JUVENILE JUSTICE SYSTEM

Working Manual for Stake Holders

• Police
• Probation Officer
• Juvenile Justice Board
• Observation Home & Special Home
• State Government
• NGO
• Legal Services Authority
• Advocate

Introduction By

Justice K.G.Balakrishnan, Chief Justice of India

Edited By

Vijay Hansaria, Senior Advocate
&
P.I.Jose, Advocate

A PROJECT OF

Legal Assistance Forum
in association with
Unicef
PREFACE

Legal Assistance Forum is an association of lawyers, academicians, journalists, students and other responsible citizens concerned about the development of the legal system for extending better services to the poor, marginalized and underprivileged sections of the society. Since its formation in June 2005 till 20th June 2006, members of the Legal Assistance Forum had no experience in the field of Juvenile Justice barring the little acts of delinquency committed by themselves in their childhood. On that day after completing the Lok Adalat at Jorhat Central Jail in Assam, the members while informally interacting with the inmates came to notice that a large number of children below the age of 18 years were lodged along-with hardcore criminals. It surprised everyone and we decided to act whatever the little we could.

We made representations to various authorities including Gauhati High Court and National Human Rights Commission. Gauhati High Court treated our representation as a PIL and enquiry was ordered wherein 42 minors found in jails were shifted to Juvenile Homes. Similarly NHRC issued notice on our complaint to all the prison authorities in the country and directed remedial action to shift the juveniles from jails, if found.

This led us to choose the topic “Treasuring the Future: Children’s Rights and Realities” for our annual seminar held on 18th November, 2006 and we invited the country representative of Unicef to deliver the key note address. Unicef and LAF decided to join hands and work together. It was felt that key functionaries like Police, Probation Officer, Juvenile Justice Board and staff of the Observation Homes and Special Homes do not have a manual which can be referred and relied upon by them in day to day functioning. Juvenile for whom the Act and Rules have been framed are not aware of their entitlement under the law. It was thus decided to develop a simplified and child friendly version under the Act and Rules clearly defining the role of each stake holder under the Juvenile Justice System.

For the purpose of preparation of the manual, our members and associates visited and interacted with (1) Principal Magistrates and members of the Juvenile Justice
Boards, (2) Probation Officers (3) Staff of Juvenile Observation Homes and Special Homes, (4) Police Officers, (5) Advocates and (6) Children in conflict with law in the States of Kerala, Rajasthan and Assam and we also organised workshop-cum-seminars at Kochi, (Kerala), Jaipur (Rajasthan) and Guwahati (Assam) which were attended by the stake holder of these States.

The provisions of the Act and the Rules have been analysed by a team of dedicated researchers and have been stated in a simplified manner. The organisation, duties and responsibilities of each stake holder have been analysed separately so that each stake holder can equip himself or herself with that part of the law which is relevant to him or her. Charts have been prepared so that the legal provisions can be understood in a simplified and user friendly manner. The key responsibilities of the approach of each stake holder have been summarized by the Hon'ble Judges of the Supreme Court and different High Courts. The entire manual has been discussed and debated by an Advisory Committee constituted for this purpose.

We hope that the manual would be useful not only to the various stake holders but also the juvenile and their parents and it would facilitate the achievement of the final goal of rehabilitation and social reintegration of the juvenile who, due to circumstances beyond their control, have unfortunately came in conflict with law.

October 31, 2008                      Vijay Hansaria, Senior Advocate
                                          President, Legal Assistance Forum
ACKNOWLEDGEMENT

Legal Assistance Forum was fortunate to have participation and guidance of several eminent persons in the preparation of this Working Manual for stakeholders under Juvenile Justice System, without which completion of this project would have been impossible. While acknowledging their full hearted contribution I, on behalf of Legal Assistance Forum, express our sincere gratitude to each one of them.

It was a live experience to interact with so many stakeholders of Juvenile justice system during the workshops conducted at three different parts of the country. In the light of experience gathered, I wish to state that we need to change, change administratively and attitudinally. I am sure this manual will pave the way, and all who lent a hand to us in this project would cherish that more than any acknowledgement. Yet it is my duty to name a few, without in any way lessening the importance of others’ contribution.

Chief Justice of India, Mr. Justice K. G. Balakrishnan – he presided over the annual seminar in 2006, which lead to our association with UNICEF, inaugurated the project at Kochi and was kind enough to contribute the introductory chapter of this manual. His selfless contribution will go a long way in improving the whole system of Juvenile justice in the country.

Mr. Sonykutty George, Specialist-Child Protection, UNICEF and Ms. Victoria Rialp, Chief, Child Protection Section, UNICEF – while their confidence in Legal Assistance Forum emboldened us, the informal interaction, help and guidance made the project a success. I do not intend to end this with mere words, Legal Assistance Forum promises to continue the mission to achieve the ultimate goal of ensuring justice to all, children in particular.

Dr. Justice (Rtd.) Shivraj. V. Patil; Mr. Justice Altamas Kabir, Judge Supreme Court of India; Mr. Justice R.V.Raveendran, Judge, Supreme Court of India; Mr. Justice
Tarun Chatterjee, Judge, Supreme Court of India; Mr.Justice Jasti Chelameswar, Chief Justice, Gauhati High Court; Mr. Justice Madan B. Lokur, Judge, Delhi High Court and Mr. Justice I.A.Ansari, Judge, Gauhati High Court - each of them were kind enough to contribute articles to this manual. The articles will guide and motivate the users to understand and work to improve the system.

Mr. Amod K. Kanth, Chairperson, Delhi Commission for Protection of Rights of Children; Dr. A. K. Gopal, Director, NIPCCD and Ms. Minna Kabir, Social activist - members of the advisory committee. Each one of them spent several hours discussing various aspects at the committee meetings and then reading the drafts and suggesting improvements. It would have been rather impossible to prepare a manual with out regular discussions, guidance and advice from well experienced persons in the field.

Mr. Justice J.B. Koshy, Judge, High Court of Kerala; Mr. Justice R. Basant, Judge, High Court of Kerala; Ms. P. K. Srimati, Minister for social welfare, Govt. of Kerala; Mr. Jacob Punnuse, DGP, Kerala; Mr. K.L. Varghese, President, LAF Kerala Chapter; Dr. Fathima Sherief, Secretary, LAF Kerala Chapter; Dr. Mary Joseph and all the research associates of Rajagiri College of social sciences, Kalamassery, Kerala - their help, guidance and participation in the research and workshop cum seminar conducted in Kerala made it possible for LAF to make this project a success.

Mr. Justice R.S.Chauhan, Judge, High Court of Rajasthan; Shri Madan Dilawr, Minister for Social Justice and Right Department, Government of Rajasthan; Mr. Sanhgi, President, LAF Rajasthan Chapter and Mr.Praveen Balwada, Secretary, LAF Rajasthan Chapter - their help, guidance and participation in the research and workshop cum seminar conducted in Rajasthan took the project further foreward.

Mr. R.N. Mathur, DGP, Assam; Mr. Dilip Bora, IG Police (CID); Mr. Mrinal K. Choudhury President, LAF Assam Chapter and Mr. Apurba Kumar Sharma, Secretary, LAF Assam Chapter -their whole hearted involvement and guidance in the research and
workshop cum seminar conducted in Assam successfully completed the field study and stake holders interaction part of the project.

Last but most important, names of two youngsters, Mr. Jayant Sangwan and Ms. Aakansha Agrawal, who worked with LAF team as research associates need a special mention. Jayant is not only bright and affable but also very hard working. While acknowledging their contributions I wish both of them the very best in their carrier and future life.

October 31, 2008

P.I. Jose, Advocate
Secretary, Legal Assistance Forum
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**Key responsibilities and approach**

*by Hon’ble Mr. Justice I.A.Ansari, Judge, Gauhati High Court*

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8 **Non Government Organisation (NGO)**

*Contributed by: Ritu Bhardwaj, Advocate*

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**Key responsibilities and approach**

*by Mr. Sonykutty George, Project Officer, Child Protection Section, UNICEF, India*

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9 **Legal Services Authority and Advocate**

*Contributed by: Jayesh K.U., Advocate*

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1
Introduction
An Overview of Juvenile Justice System in India

By
Hon'ble Mr. Justice K.G.Balakrishnan, Chief Justice of India

The juvenile justice system in India contemplates the legal response with respect to two categories of children, namely those who are 'in conflict with law' (an individual under the age of 18 years who is accused of committing an offence); and those 'in need of care and protection' (children from deprived and marginalized sections of society as well as those with different needs and vulnerabilities). The juvenile justice policy in India is structured around the Constitutional mandate prescribed in the language of Articles 15(3), 39 (e) & (f), 45 and 47, as well as several international covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

Prior to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 the policy was based on the Juvenile Justice Act, 1986 and various State legislations dealing with the rights and welfare of children. However, a review of the working of the said legislations indicated that much greater attention was required and a distinction had to be drawn between the treatment of ‘children in conflict with the law’ and those ‘in need of care and protection’. In this regard, one of the key objectives of the Juvenile Justice Act, 2000 was to create a separate system of justice-dispensation for instances where children are accused of committing offences, distinct from the criminal justice system for adults. The Act also contemplates the effective involvement of informal social arrangements at the level of the family, voluntary organisations and the community.
It was widely perceived that even the 2000 Act did not achieve what it set out to do and that the justice-delivery system for juveniles continues to suffer from neglect and apathy. For instance, empirical studies indicated that there were extensive delays in the disposal of cases on the account of the omission to constitute Juvenile Justice Boards in many districts. Furthermore, monitoring by voluntary sector organisations regularly indicated that the infrastructure in many of the government-run homes where the children are kept does not meet the minimum standard required for a humane living. Such reports prompted the Parliament to intervene again and an amendment was made to the Act in 2006, with the primary intent of speeding up the administration of justice for juveniles. Due emphasis was also placed on the integration of children from deprived sections into the social mainstream. The amendment also reflected the legislature’s concern that the various duties and responsibilities cast on State Governments by the 2000 Act were not being met and many States had not framed the requisite rules under the same. This concern was addressed by inserting a proviso to Section 68, wherein the ‘Model Rules’ that were to be framed by the Central Government were made applicable to the States until such point of time that the State Governments made rules which were to be in conformity with the Central Model Rules.

Subsequently the Model Rules were framed by the Central Government in 2007. They prescribe and restate the fundamental principles involved in the administration of Juvenile Justice and the protection of Children – such as the ‘presumption of innocence’, ‘principle of dignity and worth’, deference to the ‘best interests of the child’, principle of ‘family responsibility, positive measures, principle of repatriation and restoration, and the idea of ‘fresh start’ among others. These principles are to be borne in mind by all the concerned stakeholders while discharging their duties under the Act.

In spite of having such a comprehensive legislation in place, it is often felt that there is an inherent risk of violation of children’s rights within the
juvenile justice system. This can be attributed not only to the weak implementation of the legislation but also to poor awareness about the same amongst the various authorities and stakeholders. There have been numerous reports to the effect that children ‘in need of care and protection’ continue to languish in poorly managed institutions, while children who come in conflict with the law continue to be treated as criminals. Therefore one cannot understate the need to have a ‘child friendly’ juvenile justice system with appropriate procedures and protocols in place for police, prosecutors, judges, probation officers and home staff – all of which are crucial to ensure the protection of children rights’ and to ensure that the system works in the best interest of the child.

In our country, there is not much awareness about concepts such as ‘diversion and restorative justice’. Diversion schemes relate to a policy-choice wherein cases involving juveniles are dealt with by bodies other than the formal court system, in order to avoid the stigmatization and trauma associated with judicial proceedings. Diversion of children from the justice system needs to be combined with community-based programmes involving families of offenders, so as to ensure proper rehabilitation and avoid repeat offences. Strategies oriented around the idea of Restorative justice, (i.e. promoting reconciliation, restitution and responsibility) through the involvement of the child, family, community and the victim provide juveniles the opportunity to develop their individual capacities and contribute to society. In many countries, successful combinations of diversion and restorative justice initiatives have resulted in reduction in the levels of juvenile crime.

The improvement of the juvenile justice system is a gradual process, which requires intensive and continual follow-up as well as long-term commitment rather than a series of ‘ad hoc’ exercises and ‘knee-jerk’ responses. Training programs should be based on participatory techniques that promote sensitization and behavioral changes among the various
stakeholders responsible for the working of the juvenile justice system. Training also creates opportunities for stakeholders to interact amongst themselves and get a better understanding of the constraints and bottlenecks at various levels.

It is vital for the authorities involved in the juvenile justice system to build effective partnerships with civil society. Non-Governmental Organisations (NGO’s) have the capacity to provide community-based life-skills programs, ‘group counseling’, community work opportunities, and open ‘custody group homes’ for children in conflict with law. Voluntary sector organisations can thus help the governmental agencies to engineer a substantial shift towards non-custodial alternatives for corrective measures involving juveniles.

In this regard, I welcome the initiative of the Legal Assistance Forum to bring out a working manual for all the stake-holders under the Juvenile Justice system. I hope that the same will make an effective contribution to the cause of improving the standards of justice-delivery for children in our country.
FUNDAMENTAL PRINCIPLES*

The fundamental principle of juvenile justice system has been laid down in Rule 3 of the Juvenile Justice (Care and Protection of Children) Rule 2007. The State Government, the Juvenile Justice Board, the Child Welfare Committee and other competent authorities or agencies while performing their duties shall abide and be guided by these principles. These principles are –

I. **Principle of presumption of innocence:** A juvenile in conflict with law is presumed to be innocent of any malafide or criminal intent up to the age of eighteen years. The basic components of presumption of innocence are:

   (i) Age of innocence;
   (ii) Procedural protection of innocence; &
   (iii) Provisions of Legal aid and guardian ad litem.

II. **Principle of dignity and worth:** Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice. The juvenile's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.

III. **Principle of Right to be heard:** Every child's right to express his views freely in all matters affecting his interest shall be fully respected through every stage in the process of juvenile justice.

* By **K.S.Bhati**, Advocate, Treasurer, Legal Assistance Forum
IV. **Principle of Best Interest:** In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the juvenile in conflict with law shall be the primary consideration.

V. **Principle of family responsibility:** The primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. However, in exceptional situations, this responsibility may be bestowed on willing adoptive or foster parents.

VI. **Principle of Safety:** At all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter, the juvenile shall no be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the protection.

VII. **Positive measures:** Provisions must be made to enable positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other mainstream community institutions or processes, for the purpose of promoting the well-being of the juvenile through individual care plans carefully worked out.

VIII. **Principle of non-stigmatizing semantics, decisions and actions:** The non-stigmatizing semantics of the Act must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited in the processes pertaining to the juvenile.

IX. **Principle of non-waiver of rights:** No waiver of rights of the juvenile, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the juvenile, is either permissible or valid. Non-exercise of a fundamental right does not amount to waiver.
X. **Principle of equality and non-discrimination:** There shall be no discrimination against a juvenile on the basis of age, sex, place of birth, disability, health, status, race, ethnicity, religion, caste, cultural practices, work, activity or behaviour of the juvenile or that of his parents or guardians, or the civil and political status of the juvenile.

XI. **Principle of right to privacy and confidentiality:** The juvenile's right to privacy and confidentiality shall be protected by all means and through all the stages of the proceedings and care and protection processes.

XII. **Principle of last resort:** Institutionalization of a juvenile shall be a step of the last resort after reasonable inquiry and that too for the minimum possible duration.

XIII. **Principle of repatriation and restoration:** Every juvenile has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile enjoyed before coming within the purview of the Act.

XIV. **Principle of Fresh Start:** The principle of fresh start promotes new beginning for the juvenile by ensuring erasure of his past records.
POLICE*

The Act contemplates constitution of a special unit of the police force called 'Special Juvenile Police Unit' (SJPU) to deal with juvenile in conflict with law. In every police station at least one officer, specially instructed and trained, is required to be designated as 'Juvenile or Child Welfare Officer' (JCWO) to deal with juvenile. Police is the first person with whom a juvenile comes into contact in the juvenile justice system; thus he is required to have a child friendly approach. Special care is to be taken not to treat the juvenile as a criminal.

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

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* By Ritu Bhardwaj, Advocate, Joint Secretary, Legal Assistance Forum
* Applicable to all States as per proviso to section 68 (1) of the Act r/w Rule 96
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**II. ORGANISATION**

1. An officer of the rank of not less than Inspector General of Police (IGP) to act as Nodal Officer to coordinate and upgrade role of Police in issues pertaining to Juvenile. [*Rule 84 (10)*]

2. In every district and city there should be a 'Special Juvenile Police Unit' (SJPU) to handle juvenile to be constituted within 4 months of the notification of the Rules i.e. by 26.2.2008. [*Section 63(3) r/w Rule 84(1)*]

3. Superintendent of Police of district to head SJPU and oversee its functioning. [*Rule 84 (9)*]

4. SJPU shall consist of Juvenile or Child Welfare Officer (JCWO) of the rank of Police Inspector and two paid social workers one of whom shall be a woman. [*Rule 84 (1)*]

5. In every police station at least one officer, specially instructed and trained, to be designated as the JCWO to deal with juvenile. [*Section 63(2)(3) r/w Rule 84 (3)*]

6. List of designated JCWO and members of SJPU with contact details to be prominently displayed in every police station. [*Rule 11 (4)*]
7. SJPU to seek assistance from NGOs, Panchayat & Gramshabhas and Residents Welfare Associations. \([\text{Rule 84 (7) (8)}]\)

8. Central and State Government to monitor establishment and functioning of SJPU. \([\text{Rule 64(1)}]\)

### III. DUTIES & FUNCTIONS

#### A. APPREHENSION/ARREST

1. In case of petty offences (punishable with fine upto Rs.1000/- only), the police may dispose off the case at the police station itself. \([\text{Rule 13(2) (d)}]\)

2. In case of non serious offences (punishable with imprisonment upto 7 years) juvenile can be apprehended only if it is "necessary in the interest of the juvenile". \([\text{Rule 11(7)(9)}]\)

3. In case of serious offence (punishable with imprisonment for more than 7 years) juvenile can be apprehended. \([\text{Rule 11 (7)}]\)

#### B. DUTIES UPON APPREHENSION

1. Upon apprehension of a juvenile, the police shall not:

   (i) Hand-cuff, chain or otherwise fetter the juvenile; \([\text{Rule 76}]\)

   (ii) Send the juvenile to police lock up or jail; \([\text{Section 10(1) proviso r/w Rule 11 (3)}]\)

   - Courts have even awarded monetary compensation where juvenile has been kept in jail or police lock up.\(^1\)

---

2. Upon apprehension of Juvenile the police shall:

(i) Inform the designated JCWO of the nearest police station to take charge of the juvenile and matter; [Section 10 (1) r/w Rule 11(1)(a)]

(ii) Inform the parents/guardian about apprehension of the juvenile, address of the Board and date and time of production; [Section 13 (a) r/w Rule 11 (1)(b)]

(iii) Explain to the parents/guardian about the possible need of personal bond/surety; [Section 50 (2) Cr.P.C.]

(iv) Give copy of police report to the parents/guardian free of cost; [Section 50 (1) r/w section 50A (1) & 207 Cr.P.C]

(v) Ask the parents/guardian to bring documents regarding age of juvenile;

(vi) Inform the Probation Officer; [Section 13 (b) r/w Rule 11 (1)(c)]

(vii) Record social background of the juvenile and circumstances of apprehension in the case diary and forward to the Board; [Rule 11 (6)]

(viii) Be responsible for the safety, food and basic amenities during the period of apprehension; [Rule 11 (13)]

(ix) Produce before the Board within 24 hours of apprehension; [Section 10 r/w Rule 11 (2)] and in case the Board is not sitting, the juvenile shall be produced before a single member of the Board, who is empowered to pass all orders except final disposal; [Sec. 5(2) r/w Rule 11 (10)]

(x) Where juvenile is not released on bail, he shall be sent to Observation Home; [Section 12(2)]
3. In case of apprehension apparently in the interest of juvenile, the police shall make a report to the Board for transferring the child to the Child Welfare Committee. [Rule 11 (8) r/w Rule 13 (1)(b)]

4. In case of non-serious offence, no FIR or charge-sheet is required. Police may record the information regarding the alleged incident in General Diary. A social background report, circumstances of apprehension and offence shall be submitted to the Board before the first hearing. [Rule 11 (11)]

C. OTHER IMPORTANT ASPECTS

1. The police shall complete the investigation at the earliest having regard to the requirement of the Act to complete the inquiry by the Board within 4 months. [proviso to section 14 (1)]

2. The police shall attend the Board proceedings in plain clothes and shall not wear police uniform except at the time of arrest. [Rule 75]

3. Every juvenile is entitled to be released on bail, except:

   (i) Release is likely to bring him into association with any known criminal, or

   (ii) Expose him to moral, physical or psychological danger, or

   (iii) Release would defeat the ends of justice. [Section 12 (1)]

4. In case of escape, police may trace the juvenile and send him back. No proceeding for such escape can be initiated against the juvenile. [Section 22, Rule 18(2)(a)]

5. SJPU to act as watch-dog against cruelty, abuse and exploitation of juvenile. [Rule 84(5)]
6. Police to accompany the juvenile for restoring him back to the family. 

[Rule 65(4)]

7. Police Officer if found guilty of torturing a child, is liable to be removed from service besides being prosecuted under section 23 of the Act.

[Rule 84(11)]
Key Responsibilities and Approach

By

Hon’ble Mr. Justice Jasti Chelameswar, Chief Justice, Gauhati High Court

Juvenile delinquency is a subject, which attracted the attention of the law makers in this Country for over the last 150 years. Over a period of time, the Parliament recognized that what needs to be tackled is not only the juvenile delinquency, but also various problems of the juvenile, such as, children in need of care and protection, etcetera. In the Juvenile Justice (Care and Protection of Children) Act, 2000, the expression ‘Juvenile’ or ‘child’ are used synonymously under Section 2 of the Act. While the said enactment defines a ‘child in need of care and protection’ under Section 2(d), it defines a ‘Juvenile in conflict with law’ under Section 2(l).

The said enactment purports to deal, comprehensively, with the various aspects of the above mentioned two categories of children. In substance, the scheme of the Act is that: (1) it deals with the manner in which ‘a juvenile in conflict with law’ is required to be dealt with, (2) it prohibits certain conduct against the juvenile and indulgence of such conduct, like employing a juvenile for begging or subjecting a juvenile to cruelty, to be punishable offences. Under Section 32 of the Act, a ‘child in need of care and protection’ is required to be produced before the Committee established under Section 29 of the Act, by the various categories of persons enumerated thereunder, which includes a Police Officer of a “Special Juvenile Police Unit” or a “Designated Police Officer”.

Under Section 10 of the Act, as soon as a juvenile in conflict with law is apprehended by the Police, such a juvenile is required to be kept under the charge of a Special Juvenile Police Unit or Designated Police Officer, such an Officer, who is also a Police Officer, shall immediately report the matter to the Board constituted under the Act. Under Section 13 of the Act, it is obligatory that the parent or guardian of such a juvenile be intimated regarding the apprehension.

The ultimate purpose of the Juvenile Justice Act is rehabilitation and social integration, be it, a child in conflict with law or a child in need of care and protection. For the purpose of achieving such rehabilitation and social integration, elaborate procedures are prescribed under the Act. The Act contemplates, under Section 63, the Police Officers with aptitude and appropriate training and orientation, to be designated as a Juvenile or Child Welfare Officer, to handle the juvenile in coordination with the Police. Secondly it contemplates that the Police Officers, who frequently deal with the juveniles or engaged in the prevention of the juvenile crime, shall be specifically instructed and trained.
The key responsibility of Police Officers, whether designated as a Juvenile or Child Welfare Officer or not, is that the Officer, should always keep in mind that a juvenile in conflict with law or a child in need of care and protection, is required to be handled gently and cannot be treated on par with persons, who are, otherwise, called criminals.
4
PROBATION OFFICER

Probation Officer plays an important role in juvenile justice system beginning with apprehension by police and continues to supervise the juvenile till his rehabilitation and social re-integration. He acts as the friend, philosopher and guide of the juvenile.

I. RELEVANT STATUTORY PROVISIONS

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<td>15 (2)</td>
<td>Prepare and submit Social Investigation Report on juvenile to the Board in Form – IV.</td>
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<td>15(3)</td>
<td>Board may place a juvenile under supervision of a Probation Officer while passing final order.</td>
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<td>Report of Probation Officer shall be confidential; however, substance of the report may be communicated the juvenile/parent.</td>
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<td>59(1)</td>
<td>Probation Officer may submit report to the Board for permitting a juvenile (in Special Home) to live with his parent/ guardian/ authorised person.</td>
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*By Jayesh K.U., Advocate, Executive Member, Legal Assistance Forum*
### B. Juvenile Justice (Care and Protection of Children) Rules, 2007*

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<td>11(1)(c)</td>
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<td>15(3)</td>
<td>Probation Officer to prepare individual care plan for the juvenile.</td>
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<td>15(8)</td>
<td>Board may place the juvenile under supervision of a Probation Officer while passing final order.</td>
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<td>17(2)</td>
<td>The Probation Officer shall place each case before the Management Committee for ensuring proper release and social mainstreaming of the juvenile post-release.</td>
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<td>50(2)</td>
<td>Every newly admitted juvenile shall be allotted a case worker who may be a Probation Officer.</td>
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<td>55(3)</td>
<td>The Management Committee of each Institution to consist of a Probation officer as a member.</td>
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<td>65(8)</td>
<td>Probation Officer to prepare restoration and follow up plan for juvenile and submit to the Board.</td>
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<td>68(3)</td>
<td>The whole-time staff of Observation/ Special Home may, consist of Probation Officer.</td>
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<td>Before sending a juvenile outside its jurisdiction, the Board may direct a probation officer to make enquiries as to the fitness and willingness of the relative or other person to receive the juvenile.</td>
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<td>Probation Officers may be appointed from the voluntary organization and social workers found fit for the purpose.</td>
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<td>Duties, functions and responsibilities of Probation Officer.</td>
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* Applicable to all States as per proviso to section 68 (1) of the Act r/w Rule 96
II. APPOINTMENT

A. Appointment by State Government

'Probation Officer' is an officer appointed by the State Government as a Probation Officer under the Probation of Offenders Act, 1958 (20 of 1958). [Section 2(s)]

B. Honorary Probation Officers

To augment the existing probation service, honorary or voluntary Probation Officers may be appointed from the voluntary organizations and social workers found fit for the purpose by the Competent Authority i.e. the Board. [Section 2(g) r/w Rule 85 ]

C. Whole-Time Staff of Institution

Probation Officer shall be a whole-time staff of every Observation/Special Home. For an Institution with a capacity of 100 juveniles there should be at least 3 Probation Officers, which, shall be proportionally increased with the capacity of the Institution. [Rule 68]

D. Member of Management Committee of Institution

Probation Officer shall be a member of the Management Committee constituted for the management of the Institution and monitoring the progress of juvenile. [Rule 55 (3)]
III. DUTIES & FUNCTION

A. Obtain Information upon apprehension of Juvenile by Police

Upon receipt of information of apprehension of juvenile, Probation Officer shall obtain details regarding antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry. *[Section 13 (b) and Rule 11 (1) (c)]*

B. Social Investigation Report

1. Probation Officer shall prepare a Social Investigation Report (SIR) in Form IV of the Rules and submit to the Board.

2. SIR shall be prepared through:
   - personal interview of the juvenile;
   - information from the family;
   - information from social agencies and other sources.

3. SIR shall contain:
   - family history of the juvenile, i.e., education, occupation, earning etc. of parents/guardian and sibling;
   - antecedents of the juvenile, like habits and interest, companion and their influence, school and/or work record, report of neighbour etc.;
   - mental and physical condition of juvenile;
   - opinion of experts consulted etc.
   - analysis of the case including reasons for delinquency;
   - recommendation and planning for dealing with juvenile *[Section 15(2) r/w Rule 15(2), 87 (1)(a) and Form - IV]*
C. Supervision of Juvenile

1. A juvenile may be placed under the supervision of a Probation Officer by the Board; at three different stages, namely

   a. Bail [Section 12 (1)]
   b. Final Order [Section 15 (3) r/w Rule 15(8)]
   c. Post release [Rules 65(9) & (10)]

2. Where such supervision order is passed, the Probation Officer shall supervise the juvenile for such period not exceeding three years and subject to such conditions that may be specified by the Board.

3. Supervision includes:

   (a) Assisting the juvenile to develop contacts with family and also providing assistance to family members; [Rule 87(1)(f)]
   (b) Establishing linkages with voluntary workers and organizations to facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow-up; [Rule 87(1)(i)]
   (c) Follow-up of juveniles after their release and extending help and guidance to them; [Rule 87(1)(j)]
   (d) Visiting regularly the residence of the juvenile under their supervision and also places of employment or school attended by such juvenile and submitting fortnightly reports as prescribed in Form XXI; [Rule 87(1)(k)]
   (e) Maintaining case file and such registers as may be specified from time to time. [Rule 87(1)(m)]
4. If the Juvenile has not been of good behaviour, the Probation Officer shall report to the Board for appropriate orders. [*Proviso to Section 15 (3)*]

**D. Assistance to Institutionalised Juvenile**

As soon as Probation Officer is allotted a juvenile on his admission to an institution, he shall assist the juvenile in the following ways:

- Communicate with family/guardian of juvenile and also provide assistance to family members; [*Rule 87 (1) (f)*]
- Attend Board proceedings and submit reports, as and when required; [*Rule 87 (1) (b)*]
- Clarify problems of Juvenile and deal with their difficulties in institutional life. [*Rule 87 (1) (c)*]
- Participate in the orientation, monitoring, education, vocational and rehabilitation programmes of the juvenile. [*Rule 87 (1) (d)*]
- Establish co-operation and understanding between the juvenile and the Officer-in-charge. [*Rule 87 (1) (e)*]
- Accompany juveniles, where-ever possible, from the office of the Board to Observation/Special Home. [*Rule 87 (1) (l)*]

**E. Case Worker**

A newly admitted juvenile to an Institution may be allotted a Probation Officer as a Case Worker. [*Rule 50 (2)*]

[Note: please see duties of case worker under the chapter ‘NGO’]

**F. Information of Unnatural Death**

Probation Officer shall immediately inform the Officer-in-Charge and the Medical Officer about unnatural death of a juvenile. [*Rule 59 (3)*]
G. Individual Care Plan

Probation Officer shall prepare an individual care plan of every juvenile in Form XXI which must from part of all final orders of the Board. \([\text{Rule 15}(3)]\)

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

H. Restoration and Follow-Up

The Probation Officer shall prepare restoration and follow up plan as part of the individual care plan of juvenile.

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

I. Conduct enquiry for transfer outside jurisdiction

Probation Officer to make enquiries as to the fitness and willingness of the relative or other person to receive the juvenile at the ordinary place of residence when to ordered by the Board. \([\text{Section 50 r/w Rule 79 (1)}]\)

J. Reports to be confidential

The report of Probation Officer considered by the Board is confidential. However, the Board may communicate the substance thereof to the juvenile and/or his parent/guardian. \([\text{Section 51}]\)

K. Prohibitions

Probation Officer shall not:

(i) employ a juvenile under his supervision for his own purposes;
(ii) take any private service;
(iii) exploit/abuse in any manner physically, sexually, or emotionally.

[Rule 89]
Key Responsibilities & Approach

By

Hon’ble Mr. Justice R. V. Raveendran, Judge, Supreme Court of India

Probation service originally started as a part of religious missionary service. When courts discharged minor offenders conditionally on assurance of good conduct, it was found that the offenders were more likely to conduct themselves properly, if they were placed under the supervision of some responsible person. As it was difficult to secure adequate number of responsible persons willing to ‘supervise’ discharged offenders, courts developed the practice of calling upon missionaries to supervise the discharged offenders and give advice and help to them. Gradually the supervision during probation were shifted from religious missionaries to professional Probation Officers, as the emphasis shifted from ‘redeeming the sinner’ to ‘advising, assisting and befriending the probationer’. Conceptually, Probation Officers in their supervising capacity, endeavour to ‘improve the position of the probationer by tendering advice, providing moral support and identifying employment opportunities’.

2. The skills and knowledge required to supervise adult offenders on probation are completely different from the skills and understanding required for supervising juveniles in conflict with law. A.E.Jones in ‘Juvenile Delinquency & the Law’ (1945) succinctly defined the role of a Probation Officer in regard to juveniles thus :

“……the relationship between the probation officer and the probationer will have little value if it is regarded as a matter of carrying out the terms of a contract for a certain period… The essential power of the probation officer is in his personality; if he can inspire devotion in his charge; if the probationer becomes filled with a genuine desire to gain his approval; if the parents accept him unreservedly as a wise friend of the family and profit by his suggestions on the upbringing of their offspring; if the probationer does not look on him as a sort of policeman whose watchfulness it is almost a point of honour to cheat; then the probation officer may hope for a true success…… the probation officer can only cure delinquency by effecting a change of heart either in the child or the parent.”

3. To discharge his duties effectively, a Probation Officer dealing with juveniles should know the basics of juvenile justice law and criminal law as also human and child psychology, and a broad knowledge about avenues of educational, vocational and employment opportunities. He should be able to ‘talk’ to them to gain their confidence and respect. His supervision should be a proper blend of discipline, patience, concern, understanding and compassion. He should not treat juveniles in conflict with law as criminals. Nor should he treat their problems, grievances, fears and needs with disdain and cynicism, in a mechanical and routine manner. A Probation Officer should always remember that a juvenile usually gets into a situation of conflict with law on account of ignorance, illiteracy, penury, threats or undue influence, which in turn, are the consequences of the greed, selfishness,
apathy, lust and depravity of adults – many a time the parents and guardians. More often than not, a juvenile is unaware of the consequences of his actions; he is hardened by the callous and harsh treatment meted out by the adult world; and he is hardly in a position to distinguish right from wrong. Many a juvenile being victims of physical and sexual abuse, suffer from sexually transmitted diseases, physical ailments and mental disorders. Many develop fear psychosis or other abnormal behaviour which may vary from ‘violent and unsociable’ to ‘timid and withdrawn’. Many become addicted to drugs and substance abuse, making them human wrecks requiring special care and delicate handling. The Probation Officer’s role is to persuade the juveniles in conflict with law learn to follow what is good and healthy; to make them unlearn what is bad; and to wean them away from corrupting habits and influences. In short, each Probation Officer should be a social worker, disciplinarian, friend, guide, nurse, teacher and mentor rolled into one. A daunting and difficult task indeed. That is why Chief Justice Bhagwati observed two decades ago [in Sheela Barse vs. Secretary, Children Aid Society -- AIR 1987 SC 656] that unless Probation Officers remain motivated and observant, they will not be able to handle juvenile related situations.

4. Moving from general to specific, let us consider their role under Juvenile Justice (Care and Protection of Children) Act, 2006 (‘Act’ for short). It is as follows:

(i) When any juvenile is arrested and detained or appears or brought before the Juvenile Justice Board (for short ‘Board’) in connection with an offence, the Board may direct that such juvenile be released on bail or placed under the supervision of a Probation Officer. [Section 12(1)]

(ii) When a juvenile is arrested, the concerned Police shall have to inform the Probation Officer of such arrest, to enable him to obtain the information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry. [Section 13(b)]

(iii) Before passing a final order as to whether the juvenile has committed an offence, the Board is required to obtain the social investigation report on the juvenile through a Probation Officer (or a recognized voluntary organization or otherwise) and take into consideration the findings of such report. [Section 15(1) and (2)]

(iv) When the Board finds that the juvenile has committed an offence, it may, while passing the final order, make an order that the juvenile in conflict with law, shall remain under the supervision of a Probation Officer during a period not exceeding three years (subject to such conditions as it deems necessary to impose for due supervision of such juvenile) – [Section 15(1) (d, e, f) and (3)]

The Act also enables the state government to make rules providing for the preparation of a report by the Probation Officer in respect of each juvenile prior to his discharge from a special home regarding the necessity and nature of after-care,
the period of such after-care, supervision thereof, and for the submission of report on the progress of such juvenile.

5. The general duties of a Probation Officer are enumerated in section 14 of the Probation of Offenders Act, 1958. They are: (a) to enquire into the circumstances or home surroundings of the accused, and submit reports to assist the court in determining the most suitable method of dealing with the accused; (b) to supervise persons placed under his supervision, and where necessary, endeavour to find them suitable employment; (c) advise and assist the offenders in payment of compensation or costs; and (d) advise and assist in such cases and in such manner as may be prescribed, persons who have been released on probation of good conduct. The duties, functions and responsibilities of Probation Officers with reference to supervision of Juveniles are enumerated in Rule 87 of the Central Juvenile Justice Rules 2007.

6. Thus the two significant roles of a Probation Officer under the juvenile justice system can be summarised thus:

Investigation, that is obtaining information regarding the antecedents and family background of the juvenile and other material circumstances to assist the Board in making the inquiry, preparing a social investigation report on the juvenile to be taken into consideration by the Board while passing a final order in respect of the juvenile, and preparing further report regarding the necessity, nature and period of after-care, when the juvenile is discharged from the Special Home.

And

Supervision, that is supervising a juvenile, either pending inquiry by the Board, or on a final order being passed by the Board on finding that the juvenile has committed an offence, or after the juvenile is discharged from the Special Home.

7. The Act is intended to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and make the juvenile justice system more appreciative of, and responsive to the developmental needs of the juvenile, as compared to the normal criminal justice system applicable to adults. It is reformative and not punitive. It even carefully avoids use of words associated with criminals and criminal justice system. Under the Act, a juvenile is not brought before a ‘Magistrate or Judge’, but before a ‘Juvenile Justice Board’. The Act does not provide for ‘convicting’ and ‘sentencing’ a juvenile on being found ‘guilty’ of an offence, but provides for passing a ‘final order’ when the Board finds that a juvenile has committed an offence. It does not refer to an offender as an ‘accused’ or ‘convict’ but refers to him as a ‘juvenile in conflict with law’. It does not provide for punishing juveniles by awarding imprisonment in jails or confinement in correction homes, but it contemplates ‘advising’ the juvenile and ‘counselling’ the
parents, or asking the juvenile to ‘perform’ community service, or releasing the juvenile on probation of good conduct or at worst ‘sending him to a special home’ for a period of three years. It gives the Board a wide choice in respect of the orders that could be made in respect of a juvenile who is found to have committed an offence, on the inputs given by the Probation Officer in his Social Investigation Report, so that a juvenile in conflict with law does not get branded as a criminal or ‘convict’. It takes care to describe the places where the juveniles in conflict with law are made to stay during investigation as ‘observation homes’ and not ‘detention centres’, and the places where such juveniles are required to be sent on passing final orders as special homes instead of ‘jails’ or ‘correction centres’. In short it gives an opportunity to the juvenile in conflict with law to get back to normalcy without stigma or scars of incarceration. It also attempts to bring about an attitudinal and perceptual change in those who deal with juveniles in conflict with law, so that the juveniles are not viewed as criminals to be punished, but as unfortunate or misguided youngsters requiring advice, counselling, education, treatment and reformation. Thus the role of a Probation Officer and his functions and tasks are clear-cut and obvious.

8. The general perception among the public is that there is considerable delays and inadequacies in the appointment of Probation Officers and Child Welfare Officers and in setting up of observation homes (for the stay of juveniles during inquiry), special homes (for the stay of juveniles during the period of punishment) and child protection homes (for children in need of care and attention) as required under the Act. These inadequacies are attributable to financial constraints and lack of administrative ‘will’ and ‘commitment’ to implement the ‘Act’. Inordinate delay in effective implementation of the Act will make a mockery of juvenile justice system. There should be adequate Probation Officers and Child Welfare Officers. They should be given specialized training to enable them to deal with juveniles and their special problems, so that they can effectively guide, educate, reform and improve the juveniles entrusted to their supervision. If the existing probation service does not have adequate number of efficient, full-time professional Probation Officers, the service should be augmented by honorary voluntary officers. The Boards cannot effectively discharge their duties nor render justice to the juveniles in the absence of an effective and dedicated probation service with necessary facilities and infrastructure. The reports of the Probation Officer containing the facts relating to the background, antecedents and present condition of the juvenile and the suggestions and recommendations of the Probation Officer, is the most important input which the Board will have in taking an appropriate final decision in regard to the juvenile in conflict with law. On such report depends the decision whether the juvenile will be sent to a Special Home for three years, or will be released to the care of the parents or guardian or a voluntary organization or will be asked to do community service or will be merely admonished and advised. On such report depends the directions as to how the juvenile will be dealt with after he completes his stay in a Special Home. Effective achievement of the objects of the Act is therefore possible, only when there are adequate number of committed and professionally trained Probation Officers and Child Welfare Officers sensitized to the problems and needs of victimized and abused juveniles.
9. Statistics demonstrate that whenever juveniles in conflict with law are released into the care of parents or fit institutions and are placed under the supervision of Probation Officers, there is a lesser chance of the juveniles reverting to a life of crime. Probation Officers play a crucial role in the reformation, rehabilitation and social reintegration of the juveniles in conflict with law. Probation Officers can prevent them from reverting to a life of crime and debasement and convert them into law abiding responsible citizens of the society.
Juvenile Justice Board conducts the inquiry against juvenile who is alleged to have acted in conflict with law. The procedure for dealing with juvenile is required to be child friendly and rehabilitation oriented and not adversarial. The Board comprises of a judicial magistrate and two social workers, whose powers are co-extensive with the magistrate. The inquiry is required to be completed within 4 to 6 months and delay beyond this period leads to termination of proceedings in non-serious offences.

I. RELEVANT STATUTORY PROVISIONS

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# By Sneha Kalita, Advocate, Executive Member, Legal Assistance Forum
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II. CONSTITUTION

2006 amendment to the Act mandates constitution of a Juvenile Justice Board in every District latest by 22.8.2007. [Section 4]

A. Composition

- Board to comprise of three members
  - Principal Magistrate,
  - Social worker, and
  - Woman social worker. (Section 4(2) r/w Rule 5)

B. Qualification

1. Principal Magistrate

   Principal Magistrate must be a Metropolitan Magistrate or a Judicial Magistrate of the first class having special knowledge or training in child psychology and child welfare. [section 4(3) r/w Rule 5(3)]

2. Social worker

   A Social worker
   (i) who has been actively involved in health, education, or welfare activities pertaining to children for at least seven years;
   (ii) not less than 35 years of age;
   (iii) who has a post-graduate degree in social work, health, education, psychology, child development or any other social science discipline;
   (iv) should not:
       (a) have been convicted under any law;
(b) have indulged in child abuse or employment of child labour or any other human rights violations or immoral act;

(c) be holding such other occupation that does not allow him to give necessary time and attention to the work of the Board;

(v) selected by a Selection Committee headed by a retired High Court Judge. [Section 4(3) r/w Rule 5(4), 7 and 91]

C. **Tenure**

- Three years

- Members of the Board can be appointed for a maximum of two consecutive terms. [*Rule 6*]

D. **Termination**

- Principal Magistrate being a judicial officer, service conditions are governed by relevant State Judicial Service Rules

- Member of the Board – by the State Government, after holding inquiry, if—

  (i) He has been found guilty of misuse of power vested under this Act or

  (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 or

  (iii) He fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year. [*Section 4 (5)*]
E. **Allowances**

- Principal Magistrate being a judicial officer, pay and allowances are governed by relevant State Judicial Service Rules
- The social worker members of the Board shall be paid a minimum of Rs. 500/- per sitting. [*Rule 8*]

F. **Sitting**

1. **Premises**

   - Proceedings to be held in the premises of an Observation Home or in its proximity.
   - Not to be held within any court premises.
   - The premises shall be child-friendly and shall not look like a court room.
   - Board shall not sit on a raised platform.
   - There shall be no witness box [*Rule 9 (1) & (2)*]

2. **Meetings**

   - Board shall meet on all working days of a week, unless the case pendency is less in a particular district and concerned authority issues an order in this regard.
   - A minimum of three-fourth attendance of the Chairperson and Members of the Board is necessary in a year.
   - Every member of the Board shall attend a minimum of five hours per sitting. [*Rule 9 (3) (4) & (5)*]
G. Infrastructure

Following infrastructure to be provided with constitution of Board

1. A Board Room,
2. Waiting room for children,
3. A room for Principal Magistrate and Members,
4. A record room,
5. Room for Probation Officers,
6. Waiting room for parents and visitors,
7. Safe drinking water facility and toilets,
8. Steno-typist or computer operator,
9. Peon,
10. Safai karamchari. [Rule 83]

III. POWERS AND FUNCTIONS

A. Exclusive Jurisdiction

Board has exclusive jurisdiction to deal with Juvenile in conflict with law notwithstanding any other law for the time being in force. [Section 6]

Case Law

- JJ Act has overriding effect and all offences including offences under NDPS Act, Arms Act, SC/ST Prevention of Atrocities Act allegedly committed by a juvenile has to be inquired by the Board.¹

- In the case of a 'juvenile', the exclusion of anticipatory bail by Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 does not apply in view of Section 12 of the Juvenile Justice (Care and Protection of Children) Act. 2000.²

➢ Where Juvenile Justice Board is not constituted, the Magistrate concerned has jurisdiction to deal with cases of juvenile and appeal will go before the Sessions Judge.³

B. Functions of the Board

(a) To adjudicate and decide cases of juvenile in conflict with law; [Section 6 r/w Rule 10(a)]

(b) Take cognizance of crimes committed under section 23 to 28 of the Act; [Section 27 r/w Rule 10 (b) and 18]

(c) Monitor Institutions for juveniles in conflict with law; [Rule 10 (c)]

(d) Deal with non-compliance on the part of concerned government functionaries or functionaries of voluntary organizations; [Rule 10 (d)]

(e) Direct District authority and Police to provide necessary infrastructure or facilities so that minimum standards of justice and treatment are maintained in the spirit of the Act; [Rule 10 (e)]

(f) Maintain liaison with the Child Welfare Committee in respect of children needing care and protection; [Rule 10(f)]

(g) Liaison with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law;

(h) Send quarterly information about juveniles in conflict with law produced before them to the District and State Child Protection

C. Powers under Cr. P.C.

Every Board has the powers conferred by the Cr.P.C. \([\text{Rule 5(2)}]\)

D. Production before Single Member

In case Board is not sitting, the juvenile shall be produced before any single member of the Board, who is empowered to pass all appropriate orders except final disposal. \([\text{Section 5(2) r/w Rule 11 (10)}]\). Any such order shall be ratified by the Board in the next meeting \([\text{Rule 11 (14)}]\). However, 2 members including Principal Magistrate can pass final order. \([\text{Section 5(3)}]\)

E. Decision by majority

In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail. Where there is no such majority, the opinion of the Principal Magistrate shall prevail.\([\text{Section 5(4)}]\)

IV. INQUIRY

A. Order on First Production of Juvenile

On production of juvenile, the Board shall pass the following order in the first summary inquiry on the same day, namely:-

(i) Dispose of the case, if the evidence of his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking; or \([\text{Rule 13(1)(a)}]\)
(ii) Transfer the juvenile to the CWC, if the police report states that the juvenile is in need of care and protection; or [Rule 13(1)(b)]

(iii) Consider release of juvenile on bail; or [Section 12]

(iv) Release the juvenile in the supervision or custody of fit persons/institutions or Probation Officers, through an order in Form-I; or [Rule 13 (1) (c)]

(v) Detain the juvenile in an Observation Home or fit institution pending inquiry, only in cases of juvenile's involvement in serious offences as per order in Form-II; [Rule 13 (1)(d)]

B. Age Determination

1. Determination by Board

(a) When a person is brought before a Board under any of the provisions of the Act who appears to be juvenile, the Board shall make due inquiry as to the age of that person [Section 49].

(b) The Board shall determine the age of juvenile within a period of 30 days. [Rule 12 (1)]

2. Determination by Magistrate/Court

(a) When a person brought before a Magistrate is a juvenile in his opinion, the magistrate shall transfer the juvenile and the record to the Board. The Board shall then hold the inquiry as if the juvenile was originally brought before it. [Section 7 r/w Rule 77]

(b) When a claim of juvenility is raised / arises before any court at any stage even after final disposal of the case, such claim shall
be decided by the Court after taking evidence in accordance with the provisions of the Act and Rule. [Section 7 A]

3. Relevant Date

➢ Relevant date for determination of juvenility is the date of offence, provided person had not completed 18 years of age as on or before the date of commencement of the Act, i.e., 1-4-2001.⁴ [section 2 (i)]

➢ The Act was amended in 2006, inter alia, amending sections 2(l), 7A, 20 and 64 cumulative effect of which is that even if the juvenile has ceased to be so on 01.04.2001, still he will be considered as juvenile if he was below 18 years of age on the date of commission of offence.⁵

4. Procedure to be adopted

a. Prima facie Opinion

• On production of a person, the Board is to decide the Juvenility or otherwise, prima facie, on the basis of physical appearance or documents, if available, and send him to the Observation Home or jail. [Rule 12 (2)]

• The Board can consider bail application of the person, if it is of the prima facie opinion that the person produced is apparently a juvenile. [Section 12(1)]

b. Conclusive Enquiry

⁴ Pratap Singh 2005 (3) SCC 551
• The age determination inquiry shall be conducted by the Board by seeking evidence by obtaining-

i. Documentary evidence

  o matriculation or equivalent certificates;
  o date of birth certificate from the school;
  o birth certificate given by corporation or municipal authority or panchayat;

ii. Medical Opinion

  o in the absence of aforesaid documents, the medical opinion can be sought from a Medical Board. The Board may, for reasons to be recorded, give benefit to the juvenile by considering his/her age on lower side within the margin of one year. [Rule12 (3)]

  o Determination by the Board as above by an order is conclusive proof of the age as regards such juvenile. [Rule12 (3)(4)]

Case Law

➢ Date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced. Medical evidence, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.⁶

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In age determination inquiry a hyper-technical approach should not be adopted and the court should lean in favour of holding the accused to be a juvenile in borderline cases.\(^7\)

Where a plea of juvenility is raised even in the appellate court (may be apex court) for the first time, the same should be examined having regard to the beneficial nature of the socially oriented legislation.\(^8\)

Medical evidence regarding the age can be considered only if the date of birth mentioned in the school record can not be relied upon.\(^9\)

If the matriculation or municipal certificate does not inspire confidence, medical opinion can be relied.\(^10\)

To verify genuineness of certificate produced, the Board may summon school registers.\(^11\)

Where school leaving certificate and the horoscope produced by the person are found to be forged and fabricated and medical reports also found the age (as on 1.04.2001) between 18 and 19 years, the person is not juvenile.\(^12\)

Magistrate/Session Judge while making inquiry about age determination under Section 7A must afford opportunity to all the parties (accused, State and complainant) to lead evidence.\(^13\) [Note: Provision of Rule 12 (3) was not considered in [his case]]

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\(^7\) Rajinder Chandra v. State of Chhattisgarh : (2002) 2 SCC 287
C. **Bail**

1. When any person apparently a juvenile is brought before a Board, such person shall be released on bail or placed under the supervision of a Probation Officer/ fit institution/ fit person.

2. Bail can be denied only if there appear reasonable grounds for believing that:

   (i) the release is likely to bring him into association with any known criminal, or

   (ii) expose him to moral, physical or psychological danger, or

   (iii) his release would defeat the ends of justice.\[Section 12\]

**Case Law**

- A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in section 12 are made, which should be based upon some material/evidence available on the record.\[14\]

- Bail is granted on prima facie satisfaction of juvenility subject to further inquiry regarding age on the date of offence.\[15\]

- The nature and gravity of the offence is not one of the conditions on which bail can be refused to the juvenile.\[16\]

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\[15\] Abdul Rab vs. State of Bihar: 2008(12) Scale 359

➢ To reject bail under 1st exception, there must be a reasonable ground for believing that the juvenile's release would bring him into association with 'known criminals' and not 'criminals'.  

➢ The 3rd exception, namely, ends of justice being defeated has to be considered in the context of the welfare of the juvenile.  

➢ Social Investigating Report (SIR), if available, to be considered while granting/refusing bail; but is not decisive.  

➢ Where an accused alleged to have been engaged in smuggling activity, the possibility of his being joining the gang and repeating the activity if released on bail cannot be ruled out, thus not entitled to bail.  

➢ Bail application of a juvenile denied in case of murder of a foreign tourist as this act is prejudicial to image of the country in the world, adversely affecting the tourism business.  

➢ Bail was rejected as there was every likelihood that if the present juvenile is released on bail, he may again mix up with other adult co-accused who are still absconding and it may lead to moral and psychological dangers and his release would defeat the ends of justice.  

➢ If the family sends the child, below sixteen years of age, to work as daily wager and the juvenile took the victim to his house and committed rape showing clear criminal tendencies in him. In this


22 Fawaad Nasir @ Ziya v. State (Del): MANU/DE/8845/2007
situation if the juvenile offender is released, he will be exposed to moral and psychological dangers; thus bail was denied.\textsuperscript{23}

D. Procedure

1. "Petty offences"\textsuperscript{24} may be disposed off by the Board through summary proceedings or inquiry. \textit{[Rule 13 (2) (d)]}

2. The Board shall follow the procedure of trial in summons cases, as far as may be, in inquiry pertaining to non-serious offences (punishable with imprisonment upto 7 years). \textit{[Section 54(1) r/w Rule 13 (2) (d)]}

3. The Board shall follow the procedure of trial in summons cases in inquiry pertaining to serious offences (punishable with imprisonment of more than 7 years for adults). \textit{[Section 54(1) r/w Rule 13 (2) (d) (e)]}

4. The Board has to satisfy that the juvenile has not been subjected to any ill-treatment by the police or lawyer or probation officer. \textit{[Rule 13 (2) (a)]}

5. The Board shall make sure that the parents / guardian have been -

   (i) Supplied with copy of police report by the concerned police officer or JCWO before or on the day of production of the juvenile in the Board;

   (ii) Informed about apprehension of the Juvenile and production before the Board;

   (iii) Informed about the possible need of personal bond/surety in the event of bail be granted and the provision relating to bonds in Chapter 33 Cr.PC shall apply.\textit{[Section 50 & 65 r/w section 50A Cr.PC]}


\textsuperscript{24} Defined under section 206 Cr.P.C. as those punishable only not exceeding Rs. 1000/-
6. The Board shall ensure that the police has informed the probation officer about the apprehension of the Juvenile for the purpose of obtaining information of the background of the juvenile and other necessary material circumstances. [Section 13 (b) r/w Rule 11 (1)(c)]

7. The Board shall notify the next date of hearing, not later than 15 days of the first summary enquiry and also seek social investigation report from the concerned Probation Officer through an order in Form-III; [Rule 13 (1)]

8. The Board has to conduct the proceedings in a child friendly atmosphere [Rule 13 (2) (b) & 13(4)].

9. Every juvenile shall be given the opportunity to be heard and participate in his inquiry. [Rule 13 (2) (c)]

10. The Board may require any parent or guardian to be present at any proceeding. [Section 46]

11. The Board may dispense with attendance of the juvenile, if it is not essential for the purpose of inquiry. [Section 47]

12. The inquiry shall be conducted in the spirit of non-adversarial proceedings. [Rule 13 (3) r/w Rule 14 (1)]

13. The Board may use the powers of questioning witnesses conferred by section 165 of the Indian Evidence Act, 1872 [Rule 13 (3)]

14. The Board shall proceed with the presumptions that favour the juvenile's right to be restored. [Rules 13 (3)]

15. The Board may take into account the report of the police containing circumstances of apprehension and offence alleged to have been committed. [Rule 13 (5)]
16. The Board shall take into account the Social Investigation Report prepared by Probation Officer or voluntary organization. [*Section 15(2) r/w Rule 13 (5) and 15(2)]*

17. The Board shall ensure grant of free legal aid and right to counsel. [*Rule 14]*

18. No juvenile shall be charged with or tried for any offence together with an adult. [*Section 18]*

19. No proceeding shall be instituted and no order shall be passed against juvenile regarding security for keeping peace and good behaviour under Chapter VIII Cr.P.C. [*Section 17]*

20. Use of accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited. [*Rule 3 (VIII)]*

**E. Continuation of Inquiry in respect of Juvenile ceased to be a child**

Inquiry shall be continued by the Board even if the juvenile ceases to be a child during the pendency of the inquiry and orders may be passed as if he is a juvenile. [*Section 3]*

**F. Period of Inquiry**

1. The inquiry to be completed within a period of 4 months after the first summary inquiry unless extended for reasons in writing. [*Proviso to Section 14 (1) r/w Rule 13 (6) and Rule 15 (1)]*

2. The period of inquiry may be extended by 2 months in the following exceptional cases:
cases involving trans-national criminality; or
• large number of accused; or
• inordinate delay in production of witnesses \[Rule 13(6)\]

3. Delay beyond 4 to 6 months leads to the termination of proceedings in non-serious offences. \[Rule 13 (7)\]

4. Delay beyond six months in serious offence has to be reported by the Board to the CJM/CMM stating the reason for delay and steps taken. \[Rule 13 (8)\]

G. Legal Aid

1. Every child who has to file or defend a case is entitled to free legal services under Legal Services Authority Act, 1987. \[Section 12(1)(c) of Legal Services Authority Act, 1987\]

2. The Board shall ensure free legal services to all juvenile through State Legal Aid Services Authority or recognized voluntary legal services organisations or the University legal services clinics. \[Rule 14(2)(4)\]

3. The Board may also deploy the services of the student legal services volunteers and non-governmental organisation volunteers in para-legal tasks such as contacting the parents of juveniles and gathering relevant social and rehabilitative information. \[Rule 14(5)\]

H. Juvenile outside jurisdiction

In the case of a juvenile, whose ordinary place of residence lies outside the jurisdiction, the Board may send the juvenile back to his ordinary place of residence if such transfer is in the best interest of the juvenile. However, such order can be passed only after the completion of evidence and cross examination. On such transfer, the Board
exercising jurisdiction over the place to which the juvenile is sent shall have the same powers in relation to the juvenile as if the original order had been passed by itself. [Section 50 r/w Rule 78 & 79]

I. **Foreign National Juvenile**

Any juvenile, who is a foreign national and who has lost contact with his family shall be entitled for protection and he shall be repatriated, at the earliest, to the country of his origin in co-ordination with the respective Embassy or High Commission. During the pendency of the order of repatriation, the juvenile shall be sent to an Observation Home. The Board shall keep the Ministry of External Affairs informed about repatriation of every juvenile of foreign nationality. [Rule 79 (4) (5) (6)]

V. **FINAL ORDER**

A. **Orders that may be passed**

The Board, if satisfied that a juvenile has committed an offence, may pass one of the following orders:

(i) Allow the juvenile to go home after advice or admonition and counselling to parent/ guardian and juvenile; [Section 15(1)(a)]

(ii) Direct the juvenile to participate in group counselling and similar activities and necessary direction may also be made to the District or State Child Protection Unit or the State Government for arranging individual counselling and group counselling; [Section 15(1)(b) r/w Rule 15(4)]

(iii) Order the juvenile to perform community service that is not degrading and dehumanizing and necessary direction may also be made to the District or State Child Protection Unit or the
State Government for arranging community service which may include:

(i) Cleaning a park;

(ii) Getting involved with habitat for humanity;

(iii) Serving the elderly in nursing homes;

(iv) Helping out a local fire or police department;

(v) Helping out at a local hospital or nursing home; and

(vi) Serving disabled children. [Section 15(1)(c) r/w Rule 2(e)and 15(4)];

(iv) Order the parent or the juvenile himself to pay fine, if he is over 14 years of age and earns money; however, no juvenile shall be committed to prison in default of payment of fine. [Section 15(1)(d) r/w Section 16(1)];

(v) Direct the juvenile to be released on probation of good conduct and place him under the care of parent, guardian25 or other fit person26, on executing a bond in Form V, for the good behaviour and well-being of the juvenile for a maximum period of three years.

In addition, the Board may also direct;

- Furnishing of surety
- Execution of bond in Form VI by juvenile

25 sec. 2(j) – “guardian”, in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority

26 sec. 2(l) – “fit person” means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child
• Juvenile shall remain under the supervision of a Probation Officer. [Section 15(1)(e), (3) & (4) r/w Rule 15(5),(6) & (8)];

(vi) Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution\(^{27}\) for the good behaviour and well-being of the juvenile for any period not exceeding three years, located nearest to the place of residence of the juvenile's parent or guardian. In addition, the juvenile may be placed under supervision of a Probation Officer [Section 15(1)(f), (3) & (4) r/w Rule 15(7) & (8)];

(vii) Make an order directing the juvenile to be sent to a special home for a maximum period of three years located nearest to the place of residence of the juvenile's parent or guardian. [Section 15(1)(g) r/w Rule 15(7)];

B. Individual Care Plan

All final orders shall necessarily include an individual care plan

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

C. No Death Sentence or Imprisonment

No juvenile shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life or committed to prison for default in payment of fine or furnishing security. [Section 16(1)]

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\(^{27}\) sec. 2(h) – "fit institution" means a governmental or a registered non-governmental organisation or a voluntary organisation prepared to own the responsibility of a child and such organisation is found fit by the State Government on the recommendation of the competent authority
A juvenile cannot be sent to serve the term of jail after conviction.\(^2^8\)

**D. Transfer to Place of Safety**

Where a juvenile who has attained the age of 16 years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in the Special Home, the Board may order the juvenile to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. *[Proviso to Section 16 r/w Rule 15 (11)]*

**E. Contribution by Parents**

The Board while making an order for sending a juvenile to a Special Home or placing the juvenile under the care of a fit person or fit institution may make an order requiring the parent/guardian to contribute to his maintenance, if able to do so, according to the income. *[Section 60(1)]*

**F. Payment of journey expenses to Parents**

The Board may direct, if necessary, the payment to be made to poor parent/guardian by the Superintendent or the Project Manager of the Home to pay such expenses for the journey of the inmate or parent/guardian or both, from the Home to his ordinary place of residence at the time of sending the juvenile. *[Section 60(2)]*

\(^{2^8}\) Devendra @ Sonu and Anr. Vs. State of Rajasthan RLW 2006 (1) Raj 407, 2006 (1) WLC 726 (Jaipur)
G. Disposal of Records

The records in respect of a juvenile shall be destroyed after a period of seven years. [Section 19(2) r/w Rule 99]

H. Power to amend orders

1. The Board may amend any order as to the institution to which a juvenile is to be sent or as to the person under whose care or supervision a juvenile is to be placed. [Section 55(1)]

2. Clerical mistakes in orders passed by a Board or errors arising therein from any accidental slip or omission may be corrected either on its own motion or on an application received in this behalf [Section 55(2)]

VI. Appeal and Revision

1. Any person aggrieved by an order made by a Board may prefer an appeal to the Court of Session within thirty days from the date of such order. The Appellate Court may entertain the appeal after the expiry of the period on sufficient cause being shown. [Section 52(1)]

2. No appeal shall lie from any order of acquittal made by the Board in respect of a juvenile. [Section 52(2)]

3. The High Court may, at any time, call for the record of any proceeding for the purpose of satisfying itself as to the legality or propriety of any order of the Board or Court of Session. [Section 53]

4. The powers conferred on the Board under this Act may also be exercised by the High Court and the Court of Session. [Section 6(2)]
5. The procedure to be followed in hearing appeals or revision shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 [Section 54(2)]

VII. POST FINAL ORDER

A. Discharge and Transfer

The Board may discharge or transfer a juvenile from one Special Home to another keeping in view the best interest of the juvenile and his natural place of stay. [Section 56]

B. Release

The Board, on a report of a Probation Officer/Government or social worker may release a juvenile permitting him to live with his parent or guardian or of any authorised person to educate and train him for some useful trade or to look after him for rehabilitation [Section 59(1)].

C. Leave

The Board may permit any juvenile to go on leave on special occasions like examination or admission, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature for a maximum period of 7 days. The period of such leave shall be counted as a part of the period of stay in the institution [Section 59 (2),(3) & (4) r/w Rule 62]

D. Transfer in case of disease

- When a juvenile brought before a Board, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint or suffering from leprosy, sexually transmitted disease,
Hepatitis-B, Tuberculosis etc. or is of unsound mind, he shall be treated/sent to an appropriate place. [Section 48]

- Where any juvenile kept in a special home is suffering from leprosy or is of unsound mind or is addicted to drug, the Board may order his removal to a leper asylum or hospital for treatment for the remainder of the term for which he has to stay. [Section 58 r/w Rule 61]

### E. Restoration

The Board shall pass order for restoration of the juvenile after hearing the juvenile and his parents or guardian, as well as on the report of the Probation Officers. In case of girl, the juvenile shall be accompanied by a female escort. When a juvenile expresses his unwillingness to be restored back to the family; the Board shall not coerce him to go back to the family, particularly if the Social Investigation Report establishes that restoration to the family may not be in the best interest of the juvenile. [Rule 65]

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

### VIII. PENDING CASES

1. All proceedings in respect of a juvenile pending in any court (including appellate court) on the date on which the Act came into force shall be continued in that court.

2. If the court finds that the juvenile has committed an offence, it shall record such finding; but instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act.
3. The claim of juvenility can be raised before any Court at any stage, even after the final disposal of the case and is to be determined in accordance with the Act and the Rules. [Section 20 r/w Rule 97]

IX. DISPOSED OFF CASES

1. Claim of juvenility can be raised before any court and at any stage, even after final disposal of the case. Since claim shall be determined in terms of the provisions this Act, even if the juvenile ceases to be so on or before the date of commencement of this Act. [Section 7A (1) proviso r/w Rule 12(6) and Rule 98].

2. If the person is found to be juvenile on the date of offence, he shall be transferred to a special home for remainder of the period of sentence or released, if the period of detention has exceeded three years. [Section 64 r/w Section 15 and Rule 98]

X. PREVENTION OF ABUSE & EXPLOITATION

1. Any person having the actual charge or control over a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile shall be punishable with imprisonment upto six months and/or fine. [Section 23]

2. On receipt of a report of abuse/ cruelty/ exploitation, the Board shall-

- direct the local police station or SJPU to register a case and conduct investigations;
- take steps to ensure completion of all inquiry;
- provide legal aid and counselling to the juvenile;
- transfer such juvenile to another institution or place of safety/fit person;
may seek assistance from voluntary organizations, child rights experts, mental health experts or crisis intervention centres.

XI. COGNIZANCE OF OFFENCES

The Board shall take cognizance of offences punishable under sections 21, 23, 24, 25 and 26 and pass appropriate orders [Rule 18(1) & (3)]
Key Responsibilities and approach

By

Hon'ble Mr. Justice Altmas Kabir, Judge, Supreme Court of India

While adopting the Declaration of the Rights of the Child on 20th November, 1959, the General Assembly of the United Nations laid down ten principles designed to enable children, irrespective of race, colour, sex, language, religion or origin, to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. This was followed up by the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules", on 29th November, 1985. As a member country, India enacted the Juvenile Justice Act, 1986, in keeping with the Beijing Rules, but after the adoption of the Convention of the Rights of the Child by the United Nations in 1987, the said Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000.

The 2000 Act made a conscious distinction between juvenile who had committed offences and were referred to as “children in conflict with law” and children from indigent backgrounds who were in need of care and protection. The Act was, therefore, divided into two broad parts. While the first part comprising Chapter II deals with juveniles in conflict with law, Chapter III makes provision for children in need of care and protection. In this article the focus is on Chapter II of the Act and the role of the Principal Magistrate and the other Members of the Board in dealing with juvenile delinquency.

Section 4 of the 2000 Act empowers the State Government to constitute one or more Juvenile Justice Boards in each District to be comprised of a Magistrate and two social workers, of whom at least one is to be a woman. Such Board is to constitute a Bench having powers conferred by the Code of Criminal Procedure on a Metropolitan Magistrate or a Magistrate of the First Class with the Magistrate on the Board to be designated as the Principal Magistrate.

The provisions of the 2000 Act are rehabilitation oriented and the procedure prescribed under the Act and the Rules framed thereunder are child-friendly and not adversarial. The Bench, therefore, has to deal with juvenile delinquency from a point of view which is entirely different from the procedure prescribed for adults under the Code of Criminal Procedure. Necessarily, the Principal Magistrate, who is a member of the judicial service and is used to the provisions of the Code, has to undergo a complete mental metamorphosis and attitudinal transformation while discharging his or her duties under the 2000 Act. The two Members, who probably have little legal experience, have to blend their expertise in the field of social welfare with the legal parameters to effect solutions which are rehabilitation oriented which is the primary object of the 2000 Act.
However, it is for the Principal Magistrate to guide the other Members of the Board and to carry them as a team to achieve the objects of the Act. One of the most important objects that the Act seeks to achieve and has to be kept in mind by the Juvenile Justice Board is the speedy disposal of enquiries contemplated under the Act. If the infrastructure is not available, it is for the Board and, in particular the Principal Magistrate, to ensure that the same is made available. Each Member of the Board has to be sufficiently sensitised to understand the trauma a child, who is removed from his normal surroundings or familiar faces, suffers when faced with an unfamiliar situation which he or she is unable to handle. If is, therefore, the moral, if not legal, duty for the Members of the Board and the Principal Magistrate in particular, to ensure that all those involved in the juvenile justice delivery system, from the Probation Officers to the Superintendents of the different Homes contemplated under the Act, perform their duties conscientiously and without resorting to unfair means. Children are hardly in a position to raise their voices in protest against injustice, but if the same is brought to the notice of the Board, its members must act with alacrity and not shirk their responsibility in dealing with the problem.

It would be a complete negation of the provisions of the 2000 Act if the case of a juvenile in conflict with law is allowed to remain pending indefinitely for whatever reason. It is the duty of the Board to keep track of such cases so that they can be disposed of at the earliest opportunity and the juvenile and his guardians cease to be exploited by unscrupulous players within the juvenile justice delivery system.

The Juvenile Justice (Care and Protection of Children) Rules, 2007, provides a comprehensive procedure to be followed in dealing with juveniles in conflict with law. If the same is implemented in its true spirit, considerable change can be brought about in the Juvenile Justice delivery system and can help juveniles in conflict with law to return to the mainstream of society and become responsible citizens, instead of being transformed into hardened criminals.

Section 6 of the 2000 Act enumerates the powers of the Juvenile Justice Board and provides that the Board when constituted for a district shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in the Act, have exclusive power to deal with all proceedings under the Act relating to juveniles in conflict with law.

A grave responsibility has been entrusted to the Juvenile Justice Board which is exclusively empowered to deal with offences relating to children and to rehabilitate such children so that they became responsible members of society instead of being criminalized. It is for the Board and its Members to discharge such responsibility in the true spirit of the special law for children and in the interest of the children who come under their jurisdiction.
Juvenile in conflict with law are kept in a Home and not in jail or lockup. There are two categories of Homes for juvenile in conflict with law, namely, 'Observation Home' and 'Special Home'.

**I. RELEVANT STATUTORY PROVISIONS**

A. **Juvenile Justice (Care and Protection of Children) Act, 2000**

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B. **Juvenile Justice (Care and Protection of Children) Rules, 2007**

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* By Sneha Kalita., Advocate, Executive Member, Legal Assistance Forum
* Applicable to all States as per proviso to section 68 (1) of the Act r/w Rule 96
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II. ESTABLISHMENT

A. Observation Home

Observation Home is the Home where a juvenile, who is alleged to have came in conflict with law, that is to say, allegedly committed an offence is kept pending inquiry against him by the Board. Observation Homes for temporary reception of juvenile may be established and maintained by the State Government either by itself or under an agreement with voluntary organisation in every district or group of districts separately for boys and girls. [Section 8 r/w Rule 16(1)]
B. **Special Home**

Special Home is the Home for reception of juvenile, if found guilty on conclusion of inquiry against him by the Board and sent for institutional care. Special Homes for reception and rehabilitation of juvenile may be established and maintained by the State Government either by itself or under an agreement with voluntary organisation in every district or group of districts separately for boys and girls. [Section 9 r/w Rule 16(1)]

III. **CERTIFICATION/ RECOGNITION OF INSTITUTIONS RUN BY NGO**

A. **Procedure for Certification/Recognition**

1. Observation/Special Home run by an NGO must be certified and recognized. [Section 2 (o)/(v) r/w section 8/9 & Rule 2(i) (m)]

2. Any organization desiring certification to run an Institution is required to make an application to the State Government together with the following documents:
   - a copy each of the rules, bye-laws and articles of association,
   - list of members of the organization and office bearers,
   - statement showing the status and past record of specialized childcare services provided by the organization. [Rule 70 (1)]

3. The State Government may grant certificate
   - after verifying the provisions made in the organization for the boarding and lodging, general health, educational facilities, vocational training and treatment services; and
on the condition that the organization shall comply with the standards or services as laid down under the Act and the Rules and ensure an all round growth and development of juvenile placed under its charge. [Rule 70 (1)]

B. Cancellation and Restoration of Certificate

1. State Government, if dissatisfied with the conditions, Rules or management of the organization may withdraw the certificate as per the following procedure:
   
   - Issue notice on the manager of the organization pointing out the proposed grounds for withdrawal;
   
   - The concerned organization shall be given an opportunity of making a representation in writing, within a period of thirty days;
   
   - Government, if not satisfied, with the explanation may conduct investigation by Advisory Board;
   
   - The Officer- in- charge of the institution shall be asked to give explanation within thirty days on the report of the Advisory Board.

2. On cancellation of the certificate after following the aforesaid procedure, the organization shall cease to be an organization certified under sections 8 of the Act from the date mentioned in the order. [Rule 70 (4), (5) & (6)]

C. Effect of Cancellation of Certificate

When an organization ceases to be certified under the Act, juveniles kept therein shall be transferred to some other certified institution or discharged by giving intimation of such discharge or transfer to the Board. [Rule 70 (1)]
IV. PHYSICAL INFRASTRUCTURE AND STANDARD OF CARE & FACILITIES

A. Physical Infrastructure

- The Observation Homes and Special Homes shall be child-friendly and it should not look like a jail or lock-up. [Rule 40(6)]

- The Observation Homes or Special Homes shall set up separate residential facilities for juvenile up to 12 years, 13-15 years and 16 years and above. [Rule 16(2)]

- The institutions shall have sufficient space for every juvenile and shall include a minimum of following facilities:
  - Dormitory: 40 Sq. ft. per juvenile.
  - Classroom: 300 Sq. ft for 25 juvenile.
  - Workshop: 75 Sq. ft. per juvenile.
  - Play ground: Sufficient play ground area according to the total number of juveniles in the institution. [Rule 40(5)(i)]

- Adequate lighting, ventilation, heating and cooling arrangements, safe drinking water and clean toilets shall be provided. [Rule 40(5)(iii)]

- First aid kit, fire extinguishers in kitchen, dormitories, store rooms, counselling room, periodic review of electrical installations, proper storage and inspection of articles of food stuffs, stand-by arrangements for water storage and emergency lighting shall be provided. [Rule 40(5)(iv)]
NORMS FOR BUILDING

The norms for building for an institution with 50 juveniles shall be as under:

- 2 Dormitories – Each 1000 Sq. ft. for 25 juveniles
- 2 Classrooms – 300 Sq. ft. for 25 juveniles/children i.e. 600 Sq. ft.
- Sickroom/First aid room – 75 Sq. ft. per juvenile/children for 10 i.e. 750 Sq. ft
- Kitchen – 250 Sq. ft
- Dining Hall – 800 Sq. ft
- Store – 250 Sq. ft
- Recreation room - 300 Sq. ft
- Library – 500 sq. ft
- 5 bathrooms – 25 Sq. ft. each i.e. 125 Sq. ft
- 8 toilets/latrines – 25 Sq. ft. each i.e. 200 Sq. ft
- Office rooms – 300 Sq. ft.
- Superintendent’s room – 200 sq. fit
- Counselling and guidance room – 120 Sq. ft.
- Workshop – 1125 Sq. ft. for 15 juvenile @75 Sq. ft. per trainee
- Residence for Superintendent – (a) 2 rooms of 250 Sq. ft. each (b) kitchen 75 Sq. ft. (c) bathroom cum Toilet/latrine 50 Sq. ft
- 2 Rooms for Juvenile Justice Board – 300 Sq. ft. each
- Play ground – Sufficient area according to the total number of juveniles or children
- TOTAL – 8495 Sq. ft. [Rule 40(3)]
STANDARD OF CARE & FACILITIES

B. Sanitation and Hygiene

Every institution shall have basic facilities including the following:

- Sufficient treated drinking water;
- Sufficient water for bathing, washing clothes, maintenance and cleanliness of the premises;
- Proper drainage system and arrangements for disposal of garbage;
- Protection from mosquitoes by providing mosquito nets; annual pest control;
- Sufficient number of toilets (at least one toilet for seven children);
- Sufficient number of bathrooms in the (at least one bathroom for ten children). [Rule 42]

C. Clothing and Bedding

Clothing and bedding shall be as per the climatic conditions, more specifically as laid down in Schedule-I including the following:

- Skirts & blouse or salwar kammez or sari for girls and under garments 5-6 sets per year;
- Shirts & pants or shorts for boys and under garments 4-5 sets per year;
- Woollen garments;
- Mattresses, bed sheets, pillow, quilt, towels etc.;
- Slippers and shoes;
- School bags and stationary. [Rule 41 r/w Schedule I]

D. Meals and Diet

- The Institution shall provide four meals to the Children after preparing the menu with the help of nutritional experts or doctor, ensuring a
balanced diet and variety in taste along with adherence of minimum nutritional standards.

- Sick juveniles shall be provided special diet according to the advise of the doctor on their dietary requirement.

- Special meals may be provided on holidays and festivals.

- Every institution under this Act shall strictly adhere to the minimum nutritional standard and diet scale specified in Schedule II. \[Rule 44 r/w Schedule II\]

E. **Medical and Mental Health Care**

1. **Medical Record**

   The Institution shall maintain a medical record of each juvenile including height, weight, sickness and treatment and other physical and mental problems. \[Rule 45(b)\]

2. **Monthly Medical Check-Up**

   - There shall be monthly medical check up of juvenile and the institution shall provide necessary medical facilities including a doctor, medical equipments for minor health problems, fist aid kit, stock of emergency medicines, consumables and immunization coverage. \[Rule 45(c)(d)(g)\]

   - The staff shall be trained in handling first aid. \[Rule 45(e)\]

   - The Institution shall take preventive measures in the event of outbreak of contagious or infectious diseases. \[Rule 45(h)\]
3. **Tie-up with Local Primary Health Centre**

Institution shall tie-up with local Primary Health Centre, government hospital, medical colleges, other hospitals, clinical psychologists and psychiatrists and mental health institutes for regular visits by their doctors and students and for holding periodic health camps within the institution. *[Rule 45(f)]*

4. **Drug Abuse Prevention and Rehabilitation Programme**

Institution shall refer such children who require specialized drug abuse prevention and rehabilitation programme, to an appropriate centre administered by qualified personnel where these programmes shall be adopted to the age, gender and other specifications of the concerned child. *[Rule 45 (p)]*

5. **Mental Health Record**

A mental health record of every juvenile shall be maintained by the concerned institution. *[Rule 46(1)]*

Services of trained counsellors or psychologists or psychiatrists may be taken to provide for specialized and regular individual therapy for every juvenile. *[Rule 46 (6)]*

6. **Education Facilities**

- Every institution shall provide education to all juvenile, inside the institution or outside. *[Rule 47 (j)]*

- The institution shall make arrangement of educational opportunities with schools, non formal education institutions and from special educators. *[Rule 47(2)]*
• Extra coaching shall be made available to school going children in the institutions by encouraging volunteer services or tying up with coaching centers. [Rule 47(3)]

G. Vocational Training

• Every institution shall provide gainful vocational training to juvenile. [Rule 48(a)]

• The institutions shall develop networking with Institute of Technical Instruction, Jan Shikshan Sansthan, Government and Private Organization or Enterprises, Agencies or non-governmental organisations with expertise or placement agencies. [Rule 48(b)]

H. Recreation Facilities

• A provision for guided recreation shall be made available to all juveniles in the institutions including indoor and outdoor games, music, television, picnics, outgoings, cultural programmes and library. [Rule 49(1)(2)]

I. Daily Routine

• Every institution shall have a daily routine for the juveniles developed in consultation with the Children’s Committees, which shall be prominently displayed at various places within the institution. [Rule 43(1)]

• The daily routine shall provide, for a regulated and disciplined life, personal hygiene and cleanliness, physical exercise, yoga, educational classes, vocational training, organized recreation and games, moral education, group activities, prayer and community singing and special programmes for Sundays and holidays. [Rule 43(2)]
V. MANAGEMENT AND STAFF

A. Management Committee

Every Institution shall have a Management Committee for the management of the institution and/or monitoring the progress of every juvenile. [Rule 55]

1. Composition

The Management Committee shall consist of:

- District Child Protection Officer (District Child Protection Unit) - Chairperson
- Officer-in-charge - Member Secretary
- Probation Officer or Child Welfare Officer or Case Worker - Member
- Medical Officer - Member
- Psychologist or Counsellor - Member
- Workshop Supervisor or Instructor in Vocation - Member
- Teacher - Member
- Social Worker Member of Juvenile Justice Board or Child Welfare Committee - Member
- A Juvenile representative from each of the Children's Committees (on a monthly rotation basis to ensure representation of juveniles or children from all age groups) [Rule 55 (3)]
- Voluntary organizations providing professional and technical services like education, vocational training, psychosocial care, mental health intervention and legal aid. [Rule 55 (5)]

2. Meeting

- The Management Committee shall meet every month. [Rule 55 (6)]

- The Committee shall review the Children's Suggestion Book at least once in three months. [Rule 55 (10)]
3. **Duties and Functions**

The Management Committee shall consider and review —

- Custodial care, housing, area of activity and type of supervision or interventions required;
- Medical facilities and treatment;
- Food, water, sanitation and hygiene conditions;
- Vocational training and opportunities for employment;
- Education and life skills development programmes;
- Social adjustment, recreation, group work activities, guidance counselling;
- Release or restoration including pre and post release;
- Daily routine;
- Community participation and voluntarism in the residential life of children such as education, vocational activities, recreation and hobby;
- Oversee that all registers as required under the Act and rules are maintained by the institution, check and verify these registers, duly stamped and signed in the monthly review meetings. *[Rule 55 (6)(a)]*
• All suggestions received through the suggestion box and action taken as a result of the decisions shall be placed before the Management Committee. \([\text{Rule 55}(8)(e)]\)

B. **Children's Committee** \([\text{Rule 56]}\)

1. **Composition**

   Children's Committees shall be constituted solely by children for three different age groups of children, viz., 6-10 years, 11-15 years and 16-18 years. \([\text{Rule 56 (1)}]\)

2. **Meeting**

   • Children's Committees must meet every month and maintain a register for recording its activities and proceedings.

   • Register of the Children's Committee meetings shall be placed before the Management Committee. \([\text{Rule 56(3)}]\)

3. **Duties and Functions**

   The committee would be involved in activities relating to:
   - Improvement of the condition of the institution;
   - Preparing daily routine and diet scale; developing educational; vocational and recreation plans;
   - Reporting abuse and exploitation by peers and caregivers;
   - Creative expression of views through wall papers or newsletters or paintings or music or theatre. \([\text{Rule 56(2)}]\)

C. **Staff / Personnel**

• The strength of staff of an institution shall be fixed on the basis of capacity of institution, work load, category of children etc. They shall be appointed in accordance with the educational qualifications, training and experience.\([\text{Rule 68(1)(2)}]\)
• Suggested staffing pattern for an institution with a capacity of 100 juveniles could be as mentioned below–

  o Officer-in-Charge (Superintendent) – 1
  o Counsellor – 2
  o Probation Officer – 3
  o House Mother or House Father – 4
  o Educator – 2 (voluntary or part time)
  o Doctor – 1
  o Paramedical staff – 1
  o Store-keeper cum Accountant – 1
  o Art & Craft cum Music Teacher – 1 (Part Time)
  o PT Instructor cum Yoga Trainer – 1 (Part Time)
  o Driver – 1
  o Cook – 2
  o Helper – 2
  o Housekeeping – 2
  o Gardner – 1 (Part Time)
  o Psychiatrist, Psychologist, Occupational Therapist & Other Professionals (Part Time as may be required) [Rule 68(9) and (4)]

1. Officer-in-Charge

• The officer in charge has the primary responsibility of maintaining the institution. He shall stay within the institutional premises to be readily available as and when required by the juvenile. He shall control and overall supervise the staff of the home and shall determine their specific responsibilities.

• The general duties and functions of the officer-in-charge includes:
  o Providing homely atmosphere of love, affection, care, development and welfare for juveniles or children;
  o Maintaining minimum standards of care in the institution;
o Proper maintenance of buildings and premises;
o Security measures;
o Supervision and monitoring of juveniles' discipline and well being;
o Segregation of a juvenile suffering from contagious or infectious diseases;
o Observance and follow-up of daily routine;
o Filing of monthly report of juvenile in the case file;
o Preparation of budget and control over financial matters;
o Prompt, firm and considerate handling of all disciplinary matters;
o Organize the meetings of the Management Committee and provide necessary support;
o Maintenance of all records and registers required under the Act and the rules and monthly verification of the same by the Management Committee;
o Liaison, coordination and cooperation with the District Child Protection Unit or State Government as and when required; and
o Coordination with the legal officer in the District Child Protection Unit. [Rule 86]

2. House Father or House Mother

House Father and House Mother are part of permanent staff of every Institution. Duties, functions and responsibilities of House Father and House Mother are:

o Handling juvenile with love and affection;
o Taking proper care and welfare of juvenile;
o Maintaining discipline among the juvenile;
o Maintenance, sanitation and hygiene;
o Implementing daily routine in an effective manner and ensuring children's involvement;
Looking after the security and safety arrangements of the home; and

Escorting juvenile, whenever they go out of the home. [Rule 68 (3) r/w 88]

3. **Disqualification of Staff**

- The staff and other care givers shall not employ a juvenile or child under their supervision or care and protection for their own purposes or take any private service from them.

- Any report of physical, sexual or emotional abuse of a juvenile or a child in an institution or outside, by a caregiver, shall hold them liable for disqualification after due inquiry. [Rule 89]

D. **Training of Personnel**

- The officer-in-charge shall provide for training of personnel of each category of staff, in keeping with their statutory responsibilities and specific jobs requirements.

- The training programme shall include-
  - Orientation and induction training of the newly-recruited staff; and
  - Refresher training courses and skill enhancement programmes for all care givers once a year; and
  - Staff conferences, seminars, workshops. [Rule 90]

E. **Maintenance of Records**

1. **Case File**

   A case file of each Juvenile shall be maintained in the institution, amongst others, containing the following information:
o Report of the person or agency who produced the juvenile before the Board;

o Report of the initial interaction with the juvenile, information from family members, relatives, community, friends and miscellaneous information;

o Regular health status reports from Medical Officer, drug de-addiction progress reports, progress reports vis-a-vis psychological counselling or any other mental health intervention, where applicable;

o Social history;

o Leave and other privileges granted;

o Quarterly progress report;

o Individual care plan, including pre-release programme, post release plan and follow-up plan as prescribed in Form XXI;

o Leave of absence or release under supervision;

o Final discharge;

o Case history duly filled in prescribed Form XX;

o Follow-up report of post release cases as per direction of the competent authority, if any. [Rule 54]

The case file, as far as possible, be computerised

2. Maintenance of Registers

The Officer- in-charge shall maintain registers and forms in his office including the following -

o Admission and discharge register;

o Attendance register for staff and juvenile;

o Supervision register;

o Stock register;
Logbook; Order book; Meeting book; Cash book;
Budget statement file;
Inquiry report file;
Visitor’s book;
Staff movement register;
Personal belongings register;
Minutes register of Management Committee & Children's Committees. [Rule 67]

3. Disposal of records

The officer-in-charge shall destroy the records and documents in respect of a juvenile after seven years. [Rule 99]

4. Copy of Act and Rules to be kept in the Institution

Every institution shall keep a copy of the Act, the Rules made by the Central Government and the State Rules if any, for use by staff and juvenile. [Rule 16 (3)]

VI. STEPS TO BE TAKEN FOR NEWLY ADMITTED JUVENILE

The following procedure shall be followed in respect of the newly admitted juveniles:

(a) receiving and search;
(b) disinfection and storing of juvenile's personal belongings and other valuables;
(c) bath and haircut (unless prohibited by religion);
(d) issue of toiletry items; new set of clothes, bedding and other outfit and equipment;
(e) medical examination and treatment where necessary and in case of every juvenile suspected to be suffering from contagious or infectious diseases, mental ailments or addiction;

(f) segregation in specially earmarked dormitories or wards or hospitals in case of a child suffering from contagious disease requiring special care and caution;

(g) attending to immediate and urgent needs of the juveniles like appearing in examinations, interview letter to parents, personal problems and verification by the Officer-in-charge of age of juvenile as per order of the Board.

1. Search

• The officer-in-charge shall see that every Juvenile received in the Institution is searched and the personal belongings of the juvenile including money or any other valuable found with the Juvenile are disinfected and kept in safe custody. [Rule 52(1)]

• Personal belongings shall be recorded in the Personal Belonging Register and must be returned to the juvenile or child when he leaves the institution. [Rule 52 (3) r/w 53(d)]

• Girls shall be searched by a female member of the staff. Both girls and boys shall be searched with due regard to decency and dignity. [Rule 52(2)]

• No person shall bring into the institution articles like fire-arms or other weapons, alcohol, narcotic or psychotropic substances. [Rule 51]
2. **Reception & Familiarisation**

- Every juvenile shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification according to his age group giving due consideration to physical and mental status and degree of the offence committed for further induction into observation home. *[Section 8(4)]*

- The Juvenile shall be familiarized with the institution and its functioning and the name of the Juvenile shall be entered in the admission register. *[Rule 50(3)(4)]*

3. **Medical Care**

Every institution shall:

(a) maintain a medical record of each juvenile on the basis of monthly medical check-up and provide necessary medical facilities;

(b) ensure that the medical record includes weight and height record, any sickness and treatment, and other physical or mental problem;

(c) have arrangement for the medical facilities, including a doctor on call available on all working days for regular medical check-ups and treatment of juveniles or children;

(d) have sufficient medical equipments to handle minor health problems including first aid kit with stock of emergency medicines and consumables;

(e) train all staff in handling first aid;

(f) tie-up with local Primary Health Centre and other hospitals/doctors for holding periodic health camps within the institutions;
(g) make necessary arrangements made for the immunization coverage;

(h) take preventive measures in the event of out break of contagious or infectious diseases;

(k) admit a juvenile without insisting on a medical certificate at the time of admission;

(l) arrange for a medical examination of each juvenile within twenty four hours of admission/transfer;

(o) provide for regular counselling of every juvenile and ensure specific mental health interventions for those in need of such services;

(p) refer children who require specialized drug abuse prevention and rehabilitation programme to an appropriate centre. [Rule 45]

4. Identity Photo

- On admission to a home, every juvenile shall be photographed. [Rule 50 (5) r/w 74(1)]

- One photograph shall be kept in the case file of the juvenile, one shall be fixed with the index card, a copy shall be kept in an album serially numbered with the negative in another album, and a copy of the photograph shall be sent to the Board, as well as to the District or State Child Protection Unit. [Rule 74(2)]

- In case of a child missing from an institution or in case of lost children received by an institution, a photograph of the child with relevant details shall be sent to the missing person's bureau and the local police station. [Rule 74(3)]
5. Case File

- A case file of each Juvenile shall be maintained in the institution containing the information specified in Rule 54. [Rule 54]

- A case history of the juvenile admitted to an institution shall be maintained in Form XX, containing information regarding his socio-cultural and economic background. [Rule 50 (9)]

6. Individual Care Plan

The officer-in-charge along with the case worker, or social worker shall prepare an individual care plan for every child in an institution within one month of his admittance as per Form XXI. [Rule 50 (12) (a)]

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']

7. Progress Report

The officer-in-charge shall file a quarterly progress report of every juvenile in the case file and send a copy to the District Child Protection Unit and Board. [Rule 55 (6) (b)]

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VII. VISIT, COMMUNICATION & LEAVE

1. Visit

- The officer-in-charge shall allow the parents and relatives of the juvenile to visit once in a month or in special cases, more frequently as per visiting hours. [Rule 58(1)]

- In special cases, however, where parents or guardians have travelled a long distance from another State or district, the officer-in-charge shall allow them to meet their children. [Rule 73(2)]
• No stranger shall be admitted to the premises of the institution, except with the permission of the Officer- in-charge or on an order from the Board. [Rule 73(1)]

2. Letter

• The receipt of letters by juvenile of an institution shall not be restricted. The institution shall ensure that at least one letter is written by the juvenile every month for which the postage shall be provided by the institution. [Rule 58(2)]

• The officer-in-charge may peruse any letter written by or to the juvenile, and may refuse to deliver or issue the letter and forward it to the Committee after recording his reasons in a book maintained, for the purpose. [Rule 58(3)]

3. Telephone

• The officer-in-charge in special circumstances or as per the orders of the Board may allow a juvenile to make telephone calls to his parents/ guardians/ relatives. [Rule 58 (4)]

4. Leave

• The Officer-in-charge may recommend a leave of absence for a Juvenile to the Board stating the purpose for the leave and the period of leave. [Rule 62(3) r/w section 59(2)]

• Where the parent/guardian is unable to escort the juvenile on leave, the Officer-in-charge may arrange escort or traveling expenses for journey of the juvenile to family and back. [Rule 62(6)]

• If the juvenile escapes while on leave and is not found within twenty four hours, the officer-in-charge shall report the matter to the nearest
police station and missing person's bureau, but no adverse disciplinary action shall be taken against the juvenile. [*Rule 62(8) r/w section 22*]

**VIII. TRANSFER OF JUVENILE**

- On receipt of order/information from the Board/State Government/Child Protection Unit requiring a juvenile to be transferred outside Home, the officer-in-charge shall arrange to escort the child at government expenses. [*Rule 78 (3) r/w section 50 & 57*]

- The Institution shall arrange for a medical examination of the juvenile by a Medical Officer within twenty four hours before transfer. [*Rule 45(m)*]

- Where the Board sends a juvenile to his relative/fit person at his ordinary place of residence, the Officer-in-charge shall, on the directions of the Board, pay the travel expenses of the relative/fit person and the juvenile. [*Rule 79 (10) r/w section 50*]

**IX. PREVENTION OF ABUSE & EXPLOITATION**

**A. Punishment for cruelty to juvenile**

Any person having actual charge or control over a juvenile assaults, abandons, exposes or willfully neglects the juvenile shall be punishable with imprisonment upto six months and fine. [*Section 23*]

**B. Action against Staff in case of abuse etc.**

- Every institute shall ensure prevention of abuse, neglect and maltreatment of juvenile. To ensure prevention, the staff should be made aware of what constitutes abuse, neglect and maltreatment and their early indicator and also how to respond to the same. [*Rule 60(1)*]
• When there is an incidence of abuse it must be immediately reported by the staff to the Officer-in-charge; who shall place a report before the Board and the Management Committee for necessary action. [Rule 60(2)]

C. Death of a juvenile

• In the event of an unnatural death or suicide of a juvenile in an institution, an inquest and post-mortem examination must be held at the earliest. [Rule 59(1)]

• In all cases of death (whether unnatural or natural or due to illness) the officer-in-charge shall obtain a report of the Medical Officer stating the cause of death and a written intimation about the death shall be given immediately to the following:
  o Police Station,
  o Parents or guardians or relatives of the juvenile,
  o Board,
  o National or State Commission for Protection of Child Rights,
  o District Child Protection Unit or State Child Protection Unit,
  o Magistrate empowered to hold inquests. [Rule 59(2)]

• As soon as the inquest is held, the body shall be handed over to the parents/ guardian/ relatives or in the absence of any claimant the last rituals shall be performed under the supervision of the officer-in-charge in accordance with the religion of the juvenile. [Rule 59(8)]

X. ACTION AGAINST JUVENILE

A. Juvenile committing offence within Institution

If a juvenile commits an offence within the institution, the officer-in-charge shall inform the police and the family and send a detailed report to the Board. [Rule 50 (11)]
**B. Escape of Juvenile from Institution**

- If a juvenile escapes from the institution, the officer-in-charge within 24 hours shall -
  - send information of the same along with the details and description of the juvenile, identification marks and photograph to the police;
  - send the guards in search of the juvenile to railway station, bus stand and other places where the juvenile is likely to go;
  - inform parents or guardians immediately about such escape;
  - hold an inquiry about such escape and send his report to the Board and the Management Committee. [*Rule 18 (2)*]

- No proceeding shall be instituted in respect of the juvenile by reason of such escape; but the Officer in Charge may, after informing the Board take necessary steps in respect of the juvenile. [*Section 22*]

**XI. RELEASE FROM INSTITUTION AND RESTORATION**

**A. Maintain Roster**

- The officer-in-charge shall maintain a roster of juveniles to be released on the expiry of the period of stay. [*Rule 17(1)*]

- A well conceived programme of pre-release planning and follow up of cases discharged from special homes shall be organized in all institutions in close collaboration with existing governmental and voluntary welfare organizations. [*Rule 50 (10)*]

- Each case shall be placed before the Management Committee by the concerned probation officer or child welfare officer or case worker for ensuring proper release and social mainstreaming of the juvenile post-release. [*Rule 17 (2)*]
• Necessary action for release shall be initiated well before the time and shall include preparation for post-release follow-up. [Rule 17(3)]

B. Pre-mature release

• A juvenile kept in Special Home may be released by the Board on the report of Probation Officer or Social Worker or Government permitting him to live with parents/guardian/authorise person willing to take charge of the juvenile to educate, train or look after him. [Section 59(1)]

C. Information to Parent/Guardian

• The parent or guardian shall be informed of the date of release well in advance and be invited to come to the institution to take charge of the juvenile on that date. [Rule 17(4)]

• The officer-in-charge shall pay travel expenses of the parent/guardian and the juvenile, if necessary. [Rule 17(5)]

D. Escort

• If the parent/guardian fails to come the juvenile shall be taken by the escort of the institution. [Rule 17(6)]

• If the juvenile has no parent/guardian, he may be sent to an aftercare organization, or in the event of his employment, to the person who has undertaken to employ the juvenile. [Rule 17(8)]

E. Provide Cloths, Toiletries & Tools

• The officer-in-charge at the time of release of a juvenile shall, if necessary, provide him with a set of summer or winter clothing and essential toiletries. [Rule 17(7)]
• The officer-in-charge, in deserving cases, may provide the juvenile with small tools to start a work or business. [Rule 17(12)]

F. Rewards and Earnings

• Rewards earned by a juvenile for steady work and good behaviour; shall be handed over to the juvenile/parent at the time of release. [Rule 57]

G. Return of belongings

• The money or belongings of a juvenile received or retained in an institution at the time of admission shall be returned to the juvenile. [Rule 53]

H. Restoration and Follow-up

• The officer-in-charge of the institution from where the juvenile or child is restored shall be given a copy of the quarterly follow-up report by the concerned Child Welfare Officer or Probation Officer or NGO for a period of two years. [Rule 65(a)]

• The officer-in-charge shall file the follow-up report in the case-file of the juvenile and place the report before the Management Committee and send a copy to the District Child Protection Unit. [Rule 65(11) & (12)]

[Note: please see details under the chapter 'Rehabilitation and Social Re-integration']
Key Responsibilities & Approach

By

Hon’ble Mr. Justice Madan B. Lokur, Judge, Delhi High Court

Children seem to be easiest victims of most unlawful activities – be it petty penal offences or even something as serious as trafficking or war crimes. Perhaps, this is because of their innocence or their vulnerability or both. Sometimes, juvenile perpetrators of crime are victims of the unlawful activity of someone else. This was graphically brought out by Charles Dickens in Oliver Twist. These are all instances of children being victims of acts of commission. But, sometimes they are the victims of omissions – they are entitled to live a normal existence but are denied the opportunity to do so for no fault of theirs. This may well be the worst crime that they are subjected to.

It is in the above background that due importance needs to be given to Observation Homes set up under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Initial experience

I first visited an Observation Home for Boys (OHB) in Delhi about two years ago. Believe me, the conditions prevailing there were nothing like what anybody would expect in a facility for children. There were eight available dormitories, but for good reasons, only five of them were being used for living purposes. There were more than 200 residents from the age of 12 to young men of about 22 years of age living in those dormitories – each dormitory had more than 40 of them. They slept on mattresses spread out on the floor; the toilets were attached to the dormitories and were stinking; cleanliness and hygiene were perhaps not even heard of; there was no segregation of children either on the basis of age or crime and so there were those accused of murder and rape living with those accused of a petty crime.

What was the attitude of the officer in charge? Well, he hadn’t invited those children to come and live there – they were in judicial custody, so to speak, and so it was for the Juvenile Justice Board (the JJB) to take care of them. What about nourishment, facilities and infrastructure requirements? Well, they were the concern of the Department of Social Welfare and he was only a lowly employee of the department. If the senior officers thought it appropriate to improve the living conditions, they would certainly do it and if they did not, he wasn’t going to push them around, since it was not a part of his job. And so, there was a general apathy, which started I don’t know when, and would perhaps continue till the OHB closed down, if at all.

The first thought that came to my mind was that the State and its officers must adopt and accept their role as parens patrie of the children in Observation Homes.
Constitutional vision

Of course, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder have excellent provisions for the better ‘care and protection’ of children, but they were not being implemented in the OHB and were, in a sense, utopian. I was faced with the question: Is there a simpler way out to make the life of the children more comfortable?

The answer is available in our Constitution which provides for the right to life in Article 21. Over a century ago, the American Supreme Court in *Munn v. Illinois*, 94 *US* 113 explained ‘life’ as occurring in the 5th and 14th Amendments to the US Constitution in the following words:

“By the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed.”

This definition was accepted over fifty years ago by our Supreme Court in *Kharak Singh v. State of U.P.*, (1964) 1 SCR 332. Well then, is it possible to implement the Constitutional vision (accepted by the Supreme Court) and improve the quality of life for children in the Observations Homes, more in the spirit of the Act and the Rules rather than in its letter? In my opinion, the answer to this was in the affirmative and we should strive to achieve this Constitutional goal.

Bail not jail

The first question to ask is how long has each child been in the Observation Home? It would be shocking to know (it certainly did shock me) that many children were in the Observation Home because no one really thought about releasing them till the conclusion of their inquiry. Section 15 of the Act provides a maximum punishment of three years stay in a Special Home. Yet, there were children in the Home who had spent more than three years as ‘undertrials’ and so their ‘punishment’ period was already over. First things first – such children needed to be immediately released.

Section 436-A was incorporated in the Criminal Procedure Code, 1973 in 2005 and it provides for the maximum period for which an undertrial prisoner can be detained. Unless there are special reasons, the maximum period for which an undertrial may be detained cannot exceed one-half of the maximum period of imprisonment. Therefore, pending an inquiry, no juvenile may be kept in an Observation Home for more than 18 months. To my shock, I found that many children were in the OHB well beyond this period provided for by law. Was it because their bail application was not being decided or was it because bail was denied to them? Whatever the reason, they could not be kept in custody contrary to law and they needed to be released.
Add to this another option available – sending a child to the Observation Home should be the last option and not the first. This is mentioned as the Principle of last resort in Section 3(2) of the Act. Once this is kept in mind by the JJB, the number of children being routinely sent to the Observation Home to spend a few days would fall dramatically.

These three steps were implemented in the OHB in Delhi and they really emptied it out, with the result that for the last few months, the number of children in the OHB has not exceeded 50.

**Bringing about changes**

Once the number of children in the Observation Home becomes manageable, the atmosphere within is that much more conducive to change and it is that much easier for the person in charge to manage change. And this is what happened in the OHB in Delhi.

Suddenly, the Superintendent found it possible to recognize each child by his name or at least his appearance. It became easier for him to attend to his specific needs, if any. This not only included medical attention, which is extremely important but also any particular activity that the child was interested in – painting, tailoring, clay modeling etc. Short stay education courses and counseling was an area that could be considered favorably by the Superintendent, and he did. This necessitated the involvement of NGOs who could help out in a variety of activities that would keep the child busy for most of the day.

Simultaneously, the physical needs of the child were also attended to by the Superintendent. There was that much less utilization of the toilets, for example, and so maintenance could be looked into. Kitchen facilities slowly improved and therefore, the children got a better diet. What about sports and games? The adjacent garden was completely unattended. The horticulture wing of the Public Works Department was persuaded to plant some grass and grow some trees. Fortunately, they responded positively. The children could now go out and play for a couple of hours each day.

Merely because a child is in the Observation Home, it does not mean that he should not have any contact with his family. Without there being any rule or regulation in this regard, a practice had developed whereby the parents or guardians of a child in the Observation Home could meet with him only once a month. The Superintendent changed all that – now he permits a weekly meeting – because it can be easily managed.

Community activities have been given a fillip by the entire staff of the OHB. They have organized a ‘sports day’ with prizes being distributed courtesy of NGOs. An exhibition of talent, singing, painting, sculpture and tailoring has been organized quite successfully with some people from the neighborhood having purchased a few...
items. The Song and Drama Division of All India Radio and Doordarshan have assisted in performances such as a magic show, a skit and dancing. Children who have since left the OHB have interacted with those in custody and have encouraged them to integrate into society as useful members.

**Conclusion**

It is necessary for all stakeholders to work together – whether it is the JJB or the staff of the Observation Home, officials of the concerned department of the government (Social Welfare or Child Development or Public Works), NGOs and anybody who is prepared to spend some time with disadvantaged children. While day-to-day responsibilities are mentioned in the Act and the Rules, it is necessary to look beyond the letter of the law and understand the spirit behind it. Our Constitution always provides the guidance. Once these fundamentals are clear, the approach becomes obvious.

We need to understand that children are not born into crime – they are led into it. They need to be weaned away from it, sometimes through cajoling, counseling or appreciating their problems. Sometimes it is necessary to take a tougher route and that is why the law provides for Observations Homes and Special Homes. But these Homes need to be the last resort and they should essentially play a restorative role of enabling the integration of a ‘wayward’ child into society.

In a recent television program, Professor Amartya Sen spoke of how it is so much easier for Indians to live with each other than for people in many other countries. He backed this up by saying that the crime rate in India is lower than in most countries. Our endeavor should be keep it that way and if some of us stray away from the path, particularly children, special efforts need to be made to restore them to the straight and narrow and then integrate them into society. Only a positive approach can help us achieve this Constitutional vision.
STATE GOVERNMENT

State Government is the authority on whom the Act has entrusted the responsibility for smooth functioning of juvenile justice system. It is the State Government that has to provide necessary infrastructure and ensure that all the stake holders discharge their duties efficiently in the best interest of the child.

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

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* By K.S.Bhati, Advocate, Treasurer, Legal Assistance Forum
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II. CONSTITUTION OF STATUTORY BODIES

A. Selection Committee

- The State Government shall constitute a Selection Committee for selecting and recommending persons for appointment as members of:
  - Juvenile Justice Board,
  - Advisory Committee, and
  - Inspection Committee

and for dealing with complaints against the above persons. [Rule 92 r/w Rule 63 (1) & Rule 93 (8)]

- Selection Committee shall be constituted for a period of 5 years comprising of the following:
  - Chairperson - a retired judge of High Court.
  - Member Secretary - representative from the State Government not below the rank of Director.
  - Members –
    - 2 representatives from reputed NGO working in the area of child welfare;
    - 2 representatives from academic bodies;
    - 1 representative of the National or State Human Rights Commission or National or State Commission for Protection of Child Rights or National or State Commission for Women. [Rule 91]

B. Juvenile Justice Board

- State Government shall constitute for every district one or more Juvenile Justice Boards for conducting inquiry against juvenile within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, i.e. latest by 22.8.2007 [Section 4 r/w Rule 4 and 83]

[Note: for details please refer the chapter on 'Juvenile Justice Board']
C. Advisory Boards and Inspection Committee

State Government shall constitute Advisory Boards at State, District and City levels through the Selection Committee for 3 years to advise the Government on matters relating to -

- establishment and maintenance of Homes;
- mobilisation of resources;
- provision of facilities for education, training and rehabilitation of juvenile;
- co-ordination among various official and non-official agencies concerned. [Section 62 r/w Rule 93]

Advisory Board shall consist of -

- representatives of the State Government,
- members of the Juvenile Justice Board,
- representatives of voluntary organisations in the field of child welfare, corporate sector, academicians, medical professional,
- eminent social workers, and
- locally respectable and spirited citizens.

- The District or City level Advisory Board constituted in terms Section 62 (3) shall also function as the Inspection Committee under section 35 of the Act. [Rule 93 (9)]

- The main functions of the Advisory Boards while acting as the Inspection Committee are as below -
  - carry out inspection of Homes at least once in three months 63(5)
  - interact with children to determine their well-being and uninhibited feedback [Rule 63]
  - visit and oversee the conditions in the institutions and look into the functioning of the Management Committee and Children's Committee. [Rule 63 (2)]
D. Child Protection Unit (CPU)

Every State Government shall constitute a Child Protection Unit for the State and, such Units for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children in need of care and protection and juvenile in conflict with law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and co-ordination with various official and non-official agencies concerned. [Section 62A]

In the administrative hierarchy of the Government, district head quarter is the prominent centre of administration. It is the connecting link between the ground level officers, social workers and other Stake holders, who actually interact with the children on a day to day basis and implement the policies of the Government. District CPU therefore plays the most pivotal role in actual implementation of the provisions of the Act and the Rules.

State Child Protection Unit

1. Constitution

State Government shall constitute a Child Protection Unit (CPU) for the State consisting of such officers and employees as may be appointed by that Government [Section 62A]
2. **Primary Duties**

- implementation of the Act and supervision and monitoring of agencies and institutions under the Act;

- set up, support and monitor the District Child Protection Units;

- represent State Child Protection Unit as a member in the Selection Committee for appointment of members of Boards or Committees;

- make necessary funds available to the District Child Protection Units for providing or setting up required facilities to implement the Act;

- network and coordinate with all government departments to build linkages on child protection issues;

- training and capacity building of all personnel - Government and Non-government;

- establish minimum standards of care and ensure its implementation in all institutions set up under the Act;

- review the functioning of Committees; and

- all other functions necessary for effective implementation of the Act. [Rule 80]

**District Child Protection Unit**

1. **Constitution**

State Government shall constitute a Child Protection Unit (CPU) for every District consisting of such officers and employees as may be appointed by that Government. [Section 62A]
2. **Primary Duties**

- ensure effective implementation of the Act at district or city levels by supporting creation of adequate infrastructure, such as, setting up Boards, SJPU and Homes;
- periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Board from time to time;
- implement family based non-institutional services including sponsorship, foster care, adoption and after care;
- ensure setting-up of District, Block and Village level Child Protection Committees;
- facilitate transfer of children for their restoration;
- network and coordinate with all government departments to build linkages on child protection issues;
- develop parameters and tools for effective monitoring and supervision of agencies and institutions in the district in consultation with experts in child welfare;
- supervise and monitor all institutions or agencies providing residential facilities to children in the district;
- train and build capacity of all personnel - Government and Non-government;
- organize quarterly meeting with all stakeholders at district level including Childline, Specialised Adoption Agencies, Officers in-charge of homes, non-governmental organisations and members of public;
- liaison with the State Child Protection Unit, State Adoption Resource Agency at State level and District Child Protection Units of other districts. [Rule 81]
3. **Performance appraisal of members of Board**

Any extension of the tenure of members of the Board shall be on the basis of their performance appraisal by the District CPU or State Government and on the recommendation of a Selection Committee constituted for the purpose. [Rule 6(3)]

4. **Legal Aid**

Legal Officer of the District Child Protection Unit shall work with the State Legal Aid Services Authority to extend free legal services to all the Juveniles in conflict with law and shall be under an obligation to provide legal services sought by the Board. [Rule 14]

5. **Initiation of action for publication of name of juvenile**

Section 21 of the Act prohibits publication of name, etc., of juvenile involved in any proceeding under the Act and any person who contravenes this provisions is liable to a penalty of fine up-to Rs. 25,000/-. In the event of violation of this section, State or District CPU shall initiate necessary action through Board. [Rule 18(1)(b)]

6. **Sponsorship**

The State Government, with the help of District or State CPU, shall identify families and children at risk and provide necessary support services in the form of sponsorship for education, health, nutrition and other developmental needs of the children.[Rule 37(2)]

The Board shall make an order in Form XVIII for support to a Juvenile through sponsorship and send a copy to the District or State CPU or State Government for appropriate action. [Rule 37(5)]

7. **After Care Organisation**

After care programmes shall be made available for 18-21 year old persons, who have no place to go to or are unable to support
themselves, by the District or State CPU in collaboration with voluntary organizations for the purpose of section 44 of the Act and the Rules. [Rule 38(2)]

8. **Linkages and co-ordination**

District or State CPU shall help the State Government to identify the roles and responsibilities of each department at district or State level for effective implementation of the Act and the Rules. [Rule 39(2)]

District or State CPU shall arrange for appropriate training and sensitization of functionaries of various departments from time to time in coordination with National Institute of Public Cooperation and Child Development (NIPCCD) and its Regional Centres. [Rule 39(3)]

9. **Restoration and Follow-up**

District CPU or State Government shall provide funds for restoration of the juvenile. [Rule 65(2)]

The expenses incurred on restoration of a juvenile including travel and other incidental expenses, shall be borne by the District CPU or State Government. [Rule 65(6)]

Where a follow-up is not possible due to unavailability of government functionaries or nongovernmental organisations, the concerned District CPU shall provide necessary assistance and support to the concerned Board. [Rule 65(13)]

10 **Social workers for SJPU**

District CPU or State Government shall provide services of two social workers to the Special Juvenile Police Unit for discharging their duties. [Rule 84(2)]
11 Training of Personnel

State Government with the help of the State CPU and NIPCCD shall organize regular training and capacity building of personnel involved in the implementation of the Act and the Rules.

E. Special Juvenile Police Unit

State Government shall constitute Special Juvenile Police Unit (SJPU) in each District within 4 months of the notification of the Central Model Rules i.e. latest by 26.2.2008. [Section 63 r/w Rule 84]

[Note: for details please refer the chapter on 'Police']

III. ESTABLISHMENT OF HOMES

A. Observation Home

State Government shall establish and maintain separate Observation Homes for boys and girls in every district or a group of districts for temporary reception of juvenile during pendency of inquiry. Observation Homes may be set up by the State Government either by itself or under an agreement with voluntary organisation. [Section 8 r/w Rule 16]

[Note: for details please refer the chapter on 'Institutions']

B. Special Home

State Government shall establish and maintain separate Special Homes for boys and girls in every district or a group of districts for reception and rehabilitation of juvenile in conflict with law. Special Homes may be set up by the State Government either itself or under an agreement with voluntary organisations. [Section 9 r/w Rule 16]

[Note: for details please refer the chapter on 'Institutions']
C. **After Care Organization**

State Government shall establish and maintain separate After Care Organization for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution-based life to mainstream society for social re-integration. After Care Organization may be set up by the State Government either itself or under an agreement with voluntary organisations. 

\[\text{Sections 40 \& 44 r/w Rule 38}\]

\[\text{Note: for details please refer the chapter on 'NGO' \& 'Rehabilitation and Social Re-integration'}\]

IV. **RECOGNISATION OF ORGANISATIONS \& INSTITUTIONS**

A. **Observation Home**

State Government may certify and recognize an Institution run by an NGO to be Observation Home. \(\text{Sections 8 r/w Rule 70}\)

\[\text{Note: for details please refer the chapter on 'Institutions'}\]

B. **Special Home**

State Government may certify and recognize an Institution run by an NGO to be Special Home. \(\text{Sections 9 r/w Rule 70}\)

\[\text{Note: for details please refer the chapter on 'Institutions'}\]

C. **After Care Organization**

State Government may certify and recognize an Institution run by an NGO to be After Care Organization. \(\text{Sections 44 r/w Rule 70}\)

\[\text{Note: for details please refer the chapter on 'NGO'}\]
D. **Fit Institutions and Fit Person**

- A fit institution may be given recognition by the State Government on the recommendation of the Board after holding due enquiry. [*Rule 2(m) r/w Rule 69 (6)*]

- An individual may be recognized as a fit person by the Board after due verification of his credentials and reputation. [*Rule 69 (1)*]

  [*Note: for details please refer the chapter on 'NGO']*

E. **Protection Agencies**

- The State Government shall recognize such voluntary organizations as protection agencies which are in a position to provide the services of probation, counselling, case work, a safe place and also associate with the Police and have the capacity, facilities and expertise for the aforesaid purposes.

- Such agencies may assist the Police at the time of apprehension, in preparation of the report containing social background of the juvenile and circumstances of apprehension and the alleged offence, in taking charge of the juvenile until production before the Board and in actual production of the juvenile before the Board within twenty-four hours. [*Rule 11(12)*]

  [*Note: for details please refer the chapter on 'NGO']*

F. **Adoption Agencies**

The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies for the placement of orphan, abandoned or surrendered children for adoption. [*Section 41(4) r/w Rule 70(1)*]

  [*Note: for details please refer the chapter on 'Rehabilitation and Social Re-integration']*
G. Transfer of Management

The State Government may transfer the management of any State run institution to a voluntary organization of repute, who has the capacity to run such an institution; and certify or recognize the said voluntary organization as a fit institution for a specified period. [Rule 70 (3)]

V. Training of Personnel

The State Government with the help of State or District Child Protection Unit shall arrange for appropriate training and sensitization of functionaries from time to time in coordination with National Institute of Public Cooperation and Child Development [NIPCCD] and its Regional Centres. [Rule 39(3)]

1. Juvenile Justice Board

The State Government shall provide training and orientation to the Principal Magistrates and members of the Board in child psychology, child welfare, child rights, national and international standards for juvenile justice. [Rule 5 (5)]

2. Police

In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles to perform their functions more effectively, they shall be specially instructed and trained. [Section 63 r/w Rule 84 (3)]

3. Staff of Homes & Institutions

The State Government or Officer in charge shall provide for training of personnel of each category of staff which shall include:
orientation and induction training of the newly-recruited staff;
refresher training courses and skill enhancement programmes for all care givers once a year; and
Staff conferences, seminars, workshops. [Rule 90]

VI. SCHEMES & PROGRAMMES

A. Sponsorship

• The State Government shall prepare sponsorship programme in consultation with the NGO, Child Welfare Committees, other relevant government agencies and the corporate sector to provide supplementary support to families, to children’s homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improve their quality of life. [Section 43 r/w Rule 37]

• The State Government, with the help of State or District Child Protection Units shall identify families and children at risk and provide necessary support services in the form of sponsorship for child’s education, health, nutrition and other developmental needs. On such identification, Board may make an order in Form XVIII directing the State Government to release specified amount on monthly or one time basis for support to a juvenile through sponsorship. [Rule 37 (5)]

B. Grants-in-Aid

• State Government may provide grant in aid to certified or recognized organisations for the maintenance of juvenile and expenses incurred on their education, treatment, vocational training, development and rehabilitation. The grants-in-aid may be admitted, at such rates, which shall be sufficient to meet the prescribed norms, in such manner and
subject to such conditions as may be mutually agreed to by both the parties. [Rule 72]

C. **Linkage and Co-Ordination**

1. State Government, with the help of State or District Child Protection Unit, shall -
   
   o identify the roles and responsibilities of each department and inform them through a notification;
   
   o arrange for appropriate training and sensitization of functionaries of these departments from time to time in coordination with National Institute of Public Cooperation and Child Development and its Regional Centres (NIPCCD); and
   
   o develop effective networking and linkages with local non-governmental organisations for specialized services and technical assistance like vocational training, education, health care, nutrition, mental health intervention, drug de-addition and legal aid services. [Section 45 r/w Rule 39]

2. State Government shall establish effective linkages between various government, non-government, corporate and other community agencies for facilitating the rehabilitation and social reintegration of juveniles. [Rule 39(1)]

3. State Government shall -
   
   o circulate a copy of the Act and the Rules amongst all concerned;
   
   o ensure that copies of the Act and Rules are to be kept by the Observation Homes for the use of staff and juveniles;
   
   o develop and make available simplified and child friendly versions of the Act and the rules in regional languages. [Rule 16]
D. Social Auditing

- The State Government shall monitor and evaluate the implementation of the Act annually by reviewing matters concerning establishment and functioning of Board, Special Juvenile Police Unit, Institutions and any other matter concerning effective implementation of the Act. \([\text{Section 36 r/w Rule 64(1)}]\)

- The social audit can be carried out with support and involvement of NGOs and autonomous bodies like the National Institute of Public Co-operation and Child Development (NIPCCD), Indian Council for Child Welfare, Childline India Foundation, Central and State level Social Welfare Boards, School of Social Work and School of Law. \([\text{Rule 64(2)}]\)

E. Preparation of Guidelines for Prevention of Sexual abuse.

State Government shall prepare guidelines for prevention of sexual abuse of children and shall ensure that every person, school or such other educational institutions abide by these guidelines. \([\text{Rule 31}\]

F. After Care Programme

State Government shall set up an after care programme for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution-based life to mainstream society for social re-integration. \([\text{Sections 40 & 44 r/w Rule 38}\]

[Note: for details please refer the chapter on 'Rehabilitation and Social Re-integration']
G. Adoption

The State Government may issue various guidelines for adoption from time to time and the court giving the children in adoption have to conform to those guidelines. [Section 41 (3)]

[Note: for details please refer the chapter on 'Rehabilitation and Social Re-integration']

H. Foster Care

The State government may make rules for the purposes of carrying out the scheme of foster care programme of children and every State Government shall design its own foster care programme so as to reduce institutionalization of children and enable a nurturing family environment for every child. [Section 42(3) & Rule 34 (2)]

[Note: for details please refer the chapter on 'Rehabilitation and Social Re-integration']

VII. CREATION OF JUVENILE JUSTICE FUND

The State Government shall create a 'Juvenile Justice Fund' at the State level for the welfare and rehabilitation of the juvenile which shall be administered by the State Advisory Board. [Section 61 r/w Rule 95 (1)]

- The assets of the Fund shall include grants and contributions from
  - Central Government;
  - State Government;
  - Statutory or non-statutory bodies set up by the Central or State Government; and
  - Voluntary donations from any individual or organization.[Rule 95(2)(5)]
• The Fund shall be applied for following purposes:
  o To implement programmes for the welfare, rehabilitation and
    restoration of juveniles or children;
  o To pay grant-in-aid to non-governmental organizations;
  o To meet the expenses of State Advisory Board and its purpose;
    and
  o To do all other things that are incidental and necessary for the
    above purposes. [Rule 95(3)]

VIII. MISCELLANEOUS FUNCTIONS

A. Transfer outside State

• The State Government may direct a juvenile to be transferred from any
  special home within the State to any other special home or institution
  outside the State in consultation with the concerned State government
  and with the prior intimation to the Board. [Section 57]

B. Provide Place of Safety

• On the order of the Board, the State government shall make
  arrangement in respect of juvenile who is above the age of 16 years
  and has committed a serious offence to be kept under protective
  custody at a place of safety other than the Special Home. [Section 2(q)
  and 16 & Rule 15 (12)]

C. Arrange Counseling and Community Service

• When the Board releases the juvenile after advice and admonition or
  after participation in group counselling or order him to perform
  community service, the State Government shall arrange for the
individual counselling or group counselling or community service on receiving necessary directions in this respect from the Board [Rule 15(4)]

- Community service implies service rendered to the society by juveniles, which is not degrading and dehumanizing and may include:
  
  (i) cleaning a park;
  
  (ii) getting involved with Habitat for Humanity;
  
  (iii) serving the elderly in nursing homes;
  
  (iv) helping out a local fire or police department;
  
  (v) helping out at a local hospital or nursing home; and
  
  (vi) serving disabled children. [Rule 2 (e)]

D. Set Up Treatment Centre for Juvenile suffering from Dangerous Disease

- State Government shall set up necessary organization like leper asylum or mental hospital or treatment centre for drug addicts or place of safety to cater to the special needs of juveniles suffering from a dangerous disease or physical or mental health problems requiring prolonged medical treatment, or is found addicted to a narcotic drug or psychotropic substance. [Section 58 r/w Rule 61]

IX. RULE MAKING POWER

1. State Government shall make rules to carry out the purposes of this Act which shall conform to Juvenile Justice (Care and Protection of Children) Rules, 2007, so far as is practicable. Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of that State. [Section 68]
2. State Government may also make rules-
   o to provide for persons through whom any juvenile may be produced before the Board; [Section 10(2)]
   o for foster care programme; [Section 42(3)]
   o for sponsorship; [Section 43(2)] and
   o for after care programme [Section 44].

Application of Central Rules

Until the rules are made by the State Government, Juvenile Justice (Care and Protection of Children) Rules, 2007 framed by the Central Government shall apply to the State. [proviso to Section 68 (1) r/w Rule 96]
Key responsibilities and approach

By

Hon’ble Mr. Justice I A Ansari, Judge, Gauhati High Court

A child is a child, no matter, which region he comes from, which family he belongs to or who are, or were, his parents. Regardless, therefore, of the structure of a government, or of the political, economic or social philosophy of a government, welfare of children must be of utmost priority to every government. Children are the backbone of the next generation and leaders of the future.

A child may come into conflict with the law even if he, otherwise, belongs to a good, respectable and affluent family. However, a large number of children who come into conflict with law, emerge as law-breakers due to poverty, social conditions governing the child, hunger for food, malnutrition, even environment in educational institution, lack of proper guidance arising out of disintegration of family, community bondage and erosion of social values, which, at one point of time, worked as deterrent factors towards anti-social behaviour. So it is the high time that government should adopt such effective mechanism for those juveniles in conflict with law for their proper rehabilitation and re-integration.

A phenomenon, which has, now, developed into a potential threat and drives children to come into conflict with law is insurgency, for, the areas, which see extremism and insurgency, give rise to children, who, for a number of reasons, are either driven to take the law into their own hands or are left by the society so uncared and unprotected that they have to choose their own mode of sustenance and one of the common modes of sustenance, which such children are driven to choose, is theft. Gradually, survival of such children on theft and various other law-breaking acts becomes their mode of living. Sometimes, such children are forced to work in various dhabas (a kind of wayside restaurants) and serve food and even liquor to customers, though such avocation is wholly unsuitable to their age.

No wonder, therefore, that Article 39, as a Directive Principle of State Policy, casts responsibility, on the State, to evolve a policy for protecting children and youth against exploitation and moral and material abandonment. Articles 15(3), 45, 47 of the Constitution impose, on the State, the responsibility to ensure that all the needs of the children are met and their basic human rights are fully protected. It is, however, after more than half a century of our independence that under the orders of the Supreme Court, as given in Unnikrishnan J P & Others vs. State of Andhra Pradesh, (1993) 1 SCC 645, it has become the fundamental right of every child to receive, and, correspondingly, a fundamental duty of every state to provide, education, free of cost, up to the age of fourteen years.

Article 3 of the Convention on the Rights of the Child (adopted by the General Assembly of the United Nations on 20th November, 1989) emphasizes responsibilities of the public as well as private social welfare institutions, courts of law,
administrative authorities and legislative bodies to adopt, in all its actions concerning children, the principle of 'best interest of the child'.

It is to fulfill its obligations under the Constitution and international conventions that the Juvenile Justice (Care and Protection of Children) Act, 2000, has been enacted. This Act is designed as a comprehensive legal framework, which seeks to take care of two categories of children, namely, (i) those, who are in conflict with law, and (ii) those, who are in need of care and protection. Statement of objects and reason of this Act spells out the urgent need for creating adequate infrastructure, which may be necessary for effective implementation of this significant piece of legislation. This Act envisages that the State shall, apart from its own machinery, which it may use for achieving the objects of the Act, also become a facilitator for voluntary organizations and local bodies so as to achieve effective implementation of the legislation. This enactment casts responsibility on the State to make effective provisions for rehabilitation and social re-integration, such as, adoption, foster care, sponsorship and post care of delinquent juvenile.

Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, obligates the States to establish Juvenile Justice Board (JJB) in every district and assign duty to them in relation to juvenile in conflict with law. In many parts of our country, though Juvenile Justice Boards have been constituted, what is, unfortunate, is that the authorities, constituting these Boards, appear to have lost sight of the eligibility criteria for persons, who constitute such Boards, inasmuch as Section 4(3) of the Act states that the Principal Magistrate shall have special knowledge or training in child psychology or child welfare and that the members of the Board shall be those, who have been involved in health, education or welfare activities pertaining to children for, at least, seven years. Unless, therefore, suitable persons constitute the Juvenile Justice Boards, the basic purpose of formation of the Board may stand defeated.

Sections 42 and 43 further oblige the State to provide and regulate the foster care scheme. It also envisages State’s role in inspiring and helping individuals as well as group of individuals and/or communities to sponsor schemes for taking care of the children, who are in need of care of the society and protection from exploitation. Section 44 makes the State governments responsible to set up or identify organization(s), which would take care of the children, who may come into conflict with law and help them become responsible citizens so that they can lead honest and useful life. It is, thus, the solemn duty of the State to motivate individuals or groups to take up responsibility of the children, who are uncared for, and are, therefore, likely to come in conflict with law or who may have already come in conflict with law.

Section 63 of the Act imposes a duty, on the State, to set up Juvenile Police Unit in each district for handling cases concerning juvenile. Such a unit would have no meaning unless the people constituting the unit are made aware of what they are expected to do. Thus, special training, for this purpose, is necessary and a desire to
work for the future benefit of this country must be ignited in them. In fact, the Government must provide training to all stakeholders in order to ensure effective coordination amongst the various organs, which would make the Act a meaningful and workable Act.

It is pertinent to note that the Act casts a duty upon the State to establish Observation Home and Special Home in every district or a group of districts. Most appropriately, the Act uses the word ‘Home’, for, a home does not mean a mere structure of concrete, called building, with inanimate objects, such as, furniture. A ‘Home’ signifies care, love, protection and affection. Hence, a building would remain a building and not become a ‘Home’ if the building is devoid of heart and life. In most of the cases, the observation homes and special homes are in pitiable state and the atmosphere is so hostile there that a child, who may have been sent there for reformation or for his well-being, is quite likely to fall in bad company and get exposed to all sorts of notoriety.

Apart from establishing Homes, the Government must constitute various statutory bodies like Advisory board, Selection Committee, Child welfare Committee, Child protection unit, etc. and also recognize those NGOs who can render service for effective implementation of juvenile justice system. Keeping in mind the concept of “the best interest of child “, the State Government must prepare and conduct programmes such as Sponsorship programme, After-care plan, Counseling, Community service etc. for proper rehabilitation and reintegration of the juvenile. The concept of Community service introduced in Rule 2(e) of the Act is a flexible, personalized and humane sanction inasmuch it gives an offender an opportunity to work for the society, gain work experience, boost his self-esteem and make himself settle in future. It also gives the community a chance to participate in the correctional process of the offender so that the community is the ultimate gainer. In fact, a trained group of motivated persons would be essential to make the scheme of community service meaningful. Of late, various Universities have started courses on social works. The students of such Universities may be gainfully utilized for such purposes.

It is the duty of the State Government to make all required support system for the purpose of ensuring effective functioning of all the other players under the Juvenile Justice System. However, various duties envisaged under the Act and the Rules cannot be implemented effectively unless and until the Government take initiatives and create 'Juvenile Justice Fund' with sufficient amount for incurring expenditures for implementing programmes, restoration, aiding NGOs , to meet expenses of Homes, Special Juvenile Police Unit, Juvenile Justice Board and other statutory bodies for the purpose of ensuring effective functioning of all the stakeholders under the Juvenile Justice System. Therefore the role of the Government is very crucial in the juvenile justice system as functioning of all the stakeholders revolves around the infrastructure and facilities made available by the State.
Various problems, relating to children, who come in conflict with law, cannot or should not, therefore, be viewed independent of, or divorced from, each other, because a child is, after all, nothing, but a genesis of future society. No enactment, far less an enactment relating to juvenile in conflict with law, can be successful if suitable mechanism, with logistic support, is not in place for implementation of the objectives, which the enactment seeks to achieve. It is sad, but true, that in our country, we have no dearth of laws; what we suffer from is the logistic support so as to ensure proper implementation of the objects of law and the logistic support has to come from the State Government.

Prevention is always better than cure. As all of us constitute the State; it is, therefore, our duty to ensure that requisite care is taken of every child and, particularly, of a child, who is uncared for, or a child, whose misfortune may have brought him into conflict with law, so that each child grows up and shapes into a responsible, law-abiding and respectful citizen.
The Act and the Rules provide for involvement of Non Governmental Organisations (NGOs) in a big way. The objects and reasons of the Act also specifically contemplate "larger involvement of informal systems specially the family, the voluntary organizations and the community."

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Act, 2000

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*By Ritu Bhardwaj, Advocate, Joint Secretary, Legal Assistance Forum*
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Report of social worker confidential.

Advisory Boards to include social workers and voluntary organisations.

Protection of action taken in good faith.

**B. Juvenile Justice (Care and Protection of Children) Rules, 2007**

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1 Applicable to all States as per proviso to section 68 (1) of the Act r/w Rule 96
II. AREAS OF OPERATION

A. Observation Home and Special Home

1. Establishment

   - Observation Homes may be set up by the State Government under agreement with an NGO for the temporary reception of juvenile in conflict with law during pendency of inquiry by the Board. \([\text{Section 2 (o) & 8 r/w Rule 16}]\)

   - Special Homes may be set up by the State Government under agreement with an NGO for reception and rehabilitation of juvenile in conflict with law, if sent by the Board on conclusion of inquiry. \([\text{Section 2 (v) & 9 r/w Rule 16}]\)

2. Certification and Recognition

   - Observation Home and/or Special Home run by an NGO must be certified and recognized by the State Government. \([\text{Section 2 (o)/(v) r/w section 8/9 & Rule 2(i) (m) & Rule 70}]\)

   \[\text{Note: for details please refer chapter on ‘Observation Home & Special Home’}\]

B. Protection Agencies

1. Voluntary organizations which are in a position to provide the services of probation, counselling, case work, a safe place and also associate
with the Police may be recognised as protection agencies by the State Government. [Rule 11(12)]

2. Such protection agencies may assist the Police/SJPU -
   o at the time of apprehension,
   o in preparation of the report containing social background of the juvenile, circumstances of apprehension and the alleged offence,
   o in taking charge of the juvenile until production before the Board, and
   o in actual production before the Board within twenty-four hours. [Rule 11 (12) r/w Section 10]

C. Honorary Probation Officer

1. To augment the existing probation service, honorary or voluntary Probation Officers may be appointed from the voluntary organization and social workers found fit for the purpose by the Competent Authority i.e. the Board. [Section 2(g) r/w Rule 85]

2. The Board may obtain Social Investigation Report on juvenile through a recognised voluntary organisation and shall take into consideration the findings of such report before passing a final order against a juvenile. [Section 15(2) r/w Rule 2(m)]

D. Fit Institution

1. Fit institution includes a registered non-governmental organisation prepared to own the responsibility of a juvenile and such organisation is found fit by the State Government on the recommendation of the Board. [Section 2(h) r/w Rule 69 (2)(6)]
2. Before recommending an institution as a fit institution, the Board shall hold due enquiry and only on being satisfied, recognition shall be given. *[Rule 2(m) r/w Rule 69 (6)]*

3. An institution recognized as a fit institution, shall-
   - meet the standards of care laid down in the Act and the rules made thereunder;
   - have the capacity and willingness to meet the standards of care laid down in the Act and the rules;
   - receive and provide basic services for care and protection of the juveniles and children;
   - prevent subjection of juvenile or child to any form of cruelty or exploitation or neglect; and
   - abide by the orders of the competent authority. *[Rule 69 (3)]*

4. A list of fit institutions approved by the State Government shall be kept in the office of the Board and the Committee. *[Rule 69 (4)]*

5. When a juvenile is arrested or detained, Board may place him under the care of a fit institution pending inquiry. *[Section 12 (1)]*

6. Where a Board on completion of inquiry is satisfied that a juvenile has committed an offence, it may direct that the juvenile be placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years. However, if afterwards it appears to the Board that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may order the juvenile to be sent to a special home. *[Section 15 (1) (f) r/w section 15(3) & (4)]*
E. **Fit Person**

1. Fit person means a social worker or any other person, who is prepared to own the responsibility of a juvenile and is found fit by the Board to receive and take care of the juvenile. [*Section 2(i)*]

2. An individual may be recognized as a fit person by the Board after due verification of his credentials and reputation. [*Rule 69 (1)*]

3. When a juvenile is arrested or detained, Board may place him under the care of a fit person, pending inquiry. [*Section 12*]

4. In the case of a juvenile whose ordinary place of residence lies outside the jurisdiction of the Board, and if the Board considers it necessary to take action under section 50 of the Act, it may inform the fit person to receive and take charge of the juvenile. [*Rule 79 (1)*]

F. **After Care Organisation**

1. After-care organisation may be recognised for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life with the objective to facilitate their transition from an institution-based life to mainstream society for social re-integration. [*Sections 40 & 44 r/w Rule 38*]

    [*Note: for details please refer chapter on 'Rehabilitation & Social Re-integration']*]

2. After-care organisation run by an NGO must be certified and recognized by the State Government. The procedure for certification/cancellation is the same as that of the Institutions (Homes). [*Rule 70*]

    [*Note: for details please refer chapter on 'Institutions']*]
G. CASE WORKER

- A case worker is allotted to every juvenile newly admitted to an institution from amongst the probation officers or child welfare officers or social workers or counsellors attached to the institutions or voluntary social workers or counsellors. [Rule 50 (2)]

- Case worker is one of the members of the Management Committee constituted in every institution for the management of the institution and monitoring the progress of every juvenile. [Rule 50 (3) r/w Rule 55 (3)]

1. Prepare Social Investigation Report

Social investigation of the juvenile through personal interview and from the family, social agencies and other sources on receipt of information from the Police or otherwise about apprehension of a juvenile under section 13 of the Act. The SIR shall contain such material circumstances, as may be necessary and submit in Form IV to the Board as early as possible. [Rule 87 (1) (a) r/w 87 (2)]

2. Prepare Case History

A case history of the juvenile shall be prepared by the case worker containing information regarding his socio-cultural and economic background collected through all possible and available sources, including home, parents or guardians, employer, school, friends and community admitted to an institution and shall be maintained as per Form XX of the Rules. [Rule 50 (9)]
3. **Assist the Institutionalised Juvenile**

As soon as case worker shall the juvenile on his admission to an institution in the following ways:

- Correspondence with the person, whom the juvenile might have named and develop contacts with family and also provide assistance to family members; *[Rule 50 (5) r/w Rule 87 (1) (e)]*

- Attend the proceedings of the Board and submit reports as and when required; *[Rule 87 (1) (b)]*

- Clarify problems of Juvenile and deal with their difficulties in institutional life. *[Rule 87 (1) (c)]*

- Participate in the orientation, monitoring, education, vocational and rehabilitation programmes of the juvenile. *[Rule 87 (1) (d)]*

- Establish co-operation and understanding between the juvenile and the Officer- in-charge. *[Rule 87 (1) (e)]*

- Accompany juveniles, where ever possible, from the office of the Board to observation home, special home. *[Rule 87 (1) (l)]*

### III. GRANTS IN AID

An organization certified or recognized or registered under the Act may apply to the State Government for grants-in-aid for the maintenance of juvenile received by them and expenses incurred on their education, treatment, vocational training, development and rehabilitation. *[Rule 72]*

### IV. SPONSORSHIP PROGRAMME

NGOs may be consulted by the State Government while preparing sponsorship programme for providing support to families, children’s
homes and special homes to meet medical, nutritional, educational and other needs of the children. [Section 43 r/w Rule 37]

V. DISQUALIFICATION

No NGO shall employ juvenile under its supervision or care and protection for its own purposes or take any private service from them. Any report of physical, sexual or emotional abuse of a juvenile in an institution or outside, by a caregiver, shall hold them liable for disqualification after due inquiry. [Rule 89]

VI. REPORTS TO BE CONFIDENTIAL

The report of the social worker considered by the competent authority is confidential. However, the competent authority may communicate the substance thereof to the juvenile or his parent/ guardian. [Section 51]
VOLUNTARY ORGANISATIONS AND JUVENILE JUSTICE IN INDIA

By

Mr. Sonykutti Goerge, Specialist - Child Protection, UNICEF, India

1. INTRODUCTION

The implementation of the Juvenile Justice (Care and Protection of Children) Act 2000 has demonstrated that involvement of the voluntary organizations helps in promoting a child centered juvenile justice system. The statement of the objects and reasons for the Act defines the role of voluntary organizations. The key roles envisaged are; the establishment and management of institutions, receiving children on bail, preparing social investigation reports, running ‘after care’ programmes, and above all active involvement in advisory bodies and playing a watchdog function. The launch of the Integrated Child Protection Scheme and constitution of child protection units at the state and district levels opens up the space for increased engagement of the voluntary sector in the implementation of the juvenile justice act in India.

1(a). Historical overview.

The history of involvement of voluntary organizations in the implementation of legislations dealing with children in conflict with law dates back to 1930s with organizations such as Children’s Aid Society in Bombay and the Guild of service in Madras. This has been the result of the three enactments that came into force during that period; Children’s Act of Madras (1920), the Bengal Children Act (1922) and the Bombay Children Act (1924). However, the involvement of the voluntary organizations have been limited to assisting the state in running the homes for the children and managing after care institutions set up to implement the provisions of the Reformatory Schools Act (1897) and the Children’s Acts.

Voluntary organizations have continued to play a limited role even after the enactment of the Juvenile Justice Act of 1986. During the formulation and enactment of the Juvenile Justice (Care and Protection of Children) Act 2000, the Parliament decided to give a larger role to voluntary organizations in the operation of the juvenile justice system in the country.

1(b). Juvenile Justice Act and Social Change

Indian Parliament has indeed worked as a vehicle of social engineering. Legislation being one important mechanism to bring about the necessary changes and to make adequate provision, the Parliament has enacted many progressive laws.

The beginning of the twentieth century witnessed Children’s Acts passed in many states that were under colonial rule. However these were not uniform in their
content. Furthermore Children Acts were not enforced till the mid 1980s and the demand for a separate statute on juvenile justice was demanded by various voluntary organizations. Sheela Barse, a journalist and activist persistently raised the detention of children in prisons and the conditions found there in her writings and through Public Interest Litigations (PILs). Her campaign for a uniform code for children and her PIL in the Supreme Court pushed the issue centre stage. The Supreme Court suggested parliamentary legislation on the subject in 1986 and the Juvenile Justice Act of 1986 was enacted.

The amendment to the Juvenile Justice Act of 1986, passed by the parliament, is a clear articulation of this intent of social change agenda. The Juvenile Justice (Care and protection of children) Act 2000 states, “…There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of the informal systems specially the family, the voluntary organizations and the community.”

2. JJ ACT 2000 AND ROLE OF VOLUNTARY ORGANISATIONS

The Juvenile Justice (Care and protection of children) Act 2000 clearly carves out a specific role for the voluntary organizations. This is a key shift from the earlier Act of 1986. The statement of objects and reasons for the Juvenile Justice (Care and Protection of Children) Act 2000 clearly articulates this role. It states, “A review of the working of the Juvenile Act, 1986 (53 of 1986) would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system as available for adults is not considered suitable for being applied to a juvenile or the child or anyone on their behalf including the police, voluntary organizations, social workers or parents and guardians, throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, voluntary organizations and the community.” The statement of reasons for the Act states, “spell out the role of the State as a facilitator rather than doer by involving voluntary organizations in the implementation of the proposed legislation”.

2 (a). Establishing Institutions

A child centered juvenile justice system demands quality care for children in institutions. Standards of care in institutions are ensured through processes of licensing, certification and effective monitoring. The Act while ensuring participation of voluntary organizations in these areas, builds in systems for certification as well. Section 2. (h), (o) and (v) defines, “fit institutions”, “observation homes” and “special homes” as institutions established by a State Government or by voluntary organizations and certified by that Government under Sections 8, 9 and 12 of the Act.
Though the Act created an opportunity for the voluntary organizations to run institutions for the care of the children in conflict with law, the opportunity has not been utilized to the full potential. The voluntary organizations are hesitant to enter into this area for lack of experience and a lack of clear terms of engagement with the state.

2 (b). Managing Institutions

While in certain states such as Maharashtra and Tamil Nadu there is a history of NGOs themselves being allocated grants to run institutions under the Government Of India (GOI) Juvenile Justice scheme, in a majority of States/Union Territories (UTs) this responsibility is the exclusive domain of the States/UTs. However, even in these states/UTs, NGOs have invariably partnered the programme in different ways.

The first and most prevalent partnership model is where NGOs pitch in with ad hoc supportive services to improve the quality of care extended in these institutions and also extend rehabilitative services. It is the poor standard of care in the government run institutions that motivates local NGOs to do so in the form of educational inputs, organizing outings, providing material inputs like clothes, shoes, school supplies, vocational training etc. State/UT established JJ Homes tend to accept as much support as the NGOs offer.

The second model is one where the government has formalized the support and participation of NGOs in the management of JJ Homes. Andhra Pradesh followed by Karnataka in recent years has passed such orders to formalize NGO involvement by forming Home Committees specifying the role and responsibilities of the NGOs in the partnership.

The third model is one in which the complete management is handed over to an NGO with allocated budget of a JJ Home. One of the examples of India's new partnership approach to managing juvenile institutions is the Prayas Observation Home for Boys in Delhi. The Home’s facilities are owned by the government, but managed by Prayas, a national children's NGO, through a partnership agreement. The Government provides grants to Prayas to run the institution, which is staffed entirely by Prayas personnel. Upon taking over the facility, Prayas made significant changes to the physical environment to make it less prison-like and more child-friendly. Prayas has a team of counsellors and probation officers on staff who assess the children and conduct family tracing and family reunification. All children participate in education and vocational training, and regularly take part in recreational and cultural activities, including regular outings and sporting activities in the community. Through its linkages with the broader NGO community, Prayas has also been able to expand its service by mobilising volunteer support from other professionals such as lawyers and doctors.
2(c). Receiving children on bail

The Act has created role for the voluntary organizations all through the process of a child’s journey in search for juvenile justice; from production before the JJB by the police, through the procedures in the Board, to final rehabilitation of the child. The child, while being released on bail may be placed in a “fit institution” which may be managed by the voluntary organization. This provision within the Section 12 of the Act creates a legitimate space for the involvement of the voluntary organizations, in protecting the best interest of the child and a child centered juvenile justice system. This provision has been effectively used by some voluntary organizations in Tamil Nadu, like the Relief Foundation. However, the voluntary organizations have been limited in their innovations.

2(d). Preparing Social Investigation Reports

Before passing a final order as to whether the juvenile has committed an offence, the Board is required to obtain ‘Social Investigation Report’ on juvenile through a probation officer (or a recognized voluntary organization or otherwise) and take into consideration the findings of such report. (Section 15 (1) and (2). The voluntary organizations can obtain information regarding the antecedents and family background of the juvenile and other material circumstances in arriving at a decision in the best interest of the child.

The decision whether to send the juvenile to a Special Home for three years or less, or to release to the care of the parents or guardian or a voluntary organization, or to be asked to do community service or just to be admonished and advised; depends on this social investigation report.

The space provided for the voluntary organizations in the Act goes a step forward in Section 15. It empowers the Board to release a child found to have committed an offence on probation of good conduct and place him under the care of any “fit institution”. This is yet another provision, used in a very limited way since voluntary organizations have not come forward to play this role and the Boards are not confident in having over this responsibility to the non state institutions. The section can be effectively used only when the interaction between the JJB and the voluntary organizations are further strengthened. The social workers of the JJB could facilitate the strengthening of these relationships and play a critical role getting many more organizations registered as “fit institutions”. The Board could maintain data about the specialized services provided by the voluntary organizations in the district and elicit their help based on the specific need of the child in conflict with law. This move to respond to the specific need of the child is the requirement in a child centered juvenile justice system.
2(e). Running ‘after care’ organizations

To ensure the best interest of the child and to complete the rehabilitation process, role is created for voluntary organizations in the after care programmes as well. Section 44 provides for a scheme of after care programmes to be followed by ‘After Care Organizations’ to care of juveniles after they leave Special Homes to enable them to lead an honest, industrious and useful life.

2(f). Monitoring and Watchdog function

The Act provides for the involvement of the voluntary organizations in two key functions: inspection and advice. Section 35 of the Act mandates that representatives of voluntary organizations should be part of the Inspection Committees. Through the provisions in Section 62, the district level Inspection Committees are also given the advisory capacity. Section 62 mandates the setting up of advisory committees at the national and state level to advise the government.

3. MOVING BEYOND THE PROVISIONS OF THE ACT

The Law reform on Juvenile Justice in India has been achieved through various interventions. These include the honorable higher courts of India, voluntary organizations, media and international treaties and conventions. There are a number of civil society organizations working for the realization of the rights of children in the country. The interventions by these organizations have been instrumental in influencing public policies on children, especially the policies on juvenile justice. The contributions by the voluntary organizations are listed below;

- The budget analysis and the work on child budgeting highlighted the low level of expenditure on children’s programmes and especially the low allocation to the implementation of the Juvenile Justice Act. This helped in policy influencing and the announcement of the Integrated Child Protection Scheme with increased allocation to juvenile justice programmes in the country.
- The voluntary organizations brought court interventions through public interest litigations leading to law reform and accelerated implementation of the Act.
- Voluntary organizations sought details of expenditure on implementation of the JJ Act, by applying the Right to Information Act. This unearthed corruption within the system and compelled the government to take corrective measures.
- Support of voluntary organizations in the functioning of the Juvenile Justice Boards and collaboration in creating Special Juvenile Protection Units created child friendly and child centered interventions.
4. EMERGING OPPORTUNITIES

To reach out to all children, in particular to those in difficult circumstances, the Ministry of Women and Child Development proposes to combine its existing child protection schemes under one centrally sponsored scheme titled Integrated Child Protection Scheme (ICPS). The proposed ICPS brings together multiple vertical schemes under one comprehensive child protection programme and integrates interventions for protecting children and preventing harm.

It does not see child protection as the exclusive responsibility of the Ministry of Women and Child development but stresses that other sectors have vital roles to play. The Ministry looks at child protection holistically and seeks to rationalize programs for creating a strong protective environment for children, diversify and institutionalize essential services for children, mobilize inter-sectoral response for strengthening child protection and set standards for care and services.

ICPS will function as a Government – Civil Society Partnership scheme under the overarching direction and responsibility of the Central and State Governments. The Government is aware that improving the situation of millions of India’s children in difficult circumstances requires an integrated effort and strong partnership of many stakeholders. Government cannot achieve this task alone. Therefore, the ICPS will work closely with all stakeholders including government departments, the voluntary sector, community groups, academia and, most importantly, families and children to create a protective environment for children in the country. Its holistic approach to child protection services and mechanisms is reflected in strong lateral linkages and complementary systems for vigilance, detection and response. The scheme visualizes a structure for providing services as well as monitoring and supervising the effective functioning of child protection system, involving Voluntary sector: Voluntary Organisations will lobby for the protection of children of India and act as a watch-dog on the situation of children and implementation of public policies and programs aimed at children. The State will financially support voluntary organisations to provide vibrant, responsive and child friendly services for detention, counselling, care and rehabilitation for all children in need.

5. CONCLUSION

A child centred juvenile justice system becomes a reality with the involvement of responsive, vigilant and innovative voluntary organisations willing to work closely with all the stakeholders. While day to day responsibilities are listed in the Act and the Rules, it is necessary to go beyond the letter of the law and imbibe the spirit behind it. The preamble to the Act provides guidance on this. Clear understanding of the fundamentals makes the approach obvious.
Responsive voluntary organisations play a crucial role in the reformation, rehabilitation and social reintegration of children in conflict with law. Vigilant organisations ensure that all the stake holders play their roles effectively and the system if free of corruption and malpractices. Innovative organisations bring in new child centred interventions that will treat each child differently.
LEGAL SERVICES AUTHORITY AND ADVOCATES

It is the Constitutional right of every citizen under Article 22 of the Constitution of India to be defended by a legal practitioner of his choice. One of the fundamental principles to be followed in the administration of juvenile justice is ensuring legal aid at State expense. It is a mandatory duty of Legal Services Authority that free legal service is made available to every juvenile.

I. RELEVANT STATUTORY PROVISIONS

A. Juvenile Justice (Care and Protection of Children) Rules, 2007

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II. FUNDAMENTAL RIGHT

- Constitution of India guarantees every person right to consult and to be defended by a legal practitioner of his choice. [Article 22 (1) r/w Rule 3.I(d)(ii)]

III. LEGAL SERVICES AUTHORITY

- Every juvenile who has to file or defend a case is entitled to legal aid under Legal Services Authority Act, 1987. [Section 12(1)(c) of Legal Services Authority Act, 1987 r/w Rule 14 (2)]

By Jayesh K.U., Advocate, Executive Member, Legal Assistance Forum

Applicable to all States as per proviso to section 68 (1) of the Act r/w Rule 96
IV. Legal Aid

• The Board shall ensure free legal aid to all juveniles through State Legal Aid Services Authority or recognized voluntary legal services organisations or the University legal services clinics. [Rule 3.I (d) (iii) r/w 14(2)]

• The Legal Officer in the District Child Protection Unit and the State Legal Aid Services Authority shall extend free legal services to all the Juveniles. [Rule 14(3)]

• Officer-in-charge to coordinate with the legal officer in the District Child Protection Unit or District/State Legal Service Authority to ensure that every Juvenile is legally represented and provided free legal aid and other necessary support. [Rule 86(2)(y)]

• In the event of shortfall in the State Legal Aid Services support, the Board shall be responsible for seeking legal services from recognized voluntary legal services organisations or the university legal services clinics. [Rule 14 (4)]

V. Para-Legal Tasks

• The Board may also deploy the services of the student legal services volunteers and non-governmental organisation volunteers in para-legal tasks such as contacting the parents of juveniles and gathering relevant social and rehabilitative information. [(Rule 14(5)]]
Key Responsibilities & Approach

By
Hon'ble Mr. Justice Tarun Chatterjee, Judge, Supreme Court of India

"Humanity has the Stars in its future and that future is too important to be lost under the burden of juvenile folly and ignorant superstition."

--Isaac Asimov

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace."

--Kofi Annan.

A juvenile in conflict with law is a child who is alleged to have committed an offence and who cannot be treated as an adult offender. Such a child is termed as a "Juvenile Delinquent". Juvenile Delinquency may be defined as an act prohibited by law for children up to a prescribed age limit and, therefore, a child found to have committed an act of juvenile delinquency by a court of law is a juvenile delinquent.

Development of the Juvenile Justice System in India:

The years following 1950 witnessed both official and non-governmental initiatives that contributed to the development of a more pronounced juvenile justice system in India. To address the increase in neglected and delinquent children as a result of partition of the country into Pakistan and India, the Indian government passed a Central Children’s Act (CCA) in 1960. The CCA provided for the care, protection, and treatment of juveniles, and made it applicable in the territories under direct central government rule. The central government, however, did not make any effort to apply the law throughout the entire country. As a result, states with existing laws were free to enforce their own laws, and other states failed to pass any laws regarding the special treatment of children. Further still in 1974, India declared its National Policy for Children, "recognizing children as a nation’s supremely important asset and that their programs must find a prominent place in the national plan for the development of human resources". The policy included, among other things, training and rehabilitation of delinquent, destitute, neglected, and exploited children. By 1986, almost all states had passed their own children’s legislation. Because these acts lacked consistency in terms of defining delinquency, court procedures, and institutionalization practices, the Indian government felt a need for a children’s justice act that could be applied throughout the country. With that in mind, the central government passed the most comprehensive act to date, the Juvenile Justice Act of 1986. (JJA). The JJA was considered a unique piece of social legislation intended to provide care, protection, treatment, development, and rehabilitation for neglected and delinquent juveniles as well as the adjudication of matters relating to the disposition of delinquent juveniles. To accomplish the goals of this legislation,
special provisions were made for separate procedures for handling offenders and non-offenders. Juvenile courts were created to deal with juvenile delinquents, and juvenile welfare boards were established to handle neglected juveniles. The final decision regarding the implementation of these courts and boards was left to the respective state governments, but with some stipulations.

The Juvenile Justice Act despite being landmark legislation in the field of juvenile justice failed at various levels to fulfill the aims and goals of ensuring that juvenile delinquents needed special care and protection and had to be viewed in a different light.

The Juvenile Justice (Care and Protection of Children) JJ(C&P) Act, 2000, was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

In India, The Juvenile Justice (Care and Protection of Children) Act, 2000 has been framed which is aimed at protecting the rights of juvenile delinquents. The Juvenile Justice Act 1986 was repealed by this Act. Any action taken under the former Act would be deemed to have been taken under corresponding provisions of this new Act. The Act defines the ‘juvenile’ or ‘child’ as a person who has not completed 18 years of age. ‘Juvenile in conflict with law’ means a juvenile who is alleged to have committed an offence. An important change brought about by the Act was to replace the existing Juvenile Welfare Board with the Juvenile Justice Board (JJB). According to the Act, children in conflict with the law are to be kept in an observation home while children in need of protection are sent directly to a juvenile home.

The Constitution of India under Article 39-A provides that, “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”. This provision has been complied with by inserting Rule 14 under the Central Juvenile Justice (Care and Protection of Children) Rules, 2007 that "Every juvenile is entitled to free legal aid".

The juvenile justice system has been established with a view to take juvenile delinquents out of the jurisdiction of criminal courts and to protect them from technicalities of criminal procedures. Efforts have been made to co-ordinate various agencies to make the judicial system more accessible to the community. Emphasis has been made to create a relationship between the judicial system and the
members of the community which could help the juvenile court in its decision making process.

The Law relating to juvenile delinquents lay down elaborate provisions for the protection of the rights of the delinquents and provides them with adequate opportunities for their rehabilitation. It is still the responsibility of those involved in the legal profession to ensure that the law is complied with and that the juveniles in conflict with the law are not deprived from receiving free legal aid. To this respect, the role of the advocates and the Legal Service Authority is of paramount importance. They can provide pro bono legal assistance and advocacy to such children in need in addition to their usual client services.

In the case of Sheela Barse & Anr (1) v. Union of India & Ors., (1986) 3 SCC 596, the Hon’ble Supreme Court issued direction to the State Legal Aid Boards and other legal aid organizations to arrange for the visit of two advocates to custodial institutions once every week for the purpose of providing legal assistance to children below the age of sixteen years who are confined in the observation homes.

Further, in the case of Supreme Court Legal Aid Committee v. Union of India, (1989) 2 SCC 325, the Court stressed on the importance of ensuring justice for juvenile, observing that juvenile delinquents are not capable of initiating their claims or protecting their rights. A committee of Advocates was constituted and entrusted with drafting a scheme for the proper implementation of the Juvenile Justice Act. Every state was also directed to appoint an adequate number of Probation Officers and to establish training institutions for imparting child welfare knowledge.

Section 12(c) of the Legal Services Authorities Act, 1987, provides that a child shall be entitled to legal services for filing or defending a case. Therefore, it is the duty of various State Legal Service Authorities to provide free legal aid to juvenile in conflict with law and work towards speedy disposal of cases. The term free legal aid includes not only legal assistance but moral, social and learning assistance to juvenile in conflict with the law so that the child can plan for and live a dignified life in future.

In the United States, lawyers are socialized in law school into this aspect of a criminal justice approach. In addition, for many students, training also includes a strong emphasis upon rights, because one of the few things law school faculty members seem to share, is a kind of liberalism which values civil liberties highly and which influences their teaching. In England, it is the attorney who approaches the juvenile court with substantial information in hand. The ability to understand and deal with people, and to perceive the implications of what is said or not, and attitudes of, demeanor or even gestures is, therefore, an important aspect of the practitioners’ professional skills. Much is known about interviewing techniques in other professions, but in the legal profession it still depends upon intuition and experience.
In India, the juvenile justice system provides measures to chalk out the rehabilitative programmes. Therefore, its approach towards delinquent juvenile is of rehabilitative nature rather than punitive. In such circumstances, the role of the legal practitioner is not considered more valuable, as the magistrates and probation officers are expected to be capable of fully understanding the juvenile situation. However, the legal practitioner participates in the proceedings of the juvenile court and provides relevant information and legal aid and advice to juvenile as also to the juvenile court to arrive at a conclusion, which is more suitable and beneficial to the juvenile. Right to engage legal practitioner is also provided in the Constitution of India as a Fundamental Right under Article 22 (1). Lawyers should not go into the technicalities of law while dealing with juvenile cases. The practitioner should bring all those relevant facts before the juvenile court, which may be useful for treatment and rehabilitation. Practitioner who is having special knowledge may make substantial contribution for legal defence to the child.

In dealing with juvenile delinquents, it is important to focus on their rehabilitation rather than punishment. A positive approach should be taken towards these children by the legislature, the courts, the advocates involved in dealing with these children and by the legal service authorities. The state governments for the proper rehabilitation of these juveniles should take adequate administrative and legislative steps. While dealing with the juvenile delinquents by the respective authorities and the advocates, it is necessary to understand the psyche of such offenders. It should be borne in mind that the accused concerned is a juvenile who does not have the proper understanding of the intricate details of law and hence is unaware of the legality of a particular act he involves himself in. Therefore, the concerned legal service authorities and the advocates should take care not to discuss too much details about the legal aspect of a particular case, rather they should encourage the juvenile concerned to understand that his actions are against his morality and detrimental to the society as a whole.

The Juvenile Justice (Care and Protection of Children) Rules, 2007, provide that the Juvenile Justice Board had to ensure that any juvenile in conflict with law does not undergo ill treatment by the police, lawyers or probation officers. The child must also be allowed to take part, and be heard during the enquiry proceedings [Rule 13(2)].

Advocates can also render a variety of services, including, offering information and referral, training and education, negotiations, legal services, investigation and monitoring. The State Legal Service Authority can help the State Governments to set up or identify after-care organizations and their functions so that children in conflict with the law can lead an honest and useful life [Section 44(a) (b) of the Juvenile Justice (Care and Protection of Children) Act, 2000].

The legal service authorities and advocates must work towards ensuring that juveniles in conflict with law are not made victims of overly harsh criminal procedures. As such it is important to ensure that their rights are protected. In
addition to this advocates can also play an important role by providing juveniles the information about their rights and guiding them towards a healthy, honest future. Advocates, through the means of public interest litigation and legal aid services can also represent the cause of such delinquents. They can work towards sensitizing the community to the needs of such children. Often, concerns have been raised about the occurrence of child abuse within the Observation Homes, which must be promptly investigated, and the legal service authorities along with the advocates must raise their voice against the violation of the law by officials who are in charge of these homes and institutions.

The preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000, amongst other things states, “proper care, protection and treatment by catering to their development needs...”. This suggests that the aim of the Act is to take care of, protect, and treat the juveniles while keeping in mind their developmental needs. The various legal service authorities and advocates can achieve this with the help of NGOs, the society and other related institutions.

Children are an asset to a country and are responsible for building its future. Therefore it is the responsibility of everyone to ensure that they are able to live safely and with dignity. Efforts should be made from everybody concerned to make sure that their exploitation is curbed at all costs. Helping the young to develop into active, contributing citizens is essential for the development of the nation.

Accordingly, it is important that the legal service authorities and advocates must fulfill their responsibilities towards juvenile delinquents and help them to develop into responsible citizens of the country.
10

REHABILITATION AND SOCIAL REINTEGRATION

Juvenile Justice System aim at rehabilitation and social reintegration of juvenile by helping the children in restoring their dignity and self-worth and to mainstream them within the family or through alternate care programmes.

I. RELEVANT STATUTORY PROVISIONS

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*By Anupam Mishra, Advocate, Executive Member, Legal Assistance Forum
*Applicable to all States as per proviso to section 68 (1) of the Act r/w Rule 96
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## II. INDIVIDUAL CARE PLAN

### A. Content and Meaning

1. The Individual Care Plan is a comprehensive plan in order to restore the juvenile’s self-esteem, dignity and self-worth and nurture him into a responsible citizen. It is prepared by a probation officer or voluntary organization on the basis of interaction with the juvenile and the family in Form XXI. [Rule 2(h)]

2. Individual care plan is based on age specific and gender specific needs and the case history of the juvenile addressing the following -

   (i) Health needs;
   (ii) Emotional and psychological needs;
   (iii) Educational and Training needs;
   (iv) Leisure, creativity and play;
   (v) Attachments and Relationships;
   (vi) Protection from all kinds of abuse, neglect and maltreatment;

Rehabilitation ...

(vii) Social mainstreaming; and
(viii) Follow-up post release and restoration. [Rule 2 (h)]

B. Institutionalized juvenile

1. Within one month of his admittance, an individual care plan for every juvenile in institutional care shall be prepared with the ultimate aim of being rehabilitated and re-integrated based on case history, circumstances and individual needs as per Form XXI. The individual care plan shall be based on following:

   o the Officer-in-charge, counsellor along with the child welfare officer or case worker, or social worker shall prepare the individual care plan;
   o all care plans shall include a plan for the juvenile's restoration, rehabilitation, reintegration and follow-up;
   o juvenile shall be consulted while determining the care plan;
   o continuity of care plan shall be ensured in cases of transfer or repatriation or restoration. [Rule 50 (12)]

2. Every institution shall provide education to all juvenile according to the age and ability, both inside the institution or outside, as per requirement. [Rule 47]

3. Every institution shall provide gainful vocational training to juvenile through networking with Institute of Technical Instruction, Jan Shikshan Sansthan, Government and Private Organization or Enterprises, Agencies or nongovernmental organisations with expertise or placement agencies. [Rule 48]

4. A provision of guided recreation shall be made available to all juvenile or children in the institutions which shall include indoor and outdoor games, music, television, picnics and outings, cultural programmes and library. [Rule 49]
5. A mental health care plan shall be developed for every juvenile by the Child Welfare Officer in consultation with mental health experts associated with the institution and integrated into the individual care plan of the concerned juvenile. [*Rule 46 (7)*]

6. The care plan shall be reviewed quarterly by the Management Committee including options for release or restoration to family or foster care or adoption [*Rule 50 (12) (c)*]

C. Dispositional order of Board

All dispositional orders passed by the Board have to necessarily include an individual care plan for the concerned juvenile in conflict with law. [*Rule 15 (3)*]

D. Release

The Individual care plan shall include a pre-release and post-release plan and the release of the juvenile shall be in accordance with such plan. [*Rule 17 (3)*]

III. RESTORATION AND FOLLOW UP

1. Every Restoration has to be planned as a part of the Individual care plan. A follow up plan shall also be prepared under the individual care plan to assist the restoration of the Juvenile. [*Rule 65 (8)*]

2. The order for restoration of the juvenile shall be made by the Board after hearing the juvenile and his parents/guardian and considering the report of the Probation Officer or NGO. [*Rule 65 (1)*]

3. The order of restoration of a juvenile suffering from infectious or contagious disease shall be based on the principle of best interest of
the juvenile, keeping in mind the risk of stigmatization and discrimination and discontinuation of treatment. [Rule 61 (3)]

4. A follow up report shall be submitted by the Probation officer or NGO to the Board District CPU and the Officer-in-charge of the concerned institution for a period of 2 years. [Rule 65 (9), (11) & (12)]

5. Management Committee shall review every month post-release or post-restoration rehabilitation programme and follow up for a period of two years in collaboration with aftercare services. [Rule 55 (6)(a)(x)]

6. The follow up report shall clearly state the situation of the juvenile post restoration and the juvenile's needs to be met by the State Government in order to reduce further vulnerability of the juvenile. [Rule 65 (10)]

7. Where a follow-up is not possible due to unavailability of government functionaries or NGOs, the concerned District CPU shall provide necessary assistance and support to the concerned Board. [Rule 65 (13)]

IV. REHABILITATION/SOCIAL REINTEGRATION

The rehabilitation and social reintegration of a child shall begin during the stay of the child in Special Home and it shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship or (iv) sending the child to an After-Care Organisation. [Section 40 r/w Rule 32]

A. Adoption

1. The primary responsibility for providing care and protection to children shall be that of his family and adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered. [Section 41 (1) & (2) r/w Rule 33 (1)]
2. The State Government or Central Adoption Resource Agency (CARA) is required to issue guidelines for adoption. [*Section 41 (3) r/w Rule 33 (3)]*

3. For the placement of children who are orphan, abandoned or surrendered the State Government shall recognise one or more of its institutions or voluntary organisations in each District as specialised adoption agencies. [*Section 41 (4)]*

**B. Foster Care**

1. A child may be placed in foster care with a family for a short period so as to reduce institutionalization of children and enable a nurturing family environment for the child. [*Section 42 r/w Rule 34]*

2. The foster parents shall be declared to be “fit persons” within the meaning of Section 2 (i) of the Act. [*Rule 35 (3)]*

3. The Board may order for carrying out foster care under the supervision of a Probation Officer or case worker or social worker. [*Rule 34 (1)]*

**C. Sponsorship**

1. State Government shall prepare sponsorship programme for supplementary support to families and to Special Homes to meet medical, nutritional, educational and other needs of the children in consultation with the NGOs, Child Welfare Committees, other Government agencies and Corporate Sector. [*Section 43 (1) r/w Rule 37 (1)]*

2. The Board shall make an order in Form XVIII for support to a juvenile through sponsorship and send a copy to the District or State CPU or the State Government for appropriate action.[*Rule 37 (5)]
D. **After Care Programme**

1. State Government shall set up an after care programme for rehabilitation and social reintegration of juveniles after they leave special homes to enable them to lead an honest, industrious and useful life. The objective is to facilitate their transition from an institution-based life to mainstream society for social re-integration. [*Sections 40 & 44 r/w Rule 38*]

2. After care programme is made available to juvenile between 18-21 years of age, who have no place to go to or are unable to support himself. The programme is prepared by the District or State CPU in collaboration with voluntary organizations. [*Section 44 proviso r/w Rule 38(2)*]

3. The Board may pass an order for placing a juvenile under an after care programme in Form XIX, a copy of which is sent to the District and the State CPU and the State Government, who are responsible for arranging after care. [*Rule 38(3)*]

4. The key components of the after care programme include -
   - community group housing on a temporary basis;
   - encouragement to learn a vocation or gain employment and provide for payment of stipend;
   - encouragement to gradually sustain themselves;
   - provision for a peer counsellor;
   - payment of stipend during vocational training till the youth gets employment.
   - arrangement of loan to set up entrepreneurial activities; [*Rule 38(6) to (9)*]

E. **Linkages & Co-ordination**
1. State Government, with the help of State or District CPU, shall -
   - identify the role and responsibility of each department and inform them through a notification;
   - arrange for appropriate training and sensitization of functionaries of these departments from time to time in coordination with National Institute of Public Cooperation and Child Development (NIPCCD) and its Regional Centres; and
   - develop effective networking and linkages with local non-governmental organisations for specialized services and technical assistance like vocational training, education, health care, nutrition, mental health intervention, drug de-addiction and legal aid services. [Section 45 r/w Rule 39]

2. State Government shall establish effective linkages between various government, non-government, corporate and other community agencies for facilitating the rehabilitation and social reintegration of juveniles. [Rule 39(1)]
CHILDREN – SUPREME NATIONAL ASSET

By

Dr. Justice Shivraj V. Patil, Former Judge, Supreme Court of India
Former Member, National Human Rights Commission
Patron, Legal Assistance Forum

Gabriel Mistral, the Nobel Laureate said “We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation 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 made and his senses are being developed. To him we cannot answer ‘tomorrow’. His name is ‘today’.

One of the greatest achievements of progressive democracies in the last century is to have recognized the rightful place of the child in the societal fabric. Both in the international forum as well as domestic policies, positive action for the child’s welfare is evidenced by way of various United Nations Conventions, State legislations and judicial interpretations. The efforts toward preserving environment and bringing about sustainable development are aimed at giving our children what is naturally theirs. Child centric human rights jurisprudence has come to be a new dimension to the larger role of law in social engineering.

Starting with the Declaration of the Rights of the Child, adopted in 1924 by the League of Nations that “mankind owes to the child the best it has to give”, there have been many endeavors of the international community in protecting the interest of the child. The Declaration of the Rights of the Child, 1959 and the Convention on the rights of the child, 1989 of the United Nations ratified by our country as well, contain legal standards necessary for granting social, economic and cultural rights for children. The Universal Declaration of Human rights, 1948, the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, 1966 are the other instruments that convey the rights of the child.

At the domestic level, India has made good strides in uplifting the position of the child. The 86th Constitutional Amendment that made education a fundamental right for children in the age group of 6 to 14 years is a result of the empathy shown by public-spirited individuals and institutions towards the child. Many statutes are in place to make the life of child easier and enjoyable.

The role and concern of the Indian Supreme Court has been profound in making better the lives of numerous children who were objects of exploitation. Supreme Court in Bandhua Mukti Morcha vs. Union of India1 and others had to say, “This right to live with human dignity enshrined in Article 21 derives its life breath

1 1997 (10) SCC 549
from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity”.

The observations made yet in another judgment in Bandhua Mukti Morcha vs. Union of India and others are relevant in the context, which read:-

“Child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child.......Neglecting the children means loss to the society as a whole. If children are deprived of their childhood – socially, economically, physically and mentally – the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development”.

The Supreme Court of India in Rosy Jacob vs. Jacob A. Chakrammakkal observed that ”Children are not mere chattels, nor are they mere play things, for their parents. Absolute right of parents over the destinies and the lives of their children has in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society”. Every child in the country has a legitimate claim and is entitled to its share in the finances of the Republic for harmonious and comprehensive development of its personality. There is a need to enhance share in the Budget for the development and welfare of children in their interest as well as in the interest of the country. As a plant needs protection, nourishment and proper environment to grow into a big fruit-bearing tree, a child also needs protection, promotion, nourishment and proper environment to grow into a useful and responsible citizen to serve the nation.

Proper Health, Education and Environment for the children are the imperative needs of the hour. It is said that large number of children under the age of five die every year due to diarrhea and several million suffer from other dangerous diseases. Female foeticide is still a tragic evil in rural India. It is true that the government is relentlessly working for eradication of diseases like polio, hepatitis and AIDS, but the enormity of the population and incidence of disease have their own negative effects on these sincere efforts. This is natural when the country supports 16 percent of the global population while it holds only 2.4 percent of the world’s land.
Spending money on education of the child is not an expense on public exchequer but an asset in the long run. It is the best infrastructure that could be laid for the prosperity of a nation. About 42 million children in the age group of 6-14 do not have access to basic education. Female education, while Palkivala calls the priority of priorities, is hampered not only by the deep-rooted culture prejudices but also due to lack of real concern. According to the statistics provided by UNICEF, out of India’s 7 lakh rural primary and upper primary schools only one in six have toilets deterring girls from attending school. Initiatives like Operation Blackboard, Sarva Shiksha Abhiyaan and mid day meal scheme etc. have been taken so that school drop out rate is curtailed. But we must also ensure that the policies and efforts to serve the purpose must be consistent and continuous and not momentary promises.

Education of the child is inextricably intertwined with the progress of a democracy. Democracy can succeed only with an informed citizenry.

Children are the supreme asset of any nation, they being the greatest gift to humanity. Children are the potential and useful human resources for the progress of the country. Kamaladevi Chattopadhyay wrote “There is no greater waste in life either in magnitude or intensity than the colossal waste of human talent that goes on for want of the educative stimulant, scientific training and congenial modes of expression”. We should remember and remind ourselves that it is only the strong, knowledgeable and virtuous children who can make the country strong and great.

Children are innocent, vulnerable and dependent. Abandoning children and excluding good foundation of life for them is a crime against humanity. Millions of children live under especially difficult circumstances – as orphans, street children, refugees, displaced persons, as victims of war and other man-made disasters. Article 39 (e) indicates State as the guardian of the health and strength of the tender-aged children to see that they are not abused or forced to enter avocations unsuitable to them, compelled by economic necessities. We must remember that children cannot and should not be treated as chattels or saleable commodities or play things. They are in flesh and blood with life as much as we elders are and they are also capable of becoming as great, as good or as useful as we are and even more. Therefore, they are to be provided with all necessary facilities and atmosphere to grow into responsible and useful citizens of the country. For the full and harmonious development of his or her personality, a child should grow up in a family environment, in an atmosphere of happiness, love and understanding. Adults cannot barter away the future of the children. There must be conscious and continuous effort by all the concerned to take care of the children to ensure wholesome development of their personality.

In my view, all globalization, liberalization, modernization and privatization must have element of humanization so that the human right violations including the violations of the rights of children, if they cannot be eliminated, can be minimized. The United Nations in the Universal Declaration of Human Rights has proclaimed that childhood is entitled to special care and assistance.
If we neglect and do not provide or meet bare needs of food, health and education of children, heavy price will have to be paid in future. There is need to made people aware about rights of children and as to the importance of their growing as responsible and productive citizens. Educational institutions, Governments, NGOs and media can play vital role in this regard. Social communication needs to be stimulated at different levels and through multiple channels across the plural society. This requires sensitive and professional handling in a decentralized manner. Methods and mechanics are to be designed to inform children and parents through the educational system and other media to sensitize public functionaries and opinion makers. Voluntary organizations could be powerful means of social mediation and communication in promoting rights of children and equally in preventing their exploiting and suffering. In the democratic set up, the most important need is institutional support at the political and policy levels.

It appears from the beginning of the human society the children have been exploited mercilessly and indiscriminately. Child labour has been the cheapest and disciplined. Children were made to work at home and outside, in factories and fields, in hazardous occupations, in hotels, restaurants and as a domestic aid. Children have been working even at an early age of 6 to 8. Their working hours have been long and their wages have been meager.

As per the Census of 2001, children below the age of 6 years were 157.86 million accounting for 15.24% of the country’s population. Their holistic development should be of great concern in their interest and in the interest of the country.

Pandit Jawaharlal Nehru in his letter dated 26th October, 1930 addressed to his daughter Indiraji wrote, "Be brave and all the rest follows". The children are innocent but defenseless. They are not burdened by prejudice, fears and hypocrisy. They need appropriate attention and proper support to grow well to engage themselves usefully to serve the country. Panditji’s great love and concern for children was well pronounced. The fact that Panditji’s birthday 14th November every year is celebrated as Children’s Day shows the importance he attached to the children. He was of the view that unless India’s women were educated, the future generation of this country would be seriously affected.

Even as on today, millions of children in the metropolitan slums are growing in an environment of crime and drug abuse. Who is to care for them and what is to be done? Ignoring or neglecting children is nothing but wasting supreme national asset. Many of them, if properly groomed, may occupy various vital and useful positions in all walks of life in future. If our children are denied basic needs of life such as education, health, food, clothing and shelter, visualize what our country is going to be in future. We realize the importance and worth of oxygen when it is withdrawn resulting in suffocation and leading to serious consequences. Neglecting or ignoring the welfare of children and their all-round development may create a like atmosphere where oxygen is withdrawn making the life of even the country miserable over the years. We have a full-fledged Ministry of Human Resources Development and
numerous agencies engaged in child welfare work. It is true that the health, education and general well-being of the children have received the focus and attention of officials and public but in effect and practice, lot is required to be done yet. In a sense children are custodians of the glory and greatness of the nation. The proper growth of our children will be a true tribute to Panditji – the Builder of Modern India. Almost 65 years ago he asked, “Who live if India dies? Who dies if India lives”? If India is to live children are to live well.

The Constitution of India articulates the concern for the children as can be seen from Articles 15, 24, 39(e), 39(f) 47 and 51A. The provisions in the Constitution provide right to the children against exploitation through hazardous employment, on free and compulsory education and to make special provision for them. Numerous laws have been enacted at the Central and State level for children but what is really needed is the effective implementation with concern and commitment.

Even the concern of international community for the well-being of children can be seen in the Resolution on the Rights of the Child, unanimously adopted by the General Assemble of the United Nations in 1989. This Convention sets legal standards for the protection of children against neglect, abuse and exploitation as well as guaranteeing to them their basic human rights with assurance for their individual growth and well-being. Although there are numerous laws at national and international level to protect the rights of the children and ensuring their development but the ground realities are not still encouraging inasmuch as there still exist neglected children, after divorce ignorance, of fallen women, HIV/AIDS affected parents and the child bride, groom and child widow. These children face exploitation and suffering in the society – mental and physical both.

Children should be motivated, inspired and persuaded to possess good qualities and human values. Children can be inspired to possess these qualities so that when they grow, they should be able to build bridges between man and man irrespective of regions, religions, caste, community, language et., based on mutual love and trust and not the walls of hatred, violence and distrust. It is both expedient and convenient to infuse these qualities in the children from the beginning so that the future of this country can be safe in their hands.

Children being supreme asset of the country, they are to be looked after and groomed well not merely on the basis of constitutional or statutory provisions but also with great human touch and concern.