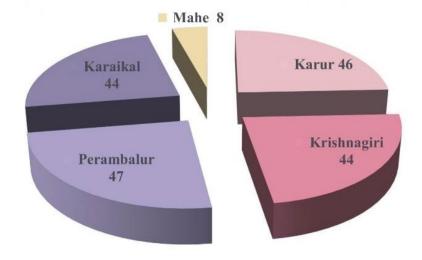
E: No. of Cases pending under Other Offences against Children

S.No	DISTRICT	A	В	C	D	E
1	ARIYALUR	122	52	50	NIL	20
2	CHENNAI	110	37	42	6	NIL
3	COIMBATORE	227	60	40	5	118
4	CUDDALORE	183	42	80	34	61
5	DHARMAPURI	65	8	28	9	29
6	DINDIGUL	85	25	46	6	14
7	ERODE	189	47	47	02	95
8	KANCHIPURAM	203	78	92	40	30
9	KANYAKUMARI	168	71	45	7	52
10	KARUR	46	26	1	1	NIL
11	KRISHNAGIRI	44	8	26	2	10
12	MADURAI	225	62	149	111	14
13	NAGAPATTINAM	71	32	22	NIL	17
14	NAMAKKAL	76	29	34	2	11
15	NILGIRIS	58	19	12	26	1
16	PERAMBALUR	47	15	28	NIL	5
17	PUDUKKOTTAI	65	51	11	NIL	3
18	RAMANATHAPURAM	113	51	29	NIL	33
19	SALEM	156	31	68	0	57
20	SIVAGANGA	266	194	90	7	30
21	THANJAVUR	102	24	47	15	31
22	THENI	172	1	7	0	0
23	THOOTHUKODI	400	129	160	160	111
24	TIRUCHIRAPPALLI	212	60	96	NIL	56
25	TIRUNELVELI	307	133	62	NIL	112
26	TIRUPPUR	114	25	31	2	58
27	TIRUVALLUR	76	14	44	8	18
28	TIRUVANNAMALAI	74	14	38	5	22
29	TIRUVARUR	96	20	29	29	18
30	VELLORE	121	23	81	8	17
31	VILUPPURAM	372	170	155	131	0
32	VIRUDHUNAGAR	247	39	156	1	52
33	U.T of PUDUCHERRY	207	106	50	21	-
34	KARAIKAL	44	6	6	1	3
35	YANAM	NIL	NIL	NIL	NIL	NIL
36	MAHE	8	NIL	NIL	NIL	NIL

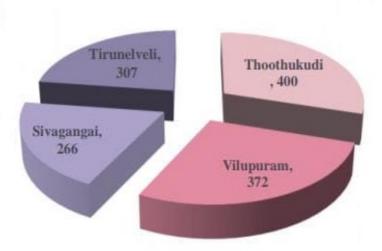
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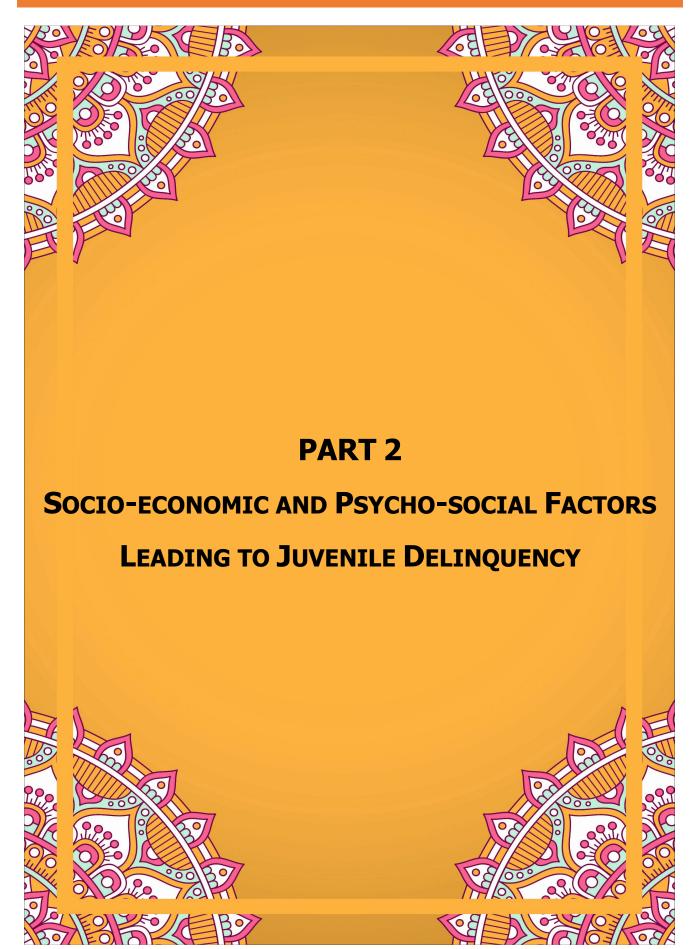
♣ Total No. of Pending Cases in Juvenile Justice Board:
♣ No. of Cases pending under Serious Offences:
♣ No. of Cases pending under Heinous Offences:
♣ No. of Cases Pending under Preliminary Assessment Stage:
♣ No. of Cases pending under Other Offences against Children:
1098

Districts with Least no. of Pending Cases in Juvenile Justice Board



Districts with Highest no. of Pending cases in Juvenile Justice Board.





## PART 2: Socio-economic and Psycho-social Factors Leading to Juvenile Delinquency

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.

#### **Psycho-social Aspects of Juvenile Delinquency**

This Chapter gives a key for the readers to understand the importance of psychosocial aspects which play a critical role on children in conflict with law. Studies have been conducted worldwide over the correlation of psychosocial aspects leading to juvenile delinquency. This part shall give some snippets of certain relevant studies and hypothesis framed by researchers working over this inter-discipline worldwide.

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 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 these may produce personality disorders falling short of mental illness according to

<sup>&</sup>lt;sup>1</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

him.<sup>2</sup> According to the Journal of Adolescence, research findings indicate that, "there are multiple causal-pathways to delinquency".<sup>3</sup>

According to Prof. Cyril Burt<sup>4</sup>, "Delinquency is due to a great multiplicity and wide variety of alternative and convergent influences. Main causes of the majority are "personal," the most significant being, "first, the mental dullness, which is not severe enough to be called deficiency, and secondly, the temperamental instability which is not abnormal enough to be considered pathological. Among social conditions by far the most potent is family life, and next to it, the friendships formed outside the home. These four conditions are paramount ... Conduct and misconduct are always, in the last analysis, the outcome of mental life," (3) the pre-school age is of fundamental importance for moral character and temperamental balance: (4) treatment for delinquency already entered upon must be individual, and mass treatment of offenders by inexpert persons is futile."<sup>5</sup>

Researchers J. Cotter Hirschberg, and Joseph Noshpitz, comment that, "to understand the total problem of juvenile delinquency, we must examine the problem in its two aspects. First, from our understanding of the individual delinquent whose family background promotes the expression of emotional conflict in socially unacceptable ways, and second, from our knowledge of the group delinquent whose adolescence takes place under such social and community conditions that he has small chance to achieve a normal resolution of his dependency without using the delinquent group."

According to Vladimir Zubenko, a Russian Researcher, "the legal nature of using enforcement measure for educational influence by way of placement of any delinquents in closed fostering institutions with regard to minor offenders, should be done only by **analysing role of legal discretion for such relief to minors from** 

<sup>&</sup>lt;sup>2</sup> JPB Starker, Zimbabwe Law Journal (1966)

<sup>&</sup>lt;sup>3</sup> Journal of Adolescence Vol. 22, pp. 95-107 (1999)

<sup>&</sup>lt;sup>4</sup> Sir Cyril Lodowic Burt, 3 March 1883 – 10 October 1971, an English educational psychologist and geneticist

<sup>&</sup>lt;sup>5</sup> Cyril Burt, The Young Delinquent (1925)

<sup>&</sup>lt;sup>6</sup> J. Cotter Hirschberg, M.D. And Joseph Noshpitz, M.D., Topeka, Kan., Comments On Socio-psychological Aspects Of Juvenile Delinquency, (2015)

children with parents when minors are otherwise isolated from society. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) dictates the following: The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at, will, by order of any judicial, administrative or other public authority."

Researchers Arnold Leunes, Anthony Bourgeois & Rosario Grajales from United States in 1996 conducted a study which is very relevant for the present day, "Four violent juvenile offenders from a local correctional facility spoke to a class of U.S. undergraduates studying abnormal psychology. Two weeks later, the students attended a tour sponsored by the correctional facility that had provided the speakers. The results of a semantic differential scale administered both before and after the talk and tour indicated that the students' attitudes became significantly more positive for the 3 dimensions assessed by the scale: juvenile delinquent, state correctional facility for juvenile delinquents, and treatment staff for juvenile delinquents. The talk and the tour appeared to be equally effective in bringing about positive changes in the students' attitudes."

Researchers P.S. Hundal and H.S. Brar, measuring the impact of reformatory education on the manifest behavior and some psycho-social aspects of juvenile delinquents presented a study from India, "In Punjab there are two Borstal institutes, one at Faridkot and the other at Hissar. The main objective of these institutes is to reform juvenile delinquents referred to them by the courts. In order to achieve their objectives the Borstal authorities have set up a rigorous daily routine of 12-14 hours for the inmates. The general pattern of this routine in

<sup>&</sup>lt;sup>7</sup> Vladimir Zubenko, On The Question Of The Relief Of Minors From Punishment Through Placement In Closed Fostering Institutions: Some Aspects Of Juvenile Criminal Policy In Russia (2013)

<sup>&</sup>lt;sup>8</sup> Arnold Leunes, Anthony Bourgeois & Rosario Grajales (1996) The Effects of Two Types of Exposure on Attitudes toward Aspects of Juvenile Delinquency, The Journal of Social Psychology, 136:6, 699-708, DOI: 10.1080/00224545.1996.9712246

summer is: one hour for morning toilet, two hours for morning and evening meals, two hours morning and evening games, one hour rest in the afternoon, two hours formal teaching in school, and six hours work in a factory or on a farm. In winter the programme is practically the same except that there is no provision for the afternoon rest and evening games. On Sundays and other holidays the inmates have full freedom to utilize their time while remaining on the premises of the institute. Those who show good progress in their day-to-day behaviour are given supervisory duties in the factory or farm. Those who show good progress in their studies are provided with facilities to work as private candidates for higher examinations of Punjab University. It is also important to point out that the Superintendent in charge of the institute and his colleagues are given short-term orientation courses before they are appointed to their jobs." According to them, the functioning and effectiveness of these institutes, has not so far been scientifically evaluated. Such evaluative studies are little in number not only in India, but also in the West (Jurjevich, 1966). This study was a step in supplying evaluative data, and its first phase is designed to measure the impact of reformatory education on the manifest behaviour of juvenile delinquents. In the second phase a new group therapy programme was tried on the inmates of the reformatory institute with a hope of accelerating the progress of this group. The effects of the group therapy programme were also evaluated. The investigation was limited to certain measurable aspects of behaviour, such as delinquency proneness, manifest behavioural difficulties, and attitudes towards institutionalization concluded the researchers.9

Peter M. Heyns, Hermanus G. Van Niekerk and Johan A. Le Roux, from University of Stellenbosch, in their article on Moral Judgment and Behavioural Dimensions Of Juvenile Delinquency, found that, "the relationship of levels of moral reasoning to behavioural dimensions of juvenile delinquency was investigated, using 162 delinquent boys in a reformatory. The delinquents with anti-social ego-centristic

<sup>&</sup>lt;sup>9</sup> P. S. Hundal, H. S. Brar, Measuring The Impact Of Reformatory Education On The Manifest Behavior And Some Psycho-Social Aspects Of Juvenile Delinquents, Int. Rev. App. Psychol. (1971), Vol. 20, No. 2

tendencies did not display lower principled morality scores. Therefore, understanding moral development indices could differentiate between delinquents."<sup>10</sup>

Developmental levels of moral reasoning and juvenile delinquency are as follows:

- The morality of obedience: 'You do what you're told.'
- The morality of instrumental egoism and simple exchange: 'Do your own thing.'
- The morality of personal concordance: 'Be considerate, nice and the morality of rules and duty to the social order: 'everyone in society is obligated and protected by the law.' Be kind and you'll get along with people.'
- The morality of social contract: 'The greatest good for the greatest number.'
- The morality of the principles of ideal social cooperation.

On the Psychiatric Aspects of Juvenile Delinquency, the causative factors of not only juvenile delinquency but of criminality were looked into. Discussing the etymology of delinquency, disturbances in the psychological development of the personality and the psychological common denominator of delinquency can be found in the "feeling of insecurity to which any criminal tendency, from whatever source, gives rise," and that guilt leads to more anxiety, thereby completing the vicious circle of anxiety, aggression, guilt. 11

<sup>&</sup>lt;sup>10</sup> Peter M. Heyns, Hermanus G. Van Niekerk And Johan A. Le Roux, Moral Judgment And Behavioral Dimensions Of Juvenile Delinquency, University Of Stellenbosch, Int. J. Adv. Couns 4:139-151 (1981)

<sup>&</sup>lt;sup>11</sup> Psychiatric Aspects of Juvenile Delinquency, Lucien Bovet Review by: Marcel Frym The Journal of Criminal Law, Criminology, and Police Science, Vol. 43, No. 2 (Jul. - Aug.,1952), p. 231 Published by: Northwestern University Stable URL: http://www.jstor.org/stable/1139277

TABLE 9.6
Education & Family Background of Apprehended Children in Conflict with Law - 2020

	Eddtation & I	Education Family Background  Education Family Background									
S. No	Districts	Illite- rate	Upto Primary	Above Primary to Matric	Above Matric to Higher Secondary	Above Higher Secon- dary	Total	Living with Parents	Living with guard- ian	Home- less	Total
1	2	3	4	5	6	7	8	9	10	11	12
1	Ariyalur	0	12	37	26	10	85	85	0	0	85
2	Chennai	9	372	459	159	21	1020	919	70	31	1020
3	Coimbatore	0	14	0	0	0	14	14	0	0	14
4	Coimbatore City	3	4	21	5	0	33	33	0	0	33
5	Cuddalore	0	8	19	0	0	27	27	0	0	27
6	Dharmapuri	0	1	5	4	0	10	10	0	0	10
7	Dindigul	0	7	61	22	3	93	93	0	0	93
8	Erode	0	4	0	0	0	4	4	0	0	4
9	Kanchipuram	0	0	0	0	0	0	0	0	0	0
$\overline{}$	Kanyakumari	0	0	7	15	0	22	22	0	0	22
11	Karur	0		0	0	0	0	0	0	0	0
-	Krishnagiri	0	2	0	0	0	2	2	0	0	2
13	Madurai Chi	0	72	1101	0	0	1173	1169	5	0	1173
-	Madurai City	7	34	59 27	14	0	114 33	109	10	0	114
-	Nagapattinam Namakkal	0	5 9		3	0	26	26	0	0	33 26
	Nilgiris	0	0	14	6	0	9	9	0	0	9
-	Perambalur	3	0	10	24	35	72	60	10	2	72
19	Pudukottai	2	1	18	4	8	33	20	3	10	33
$\overline{}$	Ramnathapuram	0	0	32	5	0	37	37	0	0	37
	Railway Chennai	3	4	18	6	0	31	31	0	0	31
	Railway Trichy	0	0	5	0	0	5	5	0	0	5
23	Salem	0	0	25	0	0	25	25	0	0	25
	Salem City	6	12	0	0	0	18	18	0	0	18
-	Sivagangai	0	9	11	0	34	54	37	10	7	54
	Thanjavur	0	6	10	9	69	94	94	0	0	94
27	Theni	0	4	32	16	0	52	52	0	0	52
-	Thirunelveli	3	12	62	7	2	86	83	3	0	86
-	Thirunelveli City	0	1	7	0	0	8	8	0	0	8
30	Thiruvallur	0	16	19	12	4	51	51	0	0	51
31	Thiruvannamalai	5	17	5	0	0	27	18	9	0	27
32	Thiruvarur	3	8	9	0	0	20	20	0	0	20
33	Thoothukudi	0	2	92	84	38	216	202	14	0	216
-	Tiruppur	0	0	6	3	0	9	4	0	5	9
	Tiruppur City	0	3	6	0	0	9	9	0	0	9
36	Trichy	0	3	36	39	21	99	64	5	30	99
37	Trichy City	5	17	48	2	0	72	68	4	0	72
38	Vellore	5	12	27	0	0	44	36	8	0	44
39	Villupuram	0	15	8	6	0	29	29	0	0	29
40	Virudhunagar	6	18	13	4	0	41	39	2	0	41
	Cyber Cell	0	0	0	0	0	0	0	0	0	0
42	Other Units	0	0	0	0	0	0	0	0	0	0
43	Chengalpattu	0	0	0	0	0	0	0	0	0	0
44	Kallakurichi	0	0	0	0	0	0	0	0	0	0
45	Ranipet	0	0	1	0	0	1	1	0	0	1
46	Tiruppattur	0	5	12	0	0	17	4	13	0	17
47	Tenkasi	0	3	14	11	0	28	28	0	0	28
	TOTAL DISTRICTS	60	712	2339	487	245	3843	3588	170	85	3843

Data from Tamil Nadu Crime Review 2020

#### **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 under privileged caste group are poor compared to other caste groups. Some of the ethnic groups suffer from dis-crimination. 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." 12

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 despite of different and varied cultural backgrounds is found with common characteristics universally..."<sup>13</sup>

Poverty is one of the significant factors behind juvenile delinquency. The vast majority of delinquents originate from underprivileged families. They submit their

<sup>&</sup>lt;sup>12</sup> Ms. ABHINANDA CHOUDHURY, DR. M. SREEDEVI XAVIER, Juvenile Delinquency in India: A Socio-Psychological Analysis, Volume: 4 | Issue: 4 | April 2015 • ISSN No 2277 – 8179 <a href="https://www.worldwidejournals.com/international-journal-of-scientific-research">https://www.worldwidejournals.com/international-journal-of-scientific-research</a> (IJSR)/fileview.php?val=April\_2015\_1427978877\_\_162.pdf

<sup>&</sup>lt;sup>13</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

offences as an individual from packs. 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, hunger. They will neglect the youngsters. 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>14</sup>

#### **Literacy and Juvenile Delinquency**

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. However, the current research on literacy strategies is limited due to the small number of recent studies conducted, focus on short-term interventions without consideration to long-term outcomes, small sample sizes used that are not representative of all youth (e.g., English Language Learners), little attention paid to the context in which the study was implemented, and the narrow breadth of components of literacy studied. In the absence of a strong empirical knowledge base on teaching comprehensive literacy skills within a juvenile justice setting, reliance on validated strategies for similar (e.g., youth who are neglected, homeless, or at-risk) or more general populations with thoughtful adaption for the context and continued analysis of the impacts on students is suggested." <sup>15</sup>

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<sup>&</sup>lt;sup>14</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>15</sup> Mindee O'Cummings, Sarah Bardack, Simon Gonsoulin, The Importance of Literacy for Youth Involved in the Juvenile Justice System, The National Evaluation and Technical Assistance Center, January, (2010) Washington, D.C <a href="https://files.eric.ed.gov/fulltext/ED594436.pdf">https://files.eric.ed.gov/fulltext/ED594436.pdf</a>

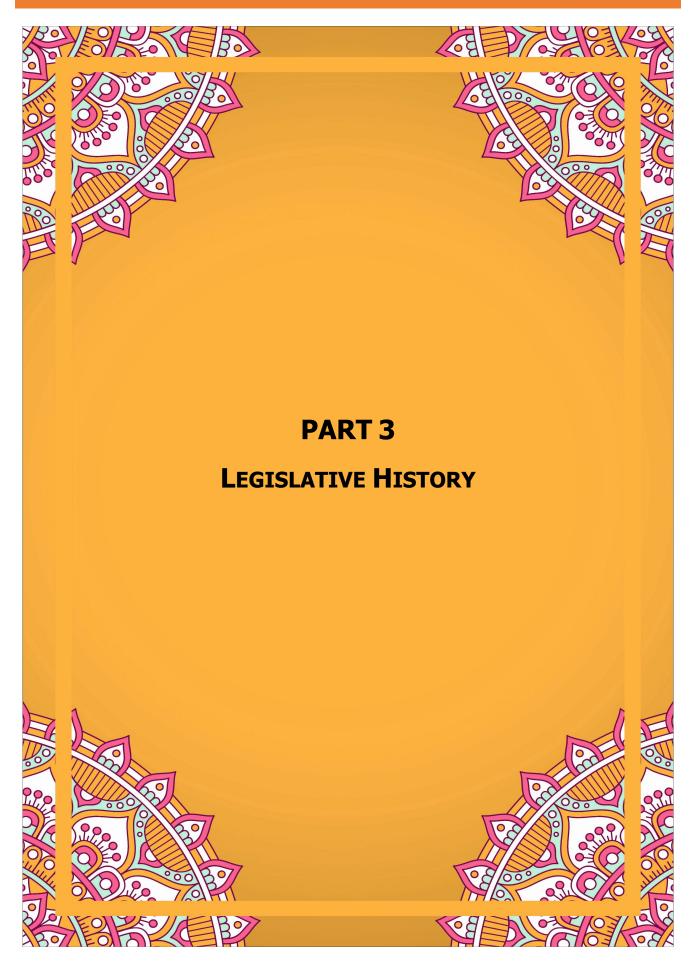
One of the characteristics of juveniles incarcerated in correctional and detention facilities is their poor experience with elementary and secondary education. For many, difficulties in reading underlie their poor academic achievement. However, it has been demonstrated that with effective instructions like the reading levels of incarcerated youth can improve dramatically.<sup>16</sup>

#### International Conventions & Instruments

- Beijing Rules- Administration of Juvenile Justice
- Riyadh Guidelines- Prevention of Juvenile Delinquency
- Havana Conventions Protection of Juvenile Deprived of their Liberty
- Vienna Guidelines Guidelines for chidlren in Criminal Juvenile System
- These guidelines and Conventions are signed by all States of UN to protect rights of Children.



<sup>&</sup>lt;sup>16</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) <a href="https://www.ojp.gov/pdffiles/lit.pdf">https://www.ojp.gov/pdffiles/lit.pdf</a>



#### **PART 3: LEGISLATIVE HISTORY**

## **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 Juveniles 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.

## **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.

# 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. 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.

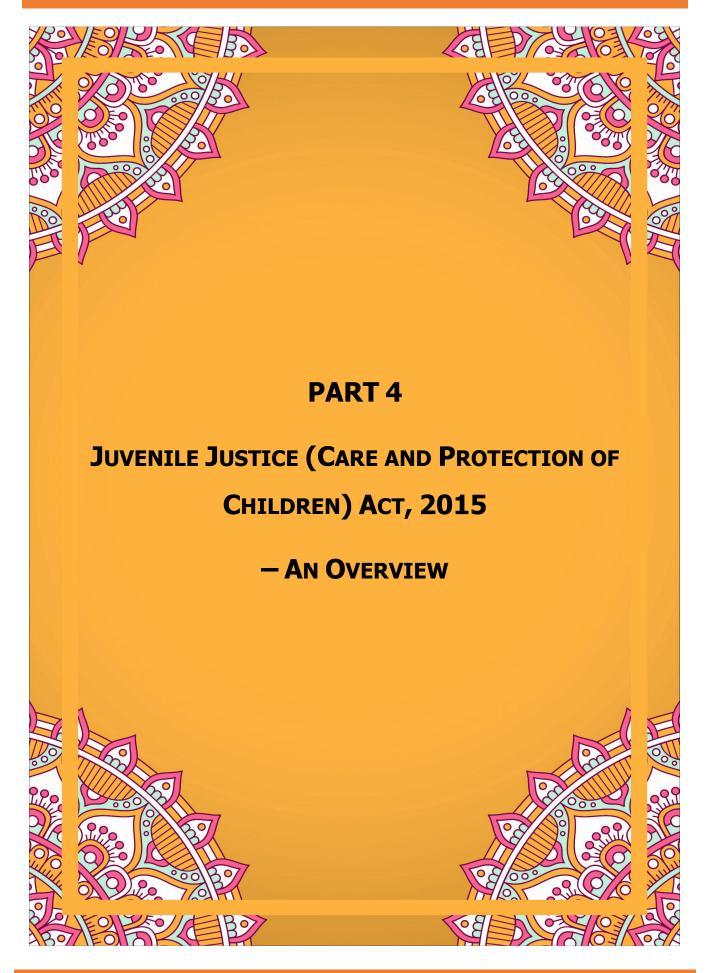
## 2021 Amendment to the JJ Act, 2015

The Object and Reasons of the 2021 Amendment is that, adoption cases have been significantly delayed in courts. Moreover, it is said that adoption cases are non-adversarial in nature and can be dealt through a well laid out process. A similar Bill empowering district magistrates to issue adoption orders was introduced in Lok Sabha in August 2018. Yet, the Bill lapsed with the termination of 16th Lok Sabha. As per Juvenile Justice (Care and Protection of Children) Act, 2015, the adoption of a child is final on the issue of adoption order by the Civil Court. This amendment provides for the district magistrate (including additional district magistrate) instead of the court to issue such adoption orders.

The 2015 Act categorises offences committed by juveniles as heinous offences, serious offences, and petty offences. The Amendment augments those serious offences to include offences for which maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is less than seven years.

In 2020, the Apex Court in *Shilpa Mittal v. State (NCT of Delhi) [(2020) 2 SCC 787]* observed that, "the Act does not deal with offences where the maximum sentence is more than seven years of imprisonment, but there is no minimum sentence, or minimum sentence is of less than seven years". The Court ordered that these offences should be categorised as serious offences. This amendment also seeks to give effect to order of the Court.





## PART 4: Juvenile Justice (Care and Protection of Children) Act, 2015

#### - AN OVERVIEW

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 recent Amendment of 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.

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

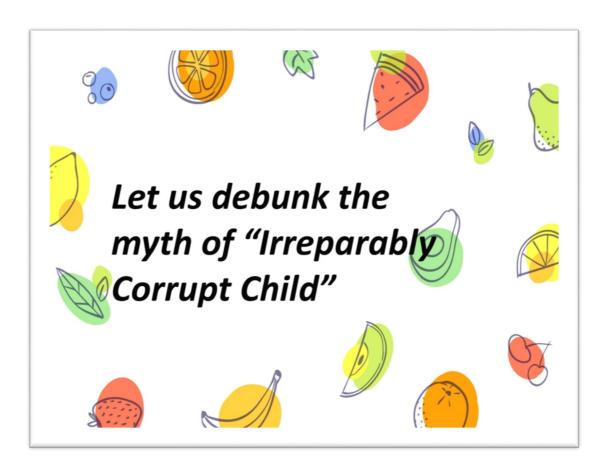
The Committee Report concluded that the existing juvenile system is not only reformative and rehabilitative in nature but also recognises the fact that, the age of 16-18 years is an extremely sensitive and critical age requiring greater protection. The committee looked at available statistics, scientific 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.



## **CHAPTER I: Preliminary**

This Act will apply to all issues concerning child's needs care and security and youths in strife with law, including anxiety, confinement, arraignment, appropriate punishment or detainment, restoration and social re-incorporation of kids in a struggle with law.

## **Important Definitions under the 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.

**Section 2(14)** "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—
- (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
- (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
- (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.

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."

**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.

**Section 2(19)** "Children's Home" means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50.

**Section 2(20)** "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

**Section 2(21)** "Child care institution" means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services.

**Section 2(26)** "District Child Protection Unit" means a Child Protection Unit for a District, established by the State Government under section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district.

**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.

Section 2(35) "Juvenile" means a child below the age of eighteen years.

In *Shilpa Mittal v. State (NCT of Delhi)*, (2020) 2 SCC 787, the Supreme Court held that, "A bare reading of Sections 2(12), 2(13) and 2(35) clearly shows that a child or a juvenile is a person who has not completed 18 years of age, and a child in conflict with law is a child/juvenile who commits an offence when that child/juvenile has not completed 18 years of age. "Petty offences" have been defined under Section 2(45) to mean offences for which the maximum punishment provided under any law including the IPC, is imprisonment up to 3 years. "Serious offences" mean, offences for which punishment under any law is imprisonment

between 3-7 years. "Heinous offences" have been defined to mean offences for which the minimum punishment under any law is imprisonment for 7 years or more. This was a departure from the previous legislation on the subject where the offences had not been categorised as heinous or serious."

**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(46)** "place of safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in charge of which is willing to 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(48)** "probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958) or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit.

**Section 2(54)** "serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years.

**Section 2(55)** "special juvenile police unit" means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107.

**Section 2(56)** "special home" means an institution established by a State Government or by a voluntary or non-governmental organisation, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board.



## **CHAPTER II: General Principles of Care and Protection of Children**

#### JJ Act, 2015

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

- (i) *Principle of presumption of innocence*: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- (ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.
- (iii) *Principle of participation*: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- (iv) *Principle of best interest*: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.
- (v) *Principle of family responsibility*: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- (vi) *Principle of safety*: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.
- (vii) *Positive measures*: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.
- (viii) *Principle of non-stigmatising semantics*: Adversarial or accusatory words are not to be used in the processes pertaining to a child.
- (ix) *Principle of non-waiver of rights*: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
- (x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.
- (xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- (xii) *Principle of institutionalisation as a measure of last resort*: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
- (xiii) *Principle of repatriation and restoration*: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.
- (xiv) *Principle of fresh start*: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
- (xv) *Principle of diversion*: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.
- (xvi) *Principles of natural justice*: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

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."

## **Chapter III: 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**

#### JJ Act, 2015

**Section 4. Juvenile Justice Board.**— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

#### JJ Model Rules, 2016

**Rule 3. Board.-** There shall be one or more Boards in each district to be constituted by the State Government through a notification in the Official Gazette.

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 begins with the 'saving clause' which means that an overriding effect over the Code of Criminal Procedure,1973 has been given to this provision. Therefore, Section 4 is an enabling 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**

#### JJ Act, 2015

**Section 4(2)** - A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years' experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

#### JJ Model Rules, 2016

- **Rule 4. Composition of the Board.-** (1) The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class having at least three years' experience to be designated as the Principal Magistrate of the Board and two social worker members, of whom one shall be a woman, forming a Bench.
- (2) The social worker members shall be appointed by the State Government on the recommendations of the Selection Committee constituted under these rules.
- (3) The social worker members shall not be less than thirty-five years of age and shall have at least seven years of experience of working with children in the field of education, health, or welfare activities, or should be a practicing professional with a degree in child psychology or psychiatry or sociology or in the field of law.
- (4) As far as possible, the two social worker members so selected for a Board shall be from different fields.
- (5) All members of the Board including the Principal Magistrate, shall be given induction training and sensitisation within a period of sixty days from the date of appointment.

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, psycho-social workers or other relevant experts.

## **Eligibility and Tenure of Members of JJB**

#### JJ Act, 2015

- **Section 4(3)** No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.
- (4) No person shall be eligible for selection as a member of the Board, if he—
  - (i) has any past record of violation of human rights or child rights;
- (ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
- (iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
- (iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

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.

#### JJ Act, 2015

- **Section 4(6)** The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.
- (7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he—
  - (i) has been found guilty of misuse of power vested under this Act; or
- (ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or
  - (iii) fails to attend less than three-fourths of the sittings in a year; or
  - (iv) becomes ineligible under sub-section (4) during his term as a member

### JJ Model Rules, 2016

- **Rule 5. Term of Members of the Board .-** (1) The term of the social worker member of the Board shall not be more than for a period of three years from the date of appointment.
- (2) A social worker member of the Board shall be eligible for appointment of maximum of two terms, which shall not be continuous.
- (3) The members may resign at any time, by giving one month's notice in writing to the State Government.
- (4) Any vacancy in the Board shall be filled by appointment of another person from the panel of names prepared by the Selection Committee.

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.

#### JJ Act, 2015

- **Section 7. Procedure in relation to Board.**—(1) The Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts.
- (2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.
- (3) A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings: Provided that there shall be at least two members including the Principal Magistrate present at the time of
- (4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

final disposal of the case or in making an order under sub-section (3) of section 18.

#### JJ Model Rules, 2016

- **Rule 6. Sittings of the Board.-** (1) The Board shall hold its sittings in the premises of an observation home or at a place in proximity to the observation home or, at a suitable premise in any Child Care Institution meant for children in conflict with law run under the Act, and in no circumstances shall the Board operate from within any court or jail premises.
- (2) The Board shall ensure that no person(s) un-connected with the case remains present in the room when the case is in progress.
- (3) The Board shall ensure that only those person(s), in the presence of whom the child feels comfortable, are allowed to remain present during the sitting.
- (4) The Board shall hold its sittings in a child-friendly premises which shall not look like a court room in any manner and the sitting arrangement should be such to enable the Board to interact with the child face to face.
- (5) While communicating with the child, the Board shall use child friendly techniques through its conduct and shall adopt a child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child.
- (6) The Board shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Board and the child.
- (7) The Board shall sit on all working days for a minimum of six hours commensurate with the working hours of a Magistrate Court, unless the case pendency is less in a particular district and the State Government issues an order in this regard, or the State Government may, by notification in the Official Gazette constitute more than one Board in a district after giving due consideration to the pendency of the cases, area or terrain of the district, population density or any other consideration.
- (8) When the Board is not sitting, a child in conflict with law may be produced before an individual member of the Board. For the said purpose, one member of the Board shall always be available or accessible to take cognizance of any matter of emergency and necessary directions required to deal with the emergency situation shall be given by such member to the Special Juvenile Police Unit or the local police of the district. The Principal Magistrate shall draw up a monthly duty roster of the members who shall be so available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/ Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Committees, the District Child Protection Unit and the Special Juvenile Police Unit.
- (9) The social worker members of the Board shall be paid not less than Rs. 1500/- per sitting which shall include sitting allowance, travel allowance and any other allowance, as the State Government may prescribe.
- (10) The Board shall be provided infrastructure and staff by the State Government.

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

#### JJ Act, 2015

**Section 8(1)** - Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

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**

#### JJ Act, 2015

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.

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:

#### JJ Model Rules, 2016

**Rule 7. Functions of the Board.-** (1) The Board shall perform the following additional functions, namely:

- (i) whenever necessary, the Board shall provide a translator or interpreter or special educator who
- shall be paid not less than Rs.1500 per day and in case of translator, not exceeding Rs.100 per page. For the said purpose, the District Child Protection Unit shall maintain a panel of translators, interpreters and special educators who shall forward the same to the Board, the qualifications of the translator, interpreter and special educator shall be as prescribed under the POCSO Act, 2012 and rules framed thereunder;
- (ii) wherever required issue rehabilitation card in Form 14 to the child in conflict with law to monitor the progress made by the child;
- (iii) wherever required, pass appropriate orders for re-admission or continuation of the child in school where the child has been disallowed from continuing his education in a school on account of the pendency of the inquiry or the child having stayed in a Child Care Institution for any length of time;
- (iv) interact with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law, including sending a child for the purpose of an inquiry or rehabilitation to a Board in another district or State;
- (v) inspect Child Care Institutions for children in conflict with law, issue directions in cases of any noticeable lapses, suggest improvements, seek compliance and recommend suitable action, including against any employee found in dereliction of duty to the District Child Protection Unit;
- (vi) maintain a suggestion box or grievance redressal box in the premises of the Board at a prominent place to encourage inputs from children and adults alike which shall be operated by the nominee of the Principal Magistrate;
- (vii) ensure smooth functioning of Children's Committees in the Child Care Institutions for children in conflict with law, for realising children's participation in the affairs and management of such Child Care Institutions;
- (viii) review the Children's suggestion book at least once in a month;
- (ix) ensure that the Legal cum Probation Officer in the District Child Protection Unit and the State or District Legal Aid Services Authority extends free legal services to a child; and
- (x) deploy, if necessary, the services of student volunteers or non-governmental organisation volunteers for para-legal and other tasks such as contacting the parents of child in conflict with law and collecting relevant social and rehabilitative information about the child.

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.

Normally, the police are expected to produce the child before the JJB and not any other magistrate. Section 9, 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.

#### JJ Act, 2015

#### Section 9. Procedure to be followed by a Magistrate who has not been empowered under this Act.—

- (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.
- (2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:
- Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.
- (3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.
- (4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

#### **CHAPTER IV: 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.

## **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.

#### JJ Act, 2015

Section 10. Apprehension of child alleged to be in conflict with law.— (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

- (2) The State Government shall make rules consistent with this Act,—
  - (i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;
  - (ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

Section 13. Information to parents, guardian or probation officer.—(1) Where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform—

- (i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and
- (ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.
- (2) Where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board.

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.

Section 11 prescribes the role of the person in whose charge child in conflict with law is placed.

#### JJ Act, 2015

**Section 11. Role of person in whose charge child in conflict with law is placed.**— Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such 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

#### JJ Act, 2015

Section 26. Provision with respect of run away 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.

followed. 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."



## **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 appears 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 sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home 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."

## **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

#### 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.

committed. Sections 15 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 postrelease 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.

### 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 guardian, 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 (g) of sub-section (1) of section 18 of the Act.

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.

### JJ Act, 2015

Section 5. Placement of person, who cease to be a child during process of inquiry.— Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

Section 6. Placement of persons, who committed an offence, when person was below the age of eighteen years.— (1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.

- (2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.
- (3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.



## **Preliminary Assessment by JJB**

### 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 sub-section (3) of section 18:

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

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

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

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

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.

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 discernable 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.

## **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.

### JJ Act, 2015

- **Section 16. Review of pendency of inquiry.** (1) 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.
- (2) 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.
- (3) 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.

### JJ Model Rules, 2016

- **Rule 12. Pendency of Inquiry.-** (1) For the purpose of sub-section (3) of section 16 of the Act, the Board shall maintain a 'Case Monitoring Sheet' of every case and every child in Form 11. The said Form shall be kept at the top of each case file and shall be updated from time to time. The following points shall be considered so far as 'progress of inquiry' mentioned in Form 11 is concerned:
  - (i) time schedule for disposal of the case shall be fixed on the first date of hearing;
  - (ii) scheduled date given in column No. (2) of 'progress of inquiry' shall be the outer limit within which the steps indicated in column (1) are to be completed.
- (2) The Board shall submit a quarterly report in Form 12 about the pendency of the cases, visits to Homes etc. to the following:
  - (i) Chief Judicial Magistrate or Chief Metropolitan Magistrate;
  - (ii) District Magistrate.
- (3) The District Judge shall conduct an inspection of the Board once every quarter and appraise the performance of the members of the Board on the basis of their participation in the proceedings of the Board and submit a report to the Selection Committee constituted under rule 87 of these rules.

## Orders passed by the JJB

### JJ Act, 2015

- Section 17. Orders regarding a child not found to be in conflict with law.— (1) 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.
- (2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.
- Section 18. Orders regarding child found to be in conflict with law.— (1) 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, 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, 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:

Provided 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.

- (2) If an order is passed under clauses (a) to (g) of sub-section (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.
- (3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

### JJ Act, 2015

Section 21. 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. Proceeding under Chapter VIII of the Code of Criminal Procedure not to apply against child.— Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

Section 23. No joint proceedings of child in conflict with law and person not a child.— (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) 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.

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.



## **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.

## **Powers of Children's Court**

### JJ Act, 2015

**Section 19. Powers of Children's Court.**— (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;
- (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.
- (2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.
- (3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

- (4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.
- (5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

The Supreme Court in *Shilpa Mittal Vs. State (NCT of Delhi) [(2020) 2 SCC 787]* in paragraph 18, observed that, "The Children's Court constituted under the 2015 Act has to determine whether there is actually any need for trial of the child as an adult under the provisions of CrPC and pass appropriate orders in this regard. 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 subsection (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**

### JJ Model Rules, 2016

**Rule 14. Destruction of records.-** The records of conviction in respect of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer, and thereafter be destroyed by the Person-in-charge or Board or Children's Court, as the case may be: Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19 of the Act, the relevant records of conviction of such child shall be retained by the Children's Court.

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.

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.



## **CHAPTER V: 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.

### JJ Act, 2015

Section 27. Child Welfare Committee.— (1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

- (2) The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children.
- (3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.
- (4) No person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for at least seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development.
- (5) No person shall be appointed as a member unless he possesses such other qualifications as may be prescribed.
- (6) No person shall be appointed for a period of more than three years as a member of the Committee.
- (7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if—
  - (i) he has been found guilty of misuse of power vested on him under this Act;
  - (ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
  - (iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.
- (8) The District Magistrate shall conduct a quarterly review of the functioning of the Committee.
- (9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.
- (10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

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.

### JJ Model Rules, 2016

Rule 15. Composition and Qualifications of Members of the Committee.- (1) There shall be one or more Committees in each district to be constituted by the State Government through a notification in the Official Gazette.

- (2) The Chairperson and members of the Committee shall be appointed by the State Government on the recommendation of the Selection Committee under rule 87 of these rules.
- (3) The Chairperson and the members shall be above the age of thirty-five years and shall have a minimum of seven years of experience of working with children in the field of education, health, or welfare activities, or should be a practicing professional with a degree in child psychology or psychiatry or social work or sociology or human development or in the field of law or a retired judicial officer.
- (4) A member of the Committee shall be eligible for appointment of maximum of two terms, which shall not be continuous.
- (5) All persons, on selection shall mandatorily be given training under rule 89 within a period of sixty days from the date of appointment.
- (6) The Chairperson and the members may resign at any time by giving one month's notice in writing to the State Government.

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.

## **Procedure followed by the CWC**

### JJ Act, 2015

**Section 28. Procedure in relation to Committee.**—(1) The Committee shall meet at least twenty days in a month and shall observe such rules and procedures with regard to the transaction of business at its meetings, as may be prescribed.

- (2) A visit to an existing child care institution by the Committee, to check its functioning and well being of children shall be considered as a sitting of the Committee.
- (3) A child in need of care and protection may be produced before an individual member of the Committee for being placed in a Children's Home or fit person when the Committee is not in session.
- (4) In the event of any difference of opinion among the members of the Committee at the time of taking any decision, the opinion of the majority shall prevail but where there is no such majority, the opinion of the Chairperson shall prevail.
- (5) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding:

Provided that there shall be at least three members present at the time of final disposal of the case.

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) 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.

### JJ Model Rules, 2016

- **Rule 16. Rules and Procedures of Committee.-** (1) The Chairperson and members of the Committee shall be paid such sitting allowance, travel allowance and any other allowance, as the State Government may prescribe but not less than Rs.1500 /- per sitting.
- (2) A visit to an existing Child Care Institution by the Committee shall be considered as a sitting of the Committee.
- (3) The Committee shall hold its sittings in the premises of a children's home or, at a place in proximity to the children's home or, at a suitable premises in any institution run under the Act for children in need of care and protection.
- (4) The Committee shall ensure that no person(s) un-connected with the case remains present in the room when the session is in progress.
- (5) The Committee shall ensure that only those person(s), in the presence of whom the child feels comfortable, shall be allowed to remain present during the sitting.
- (6) At least one member of the Committee shall always be available or accessible to take cognizance of any matter of emergency and issue necessary directions to the Special Juvenile Police Unit or local police of the district. For this purpose the Chairperson of the Committee shall draw up a monthly duty roster of the Committee members who shall be available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Board, the District Child Protection Unit and the Special Juvenile Police Unit.
- (7) The Committee shall sit on all working days for a minimum of six hours commensurate with the working hours of a magistrate court, unless the case pendency is less in a particular district and the State Government concerned issues an order in this regard:
- Provided that the State Government may, by notification in the Official Gazette constitute more than one Committee in a district after giving due consideration to the pendency of the cases, area or terrain of the district, population density or any other consideration.
- (8) On receiving information about a child or children in need of care and protection, who cannot be produced before the Committee, the Committee shall reach out to the child or children and hold its sitting at a place that is convenient for such child or children.
- (9) While communicating with the child, the Committee members shall use child friendly techniques through their conduct.
- (10) The Committee shall hold its sittings in a child-friendly premises which shall not look like a court room in any manner and the sitting arrangement should be such to enable the Committee to interact with the child face to face.
- (11) The Committee shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Committee and the children
- (12) The Committee shall be provided infrastructure and staff by the State Government.

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 Rule reinforces the principle of centring the best interests of the child, and enabling participation of the child.

## **Powers of the CWC**

#### JJ Act, 2015

**Section 29. Powers of Committee.**— (1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

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.

## **Functions and Responsibilities of the CWC**

### JJ Act, 2015

**Section 30. Functions and responsibilities of Committee.**— The functions and responsibilities of the Committee shall include—

- (i) taking cognizance of and receiving the children produced before it;
- (ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;
- (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;
- (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;
- (v) directing placement of a child in foster care;
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;
- (vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;
- (viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;
- (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;
- (xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;
- (xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;
- (xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);
- (xiv) dealing with cases referred by the Board under sub-section (2) of section 17;
- (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;
- (xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;
- (xvii) accessing appropriate legal services for children;
- (xviii) such other functions and responsibilities, as may be prescribed.

The other functions and responsibilities as mentioned in Section 30(xviii), are provided under Rule 17, JJ Model Rules, 2016. 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.

## CHAPTER VI: Procedure in Relation to Children in Need of Care and Protection

## 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.

## **Rule 18 Production before Committee**

Any child in need of care and protection shall be produced before the Committee during the working hours at its place of sitting and beyond working hours before the member as per the duty roster. Where the child cannot be produced before the Committee, the Committee shall reach out to the child where the child is located. Whoever produces the child before the Committee shall make a report in Form 17 containing the particulars of the child as well as the circumstances in which the child was received or found. In case of a child less than two years of age, who is medically unfit, the person or the organization who comes in contact with the child in need of care and protection shall send a written report along with the photograph of the child to the Committee within twenty-four hours and produce the child before the Committee as soon as the child is medically fit along with a medical certificate to that effect.

The Committee after interaction with the child may issue directions for placing the child with the parent or guardian or Children's Home, where such Home is available in the vicinity of the Committee before which the child is produced, and in the absence of such Home, to direct the placing of the child in safe custody of a fit person or a fit facility. The Committee or the member on duty shall issue the order

for placing the child in Children's Home in Form 18. The Committee or the member on duty shall order immediate medical examination of the child produced before the Committee or the member on duty, if such examination is needed. 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. The Committee may, while making an order in Form 19 for placing a child under the care of a parent, guardian or fit person, pending inquiry or at the time of restoration, as the case may be, direct such parent, guardian or fit person to enter into an undertaking in Form 20.

Whenever the Committee orders a child to be kept in an institution, it shall forward to the Person-in charge of such institution, a copy of the order of short term placement pending inquiry in Form 18 with particulars of the Child Care Institution and parents or guardian and previous record. A copy of such order shall also be forwarded to the District Child Protection Unit.

- Geetanjali Dogra v. State, 2019 SCC OnLine Del 10009
- Priya Yadav v. State of M.P. 2017 (2) MPLJ 404

"Under the Act of 2015 and the Rules framed thereunder, CWC is not conferred with a power to give the custody of the child. It is a case wherein due to dispute in between the husband and wife, proceedings are pending between them, however CWC, Indore cannot direct visitation right to meet the child either to husband or to wife in the facts of the case. In the said context the provisions of the Guardians and Wards Act, 1890 are relevant whereby as per section 7, the court may make an order as to guardianship on submitting an application by a person as specified in section 8 before the competent Court having jurisdiction to entertain such an application in a form as prescribed. As per section 7 the Court may have power to decide who would be the guardian of the child. Similarly in the Family Courts Act, as per section 7(1)(b), explanation (g) the proceedings may be brought before the Family Court in a suit or proceeding asking guardianship of the child or the custody or access to any minor.

In view of the discussions made hereinabove, it can safely be concluded that under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Rules, 2016, Child Welfare Committee does not confer power to give custody of a child taking it from mother and give to the father in the manner as done by the CWC, Indore in the present case. It is seen that CWC, Indore is passing orders granting custody of the children and one of such order has been brought to the notice of this Court dated 25.5.2015. In the said case also the proceedings were pending before the Family Court for custody of the child but CWC usurp the jurisdiction and during pendency of those proceedings directed custody of the child to the mother. Similar is the position in the present case wherein also as per Annexure P-2, an application for custody of the child has also been filed before the Family Court but during pendency of the said application, respondent No. 5 applied to the CWC whereon the order of the visitation right has been passed directing to bring the child in the office of CWC, Indore on every Friday between 10:00 a.m. to 5:00 p.m. to the petitioner. In my considered opinion the aforesaid exercise of powers by the CWC, Indore is not in conformity with the Act and the Rules and also contrary to the powers conferred under the other law applicable for the time being in force, therefore the order impugned is set aside.

In this respect it is directed that they may exercise the powers within the ambit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules framed therein and not beyond the same."

# 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 a child referred shall be mandatorily uploaded on a portal as may be specified by the Central Government or the Committee or the District Child Police Unit or the child care institution.

## **❖ Thankamma Nelliyaniyil v. State of Kerala, 2017 SCC OnLine Ker 10962**

"12. Section 32(1) of the Act mandates the reporting within twenty-four hours regarding a child found separated from the guardian. Section 33 of the Act provides that if information regarding a child as provided under Section 32 is not given within twenty four hours, then such act shall be regarded as an offence. In this case, the prime allegation is that even though the eighth accused had received the child on 7.2.2017, the said aspect was not officially informed to the police or CWC within the time stipulated under Section 32 of the Act. The punishment for the said offence is provided under Section 34 of the Act. Section 34 of the Act provides imprisonment upto six months or a fine of Rs. 10,000/- or both, as punishment. Therefore, the said offence is also a bailable offence. Section 80 of the Act is not attracted against the petitioners herein, as there is no allegation that accused Nos. 8, 9 or 10 had received the child for the purpose of adoption without following the provisions or procedures as provided under the Act."

## 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.

## Arun v. State of Karnataka, 2019 SCC OnLine Kar 3089

"15. In Raju @ Ashish Vs. State of Uttar Pradesh [Crl.R.P No. 2492/2017, dated 03.07.2018 (unreported) case, referred to supra, the Allahabad High Court while interpreting phrase "defeat the ends of justice" held as:— "In other words, this Court found in the expression "defeat the ends of justice" a repose for the society to defend itself from the onslaught of a minor in conflict with law by certainly making relevant though not decisive, the inherent character of the offence committed by the minor".

16. The Hon'ble Supreme Court in Omprakash Vs. State of Rajasthan [Crl.A.No. 651/2012, dated 13.04.2012], about the phrase "defeat the ends ofjustice", held as follows:— "Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well-planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him".

## Section 34 Penalty for non-reporting

Offence u/S. 33 shall be punishable to imprisonment up to 6 months or fine of Rs. 10,000/- or both.

## Section 35 Surrender of Children

A parent or guardian who for physical, emotional and social factors beyond their control wishes to surrender a child shall produce the child before the Committee. After prescribed process of inquiry and counseling, the committee is satisfied a surrendered deed shall be executed by the parents or guardian, before the committee. The parents or guardian shall be given two months' time to reconsider their decision and in the intervening period the Committee shall either allow after due inquiry, the child to be with the parents of guardian under supervision or place the child in a Specialized Adoption Agency (if below 6 years of age) or Children's home (if above 6 years).

## Section 36 Inquiry

On production of a child or receipt of a report u/S. 31, the Committee shall hold an inquiry. The committee may pass an order to send the child to the Children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer. All children below 6 years of age, who are orphan, surrendered or appear to be abandoned, shall be placed in a specialized adoption agency where available.

The social investigation shall be completed within 15 days so as to enable the committee to pass final order within four months of first production of the child. (S. 38 specifies the time for completion of inquiry in case of orphans, abandoned or surrendered children). After completion of the enquiry, if the Committee so opines that, the said child has no family or ostensible support or is in continued need of care and protection, the Committee may send the child to a Specialized Adoption Agency (if child below 6 years of age), Children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, or will the child attains (18 years of age). The situation of the child shall be reviewed by the Committee. The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate for review of pendency of cases.

The District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency and if necessary send a report of such reviews to the State Government who may cause the constitution of additional committees. If pendency of cases is continued to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee. The State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee. In case of any delay in the constitution of a new Committee, the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

## Rule 19 Procedure for Inquiry

The Committee shall inquire into the circumstances under which the child is produced and accordingly declare such child to be a child in need of care and protection. The Committee shall, prima facie determine the age of the child in order to ascertain its jurisdiction (pending further inquiry as per section 94). When a child is brought before the Committee, the Committee shall assign the case to a social worker or Case Worker or Child Welfare Officer or to any recognized non-governmental organization for conducting the social investigation u/S. 36(2) an Order in Form 21.

The Committee shall direct the person or organization concerned to develop an individual care plan in Form 7 including a suitable rehabilitation plan. The individual care plan prepared for every child in the institutional care shall be developed with the ultimate aim of the child being rehabilitated and re-integrated based on the case history, circumstances and individual needs of the child. The inquiry shall satisfy the basic principles of natural justice and shall ensure the informed participation of the child and the parent or guardian. The child shall be given an opportunity to be heard and his opinion shall be taken into consideration with due regard to his age and level of maturity.

The orders of the Committee shall be in writing and contain reasons. The Committee shall interview the child sensitively and in a child-friendly manner and will not use adversarial or accusatory words or words that adversely impact the dignity or self-esteem of the child. The Committee shall satisfy itself through documents and verification reports, before releasing or restoring the child, (Form 19), in the best interest of the child.

The social investigation conducted by a social worker or Case Worker or Child Welfare Officer of the institution or any non-governmental organization shall be (as per Form 22) and must provide an assessment of the family situation of the child in detail, and explain in writing whether it will be in the best interest of the child to

restore him to his family. Before the Committee releases or restores the child, the child as well as the parents or guardians may be referred to the Counsellor. The Committee shall maintain proper records of the children produced before it including medical reports, social investigation report, any other report(s) and orders passed by the Committee in regard to the Child. In all cases pending inquiry, the Committee shall notify the next date of appearance of the child not later than 15 days of the previous date and also seek periodic status report from the social worker or Case Worker or Child Welfare Officer conducting investigation on each such date. In all cases pending inquiry, the Committee shall direct the person or institution with whom the child is placed to take steps for rehabilitation of the child including education, vocational training, etc., from the date of first production of the child itself. Any decision taken by an individual member, when the Committee is not sitting, shall be ratified by the Committee in its next sitting.

At the time of final disposal of a case, there shall be at least three members present including the Chairperson, and in the absence of Chairperson, a member so nominated by the Chairperson to act as such. The Committee shall function cohesively as a single body and as such shall not form any sub-committees. Where a child has to be sent or repatriated to another district or state or country the Committee shall direct the District Child Protection Unit to take necessary permission as may be required, such as approaching the Foreigners Regional Registration Offices and Ministry of External Affairs for a no-objection certificate, contacting the counterpart Committee, or any other voluntary organization in the other district or state or country where the child is to be sent.

At the time of final disposal of the case, the Committee shall incorporate in the order of disposal, an individual care plan in Form 7 of such child prepared by the social worker or Case Worker or Child Welfare Officer of the institution or any non-governmental organization, as the case may be. While finally disposing of the case, the Committee shall give a date for follow-up of the child not later than one month

from the date of disposal of the case and thereafter once every month for the period of first six months and thereafter every three months for a minimum of one year or till such time as the Committee deems fit. Where the child belongs to a different district, the Committee shall forward the age declaration, case file and the individual care plan to the Committee of the district concerned which shall likewise follow-up the individual care plan as if it had passed such disposal order.

The individual care plan shall be monitored by means of a rehabilitation card in Form 14 issued for the purpose by the Committee passing the disposal order and which shall form part of the record of the Committee which follow up the implementation of the individual care plan. Such rehabilitation card shall be maintained by the Rehabilitation-cum-Placement Officer. All orders passed by the Committee in respect of a child in need of care and protection shall also be uploaded on the designated portal with due regard to the confidentiality and privacy of the child. When a parent or guardian, wishes to surrender a child u/S. 35(1), such parent or guardian shall make an application to the Committee in Form 23. Where such parent or guardian is unable to make an application due to illiteracy or any other reason, the Committee shall facilitate the same through the Legal Aid Counsel provided by the Legal Services Authority, the deed of surrender shall be executed as per Form 24.

The inquiry u/S. 35(3) shall be concluded by the Committee expeditiously and the Committee shall declare the surrendered child as legally free for adoption after the expiry of sixty days from the date of surrender. In case of orphan or abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption. In case an abandoned or orphan child is received by a Child Care Institution including a Specialised Adoption Agency, such a child shall be produced before the Committee within twenty-four hours (excluding the time necessary for the journey) along with a report in Form 17 containing the particulars and photograph of the child as well as the circumstances in which the

child was received by it and a copy of such report shall also be submitted by the Child Care Institution or a Specialised Adoption Agency to the local police station within the same period. The Committee shall issue an order in Form 18 for short term placement and interim care of the child, pending inquiry under section 36 of the Act.

The Committee shall use the designated portal to ascertain whether the abandoned child or orphan child is a missing child while causing the details of the orphan or the abandoned child to be uploaded. The Committee, after taking into account the risk factors, and in the best interest of the child, may direct the publication of the particulars and photograph of an orphan or abandoned child in national newspapers with wide circulation within seventy-two hours from the time of receiving the child for the purposes of tracing out the biological parents or the legal guardian(s).

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 82.

## Rule 20 Pendency of cases

The Committee shall maintain a 'Case Monitoring Sheet' of every case and in case there is more than one child in one case, a separate sheet shall be used for each child. The case monitoring sheet shall be in Form 26. The said Form shall be kept at the top of each case file and shall be updated from time to time. The following points shall be considered so far as 'progress of inquiry' mentioned in Form 26 is concerned (i) time schedule for disposal of the case should be fixed on the first date of hearing; (ii) scheduled date given in column (2) of 'progress of inquiry' shall be the outer limit within which the steps indicated in column (1) is to be completed. The Committee shall submit a quarterly report to District Magistrate in Form 16 for review of pendency of cases. The District Magistrate shall review the functioning of the Committee including by inspection once every quarter and also appraise the

performance of the Chairperson and the members of the Committee on the basis of their participation in the proceedings of the Committee and submit a report to the Selection Committee constituted under Rule 87.

- Sampurna Behura v. Union of India, (2018) 4 SCC 433 (Paras 47-51, 64-78, 94.4-94.8)
- **❖** S. 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 submitted by the Child Welfare Officer, child's wishes in the case the child is sufficiently mature to take a view) pass the orders to [a] declaration that the child is in need of care and protection, [b] restore the child to parents, guardians or family with or without supervision of child welfare officer or designated social worker, [c] placements of the child in children's home or fit facility or specialized adoption agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child, [d] placement of the child with fit person for long term or temporary care, [e] foster care u/S. 44, [f] sponsorship orders u/S. 45, [g] directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including 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 38 Procedure for declaring a child legally free for adoption

The Committee shall make efforts for tracing the parents or guardians of the child and on completion of inquiry if it is established that the child either an orphan having no one to take care or abandoned the Committee shall declare the child legally free for adoption within a period of 2 months from the date of production of the child.



## CHAPTER VII: Rehabilitation of 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.

### JJ Act, 2015

Section 39. Process of rehabilitation and social re-integration.— (1) The process of rehabilitation and social integration of children under this Act 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:

Provided 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.

- (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.
- (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.
- (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. Restoration of child in need of care and protection.—(1) The restoration and protection of a child shall be the prime objective of any Children's Home, Specialised Adoption Agency or open shelter.

- (2) The Children's Home, Specialised Adoption Agency or an open shelter, as the case may be, shall take such steps as are considered necessary for the restoration and protection of a child deprived of his family environment temporarily or permanently where such child is under their care and protection.
- (3) The Committee shall have the powers to restore any child in need of care and protection to his parents, guardian or fit person, as the case may be, after determining the suitability of the parents or guardian or fit person to take care of the child, and give them suitable directions.

Explanation.— For the purposes of this section, "restoration and protection of a child" means restoration to—

- (a) parents;
- (b) adoptive parents;
- (c) foster parents;
- (d) guardian; or
- (e) fit person

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.

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 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.

## **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).

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.

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 provides for sponsorship facility. Section 44 along with Rule 23 provides for foster care facility. Apart from the above, the State Government shall also set up place of safety as per Section 49.

## **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 provides for rehabilitation through education, which is the responsibility of the Child Care Institution.

## **Effective and Speedy Disbursal of Victim Compensation** <sup>17</sup>

Making compensation an integral aspect of right to life<sup>18</sup> in Rohtash @ Pappu Vs. State of Haryana (2008)<sup>19</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

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<sup>&</sup>lt;sup>17</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>18</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>19</sup> Rohtash @ Pappu Vs. State of Haryana, No. Cri.Appeal. No.250 0f 1999 (Punjab & Haryana 2008) Retrieved from http://rajasthanjudicialacademy.nic.in/docs/juds/42130.pdf.

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).

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 the case of *Chattar Singh Vs. Subhash, 2 ILR 470 (Delhi 2011).*, the Delhi High Court ruled that "the word "legal heir" refers to the people who would inherit property according to the personal laws of a person."

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."

## **CHAPTER IX: Other Offences against Children**

Not only do children commit offences, but offences against the children are also committed. 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 74 - Prohibition on disclosure of identity of children.

(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

- (2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.
- (3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

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.

In the case of *Shilpa Mittal v. State (NCT of Delhi), (2020) 2 SCC 787*, at page 802, The Supreme Court in para 37 of the judgement has 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."

## Section 75 - Punishment for cruelty to child.

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakh rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

### Rule 55 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Procedure in case of offence under section 75 of the Act. - (1) For the purposes of section 75 of the Act and this rule, giving a child in marriage shall be considered as cruelty to the child. On receipt of information of risk of a child being given in marriage, the police or any officer authorised under the Act or under the Prohibition of Child Marriage Act,2006 (6 of 2007), shall produce the child before the Committee for appropriate directions and rehabilitative measures.

(2) Where an act of cruelty to a child takes place in a Child Care Institution, or a school, or in any other place of care and protection to the child, considering the best interest of the child, the Board or the Committee or the Children's Court after consultation with the child and or parents or guardians shall provide alternative rehabilitation for the child. (3) A child covered under the Act requiring immediate medical attention shall be provided with required medical care and treatment by a hospital or clinic or facility upon a direction of the Board or the Committee made in this regard, free of cost. A failure to respond immediately resulting in serious injury, irreversible damage or threat to life or death shall be deemed to be wilful neglect of the child and shall tantamount to cruelty under section 75 of the Act on the direction of the Board or the Committee after a detailed inquiry.

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 offense 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. Employment of child for begging.

- (1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees: Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees.
- (2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2:

Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

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 - Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child.

Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or 36 tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

#### Rule 56 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Procedure in case of offence under section 77 of the Act. -

(1) Whenever a child is found to be under the influence of, or in possession of intoxicating liquor or narcotic drugs or psychotropic substances or tobacco products, including for the purpose of sale, the police shall enquire as to how the child came under the influence of, or possession of such intoxicating liquor or narcotic drugs or psychotropic substances or tobacco products and shall register an FIR forthwith.

- (2) The child who has been administered narcotic drugs or psychotropic substances or is found under the influence of the same may be produced either before the Board or the Committee as the case may be, and the Board or the Committee shall pass appropriate orders regarding rehabilitation and de-addiction of the child.
- (3) In case of a child found to be addicted to intoxicating liquor or tobacco products, the child shall be produced before the Committee which shall pass directions for rehabilitation including de-addiction of the child and transfer the child to a fit facility identified for the purpose.
- (4) In case any 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.
- (5) The Board, shall on its own or on complaint received from the Committee, issue directions to the police to register an FIR immediately.
- (6) The Board 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.
- (7) The Board or the Committee may also issue directions for transfer of the child to another Child Care Institution as the case may be.
- (8) Any shop selling intoxicating liquor, tobacco products, must display a message at a prominent place on their shop that giving or selling intoxicating liquor or tobacco products to a child is a punishable crime with upto seven years of rigorous imprisonment and a fine of upto one lakh rupees.
- (9) All tobacco products and intoxicating liquor must display a message that giving or selling intoxicating liquor or tobacco products to a child is a punishable crime with upto seven years of rigorous imprisonment and a fine of upto one lakh rupees.
- (10) 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 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.

# Section 78 - Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance.

Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.

#### Rule 57 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Procedure in case of offence under section 78 of the Act. -

- (1) Whenever a child is found to be vending, carrying, supplying or smuggling an intoxicating liquor, narcotic drug, or psychotropic substance, the police shall enquire how and from whom the child came into possession of the intoxicating liquor, narcotic drug, or psychotropic substance and shall register an FIR forthwith.
- (2) A child who is alleged to have committed an offence under section 78 of the Act shall be produced before the Board, which may transfer the child to the Committee, if the child is also in need of care and protection.

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] /(2017) 1 SCC 653] case, 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 – Exploitation of a child employee.

Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Explanation — For the purposes of this section, the term "employment" shall also include selling goods and services, and entertainment in public places for economic gain.

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 – Sale and procurement of children for any purpose

Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend up to seven years.

# Rule 58 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Procedure in case of offence under section 80 of the Act. -

- (1) Where any orphan, abandoned or surrendered child, is offered or given or received for the purpose of adoption without following the procedures as provided in the Act and the rules, the police shall, Suo motu, or on receipt of information in that regard register an FIR forthwith.
- (2) A child who has been so offered, given or received for the purpose of adoption shall be produced before the Committee forthwith which shall pass appropriate directions for rehabilitation of the child, including placing such child in a Specialised Adoption Agency.
- (3) Wherever any offence under section 80 of the Act is committed by a recognised Specialised Adoption Agency or by a person associated with such an agency, the Committee may also pass appropriate orders for placing the other children placed with the Specialised Adoption Agency in any other Child Care Institution or Specialised Adoption Agency.

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.

## Section 82 – Corporal punishment

- (1) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both.
- (2) If a person employed in an institution referred to in sub-section (1), is convicted of an offence under that sub-section, such person shall also be liable for dismissal from service, and shall also be debarred from working directly with children thereafter.
- (3) In case, where any corporal punishment is reported in an institution referred to in sub-section (1) and the management of such institution does not cooperate with any inquiry or comply with the orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be liable for punishment with imprisonment for a term not less than three years and shall also be liable to fine which may extend to one lakh rupees.

# Rule 59 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Procedure in case of offence under section 81 of the Act. -

- (1) On receipt of information about the selling or buying of a child, the police shall register an FIR forthwith.
- (2) Giving or agreeing to give, receiving or agreeing to receive any payment or reward in consideration of adoption, except as permitted under the adoption regulations framed by the Authority, towards the adoption fees or service charge or child care corpus by any prospective adoptive parent(s) or parent or guardian of the child or the Specialised Adoption Agency shall amount to an offence under section 81 of the Act and this rule.
- (3) A child, who has been subjected to buying or selling, shall be produced before the Committee forthwith which shall pass appropriate orders for the rehabilitation of the child.
- (4) Where any offence under section 81 of the Act is committed by a parent or a guardian of the child or any other person having actual charge or custody of the child, the Committee shall pass appropriate orders for placing the child in a Child Care Institution or fit institution or with a fit person, as the case may be.
- (5) Where any offence under section 81 of the Act is committed by a Child Care Institution including Specialised Adoption Agency or by a hospital or nursing home or maternity home, or a person associated with such an institution or agency, the Committee may also pass appropriate orders for placing the other children placed with such Child Care Institution or Specialised Adoption Agency or hospital or nursing home or maternity home in any other Child Care Institution or Specialised Adoption Agency or hospital or nursing home or maternity home, as the case may be.
- (6) The Committee shall recommend to the State Government that the registration or recognition of such agency or institution or the registration or license of such a hospital or nursing home or maternity home or such associated person under any law for the time being in force shall also be withdrawn.
- (7) Where the Judicial Magistrate First Class finds that the management of the institution is not cooperating with the inquiry or complying with the orders of the court under sub-section (3) of section 82 of the Act, the Judicial Magistrate First Class will either take cognizance of the offence himself or direct the registration of FIR and proceed against the person in-charge of the management of the institution.
- (8) Where the Board or the Committee or the State Government issues any directions to the management of the institution in respect of any incident of corporal punishment in the child care institution, the management shall comply with the same.
- (9) In the event of non-compliance, the Board on its own or on the complaint of the Committee or the State Government shall direct the registration of an FIR under sub-section (3) of section 82 of the Act. (10) Where a person has been dismissed from service or debarred from working directly with children or is convicted of an offence of subjecting a child to corporal punishment under sub-section (2) of section 82 of the Act, he shall stand disqualified from any further appointment under the Act and the rules.

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 3years 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. If the management does not cooperate the person in charge of the management will be made liable to imprisonment for three years and also for fine which may extend to one lakh rupees. 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 suggests following measures.

19. The 'right to remedy' includes providing (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for the harm suffered; (c) access to relevant information concerning violations and reparation mechanisms. 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. All educational institutions including schools and hostels, government as well as private, are custodians of children during the time the children are on their premises. It is thus the responsibility of the management/administration of the school/institution to ensure that children are safe from all forms of violence, including corporal punishment. Therefore, 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 – Use of child by militant groups or other adults.

- (1) Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.
- (2) Any adult or an adult group uses children for illegal activities either individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

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 – Kidnapping and abduction of child.

For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code (45 of 1860), shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

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 – Offences committed on disabled children.

Whoever commits any of the offences referred to in this Chapter on any child who is disabled as so certified by a medical practitioner, then, such person shall be liable to twice the penalty provided for such offence.

Explanation. —For the purposes of this Act, the term "disability" shall have the same meaning as assigned 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 – Classification of offences and designated court.

- (1) Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children's Court.
- (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 cognizable, non-bailable and triable by a Magistrate of First Class.
- (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, bailable and triable by any Magistrate.
- Explanation. —For the purposes of this Act, the term "disability" shall have the same meaning as assigned to it under clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).

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 87 – Abetment

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence.

Explanation. —An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

Section 87 deals with abetment. Any person who abets in commission of any offence under this act and if the offence is committed then such a person shall be punished with the punishment as provided for the offence.

# Section 88 – Alternative punishment.

Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the offender found guilty of such offence shall be liable for punishment under such law which provides for punishment which is greater in degree.

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 – Offence committed by child under this Chapter.

Any child who commits any offence under this Chapter shall be considered as a child in conflict with law under this Act.

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.

## **CHAPTER X: 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 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.

• Sanjeev Kumar Gupta v. State of U.P., (2019) 12 SCC 370

"16. Both these judgments have since been considered by a two-Judge Bench of this Court in Parag Bhati [Parag Bhati v. State of U.P., (2016) 12 SCC 744: (2017) 3 SCC (Cri) 819], where it was observed: (SCC p. 758, para 36) "36. 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 [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." 17. The 2015 Act came into force on 15-1-2016. Section 111 repeals the earlier the 2000 Act but stipulates that despite the repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the new legislation. Section 94 contains provisions in regard to the determination of age, is in the following terms: "94. Presumption and determination of age.—(1) 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 of this Act (other than for the purpose of giving evidence) 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 under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age. (2) 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) the date of birth certificate from the school, or the matriculation or equivalent certificate from the Examination Board concerned, if available; and in the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order. (3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person." Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the Examination Board concerned in the same category [namely (i) above]. In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the 2007 Rules made under the 2000 Act. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category."

In Shah Nawaz Vs. State of U.P. & Anr. [(2011) 13 SCC 751], the Supreme Court held as follows, "Rule 12, JJ (Care and Protection of Children) Rules, 2007, categorically envisages that the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available. ...the Board has correctly accepted the entry relating to the date of birth in the mark sheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules....the entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The School Leaving Certificate is also a valid proof in determining the age of the accused person....Rule 12 of the Rules which was brought in pursuance of the Act describes four categories of evidence which have been provided in which preference has been given to school certificate over the medical report." This dictum was incorporated in Section 94 of the JJ Act, 2015

# **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 fulfill the conditions set by the Board the time for which he is still liable 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.

☐ Amrinder Singh v. State of Haryana, 2016 SCC OnLine P&H 893

# 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 confidentiality related to the reports of the Child Welfare Committee or Board stated in Section 99(1) of the JJ Act is not absolute. 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.

# 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

The State Child Protection Society shall perform the following functions namely (i) overseeing the implementation of the Act and the rules framed thereunder in the State and supervision and monitoring of agencies and institutions under the Act; (ii) addressing road-blocks, issues, complaints received regarding care and protection of children; (iii) ensure that all institutions set up under the Act and the rules are in place and performing their assigned duties; (iv) reviewing reports received from various District Child Protection Units on the functioning of institutions in various districts and take action to facilitate the protection of children wherever necessary and monitoring the functioning of the District Child Protection Units; (v) develop programmes for foster care, sponsorship and after-care; (vi) inquire into, seek reports and make recommendations in cases of death or suicide in Child Care Institutions and under other institutional care; (vii) ensure inter-department coordination and liaising with the relevant departments of the State and Central Governments and State Child Protection Societies of other States or Union Territories; (viii) networking and coordinating with civil society organisations working for the effective implementation of the Act and the rules; (ix) maintaining a state level database of all children in institutional care and family based non institutional care and updating it on a quarterly basis; (x) maintaining a database of Child Care Institutions, Specialised Adoption Agencies, open shelters, fit persons and fit facilities, registered foster parents, sponsors, after care organisations and other institutions at the State level; (xi) maintaining a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the State level; (xii) monitoring and administering the Juvenile Justice Fund set up by the State Government including disbursal of funds to the District Child Protection Units, Special Juvenile Police Units and police stations, as the case may be; (xiii) maintaining separate accounts for all funds received by the State Child Protection Society such as the Juvenile Justice Fund, funds under Schemes of Central and State Government and getting the same audited; (xiv) generate awareness among public on various aspects of the Act and the rules made there under specifically the existing institutional framework, rehabilitation measures, penalties, procedures for better protection of children; (xv) organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders; (xvi) commission research programmes on child protection; (xvii) co-ordinate with State Legal Services Authority and law schools; and (xviii) any other function for the effective implementation of the Act and the rules made thereunder. The Member- Secretary of the State Child Protection Society shall be the Nodal Officer in the State for the implementation of the Act and the rules.

# ❖ Rule 85

The District Child Protection Unit shall perform following functions, namely: (i) maintain quarterly report information sent by the Board about children in conflict with law produced before the Board and the quarterly report sent by the Committee; (ii) arrange for individual or group counselling and community service for children; (iii) conduct follow up of the individual care plan prepared on the direction of the Children's Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offence; (iv) conduct review of the child placed in the place of safety every year and forward the report to the Children's Court; (v) maintain a list of persons who can be engaged as monitoring authorities and send the list of such persons to the Children's Court along with biannual updates; (vi) maintain record of run- away children from Child Care Institutions; (vii) identify families at risk and children in need of care and protection; (viii) assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of children in difficult

circumstances; (ix) periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Committees and Boards from time to time; (x) facilitate the implementation of noninstitutional programmes including sponsorship, foster care and after care as per the orders of the Board or the Committee or the Children's Court; (xi) facilitate transfer of children at all levels for their restoration to their families; (xii) ensure interdepartmental coordination and liaise with the relevant departments of the State Government and State Child Protection Society of the State and other District Child Protection Units in the State; (xiii) network and coordinate with civil society organisations working under the Act; (xiv) inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the State Child Protection Society; (xv) look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action; (xvi) be represented on the Management Committees within the Child Care Institutions; (xvii) maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the facility of Open Shelter and of children placed in foster care; (xviii) maintain a database of child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, after care organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society, as the case may be; (xix) maintain a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education apprenticeship and vocational training programmes and centres, facilities, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society; (xx) maintain a database of special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Children's Court and the State Child Protection Society; (xxi) generate awareness and organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders under the Act; (xxii) organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act; (xxiii) submit a monthly report to the State Child Protection Society; (xxiv) notify the State Government about a vacancy in the Board or the Committee six months before such vacancy arises; (xxv) review reports submitted by Inspection Committees and resolve the issues raised through coordination among the stakeholders; (xxvi) provide secretarial staff to the Committees and the Boards; (xxvii) all other functions necessary for effective implementation of the Act including liaising with community and corporates for improving the functioning of Child Care Institutions. The District Child Protection Officer shall be the Nodal Officer in the district for the implementation of the Act and the rules.

# **❖** 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, in this case, noted that the National Policy for the Welfare of Children, contained in the Preamble which states "The nation's children are a supremely important asset. Their nurture and solicitude is our responsibility".[vi] 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. In its lengthy judgment, the court hoped that the MWCD in the central and state governments would ensure that the National Commission for Protection of Child Rights (NCPCR) and the State Commission for Protection of Child Rights (SCPCR) performed optimally.

It is also said that the constitution of the State Child Protection Society and District Child Protection Units needed to include the police and members of civil societies. The court was of the view that it is "high time that every district in every state must have a Juvenile Justice Board" that is well-staffed with properly trained personnel and has a child-friendly ambiance. 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'. The court also hoped that the state governments and concerned authorities would provide adequate sensitization and training to both legal aid lawyers and Probation Officers to assist juveniles in conflict with the law and that well-trained Child Welfare Police Officer (CWPO) and Special Juvenile Police Unit (SJPU) were appointed in each district.

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'.

# ❖ Bachpan Bachao Andolan v. Union of India, (2016) 13 SCC 683

Upon discussing on a national policy framework, the following objectives are kept in mind...(1)To evolve appropriate models for the prevention of alcoholism and substance abuse, treatment and rehabilitation of drug dependent individuals; (2) To promote collective initiatives and self-help endeavor among individuals and groups vulnerable to dependence or found at risk; (3) To increase community participation and public cooperation in the reduction of demand for dependence-producing substances; (4) To create a pool of trained human resources personnel and service providers to strengthen the service delivery mechanisms; (5) To establish and foster appropriate synergy between interventions by the State, corporate initiatives, the voluntary sector and other stakeholders in the field of substance abuse prevention; (6) To facilitate networking among policy planners, service providers and other stakeholders with an aim to encourage appropriate advocacy; (7) To promote and sustain a system of continuous monitoring and evaluation including self-correctional mechanism.

# 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 sub-inspector, 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. To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated and two social workers having experience of working in the field of child welfare, of whom one shall be a woman. All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them

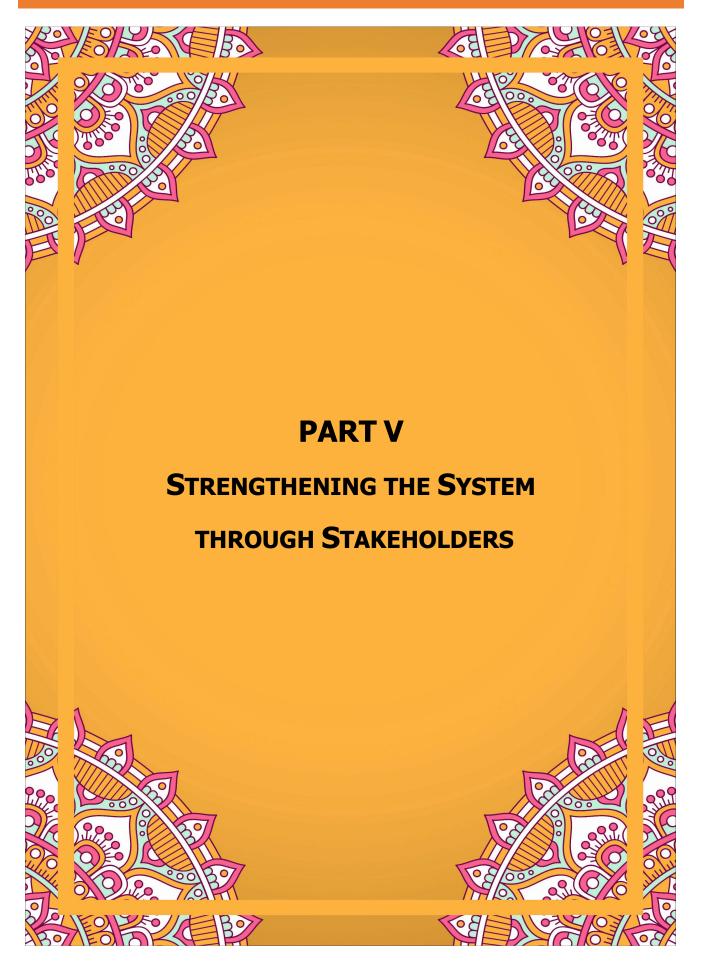
to perform their functions more effectively. Special Juvenile Police Unit also includes Railway police dealing with children.

# ❖ Rule 86

The State Government shall constitute a Special Juvenile Police Unit in each district and city to co-ordinate all functions of police related to children. The Central Government shall constitute a Special Juvenile Police Unit for the Railway Protection Force or Government Railway Police at every railway station as per requirement and where a Special Juvenile Police Unit cannot be set up, at least one Railway Protection Force or Government Railway Police Officer shall be designated as the Child Welfare Police Officer. The Child Welfare Police Officers and other police officers of the Special Juvenile Police Unit shall be given, appropriate training and orientation to deal with matters concerning children. The transfer and posting of the designated Child Welfare Police Officers may be within the Special Juvenile Police Units of other police stations or the district unit. The police officer interacting with children shall be as far as possible in plain clothes and not in uniform and for dealing with girl child, woman police personnel shall be engaged. The Child Welfare Police Officer or any other police officer shall speak in polite and soft manner and shall maintain dignity and self-esteem of the child. Where questions that may lead to discomfort of the child are to be asked, such questions shall be asked in tactful manner. When an FIR is registered for offence against a child, a copy of the FIR shall be handed over to the complainant or child victim and subsequent to the completion of investigation, copy of report of investigation and other relevant documents shall be handed over to the complainant or any person authorized to act on his behalf. No accused or suspected accused shall be brought in contact with the child and where the victim and the person in conflict with law are both children, they shall not be brought in contact with each other. The Special Juvenile Police Unit shall have a list of (i) the Board and Child Welfare Committee in its due jurisdiction, their place of sitting, hours of sitting, names and contact details of Principal Magistrate and members of the Board, names and contact details of Chairperson and members of the Committee and the procedures to be followed before the Board and the Committee; and (ii) contact details of the Child Care Institutions and fit facilities in its due jurisdiction. The names and contact details of the Special Juvenile Police Unit or Child Welfare Police Officer shall be placed at a conspicuous part at the police stations, Child Care Institutions, Committees, Boards and the Children's Courts. The Special Juvenile Police Unit shall work in close co-ordination with the District Child Protection Unit, the Board and the Committee in the matters concerning the welfare of children within its jurisdiction. The Special Juvenile Police Unit may coordinate with the District Legal Services Authority to provide legal aid to children.

# **❖** Bachpan Bachao Andolan v. Union of India, (2016) 13 SCC 683

While recognizing the need for services, it is also necessary to increase the range of services and the access to various modalities of interventions for prevention, treatment, rehabilitation with a focus on the poor and marginalized sections of the society. 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.



# PART V: 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. (Criminal) 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**

S.	Stakeholder	Powers	Functions	Responsibilities
No.				
1	Juvenile Justice Board	Sec.8(2)	Sec.8(3)	Sec.8(3)
			Rule 7	
2	Children's Court	Sec.19	Sec.19	Sec.19
3	Child Welfare Committee	Sec.29	Sec.30	Sec.30
			Rule 17	Rule17
4	Police – Special Juvenile	Rule 86	Rule 86	Rule 86 and
	Police Unit, Child Welfare			_
	Police Officer			Rule 62
5	Legal Services	Art. 39-A	Art. 39-A	Art. 39-A
	Authorities			
6	Probation Officer	Rule 64	Rule 64	Rule 64
7	Child Care Institutions	Rule 61	Rule 61`	Rule 61
8	District Child Protection	Rule 85	Rule 85	Rule 85
	Unit			
9	Special Child Protection	Rule 84	Rule 84	Rule 84
	Society			
10	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.

## **Role of Police**

Chapter III, Model Rules, 2016- procedure in case of child in conflict with law

Chapter VII, Model Rules- other offences against children

Chapter IX, Model Rules- supervision of Child Care Institutions

The Supreme Court in *Sampurna Behura case*, observed that "An extremely important stakeholder in the effective implementation of the JJ Act is the local police. Section 107 of the JJ Act mandates the appointment of a Child Welfare Police Officer (for short "CWPO") and a Special Juvenile Police Unit (for short "SJPU") in each district. The SJPU must also include two social workers having experience of work in the field of child welfare, one of them being a woman. The responsibility for appointment lies on the State Government."

"94.9. It is important for the police to appreciate their role as the first responder on issues pertaining to the offences allegedly committed by children as well as the offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such units and officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.

94.10. The National Police Academy and State Police Academies must consider including child rights as a part of their curriculum on a regular basis and not as an isolated or sporadic event."

# **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.

# **PROGRAMME SCHEDULE**

# TAMIL NADU STATE JUDICIAL ACADEMY and TAMIL NADU STATE LEGAL SERVICES AUTHORITY In association with UNICEF

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

Date	Place	For the Districts of	
18.09.2021	TNSJA, Headquarters,	Chennai, Cuddalore, Kancheepuram, Krishnagiri, Nagapattinam, Thanjavur	
19.09.2021	Chennai	Tiruvallur, Tiruvannamalai, Tiruvarur, Vellore, Villupuram, Puducherry and Karaikal	
30.10.2021	TNSJA Regional	Ariyalur, Kanniyakumari, Madurai, Perambalur, Pudukkottai, Ramanathapuram	
31.10.2021	Centre, Madurai	Sivagangai, Theni, Thoothukudi, Tiruchirappalli, Tirunelveli, Virudhunagar	
27.11.2021	TNSJA Regional	Coimbatore, Dharmapuri, Dindigul, Erode, Karur	
28.11.2021	Centre, Coimbatore	Namakkal, Nilgiris, Salem, Tiruppur	
10.00 a.m. – 10.10 a.m.	Scope and Object of the Programme		
10.10 a.m. – 10.20 a.m.	Keynote Address		
10.20 a.m. – 10.30 a.m.	Inaugural Address		
10.30 a.m. – 11.30 a.m.	Salient Features of Juvenile Justice (Care and Protection of Children) Act, 2015		
11.30 a.m. – 11.45 a.m.	Tea Break		
11.45 a.m. – 01.00 p.m.	Functions of Juvenile Justice Board and Role of Lawyers in Strengthening Juvenile Justice System		
01.00 p.m. – 02.00 p.m.	Lunch Break		
02.00 p.m. – 04.00 p.m.	a) Role of Legal Services Authority in providing Legal Assistance and Compensation to Children		
	b) Free and Compulsory Education changes the life of Children in Conflict with Law		
04.00 p.m. – 04.15 p.m.	Tea Break		
04.15 p.m. – 05.00 p.m.	Discussion and Interaction		

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# LET ME BE A BUTTERFLY!

She trespassed your land, Laid me in your Lawn!

I Managed to eat
Few of your leaves and
Destroyed some plants

Oh! Gardener!
Do not stamp me out!

Few days later- I Cocooned like a shell; To protect me from hell

Oh! Gardener!
Crush me not
To a cruel death!

Flapping my wings; Causing no typhoons!

Oh! Gardener!
Believe no Lorenz!

Netting me Strong; Letting out not Is not at all right! Have no Strength Today to fight; Morrow I may not Be a Butterfly!

Lee



# TAMIL NADU STATE JUDICIAL ACADEMY, HEADQUARTERS, CHENNAI

No. 30(95), "Malligai" P.S.K.R. Salai, Greenways Road, R.A.Puram, Chennai - 600 028. Website: www.tnsja.tn.gov.in

E-Mail: tnsja.tn@nic.in / tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018

REGIONAL CENTRE, MADURAI Alagar Koil Road, K.Pudur Madurai - 625 002