

Understanding Juvenile Justice (Care and Protection of Children) Act, 2015



HAQ: Centre for Child Rights

www.haqcrc.org

JJA, 2015: What is New?

The new provisions cover the following areas:

- Overriding effect of law wrt CICAL and CNCP
- Definitions
- Classification of Offences
- Qualification for CWC Members
- Functions & responsibilities of CWCs
- Review of Pendency of CWC cases
- Mandatory reporting of children found separated from their guardians and mandatory uploading of such information on a government web portal
- Orders that may be passed by CWCs
- Process of rehabilitation and social re-integration
- Open Shelters
- Foster Care
- Revised Adoption Procedures
- After Care
- Roles and Responsibilities vis-à-vis Registration of CCIs and Penalty for non-registration
- Mandatory Services to be provided by institutions for rehabilitation and re-integration
- Courts to try offences against children

The Positives

- Over riding effect of law for matters concerning both CNCP and CICL.
- Rehabilitation and Social re-integration of CICL emerges as a specific objective in the non-obstante clause.
- Establishment of facilities such as children's homes, observation homes, special homes etc. is mandatory for state government. Word 'may' is replaced with 'shall'.
- Compulsory Registration of all CCIs/residential facilities for CNCP and penalty for non-registration.
- High Level Committee for Monitoring JJBs.
- Minimum Mandatory rehabilitation and re-integration services for children clearly laid down for registered CCIs.
- Earlier 2 members of CWC could declare a child legally free for adoption. Now 3 members required to do so.

- Individual Care Plan mandatory both in case of CICL and CNCP.
- Adoption of children of all religions clearly mentioned.
- Foster Care no longer limited to pre-adoption foster care
- Sponsorship introduced in various situations to cover individual child, family, community and children in institutional care
- Greater Penalty for disclosure of identity of child.
- Addition to special offences against children - use of children for drug peddling, smuggling of liquor, drugs and psychotropic substances to children, illegal adoption, sale and procurement of children, corporal punishment, use of children by militants, kidnapping and abduction of children under 18 yrs, offences against disabled children.
- Abetting a special offence against children recognised as a distinct crime.
- Double punishment for offences against children with disabilities.

OVERRIDING EFFECT OF LAW ON FOLLOWING MATTERS [s1(4)]

Children in Conflict
with the Law
[CICL]

Apprehension
Detention
Prosecution
**Penalty or
imprisonment**
Sentence

Departures and Additions in Definition of CNCP

43. Children in Need of Care and Protection (CNCP) – To be a CNCP children must fit into the 14 criteria listed in the definition of CNCP
- **Working child** - covered only if he/she is working in **contravention of existing labour laws**. This implies children employed for begging/drug peddling/supply u/s 76 and 78 of JJ Act or child employees u/s 79 of JJ Act are not CNCP.
 - **Children of Unfit parents or parents lacking capacity to provide care and protection for their safety and well-being** - positive departure from **capacity to control** children to **capacity to provide care**.
 - **Children affected by civil unrest** (replacement of word '**commotion**' with '**unrest**')

Additions –

- Children **residing with people who violate** any **child protection laws**
- Children **exploited** by persons they reside with
- **Children at risk of child marriage** if such marriage is being solemnised by parent/guardian/family member/others . Not clear if this “others” would include children themselves i.e. when children elope to get married.
- **“Fitness” of parent/guardian to take care of mentally ill or mentally/physically challenged** child is **a sufficient condition** by itself to declare a child CNCP.
- Child who is **mentally ill/mentally or physically challenged/suffering from terminal or incurable disease**, having no one to support or look after or having unfit parents or guardians, **if found so by the Board**
- parent or guardian is found to be unfit or incapacitated, **by the Board**, to care for and protect the safety and well-being of the child

Definitions wrt CCL

44. **Child in conflict with the law** – children alleged and found to be in conflict with the law.
45. **Juvenile** - child below the age of 18 yrs.
46. **Observation Home** - to be established in every district or for a group of districts
47. **Place of Safety** – to receive children both during pendency of inquiry/trial and for rehabilitation after a child is convicted by JJB/Children’s Court. Cannot be part of police lock-up or jail.
48. **Special Home** – to be established for CICL found guilty after inquiry by Board
49. **Heinous Offences** – includes those with minimum imprisonment of 7 yrs or more
50. **Petty Offences** - includes those with maximum imprisonment of 3 yrs
51. **Serious Offences** - includes those with imprisonment between 3 to 7 yrs

Word “juvenile” replaced with “child” throughout the law, YET defined separately in Sec. 2 (35)

CICL found guilty by Board can go to a Special Home or Place of Safety. But CICL found guilty by Children’s Court can only go to a Place of Safety.

Classification of Offences – Definitions leave scope for confusion and arbitrariness

Individual Care Plan – comprehensive development plan (defined in the rules)

- **Based on** –

- age and gender specific needs
- case history of the child

(Case history of child to be prepared in consultation with the child)

- **Purpose** –

- to restore the child's self-esteem, dignity and self worth
- to nurture him into a responsible citizen

- **ICP to include** –

- Health and nutrition needs
- Emotional and psychological needs
- Educational and training needs
- Life skill training
- Leisure, creativity and play
- Protection from all kinds of abuse, neglect and maltreatment
- Restoration and FOLLOW-UP
- Social mainstreaming

Dealing with Children in Conflict with the Law – Highlights

Any Court other than Board to forward cases of CCL brought before it to JJB for further inquiry and disposal WITHOUT DELAY – [s 9(1)]

Retrospective Effect w.r.t. claim of juvenility: claim of juvenility can be raised before any court and any stage, even after disposal - [s 9(2) Proviso]

While claim of juvenility is pending inquiry, person to be kept in place of safety [s. 9(4)]

Cases of CCL disposed by any court other than JJB be forwarded to JJB for appropriate orders. Sentence passed shall have no effect – [s 9(3)]

Different procedures for different categories of CCL- Based on age and nature of offence [**s 6, 14, 15, 18, 19 and 20**]

Transfer of cases involving CCL from Board to Children's Court [**s 18(3)**]

Pending proceedings before a Board/Court to continue as per the old law –
[**s 25**]

No additional proceedings against a CCL who runs away from a OH/SH/PoS – [**s 26(4)**]

Structure and Composition of Board [JJA s4]

Composition of Board	Eligibility Criteria	Tenure of Board	Term of Office of Members
1 x Principal Magistrate	<p>Metropolitan Magistrate or Judicial Magistrate of First Class</p> <ul style="list-style-type: none"> • At least 3 years experience • No record of human/child rights violation • No record of dismissal from a public position • Has not indulged in child labour/abuse <p>(Special knowledge/training in child psychology / welfare deleted) BUT Training post appointment within 60 days added as a necessary condition)</p>	Not mentioned	As per decision of the High Court. Rules are silent.

Composition of Board	Eligibility Criteria	Tenure of Board	Term of Office of Members
<p>2 x Social Workers (1 must be a woman)</p>	<ul style="list-style-type: none"> ● Not less than 35 years of age ● At least 7 years experience of working with children in - health, education or other welfare activities OR ● A practicing professional with degree in child psychology, psychiatry, sociology or law. (Experience??) <p>Training post appointment within 60 days is a necessary condition</p> <p>In both instances they:</p> <ul style="list-style-type: none"> ● Cannot have any record of human rights violation ● Cannot have had a dismissal from a public position. 	<p>Not mentioned</p>	<ul style="list-style-type: none"> ● One term - 3 years ● Two terms possible but cannot be continuous <p>May be terminated if</p> <ul style="list-style-type: none"> ● Found guilty of misuse of power ● Convicted of an offence ● Has past record of violation of human rights/child labour/child abuse ● Has record of dismissal from a public position ● Fail stop attend Board proceedings for 3 months without reason ● Fail sto attend at least 75% of sittings in a year.

Sittings of the JJB [Rule 6 of Model JJ Rules, 2016]

- All working days
- Min. 6 hrs daily
- Sittings may reduce depending on pendency but as per order issued by state government
- Child friendly atmosphere – no elevated platforms, no witness boxes, no presence of outsiders during proceedings except those with whom child is comfortable
- Child friendly behaviour and attitude – body language, facial expressions, eye contact, tone and volume
- PM to draw out a monthly duty roster of members before whom a child can be produced after working hours or during holidays.
- Roster to be circulated to all police stations, CJM/CMM, District Judge, DM, CWCs, DCPU and SJPU in advance.

Powers, Functions and Responsibilities of JJB

- To be guided by the principles laid down in law
- Transfer cases of CCL treated as CNCP to the CWC
- Adjudicate and dispose of cases relating to CCL
- Final order to include individual care plan and follow-up by PO/DCPU/NGO -
- Recognition of Fit Facility and Fit Person – [s 27, 28, 51 and 52(1)]
- **Conduct**
 - Inquiry for declaring fit person
 - Inspection of OH/SH/PoS/Fit Facility having charge of CCL at least once a month and recommend action to DCPU/State Govt.
 - Regular inspection of jails and take immediate measures for transfer of children found in jails to OH
- **Direct/Order**
 - **PO/CWO/Social worker** to submit SIR within 15 days from first production of CCL before the JJB
 - Police to register FIR for offences against CCL/CNCP (CWC to make a written complaint to JJB wrt offences against CNCP)
- **Ensure**
 - Informed participation of child and parent/guardian at all stages
 - Protection of child's rights at all stages (apprehension to rehabilitation)
 - Availability of **legal aid** through **legal services institutions** and **legal cum probation officer**
 - **Qualified and experienced** Interpreter/translator on **payment of prescribed fee**

- Where needed, provide translator @ INR 100/- per page, and interpreter, special educator @ INR1500/- per day **[Rule 7 (i)]**
DCPU to maintain a panel. No clarity on whether DCPU will pay or Board has to pay.
- Issue Rehabilitation Card to monitor progress of child **[Rule 7 (ii)]**
- Order re-admission in school in case child's education is discontinued **[Rule 7 (iii)]**
- Link up with JJBs in other districts/states **[Rule 7 (iv)]**
- Maintain suggestion box or grievance redressal box in the premises of JJB. PM to nominate a person to operate it. Review it every month. **[Rule 7 (vi) and (viii)]**
- Ensure smooth functioning of Children's Committees in CCI's **[Rule 7 (vii)]**
- Deploy para-legal for contacting parents/guardians, collecting social and rehabilitative information about child **[Rule 7 (x)]**

Role of Police wrt CCLs

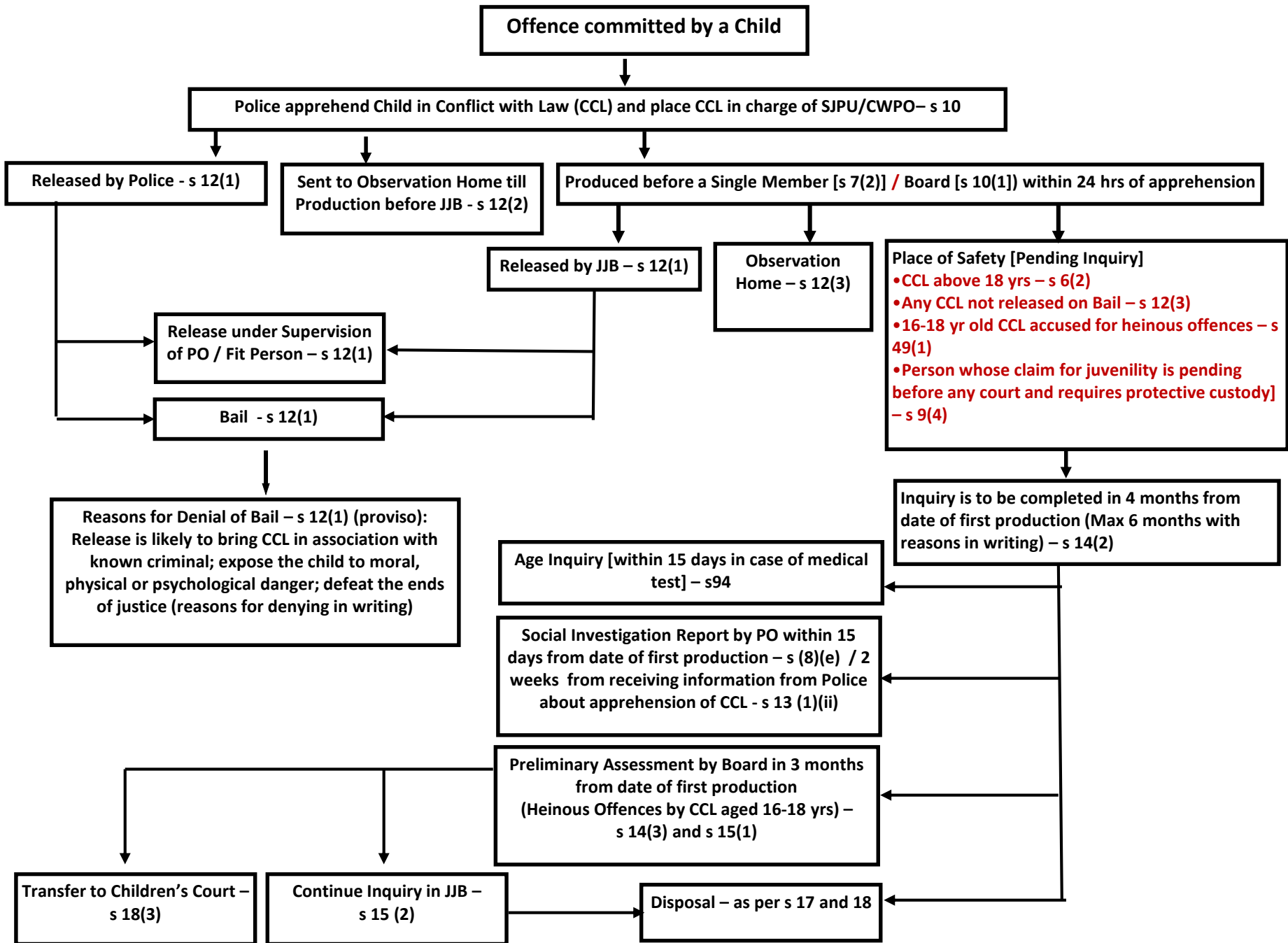
- All cases to be recorded in GD/DD along with –
 - SBR
 - Circumstances under which child was apprehended
- **FIR only in** heinous offences or offences alleged to be committed jointly with adult(s) [**Rule 8 (1)**]
- **Apprehension only in** heinous offences, that too if it is in the best interest of the child [**Rule 8 (1) Proviso**]
- **Where no apprehension**, information be sent to JJ along with SBR and child/parents/guardians to be intimated about production before JJB [**Rule 8 (1) Proviso**]
- **In case of apprehension Police to inform [Section 13 (1) and Rule 8 (2)] –**
 - parents/guardians – about apprehension, date and time when child will be produced before JJB and when parents need to be present before JJB
 - PO
 - CWO or case worker
 - **CWO or case worker to accompany CWPO for production of child before JJB.**

Other Prochild measures to be taken by police [Rule 8]

- List of CWPOs, CWOs, Pos, Paralegal volunteers, DLSAs, NGOs, PM and Members of JJB, Members of SJPU, Childline, with contact details to be displayed in every police station.
- CWPO to be in plain clothes.
- Basic needs and emergency care needs of children apprehended to be met by police through funds from state government.
- Child not to be kept in a police lock-up or handcuffed/chained.
- Child not to be compelled to confess guilt.
- Child only to be interviewed in SJPU or other child-friendly premises within or outside police station, and parent/guardian may be present.

Role of Police wrt CCLs

Structures/ Mechanisms	Level	Composition	Nodal Authority/ Officer in charge	Responsibilities
Child Welfare Police Officer (CWPO) – s 2 (18) and 107(1)	Police Station	≥ Assistant Sub- Inspector designated exclusively	SJPU	<ul style="list-style-type: none"> Deal with victims and perpetrators – s 107 Take charge of CCLs and produce them before JJB, including CCLs who run away from OH/SH/PoS – s 10(1) and s 26(1) respectively
Special Juvenile Police Unit (SJPU) – s 2(55) and 107(2)	District/ City/ Railway Police Unit	All CWPOs + 2 Social Workers (of whom one shall be a woman)	≥ Deputy Superintende nt of Police	<ul style="list-style-type: none"> Ensure no child is subjected to ill-treatment by Police – s 14(5)(a) Disposal of records pertaining to CCL as per directions of JJB/Children’s Court – s 24(2) Non-disclosure of any record of child whose case is closed/disposed off – s 74(2) SJPU to escort the child within 15 days of receiving order for transfer – s 95(2) Coordinate all functions of police related to children – s 107(1) Coordination with Police/ JJB/CWC/DCPU/ NGOs - s 107(2)
SHO – s 12 (2)	Police Station	In-charge of the police station	SJPU	<ul style="list-style-type: none"> Grant Bail Send CCL to Observation Home if bail not granted



Inquiry by JJB

Petty -
s 2(45)

Serious -
s 2 (54)

Heinous -
s 2 (33)

Maximum
Imprisonment Up to
3 yrs

Imprisonment
between 3 to 7 years

Minimum
Mandatory
Imprisonment for 7
years or more

Below 16 years

Above 16 years

Inquiry is to be completed
in 4 months from date of
first production (Max 6
months with reasons in
writing) – s 14(2)

Preliminary Assessment
within 3 months from
date of first production
– s 14 (3) and 15

Physical
Capacity

Mental
Capacity

Ability to
understand
consequences
of the offence

Circumstances
of offence

Petty Offence:
If in case inquiry is not
completed in 6 months,
proceedings will stand
terminated – s 14 (4)

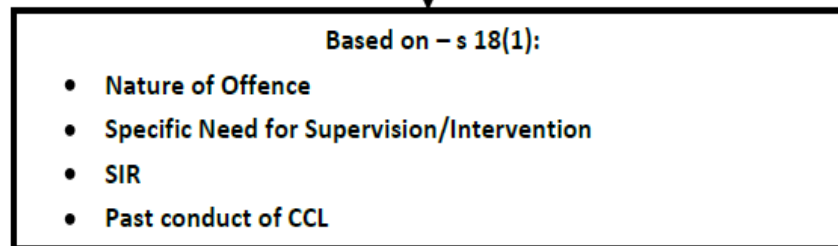
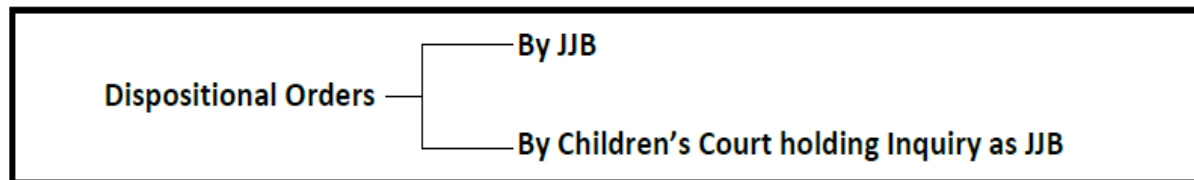
Extension for completion
of Inquiry may be granted
with written permission
from the CJM/CMM – s
14(4)

Continue
Inquiry –
s 15(2)

Pass Order
to treat CCL
as adult
+
Transfer to
Children's
Court –
s 18(3)

Disposal by JJB

- Final Disposal by Principal Magistrate and any one Member – [s 7(3) Proviso]
- If difference of opinion – opinion of majority to prevail / opinion of Principal Magistrate (in absence of majority) – [s 7(4)]
- No Question of majority where cases are disposed by the Children's Court following the procedures laid down for JJB



DEATH PENALTY AND IMPRISONMENT FOR LIFE WITHOUT POSSIBILITY OF RELEASE IS PROHIBITED FOR CCLs u/s 21

Non-institutional measures – s 18(1):

- a) Release on advice or admonition after appropriate inquiry and counseling of child and parents/guardians
- b) Direction to participate in group counseling and similar activities
- c) Order to perform community service under **supervision of organisation/institution/individual(s)/group of persons**
- d) Order child or parents/guardians to pay fine (**unless that would amount to violation of existing labour laws**)
- e) Direction for Probation of Good Conduct under the care of parent/guardian/fit person for maximum 3 years

Institutional measures – s 18(1):

- f) Direction for Probation of Good Conduct under the care of fit facility for maximum 3 years
- g) CCL sent to special home for maximum 3 years /sent to a place of safety for maximum 3 years (in keeping with the interest of the child or other CCLs)

Others:

Sponsorship – individual/group/community/children in CH and SH – s 2(58) and 45

Aftercare – Financial support to children aged 18-21 yrs leaving institutional care – s 2(5), 39(4), 46

Additional Orders that may be passed by JJB – s 18(2):

CCL to attend:

- School
- Vocational Training centre
- Therapeutic Centre
- De-addiction programme

CCL to be prohibited from:

- visiting/frequenting/appearing at a specified place

Trial by Children's Court

Examine the Preliminary Assessment received from JJB to decide on how to proceed further - s 19(1)

CCL to be tried as a child
[Procedure of Inquiry prescribed for JJB] – s 19(1)(ii)

Inquiry is to be completed in 4 months from date of first production (Max 6 months with reasons in writing) – s 14(2)

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

- No Death Sentence
- No Sentence of Life Imprisonment without possibility of Release – s

Release CCL on conditions, including monitoring – s 20(2)(i)

Order completion of remainder term in jail – s 20(2)(ii)

CCL to be tried as an adult
[Trial and order under CrPC] – s 19(1)(i)

No time prescribed for completion of Trial

Disposition/Final Order:

- Sentence as for adults – s 19(1)(i)
- Order CCL to be sent to Place of Safety till he attains the age of 21 years – s 19(3)

Must contain Individual Care Plan – s 19(2)

Annual Follow-up by PO/DCPU/Social Worker to evaluate progress – s 19(2) and 19(4)

Evaluate CCL's reformation on attaining the age of 21 years – s 20(1)

Dos and Don'ts for Children's Courts [Rule 13]

When conducting inquiry as Board/trying CCL as a child –

- In camera proceedings
- Child friendly atmosphere
- No joint trial
- No adversarial proceeding
- Remove child's fears
- Help CCL state facts and circumstances, influences, social surroundings etc. with ease
- Dispositional order to include ICP, prepared by PO and in consultation with the CCL

When treating CCL as an adult –

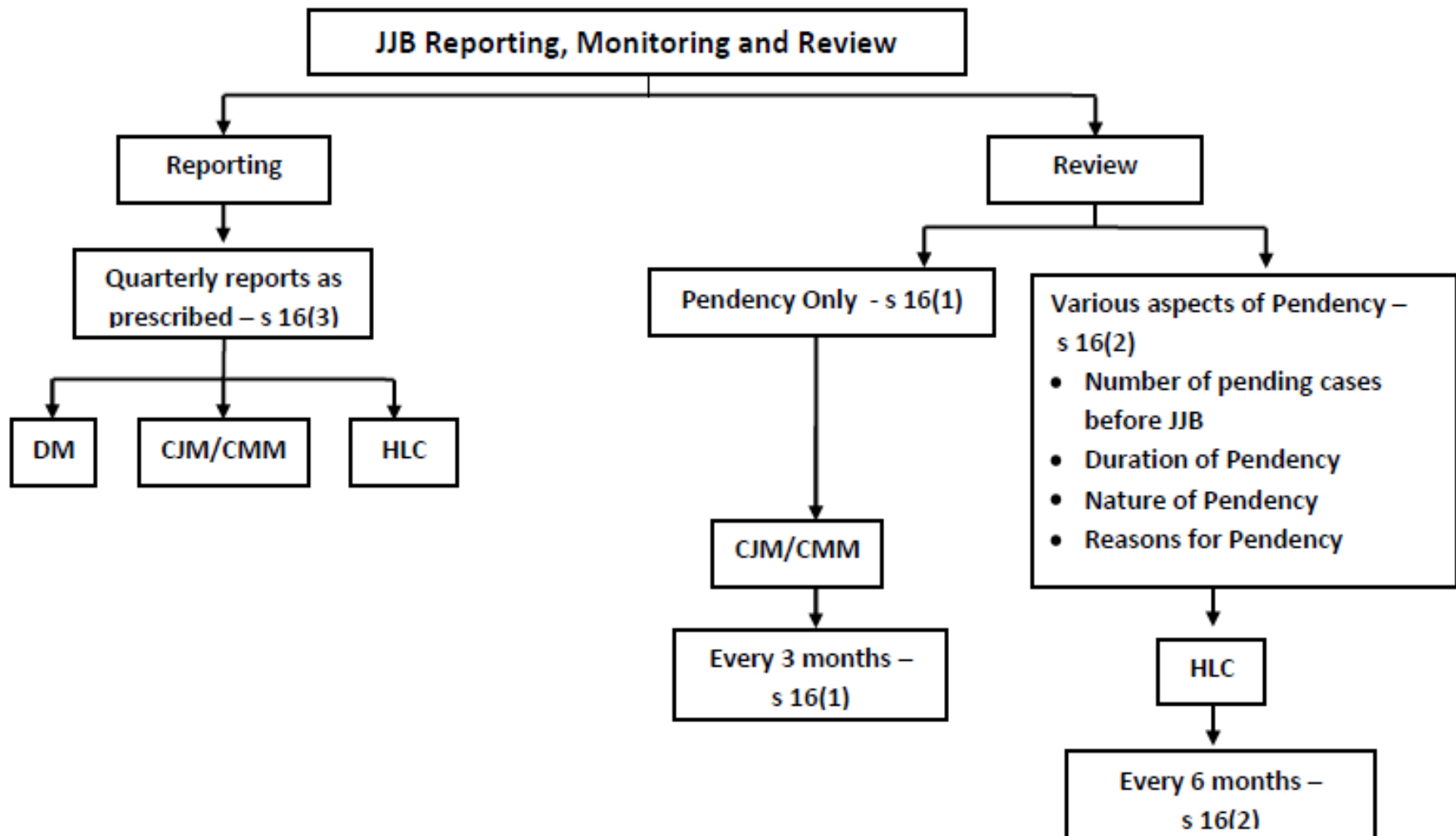
- Consider the special needs of the child [s. 19(1)(i)]
- Maintain child friendly atmosphere [s. 19(1)(i)]
- Dispositional order to include ICP, prepared by PO and in consultation with the CCL [Rule 13 (8) (ii)]
- Seek annual review of the child's progress from PO/DCPU [s. 19(5) and Rule 13 (8) (iv)]
- Ensure periodic production of CCL before Children's Court (at least once in 3 months) [Rule 13 (8) (v)]
- Send CCL to place of safety both during pendency of inquiry and when found guilty

After child attains the age of 21 yrs. –

- Call for follow-up report from PO/DCPU
- Ascertain whether CCL has undergone reform
- Interact with CCL
- Accordingly decide on whether to release the CCL under supervision of a monitoring authority or pass an order for the CCL to be transferred to jail for the remaining period of sentence.

Follow-up when child released under supervision of monitoring authority –

- In the first quarter of release:
 - Monitoring Authority and CCL to meet fortnightly
 - Monitoring Authority to submit monthly report to Children's Court
- At the end of first quarter:
 - Monitoring Authority to recommend procedure for further follow-up
 - Children's Court to fix periodicity of follow-up and review the same quarterly



HLC – High Level Committee (4 persons)
Chairperson - Executive Chairperson of SLISA
Member - Home Secretary
Member - Secretary Responsible for Implementation of the Act
Member - Representative of NGO nominated by Chairperson

Structure and Composition of CWC [JJA s27]

Composition	Eligibility	Tenure	Term of Office of Members
<ul style="list-style-type: none"> • 1 Chairperson • 4 other members appointed by the State Government <ul style="list-style-type: none"> • at least 1 of these 4 must be a woman • at least 1 of these 4 must be an expert on child matters 	<ul style="list-style-type: none"> • Actively involved in the health, education or welfare of children for at least 7 years OR • A practicing professional with a degree in child psychology, psychiatry, law, social work, sociology or human development (earlier included fields of education, child development, criminology but not child psychology) • Other Qualifications/ Disqualifications as may be prescribed 	<p>Not mentioned</p>	<p>≤3 years</p> <p>Appointment may be terminated if a member is:</p> <ul style="list-style-type: none"> • Guilty of misusing a power conferred under the Act or of an offence of moral turpitude • Fails to attend meetings for 3 months in a row without reason or attends less than 75% of meetings in a year without reason

Production before CWC

**Timeframe
s 31 (1) Proviso**

**Without any loss of
time
Within 24 hours**

**Who can produce
s 31(1)**

- **Police Officer/SJPU/CWPO**
- **Officer of DCPU**
- **Inspector under any labour law**
- **Public Servant**
- **Childline / NGO**
- **Recognised Agency of the state**
- **Social worker/public spirited citizen**
- **Nurse/Doctor/Mgmt. of Nursing home/ Hospital/Maternity Home**
- **Child himself/herself**

**Production before Individual Member
s 28(3)**

- **Only when CWC is not in session**
- **Only for being placed in a children's home or with a fit person**

Inquiry by CWC

Inquiry to be initiated on ...

Production of a child
s 31 & 36(1)

Receipt of report about a child
s 31(2) & 36 (1)

Its own, taking cognizance of a case
s36(1)

Send to SAA if - s 36 (1)

- child below 6 yrs, and
- orphan/surrendered/
appearing to be abandoned

Send to -
Children's home/Fit Facility/Fit
person if child above 6 yrs –
s 36 (1)

Pending Inquiry

SIR within 15 days
by
SW/CWO/CWPO –
s 36 (2)

Purpose of Inquiry

Declaring a child as a CNCP – s 37 (1)

declaring fit persons - s 30
(iv)

inquiry for execution of
surrender deed - s 35(2)

to declare legally free for
adoption - s 30(xi)

care, protection, appropriate
rehabilitation & restoration

safety and well being of
children - s 30(ii)

on complaint of abuse in CCI –
s 30 (xvi)

- Remove the child from the
CCI & transfer to another CCI
- Give necessary directions to
Police/ DCPU/Labour Dept/
Childline

Time for Completion of Inquiry

Abandoned Child

2 months for
child < 2 yrs

4 months
for child > 2 yrs
(from date of
production)

Surrendered Child

2 months from date
of production
(reconsideration
period)

Other CNCP

4 months from
date of production

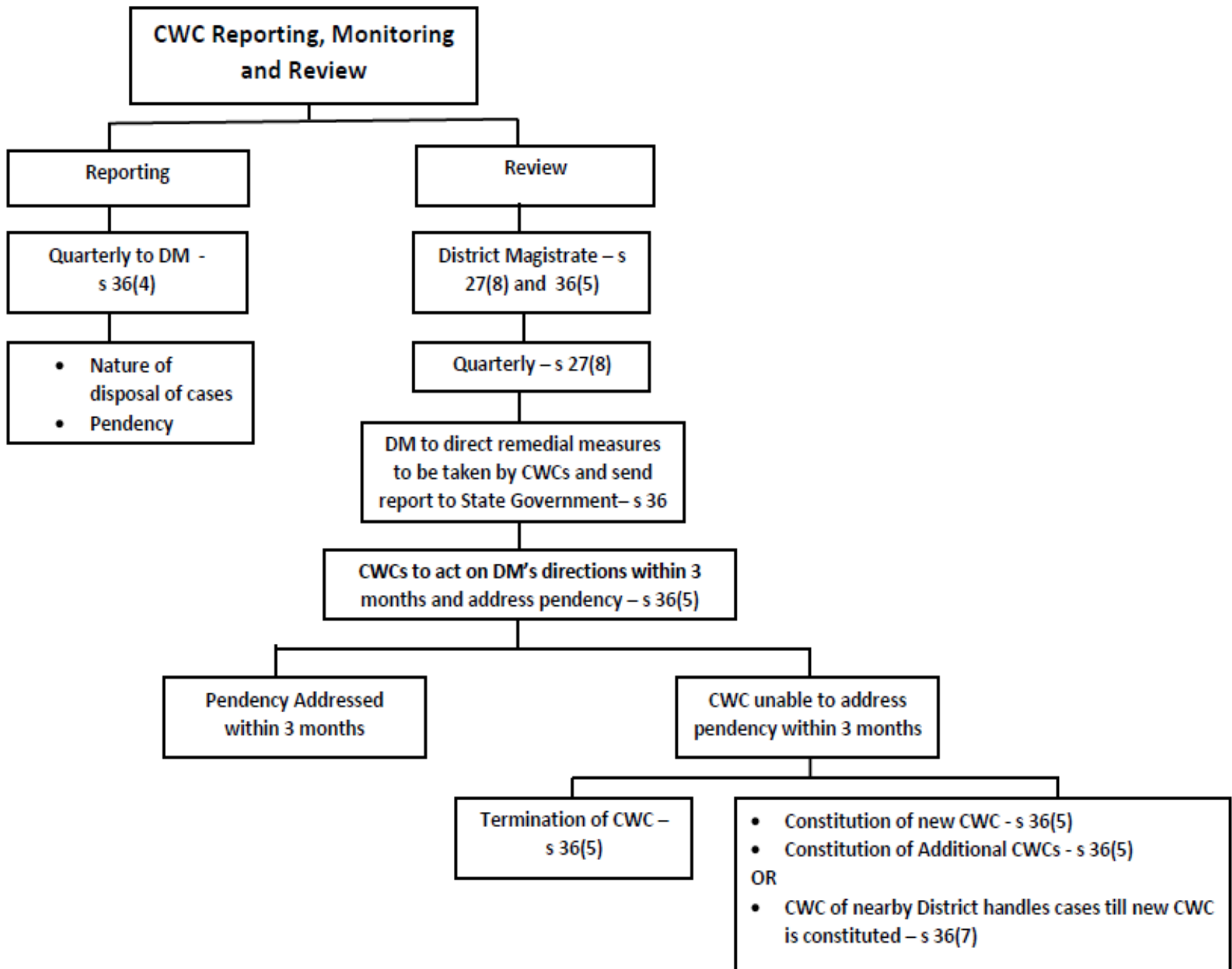
Other Procedure for Inquiry by CWC

To be prescribed under rules
BUT
must include

Declaration that a child is in need of care and protection –
s 37 (1)

SIR submitted by SW/CWO/CWPO –
s 37 (1)

Child's wishes if child is "sufficiently" mature to take a view –
s 37(1)



Orders that may be passed by CWC during or after inquiry	Conditions
Declaration of child as CNCP – s 37 (1) (a)	On satisfaction through inquiry (<i>procedure not laid down</i>) – s 37 (1)
Restoration to parents/guardians/family – s 37 (1) (b)	<ul style="list-style-type: none"> • with or without supervision of CWO/SW – s 37 (1) (b) • after determining suitability of parents/guardians – s 39 (3) • based on Individual Care Plan (ICP) – s 39 (1)
Placement in CH/Fit Facility/SAA for adoption/long term care/short-term care – s 37 (1) (c)	<p>s 37 (1) (c)</p> <ul style="list-style-type: none"> • Capacity of institution • If parents cannot be traced • When parents traced but restoration not in the best interest of the child <p>s 39 (1)</p> <ul style="list-style-type: none"> • Based on ICP • All efforts to keep siblings together

Orders that may be passed by CWC during or after inquiry	Conditions
Placement with fit person <ul style="list-style-type: none"> • for long-term/temporary care – s 37 (1) (d) • for temporary care – s 52 	<ul style="list-style-type: none"> • After determining suitability of the person – s 39 (3) • After due verification of credentials – s 52 (1) • Period to be specified in the order – s 52 (1)
Directions to various persons/institutions/facilities in whose care the child is placed – s 37 (1) (g)	<p>Directions should be wrt care, protection & rehabilitation - s 37 (1) (d) & s 53</p> <p>Could include:</p> <ul style="list-style-type: none"> • Immediate shelter • Medical attention – including treatment for diseases • Mental health intervention – including psychiatric / psychological support, need-based counselling, behaviour modification therapy • Occupational therapy and skill training • Educational services, including under RTE and special education for children with special needs • Recreational and Developmental activities • Vocational training • Legal aid • De-addiction treatment • Birth Registration • Case Management – including preparation and follow-up of Individual Care Plan • Follow-up & coordination with DCPU/state govt./other agencies

Orders that may be passed by CWC during or after inquiry	Conditions
Placement in Open Shelter – s 43	<p>s 43 (1) and (2)</p> <ul style="list-style-type: none"> • Short-term basis • Community based facility • Open shelter to send monthly information about children availing its service to DCPU and CWC
Declaration of child as legally free for adoption – s 37 (1) (h)	<ul style="list-style-type: none"> • Decision to be taken by at least 3 members of CWC – s 38 (4)
After Care Support – s 37 (2) (ii)	<ul style="list-style-type: none"> • For children between the age of 18 – 21 years – s 2 (5) • Financial support – s 2(5) & s 46 • Other support - ??? (only mentioned in s 2 (5), not in s 46)

Procedure for Declaring Legally Free for Adoption – s 38

Orphan/Child appearing to be abandoned – s 38

Send the child to SAA/CH -

Trace parents/guardians – s 38 (1)

Inquiry by CWC to establish there is no one to take care of the child or child is abandoned

Declare only if no one claims the child within

- * 2 months from date of production in case of child < 2 yrs
- * 4 months from date of production in case of child > 2 yrs

CWC to send monthly Information on number of children declared free for adoption and number of cases pending to SARA and CARA – s 38 (5)

Surrendered child – s 35

Application for surrender

Counselling of surrendering parent

Two months' reconsideration time for surrendering parent(s)

Inquiry by CWC as prescribed under Rules

Declare free for adoption

Adoption

Criteria

For Child – s 56

- Must be declared orphan/abandoned/ surrendered
- Can be of any religion
- Can be a relative's child

For PAP – s 57

- Must be –
 - physically fit
 - financially sound
 - mentally alert
 - highly motivated to adopt
- Can be of any religion
- Can be the child's relative
- Can be a single or divorced female (but not male if adopting a girl)
- Consent of both spouses required in case of couples

Procedure for Domestic Adoption – s 58

Apply to SAA

Role of SAA

- Prepare -
 - Home Study report
 - Child Study Report
 - Child's Medical Report
- Referral to parents with child's reports
- Receipt of acceptance report from PAP + signed reports of child
- Give child in pre-adoptive foster care
- Apply to court for adoption order
- Obtain certified copy of court order
- Send child to adoptive parent(s)
- Follow-up as per Rules

Inter-country Adoption

Criteria

For Child

Preference for inter-country adoption

- Children with physical/mental disability
- Siblings
- Children above the age of 5 yrs

For PAP

First Preference to

- NRIs
- OCIs
- PIOs

Foreigner to apply with NOC from Diplomatic Mission of his country

Procedure

Inter-country adoption process if no Indian parent found within 60 days of child being declared free for adoption

PAP applies to authorized foreign adoption agency/Central Authority/concerned govt. dept. of their country

Home Study by the above mentioned agency/authority/dept. of their country

PAP's application sponsored by above mentioned agency/authority/dept. to CARA

Screening of application by CARA

CARA to refer suitable applications to SAA

SAA to match the child with PAP + send child's reports to PAP

Acceptance / Rejection by PAP

On acceptance, SAA to file application in court for adoption order

SAA to obtain certified copy of adoption order and send to agency/authority/dept. in PAP's country

Agency/authority/dept. in PAP's country to inform immigration authorities in both sending and receiving country

Foster Care – s 37 (1)e) & 44

Long-term / Short-term

Individual

Group

**Selection of Foster
Parents/Family –
s 44 (2)**

By State
Government

Based on –
1. Ability
2. Intent
3. Capacity
4. Prior
experience of
taking care of
children

**Declaration of fit Persons
for Foster Care –
s 37 (2) (i)**

By
CWC

After
Inquiry

**Placement conditions
Part of CWC Order –
s 44**

1. Siblings to be kept together as far as possible – s 44(3)
2. Biological parents may be allowed to visit the child in foster family unless it is not in the best interest of the allowed – s 44(5)
3. Child may return to biological parents when they become fit – s 44(5)
4. Foster family takes responsibility of providing education, health, nutrition and overall well-being of child – s 44(6)
5. No adoptable child to be placed in foster care for long-term

**Monitoring and
Follow-up by CWC –
s 44 (8)**

1. Monthly inspection of foster families
2. Child to be removed if foster family found lacking
3. Child be shifted to another foster family after removal

Sponsorship – s 37 (1) (f) & 45

Criteria – s 45 (2)

1. Widow/divorced/
abandoned
mother
2. Child is orphan
and living
extended family
3. Parents suffering
life threatening
disease
4. Parents
incapacitated due
to accident and
unable to take
care of child
financially and
physically

Duration – s 45 (3)

As
per
Rules

Type of Sponsorship s 45 (1)

Individual to
Individual

Group

Community

Nature of Support – s 2 (58) & 45 (4)

Financial
Or Other

For –
* Medical
* Educational
* Nutritional
* Other Needs

Rehabilitation and re-integration

Services to be provided by CCIs – s 53

- Basic requirements – food, shelter, clothing, medical attention
- Equipment for children with special needs – wheelchairs, prosthetic devices, hearing aids, braille
- Education – including education under RTE, supplementary education, special education for children with special needs
- Skill development
- Occupational therapy and life skill education
- Mental health interventions
- Recreational activities
- Legal aid

Training of JJB/CWC/CWPO/SJPU/Others

- **JJB** - Within 60 days of appointment – s 4(5)
- **CWC**- Within 2 months from date of notification – s 27(1)
- **CWPOs** – SJPU to provide induction training (no time frame laid down) – s 107(3)
- **Officers of the Central Government, State Government and other concerned** – Periodic Training (no authority and time frame laid down) – s 108(b)

Appeal – Cases Pertaining to CCLs

Appealable Matters	Time Limit	Authority
Any Order of JJB – s 101(1)	Within 30 days [Extendable by another 30 days period, subject to reasonable grounds]	Children’s Court
Preliminary Assessment in case of 16-18 yr olds accused of committing heinous offences – s 101(2)	Within 30 days [Extendable by another 30 days period, subject to reasonable grounds]	Children’s Court [May take assistance of experienced psychologist, medical specialist – other than those who assisted the JJB]
Any Order of Children’s Court – s 101(5)		High Court

Exceptions: No Appeal shall lie against...

Order of acquittal of a child aged 16 yrs or above in case of petty and serious offences – **s 101(3)(a)**

Second Appeal against any order of Children’s Court w.r.t. preliminary assessment – **s 101(4)**

Review/Amendment/Correction of Orders Pertaining to CCLs

Matter	Authority	Procedure	
Legality and Propriety of an order passed by JJB/Children's Court/any other Court – s 102	High Court	On its own motion or an application received in this behalf	Persons concerned to be given reasonable opportunity of being heard
Orders passed by JJB w.r.t. institutional placement/supervision under care of a person – s 104(1)	JJB itself can amend its own orders [Presence of Principal Magistrate and one Member of the Board is essential]	Only on application received in this behalf	Views of affected parties or their representatives to be heard
Clerical Mistakes/Accidental slip or omission in JJBs Orders – s 104(2)	JJB itself	On its own motion or an application received in this behalf	

Removal of Disqualification attached to conviction – [s 24 (1)]

Non-disqualification rule applies to:

- All CCL < 16 years
- CCL < 18 yrs convicted for petty/serious offence
- CCL \geq 16 years **tried as a child and convicted for heinous offence** by JJB/Children's Court

Exception:

- CCL \geq 16 years convicted for heinous offence as an adult by Children's Court

Removal of Records of Conviction of CCL – [s 24(2)]

Destruction of relevant records of conviction of CCL after expiry of period of appeal/ seven years **[Rule 14]**

Exception:

- CCL \geq 16 years convicted for heinous offence as an adult by Children's Court

Privacy and Confidentiality of CCL/CNCP

All reports relating to CCL/CNCP to be confidential – [s 99(1)]

Exception:

- Right of victims to case record, orders and relevant papers – [s 99(2)]
- Only substance of relevant documents that need to be communicated to
 - another JJB/CWC
 - the child concerned
 - concerned parent/guardianfor purpose of allowing them to produce evidence relevant to the matter – [s 99(1) Proviso]

OFFENCES AGAINST CHILDREN

Different Courts to try different offences against children. This puts a question on the purpose of creation of Children's Courts under the CPC Act. It also amounts to dilution of intent wrt treatment of offences against children.

Type of Offence	Classification of Offence	Trial Court
Liable for imprisonment of >7 years	Cognizable, Non-bailable	Children's Court
Liable for imprisonment of ≥ 3 years but < 7	Cognizable, Non-bailable	Judicial Magistrate of First Class
Liable for imprisonment of < 3 years or fine	Non-cognizable, bailable	Any Judicial Magistrate

OFFENCES AGAINST CHILDREN

Cognizable | Non-bailable | Triable by Children's Court

Offence	Perpetrator	Imprisonment	Fine
Cruelty to a child resulting in physical incapacitation/mental illness/mentally unfit to perform regular tasks/risk to life or limb	Person having charge of or control over a child	RI Min – 3 yrs Max – 10 years	Mandatory – 5 lakh
Cruelty against disabled children	Person employed by or managing an organisation entrusted with care and protection of child	RI Min – 6 yrs Max – 20 years	Mandatory – 10 lakh
Employing or using a child for begging + amputating or maiming a child for begging	Any person, including person having charge of or control over the child	RI Min – 7 yrs Max – 10 yrs	Mandatory – 5 lakh

Issues for discussion

Bail may be denied if it “Defeats the Ends of Justice” ...

- What does this mean?
- Is it Ends of Juvenile Justice or Justice in general?

Presumption against accused under POCSO Act...

- Will it override presumption of innocence under JJ Act when the accused is a minor?

Issues for Discussion...

- Is psychological assessment necessary to carry out a preliminary assessment?
- Is it important to ensure that psychological assessment carried out for preliminary assessment is done at a time when the child is relaxed and has settled down in the CCI?
- What should be the tools and process for psychological assessment?
- Would the outcome of psychological assessment be any different if it were carried out by a different expert or using a different approach?
- Children's Court is to first dispose appeal on order of preliminary assessment. Is it supposed to review the preliminary assessment again after disposing the appeal?