

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

BY:  
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# RELEVANT LAWS/ENACTMENTS

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[Juvenile Justice \(Care and Protection of Children\) Act, 2015](#)

[The Juvenile Justice \(Care and Protection of Children\) Model Rules 2016](#)

[The Juvenile Justice \(Care and Protection of Children\) Amendment Act, 2021 stands enforced from 1st September 2022](#)

[The Juvenile Justice \(Care and Protection of Children\) Model Amendment Rules, 2022](#)

[Madhya Pradesh Juvenile Justice Rules, 2022](#)

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# Objectives of Act

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

# Offence

## **Petty offences** Section 2 (45)

offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment

**up to 3 years**

## **Serious offences** Section 2 (54)

the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is,-

(a) minimum imprisonment for a term more than **3 years and not exceeding 7 years;**  
**or**

(b) maximum imprisonment for a term more than **7 years** but **no minimum imprisonment** or **minimum**

## **Heinous offences** Section 2 (33)

heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for

**7 years or more;**

# Whether section 307 IPC is a heinous offence?

The Supreme Court has held in a very recent case of *Shilpa Mittal vs the State of NCT of Delhi* (2020) that an offence that does not carry a minimum penalty of seven years cannot be considered terrible. However, in light of the foregoing, the Act does not address the 4th category of offences: the maximum sentence is more than 7 years in prison but no minimum sentence or a minimum sentence of less than 7 years is provided. These offences shall be treated as "serious offences" within the meaning of the Act and dealt with accordingly until Parliament takes the call.



## **Section 3. General principles to be followed in administration of Act.**

- (i) Principle of presumption of innocence**
- (ii) Principle of dignity and worth**
- (iii) Principle of participation**
- (iv) Principle of best interest**
- (v) Principle of family responsibility**
- (vi) Principle of safety**
- (vii) Positive measures**
- (viii) Principle of non-stigmatising semantics**
- (ix) Principle of non-waiver of rights**
- (x) Principle of equality and non-discrimination**
- (xi) Principle of right to privacy and confidentiality**
- (xii) Principle of institutionalisation as a measure of last resort**
- (xiii) Principle of repatriation and restoration**
- (xiv) Principle of fresh start**
- (xv) Principle of diversion**
- (xvi) Principles of natural justice**

# JUVENILE JUSTICE BOARD



POWERS

FUNCTIONS

JURISDICTION

INQUIRY





# JUVENILE JUSTICE BOARD.

The Juvenile Justice Board is an institutional body constituted under Section 4 of the JJ Act, 2015.

It provides for the inquiry and hearing in the case of a juvenile in conflict with law.

▶ The section also lays down the qualifications for appointment, removal, etc of the members of the Board.

▶ The procedure in relation to the working of the Juvenile Justice Board is contained in Section 7 of the JJ Act, 2015.

▶ The juvenile Justice Board can make an order against the juvenile on his being guilty of having committed an offence, only under the Juvenile Justice Care and Protection of Children Act, 2015 and under no other law.



Section 4 start with non obstant clause,

# JURISDICTION OF JUVENILE JUSTICE BOARD.

The Juvenile Justice Board has exclusive jurisdiction to deal with the Juvenile in conflict with law notwithstanding any other law for the time being in force.

The powers that could be exercised by the Juvenile Justice Board can be exercised by the High Court or the Court of Sessions while dealing with appeals or revision.

# OBJECTIVE OF JUVENILE JUSTICE BOARD.

To keep the juvenile alleged to be in conflict with law away from the accusatory procedure.



To provide the juvenile a child-friendly environment.



To ensure that the best interests of children and young people and are paramount to any proceedings.

# CASE LAWS.

Sant Das v. State of UP, 2003 Cri.LJ 3424

- ▶ In this case, the Court held that where Juvenile Justice Board is not constituted, the Magistrate concerned has jurisdiction to deal with cases of juvenile and appeal will go before the Sessions Judge.

Nanlabhai Kukabhai Rathwa v. State of Gujarat 2005(33) AIC

- ▶ In this case, Court held that if a juvenile is tried by the Sessions Court in ignorance of the fact that he is a juvenile, the trial would stand vitiated.

# 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"> <li>• <b>At least 3 years experience</b></li> <li>• <b>No record of human/child rights violation</b></li> <li>• <b>No record of dismissal from a public position</b></li> <li>• <b>Has not indulged in child labour/abuse</b></li> </ul> <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.

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

# State of Himachal Pradesh v. Happy, 2019 SCC HP 700.

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In this case, it was held by the Himachal Pradesh High Court that judgement passed by a single member of the juvenile justice is void ab initio.

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In this case, the impugned order was passed by a single Magistrate, without fulfilling the criteria of the composition required for the functioning of the Juvenile Justice Board. Therefore, the order was set aside.

# 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 OF THE BOARD.

- The Board constituted for any district shall have the power to deal exclusively with the proceedings under the Act:
- In the area of jurisdiction of the Board.
- In matters relating to children in conflict with the law.
- These powers may be exercised by the High Court or the Children's Court, when proceedings under Section 19 come before them or in appeal, revision or otherwise.



# POWERS OF THE BOARD.

- ▶ The Board is also empowered to inquire into heinous offences under Section 15 of the Act. Such preliminary assessment has to be disposed of within a period of 3 months from the date of first production of the child before the Board.

Puneet S. v. State of Karnataka (2019 SCC Online Kar 1835)

- ▶ In this case, the Karnataka High Court held that only the Juvenile Justice Board has the power to decide whether an offence committed by a juvenile is heinous or not.



# FUNCTIONS.

1.

Ensuring informed participation of the child & the parent or the guardian throughout the process.

2.

Ensuring protection of the child's rights throughout the process of arresting the child, inquiry, aftercare and rehabilitation.

3.

Ensuring the availability of legal aid for the child through various legal services institutions.

4.

Providing a qualified interpreter or translator to the child if he/she fails to understand the language during the course of proceedings.

## FUNCTION S.

4. Directing Probation Officer/Child Welfare Officer/Social Worker to undertake a social investigation into the case. Further, directing them to submit the report within 15 days from the date of the first production before the Board.
5. Adjudicating and disposing of cases pertaining to children in conflict with the law according to the process mentioned in Section 14.
6. Transferring matters to the Committee in cases where the child is alleged to be in conflict with the law, but is stated to be in need of care and protection at any stage.

# FUNCTIONS.

- ▶ Disposing of the matter and passing a final order which should include an individual care plan for the child's rehabilitation. This also includes follow-ups by officers or an NGO.
- ▶ Conducting inquiry for declaring that a certain person is fit for taking care of the child in conflict with the law.
- ▶ Conducting inspection every month of residential facilities for children in conflict with the law and recommending various measures for improvement in the quality of services provided.

# FUNCTIONS.

- Ordering the police for registration of FIR if any offence is committed against any child in conflict with the law.
- Conducting a regular inspection of jails meant for adults, to check if any child is lodged in such jails.
- Taking immediate measures for the transfer of a child found in jails for adults, to an observation home.
- Any other function as may be prescribed to the Board.

## PROCEEDINGS IN JJB.

- ▶ Petty cases may be disposed of by the JJ Board by summary proceedings while in heinous offences, due process of inquiry may be followed.
- ▶ The Board shall follow the procedure of trial as in summons cases.
- ▶ Even a single member of the Board can undertake proceedings on behalf of the Board, but such proceedings need to be confirmed by the Board in its next meeting.



## PROCEEDINGS IN JJB.

- The final decision shall be taken by a majority in which presence of the Principal Magistrate is mandatory.
- The Principal Magistrate should have special knowledge and or training in child psychology or child welfare.
- The act casts a duty upon the State to arrange short term training for the members and Principal Magistrate of the Juvenile Justice Board.



# SPECIAL PROCEDURE OF JUVENILE JUSTICE BOARD.

- The procedure followed in the proceeding against juvenile offender under the Juvenile Justice Act, 2015 differ from that of an ordinary criminal trial, and therefore it can be rightly termed as 'special procedure' in view of the following considerations:-
- The proceedings cannot be initiated on a complaint from a citizen or the police.
- The hearing is informal and strictly confidential.
- The Juvenile offender while under detention, is kept in separate observation Home.



# Powers, Functions and Responsibilities of JJB

- To be guided by the principles laid down in law
- Transfer cases of CACL 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 CCl's **[Rule 7 (vii)]**
- Deploy para-legal for contacting parents/guardians, collecting social and rehabilitative information about child **[Rule 7 (x)]**

# Enquiry under Section 9 of JJ Act

- **Hariom Singh v. State of M.P., ILR (2018) MP 1007**
- **Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720**
- **Babloo Pasi v. State of Jharkhand, AIR 2009 SC 314**
- **Ravinder Singh Gorkhi v. State of U.P., (2006) 5 SCC 584**
- **Arnit Das v. State of Bihar, (2000) 5 SCC 488**
- **Mukarrab and ors. v. State of U.P., (2017) 2 SCC 210**
- **Ashwani Kumar Saxena v. State of M.P. (2012) 9 SCC 750**

# 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)

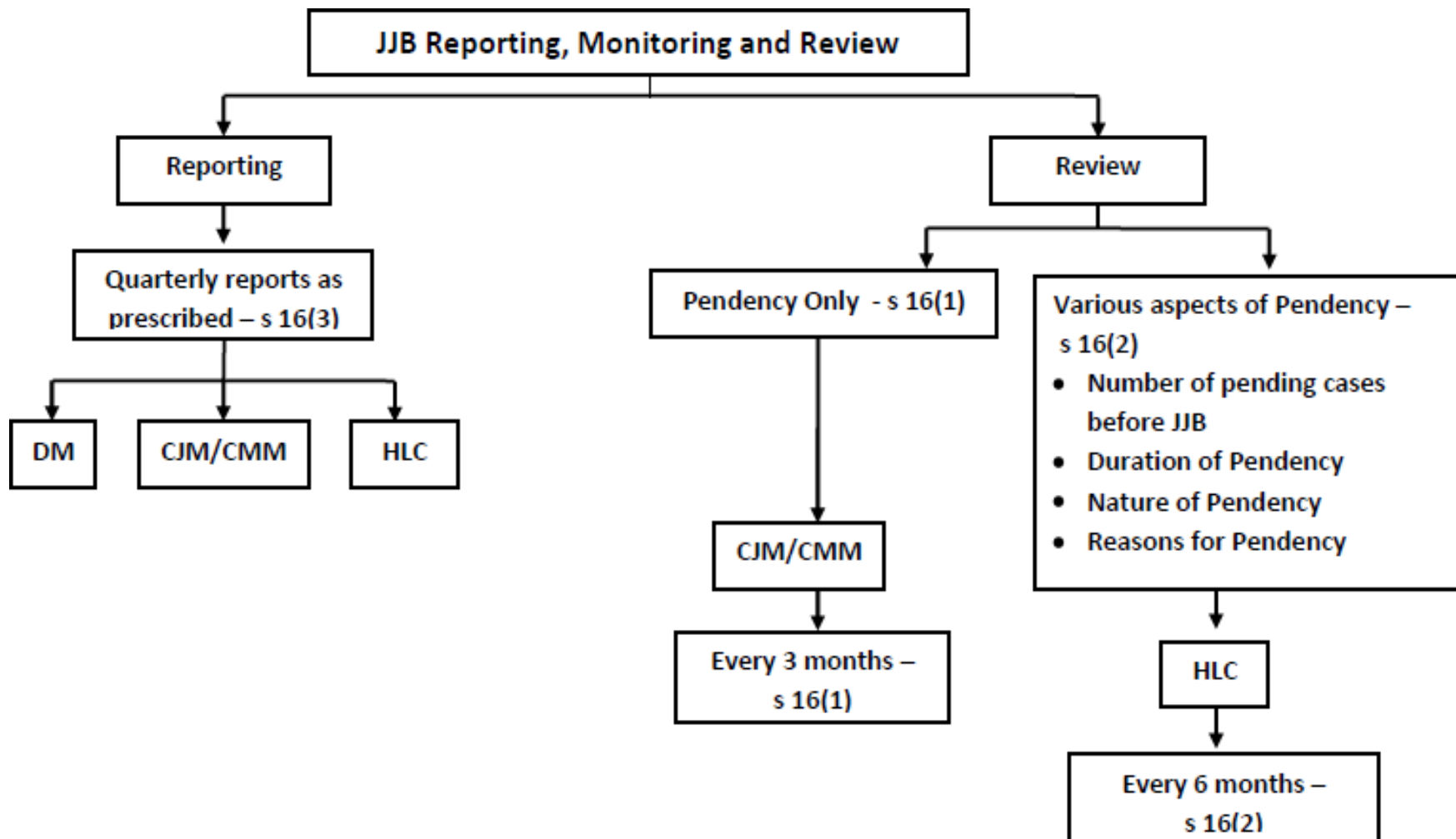
Pass Order  
to treat CCL  
as adult  
+  
Transfer to  
Children's  
Court –  
s 18(3)

# Disposal by JJB

Final Disposal by Principal Magistrate and any one Member – [s 7(3) Proviso]

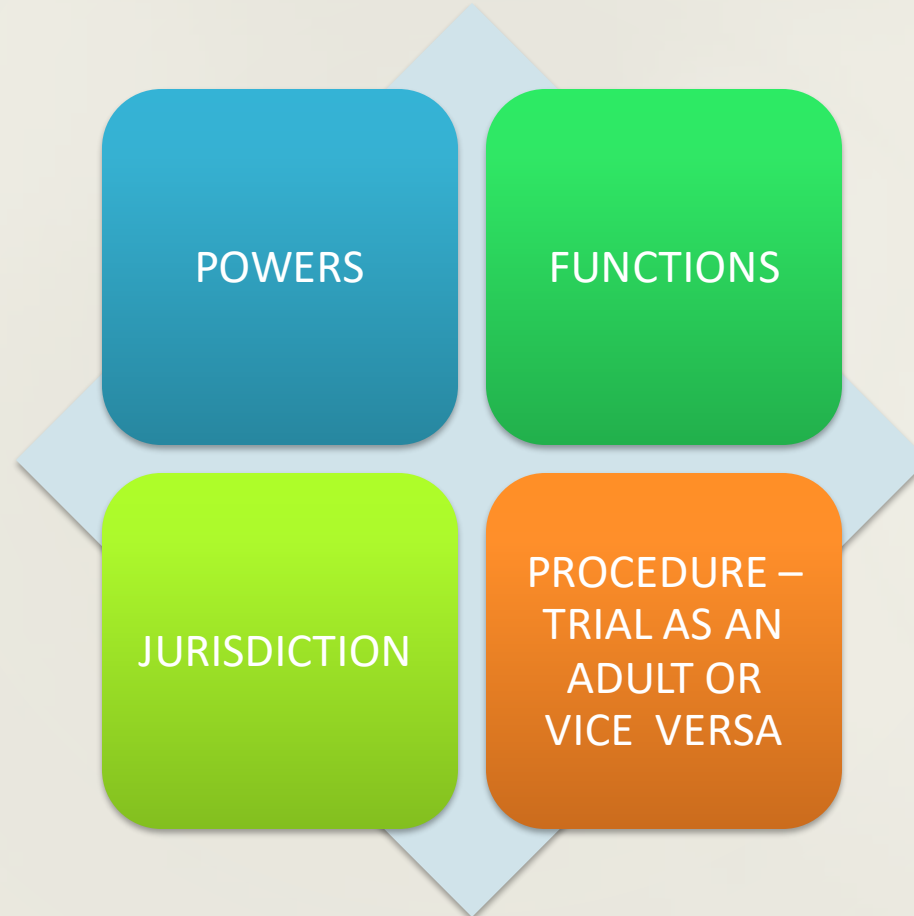
If difference of opinion – opinion of majority to prevail / opinion of Principal Magistrate (in absence of majority) – [s 7(4)]

No Question of majority where cases are disposed by the Children's Court following the procedures laid down for JJB



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

# CHILDREN'S COURT



# Establishment of children's court

COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005

*“25. Childrens Courts . For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a Court in the State or specify, for each district, a Court of Session to be a Children’s Court to try the said offences:*

*Provided that nothing in this section shall apply if*

- (a) a Court of Session is already specified as a special Court; or
- (b) a special Court is already constituted, for such offences under any other law for the time being in force.”
- (c) wherever such courts exist and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.



# State government notification

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## मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग अधिसूचना

भोपाल, दिनांक 07.01.2011 फा. क्र. 17(ई)./38/2010/21-ब(एक) - बाल अधिकार आयोग अधिनियम, 2005 (2006 का 4) की धारा 25 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए राज्य सरकार, म.प्र. उच्च न्यायालय के मुख्य न्यायाधिपति की सहमति से, एतद् द्वारा, बालकों के विरुद्ध अपराधों अथवा बाल अधिकारों के अतिक्रमण के अपराधों का त्वरित विचारण का उपबंध करने के प्रयोजन के लिए राज्य के प्रत्येक सेशन खण्ड में, सेशन न्यायालय को, बाल न्यायालय के रूप विनिर्दिष्ट करता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार  
सही/-

यही न्यायालय लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 की धारा - 28 (1) के परंतुक के अधीन विशेष न्यायालय भी है।

# POCSO Special Court v. Juvenile Justice Board



Totally diverse views which is to be followed

# Overriding effect

Section 1(4) JJ Act , Neither IPC nor POCSO will prevail

Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including — (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

# JURISDICTION OF CHILDREN'S COURT.

Children's Court hear the matter of children between 16-18 years who have committed heinous offences.

It has no original jurisdiction.

It can exercise the jurisdiction only on transfer of the case by the Board.

It is empowered to hear the appeal against the orders of Board.

# JUVENILE JUSTICE BOARD AND CHILDREN'S COURT.

- The preliminary assessment is done by the Board to determine adulthood of a child.
- The assessment is with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which the allegedly committed the offence.
- Even after the preliminary assessment and referral order of Board, the Children's Court is again bound to determine the adulthood of the referred child.

## **Section 15. Preliminary assessment into heinous offences by Board.**

(1) In case of a heinous offence alleged to have been committed by a child, **who has completed or is above the age of sixteen years**, the Board shall conduct a preliminary assessment with regard to **his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence**, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the **assistance of experienced psychologists or psycho-social workers or other experts.**

*Explanation.*—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that **the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:**

Provided further that **the assessment under this section shall be completed within the period specified in section 14.**

# Determination of age of a juvenile

In every case involving a juvenile accused of committing a "heinous crime," the JJB must determine whether the child has reached the age of sixteen.

In terms of a preliminary assessment, Rule 11 (1), provides, "The Board after determine whether the child is sixteen years of age or older in the first instance conduct a Preliminary inquiry."

# Procedure to be followed by the Juvenile Justice Board

The procedure to be followed by the JJB once the prerequisites of a "heinous offence" and age are met is laid out in Section 15(1) of the JJ Act, 2015 read with Rule 11. Only after a JJB's "preliminary assessment" can a child be sent into the criminal court system for adult treatment. The purpose of the "preliminary assessment" is to determine the following:

- 1.The child's mental and physical capability to commit the alleged offence;**
- 2.The child's ability to understand the offence's consequences;**
- 3.The circumstances in which the child allegedly committed the offence.**





The legislature has established that “the Board may take the aid of professional psychologists or psycho-social workers or other experts” because the JJB is not qualified to judge the child’s mental competence to conduct the offence.

The limitation is likewise reiterated in Rule 11 (i) of the M.P.JJ Rules 2022, with the caveat that such professionals **“who have the experience of working with children in difficult circumstances”**.

# Procedural aspects of Preliminary assessment

## M.P. JJ Rules 2022

Board may take the assistance of competent psychologists or psycho-social experts or other experts who have the experience of working with children in difficult circumstances.

The Madhya Pradesh State Child Protection Society shall enlist a panel for each district, whose assistance can be taken by the Board.

**Any other not in panel can also assist**

**In cases where the Board is of the view that assistance of psychologists or psycho-social experts or other experts is not required, the Board shall proceed without taking any such assistance.**

The Board shall, in its order, clearly specify the aspect on which an opinion is asked.

Copy to CICL/ Fund by Government

**Presumption:** The child shall be presumed to be innocent and previous or subsequent instances of the child coming in conflict with the law, if any, shall not be taken into account.

**Reason and copy:** Board shall assign reasons in writing for the same, inform the child about the decision and the right to appeal against it and shall provide a true copy of the order to the child or the child's parents or guardians on the date of the decision itself.

**Record:** The Board, while transferring the case to the Children's Court having jurisdiction to try such offences, shall send the entire record available with it in original to the concerned Children's Court and a certified copy thereof shall be retained in the Board for its own record.

**Effect on bail:** Pendency of a preliminary assessment proceeding shall have no bearing on the bail application of a child and its disposal.

Section 18(3) of the JJ Act, 2015: “Where the Board after preliminary assessment under Section 15 passes an order that there is a need for the said child to be tried as an adult, then the Board may order the transfer of the case to the Children’ Court which have the jurisdiction to try these kinds of offences.”

# Landmark Judgement on Preliminary assessment Guidelines



BARUN CHANDRA THAKUR; CBI V/S MASTER BHOLU  
& ANR



Date of Decision: 13 July 2022 Citation: 2022  
LawSuit(SC) 833

# Guidance Notes

" Preliminary Assessment Report for Children in Conflict with Law  
Department of Child & Adolescent Psychiatry, NIMHANS, Bengaluru

- A. Mental & Physical Capacity to Commit Alleged Offence
- B. Circumstances of Alleged Offence
- C. Child's Knowledge of Consequences of Committing the Alleged Offence
- D. Other Observations & Issues
- E. Recommendations

DURGA W/O BHERULAL MEENA

V/S

STATE OF RAJASTHAN

Date of Decision: 15 April 2019 Citation: 2019 Law Suit(Raj)  
180

Psychological expert having experience of dealing with children is must.

Copy of the report should be provided to CCL.

Legal assistance should be provided to CCL.

Cross examination of expert giving report.

Presumption of innocence is in favor of CCL  
to be considered.

Evidence in rebuttal of report.

# **PROVISO TO SECTION 15(1)**

## **DIRECTORY OR MANDATORY**

It is to be noted that child psychology is a specialized branch of development psychology, its genesis is based on the premise that children and adults have a different thought process. The individualized assessment of adolescent mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment mandated by section 15 of the Act, 2015



# Contt....

Where the Board is not comprising of a practicing professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to section 15(1) would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psycho-social workers or other experts.

However, in case the Board comprises of at least one such member, who has been a practicing professional with a degree in child psychology or child psychiatry, the Board may take such assistance as may be considered proper by it.

**In case the Board chooses not to take such assistance, it would be required of the Board to state specific reasons therefor.**

**Ojef Khan**  
**Vs.**  
**State of M.P.**  
**CRR No.2071/2021 Dated 21/9/2021**

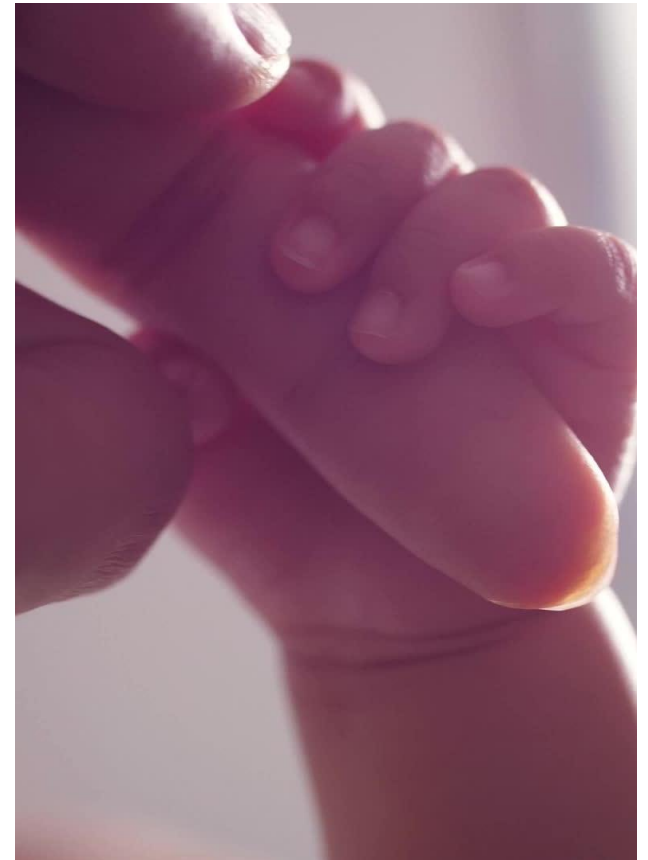
Preliminary assessment by Juvenile Justice Board as to whether a Juvenile ought to be tried by Children Court under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Assistance of experienced psychologists or psycho social workers or other experts whether mandatory. Held - 'Yes'. The word 'may' in proviso to Section 15(1) of the Act of 2015 would have to be read as 'shall'.

The word "other experts" in the proviso to Section 15(1) of the Act would include Probation Officer in view of Rule 10(a) of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

# Conditions when a CICL is transferred

According to Section 15(1) of the JJ Act, 2015, the procedure for determining whether a child in conflict with the law should be denied juvenile justice protection should begin only when the child is accused of committing a heinous offence and has finished or is beyond the age of sixteen who may indeed be tried as adults under Section 18(3) of the JJ Act, 2015.



## **Section 19. Powers of Children's Court.**

(1) After the receipt of preliminary assessment from the Board under section 15, the Childrens Court may decide that—

**(i) there is a need for trial of the child as an adult** as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

**(ii) 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.

(2) The Childrens 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.

(3) The Childrens Court shall ensure that the child who is found to be in conflict with law **is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:**

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behavior modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Childrens Court shall ensure that there is **a periodic follow up report** every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Childrens Court for record and follow up, as may be required.

After the receipt of preliminary assessment from the Board, the Children's Court may decide if there is a need for trial of the Child as an adult or there is no need for trial of the child as an adult.

If the Court decide to try the child as an adult, it may pass appropriate orders after the trial considering the special needs of the child.

A wide discretion has been given to the Children's Court in passing any order against a child tried as an adult.



# **How to proceed; children Court.**

# Appeal against order of PE

By session court not children court, and session court will stay the proceeding of children court till pendency of appeal. Rule 14(1)(i)

If find to try as child send back to JJB. Rule 14(1)(ii)

If find, try as adult send to children court and order of session court will have no effect on finding of Children court. Rule 14 (1)(iii)

A Court of Sessions or the Children's Court shall have powers to pass orders under section 12 of the Act, notwithstanding anything contained in any other law for the time being in force, and the issue of bail shall be decided as per section 12 of the Act, even if the child is tried as an adult.

Rule 14(1)(iv)

Power to make the preliminary assessment is vested in the Board and also the Children's Court under sections 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to under section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under section 18.

*(Barun Chandra.....Supra)*



# Procedure by children court

shall examine the order of the Board on preliminary assessment,

Will consider

reports of experts if any,

social background report submitted by the Child Welfare Police Officer,

social investigation report submitted by the Probation Officer or Child Welfare Officer,

any evidence produced on behalf of the child under section 99 of the Act,


arguments presented by or on behalf of the child by the child's lawyer,

and accordingly pass an order with reasons under clause (i) of sub-section (1) of section 19 .


If decided to treat as Juvenile pass order after **summon inquiry** under Section 18

# ***Cognitive Maturity and Emotional Development Assessment***

The Court stated that the obligation of the Board in making the preliminary assessment on the four counts mentioned in section 15 of the Act



Which is largely dependent upon the wisdom of the Board without there being any guidelines as to how the Board would conduct such preliminary assessment.



In the absence of any such framework or guidelines, ***the Board has to use its discretion in taking into consideration whatever material it deems fit for assessing*** the four attributes.

# What if no PE was done by Children Court

Children's Court has not passed any order in terms of Section 19 of the JJ Act read with Rule 13(1) and Rule 13(6) of the Rules, the Children's Court is directed to pass an order in terms thereof. In case the Children's Court opines that there is no need for trial of the child as an adult; it shall follow the procedure as prescribed under Rule 13(7) and in case it holds that there is need for trial of the child as an adult it shall follow the procedure as prescribed under Rule 13(8).

In either eventuality, the proceedings that have so far been conducted and the evidence that has already come on record would be saved.

The petition is, accordingly, disposed of with the above observations, directing the Children's Court to decide in terms hereof within a period of three months.

**Ccl Lk @ Lkp vs State**

**CRL.REV.P. 985/2018 & CrI.M.A.47265/2018**

**D.O.J 9 July, 2019**

# When no need to try as adult

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Follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

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Proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial

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When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872

Trial according to Crpc.  
Child friendly atmosphere

Camera trial

Protection of all rights of accused

Use power u/s 165 Evidence act

Defense witness

Order which may pass

Any punishment prescribed subject to JJ Act

Benefit of probation in all cases other than cases in which punishment of death or imprisonment of life is there.

# 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)

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

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 time prescribed for completion of Trial

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

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)

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

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

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

# Factors to be borne in mind for decision making

Unique activity

“ Each case has its own circumstances

“ Every child has unique specific characteristics

“ Age, sex, maturity level of child

“ Physical, sensory intellectual disability

“ Social, cultural context, environment

Children's Court shall ensure that the child who is found to be in conflict with law is sent to a Place of Safety till he attains the age of 21 years and thereafter, the person may be transferred to a jail. {Section 19 (3)}.

Include Integrated Child Care Plan



# Post disposition order

Child may be sent to a place of safety till the age of twenty-one years  
There shall be yearly review by the Probation Officer or the District  
Child Protection Unit or a social worker in Form 13 to evaluate the  
progress of the child and the reports shall be forwarded to the  
Children's Court.

Also direct the child to be produced before it periodically and at least  
once every three months

- a) **Interact** with the child in order to evaluate whether the child has undergone reformative changes and if the child can be a contributing member of the society.
- b) **Question the Parents** regarding his progress
- c) **Take into account the periodic reports** of the progress of the child, prepared by the **Probation Officer** or the **District Child Protection Unit** or a **social worker**, if needed and further direct that institutional mechanism if inadequate be strengthened.
- d) **Call report from relevant expert** if required.
- e) **Consider the efforts of institute** in reformation and mainstreaming the child

Rule 14(3)(ii)

**Indra Singh v. State of M.P., order dated 15.03.2017 passed in Criminal Revision No. 793/2016**

**&**

**Narpat Singh v. State of Madhya Pradesh, order dated 16.09.2019 passed in Criminal Revision No. 4376/2019,**

wherein it is held u/s 94 of JJ Act, 2015, the Court of Session has no power to determine the age of accused and this power is granted only to the Juvenile Justice Board (JJB) constituted under the JJ Act, 2015. It was interpreted that in all cases when claim of juvenility is raised, the matter should be sent to JJB for determination

**Rishipal Singh Solanki v. State of Uttar Pradesh and ors., 2021 SCC OnLine SC 1079**

It has been held that it is mandatory for the Court or Magistrate to record its opinion before forwarding any person claiming to be a juvenile to the JJB.

it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

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

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

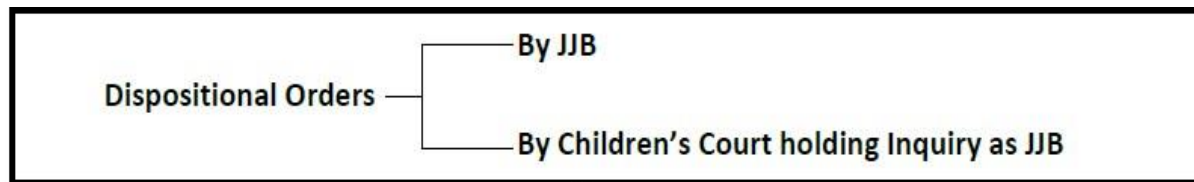
- In camera proceedings
- Child friendly atmosphere
- No joint trial
- No adversarial proceeding
- Remove child's fears
- Help CCL state facts and circumstances, influences, social surroundings etc. with ease
- Dispositional order to include ICP, prepared by PO and in consultation with the CCL

## **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.



- Based on – s 18(1):
- Nature of Offence
  - Specific Need for Supervision/Intervention
  - SIR
  - Past conduct of CCL

**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



APPEALS

## **Section 101. Appeals.**

(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, **within thirty days from the date of such order**, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the **District Magistrate:**

<sup>1</sup>[(3) **No appeal shall lie from any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years.]**

(4) **No second appeal** shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the **Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).**

<sup>2</sup>[(6) Any person aggrieved by **an adoption order passed by the District Magistrate** may, within a period of thirty days from the date of such order passed by the District Magistrate, file an appeal before **the Divisional Commissioner.**

(7) Every appeal filed under sub-section (6), shall be decided as expeditiously as possible and an endeavour shall be made to dispose it within **a period of four weeks from the date of filing of the appeal:**



## **Section 102. Revision.**

The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

# Appeal – Cases Pertaining to CCLs

Appealable Matters	Time Limit	Authority
Any Order of JJB – <b>s 101(1)</b>	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 – <b>s 101(2)</b>	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 – <b>s 101(5)</b>		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 – <b>s 102</b>	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 – <b>s 104(1)</b>	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 – <b>s 104(2)</b>	JJB itself	On its own motion or an application received in this behalf	

**THANK YOU**

