

Key Changes brought in by the JJ Act 2015 and Model Rules 2016 – An Overview

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Why was the JJ Act 2000 repealed and re-enacted?

- To plug **gaps in law and implementation**:
 - abuse of children in institutions,
 - high pendency,
 - quality of care & rehabilitation measures,
 - delays in adoption,
 - accountability of institutions,
 - role confusion
 - inadequate provisions to address offences against children.
- To address **increasing crimes being committed by children between 16 and 18 years** as the JJ Act, 2000 was “ill equipped to tackle child offenders in this age group.”
 - Parliamentary Standing Committee that examined the JJ Bill concluded that “**juvenile crime is a miniscule proportion of total crime committed and the same is not significantly increasing**” and that these can be dealt with entirely under the JJ system. It also observed that the system proposed under the Bill violated the Indian Constitution and the UNCRC.

Key Highlights of JJ Act, 2015

1. **Builds on progressive framework of JJ Act, 2000.**
2. **Fundamental Principles now in parent statute**
3. **Rights framework** strengthened.
4. Greater emphasis on **accountability**.
5. **Child Protective framework** strengthened.
6. **Rehabilitative framework** strengthened.
7. **Definition and Classification of offences**
8. **Inclusion of Transfer System** for children alleged to have committed a heinous offence for trial & sentencing as an adult.
9. **Recognition that CICL can also be CNCP.**
10. **Procedures- age determination**
11. **Legal framework on Adoption** strengthened.
12. **List of functionaries expanded.**
13. Enables greater **involvement of civil society** in implementation.

Objectives of the JJ Act 2015 - Preamble

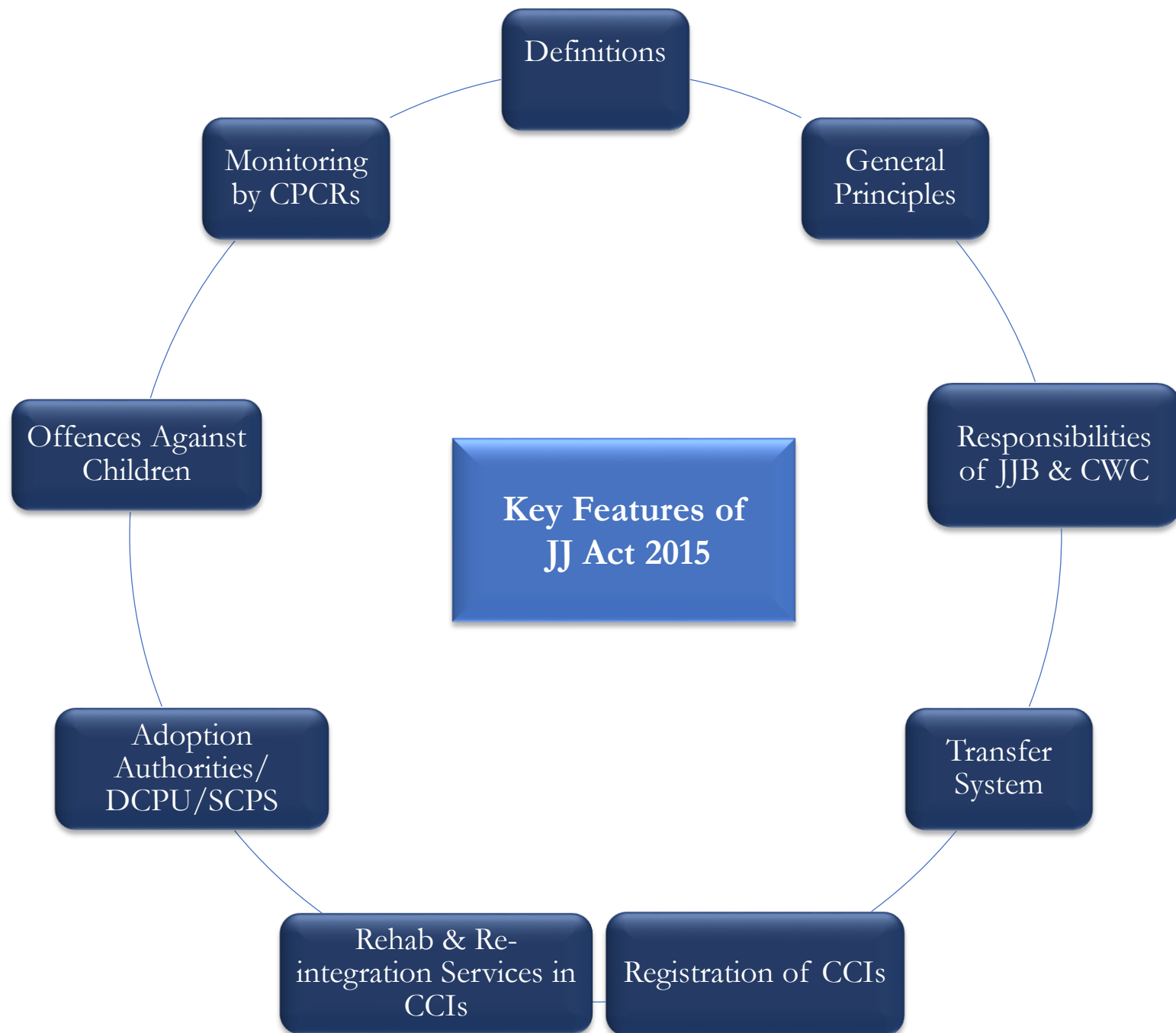
- ‘An Act to consolidate & amend the law relating to ~~juveniles~~ children alleged & found to be in conflict with law & children in need of care & protection, by catering to their ~~development~~ basic needs, through
 - proper care,
 - protection,
 - development,
 - treatment,
 - social re-integration,
 - by adopting a **child-friendly approach** in adjudication & disposal of matters,
 - in the **best interest** of children, and
 - for their ~~ultimate~~ **rehabilitation**
 - through processes provided and institutions and bodies established,
- herein under & for matters connected therewith or incidental thereto’.

Application of the JJ Act, 2015

- S.1(4), JJA:
 - (i) Overriding law for **apprehension, detention, prosecution, penalty or imprisonment, rehabilitation, and social re-integration** of **children in conflict with the law**.
 - (ii) Overriding law for **procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration** of **children in need of care and protection**.

Coverage of the JJ Act, 2015

- **Child** –S.2(12): “a person who has not completed 18 years of age”
- **Child in need of care and protection (CINCP)**– S. 2(14)
 - 12 categories;
 - Categories are illustrative not exhaustive and benefits for CINCP should be extended to all children requiring **State** care and protection. [*Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, W.P. (Cri) No. 102/2007, Supreme Court decision dated 05.05.2017]
- **Child in conflict with law (CICL)** – S. 2(13)
 - Child who is **alleged or found** to have committed an offence and who has **not completed 18 years of age on the date of commission of such offence.**
- Lines that divide CNCP from CICL blur



Composition and Powers of Juvenile Justice Board

Social Worker
(Woman)

Magistrate
(Principal Magistrate)

Social Worker

- To function as **Bench** of Magistrates –S.4(2).
- **Majority** clause – S.7(4)
- Vested with **powers of a Judicial Magistrate of First Class** –S.4(2).
- **Child friendly, Inter-disciplinary & non-adversarial** inquiry
- **Qualifications:**
 - Principal Magistrate - ~~special trg in child psychology/welfare;~~
 - SW members - actively involved in health, education, or welfare activities pertaining to children for atleast 7 years or a practicing professional with a degree in child psychology, psychiatry, sociology or law- S.4 (3) & R 4(3).
- **Exercise: What are the implications for SW member roles given the composition and powers of the JJB?**

Multi-disciplinary Composition of JJBs - Opportunities

- Experience of SW members in working directly with vulnerable children, understanding of root causes, reviewing the Social Investigation Report.
- Child friendly proceedings
- Enable CICL to participate
- assess the developmental gaps in a child's life and respond to the same through psycho-social interventions, besides judicial adjudication of the case
- Ensuring a rigorous multi-disciplinary inquiry to inform rehabilitative orders
 - a) Bail Orders (particularly proviso to Sec 12)
 - b) Individual Care Plans
 - c) Which of the options in Section 15 is in the best interest of the CICL



Outcomes expected from Orders by JJBs

JJBs and Children's Courts are required to pass orders related to two aspects:

- A: Whether or not the child has **committed the offence** alleged
- B: **Best Interest orders that enable rehabilitation and re-integration** of the child, as envisaged in the Preamble and Fundamental Principles.

Changes with regard to Juvenile Justice Boards

- **Functions** of JJB (S.8, JJA): **Additions**
 - Sub clause b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation
 - Sub clause d) providing for an interpreter
 - Sub clause k) and l) providing for police to register FIRs for crimes against children
 - Sub clause m) providing for Inspection of jails
 - **Conduct Preliminary Assessment and related Procedures** for dealing with child aged 16-18 years alleged to have committed a heinous offence.
- **Orders** that may be passed by JJB expanded.
 - to attend school, vocational training, access therapy and de-tox services
 - to prohibit child from visiting, frequenting or appearing at a specific place.
- **No discretion to reduce period of stay** in Sp. Home (Proviso to S.15 (1)(g), JJA 2000 deleted).



Orders that may not be passed by JJB



‘No child in conflict with law shall be sentenced to

- a) death, or
- b) life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force’ – **S. 21**

Institutional Arrangements under the JJ Act 2015

For
**Children in Conflict
with Law**

JUVENILE JUSTICE BOARD

Observation Home
(for CACLs not
released on bail
and kept for observation
pending inquiries)

Special Home
(for children placed in
secure detention
as per final orders)

Child found
innocent and CNCP

Open Shelter
Community based
Drop in residential
facility

Fit Facility
(Institutions
managed by
NGOs)

Place of Safety
While under inquiry
and after found guilty
(16 – 21 years who are guilty
of heinous crime)

For
**Children in need of
Care and Protection**

CHILD WELFARE COMMITTEE

Children's Home
(for temporary
observation
in Reception Units
within this home
and long term care)

**Specialized Adoption
Agency**
(0-6 years)

Structures - Place of Safety

S.49 (1), at least one in each State for:

A: Persons alleged to have committed an offence under inquiry

1. **Children 16-18 yrs** alleged to have committed heinous crime -MR 29(1)(iii)(a).
2. **Persons above 18 years** alleged to have committed a crime when a child & not released on bail –S. 6(2) & 9(4).

B: Persons found guilty of an offence

1. **Children 16-18 yrs** found to have committed heinous crime
2. **Children below 16 years** if their conduct & behavior has been such that, it would not be in the child's interest, or in interest of other children housed in a Special Home.
3. **Persons between 18-21 years** found guilty of heinous crime -S.19(3).

Social Investigation Report – the foundation on which the rehabilitative final orders of JJB & Children’s Court are based

Sec 18 (1): ‘Where a **Board** is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit -

Sec 19 (2): ‘The **Children’s Court** shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker’.

Individual Care Plan

Definition: “individual care plan” is a **comprehensive** development plan for a child based on age & gender specific needs & case history of the child, prepared **in consultation with the child**, in order to restore the child’s self-esteem, **dignity** & self-worth & nurture him into a responsible citizen & accordingly the plan shall address the following, including **but not limited to, needs of a child, namely:-**

- (a) **health & nutrition** needs, including any **special needs**;
- (b) **emotional & psychological** needs;
- (c) **educational & training** needs;
- (d) **leisure, creativity & play**;
- (e) **protection** from all kinds of abuse, neglect & maltreatment;
- (f) **restoration & follow up**;
- (g) **social mainstreaming**;
- (h) **life skill training**.

Definitional clause 2(ix), MR, 2016

Prepared in FORM 7, MR, 2016



ICP envisaged as essential component of orders/sentences

- The ICP is a **mandatory** part of Final Orders/ Sentences for children in conflict with law:
 - a) **Juvenile Justice Board: s.8 (3) (h)**
 - b) **Children's Court: s.19 (2)**
- The ICP is therefore **legally binding** on the state, the child and the family members or other actors (where specifically mentioned in the final order).

Individual Care Plan

- **Legally binding** on the state, child & family members (where specifically mentioned in order)
- At the **heart of reintegration programmes** - Addresses child's need for '**protection**', '**treatment**', '**development**', '**rehabilitation**' and '**social re-integration**,' is a vital tool in enabling realization of these legislative goals.
- Recognises **important role of family, school and wider community** for effective reintegration.
- Helps ensure that **children requiring specialized attention**, get help the help they are entitled to from the state in order to effective re-integrate into society.
- Means by which PO can **enable rehabilitation**
- Enables **monitoring** his progress.
- **Essential element in Fundamental Principle on Positive Measures – S.3 (vii)**
- **Mandatory part of Final Orders of the JJB-S. 8(3)(h) and Children's Court –S.19 (2).**

Pre-release Care Planning and ICP

- Most CICLs hail from difficult and **unstable living conditions** and may not have anyplace suitable to return to on release.
- Any **gaps between leaving custody and effective rehabilitation can further alienate the child and result in re-offending**, either as a pure survival strategy, or because of re-connections made with negative influences/triggers, resulting in a high risk of re-entry into the JJ system.
- **Pre-release planning** (Rule 69 K(1), and Section C of Form 7) is therefore vital in paving the way for a smooth re-integration into the community with dignity and for **preventing recidivism**



SIR

ICP

Re-
integration
with dignity

Is the ICP a static document?

- **Children continue to develop and evolve.** Neuroscience proves that the human brain continues to grow until 24 years.
- The ICP is **intrinsically linked to the pre-release plans** prepared for children being released from CCIs on directions of JJB/ Children's Court /CWC –Rule 69 K(1).
- **Management Committee can modify the ICP** – Rule 69 J(3).
- **JJB can issue Rehabilitation Card** (Form 14) to monitor child's progress R 7(1)(ii)

Key Changes in Procedures

- **Social Investigation Reports** (within 15 days) to inform orders
- **JJB, CWC & Children's Court orders to include Individual Care Plans**
- **Child Friendly atmosphere** mandatory in JJB & Children's Court
- **Procedure for inquiry/trial:**
 - Petty** offences -Summary procedure;
 - Serious & heinous** offences -Summons procedure;
 - Heinous** offences –
 - (i) child below 16 years -inquiry by JJB
 - (ii) child above 16 years - Preliminary Assessment by JJB and potential transfer to CC for trial as an adult.
- **Appeals: to Children's Court** (except CWC orders on Foster Care, Sponsorship & After Care - Dist. Magistrate);
- **Possibility for appeal on acquittal** of child above 16 committing heinous crime.

Liaison between JJB and CWC

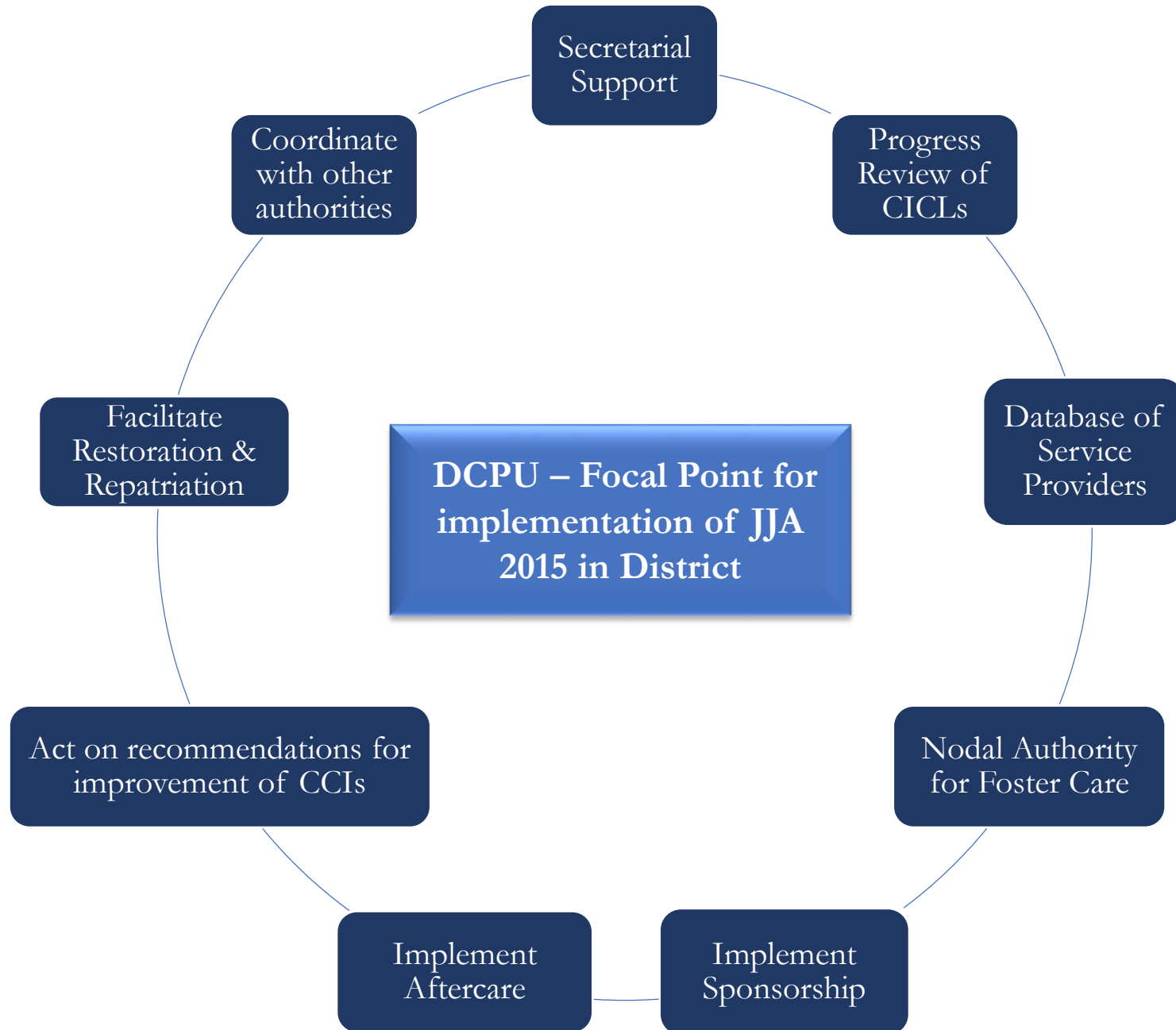
- There is a need for some amount of co-ordination and complementarity between the JJBs and the CWCs.
 - Children below seven years who have committed any crime.
 - Children above 7 years who have been found to not have the capacity to commit crime.
 - When the JJB determines that a child alleged to be in conflict with law is found innocent. – S. 17(2)

Key Changes in Services that may be provided

- **Rehabilitation and Re-integration strengthened:**
 - New Chapter introduced –
 - Mandatory in all CCIs,
 - Rehabilitation cum Placement officer,
 - Rehabilitation cards to enable monitoring,
 - Range of rehabilitation services enhanced, etc.
- **Mental health interventions**
- **Sponsorship eligibility broadened:** (Individual-Individual; Group; Community)
 - (i) where a mother is a widow or divorced or abandoned by her family;
 - (ii) where children are orphans and are living with their extended family;
 - (iii) where parents are victims of life threatening disease;
 - (iv) parents incapacitated due to accident and unable to take care of children both financially and physically.'
- **Right to Education - services within CCIs strengthened**
- **Aftercare narrowed and weakened** - for children 18 – 21 years leaving CCIs; only financial.

Key Changes - Functionaries

- **Legal cum PO = 'Probation Officer'** –S. 2(48); but contradiction between S.2(48) & MR 7(1)(ix).
- **Rehabilitation cum Placement Officer** for every CCI
- **Case Worker** – Rule 2(1)(iii).
- **Child Welfare Officer** – S. 2(17).
- **Social Worker** – Rule 2(xviii)
- **Counselors** – however no definition; qualifications/ experience.
- **Psycho-social worker** – mentioned in S. 15(1), proviso.
- **District Child Protection Officer – Nodal Officer in the District** – Rule 85(2).
- **District Child Protection Unit** - Focal point to ensure the implementation of the Act and other child protection measures in the district; - S. 2(26). *See Integrated Child Protection Scheme for structure (Ch 3, 2.2, p. 16).*



Key Changes - Monitoring and Review

- **District Magistrate -S. 27(8).**
 - to conduct quarterly review of CWC;
 - be Grievance redressal authority *vis a vis* CWC
- **Inspection -S. 54**
 - **Inspection Committee:** Inspect CCI every quarter; **Action Taken Reports** to be submitted by the DCPU **within a month**;
 - **Child Welfare Committee:** Inspect CCI (at least 2 CCI in a month);
 - **Juvenile Justice Board:** Inspect CCI for CIJL (monthly).
- **Central/State Govt -S. 55(2)**
 - to independently evaluate JJBs, CWCs, SJPU, CCI, Fit Facilities & Fit Persons.
- **Commissions for Protection of Child Rights -S. 109.**
 - vested with additional function of monitoring implementation of JJA.

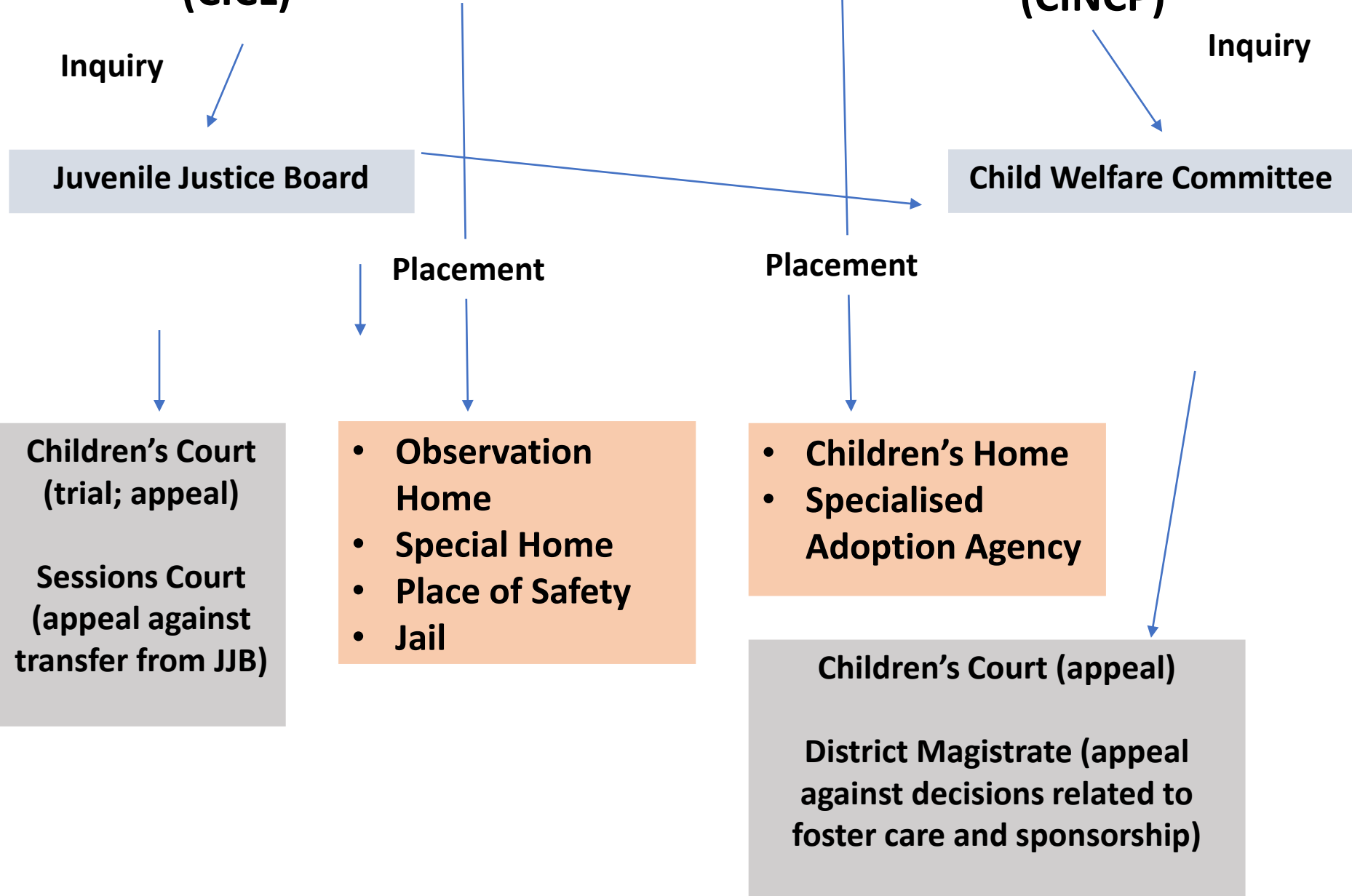
Key Changes - Pendency

Juvenile Justice Board

- **Inquiry into petty offences can be terminated** if proceedings inconclusive **after 6 months** –S.14(4).
- **CJM/CMM to review pendency** of JJB quarterly –S.16(1).
- **High Level Committee to monitor** - Exec. Chairperson of SLSA as Chairperson, Home Secretary, DWCD Secretary and NGO nominated by Chairperson – S.16(2).

Children in Conflict with Law (CICL)

Children in Need of Care and Protection (CINCP)



The Transfer System under JJ Act 2015 & Rules



SIR
8 (3) (e)

MULTI-DISCIPLINARY

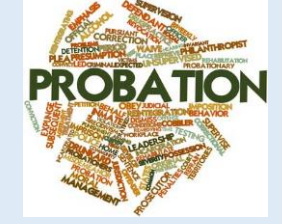
JJB

Preliminary Assessment by JJB of child 16 – 18 years **alleged** to have committed a **heinous** offence, within 3 months to determine physical & mental capacity to commit crime, circumstances, understanding of consequences – S.15(1). Assistance from experts

Orders for child up to 18 years found guilty of petty/serious crime - S.18(1)
or for child guilty of **heinous crime but not transferred** - S.15(2)



FINED!



Special Home -max of 3 yrs
Addl Orders – S.18(2): Edn, Voc Trg, Therapy, Prohibited places and De-tox
If child innocent, may transfer to CWC S.17(2)

Appealable to Sessions Court -101(2)

C's Court can 'hear' case as a 'JJB' and pass rehab. orders -19 (1)(ii)

Another Assessment by Children's Court to determine if the child should be tried as an 'adult' or as a 'child' – S.19(1)

CHILDREN'S COURT

'Try' as adult- S.19 (1)(i)
Sentence , & ICP S.19(2), x death / life x parole –S. 21

Disqualification - S. 24



Monitored Release
20 (2)(i)



ADULT PRISON
- for remainder of sentence S.20(2)(ii)

PLACE OF SAFETY
Evaluation of Reformation S. 20 (1)

No disqualification attached to conviction

- If a child is found guilty of a petty/serious crime, this will not disqualify him from admission into any educational institution or employment, etc., – vital protection that enables the child's integration into the community with dignity.
- Children found guilty of heinous crime will however not enjoy this protection.



Guilty of heinous crime

Institutional & Non-Institutional Care

		CICL	CINCP
Pending placement	Inquiry	Observation Home/Place of Safety	Children's Home, SAA (children below 6 years), fit facility, fit person
Post inquiry/trial placement		Special Home, Place of Safety, Jail	Children's Home, SAA (children below 6 years), fit facility, fit person, foster family
Non-institutional care/disposition		Admonition, community service, group counselling, probation, sponsorship, vocational training, de-addiction program, therapeutic centre, schools.	Foster care, adoption, sponsorship
Management of Institutions		Person-in-charge (Superintendent), Management Committee	
Children's Participation in Institutions		Children's Committee, Children's Suggestion Book	
Post-release support		Aftercare (financial support); DCPU - database of aftercare service providers	

S. No	Offence	Minimum Punishment	Maximum Punishment	Fine
1.	Violation of prohibition on disclosure of identity	-	6 months	And/or fine of upto Rs 2 lakhs
2.	Cruelty to the child		3 years	And/or fine of Rs 1 lakh
3.	Cruelty to child by person employed by or managing organization entrusted with care & protection of the child		5 years rigorous imprisonment	And fine of upto Rs 5 lakhs
4.	Cruelty that results in phy incapacitation/ mental illness/renders child mentally unfit	3 years rigorous imprisonment	10 years imprisonment	And fine of Rs 5 lakhs
5.	Employment of a child for begging		5 years	And fine of Rs 1lakh
6.	Amputating/ maiming a child for begging	7 years rigorous imprisonment	10 years	And fine of Rs 5 lakh
7.	Abetment of begging by a person having actual charge of or control over the child		5 years	And fine of Rs 1lakh
8.	Abetment by person having actual charge of/control over child -of amputation/ maiming of child for begging	7 years rigorous imprisonment	10 years	And fine of Rs 5 lakh
9.	Giving intoxicating liquor/narcotic drug / psychotropic substance to a child	-	7 years rigorous imprisonment	And fine upto Rs 1lakh.
10.	Using child for vending/peddling/ carrying/supplying/smuggling intox. liquor/ narco drug/ psychotr. substance	-	7 years rigorous imprisonment	And fine upto Rs 1lakh.
11.	Exploitation of a child employee	-	5 years rigorous imprisonment	And fine of Rs 1 lakh

S. No	Offence	Minimum Punishment	Maximum Punishment	Fine
12.	Non-compliance with adoption procedures	-	3 years imprisonment	And/or fine of Rs 1 lakh
13.	Sale & procurement of child for any purpose	-	5 years rigorous imprisonment	And fine of Rs 1 lakh
14.	Sale & procurement of child by person having actual charge of child , including employees of hospital/nursing home/ maternity home	3 years	7 years	
15.	Corporal punishment	-	2 nd conviction onwards – 3 months	1 st conviction – Rs 10,000; 2 nd conviction onwards –And/or fine
16.	Non-cooperation by management in a corporal punishment case	3 years		And fine upto Rs 1 lakh
17.	Use of child by militant groups	-	7 years rigorous imprisonment	And fine of Rs 5 lakhs
18.	Use of child by an adult or adult groups for illegal activities	-	7 years rigorous imprisonment	And fine of Rs 5 lakhs
19.	Offences under the Act committed on disabled children	Twice the penalty provided for such offence		
Other Offences				
20.	Non-reporting a child who appears to be separated from guardian	-	Upto 6 months	Or fine of Rs. 10,000/- or both
22.	Non-registration of Institutions	-	Upto 1 year	Or fine of not less than Rs. 1 lakh or both

Procedures to be followed by JJBs for dealing with child victims of offences by CICL

- Presence of parent, person of child's choice, fit person, or rep of fit institution during trial.
- Psychological counselling
- Court should order production before CWC if parents are involved in the crime or child is at risk where child is living,
- Procedure u/s 94 to be followed for age determination.
- Language known to the child should be used. Translators and special educators to be made available.
- Court should assess if child is capable of making voluntary statement. Child's statement should not be disregarded as evidence solely on the basis of the age of the child.
- Images or statements admissible shouldn't be detrimental to the mental or physical well-being of the child.

Procedures to be followed by JJBs for dealing with child victims of offences by CICL

- Length and questions should not be taxing and should be suitable to the attentions span of the child.
- Alternative and less intimidating interaction methods for young children or otherwise incapacitated child.
- No exposure to the accused.
- Special permission from school and arrangement for remedial classes for days lost to be ensured by school authorities.
- Representation by lawyer of child's choice, PP, or Legal Aid Lawyer
- Information about outcome and legal options.

Potential for Linkages with Civil Society for service delivery

1. **Fit Person**
2. **Social Worker**
3. Establishing & maintaining **Child Care Institutions**
4. **Fit Facilities**
5. **Foster Care Services**
6. **Vocational Training**
7. **Escort** services to enable restoration
8. **Special Adoption Agency**
9. Conducting **Social Investigation** Reports
10. Follow up of **Individual Care Plans**
11. **Counselors** or collab with **Child Guidance Centres, Psychology & Psychiatric Depts/similar agencies for therapy, assessments;**
12. **Community Services** for CICLs;
13. **Legal and Para legal services;**
14. Expertise on **Preliminary Assessment** to inform orders on transfer of children alleged to have committed heinous crime;
15. **Evaluation of Reformation** of person transferred and housed in Place of Safety;
16. **Evaluation** of structures – Academic Institutions;
17. Panel for **Probation Services, Counseling Services, Case Work, association with Police, producing children before JJB;**
18. **Corporates** for **sponsoring** training program and support for self-employment;
19. **Juvenile Justice Fund;**
20. **Training.**

Key Changes - Role of NGOs and CICLs

- **Provide reformative services**, educational services, skill development, counselling, behaviour modification therapy, or psychiatric support to children in CCIs.
- Serve as **interpreter, translator, or special educator**.
- **Provide legal services** to CICLs.
- Assist JJB in **collecting relevant social and rehabilitative information** about CICL.
- Serve as a **Case Worker** and **accompany child** to JJB
- Perform **any tasks assigned by JJB**.
- Serve as a **monitoring authority as a Case Worker** if appointed by Children's Court.
- Be a **part of the panel of organisations** or persons in a position to provide probation services, counselling, case work, assist in physical production of child within 24 hours & during pendency of proceedings, associate with police or **SJPU**, or CWPO.
- Function as a **fit person or fit facility** with whom or where a CICL can be placed.

Mandate for Civil Society Organizations to work in collaboration with the State Government in these Homes

Openness and Transparency.- Model Rule 78

- 1. All CCIs shall be open to visitors** with the permission of the JJB/ CWC/Person-in-charge (PIC), who may allow voluntary organisations, SWers, researchers, doctors, academicians, & such other persons as the Management Committee may permit....
- 2. The PIC shall encourage active involvement of the local community and corporates in improving the condition in the institution or support the child.**



Teamwork towards a common goal

- The Supreme Court has stated that-

"We must emphasize, at this stage that it is absolutely necessary for all stakeholders having interest in the welfare of children to work together towards a common goal. This teamwork would include not only the government machinery but also the police, civil society and the judiciary - Juvenile Justice Committee."

- Re Exploitation of Children in Orphanages in the State of TN (W.P. (Criminal) No. 102 of 2007), para 51.

