

Diversion for Children in Conflict with Law: Glimpses into Innovative Diversionary Methods of Indian Juvenile Justice Law

Anant Kumar Asthana
Child Rights Lawyer

Diversion / Juvenile Justice / Child Rights

Around 2021-2022, India's Juvenile Justice System started witnessing a growing curiosity among its judicial constituents towards understanding Diversion as a subject with a view to figure out its utility, application, law and procedure. It has happened so largely on account of inclusion of diversion as a subject of discussion in the conferences organised by Juvenile Justice Committees of various High Courts and Supreme Court of India. Prior to such mainstream deliberation and engagement, discussion on diversion had largely remained confined to a small section of academics, child justice policy makers and justice intellectuals.

Diversion is a term which is loosely used in the context of juvenile justice for a range of methods and programmes which seek to keep children away from judicial proceedings, assuming that prolonged exposure to judicial proceedings is prejudicial to healthy development and growth of children.

India's Juvenile Justice Law is primarily and basically codified in the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Juvenile Justice (Care and protection of Children) Model Rules 2016. Some states like Bihar, Jharkhand, Tamil Nadu, Odisha, Gujarat, Madhya Pradesh have framed and follow their own State Rules on JJ Act.

Principle of Diversion is contained in JJ Act, 2015 and is among one of the 16 fundamental principles of administration of Juvenile Justice. These principles exhibit themselves and operate through various provisions of JJ Act and its rules. Manner, approach and nature of how these provisions are appreciated and interpreted determines how and to what extent these fundamental principles are given effect in real time cases, their processes and outcomes. Case of use of diversion is no different. Unlike Juvenile Justice Laws of various other countries, Indian Juvenile Justice Law does not provide specific processes for using Diversion nor it provides an explicit legal and procedural framework. Here in India, diversion has to be figured out of Law and then if aligned with Juvenile Justice, then can be given effect via judicial orders passed by JJBs. In India, the only authority to execute diversionary programmes is JJB. Diversion by Police is not permitted under Indian Laws as production of an accused before a Magistrate is a must and police does not have power to dispose of criminal cases on its own.

The Indian way of doing **Diversion** for Children in Conflict with Law can be a subject of curiosity for observers of Juvenile Justice Practices worldwide because it is way more complex, multi-tiered and interesting than one would ordinarily want to imagine. India's Juvenile Justice Law has several ways in which it conceives and operationalizes the principle of Diversion.

Diversion of Children alleged to be in conflict with law at the level of Police through various programmes is legal and recognised in laws of various countries but in India, it is not legally permissible to allow police to dispose of a case at the police station level without bringing the child to a judicial body or Board. The Model JJ Rules 2007 had in-fact made a provision allowing police to dispose off cases of petty nature by children at the police station itself but I don't think this provision was ever put to use anywhere in the country and was ultimately removed from law when JJ Model Rules 2016 were framed and issued by the Central Government in a clear indication that diversion is not to be operationalised at the level of police.

One of the most fascinating ways of diversion, imagined in India's Juvenile Justice law is the way it empowers and trusts Juvenile Justice Boards (JJBs) with a decision to liberate *prima facie* innocent Children alleged to be in conflict with law from the clutches of police itself in a rather unconventional and in an un-criminal law way. This I will explain in a bit.

Juvenile Justice Boards are district level adjudicatory & justice delivery Units which are vested with the powers of a Judicial Magistrate of First Class or Metropolitan Magistrate in Metro City Jurisdictions. These JJBs have exclusive jurisdiction over all matters related to the children in conflict with law. All such children are mandatorily brought before these Juvenile Justice Boards.

Now imagine a situation when on the very first day of interaction with the Child, Juvenile Justice Board feels that the allegation against the minor is either unfounded or is of trivial or petty nature. Can JJB close the case and let the child go back home?

A Criminal Law expert will say "NO". But an expert of India's Juvenile Justice Law will say, " Of course! Why not?".

It is unheard and rather unbelievable also in criminal law that a Criminal Court closes a criminal case on the very first date of production of accused by holding that the allegation made by Police or complainant is unfounded or is of petty nature.

But this is where diversionary magic of India's Juvenile Justice Law happens. At least since last 17 years, in India's Juvenile Justice Law, there is a legal provision which actually empowers the JJBs in a way Criminal Law cannot even imagine empowering its Criminal Courts. Without police filing chargesheet, Criminal Courts cannot close a case. They can grant bail or refuse judicial custody of accused but they have to wait till police completes

the investigation and files a chargesheet. Only after this happens that Criminal Courts have all the powers to close the case in various ways. But equipped with the mandate of enforcing **Principle of Diversion**, India's Juvenile Justice Law allows Juvenile Justice Boards a power which Indian Criminal Courts do not enjoy.

Just few weeks ago, a Juvenile Justice Board in Delhi has closed a case against a minor on the mixed grounds that apart from being highly improbable, the allegation constituted merely a petty offence. Principle of Diversion has been cited in the JJB's order as a basis for this decision.

Few years ago, when I was a Legal Aid Lawyer in one of the JJBs in Delhi, one of my own cases was disposed of on the very first date of production of child because based on the documents and records of police agency, the allegations made against the minor were found by the Board to be an impossibility even *prima facie*, hence totally unfounded allegations. There have been several such decisions from Juvenile Justice Boards across the country, as we stand in year 2024. The awareness and understanding that these orders and the legal provision allowing such orders are based on Principle of Diversion is rather recent, but the practice is almost 15 years old in India.

17 years ago, JJ Act, 2000 was in force and to give effect to its various provisions, the Central Government had framed **the Juvenile Justice (Care and Protection of Children) Model Rules, 2007**. These model rules supplied procedural juvenile justice law for entire country. It contained a Rule 13 (1) (a) which is subject matter of this discussion. It is reproduced below:

Rule 13. Post-production processes by the Board.— (1) On production of the juvenile before the Board, the report containing social background of the juvenile and circumstances of apprehension and offence alleged to have been committed provided by the officers, individuals, agencies producing the juvenile shall be reviewed by the Board, and the Board shall pass the following order in the first summary inquiry on the same day, namely:- (a) dispose off the case, if the evidence of his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking;

For a very long time, in practice, rules like this were not much known nor they were often put to use and nor there existed an environment conducive of its usage. But when through trainings and advocacy, this rule started getting space in child rights and Juvenile Justice discussions and also made its way into some judicial orders passed by JJB, this rule started throwing several philosophical, implementation and interpretation related challenges, which I will elaborate in a separate Diversion Diary series.

This particular rule after a substantial evolutionary journey is now Rule 10 (1) (i) of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

The Juvenile Justice (Care and Protection of Children) Rules 2016, Rule 10. Post-production processes by the Board.

- (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely: **(i)** disposing of the case, if on the consideration of the documents and record submitted at the time of the child's first appearance, the child being in conflict with law appears to be unfounded or where the child is alleged to be involved in a petty offense;

The Journey of **Rule 13 (1) (a)** of JJ Model Rules 2007 to **Rule 10 (1) (i) of JJ Model Rules 2016** is also a fascinating story of stakeholder engagement and evolution of one of the most robust and strong diversionary provision in India's Juvenile Justice law. I invite curious readers of this article to locate differences between content of:

1. Rule 13 (1) (a) of JJ Model Rules 2007,
2. Rule 10 (1) (i) of JJ Model Rules, 2016

This exercise will demonstrate the evolutionary journey of most robust legal provision of diversion in India's Juvenile Justice Law.

Bringing Children Out from Jails to JJB is Diversion.

As a parting note, I will mention that another aspect of JJ Act, 2015 is that it empowers JJBs to inspect Jails to trace and find minors in Jails meant for adult. There is an explicit authority given to JJB in Section 8 (3) (m) of JJ Act, 2015. This allows JJBs to do diversion of children from Jails to JJB. Since a considerable number of children actually land up in jails before finally coming to JJBs at a belated stage through Courts, I consider section 8 (3)(m) of JJ Act 2015 as another way and form of implementing principle of diversion in India.

In fact, looking at the scale of child incarceration in jails, I sometime say that bringing children out from jails to JJB is the exact kind of diversion, children of India need the most at this point in time. A recent report of National Legal Services Authority informs that in a nation-wide campaign named "Restoring the Youth" run from 25th January 2024 to 27th February 2024 for tracing minors lodged in jails at present, 7134 persons lodged in prisons across the country have been identified as probable minors. For Delhi alone, this figure is 523.

Author is a practicing Child Rights Lawyer and can be reached out at anant.asthana@gmail.com.