

Juvenile Justice Board

Module 4



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Abbreviations

CCL	Child in Conflict with Law
CJM	Chief Judicial Magistrate
CMM	Chief Metropolitan Magistrate
CNCP	Child in Need of Care and Protection
CrPC	Code of Criminal Procedure
CWC	Child Welfare Committee
CWO	Child Welfare Officer
CWPO	Child Welfare Police Officer
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
DM	District Magistrate
FIR	First Information Report
ITI	Industrial Training Institute
JJ Act	Juvenile Justice Act
JJB	Juvenile Justice Board
KOS	Karnataka Open School
NGO	Non-governmental Organisation
PIL	Public Interest Litigation
PO	Probation Officer
POCSO	Protection of Children from Sexual Offences Act
RTI	Right to Information
SIR	Social Investigation Report
SJPU	Special Juvenile Police Unit
TPAP	Traffic Police Assistance Programme



Time:
4 Hours

Juvenile Justice Board



We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being developed. To him we cannot answer 'Tomorrow,' his name is today.

- **Gabriela Mistral**



Overview

The Juvenile Justice (JJ) Act provides for the setting up of one or more Juvenile Justice Boards (JJBs) for exercising the powers and discharging its functions relating to children in conflict with law (CCL). This module talks in detail about the composition of the JJB and the role that it plays from the time when the child alleged to be in conflict with law is produced before the Board for the first time till the case is disposed. The section also touches upon the key changes that have been brought about in the JJ Act, 2015 with respect to the categories of offences by children and the prescribed provisions to deal with such cases.

At the end of this section, few exercises and case studies are given for the readers/ participants along with a note for the facilitator.



Objectives:

At the end of the session, participants will be able to describe:

- ◆ The structure and composition of JJB
- ◆ Procedure in relation to JJB
- ◆ Powers, functions and responsibilities of JJB.

(Facilitator can use the given link to show video on JJB) <http://haqcrc.org/additional-resources/abyss-documentary-juvenile-justice-act-2015/>

Principle of presumption of innocence clearly states that 'any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years'.

One of the principal roles of the Juvenile Justice (Care and Protection of Children) Act, 2015 is to 'provide specialised and preventive treatment services for children and young persons as a means of 'secondary prevention, rehabilitation and improved socialisation'.¹

Definition of “Child in Conflict with Law” – The Confusions

A child who is alleged or found to have committed an offence and who has not completed the 18th year of age on the date of commission of such offence is considered a “Child in Conflict with Law” (Sec. 2 (13)).

For determining the applicability of JJ Act over a person, relevant date is “Date of Commission of Offence”. Considerable confusion arises in dealing with cases where a person who was a child at the time of commission of offence but turns adult subsequently.

Section 5 and Section 6 of the JJ Act, 2015 deal with situations where:

- (1) a child completes the age of 18 years during the pendency of inquiry; and
- (2) a person is apprehended for committing an offence when such person was below the age of 18 years.

The law is abundantly clear that persons mentioned above shall continue to be treated as children and orders will be passed as if such person continues to be a child, irrespective of such person having turned adult. Additionally, there is confusion regarding the placement of a person or a child—who may have crossed the age of 18 years at the time of apprehension or in the course of the inquiry—in an institution.

The JJ Act is very clear on this. It states (u/s 49) that for such persons or children (if apprehended after the age of 18 years), the State Government shall set up at least one place of safety in a state, duly registered under Section 41, in which such persons or children shall be placed. A CCL, who is between the age of 16 and 18 years and is accused of or convicted for committing a heinous offence, shall also be placed in a Place of Safety.

¹ Ved Kumari, *The Juvenile Justice in India: From Welfare to Rights*. OUP. 2004 p.1

Section 1

Structure and Composition



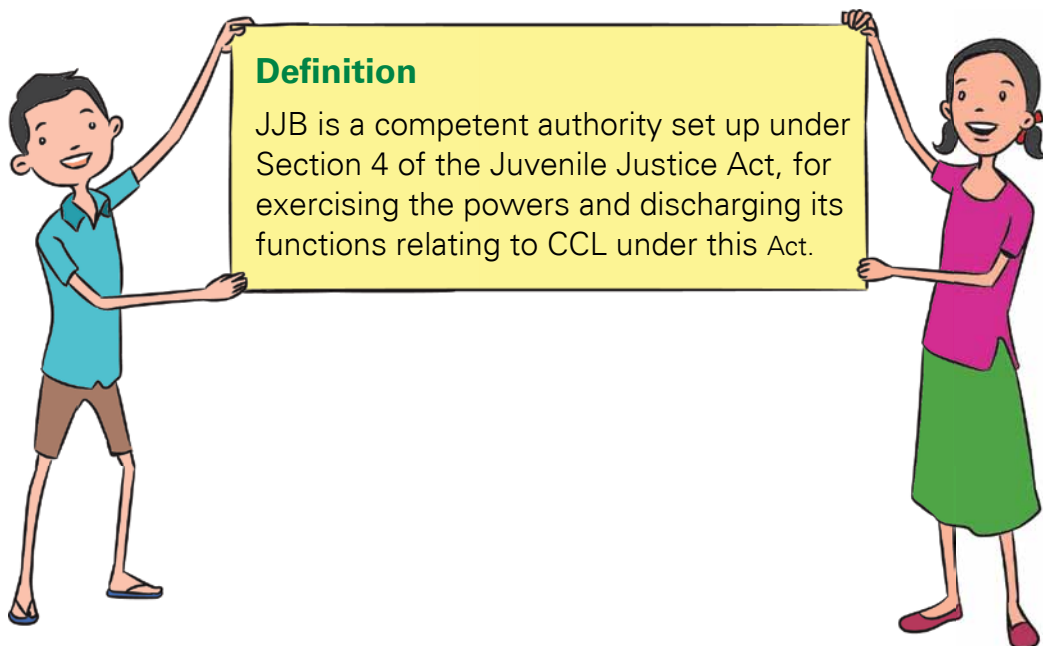
Time:

45 Minutes



Step 1

Ask the participants to define JJB. Encourage them to share their views and discuss as below:



Activity:

Divide the participants into two groups.

Each group will work on two of the below mentioned topics. The groups have to list down the key points and present their findings. Post this, a discussion will be generated with the help of the pointers given below:

Group A

- ♦ Structure and composition of JJB
- ♦ Procedures followed in relation to the Board

Group B

- ♦ Powers, functions and responsibilities of JJB
- ♦ Other important responsibilities

Structure and composition (Section 4, JJ Act 2015, JJ Central Model Rules, 2016)

- ♦ The State Government shall constitute for every district, one or more JJBs for exercising the powers and discharging its functions relating to CCL based on the number of cases or pendency.
- ♦ A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class with at least three years' experience. S/He should not have any record of human/child rights violation or dismissal from a public position and should not have indulged in child labour/abuse.
- ♦ A Board shall have two social workers of whom at least one should be a woman. They should have 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.
- ♦ They form a Bench and every such Bench will have the powers conferred by the Code of Criminal Procedure (CrPC), 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.
- ♦ No person shall be eligible for selection as a member of the Board, if he –
 - has any past record of violation of human rights or child rights; has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
 - has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
 - has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.
- ♦ 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.

What are the procedures followed in relation to the Board? (Section 7, JJ Act 2015)

- ♦ 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 regular courts.
- ♦ A CCL may be produced before an individual member of the Board, when the Board is not in sitting.
- ♦ A Board may act notwithstanding the absence of any member of the Board,

and no order passed by the Board shall remain 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 final disposal of the case or in making an order under sub-section (3) of Section 18, where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of a 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.



- ◆ 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. Where there is no such majority, the opinion of the Principal Magistrate shall prevail.

Sittings of the Board (Sec 6, JJ Central Model Rules, 2016)

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 premises in any child care institution (CCI) meant for CCL. In no circumstances shall it operate from within any court or jail premises.
- ◆ Ensure that no person(s) unconnected with the case remains present in the room when the case is in progress.
- ◆ Ensure that only those person(s), in the presence of whom the child feels comfortable, are allowed to remain present during the sitting.
- ◆ Hold its sittings in a child-friendly premises which shall not look like a court room in any manner. The sitting arrangement should be such that it enables the Board to interact with the child face-to-face.
- ◆ Use child-friendly techniques and adopt child-friendly attitudes with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child.
- ◆ Not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Board and the child.



Powers, functions and responsibilities of JJB (Section 8 and 14, JJ Act, 2015)

What are the powers, functions and responsibilities of JJB?

The JJ Act prescribes following functions and responsibilities to the Board:

- ◆ Ensuring the informed participation of the child and the parent or guardian, in every step of the process.
- ◆ Ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation.
- ◆ Ensuring availability of legal aid for the child through the legal services institutions.
- ◆ Wherever necessary, the Board shall provide an interpreter or translator to the child if he fails to understand the language used in the proceedings.
- ◆ Directing the Probation Officer (PO) or the Child Welfare Officer (CWO) or a social worker to undertake a social investigation into the case and submit a social investigation report (SIR) within a period of 15 days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed.
- ◆ Adjudicate and dispose of cases of CCL in accordance with the process of inquiry specified in Section 14 of the JJ Act.
- ◆ 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.
- ◆ 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 PO or the District Child Protection Unit (DCPU) or a member of a non-governmental organisation (NGO). When a CCL is produced before the Board, it shall hold an inquiry which is to be completed within four months which could be extended by two more months.
- ◆ A preliminary assessment in case of heinous offences is to be completed within three months.
- ◆ The Board shall ensure fair and speedy inquiry (**See box 1**).
- ◆ Inquiry of cases of petty offences shall be disposed of through summary proceedings as per the procedure prescribed under the CrPC, 1973.
- ◆ Inquiry of serious offences shall be disposed of by following the procedure for trial in summons cases under the CrPC, 1973.
- ◆ Inquiry of heinous offences
 - In case the child is below 16 years, inquiry to be conducted as serious offences.
 - In case the child is above 16, it will conduct preliminary assessment and is of the view that there is a need to conduct trial as an adult and transfer the case to Children's Court.



- ♦ Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then it shall follow the procedure as in the case of serious offences.

Other important responsibilities

- ♦ Conducting inquiry for declaring fit persons regarding care of CCL.
- ♦ Conducting at least one inspection visit every month of residential facilities for CCL and recommend action for improving the quality of services to the DCPU and the State Government.
- ♦ Order the police for registration of First Information Report (FIR) for offences committed against any CCL, following a complaint made in this regard, and for offences committed against any child in need of care and protection (CNCP) on a written complaint by a Committee in this regard.
- ♦ 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.
- ♦ The Board shall make an order to destroy relevant record of conviction after the expiry of relevant period.
- ♦ Conduct inquiry for declaring fit persons regarding care of CCL.



Box 1: Steps to ensure fair and speedy inquiry by the Board (Section 15, JJ Act 2015)

- ♦ At the time of initiating the inquiry, the Board shall satisfy itself that the CCL has not been subjected to any ill-treatment by the police, or by any other person, including a lawyer or PO, and take corrective steps in case of such ill-treatment.
- ♦ In all cases under the Act, the proceedings shall be conducted in a simple manner as much as possible and in a child-friendly atmosphere.
- ♦ Every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry.



All Juvenile Justice Boards should follow Child Friendly Procedures

These include:

- a) JJB shall deploy, if necessary, the services of student volunteers or non government organization 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 {Rule 7 (1)(x)}.
- b) JJB shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular court {Section 7 (1)}.
- c) In all cases under this Act, the proceedings shall be conducted in simple manner as possible and care shall be taken by JJB to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings. {Section 14 (5)(b)}.
- d) JJB shall hold its sitting in child friendly premises {Rule 6 (4)}.
- e) JJB, while communicating with the child, 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 {Rule 6 (5)}.



Procedure in relation to CCL



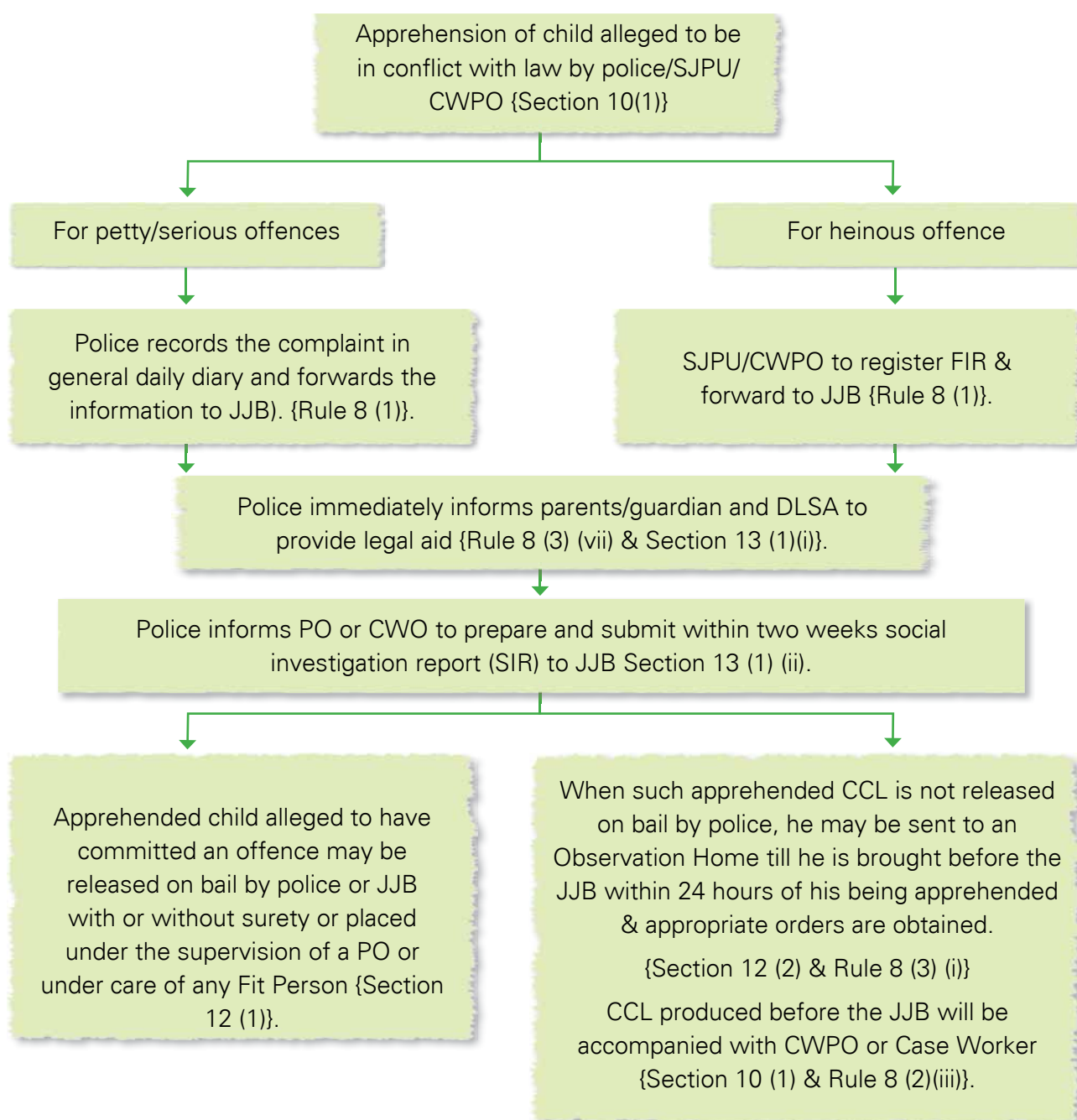
Step 1: What happens once the complaint is made? [Sections 10 & 13]



Activity: Puzzle Game

The flow chart will be cut into pieces and provided to the three groups that will be formed. The groups need to prepare the flow chart in sequence and present.

Flow chart for dealing with CCL





Step 2: Procedure at Police Station



DOs (Section 10 & Rule 8)

- ◆ Child to be taken to Child Friendly Corner/room.
- ◆ Child should be produced before JJB within 24 hours.
- ◆ The Child Welfare Police Officer (CWPO) should be in plain clothes and not in uniform.
- ◆ Use of any coercion or force on the child is prohibited.
- ◆ Inform the child promptly and directly of the charges levelled against him through his parent or guardian.
- ◆ Copy of FIR should be provided to the child or copy of the police report should be given to the parent or guardian.



- ◆ Provide appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require.
- ◆ Inform the District Legal Services Authority (DLSA) for providing free legal aid to the child.



Don'ts (Section 10 & Rule 8)

- ◆ No FIR is to be registered against a CCL except in a heinous offence or offence committed jointly with adult.
- ◆ Child should not to be kept in police station or lock up or an adult jail.



- ◆ Child will not be handcuffed/chained/fettered.



- ◆ Child shall not be asked to sign any statement.
- ◆ Child shall not be compelled to accept his guilt.
- ◆ No joint proceedings of CCL along with a person who is not a child (Section 23).



Step 3: What happens once the case is admitted in the JJB?

(Inquiry is to be completed within **four** months, extendable by **two** more months only).



Activity: Puzzle Game

Similar to the previous puzzle game, the flow chart will be cut into pieces and the cut pieces will be given to the groups to rearrange it and present.

Flow chart in cases of petty or serious offences by all children and heinous offences by children up to 16 years of age

[Sections 13,14,17,18 and Rules 9, 10 and 11]

- (i) JJB holds an inquiry & completes it within four months from the date of first production extendable by two more months only {Section 14 (2)}.
- (ii) 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 {Section 14 (3)}.
- (iii) If inquiry by Board for petty offences remains inconclusive even after extended period, the proceedings shall stand terminated. Extension of time for completion of inquiry for serious or heinous offences shall be granted by Chief Judicial Magistrate (CJM) or Chief Metropolitan Magistrate (CMM) {Section 14 (4)}.
- (iv) Summary Trial Procedure to be followed in case of petty offences and procedure of Trial in a Summons Case to be followed in serious and heinous offences {Section 14 (5) (d), (e) & (f)}.

JJB obtains SIR from PO {Section 13 (1)(ii)}.

In case it appears to JJB that the child brought before it is CNCP, it may refer the child to CWC {Section 17 (2)}.

Where JJB is satisfied that the child brought before it has not committed any offence, it shall pass order to that effect {Section 17 (1)}.

Where JJB is satisfied on inquiry that the child, irrespective of age, has committed a petty/serious/heinous offence, it may pass orders {Section 18 (1)}.

- Order for rehabilitation of child for maximum of three years {Section 18 (1)(g)}.
- Along with inclusion of Individual Care Plan prepared by PO or CWO or Social Worker {Rule 11 (3)}.

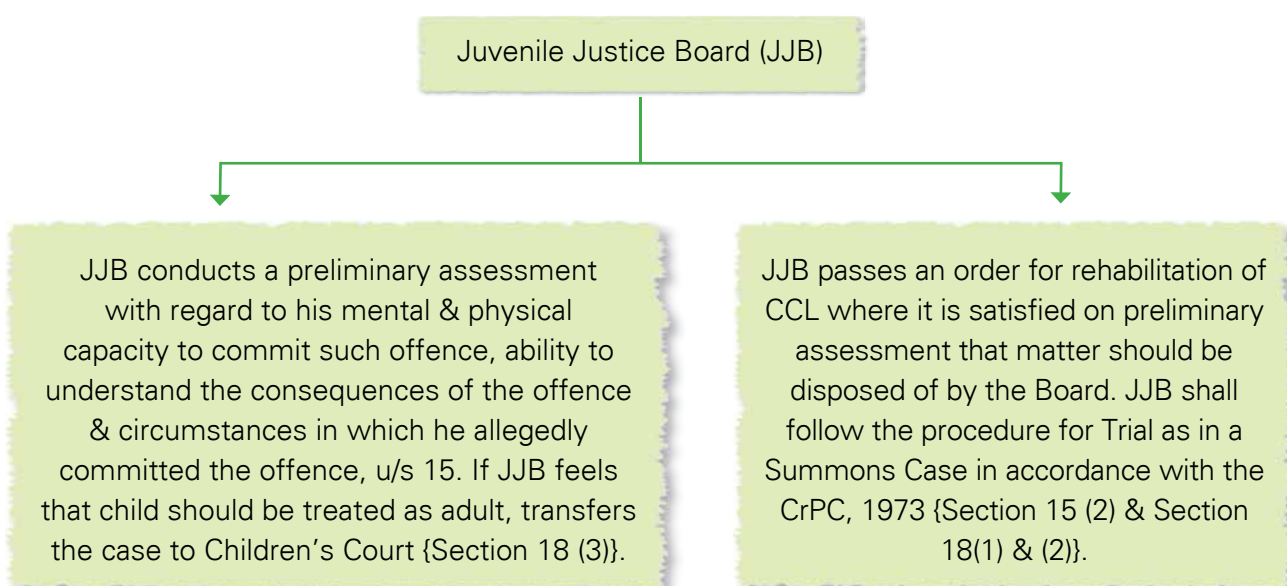


Step 4: Procedure for JJB

Steps in cases of petty or serious offences by all children and heinous offences by children up to 16 years of age [Sections 13,14,17,18 and Rules 9, 10 and 11]

Types of Trial (Sections 14 & 15)	(i) Petty offence: Summary Trial (ii) Serious offence: Trial as in Summons Case (iii) Heinous offence: Trial as in Summons Case
JJB while passing the orders shall (Section 18)	(i) Obtain SIR from PO or CWO. (ii) Include an individual care plan prepared by PO or CWO.
Types of orders by JJB (Section 18)	(i) To go home after advice or admonition. (ii) Participate in group counselling or similar activities. (iii) Perform community service. (iv) Child or parents or the guardian to pay a fine. (v) Be released on probation of good conduct and placed under the care of parent or guardian or Fit Person or Fit Facility or Fit Person executing a bond with or without surety for good behaviour and child's well-being for any period not exceeding three years. (vi) Be released on probation of good conduct and placed under the care and supervision of any Fit Facility for ensuring good behaviour and child's well-being for any period not exceeding three years . (vii) Be sent to a Special Home, for such period, not exceeding three years, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the Special Home. (viii) In addition to above, JJB may also pass orders to: <ul style="list-style-type: none"> • attend school; or • attend a vocational training centre; or • attend a therapeutic centre; or • prohibit the child from visiting, frequenting or appearing at a specified place; or • undergo a de-addiction programme.

Flow chart in JJB for CCL between 16-18 years who allegedly commits a Heinous Offence (Sections 14, 15, 19 and Rule 10A)

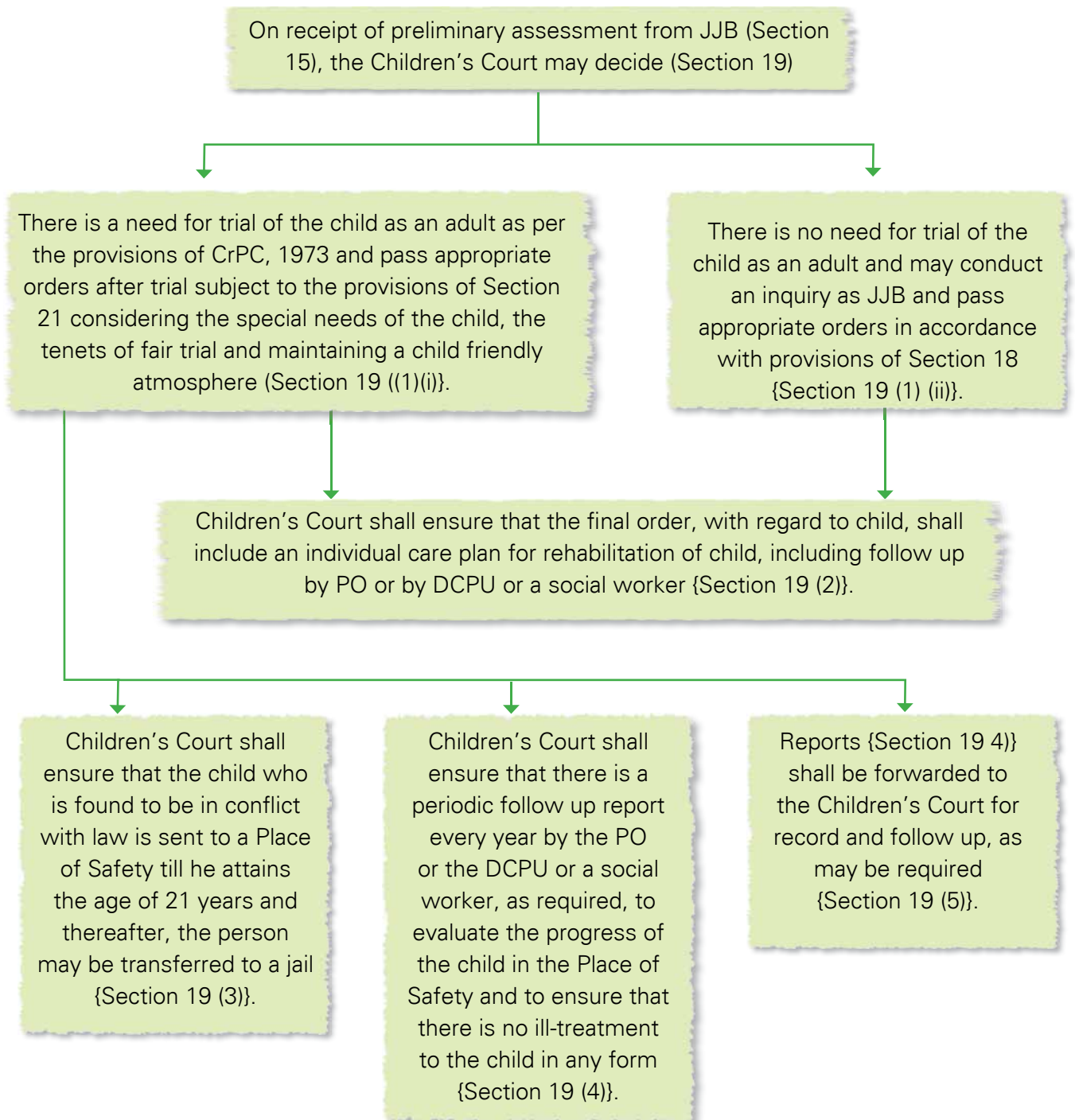


Activity: Puzzle Game

The same three groups formed earlier in this session will work on this flow chart also and present. A set of cut pieces of the flow chart will be given to each group to rearrange and put the flow chart in sequence.



Step 5: Procedures to be followed by Children's Court when a CCL between 16-18 years allegedly commits Heinous Offence.



Destruction of records

The records of conviction in respect of a CCL 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 Section 19 (1) of the Act, the relevant records of conviction of such child shall be retained by the Children's Court (Section 14).



Step 6: Activity: Mind Mining

Ask the participants to list out the organisations involved in rehabilitation of CCL for short term and long term stay and discuss with the pointers given below.

Organisations involved in rehabilitation of CCL

(a) For Short Term Stay

(i) Observation Home (Section 47)	'Observation Home' means a home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary organisation or NGO, and is registered as such, for the purpose of temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act {Section 2 (47) & Section 47}.
(ii) Fit Facility (Section 51)	'Fit Facility' means a facility being run by a governmental organisation or a registered voluntary organisation or NGO, prepared to temporarily take the responsibility of a child for a specific purpose, and such facility is recognised after inquiry regarding the suitability of the facility and the organisation to take care of the child, as directed by the JJB or the CWC {Section 2 (27) & Section 51}.
(iii) Fit Person (Section 52)	'Fit Person' means any person prepared to own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the CWC or the JJB, to temporarily receive a child for care, protection and treatment of such child for a specified period {Sections 2 (28) & Section 52}.

(b) For Long Term Stay

(i) Special Home (Section 48)	'Special Home' means an institution established by a State Government or by a voluntary organisation or NGO, registered under Section 48, for housing and providing rehabilitative services to CCL, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board {Section 2 (56) & Section 48}). <ul style="list-style-type: none">◆ For long term stay of CCL, as per orders of JJB (Section 18).◆ Includes attending of school, vocational training, therapeutic centre, addiction programme.
(ii) Place of Safety (Section 49)	'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 {Sections 2 (46) and 49}). <ul style="list-style-type: none">◆ Separate arrangement and facilities for stay of children or persons during the process of inquiry and children or persons found to be involved in an offence.◆ Includes attending of school, vocational training, therapeutic centre, addiction programme, etc.◆ A Place of Safety cannot be in the same compound as a jail for adults.



Step 7: Activity: Group Work through Situational Analysis

The three groups formed earlier will be allotted one case story each and the participants need to write down the procedures to be followed in relation to CCL.

Situation 1



Police apprehended a 16 year old boy who has stolen money from the shop where he was working.

Situation 2

Nagendra is a 15 year old boy who has been alleged for murdering his friend during a quarrel. Police has apprehended him for this offence.



Situation 3



Ranjeet is a 17 year old boy and has been alleged for gang rape and murder.

Ask each of the group to present one by one and discuss with the help of the pointers given below.

Apprehension of child alleged to be in conflict with law (Section 10, JJ Act, 2015)

1. A child alleged to be in conflict with law when apprehended by the police, within 24 hours, shall be produced before the Principal Magistrate of the Board, or before a social worker member even at their residence, when the Board is not sitting.

Bail of a child alleged to be in conflict with law (Section 12, JJ Act, 2015)

1. A child alleged to have committed a bailable or non-bailable offence and brought before a Board shall be released on bail with or without surety or placed in an Observation Home under the supervision of a PO or a Place of Safety or a Fit Facility or a Fit Person.
2. The Board may not release the child on bail if there appear reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger, or the person's release would defeat the ends of justice. The Board shall record the reasons for denying the bail and circumstances that led to such a decision.
3. When the CCL is not released on bail 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.
4. When a CCL is unable to fulfill 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.
5. Where a child is released on bail, the PO or the CWO shall be informed by the Board.

Inquiry by Board regarding CCL (Section 14, JJ Act, 2015)

1. In case of a child alleged to be in conflict with law, 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.
2. The inquiry 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.

Petty offences

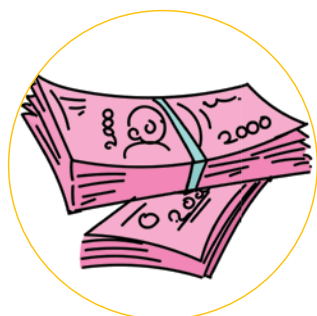
1. Cases of petty offences shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the CrPC, 1973.
2. The Board can direct a maximum Imprisonment up to three years to the child.
3. If inquiry by the Board for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.

Serious or heinous offences

1. Inquiry of serious offences shall be disposed of by the Board, by following the procedure for trial in summons cases under the CrPC, 1973.
2. Inquiry of heinous offence by a child below the age of 16 years as on the date of commission of an offence shall be disposed of by the Board, by following the procedure for trial in summons cases under the CrPC, 1973.
3. In case of a heinous offence alleged to have been committed by a child who has completed or is above the age of 16 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 section 18 (3) of the JJ Act:
 - ♦ That there is a need for trial of the said child as an adult and the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.
 - ♦ The Board may take the assistance of experienced psychologists or psycho-social workers or other experts for such an assessment.
 - ♦ 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.
4. 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 CrPC, 1973.
5. A preliminary assessment in case of heinous offences 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.
6. 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 CJM or, as the case may be, the CMM, for reasons to be recorded in writing.

Classification of offences and designated court (Section 86, JJ Act, 2015)

- ♦ Where an offence under the JJ Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then such offence shall be cognisable, non-bailable and triable by a Magistrate of First Class.



- ♦ Where an offence, under the JJ Act, is punishable with imprisonment for less than three years or with fine only, then such offence shall be non-cognisable, bailable and triable by any Magistrate.

Placement of person, who ceases to be a child during process of inquiry (Section 5, JJ Act, 2015)

1. When during the course of an inquiry, the child completes the age of 18 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.

Placement of persons, who committed an offence, when person was below the age of 18 years (Section 6, JJ Act, 2015)

1. Any person, who has completed 18 years of age, and is apprehended for committing an offence when he was below the age of 18 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, if not released on bail by the Board, shall be placed in a Place of Safety during the process of inquiry and shall be treated as per the procedure specified under the provisions of this Act.



Step 8: Activity: Group Work

In the previous situational analysis of Sunil, Nagendra and Ranjit, it was proved that they have committed the offence. Now the group will discuss internally and put down what orders can be passed for their cases. Also, the groups will present their observations and points followed by a discussion with the help of the pointers given below.

Orders regarding child found to be in conflict with law (Section 18, JJ Act 2015)

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 16 years has committed a heinous offence, then, based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the SIR and past conduct of the child, the Board may, if it so thinks fit:

1. 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;
2. direct the child to participate in group counselling and similar activities;
3. 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;
4. order the child or parents or the guardian of the child to pay fine;
5. direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, or 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;
6. 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; and
 7. direct the child to be sent to a Special Home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the Special Home.

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.

In addition to the above orders (a) to (g), the Board may, in addition, pass orders to:

- ♦ attend school; or
- ♦ attend a vocational training centre; or
- ♦ attend a therapeutic centre; or
- ♦ prohibit the child from visiting, frequenting or appearing at a specified place; or
- ♦ undergo a de-addiction programme.

Orders regarding a child not found to be in conflict with law (Section 17, JJ Act, 2015)

- ♦ 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.
- ♦ In case it appears to the Board that the child is in need of care and protection, it may refer the child to the Committee with appropriate directions.

Presumption and determination of age (Section 94, JJ Act, 2015)

Where it is obvious to the Board, based on the appearance of the child 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 Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry (as under Section 14 for CCL or Section 36 for CNCP, as the case may be), without waiting for further confirmation of the age.

In case 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:

- ♦ the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof
- ♦ the birth certificate given by a corporation or a municipal authority or a panchayat; 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 Board, provided such age determination test conducted on the order of the Board shall be completed within 15 days from the date of such order. The age recorded by 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.

Transfer of a child to place of residence (Section 95, JJ Act, 2015)

If during the inquiry it is found that a child hails from a place outside its jurisdiction, the Board shall, if satisfied after due inquiry that it is in the best interest of the child and after due consultation with the Board of the child's home district, order the transfer of the child, as soon as possible, to the said Board, along with relevant documents and following the prescribed procedures.



Such transfer can be made in case of a CCL 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 Board of the home district of the child, or to the Board in the capital city of the home State.

Once the decision to transfer is finalised, the Board, as the case may be, shall give an escort order to the Special Juvenile Police Unit (SJPU) to escort the child, within 15 days of receiving such order.

A girl child shall be accompanied by a woman police officer.

Where a SJPU is not available, the Board shall direct the institution where the child is temporarily staying or DCPU to provide an escort to accompany the child during travel.



The Board, on receiving the transferred child will process for restoration or rehabilitation or social re-integration, as provided in this Act.

Inspection of jails and other institutions for CCL

Conducting at least one inspection visit every month of residential facilities for CCL and recommend action for improvement in quality of services to the DCPU and the State Government.

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.



Other functions of JJB with respect to the child brought before it

- ♦ 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 inquiry, the Committee or the Board, as the case may be, shall dispense with the attendance of a child and limit the same for the purpose of recording the statement.
- ♦ If the child is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the Board may send the child to any place recognised as a Fit Facility for the required treatment.
- ♦ The Board 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 Board may increase the frequency of its sittings based on recommendation of the CJM or the CMM after the review of pendency of cases of the Board once in every three months.



Time:

45 Minutes

Procedure in relation to CCL – Role Play



Step 1: Procedure in relation to CCL – Role Play



Note for the facilitator: The purpose of the role plays is to bring out the role of JJB and their social role. More often than not, JJB as a result of being headed by a Magistrate is always focused on legal aspects. Social worker members are not adequately empowered or heard.

Split the role plays into two parts A and B respectively and see if the opinion of the participants changes with the changing situation in the story. Instruct the participants to enact the role play and elicit the role of JJB as per the situations enacted.



Process

Ask the participants to do a role play showing the proceedings by JJB for the CCL mentioned in the below situations. Encourage the participants to share their feedback on the proceedings enacted.



Role Play

Part A:

- ◆ Chetan is a 17 year old orphan. He was brought by the police to the JJB for a 'murder' offence, as a child who is in conflict with the law.
- ◆ Suraj is 17 years old and was caught while stealing from a grocery shop.

Part B:

- ◆ Chetan lived on the street with his younger sister. He was trying to protect his sister from a sexual predator and inadvertently killed him.
- ◆ Suraj has been caught multiple times earlier too and is part of a gang.



Important note for summarising the role plays:

The initial reaction on what should be the action is always harshest punishment for Chetan and nothing for Suraj. However, the role plays build up and reveal more details about the background of the two children and their context of the crime committed.

It becomes apparent that one has to look at a lot of factors before deciding the sentence. In these two cases, the first was clearly a self-protection assault and it is evident the child is not into any criminal activity or mindset. However, the second child is clearly linked with criminal gangs and unless he is made to be a part of a reform process, the day will not be far when he commits serious offences as well. So what was perceived as just an admonishment and release case actually needs a lot more intervention and possibly detention to allow for reform.

These two situations and similar cases bring out the importance of the social background report and for the JJB to not be biased about cases depending on severity of crime committed.



Step 2: Provisions in law to ensure JJB members are sensitised on the law²

Under Section 4(5), the State Government is made responsible to provide induction training and sensitisation to all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, within a period of 60 days from the date of their appointment. Further, under Model Rule 89, the State Government is also required to organise regular training programmes for all stakeholders including JJB members on the implementation of the JJ Act, 2015.

Invite one volunteer to read aloud the lines given below:

When the ancient Chinese decided to live in peace, they built the Great Wall of China. During the first 100 years of its existence, Chinese were invaded thrice. The invaders never had to climb the wall, they bribed the guards and came through the doors. The Chinese built the wall but forgot character building of the guards! Thus building of human character comes BEFORE building of anything else. If you want to destroy the civilisation of a nation, there are three ways: Destroy the family structure, Destroy education, Lower their role models and references.

Ask the participants what learning they can draw from the above lines with respect to their roles as part of the JJB. Highlight the importance of empathy, team work, talking to children, active listening, coordination and communication aspects. Encourage them to go through the facilitators guide in the smart kit for better understanding of these.

² <https://satyarthi.org.in/assets/pdf/FAQ's%20on%20JJB.pdf>



Time:

30 Minutes

Way Forward – Filling the Gaps

The JJ Act, 2015 covers a wide range of issues relating to children and it intersects with other laws. It is therefore imperative to also recognise that there are several schemes and programmes that will have to be drawn, to ensure that the rights of all categories of children at different levels—panchayat, block and district—are not violated and also for the successful implementation of the JJ Act.



Step 1: The case below illustrates how JJB, CWC and DCPU have acted in close coordination trying to ensure the 'best interest of the child'

CASE STUDY

'S', a 14-year-old, was apprehended for theft, along with a gang, when she was already five months pregnant. The JJB held an inquiry and decided that 'S' needed to be treated as a CNCP. So it ordered that 'S' be sent to CWC of the same district. The CWC, based on the SIR, decided that it would be in her best interest not to send her back home. She had not only been inducted into the gang for stealing by her uncle, who was her guardian, but had also been subjected to sexual assault by him, leading to her pregnancy. Hence, 'S' was placed in a Children's Home. The CWC, under powers vested in Section 30 of the JJ Act, filed a case of sexual abuse against the uncle under the Protection of Children from Sexual Offences (POCSO) Act. It also filed a case against the uncle under the JJ Act for having inducted the child to perform crimes and illegal activities. Since it was unsafe for 'S' to have an abortion, the CWC and the Children's Home she was placed in helped her to reach her full term of pregnancy and deliver her baby. The baby was placed for adoption following the procedure laid down in the JJ Act and continued to stay at the Children's Home with a care plan developed for her, keeping her needs in mind and linking her to the existing government schemes available to her. The counsellor with the DCPU provided the necessary psycho-social care to tide over the trauma that she had faced. The legal-cum-probationary officer of DCPU has been monitoring the case filed under POCSO to ensure that she gets justice.



Note for the facilitator: Encourage the participants to share more such instances where they have seen 'best interest of the child' being taken into consideration.

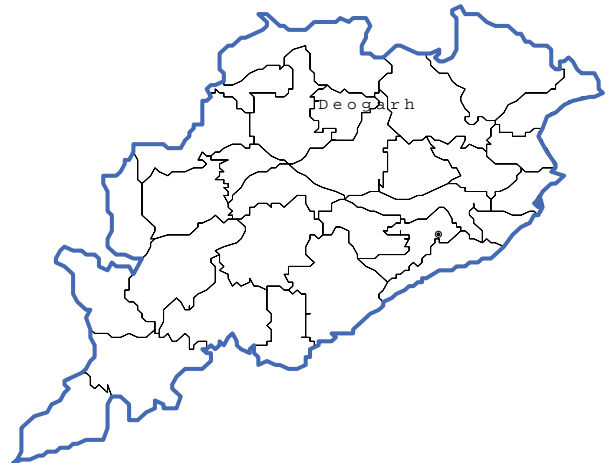
Related Key Programmes and Schemes that can help in prevention of violation of rights of the children

1. Beti Bachao Beti Padhao
2. Mission Vatsalya
3. Dindayal Disabled Rehabilitation Scheme
4. Janani Suraksha Yojana
5. Janani Shishu Suraksha Karyakram
6. Mid-Day Meal
7. Mahatma Gandhi National Rural Employment Guarantee Scheme
8. National Health Mission
9. National Nutrition Mission
10. Integrated Child Development Services (Including SABLA and Kishori Shakti Yojana)
11. Maternity Benefit Programme (Matritva Sahayog Yojana)
12. National Rural/Urban Drinking Water Mission
13. National Mental Health Programme
14. National AIDS Control Programme
15. Pradhan Mantri Kaushal Vikas Yojana
16. Pradhan Mantri Surakshit Matritva Abhiyan
17. Rashtriya Madhyamik Shiksha Abhiyan
18. Rashtriya Bal Swasthya Karyakram
19. National Crèche Scheme
20. Rashtriya Kishor Swasthya Karyakram
21. Sarva Shiksha Abhiyan
22. Swachh Bharat Mission
23. Scholarship Schemes
24. Schemes under National Trust Act
25. UJJAWALA
26. National Welfare Fund for Sportspersons
27. National Playing Fields Association of India
28. Scheme of Assistance for the creation of Urban Sports Infrastructure

Some examples of good practices

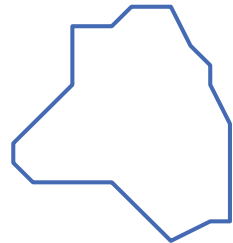
Maximisation of available resources – Example from Deogarh, Odisha

In Deogarh district of Odisha, the District Magistrate took the initiative to converge funds and arrange for accommodation of the JJB, CWC and DCPU in the same building. It became a single point for delivery of all child protection services in the district. The benefits included enhanced visibility of all three institutions, quicker response to any issue of child rights violation, better coordination, convergence of resources, etc.



Delhi High Court Directs Linking of JJ System with Birth Registration

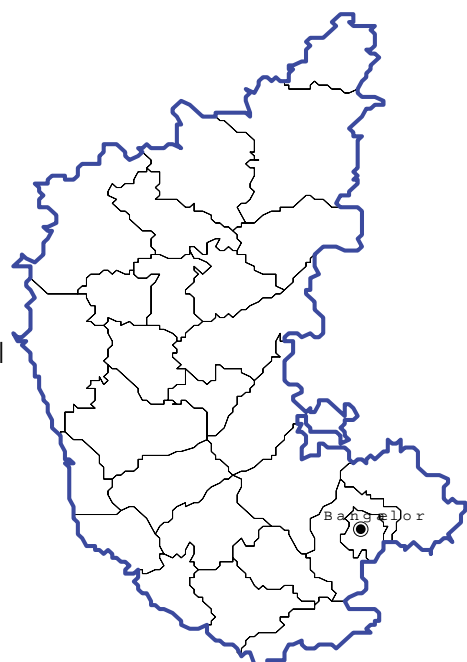
Taking suo moto cognisance of data received on number of children lodged in Tihar jail following a Right to Information (RTI) application filed by HAQ: Centre for Child Rights, the Delhi High Court initiated a Public Interest Litigation (PIL) to look into and correct the situation and pass appropriate directions for various authorities involved. In a step of far reaching consequences for millions of disadvantaged children in the Capital and other states of India, the Delhi High Court linked the Birth Registration System with the Juvenile Justice Administration System by holding that once the age of the child has been determined by the CWC or the JJB, the order should be used to get a birth certificate issued for the child so that this can become a proof of their age for the future (Court on its Own Motion Vs. Department of Women and Child Development [WP (C) 8889/2011]).



State Special Home for CCL in Summanahalli, Bangalore

The ECHO Special Home for CCL is the first one in India to be run by a voluntary organisation. It focuses on the overall development of the child through individual care and attention—which helps them become better human beings—and a variety of educational, vocational and agricultural activities. Services to mainstream CCL are:

- ♦ Life orientation: conducted regularly for psycho-social engagement.
- ♦ Career guidance: to orient children towards contributing positively to society.
- ♦ Personality development programmes: to enable the children to enhance their functional ability and civic sense.
- ♦ Yoga and meditation: to improve deviant and aggressive behaviour.



- ◆ Counselling and guidance: to resolve psychological issues through therapy.
- ◆ Therapeutic treatment: in the form of dance, music, theatre and art.
- ◆ Formal and non-formal education: at primary and higher secondary levels in addition to the KOS (Karnataka Open School) exam (Xth boards). A few children also pursue undergraduate studies at recognised universities in Bengaluru.
- ◆ Vocational training: such as computer skills, farming, Industrial Training Institute (ITI), tailoring, screen-printing, driving, etc. that equips them for the post-institutional life.
- ◆ Life skills education: helps them understand the ethos and ethics of human life and better adapt to society.
- ◆ Bala Panchayat: offers a platform for participation in decision making and familiarises them with ownership and civic responsibility.
- ◆ Traffic Police Assistance Programme (TPAP): This programme, initiated by ECHO in cooperation with the Department of Police, aims to transform CCL into responsible members of society through law enforcement. Former lawbreakers become law enforcers and earn their own living.
- ◆ Institutional Setup Transitional Homes at Bengaluru, Mysore and Cochin: These homes are established for delivering reformatory programmes to CCL and for their care and protection.
- ◆ Rehabilitation Centre: This centre is dedicated to complete rehabilitation in terms of education, vocational training, job placements of the children, etc.

BAL MITRAS – Friends of Children in Uttar Pradesh

Issue/Challenge: Cases of poor living conditions and low standards of service at Children's Homes have been highlighted recently. Regular support is required to maintain the standards of Children's Homes and facilities. This support can also be garnered from outside the formal system. Rule 78 (3) says that CCI shall encourage active involvement of the local community and corporates in improving institutional conditions supporting children. This provision is not being utilised, even though there are individuals wanting to extend support and CCI requiring the same. The issue is one of bridging the gap successfully.



Innovative step: The Government of Uttar Pradesh identified individuals to bridge this gap. These Bal Mitras (literally Friends of Children) can be retired or serving officers, employees, doctors, educationists, students, industrialists, social organisations, and social workers. Their credentials were verified by the District Probation Officer and they were issued Identity Cards signed by the District

Magistrate (DM). Through this innovative step, medical camps, therapy sessions, individual tuitions, sessions on Art of Living, group counselling and recreational and sports activities and many such other programmes/activities can be organised. These help CCI inmates in skill development, behavioural change, getting admission to regular schools, economic gain and in the creation of a transparent environment.

Additional readings and references:

<http://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=1295&lid=1518>

<http://chandigarh.gov.in/pdf/dsw2016-conflict.pdf>

<https://www.cplibrary.in/uploads/Publication/Final%20JJ%20Handbook.pdf>

https://nalsa.gov.in/sites/default/files/document/Training_Module_Samvedan.pdf

<https://satyarthi.org.in/assets/pdf/FAQ's%20on%20JJJB.pdf>

Annexure 1: Formats and Orders

facilitating and monitoring the adoption programme;

- (v) “Child Study Report” means the report which contains details about the child, such as his date of birth and social background;
- (vi) “community service” means service rendered by children in conflict with law who are above the age of fourteen years and includes activities like maintaining a park, serving the elderly, helping at a local hospital or nursing home, serving disabled children, serving as traffic volunteers etc.
- (vii) “Form” means the forms annexed to these rules;
- (viii) “Home Study Report” means a report containing details of prospective adoptive parents or foster parents, and shall include social and economic status, family background, description of home and atmosphere, and health status;
- (ix) “individual care plan” is a comprehensive development plan for a child based on age and gender specific needs and case history of the child, prepared in consultation with the child, in order to restore the child’s self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following, including but not limited to, needs of a child, namely:-
 - (a) health and nutrition needs, including any special needs;
 - (b) emotional and psychological needs;
 - (c) educational and training needs;
 - (d) leisure, creativity and play;
 - (e) protection from all kinds of abuse, neglect and maltreatment;
 - (f) restoration and follow up;
 - (g) social mainstreaming;
 - (h) life skill training.
- (x) “in country adoption” means adoption of a child by a citizen of India residing in India;

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 21st September, 2016

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- (x) “in country adoption” means adoption of a child by a citizen of India residing in India;

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 21st September, 2016

G.S.R. 898.—In exercise of the powers conferred by the proviso to sub-section (1) of section 110 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), the Central Government hereby makes the following model rules, namely:-

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1. Short title and commencement.- (1) These rules may be called the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

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