



# Dispositional Orders u/JJA

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# Who are they?

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2 April 2017

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# Parents complain 3-year-old classmate assaulted their girl

TNN | Updated: Dec 21, 2016, 07:44 AM IST



Ad



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*Representative image*

BENGALURU: The parents of a three-year-old girl accused a three-year-old boy of sexually assaulting their daughter during school hours on Monday.

Based on their complaint, KG Halli police subjected the girl to a medical test on Tuesday.

Doctors said there were injuries on her private parts, caused by sharp objects. Police said she was fighting with the boy, her

classmate, who poked her private parts with a pencil. A police team visited the school and checked CCTV footage. Video images showed the girl was present on the school premises till Monday evening, and was fighting with her classmate who hit her on her private parts, police said. Both the girl and the accused are minors and the attack was not intentional, cops added. Technically speaking, the incident cannot be termed sexual assault, but the parents insisted a case be registered under Pocso. The boy will be sent to a remand home, police added.

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# Children or Offenders?

- If Crime is
  - as an act done with the intention or knowledge of causing harm
- Conclusion –
  - Children by definition - incapable of committing crime;
  - if commit an offence, specially a serious one, they cease to be children

Serious  
offence

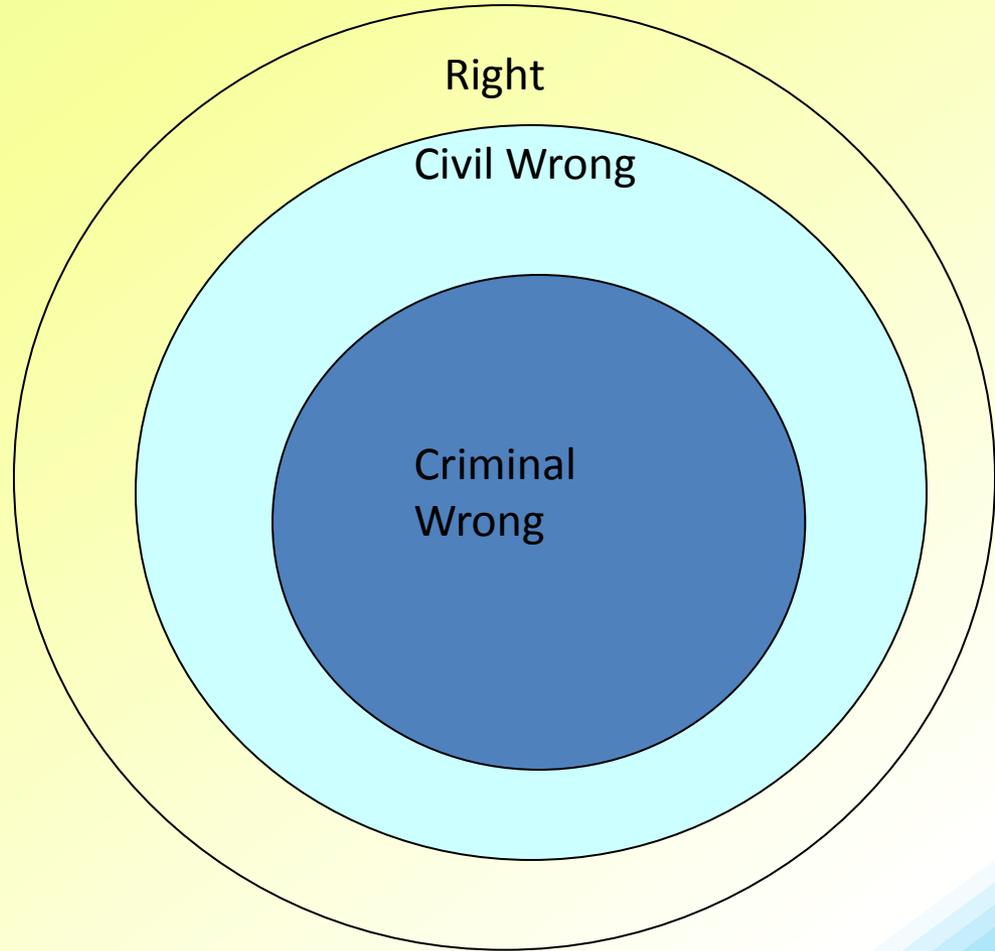
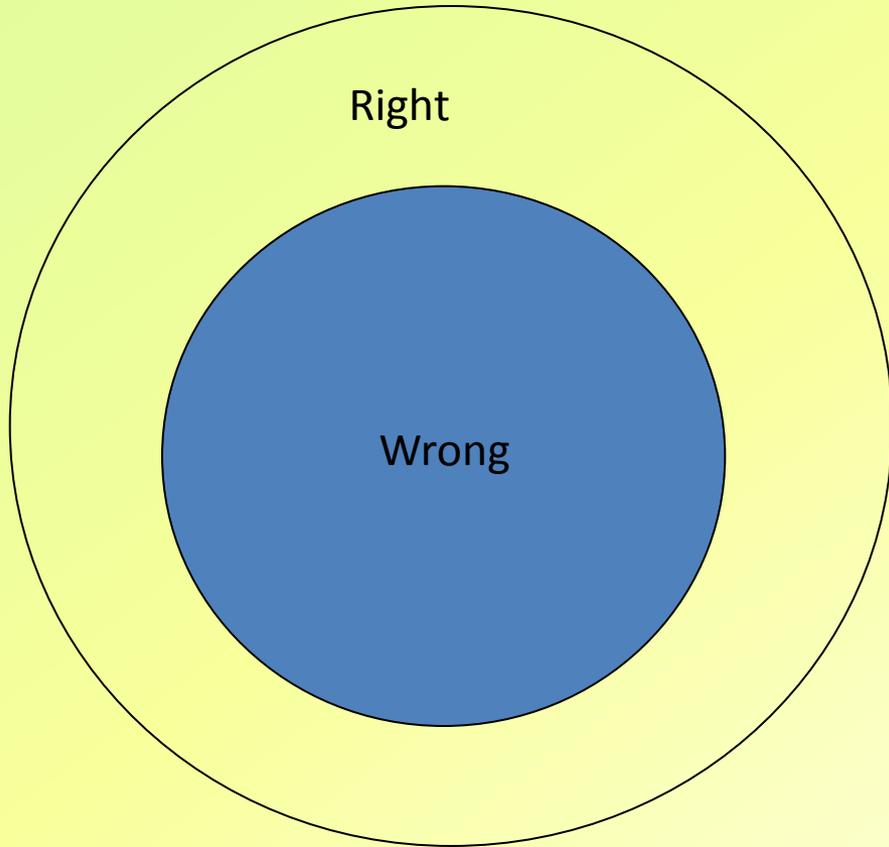
Children

# Collapsing Different Worlds



Children's World

Adults' World





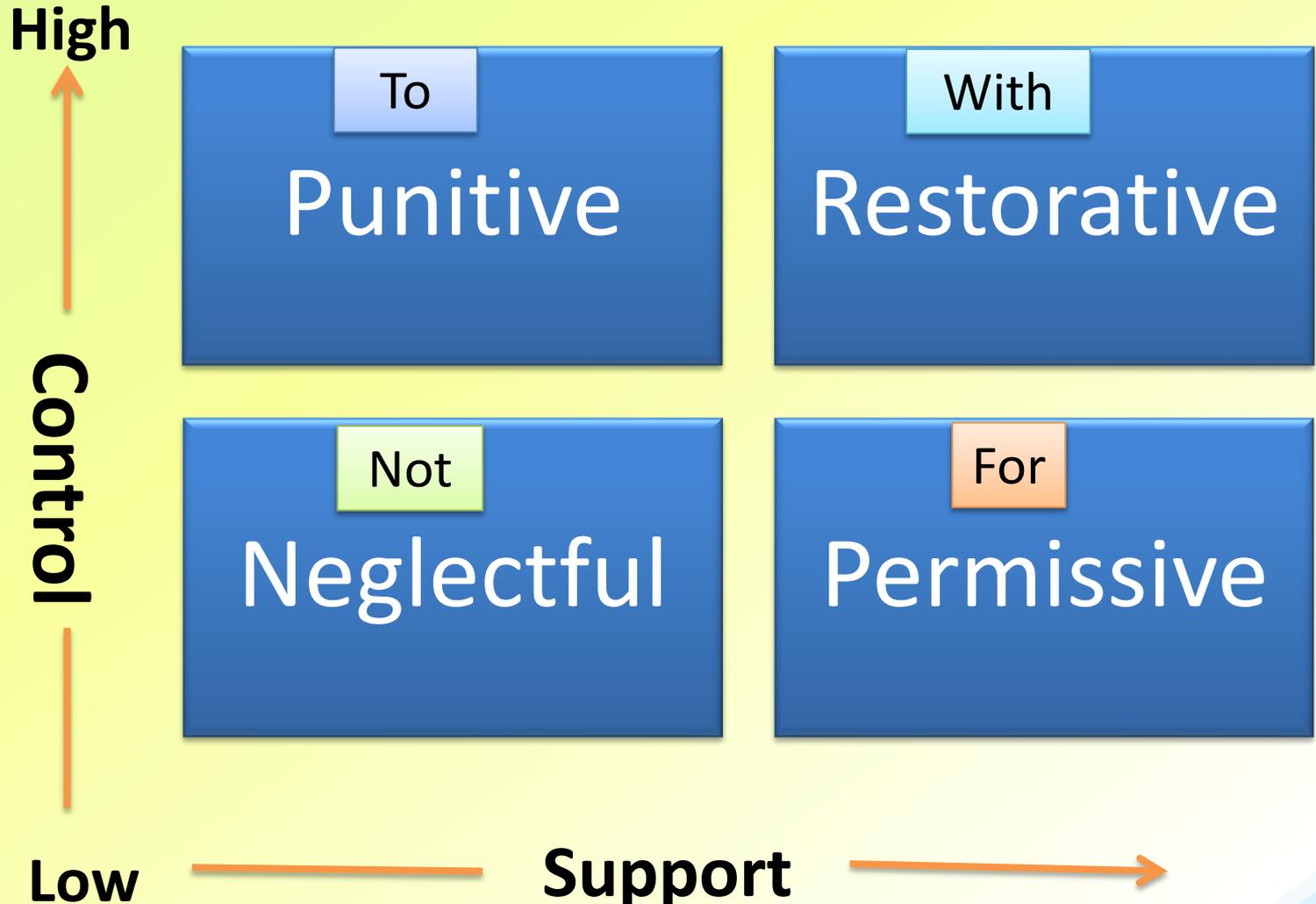
# Standard Response to Crime

Punishment

Permissive



# Social Discipline Window





# Difference

## Criminal Justice

- What laws were broken?
- Sees broken laws and rules as offense against the State
- Punishment imposed.
- Offender based and driven.
- Usually lacks victim and community input.

## Restorative Justice

- What was the harm done?
- Who was harmed?
- Who is responsible for repairing the harm?
- Victim/Community based and driven.
- Focus on repairing harm – either **instead of** punishing or **in addition to** punishment



|  | <u>Criminal Justice</u> | <u>Restorative Justice</u>                             |
|--|-------------------------|--|
| <b>Who is crime against?</b>             | State                   | Victim/Community                                       |
| <b>How is Offender held accountable?</b> | Punishment              | Accept responsibility<br>Repairs harm                  |
| <b>What role does Victim play?</b>       | Witness                 | Has say in restitution                                 |
| <b>Focus of System?</b>                  | Place Blame             | Questions answered<br>Problem-Solving<br>Harm repaired |



# Benefits of RJ to Victim

- Have the offender right the wrong
- Confront the offender
- Find out what the offender is like
- Get answers to questions that only the offender can answer
- Opportunity to ask for/receive an apology
- Become primary and valued participant
- Decrease reoffending
- Obtain closure of offence



# Benefits of RJ to Offenders

- Opportunity to make amends
- Offer an apology or an explanation
- truly understand the real human consequences of the offense
- To be seen as a person and not monster
- Participate in deciding restitution
- Restore self -image



# Benefits of RJ to Community

- Lessen the impacts of crime on the community by increasing restoration of losses
- Reduce the incidence of repeat crime
- Increase the experience of justice in the community
- Reduce the impacts of incarceration on the community
- Involving volunteers in crime resolution



# Benefits of RJ to Justice System

- Meet the needs of crime victims and their sense of justice
- Increase the public's experience of justice
- Greatly decrease
  - the time generally required
  - expense of processing offenses
  - Incarceration costs
  - Court burden
- Increase the community's understanding and ownership of the criminal/juvenile justice process



# RJ must be Victim Centred

- A. A VICTIM CAN NEVER BE COURT-ORDERED TO RESTORATIVE JUSTICE.**
- B. AN OFFENDER CAN BE ORDERED TO RESTORATIVE JUSTICE, BUT CAN ONLY ATTEND IF:**
  - **A. The facilitator agrees that he is remorseful and appropriate.**
  - **B. He agrees to participate, admit to his crime, answer victim questions and work to find a way to repair the harm he caused**
- C. RESTORATIVE JUSTICE MEETINGS SHOULD OCCUR IN A PLACE WHERE THE VICTIM FEELS SAFE AND COMFORTABLE.**
- D. A VICTIM SHOULD NEVER BE ASKED TO FORGIVE AN OFFENDER.**

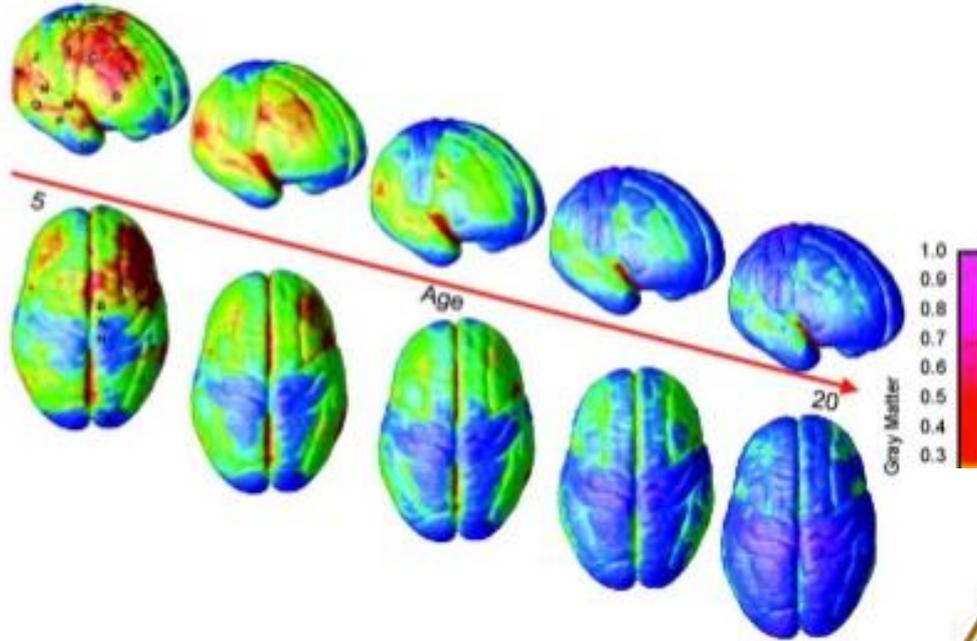


# Who is a Child?

- Mentally immature – not knowing the consequence of their action?
- Below 7 years – 21 years?
- **Cut offs are arbitrary!**
- Rationality for 18 years?
  - most used – majority, voting, contract, marriage, driving, etc.
- CRC

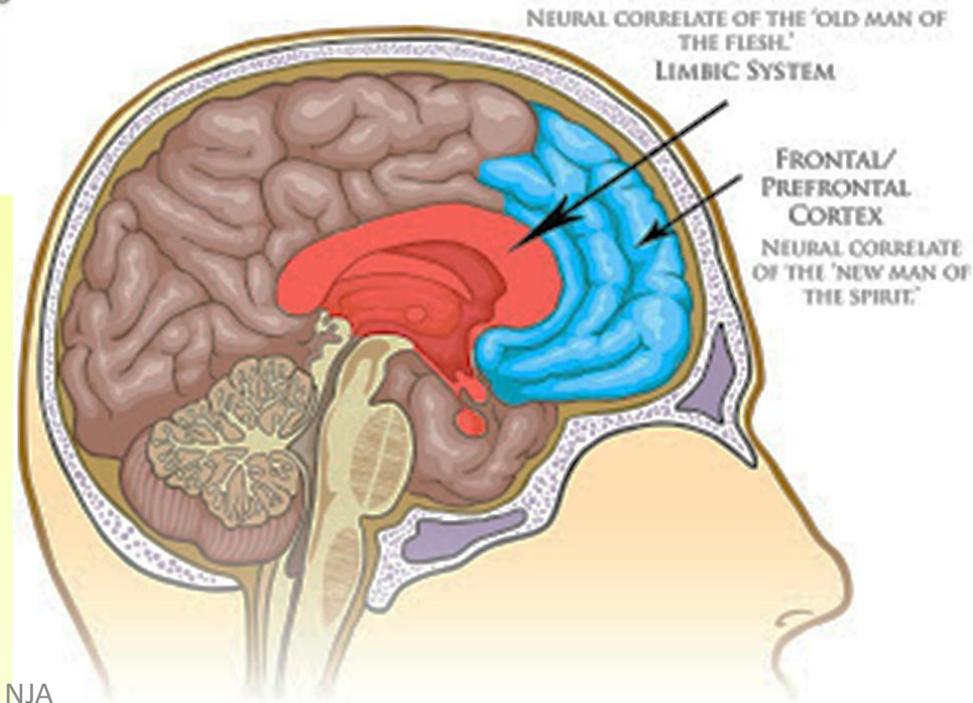


# Adolescent Brain Science



Breaks

Speed pedal →



# Implications of Arrested Development: Adolescent Behaviour

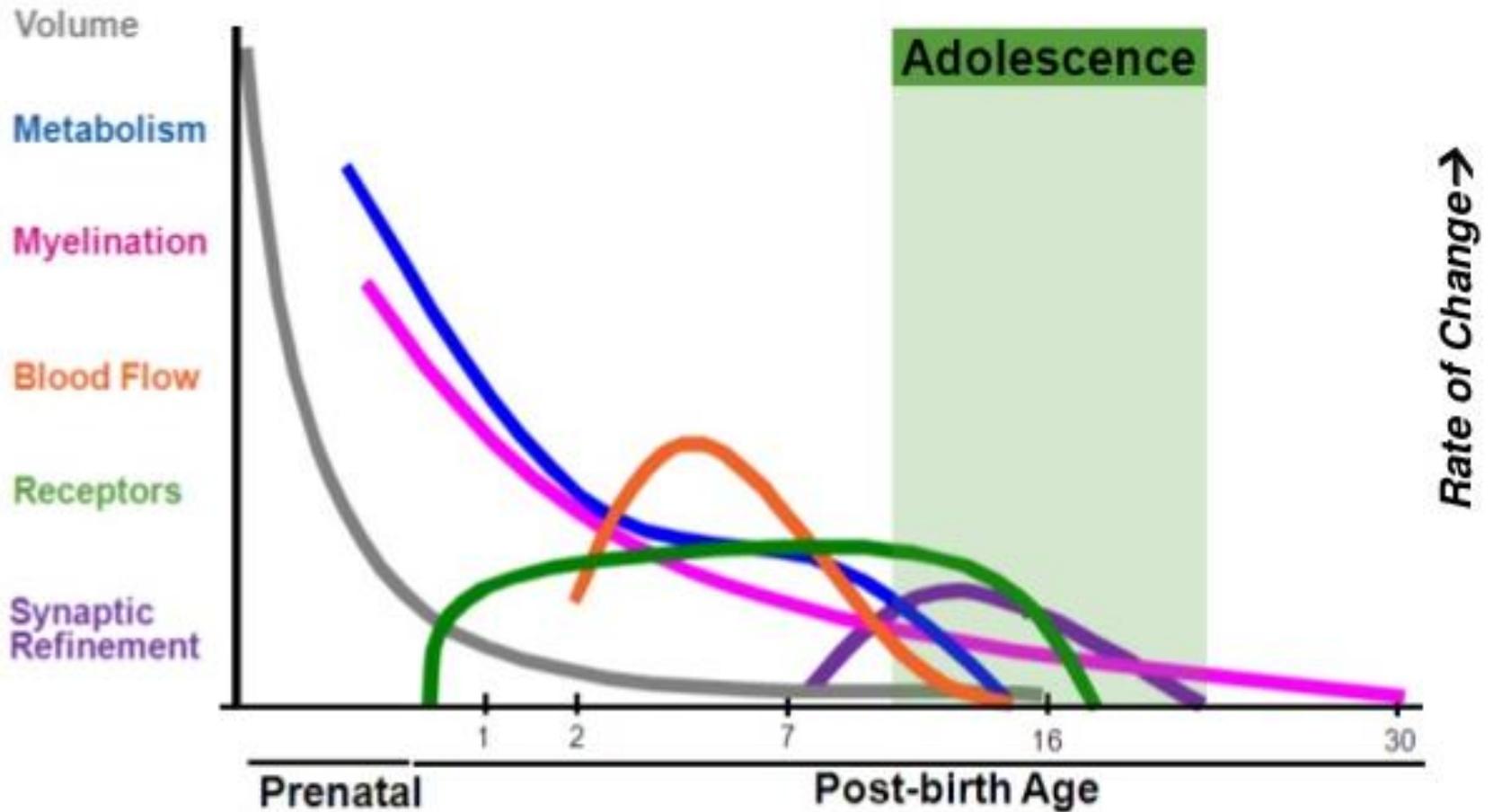
Earlier development of the back of the brain and later development of the front of the brain ...

- Preference for physical activity
- Less than optimal planning and judgment
- More risky, impulsive behaviours
- Minimal consideration of negative consequences

Bullet Proof Mentality



# Brain Development



Source: Tapert & Schweinsburg, 2005

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## §.17: If found not committing offence

- Record the finding
- May refer to CWC if needs care
- No appeal
  - If the child was above 16 years and charged of heinous offence, appeal against acquittal may be made by **any aggrieved party**



# If committed

- **18. (1) a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence**
- then, notwithstanding anything contrary contained in any other law for the time being in force,
- and based on
  - the nature of offence,
  - specific need for supervision or intervention,
  - circumstances as brought out in the social investigation report and
  - past conduct of the child



# Orders by JJB

- (a) go home after advice or admonition;
- (b) participate in group counselling and similar activities;
- (c) perform community service;
- (d) child / parents / guardian to pay fine
- (e) released on probation of good conduct and placed under the care of any parent, guardian or fit person (max 3 yrs)
- (f) released on probation of good conduct and placed under the care and supervision of any fit facility (max 3 yrs)
- (g) sent to a special home (max 3 yrs)
  - In special circumstances send such child to place of safety



# In Addition

- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- (v) undergo a de-addiction programme.



# Group counselling and similar activities

- Group?
- Similar activities?
- When to choose?



# Community Service

- What kind of work may be done?
- When to choose?
- How to supervise?



# Fine

- Parent / Guardian / Child
- When?
- How much?
- What in case of default?



# Exercise Time



# Situation 1 – Appropriate Order?

- A, aged 15 years, has been found to have stolen scrap iron worth Rs.2500/- from the house of Ms. X and sold it in the black market for Rs.200. A used the money to see the movie “Bhutnath” in the nearby multiplex with friends.
- Will your answer be different, if A, was 17 years old and he snatched the above money for the same purpose pushing Ms. X. She fell and suffered a compression fracture in her spine making her bed ridden for three months?



## Situation 2 – Appropriate Order?

- Y, aged 17 years old and Z and M, both 22 years olds are found to have murdered X. It has been found that while Z and M held X down, Y repeatedly stabbed X till he died. It has also been found that Y, Z and M belonged to the same village. Y had come to Delhi six months ago in search of job and was staying with Z and M when murder took place at their home.
- Will your answer be different if Y was 15 ½ years old?



# Additional Information – Situ 1

- A is addicted to drugs
- He has been stealing small items in the past but has been caught for the first time
- His family is not traceable – he ran away from home nine years ago and now lives on the street
- He is known to beat up younger children on the street and molest them sexually.



## Additional Information – Situ 2

- Y used to study in class x when her father died a year ago. She had to leave her studies and become the bread earner.
- All her teachers and neighbours held Y in high esteem.
- Z and M decided to kill X as he had raped Z earlier but they had not filed the FIR for fear of social stigma but this time when he attempted to sexually molest Y, they decided to deal with the matter themselves.



# Decision to Transfer to be tried as Adult

- Child of 16-18 years old
- Alleged – committed a heinous offence
- Preliminary assessment – within 3 months
  - his mental and physical capacity to commit such offence,
  - ability to understand the consequences of the offence and
  - the circumstances in which he allegedly committed the offence
- may take the assistance of experienced psychologists or psycho-social workers or other experts



# Orders If tried as adult

- S.19(1)(i) pass **appropriate orders** after trial subject to the provisions of this section and section 21,
  - **considering the special needs of the child,**
  - the tenets of fair trial and
  - maintaining a child friendly atmosphere;
- final order shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker



19 (3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety

- till he attains the age of twenty-one years and
- thereafter, the person shall be transferred to a jail:

- **20. (1)** When the child in conflict with the law attains the age of twenty-one years **and is yet to complete the term of stay,**
- evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society
  - Consider annual progress records
  - evaluation of relevant experts



## S.20

- (2) After the completion of the procedure specified under sub-section (1), the Children's Court may—
- (i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;
- (ii) decide that the child shall complete the remainder of his term in a jail:
- Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.



# S.21 Orders that cannot be passed

- Death Penalty
- Life imprisonment without the possibility of release