

NCPCR guidelines on preliminary assessment

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In news– The National Commission for Protection of Child Rights (NCPCR) has come up with draft guidelines on the preliminary assessment of whether certain minors are to be tried under law as adults in particular cases, under the Juvenile Justice (Care and Protection of Children) Act.

What is preliminary assessment as per the JJ Act?

- **Earlier, all children under the age of 18 were considered minors by the law, but through an amendment in 2015, a provision was added to the JJ Act for trying a child in conflict with the law as an adult.**
- **Under this, a child in the age group of 16-18 years could be tried as an adult in case of heinous offences.**
- Section 15 (1) of the Act states that the **Juvenile Justice Board shall conduct a preliminary assessment** to determine whether to try such a child as an adult or a minor.
- **The Act directs that the Board shall consider the mental and physical capacity of the child for committing the alleged offence,** the ability to understand the consequences of the offence, and the circumstances in which the offence was committed.
- It states that the Board can take the assistance of experienced psychologists or psychosocial workers or other experts.
- The Act also gives a disclaimer that **the assessment is not a trial, but is only to assess the capacity of the child to commit and understand the consequences of the alleged offence.**
- **After the assessment, the Board can pass an order saying there is a need to try the said child as an adult and**

transfer the case to a children's court with the relevant jurisdiction.

- If tried as a minor, the child could be sent to a special home for a maximum of three years.
- If tried as an adult, the child can be sentenced to a jail term, except being sentenced to death or life imprisonment without the possibility of release.

About the guidelines-

- The NCPCR has framed guidelines which describe the key procedures to conduct the preliminary assessment.
- It said that while the course of assessment may differ from child to child, the guidelines are meant to frame essential components and the basic mechanisms to address any ambiguity.
- **The draft relying on already existing provisions in the Act says that the preliminary assessment has to determine four aspects:**
 1. **Physical capacity of the child:** To determine the child's 'locomotor' abilities and capacities, particularly with regard to gross motor functions such as walking, running, lifting, throwing...such abilities as would be required to engage in most antisocial activities.
 2. **Mental capacity:** To determine the child's ability to make social decisions and judgments. It also directs assessments pertaining to mental health disorders, substance abuse, and life skills deficits.
 3. **Circumstances in which the offence was allegedly committed:** Psychosocial vulnerabilities of the child. This is to include life events, any trauma, abuse, and mental health problems, stating that the offence behaviour is a cumulative consequence of a lot of other circumstances.

4. **Ability to understand the consequences of the alleged offence:** To determine the child's knowledge or understanding of the alleged offence's social, interpersonal and legal consequences. These include what others will say or perceive him, how it might affect his personal relationships and the knowledge of relevant laws, respectively.
- It also states that the experts must be given an optimal opportunity to interact with the child to build a rapport. Experts can be from the field of child psychology and psychiatry.
 - It also states they must undergo regular training. Additionally, a copy of the assessment must be given to the child and a legal aid counsel must be present during the assessment. it must be within three months of the child being produced before the Board.
 - **Other reports that the Board is to rely on include the Social Investigation Report, Social Background Report and Individual Care Plan,** statements of witnesses and interaction with parents, guardians, school staff, peer groups and neighbours.

Further reading:
<https://journalsofindia.com/amendments-to-juvenile-justice-act/>