



“The best way to make children good is to make them happy”
Oscar Wilde, author and poet



NATIONAL DEVELOPMENT FOUNDATION

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JAMMU AND KASHMIR JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2013

A summary



What is JJ Act of J&K?

JJ Act of J&K (2013) and Rules (2014) aim at safeguarding the rights of (a) children in conflict with Law (alleged to have committed an offence) and (b) children in need of care and protection.

Why JJ Act?

The United Nation's Convention on the rights of Children (CRC) and the Constitution of India acknowledge that the State and the Society have an obligation to protect the rights of every child. These rights include right to life, right to be protected (from all types of abuse, neglect, exploitation and discrimination) and right to education and maximum development. Children in conflict with law must be dealt with sensitivity to their age, respect for their dignity and human rights, and they must be given opportunity to rehabilitate and re-integrate into the society. The State and the Society have an obligation to assist parents in fulfilling their responsibilities towards children.

The Aim:

The JJ Act of J&K commits itself to ensure that children in need of care and protection are adequately looked after (by their families or through alternate care systems) for their survival, protection and developmental needs. Children in conflict with law will be given opportunities to restore their dignity and self-worth, and to develop themselves into productive and responsible members of the Society. The Act aims at ensuring that the 'best interest' of the children is given primary consideration in all legal and administrative decisions and actions.

Who is a Child?

A 'child' means a person who has not completed 18 years of age.

Who is a child in conflict with Law?

A 'child in conflict with law' means a person who is alleged to have committed an offence and has not completed 18th year of age as on the date of commission of such offence.

Who is a child in need of care and protection?

A 'child in need of care and protection' means a child who:

a. is found without any home or settled place of abode and without any ostensible means of subsistence, b. is found begging or who is either a street child or a working child, c. resides with a person (whether a guardian or not) posing threat of abuse, neglect or Causing harm to his/ her well being and life, d. is physically or mentally challenged or suffering from terminal or incurable diseases, with no one to look after, e. has a parent or guardian who is unfit or incapacitated to care for his / her, f. does not have parents and no one is willing to take care of or whose parents have abandoned or surrendered him/ her or is a missing and run away child and whose parents cannot be found after reasonable inquiry, g. is being or is likely to be grossly abused, tortured or exploited for sexual purposes or illegal acts, h. is found to be vulnerable and is likely to be inducted into drug abuse or trafficking, i. is being or is likely to be abused for unethical gains, j. is a victim of an armed conflict, civil commotion or natural calamity, k. is found to be in conflict with law (!)

Institutional arrangements at District Level

The JJ Act provides for a range of institutions and mechanisms to ensure that the children rights are safeguarded at various levels.

Child in conflict with law	Child in need of care and protection	
Mechanism Juvenile Police Officer/ Child Welfare Officer (Social Background Report) Parent/ Guardian Observation Home Probation Officer/ Case worker (Social Investigation report) Juvenile Justice Boards (inquiry, trial and disposal order) Parent / Guardian Special Home Fit Person/ institution Probation Officer/ Case Worker (Individual Care Plan) After Care Organization (After Care Program)	Mechanism Juvenile Police Officer/ Child Welfare Officer (Social Background Report) Children's Home Probation Officer/ Case Worker (Social Investigation report) Child Welfare Committee (inquiry, disposal order) Parent/ Children's home Fit person/ guardian/ institution	Support Structure SJPU (Special Juvenile Police Unit) Child Line service VOs (Voluntary Organisations) DCPU (District Child Protection Unit) DSLA (District Legal Services Authority) VOs DCPU, VOs CPC (Child Protection Committee)

District Child Protection Unit (DCPU)

DCPU is responsible for coordinating and ensuring implementation of all child rights and child protection related activities in a district. Its responsibilities include creation of adequate infrastructure (e.g., setting up of JJBs, CWCs, SJPU and homes for children in need of care and protection, mapping of child related services, implementation of family based non-institutional support (including sponsorship and after-care programs), setting up of district, block and village level CPCs (Child Protection Committees), facilitating transfer of children for restoration to families or placing them under short and long term rehabilitation, networking with various departments and CSOs (Civil Society Organizations), particularly VOs working on welfare of children, to build inter-sectoral linkages

on child protection issues, training and capacity building of personnel (Govt. / NGO) in implementing the Act, liaising with agencies involved in tracking missing children and specialized services for drug de-addiction and mental health services, coordinating with District Legal Services Authority for availability of legal aid to children.

Dealing with a child in conflict with law

- A case of alleged offence by a child will be dealt with by Juvenile Justice Board (JJB) consisting of a Judicial Magistrate and two social workers. The Board will have the powers of a first class magistrate. It will have its sittings in or near an Observation Home for children (managed by the Govt. or a Voluntary organization) and not in a court. The Board will conduct its proceedings in a child-friendly atmosphere.
- There will be a special Juvenile Police Unit (SJPU) in every district. The SJPU will have a Juvenile Police Officer (JPO)/ Child Welfare Officer (CWO) and Probation Officers/ Social Workers (including a woman) to deal with children in conflict with law. For this purpose, every police station will have a police officer designated as Juvenile Welfare Officer. The Juvenile Police Officer/ Child Welfare Officer and Probation Officer/ Social workers will be personnel adequately trained in matters relating to children.
- When a child is found to be in conflict with law, the Juvenile Police Officer concerned will take the child in his/ her custody and register an FIR. If the alleged offence is non-serious (involving punishment of imprisonment for less than 7 years in case of adults), the child will be handed over to parent/ guardian after getting an undertaking that the child will be produced before the JJB when required (however, the child may be apprehended and kept under the care of an Observation Home if deemed in the best interest of the child). In case the alleged offence is serious in nature, the child will be apprehended and sent to an Observation Home (designated for this purpose), with intimation to parent/ guardian, and produced before the JJB.
- While dealing with children in conflict with law, JPO/ CWO will wear civil dress (unless wearing uniforms is in the interest of the child). The child will neither be handcuffed or fettered nor put in jail or lock-up at any stage during the procedure.

- e. The JPO/ CWO will, with the help of Probation Officer/ Social Worker, carry out investigation into the matter, prepare the case and produce the child (or cause the child to be produced by parent/ guardian) before the JJB within 7 days of filing the case. Documents to be submitted to JJB will include a copy of FIR, age memo and personal search memo, medical examination report (if required), Social Background Report (prepared by JPO/ CWO), child's version of the incident (prepared with help of Probation Officer/ Social Worker) and a Social Investigation Report (prepared by Probation Officer/ Social Worker). In case the child has been apprehended, he/she will be produced before the JJB within 24 hours.
- f. The JJB will review information provided and pass orders as follows: i. Absolve the child of the allegation and release him/ her, ii. Dispose the case and place the child in custody of parent/ guardian with admonition and advice to follow (for example, to attend counseling sessions or to provide community service, etc.), iii. Treat the child as in need of care and protection (and transfer the case to Child Welfare Committee), iv. Place the child in an Observation Home or a 'Fit Person/ Institution' and make further inquiry (in cases of serious offences). The Board will aim at disposing cases of non-serious offences in its first summary proceedings. However, in case of serious offence, the Board will have more sittings (while granting bail or ordering the child to be kept in an Observation Home) and finally order the child to be restored to parents/ guardians or placed in a Special Home or in custody of a Fit Person or Institution.
- g. For each child, the Board will approve an Individual Care Plan (ICP), to be prepared by the Probation Officer/ Social Worker. The ICP will be implemented by Social Workers, parents/ guardians, Fit person/ Institution and authorities at Special Homes so as to ensure adequate care and protection of the child as well as his/ her longer term rehabilitation (including an After-care Program with sponsorship support if required).
- h. To ensure fair, speedy and child-friendly inquiry, the Board will: i. Satisfy itself that the child has not been subjected to illegal detention or ill-treatment by the police or any other person, ii. Conduct proceedings in a simple manner in the language understood by the child, and in a child-friendly atmosphere, iii. Provide adequate opportunity for the child to

take part in the proceedings, iv. Help the child to have a lawyer of his/ her choice (or arrange free legal aid) and to interact with the lawyer before the hearing, v. Ensure that the child understands the nature of allegations made and is not coerced to pled guilty, vi. Ensure that the entire evidence of witnesses recorded during the inquiry is explained to the child, and that his/ her response or evidences/ witnesses are adequately heard before passing a judgement.

Dealing with a child in need of care and protection?

- a. Children in need of care and protection will be dealt with by the Child Welfare Committee (CWC) through JPO/ CWO, Probation Officers/ Social Workers, Children's Homes and 'Fit Persons/ Institutions'.
- b. Every district will have a CWC, consisting of a Chairperson and 4 members (one of whom will be a woman and another will be an expert on matters concerning children). CWC will function as a bench of magistrates (with powers of a first class magistrate).
- c. CWC will be responsible for taking cognizance of and reaching out to children in need of care and protection, conduct inquiries and decide on matters concerning children in need of care and protection brought before it, and dispose of cases for their care, protection, treatment, development and rehabilitation. CWC may direct CWOs (and VO's concerned) to conduct social inquiries into children in need of care and protection (and report to it). It will coordinate with Police, Labour Department, DCPU/ SCPS, Corporate sector, NGOs and various authorities including JJB on matters of children in need of care and protection.
- d. CWC will conduct its sittings in the premises of a Children's Home and in a child friendly atmosphere.
- e. A child in need of care and protection may be brought before the CWC by a police officer, child line service, a public servant, a VO, a social worker, a citizen or the child himself/ herself. The child can be produced before a single member of CWC.
- f. When a child in need of care and protection is found, he/she can be taken to a Children's Home. In such cases, officials at Children's Home, with CWO and Probation Officer/ Social Worker of SJPU, will produce the child before CWC, (within 24 hours). In case the child is incapacitated, a

report will be submitted. When the child is produced before CWC, it will not be necessary for the person who brought the child to be present.

- g. During pendency of the case, CWC may pass an order for the child to be placed in a Children's Home and assign a Case Worker for conducting inquiry and for preparing a Social Investigation Report.
- h. CWC will interact with the child, his/ her parents/ guardians (if available) and other persons of relevance, consider the age, gender, physical and mental status of the child and recommendations made by CWO/ Social Worker.
- i. In its final order, CWC may decide to restore the child to his/ her parents/ guardians or to place him/ her in care of a Fit person or institution or send him/ her to a Children's Home. CWC will also approve an Individual Care Plan (ICP) developed by the Social / Case Worker for implementation by the Institution concerned.

Some Child Protection Measures Provided for by JJ Act of J&K

- a. A child in conflict with law will be given benefit of JJ Act and its Rules even after he/ she ceases to be a child during pendency of inquiry.
- b. The period of stay during trial / custody will be counted as part of stay under hence institutional care decided upon by the Board or CWC.
- c. All records of a child in conflict with law will be confidential. Information leading to identification of the child will not be published.
- d. Non-disclosure of information in respect of cases involving a child in conflict with law will neither be considered an offence nor concealment of truth.
- e. If a person in possession of information on documents/ records pertaining to a child in conflict with law, discloses it or, on this basis, attaches any qualifications, stigma or prejudice for the child, it will be considered cognizable violation of Act (and hence punishable).

Offences committed by adults against Children (and punishments thereof)

The following offences committed by adults against children will be cognizable by the Board (and the CWC) and may be referred to a Court:

- a. Cruelty to child: If someone in charge/ control of a child, exposes or willfully neglects a child (or procures him/ her for such action) in a manner likely to cause unnecessary mental or physical sufferings, he/ she will be punishable with imprisonment up to one year and / or fine.
- b. Employing a child for begging: If someone employs a child for begging (or causes a child to beg), he/she will be punishable with imprisonment up to 3 years and / or fine.
- c. Giving intoxicating liquor or narcotic drug or psychotropic substance to a child: If someone gives (or causes to be given) a child any liquor in a public place or any narcotic drug or psychotropic substance (except upon the order of a qualified medical practitioner in case of sickness), he/she will be punishable with imprisonment up to 3 years and / or fine.
- d. Exploiting a child employee: If someone procures a child for any hazardous employment or keeps him/ her in bondage or withholds his/ her earnings for own purpose, he/she will be punishable with imprisonment up to 3 years and or fine.

The above offences are cognizable by any court of Law, and the offender will be punished under the Act which provides punishment of greater degree. The procedures will apply on persons as well as police, functionaries and authorities.

During its proceedings while dealing with cases of children in conflict with law or in need of care and protection, if the JJB or CWC finds that an adult has been responsible for the child's action or situation, the Board/ Committee will order registration of FIR against that person and refer to case of trial to a Court.