

# SUMMARY OF THE CHILD PROTECTION LAWS IN INDIA



  
**SATYARTHI**

KAILASH SATYARTHI CHILDREN'S FOUNDATION





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# ABBREVIATIONS

CARA	Central Adoption Resource Authority
CCI	Child Care Institution
CCL	Child in Conflict with Law
CLPRA	Child and Adolescent Prohibition and Regulation Act
CMPO	Child Marriage Prohibition Officer
CNCP	Child in need of Care and Protection
CrPC	Criminal Procedure Code
CWC	Child Welfare Committee
CWPO	Child welfare police officer
DCPO	District Child Protection officer
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
DM	District Magistrate
DNO	District Nodal Officer
DTF	District Task Force
FIR	First Information Report
HIV	Human Immuno Virus
ICPS	The Integrated Child Protection Scheme
ILO	International Labour Organization
IPC	Indian Penal Code
JJB	Juvenile Justice Board
NCLP	National Child Labour Project
PO	Probation Officer
POCSO Act	Protection of Children from Sexual Offences Act
SAA	Specialized Adoption Agency
SARA	State Adoption Resource Authority
SDM	Sub-Divisional Magistrate
SHO	Station House Officer
SI	Sub Inspector
SJPU	Special Juvenile Police Unit
SLSA	State Legal Services Authority
UNICEF	United Nations International Children's Emergency Fund
UNCRC	United Nations Convention on the Rights of Children
WHO	World Health Organization



## 1.1 History of Juvenile Justice

History of Juvenile Justice can be traced back to the British Courts of High Chancery. The Federal Courts of High Chancery was given the responsibility of *Parens-Patriae* (in place of parent) which included taking care and protecting the child in the absence of his parents and whose property was in danger. These Federal Courts ensured general child welfare and incorporated the neglected and dependent child within their jurisdiction. Under the British Common law, a child below 7 years was considered to be incapable of committing a crime. A child between the ages of 7 years to 14 years was also considered to be incapable of having the maturity and understanding to fully comprehend the consequences of his actions. Special tribunals were created to deal with such children as it was believed that the adult criminal courts were not equipped to deal with Juvenile offenders. Special courts for Juveniles were first initiated in USA in 1847. The first Juvenile Court was established in Chicago in 1899 and in England in 1905<sup>1</sup>.

The term Juvenile Justice was used for the first time in the State of Illinois, USA in 1899<sup>2</sup>. The history of Juvenile Justice System in India can be traced back to the British era. The Apprentice Act of 1850 was the first Act that laid the foundation of the Juvenile Justice System in India. The concept of Juvenile Justice gained momentum with the enactment of IPC (Indian Penal Code) in 1860 and Reformatory Schools Act in 1876, which was later amended in 1897. The Reformatory Schools Act is considered to be the landmark legislation in Juvenile Justice. According to this Act, courts can order a child to be kept in Institution for 2-7 years till the age of 18 years. Further, suggestions to deal with children were proposed by the Indian Jail Committee in 1919-1920. It stated that “largely due to lack of suitable training and to bad upbringing.... It should be given in a special institution

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1 [http://shodhganga.inflibnet.ac.in/bitstream/10603/145628/9/09\\_chapter5.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/145628/9/09_chapter5.pdf)

2 [http://shodhganga.inflibnet.ac.in/bitstream/10603/145628/9/09\\_chapter5.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/145628/9/09_chapter5.pdf)

devised and equipped for the purpose... we consider that imprisonment of children (below 14) and young persons (14-16) is clearly contrary to the public policy and we recommend that the provision of English law on this subject which have already been embodied in the Madras Children Act should be generally adopted throughout India.<sup>3</sup> The report of the Indian Jail Committee further suggested that i. Juvenile offender should be treated in a different way than an adult, ii. Detention of juvenile offenders should be prohibited and iii. Provision of reformatory schools and constitution of juvenile courts<sup>4</sup>

Thereafter, the Madras Children Act was enacted in 1920. Subsequently, Bengal Children Act, 1922 and Bombay Children Act 1924 were also enacted. Till this point of time, the main idea was the welfare of the child irrespective of the fact whether the child was delinquent or neglected. After independence, it was observed that, the number of neglected and delinquent children increased exponentially. Industrialization and rapid urbanization also brought different types of problem for children. So, in 1960, a new law was enacted for children that came to be known as the Children Act of 1960. This Act was applicable to all the Union Territories and the States were free to adopt the Act. This Act provided for care, protection, welfare, education and rehabilitation of neglected and delinquent children. This Act strictly prohibited detention of children in jails. During this period, the juvenile justice system was not uniform across the country and each State had its own different juvenile law, norms and practice.

In the year 1985, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the Beijing Rules was adopted by the UN General Assembly. The Beijing rules stressed on the wellbeing of the juvenile and stated that it is the responsibility of the Government to develop conditions for meaningful life of a juvenile. It also suggested that juvenile justice should be an integral part of the national development process and social justice.<sup>5</sup>

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3 Para 367 Indian Jail Committee Report 1919-1920

4 Indian Jail Committee Report 1919-1920

5 The Beijing Rules

In 1989, The United Nations Convention on the Rights of Children (UNCRC) was adopted and this is one of the most widely adopted Conventions of the UN. The rights covered under the Convention can be clubbed into four categories as listed below:

- Right to survival
- Right to protection
- Right to development
- Right to participation

## **1.2 Juvenile Justice Act, 1986**

In the backdrop of this world scenario, the first Juvenile Justice Act, was enacted in India in 1986. With the enactment of Juvenile Justice Act, welfare approach was replaced by justice approach. The Act provided for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles under this Act, the age of the children was not uniform. Girls below the age 18 was considered child, but for boys the age was 16 years. This led to a lot of ambiguity and confusion. Moreover, India ratified the UNCRC in 1992 which made it a mandate to:

- Protect children from all forms discrimination irrespective of sex, colour, nationality and ethnic background (Article. 2)
- Ensure best interest of the children as the primary consideration in all decision making process (Article 3)
- Ensure right of the child to life, survival and development to the maximum extent of the available resources (Article 4 & 6)
- Ensure right of children to freely express views and to be heard (Article 12)<sup>6</sup>

This global scenario made it necessary to amend the Juvenile Justice Act of 1986, which was repealed in 2000 and the new Juvenile Justice (Care and Protection of Children) Act, 2000 came into force.

### **1.3 The Juvenile Justice (care and protection of children) Act, 2000**

The Juvenile Justice (Care & Protection of Children) Act, 2000 was in coherence with UNCRC and did away with the age difference in boys and girls. This Act considered all children below the age of 18 years under its gambit. The two categories of children considered under this Act were juveniles in conflict with law and children in need of care and protection. The Act was amended twice in 2006 and 2011 to bring in more clarity.

In 2012, the brutal Nirbhaya case shook the entire nation and as one of the perpetrators was a minor, it was strongly felt to amend the existing Act keeping in view the heinous crimes committed by children. On 7<sup>th</sup> May'2015, the Bill was passed in Lok Sabha and by Rajya Sabha on 22<sup>nd</sup> December'2015. The Bill received President's assent on 31<sup>st</sup> December'2015. It came into effect from 15<sup>th</sup> January 2016 and replaced the Act of 2000.

### **1.4 Juvenile Justice (care and protection of children) Act, 2015**

The Juvenile Justice (Care & Protection of Children) Act, 2015 is the umbrella Act on child protection. Under this Act, the term juvenile is not used to describe any category of children. It covers two categories of children-children in need of care and protection and children in conflict with law. Several new terms are defined such as "orphaned", "abandoned", "surrendered", "petty offence", "serious offence", "heinous crime".

The second chapter lays down the 16 General Principles of the Act which can be considered as the bedrock for the entire Juvenile Justice System. The 16 General Principles are as follows<sup>7</sup>:

Principle of presumption of innocence	All children should be presumed to be innocent and not having any criminal intent till the age of 18 years
Principle of dignity and worth	All children shall be treated with equal dignity and rights
Principle of participation	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
Principle of best interest	All decisions regarding the child shall be based keeping in mind the best interest of the child and to help the child to develop upto their full potential
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
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
Positive measures	All resources are to be mobilized 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
Principle of non-stigmatising semantics	Adverse, accusatory or negative words should not be used in the processes pertaining to a child

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7 Section 3 Juvenile Justice( Care and Protection of Children) Act, 2016

Principle of non-waiver of rights	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
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
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
Principle of institutionalization as a measure of last resort	A child shall be placed in institutional care as a step of last resort
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 of the child
Principle of fresh start	All past records of any child under the juvenile justice system should be erased except in special circumstances
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
Principle 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

### 1.4.1 Children in conflict with law

Children in conflict with law is a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of crime.<sup>8</sup> (Section 2(13))

A child in conflict with law needs to be produced before a juvenile justice board within 24 hours of apprehension excluding time of travel. According to the Act, there should be at least one Juvenile Justice Board in each district. The juvenile justice board consists of three members.



- One Magistrate and two members together form a bench and the bench has the power of Metropolitan Magistrate or Judicial Magistrate of First Class
- The members including the Magistrate are to be provided training within 60 days of joining
- Term of members in the juvenile justice board is for three years and a person can be member for two terms, but the terms cannot be continuous.

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8 The Juvenile Justice (Care and Protection of Children) Act, 2015, Section 2



- Members can be terminated if :
  - i. Found guilty of misuse of power
  - ii. Convicted of an offence
  - iii. Does not attend proceedings of the board consecutively for three months without valid reason
  - iv. Does not attend at least three fourths of the sittings in a year
- After apprehension, the child in conflict with law should be produced before the Board and if the Board is not sitting, child can be produced before a single member also within 24 hours
- During passing of a final order, at least two members should be present including the Principal Magistrate
- District Magistrate is to conduct quarterly review of the cases pending with the Board
- District Magistrate is also the redressal authority for cases under the JJB

### 1.4.2 Types of offences

Any offence committed by a child can be categorised into three types<sup>9</sup>:

Heinous Section 2 , point 33	Includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more
Serious Section 2 , point 54	Includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years
Petty Section 2 , point 45	Includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years

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<sup>9</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, section 2

### **1.4.3 Orders regarding child in conflict with law<sup>10</sup>**

The juvenile justice board after inquiry of an offence committed by a child in conflict with law can pass following orders based on the seriousness of the offence:

- Allow the child to go home after counselling
- Direct the child to participate in group counselling activities
- Order the child to perform community service
- Ask the child or his parents or guardian to pay fine
- Can be released on probation under fit person/fit facility for a period of not more than three years
- Can be sent to Special Home/Place of safety

### **1.4.4 Heinous crime committed by a child who is 16-18 years (Section 15, 19 and 20)**

When a heinous offence is committed by a child who is between the age of 16-18 years, the Juvenile Justice Board, after conducting a preliminary assessment related to the physical and mental capacity of the child, ability to understand consequences of the offence and his circumstances, comes to the conclusion that there is a need for further trial in such cases, the Board has the option to transfer the matter to the Children's Court, which is the Court of Session having jurisdiction to try heinous offences.

If after trial, a child is found guilty of committing a heinous offence by the Children's Court, then such child has to be sent to a place of safety for reformation and rehabilitation up to the age of twenty one years. After completing the age of twenty one years, an evaluation of the child is conducted by the Children's Court after which either the child is released or transferred to an adult jail for the rest of term of imprisonment.

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<sup>10</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, section 18

#### **1.4.5 Determination of age (Section 94):**

When it is obvious to the Board, based on the appearance of the person that the person is a child, the Board will record the same and proceed with the case but when it is not obvious or when the Board has reasonable grounds for doubt regarding the age of the person then the age is determined by seeking evidence in the form of:

- Date of birth certificate from school or school leaving certificate or the age mentioned in the school register during the time of admission; and in the absence of these documents;
- Birth certificate issued by a Corporation or Municipal Authority or a Panchayat;
- Only in absence of both the above, the Board can order bone ossification test to determine the age of the person

### **1.5 Role of stakeholders in dealing with child in conflict with law**

#### **1.5.1 Role of police (Rule 8, Juvenile Justice (Care and Protection of Children) Act, Model Rules, 2016):**

- First inform his parent/guardian about the apprehension and of the offence allegedly committed by the child
- Inform the Probation officer, so that he can gather information on social background and circumstances under which the offence was committed
- Inform special juvenile police unit or the child welfare police officer to record the information regarding the offence in the general daily diary. No FIR will be registered except in case of heinous crimes

- A child will be apprehended only in case of heinous crime or when apprehension is in best interest of the child. After apprehension, the child will be produced before Juvenile Justice Board (JJB) within 24 hours
- In petty or serious offence where apprehension is not required, child welfare police officer has to inform the juvenile justice board about the offence allegedly committed by the child and also submit the social background report
- The child cannot be hand cuffed or kept in jail. The child has to be kept in observation home/fit facility or with fit person till the time of first production before the juvenile justice board
- The child cannot be asked to sign on any document or statement and in case of FIR being registered; the copy of the same has to be given to the child or to his parents or guardian.
- The SJPU/CWPO cannot compel the child to confess guilt or use force. The child's parents/guardians can also be allowed to be present during the interview
- Special juvenile police unit or the child welfare police officer has to prepare the social background report of the child in Form 1 and circumstances under which the child was apprehended and submit it to the juvenile justice board during first hearing
- Special juvenile police unit or the child welfare police officer has to inform the parents or guardian of the child as to when the child is to be produced for hearing before the Board
- Police officer/SJPU/CWPO has to provide immediate medical assistance to the child if needed
- Assistance of interpreter or a special educator if needed should be provided during interviewing the child. It is mandatory for the CWPO to be in plain clothes during interviewing the child

- Special juvenile police unit or the child welfare police officer has to produce the child before JJB within 24 hours excluding the time of travel
- Police officer has to inform the district legal services authority for providing free legal aid to the child
- A list of all designated child welfare police officers, child welfare officers, probation officers, para legal volunteers, district legal services authorities and registered voluntary and non-governmental organisations in a district, principal magistrate and members of the board, members of special juvenile police unit and child line services with contact details will have to be prominently displayed in every police station
- In case of heinous offence being allegedly committed by a child who is over 16 years, then the CWPO has to produce statement of witnesses and other documents as far as possible within one month and also give a copy of the same to parents/guardians of the child
- In case of petty/serious offence allegedly committed by a child, the final report is to be submitted before the JJB at the earliest and not beyond two months

### **1.5.2 Role of juvenile justice board {Rule 10, Juvenile Justice (Care and Protection of Children) Act, Model Rules, 2016}:**

- Any child apprehended by police for allegedly committing an offence has to be produced before JJB within 24 hours of apprehension along with a report explaining the reason and circumstances of the child being apprehended. Board will consider the report and take necessary action

- In case the Board is not sitting, and a child is apprehended, then the child has to be produced before a single member of the Board, and the order given by the single member will have to be ratified in the next sitting of the Board
- If the JJB is of the opinion that the child produced before it falls under the category of a child who has been employed by a militant group or any circumstances as mentioned in Sec 83, the Board can decide to consider such a child as one in need of care and protection and transfer the child to child welfare committee
- When a child is not apprehended but information of the offence allegedly committed by the child is given to the board, then the board will direct the child to appear before it at the earliest
- On production of a child, the Board has to review the report containing the social background report (SBR), circumstances of apprehension, and offences allegedly committed and then pass orders in relation to the child.
- The Board can dispose the case if it is of the opinion that the allegation is unfounded or is a petty offence.
- Refer the child to CWC if Board feels that the child is need of care and protection.
- Release the child under supervision of fit per/fit facility/probation officer through an order in Form three with directions to present the child for inquiry on next given date.
- The Board can pass orders for keeping the child in a child care institutions, if it thinks this option to be in the best interest of the child
- In all cases where release is pending during inquiry, Board has to give the next date of hearing not later than 15 days

- If the child in conflict with law fails to appear before the Board, after being granted bail, the Board has to issue directions to CWPO for the production of the child
- If CWPO fails to produce the child even after directions from the Board, the Board will have to pass orders as per Section 26 of the Act
- When witness is produced before JJB for examination in an inquiry relating to a child in conflict with law, it is the responsibility of the Board to ensure that inquiry is not conducted in spirit of strict adversarial proceedings
- The Board is supposed to address the child in child friendly manner
- Board has to take into account the report containing circumstances of apprehending the child and the offence committed along with the social investigation report before arriving at a conclusion
- The Board has to determine the age at the first instance when the child is produced, in case of unavailability of age proof the Board will pass orders for age determination as per section 94 of the Act
- For conducting preliminary assessment in case of a heinous crime allegedly committed by a child who is over 16 years of age, the Board may take assistance of psychologists/counsellors
- After preliminary inquiry, if the Board is of the opinion that the offence was committed with an adult like mind, and the child should be treated as an adult, Board shall assign reason for the same, share a copy of that report with the child or parents/guardians of the child and transfer the case to children's court

- After preliminary assessment, the Board can pass any of the following:
  - Order the child to be kept in a place of safety
  - Decide to release the child after advice and admonition and ask the child to participate in group activity or community service and ask district child protection unit (DCPU) to arrange for proper counselling
  - If the Board decides to release the child on probation and place him under the supervision of a parent/guardian/fit person, then the custodian will submit a written undertaking
  - Order release on personal bond
  - Order to be placed under supervision of a probation officer for a maximum period of three years
- If the Board finds that the child is not complying with the probation conditions, the Board can then decide to send the child to a special home or place of safety for the remaining time of probation
- Board has to maintain case monitoring sheet and every case and every child as per Form No 11
- Board has to submit a quarterly report in Form 12 about the pendency of cases, visits to Special Homes etc and share the report with Chief Judicial Magistrate or Chief Metropolitan Magistrate and District Magistrate
- The Board has to ensure that no person unconnected with the case is present in the room during case inquiry
- The Board will have to hold sittings in a child friendly manner and not use harsh language for the child
- The Board is not supposed to sit on a raised platform



- The Board has to sit on all working days for at least six hours
- The Board has to issue rehabilitation cared as per Form 14 and monitor the progress of the Child
- The Board has to pass appropriate orders for re-admission or continuation of studies of the child
- The Board has to ensure that District Child Protection Unit (DCPU) extends legal help
- The Board has to review after care and sponsorship programs and recognize fit person/fit facility

### **1.5.3 Role of child welfare committee**

- In case the Juvenile Justice Board is of the opinion that the child is need of care and protection as under section 83 of the Act, the child welfare committee will have to take decision regarding the child and tray for repatriation or rehabilitation of the child
- CWC has to take care of any child transferred to it by the Board and take proceedings as per the Act

### **1.5.4 Role of district child protection unit {Rule 85: Juvenile Justice (care and protection of children), Model Rules, 2016}**

- Maintain report of quarterly information sent by the Board about children in conflict with law produced before the Board
- 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 offence

- Conduct review of the child placed in the place of safety every year and forward the report to the Children's Court
- 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 record of run- away children from child care institutions
- Perform periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to JJB from time to time
- 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;
- Inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the State Child Protection Society
- Look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action
- Send representative to the management committees within the child care institutions;
- Maintain a database of child care institutions, fit persons and fit facilities, registered after care organisations and institutions etc. at the district level and forward the same to the Boards
- 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

- 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
- Organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act
- Submit a monthly report to the State Child Protection Society;
- Notify the State Government about a vacancy in the Board six months before such vacancy arises
- The District Child Protection Officer is the Nodal Officer in the district for the implementation of the Act and the rules

### **1.5.5 Role of NGO**

- In case a NGO has resources or capabilities of providing assistance in providing probation, case work, counselling, psychological sessions than it can enrol itself in the Govt panel
- Prepare the individual care plan and submit to Board if directed by the Board to do so (Rule 13, 8 (2))

## 1.6 Child in need of care and protection

A child in need of Care and Protection (CNCP) is a child who is (Section 1 point 14)

- Homeless
- Found working or begging or living on the streets
- Residing with a person (whether a guardian of the child or not) and such person—
  - has injured, exploited, abused or neglected the child or
  - has violated any other child protection law or
  - has threatened to kill, injure, exploit or abuse the child or
  - 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; or
- Mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or
- Having a parent or guardian and such parent or guardian is found to be unfit to care and protect the child; or
- Not having parents and no one is willing to take care or whose parents have abandoned or surrendered him; or
- Missing or run away child
- Being abused or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- Is found vulnerable and is likely to be inducted into drug abuse or Trafficking; or

- Being or is likely to be abused for unconscionable gains; or
- Victim of or affected by any armed conflict, civil unrest or natural calamity; or
- At imminent risk of marriage before attaining the age of marriage

For taking care of children in need of care and protection, the State Government is required to establish one or more child welfare committee (CWC) in every district.



### 1.6.1 Child welfare committee

- CWC is a five member committee with one chairperson, and four members of whom at least one should be a woman
- District Child Protection Unit is required to provide a Secretary and other staff to the Committee for secretarial support
- The appointment of the Committee is for a period of three years and a person can be member of the Committee for two terms, but the two terms cannot be consecutive

- Membership can be terminated by State Government on grounds of misuse of power, convicted of an offence, if a member does not attend proceedings for three consecutive months without valid reason or fails to attend 3/4th of the proceedings in a year
- District Magistrate is the grievance redressal authority for the Committee
- Committee is required to submit quarterly report to DM giving details of nature of disposal of cases and pendency of cases
- Visit to a child care institution is considered as a sitting of the Committee

### **1.6.2 Procedure in relation to child welfare committee**

- The Committee has the power to dispose of cases for care, protection, treatment, development and rehabilitation of children in need of care and protection
- The Committee is required to meet for at least 20 days a month
- In case the Committee is not sitting or it is late in the evening then a child in need of care and protection can be produced before a single member of the Committee
- At the time of decision making regarding a child, decision of the majority prevails, and when there is no clear majority, then the decision of the Chairperson prevails
- There should be at least three members at the time of final disposal of case
- CWC conducts inquiry on all issues related to children in need of care and protection and direct the Child Welfare Officers or Probation Officers or District Child Protection Unit or NGO to submit social investigation report within 15 days

- CWC completes inquiry within a period of four months
- It is required to conduct at least two inspection visit to Child care Institutions every month
- CWC declares children to be legally free for adoption after due process of inquiry
- The committee takes suo moto cognizance and reach out to children
- Any CNCP can be produced before Child Welfare Committee by:
  - Any police officer, special juvenile police unit, CWPO
  - District Child Protection Unit
  - Any public servant
  - Child line
  - Child welfare officer or probation officer
  - Any social worker or public spirited citizen
  - Nurse, doctor or management of a nursing home, hospital or maternity home
  - Child himself

### **1.6.3 Orders regarding child in need of care and protection**

- After inquiry, the CWC can:
  - Declare that a child is in need of care and protection
  - Restore the child to family with or without supervision
  - Place the child in a children home/fit facility/foster care or Specialized Adoption Agency (SAA)

- Place the child with fit person for long term or temporary care
- Declare the child free for adoption
- Provide for care and support for the child
- Order sponsorship for the child

## **1.7 Role of stakeholders in case of Child in Need of Care and Protection**

### **1.7.1 Role of Police**

- If the child is in need of care and protection, the police has to produce the child before CWC
- When dealing with children, the Police will have to be in plain clothes, as far as possible
- Provide for food and other basic needs till the time the child is produced before CWC
- Provide immediate medical assistance if required
- A police officer has to be totally aware of the CWC, its address and days of sittings as well as of the names, addresses and phone numbers of its members and Chairperson
- A police officer dealing with children in need of care and protection should have with him/her the list of various NGO's working with children in the area, children's homes/fit institutions/child helplines, child care institutions, so that necessary emotional and legal support can be provided to children in need of care and protection through these organizations and a copy of this list has to be kept with the SHO and duty officer of the concerned police station



- A police officer dealing with children in need of care and protection should have a list of government hospitals, with paediatric unit, so that necessary medical aid can be provided to the child in custody
- Conduct proper inquiry as per the law if the child is a) missing b) rescued from child labour c) victim of sexual abuse d) rescued from trafficking e) victim of child marriage or rescued from child marriage

### **1.7.2 Role of juvenile justice board**

No specific role

### **1.7.3 Role of child welfare committee**

- The CWC has to ensure that no person unconnected with the case/child is present in the room when session is in progress
- The CWC will ensure that only those people shall remain in the room, before whom the child is comfortable
- At least one member of the CWC will always be available to take decision on any matter of emergency and issue necessary directions to SJPU
- If a child in need of care and protection cannot be produced before the CWC for valid reasons, the members of the CWC will reach out to the place where the child is kept
- While communicating with children, the CWC members will have to use child friendly language and the meetings will be held in child friendly premises
- CWC has to document and maintain detailed case record along with case summary for all cases dealt by the committee

- Keep a suggestion box at a prominent place in the premises of the committee and review it once a month
- Send quarterly report in Form 16 about children in need of care and protection to DM with all relevant information
- Issue rehabilitation card in Form 14 to children in need of care and protection and monitor their progress
- The committee after interacting with the child produced before it will pass orders for placing the child with parent/guardian or children's home or fit person/fit facility
- CWC will have to pass orders for immediate medical examination for the child produced before it
- Determine the age of the child to ascertain its jurisdiction
- When a child is produced before the committee, the committee will assign the case to a social worker/case worker/child welfare officer or to a recognized NGO for conducting the social investigation report
- Pass orders to concerned person/organization to develop an individual care plan and rehabilitation plan
- Refer the child as well as parents to counsellor before releasing or restoring the child
- Maintain proper records of each child including medical report, social investigation report, and any other report or orders passed by the committee
- In all cases of pending inquiry, the committee has to notify next date of appearance of the child which shall not be more than 15 days of the previous date

- Direct person or institution with whom the child is placed to take steps for rehabilitation of the child which will include educational, vocational training
- In case a child is repatriated to another district/state or country, then CWC will ask DCPU to take necessary permission from requisite agencies
- At the time of final disposal of case, the committee will give the order of disposal and individual care plan prepared by social worker/ case worker or child welfare officer
- During final disposition of case, the committee has to give a date for follow up of the child not later than one month and then once every month for next six months
- In case of abandoned or orphaned child, the CWC will make all efforts to trace the parents or guardians and if it is established that the child is orphan without any one to take care, then the child will be declared as legally free for adoption

#### **1.7.4 Role of DCPU<sup>11</sup>**

- Identify orphan, abandoned and surrendered children in the district and get them declared legally free for adoption by child welfare committee with the help of specialised adoption agency or child care institution, wherever required
- Ensure that the child study report and medical examination report are uploaded in the child adoption resource information and guidance system by the specialised adoption agency within ten days from the date a child is declared legally free for adoption

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11 <http://oscps.nic.in/node/10> and <http://cara.nic.in/Regulation/DCPU.html>

- Facilitate the linkage of child care institution with specialised adoption agency in the same or other districts to facilitate adoption
- Track the progress of adoption of each child declared legally free for adoption and take necessary actions for expediting the case, wherever required
- Track 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
- Maintain a panel of professionally qualified or trained social workers and 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
- Maintain report of quarterly information sent by the Board about children in conflict with law produced before the Board and the quarterly report sent by the Committee
- Arrange for individual or group counselling and community service for children
- Maintain record of run- away children from child care institutions
- Identify families at risk and children in need of care and protection
- Assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of children in difficult circumstances
- Perform periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the committees

- Facilitate the implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Committee
- 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 district child protection units in the state
- Inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the state child protection society
- Look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action
- Maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the facility of open shelter and of children placed in foster care

### **1.7.5 Role of NGO**

- Conduct the Social Investigation Report if directed by CWC to do so
- In case a NGO has resources or capabilities of providing assistance in providing probation, case work, counselling, psychological sessions than it can enrol itself in the Govt panel
- Prepare the individual care plan and submit to CWC if directed by the CWC to do so

## 1.8 Offences against children

The Juvenile Justice (Care and Protection of Children) Act, 2015 clearly lays down the offences against children and punishment for the same (section 74-85)

Offence	Punishment
Prohibition on disclosure of identity (Section 74)	Imprisonment up to six months and fine up to Rs. two Lakhs or both
Cruelty to a child (Section 75)	Imprisonment upto five years and fine upto Rs. five Lakhs , if the child is physically incapacitated or becomes mentally ill then rigorous imprisonment of 3 years -10 years and fine upto five lakh
Employment of child for begging (Section 76)	Imprisonment up to 10 years and fine upto Rs. five lakhs, if amputates the child then imprisonment of 7 years-10 years and fine upto five lakhs
Giving drugs or intoxicating substances (section 77)	Imprisonment upto seven years and fine up to Rs. seven lakhs
Using a child for drug peddling (Section 78)	Imprisonment upto seven years and fine upto Rs. seven lakhs
Exploitation of child employee (Section 79)	Imprisonment upto five years and fine upto Rs. one lakhs
Illegally adopting a child or giving the child to adoption illegally (Section 80)	Imprisonment upto three years and fine upto Rs. one lakhs or both
Sale or procurement of a child for any purpose (Section 81)	Imprisonment upto five years and fine upto Rs. one lakhs  And if done by a person having actual charge of the child than imprisonment not less than three years which can go upto seven years
Corporal Punishment -Any person employed or in charge of a Child Care Institute gives corporal punishment to a child with aim of disciplining him (Section 82)	First time offence fine of Rs. 10000 and repeat offence shall be liable to imprisonment of upto three months
Use of Child by militant groups or adults (Section 83)	Imprisonment upto seven years and fine upto Rs. five lakhs
Offence on disabled children (Section 85)	Double of actual punishment

## 1.9 Adoption<sup>12</sup>

Central Adoption Resource Authority (CARA) is the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions.

CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated /recognized adoption agencies. Each State will have State Adoption Resource Authority (SARA) to deal with adoption in that particular state as per section 67 of the Act.

The main function of CARA is to promote inter-state and inter country adoption, regulate inter country adoption and frame regulations on adoption as and when needed. CARA will have its counterpart in each state called State Adoption Resource Authority and it will take care of the adoption process in state.

### 1.9.1 Role of Central Adoption Resource Authority<sup>13</sup>

- Monitor and regulate the procedure for in-country adoption;
- Receive applications from Non-resident Indians or foreigner regarding adoption and review the applications
- Issue “No Objection Certificate” in all cases of inter-country adoptions
- Coordinate with State Adoption Resource Agencies regarding adoption related matters
- Maintain a comprehensive centralised database relating to children and prospective adoptive parents for the purpose of adoption in Child Adoption Resource Information and Guidance System

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12 Juvenile Justice (Care and Protection of Children) Act, 2015, section 56

13 <http://cara.nic.in/Regulation/CARA.html>

### **1.9.2 Structure State Adoption Resource Agency<sup>14</sup>**

- Principal Secretary or Secretary of the department of the State Government will be the head of The State Adoption Resource Agency and have following members:
- Director of the department of the State Government dealing with adoption who will perform as the Member Secretary;
- Director of the Department of Health or Hospital Administration of the State Government;
- Chairperson of a CWC;
- Representative of a SAA
- one member from the civil society involved in child welfare and protection for at least ten years;
- One member from the State Legal Services Authority.
- The Governing Body will meet at least once in every quarter to review the progress of adoption work

### **1.9.3 Function of State Adoption Resource Agency<sup>15</sup>**

- SARA is involved in promotion, facilitation, monitoring and regulation of the adoption programme in the State
- Recommend for recognition to one or more of the child care institutions as specialised adoption agencies in each district
- Publish the contact details of Specialised Adoption Agency in the State and recommend renewal of recognition to Specialised Adoption Agency every five years

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14 <http://cara.nic.in/Regulation/SARA.html>

15 <http://cara.nic.in/Regulation/SARA.html>



- Inspect and monitor adoption programme and activities of all Specialised Adoption Agencies within its jurisdiction
- Identify child care institutions which are not recognised as specialised adoption agencies and link them to SARA
- Maintain a State-specific database in Child Adoption Resource Information and Guidance System of adoptable children, prospective adoptive parents, children given in in-country and inter-country adoptions
- Ensure that all adoption placements in the State are done in accordance with the relevant provisions of the Act, rules made there under and these regulations

#### **1.9.4 Specialized Adoption Agency (SAA), Section 65**

- The State Government will identify institutions or organizations in each district as SAA for rehabilitation of orphan, abandoned or surrendered children. Children declared as legally free for adoption will be placed in SAA
- Children in the age group of 0-6 years who are legally free for adoption will be kept in SAA for adoption as primary focus
- Children in the age group of 6-8 years who are legally free for adoption but are not adopted within two years can be placed in family foster care or group foster care
- Children in the age group of 8-18 years who are legally free for adoption, but not adopted within one year can be placed in foster care

### **1.9.5 Eligibility of prospective adoptive parents (Section 57)**

- The prospective adoptive parents has to be physically and mentally fit and financially capable of taking care of a child
- In case of couples, consent of both the partners is mandatory
- A single male cannot adopt a girl child

### **1.10.1 Rehabilitation of children in conflict with law**

- Observation Homes: Children who have allegedly committed an offence are placed in an observation home during the pendency of inquiry
- Special Homes: Children who are found to have committed an offence by the Board are placed in Special Home for the time period as ordered by juvenile justice board
- Place of safety: A person who is above 18 years of age or children in the age group of 16-18 years are alleged to be in conflict with law or have been found to have committed an heinous offence is placed in place of safety for rehabilitation till the time period as directed by juvenile justice board

### **1.10.2 Rehabilitation of children in need of care and protection**

- Open Shelter: Open shelters functions as community based residential support for children on short term basis. If a child stays in an open shelter for more than 24 hours, then he has to be produced before CWC for more alternative place of stay
- Foster Care: Children in need of care and protection may be placed in foster care or group foster care where the child stays in a family environment

- Children's Home: A child who is in need of care and protection can be placed in a children's home
- Specialized Adoption Agency: A child who is declared as legally free for adoption is placed in a SAA and the details of the child are available online in CARA portal for adoption by prospective parents

## 2.1 Child Abuse

According to WHO, Child Abuse means “all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”<sup>16</sup> Child Abuse is violation of basic human rights of the child and child abuse can be further categorised into a) Physical Abuse b) Sexual Abuse c) Emotional Abuse d) Neglect.

## 2.2 Child Sexual Abuse

Child sexual abuse is one of the major problems being faced in our country. According to a study conducted by Ministry of Women and Child Development in 2007, 53% of the children surveyed said that they had been subjected to some form of sexual abuse. The data speaks of the enormity of the problem and in the case of child sexual abuse; the problem is more alarming as many times cases of child sexual abuse go unreported due to the taboo attached with it.

Various independent reports suggest that, not only girls but boys also are sexually abused and in most of the instances, the abuser is known to the child. After the publication of the Study on Child Abuse: India 2007 by Ministry of Women and Child Development, the need was felt to bring in a law to address Child Sexual Abuse and so the Protection of Children from Sexual Offences Act came into effect in 2012.

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16 [«Child abuse and neglect by parents and other caregivers»](#) (PDF). [World Health Organization](#). p. 3. [Archived](#) (PDF) from the original on 4 March 2016.

## 2.3 POCSO Act, 2012

POCSO Act is the acronym for the Protection of Children from Sexual Offences Act, 2012. The Act aims to protect children from adult abusers. This Act has been amended with effect from 16th August 2019. Some of the key points of this Act are:

- It covers all children below the age of 18 years
- It is a gender neutral Act
- Provides child friendly processes for reporting, recording and trial keeping best interest of child as top priority
- Burden of proof is on the accused in cases of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault
- Makes reporting of child sexual abuse cases mandatory

### 2.3.1 Categories of Sexual offence under POCSO Act, 2012

Offences covered under the Act:

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012		
Section	Provision	Punishment
4	Punishment for penetrative sexual assault- if any person inserts or penetrates any private body part or any object in child's body or makes the child to do so with him/her, then it is called as penetrative sexual assault.	Shall be punished with an imprisonment of minimum ten years which may extend upto imprisonment for life, and shall also be liable to fine.If penetrative sexual assault is done on child below 16 years than the punishment will be minimum 20 years and can extend to life imprisonment and shall also be liable to fine. (Section 6, sub section 1)
6	Punishment for aggravated penetrative sexual assault-any police officer, teacher, hospital staff or any other person, under whose care and protection the child is or on whom the child trusts, if that person commits penetrative sexual assault with the child or two or more people commit the act, then it is called as aggravated penetrative sexual assault.	minimum 20 years and can be also life imprisonment or death penalty and shall also be liable to fine. The fine imposed will be reasonable and paid to the victim to meet the medical expenses and rehabilitation of the victim. (Section 6, sub section 2)  The fine paid will be used to meet medical and rehabilitation expenses of victim.

8	<p>Punishment for sexual assault-</p> <p>If any person touches with sexual intent any private part of child's body or make the child touch his/her private body part, then it is called as sexual assault.</p>	<p>Shall be punished with an imprisonment of minimum three years which may extend upto five and shall also be liable to fine</p>
10	<p>Punishment for aggravated sexual assault- any police officer, teacher, hospital staff or any other person, under whose care and protection the child is or on whom the child trusts, if that person commits sexual assault or two or more people commits sexual assault using a weapon, then it is called as aggravated sexual assault.</p>	<p>Shall be punished with an imprisonment of minimum five years which may extend upto seven years, and shall also be liable to fine</p>
12	<p>Punishment for sexual harassment- if any person with malice commits any act which can be considered sexual in front of a child or makes the child exhibit his/her body, shows any form of media or pornographic content, then it is called as sexual harassment.</p>	<p>Shall be punished with an imprisonment of upto three years, and shall also be liable to fine</p>

14	<p>Punishment for using child for pornographic purposes- if any person uses a child for pornographic (obscene media, movies or picture) purposes (which includes T.V. channels or advertisements or internet or any other electronic form or printed form, whether or not such programme or advertisement is used for personal purpose or distribution or not), it is a serious offence</p>	<p>Using a child for pornographic purposes is punishable with imprisonment for a period not less than 5 years and is also liable to fine, and in case of repeated offence, punishment will be not less than 7 years of imprisonment and is also liable to fine. (Section 14, 1).</p>
15	<p>Punishment for storage of pornographic material involving child- any person, who stores, for commercial purposes any pornographic material in any form which includes a child, is punishable.</p>	<p>Any person who stores any pornographic material involving a child and fails to report or destroy it is punishable with a fine of not less than five thousand rupees., and repeat offence will be punishable with fine of not less than ten thousand rupees. If the material is stored for further transmitting or propagating, then along with fine, it is punishable with upto three years of imprisonment. For storing child pornographic material for commercial purpose is punishable with three to five years of imprisonment, and in subsequent conviction, upto seven years of imprisonment. (Section 15)</p>



17	Punishment for abetment- to abet or instigate for aforementioned offences is also an offence. If any offence is committed in consequence of abetment, then it is punishable.	Shall be punished with imprisonment of any description provided for the offence
18	Punishment for attempt to commit an offence- whoever attempts to commit any offence punishable under this act or helps in committing the act and does an act in the commission of such act, then it is punishable.	Shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the punishment had the act been actually committed or with fine or both
21	Not reporting any offence committed under the provisions of this act.	Shall be punished with an imprisonment of upto six months and/or with fine

22	<p>Any person, who reports a wrong complaint of offences committed under Section 3 (penetrative sexual assault), Section 5 (aggravated penetrative sexual assault), Section 7 (sexual assault), Section 9 (aggravated sexual assault) with an intention of insulting, intimidating or for defamation lies about it or gives wrong information.</p> <ol style="list-style-type: none"><li>1. If the person filing false complaint is a child, then no punishment shall be imposed on such child.</li><li>2. If the false complaint has been filed by a person, not being a child, against a child, knowingly gives the false information or information which he/she has ground to believe is false, thereby victimizing such child in any offence under this act, is punishable.</li></ol>	<p>Shall be punished with an imprisonment of upto six months or with fine or both</p> <p>Such person shall be punished with an imprisonment of upto one year or with fine or both</p>
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23	<p>Any person, who makes any report or present comments on any child in any form of media without any authentic information, which can lower the reputation or infringe the privacy of child.</p> <p>Or</p> <p>Through any report of media publishes child's identity, like name, address, photograph, family details, school, neighbourhood or any other particulars.</p>	<p>Shall be punished with an imprisonment of six months which may extend to a term of one year or with fine or both.</p>
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### 2.3.2 Reporting of POCSO Cases<sup>17</sup>

Non reporting of Child Sexual Abuse case is a punishable offence under Section 21 and is punishable by imprisonment of upto six months and liable for fine or both. Anybody who has information of such an offence should inform :

- Special Juvenile Police Unit or any local police
- Police should give an entry number of each complaint and record it in writing
- Police is to read out the written information to the complainant
- In case a complaint is made by child then the reporting should be done in simple language
- In case the entry is made in a different language than what the child understands, then help of a translator or interpreter is to be taken
- If the SJPU feels that the child against whom such an offence is committed is in need of care and protection, then SJPU will produce the child before of CWC within 24 hours in situations where the perpetrator is a family member or shares the same accommodation with the victim or if keeping the child with the family can cause further harm to the child
- Police will give information of all cases to the CWC

The POCSO Act also has provision for punishing against false complaint or false information which can extend upto 6 months of imprisonment or fine or both. However, no action will be taken if false complain is made by another child. (Section 22)

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17 Section 19, POCSO Act, 2012

### **2.3.3 Recording of statement and procedure of trial**

- The statement of the child is to be recorded at the residence of the child or at a place where he is comfortable and as far as possible by a woman police officer not below the rank of Sub Inspector
- While recording statement the police officer should not be in uniform
- If needed, then help of translator or interpreter will have to be taken
- The child should not be kept in the police station at night for any reason
- The police must ensure that the identity of the child is not disclosed to public or media
- The police should provide immediate medical assistance and take the child for medical examination irrespective of the fact whether FIR has been registered or not
- In case of girl child, medical examination has to be conducted by a woman doctor
- Evidence of the child must be recorded within a period of 30 days as far as possible and the special court is to complete the trial as far as possible within one year<sup>18</sup>
- Children's Court/Special court is to take care of the fact that the child is not exposed in any way to the accused at the time of recording of evidence<sup>19</sup>
- The Children's Court/Special court has to try cases in-camera and in the presence of the parents of the child or such person whom the child trusts

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18 Section 35, POCSO Act, 2012

19 Section 36, POCSO Act, 2012

## **POCSO RULES 2020**

POCSO Act is the acronym for the Protection of Children from Sexual Offences Act, 2012. The Act aims to protect children from adult abusers. This Act has been amended with effect from 16th August 2019. The Rules under the Act have also been amended and were notified on 9th March 2020.

Some of the key points of POCSO are:

- Covers all children below the age of 18 years
- Is a gender neutral Act
- Provides child friendly processes for reporting, recording, investigation and trial keeping best interest of child as top priority
- Burden of proof is on the accused in cases of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault
- Makes reporting of child sexual abuse cases mandatory

## **2.4 Role of different stakeholders in cases of Child Sexual Abuse**

### **2.4.1 Role of Police**

- Police officer recording information has to immediately give to the informant the details of himself and his supervising officer's name, designation, address and telephone number. (Rule 4)
- As soon as local police or SJPU receives information of any offence committed or likely to be committed under this Act, then it has to immediately register an FIR and share the copy of the same free of cost with the person making such report, as per sub-section (2) of section 154 of that CrPC
- Police should ascribe an entry number to the recorded information

- The contents of the statement are to be read-over and explained to the child by the police officer
- Police must use simple language so that the child understands what is being recorded.
- In cases where the child requires emergency medical care as per Sub Section (5) of section 19 of the Act, the child has to be taken to nearest medial facility at the earliest
- The child is also to be taken to hospital for medical examination (Sec 27)
- Police need to complete the Preliminary Assessment Report in Form B of POCSO Rules within 24 hours of the registration of the First Information Report and submit it to the CWC.
- The statement of the child is to be recorded at the residence of the child or at a place where the child is comfortable and as far as possible by a woman police officer not below the rank of Sub Inspector.
- While recording the statement the police officer should not be in uniform
- The child should not be kept in the police station at night for any reason
- The police must ensure that the identity of the child is not disclosed to public or media
- If required, the police officer may take the assistance of a translator or an interpreter, while recording the statement of the child
- Police must ensure that samples collected for forensic tests are sent immediately to forensic laboratory

- Police should report all cases to the CWC and to the Special Court within 24 hours to enable financial assistance /interim compensation to the child
- Wherever a support person is appointed to assist the child in legal process by the CWC, police is to inform the same to the special court in writing within 24 hours
- Police has to inform the child and his parents or guardian or the person on whom the child has trust about the developments in the case
- Police has to inform the child and child's parent or guardian or other person in whom the child has trust about the various support services available for child including counselling, and also provide assistance in contacting relevant people accountable for providing these services and relief;
- Police has to inform the child and child's parent or guardian or other person in whom the child has trust about the right of the child to have legal advice and counsel and also the right to be represented by a lawyer (Sec 40)
- the child and his/her family is also to be informed about victim compensation schemes
- It is the responsibility of the police to inform the child/his parents or guardian / or any person on whom the child has trust/support person about the developments in the case like arrests made, release in bail of accuse, applications filed and other court proceedings.
- The police need to inform the child and child's parents / guardian / other person in whom the child has trust about their entitlements and services available to them under the Act or any other law as per Form-A.



## **2.4.2 Role of Juvenile Justice Board**

- If the perpetrator is a child, then the child is to be produced before JJB and the JJB will initiate inquiry process as per the Juvenile Justice (Care and Protection of Children) Act, 2015 (Section 34)

## **2.4.3 Role of Child Welfare Committee (Rule 4)**

- In case the SJPU receives information about the offence and it has apprehension that the offence has been committed by a person:
  - living in the same or shared household with the child
  - the child is living in a child care institution
  - the child is without any home or parental care

the SJPU has to produce the child before CWC within 24 hours. CWC has to decide within three days whether the child needs to be taken out of custody of parents/guardians and sent to a child care institution or if the child is already in an institution, the CWC may decide to shift the child to another institution keeping in mind the best interest of the child

- In taking decision about the child, the CWC is to take into account any preference or opinion shared by the child:
- Make a recommendation to District Legal Services authority for providing legal aid and assistance to the child
- Recommend for special relief, if any, to be provided to the child to cater to needs such as food, clothes, transport and other essential needs, which is to be paid from any of the following:-
  - DLSA under Section 357A; or;
  - DCPU out of such funds placed at their disposal by state or;
  - funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015

This immediate payment is to be given to the child within a week of receipt of recommendation from the CWC

- All decisions of CWC must keep the best interest of the child as the primary consideration. While taking decision, CWC has to consider the following points:
  - o the capacity of the parents/either parent/ any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child which includes medical and counselling needs
  - o the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;
  - o The age, maturity, gender, social and economic background of the child
  - o disability / any chronic illness or any history of family violence involving the child or a family member of the child; and has to ensure that during enquiry and decision making, the child is not unnecessarily exposed to injury or inconvenience.
- CWC after receiving report and with consent of the child and his or her parent or guardian or any person whom the child trusts may order a "support person" to assist the child through the legal process and immediately inform the SJPU about the appointment of such support person
- The services of the support person may be terminated by the CWC upon the child's or his parents/guardian's request and the special court has to be informed about the same in writing
- The CWC has to seek monthly reports from support person till the completion of trial regarding condition and care of child, medical, social and educational care that is being provided to the child.

- CWC is to coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court, which is to be paid to the child, is in fact paid to the child.
- For receiving payments, the CWC needs to facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.

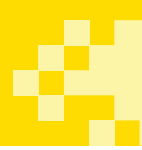
#### **2.4.4 Role of DCPU**

- DCPU has to maintain a register with names, addresses and other contact details of interpreters, translators and special educators and this list has to be shared with SJPU, CWC and JJB
- DCPUs in each district are to maintain a list of persons/ NGOs who may be appointed as counsellors and support persons to assist the child
- In all cases of penetrative sexual assault and all aggravated cases, arrangements should be made as far as possible to ensure that the child is provided counselling support. Where a counsellor is not available within the existing ICPS framework, the State Government may secure the engagement of external counsellors on contract basis
- The DCPU in each district shall maintain a list of persons who may be appointed as counsellors to assist the child. The rates for payment for counsellors shall be as fixed by the DCPU.
- Facilitating CWC by providing a support person employed by DCPU including legal-cum-probation officer, social worker or outreach worker support persons
- The DCPU and the CWC should maintain a list of persons/ NGOs who may be appointed as support person to assist the child

- Assist CWC in facilitating any procedure for opening a bank account, arranging for identity proofs, etc. of the child for receiving financial benefits/compensation/relief

#### **2.4.5 Role of NGOs/Childline**

If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline is to immediately report such information to SJPU or Local Police.



### **3.1 Child Marriage**

Child marriage means a marriage in which either the bride or the groom is a child. According to the Prohibition of Child marriage Act, 2006, any marriage where the age of the bride is less than 18 years and/or the age of the groom is less than 21, is considered to be a Child Marriage.

The very first Law that was enacted in India to prevent Child Marriage was called the Child Marriage Restraint Act of 1929, which is popularly known as the Sharda Act. Under this Act, marriage of girls below 15 and boys below 18 years of age was prohibited. In the year 1978, the Act was amended and the legal Age of marriage for girls was increased to 18 years and for boys it was increased to 21 years.

The definition of child marriage was last updated by India with its The Prohibition of Child Marriage Act of 2006, which applies only (a) to Hindus, Christians, Jains, Buddhists and those who are non-Muslims of India, and (b) outside the state of Jammu and Kashmir.

### **3.2 Data on child marriage**

- 42% of married women in India were married as children (District Information System for Education (DISE))
- According to UNICEF report, one in every three child brides in the world is a girl from India
- India has more than 45 lakh girls under 15 years of age who are married with children. Out of these, 70% of the girls have two children (Census 2011)
- In Asia, second largest number of child brides are found in India after Bangladesh<sup>20</sup>

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20 <https://www.girlsnotbrides.org/where-does-it-happen/atlas/#/>

- According to 2011 census maximum number of child marriages are reported from Jharkhand, Bihar, West Bengal and Madhya Pradesh

### **3.3 Causes of child marriage**

Considering girl child to be a burden: Many Indian household consider a girl child to be financial burden and feel that getting them married off early will reduce their financial burden also lessen the dowry amount

Feeling of insecurity: many households feel that they are unable to protect the girl child, so it is better to marry her off at an early age. This is seen as a protective measure by many parents.

More the age of the girl more the dowry: In many parts of the country, young girls are asked less dowry and older the girl, more the dowry amount.

### **3.4 Consequences of child marriage**

Increases maternal and child mortality rate: The girl child is not fully developed before the age of 18. Getting married and becoming pregnant before being fully mature hampers the health of both the mother and child and increases incidences of maternal and infant mortality.

Violation of child Rights: Child marriage is violation of child rights as the child is denied basic rights of education and development of full potential

Ill health: Getting her married early adversely affects her health and wellbeing and increases chances of sexually transmitted diseases because of unsafe sex, cervical cancer and death during childbirth

Increased instances of domestic violence: The incidences of domestic/intimate partner violence increases in case of child marriage

### **3.5 Who can complain if child marriage is happening?**

- Anyone can complain against a child marriage already solemnized or arranged to be solemnized in the future
- On information or complaint of Child Marriage being solemnized, or about to be solemnized, Court of Judicial Magistrate or Metropolitan Magistrate can issue injunction to prevent child marriage
- Court of Judicial Magistrate or Metropolitan Magistrate can take suo moto action to prevent child marriage
- On special days like Akshay Tritiya when mass child marriages are solemnized, DM assumes the power of a Child Marriage Prohibition Officer (CMPO) to stop or prevent child marriage

### **3.6 How can a child marriage be made voidable**

- A petition for annulling the child marriage by a decree of nullity has to be filed in the District court by a party to the marriage who is or was a child at the time of marriage<sup>21</sup>
- If the petitioner is a minor, petition can be filed by his guardian along with child marriage prohibition officer
- The petition can be filed within two years of attaining majority

### **3.7 Situations when the child marriage becomes automatically void**

- If child is taken away from the lawful guardian and married
- If a child is married by force or deceitful means
- If the child is sold for the purpose of marriage

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21 Section 3, Prohibition of Child Marriage Act, 2006

- If the child is married and then sold or trafficked or used for immoral purposes
- Marriage solemnized in contravention to an injunction order by the Court

### 3.8 Provision for maintenance and custody

- Court may order the groom's side to pay maintenance to the girl child till the time of her remarriage
- Quantum of maintenance will be decided by the Court which can order the maintenance to be either paid monthly or lump sum
- Children born out of child marriage, whether before or after the enactment of this Act will be considered legitimate and eligible for all care and support programs of the Government
- Court shall provide order regarding custody of the children born out of child marriage, keeping in mind the best interest of the child

### 3.9 Who can be punished and quantum of punishment

Adult male who marries a child below 18 years of age	Imprisonment upto two years and fine upto Rs. one Lakh or both <sup>8</sup>
Anyone who performs, conducts, directs or abets a child marriage	Imprisonment upto two years and fine upto Rs. one Lakh or both <sup>9</sup>
Anyone who promotes, permits or solemnizes a child marriage	Imprisonment upto two years and fine upto Rs. one Lakh or both <sup>10</sup>
No woman will be given imprisonment	she can only be fined



### **3.10 Role of CMPO in preventing child marriage:**

The Child Marriage Prohibition Officer has been empowered under this Act to

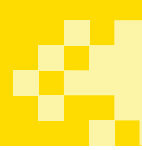
- Prevent solemnization of child marriage
- Collect information and evidence for effective prosecution of persons involved in solemnization of child marriage
- Generate awareness regarding ill effects of child marriage
- Sensitize the community against child marriage
- Provide necessary aid to victims of child marriage
- Provide legal aid and produce children in need of care and protection before the CWC or a First Class Judicial Magistrate, where there is no child welfare committee

### **3.11 Role of various stakeholders in cases related to child marriage:**

On receiving a complaint, the police should follow the procedures laid down in the Code of Criminal Procedure, 1973:

- Register an FIR and initiate investigation
- Report the matter to the CMPO for him/her to gather evidence about the incident of a child marriage
- Report the matter to the District Magistrate 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 cognizable 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 Child Welfare Committee within 24 hours or before a Judicial Magistrate of First Class where such Committee is not available. Victims of child marriage are also children in need of care and protection under the Juvenile Justice Act and the rules made for its implementation
- Removing 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 should be placed in police lock-up or police custody. Such children should be placed in a fit institution recognised and registered under the Juvenile Justice (Care and Protection of Children) Act, 2015



## 4.1 Missing child

The Juvenile Justice (Care and Protection of Children) Act, 2015 under section 14 (vii) includes a 'Missing Child' as a 'child in need of care and protection'

To elaborate this, a missing child is one who:

- Is lost (separated from family),
- Has left home on his/her own without a notice
- Has been abducted or kidnapped or trafficked or abandoned and will also include
- Traced Children
- Found Children
- Is missing/lost/found due to accidents, disaster, calamity, and other miscellaneous reasons and missing children are also those whose parents, guardians or legal caregivers do not have any information about their whereabouts.

So, to sum up "a child whose whereabouts are not known to the parents, legal guardian or any other person or institution legally entrusted with the custody of the child, whatever may be the circumstances or causes of disappearance, and shall be considered missing and in need of care and protection until located or his safety and wellbeing established."

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22 SOP for cases of missing children by Ministry of Women and Child development

## 4.2 Data on missing children in India

- 174 children go missing every day, half of them remain untraced<sup>23</sup>
- The National Crime Records Bureau (NCRB) states that 1,11,569 were reported to have gone missing till 2016, and 55,625 of them remained untraced

## 4.3 Where / How and who can report a missing child?

The report of a missing child can be made by a parent, a legal guardian, a relative, CWC, child Line 1098, NGOs, police, public servant or any person concerned with the safety and well-being of the child or any person who has knowledge about the incident. The report can be lodged at

- The police station/Anti Human Trafficking Unit (AHTU)/SJPU
- Child friendly police station
- The Police Control Room (PCR) number: Dial 100
- Any other emergency helpline number of the police
- Child Line1098

After reporting to the police, the information of the missing child can be entered by logging onto [www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in) and photograph can be uploaded in the citizen's corner "khoya paya" to assist all the stakeholders to track the missing child.

In addition to all the regular means of filing a complaint a missing child's complaint may be filed through SMS to the authorities. The police should record all such information on the General Diary (GD) and conduct a preliminary verification of the caller and get the FIR registered.

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23 <https://www.deccanchronicle.com/nation/current-affairs/250518/indias-children-174-go-missing-every-day-half-untraced.html>

## 4.4 Roles of stakeholders in case of missing child:

### 4.1.1 Role of Police<sup>24</sup>

- As per the directive of Hon'ble Supreme Court of India in Bachao Andolan vs. Union of India (WP (Civil) 75 of 2012) on 10th May 2013, the police shall "upon receipt of a complaint regarding a missing child, an FIR should be registered forthwith as a case of trafficking or abduction"
- Inform the Child Welfare Police Officer and forward the FIR to the special juvenile police unit for immediate action for tracing the child
- Collect a recent photograph of the missing child and make copies for District Missing Persons Unit, Missing Persons Squad, National Crime Records Bureau/Media and give wide publicity by publishing or telecasting the photographs and the description of missing child in electronic, print and social media
- Fill the specific designated "missing persons information form" and immediately send to Missing Persons Squad, District Missing Persons Unit, National Crimes Records Bureau, State Crimes Records Bureau, Central Bureau of Investigation, PCRs, Railway Police and other related institutions
- Prepare and distribute hue and cry notice containing photograph and physical description of the missing child
- Search areas and spots of interest such as movie theatres, shopping malls, parks, game parlours
- Scan the recordings of the close circuit television cameras (CCTV) installed in the vicinity of the area from where the child was reported missing and on all possible routes, transit and destinations.

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24 SOP for cases of missing children by Ministry of Woman and Child Development

- Inquire from under construction sites, unused buildings, hospitals and clinics, 1098 and other local outreach workers, railway police and other places;
- Send details of missing child to the District Crime Records Bureau of the neighbouring States and Station House Officers (SHOs) of the bordering police stations including in charge of all police posts in their jurisdiction and conduct regular interaction with the concerned so that follow up action is ensured
- Upload information on the [www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in) portal. In case the information is already uploaded, match the complaint with case details uploaded on the portal
- Send the copy of the FIR by post/email to the office of nearest Legal Services Authority/DLSA along with addresses and contact phone numbers of parents and legal guardians of the missing child or the child care institution, after uploading the relevant information onto the designated portal
- Inform immigration authorities, Border Security Force (BSF), railways and other transport authorities, provincial/ territorial and municipal agencies, and NGOs involved in service delivery for spotting and recovering/rescuing the missing children\
- Taking into consideration various parameters with respect to the missing child, risk assessment should be done and the "Risk Assessment Form" be filled out by the SHO/ Officer in charge

#### **4.4.2 Role of Juvenile Justice Board<sup>25</sup>**

- If any found/traced/missing child is produced before the juvenile justice board as a child in conflict with law, such a child should immediately be redirected to the relevant CWC after due enquiry, for initiating the process of rehabilitation

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25 SOP for cases of missing children by Ministry of Woman and Child Development

- If FIR is not registered in a case of missing/trafficked child immediately, then direct the police for registration of FIR for offences committed against children in need of care and protection.
- Provide free legal aid for the child through the district legal services authority
- Create an individual care plan as per the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules for the child including follow up by the probation officer of the District Child Protection Unit or a member of a non-governmental organisation, as it may be required as per Section 8 (3) (h) or Section 19 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015

#### **4.4.3 Role of Child Welfare Committee<sup>26</sup>**

- When a missing child is found or recovered and/or a child in conflict with law is found to be a missing child, the child has to be produced before the Committee for appropriate direction
- In case FIR is not registered in a case of missing/trafficked child, CWC will direct the police for registration of FIR for offences committed against children in need of care and protection
- Any three members of the Committee together can take suo moto cognizance of any case of missing child, report to the police, or the AHTU immediately, and initiate process of providing care and protection to the child
- Assess the needs of the child and pass orders with respect to repatriating the child or placing the child in a fit facility or with a fit person, or declare free for adoption or foster care, while ensuring the best interest of the child
- Engage services of the DCPU/District Legal Services Authority in \_\_\_\_\_ the source district of the found/traced child, to facilitate smooth and

26 SOP for cases of missing children by Ministry of Woman and Child Development

effective rehabilitation of the child, and for any other legal support

- Ensure that the case of the child is linked to the District Legal Services Authority
- In case the child requires medical care, CWC has to pass direction to link the child to the appropriate medical institution
- In the absence of adequate proof of age of the child, pass directions for age determination test. The report of the test should be obtained immediately after the test results have been concluded. In the meantime, the child may be placed in a fit facility
- Perform all duties specified under Section 30 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the rules therein, and send regular updates and report to the appropriate agency at the District /State level

#### **4.4.4 Role of District Child Protection Unit<sup>27</sup>**

- Ensure that there is an individual care plan and that the plan for every recovered/traced child and that the plan is regularly reviewed. Monitor the implementation of the plan
- Map all child related service providers and services in the district for creating a resource directory, and link the missing/recovered child to the schemes. Share the available information with the Board and Committee from time to time
- Identify and support credible voluntary organizations to implement program components of the ICPS
- 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,

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27 <http://cara.nic.in/PDF/revised%20ICPS%20scheme.pdf>



inter-country adoption and placement in institutions

- Maintain a database of all children in institutional care and non-institutional care at the district level for uploading onto a comprehensive, integrated, live database for children in care and in need of care in the country- the 'TrackChild'
- Maintain record of run- away children from child care institutions
- Maintain a district level database of missing/traced children in institutional care and upload the same on designated portal. DCPU also has to update and share details of children availing the facility of open shelter and of children placed in foster care

#### **4.4.5 Organized crime perspective**

If the child cannot be traced within a period of four months, the investigation of the case shall be transferred to the AHTU in the district which shall make reports every three months to the District Legal Services Authority regarding the progress made in the investigation.

If trafficking or any other element of organized crime is suspected, a specialized team shall be instituted for investigation headed by the SHO.

#### **4.5.1 Steps to be taken when a child is found or recovered:**

##### **4.5.2 Role of Police:**

- After recovery, produce the child before CWC/JJB/Children's Court, as the case may be, for appropriate directions
- The child should be examined by a team of medical experts, including psychosocial experts.
- The recovery form "R" on the TrackChild portal must be filled and data be updated in [www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in)

- Send a report to the District Legal Services Authority which shall provide counselling and support services to the child and the family
- Conduct an enquiry and ensure if the child has been subjected to any offence under the Act or any other law and if so, proceed accordingly
- Proper home verification has to be carried out before the child is reunited with Parents/legal guardian through CWC



## 5.1 Child Labour

International Labour Organization (ILO) defines the term “child labour” as work that deprives children of their childhood, their potential and their dignity, and which is harmful to physical and mental development.

It refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children
- interferes with their schooling by depriving them of the opportunity to attend school
- obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work

In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age.<sup>28</sup>

Article 3 of the ILO convention 182 defines worst forms of child labour which includes:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict

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28 <https://www.ilo.org/ipecc/facts/lang--en/index.htm>

- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children<sup>29</sup>

India has ratified the ILO convention No 138 in 2017 which mandates setting a minimum age below which no children shall be permitted to work and also ILO convention no 182 which aims at abolishing worst forms of child labour.

Child labour in all forms curbs the fundamental rights of the child and deprives the child of his/her childhood.

## 5.2 Data on child labour in India

According to the 2011 census, the total population of children in India in the age group (5-14) years is 259.6 million. Of these, 10.1 million (3.9% of total child population) are working and along with this more than 42.7 million children are out of school.<sup>30</sup> Of total children who are engaged in some or other form of work, 32.9 % are working in the agricultural sector<sup>31</sup>

## 5.3 Genesis of Child Labour laws in India

In 1938, the Employment of Children Act was the first enactment to address the issue of child labour and recommended prohibition of children

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29 <https://www.ilo.org/ipec/facts/lang--en/index.htm>

30 [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms\\_557089.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms_557089.pdf)

31 Census 2011

below 13 years to work in certain industries. The constitution of India came into force in 1950 and article 24 of the Constitution clearly stated that “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

The Factories Act of 1948 prohibited children below 14 years from working in a factory, The Plantations Labour Act of 1951 prohibited the employment of children below 12 and The Mines Act of 1952 prohibited employment of children below 18 and The Merchant Shipping Act of 1958 prohibited employment of children under 14. The Bonded Labour System (Abolition) Act of 1976 was enacted to abolish the bonded labour system.

In 1969, the National Commission of Labour, chaired by Justice P.B. Gajendragadkar, in his report shared that child labour was rampant in agriculture, plantations and shops. After this a committee called Gurupadswamy Committee was formed in 1979 by Government of India to study and examine the expanse of Child labour problem in India. In 1986, another committee called the Sanat Mehta Committee was set up and based on the reports of these committees The Child Labour (Prohibition and Regulation) Act (CLPRA) of 1986 was enacted which prohibited employment of children in a Scheduled List of Occupations and a Scheduled List of Processes.

The National Policy on Child Labour was formed in 1987 and in 1988; the National Child Labour Project (NCLP) Scheme was launched in nine districts of high child labour.<sup>32</sup> This Act was further amended in 2016 to include the term “adolescent” and now the Act is called “The Child and Adolescent (Prohibition and Regulation) Act, 1986.

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32 <http://www.ielrc.org/content/a0905.pdf>

## **5.4 The Child and Adolescent (Prohibition and Regulation) Act, 1986**

According to this Act, a child is one who has not completed the age of 14 years and adolescent is one who has completed 14 years of age but has not completed 18 years of age.<sup>33</sup>

### **5.4.1 Prohibition of employment of children<sup>34</sup>**

- Children are prohibited to work in any occupation or process.
- They can only help family or family enterprise in any work that is non-hazardous after school hours or during vacations
- Family means biological or legally adopted brother or sister of the child, biological brother or sister of parents of the child
- The work of the child should not substitute for the work of an adult
- They can perform as artist in audio-visual, entertainment industry or sports but not in circus

### **5.4.2 Condition of employment of adolescents<sup>35</sup>**

- Adolescents are prohibited to work in hazardous occupations and processes as mentioned in Part A of Section 3A.
- Adolescents cannot be made to work for more than three hours at a stretch without rest

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33 Section 2, The Child and Adolescent (Prohibition and Regulation) Act, 1986, Amendment 2016

34 Section 3, The Child and Adolescent (Prohibition and Regulation) Act, 1986, Amendment 2016

35 Section 7, 8, The Child and Adolescent (Prohibition and Regulation) Act, 1986, Amendment 2016

- Rest of at least one hour to be provided after three hours of work
- Adolescents cannot be made to work for more than six hours in a day and cannot be made to work overtime
- They cannot be made to work from 7 PM to 8 AM
- They should be given at least one day holiday in a week which will be pre fixed

#### **5.4.3 Condition of employment as child artist {Rule 2 (c)}**

- No child artist can be made to work for more than 5 hours in a day and not more than three hours at a stretch without rest
- Permission for employing child artist in any entertainment/audio visual industry/reality show has to be taken from the District Magistrate of the District where the activity is planned be performed
- Permission of the District Magistrate is valid for a period of six months and has to be renewed after that
- Proper mental and physical growth of the child will have to be ensured
- The child should be given proper nutritional diet
- The child's education should not be hampered and appropriate facility for his education has to be provided
- Child should not be made to work for more than 27 consecutive days
- One responsible person will be in charge of upto five children
- 20% of the child's earning will have to be deposited as fixed deposit in the child's name in any nationalized bank
- No child can be made to work against his/her will

#### 5.4.4 Maintenance of register (Section 11)

An employer who employs any adolescent in his establishment needs to maintain a register which should have details of:

- Name and date of birth of every adolescent employed in his establishment
- Period of work and rest to which he is entitled
- Details of nature of work

And this register should be available on all working days for inspection by Inspector

#### 5.4.5 Punishment for employing a child or adolescent (section 14)

Employing a child or adolescent is a cognizable offence.

Offence	Punishment
Employing a child	Imprisonment of six months to two years and fine of Rs.20000-Rs.50000. Parents will not be punished
Employing an adolescent in hazardous occupation and processes	Imprisonment of six months to two years and fine of Rs.20000-Rs.50000. Parents will not be punished
Repeat offence	Imprisonment of one year-three years
Repeat offence by parents of the child/ adolescent	Fine upto Rs. 10000



#### **5.4.6 Who can register a complaint against Child labour (Section 16)**

- Any person
- Police Officer
- Labour inspector
- Any voluntary organization
- Teachers/Principal of the school where the child is studying. If a child is absent from school for more than 30 consecutive days, then the school Principal needs to inform the District Nodal Officer.
- District Child Protection Committee
- Panchayat or Municipality members

Cases of child labour will be tried in the court of Metropolitan Magistrate or Magistrate of the first class

#### **5.4.7 Where to Complain**

- In the Government Platform for Effective Enforcement for No Child Labour (PENCIL) portal (<https://pencil.gov.in>)
- Any police station
- Special juvenile police unit (SJPU)
- District Task Force
- State Labour Department
- Child line
- District Nodal Officer

### **5.4.8 Certificate of Age (Section 10)**

The following documents will be considered as proof of age for a child or adolescent:

- Aadhar card
- Certificate of age proof as received from school as per the date mentioned during admission
- Birth certificate issued by Panchayat or municipality
- If none of the above is available then Assistant Labour Commissioner can order for bone ossification test by competent medical authority
- The cost of the bone ossification test will be borne by the employer who had employed the child/adolescent

### **5.4.9 Duties of District Magistrate in prohibiting child labour {Rule 17 (C)}**

- He will specify District Nodal Officers and assign powers and duties to the District Nodal Officers
- Preside over as Chairperson of the Task Force to be formed in a District consisting of
  - Labour Inspector
  - Superintendent of Police
  - Additional District Magistrate
  - District Nodal Officer
  - Assistant Labour Commissioner
  - Two representatives from Voluntary organizations for a period

of two years

- One member from District Legal Service Authority nominated by District Judge
- One member from District Anti Human Trafficking Unit
- Chairperson of CWC
- District Child Protection Officer under ICPS
- District Education Officer
- Any other person nominated by DM

#### **5.4.10 Role of District Task Force {Rule 17 C, (2)}**

The District Task Force shall meet at least once a month and take decisions regarding:

- Identifying child labour in the district
- Conducting Raid and rescue operations
- Ensure that rescued children are rehabilitated as per the Juvenile Justice Act, Bonded Labour System (Abolition) Act, 1976
- Rehabilitation and compensation is received as per National Child Labour Project (NCLP) and Central Sector Scheme for Rehabilitation of Bonded labour-2016

#### **5.5.1 Rescue team<sup>36</sup>**

During a raid and rescue operation, a team needs to be formed which shall include:

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36 Section 6 Towards Child Labour Free India, SOP for Enforcement of The CL-PRA

- Police/Special Juvenile Police Unit
- District Nodal Officer or labour Inspectors
- District Magistrate/SDM or nominee of DM
- Member of District Legal Service Authority
- Woman Police officer
- Translator/Counsellor

### **5.5.2 Role of Police**

- Make a site map of the area so that all the entry and exit points are known
- Make entry in general diary before going for a raid
- Thoroughly search the place and collect all evidences like food bills, clothing, registers etc. and also ensure that no child is left behind
- Take photos/videos of the place
- Develop disclosure memo
- Seal the premises
- Separate the victims from the offender
- Do not disclose identity of the child
- Provide food , clothing and immediate medical help to the child
- Explain the situation to the child and take the help of translator or interpreter if required
- Keep the child in a CCI or with a fit person or fit facility and produce before CWC within 24 hours
- Each rescued child will be treated as a separate case and separate FIR has to be lodged against employer

## 5.6 Rehabilitation<sup>37</sup>

All rescued children have to be provided rehabilitation which includes social rehabilitation, educational support and economic rehabilitation.

### 5.6.1 Social Rehabilitation

- All rescued children have to be produced before CWC within 24 hours. CWC will conduct inquiry which will include home verification and social investigation report
- If the home verification report is positive, then the child will be repatriated with his family and economic rehabilitation will be provided
- If the home verification report is negative, then the child will be sent to a child care institute/fit facility/fit person/foster care
- The CWC will issue rehabilitation card to monitor the progress made by the child based on the Individual Care Plan

### 5.6.2 Educational Rehabilitation

The rescued children/adolescent has to be linked to suitable education facilities as per NCLP

- Children between 5-8 years, will be enrolled under Sarva Shiksha Abhiyan
- Children between 9-14 will attend a two year bridge education in Special Training Centres under NCLP
- Adolescents between 14-18 will be linked to skill development programs run by the Government

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### 5.6.3 Economic Rehabilitation

Economic rehabilitation will include:

- Taking the back wages from the employer
- Immediate financial assistance of Rs. 20000 will be given under the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016. This scheme is applicable to cases of trafficking, bonded labour, child labour, forced prostitution, begging rings etc
- Additional compensation of upto Rs. Three Lac is available on issuing of release certificate by DM
- Victim compensation from DLSA under section 357 A
- Rs.20000 fine will have to be paid by employer to the rehabilitation fund
- Rs. 5000 will be given by Government to the rehabilitation fund per rescued child/adolescent or job to any family member
- Another Rs. 15000 will be paid by the Government to the rehabilitation fund



## 6.1 Human Trafficking

Section 370 of the Indian Penal Code 1860 defines trafficking as:<sup>38</sup>

Whoever for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by using –

threats, or

force, or any other form of coercion, or

abduction, or

practising fraud, or deception, or

abuse of power, or

inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

The consent of the victim is immaterial in the determination of the offence of trafficking.

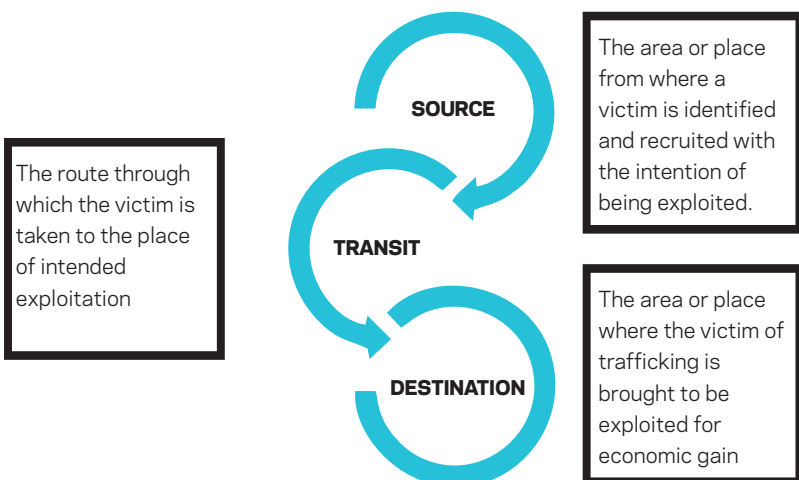
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38 SOP for combatting trafficking of persons in India by National Human Rights Commission

## TRAFFICKING IS CONDUCTED <sup>11</sup>

Through Act of	By means (process) of	For purpose of
<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Transportation</li> <li>• Transfer</li> <li>• Harboring or</li> <li>• Receipt of a person</li> </ul>	<ul style="list-style-type: none"> <li>• Threat</li> <li>• Force or Coercion,</li> <li>• Abduction,</li> <li>• Fraud or Deception,</li> <li>• Inducement, including giving or receiving money or benefit</li> </ul>	<ul style="list-style-type: none"> <li>• Exploitation: including, at a minimum :</li> <li>• Physical Exploitation</li> <li>• Sexual Exploitation</li> <li>• Slavery or practice similar to slavery (like Forced Labour)</li> <li>• Servitude</li> <li>• Forced Removal of organs</li> </ul>

Trafficking is a continuing offence that starts from source to transit and to destination for the purpose of exploitation.





Human trafficking is a multi-dimensional organised crime with a global reach. It is a basket of crimes ranging from cheating, kidnapping, abduction, buying and selling, wrongful confinement leading to various forms of exploitation and crimes such as child labour, bonded or forced labour, sexual exploitation, rape, organ trade, etc. The crime of human trafficking may have local, national and international dimensions with respect to stakeholders, geography, jurisdiction of crime etc.

The crime starts at a source area where the first person in the chain of trafficking identifies and takes an action to recruit a victim, follows through transit areas through which the victim is transported to the destination where he/ she is exploited for some form of economic gain. However, exploitation may happen at various stages by multiple traffickers during the chain of the crime of trafficking.

Accordingly, efforts against human trafficking require efforts at: community level at source, transit and destination areas through:

- (i) Preventive action by various stakeholders by way of social development, law enforcement, close monitoring by community groups.
- (ii) Ensuring timely surveys in areas vulnerable to trafficking and maintaining networks with Community groups for early detection
- (iii) Checks and interventions on transit routes and promoting safe migration practices by closely monitoring migration for work<sup>39</sup>

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39 SOP for combatting trafficking of persons in India by National Human Rights Commission

## 6.2 Why human trafficking

- One of the most profitable criminal activity
- Market-driven industry based on the principle of supply and demand
- Only industry in which the supply and demand are the same. The more the demand, the more is the supply
- Easy and low-cost business to procure and traffic vulnerable girls for sexual exploitation.
- Global profits made using forced labour were at least US\$44 billion per year, including the US\$32 billion from trafficking. (ILO report 2005)
- With a global average profit of US\$21,800 per year per victim, this sector is six times more profitable than all other forms of forced labour, and five times more profitable than forced labour exploitation outside domestic work

## 6.3 Causes of human trafficking

- Poverty
- Illiteracy/Lack of Education
- Unemployment
- Migration in search for livelihood or other reasons like desire for glamorous jobs in big cities (Rural & Urban)
- Economic Reasons
- Commoditization of women
- Easy money

- Demand for cheap labour
- Disaster victims
- Social Issues-child preference/gender inequality
- Runaway children
- Polygamy, divorced, separated and widowed women, infidel husbands
- Religious and social taboo
- Unhealthy family environment
- Sexual exploitation/abuse and rape
- Violence against women /domestic violence
- Alcoholism/substance abuse
- Weak law enforcement compounds the problem

## **6.4 Who can file a complaint**

Any individual can file a complaint through phone, email or personally of any incident of trafficking. Complaint can be raised by:

- Parents or legal guardian
- NGOs
- DLSA/SLSA/NLSA
- Social Worker
- Labour inspector/labour department
- Railway police
- Nurse, doctor or management of any hospital or nursing home

- Any person who has knowledge of incident
- Any person concerned with safety of an allegedly trafficked person
- The victim herself/himself

## **6.5 Where to complain:**

The complaint has to be lodged in police station.

## **6.6 Action to be taken after receiving a complaint**

- The Police have to register a FIR incorporating all the relevant sections on receiving complaint about trafficking
- After registering FIR, a comprehensive rescue team has to be formed which will include: Police/SJPU/AHTU, District Magistrate or Sub-Divisional Magistrate, representative of DLSA, Women Police Officer, District Nodal Officer or labour officers, representatives of NGOs/women or child helpline, at least two respectable citizens of whom one should be a woman, translators and counsellor. If in transit, then rescue team will also include GRP or RPF. In case of children being trafficked, rescue team will include CWC, DCPU, CMPO (in case child marriage has taken place)
- During rescue, water, food and medical help has to be arranged and the nearest child care institute and women's shelter should also be informed in order to provide emergency shelter
- Before conducting the raid and rescue operation, police should make a proper note of the area and should have knowledge of all entry and exit points
- Police should take care of collecting all evidences from the rescue site to make the case full proof

- The victims will have to be separated from the traffickers after the rescue operations and the victims are to be placed in nearest CCI or women shelter home after the rescue operations.
- The child victim has to be produced before CWC within 24 hours for the CWC to take necessary action as per the Juvenile Justice (Care and Protection of Children) Act, 2015
- The rescue team has to maintain confidentiality about the operation and the identity of the children must not be disclosed
- Provide immediate medical care to the victims if required

## **6.7 Rehabilitation after Rescue**

CWC has to order home verification and social investigation report for children who are rescued from trafficking. If home verification is approved, then the child will be repatriated to his/her family. CWC can order for providing necessary monetary support required for repatriation.

In case the home verification report is negative, the CWC will pass order for long term rehabilitation of the child.

### **6.7.1 Social Rehabilitation**

- In cases where home verification is negative, the CWC will pass orders to place the child in a children's home or fit facility or fit person or foster care
- The CWC is supposed to issue a rehabilitation card to monitor the progress of the child and the card will be maintained by Probation Officer of the concerned CCI where the child is placed
- CWC will also make an individual care plan and monitor the same every quarter till the child attains 18 years

- After the child attains 18 years, CWC can order for providing further financial support as per section 46 for JJ Act

### **6.7.2 Economic Rehabilitation**

A child who is rescued from trafficking is eligible for the following compensation schemes:

- Immediate financial assistance of Rs. 20000 under Central Sector Scheme for rehabilitation of bonded labour, 2016. This is applicable in cases of human trafficking, bonded labour, child labour, prostitution, begging rings etc
- Additional compensation of upto Rs. Three Lakhs is available on the issue of Release Certificate by District magistrate
- DM/SDM can also provide immediate monetary relief under SC/ST Act
- Back wages at the rate of minimum wages will have to be given to the victim for the period of work done
- The employer will also have to pay Rs. 20000 per child to the Child Labour Rehabilitation cum Welfare Fund for the benefit of the child
- Along with this, Govt will provide the amount of Rs. 15000 to this fund and another Rs 5000 to the child or job to a family member
- Child will also get further compensation in case of sexual assault

### **6.7.3 Educational support**

- If the child is between 5-8 years, he/she will be directly linked to the Sarva Siksha Abhiyan

- Children in the age group of 9-14 years will attend a one year bridge course in NCLP schools and will then be linked to Sarva Shiksha Abhiyan
- Children in the age group of 14-18 years will be provided skill development programmes

## **6.8 Role of different stakeholders in dealing with case of Human Trafficking**

### **6.8.1 Role of Police<sup>40</sup>**

- Police has to be proactive in investigation for early detection of crime and collection of evidence to prevent trafficking
- Identify sources and conduct awareness camps to ensure collection of information and become vigilant at the transit area such as railway junctions and bus stops to prevent trafficking
- Introduce the concept of community policing to make the general public the eye and ear of police and prevent trafficking.
- Maintain record of the profile of victims rescued earlier, accused involved, middlemen and other possible perpetrators in order to predict the crime of trafficking.
- Collect and analyse database of missing persons/ children and if not traced within four months then transfer the case to AHTU in the district
- In case of receiving a complaint of missing child, immediately register a FIR
- Conduct sensitisation workshops for Panchayati Raj Institutions and Municipal Corporations on crimes against children including identification and reporting of crimes

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- Establish partnership with other stakeholders for intelligence sharing and collection
- Form rescue team as per requirements of law for rescue and identify relevant provisions of laws to include when a complaint is registered
- Arrange logistical support during raid and rescue operation and seal the premises after raid
- Separate the victims from the traffickers and provide immediate medical help after rescue
- Ensure confidentiality of the rescue process and also ensure that the victim is not arrested during rescue
- Collect all available evidence at the time of rescue in form of photographs and documents and make a memo of all the things seized during raid/ rescue
- Explain the situation to the child victim with the help of the translator, representative of NGO or representative of DLSA
- Ensure confidentiality and protect the identity of all victims
- Immediately place the rescued child in a safe place and away from the offender
- Make a general diary entry while leaving police station for raid and rescue operation and ensure that the information regarding source/victim/location is not leaked
- Register FIR which should include all the relevant provisions of applicable laws to get justice for victim
- Children rescued must be produced before CWC within 24 hours from the time of rescue, excluding travel time
- Collect necessary evidence to establish a fool proof case (Follow all leads including money trail, communication trails etc)



- In cases of child labour, ensure that factory is sealed, unpaid wages are recovered and disbursed
- In case of child sexual exploitation, confirm that brothel is sealed and offenders are evicted from premise as per sec 18 of ITPA 1956

### **6.8.2 Role Non-Government Organisation**

- Work with police for conducting awareness generation programmes to ensure collection of information from the community
- Inform the police in case information regarding a trafficker or of a possible crime is received. Complaint can also be filed in case a victim requires any help
- File a complaint with the police in order to report an incident of trafficking
- Ensure logistical support is available with the rescue team prior to rescue operation
- Assist in formation of the rescue team as per requirements of law
- Help the police in explaining the situation to the victim and counselling him/her
- Co-ordinate with the police in explaining the procedure of trial, preparing and counselling the victim before the court proceedings
- Assist CWC in collecting data for home verification
- Prepare social investigation report on the directions of the CWC
- Assist in repatriation of the child as per the orders of the CWC

### **6.8.3 Role of Child Welfare Committee**

- CWC has to complete inquiry within a period of four months and on the basis of inquiry declare a child in need of care and protection and give orders for his/her rehabilitation
- Provide requisite order for immediate shelter and medical assessment
- Pass order for home verification and it should be completed within 15 days of passing such order
- After inquiry and assessing the home verification reports, pass order for repatriation (with or without monetary support) or pass orders for long term rehabilitation of the child
- A child who requires long term institutional support will have to be sent either to a children's home, fit facility, fit person or foster care till the time the child is 18 years old
- Pass order for preparing individual care plan and monitor it and also issue rehabilitation card for the child
- Order for back wages to be recovered at the rate of minimum wage to child victim in case of trafficking for forced labour
- In case of a child between 5-8 years rescued from forced labour, pass order for linking the child to Sarva Shiksha Abhiyan

### **6.8.4 District Child Protection Unit**

- Maintain co-ordination with stakeholders for intelligence sharing and collection of information
- File a complaint with the police in order to report an incident of trafficking

- Join the rescue team and conduct necessary inquiries as under the CLPRA, 2016 and BLSA, 1976 Acts
- Enter information into the centralised data base and ensure that FIR is filed with relevant sections
- Give application to the Magistrate for closure of illegal factories/ places of work
- Ensure that the victims are produced before the district magistrate for declaring them as bonded labour and issuing release certificates and steps are taken for releasing the rehabilitation amount in their favour
- Wherever bridge education is necessary ensure that the child is enrolled in an NCLP school
- Proactively recover Rs 20,000 per child from the employer and ensure that it is deposited to “child labour rehabilitation-cum-welfare fund” and it has to be only used for the benefit of the child
- Ensure that government provides employment to an adult family member of the child trafficked for inducted into forced labour or have the government contribute Rs 5000 per child







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**TO COMPLAINT ABOUT CHILD ABUSE, PLEASE CALL US ON:**

 **1800-102-7222** (Toll-Free)