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SATYARTHI

MOVEMENT FOR CHILDREN

**FREQUENTLY ASKED QUESTIONS & ANSWERS
ON
JUVENILE JUSTICE BOARD (JJB)

UNDER
THE JUVENILE JUSTICE (CARE & PROTECTION
OF CHILDREN) ACT, 2015**

Introduction

The Juvenile Justice (Care and Protection of Children) Act, 2015 is the principle law in the country for children alleged and found to be in conflict with law and children in need of care and protection. The Act provides for child friendly approaches in the adjudication and disposal of matters keeping best interest of children as paramount. The Act also provides for several institutional and non-institutional measures for rehabilitation and social re-integration of children.

The Act has come into force from 15th January, 2016 and the Model Rules under the Act were notified on 21st September, 2016. The provisions of the Act are guided by fundamental principles for care and protection of children which are detailed in chapter two of the Act. Some of these principles include: principle of presumption of innocence under which every child is to be presumed to be innocent of any criminal intent up to the age of eighteen years; principle of natural justice; principle of participation; principle of best interest; principle of equality and non-discrimination and principle of right to privacy and confidentiality.

Children who are alleged or found to be in conflict with law are produced before a Juvenile Justice Board. On the basis of nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Juvenile Justice Board may:

- (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- (b) direct the child to participate in group counselling and similar activities;
- (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- (d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

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

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

The institutional measures for children alleged or found to be in conflict with law include:

1. Observation homes: These are meant for temporary reception of children alleged to be in conflict with law during the pendency of any inquiry.
2. Special homes: These homes are meant for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board
3. Place of safety: These are meant to place a person above the age of eighteen years or child in conflict with law, who is between the ages of sixteen to eighteen years and is accused of or convicted for committing a heinous offence.
4. After care: This is meant for any child who leaves a child care institution on completion of eighteen years of age with financial support in order to facilitate child's re-integration into the mainstream of the society.

This handbook provides an exhaustive list of frequently asked questions on the structure and functioning of Juvenile Justice Board. For any other queries please write to:

1. What is the composition of JJB?

The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of First Class as the Principal Magistrate of the Board and two social workers as members. In the earlier law, in many States, it was found that the Chief Metropolitan Magistrate (CMM) or Chief Judicial Magistrate (CJM) were holding the charge of Principal Magistrate. As they are already burdened with cases, the cases before the JJB remained un-attended leading to huge pendency of cases. In order to address this issue, in the new Act under Section 4(1), it is clearly stated that the CMM or CJM cannot be the Principal Magistrate of the Board.

The Social worker members should be persons who have been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

2. What is the term of members of the Board?

The term of social worker members of the Board is for a period of three years from the date of appointment. They are eligible for maximum of two terms which cannot be continuous.

3. What are the provisions for sitting of the Board?

The Board is required to hold its sittings in either an Observation Home or a Special Home or any place which is close to these child care institutions. The Board cannot hold its sittings in any court or jail premises.

The Board is required to sit on all working days for a minimum of six hours unless the case pendency is less.

4. What are the allowances given to the Board?

The Principal Magistrate of the Board is a judicial officer therefore his/her pay and allowances are governed by relevant State Judicial Service. The social worker members of the Board are paid not less than Rs 1500/- per sitting, which includes sitting allowance, travel allowance and any other allowance.

5. What are the provisions in law to ensure JJB members are sensitized on the law?

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

6. Who monitors the pendency of cases in a JJB?

The Chief Judicial Magistrate or the Chief Metropolitan Magistrate reviews the pendency of cases of the Board once in every three months. Based on the review, they may direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

The pendency of cases is also reviewed every six month by a high level committee consisting of:

- Executive Chairperson of the State Legal Services Authority as the Chairperson
- Home Secretary
- Secretary responsible for the implementation of JJ Act, 2015 in the State
- a representative from a voluntary or nongovernmental organization to be nominated by the Chairperson

The JJB is required to furnish information of pendency of cases to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in Form 12 of the Model Rules.

The Board is also required to maintain “Case Monitoring Sheet” of every case and every child in Form 11 of the Model Rules. The sheet facilitates tracking and monitoring of timelines of cases before the Board.

7. Does the Board have power to pass a decision or order in case of children who are in need of care and protection?

No, the Board has the power to deal with children in conflict with law. Children who are in need of care and protection are to be referred to a Child Welfare Committee for appropriate order.

8. What happens if a child ceases to be a child during the process of inquiry?

Under Section 5 of the Act, where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, the inquiry is to be continued by the Board and orders as if such person had continued to be a child.

9. What happens if a person is apprehended for committing an offence when he was a child?

Under Section 6 of the Act, if a person is apprehended for committing an offence when he or she was a child or below 18 years of age then such person is to be treated as a child under the JJ Act, 2015. However, as the person is an adult and cannot be kept in an observation home with children, the Act states that such person is to be placed in a Place of safety.

Every State Government is required to establish at least one place of Safety in a state.

10.If the Board is not sitting, can a child be produced before a single member of the Board?

Yes, a child in conflict with law can be produced before a single member of the Board. The order given by individual member is to be ratified by the Board in its next meeting.

The Principal Magistrate is to draw a monthly roster of member who are required to be available and accessible every day including Holidays. The roster is to be circulated in advance to all police stations, CJM/CMM, District judge, District Magistrate, Child Welfare Committee, District Child Protection Unit and Special Juvenile Police Unit.

11.Can one member of the Board pass an order for disposal of the case?

No, at least two members including the Principal Magistrate should be present at the time of final disposal of a case.

12.What happens if there is difference of opinion among members of the Board in an interim or final order?

In case of difference of opinion among members of the Board, the opinion of majority is to prevail and if there is no majority then the opinion of Principal Magistrate is to prevail.

13. Is the Board required to give bail in all cases brought before it?

If a child is brought before the Board for committing a bailable or non-bailable offence, the Board may release the child on bail with or without surety and place him under the supervision of probation officer or a fit person. The bail may however be denied if there appears reasonable ground for believing that:

- the release is likely to bring him into association with any known criminal
- expose him to moral, physical or psychological danger
- his release would defeat the ends of justice

14. The Board is expected to adopt child friendly approaches, what are these?

The child friendly approaches include:

- Ensuring no person un-connected with the case is present during proceedings
- Ensuring only persons whom the child feels comfortable, are present during proceedings
- The premises should not look like a court room
- Board members should interact with child face to face
- Board members should ensure their facial expressions, body language, eye contact, intonation and volume of voice in addressing children is not threatening to child rather it should make the child comfortable

15. What are the functions of JJB other than disposing of matters related to children in conflict with law?

The Board is required to conduct at least one inspection visit every month of Observation Home, Special Home and Place of safety and recommend action for improvement to the District Child Protection Unit and State Government.

The Board is also required to conduct regular inspection of jails meant for adults to check if any child is lodged in jail. In case a child is found then the Board is to take immediate action for transfer of child to an Observation home.

16. How does the Board ensure free legal aid for the child?

Every child who files or defends a case is entitled to free legal services under the Legal services Authority act, 1987. The Board is to ensure free legal services to children through State or District Legal Aid Services Authority or through the Legal cum Probation Officer placed in the District Child Protection Unit.

The Board can also deploy services of student volunteers or NGOs for para legal and other tasks such as contacting the parents of child and collecting relevant social and rehabilitative information about the child.

17. What is the timeline for inquiry if a child commits a petty offence?

The inquiry is to be completed within four months from the date of first production of child before the Board. The period may be extended for a maximum of two months by the Board. In case the inquiry remains inconclusive even after the extended period then the proceedings stand terminated as per Section 14(4) of the Act.

18. What are the timelines for inquiry if a child commits a serious or heinous offence?

The inquiry is to be completed within four months from the date of first production of child before the Board. The period may be extended for a maximum of two months by the Board. However, if the Board requires more time, the permission needs to be taken from the Chief Judicial Magistrate or Chief Metropolitan Magistrate after recording reasons in writing.

19. If a child aged 15 years commit a heinous offence, can the Board conduct preliminary assessment?

No, preliminary assessment is to be conducted only when the child completes sixteen years of age. In this case, the Board is to conduct inquiry as per Section 14 and pass order as per Section 18 of the Act.

20. What are the provisions to tackle heinous offences committed by children?

- (i). If heinous offence is committed by a child below the age of 16 years, then the child is to be tried by the Juvenile Justice Board (JJB) as per the procedures under Section 14 and 18 of the Act. This implies that a child will not be given detention of more than three years.

- (ii). If heinous offence is committed by a child between the age of 16-18 years, then the child is first produced before the Juvenile Justice Board. The Board is to conduct a preliminary assessment. The assessment is basically to assess the capacity of the child to commit the offence and whether the child understands the consequences of the alleged offence.

Based on the preliminary assessment, two situations may arise:

- a) The Juvenile Justice Board decides that the matter should be disposed off by the Board itself, the Board follows the procedures as per Section 14 and 18 of the Act.
- b) The Board decides that the child needs to be tried as an adult and thus make an order to transfer the trial of the case to the Children's Court as per Section 18(3) of the Act.

When the matter comes before the Children's Court, the Children's Court has two options:

- a) The Children's Court decides that there is no need for trial of the child as an adult. In such case, the Children's Court has the power of the Juvenile Justice Board as per Section 8(2) of the Act and therefore instead of transferring the case back to the Board, the Children's Court can conduct inquiry and pass orders accordingly. This implies that a child will not be given detention of more than three years.
- b) On the other hand, the Children's Court may decide that there is a need for trial of the child as an adult and thus will follow the procedures prescribed under CrPC. The quantum of detention in such case is not prescribed in the Act and has been left at the discretion of the Children's Court.

Under Section 21 of the Act, no child for any offence can be sentenced for life without the possibility of release or sentenced to death by the Board or the Children's Court.

21. Is preliminary assessment an inquiry by the Board?

No, preliminary assessment by the Board is to assess the capacity of child to commit the offence and if the child understands the consequences of the alleged offence. To do so, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

22. Can the period of preliminary assessment be extended?

No, the preliminary assessment should be completed within a period of three months.

23. Is the order of the Board in case of preliminary assessment appealable?

Yes, the order of the Board in case of preliminary assessment is appealable under Sub-section (2) of Section 11 of the Act.

24. Are there any timelines for police to submit reports to JJB?

Yes, the Model Rules have laid down timelines under Rule 10, these are:

- In case of petty or serious offences, the final report by police is to be submitted within two months of receiving information.
- In case of heinous offence alleged to have been committed by a child above 16 years of age, police has to submit statement of witnesses and other documents during the course of investigation within ONE MONTH from the date of first production of the child before the Board.

25. What is the procedure if police is unable to file final report as it is not reasonably known that the person involved in the offence is a child?

In such cases, extension of time may be granted by the Board for filing final report by Police.

26. Can the Board give a punishment of more than three years if after preliminary assessment the Board decides to conduct inquiry on itself?

If after preliminary assessment, the Board comes to the conclusion that the child committed the offence with a "child-like" mind then it will keep the case with itself and after inquiry it may give order to keep the child in a child care institution for a maximum of three years.

27. What happens in a case where the behavior or conduct of a child already placed in a Special Home is not in his best interest or in the interest of other children?

If the behavior of child placed in a Special Home is not in his interest or in the interest of other children then in such a case, the Board can order for the transfer of the child to a Place of safety.

28. What is the procedure for determining age of the child?

The Act under Section 94 gives two possible scenarios. In the first scenario, if on the basis of appearance of the child, the Board decides that the child brought before it is a child then in such case, it has to record its observation stating the age of child as nearly as may be and proceed with inquiry without waiting for further confirmation of age.

In the second scenario, if the Board has reasonable ground regarding age of child then it will follow the procedure as per Section 94(2), which is given below:

- (i) Date of birth certificate from the school or the matriculation or equivalent certificate from the examination Board concerned, and in the absence thereof;
- (ii) Birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) And only in the absence of (i) and (ii) age is to be determined by an ossification test or any other medical test for determining age of child. Provided the test is completed within 15 days of order by the Board.

29. What are different orders that a Board can give in respect of child found to be in conflict with law?

The orders that can be given by Board in respect of a child found to be conflict with law are listed in detail under Section 18 of the Act. These are summarized below:

- (i) Allow the child to home after advise and admonition
- (ii) Direct the child to participate in counseling
- (iii) Order the child to perform community service
- (iv) Release child on probation of good conduct and place with parent/guardian/fit person/fit facility
- (v) Send child to special home for not more than three years
- (vi) Order child to attend school/vocational training centre/therapeutic centre/ undergo de-addiction programme
- (vii) Prohibit child from visiting a specified place
- (viii) Order for re-admission or continuation of the child in school where the child has been disallowed from continuing his education on account of pendency of inquiry or because the child has stayed in a child care institution for any length of time
- (ix) Issue rehabilitation card to monitor progress made by the child

30. What is the procedure, if a child runs away from an observation home or special home or place of safety?

If a child runs away from a home, the police is required to take charge of the child and produce him within twenty four hours before the Board, which had passed the original order in respect of that child. If the child is found in a different district or city or state then the child is to be produced before the nearest Board.

The Board is to determine the reasons as to why did the child run away and give appropriate directions keeping the best interest of child as the main consideration. The Board cannot initiate any additional proceedings in respect of such run-away child.

31. For how long is the Board required to maintain records of children in conflict with law?

The records of conviction in respect of a child in conflict with law are to be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer. Thereafter, the records are to be destroyed by the Board.

32. What are the provisions for appeal if a person is aggrieved by an order of the Board?

Any person aggrieved by the order of the Board can file an appeal in Children's Court within 30 days from the date of order. Any person aggrieved by an order of Children's court may file an appeal before the High Court.

An appeal against an order of the Board after making preliminary assistance can be filed before a Court of Session.