



**iProbono INDIA**

# Deciding the Fate Of Childhood with a Test

A Study Of Preliminary  
Assessment Reports  
across JJBs in Delhi

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*On an ordinary afternoon in North Delhi, 17-year-old 'K' sat in a small room at the Place of Safety, facing a psychologist. He had been apprehended for his involvement in an altercation with a friend that spiraled into murder. Until then, his world consisted of severe drug abuse, social media, and a group of friends, with little parental oversight. Now the legal system required him to explain whether he understood the consequences of his actions, a determination that would decide if he stayed in the juvenile system or faced transfer to an adult trial, and potentially to an adult prison after turning 21 if found guilty.*

**(adapted from an oral conversation with a child-in-conflict with the law whose case has been ongoing for almost 3 years in one of the Children's Court in Delhi)**

Instances of this nature are routine for children between 16-18 years of age, who are accused of committing a heinous offence [1] under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act 2015) and are required to undergo a mandatory Preliminary Assessment (PA) process under S.15 of the JJ Act 2015 to determine whether they should be tried as adults.

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[1] S. 2(33) of the JJ Act 2015 - "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.

# Introduction

## What is Preliminary Assessment (PA)?

A PA requires the Juvenile Justice Board (JJB) to assess a child's physical and mental capacity, ability to understand the consequences of the alleged offence, and the circumstances surrounding the incident to decide whether they should be treated as a child or be transferred to the adult justice system. The foundational premise of juvenile justice is that children, being in their formative years, are developmentally distinct from adults. Consequently, offending behaviour during adolescence is often a product of immaturity, vulnerability to environmental influences and reduced parental supervision, rather than entrenched criminality.

## Rationality of Preliminary Assessment

A growing number of cases involving children culminated in public outrage following the 2012 Delhi gang-rape case, where one accused was a minor. This, along with other factors, led to criticism of the perceived leniency of the Juvenile Justice Act, 2000 and resulted in the enactment of the JJ Act, 2015 which introduced a separate procedure called PA for 16–18-year-olds accused of heinous offences, allowing for the possibility of trial as adults. The provision for PA was introduced as a narrow exception to the general principle of including all children within the juvenile justice system, and was intended to be exercised with the utmost caution and responsibility. Its purpose was to ensure that children are transferred to be tried as adults only in truly exceptional circumstances.





# Purpose and Methodology of This Study

The JJ Act prescribes three mandatory conditions for a transfer of a child's case to the Children's Court, aimed at comprehensively assessing the child's mental and physical capacity, circumstances, and awareness of the consequences of the alleged offence. These conditions are designed to enable a holistic understanding of the child before taking the grave step of subjecting them to the adult criminal justice system.

A decade has now passed since this provision was introduced, making it an appropriate and necessary moment to critically examine the exercise of conducting PA in practice, to understand the nature, depth, and rigour with which they are being conducted.

The objective of this publication is to:

1. Clarify the purpose and legal standards of Preliminary Assessment under the JJ Act 2015;
2. Examine PA orders and reports against statutory and jurisprudential requirements;
3. Identify gaps in understanding, process, and safeguards

## 2.1. Analysis of Preliminary Assessment Reports:

During our engagement with the juvenile justice system in Delhi, and while representing children in conflict with the law (CCLs) before JJBs and Children's Courts, iProbono India observed widespread uncertainty about PA and how it aligns with statutory provisions and judicial precedents. To understand the nature of this issue, we reviewed 18 PA reports and few orders in the cases of the children represented by us to assess their compliance with:

(a) The mandatory requirements under Section 15 of the JJ Act, 2015, including the statutory requirement and their subsequent judicial clarifications, namely -

- **Physical capacity:** This involved assessing whether the PA reported that the child had the physical ability to commit the alleged offence, with reference to the child's strength, motor skills and physical development, strictly in relation to the offence alleged.
- **Mental capacity:** This involved assessing whether the PA report properly assessed the child's ability to exercise social judgment and make reasoned decisions within the specific circumstances of the alleged offence, or whether it simply inferred mental capacity from the absence of any diagnosed mental disorder and the presence of expressed remorse or guilt. The final findings regarding this aspect ought to cover factors such as mental health conditions, substance abuse, trauma, neglect, developmental disabilities and lack of parental supervision that may impair judgment.
- **Circumstances in which the child allegedly committed the offence:** This involved assessing whether the PA reported circumstances of the child's psychosocial vulnerabilities, life events, mental health problems or whether it simply laid down the child's verbatim statement regarding the alleged offence.
- **Ability to understand the consequences:** This involved assessing whether the PA report findings reflected on the child's insight, awareness of the long-term social and legal consequences of his act, and potential for behavioural change based on psychosocial evaluations.

*Note: \*It has to be noted that as per section 15, all these four factors have to be considered cumulatively before transferring the child to the Children’s Court. Absence and non-compliance of even one of them vitiates the entire PA process.*

- (b) The time taken to conduct such assessments; and
- (c) The nature of orders passed thereafter.

| <b>Thematic Area</b>                                                    | <b>Indicator Code</b> | <b>Compliance Indicator (What the PA Report Must Demonstrate)</b>                                                                                                                                                         |
|-------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Physical Capacity</b>                                                | P-1                   | Offence-specific assessment of the child’s physical capacity, including functional bodily abilities (such as locomotor and gross motor functions), rather than presumptions based on age, appearance, or offence gravity. |
|                                                                         | P-2                   | A reasoned nexus between the physical mechanics of the alleged offence (nature, duration, and physical demands) and the child’s actual bodily ability to plausibly perform the act.                                       |
| <b>Mental Capacity</b>                                                  | M-1                   | Assessment of the child’s real-world decision-making ability in the context in which the alleged offence occurred, as distinct from abstract knowledge of right and wrong.                                                |
|                                                                         | M-2                   | Consideration of the child’s judgment, impulse control, and emotional regulation at the time of the alleged offence.                                                                                                      |
|                                                                         | M-3                   | Analysis of relevant psychosocial and mental-health factors (such as substance use, trauma, neglect, peer influence, or neurodevelopmental conditions) and their nexus with the child’s conduct.                          |
| <b>Circumstances in Which the Child Allegedly Committed the Offence</b> | C-1                   | Identification and analysis of social and environmental factors (such as enmity, poverty, peer influence, substance abuse, or adverse life events) that may have contributed to the alleged offence.                      |
|                                                                         | C-2                   | Consideration of individual-level factors (such as greed, material inducement, coercion, or desire to support family or friends) operating at the time of the alleged offence.                                            |
|                                                                         | C-3                   | Holistic and independent assessment of circumstances based on material beyond the child’s extra-judicial confession, including cumulative and longitudinal life context.                                                  |



| Thematic Area                                         | Indicator Code | Compliance Indicator (What the PA Report Must Demonstrate)                                                                                                                         |
|-------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ability to Understand the Consequences of the Offence | U-1            | Assessment of the child's understanding of <b>social consequences</b> , including the risk of labelling, stigma, and social exclusion, in both the immediate and long term.        |
|                                                       | U-2            | Assessment of the child's understanding of <b>interpersonal consequences</b> , including impact on relationships, trust, affection, and respect within family and peer networks.   |
|                                                       | U-3            | Assessment of the child's understanding of <b>legal consequences</b> , including awareness of applicable laws and the seriousness of potential punitive and future legal outcomes. |



# CHAPTER 1

## Ingredients of Preliminary Assessment

- **Age criterion (16-18 years):** Children between 16–18 years (Rule 10 A).
- **Heinous offence requirement:** PA is permissible only where the alleged offence is “heinous”, defined as one carrying a minimum punishment of seven years or more. The Supreme Court has clarified that offences with no minimum sentence, or a minimum sentence of less than seven years (even if the maximum exceeds seven years), are to be treated as serious offences, thereby excluding them from PA [3]. This definition has also been added in the JJ Act 2015 through amendment. [4]
- **Time limit under Section 14(3):** The JJ Act prescribes that PA should ordinarily be completed within three months from the child’s first production before the JJB, as the inquiry focuses on the child’s mental and cognitive state at the time of the offence. While the time period under Section 14 has been held to be directory, not mandatory, extendable with reasons to be recorded in writing by the Magistrate [5], it has also been held by several Courts that a retrospective assessment after a significant lapse of time of the CCL’s capacity as on the date of offence becomes a farce and meaningless exercise. [6]

### 1.1. Documents considered for PA

| S.no | Name of the document           | Prepared by whom                                                                                                                               | Contents of the document                                                                                                                                                                           |
|------|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1    | Social Background Report (SBR) | Prepared by a Child Welfare Police Officer (CWPO) [7], this document is submitted at the time of first production of the child before the JJB. | It provides an overview of the child’s family background, habits, education, peer influences, family history of addiction or crime, reasons for school drop-out, and circumstances of apprehension |

[3] Shilpa Mittal v. State of NCT of Delhi (2020) 2 SCC 787

[4] Juvenile Justice (Care and Protection) Amendment Act, 2021

[5] Child in Conflict with Law v. State of Karnataka, 2024 SCC OnLine SC 798

[6] Thirumoorthy v. State Represented by Inspector of Police (paras 47-48), Rajkumar v. State, 2023 SCC OnLine Mad 50

[7] Rule 2(xvi) in the prescribed Form 1 of the JJ Model Rules 2016

[8] Rule 2(xvii) and in the prescribed Form 6 of the JJ Model Rules 2016



| S.no | Name of the document                                                                                                                                                                                                       | Prepared by whom                                                                                    | Contents of the document                                                                                                                                                                                                                                                                                                                                                                                        |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2    | Social Investigation Report (SIR)                                                                                                                                                                                          | Probation Officer or social worker                                                                  | An SIR offers a deeper, holistic assessment of the child's socio-economic, psychological and environmental circumstances [8]. It covers family structure and values, living conditions, education, health, peer relationships, history of abuse, neighbourhood influences, and emotional and intellectual development, and concludes with analysis and rehabilitation recommendations.                          |
| 3    | PMDAR (Physical, Mental and Drug Assessment Report)                                                                                                                                                                        | Psychologists attached to the Observation Home or Child Care Institution                            | In some jurisdictions including Delhi, an additional PMDAR is prepared which documents socio-demographic details, family and legal history, substance use, educational and occupational issues, mental status, vulnerabilities, and protective factors. It may include screening tools like the Mini-Mental State Examination (MMSE) and propose intervention plans such as counselling or psychiatric support. |
| 4    | Limited prosecution documents: FIR or DD entry, scene and arrest panchnamas, medical history disclosed to a doctor, non-confessional portions of the child's statement to the CWPO, and statements of victims or witnesses | Filed by the Investigating officer within one month of the child's first production before the JJB. | The JJB may also consider certain prosecution documents solely to understand the alleged circumstances of the offence. However, such material must not influence findings on guilt, and greater weight should be placed on the SIR than to police records.                                                                                                                                                      |

## 1.2. Determinants of Preliminary Assessment

S. 15 mandates a composite and cumulative evaluation of four factors:

1. **Physical capacity:** Physical capacity concerns the child's physical ability to commit the alleged offence in the manner claimed.
2. **Mental capacity:** Mental capacity concerns the child's ability to make social decisions and exercise judgment within the context of the alleged offence.
3. **Circumstances in which the alleged offence was committed:** Circumstances can have two aspects: circumstances of the crime (momentary heat of passion; provocation; instigation by an adult accomplices, etc.); and circumstances of the child (troubled childhood; past trauma or abuse; schooling and education; extreme poverty; love/infatuation, etc.).
4. **Ability to understand consequences:** This factor relates to the child's understanding of the social, legal and long-term consequences of the alleged act, including its impact on the victim, the child, their families and society. Courts have cautioned against conflating this inquiry with mental capacity.

**\*Assistance of experts:** While the proviso to S. 15 says that the JJB may seek assistance from psychologists, psycho-social workers or other child specialists, expert opinions are valuable but not binding; the JJB must critically evaluate them and provide a reasoned decision.<sup>[9]</sup>

**\*Explanation:** It has been clarified that preliminary assessment is not a trial.

None of these elements is dispensable or alternative <sup>[10]</sup>. Guidance Notes have been issued by National Institute of Mental Health and Neuro Sciences (NIMHANS) to aid psychologists and other experts and institutions to make a comprehensive inquiry<sup>[11]</sup> at the time of Preliminary Assessment.

As per direction of the Supreme Court in *Barun Chandra Thakur*<sup>[12]</sup>, guidelines have also been issued by the National Commission For Protection of Child Rights (NCPCR) to introduce standardisation of tools and procedures to be utilised for the assessment in consonance with the principles of the JJ Act. <sup>[13]</sup>

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[9] Pradeep Kumar v. State Nct Of Delhi 2019 SCC OnLine Del 8251

[10] Mumtaz Ahmed Nasir Khan v State of Bombay and Anr CRIMINAL APPEAL NO. 1153 of 2018

[11] <https://nimhanschildprotect.in/wp-content/uploads/2021/02/CICL-Assessment-Guidance-Notes.pdf>

[12] 2022 SCC OnLine SC 870

[13] [https://ncpcr.gov.in/public/uploads/16813797786437dic2bea2a\\_guidelines-for-conducting-preliminary-assessment.pdf](https://ncpcr.gov.in/public/uploads/16813797786437dic2bea2a_guidelines-for-conducting-preliminary-assessment.pdf)



### 1.3. What do the Judgments and guidelines say?

#### Mental and Physical ability of the child to commit the alleged offence:

- “Children and adolescents tend to seek immediate gratification, have a limited ability to appreciate long-term consequences, and are more influenced by emotional and social factors than by reason; although they may understand risks intellectually, they are more likely than adults to engage in risky behaviour due to emotional impulsivity and peer influence.” - **Barun Chandra Thakur v. Bholu, 2022 SCC OnLine SC 870**
- “Although adolescents are not childlike, they are less competent decision-makers than adults. By around age sixteen, their reasoning and understanding approach adult levels, but they are less able to apply these capacities to real-world decisions. This is largely because emotional and psychosocial development lags behind cognitive maturation.” - **Mumtaz Ahmed Nasir Khan v State of Bombay and Anr**
- “Emotional Intelligence Quotient (EQ) refers to the ability to understand, manage, and use emotions positively, including relieving stress, communicating effectively, empathizing with others, overcoming challenges, and resolving conflict. While Intelligence Quotient (IQ) measures logical reasoning and problem-solving ability, EQ reflects emotional understanding and regulation. Poor EQ is associated with crime and unethical behaviour. Although family and environmental factors play a role, poor emotional skills remain a common underlying risk. EQ may be viewed as the product of wisdom and cognitive ability, expressed as  $EQ = W \times IQ$ .” - **Juvenile v. State of UP and Another (Criminal Revision No.-3690 of 2025)**
- “Physical capacity refers to a child’s locomotor abilities, particularly gross motor functions such as walking, running, lifting, and throwing, which are relevant to engaging in activities that may bring children into conflict with the law”. - **NCPCR Guidelines on PA**
- “Mental capacity refers to a child’s ability to make social decisions and judgments, reflecting executive functioning within the social context in which an offence occurs. Assessment of mental capacity draws on mental health and psychosocial factors, including substance abuse, life-skills deficits, neglect or inadequate supervision, poor role models, experiences of abuse or trauma, and the presence of mental health disorders or neurodevelopmental disabilities such as ADHD or intellectual disability”. - **NCPCR Guidelines on PA**

[9] Pradeep Kumar v. State Nct Of Delhi 2019 SCC OnLine Del 8251

[10] Mumtaz Ahmed Nasir Khan v State of Bombay and Anr CRIMINAL APPEAL NO. 1153 of 2018

[11] <https://nimhanschildprotect.in/wp-content/uploads/2021/02/CICL-Assessment-Guidance-Notes.pdf>

[12] 2022 SCC OnLine SC 870

[13] [https://ncpcr.gov.in/public/uploads/16813797786437dic2bea2a\\_guidelines-for-conducting-preliminary-assessment.pdf](https://ncpcr.gov.in/public/uploads/16813797786437dic2bea2a_guidelines-for-conducting-preliminary-assessment.pdf)

## **The ability to understand the consequences of the offence:**

- “The expression “ability to understand the consequences of the offence” in Section 15 is used in the plural, indicating that it extends beyond the immediate outcome of the act and encompasses the wide-ranging and long-term consequences affecting not only the victim but also the child, their respective families, and the child’s own psychological well-being, including future repercussions.” - **Barun Chandra Thakur v. Bholu, 2022 SCC OnLine SC 870**
- “According to Elizabeth S. Scott et al., teenagers are significantly more susceptible to peer influence than adults, tend to focus on immediate rather than long-term consequences, and exhibit greater impulsivity and mood fluctuations. They are therefore more inclined to take risks and less adept at balancing risks and rewards. Additionally, adolescence is marked by a fluid and unformed personal identity, as individuals separate from parental influence, experiment—often in risky ways, and struggle to define who they are.” - **Mumtaz Ahmed Nasir Khan v State of Bombay and Anr**
- “The child’s knowledge and understanding of consequences include awareness of social consequences (how others may perceive the behaviour, leading to labelling or stigmatisation), interpersonal consequences (the impact on relationships, including loss of trust, affection, and respect from family and friends), and legal consequences (understanding relevant laws and the serious punitive outcomes that may result from violations such as sexual offences, robbery, or other crimes).” - **NCPCR Guidelines on PA**

## **The circumstances in which the child allegedly committed the offence:**

- “Assessment of the circumstances in which an offence is alleged to have been committed involves consideration of multiple factors, as crimes may arise from varied causes such as enmity, poverty, greed, coercion, threats to life or property, material inducements, mental perversity, stress or depression, peer influence, or a desire to help family or friends. These diverse factors collectively constitute the circumstances leading to the commission of the offence and must be evaluated holistically.” - **Barun Chandra Thakur v. Bholu, 2022 SCC OnLine SC 870**
- “The order must refer to the circumstances which led to the commission of offence and there must be an active consideration of the fact whether the child was driven to commit the offence because of the conduct of the victim.” - **Durga Meena v. State of Rajasthan, 2019 SCC OnLine Raj 3839**
- “Psychosocial vulnerabilities, such as adverse life events and mental health problems arising from family, school, peer relationships, trauma or abuse, and substance use—form an essential part of assessing the circumstances of an offence. These circumstances are not limited to the immediate events preceding the offence but reflect a cumulative outcome of multiple, long-standing factors operating over the child’s life, often since early childhood. Accordingly, the assessment must adopt a longitudinal rather than a purely cross-sectional perspective of the circumstances leading to the offence.” - **NCPCR Guidelines on PA**

## CHAPTER 2

# Caveats Governing Preliminary Assessment

In addition to the statutory ingredients of PA, the JJB must remain guided by the general principles under Section 3 of the JJ Act, 2015.

### 2.1. Presumption of innocence

The presumption of innocence is a core human right expressly incorporated in the JJ Act and Juvenile Justice (Care And Protection Of Children) Model Rules, 2016 <sup>[14]</sup> (JJ Model Rules 2016) . Courts have cautioned against assessments premised on assumed guilt, reliance on self-incriminatory disclosures, or descriptions in SIRs/SBRs portraying the child as manipulative or remorseless. Such practices violate Article 20(3) and vitiate PA <sup>[15]</sup>. High Courts have held that eliciting extra-judicial confessions through SIRs is unconstitutional, <sup>[16]</sup> and lack of remorse cannot justify transfer to the Children's Court.

### 2.2. Principle of participation

The JJB is duty-bound to ensure informed participation of the child and guardian at every stage <sup>[17]</sup>. Moreover, JJ Model Rules 2016 require a reasoned order for adult trial to be supplied to the child <sup>[18]</sup>, and mandatory disclosure of prosecution documents relied upon for PA <sup>[19]</sup> . Denial of such material on grounds of confidentiality is impermissible <sup>[20]</sup>. The Supreme Court has reaffirmed that all documents relied upon by the Board must be furnished to the child to ensure a real opportunity of defence. <sup>[21]</sup>

### 2.3. Preliminary assessment is not a trial

S 15 clarifies that PA is not a determination of guilt but an assessment of capacity. Findings at this stage cannot influence the merits of the trial <sup>[22]</sup>. Materials relied upon for PA cannot be used as evidence during trial. Reliance on witness statements or victim versions at this stage is discouraged, as it creates prejudice and violates natural justice.

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[14] S. 3(i) of the JJ Act 2015 and Rule 10(A)(3) of the JJ Model Rules 2016

[15] Child in Conflict with Law v. State of Gujarat 2023 SCC OnLine Guj 3119.

[16] Vikas Sangwan v. State, CRL. REV.P. 696/ 2018 [order dated 19.09.2022]; Durga Meena v. State of Rajasthan, 2019 SCC OnLine Raj 3839

[17] Sections 3(iii), 8(3)(a), 14(5)(c) guarantee the child's right to be heard and to meaningfully participate in all proceedings.

[18] Rule 10A(4)

[19] Rule 10(5)

[20] Mustafa Khan Jabbar Khan v. State of Maharashtra, 2023 SCC OnLine Bom 1285

[21] Barun Chandra Thakur SCC OnLine SC 870

[22] Pradeep Kumar v. State Nct Of Delhi 2019 SCC OnLine Del 8251



# CHAPTER 3

## Children Being Tried as Adults

If a child between 16 to 18 years of age is accused of committing a heinous offence

### Preliminary Assessment (PA)

Report of the child (to be completed within 3 months from the date of first production)  
[Section 14(3) and Section 15 of JJ Act]

JJB will assess the PA report and shall decide on whether the CCL's case shall be transferred to Children's Court or shall remain with the JJB

If decided to be treated as a child, the above JJ procedure shall be followed

If decided to be treated as an adult, the matter shall be sent to Children's Court

Children's Court shall mandatorily conduct PA  
[Section 19(1)(ii) of JJ Act]

If the Children's Court finds the PA not conducted properly, they may conduct a PA again or order fresh assessment

If the Children's Court finds that PA was done properly, then the case shall proceed under the regular Criminal Justice System

### NOTE

Under S. 21, the child cannot be sentenced to death or life imprisonment without the possibility of release.

The child must be kept in a Place of Safety, not a regular prison, until the completion of 21 years of age.

Under S 20, when the child attains 21 years, the Children's Court conducts a mandatory review of the child's reformation may:

1. Release the CCL;
2. Modify the sentence, or
3. Transfer the CCL to an adult prison to serve the remaining sentence.

## CHAPTER 4

### Summary of Findings with Respect to PA Reports/ Critical Gaps

Analysing the compliance of each PA in the light of the mandatory parameters

| Parameters           | Physical Capacity to commit the offence | Mental Capacity to commit the offence | Circumstances in which the child allegedly committed the offence | Ability to understand the consequences of the offence |
|----------------------|-----------------------------------------|---------------------------------------|------------------------------------------------------------------|-------------------------------------------------------|
| CCL 'A' (15.03.2025) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'F' (15.03.2025) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'A' (11.04.2022) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'G' (13.07.2016) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'K' (04.11.2016) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'K' (05.01.2022) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'R' (31.03.2023) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'K' (19.05.2022) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'K' (27.03.2023) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'P' (04.04.2022) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |
| CCL 'R' (19.07.2025) | ✓                                       | ✗                                     | ✗                                                                | ✗                                                     |



|                         |   |   |   |   |
|-------------------------|---|---|---|---|
| CCL 'S'<br>(15.03.2022) | ✓ | ✗ | ✗ | ✗ |
| CCL 'M'                 | ✓ | ✗ | ✗ | ✗ |
| CCL 'S'                 | ✓ | ✗ | ✗ | ✗ |
| CCL 'V'<br>(Sept 2022)  | ✓ | ✗ | ✗ | ✗ |
| CCL 'R'<br>(17.11.2025) | ✓ | ✓ | ✓ | ✓ |
| CCL 'R'<br>(07.08.2018) | ✓ | ✗ | ✗ | ✗ |
| CCL 'V'<br>(29.09.2021) | ✓ | ✗ | ✗ | ✗ |





- A review of the preliminary assessment (PA) reports reveal recurring structural and substantive gaps in their preparation and application. Each PA report contains a separate sub-heading recording the child’s statement verbatim, under the rubric of “circumstances of the offence.”
  - In all 18 cases reviewed, the child’s confession is reproduced in detail, despite consistent judicial clarification that a preliminary assessment is not a determination of guilt and that reliance on confessional statements at this stage is impermissible. Judicial precedents have repeatedly held that the PA process is limited to assessing capacity and understanding, and not culpability. The routine recording of verbatim confessions, without safeguards, raises concerns under Article 20(3) of the Constitution relating to protection against self-incrimination and is inconsistent with established jurisprudence, including the principle laid down in *Vikas Sangwan*.<sup>[23]</sup>
- There is minimal engagement with the underlying psychosocial factors contributing to the alleged offence. Psychologists generally do not explore or document the child’s emotional state prior to the incident, including impulses, stressors, or situational triggers. Instead, the focus remains on narrating the sequence of events as described by the child, effectively replicating the prosecution narrative. This approach limits the assessment’s ability to meaningfully examine the child’s developmental maturity, vulnerability, and decision-making processes at the relevant time.
- Assessment of mental capacity is frequently reduced to the absence of any diagnosed intellectual or mental disability. In several cases, mental capacity is inferred from the child’s expression of guilt or remorse, rather than through a structured evaluation of cognitive, emotional, and psychosocial functioning. Except for two PA reports, there is no reference to the use of any scientific or standardised psychological assessment tools. Most reports merely record that the child has “no mental or physical disability,” without further elaboration.
- With respect to the child’s understanding of the consequences of the alleged offence, the emphasis is predominantly on immediate or short-term consequences. Except in two cases, the PA reports do not assess the child’s understanding of long-term consequences, including legal, social, and personal outcomes. Instead, understanding is often inferred from factors such as the manner in which the offence was allegedly committed, the role attributed to the child, or the child’s ability to carry out routine activities within a Child Care Institution.
- In several cases, substance use or drug dependency—despite being noted in passing or evident from the case record—is not meaningfully examined in the context of decision-making, impulse control, or capacity. This omission further limits the depth of the assessment.
- Additionally, all PA formats include a separate section on the child’s legal history, detailing prior alleged offences and their nature. While not a statutory requirement under Section 15 of the Juvenile Justice Act, this information risks introducing bias into the assessment process by foregrounding criminal history rather than focusing on present capacity and maturity.

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[23] CRL. REV.P. 696/ 2018 [order dated 19.09.2022]



- Of the 18 PA reports reviewed, nine were conducted after the Supreme Court's decision in Barun Chandra. However, with the exception of one case, these reports do not substantially reflect compliance with the standards articulated in the judgment, particularly with respect to structured, child-centric, and evidence-based assessment of capacity and understanding.







## Conclusion

“

*Adolescence is, perhaps, no more important a stage of development than any other, but it is the concluding stage of childhood. Therefore, it offers to both the parents and the society the final opportunity to educate a child for his adult responsibilities. Delinquency, therefore, during adolescence has major implications. It puts double responsibility on the society to understand them and to help them come out of the deviant culture with a view to become a functionally useful member of the society.”*

**Dr. Bharti Sharma**  
**“Juvenile Delinquents and Their Social Culture”**

The PA process under S. 15 of the JJ Act represents a critical juncture in the lives of children aged 16-18 accused of heinous offences, determining whether they remain within the rehabilitative structure of the juvenile justice system or face the punitive rigors of adult trials. Introduced as a cautious exception to the foundational principle that children are developmentally distinct from adults and thus deserving of protection rather than retribution, the PA process was intended to safeguard vulnerable adolescents from undue exposure to the adult criminal justice system.

However, the study of 18 PA reports and few orders from Delhi's JJBs reveal that the implementation of this provision often falls short of the statutory mandates, judicial precedents, and the holistic, child-centric approach envisioned by the law. Our analysis underscores persistent gaps in the PA process. Despite clear requirements for a composite evaluation of the child's physical and mental capacity, ability to understand the consequences of the offence, and the broader circumstances surrounding both the act and the child's life, many assessments appear perfunctory. These gaps not only contravene Supreme Court directives, but also erode the rehabilitative ethos of juvenile justice. These results from Delhi, a jurisdiction which is expected to set the benchmark, make a compelling case for extending a scrutiny to other jurisdictions, to assess whether the PA standards are being met pan India or not.

Ultimately, PA is not merely a procedural step but a test of our commitment to justice that is restorative, not retributive. A decade after the JJ Act's enactment, it is imperative to refine this mechanism to protect the most vulnerable, ensuring that the fate of childhood is not decided by a flawed test, but by principles of fairness, empathy, and hope for redemption. Only then can we uphold the promise of a juvenile justice system that truly cares for and protects its children.



## ANNEXURE: DETAIL ANALYSIS OF PA REPORTS & ORDERS

- VS, a 16 year old CCL, was accused under Sections 302/304 IPC and 25/27 Arms Act. He was admitted to the Observation Home on 16.03.2021 and his PA was conducted on 29.09.2021, with a delay of 6 months. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment. The parameter of understanding of consequences was simply assessed based on his ability to undertake activities of daily living like attending non-formal classes at the institution. Moreover, it was noted in this section that initially the CCL was apprehensive of telling the truth about the incident but later chose to reveal the particulars of the incident without manipulating the facts. To assess the circumstances in which he allegedly committed the crime, his entire confession was recorded instead of going into the background of the CCL. The psychologist later mentioned that the CCL acts impulsively when faced with difficult situations. In the summary of the report, the counsellor concluded that the CCL is guilty but remorseful of his actions and lastly notes the possibility of his restoration in the society.

**JJB's decision:** Relying on the PA report, the JJB transferred the child's case to the Children's Court, primarily on the basis of the finding that he had mental capacity due to the absence of any identified illness or disability. It chose to overlook the psychologists' findings regarding CCL's impulsive behaviour. Moreover, the Board at the stage of PA went into the particulars of the offence and noted that CCL possessed the 'intention' to commit the offence.

- P, a 17-year-old CCL, was accused under Sections 302, 392, and 34 of the IPC. He was apprehended on 13.01.2022, and the PA report was submitted on 04.04.2022. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment. To assess his understanding of consequences, the report relied on factors such as having dropped out after the 7th standard and his decision to return to Delhi without informing his father, where he stayed with a friend. The assessment regarding circumstances of the offence relied extensively on the child's confessional statement, including details of the alleged planning of the offence. The summary of the PA noted that the child was intoxicated at the time of the incident and recorded attempts by him to manipulate details of the incident. It also identified vulnerabilities arising from poor parental supervision, peer influence, difficulties with impulse control, and limited coping mechanisms. Despite these observations, the assessment largely focused on the factual narrative of the alleged offence.

**JJB's decision:** Relying on the PA report, the JJB transferred the child's case to the Children's Court, primarily on the basis of the finding that he had mental capacity due to the absence of any identified illness or disability. The transfer order did not substantially engage with the child's substance use, financial stressors, or state of intoxication when assessing his understanding of consequences and the circumstances of the alleged offence.

\*It is pertinent to note that the CCL is accused of committing two offences on the same night. One PA was done for both the FIRs and interestingly one JJB decided to transfer the case while the other JJB retained the case.

- SKM, a 17-year-old CCL, was accused under Sections 302, 392, and 411 of the IPC. He was apprehended on 12.12.2021, and the preliminary assessment (PA) report was submitted on 15.03.2022. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment. The report assessed the child's understanding of the consequences of the offence on the basis that he demonstrated an awareness of his future, which was taken to indicate an understanding of consequences. The circumstances of the alleged offence were assessed primarily through the facts of the case and the manner of the child's apprehension, with the child's confessional statement forming part of this assessment. The summary noted that the child accepted his guilt and did not express remorse.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In the transfer order, the JJB recorded findings on the child's physical and mental capacity and the circumstances of the offence. However, the order did not separately record findings on the child's ability to understand the consequences of the alleged offence, as required under S. 15 of the JJ Act. The assessment of the circumstances of the offence was based entirely on the prosecution's version of events and the manner in which the offence was allegedly committed.

- V, a 16-year-old CCL, was accused under Sections 302 and 34 of the IPC. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment tools. The report further observed that the child had planned the alleged offence, which was taken to indicate cognitive ability. The child's understanding of the consequences of the alleged offence was assessed on the basis that he was aware that the police would be informed if a robbery was reported, and this awareness was relied upon to conclude that he understood the consequences of his actions. The circumstances of the alleged offence were described using the narrative of the incident, with the report recording that the child's "greed" led to the commission of the offence. The summary reiterated that the offence was planned.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child's case to the Children's Court.

- R, a 16-year-old CCL, was accused under Sections 302, 34, and 201 of the IPC, along with Sections 25 and 27 of the Arms Act. He was apprehended on 26.01.2023, and the PA report was submitted on 31.03.2023. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment tools. The assessment of the child's understanding of the consequences of the alleged offence relied on the fact that he was able to conduct day-to-day activities in the Child Care Institution (CCI) and on his status as a repeat offender, which was taken to indicate an understanding of legal consequences. The circumstances of the alleged offence were assessed primarily on the basis of the child's confessional statement. The summary of the PA also noted group involvement and prior engagement in criminal activities.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In its order, the JJB relied primarily on the facts of the case. To establish the child's understanding of the circumstances of the offence, reliance was placed on the fact that he was allegedly carrying a weapon at the time of the incident. The order did not record separate findings regarding the child's ability to understand the consequences of the alleged offence. It is also noted that two children in conflict with law were named in the same FIR, and the JJB passed a common order for both children using identical language, indicating a uniform approach in the proceedings.

- RO, a 16-year-old CCL, was accused under Sections 103 and 3(5) of the BNS. He was apprehended on 20.05.2025, and the PA report was submitted on 19.07.2025. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment tools. In assessing the child's understanding of the consequences of the alleged offence, the report relied on the child's ability to make everyday decisions in his life. The circumstances of the alleged offence were assessed primarily on the basis of the child's confessional statement. The summary of the PA recorded poor impulse control, absence of expressed remorse, repeated contact with the justice system, and observed that the child's family background included exposure to criminal activity.

**JJB's decision:** At the time of reporting, the JJB had not yet passed an order on the preliminary assessment.

- M, a 17-year-old CCL, was accused under Sections 302, 452, 506, 120B, and 34 of the IPC, along with Sections 25 and 27 of the Arms Act. He was apprehended on 28.04.2024, and the PA report was submitted on 20.03.2025, reflecting a delay of approximately seven months. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, relying on the ICT test. The assessment of the child's ability to understand the consequences of the alleged offence noted that the child's participation in educational classes and recreational activities indicated an ability to make choices in daily life. At the same time, the report recorded that the child did not demonstrate an understanding of the cause-and-effect relationship of the alleged offence or of legal procedures. The circumstances of the alleged offence were assessed primarily through the child's confessional statement. The summary of the PA noted that while the child was assessed as having physical and mental capacity, he was affected by factors such as intoxication, peer influence, easy access to weapons, and maladaptive societal practices.

**JJB's decision:** The JJB declined to transfer the matter to the Children's Court. In its order, the JJB noted that the presumption of innocence operated in favour of the child and recorded that the Board had interacted with the child on multiple occasions. Based on these interactions, the JJB concluded that the child did not possess the physical and mental capacity required to commit the alleged offence and accordingly retained the matter within its jurisdiction.

- AS, a 17-year-old CCL, was accused under Sections 302 and 304 of the IPC. He was apprehended on 15.02.2022 and his PA report was submitted on 11.04.2022. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity. In assessing the child's ability to understand the consequences, it was recorded that his ability to understand cause and effect was weakened. The circumstances of the alleged offence were assessed primarily on the basis of the child's confessional statement.

The summary of the PA recorded bad peer influences, lack of parental supervision and societal exposure to criminality and at the same time mentioned the child's version of events was not trustworthy and that he denied stabbing the victim.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In its order, the JJB noted that there were no mental and physical disabilities, the child was a repeat offender who knew the JJ Act and used it to his advantage. The Board also relied on the child's previous case files to pass an order in this case.

- G, a 16-year old CCL, was accused under Section 363 of the IPC. He was apprehended on 13.07.2016. The PA report found no intellectual, mental, or physical disabilities. To establish the child's understanding of the circumstances of the offence, reliance was placed on the fact that the child did not report the crime or surrender to the police. The circumstances of the alleged offence were assessed primarily on the basis of the child's confessional statement. The summary of the PA recorded that multiple factors like financial stressors, lack of parental supervision, negative peer influence, involvement in gambling and immature problem solving skills led to the child's involvement in criminal activities and that the child had reported that had he not had financial troubles, he would not have been involved in the alleged offence.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In its order, the Board completely relied on the facts of the case and overlooked the various factors the PA had noted regarding the child's socio-economic background. To establish the CCL's understanding of the consequences of the offence, it was recorded that the child was actively involved in planning the offence without any regard for human life.

- K, a 16-year-old CCL, was accused under Sections 302/186/353/34 IPC. He was apprehended on 27.09.2016 and his PA report was submitted on 05.11.2016. The PA recorded no intellectual, mental, or physical disability and concluded that he possessed the requisite mental capacity, inferred from alleged planning and execution of the incident and from inconsistencies in his statements regarding the alleged offence, which were taken to reflect cognitive ability. There was no test conducted to assess the child's mental capacity. Understanding of consequences was assessed from short-term awareness, including knowledge of the alleged weapon that was used. The circumstances of the alleged offence were assessed primarily on the basis of the child's confessional statement. The summary of the PA report recorded that it can be inferred that the CCL helped his friend to commit the act before that he has been rusticated from the school due to his negative peer group influence.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In its order, the Board relied on the facts of the case. To establish that the child understood the consequences of the offence, it was noted that the CCL allegedly fled from the scene and the circumstances of the offence were assessed on the basis of how the alleged offence took place.

- A, a 16-year-old CCL, was accused under Sections 103(1), 109(1), and 3(5) of BNS and Sections 25/27 Arms Act. He was apprehended on 09.11.2024 and his PA report was submitted on 15.03.2025, reflecting a delay of approximately one month. The PA recorded no physical or mental disability and concluded that the child had the ability to understand consequences on the basis of admission and expressed guilt.



The PA relied substantially on the confessional account and included past legal history to assess that the child had the ability to understand the consequences and the to establish the circumstances of the offence. The summary of the PA recorded poor decision making skills, inadequate parental supervision and recommended mandatory family counselling sessions.

**JJB's decision:** The JJB declined to transfer the matter to the Children's Court. In its order, the Board noted impaired decision making skills of the child, heightened emotions, lack of parental supervision and concluded that the child should be treated as a child.

- F, a 16-year-old CCL, was accused under Sections 103(1), 109(1), and 3(5) of BNS and Sections 25/27 Arms Act. He was apprehended on 09.11.2024 and his PA report was submitted on 15.03.2025, reflecting a delay of approximately one month. The PA recorded no physical or mental disability and noted past trauma including a friend's murder and a recent attack on the child. Understanding of consequences was inferred solely from the child's admission of involvement in the alleged offence. Circumstances were again reproduced verbatim through a confession. The summary of the PA recorded impaired judgment and inadequate parental supervision.

**JJB's decision:** The JJB declined to transfer the matter to the Children's Court. In its order, the Board noted impaired decision making skills of the child, heightened emotions, lack of parental supervision and concluded that the child should be treated as a child.

- KA, a 17-year-old CCL, was accused under Sections 302/394/397/34 IPC. He was apprehended on 06.09.2021 and the PA report was submitted on 05.01.2022, reflecting a delay of one month. The PA recorded no intellectual, mental, or physical disability. Understanding of consequences was assessed through the child's participation in daily living activities and expressed remorse. Circumstances of the alleged offence were reproduced verbatim from an extra-judicial confession. The summary of the PA report acknowledged negative peer influence, drug dependency of the child, and emotional stressors like alcoholic father and financial instability.

**JJB's decision:** Relying on the PA report, the JJB transferred the child's case to the Children's Court, primarily on the basis of the finding that he had mental capacity due to the absence of any identified illness or disability. The transfer order did not substantially engage with the child's substance use, financial stressors, or state of intoxication when assessing his understanding of consequences and the circumstances of the alleged offence and instead reliance was placed on the facts of the case.

- R, aged 17, was accused under Sections 302/406/380/411/34 IPC. The PA was delayed by approximately two months. The circumstances focused on the manner of commission of the alleged offence and reflected a confessional narrative. Mental capacity was inferred from physical appearance and absence of mental illness. Reliance on the psychologist's report was uncritical and circumstance analysis drew from police investigation rather than the child's contextual background.

**JJB's decision:** The Board adopted a literal reading of Section 15 and transferred the matter to the Children's Court.

- KMA, aged 17, was accused under Sections 363/302 IPC. The PA recorded no intellectual, mental, or physical disability and relied on daily living decisions, prior remorse and future intentions to infer understanding of consequences. Circumstances were reproduced verbatim from the child's account of the alleged offence. The summary of the PA report noted emotional volatility and self-harm history of the child and described the child as manipulative.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In its order, the Board completely relied on the facts of the present case as well as the child's involvement in previous cases.

- KR, aged 17, was accused under Sections 302/34 IPC. The PA recorded no intellectual, mental, or physical disability. The child's understanding of consequences and cause and effect relationship were inferred from his involvement in daily activities like attending classes in the CCI. Circumstances of the offence consisted of a verbatim confession. Mental capacity of the child was inferred from his alleged planning and possession of a weapon and from post-incident conduct. The summary of the PA recorded that the CCL possessed the mental capacity to commit the offence because he was familiar with the legal process but several factors like lack of parental supervision and association with negative peer groups facilitated his involvement in criminal activities.

**JJB's decision:** Relying on the PA report, the JJB passed an order transferring the child to the Children's Court. In its order, the Board noted that there was nothing on record to show that the child was compelled to commit the offence due to poverty or any other reason. To establish that the child was aware of the consequences of the offence, reliance was placed on the fact that the child was carrying a weapon which shows planning.

- S, a 17-year-old CCL, was accused under Sections 302, 452, 506, 120B, and 34 of the IPC, along with Sections 25 and 27 of the Arms Act. He was apprehended on 28.04.2024, and the PA report was submitted on 20.03.2025, reflecting a delay of approximately seven months. The PA recorded that the child had no physical or mental disability and concluded that he possessed the requisite physical and mental capacity, without reference to any psychological testing or structured assessment tools. The assessment of the child's ability to understand the consequences of the alleged offence noted that the child's participation in educational classes and recreational activities indicated an ability to make choices in daily life. Further understanding of cause and effect of offence and legal procedure is intact. The circumstances of the alleged offence were assessed primarily through the child's confessional statement. The summary of the PA noted that while the child was assessed as having physical and mental capacity, he was affected by lack of judgment, a maladaptive social factor, and inadequate supervision.

**JJB's decision:** The JJB declined to transfer the matter to the Children's Court. In its order, the JJB noted that the presumption of innocence operated in favour of the child and recorded that the Board had interacted with the child on multiple occasions. Based on these interactions, the JJB concluded that the child did not possess the physical and mental capacity required to commit the alleged offence and accordingly retained the matter within its jurisdiction.

- RO, a 17-year-old CCL, was accused under Sections 103 and 3(5) of the BNS. He was apprehended on 09.07.2024, and PA report was submitted on 17.11.2025, reflecting a delay of approximately 13 months. The PA examined the child had no physical or mental disability and assessed intellectual functioning using the Standard Progressive Matrices (SPM). The assessment also examined the child's awareness of the alleged offence through the Juvenile Adjudicative Competence Interview, along with aspects of decision-making, attention, environmental influences, and physical ability. In assessing the child's understanding of the consequences of the alleged offence, the report considered legal, moral, and social consequences, cognitive limitations, and the influence of environmental factors. The circumstances of the alleged offence were assessed with reference to the child's educational disengagement, peer influence, work and lifestyle patterns, family support, and substance use, marking a departure from the approach adopted in several other preliminary assessments that rely primarily on the factual narrative of the offence.

**JJB's decision:** At the time of reporting, the JJB had not yet passed an order on the PA.



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