

Module 1: Introduction to Children's Rights and Protection Laws

Session 3.2: Who are children in need of care and protection

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Offence committed by a Child

Let us now understand the steps involved in case of an Offence committed by a child

When a child alleged to be in conflict with law is apprehended by Police, the child is placed under the charge of Special Juvenile Police Unit (SJPU) under section 10, subsection 1 of JJ Act.

The police has to decide whether to send the child to an observation home or a place of safety & inform the parents or guardians of the child.

The police has to inform the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission of a social investigation report within two weeks to the JJB, containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.

The Child is then produced before the Juvenile Justice Board with 24 hours under Section 10 subsection 1.

When a child, who has allegedly committed a bailable or non-bailable offence, is apprehended by police or appears or brought before a Board, the child can be released on bail under Section 12 subsection 1.

When the child is not released on bail under sub-section (1) of section 12 by the JJB, it can make an order sending the child to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the child.

Inquiry by JJB

Let us now understand the procedure for inquiry by JJB.

The inquiry by JJB under Section 14 subsection 2 has to be completed within a period of four months from the date of first production of the child before the JJB, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

The probation officer or the Child Welfare Officer has to prepare and submit a social investigation report within two weeks to the JJB under section 13 subsection 1 (ii).

Based on the nature of the offences, JJ Act has classified offences as Petty, Serious or Heinous. Petty Offences include the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years. Serious offences include the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years. Heinous offences include the offences for which the minimum punishment under the Indian Penal Code or any other law for

the time being in force is imprisonment for seven years or more. However, no child in conflict with law can be sent for more than 3 years to a special home or place of safety, except in case of child above 16 years of age who has committed a heinous offence and is being tried as an adult. In any case, no child in conflict with law can be sentenced to death or life imprisonment under Section 21.

In case of petty offences, the inquiry is disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973.

Inquiry of serious offences is disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973.

In both of these cases, if the child is found to be not in conflict with law, the JJB can pass an order under Section 17 subsection 1 or subsection 2 wherein the child can also be declared a child in need of care and protection and refer the child to CWC. If the child is found to be in conflict with law, the JJB can pass appropriate orders under Section 18.

In case of heinous offences:

If the child is below 16 years, the inquiry is disposed of by JJB under clause (e) of Section 14 subsection 5 as discussed before.

If the child is above 16 years, a preliminary assessment is conducted by JJB under Section 14 subsection 3 and Section 15, which is to be completed within 3 months. In case the Board requires further extension of time for completion of inquiry, the same can be granted by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the reasons have to be recorded in writing.

The preliminary assessment is conducted with regard to the child's mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he or she allegedly committed the offence. The Board can also take the assistance of experienced Psychologists or psycho-social workers or other experts for this assessment.

If the Board is satisfied on preliminary assessment that the matter should be disposed of by

the Board, then the Board can follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973 or transfer the case to Children's Court under Section 18 subsection 3 if there is a need for trial of the said child as an adult

Orders by JJB

For all children in conflict with law, except those who have committed heinous crimes under 16-18 yrs and whose cases have been transferred to Children's Court, JJB can pass the following orders under Section 18:

- Allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- Direct the child to participate in group counselling and similar activities;
- Order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the board;
- Order the child or parents or the guardian of the child to pay fine
- Direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond,

- with or without surety, as the board may require, for the good behaviour and child's well-being for any period not exceeding three years;
- Direct the child to be released
- on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;
- Direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

In case of Trial by Children's Court under Section 19, the Children's Court may decide that there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18.

If there is a need for trial of the child as an adult as per the provisions of the CrPC, the Children's Court may pass appropriate orders after trial, subject to the provisions of Section 19 and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere.

Trial by Children's Court

Let's now understand the procedures for Trial by Children's Court

First of all, examine the Preliminary Assessment received from JJB to decide on how to proceed further –as per section 19(1) In case of, CCL to be tried as a child as per the procedure of Inquiry prescribe for JJB, Section 19(1)(ii), Inquiry is to be completed in 4 months from date of first production (ie, Max 6 months with reasons in writing) – as per section 14(2).

Extension for completion of Inquiry may be granted with written permission from the CJM/CMM –as per Section 14(4)

In case of, CCL to be tried as an adult [Trial and order under CrPC] –As per Section 19(1)(ii), No time prescribed for completion of Trial.

Next step is Disposition/ Final Order which is categorized as two:

Sentence as for adults – as per 19(1) (i)

Order CCL to be sent to place of Safety till he attains the age of 21 years as per Section 19(3)

This step must contain individual Care Plan – as per Section 19(2); and Annual Follow-up by PO/DCPU/Social Worker to evaluate progress – as per Section 19(2) and 19(4)

Next step after Deposition/Final Order is to Evaluate CCL's reformation on attaining the age of 21 years – as per Section 20(1)

The final step is Release CCL on conditions, including monitoring –as per Section 20(2)(i) or Order completion of remainder term in Jail – as per Section 20(2)(ii)

In case of Children in Need of Care and Protection (CNCP), the steps to be followed mandate for

- Child to be produced before CWC within 24 hours
- Mandatory Reporting of child found separated from guardian
- Any Non reporting will be considered as punishable offence
- CWC shall meet at least 20 days in a month
- DM shall conduct a quarterly review of functioning of CWC

Inquiry by CWC

The steps for inquiry of CWC is as follows.

A child in need of care and protection has to be produced before the CWC within 24 hours under Section 31 subsection 1.

Within 15 days of production of the child before the CWC, a social investigation has to be conducted by a by a social worker or Child Welfare Officer or Child Welfare Police Officer.

The CWC can pass an order to send the child to the children’s home or a fit facility or fit person under section 36 subsection 1.

After the completion of the inquiry, if CWC is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it can send the child to a Specialised Adoption Agency if the child is below six years of age, children’s home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years, under section 36 subsection 3

Time for Completion of Inquiry

The JJ Act has also set time for the Inquiry by CWC.

Look at the flow chart

In case its an abandoned,

The timing for inquiry is : 2 months for child below 2 years; 4 months for child above 2 years(from date of production)

In case it’s a Surrendered Child, the timing for inquiry is 2 months from date of production which means reconsideration period.

In case the child belong to other CNCP category, the timing is 4 months from date of production.

Orders by CWC

The CWC, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child’s wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:

- declaration that a child is in need of care and protection;
- restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- placement of the child with fit person for long term or temporary care;
- foster care;
- sponsorship;
- declaration that the child is legally free for adoption
- declaration of fit persons for foster care; getting after care support

Let us now talk briefly about child care institutions (CCIs) and Institutional Care provided by them

- It is mandatory for all CCIs to register within 6 months from the date of commencement. Failure of compliance will be considered as punishable offence.
- Application of registration of CCIs to be disposed within Six months (otherwise it will be regarded as dereliction of duty and will invoke departmental proceedings).