



# **JUVENILE JUSTICE ACT 2015**

**A HANDBOOK FOR FIELD ADMINISTRATORS**

# JUVENILE JUSTICE ACT 2015

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A HANDBOOK FOR FIELD ADMINISTRATORS



NATIONAL GENDER CENTRE

LAL BAHADUR SHASTRI NATIONAL ACADEMY OF ADMINISTRATION

Mussoorie 248 179 | Uttarakhand | INDIA



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<sup>1</sup>HAQ: Centre for Child Rights, New Delhi

## Message



The Constitution of India guides and governs us to create an enabling environment for holistic development of our children. India as a nation is committed to abide by the international conventions that have been framed to protect the rights of children.

It is my pleasure to share that the National Gender Centre (NGC), Lal Bahadur Shastri National Academy of Administration (LBSNAA), in collaboration with UNICEF is bringing out a handbook for administrators who play a critical role in the implementation of the Juvenile Justice Act, 2015. This handbook will be a ready reckoner for the field level officers to explain and elaborate upon different issues centering on child rights, mechanisms to deal with such issues, best practices and frequently asked questions.

National Gender Centre is committed towards creating a better India for and with children by recognizing the potential and power of young people as drivers of change. Our endeavour is to continue this work so that it reaches each and every official/department that is working towards the upliftment of children in India and bring about a transformational shift.

A handwritten signature in black ink, reading 'Upma Chawdhry'.

Upma Chawdhry  
Director, LBSNAA, &  
Chairperson, NGC  
Mussoorie.

## Message



It gives me great pleasure to provide the foreword for this very important publication, “Handbook on Juvenile Justice (Care and Protection of Children) Act, 2015 (JJA) for District Administrators”.

The Handbook is intended for district administration, especially the District Magistrates/Collectors to have access to a one-stop guide on their responsibilities and accountabilities as per the Statute. The JJA brought into effect in 2015, has placed a heightened importance on the role of the district administration in implementation, monitoring and review of child protection services in the districts.

By collating the information relevant for the district administrators, highlighting specific actions required and providing case studies to illustrate practice, the Handbook seeks to be a working document which can also be reviewed and updated periodically based on the experience of the implementation of the JJA.

I am especially pleased to note the emphasis placed on convergent working and the need to have a holistic view on child protection by also discussing other relevant legislations and policies that seek to protect children.

I would like to congratulate the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie and the leadership of Ms. Aswathy S, Joint Director, LBSNAA and Director, National Gender Centre in conceiving and giving action to this idea. My commendations to the HAQ Centre for Child Rights, New Delhi for their technical support and to all those who contributed with their suggestions and recommendations.

This is only one step in the effort to support and enhance the role of district administration for protecting children. I am looking forward to a wider dissemination of this Handbook and feedback on its efficacy in the coming months.

Dr. Yasmin Ali Haque  
Representative,  
UNICEF India Country Office

## Acknowledgement



The Lal Bahadur Shastri National Academy of Administration (LBSNAA) is a premier institute of the country, entrusted with the task of training senior members of the Indian Civil Services. The National Gender Centre (NGC) was established in 1995, under the aegis of the Academy, with the foremost aim of mainstreaming gender and child rights in policy, programme formulation and implementation in Government. Working towards this end, the Centre, since inception has been actively involved in designing and conducting thematic workshops, programmes and trainings in the field of rights of women and children. It is to further this aim that NGC has been working to promote knowledge sharing on policies and programmes related to children in India.

NGC had developed modules on child rights for the sensitization and capacity building of young administrators with the support of UNICEF in 2014. Since then, there have been significant additions made in the Acts related to children. The passing of new Juvenile Justice Act, 2015, by the central government deserves special mention in this regard.

Therefore, there was a felt need to bring out a handbook that would incorporate the additions and changes, especially with reference to the new Juvenile Justice Act, 2015, and would also serve as a reference for administrators with regard to existing instruments, standards and mechanisms for the protection of child rights in India.

We would like to thank Ms. Upma Chawdhry, Director, LBSNAA, Ms. Arti Ahuja, Joint Director, LBSNAA, Mr. Manoj Ahuja, Joint Director, LBSNAA and the team at HAQ; Centre for Child Rights, New Delhi, especially Ms. Enakshi Ganguly who prepared the draft handbook for us. The draft was also shared with eminent experts in the field eliciting their comments which were incorporated into the handbook. NGC with the support of UNICEF, endeavours to continue this work for the children of India in order to provide a conducive and supporting environment for the leaders of tomorrow.

A handwritten signature in black ink, appearing to read 'Aswathy S.'.

Aswathy S., IAS  
Deputy Director, LBSNAA &  
Executive Director,  
National Gender Centre, LBSNAA

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## LIST OF ABBREVIATIONS

CICL	Child in Conflict with the Law
CCI	Child Care Institution
CJM	Chief Judicial Magistrate
CMM	Chief Metropolitan Magistrate
CNCP	Child in Need of Care and Protection
CSO	Civil Society Organisation
Cr P C	Code of Criminal Procedure
CNCP	Child in Need of Care and Protection
CWC	Child Welfare Committee
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
DM	District Magistrate
DWCD	Department of Women and Child Development
HCC-JJ	High Court Committee on Juvenile Justice
HIV	Human Immunodeficiency Virus
ICP	Individual Care Plan
ICPS	Integrated Child Protection Scheme*
IPC	Indian Penal Code
ITPA	Immoral Traffic (Prevention) Act, 1956
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015
JJB	Juvenile Justice Board
JJMR	Juvenile Justice (Care and Protection of Children) Model Rules, 2016
LPO	Legal cum Probation Officer
LSA	Legal Services Authority
NCPCR	National Commission for Protection of Child Rights
NGO	Non-governmental organization
OH	Observation Home

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\*NOTE: ICPS has been subsumed in 'Child Protection Services' as per budgetary allocation since 2018-19.

PCMA	Prohibition of Child Marriage Act, 2006
PO	Probation Officer
POCSO	Protection of Children from Sexual Offences Act, 2012
NPAC	National Plan of Action for Children
RTE	Right of Children to Free and Compulsory Education Act, 2009
SARA	State Adoption Resource Agency
SCPCR	State Commission for Protection of Child Rights
SCPS	State Child Protection Society
SH	Special Home
SIR	Social Investigation Report
SJPU	Special Juvenile Police Unit
SLSA	State Legal Services Authority
UNCRC	United Nations Convention on the Rights of the Child

## CHILD RIGHTS AND JUVENILE JUSTICE IN INDIA

### 1.1 Context

India is home to 472 million children in the age group of 0-18 years, constituting almost 39 per cent of the nation's population.<sup>2</sup> India's future vests with these citizens of today and adults of tomorrow. Unfortunately, India is also home to many child labourers, homeless children, migrant children, runaways, orphans or abandoned children and victims of sexual and other forms of child abuse. According to the National Crime Records bureau, there has been an over 13 per cent increase in crimes against children between 2015 and 2016 as against a 5.3 per cent increase between 2014 and 2015. Of course, there are many more that go unregistered and unrecorded.<sup>3</sup>

State shall direct its policy towards ensuring "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Constitution of India; Article 39

Just as in other countries of the world, in India too, children commit offences. Crimes committed by children constituted 0.7 per cent of all crimes in 2016, which was the same in 2015. IPC crimes committed by children has remained about 1 per cent of the total IPC crimes over the years.<sup>4</sup> However, children who come in conflict with the law are a category that need attention and intervention so that they can be moved away from the world of crime and offence and placed back in society as responsible citizens.

The correlation between children who come in conflict with the law, and those in need of care and protection, is a strong one. A large number of children (42 per cent) apprehended, belonged to poor families whose annual income was up to only INR 25,000. Almost 46 per cent of the total children apprehended were either illiterate or had been only to primary school. Hence, addressing the needs of vulnerable children is critical to the prevention of crime by children.

Preventing crime by children and protecting them from becoming victims of crime, are both central to protecting children's rights. It is the recognition of this important fact that forms the bedrock of juvenile justice system in India, which has always addressed two categories of children – Children in Conflict with the Law (CICL) and Children in Need of Care and Protection (CNCP).

Since children live everywhere - in cities, towns and villages and as part of families and communities, the challenge in protecting them is to provide protective mechanisms and systems wherever they are. This calls for a well-defined, regulated and administered system of governance at different levels so that every last child can be reached.

Unlike an adult, a child cannot access the 'system' on their own. Hence it is imperative that the 'system'

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<sup>2</sup>Census 2011

<sup>3</sup>Crime in India. National Crime Records Bureau 2014 and 2015

<sup>4</sup>Ibid. Chapter 10

reaches the child. This responsibility falls on the governance system at different levels, particularly the district administration.

## 1.2 Understanding Child Protection

In its simplest form, child protection addresses every child's right to not to be subjected to harm. It thus complements other provisions which ensure that children receive all that they need in order to survive, develop and thrive. Protection from perceived or real risk, danger or damage relates not only to a person's physical condition, but to all the nuances of life and status in the diversity of physical, social, material, civil, cultural, psychological and political settings, and usually to a complex mix of them.

The National Policy for Children 2013 identifies the right to protection as a key priority and emphasizes that a safe, secure, and protective environment is a precondition for the realization of all rights of children. The Policy also states that a multi-sector, sustainable and inclusive approach is essential to the development and protection of children.

The Integrated Child Protection Scheme (ICPS) of the Ministry of Women and Child Development (MWCD), launched in 2009, aims at establishing and strengthening a comprehensive child protection system at the state, district, and community levels, and provides a range of child protection services to children. ICPS intends to build a protective environment for all children, especially those vulnerable to violence, abuse, and exploitation. Through partnerships between government and civil society, the scheme hopes to create a safety net that prevents and responds to vulnerabilities of children. This is the main vehicle for implementation of all laws for the protection of children, particularly the Juvenile Justice (Care and Protection of Children) Act 2015.

Child protection has been defined in the guidelines of the ICPS as:

*"Protecting children from or against any perceived or real danger or risk to their life, their personhood and childhood; reducing vulnerability to any kind of harm and ensuring that no child falls out of the social safety net; and in case children fall out of the safety net, then ensuring that they receive necessary care, protection, and support so as to bring them back into the safety net".*

It refers to protecting children against social, psychological and emotional insecurity by preventing all forms of discrimination, deprivation, neglect, violence, exploitation and abuse against children, including commercial sexual exploitation, trafficking, child labour and harmful home-based violence arising from superstitions, such as child sacrifices or child marriages. The government by providing protection measures can facilitate healthy physical and emotional growth of children. While protection is a right of every child, some children are more marginalised than others due to their circumstances.

The key to prevention and prohibition of violence

- All children have the right to be protected wherever they are — at home, in school, on the streets, and at all times — in times of peace or conflict or calamity.
- Their right to protection is as intrinsic to their well being, as is the right to survival, development and participation.
- Children deserve to live in an environment where good governance and the full enjoyment of human rights are mutually reinforcing.

## CHILDREN IN INDIA REMAIN UNPROTECTED

The National Crime Records Bureau Report (Crime in India 2015 and 2016, <http://ncrb.nic.in>)

- An increase of 13.6 per cent increase in crimes against children between 2015 and 2016 as against 5.3 per cent in crimes against children between 2014 and 2015.
- A total of 10,6958 cases registered in 2016 as compared to 94,172 cases registered in 2015.
- In percentage terms, major crime heads under 'Crime Against Children' during 2016 were kidnapping & abduction (52.3 per cent ) and cases under the Protection of Children from Sexual Offences Act, 2012 (34.4 per cent) including child rape.
- There were 37,269 cases of sexual offences registered during 2016 as against 35,319 cases registered during 2015. These include cases registered under the Protection of Children against Sexual Offences (POCSO) Act, 2012 and the relevant IPC sections.
- City wise comparison revealed that the maximum cases of crime against children were reported in Delhi (7,392 cases), Mumbai (3,400 cases) and Bengaluru (1,333 cases), accounting for 39.6%, 16.9% and 7.0%, of total such cases respectively.
- In percentage terms, major crime heads under 'Crime Against Children' during 2016 were kidnapping & abduction (67.7%) followed by cases under the Protection of Children from Sexual Offences Act (24.2%) IPC section 376 (rape).
- The total conviction rate under crime against children stood at 30.7 per cent in 2016 as against 35.6 per cent in 2015.
- 58.7 per cent of the total 15,379 persons trafficked during 2016, were children. A total of 23,117 persons were rescued during the year in the country, out of which children constituted 61.3 per cent.
- A total of 1,11,569 children (41,175 males and 70,394 females) were reported missing during 2016, in which maximum children missing were reported from West Bengal (15.1 per cent). A total of 55,944 children were traced till the end of the year in the country.

The Rapid Survey on Children, 2013-2014

- Birth was registered for 71.9 per cent children (below 5 years) but a mere 37.1 per cent had birth certificates.
- 6.4 per cent of adolescent girls in the age group 10-19 years were married.

Census 2011

- There are about 33 million children in the age group of 5-18 years engaged in the labour force; forming 9 per cent of the child population.

Child protection work requires swift and sensitive handling by trained personnel and the availability of well-equipped structures and systems. This means adequate budget allocations. Unfortunately, analysis of the budget for children conducted by HAQ: Centre for Child Rights, for the last 17 years shows that children had never received more than five percent of the total Union Budget allocation, and within that the least allocation is on child protection sector.<sup>5</sup>

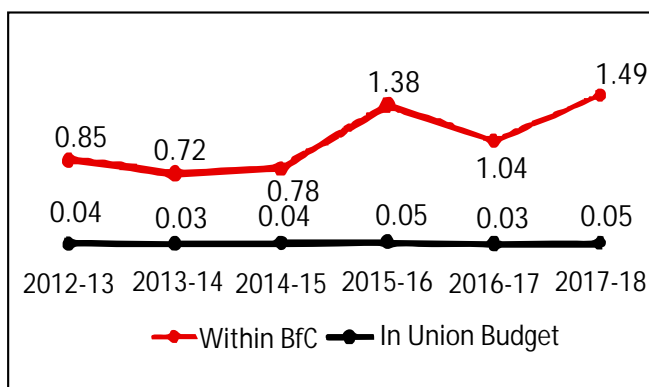


FIGURE 1: SHARE OF CHILD PROTECTION (BE) IN UNION BUDGET AND WITHIN BfC (PER CENT)

This gap was recognised by the Government of India; first during the Eleventh Five Year Plan process, and subsequently in the National Policy for Children 2013 and the National Plan of Action for Children 2016, which also calls for putting in place the requisite infrastructure.

#### RECOGNITION OF THE NEED TO INVEST IN CHILD PROTECTION

The Government of India's recognition of the need for investing in child protection was first articulated in the document 'India- Building a Protective Environment for Children' published by the Ministry of the Women and Child Development (22 July 2006). It categorically said- "With more and more children falling out of the protective net, the financial investment on child protection will have to be increased". This demand was also made to the Planning Commission by the Ministry in the run up to the Eleventh Plan and it suggested a separate scheme for child protection.

The protection of children and the need for investing in it was recognized specifically in the Eleventh Plan for the first time. It categorically stated that 'Provision for Child Protection' would be the key intervention in the Eleventh Plan. Recognising that all the existing child protection measures were ameliorative and palliative rather than also preventive, the Plan categorically stated that the intervention for Child Protection was designed to take both a preventive and a protective approach. This led to the design and launch of the Integrated Child Protection Scheme (ICPS).

### 1.3 Commitments to Child Protection

The Indian constitution accords rights to children as citizens of the country, and in keeping with their special status, the State has enacted several special laws. Moreover, India has ratified a range of international human rights instruments that have a bearing on its national legal provisions, programmes and policies. Government of India is signatory to several international instruments – UN Conventions and

<sup>5</sup>HAQ: Centre for Child Rights: Budget for Children reports over the years. See reports on <http://haqrc.org/our-work/governance/budget-for-children/>



The rights of the children are categorized under four Key Priority Areas in the National Policy for Children 2013. In alignment with the NPC 2013, the NPAC 2016 has the following objectives:

*Key Priority Areas of NPC 2013*

*Corresponding Objectives of NPAC 2016*

- |  |   |
|--|---|
| 1. <i>Survival, Health and Nutrition</i>                             | I. Ensure equitable access to comprehensive and essential preventive, promotive, curative and rehabilitative health care of the highest standard, for all children before, during and after birth, and throughout the period of their growth and development.   |
| 2. <i>Education and Development</i><br>(Including Skill Development) | II. Secure the right of every child to learning, knowledge, education, and development opportunity, with due regard for special needs, through access, provision and promotion of required environment, information, infrastructure, services and support for the development of the child's fullest potential. |
| 3. <i>Protection</i>   | III. Create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces.  |
| 4. <i>Participation</i>  | IV. Enable children to be actively involved in their own development and in all matters concerning and affecting them.  |

FIGURE 2: KEY PRIORITY AREAS AS IDENTIFIED IN NPC, 2013 AND OBJECTIVES OF NPAC 2016

Covenants.<sup>6</sup> While all human rights instruments are applicable to children and can be drawn upon whenever relevant, others have specific Sections or Articles dedicated to children.

The Convention on the Rights of the Child (UNCRC), adopted in 1989, is dedicated solely to children, thereby making it the most powerful and comprehensive instrument available for them. It was ratified by India in 1992. This Convention looks upon children not merely as extensions or dependents of adults, but as human beings and rights-holders who can play an active part in the enjoyment of their rights. Owing to their particularly vulnerable position in society, they need protection.

## 1.4 Defining a Child

The UNCRC defines a child as a person up to the age of 18 years. In India, the issue is more complex, with different laws at different times recognising different defining ages. What is important is that both the National Policy for Children 2013, the Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act); the Protection of Children from Sexual Offences Act, 2012, (POCSO); The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 - all define children as persons up to 18 years. The Child Marriage Prohibition Act 2006, (CMPA) however, has the cut off age of 18 years for girls and 21 for boys.

<sup>6</sup> Such as UN Convention on Economic Cultural and Social Rights; UN Convention on Civil and Political Rights; UN convention on Elimination of Discrimination Against Women; UN Convention on the Rights of Persons with Disabilities

NOTE: Principles of international law apply within a country by a process of reception into 'municipal law' or the national or domestic legal system. In some countries the ratification or adoption of an international treaty becomes automatically binding on the domestic courts. Most ratification of international legal instruments by India are harmonious in spirit with national commitments. Judicial decisions of the Supreme Court of India support the view that international treaties create legal rights and obligations in domestic law only if they have been incorporated in it. In other words an international legal instrument does not automatically become applicable in India merely because it has been ratified.

TABLE 1 DEFINITION OF CHILD

S.No.	LAW/ POLICY/LEGAL PROVISION	AGE
NATIONAL		
1	Indian Majority Act	18 years
2	Juvenile Justice (Care and Protection) Act (child)	Upto 18 years
3	Prohibition of Child Marriage Act (child/ minor)	18 for girls and 21 for boys
4	Right to Free and Compulsory Education Act (child)	Upto 14 years
5	The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 (child)	14 years (Prohibition) 18 years (regulation)
6	Protection of Children from Sexual Offences Act (child)	Upto 18 years
7	IPC- Criminal Law Amendment	Marital Rape not an offence if the wife is 15 years and above
ADOLESCENTS		
1	The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 (only law with a legal definition of adolescents)	14-18 years (regulation of labour)
2	Under ICDS Programme (Adolescent Girls)	11-18 years
3	RCH programme (Adolescents)	10-19 years
4	Youth Policy (Adolescents)	13-19 years
INTERNATIONAL		
1	UN Convention on the Rights of the Child (child)	Upto 18 years
2	Adolescents (World Health Organisation and others)	10-19 years

## 1.5 Juvenile Justice: Concept and Law in India

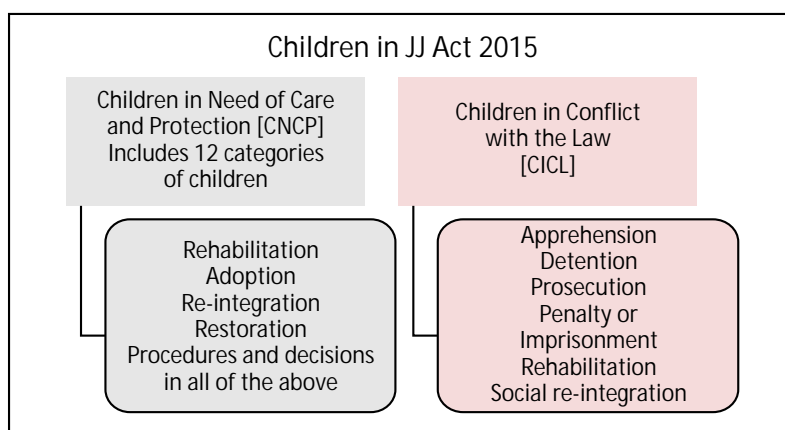


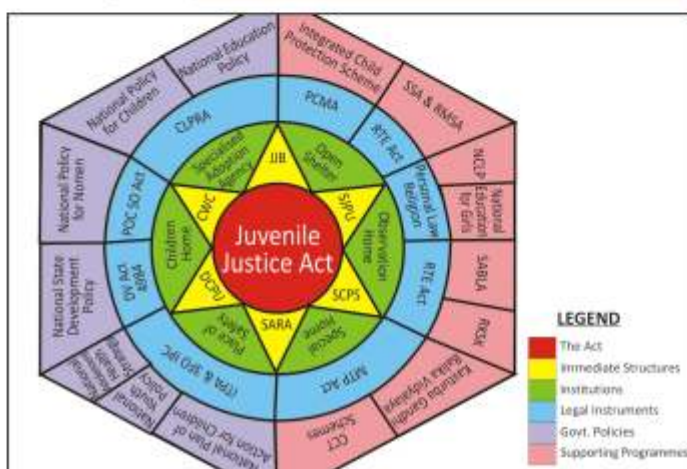
FIGURE 3: CHILDREN UNDER THE JJ ACT

The most important and comprehensive children-related law in India is the Juvenile Justice (Care and Protection of Children) Act or the JJ Act because it deals with both CICL as well children who need care and protection.

Hence, its implementation intersects with several other laws: relating to child labour, child marriage, child sexual abuse etc. as well as adoption. In fact, the systems and structures, most of which are at the district level, are provided for within the juvenile justice law in India.

It would not be amiss to say that the JJ Act forms the spine of child protection mechanisms in India. Since this handbook is designed for all district level functionaries who are responsible for protecting children at the district levels, it draws upon and makes the intersectional connections between the JJ Act and the other laws that together form the web of child protection in India.

The implementation of the JJ Act intersects with several other laws- dealing with child labour, child marriage, child sexual abuse etc. as well as adoption. In fact, the systems and structures, most of which are at the district level, are provided for within the juvenile justice law in India.



**FIGURE 4: LINKAGES AND CONVERGENCES IN JUVENILE JUSTICE SYSTEM**

## CONSTITUTION OF INDIA

### Constitutional Guarantees that are meant specifically for children include:

- Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A)
- Right to be protected from any hazardous employment till the age of 14 years (Article 24)
- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e))
- Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f))
- Right to early childhood care and education to all children until they complete the age of six years (Article 45)

### In addition, children also have rights as equal citizens of India, just as any other adult male or female:

- Right to equality (Article 14)
- Right against discrimination (Article 15)
- Right to personal liberty and due process of law (Article 21)
- Right to being protected from being trafficked and forced into bonded labour (Article 23)
- Right of minorities for protection of their interests (Article 29)

- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46)
- Right to nutrition and standard of living and improved public health (Article 47)

## 1.6 Understanding Juvenile Justice - Brief Background and Philosophy

The term juvenile justice emanates from the word juvenis, Latin for “young” and it thus refers to a justice system for the young. Historically, juvenile justice systems evolved through the societal belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the traditional processes of criminal law.

### Three Models of Juvenile Justice

- Under the Welfare or Parens Patriae Model, the child’s well-being and protection takes priority over due process of law.
- The due process model emphasizes applying the law over treating the juvenile, stressing on when and how the law is used if a juvenile is involved. Children are not viewed as property of parents or the state, but as individuals to be tried and treated in accordance with the law and the principles of natural justice and fair hearing.
- The Participatory Model emphasizes active participation by community agencies and citizens in an effort to contain the harmful behaviour of young people. It thus uses alternative dispute resolution techniques, such as mediation, conciliation, and arbitration, in criminal justice systems, instead of, or before, going to court.

In the Juvenile Justice Act, 1986, the terms used for the two categories of children addressed in law were Delinquent juvenile and Neglected Juvenile, reflecting a clear understanding of the term ‘juvenile’ as ‘child’. However, in 2000, even as a shift was made to a more rights-based approach, the connotation made a distinction between the ‘juvenile’ and the ‘child’, the former being associated with children who offend, requiring reform more than care and protection. In 2000 the term Juvenile in Conflict with the Law was used to describe “a child who is alleged to have committed an offence (Juvenile Justice (Care and Protection) Act 2000 Section 2 (l)).”<sup>7</sup>

One of the principal roles of the Juvenile Justice System has been to provide specialized and preventive treatment services for children and young persons as a means of ‘secondary prevention, rehabilitation and improved socialization’.<sup>8</sup>

Most often, juvenile justice is seen simply as administering justice to minors who are alleged to have broken the law, and about reforming a criminal justice system designed for adults. However, this limited approach ignores the obvious linkages of the social justice framework to poverty, discrimination, abuse of power, and marginalization.

India has always adopted a welfarist model of juvenile justice that has both a preventive and curative aspect to it. That is why it deals with both children in conflict with the law as well children who are in need of care and protection and hence may be vulnerable to offending because of their circumstances.

<sup>7</sup> This has been changed to ‘children in conflict with law’ in 2015 version of the JJ Act.

<sup>8</sup> Ved Kumari, The Juvenile Justice in India. From Welfare to Rights. OUP. 2004 p.1

Although the issue of juvenile justice gained prominence recently, the history of juvenile justice legislations does not begin with the controversy that arose post the unfortunate rape and murder of a young woman (who came to be known as Nirbhaya) in 2012. In fact, India has had a long history of special legislations for children, which culminated in the present day Juvenile Justice system. Annexure A, Table no-21, page 144.

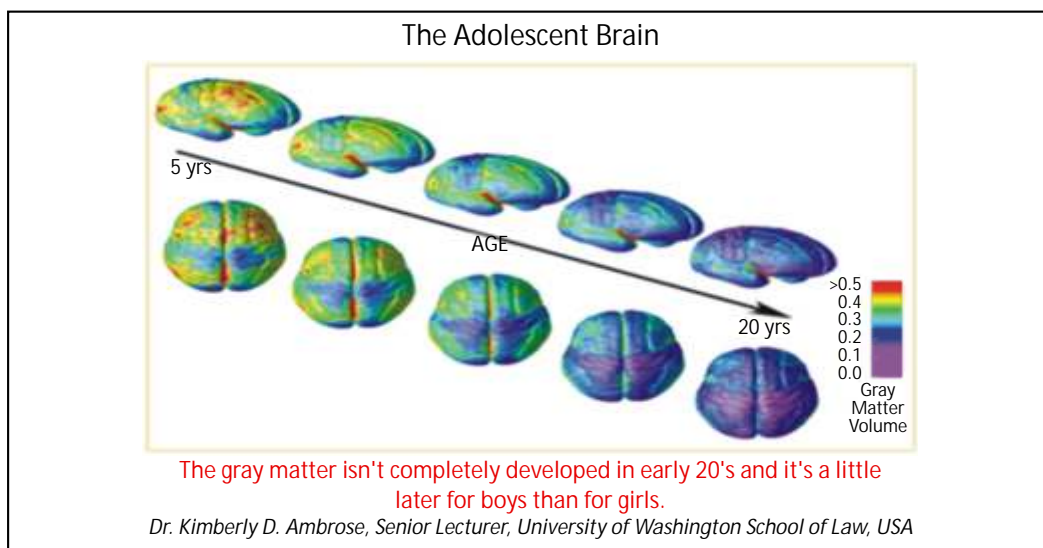


FIGURE 5: THE ADOLESCENT BRAIN

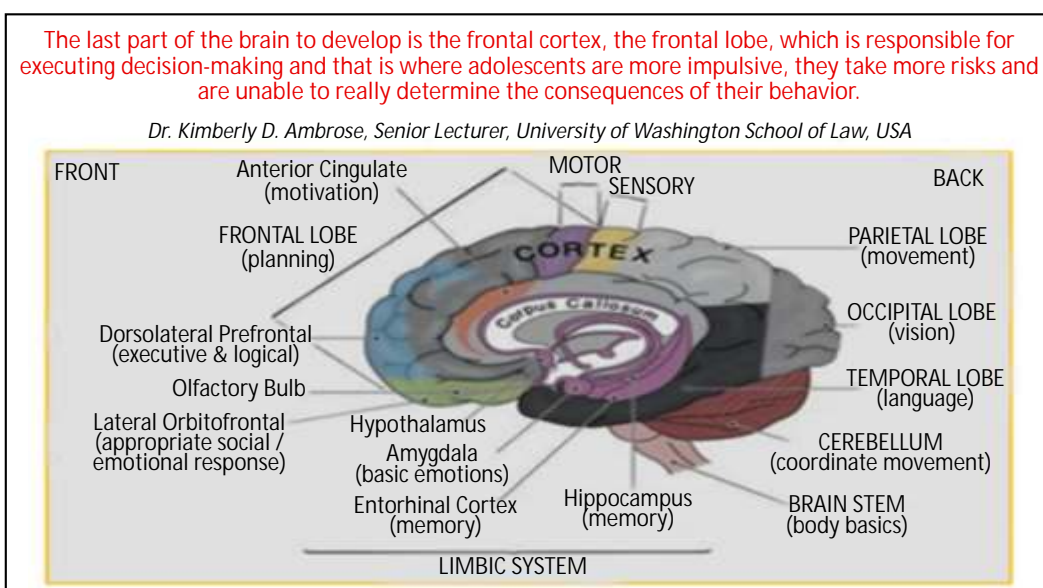


FIGURE 6: THE ADOLESCENT BRAIN (LIMBIC SYSTEM)



## 1.7 Philosophical foundation and Principles of Juvenile Justice

Across the world there is a separate legal system for dealing with children, recognising that they are still adults in the making. "Growth and development are an ongoing process. Adolescents are more prone to peer influence and less aware of risks and benefits when they take decisions. Hence, even if their actions might be the same as adults', they do not come from the same process of reasoning, or at least the variables which influence this process are different".<sup>9</sup> It is this recognition that has been reflected in the setting up of Juvenile Justice system in India and in the world.

The UNCRC and other international standards on the administration of Juvenile Justice<sup>10</sup> require nations to establish a child-centred, specialised justice system, whose overarching aim is children's social reintegration, and which should guarantee that their rights are respected. When discussing juveniles in conflict with law, international agreements emphasize the importance of preventing juveniles from coming into conflict with the law in the first place as well as an expectation of complete rehabilitation by the time they leave the juvenile justice system. Alternative measures such as 'Diversion' and 'Restorative Justice' form the bedrock of implementation of juvenile justice so that state parties act in the best interest of the child as well as in the long-term and short-term interest of society.

Internationally it has been accepted that Juvenile Justice must be based on:

- A rights based approach
- Best interest of the child
- Non-discrimination
- Right of the child to be heard

Over the years there has been a clear shift in approach from one based on welfare to one based on rights in addressing the needs of children. Children's rights to protection from violence, abuse and exploitation are clearly laid out in international law, the legal standards of regional bodies, and in the constitutional and legal framework of most countries in the world. It reflects a basic human consensus that a world fit for children is one in which all children are protected, at home or outside of it.

The Rights approach is an acceptance of the legal and moral obligations of the state and its institutions to fulfil its duties and responsibilities towards children in the "Best Interests of the Child". This must govern the approach to be followed in all actions concerning children.

Recognising the need for basic principles that need to guide the administration of juvenile justice in India, the JJ Act in Section 3. lays down that *the Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the certain fundamental principles* which are explained in the Table no-2, next page.

They have also been explained in detail in the context of how they apply to CICA in Chapter 3.

<sup>9</sup> Arlene Manoharan and Swagata Raha, The Juvenile Justice System in India and Children who commit serious offences – Reflection on the Way Forward. Centre for Child and the Law, National Law School University of India, Bangalore. Paper Contribution for the International Colloquium on Juvenile Justice, 16-18 March, 2013, New Delhi

<sup>10</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Rules for the Protection of Juvenile Deprived of their Liberty (1990)

\* Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible Expert Consultation on Prevention of and Responses to Violence Against Children Within The Juvenile Justice System Vienna, 23-24 January 2012

TABLE 2: GENERAL PRINCIPLES TO BE FOLLOWED IN ADMINISTRATION OF JJ ACT, 2015

S.No.	Principle	Explanation
I	Principle of presumption of innocence	Any child shall be presumed to be innocent of any mala fide or criminal intent up to the age of eighteen years.
II	Principle of dignity and worth	All human beings shall be treated with equal dignity and rights.
III	Principle of participation <sup>11</sup>	Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
IV	Principle of best interest <sup>12</sup>	<p>All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.</p> <p>Section 2 (9) - "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.</p>

<sup>11</sup> Right to be heard in administrative and judicial proceedings is also one of the fundamental principles of juvenile jurisprudence, including the Convention on the Rights of the Child, the Beijing Rules, and the General Comment No.10 of the UN CRC Committee. Article 12 (2) of CRC requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

As a concept it entails:

- Freedom of expression
- Conducive environment that ensures freedom of expression in its true sense
- Opportunities to participate in decisions at different levels regarding matters (i) that concern them and (ii) those that they can relate with.
- Age appropriate information that can help them make decisions
- Respect for their views
- Ensuring legal representation when children come in contact with the law
- Making children's right to be heard a 'deliverable' goal
- Putting in place mechanisms by which children's ability to make personal decisions is respected and enforced

<sup>12</sup> A further explanation of this principle can be found in Article 3 of the Convention on the Rights of the Child says that a) Primary consideration to the child's best interests 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'. b) Taking appropriate legislative and administrative measures to ensure well-being of children by providing necessary protection and care. c) Ensuring compliance of institutions, services and facilities responsible for the care or protection of children with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

V	Principle of family responsibility	The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
VI	Principle of safety	All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.
VII	Positive measures	All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children the need for intervention under this Act.
VIII	Principle of non-stigmatising semantics	Adversarial or accusatory words are not to be used in the processes pertaining to a child.
IX	Principle of non-waiver of rights <sup>13</sup>	No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
X	Principle of equality and non-discrimination	There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.
XI	Principle of right to privacy and confidentiality	Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
XII	Principle of institutionalisation as a measure of last resort	A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. Rule 17.1 (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be imposed only

<sup>13</sup> Article 2 of the Convention on the Rights of the Child insists on “appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”. In its General Comment Number 10: Children’s Rights in Juvenile Justice, (United Nations, Geneva, UN Doc CDC/C/GC/10, p2), the UN Committee on the Rights of the Child stated the need for taking “necessary action to ensure that children are treated equally with particular attention to ‘de facto discrimination and disparities’ that affect vulnerable groups of children such as ‘children who are indigenous...children with disabilities and children who are repeatedly in contact with the law (recidivists)’”.

The Beijing Rules too emphasize that all children must be treated equally and that the Standard Minimum Rules listed therein should be “applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.” (Rule 2 (1)).



		<p>after careful consideration and shall be limited to the possible minimum.</p> <p>Rule 17.1(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences unless there is no other appropriate response.</p> <p>Rule 19.1 The placement of a juvenile in an institution shall always be a disposition of the last resort &amp; for the minimum necessary period.</p>
XIII	Principle of repatriation and restoration	Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.
XIV	Principle of fresh start	All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
XV	Principle of diversion	Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.
XVI	Principles of natural justice	Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

## Role of the District Administration in Implementing the JJ Act

The district administration and the district magistrate find mention in the JJ Act under the following:

### Definitions

Section 2 (4) “administrator” means any district official not below the rank of Deputy Secretary to the State, on whom magisterial powers have been conferred;

Section 2 (26) “DCPU” means a Child Protection Unit for a District, established by the State Government under section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district. The DCPU works under the aegis of the District Magistrate (DM)

### Review and Monitoring

Section 16 (3)- The information of such pendency shall also be furnished by the Juvenile Justice Board (JJB) to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.

Section 27 (8) -The DM shall conduct a quarterly review of the functioning of the Child Welfare Committee (CWC).

Section 27 (10)- The DM shall be the grievances redressal authority for the CWC and anyone connected with the child, may file a petition before the DM, who shall consider and pass appropriate orders.

36 (4)- The CWC shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the DM in the manner as may be prescribed, for review of pendency of cases.

36 (5)- After review under sub-section (4), the DM shall direct the CWC to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

Section 110 (xi)- format for information on pendency in the JJB to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and District Magistrate on quarterly basis under sub-section (3) of section 16;

Section 110 (xx) manner in which a quarterly report may be submitted by the CWC to the District Magistrate for review of pendency of cases under sub-section (4) of section 36;

### Appeals

101. (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

The ultimate responsibility of implementing the law at the district level vests with the District Administration under the leadership of the DM/ District Collector (DC). While clear roles and responsibilities for implementation of the JJ Act relating to review, monitoring and grievance redressal are laid down in the JJ Act 2015, other roles are derived from the implementation of other laws related to children, especially CNCP as well as the ICPS.

Since long-term rehabilitation of a child needs convergence of several services through related schemes and programmes, bringing them together in the best interest of the child, is also the responsibility of the district administration.

Hence this handbook, which attempts to delineate the roles and responsibilities of the District Administration in implementing the JJ Act and the related laws.

Chapter 2 explains the JJ Act as it is structured; the entry of a child into the system, and identifies the overall roles and responsibilities of the administrative system at different levels with specific attention paid to the district administration.

Chapter 3 addresses the roles of the district administration vis-a-vis CICA and Chapter 4 with respect to CNCP.

While Chapter 5 addresses the needs and standards of care for children in institutional care, Chapter 6 deals with children in non-institutional care. Chapter 7 lists the laws, policies and schemes that come into play when dealing with some categories of child in need of care and protection.

## JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015

### 2.1 Children covered by the JJ Act

As has been already discussed, the JJ Act 2015 deals with 2 categories of children- those who are in conflict with the law (CICL) and those who need care and protection (CNCP). It also addresses in detail the rights and process for children who are to be put up for adoption (they are also children who need care and protection). The Act lays down processes and structures for each of these categories of children.

This chapter will lay out these processes, detailing out the roles and responsibilities of the various stakeholders.

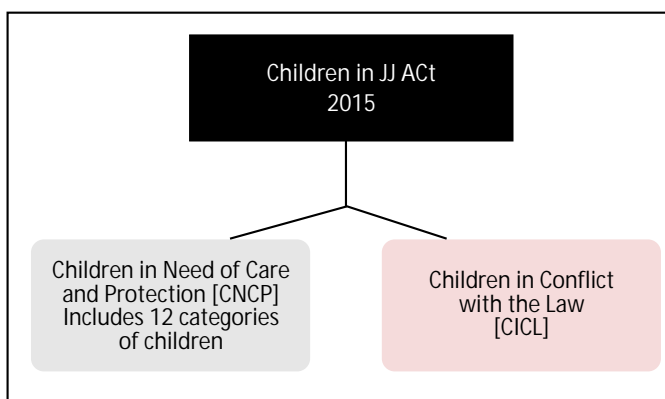


FIGURE 7: CHILDREN COVERED BY JJ ACT

CNCP are defined under Section 2 (14) of the JJ Act which provides a list of children who need special attention and hence fall within the ambit of this act. (Ref. Table 10 in Section 4.2, page-64).

TABLE 3: LEGISLATIONS RELATED TO JJ ACT 2015

S.No.	LEGISLATION
1	The Bonded Labour System (Abolition) Act, 1976
2	The Commission for Protection of Child Rights Rules, 2006
3	The Immoral Traffic (Prevention) Act, 1956
4	The Medical Termination of Pregnancy Act, 1971
5	The Mines Act, 1952

6	The National Food Security Act, 2013
7	The Orphanages and other charitable Homes (Supervision and control) Act 1960
8	The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994
9	The Prohibition of Child Marriage Act 2006
11	The Protection of Children from Sexual Offences Act, 2012
12	The Right of Children to Free and Compulsory Education Act 2009
14	The Juvenile Justice (Care and Protection of Children) Act 2015
15	The Probation of Offenders Act 1958
16	The Women's and Children's Institution (Licensing) Act 1956
18	Young Persons (Harmful Publication) Act, 1956
19	Persons with Disabilities (Equal Protection of Rights and Full participation) Act 1996
20	Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act -1989,

The JJ Act also deals with children who are legally free for adoption and lays out the process to followed for (Section 15 and 38).

The JJ Act also deals with children who are legally free for adoption and provides a platform for adoption of children across all religions (Sections 15 and 38)

TABLE 4: IMPORTANT DEFINITIONS PERTAINING TO ADOPTION

"abandoned child" Section 2 (1)	Child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry.
"adoption" Section 2 (2)	Process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.
"child legally free for adoption" Section 2 (16)	A child declared as such by the Committee after making due inquiry under section 38.

CICL (Section 2 (13)): A child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of offence. These are the also children who have been historically referred to as juvenile delinquents. In fact, over the years the term juvenile has come to be associated with children who offend, although that is not what this term actually means.

## 2.2 Child's Entry into JJ system

A child enters into the Indian juvenile justice system in different ways. While CNCP is brought before the CWC, CICL is brought before the JJB. These bodies decide on how the child must be treated based on the

investigation/ inquiry it conducts. They may decide to place children in institutional care. The nature of the institution will differ according to the category of the child.

However, not all children find themselves in institutional care, although a sizeable proportion may do so. Hence, another way of classifying the children would also be according to where they find themselves - Institutional Care and Non-Institutional Care.



FIGURE 8: ENTRY INTO JJ SYSTEM

### 2.2.1 JJB

The JJBs are bodies to deal with CICL and as per the Act. The State Government has to constitute one or more JJBs for every district for exercising the powers and discharging its functions relating to children in conflict with law under this Act. (Section 4. (1). Each Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years' experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman. They form a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

### 2.2.2 CWC

The CWC is meant to address the needs of CNCP under the Act. The State Government has to, by notification in the Official Gazette, constitute for every district, one or more CWCs for exercising the powers and to discharge the duties conferred on such Committees in relation to children identified as CNCP under this Act. It has to ensure the induction training and sensitisation of all members of the committee within two months from the date of notification (27. (1). Each CWC shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children.

The functioning of the JJB and the CWC and the role of the district administration with respect to these bodies and the children they deal with have been discussed in detail in the next chapters.

As mentioned earlier, besides the Juvenile Justice Act, there are many other laws which directly or indirectly deal with rights of children. They come into effect depending upon the situation of the child coming before the JJ system either as CNCP or as CICL and would require the necessary legal and administrative intervention as prescribed by the law, which would become the responsibility of the district administration and the designated officers and bodies under it.

**List of District level structures/ institutions and Authorities that are relevant for implementation of JJ Act 2015**

1. Child Welfare Committee
2. Juvenile Justice Board
3. Children's Court
4. Court of Sessions
5. District Child Protection Unit
6. District Level Inspection Committee
7. Deputy Superintendent rank officer, who is head of Special Juvenile Police Unit
8. District Superintendent of Police
9. Chief Judicial Magistrate/ Chief Metropolitan Magistrate
10. District Magistrate
11. District Judge
12. District Child Protection Officer
13. Chief Medical Officer
14. Childline of the District
15. Chief Probation Officer of District or Probation Officer of District
16. District Legal Services Authority
17. District Head of Prosecution Department
18. Superintendent of District Jail
19. Superintendents of various Child Care Institutions in a District
20. Specialized Adoption Agency of District
21. District Court (Family Court) having jurisdiction on adoption matters
22. District Heads of Railway Police (RPF & GRP)
23. Two Social Workers appointed in District Level Special Juvenile Police Unit
24. The institutions that house the children- the child- care institutions, be it the children's homes, observation homes or special homes- are also at the district level.

Accepting the fact that the JJ Act 2015 covers a wide range of issues relating to children and relating how it intersects with other laws, it becomes imperative to also recognise that there are several schemes and programmes that will have to be drawn upon for the successful implementation of the JJ Act to ensure that the rights of all categories children at different levels - panchayat, block and district.

The most important scheme is the ICPS, which was initiated as part of the Eleventh Five Year Plan and which is the main scheme through which the institutions/ systems mechanisms for implementation of the JJ Act 2015 as well as other child protection initiatives are set up such as – DCPU, Child Line, CWC, JJB etc.

#### CASE STUDY

14-year-old Surabhi was apprehended for theft, along with a gang, when she was already 5 months pregnant. The JJB held an inquiry and decided that Surabhi needed to be treated as a CNCP. So it ordered that Surabhi be sent to CWC of the same district. The CWC, based on the social investigation report, decided that it would be in her best interest not to send Surabhi back home. She had not only been inducted into the gang for stealing by her uncle, who was her guardian, but had also been subjected to sexual assault by him, leading to her pregnancy. Hence Surabhi was placed in a children's home.

The CWC, under powers vested in under Section 30 of the JJ Act<sup>14</sup> filed a case of sexual abuse against the uncle under the POCSO Act. It also filed a case against the uncle under the JJ Act for having inducted the child to perform crimes and illegal activities.

Since, it was unsafe for Surabhi to have an abortion, the CWC and the children's home she was placed in, helped her to reach her full term of pregnancy and deliver her baby. The baby was placed for adoption, following the procedure laid down in the JJ Act and Surabhi continued to stay at the Children's Home with a care plan developed for her, keeping her needs in mind and linking her to the existing government schemes available to her. The counsellor with the DCPU provided the necessary psycho social care for Surabhi to tide over the trauma that she had faced. The legal-cum-probationary officer of DCPU has been monitoring the case filed under POCSO to ensure that she gets justice.

This case illustrates how both JJB, CWC and DCPU have acted in close coordination trying to ensure the 'best interest of the child'

## 2.3 Integrated Child Protection Scheme (ICPS)

ICPS is a centrally sponsored programme for child protection, being implemented across the country from 2009-10.

It was conceived at the beginning of the Eleventh Plan period, when children were placed at the 'centre of development' by the Plan and protection of children from abuse and exploitation was stated to be integral to their holistic growth and development.

The aim was to address gaps in existing initiatives and putting in place, a safety net of exclusive structures, services and trained personnel for the protection of children in difficult circumstances.

The ICPS provides financial resources to States/UT Administrations for the effective implementation of the JJ Act, 2015, bringing together hitherto piecemeal initiatives on child protection of the Ministry under one comprehensive umbrella, and integrating additional interventions for protecting children and preventing them from harm.

<sup>14</sup> Section 30 (xiii) taking action for rehabilitation of sexually abused children who are reported as CNCP to the Committee by Special Juvenile Police Unit or local police, as the case may be, under POCSO (xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

### Related Key Programmes and Schemes

- Beti Bachao Beti Padhao
- Integrated Child Protection Scheme
- Dindayal Disabled Rehabilitation Scheme
- Janani Suraksha Yojana
- Janani Shishu Suraksha Karyakram
- Mid-Day Meal
- Mahatma Gandhi National Rural Employment Guarantee Scheme
- National Health Mission
- National Nutrition Mission
- Integrated Child Development Services (Including SABLA and Kishori Shakti Yojna)
- Maternity Benefit Programme (Matritva Sahayog Yojana)
- National Rural/Urban Drinking Water Mission?
- National Mental Health Programme
- National AIDS Control Programme
- Pradhanmantri Kaushal Vikas Yojna
- Pradhan Mantri Surakshit Matritva Abhiyan
- Rashtriya Madhyamik Shiksha Abhiyan
- Rashtriya Bal Swasthya Karyakram
- National Crèche Scheme
- Rashtriya Kishor Swasthya Karyakram
- Sarva Shiksha Abhiyan
- Swachh Bharat Mission
- Scholarship Schemes
- Schemes under National Trust Act
- UJJAWALA
- National Welfare Fund for Sportspersons
- National Playing Fields Association of India?
- Scheme of Assistance for the creation of Urban Sports Infrastructure.

“In order to meet the challenges of child protection both in terms of maintaining a data base and planning for the numbers reflected through it, the Ministry of Women and Child Development, Government of India proposes a centrally sponsored scheme “Integrated Child Protection Scheme (ICPS)”, which not only brings all existing child protection schemes of the Ministry under one window but also proposes an increased allocation for child protection programmes in the Union Budget. The Ministry is making serious efforts to have the proposed scheme included in the Eleventh Plan document for ensuring necessary fund allocation.”

SUB GROUP REPORT, Child Protection in the Eleventh Five Year Plan (2007-2012)  
Ministry of Women and Child Development



ICPS, therefore, is designed to institutionalise essential services and strengthen structures, enhance capacities at all levels, create database and knowledge base for child protection services, strengthen child protection at family and community level, ensure appropriate inter-sectoral response at all levels. ICPS is also a platform for other departments to provide services envisaged under their existing programs to children, wherever required. For example, support to children with special needs that include children affected by HIV/AIDS. The DCPU in every district is to work in close association with the officials of health department to reach out to such CNCP and provide necessary services. The scheme provides support for additional nutritional or medical needs along with provision of institutional and non-institutional care to such children.

### 2.3.1 Structure of ICPS

In order to ensure effective service delivery ICPS is to be implemented by setting up of various agencies and committees at different level. The State Child Protection Society (SCPS) and DCPUs (DCPUs) are the fundamental units for implementation at State and District level respectively. The SCPS are registered under the Societies Registration Act, 1860 and function under the overall supervision and control of the department looking after child welfare/protection in the State/UT. The Ministry of Women and Child Development (MWCD) has already formulated and disseminated detailed guidelines along with the bye laws for setting up these societies at the State level. State Adoption Resource Agency (SARA) function as a unit under the SCPS.

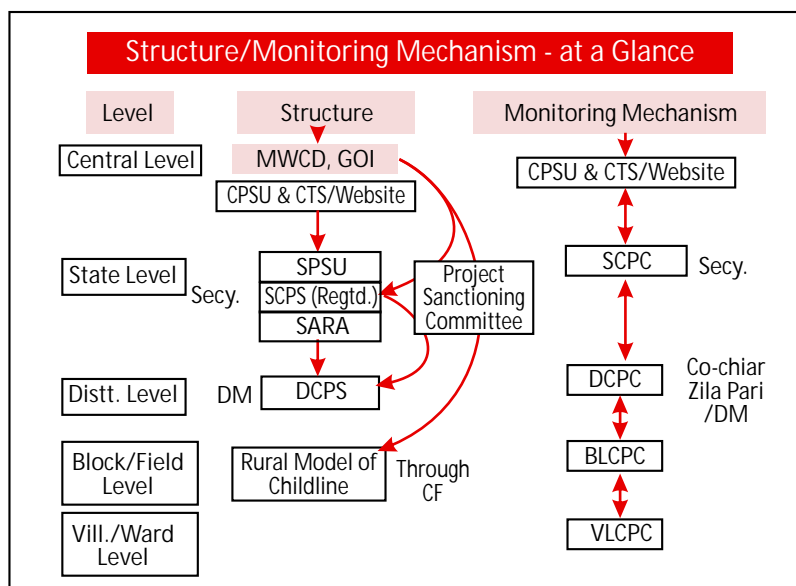


FIGURE 9: ICPS STRUCTURE

#### State Child Protection Society (SCPS)

- Set up in every State/ UT
- All funds from Centre under the child protection scheme will be given to the States through the SCPS

- SCPS to be headed by the concerned Secretary of the State Government and assisted by a team of officials

#### Staff

- For States with 15 or less than 15 districts – 7 staff members
- For States with more than 15 districts – 13 staff members
- This society shall be responsible for implementation of ICPS and other child protection policies and programmes at the State level

#### District Child Protection Society (DCPS)

DCPS, which is responsible for the setting up and functioning of the DCPU (DCPU) is the fundamental unit for implementation of the scheme in every district and is chaired by the District Magistrate or the Chairman, Zila Parishad.

This has been included in the JJ Act 2015 (Section 2 (26):

*“DCPU” means a Child Protection Unit for a District, established by the State Government under section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district;*

Under the DCPU are child protection committees at the local levels:

Block Level Child Protection Committee (BLCPC) is under the chairmanship of the Block/ Ward Level elected representative with the Block Development Officer (BDO) as member secretary. It is responsible for recommending and monitoring the implementation of child protection services at the block level.

Village Level Child Protection Committee (VLCPC) will be under the chairmanship of the head of the Gram Panchayat. It is responsible for recommending and monitoring the implementation of child protection services at village level.

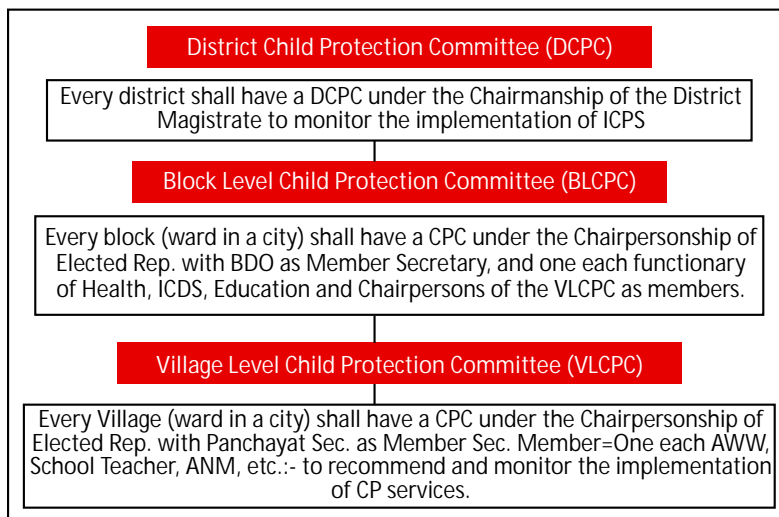


FIGURE 10: CHILD PROTECTION COMMITTEES

### 2.3.3 Functions of DCPU:

The DCPU shall coordinate and implement all child rights and protection activities at the district level. Specific functions of the DCPU include planning; prevention; protection; establishing linkages and convergence with other agencies and NGOs; repatriation, restoration and rehabilitation; monitoring and supervision, and administration. (See Annexure 2.1 for detailed functions)

### **Roles and Responsibilities of DM with respect to ICPS and DCPU**

#### District Magistrate

The District Magistrate shall be responsible for effective implementation of ICPS and all other child protection policies and programmes at the district level. This includes the implementation of the JJ Act as well as all the other laws that come into effect in cases of CNCP.

He/she shall also be the co-chairperson of District Child Protection Committee (DCPC). The DCPC shall be chaired by the Chairperson Zila Parishad.

The DCPU shall function under the overall administrative control and supervision of the DM of the concerned district.

#### District Child Protection Officer (DCPO)

The DCPO shall function as the head of the DCPU and shall be responsible for carrying out all day-to-day functions of the DCPU at the district level. The DCPO shall be appointed either by deputation or on contract.

The DCPO shall coordinate and supervise implementation of the ICPS and all other child protection activities at district level including monitoring and supervision of all institutions/agencies/projects/programs/NGOs and shall report to SCPS at the State level.

For the purpose of coordinating non-institutional care programme at district level, he/she shall report to SARA at the State level.

The DCPO shall be responsible for coordinating development of an Annual District Child Protection Plan, resource directory of child related services and child tracking system at the district level.

Since the basic objective of ICPS is to create a protective environment for children through the convergence of services, the DCPO is responsible for coordinating and networking with all the line departments/officers including:

- District Magistrate,
- District Judge,
- Superintendent of Police,
- Child Development Project Officer (CDPO),
- Labour Officer, Education Officer,
- Chief Medical Officer (CMO),
- Municipal Authorities and
- Members of Zila Parishad and other local bodies.

The DCPO has to also coordinate with:

- Voluntary Organizations,

- Hospitals/Nursing Homes,
- CWC,
- Juvenile Justice Board,
- Childline Services
- Other authorities at district level who have direct or indirect impact on child protection programs/services.

All other members of the DCPU can be identified from the figure below. The Counsellor at the DCPU are responsible for supervising counsellors in the institutions and also for providing counselling support to children and families coming in contact with the DCPU.<sup>15</sup>

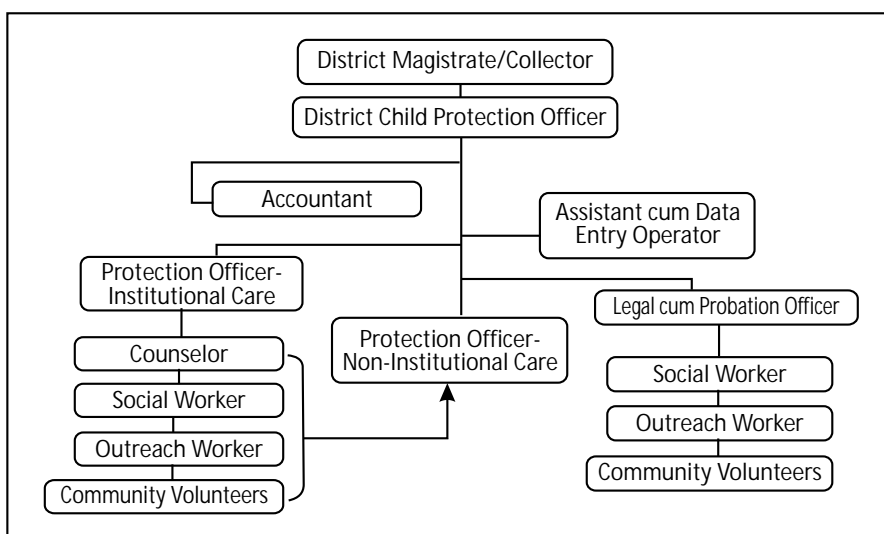


FIGURE 11: DCPU STRUCTURE

## 2.4 Adoption of Children

The JJ Act has addressed the adoption of children in great detail as a measure of non-institutional care and protection. It requires the setting up of special structures that are responsible for providing shelter for children who are to be placed for adoption and mechanisms for ensuring and monitoring adoption. This has been dealt with in detail in Chapter 5.

### 2.4.1 State Adoption Resource Agency (SARA)

SARA shall function as a unit under the SCPS. The SCPS will be registered under the Societies Registration Act, 1860 and function under the overall supervision and control of the department looking after child welfare/protection in the State/UT.

<sup>15</sup> (i) The Counsellors at the DCPU are responsible for supervising counsellors in the institutions and also for providing counselling support to children and families coming in contact with the DCPU.

(ii) All staff members shall be engaged on contractual basis.

(iii) The scheme also allows flexibility for staff on the basis of the geographical spread and population of the State, with the approval of PAB, MWCD.

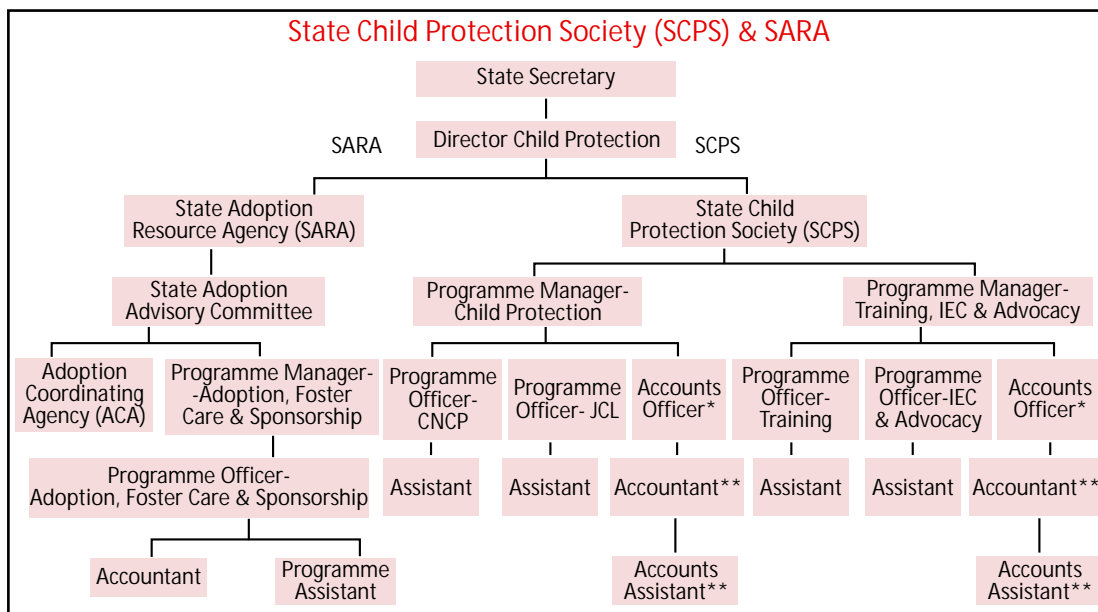


FIGURE 12 : SCPS AND SARA STRUCTURE

## 2.4.2 Sponsorship and Foster Care Approval Committee

This is to operate in each district – under the DCPO – to review and sanction the sponsorship and foster care fund. While sponsorship aims to support families in conditions of extreme deprivation to raise their children, foster care is a non-institutional programme that provides temporary/substitute care for children through foster parents.

### CASE STUDY

A 10-year-old boy was rescued from a brick kiln by the police, who informed the Child Welfare Committee. On conducting a medical check-up, it was found that hard labour in hazardous conditions had affected the child's health. So he was provided with medical support and essential medicines under the Bal Swasthya Karyakram. Following this, the child was sent to an open shelter where counselling was provided by counsellor, DCPU.

The parents were tracked and they were counselled to take the child home. Based on the economic conditions of the child and his family, the DCPU sent a proposal to Sponsorship and Foster Care Approval Committee for sanctioning sponsorship in the joint account of the child and parent. The conditions for sponsorship were laid out explained to the parents. Additionally the DCPU also issued orders for periodic social worker visits to the child's home to monitor his well-being.

Simultaneously, a case was filed against the brick kiln owner, with the Law and Protection Officer (LPO) of DCPU following up on the case. The DCPU was ultimately successful in providing compensation to the child which was also deposited in the joint account.

The DM reviewed the case and expressed satisfaction at the action taken by the DCPU and has instructed the social worker to submit reports on the follow up visits.

## 2.5 Funding

The MWCD provides funds to the State/UT and the concerned State/UT will transfer their share of funds along with the funds received from MWCD directly to the Bank Account of the SCPS within 15 days of receiving funds from the Centre. (See Annexure XX for details of funds to be received).

The SCPS in turn, provides grants-in-aid to the DCPUs and voluntary organizations under the different components of the Scheme within 15 days from the date of receiving funds from State Government.

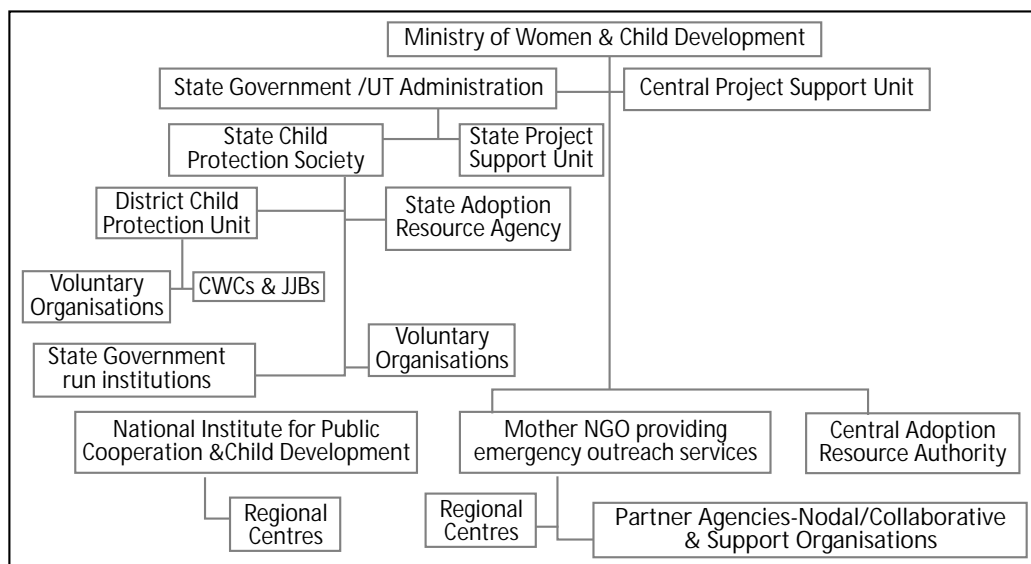


FIGURE 13: ADMINISTRATIVE STRUCTURE FOR ICPS

## 2.6 Building and Infrastructure

Under the ICPS, the SCPS and DCPU shall be provided with adequate space and infrastructure by the concerned States/UTs at State/UT and District headquarters to carry out their roles and responsibilities.

While the SCPS may function from the premises of the State Department working on child protection/welfare issues in the State, DCPUs may function from the premises of the concerned department at the district level. In case the State/UT Government or district administration is unable to provide space, the SCPS or DCPU may function from a rented building.

Investing in ICPS and ensuring the setting up of the DCPUs and other structures with a well-qualified and dedicated team is integral to the successful implementation of the JJ system. Of course, intrinsic to this is the role of the District Magistrate/ District Collector and the team under her/ him.

### MAXIMISATION OF AVAILABLE RESOURCES – EXAMPLE FROM DEOGARH, ODISHA

In Deogarh district of Odisha, the District Magistrate took the initiative to converge funds and arrange for accommodation of the JJB, CWC and DCPU in the same building. It became a single point for delivery of all child protection services in the district.

The benefits included enhanced visibility of all three institutions, quicker response to any issue of child rights violation, better coordination, convergence of resources etc.

## CHILDREN IN CONFLICT WITH LAW

### 3.1 Introduction

Over the years, the word Juvenile has come to be synonymously used with delinquency in common usage. The full form was juvenile delinquent. Slowly other terms such as delinquent juvenile in conflict with the law was introduced. However, the common parlance for the child who commits an offence has come to be –juvenile. And this continues despite the replacement of juvenile by child in the JJ Act 2015.

The new law, JJ Act, 2015 has dropped the differential usage of Juvenile and Child. The term Juvenile in Conflict with Law has been replaced by Child in Conflict with Law. This is indeed an important recognition of the rights of all children. Further, while the 2000 Act defined a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence; the 2015 Act not only mentions 'alleged', but has also added 'or found' to have committed an offence' to ensure a child-centred and rights-based approach to all programming and action for children, even if they were found guilty for having committed an offence.

If we go back in history, we find that the concept of juvenile justice was derived from the belief that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the traditional processes of criminal law. The separate justice mechanism for children who have come in conflict with the law in the Indian law too is based on this recognition. Hence, one of the principal roles of the Juvenile Justice (Care and Protection of Children) Act 2015 is to 'provide specialized and preventive treatment services for children and young persons as a means of 'secondary prevention, rehabilitation and improved socialization'.<sup>16</sup>

The JJ Act, 2015 in its preamble, recognizes the international guidelines on Juvenile Justice- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

At the very outset the law lays down that notwithstanding anything contained in any other law in force, it is the provisions of only the JJ Act that will apply to a child who has offended including apprehension (the law has done away with the term arrest in its effort to be child sensitive); detention; prosecution; penalty; imprisonment, rehabilitation and social integration of CICL Sec.1 (4).

In this context, the law provides for the structures, the personnel needed and treatment to be meted out to children who come before the justice system. The offences committed by children have

Whatever may be our personal concerns and opinions regarding treatment of children who have offended, all district administration officials must adhere to the tenets and provisions of the JJ Act. This is non-negotiable.

<sup>16</sup> Ved Kumari, The Juvenile Justice in India. From Welfare to Rights. OUP. 2004 p.1

been classified into three categories - petty, serious and heinous.

While giving a short description of the law, with details of process to be followed and structures that need to be in place, this chapter does not delve into every provision in detail but confines itself to the extent that it imposes a certain responsibility upon the district administration.

The DCPU (to be set up through the ICPS) has been given a very central role in the implementation of the JJ Act (Section 2 (26)) as a whole. The DCPU also has an important role to play in the context of CICL and the protection of their rights. Each district also has a Child Line, co-ordination of which too is the responsibility of the district administration.

As the chapter proceeds, specific roles and responsibilities of the District Administration, some through the DCPU, and others through existing structures, will be identified.

Who is a Child in Conflict with Law (CLCL)?

As per the general definition of 'child' in the JJ Act, 2015, all children who may have alleged to have committed an offence and have not completed 18 years of age will fall under the purview of this law. Also, Section 6 of the JJ Act 2015 lays down that when a person who has crossed the age of 18 years is apprehended for an offence that was committed before the age of 18 years, such a person will be treated as a CHILD and if there are any cases against them, they will be disposed under the JJ Act 2015.

Scheme of JJ Act 2015 is based on this principle, with the sole exception where a child may be referred for being tried as an adult criminal in rare circumstances, after following a procedure for arriving at this decision.

Since JJ Act works in tandem with Criminal Law (Evidence Act, Criminal Procedure Code etc.), it presents before duty holders several trappings of criminal law, which create considerable confusion in application of this law.

#### DEFINITION OF "CHILD IN CONFLICT WITH LAW"- THE CONFUSIONS

A child who is alleged or found to have committed an offence and who has not completed the eighteenth year of age on the date of commission of such offence is considered a "Child in Conflict with Law" Sec. 2 (13). For determining applicability of JJ Act over a person, relevant date is "Date of Commission of Offence".

Considerable confusion arises in dealing with cases where a person who was a child at the time of commission of offence but turns adult subsequently. Section 5 and Section 6 of the JJ Act 2015 deal with situations where (1) a child completes the age of 18 years during the pendency of inquiry and (2) a person is apprehended for committing an offence when such person was below the age of 18 years. The law is abundantly clear that persons mentioned above shall continue to be treated as children and orders will be passed as if such person continues to be a child, irrespective of such person having turned adult.

Additionally, there is confusion regarding the placement of a person or a child - who may have crossed the age of 18 years at the time of apprehension or in the course of the inquiry - in an institution. The JJ Act is very clear on this. It states (u/s 49) that for such persons or children (if apprehended after the age of 18 years) the State Government shall set up at least one place of safety in a state, duly registered under section 41, in which such persons or children shall be placed. A CICL, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence shall also be placed in a Place of Safety.



### 3.2 Overview of Children in Conflict with Law in India

Despite the controversy around huge increase in crimes by children and the need to change the law, which did indeed happen in 2015, with the introduction of the waiver provision for 16-18-year olds who may have committed heinous offenses, it is worth noting that as per the Crime in India data<sup>17</sup>, IPC crimes by children have never exceeded 1.2 per cent of the total crimes committed in the country.

The share of IPC crimes registered against juveniles to total IPC crimes registered in the country during 2005 was at 1.0% which marginally increased to 1.1% in 2006 and remained static in 2007. This share increased marginally to 1.2% in 2008 thereafter decreased to 1.1% in 2009. This share further decreased to 1.0% in 2010 and thereafter marginally increased to 1.1% in 2011. Further, the share increased marginally to 1.2% in 2012 and remained static at 1.2% in 2013 and 2014. Furthermore, the share has marginally decreased to 1.1% in 2015.<sup>18</sup>

IPC crimes by children constituted only 1.05 per cent of total IPC Crimes in 2016. If IPC and SLL crimes are both included, offences by children constitute 0.7 per cent of the total crimes in 2016.

If we were to look at the states, we find that nine states taken together have accounted for 80 per cent (25,252 out of 35,849 cases) of total cases under IPC relating to children in conflict with law in the country. They are-Madhya Pradesh (7,369 cases), Maharashtra (6,606 cases), Delhi (2,499 cases), Rajasthan (2,273 cases), Chhattisgarh (1,953 cases), Bihar (2,335 cases) and Tamil Nadu (2,217 cases), Gujarat (1,681 cases) and Uttar Pradesh (1,438 cases).<sup>19</sup>

Of the total of 44,171 children apprehended during 2015, 43,089 were boys and 1,082 were girls. In other words, only 2.4 per cent of the children apprehended were girls. (1.1 percentage point less than such share in 2014 (3.3 per cent)).

What is more, despite the scare and panic of 'repeaters', it is only 5 per cent CICTL who have reoffended in 2016, and this percentage has been going down over the years. This compares favourably to total recidivism.

What is required is a guarantee that the system will work - children who offend will be brought into the system where they will be provided with the necessary support and services without discrimination and an opportunity to make a fresh start.

Over the years it has been recognized that juvenile delinquency, like other social issues, has complex roots embedded in the 'person-environment' and 'socio-cultural' contexts, and most often they may

<sup>17</sup> Crime in India. National Crime Records Bureau. Government of India 2015. Chapter 10. Sourced from: <http://ncrb.nic.in/StatPublications/CII/CII2015/chapters/Chapter%2010-15.11.16.pdf>

<sup>18</sup> Crime in India. National Crime Records Bureau. Government of India 2015. Chapter 10. Sourced from: <http://ncrb.nic.in/StatPublications/CII/CII2015/chapters/Chapter%2010-15.11.16.pdf>

<sup>19</sup> *ibid*

TABLE 5: RECIDIVISM IN INDIA<sup>20</sup>

Year	Juvenile apprehended for a repeat offence	Total juveniles apprehended	Recidivism (in per cent)
2006	2545	32145	7.9
2007	2936	34527	8.5
2008	3574	34507	10.4
2009	3708	33642	11
2010	3674	30303	12.1
2011	3897	33887	11.5
2012	4476	39822	11.2
2013	4145	43506	9.5
2014	2609	48230	5.4
2015	2508	41385	6.1
2016	2289	44171	5.2

Average - 9.36%

represent a transitory phase that children and adolescents commonly experience in their growing up years.<sup>21</sup>

Even though the number of children in conflict with law is far less than those in need of care and protection, this segment of children receives much greater attention from the public due to their association with crime and concerns related to safety.

Out of the total juveniles apprehended in various crimes in 2016:

- 45.1 % CICL were illiterate or had been to primary school only
- 86.2% CICL were living with parents
- 3.5% CICL were homeless children
- 42.4% CICL belonged to the families whose annual income was up to ₹25,000
- 28.2% CICL were from families with income between ₹25,000 and ₹50,000
- 25.9% CICL were from families with an income of ₹50,000 - ₹2,00,000

Needless to say, these are children who have fallen out of the net of the most basic services as well as the protective net. In effect they are also CNCP who have become vulnerable to offending. If the administration does not reach them with support and services that they need, there is every possibility that they will re-offend. Hence the role and responsibility of the district administration and below, is critical in providing both curative as well as preventive measures.

<sup>20</sup> Source: Crime in India. National Crime Records Bureau. Government of India 2016.

<sup>21</sup> Kusum. K.1979. Juvenile delinquency: A socio-legal study. KLM Book House. Delhi quoted in ECHO Centre for Juvenile Justice. 2014. Juvenile Crimes- A Peep into Reality. A Study on Root Causes of Juvenile Crimes and Alternative Strategies.p.10

While it is true that not all poor people take to crimes, it is equally true that their poor economic situation makes them more vulnerable to being drawn into it. Perhaps if there was more effort made to strengthen these families economically, they would not be as vulnerable. This is something that the government at all levels, especially at the local levels must address as prevention measure both to prevent criminalization of children, as well re-offending.

This is corroborated by the study by ECHO a Bengaluru-based organisation, which showed that CICL had dropped out of school for a number of reasons, that are almost always common to most such cases. Additional factors (apart from dysfunctional or chaotic family environments) included lack of parental education, guidance or supervision, witnessing violence, experience of abuse/neglect, forced child labour and many other socially introduced inadequacies or poor modelling in these children's lives.<sup>22</sup> The study by BUTTERFLIES – a Delhi-based organisation – found that “absence/lack of supervision/ involvement that evolved from the multiple deprivations of families was a super predator of deviance of children” and that these were linked to other vulnerabilities such as economic constraints, parental conflict, parental deviance and family disruptions.<sup>23</sup>

Over the years it has been recognized that juvenile delinquency, like other social issues, has complex roots embedded in the ‘person-environment’ and ‘socio-cultural’ contexts, and most often they may represent a transitory phased that children and adolescents commonly experience in their growing up years

The ECHO study highlights these children's needs as “promotive and family enrichment interventions that prepare effective parenting skills and practice, which would in a way act as a buffer to the inclination to adopt criminal methods in times of need or vulnerability”.<sup>24</sup> The system that deals with such children needs an emphasis on restorative measures such as diversion, community services, victim offender mediation, family conferences etc.<sup>25</sup> Along with this, there need to be strong and effective measures for reintegration and rehabilitation into society so that these children can have an opportunity for a ‘fresh start’. This includes counselling, educational and skill development support, de-addiction services for those who need them, so that they can get back into mainstream of society without stigma. When such opportunities are available, children do move ahead into a life free of offending.<sup>26</sup>

<sup>22</sup> ECHO Centre for Juvenile Justice. 2014. Juvenile Crimes - A Peep into Reality. A Study on Root Causes of Juvenile Crimes and Alternative Strategies.p.28

<sup>23</sup> Saju Parackal and Rita Panicker. Children and Crime - The Story Behind. Butterflies. New Delhi. 2016. P.xvii

<sup>24</sup> ECHO Centre for Juvenile Justice. 2014. Juvenile Crimes- A Peep into Reality. A Study on Root Causes of Juvenile Crimes and Alternative Strategies. p,31

<sup>25</sup> Saju Parackal and Rita Panicker. Children and Crime- The Story Behind. Butterflies. New Delhi. 2016. P.xxiii

<sup>26</sup> HAQ: Centre for Child Rights Juvenile Justice Documenting Good Practices Rehabilitation and Reintegration of Children In The ‘JJ’ System. 2014

And indeed, this is where the role of the district administration becomes most pertinent – both in prevention of crime as well as bringing those children who have offended, back into mainstream society through providing them with the required support services.

### 3.2.1 Definitions and Terminologies

JJ Act and Rules use certain terminology when it comes to processes and authorities, which are not commonly used in Criminal Justice Administration System. Furthermore, procedures and processes provided in JJ Act and Rules are based on concepts which require familiarity in order to correctly appreciate their application in the Law. Some of these concepts and terminology are being discussed below-

TABLE 6: IMPORTANT DEFINITIONS IN THE CONTEXT OF CICL

S.NO.	TERM	MEANING
1.	Child in conflict with law Section 2 (13)	Child alleged and found to have committed an offence who has not completed 18 years on the date of commission of the offence
2.	Juvenile Section 2(35)	Child below the age of 18 years
3.	Juvenile Justice Board (JJB) Sections 2 (10) and 4	JJB is constituted under Section 4 of the Act consisting of a Metropolitan Magistrate referred to as the Principal Magistrate and 2 Social Workers (one of whom is a woman) One or more JJBS can be constituted for every district
4.	Observation Home Sections 2 (40); 12 (2) and 47	These homes are to be established in every district or for a group of districts for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry. Those children who are not being released on bail are to be kept in an observation home until they can be brought before a Board. Observation homes may be established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation and is registered as such, for the purposes specified in sub-section (1) of section 47 of JJ Act
5.	Place of Safety Section 46	A child care institution and/ or a status which can be granted to any place, except a jail. These are meant to receive children both, during pendency of inquiry/ trial and for rehabilitation after a child is convicted by Special Home. They are to be established for CICL found guilty after inquiry by Board. It is meant only for children in conflict with law, be they below or above 18 years of age. Ordinarily State Governments are required to set up at least one Place of Safety in the state, either as a separate institution or attached to an observation home or special home. This institution is also meant for

		keeping persons whose age is being determined by any Court. <sup>27</sup>
6.	Petty Offences Section 2 (45)	It includes those offences which have maximum imprisonment up to 3 years under Indian Penal Code (45 of 1860)
7.	Serious Offences Section 2 (54)	It includes those offences for which imprisonment between 3 to 7 years have been provided.
8.	Heinous Offences Section 2(33)	It includes those offences for which the sentence is a minimum imprisonment of 7 years or more under the Indian Penal Code (45 of 1860)
9.	Administrator Section 2 (4)	Any district official not below the rank of Deputy Secretary of the State, on whom magisterial powers have been conferred
10.	Best interest of Child	“Best interest of Child” is the cornerstone of the Juvenile Justice System and each decision, process or procedure is guided by it. This is defined <sup>28</sup> as “the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development”.
11.	Child Friendly	In its statement of aims and objectives, the JJ Act 2015 prescribes a child-friendly approach to be adopted in the adjudication and disposal of matters. The term has been defined <sup>29</sup> as, “any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.”
12.	Individual Care Plan	For every child who is dealt with under the Juvenile Justice Administration System, the process of reformation, rehabilitation or social reintegration or any other decision emanates from the Individual Care Plan. This is a document which is prepared by stipulated officers and included in the final orders of the JJB. It is this plan that guides the course of action regarding a CICL. The term is defined <sup>30</sup> as, “A Comprehensive development plan for a child based on age and gender specific needs and case history of the child, prepared in consultation with the child, in order to restore the child’s self-esteem, dignity and self-worth and nurture him into a responsible citizen. Accordingly, the plan shall address the following, including but not limited to, the needs of a child, namely- (a) health and nutrition needs, including any special needs, (b) emotional and psychological needs, (c)

<sup>27</sup> Section 9 (4) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>28</sup> Section 2 (9) of the Juvenile Justice (care and Protection of Children) Act, 2015

<sup>29</sup> Section 2 (15) of the Juvenile Justice (care and Protection of Children) Act, 2015

<sup>30</sup> Rule 2 (1) (ix) of the Juvenile Justice (Care and Protection of Children) Rules, 2016

educational and training needs, (d) leisure, creativity and play, (e) protection from all kinds of abuse, neglect and maltreatment, (f) restoration and follow up, (g) social mainstreaming and (h) life skill training.

13.	Preliminary Assessment	In a major shift, the new JJ Act 2015 now allows a child to be treated as “an adult” in specific circumstances. This requires a process as well as indicators. “Mental and Physical capacity to commit alleged offence”, “Ability to understand consequences of the alleged offence” and “Circumstances in which alleged offence has been committed” are three indicators prescribed in Section 15 of the JJ Act, which a Juvenile Justice Board must consider while pondering over a decision to send a child for adult like trial. This process is called “Preliminary Assessment”.
14.	Child Welfare Police Officer	Like several other laws, the JJ Act also requires a special police officer to deal with all matters related to children. This officer has to be designated to work “exclusively” on children, be they victims or perpetrators of crimes. In the old JJ Act of 2000, this police officer was described as “Juvenile Welfare Officer” but now this term has been dropped and replaced with a new term “Child Welfare Police Officer (CWPO)”. In every police station, at least one police officer, not below the rank of “Assistant Sub-Inspector” needs to be designated as “Child Welfare Police Officer” to exclusively deal with matters related to children. “Exclusivity” of such officer is highlighted in the new JJ Act, emphasizing thereby a need to not assign them any other responsibility and allow them to focus on children’s issues and develop in-house expertise on such matters. Provisions regarding CWPO are detailed in Section 107 of the JJ Act 2015 and in Rule 86 of the JJ Rules 2016. Such provisions deal with their duties as well as their transfer posting.
15.	Inquiry	Term “Inquiry” has been used in the JJ Act 66 times and in various contexts and with different purposes i.e. “Reasonable Inquiry”, “Appropriate Inquiry”, “Due Inquiry” etc. However, in the context of proceedings related to Child in conflict with law, usage of term “Inquiry” is identical to the process which is described as “Trial” in criminal law. The purpose of trial is to establish beyond reasonable doubt the accusation made on an accused. “Inquiry” serves the same purpose though the standards of conducting inquiry are less formal than those of trial. If it only after conclusion of inquiry that it is established whether or not a child is a CICL.

### 3.2.2 Legal Framework Related to Children in Conflict with Law (CICL)

As was seen in Chapter 1 and 2, the JJ Act, 2015 is the primary law dealing with CICL. This law is in force in India (Except State of Jammu and Kashmir) from 15.01.2016. To carry out the purpose of this Act, State and Union Territory Governments are mandated to frame their Rules<sup>31</sup>. Till State and UT Governments frame their own Rules, they have to follow the Juvenile Justice (Care and Protection of Children) Rules 2016<sup>32</sup>. Several State and UT Governments have notified their own rules and others are in process of framing them. In the absence of state rules, those notified by the Government of India in this regard will be applied.

Notwithstanding the enactment of a new Law, the cases originated before 15.01.2016 shall continue to be governed under the Juvenile Justice Act, 2000<sup>33</sup> and applicable Rules thereunder.

Regardless of the commission of offence by children, the nature of said offence or the section of the IPC (Indian Penal Code) or other legislation that it violates, their (i.e. children's) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration shall be conducted as per the provisions of JJ Act.<sup>34</sup>

### 3.2.3 General Principles as they Apply to CICLs

The General principles that underpin the JJ Act have been discussed in Chapter 1.

How they apply to CICLs is discussed below, along with the role that the district administration has in that context:

#### Principle of innocence

It is critical that the District Administration in its words and actions ensures that this principle is not violated. Often there is huge pressure on the administration because of public outcry and even trial by media. It is in the face of such demands that it becomes even more imperative to stick to this principle in the response that the administration provides.

#### Principle of Diversion

The principle of diversion involves two aspects- diversion from what and diversion to what.<sup>35</sup> In the context of the CICLs, it is about diversion from the regular adult judicial system to one that is for children, based on the principles being discussed in this section. In this context, it falls upon the district administration to ensure the building of a system; maintenance of existing institutions under the JJ Act; assignment of responsibilities to key personnel and notification to competent authorities when needed; rehabilitation of children and co-ordination between the key stake holders.

Principles of dignity and worth; equality and non-discrimination and non- stigmatizing semantics; privacy and confidentiality

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<sup>31</sup> Section 110 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>32</sup> Provision to Section 110 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>33</sup> Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>34</sup> Section 1(4) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>35</sup> Ved Kumari. 2017. The Juvenile Justice (Care and Protection of Children) Act. Critical Analysis. Universal Law Publishing

In a country ridden with caste, class and ethnic biases (including some groups of people having been classified as criminal tribes)-these three principles independently and together are critical to ensure access to fair justice to children who may have offended. Special care needs to be taken to ensure that they have not been apprehended or targeted because of their socio-economic status and CICLs do not face discrimination in the dispensation of justice and the services they receive.

It also becomes imperative that as those responsible for children, the District Administration discourages and if needed acts to ensure that 'opinions' against children who may have offended are not created in a manner that such children are stigmatised and hence unable to re-integrate into community and society. Only this can ensure the principle of fresh start.

#### Principles of Fresh Start, positive measures, repatriation and restoration

One of the most important philosophies that guide the JJ Act is the opportunity that the young and impressionable CICLs need to start all over again and be able to reintegrate into society, as they are young and have a long life ahead. The JJ Act provides for destruction of all records on the expiry of the period of appeal or after period of seven years, and no longer. These should thereafter be destroyed by the Person-in-charge or Board or Children's Court, as the case may be (JJ Model Rules (JJMR) 2016).<sup>36</sup> In case of a child who has committed a heinous offence and been transferred by the JJB into the adult system for trial (under clause (i) of sub-section (1) of section 19 of the JJ Act), the relevant records of conviction of such child shall be retained by the Children's Court. However, it is for the Administration to ensure that the opportunities for such children to start afresh are available without facing prejudice and discrimination.

To ensure that the CICL can make a fresh start repatriation and restoration is a must - and this may be within the district, inter-district and even inter-state. Sometimes it is even across borders. However, repatriation and restoration must be governed by principles of best interest. Often practical experience shows, that in the absence of any change in the circumstances in which the child may have committed an offence, sending the child back may place them in a situation where they re-offend. Hence, unless repatriation and restoration are backed by an individual care and rehabilitation plan, and the principle of positive measures, the child will not be protected from falling into re-offending. This must be ensured by the district administration.

#### Principle of Participation

As far as CICL's are concerned, the most important interpretation of this is in the context of their right to be heard in all stages of the enquiry (the equivalent of trials for adults). It is also closely linked to the principle of safety. To create safety for the child, they must be provided with safe spaces in which to speak up. In this context, it is important to remember that while many CICLs act on their own volition, several are used by adults – either individually or as part of organized syndicates and that they will be scared to speak up against them.

<sup>36</sup> Section 24 (2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed: Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.



Also, as those responsible for the institutions that the CICLs are placed in (observation homes and special homes; or in the short term with fit persons or fit institutions), it is imperative that the children be given the opportunity and space to voice their opinions and concerns by the district administration. This is the only way to ensure that they are protected.

#### Principle of Safety

This would require that the district administration keeps a very close watch to ensure that the CICLs are not subjected to any harm, abuse or maltreatment at any stage or in any place, especially institutions in which they may be placed. It would also mean that both the Board, and the District Administration under its direction take immediate cognizance of and subsequent action on any such reports.

#### Best Interest of the Child

While the definition of best interest of the child refers to the basis for any decision to be taken, the important component in this definition is the fulfilment of basic rights and needs (see definition). This in effect places the obligation of fulfilling the basic needs and rights on the State and the state functionaries. Since the implementation of the JJ Act is through District Level structures (as will be described below) this places a responsibility of all officials and functionaries at the district level to ensure that even though a child may have offended, he or she is not deprived of his/her basic rights and needs: Indeed they must facilitate this access.

#### Principles of family responsibility

The JJ Act recognizes the importance of the family in care and nurture of children. However, often the families themselves need support of the government to be able to fulfil their responsibilities because of their socio-economic circumstances.

According to the Crime in India, 2015, although almost 86 per cent of the CICLs live with their parents, almost 71 per cent have annual incomes less than INR. 50,000 a year- which is INR. 4166 a month or INR.138.8 a day!

While it is true that not all poor people take to crimes,<sup>37</sup> it is equally true that this very low economic situation makes them more vulnerable to being drawn into it. According to Parackal and Panicker

*"...data shows that offending/ deviance is an issue prevalent in all socio-economic classes of people but only those from the lower classes are likely to be incarcerated, charged or convicted. The evidences and experiences strongly contest the premise that poverty is the root cause of all offending behaviour..... However, this does not mean that all deviant/offending acts of children delink itself from the influence of poverty /economic strain but emphasise that it is not an exclusive factor but a distant risk factor for juvenile deviance"<sup>38</sup>*

Perhaps if there was more effort made to strengthen these families economically, they would not be as vulnerable. This is something that the government at all levels, especially at the local levels must address as prevention measure both to prevent criminalisation of children, as well re-offending.

<sup>37</sup> Saju Parackal and Rita Panicker. Children and Crime- The Story Behind. Butterflies. New Delhi. 2016. P.xiv

<sup>38</sup> Saju Parackal and Rita Panicker. Children and Crime- The Story Behind. Butterflies. New Delhi. 2016. p.xiv

TABLE 7 : SOCIO-ECONOMIC STATUS OF CICL

Family Background	Number of CICLs (2015)	CICLs (in per cent)
Living with Parents	38061	86.2
Living with Guardians	4550	10.3
Homeless	1560	3.5
Total	44171	100
Economic Status	Number of CICLs (2015)*	CICLs (in per cent)
Annual Income (Upto Rs. 25,000)	17543	42.4
Annual Income (Rs. 25,001 To Rs. 50,000)	11695	28.3
Middle Income (Rs. 50,001 To Rs. 1,00,000)	7982	19.3
Middle Income (Rs. 1,00,001 To Rs. 2,00,000)	2757	6.7
Upper Middle Income (Rs. 2,00,001 To Rs. 3,00,000)	951	2.3
Upper Income (Above Rs. 3,00,000)	457	1.1
Total	41385	100.0

Source: Crime in India 2015. National Crime Records Bureau. Govt. of India

### 3.3 Key Rights of CICL

There are certain specific rights that have been provided for in the JJ Act 2015 for CICL. These require creation of infrastructure:

#### 3.3.1 Non-Institutionalization

Keeping children in any kind of institutional setup has been prescribed as a measure of last resort. There are several non-institutional mechanisms provided in the JJ Act which must be accorded priority over institutionalization. Some of the non-institutional mechanisms are "Fit Person", "Fit Facility", "Sponsorship", "Fostercare" etc. Effort should be made to explore options which do not require a child to be kept in an institution.

#### 3.3.2 Right to Bail

Keeping in view the "Principle of institutionalisation as a measure of last resort"<sup>39</sup>, a child who has been apprehended by the Police has to be granted bail, irrespective of nature of offence alleged to be committed. Bail can be denied only if there appear reasonable grounds for believing that (1) release is likely to bring such person into association with any known criminal or (2) such release is likely to expose such person to moral, physical or psychological danger or (3) the person's release would defeat the ends of justice<sup>40</sup>. If these three exceptional conditions do not exist in a given case, bail has to be granted and a refusal to grant bail has to be explained in writing in the order<sup>41</sup>. If a child is not able to fulfil the conditions

<sup>39</sup> Section 3 (xii) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>40</sup> Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>41</sup> Provision to Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015

laid down for bail, within seven days from the order of bail, it is duty of the Juvenile Justice Board to modify the conditions of bail<sup>42</sup>.

#### CASE STUDY

Sumant from Odisha, who had lost his parents, was staying with his aunt. One day while fighting with his cousins over something, he injured one of his cousins, who succumbed to the injury. The aunt refused to take the child back or arrange for his bail. By the time the DCPU detected his case, the child had spent a couple of years in the home. The DCPU arranged for bail through the legal cum probationary officer and sent him to a CCI.

### 3.3.3 No arrest

JJ Act is a non-custodial legislation. It does not prescribe “Arrest” of persons who are alleged to have committed an offence, if such persons are children on the date of commission of such offence. JJ Act, however, allows “Apprehension”. Power to apprehend<sup>43</sup> a child has been given to Police only in case of heinous offences and that too can be exercised only if the police officer can justify such apprehension to be in the interest of the child. A police officer apprehending a child is required to submit a report to the Juvenile Justice Board at the time of first production explaining the reasons for apprehending the child<sup>44</sup>.

### 3.3.4 Registration of First Information Report (FIR) only in Heinous Offences

No FIR can be registered against a child except in a few exceptional circumstances. The police are permitted to register an FIR regarding a complaint against a child only if the allegation is of a heinous offence or the child is alleged to have committed such offence jointly with adults. In all other cases, the police will only record the complaint in General Daily Diary and proceed on that basis only<sup>45</sup>.

### 3.3.5 Protection of Identity

Considering that disclosure of identity of CICL may jeopardize rehabilitative measures, may cause obstruction in their re-integration in society and may even generate long-lasting stigma around them, JJ Act prescribes that identity of a CICL cannot be revealed<sup>46</sup> and any violation of this prohibition is a criminal offence punishable with imprisonment up to six months or fine up to two lakh rupees or both<sup>47</sup>. Identity includes name, address, photo, school or any other particular which may lead to identification of a child. This provision takes into its ambit any newspaper, magazine, news-sheet, audio-visual media or other forms of communication including social media.

### 3.3.6 Protection against Disqualification

In order to make reformation and re-integration possible, JJ Act grants all CICLs protection against disqualification under Section 24. It means that a CICL cannot be made to suffer disqualification for being

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<sup>42</sup> Section 12 (4) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>43</sup> Provision to Rule 8 (1) of the Juvenile Justice (Care and Protection of Children) Rules, 2016

<sup>44</sup> Rule 8 (5) and Rule 10 (1) of the Juvenile Justice (Care and Protection of Children) Rules, 2016

<sup>45</sup> Rule 8 (1) of Juvenile Justice (Care and Protection of Children) Rules, 2016

<sup>46</sup> Section 74 (1) of Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>47</sup> Section 74 (3) of Juvenile Justice (Care and Protection of Children) Act, 2015

involved with crime in the future with respect to availing of any other opportunity such as further education, skill development or employment on reaching the age of employment.

It is crucial to remember that law in this aspect is different for children covered under JJ Act 2000 and JJ Act 2015.<sup>48</sup> In JJ Act of 2000, protection against disqualification is absolute and is available to all children in conflict with law, irrespective of nature of offence committed<sup>49</sup>. But under the new JJ Act 2015, one category of children in conflict with law is excluded from such protection - those who have been held to be in conflict with law (convicted) and have been dealt under Section 19 (1) (i) by the Children Court<sup>50</sup>.

### 3.3.7 Aftercare

Aftercare is a right available to all children who are released from Child Care Institutions (Observation Home, Special Home or Place of Safety) after attaining the age of 18 years<sup>51</sup>. State Government is mandated to prepare special programmes of aftercare for children requiring such assistance. Aftercare assistance is generally made available to children for up to the age of 21 years but in exceptional circumstances, it may be made available to children up to the age of 23 years. Aftercare is aimed at providing needy children (who have turned adult) with financial or other assistance for the purpose of education, placement, residence, vocational training, medical support, nutrition etc. and to this end, the DCPU of the District is required to prepare and maintain a list of organizations, institutions and individuals interested in providing aftercare.

### 3.3.8 Not be Kept in Jail or Police Lock Up

Under no circumstances, can a CICL be kept in Jail or in a police officer lockup<sup>52</sup>. If a child cannot be produced within 24 hours before a JJB, they shall be kept in only an observation home, till they can be produced before a JJB.

Similarly, lodging a child in Jail is also prohibited and this requires police officers dealing with young offenders to be careful in doing prompt investigation about the age of accused persons, in order to avoid any confusion regarding the age. But despite such prohibition, in the absence of proper age records or even deliberate oversight by the police, children find themselves in Jail.

In 2012, the Delhi High Court on receiving evidence<sup>53</sup> that at least 114 children were incarcerated during 2010-11, in Tihar Jail, Delhi, passed an order directing the National Commission for Protection of Child Rights to conduct a survey of all the jails in Delhi in order to discover the number of children among the

<sup>48</sup> As mentioned earlier Notwithstanding that a new Law has been enacted, the cases originated before 15.01.2016 shall continue to be governed under the Juvenile Justice (Care and Protection of Children) Act, 2000 and applicable Rules there under.

<sup>49</sup> Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000

<sup>50</sup> Provision to Section 24 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>51</sup> Section 46 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 25 of Juvenile Justice (Care and Protection of Children) Rules, 2016

<sup>52</sup> Provision to Section 10 (1) of Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>53</sup> Such evidence was procured by "HAQ: Centre for Child Rights" through right to information application and was presented to Hon'ble Acting Chief Justice A. K. Sikri of Delhi High Court by way of a letter petition.  
Read more: <http://www.hrln.org/hrln/child-rights/pils-a-cases/887-children-rotting-in-tihar-jail-delhi-high-court-takes-cognizance-a-directs-national-commission-for-protection-of-child-rights-to-survey-all-jails-of-delhi-to-find-out-if-children-are-lodged-in-jails.html#ixzz4yqhhd6DC>

prison population in Delhi jails who would have been entitled to the benefits of the Juvenile Justice Act. Many more children were identified in the course of these visits.

It is in view of this problem of children being lodged in jails, (due to several reasons, including inadequate investigation on age), that the new JJ Act 2015 has mandated each district's JJB to regularly inspect jails to find out if any child is lodged in such jails and if found, to take immediate measures for transfer of such child from the Jail<sup>54</sup>

### 3.3.9 Not to be handcuffed

Under Rule 8 (3) (ii) of the Juvenile Justice (Care and Protection of Children) Rules 2016, there is a specific prohibition on hand-cuffing or chaining a child or even using fetters on them. It also prohibits use of coercion or force on children.

### 3.3.10 Right to be re-united with family

A perusal of law concerning apprehension and bail will demonstrate the emphasis on right of the child to be reunited with family. Police is permitted to apprehend a child only in specific circumstances and in rest of cases, Child is prescribed to be handed over to his or her parents after taking an undertaking from the parents to the effect that child will be produced before authorities as and when may be required<sup>55</sup>. This right is further affirmed in Bail provisions in Section 12 where refusal of Bail is prescribed only in 3 exceptional circumstances mentioned earlier.

### 3.3.11 Right to be Repatriated or restored

Restoration is a process to be followed in case of children who are Indian nationals, while in the case of children from foreign countries, they are required to be repatriated to their country after following the due process prescribed in the JJ Act and Rules made thereunder. In case of children from other states within India, cases can be transferred to the Juvenile Justice Board of their area and children be shifted to Child Care Institutions only after completion of inquiry and passing of final order in the case<sup>56</sup>.

### 3.3.12 Use of Non-Stigmatizing Semantics

One will notice use of terms like "Apprehension" instead of "Arrest", "Child in Conflict with Law" instead of "Accused", "Final Report" instead of "Charge Sheet". This is reflective of legislative intent of not applying stigmatizing terminology on children. Though at times, use of criminal law terminology for accused is indispensable, (for example use of word "bail" in Section 12) various provisions of the Act and Rules demonstrate that such terms have been used rarely and effort is to use child-friendly terminology wherever possible.

### 3.3.13 Right of Parents to be informed

Right of a child to have his/her parents informed starts from the very first contact of police with the child. Section 13 of JJ Act 2015 and Rule 8 (2) (i) places the onus on the Police officer to inform the parents of the child as soon as possible after apprehension of the child about the fact of apprehension and details of date, time and address of the Board where the child will be produced.

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<sup>54</sup> Section 8 (3) (m) of Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>55</sup> Rule 8 (7) of the Juvenile Justice (Care and Protection of Children) Rules 2016

<sup>56</sup> First proviso to Section 95 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015

### RIGHTS AND OBLIGATIONS OF CHILDREN ALLEGED TO BE IN CONFLICT WITH THE LAW AND THEIR PARENTS/GUARDIANS

- Every child has a right to be informed about the allegations made against him/her and the procedure to be followed.
- Parents/guardians of every child alleged to be in conflict with the law have a right to receive immediate information about the complaint against their child and their child's apprehension as well as their duty to present the child before the JJB as and when required.
- Every child has a right to be legally represented and provided necessary legal aid free of cost if so required.
- A child alleged to have committed an offence must present himself/herself before the JJB as and when required. This alone can reduce the risk of the child being subjected to violation of rights and will allow the child a forum to voice grievances, if any.
- A child need not be present before the JJB for every hearing. On a request made by the child, the JJB can dispense with the child's attendance, except when it is necessary for the purpose of inquiry. This will allow the child to pursue education or a vocation even during the pendency of inquiry against him/her. [Section 91 (1) of JJ Act]
- Children are entitled to travel reimbursement for themselves and one family member/relative accompanying the child or the child's escort. [Section 91 (2) of the JJ Act]
- A child alleged to be in conflict with the law cannot be jointly tried with an adult. In all such cases involving children along with adults, while there may be a common FIR, separate charge sheets have to be filed and their cases have to be tried separately by different authorities. In the case of children it is the Juvenile Justice Boards, unless a child is transferred to the Children's Court and the Children's Court decides to try the child as an adult. The proceedings against the adult co-accused shall not have any bearing on the proceedings against a child. [Section 23 of JJ Act]
- Every child has a right to privacy and confidentiality. The identity of a child cannot be disclosed unless such disclosure is, in the opinion of the Board, in the best interest of the child. Even the police cannot disclose the child's record on any grounds whatsoever. Disclosure of child's name, school, address, photograph, parent/guardian's name or any other particulars is prohibited and liable for punishment. [Section 74 of JJ Act].
- No child in an institution can be subjected to corporal punishment. [Section 82 of JJ Act]
- No child can be subjected to physical or mental cruelty. [Section 75 of JJ Act]

## 3.4 Legal Process relating to Children in Conflict with Law (CICL)

### 3.4.1 Where is a CICL to be Produced?

CICLs are to be produced before the JJB which is set up under section 4 of JJ Act. The act provides that State Government shall constitute for every district, one or more JJBs. See Table 3 for structure and composition of the board (JJB).

When the Board is not sitting, a CICL may be produced before an individual. The JJB is supposed to be always available or accessible to take cognizance of any matter of emergency. Necessary directions required to deal with an emergency situation shall be given by JJB members to the Special Juvenile Police Unit (SJPU) or the local district police. The Principal Magistrate shall draw up a monthly duty roster of the members who shall be so available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/ Chief Metropolitan Magistrate, the District Judge, the DM, the Committees, the DCPU and the Special Juvenile Police Unit. (Rule 8 (8)).

**As a general practice, all CICLs have to be produced before the JJB, which has :**

- Exclusive jurisdiction to deal with ALL OFFENCES that may have been committed by children upto the age of 16 years.
- Exclusive jurisdiction to deal with all PETTY OFFENCES by all children including those in the 16-18 years age group.
- To conduct preliminary assessment with the help of professional experts to assess the mental state of the child.

#### 3.4.2 Are all CICL Required to be Apprehended by the Police?

The law does not require apprehension of every child against whom an allegation is made. All children alleged to have committed a heinous offence can be apprehended. In other cases of petty and serious offences, apprehension is allowed only if it is in the best interest of the child [Provision to Rule 8 (1) of JJMR, 2016].

#### 3.4.3 What happens to children who are not apprehended?

Where a child alleged to have committed a petty or a serious offence, is not apprehended by the police, it is the duty of the police to inform the JJB about the nature of allegations against the child and submit a social background report to the JJB along with such information. In case the family cannot be traced, the social background report can be based on information from non-family sources (e.g. whoever the child is currently living with or neighbours) or solely on information provided by the child.

In the instance that the child's parents/ guardians can be contacted, the police are also required to inform them about the need to produce the child before the Board on a specified date and take an undertaking from them on a non-judicial paper to ensure their presence before the Board as and when required. [Provision to Rule 8 (1) and Rule 8 (7) of JJMR, 2016].

#### 3.4.4 Where will the CICL be placed after apprehension and pending Inquiry?

The JJ Act clearly lays down that in no case, shall a child alleged to be in conflict with law be placed in a police lockup or lodged in a jail and the State Government shall make rules (S 10 (2)) consistent with this Act.

To ensure that the CICL is in a safe space, there are some very important steps that need to be taken.

### REMEMBER

The Juvenile Justice (Care and Protection of Children) Model Rules, (JJMR) 2016 do not require an FIR to be registered against a child in every case. As per Rule 8 (1) of the JJ Model rules, an FIR can either be registered where a child is alleged to have committed a heinous offence, or where an offence of any nature is alleged to have been committed by a child along with an adult. In case of petty offences or serious offences, an entry in the General Diary/Daily Diary maintained by the police stations will suffice.

TABLE 8: PLACEMENT OF CICL POST APPREHENSION- ROLE OF DISTRICT ADMINISTRATION

Action Required	Responsibility of District Administration
(i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;	District administration to identify such NGOs and such persons
(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.	<p>The JJ Act 2015 requires that the State Governments establish an OH in every District or group of Districts, and that these homes are registered under Section 41 of the Act.</p> <p>District administration to set up and maintain such observation homes and place of safety (This has been dealt with in detail later).</p> <p>The district administration must also ensure legal assistance and counselling for the child and the family.</p>

### 3.4.5 Inquiry by the Board and Dispositional Orders

All the children in conflict with law, irrespective of what kind of offence they are alleged to have committed, are required to be produced only before a JJB and before no other court. The JJB then conducts inquiry and decides the fate of a child.

If a child is 16 years of age or above on the date of commission of offence and is alleged to have committed an offence which qualifies to be included in the definition of "Heinous Offence", then JJB conducts a preliminary assessment and decides if it needs to be transferred to Children Court for trial as an adult but in all other cases and in cases where JJB decides not to send a child for trial as an adult, it conducts inquiry to establish if child has committed the offence or not, and if found to have committed such offence, pass appropriate dispositional orders.

After following the due process of inquiry, the JJB u/s 18 may pass any of these orders. In most of the orders below, the district administration has a role to play. Section 19 (2)



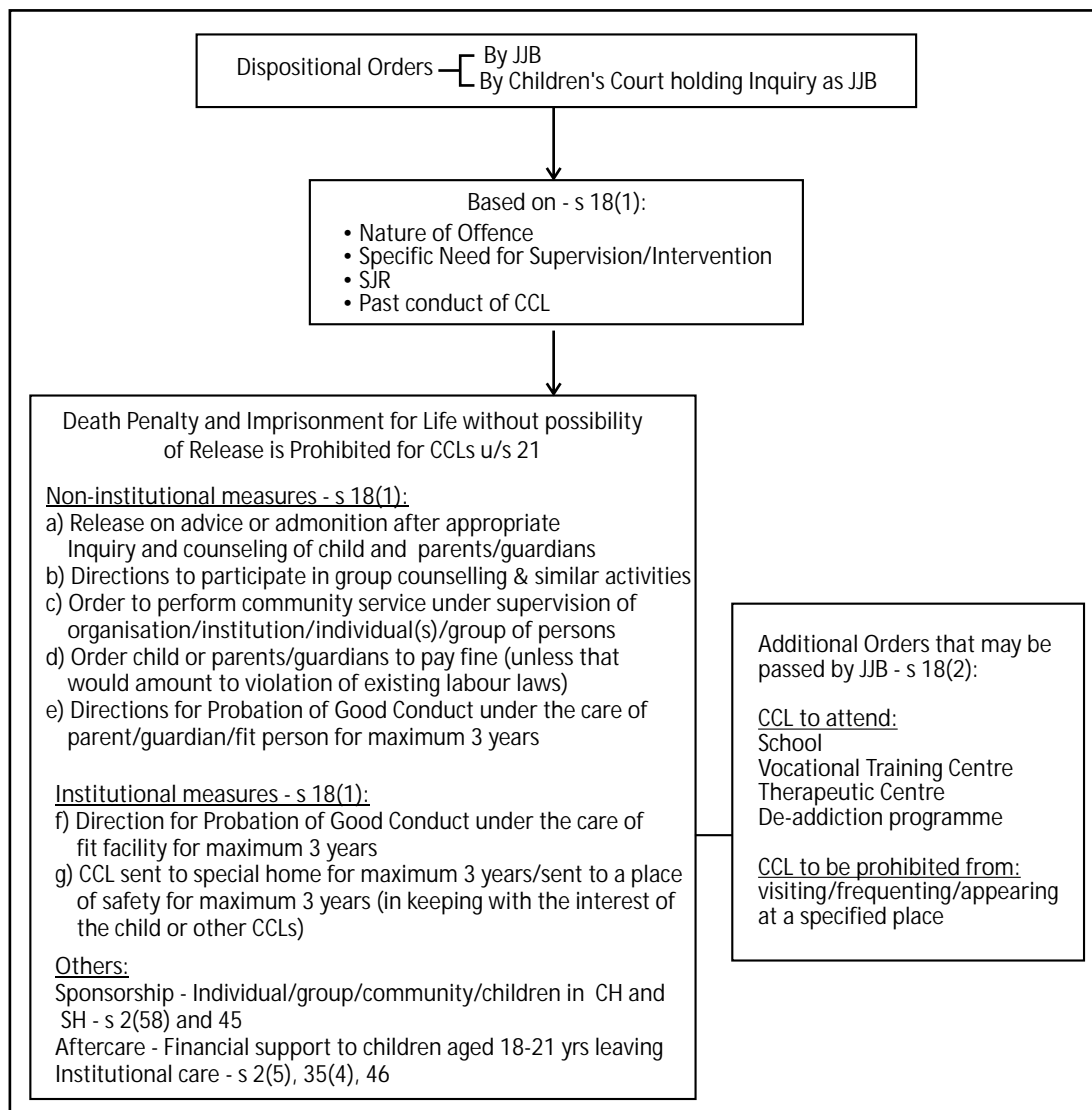


FIGURE 14 : NATURE OF INQUIRY AND DISPOSITIONAL ORDERS

TABLE 9: DISPOSITIONAL ORDERS BY THE JJB AND ACTION REQUIRED FROM DISTRICT ADMINISTRATION

Sec.18	Order JJB	Responsibility of District Administration
1a	Allow the child to go home after advice or admonition by following appropriate inquiry and counselling to the child and their parents or the guardian;	The district administration is responsible for ensuring that counselling services are in place and has the onus of identifying and creating a panel of qualified and professional counsellors.

B	Direct the child to participate in group counselling and similar activities	Same as above.
C	Order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board	The district administration must create a list of institutions and/ or individuals, & where needed might be called upon by the board for assistance to identify such organisations.
D	Order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated	Follow up visit to by the DCPU social worker to the child's home.
E	Direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years	The state government is responsible for the appointment of social workers who need to monitor and follow-up such children so that they are truly rehabilitated and do not re-offend.  It is also responsible for ensuring that an ICP has been prepared for the child and is being implemented.
f	Direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years. Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.	The fit facility may be a child care home set up by the government or operated by an NGO. In the latter case, the district administration must ensure that it is registered under the JJ Act. The facility will be maintained under the provisions of the ICPS.
(2)	If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in Addition, pass orders to— (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.	The provision of infrastructure for vocational training, therapeutic centres and de-addiction programmes is that of the administration. It is also the responsibility of the district administration to identify other such non-governmental organisations and provide them with the necessary recognition and support, and if needed, financial backing. This should be combined with counselling of both child and parents.

(3)	Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court with the jurisdiction to try such offences.	The child will remain in the Observation Home pending trial and under the jurisdiction of the District Administration.
Sec. 19	Children's Court	Responsibility of District Administration
2	ICP for the rehabilitation of child, including follow up by the probation officer or the DCPU or a social worker. (19 (2))	The DCPU is a district level body and the social workers are under the district administration. A key responsibility of the DCPU is to facilitate and ensure the setting up of child-friendly rooms in the district courts.
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: Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.	Setting up of the place of safety, its maintenance and up keep, staff appointment and provision of all services mentioned (educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support) is the responsibility of the district administration.
4	The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the DCPU or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment of the child in any form.	The DCPU is a district level body, and the social worker is appointed at the district level.
5	The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.	The district administration through its team, the DCPU, will prepare these reports.

### 3.4.6 Monitoring of Pendency and Disposal of Cases in Juvenile Justice Board

Speedy justice is a corner stone of Juvenile Justice System because of the necessity of setting children free from formal legal processes at the earliest possible. To achieve this, JJ Act prescribes a multi-tier system of reporting and monitoring with the sole objective of speedy disposal of cases. A joint reading of JJ Act 2015 and Model JJ

#### Monitoring –Role of DM

The DM is one of the designated persons to receive the information regarding Pendency of Inquiry (Section 16 (3) and rule 12) on quarterly basis in such form as may be prescribed by the State Government.

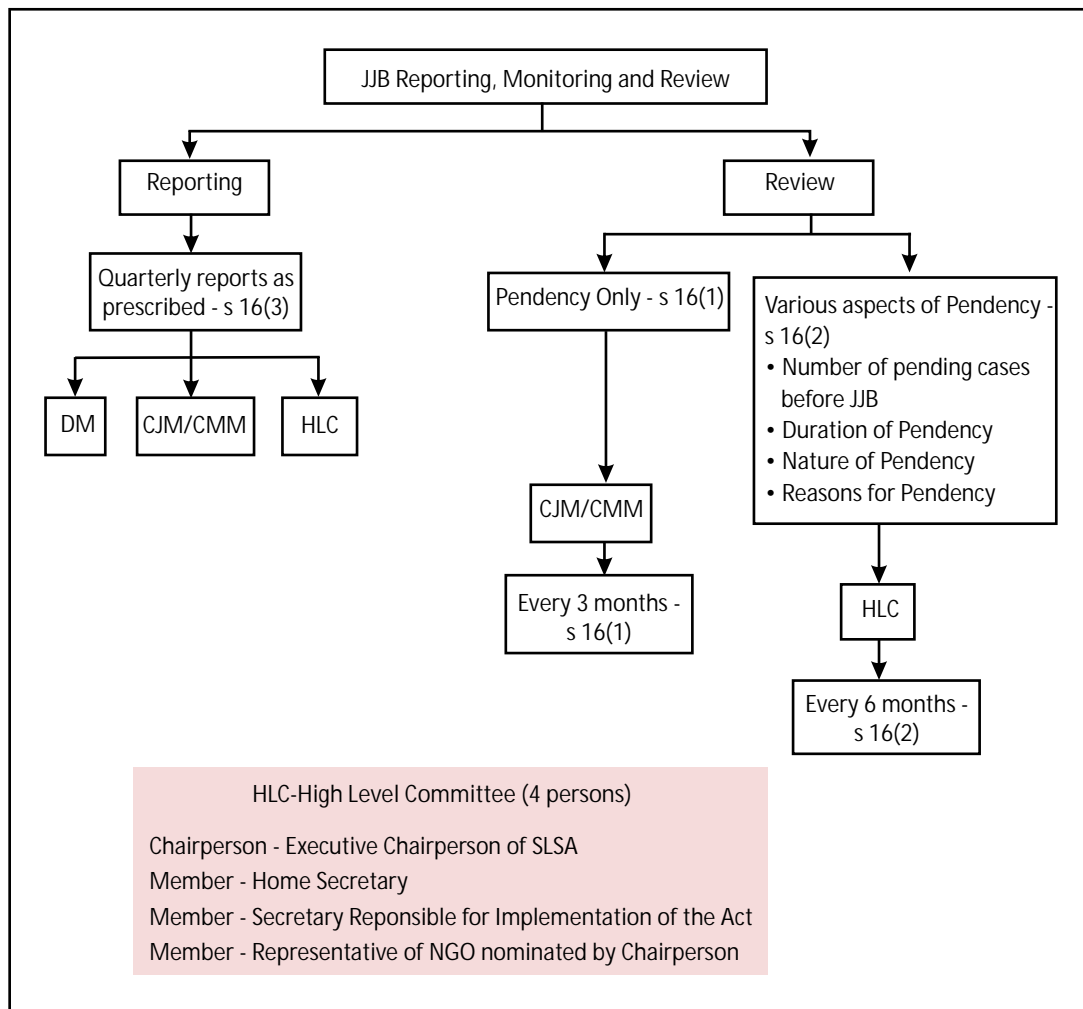


FIGURE 15 : JJB REPORTING, MONITORING AND REVIEW

Rules 2016 brings out a four-tier mechanism for speedy disposal of cases before JJBs and monitoring thereof.

#### TIER-1

Rule 12 (1) prescribes that JJB shall maintain a "Case Monitoring Sheet" of case and every child in Form 11. The said Form shall be kept at the top of each case file and shall be updated from time to time. The following points shall be considered so far as 'progress of inquiry' mentioned in Form 11 is concerned:

- Time schedule for disposal of the case shall be fixed on the first date of hearing;
- Scheduled date given in column No. (2) of 'progress of inquiry' shall be the outer limit within which the steps indicated in column (1) are to be completed.

This mechanism aims to lay down a self-monitoring system by JJB over its own cases.

#### TIER-2

Second tier is quarterly submission of reports by JJBs to CJM or CMM and based on these reports, CJM or CMM will conduct a review of pendency 4 times in a year and will pass consequential orders for either increasing the sittings of JJB or for constitution of more JJBs, to ensure that cases are disposed in a timely manner.

Section 16 (1) mandates that the CJM or the CMM shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

Section 16 (3) mandates that the information of such pendency shall be furnished by the Board to the CJM or the CMM and the DM on quarterly basis in such form as may be prescribed by the State Government.

Form No. 12 has been prescribed in the Model Rule for this purpose. Rule 12 (2) further provides that the Board shall submit its quarterly report in Form 12 about the pendency of the cases, visits to Homes etc. to the following:

- Chief Judicial Magistrate or Chief Metropolitan Magistrate;
- District Magistrate.

#### TIER 3

Third tier is inspection of JJBs by the District judge four times in year, once in every three months. These inspections are not pendency-focused but examine the functioning of the JJB and performance of its members. However, it is understood that the District Judge examine case pendency during the inspection.

Rule 12 (3) provides that the District Judge shall conduct an inspection of the Board once every quarter and appraise the performance of the members of the Board on the basis of their participation in the proceedings of the Board and submit a report to the Selection Committee constituted under rule 87 of these rules.

#### TIER-4

Final and highest level of monitoring is by a high-level committee headed by a sitting High Court judge two times in a year, once in every six months. This Judge is the Chairperson of the State Legal Services Authority.

Section 16 (2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or nongovernmental organisation to be nominated by the Chairperson.

# CHILDREN IN NEED OF CARE AND PROTECTION

## 4.1 Introduction

Since the Children's Act of 1960, the law has dealt with two categories of children - those who have offended (known as delinquent) and those who were categorised as 'neglected'- children who lacked adequate parental or family support and therefore needed special protection measures. Since 2000, the latter have been categorised as CNCP which has been listed and defined in Section 2(14) of the JJ Act 2015 (see Table 4.1).

Although the CWC is the official body which decides the fate of CNCP, the creation and maintenance of the institutions and mechanisms at the district level is the responsibility of the district administration, primarily through the DCPU, Child Line and the Block and Village child protection Units.

Several of the children covered under this law also come under other laws, or are covered by other legal provisions. While the structure for dealing with such children is provided under the JJ Act, their rights violation will be dealt with as a combination of JJ Act and the relevant laws (addressed in detail in Chapter 5).

The DCPU shall function under the overall administrative control and supervision of the DM of the concerned district. The DM shall be responsible for effective implementation of ICPS and all other child protection policies and programs at the district level. He/she shall also be the co-chairperson of District Child Protection Committee (DCPC).

TABLE 10 : CNCP IN JJ ACT 2015

S.No.	Section	Category	Special Law if any	Description
1	2(14)(i)	Homeless child	--	who is found without any home or settled place of abode and without any ostensible means of subsistence
2	2(14)(ii)	Working Child / Child labour/ child beggar/ street child	The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986(as amended in 2016) and Bombay Prevention of Begging Act, 1959, IPC- 363A Kidnapping or maiming a minor for purposes of begging.	who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street

3	2(14)(iii),	Abuse and Exploited Child	Indian Penal Code- 305- Abetment of suicide of child or insane person, 316 Causing death of quick unborn child by act amounting to culpable homicide, 366A Procuration of minor girl 369 Kidnapping or abducting child under ten years with intent to steal from its person , 361- Kidnapping from lawful guardianship, 369-Kidnapping or abducting child under ten years with intent to steal from its person, 376C- Intercourse by superintendent of jail, remand home, etc, 376C Intercourse by superintendent of jail, remand home, etc, 372	who resides with a person (whether a guardian of the child or not) and such person— (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person
4	2(14)(x)		Selling minor for purposes of prostitution, etc	who is being or is likely to be abused for unconscionable gains
5	2(14)(ix)		The Immoral Traffic (Prevention) Act, 1956, Protection of women from Domestic Violence Act 2005.	who is found vulnerable and is likely to be inducted into trafficking
6	2(14)(iv)	Children with disability	Rights of Persons with Disabilities Act 2016, The Right of Children to Free and Compulsory Education Act 2009	who is mentally ill or mentally or physically challenged with no one to support or look after them or having parents or guardians who are unfit to care for them, if found so by the Board or the Committee
7	2(14)(iv)	Child with terminal or incurable disease	--	Who is suffering from terminal or incurable disease, and having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee
8	2(14)(v)	Neglected or uncared-for child	--	Who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated to care for and protect the safety and well-being of the child

9	2(14)(vi)	Abandoned or surrendered child	317 of the IPC Exposure and abandonment of child under twelve years, by parent or person having care of it,	Who does not have parents or fit guardians; or whose parents have abandoned or surrendered them.
10	2(14)(vii)	Missing or runaway child	--	Who is missing or run-away, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed
11	2(14)(viii)	Sexually abused child	POCSO Act, IPC -373 Buying minor for purposes of prostitution, etc 375- Rape	Who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts
12	2(14)(ix)	Child with substance abuse	The Narcotics Drugs and Psychotropic Substances Act-1985, 32A. No suspension, remission or commutation in any sentence awarded under this Act if minors are affected	Who is found vulnerable and is likely to be inducted into drug abuse
13	2(14)(xi)	Children affected by armed conflict or civil unrest	--	Who is a victim of or affected by any armed conflict, civil unrest
14	2(14)(xi)	Children affected by natural disasters	--	Who is affected by natural calamity
15	2(14)(xii)	Child marriage victims (this is an addition made in JJ Act 2015)	The Prohibition of Child Marriage Act- 2006	Who is at imminent risk of marriage before attaining the age of marriage & whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

NOTE: Not every child who is sexually abused or disabled or sick must be produced before the CWC as a child in need of care and protection nor must they all be put into an institution for protection and care. It is only when such children are unsafe in families or the families are incapacitated to look after them that the CWC takes over.



## 4.2 Roles and Responsibilities

Table 4.2 lists out the different structures/ institutions that have to exist to address CNCP. While the responsibility for the constitution of these bodies, and appointment of the officials/members vests with the state government, their onus for their execution and monitoring lies with the district administration.

TABLE 11: AUTHORITIES/ AGENCIES/ INSTITUTIONS/ FUNCTIONARIES FOR CNCP

Details	Level at which it is to be set up	Authority Responsible for their establishment
Inspection Committee w.r.t. Children Home's only	District	The State Government shall constitute State and district level inspection committees. The District Inspection Committee shall comprise the DCPO as the Member Secretary; Medical Officer; one member of a CSO working in the area of child rights, care, protection and welfare; one mental health expert who has experience of working with children.
CWC(CNCP)	District	State Government on recommendation made by Selection Committee
Children's Committee	In every Institution	Officer-in-charge of the institution
Management Committee	In every Institution	DCPU or DM/Collector where there is no DCPU
<b>Authorities/Units/Organisations/Agencies</b>		
State Legal Aid Services Authority	State	State Government
State Child Protection Unit	State	State Government
DCPU	District	State Government
Special Juvenile Police Unit	District	State Government
<b>Homes/ Institutional Care Facilities</b>		
Children's Homes (CNCP)	District	State Government
Shelter Homes (CNCP)	District	State Government
Specialized Adoption Agencies (CNCP)	District	State Government
After Care Organisation (JCL + CNCP)	District	State Government
<b>Functionaries under Integrated Child Protection Scheme</b>		
CWC	District	State Government (through a gazette notification) 27(1)

District Child Protection Officer	District	State Government
State Child Protection Society (SCPS)	State	State Government
District Child Protection Society (DCPS)	District	State Government
Sponsorship and Foster Care Approval Committee	District	State Government
Block Level Child Protection Committee (BCPC)	Block/Ward Level	DCPU
Village Level Child Protection Committee (VCPC)	Block/Ward Level	DCPU

\* NOTE: State Government means the concerned Department of the State Government dealing with child protection. In some states it is the Department of Women and Child Development/Welfare and in some others, it is the Department of Social Welfare/Social Justice, which plays the role on behalf of state Government.

### 4.3 Setting Up and Monitoring of CWC

CWCs are established under section 27 of the Juvenile Justice Act. One or more CWCs are to be established for each district. This committee comprises a Chairperson, and four other members, who form a Bench of Magistrates. Of these four members at least, one shall be a woman and another, an expert on matters concerning children.

TABLE 12: STRUCTURE AND COMPOSITION OF CWC

Composition	Eligibility	Tenure	Term of Office of Members
1 Chairperson 4 other members appointed by the State Government at least 1 of these 4 must be a woman at least 1 of these 4 must be an expert on child matters (S 27 (1,2 4 &5) and Rule 15 (3))	Above 35 years of age (Rule 15 (1)) Actively involved in the health, education or welfare of children for at least 7 years OR A practicing professional with a degree in child psychology, psychiatry, law, social work, sociology or human development (earlier included)	Maximum of 2 terms, which will not be continuous (Rule 15 (4))	≤3 years Appointment may be terminated if a member is: Guilty of misusing a power conferred under the Act or of an offence of moral turpitude Fails to attend meetings for 3 months in a row without reason or attends less than 75% of meetings in a year without reason

	fields of education, child development, criminology but not child psychology) Other Qualifications/ Disqualifications as may be prescribed		
Training	Shall mandatorily be given training under <b>rule 89</b> within a period of sixty days from the date of appointment.		
Sitting	Minimum of 20 Days in a Month A minimum of six hours on all working days, unless the case pendency is less in a particular district and order has been issued in this regard by State Government.		
Sitting fee	The Chairperson and members of the Committee shall be paid such sitting allowance, travel allowance and any other allowance, as the State Government may prescribe but not less than Rs.1500 /- per sitting (S. Rule 16 (1)		
Premises as per ICPS norms detailed in Annexure 5.1 (Table 21) and Footnote 56	<p>The Committee shall hold its sittings in the premises of a children's home, or at a place in proximity to the children's home, or at suitable premises in any institution run under the Act for CNCP. (Rule 16 (3) <sup>57</sup></p> <p>The Committee shall hold its sittings in a child-friendly premises which shall not look like a court room in any manner and the sitting arrangement should be such to enable the Committee to interact with the child face to face.</p> <p>The Committee shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Committee and the children</p>		
Human Resource Support	<p>The DCPU shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning. 27 (3)</p> <p>Assistant cum Data Operator (ICPS norms)</p>		

<sup>57</sup> As per ICPS norms- The newly constructed Children's Homes shall have two rooms of 300 Sq. ft. each for the CWC. Where an existing Children's Home has the required space available within the premises, the same shall be provided to the Committee. However, in districts where there is no Children's Home or the existing Children's Home has no space for the CWC, the ICPS will provide funds for constructing or renting suitable premises for the CWC.

b) The Committee shall hold its sittings in one room and the other room should be used as a waiting room for children and families. The room where the CWC holds its sittings should be well equipped with necessary furniture and equipment, be well lit and have a child friendly environment. The waiting room should have provisions for drinking water and some indoor recreation facilities for children.

If the CWC is to be active and effective, it is imperative that more and more people know about its existence, its powers and responsibilities and the names and contact details of its members so that they can be directly approached.

While the most common way adopted is to place such details on the internet, as is the practice in several states or in the premises where the CWC sits, the DCPU needs to find more effective ways of advertising this. For example:

- flex banner and wall writings in prominent places such as schools, panchayat buildings, health centres, block/tehsil/taluka offices, anganwadi centres, police stations etc.
- public announcements at meetings of gram sabhas and other local bodies
- exposure visits for children to CWC
- regular multi-stake holder meetings
- announcements on local channels of radio and TV
- advertisements in local papers

#### 4.4 Functioning of CWC and Role of DM

CWCs are the most critical district-level bodies for ensuring appropriate implementation of the JJ Act in reference to CNCP. The law empowers CWCs to be the final authority for the care, treatment, protection, development and rehabilitation of CNCP and for disposing all complaints related to these children while ensuring that their basic rights and needs are met.

In the current setting it is therefore vital to ensure that all the districts have functional and regularly monitored CWCs. In this light, Supreme Court of India as well as various High Courts have been monitoring establishment and functioning of CWCs, and other provisions of JJ Act.

The Honourable Supreme Court of India has drawn attention to the Constitution of CWCs and Juvenile Justice Boards in each district<sup>58 & 59</sup>.

If the CWC is to be active and effective, it is imperative that more and more people know about its existence, its powers and responsibilities and the names and contact details of its members so that they can be directly approached. This must be ensured by the DCPU and the District Administration

#### ROLE OF DISTRICT ADMINISTRATION

- DCPU shall provide a Secretary and other staff to Child Welfare Committee, as may be required, for its effective functioning. (Section 27 (3)). Although appointed by the state government, since the DCPU is located in the District and under the DM, the principal responsibility of ensuring this falls under the district administration.
- The Committee shall be provided infrastructure and staff by the State Government (Rule 16 (12)). However, the infrastructure will be facilitated by the district administration. This will include child friendly space, computers and other requirements as specified in the Integrated Child Protection Scheme

<sup>58</sup> Sampurna Behrui Versus Union of India & Ors. Writ Petition (Civil) No. 473 of 2005

<sup>59</sup> In Bachpan Bachao Andolan Versus Union of India & ors Writ Petition (civil) 51 of 2006, judgement dated on 18 April, 2011

#### 4.4.1 Functions and Responsibilities of the Committee

The CWC is a statutory authority with its members being executive appointees. As one of its most progressive features, the JJ Act mandates the participation of civil society in CWC membership.

1.I. Section 29 (1) and (2) empowers the CWC to deal exclusively with all proceedings relating to CNCP. They have been given the powers of a bench of magistrates under Section 29 (9) of the JJ Act<sup>60</sup>. and can give orders regarding care, protection, treatment, development and rehabilitation of CNCP.

1.II. To ensure that the CWC is always available to deal with CNCP, as per Rule 16(6) of Juvenile Justice Act, at least one member of the Committee must be always available or accessible to take cognizance of any matter of emergency and issue necessary directions to the Special Juvenile Police Unit or local police of the district. For this purpose, the Chairperson of the Committee shall draw up a monthly duty roster of the Committee members who shall be available and accessible every day, including on Sundays and holidays. (See the circular regarding the roster in Rajasthan as an example at page-79).

The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the DM, the JJB, the DCPU and the SJPU. An example of the circular of the Government of Rajasthan at page-80.

The CWC's functions and responsibilities as given under the JJ Act<sup>61</sup> :-

- Taking cognizance of cases brought before CWC and also taking suo moto cognizance of cases.
- Giving directions conducting inquiries for social investigation, for declaration of fit persons, for placement of a child in foster care.
- Making individual care plans to ensure care, protection, appropriate rehabilitation or restoration of children, and passing appropriate orders.
- Selecting registered institutions, conducting inspection visits and giving recommendations; certifying the execution of the surrender deed by the parents and ensuring prior formalities and procedures.
- Restoration of abandoned or lost children, sexually abused children who are CNCP.
- Responsibilities in process of adoption (declaring children legally free for adoption and ensuring that proper adoption process is followed).
- Conducting inquiry and directing police to take due action, in case of a complaint of abuse of a child in any child care institution.
- Taking any other action as may be required.

Additional /Administrative functions and responsibilities of CWC<sup>62</sup>:

(i) Document and maintain detailed case records in Form 15;

(ii) Maintain a suggestion/grievance redressal box at a prominent place in CWC premises, to encourage inputs from children and adults, and to be operated by the DM or his nominee;

<sup>60</sup> Section 29 (9) of the JJ Act. The powers of the CWC are equivalent to the powers held by a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class as conferred by the Code of Criminal Procedure (CrPC) 1973 (2 of 1974). It becomes relevant here to mention that CWC members hold this power only as a bench and not on an individual basis.

<sup>61</sup> Section 30 of JJ Act 2015

<sup>62</sup> Juvenile Justice (Care and Protection of Children) Model Rule 2016- Rule 17

(iii) Ensure smooth functioning of Children's Committees in the CCI; and also review the Children's Suggestion Book at least once a month;

(v) Send quarterly information in Form 16 to the DM with all relevant details

(vi) Wherever required, issue rehabilitation card in Form 14 to monitor progress of CNCP;

(vii) Maintain the following records in a register or digitised format:

- A daily case list of the cases before it;
- Entries and particulars of children and details of concerned CCI;
- Execution of bonds;
- Movement of members including visits to institutions;
- Children declared legally free for adoption and those recommended for or placed in sponsorship;
- Children placed in individual or group foster care;
- Children transferred to or received from another Committee;
- Children for whom follow up is to be done;
- Children placed in after care;
- Inspection record of the Committee;
- Record of Minutes of the meetings of the Committee;
- Correspondence received and sent;
- Any other record or register which the Committee may require.

NOTE: There are Standard Operating Procedures (SOP) For all the Stakeholders in Safeguarding Rights of Children in Contact with Railways prepared by NCPCR Working Group in 2013. This document is relevant in reference to the CNCP at Railway Premises. (Annexure B, page-145).

### The Role of the DM with Respect to Monitoring the Functioning of the CWC (JJ Act S.27)

- The DM will need to ensure that one member of the CWC is always available based on the roster prepared by the chairperson who has circulated this roster in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the DM, the Board, the DCPU and the Special Juvenile Police Unit (Rule 16 (6)).
- The DM shall be the grievances redressal authority for the CWC. Anyone connected with the child may file a petition before the DM, who shall consider and pass appropriate orders (S.27).
- The DM must also duly consider the grievances received through the suggestion box or grievance redressal box that the CWC has to maintain at a prominent place in the premises of the Committee. This is to encourage inputs from children and adults alike and shall be operated by the DM or his nominee (Rule 17 ii).
- To receive and send quarterly information in Form 16 about CNCP received with all relevant details on nature of disposal of cases, pending cases and reasons for such pendency (Rule 17 v).
- To receive quarterly reports in Form 16 for review of pendency of cases. (Rule 20 (2)).
- The DM shall review the functioning of the Committee by undertaking an inspection once every quarter. (Rule 20 (3)).

- Appraise the performance of the Chairperson and the members of the Committee on the basis of their participation in the proceedings of the Committee and submit a report to the Selection Committee constituted under rule 87 of these rules. (Rule 20 (3)).
- On the basis of this quarterly reports DM can direct CWC to take necessary remedial measures so that the issue of pendency can be addressed. Importance of speedy disposal of the cases is highlighted by the fact that it is further provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee<sup>63</sup>.
- To ensure that during the period when the existing CWC is terminated, a standing panel of eligible persons is to be maintained by the state government. If there is delay in constitution of a new Committee, then for the time being the CWC of a nearby district shall be required to assume responsibility in the intervening period.

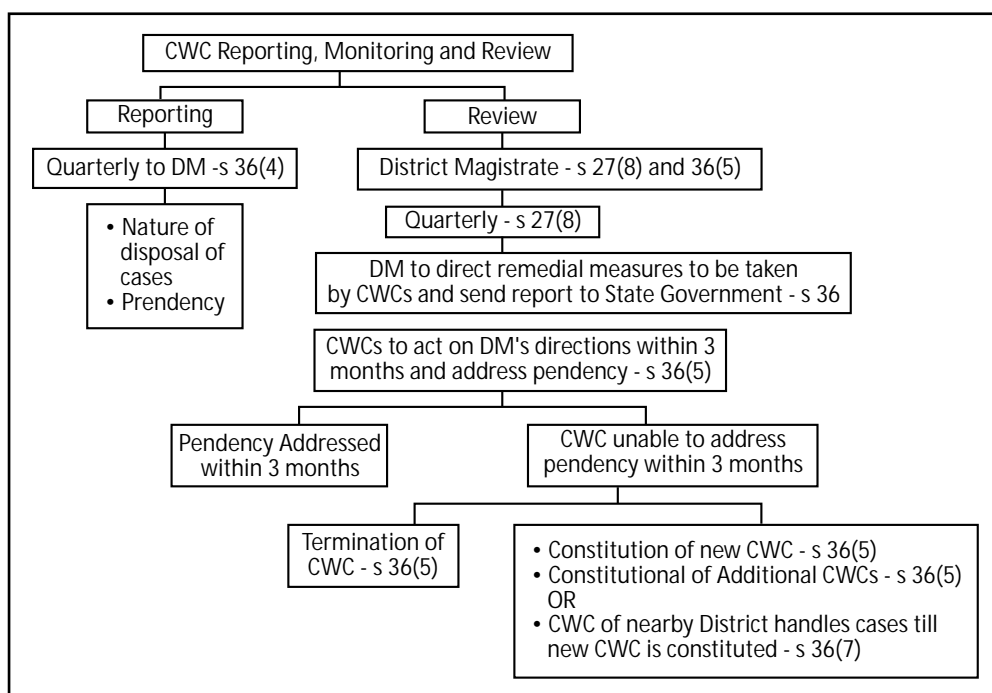


FIGURE 16 : CWC REPORTING, MONITORING AND REVIEW

<sup>63</sup> Provision of section 36(5) of Juvenile Justice (Care and Protection of Children) Act 2015

#### 4.4.2 Who can Produce a Child before the CWC?

Section 31 of the JJ Act lists persons who can produce such a child before the CWC. See Figure 17.

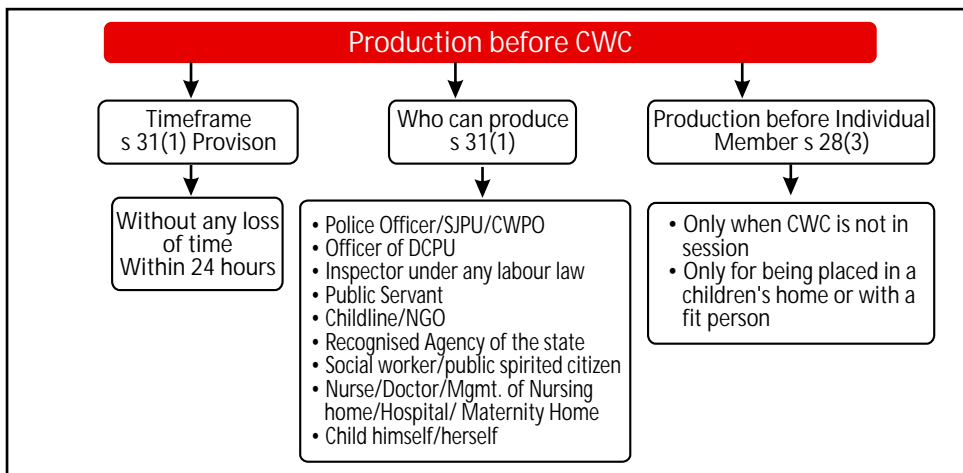


FIGURE 17 : PRODUCTION BEFORE CWC

When any person comes in contact with child in need of care and protection, he/ she can also give information to the Childline Services or the nearest police station or to the DCPU, or hand over the child to a child care institution registered under this Act. This on the other hand also emphasises and presumes that all the agencies working on children in need of care and production need to work in close coordination with each other.

Under Section 33 & 34 of the JJ Act, if information regarding a child as required under section 32 is not given within 24 hours, then, such omission is regarded as an offence. Any person who has committed such an offence is liable for imprisonment up to six months or fine of ten thousand rupees or both<sup>64</sup>.

#### 4.4.3 Inquiry after production before CWC

In order to be able to fully and properly perform their functions, CWCs have been entrusted with power to order inquiries. The purpose of this inquiry would vary from case to case and would depend upon the requirement of each case. The CWC must give directions for speedy social investigation by a social worker or Child Welfare Police Officer<sup>65</sup>. Any such inquiry has to be conducted within 15 days and Social investigation report has to be submitted by SW/ CWPO /CWOs.

CWC has been empowered to initiate an inquiry when

- A child is produced before the committee;
- CWC receives a report about the child
- It takes cognizance of the case on its own (suo moto) in case of CNCP.

<sup>64</sup> Section 33 & 34 of the JJ Act. 2015

<sup>65</sup> Section 30 Read with Rule 19 by a social worker or Case Worker or Child Welfare Officer of the institution or any non-governmental organisation shall be as per Form 22 and must provide an assessment of the family situation of the child in detail, and explain in writing whether it will be in the best interest of the child to restore him to his family.



TABLE 13: INQUIRY AFTER PRODUCTION - TIMELINES

Child	Completion of Inquiry
Children of two years of age or below	Within two months from the date of production of the child
Children above two years of age	Within four months from the date of production of the child
Child of a mentally retarded or challenged parent or unwanted child of victim of sexual assault	Can be declared legally free for adoption immediately after completing the procedure

During pendency of the inquiry CWC is expected to take certain action/s keeping in consideration the need of the child, including placing the child in a Child Care Institution (CCI or with a fit person (who has been identified and declared such by the CWC).

In any situation where a child is produced before the committee and the child is found to be separated from the parents, it is mandatory to upload the information on a portal for the same<sup>66</sup>. There are number of portals being run by central government and state government. The District Administration has to ensure that this information is uploaded on the missing children portals.

Two of the central government portals are

- Khoya paya ([khoyapaya.gov.in/](http://khoyapaya.gov.in/))
- Track Missing Child ([trackthemissingchild.gov.in/](http://trackthemissingchild.gov.in/))

#### 4.4.4 Time Period for Completion of Inquiry

The delay in any process involving rights of a child is indirectly denying those rights. Any inquiry initiated by CWC has to be completed within fifteen days so as to enable the Committee to pass order/s within four months from the date of first production of the child.

The JJ Act lays down different time periods provided for different situations.

In case of orphans and abandoned children, the Committee shall make all efforts to trace the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan with no fit guardian, or abandoned, the Committee shall declare the child legally free for adoption. Any such order where CWC declares child an orphan, abandoned or surrendered and child as legally free for adoption has to be taken by at least three members of the Committee<sup>67</sup>. The provision related to adoption is covered in detail in chapter V in the section related to adoption.

#### 4.5 Orders of the CWC and Role of District Administration

Table 14 lists out the kinds of orders that can be passed by the CWC. The nature of orders that are passed depends on the facts of the particular case and varies from case to case.

What however remains common, are the principles on which the orders must be based- best interest of the child, the child's own opinion (based on the principle of the right of the child to be heard in matters

<sup>67</sup> Section 38 (4) of Juvenile Justice (Care and Protection of Children) Act 2015

that concern her/him) and freedom from bias or discrimination based on the socio-economic status, gender, ethnicity, religion or disability of the child. It must be ensured that the child is in no way stigmatised by the decision of the CWC and has a chance to be part of society with dignity and respect. Before any of these orders can be passed certain conditions are also required to be fulfilled.

The following list of orders is indicative, rather than comprehensive. The CWC can, based on the circumstances of the child, the situation at that time and the resources available make orders for the child as long as they are based on the basic principles (outlined in chapter 1 and above).

#### Role of CWC in Property related rights of orphan children in Madhya Pradesh

**Issue/Challenge:** When children are orphaned (and produced before the CWC), there is a strong risk of their property being grabbed by relatives by the time said children attain their majority. Does the state have any role/responsibility to ensure that child's right to property is not violated?

**Innovative Step:** Madhya Pradesh Government, in order to safeguard property rights of orphan children has issued directions and procedural guidelines to the effect that the District Child Protection Officer is the Nodal officer/custodian of the minor. The DCPO will work in coordination with the Tehsildar/ Naib Tehsildar and prepare a list of orphaned children with details of the property of deceased parents of such identified children. For this, the DCPO will work under monitoring and supervision of the Deputy Commissioner.

#### CASE STUDY

##### CWC action regarding child pending Inquiry

A is a victim incest who was produced before a CWC. Before she can be restored to her family which resides in another state, CWC must ensure the following:

- That her testimony in POCSO court is complete
- Based on an inquiry conducted through a social investigation report (SIR) verify the circumstances of her family to ensure that child will be safe on her return and may be pressurised or finds herself in a situation where she is being held guilty. As a basic rule, giving the child a familial environment is of utmost importance, however, there may be unavoidable situations where the child's best interests are at risk within the family itself.
- Pass an order for a regular follow up inquiry for some time after restoration in case it is required.
- Counselling to the child and the family
- Ensure that if deserving, she /her receives compensation under the victim compensation scheme from the court.

##### Role of District Administration

- The social investigation will have to be undertaken by a social worker, Case Worker or Child Welfare Officer of the institution or any non-governmental organisation who are either appointed or recognised by the district administration through the DCPU.
- The responsibility of transporting the child is that of the district administration u/s 95 (3) and Rule 19 (16).

TABLE 14: ORDERS OF THE CWC AND THE ROLE OF DISTRICT ADMINISTRATION

S.No.	Order Of CWC	Role of District Administration Through DCPU and its Team and the Child Care Institutions (Government or others)
1	<p>Restoration of the child to parents or guardian or to family- this order can be passed once CWC has ensured that parents are fit and suitable for the child to be restored</p> <p>Restoration has to be accompanied based on an Individual Care Plan</p>	<p>The child may be from another district or even another state. The State Government through the district administration is responsible for providing escorts and ensuring travelling allowance to the escorting staff for the child, which shall be paid in advance. S.95 (3)</p> <p>Preparation of Individual Care Plan (ICP) is also to be ensured at the time of restoration of the child<sup>68</sup>;</p> <p>Where a child has to be sent or repatriated to another district or state or country the Committee shall direct the DCPU to take necessary permission as may be required, such as approaching the Foreigners Regional Registration Offices and Ministry of External Affairs for a no-objection certificate, contacting the counterpart Committee, or any other voluntary organisation in the other district or state or country where the child is to be sent. Rule 19 (16)</p>
2	<p>Placement of the child in Children's Home or fit facility</p> <p>This placement can be for a long term or a temporary care. CWC can pass such order of placement only after ensuring that the family of the child is not traceable and if traced, restoration of the child to the family is not in the best interest of the child. In this regard CWC has specifically been directed to keep in mind the capacity of the institution for housing such children<sup>69</sup>, to ensure that proper care and protection is provided to each child and there is no overcrowding in any of the homes.</p>	<p>The district administration must identify and have a list of fit institutions that are duly registered under the JJ Act and provide the same to the CWC<sup>70</sup>. District Administrations are also required conduct a periodic and regular mapping of all child related services and facilitate the implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Committee (mentioned in columns below.)</p>
3	<p>SAA CWC may order child to be placed in Specialised Adoption Agency for the</p>	<p>The District Administration has to maintain a database of specialised adoption agencies,</p>

<sup>68</sup> Section 39(1) of Juvenile Justice (Care and Protection of Children) Act 2015

<sup>69</sup> Section 37 (1(c)) of Juvenile Justice (Care and Protection of Children) Act 2015

<sup>70</sup> JJ Act 2015- Rule 85

	purpose of adoption	etc. at the district level and forward the same to the Committees, and the State Child Protection Society, as the case may be.
4	Fit person CWC order relating to placement of the child with fit person	DCPU has to maintain a database of fit persons and fit facilities, registered foster parents, etc. at the district level and forward the same to the Committees, and the State Child Protection Society, as the case may be. A Foster family is selected on the basis of family's ability, intent, capacity and prior experience in taking care of children. The Committee may also pass orders for declaration of fit persons for foster care, and orders regarding cases of children who have completed eighteen years of age where financial support in order to facilitate the child's re-integration into the mainstream of the society is required.
5	Order for foster care Foster care is different from adoption. In case of such an order data-base as well implementation related responsibilities lie on DCPU.	DCPU shall maintain a database of registered foster parents at the district level and forward the same to the Committees, and the State Child Protection Society, as the case may be; <sup>71</sup> . In case a decision related to Foster Care and Sponsorship After Care is to be challenged then the appeal shall lie with DM which can be filed within 30 days of passing of the order by the CWC. (S.101)
6	Sponsorship orders There are individual to individual sponsorships, group sponsorship and community sponsorship plans. The duration of sponsorship can vary from case to case, and is to be prescribed by CWC. Sponsorship aims at providing supplementary support to families, to Children's Homes and to special homes. This support is provided to improve the quality of life of CNCP through meeting their medical, nutritional, educational and other requirements <sup>72</sup> . (For criteria for sponsorship <sup>73</sup> refer to section 6.1)	District Administration is responsible for ensuring the implementation of sponsorship orders and to find the right sponsorship match for the CNCP as ordered by the CWC.

<sup>71</sup> JJ Act 2015- Rule 85

<sup>72</sup> Section 45 of Juvenile Justice (Care and Protection of Children) Act 2015

<sup>73</sup> J ibid 19

7	Open Shelters	State governments are to establish and maintain, as many open shelters as may be required. These are to be registered with the government and shall function as a community based facility for children in need of residential support. A report has to be sent by these open shelters to CWC and DCPU every month regarding information on children availing the services of the shelter <sup>74</sup> . DCPU has also to maintain a list of such open shelters, and also conduct periodic review of the same.
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#### 4.5.1 General Functions of DCPU in Reference to CNCP<sup>75</sup> (rule 85).-

The DCPO is the Nodal Officer in the district for the implementation of the JJ Act and the rules under it. His/ her key functions include proactive identification and maintenance of databases of CNCP and child services and facilities (including counsellors); facilitation of non-institutional schemes; monitoring and review of institutional and other services and facilities for children, and coordination and liaison with government departments and CSOs.

#### 4.5.2 Functions of the District Administration for JJ Act implementation through the DCPU:

District Inspection Committee with reference to Children Home (Rule 41 (9-13))

The State Government has to appoint Inspection committees at state and district level. 41 (8) The District Inspection Committee shall comprise the following members:

- (i) Member of the Board or the Committee;
  - (ii) DCPO as the Member Secretary;
  - (iii) Medical Officer;
  - (iv) One member of the civil society working in the area of child rights, care, protection and welfare
  - (v) One mental health expert who has experience of working with children.
1. The District Inspection Committee shall inspect all Child Care Institutions in the district
  2. The inspection of the facilities housing children in the district shall be carried out at least once every quarter.
  3. The District Inspection Committee shall submit the report of the findings to the DCPU or the State Government and make suggestions for the improvement and development of the CCIs in accordance with the provisions of the Act and the rules made thereunder.
  4. The District Inspection Committee shall interact with the children during its visits to the institution to determine their well-being and to elicit their feedback.
  5. The DCPU shall take necessary follow up action on the report of the District Inspection Committee.

Children's Committee It is the responsibility of the officers in-charge of every institution that houses children above six years of age to set up children's committees. These committees are to ensure the

<sup>75</sup> Rule 85 The Juvenile Justice (Care and Protection of Children) Act 2015.

participation of children in the running of the institution and their safety and well-being<sup>76</sup>.

Management Committee It has also been provided by JJ Act that every institution shall have a Management Committee, which will manage the institution and monitor the progress of every child<sup>77</sup>.

### Restoration and Rehabilitation

One of the most important roles of the District Administration is with respect to restoration and rehabilitation of CNCP based on orders of the CWC. The child may be from another district or even another state. The State Government through the district administration is responsible for providing escorts and ensuring travelling allowance to the escorting staff for the child, which shall be paid in advance. S.95 (3). Where a child has to be sent or repatriated to another district or state or country the Committee shall direct the DCPU to take necessary permission as may be required, such as approaching the Foreigners Regional Registration Offices and Ministry of External Affairs for a no-objection certificate, contacting the counterpart Committee, or any other voluntary organisation in the other district or state or country where the child is to be sent. Rule 19 (16)

Preparation of Individual Care Plan (ICP) is also to be ensured at the time of restoration of the child<sup>78</sup>;

Restoration and REhabilitation support for non-institutionalised children through setting up a Child Guidance Centre in Mizoram

Issue/Challenge: CNCP in institutional care have defined services which they can access, however providing support children in non-institutional settings can be challenging.

Innovative step: Mizoram state, under its State Child Protection Society (Office), has established the Child Guidance Centre to provide non-institutional services to children who are not covered under the regular programme components of the ICPS and are CNCP. This Child Guidance Centre offers:

1. Diagnosis and management of psycho-social and scholastic disorders.
2. Day Treatment Programme for remedial education, cognitive behavioural therapy, behaviour modification, Occupational Therapy, support group and counselling for parents and teachers, vocational guidance, counselling etc.
3. Bereavement and Trauma Service to children and youth in times of grief and trauma, including peer & family members of suicide victims, witnesses of crime and also children affected by natural disasters.

### CASE STUDY

#### Examples of Innovations Across States to Implement the JJ Act using Existing Resources

- Assam: Aadhaar Camp for Children

Issue/Challenge Having an identity is a fundamental human right because it is the declaration of a person's existence in society. Article 7 of UNCRC states that "All children have the right to a legally registered name, officially recognised by the government. Children have the right to a nationality (to belong to a country).

In India today, Aadhaar card has come to be not only an identity proof but also mandatory to avail benefits of various government schemes and services. Unfortunately, most inmates of CCIs do not have the Aadhaar and thus are deprived of many welfare schemes as well.

<sup>76</sup> 53 (2)

<sup>77</sup> 53 (3)

<sup>78</sup> Section 39(1) of Juvenile Justice (Care and Protection of Children) Act 2015

Innovative step: In Nagaland, the DCPU, in collaboration with District Administration Dimapur organized Aadhaar Camp. This camp was organized for all the Child Care Institutions within Dimapur districts. 300 children were enrolled under the Aadhaar programme through this camp.

- Madhya Pradesh: CCI Upgradation and Financial Assistance for Ex Inmates of Children Homes

Issue/Challenge: In case of CNCP in institutional care, their stay is limited to their attaining majority (i.e. 18 years). After this age, the state expects them to be self-reliant. However, the state has a role to play in developing this self-reliance so that inmates of CCIs are independent and socially integrated when they emerge from the institution.

Innovative Step: State of Madhya Pradesh has introduced the Mukhya Mantri Bal Udhar Yojna. This supplements the provisions of the centrally sponsored scheme - ICPS for CNCP. Under this scheme CCIs have been upgraded to support and assist CNCP in skill up-gradation and vocational/professional training. Along with this CCI are granted INR 20,000/- per child to enable CNCPs to make a start at self-employment.

- Mizoram: Convergence and Linkages with Line Departments/NGOs

Issue/Challenge: While the state has made several provisions for the wellbeing of CICI and CNCP, there is a lack of awareness among the relevant service providers of the available means and resources. The administration has a key role in developing awareness of the same in line with several provisions of the JJ Act viz. DCPU [Rule-85 (xxi)], State Child Protection Society [Rule 84 (xvi)], Rehabilitation cum Placement Officer [Rule 65-(xi)], Steering Committee of SAA [Rule-50 (4(iv))], as well as provision for the JJ Fund, which along with other activities, is reserved for awareness generation. National Commission for Protection of Child Rights also has a mandate to build awareness about the issue [91(iv)]. With the responsibility for creating awareness distributed across various authorities at different levels, it can be challenging for the state government to achieve this.

Innovative Step: Mizoram Government took steps towards convergence and establishing linkages with Administrative Training Institute, Anganwadi Training Centre, District Institute of Education and Training (DIET), State Council of Educational Research and Training (SCERT). Similarly institutes like National Institute for Orthopedically Handicapped (NIOH), District Tobacco Control Society etc. are encouraged to include child-related provisions in their training sessions and invite resource persons from ICPS staff. This includes lectures and literature on UNCRC, JJ Act, ICPS, POCSO, Labour, Child Marriage etc.

- Orissa: Resource optimisation and convergence

Issue/Challenge: While funding is often an issue, particularly in states with highly vulnerable children, another issue that impedes timely aid to children is the lack of convergence between the various departments and agencies which are responsible for ensuring the best interest of the child.

Innovative Step: In Orissa, in order to maximise the utilisation of available space, the CWC, JJB and the DCPU co-ordinated with each other and had situated their offices situated in the same building. In this manner they pooled all their physical resources (waiting area, meeting room, vehicle etc.). This was possible only through better co-ordination and convergence and resulted in better performance and institutional co-ordination besides helping to overcome financial constraints.

## Roster Circular

List of Child Welfare Committees (Chairperson & Members) 16-06-2016			
S. No.	Child Welfare Committee	Name, Residence & Phone No.	Chairperson & Members
1	2	3	4
1.	Child Welfare Committee-I, Nirmal Chhaya Complex, Jail Road, Delhi 011-28546733 cwc.ncc@gmail.com	Smt. Rachna Srivastava D-IV/2, Rites Flats. Ashok Vihar-III, Delhi. Mob. No. 9968169941	Chairperson
		Smt. Malashri S. Malik 401, Air Lines Apartment. Flat No. 5 Sector-23 Dwaraka, New Delhi Mob. 9910209866	Member
		Sh. Sunil Kumar Plt No. 81, Flat No. 10, Vikram Enclave, Martin Apartment, Extension, Sahibabad, Ghaziabad, U.P Mob. No. 9868396911	Member
		Ms. Paramjeet Kaur Pardeshi R/o B-6, Mitradweep Apartment, 38 I.P. Extension, Delhi-92 Mob. No. 9555638383	Member
		Ms. Kavita Bhandari R/o H.No. 79 D, Rockview Officers Enclave, Air Force Station, Palam, Delhi Cantt-110010 Mob. No. 8800962458	Member
2.	Child Welfare Committee-II Kasturba Niketan Complex, Lajpat Nagar, Delhi. 011-29819329 cwcsouthdelhi@gmail.com	Sh. Jas Ram Kain R/o 50/1, MCD Officers Flat, Bungalow Road, Kamla Nagar, Delhi. M.No. 9717750214	Chairperson
		Smt. Renu Malhotra 672, Sector 37, Faridabad Mob. No. 8750157676	Member
		Sh. Asif Iqbal R/o H.No. 336, Sector-16, Vasundhara, Ghaziabad, U.P. Mob. No. 8750157676	Member
		Ms. Satya Prabha R/o D-II/36, Shahjahan Road, New Delhi-i, M.No. 9810161339	Member
3.	Child Welfare	Ms. Vimla Paul 174, Manu Apartments	Chairperson



## Circular

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## CHILDREN IN INSTITUTIONAL CARE

As per international standards as well as the JJ Act, placing a child in institutional care should be a measure of last resort. Children are to be placed in institutions only when it is found that the restoration of the child to parents or family may not be in the best interest of the child. For example, institutional care becomes essential for taking care of children who do not have parents, whose parents are not suitable to raise them, or whose parents are unable or incapacitated to take care of their children<sup>79</sup>. In such circumstances, the CWC can order the child to be placed in a home run or recognised by the government<sup>80</sup> (Registered u/s 50 of the JJ Act).

The JJ Act provides a range of options for residential care for the different categories of children. The residential categories can be broadly divided into two categories.

- Homes - Observation Homes, Special Homes, Place of Safety for CICL and Children's Homes for CNCP
- Open Shelter, Fit Facility, Fit persons who are to provide community-based residential care to children. These are different from adoption, foster care and sponsorship, which fall in the category of non-institutional care.

Under Section 46, the JJ Act addresses After Care for children leaving institutions. It provides any child leaving a child care institution on completion of eighteen years of age with financial support in order to facilitate their re-integration into mainstream society.

### 5.1 Compulsory Registration of Institutions (Section 2 (51 and 41))<sup>81</sup>

The JJ Act allows institutional facilities for children to be set up by both government and non-government organisations. However, as per law, all child care institutions, whether they are for CNCP or for CICL, are required to be compulsorily registered under JJ Act 2015 within six months of the JJ Act 2015 having been enacted. This requirement for registration is irrespective of who is running such homes - government, voluntary organisation or NGO. Even those institutions that are not receiving government funds are required to register.

<sup>79</sup> Ved Kumari.2017. The Juvenile Justice (Care and Protection of Children) Act. Critical Analysis. Universal Law Publishing

<sup>80</sup> Section 2 (19) "Children's Home" means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;

<sup>81</sup> Section 2 (51) "registered", with reference to child care institutions or agencies or facilities managed by the State Government, or a voluntary or non-governmental organisation, means observation homes, special homes, place of safety, children's homes, open shelters or Specialised Adoption Agency or fit facility or any other institution that may come up in response to a particular need or agencies or facilities authorised and registered under section 41, for providing residential care to children, on a short-term or long-term basis

41. (1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, for housing CNCP or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not

## CATEGORISATION OF INSTITUTIONS

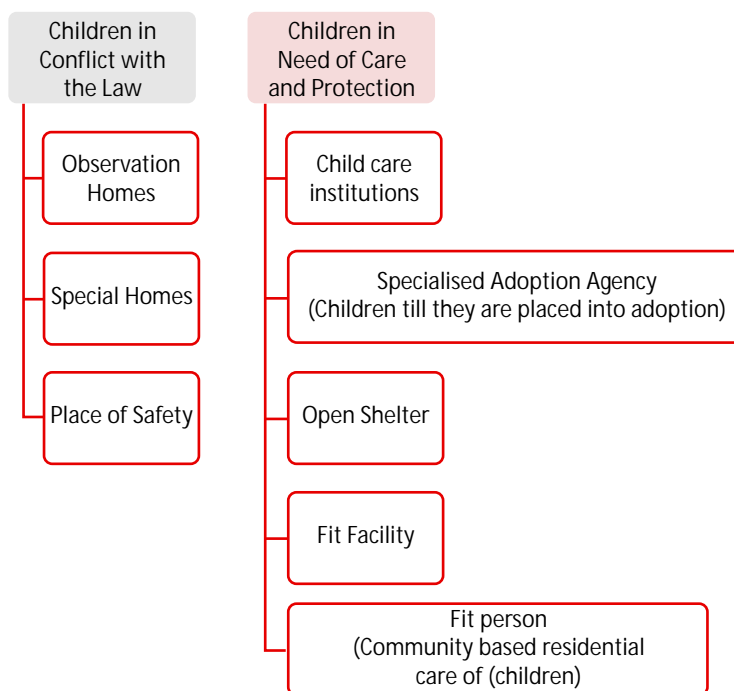


FIGURE 18: CATEGORIES OF CHILDREN'S INSTITUTIONS

The responsibility of registering these institutions vests with the State Government. At the district level this will have to be executed by the District Government. This is what is expected for registration:

- At the time of registration, the State Government has to determine and record the capacity and purpose of the institution and accordingly register the institutions under the following categories:
  - Children's Home
  - Open shelter
  - Observation home
  - Special home
  - Place of safety
  - Specialised Adoption Agency
- On receipt of application for registration from any existing or new institution housing CNCP or CICL, the State Government may grant provisional registration, within one month from the date of receipt of application, for a maximum period of six months, in order to bring such institution under the

The requirement for registration is irrespective of who is running such homes - government, voluntary organisation or NGO. Even those institutions that are not receiving government funds are required to register.

purview of this Act after determining the capacity of the Home which shall be mentioned in the registration certificate:

- If the said institution does not fulfil the prescribed criteria for registration, within the period specified in sub-section (41 (1)), the provisional registration shall stand cancelled.
- The period of registration of an institution shall be five years, subject to renewal in five-year periods.
- The State Government may, after following due procedure, cancel or withhold registration, as the case may be, of such institutions which fail to provide rehabilitation and reintegration services as specified in section 53 and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution.
- Any child care institution registered under this section shall be duty bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or the State Government or not receiving any grants from them.

#### NOTE

Section 41 states:

(4) If the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run an institution for a maximum period of six months.

(5) If the application for registration is not disposed of within six months by any officer or officers of any State Government, it shall be regarded as dereliction of duty on their part by their higher controlling authority and appropriate departmental proceedings shall be initiated.

(9) Notwithstanding anything contained in any other law for the time being in force, the inspection committee appointed under Section 54 of the JJ Act, shall have the powers to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing CNCP.

#### 5.1.1 Getting a Registration is an Obligation and not a Right.<sup>82</sup>

State Government may refuse or withhold registration. In case institutions fail to meet the necessary standards as laid out in the law and elucidated in the rules, the State Government has the duty to cancel the registration. In case the registration of an institution is cancelled, the management of the institution will be passed on to the State Government till the registration is renewed or granted. This is to ensure that children in the institution are not displaced and are cared for properly till necessary remedial actions have been taken.

#### 5.1.2 Penalty for Non-Registration of CCI (Section 42)

As per the JJ Act, those persons who are in charge of institutions who fail to comply with the provisions of sub-section (1) of section 41, shall be punished with imprisonment which may extend to one year or a fine of not less than one lakh rupees or both. As it is a continuing offence, delay of 30 days in moving an

<sup>82</sup> Ved Kumari.2017. The Juvenile Justice (Care and Protection of Children) Act. Critical Analysis. Universal Law Publishing

application for registration from the date of establishment or from the date when renewal of registration becomes due, will be considered as a separate offence.

In effect, if an institution fails to move an application for registration for 90 days, it will be liable to three offences of non-registration<sup>83</sup>.

## 5.2 Inspection Committee (Section 54)

The State Government shall appoint inspection committees for the State and district, as the case may be, for all institutions registered or recognised to be fit under this Act for such period and for such purposes, as may be prescribed.

The Inspection team must be less than three members of whom at least one shall be a woman and one shall be a medical officer.

Committee must submit reports of the findings of such visits within a week of their visit, to the DCPUs or State Government, as the case may be, for further action.

Such inspection committees shall mandatorily conduct visits to all facilities housing children in the area allocated, at least once in three months.

### 5.2.1 District Inspection Committee

The District Administration must constitute District Inspection Committee (Model Rules 41 (8-13)) which shall comprise the following members:

- (i) Member of the Board or the Committee;
- (ii) District Child Protection Officer as the Member Secretary;
- (iii) Medical Officer;
- (iv) One member of the civil society working in the area of child rights, care, protection and welfare;
- (v) One mental health expert who has experience of working with children.
- The District Inspection Committee shall inspect all Child Care Institutions in the district according to Form 46 of the Model rules.
- The inspection of the facilities housing children in the district shall be carried out at least once every three months as per the JJ Act.
- The District Inspection Committee shall submit the report of the findings to the DCPU or the State Government and shall make suggestions for improvement and development of the Child Care Institutions in accordance with the provisions of the Act and the rules made thereunder.
- The District Inspection Committee shall interact with the children during the visits to the institution to determine their well-being and to elicit their feedback.
- The DCPU shall take necessary follow up action on the report of the District Inspection Committee.

Additionally, the JJ Board is under obligation to conduct monthly inspection of the residential facilities for CICL (Section 8(3)) and the CWC must conduct 2 inspections in a month (Section 30 (viii)) and make necessary recommendations to the DCPU.

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<sup>83</sup> Ved Kumari. 2017. The Juvenile Justice (Care and Protection of Children) Act. Critical Analysis. Universal Law Publishing

### 5.3 Services for Children in Institutions

Ideally, placement of children in residential care must be a temporary measure of care to prepare them for resettlement and re-integration into society. However, in preparation for all children in institutions to be able to return to community life outside the institution, it is critical that children are looked after and provided skills and educational skills. Section 53 (1) JJ Act provides a list of services that must be provided to all children in institutions based on their needs - gender, age and ability. The Model and State Rules further lay down the standards of care and services that must be made available to children in institutions. These services include those necessary for the child's survival and development –food, shelter, clothing, education, recreation and leisure, necessary health interventions, education and skill development and other soft skills that would help them build their lives.

The most important component is the individual care plan for each child based on the specific needs of the child that are identified through a physical, social and psychological needs assessment undertaken by trained personnel.

The holistic counselling services provided to children must enable children to be able to disclose any sexual or other forms of abuse they may have faced prior to coming into the institution or in the course of their stay in the CCI.

Some of the challenges that are faced by children when they arrive at an institution are absence of an identity proof and a birth certificate that can link them to basic services- especially education. The CCI and the District Administration must assist the child in the institution in procuring a birth certificate and identity proof.

#### DELHI HIGH COURT DIRECTS LINKING OF JJ SYSTEM WITH BIRTH REGISTRATION

Taking suo moto cognizance of data received on number of children lodged in Tihar jail following an RTI application filed by HAQ: Centre for Child Rights, the Delhi High Court initiated a PIL to look into and correct the situation and pass appropriate directions for various authorities involved.

In a step of far reaching consequences for millions of disadvantaged children in the Capital and other states of India, the Delhi High Court linked the Birth Registration System with the Juvenile Justice Administration System by holding that once the age of the child has been determined by the CWC or the JJB, the order should be used to get a birth certificate issued for the child so that this can become a proof of their age for the future.

*Court on its Own Motion Vs. Department of Women and Child Development [WP (C) 8889 / 2011]*

All children are entitled to free legal aid and CCI are obligated to arrange it if required.

Section 53 (2) provides that every CCI must have a Management Committee to manage the institution as well as monitor the progress of each child residing in it. Section 53 (3) also requires the setting up of Children's Committee in CCI housing children over the age of six years.

### 5.4 Children in Conflict with the Law (CICL)

While the law mandates that CICL and CNCP are to be housed separately, it also recognises that the former are children, not adults and accordingly provides for them to be treated as such. It was as far back

as 1919 -1920 that the Indian Jail Committee Report recognised the need to segregate child offenders from adults at all stages and recommended the setting up of separate remand homes for children. The Jail Committee had then recommended that such facilities be set up away from adult jails, and that their physical appearance and characteristics differ from traditional jails, in that features like high walls and gates, iron bar windows etc. be absent. Subsequent legislation has reinforced this stance.

All the facilities for CICL–Observation homes, Special Homes and Place of Safety must provide infrastructure and services for its inmates according to the JJ Act and the Rules (Model Rules and State Rules).

As per Section 47 of the JJ Act, an Observation Home has to be established by the State Government in every district or a group of districts on its own or through private entities such as NGOs or foundations. Its purpose is to receive children on a temporary basis and provide care and rehabilitation for CICL during the pendency of the inquiry. The scheme of the Act required the 16-18-year-old children who are suspected to have offended be placed in a place of safety rather than an Observation Home.

Section 48 of the JJ Act provides for the setting up of Special Home for CICL directed to be placed there by the JJB after the disposal of the case. Like all CCIs they are to be set up in each district or a group of districts by the State on its own or through NGOs or voluntary organisations or foundations.

Place of Safety defined in Section 2 (46) refers to any place or institution not being a police lock-up or a jail established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

The following categories of children may be sent to a place of safety:

- Any person, who has completed eighteen years of age, and is apprehended for committing an offence when (s) he was below the age of eighteen years, (and therefore treated as child for inquiry under the JJ Act), if not released on bail by the Board, shall be placed in a place of safety during the process of inquiry. (Section 6. (2)).
- The Board can also order certain children to be committed to a place of safety in case the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home. (Section 18 (1) (g))
- Children's Court can send children between the age of 16-18 years tried by them and convicted to a place of safety till they attain 21 years of age (Section 19)

Section 49 of the JJ Act addresses the setting up of the place of safety:

- (1) The State Government shall set up at least one place of safety in a State registered under section 41 of the JJ Act, so as to place a person above the age of eighteen years or child in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence.
- (2) Every place of safety shall have separate arrangements and facilities for stay of such children or persons during the process of inquiry and children or persons convicted of committing an offence.

- (3) The State Government may, by rules, prescribe the types of places that can be designated as place of safety under sub-section (1) and the facilities and services that may be provided therein.

NOTE: While it is clear what may not be a place of safety (police lock up or jail), the Act does not specify what may constitute one. Hence it is up to the State to prescribe under the rules what they would like to declare as the place of safety for children.

Model Rule 85 (iv) requires the DCPU to conduct a review of the child placed in the place of safety every year and forward the report to the Children's Court.

#### STATE SPECIAL HOME FOR CICL IN SUMMANAHALLI, BANGALORE

The ECHO Special Home for CICL is the first one in the India to be run by a voluntary organisation. It focuses on the overall development of the child through individual care and attention – which helps them become better human beings – & a variety of educational, vocational and agricultural activities.

- Services to mainstream CICL
- Life orientation: is conducted regularly for psycho-social engagement.
- Career guidance: to orient children towards contributing positively to society.
- Personality development programmes: enable the children to enhance their functional ability and civic sense.
- Yoga and meditation: to improve deviant and aggressive behaviour.
- Counselling and guidance: to resolve psychological issues through therapy.
- Therapeutic treatment: in the form of dance, music, theatre and art.
- Therapeutic treatment: in the form of dance, music, theatre and art.
- Formal and non-formal education: at primary and higher secondary levels in addition to the KOS exam (Xth boards). A few children also pursue undergraduate studies at recognised universities in Bengaluru.
- Vocational training: such as computer skills, farming, ITI, tailoring, screen-printing, driving etc. equips them for the post-institutional life.
- Life skills education: helps them understand the ethos and ethics of human life and better adapt to society.
- Bala Panchayat: offer a platform for participation in decision making and familiarises them with ownership and civic responsibility.

#### Traffic Police Assistance Programme (TPAP)

This programme, initiated by ECHO in cooperation with the Department of Police, aims to transform CICL into responsible members of the society through law enforcement. Former lawbreakers become law enforcers and earn their own living.



#### Institutional Setup

- Transitional Homes at Bangalore, Mysore and Cochin: These homes are established for delivering reformatory programmes to CICL and for their care and protection.
- Rehabilitation Center: This center is dedicated to complete rehabilitation in terms of education, vocational training, job placements of the children etc.

#### 5.4.1 Segregation of CICL by Age, Gender, Maturity and Degree of Offence

A child between 7-18 years alleged to have committed offences can be kept in an OH, pending the bail inquiry or if the child has been denied bail by the police or the JJB.

A person who has completed 18 years of age and is apprehended for having allegedly committed an offence when he was below 18 years will be kept in a place of safety and not the OH during the inquiry process if the person has been denied bail.<sup>84</sup>

Girls and boys have to be kept in different homes. However, it is not clear how the other genders are to be placed.

Children must also be segregated on the basis of maturity:

S.47 (4) Every child alleged to be in conflict with law who is not placed under the charge of a parent or guardian and is sent to an observation home, shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed.

**NOTE:** While segregation on the basis of age and gender (including the third gender) is clear, the segregation of children on the basis of 'mental status and degree of offence committed' is problematic. As the term 'degree of offence' is not defined in the law, it is not clear whether it is addressing classification of offence into petty and serious or heinous OR whether this refers to 'nature of the offence'.

Besides, since the children in the Observation Home are in a pre-inquiry (trial) stage, they have not been found guilty of the offence. Under the circumstances, their segregation basis 'degree' of offence committed is moot.

These gaps in the law will have to be addressed by the administration on a case-by-case basis in its implementation of the JJ Act.

#### 5.4.2 Infrastructure for CICL

As per Rule 29(1) the accommodation in each institution should meet the following criteria:

(i) Observation Home:

(a) Separate observation homes for girls and boys;

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<sup>84</sup> JJ Act, 2015, Section 6(2).

- (b) Classification and segregation of children according to their age group: preferably 7-11, 12-16 and 16-18 years, giving due consideration to physical and mental status and the nature of the offence committed.

(ii) Special Home:

- (a) Separate special homes for girls above the age of 10 years and boys in the age groups of 11-15 and 16-18 years;
- (b) Classification and segregation of children on the basis of age and nature of offences and their mental and physical status.

(iii) Place of Safety:

- (a) For children in the age group of 16-18 years alleged to have committed heinous offence pending inquiry;
- (b) For children in the age group of 16-18 years found to be involved in heinous offence upon completion of inquiry;
- (c) For persons above 18 years alleged to have committed offences when they were below the age of 18 years pending inquiry;
- (d) For persons above 18 years found to be involved in offence upon completion of inquiry;
- (e) For children as per the orders of the Board under clause (g) of sub-section (1) of section 18 of the Act.

It is the role and responsibility of the District Administration – DM through the DCPU to ensure adequate physical infrastructure and personnel to ensure the segregation that the Act and the Rules require.

#### 5.4.3 Rights of CICL in an Observation and Special Homes

The rights of CICL under the JJ Act 2015, UN Convention on the Rights of the Child, and soft law instruments which are not binding, but of persuasive value, such as the Beijing Rules and Havana Rules is detailed in Chapter 2.

These rights include the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, the right to legal aid, the right to education, the right to privacy, the right to be heard, the right to equality and non-discrimination, and all other rights available to children.

### 5.5 Children in Need of Care and Protection (CNCP)

As explained in Chapter 3, the CWC may direct a child to be placed in a children's home or open home. Model rule 85 requires DCPU to maintain a database of Child Care Institutions, Specialised Adoption Agencies, open shelters, fit persons and fit facilities.

Section 50 of the JJ Act provides for the setting up of Children's Homes in every district or a group of districts for the placement of CNCP by the orders of the CWC. These can be set and maintained both by government and NGOS/ CSOs. Some of these children's homes can also be designated as a home for children with disabilities providing special needs care and support as per the requirements of the children placed in them.

### 5.5.1 Rights of Children in Children's Homes

The purpose is to provide care, treatment, education, training, all round development and rehabilitation to the children sent into these homes. All children have a right to live a life free of violence inside an institution. Hence it must be ensured that there is no torture or corporal punishment. Unlike the institutions for CICLs, Children's Homes are often long-term care institutions where children may be spending a large part of their lives.

Institutionalisation as the last resort has been established in the JJ Act. So, all efforts must be made to trace the family and re-unite to the extent possible the child with his/her family. However, there are many cases in which it may not be in the best interest of the child to return to the family- especially if the family has been established as a site of abuse and exploitation.

Siblings must not be separated in the process of institutionalization (Section 39 (1)). However, in case the siblings are of different genders, then this is a challenge as the law requires CCIs to be created based on age and gender.

'Care' includes provision of adequate and quality food, clothing, bedding and sufficient living conditions necessary for healthy growth and development of each child.

'Treatment' refers not just to medical treatment but support necessary for all round mental well-being and growth of the child, including special support if necessary based on physical or mental needs identified from time to time.

The educational support for the children must be such that they can compete at par with children who are not in institutions, and which enables them to move forward in their lives outside the institution, as they move into adulthood.

## 5.6 Standards of Care and Protection in CCI (Rule 29 (4))

The standards of care and protection for all children in child care institutions (CCI) whether they are CICL or CNCP are the same and laid out in Model Rule 29

- Child Care Institutions shall be child-friendly and in no way resemble a jail or lock-up.
- While children of both sexes below 10 years may be kept in the same home, separate bathing and sleeping facilities shall be maintained for boys and girls in the age group of 5-10 years;
- Separate facilities for children up to the age of six years with appropriate facilities for infants.
- Separate children's homes for boys and girls in the age group of 7-11 years and 12- 18 years.
- The Child Care Institutions for CICL and CNCP shall function from separate premises.

The law and the rules stipulate certain criteria for CCIs and the district administration is responsible for ensuring they are met.

The standards of care and protection for all children in CCIs, whether they are CICL or CNCP are the same and laid out in Model Rule 29. The CCIs shall be child-friendly and shall in no way resemble a jail or lock-up. The suggested norms for building or accommodation in each institution with 50 children are given in Annexure C.

#### 5.6.1 Infrastructural Requirements (Rule 29)

- There shall be proper and non-slippery flooring for preventing accidents.
- There shall be adequate lighting, heating and cooling arrangements, ventilation, safe drinking water,
- Clean and accessible gender and age appropriate and disabled friendly toilets and high walls with barbed wire- fencing.
- CCI must:
  - (i) Make provision of first-aid kit, fire extinguishers in kitchen, recreation room, vocational training room, dormitories, store rooms and counselling room;
  - (ii) Conduct periodic inspection of electrical installations;
  - (iii) Ensure proper storage and inspection of articles of food;
  - (iv) Ensure stand-by arrangements for water storage and emergency lighting.
- Special infrastructural facilities and necessary equipment shall be provided to differently abled children. Such facilities and equipment shall be designed under the guidance of specialists or experts.
- Other logistical and functional requirements which may be provided, include:
  - (i) Computer sets;
  - (ii) Photocopiers;
  - (iii) Printer, scanner cum fax;
  - (iv) Telephone with internet facility;
  - (v) Web cam;
  - (vi) Furniture for officials, record keeping cabinets, work stations, wheel chair and stretchers for medical room;
  - (vii) Chairs and tables for study and dining hall;
  - (viii) Projector.
- Every Child Care Institution shall keep a copy of the Act and the rules framed by the State Government, for use by both the staff and children residing therein.
- Each Child Care Institution shall have a Management Committee for the management of the institution and monitoring the progress of every child in the home

#### 5.6.2 Staff and Personnel

According to Rule 2(xii), JJMR 2016, "Person-in-charge" means a person appointed for the control and management of the Child Care Institution.". The Person-in-charge of a CCI housing girls should be female and only female staff should be appointed in such CCI<sup>85</sup>

The Person-in-charge is responsible for the control and supervision of the staff of the CCI and can, by order, determine their specific duties and responsibilities in accordance with the JJ Act 2015 and JJMR 2016.<sup>86</sup>

<sup>85</sup> JJ MR, 2016, Rule 26(4).

<sup>86</sup> JJ MR, 2016, Rule 26(2).

The personnel strength will be determined based on the duty, posts, hours of duty, and category of children<sup>87</sup>. The number of posts in each category of staff will be determined based on the capacity of the CCI and will proportionately increase with the increase in capacity.<sup>88</sup> The JJMR 2016 suggests the following staffing pattern for institutions with a capacity of 100 children<sup>89</sup>:

TABLE 15: RECOMMENDED STAFF AND PERSONNEL IN CCI

S. No	Personnel/ Staff	Number
1.	Person-in-charge (Superintendent)	1
2.	Probation Officer/Child Welfare Officer/Case Workers (NGOs) A Child Welfare Officer may be designated as Rehabilitation-cum-Placement Officer	3
3.	Counsellor/ Psychologist/ Mental health expert	2
4.	House Mother/ House Father	4
5.	Educator/ Tutor	2 (Part time)
6.	Medical Officer (Physician)	1 (on call)
7.	Para-medical staff/ Staff Nurse/Nursing Orderly	1
8.	Store Keeper cum Accountant	1
9.	Art & Craft & activity teacher	1 (Part time)
10.	PT Instructor-cum-Yoga trainer	1 (Part time)
11.	Cook	2
12.	Helper	2
13.	House keeping	2
14.	Driver	1
15.	Gardener	1 (Part time)

According to the JJMR 2016, security personnel should be deployed based on the “strength of the children, age groups, physical and mental status, segregation of the facility based on the nature of offence and structure of the Institution.”<sup>90</sup> They should be trained and oriented to deal with children with sensitivity.<sup>91</sup> Preference should be given to appointing former servicemen, retired para-military personnel or applicants through the Director General of Resettlement.<sup>92</sup> They should not be armed or carry guns, but should be trained and skilled in dealing with crisis situations, controlling violence, escape of children from the CCI, conducting search and frisking and security surveillance.<sup>93</sup>

<sup>86</sup> JJ MR, 2016, Rule 26(2).

<sup>87</sup> JJ MR, 2016, Rule 26(1).

<sup>88</sup> JJ MR, 2016, Rule 26(3).

<sup>89</sup> JJ MR, 2016, Rule 26(7).

<sup>90</sup> JJ MR, 2016, Rule 26(9).

<sup>91</sup> JJ MR, 2016, Rule 26(10).

<sup>92</sup> JJ MR, 2016, Rule 26(10).

<sup>93</sup> JJ MR, 2016, Rule 26(11).

**BAL MITRAS – FRIENDS OF CHILDREN IN UTTAR PRADESH**

Issue/Challenge:- Cases of poor living conditions and low standards of service at Children's Homes have been highlighted recently. Regular support is required to maintain the standards of children's homes and facilities. This support can also be garnered from outside the formal system. Rule 78 (3) says that CCI shall encourage active involvement of the local community and corporates in improving institutional conditions supporting children. This provision is not being utilised, even though there are individuals wanting to extend support and CCI requiring the same. The issue is one of bridging the gap successfully.

Innovative step Government of Uttar Pradesh identified individuals to bridge this gap. These Bal Mitras (lit., Friends of Children) can be retired or serving officers, employees, doctors, educationists, students, industrialists, social organization, and social workers. Their credentials were verified by the District Probation Officer and they were issued Identity Cards signed by District Magistrate.

Through this innovative step, medical camps, therapy sessions, individual tuitions, sessions on Art of Living, group counselling and recreational and sports activities and many such other programmes/activities can be organized. These help CCI inmates in skill development, behavioural change, getting admission to regular schools, economic gain and in the creation of a transparent environment.

**5.6.3 Clothing, Bedding and Toiletries**

Clothing, Bedding, Toiletries and other Articles shall be as per the scale and climatic conditions (Model Rule 30). The requirements of each child and the minimum standards are in Annexure 2.

In addition to the clothing specified above, each male child shall be provided, once in three years, with a suit consisting of one white shirt, one pair of shorts or pants, one pair of white canvas shoes and one blazer for use during ceremonial occasions. In the case of girls, it shall be one white half sari or one salwar kameez or one white skirt and one white blouse, a pair of white canvas shoes and a blazer.

**5.6.4 Health care Facilities**

All children in CCI have a right to medical attention- both physical and mental when needed. Rule 34 of the Model Rules stipulates certain standards that have to be provided for and maintained.

Medical personnel should be available on call for regular medical check-up and treatment of children in the OH.<sup>94</sup> A nurse or a paramedic should be available round the clock.<sup>95</sup> It is the responsibility of the Person-in-charge of the institution to ensure that recommendations made in connection with the medical care of the child are complied with.<sup>96</sup>

Child Care Institution medical responsibilities (in accordance with JJMR 2016<sup>97</sup>):

- Arrange for medical examination of each child admitted in an institution by the Medical Officer within

The children shall be kept in special care homes or hospitals and avail necessary medical/ psychiatric and psychological support or treatment.

(Rule 34 (6))

<sup>94</sup> JJ MR, 2016, Rule 26(1).

<sup>95</sup> JJ MR, 2016, Rule 26(2).

<sup>96</sup> JJ MR, 2016, Rule 26(8).

<sup>97</sup> JJ MR, 2016, Rule 26(3).

twenty- four hours of admission and immediately in special cases or medical emergencies;

- Arrange for the psycho-social profile of every child in the OH should be maintained and updated on a monthly basis and special observations should be recorded<sup>98</sup>.
- Arrange for a medical examination of child by the Medical Officer at the time of transfer within twenty-four hours before transfer;
- Maintain a medical record of each child on the basis of monthly medical check-ups and provide necessary medical facilities;
- Ensure that the medical record includes weight and height record, any sickness and treatment, and other physical or mental problems;
- Have facilities for quarterly medical check-ups including dental check-up, eye testing and screening for skin problems and for treatment of children;
- Have a first aid kit with all staff trained to administer first aid;
- Make necessary arrangements for the immunization of children;
- Take preventive measures in the event of an outbreak of contagious or infectious diseases;
- Keep sick children under constant medical supervision;
- Not carry out any surgical intervention in a hospital on any child without the previous consent of his parent or guardian, unless the parent or guardian cannot be contacted, and the condition of the child is such that any delay would, in the opinion of the medical officer, involve unnecessary suffering or injury to the health of the child or danger to life, or without obtaining a written consent to this effect from the Person-in-charge of the institution;
- Provide or arrange for regular counselling of every child and ensure specific mental health interventions for those in need of such services, including separate rooms for counselling sessions within the premises of the institution and referral to specialised mental health centres, where necessary;
- Refer such children who require specialised drug de-addiction and rehabilitation programme, to an appropriate centre administered by qualified persons where these programmes shall be adopted to the age, gender and other specifications of the child concerned.

The State Government through the District Child Protection Unit shall make provisions for those children diagnosed with special problems such as hormonal problems, immuno-compromised diseases, physical and mental disabilities on the recommendation of the medical officer. The children shall be kept in special care homes or hospitals and avail necessary medical/ psychiatric and psychological support or treatment. (Rule 34 (6))

**Provision for Hospitals:** These are to be attached to institutions where there is provision for in patient cots. JJMR (Rule 30 (3)) lays down the requirements for such hospitals as well as the kind of toiletries and hygiene standards that they must maintain.

<sup>98</sup> JJ MR, 2016, Rule 26(8).

### Lab Investigations:

Baseline investigations of complete blood count, urine routine, HIV, VDRL, Hepatitis B and Hepatitis C tests, allergy or addiction to drugs should be carried out at the time of entry into the institution based on the doctor's suggestion after examination of the child<sup>99</sup>. The JJMR 2016 also stipulates that pregnancy tests or tests for sexual diseases should be conducted, if required, by order of the JJB or Children's Court<sup>100</sup>. The DCPU should facilitate the procedures under the Medical Termination of Pregnancy Act, 1971, if required.<sup>101</sup> Health assessments to detect iron deficiency should be conducted for a girl who has attained puberty and dietary plans and medicines should be prescribed by the nutritionist and doctor, if necessary.<sup>102</sup>

Provisions should be made by the State Government through the DCPU for children with hormonal problems, immuno-compromised diseases, physical and mental disabilities based on recommendation of the medical officer.<sup>103</sup>

### Mental Health Interventions

The environment in the CCI must be "free from abuse, allowing children to cope with their situation and regain confidence."<sup>104</sup> To this end, the staff and persons responsible for their care should facilitate an enabling environment and collaborate with therapists, if necessary.<sup>105</sup> The JJMR 2016 mandates milieu based interventions and individual therapy for all children living in the institution.<sup>106</sup> The phrase "milieu based intervention" connotes "a process of recovery, which starts through providing an enabling culture and environment in an institution so as to ensure that each child's abilities are discovered and they have choices and right to take decisions regarding their life and thus, develop and identify beyond their negative experiences, such intervention which has a critical emotional impact on the child."<sup>107</sup>

The CCI should have trained counsellors or collaborate with child guidance centres, psychology and psychiatric departments or similar Government and non-Governmental agencies, for specialised and regular individual therapy for the child.<sup>108</sup> Recommendations of mental health experts should be maintained in the case file.<sup>109</sup> The JJMR 2016 prohibits the administration of medicines for mental health problems without a psychological evaluation and diagnosis by trained medical health professionals.<sup>110</sup> Further, "medicines should be administered to the children only by trained medical staff and not by any other staff of the Home."<sup>111</sup>

<sup>99</sup> JJ MR, 2016, Rule 34(4).

<sup>100</sup> JJ MR, 2016, Rule 34(5).

<sup>101</sup> JJ MR, 2016, Rule 34(5).

<sup>102</sup> JJ MR, 2016, Rule 34(7).

<sup>103</sup> JJ MR, 2016, Rule 34(6).

<sup>104</sup> JJ MR, 2016, Rule 35(1).

<sup>105</sup> JJ MR, 2016, Rule 35(2).

<sup>106</sup> JJ MR, 2016, Rule 35(3).

<sup>107</sup> JJ MR, 2016, Rule 35(3) Explanation.

<sup>108</sup> JJ MR, 2016, Rule 35(5).

<sup>109</sup> JJ MR, 2016, Rule 35(6).

<sup>110</sup> JJ MR, 2016, Rule 35(7).

<sup>111</sup> JJ MR, 2016, Rule 35(8).



The model rules clearly lay down that a psycho-social profile of every child shall be maintained by the Child Care Institution and updated every month. Special observations may be recorded, when required. Person-in-charge of the institution shall ensure that any recommendations made shall be duly complied with. (Rule 34 (8)).

#### 5.6.5 Sanitation, Hygiene and Nutrition

The Model rules have laid out norms for Sanitation hygiene and nutrition which have been listed out in Annexure 4

#### 5.6.6 Education (Rule 36)

All children have a right to free and compulsory education under the Right to Free and Compulsory Education Act, 2009. This is an integral part of the JJ Act and its implementation. The District Administration has to ensure that all children in CCIs are provided these opportunities through linking them with existing facilities, programmes and schemes (Central and State).

The following are the norms:

- Every institution shall provide education to all children according to the age and ability, both inside the institution or outside, as per requirement.
- There shall be a range of educational opportunities including, mainstream inclusive schools, bridge school, open schooling, non-formal education and learning where needed.
- Wherever necessary, extra coaching shall be made available to school-going children in the institutions by encouraging volunteer services or tying up with coaching centres or tutors.
- Specialised trainers and experts shall be appointed to cater to the educational needs of children with special needs either physical or mental. Learning disorders shall be identified, assessed and reported in the Individual Care Plan. Further assistance shall be given to the child by trained professionals.
- Regularity of the education programme and attendance of the children shall be ensured.
- Children should be able to avail scholarships, grants and schemes and sponsorships.

#### 5.6.7 Vocational Training (Rule 37)

- Every Child Care Institution shall provide gainful vocational training to children according to their age, aptitude, interest and ability, both inside and outside the Child Care Institution.
- Vocational training shall include occupational therapy, skill and interest based training, aimed at suitable placement at the end of the course. The institute, preferably government recognised, providing vocational training shall give a certificate, on the completion of the course.
- Where vocational training is offered outside the premises of the Child Care Institution, children shall be escorted for such programmes with proper security planning and services, particularly for children who are at risk.
- A record shall be maintained for all children attending the programmes and the progress made by each child shall be reviewed. The report in that regard shall be submitted to the Board or the Committee or the Children's Court, as the case may be, on a quarterly basis.

## 5.7 Open Shelters

Section 2 (41) defined “open shelter” as a facility for children, established and maintained by the State Government, either by itself, or through a voluntary or non-governmental organisation (under sub-section (1) of section 43).

Such open shelters are to function as a community based facility for children in need of residential support, on short term basis, with the objective of protecting them from abuse or weaning them, or keeping them away from a life on the streets.

They are supposed to send information, in the manner prescribed (see format below provided in the model rules), regarding children availing the services of the shelter, to the DCPU and the CWC every month.

(Format - Form 29 at Page No.101)

**The district administration through the DCPU is responsible for identifying and maintaining a list of open shelters as well as monitoring their functioning.**

## 5.8 Fit Facility

The JJ Act makes provision for placing of children temporarily or for a short-term period in “Fit Facility”. Section 2 (27) of the JJ Act defines fit facility as one that is run by the government or by a voluntary or non-governmental organization that is ready to take temporary care of a child for a specific purpose. Section 51. (1) empowers the JJB or the CWC to recognise a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child in such manner as may be prescribed.

It is important to distinguish a fit facility from a residential home. While a residential home (Observation Home, Special Home or Children’s Home) aims to provide long term care, a Fit Facility is expected to take only temporary responsibility of the child. Here are some examples:

- The CWC or JJB may place a child with a substance abuse issue in a de-addiction centre declaring it a fit facility for the child.
- In case a child is suffering from some disease that requires special care or quarantine, a specialised hospital may be declared a fit facility.
- The JJB may release a child on probation and place him /her under the care of fit facility, and also order that the child be placed under the supervision of a Probation Officer who shall submit periodic reports in Form 10 with the period of such supervision being capped at three years.
- The CWC may, after interaction with the child, issue directions for placing the child in safe custody in a fit facility till such time that s/he can be moved into a home or sent back to their parents / guardians.

As per Model Rule 11 (8), in the event of placement of the child in a fit facility, the JJB shall consider that the fit facility or special home is located nearest to the place of residence of the child’s parent or guardian, except where it is not in the best interest of the child to do so.

Any facility for recognition as a fit facility shall:<sup>112</sup>

- (i) meet the basic standards of care and protection to the child;
- (ii) provide basic services to any child placed with it;
- (iii) prevent any form of cruelty, exploitation, neglect or abuse of any kind to any child placed in it
- (iv) abide by the orders passed by the Board or the Committee.

### Role of District Administration

The District Administration through the DCPU is required to keep an updated list of fit facilities with the specialised services it can provide to children. A list of fit facilities approved by the Board or the Committee shall be kept in that office and be sent to the Children's Court, Special Juvenile Police Unit, the DCPU and the State Child Protection Society.

An institution or organisation shall be recognised as a fit facility for purposes which may include:

- (i) short term care;
- (ii) medical care treatment and specialised treatment;
- (iii) psychiatric and mental health care;
- (iv) de-addiction and rehabilitation;
- (v) education;
- (vi) vocational training and skill development;
- (vii) witness protection; and
- (viii) group foster care.

The services to be provided by the fit facility should include:

- (i) food, clothing, water, sanitation and hygiene;
- (ii) mental health interventions including counselling;
- (iii) medical facilities including first aid and to facilitate specialised treatment;
- (iv) formal age appropriate education including bridge education and continuing education and life skill education;
- (v) recreation, sports, fine arts and group work activities.

(12) A child shall be placed in a fit facility for a period deemed fit by the Board, the Committee or the Children's Court.

### 5.9 Fit Person

A fit person according to the JJ Act, is one who is recognised as such (vide section 2 (28) and Model Rule 28). Under Section 52. (1), the CWC or the JJB has the power to recognise any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period and in the manner as

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<sup>112</sup> Model Rule 27 (3)

may be prescribed. Under Section 52 (2) the CWC or the JJB , as the case may be, also has the power to withdraw the recognition granted under sub-section (1) for reasons to be recorded in writing.

A fit person is different from a fit facility or fit institution in that although highly temporary in nature, the fit person is expected to provide all round care and protection to the child while under his/her care. This is especially beneficial for children who need individualised care until long term care arrangements can be made.

The JJB or the CWC or the Children's Court may place the child with a fit person in case required, including situations where the child cannot be sent to a Child Care Institution due to distance and/ or time.

The JJB or the CWC may identify a panel of persons on the basis of their credentials, respectability, expertise, professional qualifications, experience of dealing with children and their willingness to receive the child and shall recognise them as fit persons for the purposes of the Act<sup>113</sup>

The JJB or the CWC or the Children's Court, depending on the need of the child and in consultation with the fit person shall determine the period for which a child shall remain with the fit person. However, the child shall not be placed with a fit person for a period exceeding thirty days.<sup>114</sup>

In such cases where the child requires further care, the CWC may consider the placement of the child in foster care or may consider other rehabilitative alternatives for the child.<sup>115</sup>

NOTE: Where the JJB or the Children's Court needs to place a child for more than thirty days, it must refer the matter to the CWC for further orders in respect of the child.<sup>116</sup>

#### 5.9.1 Role of District Administration

District Administration through the DCPU must maintain an updated list of possible fit persons which the CWC and the JJB can refer to for placing the children. The Social Workers attached to the DPU need to ensure regular follow-up to ensure that the child is safe and protected and is being provided all the necessary support and services while with the fit person.

If not, this information needs to be provided to the CWC or the JJB so that the child can be removed from the care of the fit person and the said person de-recognised.

A list of fit persons recognised by the JJB or the CWC shall be kept in their offices and the Children's Court and be sent to the Special Juvenile Police Unit, the DCPU and the State Child Protection Society.<sup>117</sup>

The fit person shall:<sup>118</sup>

- i) have the capacity and willingness to receive the child; and
- ii) provide basic services for care and protection of the child.

<sup>113</sup> Model Rule 28 (2)

<sup>114</sup> Model Rule 28 (9)

<sup>115</sup> Model Rule 28 (9)

<sup>116</sup> Model Rule 28 (10)

<sup>117</sup> Model Rule 28 (6)

<sup>118</sup> Model Rule 28 (8)

## Role of District Administration through DCPU in the context of Institutional Care (Model Rule 85)

Follow up of children based on orders of the CWC, JJB and Children's Court

- Maintain reports of quarterly information sent by the Board about CACL produced before the JJB and the quarterly reports sent by the CWC;
- Arrange for individual or group counselling and community service for children;
- Conduct follow up of the individual care plan prepared on the direction of the Children's Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offences;
- Conduct annual reviews of children in places of safety and forward the report to the Children's Court.

Update and Maintain Databases

- Maintain a list of persons who can be engaged as monitoring authorities and send the list of such persons to the Children's Court along with bi-annual updates;
- Maintain records of runaway children from Child Care Institutions;
- Identify families at risk and CNCP;
- Assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of the same;
- Periodic and regular mapping of all child related services at the district level for creating a resource directory and making the information available to the Committees and Boards from time to time;
- Maintain a database of child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, after care organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society, as the case may be;
- Maintain a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society;
- Maintain a database of special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Children's Court and the State Child Protection Society;

Facilitation and Coordination

- Facilitate the implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Board or the Committee or the Children's Court;
- Facilitate transfer of children at all levels for their restoration to their families;

- Ensure inter-departmental coordination and liaise with the relevant departments of the State Government and State Child Protection Society of the State and other DCPUs in the State;
- Network and coordinate with CSOs working under the Act;
- Inquire into, seek reports of, and act in cases of death or suicide in CCIs and institutions for care of children, and submit the reports to the SCPS

Role within Child Care Institutions (CCI)

- Examine the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action;
- Be represented on the Management Committees within the Child Care Institutions;
- Maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the Open Shelter facility and of children placed in foster care.

FORM 29  
[Rule 22(9)]

MONTHLY REPORT SUBMITTED BY OPEN SHELTER TO DCPU

1. Name of the Open Shelter.....
2. Name of the In charge.....
3. Registration No.....
4. Address of the Home.....
5. Period of the Report.....
6. Details of children available on

Sr. No.	Name of the Child	Father's Name	Address of the Child, if available	Date of admission	Reason for admission	Duration of stay	Facilitation availed	Produced before CWC (Yes/No)	Remarks, if any

7. Total number of children admitted during the month.....
8. Total number of children in the Open Shelter on the last day of the month.....
9. Total number of children who availed the facilities of the Open Shelter during the month.....
10. Out of these the number of children who availed the services only during the day in the month:

Signature  
In charge of the Open Shelter Home

# CHILDREN IN NON-INSTITUTIONAL CARE

From the reading of the JJ Act, it is apparent that the preferred mode of care and protection for children below the age of six years is adoption. However, the JJ Act also provides for other alternatives for the placement orders in institutions. As per the JJ Act, these placement orders should be reviewed continuously to find if any other alternative community care has become available for keeping the child in view of the fundamental principle of the use of institutions as a measure of last resort and for the minimum period necessary until community care is found.<sup>119</sup>

It is in this context that the alternative care mechanisms of sponsorship, foster care and adoption have been included in the law.

### RESTORATION AND REHABILITATION SUPPORT FOR NON-INSTITUTIONALISED CHILDREN THROUGH SETTING UP A CHILD GUIDANCE CENTRE IN MIZORAM

Issue/Challenge: CNCP in institutional care have certain services available for them, but those who are not in institutional care also need certain services. What is the support available to non-institutional children?

Innovative step: Identifying their need for services, Mizoram state under its State Child Protection Society (Office), has established Child Guidance Centre to provide non-institutional services to children who are not covered under regular programme component of the ICPS and are CNCP. This Child Guidance Centre offers:

1. Diagnostic & management of psycho-social and scholastic disorders
2. Day Treatment Programme for remedial education, cognitive behavioural therapy, behaviour modification, Occupational Therapy, support group and counselling for parents and teachers, vocational guidance, counselling etc.
3. Bereavement and Trauma Service to children and youth in times of grief and trauma, including peer and family members of suicide victim and victim and witnesses of crime and also children effected with natural disasters.

## 6.1 Sponsorship

As per Section 2 (58) "sponsorship" means provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child. The concept of sponsorship is very important in the JJ Act. This enables the child to be looked after by the family, which in other circumstances is unable to do so.

<sup>119</sup> Ved Kumari. The Juvenile Justice (Care and Protection of Children) Act 2015- Critical Analysis. Universal Law Publishing. New Delhi.2017

When granting an order for sponsorship the CWC must consider certain criteria, which shall include the following as given u/s Section 45 (2)

- where mother is a widow or divorced or abandoned by family;
- where children are orphan and are living with the extended family;
- where parents are victims of life threatening disease;
- where parents are incapacitated due to accident and unable to take care of children both financially and physically.

NOTE: The sponsorship programme may provide supplementary support children living in children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life. (Section 45 (4))

The CWC must specify the duration of sponsorship. As per the Model Rules, the duration of the sponsorship shall not ordinarily exceed three years (Model Rule 24 (7)). Section 45 (1) of the JJ Act requires the State Governments to make rules for the purpose of undertaking various programmes of sponsorship of children.

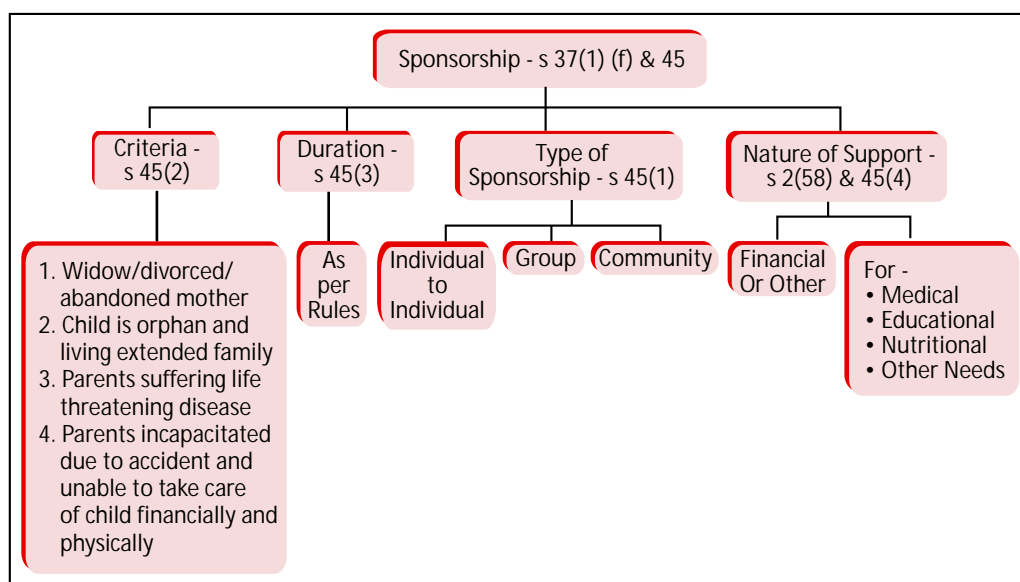


FIGURE 19: SPONSORSHIP CRITERIA AND TYPES

As per Rule 24 of the Model Rules, the State Government shall prepare sponsorship programmes, which may include:

- individual to individual sponsorship;
- group sponsorship;
- community sponsorship;
- support to families through sponsorship; and
- support to Children Homes and Special Homes



CARA is in the process of developing guidelines for sponsorship<sup>120</sup>. Building on the definition of Sponsorship in the JJ Act (above), the draft CARA guidelines states:

*...sponsorship is the provision of supplementary support to families to meet medical, nutritional, educational and other needs of their children with a view to improving their quality of life. It is a conditional assistance to enable children who were at risk from being removed from school and sent for work, to continue their education.*

## Role of DCPU and District Administration

- Hearing of Appeal: Appeals regarding the decision of the CWC regarding Sponsorship by any aggrieved party lie with the DM (Section 101 (1))
- The following are the tasks of the DCPU as per the Model Rule (25)

### Creation of a panel

- The sponsorship programme is to be implemented by the DCPU, which shall provide a panel of persons or families or organisations interested in sponsoring a child.
- The panel will list sponsors according to the area of interest such as education, medical support, nutrition, vocational training etc., and the nature of sponsorship.
- The DCPU shall forward the panel to the JJB, the CWC, or the Children's Court, based on which it shall make its orders. The JJB or the CWC or the Children's Court may suo moto, or based on an application received in that behalf, consider the placement of a child under sponsorship for which purpose it shall verify from the panel whether a sponsor is available to support such child and pass an order for placement of the child under sponsorship in Form 36 of the Model Rules

### Transfer of Sponsorship Amount

The DCPU, in case of individual sponsorship, shall open an account in the name of the child to be operated preferably by the mother. The money shall be transferred directly from the bank account of the DCPU to the bank account of the child. The Juvenile Justice Fund may be used for providing sponsorship. (Model Rules 84 (4) (V))

## 6.2 Foster Care

The guidelines for the Alternative Care of Children (UN 2009) define foster care as a "situation where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family that has been selected, qualified, approved, and supervised for providing such care".

Although, a new concept in the formal structure in India, Foster Care has been in prevalence in many countries such as the USA and the UK with varying degrees of success.

According to Section 44 of the JJ Act, CNCP may be placed in foster care, including group foster care, for their care and protection through orders of the CWC. The purpose is that a child be placed for the purpose of alternate care in the domestic environment of a family, either for a short term or an extended period of time, with unrelated family members for purpose of care and protection.

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<sup>120</sup> <http://cara.nic.in/PDF/sponsorship.pdf>

Placement may be:

- In a family which does not include the child's biological or adoptive parents i.e. in an unrelated family recognised as suitable for a short or extended period of time;
- In a fit facility recognised under the Act for group foster care

In 2016, Government of India has notified the model Foster Care Guidelines<sup>121</sup>. According to it:

*The Guidelines derive strength from section 44 of the Juvenile Justice (Care & Protection of Children) Act 2015, Rule 23 of the JJ Rules, 2016 and the United Nations Convention on the Rights of the Child (1989). These Guidelines do not include pre-adoptive foster care as Regulations for Adoption 2016 framed under JJ Act, will apply in such cases. The States/UTs may adapt or adopt these Guidelines to suit their socio economic and geographic needs*

While foster care is an important form of alternative care, it is important to keep a close watch to ensure that the foster family does not become a site of violence and exploitation.

There are 2 types of foster care:

- Pre-adoption foster care- Wherein the child is placed with the adopting family before the formalisation of the adoption
- Long- term foster care- Where the child has remained with a foster family for a minimum of five years other than in pre-adoption foster care, the foster family may apply for adoption of the child. Such foster parents will have to register on a separate page created on Child Adoption Resource Information and Guidance System under the Adoption Regulations, 2016.

As per Model Guidelines for Foster Care 2016, district administration through the DCPU plays a very critical role in the implementation of foster care and ensuring that children are safe in the foster families.

DCPU is the nodal authority for implementing the foster care programme in a district. All decisions related to placement of a child in foster care are to be taken by the CWC of the district on the recommendation of DCPU and the District Child Protection Officer who is the head of DCPU shall function as the nodal officer for the Foster Care Program and shall receive regular reports regarding ongoing cases from the Protection Officer – Non-Institutional Care<sup>122</sup>

#### 6.2.1 Identification of Children for Foster Care

CWC will order such children to be eligible to be placed in family foster care or group foster care, as the case may be, on the recommendation of DCPU or Specialised Adoption Agency.

#### 6.2.2 Rights of a Child Under Foster Care

CWC, in conjunction with district and state functionaries shall ensure that the foster child's best interest is upheld, and their views are taken into consideration as far as possible in their placement. The individual care plan should be developed and implemented, and the child shall have access to information on the situation of their biological family.

<sup>121</sup> <http://www.wcd.nic.in/sites/default/files/November2016-FC.pdf>

<sup>122</sup> <http://www.wcd.nic.in/sites/default/files/November2016-FC.pdf>

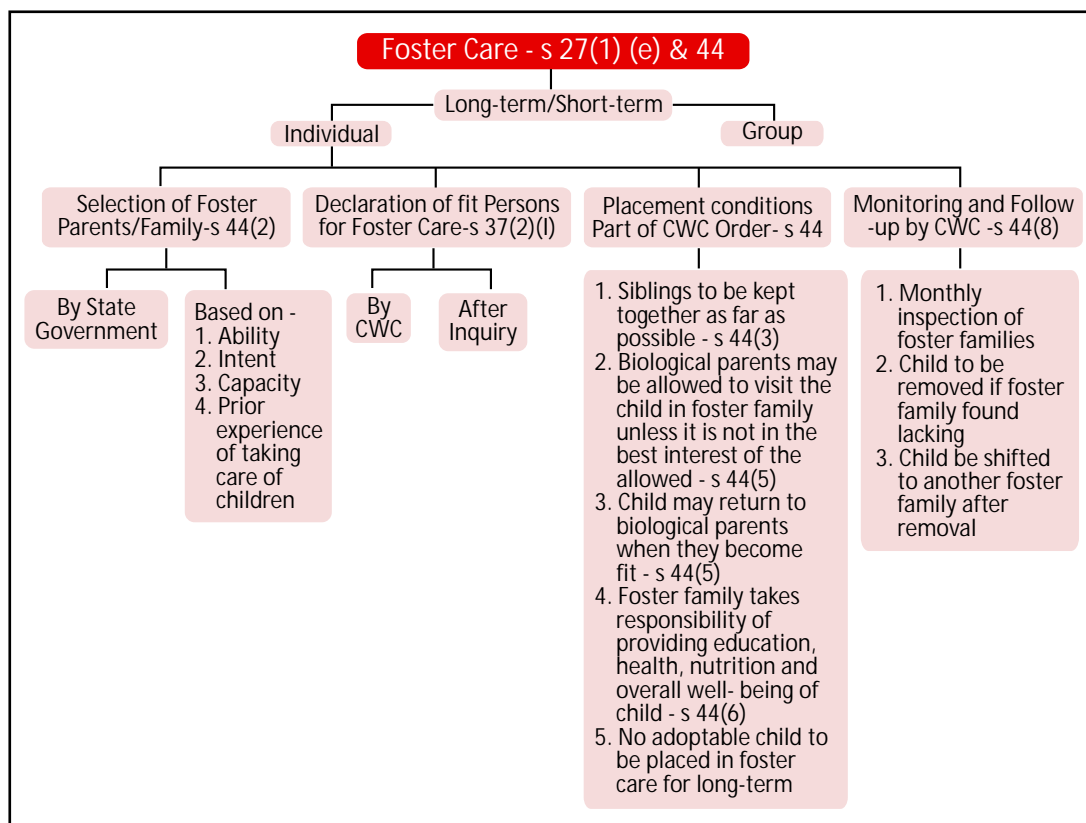


FIGURE 20: FOSTER CARE PROCESS AND GUIDELINES

### 6.2.3 Selection of Foster Families

It is the responsibility of the DCPU to select the Foster Families. The DCPU, while selecting a foster family, may consider the following illustrative criteria:

- Both the spouses must be Indian citizens;
- Both the spouses must be willing to foster the same child;
- Both the spouses must be above the age of 35 years and must be in good physical, emotional and mental health;
- Ordinarily the foster family should have an income with which they are able to meet the needs of the child;
- Medical reports of all the members of the foster care family residing in the premises should be obtained, including checks on Human Immuno Deficiency Virus (HIV), Tuberculosis (TB) and Hepatitis B, any other communicable disease, cancer etc. to determine that they are medically fit;

- Should have adequate space and basic facilities;
- Should be willing to follow rules laid down including regular visits; to doctors, maintenance of child health and their records;
- Should be willing to attend foster care orientation programs organized by the DCPU;
- Must be without criminal conviction or indictment;
- Should have supportive community ties with friends and neighbours.

#### 6.2.4 Selection of Fit Facility for Group Foster Care

While identifying a fit facility, the DCPU may consider the following illustrative criteria:

- Registration of the organisation under the Act;
- Recognition as fit facility by CWC for placement of children in group foster care;
- Registration as NGO on the NITI Aayog website;
- Existence of Child Protection Policy;
- Medical reports of all the care givers of the fit facility should be obtained including checks on Human Immuno Deficiency Virus (HIV), Tuberculosis (TB) and Hepatitis B, any other communicable disease, cancer etc to determine that they are medically fit;
- The care givers shall be without criminal conviction or indictment;
- Space required: The accommodation shall be sufficiently spacious with proper amenities for a group of children (maximum 08 children) to reside. Since children from different genders could be housed, there needs to be adequate space to ensure privacy;
- Sufficient space and proper amenities for children;
- Should have an in-house kitchen and separate toilets and bathroom. There should be at least 1 toilet for every 4 children;
- Should preferably have the look and feel of a house providing a family environment, rather than an institutional setting;
- These fit facilities for group foster care shall be located within an existing neighbourhood to encourage local interaction;
- Recruitment procedures of care givers should in accordance with the qualifications as may be prescribed by State Government;
- Caregivers should have empathy with children;
- Pre-service training should be provided for each foster care giver in the fit facility for group foster care;
- Should have retirement policy for care- givers.

#### 6.2.5 Monitoring and Follow Up

DCPU or its nominee or authorized representative shall present Quarterly Reports of each child before the Sponsorship and Foster Care Approval Committee (SFCAC) for review and recommendation to the

CWC. The District Child Protection Officer shall submit a Quarterly Report to the SFCAC and an Annual Report to the State Child Protection Society

### 6.3 Adoption

Chapter VII of the JJ Act lays down in detail the process of adoption of CNCP who come before the CWC and the role of each of the institutions that are part of this process.

Adoption under the Act means “the process through which the child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights privileges and responsibilities that are attached to a biological child” (Section 2 (2)).

Foster families and children have the right, after proper counselling and time, to decide that a match is not working. At all times the best interest of the child is of foremost importance. Key factors remain the family's and child's right to be respected and considered during the entire matching process.

According to Ved Kumari, “the question who may be adopted under the JJ Act, 2015 must be answered by stating that all Indian children living in India who have not completed the age of eighteen years may be adopted under the JJA 2015 if they are orphaned, abandoned, or surrendered and are declared fit for adoption by the Committee after following the procedure prescribed by the Act”<sup>123</sup>

There are three categories of children who may be declared legally free for adoption:<sup>124</sup>

Orphan- child who is without biological or adoptive parents or legal guardian; or whose legal guardian is not willing to take, or capable of taking care of the child (Section 2(42)).

Surrendered- child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee (Section 2(60)).

Abandoned- child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry (Section 2 (1)).

The decision to declare a child legally free for adoption is that of the CWC after making all inquiries specified under Section 38 of the JJ Act.

As per the Model Rule 23, after the inquiry under Section 35 (3) of the JJ Act shall be concluded by the Committee expeditiously and the Committee shall declare the surrendered child as legally free for adoption after the expiry of sixty days from the date of surrender.

The JJ Act (Section 38 (1)) and Model Rule 24 very clearly stipulates that the adoption procedures in case of an orphaned or abandoned child can only begin after the Committee has made all efforts for tracing the parents or guardians of the child.

For this the Committee shall use the designated portal to ascertain whether the abandoned child or orphan child is a missing child while causing the details of the orphan or the abandoned child to be uploaded, and may direct the publication of the particulars and photograph of an orphaned or

<sup>123</sup> Ved Kumari. The Juvenile Justice (Care and Protection of Children) Act 2015. Critical Analysis. Universal Law Publishing. 2017

<sup>124</sup> There is yet another category of children who can be adopted as per the Adoption Guidelines 2017, which is not part of the JJ Act. This is child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption by the step-parent. This category of children are not part of the JJ system.

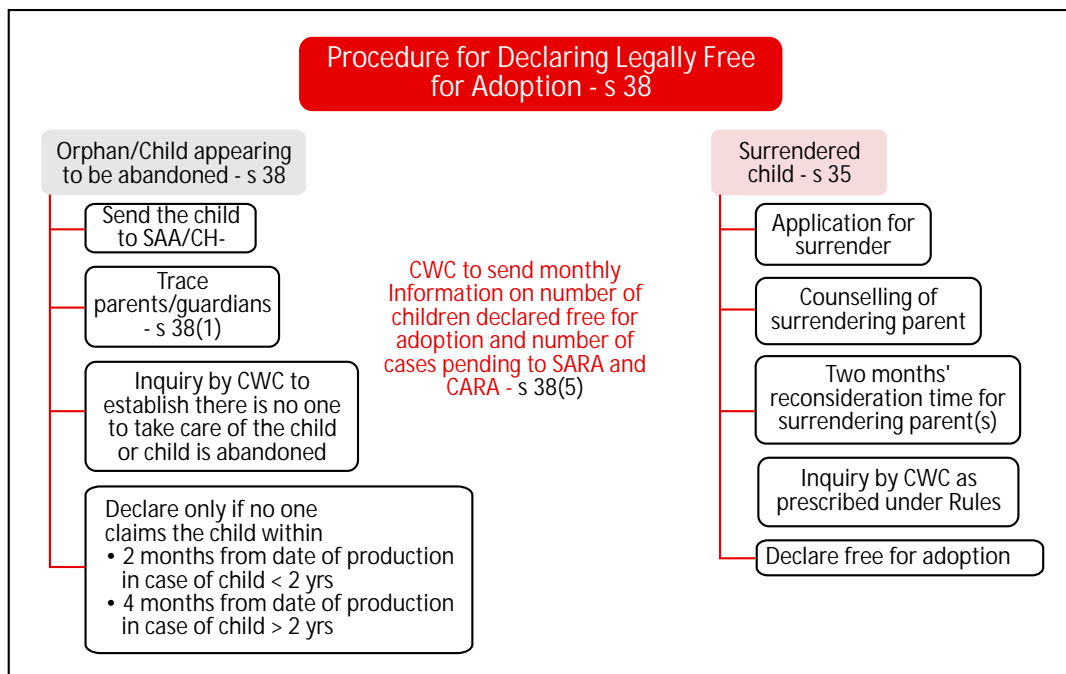


FIGURE 21: PROCEDURE FOR DECLARING A CHILD LEGALLY FREE FOR ADOPTION

#### JJ Act 56

- (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.
- (2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.
- (3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.
- (4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

abandoned child in national newspapers with wide circulation within seventy-two hours from the time of receiving the child for the purposes of tracing out the biological parents or the legal guardian(s).

Only on completion of such inquiry, if it is established that the child is either an orphan without a guardian, or abandoned, will the CWC declare the child legally free for adoption.

In case an abandoned or orphan child is received by a Child Care Institution including a Specialised Adoption Agency, such a child shall be produced before the Committee within twenty-four hours

(excluding the time necessary for the journey) along with a report (in Form 17) containing the particulars and photograph of the child as well as the circumstances in which the child was received by it and a copy of such report shall also be submitted by the Child Care Institution or a Specialised Adoption Agency to the local police station within the same period. (Rule 25)

The CWCs shall furnish the data relating to children declared legally free for adoption and cases pending for decision to the Authority online in the formats provided in the Adoption Regulations and also to the respective State Adoption Resource Agencies, with the assistance of the DCPUs. (Rule 44)

The process of adoption has been laid down in the JJ Act; the Model Rules and Child Adoption Regulations, 2017<sup>125</sup>. While the process of declaring child legally free for adoption and looking after the child till it is formally adopted, the Child Adoption Regulations lay out the procedure to be followed for the adoption.

**As per the Adoption Regulations, the fundamental principles governing adoption are the following :**

- (a) the child's best interests shall be of paramount consideration, while processing any adoption placement;
- (b) preference shall be given to place the child in adoption with Indian citizens and with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible;
- (c) all adoptions shall be registered on Child Adoption Resource Information and Guidance System and the confidentiality of the same shall be maintained by the Authority.

Adoption Regulations, 2017- Section 3

## **Role of DCPU and District Administration (Adoption Regulations 2017)**

Identify orphaned, abandoned and surrendered children in the district

Have them declared legally free for adoption by CWC with the help of Specialised Adoption Agency or Child Care Institution, wherever required;

Advertise the particulars of an orphan or abandoned child

- The CWC, after considering the risk factors, and in the best interest of the child, may direct the DCPU to advertise the particulars and photograph of an orphan or abandoned child in a national newspaper with wide circulation within three working days from the time of receiving the child and also ensure entry of data in the designated portal in its missing or found column by the concerned Child Care Institution or Specialised Adoption Agency.
- In case the child is from another State, the publication shall be done in the known place of origin of the child in the local language and such publications shall be facilitated by State Adoption Resource Agency concerned.
- Wherever DCPU is not functional, the DM concerned shall get such advertisement issued.

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<sup>125</sup> [http://cara.nic.in/PDF/Regulation\\_english.pdf](http://cara.nic.in/PDF/Regulation_english.pdf)

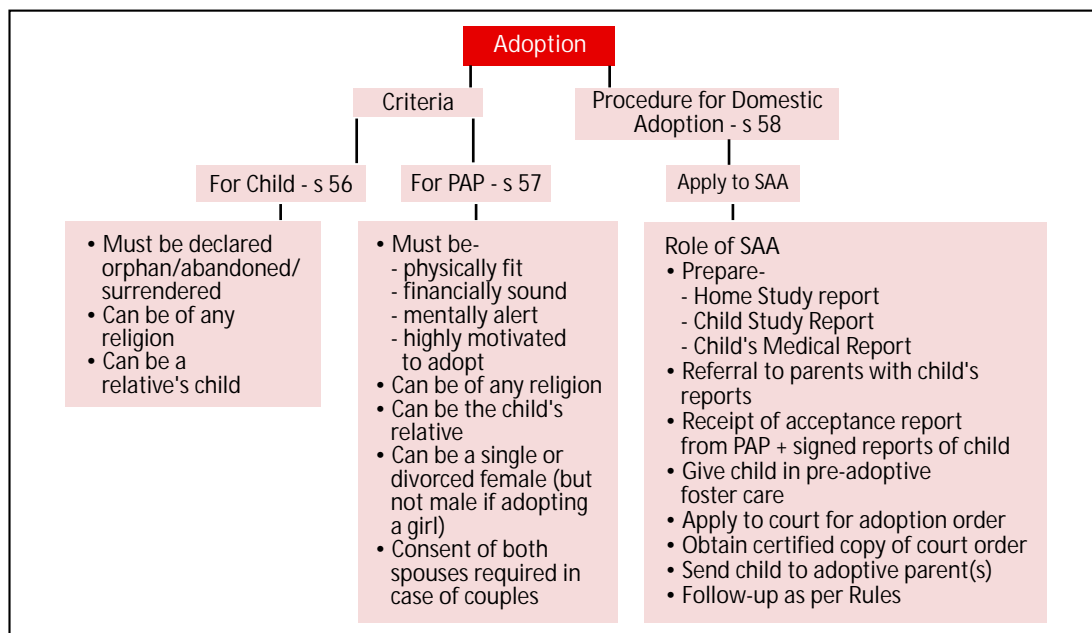


FIGURE 22: DOMESTIC ADOPTION: CRITERIA AND PROCEDURE

### Submission of Report

In case the biological parents or legal guardian cannot be traced, despite the efforts specified in sub-regulations (6) to (8), the DCPU shall accordingly, submit a report to the CWC within thirty days from the date of production of the child before the CWC.

### Data Maintenance and Update

- Facilitate the Specialised Adoption Agency in uploading the Child Study Report and Medical Examination Report in Child Adoption Resource Information and Guidance System, in case the Specialised Adoption Agency is facing any technical difficulty.
- Assist State Adoption Resource Agency and the Authority in all matters related to adoption;
- Assist the CWC in the restoration effort and in completing the process for declaring the abandoned children legally free for adoption, including publishing information of the child in the newspaper, obtaining the social investigation report from the probation officer and non-traceable report from police with the help of Specialised Adoption Agency, wherever required;
- Upload the certificate of CWC declaring children legally free for adoption in Child Adoption Resource Information and Guidance System;
- Update adoption related information on Child Adoption Resource Information and Guidance System, as specified in Schedule XVI and XVII or as given in the format online by the Authority.



### Counselling the Prospective Adoptive Parents

The Specialised Adoption Agency or the empanelled social worker of the State Adoption Resource Agency or DCPU shall counsel the prospective adoptive parents during the home study.

### Facilitation of Online Registration of Application of Prospective Adoptive Parents

The DCPU shall facilitate online registration of application of prospective adoptive parents, uploading of their documents and for addressing technical difficulties faced by the Specialised Adoption Agencies.

### Acting as part of the Adoption Committee

The quorum of the Adoption Committee shall be two members and the quorum of the Adoption Committee in case of adoption from a Child Care Institution shall be three members, while the presence of one official from the DCPU would be mandatory.

- Child Care Institution and its linkage with Specialised Adoption Agency- The DCPU shall be responsible for linking the Child Care Institution where adoptable children have been identified with Specialised Adoption Agency. In case the Child Care Institution and the Specialised Adoption Agency are not located in the same district, the DCPU: -
  - (i) shall conduct Child Study Report through a social worker and Medical Examination Report of the child as per Schedule II and III respectively;
  - (ii) shall upload the profile of the child in Child Adoption Resource Information and Guidance System, which includes photograph, Child Study Report, Medical Examination Report of the child and certificate from CWC declaring the child legally free for adoption; and
  - (iii) once documents of children are uploaded in Child Adoption Resource Information and Guidance System, the linked Specialised Adoption Agency shall access information of such children for facilitating their adoption as per the provisions of these regulations.
- Root search- The DCPU has been given the role of assisting older children in root search along with the Specialised Adoption Agency<sup>126</sup> (44 (2))
- Maintain a panel of professionally qualified or trained social workers - Set up counselling centre with support of State Adoption Resource Agency or the Authority to assist Specialised Adoption Agency or Child Care Institution, wherever required, for
  - (i) counselling and preparation of the Home Study Report of the prospective adoptive parents;
  - (ii) preparation of the Child Study Report and counselling of older children;
  - (iii) preparing post-adoption follow-up report;
  - (iv) preparing family background report in cases of inter-country relative adoptions;
  - (v) post adoption counselling to adopted children and adoptive parents; and
  - (vi) assisting and counselling of older adoptees in root search.

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<sup>126</sup> In cases of root search by older adoptees, the agencies or authorities concerned (Authorised Foreign Adoption Agency, Central Authority, Indian diplomatic mission, Authority, State Adoption Resource Agency or District Child Protection Unit or Specialised Adoption Agency), whenever contacted by any adoptee, shall facilitate his root search.

- Monitoring - The responsibility of constantly monitoring the situation of adoption in the district and ensuring that it remains a clean and ethical process and is undertaken in the best in the best interest of the child vests with the DCPU and District Administration. Monitoring responsibilities include
  - (i) tracking the progress of application of each Prospective Adoptive Parent registered in Child Adoption Resource Information and Guidance System for adopting a child or children from the district and take necessary actions for expediting the case wherever required;
  - (ii) supervising and monitoring the adoption programme in the district;
  - (iii) ensuring that data is being updated by Specialised Adoption Agency in the Child Adoption Resource Information and Guidance System on time and in the correct manner;

The monitoring role of the DCPU and the DM is critical to ensure that there is no subversion of the law, especially since evidence points to the lucrative nature of trafficking for adoption. (See news reports in box below)

Adoption is to ensure a family for the child and cannot be for commercial reasons. To this end, the JJ Act Section 61 (1) clearly states "Before issuing an adoption order, the court shall satisfy itself that — (a) the adoption is for the welfare of the child; (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and (c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus."

### 6.3.2 Inter-Country Adoption

The JJ Act provides for international adoptions of children after following the due process of law.

#### Role of DCPU in Inter-Country Adoptions

- Prior approval for inter-country relative adoption from CARA:
  - i. On receipt of all requisite documents on Child Adoption Resource Information and Guidance System, the Authority shall forward the same to DCPU for obtaining family background report of the child proposed for adoption, as provided in Schedule XXI.
  - ii. The DCPU shall get the family background report conducted by its social worker and for this purpose, it can charge a fee as stipulated in the norms prescribed by the Authority from time to time.
  - iii. DCPU shall forward a copy of the family background report of the child and the biological family to the Authority for onward submission to Authorised Foreign Adoption Agency or Central Authority or Indian Mission abroad.

Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of Section 80 of the JJ Act (Section 56(5)).

- No Objection Certificate of CARA-

In case of all inter-country adoptions, CARA shall issue No Objection Certificate in favour of the adoption of the child within ten days from the date of receipt of adoption order forwarded by the DCPU and a copy of the same shall be forwarded to the Authorised Foreign Adoption Agency or Central Authority concerned.

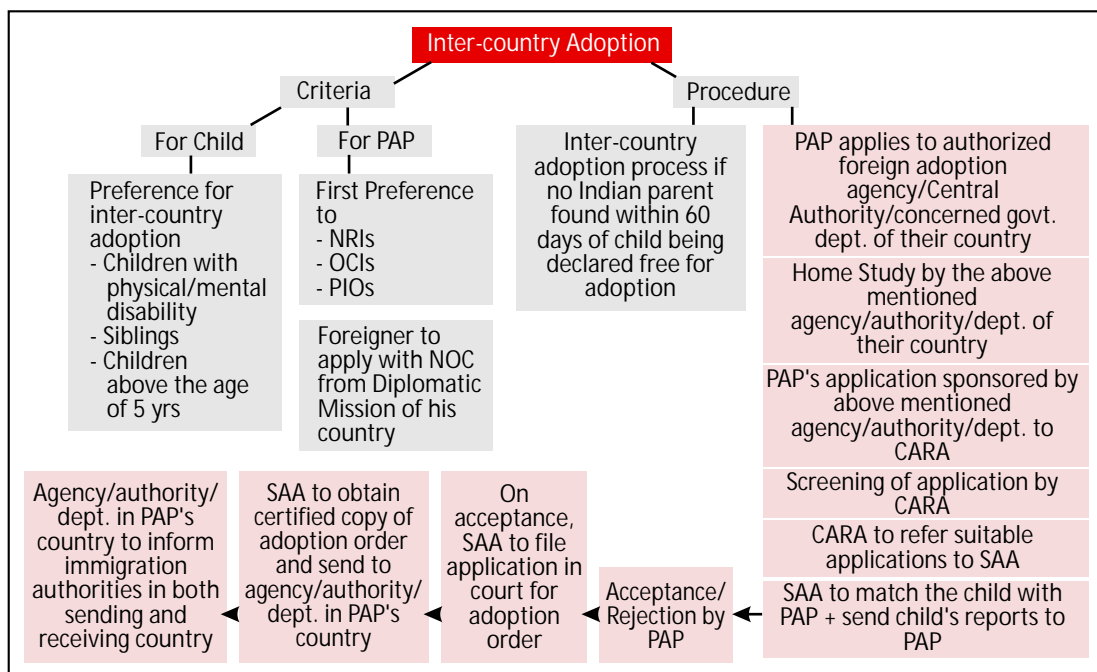


FIGURE 23: CRITERIA AND PROCEDURE FOR INTER-COUNTRY ADOPTION

## ADDRESSING THE NEEDS OF CNCP AS PER CATEGORY

There are many categories of CNCP listed in the JJ Act. As we also saw, there are many other laws that apply to them apart from the JJ Act. In this chapter we will deal with some of the main categories, the intersectionality of the laws that address theme and the administrative support that is required for them

### 7.1 Child Labour

On the issue of child labour, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides stringent penal provisions for employing a child. The new JJ Act has increased the punishment for employing a child to 5 years of imprisonment as against three years in the previous JJ Act. In particular, S. 79 of the JJ Act states that:

“Whoever engages a child or keeps him in bondage for the purpose of employment or withholds his earnings or uses such earnings for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to a fine of INR. One Lakh.”

Although the JJ Act, 2015 addresses the issue of child labour, it does not provide any specific duty for the District Administration with regard to child labour. However, the responsibilities of the District Administration can be derived from the provision of the JJ Act that authorises the DM to monitor the functioning of the CWCs. In addition, there are a few other legislations and schemes which lay down the specific duties for the District Administration w.r.t. child labour and these need to be read in conjunction with the JJ Act wherever necessary. These legislations are:

- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
- Bonded Labour System Abolition Act, 1976
- National Child Labour Project (NCLP)
- Rehabilitation of Bonded Labour Scheme, 2016

#### 7.1.1 Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

While the new Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred as CLPRA) puts a complete ban on child labour and has widened the scope of its intervention, the CLPRA also puts significant responsibilities on the district administration and clearly defines its role in combating the problem. For example: Section 17 A of the CLPRA imposes the onus of ensuring that the provisions of this Act are properly carried out within the jurisdictional limits of the concerned district, on the DM.

The new CLPRA allows children to work as an artist, with the proviso that prior permission from the DM should be obtained by furnishing an undertaking (as prescribed in Form ‘C’ of the Rules), a list of child participants and the consent of their parents. The DM has also been conferred the power to compound the offences (as defined under the Act) within their jurisdiction. A great deal of responsibility has been imposed on district administration with regard to rescue of child labourers and rehabilitation of the victims. These can be distinctly qualified into following categories:

- Prevention and Monitoring
- Rescue
- Rehabilitation

The distinctive functions of the district administration laid down under the Act and other schemes has been described in the flow-chart below:

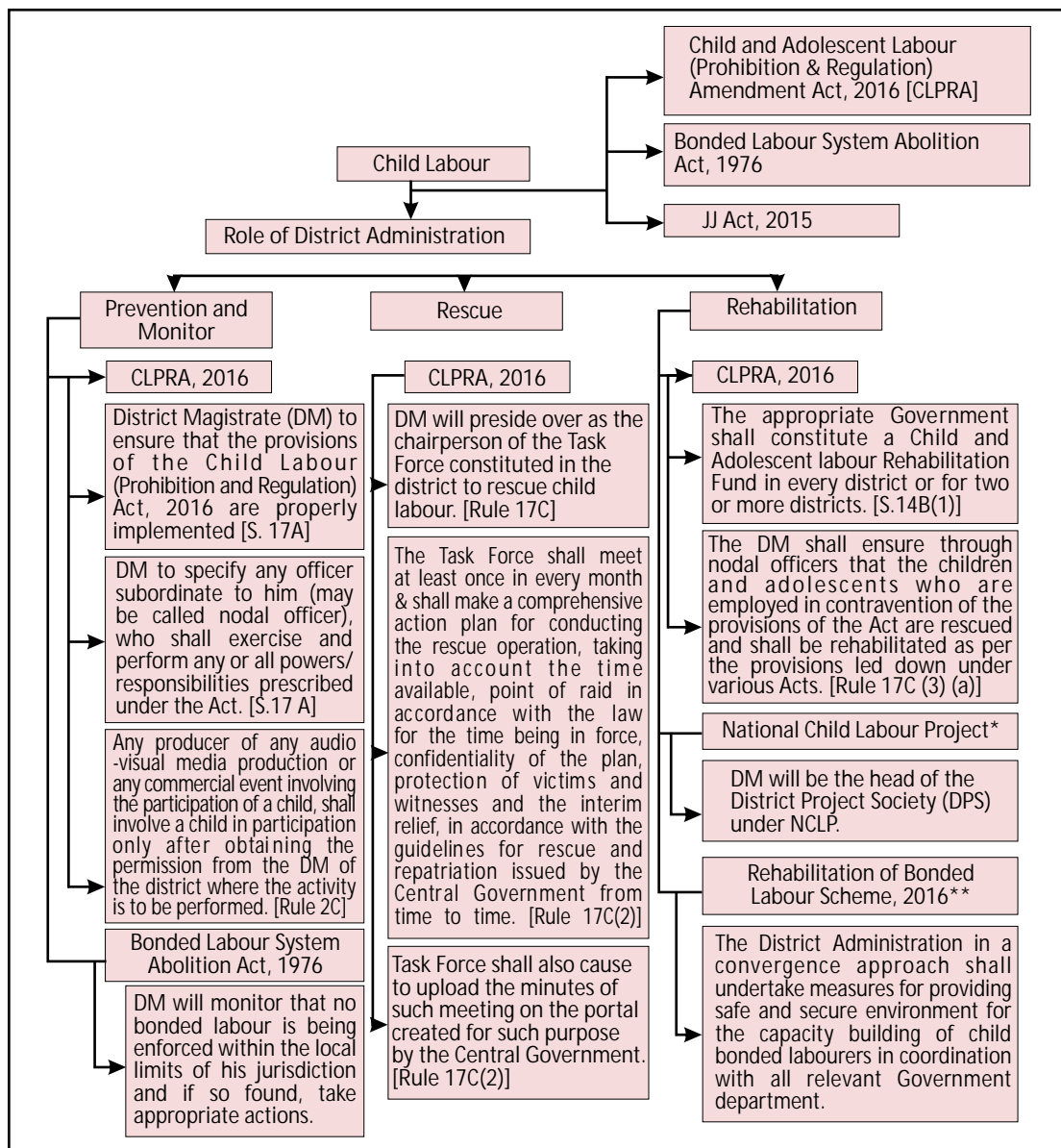


FIGURE 24: CHILD AND ADOLESCENT LABOUR ACT - PROCESS

### Compounding of Offences [Section 14 and Rule 17 of the CLPRA]

Apart from the above-mentioned roles, the District Administration/ DM, has the power to compound any offence defined under the provisions of the CLPRA. The DM, within her/his jurisdiction, may compound any offence committed for the first time as prescribed under Rule 17B of the CLPRA.

Compounding of offences would stand true for two categories of accused, which are:

- first time offender,
- A parent or guardian committing an offence

The accused person mentioned above may file an application to the DM with the jurisdiction for compounding the offence.

The DM shall, after hearing the accused person and the Inspector concerned, on an application, dispose of such application, and if the application is allowed, issue the certificate of compounding, subject to:

- the payment of a sum of fifty per cent; of the maximum fine provided for such offence within a period to be specified in such certificate; or
- the payment of an additional sum of twenty-five per cent; of the maximum fine provided for such offence together with the compounding amount specified.

### \* National Child Labour Project Scheme (NCLP)

National Child Labour Project Scheme (NCLPS) was started in 1988 to rehabilitate child labour. The Scheme seeks to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations and processes. Under the Scheme, a survey is conducted of children engaged in hazardous occupations and processes in a district or a specified area; then children in the age group of 9-14 years are withdrawn from these occupations and processes, and put into NCLP Special Training Centres. In the NCLP Special Training Centres, these children are provided bridge education, vocational training, mid-day meal, stipend, health care and recreation etc. with the ultimate objective of preparing them to be mainstreamed into the formal system of education<sup>127</sup>. The NCLP Scheme with modifications has been extended to 31 March, 2020<sup>128</sup>.

### Institutional Structure of NCLP<sup>129</sup>

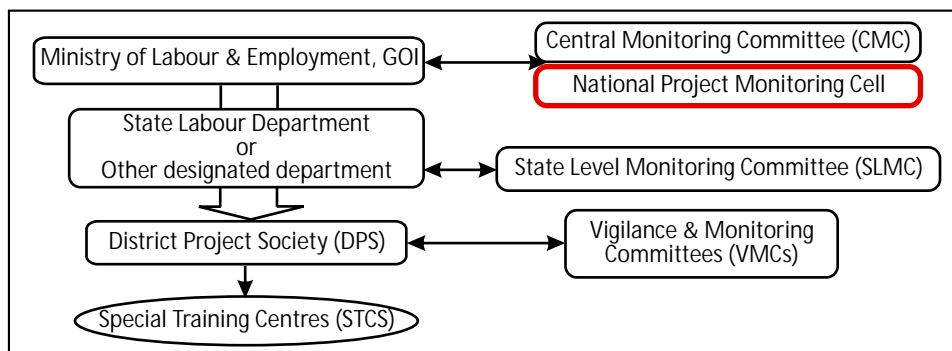


FIGURE 25: INSTITUTIONAL STRUCTURE OF NCLP

<sup>127</sup> <http://labour.gov.in/sites/default/files/Revised%20NCLP%20Guidelines%20from%2001.04.2016.pdf>

<sup>128</sup> [http://labour.gov.in/sites/default/files/NCLP%20Modified%20Extension%20March%202020\\_0.pdf](http://labour.gov.in/sites/default/files/NCLP%20Modified%20Extension%20March%202020_0.pdf)

<sup>129</sup> <http://labour.gov.in/sites/default/files/Revised%20NCLP%20Guidelines%20from%2001.04.2016.pdf>

## Role of District Administration in Implementation of NCLP

The implementation of the Project is carried out at the district level by a dedicated District Project Society (DPS) set up for the NCLPS. The District Magistrate/ Collector is the Chairperson of the NCLP Society and also Member Secretary)

NCLP society is a registered under the Societies Registration Act, 1860It comprises key officers of government departments, representatives of panchayat raj institutions, trade unions, employers, NGOs, child worker representatives etc.

Suggested Composition of the District Vigilance & Monitoring Committee for NCLP	
1.	All Members of Parliament and Members of the State Legislature elected from the District
2.	District Magistrate/ Collector (Chairperson of the NCLP Society and also Member Secretary)
3	Chairman Zila Parishad
4.	District elementary Education Officer (SSA)
5.	District Officer in Charge of Child Development
6.	One Member of the District Child Welfare Committee
7.	Up to 4 Representatives from district Panchayati Raj Institutions (PRIs)
8.	Up to 2 Representatives from NGO/Civil Society Organisations active in the district in the field of child welfare
9.	District Labour Officer
10.	District Health Officer
11.	Chief Labour Commissioner (Central) Office Representative -1

FIGURE 26: SUGGESTED COMPOSITION OF THE DISTRICT VIGILANCE & MONITORING COMMITTEE FOR NCLP

The Society is responsible for overall implementation of the Project activities in the district. Some of its functions are:

- Formulation of project related strategies at the district level;
- Reviewing and monitoring implementation of action programmes;
- Overseeing implementation of the scheme and ensuring timely release of funds to the partners / implementing agencies;
- Promoting ownership of the project, facilitating convergence and co-ordination amongst existing government departments towards elimination of child labour;
- Monitoring the child labour situation in the district;
- Promoting society partnership of NGOs, Trade Unions, Employers? Organizations & other local associations;
- Compilation and timely submission of periodical reports, accounts and utilization certificates; and
- Conducting quarterly meetings for the NCLPS District Project Society Executive Committee and bi-annual meetings for the Governing Body.

As per this Office Memorandum there is an Introduction of the concept of "Performance Linked Incentive (PLI), to "extract the best from DPS Staff as a team, objective for Performance Linked Incentive (PLI) to staff of District Project Society is linked with the Society performance in the past year. PLI Would be granted as lump sum basis for the past 12 months performance after objective evaluation.....".

For this there is an introduction of an online portal PENCIL. The evaluation and PLI will be based on data filled on this online portal by the NCLP Society. This is in line with the mandatory use of PENCIL by District Project Society (DPC) and timely submission of all documents and the performance.

*For details of the revisions in the scheme the DM/DC needs to refer to the Circular (F.No.G-20012/1/2012-CL, Government of India, Ministry of Labour and Employment (Child Labour Division. Dated 31.10.2017. Subject: Continuation of National Child Labour Project (NCLP) Scheme addressed to The District Magistrates/District Collectors & Chairperson NCLP Society).*

**\*\*Rehabilitation of Bonded Labour Scheme, 2016<sup>130</sup>**

In 1978, Ministry of Labour and Employment launched a centrally sponsored scheme for rehabilitation of bonded labourers. Originally the Scheme provided for rehabilitation assistance up to a ceiling limit of Rs. 4000/- per bonded labour to be equally shared by Central Government and State Governments. This scheme was recently revised after a wide consultative process which included inputs from various stakeholders like NHRC, ILO, UNESCO and NGOs working on the issue of bonded labour. The revised Scheme is now a Central Sector Scheme and has come into effect from 17th May, 2016. The State Governments are not required to pay any matching contribution for the purpose of cash rehabilitation assistance. The salient features of the scheme are:

- For special category beneficiaries such as children including orphans or those rescued from organised and forced begging rings or other forms of forced child labour and women, the amount of rehabilitation assistance shall be Rs. 2 lakhs out of which at least Rs. 25,000/- shall be deposited in an annuity scheme in the name of each beneficiary and the balance amount shall be transferred to the beneficiary.
- In cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc., or trafficking, or in cases of differently abled persons, or in situations where the DM deems fit, the rehabilitation assistance shall be Rs. 3 lakhs, out of which at least Rs. 2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and Rs. 1 lakh shall be transferred to the beneficiary account through ECS.
- In cases where, on the conclusion of the summary trial, the DM(DM)/Sub-Divisional Magistrate (SDM) concludes that the alleged bonded labourer is, in fact, not in a condition of bondage, but requires socio-economic assistance, the DM/SDM, may provide state assistance under any other scheme administered by them.
- In cases where, the DM/SDM find that immediate assistance is necessary for care & protection of the rescued persons during the pendency of the summary trial, such assistance including food, lodging, medical assistance, legal aid, provisions for victim's or witness' protection, etc., shall be provided under any other law or scheme forthwith, notwithstanding the entitlements prescribed under this scheme.

## 7.2 Child Trafficking

In India, till 2013, the only legislation which dealt with the issue of trafficking was 'Immoral Traffic (Prevention) Act, 1956 [Hereinafter referred to as ITPA]. ITPA had limitations and covered only trafficking of women for the purpose of commercial sexual exploitation. It was in 2013 by the way of Criminal Law Amendment Act, 2013 that a broad definition of human and child trafficking and penal provisions were added as Section 370 in the Indian Penal Code.

<sup>130</sup> [http://labour.gov.in/sites/default/files/OM\\_CSS\\_Rehab\\_BL\\_2016\\_1.pdf](http://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016_1.pdf)



Apart from the penal provisions and legislations, the government of India has been issuing various Advisories, Standard Operating Protocols (SOPs) and guidelines issued in landmark judgments which are instrumental in order to combat child trafficking. Also, there are few schemes which focus on the rehabilitation of the victims of trafficking. The Indian Penal Code (IPC) has included a wide definition of Human Trafficking & child trafficking in particular & has also provided enhanced punishment for these offences.

The National Policy for Children, 2013 has recognised child trafficking as one a growing concern and mandates the State to safeguard all its children from all forms of violence, deprivation, exploitation of any kind and sale or trafficking for any purpose or in any form. The Policy also obligates the State to ensure that all out-of-school children, trafficked children (along with other categories of vulnerable children) are tracked, rescued, rehabilitated and have access to their Right to Education.

Based on the National Policy for Children, the National Plan of Action for children 2016, was drafted which identifies prevention of child trafficking; adequate measures for prevention, rescue and rehabilitation and re-integration of children; and prosecution of traffickers as a key priority area.

As per S. 370 of IPC, trafficking has been defined as:

ACT	MEANS	PURPOSE*
Recruitment	Threat or use of force	Exploitation including
	Coercion	Prostitution of others
Transport	Abduction	Other forms of sexual exploitation
Transfer	Fraud	Forced labour
	Deception	Slavery or similar practices
Harbouring	Abuse of Power	Servitude
Procurement/Receipt of Persons	Abuse of position of vulnerability	Removal of organs
	Giving or receiving payments or benefits	

+ + = **TRAFFICKING**

See Annexure - G for details.

\*Based on a review of the available literature the different forms & purposes of child trafficking are the following:

**Sexual Exploitation**

- (a) Forced prostitution
- (b) Socially and religiously sanctified forms of prostitution
- (c) Sex tourism
- (d) Pornography

**Illegal Activities**

- (a) Begging
- (b) Organ trade
- (c) Drug peddling and smuggling

**Labour**

- (a) Bonded labour
- (b) Domestic work
- (c) Agricultural labour
- (d) Construction work
- (e) Carpet industry, garment industry, fish/shrimp export as well as other sites of work in the formal and informal economy

**Entertainment and Sports**

- (a) Camel jockeying

TABLE 16: PURPOSE OF TRAFFICKING. APPLICABLE LAWS AND LANDMARK JUDGMENTS

Purpose of Trafficking, Applicable Laws and Landmark Judgments

Purpose		Laws / Landmark Judgments
	For marriage	Prohibition of Child Marriage Act, 2006 (PCMA) - Sections 12 (a) (b) and (c)
Child Trafficking	For labour	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 Bonded Labour System (Abolition) Act, 1976 Landmark Judgments of the Supreme Court: Bachpan Bachao Andolan & ORS. Versus Union of India & Others [WP (CrI.) No.82 of 2009] Shramjeevi Mahila Samiti v. State & Others [WP (CrI.) No.619 of 2002] Kalpana Pandit v. State [WP (CrI.) No.879 of 2007] Bandhua Mukti Morcha v. Union of India and others [AIR 1984 Supreme Court 802]
	For prostitution	Immoral Traffic (Prevention) Act, 1956 Landmark judgments of the Supreme Court: Vishal Jeet v. Union of India [AIR 1990 SC 1412] Gaurav Jain v. Union of India [AIR 1990 SC 292, AIR 1997 SC 3021] Prerna v. State of Maharashtra [2003 (2) Mah.L.J. 105] Geeta Kancha Tamang v. State of Maharashtra [Criminal Appeal No. 858 of 2009] Hori Lal v. Commissioner of Police, Delhi & Ors Respondents [Writ Petition (CrI.) No. 610/1996] Bachpan Bachao Andolan v. Union of India & Others [Writ Petition Civil 75/ 2012] Bachpan Bachao Andolan v. Union of India [2011 SCC (5) 1] Budhadev Karmaskar v. State of West Bengal, [(2011) 11 SCC 538]
	Importance of JJ Act in cases of child trafficking	Delhi High Court Legal Services Committee Vs. Union of India and Ors. [CrI. Rev. No. 443/2009 & CrI.M.A.No.3071/2010]
	Decisions of the CWC are Final in Terms of Care & Protection of Children	Munni v. State of Maharashtra [Criminal Writ Petition No. 227/2011(Bombay High Court)]

Law enforcement is primarily a state subject in India. However, the Ministry of Home Affairs (MHA) deals with all the matters related to law enforcement, especially the provisions of ITA and specific provisions of the IPC. In addition, the MHA has under its aegis, special enforcement agencies such as Central Bureau of Investigation (CBI), Border Security Force (BSF), Seema Suraksha Bal (SSB) and the National Crime Records Bureau (NCRB) which compiles crime statistics.

The Ministry of External Affairs (MEA) handles issues related to international treaties and protocols dealing with trafficking, and care and support to for victims of trafficking across borders, while the Ministry of Overseas Indian Affairs deals with the issues relating to migration, with a special focus on prevention of unsafe migration. The Ministry of Labour and Employment focuses on all matters related to the enforcement of labour laws, and rehabilitation and repatriation of child labour<sup>131</sup>. The Ministry of Home Affairs, from time to time, has issued certain Advisories and Standard Operating Protocols (SOPs) directing the roles and responsibilities of State functionaries in cases of trafficking. The table below lists these advisories:

TABLE 17: ADVISORIES AND SOPs ON TRAFFICKING

S.No.	Advisories/SOPs	Date of Issue
1	Advisory on preventing and combatting human trafficking in India	09.09.2009
2	Advisory on preventing and combatting human trafficking during Commonwealth games	10.09.2010
3	Advisory regarding enrolment of police officials in certificate course in Anti-Human Trafficking launched on 10th December 2010 by Union Home Minister in IGNOU in partnership with Ministry of Home Affairs.	12.01.2011
4	Advisory on missing children-measures needed to prevent trafficking and trace the children	31.01.2012
5	Advisory on preventing and combating human trafficking in India - dealing with foreign nationals.	01.05.2012
6	Advisory on Hon'ble Supreme Court's direction to file FIR in case of missing children	25.06.2013
7	Standard Operating Procedure (SOP) to handle trafficking of children for child labour—measures to be taken for rescue of trafficked child labourers and action against the traffickers/ employers	12.08.2013
8	Associating Seema Suraksha Bal (SSB) and Border Security Force (BSF) in crime meetings	23.07.2015

Source : Ministry of Home Affairs; Government of India; <http://mha.nic.in/csdivadvisory>

Given the nature of the economy and society today, migration has become very common. While it may seem that migration and trafficking are distinct and separate, they are at the same time integrally connected. The pressing need to migrate in search of work creates a fertile ground for traffickers and

<sup>131</sup> MWCD-GOI. UNODC, India Country Report: To prevent and combat trafficking and commercial sexual exploitation of children and women world congress III against sexual exploitation of children and adolescents (Rio de Janeiro, Brazil, November 2008), 2008. <https://www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf>

unscrupulous agents to exploit this need and profit from it. At the same time, it is important to distinguish between trafficking and illegal migration. By its very nature, trafficking involves some element of involuntariness - either through deception, force or intimidation; while illegal migration often occurs with the free co-operation, if not the instigation of the illegal migrant. There are, however, linkages between the two activities.

Looking at the diverse nature of offence and the purposes attached therewith, the stages of intervention and role of district administration can be categorised into these following stages:

- Prevention and Monitoring
- Rescue
- Rehabilitation

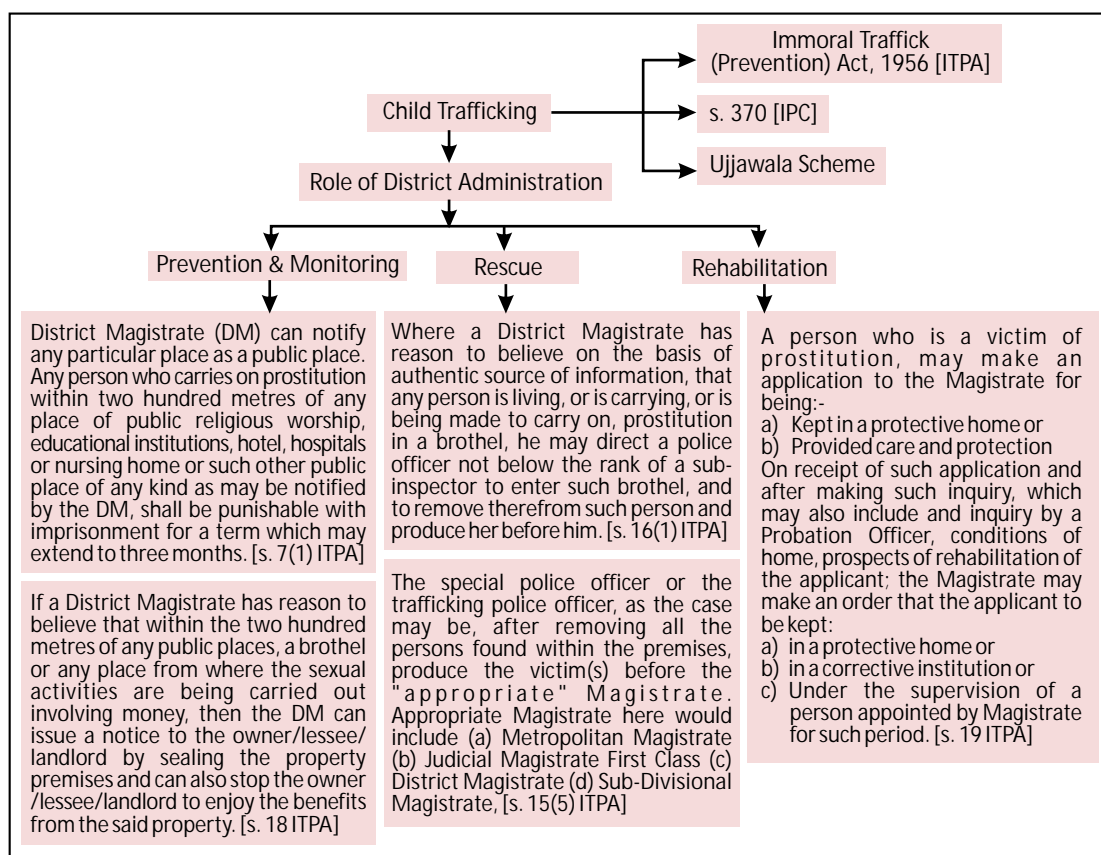


FIGURE 27 : IMMORAL TRAFFIC PREVENTION ACT - IMPLEMENTATION

### 7.2.1 Juvenile Justice (Care & Protection of Children) Act, 2015 and Child Trafficking: How District Administration can help

Apart from ITPA, the Juvenile Justice (Care and Protection of Children) Act, 2015 defines children who are victims of trafficking or are more likely to be trafficked as CNCP. Section 2 (14) (ix) provides the definition

of such children as CNCP, who will further be dealt by the CWCs set up at the district level. The district administration has been empowered under S. 27(8) of the JJ Act to conduct the quarterly review of the functioning of the CWCs in their respective districts. This is also relevant here as CWCs are extensively involved in the process of providing immediate care to the victims of child trafficking as well as in the process of rehabilitation and repatriation (wherever needed) to such victims. Further, as per Section 27(10) of the JJ Act, the DM shall also act as grievance redressal authority for CWCs and anyone connected with the child, may file a petition before the DM, who shall consider and pass appropriate orders.

### 7.3 Child Marriage

The Prohibition of Child Marriage Act, 2006 (PCMA, 2006) was notified on 10 January 2007 to overcome the constraints of the former legislations in effectively dealing with the problem of child marriages in India and to put in place a comprehensive mechanism. It came into force on 1 November 2007. The basic premise of the law is:

- To make a child go through a marriage is an offence (Sections 10, 11 and 15 of PCMA, 2006)
- Child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys (Section 2 (a), PCMA 2006)

The provisions of this law can be classified into three broad categories:

A. Prevention

B. Protection

C. Prosecution of Offenders

#### 7.3.1 Salient Features of PCMA w.r.t Prevention:

- The solemnisation of child marriages is a cognizable and non-bailable offence. [S. 15]
- Child Marriage Prohibition Officers (CMPOs) are to be appointed in every state to prevent child marriages, ensure protection of the victims as well as prosecution of the offenders. [S. 16]
- The Courts have the power to issue injunction for prohibiting child marriages from taking place. [S.13]
- Child marriages will be declared null and void if the injunction prohibiting a child marriage from taking place is violated/contravened or, if the child is taken away from their lawful guardian by enticement, force or use of deceitful means or, is sold or trafficked for the purpose of marriage. [S. 12 and S. 14]
- The law lays down penal provisions for those who solemnise child marriages. [S. 10]
- The CMPO and District Collector are responsible for sensitisation and awareness creation in the community. [S. 13 (4) and S. 16 (3) (d)]

#### 7.3.2. Salient Features of the PCMA w.r.t Protection:

- The Act makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage. [S. 3(2) & S. 3(3)]
- The Act gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance. [S. 5 & S. 6]

- The CMPO under the Act, has been empowered:
  - a. to provide necessary aid to victims of child marriage
  - b. to provide legal aid and
  - c. to produce CNCP before the CWC or a First Class Judicial Magistrate, where there is no CWC. [S. 31 of the JJ Act, 2015]

#### 7.3.3 Salient Features of the PCMA w.r.t Prosecution of Offenders:

- The law provides for punishment for an adult male above 18 years of age marrying a child. [S. 9]
- It also lays down punishment for those performing/conducting/ abetting a child marriage. [S. 10]
- It prescribes punishment for promoting or permitting solemnisation of child marriage, including for parents, guardians or any other person/association/organisation. [S. 11]
- The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalised by way of imposition of a fine. [S. 11(1) Proviso]

#### 7.3.4 Mechanisms/ Authorities Identified Under PCMA:

The authorities identified for prohibiting child marriage under the present law are:

- Child Marriage Prohibition Officer
- DM
- First Class Judicial Magistrate or Metropolitan Magistrate
- Police
- Family Courts
- Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include - a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public-sector undertaking, office bearer of any non-governmental organisation.

#### 7.3.5 Reporting Child Marriages

Any person can report an incidence of child marriage before or after it has been solemnised. An immediate report can be made to any of the following:

- The Police
- The Child Marriage Prohibition Officer or such persons as may be appointed to assist him/her
- First Class Judicial Magistrate or Metropolitan Magistrate
- CWC or a member of the CWC set up under the JJ Act, 2000 as amended in 2006
- Child Line
- DM

A First Class Judicial Magistrate is empowered to take 'suo moto' cognisance of any reliable report of information of child marriage. CMPOs are also responsible for reporting and preventing child marriages.

In case of mass marriages, the DM is also deemed to have the powers of a CMPO and therefore has the powers to stop or prevent solemnisation of child marriages.

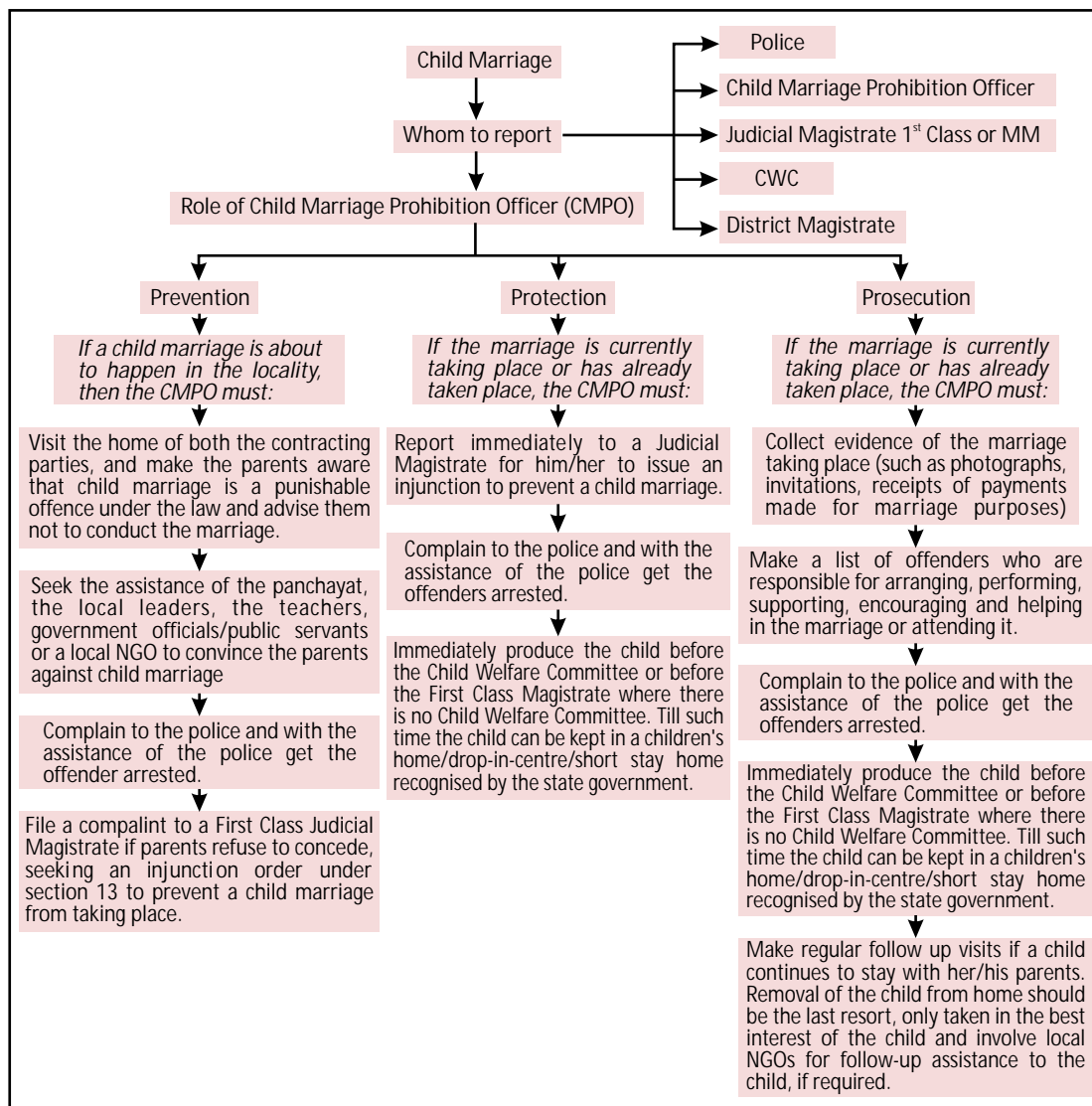


FIGURE 28 : PCMA IMPLEMENTATION

### 7.3.6 Role of Police in Combatting Child Marriages:

- On receiving a complaint, as a police official, you should follow the procedures laid down in the Code of Criminal Procedure, 1973:
- Register an FIR and investigate. No police official can refuse to accept the complaint, which may be made orally or in writing. All complaints must be converted into an FIR without delay.
- Report the matter to the CMPO for him/her to gather evidence about the instance of a child marriage.
- Report the matter to the DM for her/him to issue an injunction.

- Accompany the CMPO or the appointed person for investigation.
- Arrest the offender as offences under the law are cognisable and non-bailable.
- Do not arrest or handcuff the child.
- In case of non-availability of CMPO or the appointed persons, visit the scene of crime (i.e. where a child marriage is being conducted/or has been conducted) and take necessary action, including rescue of the minor(s) if necessary.
- Avoid being in uniform when dealing with children to make them more comfortable and less intimidated.
- Ensure presence of a lady police officer in dealing with a girl child along with a female social worker/teacher/anganwadi worker/ANM/child's next friend (a person trusted by the child). Only in case there is NO LADY officer available immediately, should a male police person interact with the girl child, but in the presence of a female social worker/teacher/anganwadi worker/ANM/child's next friend.
- Produce the child/minor before the nearest CWC within 24 hours or before a Judicial Magistrate of First Class where such Committee is not available. Victims of child marriage are also CNCP under the JJ Act and the rules made for its implementation.
- Removal of children from the custody of parents/legal guardians must be the last resort and taken only in the best interest of the child. No such child shall be placed in police lock-up or police custody. Such child can only be placed in a fit institution recognised and registered under the JJ Act, 2015.

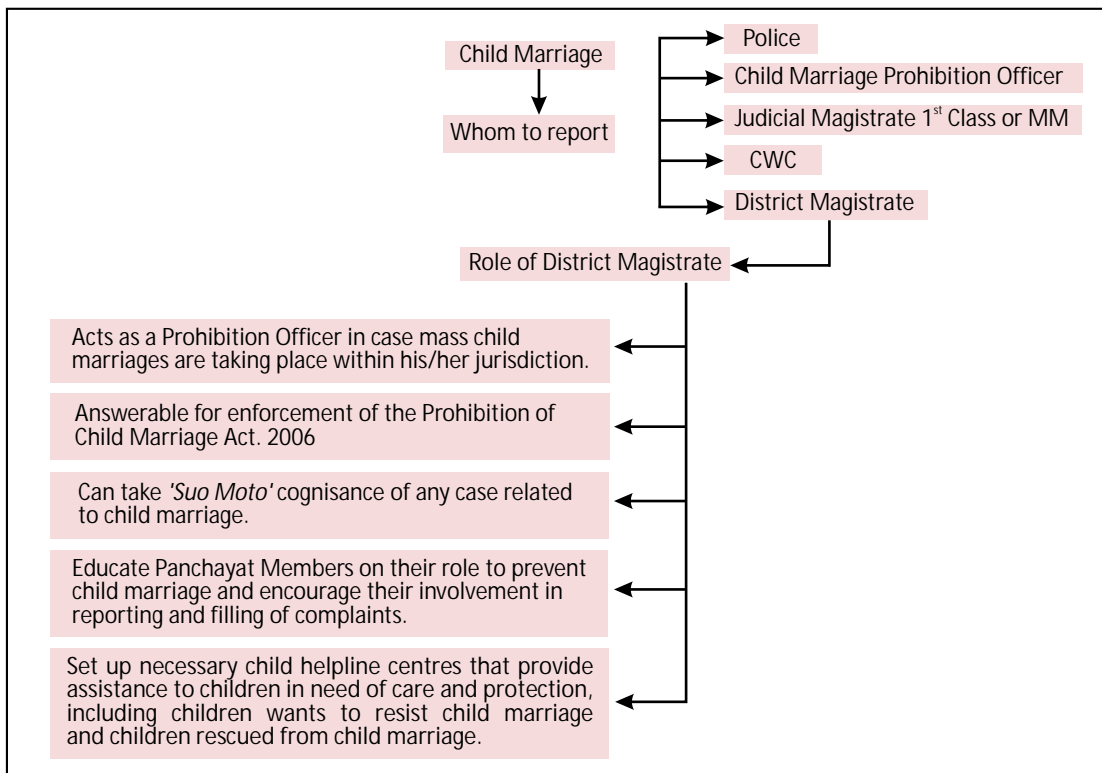


FIGURE 29: ROLE OF DM IN PREVENTING CHILD MARRIAGES



### 7.3.6 Role of Panchayat Members in combatting Child Marriages

As members of the gram panchayat/gram sabha you are closest to the community and also have the constitutional mandate to perform functions of the legislature. It is imperative that you play a leading role in preventing child marriages, protecting the victims as well as supporting the concerned authorities in evidence building so as to prosecution of the offenders.

- Assist the Child Marriage Prohibition Officer in preventing child marriages as per section 16 (2) of the Act. This could be done by convincing parents against conducting child marriages, educating parents and the community on the implications of child marriage for a child, providing information about the law, ensuring that children have access to education and their attendance and retention in schools is promoted.
- Assist the Child Marriage Prohibition Officer or the police in enforcing the law by providing necessary support and information.
- Ensure that no member of the gram sabha or gram panchayat is involved in promoting child marriages.
- For offenders within the gram panchayat, apart from legal action according to the law, their membership must be revoked. Other elected representatives in the panchayat must ask the Member Secretary to take necessary action in this regard.
- Create awareness within the community about the law and educate the community about the implications/consequences of early marriage for their child such as early childbearing, poor maternal health and mortality, poor infant health and mortality, and higher risk of HIV infection, lower levels of education, lower economic status and livelihood opportunities, higher likelihood of domestic violence and less decision-making power at home, especially for girls. Encourage the parents to wait for their children to reach the age of maturity (i.e. age 18 for girls and 21 for boys) before they are married.
- Assist enrolment and retention of all children, especially of girls, in school by making the village Education Committee aware of the issue of child marriage and enabling them to play a vigilant role in preventing child marriages. This could be done by keeping track of school dropouts, ensuring their enrolment and retention in schools, and making education accessible to all.
- Set up a Child Protection Committee within the Panchayat to create awareness and monitor child protection issues such as child marriage.
- The role of the Child Marriage Prohibition Officer, the Police, the DM/District Collector, Members of Gram Panchayats and School Teachers is specified in the Act.

Other government functionaries whose assistance can be sought include:

- a. Child Development and Panchayat Officers (CDPO)
- b. District Child Protection Officers (DCPO)
- c. District Welfare Officers (DWO)
- d. Members of CWCs
- e. Auxiliary Nurse Mid-wife (ANM)
- f. Anganwadi worker
- g. ASHA-health worker

Clearly, along with the Departments of Rural Development, Panchayati Raj and the Department of Education, the Health and Family Welfare Department too have a critical role to play while reaching out to women through its health programmes. For example, ASHA (Accredited Social Health Activist) is a health activist in the community who creates awareness on health and its social determinants, and mobilises the community towards local health planning as well as increased utilization of existing health services. They could thus play a very key role in promoting good practices that help establish a higher age at marriage at the community level. The ANMs and the ASHA-health worker for example, can include in their mandate an awareness drive to highlight the effects of early marriage on the health of young girls and early child bearing.

Some other schemes that can have an impact on child protection include crèche services provided through the ICDS and the Rajiv Gandhi National Crèche Scheme, which enables girl children to go to school and reduces the risk of trafficking and marriage. Vulnerability of the girl children can also be reduced by enabling access to benefits under existing schemes such as Balika Samriddhi Yojana, Integrated Child Development Scheme, Kishori Shakti Yojana, the Nutrition Programme for Adolescent Girls, Dhanalakshmi Pilot Scheme on Conditional Cash Transfers and National Programme for Education of Girls at Elementary Level.

It could be valuable to develop a convergent “Anti-Child Marriage Action Plan” in the districts whereby the roles and responsibilities of all the stakeholders are clearly spelt out.

#### 7.4 Child Sexual Abuse

Child sexual abuse is a rapidly growing menace in today’s society and has been drawing attention from all the corners. But this, by any means, does not imply that this issue has suddenly taken this monstrous form, but rather the truth lies in the increased reporting of such crimes. Prior to 2012, there was no specific legislation which could deal with the sexual offences against children in its totality. There were few penal provisions in the Indian Penal Code, which dealt with such offences, but various types of sexual offences, did not have any legal definition in our legal framework and hence were not reported. The Protection of Children from Sexual Offences Act, 2012 (POCSO), a separate legislation addressing sexual offences against children defined various kinds of sexual offences, included harsher penal provisions and embraced gender-neutrality.

#### NEWS REPORT ON CCIS

NEW DELHI: Taking a serious view of increasing incidence of cases of sexual abuse of children, the Supreme Court has directed setting up of child care institutions to look after children, particularly those who are victims of sexual offences, and also those who are in conflict with law.

A bench of Justices Madan B Lokur and Deepak Gupta directed that all such child care institutions be registered by December 31 (2017). It also wanted governments to ensure a care plan for every child in each care institution by 2017-end. The bench also appealed to judges to play an active role in protecting the rights of children. It asked all HCs to set up a Juvenile Justice Committee to ensure effective implementation of Juvenile Justice (Care and Protection of Children) Act.

TABLE 18: INCIDENCES OF OFFENCES REPORTED UNDER POCSO ACT (2014 & 2015)

Incidences of Offences Reported under POCSO Act (2014 & 2015)

Type of Offences under the POCSO Act	Incidence Year 2015	Incidence Year 2016	Percentage increase
Penetrative Sexual Assault (Sec 4) and Aggravated Penetrative Sexual Assault (Sec 6)	8800	19765	124.6
Sexual Assault (Sec 8) and Aggravated Sexual Assault (Sec 10)	4137	12226	195.5
Child Pornography (Sec 14 & 15)	94	47	50 % decreased
Others (including Sexual Harassment - Section 12)	1882	3984	111.6
Total cases under the POCSO Act	14913	36022	141.5

Source : Crime in India 2015 and 2016. National Crime Records Bureau. Govt. of India

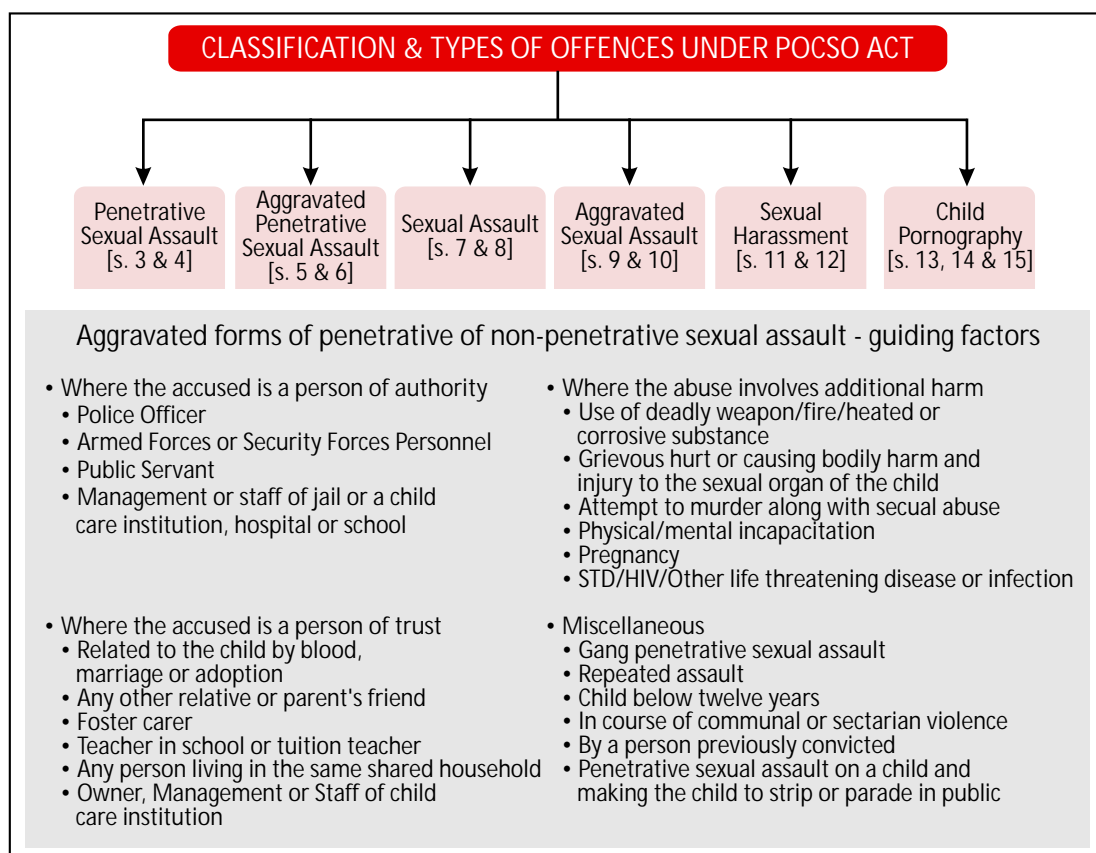


FIGURE 30: TYPES OF OFFENCES UNDER POCSO ACT

TABLE 19: OFFENCES AND PUNISHMENTS UNDER POCSO ACT

Offence	Relevant Sections in POCSO	Punishment in POCSO - Imprisonment	Punishment in POCSO - Fine	Punishment in IPC Imprisonment	Punishment in IPC - Fine
Penetrative Sexual Assault (PSA)	Section 3 and 4	7 years to life	Mandatory	7 years to life	Mandatory
Aggravated Penetrative Sexual Assault (APSA)	Section 5 and 6	RI – 10 years to life	Mandatory	If by a person in uniform or authority, including staff of jail/institution: RI – 10 years to rest of natural life APSA resulting in death or vegetative state/ Gang rape: RI – 20 years to rest of natural life By person in authority: 5 to 10 years Repeat Offence: Rest of natural life	Mandatory
Sexual Assault (SA)	Section 7 and 8	3 to 5 years	Mandatory	354 A - Unwanted physical contact and advances: Up to 3 years 354 B - Assault with intent to disrobe: 3 to 7 years	Optional  Mandatory
Aggravated Sexual Assault (ASA)	Section 9 and 10	5 to 7 years	Mandatory	-	-
Sexual Harassment (SH)	Section 11 and 12	Up to 3 years	Mandatory	354 A - Making sexually coloured remarks: Up to 1 year 354 D - Stalking: Fist Conviction – Up to 3 years	Optional  Mandatory

				<p>Second &amp; Subsequent conviction – Up to 5 years</p> <p>354 A - Demand for sexual favours or showing pornography: Up to 3 years</p> <p>354 C - Voyeurism: First conviction - 1 to 3 years Second &amp; subsequent conviction-3 to 7 years</p> <p>509 - Word, gesture, act to outrage modesty: Up to 3 years</p>	<p>Optional</p> <p>Mandatory</p> <p>Mandatory</p>
Using Child for Pornography	Section 13 and 14	<p>First Offence: Up to 5 years</p> <p>Subsequent Conviction: Up to 7 years</p> <p>Participating in PSA: 10 years to life</p> <p>Participating in Aggravated PSA: RI for life</p> <p>Participating in Sexual Assault: 6 to 8 years</p> <p>Person participating in Aggravated Sexual Assault: 8 to 10 years</p>	<p>Mandatory</p> <p>Mandatory</p> <p>Mandatory</p> <p>Mandatory</p> <p>Mandatory</p>	<p>354 C - Voyeurism: First conviction - 1 to 3 years Second &amp; subsequent conviction-3 to 7 years</p>	Mandatory
Storage of Child Pornography for Commercial purposes	Section 15	Up to 3 years	Optional		

#### 7.4.1 Other Offences under the POCSO Act

- Abetment of an offence under the Act [Section 16 and 17]
- Attempt to commit any of offence under the Act or cause such offence to be committed [Section 18]
- Failure of all adults to report or failure of the police to record an offence [Section 21 (1), (2) and (3)]
- Filing a false complaint or giving false information, except when done by a child is also an offence [Section 22 (1), (2) and (3)]
- Failure of any media or a studio or photographic facility to protect the privacy, dignity and confidentiality of victims [Section 23 (3) and (4)]

#### 7.4.2 Special Courts [Section 28 and 34 POCSO Act]

- A Court of Sessions is to be designated as a Special Court [Section 28(1)] to try the following cases:
  - Offences under the POCSO Act [Section 28(1)],
  - Other offences that the accused may be charged with in the same trial [Section 28 (2)],
  - Offences under Section 67 B of the Information Technology Act [Section 28(3)], and
  - Age determination of the accused that may arise before such court in the course of its proceedings [Section 34(2)].
- Can take cognizance of any offence upon receipt of a complaint or police report of facts that constitute an offence without the accused being committed to it for trial [Section 33 (1)]

#### 7.4.3 Procedures under the POCSO Act

##### Reporting Cases: process

- Report the Crime and provide the information to either Special Juvenile Police Unit or the local Police.
- Take note of following details of I.O. and supervisor: name and designation, address and telephone number
- Ensure that the information to either Special Juvenile Police Unit or the local Police has
  - i. Ascribed an entry number
  - ii. Recorded entry in writing
  - iii. Read over entry to the informant
  - iv. Entered in a book kept by the Police Unit
  - v. Enabled videography for recording of FIR of a physically or mentally disabled child. [Section 26 (4)]
- Police to reach the child at her/his residence or any other place convenient for the child and her/his family in civil dress for recording FIR. [Section 24]

##### Reporting Cases : Methodology

- If the informant is a child
- Record in simple language

- Provide a translator or interpreter
- Provide a copy of the FIR to the complainant
- Make immediate arrangements to give care and protection in a shelter home or hospital within 24 hours of the report, if the child is in need
- The Police shall report the matter to the CWC and the Special Court within 24 hours of the report of the matter
- Confidentiality of child: Any and every police officer shall ensure protection of privacy, non-disclosure of identity and confidentiality of a child victim of sexual crimes [Section 24 (5) of the POCSO Act]
- Police to provide information to the child, his parents/guardians or support person about
  - i. Developments in the case and
  - ii. The status of the investigation of the crime (to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation)
  - iii. Filing of charges against a suspected offender
  - iv. Schedule of court proceedings that the child is either required to attend or entitled to attend about applications filed.

#### Recording of Child's Statement

- Should be done as spoken by the child.
- Presence of the parents of the child or any other person in whom the child shall trust, should be ensured.
- Translator or interpreter should be present if required.
- Special educator should be present if the child has a disability.
- Audio video electronic means should be used wherever possible.
- Copy of the final report should be provided to the child, and their parents or representative.

#### Conduct of Medical Examination

- Should take place within 24 hours of receiving information about the crime.
- In a special room.
- Medical examination of a girl child to be conducted by a female doctor.
- Child's consent is necessary where the child is above 12 years of age and capable of expressing his/her views. In case of younger children, consent of parent/guardian will be necessary.
- Presence of the parents of the child or any other person whom the child trusts or presence of a woman nominated by the head of the medical institution is essential.
- Wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

- It is important to ensure that the medical examination report documents when the examination was done.
- It is not mandatory to go to a Government hospital for medical examination in cases of sexual violence.
- No child victim can be refused emergency medical care by a medical practitioner or hospital or medical facility. Section 357 C of Cr.P.C. now mandates all hospitals, government and private, to immediately provide first aid or medical treatment free of cost.
- No medical practitioner can demand a legal or magisterial requisition or documentation as a pre-requisite for providing such care.
- Refusal to provide medical is an offence under section 166 B of the IPC.
- In such a situation, the police is mandated to register a case and inform the victims about their right to treatment and care.

#### Medical Practitioner is Mandated to Provide

- Treatment for cuts, bruises, and other injuries including genital injuries, if any
- Treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs
- Treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts

#### Recent Changes in Medical Examination of Sexual Violence Cases<sup>132</sup>

- The WHO evidence states that in only 33% of cases of sexual violence are injuries sustained; that means out of 3 cases of sexual violence you do not find injuries in 2 cases.
- This absence of injuries could be due to various reasons– the victim being unconscious either due to trauma or being drugged / intoxicated,

#### Addressing Child Sexual Abuse in Schools

##### Appointment and capacity Building of Nodal Teachers in Mizoram

**Issue/Challenge:-** Many children, who are being abused or exploited in school or outside the school, sometimes are not able to decide about reporting of the abuse/exploitation. In some cases though, teachers have been able to see an explicit shift in behaviour but were clueless about ways of extending support. In such cases, there may also be resistance from school administration to avoid addressing the issue.

**Innovative Step:-** To address these issues District Child Protection Committee of a few districts of Mizoram in coordination of District Education Officer (who is also member of DCPC) appointed Nodal Teachers in every school for protection of rights of children. At the district level teachers were identified and trained on child related topics like JJ Act, ICPS, child psychology etc. The role of Nodal teacher has been fixed for identification of students who are being abused/exploited so that the matter can be reported and necessary steps taken for the protection of child. Nodal teachers are also expected to keep a watch on children for any kind of symptoms which indicate signs of abuse exploitation and violence.

<sup>132</sup> JKAMLS Vol 23(1), Jan – Jun 2014



overpowered or silenced by fear. Even the use of lubricant in sexual violence decreases injuries.

- Explanation 2 to section 375 IPC states that if someone does not resist the sexual violence that alone cannot be construed as offering consent to the act.
- Section 146 IEA (Indian Evidence Act)<sup>3</sup> prohibits the debate on previous sexual experience/ past sexual practices in the witness box.
- Documentation on two finger test, old hymen injuries, past abortions, past contraceptive practices is not required.
- Such documentation may be required only in cases of chronic sexual abuse and if consensual sexual intercourse is within one week of the medical examination.

# MATRIX

## -KEY ROLES AND RESPONSIBILITIES OF DM/DC AT A GLANCE

TABLE 20: ROLES AND RESPONSIBILITIES WITH RESPECT TO JJ ACT AND RELATED LAWS

Subject	Action	Brief Description	Reference
The Juvenile Justice (Care & Protection of Children) Act 2015	Child Welfare Committee Review		
	Review of Child Welfare Committee	<ul style="list-style-type: none"> <li>The Child Welfare Committee shall submit a quarterly report to the District Magistrate/Collector; in Form 16 about children in need of care and protection received by it, on the nature of disposal of cases, pendency of cases and reasons for such pendency; for review of such cases.</li> <li>The District Magistrate shall review the functioning of the Committee including by inspection once every quarter &amp; also appraise the performance of the Chairperson and the members of the Committee on the basis of their participation in the proceedings of the Committee and submit a report to the Selection Committee constituted under rule 87.</li> <li>The District Magistrate shall direct the Child Welfare Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required</li> <li>If the pendency of cases continues to be unaddressed by the CWC even after three months of receiving such directions from the DM, the State Government shall terminate the said Committee and shall constitute a new Committee.</li> </ul>	Sec 27(8) of the JJ (C&PC) Act 2015 Sec 36 (4)

- The Member Secretary of the Selection Committee will make available a copy of regular performance appraisals, of the Member carried out by District Magistrate, to the Chairperson and Members of the Selection Committee every quarter.

#### Grievance Redressal

	Grievance redressal on the orders passed by the CWC	The District Magistrate shall be the grievances redressal authority with respect to the functioning of the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.	Sec 27(10) of the JJ (C&PC) Act 2015
	Operation of Suggestion Box / Grievance Box at CWC	The District Magistrate or his nominee shall operate a suggestion box or grievance redressal box maintained by the CWC at its premises, to encourage inputs from children and adults concerned with the rights of children.	Rule 17 (2)

#### Appeal

	Appeal	<ul style="list-style-type: none"> <li>• Any person aggrieved by an order or decision made by the Child Welfare Committee related to Foster Care, Sponsorship &amp; After Care; may prefer an appeal to the District Magistrate within thirty days of passing of such order.</li> <li>• The District Magistrate may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.</li> </ul>	
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#### Roster

	Information regarding roster of sitting of the JJ Board and Child Welfare Committee	A member of the JJB and the CWC will always be available / accessible to deal with respective cases in emergency, even on holidays and Sundays. The District Magistrate will stay informed about the	Rule 6 (8) & Rule 16 (6)
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		roster of duties of such members of JJB and CWC, by the Principal Magistrate and the Chairperson respectively.	
Registration of Child Care Institutions			
	Mandatory registration of all Child Care Institution	Ensure that all Child Care Institution in your district are registered	Section 41 & 42 of the JJ (C&PC) Act 2015
Adoption of children			
	Advertisement of Orphan / Abandoned Children	Wherever District Child Protection Unit is not functional, the District Magistrate concerned shall advertise the particulars and photograph of an orphan or abandoned child in a national newspaper with wide circulation within three working days from the time of receiving the child, to trace out the biological parents	Regulation 6 (8) of the Adoption Regulation 2017
	Sensitisation of Medical Establishments, Police Personnel & Public Awareness on Mandatory reporting to CWC	Any individual is required to provide Information of abandoned, orphaned and lost children to the Childline, Police or DCPU for production of such child before the CWC. The stakeholder should be sensitised about this provision laid down in the JJ Act	Sec 32/33/34 of the JJ (C&PC) Act 2015
	Review of pendency of children to be declared legally free	Review the reports of Orphaned, Abandoned and Surrendered Children pending with CWC to be declared legally free for adoption	Section 36 (4) to (7) of the JJ (C&PC) Act 2015
	Linkage of adoptable children in Child Care institution to SAA	All Child Care Institution those who are not SAA will link all adoptable children to the nearest SAA	Section 66 of the JJ (C&PC) Act 2015 read with Regulation 58 of the Adoption Regulation 2017
	Transfer of children, both CNCP and CICL across jurisdictions	The District Magistrate must ensure safe transfer of children across jurisdictions as per the orders of the CWC or JJB and ensure human and financial resources for this.	Section 95 and 96 read with Rule-81
The Protection of Children from Sexual	Provide Support Service to the Victim Child of	The District Child Protection Unit functioning under the District Magistrate shall maintain a panel of Interpreters,	Rule-3 of the POCSO Rules 2012

Offences (POCSO) Act, 2012	Sexual Abuse	Translators, Special Educators and provide such services for the child from the budget of DCPU.	
	Counseling services to the victim child	Counseling to the victim child can be provided by the Counsellors appointed by the District Child Protection Unit. Also the DCPU should maintain a panel of counselors who can provide counseling to such children.	POSCO Model Guideline, 2013
	Free legal aid	The Legal cum Probation Officer appointed under DCPU may link the Child with District Legal Service Authority for free legal assistance and victim compensation	
The Child and Adolescent Labour (Prohibition and Regulation) Act, 2016	Implementation of Provisions in the Act	The District Magistrate shall specify such officers subordinate to him, as he considers necessary, to be called nodal officers, who shall exercise all or any of the powers and perform all or any of the duties of the District Magistrate conferred and imposed on him by the Central Government	Rule 17 c read with Section 17 A of the Act
		The District Magistrate shall assign such powers and duties, as he thinks appropriate, to a nodal officer to be exercised and performed by him within his local limits of jurisdiction as subordinate officer	
		The District Magistrate shall preside over as chairperson of the Task Force to be formed in a district	
		The District Magistrate shall ensure through nodal officers that the children and adolescents who are employed in contravention of the provisions of the Act are rescued and shall be rehabilitated through the JJ Act, NCLP, etc.	
	Reporting of engagement of children in Audio-Visual Media Production	Any producer of any audio –visual media production or any commercial event involving the participation of a child, shall involve a child in participation only after obtaining the permission from the District Magistrate of the district where the activity	Rule 2C (b) of the The Child Labour (Prohibition and Regulation) Amendment Rules, 2017

		is to be performed, and shall furnish to the District Magistrate before starting the activity an undertaking in Form C	
	Compounding of Offence	The District Magistrate may, on the application of the accused person, compound any offence committed for the first time by him	Section 14 D read with rule 17 B
	Child and Adolescent Labour Rehabilitation Fund	A Fund in every district or for two or more districts will be constituted, to be called the Child and Adolescent Labour Rehabilitation Fund, to which the amount of the fine realized from the employer of the child and adolescent, shall be credited.	Section 14 B read with rule 16 A
The Prohibition of Child Marriage Act 2006	Powers of Child Marriage Prohibition Officer in the vents of Mass Marriage of Children	To prevent solemnisation of Mass Child Marriage the DM shall be deemed to be the Child Marriage Prohibition Officer with all its powers.	Section 13 (4)
		The DM shall have additional powers to stop or prevent solemnisation of child marriages by taking appropriate measures and using minimum force	Section 13 (5)

**ROLES AND RESPONSIBILITIES WITH RESPECT TO JJ ACT AND RELATED SCHEMES AND PROGRAMMES**

DM – as the Head of DCPU	The District Child Protection Units (DCPU) shall function under the overall administrative control and supervision of the District Magistrate of the concerned district. The District Magistrate shall be responsible for effective implementation of ICPS and all other child protection policies and programs at the district level. The DCPU acts as a focal point for implementation of the JJ Act u/s 106 of the Act.	Annexure 1 of Revised ICPS Guideline 2014 and Section 106 of the JJ (C&PC) Act 2015
DCPC	The District Magistrate will co-chair the Chairperson Zilla Parishad as chair over the DCPC to supervise the activities of DCPU and implementation of ICPS	

Recruitment of staff under ICPS	The District Magistrate shall head the selection committee to recruit the staff for DCPU adopting procedure of the respective State Government.	
CAB / DAB (Childline)	The District Magistrate will preside over the City Level / District Level Advisory Board of Emergency Outreach Services such as Childline	
Setting up of District Project Society and District Vigilance & Monitoring Committee for NCLP	The District Magistrate/ Collector is the Chairperson of the NCLP Society and also Member Secretary)	National Child Labour Programme (NCLP)Setting up of District Project Society & District Vigilance & Monitoring Committee for NCLPThe DM/DC is the Chairperson of the NCLP Society and also Member Secretary)For details of the revisions in the scheme the DM/DC needs to refer to the Circular (F.No.G-20012/1/2012-CL, Government of India, Ministry of Labour & Employment (Child Labour Division. Dtd. 31.10.2017. Sub: Continuation of National Child Labour Project (NCLP) Scheme addressed to The DM/ DC & Chairperson NCLP Society).

## SUMMARY AND CLOSING

In summing up, it should be clear that the responsibility of the district administration is paramount in the implementation of the JJ Act. The responsibility of implementation of the JJ Act at the district level and below is that of the DM (DM) or District Collector (DC) (as the case may be). Specific roles and responsibilities related to review and monitoring of the implementation of the law; appeals and grievance redressal in cases of certain orders by the CWC have been laid down in the JJ Act and further elucidated in the Model Rules. Key functions of the district administration pertain to both: CNCP and CICL, through the CWC and JJB respectively.

Since ICPS is the main scheme through which the necessary resources are made available for the implementation of the Act through the setting up of the DCPU, of which the DM/DC is the Chairperson; the creation of necessary infrastructure where there is none; inspection and monitoring of CCIs; Appointment and provision of necessary personnel, and all other responsibilities of the DCPU are ultimately to be overseen and ensured by the DM/DC.

It must be clear that whether a child is CNCP or CICL, their fundamental rights cannot be violated or otherwise infringed upon. In dealing with either category of child, the foremost principle to be kept in mind is the "best interest of the child", to be determined through consultation with experts in child care and welfare.

In the case of CNCP, the District Child Protection Officer DCPO is the Nodal Officer in the district for the implementation of the Juvenile Justice Act and the rules under it. His/ her key functions include: - Development and maintenance of relevant databases: e.g. at-risk children, relevant services, organisations and counsellors; Facilitation of scheme implementations; Monitoring and review of children in CCIs and non-institutional care; Liaison and networking with all relevant government and non-governmental organisations for implementation of all laws pertaining to children and their welfare.

The district administration is also responsible for ensuring that CICL are treated in accordance with the principles outlined in Section 3 of the JJ Act; that their key rights are not violated; that due legal process is followed in all interactions of CICL with the JJB and any other institutions that they come in contact with; that CICL, if in institutional care, are not denied any of their basic rights as laid down in the JJMR; that they are given every opportunity to re-integrate into mainstream society through provision of adequate counselling, education and care.

The fact remains that all the children who come in contact with the law, either as CNCP or as CICL are ultimately children who need special attention and if that is not provided to them, they will be unable to be mainstreamed into society as responsible citizens of the country.



## ANNEXURES

### A. Juvenile Justice System in India: A Timeline

TABLE 21 : JUVENILE JUSTICE SYSTEM IN INDIA - A TIMELINE

Year	Law/ Legal Action	Treatment
1850	Apprentices Act.	Required children between the ages of 10-18 who have been convicted in courts be provided vocational training as part of their rehabilitation process.
1897 and was amended in 1957	Reformatory Schools Act	"youthful offender" meant any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years:
1919-20	Jail Committee (1919-20)	Though primarily concerned with Prison Reforms, this Committee dealt with "Child Offender" as an exclusive subject and examined various concerns associated with juvenile crime and treatment due to Child Offenders <sup>133</sup> .
1920-24	Madras Children's Act Bengal Children's Act, Bombay Children's Act	The Juvenile Court philosophy was first introduced in the Madras Children Act 1920, (followed by the Bengal Children Act (1922) and the Bombay Children Act (1924), thereafter by many other Children Acts).
1948-59	All the Children's Acts were amended	
1960	Children's Act	In 1960, at the second United Nations Congress on the Prevention of Crime and Treatment of Offenders at London, the issue was discussed, and some therapeutic recommendations were adopted. The resultant Central enactment was the Children's Act, 1960. Its application remained restricted in Union Territories only as State

<sup>133</sup> An excerpt there from is reproduced below:

*"In no direction have more important changes been effected in the last thirty years than in the treatment of the child-offender. Until nearly the close of the last century, children, if over the age of seven, were not regarded or dealt with by the criminal courts very differently from adults. They were tried in the same courts and with the same procedures, sentenced to similar penalties and imprisoned in the same prisons. The first impulse towards reform came in this matter, as in many others, from America. It was in that country that the first children's court was called into existence and it is in America that the theory of the State's responsibility towards the child has been most fully developed; but these views are no longer the sole property of any one country. It is now generally recognised that the ordinary healthy child criminal is mainly the product of unfavourable environment and that he is entitled to a fresh chance under better surroundings. There is a general consensus of the opinion that as youth is the time when habits have not become fixed, the prospects of reformation are then most hopeful. From both points of view it has come to be agreed that the child offender should be given different treatment from the adult."*

Chapter XV. 363. Special Treatment of Child Offenders, Indian Jails Committee, 1919-1920

		Legislations continued to be in force. The Children Act was passed, to function as a model legislation and for use in Union Territories.
1986	Juvenile Justice Act	Enacted to “provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles”. It brought into operation the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). This law covered both delinquent juveniles and neglected juveniles. Juvenile was defined as a boy who has not attained the age of 16 years or a girl who has not attained the age of 18.
2000	Juvenile Justice (Care and Protection of Children) Act	Brought in the standards set by the UN Convention of the Rights of the Child. This law too addressed both the child in need of care and protection as well as those who had offended.
2015	Juvenile Justice (Care and Protection of Children) Act	An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and CNCP by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.

## B. Role of the DCPU with respect to CNCP:

The DCPU shall coordinate and implement all child rights and protection activities at the district level. Specific functions of the DCPU shall include:

### Planning

- Contribute to effective implementation of child protection legislations, schemes and achievement of child protection goals laid out in the National Plan of Action for Children. In doing so, the DCPU will follow national and state priorities, rules and guidelines.
- Ensure that for each child in need of care there is an individual care plan and that the plan is regularly reviewed. Monitor the implementation of the plan.

### Prevention

- Identify families at risk and CNCP through effective networking and linkages with the ICDS functionaries, Specialized Adoption Agencies (SAA), NGOs dealing with child protection issues and local bodies, viz. PRIs and Urban Local Bodies, etc.;
- Assess the number of children in difficult circumstances and create district specific databases to monitor trends and patterns of children in difficult circumstances;
- Map all child related service providers and services at district for creating a resource directory;

- Maintain a database of all children in institutional care and non-institutional care at the district level. This Data Management System is uploaded onto a comprehensive, integrated, live database for children in care and in need of care in the country - the 'Track Missing Child'.
- Train and build capacity of all personnel (Government and Non-government) working under child protection system to provide effective services to children;
- Encourage voluntary youth participation in child protection programs at district, block and community levels;

#### Protection

- Ensure setting up of District, Block and Village level Child Protection Committees for effective implementation of programs, as well as discharge of its functions
- Ensure effective implementation of the JJ Act at district/city levels by supporting creation of adequate infrastructure, viz. setting up JJBs, CWCs, SJPU in each districts and homes in a cluster of districts as required
- Facilitate effective implementation of other legislations for child protection in the district, viz. Hindu Adoption and Maintenance Act (HAMA) 1956; Guardians and Wards Act (GAWA) 1890; Child and Adolescent Labour (Prohibition and Regulation) Act 1986; Child Marriage Prohibition Act, 2006 and Immoral Traffic (Prevention) Act 1986, Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994, Protection of children from Sexual Offence Act, 2012, CPCRC Act, 2005 etc. and any other Act that comes into force for protecting child rights;

#### Linkages & Convergence with other Agencies and NGOs

- Identify and support credible voluntary organizations to implement programme components of the ICPS;
- Network and coordinate with all government departments to build inter-sectoral linkages on child protection issues, including Departments of Health, Education, Social Welfare, Urban Basic Services, Backward Classes & Minorities, Youth Services, Police, Judiciary, Labour, State AIDS Control Society, among others;
- Network and coordinate with voluntary and civil society organizations working in the field of child rights and protection;

#### Repatriation, Restoration and Rehabilitation

- Support implementation of family based non-institutional services including sponsorship, foster care, adoption and after care;
- Facilitate transfer of children at all levels for either restoration to their families or placing the child in long or short-term rehabilitation through sponsorship, kinship care, in country adoption, foster care, inter-country adoption and placement in institutions;

#### Monitoring and Supervision

- Develop parameters and tools for effective monitoring and supervision of ICPS in the district;
- Supervise and monitor all institutions/agencies providing residential facilities to children in district;
- Organize quarterly meeting with all stakeholders at district level including Childline Services, SAA, superintendents of homes, NGOs and members of public to review the progress and achievement of child protection activities; Liaison with the SCPS, SARA and DCPUs of other districts;

# Administrative

- Provide secretarial support to the DCPC
- Sample expenditure at DCPU

TABLE 22: BUDGET OF DCPU

S.N.	ITEM	AMOUNT (In Rs.)
A. Non-recurring Expenditure (once in five years)		
1.	Furniture and other office equipments (tables, chairs, cupboards etc.)	3,00,000
2.	Five Computers with Web Cam and UPS (including cost of software license) and with Printers cum Scanners	2,25,000
	Total (A)	5,25,000
B. Recurring Expenditure (per annum)		
3.	Staff Salary	
	One District Child Protection Officer (DCPO) @ Rs. 33,250 per month <sup>1</sup>	3,99,000
	One Protection Officers, Institutional Care @ Rs. 21,000 per month	2,52,000
	One Protection Officer, Non-Institutional Care @ Rs. 21,000 per month	2,52,000
	One Legal cum Probation Officer @ Rs. 21,000 per month	2,52,000
	One Counsellor @ Rs. 14,000 per month	1,68,000
	Two Social Worker @ Rs. 14,000 per month	3,36,000
	One Accountant @ Rs. 14,000 per month	1,68,000
	One Data Analyst @ Rs. 14,000	1,68,000
	One Assistant cum Data Entry Operator @ Rs. 10,000 per month	1,20,000
	Two Outreach Workers @ Rs. 8,000 per month <sup>2</sup>	1,92,000
	Total Salary	23,07,000
4.	Rent for hiring the space at district level (if not provided by the District Administration) @ Rs. 15,000 per month x 12 months (as per actuals) <sup>3</sup>	1,80,000
5.	Travel allowance for DCPU staff at State/UT Government rates	4,50,000
6.	Fund for repatriating children - (subject to actuals)	4,00,000
7.	District Sponsorship and Foster Care Fund	10,00,000
8.	Advocacy and awareness - organizing camps, melas for community awareness and sensitization	2,00,000
9.	Sensitisation and capacity building of all stakeholders such as Police, PRI members etc.	4,00,000
10.	Administrative Expenses (water, electricity, postage, stationary, telephone with STD, Xeroxing, etc.)	1,80,000
11.	Contingency Fund including internet connection, hiring of watchman, vocational training in Homes etc.	6,00,000
12.	Total (B)	57,17,000
13.	Total Expenditure (A+B)	62,42,000

**NOTES:**

- 1 Either by deputation or contract, the officer on deputation will draw his salary according to government rules/scale.
- 2 Number of outreach workers can be increased upto a maximum of five on the basis of population and geographical spread of district.
- 3 In Metro cities (Delhi, Kolkata, Mumbai, Chennai, Bangalore and Hyderabad) @Rs.30,000 per month.

Note: Any request for non-recurring component, in the interim period, may be provided if approved by the Project Approval Board (PAB).

### C. Building/ Accommodation Norms per 50 Children

TABLE 23: BUILDING / ACCOMMODATION NORMS PER 50 CHILDREN<sup>134</sup>

Sl. No.	Building	Accommodation
(i)	2 Dormitories	Each 1000 Sq.ft. for 25 children i.e. 2000 Sq. ft.
(ii)	2 Class rooms	300Sq.ft. for 25 children i.e. 600 Sq. ft.
(iii)	Sickroom/First aid room	75 Sq.ft. per children for 10 i.e. 750 Sq. ft.
(iv)	Kitchen	250 Sq. ft.
(v)	Dining hall	800 Sq. ft.
(vi)	Store	250 Sq.ft.
(vii)	Recreation room	300 Sq.ft.
(viii)	Library	500 Sq.ft.
(ix)	5 Bathroom	25 Sq.ft. each i.e. 125 Sq. ft.
(x)	8 Toilets	25 Sq. ft. i.e. 200 Sq.ft.
(xi)	Office rooms	(a)300 Sq.ft. (b) Person-in-charge room 200 Sq.ft.
(xii)	Counselling and Guidance room	120 Sq.ft.
(xiii)	Workshop	1125 Sq. ft. for 15 children @ of 75 Sq.ft. per trainee
(xiv)	Residence for Person-in-charge	(a)2 rooms of 250 Sq.ft. each (b) Kitchen 75 Sq.ft. (c) bathroom cum toilet 50 Sq. ft.
(xv)	2 rooms for JJB or CWC	300 Sq. ft. each i.e. 600 Sq.ft.
(xvi)	Playground	Sufficient area according to total number of children
<b>Total</b>		<b>8495 Sq.ft.</b>

<sup>134</sup> JJ MR, 2016, Rule 29(6).

TABLE 24: CONSTRUCTION AND MAINTENANCE GRANT

S.No.	ITEM	AMOUNT (In Rs.)
<b>A. Non-recurring Expenditure (once in five years, expect construction)</b>		
1.	Construction of two rooms of 300 sq. feet each @ Rs. 1000 per sq feet, as and when required (Rs. 1000 x 600 sq.ft.)	6,00,000
2.	Furniture and equipments	50,000
3.	One Computer with Web Cam and UPS (including cost of software license) and one Printer cum Scanner	45,000
4.	Creating and maintaining a child friendly environment including painting of rooms, indoor games etc.	7,500
	<b>Total</b>	<b>7,02,500</b>
<b>B. Recurring Expenditure</b>		
5.	Travelling/meeting allowance or honorarium @ Rs. 1000 per meeting for Chairperson (Rs. 1000 x 12 meetings per month x 12 months)	1,44,000
6.	Traveling/meeting allowance or honorarium @ Rs. 1000 per meeting per member for 4 members (Rs. 1000 x 12 meetings per month x 12 months x 4 members)	5,76,000
7.	Salary of One Assistant cum Data Entry Operator @ Rs. 9,000	1,08,000
8.	Child related expenses including medicine, transportation, food, etc. during the process of production of a child to the committee @ Rs. 6,000 per month (Subject to actuals)	72,000
9.	Contingency (water, electricity, telephone, stationary, photocopy, postage, local travel, etc.) @ Rs. 5,000 per month (Subject to actuals)	60,000
	<b>Total</b>	<b>9,60,000</b>
	<b>Total Expenditure (A + B)</b>	<b>16,62,500</b>

This is indicative only. Actual release shall be as per PWD/CPWD estimates or as per Schedule of Rates in the State, whichever is less.

TABLE 25: MAINTENANCE GRANT

S.No.	ITEM	AMOUNT (In Rs.)
<b>A. Non-recurring Expenditure (once in five years)</b>		
1.	Furniture	50,000
2.	One Computer with Web Cam and UPS (including cost of software license) and one Printer cum Scanner	45,000
3.	Creating and maintaining a child friendly environment including painting of rooms, indoor games etc.	7,500
	<b>Total</b>	<b>1,02,500</b>
<b>B. Recurring Expenditure</b>		
4.	Rent for hiring building for running Children's Home @ Rs. 10,000 per month (Subject to actuals) <sup>1</sup>	1,20,000
5.	Traveling/meeting allowance or honorarium @ Rs. 1000 per meeting for Chairperson (Rs. 1000 x 12 meetings per month x 12 months) <sup>2</sup>	1,44,000
6.	Traveling/meeting allowance or honorarium @ Rs. 1000 per meeting per member for 4 members (Rs. 1000 x 12 meetings per month x 12 months x 4 members)	5,76,000

7. Salary of One Assistant cum Data Entry Operator @ Rs 9,000	1,08,000
8. Child related expenses including medicine, transportation, food, etc. during the process of production of a child to the committee @ Rs. 6,000 per month (Subject to actuals)	72,000
9. Contingency (water, electricity, telephone, stationary, photocopy, postage, local travel, etc.) @ Rs. 5000 per month (Subject to actuals)	60,000
Total	10,80,000
Total Expenditure (A + B)	11,82,500

Note: Any request for non-recurring component, in the interim period, may be provided if approved by the Project Approval Board (PAB).

1 In Metro cities (Delhi, Kolkata, Mumbai, Chennai, Bangalore and Hyderabad) @Rs.20,000 per month.

2 CWC shall meet at least thrice in a week and the minimum duration of a sitting should of four hours.

Note: a) Any request for maintenance of accommodation facilities or up gradation of non-recurring nature, in the interim period, shall also be provided if approved by the Project Approval Board (PAB).

b) The Children's Home where the CWC is holding its proceedings shall provide support of counsellor and peon to the CWC on those days when the sitting is taking place. DCPU will also provide legal and counselling support where necessary.

## D. Linen and Clothing Supply

TABLE 26: BED LINEN SUPPLY

A- BEDDING		
S.No.	Articles	Quantity to be provided per child
1.	Mattress	1 at the time of admission and subsequently 1 after every 1 year.
2.	Cotton Durry	2 at the time of admission and subsequently 2 after every 2 years.
3.	Cotton bed sheets	2 at the time of admission and subsequently 1 after every 6 months.
4.	Pillow (Cotton stuffed)	1 at the time of admission and subsequently 1 after every 1 year.
5.	Pillow covers	1 at the time of admission and subsequently 1 after every 1 year.
6.	Cotton blankets/Khes	2 at the time of admission and subsequently 1 after every 2 years.

TABLE 27: LINEN AND CLOTHING SUPPLY

S.No.	Night clothing and bedding	Scale for supply
1.	Mattress	One per bed per 3 years.
2.	Cotton bed sheets	four per bed per year.
3.	Pillows	One per bed per two year.
4.	Pillow covers	Four per bed per year.
5.	Woollen blankets	One per bed per 2 years.
6.	Pyjamas and loose shirts (hospital type for boys)	3 pairs per child per year.
7.	Skirts and blouses or salwar kameez for girls	3 pairs per child per year.
8.	Cotton durry	One per bed per three years.

TABLE 28: TOILETRIES SUPPLY

S.No.	Items	Quantity to be issued per child
1.	Hair Oil for grooming the hair	100 ml per month.
2.	Toilet soap/handwash	2 bars of 100 gm per month.
3.	Tooth brush	1 in every 3 months.
4.	Toothpaste	100 gm (a tube) per month.
5.	Comb	1 in every 3 month.
6.	Shampoo sachets	8 in a month (10 ml/per sachet).
7.	Bathing soap	2 bars of 125 gm per month.
8.	Hair clip/band	2 bands in 3 month.
9.	Moisturiser or cold cream (during winters)	250 ml in a month.

- For washing of clothes and towels, bed-sheet, etc., the following scale may be followed:
  - washing soap: 3 soaps for one month (125 gms) or equivalent washing powder;
  - whitening or bleaching agent to the extent required only for white clothing.

TABLE 29: SUPPLIES FOR GIRLS

7.	Cotton filled quilt	1 at the time of admission and subsequently 1 after every 2 years (in cold region in addition to the blankets).
8.	Mosquito net	1 at the time of admission and subsequently 1 after every 6 months.
9.	Cotton towels	2 at the time of admission and subsequently 1 after every 3 months.

**B- CLOTHING (GIRLS)**

S.No.	Article	Quantity per child
1.	Skirts and Blouse or Salwar Kameez or Half Sari with Blouse and Petticoat	5 sets per year for girls depending on age and regional preferences.
2.	Age appropriate undergarments	3 sets every quarter.
3.	Sanitary Towels	12 pacs per year for older girls.
4.	Woollen Sweaters (Full sleeves)	2 sweaters yearly.
5.	Woollen Sweaters (Half sleeves)	2 sweaters yearly.
6.	Woollen Shawls	1 per year.
7.	Nightwear	2 sets every 6 months.



### B - CLOTHING (BOYS)

S.No.	Article	Quantity per child
1.	Shirts	2 at the time of admission and subsequently 1 after every 6 months.
2.	Shorts	2 at the time of admission and subsequently 1 after every 6 months for younger boys.
3.	Pants	2 at the time of admission and subsequently 1 after every 6 months for older boys.
4.	Age appropriate undergarments	3 sets every quarter.
5.	Woollen jerseys (Full sleeves)	2 yearly.
6.	Woollen jerseys (Half sleeves)	2 yearly.
7.	Woollen Caps	1 in 1 year.
8.	Kurta Pyjama for night wear	2 sets every 6 months.

### C - MISCELLANEOUS ARTICLES

1.	Slippers	1 pair at the time of admission and subsequently after every 6 months.
2.	Sports shoes	1 pair at the time of admission and subsequently 1 pair after every 1 year.
3.	School uniform	2 sets every six months for children attending schools.
4.	School bag	1 every year for children attending schools.
5.	School shoes	1 pair at the time of admission in school and subsequently 1 pair after every 6 months.
6.	Handkerchiefs	2 at the time of admission and subsequently 2 after every 2 months.
7.	Socks	3 pairs every six months.
8.	Stationery	As per need.

## E. Nutrition and Diet

Nutrition and Diet Scale.-(1) The following nutrition and diet scale shall be followed by the Child Care Institutions, namely:

- (i) the children shall be provided four meals in a day including breakfast;
- (ii) the menu shall be prepared with the help of a nutritional expert or doctor to ensure balanced diet and variety in taste as per the minimum nutritional standard and diet scale;
- (iii) every Child Care Institution shall strictly adhere to the minimum nutritional standard and diet scale suggested as specified below:

TABLE 30: ARTICLES OF DIET

S.No.	Name of the articles of diet	Scale per head per day
1.	Rice/Wheat/Ragi/Jowar	600 gms. (700 gms for 16-18 of which atleast 100 gms to Wheat or Ragi or Jowar)
2.	Dal/Rajma/Chana	120 gms.
3.	Edible Oil	25 gms.
4.	Onion	25 gms.
5.	Salt	25 gms.
6.	Turmeric	05 gms.
7.	Coriander Seed Powder	05 gms.
8.	Ginger	05 gms.
9.	Garlic	05 gms.
10.	Tamarind/Mango powder	05 gms.
11.	Milk (at breakfast)	150 ml.
12.	Dry Chillies	05 gms.
13.	Vegetables Leafy Non-leafy	100 gms. 130 gms.
14.	Curd or Butter Milk	100 gms./ml.
15.	Chicken once a week or Eggs 4 days	115 gms.
16.	Jaggery & Ground Nut Seeds or Paneer (vegetarian only)	60 gms. each (100 gms. for Once in a week.
17.	Sugar	40 gms.
18.	Tea/Coffee	5 gms.
19.	Sooji/Poha	150 gms.
20.	Ragi	150 gms.
Following Items for 50 Children per day		
21.	Pepper	25 gms.
22.	Jeera Seeds	25 gms.
23.	Black Gram dal	50 gms.
24.	Mustard Seeds	50 gms.
25.	Ajwain Seeds	50 gms.
On Chicken Day for 10 Kg. of Chicken		
26.	Garam Masala	10 gms.
27.	Kopra	150 gms.
28.	Khaskhas	150 gms.
29.	Groundnut Oil	500 gms.

TABLE 31: DIET FOR SICK CHILDREN

For Sick Children		
30.	Bread	500 gms.
31.	Milk	500 ml.
32.	Khichadi	300 gms.
	Other Items	
33.	LP Gas for Cooking only	

In addition to the above the Rules also provide for :

- Special meals on holidays, festivals, sports and cultural day and celebration of national festival.
- Special diet according to the advice of the doctor for infants and sick children .
- Each child's nutritional requirements shall be considered (including the need for iron and folic acid supplements.)

The menu for the day shall be prepared in consultation with the Children's Committee and shall be displayed in the dining hall. The provision for variation in diet takes into account seasonal and regional variations.

The suggested diet variation is given below:

- Varieties of dal e g., Toor (Arhar), Moong (Green Gram) and Chana (Bengal Gram) may be given alternatively;
- On non-vegetarian days, vegetarian children shall be issued with either 60 gms of jaggery and 60 gms of groundnut seeds per head in the shape of laddus or any other sweet dish or 100 gms paneer; leafy vegetables such as Fenugreek (Methi), Spinach (Palak), Sarson (Mustard leaves) Gongura, Thotakura or any other saag etc., may also be issued once in a week. If a kitchen garden is attached to any institution, leafy vegetables, should be grown and issued and the Superintendent should try to issue variety of vegetables and see that the same vegetable is not repeated for at least a period of one week;
- Seasonal fruits shall be provided in a non-repetitive manner in sufficient quantities; the Person-in-charge may make temporary alterations in the scale of diet in individual cases when
  - (i) considered necessary by him, or on the advice of the doctor of the institution subject to the condition that
  - (ii) the scale laid down is not exceeded.

## F. Sanitation and Hygiene Standards

As per the JJMR 2016, there are 21 facilities that should be provided in the OH<sup>135</sup> : These are:

### Water and Sanitation

- sufficient treated drinking water; water filters or RO shall be installed at multiple
- locations in the premises for easy access such as kitchen, dormitory, recreational rooms etc.;
- sufficient water including hot water for bathing and washing clothes, maintenance and cleanliness of the premises;
- proper drainage system with regular maintenance;
- arrangements for disposal of garbage;
- sufficient number of well-lit and airy toilets with proper fittings in the proportion of at least one toilet for seven children;

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<sup>135</sup> JJ MR, 2016, Rule 31.

- sufficient number of well-lit and airy bathrooms with proper fittings in the proportion of at least one bath room for ten children;
- sufficient space for washing and drying of clothes;
- washing machine wherever possible;
- daily sweeping and wiping of all floors in the home;
- cleaning or washing of the toilets and bathrooms twice every day;

#### Health Related Actions

- protection from mosquitoes by providing mosquito nets or repellents;
- annual pest control;
- maintenance of cleanliness in the Medical Centre;
- disinfection of the beddings at least once a year;
- fumigation of a sick room or isolation room after every discharge in case of contagious or infectious disease; and
- cleanliness in medical centre.

#### General Cleanliness

- clean and fly-proof kitchen and separate area for washing utensils;
- sunning of bedding twice every month and clothing on regular basis;
- proper washing of vegetables and fruits and hygienic manner of preparing food;
- cleaning of the kitchen slabs, floor and gas after every meal;
- clean and pest proof store for maintaining food articles and other supplies

### G. Explanation of Child Trafficking Terms

There are some terms that need a clarity in the context of child trafficking:

#### Sale of Children<sup>136</sup>

It is difficult to have a definition of "sale of children" since children are not, and should not be, legally and/or morally, the objects of trade or commerce. The reality of such sales, however, proves the need for a definition. The traditional concept of sale is that it pertains only to property - real, personal or incorporeal - and that the consideration is always price in money.

In order to gain a clearer perception of the meaning of "sale" in its commercial application, it may be useful to take a look at some definitions of "sale" in general. Black's Law Dictionary defines it as "a contract between two parties, called, respectively, the 'seller' (or vendor) and the 'buyer' (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property".

<sup>136</sup> Ibid page 4

## Recruitment

The process of recruitment of children is always by adults with the knowledge and support of at least certain members of the community and sometimes even the parents or other family members. Abuse of authority also plays a vital role when anyone who exercises any form of authority over a child or involved in recruitment resulting in trafficking.

Children are generally recruited into (this not an exclusive list - just exemplary):

- Prostitution
- Industrial/ factory based labour
- Bonded labour
- Domestic labour
- Agricultural labour
- Construction work
- Circus
- Dance Troupes
- Liquor shops
- Camel jockeys
- Insurgent groups
- Or any other employment, which may be legal or illegal

Often, recruitment is done through:

- Personal contacts
- Agencies
- Advertisements/Internet
- Kidnapping/threats or violence or other forms of coercion such as debt bondage, or with consent through deception, when good job opportunities are promised or implied

## Transportation

Transporting a child from one place to another would result in trafficking when it is done by:

- Using force as in the case of kidnapping or
- When the travel is under threat or
- When the travel is done with consent taken deceptively

## Transfer

Sometimes, children are transferred from one place to another, sold several times to middlemen or agents before they reach the final destination. Generally, transfer is done secretly by using force or coercion and without informing the child about it.

### Harbouring

In the context of trafficking, harbouring implies confinement.

### Abuse of a Position of Vulnerability

It has been observed that often the victims/trafficked children are pushed into difficult situations by someone whom they trust or someone close to them or someone whom they cannot refuse to. In the case of trafficking, generally, these people are either parents or community leaders or some close friend.

### Procurement

In the case of child trafficking, procurement means acquiring a child for the purpose of exploitation either through:

- Sale and purchase
- By kidnapping
- By use of threat, force, coercion
- By deception or fraud

### Consideration

It is the benefit received (in cash or in kind) in exchange of the child.

### Source, Transit, Destination

A case of trafficking covers a chain of events from the source areas to their destinations. In this chain, there may also be several halts before the trafficked child reaches the final destination. These points of halts are known as the transit areas.

Several kinds of crimes may be committed against a child in each of these areas. For example, the buying or selling or kidnapping may happen in the source area. In transit areas, the child may be kept in wrongful confinement and subjected to sexual as well as other forms of abuse and violence or fraud and deception. In the destination areas, several transactions may take place e.g. final selling, forced labour or prostitution.



**NATIONAL GENDER CENTRE**

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