

# **REHABILITATION OF CHILDREN IN CONFLICT WITH THE LAW**

## **POSSIBILITIES AND OPPORTUNITIES**

### **A. INTRODUCTION**

It has been recognized that children and young adults are a major human resource for development and key agents for collective social change. But it is only possible when they are involved to participate in the meaningful dialogues on issues that concern them the most.

There is a need to strengthen family, school, and community- their structures and the value systems as these provide an inclusive attitude and become role models for children. There is also a need to initiate collective action to address their problem and empower them, motivate them thereby provide them a road map for self development so that none fall off the social security net.

India has a strong legal framework cannot be denied and the JJ rules 2016 notified by the Ministry provide a robust mechanism for implementing the provisions of the Act, including - "idea of Individual care plan and follow up is more emphatic in these Rules as well as at almost every place. As Shri Anath Asthana says<sup>[1]</sup> "If required infrastructure, as expected in the Act and Rules is available, functionaries will be able to devise appropriate measures based on Act and Rules. And this I am speaking from my own experiences. Once oriented and interested Judicial Officers and professional social workers are in place in JJBs, our probation services is robust and well equipped with

human as well as other required resources , we will be able to progress a great deal in our mission of securing rehabilitation of children in conflict with law”.

However, while addressing the issue or problems faced by children in our country, a category of children that are almost always overlooked are the ‘Children in Conflict with the Law’. Many believe that ‘these children get what they deserve’ and want to do little about the treatment meted out to them. It must be realized that a child, given his/her relative immaturity, does not quite often understand the consequences of his/her actions and is extremely susceptible to his/her surroundings. Even to such children we cannot allow deficit of hope and loss of dignity to destroy their childhood.

The minimum age of criminal responsibility is the age at which children may be prosecuted in the criminal justice system. The average minimum age of criminal responsibility worldwide is 12 years. However it is 10 years in England and Wales, 18 years in Brazil, 7 years in India, 16 years in Kazakhstan. Moreover, it shifts abruptly down to 14 years for crimes classified as serious, such as terrorism, murder, rape and kidnapping. In other countries, the minimum age of criminal responsibility depends upon the relative maturity of the child within certain defined ages – principle of *doli incapax*.[\[2\]](#)

“Children in conflict with the law (CCL) are called by many names: criminal, thief, murderer, rapist. When people look at them, if they look at all, all they see are the faces of young criminals - fierce, vicious, and rough. When people speak of them, their voices are often full of contempt, scorn and even condemnation. These children are given names that speak only of their crimes and not of their intrinsic humanity. Society often wishes to be rid of such useless, hopeless creatures thinking that these children will always lead a life of crime throughout their lives.

What many do not know, or do not care to know, is that these wicked faces are, sadly, often only masks— masks that children have put on themselves to hide their pain, anger, and fear, or masks that we, in our indifference and even revulsion, have actually put on them. Because we mistake their masks for their faces, we forget who these children are. We forget that they are children, who have much to learn, much to

do, and much to hope for. In believing the masks to be real, we undermine children's capacity for growth and change."

Every child who comes in contact with the juvenile justice system is a child in difficult circumstances who has fallen out of the protective net at some point and has been robbed of an opportunity of a safe and secure childhood. Children in conflict with law should be treated as children in difficult circumstances and the approach of the juvenile justice system should be aimed at addressing the vulnerabilities of children and ensuring their rehabilitation.

The Importance of family and inter personal relationships has to be taught by the parents to children. At a certain level in our career we feel that there are certain things that are not letting us grow such as family ties, culture, friends etc. and one wants to be free from them. However these are things that help us stay stable at higher heights. If we try to break these ties our condition is like a kite going higher but falls down the moment the strings are severed.

*Relationships help us stay stable while we are flying high!*

In fact, reform and rehabilitation and not punishment are the guiding principle of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act provides that children in conflict with law and children in need of care and protection are to be catered for 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.

The slowly changing perspectives have led to the emergence of an alternative justice system for children. However, while drawing an alternative system for juveniles, both the interests of the child and the interests of the society must be borne in mind. While children are protected from the baneful effects of prisons, the victims of their offences have found no solace from juvenile justice system. The victims feel that children are let off easily even when they commit a serious offence or repeat offences. So while on one hand an alternative system for juveniles must champion minimum intervention by law and minimum institutionalization, on the other it must make sure that

the rehabilitation process is strong enough to prevent them from coming into conflict with law again.

The idea behind rehabilitation is that people are not born criminals, thus should be given a chance to be restored back into the society. It also prevents them from becoming recidivists. Rather than punishing them as a criminal, rehabilitation seeks, by means of education or therapy, to make the juvenile in conflict with law a healthy citizen of the society.

### **Rights of the Child in conflict with law**

The process of Rehabilitation shall also secure the Rights of the child in conflict with law:

Every child in conflict with the law shall have the following rights, including but not limited to:

- a) Humane treatment
- b) No corporal punishment
- c) Separation from adult criminals, if detained
- d) Access to legal assistance
- e) Bail and release on recognizance
- f) Privacy
- g) Diversion, if qualified
- h) Proportionate judgment
- i) Restrictions on liberty kept to a desirable minimum
- j) Automatic suspension of sentence

- k) Probation, if qualified
- l) Confidentiality of proceedings
- m) Right against discrimination
- n) Constitutional rights

## **B. CONCEPT OF REHABILITATION**

Studies indicate that the most effective way to find constructive solutions to involvement of children in activities that violate a law is to involve children in the process of rehabilitation and not to consider them as merely 'trouble makers' or 'problem children' in need of punishment. Recognition of and respect for their rights as human being and as a child is an important first step in this direction.

Thus Juvenile justice has made a departure from the criminal justice model of punishment recognizing the negative influence of association with adult offenders and the higher possibility of reformation of children being in the growing age where their capacities are still being built and developed. Juvenile Justice adopted the path of reformation of children found to have committed an offence through various community based reformatory and rehabilitative measures and using institutionalization as a measure of last resort and for the minimum period till suitable community based alternatives are found for them.

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

The JJ Act 2015 caters to the basic needs of children through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach and disposal of matters in the best interest of children and for their rehabilitation through process provided and institutions and bodies established under the Act.

The JJ Act has also categorized offences committed by children into three categories as listed below:

1. Heinous offences is defined under Section 2 (33) as “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more;
2. Petty offences is defined under Section 2 (45) as “petty offences” includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;
3. Serious offences is defined under Section 2 (54) as “serious offences” includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years;

With the passage of the JJ Act, 2015, the possibility of children between the ages of 16 and 18 years being tried as adults for heinous offences has arisen. This means that a separate set of reform and rehabilitation measures will have to be taken for such children. Further, it is important to identify the parameters on which the level of reformation of a child offender who has, committed heinous offence, will be assessed, so as to minimize the element of bias or prejudice, after the child has attained the age of 21 years.

The Act also focuses on restorative justice practices that are different from criminal justice practices. Section 18. (1) of the JJ Act, 2015 states

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

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counseling to such child and to his parents or the guardian;

(b) direct the child to participate in group counseling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

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

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences

There are two orders listed at 1 and 2 in Section 18 mentioned above that are suitable for using restorative practices and long term rehabilitation

The process of rehabilitation includes a network of different professionals. These professionals have to undertake this difficult task within a limited time frame. All our strategic interventions are aimed to improving the rehabilitation process for the children in conflict with law.

For successful rehabilitation and re-integration of children in conflict with law it becomes necessary to develop a multi- dimensional approach. Prevention of juvenile crimes, proper timely interventions can help strengthen the rehabilitation process. Focus should be given on addressing all the needs of a child's life: emotional, physical, relational, intellectual, creative and spiritual. We must shift our attitudes from need based approach to rights based approach while rehabilitating children in conflict with law.

### **C. REHABILITATION MEASURES:**

Rehabilitation is a crucial step to put the survivors/victim and children in conflict with law back in the society as well as to prevent recidivism. This cannot be completed without maintaining follow up to assess their socio economic and educational status.

Rehabilitation measures also have to be different for children in conflict with law who are in institutional care and the ones who are been released from the institution. While child care institutions need to take steps to ensure rehabilitation of the child when



he/she is in its care, probation officers/social workers also have to make sure that the process of rehabilitation is not interrupted when the child re-enters in the community.

There are multiple factors which need to be considered when one imagines the situation of a child in conflict with law. These include socio-psychological, family and peer-related influences. CCLs require rehabilitation and re-integration in to the society in the form of sponsorship, foster care and aftercare.

The UN Convention on the Rights of the Child (the CRC) which India has ratified in 1992, recognizes the importance of diverting young offenders from the formal processes of the criminal justice system. By becoming a party to the CRC, India has voluntarily undertaken to introduce appropriate diversionary measures for juvenile offenders and to ensure that such measures comply with a number of minimum standards.

At this point it will be helpful to understand the importance of restorative justice in the rehabilitation process. The following table brings out the difference between criminal justice and restorative justice.

	<u>Criminal Justice</u>	<u>Restorative Justice</u>
<b>The crime is against whom ?</b>	State	<ul style="list-style-type: none"> <li>• Victim/Community</li> </ul>
<b>How the Offender is held accountable?</b>	Punishment	<ul style="list-style-type: none"> <li>• Accept responsibility</li> <li>• Repairs harm</li> </ul>
<b>What role does Victim play?</b>	Witness	<ul style="list-style-type: none"> <li>• Has say in restitution</li> </ul>
<b>Focus of System?</b>	Place Blame	<ul style="list-style-type: none"> <li>• Questions answered</li> <li>• Problem-Solving</li> <li>• Harm repaired</li> </ul>

Rehabilitation for children in conflict with law rests on the principle of restorative justice which seeks to restore the balance of a situation disturbed by crime or conflict rather than just simply meting out punishment for an offence committed. It means taking responsibility to make things right insofar as possible, both concretely and symbolically.

As our fore parents knew well, wrong creates obligations; taking responsibility for those obligations is the beginning of genuine accountability. For many of us, it reflects values with which we were raised. In restorative justice, offenders are encouraged to understand the harm they have caused and to take responsibility for it. Dialogue-direct or indirect - is encouraged and communities play important roles. Restorative justice assumes that justice can and should promote healing, both individual and societal.

#### **D. STRATEGIES FOR PREVENTION**

*When the ancient Chinese decided to live in peace, they build the Great wall of China. During the first 100 years of its existence, Chinese were invaded thrice. They invaders never had to climb the wall, they bribed the guards and came through the doors.! The Chinese built the wall but forgot character building of the guards! Thus building of human character comes BEFORE building of anything else. If you want to destroy the civilization of a nation there are 3 ways: Destroy the family structure, Destroy education, Lower their role models and references.*

**PREVENTION:** The prevention of juveniles from committing offences is an essential part of crime prevention in society. Prevention constitutes community-based programmes, there by attempting to address the problem where it starts - in the family and the community. The preventive programmes can be classified as **(a) pure prevention or primary prevention**, aims at inhibiting delinquency before it takes place, and **(b) rehabilitative prevention or secondary prevention**, deals with youngsters who have been adjudicated delinquents by the courts.

#### **ACTIVITIES UNDER PREVENTION**

Capacity building for stakeholders including family, school and neighbourhood.

1. Conduct frequent awareness programmes at community level for children and adults.
2. Childline services shall identify local leaders in the community and develop a community vigilance team, Counselling units etc

3. Strengthen Youth clubs and youth volunteers from Nehru Yuva Kendra as peer supporters
4. Conduct regular meetings of Child Protection Committees constituted at the village, Block and District level
5. Conduct Research to find the root cause of juvenile crimes so that appropriate interventions can be put in place.

#### 1. **E. STRATEGIES FOR DIVERSION:**

Diversion is the term applied to various measures to 'divert' offenders from the formal criminal justice system. Diversionary options aim to avoid the stigma associated with prosecution and the danger of trapping young people in a pattern of offending behaviour. They seek to temper the punitive nature of criminal justice processes in recognition of the particular vulnerabilities of juvenile offenders. They also recognise that most juvenile offending is episodic and transitory - most young people mature out of deviant and criminal behaviour. To be wise and old it requires to be young and stupid at times but not so stupid to be self destructive. So help must be provided to such youngsters in their best interest.

#### **ACTIVITIES UNDER DIVERSION**

##### **a) Use Diversion as a viable alternative to detention:**

Diversion requires the provision of viable community-based alternatives to detention.

Options that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are specifically commended. However, the specific form of diversion should be adapted to meet local needs.

Public participation in the development of all non-custodial options should be encouraged as prescribed under the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990 which states that

“Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration”.

**b) Making diversionary options available:**

Diversion may be used at any point of decision-making by the police, the prosecution or other agencies such as the courts or tribunals as prescribed under United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by General Assembly resolution 40/33 of 29 November 1985 which states that

“ In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions”.

It is clear that the earlier in the process diversion occurs, the more effective it can be in avoiding stigmatisation of the young offender. However, diversion should also be possible in the later stages of proceedings when the young person is before the court.

The fact that a juvenile has previously participated in a pre-court diversionary option should not preclude future diversion or referral to diversion in subsequent legal proceedings. If a juvenile offender breaches the conditions of a diversionary option, this should not automatically lead to the imposition of a custodial measure (Tokyo Rule 14.3).

**c) Offences where diversion is appropriate:**

Diversionsary measures should not be restricted to petty offences. Diversion should be an option 'whenever appropriate'. There may be mitigating circumstances which make diversion appropriate even when a more serious offence has been committed.

Commentary on Beijing Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

**d) Legal safeguards for diversion:**

Agencies with the discretionary power to divert young people from formal proceedings must exercise that power on the basis of established criteria. Access to diversionsary programs must not be arbitrary.

Tokyo Rule 3.1 requires that the 'introduction, definition and application of non-custodial measures shall be prescribed by law'.

Tokyo Rule 3.2 states "The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims".

Tokyo Rule 3.3 states “Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law”.

Tokyo Rule 3.4 states “Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial , shall require the offender's consent”.

Tokyo Rule 3.5 states “Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender”.

Tokyo Rule 3.6 states “The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of noncustodial measures”.

Tokyo Rule 3.7 states “Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights”.

Tokyo Rule 3.8 states “ Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender”.

Tokyo Rule 3.9 states “The dignity of the offender subject to non-custodial measures shall be protected at all times”.

Tokyo Rule 3.10 states “In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision”.

Tokyo Rule 3.11 states “In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family”.

Tokyo Rule 3.12 states “The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons”.

## **F. STRATEGIES FOR INTERVENTION:**

Intervention is a series of activities designed to address issues that caused the child to commit an offense. This is geared to develop community-based programs and services to provide intervention of the children in conflict with the law and for reintegration into their family and community. It refers to programmatic approaches or systematic social protection programs for children that are designed to promote the physical and social well-being of children, avert or prevent juvenile delinquency from occurring and stop or prevent children from re-offending.

Intervention has been classified into [\[3\]](#)

a) **Primary intervention** is intervention which include measures to promote social justice for the root cause of the commission of crimes, such as

- Early childhood care and development
- Creation of Youth Resource Centers/ Youth Clubs in every municipality
- Institutionalization of activities on/for children and youth e.g. congress, camps, summits
- Health services/education
- Access of children to Child and Youth Organizations like NYK organizations, Children Associations, Children Federations
- Value formation activities

b. **Secondary intervention** is intervention which include measures to assist children at risk, such as

- Psycho-social interventions such as group/individual sessions by the social worker for children at-risk
- Involvement of former CICL in self-help groups as advocates λ
- Family therapy for families of children at-risk
- Organization of watch groups
- Development of foster families
- Establishment of Special Drug Education Centers
- Family Drug Abuse Prevention Program
- Institutionalization of Birth Registration

c **Tertiary intervention** is interventions which include measures to avoid unnecessary contact with the formal justice system and measures to avoid re-offending such as diversion, rehabilitation and reintegration programs.

- Release on recognizance
- Temporary shelter
- Psycho-social and therapeutic programs
- Financial assistance and support services
- Organization of peer support groups λ
- Diversion program as indicated in para-----
- Restitution of property
- Reparation of damaged cause
- Indemnification for consequential damages
- Written or oral apology
- Care, guidance and supervision orders
- Counseling for the CICL and the child's family regarding the law
- Attendance in trainings, seminars, and lectures on: anger management skills; problem solving and/or conflict resolution skills; values formation and other skills which will aid the child in dealing with situations which can lead to repetition of the offense
- Participation in education, vocation and life skills programs.
- Participation in available community-based programs including community services

Child care development and building relationships with families are given strong emphasis. Partnership and collaboration with the coordinating agencies is vital to ensure effective and efficient delivery of technical assistance to the Local Government Units and other stakeholders. It is therefore essential that the program design should have strategies that are relevant and responsive to the diverse needs of children in conflict with law in attaining sustainable future as rightful members of the society.



## **ACTIVITIES UNDER INTERVENTION FOR VARIOUS STAKEHOLDERS**

### **As per JJ Act, 2015**

#### **1. REHABILITATION CUM PLACEMENT OFFICER designated in Child Care Institutions, including place of safety**

Rule 65 of the Juvenile Justice Model Rules, 2016 provides that a rehabilitation cum placement officer shall be designated in all Child Care Institutions including Place of safety.

The Rehabilitation-cum- Placement Officer to perform the following functions:

(i) Identify the skills and aptitude of the children placed in Child Care Institutions through appropriate mechanism and in consultation with the Child Welfare Officer, Case Worker, Counsellor and Vocational instructor; (ii) Identify and develop linkages with all such agencies that offer vocational and training services with job placement at the end of the course;

(iii) Network with persons, corporates, recognised non-governmental organisations and other funding agencies to mobilise resources for sponsoring training program and support for self-employment;

(iv) Facilitate and coordinate with agencies, individuals, corporates, recognised non-governmental organisations and other funding agencies to set up vocational training units or workshops in Child Care Institutions as per age, aptitude, interest and ability;

(v) Mobilise voluntary vocational instructors who render services to carry out the training sessions in the Child Care Institutions;

(vi) Inculcate entrepreneurial skills and facilitate financial and marketing support for self-employment;

(vii) Prepare rehabilitation plans keeping in mind the nature of the offence and the personality traits of the child;

(viii) Maintain the Rehabilitation Card in Form 14 and monitor the progress made by the child on regular basis and submit such progress reports to the Management Committee;

(ix) Facilitate the child to get certificates on completion of the education or vocational training courses;

(x) Make efforts for ensuring effective placement of each eligible and trained child;

(xi) Organise workshops on Rehabilitation programmes and services available under Central and State Government Schemes, spread awareness and facilitate access to such schemes and services;

(xii) Organise workshops on personality development, life skill development, coping skills and stress management and other soft skills to encourage the child to become a productive and responsible citizen; and

(xiii) Conduct regular visits to the agencies where the children are placed to monitor their progress and provide any other assistance as may be required.

## **2 SPECIAL JUVENILE POLICE UNITS:**

- Capacity building of Child Welfare Officers
- Sensitivity training
- Involvement of NGO's in SJPU functioning
- Regular review meetings with SJPU and other stakeholders
- Create a platform for children-parents-police interaction through police station visits and involvement of police in meetings in schools and colleges
- Creating awareness on laws and procedures during these meetings
- Ensure accountability of functioning of stakeholders by holding review meetings.

### 3. JUVENILE JUSTICE BOARD:

- Strengthening of free legal aid cells
- Capacity building for Juvenile Justice Board members and staff of JJB
- Capacity building for Observation Home Staff attached to JJB
- Facilitate regular meetings of JJB members with children and staff at Observation home.
- Facilitate regular meetings of JJB members with parents and released children through follow-up meetings.
- Involvement of NGO's in the functioning observation homes
- Awareness to parents and children on free legal aid and procedure of JJ system
- Ensure accountability through regular review meetings.
- Setting up of a Child / Youth Guidance Centre in association with each JJB. The centre should provide services based on the principle of diversion for child/youth offenders. The JJB should use discretion to refer children to the Guidance Centre based on the social investigation report. This centre should provide the following services:
  - Individual work and Therapeutic Care,
  - Collaborative and Community work
  - Mindfulness training for children and their parents
  - Staff training
- Community based diversion centers should be set up wherever plausible. In designing a community service programme, the JJB may combine the restorative justice approach by keeping in mind:
  - the nature of offence committed by the CCL,
  - the circumstances of its commission
  - the impact on the victim
  - lessons that should be taught to the CCL
  - how the programme will help correcting the harm to the victim

Any offences are fit for restorative justice if they are done appropriately. Many countries in the world are applying them to heinous offences like murder and rape also but we may make a modest beginning by introducing it for all the compoundable offences on a routine manner and other petty and serious basis on a selective basis. The preconditions for adopting restorative practice in a given case are:

1. The CCL must accept commission of offence;
2. The CCL (and not their parents) must be ready to accept responsibility for correcting the wrong
3. The CCL must be ready to apologise to the victim
4. The victim will have a say in deciding what they want the CCL to do to make amends
5. It cannot be demeaning the offender but must be focused on making good the harm caused.
6. The victim should be assisted in not demanding something which is beyond the means of the CCL to fulfill

#### 4. FOR OBSERVATION HOME:

The environment within the observation home should lead towards de-stigmatization and reintegration into mainstream society. Life skills training through sports and mindfulness programs within the homes should be conducted. **Restorative justice practices should be used as an effective positive disciplining and conflict resolution tool amongst the children in CCIs.**

**Reference: Section 29 of JJ Rules:** A short document explaining the rights of children in child-care institutions under the JJ Act and Rules may be displayed prominently in certain parts of the premises (Child Protection Policy).

This document should be written in a simple and child-friendly manner and should be in the local language. Following is an example—

While you are in this home, we must:	While you are in this home, we must not:
Keep you safe and happy	Hurt you or beat you up
Provide you with food and clothes	Treat you badly because of your caste or religion
Take care of you if you get sick	Deny you food
Make sure you study well	Prevent you from meeting your family, if they do not harm you
Help you be friends with every other child in the home	Not to mention your name to anyone outside of the home/ Media

**Reference: Section 61 (3) (xxxi):** The person-in-charge should conduct a review once in every month to identify children in conflict with law who need legal aid. Care must be taken that the guardian of every such child must be asked if they wish to hire a private lawyer or if they wish to apply for free legal aid.

## **5 FOR PROBATION OFFICER:**

**Reference: Section 25 of JJ Rules:** The probation officer/social worker should provide the following information while preparing the post-release plan for aftercare of a person who is about to leave a child care institution—

- a) Educational qualifications
- b) Will the child will be in care of his family after leaving the childcare institution?
- c) If yes, provide a brief profile of the members of the family (age/relation/income).
  - If not, provide details of where the child intends to stay after release,
  - legal status of the place of residence (own house/rented accommodation/in the care of a relative/acquaintance)
  - Employable skills of the child. Also, it must be seen whether the person can avail of employment in his/her community considering the possibility that his/her previous involvement in crime may be known.

## **G. STRATEGIES FOR REHABILITATION:**

The ultimate objective of these interventions is the rehabilitation and reintegration of children in conflict with law in the society.

## **ACTIVITIES UNDER REHABILITATION**

Rehabilitative programmes at Observation Homes / Special Homes could incorporate the following activities in the daily time table:

### **1. Discipline**

Discipline in the juveniles through structured programmes moulds them as the responsible citizens of the society. The structured and strict time table helps the children to develop discipline within them.

### **2. Yoga**

Yoga is good for mental and physical growth of a child. Introduction of Yoga practices to the juveniles like; Pranayama, SooryaNamaskar, Halasana, Vajrasana, Thriconasana, Bhujangasana, Padmasana, Dhanurasana, Mudrasana, Vakrasana, Shavasana etc. It helps them in their day to day life and keeps them fit all through the day.

### **3. Meditation**

Meditation provides numerous benefits to a person who practices it regularly. Some of the benefits gained by juveniles practicing meditation are; keeps him stress-free, increases attention-span, increases immunity and metabolism, improves brain functioning & emotional stability etc. A light music should be played early in the morning. Practice of silence and meditation puts the children in a peaceful and happy mood throughout the day.

### **4. Personality Development**

The child must believe in himself that he can change his life for the better and all efforts should motivate the children to put their dreams together and move forward. Through various awareness programmes and class on different subjects efforts should be made to develop the personality and moral values within the juveniles. Helping juveniles to

build a positive self-esteem and training them to stay away from negative influences enhances their personality.

## **5. Counseling**

The juveniles should be regularly counseled by well experienced counselors. Counseling is also very important for children to change their mental state. It is an absolute requirement to strengthen their confidence and remove the stigma and other demoralizing effects on their mind.

## **6. Vocational and skill training**

Through close observation and individual assessment of each child, institutions must identify hidden talents and potentials within a child. There are instances where the child requires more training and expertise to shine in a specific area.

During a study on rehabilitation of Children in Conflict with the Law by HAQ a database of vocational courses managed by NGOs for children in Homes in Delhi was also prepared. It was observed that organizations mostly offer courses on beauty culture, computer courses which include tally, MS Office, MS Excel, Hardware, desktop publishing, etc, and cutting and tailoring courses which include dress making, sewing, fashion designing. Typing and stenography is also widely offered.

With the help of suitable resource persons, training to the juvenile helps the child in mastering his/her skills thereby helping the child to earn some income. Vocational training is definitely a good way of rehabilitating. reintegrating the child back into the society.

Prayas Observation Home for Boys (POHB) runs the 'Yuva Connect Aftercare Programme,' which provides vocational training and effective social re-integration of children in conflict with law. It is a project for youth in need of social integration and rehabilitation of CCLs who are about to leave or have left POHB in Delhi. The state is required to frame a policy with proper financial back-up to strengthen the initiative of NGOs involved in such projects.

Linkages with Jan Shikshan Sansthan for skill development should be done and workshops should be organised. Jan Shikshan Sansthans (JSSs) are established to provide vocational training to non-literate, neo-literate, as well as school drop outs by identifying skills as would have a market in the region of their establishment. The Jan Shikshan Sansthan is an initiative of MHRD provides short certificate courses and this convergence will be more effective than setting up of own vocational training centre in Observation Home. The Vocational trainer should function as a vocational training organiser and organise vocational trainings through such linkages.

## **7. Bala-Panchayat**

- Weekly Bala-Panchayat (Child self-governance) should be conducted by the children with their peer-mates at institutions. The **aim** of Bala-Panchayat is to provide opportunity for them to take responsibility of their actions. It develops "we" feeling among the children.
- Bal-Panchayat inculcates self-discipline, improves self-confidence, motivates them in team building & methodological thinking, gives clarity about their goal and aim and enables them to deal with their problems.
- Bala-Panchayath helps children voice their opinion before the management in a systematic and democratic manner.

## **8. Computer Education**

In this fast moving era, we depend on computer for everything. Computer is an integral part in all the fields of work. Through the computer education juveniles get an opportunity to enrich themselves with technical knowledge.



## **9. Development of short term courses**

The studies have shown that illiteracy and ignorance are major reasons for juvenile crimes in India. Poverty and lack of job opportunities are other factors which draw children to crime. With development of short term courses, institutions can help in eradicating illiteracy, ignorance and poverty by helping the children develop their skill and find employment for themselves.

## **10. Art and craft therapy**

Art and craft activities helps the children to relax, feel sense of accomplishments, to discover pride, to improve their motor-skills, to develop a meaningful and life-long hobby, to maintain an alert mind etc. Juveniles at institutions must regularly get trained from the qualified trainers. Various art forms should be introduced within the home such as music, dance, painting as the healing properties of the artistic activities are well known

## **11. Spoken English**

English as a universal language and has become the key tool of globalization. English is the medium of communication in and around the world. Spoken English class should be included in institution's curriculum for the juveniles and should be taught by a trained teacher on a regular basis.

## **12. Cultural Gathering**

- Weekly cultural gatherings should be part of the institutions child-friendly life style.
- It is also an essential component for the overall development of Juveniles. It helps to bring forth the hidden talents of the children.
- Every Sunday, the children perform various programmes which include dance, drama, speech, etc.

- Through this cultural gathering, a self-disciplined and a well confident group will be generated. It also inculcates moral values and strengthens their skills, increases their knowledge and builds a better and positive attitude.

### **13. Dance and drama practice**

To enrich the juveniles in the cultural front, the artistic skills of juveniles would be identified and classes for these are arranged to bring out their talents in the open.

### **14. Farming, Gardening & Animal Husbandry**

Farming, gardening & Animal Husbandry help in development of the entrepreneurship skills among the juveniles, thereby enabling them to be independent once they are released and are on their own.

### **15. Sports & Games**

“All work and no play make Jack a dull boy” this proverb is true to every child. They need to be physically exerted to forge their routine and get refreshed. Therefore regular sports and games should be conducted without compromising the security of the juveniles.

### **16. Recreation**

Television programme and indoor games are useful tools to have some extracurricular activities in their daily routine. This helps to remove their boredom and monotony from their lives.

### **17. Individual care plan**

As per sec.39 of JJ Act an individual care plan for every juvenile must be developed for rehabilitation and social integration, which includes the needs and service options identified in the assessment process. It helps to effectively identify and address all their

needs. The individual care plan should be reviewed at regular intervals so that it is dynamic and can meet the needs of a growing child.

### **18. Rehabilitation through professional course**

- The studies have shown that poverty is often the reason for children getting into crime but not the only reason.
- Financial empowerment holds key in sustained development of children.
- Financial empowerment is best achieved when these children find employment in the best working environment.
- Professional courses through universities could be linked to institutions.

### **19. Post-release follow-up**

Institution should conduct regular follow-up programs for all released children to ensure the child does not get back to a difficult situation. Institution should maintain regular contact with the children and their families. Regular follow-up activities help to reduce the rate of recidivism. Institutions should conduct half yearly meets to get a feedback from the juveniles about their current situation and to ascertain the further interventions required for their successful rehabilitation.

- The **central objective** of the programme is to **maintain zero recidivism**.
- Parents, social workers from like-minded NGOs, SJPU police personnel's, Superintendent of Government Juvenile Home for Boys are part of these programmes.
- The programme offers individual and group counseling services to both parents and children.
- Regular follow-up programmes helps in developing a constant relationship with the children and their families.
- The programme provides a platform for the children to voice their

apprehensions and challenges through group discussions and learn from the experiences of other children present, on how they can face these challenges and succeed in life.

### **Networking:**

Networking with like-minded NGOs, Govt. institutions like CWC, JJB, SJPU, DWCD, community organizations and other stakeholders helps in reducing recidivism ultimately succeeding to attain zero recidivism.

### **3. Society's Role:**

Society plays an important role in shaping an individual's character.●

The attitude of the individuals in the society should change towards the juveniles in conflict with law.●

The society as a whole should believe in empowering our children and youth by providing them with the right conditions, thus curbing juvenile delinquency and aiding the youth to grow and develop into good citizens and socially responsible adults.●

## Different programs:

ECHO Conducts Crime Prevention Program in order to prevent children from getting into crime.

After a research and identification of the locations, awareness programmes are given to the families in the slums for better child care practices promote interest among children for education.

ECHO provides 1 year bridge course for school dropout children and enrolls them back to mainstream schools thus preventing juvenile crimes.

### **Transitional Home**

A home established for the reformative programmes of the children in conflict with law and in need of care and protection.

### **Rehabilitation Center**

A center established for the total rehabilitation in terms of education, vocational Trainings, job placements for the children in conflict with law.●

### **Group Foster Home for After care**

An innovative program of the organization for the children who are about to complete the rehabilitation period.●

It is the next step forward towards their independence.●

The● **objective** of the programme is **de-institutionalization** of children who are under institutional care.

Children are assisted in getting a rented house where they learn to live in groups and share their responsibility towards household●

## **5. MEDICAL & MENTAL HEALTH CARE**

1. Mental health care and planning to assess the child's reality should be mandatory and conducted by experts and professionals
2. Counseling for CCL is often more challenging than CNCP and hence there is a need for clearer guidelines on this.
3. There are no clear-cut guidelines, which could identify children with behavioral disorders
4. Referral lists for providing reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety shall be put in place and displayed on online portals too.

**6. TRAINING OF STAFF:** Regular staff training and their assessment should be made mandatory. Mindfulness and other programs for the mental health of staff should be introduced in order to help them develop a positive environment within the observation home

### **Training for restorative justice**

**While this requires some training of the staff, it is not a complex process. It involves getting both parties (that have caused harm and that have been harmed) to agree to a conference where the victim can speak about the impact and the accused is also given a chance to explain his/her behaviour. It is a forum where people deal with wrongdoing and conflict. The facilitator creates a safe space for everyone to participate. The facilitator does not influence the decisions taken by the participants but allows them all to speak and find their own solutions by asking the right questions:**

### **Restorative Questions I**

**When things go wrong:**

**= What happened?**

**What were you thinking at that time?**

**What have you thought about since?**

**Who has been affected by what you have done? In what way?**

**What do you think you need to do to make things right?**

## **Restorative Questions II**

**When someone has been hurt**

- **What did you think when you realized what had happened?**
- **What impact has this incident had on you and others?**
- **What has been the hardest thing for you?**
- **What do you think needs to happen to make things right? [\[4\]](#)**

## **7. SOP for STATE GOVERNMENT**

**Reference: Section 23 of JJ Rules:** The state WCD departments may undertake awareness programmes to encourage members of the public for foster care of children in conflict with law, especially those not involved in heinous offences. The opinion of the child may be taken in a written format. The child shall be handed for foster care only to the families declared as fit family.

**Reference: Section 42 of JJ Rules:** The women and child development department must identify exactly which officer is responsible for co-ordinating the evaluation of the functioning of the Board, Committee, SJPU, etc. Further, the body which conducts the evaluation of the institution must identify specific parameters such as infrastructure, documentation, educational facilities, vocational training facilities etc. A similar exercise must be done after fixing responsibility for non-institutional care. Local level committees



may be formed to evaluate the success/failure of the individual care plan for children in conflict with law.

**Reference: Section 80 (3):** In every district, the state government can appoint an organization working on de-addiction as a nodal organization for rehabilitation of children in conflict with law who are addicted to intoxicating substances. There shall be adequate number of drug de-addiction centers in every district. Child care institutions can allow such organizations to visit the homes at regular intervals to identify cases which need support.

**Reference: Section 83:** The appropriate government shall open the Juvenile Justice Fund account in nationalized banks within 3 months of the implementation of rules. This fund may be used for the various purposes mentioned in the JJ Rules.

There should be proper mechanisms for linkages and synergy between govt, various departments, NGOs, agencies, corporates and other duty bearers to give the best to the child. There should be a tracking mechanism set up in all States where complete records of all CCL moving out of Special homes are maintained and follow up done ensuring their reintegration under Aftercare services. The follow up should be such that there is no falling back of the child into crime again. The Sops should try to establish aftercare programmes for juveniles released from closed institutions, in partnership with non-governmental community services.

There is need for more research, data collection and documentation of issues affecting CCL and hence government should encourage more dialogues and discussion through seminars and conferences.

## **8. SOP FOR LAW ENFORCEMENT AGENCIES**

Law enforcement officials from JJB and DCPUs, juvenile judges, magistrates, social workers, case workers and police should be trained continuously on constructive approaches that make it possible to avoid formal arrest and detention of CCL with an increased knowledge in the area of juvenile justice.

## 9. AFTER CARE PROGRAM

**Specific guidelines should be framed for After Care vis-a-vis children in conflict with law** in transition and reintegration in society; as also for Children with special needs.

- Space should be allotted to run Aftercare Programs within community which facilitates the integration process. MLAs and other local authorities should be sensitized to provide spaces where After Care Homes can be established.
- Government must give the freedom, without any imposition, to the organizations which are already running After Care facilities, to operate their After Care homes with their own organizational philosophy and perspective within the spirit and word of law; and should not be prevailed upon to take young adults given to them by the authorities, from Government or other organizations.
- **National tracking system** of creating databases should be developed for all children, who will be in transition, in After Care; and once they leave care, they should be tracked for minimum 3 years to analyze the transitions and develop learning. **Set up a national database of children leaving CCI upon turning 18 every year - an online portal can be designed for this as TrackChild**
- **Helpline numbers** should be made available for youth who are out of the care institutions, where they can contact to seek guidance or counseling, whenever required, and can find solutions for their concerns. Even 1098 Child Helpline can be strengthened.

**Reference: Section 25 of JJ Rules:** The probation officer/social worker should provide the following information while preparing the post-release plan for aftercare of a person who is about to leave a child care institution—

### Educational qualifications

- Will the child will be in care of his family after leaving the childcare institution?
- If yes, provide a brief profile of the members of the family (age/relation/income).
- If not, provide details of where the child intends to stay after release,
- legal status of the place of residence (own house/rented accommodation/in the care of a relative/acquaintance)
- Employable skills of the child. Also, it must be seen whether the person can avail of employment in his/her community considering the possibility that his/her previous involvement in crime may be known.

The challenge before us is to resolutely and clearly venture in juvenile justice field acknowledged by government as the area of comprehensive **aftercare**.

As per section 2 (5) “aftercare” means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society.

To look after these children when they are back to their communities; undertake re-integrative services that prepare young offenders for reentry into society by establishing the necessary collaborative arrangements with the community to ensure that they do not re-offend.

Aftercare interventions are needed to explore innovative, action-based programmes including the skill development of such children which help child in conflict with law to re-enter the community in a healthy and respectful manner shortly after their release. Most importantly, such interventions help their social re-integration so that they live as responsible citizens with a good name in society.

Now and in the years to come, we shall aim at an effective aftercare program with a seamless set of systems across formal and informal social control networks with a continuum of community services to prevent the recurrence of antisocial behavior and address the multiple needs of children in conflict with the law. Indeed, for us, the call to further action is urgent. The demand to make concrete the aftercare program is real. The children are waiting!

### **Conclusion:**

The empowerment of children by ensuring their human rights and dignity provides an opportunity to change, the change which is required for the growth and development of our country. The way we deal with our children speaks volumes of our own character and ensures in laying a concrete foundation for the future generations to follow.

Undermining the value of a child undermines the value of our nation.

For rehabilitation to be successful and to sustain the livelihood of the children regular follow-up becomes necessary. The role of social workers becomes all the more necessary as children need to be provided continuous help even after rehabilitation to check zero recidivism.

The responsibility for the protection of our children is not alone for the government and NGO's working for it but also a collective responsibility of all the citizens. Every individual should be sensitive towards working and safeguarding the rights of our children.

*The body heals with play. The mind heals with laughter and the spirit heals with joy!*

- Unknown

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[1] Email dated 24<sup>th</sup> October, sent to the Joint Secretary, MWCD

[2] When this applies, the police or prosecutors can rebut the presumption that a child is “incapable of committing a crime” by providing evidence that the child did not in fact understand the consequences of his or her action.

[3] American journal of Social Sciences, Arts and Literature, Vol 3, No. 3, April 2016. Available online at <http://ajssal.com>

[4] Restorative Justice Conferencing, by Ted Wachtel, Terry O'Connell and Ben Wachtel, Real Justice & the conferencing handbook, International Institute for Restorative Practices, 2010