

Report of the Orientation Programme for Legal cum Probation Officers

27-28 May 2015



Organized by
Centre for Child Rights
National Law University Odisha

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1. Executive Summary

The Centre for Child Rights (CCR), was established by the National Law University Odisha as a specialized unit for research, teaching, training and advocacy on children issues, organized two-days orientation programme for the Legal-cum-Probation Officers (herein after LPOs) on 27-28 May 2015 at NLUO, Cuttack. NLUO and United Nations Children’s Fund have entered into a memorandum of understanding to venture the promotion of child rights practices in the State of Odisha under the Project on **Effective Implementation of Children’s Laws in Odisha.**” Accordingly the two day orientation programme was organized with the support from UNICEF. The participants for the programme were thirty LPOs from 30 district of Odisha who are working at the District Child Protection Units under the Integrated Child Protection Scheme (ICPS). The programme has had the gracious presence of Prof. Srikrishna Deva Rao, Vice-Chancellor, NLU Odisha, and Mrs.Aswasthy. S, IAS Director Social Welfare cum Additional Secretary to Government, Women & Child Development Department Government of Odisha, and Ms.Yumi Bae, Chief Field Office, UNICEF Odisha.

The key objective of the programme was to develop professionalism among the Legal cum Probation Officers to perform effective probation service practices to ensure justice for children. Specifically, the orientation programme was aimed to:

- 1) Make LPOs to understand their roles and responsibilities towards Juvenile Justice Board and Child Welfare Committee.
- 2) Strengthen their knowledge on child protection system, and empower them to understand the interconnectivity between juvenile justice system and other legal safeguarding mechanisms available for children.
- 3) Sensitize them about the importance of probation service towards social reintegration of the children.
- 4) Make them to acquire skills and techniques to deal children’s issue in challenging situations.



- 5) Make them professional social workers to discharge their duties and functions as LPO.

Programme designing

The agenda for the programme was revolved around on the subject of ***'juvenile justice and its interconnectivity with other child protection laws'*** with special emphasis to probation as a viable and alternative service for ensuring justice to children. In addition to the opening and concluding sessions, there were eight technical sessions at the programme. They are:

Session I- Understanding UNCRC and the Best interest principles: This session provided essential overview of the guiding principles of the UN Convention on the Rights of the Child with highlighting the application of best interest principle in the administration justice for children.

Session II- Basic theoretical understanding of JJ Act and other legislations: This session highlighted the fundamentals of the juvenile justice system in India and its interconnectivity with various child protection laws such as Child Labour (Prohibition and Regulation) Act 1986, Protection of Children from Sexual Offences Act 2012, Immoral Trafficking Prevention Act,1956, Prohibition of Child Marriage Act 2006 and so on. This session also highlighted mechanisms and procedures for effective management of issues relating to juveniles in conflict with law, and children in need of care and protection. The critical linkage between ICPS and juvenile justice system was also discussed in this session.

Session III – Understanding the role of LPO in case management: This session enunciated the role of LPOs in the juvenile justice framework. Techniques and professional approach required for effective case management, case analysis, and evolving individual care plan were also highlighted at this session.

Session-IV- Probation Services: This session provided an essential understanding of probation services by highlighting meaning, definition, origin & development of probation, emerging of probation law in India, concept & criteria for probation application, and admonition and probation release criteria.



Session-V: Probation as a viable alternative care: This session highlighted the techniques of the intake process and interviewing with children, objectives and importance of social inquiry report, ethical code for the probation officers.

Session-VI: Probation Supervision and Follow-up: This session provided an overview of the probation release, community based treatment programme vis-a-vis probation supervision, and application of rehabilitation and social reintegration. The sessions IV, V and VI are interrelated and interwoven with probation concepts, techniques and application.

Session-VII: Child victim of crime & Role of LPO: Essential legal safeguarding provisions for protecting children from sexual abuse, economic exploitation, trafficking, child marriages were discussed in this session.

Session-VIII: Model Social Inquiry Report: In this session, participants were asked to prepare social inquiry report on the given case studies followed by group presentation and technical inputs to prepare good social inquiry report.

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

- a) Lecture cum interactive discussion
- b) Power point presentation
- c) Case study
- d) Group discussion
- e) Question-answer method

Outcomes: From the feedback obtained from the participants, it has been understood that the orientation programme has helped the Legal cum Probation Officers to build their knowledge, skill and attitude in the following areas.

- a) Underlying philosophy and principles of juvenile justice law



- b) Interconnectivity of juvenile justice law with other child protection legislations and policies and the roles that could be performed by them.
- c) Roles and responsibilities of LPOs
- d) Underlying philosophy of probation service and its effectiveness in addressing the issues of children
- e) Importance of social inquiry report
- f) Individual care plan
- g) Community based interventions and supervision techniques
- h) Strategies of rehabilitation and social reintegration

Resource Person: The sessions were delivered by eminent legal scholars and child rights practitioners who have in-depth knowledge in criminal jurisprudence, juvenile laws and probation services. They were:

- 1) Prof.N.K Charabarti, Director KIIT Law School, KIIT University, Bhubaneswar
- 2) Prof.P.Madhava Soma Sundaram, Head of the Department of Criminology and School of Criminal Justice, Manonmanmiam Sundaranar University, Tirunelveli, Tamil Nadu
- 3) Mr. S. Kannayiram, Senior Programme Coordinator, Centre for Child Rights, NLUO
- 4) Mr. Pramoda Kishor Acharya, Senior Research Associate, Centre for Child Rights, NLUO



2. Background

The Government of India launched the Integrated Child Protection Scheme (herein after ICPS) as a flagship programme by amalgamating or restructuring the already existed programmes and added new dimensions keeping in mind the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 .The scheme was launched in 2009 as a Centre and state partnership of sharing expenses on the ratio of 75:25 bases. On a careful analysis of the scheme and its components it is understood that the primary objective of the scheme is to evolve an integrated approach by strengthening the machineries and institutions under the Juvenile Justice (Care and Protection of Children) Act, 2000. ICPS is the integration of various schemes as listed infra.

1. Establishment of Juvenile Justice Boards (Section 4 of the Act of 2000) with support staffs, infrastructures etc.
2. Establishment of Child Welfare Committees (Section 29 of the Act of 2000) with support staffs and infrastructures.
3. Establishment of residential homes for children (Section 8, 9, and 34 of the Act of 2000 ensures the establishment of Observation Homes, Special Home and Children Home respectively) with the provisions of staffs, infrastructures and meeting recurring expenditures on food, clothes, maintenance etc.
4. Provisions for the extension of Foster care and sponsorship programmes to children (Section 42 and 43 of the Act of 2000 respectively). Pages 48 and 49 of ICPS guidelines –Rs.2000/- per month per child as a financial support.
5. Establishment of Open shelters (Section 37 of the Act of 2000) with staffs and infrastructures and annual grant to meet the recurring expenditures
6. Provisions for the financial supports during the follow-up period under After care programme (Section 44 of the Act of 2000)
7. Establishment of District Child Protection Unit (Section 62 –A of the Act of 2000) with project support staffs, infrastructures, funding etc. In the District Child Protection Unit provisions for the appointment of Legal cum Probation Officer has been made.



Legal cum Probation Officer: ICPS envisages setting up a District Child Protection Unit (DCPU) in each district as a fundamental unit for the implementation of the scheme. The Legal cum Probation Officers are placed at the DCPU to coordinate and supervise all the programmes and activities relating to Juveniles in Conflict with law under the supervision of the District Child Protection Officers (DCPO). As devised under ICPS, the LPOs are required to perform specific roles and responsibilities of the following:

1. Collect and compile data on dimensions of the juvenile delinquency in the district.
2. Attend proceedings of the JJB regularly.
3. Support JJB in conducting inquiries.
4. Prepare and submit social investigation reports.
5. Maintain case files and other registers.
6. Escort juveniles to a home/fit person/fit institution from the JJB.
7. Undertake follow up visits of juveniles released under supervision and after release.
8. Establish linkages with voluntary sector for facilitating rehabilitation and social reintegration of juveniles.

The Legal cum Probation Officer should have legal background and a good understanding on child rights and protection issues. He/she would be responsible for providing free legal aid services to children/juveniles. He/she shall also provide necessary support to the Child Welfare Committee and Juvenile Justice Board in the legal matters relating to children coming under the purview of the Juvenile Justice Act as and when required. From the above it is understood that the Legal cum Probation Officer has to conduct social enquiry report and submit to the adjudication agencies such as the Juvenile Justice Board(s) and Child Welfare Committee(s). Though, the Legal cum Probation Officers have been working for the last two years or so, they do not have role clarity and their specific accountabilities and responsibilities. In this backdrop, the Centre for Child Rights of NLU Odisha had proposed to conduct two-day orientation programme for LPOs to strengthen their knowledge base. Accordingly, the programme was held on 27-28 May 2015.



Pre-Orientation Need Assessment: Before designing the module for the orientation programme, CCR conducted a need assessment to ascertain the needs of the LPOs in order to programme need based and purposeful for the participants. The needs identified were broadly related to knowledge and technicalities to deal children issues, administrative and operational issues, documentation and report preparation, and convergence and coordination among child protection structures and allied stakeholders.

Training Needs for LPOs

- a) Roles and responsibilities of the LPOs under JJ Act, ICPS, POCSO Act etc. and their interconnectivity.
- b) Fundamentals of child psychology to understand behaviour pattern, cognitive development and socialization of children
- c) Follow up activity for LPOs in the circumstances where charge-sheet is not filed with the stipulated time, but child in conflict with law is in observation home.
- d) Fundamentals of Social Investigation Report (SIR) and Model recommendations: The problems faced by the LPOs with regard to SIR are of two types. First one is related to the logistic problem in preparing SIR of those children who are placed in the observation homes due to rejection of bail. The LPOs have found difficulties to meet those children in observation homes as homes are far away from their district. The other point of concern is that recommendations of LPOs in the Social Investigation Report are not taken into consideration by the JJ Board.
- e) Role of LPOs in accessing children to the Legal Services Authorities
- f) Procedures and assistance under Orissa Victims Compensation Scheme
- g) Role of LPOs to monitor the order passed by JJ Board for juvenile to perform community service u/s 15 (c) of the JJ Act.
- h) Interconnection/ linkage among JJB, CWC, DCPU, Police
- i) How to prepare probation report
- j) Rehabilitation strategies for children in conflict with law.
- k) Procedures and essential circumstances for inter-district repartition of children.
- l) Methods to prepare individual care plan
- m) Role of LPOs on escorting child
- n) Best interest of the child: Guiding principles & methods of determining best interest
- o) Overview of JJ Act, particularly the disposal procedures & age determination with reference to Orissa JJ Rules
- p) Essentials provisions of Criminal Law Amendment
- q) Overview of the recent notifications/ circulars of government relating to sexual offence against children
- r) Jurisdiction/ commonalities / overlapping of work between District Probation Officer and LPO.
- s) Convergence / linkage with voluntary sectors for rehabilitation of JCL.



Module Preparation: A consultative process was followed up for planning and designing Two- day orientation programme. The draft module prepared by the CCR based upon the needs of the LPOs was shared with Women and Child Development Department and UNICEF. A consultative meeting was held on 13th May 2015 at UNICEF, Bhubaneswar where representative of DWCD, SCPU, UNICEF were present to discuss and deliberate upon the module and related materials for the programme. Based upon their inputs and suggestions, module was fine tuned and get ready for use.



3. Proceedings

3.1. Opening Session

The programme began with welcome address followed by objective sharing of the orientation programme by Mr.S.Kannayiram, Senior Programme Coordinator, Centre for Child Rights. The opening session has had the presence of Prof. Srikrishna Deva Rao, Vice-Chancellor, NLUO, and Dr.Dolly Jabbal, Registrar (i/c), NLU Odisha besides Prof. N.K Chakrabarti, and Prof. P. Madhav Somasundaram who were the resource persons for the programme.

At the outset, participants introduced themselves by intimating their names, place of work, years of work experience, duties they perform currently as LPO. In this interactive session, the LPOs were asked about the problems and challenges that they have been facing while discharging their duties. To this the LPOs responded with lots of practical obstacles they face in their job as follows:-

1. They were/are sometimes not being given proper recognition
2. Lack of proper cooperation from the police department
3. In the absence of role clarity they face problems in handling and follow-up of cases pending with JJB
4. Ambiguity in the powers and functions between the Probation Officers under the Probation of Offenders Act,1958 (They under the administrative control of the Prison Department) and Legal-cum-Probation Officers under the Integrated Child Protection Scheme (ICPS).

Following self-introduction and experience sharing, Prof. P. Madhava Somasundaram opined that the confusion amongst judiciary in relation to probation officers appointed under the Probation Offenders Act, 1958 and Legal cum Probation Officers could be sorted out by briefing and maintaining cordial relationship. He viewed that National Law University would be the appropriate forum to initiate policy dialogue and law reforms to make LPOs on par with the Probation Officers under the juvenile justice system.



Prof. N.K. Chakrabarti in his opening address highlighted that juvenile in conflict with law are not to be seen as offenders of crime rather they shall be treated as victim of the crime. He advised LPOs to analyze the juvenile matter that they are dealing from victim perspective and to engage them to work as victim support system whether they are dealing the matter related to children in conflict with law or children in need of care and protection.

Prof. Srikrishna Deva Rao reiterated initial need of a different justice system for children and how this system eventually came into place with the form and content that we now see in the country. He told that juvenile jurisprudence in India is structured around constitutional mandate prescribed in the language of Articles 15(3), 39(e) & (f) and 47 as well as several international covenants, such as the UN Convention on the Rights of the Child and UN Standard Minimum Rules for Administration of Juvenile Justice otherwise known as Beijing Rules). The basic premise on which juvenile justice system has been grounded is restorative justice. He highlighted that one of the key objectives of the Juvenile Justice Act, 2000 was to create a separate system of justice dispensation for children who are accused of committing offences. In his speech, Prof. Rao elucidated the present engagement of NLU Odisha to promote child rights practices and extension legal services at the community level for Access to Justice for the marginalized.



3.2. Technical Sessions

Understanding UNCRC and the Best interest principles: This session was jointly taken up by Prof.P. Madhavsomsundram, and Mr.S.Kannayiram. Basic principles and fundamentals of UN Convention on the Rights of the Child (CRC) were explained to the participants. Prof. Madhavsomsundram highlighted that the CRC is built upon the principle that all children are born with fundamental freedoms and inherent rights. He viewed CRC is a treaty based legal instrument that codifies the rights of the children by setting standards for national laws, procedures and policies for children. He threw light on the unique characteristic of the CRC by highlighting distinct approach of the convention. They are:

- 1) **Comprehensive:** it embodies civil, political, economic, social and cultural rights.
- 2) **Universal:** applying to all children in all situations.
- 3) **Unconditional:** obligates government to implement at the domestic level.
- 4) **Holistic:** asserts that all rights are essential, indivisible, interdependent and equal.

He explained that the CRC is stood on four principles i.e. Best interest of the child, Non-discrimination, Survival and development, and Respect for the views of the child and these principles are fundamental to the interpretation of all other rights. The focus of his deliberation went on the 'best interest of the child'. By explaining the concept, Mr.S.Kannayiram put forth that best interest principle principles is a discretionary, notional and psychic power of the obligator to take an appropriate, deliverable and curable initiative to help his or her client to get away from the unpleasant situation or circumstances that shall lead to a normal life for the coming years. He stated that although there are no codified guiding principles to determine best interest

General Principles of Best Interest

- It is non-negotiable and applicable to the satisfaction of the interest of the community
- It is to certain extent authoritative and enforceable with regulations and restrictions
- It should obligate the offender to self-regulation and control
- The interest of victims shall not be compromised
- Restorative justice and best interest principle shall go together



of the child, but some general consideration may be kept in mind while deciding best interest.

Understanding of Juvenile Justice Act and other legislations: Prof.Madhava Somasundaram took up this session through interactive discussion supported by a power-point presentation. The main points that he discussed were the core concept surrounding the juvenile justice system, the status of children in the country, the causes of children in conflict or interface with law, the overview of the juvenile justice system and how is it different from the adult criminal justice system, the international standards & statutes of juvenile system and the other models of juvenile justice system. He talked about how the juvenile justice system revolves around three concepts i.e. the best interest of the child, doctrine of *parens patriae* and child protection. He discussed all these three concepts in details and also talked about the terminology used in the system and how it is important to avoid negative semantics usually used in the adult justice system from being used in the juvenile system.

Explaining the concept of *best interest*, he told that the legal interpretation and the legal obligations should not be in the front seat and these are guiding factors and provide authority to make interventions in respect of juveniles in conflict with law or a child in need of care and protection. According to him without diluting the legal frame work, the decisions by any authority who works with or for the child should keep in mind that their decisions could facilitate the proper rehabilitation or social reintegration in respect of juveniles in conflict with law. In the case of children in need of care and protection the relief and assistances should help them to restore to their normal position.

Throwing light on the concept "**parens patrie**", he explained that the legal philosophy justifying state intervention in the lives of children when their parents are unable or unwilling to protect their children. It was clarified that though the family is the best place for a child to be reared, in some cases, such families would not viable for the well being of children due to variety of reasons such as dysfunctional families, chronic illness, sudden demise either of the parent or due to conflicts etc., the State has the responsibility to look



after the citizens and especially the children and women. Hence, the various institutions and mechanisms formulated under the JJ system were keeping the concept of parent patrie.

He made a succinct presentation on the provisions of the JJ Act that are essentially required to be understood and internalized by the LPOs. He stated that the juvenile justice system in India caters legal response to two category of children, i.e. 'children in conflict with law' and 'children in need of care and protection' where LPOs have important role to play all though the judicial process to see that children in question are reintegrated and mainstreamed at the society. He also talked about how important the role of a probation officer is in the system and he described them as the eyes and ears of the juvenile court. He went on to discuss the rehabilitation process for a juvenile in conflict of law. The complete rehabilitation process includes lot of other steps like rescue, recovery, rehabilitation, restoration, reintegration etc.

The interconnectivity of the JJ Act with other child protection related legislations was also highlighted by Prof. Madhavsomasundaram in his presentation. He explained the essential provisions of the Protection of Children from Sexual Offences Act, 2012, Prohibition of Child Marriage Act, 2006, Child Labour (Prohibition and Regulation) Act 1986, and Immoral Traffic Prevention Act,1956 to highlight legal safeguards being provided to the children under such legislations and role to be accomplished by the LPOs to address vulnerabilities of the children in different conditions. The linkage between ICPS and the juvenile justice system was also a point of discussion. He explained that ICPS aims at creating viable and strong juvenile justice system by strengthening a comprehensive child protection system at the state, district and community level.

Mr. S. Kannayiram, Senior Programme Coordinator, Centre for Child Rights has pointed out that the specialty of the Juvenile Justice (Care and Protection of Children) Act, 2000 is its inter connectivity with various legislations. He highlighted that a child in need of care and protection was upon personal intake by the probation officer could visualize the various dimensions of problems and issues associated with the child. The child could be a runaway child or lost child or a child who might have been trafficked and employed and faced abuse



and exploitation. Some of them could have been abused sexually and forced into street life. Therefore, such children could get medico legal assistance, legal remedies, restitution and compensation in accordance with the legal provisions enshrined in legislations. He has also pointed out that a child employed as a residential domestic worker and brought before the Child Welfare Committee could be identified as a child who have faced abuse and exploitation at the hands of employer. All domestic helper of similar in nature shall be viewed as kept in bondage and therefore the provisions of section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 could be linked with the legal provisions in any other law as per Section 28 of the same Act. He emphasized that a child domestic help could get relief from the provisions of the Bonded Labour (Abolition) Act of 1976. Likewise, a trafficked child could get relief under the provisions of Section 370 of IPC. A sexually abused child could get compensation from any of the fund operated for the welfare of people such as Chief Ministers' Welfare fund or the Collectors discretionary grant or from the fund operated under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. These assistance should not be a stumbling block for the Children's Court to order the payment of interim or permanent compensation to the victim.

Understanding the role of LPOs in case management: The session aimed at providing technical inputs to develop professional approach for case analysis, case management and how to prepare individual care plan. The session was held through group work by the participants on the given case studies. Six groups were formed to discuss, analyze and consolidate group views on the case study given to each groups. Each group made their presentation followed by clarification and further inputs by the resource panelists. Details of the group presentation on case analysis are provided in the annexure.

Probation Services: The objective of this session was to provide an essential overview of the conceptual and theoretical aspects of the probation and its importance for reformative justice, and to make the LPOs aware of what are their professional obligations and legal accountability. To begin with Prof. N.K Chakrabarti made a presentation on *Probation System in the Administration of Criminal Justice System in India*. In his interactive deliberation, Prof. Chakrabarti discussed the following points:



- Basic assumption behind probation
- What is probation
- Why probation is an alternative to imprisonment
- Varied process of probation in India
- Probation supervision techniques.

He highlighted the origin and development of probation services in UK and USA and also in India. In his presentation he has made a scientific approach to the importance of probation services. He opined that the probation services are to community based interventions rather than the institutionalized interventions. He emphasized that the preparation of social enquiry report is the base for the successful of the probation services.

As discussed by Prof. Chakrabarty that probation is basically built upon certain assumptions.

They are:

- Every individual has worth and value.
- Individual does not like to live in isolation
- Individual is profoundly influenced by his pas which help to shape the present.
- Individual is governed by forces some of which are conscious and others unconscious.
- Individual is essentially be interested in himself and his own problems and want help in working out his solutions to problems.

Analyzing what is probation, he touched upon the conceptual development, definitional discourse and theoretical discourse on probation. A summary view of the grace theory, contract theory, and custody theory was presented. In his presentation, Prof. Chakrabarty also highlighted varied processes of probation in India with reference to Admonition under sections 3 of the Probation of Offenders Act & 360 of Cr.PC, Plea Bargaining u/s 265(b) of Cr.PC, and u/s 15 (c) of the Juvenile Justice (care and protection of children) Act, 2000. He enunciated certain guiding factors for granting probation such as:

- Age of the offender
- Economic condition/means of livelihood



- First offender/spur of moment
- Provocation
- Temptation
- Absence of bad intention
- Self preservation/ preservation of nearest one

A succinct analysis of social therapy, reality therapy and behaviour therapy as probation supervision techniques was made by Prof. Chakrabarti.

Social Therapy	<ul style="list-style-type: none"> • Removing and discouraging unwholesome social ties and supporting positive and constructive social relations.
Reality Therapy	<ul style="list-style-type: none"> • Substituting mental health level to help an irresponsible person to become responsible.
Behaviour Therapy	<ul style="list-style-type: none"> • All forms of behaviour are the result of the learning process.

Probation as viable alternative: At the threshold of the presentation, **Mr. S. Kannayiram** described the literal meaning of the concept 'probation' by stating that that probation was derived from the Latin word "**Probatio**" meaning to test or to experiment. Probation is therefore an experiment with human beings whose behaviour modification and keeps them to behave orderly and away from criminality is the concept. Therefore, probation could not be claimed as matter of right but it is the discretionary power of the probation officer and that should be used cautiously and judiciously. Hence, the selection of offender whose personality could be changed through intervention is the pure decision of the probation officer which should ultimately satisfy the community safety and the offenders' proper re-socialization and social reintegration. He stated that the viability of probation services as an



effective mechanism to handle children within the community without any damage to the personality but with ensuring the accountability through positive approach is the concept of probation services. Explaining the techniques of social inquiry report, he told that the SIR shall necessarily dwell upon family based need assessment, need analysis, consideration of positive factors and risk factors in releasing the person on probation, personal safety of the offender and safety of the community. SIR shall be prepared through personal interview of the juvenile; information from the family; and information from social agencies and other sources. The SIR shall necessarily contain:

- Family history of the juvenile, i.e. education, occupation, earning etc. of parents/guardian and sibling.;
- antecedents of the juvenile including habits and interest, companion and their influence, school record, neighbourhood report;
- mental and physical condition of the juvenile;
- opinions of the expert consulted;
- analysis of the case including reason for delinquency;
- Recommendation and planning for dealing with juvenile.

Mr. S. Kannayiram in his presentation on probation as a viable alternative care he emphasized the careful selection of offenders to get the benefit of probation services. In this context, the report of the social enquiry report is viewed as “**action plan on individual**” and the conditions of probation suggested by probation officer is “**individual care plan**”. The conditions should be proposed based on the personality traits, family environments, the negative factors and how the negative and personality traits could be turned as positive and desirable behaviours etc. The probation officer should also do risk assessment on the probationer in order to ensure the best interest of the community and the best interest of the probationer.

He also highlighted the indicators for inclusion in the social enquiry report and the report should be helpful for the adjudication agency to arrive at the appropriate treatment plan. He explained that the “**Law of effect**” is the effective analysis of the individual issues and



proper the conditions that should help the offender to keep off from crime and delinquency and social reintegrated. The probation officer shall be responsible or the decision of adjudication agency which pronouncement should ensure the safety and security of the community and the rehabilitation of the offender.

In this context, Prof. P. Madhava Somasundaram added that the selection of offenders for probation benefit should be with certain indicators and such indicators should be identified by the probation officer based on his experiences and commitments. He explained two tested models on juvenile probation. They are: Diversion Programme, and Mediation/Restitution Programme.

Probation supervision and follow-up: This session provided an overview of the probation release, community based treatment, probation supervision, judicial accountability and follow- up reporting, and application of rehabilitation and social integration. The participants were told that the role of the probation officer in the juvenile justice starts with apprehension of juvenile by police and continues to supervise the juvenile till his rehabilitation and social integration. Probation may be used at the “front end” of the juvenile justice system for first-time, low-risk offenders or at the “back end” as an alternative to institutional confinement for more serious offenders. Probation is highly confidential in nature. Referring the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules thereto, resource person told the participants that a juvenile may be placed under the supervision of a Probation Officer at three stages, i.e. at the stage of granting bail, at the stage of final order, and post release. Supervision role of the probation officer is multifaceted and shall be necessarily oriented to ensure ultimate social reintegration of the juvenile. Therefore supervision includes:

- a) Assisting juvenile to develop contact with family;
- b) Providing assistance to family members;
- c) Facilitating rehabilitation and social reintegration of juveniles by establishing linkage with voluntary organizations; and
- d) Follow-up of juveniles after their release



In the event of the institutionalization of the juvenile, the role of the probation officers is extended to attend the JJ Board proceedings and submit reports, address the difficulties of the juvenile in the institutional life, establish linkage between juvenile and the Officer-in – charge, and to accompany juveniles from the office of the Board to observation/ special home.

Child victim of Crime-Role of LPOs: This session highlighted victim based interventions and that the role of the LPOs is not necessarily to be offender oriented, rather they must extend services towards assistance and support for the victim in the lens of right-based perspective. Mainly this session focused upon how children are becoming the victim of sexual abuse and economic exploitation. In this session, LPOs were sensitized about the extended role to render legal and other support services to the children who have been dealt with under the Prohibition of Child Marriage Act, Protection of Children from Sexual Offences Act, and children who are victims of trafficking, economic exploitation, bonded labour and so on. The LPOs were specifically asked the services to victim to ensure that legal provisions under POCSO Act is fully recognized and adopted by the medical authorities, police, CWC; necessary relief and supports are available under the provision of PCM Act; and legal remedies are available for trafficked children. This session helped participants to understand about the legal and other remedial supports that have to be extended lawfully and how to ensure children are provided with proper support while being a victim of child trafficking and what are the legal safeguards measures for child marriage.

Social Inquiry Report: Practical work to prepare social inquiry report was carried out in this session. Participants were divided in to six groups of equal number to prepare SIR on the given case studies followed by group presentation and necessary inputs from the resource panelists. The emphasis was made that the SIR format is a guiding factor and information shall be furnished in additional sheets and the format should not be filled mechanically. In this context, Prof. P. Madhava Somasundaram emphasized that the quality of services shall always rewarded and the LPOs should keep in mind that beyond the submission of social enquiry report to JJB about juveniles in conflict with law they have to extend variety of services such as rendering assistance to help juveniles to get legal assistance, legal advice



and performs services to children in need of care and protection also. The word “**cum**” that links the two important concept of **legal supports** and **probation services**. Therefore the legal cum probation officers have multiple responsibilities and their services and contributions shall alone speak the effectiveness of the system and they should keep in mind their legal knowledge should be on the back seat and their project as a social work professional shall be on the front seat. If they realize their position as such the work is clear and meaningful.



3.3. Concluding Session:

Mrs. Aswathy. S, IAS, Director of Social Welfare cum Additional Secretary to Government, Department of Women and Child Development, Government of Odisha made an extensive discussion on the “Roles and Responsibilities of the Legal cum Probation Officers’ with a power-point presentation. She remarked that the LPOs are only officials in the district to influence life of both the juvenile in conflict with law (LCL) and the children in need of care and protection (CNPC). Further they are the only officials at the DCPU who has both legal knowledge and social perspective on children issues. She emphasized

Key responsibilities of LPOs

- Conduct all inquires as entrusted to DCPU on the order of NHRC, SHRC, NCPCR, SCPCR and others.
- Keep track of child rights violation news from media and other sources; ensure filing FIR and bring the case to the notice of the appropriate authority.
- Act as resource person for sensitization of stakeholders
- Act as contact point for DCPU for interaction with Juvenile Justice Board.

the importance of partnership, coordination and networking. She highlighted that the LPOs should complement for the better services by the DCPU and should not be viewed as problem creator and expected as problem shooter.

In her presentation, she highlighted roles of LPOs towards JCL & CNPC, expectation of government from LPOs, and importance of documentation and reporting. She emphasized that role of LPO is not limited to doing Social Inquiry Report (SIR) assigned by the JJ Board; rather it should go much beyond this. She also explained specific roles of LPOs towards JCL in different stages, i.e. (i) when juvenile is apprehended, (ii) during the course of inquiry, and (iii) after final order. Her presentation also lighted upon some ethical code of conduct for the LPOs which need to be adhered by them to ensure their full time engagement for job performance.

Ms. Yumi Bae, Chief, Field Office, UNICEF Odisha , at the outset of her speech, expressed thanks and accolade the efforts of the CCR and NLUO in designing and delivering the programme as per the needs and purpose of the Legal cum Probation Officers. She



emphasized on the collective efforts of all stakeholders including justice sectors and academic institutions towards successful implementation of the juvenile justice law. She urged 'Concern', 'Dedication' and 'Action' from LPOs to ensure access to justice for children.

Prof. Srikrishan Deva Rao, Vice Chancellor, NLU Odisha in his concluding remarks shared the vision and work agenda of NLU for child rights. He informed that the NLUO is planning to introduce Diploma Course on Child Rights and to establish Juvenile Aid Clinics.

At the end, Legal cum Probations Officers were provided certificate of participation in the two-days orientation .The programme ended with Vote of Thanks by Mr. Pramoda Kishore Acharya, Senior Research Associate, Centre for Child Rights, NLU Odisha.



4. Feedbacks

At the completion of technical session, participants were allowed to express their views on two questions. They were: (i) what have they learned, and (ii) what will their expectation from NLU in future. The points emerged from the LPOs are consolidated hereunder.

Key Learning:

- Roles and responsibilities of LPO is vital centre stage in the juvenile justice system
- Techniques for dealing children in conflict with law from apprehension to ultimate rehabilitation
- Complete understanding of the juvenile justice system
- Understood essential aspects to prepare social inquiry report
- Gained required technical knowledge to address operational issues
- Learnt innovative skills for dealing JCL
- Understood technical aspects of the probation service.
- Learned probation supervision techniques
- Understood the key role of LPOs in mainstreaming both JCL and CNCP
- Learned the concept 'children in interface with law'
- Gained a proper understanding of interpreting the Best Interest of the Children'
- Learned about the supervision of probationer and techniques of supervision
- Gained knowledge on the socio-legal perspectives of child protection issues
- Internalized that rehabilitation is not an event, it is a process
- Learned to keep positive attitude towards JCL; keep performing without bothering the outcome of the efforts.
- Learned various kinds of solution to juvenile issues



- Learned about various correctional intervention including importance of counseling for reformation of juvenile
- Learned the professional approach to deal JCL
- Understood the concept of Restorative Justice
- Understood the role of probation officer as a change maker for JCL

Expectations:

- Training should be for three days
- There should be separate session for POCSO Act
- Regular follow up support from NLUO to develop professionalism among LPOs
- Ready reference Handbook on children laws to be provided by NLUO
- Theme based documentary film should be more used in future training.
- Inclusion of thematic session on 'child victim of crime and role of LPOs at the next training course
- More theme based training in future
- NLU to act as knowledge partner for child rights programme
- Joint training of LPOs with JJB members and SJPU to be organized by NLUO
- Include Resource persons who can deliver the subject in Odia language for future training
- Skill development to be more focused in future training
- Interested to know more about rehabilitation of juvenile
- Exposure to learn good practices
- Understanding Child Psychology to be included in the training module
- Handbook on Model Social Inquiry Report to be provided to LPOs for ready reference
- Orientation programmes for JJ and other child protection stakeholders needs to be conducted at the district levels



5. Case Analysis and Presentation

Case study: A person named Rajendra Pradhan was arrested on 16th November 2004 when he was about 15 years of age by Ranpur Police station u/s 392 & 397 of the IPC. The charge sheet was filed on 14th February 2005 before the SDJM. Thereafter the case was committed to the Court of Sessions and during that Rajendra was produced twice before the SDJM at Nayagarh. Rajendra was shifted to Berhampur jail and thereafter he was never produced before the SDJM. He was not produced on as many as ten consecutive dates of court hearing. He was neither produced in the court when the charge-sheet was filed on 14th February 2005 nor when he was committed to the Court of Session on 5th May 2005, nor when session court granted him bail on 15th October 2005. But despite the bail order granted to him he was not released because he could not fulfill the financial conditions attached to the bail order. In the subsequent stage one Human Right Activist Lawyer moved an application on behalf of Rajendra raising the plea of juvenility. A medical examination was ordered for age determination. Based on the medical report on the age of juvenility, the case was transferred to the Juvenile Justice Board by and order of the Sessions Court dated 20th September 2006. But that order was served to the jail authorities after nine months i.e. on 10th June 2007.

Points for discussion

1. What is the procedure which has not been followed in Rajendra's case?
2. What law is applicable in such situations?
3. Would it be considered as illegal detention?
4. Would you perceive any role for the Legal –cum Probation Officer in this case?
5. What should be further course of action?

Group presentation:

- Police could have produced the child before JJ Board
- Referring the matter to the session court instead of JJB by the SDJM is a violation of JJ Act.
- It is case of illegal detention
- There is no scope for LPO to act upon the case

Clarification:

In the instant case, it was clarified that had the juvenile intake process was initiated and a follow-up had been made, the juvenile would not have experienced such unwanted detention. Here, the legal cum probation Officers have vital role to make a follow-up on cases and open dialogue with the stakeholders to get justice to the juvenile

Case study: Sanjay aged 15 years was committed to Special Home for a theft that he had committed in a shop along with his friends. He lost his mother when he was four years old and his father got married second time. His step mother has three children and among them the youngest was a male child and the other two are girl children. She used to look after her own children and treated him shabbily. He faced humiliation, ill-treatment, deprivation of food etc. His father has seven acres of ancestral agricultural land and one concrete built house with lots of vacant spaces in and around the house. His father used to engage in the field and did not look after him besides harassed him also to



satisfy his second wife. His maternal aunty took him to a local church at the age of nine. The church sent him to Chennai for care and protection in a residential home run by the provincial of the church. He was there for four years. He left the home on his own under the influence of his associate who was his classmate in the school that was adjacent to the residential home in which he was admitted. His friend Raja lost his father and was living with his mother and his elder brother. After leaving the school and the residential institution he was staying with his friend whose mother looked after him very affectionately. Sanjay and his friend Raja was dropout from 8th standard and started to work with a bottling unit and earn Rs.7000/- per month. They developed friends with local youths and started to drink and use drugs. While they were under the influence of alcohol, one of their associate suggested for looting a nearby shop which sell electronic items such as computers, mobiles, iPod etc. The fellow who instigated the looting was the former employee of the shop and he informed that he knew how to enter into the shop without being caught in the CCTV. They looted and took away laptops, mobiles etc in midnight. The next day they wanted to sell the products in the market that sells electronic goods. While they were walking on the road along with the looted materials such as laptops, iPad, mobiles etc., the police on patrol noticed and caught them on suspicion. When they were caught by police, they confessed the crime committed. Police took them to JJB and admitted them in the Observation Home. In the instant case there were four boys involved including the subject. All of them were released on bail except the boy. The mother of his friend attempted several times to get him be released on bail. But, the board did not entertain as he was not related to her and her plea could not be accepted. He was in the Observation Home for one year and he was committed to Special Home for three years on the basis of the recommendation of probation officer. The mother of his friend comes to the special home regularly on interview days and meeting him. He has also been taken on leave during festivals twice by the mother of his friend. In the instant case, except the boy, all of them were discharged from the offence.

Points for discussion

1. If you are a probation officer or a superintendent of the home, how you could have handled it?
2. What are the factors that have to be taken into consideration for social reintegration?

Group presentation:

- Biological father to be traced.
- Life skill and vocational programmes shall be given to him.
- Counselling to be made for deaddiction of drugs and alcohol.

Clarification:

1. The probation officer was concentrating on the release of the person to the care of the lady who was taking care of him along with his sons. He has not taken any efforts to trace the biological family. This could have been done with the verification of records from the residential institution in which the juvenile was admitted a few years back. The plea and the recommendation of probation officers were not entertained because his approach was not in the best interest of the juvenile.
2. No intake process was made at the time of his admission in the observation home and no efforts were made to trace the biological family.
3. Had the probation officer interacted with the child and subsequently verified the records from the care home in which the juvenile was admitted, the family contact could have been done.
4. Since the juvenile has ancestral property naturally he was entitled to get his share. This has also not been taken seriously.
5. Because of the incompetency on the part of the probation officer, the juvenile was languished in observation home for more than a year and subsequently committed to



special home.

6. The juveniles history was incidentally brought to the notice of the superintendent by a researcher, the newly assumed superintendent has initiated to trace his parents and to ensuring him to get his due share in his property.
7. The board also failed to interact with the juvenile and get information about his family. Further, juvenile should have been released on his own surety under the supervision of the probation officer instead of keeping him in the observation Home.

Case Study: Manoj from Rajasthan landed in Chennai in search of a job. He was 12 years old at that time. He got a work in a lodge nearer to Central Railway station. He was working in the lodge for more than six months as a room boy. One day, a customer in the lodge at about 10.30 pm, called him and get him liquor and eatable. He gave him Rs.1000/- for the purchase. Manoj within half an hour brought the materials and knocked the door. The customer called him inside and told him to keep them in one corner of the room. When he entered and was keeping the materials in one corner of the room, the man locked the room inside. He requested him to massage his legs as he was paining. When he was doing it half heartedly, the man attempted to abuse him sexually. Fearing of being caught in the room, he rushed to the corner of the room, took the liquor bottle, broken it and stabbed the man on his thigh and ran away from the room. He was charged for committing theft by forcibly entering the room and assaulted the customer with deadly weapon. The case was entrusted to a probation officer for investigation.

Points for discussion:

1. How you would handle this case?
2. What are the factors to be taken into consideration?
3. How to ensure access to justice to the boy?

Group presentation:

- The JCL to be provided proper counseling
- The act alleged to have been committed by the JCL under exceptional circumstances could be taken as mitigating factor for consideration of probation.
- The factors to be taken into consideration: tender age of the JCL, unaware of the consequence of act, poor socio-economic condition, mental harassment
- JJ Board should take lenient views considering no criminal antecedent and to refer the case to the CWC for reformation and rehabilitation of the juvenile.

Clarification:

The probation officer who handled the case has reported to the board after intake enquiry with the juvenile and came to the conclusion that the juvenile was the victim of circumstance and he could not be viewed as offender as the self defence cannot be viewed as an offence. The case was also taken seriously by the civil society organization and a writ petition was filed before the High Court and the High Court directed to provide necessary relief and discharge him from the offence.

The probation officer further approached the probation officer in Rajasthan and brought the parents at the cost of employer. The employer was charged for engaging a child without any remuneration and considered that the juvenile was kept on bondage. He was also granted relief under the provisions of the Bonded Labour (Abolition) Act, 1976 besides payment of remuneration for the period of employment fixed by the board together with bank interest. The amount was deposited in the name of the juvenile and the probation officer in Rajasthan was requested to make follow up and report periodically with the condition that the juvenile has to be imparted education in



Rajasthan. The deposited amount shall be released upon his attainment of 18 years on the basis of the final report from the probation officer from Rajasthan.

Case Study: A girl (Meha) aged 16 years ran away from her home. She was very bright, articulate and well socialized. Her father was a school teacher and her mother was a heart patient. Her brother aged 12 years was always and the family was incurring expenses on medical intervention a lot. She was studying 11th standard. The subject and her close friend (Manu) were usually escorted from the school to the village by the brother of her friend. He was a graduate and looking after their lands and business. Meha's father always suspected her of eloping and used to scold her for being escorted by the boy. She defended many times against the accusation and explained that he has shown a brotherly affection. In spite of her explanations and clarifications, her father used to treat her unfairly. Unable to tolerate the humiliation from her own family she ran away from the home and landed in Chennai. She was taken charge by Police and was immediately produced before the Child Welfare Committee within one of her landing in Chennai. She narrated the reasons for leaving the home and did not show interest in going back to the family before the CWC and the probation officer. However, intimation was sent to her family regarding her placement in the child care institution. But, her father lodged a specific complaint against her friend's (Manu) brother of kidnapping her. Incidentally, the boy was away from the village on the day the girl left the village. As the superintendent of the children home has immediately sent a communication to the family regarding her admission in the children home.

Under these circumstances, the police along with the parents of the child arrived in Chennai. She informed the police that she and the boy has sister and brotherly relationship and she denied the allegation. Further she accused her father for suspicious attitude and arrogance with her that has prompted her upset and hence left the home. She refused to go with the family. She was counseled by the Psychologist. The probation officer interacted with her and assured that she would not be sent against her wishes. However, she was proposed to visit her village for writing her examination under full protection from the Government Department and she agreed to the suggestion.

In the mean time, the family again visited Chennai and pleaded with a member who was alone present on the day for CWC sitting. The member took sympathy with family and did not have any empathetic attitude forced the girl to go with the family as her mother's health is not good and it was good for her to go home. While she was leaving to her village along with the family, the superintendent and the staff members, advised her to get in touch with the probation officer for any help or support. She appeared for her examination from the home and did well. But, after a gap of one month she wrote a letter (inland letter) to the probation officer by name with full of issues, humiliations that she was facing and concluded that she has no other alternative except to commit suicide. In the letter she has mentioned as follows:-

I was told to get your support; I am writing you this letter. From the day of this letter written, I am giving you 15 days time to help me failing which I shall commit suicide. It was common that children used to write such letters. But, the probation officer did not want to take it lightly and take measures to protect her as she was very decisive and sharp.

Points for discussion:

1. In a situation like this, as probation officers, what would be your initiative?
2. What are the interconnectivity of problems and issues and how best she could be helped?

Group presentation:

- CWC to be informed of her letter.



- Child shall be rescued and produced before CWC
- Parents and girl to be counselled

Clarification: The letter from her was taken very seriously by the probation officer. He approached the Director of Social Defence who immediately requested the Revenue Divisional Officer under whose jurisdiction, the village of the girl situated for necessary intervention. She was rescued and provided supports. It was later known from the probation officer that the RDO went to the village with battalion of officials such as Thasildhar, DSP, DSWO, Probation Officer, medical authorities resulted in her admission in B.A. Social work in a women's college and the college provided her free education including the accommodation in the hostel..

Rajesh was 17 years old and was doing her +2 course. He was humble, good in study, cool in temperament and well socialized. His father was a dealer in machines and tools in Coimbatore. His mother was house wife and his two sisters were in studying. His intelligence and thrust for knowledge made him to spend most of the time in libraries. Therefore, his father provided him a new brand motor cycle for his travelling. He was very cautious in riding and always keeps road safety rules. One day when he was returning from the library at about 8.30 pm, it was drizzling and the street lights were off. At that time a person aged 62 years while riding his bicycle came from the opposite direction from a small lane and dashed with his bike. The man fell down and got head injury because he was hit in a stone on the road side. The boy took the man to the hospital 'but the person collapsed before reaching the hospital. The hospital authorities informed police. They charged the boy Rajesh for driving recklessly and dashed with the old man and killed him.

Rajesh got bail and he was attending his college. The case for prolonged for three years unnecessarily and at last came for final hearing while he was completing his graduation and got selection with merit scholarship for higher studies in UK.

The person who expired in the incident has left his wife who was aged 58 years. Her sons and daughters did not take interest in taking care of her. But, they were very particular to get money from the Rajesh family. Rajesh family helped the old land in many aspects and supportive to her sustainability. The Probation officer was requested to submit social enquiry report about the boy Rajesh.

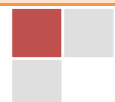
Points for discussion:

In this context, as a probation Officer, what could be your recommendations keeping in mind the best interest of the boy and the old lady?

Group Presentation:

- The JCL is good in studies and his socio-economic condition is good.
- The wrong was committed due to drizzling and darkness on the road, narrow road, and accident without any malafide intention.
- He may be released u/s 15 (c) of the JJ Act

Clarification: In the instant case, no intimation was made by police to probation officer. The bail was also granted repeatedly without any analysis of the case and a study on his backgrounds. The system has victimized him. There were/are failures on the part of different stakeholders including the



probation officer, police and juvenile justice board. The guidelines formulated in the state rules and the provisions of the Act have been sidelined by all concerned.

Case Study: A 25 days old male child was handed over to an adoption agency by the Government hospital as the mother of the child developed complications after delivery and expired. The child was kept in the incubator as the child was premature delivered child. Rajendran, a weaver by profession was illiterate and economically very poor. He has two living daughters and his wife was admitted in the Government hospital in Chennai for third delivery. He has hailed from a village which is 65 kms from Chennai. After her admission in the hospital, he left his sister in the hospital and proceeded to the village to arrange fiancé to meet expenses. The next day early morning he arrived in the hospital. His sister told him that early morning she was taken to labour ward and delivered a child. While she was enquiring the child, the hospital authorities have not given any reliable answer and informed that they are hardly working to save the mother as she has some complications. In the meantime, the hospital authorities called him and said that his wife expired. Hearing the news, he did not enquire about the child; but, take steps to get the body to his native village. After rituals he went to the hospital and enquired about the child. He was unable to get information. Presumed that the child could also die, he left the hospital.

The agency which received the child from the hospital approached the Child Welfare Committee to declare the child legally free for adoption. In the mean time, without the knowledge of the CWC, the agency placed the child in the pre-foster care and initiated the process of adoption. The child was given to a medical Doctor. The Doctor's wife was very much attached with the child and was looking the child very affectionately. The child was in the pre-foster care for more than six months. All these information were not reported to CWC by the agency.

The CWC requested the probation officer to conduct the enquiry and submit a report. He went to the hospital and verified the medical records. Since, the hospital authorities have the inpatient record and other medical interventions extended to the child, the probation officer traced the address of the biological parent. Then he enquired with the agency on the status of the child. Under these circumstances, the agency has revealed the placement of the child in pre foster-care.

Since, the jurisdiction of the place in which the parent was living come under another probation officer; he sent the entire details including the present placement of the child in pre foster care with the request to conduct the enquiry and communicated the same to the CWC. The probation officer has revealed the entire details to the biological parent who got married second time to look after his two daughters. His second wife was a close relative to him.

The biological parent was traced and he was interested in taking charge of the child. But, his mother-in law (the mother of his first wife) who was incidentally at the native place of Rajendran while the probation officer conducted enquiry requested to handover the child to her as her second daughter has no issues. The probation officer in his concluding remarks has expressed that the child may be handed over to the father or the grandmother by the CWC.

The biological parent got the address of the foster care family; he went to the house and demanded that the child may be returned to him. The foster care family upset and approached the adoption agency which moved the CWC and the Department concerned for relief. While an enquiry was in progress before CWC, the foster mother fainted more than thrice. She has developed medical complication and any adverse order would have impact on her health. At the same, time, the biological family has claimed their right and there was also another claim from the grandmother of the child.



Points for Discussion:

The case has been referred to you for expert opinion as legal cum probation officer. What could be your suggestion?

Group presentation:

- FIR to be lodged against errant medical authority for illegally handed over the child to the agency.
- The agency illegally placed the child at the foster care without the order of the CWC
- As the biological father is alive and interested to take custody of the child, the child should be restored in his family and CWC shall give order accordingly.
- The agency may be asked for show cause for dealing with child unlawfully.

Clarification:

In the instant case, the probation officer successfully traced the address of the biological family from the medical records of the hospital. He has noticed that the adoption agency has violated the guidelines and placed the child with a family without any prior intimation to the CWC and clearance from it for placing the child in pre-adoption foster care. He has requested the probation officer having jurisdiction on the area in which the biological family was residing to conduct an enquiry and report. The Officer has traced the biological father and reported a claim for the child has been made not only from the father but also from the maternal grandmother who wanted to give the child to her childless second daughter. There was a conflict situation. If the child was handed over to the biological father who has full right to get the child, the legal provisions could be fulfilled but the foster mother could collapse and even the possibility of endanger to her life as there was a medical report as such.

The probation officer has finally recommended the following

1. Since there was a conflicting situation in the biological family as the claim for the child by the maternal grandmother might have resulted in unpleasant situation to the child. Therefore, he has recommended that foster mother shall be declared as a fit person to take charge of the child and upbringing the child till he attains the 18 years of age.
2. The foster family should recognize the right of the biological father and he shall be allowed to visit the child as and when he desires to meet the child. At least once in fortnight the child should be allowed to meet the biological father if he visited. If any variation or any grievances on both sides, they could approach the CWC for relief.

The recommendation was taken into consideration by the CWC and in the best interest of all parties concerned, the orders were passed accordingly



6. Power Point Presentations

6.1. An Overview of Juvenile Justice System in India:

Slide-1

An Overview of Juvenile Justice System in India

Dr. P. Madhava Soma Sundaram
Professor and Head
Department of Criminology and Criminal Justice
Manonmaniam Sundaranar University
Tirunelveli, Tamil Nadu

Slide-2

At the end of this session you will have broad picture of the following

- Core Concept
- The Status of Children
- The Causes of Children in Interface with Law
- Overview of the Juvenile Justice System
 - JJS Vs Adult CJS
- International Standards
- Models of Juvenile Justice System

Slide-3

Core Concept

Children everywhere are vulnerable to abuse and exploitation by those in positions of power and trust...

Slide-4

Status of children in India

- India has the highest number of children in the world
- More than one third of the country's population is below 18 years – over 400 million
- India is set to be the youngest population in the world by 2020



Slide-5

India has:

- > Highest rate of neo-natal deaths (around 35%) in the world
- > 40% of child malnutrition in developing world
- > 50% of child mortality in the developing world
- > Reduced number of girls in 0-6 age group- *for every 1000 boys 927 girls*
- > 46% children from Scheduled Tribes and 38% from Scheduled castes are out of school
- > High school dropouts especially amongst girls
- > High rate of child marriage:
 - > 37% of literate & 51% of illiterate girls are married off below the age of 18
 - > 10% of literate & 15% of illiterate boys are married off below the age of 18
- > Large number of children in forced labour
- > Large number of sexually abused children – almost 54% children reported sexual abuse in a national study conducted by MWCD

Slide-6

The Tripods of Juvenile Justice

- Doctrine of Parens Patriae
- Principle of Best Interest of the Child
- Child Protection

Slide-7

Parens Patriae

The legal philosophy justifying state intervention in the lives of children when their parents are unable or unwilling to protect them.

Slide-8

Child Protection is:

Child protection implies the interdisciplinary/ multi-sectoral measures undertaken to guarantee the survival and acceptable development of children, with respect to their rights



Slide-12

JJS v. CJS

- The JJS was purposely developed as a different system from the adult criminal justice system (CJS)
- The JJS recognized the need for different responses and emphasized rehabilitation over punishment
- JJS differs significantly from the CJS:
 - > Informal proceedings
 - > Confidential
 - > Less adversarial
 - > Different responses, with an emphasis on treatment

Slide-13

International Standards

United Nations Convention

on the Rights of the Child (1989)

- Treaty based binding document: standards for national laws, procedures, and policies.
- Minimum standards for juvenile justice.
- Standards include: fair trial guarantees; procedural safeguards; promote rehabilitation and reintegration policies.
- Only broad statements and general guidelines outline the age of criminal responsibility or the age in which juvenile justice should apply – in other words, no specific age is referenced.
- Currently, the age of criminal responsibility ranges from 7 to 18 throughout the world.

Slide-14

Convention of the Rights of the Child (CRC)

- Drafted by the UN Commission of Human Rights.
- Adopted by General Assembly of United Nations on 30th Nov, 1989.
- Contains, Universal Legal Standards or Norms for the Protection and Well Being of the Children.
- Ratified by India on 12th Nov, 1992 and Hence Obligatory for the Govt. Of India to Re-examine Its Legislation and Policies Connected With Children.

The Rights for Children

The Rights Cover Four Main Areas

- Survival Rights
- Development Rights
- Protection Rights
- Participation Rights



Slide-15

The legal foundation of the Child Protection mandate in India is

- ⦿ The Juvenile Justice Act which first came into force in 1986 - Was renamed and rewritten in 2000 to be called the *Juvenile Justice (Care and Protection of children) Act* - Is the premier law related to all individuals – [“children/juveniles”] – below 18 years of age, in India
- ⦿ The Commissions for Protection of Child Rights Act, 2005 - Provides for setting up of National and State level Commissions for Protection of Child Rights - for proper enforcement of children’s rights and effective implementation of laws and programmes relating to children.

Slide-16

The Juvenile Justice Act seeks...

- ⦿ To provide care/protection to children by:
 - ✓ Catering to a child’s development needs
 - ✓ Adopting a child friendly atmosphere and approach, for adjudication of cases related to juveniles/children
 - ✓ Keeping the child’s “best interest” in mind
 - ✓ Keeping rehabilitation of the child as a goal

Slide-17

Juvenile Justice Act

- ⦿ The Act places children/juveniles in two categories –
 - > Juvenile in ‘*conflict with the law*’ handled by State Governments/ ‘*Juvenile Boards*’
 - > Child in need of ‘*care and protection*’ to be looked after by State Governments/ ‘*Child Welfare Committees*’
- ⦿ *Act to be implemented by the respective State Governments*

Slide-18

Protection

- ⦿ Handling by special juvenile police
- ⦿ Handcuffing of juvenile/child prohibited.
- ⦿ Police should not be in uniform
- ⦿ Child / juvenile cannot be kept in jail or lock-up
- ⦿ No death penalty or life imprisonment
- ⦿ Proceeding are informal, participatory and private.
- ⦿ Deletion of record of juvenile after 7 years
- ⦿ Parents to be involved in juvenile processes
- ⦿ Right to free legal aid
- ⦿ No joint trial of a juvenile with an adult
- ⦿ Information about a juvenile cannot be released to media.



6.2. Probation system in the Administration of Criminal Justice System In India

Slide-1

PROBATION SYSTEM IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN INDIA

Prof. N.K. Chakrabarti
Director, School of Law
KIIT University

Slide-2

Basic assumption behind probation

- ✘ First- every individual person has worth and value ant that is no less and no greater than that of any other individual person.
- ✘ Individual does not live in isolation and needs to be regarded in relation to his environment to achieve a better adjustment between himself and his environment.
- ✘ At any present moment a person is profoundly influenced by his pas which help to shape the present .
- ✘ Individual is governed by forces some of which are conscious and others unconscious.
- ✘ Individual will essentially be interested in himself and his own problems and want help in working out his solutions to problems.
- ✘ How a person feels is going to determine in considerable measure what he thinks, how he acts and what use he makes of an agency's service.

Slide-3

What is Probation?

- ✘ Conceptual development
- ✘ Definitional discourse: A conditional suspension of sentence
- ✘ Theoretical discourse:
 - (i) Grace or mercy Theory
 - (ii) Contract Theory
 - (iii) Custody Theory



Slide-4

When Probation

- ✘ John Augustus- 1841, Boston ,USA
- ✘ Mathew Devanport Hill, 1841,Warwickshire Quarter Sessions, U.K.
- ✘ 1878- first Statute in Massachusetts, USA
- ✘ 1879 -first British statute on Probation
- ✘ 1898 –S.562 of Cr.P.C.(Now S.360 of 1973)
- ✘ 1958- The Probation of Offenders Act

Slide-5

Why Probation is an alternative to Imprisonment?

- ✘ Objective value of Reformation of offenders
- ✘ Less recidivism than Imprisonment
- ✘ More economic than imprisonment
- ✘ Over-crowding in prison
- ✘ Community correction
- ✘ Non-institutional correction

- ✘ Self correction

Slide-6

Varied Processes of Probation in India

- ✘ Admonition u/s 3 of Probation of Offenders Act, 1958 (PO Act, 1958)/sec.360 of Cr.P.C.
- ✘ Probation u/s 4 of PO Act, 1958
- ✘ Plea-bargaining u/s 265E (b) of Cr.P.C.
- ✘ Juvenile to be released on probation u/s15(e) &(f) of The Juvenile Justice (Care and Protection of Children) Act,2000.



Slide-7**RELEASE ON ADMONITION**

- ✗ Admonition: verbal warning/condemnation
- ✗ Section 3- Conditions upon which discretion to be used:
 - (i) first offenders
 - (ii) circumstances of the case
 - (iii) nature of the offence
 - (iv) character of the offender
 - ✗ Offence must be one of the following descriptions-
 - ✗ ss. 379,380, 381,404 or 420 of IPC
 - ✗ Any offence punishable **with imprisonment for not more than two years , or with fine**, or with both under the Indian Penal Code or any other law for the time being in force.
 - ✗ Analysis of some admonition cases
 - a) Bisi Kisan Suna v.State of Orissa(AIR 1967 Orissa 4)
 - b) Keshab Sitaram Sali v. State of Moharashtra(AIR 1983 SC 291)
 - c) Anil Kumar Pandey & Anr. V. State of Bihar (Cri. Revision no.118 of 2013,Patna High court)

Slide-8**RELEASE ON PROBATION under section 4 of PO Act, 1958**

- ✗ Objective criteria to use discretion:
 - (i) nature of the **offence(not punishable with death or imprisonment for life)**
 - (ii) circumstances of the case;
 - (iii) character or antecedents of the offender
 - (iv) age of the offender
 - ✗ PSI Report of Probation officer

Slide-9**Use of discretion by Courts**

- ✗ Ved Prakash v. State of Haryana(AIR 1981 SC 643)
- ✗ State of Maharashtra v. Kapur Chand Kesarimal(AIR 1981 SC 927)
- ✗ Saradhakar Sahu v.State of Orissa(1985 Cri. L.J.1591, Orissa)
- ✗ Ammini v. State of Kerala(1985 Cri. L.J. 1170 ,Kerala)
- ✗ Dalbir Singh v. State of Haryana(2000,5SCC82)
- ✗ Sanjeev Nanda v. State of NCT of Delhi(2007 Cri L J 3786)
- ✗ Jayakanth v. State Karnataka((2009Cr.LJ1224
- ✗ Gita Ram & Anr. V. State of Himachal Pradesh(SC Appeal No.227 of 2013



Slide-10**Mitigating circumstances for granting admonition/probation**

- ✗ Age of the offender
- ✗ Economic condition/means of livelihood
- ✗ First offender/spur of moment
- ✗ Provocation
- ✗ Temptation
- ✗ Absence of bad intention
- ✗ Self preservation/ preservation of nearest one

Slide-11**PROBATION UNDER JJ Act,2000**

- ✗ Under section 15(1) of the JJ Act, Juvenile Board may, if it thinks so fit:
- ✗ (i) direct the juvenile to be released on probation under the care of any parent, guardian or other fit person on executing a bond;
- ✗ (ii) or under the care of any fit institution;
- ✗ (iii) In addition Board may make an order that the juvenile in conflict with law shall remain under supervision of a probation officer.

Slide-12**Sentencing of a young offender**

- ✗ Reason to be written for refusing probation to a convict below 21 years of age u/s 6 of PO Act.
- ✗ Decisions u/s 6 of PO Act:
 1. Isher Das v. State of Punjab (Air 1972 SC 1295)
 2. Smt. Mani v. State of Kerala (1985 Cr.LJ 1982 Kerala)
 3. Sadek K. and another vs. State of West Bengal (1984 Cr.LJ 29 D Calcutta)
 4. Municipal Corporation of Delhi v. State of Delhi(2005, 3 RCR, Cr.,13 SC)

Slide-13**Probation supervision techniques**

- ✗ Social Therapy- by removing and discouraging unwholesome social ties and supporting positive and constructive social relationships.
- ✗ Reality Therapy- by substituting mental health level to help an irresponsible person to become responsible.
- ✗ Behaviour Therapy- based on the theory that all forms of behaviours are the result of learning process.



Slide-14**A Critique on interpretation of Section 12 of the PO Act**

- ✘ It is based on traditional attitude
- ✘ Opposed to intention of legislature
- ✘ Contrary to rule of interpretation of statute
- ✘ Ambiguity should be resolved in favour of the convict
- ✘ Reformation of the offender and removing him from service are conflicting

Slide-15**SELF-CORRECTION: THE SOUL OF PROBATION**

- ✘ An empirical study in West Bengal reveals:
 - (i) Majority of probationers are illiterate(59.43%), unskilled workers(82.89%), poor (66%), agricultural labourers (56.97%) and of rural background (65.71%).No intensive supervision(1 P.O. is to work 3253 sq.km.)
 - (ii) But 70% ex-probationers have been found leading a normal life without any rehabilitation programme of the Probation Department.
- The probation system has an inherent efficiency of '**self-correction**'.

THANK YOU



6.3. Roles and Responsibilities of Legal-cum- Probation Officers

Slide-1

Roles and Responsibilities of Legal cum Probation Officers

28th May 2015, NLUO, Cuttack



Smt. Aswathy S, IAS,
Director, Social Welfare cum Additional Secretary to Government,
Women and Child Development Department, Government of Odisha

Slide-2

LPOs are important because....

- You are the one of the few officials at the District level who can influence the life of both a CNCP or JCL positively
- You are also the only official of the DCPU who has both legal knowledge and the social perspective essential for providing support to children in distress

Slide-3

**What is the Government's expectation
from the LPO of a District?**



Slide-4

The Administrative Framework for functioning of LPOs

- The LPO is an integral part of the DCPU and will work under the administrative supervision of the DCPO and the Collector of the District.
- The LPO will sit in the DCPU office and visit the JJB, CWC, Police or any other stakeholder, if required.
- The leave, pay, contract renewal etc. of the LPO will also be governed by norms applicable for ICPS staff as defined under Odisha State Child Protection Society(OSCPS).
- The LPO is a full time staff of the OSCPS/DCPU. No part time involvement in any other vocation is allowed.

Slide-5

Your role is not limited to doing SIRs assigned by the JJBs of your District only.....it goes much beyond it !

Slide-6

You are there to support each of these stakeholders!

- The District Child Protection Unit, under ICPS
- Juveniles in Conflict with Law and the JJB
- Children in Need of Care and Protection and the CWC

Slide-7

**Roles and Responsibilities as a part of the District
Child Protection Unit**



Slide-8

- Conduct all enquiries as assigned by the DCPO/District Collector, especially related to NHRC, OHRC, NCPCR, OSCPCR, cases forwarded by W&CD Department and MWCD etc.
- Keep a track of various child rights violation related news in the local media and other sources and ensure filing of FIR and bring the case to the notice of the competent authority.
- Submit MPRs/QPRs in the context of JCL cases to the DCPO for onward transmission to the State Office.
- Take on additional responsibilities as assigned by the District Collector.
- Act as a resource person for sensitisation of various stakeholders in the District on various legislations related to children.

Slide-9

- The LPO will be the point person within the DCPU for interaction with the Juvenile Justice Board of the District. The LPO under the supervision of the DCPO and Collector of the District will be responsible for
 - Identifying office space for the JJB outside court premises
 - Ensure and follow-up for fund transfer to JJB Accounts and timely submission of UC by the JJB
 - Appointment of Data Entry Operator for the JJB
 - Any other coordination support requested by the JJB
- The LPO of the District where the Observation Homes and Special Homes are located have to ensure the following:
 - Standards of care are maintained in the OH/SH
 - ICP is prepared for all inmates
 - Ensure counselling support to the children through the counsellors of the DCPU
 - Establish linkages with various agencies in the District for recreation, education, skill building and improving the quality of life of the JCLs.

Slide-10

Roles and Responsibilities towards Juveniles in Conflict with Law



Slide-11

When a juvenile is apprehended

- The legal probation officer has to ensure that the Juvenile is produced before the board within 24 hours and is not handcuffed during the process of arrest and production before the JJB. You also have to ensure that the juvenile has to be kept in a separate place in the police station and not with regular offenders.
- Provide support to the board for obtaining information regarding the antecedents and family background of the juvenile and other material circumstances as may be necessary and submit a social investigation report. The SIR has to be prepared in all JCL cases....its not an optional document to be made only on the request of JJB
- Provide legal counselling to the juvenile and his/her family. The counselling should include the provision of free legal aid for the juvenile, nature of charges and potential rehabilitation options for the juvenile.
- Ensure that the rights of the juvenile are not violated in between apprehension and production before the JJB.

Slide-12

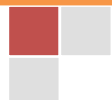
During the course of enquiry

- **Ensure that each JCL has legal aid.**
- Attend regularly the proceedings of the Juvenile Justice Board.
- Maintain a diary case file, case records and such register as may be prescribed from time to time
- Visit regularly the residence of juvenile / child released on bail and also places of employment or school attended by such children and to submit periodic reports
- To provide support to the District Administration and JJB for identifying fit institution in the District for temporary housing of Juveniles.
- To bring before the board immediately children who have not been of good behaviour/or who are at risk during the period of supervision
- The legal cum probation officer has to liaison with the board to facilitate speedy inquiry and disposal of cases through due process of law (within the prescribed time frame as per the JJ Act).
- The LPO has to sensitise the JJB so that child-friendly manner is followed while the board is recording the statement of the juvenile.

Slide-13

After the final order

- To ensure that the order passed by the board is carried through i.e. juvenile participates in group counselling, performance of community service as per the orders of Board.
- Follow up of children after their release from the OH/SH and extending help and guidance to them.
- Establishing linkages within the District, either with various arms of the District Administration or with voluntary workers and organisations to facilitate the rehabilitation and social reintegration of children and to ensure the necessary follow up.
- Establish linkages between JJB and CWC, especially in cases where JCLs need care and protection after release from the JJB.



Slide-14

Documents to be kept in file in all JCL cases in the DCPU

- Case History including date of apprehension, intake, production, legal aid provision status etc.
- Detailed SIR by the LPO
- Counselling history – including legal and psychosocial
- ICP – to be reviewed every year (in case the child is in OH/SH, the ICP should be collected from the LPO of the District where the OH/SH is located)
- Any important JJB orders involving the LPO/DCPU specific to the case
- In case the final order is given by the JJB, then the copy of the final order and a follow-up plan
- Follow-up/Supervision Reports etc.

Slide-15

Roles and Responsibilities towards Children in Need of Care and Protection

- Provide support to the CNCP children especially in cases where the children are victims i.e. victims of abuse, child labour child marriage, trafficking etc. In such cases the LPO will ensure that an FIR is filed, the family and the victim have received legal counselling and have access to free legal aid.
- In case of victims under POCSOA'12, provide support to the victim and his/her family to apply for victim's compensation scheme or the ST & SC Development Department's compensation scheme for ST & SC communities.
- Follow up with the District Legal Services Authority for release of compensation.

Slide-16

Administrative challenges vis-à-vis LPOs

- Moonlighting as part time lawyers
- Conflict of interest
- Use of negative semantics by LPOs e.g. JJB is referred to as court
- Working more on the legal aspect of things rather than an inclusive socio-legal perspective.
- Follow-up/Supervision function is not active.
- Inadequate documentation and record maintenance



Slide-17

Challenges continued

- Power struggle within the DCPU owing to LPOs trying to create a parallel structure of reporting directly to PM, JJB and not the DCPO (e.g. vehicle request for attending JJB meetings)
- Working more on the ‘ word of the legislation’ rather than the ‘spirit of the legislation’
- Malpractice/Kickbacks solicited during the provision of legal aid to JCLs

Thank You!



6.4. Understanding Probation

Slide-1

Understanding Probation

Presented by:
S. Kannayiram
Senior Programme Coordinator
Centre for Child Rights, NLUO

Slide-2

What is Probation?

- Treating offenders within the community, after found guilty of offences committed.
- Community placement upon the promise of good behaviour
- Supervision by Probation officer which include surveillance, community correction, rehabilitation and social reintegration
- Probation is not a let off-Suspension of sentence for the promise of good behaviour
- Treating an offender by placing within the community instead of detention
- Conviction, suspension of sentence and community placement under supervision
- Restrictions and regulations in movements
- Monitoring and evaluation, and report to court
- Review and Changes
- Judicial function

Slide-3

Expectation from Probation Officer

- Knowledge of human behaviour
- Skill in effecting relationships with people and inspiring them to make decisions
- Positive mind set and attitudes
- Knowledge and skill in the use of local resources
- Competency to face challenges Emotionally mature and stable
- Should have integrity and be accepted.
- Genuine interest in people and their welfare



Slide- 4

What is social inquiry report: It is action plan to be prepared professional social worker.

The report should be...

- Reliable
- Comprehensive
- Matching the sentencing policy
- Helping the Probation officer himself
- Helping the residential care givers
- Facilitating further research. The report is highly confidential in nature and revealing certain information should be in the best interest and without harm to his or her dignity
- Facilitate the appropriate disposition options

Slide-5

Process for social inquiry report

- Analyzing the issues
- Diagnosing the causes
- Identifying the Problem
- Intervention strategies aiming long term rehabilitation process
- The report should disseminate information on the following issues
- Information on the offence (s) - Present
- Information on pending cases.
- Previous records of deviance and disposition made
- Family history including the relationship with the family members
- Clinet's history (Social behaviour)
- Home and neighborhood
- School or work record

Slide-6

Guiding factors for summary recommendations:

- The conditions to be proposed should be defined clearly in the report
- The specific roles and responsibilities of borrowing agencies and their accountability should also be defined
- The probable time limit for each agencies shall also be projected subject to variation on a later date after review
- It targets the personality and behaviour of the client
- Restitution or compensation to victim should also be defined
- In ensuring the effective functioning of probation concept, judiciary has proactive and vital role as the administration of Probation is the responsibility of the judge
- The professional relationship between the judge and the probation officer in each of the administrative structure is important
- The judge is responsible to the community.
- Disposition should to the satisfaction of the victim and also to the requirements of the community
- Behavior management are operational conditioning and the theory of "Law of effect"
- Preventing recidivism concentration on the behaviour management is to be designed.
- Behavior management is to ensure the law of effect (Rehabilitation and reintegration)
- Fruedian theory of id, ego and supergo is the base

List of Participants

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