

Provisions of the Act and Rules relevant for JJB

I. Fundamental Principles

Every stakeholder under the Juvenile Justice System is required to be guided by the following Fundamental Principles which have been enumerated in Rule 3.

1. Principle of presumption of innocence;
 - (i) Age of innocence;
 - (ii) Procedural protection of innocence; &
 - (iii) Provisions of Legal aid and guardian ad litem.
2. Principle of dignity and worth;
3. Principle of Right to be heard;
4. Principle of Best interest;
5. Principle of family responsibility;
6. Principle of safety;
7. Positive measures;

8. Principle of non-stigmatizing semantics, decisions and actions;
9. Principle of non-waiver of rights;
10. Principle of equality and non-discrimination;
11. Principle of right to privacy and confidentiality;
12. Principle of last resort;
13. Principle of repatriation and restoration;
14. Principle of Fresh Start.

II. Establishment of Juvenile Justice Boards

The 2006 amendment to the Act mandates constitution of a Juvenile Justice Board in every District latest by 22.08.2007 [Section 4]. State of Assam is one of the few States in the country where Juvenile Justice Boards have been constituted in most of the Districts. While selecting the Principal Magistrates and appointing social workers as Members of the Boards, it has been kept in mind that they have special knowledge / training in Child Welfare activities.

III. Infrastructure and sitting of the Board

Rule 83 provides for separate infrastructure for each JJB; however, none of the JJBs have any independent infrastructure and the services of court staff of the Principal Magistrates are utilized. The State Government should look into these aspects.

As regard to sitting of the Boards Rule 9, *inter-alia*, mandates:

- Proceedings to be held in the premises of an Observation Home or in its proximity;
- Not to be held within any court premises;
- The premises shall be child-friendly and shall not look like a court room;
- Board shall not sit on a raised platform;
- There shall be no witness box;
- Board shall meet on all working days of a week unless the case pendency is less in a particular district and concerned authority issues an order in this regard.

At present most of the sitting of the Board are held either in the Court room of the Principal Magistrate or in his chamber twice a week.

IV. Power & Jurisdiction

1. Board has exclusive jurisdiction to deal with Juvenile in conflict with law notwithstanding any other law for the time being in force; [Section 6]
2. Inquiry shall be continued by the Board even if the juvenile ceases to be a child during the pendency of the inquiry and orders may be passed as if he is a juvenile. [Section 3]
3. Every Board has the powers conferred by the Cr.P.C. [Rule 5(2)]
4. In case Board is not sitting, the juvenile may be produced before any single member of the Board, who is empowered to pass all appropriate orders except final disposal. Any such order is to be ratified by the Board in the next meeting. [Section 5(2)(3) r/w Rule 11 (10) (14)]
5. In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail. Where there is no such majority, the opinion of the Principal Magistrate shall prevail. [Section 5(4)]

V. Order on First Production of Juvenile

On production of juvenile, the Board shall pass the following order in the first summary inquiry on the same day, namely-

1. Dispose of the case, if the evidence of his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking; or [Rule 13(1)(a)]
2. Transfer the juvenile to the CWC, if the police report states that the juvenile is in need of care and protection; or [Rule 13(1)(b)]
3. Consider release of juvenile on bail; or [Section 12]
4. Release the juvenile in the supervision or custody of fit persons / institutions or Probation Officers, through an order in Form-I; or [Rule 13(1)(c)]
5. Detain the juvenile in an Observation Home or fit institution pending inquiry, only in cases of juvenile's involvement in serious offences, as per order in Form-II [Rule 13(1)(d)]

VI. Age Determination

When a person is brought before a Board under any of the provisions of the Act who appears to be juvenile, the Board shall make due inquiry as to the age of that person [Section 49]. While determining age of juvenile the following points be kept in view:

1. Age determination shall be made within a period of 30 days. [Rule 12(1)]
2. All persons who have not completed 18 years of age on the date of alleged commission of offence shall be treated as 'Juvenile in Conflict with Law' (Section 2(I)).
3. On production of a person, the Board is to decide the Juvenility or otherwise, prima facie, on the basis of physical appearance or documents, if available, and send him to the Observation Home or jail [Rule 12(2)].
4. The Board can consider bail application of the person, if it is of the prima facie opinion that the person produced is apparently a juvenile [Section 12(1)]
5. The age determination inquiry shall be conducted by the Board by seeking evidence by obtaining following documentary evidence:
 - i. Matriculation or equivalent certificates;
 - ii. Date of birth certificate from the school;
 - iii. Birth certificate given by corporation or municipal authority or panchayat.
6. In the absence of aforesaid documents, the medical opinion can be sought from a Medical Board.
7. The Board may, for reasons to be recorded, give benefit to the juvenile by considering his / her age on lower side within the margin of one year. [Rule 12(3)]
8. Determination by the Board as above by an order is conclusive proof of the age as regards such juvenile. [Rule 12 (3) (4)]

VII. Bail

When any person apparently a juvenile is brought before a Board such person shall be released on bail or placed under the supervision of a Probation Officer / fit institution / fit person. Bail can be denied only if there appear reasonable grounds for believing that

1. the release is likely to bring him into association with any known criminal; or

2. expose him to moral, physical or psychological danger; or
3. his release would defeat the ends of justice. [Section 12]

VIII. Procedure

1. "Petty offences" may be disposed off by the Board through summary proceedings or inquiry [Rule 13(2) (d)]
2. The Board shall follow the procedure of trial in summons cases, as far as may be, in inquiry pertaining to non-serious offences (punishable with imprisonment upto 7 years). [Section 54(1) r/w Rule 13(2) (d)]
3. The Board shall follow the procedure of trial in summons cases in inquiry pertaining to serious offences (punishable with imprisonment of more than 7 years for adults). [Section 54(1) r/w Rule 13(2) (d)]
4. The Board has to satisfy that the juvenile has not been subjected to any ill-treatment by the police or lawyer or probation officer. [Rule 13(2) (a)]
5. The Board shall make sure that the parents / guardian have been-
 - (i) Supplied with copy of police report by the concerned police officer or JCWO before or on the day of production of the juvenile in the Board.
 - (ii) Informed about apprehension of the Juvenile and production before the Board.
 - (iii) Informed about the possible need of personal bond / surety in the event of bail be granted and the provision relating to bonds in Chapter 33 Cr.P.C. shall apply (Section 50 & 65 r/w section 50A Cr.P.C.
6. The Board shall ensure that the police has informed the probation officer about the apprehension of the Juvenile for the purpose of obtaining information of the background of the juvenile and other necessary material circumstances. [Section 13(b) r/w Rule 11(1)(c)]
7. The Board shall notify the next date of hearing, not later than 15 days of the first summary enquiry and also seek social investigation report from the concerned Probation Officer through an order in Form-III; [Rule 13(1)]
8. The Board has to conduct the proceedings in a child friendly atmosphere [Rule 13(2) (b) & 13 (4)].

9. Every juvenile shall be given the opportunity to be heard and participate in his inquiry [Rule 13(2) (c)]
10. The Board may require any parent or guardian to be present at any proceeding [Section 46]
11. The Board may dispense with attendance of the juvenile, if it is not essential for the purpose of inquiry. [Section 47]
12. The inquiry shall be conducted in the spirit of non-adversarial proceedings. [Rule 13(3) r/w Rule 14(1)]
13. The Board may use the powers of questioning witnesses conferred by section 165 of the Indian Evidence Act, 1872 [Rule 13(3)]

(added)

In Rule 13(3), the word used is "shall" and instead of "may" and therefore substitution of VIII(13) is suggested as follows:-

"The Board shall use the powers of questioning witnesses conferred by section 165 of the Indian Evidence Act, 1872 [Rule 13(3)]".

14. The Board shall proceed with the presumptions that favour the juvenile's right to be restored [Rule 13(3)]
15. The Board may take into account the report of the police containing circumstances of apprehension and offence alleged to have been committed. [Rule 13(5)]
16. The Board shall take into account the Social Investigation Report prepared by Probation Officer or voluntary organization. [Section 15(2) r/w Rule 13(5) and 15(2)]
17. The Board shall ensure grant of free legal aid and right to counsel. [Rule 14]
18. No juvenile shall be charged with or tried for any offence together with an adult [Section 18]
19. No proceeding shall be instituted and no order shall be passed against juvenile regarding security for keeping peace and good behaviour under Chapter VIII Cr.P.C. [Section 17].
20. Use of accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited. [Rule 3 (VIII)]

IX **Period of Inquiry**

1. The inquiry to be completed within a period of 4 months after the first summary inquiry unless extended for reasons in writing. [Proviso to Section 14(1) r/w Rule 13(6) and Rule 15(1)]
2. The period of inquiry may be extended by 2 months in the following exceptional cases
 - cases involving trans-national criminality; or
 - large number of accused; or
 - inordinate delay in production of witnesses [Rule 13(6)]
3. Delay beyond 4 to 6 months leads to the termination of proceedings in non-serious offences [Rule 13(7)]
4. Delay beyond six months in serious offence has to be reported by the Board to the CJM / CMM stating 'the reason for delay and steps taken [Rule 13(8)]

(added)

The concept of having a time schedule for disposal of a case on the first date of hearing is good, but it would however be not advisable to strictly prescribe an outer limit of inquiry in the interest of justice as the interest of the sufferers and the victims are also to be looked into. Discretion to close and inquiry always be left to the Board which is to be allowed to determine the same taking into consideration the facts and circumstances of a case. Of course, a set of guidelines may be framed in this regard.

X. **Legal Aid**

1. Every child who has to file or defend a case is entitled to free legal services under Legal Services Authority Act, 1987. [Section 12(1) (c) of Legal Services Authority Act. 1987]
2. The Board shall ensure free legal services to all juvenile through State Legal Aid Services Authority or recognized voluntary legal services organizations or the University legal services clinics. [Rule 14(2)(4)].
3. The Board may also deploy the services of the student legal services volunteers and non-governmental organization volunteers in para-legal tasks such as contacting the parents of juveniles and gathering relevant social and rehabilitative information. [Rule 14(5)]

XI. Final Dispositional Orders

The Board, if satisfied that a juvenile has committed an offence, may pass one of the following final orders-

- (i) Allow the juvenile to go home after advice or admonition and counseling to parent / guardian and juvenile. [Section 15(1)(a)]
- (ii) Direct the juvenile to participate in group counseling and similar activities and necessary direction may also be made to the District or State Child Protection Unit or the State Government for arranging individual counseling and group counseling. [Section 15(1)(b) r/w Rule 15(4)]
- (iii) Order the juvenile to perform community service that is not degrading and dehumanizing and necessary direction may also be made to the District or State Child Protection Unit or the State Government for arranging community service which may include
 - (i) Cleaning a park;
 - (ii) Getting involved with habitat for humanity;
 - (iii) Serving the elderly in nursing homes;
 - (iv) Helping out a local fire or police department;
 - (v) Helping out at a local hospital or nursing home; and
 - (vi) Serving disabled children. [Section 15(1)(c) r/w Rule 2(e) and 15 (4)].
- (iv) Order the parent or the juvenile himself to pay fine, if he is over 14 years of age and earns money; however, no juvenile shall be committed to prison in default of payment of fine. [Section 15(1) (d) r/w Section 16(1)]
- (v) Direct the juvenile to be released on probation of good conduct and place him under the care of parent, guardian or other fit person, on executing a bond in Form V, for the good behaviour and well-being of the juvenile for a maximum period of three years. In addition, the Board may also direct furnishing of surety and / or execution of bond in Form VI by juvenile and / or juvenile to remain under the supervision of a Probation Officer [Section 15(1) (e) (3) & (4) r/w Rule 15(5), (6) & (8)]

- (vi) Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years, located nearest to the place of residence of the juvenile's parent or guardian. In addition, the juvenile may be placed under supervision of a Probation Officer [Section 15(1) (f), (3) & (4) r/w Rule 15(7) & (8)]
- (vii) Make an order directing the juvenile to be sent to a special home for a maximum period of three years located nearest to the place of residence of the juvenile's parent or guardian. [Section 15(1) (g) r/w Rule 15(7)]

All final orders shall necessarily include an individual care plan for the concerned juvenile [Rule 15 (3)].

XII. Post Final Order

The Board has the following power in respect of juvenile after the final order has been passed:

1. The Board may discharge or transfer a juvenile from one Special Home to another keeping in view the best interest of the juvenile and his natural place of stay. [Section 56]
2. The Board, on a report of a Probation Officer / Government or social worker may release a juvenile permitting him to live with his parent or guardian or of any authorized person to educate and train him for some useful trade or to look after him for rehabilitation [Section 59(1)]
3. The Board may permit any juvenile to go on leave on special occasions like examination or admission, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature for a maximum period of 7 days. The period of such leave shall be counted as a part of the period of stay in the institution [Section 59(2) (3) & (4) r/w Rule 62]
4. The Board shall pass order for restoration of the juvenile after hearing the juvenile and his parents or guardian as well as on the report of the Probation Officers. In case of girl, the juvenile shall be accompanied by a female escort. When a juvenile expresses his unwillingness to be restored back to

the family; the Board shall not coerce him to go back to the family, particularly if the Social Investigation Report establishes that restoration to the family may not be in the best interest of the juvenile [Rule 65]

NATIONAL LEVEL

Advisory Boards

Central Advisory Board [Section 62 of the Act]

Term: The Advisory Board at the Central level shall have a term of 3 years¹.

Purpose: The Central Govt. may constitute a Central or a State Advisory Board to advise the Govt. on matters relating to the establishment and maintenance of the homes, mobilization of resources, provision of facilities for education, training and rehabilitation of the child in need of care and protection and co-ordination among the various official and non-official agencies concerned. They have to inspect the various institutional or non-institutional services in their jurisdictions, and the recommendations made have to be acted upon by the concerned government.

Composition: The Central Government through the Union Ministry of Women and Child Development shall set up the Central Advisory Board to be headed by the Minister concerned and shall consist of the Secretary of the Ministry aforesaid, representatives from State Governments, representative members from the competent authority, leading non-governmental organizations, experts in child or juvenile care, children's institution and academic institutions as members². A designated official of the Central Ministry of Women and Child Development shall function as the Member Secretary of the Central Advisory Board³.

Meetings: All the Advisory Boards must hold at least two meetings in a year⁴.

STATE LEVEL

Advisory Boards

State Advisory Board [Section 62 of the Act]

Term: The Advisory Board at the State shall have a term of 3 years⁵.

Purpose: The State Govt. may constitute a State Advisory Board to advise the Govt. on matters relating to the establishment and maintenance of the homes, mobilization of resources, and provision of facilities for education, training and rehabilitation of the child in need of care and protection and co-ordination among the various official and non-official agencies concerned. They have to inspect the various institutional or non-institutional services in their jurisdictions, and the recommendations made have to be acted upon by the concerned government.

Composition: The State Government, through the Selection Committee, shall set up State level Advisory Boards, which shall consist of representatives of the State Government, members of the competent authority, academic institutions, locally respectable and spirited citizens, and representatives of non-governmental organizations⁶.

¹ Rule 93(1)

² Rule 93(6).

³ Rule 93(7).

⁴ Rule 93(4).

⁵ Rule 93(1).

⁶ Rule 93(8).

Meetings: All the Advisory Boards must hold at least two meetings in a year.⁷

Committees

a) Selection Committee [Rule 91 of JJR, 2007]:

Term: The term of the Selection Committee shall be for a period of five years.⁸

Appointment: the State Govt. shall constitute the Selection Committee by notification in the official gazette.⁹ It shall consist of 7 members.

Purpose: Primarily, the Selection Committee shall select and recommend a panel of names to the State Child Protection Unit or the State Govt. for appointment of members of the Juvenile Justice Board or Child Welfare Committee.¹⁰ It must also recommend names for constitution of the State or District or City level Inspection Committees as required under section 35 of the Act.¹¹

Composition :¹²

(i) A retired judge of High Court as the Chairperson;

(ii) One representative from the concerned Department of State Government not below the rank of Director as the Member Secretary;

(iii) Two representatives from a reputed non-governmental organization, working in the area of child welfare;

(iv) Two representatives from academic bodies concerned with social work, psychology, sociology, child development, education, law, criminology and with experience of working on children's issues; and

(v) A representative of the National or State Human Rights Commission or, National or State Commission for Protection of Child Rights or, National or State Commission for Women.

b) Inspection Committee [Section 35 of the Act – only with respect to children's homes]:

Appointment: The State Govt. has the power to appoint **inspection committees for the children's homes for the State**.¹³ The appointments shall be made on the basis of the recommendations of the Selection Committee.¹⁴

Purpose:

a) Carry out inspection of the intuitions¹⁵ at least once in every three months.¹⁶

b) Visit and oversee the conditions in the institutions and look into the functioning of the Management Committee and the Children's Committee.¹⁷

⁷ Rule 93(4).

⁸ As mentioned in Rule 91 of the JJR, 2007.

⁹ Rule 91.

¹⁰ As mentioned in Rule 92(b).

¹¹ Rule 92(4).

¹² Rule 91.

¹³ Section 35(1).

¹⁴ As mentioned in Rule 63

¹⁵ Institutions means an Observation Home or Shelter Home or a Special Home or a Children's Home.

¹⁶ Rule 63(5).

¹⁷ Rule 63(2).

c) Make suggestions for improvement and development of the institution.¹⁸

Composition: The team shall consist of a minimum of 5 members with representation from the State Government, the Board or Committee, the State Commission for Protection of Child Rights or the State Human Rights Commission, medical and other experts, voluntary organizations and reputed social workers.¹⁹

Tenure: Since the District Inspection Committee also functions as the District Advisory Board, its term shall be the same as the District Advisory Board i.e. 3 years.²⁰ [The tenure of the State Inspection Committee has not been mentioned.]

Authorities, Units, Organizations & Agencies

a) State Legal Aid Services Authority [Rule 14 of JJR, 2007]:

The State Legal services Authority and the Legal Officer of the District Child Protection Unit shall be under an obligation to provide legal services sought by the Juvenile Justice Board.²¹ These bodies shall also provide free legal services to all the juvenile(s) in conflict with the law.²²

Note: Lack of District Legal Services Authorities or absence of a Legal Officer in the District Child Protection Unit in lieu thereof, as mandated under Rule 14 of JJR 2007, adversely affects legal aid that should be provided to children in conflict with the law.

b) State Child Protection Unit or State Child Protection Society [Section 62A: Rule 80]

Constitution: The State Govt. is given the responsibility to constitute the State Child Protection Unit.²³

Purpose: Child Protection Unit's shall be established for the purpose of maintenance of homes, notification of competent authorities in relation of children and their rehabilitation and co-ordination with various official and non official agencies concerned. The important functions of the State Child Protection Unit include²⁴ :

(i) Implementation of the Act and supervision and monitoring of agencies and institutions under the Act.

(ii) To set up, support and monitor the District Child Protection Units.

(iii) Represent State Child Protection Unit as a member in the Selection Committee for appointment of members of Boards or Committees.

(iv) Network and coordinate with all government departments to build inter-sectoral linkages on child protection issues, including Departments of Health, Education, Social Welfare, Urban Basic Services, Backward Classes & Minorities, Youth Services, Police, Judiciary, Labour, State AIDS Control Society etc.

(v) Training and capacity building of all personnel

¹⁸ Rule 63(3).

¹⁹ Rule 63(4).

²⁰ Supra.

²¹ As mentioned in Rule 14(3).

²² As mentioned in Rule 14(2).

²³ Section 62 A.

²⁴ All the functions of the State Child Protection Unit are mentioned in Rule 80 of the JJR, 2007.

Composition: These Units shall consist of such officers and other employees as may be appointed by the Government to take up matters relating to children in need of care and protection and juveniles in conflict with the law.²⁵

DISTRICT LEVEL

Advisory Boards

District/ City Advisory Boards [Section 62 of the Act]

Term: The Advisory Board at the District and City levels shall have a term of 3 years.²⁶

Appointment: The members of the District and City Advisory Board shall be appointed by the State Govt.²⁷

Purpose: Inspection of the various institutional or non-institutional services in their jurisdictions has to be done, and the recommendations made have to be acted upon by the concerned government.

Composition: The District or City Level Board shall consist of such representatives from the State Government, voluntary organizations, Committee, and other medical experts and social workers.²⁸

Meeting: All the Advisory Boards must hold at least two meetings in a year.²⁹

For Children in Need of Care and Protection: Centre

Child Welfare Committee [Section 29 of the Act]:

Composition: The Committee shall consist of a Chairman and four other members as the State Govt. may think fit to appoint, of whom one at least shall be a woman and another, an expert on matters concerning children.³⁰

Appointment: The Chairperson and the members of the Committee shall be appointed on the recommendation made by the Selection Committee set up by the State Govt.³¹

Term: The Committee shall have a tenure of three years and the appointment of the members shall be co-terminus with the tenure of the Committee.³² Also, the Chairperson and the members of the Committee shall be eligible for appointment for a maximum of two consecutive terms.³³

Qualification³⁴: Apart from having a minimum of 7 years experience in their respective field, a person to be selected as a Chairperson or the member must be:

i) A person who holds a post graduate degree in social work, psychology, child development, education, sociology, law, criminology and where such person is not available;

25 As mentioned in Section 62A of the Act

26 Rule 93(1).

27 Rule 93(3).

28 Section 35.

29 Rule 93(4).

30 Section 29(2).

31 Refer to Rule 20(2) of the JJR, 2007.

32 Refer to Rule 21(2) of the JJR, 2007.

33 As mentioned in Rule 21(1) of the JJR, 2007.

34 As explained in Rule 22 of the JJR, 2007.

a person with at least a graduate degree in any of the social science disciplines.

ii) A teacher, doctor or a social worker who has been involved in the work concerning children.

Functions :³⁵ The Committee is required to decide on the matters brought before it.³⁶ It is required to reach out to such children in need of care and protection, who are not in a position to be produced before it.³⁷ The Committee must also direct the Child Welfare Officers or the Probation Officers or NGO's to conduct social inquiry and submit reports to it. ³⁸ It must also ensure appropriate rehabilitation and restoration, including passing necessary directions to parents and guardians in such regard.³⁹

FOR CHILDREN IN CONFLICT WITH THE LAW: Centre

Juvenile Justice Board [Section 4 of the Act]:

Composition: The Board shall consist of a Principal Magistrate [Metropolitan Magistrate or a Judicial Magistrate] of the first class and two social workers, of whom at least one shall be a woman. ⁴⁰ The two social workers shall be appointed by the State Govt. on the recommendation of the Selection Committee.⁴¹

Term: The Board shall have a tenure of three years and the appointment of the members shall be co-terminus with the tenure of the Board.⁴²

Qualification: The Magistrate appointed must have special knowledge or training in child psychology or child welfare and the Member appointed must have been actively involved in working on issues of health, education, or welfare activities pertaining to children for at least 7 years.⁴³

Functions⁴⁴ : The Board shall primarily adjudicate and dispose cases of juveniles in conflict with the law⁴⁵ and take cognizance of crimes committed under Section 23 to 28⁴⁶ of the Act. The Board is also is given the responsibility of monitoring institutions for juveniles in conflict with law⁴⁷ and deal with the non compliance on the part of the concerned government functionaries or functionaries of the voluntary organizations.⁴⁸

Committees

a) Inspection Committee [Section 35 of the Act]:

Appointment: The State Govt. has the power to appoint the Inspection Committees for

35 Rule 25 of the JJR, 2007 deals comprehensively with the functions and powers of the Committee.

36 As mentioned in Rule 25(b) of the JJR, 2007.

37 As mentioned in Rule 25(c) of the JJR, 2007.

38 As mentioned in Rule 25(e) of the JJR, 2007.

39 As mentioned in Rule 25(g) of the JJR, 2007.

40 As mentioned in Section 4(2) of the Act.

41 Refer to Rule 5(4) of the JJR, 2007.

42 As mentioned in Rule 6(1) of the JJR, 2007.

43 Refer to Section 4(3) of the Act.

44 Rule 10 of the JJR, 2007 comprehensively deals with the functions of the Juvenile Justice Board.

45 Rule 10(a) and (b) of the JJR, 2007.

46 Section 23 deals with punishment for cruelty to a juvenile or a child. Section 24 deals with employment of juvenile or child for begging; Section 25 deals with penalty for giving intoxicated liquor or narcotic drug to a juvenile or a child; Section 26 deals with exploitation of a juvenile or a child; Section 27 deals with special offences and Section 28 deals with alternative punishment.

47 Refer to Rule 10(c) of the JJR, 2007.

48 Refer to Rule 10(d) of the JJR, 2007.

the children's homes for district and city level. The appointments shall be made on the basis of the recommendations of the Selection Committee.⁴⁹

Purpose: The Inspection Committee shall visit and oversee the conditions in the institutions and appropriateness of the process for safety, well being and permanence, review the standards of care and protection being followed by the institutions, look out for any incidence of violation of child rights, look into the functioning of the Management Committee and Children's Committees and give appropriate directions. Suggestions for improvement and development of the institution also have to be made.⁵⁰

Composition: The members of the Inspection Committee shall consist of a minimum of 5 members with representation from the State Government, the Board or Committee, the State Commission for Protection of Child Rights or the State Human Rights Commission, medical and other experts, voluntary organizations and reputed social workers.⁵¹

Note: *The District or City Level Inspection Committee constituted under Section 35 of the Act shall also function as the District or City Advisory Board.*⁵²

Tenure: Since the District Inspection Committee also functions as the District Advisory Board, its term shall be the same as the District Advisory Board i.e. 3 years.⁵³

Authorities, Units, Organizations & Agencies

a) District Child Protection Unit [Section 62A: Rule 81]

Purpose: Every State Govt. shall constitute this Unit for the purpose of establishment and maintenance of homes, notification of competent authorities in relation to children and their rehabilitation and co-ordination with various official and non official agencies concerned.

Constitution: It is the responsibility of the State Govt. to constitute the District Child Protection Unit.⁵⁴

Composition: These Units shall consist of such officers and other employees as may be appointed by the Government to take up matters relating to children in need of care and protection and juveniles in conflict with the law.⁵⁵

District Child Protection Unit⁵⁶ : The District Child Protection Unit shall coordinate and implement all child rights and protection activities at district level. Some of the relevant functions of the District Child Protection Unit include:

(i) Ensuring effective implementation of the Act at district or city levels by supporting creation of adequate infrastructure, such as, setting up Boards, Committees, Special Juvenile Police Units and homes in each districts.

(ii) Identifying families at risk and children in need of care and protection.

(iii) Assessing the number of children in difficult circumstances and creating district-

49 As mentioned in Rule 63 of the JJR, 2007.

50 Refer to Rule 63(2) and Rule 63(3) of the JJR, 2007

51 Refer to Rule 63(4) of the JJR, 2007.

52 As mentioned in Section 62(3) of the Act.

53 Supra.

54 Section 62 A.

55 As mentioned in Section 62A of the Act.

56 All the functions of the District Child Protection Unit are mentioned in Rule 81 of the JJR, 2007

specific databases to monitor trends and patterns of children in difficult circumstances. (d) Implementing family based non-institutional services including sponsorship, foster care, adoption and after care.

(iv) Implement family based non-institutional services including sponsorship, foster care, adoption and after care.

(v) Network and coordinate with civil society organizations working under the Act

b) Special Juvenile Police Unit [Section 63 of the Act]:

Composition: The State Government shall appoint a Special Juvenile Police Unit at the District level and this unit shall consist of a juvenile or child welfare officer of the rank of police inspector and two paid social workers having experience of working in the field of child welfare, of which one shall be a woman.⁵⁷

Purpose: The police officers who frequently deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under the Act are required to be specially instructed and trained and perform their functions effectively.⁵⁸

It is also stated that in every police station, at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in co-ordination with the police.⁵⁹

As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board within 24 hours.⁶⁰

Functions: Special Juvenile Police Unit at district level shall coordinate and function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child or juvenile.⁶¹ The unit shall take serious cognizance of adult perpetrators of crimes against children and see to it that they are without delay apprehended and booked under the appropriate provisions of the law and for this purpose the district level units shall maintain liaison with other units of police station.⁶²

Note: The Superintendent of Police in a district shall head the Special Juvenile Police Unit and oversee its functioning from time to time.⁶³ A Nodal Officer from Police not less than the rank of Inspector General of Police shall be designated in each State to coordinate and upgrade role of police on all issues pertaining to care and protection of children or juveniles under Act.⁶⁴

Homes/Institutional Care Facilities

For Children in Need of Care and Protection (CNCP)

a) **Children's Homes** [Section 34: By the State Govt. itself or in association with a voluntary organization]:

⁵⁷ Refer to Rule 84(1) of the JJR, 2007.

⁵⁸ As mentioned in Section 63(1) of the Act.

⁵⁹ Refer to Section 63(2) of the Act.

⁶⁰ Refer to Section 10(1) of the Act.

⁶¹ Refer to Rule 84(5) of the JJR, 2007.

⁶² Refer to Rule 84(6) of the JJR, 2007.

⁶³ Refer to Rule 84(9) of the JJR, 2007.

⁶⁴ Refer to Rule 84(10) of the JJR, 2007.

Formation: The State Governments have been empowered to establish and maintain either by themselves or in association with the voluntary organizations, children's homes in every district or group of districts.⁶⁵

Purpose: Primarily established for the reception of the children in need of care and protection during the pendency of any inquiry and subsequently for the child's care, treatment, education, training and rehabilitation.⁶⁶

Rule 29(2) of the JJR, 2007 states that the children's home shall be a comprehensive child care center with the primary objective to promote an integrated approach to child care by involving the community and local NGO's through the Management Committee and the District Child Protection Unit or State Child Protection Unit.

Functions: Restoration and protection of a child shall be the prime objective of any children's home. Therefore, steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home must be taken by it.⁶⁷ The children's home must also strive to promote sponsorship programmes as laid down in section 43 of the Act.⁶⁸

Staff:

i) Whole-time staff: in a Children's Home may consist of Case Workers, Child Welfare Officers, Counselor, Educator, Vocational Training Instructor, Medical Staff, Administrative staff, Care Takers, house father and house mother, child mentors, volunteers, store keeper, cook, helper, washer man, safai karamchari, gardener as required.⁶⁹

ii) Part-time staff: shall include Psychiatrist, Psychologist, Occupational therapist, and other professionals as may be required by time to time.⁷⁰

Note: All Children's homes are required to be registered as child care institutions under sub-section (3) of Section 34 of the Act and Rule 71 of the JJR, 2007.⁷¹

b) Shelter Homes [Section 37 of the Act]

Formation and Purpose: The State Govt. is empowered to recognize reputed and capable voluntary organizations and provide them with assistance as many shelter homes are required for juveniles and children. These shelter homes shall function as drop in centres for the children in need of urgent support.⁷² The shelter homes or drop-in-centres must have minimum facilities of boarding and lodging, besides the provision for fulfillment of basic needs in terms of clothing, food, health care and nutrition, safe drinking water and sanitation.⁷³

Shelter Homes shall include⁷⁴ :

⁶⁵ Refer to Section 34(1) of the Act.

⁶⁶ Supra.

⁶⁷ Refer to Section 39(1) & (2) of the Act.

⁶⁸ Refer to Rule 37(3) of the JJR, 2007.

⁶⁹ Refer to Rule 68(3) of the JJR, 2007.

⁷⁰ Refer to Rule 68(4) of the JJR, 2007.

⁷¹ Refer to Rule 29(a) of the JJR, 2007.

⁷² As mentioned in Section 37(2) of the Act.

⁷³ See Rule 30(3) of the JJR, 2007.

⁷⁴ As mentioned in Rule 30(2) of the JJR, 2007.

i) Short stay homes for children needing temporary shelter, care and protection for a maximum of one year.

ii) Transitional homes providing immediate care and protection to a child for a maximum period of four months.

iii) 24 hour drop-in-centres for children needing day care or night shelter facility.

Functions:

i) Restoration and protection of a child shall be the prime objective of all shelter homes. Therefore, steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a shelter home must be taken by it.⁷⁵

ii) All shelter homes are mandated to provide requisite facilities for education, vocational training, counseling and recreation or make arrangements for it in collaboration with voluntary organizations or corporate sector.⁷⁶

Staff:

i) Whole-time staff: in a Children's Home may consist of Case Workers, Child Welfare Officers, Counselor, Educator, Vocational Training Instructor, Medical Staff, Administrative staff, Care Takers, house father and house mother, child mentors, volunteers, store keeper, cook, helper, washer man, safai karamchari, gardener as required.⁷⁷

ii) Part-time staff: shall include Psychiatrist, Psychologist, Occupational therapist, and other professionals as may be required by time to time.⁷⁸

Note: There shall be separate shelter homes for girls and boys as per rule 40(2)(d) of the rules.

c) **Specialized Adoption Agencies** [Rule 33(3)(a) of JJR, 2007]:

The State Govt. shall recognize one or more of its institutes or voluntary organizations in each district as Specialized Adoption Agencies.⁷⁹ These agencies shall produce all orphaned and abandoned children who are to be declared legally free for adoption before the Committee within 24 hours of receiving such children.

d) **After Care Organization** [Section 44 of the Act]:

Formation and Purpose: The State Government under the rules of the Act is empowered to establish or recognize after care organizations for the purpose of taking care of juveniles or the children after they leave the special homes, children's homes and for the purpose of enabling them to lead an honest and useful life.⁸⁰ Therefore the main objective of this organization is to facilitate their transition from an institutional-based life to mainstream society for social reintegration. After care programmes are to be made available for 18-21 years old persons, who have no place to go to or are unable to support themselves.⁸¹

⁷⁵ Refer to Section 39(1) & (2) of the Act.

⁷⁶ See Rule 30(5) of the JJR, 2007.

⁷⁷ Refer to Rule 68(3) of the JJR, 2007.

⁷⁸ Refer to Rule 68(4) of the JJR, 2007.

⁷⁹ As mentioned in Section 41(4) of the Act.

⁸⁰ As mentioned in Section 44(b) of the Act.

⁸¹ As mentioned in Rule 38 of the JJR, 2007. Rule 38 entirely deals with the After Care Organizations objectives and working.

Staff: the whole time and part time staff at an after care organization shall be the same as that in a Children's Home or a Shelter home.⁸²

For Children in Conflict with the Law

e) Observation Homes [Section 8 of the Act]

Formation and Purpose: The State Govt. may maintain either by itself or under an agreement with voluntary organizations, observation homes in every district which may be required for temporary reception of any juvenile in conflict with the law during the pendency of any inquiry regarding such juvenile under the Act.

When a juvenile having been arrested, is not released on bail, the officer in-charge shall cause him to be kept only in an observation home until he can be brought before the Board.⁸³ Further, even during the pendency of the inquiry, the juvenile shall be kept in an observation home or a place of safety.⁸⁴ The Observation homes must be child-friendly and in no way should they look like a jail or lock-up.⁸⁵

Staff:

i) Whole-time staff: in a Observation Home may consist of Officer-in-charge, Probation Officer, Child Welfare Officers, Counselor, Educator, Vocational Training Instructor, Medical Staff, Administrative staff, Care Takers, house father and house mother, child mentors, volunteers, store keeper, cook, helper, washer man, safai karamchari, gardener as required.⁸⁶

ii) Part-time staff: shall include Psychiatrist, Psychologist, Occupational therapist, and other professionals as may be required by time to time.⁸⁷

Note: The observation homes or special homes shall set up separate residential facilities for boys and girls up to 12 years, 13-15 years and 16 years and above.⁸⁸

f) Special Homes [Section 9: By the State Govt. itself or in association with a voluntary organization]

Formation: The State Governments have been empowered to establish and maintain, either by themselves or under an agreement with voluntary organizations, special homes in every district or a group of districts.⁸⁹

Purpose: These homes are primarily required for reception and rehabilitation of juveniles in conflict with the law under this Act. Special homes shall set up separate residential facilities for boys and girls up to 12 years, 13-15 years and 16 years and above.⁹⁰ These homes must be child-friendly and in no way should they look like a jail or lock-up.⁹¹

Functions:

⁸² Refer to Rule 68(3) of the JJR, 2007.

⁸³ See Section 12(2) of the Act.

⁸⁴ See Section 12(3) of the Act.

⁸⁵ Refer to Rule 40(6) of the JJR, 2007.

⁸⁶ Supra.

⁸⁷ Supra.

⁸⁸ See Rule 16(2) of the JJR, 2007.

⁸⁹ As mentioned in Section 9 of the Act.

⁹⁰ See Rule 16(2) of the JJR, 2007.

⁹¹ Refer to Rule 40(6) of the JJR, 2007.

i) The rehabilitation and social reintegration of a child must begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.⁹²

ii) Special homes must undertake the task to promote sponsorship programmes as laid down in section 43 of the Act.⁹³

Staff:

i) Whole-time staff: in a Special Home may consist of Officer-in-charge, Probation Officer, Child Welfare Officers, Counselor, Educator, Vocational Training Instructor, Medical Staff, Administrative staff, Care Takers, house father and house mother, child mentors, volunteers, store keeper, cook, helper, washer man, safai karamchari, gardener as required.⁹⁴

ii) Part-time staff: shall include Psychiatrist, Psychologist, Occupational therapist, and other professionals as may be required by time to time.⁹⁵

g) **Place of Safety**⁹⁶ [As defined in Section 2(q) of the Act]

Where a juvenile in conflict with law who has attained the age of sixteen years and the offence committed by him is of such a serious nature that in the satisfaction of the Board, it is neither in the interest of the juvenile himself nor in the interest of other juveniles of the special home, the Board may order the juvenile to be kept in a place of safety and in the manner considered most appropriate by it.⁹⁷

Committees in Homes/Institutions established in Districts

a) **Children's Committee** [Rule 56 of JJR, 2007]:

Composition: The Officer-in-charge of every institution for Juveniles or children shall facilitate the setting up of Children's Committees for different age groups of children- 6-10 years, 11-15 years and 16-18 years and these Children's Committees shall be constituted solely by the children.⁹⁸

Purpose: The Children's Committee is encouraged to participate in activities such as improving the condition of the institutions; reviewing the standards of care; preparing a daily routine and diet for the children; developing education and recreational plans and management of the institute through the Managing Committee.⁹⁹

b) **Management Committee** [Rule 55 of JJR, 2007 deals with this Committee]:

Purpose: Every institution must have a Management Committee for the management of the institution and monitoring the progress of every juvenile and child. The Management Committee must ensure that each children home shall be a comprehensive child care center with the primary objective to promote an integrated approach to child care by involving the

92 Refer to Section 40 of the Act.

93 Refer to Rule 37(3) of the JJR, 2007.

94 Supra.

95 Supra.

96 "Place of safety" means any place or institution (not being a police lock-up or jail), the person incharge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile.

97 Refer to Rule 15(11) of the JJR, 2007.

98 Refer to Rule 56(1) of the JJR, 2007.

99 Refer to Rule 56(2) of the JJR, 2007.

community and local NGO's.¹⁰⁰

The individual care plans of the juveniles or children are required to be reviewed quarterly by the Management Committee for appropriate development and rehabilitation including options for release or restoration to family or foster care or adoption.¹⁰¹

Composition¹⁰² :

The Management Committee shall consist of the following personnel:

District Child Protection Officer (District Child Protection Unit): Chairperson

Officer-in-charge: Member-Secretary

Probation Officer or Child Welfare Officer or Case Worker: Member

Medical Officer: Member

Psychologist or Counselor: Member

Workshop Supervisor or Instructor in Vocation: Member

Teacher: Member

Social Worker Member of Juvenile Justice Board or Child Welfare Committee: Member

A juvenile or child representative from each of the Children's Committees (on a monthly rotation basis to ensure representation of juveniles or children from all age groups) – Member

Functionaries

a) Chief Judicial Magistrate [Section 14(2) of the Act]

The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Juvenile Justice Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

b) Social Worker Members of JJB (Two persons, of which one shall be a woman) – Rule 5 (4)

c) Social Worker Members of SJPU (Two persons of whom one shall be a woman) – Rule 84 (1)

b) Probation Officers [S.2(s) of the Act, Rule 87 of the JJR 2007]

Appointment¹⁰³: By the State Government under the Probation of Offenders Act, 1958 (20 of 1958) .

Purpose: The functions of a probation officer include

i) Prepare a Social Investigation Report on the juvenile in conflict with law through personal interview and from the family, social agencies and other sources;¹⁰⁴

ii) Attend the proceedings of the Board and submit reports as and when required.¹⁰⁵

iii) Clarify problems of the juvenile or the child and dealing with their difficulties in

¹⁰⁰Refer to Rule 29(2) of the JJR, 2007.

¹⁰¹ Refer to Rule 50(12)(c) of the JJR, 2007.

¹⁰² Refer to Rule 55(3) of the JJR, 2007.

¹⁰³ S.2(s) of the Act

¹⁰⁴ Refer Rule 13(1)(e), Rule 15(2) of the JJR 2007

¹⁰⁵ Refer to Rule 87 of the JJR 2007

institutional life¹⁰⁶

iv) Supervise the juvenile under an order made under S.15(3) of the Act, and provide the Board with a report on the behaviour and conduct of the juvenile.

v) Prepare an individual care plan, including a follow-up plan¹⁰⁷, for the concerned juvenile in conflict with law on the basis of interaction with the juvenile and his family where possible.¹⁰⁸

vi) Place each case before the Management Committee for ensuring proper release and social mainstreaming of the juvenile post-release¹⁰⁹

vii) Participate in the pre-release programme and helping the juvenile to establish contacts which can provide emotional and social support to juvenile after his or her release.¹¹⁰

viii) Provide immediate information to the Officer-in-charge and the Medical Officer whenever a sudden or violent death or death from suicide or accident of a juvenile takes place in an institution.¹¹¹

ix) Prepare and submit a quarterly follow-up report to the Board for a period of two years with a copy to the officer-in-charge of the institution from where the juvenile or child is restored. The follow-up report shall clearly state the situation of the juvenile post restoration and the juvenile's needs to be met by the State Government in order to reduce further vulnerability of the juvenile.¹¹²

c) Child Welfare Officer [Rule 87, Rule 28 (1), Rule 30 (9) and Rule 35 (3) of the JJR 2007]
The responsibilities of the Child Welfare Officer include¹¹³ :

i) Prepare a Social Investigation Report on child through personal interview and from the family, social agencies and other sources.

ii) Attend the proceedings of the Committee and submit reports as and when required.

iii) Clarify problems of the child and deal with their difficulties in institutional life.

iv) Establish co-operation and understanding between the child and the Officer-in-charge.

v) Develop a care plan for every child in consultation with the child and follow up its implementation.

vi) Participate in the pre-release programme and help the child to establish contacts which can provide emotional and social support to the child after his or her release.

vii) Child Welfare Officer or social worker to carry out assessment of prospective foster parents/fit persons

d) Juvenile Welfare Officer [Section 63 (2) of the Act – In every Police Station]

In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the Juvenile or Child Welfare Officer who will handle the juvenile or the child in coordination with the police.

g) Social Worker for the proper care, protection, development, rehabilitation and

106 Refer to Rule 87 of the JJR 2007

107 Refer to Rule 65(8) of the JJR 2007

108 Refer Rule 15(3) of the JJR 2007

109 Refer to Rule 17(1) of the JJR 2007

110 Refer to Rule 87 of the JJR 2007

111 Refer to Rule 59(3) of the JJR 2007

112 Refer to Rule 65(9) of the JJR 2007

113 Refer to Rule 87, 28, 34 and 35 of the JJR 2007 for the complete list of duties.

reintegration of children in need of care and protection in shelter homes – Rule 30 (9)

OTHER IMPORTANT TERMS AND POINTS

1. **Fit Institutions¹¹⁴ [Defined under Section 2(i)]**

The recognition of fit institutions is explained in Rule 69 of JJR, 2007.

2. Competent Authority¹¹⁵ : means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board.
3. Institution: means an observation home, or a special home, or a children's home or a shelter home set-up, certified or recognized and registered under Section 8, 9, 34, sub-section (3) of section 34 and section 37 of the Act respectively.¹¹⁶
4. Section 61 of the Act and Rule 95 of JJR, 2007: states that the State Govt. may create a Fund for the welfare and rehabilitation of the juveniles and children dealt under the Act.¹¹⁷ It shall be administered by the State Advisory Board.
5. Section 58 of the Act and Rule 61 (4): Leper Asylum, Mental Hospital, Treatment Centre for drug-addicts, Place of Safety for proper treatment of a child/juvenile suffering from leprosy, or who is of unsound mind or addicted to narcotic drugs and psychotropic substances.¹¹⁸ Rule 61(4) suggests that such facilities should ideally be available within the jurisdiction of the competent authority, which is at the district level, or otherwise at the state level.
6. Rule 27 (12 and 13): CWCs to have an empanelled list of lawyers, social workers, mental health experts and voluntary organisations
7. 'Integrated Rehabilitation Centre for Addicts'/'Psychiatric Hospitals' or 'Psychiatric Nursing Home'¹¹⁹ : These centres are maintained by the State Govt. for mentally ill persons including persons addicted to narcotics.¹²⁰
8. State Adoption Resource Agency (SARA) – this is a state level body meant to implement family based non-institutional services at district level [Rule 81 (2) (h)]
9. Child Line Services (at district and city level) – for production of a child before CWC [Rule 27 (1) (c) and (5)], to help in tracing family [Rule 27 (13)], emergency outreach service [Rule 29 (3) (d)], refer a child to a shelter home [Rule 30 (6)], social audit [Rule 64(2)], as a stakeholder at district level [Rule 81 (2) (n)]



114 means a governmental or a registered non-governmental organization or a voluntary organization prepared to own the responsibility of a child and such organization is found fit by the competent authority [Competent Authority defined in Section 2(g)].

115 As defined in Section 2(g) of the Act.

116 As defined by Rule 2(i) of JJR, 2007.

117 Rule 95 of the JJR, 2007 comprehensively deals with the Fund.

118 The purpose of Section 58 of the Act will be defeated if the institutions and facilities listed therein are not in place. Also, the place of safety mentioned in Section 58 of the Act is not the same as defined under Section 2 (q) of the Act.

119 'Psychiatric Hospitals' or 'Psychiatric Nursing Home' shall have the meaning assigned to it in clause (q) of Section 2 of the Mental Health Act, 1987.

120 This Centre has been mentioned in Section 58 of the Act. This centre is not established by the JJ Act, and its meaning shall be the same as defined by the 'Central Sector Scheme for Prevention of Alcoholism and Substance (Drug) Abuse and for Social Defence Services' Scheme.