

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

**ORDER**

No. **1198**/Confdl./2021  
II-3-1/2021

Dated **16** December, 2021

The Madhya Pradesh State Judicial Academy, Jabalpur in coordination with NIMHANS-SAMVAD, is organizing an online deliberation on "The Dilemmas of implementing Section 15: Preliminary Assessment for Children in conflict with the Law" for the Principal Magistrates, Juvenile Justice Boards on **09.01.2022** and **15.01.2022** online or through other modes of communication. Judges, whose names and postings figure in the endorsement are directed to attend the aforesaid deliberation online.

BY ORDER OF HON'BLE THE CHIEF JUSTICE

  
(RAJENDRA KUMAR VANI)  
REGISTRAR GENERAL  
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Endt. No. **1199**/Confdl./2021  
II-3-1/2021

Dated **16** December, 2021

Copy forwarded to:-

1. The Accountant General, (I), M.P. Gazetted Audit Department, Gwalior, for information.
2. The Accountant General, (II), Gwalior, for information.
3. The Principal Secretary, Govt. M.P. Law & Legislative Affairs Department, 1<sup>st</sup> Floor, Vindhyachal Bhawan, Bhopal, Pin 462 006, for information.
4. The Deputy Controller, Govt. Central Press, Arera Hills, Habibganj, Bhopal-6 for publication in the next issue of the M.P. Gazette.
5.
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23. Smt. Rohini Tiwari, III Civil Judge, Senior Division, Sagar  
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51. Sushri Khalida Tanveer, I Civil Judge, Junior Division, Umaria  
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The participant Judges are directed to observe the following instructions:

- to apprise themselves with the concept of the aforementioned deliberation, and go through the instructions as mentioned in the enclosed letter and strictly follow the same.
- to apprise themselves with the schedule of the Session communicated by Director, MPSJA and strictly follow the same.
- to apprise themselves about the use of Zoom platform.
- to use their proper names while registering/logging in.
- to attend the course in working uniform.
- links for a particular e-learning should not be shared on any social media.
- to intimate the Registry after attending the online Training.



- to send comments/suggestions regarding experience of the online training to the Director, MPSJA, Jabalpur.
- in case of any need, participants may contact the following IT Officials of the MPSJA on their mobile numbers:

Shri Rahul Jaltodiya – 9685229141

Shri Rahul Agrawal – 9770227992

Shri Anoop Patel – 9713968641

- to make themselves available through email and other modes of communication for receiving reading material and other communication from the Academy.
- to strictly follow the timeline provided by Academy relating to the Session.

6. The Principal District Judge, **Alirajpur/ Anuppur/ Ashoknagar/ Balaghat/ Barwani/ Betul/ Bhind/ Bhopal/ Burhanpur/ Chhatarpur/ Chhindwara/ Damoh/ Datia/ Dewas/ Dhar/ Dindori/ Guna/ Gwalior/ Harda/ Hoshangabad/ Indore/ Jabalpur/ Jhabua/ Katni/ Khandwa/ Mandla/ Mandleshwar/ Mandsaur/ Morena/ Narsinghpur/ Neemuch/ Panna/ Raisen/ Rajgarh/ Ratlam/ Rewa/ Sagar/ Satna/ Sehore/ Seoni/ Shahdol/ Shajapur/ Sheopur/ Shivpuri/ Sidhi/ Singrauli/ Tikamgarh/ Ujjain/ Umaria/ Vidisha**

for information and necessary action with a request to:

- instruct the participant Judges to attend the aforesaid Session under the directions of Director, MPSJA.
- to make available verified list of participant Judges who attended the Session directly to the Academy.
- to direct System Officers/System Assistants to provide necessary technical support for seamless connection of participant Judges with MPSJA.
- to ensure that necessary arrangements are made at the District Headquarters as well as outlying station (if any) for convenient online participation of nominated Judges.

7. Director/ Faculty Members (Senior/Junior)/ Deputy Director/ OSD I & II, Madhya Pradesh State Judicial Academy, Jabalpur for information.

8. (I) OSD (Computer), High Court of Madhya Pradesh, Jabalpur, for sending copy of order by e-mail to the Hon'ble Judges, High Court of M.P., **Jabalpur** /Bench **Indore**/ Bench **Gwalior** for kind information of His Lordship.

- (II) OSD (Computer), High Court of Madhya Pradesh, Jabalpur, for sending copy of order by e-mail to following Judicial Officers:-

1. District Judge (Inspection), High Court Premises, Jabalpur/ District Judge (Inspection), J.E.-1, Judges Enclave, Residency Area, Indore-452001/ District Judge (Inspection), 28/B, Race-Course Road, Opposite Maila Ground, Gwalior (M.P.), for information.

2. Principal Registrar, High Court of M.P., Bench at Indore, Indore for information
3. Principal Registrar, High Court of M.P., Bench at Gwalior, New High Court Building, City Centre, Gwalior, for information.
4. Member Secretary, M.P. State Legal Services Authority, 574, South Civil Lines, Jabalpur, for information.
5. Principal Registrar (Judicial)/ (Vigilance)/ (I.L.R. & Examination), High Court of M.P., Jabalpur, for information.
6. Member Secretary, State Court Management System, High Court of M.P., Jabalpur, for information.
7. Registrar (I.L.)/ (District Establishment)/ (Judicial-I & Secretary, Juvenile Justice Committee)/ (Judicial-II)/ (Administration)/ (Exam & Labour Judiciary)/ District Judge (Inspection)/ Sr. Principal System Analyst (SA) / Registrar/Secretary, High Court Legal Service Committee, High Court of Madhya Pradesh, Jabalpur, for information.
9. Registrar (E.)/ Deputy Controller Accounts/ Controller Accounts/ Joint Registrar (M)/ Deputy Registrar (Judicial), High Court of Madhya Pradesh, Jabalpur, for information.
10. OSD-cum-P.P.S. to Hon'ble the Chief Justice, High Court of Madhya Pradesh, Jabalpur, for placing the same before Hon'ble the Chief Justice for kind information.
11. Administrative Officer Pension/ Budget/ Assistant (Work)/ Complaint/ Pay Fixation (Gazetted)/ Advance/ Leave (Gazetted)/ Civil Checker/ Criminal Checker Section, High Court of M.P., Jabalpur for information.
12. PS to Registrar General, High Court of Madhya Pradesh, Jabalpur, for information.

**Encl. Concept note of the Deliberation**

  
 (RAJENDRA KUMAR VANI)  
 REGISTRAR GENERAL  
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# **The Dilemmas of Implementing Section 15: Preliminary Assessment for Children in Conflict with the Law**

## **A Brief Deliberation with Juvenile Justice Board Magistrates & Children Court's Judges**

**SAMVAD** (Support, Advocacy & Mental health interventions for children in Vulnerable circumstances And Distress)

**(A National Initiative & Integrated Resource for Child Protection, Mental Health, & Psychosocial Care)**

**Dept. of Child and Adolescent Psychiatry**

**National Institute of Mental Health & Neurosciences (NIMHANS) Bangalore**

**Supported by Ministry of Women & Child Development, Government of India**

### **1. Introduction**

1.1. While NIMHANS has a long history of community psychiatry, the last 6 years have focussed actively on the practice of community child psychiatry. The Dept. of Child and Adolescent Psychiatry (currently the only independent, specialized department of child and adolescent psychiatry in the country) implemented a large community-based child and adolescent mental health service project, supported by the Government of Karnataka. This project provided preventive, promotive and curative mental health services to vulnerable children and adolescents from primarily vulnerable urban communities and institutions; it also engaged extensively in capacity building initiatives on protection and mental health issues for various child care service providers such as ICPS staff, school teachers, anganwadi workers, Child Welfare Committee (CWC) and Juvenile Justice Board (JJB) Members, Judicial Officers (including Special Court Judges and Principal Magistrates of Juvenile Justice Boards). A large repertoire of materials on child protection and mental health also resulted from this project (freely accessible at [www.nimhanschildproject.in](http://www.nimhanschildproject.in)).

The NIMHANS project's activities have also involved capacity building initiatives for Judicial Personnel, upon request from State Judicial Academies as well as the National Judicial Academy. The training content of such capacity building initiatives is on the psychosocial care/mental health aspects of child and law, namely issues relating to the Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015.

Based on our work with these State Judicial Academies, and our other medico-legal work with sexually abused children and children in conflict with the law, the Project developed two training manuals and a monograph for judicial personnel:

- 'The Child as a Witness: Developmental & Mental Health Implications for Eliciting Evidence under Protection of Children from Sexual Offences Act (POCSO), 2012'



- ‘Psychosocial & Mental Health Considerations in Juvenile Justice: A Framework for Judicial Response to Children in Conflict with the Law’
- ‘Critical Issues in Psychosocial Care & Mental Health of Children in Conflict with the law -A Practitioner’s Perspective.’

In February 2020, the abovementioned documents were formally endorsed and released by the Juvenile Justice Committee of the Hon’ble Supreme Court of India, along with the Karnataka State Judicial Academy.

The above-described work, including work in the context of medico-legal issues and capacity enhancement of judicial officers, is now being continued through **SAMVAD** (Support, Advocacy and Mental health interventions for children in Vulnerable circumstances And Distress), a National Initiative & Integrated Resource for Child Protection, Mental Health and Psychosocial Care. **This initiative, supported by the Ministry of Women & Child Development, is located in the Dept. of Child & Adolescent Psychiatry, NIMHANS, was initiated in July 2020.** With the aim of enhancing child and adolescent psychosocial well-being, through promotion of integrated approaches to mental health and protection, SAMVAD will extend its support and activities to all the states in the country. It comprises of a multi-disciplinary team of child care professionals, with expertise in training and capacity building, program, policy and research pertaining to child mental health, protection and law.

**In addition to the training programs (currently conducted online due to the COVID pandemic), SAMVAD proposes to establish an on-going dialogue with judicial officers from across the country, through a series of deliberations on child and law, organized with the support of the State Judicial Academies.** Thus far, training programs conducted by the SAMVAD team have strived to bring knowledge and skills on child development, mental health, and child rights to judicial personnel, so as to enable them to bring to their work these essential perspectives. However, we also increasingly recognize the need for the child mental health and child rights fraternity to better understand the powers and limitations of the law. This understanding will help us better contextualize our medico-legal work, including our judicial engagement and capacity building initiatives, in ways that will: a) serve the best interests of the child, in terms of justice, healing and rehabilitation; b) enable the judicial system to engage with children in developmentally sensitive ways, so that the objective of dispensation of justice is effectively served. Such transdisciplinary approaches, which promote meaningful engagements between professionals from different domains/expertise, are likely to help dissolve the boundaries between conventional disciplines of law and psychiatry, making for teaching and learning that is truly centred around field realities, or the needs of children and justice systems, in our case.

In the light of the above, and given the high levels of knowledge and experience of Juvenile Justice Board Magistrates and Children’s Court/Special Court/District and Sessions Judges, and other judicial personnel working on child and law issues, we feel that it is critical to engage with them to be able to better understand legal perspectives and opinions on key issues pertaining to juvenile justice and child sexual abuse law and its practice. In an attempt to initiate transdisciplinary work in the area of child and law, **this document details out the first of the**



deliberations, titled “The Dilemmas of Implementing Section 15: Preliminary Assessment for Children in Conflict with the Law”.

## **2. Rationale for Deliberations on Section 15**

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) has brought to the fore the needs and concerns of children in conflict with the law (CICL), because of the seriousness of the consequences for CICL in cases concerning certain offences, namely the mechanism for transfer to the adult criminal justice system. The country's response and outrage following the Nirbhaya case has propelled the issue into public discourse, and consequently made it imperative for child care services and systems, including those addressing juvenile justice, care and protection, legal issues, and mental health issues for children and adolescents, to re-examine their systems and services, the ways in which they assist these children and provide for assessment and intervention processes. The last two processes, of assessment and intervention, have become particularly important in light of the decisions to be made for transferring a juvenile to the adult criminal justice system. Additionally, these issues have deepened the debates around the culpability of children, including issues of seriousness of circumstances versus crime and proportionality, resulting in fresh complexities in the dispensation of justice to CICL. Those working in the Juvenile Justice system are thus confronted with the challenges of straddling the varied approaches to juvenile justice i.e. considering public opinion/ pressure (and indeed, as part of the public they also have personal and ideological positions on this issue) on the one hand, and their role as JJ service providers, on the other, wherein they are expected to act in accordance with child rights and principles of restorative justice, in keeping with the spirit of the Juvenile Justice Act.

As per Section 15 of the JJ Act, the JJB is required to ‘evaluate the role of the child in the alleged offence, as well as his mental condition and background’, in terms of three main questions, namely: i) Does the child have the mental and physical capacity to commit such offence? ii) Did the child have the ability to understand the consequences of the offence? iii) The circumstances in which he/she allegedly committed the offence.

Child rights activists and many child mental health professionals have put forth neurobiological, psychological and sociological reasons to argue that children should not be transferred to the adult criminal justice system. These also have a bearing on how preliminary assessments are conducted in accordance with Section 15. Neurobiological reasons pertain to how brain development takes place in adolescence—that the brain's ‘rational part’, responsible for many brain functions that pertain to impulse control, control and organization of emotional reactions, focus and organization of attention, complex planning and adjustment of complex behaviour, is not fully developed; and that in fact, development of this part, responsible for impulsivity control and social judgement, is complete only when an individual reaches his/her mid-twenties.

From a psychosocial contextual perspective, most children requiring the assistance of the Juvenile Justice system are from difficult circumstances such as from poor socio-economic backgrounds, dysfunctional families, and contexts of child labour; for various reasons, such as

neglect and abuse, adverse peer influences and life skills deficits, these children and adolescents come into conflict with the law. Additionally, these children also suffer from child and adolescent mental health disorders such as Anxiety, Depression, Attention Deficit Hyperactive Disorder (ADHD), Conduct Disorders and Substance Abuse, all of which increase their vulnerability to coming into conflict with the law. Thus, psychology and neuroscience research and knowledge, make it challenging to conduct a preliminary assessment with regard to a child's mental and physical capacity to commit such offence, ability to understand the consequences of the offence.

From a legal perspective, the challenge in implementation of Section 15 is related to the lack of specificity and detail i.e., the provision does not explain how to determine whether children have the mental and physical capacity to commit an offence, or whether they have an understanding of consequences of the offence or how to assess the circumstances of the offence. Furthermore, while Section 15 lays out the aforementioned three questions regarding capacity, circumstances and consequences, it does not unequivocally define the terms, such as 'physical and mental capacity', 'ability to understand the consequences...' or 'circumstances'. There could be multiple ways of defining these terms—which has also been one of the challenges in implementing Section 15. Combined with the lack of specificity and direction in the law, is the paucity of knowledge of mental health and psychosocial issues, and of skills and methods to engage and work with children in general, even in mental health professionals.

Furthermore, from a legal perspective, it is interesting to note that subsection (i) of Section 3 of the JJ Act points out that for the administration of the provisions of the Act, every child must be considered, by default, to be innocent and devoid of any mala-fide or criminal intention. It is worth noting that on one hand the Act says this, and on the very other, it says that upon the completion of a preliminary assessment, if the Juvenile Justice Board feels that a child should be tried as an adult, then it may refer the case to the Children's Court having jurisdiction. Implementation of Section 15 is based on the presumption that the child before the Board has committed the offence, thus is not innocent, even before the inquiry/trial is conducted in the matter. Thus, this is one of the instances of how Section 15 contradicts the avowed purposes of the Act. There are also the issues of fundamental rights protected by the Constitution of India, such as the right to equality (Article 14) and right to immunity against self-incrimination (Article 20(3)). Moreover, principles of natural justice are contradicted by Section 15. The fundamental principle of natural justice is *audi alteram partem*, i.e., no man should be condemned unheard, or both the sides must be heard before passing any order. In the context of preliminary assessment orders, this signifies that effective opportunity of hearing or legal representation be a basic right of the child in the conflict with the law.

The juvenile court thus lies at the intersection of two domains- youth policy and crime policy. How should the legal system respond when a child comes into conflict with the law or when a person in conflict with the law is a child? How do we understand the contexts and vulnerabilities of CICL? How do we then implement Section 15 and the preliminary assessments in ways that uphold the essence of the JJ Act—the essential objectives of the Act



are care, protection and rehabilitation, which also apply to all children who fall within the JJ system, including CICL.

### 3. Objectives of Deliberation

Based on the above-described debates and dilemmas, the following are the objectives of the proposed deliberation:

- To understand the perspective of Judicial Officers on Section 15 i.e., the legal, moral and philosophical underpinnings they base their views on.
- To understand how Judicial Officers currently conduct preliminary assessments, including methods they use, and how they make decisions based on assessments conducted.
- To learn about the challenges that Judicial Officers experience in conducting or obtaining preliminary assessments.
- To present a child development and mental health perspective on Section 15 to judicial officers, for their consideration and response.

### 4. Motions for Deliberation

There will be 3 Motions for deliberations, as follows, these are to read with the general principles of Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 3.

- **First Motion:** The Juvenile Justice (Care and Protection of Children) Act, 2015 through implementation of Section 15 obliterates the following principles of Act with regard to the child in conflict with the law: -
  - i. Principle of Presumption of Innocence
  - ii. Principle of Participation
  - iii. Principle of Best interest of the child
  - iv. Principle of Safety
  - v. Principle of Positive Measures
  - vi. Principle of Natural Justice
- **Second Motion:** It is obligatory for the JJ Board to seek a preliminary assessment report of the child from an expert on whether the child is mentally and physically still a child or has the mental and physical maturity of an adult. A fair and meaningful assessment cannot be conducted independently by the JJB or Children's Court.
- **Third Motion:** The Juvenile Justice (Care and Protection) Act, 2015 and Indian Penal Code accord the same meaning to mens rea at the stage of making a preliminary assessment.

### 5. Methodology

A deliberation is a collaborative process of discussing contested issues by considering various perspectives in order to form opinions and guide judgment. Effective deliberation incorporates sustained and appropriate modes of argumentation. Deliberative practices can take many forms—from discussions, to role-playing exercises, to formal debates. All of these activities

lead to exploring differing perspectives and informing various decisions. It is proposed that for this deliberation, a form of structured debate is undertaken wherein 3 motions are debated with arguments advanced in favour of and against each motion. Deliberations on each motion will include time allotted for the respective panellist's considered views on the discussion and significance of the issues raised through the deliberative process. A total of 30-36 judicial personnel may participate in the deliberations and work in teams to prepare arguments in favour of and against the said motions. On the final day, one Speaker, nominated by participants in each group (for/against) the 3 motions i.e. 6 Speakers, will be invited to deliver each group's arguments for the motion.

Permissions from the Hon'ble High Court, for the participation of judicial personnel, will be requested through the State Judicial Academy. The deliberations will be conducted online via the video-conferencing platform "Zoom", with the support of the State Judicial Academy. It is proposed that the sessions are moderated by the following persons:

- Hon'ble Justice Madan B. Lokur / Hon'ble Justice Deepak Gupta, (Former) Judge & Chairperson of the Juvenile Justice Committee, Hon'ble Supreme Court of India
- Hon'ble Judge and Chairperson/Member of the Juvenile Justice Committee of the Hon'ble High Court
- Dr. Shekhar Seshadri, Former Senior Professor & Head, Dept. of Child and Adolescent Psychiatry; Former Dean, Behavioural Sciences; Former Director, NIMHANS & Advisor, SAMVAD

#### **6. Procedure:**

- After receiving confirmation on hosting of the event from the State Judicial Academy, a Google Form link will be sent to the Academy, to share with the participant judicial officers. The officers will be requested, via this form, to indicate the motion they wish to discuss, and also whether they would want to take a position 'for' or 'against' it. The SAMVAD team will receive these responses and consolidate them into a list accordingly. Additionally, the SAMVAD team will send a consolidated folder of resource materials (including articles and relevant case-law) that may assist the participants in their preparations for the deliberation.
- The SAMVAD team will collaborate with the State Judicial Academy to set up a date for a preparatory meeting prior to the deliberation. About 5 to 6 days before the final deliberation, the SAMVAD team would need to have a 2-hour meeting with all the participant Judicial Officers. During this meeting, the participants would be briefed on the objectives of the deliberation, presented with the 3 motions, placed in small groups (through virtual 'Breakout Rooms' on Zoom) so that they can discuss and prepare for the event. Since there are 3 motions, there would be 6 break out rooms-- to include a 'for' and 'against' group for each motion. Each virtual Breakout Room will be assisted in their preparations by the SAMVAD team, who shall brief the participant judicial officers on prospective talking points for the final deliberation.



- Prior to the Final deliberation, the SAMVAD team will send the link to the Zoom meeting, for the event, to the State Judicial Academy for dissemination to the participant Judicial Officers. On the day of the Deliberation, SAMVAD will commence with the Introduction to the event and invite the Director, State Judicial Academy to begin proceedings with the opening remarks. A sample schedule for the final day deliberations is provided below for reference.

## 7. Sample Schedule for Section 15 Deliberations

Note 1: Total duration of program is 3 hours. (Timings to be determined in consonance with the State Judicial Academy)

Note 2: Each round for the 3 motions will be divided according to the following break-up:

- 15 mins for Proposition Team
- 15 mins for Opposition Team
- 15 mins for Panellists' remarks

Sessions	Time/Duration	Topic	Moderator/Panellist
-	15 minutes	<b>Welcome Speech &amp; Introduction of Panellists</b>	Director, State Judicial Academy
<b>I</b>	45 minutes	<b>First Motion</b>	(Former) Judge & Chairperson of Juvenile Justice Committee, Supreme Court of India
<b>II</b>	45 minutes	<b>Second Motion</b>	Dr. Shekar Seshadri, Senior Professor, Dept. of Child & Adolescent Psychiatry; Associate Dean, Behavioural Sciences, NIMHANS, Bangalore
<b>III</b>	45 minutes	<b>Third Motion</b>	Hon'ble Judge & Member of Juvenile Justice Committee, State High Court
	20 minutes	<ul style="list-style-type: none"> <li>• <b>Open floor</b></li> <li>• <b>Closing remarks</b></li> </ul>	(Former) Judge & Chairperson of Juvenile Justice Committee, Supreme Court of India
	10 minutes	<b>Vote of thanks</b>	Director, State Judicial Academy -

## Annexure

### RULES OF THE DELIBERATION

#### **1. Framework**

The motion for each round of the deliberation will be in respect of the overarching framework for the deliberations i.e. The Dilemmas of Implementing Section 15: Preliminary Assessment for Children in Conflict with the Law.

#### **2. Objective of the Deliberation**

The proposition team must affirm the motion by presenting and defending a sufficient case for that motion. The opposition team must oppose the motion and/or the proposition team's case. Subsequently, the Panellist will engage with the range of arguments advanced through the course of the discussion and share his/her thoughts on the same. This format has been developed with the imperative of facilitating systemic and transdisciplinary approaches to the motions for discussion at hand.

#### **3. During the debate**

A. The participants may refer to case laws, articles etc. while making their arguments and cite relevant studies, case laws to support and contextualise the arguments advanced.

B. Participants may refer to any information that is within the realm of knowledge of reasonably informed citizens. If they believe some cited information to be too specific, participants may explain specific information for the benefit of fellow participants. In the event further explanation of specific information is requested, the participant should provide details sufficient to facilitate an understanding of the connection between the information and the claim.

#### C. Format of the debate

i) Proposition Team Speaker: 15 minutes

ii) Opposition Team Speaker: 15 minutes

iii) Panellists Remarks: 15 minutes

The Panellist will provide his remarks on the salient issues/questions raised during the course of proposition and opposition arguments. These remarks will include the Panellist's observations on the contentions raised and his considered views thereon. This segment for Panellist's remarks is to provide the participant judicial officers with questions/issues to reflect upon after the conclusion of the deliberation and to facilitate a nuanced understanding of the myriad issues involved in the various motions for discussion.



#### D. Points of Information

A participant may request a point of information—either verbally or by rising—at any time after the first minute and before the last minute of any participants’ speech. The participant holding the floor has the discretion to accept or refuse points of information. If accepted, the participant requesting the point of information has a maximum of fifteen seconds to make a statement or ask a question. The speaking time of the participant with the floor continues during the point of information.

#### **4. After the debate**

An Open Floor will be provided for the participant judicial officers to express their views on the motions and the deliberation and to engage with the Panellist’s remarks in a constructive manner. Hon’ble Justice (Retd.) and Former Chairperson, Juvenile Justice Committee, Supreme Court of India will provide his final remarks on the deliberation.