



National Commission For Protection of Child Rights

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GUIDELINES FOR CONDUCTING PRELIMINARY ASSESSMENT UNDER SECTION 15 OF THE JUVENILE JUSTICE (JJ) ACT, 2015

Chapter 1 Introduction

1.1 Context

The Hon'ble Supreme Court has passed a judgement dated 13.07.2022 in Barun Chandra Thakur v/s Master Bholu&Anr. CrI. Appeal No. 950/2022 while examining the proceedings arising out of preliminary assessment made under section 15 of the Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015. The Hon'ble Court indicated that the task of preliminary assessment under section 15 of the JJ Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. The Central Government, NCPCR and SCPCRs have been directed by the Hon'ble Court to consider formulating guidelines for the procedure to be adopted by the authorities while conducting the assessment under Section 15 of the JJ Act, 2015. In view of the Hon'ble Supreme Court's directions, the National Commission for Protection of Child Rights (NCPCR) has developed guidelines describing the key procedures that will enable the Juvenile Justice Board (JJB) to conduct the preliminary assessment in consonance with the guiding principles and other provisions of the Act.

The guidelines are formulated in manner so as to not limit the experts by providing or suggesting any kind of specific assessment tool. During the consultations carried out by NCPCR with experts and SCPCRs, it has been noted that the existing mechanisms such as Social Investigation Report (SIR) and Social Background Report (SBR) are exhaustive in nature. Moreover, the course of assessment especially psychological assessment may differ from child to child. Therefore, the guidelines have been cautiously framed as to include the essential components and basic mechanism involved in preliminary assessment to address the ambiguity in understanding of the process and steps to be followed.

1.2 General Principles

The fundamental principles of care and protection of children that guide the implementation of J.J. Act, 2015 are also significant for these guidelines. These guiding principles are as follows-

- *Principle of presumption of innocence:* Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- *Principle of dignity and worth:* All human beings shall be treated with equal dignity and rights.
- *Principle of participation:* Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- *Principle of best interest:* All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.
- *Principle of family responsibility:* The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- *Principle of safety:* All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.
- *Positive measures:* All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.
- *Principle of non-stigmatising semantics:* Adversarial or accusatory words are not to be used in the processes pertaining to a child.
- *Principle of non-waiver of rights:* No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
- *Principle of equality and non-discrimination:* There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

- *Principle of right to privacy and confidentiality:* Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- *Principle of institutionalisation as a measure of last resort:* A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
- *Principle of repatriation and restoration:* Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.
- *Principle of fresh start:* All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
- *Principle of diversion:* Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.
- *Principles of natural justice:* Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under the J.J. Act.

Chapter 2- Nature and Purpose of Preliminary Assessment

Before discussing preliminary assessment in detail, it is pertinent to understand the key concepts related to the preliminary assessment related to the said provision. The Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015 has categorized the offences committed by children in three categories- petty offences, serious offences and heinous offences. The categories are defined under Section 2 of the Act as-

- i) “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;
- ii) “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;
- iii) “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,

- a) minimum imprisonment for a term more than three years and not exceeding seven years; or
- b) maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.

Though the child is defined in the JJ Act, 2015 as any person who has not completed eighteen years of age, there is a specific provision wherein to ensure fair and speedy inquiry, the initiation of an inquiry into a heinous crime has been differentiated based on age of the child. Specifically, Section 14 (5) (f) (ii) of the Act states that - *for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.*

Section 15(1) states that - In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order 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 [in accordance with section 18(3)]. It further states that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

2.1 Aim of conducting preliminary assessment- The sole aim of preliminary assessment is to determine whether the child in the age of 16-18 years should be tried as an adult in case of heinous offence. This should not be considered an inquiry into the offence or a prelude to the trial by Children’s Court or JJB. Also, while making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise [Rule 10A (3)].

Aim of the preliminary assessment is not to seek confession from the child nor to reach at a conclusion of any sort.

2.2 Criteria for conducting preliminary assessment- There are two essential conditions that calls for preliminary assessment under section 15 of the JJ Act, 2015. *First*, the crime that has taken place is in the category of heinous crime as defined in the JJ Act, 2015. *Second*, the child who has allegedly committed the crime is in the age group of 16-18 years.

If the offence is allegedly committed by more than one child, preliminary assessment of each child will be carried out separately.

2.3 Determining the age of child allegedly in conflict of law- One of the most important steps for Juvenile Justice Board to proceed with preliminary assessment regarding children alleged of heinous offences is to determine the age of the child. For this, under section 94(2)

of the JJ Act, the Board shall undertake the process of age determination, by seeking evidence by obtaining-

- i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Board. Provided such age determination test conducted on the order of the Board shall be completed within fifteen days from the date of such order.

2.4 Determinants of a preliminary assessment- The preliminary assessment has to be carried out in terms of the following four determinants-

- a. **physical capacity of the child to commit alleged offence-** Child's locomotor abilities and capacities, particularly with regard to gross motor functions (such as walking, running, lifting, throwing...such abilities as would be required to engage in most antisocial activities due to which children come into conflict with the law). The expert shall not delve into assessing the physical age of the child as a part of the preliminary assessment. The age determination is concluded before the initiation of preliminary assessment by the JJB and therefore, the experts shall not repeat the process at this stage. The role of the experts with regard to assessing physical capacity of the child to commit the alleged offence is only limited to assessing the aspects as have been mentioned above in light of the physical capacities that may be required to carry out the offence.
- b. **mental capacity of the child to commit alleged offence-** Child's ability to make social decisions and judgments, for these are the critical executive functioning abilities that operate in the social context that offense takes place in. Thus, reporting on the child's "mental capacity" would draw on all the variables in the mental health and psychosocial assessment including substance abuse problems, life skills deficits, neglect or poor supervision by family or poor role models; experience of abuse and trauma; mental health disorder or other (neuro) developmental disabilities such as attention deficit hyperactivity disorder; intellectual disability.
- c. **the circumstances in which the child allegedly committed the offence-** Psychosocial vulnerabilities, including life events and mental health problems

that the child is afflicted with, i.e., factors relating to family, school, peer relationships, trauma and abuse, mental health, and substance use. Circumstances, therefore, do not refer merely to the immediate circumstances of the offense itself, i.e., the last event that occurred and led the child into conflict with the law. In fact, the offense behavior, including its immediate circumstances, is a (cumulative) consequence of a whole plethora of other circumstances that have been occurring over relatively long time periods of the child's life (perhaps since early childhood). Thus, we take a longitudinal (versus a cross-sectional) perspective of circumstances of the offense.

- d. **ability to understand the consequences of the offence-** Child's knowledge and/or understanding of social consequences (what other people will say or how they will perceive the behaviour and consequently what opinion society would form about the child including labelling and stigmatization), interpersonal consequences (how the behaviour might affect personal relationships in terms of loss of trust, affection and respect of family and friends) and legal consequences of their actions (knowledge of relevant laws on sexual abuse/rape/robbery/ dacoity etc. and violation of rules leading to serious consequences for the child in terms of punishment).

2.5 Sitings for conducting preliminary assessment- The psychologists and other experts must be given optimal opportunity to interact with the child. It is important that appropriate time and space is given for building rapport with the child and for carrying out the assessment by admitting the child through in-patient or out-patient setting as deemed appropriate. However, in case the expertise is availed from outside District, the child should be assessed through in-patient facility.

Chapter 3 **Role of Juvenile Justice Board (JJB) and Other Experts**

3.1 The **Juvenile Justice Board (JJB)** is solely responsible for conducting preliminary assessment as per section 14 (5) (f) (ii) and Section 15(1) of the Act.

3.2 In case the Board does not have at least one member who is a practicing professional with a degree in child psychology or child psychiatry, the Board shall take assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. In such cases the Board would record specific reason(s) for the same.

The Juvenile Justice Board shall supply the copy of the order to the child, child's family and the counsel.

3.3 In cases where the Board needs to consult experts for preliminary assessment, the Board may take assistance from experts associated with any District Mental Health Programme or an expert from a Mental Health Institution in the District or outside the District. District Magistrate (DM) will provide the list of such experts and Institutions.

3.4 Qualification of experts-The psychologists and other experts who are asked to assist JJB in conducting the Preliminary assessment, shall be possessing qualification as required to be a Member of the JJB under the JJ Act, 2015, that is as follows-

- a practicing professional with a degree in child psychology or psychiatry.
- No expert shall be included in the process of conducting the preliminary assessment, if he —
 - has any past record of violation of human rights or child rights;
 - has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
 - has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
 - has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

3.5 Non-availability of experts in the District- In case trained psychologists and experts are not available within a given District, services of In-Patient Departments may be availed from other Districts. The State Child Protection Society (SCPS) with help of the Health Department shall issue a list of Institutes.

3.6 Remuneration to be paid to the Experts- In case the JJB takes the assistance of any external expert, the remuneration of such expert must be paid by the District Child Protection Unit (DCPU) as per the standardized rates set by the SCPS.

3.7 Presence of a legal-aid counsel- The child must be provided with a legal-aid counsel through the District Legal Aid Service Authority, who shall have the responsibility to be present with the child when the preliminary assessment is taking place. The child may also be accompanied by the private advocate if available with the child. The Legal Aid counsel/ Private Advocate shall have the responsibility to assist the child as per the J.J. Act and its Rules.

3.8 Training of the experts whose assistance is sought by the JJB for conducting the Preliminary assessment- The experts who have the required qualification to assist the JJB in conducting the preliminary assessment must undergo a training with respect to Section 15 of the Act and the training must be provided on a regular basis by the National Institute of Public Cooperation and Child Development or the respective State Child Protection Society.

3.9 Role of JJB if the child is also child in need of care and protection- As per Rule 9(3) - Where the child produced before the Board is covered under section 78 and section 83 of the Act, including a child who has surrendered, the Board may, after due inquiry and being satisfied of the circumstances of the child, transfer the child to the Child Welfare Committee (CWC) as a child in need of care and protection for necessary action, and or pass appropriate directions for rehabilitation, including orders for safe custody and protection of the child and transfer to a fit facility recognized for the purpose which shall have the capacity to provide appropriate protection, and consider transferring the child out of the district or out of the State to another State for the protection and safety of the child.

Moreover, Rule 10(1)(iii) also mentions that the JJB may refer the child who has been produced before it to the CWC where it appears to the Board that the child is in need of care and protection.

Chapter 4 Completion of Preliminary Assessment

4.1 Period of completion of preliminary assessment- Preliminary assessment in case of heinous offences is to be disposed of by the JJB within a period of three months from the date of first production of the child before the Board [section 14(3)].

In accordance with the Rule (10A (4) of the JJ Model Rules 2016, the Board after preliminary assessment, shall assign the reason for the same and the copy of the order shall be provided to the child forthwith.

4.2 Final Report of preliminary Assessment- It is important to note that the report prepared by psychologist or psycho-social workers or other experts based on their analysis cannot be submitted as final Preliminary assessment Report.

4.3 Transfer of Trial-The Board shall pass an order that there is a need for trial of the said child as an adult, and order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences. The copy of the order shall also be provided to the child. Thereafter, upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders [Rule 13(4) of JJ Model Rules, 2015].

4.4 Other information to be considered while carrying out preliminary assessment-

During the preliminary assessment, the Board and experts shall also analyze and take into consideration the following-

- **Social Investigation Report (SIR)-** The Board directs the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report, within a period of fifteen days from the date of first production before the Board [section 8(3)(e)]
- **Social Background Report-** Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform he probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry [Section 13(1)(ii)]
- **Individual Care Plan (ICP)-** The Board should also consider the Individual Care Plan (ICP) for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible. Thereafter, at the time of final orders an amended/updated ICP may be submitted to the Board/Children's Court.
- **Witness report by CWPO-** In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child [Rule 10(5)].
- **Interaction** with parents/guardians; staff of school or other institution attended by the child; peer group; neighbours or any other person deemed appropriate for giving insights regarding the child within the scope of four determinants as given at point 7 above.

Any confessional statement from SIR must not be taken into consideration while conducting preliminary assessment.

4.5 Essential elements of the final report by JJB- The final report prepared by the JJB to be submitted to the Children's Court **should include-**

- JJB’s decision on transfer of trail;
- socio- demographic details of the Child;
- whether the child also qualifies as a child in need of care and protection;
- details of the procedure followed by the JJB, psychologists and other experts (if any) including the psychological tests administered;
- reason for including or excluding the observations recorded in the SIR, SBR, witness report;

The final report should not include-

- written/verbal statement of the child or other persons interviewed;
- details of observations made during the assessment;
- any kind of statement or document that could be incriminating in nature.

The final report should not include any kind of statement or document that could be incriminating in nature

4.6 Appeals- Children’s Court shall first decide an appeal filed within thirty days from the date of such order under sub-section (1) of section 101 of the JJ Act against the order of the Board declaring the age of the child; and under sub-section (2) of section 101 of the Act against the finding of the preliminary assessment done by the Board.

The order passed by the Juvenile Justice Board must explicitly mention the right of the child to file an appeal against the order. Further, the advocate so appointed shall meet and interact with the child and child’s family immediately and start the preparation of filing the appeal.

Annexure I- Suggestive Questions to be included on report

In addition to the above points, following are the **suggestive questions** that may be covered in the report that may provide useful insight and guidance as to the manner in which preliminary assessment may be conducted

- i. whether the child has himself been a victim of any offence in the past;
- ii. if yes, what is the nature of offence
- iii. whether the child have ever been put to extreme mental trauma;
- iv. whom does a child sees as their role models;
- v. what are child's ambitions in life;
- vi. whether the child is associated with any group formed by adults;
- vii. whether the child is the control of adults, or group of adults, and if so, the Board shall consider the aspect whether independent of the influence of the adults, the child may not have committed the offence;
- viii. whether the child suffers from any kind of disability as listed in Rights of Persons with Disabilities Act, 2016; specify
- ix. whether the child is prone to taking drugs or alcohol;
- x. whether the child is under the influence of peer groups or associates with those who present risk of harm e.g. sexual offenders, drug peddlers etc. or criminals;
- xi. whether the child has suicidal tendencies or of harming own self;
- xii. whether the child has been recruited or used or forced by any non-State, self-styled militant group or outfit declared as such by the Central or the State Government and whether such child was in a position to desist influences and pressures excreted by such actors in the given circumstances of his or her life etc.

Annexure II- Hypothetical Caselets/Examples

NOTE: The examples used here are only for illustrative purposes and do not find any relation, whatsoever to any real-life incidents/ cases. Moreover, the examples are put for explaining the concept(s) and shall not be used to make decisions in other similar matters. Every case is unique and must be dealt with in the light of its unique facts and circumstances.

- A 17-year-old boy was accused of repeatedly raping a teen girl after blackmailing her with a picture of her drinking alcohol in a bar. The boy was produced before the Juvenile Justice Board and the Board verified his age. It was concluded that he was 17 years old and was alleged to have committed a heinous offence, therefore, the Board conducted the Preliminary Assessment. During the assessment, the boy was asked whether he could understand that any girl would undergo an unbearable pain if someone forced themselves upon her physically. It was assessed whether the boy could mentally think about the offence as a wrong and whether he possessed the physical capacity to commit it. One Member of the Board who was a Psycho-social worker also visited the school and home of the boy to talk to his parents, teachers and friends. This enabled the Board to assess whether the boy had a developed psyche to understand the offence which was being committed. It was found out that the boy was physically capable to commit the offence which came to be known after asking him how physical relations may be made and what all can be done to enter into a physical relation with someone. The physical capacity of the boy was also affirmed by the medical professional's report which was used by the Board for assistance. The Board concluded that the boy had the mental capacity to think the nature of offence and how it was to be committed. The Board found out that the boy was aware that forcing oneself on someone physically leads to pain which may get unbearable and if someone is blackmailed, they may do anything to protect themselves, even if it comes down to bearing the pain. The Board did not ask any personal questions to the boy. All the assessment was made by making statements in third person, in order to not get any incriminating responses in the form of a confession from the boy. The Board took help of a similar story and assessed the 4 elements provided under section 15. Through questions about the known consequences, and the circumstances under which the offence was committed, the Board made the decision that the boy could be tried as an adult.
- A 17-year-old boy was in a romantic relationship with his classmate who was of same age and it was alleged by the parents of the girl that the boy had sexually assaulted their daughter. The boy was produced before the Board and verification was done

regarding his age. After it was confirmed that he is above 16 years of age and is alleged to have committed a heinous offence, it was decided that a Preliminary Assessment must be conducted. During the assessment, the mental and physical capacity was assessed. It was concluded by the Board that though the boy had physical capacity and mental capacity of getting involved in a physical relation, he lacked the understanding of the consequences related to it. The boy only knew that if he will get caught with the girl while making physical relations, people will scold him and the girl. He was aware that the parents of the girl would be upset if they had come to the knowledge of him having a romantic relationship with their daughter. However, he was unaware about the nature of offence and the consequences that may entail due to the offence. The Board also assessed the circumstances under which the offence took place by talking to the friends of the boy and the girl. It was found out that their friends were also aware about them being in a relationship and spending private time together on occasions. Finally, it was decided by the Board that the boy could not be tried as an adult and it would be appropriate to get the inquiry conducted by the Board in the matter.

- A 17-year-old boy, was brought before the Juvenile Justice Board by the police for a murdering his step-father. The boy's stepfather was an alcoholic and often beat his mother. Once, in a fit of rage, the boy threw an iron box at the stepfather and he died. The boy was produced before the Juvenile Justice Board and the Board verified his age. It was concluded that he was 17 years old and was alleged to have committed a heinous offence, therefore, the Board conducted the Preliminary assessment. During the assessment, the Board took help of a clinical psychologist in assessing the fact whether the boy had the mental capacity and an understanding about the consequences which may entail if an iron rod is thrown at a person. It was opined by the clinical psychologist that the boy had anger issues due to childhood traumas and could do anything in a fit of rage. It was also understood whether the boy was aggressive with everyone or only with his step-father and it was found that the anger issues were a result of the boy not being able to accept the pain which his step-father was causing to his mother, and at times he would just throw things here and there after his father would beat up his mother. It was also found that the boy was also under a shock after knowing that his step-father had died after getting hit by the iron rod he had thrown. The boy could not understand the consequences of the act committed by him and therefore, the Board decided that he could not be tried as an adult and the Board initiated the inquiry in the matter.
- A 17-year-old boy was caught by the police for causing grievous hurt with dangerous weapon to the other gang member. On proper inquiry, it was revealed that the child

was influenced by the group to leave his house and was being used by the group for the unlawful activities. He was brainwashed to believe that the acts being done by the boy were for some lawful purposes. During the Preliminary assessment, the Board found out that the boy had no mental capacity formulated for committing the offence, nor did he had any proper knowledge about the consequences of the acts that the gang was asking him to do. After the Preliminary assessment, it was found out that the boy could not be tried as an adult and only the Board could conduct an inquiry in the matter. Moreover, it was found out that though the boy was a child in conflict with law, he could also be considered as a child in need of care and protection. Therefore, the Board also passed rehabilitative orders for the boy under Rule 9(3) of the Juvenile Justice (Care and Protection) Rules, 2016.

- A 17-year-old boy was involved in providing maths tuition classes to his neighbour girl who was 11 years old. He had romantically fallen for her and entered into a physical relationship with her for which he also used to give her contraceptives. When it was found out, the boy was produced before the Board and verification was done regarding his age. After it was confirmed that he was above 16 years of age and was alleged to have committed a heinous offence as per the POCSO Act, it was decided that a preliminary assessment must be conducted. During the assessment, it was concluded that the boy had the physical and mental capacity to commit the alleged offence. Moreover, it was also found out that the boy was in a position of influence and had knowledge regarding the consequences that may entail his actions. Therefore, the JJB decided to transfer the boy to the Children's Court for his trial.

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