

ROLE OF POLICE UNDER JJ. ACT

It is mostly the police who arrests the juvenile and produces him before the JJB. It is rarely, if at all, that a juvenile is produced before the JJB by a private party or voluntary organisation. Hence, a juvenile's first contact with the juvenile justice system is through the police. A private party or voluntary organisation producing a juvenile before the JJB should preferably inform the police about such production. It is the police who investigates a juvenile case, and submits the charge-sheet before the competent authority. The dispensing of distinct treatment to juveniles as obligated under juvenile legislation is defeated if the police treat juveniles in the same manner as they treat hardened criminals. So the Statement of Objects and Reasons of JJA 2000 includes "to create special juvenile police units with a humane approach through sensitization and training of police personnel". Accordingly, JJA 2000 envisages the setting-up of the SJPU in every district and city, and the designation of at least one police officer attached to a police station as "the juvenile or the child welfare officer".

Special Juvenile Police Unit

In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained. 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. Special juvenile police unit, of which all the police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children. The Model Rules¹, visualise the SJPU at the district level to function under a juvenile or child welfare officer (of the rank of Inspector of Police) and two paid social workers, of whom one shall be a woman, having experience of working in the field of child welfare. This ensures social intervention in a juvenile case from the time of arrest. It would be optimum if the social workers appointed to assist SJPU are trained in child psychology. In 1952, the Juvenile Aid Police Unit [JAPU] was created in Greater Mumbai, and continues as a special cell within the police force to mainly handle destitute and neglected children. Different methods have been innovated for the establishment of SJPU. In Karnataka State, the SJPU are to be assisted by recognized voluntary organisations² In Bangalore, SJPU are established in two zones. Each SJPU is assisted by an organisation working with children. The "SJPU are situated at police stations, headed by a senior level police officer, and its members are the Child Welfare Officers (also called "Designated Police Officers") attached to different police stations within that zone. As soon as a juvenile offender is arrested the relevant voluntary organisation will be informed. The voluntary organisation ensures that the provisions of juvenile legislation are adhered to, and that the child enjoys the rights guaranteed to him within the juvenile justice system. In case of a minor offence, the endeavour is to "divert" the juvenile with the permission of the JJB³. Diversion is a process by which a juvenile offender, in appropriate cases, does not

1 . Rule 84(1) of the Model Rules.

2 . Rule 12(1)(b) of the Karnataka (Juvenile Justice Care and Protection of Children) Rules 2002.

3 . Rule 11(2) &(3) of the Karnataka (Juvenile Justice Care and Protection of Children) Rules 2002.

enter the juvenile justice system, and hence, is not compulsorily made to face an inquiry before the JJB. It is necessary to examine the role of the police under juvenile legislation.

It is the police who apprehends the juvenile suspected of having committed an offence. Immediately upon apprehension, the juvenile is to be placed under the charge of SJPU or juvenile welfare officer⁴. Within 24 hours of apprehension, the SJPU or the juvenile welfare officer, as the case may be, is to produce the juvenile before the JJB⁵. Pending production before JJB, the juvenile is to be kept in the Observation Home. Under no circumstances should a juvenile be kept in the police lock-up or jail⁶. The SJPU or juvenile welfare officer must inform the parent or guardian⁷ or any other person of the juvenile's choice about the juvenile's apprehension. The SJPU or juvenile welfare officer must also inform the PO⁸ about the juvenile's arrest so that information may be obtained "regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry."

Section 12(2) of JJA 2000 gives the police the authority to immediately on apprehension release a juvenile on bail. The same provision was contained in JJA 1986⁹ and Bombay Children Act 1948.¹⁰ But the police, however insignificant the crime alleged to have been committed, do not release a juvenile on bail as they would, an adult, alleged to have committed a bailable offence. This is the correct practice. In the case of a juvenile it is not the offence that determines whether he should be released on bail or not, but the juvenile's situation, and that can only be determined by a body having the requisite expertise and assistance. Moreover, the police's decision to grant bail may be based on extraneous reasons, and result in arbitrariness. The JJB whilst considering a bail application will seek the police's response to the same. Sadly, the police almost always file their report opposing the grant of bail on some pretext or another in absolute contravention of the spirit of juvenile legislation. It has been observed that most police responses habitually oppose the grant of bail on grounds other than those prescribed under JJA 2000. Gravity of offence or likelihood of tampering with prosecution witnesses or difficulty to obtain juvenile's presence during inquiry are the reasons generally pleaded by the police to deny bail to a juvenile. It must be noted that the three conditions set out in juvenile legislation are in existence only in rare cases, but the police lack the magnanimity to accept the actuality. In the absence of documentary proof of age, and juvenility not being apparent, the JJB directs the police to take the person produced for medical examination to ascertain his age. It is imperative that the PO or any other functionary of the Observation Home also accompanies the juvenile.

The SJPU or juvenile welfare officer investigates the matter, and files a charge-sheet before the JJB. At this stage it is essential to recall that every police station will be embodied in the SJPU through its juvenile welfare officer, and hence, assistance of the relevant police station will be taken to carry out the investigation. The police while dealing with a juvenile case should be in plain clothes, and not in

4 . Section 10(1) of JJA 2000.

5 . Ibid.

6 . Proviso to section 10(1) of JJA 2000.

7 . Section 13(a) of JJA 2000.

8 . Section 13(b) of JJA 2000.

9 . Section 18(1) of JJA 1986.

10 . Section 64 of BCA 1948.

uniform.¹¹ A juvenile should never be handcuffed¹² when brought to the Observation Home or otherwise. Such was also the case under the 1986 Act as most States had incorporated alike provision under their respective Rules framed under JJA 1986.

Under juvenile legislation, the juvenile in conflict with law will always be under the charge of the JJB, and there is nothing like “police custody”. Once a juvenile is produced before the JJB, the police loses control over the juvenile. If the police require to interrogate the juvenile or conduct a TIP, they will have to seek the prior permission of the JJB. Granting of such permission is at the discretion of the JJB, and if permission is given, the JJB will ensure that the interrogation or TIP is done in the presence of the PO or any other functionary attached to the Observation Home. It is imperative for State governments to ensure that juvenile justice forms part of the police’s training curriculum. That the law treats juveniles not in the same manner as an adult criminal, and the reasons for such distinct treatment, should be engraved in the mind of every police personnel. This will be a step towards assuring a juvenile his rights. It will also curtail the police’s prevailing practice of treating juveniles as adults. It is only time that will reflect whether training changes the perspective of a police officer who is typified into believing that those who commit crimes deserve to be treated stringently, and punished. It is not only the public, it is also policemen who believe that juvenile legislation deals leniently with those from whom society requires protection. The Model Rules provide, “Any police officer found guilty, after due enquiry, of torturing a child, mentally or physically, shall be liable to be removed from service besides being prosecuted for the offence.”¹³ It is hoped that the above Rule will deter physical abuse of children at the hands of the police

During inquiry, it is the police who are directed to produce the prosecution witnesses before the JJB. On completion of inquiry, it is the police who escort the juvenile to the Special Home, or to his place of residence when below 18 years of age.

11 . Rule 75 of the Model Rules.

12 . Rule 76 of the Model Rules.

13 . Rule 84(11) of the Model Rules.