



CHILD PARTICIPATION IN JUVENILE JUSTICE IN INDIA

National Report for AIMJF's Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en India

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Inde

Rapport national pour la recherche comparative et collaborative de l'AIMJF

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in India.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de adolescentes en la justicia juvenil. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en India

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants à la justice juvénile. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Inde.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

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The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation in juvenile justice is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1.1 What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?

The Juvenile Justice (Care and Protection of Children) Act, 2015 which is the primary legislation in India dealing with children alleged and found to be in conflict with law has by way of **Sec 4** provided for the constitution of the **Juvenile Justice Board** to deal exclusively with all the proceedings under the Act, relating to children in conflict with law. The powers conferred on the Board by or under this Act may also be exercised by the High Court and Children's Court, when the proceedings come before them under **Sec 19** or in appeal, revision or otherwise.

The name **JUVENILE JUSTICE BOARD** is uniform across various regions in our country. The Act vide **Sec 4** lays down that the State Governments shall constitute one or more Juvenile Justice Board for every district.

The Juvenile Justice Board deals exclusively with the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established under the legislation. **Sec 8(3)** of the Act clearly lays down the functions that are to be performed by the Board which include-

- Ensuring informed participation of the child and the parent or guardian in every step of the process
- Ensuring that the rights of the child are protected throughout the process of apprehension, inquiry, aftercare and rehabilitation
- Ensuring availability of legal aid for the child
- Conducting inquiry for declaring fit persons regarding care of children in conflict with law.
- Conducting regular inspection in jails meant for adults to check if any child is lodged in such jails and take immediate measures for the transfer of such a child to observation homes, etc.

1.2 What is the minimum age of criminal responsibility (MACR)?

In India, nothing is an offence which is done by a child below **7 (seven) years** of age as per **Sec 82** of the **Indian Penal Code, 1860**, whereas **Sec 83** of the Code provides that a child above **7 years and under 12 years** of age, who has attained sufficient maturity of understanding to judge the nature and consequences of his conduct can be held liable for an offence. Thus, 7 years is the minimum age for being criminally liable in India.

1.3 Until which age is a child subjected to the jurisdiction of the Youth Court? Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?

In India, a child who is below the age of **18 (eighteen) years** comes under the jurisdiction of the Juvenile Justice Board.

In certain situations, The Juvenile Justice (Care and Protection of Children) Act, 2015 provides for circumstances when a child can be treated as adult.

After the Nirbhaya gang rape incident in the capital in December 2012, a three member Committee headed by Justice J.S Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. One of the accused

in the 2012 Delhi gang rape was a few months younger than 18 years of age and under the Act was tried in a juvenile court. Eight writ petitions alleging the Juvenile Justice Act and its several provisions to be unconstitutional were heard by the Apex Court prompting the juvenile court to delay its verdict. In the second week of July 2013, the Supreme Court dismissed the objections, holding the Act to be constitutional. Demands for a reduction of the age of adults from 18 to 16 years were also turned down by the Supreme Court, when the Government of India stated that there is no proposal to reduce the age of an adult. On 31 August 2013, the case returned to the juvenile court and a sentence of 3 years in a reform home was handed down. Amid huge public outrage and widespread criticism, the Juvenile Justice Act of 2000 was amended and replaced by the 2015 Act. **Section 15** of the said Act provides that a child who has completed or is above the age of 16 years and who has committed a heinous offence (those offences for which the minimum punishment is seven years or more) **can be treated as adult**. 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 take the assistance of experienced psychologists or psycho-social workers or other experts to make such an assessment.

1.4 Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offence was committed before the age of 18?

The Juvenile Justice Board maintains jurisdiction even if at the date of judgment the child has crossed the age of 18 years. The most important consideration is the age as it was at the date of the commission of the offence.

1.5 Can you describe the general steps of the procedure?

According to The Juvenile Justice (Care and Protection of Children) Act, 2015, the general procedure post apprehension of a child in conflict with law is as follows

- The child is placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended. (vide Sec 10)
- Bail is given in appropriate cases. (Sec 12)

- Information is given to parents, guardians or probation officer.(Sec 13)
- Inquiry and preliminary assessment (whether the child has committed heinous or petty offence) to be held by the board.(Sec 14)
 - The Board satisfies itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment.(Sec 14)
 - Proceedings are conducted in simple manner and care is taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings.
 - The Board shall not adjudicate the proceedings without calling for the report of probationer officer.
 - Every child brought before the Board is given the opportunity of being heard and participates in the inquiry.
 - The inquiry shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two months by the Board, for the reasons to be recorded in writing for such extension.
 - Petty offences are disposed of by summary proceeding and serious offences are disposed by summons procedure. Heinous offences by child below 16 years are dealt by summons procedure and those above 16 years are preliminarily assessed as to whether they can be tried as adult by assessing physical and mental capacities, ability to understand and the consequences of the offence and circumstances in which allegedly committed the offence.
 - Orders are then accordingly passed.

1.6 What are the opportunities for the child hearing in the whole proceeding?

Every child has a right to be heard and to participates in the inquiry conducted by the board and the child's views are taken into consideration with due regard to the age and maturity of the child. They are also given an opportunity to be represented through a Counsel provided by the DLSA.

1.7 Are there differences on how to proceed according to the age or other criteria? Please specify.

Yes. Section 15(1) of the Juvenile Justice Care and Protection Act, 2015 provides that in case of heinous offence alleged to have been conducted 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.

According to **Section 18** of Act where a Board is satisfied on inquiry that a child below the age of sixteen years has committed a heinous offence, then based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit

- allow the child to go home after advice or admonition by following appropriate inquiry and counseling to such child and to his parents or the guardian.
- direct the child to participate in group counselling and similar activities
- order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- order the child or parents or the guardian of the child to pay fine
- direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years
 - direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years
 - direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counseling, behaviour modification therapy, and psychiatric support during the period of stay in the special home



- Can order to attend school, attend a vocational training centre, attend a therapeutic centre, prohibit the child from visiting, frequenting or appearing at a specified place or undergo a de-addiction programme.

Where the Board after preliminary assessment pass an order that there is need for trial of the said child as an adult then the Board may order of transfer of the child of the case to the Children's Court having jurisdiction to try such offences vide Sec 18(3).

2.1 Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?

As per Section 14 (5) (c), it is provided that the child brought before the Board shall be given an opportunity of being heard and participate in the inquiry. Thus there is a statutory requirement for the child to participate in the proceedings before the Board, but the same is not mandatory.

However the child is not summoned. The date of hearing is mentioned in the order sheet and direction is given to the Zimmadar or Special Juvenile Police, as the case may be, to produce the child on the date of hearing, if it is necessary.

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2.2 Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?

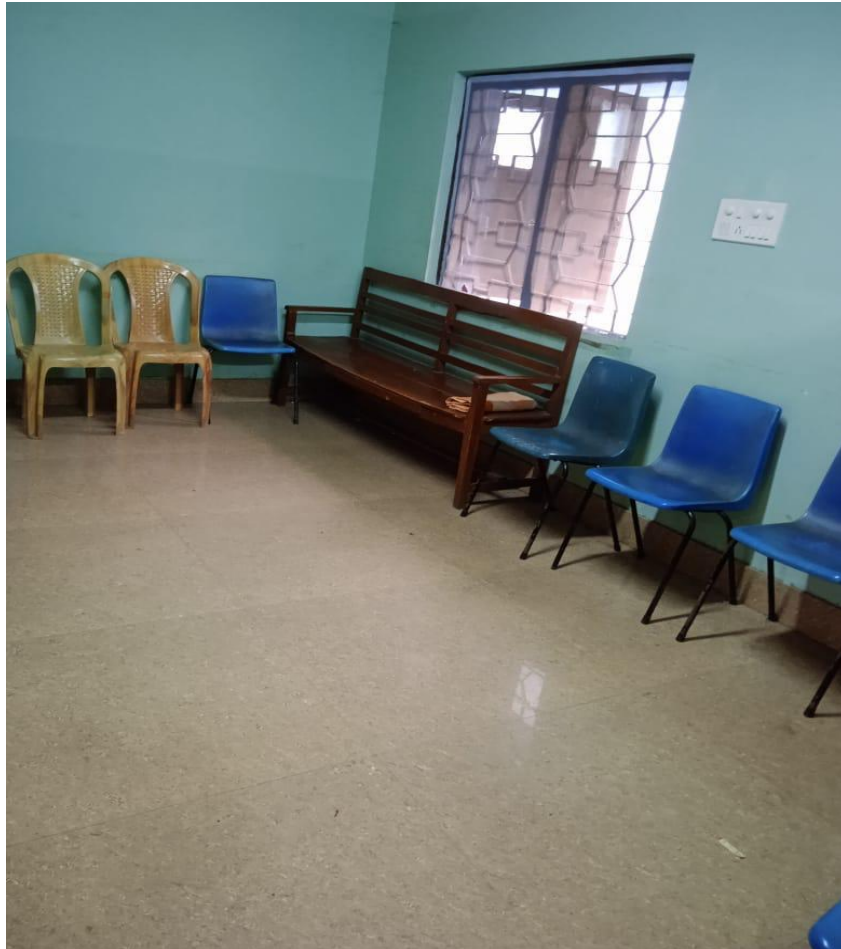
The child is not summoned. The call to appear is not necessarily made together with parent/representative. The Board if it feels the need to do so can ask the parent/representative to be present with the child during the inquiry. The proceedings before the Board shall be conducted in a simple manner and care shall be taken to ensure that a child-friendly atmosphere is provided during the proceedings.

2.3 Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard?

Wherever feasible, there are separate entrances and accesses for the child and other persons.

2.4 Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? - Can you share a photo of this place, if any?-

Yes, wherever feasible, there are separate waiting rooms for the child.



2.5 If children are brought by the police from places of detention, are they transported separately from others? - Yes

2.6 Is there some space where the child and his/her support persons can meet confidentially before and after the hearing? - Yes



2.7 Where does the hearing occur? In the courtroom, chambers, in another room (if so, please specify)? If various options apply, which situation will determine the difference in the approach?

The Board holds its sittings in the premises of an observation home or at a place in proximity to the observation home or at a suitable premise in any Child Care Institution meant for children in conflict with law run under the Act, and in no circumstances shall the Board operate from within any court or jail premises.

In case of various options, the one best suited to the child's interest is considered.

2.8 Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection or child victim/witness) hearing environment?

The proceedings before the Board are conducted in a simple manner and a child friendly atmosphere. Child friendly actions include talking in friendly manner with the child, being empathetic, addressing the concerns of the child without being judgmental, ensuring privacy of conversation, being patient with the child and so on.

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2.9 Are there differences regarding the hearing room in comparison with a regular criminal court room?

The Board holds its sittings in child-friendly premises which do not look like a court room in any manner and the sitting arrangement should be such to enable the Board to interact with the child face to face. The Board does not sit on a raised platform and there are no barriers, such as witness boxes or bars between the Board and the child.

2.10 Are hearings sound or video recorded? Does such option exist?

Wherever needed, the hearings are audio-video recorded. Section 164 of The Criminal Procedure Code 1973 makes the provision which is also endorsed by Juvenile Justice Model Rules 2016.

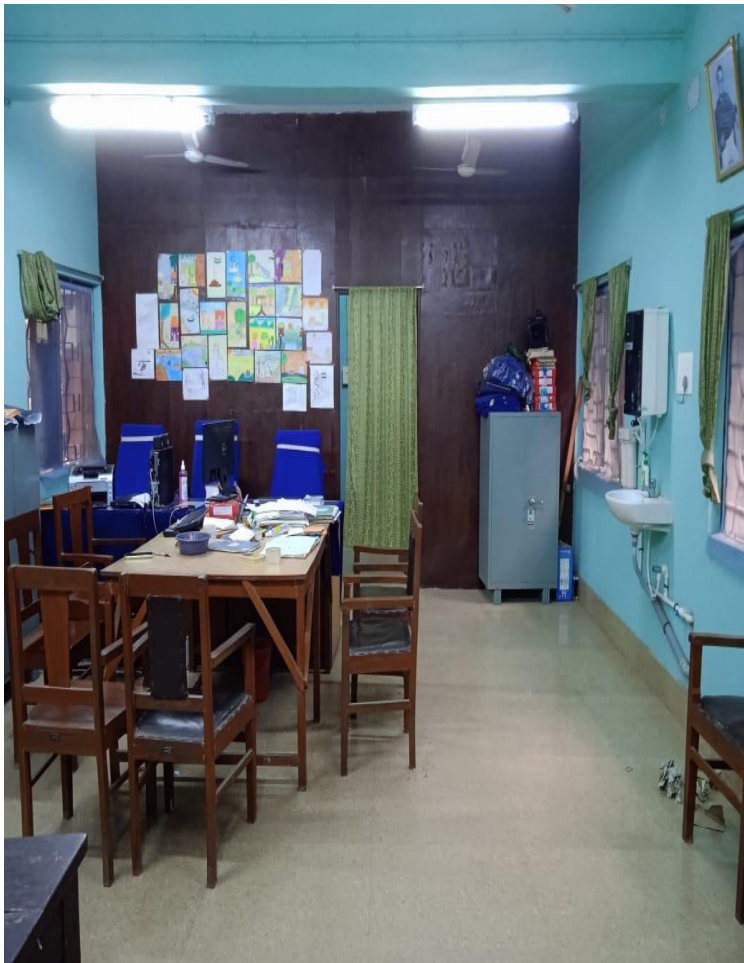
2.11 Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.

The Board comprises of a Metropolitan Magistrate or a Judicial Magistrate First Class having at least three years of experience and two social workers of whom one is woman.

The Board shall ensure that person(s) not connected with the case remains present in the room when the case is in progress.

The Board shall ensure that only those person(s), in the presence of whom the child feels comfortable, are allowed to remain present during the sitting.

2.12 Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)



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2.13 Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

No

2.14 Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge?

In which circumstances?

The Board comprising of the Principal magistrate and two social workers of whom one is woman hears the child in juvenile proceedings. The child has a right to be heard by the Principal Magistrate, who is a Judicial Officer in the rank of Metropolitan Magistrate or Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate, who he is an important member of the board. The social workers who are members of the Board are usually people who have been actively involved in health, education, or welfare activities pertaining to children for at least 7 years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

2.15 Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?

While communicating with the child, the Board uses child friendly techniques through its conduct and shall adopt a child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child.

All members of the Board including the Principal Magistrate are given induction training and sensitization within a period of sixty days from the date of appointment.

2.16 Can you please describe the ritual? (Some guiding questions are below)

2.16.1 Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?-

No, judges do not wear gown/wig during the hearing. Yes, it would be different in a family court as well as any criminal court for adults.

2.16.2 Does the prosecutor and the defense attorney have to wear a gown or to use special clothes?

No

2.16.3 Who else is allowed to attend the hearings?



Only those persons who are connected with the matter at hand and those in whose company the child feels comfortable are allowed to attend the hearings. Such persons may include the parents, witnesses.

2.16.4 Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?

There are no cloth restrictions for the child, his/her parents or non-legal professionals.

2.16.5 When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?

The child wears regular clothing.

2.16.6 Is the judge/decision maker in the hearing room when the child enters?

Yes the board members are in the hearing room when the child enters.

2.16.7 Does the child have to stand up?

No the child does not have to stand up as the proceedings are conducted in a child friendly manner.

2.16.8 Does someone have to allow the child (or others attendees) to sit down?

As the proceedings are conducted in a child friendly manner it is not the case that someone allows the child to sit down before he can sit down.

2.16.9 Does the child have to remain standing during the hearing?

The child does not have to remain standing during the hearing.

2.16.10 Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?

The Board uses child friendly techniques and adopts a child friendly attitude with regard to the intonation and voice and thus no solemn speech or specific explanations are provided to the child be he has the opportunity to speak.

2.16.11 Does the child have to make any kind of commitment or swear an oath before speaking?

The child does not have to make any kind of commitment or swearing an oath before speaking. The child is also never asked to admit or deny any offence.

2.16.12 Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?

The board members which comprises of the Principal Magistrate along with two social workers poses the questions to the child. The child himself answers them.

2.16.13 Is the child allowed to consult his/her defense attorney or his/her family during the hearing?

The Board allows the child to consult his parents or is attorney whenever it is necessary or just to do so.

2.16.14 Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

All of them are allowed to address the child

2.16.15 If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?

The board comprises of two social workers and they do speak to the child. They are also decision makers alongside the Principal Magistrate.

2.16.16 If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?

Since the child brought before the Board must be given an opportunity of being heard, the child may be allowed to interfere/correct the information or conclusions.

2.17 Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?

The entire process is more in the nature of a dialogical interaction with the child.

2.17.1 How would you characterize the tone of the dialogue and the general attitude of the hearing?

Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child's behavior, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?

While communicating with the child, the Board uses child friendly techniques through its conduct and shall adopt a child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child. An empathetic approach is adopted by the Board, ensuring privacy, being patient with the child. The Board is required to display warmth, interest and concern towards the child.

The child during the inquiry is allowed to speak freely about what has happened rather than answer strictly to the questions.

The interaction is not only focused on the wrongful act but also to contextualize the child's behaviour, his or her family condition, educational process, social experiences and to get some aspects of his or her subjectivity.

Such a dialogue can be ensured and promoted only when the Board displays empathy towards the child, without being judgmental and allows the child to freely express his mind. If the Board is judgmental from the very beginning and displays a hostile attitude towards the child, an open dialogue can never take place.

2.17.2 Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that enable some kind of less formal

interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?

There are occasions which enable the board to decide about restorative justice, plea bargaining or other alternative to trial rather than strictly adhering to the trial procedure. Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides some of such instances.

2.17.3 Is the Judge or any other professional allowed to make any recommendation on how the child should behave?

An informal recommendation may be made by the Board.

2.18 Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?

Yes the child has the same legal and procedural safeguards as an adult. In fact, additional measures are adopted to provide for a child friendly atmosphere throughout the hearing.

2.19 What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults?

- The Board holds its sittings in the premises of an observation home or at a place in proximity to the observation home or, at a suitable premise in any Child Care Institution meant for children in conflict with law run under the Act, and in no circumstances the Board operates from within any court or jail premises.

- The Board ensures that no person(s) un-connected with the case remains present in the room when the case is in progress.

- The Board ensures that only those person(s), in the presence of whom the child feels comfortable, are allowed to remain present during the sitting.

- The Board holds its sittings in a child-friendly premise which does not look like a court room in any manner and the sitting arrangement is such to enable the Board to interact with the child face to face.

- While communicating with the child, the Board uses child friendly techniques through its conduct and adopts a child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child.



- The Board does not sit on a raised platform and there are no barriers, such as witness boxes or bars between the Board and the child.

Generic questions concerning the improvement of Youth Courts

3.1 In your country, do the judges, prosecutors and defense attorneys benefit from specific initial and continue training on children’s rights in juvenile justice and specifically on child hearing in this setting?

According to me, since the inquiry of a child by the Juvenile Justice Boards is different than that of a regular trial it is necessary for the Board members, the prosecutors and the defense attorneys to receive specific and continued training on children’s right in juvenile justice and on child hearing in the specific settings. Children are vulnerable and require a certain amount of sensitivity from adults and support persons to minimize harm and victimization when they are alleged to be in conflict with law.

3.2 Anything else you would like to add on this topic?

Our legislation and efforts from the respective constituents of the juvenile justice process ensures that a child in conflict with law gets the treatment as is just and equitable. All situations pertaining to a child in conflict with law are not same and thus there is enough flexibility to deal with each and every situation on a case to case basis and not with the same rigorous hand of law. The procedural aspects are therefore designed accordingly so as to allow it to be it to be different from that followed in a regular trial.

3.3 Any reform proposals in progress on any of the above issues?

The Juvenile Justice (Care and Protection of Children) Act, 2015 was recently amended in 2021 to further streamline the procedure and to allow child aged 16 to 18 years to be tried as an adult in certain circumstances as already mentioned hereinbefore. Post that no reforms proposal is pending as of this date.

3.4 Any suggestions for improvement from your side?

One area according to me which is shaky is that the assessment to be made by the Board as to whether a child aged 16 to 18 years is to be tried as an adult is not based on an exact science and as such majorly they rely on the opinion of the experienced psychologist or psycho-social worker



or other experts who oftentimes develop the tendency to seek the non-arduous path so that they are not subjugated to intensive cross-examination by the defense attorneys. Thus, the exact intent behind the provision is not upheld in those instances.

Also, the various rules that have been adopted under the Act that are required to be followed by Board and the defence counsel and prosecutors as well as the rights available to the child must be made available in a child friendly manner in order to enable a child to have a complete idea about the process to which he may be subjected to. The child should be protected from stigmatization at all cost to ensure a complete reform in his behaviour in those situations wherein he is found to be in conflict with law.