

Visit to Ernakulam Juvenile Justice Board

Date of visit: 5th April 2008

Place: Government Observation Home, Kakkanad, Ernakulam, Chennai

Present strength of the home : Nil from February 08.

Members: Principal Magistrate: Shri. T.K Madhu – Chief Judicial Magistrate of Ernakulam

Members: Ms.Bitty Joseph (People's Council for Social Justice),

Dr.Abraham Paul (Paediatrician)

Sitting days: Saturday, 11:00 to 1:30 p.m

Tenure of the Board : 3 years, two years completed for this Board. Principal Magistrate's term is not co-terminus of the Board, and due to the post itself, there are frequent transfers.

Selection and Training :

The Board members who have been selected by the Collector, are qualified and have the attitude and training to contribute to the Board. However the CJM (Principal Magistrate) who occupies only for short periods of time, is not given any training or orientation. Also there is a confusion over this kind of direction from the judiciary, and there is no mention of who will be the reviewing authority for this Board, if the CJM sits in the Board. The CJM seems a very child friendly person, however no one seems to know that the Model Rules have been issued. They are still following the old rules of the previous act, with the new Act.

JJBs were formed in all 14 Districts as of a recent Government order.

Infrastructure and accessibility

The Observation Home campus is situated on the National Highway, and hence it is accessible. High compound walls (broken on one side) and a huge prison like gate mark the entrance. The building is archaic but neat and clean. There is only one room for the Board, and no chamber or separate counselling room for Legal Aid or the Public Prosecutor. There is no Notice Board displaying the Board details. There is also no waiting room for parents and juveniles when they come in. There is a separate toilet and there is also facility for drinking water.

The Board room is decorated with a lot of posters of children and is very pleasant and informal.

Personnel in the Board :

Lawyers and police are present, and some personnel from the prison who brought a boy from there were all dressed in non-uniform. The JJB s assisted by one clerk and peon from the CJMs court for now, as per orders from the high Court. The papers are brought from the CJMs court and taken back there. The District probation officer is present for every Board session. Public prosecutor also is available for the weekly sitting. Both are not exclusive for the Board and they have other duties as well.

Proceedings in the Board:

Pre-JJB Production and SJPU:

Whether police detain the juveniles in the station is not completely known to the Board.

JJB production:

Police produce the juvenile before the CJM or any other magistrate. The members do not receive children in their premises. There are rare cases of police excesses on the juveniles, and the Board takes cognizance and files a case against the concerned police.

There is no case of diversion in the Board, to the CWC, in the first instance, quashing the FIR, as they feel that there is no provision or the procedure is not clear.

Views and expressions are not ascertained, however legal aid and the charges are explained on production.

Intimation to the District probation officer immediately is never done, and P.O report is not called for to consider bail for the juvenile. Probation officer's role is only after the case completion.

In case the juvenile is absent, for a long period, warrant is issued to the police to produce him. There are no other NGOs or social workers present during the Board session.

If police do not file charge-sheet on time or delay the trial, the magistrate issues show-cause notice to the police and then to higher police officials.

Age verification:

For all juveniles from Kerala, there is no problem as all of them have birth certificates. However the problem is with migrant workers from other states, who do not have any documents. They rely on the Radiological examination for concluding the age.

Police:

There is no designated SJPU in the District or in the State. The Board members feel that the training offered to the police is inadequate, and the police do not perform their duties while handling the juvenile as per the Act.

Role of members:

Members do not receive children on their own. They meet the children when they are produced before the Board, and also counsel them inside the home premises. They do not perform any other functions in the absence of the Principal Magistrate. It was suggested that the juvenile could be sent to the Board members also, however the P.M said that he did not want to inconvenience them. They accepted to receive juveniles in their premises so that the first interface facilitates the juvenile to lower his defences and be rest assured that he will be heard.

Bail and procedure:

There is no delay in issuing the Bail as most of the juveniles parents are present to take responsibility of the juvenile. In rare cases where there is no one, the boy or girl remain inside the home, for a period of time, and the P.M ensures that the police submit the chargesheet, and the case is completed at the earliest, and the juvenile is sent to a Fit Institution in another district if they agree or a Children's home.

There is no procedure of asking for P.O's report before releasing the juvenile on bail.

There are no cases of release on cash surety. There is also no practice of pre-trial supervision by the probation officer, and if the juvenile does not turn up for hearing, for a long time, and there is also no representation from the advocate, warrant is issued and police procure him, to re-admit him in the home till case completion.

Members do not release the Juvenile on Bail in the absence of the P.M. There are hardly any cases of children remaining in the Observation home for a long time. In rare cases when completed, the parents are either not willing or traceable then the children are sent to an Institution depending on the nature of the juvenile and the crime.

Post production process, handling delays:

After Bail the process of awaiting the chargesheet begins, and if the juvenile is falsely implicated, the P.M splits the cases.

If there is inordinate delay in filing charge sheet, the Inspector is notified and letters to the higher authorities are sent. Properties are not handed over until the chargesheet is filed, which was yielding results.

Trial process, re-entry, custody:

There are procedural delays due to non-filing of chargesheets only.

About 5 to 10 % of the cases keep bouncing back and forth even before the completion of their cases.

There are more than 10 cases per week presently handled by the Board. As of now, in this Board there are only 17 pending cases. Most of the cases are completed before 4 months, and only rare cases where the cases are delayed.

Though there are provisions for conducting certain sections of proceedings in the absence of the juvenile, the advocates want their presence, in order to get their fees. Also the entire process of trial and disposal is strictly as per Cr.P.C in the absence of any other reference manual.

Extension of remand is 15 days each time. There are no instances when the police have asked the custody of the juvenile (which may mean that the juvenile would have stayed in the police station till the process of interrogation and recovery is done).

Members are present on the sitting day, watch the proceedings, and sometimes counsel the juvenile. Also they provide linkages of volunteer and medical support .

Final order is arrived at after discussion within themselves. There are no cases of difference of opinion at all in this Board. The Chairperson does not conduct proceedings in the absence of the members. Invariably one of them at least is present. There seems to be a lack of opportunity for the participation of the members, even though they have the calibre and commitment. The papers are not

given to them and each time it is taken back to the CJMs court. Even for reading the case papers to arrive at a Final order is not possible for the members.

Parental Contact: Ensuring parental contact is a hurdle for many who continue to remain in the observation home, and the JJB relies on P.Os report for the purpose. No letters, phone calls or home visits is asked for or facilitated due to the absence of support system for the Board.

Probation officers report, jumping probation:

The probation officers report is called during the last stage of the case as of now.

If there is a delay in obtaining P.Os report, reminders are issued for the purpose, and there is no alternate report sourced.

If the juvenile jumps probation or there is non-compliance of conditions, in the final stage the P.O reports to the Board, and a warrant is issued, he is re-admitted to the home.

Final order:

No of cases using

15(a) - 50% of the cases – 1 or 2 cases have been handed over to CWC, but the present practice of admitting to the Children's home is not working out well, with the staff not co-operating to accommodate these children, as they have a tendency to 'contaminate' other children.

15(b) - 1 or two

15(c) - 1 case of cleaning of hospital was given. However no one reported on compliance and there was no supervision. Hence community service options are not actively considered.

15(d) Fine was paid by 2 cases in the last one year

15(e) Not to any Fit Person or institution

15() Probation supervision 45% of cases

15() 3 cases in the last one year to the Special home.

So far no member or the P.M has visited the special home after sending the children there. They are not aware of the problems or facilities there.

Specific issues raised by the Board:

There is a disadvantage of the Chief Judicial Magistrate being the Principal Magistrate of the Board, as he is actually the reviewing / inspecting authority. Also the tenure of the CJM is limited to 6 to 7 months only, and there is no scope of training them. Hence a regular magistrate with training given could be appointed.

There is a need for SJPU as per the Act. The police and the Public prosecutor must be specially trained under the Act.

There is a need for intensive psychological counselling and psychiatric support for juveniles with high offence rates as they have a tendency to climb into the adult prisons over a period of time.

There is a need to have vocational training, and continuing education activities for juveniles who are spending their time at the Observation home. As of now, there is nothing but a TV and a few indoor games for the children.

Visit and observation at the Juvenile Justice Board:

The juvenile, the parents and the lawyers are allowed to sit in front of the Board in chairs and spoken to in a very child friendly way. Questioning is also done by explaining the charge and asking his opinion, or what he has to say about it. It is open ended and the Principal Magistrate records whatever the juvenile has to say.

“Legal counselling ‘ is done by the CJM to inform him about Sec 19, which is a provision that there is no permanent black mark if he confesses the crime, and he can carry on his life and career without any problem. This is done for all cases, as the CJM is convinced that there is no need to prolong the trial and make the juvenile pass through unnecessary trial, when he can confess the offence and move on in life. Though the intention seems genuine, one particular contest case the boy explicitly told the Board that he did not commit the offence, was playing near the site, but was fed up of the whole procedure and wants to complete the case. He was asked to confess and the Board will be passing judgement on the case based on the confession.

One case had to be adjourned as the Public prosecutor who was newly appointed did not read the case papers and was not ready.

As of now the Board is approaching the Medical college for any psychological or psychiatric assessment.

The copy of the Act and Sec 19 is shown to the Juvenile who understands that there is no worry of criminal record if he is found guilty and reprimanded under this act.

In one particular case where there were 3 juveniles, two of them pleaded guilty, and the case was split up. A few parents complained of harassment by the police.

Most of the cases who came into this Board seem to be students, who commit offences during holidays. Some of the other cases are those of migrant workers, from other states, Andhra, Jharkand etc.

Meeting with Justice Basant and the members of the Juvenile Justice Board Ernakulam on 6th Apr, 08:

Points discussed:

Regarding Diversion of cases:

The procedure is still not clear in the Act .

Regarding Cr.P.C as the base:

J.B felt that a child needs all procedural safeguards, and presumption of innocence. Inquiry does not amount to trial, to decide whether he has committed an offence or not. The child deserves all the rights of an accused to be taken into account so that there is proof beyond doubt that he is innocent.

Closure of cases:

Dropping of charges against the juvenile if the case is getting delayed for no fault of him, after one or two years is possible.

Presence of juvenile in every stage:

Is important only on the date of recording evidence for the purpose of a fair trial.

Whether the Juvenile can represent himself

He can do so in some types of cases. However he has a right to legal assistance for a fair trial.

Other issues discussed:

Legal counselling before the questioning is permitted – to facilitate the person to understand the implications of his plea. Probation officer could probably facilitate the counselling so that the juvenile could complete the case and move on in life, without any blackmark on his studies or career.

There was no provision of following a precedent in juvenile cases. There is no record of judgements or a library with the information, for the JJBs.

Regarding false cases, there was no procedure spelt out to close the case, hence if the juvenile pleads not guilty, cases needs to be split.

While there is a provision for special advocates to appear in family court, in the same way, specially trained advocates alone should appear for juveniles. Also only Trained public prosecutors should be appointed to the Board.

Judicial officers appointed to the Board could be appointed to have a tenure co-terminus with the Board. The present status of appointing the Chief Judicial Magistrate of the District could be discontinued as they were the Inspecting authority, besides other issues mentioned as before.

Posting could be on nomination based on suitability of the person for the post - the attitude aptitude and commitment

It was interesting to note that both the Judicial Officers were of the view that the Social Worker members could restrict their participation after the case was decided by the Magistrate. i.e only for the rehabilitation portion – as the rest of the work was as per Judicial proceedings, which the members were not qualified to peruse or decide. I mentioned to them that it was debatable as the members had equal responsibility for the juvenile from the start to completion.

Legal Reforms for consideration that emerged after the discussion

- Cr.P.C as basis for conduct of cases
- Lack of mention of consequences if the case is not completed within 4 months.
- Lack of procedure regarding diversion to CWC.
- Place of safety not defined
- The only Act which depends a lot on civil society participation. Need for moderation of services for children in a district so that NGOs and Government offer services to cover all areas of childcare as mandated in the Act.

Meeting with Dr.Bhanumathi – Member, Juvenile Justice Board of Thrissur on 5th April 2008

Ph: 094474 36710

Issues and the status presented at the Ernakulam Board were similar to that of Thrissur Board. The only difference is that the member expressed that the Police here inform the Probation officer and a report is sought before releasing the juvenile on bail. About 10 cases are seen per week and the present occupancy is about 10 children who stay for an average of few days to two or three months. One rare case of two boys who stayed on for a year as there was no one to apply bail, for them. Their case is getting completed, and they would be transferred to a Fit Institution for Boys in Thrissur for continuing their education. There were no fit Institutions for girls in the District.

There was no female staff to look after girl children.

Police require training as they do not have an SJPU in the district.

They require a psychologist and psychiatrist on call when there is a need, Lack of it, is a problem especially immediate interventions of behaviour problems are required.

Since there is no information or linkages with other states, for JJBs, boys and girls from outside the state, are a problem when released on Bail. Most of the time, they are admonished and sent away.

Visit to Observation Home at Calicut on and Telecon with JJB member Ms.Shiny on 10th April:

Ms.Shiny Ph: 09895871895

Mr.Nazeer Chaliyan (Other member) 09895236212

Govt observation Home Superintendant: Ms.Marilyn Ph: 0495370459

The Home was very neat and clean, with staff attending to the needs of the 2 children housed there.

Board sits on Wednesdays only , recently due to the increase in the no hearings required for completing recent community clashes cases, they are sitting on Fridays also. The presiding officer is the CJM of Calicut. The present strength is about 2 girls and 4 boys who are housed in the Govt Observation home, Vellimadu Kunnu, Calicut.

Issues and status presented by the Board member of Calicut is almost the same as that of Ernakulam. There are about 20 to 25 cases every week. Police officers do not inform Probation officers and the P.O report is asked for by the Board only.

Calicut Board receives cases mostly related to political rivalry. There were only 4 admissions between Dec 2007 to date to the Observation Home. The rest of them were out on Bail.

The District has a Juvenile Police wing, which rescues and produces children to the CWC only.

Most of the cases are completed within 4 months. The Final order is arrived at by consensus within the Board.

During their period of stay in the home, there are no activities or work for the children.

The main issue remains that the Board members do not have access to the Case papers as they are taken back to the CJMs court, hence they find that they are unable to read it and understand the progress of the case.

In cases where counselling, assessment, psychiatric interventions are required, they refer the juveniles to the Medical college only. The Board feels the need for a Psychiatrist on Call