



Report

Training of the District Level Officers of the Special Juvenile Police Units of Odisha



9-10 January 2017

Organized by:
Centre for Child Rights, National Law University Odisha

With the Support of UNICEF

TABLE OF CONTENTS

Sl. No.	Content	Page
1	About NLUO	3
2	Centre for Child Rights	3
3	Introduction	5
4	Philosophy of Juvenile Justice	5
5	Why children infringing criminal laws	6
6	Background	7
7	Programme design	8
8	Methodology	9
9	Introductory session	10
10	Children's entitlement in law and due process	12
11	Apprehension of child	16
12	Interrogative procedure and handling children in conflict with law –Police response	17
13	Children as witness and victims of crimes – Testimony of children-Admissibility	19
14	Investigative procedure on cases involving children	21
15	Group work and presentation	22
16	Gaps and inadequacies	25
17	Suggestions and recommendations	28
18	Conclusion	32

1. About NLUO

The National Law University Odisha (NLUO), established by the Orissa National Law University Act of 2008, seeks to promote advanced learning, teaching, research, and diffusion of knowledge in the field of law and related issues to support and develop professional skills of persons intending to take up advocacy, judicial service, legal service, and service for legislative drafting as their profession. It is situated in a sprawling and scenic campus between the rivers Mahanadi and Kathajodi near Naraj in the historic city of Cuttack. The University has flagship programmes of B.A LL.B and B.B.A LL.B Honours. It also offers one year LL.M programme in 'Corporate Law & 'Commercial Law' and research degrees in M.Phil and Ph.D. In a short span of time, NLUO has experienced rapid growth in quality legal education and earned good reputation for its exceptional achievements be it in mootings, debating and other literary activities, publishing of quality journals and research papers. The University also strives to contribute to society by way of focusing on positive social impact through affirmative action. The Chief Justice of Orissa High Court is the Chancellor of NLUO. The Visitor of the University is the Chief Justice of India or his nominee judge of the Supreme Court. At present, Hon'ble Mr. Justice Deepak Mishra, Judge, Supreme Court of India is the visitor of NLUO.

2. Centre for child Rights

The Centre was established with broad based perspective of promoting child rights practices not only through academic and research activities but also emphasizes on practical aspects. The working group on the strategy document for 12th five year plan has advocated the more inclusive growth of children. Further, it has emphasized to ensure the placement of proper and proactive mechanisms, institutions and

structures and priorities on updating policies on children, operational priorities, and monitoring mechanisms to address the issues of children. The Centre for Child Rights aims to facilitate the establishment of mechanisms and strengthen their capacities to fulfill their obligations towards children

2.1. Objectives:

- To improve access to justice for children through various purposive activities targeted to ensure protection of the rights of the children in various areas like child labour, gender justice, children's education, child trafficking etc.
- To work towards a more vigorous juvenile justice mechanism to ensure fair opportunity for children to realize their positive potential.
- To frame a collaborative approach by engaging different stakeholders and pro-active policy makers on the issues of child rights and juvenile justice.
- To conduct an exhaustive documentation exercise on the existing child laws and policies so as to come up with suggestions to fill up the loopholes if any and also recommend reorientation of policy when necessary.
- To work in association with different NGOs working in the field of improving the situations of child migrants who are higher risks of child abuse and child labour.
- To conduct awareness programme on the issues of juvenile justice and child rights to promote the idea of more conscious and self correcting society.
- To emphasize on mainstreaming through institutional approach to juvenile justice rather than separation.
- To enhance experiential learning by conducting extensive field work and research thereby make an integration of the practical reality and classroom teaching.

3. Introduction

The emergence of modern Industrial society is in full need of abundant, fit and healthy populace and therefore, the human capital formation has been viewed as the most important resources in order to maximize the benefits flowing from the natural resources with cost effective and less in wastage strategies. With the geometrical growth of population and the arithmetically growth of production and a demand for human resources has increased and necessitated mass production and consumption, corporate capital, organized labour force and movements of population due to extensively large demand for workers. Therefore children and youth were/are now seen as important economic assets (Roger Hopkins Burke, 2008).

4. Philosophy of Juvenile Justice

The goal of the justice for children approach is to ensure that children¹ are better served and protected by justice systems. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice systems as victims, witnesses and alleged offenders; or for other reasons where judicial intervention is needed, for example regarding their care, custody or protection². Whatever the reasons for children being in contact with justice systems, they are usually dealt with by the same institutions and the same personnel.

¹ As per article 1 of the UN Convention on the Rights of the Child a child is « [e]very human being below the age of eighteen years unless, under the law application to the child, majority is attained earlier »

² Justice for children goes beyond juvenile justice – i.e. work with children in conflict with the law – to include all children going through justice systems, for whichever reason (victims, witnesses, care, custody, alleged offenders, etc.)

This goal also includes ensuring **children's access to justice** to seek and obtain redress in criminal and civil matters. **Access to justice can be defined as the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards (including the CRC).**

Children's justice or juvenile justice could be viewed as not only the treatment of children in conflict with the law but also to analyze the root causes of offending behaviour and measures to be initiated to prevent such behaviours. Therefore, prevention and protection go simultaneously and should be addressed together.

5. Why Children infringing criminal laws?

Crimes committed by juveniles run the gamut from petty larceny to murder. The reasons for these offences vary. While it is possible to group the identified risk factors loosely into economic and non-economic ones, in reality, they often create a vicious circle of deprivation, alienation and delinquency. Expectations of failure can begin to develop in very young children, and if consistently reinforced, may force a child to abandon longer term goals to pursue more immediate gratifications, possibly through delinquency. In view of the above facts, the Centre organized two-day training programme for the Special Juvenile Police Officers on Juvenile Justice and Child Protection on 9th and 10th January 2017 at the National Law University Odisha, Cuttack.

The training programme was aimed at sensitising the special juvenile police officers on the legal regime with regard to juvenile justice and child protection. Accordingly, a two-day training programme was organised. The participants for the programme were police officers in the rank of Deputy Superintendents of Police, Inspectors and Sub-Inspectors associated with Special Juvenile Police Unit either s supervisory Officers or Child Welfare officers as the case may be.

6. Background

Children's Right to Protection has received adequate expression by the Constitution of India in different provisions of the Fundamental Rights and Directive Principles of State Policy. The first legislation on juvenile justice in India was the Tamil Nadu Children Act, 1920. Followed by the then provincial Government of Madras, the Provincial Governments of Bombay, Bengal and UP enacted similar legislations in 1924. In 1960, the Government of India brought out the Children Act, 1960 applicable to Union Territories. However, the Juvenile Justice Act, 1986 which contemplated a uniform legal framework to provide care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles could be viewed as the first legislation implemented across the country except Jammu & Kashmir with effect from 2-10-197. The Act of 1986 was the outcome of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985.

The Juvenile Justice Act of 1986 was in force till 31st march 2001, as the same was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000 with effect from April 1, 2001. The new legislation was enacted taking into consideration of the following international conventions and Rules brought by United Nations.

1. UN Convention on the Rights of Child, 1989 (Signed and ratified by Government of India on 11th December 1992)
2. Riyadh guidelines, 1990
3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Of late, legal reforms in children related legislations are frequent due to global obligations and accountabilities. Further, there was also a hue and cry at the national level to revisit the legislation relation to Juvenile

Justice resulted in the enactment of Juvenile Justice (Care and Protection of Children) Act, 2015. The Act repealed the earlier legislation and came into force with effect from January 15, 2016. The newly enacted legislation has brought out enormous changes in handling children in conflict with law and incorporated new provisions of handling crime against children.

The programme centres on the main issues of addressing operational structure of juvenile justice mechanisms, providing adequate infrastructural facilities at the juvenile justice institutions, enhancing the quality of service, convergence and coordination between juvenile justice institutions and allied systems, as well as adhering to an effective monitoring and management system. In order to achieve proper implementation of the laws and policies, the various bodies in the juvenile justice system which include the Juvenile Justice Boards, Special Juvenile Police Units, Child Welfare Committees, Observation Homes, Special Homes, Place of safety, Children's Homes, District Child Protection Units and so on should work in tandem and training to officers working at the grass-root level is a prerequisite to all.

The key objective of the training programme was to make the participants understand the law and policy framework on juvenile justice in conformity to the provisions of Juvenile Justice Act, 2015 and the model rules framed under the Act by Government of India in 2016.

7. Programme Design

The programme was designed in a way to make the participants comfortable and acquainted with the training sessions. The focus of the training programme was to make the participants, adapt to the learning situation and gather knowledge on the critical understanding of the proper approach and way to perform their duties in a child friendly manner and with due regard to the juvenile justice law and practices. In addition to

the opening and concluding sessions the training programme involved six technical sessions, spread over the two-day programme. They are:

Session I- Understanding the background and objectives of the training and post-training responsibilities: This session made the participants understand the ground-rules of training and encouraging self-introductory interactive participation.

Session II- Understanding the Children's entitlement in law and due-process: This session provided the essential understanding of the law and policies with regard to child protection and juvenile justice.

Session III- Basic Understanding of the role of different players in Juvenile Justice System: This session mainly focused on providing a better understanding with regard to the role, duties and responsibilities of the officers and various people involved in the entire juvenile justice system.

Session IV- Understanding the role of police and strategic analysis of the police system with regard to juvenile justice: This session aimed at assessing the role of police as a changing agent and strategically getting responses to the plight of children and addressing them with the goal of socially mainstreaming children.

Session V- Way Forward Plan: This session was essential in discussing law and policy relating to child abuse and how police can make a difference in children's development.

8. Methodology:

The sessions were delivered through participatory and interactive discussion methods including the following:

- a) Lecture cum Interactive discussion
- b) Power point presentation discussion
- c) Group Discussion

d) Suggestions, Discussions and Deliberations

9. Introductory Session:

The welcome address was given by Mr. S. Kannayiram, in which he spoke about the two main thrust areas of the programme, i.e. anti-trafficking, juvenile justice and child protection. He told that entire juvenile justice system has undergone a change after the 2015 Act with its child friendly directives.

Prof. Dr. Krishna Deva Rao stressed on the need to rethink on the nature and importance of a special Juvenile Justice Unit which would be child-friendly and a catalyst for national development. Efforts are needed to change the



role of police officers and to make them more child friendly and work towards ensuring the best interest of the child. There is a need to prevent crime and transformation of the general police to special police for ensuring juvenile justice, having an optimistic outlook as child is the future of the nation.

The norms enshrined in the United Nations Conventions on the Rights of Child and other international standards set forth are the guiding factors for effective juvenile justice mechanism. The social background, education, conditions and situations in the family and community influence the child and their behaviour; so, they need special care and attention and child-specific treatment. The legal scenario underwent a

transformation during when the Supreme Court stressed on the reformation, rehabilitation and reintegration of the juveniles.

The JJ Act 2015 is unique as it has added the provision of “child friendly” under section 2(15). In order to give effect of child friendly system the Act has provisions for the creation of special juvenile police with specially trained child welfare officers in every police station for focusing on child welfare. In this context, it was highlighted that D.K. Basu guidelines formulated by Supreme Court of India need to be strictly followed in the required manner such as the display the name of the child welfare officer who will be contacted for children issues, separate place for the children to be placed for interaction. The idea is children are not contaminated and exposed to the atmosphere of police station and police officers should act in a humane manner recognizing children’s dignity and worth.

One of the participants pointed out that there is no place for children’s interrogation, to which Prof. Dr. Rao pointed out that words like ‘interrogation’, ‘arrest’ etc should not be used. The word ‘apprehension’ should be used in the place of arrest. He also pointed out that public interaction and sensitization in this regard is essential. There should be a conscious transformation of the rules and police should be participative and engaging, thereby reducing anxiety and inculcating confidence in the public for justice. Children are special categories and need to be handled differently.



10. Children's' entitlement in law and due-process

Ms. Geetanjali Goel, in her presentation on the children's entitlement in law and due process and the role of police in achieving juvenile justice extensively discussed the legal provisions under the Juvenile Justice Act of 2015 and Model Rules framed there under in 2016. She also discussed the composition of the Special Juvenile Police Units under the provisions of section 107 of the said Act. The social workers from the District Child Protection Unit have a direct bearing and role to play and should be under the direct control of the Special Juvenile Police Unit. The child welfare officers should ensure counselling for the children and especially in the case of the child victims with the help of social workers. The probation officers should play a sensitive and effective role by presenting a very informative and effective social investigation report.

Rule 89 of the Model Rules talks about the training of the officers which should include railway police. Ms. Goel, discussed a few landmark case laws which included the Sampurna Behura vs. Union of India and ors. The Child Welfare



Officers should have the aptitude, attitude suited to handle children's affairs and such personnel will be given appropriate training and orientation.

Children come in contact with the police either as witness of crimes, victims of crime, or children in conflict with law and also children in need of care and protection.

For instance, street children or children at the railway stations or run away children are in need of protection and such children be helped in

securing a safe place of residence and supportive net. But, the focus should be reuniting the child with the family or producing the child to the CWC should be the last resort. According to the statistics, the number of IPC crimes committed by juveniles increased from 27936 in 2012 to 31725 cases in 2013. Does it indicate a general increase in crime or just the crimes committed by children are increasing?

That the perception of crimes committed by children is increasing is not right. The increase was due to the enactment of the Protection of Children from Sexual Offences Act (POCSO) 2012 and the registration of eloping cases under the provisions of the Act. This has widened the scope of what constitutes an offence. Children need to be treated differently as they are vulnerable and weak. They are tender in age and mentally immature which renders them incapable of taking decisions properly. The Indian Constitution under articles 15(3), 21, 21A, 22, 23, 24, 39, 39A, 45, 47, 51A mandates special protection to children. The international conventions and standards under the Beijing Rules, Riyadh guidelines, UN Convention on the Rights of Child, 1989 (India ratified in 1992), SAARC guidelines etc., have paved the way for a progressive law and policy system for children.

Ms. Goel also stressed on the need of proper field scenario evaluation by the police officers for better implementation of the law. She presented a comparative table of law wherein she discussed extensively on the child protection and laws for juvenile. The JJ Act is a comprehensive and progressive legislation which safeguards the interests of children. In the American police system children are handcuffed whereas in India even adults are not handcuffed. The United Kingdom also has much strict laws dealing with juveniles but in India retribution and deterrence procedure has not been stressed.

The main question discussed was whether there are adequate Observation Homes, Special Homes and Place of Safety in Odisha. The

answer was affirmative. For the 30 districts, there are three observation homes at Rourkela, Berhampur, and Angul where nearly 35-40 children reside in each of the home. There was an almost unanimous suggestion given that there should be observation homes in each district. The girl child should have separate rooms. Odisha has no place of safety and NGOs are reluctant to taking care of children in conflict with law. Establishment of the Place of safety is important for keeping children above 16 years of age and involved in heinous crimes. There should be separation of children on the basis of crimes committed and their condition.

The granting of bail for children is a matter of right and should be granted. Exploitation of these children is strictly prohibited and provisions have been made under section 26 of the JJ Act. The important things to be properly managed is the order of apprehension, production of child, time period of filing charge sheet, disposal of case, differentiation made between serious and petty offences, procedure for summons trial and disposition in accordance with Section 18 JJ Act.

The important issues to be kept in mind is that no provisions of life imprisonment and death penalty to children in conflict with law and no stigma is attached as an aftermath of conviction and following due process of law. Apprehension is not mandatory but in case of serious offences can be considered.

Ms. Goel also pointed out the principles to be kept in mind:

- a) Best interest of the child,
- b) rehabilitation and restoration and reintegration of child in society
- c) Child treated in a manner consistent with the promotion of his sense of dignity and worth.
- d) Presumption of innocence for children.

The 2015 Act categorizes cases as petty offences under section 2 (45), serious offences section 2 (54) and heinous offences under section 2 (33) and that there should be a proactive in dealing with different situations. The JJ Act doesn't talk about the offences but rather about the procedure. The Claim of juvenility can be raised at any point even after the disposition is made and hence it is very important and crucial to determine the age of a person who has been brought before the system. The age inquiry can be made under section 94 which applies to the courts or the JJBs or CWC and where the JJB is satisfied that the person is child so they need not conduct an age inquiry.

A question was raised whether the police officer has to produce a medical certificate or any evidence showing the age of the person as a proof of age. It is important that age determination or any proof is essential at the time of production of the child before the board or the committee. Ms. Goel stated that the birth certificate or matriculation or equivalent documents etc. can be acquired and if no documents are available then medical opinion can be sought by the JJB. An application for medical test (ossification test) and an earlier age determination test can be made. Any school certificate is produced, the authenticity should be attested by the heads of the educational institution and similar is the situation in the case of entries in birth and death registers. No horoscope or an affidavit specifically produced for the purpose will be not admissible.

One of the participants raised a question as to how to determine age when there is no documents available to which Ms. Goel replied that the application needs to be moved before the board and it is for the board to order the medical and dentists to examine and determine the age. Ms. Goel mentioned about two cases laws on age determination. Jarnail singh vs. State of Haryana; and Mahadeo vs. State of Maharashtra; Ashwini kumar Saxena vs. State of Madhya Pradesh. Documents based on affidavits and oral evidence cannot be accepted.

11. Apprehension of child

The apprehension of the child is to be placed under the SJPU or the Child Welfare Officer under section 10 (1) who is to be informed. The best interest of the child under rule 8(1) has to be borne in mind. The social background report along with the family circumstances needs to be produced before the JJB and the CWPO has to produce the Social Investigation Report. Ms. Goel made the lecture more interactive by giving an activity where a question was asked relating to a boy named Sumit, aged 17 years was apprehended by the police for stealing a mobile of the employer. The mobile was not traced from him and the police tried to beat him, keep him in lockup and make a confession out of him. Are Sumit's rights violated?

The participants unanimously stated that all his rights were violated. One of the participants also pointed out a similar case where in Odisha two boys were brutally beaten up by the Railway Police in Cuttack. The dos and don'ts have been provided under the model rules of 2016. Children cannot be handcuffed, chained or fettered and no coercion or force to be exercised. The child cannot be asked to sign on any statement and treated in any cruel, degrading and inhumane manner. The child victim and child in conflict with law need to be separated. The police officers need to be in plain clothes and the girl child should be dealt by the female police officers, these children should be provided with free legal aid and proper SBR needs to be prepared and submitted to the JJB by the CWPO. Child should be produced at the earliest.

Mr. Kannayiram pointed out the legal implication in making notes in the daily diary and the process involved. The completion of the investigation should be stressed. The participants pointed out that the 3 months time in completion of the report is too hectic for the police but the resource persons answered that the SJPU should get involved in the monitoring process.

12. Interrogative procedure and handling children in conflict with law –Police response

Dr. P.M. Nair highlighted about a report in the "Times of India" in one of the district of Odisha where an infant was sold by the biological mother to another known couple. He quoted that the district officials have been directed to investigate the matter. He pointed out that investigation cannot be made by anybody other than police and the district officials cannot order the investigation.

He appealed in such reported news that the local Police Station House Officer should sumotto register a case and to investigate and should not keep idle. Police must



always be sensitive, alter and act in conformity to law. Under no circumstances, the victim and the perpetrator of crime should be allowed to go in same vehicle. He raised an important question as to the definition of buying and selling a person and what is the purpose. The main purpose is exploitation in all forms. Police officers are not judges but are the safe guarder and protector of victims. The police stations at the grass root level are the major source of dispensation of justice. He also stressed that the police should take up a proactive stand and register FIRs suo-motto against the person concerned out of any source.

In his presentation he has shown a picture of a tree grown on a big rocky surface which connoted that even a plant has the power to break the

rocks. A small thing can make a huge difference. He made the interaction livelier by giving various examples of women being empowered by the police and children ensured safety and access to justice. He stressed that the police station is the gateway of human rights and police are the best agents of human rights. He brought out clarity in the concept of human trafficking and mentioned the starting of the first integrated anti-human trafficking unit (ASU) in January 2007 in Andhra Pradesh. The focus should be on investigating sex trafficking crimes and labour trafficking crimes with adequate step-by-step procedure. He discussed the constitutional mandate in preventing and combating all forms of human trafficking and the responsibilities that a citizen has on this behalf.

Article 23 of the Indian Constitution prohibits human trafficking in all forms and preamble mandates the constitutional obligation to protect. Human trafficking can be any practice similar to slavery. The consent is immaterial and victimization of the victims should be strictly checked. Every year more than 9500 human trafficking crimes are committed. 13000 people were arrested out of which 93% were women but the victim here also gets prosecuted. There are three types of human trafficking for exploitative labour, terrorism, militancy, naxalism and child slaves.

Human trafficking for sexual exploitation includes sex tourism, massage parlours etc., facade of marriage bureau, tourist circuits, camouflaged servitude, surrogacy, use of children as guinea pigs for medical tests, adoption as a facade, orphanages, child soldiers etc. In case of surrogacy, the condition is precarious as how to execute the contract of surrogacy when the child born has disability. In case of commercial sexual exploitation the norm should be let the victim speak. Listening to the victim is the most important thing for a police officer. The commoditization of the children needs to be checked immediately. The terms like "child prostitute" should be refrained as a child can never be a prostitute.

He also discussed regarding the crimes enshrined under IPC which criminally displaced (abducted), criminally confined, restrained, tortured, organised crime, sexual perversions and all these come under the basket of crimes that come under the scanner of human trafficking. In case of investigation of a crime s proper plan of action needs to be prepared and all the crime scenes are required to be investigated. The traffickers' network including the spotter, seller, transporter, abuser, financier, etc need to be investigated to strike at the root of the crimes. He also showed a film on human trafficking wherein it was showed that around 1.2 million children were trafficked alone in 2006.

13. Children as witness and victims of crimes –testimony of children –Admissibility:

Ms. Goel, brought out the distinction between children as witnesses and children as victims of crime. She stressed that the child should be put at the place of safety. The children who are habitual offenders need to be put in the place of safety. The child should be treated according to age and crime committed. Offences under the JJ Act has been broadened under sections 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 92, rules 55 to 60. The duties of the SJPU's need to be clearly spelt out. The need assessment of the child should be done and children should be interviewed at separate child friendly places.

One of the participants shared a case and requested procedural clarification in handling such cases. A case was registered that a minor girl was kidnapped. She was rescued and it was found that she is the mother of two children. She pleaded that she was not kidnapped and went voluntarily her husband should not be arrested. In such cases, the interlinkage of various laws such as POCSO Act, the Prohibition of Child Marriage Act of 2006 and the age of the child should also be taken into consideration. There are many issues are to be considered taking into

consideration of facts and the statements of the persons concerned, the child and her husband.

Ms. Goel mentioned that recording of statement under Section 164 CrPC should be made at the earliest. In *Virender vs State of NCT of Delhi* a detailed guideline for recording statements was provided. The questions should be put in a tactful and child friendly manner. A child competency test should be conducted to make the child comfortable and understand the problems. The protection of the identity of the child and his secrecy should be maintained. The participants pointed out major problems are caused by media as they get to the crime scene and spread misinformation. Ms. Goel pointed out that in the Nirbhaya case the media out of their own whim stated that the juvenile was the most brutal but the police could not find any evidence thereof.

In case of the missing children, Rules 92 of Model Rules has stated that there was a 48 hour waiting period which has been changed to filling of FIR from the moment the child goes missing. Here the CWPO has a role to play and needs to be informed immediately and the FIR forwarded to him. Police should collect photograph and also circulated to a child web portal. A lawyer should be appointed and the family should be questioned as to where the child probably went and other relevant information. Frequent search operations need to be made and information spread through loud speakers. One of the participants pointed out the problems of under staffing and over burdening, to which Ms. Goel, replied that the officers need to be specially trained for better and intelligent utilisation of skills and resources. She also pointed out that this issue was raised in the *Sampurna Behura* case before the Supreme Court.

One of the participants also asked a question on who can be a translator for the child to which Ms. Goel stressed that the district child protection units are authorised on this behalf and as such there are no written qualification for it. Another participant asked about the procedure to be

followed in case of a girl child escaping to which Ms. Goel pointed out that the missing procedure needs to be followed as per section 26 of the JJ Act and CWPO has to be given directions to search after getting back to the CWC.

14. Investigative procedure on cases involving Children

Dr. Nair stressed on a holistic and integrated functioning of police in matters of prevention and detection of crime, protection and prosecution. Working with NGOs and involving them in information sharing, legal assistance, interviews and assistance etc. The focus should be on investigating offenders and crime mapping. He also stressed on the need to adopt proper and child friendly procedure for interacting with a child victim, not to intimidate them and getting a statement by striking a casual conversation. The interaction room should be child-friendly, one should not directly look at the child and talk to the child by giving supplementary things like chocolates, toys, etc. The witness can be female from an NGO. The trickiest part is how to frame the charge sheet and uniqueness in maintaining the case diary. He also mentioned the case of two traffickers- BRP at Delhi and Panna Lal Mahto of RNC.



15. Group work and presentation

The participants were divided into four groups and requested to discuss and present on the following issues

1. Effective implementation of Section 10 of Juvenile Justice Act of 2015 –Apprehension and production and safe detention
2. Effective implementation of the provisions of section 12 of the JJ Act 2015 – Bail and procedure of coordination
3. Investigative procedures under the Juvenile Justice System
4. Strategy for missing children and challenges, abandoned children, etc.

GROUP 1: The participants after hectic discussions and debate among themselves on the Effective implementation of Section 10 of Juvenile Justice Act of 2015 – Apprehension and production and safe detention presented the following issues



1. It is very difficult to keep children in conflict with law in a secured place as the observation homes are not accessible and no place of safety is notified.
2. Whenever police on patrol or happened to see a child is vulnerable situation irrespective of timings and especially during night hours, it is the primary duty of police to take charge of such children. But, keeping such children in a secured place is a problem. In such circumstances, the adaptation of the legal provision of not keeping a child in police station could not be viewed in the best interest.

Unless some individual or NGO is willing to take charge of them police has no option but to keep the child in police station. agreed with almost all the points on the handouts. But pointed out that nobody listens to the grievances. There are certain practical barriers like the place of safety has not been notified anywhere.

3. There should be a 24 hour child helpline and taking charge of child services.
4. Age determination in respect of children from other districts or from other states is also a challenge for police. In such issues, they are depending upon the medical authorities.

GROUP 2: The group has presented their views on Effective implementation of the provisions of section 12 of the JJ Act 2015 – Bail and procedure of coordination as follows:-



1. Police can release a child in conflict with law on bail. But it is not being followed by police officers. In this case it was pointed out that the permission of the higher officials has to be obtained.
2. Since the children are produced before the board and the board has to decide the bail application, police is not exploring their participation in bail hearing.

GROUP 3: Investigative procedure under Juvenile Justice System

1. This group suggested that with regard to the place of interview that the place should be outside the police station, should be child friendly and should have humane conditions. The CWPO should be

permanently designated in the district. Special remand homes should be made.

2. The Act does not talk about the procedure of apprehension.
3. The further investigation process should be undertaken with the help of NGOs and safety homes to be provided in each district.
4. Dr. Nair stressed that the custodial interrogation of the children in the police station should be refrained. There should be a particular, child friendly place of interaction with the children.
5. The police should adopt the procedure according to CrPC. The entire investigation procedure should be in a child friendly system. For the purpose of collection of evidence and circumstantial evidence cooperation by all the stake holders is required from time to time till the filing of the charge sheet. There should be a prescribed time limit for the submission of Social Background Report during investigation. In case of habitual offenders a report of good conduct should be made available by the police immediately.

6. The Civil society organisations should help in the tracking of children. The child should be in the constant vigilance of the probation officer. The SBR of the child should be utilised in



such a manner so as to help the child in getting reintegrating with the society. The parent's responsibility should be fixed. The police should be provided with all necessary infrastructure and funds to make the entire system child friendly.

GROUP 4: Last group was given to suggest on miscellaneous provisions relating to missing children, coordination and networking, challenges, abandoned children, etc.



1. The main issue pointed out in the group was lack of time in getting information. The group suggested that the probation officers should be used for diversion and system of checks and balances should be used for informal handling of cases.
2. There is a need to make an intervention in urgent situations and not necessary to go with formal adoption of procedure.
3. The age determination by the medical officers also creates nuisance as they do not suggest or propose the exact age.
4. The higher officials should also be informed about the ground realities and help in solving these problems.

16. Gaps and inadequacies

The two-day orientation programme with Police officers has brought out the ground realities towards the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Police officers' knowledge base on the administration of Juvenile Justice requires to be enhanced further. During debate and discussion it is understood that a very few of them have handled the affairs of children in conflict with law and hence their understanding of the system is also minimal.

1. The Act stipulates that upon apprehension of a child in conflict with law intimation to family and probation officer has to be made. This is not being adopted.

2. In the absence of Observation Homes, Children Homes, Shelter Homes and Place of safety in every district as contemplated under the Juvenile Justice Act of 2015, police face tough job in apprehension and keeping children in a safe and secured custody
3. The Juvenile Justice Act stipulates the preliminary assessment of mental and physical capacity of children in conflict with law who are over 16 years of age and committed heinous crimes. Assessment is a matter of assessing the personality of such children in conflict with law, a professional body is required to be established to extended such services as contemplated under Section 15 of the Juvenile Justice Act of 2015
4. The Act stipulates the time bound disposition of enquiries by Juvenile Justice Boards which are depending upon the police proactive in respect of investigation and filing of reports in time, producing the evidences, bringing the witnesses and so on. But, the Child Welfare Officers in every police station are designated officers and they are responsible for multifaceted functions and responsibilities. Therefore, in the absence of creating an exclusive Special Juvenile Police Wing within the Police system, it is difficult for the police to fulfil their legal obligations.
5. Police requires the cooperation of medical authorities in hospitals in respect of collection of evidences and reports on the cases of crime against children especially the cases on sexual exploitation of children and women. Police officers expressed their anguish over the non cooperation of medical personnel and humiliating attitudes on the lower level police men by medical officers and medical staffs. A comprehensive and viable working relationship is required to be developed.
6. In the case of crime against children, police personnel have also expressed that while police investigating the cases of sexual exploitation of children, District Child Protection Unit and CWC personnel interfere in matters and such interference hampers the

investigation by police. They can be supportive and could not interfere and investigate, conduct enquires in the form of fact findings and precipitates or aggravate the problems and such happenings would not help victims to get appropriate relief and remedy.

7. Police expressed that DCPU personnel should be oriented by NLUO on various legal provisions, obligations and accountabilities in handling children issues.
8. NLUO may be the knowledge hub and it should be recognized by all stakeholders so that a comprehensive system of child protection will be evolved in the state of Odisha.



17. Suggestions and recommendations

1. Police is the first agency that interfaces with children in vulnerable situations and also the children in conflict with law or children infringing criminal laws. The Act has classified the offences committed by children as petty offences, serious offences and heinous crimes. Section 10 of Juvenile Justice Act of 2015 has stipulated that as soon as a child in conflict with law is apprehended by police, such child shall be placed under the charge of the Special Juvenile Police Unit or the designated Child Welfare officer who shall produce the child before the juvenile justice board. There is no definition for the word apprehension either in the Juvenile Justice Act of 2015 or in the CrPC. Further, the Juvenile Justice Act of 2015 explains the procedures to be followed after apprehension and has not defined how apprehension is to be made. In the absence of description of how apprehension is to be made, police officers require clarification whether the provisions of arrest as contemplated under Section 41 and 46 of CrPC may be adopted. If so, whether sub-section (2) and (3) of Section 46 of CrPC are invocable in the case of children in conflict with law. Since, the word "**apprehension**" is substituted for "**arrest**" in the Juvenile Justice Act of 2015, the analogous require clarification.
2. The Model Rules under the Juvenile Justice Act of 2016 stipulates that police need not apprehend children in conflict with law and in exceptional cases and in the case of heinous crimes committed by children in conflict with law, apprehension shall be made. The Act of 2015 in sub- section (2) of Section 12 of the Juvenile Justice Act of 2015 specified that the apprehended child in conflict with law is not released on bail under sub-section (1) of Section 12 by the officer in-charge of Police Station, such officer shall cause the person to be kept only in Observation Home until the person is produced before the Board. Section 12 (1) stipulates that the person released on bail shall

be placed under the supervision of “**Probation Officer.**” It is therefore clear that **the concept of Diversion** as contemplated under the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 shall be applied by police in respect of petty offences and serious offences provided such release of bail and supervision under the Probation Officers upon specific conditions to help the child to get treatment, specific interventions and rehabilitations using the community based resources for the specific problems associated with the child. It is suggested to explore a pilot project in the state involving police and probation service providers.

3. The problems of police officers are apprehension of children in conflict with law or taking charge of children in vulnerable situations and keep them in safe and secured environments. In this context it is understood that there are three Observation Homes in the State and no adequate children homes or shelter homes run by Government is available. NGOs cooperation to keep children is not encouraging. Therefore, in every District, it is necessary to establish one Observation Home, one or two Place of Safety, One or two children Homes, one or two Shelter Homes nearer to Railway stations or market places by Government as contemplated under the Juvenile Justice Act of 2015 in accordance with the guidelines formulated by Government of India under Integrated Child Protection Scheme. Government of India has launched Integrated Child Protection Scheme and among other things, the scheme has been clearly defined in the **Annexure –X** of ICPS scheme with the financial implications being provided by Government on a shared basis between Central and State Government on 75:25 percent bases. Therefore, WCD department may be requested to approach Government of India towards the establishment of Observation Homes, Children Homes, Shelter Homes and Place of safety in each district. The existing

Observation Homes may be converted into Special Homes and Place of safety for keeping persons above 16 years of age after committal.

4. Juvenile Justice Boards and Child Welfare Committees have been established in each district. But in the absence of adequate building and spaces, these institutions are functioning in the court premises of the court of the presiding officers or in rental buildings without adequate facilities. Had the Observation Homes, Place of Safety and Children Homes are established in each district with the support of Government of India under the scheme of ICPS, these institutions will also function within the same premises and such arrangements will reduce the police functions considerably in providing escort staff to take children from Observation Home and produce them before the Board and take them back to Observation Home after the enquiry. OSCPS or the Social Welfare Department may establish such institutions.
5. Government of India provides fund for the construction of buildings to Observation Homes, JJB, and Child Welfare Committee. Therefore, getting fund from Government of India for the construction of buildings to these institutions within one campus shall reduce the burden of police considerably
6. Police Officers informed that the Two Social Workers in the District Child Protection Units under ICPS are for assisting the Special Juvenile Police Unit. The guidelines have mentioned that the DCPU should appoint and depute the Social Workers to Special Juvenile Police Unit. The participants has informed that if the two social workers under DCPU are under the Special Juvenile Police Unit exclusively, it is feasible to elicit information from children, counsel them and guiding them in their crisis besides using them as support persons. WCD Department may be approached to spare the services of the two social workers exclusively with the Special Juvenile Police Unit.

7. Participants have suggested that in every district Child line may be installed with the District Child Protection Unit for effective coordination and implementation of services to children. Such arrangements will strengthen the police and community service delivery more effectively with the help of DCPU.
8. Page 79 of ICPS guidelines provide provisions for the appointment of at least three protection officers in each district and one protection officer exclusively for Child Welfare Committee to ensure the smooth administration. This has not been explored. Government of India may be approached for the establishment of three protection officers (institutional care) having jurisdiction in two or three taluks and housed in the respective taluk and ensure the effective management of child care organization and prevent the existence of unauthorized organizations. This will help for better coordination with Child Welfare Committee and frequent information sharing to police on matters of vulnerable children.
9. Similarly, One Protection officer shall be appointed to the Child Welfare Committee to look after the administrative affairs of CWC as Registry as suggested in the guidelines. Such arrangements will help police to build a better coordination and networking with the system\
10. ICPS guideline has also provisions for the appointment of at least three Legal cum Probation Officers and one LPO exclusively for JJB. (page 81 of ICPS guidelines). It is therefore recommended that three LPOs and one LPO for each JJB shall be considered under ICPS and the jurisdiction of each of the three LPOs shall be two or three taluks. This arrangement will help Police personnel to work with probation system more effectively and children who have been committing non-serious offences could be handled effective within the community.

18. Conclusion:

From the feedback obtained from the participants, it has been understood that the training programme has helped the participants to build their knowledge, skill and attitude in the following areas:

- a) Underlying philosophy and principles of child abuse and juvenile justice.
- b) Role of each essential player in the juvenile justice system.
- c) Providing children the friendly environments while dealing children infringing criminal laws and protective mechanisms while coming into contact with laws as witnesses and victims.

Prof. Srikrishna Deva Rao, Vice-chancellor, NLUO in his concluding remarks urged the participants to move forward in a progressive, optimistic and proactive manner in dealing with the human rights of children and enduring a child friendly system. Education is the biggest grey area that needs to be addressed immediately.

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