



Role of Duty Bearers  
*in*  
**Child Protection**

**Surendra Kumar, IPS**

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## **Role of Duty Bearers in Child Protection**

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**(Prof.) Jagdish Mukhi**  
Governor of Assam



## **FOREWORD**

It is with immense pleasure, I present this handbook titled 'Role of Duty Bearers in Child Protection'. Children are an imperative part of our society and constitutes about 40 percent of Indian population. However, violence against children is a matter of serious concern and the crux of the crisis lies in exploitation of children at the hands of adults and care givers. In recent years, there have been a paramount shift on the issues concerning children, not because they are the future of our country, but because they are humans and children have equal rights as adults. It is a collective responsibility of every citizen to ensure that children in our country feel safe and protected. I think it is also the role of the Judiciary to ensure that justice reaches to every child who has in some form been subjected to cruelty and its manifestation. In the phase of this, it is the mandate and responsibility of various government departments which are entrusted to work for children to provide a holistic environment wherein children feel safe and have access to facilities where they can transform into their full potential.

This handbook indicates an important milestone achieved in developing a user friendly guide for the stakeholders working in the field of child protection. The handbook provides clarity and unmistakably defines the role of every stakeholder working with children. The book focuses very accurately on coordinated and synergistic approaches to realize the common goal i.e., providing a safe place to our children so that they can freely enjoy their childhood. Above all the book is a painstaking of different pertinent legal provision related to children and their rights, and remedies in case of infringement of their rights.

It is with these thoughts, I would like to appreciate the efforts of Shri Surendra Kumar (IPS), Inspector General of Police, CID Assam, Centre for Child Rights, National Law University and Judicial Academy, Assam and UNICEF's Office for Assam for this commendable work and I am hopeful that through this handbook we will be able to bring in positive changes in the lives of many more children.

**(Prof.) Jagdish Mukhi**  
Governor of Assam

**Sarbananda Sonowal**



**Chief Minister, Assam  
Guwahati**

## **FOREWORD**

Surendra Kumar (IPS), a senior police officer has held important positions and rendered good services to promote rule of law and standard of secured living of all sections of the people. During his service career so far, he has had innumerable interventions for the peaceful living of people.

Crime against children has been one of the pressing issues of our society. Taking serious note over crime against children and finding out positive solutions to this problem, the joint efforts by Surendra Kumar (IPS), Centre for Child Rights, National Law University and Judicial Academy, Assam and UNICEF Office for Assam have taken a special initiative to bring out a book to fall back upon the children who are subjected to violence.

In this book, entitled '*Role of Duty Bearers in Child Protection*' the writer has given an articulated account of the challenges that the stake holders face and the manner in which they should grapple with those challenges converting them into opportunities to give a new shining chapter in the narrative of child protection in Assam. Protecting children and giving them an enabling environment for their upbringing is of paramount importance of a civilised society.

With this backdrop, I appreciate Shri Surendra Kumar (IPS), Centre for Child Rights, National Law University and Judicial Academy, Assam and UNICEF Office, Assam for bringing out this book to give a roadmap to the stake holders for auguring a congenial atmosphere for positive development of our children.



**(SARBANANDA SONOWAL)**



**Justice Deepak Gupta**  
Judge  
Supreme Court of India

## **FOREWORD**

This book was conceptualised during the Fourth Round Regional Consultation of North Eastern States and Sikkim on 'Effective Implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 with focus on Integrated Child Protection Services' organised by Supreme Court's Juvenile Justice Committee, and Gauhati High Court's Juvenile Justice Committee in collaboration with State Child Protection Society and UNICEF, Assam. It gives me immense pleasure to announce that after endless hard work and research, this vision has been translated into a book. This book will provide stakeholders working in the realm of care and protection of children, with comprehensive and detailed knowledge about their responsibilities enshrined under various legislations pertaining to children.

Crime against children is one of the most pressing issues in our society today. Despite ample legislations for the protection of children in our country, crime against children has been rising at an alarming rate. Thus, it is the duty of the State and the society to provide a protective environment conducive to the growth and development of children. In addressing the issues concerning children, it is important that primary stakeholders, understand their roles and mandates with respect to services, they are duty bound to provide for children. The handbook gives a holistic view on the issue of child protection. It also describes in great detail, the role of various duty bearers while dealing with children in various situation.

I would like to extend my appreciation to Shri Surendra Kumar (IPS), Inspector General of Police, CID Assam, Centre for Child Rights, National Law University and Judicial Academy, Assam and UNICEF Office for Assam, for taking an initiative in the form of this handbook, to support the cause of children in a very significant way.

**Justice Deepak Gupta**  
Judge  
Supreme Court of India



**Prof. (Dr.) J.S.Patil**

Vice Chancellor  
National Law University and  
Judicial Academy, Assam

**FOREWORD**

The Constitution of India accords rights to children as citizens of the country and provides a special status which empowers the State to enact special laws for children. The Indian Constitution encompasses most rights provided for a child in the UN Convention on the Rights of the Child, under Part III of Fundamental Rights and Part IV of Directive Principles of State Policy. Furtherance to that, various special legislations are being brought in to establish 'Systems and Structures', which would cater to needs of children and provide a holistic environment free from abuse and neglect.

The hypothesis of having a comprehensive book which can be a ready reckoner for all 'Public Servants' who are duty bound to work for children, came up during the 'Fourth Round Regional Consultation of North Eastern States and Sikkim on Effective Implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 with focus on Integrated Child Protection Services' organised by Supreme Court's Juvenile Justice Committee and Gauhati High Court's Juvenile Justice Committee. I have a strong conviction that this book, which had encompassed all pivot legislation for children and simplified the roles and responsibilities of different cohorts of duty bearers and interpreted the law in a way which could be easily understood, will be beneficial for all.

I would like to extend my gratitude to Shri. Surendra Kumar (IPS), Inspector General of Police, CID Assam, for anchoring this project and my colleagues in Centre for Child Rights, National Law University and Judicial Academy, Assam for working relentlessly under the able guidance of Mr. Kumar for successfully completing this book.

**Prof. (Dr.) J.S.Patil**

Vice Chancellor  
National Law University and Judicial  
Academy, Assam



**Dr. Tushar Rane**

Chief of Field Office

UNICEF Office for Assam

## **FOREWORD**

This year we celebrate the 30th anniversary of the adoption of the Convention on the Rights of the Child (CRC). In these past three decades, a lot has changed – especially for children – and the next 30, will continue to bring more changes in unforeseeable ways. However, children’s rights have remained the same, and there is no expiry date to them. Their rights will only be fully realised when every Government and citizen upholds their duties and supports every child to claim their rights.

Violence against children is universal. There are millions of girls and boys who face different forms of violence at every stage of their childhood – be it at home, school, institutions or on the streets. For many children, there is no safe place. This can be said about a large percentage of children in Assam, who are vulnerable to labour, trafficking, early marriage, sexual abuse and exploitation, corporal punishment and other forms of violence and neglect. And these vulnerabilities are compounded for those living in the tea garden communities or subjected to protracted ethnic violence and internal displacement.

While prevention is the best medicine to deal with violence against children, strong structures and mechanisms to protect the rights of children are on an equal footing. The effective implementation of the Juvenile Justice (Care and Protection of Children) Act has been a priority for the Government of Assam. The legislations, schemes and measures rolled out have been progressive and reflective of addressing different kinds of vulnerabilities confronted by children in the need of care and protection.

In an effort to strengthen structures and mechanisms for protecting the rights of children, the Department of Social Welfare, Government of Assam, conducted five zonal consultations in 2018 under the direction and presence of the Juvenile Justice Committee (JJC) and the Gauhati High Court. These consultations were critical from the point of view of reviewing the implementation of the Integrated Child Protection Scheme (ICPS) and other children-related laws, statutes and schemes in Assam’s 33 districts.

The idea of this book emanated from the 4th Roundtable Consultation of North Eastern States and Sikkim on the Effective Implementation of JJ Act, which was organised in collaboration with

the State Child Protection Society, and with technical support from UNICEF Assam. A significant observation made during the consultation was the fact that a number of duty bearers were either unaware or unclear about their roles and responsibilities, as mandated by various child protection legislations.

In this light, this book serves as an important tool for different stakeholders and duty bearers that will help them in understanding, and thereby supporting children in fully realising their rights. I would like to take this opportunity to congratulate Mr. Surendra Kumar (IPS), Inspector General of Police, CID, Assam, for this comprehensive documentation, and UNICEF's partner, the Centre for Child Rights, National Law University and Judicial Academy in Assam, for editing and publishing the book.

Together, we must work to seize opportunities and identify solutions to threats that stand in the way of children realising their rights. We must commit ourselves to fulfil the rights of every child, now, and for generations to come.



**Dr. Tushar Rane**  
Chief of Field Office  
UNICEF Office for Assam



# PREFACE

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The thought of writing this handbook occurred to me during Zonal Consultations, organised by Juvenile Justice Committee of Gauhati High Court, in the year 2018. The observations made in the Zonal Consultations brought a realisation to the fore that many duty bearers are not adequately aware about their specific roles and responsibilities towards child protection under various Acts and Rules. I had the privilege of making presentations on Role of District Magistrates, Police Officers, Health department, Education department, Judiciary and Social Welfare department during 3 of the 5 Zonal Consultations held at different places of Assam. The inputs shared by me, during those presentations, were widely appreciated not only by the participants representing various stakeholders but also by the honorable Judges of Gauhati High Court who were themselves present in all these consultations. I was unable to find suitable reading material which could enlist the roles and responsibilities department-wise. In many of the books and reading materials available, the roles of various stakeholders have been combined in a single chapter. For example, a Chapter on Child Sexual Abuse usually contains material, or information on legal provision, role of Police, Judiciary, Doctors, Department for Welfare of Women and Children and Legal Services Authorities. A police officer who reads such material would be mostly interested in learning about his role at the first place. It is only after a Police officer becomes aware about his own roles, he/she may like to know about the roles of other functionaries. I was encouraged by the Juvenile Justice Committee of Gauhati High Court and UNICEF to write this handbook.

This handbook contains 17 chapters. The first chapter is on the Role of District Magistrates and other Executive Magistrates in the domain of Child Protection. Maximum number of chapters (10 chapters from Chapter 2(A) to Chapter 2(J)) are on the role of police officers particularly those in the District or the Police Commissionerate. These chapters are primarily meant for making the police officers aware about their role. Care has been taken to use simple language and avoid legal or technical jargons as far as possible. The experience gathered during two decades long fieldwork has provided me with an insight into the problems faced and lapses committed by police officers. I am confident that these chapters would effectively address these aspects.

A chapter each has been devoted to other departments i.e. Labour Department, Social Welfare Department/Department for Women and Children, Health Department,

Education Department and Legal Services Authority. These chapters are primarily meant for the functionaries of respective departments. For example, the chapter on the Health department aims at improving the awareness of doctors, hospital management and medical staff.

I believe that in order to be effective, besides being thoroughly familiar with one's own role and responsibilities, it is highly desirable that one is also aware about the roles of duty bearers from the other departments. This would give a holistic picture of the eco system of child protection and help serve the best interest of the children. For instance, a police officer must know the role of Legal Services Authority in payment of compensation and in providing free legal aid to victims. He should also be aware about the role of Social Welfare department in providing support to children including rehabilitation. Similarly, a Labour Inspector should read the chapter on Role of Police, vis a vis Child Labour. I wish and sincerely hope that functionaries of a particular department would take some time out to go through the other chapters, as far as possible, after reading the chapter on their own department. As the author of this handbook, it has been my endeavour to incorporate relevant information, as much as possible, in the chapters so that the chapters are self contained and the readers get to know most of the aspects, which they ought not to miss. However, a list of additional reading material has been provided in most of the chapters for the benefit of those readers who want to go deeper into the topic. Verbatim reproduction of provision of various Acts have been generally avoided for the sake of simplicity as the readers can go through such provision in details by going through the Bare Acts. The gist of the legal provision has been given instead, in simple language, which could be easily appreciated by the readers particularly, the police officers. I have also observed that the duty bearers are generally not well conversant with the High Court/Supreme Court judgments particularly the recent ones. An effort has been made to include relevant judgments in various chapters, since such directions of the courts are to be implemented as law.

There are certain aspects of child protection, which are relevant for more than one department. For example, a labour inspector, besides reading the chapter on 'Role of Labour Department' should also go through the chapter on 'Role of Police-Child Labour'. In all such cases cross-reference have been given instead of repeating the same content in more than one chapter.

The particulars regarding role of Judiciary in Chapter 8, stands on a different footing. This chapter does not aim at making the judicial officers aware as they are adequately aware about their roles in the field of child protection. Explanations have been avoided and legal provision from various Acts and Rules along with Court judgments have been put at one place in this chapter for ready reference. It may be useful for judicial officers while referring to the relevant provision of various Acts and Rules. However, functionaries of other departments may also benefit by going through this chapter.

A segment on Frequently Asked Questions (FAQs) has been included in some of the chapters for the benefit of the readers. I fervently hope that this handbook would be a comprehensive book in itself and would go a long way in improving the awareness of the functionaries working in the field of Child Protection. I plan to update the handbook every year so that all the developments including new enactments, amendments of existing Acts, important Court orders and Govt. initiatives of the year get incorporated in the subsequent revised edition. I also expect that the publisher would translate contents of the handbook into local vernacular languages particularly of those chapters, which are meant for Police. Such exercise would improve the penetration and utility of the handbook. The handbook can also be unbundled into eight booklets for each department as and when required. This would make the reading material handier besides being cost effective. With utmost gratitude, I acknowledge the support of UNICEF, Guwahati; Centre for Child Rights, National Law University, Guwahati and officers of CID, Assam, for providing their invaluable support in writing this handbook. It would not have been possible to complete this task without the solid support of my wife Smti Babita Singh, my son Suyash Kumar, other members of my family and friends.

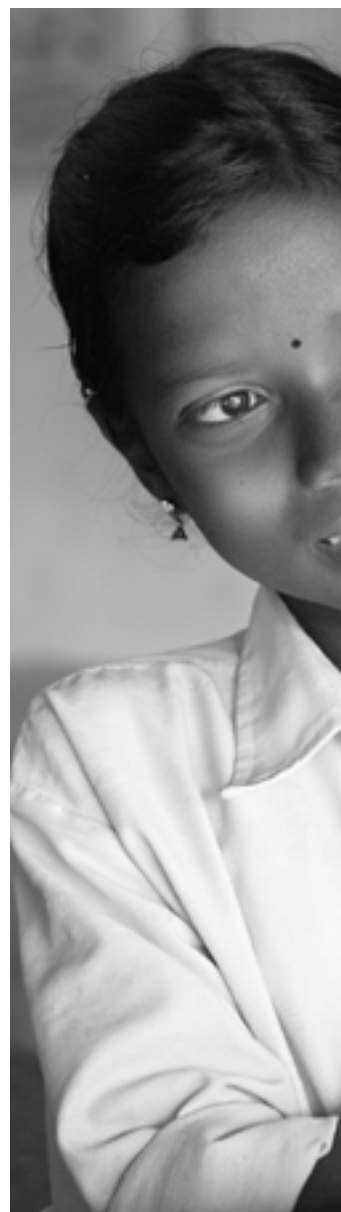
It is my earnest request to all the readers of this handbook to share their invaluable feedback with the author or with the publisher, which would help improve the future editions.

Guwahati  
June, 2019

Surendra Kumar

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## LIST OF ABBREVIATION

ACP	Assistant Commissioner of Police
ADM	Additional District Magistrate
AHTU	Anti-Human Trafficking Unit
ANM	Auxiliary Nurse Midwife
ASHA	Accredited Social Health Activist
BLCPC	Block Level Child Protection Committee
BLSA	Bonded Labour System (Abolition) Act, 1976
BPRD	Bureau of Police Research and Development
CALPRA	Child and Adolescent Labour (Prohibition and Regulation) Act
CARA	Central Adoption Resource Authority
CBSE	Central Board of Secondary Education
CCI	Child Care Institutions
CCPWC	Cyber Crime Prevention against Women and Children
CCTNS	Crime and Criminal Tracking Network and Systems
CCTV	Closed Circuit Television
CD	Compact Disc
CERT	Computer Emergency Response Team
CFSL	Central Forensic Science Laboratories
CCL	Child in Conflict with Law
CIF	Childline India Foundation
CJM	Chief Judicial Magistrate
CMPO	Child Marriage Prohibition Officer

CNCP	Child in Need of Care and Protection
COTPA	Cigarettes and Other Tobacco Products Act, 2003
CP	Child Pornography
CPCR	Commission for Protection of Child Rights
CrPC	Criminal Procedure Code
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CVCF	Central Victim Compensation Fund
CWC	Child Welfare Committee
CWPO	Child Welfare Police Officer
DLSA	District Legal Service Authority
DCPC	District Child Protection Committee
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
DCRB	District Crime Record Bureau
DGP	Director General of Police
DLVMC	District Level Vigilance and Monitoring Committee
DM	District Magistrate
DNA	Deoxyribonucleic Acid
DNO	District Nodal Officer
DSP	Deputy Superintendent of Police
DSWO	District Social Welfare Officer
DTF	District Task Force

ECS	Electronic Clearing Service
ESPP	Exclusive Special Public Prosecutor
FICN	Fake Indian Currency Note
FIR	First Information Report
FSL	Forensic Science Laboratories
GOI	Government of India
HIV	Human Immunodeficiency Virus
HR	Human Resource
ICDS	Integrated Child Development Scheme
ICPS	Integrated Child Protection Scheme
IEC	Information, Education and Communication
IP	Internet Protocol
IPC	Indian Penal Code
ITPA	Immoral Traffic (Prevention) Act, 1956
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015
JJB	Juvenile Justice Board
JJC	Juvenile Justice Committee
JJF	Juvenile Justice Fund
LSAA	Legal Service Authority Act, 1987
MEA	Ministry of External Affairs
MHA	Ministry of Home Affairs
MHRD	Ministry of Human Resource Development
MOHFW	Ministry of Health and Family Welfare

MTPA	Medical Termination of Pregnancy Act, 1971
MWCD	Ministry of Women and Child Development
NALSA	National Legal Service Authority
NCLP	National Child Labour Project
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Record Bureau
NCSC	National Commission for Scheduled Caste
NCST	National Commission for Schedule Tribe
NDPS	Narcotic Drugs & Psychotropic Substances Act
NGO	Non-Governmental Organisations
NHM	National Health Mission
NHRC	National Human Rights Commission
NIPCCD	National Institute of Public Cooperation and Child Development
PCMA	Prohibition of Child Marriage Act, 2006
PCPNDT	Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
PENCIL	Platform for Effective Enforcement for No Child Labour
PIL	Public Interest Litigation
PIN	Personal Identification Number
PLV	Para Legal Volunteers
POCSO	Protection of Children from Sexual Offences Act, 2012
PRI	Panchayati Raj Institutions
PS	Police Station
R/GR	Rape/Gang Rape

RI	Rigorous Imprisonment
RPF	Railway Protection Force
RPWD	Right of Persons with Disabilities Act, 2016
RTE Act	The Right of Children to Free and Compulsory Education Act, 2009
SAA	Specialised Adoption Agency
SARA	State Adoption Resource Agency
SC	Scheduled Caste
SC & ST (POA), Act	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
SCC-JJ	Supreme Court Committee on Juvenile Justice
SCERT	State Council Of Educational Research And Training
SCPCR	State Commission for Protection of Child Rights
SCPS	State Child Protection Society
SDM	Sub-Divisional Magistrate
SDPO	Sub-Divisional Police Officer
SHO	Station House Officer
SHRC	State Human Rights Commission
SIM	Subscriber Identification Module
SLMC	State Level Monitoring Committee
SMS	Short Message Service
SOP	Standard Operating Procedures
SP	Superintendent of Police
SPO	Special Police Officer
SPP	Special Public Prosecutor

SSA	Sarva Shiksha Abhiyan
SSI	Small Scale Industry
ST	Scheduled Tribe
STD	Sexually Transmitted Disease
TAR	Threat Analysis Report
TIP	Test Identification Parade
TLSA	Taluk Legal Service Authority
TLSC	Taluk Legal Service Committee
TOR	The Onion Router
TOT	Training of Trainers
UNCRC	United Nations Convention on the Rights of the Child
URI	Uniform Resource Identifier
V&MC	Vigilance and Monitoring Committee
VG	Vigilance Committee
VLPCP	Village Level Child Protection Committee
WHO	World Health Organisation
WPC	Witness Protection Cell
WPO	Witness Protection Order





## THE ROLE OF DISTRICT MAGISTRATES / OTHER EXECUTIVE MAGISTRATES

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**T**he District Magistrate (DM) holds pivotal position as the head of the district administration in the district. The DM heads the district administration and has oversight over the functioning of all the Government departments. The DM is in a formidable

position to ensure co-ordination among departments, convergence of efforts and steer the administration in a positive direction.

The DM is also responsible for implementation of various schemes for development and welfare of citizens. The involvement of DM on issues affecting children can have a deep and long lasting impact on the lives of children, particularly the vulnerable and marginalised ones. It would be highly desirable that the DM focuses on the following aspects:

### Awareness Generation

Awareness generation is an effective preventive tool. The awareness should be generated among masses with special emphasis on children. Multiple channels available should be used for maximum reach and penetration. These channels may be:

- Local media like newspaper, television, etc.
- Social media platforms,
- The Twitter handle and Facebook page of the District Administration may be used for maximum leverage,
- Bulk SMS,
- By publicity through leaflets, posters, public address system, slogans, etc.; in various parts of the districts with more focus on public places, places of public gathering, 'melas', etc.,
- Street plays, traditional folk troupes, etc.,

- By organising theme based events like quiz/debate/essay competition, screening of movies, etc.,

Awareness empowers the parents and children and results in hardening of victims.

### **Capacity Building and Sensitisation**

Many functionaries of various departments who are responsible for protection of children are themselves not fully aware of gravity of the situation, their power and roles. The DM should regularly impart appropriate training to various functionaries of district administration, particularly those connected with child protection. Such training should cover various aspects including:

- The present scenario of crime against children
- Legal provisions of various Acts and Rules, Supreme Court and High Court Orders
- Role and responsibilities of the various functionaries
- Child-friendly approach

The public servants should not only be trained but also feel for the cause of the children. They should be sensitive and accord priority to child protection.

### **Co-ordination**

It has been observed that many a times, various departments work in silos. This leads to lack of synergy, duplicity of efforts and, on occasions, a blame game. It is the duty of the DM to see that all are on the same page and work in harmony. Some formal platforms may be fully exploited for this purpose like District Task Force for Child Labour, District Child Protection Committee under ICPS, District Level Vigilance and Monitoring Committee under The Scheduled Caste and Scheduled Tribe Act. DM has to see that ICDS and ICPS have synergy in the district.

### **Promoting Partnerships**

The threats to children are multiple which makes the problem of crime against them, a deep rooted and complex one. To ameliorate the situation, it is highly desirable that administration forges alliance, builds partnership and works with NGOs, Civil Society Organisations, Panchayati Raj Institutions, Training and Research Institutions; Media and Advocacy groups; Business and Corporate houses, etc. Such exercise would also be helpful in mobilisation of resources including CSR funds.

### **Tapping the Vast Network of Cutting Edge Level Functionaries**

The DM has at his command resource pool of teachers, Anganwadi workers, ASHA

workers, ANMs, Revenue officials, etc. who have presence and influence in each and every village. They must be utilised for creating awareness, mounting surveillance, identifying victimisation and encouraging reporting of incidents in the communities.

## ROLE OF THE DM UNDER THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

### Roles and Responsibilities vis-à-vis Child Welfare Committees (CWCs):

1. The DM is the grievance redressal authority for the Child Welfare Committee and any person connected with a child can file a petition before the District Magistrate, who shall consider and pass appropriate orders. **(Section 27(10), JJ Act, 2015)**
2. The DM shall conduct a quarterly review of the functioning of the CWC. **(Section 27(8), JJ Act, 2015)**
3. The CWC shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner, as may be prescribed, for review of pendency of cases. **(Section 36(4))**
4. The CWC shall submit quarterly information to the DM in Form 16 about children in need of care and protection received by the CWC and all relevant details about nature of disposal of cases, pending cases, and reasons for pendency. **(Rules 17(v) and 20(2), JJ Model Rules, 2016)**
5. After review under Section 36(4), the DM shall direct the CWC to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required. If the pendency of cases continues to be unaddressed by the CWC even after three months of receiving such directions, the State Government shall terminate the said CWC and constitute a new CWC. **(Section 36(5), JJ Act, 2015)**
6. The DM shall review the functioning of the CWC and appraise the performance of the Chairperson and Members of the CWC on the basis of their participation in the proceedings of the CWC and submit a report to the Selection Committee constituted under Rule 87. **(Rule 20(3), JJ Model Rules, 2016)**
7. The Chairperson of the CWC shall prepare monthly duty roster of Members of the CWC who will be available or accessible every day, including on Sundays and holidays. This roster should be circulated in advance to various functionaries and authorities, including the DM. **(Rule 16(6), JJ Model Rules, 2016)**

8. The DM or the DM's nominee shall operate a suggestion box or grievance redressal box in the premises of the CWC. *(Rule 17(ii) JJ Model Rules, 2016)*

### Role vis-à-vis Juvenile Justice Boards (JJB)

1. The JJB shall inform about the pendency of cases to the District Magistrate on a quarterly basis in Form 12. *(Section 16(3) JJ Act 2015 and Rule 12(2)).*
2. The Principal Magistrate of the JJB shall prepare monthly duty roster of Members of the JJB who will be available or accessible every day, including on Sundays and holidays. This roster shall be circulated in advance to various functionaries and authorities, including the DM.  
*(Rule 6(8) JJ Model Rules, 2016)*

### Appeals

Appeals against the decisions by the CWC related to Foster Care, Sponsorship, and After Care will lie before the DM. *(Section 101(1) JJ Act, 2015)*. These appeals should be filed within 30 days from the date of the order. The DM can, however, entertain the appeal after the expiry of 30 days, if the DM is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. The DM shall decide appeals within 30 days. *(Section 101(1) Proviso JJ Act, 2015)*

## ROLE OF DM UNDER INTEGRATED CHILD PROTECTION SCHEME (ICPS)

### Integrated Child Protection Scheme (ICPS)

The Integrated Child Protection Scheme (ICPS), which is the flagship programme of the Govt. of India, aims to provide a holistic child protection mechanism which covers preventive and rehabilitative aspects for children in need of care and protection and children in conflict with law. The DM of a district has key role under the ICPS and is responsible for supervising the overall implementation of the ICPS.

### District Child Protection Committee

As per the ICPS, the DM is the Co-Chairperson of District Child Protection Committee (DCPC) along with Chairperson, Zila Parishad. The DCPC is a multidisciplinary body with senior-most representative of line departments in the district such as Police, Labour, Education, Health, Social Welfare/Women and Child Development, etc., as its members. The DCPC is responsible for the implementation and monitoring of all child protection laws. The DM can play a significant role in the field of child protection by holding regular meetings and following up on implementation of decisions taken. Similarly, the DM also has the responsibility to monitor the functioning of

Village Level Child Protection Committee (VLCPC) and Block Level Child Protection Committee (BLCPC) notified by the State Government under the ICPS.

*(For details please refer to chapter 2B and chapter 5 of this handbook)*

## **ROLE OF DM UNDER CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT (CALPRA)**

### **Implementation of Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (CALPRA)**

The DM is the key functionary for the implementation of this Act. It may be mentioned that the Child Labour (Prohibition and Regulation) Act, 1986 was amended in 2016 and was also renamed as Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. CALPRA Rules framed under this Act were also amended in 2017.

#### **DM to Implement the Provision of this Act**

The DM is responsible for implementation of the provisions of this Act. The State Government may confer such powers and impose such duties on him as may be necessary for this purpose. *(Section 17A CALPRA, 1986)*

#### **DM to specify Nodal Officer**

The DM may specify one or more officers, subordinate to him, as nodal officers for implementation of the provisions of this Act. *(Section 17A)*

#### **District Task Force headed by the DM (Rule 17C CALPRA Rules)**

The DM is the Chairperson of the District Task Force (DTF), which has to meet at least once in every month, and is empowered to make comprehensive action plan for conducting the rescue operations, rehabilitation and other matters relating to child and adolescent labour. The task force has representatives from various stakeholders as members, including ADMs, SP, CWC Chairperson, DCPO and two representatives from a voluntary organization involved in rescue and rehabilitation of employed children. The nodal officer appointed by the DM is the Secretary of the District Task Force. The DM has to ensure through the nodal officer that children and adolescents who are employed in contravention of the provisions of this Act are rescued and rehabilitated in accordance with JJ Act, 2015, Bonded Labour System (Abolition) Act, Central Sector Scheme for Rehabilitation of Bonded Labourers, 2016, NCLP, and other schemes and laws in force under which children or adolescents can be rehabilitated and subject to directions, if any, of a court of competent jurisdiction and guidelines for rescue and repatriation issued by the Central Government.

*The list of members of the DTF has been provided in Annexure-A of this chapter.*

- The District Task Force is the most important body at the district level and plays key role in implementation of the provisions of the Act and the Rules.
- The minutes of the meeting of the DTF has to be uploaded on **PENCIL** (Platform for Effective Enforcement for No Child Labour) portal.

### **DM may Compound Offences**

The DM is also empowered to compound offences under this Act as per Section 14 D, CALPRA, 1986.

1. The DM cannot, however, compound all the offences.
2. If an employer employs a child (a person below 14 years of age) for any work or employs an adolescent (a person who has completed 14 years of age but is below 18 years) in any hazardous process or occupation (enlisted in part A of the schedule of the Act), then the DM cannot compound such offence.
3. However, if an employer violates any provision of this Act or Rules (other than the offences, mentioned in Point '2' as above) for the first time then the DM may compound such offence.
4. Any offence committed by a parent or guardian is also compoundable by the DM.
5. Compounding of offence can take place on the application of the accused person to the DM.
6. As per Rule 17B(2), CALPRA Rules 2017, the DM after hearing the accused and the Inspector concerned, can dispose of such application, and if the application is allowed, can issue the certificate of compounding subject to:
  - The payment of a sum of 50% of the maximum fine provided for such offence within a period to be specified in such certificate or
  - The payment of an additional sum of 25% of maximum fine provided for such offence together with the compounded amount, if the accused person fails to pay the compounded amount within the specified period. Such delayed payment has to be made within a further period as may be specified by the District Magistrate, which cannot exceed the period specified in that clause.
7. The accused person shall pay the compounding amount to the Central Government.
8. If the accused fails to pay such amount for compounding of the offence, then,

the proceedings shall be continued against such person in accordance with the provisions of the Act. (*Rule 17B(4) CALPRA Rules, 2017*)

9. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged. (*Section 14D(4) CALPRA, 1986*).

### Role of DM in case of Child Artists

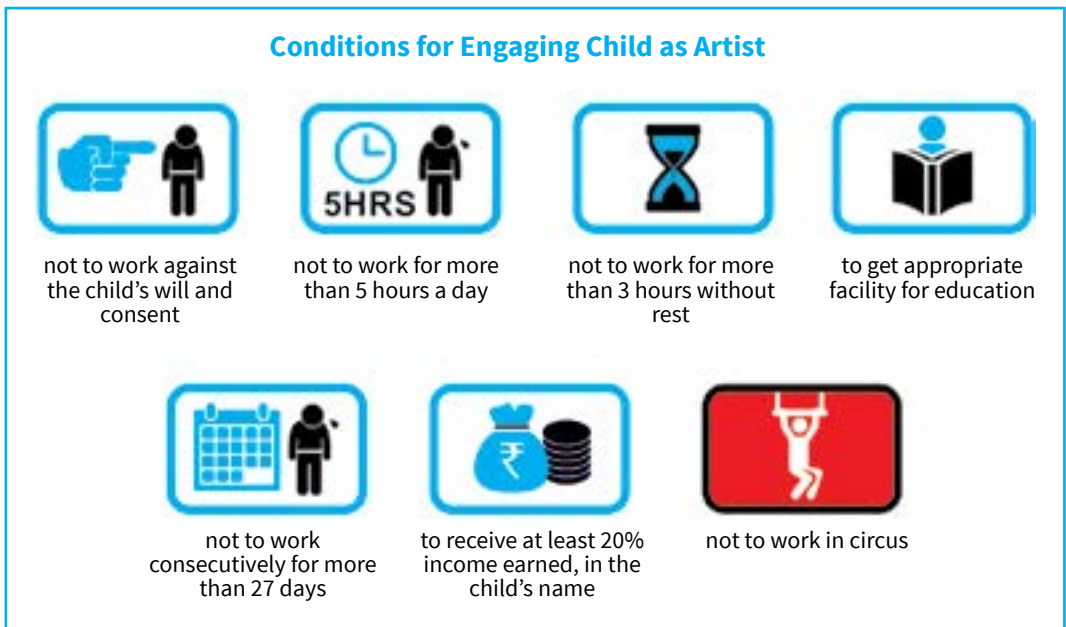
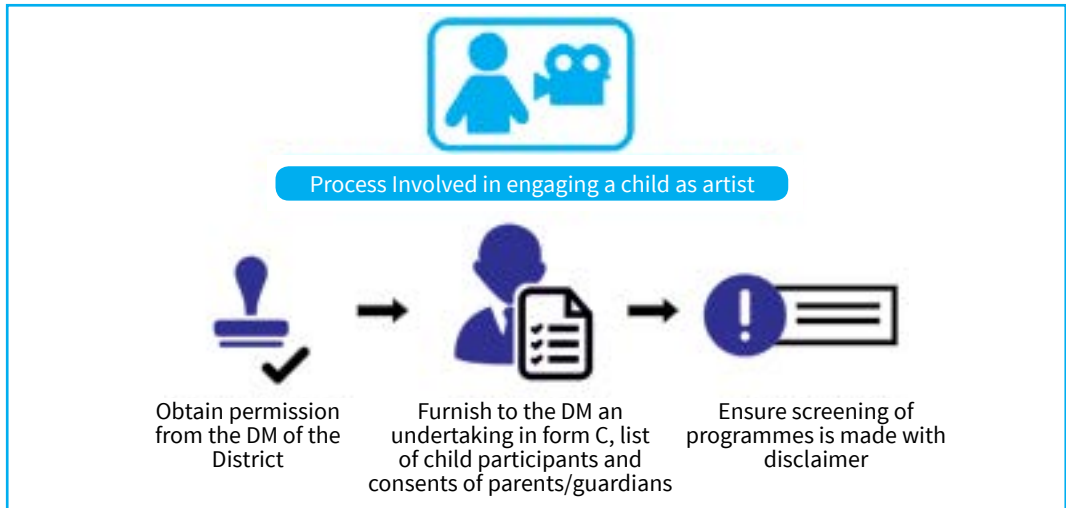
As per Section 3, CALPRA a child below 14 years of age may be allowed to work as an artist in audio-visual entertainment industry including advertisements, films, TV serials or any such other entertainment or sports activities except circus, subject to prescribed conditions and safety measures. A producer of any audio-visual media production or any commercial event involving the participation of a child should as per Rule 2C, CALPRA Rules:

1. Obtain permission from the DM of the district where the activity is to be performed.
2. Furnish to the DM, before starting the activity, an undertaking in **Form C** (provided in the rules) and the list of child participants, consent of parents or guardians, as the case may be, name of the individual from the production or event who shall be responsible for the safety and security of the child.
3. Ensure that all screening of the films and television programmes are made with a disclaimer specifying that if any child has been engaged in the shooting, then, all the measures were taken to ensure that there has been no abuse, neglect or exploitation of such child during the entire process of the shooting.
4. No child shall be allowed to work for more than 5 hours in a day, and for not more than three hours without rest;

The undertaking referred above shall be valid for 6 months and should clearly state the provision for education, safety, security and reporting of child abuse in consonance with the guidelines and protection policies issued by the Central Government from time to time for such purpose including,

1. ensuring facilities for physical and mental health of the child;
2. timely nutritional diet of the child;

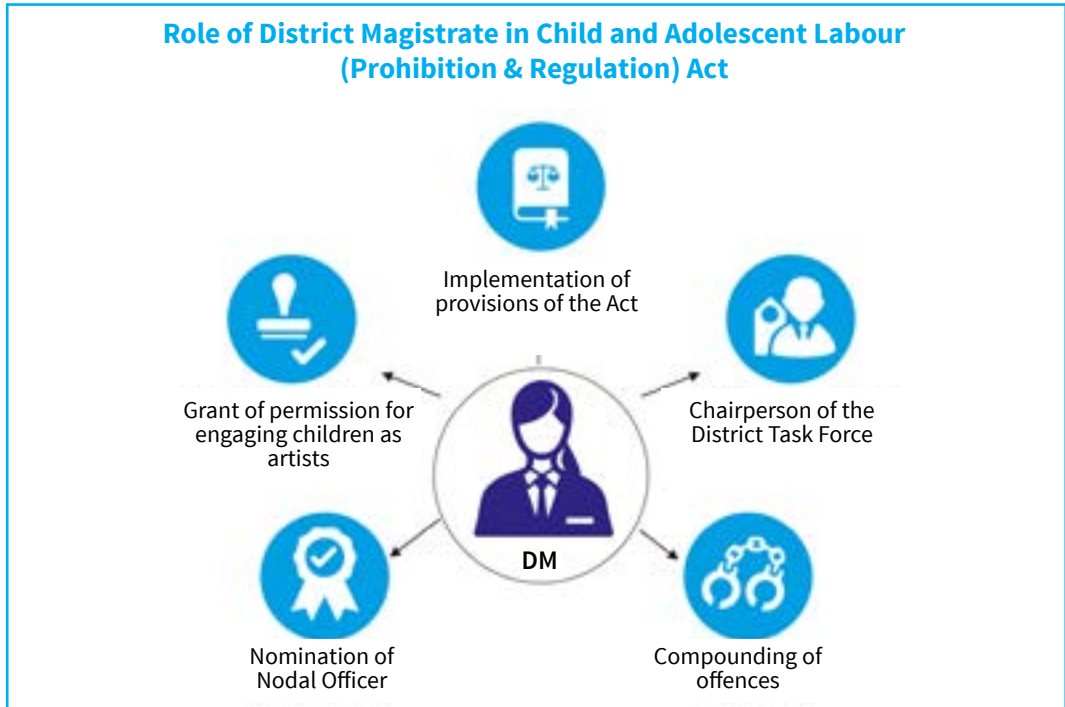
3. safe, clean shelter with sufficient provisions for daily necessities; and
4. compliance to all laws applicable for the time being in force for the protection of children, including their right to education, care and protection, and against sexual offences. (*Rule 2C(c) CALPRA Rules, 2017*)





### Child and Adolescent Labour Rehabilitation Fund

The DM should also take steps so that Child and Adolescent Labour Rehabilitation fund is constituted by the State Government in respect of his district as per provision of the Section 14 B of the Act. It may be noted that the amount of fine (which may be up to Rs. 50,000 per case) realised from the employer is credited to this fund. An additional amount of Rs. 15,000 per rescued child/adolescent for whom the fine amount has been credited is also to be credited to this fund by the State Government. The total amount so credited is invested and paid along with interest to the Child/Adolescent when he/she completes 18 years of age. The Inspector or the Nodal Officer having jurisdiction should ensure that an account of such child or adolescent is opened in a nationalised bank and inform the bank in which the amount of the fund is deposited or, as the case may be, to the officer responsible to invest the amount of the fund.



### ROLE OF THE DM/OTHER EXECUTIVE MAGISTRATES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

A number of victims of bonded labour system are children. The Bonded Labour System (Abolition) Act, 1976 provides for the abolition of Bonded Labour System,

extinguishments of liability to repay bonded debt, formation of Vigilance Committees, etc. Under Section 10, Bonded Labour System (Abolition) Act, 1976:

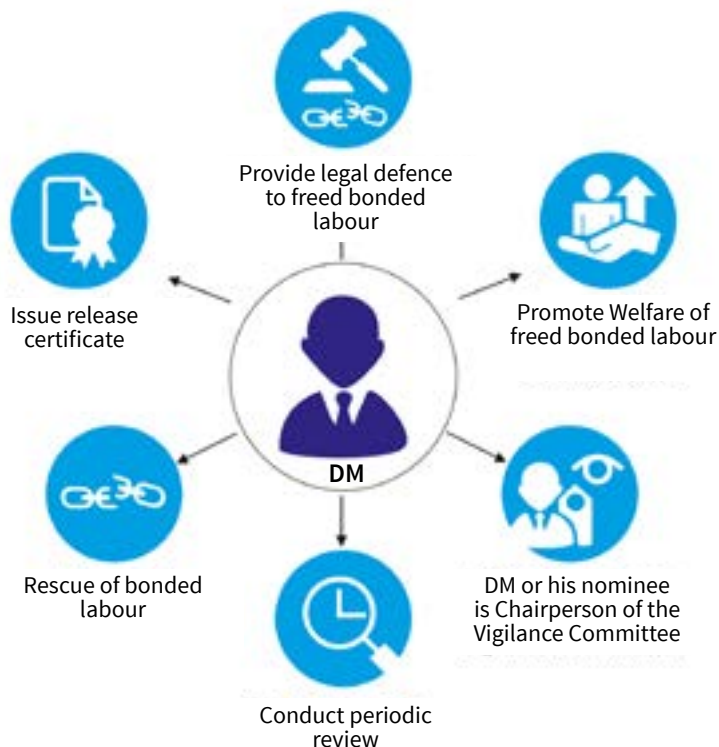
*'The State Government may confer such powers and impose such duties on a DM as may be necessary to ensure that the provisions of this Act are properly carried out and the DM may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer so specified'*

### Responsibilities of the DM

1. The DM authorised under Section 10 and the officer specified by the DM, should, as far as practicable, promote the welfare of the freed bonded labour by securing and protecting their economic interests so that they may not have any occasion or reason to contract any bonded debt. **(Section 11)**
2. The DM and the officer specified by the DM shall enquire whether the bonded labour system is being enforced and if any person is found to be enforcing the system within their jurisdiction, necessary action should be taken to eradicate the enforcement of such forced labour. **(Section 12)**
3. The offences under this Act are to be tried by such Executive Magistrates who have been conferred, by the State Government, the power of Judicial Magistrate 1st Class or 2nd Class. The offences are to be tried summarily by such Executive Magistrates. **(Section 21)**
4. DM or a person nominated by DM serves as the Chairperson of Vigilance Committee in the district whereas Sub-Divisional Magistrate (SDM) or a person nominated by SDM is the Chairperson of the Vigilance Committee for the sub division. The DM or the SDM, as the case may be has to nominate two social workers, and not more than three persons to represent the official or non-official agencies in the district, three persons belonging to SC or ST and one person to represent the financial and credit institution in the district or the sub-division as the case may be, as member of the Vigilance Committee. **(Section 13(1) and (2))**
5. The DM, being the Chairperson of the Vigilance Committee will preside over the meeting and conduct its proceedings. This function should ordinarily not be delegated to anyone else. Proposals for constitution and reconstruction of Vigilance Committee should originate from the DM. The DM,
  - should organise field visits for the members of the Committee to conduct field investigations in an objective manner as it would help in identification of bonded labour system.

- should provide for the economic and social rehabilitation of the freed bonded labourers.
  - should ensure proper co-ordination of the functions of rural banks and co-operative societies with a view to channelising adequate credit for the freed bonded labourers.
  - has to organise periodic surveys, which could be both household wise and establishment wise to satisfy himself as to whether there is any offence arising out of prevalence of bonded labour system of which cognisance ought to be taken under the Act. He has to exercise vigilance on the number of offences of which cognisance has been taken under this Act.
  - has to provide legal defense to defend any suit instituted against a freed bonded labourer.
  - has to ensure that all records and registers, required to be maintained under Rule 7 of Bonded Labour System (Abolition) Rules are maintained at the district level.
6. The DM has to oversee the process of disposal for all cases instituted under the Act being tried by the Executive Magistrate. He should also ensure that all pending cases are disposed of through a summary trial.
  7. The DM issues release certificates when a person is released from bonded labour, which has to be followed by measures for rehabilitation.
  8. The DM has to monitor the implementation of schemes for rehabilitation of bonded labour including 'Central Sector Scheme for Rehabilitation of Bonded Labour'.

### Role of District Magistrate under Bonded Labour System (Abolition) Act



DM has a very crucial role in creating awareness; sensitising stakeholders; capacity building of functionaries; detection, rescue, rehabilitation, etc. of child/ adolescent labour and bonded labour. The DM can also do advocacy for ethical governance by persuading the employers, particularly in corporate sector, to not employ adolescents and encourage them to take initiatives for empowerment of adolescents by promoting education, skill development/up-gradation, improving their employability, etc.

*(For further details, please refer to chapter 6 and 2F of this handbook)*

### ROLE OF THE DM UNDER THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 (PCMA)

The practice of child marriage is prevalent among many communities in the country. Many factors including social customs, poverty, lack of education, etc. lead to this practice. Child marriage is widespread and can lead to a lifelong disadvantage and

deprivation. Prohibition of Child Marriage Act, 2006 was enacted to address issues relating to child marriage.

A male below the age of 21 years or a female below 18 years of age is a child as per Section 2(a) of the Act. Child marriage is a marriage in which either of the contracting parties is a child. It is illegal for an adult male above 18 years of age to marry a child. **(Section 9)**

The DM has been given very important responsibilities for prevention of solemnisation of child marriage.

The DM is deemed to be the Child Marriage Prohibition Officer (CMPO) for preventing solemnisation of mass child marriages on certain days like Akshaya Tritiya and is vested with all powers, which are conferred on a Child Marriage Prohibition Officer under **Section 13(4)**.

The DM shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, the DM may take all appropriate measures and use minimum force required. **(Section 13(5))**

*(The powers and duties of CMPOs have been provided in detail in chapter 2(G) of this handbook)*

### **ROLE OF DM/OTHER EXECUTIVE MAGISTRATES UNDER THE SCHEDULED CASTES AND THE SCHEDULES TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

Large number of child victims of crime belong to disadvantaged sections of society particularly SC and ST. The members of these communities are vulnerable to discrimination and exploitation due to ill effects of caste system and existing socio-cultural factors in many parts of the country. When a child belonging to SC and ST becomes a victim of crime, then the provision of this Act may be applied as the punishment are stringent and provision for relief and protection of victims are in place. The noose of law also gets tightened for the accused person due to special provision relating to time bound completion of investigation, restriction on applicability of anticipatory bail, etc. The District Magistrate plays an important role in implementation of this Act.

#### **Preventive Action**

A District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate or any Police Officer not below the rank of DSP, may, on receiving information and after such inquiry as they may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in

or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behavior and maintenance of public order and tranquility and may take preventive action. *(Section 17)*

### Spot Inspection *(Rule 6)*

1. Whenever the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate or any Police Officer not below the rank of DSP receives information from any person or upon his own knowledge that an atrocity has been committed on the members of the Scheduled Castes or the Scheduled Tribes within their jurisdiction, they shall immediately visit the place of occurrence to assess the extent of atrocity, loss of life, loss and damage to the property and submit a report forthwith to the State Government.
2. The DM or SDM or any other Executive Magistrate and the Superintendent of Police, DSP, after inspecting the place or area on the spot,
  - Draws a list of victims, their family members and dependents entitled for relief;
  - Prepares a detailed report of the extent of atrocity, loss and damage to the property of the victims;
  - Orders for intensive police patrolling in the area;
  - Takes effective and necessary steps to provide protection to the witnesses and other sympathizers of the victims;
  - Provides immediate relief to the victims.

### Supervision of Prosecution *(Rule 4)*

The State Government shall on the recommendation of the DM prepare for each district a panel of eminent senior advocates who have been in practice for not less than 7 years for conducting cases in the Special Courts and Exclusive Special Courts. The DM and the Director of Prosecution in charge of the Prosecution shall review at least twice in a calendar year, the performance of Special Public Prosecutors and Exclusive Special Public Prosecutors and submit report to the State Government.

As per Rule 4(4), the District Magistrate and the Officer-in-Charge of the prosecution at the District level, shall review,

1. The position of cases registered under the Act;
2. The implementation of the rights of victims and witnesses, specified under the provisions of this Act and submit a monthly report on or before 20th day of each subsequent month to the Director of Prosecution and the State Government, which should specify the actions taken or proposed to be taken in respect of investigation and prosecution of each case.

The District Magistrate or the Sub-Divisional Magistrate may, if deemed necessary or if so desired by the victim of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts or Exclusive Special Courts on such payment of fees as may be considered appropriate.

### Payment of Relief

The DM or the Sub-Divisional Magistrate or any other Executive Magistrate shall make necessary administrative and other arrangements and provide relief in cash or in kind or both within 7 days to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure-I read with Annexure-II of the Schedule annexed to the rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items. **(Rule 12(4))**

The relief and rehabilitation facilities mentioned in sub-rule (4) above shall be provided by the DM or the Sub-Divisional Magistrate or any other Executive Magistrate in accordance with the scales provided in the Schedule annexed to the rules. **(Rule 12(6))**

A report of the relief and rehabilitation facilities provided to the victims should also be forwarded to the Special Court by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police. In case the Special Court is satisfied that the payment of relief was not made to the victim or his/her dependent in time or the amount of relief or compensation was not sufficient or only a part of payment of relief or compensation was made, it may order for making in full or part the payment of relief or any other kind of assistance. **(Rule 12(7))**

The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate should make necessary administrative and other arrangements and provide relief in cash or in kind or both within 7 days to the victims of atrocity, their family members and the dependents. The scale of relief has been mentioned in Annexure of the SC and ST (POA) Rules. The amount of relief varies from Rs. 85,000 to Rs. 8,25,000 depending on nature of atrocity. Amount should be paid in installments as prescribed in the annexure. In most of the cases, relief is to be

paid in three installments:

- First installment at FIR stage,
- Second installment when charge sheet is sent to the Court, and
- Third and final installment when the lower court convicts accused persons.

However, in case of Acid Attack (*Section 326B IPC*) and rape/gang rape, the first installment is paid after medical examination and confirmatory medical report.

For example, in case of molestation or sexual harassment of women belonging to SC or ST, minimum relief amount is Rs. 2 lakhs out of which 25% is to be paid at FIR stage, 50% when charge sheet is submitted and 25% when accused are convicted by the lower Court.

### Visit of Place of Occurrence

The District Magistrate and the Superintendent of Police shall visit the place or area where the atrocity has been committed to assess the loss of life and damage to the property and draw a list of victims, their family members and dependents entitled for relief. (*Rule 12 (1)*)

### Travelling Allowance/Daily Allowance/Maintenance Expenses & Transport Facilities to the Victim of Atrocity, Victim's Dependent and Witnesses (*Rule 11*)

The DM or the Sub-Divisional Magistrate or any other Executive Magistrate should make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the Investigating Officer, Superintendent of Police/Deputy Superintendent of Police, DM or any other Executive Magistrate.

The payment of travelling allowance, daily allowance, maintenance expenses and reimbursement of transport facilities should be made immediately or not later than three days by the DM or the Sub-Divisional Magistrate or any other Executive Magistrate to the victims, their dependents/attendant and witnesses for the days they visit the Investigating Officer or police station in-charge or hospital authorities or Superintendent of Police/Deputy Superintendent of Police or DM or any other officer concerned or the Special Court. When an offence has been committed under Section 3 of the Act, the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate should reimburse the payment of medicines, special medical consultation, blood transfusion, replacement of essential clothing, meals and fruits provided to the victim(s) of atrocity.



### District Level Vigilance and Monitoring Committee

The District Magistrate shall set up a vigilance and monitoring committee in the district to review the implementation of the provisions of the Act, scheme for the rights and entitlements of victims and witnesses in accessing justice, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers/agencies responsible for implementing the provisions of the Act and various reports received by the District Administration. **(Rule 17(1))**

The district level vigilance and monitoring committee shall consist of the elected Members of the Parliament and State Legislative Assembly and Legislative Council, Superintendent of Police, three Group-‘A’ officers, Gazette Officers of the State Government belonging to the Scheduled Castes and the Scheduled Tribes, not more than 5 non-official members belonging to the Scheduled Castes and the Scheduled Tribes and not more than 3 members from the categories other than the Scheduled Castes and the Scheduled Tribes having association with Non-Government Organisations. The District Magistrate and District Social Welfare Officer shall be Chairman and Member Secretary respectively. **(Rule 17(2))**. The district level committee shall meet at least once in 3 months. **(Rule 17(3))**

### Coordination and Linkages

#### Nodal Officer:

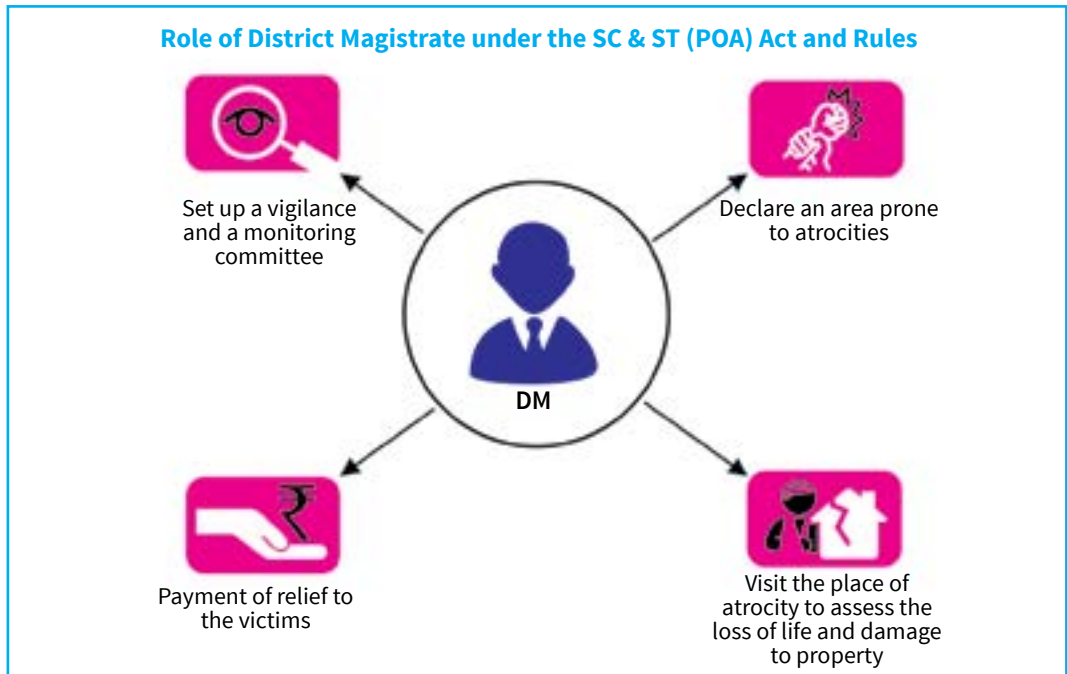
The State Government shall nominate a Nodal Officer of the level of a Secretary in the State Government preferably belonging to the Scheduled Castes or the Scheduled Tribes, for coordinating the functioning of the DM and Superintendent of Police or other officers authorised by them, investigating officers and other officers responsible for implementing the provisions of the Act. **(Rule 9)** The DM may co-ordinate with the State Nodal Officer (appointed under the provision of this Act) for discharge of responsibilities under this Act.

#### Special Officer:

In the identified area, a Special Officer not below the rank of an Additional District Magistrate shall be appointed to co-ordinate with the DM, Superintendent of Police or other officers responsible for implementing the provisions of the Act, various committees and the Scheduled Castes and the Scheduled Tribes Protection Cell. **(Rule 10)**

### Amendment of Rules

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 2018 have been amended. The amendment has been notified on 27th June, 2018. The amendments broadly relate to provision of relief to victims.



*(For further details, please refer to the chapter 2(I) of this handbook.)*

### ROLE OF THE DM/OTHER EXECUTIVE MAGISTRATES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Trafficking of children has emerged as a serious challenge. Many children particularly girls are trafficked for commercial sexual exploitation. The DM has an important responsibility under this Act which has been enacted to address various aspects of commercial sexual exploitation.

<p><b>Appointment of a Special Police Officer (Section 13(2A))</b></p>	<p>The DM may, if considered necessary or expedient, confer upon any retired police or military officer all or any of the powers of Special Police Officer (SPO). However, no such power can be conferred on:</p> <ul style="list-style-type: none"> <li>A retired police officer unless such officer, at the time of retirement, was holding a post not below the rank of an inspector;</li> <li>A retired military officer unless such officer, at the time of retirement was holding a post not below the rank of a commissioned officer.</li> </ul> <p>It may be noted that only SPOs can investigate cases registered under this Act.</p>
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<p><b>Notification of Public Places (Section 7(1))</b></p>	<p>The DM may notify public places other than place religious worship, educational institution, hostel, hospital and nursing home, to be a public place. Prostitution in such public places or within 200 meters is illegal.</p>
<p><b>Passing an order to keep a person in a protective home, etc.</b></p>	<p>A DM/SDM, within his/her local jurisdiction may pass an order on an application made by a person who is carrying or is being made to carry on prostitution, for keeping such person in a protective home. The Magistrate after hearing the applicant and making such enquiry as may be considered necessary, make an order that the applicant may be kept in a protective home or corrective institution or under the supervision of a person appointed by the Magistrate. <i>(Section 19)</i></p>
<p><b>Removal of prostitute from any place</b></p>	<p>A magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction, is a prostitute, may record the substance of the information received and issue a notice to such person requiring the person to appear before the magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it. <i>(Section 20)</i></p>
<p><b>Search without warrant</b></p>	<p>A Special Police Officer may conduct search without warrant of any premises where an offence under Immoral Traffic Prevention Act is suspected of being committed. After the search, the Special Police Officer is entitled to remove all the persons found in such premises.</p> <p>The persons so removed should be forthwith produced before DM/SDM by the SPO. <i>(Section 15(5))</i></p>

## Closure of Brothel

A DM or SDM has power to evict or close a brothel under Section 18(1). The step-by-step process to be followed by the Magistrate is as under:

1. The DM or the SDM receives information from the police or otherwise, that any house, room, place or any portion thereof within 200 meters of any public place is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade.
2. The DM/SDM may issue Notice to the concerned party like owner, lessor or landlord of such house, room, place or portion or his agent or the tenant, lessee or occupier or any other person in charge of such house, room, place, etc.
3. The notice directs the concerned party to show cause within 7 days of receipt of the notice why the premises should not be attached for improper use.
4. DM/SDM passes order after hearing the party concerned and being satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution.
5. The DM/SDM can pass the following orders:
  - Direct eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;
  - Direct that before letting it out during the period of one year immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate. In a case where a child or minor has been found in such house, room, place or portion during a search then the period during which this direction will be applicable is three years. However, if the DM finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, the DM may cause the same to be restored to them, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

**The Order passed by the DM/SDM is not appealable and cannot be stayed or set aside by the order of any Court, Civil or Criminal. (Section 18(3))**

It is a powerful provision under Section 18(1) and should be used in all suitable cases. The order may be passed even when investigation or trial is continuing

The Magistrate should ensure that the prescribed procedure is followed; show cause notice is issued and concerned party is given opportunity to defend itself. The Magistrate should go through the material on record, conduct further enquiry as he may deem proper; apply his mind and satisfy himself before passing the order. The order of the Magistrate should be a speaking order.

**Rescue of Persons**

If a DM/SDM has reason to believe from information received from the police or otherwise that any person is living or is carrying on or is being made to carry on prostitution in a brothel then the DM/SDM may direct a police officer, not below the rank of a Sub Inspector, to enter such brothel and remove such person from there and to produce him/her before him. The police officer after removing such person should forth with produce the person before the Magistrate who had issued the order. (Section 16)

*(For further details, please refer to chapter 2(E) of this handbook.)*

**ANNEXURE-I****Conditions for Engaging a Child as an Artist (Rule 2C, CALPRA Rules)**

S.N.	Conditions	Explanation
1	Duration of work and provision of rest	No child shall be allowed to work for more than 5 hours in a day, and for not more than 3 hours without rest.
2	Permission from District Magistrate and furnishing of undertaking	Any producer of any audio-visual media production or any commercial event involving the participation of a child, shall involve a child in participation only after obtaining the permission from the District Magistrate of the district where the activity is to be performed, and shall furnish to the District Magistrate before starting the activity an undertaking in Form C and the list of child participants, consent of parents or guardian, as the case may be, name of the individual from the production or event who shall be responsible for the safety and security of the child, and ensure that all screening of his films and television programmes shall be made with a disclaimer specifying that if any child has been engaged in the shooting, then, all the measures were taken to ensure that there has been no abuse, neglect or exploitation of such child during the entire process of the shooting.
3	Validity and content of the undertaking	The undertaking shall be valid for 6 months and shall clearly state the provisions for education, safety, security and reporting of child abuse in consonance with the guidelines and protection policies issued by the Central Government from time to time for such purpose including: <ul style="list-style-type: none"> <li>i. ensuring facilities for physical and mental health of the child</li> <li>ii. timely nutritional diet of the child</li> <li>iii. safe, clean shelter with sufficient provisions for daily necessities; and</li> </ul>

3	Validity and content of the undertaking	iv. compliance to all laws applicable for the time being in force for the protection of children, including their right to education, care and protection, and against sexual offences.
4	Facility for education & number of days for which child can work	Appropriate facilities for education of the child to be arranged to ensure that there is no discontinuity from his lessons in school and no child shall be allowed to work consecutively for more than 27 days.
5	Appointment of caretaker	One responsible person should be appointed for maximum of five children for the production or event, to ensure the protection, care and best interest of the child.
6	Investment of portion of earning in child's name	At least 20% of the income earned by the child from the production or event should to be directly deposited in a fixed deposit account in a nationalised bank in the name of the child which may be credited to the child on attaining majority.
7	Will of the child	No child shall be made to participate in any audio-visual and sports activities including informal entertainment activity against his will and consent.

**ANNEXURE-II****Composition of the District Task Force (Rule 17C)**

1	Chairperson	District Magistrate
2	Secretary	Nodal officer specified by the DM as per Rule 17C
3	Member	Inspector appointed under Section 17 of the Act
4	Member	Superintendent of Police of the district
5	Member	Additional District Magistrate
6	Member	Assistant Labour Commissioner (Central)
7	Members	Two representatives each from a voluntary organisation involved in rescue and rehabilitation of employed children in the district on rotation basis for a period of two years
8	Member	A representative of the District Legal Services Authority to be nominated by the District Judge
9	Member	A member of the District Anti-trafficking Unit
10	Member	Chairperson of the Child Welfare Committee of the District
11	Member	District Child Protection Officer
12	Member	District Education Officer
13	Member	Any other person nominated by the District Magistrate

**Additional Reading Material**

1. Role of District Administration in Preventing and Combating Human Trafficking by Dr. P.M. Nair, published by Centre for Child Rights, National Law University, Odisha, 2017.



## THE ROLE OF POLICE - INTRODUCTION

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**C**rime against children has significantly risen in the recent years. It includes sexual abuse, trafficking, employment of children in contravention to the labour laws, cruelty, child marriage, and cyber crime, among other offences. Many incidents of exploitation of children go unreported. These crimes against children may leave

a life-long adverse impact on them. They are vulnerable due to their young age and dependence on adults and therefore, their rights needs to be protected. Police generally being the first responder and law enforcing agency has a crucial role to play in protecting children along with preventing and investigating crimes committed against them. The Superintendent of Police (SP) by virtue of being at the helm of affairs of Police Administration in a District can significantly contribute towards addressing violence against children. The positive experience of children with police exhibiting child friendly attitude can lead to reduction of trauma, their increased trust in the criminal justice system and better cooperation from them during the investigation.

### LEGAL FRAMEWORK

Provisions of important Acts/Rules and Court judgments which are specific to the subject matter of various chapters (Chapter 2 B to Chapter 2 J) on 'Role of Police' (like child sexual abuse, child marriage, child trafficking, and child labour) have been mentioned in respective chapters of this handbook. For example, Provision of Prohibition of Child Marriage Act, 2006 is specifically applicable to Chapter 2 (G) and hence has been incorporated in chapter 2(G) However, certain legal aspects of general importance which are relevant to all chapters (like determination of age, disclosure of identity of child, witness protection, etc), have been provided in this chapter instead of repeating them in all such chapters.

## International Convention

The United Nations Convention on the Rights of the Child (UNCRC) prescribes various rights of children. It was ratified by India on 11th December 1992.

## Constitutional Provisions

Article 15	The State shall not discriminate against any citizen. Nothing in this Article shall prevent the State from making any special provisions for women and children.
Article 21 A	The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.
Article 23 (1)	Traffic in human beings and begar and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
Article 24	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.
Article 39(e)	The state shall ensure that the health and strength of workers, men and women and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
Article 39(f)	The state shall ensure that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.
Article 45	The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

## **DEFINITION OF 'CHILD'**

With different legislations relating to children, the definition child also varies. Given below are the definitions of child in various Acts:

### **Juvenile Justice (Care & Protection of Children) Act, 2015**

A child is any person who has not completed eighteen years of age.

### **Prohibition of Child Marriage Act, 2006**

A child is a person, if a male, has not completed 21 years of age and if female, has not completed eighteen years of age.

### **The Immoral Traffic (Prevention) Act, 1956**

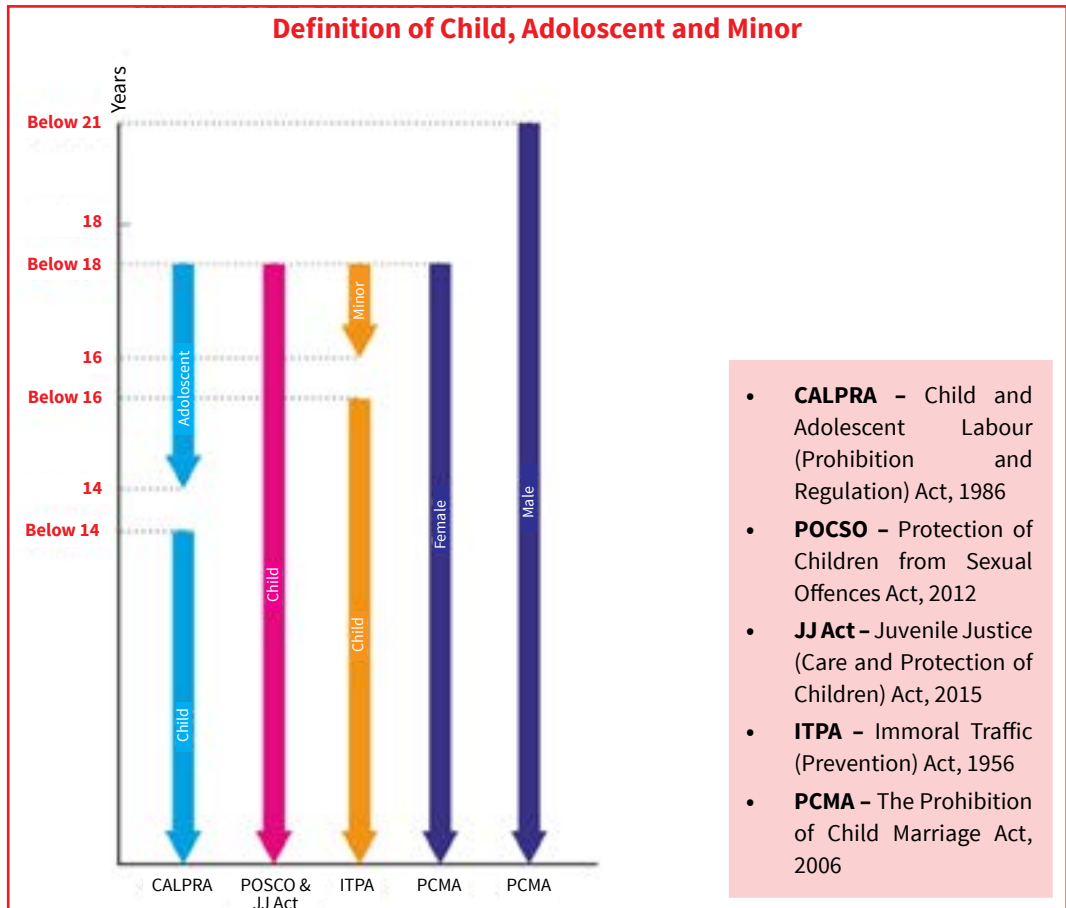
A child is a person who has not completed 16 years of age. This Act also mentions the term 'minor' who is a person who has completed the age of 16 years but has not completed age of 18 years.

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

There is a use of two terms i.e., child and adolescent. A child is any person who has not completed 14 years of age and an adolescent is a person who has completed 14 years of age but is below 18 years of age.

### **Protection of Children from Sexual Offences, 2012**

Any person who has not completed 18 years of age is a child.



## PROVISIONS UNDER IPC FOR CHILDREN

Provision under IPC and CrPC meant for women are also be applicable to girl children as a female of any age is defined as a woman in the IPC. Thus, the term ‘women’ also includes children (female) who have not completed 18 years of age. Some of the important provisions under IPC which are relevant to child protection are given below:

### Section 166A: Public Servant Disobeying Directions under Law

#### Whoever being a Public Servant,

- a. knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

- b. knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- c. fails to record any information given to him under Sub-Section (1) of Section 154 of the Code of Criminal Procedure, 1973, in relation to cognisable offence punishable under Section 326A, Section 326B, Section 354, Section 354 B, Section 370, Section 370A, Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB, Section 376E or Section 509 of IPC.

***shall be punished with rigorous imprisonment for a term not less than 6 months but which may extend to 2 years, and shall also be liable to fine.***

Thus, it is clear from the reading of Section 166A IPC that If any police officer calls any woman who is a victim or witness to police station, then such police officer may be liable for punishment under Section 166A (a). This provision would also apply if the police officer calls a victim of POCSO offence to police station for recording the statement .

Similarly, if any police officer who intentionally does anything during investigation which adversely affects the quality of investigation, diminishes or ruins prospects of conviction, then such officer commits an offence under Section 166A (b). This would also include neglecting or not following procedure prescribed by law relating to search, seizure, examination of witnesses, arrest, TIP, collection of evidences including expert opinion, etc. Thus, the police officers may be booked for botching up/sabotaging investigation under this provision. This provision would also apply in case a police officer does not follow relevant procedure prescribed in JJ Act, 2015 or POCSO Act, 2012.

If an Officer-in-Charge/SHO of a police station fails to register a case on the basis of FIR which alleges commission of an offence relating to human trafficking; acid attack; outraging modesty of a woman (molestation); rape; assault or use of criminal force to woman with intent to disrobe or insulting the modesty of woman, then such officer commits an offence under Section 166A (c).

### **Section 166B IPC:**

The in-charge of a hospital, public or private, contravening the provision of Section 357C\*, CrPC is liable for punishment with imprisonment up to one year, or with fine, or with both.

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*\*All hospitals whether public or private have to provide first aid or medical treatment free of cost to victims of acid attack and rape. All the hospitals have to immediately inform the police of such incident.*

### **Section 82 IPC: Act of a child under seven years of age**

Nothing is an offence which is done by a child under seven years of age.

### **Section 83 IPC: Act of a child above seven and under twelve of immature understanding**

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

## **PROVISIONS UNDER CrPC**

**Section 46(4) CrPC:** No woman can be arrested after sunset and before sunrise. A woman can be arrested during this period under exceptional circumstances after the woman police officer, by making a written report, obtains prior permission of the Judicial Magistrate of the First Class.

**Section 100(3) CrPC:** Only another woman can search a woman with strict regard to decency.

**Section 154(1) CrPC:** If information about commission of certain offences (acid attack and sexual offences) is given by a victim woman, then such information has to be recorded by a woman police officer or any woman officer. If the woman who is a victim of sexual offences is temporarily or permanently, mentally or physically disabled, then such information has to be recorded by a police officer at the residence of the person seeking to report such offence or at convenient place of her choice, in the presence of an interpreter or a special educator. The recording of such information has to be videographed.

**Section 157(1) CrPC:** In relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim, or in the place of her choice, and as far as practicable, by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

**Provision to Section 160(1) CrPC:** No male person under 15 or above 65 years of age; a mentally or physically challenged person or a woman is required to attend at any place other than the place where such person or woman resides.

The violation of this provision may attract punishment under the provision of Section 166A (a) IPC.

Thus, any woman who is a victim or a witness cannot be called to a police station.

**Provision to Section 161(3) CrPC:** The statement of a woman victim of sexual offences has to be recorded by a woman police officer or any woman officer.

### THE RIGHT OF PERSONS WITH DISABILITIES ACT, 2016

Many children who come in contact with police may be persons with disability and the provision of this Act is applicable to them. Some of the provisions relevant for police are as under:

**Section 7(4):** Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of,

- his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;
- the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;
- the right to free legal aid; and
- the right to file a complaint under the provisions of this Act or any other law dealing with such offence:

Provided that nothing in this Section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognisable offence.

**Section 12(1):** The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

It is mandatory that the police stations and other buildings of police covered under this provision have suitable structure/facilities to ensure that the persons with disability have no difficulty in accessing these buildings.

### WITNESS PROTECTION

The victims and witnesses need to be protected to prevent further victimisation and for the success of investigation. There was no law in India for victim protection. However, the Supreme Court, in its judgement dated 5th December, 2018 in 'Mahender Chawla & others Vs Union of India & Others' (Writ Petition (Criminal)156 of 2016) has approved '*Witness Protection Scheme 2018*'. The scheme has to be enforced in letter and spirit like the 'law' under Article 141/142 of the Constitution, till the enactment of suitable

Parliamentary and/or State Legislations on the subject. This scheme is applicable for witnesses of such offences which are punishable with death or life imprisonment or an imprisonment upto 7 years and above and also offences punishable under Sections 354, 354A, 354B, 354C, 354D and 509 of IPC.

The salient features of the scheme are as under:

- a. **‘Competent Authority’** means a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary.
- b. **‘Witness Protection Application’** means an application moved by the witness in the prescribed form before a Competent Authority for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or IO/SHO/SDPO/Prison SP concerned and the same shall preferably be got forwarded through the Prosecutor concerned.
- c. On receipt of Witness Protection Application by the competent authority, **‘Threat Analysis Report’** is to be sought from the Head of the Police in the District. The report categorises the threat perception and also includes suggestive protection measures for providing adequate protection to the witness or his family. Witness Protection Order is passed by the competent authority on the basis of Threat Analysis Report.
- d. The overall responsibility of implementation of Witness Protection Order is on the **‘Witness Protection Cell’** which is a dedicated cell of State/UT police.
- e. Some of the **witness protection measures** to be implemented by police which may be ordered by competent authority are given hereunder:
  - i. Ensuring that witness and accused do not come face to face during investigation or trial;
  - ii. Monitoring of mail and telephone calls;
  - iii. Arrangement with the telephone company to change the witness’s telephone number or assign him or her an unlisted telephone number;
  - iv. Installation of security devices in the witness’s home such as security doors, CCTV, alarm, fencing etc;
  - v. Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
  - vi. Close protection, regular patrolling around the witness’s house;
  - vii. Escort to and from the Court and provision of Government vehicle or a



State funded conveyance for the date of hearing;

- viii. Allowing a support person to remain present during recording of statement and deposition.
- f. The investigating officer has to inform witness about the existence of Witness Protection Scheme and its salient features.
- g. All the expenses incurred during the implementation of the witness protection order passed by the competent authority has to be met from '*Witness Protection Fund*'

*(For further details, the Supreme Court Judgement and chapter 8 of this handbook may be referred)*

### **FREE LEGAL AID AND COMPENSATION**

As per the Legal Services Authority Act, 1987 (Section 12), all women and children are eligible for free legal aid. Similarly victims are also entitled for compensation including interim compensation as per provision of CrPC, Supreme Court Judgments, POCSO Act, victim compensation scheme of the state etc. It is also the responsibility of police to inform the women, children, victims etc. about their entitlements. The police officers should also extend necessary assistance in accessing free legal aid and compensation. The District Legal Service Authority (DLSA) has to be informed through Para Legal Volunteers (PLV) (who are deputed by DLSA to police stations) about the individual cases requiring free legal aid and compensation.

*(For further details, refer to chapter 7 on Legal Services Authorities and Victim Compensation Scheme of the handbook)*

### **REHABILITATION AND RE-INTEGRATION**

Rehabilitation of victims is a crucial intervention in addition to prevention, protection and prosecution. Rehabilitation and re-integration is primarily the responsibility of the Department dealing with women and children. The police officers should coordinate with the Department for the purpose of rehabilitation. In the district level, District Child Protection Unit (DCPU) may be contacted for this purpose.

*(For further details please refer to chapter 5 of the handbook)*

### **ROLE OF SUPERINTENDENT OF POLICE AND OTHER SENIOR POLICE OFFICERS**

#### **A. Training and Sensitisation**

- i. It is desirable that the SP and other senior officers of district police discuss matters concerning child protection during crime review, crime conferences

and during their visits to police stations so that awareness can be generated among police personnel. As such, it is important that the SP accords priority to issues concerning children and creates awareness on the role of police in various legislations pertaining to child protection.

- ii. The SP of a district needs to make sustained efforts to see that the knowledge, skills and attitude of the police officers are continuously upgraded. Providing reading materials, organising short training programmes at various levels in the district and sending the officers for trainings, which are conducted outside the district, are necessary for this purpose. The capacity building of the field level police officers who come in direct contact with children who are either victim of exploitation or in conflict with law would go a long way in serving the cause of rights of children. They should be aware of the new legislations and amendments pertaining to children.
- iii. The sensitisation of police personnel particularly at police station level is necessary so that they are well informed about their law bound duties and show empathy, sensibility, sensitivity, no judgment, and accountability in preventing and responding to various instances of exploitation, abuse and neglect of children.
- iv. It is also very important for a field level officer to understand that crime against children is a very serious matter which strikes at the root of fundamental rights of the children.

## **B. Awareness Generation**

- i. Creating awareness is a pre-requisite for prevention of crime. The SP has to ensure that the awareness generation measures target the society in general and vulnerable sections in particular as police has considerable opportunity for interaction with members of public. Awareness may be generated through all possible forum including Nagarik Samittees, Village Defence Parties, Police-Public meetings, etc. Innovative methods involving use of technology like social media and bulk SMS may also be used for this purpose.
- ii. Police officers may visit schools as far as possible and interact with teachers and children. Issues of child protection may be discussed with them during such visits.

## **C. Synergy and Coordination**

- i. Harmony and coordination among all stakeholders is necessary to bring in synergy. The SP is required to take steps to ensure coordination among various Departments of the Government including the Department of Health & Family Welfare; Department of Education; Department dealing with children, Department of Labour and District Legal Services Authority, Child Welfare Committees, Juvenile

Justice Board and District Child Protection Unit for ensuring a coordinated and collaborative approach towards protection and rehabilitation of children.

- ii. Police should also build alliance with media and advocacy groups; business and corporate houses; training and research institutions and with the society for serving the cause of children in difficult circumstances.
- iii. It is highly desirable that the SP maintains inter-district and inter-state coordination with his/her counterparts either directly or through concerned Nodal Officers.

#### **D. Investigation**

- i. Investigation conducted by the police should be speedy, professional and free from lacunae so that it can stand scrutiny during trial.
- ii. The SP can also take an initiative to make child-friendly spaces where children will feel at home to share their problems and feedback. Such spaces may create conditions for eliciting cooperation from children during investigation.

#### **E. Child Friendly Policing**

Child friendly policing has three aspects, i.e., (i) child friendly behaviour/treatment by police officers while dealing with children; (ii) the infrastructural aspects/environment which includes child friendly corners/police stations and (iii) child friendly practices and processes.

##### **Child Friendly Behavior**

The police at all times while dealing with children needs to exhibit child friendly approach.

*(For further details, please refer to chapter 2 (B) on Juvenile Justice (Care & Protection of Children) Act, 2015)*

##### **Child Friendly Corners**

SPs should create Child Friendly Corners in as many Police Stations as possible in their jurisdiction. The Child Friendly Corner should have a separate entrance\* if located in the PS building. Other facilities should include separate toilets and drinking water. The furniture of the Child Friendly Corner should be child-friendly. Toys and playing articles may be kept for making the ambience engaging for the child. A rack containing books of interest for children like comics, drawing books etc. should be kept. Moreover, the painting on the ceiling and walls of the Child Friendly Corner should contain pictures of animals, cartoon characters, etc. which catch the fancy of the children. Installation of CCTVs may be considered wherever feasible. The

idea behind setting up such corner is to make the child feel comfortable rather than being overawed by the ambience of a police station. These corners will prevent the children from witnessing criminals; lock ups, interrogation, etc. which are typical of a police station. Guidelines for establishment of 'Child Friendly Police Stations' have been circulated by NCPCR vide its letter dated 14.06.017.



#### **F. Advisory on Crime Against Children**

An '**Advisory on Crime against Children**' dated 14th July, 2010 has been issued by Ministry of Home Affairs (MHA), Govt. of India. The details have been provided at *Annexure II*.

## STATUTORY BODIES AND STRUCTURES DEALING WITH CHILD PROTECTION

### National Commission for Protection of Child Rights (NCPCR)

It is a statutory body established under the Commission for Protection of Child Rights (CPCR) Act, 2005. This commission is under the administrative control of the Ministry for Protection of Women & Child development, Government of India. The Commission consists of a chairperson and six members who are well versed in child welfare. At least two members should be women. The sole purpose of this commission is to ensure that all laws, policies, administration mechanisms etc. are in sync with the Child Rights perspective cherished by the Constitution of India and the United Nations Convention on Child Rights, 1989. The Commission may inquire into complaints and take *'suo motu'* notice of matter relating to non-implementation of laws providing for protection and development of children.

### State Commission for Protection of Child Rights (SCPCR)

The State Commissions for Protection of Child Rights are meant to be established in each State as per the provisions of the Commissions for Protection of Child Rights Act, 2005. These Commissions are mandated to protect, promote and monitor child rights in each state. The composition of SCPCR is same as NCPCR. The State Commission is required to submit an annual report to the state government as well as special reports when an issue needs immediate attention. The functions of the Commission are the same as those of National Commission for Protection of Child Rights.

### National Human Rights Commission (NHRC)

It is a statutory autonomous body created on 12 October, 1993 by the Protection of Human Rights Act, 1993. The National Human Rights Commission is responsible for protecting and promoting the human rights as defined in the Act as 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.'

### State Human Rights Commission (SHRC)

The Protection of Human Rights Act, 1993 provides for the creation of State Human Rights Commission at the State level. SHRCs have similar responsibilities as those of the NHRC.

These Commissions can enquire into human right violations that are covered by the subjects in the State List and Concurrent List of the Constitution of India.

## JUVENILE JUSTICE COMMITTEES OF THE SUPREME COURT AND THE HIGH COURTS\*

The genesis of the Juvenile Justice Committees of the Supreme Court and the High Courts can be traced to the resolutions passed by the Chief Justices' Conference from 2006 to 2016. The Resolutions of 2006, 2009, 2013, 2015, and 2016 in varying degrees, urged Chief Justices of all High Courts to nominate a High Court Judge to oversee the conditions and functioning of the institutions created under the (erstwhile) Juvenile Justice (Care and Protection of Children) Act of 2000, under the broad mandate of overseeing the juvenile justice system. The 2013 Chief Justices' Conference specifically resolved that the Juvenile Justice Committee, as had been set up in the Delhi High Court, under the JJ Act of 2000, be set up in all High Courts to monitor the implementation of the provisions of the Act in their true spirit.

The Supreme Court Committee on Juvenile Justice (SCC-JJ) was subsequently set up in August 2013 to ensure the effective implementation of the (erstwhile) JJ Act of 2000.

The juvenile justice committees of the Supreme Court and the High Court's play crucial role in the matters of juvenile justice and child protection.

## CHILD RIGHTS

Child Rights include the children's rights adopted in the United Nations convention on the Rights of the Child on the 20th November 1989 and ratified by the Government of India on the 11th December 1992. (*Section 2(b) Commission for Protection of Child Rights Act, 2005*)

The United Nations Convention on Rights of the Children\*\* defines the child as a person under 18 years of age. The UN Convention consists of 41 Articles, each of which details a different type of right. A common approach is to group these Articles together under the following themes:

- 1. Survival Rights:** include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.
- 2. Development Rights:** include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
- 3. Protection Rights:** ensure children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment;

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\*Source: Guiding Framework for Juvenile Justice Committees of High Court

\*\*<https://www.childrights.ie/childrights-ireland/un-convention-rights-child>

protection and rehabilitation for children who have suffered exploitation or abuse of any kind.

4. **Participation Rights:** encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their capacities develop, children should have increasing opportunity to participate in the activities of society, in preparation for adulthood.

### SUPREME COURT JUDGMENTS

The Supreme Court in its judgment dated 9th February 2018 in Writ Petition (Civil) 473/2005 (*Sampurna Behura Vs. Union of India*) has issued following directions which are relevant for police:

1. It is important for the police to appreciate their role as the first responder on issues pertaining to offences allegedly committed by children as well as offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such Units and Officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.
2. The National Police Academy and State Police Academies must consider including child rights as a part of their curriculum on a regular basis and not as an isolated or sporadic event.

### Additional Reading Materials

1. A Handbook on the Legal Processes for the Police in respect of Crimes Against Children by Dr. P.M. Nair et.al, (published by Bureau of Police Research and Development).
2. Guidelines for establishment of 'Child Friendly Police Stations' circulated by NCPCR.
3. Supreme Court Order dated, 05-05-2017 in Writ Petition (Criminal) No-102/2017 (Exploitation of children in Orphanages in the State of Tamil Nadu Vs. Union of India & Others)
4. Supreme Court in its order dated 9th February 2018 in Writ Petition (Civil) 473/2005 (*Sampurna Behura vs. Union of India*)
5. Advisory on Crime against Children dated 14th July 2010 issued by Ministry of Home Affairs, Government of India.

**ANNEXURE I****List of Acts relating to Child Protection**

1	Indian Penal Code, 1860
2	The Code of Criminal Procedure, 1973
3	Indian Evidence Act, 1872
4	Juvenile Justice (Care & Protection of Children) Act, 2015
5	Protection of Children from Sexual Offences Act, 2012
6	The Immoral Traffic (Prevention) Act, 1956
7	The Prohibition of Child Marriage Act , 2006
8	The Child and Adolescent (Prohibition & Regulation) Act, 1986
9	The Right of Children to Free and Compulsory Education Act, 2009
10	The Medical Termination of Pregnancy, 1971
11	Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
12	Right of Persons with Disabilities Act, 2016
13	The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act 1989
14	Bonded Labour System (Abolition) Act,1976
15	The Transplantation of Human Organs Act, 1994
16	The Mental Health Care Act, 2017
17	The Indecent Representation of Women (Prohibition) Act, 1986
18	Young Person (Harmful Publication) Act, 1956



### Advisory by MHA on Crime against Children

1. Vigorously enforce all the existing legislations relating to crime against children i.e., Prohibition of Child Labour (Prohibition & Regulation) Act 1986, Juvenile Justice (Care & Protection of Children) Act 2000 (as amended in 2006), Child Marriage Prohibition Act, 2006, Immoral Traffic (Prevention) Act, 1956, Information Technology Act, 2000 (as amended in 2008) and relevant sections of IPC.
2. Sensitise the law enforcement machinery, i.e., the police as well as other functionaries of the criminal justice system, towards crime against children by way of well-structured training programmes. Such training programmes, including inputs on Juvenile Justice (JJ) and Human Rights (HR), may also be incorporated in the syllabi of various Police Training Academies at all levels including those for Constables, Sub-Inspectors and Deputy Superintendents of Police. Assistance of Bureau of Police Research and Development (BPR&D) as well as National Institute of Public Cooperation and Child Development (NIPCCD) could be taken for this purpose.
3. Set up exclusive 'Crime against Women/Children' desks in each police station. There should be no delay, whatsoever, in registration in of FIRs in all cases of crime against children. All out efforts should be made to apprehend all the accused named in the FIR immediately so as to generate confidence in the victims and their family members. The administration and police should play a more proactive role in detection and investigation of crime against children and also ensuring that there is no under reporting.
4. Cases of crime against children should be thoroughly investigated and charge sheets against the accused persons should be filed within three months from the date of occurrence without compromising on the quality of investigation. Proper supervision of such cases should be ensured from recording of FIR to the disposal of the case. Speedy investigation should be conducted in heinous crimes like rape, murder, etc. The medical examination of rape victims should be conducted without delay.
5. Steps may be taken not only to tackle such crimes but also to deal sensitively with the trauma ensuing the crime. Empanelled professional counselors may provide counseling to the victim as well as to the family.
6. Ensure all steps for improving the safety conditions in schools/institutions, public transport used by students, children's parks/play grounds, residential localities/roads etc. Crime prone areas should be identified and a mechanism be put in place to monitor infractions in such areas for ensuring the safety and security of students, especially girls.

For this purpose the following steps should be taken:

- Increase the number of beat constables;
  - Increase the number of police help booths/ kiosks, especially in remote and lonely stretches;
  - Increase police patrolling, especially during nights;
  - Posting police officers, especially women, fully equipped with policing infrastructure in crime-prone areas in adequate number.
7. For improving general awareness about legislations relating to crime against children and mechanism in place for safety and protection of the children, the following steps may be considered:
    - Creating awareness through print and electronic media;
    - Involving the community at large in creating and spreading such awareness;
    - Exploring the possibility of associating NGOs working in the area of combating crime against children and other vulnerable sections of the society;
    - Developing a community monitoring system to check cases of violence, abuse and exploitation against children and take necessary steps to curb the same.
  8. The local police must be advised to collaborate with the 'Childline-1098 Service' (which is an emergency service being operated by the Childline India Foundation (CIF) all over the country catering to the needs of children in emergency situations) and NGOs for mutual help and assistance wherever and whenever required.
  9. The juvenile offenders should be dealt with only in accordance with law through proper implementation of the Rules under the Juvenile Justice (Care & Protection of Children) Act, 2000 (as amended in 2006), as these contain the procedures and requirements in detail for dealing with children in conflict with law as well as children in need of care and protection.
  10. All efforts must be made to stop child labour and exploitation of children in all its forms and manifestations. Law enforcement agencies must extend all necessary cooperation to the State Labour Department in the cases of violation of Prohibition of Child Labour (Prohibition and Regulation) Act 1986.
  11. To save the children from the abuse/crime of child marriage, the State Government must appoint Child Marriage Prohibition Officers as required under the Prohibition of Child Marriages Act, 2006. They should also set up State Commissions for Protection of Child Rights in accordance with the Commissions for Protection of Child Rights Act 2005 (CPCR Act).

## THE ROLE OF POLICE - THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

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**T**he Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) was enacted after repealing the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act, 2000). The JJ Act, 2015 is the primary legal framework for juvenile justice in India. The Act provides for a comprehensive provision

for children in conflict with law (CCL) and children in need of care and protection (CNCP).

The State Governments are required to notify their own rules to carry out the purposes of this Act. The Model Rules shall apply to the states until they frame and notify their own rules. The JJ (Care and Protection of Children), Model Rules, 2016 have been framed by the Central Government. Thus the Model Rules would be applicable to states till such date the State Government notifies their own rules. (**Section 110**) The SPs are advised to check whether the their State Governments have notified their own rules.

### DEFINITIONS

#### Child in Need of Care & Protection (CNCP)

A child in need of care and protection is any person below the age of 18 years, working in contravention of Labour laws or without a home or an injured/exploited/abused or neglected child or a child without parent/guardian or a child missing or runaway or a child who is orphan/abandoned/surrendered etc. (*Definition of CNCP is provided in Annexure I*)

However, as per the Supreme Court's judgment in *Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Ors*, on 5 May 2017, it was

held that the definition of CNCP is illustrative and protection under the Act should be extended to all children requiring State Care and Protection.

### **Child in Conflict with Law**

Any person below the age of 18 years alleged or found guilty of committing an offence. (*Section 2(13) JJ Act 2015*)

### **Child Welfare Committee (CWC)**

A Committee constituted in every district by the State Government for exercising powers in relation to children in need of care and protection. (*Section 27(1)*)

### **Juvenile Justice Board (JJB)**

A Board constituted in every district by the State Government to deal with cases relating to children in conflict with law. (*Section 4(1)*)

### **Special Juvenile Police Unit (SJPU)**

A unit of police force of a district or a city designated to deal with cases relating to children. (*Sections 2(55) & 107, JJ Act, 2015*)

### **Child Welfare Police Officer (CWPO)**

An officer designated to deal with matters relating to children. (*Section 2(18) JJ Act 2015*)

### **Child Care Institution (CCI)**

CCI includes Children's Home, Open Shelter, Observation Home, Special Home, Place of Safety, Specialised Adoption Agency and a fit facility recognised under the Act for providing care and protection to children who are in need of such services. (*Section 2(21), JJ Act, 2015*)

## **TYPES OF CARE**

### **Non-Institutional Care**

Care and protection provided to a child outside a formal institution

#### **A. Foster Care**

'Placement of a child, by the (CWC) for the purpose of alternate care in the domestic environment of a family, other than the child's biological family, that has been selected, qualified, approved and supervised for providing such care'. (*Section 2(29), JJ Act, 2015*)

## B. Group Foster Care

‘Family like care facility for children in need of care and protection who are without parental care, aiming on providing personalized care and fostering a sense of belonging and identity, through family like and community based solutions’. (*Section 2(32) JJ Act, 2015*)

## C. Sponsorship

The ‘provision of supplementary support, financial or otherwise, to the families to meet the medical, educational, and developmental needs of the child’. (*Section 2(58), JJ Act, 2015*)

## D. Adoption

The ‘process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adopted parents with all rights, privileges and responsibilities that are attached to the biological child’. (*Section 2(2)*)

Adoption is a process for legally changing parental responsibilities from biological parents or the persons or institutions that act as caregivers of children to the adoptive parents, thereby providing the child care and warmth of a family. As per the Adoption Regulations, 2017, any child below 18 years of age, who is an orphan or abandoned or surrendered, is eligible for adoption. However, the adoption can only take place in compliance with the procedure laid under JJ Act, JJ Model Rules and Adoption Regulation 2017, and non-compliance with the procedure is considered as an offence under Section 80 of JJ Act, 2015. For the process of adoption, the CWC has to declare a child legally free for adoption and the Court needs to issue an adoption order. Adoption Regulations, 2017 prescribes the procedure in details for all aspects of adoption.

## E. After Care

Any child leaving a CCI on completion of 18 years of age may be provided with financial support in order to facilitate child’s reintegration into the mainstream of the society. (*Section 46 JJ Act 2015*) The focus of After Care are as follows:

- a. After Care services are meant for persons who have completed 18 years of age, but not 21 years
- b. These services are both financial and non-financial in nature

- c. After Care services are meant for persons who have completed their stay in CCI on attaining 18 years of age
- d. Successful mainstreaming of young adults into society lies at the core of the After Care.

### **Institutional Care**

Institutional care and protection is provided to a child in an institution away from family. Such care may be provided in the following institutions:

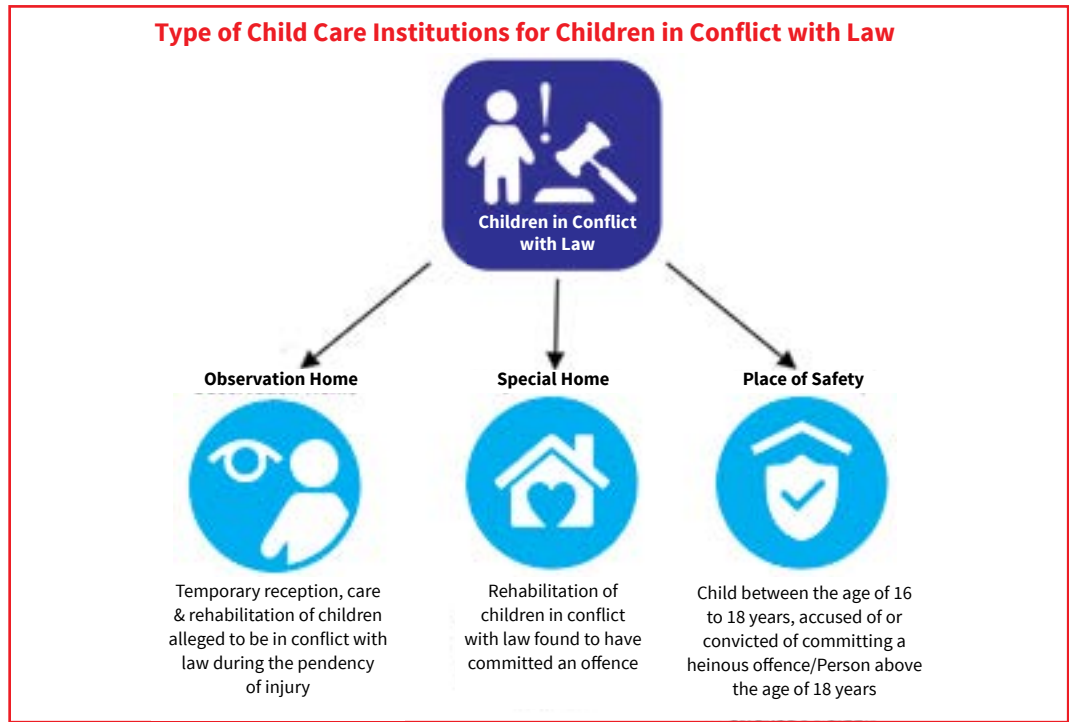
#### **A. For Children in Conflict with Law (CCL)**

**Observation Home:** Home established and maintained 'in every district or group of districts by a State Government, either by itself, or through a voluntary or Non-Governmental Organisation, '... for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act'. (*Section 47(1) JJ Act, 2015*)

**Special Home:** Home established and maintained in every district or group of districts by a State Government, either by itself or through a voluntary or Non-Governmental, for the purpose of 'rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board....' (*Section 48(1) JJ Act 2015*)

**Place of Safety:** Atleast one place of safety is to be setup by State Government in the State to place a person above the age of 18 years or child in conflict with law, who is between the age of 16 to 18 years and is accused of or convicted for committing a heinous offence. (*Section 49 JJ Act, 2015*)

The place of safety is also used in case of protective custody while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety. (*Section 9(4) JJ Act, 2015*)

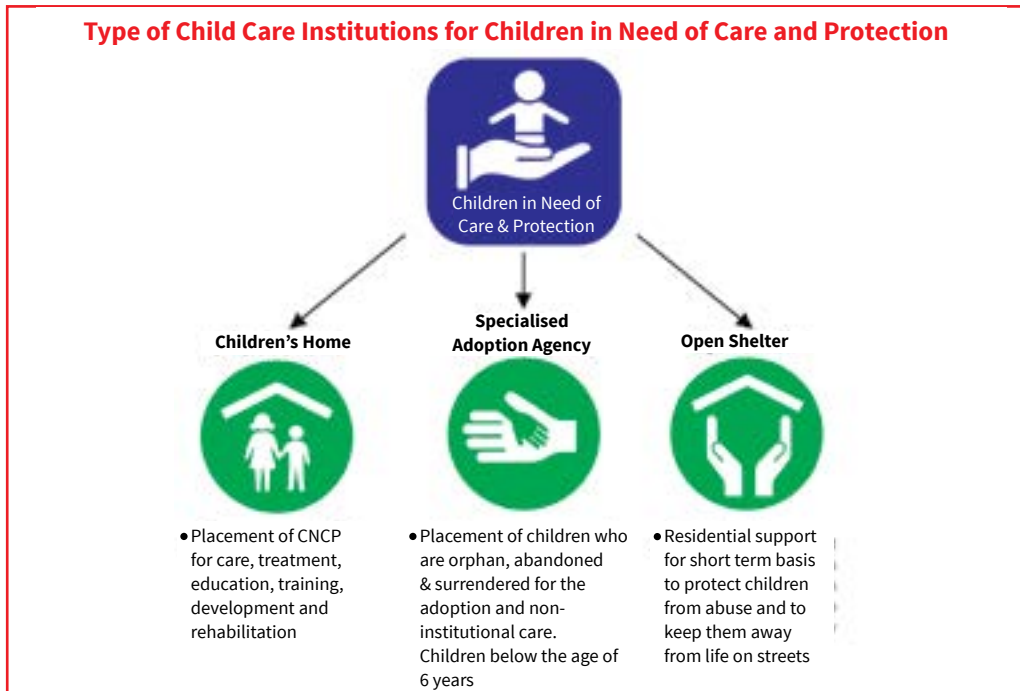


## B. For Children in Need of Care & Protection (CNCP)

**Children’s Home:** Home established and maintained ‘in every district or group of districts by a State Government, either by itself or through a voluntary or non-governmental organisation, for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation’. *(Section 50(1) JJ Act, 2015)*

**Open Shelter:** Home established and maintained in every district or group of districts by a State Government, either by itself or through a voluntary or non-governmental organisations, to ‘function as a community based facility for children in need of residential support, on short term basis with the objective of protecting them from abuse or weaning them, or keeping them, away from a life on the streets’. *(Section 43 JJ Act, 2015)*

**Specialised Adoption Agency (SAA):** Institution or organisation recognised by the State Government ‘for the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care’. *(Section 65(1) JJ Act, 2015)*  
All children below the age of six, who are orphan, abandoned, surrendered or appear to be abandoned, should be placed by the CWC in SAA, wherever available. *(Section 36(1) JJ Act, 2015)*



### C. For CCL and CNCP

**Fit Facility:** Facility run by a Government Organisation or a registered voluntary or NGO, prepared to temporarily own the responsibility, for a specific purpose, of a child in need of care and protection or a child in conflict with law. Such facility should be recognised as fit for the said purpose by the CWC or by the JJB, as the case may be. *(Section 2(27) JJ Act 2015)*

**Fit Person:** Any person prepared to own the responsibility of a child in need of care and protection or a child in conflict with law, 'for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose by the Committee or by the Board, to receive and take care of the child'. *(Section 2(28) JJ Act 2015)*



## LIST OF INSTITUTIONS, FUNCTIONARIES & AUTHORITIES UNDER THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

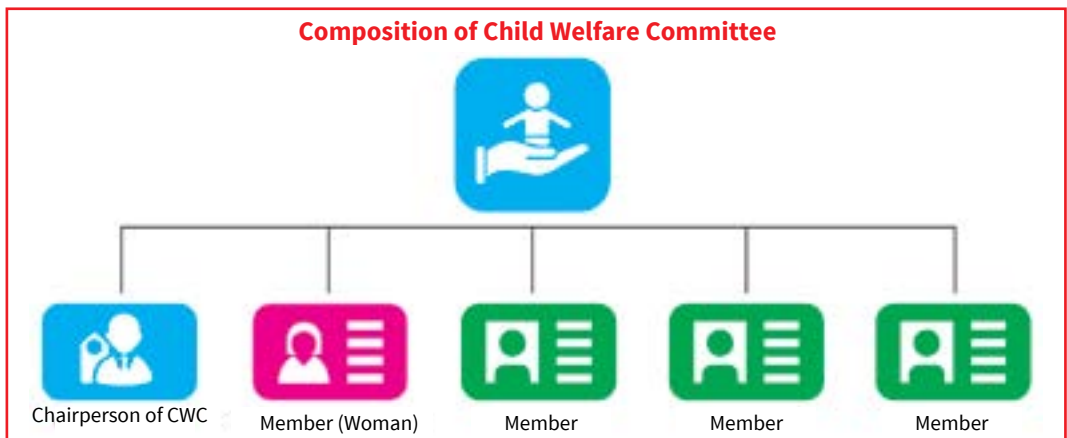
### Juvenile Justice Board (JJB)

According to Rule 3 & 4, JJ Model Rules, 2016 one or more JJB should be constituted in every district, which is headed by a Principal Magistrate who is a Judicial Magistrate of First Class along with two Social Worker Members, of which one should be a woman. All matters pertaining to children in conflict with law are dealt by the JJB.



### Child Welfare Committee (CWC)

For matters pertaining to children in need of care and protection, one or more CWC should be constituted in every district, consisting of a Chairperson and four other members, of whom at least one should be a woman. *(Section 27(1) and (2), JJ Act, 2015)*



### **District Child Protection Unit (DCPU)**

A unit established by the State Government in every district to implement the JJ Act, 2015 and other child protection measures in the district. The provision for setting up of DCPU is available in **Section 106 of JJ Act 2015**. District Child Protection Officer (DCPO) heads the DCPU.

### **State Child Protection Society (SCPS)**

The society is constituted at the State level to take up matters relating to children with a view to ensure the implementation of this Act, including the establishment and maintenance of institutions under JJ Act, notification of competent authorities in relation to children and their rehabilitation and coordination with various officials and non-official agencies. (**Section 106, JJ Act, 2015**)

It may be mentioned that a State Child Protection Society (SCPS) for the State and a District Child Protection Unit (DCPU) for the district are constituted by the State Government for implementation of various provisions of this Act including establishment and maintenance of institutions under this Act. The District Child Protection Unit (DCPU) is headed by District Child Protection Officer (DCPO) who reports to the SCPS and plays a pivotal role in implementation of the Act at the District level. Both SCPS and DCPU come under the Social Welfare Department / the department responsible for welfare of women and children.

### **Central Adoption Resource Agency (CARA)\***

Central Adoption Resource Authority (CARA) is a statutory body of Ministry of Women & Child Development, Government of India. It functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions.

### **State Adoption Resource Agency (SARA)**

A statutory body established by the State Government for promotion, facilitation, monitoring and regulation of the adoption programme in the state.

### **Child Welfare Police Officer (CWPO)**

A police officer not below the rank of Assistant Sub-Inspector, with aptitude, appropriate training and orientation, designated to exclusively deal with children who are either victim or perpetrators, in coordination with the police, voluntary and NGOs. (**Section 107(1) JJ Act 2015**). Every Child Welfare Police Officer is a member of SJPU.

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\*<http://cara.nic.in/>

### Special Juvenile Police Unit (SJPU)

The State Government in every district and city has to set up SJPU for coordinating police functions related to children. SJPU should be headed by an officer not below the rank of DSP or above and have two social workers as members having experience of working in the field of child welfare. One of the social worker has to be a woman. SJPU deals with all matters relating to children. SJPU also includes Railway Police.

The importance of setting up meaningful SJPUs which do not merely exist on paper has been amply highlighted in Supreme Court Order on 9th Feb, 2018 in Writ Petition (Civil) No. 473 of 2005. (*Sampurna Behura Vs. Union of India and Other*)

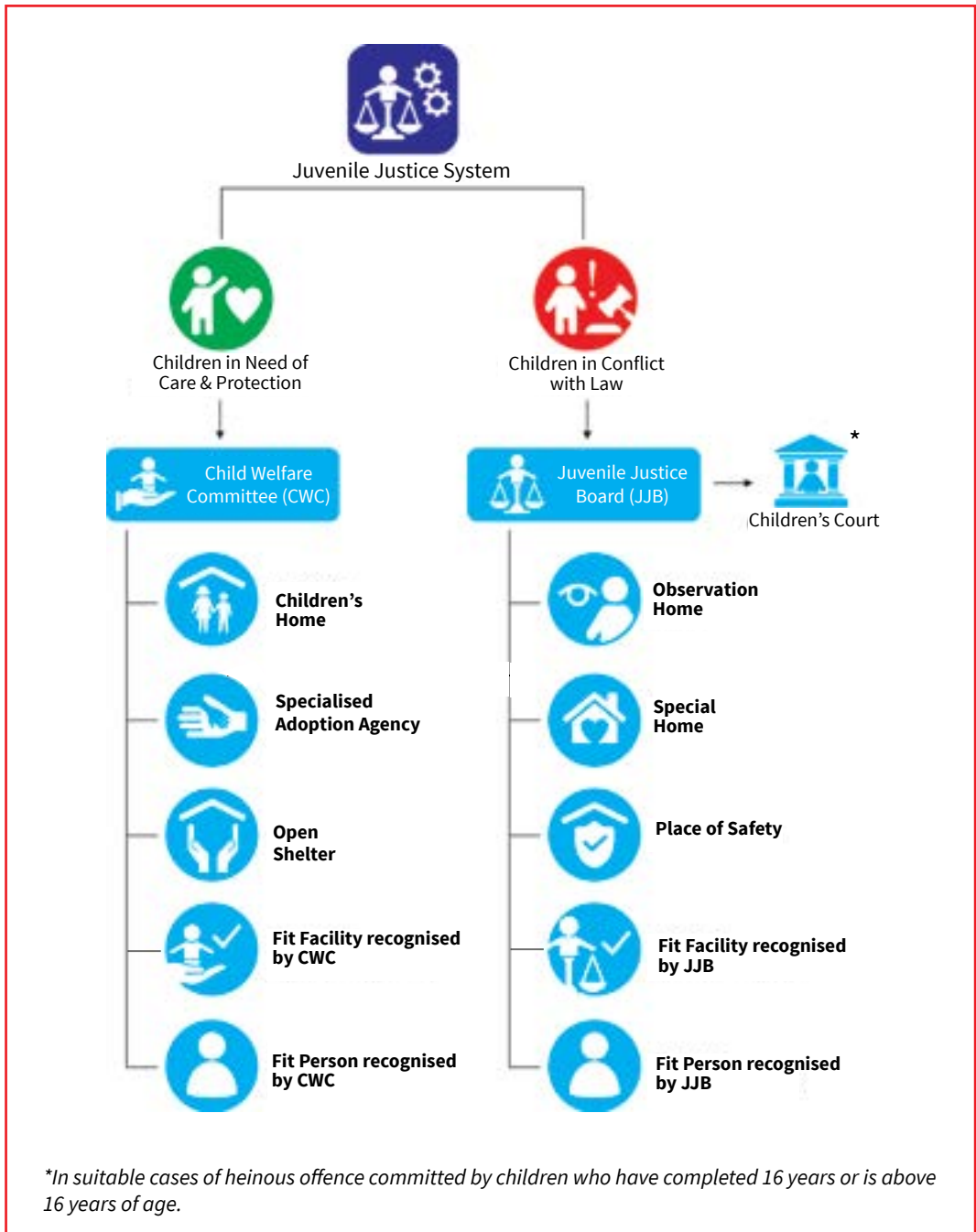
The Central Government shall constitute a Special Juvenile Police Unit for the Railway Protection Force or Government Railway Police at every railway station as per requirement and where a Special Juvenile Police Unit cannot be set up, at least one Railway Protection Force or Government Railway Police Officer shall be designated as the Child Welfare Police Officer. (*Rule 86(2) JJ Model Rules, 2016*)

#### Provision for Special Juvenile Police Unit in JJ Model Rules 2016 (Rule 86)

- a. The State Government shall constitute a Special Juvenile Police Unit in each district and city to co-ordinate all functions of police related to children.
- b. The Central Government shall constitute a Special Juvenile Police Unit for the Railway Protection Force or Government Railway Police at every railway station as per requirement and where a Special Juvenile Police Unit cannot be set up, at least one Railway Protection Force or Government Railway Police Officer shall be designated as the Child Welfare Police Officer.
- c. The Child Welfare Police Officers and other police officers of the Special Juvenile Police Unit shall be given, appropriate training and orientation to deal with matters concerning children.
- d. The transfer and posting of the designated Child Welfare Police Officers may be within the Special Juvenile Police Units of other police stations or the district unit.
- e. The police officer interacting with children shall be as far as possible in plain clothes and not in uniform and for dealing with girl child, woman police personnel shall be engaged.
- f. The Child Welfare Police Officer or any other police officer shall speak in polite and soft manner and shall maintain dignity and self-esteem of the child.
- g. Where questions that may lead to discomfort of the child are to be asked, such

questions shall be asked in tactful manner.

- h. When an FIR is registered for offence against a child, a copy of the FIR shall be handed over to the complainant or child victim and subsequent to the completion of investigation, copy of report of investigation and other relevant documents shall be handed over to the complainant or any person authorised to act on his behalf.
- i. No accused or suspected accused shall be brought in contact with the child and where the victim and the person in conflict with law are both children, they shall not be brought in contact with each other.
- j. The Special Juvenile Police Unit shall have a list of:
  - The Board and Child Welfare Committee in its due jurisdiction, their place of sitting, hours of sitting, names and contact details of Principal Magistrate and members of the Board, names and contact details of Chairperson and members of the Committee and the procedures to be followed before the Board and the Committee; and
  - Contact details of the Child Care Institutions and fit facilities in its due jurisdiction.
- k. The names and contact details of the Special Juvenile Police Unit or Child Welfare Police Officer shall be placed at a conspicuous part at the police stations, Child Care Institutions, Committees, Boards and the Children's Courts.
- l. The Special Juvenile Police Unit shall work in close co-ordination with the District Child Protection Unit, the Board and the Committee in the matters concerning the welfare of children within its jurisdiction.
- m. The Special Juvenile Police Unit may coordinate with the District Legal Services Authority to provide legal aid to children.



## ROLE OF THE POLICE

### When dealing with Children in Conflict with Law

#### Apprehension

- i. When police apprehends a CCL, the police has to immediately put such child under the charge of SJPU or CWPO. (*Section 10 JJ Act, 2015*)
- ii. CWO/SJPU has to inform the child promptly and directly of the charges leveled against the child through the child's parent /guardian and if a FIR is registered, copy of same has to be made available to the child or copy of the police report has to be given to parents or guardian. (*Rule 8(3) (iii) JJ Model Rules, 2016*)

#### When should a Child not be apprehended? (Rule 8 of JJ Model Rules 2016)

- i. Child may be apprehended if the child is alleged to have committed a heinous offence, unless it is in the best interest of the child. (*Proviso to Rule 8(1) JJ Model Rules*)
- ii. For all other cases involving petty and serious offences and cases where apprehending the child is not necessary in the interest of the child, the police or Special Juvenile Police Unit or Child Welfare Police Officer shall forward the information regarding the nature of offence alleged to be committed by the child along with his social back ground report in Form 1 to the Board and intimate the parents or guardian of the child as to when the child is to be produced for hearing before the Board. (*Proviso to Rule 8(1) JJ Model Rules, 2016*)

#### Recording of Information (Rule 8(1), JJ Model Rules, 2016)

- i. No First Information Report has to be registered except where the child allegedly commits a heinous offence, or when such offence is alleged to have been committed jointly with adult(s).
- ii. If FIR is not registered then the SJPU or the CWPO is required to record the information regarding the offence alleged to have been committed by the child in the General Dairy followed by report on Social Background Report of the child in Form 1 and circumstances under which the child was apprehended, wherever applicable, and forward it to the JJB before the first hearing.

### **Production before the Juvenile Justice Board**

When a child in conflict with law is apprehended by the police, such child shall be placed under the charge of Special Juvenile Police Unit or the designated Child Welfare Police Officer, who shall produce the child before the JJB without any loss of time within 24 hours, excluding the time required for the journey. *(Section 10(1) JJ Act, 2015)*

- i. In case the JJB is not sitting, the child alleged to in conflict with law may be produced before a single member of the Board. *(Section 7(2) JJ Act, 2015)*
- ii. In case the child alleged to be in conflict with law cannot be produced before the JJB or even before a single member due to the child being apprehended at an odd hour or distance, the child shall be kept by the CWPO in the Observation Home. *(Rule 9(6) JJ Model Rules, 2016)*
- iii. When the Board is not sitting, a child in conflict with law may be produced before an individual member of the Board. For the said purpose, one member of the JJB shall always be available or accessible to take cognisance of any matter of emergency and necessary directions required to deal with the emergency situation shall be given by such member to the SJPU or the local police of the district. *(Rule 6(8) JJ Model Rules, 2016)*
- iv. The Principal Magistrate shall draw up a monthly duty roster of the members who shall be so available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Committees, the District Child Protection Unit and the Special Juvenile Police Unit. *(Rule 6(8) JJ Model Rules, 2016)*

### **Protective Custody (Rule 69C, JJ Model Rules, 2016)**

Protective custody can be provided to a child in conflict with law during the pendency of inquiry by the JJB, duly signed by the JJB or Children's Court in Form 41, and the duration of stay of such child would be for a period as directed by the JJB or the Children's Court .

### **Overnight Protective Stay (Rule 69D of JJ Model Rules 2016)\***

- i. Wherein a child is found at an odd hour, to prevent an overnight stay at police station or any other unsuitable place, the child can be permitted to stay at CCIs for one night on an application seeking overnight protective stay of the child moved by the CWPO in writing to the receiving officer in Form 42.
- ii. The child will be handed over to the CWPO the next day at the time stated in the Form 42; however, such stay may be only after 20:00 hrs in the night and till 14:00 hrs on the following day.
- iii. In case the CWPO is not available to take the charge of the child at the designated time, the child shall be produced before the JJB/CWC concerned by the person-in-charge of the CCI, with a report stating such facts.

### **Social Background Report**

The CWPO shall record the social background of the child and circumstances of apprehending in every case of alleged involvement of the child in an offence in Form 1, which should be forwarded to Board. *(Rule 8(1) JJ Model Rules)*

### **Information and Communication**

When a child alleged to be in conflict with law is apprehended, the Child Welfare Police Officer or the SJPU shall as soon as possible after apprehending provide information to the following; *(Section 13(1) JJ Act, 2015)*

- i. Parent/guardian of such child, if found that the child has been apprehended along with the address of the Board where the child will be produced and the date and time when the parents or guardian need to be present before the Board. *(Rule 8 (2)(i) JJ Model Rules, 2016)*
- ii. The Probation Officer\*\* or if no probation officer is available, the Child Welfare Officer (CWO) to prepare and submit the Social Investigation Report within 2 weeks to the Board. *(Rule 8 (2)(ii) JJ Model Rules, 2016)*
- iii. A Child Welfare Officer\*\*\* or the caseworker to accompany the SJPU or CWPO while producing the child before the JJB within 24 hours of apprehension. *(Rule (8)(2)(iii), JJ Model Rules, 2016)*

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\*This provision is also applicable for Child in Need of Care and Protection (CNCP)

\*\*Probation Officer is an officer appointed by the State Government under the Probation of Offenders Act, 1958 or Legal-cum-Probation Officer appointed by the State Government under DCPU. *(Section 2(48), JJ Act, 2015)*

\*\*\*Child Welfare Officer is an officer attached to Children's Home *(Section 2(17), JJ Act, 2015)*



- iv. District Legal Service Authority for providing free legal aid to the child (*Rule 8(3)(vii), JJ Model Rules, 2016*)

### **Do's and Don'ts for the Police**

1. The Child Welfare Police officer has to be in plain clothes and not in uniform. (*Rules 8(4) JJ Model Rules 2016*)
2. The police officer shall not ask the child to sign any statement. (*Rule 8(3)(vi)*)
3. The police officer shall not compel the child to confess his guilt. (*Rule 8(3)(v)*)
4. The child shall be interviewed only at SJPU or at a child friendly premise or at a child friendly corner in the police station. The parents/ guardian may be present during the time of interview. (*Rule 8(3)(v)*)
5. The CWPO shall provide appropriate medical assistance, assistance of interpreter or a special educator or any other assistance that the child may require. (*Rule 8(3)(iv)*)
6. At the time of apprehension, the CWPO has to promptly and directly inform the child of the charges leveled against him/her, and if FIR is registered, a copy of the same or the police report shall be handed over to the child. (*Rule 8(3)(iii)*)
7. The police officer apprehending the child shall not hand cuff, chain or otherwise fetter the child and shall not use any force on the child. (*Rule 8(3)(ii)*)
8. Under no circumstances the child has to be sent to a police lock up and the police shall not delay the child being transferred to the CWPO of the nearest police station. (*Rule 8(3)(i)*)
9. 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 JJB, members of SJPU and Childline Services and contact details shall be prominently displayed in every police station. (*Rule 8(6)*)
10. The police officer apprehending a child alleged to be in conflict with law has to inform the District Legal Service Authority for providing free legal aid to the child. (*Rule 8(3)(vii) JJ Model Rule, 2016*)

## Final Report

In cases of heinous offences alleged to have been committed by a child who has completed 16 years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent/guardian of the child. *(Rule 10(5), JJ Model Rules, 2016)*

In case of petty or serious offence, the final report shall be filed before the board at the earliest and in any case not beyond the period of two months from the date of information to the police. However, in cases where it was not reasonably known that the person involved in an offence was a child, the Board may grant extension of time for filing the final report. *(Rule 10 (6) of JJ Model Rules 2016)*

## When dealing with Children in Need of Care and Protection

A child in need of care and protection has to be produced before the CWC, without any loss of time but within a period of 24 hours excluding the time necessary for journey. *(Section 31(1) JJ Act, 2015)*

## Other Important Roles of Police

### Child Friendly Corners

Superintendents of Police and other Police Officers should create Child Friendly Corners in as many Police Stations as possible in their jurisdiction. The Child Friendly Corner should have a separate entrance if located in the PS building. Other facilities may include separate toilets and running water.

*(For details refer to chapter 2 (A) of this handbook)*

### Training

Police officers handling children in conflict with law and children in need of care and protection need to undergo a 15 days training by the State Government *(Rules 89 JJ Model Rules 2016)*. The training programme shall include:

- Introduction of Juvenile Justice (Care & protection of Children) Act, 2015 and JJ Model Rules 2016
- Orientation on child welfare, care, protection and child rights
- Induction training of the newly recruited personnel

- Refresher training course and skill enhancement programmes, documentation and sharing of good practices
- Conferences, seminars and workshops

As per the Supreme Court's Order in *Sampurna Behrua Vs. Union Of India on 9 February, 2018*, the SLSA and NALSA should provide necessary training and orientation in phases to the police officers to function as a Child Welfare Police Officer.

### **Designation of Child Welfare Police Officers**

It has been observed that Child Welfare Police Officers often get transferred within or outside the district. There is also large-scale transfer of officers immediately before Assembly Elections or Parliamentary Elections as per the guidelines of Election Commission of India which causes significant dislocation. As a result, the trained CWPO may not be available in all Police Stations. The S.Ps may designate two or more officers above the rank of ASI as C.W.P.O. so that in case of transfer or absence of one CWPO, the other CWPO is available.

### **Fund for Police**

The State Government shall provide funds to the police or Special Juvenile Police Unit or the Child Welfare Police Officer or Case Worker or person for the safety and protection of children and provision of food and basic amenities including travel cost and emergency medical care to the child apprehended or kept under their charge during the period such children are with them. *(Rule 8(9) of JJ Model Rules 2016)*

The SP and other senior Police Officer should liaise with concerned authority for getting the fund.

## **ROLE OF JJB AND CHILDREN'S COURT WHEN DEALING WITH CCL**

### **Inquiry by the Board (Section 14(1) & (2) JJ Act 2015)**

When a child in conflict with law is produced before the JJB, it shall hold an inquiry, which shall be completed within a period of four months from the date of first production of the child before the JJB, unless the period is extended by the JJB for a maximum period of two more months having regard to circumstances of the cases and after recording the reasons in writing for such extension. The inquiry is conducted by the Board in cases of petty and serious offence and if heinous offence is committed by a child below the age of 16 years.

## **Procedure in case of heinous offences alleged to be committed by a child of 16 or above 16 years of age**

### **Preliminary Assessment by JJB\* (Section 15 JJ Act, 2015)**

If a child in conflict with law who has completed or is above 16 years of age, is alleged to have committed a heinous offence, the JJB shall conduct a preliminary assessment with regard to the child's mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. For such assessment the Board may take assistance of an experienced psychologist or psychosocial worker or other experts (**Section 15(1) JJ Act 2015**). The preliminary assessment conducted by the Board shall be disposed of within a period of 3 months (**Section 14(3) JJ Act 2015**).

### **Board itself disposes the matter after preliminary assessment**

It may be noted that the Board shall follow the procedure, as far as may be, for trial in summons case under the CrPC in cases of heinous offences alleged to have been committed by children above the age of 16 years, where the Board is satisfied on the preliminary assessment that the matter should be disposed of by the Board. (**Section 15(2) JJ Act, 2015**)

### **Board refers the matter to children's court after preliminary assessment**

If the Board is satisfied after preliminary assessment that the matter needs to be referred to Children's Court, in such case it would refer the matter to the Children's Court.

### **Role of Children's Court**

A Children's Court means a Court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the POCSO Act, 2012, wherever existing and where such Courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act. (**Section 2 (20) JJ Act, 2015**)

After receipt of preliminary assessment from the Board, the Children's Court may decide if there is a need for trial of the child as an adult. If the Children's Court decides that the child should not be tried as an adult, the Children's Court will conduct inquiry as the JJB and pass appropriate orders. (**Section 19(1), JJ Act, 2015**)

*(For further details chapter 8 of this handbook may be referred)*

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\*The preliminary assessment conducted by the Board is not a trial.

## OTHER PROVISIONS THE POLICE SHOULD BE AWARE OF

### Consequences of non compliance of JJ Act and Rules

Any officer/institution, statutory body, etc, who fails to comply with the provision of the JJ Act and Rules framed there under, the State Government may take action against such officer/institution, statutory body, etc. after due inquiry. (*Rule 93 JJ Model Rules, 2016*)

### Legal Services Clinic

The District Legal Services Authority has to establish legal services clinic inter-alia, in Juvenile Justice Boards for the purpose of providing free legal services to the children. (*NALSA (Legal Services Clinics) Regulation, 2011*)

### Presumption of Age (*Section 94(1) JJ Act, 2015*)

Where it is obvious to the CWC or JJB, based on the appearance of the child, that the person produced before them is a child, then the CWC or the JJB shall record such observation stating the age of the child as nearly as may be and proceed with inquiry.

### Determination of Age (*Section 94(2) JJ Act, 2015*)

If in any case, the JJB or the CWC has reasonable ground for doubt whether the person produced before it is a child or not, the JJB or CWC shall undertake the process of age determination, by seeking evidence, by obtaining:

1. The date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board, if available;
2. In absence of the above, the certificate issued by the corporation or a municipal authority or a panchayat;
3. Only in absence of the above (1) & (2), the age of the child shall be determined by an ossification test or any other latest medical age determination test on orders of the JJB or CWC.

### Juvenile Justice Fund

State Government may create a Juvenile Justice Fund for the welfare and rehabilitation of the children under Section 105, JJ Act, 2015, which shall be administered by the Department of Social Welfare or any other Department responsible for the implementation of the Act. The JJ Fund can also receive donation, voluntary contribution, or funds under CSR, which will be directly credited to the Fund.

The JJ Fund will meet the expense of travel for trial and restoration of children, including

the expense of escorting by the police and the expense of creating child friendly police stations. *(Rule 83, JJ Model Rules, 2016)*

### **Mandatory Reporting of a Child separated from Guardian**

Any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be. *(Section 32, JJ Act, 2015)*

Any person violating the above provision commits an offence under **Section 33** and shall be liable to imprisonment up to six months or fine of ten thousand rupees or both as per the provision of **Section 34, JJ Act, 2015**.

### **Registration of Child Care Institutions (CCIs)**

All CCIs run by the State Government or by a voluntary Organization has to be registered under the JJ Act 2015 as per the provision of **Section 41 of JJ Act 2015**.

Any person, or persons, in-charge of an institution housing children in need of care and protection and children in conflict with law, who fails to comply with the provision of Section 41 relating to registration of CCIs, shall be punished with imprisonment which may extend to one year or a fine not less than One lakh rupees or both. *(Section 42 JJ Act, 2015)*

## **OFFENCES**

### **CLASSIFICATIONS OF OFFENCES UNDER JJ ACT, 2015**

**Petty Offence:** Offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to 3 years. *(Section 2(45) JJ Act 2015)*

**Serious Offence:** Offences for which punishment under IPC or any other law for the time being in force is imprisonment between 3 to 7 years. *(Section 2(54) JJ Act 2015)*.

**Heinous Offence:** Offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for 7 years or more. *(Section 2(33) JJ Act 2015)*

## OFFENCES AGAINST CHILDREN

### **Disclosure of Identity of The Child (Section 74(1), JJ Act 2015)**

No report in any newspaper, magazine, news-sheet or audio-video media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose or publish the name, address or school or any other particular, which may lead to the identification of the child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published. Disclosure can be made only with the permission of the JJB or CWC, for reasons in writing, if they are of the opinion that the disclosure is in the best interest of the child.

Even the police, for the purpose of character certificate or otherwise, should not disclose any record of the child where the case has been closed or disposed of. (*Section 74(2), JJ Act, 2015*)

### **Punishment for Cruelty to Child (Section 75, JJ Act, 2015)**

It is an offence if any person having actual charge over the child or having a control over the child, assaults, abandons, abuses or exposes or willingly neglects the child or causes a child to be assaulted, abused, exposed, abandoned or neglected, in any manner likely to cause mental or physical suffering to the child. However if the biological parents of the child, due to circumstances beyond their control, abandon the child, such abandonment will not be considered as an offence.

### **Employment of Child for Begging (Section 76 JJ Act, 2015)**

It is an offence to employ or use any child for the purpose of begging or to causes any child to beg. It is also an offence to amputate or maim a child for the purpose of begging.

### **Penalty for giving Intoxicating Liquor or Narcotic Drug or Psychotropic Substances to a Child. (Section 77, JJ Act, 2015)**

Any person who gives or causes to be given, to any child any intoxicating liquor or any narcotic drug or a tobacco product or psychotropic substance, except when prescribed by a duly qualified medical practitioner, is an offence. Further, as per Section 6 of Cigarette and Other Tobacco Product Act (COTPA), 2003 it is an offence to sell cigarette or any other tobacco product to a child or to sell such items within a radius of 100 yards of any educational institution. The punishment for this offence under COTPA is fine up to Rupees two hundred only which may not be enough to act as an effective deterrent. Therefore, considering the stringent punishment prescribed in Section 77, the SPs and other senior Police Officers may make a big difference in potential tobacco abuse

by children. The field level officers may be made aware to register cases under this provision in suitable instances to drive a clear message to the offenders. The following related aspects are also relevant:

It may be noted that whenever a child is found to be under the influence of, or in possession of intoxicating liquor or any narcotic drug or a tobacco product or psychotropic substance, including for the purpose of sale, the police shall enquire as to how the child came under the influence or possession of such intoxicating liquor or any narcotic drug or a tobacco product or psychotropic substance and shall register a FIR forthwith. *(Rule 56(1) JJ Model Rules, 2016)*

*Any shop selling intoxicating liquor, tobacco products, must display a message at a prominent place on their shop that giving or selling intoxicating liquor or tobacco products to a child is a punishable crime. (Rule 56(8) JJ Model Rules, 2016)*

*All tobacco products and intoxicating liquor, must display a message that giving or selling intoxicating liquor or tobacco products to a child is a punishable crime with up to 7 years of RI and a fine up to 1 lakh rupees. (Rule 56(9) JJ Model Rules, 2016)*

*Giving or selling of intoxicating liquor, narcotic drugs or psychotropic substances or tobacco products within 200 meters of a CCI or any other home registered or recognised under the Act, or the office of the CWC or a JJB shall be deemed to be an offence under Section 77 of the Act. (Rule 56(10), JJ Model Rules, 2016)*

### **Using a Child for Vending, Peddling, Carrying, Supplying or Smuggling any Intoxicating Liquor, Narcotic Drug or Psychotropic Substance** *(Section 78, JJ Act, 2015)*

It is an offence if a person uses a child for the purpose of vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance.

Whenever a child is found to be vending, carrying, supplying or smuggling an intoxicating liquor, narcotic drug, or psychotropic substance, the police shall enquire how and from whom the child came into possession of the intoxicating liquor, narcotic drug, or psychotropic substance and shall register an FIR forthwith.

*(Rule 57(1) JJ Model Rules, 2016)*

### **Exploitation of a Child Employee (Section 79 JJ Act, 2015)**

It is an offence if any person ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes.



### **Punitive Measures for Adoption without following Prescribed Procedures (Section 80 JJ Act, 2015)**

It is an offence if any person or organisation offers or gives or receives any orphan, abandoned or surrendered child for the purpose of adoption without following the provision laid down in the Juvenile Justice (Care & protection of Children) Act, 2015.

However, if such an offence is committed by a recognised adoption agency, in addition to the punishment prescribed for the person in charge who handles day-to-day affair of the adoption agency, the license of such agency will be withdrawn for a minimum period of 1 year.

Where any orphan, abandoned or surrendered child, is offered or given or received for the purpose of adoption without following the procedures as provided in the Act and the rules, the police shall, *suo motu*, or on receipt of information in that regard register an FIR forthwith. (*Rule 58 (1) JJ Model Rules, 2016*)

### **Sale or Procurement of Children for any Purpose (Section 81 JJ Act, 2015)**

It is an offence if any person sells or buys a child for any purpose. Higher punishment is prescribed if such an offence is committed by a person having an actual charge over the child including hospitals, nursing home or maternity homes.

On receipt of information about the selling or buying of a child, the police shall register an FIR forthwith. (*Rule 59 (1) JJ Model Rules, 2017*)

### **Corporal Punishment (Section 82 JJ Act, 2015)**

It is an offence if any person in-charge of or employed in a CCI, who subjects a child to corporal punishment with the aim of disciplining the child. If convicted, such person will be liable for dismissal from service and shall also be debarred from working directly with children.

If the institution or organisation from where the corporal punishment has been reported fails to cooperate with any inquiry or comply with the orders of the committee or the Board or of the Court or State Government, the person in charge of the institution will be liable to punishment. (*Section 82 (3) JJ Act, 2015*)

### **Use of Child by Militant Groups or Other Adults. (Section 83 JJ Act, 2015)**

Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose or if an adult or an adult group uses children for illegal activities either individually or as a gang will be liable for punishment as prescribed in the section.

**Offences Committed on a Disabled Child** (*Section 85 JJ Act, 2015*)

If any person commits any offence mentioned in this chapter (*Section 74 to Section 89*) on a disabled child, as so certified by a medical practitioner, then, such person shall be liable to twice the penalty provided for such offence.

**Abetment of an Offence** (*Section 87 JJ Act, 2015*)

Whoever abets any offence under this Act, if the Act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence.

## Offences & Punishments for Offences Against Children

Section	Offence	Punishment
74	Disclosure of identity of the child	Imprisonment for a term which may extend to 6 months or fine which may extend to Rs.2,00,000/- or both.
75	Cruelty towards a child	Imprisonment which may extend to 3 years or fine of Rs.1,00,000/- or both.
	Cruelty that results in mental illness or physically incapacitation or renders the child mentally unfit	Rigorous imprisonment for not less than 3 years which may extend to 10 years and fine of Rs.5,00,000/-.
	Cruelty committed by a person employed by or managing an organization entrusted with the care and protection of the child	Rigorous imprisonment which may extend up to 5 years and fine which may extend up to Rs.5,00,000/-.
76	Employment of child for begging	Imprisonment for a term which may extend to 5 years and fine of Rs.1,00,000/-.
	If a person amputates or maims the child for the purpose of begging	Rigorous imprisonment for a term not less than 7 years which may extend to 10 years, and fine of Rs.5,00,000/-.
77	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substances to a child	Rigorous imprisonment for a term which may extend to 7 years and fine which may extend up to Rs.1,00,000/-.
78	Using a Child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance	Rigorous imprisonment for a term which may extend to 7 years and will also be liable to fine up to Rs.1,00,000/-.
79	Exploitation of a child employee	Rigorous imprisonment for a term which may extend to five years and fine of Rs.1,00,000/-.

80	Punitive measures for adoption without following prescribed procedures	Imprisonment of either description for a term which may extend up to 3 years or fine of Rs.1,00,000/- or with both.
81	Sale or procurement of children for any purpose	Rigorous imprisonment for a term which may extend to 5 years and fine of Rs.1,00,000/-.
	Offence committed by a person who is in charge of a child, or by a hospital, nursing home or maternity home	Imprisonment not less than 3 years and which may extend up to 7 years.
82	Corporal punishment	First conviction liable to a fine of Rs.10,000/- and for every subsequent offence, shall be liable to imprisonment which may extend to 3 months or fine or both.
	Failure to cooperate during inquiry or non-compliance by the orders of the CWC/Board/Court/State	Imprisonment for a term not less than 3 years and fine which may extend to Rs.1,00,000/-.
83	Use of child by a militant group or other adult	Rigorous imprisonment for a term which may extend to seven years and fine of Rs.5,00,000/-.
	Using a child for illegal activities either individually or in a gang	
84	Kidnapping or abduction of the a child	The provision of section 359 to 369 of IPC shall <i>mutatis mutandis</i> shall apply.
85	Offences committed on a disabled child	Twice the penalty provided for such offence.
87	Abetment of an offence	Punishment provided for that offence.

**ROLE OF POLICE IN CASES OF CRIME COMMITTED AGAINST CHILDREN  
(RULE 54, JJ MODEL RULES, 2016)**

- I. Child, family, guardian, friend or teacher of the child, childline services or any other individual or institutions or organisation concerned may make a complaint of an offence against a child. *(Rule 54 (1) JJ Model Rules, 2017)*
- II. On receipt of information in respect of a cognizable offence against a child, the police shall register a First Information Report (FIR) forthwith. *(Rule 54 (2) JJ Model Rules, 2017)*
- III. On receipt of information of a non- cognizable offence against a child, the police shall make an entry in the Daily Diary which shall be transmitted to the Magistrate concerned forthwith who shall direct appropriate action under Sub-Section (2) of Section 155 of the Code of Criminal Procedure, 1973. *(Rule 54 (3) JJ Model Rules, 2017)*
- IV. In all cases of offences against children, the Child Welfare Police Officer shall conduct the investigation. *(Rule 54 (4) JJ Model Rules, 2017)*
- V. Where an FIR is registered against a person working with a CCI including SAA for any offence under the Act and the rules, such a person shall be debarred from working directly with the children during the pendency of the criminal case. *(Rule 54 (6) JJ Model Rules, 2017)*
- VI. In no case a child shall be placed in a police lock-up or lodged in a jail. *(Rule 54 (8) JJ Model Rules, 2017)*
- VII. An immediate need assessment of the child will be conducted in terms of the need for food, clothing, emergency medical care, counseling, psychological support and the same shall be immediately extended to the child at the police station. *(Rule 54 (10) JJ Model Rules, 2017)*
- VIII. Where a child has been subjected to sexual abuse, the child may be referred to the nearest District Hospital or One-Stop Crisis Centre, as the case may be, if locally available. *(Rule 54 (11) JJ Model Rules, 2017)*

## SIGNIFICANT JUDGMENTS

### 1. **Mahadeo S/O Kerba Maske Vs. State of Maharashtra and Anr., (2013) 14 SCC, 637**

In this case, the Supreme Court held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

‘In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining,

- A.
  - i. the matriculation or equivalent certificates, if available; and in the absence whereof;
  - ii. the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
  - iii. the birth certificate given by a corporation or a municipal authority or a panchayat;
- B. and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

And, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the Clauses (a)(i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law’.

The Supreme Court Judgment dated 1st July, 2013 in Jarnail Singh Vs. State of Haryana in Criminal appeal No. 1209 of 2010 may also be referred in this regard.

### 2. **Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Ors. (Writ Petition (Criminal) No. 102 of 2007, on 5 May 2017)**

‘Even though a child in need of care and protection is defined in Section 2(14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act) the definition does not specifically include some categories of children. Consequently, we are of the view that since the JJ Act is intended for the

benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a broad interpretation. It would be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the definition. Beneficial legislations of the kind that we are dealing with demand an expansive view to be taken by the Courts and all concerned’.

**3. Sampurna Behrua Vs. Union of India on 9 February, 2018 (Writ Petition (Civil) No. 473, 2005)**

- i. An extremely important stakeholder in the effective implementation of the JJ Act is the local police. Section 107 of the JJ Act mandates the appointment of a Child Welfare Police Officer and a Special Juvenile Police Unit in each district. The SJPU must also include two social workers having experience of work in the field of child welfare, one of them being a woman. The responsibility for appointment lies on the State Government.
- ii. In order to enable the police officers that frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.
- iii. In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the ‘juvenile or the child welfare officer’ who will handle the juvenile or the child in co-ordination with the police.
- iv. Special juvenile police unit, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children.
- v. The Home Departments and the Director Generals of Police of the States/Union Territories will ensure that at least one police officer in every police station with aptitude is given appropriate training and orientation and designated as Juvenile or Child Welfare Officer, who will handle the juvenile or child in coordination with the police as provided under Sub-Section (2) of Section 63 of the Act. The required training will be provided by the District Legal Services Authorities under the guidance of the State Legal Services Authorities and Secretary, National Legal Services Authority will issue appropriate guidelines to the State Legal Services Authorities for training and orientation of police

officers, who are designated as the Juvenile or Child Welfare Officers. The training and orientation may be done in phases over a period of six months to one year in every State and Union Territory.

- vi. The Home Departments and the Director Generals of Police of the States/Union Territories will also ensure that Special Juvenile Police Unit comprising of all police officers designated as Juvenile or Child Welfare Officer be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in Sub-Section (3) of Section 63 of the Act.

*(For further details please refer to the chapters on Child Trafficking (2E), Child Marriage (2G), Child Sexual Abuse (2C), Missing Children (2D) and Child Labour (2F) of this handbook.)*



**ANNEXURE I****Definition of a Child in Need of Care & Protection  
(Section 2 (14) JJ Act 2015)**

A child in need of care and protection can be any child found in any of the following categories:

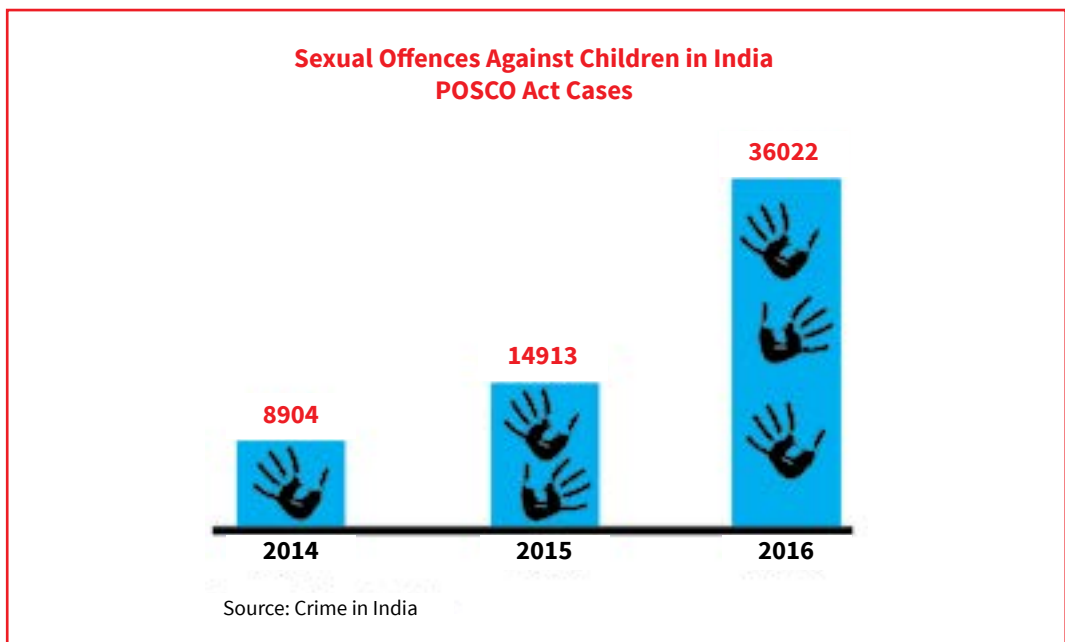
- a. A child found without any home or settled place for living and without any means of living.
- b. A child found begging or living on the street or working in contravention to the labour law.
- c. A child living with a person who has previously injured, neglected, exploited or abused a child or has violated any other law or has threatened to kill, injure exploit or abuse the child or has killed or abused or neglected or exploited some other child.
- d. A child who is mentally or physically challenged or is suffering from a terminal or incurable disease and has no one to look after or support him/her or parents/guardians are unfit to look after the child.
- e. A child whose parents/guardians are found unfit or incapacitated by the Board or Committee to look after such child.
- f. A child who is abandoned or surrendered by the parents/guardians and no one is willing to take of such child.
- g. A child who has run away from home or is missing and parents of such child cannot be found after inquiry.
- h. A child who has been or is being or is likely to be abused, exploited or tortured for the purpose of sexual exploitation or any other illegal acts.
- i. A child who is vulnerable and is at risk to be inducted into drugs abuse or trafficking.
- j. A child being abused or likely to be abused for unconscionable gain.
- k. A child who is a victim of armed conflict, civil unrest or any natural calamity.
- l. A child at a risk of getting married before attending the legal age of marriage and the parents or guardian of such child are responsible for the solemnisation of such marriage.

## 2C

## THE ROLE OF POLICE - CHILD SEXUAL ABUSE

### INTRODUCTION

Violence against children has increased in numerous forms and one of the worst kind of violence against children is child sexual abuse. Data of National Crime Records Bureau show a rise in reporting of cases of sexual offences against children over the years. Further, in many instances, cases of sexual abuse of children remain unreported.



### THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The POCSO Act, 2012 is gender-neutral. The offences and the punishments mentioned therein are applicable to male, female and transgender unlike IPC where it is provided

that rape is committed against a woman by a man. The various types of sexual offences under the POCSO Act along with penal sections are:

- a. **Penetrative Sexual Assault:** Penetrative sexual assault is similar to rape as mentioned in IPC. *The definition of this offence has been provided in Section 3 whereas punishment has been prescribed in Section 4 of the Act.*
- b. **Aggravated Penetrative Sexual Assault:** Penetrative sexual assaults becomes aggravated if any one or more of the 21 conditions as mentioned in Section 5 of POCSO Act, 2012 is met. For example, if penetrative sexual assault is committed by a person in authority, like management or staff of a hospital, education institution; or if the assault is committed on a child below the age of 12 years; or if the offence is committed more than once; or if the victim becomes pregnant as a result of the assault. *The definition of this offence has been provided in Section 5 whereas punishment has been prescribed in Section 6 of the Act*
- c. **Sexual Assault:** Any person who touches the vagina, penis, anus or breast of the child with sexual intent or makes the child do so with such person or any other person commits this offence. This offence involves contact without penetration (like kissing, inappropriate touch, etc.). It is similar to the offence of Outraging the Modesty of a Woman under Section 354 of IPC. *The definition has been provided in Section 7 whereas punishment has been prescribed in Section 8 of the Act.*
- d. **Aggravated Sexual Assault:** Sexual assault becomes an aggravated sexual assault if one or more of the 21 conditions as mentioned in Section 9 of POCSO Act 2012 are met. It may be noted, that the 21 conditions which make penetrative sexual assault or sexual assault as aggravated offence are identical except making a child pregnant as a consequence of sexual assault. *The definition has been provided in Section 9 whereas punishment has been prescribed in Section 10 of the Act.*
- e. **Sexual Harassment:** Any person who, with sexual intent, utters any word or makes any sound or makes any gestures or exhibits any object or part of body; makes a child exhibit his body; shows any object to the child in form of media for pornographic purpose; repeatedly or constantly follows a child directly or through electronic means; or entices a child for pornographic purpose commits offence of sexual harassment. It may be noted that this offence under POCSO Act does not involve physical contact between the offender and the victim. This offence under

POCSO Act is similar to the offence of 'Sexual Harassment' under Section 354A\* of IPC. *The definition has been provided in Section 11 whereas punishment has been prescribed in Section 12 of the Act.*

- f. Use of Child for Pornographic Purpose:** Any person who uses a child in any form of media for sexual gratification, which includes (a) representation of sexual organs of a child, (b) usage of child engaged in real or stimulated sexual acts and (c) indecent or obscene representation of a child, commits this offence. *Using a child for pornographic purpose includes involving a child for preparation, production, offering, transmitting, publishing, facilitation and distribution of pornographic material. The definition has been provided in section 13 whereas punishment has been prescribed in Section 14 of the Act*
- g. Storage of Pornographic Material Involving a Child:** Any person who stores pornographic materials which involves a child *for commercial purpose* commits this offence. Punishment has also been prescribed in this Section itself. *(Section 15)*
- h. Punishment for Abetment. (Section 17)**
- i. Punishment for Attempt to Commit an Offence. (Section 18)**

\*Section 354 A(1)

A man committing any of the following acts,

- i. physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. a demand or request for sexual favours; or
- iii. showing pornography against the will of a woman; or
- iv. making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

## Offences Under POSCO Act, 2012



Abetment or attempt to  
commit any of the offence



Penetrative Sexual  
Assault



Aggravated Penetrative  
Sexual Assault



Sexual Harrassment



Offences under  
POCSO Act



Sexual Assault



Use of Child for  
Pornographic Purposes

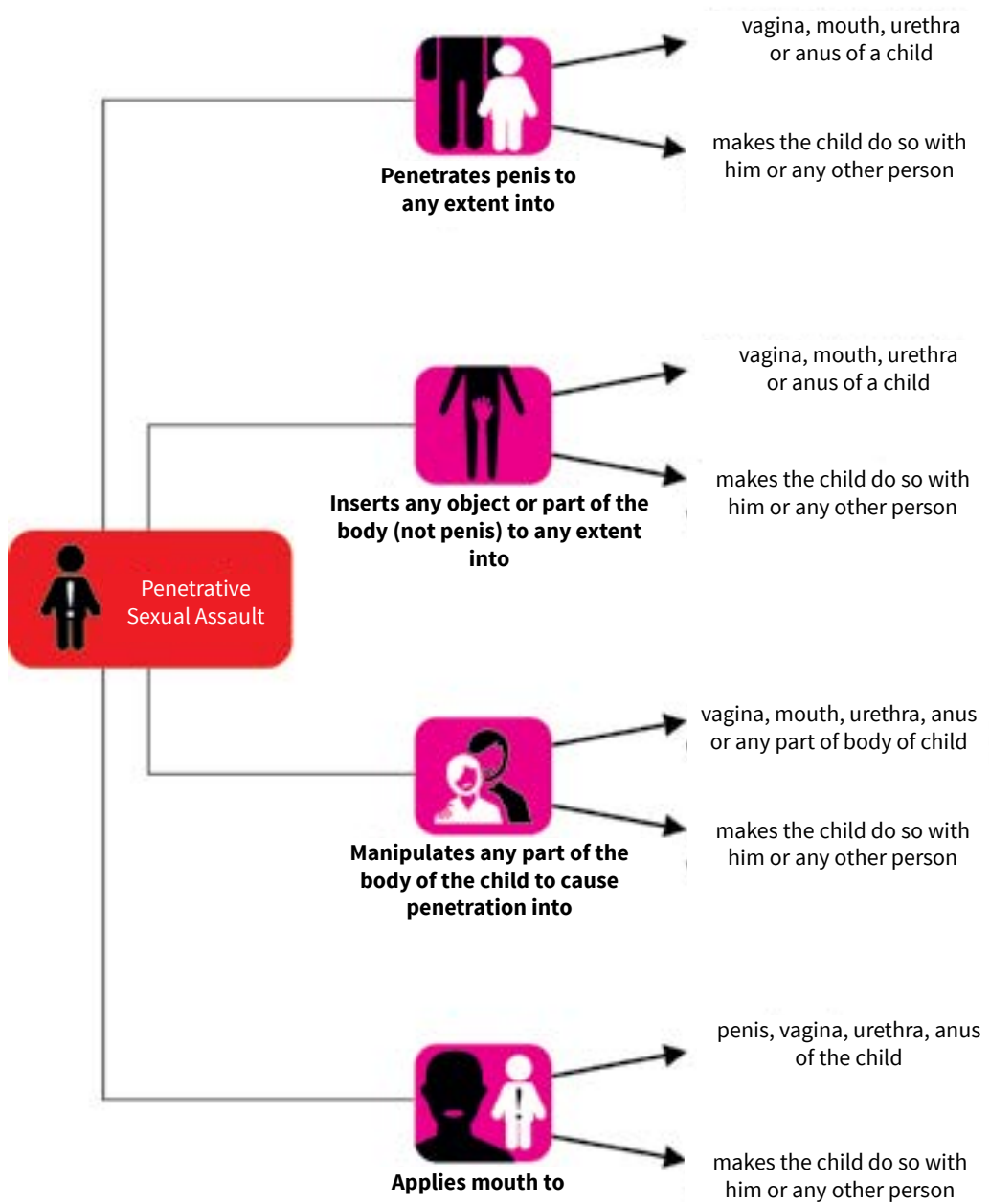


Storage of  
pornographic material  
involving a child for  
commercial purposes

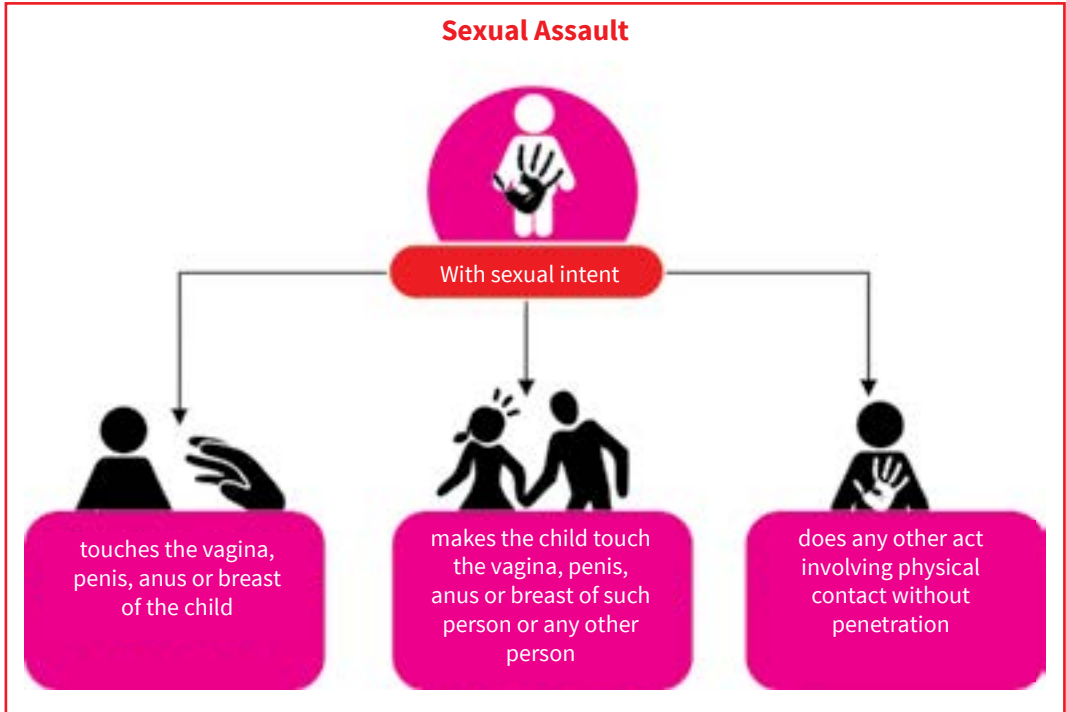


Aggravated Sexual  
Assault

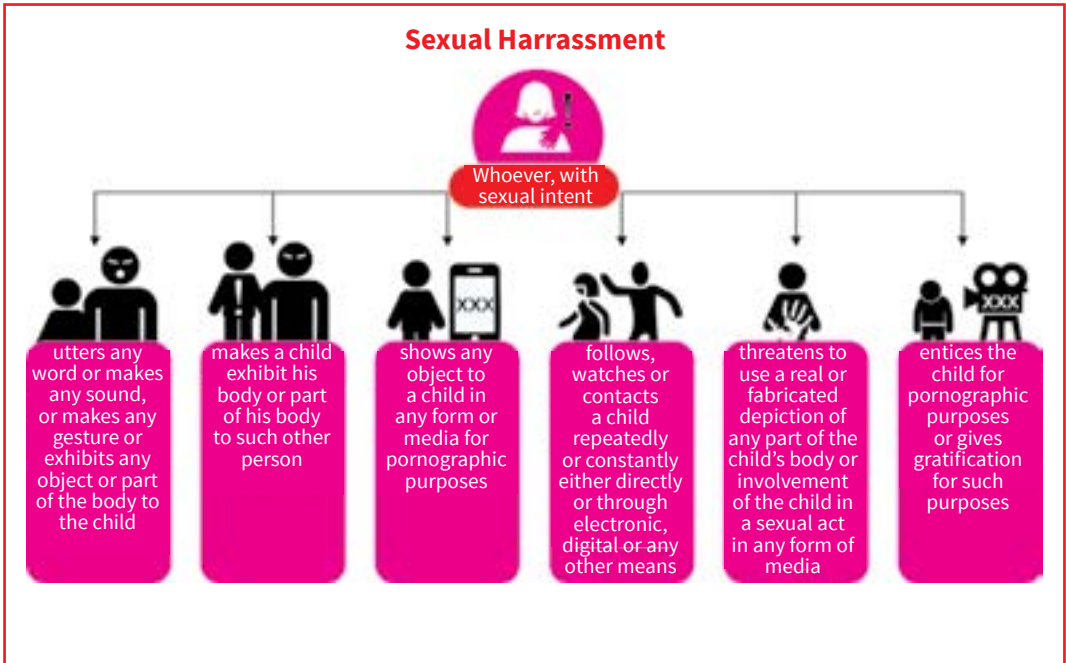
## Penetrative Sexual Assault



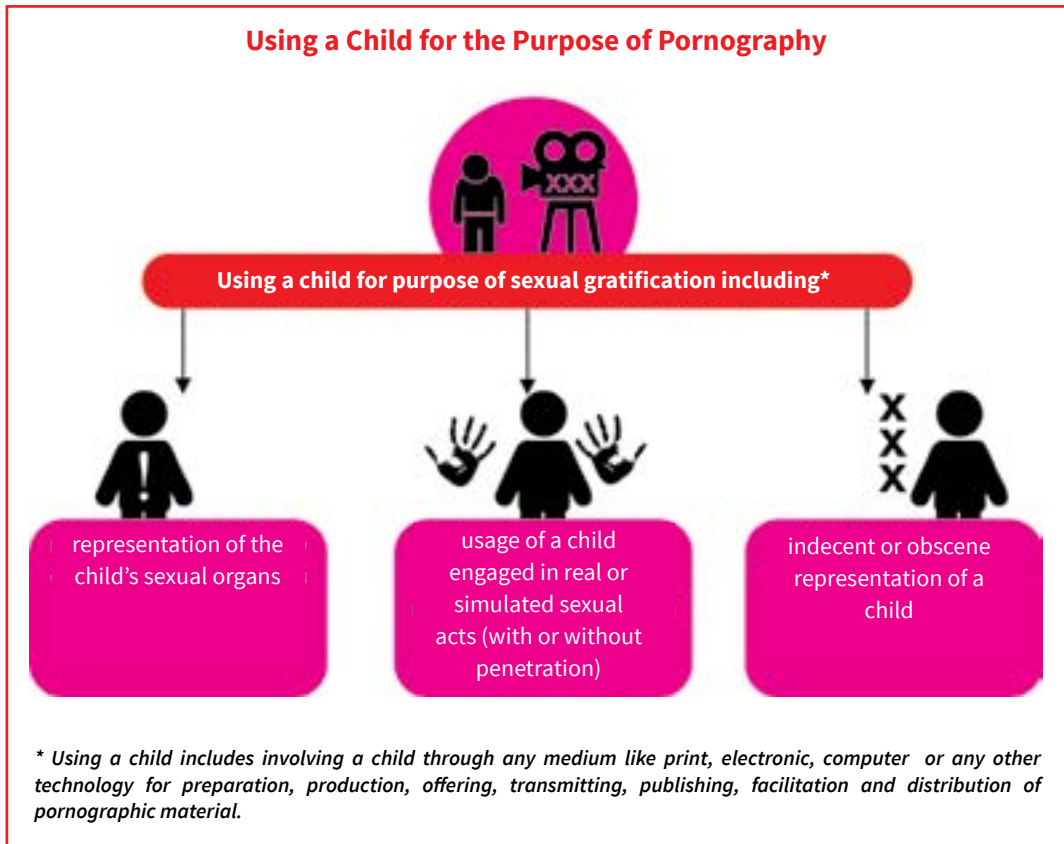
### Sexual Assault



### Sexual Harrassment



### Using a Child for the Purpose of Pornography



### NON-SEXUAL OFFENCES

Sections	Offences	Punishment
21(1)	Failure to report an offence by any person who has apprehension or knowledge that an offence under the Act is likely to be committed or has been committed. (This is not applicable in case of a child)	Up to 6 months imprisonment or fine or both.



21(1)	Failure of media, hotel, lodge, hospital, club, studio or photographic facility to report about pornographic or sexually exploitative object/material involving a child.	Up to 6 months imprisonment or fine or both.
Sections	Offences	Punishment
21(1)	Failure of the police to record information relating to the commission of an offence or an apprehension that an offence is likely to be committed.	Up to 6 months imprisonment or fine or both.
21(2)	Failure of the in-charge of a company or institution to report commission of an offence in respect of a subordinate under his control.	Up to 1 year imprisonment with fine.
22(1)	False complaint/information about specific offences ( <b>Sections 3, 5, 7, 9</b> ) against any person with intention to humiliate, extort, threaten or defame. ( <i>This is not applicable in case of a child</i> )	Up to 6 months imprisonment or fine or both.
22(3)	False complaint or false information against a child. ( <i>This is not applicable in case of a child</i> )	Up to 1 year imprisonment or fine or both.
23(4)	Making report or presenting comments on any child through the use of any form of media or studio or photographic facilities without having complete and authentic information, and which may have the effect of lowering the reputation or infringing upon privacy of the child.	6 months to 1 year imprisonment or fine or both.
23(4)	Disclosure of the identity of a child in the media without obtaining permission from the Special Court.	6 months to 1 year imprisonment or fine or both

**WHAT ARE THE AGGRAVATING FACTORS**

<b>Status of the Offender</b>			
Police officer commits penetrative sexual assault on a child,			
within the limits of the police station or premises at which he is appointed; or	in the premises of any station house, whether or not situated in the police station, to which he is appointed; or	in the course of his duties or otherwise; or	where he is known as, or identified as, a police officer.
Member of the armed forces or security forces commits penetrative sexual assault on a child,			
within the limits of the area to which the person is deployed; or	in any areas under the command of the forces or armed forces; or	in the course of his duties or otherwise; or	where the said person is known or identified as a member of the security or armed forces.
Public servant commits penetrative sexual assault on a child,			
Management or staff of custodial institution viz. jail, remand home, protection home, observation home, or other place of custody or care and protection of a child who is an inmate therein.			
Management or staff of hospital (Govt and private) on a child in that hospital.			
Management or staff of an educational institution or religious institution on a child in that institution.			
A relative of the child through blood, adoption, marriage, guardianship, foster care, or having a domestic relationship with a parent of the child, or living in the same or shared household with the child.			
Owner, management, or staff of any institution providing services to the child.			
Person in a position of trust or authority of a child in an institution or home of the child or anywhere else.			
Person who has been previously convicted of having committed any offence under POCSO or any sexual offence punishable under any other law for the time being in force.			

### Nature of the Assault

Gang penetrative sexual assault

Using deadly weapons, fire, heated substance or corrosive substance

More than once or repeatedly

Penetrative sexual assault on a child followed by attempt to murder the child

In the course of communal or sectarian violence

Penetrative sexual assault followed by making the child to strip or parade naked in public

### Impact on the Child Victim

Causing grievous hurt; or causing bodily harm and injury; or injury to the sexual organs of the child.

Penetrative sexual assault which causes, physical incapacitation or mental illness, or

Impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently.

Making a female child pregnant.

Inflicting the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks.

### Status of the Child Victim

Taking advantage of child with mental or physical disability

Child below twelve years

Having knowledge that the child is pregnant

## DEFINITION OF A CHILD

**Section 2(d)**, POCSO Act defines a child as *any person below the age of 18 years*. Thus, any person who has not completed 18 years of age whether male or female or transgender child is covered under this Act.

### Special Courts and Special Public Prosecutor (SPP)

- a. **Section 28** of the Act provides for establishment of Special Court for the purpose of providing speedy trial. A court of Sessions may be designated as a Special Court in every district. If any court of Sessions is already notified as a Children's Court under the Commission for Protection of Child Rights Act, 2005, the same will be deemed as a Special Court under the POCSO Act as well.
- b. While trying offences under the POCSO Act, the Special Court has the power to try any offences with which the accused may have been charged under the **Code of Criminal Procedure, 1973**. Even cases registered under Section 67B of the Information Technology Act, 2000 which deals with 'transmission of sexually explicit material depicting children in any act or facilitating abuse of children online' can also be tried in a Special Court.
- c. **Section 32** of the POCSO Act empowers the government to appoint Special Public Prosecutors for Special Courts. A SPP needs to have a minimum experience of 7 years of practice as an advocate.

## PENAL SECTIONS FOR RAPE/SEXUAL INTERCOURSE UNDER IPC

Nine sections of IPC deal with offence of rape/sexual intercourse with a woman under chapter XVI. Three Sections (376AB, 376DA, 376DB) and Sub Section 376(3) which have been inserted, vide Criminal Law Amendment Act, 2018; exclusively deal with rape of girl children. It may be noted that a woman is defined as a female of any age and hence a girl child is included within its purview.

- a. 376(1) – Rape
- b. 376(2) – Aggravated form of rape
- c. 376(3) – Rape of girl child below 16 years of age
- d. 376A – Rape resulting in death or persistent vegetative state of victim
- e. 376AB – Rape of girl child below 12 years of age
- f. 376B – Sexual intercourse by husband upon his wife during separation
- g. 376C – Sexual intercourse by a person in authority
- h. 376D – Gang rape
- i. 376DA – Gang rape of girl child below 16 years of age

- j. 376DB – Gang rape of girl child below 12 years of age
- k. 376E – Punishment for repeat offenders

The minimum punishment for rape is rigorous imprisonment of 10 years and which may extend up to death penalty in respect of Sections 376A, 376AB, 376DB and 376E.

- a. The equivalent of rape in POCSO Act is Section 4 (Penetrative sexual assault) and Section 6 (Aggravated penetrative sexual assault). The maximum punishment under POCSO Act for this offence is imprisonment for life and the minimum is imprisonment of 7 years (**10 years in case of Section 6**).
- b. The punishment is higher in IPC compared to POCSO Act.
- c. It may be noted that victim of rape can be only woman in case of IPC, whereas in case of POCSO Act, the victim can be male or female or transgender child who is below 18 year of age. Similarly, an offender would be a man in case of rape under IPC whereas the offender under POCSO Act may be any person including male or female or transgender.
- d. If a victim of rape is a woman under the age of 18 years, then the case will be registered under POCSO Act as she will be considered a child as per the definition. However, under Section 42, POCSO Act, it is specifically mentioned that, if any offender is found guilty of sexual offence, the person will be liable to punishment under the POCSO Act or the IPC, whichever provides for punishment which is greater in degree.

### **Punishment for Rape of Woman under 18 Years of age as per IPC**

<b>Sections</b>	<b>Offences</b>	<b>Punishment</b>
376(1)	Rape of woman of 16 years or above	Rigorous Imprisonment (RI) not less than 10 years which may extend to life and shall also be liable to fine.
376(2)	Aggravated form of rape of a woman of 16 years or above	RI not less than 10 years which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.
376(3)	Rape of woman below 16 years of age	RI not less than 20 years which may be extended to imprisonment for life (remainder of that person's natural life) and fine.

Sections	Offences	Punishment
376 AB	Rape of woman below 12 years of age	RI not less than 20 years, may be extended to imprisonment for life (remainder of that person's natural life) and fine, or death.
376 D	Gang rape of a woman of 16 years or above	RI not less than 20 years, may be extended to imprisonment for life (remainder of that person's natural life) and fine.
376 DA	Gang rape of woman below 16 years of age	Imprisonment for life (remainder of that person's natural life) and fine.
376 DB	Gang rape of woman below 12 year of age	Imprisonment for life (remainder of that person's natural life) and fine or with death.

### Sections to be Applied in Case of Rape of a Girl Child

Possible scenario of rape of girl child	IPC	POCSO
Rape of a child below 12 years of age	Section 376 AB	Section 6
Gang rape of a child below 12 years of age	Section 376 DB	Section 6
Rape of a child below 16 years of age	Section 376(3)	Section 4/6
Gang rape of a child below 16 years of age	Section 376 DA	Section 6
Rape of a child of 16 or above 16 years of age	Section 376(1)/(2)	Section 4/6
Gang rape of a child of 16 or above 16 years of age	Section 376 D	Section 6

#### Note:

*\*The other sexual offences against women have been mentioned in Annexure I*

**\*\*In case of male child, IPC Sections would not be applicable. Only the Sections of POCSO, Act need to be applied.**

**\*\*\*The rationale behind applying penal sections of IPC along with penal sections of POCSO Act while registering FIRs in cases of sexual offence against female children has been provided in details in FAQs segment of this chapter.**

## REPORTING OFFENCES UNDER THE POCSO ACT

- a. Failure to report or record an offence under this Act is an offence. (*Section 21*)

The Police Officer who receives information under this Act, is required to give information to the informant about his name, designation, address and telephone number and also the name, designation and the contact details of the officer who supervises the officer receiving the information. (*Rule 4(1), POCSO Rules*).

- b. Every report of sexual offence shall be ascribed an entry number by the police or SJPU and shall be recorded in writing, shall be read over to the informant and shall be entered in a book to be kept by the police unit. (*Section 19(2) POCSO Act*)
- c. If a girl child (against whom a sexual offence under IPC is alleged to have been committed or attempted) and is temporary or permanently, mentally or physically disabled, the information has to be recorded by a police officer at the residence of the child seeking to report the offence or at a convenience place of her choice, in the presence of an interpreter or special educator, and recording of such information has to be video graphed. (*Second Proviso, Section 154(1) CrPC*)
- d. If a child is reporting the case, it should be recorded in a language that can be easily understood by the child. (*Section 19(3) POCSO Act*)
- e. In case contents are being recorded in the language not understood by the child, a translator or an interpreter shall be provided to the child. (*Section 19(4) POCSO Act*)
- f. If the SJPU or the local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall make immediate arrangements for providing care and protection (including admitting the child into shelter home or the nearest hospital) within 24 hours of the report. (*Section 19(5) POCSO Act*)
- g. The Special Juvenile Police Unit or local police has to, without unnecessary delay but within a period of 24 hours, report the matter to the CWC and the Special Court including the need of the child for care and protection and steps taken in this regard. (*Section 19(6) POCSO Act*)

## RECORDING OF STATEMENT OF THE CHILD

- a. The police officer or magistrate shall record the statement as spoken by the child in presence of parents or any other person in whom he has trust or confidence. (*Section 26(1) POCSO Act*)

- b. The statement of the child shall be recorded at the residence of the child or place where the child usually resides or a place of the child's choice. *(Section 24(1) POCSO Act)*
- c. The statement should be recorded as far as practicable by a woman police officer not below the rank of Sub-Inspector. *(Section 24(1) POCSO Act)*
- d. The police officer while recording statement of the child shall not be in uniform. *(Section 24(2) POCSO Act)*
- e. Police officer making the investigation shall ensure that at no point the child comes in contact with the accused during examination of the child. *(Section 24(3) POCSO Act)*
- f. No child shall be detained in police station for any reason in the night. *(Section 24(4) POCSO Act)*
- g. The police officer may take the assistance of a translator or an interpreter while recording the statement of the child in case the child speaks language which is not understood by the police officer. *(Section 26(2) POCSO Act)*
- h. In case of a child with mental or physical disability, the services of special educator or any person familiar with the manner of communication of the child or expert in that field may be utilised. *(Section 26(3) POCSO Act)*
- i. The District Child Protection Unit may be contacted by police or SJPU for availing the services of interpreter/translator or special educator, as the DCPU is required to maintain a panel of such experts. Payment to such experts is to be made by the State Government/DCPU. *(Rule 3, POCSO Rules)*
- j. The police officer shall ensure that child's statement is also recorded by audio video electronic means whenever possible. *(Section 26(4) POCSO Act)*

### **DISCLOSURE OF IDENTITY OF THE CHILD**

- a. The identity of the child shall be protected from the public media. The identity can only be disclosed, under the direction of the Special Court, if it is in the interest of the child. *(Section 24 (5) POCSO Act)*
- b. In no case during the process of investigation or judicial procedure, the identity of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime shall be disclosed except with the permission of CWC/ JJB. *(Section 74(1) JJ Act)*
- c. Supreme Court of India, in its judgment dated 11/12/2018 in WPC No. 565/2012 – *Nipun Saxena & Anr. Vs. Union of India and Ors.* has issued directions regarding



disclosure of identity of victim of rape and offences under POCSO Act. The highlights of the judgment having relevance to police have been mentioned in the segment 'Important Court Judgments' of this chapter.

### **MEDICAL EXAMINATION OF THE CHILD**

- a. The police shall ensure that the samples collected for forensic tests are sent to the FSL at the earliest. *(Rule 4(2)(d) POCSO Rules)*
- b. In case the victim is a girl child, the medical examination has to be conducted by a woman doctor. *(Section 27(2) POCSO Act)*
- c. The medical examination has to be conducted in presence of parent or any other person in whom the child has trust or confidence. *(Section 27(3) POCSO Act)*
- d. In case parent or any other person in whom the child reposes trust or confidence cannot be present, for any reason, during the medical examination of the child, the medical examination has to be conducted in presence of a woman nominated by head of the medical institution. *(Section 27(4) POCSO Act)*
- e. The medical examination of the victim shall be conducted in accordance with provision of Section 164A, CrPC. *(Section 27(1) POCSO Act)*
- f. The victim has to be sent to a Registered Medical Practitioner for medical examination within 24 hours from the time of receiving information relating to the commission of offence. The medical examination has to be conducted with the consent of the child or a person competent to give consent on behalf of the child.
- g. The medical examination of the victim should be conducted without loss of time as vital evidences tend to disappear fast with the passage of time.
- h. Copy of the victim's medical examination report should be immediately handed over to the Magistrate who records the victim's statement under Section 164 CrPC. *(State of Karnataka Vs. Shivanna, (2014) 8 SCC 913)*

### **EMERGENCY MEDICAL CARE**

- a. The victim of rape is entitled to receive first aid or medical treatment free of cost from public and private hospitals. *(Section 357C CrPC)*
- b. Whenever the SJPU or the local police receives information about commission of offence under POCSO Act, and is satisfied that the victim is in need of urgent care and protection, he shall, as soon as possible but not later than 24 hours of receiving

such information, arrange to take the victim to the nearest hospital or medical care facility for emergency medical care. **(Rule 5(1) POCSO Rules)**

- c. In case of any offence under Section 3 (Penetrative Sexual Assault), Section 5 (Aggravated Penetrative Sexual Assault), Section 7 (Sexual Assault) and Section 9 (Aggravated Sexual Assault), the victim shall be referred to emergency medical care. **(Proviso to Rule 5(1) POCSO Rules)**
- d. Emergency medical care shall be rendered in such a manner as to protect the privacy of the child and in the presence of the parent or guardian or any other person in whom the child has trust and confidence. **(Rule 5(2) POCSO Rules)**
- e. The medical practitioner, hospital or any medical facility providing emergency medical care shall not demand any legal or magisterial requisition to provide emergency medical care. **(Rule 5(3) POCSO Rules)**
- f. Any forensic evidence collected during the provision of emergency medical care must be collected in accordance with Section 27 of the POCSO Act. **(Rule 5(5) POCSO Rules)**

### **PRODUCTION OF THE VICTIM BEFORE CWC**

- a. All victims under POCSO Act need not to be produced before the CWC. However the child has to be produced before CWC within 24 hours if the following conditions are satisfied.
  - i. If a local police or SJPU has reasonable grounds to believe that the offence has been attempted/committed or likely to be committed by a person living in the same or shared household with the child, or
  - ii. The child is living in a Child Care Institution and is without parental support, or
  - iii. The child is found homeless and is without parental support.

(Rule 4(3), POCSO Rules)
- b. A report has to be submitted to CWC in Form 17, JJ Model Rules containing the details of the child as well as the circumstances in which the child was received or found. **(Rule 18(2), JJ Model Rules)**
- c. If the child is below 2 years or medically unfit or cannot be produced, the CWC shall be informed so that they can reach out to the child where the child is located. **(Section 30(xii) JJ Act, 2015 and Rule 18(1) and 18(3) JJ Model Rules)**

## APPOINTMENT OF SUPPORT PERSONS AND SERVICES OF EXPERTS

- a. Rule 2(f), of POCSO Rules defines ‘**Support Person**’ to mean ‘*a person assigned by the Child Welfare Committee to render assistance to the child throughout the process of investigation and trial or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act*’.
- b. **Interpreter, Translator and Special Educator:** Rule 3(1) of the POCSO Rules mandates that the DCPU will maintain a register containing details of interpreter, translator and special educator to be made available to the SJPU, Local Police, Magistrate or Special Court as and when required.
- c. **Payment:** Rule 3(6) has provision of payment to interpreter, translator and special educator who are empaneled or registered with the DCPU from the fund maintained under Section 61 of the J.J Act, 2000, presently Section 105 of the JJ Act, 2015.
- d. **Child Preference of Experts:** Rule 3(7) of the POCSO Rule provides that any child victim will have an option of choosing his or her own expert person and if necessary more than one expert may also be provided.

## COMPENSATION AND SUPPORT TO VICTIMS

The SJPU or local police has to inform the child and his parents or guardian or other person in whom the child has trust and confidence of the availability of support services including counseling. They have to be assisted in contacting the persons who are responsible for providing the services and relief. *(Rule 4(2)(e), POCSO Rules)*

The SJPU or local police has to inform the child and his parents or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer.

*(Rule 4(2)(f), POCSO Rules)*

The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation or may recommend the award of compensation.

The police officer has to inform the child and his parent or guardian or other person in whom the child has trust or confidence about the provision for compensation. They have also to be informed about the authorities to be contacted and link them with the concerned authorities (Special Court & DLSA). The services of Para Legal Volunteers (PLV) who are deputed by DLSA to police stations may be taken in this regard.

*(For details refer to chapter 8 on Legal Service Authorities & Victim Compensation)*

## OFFENCE COMMITTED BY A CHILD

If an offence is committed under the POCSO Act by a child then such child has to be dealt as per the provisions of Juvenile Justice Act. (*Section 34(1), POCSO Act*)

### Some Important Aspects of Investigation

#### a. Time limit for completion of investigation

- i. No time limit has been prescribed for completion of investigation under POCSO Act.
- ii. However, as per the provision of Section 173(1A) of CrPC. (which has been amended vide Criminal Law Amendment Act, 2018), the investigation in relation to offence under *Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E* of IPC has to be completed within 2 months from the date on which the information was recorded by the Officer-in-Charge of the police station.
- iii. It is to be noted that Section 4 & 6 of POCSO Act which are equivalent to rape are not included in *Section 173(1A)*, CrPC. Since POCSO Act does not mention time limit for investigation of cases, the provision of the CrPC would apply. This, in effect, implies that the investigation of cases of penetrative sexual assault and aggravated penetrative sexual assault has to be completed within 2 months.
- iv. Since, other sexual offences against children are also incidents of very serious nature, It is desirable that investigation of cases registered under other sections (*Sections 8, 10, 12, 14 & 15*) are completed expeditiously.
- v. Time bound completion of investigation of cases of rape would also depend on the support from Forensic Science Laboratories, medical authorities, etc. If medical examination report from doctors and reports from FSL are not received in time, the investigating officers may not be able to file charge sheet within 2 months. The SPs and other police officers should maintain close coordination with these agencies for timely receipt of reports.
- vi. SPs and other senior Police Officers may keep in mind that trial of cases of rape has to be mandatorily completed by the Special Court in 2 months' time from the date of filing of charge sheet. (*Section 309 CrPC*)
- vii. The SPs and other senior officers of police must ensure that witnesses belonging to Police Department including Investigating Officers are deputed to depose in trial courts on scheduled dates. Similarly, Police and

prosecution should maintain coordination for timely appearance of other witnesses in trial courts. These measures will help timely completion of trials. In this regard, Supreme Court Order dated 1st May, 2018 in connection with Writ Petition (Civil) No. 76/2018 (Alok Alok Srivastava Vs. Union of India) may be referred.

- viii. It may also be noted that appeal in cases of rape has to be mandatorily disposed by Courts within a period of 6 months from the date of filing such appeal.
- ix. Provision of anticipatory bail under (*Section 438 CrPC*) does not apply to cases involving the arrest of any person for cases of rape of women below 16 years of age.

- b. When both victim and offender are children:** A numbers of cases are registered by police like cases of elopement wherein both the victim and the accused person are children. In such cases the offender has to be treated as a child in conflict with law and has to be dealt with under the provision of JJ Act, 2015. The child in conflict with law needs to be produced before JJB.
- c. Medico legal examination:** In June 2018, the Directorate of Forensics Science Services under Ministry of Home Affairs has issued guidelines for (i) *'collection, storage and transportations of crime scene DNA sample for Investigating Officers'* (ii) *'Forensics medical Examination in sexual assault cases'* for medical practitioners. It is suggested that the SPs and other senior Police Officers should make investigating officers aware of the guidelines relating to investigating officers. These guidelines are in addition to provision contained in POCSO Act and CrPC.
- d. Determination of age of child:** If the age of the victim or the child in conflict with law has to be determined, it will be determined as per the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

*If any question arises in any proceeding before the Special Court, whether such person is a child or not, such question has to be determined by the Special Court after satisfying itself about the age of such person. (Section 34(2) POCSO Act)* The police need not ask the doctor for age determination by an ossification test or any other latest medical age determination test without order from the Special Court/ JJB/CWC. It may also be noted that medical determination of age is the last resort for only such cases where the documents prescribed in Section 94(2) of

JJ Act are not available. Therefore, the investigating officers should first look for collecting documents as prescribed in Section 94(2)(i) and (ii) of JJ Act.

*(For further details refer to chapter 2 (B) on Juvenile Justice Act, 2015)*

- e. **Recording of statement of victim before magistrate:** The Judicial Magistrate has to record the statement of person against whom offences under Section 354, 354-A, 354-B, 354-C, 354-D, sub-section (1) or (2) of 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, 376-E or 509 IPC has been committed, as soon as the commission of offence is brought to the notice of police. (**Section 164 (5A), CrPC**) Thus, it is clear that police should arrange for recording of statement of victim without undue delay. In this connection, the Order of Supreme Court **dated 25th April 2015 in State of Karnataka Vs. Shivanna (Special Leave Petition (CRL) no. 5073 of 2011), may be referred.**
- f. **Prosecution sanction:** No sanction is required in case of a public servant accused of any offence alleged to have been committed under Sections 166A/166B/354/354A/354B/354C/354D/370/376/376-A/376-AB/376-C/376-D/376-DA/376-DB/509 of IPC. (**Section 197(1) CrPC**)
- g. **Repeat offences:** It has been observed that persons who are already convicted on charges of sexual offences are not properly monitored due to lack of central database of such persons. As a result, a convict moves to other States and commits another sexual offence. The Investigating Officer may not be able to ascertain his past criminal track record. To overcome this problem, **National Database on Sexual Offenders** for the country has been launched by the Government of India. The IOs can verify from the database to find out whether the accused person is already convicted for sexual offence. This would also help secure higher punishment.
- h. **Special kits for investigation of cases of sexual assault:** The Government of India has proposed to make available specially designed kits (Sexual Assault Evidence Collection Kits) which are commonly called 'Rape Investigation Kits' for police stations and hospitals to carry out immediate medico-legal investigation into sexual assault cases. The Rape Investigation Kits have to be procured by the State Government with financial support under the Nirbhaya fund. These special kits will help collect blood and semen samples along with other evidences in sexual assault cases.

The use of these kits by investigating officers would facilitate collection of medico-legal evidences in professional manner without compromising the evidence.

**COMMON LAPSES IN INVESTIGATION OF CASES UNDER POCSO ACT**

1. Cases are not registered under proper section of the POCSO Act. For example, officer in charge of a police station applies Section 4 in case of penetrative sexual assault of a child who is 11 years of age. As a matter of fact, Section 6 should have been applied.
2. In cases of rape of girl children, penal provision for rape under IPC are not applied along with provision of POCSO Act.
3. In case of rape of child, the penal provision of only IPC are applied under the impression that punishment is higher in IPC. Non-application of provision of POCSO Act would result in denial of special procedures, support services and other safeguards to the victim. On the other hand offenders get benefited through non-application of provision of POCSO Act.
4. There is unnecessary delay in arranging of recording the statement of the victim before Judicial Magistrate as per the Provision of 164 (5A) CrPC.
5. Test Identification Parade is not held in suitable cases where the victim does not know the offender and the victim is in a position to recognise him.
6. The police officer remains in uniform while recording the statement of the child.
7. The victim is called to police station for examination. It should be noted that besides Section 24, POCSO Act, Section 160 CrPC provides that no male person below 15 years or above 65 years; women of any age or physically or mentally disabled person shall be required to attend any place other than the place in which such person (victim or witness) resides.
8. There is a delay beyond 24 hours (from the time of receiving information relating to the commission of offence) in sending the victim for medical examination.
9. The offender is not sent for medical examination. Section 53A CrPC provides for examination of person accused of rape by medical practitioner. Such examination may lead to recovery of parts of clothes (fiber) or body parts of the victim from the accused which might have got exchanged during commission of crime particularly when the victim offered any resistance.
10. Material is not collected from the person of the accused or victim during medical examination, from clothes or during search of the scene of crime, etc. for DNA profiling. Semen, saliva, blood, hair or other body parts may have got transferred from the offender to the body including private parts of the victim, cloth of the victim or the place of occurrence.

11. Requisition is not made to the examining doctor for ascertaining pregnancy in case of rape of children who have reached the age of puberty.
12. Victims may undergo abortion or may give birth to children due to pregnancy which are due to rape. Products of conception or DNA sample of children so born are not collected for DNA profiling and matching with the DNA profile of the suspects.
13. The investigation is not completed in 2 months as mandated by law in cases of rape.
14. Proper procedure is not followed for determination of age of the victim or accused. Medical examination is resorted instead of looking for documents for proof of age. Rather, medical examination should be the last resort for age determination and can be done only on order of the JJB, CWC or Court.
15. When the accused is also a child, the accused is not dealt with as per the Provision of JJ Act, 2015.
16. Reports about registration of cases under POCSO Act are not provided to CWC & Special Court within 24 hours as per the provision of POCSO Act.
17. The identity of the child is disclosed.
18. The statement of the victim is not recorded by a women police officer even when such officer is available.
19. The offender and victim are brought face to face either during examination or while taking them to the Special Court or hospital.
20. The investigating officer shows insensitivity or lack of child friendly approach during investigation.

### **OTHER LAWS APPLICABLE IN CASES OF CHILD SEXUAL ABUSE**

**a. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

*The details have been provided in chapter 2 (I) of this handbook.*

**b. Immoral Traffic (Prevention) Act, 1956**

*The provision of this Act has been discussed in detail in chapter 2 (E) of this handbook.*

**c. Information Technology Act, 2000**

*The relevant parts of this Act has been discussed in detail in chapter 2 (H) of this handbook relating to cybercrime against children.*



#### d. Indecent Representation of Women (Prohibition) Act, 1986

- i. **‘Indecent representation of women’** means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals. *(Section 2 (c))*
- ii. **Prohibition of advertisements containing indecent representation of women.** The Act provides that no person shall publish, or cause to be published or arrange or take part in the publication or exhibition of, any advertisement, which contains indecent representation of woman in any form. *(Section 3)*
- iii. **Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.** This prohibits any person from producing or causing to be produced, selling, letting to hire, distributing, circulating or sending by post any book, pamphlets, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form. *(Section 4)*
- iv. **Penalty:** Any person who violates above mentioned provision shall be punished on first conviction with imprisonment up to 2 years and with fine up to Rs. 2000; and in the event of second or subsequent conviction with imprisonment from 6 months to 5 years and with a fine of Rs. 10,000 to Rs. 1,00,000. *(Section 6)*
- v. **The offences under this Act are cognisable and bailable.** *(Section 8)*

#### f. Rights of Persons with Disabilities Act, 2016

Many victims of sexual offence may be persons with disability and therefore the police officers must be aware of the relevant provision of the Act.

- i. Assaulting or using force with the intention of outraging the modesty of a woman with disability is an offence under the RPD Act as per Section 92(b).
- ii. Sexual exploitation of a child or woman with disability by a person in a position to dominate the will of the child and use of the position by such person to exploit her sexually is also an offence as per Section 92(d).

Both these offences are punishable with imprisonment of minimum term of 6 months that can extend to 5 years and fine.

- iii. Section 7(4), RPD Act requires a police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation toward any person with disability to inform the aggrieved person of his/her right to apply for protection and the particulars of the Executive Magistrate having jurisdiction to provide assistance; the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities; the right to free legal aid; and the right to file a complaint under the provisions of this Act or any other law dealing with such offence.
- iv. The Act also mandates the government to enable persons with disabilities to '*access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigation powers without discrimination on the basis of disability*'. Therefore, the physical structure of police stations, police out posts, etc. should be such which do not pose challenge or hindrance to children with disabilities.

## IMPORTANT COURT JUDGMENTS

1. **The Supreme Court of India has passed order dated 1st May 2018, in Alakh Alok Srivasatava Vs. Union of India and Ors. (WP(C) No. 76/2018)** directing all State Governments that Director General of Police (DGP) or the officer of equivalent rank of the State shall constitute a Special Task Force which shall ensure that the investigation under POCSO Act is properly conducted and witnesses are produced on the dates fixed before the Trial Courts.

In view of this order, It is required from the SPs and other Senior Police Officers of the District that they maintain close co-ordination with the prosecution and take steps to ensure that witnesses are present in the Court on date fixed. The Superintendent of Police and other senior Police Officers of the District should also closely monitor the progress of investigation of cases registered under POCSO Act in coordination with the Special Task Force of the concerned state.

2. **The Supreme Court order dated 24-10-2017 in the matter of *Suo Motu Writ Petition No. 3/2015 (Prajwala NGO case)*:** The Supreme Court has made inter alia directions concerning following areas:
  - Central reporting mechanism for receiving complaints of Child Pornography /Rape-Gang Rape (CP/RGR) content circulated through Internet,
  - Helpline to receive CP/RGR complaints,

- Prompt blocking/removal of CP/RGR content on Internet platforms in addition to investigation of complaints.

These directions are being complied by the MHA and States/UTs under CCPWC Scheme.

**3. The Uttarakhand High Court on 29th August, 2018 order in Shreemati Reenu Saini Vs. State of Uttarakhand and Others (Writ Petition (Criminal) No. 1591 of 2018):**

The cases registered under POCSO Act as well as under Section 376 of IPC, or any other sexual offence relating to child/girl, the enquiry/investigation shall be carried out by a woman police officer not below the rank of sub-inspector and the victim shall only be examined by woman doctor, as provided under Section 27 of the POCSO Act.

**4. State of Karnataka Vs. Shivanna (Supreme Court) Special Leave Petition (CRL) no. 5073 dated 2011, Order dated 25th April 2015:**

- Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge sheet/report under Section 173 CrPC is filed.
- The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
- If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- Inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

5. **Supreme Court Judgement Dated 11/04/2013 in LILLU @ Rajesh & another Vs. State of Haryana (Criminal Appeal No. 1226 of 2011)** has held that two finger test violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test cannot be performed on the victim of rape.
6. **Order of Gauhati High Court dated 19.08.2010 in PIL No. 75/2009:** The High Court has directed the DGP and Health Department of Government of Assam and all other concerned to ensure that female victim of sexual offence is examined only by lady Government Doctor and if there is no lady Doctor available, by a private female practitioner at State expense or by a trained female nurse. The High Court also directed to take immediate steps by the respondents to impart necessary training to female nurses.
7. **Supreme Court of India in its order in Independent Thought Vs. Union of India on 11th October/2017 in Writ Petition (Civil) No. 382 of 2013 case** has ruled that sexual intercourse or sexual Acts by a man with his own wife, the wife not being 18 years, is rape.
8. **Supreme Court Judgment dated 11th December 2018 in Nipun Saxena & ANR. Vs. Union of India & ORS. Writ Petition (Civil) No. 565/2012:**
  - i. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
  - ii. In case where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
  - iii. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E of IPC and offences under POCSO shall not be put in the public domain.
  - iv. In case a victim files an appeal under Sections 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
  - v. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace

these documents by identical documents in which the name of the victim is removed in all record which may be scrutinized in the public domain.

- vi. All the authorities to which the name of the victim is disclosed by the investigating agency or the Court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the Court.
- vii. An application by the next of kin to authorize disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A (2) (c) of IPC should be made only to the Sessions Judge concerned until the Government Acts under Section 228A (1) (c) and lays down a criteria as per Supreme Court's direction for identifying such social welfare institutions or organisations.
- viii. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.
- ix. All the States/Union Territories are requested to set up at least one 'one stop centre' in every district within one year from today.

### IMPORTANT INITIATIVES

- a. **POCSO e-box:** A major initiative named '*POCSO e-box*' was taken in August, 2016 providing an easy and direct online medium for reporting any case of sexual assault on a child. The "POCSO e-box" is incorporated prominently in the home page of NCPDR's website, [www.ncpcr.gov.in](http://www.ncpcr.gov.in) where any person can submit a complaint either by entering his/her name and phone number/email in the POCSO e-box portal in the NCPDR website or if the informant does not want to disclose his identity, he/she can contact these numbers; **1800115455 (Toll free), 9868235077, 1098 (Childline)**.
- b. **Cyber Crime Prevention Against Women and Children (CCPWC):** This scheme is being implemented by the Ministry of Home Affairs (MHA), Government of India and has the following components:
  - Setting up of Cyber Forensic Training Lab in States/UTs
  - Setting up of online cybercrime reporting portal
  - Capacity building of police officers, prosecutors and judicial officers, etc.
 MHA, Government of India, under CCPWC scheme has developed a centralised

online reporting portal ([www.cyberpolice.gov.in](http://www.cyberpolice.gov.in)) for accepting complaints of child pornography and rape/gang rape (CP/RGR) content being circulated through internet. This portal was formally launched on 20th Sept, 2018. All States/UTs have to designate Nodal Cyber Cells and Nodal Officers for handling the complaints received on this portal. In suitable cases, the Nodal Cyber Cells of States/UTs will issue notice to Intermediaries/Content Hosting Platforms for blocking/removal of CP/RGR content under **Section 79(3)(b)** of IT Act.

- c. National Database on Sexual Offenders (NDSO):** The online National Database on Sexual Offenders was launched on 20 September 2018 by MHA, Government of India. This database is maintained by the National Crime Records Bureau and includes names, addresses, photographs and fingerprint details of persons convicted under charges of rape, gang rape, POCSO and eve teasing. The data can be accessed only by law enforcement agencies and is not available for public. It would be helpful in monitoring and investigation of sexual crimes.
- d. Investigation Tracking System for Sexual Offences (ITSSO):** The amendment to Code of Criminal procedure, prescribes a time limit of 2 months for completion of investigation. To ensure that the amendments to the Act are effectively translated into action at the ground level, the Government has initiated Investigation Tracking System for Sexual Offences (ITSSO) which was launched on 19th February, 2019. ITSSO is an analytical tool that leverages data from Crime & Criminal Tracking System (CCTNS) to file FIRs and Final Reports. It generates report based on the ageing of cases, and States can use it for real-time monitoring of resolutions in sexual offences cases. It also supports decisions on augmentation of resources and identification of 'Best Practices'.

## FREQUENTLY ASKED QUESTIONS (FAQs)

### 1. How the age of the victim or the offender is determined?

**Answer:** If the age of the child victim or the child in conflict with law has to be determined, it will be determined as per the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 94 provides that the committee or the Board will determine the age of the person based on its appearance and shall record such observation while stating the age of the child and will proceed with inquiry without waiting for further confirmation of age. In case of doubt, the steps for age determination has been prescribed in Section 94(2) of the JJ Act, 2015.

*(The detailed explanation has been provided in chapter 2 (B) of this handbook)*

## 2. Whether the child victim of sexual offence needs to be produced before the CWC in all cases?

**Answer:** All victims under POCSO Act need not to be produced before the CWC. However the child has to be produced before CWC within 24 hours if the following conditions are satisfied:

- a. If local police or SJPU has reasonable grounds to believe that the offence has been attempted/committed or likely to be committed by a person living in the same or shared household with the child, or
- b. The child is living in a Child Care Institution and is without parental support, or
- c. The child is found homeless and is without parental support.

If the child cannot be produced, the CWC has to be informed so that they can reach out to the child where the child is located. (*Rule 18(1) JJ Model Rules, 2016*)

## 3. What is manner of reporting of POCSO cases to the CWC?

**Answer:** A report should be submitted by the SJPU or local police without unnecessary delay but within 24 hours to the CWC and the Special Court. If no Special Court has been designated then the report has to be submitted to the Court of Sessions. The report should include information on need of the child of care and protection and steps taken in this regard. (*Section 19(6) POCSO Act.*)

The report should be submitted to CWC, in case a child is produced before the CWC in Form 17, JJ Model Rules, 2016 containing the details of the child as well as the circumstances in which the child was received or found. (*Rule 18(2) JJ Model Rules*)

## 4. A case of rape against a child is reported. Does the officer in charge need to apply relevant penal section under IPC (376, 376 A, 376 D, 376 E, 376 AB, 376D A or 376 DB, as the case may be) along with provision of POCSO Act?

**Answer:** The detailed answer has already been provided in this chapter. In addition to the points already discussed, the following additional points may be considered:

- Application of relevant section for rape would be in the interest of the victim. For example, provision of Section 309 of CrPC would be applicable, if relevant section of rape as provided in the IPC is applied. Thus, the trial would have to be completed within the time limit of 2 months as prescribed by Section 309 CrPC in cases of rape.

- It is worth mentioning here that if relevant section of IPC for offence of rape (or for that matter other offences like sexual assault, sexual harassment, etc.) has not been applied by police, the offender may not be charged under the relevant Penal Section of IPC. It may also be mentioned that the punishment prescribed is higher for rape of children in IPC as compared to POCSO Act.
- However, it may be kept in mind that relevant section for rape/sexual intercourse with women under IPC or Sections 354, 354-A to D and 509 of IPC which deal with sexual offences against woman need not be applied in case the victim is a male child.

**5. A woman lodges an FIR in 2018, alleging commission of rape on her in 2011 when she was of 16 years of age. Can the provision of POCSO Act be applied?**

**Answer:** No, the provision of POCSO Act will not be applicable for this offence as this Act came into force in 2012 and the provisions cannot be given a retrospective effect. In such situation, the case would have to be registered under the provision of IPC.

**6. In January 2018, a woman who is 20 years of age complains that she was raped 4 years ago. Can the officer in charge apply provision of POCSO Act while registering the case?**

**Answer:** Yes, the officer in charge can apply the provision of POCSO Act as when the offence was committed, the complainant was a child and the POCSO Act was in force. Age of the victim at the time of commission of offence is to be considered. If offence is repeated over a period of time then the age of the victim when first offence took place would be considered for such purpose.

**7. What should be course of action for police officers if both offender and victim of sexual offence are children?**

**Answer:** The offender will be treated as a child in conflict with law. The answer has already been provided in this chapter.

**8. A girl of 16 years eloped with an adult (22 years of age) with whom she had developed intimate relationship. After elopement, both had sexual intercourse. The father of the girl lodged FIR for rape and kidnapping of his daughter by the accused. What is the criminal liability of the accused person?**

**Answer:** The accused person may be liable for punishment for kidnapping and rape/penetrative sexual assault against the victim as the consent of the child is



immaterial. However the success of investigation would depend on the cooperation from the victim.

**9. A principal of a school is informed by a girl student of sexual harassment in the school by a teacher of the school. The principal has referred the matter to Internal Committee setup under the Sexual Harassment of Women at Workplace Act, 2013. Is there any lapse on the part of the principal?**

**Answer:** Yes, the principal has committed an offence under Section 21 of the POCSO Act, by not reporting the matter to the police as mandated by Section 19 of POCSO Act .

**Additional Reading Materials**

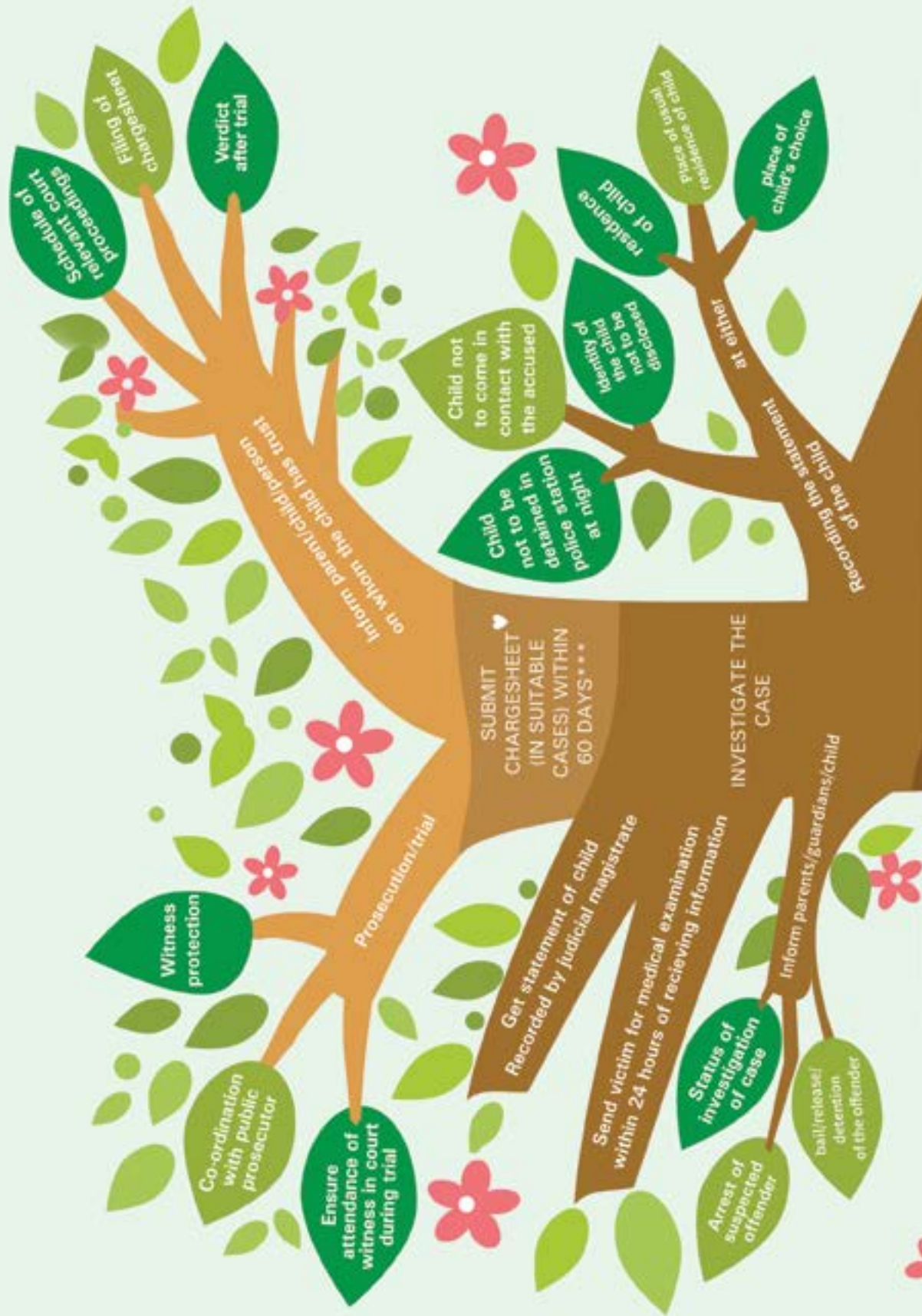
1. User handbook on POCSO Act, 2012 available on [www.ncpcr.gov.in](http://www.ncpcr.gov.in)
2. Criminal Law Amendment Act, 2013
3. Criminal Law Amendment Act, 2018
4. Guidelines by Directorate of Forensics Science Services under Ministry of Home Affairs for,
  - i. 'Collection, storage and transportations of crime scene DNA sample for Investigating Officers'
  - ii. 'Forensics medical Examination in sexual assault cases' for medical practitioners
5. Model Guidelines under Section 39 of The POCSO Act, 2012 - *Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012 September, 2013 by Ministry of Women and Child Development, Government of India.*

**ANNEXURE I****Other Sexual Offences under IPC against Women**

<b>Sections</b>	<b>Offence</b>	<b>Description</b>	<b>Punishment</b>
354	Assault or criminal force to woman with intend to outrage her modesty	Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty.	Imprisonment of either description for a term which shall not be less than one year but which may extend to 5 years, and shall also be liable to fine.
354(A)	Sexual Harassment	A man committing any of the following: <ul style="list-style-type: none"> <li>i. Physical contact and advances involving unwelcomed and explicit sexual overtures.</li> <li>ii. A demand or request for sexual favours.</li> <li>iii. Showing pornography against the will of a woman; or</li> <li>iv. Making sexually coloured remarks.</li> </ul>	For Clause (i), (ii), (iii):- Rigorous imprisonment for a term which may extend to 3 years or with fine or with both.  For Clause (iv) imprisonment of either description for a term which may extend to one year or with fine or with both.
354(B)	Assault or use of criminal force to woman with intent to disrobe	Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked.	Imprisonment of either description for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.

Sections	Offence	Description	Punishment
354(C)	Voyeurism	Any man who watches or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminate such image.	On first conviction imprisonment with either description for a term which shall not be less than 1 year, but which may extend to 3 years and shall also be liable to fine On second or subsequent conviction, with imprisonment of either description for a term which shall not be less than 3 years, but which may extend to 7 years and shall also be liable to fine.
354(D)	Stalking	Any man who, <ul style="list-style-type: none"> <li>i. Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or</li> <li>ii. Monitors the use by a woman of the internet, email, or any other form of electronic communication.</li> </ul>	On first conviction, imprisonment of either description for a term which may extend to 3 years and shall also be liable to fine; On second conviction, with imprisonment of either description for a term which may extend to 5 years and shall also be liable to fine.
509	Word, gesture or act intended to insult the modesty of a woman	Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman.	Simple imprisonment for a term which may extend to 3 years and also with fine.

# Role of Police under POCSO Act, 2012





Police Officer to be

not in uniform

woman police officer not below the rank of sub inspector

Apply relevant section of IPC along with POCSO act

emergency services

Inform parent/child about availability of

free legal aid

victim compensation

REGISTER THE CASE

IDENTITY AND OTHER DETAILS OF RECEIVING OFFICER TO BE DISCLOSED TO THE COMPLAINANT

LOCAL POLICE/SJPU RECEIVES INFORMATION

On it's own

Any Other Person

Parent/Guardian

victim & accused are in the same/shared household

the victim is without any home & parental support

Produce child before CWC in case of

crime takes place in CCI & child is without parental support

Arrange for care & protection\* of child

Special Court

Inform within 24 hours

CWC

- \* If required
- \*\* As far as practicable
- \*\*\* In case of Section 4&6 of POCSO Act
- ♥ If sufficient evidence is found

## 2D

## **THE ROLE OF POLICE - MISSING CHILDREN**

### **SCENARIO OF MISSING CHILDREN IN INDIA**

A large number of children go missing every year. The category of missing children may include trafficked children, runaway children, abandoned children and lost children. As per 'Crime in India 2016' published by NCRB, 111569 children were reported missing at the end of 2016, out of this 41175 were male children whereas 70394 were female children. It may be noted that 63407 children were reported missing in 2016 whereas 48162 were unrecovered/untraced missing children from previous years. A total of 55944 children were traced/recovered in 2016. It is an unpleasant reality that many children who have gone missing in past have remained untraced. At the end of 2016, a total of 55625 children remained untraced/unrecovered out of which 34814 are female. Each case is a matter of serious concern.

### **DEFINITION OF MISSING CHILDREN**

- a. A 'missing child' may be one who is lost (separated from family), has left home on his/her own without a notice or has been abducted or kidnapped or trafficked or abandoned. (Standard Operating Procedure for cases of Missing Children by MWCD)
- b. As per **Rule 92 (1) of JJ Model Rules, 2016**, a missing child is a child whose whereabouts are not known to the parents, legal guardians 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 & protection until located or his safety or wellbeing is established.

### **LEGAL PROVISIONS**

#### **Juvenile Justice (Care & protection of Children) Model Rules, 2016 (Rules 92(1) (6))**

- a. When a complaint is received about a child who is missing, the police shall register a First Information Report forthwith.

- b. The police shall inform the Child Welfare Police Officer and forward the FIR to the Special Juvenile Police Unit for immediate action for tracing the child.
- c. The police shall:
  - i. Collect a recent photograph of the missing child and make copies for District Missing Persons Unit, Missing Persons Squad, National Crime Records Bureau/Media etc.
  - ii. Fill the form on the designated portal.
  - iii. Fill the specific designed 'Missing Persons Information Form' and immediately send to Missing Persons Squad, District Missing Persons Unit, National Crime Record Bureau, State Crime Records Bureau, Central Bureau of Investigation, and other related institutions.
  - iv. Send the copy of the First Information Report by post/email to the office of the nearest Legal Services Authority along with addresses and contact phone numbers of parents or guardian of the missing child or the Child Care Institution, after uploading the relevant information onto the designated portal.
  - v. Prepare sufficient number of *Hue and Cry* notices containing photograph and physical description of the missing child to be sent for publication.
  - vi. Give wide publicity by publishing or telecasting the photographs and the description of the missing child, as feasible in,
    - a. leading newspapers
    - b. television/electronic media
    - c. local cable television network and social media and thereafter submit for ratification by the Board or the Committee or the Children's Court, as the case may be.
  - iv. Give wide publicity in the surrounding area through the use of loud speakers and the distribution and affixture of *Hue and Cry* notice at prominent places. Social networking portals, Short Message Service alerts and slides in cinema halls can be used to reach out to the masses.
  - v. Distribute *Hue and Cry* notice at all the outlets of the city or town, that is, railway stations, bus stands, airports, regional passport offices and other prominent places.
  - vi. Search areas and spots of interest such as movie theatres, shopping malls, parks, amusement parks, games parlours and areas where missing or run away children frequent should be identified and watched.

- vii. Scan the recordings of the Closed Circuit Television Cameras installed in the vicinity of the area from where the child was reported missing and on all possible routes and transit destination points like bus stands, railway stations, and other places.
  - viii. Inquire from under construction sites, unused buildings, hospitals, and clinics, Childline services, and other local outreach workers, railway police, and other places.
  - ix. Details of missing children should be sent to the District Crime Record Bureaus 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 shall conduct regular interaction with the concerned so that follow-up action is ensured.
- d. Where a child cannot be traced within a period of four months, the investigation of the case shall be transferred to the Anti Human Trafficking Unit in the District, which shall make reports every three months to the District Legal Services Authority regarding the progress made in the investigation.
- e. When a child is traced,
- i. He shall be produced before the Board or the Committee or the Children's Court, as the case may be, for appropriate directions.
  - ii. The police shall send a report to the District Legal Services Authority which shall provide counseling and support services to the child and the family.
  - iii. The police shall conduct an inquiry whether the child has been subjected to any offence under the Act or any other law and if so, proceed accordingly.

### **SUPREME COURT ORDER**

#### **As per the direction of the Supreme Court of India in *Bachpan Bachao Andolan Vs. Union of India (WP (Civil) 75 of 2012)* on 10th May 2013**

- a. On receiving a complaint on a missing child, a FIR has to be registered forthwith presuming it to be a case of abduction or trafficking.
- b. In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit (AHTU) in order to enable the said Unit to take up more intensive investigation regarding the missing child.
- c. The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated.



Ministry of Home Affairs has issued 'Advisory on Hon'ble Supreme Court's Direction to file FIR in case of Missing Children' dated 25th June 2013. Some of the important points of this Advisory are mentioned in *Annexure II*.

## STANDARD OPERATING PROCEDURE, PROTOCOLS & ADVISORIES

The National Human Rights Commission (NHRC), Ministry of Women and Child Development (MWCD) and National Commission for Protection of Child Rights (NCPCR) have issued Standard Operating Procedures (SOPs) for the police in case of missing children. In some states, the State Government or the Police Department have also issued SOPs. Given below are some of the important points of the various SOPs:

### I. SOP for cases of missing children by Ministry of Women and Child Development (MWCD):

Many points of the SOP for cases of Missing Children by Ministry of Women & Child Development have been included in *(Rules 92 (1) (6) of Juvenile Justice (Care & Protection of Children) Model Rules, 2016*. However, some other important points are as under:

- a. The SHO/Officer in Charge should assess the level of threat or danger to the child or his/her family and take immediate steps to ensure their protection. The risk assessment should be done by taking into consideration various parameters in the 'Risk Assessment Form' to be filled out by the SHO/Officer-in-charge to determine the,
  - i. the urgency of investigation,
  - ii. areas of inquiry,
  - iii. types of specialist knowledge that might be needed,
  - iv. the supervision that maybe required, and
  - v. agencies who may be first alerted.
- b. When a child is found, the child should be examined by a team of medical experts, including psychosocial experts.
- c. When the missing child is found and the parents are traced, the police has to be conducted a proper home verification before reuniting the child with parents/legal guardians through CWC.

- d. When the police recovers a missing child, the police shall fill a recovery form “R” on the TrackChild portal\* in [www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in).

## II. SOP on Missing Children by National Human Rights Commission (NHRC):

- a. Dedicated infrastructure is required within each Police Station so that the day-to-day work of the PS do not get hampered and the Investigating Officers (IO) working on missing cases have a well-defined area to carry out the tasks detailed in the SOP.
- b. It is also recommended in the SOP that an exclusive room be earmarked for the investigation team which should be well equipped with all necessary peripherals to assist them in tracing the missing child, for example telephone, computer, network connectivity, scanner, printer, furniture, fax etc.

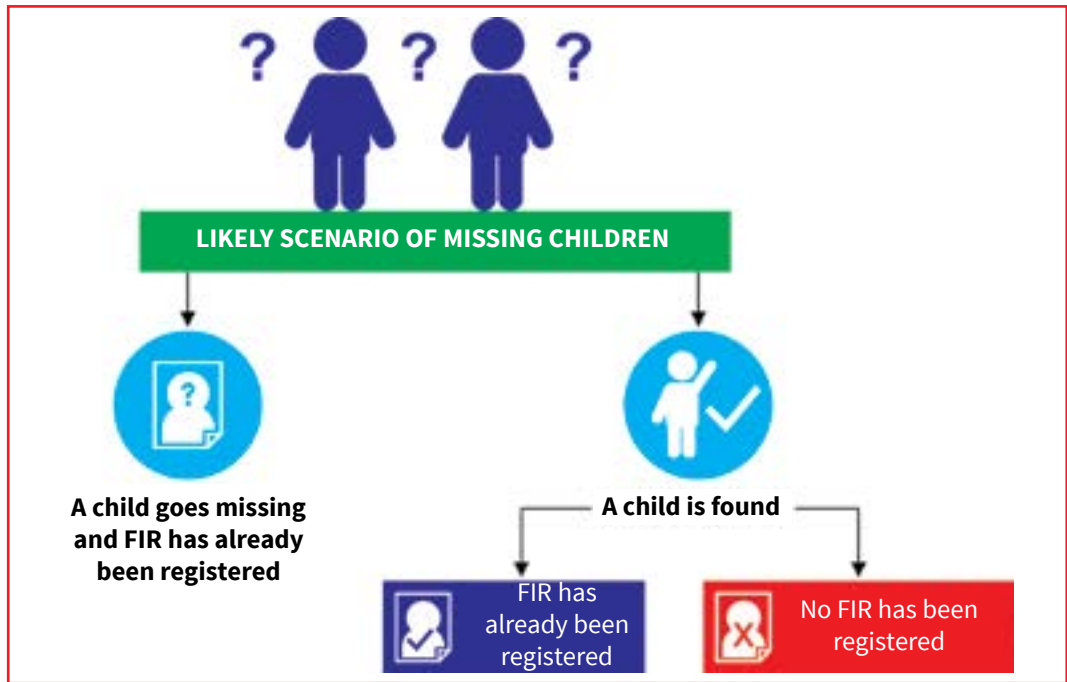
## POSSIBLE SCENARIOS OF MISSING CHILDREN

- a. A child goes missing and a missing report or FIR has been registered.
- b. A child is found and no missing complaint was registered in any police station.
- c. A child is found and a missing complaint was already registered in a police station.

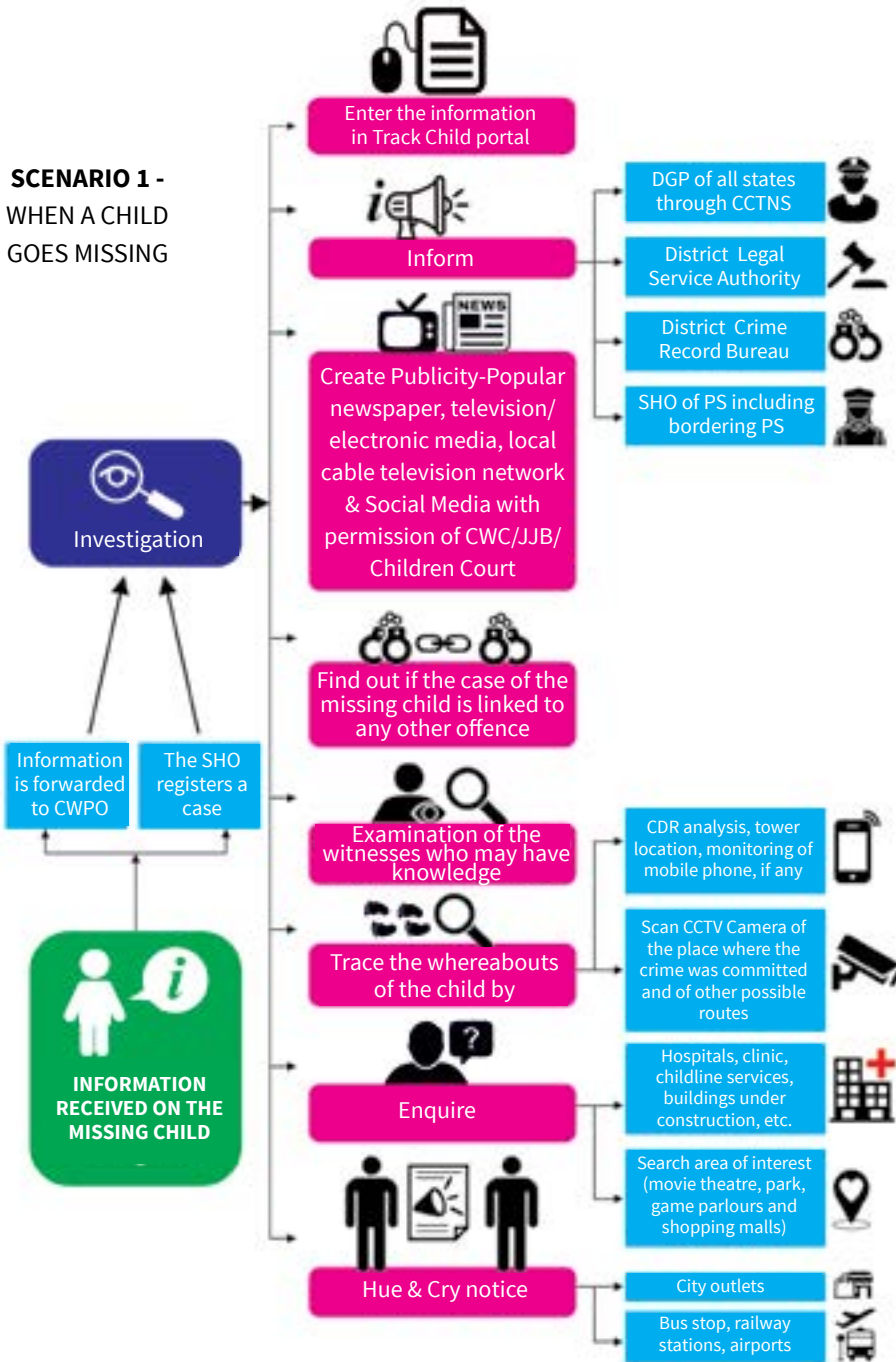
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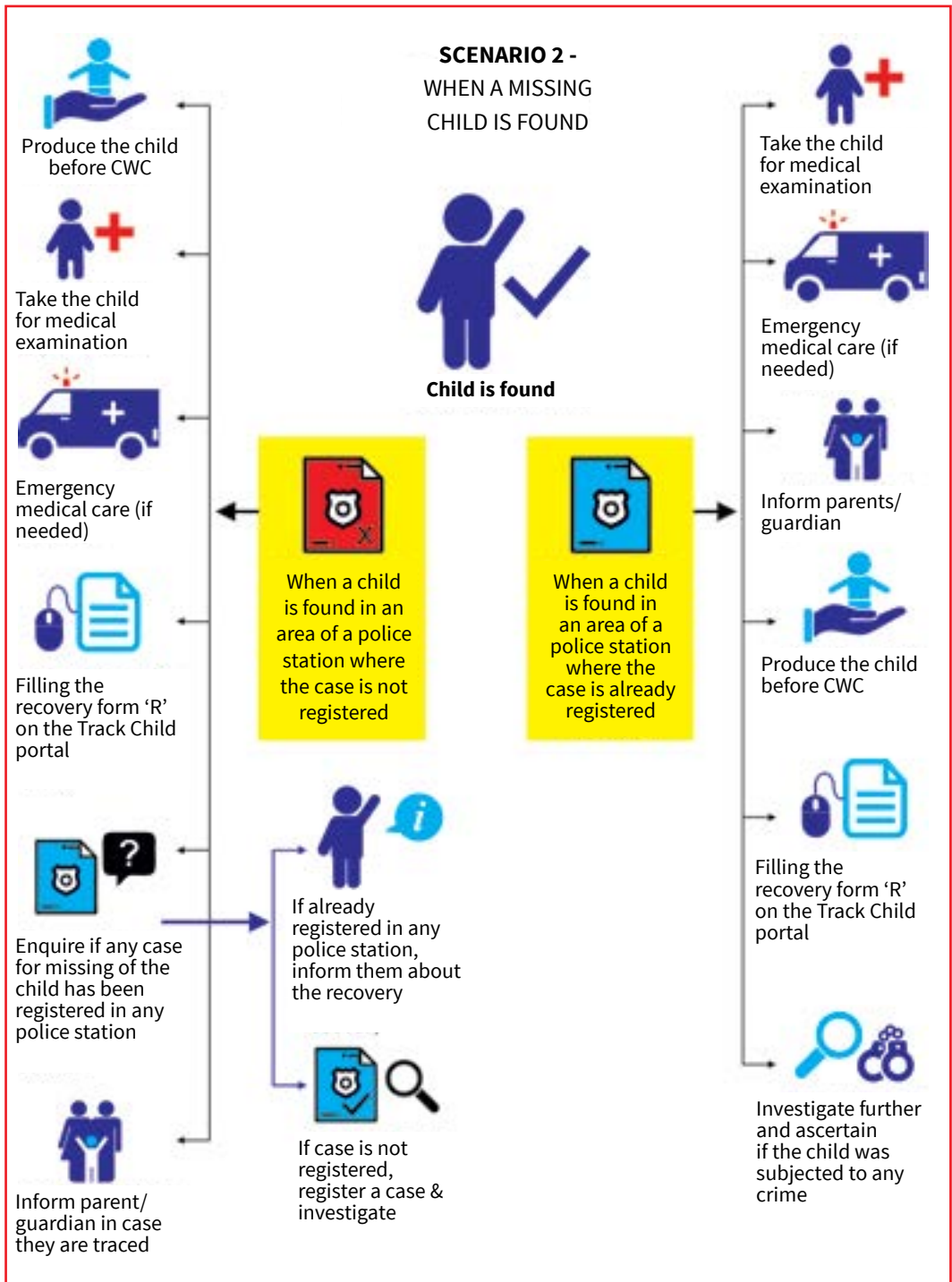
*\*TrackChild portal provides an integrated virtual space for all stakeholders & ICPS bodies which includes Central Project Support Unit (CPSU), State Child Protection Society/Units and District Child Protection Units (DCPU), Child Care Institutions (CCIs), Police Stations, Child Welfare Committees (CWCs), Juvenile Justice Boards (JJBs), etc. in the 35 State/UTs. It also provides a networking system amongst all the stakeholders and citizens to facilitate tracking of a “Child in distress”. It requires data entry and updating at various levels such as Police stations, Child Care Institutions (CCIs)/Homes, Shelters, Child Welfare Committees, and Juvenile Justice Boards etc*

Source: <https://trackthemissingchild.gov.in/trackchild/index.php>



**SCENARIO 1 -  
WHEN A CHILD  
GOES MISSING**





## **ROLE OF SUPERVISING OFFICER OVERSEEING THE INVESTIGATION**

- a. The Supervising Officer overseeing the investigation of the case should bring the content of the SOPs, Protocols, Advisories, etc. on missing children to the knowledge of SJPU and field level officers particularly CWPO. It would be more helpful, if content is translated in local language for the benefit of field level officers.
- b. Considering the amount of efforts required to trace a missing child in first 72 hrs, it may be impractical for an IO to single handedly conduct the investigation properly and complete the process required to trace the missing child. It is felt that the efforts of the IO have to be supplemented by giving him a small team so that coordinated efforts can be made to complete all the tasks expected of an IO in order to trace the child in the shortest possible time\*.
- c. The SPs and other Supervising Officers should monitor and facilitate the investigation of every missing child, periodically review the status of each case and ensure that the quality of investigation is maintained in all stages.
- d. Police should ensure that they take proper follow-up measures when a child is found. Such measures may include tracing the parents/guardians of the child, support to the child (medical treatment, counseling, free legal aid), registration of case, production of child before CWC and investigation of the case.
- e. Recovery of a missing child largely depends on the cooperation the SP gets from the counter parts within the state and in other states as the missing children in many cases may go out of the jurisdiction of the district or even state. Inter-state and Inter-district coordination holds the key for optimal results.
- f. The cases of missing children should be entrusted to Child Welfare Police Officers (CWPO) and SJPU.

## **IMPORTANT POINTS OF INVESTIGATION**

- a. When the police receive a complaint of a missing child, it needs to be sensitive and put maximum effort in the first few initial hours to trace the missing child as the initial few hours are very crucial ones and is the golden period for investigation. If all efforts are made with proper strategy, during this period, the chances of tracing the child are high as the child may not have gone too far. After few days or months, tracing the child becomes difficult, as the child by then, may have moved to a different district or state. Therefore, the Investigating Officer should employ all resources and capabilities at his command during this golden period.

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\*SOP by NHRC

- b. Police should carry out further investigation, after recovery of the child, to see whether there is involvement of traffickers or whether any other offence was committed on the child.
- c. When a child is found, the police should first find out if a Missing Report/FIR was registered in any police station in connection with missing of such child. If after inquiry, it is found that FIR/complaint has not been registered, the SHO should register a case. In case, a case is already found registered in the same police station; the investigation should be carried forward. If the case is registered in any other police station, the counterpart should also be informed by the SHO or senior officers for taking necessary action.
- d. There are some instances where after the parents/guardians have filed complaint regarding missing of their children, the children on their own have come back to their parents/families. Parents of such children, in few cases, fail to inform police about the return of children. As a result, cases remain pending and such children continue to be shown as missing children in the police records. This may lead to incorrect and inflated data of missing children. The investigating officers should remain in regular touch with the complainants to get their feedback and for ruling out such situation.
- e. The police should be vigilant and watchful while carrying out routine patrolling and undertaking visits in their jurisdiction for any other purposes. Any child found abandoned, begging, loitering, addicted to drugs, or seen under unusual circumstances with any person may create suspicion and curiosity in the minds of such police officers. In suitable cases, inquiry should be made on the spot to find out whether the child is missing or is a victim of an offence.
- f. In cases where the child goes missing due to recruitment of children in extremist group, parents do not report cases out of fear. Police should activate their own network and make efforts to find such cases for initiating lawful action.
- g. A case of missing child may be a likely case of human trafficking for the purpose of exploitation including begging, prostitution, organ removal, etc. All endeavour should be made to establish linkage of missing incidents with possible criminal acts through thorough and professional investigation.
- h. Evidence collection is crucial for tracing the child and for identifying offenders, if any. All the persons who may be likely to have knowledge about the incident including teacher, parents, friends, security guards and neighbours should be examined.
- i. Whenever a child goes missing, it cannot be ruled out that the child might have died due to accident or murder. For example, a child may have gone for swimming

and might have got drowned without anyone noticing the accident. The IO should remain alert and look for cases of unclaimed dead bodies of children reported from other police stations, as it may be helpful in linking the case with the dead body.

## TECHNICAL ASPECTS

While conducting an investigation of missing children, electronic evidence like CCTV footage, mobile phone, calls detail record of suspected phone number and tower location of suspected mobile number may be useful. In the process of investigation, if a mobile phone, laptop, computer, camera or any other electronic device is suspected to of evidentiary value, then such electronic devices should be checked and seized.

*(For further details please refer to chapter 2(H) of this handbook on Cyber Crime).*

## GOOD PRACTICES AND INITIATIVES

The following good practices are suggested for the police:

- a. The SPs and other senior Police Officers may also consider launching special drive on the lines of OPERATION MUSKAN and OPERATION SMILE in their districts for bringing focused efforts on recovery of missing children.
- b. National Commission for Protection of Child Rights has also circulated Guidelines for Organising Child Friendly Melas & Large Gatherings. The SPs may consider making the melas child friendly in coordination with other stakeholders. The role of police has been outlined in the guidelines. [www.ncpcr.gov/showfile](http://www.ncpcr.gov/showfile).

**Operation Smile** and **Operation Muskaan** is an initiative of the Ministry of Home Affairs (MHA) to rescue/rehabilitate missing children. It is a dedicated campaign for a month where several activities are taken up by the State Police personnel to trace and rescue the missing children and reunite them with their families.

All States/UTs were advised to take up a one month campaign titled 'Operation Smile-I' in the month of January, 2015 to rescue/rehabilitate the missing children and similarly another dedicated campaign titled 'Operation Muskaan-I' was launched in the month of July, 2015 throughout the country. Operation Smile-II and Operation Muskan-II were launched in January, 2016 and July, 2016 respectively whereas Operation Muskan-III were launched in July, 2017.

### Initiatives:

**Khoya Paya** is joint initiative of the Union Ministry of Women and Child Development (MWCD) and the Department of Electronics and Information Technology. This web



portal serves as a platform for people to not only report a missing child but also track the efforts towards recovery of the missing child.

Generally, information on missing children is matched with the help of various parameters listed on **TrackChild** like name of the child, father's name, date of birth, address etc. But recently, a new software called Facial Recognition Software (FRS) was acquired by MHA for Delhi Police which has successfully matched cases of missing children using the software. Ministry of Women and Child Development (MWCD), Government of India has shared complete data of missing and found children with Delhi Police to facilitate tracing of missing children. The data of found children is being made available to Delhi Police on daily basis. The Ministry of Women and Child Development (MWCD), Government of India, is contemplating to procure FRS for centralised processing of data.

*(Source: Direction of NHRC on 31-08-2018)*

### **Additional Reading Materials**

1. "Standard Operating Procedure for Cases of Missing Children" by MWCD and Child Line.
2. "The SOP on Missing Children" approved by NHRC on 06.01.2017 and circulated by MHA, (CS Division) Government of India.
3. Advisory on Hon'ble Supreme Court's Direction to file FIR in case of Missing Children" dated 25th June 2013, issued by MHA.

**ANNEXURE I****Categories of Missing Children**

S.N.	Categories	Definition
1	Traced Children	Child that has been traced by the police on the basis of the missing child report or FIR.
2	Found Children	A child found by the police in a market place, railways stations, bus stop or in any other public place or has been referred by the Juvenile Justice Board or the Child Welfare Committee or brought before the police by any NGO or individual.
3	Runaway Children	A child who leaves home without permission or without informing to his/her parents or guardians.
4	Abandoned Children	Child deserted by parent or guardian, or a person in charge irrespective of the child's physical wellbeing, safety or welfare with an intention to abandon the child or being unable to provide basic needs of the child.
5	Kidnapped Children	Wrongfully removing or detaining or concealing a child or taking away the child from the legal guardian or parent by using force or violence or threat or without the knowledge of the parents/guardians.
6	Lost Children	A child whose whereabouts are not known either because the child is too young to recall or the child is mentally challenged.
7	Trafficked Children	Recruitment, transportation, transfer, harboring, and/or receipt of a child for the purpose of slavery, forced labor, exploitation, etc.
8	Others	Children missing/lost/lost due to accidents, disaster, calamity, and other miscellaneous reasons or children missing from CCIs.

## ANNEXURE II

**Advisory on Hon'ble Supreme Court's Direction to file FIR in cases of Missing Children (Issued by MHA on 25th June, 2013)**

1. Whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under **Section 154 CrPC**. However, even in respect of complaint made otherwise with regard to a child, which may come within the scope of **Section 155 CrPC**, upon making an entry in the book to be maintained for the purpose of **Section 155 CrPC** and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint.
2. The Magistrate, upon receipt of the information recorded under **Section 155 CrPC**, shall proceed, in meantime, to take appropriate action under **Sub-Section (2)**, especially, if the complaint relates to a child and, in particular, a girl child.
3. Para-legal volunteers who have been recruited by the Legal Service Authorities, should be utilised, so that there is, at least, one paralegal volunteer, in shifts, in the police station to keep watch over the manner in which the complaints regarding missing children and other offences against children are dealt with.
4. Every found/recovered child must be immediately photographed by the police for purpose of advertisement and to make his relatives/guardians aware of the child having been recovered/found.
5. Photographs of the recovered child should be published on the website and through newspapers and even on TV so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police.
6. Standard Operating Procedures must be laid down to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after recovery of the child, when the information suggest the commission of such offences.
7. In case where First Information Report has not been lodged at all and the child is still missing, an FIR should be lodged within one month from the date of communication of this order and further investigation may proceed on that basis.
8. A protocol should be established by the local police with the High Court and also with SLSA for monitoring the cases of missing child.

*(Only a few points of the advisory have been mentioned here and for further details the advisory may be referred to.)*

## 2E

## **THE ROLE OF POLICE - CHILD TRAFFICKING**

**H**uman Trafficking is an organised crime driven by profit motive. Most of the victims of this crime are woman and children. The trafficking in human beings involves more than one place of occurrence and basket of offences. Multiple players including spotters, recruiters, transporters, harbourers, financiers and end-abusers are involved at various stages of the crime which may be committed across the borders of States and even Countries. Child trafficking may take place for commercial sexual exploitation; child labour; child marriage; removal of organ; begging; illegal adoption; enrolment in militant or criminal groups;

sports, etc. Many cases of missing children may be linked to child trafficking. Children belonging to the marginalised communities with low awareness level are more vulnerable. Parents of these children are lured due to poor socio-economic conditions, which compels them to send or sell their children for better livelihood options. Child trafficking has emerged as a serious challenge in the country including North Eastern Region.

Investigation of human trafficking is a challenging task as trafficking is an organised crime involving various players at multiple places of occurrences at source, transit and destination. The traffickers are well organised and generally well connected. They may be active in this field for years and even decades. The traffickers keep on changing places and may have assumed names. Low level operators are apprehended in most of the cases with the victims and it requires investigative acumen, perseverance and painstaking work to bust the entire racket. Moreover, the traffickers are in a position to intimidate or influence the victims or their family as the latter are no match for the clout of the former. Non-cooperation from family or victims is not uncommon which poses an additional challenge for the investigators.

### **LAWS DEALING WITH CHILD TRAFFICKING**

There is no special legislation, which may cover the entire gamut of child trafficking or human trafficking and the provision is found scattered across various Acts. The

Government of India is keen to enact a comprehensive legislation and The 'Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill', 2018 was passed by the Lok Sabha on 26 July 2018. However, with the dissolution of 16th Lok Sabha, the Bill has lapsed.

### Constitutional Provision

Article 23(1) of the Constitution of India prohibits traffic in human beings and begar and other similar forms of forced labour.

### List of important relevant Acts dealing with Child Trafficking

- a. Indian Penal Code, 1860
- b. Immoral Trafficking (Prevention) Act, 1956
- c. Protection of Children from Sexual Offences Act, 2012
- d. Child and Adolescent Labour (Prohibition & Regulation) Act, 1986
- e. Juvenile Justice (Care & Protection of Children) Act, 2015
- f. Transplantation of Human Organs Act, 1994
- g. Bonded Labour System (Abolition) Act, 1976
- h. Prohibition of Child Marriage Act, 2006
- i. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- j. The Unlawful Activities (Prevention) Act, 1967

### INDIAN PENAL CODE

**Section 370** of IPC has been amended and a new Section 370 A has been inserted through the Criminal Law Amendment Act, 2013. **Section 370** defines trafficking of persons as hereunder:

Whoever, **for the purpose of exploitation,**

(a) recruits (b) transports (c) harbours (d) transfers or (e) receives a person by (i) using threat, or (ii) using force, or any other form of coercion, or (iii) by abduction, or (iv) by practicing fraud, or deception, or (v) by abuse of power, or (vi) by 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.**

**Exploitation** includes any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

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

**Section 370** provides for higher punishment in case minors are trafficked.

**Section 370A (1)** prescribes punishment for engaging a minor for sexual exploitation, knowing or having reason to believe that such minor has been trafficked.

**Section 370** covers all possible scenario of human trafficking and must be applied by the police while registering cases. Other sections of IPC and relevant sections of other Acts may also be applied as per content of the FIR.

### List of Penal Sections of IPC which may be applied in cases of Child Trafficking/Trafficking in Persons

Section	Nature of offence	Punishment
370 (2)	Trafficking of person	Rigorous Imprisonment for a term not less than seven years, which may extend to 10 years, and also with fine.
370 (3)	Trafficking of more than one person	Rigorous Imprisonment of not less than 10 years, which may extend to imprisonment for life and also with fine.
370 (4)	Trafficking of a <b>minor</b>	Rigorous Imprisonment not less than 10 years, which may extend to imprisonment for life and also with fine.
370 (5)	Trafficking of more than one <b>minor</b>	Rigorous Imprisonment of not less than 14 years, which may extend to imprisonment for life and with fine.
370 (6)	Trafficking of <b>minor</b> on more than one occasion	Imprisonment for life, which means imprisonment for the remainder of person's natural life and also with fine.
370 (7)	Trafficking of person by a public servant or a police officer	Imprisonment for life, which means imprisonment for the remainder of person's natural life and also with fine.
370 A(1)	Engaging <b>minor</b> who has been trafficked for sexual exploitation	Rigorous imprisonment for not less than 5 years which may extend to 7 years and also with fine.
370 A(2)	Engaging a person who has been trafficked for sexual exploitation	Rigorous imprisonment of not less than 3 years which may extend to 5 years, and also with fine.

<b>Other Important Sections of IPC</b>		
<b>Section</b>	<b>Nature of offence</b>	<b>Punishment</b>
363 A(1)	Kidnapping a <b>minor</b> for purposes of begging	Imprisonment, which may extend to 10 years and shall also be liable to fine.
363 A(2)	Maiming a <b>minor</b> for purposes of begging	Imprisonment for life and shall also be liable to fine.
366 A	Procuration of <b>minor</b> girls below 18 years	Imprisonment, which may extend to 10 years and shall be liable to fine.
366 B	Importation of girls below 21 years from foreign country*	Imprisonment, which may extend to 10 years and shall be liable to fine.
371	Habitual dealing in slaves	Imprisonment for life or with imprisonment of either description for a term not exceeding 10 years and shall also be liable to fine.
372	Selling minor for the purpose of prostitution, etc.**	Imprisonment of either description for a term, which may extend to 10 years, and shall be liable to fine.
373	Buying minors for the purpose of prostitution, etc. **	Imprisonment of either description for a term, which may extend to 10 years, and shall also be liable to fine.
374	Unlawful compulsory labour	Imprisonment of either description for a term, which may extend to 1 year, or with fine, or with both.

\*or from the state of Jammu & Kashmir

\*\*Minor means a person under the age of 18 years

### **IMMORAL TRAFFIC (PREVENTION) ACT, 1956 (ITPA)**

This Act deals with commercial sexual exploitation of persons. This is gender-neutral act and victims may be male or female persons. A **child** is defined as a person who has

not completed 16 years for the purpose of ITPA (*Section 2(aa)*). A minor is defined as a person who has completed 16 years but is below 18 years for the purpose of ITPA. (*Section 2 (cb)*)

### **Offences under Immoral Traffic (Prevention) Act, 1956**

#### **a. Keeping a brothel or allowing premises to be used as a brothel**

##### **Section 3 (1):**

Keeping or managing, or acting or assisting in keeping or management of, a brothel.

##### **Section 3 (2):**

- i. Any person being the tenant, lessee, occupier or person in charge of any premises, uses or knowingly allows any other person to use such premises or any part of it as a brothel, or
- ii. Being the owner, lessor or land lord of any premises or the agent of such owner, lessor or landlord lets the same or any part of it with the knowledge that it may be intended to be used as a brothel.

*Brothel includes any house, room, conveyance or place or any portion of any house room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes. (Section 2 (a))*

#### **b. Living on the earnings of prostitution**

**Section 4:** Any person above the age of 18 years, who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person.

*Prostitution means the sexual exploitation or abuse of persons for commercial purpose, and expression prostitute has to be construed accordingly. (Section 2 (f))*

#### **c. Procuring, inducing or taking person for the sake of prostitution**

**Section 5:** Any person who,

- i. procures or attempts to procure a person whether with or without his consent, for the purpose of prostitution, or
- ii. induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent a brothel, or
- iii. takes or attempts to take a person or causes a person to be taken from one place to another with a view to his carrying on, or being brought up to carry on prostitution, or



iv. causes or induces a person to carry on prostitution.

If the above mentioned offence under this Section is committed against a child or minor then higher punishment is prescribed.

**d. Detaining a person in premises where prostitution is carried on**

**Section 6:** Any person who detains any other person, whether with or without his consent,

- i. in any brothel, or
- ii. in or upon any premises with intent that such person may have sexual intercourse with a person, who is not the spouse of the person.

**e. Prostitution in, or in the vicinity of public places**

**Section 7(1):** Any person who carries on prostitution and the person with whom such prostitution is carried on in any premises,

- i. which are within the notified area, or
- ii. which are within a 200 meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind notified in this behalf by Commissioner of Police or District Magistrate.

**Section 7(1A):** If the above offence is committed on a child or a minor then higher punishment is prescribed.

**Section 7(2):** Any person who being,

- i. the keeper of any public place, or
- ii. the tenant, lessee, occupier or person in charge of any premises, or
- iii. the owner, lessor or land lord of any premises or agent of such owner, lessor or land lord knowingly permits prostitution in such public place or premises or part thereof is punishable. If the offence is committed in a hotel, then license for carrying on the business of such hotel is also liable to be suspended for a period, of not less than 3 month but which can extend to 1 year. If the offence is committed against child or minor in a hotel then the license of the hotel is also liable to be cancelled.

**f. Seducing or soliciting for the purpose of prostitution**

**Section 8:** Whoever, in any public place or within sight of, and in such manner so as to be seen or heard from any public place,

- i. tempts or endeavours to tempt or attracts or endeavours to attract attention of any person for the purpose of prostitution by words gestures or willful exposure of her person, or
- ii. solicits or molest any person or loiters or acts in such a manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution commits the offence of seducing or soliciting for purpose of prostitution.

**g. Seduction of person in custody**

**Section 9:** Any person having the custody, charge or care of, or a position of authority over any person, causes or aids or abets the seduction for prostitution of that person commits a punishable offence.

**All offences under ITPA are cognisable. (Section 14)**

**LIST OF OFFENCES UNDER ITPA**

Sections	Offences	Punishments
3 (1)	Keeping or managing or acting or assisting in the keeping or management of a brothel	First conviction: Rigorous imprisonment for a term not less than 1 year and not more than 3 years & fine which may extend to Rs. 2000. In case of second or subsequent conviction, RI for a term not less than 2 years and not more than 5 years & fine which may extend to Rs. 2000.
3 (2)	a. The tenant, lessee, occupier or person in charge of any premises, using or knowingly allowing it as a brothel, or b. The owner, lessor or land lord of any premises or his agent letting it with the knowledge that it may be intended to be used as a brothel.	First conviction: Imprisonment for a term which may extend to 2 years & fine which may extend to Rs. 2000. In case of second or subsequent conviction, RI for a term which may extend to 5 years, and also with fine.

Sections	Offences	Punishments
4 (1)	A person above 18 years living on the earnings of prostitution	Imprisonment for a term which may extend to two years or fine which may extend to one thousand rupees or both.
	Living on the earning related to prostitution of child/minor	Imprisonment for a term not less than 7 years and not more than 10 years.
5 (1)	Procuring, attempting to procure, inducing or taking a person or attempting to take a person for the sake of prostitution If such offence has been committed on a person against his/her will	RI for a term not less than 3 years and not more than 7 years and also fine, which may extend to Rs. 2000 Imprisonment for a term of 7 years, which may extend to 14 years.
5 (1)	If such offence is committed on a child	RI for a term not less than 7 years, but may extend to life.
	If such offence is committed on a minor	RI for a term not less than 7 years, and not more than 14 years.
6 (1)	Detaining a person in premises where prostitution is carried out	Imprisonment of either description for term from 7 years to life imprisonment, or for a term which may extend to 10 years and also with fine.
7 (1)	Prostitution in or vicinity of public places	Imprisonment for a term, which may extend to 3 months.
7 (1A)	If the above offence is committed in respect of a child or a minor	Imprisonment of either description for term from 7 years to life imprisonment or for a term, which may extend to 10 years and also with fine. The Court may impose a term below 7 years after providing adequate and special reasons.

Sections	Offences	Punishments
7 (2)	Any person who being the keeper of a public place or tenant, lessee, occupier, person in charge or owner, lessor, or landlord knowingly permits the same or a part therefore to be used for prostitution	On first conviction imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 200 or with both. In event of second or subsequent conviction Imprisonment for a term which may extend to 6 months and also fine which may extend to Rs. 200.
8	Seducing or soliciting for the purpose of prostitution	Punishment on first conviction with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 500 or with both. In case of second or subsequent conviction, imprisonment for a term, which may extend to one year and also fine which may extend to Rs. 500.
8	If the offence is committed by a man	Imprisonment for a period of not less than 7 days, which may extend to 3 months.
9	Seduction of a person in custody	Imprisonment of either description for term from 7 years to life imprisonment or for a term, which may extend to 10 years and also with fine.

### Presumption under ITPA

- a. Under Section 3** (*punishment for keeping a brothel or allowing premises to be used as a brothel*): It will be presumed that the person who is the owner or tenant or person in charge of the premises had knowledge that the premise or the place was being used as a brothel if;
- i. A report is published in the newspaper with local circulation in the area that the premise or any part of the premise is being used for the purpose of prostitution, as per the search made under the Act,

- ii. A copy of the list of things found during the search is made available to the person concerned.
- b. Under Section 4 (*Living on the earning of prostitute*):** It is presumed that person above 18 years of age is living on the earning of the prostitute if it is proved that:
  - i. the person is living with, or is habitually in the company of a prostitute, or
  - ii. the person has exercised, control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution, or
  - iii. the person is acting as tout or pimp on behalf of prostitute.
- c. Under Section 6(2):** If any person is found with a child in brothel, it shall be presumed that he has detained the child in premises where prostitution is carried on.
- d. Under Section 6(2A):** It is presumed that child or minor has been detained for the purpose of prostitution or, as the case may be, has been sexually exploited for commercial purposes if such child or minor is found in a brothel and through medical examination sexual abuse is detected.
- e. Under Section 6(3):** It is presumed that a person has detained a woman or a girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person with intent to compel or induce her to remain there,
  - i. withholds from her any jewelry, wearing apparel, money or any other property, belonging to her, or
  - ii. threatens her with legal proceedings if she takes away with her any jewelry, wearing apparel, money or other property lent or supplied to her by, or on direction of such a person.

### **Special Police Officer (SPO) and Advisory Board (Section 13)**

- a. SPO has to be appointed by the State Government for dealing with offences under ITPA. An SPO shall be not below the rank of an Inspector of Police. The cases under ITPA are to be investigated only by the SPOs. The SPO of an area, for efficient discharge of his functions, is assisted by such number of subordinate police officers (including women police officers wherever applicable) as the state government may think fit.
- b. The State Government may associate an advisory body with Special Police Officer to advise on questions of general importance regarding the working of this Act.

The advisory body is non-official body consisting of not more than five leading social welfare workers of the area including women social welfare workers, as far as practicable.

### **Search (Section 15): Search without Warrant**

- a. A SPO can make a search, if he/she has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises. The SPO can conduct search without warrant if the SPO believes that search of premises with warrant cannot be made without undue delay. The SPO can enter and search such premises without warrant after recording the grounds of belief. *(Section 15(1), ITPA)*
- b. The Special Police Officer will remove all persons from the premise found during the search. *(Section 15(4), ITPA)*

### **Who can Conduct the Search?**

An Special Police Officer can conduct search under ITPA.

While conducting the search, the SPO has to be accompanied by at least two women police officers. *(Section 15(6A), ITPA)*

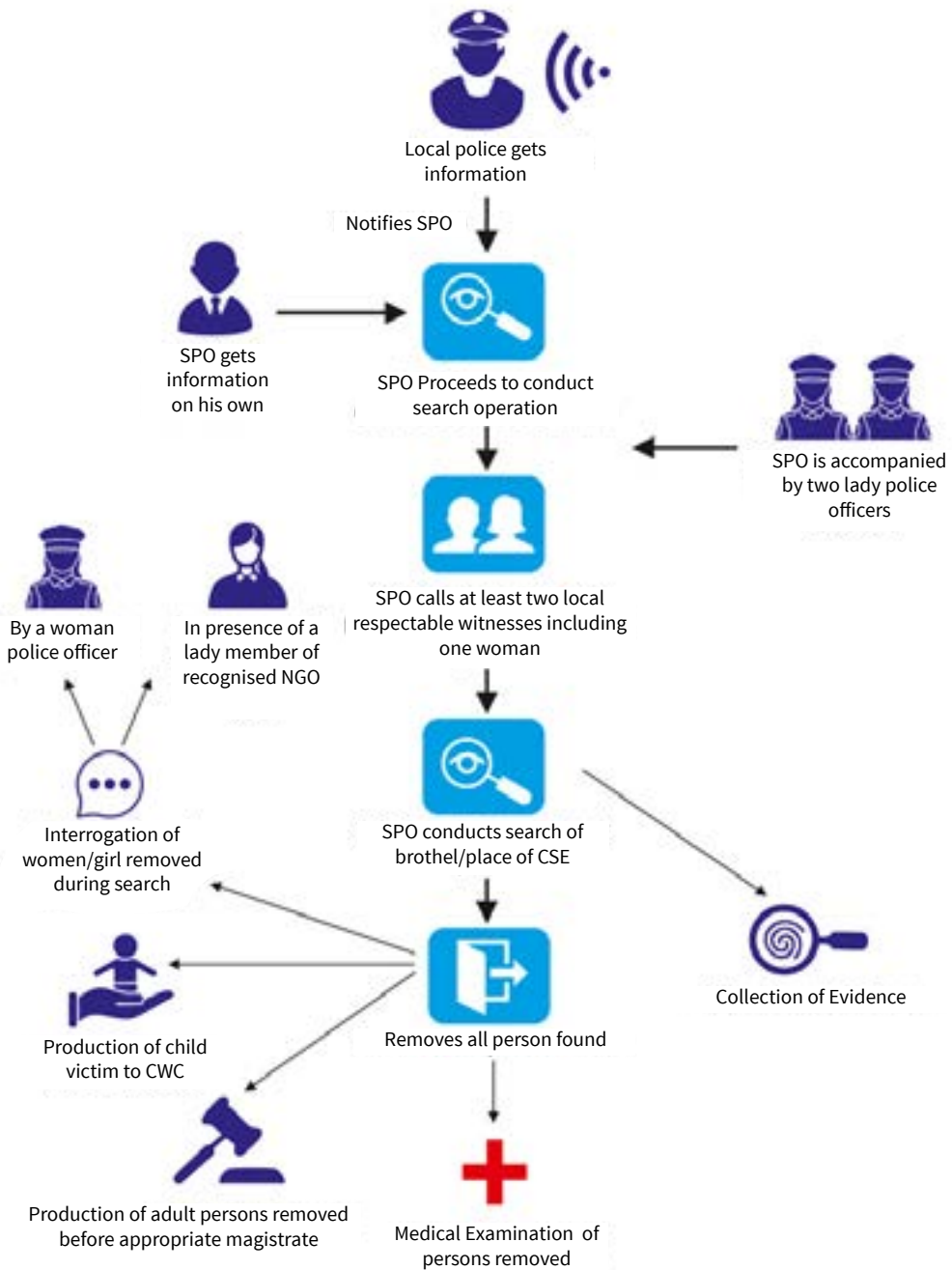
### **Interrogation of Woman or Girl**

If any woman or girl is removed from any premises during search then she has to be interrogated by a woman police officer. In case no woman police officer is available, the interrogation has to be done in presence of a lady member of a recognised welfare institution or organisation. *(Section 15(6A), ITPA)*

### **Witnesses for Search**

- a. The SPO has to call upon two or more respectable inhabitants of the locality in which the place of search is situated to attend and witness the search. It may be noted that at least one such witness has to be a woman. However, the requirement of being from the locality is not applicable in case of a woman witness. Thus it is advisable that a woman representative from an NGO accompanies the SPO/ search team to fulfill the statutory requirement of woman witness.
- b. The SPO may issue order in writing to person(s) to be witnesses and refusal or negligence to attend and witness the search when called upon to do so in writing delivered or tendered to them is deemed to be an offence under Section 187 IPC. *(Section 15(3) ITPA)*

### Search Without Warrant in Brothel/Place of Commercial Sexual Exploitation



### **Production before Magistrate**

The SPO after removing any person from the premises searched, has to produce the person forthwith before an appropriate Magistrate who may be Metropolitan Magistrate/Judicial Magistrate of the First Class or District Magistrate/Sub-Divisional Magistrate. *(Section 15(5) ITPA)*

### **Medical Examination**

The person who is produced before Magistrate shall be examined by a registered medical practitioner to determine the age of such person or for detection of any injuries as a result of sexual abuse or for the presence of sexually transmitted disease. *(Section 15(5A) ITPA)*

### **Arrest (Section 14): Arrest by SPO**

A Special Police Officer can arrest without warrant any person for offence under this Act.

#### **Arrests Where SPO Cannot be Present**

##### **a. Arrest with prior written authorisation by SPO**

A Special Police Officer can give an order in writing to a subordinate police officer, specifying the person to be arrested, and offence for which an arrest needs to be made. The Officer so authorised by the SPO can affect arrest. Further, the subordinate officer has to inform the person to be arrested the substance of the order before arresting the person and if required, show the order.

##### **b. Arrest without written authorisation of SPO**

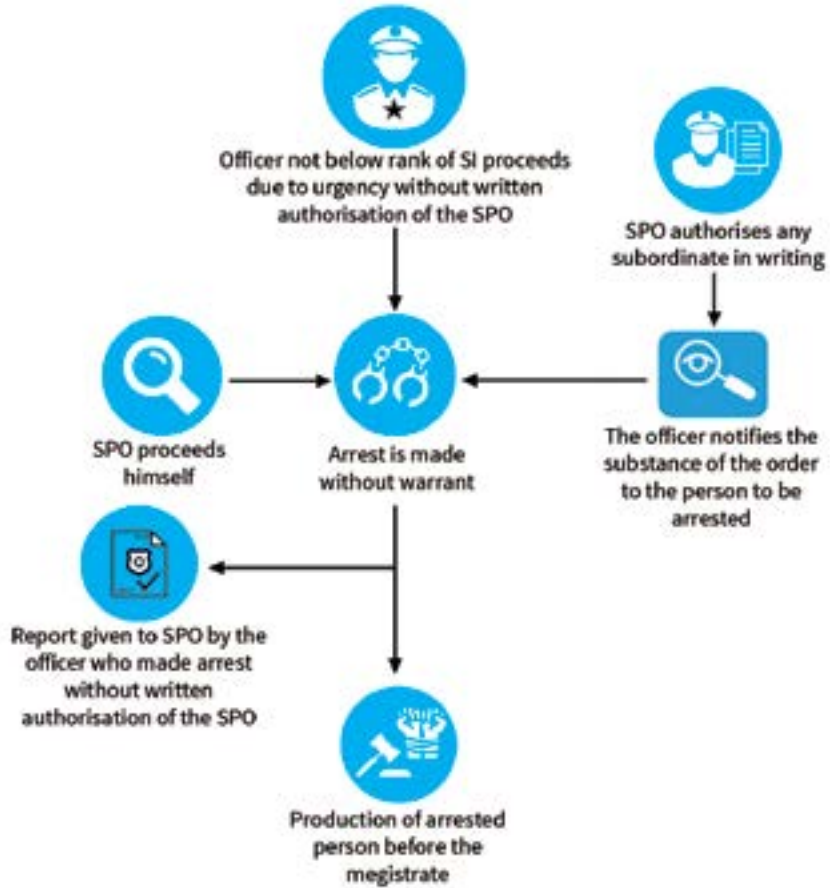
Any police officer not below the rank of a sub-inspector specially authorised by the SPO may arrest the person concerned without a written order from the SPO if the police officer believes that on account of delay involved in obtaining an order of SPO,

- i. any valuable evidence in relation to an offence under this Act is likely to be destroyed or concealed, or
- ii. the person who has committed or is suspected to have committed an offence is likely to escape, or
- iii. if the name and address of such person is unknown or there is a reason to suspect that a false name or address has been given.

Thereafter, the police officer shall report to the SPO, as soon as may be, about the arrest and the circumstances in which the arrest was made.



### Arrest without Warrant



### Rescue of Person (Section 16)

If a Magistrate (Metropolitan Magistrate/Judicial Magistrate of the First Class or District Magistrate/Sub-Divisional Magistrate) has reason to believe from information received from the police or any other person authorised by the State Government or otherwise, that any person is living or is carrying on or is being made to carry on prostitution in a brothel, then such Magistrate can direct the police officer not below the rank of a sub-inspector to enter such brothel and remove from there all such persons. The persons removed from the brothel have to be produced before the Magistrate who had issued the order.



### **Closure of Brothel and Eviction of Offenders from the Premises (Section 18)**

The DM or the SDM on receiving an information from police or any other person that a house or a place or a part of the place within a distance of 200 meter from a public place is being run or used as a brothel or prostitution is being carried out, can issue a notice to the owner or the landlord of the house or of the place, to show cause within 7 days of the receipt of the notice and after hearing the person concerned if the Magistrate is satisfied that the place or house is being used as a brothel, the Magistrate can,

- a. pass an order for eviction of the occupier within 7 days of passing of the order
- b. direct the owner to obtain previous approval before letting out the house in a period of 1 year. In case a child or minor was found in the house, etc. during the search, this period will extend to 3 years, for which the owner needs to obtain previous approval before letting out the house, etc.

**No appeal can be made against the above order of the DM/SDM in any Court and no Court, civil or criminal, can stay or set aside the order.**

### **PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

- a. Section 4 - Penetrative Sexual Assault
- b. Section 6 - Aggravated Penetrative Sexual Assault
- c. Section 8 - Sexual Assault
- d. Section 10 - Aggravated Sexual Assault
- e. Section 12 - Sexual Harassment
- f. Section 14 - Use of Child for Pornographic Purpose .

The provision of the ITPA may be applied for cases of trafficking for commercial sexual exploitation but the provision of POCSO Act can be applied for any form of sexual exploitation of children. For example a girl of 13 years of age has been trafficked and is employed as domestic worker in a family in a city. An adult who is also employed as a servant in the same household has raped the girl. Section 4 of POCSO Act has to be applied in this case besides other Sections for trafficking. ***Explanation III of Section 16, POCSO Act, 2012 may also be referred.***

*(For further details on POCSO Act, please refer to chapter 2(C) of the handbook)*

## CHILD AND ADOLESCENT LABOUR (PROHIBITION & REGULATION) ACT, 1986

The provisions of this Act should be applied when a child/adolescent is trafficked for employment as Labour.

- a. Section 14(1) - Punishment for employment of child in contravention of Section 3
- b. Section 14(1A) - Punishment for employment of adolescent in hazardous occupation and processes in contravention of Section 3A
- c. Section 14(2) - Punishment when a person already convicted of an offence under Section 3 or 3A, commits a like offence afterwards

*(For further details, please refer to chapter 2(F) of the handbook on Child Labour)*

## PROHIBITION OF CHILD MARRIAGE ACT, 2006

The provision of this Act should be applied when a child is trafficked for marriage.

- a. Section 9 - Punishment for male adult marrying a child
- b. Section 10 - Punishment for solemnising child marriage
- c. Section 11 - Punishment for promoting or permitting solemnisation of child marriage

*(For further details, please refer to chapter 2(G) of the handbook on Child Marriage)*

## BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

The provision of this Act should be applied when children are trafficked and are engaged as bonded labour.

- a. **Punishment for Enforcement of Bonded Labour (Section 16):** Any person who compels any person to render bonded labour shall be punishable with imprisonment for a term which may extend to 3 years and also with fine which may extend to Rs. 2000.
- b. **Punishment for Advancement of Bonded Debt (Section 17):** Any person who advances any bonded debt shall be punishable with imprisonment for a term, which may extend to 3 years and also with fine, which may extend to Rs. 2000.
- c. **Punishment for Extracting Bonded Labour Under the Bonded Labour System (Section 18):** Whoever enforces any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependent of such person is required to render any service

under the bonded labour system, shall be punishable with imprisonment for a term which may extend to 3 years and also with fine which may extend to Rs. 2000.

- d. Abetment to be an Offence (Section 20):** Whoever abets any offence punishable under this Act shall, whether or not the offence, abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

*(For further details, please refer to chapter 2(F) of the handbook on Child Labour)*

### **TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 (FOR FORCED REMOVAL OF ORGAN)**

Many children are trafficked and their organs, particularly kidneys are removed in connivance with hospitals and doctors. Section 18 of the Act relates to doctors and hospital staff who illegally remove the organ. Section 19 relates to commercial dealing in human organ and the child traffickers can be booked under this Section. In case of child trafficking for removal of organ, both the sections may be applied as the traffickers and doctors, hospital staff, hospital administration etc. are part of the conspiracy.

#### **Punishment for Removal of Human Organs without Authority (Section 18):**

Any person who renders services to or at any hospital and who, for purposes of transplantation, conducts, associates with, or helps in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to 5 years, and with fine which may extend to Rs. 10,000.

#### **Punishment for Commercial Dealing in Human Organ (Section 19):**

Any person who,

- a. makes or receives any payment for the supply of, or for an offer to supply, any human organ;
- b. seeks to find person willing to supply for payment any human organ;
- c. offers to supply any human organ for payment;
- d. initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
- e. takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation

- of any arrangement referred to in Clause (d); or
- f. publishes or distributes or causes to be published or distributed any advertisement
- inviting persons to supply for payment of any human organ;
  - offering to supply any human organ for payment;
  - indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in Clause (d),

shall be punishable with imprisonment for a term, which shall not be less than two years but which may extend to 7 years, and shall be liable to fine, which shall not be less than Rs. 10,000 but may extend to Rs. 20,000: provided that the court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than 2 years, and a fine less than Rs. 10,000.

### **JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015**

- a. Section 34 – Punishment for non compliance of Section 32 (Mandatory reporting regarding a child found separated from guardian)
- b. Section 75 - Punishment for cruelty to a child
- c. Section 76 - Employment of a child for begging
- d. Section 77- Penalty for giving intoxicating liquor or narcotic drug or tobacco products or psychotropic substance to a child
- e. Section 78 - Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance
- f. Section 79 - Exploitation of a child employee
- g. Section 80 - Punishment for adoption without following prescribed procedure
- h. Section 81 - Sale or procurement of children for any purpose
- i. Section 83 - Use of child by a militant groups or other adults
- j. Section 84 - Kidnapping or abduction of a child
- k. Section 85 - Offence committed on disabled children

*(For further details on offences against children, chapter 2(B) of this handbook may be referred)*

### **THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

The provision of this Act may be applied in case the victim of Child Trafficking belongs to SC or ST community and the offender belongs to Non-SC or Non-ST community.

*(For further details, please refer to chapter 2(I) of this handbook on Child Victim from SC & ST Communities)*

### THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

As per Section 18B under Chapter IV of the Act, *'Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine'*.

If any child is trafficked for the purpose of recruitment in any terrorist outfit, Section 18B of this act may be applied. However, it has to be kept in mind that the investigation would have to be carried out by an officer not below the rank of DSP as stated in Section 18B in Chapter IV of the Act.

### INVESTIGATION

Investigation requires knowledge, skill and proper aptitude in order to be effective. The following points may be given consideration in investigation:

**Registration of FIR:** The case should be registered under proper Section as per the allegation in the FIR. Besides Section 370, IPC, other relevant provision of IPC and other acts should be applied depending on the nature of exploitation. The provision of ITPA, 1956 must be applied in case of commercial sexual exploitation of the victim. Section 120B of IPC may be included in human trafficking cases as traffickers hatch criminal conspiracy for committing the offence.

As per Supreme Court's order dated 10th May 2013 in *Bachpan Bachao Andolan Vs. Union of India, (WP (Civil) 75 of 2012)*, all cases of missing children must be registered for the offence of abduction or human trafficking.

**Consequences of Failure to Register FIR:** It should be kept in mind that if a police officer fails to register any FIR given in relation to offence under *inter alia* Section 370 or 370A of IPC (human trafficking) then such officer commits an offence under Section 166A of IPC. This offence by Police Officers for non- registration of case is punishable with rigorous imprisonment for term, which may range from 6 months to two years and also with fine.

- 1. Who can Investigate?** The investigation has to be done by SPO if provision of ITPA is applied. The procedure for arrest, search, etc. prescribed in ITPA must be strictly followed.

- 2. Application of IT Act and SC & ST (POA) Act:** It has been observed that some victims are lured/induced through internet including social media platforms. Relevant Section for cyber crime (Information Technology Act, 2000) may be applied. In suitable cases provision of SC & ST (POA) Act, 1989 should be applied if the victim belongs to SC or ST community and the offender belongs to non-SC or non-ST community. However, it has to be kept in mind that the cases under the provision of IT Act have to be investigated by minimum Inspector Rank Officer and minimum DSP rank Officer in case of SC & ST (POA) Act.\*
- 3. Production before CWC:** A victim of child trafficking is a child in need of care and protection and therefore, the child victim needs to be produced before CWC within 24 hours as per provision of JJ Act, 2015.
- 4. Medical Examination:** The medical examination of the victim has to be done by a registered medical practitioner.
- 5. Identify Masterminds:** Lower level agent of the criminal network is apprehended during rescue operations. He may not know the kingpins. Police should make every effort to dig deeper to unearth the entire racket including the masterminds. A simple looking incident may lead to arrest of large number of offenders and rescue of many victims through professional investigation.
- 6. Map Places and Stages:** Various places of occurrences should be mapped and the sequence of events along with role played by each trafficker and offences committed by them at various stages of crime right from recruitment to final destination and exploitation should be ascertained.
- 7. Plan Rescue:** The rescue should be meticulously planned and properly executed with involvement of relevant stakeholders.
- 8. Seizure of Relevant Items:** All the relevant items found during search at the place of exploitation like notebooks, slips, registers, electronic devices, condoms, narcotic drug or psychotropic substances, liquor, suspected medicines, syringes, doctor's prescriptions, other medical records, SIM cards, cameras, albums, travel documents, etc. should be seized.
- 9. Carefully Handle Electronic Evidence:** The electronic devices such as computer, laptop, mobile phones, etc. may contain valuable evidence and should be handled carefully during search to prevent tampering or loss of evidence. An expert in the field of cybercrime/Information Technology may be associated to

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*\*It may be noted, that some states like Bihar and Madhya Pradesh, have extended the powers to investigate cases under SC & ST (POA) Act to all investigating ranks, i.e., Inspector, Sub-Inspector, Asst. Sub-Inspector of Police*



assist the investigating officer in labeling, seizure, packaging, transportation, imaging, analysis, etc. of the exhibits. The call details of mobile numbers used by the suspects or found during search must be analysed to get important clue.

- 10. Belongings and Children of Rescued Persons:** It should be ensured that the rescued persons carry all of their belongings and special care should be taken to ensure that their children, if any, are not left behind. In case, the brothel keeper has forcibly taken away the belonging of the victims to compel their stay in the brothel then evidence should be collected to corroborate this fact.
- 11. Protection of Child Victims from Accused:** The child victims must be segregated from the accused and the suspects. The victim and the traffickers should not be allowed to come face-to-face during investigation.
- 12. Provide and Connect Support Services to Victims:** The victims should be provided with support services including trauma counseling, immediate medical treatment, free legal aid, services of translator/interpreter/special educator as the case may be, immediately after rescue. Primary medical treatment can also be given to the victims during the rescue itself.
- 13. Financial Investigation:** Financial investigation should be given due attention. The investigators should look for bank accounts of suspects for unusual transaction. Income tax returns, financial statements including balance sheet, property documents, other assets belonging to suspects, bank lockers, etc., if any, may be examined. The following aspects may also provide leads for the investigation: a) any payment made to agents or parent, guardian or relative of the victim, b) notes, diaries, registers, cash, etc. found during investigation. The IO should endeavor to discover financial trail, Hawala transaction and disproportionate assets created by the suspects.
- 14. Seizure of Assets:** The assets created out of proceeds of the crime should be seized/attached/forfeited as per law to cripple and hit the network hard. The relevant provision of CrPC may be referred in this regard.
- 15. Unearth Networks:** A network of child traffickers may also have link with or stake in other organised crime like FICN, drug trafficking, arms trafficking, etc. The IO is required to make efforts to unearth such linkage to broaden the scope of investigation.
- 16. Child-Friendly Handling of Child Victim:** The investigating officer should try to gain confidence of the child by having child friendly approach for getting his co-

operation in investigation. He should also ensure that there is no re-victimisation. Rights of the rescued persons must be ensured at all times during rescue, interview, investigation etc.

- 17. Witness Protection:** The victims and witnesses need to be protected. It should be ensured that traffickers are not able to threaten them. They should not be unnecessarily exposed to media, offenders, etc. and publicity should be avoided. Protection of victims and witnesses of human trafficking cases assumes significance, as they are vulnerable to threats, manipulation and influence due to various factors including their age and socio-economic conditions. The Supreme Court, vide its judgment dated 5th Dec. 2018 in *Mahender Chawla & others Vs. Union of India & others (Writ Petition (Criminal) No. 156 of 2016)* has approved 'Witness Protection Scheme, 2018'. The scheme which has been prepared by the Ministry of Home Affairs, Government of India provides for various protection measures for the witnesses including concealment of identity; temporary change of residence; holding of in-camera trials; usage of specially designed vulnerable witness court rooms; close protection, regular patrolling around the witness's house and escort to and from the court.

The IO has to inform witnesses about the existence of 'Witness Protection Scheme' and its salient features.

*The highlight of this Scheme has been discussed in detail in Chapter 2A and chapter 8 of this handbook.*

- 18. Protection of Identity of Victim:** The identity of the child victim should not be disclosed as per the provision of Section 74 of JJ Act 2015 and also POCSO Act, 2016.
- 19. File Objections Against Bail:** The investigating officer should submit bail objection petition whenever bail petition is moved on behalf of the arrested persons. Courts should be impressed upon through public prosecutor that chances of finding a trafficker after being released on bail are bleak as he may move to far off places due to very nature of the offences of human trafficking. Any instance of intimidation of victims or witnesses or attempt to hamper investigation must be brought to the notice of court for getting the bail petition rejected or bail cancelled, if already granted.
- 20. Verify Identity of Accused:** It has been observed that once a trafficker is apprehended, he or she gives fake name and address and even forged documents to support the assumed identity. Once bailed out, such persons vanish and court

processes cannot be served on them. In view of this, the investigators should thoroughly verify the identity of the arrested person during investigation.

- 21. Timely Completion of Investigation:** The investigation should be completed expeditiously and the charge sheet should be submitted within 60/90 days of the arrest of the accused, as the case may be, so that he arrested accused persons do not get bail on technical ground. In case the trafficking involves rape of child or if the provision of the SC & ST Act have been applied then the charge sheet should be submitted within 2 months from registration of the case.
- 22. Avoid Negligence and Lapses:** Investigation should be foolproof and it must be ensured that evidence is not destroyed or concealed by anyone. If any police officer is found to have shown negligence or sabotaged investigation and suitable disciplinary or legal action needs to be taken against him.
- 23. Vetting of Evidence:** The evidence collected and chargesheets before submitting to the court should be vetted by legal officer of the investigating agency and supervisory officers. The evidence collected should be able to link the offenders with the crime beyond reasonable doubt. Requirement of Section 65B, Indian Evidence Act, 1872 have to be met in case of electronic evidence. Any gap detected should be plugged before submission of police report to the Court.
- 24. Move Application for Closure of Brothel:** As discussed earlier in this chapter, the SPO should submit application to the DM/SDM for issuing order for closure of brothel as per provision of Section 18 of ITPA. This can be done during investigation or after completion of investigation. This step would deliver a hard blow to the traffickers.
- 25. Consult Guidelines and Advisories:** Various Advisories, guidelines, SOPs, Protocol, etc issued by competent authorities including NCPCR, MHA, NHRC, State Police, etc. may be referred by the investigating officers for guidance. MHA has circulated an SOP on 26th of December 2018 for repatriation of Nepalese children. Since this SOP is very recent and many Nepalese children are rescued in India, the salient feature of it has been mentioned in *Annexure I* of this chapter.

## PROVISION FOR FREE LEGAL AID

‘NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015’ aims at providing legal services to the victims of trafficking at all stages: i.e., prevention, rescue and rehabilitation. Police should inform the District Legal Services Authority so that legal service is made available to the victims.

## COORDINATION

Coordination among stakeholders is a must for achieving synergy and bringing maximum impact of the efforts made, particularly between the police and the following:

- a. Prosecution:** Proper co-ordination with the prosecution should be maintained during trial and it should be ensured that the witnesses are present on the scheduled date and time and they are also briefed prior to their deposition.
- b. AHTU Nodal Officers:** Nodal Officers for Anti Human Trafficking Units have been nominated by the States/UTs. These officers are the nodal points for interstate coordination. The Ministry of Home Affairs has Anti Trafficking Cell in its Women Safety Division and holds regular meeting with these Nodal Officers.
- c. DLSA:** Police should coordinate with District Legal Service Authorities for payment of compensation and for providing free legal aid to the victims.
- d. Civil Society:** It is desirable that police coordinates with Mahila Samitis, Student Organizations, Youth Clubs, educational institutions and other stakeholders to create awareness about the modus operandi of traffickers, recent trends, the consequences of trafficking, etc.
- e. Other Authorities/Departments:** Co-ordination with stakeholders like GRP, RPF, Railway authorities, Transport Department, Health Department, Education Department, Department for Welfare of Woman & Child, Labour Department, Prosecution, Border Guarding Forces etc. should also be maintained.
- f. SPs of Other Districts:** SP should maintain co-ordination with SPs of other districts for rescue of victims and for taking legal action against traffickers.

## INSTITUTIONAL RESPONSE

### a. Anti-Human Trafficking Unit (AHTU)

The Ministry of Home Affairs, Government of India has launched a scheme for establishment of Anti Human Trafficking Units (AHTU) in about 335 affected police districts in the year 2010-11. As per the scheme, 'The AHTUs will be integrated task forces, to prevent and combat trafficking in persons and will constitute a group of trained sensitive officials of the police and will associate members from the Women and Children Welfare Department of the State, and also members of reputed local NGOs, if and when required. Each AHTU will be equipped with assets such as dedicated vehicle, furnished office and connectivity, funds for which will be provided by the Centre. State Government may identify the human-trafficking prone districts

in the State for establishing AHTUs'. One AHTU covers entire stretch of a district. The MHA, Government of India provides financial assistance to States/UTs for setting up AHTUs sanctioned by it. However, States/UTs may setup such units in other districts from their own resources. The following manpower has to be provided by the State Government for smooth functioning of an AHTU:

- i. One Inspector,
- ii. Two Sub-Inspectors,
- iii. Two Head Constables, and
- iv. Two Constables.

One representative from the following departments, whenever it is required, may be associated with The AHTU:

- i. Women and Child Development
- ii. Health and Family Welfare
- iii. Labour and Employment
- iv. Prosecution

AHTU has to be notified by the State Government as a Police Station for the entire district for registration and investigation of cases relating to the crime of Human Trafficking, which would be in addition to the other police stations in the district. The AHTUs should attend to all the three aspects of trafficking viz. prevention, protection and prosecution. They also have to develop database on traffickers and network with concerned agencies as and when required. The AHTU will thus be the field level functional unit to address human trafficking in a holistic manner.

The AHTUs address the existing gaps in the law enforcement's response to trafficking and serve as institutional mechanism for combating the crime working across all the stakeholders' i.e. police, prosecution, rescue, NGOs etc. They will help in enhancing cooperation between law enforcement agencies, concerned government departments and NGOs who have the expertise and capacity to assist trafficked victims by institutionalising this cooperation<sup>1</sup>.

The further detail of the scheme is available on MHA website [www.mha.gov.in](http://www.mha.gov.in).

**The SPs of the district having AHTUs should ensure that the Unit is functioning properly as per the Scheme.**

### **b. Statutory Bodies**

Trafficking is violation of human rights of children. A number of bodies monitor the

<sup>1</sup>Scheme of AHTU as per MHA website [www.mha.gov.in](http://www.mha.gov.in)

trafficking situation, anti-trafficking measures and also provide directions/guidelines to police and other departments having role in prevention, detection, prosecution and rehabilitation of victims. These statutory bodies are:-

- i. National Human Rights Commission (NHRC)/State Human Right Commissions (SHRC)
- ii. National Commission for Protection of Child Rights/State Commission for Protection of Child Rights (NCPCR)/(SCPCR)

**c. Supreme Court Committee On Juvenile Justice/High Court Committee On Juvenile Justice:**

These committees monitor various aspects of child protection including child trafficking. Each committee is headed by a sitting Judge of the Supreme Court/High Court.

**d. State Child Protection Society (SCPS) and District Child Protection Unit (DCPU)** are set up as per the scheme of ICPS and provision of JJ Act, 2015. SCPS and DCPU are nodal agencies at State and District level respectively in matters of child protection including child trafficking.

**e. Child Welfare Committee (CWC):**

The CWC takes all decisions for rehabilitation and welfare of child victims including victims of trafficking.

**PREVENTIVE MEASURES**

**a. Awareness:** Awareness should be generated among citizens, particularly vulnerable sections of society about various aspects human trafficking. Victims/survivors of trafficking may be associated with such awareness generation programme for maximum impact.

**b. Vulnerability Mapping:** Mapping of vulnerable areas should be done based on number of incidents, vulnerable communities, remoteness, presence of traffickers etc. Areas which are prone to natural calamities like perennial flood, drought, cyclone, earthquake, etc. or are facing communal/sectarian violence may be included in such map. The mapping would help better targeting of Anti Human Trafficking efforts.

**c. Constant Vigilance:** Intelligence machinery has to be geared up to keep a tab on the movement of traffickers, victims and to find out latest *modus operandi* of the crime, new destinations and new players in the trafficking network.

- d. Surveillance at Vulnerable Spots:** Surveillance should be maintained at vulnerable spots including public places like Railway stations, bus stands, river ghats, places of worship and interstate/international bordering areas. Surprise checks of vehicles, trains, ferries and unusual modes of transport (like ambulance, trucks loaded with goods) should also be carried out. The traffickers are very active during times of calamities, both natural and manmade, which result in distress, loss of livelihood or dislocation of people from their homes.
- e. Speedy Investigation and Prosecution:** The cases of human trafficking should be investigated and prosecuted expeditiously to ensure that the traffickers and conspirators are punished without delay by securing conviction. This would act as a strong deterrent and has immense preventive value.
- f. Implementation of provisions of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979:** The Act needs to be strictly implemented by Labour Department of States/UTs to facilitate safe migration of workers.

The Act defines ‘Inter-State Migrant Workman’ as any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment.

*(Section 2(e))*

‘Establishment’ means: (i) ‘any office or department of the Government or a local authority; or (ii) any place where any industry, trade, business, manufacture or occupation is carried on.’

*(Section 2(d))*

The Act prohibits employment of interstate migrant workmen without registration. It provides for registration of certain establishments and no principal employer of an establishment can employ interstate migrant workmen without a certificate of registration under this Act. *(Section 6)*

No contractor, without obtaining license from the government, can recruit any person in a state for the purpose of employing him in any establishment situated in another state, except under and in accordance with the license issued.

No contractor can employ as workmen for the execution of any work in any establishment in any state, persons from another state except under and in accordance with a license issued in that behalf. *(Section 8)*

Thus, it is clear that if a contractor intends to take interstate migrant workmen from a particular state to another state or intends to bring them from some other state to that particular state, then he cannot do so without obtaining license from the competent authority.

- g. Regulation of Placement Agencies:** Some placement agencies play dubious role and may be involved in human trafficking in the garb of providing attractive placement. The State Governments (Labour Department) may consider enacting legislation on regulation of placement agencies.
- h. Maintenance of Migration Register:** A migration register may be maintained in each Gram Panchayat. The name and details of children and adults moving out from village for education, employment, etc. may be entered in the register.
- i. Involvement of Community:** 'Anti-Trafficking Club' may be created in villages/wards particularly in vulnerable ones with participation of representatives from stakeholders. Community participation must be enlisted for combatting trafficking. Police may request people in their jurisdiction to inform police in case they come across or notice any suspicious person (may be a stranger or known) or suspicious activity aimed at taking away children on the pretext of providing education, employment, etc. This may act as deterrent and would discourage the traffickers.



**Table 1: Probable Scenario of Child Trafficking and Penal Sections of Law Applicable**

Sl. No.	Scenario of Human Trafficking	Section of law to be applied		Remark
		Indian Penal Code	Other Acts	
1.	Human Trafficking involving sexual exploitation of child			
	Rape of child (16 years or above but below 18 years)	370, 370A(1), 376(1)*/376(2)*	Section 4 or 6 of POCSO Act, 2012	*to be applied if victim is a girl
	Rape of child below 16 years	370, 370A(1), 376(3)*	Section 4 or 6 of POCSO Act, 2012	*to be applied if victim is a girl
	Rape of child below 12 years	370, 370A(1), 376AB*	Section 6 of POCSO Act, 2012	*to be applied if victim is a girl
	Sexual assault on child	370, 370A(1), 354*	Section 8 or 10 of POCSO Act, 2012	*to be applied if victim is a girl
	When child is used for pornographic purpose	370, 370A(1)	Section 14 of POCSO Act, 2012	
2.	Human Trafficking involving illegal removal of organ of child	370	Section 18 and 19 of Transplantation of Human Organs Act 1994	
3.	Human Trafficking where victim below 14 years of age is engaged as labour	370, 374	Section 14(1) of Child and Adolescent Labour (Prohibition and Regulation) Act, 1986	
4.	Human Trafficking where victim (14 years or above and below 18 years is engaged in hazardous process or occupation	370, 374	Section 14(1A) of Child and Adolescent Labour (Prohibition and Regulation) Act, 1986	

Sl. No.	Scenario of Human Trafficking	Section of law to be applied		Remark
		Indian Penal Code	Other Acts	
6.	Human Trafficking where victim is engaged as bonded Labour	370	Section 16 Bonded Labour System (Abolition) Act, 1976 Section 79 of Juvenile Justice (Care and Protection Children) Act, 2015	Section 17 & 18 of Bonded Labour System (Abolition) Act, 1976 may also be applied in suitable cases
7.	Human Trafficking for the purpose of illegal adoption	370	Section 80 of Juvenile Justice (Care and Protection Children) Act, 2015	
8.	Human Trafficking (the child is taken to brothel and is sexually exploited)	366A*, 370, 370A(1), 376(1)*/ 376(2)*/376(3)* /376AB*	Section 3, 4, 5 & 6 of ITPA Sections 4/6/8/10 of POCSO Act	*to be applied if victim is a girl
9.	Human Trafficking (a child is sold by parent/guardian, taken to brothel and is sexually exploited)	366A*, 370,370A(1), 372,373, 376(1)*/ 376(2)*/ 376(3)* /376AB*	Section 3, 4, 5 & 6 of ITPA Section 4/ 6/ 8/ 10 of POCSO Act Section 81 of Juvenile Justice (Care and Protection Children) Act, 2015	*to be applied if victim is a girl

Sl. No.	Scenario of Human Trafficking	Section of law to be applied		Remark
		Indian Penal Code	Other Acts	
10.	A child is trafficked and is married	370, 370A(1)	Section 9,10, 11 of Prohibition of Child Marriage Act, 2006	POCSO Act may also be applicable vis a vis the husband, if allegation of sexual assault is made in the complaint
11.	A girl child is sold by relatives, trafficked and married	370, 370A(1)	Section 9,10, 11 of Prohibition of Child Marriage Act, 2006 Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015	POCSO Act may also be applicable vis a vis the husband ,if allegation of sexual assault is made in the complaint
12.	Human Trafficking where child victim is engaged in drug peddling	370	Section 78 and 83(2) of Juvenile Justice (Care and Protection of Children) Act, 2015	
13.	Human Trafficking where child victim are recruited for militant group	370	Section 83(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 Section 18B of Unlawful Activities (Prevention) Act, 1967.	If Section 18B of UA(P) Act is applied, the IO has to be minimum DSP rank officer

Sl. No.	Scenario of Human Trafficking	Section of law to be applied		Remark
		Indian Penal Code	Other Acts	
14.	A child is trafficked, made to consume narcotic drug and also used for drug trafficking	370	Section 77, 78 and 83(2) of Juvenile Justice (Care And Protection of Child) Act, 2015	

**Note 1:** The Sections mentioned are illustrative only and not exhaustive. In case the trafficking is for more than one purpose, the Sections have to be added accordingly at the time of registration of case.

**Note 2:** Section 120B of IPC may be included in human trafficking cases as traffickers hatch criminal conspiracy for committing the offence.

### IMPORTANT COURT ORDERS

- As per **Supreme Court order in *Bachpan Bachao Andolan Vs. Union of India and Others*** in Writ Petition (Civil) No. 75 of 2012 dated 10-05-2013, whenever information regarding missing of a child is received, police shall register a case for abduction or human trafficking. In case a missing child is not recovered within 4 months from the date of filing of the FIR, the matter may be forwarded to the Anti-Human Trafficking Unit to take up more intensive investigation regarding the missing child. The Anti-Human Trafficking Unit has to file periodical status reports after every 3 months to keep the Legal Services Authority updated.

### FREQUENTLY ASKED QUESTIONS (FAQs)

**1. If a case of human trafficking is reported, is it sufficient if Section 370 IPC is applied?**

**Answer:** No, if a case of human trafficking is reported, applying Section 370 of IPC only may not be advisable. Depending on the nature of the offences, other relevant Sections of IPC and other Acts should also be applied. For example, if a child who was trafficked and forced into commercial sexual exploitation, sections of POCSO Act and ITP Act may be applied. Applying all relevant sections would make the case tight and unfavorable for the traffickers. The probable scenario of child trafficking along with sections of law, which may be applied is given in *table 1*.

**2. Can a police officer who is not an SPO conduct search without warrant to rescue a person living in a brothel or is being forced to carry out prostitution?**

**Answer:** Only an SPO as per Section 15, ITPA, can conduct search without warrant. Contravention of this legal provisions may weaken the case for prosecution during trial and the defense may take advantage of such contravention.

However, as per the provision of Section 16 of ITPA, a police officer not below the rank of SI may inform Metropolitan Magistrate, Judicial Magistrate of the First Class, DM or SDM, who may direct the police officer to enter brothel and remove the persons found there.

**3. Can a police officer who is not an SPO arrest an offender under the IT (P) Act?**

**Answer:** Yes, a police officer who is not an SPO can arrest an offender if the SPO is not present for arrest as per the provision of Section 14 of IT (P) Act 1956. *The Detailed explanation has already been provided in this chapter.*

**4. No woman is available to witness the search of a place of commercial sexual exploitation. What should the SPO do in such situation?**

**Answer:** As per the provision of Section 15(2), ITPA, the search should be witnessed by at least two respectable local witnesses. One of the witnesses has to be a woman but the requirement of being from the locality does not apply in case of woman witness. Therefore, the SPO should be accompanied by at least one lady member of a recognised welfare institution or organisation. Such lady member may act as witness. *The detailed explanation has already been provided in this chapter.*

**5. Can a brothel be closed during trial or investigation?**

**Answer:** A brothel can be closed under the provision of ITPA during investigation or before completion of trial. At first the police officer should verify if the brothel is being run within a distance of 200 meters of any public place, after which the SPO will inform the DM/SDM so that the DM/SDM can issue a notice to the owner, landlord or lessor of such place/to their agents/to the tenant, occupier, lessee or person in-charge of such place, to show cause within 7 days of the receipt of the notice. After hearing the persons concerned, if the Magistrate is satisfied that the place or house is being run as a brothel, the Magistrate can pass order for eviction of the occupier of the brothel within 7 days of passing the order. *(Section 18 of ITPA)*

*The detailed explanation has already been provided in this chapter.*

**6. Can a child be procured for taking to a brothel and detained in a brothel with consent?**

**Answer:** The consent of a child is immaterial and has no consequence. The offender or the trafficker will be liable under Sections 5 & 6 of ITPA.

**7. What should police do if they get information that prostitution is being carried out in a premise?**

**Answer:** If the police receives any such information that prostitution is being carried out, the police should verify the following,

- a. Is the premise a public place within the meaning of ITPA?
- b. Is the place where prostitution is being carried out situated within 200 meters from a public place?
- c. Is that premise a brothel as defined in ITPA?
- d. Is the victim a child?

The legal action would depend on the answers of the above questions as the affirmative answer of any of the questions indicates crime under ITPA/POCSO Act.

**8. During the search of a brothel, if a child victim and a customer were removed, what is the criminal liability of the customer?**

**Answer:** The criminal liability of the customer will be as under the POCSO Act 2012.

**9. Can AHTU investigate cases of child trafficking?**

**Answer:** Yes, as per the 'Comprehensive Scheme for Establishment of Integrated Anti Human Trafficking Units and capacity building of responders, including Training of Trainers for strengthening the law enforcement response to human trafficking in India plan', the AHTUs are to be notified by respective State Governments as police stations. Therefore, these units can investigate the cases of trafficking. As per the Supreme Court order in BBA Vs. Union of India & another, (2013), if a missing child is not recovered within four months from the date of filing of the FIR, the matter may be forwarded to the Anti-Human Trafficking Unit to take up more intensive investigation regarding the missing child. Once notified as Police Station by the State Government an AHTU can register and investigate cases of human trafficking.

**10. A parent of a child was given promise of admission in a school and the child was taken to a City. He was employed as a domestic servant in a family and was not allowed to go. He was also assaulted when he tried to escape. It is the case of human trafficking?**

**Answer:** Yes, it is a case of human trafficking as exploitation has taken place after inducing the person on the pretext of providing education. Conditions as specified in Section 370 IPC are met in this case.

**11. A person has been in trafficking or a person is a prostitute with his/her consent. Is it an offence?**

**Answer:** Yes, it is an offence as consent of the victim is immaterial for the offence of human trafficking under Section 370, IPC.

### **Additional Reading Materials**

1. Role of District Administration in Preventing and Combating Human Trafficking by Dr. P.M. Nair, Centre for Child Rights, National Law University, Odisha; Year-2017.
2. Human Trafficking-Handbook for Investigators by Bureau of Police Research and Development.
3. 'NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015' available at [www.nalsa.gov.in](http://www.nalsa.gov.in).
4. Protocol on Inter-State rescue and post-rescue activities by UNODC and Ministry of Woman and Child Development (relating to persons trafficked for commercial sexual exploitation) available at [www.unodc.org](http://www.unodc.org).
5. Model Standard Operating Procedure (SOP) for Post-rescue Procedure for Repatriation of Trafficked children Survivors Rescued from Delhi and NCR available at [www.ncpcr.gov.in](http://www.ncpcr.gov.in).
6. 'A protocol on prevention, rescue, repatriation and rehabilitation of migrant and trafficked child labour' by Ministry of Labour and Employment, Government of India.

## ANNEXURE I

### **Standard Operating Procedure for repatriation of Nepalese Children (issued by Ministry of Home Affairs dated 26th December, 2018)**

1. Concerned Department of the State Government should submit complete details of the child, to the extent possible, as in 'Annexure' to Deputy Secretary, Northern Division, Ministry of External Affairs (MEA), South Block, New Delhi-110001.
2. Upon receipt of information, Northern division, Ministry of External Affairs (MEA) will take up the matter with the Embassy of Nepal in Delhi requesting for verification of identity of the child and details of the child's family.
3. Upon receipt of confirmation from Embassy of Nepal about the child's identity, Northern division, MEA will issue a communication to facilitate the handing over of the child to his/her parent/authorised guardian/legal heir.
4. The State Government will hand over the child to the parents/legal heir at the Embassy of Nepal in Delhi in the presence of a representative from the Northern division, MEA at a mutually agreed date and time. The date and time of such handover will be decided only after the issue of response to the State Government by MEA.



## THE ROLE OF POLICE - CHILD LABOUR

**C**hild Labour poses a serious challenge to child safety and child rights. A child who is employed as labour loses education, is deprived of rights, gets exposed to various kinds of dangers and suffers due to exploitation which results

in an unhealthy growth of body, mind and intellect. Child Labour, in many cases, does not happen in isolation, and is coupled with other offences including human trafficking, sexual exploitation, cruelty and illegal confinement. This problem is wide spread in India and is a cause of concern for Governments, societies, child right activists, human right bodies, etc. Police plays an important role in combating Child Labour as an important stakeholder.

### LEGAL PROVISIONS

The following Acts and Rules deal with Child Labour and Child Bonded Labour.

- i. The Constitution of India, 1950.
- ii. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 as amended in 2016.
- iii. The Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988 as amended in 2017.
- iv. The Indian Penal Code, 1860.
- v. The Juvenile Justice (Care and Protection of Children) Act, 2015.
- vi. The Bonded Labour System (Abolition) Act, 1976.
- vii. The Bonded Labour System (Abolition) Rules, 1976.

### The Constitution of India

- i. Article 21(A) provides for free and compulsory education to all children in the age group of 6 to 14 years.

- ii. Article 23(1) prohibits human trafficking, ‘begar’ and other similar forms of forced labour.
- iii. Article 24 prohibits employment of children below the age of 14 years in any factory, or mine or any other hazardous employment.

## THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986 (CALPRA)

### 1. Who is a ‘child’?

Any person who has not completed 14 years of age is child for the purpose of this Act. (*Section 2(ii)*)

### 2. Who is an ‘adolescent’?

Any person who has completed 14 years but has not completed 18 years of age is an adolescent for the purpose of this Act. (*Section 2(i)*).

### 3. Prohibition of employment of children in any occupation and process

Section 3 of this Act prohibits employment of any child in any occupation or processes. However, there are two exceptions. A child may:

- a. Help his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
- b. Work as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed. No such work shall effect the school education of the child.

- **Family** in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother. (*Explanation (a), Section 3(2), CALPRA*)
- **Family enterprise** means any work, profession, manufacture or business, which is performed by the members of the family with the engagement of other persons. (*Explanation (b), Section 3(2), CALPRA*)
- **Artist** means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment

or sports activities. (*Explanation (c), Section 3(2), CALPRA*)

- c. The conditions under which a child can help family or family enterprise are prescribed in the rules, which have been framed under this Act. The list of such conditions has been provided as *Annexure-B* of this chapter.
- d. Similarly, the conditions under which a child can work as an artist are prescribed in the rules, which have been framed under this Act.

*(The list of such conditions has been provided at Annexure-I of chapter 1 of this handbook.)*

#### **4. Prohibition of employment of adolescents in certain hazardous occupations and processes**

Section 3A provides that no adolescent can be employed or permitted to work in any of the hazardous occupations or processes mentioned in the Schedule. An adolescent may be employed or permitted to work in non-hazardous occupation or processes with certain conditions.

#### **5. Conditions for employment of adolescents**

Some of the important conditions prescribed in **Section 7** are as under :

- a. The period of work on each day shall not exceed 3 hours at a stretch. An adolescent must be given at least one hour of break for rest after he has worked for 3 hours at a stretch.
- b. An adolescent cannot be made to work for more than 6 hours a day including the rest period and the time spent in waiting for work on any day.
- c. No adolescent shall be permitted or required to work between 7 pm and 8 am.
- d. No adolescent shall be required or permitted to work overtime.
- e. No adolescent shall be required or permitted to work in more than one establishment on any day.

#### **6. Weekly holidays**

Every adolescent employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months. (*Section 8, CALPRA*).

## 7. Schedule of the Act

The Schedule to the Act was amended by the Ministry of Labour and Employment, Government of India vide notification dated 30th August, 2017. This Schedule to the Act has two parts i.e., Part A and Part B.

- **Part A:** This part of the schedule has a list of hazardous occupations and processes. Adolescents cannot be employed in any occupation or process which are mentioned in this list. Similarly, children are prohibited to help family or family enterprise in case the family or family enterprise are engaged in any hazardous occupation or process listed in Part A. For example, mines and collieries (underground & underwater) including brick kilns, stone quarries, open pit mines; inflammable substances and explosives such as production, storage or sale of fire crackers; work in slaughter houses and abattoirs; petro-chemical industries; rubber (synthetic industries); leather tanning industries; glass and ceramics etc. are listed in Part A.
- **Part B:** This contains a list of occupations and processes where children are prohibited to help in family or family enterprise. For example, a child cannot help his family enterprise if it is in the occupation listed in Part B. For example, Dhaba (roadside eateries), restaurant, motel, hotel, resort, circus, shoe-making, handloom and power loom industry, automobile workshop and garages, **domestic workers or servants**, beedi making, lock making, zari making, massage parlour, gymnasiums, rag picking and scavenging, etc. are listed in Part B

**It may be thus noted that both parts are applicable for children whereas only Part A is applicable for adolescents.**

## 8. Maintenance of Register

As per Section 11, CALPRA if an establishment employs adolescent(s) then such employer has to maintain a register containing the details of such adolescents. The register shall be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment. The register should contain the following details,

- a. the name and date of birth of every (adolescent) employed or permitted to work;
- b. hours and period of work of adolescent and the intervals of rest to which the adolescent is entitled; and
- c. the nature of work of adolescent.

d. such other particulars as may be prescribed.

### 9. Display of Notice Containing Abstract of Sections 3A and 14

Every railway administration, every port authority and every occupier shall cause to be displayed (at every station on its railway or within the limits of a port or at the place of work, as the case may be) a notice in the local language and in English containing an abstract of (*Sections 3A and 14*) in a conspicuous and accessible place. (*Section 12, CALPRA*)

### 10. Penalty: Section 14, CALPRA

- a. Any person who employs or permits any child or adolescent to work in contravention of provision of Sections 3 or 3A, respectively is liable for punishment with imprisonment for a minimum term of 6 months which can extend to 2 years or with a minimum fine of Rs. 20,000 which can extend to Rs. 50,000 or with both. (*Section 14(1)/14(1A)*)
- b. Penalty for parent or guardian: Parents or guardians of children cannot be punished unless they permit such child for commercial purposes in contravention of the provisions of Section 3. (*Section 14(1)*)
- c. The parents or guardians of adolescent cannot be punished unless they permit an adolescent to work in contravention of the provisions of Section 3 A. (*Section 14(1A), CALPRA*)

In case of first offence, the parent or guardians of any child or adolescent shall not be liable for punishment.

### 11. Nature of Offences

An offence committed by employer in contravention of Section 3 or 3A is cognisable offence punishable under Section 14. Therefore, if any employer employs any child in any process/occupation or employs any adolescent in any hazardous occupation or process, then in such case police can register a criminal case against such employer in accordance with *Section 154(1) CrPC*.

However, other offences under this Act are non-cognisable and a complaint has to be filed by any person, police officer or Labour Inspector against persons who have committed such offences.

### Child and Adolescent Labour Rehabilitation Fund (*Section 14B and Rule 16A*)

This fund has to be constituted in every district or for two or more districts by State Government. The amount of fine realised from the employer of the child and

adolescent is credited to this fund. The State Government has to credit an additional amount of Rs. 15,000 to this fund for each child or adolescent for whom the fine amount has been credited. The amounts has to be deposited in a nationalised bank. When the concerned child or adolescent completes the age of 18 years, then, the total amount invested along with interest accrued thereon has to be transferred to the bank account of the child or adolescent.

- i. **Compounding of Offences (Section 14D):** The District Magistrate may, on the application of the accused person, compound certain offences under this Act committed for the first time or offences committed by a parent or guardian. The list of offences, which may be compounded by the DM has been provided in *Annexure-A*. *The manner of compounding and other details have been provided in Chapter 1 of this hand book.*
- ii. **District Magistrate to Implement the Provisions (Section 17A and Rule 17C):** The State Government may confer such powers and impose such duties on DM as may be necessary to ensure that the provisions of this Act are properly carried out.

The DM may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties has to be carried out by the officer as may be prescribed. The officer so specified is known as **Nodal Officer**.

## CHILD AND ADOLESCENT LABOUR (PROHIBITION & REGULATION) RULES, 1988

These rules have been framed as per the provisions of the parent Act and were last amended in 2017.

- i. **Rule 2B:** This Rule lays down the conditions under which a child may help his family or family enterprise without affecting his school education. The list of the conditions is provided at *Annexure B* of this chapter for ready reference.
- ii. **Rule 2C:** This Rule lays down the conditions, which need to be fulfilled for a child to work as an artist. The list of conditions is provided in chapter 1 of this handbook at *Annexure I*.
- iii. **Rule 17C:** The *DM is the Chairperson of the District Task Force (DTF)* which shall meet at least once in every month and is empowered to make comprehensive action plan for conducting the *rescue operations, rehabilitation etc. matters*

*relating to child labour. The nodal officer nominated by the DM is the Secretary of the District Task Force (DTF). The DM has to ensure through the nodal officer that children and adolescents who are engaged in contravention of the provisions of this Act are rescued and rehabilitated.* The SP of the district and one member of the district Anti-Trafficking Unit, among others, are also members of the District Task Force.

*(The list of members of the Task Force has been provided in Annexure II in Chapter 1 of this handbook.)*

### INDIAN PENAL CODE, 1860

- i. **Unlawful compulsory labour (Section 374):** Whoever unlawfully compels *any person* to labour against his will commits an offence punishable with imprisonment for a term, which may extend to 1 year, or with fine, or with both.
- ii. In large number of cases child labour is consequence of child trafficking. In such cases **Section 370** of IPC should be applied.

### JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

- i. **Section 2(14)(ii):** A child in need of care and protection also includes a child found working in contravention of labour laws for the time being in force or is found begging, or is found living on the streets.
- ii. **Exploitation of child employee (Section 79):** Whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term, which may extend to 5 years and shall also be liable to fine of Rs. 1,00,000.

### BONDED LABOUR

**Bonded Labour System (Abolition) Act, 1976 has made all forms of bonded labour illegal.**

#### 1. What is 'Bonded Labour System'?

Bonded Labour System is a relationship between a creditor and a debtor in which the debtor is compelled to render service (either by himself or by his family members) to the creditor for an indefinite period in lieu of the debt. It is a system in which a debtor enters or is presumed to have entered into an agreement with the creditor for an indefinite duration in regard of an advance obtained by

him or by any of his lineal ascendants/descendants or by reason of his birth in any particular caste or community or in pursuance of any customary or social obligation or in pursuance of an obligation devolving on him by succession. In this system, the debtor, whether willing or not has to render his services to the creditor under conditions which may not be favorable to the debtor.

## 2. Penalty

- a. **Punishment for enforcement of bonded labour (Section 16):** Whoever, after the commencement of this Act, compels any person to render any bonded labour is liable for punishment with imprisonment for a term which may extend to 3 years and also with fine which may extend to Rs. 2000/-
  - b. **Punishment for advancement of bonded debt (Section 17):** Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term, which may extend to 3 years and also with fine which may extend to Rs 2000.
  - c. **Punishment for extracting bonded labour under the Bonded Labour System (Section 18):** Whoever enforces after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependent of such person is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to 3 years and also with fine which may extend to Rs. 2,000 and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him.
3. **Trial of Offences (Section 21):** The offences under this Act are to be tried by Executive Magistrate, specially empowered by the State Government by conferring the powers of a Judicial Magistrate of the first class or second class.
  4. **Nature of Offences (Section 22):** All offences under this Act are *cognisable and bailable*. In case of any violation of this Act, police has to register a criminal case.

## ROLE OF POLICE IN RESCUE, INVESTIGATION AND PREVENTION OF CHILD LABOUR

- i. The DM of the district and Nodal Officer specified by him are the most important functionaries besides the Labour Inspector as per the scheme of the amended CALPR Act and amended rules. The SP and other police officers of the district



should liaise and maintain close coordination with the DM, the Nodal Officer and the Labour Inspector/senior most officer of Labour Department available in the district .

- ii. ‘Standard Operating Procedure (SOP) for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986’; is available on the website of Ministry of Labour and Employment, Government of India. Besides this, Police officers may refer to other SOPs, Protocols or Advisories, which are available on child labour for guidance.
- iii. Police should collect information about engagement of children or adolescents in contravention of this Act. Police personnel while touring their jurisdiction should keenly watch for violation of labour laws as discussed in this chapter. Such information should be shared with Secretary of the District Task Force and follow up action needs to be taken in coordination with other stakeholders.
- iv. It is desirable that police creates awareness from their side also as far as possible by utilising the various types of Police-Public meeting; through their outreach programmes, their social media cells, etc.
- v. Rescue operations have to be meticulously planned in consultation with Secretary, District Task Force and other stakeholders.
- vi. The rescue team should be joint as far as practicable and efforts should be made to associate representatives from other stakeholders like Social Welfare Department, Labour Department, District Legal Services Authority, NGO, family member, if any, etc. ***The District Task Force is the body which has the primary responsibility of rescue in the district.***
- vii. After rescue, it is to be ascertained whether other offences like sexual exploitation, human trafficking, etc. have been committed against the victim and necessary legal action has to be taken accordingly.
- viii. The children and adolescents have to be handled as per provision of JJ Act, 2015 and should be produced before the CWC.
- ix. Regular criminal cases may be registered by police under Section 14(1)/14(1A)/14(2) as applicable, if the offenders are employers of children/adolescents. Care needs to be taken to ensure that such cases are registered by applying penal sections from other Acts, in case, other offences have been alledged to be committed in addition to offences under Section 14(1)/14(1A)/14(2). ***Annexure A*** of

this chapter, which contains list of offences with relevant penal sections may be referred in this regard.

- x. Child Welfare Police Officers (CWPO) and Special Juvenile Police Units (SJPU) should handle the cases of child and adolescent labour.
- xi. The documents for proof of age may not be genuine or no documents may be available. The procedure for age determination, which has been prescribed in **Rule 17** of Child and Adolescent (Prohibition and Regulation) Rules, needs to be complied with for age determination.
- xii. In many cases, investigation does not get due attention after rescue. It has to be ensured that investigation is taken to a logical conclusion so that the Court punishes the offenders. This would send a clear message to the offenders and act as a strong deterrent.
- xiii. The Investigating Officers should exhibit child friendly attitude in order to gain trust of the child. As the victims and their families are poor and vulnerable, they may be intimidated, influenced or re-victimised by employers or their agents who are influential and in a position to dominate. Therefore, it is very important to protect the victims, their families and witnesses. This measure would also immensely benefit investigation.
- xiv. The SP and other senior Police Officers may consider taking declaration from all police personnel under them that they are not engaging any child or adolescent labour in contravention of law.
- xv. Police should help the victims and their families access support and rehabilitation services by informing the providers of such services including the District Legal Services Authority and District Child Protection Unit.



## FREQUENTLY ASKED QUESTIONS (FAQs)

### 1. Can police register a case for employment of child or adolescent in contravention of the Act?

**Answer:** Yes. Employment of a child (below 14 years) for any work by an employer in contravention of Section 3 of Child and Adolescent Labour (Prohibition & Regulation) Act, 1986, is a cognisable offence. Similarly, employment of an adolescent (14 years or above but below 18 years of age) by an employer in any hazardous process or occupation in contravention of Section 3A of the Act is also a cognisable offence. Therefore, officer-in-charge of a police station is bound to register a case if an FIR is lodged alleging contravention of Section 3 or 3A of the Act by such employer. The case would be registered under Section 14(1)/14(1A)/14(2) as applicable. Other offences except those already mentioned in this answer are non cognisable. It may be noted that contravention of the provision of these two Sections (3 & 3A) are non-cognisable, if committed by parent or guardian of the child/adolescent.

### 2. An employer has failed to maintain register with particulars of adolescents employed by him in his establishment. Can police register a case for this offence?

**Answer:** No. The employer has violated provision of Section 11, which is punishable under Section 14(3) of the Act. Police cannot register a case for this offence as it is a non-cognisable offence. Only offences committed by employers in contravention of Section 3 and 3A of the Act are cognisable whereas all other offences under Child and Adolescent Labour Act are non-cognisable. However, police can register a case if other offences are also alleged to have been committed (provided at least one of such offence is cognisable) along with the offence mentioned in the question.

### 3. A parent has permitted his son who is 15 years of age to work in a factory. What legal action can be taken against the parent?

**Answer:** The act on the part of the parent is in contravention of Section 3A which is a non-cognisable offence. The police officer may file a complaint before the court of competent jurisdiction as per the provision of Section 16 of the Act. In case of non-cognisable offences, if it is not committed along with one or more other cognisable offence, a complaint has to be filed in the court.

### 4. Who can file a complaint in court for offences under Child and Adolescent Labour (Prohibition & Regulation) Act, 1986?

**Answer:** Any police officer, Labour Inspector or any other person can file the complaint. (*Section 16*)

**5. A girl child of 12 years of age is found with a family in a city. The house owner claims that the family of the girl is extremely poor and cannot maintain the child. The child has been taken with the consent of her parents. The house owner also claims that he is keeping the child like his family member, and her education is also taken care of. However, he admits that the girl occasionally assists in domestic works like cleaning, cooking etc. Has the house owner committed any offence?**

**Answer:** The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 expressly prohibits employment of children below 14 years for any work. The exception of helping the family or family enterprise is not applicable in this case as the house owner is not a relative as defined in the Act. Therefore, the offence under Section 14(1) has been committed for violation of provision of Section 3 of the Act. These excuses forwarded by the family are very common and become pretext for employing children. If the house owner is really so concerned for the welfare of the child then it would have been a better, and of course lawful option to help the parents connect the child/family with welfare schemes/financial sponsorship or by providing financial assistance to the family of the child for her education and other needs.

**6. What is PENCIL portal?**

**Answer:** *Platform for Effective Enforcement for No Child Labour (PENCIL)* was launched in 2017 by the Union Ministry of Labour and Employment at National Conference of Child Labour. It is an electronic platform with five components-Child Tracking System, Complaint Corner, State Government, National Child Labour Project and Convergence.

Each district is required to nominate District Nodal Officers (DNOs) who will receive the complaints. After receiving the complaint, the DNO will verify the complaint within 48 hours and rescue measures will be taken in coordination with police and other stake holders based upon the verification by DNO. Any citizen can report about Child Labour on this portal.

**7. A police officer finds a child of 13 years of age staying with his father in a brick kiln. He is helping his father who gets payment from the employer. Have the parents committed any offence?**

**Answer:** Yes, the parents have violated the provision of Section 3 of Child and Adolescent Labour (Prohibition and Regulation) Act by allowing the child to help his family in hazardous occupation. Brick kiln is included in Part A of the schedule. The offence is non-cognisable, if committed by parent and a complaint may be filed in the court against him.

**8. A police officer while patrolling his area enters a Dhaba at 11pm in the night to have tea. He finds that a boy who appears to be around 17 years of age is working in the Dhaba at that time. Is there a requirement for any legal action?**

**Answer:** The police officer should take the details of the employer and the boy. He may ask for the documents to ascertain the age of the boy. If he is found to be an adolescent (14 or above, but below 18) then the employer has violated the provision of Section 7 of The Child and Adolescent Labour (Prohibition and Regulation), Act as an adolescent cannot be made to work between 7 pm and 8 am. This offence is non-cognisable and is punishable under Section 14(3) of the Act. It is advisable that the police officer intimates the Labour Inspector and also the Nodal Officer of the district appointed under provision of Rules 17C. The complaint has to be filed against the employer by the Police Officer or the Labour Inspector in the court. In case, the document produced shows age of the boy above 18 or no document is produced and there is any doubt about the age then the Labour Inspector should get the age determined as per the provision of Rule 17. The Inspector may also check the register which every employer is mandated to maintain in case he employs adolescents as per Section 11 of the Act. If such register is not maintained as per the provision of Section 11 of the Act, then it is an offence (non-cognisable) under Section 14(3) of the Act.

## ANNEXURE A

## List of Penal Provisions dealing with child labour

Act, Section	Offence	Remarks	Min. imprisonment	Max. imprisonment	Fine	Nature of offence	Compoundable by DM
<b>Act CAL(PRA), 1986*</b> 14(1)	Employment of child to work in any occupation or process (applicable to employers)	If convicted first time	6 months	2 years	and/or Rs.20,000 to Rs.50,000	Cognisable, bailable	No
14(2)	Employment of child to work any occupation or process (applicable to employers)	If already convicted but commits like offence afterwards	1 year	3 years		Cognisable, non bailable	No
14(1B)	Permitting a child to work any occupation or process	1st offence by parent or guardian	Nil	Nil	Nil		
14(2A)	Permitting a child to work any occupation or process	If parent or guardian already convicted but repeats like offence afterwards	Nil	Nil	Up to 10,000 rupees	Non cognisable, bailable	Yes
14(1A)	Employment of adolescent in hazardous occupations and processed listed in the schedule	If committed first time by the employer	6 months	2 years	and/or Rs.20,000 to Rs.50,000	Cognisable, bailable	No

\*Child and Adolescent Labour (Prohibition and Regulation) Act

Act, Section	Offence	Remarks	Min. imprisonment	Max. imprisonment	Fine	Nature of offence	Compoundable by DM
14(2)	Employment of adolescent in hazardous occupations and processed listed in the schedule	If committed 2nd time onwards by the employer	1 year	3 years		Cognisable, non bailable	No
14(1B)	Permitting an adolescent in hazardous occupations and processed listed in the schedule	1st offence by parent or guardian	Nil	Nil	Nil		
14(1B)	Permitting an adolescent in hazardous occupations and processed listed in the schedule	If parent or guardian already convicted but repeats like offence afterwards	Nil	Nil	Up to 10,000 rupees	Non Cognisable, bailable	Yes
14(3)	Non-compliance or contravention of any other provision of this Act or the Rule made under this Act			Simple imprisonment up to 1 month	and/or with fine which may extend to 10000 rupees	Non cognisable, bailable	Yes, if committed for the 1st time
<b>JJ Act, 2015</b> 79	Exploitation of a Child Employee			Rigorous imprisonment up to five years	and Rs. 1 lakh fine	Cognisable, non bailable	
<b>IPC</b> 374	Unlawful compulsory labour			Imprisonment up to 1 year	and/or fine	Cognisable, bailable	



Act, Section	Offence	Max. imprisonment	Fine	Nature of offence
<b>Bonded labour System (Abolition) Act, 1976</b> 16	Compelling a person to render bonded labour	Up to three years	and up to Rs. 2000	Cognisable, bailable
17	Advancement of bonded debt	Up to three years	and up to Rs. 2000	Cognisable, bailable
18	Extracting bonded labour under the bonded labour system	Up to three years	and up to Rs. 2000	Cognisable, bailable
19	Omission or failure to restore possession of property to bonded labourers	Up to one year	and/or up to Rs. 1000	Cognisable, bailable

**ANNEXURE B****Conditions to be fulfilled for children to help family or family enterprise.  
(Rule 2B)**

Subject to the provision of Section 3 of the Act, a child may without affecting his school education in any manner:

Nature of work	shall not be in any hazardous occupation or process listed in Part A and Part B of the Schedule to the Act.
Nature of work	shall not include work or occupation or process at any stage of the manufacturing, production, supply or retail chain that is remunerative for the child or his family or the family enterprise.
Family to be occupier	shall only be allowed to help in his family, or in a family enterprise, where his family is the occupier.
Timings	shall not perform any tasks during school hours and between 7 pm and 8 am.
Schooling and education not to be hampered	shall not be engaged in such tasks of helping which hinders or interferes with the right to education of the child, or his attendance in the school, or which may adversely affect his education including activities which are inseparably associated to complete education such as homework or any extracurricular activity assigned to him by the school.

Duration of work and Provision for rest	shall not be engaged in any task continuously without rest which may make him tired and shall be allowed to take rest to refresh his health and mind, and a child shall not help for more than three hours excluding the period of rest in a day.
Child not to substitute adult or adolescent	shall not include in anyway substitution of the child for an adult or adolescent while helping his family or family enterprise.
Not in contravention of law	shall not be in contravention to any other law, for the time being in force.

(b) Aid or assist his family in such manner which is not incidental to any occupation, work, profession, manufacture or business, or for any payment or benefit to the child or any other person exercising control over the child, and which is not detrimental to the growth, education and overall development of the child.

### **Additional Reading Material**

1. “Standard Operating Procedure (SOP) for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986” available on the website of Ministry of Labour and Employment, Government of India. <https://labour.gov.in/childlabour/child-labour-acts-and-rules>.

## 2G

## THE ROLE OF POLICE - CHILD MARRIAGE

**T**he practice of child marriage is a serious problem in many pockets of the country. Poverty, lack of education, social customs, lack of employment opportunities, etc. are contributing factors for the prevalence of child marriage. A victim of child marriage is deprived of normal physical, mental, emotional and intellectual growth. Child marriage not only has an adverse impact on the health and education but also exposes the children to the risk of maternal mortality and violence.

### LEGAL PROVISIONS UNDER PROHIBITION OF CHILD MARRIAGE ACT, 2006 (PCMA)

The PCMA prohibits solemnisation of child marriages.

**Who is a child?** A child is defined as a person who has not completed 21 years of age in case of male and a female who has not completed 18 years of age. (*Section 2(a)*)

**What is meant by child marriage?** If either of the contracting parties is a child, the marriage is termed 'child marriage'. (*Section 2(b)*)

### OFFENCES

- 1. Punishment for male adult marrying a child:** If any male adult above 18 years of age marries a female child (below 18 years of age), he commits an offence under this Act and is liable for rigorous imprisonment which may extend to 2 years or fine which may extend to Rs. 1 lakh or both. (*Section 9 PCMA*)
- 2. Punishment for solemnising a child marriage:** Any person who performs, conducts, directs or abets any child marriage commits an offence Section 10 of the Act and is liable for rigorous imprisonment which may extend to 2 years and fine up to Rs. 1 lakh unless he proves that he had reasons to believe that the marriage was not a child marriage.

Therefore, any priest, pastor, pandit, qazi, rabbi or any person who solemnises child marriage is liable for punishment under this Section.

### 3. Punishment for promoting or permitting solemnisation of child marriages:

If a child contracts a child marriage, then any person having charge of the child (parent or guardian), any member of an organisation or association of persons, or any other person who promotes or permits the solemnization of the marriage or negligently fails to prevent the child marriage from being solemnised is liable for rigorous imprisonment up to 2 years and fine up to Rs. 1 lakh. (*Section 11 (1) PCMA*) Persons who attend or participate in child marriage are also liable for punishment under this Section.

However, no woman can be punished with imprisonment under this provision. (*Proviso to Section 11(1) PCMA*)

**All offences under this Act are cognisable and non-bailable. (*Section 15 PCMA*)**

#### Presumption under the PCMA

If a minor child has contracted a marriage then the person having charge of such minor child is presumed, unless and until the contrary is proved, to have negligently failed to prevent the marriage from being solemnised. (*Section 11(2) PCMA*)

#### ROLE OF POLICE IF INFORMATION ABOUT CHILD MARRIAGE IS RECEIVED

Some confusion have been found to prevail among field level officers at ground level regarding their role in prohibition of child marriages. There may be two likely situations,

- a. **Sufficient time is left for solemnisation of marriage.** For example, a police officer comes to know that child marriage has been arranged and invitation cards are being distributed which indicate that marriage is to take place after 15 days. In such situation, the police officer himself or through Child Marriage Prohibition Officer can submit application before a Judicial Magistrate of First Class or a Metropolitan Magistrate for issue of an injunction order. As per the provision of Section 13 of the PCMA, the Magistrate, if satisfied, can issue an injunction order against any person including a member of an organisation or an association of persons prohibiting such marriage. The parties against whom the court issues the injunction order, cannot go ahead with solemnisation of child marriage. Any child marriage solemnised in contravention of injunction orders would be void (*Section 14 PCMA*) and thus, such marriage would have no legal validity. Violation of Injunction order is an offence under PCMA. (*Section 13(10)*)
- b. **When there is sense of urgency** as little time is left for solemnisation of child marriage. For example, a police officer receives information in the afternoon that child marriage is likely to take place in the evening of the same date. It may not be practical in such a situation to apply to the Magistrate for an injunction

order. The police officer should intimate the Child Marriage Prohibition Officer about the information received. The police officer should record the information and circumstances in the Station Diary/General Diary of the Police Station and thereafter, the he should act fast, proceed to the spot and take all steps as per law to prevent the child marriage. **Section 149** of CrPC gives power to police to prevent commission of any cognisable offence. Representative of NGO, woman police personnel, Child Marriage Prohibition Officer, etc. need to be associated with the police, as far as practicable.

### **What is 'Voidable' child marriage?**

Once a child marriage is solemnised such marriage is legally valid but is voidable at the option of the contracting party who was a child at the time of the marriage (**Section 3, PCMA**). Such marriage could be annulled on the petition, which may be filed in the District Court by a contracting party (who was child at the time of marriage). If the petitioner is a minor at the time of filing petition, then it can be filed through his or her guardian or next friend along with Child Marriage Prohibition Officer. As per Section 3(3), the petition can be filed at any time but before the child (filing the petition) completes two years of attaining majority. Thus, child marriage once solemnised is legally valid until it is nullified by the decree of nullity.

### **What is 'Void' child marriage?**

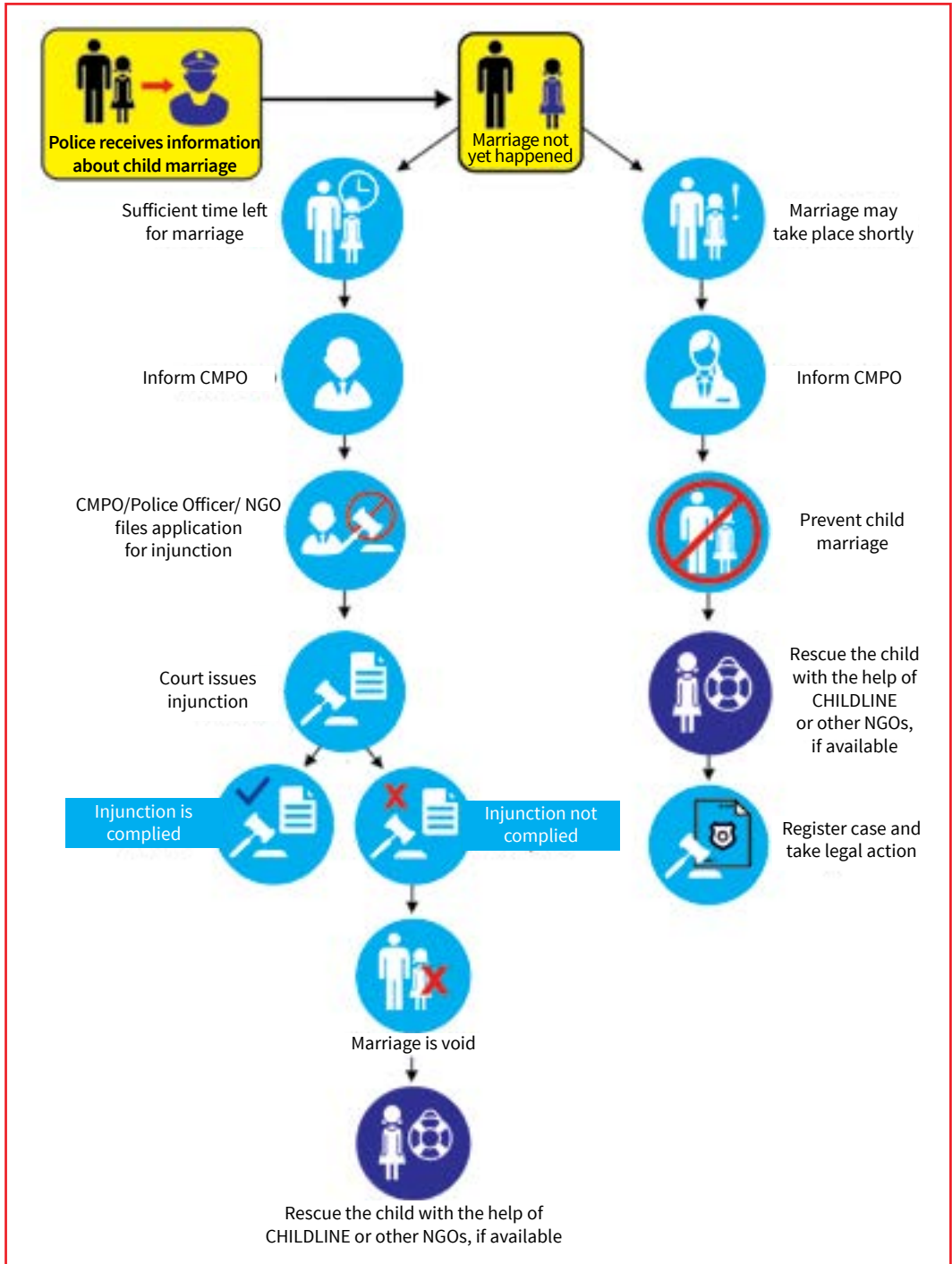
Under certain conditions, the child marriage is null and void and has no legal effect. These conditions are specified under Section 12 and are as follows:

- a. If the child is taken or enticed out of the keeping of the lawful guardian; or
- b. If the child is by force compelled, or by any deceitful means induced to go from any place; or
- c. If the child is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes.

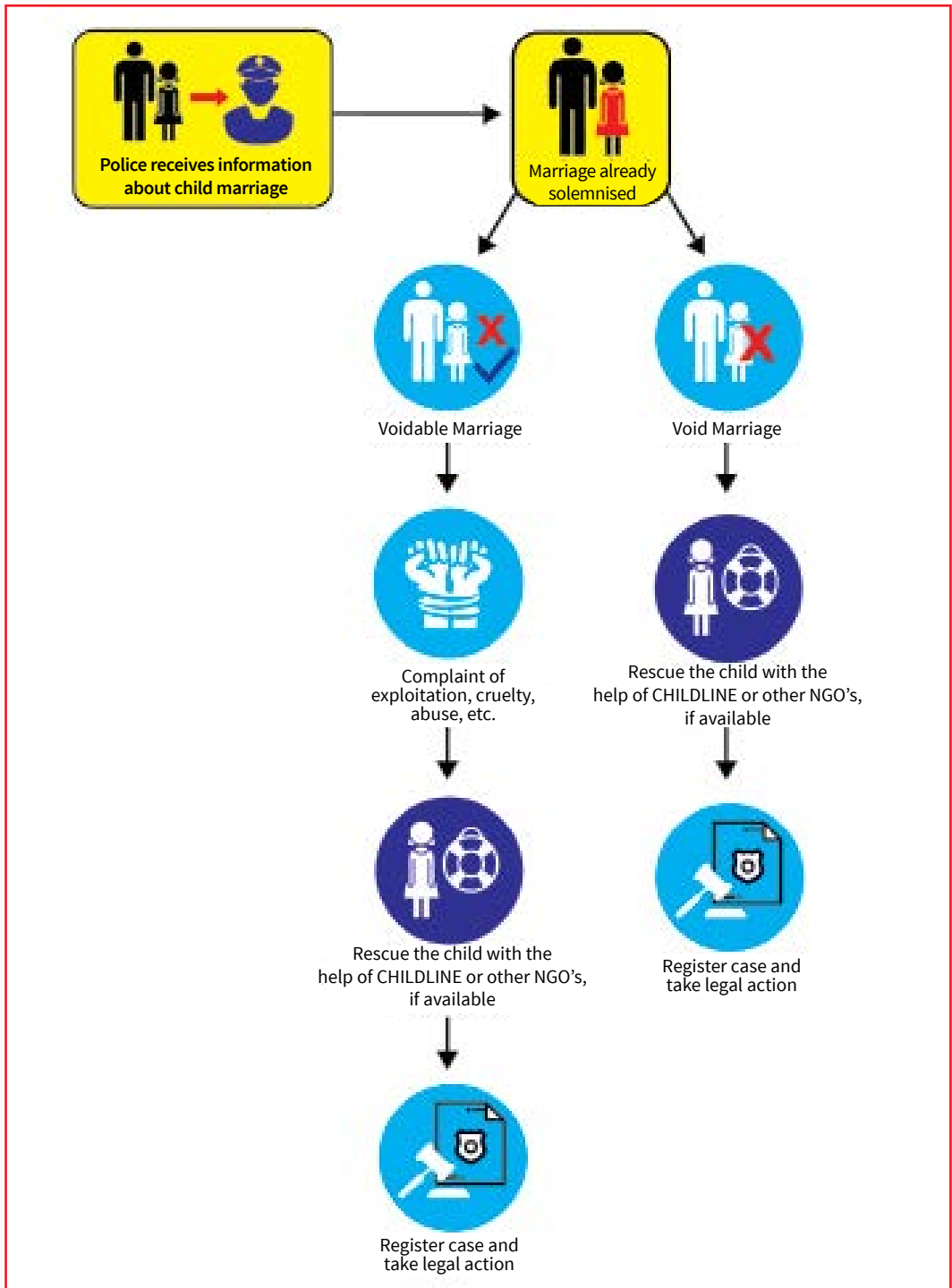
### **Implication of Void or Voidable Marriage for Rescue**

It is evident that police can rescue the child victim in all cases of void marriage. The child who has been married may be rescued in case of voidable marriage, if such child is compelled to stay in husband's family or has been subjected to cruelty, harassment, exploitation, abuse, neglect, etc after such marriage. The child has to be produced before the CWC after rescue. The police should take legal action under penal provisions of this Act, i.e., Sections 9, 10 & 11 of PCMA, against the offenders for both types of marriages.

Action needs to be taken against accused persons for other offences committed against the child under any other legislations such as the IPC, POCSO Act, ITPA etc., besides violation of provision of PCMA. Moreover, in case of voidable marriage, the child victim can also lodge FIR against the spouse for the offence of rape. It is worth mentioning here that Hon'ble Supreme Court of India in its judgment in Independent Thought Vs. Union of India on 11th October/2017 in WP (Civil) No. 382 of 2013 case has ruled that sexual intercourse or sexual Acts by a man with his own wife, the wife being below 18 years, would constitute rape.







### Who are Child Marriage Prohibition Officers?

The State Government under Section 16, PCMA, appoints Child Marriage Prohibition Officers (CMPOs) for the whole State or specified areas. The responsibilities of the CMPO are as under,

- a. to prevent solemnisation of child marriages by taking such action as he may deem fit;
- b. to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
- c. to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
- d. to create awareness of the evil which results from child marriages;
- e. to sensitise the community on the issue of child marriages;
- f. to furnish such periodical returns and statistics as the State Government may direct; and
- g. To discharge such other functions and duties as may be assigned to him by the State Government.
- h. To move the court for issue of injunction order; for maintenance and residence to female contracting party to child marriage; and for custody and maintenance of children of child marriage.
- i. To move court along with the child for annulling a child marriage by a decree of nullity.

The Child Marriage Prohibition Officer may also be invested, by notification in the Official Gazette, by the State Government with powers of police officers.

For special occasions like Akshay Tritiya, the District Magistrate is deemed to be the CMPO for the purpose of preventing solemnisation of mass child marriage.

*(Section 13(4), PCMA)*

### LEGAL PROVISION UNDER OTHER ACTS

#### Giving a Child in Marriage is Considered Cruelty

Giving a child in marriage shall be considered as cruelty to the child for the purposes of Section 75 of the JJ Act, 2015. On receipt of information of risk of a child being given in marriage, the police or any officer authorised under the Act or under the Prohibition

of Child Marriage Act, 2006, shall produce the child before the CWC for appropriate directions and rehabilitative measures. (*Rule 55(1), JJ Model Rules 2016*)

It may be noted that Section 75 of JJ Act, 2015 prescribes punishment (imprisonment for a term up to three years or with fine of Rs. 1 lakh or both) for the offence of cruelty to child.

Thus, besides the provision of Child Marriage Prohibition Act, Police may apply, in suitable cases, Section 75 of JJ Act, 2015 for the offence of child marriage.

### ROLE OF POLICE IN PREVENTING CHILD MARRIAGE

The following observations may be kept in mind by the SP and field level officers,

1. Since family and sometimes neighborhood or entire village approves child marriage, it is very unlikely that someone from such locality would come forward to lodge FIR. Thus, the non-reporting of cases is not an indicator of the severity of the problem. Police has to reach out and find out cases of likely solemnisation of child marriage by activating its intelligence machinery.
2. Child marriage cannot be solemnised without the involvement of priests, pastors, qazis, pandits etc. If they are taken on board by sensitising them about the ill effects of child marriage and also by making them aware of legal provisions including their criminal liability, they may hesitate in playing any role in solemnisation of child marriage.
3. The police should make general public aware, particularly in vulnerable areas during police-public interaction about the ill effects of child marriage and also legal provisions for such marriages. Many people are not aware that all those attending child marriage or members of marriage party (*baraati*) are also liable for punishment.
4. It is seen in many cases that legal action is taken only against the parents/guardians in case of child marriage. The persons who solemnised, arranged or attended the marriage or participated in the ceremony, the feast, etc. go unpunished. The police should ensure that all those who played any role in child marriage should be booked under proper Section and necessary action as per law must be taken against them. This would act as a strong deterrent.

### IMPORTANT COURT ORDERS

1. **Seema Vs. Ashwani Kumar, (2008) (1) SCC 180:** In this case directions were given to the States and the Union Territories in the matter of framing necessary statutes regarding compulsory registration of marriages.

- 2. Supreme Court of India in its order in Independent Thought Vs. Union of India on 11th October/2017 in WP (Civil) No. 382 of 2013:** This case has ruled that sexual intercourse or sexual acts by a man with his own wife, the wife below 18 years, is rape.

### FREQUENTLY ASKED QUESTIONS (FAQs)

#### 1. Who is a 'child'?

**Answer:** A male below 21 years of age or a female below 18 years of age is a child as per the provision of Prohibition of Child Marriage Act, 2006.

#### 2. Can police prevent child marriage if it gets information that child marriage is likely to be solemnised?

**Answer:** Yes, Police can prevent solemnisation of child marriage. As per Section 149 of CrPC, it is the duty of every police officer to interpose and prevent commission of any cognisable offence. In fact, a police officer would be failing in his duties if he does not take steps, to the best of his ability, to prevent any child marriage from happening.

#### 3. What happens to child marriage once it is solemnised? Is such marriage legally valid?

**Answer:** Once a child marriage is not prevented and it gets solemnised, then it is legally valid. However, it would not be legally valid if the marriage falls under the category of 'void' marriage as per the provision of Section 12 of the P.C.M Act, 2006. The provision of Section 12 has already been discussed in this chapter. However, it may be kept in mind that even after solemnisation of child marriage, offence under Penal Sections including 9, 10 and 11 of PCMA is committed.

#### 4. Can a child, after marriage lodge FIR with police?

**Answer:** Yes, a child who has been subjected to marriage may lodge FIR or any person on child's behalf can lodge FIR for subjecting him/her to the marriage. Action as per law would be taken against the person who contracted marriage (in case he is male adult) and also against those persons who played any role in solemnising, permitting or promoting such marriage. (**Sections 9, 10 and 11 PCMA**) The child can also lodge FIR for rape against the husband as wife can lodge such complaint against husband for rape if she is below 18 years of age.

**5. Can a victim of child marriage be rescued by police?**

**Answer:** As already discussed, Child Marriage once solemnised is legally valid in case of voidable marriage whereas 'void' marriages are not legally recognised. Police may rescue children who are party to void marriages. In 'voidable' marriage, notwithstanding such marriage being legally valid as per PCMA, a police officer may rescue a child who has been compelled to stay with her husband/his family or if there is any complaint of any exploitation, abuse, neglect, harassment cruelty, etc. of the child after the marriage. Legal action has to be taken against persons who have committed offence under PCMA or any other law, and the rescued child needs to be produced before the Child Welfare Committee, as per the provision of the JJ Act, 2015.

**6. A girl child of 16 years of age is sold by her uncle to an agent who hands her over to an adult male in another state. The girl is forcibly married to the adult male. What is consequence of this marriage?**

**Answer:** The marriage is void and does not have any legal validity as the girl has been sold and married. The victim has to be rescued and produced before the CWC. Legal action has to be taken against the male adult who married the victim, uncle of the girl, the agent and others who played any role in sale, transfer and marriage of the girl. It is also a case of human trafficking.

**Additional Reading Material**

1. Handbook on Prohibition of Child Marriage Act, 2006, Ministry of Women and Child Development, available at <https://childlineindia.org.in/pdf/child-Marriage-hand-book.pdf>

**ANNEXURE - I****List of offences for Child Marriage under PCMA**

Sl No	Section	Offence	Punishment
1	9	An adult male above 18 years of age, contracts a child marriage.	Rigorous imprisonment up to two years or with fine, which may extend to one lakh rupees, or with both.
2	10	A person performs, conducts or directs or abets any child marriage.	Rigorous imprisonment up to two years and also shall be liable to fine, which may extend to one lakh rupees.
3	11	Any person promoting or permitting solemnisation, or negligently failing to prevent a child marriage including attending or participating in a child marriage.	Rigorous imprisonment up to two years and shall also be liable to fine, which may extend up to one lakh rupees. No women shall be punishable with imprisonment.
4	13(10)	A person disobeying an injunction order issued by court prohibiting child marriage.	Imprisonment for a term which may extend up to two years or with fine, which may extend up to 1 lakh rupees or both. No women shall be punishable with imprisonment.
<b>Note: All offences under PCMA are cognisable and non-bailable.</b>			

## THE ROLE OF POLICE - CYBER CRIME AGAINST CHILDREN

In recent times, there has been an increase in number of children exposed to the cyberspace which makes them vulnerable to cyber crime. Many children are not aware of the lurking dangers in the cyber world. Cyber Crime has emerged as a major challenge to children and their safety. Death of many children due to fatal games like Blue Whale is still fresh in our memory. These

games are very harmful as they can captivate the young minds and compel them to take extreme step of inflicting injury and even taking their own lives.

Very recently, another game named “Momo Challenge” has caught the fancy of young children. In this game, the members are challenged to communicate with unknown numbers. The game inspires teenagers/players to add unknown contacts on Whatsapp by the name of “Momo”. Once the contact is added, the image of the terrifying Japanese Momo doll with bulging eyes appears in the contact. The game controller then, entices the player to perform a series of challenges which finally ends with the suicide challenge.

Online grooming of children for sexual purpose through internet and other technologies is another worldwide problem, posing risk to several children for sexual exploitation. An adult establishes or builds a relationship with a child, through internet and related technologies, for the purpose of online or offline sexual contact with the child.

Cyberspace has become den for human traffickers, pedophiles, drug dealers, disgruntled elements, psychopaths, dissidents, religious and political extremists and other criminals to carry out their nefarious activities without being noticed. Cyber crime is a high profit and low risk activity. The law enforcement agencies face many difficulties while dealing with cyber crime such as inadequate capacity; weak/inadequate law; poor co-ordination with counterparts in other countries; sophisticated criminals, etc. It is extremely difficult to locate the criminals in a number of cases as many of them operate through dark web.

## WHAT IS CYBER CRIME?

Cyber crime can be defined as any criminal activity which involves the use of a computer or a network device. These devices can be used both as a tool to commit crime and as a target of such crimes. Any device which can store and process information digitally is a computer like personal computers, laptops, mobile phones, tablet PCs, printers, fax, photocopiers, digital cameras, memory cards, SIM cards etc. Section 2 (i) of the IT Act defines a computer as “*Computer means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network.*”

Although there are different types and categories of cyber crimes, some common type of cyber crime committed against children are:

- a. **Cyber Stalking:** The victim is harassed through electronic communication like text message, email, etc.
- b. **Cyber Bullying:** The victim is threatened or blackmailed using the cyber space.
- c. **Identity Theft:** Criminals commit identity theft by accessing the victim’s computer and stealing his identity details to gain unauthorised access to his private and confidential space/accounts
- d. **Cyber Pornography:** It is an offence in which cyberspace is used to publish obscene materials depicting sexual acts involving children. It also includes online grooming of children for sexual purpose.
- e. **Online Radicalisation:** Children with young and impressionable minds are targeted and radicalised with extreme ideologies by some terrorist organisations using the cyberspace.
- f. **Cyber Defamation:** This involves defaming the character of a child by publishing objectionable material about him.

## SOME IMPORTANT ASPECTS OF CYBER CRIME

**IP Address:** An Internet Protocol address (IP address) is a logical numeric address that is assigned to every single computer, printer, switch, router or any other digital device that is part of a computer network which uses the internet for communication.\* It is a unique identity number, mainly assigned dynamically to every user when connected to the network. Every time a person gets connected to the internet through any device, the

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\*<https://www.techopedia.com/definition/2435/internet-protocol-address-ip-address>



device will have an IP address which can be used to identify the device or the person who is using that particular IP address at a given particular time. The same device may have different IP addresses every time the device gets connected to the Internet but it will be unique to a device at that point of time. It means, no two devices can have the same IP address at a particular point of time. Cyber crime investigators, by tracing an IP address can find out the device which was used to commit crime. However in certain cases the IP address may be static such as in broadband connectivity etc.

**Dark Web/Network:** These are networks accessible only via specific software and configurations. This is due to the fact that normal search engines can only access such data which are indexed. The part of web space which is accessed by normal users using common search engines is known as the surface web. In surface web every user has one's own identity and can be traced whenever required. But in dark web, it is very difficult to trace the source of any activity as it may have been routed many times before it reaches the receiver. TOR (The Onion Router) is one of the browsers commonly used to access the dark net. Users of this dark net are anonymous, and it is this anonymity that has attracted criminals towards it. Inside dark net, criminals can carry out their illegal activities without getting detected. It has become a safe haven for criminals selling drugs and guns, human traffickers etc. Monetary transaction in the dark web is done through crypto currencies like Bitcoin.

**Hash Value:** A hash value is a numeric value of a fixed length (length varies with hashing methods) that uniquely identifies data. It is unique for every set of data. For example, the hash value of a Microsoft Word file can be changed just by adding one single character to the text. Even the addition of one '.' (full stop) or a 'blank space' can generate an entirely new hash value. Verification of the integrity of data in cyber investigation is done by comparing the hash values of the original data with the data in question. The Investigating Officer should be aware of the importance of hash value and should calculate the hash value of digital evidence at the time of seizure and in presence of witnesses, as far as practicable. After generating the hash value of the evidence, the Investigating Officer should ensure its integrity by using **write blockers** whenever necessary. It is to be noted that portable devices are available which can perform functions like calculating hash value, write blocking, cloning/imaging etc. *The Information Technology Act 2000 also recognises 'hash function'. (Section 3(2) Explanation)*

**Write Blocking:** The method of preventing data from being manipulated/changed in a digital evidence such as pen drives, hard disks etc. is known as Write Blocking and the hardware/software used to do this is called a Write blocker. In simple words, a write blocker only allows to access and read the data/information located in a pen drive/

hard disk, etc. but prevents altering/manipulation of the data. Investigators should not forget to use a write blocker while examining the contents of any digital device related to a crime.

**Cloning/Imaging:** This is the process of creating an exact copy of the content of digital evidence such as a computer hard disk/pen drive/CD for the purpose of investigation. Whenever digital evidence is recovered, the Investigating Officer should clone the evidence for the purpose of analysis so that the original evidence does not get tampered.

## INVESTIGATION OF CASES OF CYBER CRIME

Cyber crime does not always take place in isolation but in large number of cases, it may only be a part of the whole crime. Many cases of child sexual abuse and child trafficking have cyber crime elements in them, as very often exploitation is preceded by communication between the victims and offenders on social media networks and other online platforms. The offenders gain the trust of the victims by becoming friend with the victims on social media followed by exploitation of the victims. Therefore, the Officer-In-Charge of a Police Station needs to apply the provisions of IT Act, 2000 at the time of registration or during investigation, as the case may be, and investigate the cases accordingly. While registering the cases, care may be taken to ensure that proper Sections of IT Act 2000 and other relevant Acts are applied.

**Investigation:** Investigation of cyber crimes is different in many ways from conventional crimes. With the advent of ultra sophisticated electronic devices, investigation of cyber crime has become much more challenging. Some of the reasons as to why cyber investigation is different from conventional investigation and the reason as to why the Investigating Officers need to be extra careful, are mentioned hereunder:

- a. **Complex Modus Operandi:** The modus operandi of cyber crime is difficult to understand and hence, requires trained police officers to investigate. The cyber criminals keep on changing and upgrading the techniques of committing crime. The investigators, therefore, need to be up to date to be relevant and effective.
- b. **Professional Criminals:** Many cyber criminals are highly trained, motivated and sophisticated. They use hi-tech equipment to commit crimes. The cyber criminals need not develop the tools for committing crime as the latest tools are available for sale on dark net. Some of the sellers also provide maintenance services to the buyers of these tools.

- c. Difficult to Detect:** Criminals can commit crimes from any part of the world and may remain untraced. Cyberspace is preferred place for criminals due to the anonymity provided by it. The professional criminals hide or mask their identity to protect themselves from the reach of investigators. As already discussed, it is extremely difficult to trace a criminal who is using dark net.
- d. Nature of Evidence:** The nature of evidence in cyber crime poses its own challenges before the investigators. It requires expertise to be able to spot the devices which may have useful evidence. Some of the characteristics of evidence are as under:
- **Volatile Evidence:** Volatile evidence is that part of evidence which is lost and cannot be retrieved once the device is switched off or shut down. Therefore, such evidence should be collected while the computer is live. Collection of volatile evidence requires expertise on the part of the investigator.
  - **Vulnerable to Mischief:** The evidences can also be erased remotely by the cyber criminals. Thus, it is important that the device containing the evidence is secured in such a way that it stops communicating with the outside.
  - **Fragile Evidence:** Digital evidences are fragile in nature and may get tampered or damaged easily. Hence, the persons, handling them should be very careful in order to prevent any damage to them.
  - **Preservation:** Evidences of cyber crime, if not preserved properly can be easily manipulated or altered. The temperature of the surroundings, humidity, nearby electric or magnetic fields, physical abrasion or impact etc. may result in compromise of evidence.
- e. Jurisdictional Issues:** Different countries have their own laws relating to cyber crime. Cyber law of a particular country may not be enforceable in another country. On the other hand, many cyber criminals commit crime from one or more foreign country. In such situations, international co-operation becomes critical for successful investigation.
- f. Players Behind Cyber Crime:** In some cases, foreign intelligence agencies backed by Governments may be behind cyber crime. In such cases, support from those nations may not be forthcoming. Added to this scale and the level of sophistication involved in such crimes is very high.

## LEGAL PROVISIONS

Information Technology Act, 2000 which was amended in 2008 is the principal Act for dealing with cyber crime cases in India. Besides the provisions of IT Act, Sections of IPC or other Acts may be applied as per the merit of the case.

- a. **Rank of Investigating Officer:** As per Section 78, IT Act, 2000 a case under this Act has to be investigated by an officer not below the rank of an Inspector of Police.
- b. **Nature of Offence:** As per Section 77B, IT Act, the offence punishable with imprisonment of three years and above shall be cognisable and the offence punishable with imprisonment of three years shall be bailable.
- c. **Provisions Relating to Intermediaries, Section 79 (3)(b):** If after being notified by appropriate Government, an intermediary fails to remove or disable access to any information residing in or connected to a computer resource controlled by that intermediary which is being used to commit an unlawful act then the intermediary shall be held liable.

*'Intermediary'* with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes websites, search engines, social media portals, online payment sites, online-auction sites, online market places etc. (**Section 2(1)(w) IT Act**)

For example, if content relating to child pornography is hosted on any website, the website authorities are bound to remove such content on receiving a notice under this provision from police.

- d. **Offences:** Table of offences has been provided in this chapter at *Annexure I* whereas other relevant provision are provided in *Annexure II*.

It is worth mentioning that Supreme Court vide Judgment, dated 24th March, 2015 has struck down as unconstitutional, Section 66A of Information Technology Act in the case of *Writ Petition (Criminal) No. 167/2012 (Shreya Singhal Vs. Union of India)*

**It is surprising and a matter of concern that police officers are still registering cases under Section 66 A despite of Supreme Court's Order.**

The matter of people being prosecuted under the provision of 66A after it was scrapped has been brought to the notice of Supreme Court through a PIL by people's Union of Civil Liberties. The Hon'ble Court took serious note of the matter and has issued notice to the Centre in January 2019.

In view of this, police officers need to keep the Supreme Court Order in mind and not to apply Section 66A in any case.

### OFFENCE RELATING TO CHILDREN

Most of the offences are not child specific as victims may be women, children or any other person. However, offence Section 67B is specifically against children.

**Section 67B:** Publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form is an offence under this section which may attract punishment of upto 5 years and also with fine which may extend to 10 lakh rupees in case of first conviction.

*(Complete provision has been provided in Annexure III)*

### CHAIN OF CUSTODY OF EVIDENCE

The chain of custody is to be properly documented every time the evidence changes hands. It starts with the person who first collected the evidence followed by the persons who were in charge of the evidence during the various stages of investigation and forensic examination. This aspect is given importance by Courts during trial.

### PROCESS OF INVESTIGATION

1. Reporting of the Crime/Registration of FIR
2. Recording of Statements
3. Requisitions and Notices

**Notice Section 91 CrPC:** In case of data which is stored in India, a police officer can directly send a request Section 91 CrPC to a company to furnish the required data and also to preserve it as long as required in the interest of investigation. Section 67C of the IT Act mandates the intermediaries to retain data for a definite time span.

Regarding information from companies in foreign countries, it is to be noted that almost all major companies reply to data requests made Section 91 CrPC.

Things to be remembered while sending such notices:

- The letter should be sent from authorised Government email ID.
- The letter should contain the case details such as case number, date & time of registration, date & time of commission of the crime etc.
- The letter must clearly indicate the required information sought/required by the investigating agency.

- The name and rank of the Investigating Officer should be mentioned in the letter.
- Gist of the FIR along with the sections of law needs to be mentioned in the letter.

### **INVESTIGATION ABROAD**

**Mutual Legal Assistance Treaty (MLAT):** This is a bilateral agreement entered into by states to exchange evidence for investigation. These are used when the actual content of a communication is needed which may not be furnished through Notice Section 91 CrPC. The designated body for routing an MLAT request is the Ministry of Home Affairs, Government of India. It does not require the assent of the Court but the MHA may directly co-ordinate with its counterpart in the foreign country and take help in investigation.

**Letters Rogatory:** This is sent by a criminal court on the request of an Investigating Officer to a court of another country requesting to furnish the necessary information. Prior permission of Government is required before proceeding to the court for issuing a Letter Rogatory. Section 166 A of the CrPC clearly lays down the procedure for sending a Letter Rogatory. IPCC (International Police Co-operation Cell) of CBI, New Delhi is the designated agency for routing requests of Letter Rogatory.

The collection of evidence from a computer is a crucial process which includes collection of RAM dump (if practicable), disconnecting the computer from power source, network, etc., along with removal of parts which may contain evidence like hard disk, labeling of evidence, seizure, packaging, transportation and preservation of evidence which requires expertise and therefore experts may be associated with the police team investigating cyber crime. The officers investigating cases of cybercrime must be well acquainted with terms like Hash Value, IP address and other basic computer related concept. The Investigating Officer should also ensure the safety and integrity of evidences. The requisition sent by the Investigating Officer to Forensic Science Laboratory/CFSL for forensic analysis of evidences must be clear in its content. Whatever information is sought from the FSL must be clearly stated in the letter without creating any confusion.

### **ADMISSIBILITY OF ELECTRONIC RECORDS**

**Indian Evidence Act (Section 65(B)):** As per this Section, any information contained in an electronic record which is printed on a paper, stored, recorded or copied by a computer shall be deemed to be a document, if the conditions\* mentioned in this

section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

\*The conditions referred to Section 65 (B) in respect of a computer output shall be the following, namely:

- a. the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- b. during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
- c. throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- d. the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

### SUPREME COURT ORDERS ON SECTION 65(B)

- a. **In Anvar P.V. Vs. P.K. Basheer case**, the Supreme Court of India held in 2014 that secondary evidence pertaining to electronic records is inadmissible if not accompanied with certificate in terms of Section 65B of the Evidence Act.
- b. **In Shafhi Mohammad Vs. The State of Himachal Pradesh case**, the Supreme Court held in 2018, that furnishing of certificate under Section 65B of the Evidence Act is not a mandatory provision and its requirement could be waived off in view of facts and circumstances and if interest of justice required the same.

### GOVERNMENT INITIATIVES TO DEAL WITH CYBER CRIME

**Cyber Crime Prevention against Women and Children (CCPWC):** It is a scheme being implemented by Ministry of Home Affairs, Government of India. It has various components such as setting up of online cyber crime reporting portal, setting of Cyber Forensic Training Labs in States/Union Territories and capacity building for police officers, prosecutors and judicial officers etc.

The MHA, under CCPWC scheme has developed a centralised online reporting portal ([www.cybercrime.gov.in](http://www.cybercrime.gov.in)) for accepting complaints of child pornography and rape/gang rape (CP/RGR) content being circulated through internet. The portal would undergo connectivity integration with States/Union Territories for allowing access to police stations for viewing the complaints in their jurisdiction and update the action taken status on this portal.

This is in compliance of order of the Supreme Court in '*suo motu*' **Writ Petition No. 3/2015, Prajwala (NGO) Vs. Union of India** in which the Supreme Court gave the following instructions:

- i. Central reporting mechanism for receiving complaints of Child Pornography/Rape-Gang Rape (CP/RGR) content circulated through internet.
- ii. Helpline to receive CP/RGR complaints.
- iii. Prompt blocking/removal of CP/RGR content on internet.

The complaints being filed on this portal are handled by Nodal Officers of States/UTs in time bound manner of blocking/removal of CP/RGR content on internet is done as per the provision of Section 79(3)(b) of the IT Act, 2000 read with The Information Technology (Intermediaries Guidelines) Rules, 2011.

**Cyber Swachhta Kendra:** The “Cyber Swachhta Kendra “(Botnet Cleaning and Malware Analysis Centre) is a part of the Government of India’s Digital India initiative under the Ministry of Electronics and Information Technology (MeitY) to create a secure cyber space by detecting botnet infections in India and to notify, enable cleaning and securing systems of end users so as to prevent further infections. The “Cyber Swachhta Kendra “(Botnet Cleaning and Malware Analysis Centre) is set up in accordance with the objectives of the “National Cyber Security Policy”, which envisages creating a secure cyber eco system in the country. This centre operates in close coordination and collaboration with Internet Service Providers and Product/Antivirus companies. This website provides information and tools to users to secure their systems/devices. This centre is being operated by the Indian Computer Emergency Response Team (CERT-In)\* under provisions of Section 70B of the Information Technology Act, 2000.\*\*

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\*CERT-In: It is a functional organisation of the Ministry of Electronics and Information Technology created in 2004 to deal with Cyber Security threats.

\*\*<https://www.cyberswachhtakendra.gov.in/>



**Twitter Handle '@CyberDost':** It is a cyber safety and cyber security awareness handle maintained by Ministry of Home Affairs Government of India. It aims at enhancing basic knowledge of social media users about cyber crimes and precautions for prevention.

**Indian Cyber Crime Coordination Centre (I4C)\*:** The Ministry of Home Affairs is implementing a scheme called 'Indian Cyber Crime Coordination Centre' (I4C) to deal with cyber crimes in a coordinated and comprehensive manner. One of the components of I4C Scheme is operationalisation of national cyber crime reporting portal. This portal would enable filing of all cyber crimes with particular focus on cyber crime against women and children. Nodal Officers are to be designated at State/Union Territory level, district level and police station level. The nodal officer at each level shall be able to manage the work flow of administering their jurisdiction such as creating/modifying/deleting users, assigning the complaints and supervising the disposal of cases.

Some of the salient features of the portal are as under:

1. Online reporting of all cyber crimes
2. Automated routing of reported complaints to the concerned State/Union Territories and up to District/Police Station level
3. Complaint handling upto FIR stage by the State/District Police
4. Integration with CCTNS for seamless handling of complaints
5. Separate and focused reporting and monitoring for cybercrime against women and children
6. Provision to transfer complaints in case of jurisdiction mismatch
7. Tracking of status of the reported complaints.

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\*[https://mha.gov.in/division\\_of\\_mha/cyber-and-information-security-cis-division/Details-about-Indian-Cybercrime-Coordination-Centre-I4C-Scheme#](https://mha.gov.in/division_of_mha/cyber-and-information-security-cis-division/Details-about-Indian-Cybercrime-Coordination-Centre-I4C-Scheme#)

**LIST OF DOS AND DON'TS FOR PARENTS/TEACHERS/CHILDREN**

General Advisory	<ul style="list-style-type: none"> <li>• Monitor your child's online activities</li> <li>• Consider installing a spying software/parental monitoring software</li> <li>• Review the security settings on your child's phone</li> <li>• Check for cyber addiction of your child</li> <li>• Watch for any behavioral change including sleeping pattern</li> <li>• Maintain an open communication with your child</li> </ul>
Device Security	<ul style="list-style-type: none"> <li>• Use a password/PIN/Pattern etc. to secure your device</li> <li>• Avoid giving your device to others</li> <li>• Do not store sensitive information on your phone</li> <li>• Don't leave your laptop, tablet, or smart phone unattended in a public place</li> </ul>
Securing your Operating System	<ul style="list-style-type: none"> <li>• Use a genuine operating system with a product key (for computers)</li> <li>• Install the periodic security updates</li> <li>• Activate firewall settings</li> <li>• Buy a genuine antivirus software</li> </ul>
Browser Security	<ul style="list-style-type: none"> <li>• Use a trusted browser</li> <li>• Disable pop up notifications in the browser</li> <li>• Do not click on unknown links</li> <li>• Browse only secured sites with SSL certificate (Check for '<b>https:</b>' before accessing a website)</li> <li>• Configure your browser's security and privacy settings.</li> <li>• Block suspicious websites in your browser</li> <li>• Be cautious when installing plug-ins</li> <li>• Install security plug-ins</li> <li>• It is recommended that you type the full address of the website instead of clicking the link provided by someone else, or the address shown by the search engine.</li> </ul>
Downloading of Apps	<ul style="list-style-type: none"> <li>• Download apps only from trusted publishers</li> <li>• Go through the reviews and ratings of the apps before downloading</li> <li>• Be careful while giving access/permissions to apps</li> <li>• Beware of malicious applications</li> <li>• Check the background data usage by different apps</li> <li>• Trust your instincts! If you feel suspicious about something, it may be for a reason</li> </ul>

Social Media Security	<ul style="list-style-type: none"> <li>• Provide only limited information on your profile</li> <li>• Do not post anything and everything on social media</li> <li>• Review the privacy and security setting</li> <li>• Do not upload private and sensitive information on social media</li> <li>• Do not chat or make friends with strangers</li> <li>• Be careful while uploading your pictures</li> </ul>
Using the Internet	<ul style="list-style-type: none"> <li>• Avoid using public computers for performing sensitive tasks as far as possible</li> <li>• Don't access personal bank accounts, or sensitive personal data, on unsecured public networks</li> <li>• Disable your Wi-Fi and Bluetooth when not in use</li> <li>• Secure your Wi-Fi hotspot with strong passwords</li> </ul>
Password Security	<ul style="list-style-type: none"> <li>• Do not share your password with anyone</li> <li>• Make your password strong with minimum 8 characters</li> <li>• Make use of special characters in addition to alpha-numeric characters to make a strong password</li> <li>• Do not write your password anywhere, instead memorise it</li> <li>• Change your password frequently</li> <li>• Use different passwords for different accounts</li> <li>• Do not use dictionary word as your password</li> <li>• Do not make your password predictable by using obvious information like date of birth, name, designation etc.</li> <li>• Avoid common passwords like 'welcome', '1234', 'abcd', 'password' or your phone number.</li> </ul>
Reporting of Offences	<ul style="list-style-type: none"> <li>• Always report offences of cyber crime</li> <li>• Provide the details of the incident</li> <li>• Learn to preserve evidences like URL, screenshots, pictures etc.</li> <li>• Spread awareness about cyber crime by sharing your experiences</li> </ul>

**ANNEXURE - I****Penal Provisions under Information Technology Act, 2000**

<b>Nature of Unlawful Activity</b>	<b>Applicable Section(s) of IT Act</b>	<b>Punishment</b>
Tempering with Computer Source Documents	65	Imprisonment up to 3 years, or with fine up to rupees 2 lakhs, or both
Computer related offences	66	Imprisonment up to 3 years, or with fine up to rupees 5 lakhs, or both
Dishonestly Receiving Stolen Computer Resource or Communication Device	66B	Imprisonment up to 3 years, or with fine up to rupees 1 lakhs, or both
Identity Theft	66C	Imprisonment up to 3 years, and with fine up to rupees 1 lakh.
Cheating by personation by using Computer Resource	66D	Imprisonment up to 3 years, and with fine up to rupees 1 lakh
Violation of Privacy	66E	Imprisonment up to 3 years, or with fine not exceeding 2 lakh rupees or both
Cyber Terrorism	66F	Imprisonment which may extend to imprisonment for life
Publishing or Transmitting Obscene Material in Electronic Form	67	Imprisonment up to 3 years, with fine up to 5 lakh rupees (first conviction) Imprisonment up to 5 years, with fine up to 10 lakh rupees (second or subsequent conviction)

Nature of Unlawful Activity	Applicable Section(s) of IT Act	Punishment
Publishing or Transmitting of Material Containing Sexually Explicit Act, etc. in Electronic Form	67A	Up to 7 years of imprisonment, and fine up to 10 lakhs
Publishing or Transmitting of Material Depicting Children in Sexually Explicit Act, etc. in Electronic Form	67B	Imprisonment up to 5 years, with fine upto 10 lakh rupees (first conviction) Imprisonment up to 7 years, with fine up to 10 lakh rupees (second or subsequent conviction)
Punishment for Abetment of Offence	84(b)	Punishment provided for the particular offence under this Act
Punishment for Attempt to Commit Offences	84(c)	Imprisonment of any description provided for the offence for a term which may extend to one half of the longest term provided, or with fine, or both

**ANNEXURE - II****Other Relevant Provisions of the Act**

Section	Provision
69A	Power to issue directions for blocking for public access of any information through any computer resource.
46	It grants the Central Government the power to appoint adjudicating officer to hold an enquiry to adjudge, upon complaints on contraventions of the Act being filed before that adjudicating officer.
67C	Preserving and retention of data by intermediaries for a period specified by Government, failure of which, will invite punishment.
79(3)(b)	The intermediaries are bound to remove or disable access to material being used to commit unlawful act.

**ANNEXURE - III****Provision of Section 67B IT Act****Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form:**

Whoever,

- a. publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- b. creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- c. cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- d. facilitates abusing children online, or
- e. records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term, which may extend to five years and with fine, which may extend to ten lakh rupees; and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Provided that provisions of Section 67, Section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form,

- i. the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or
- ii. which is kept or used for bonafide heritage or religious purposes.

***(Explanation: For the purpose of this section 'children' means a person who has not completed the age of 18 years.)***

## THE ROLE OF POLICE - CHILD VICTIMS FROM SC & ST COMMUNITIES

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**W**hile talking about child protection, Police Officers sometimes, tend to ignore the provisions of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Children belonging to these communities are often at the receiving end and become victim of various types of crime due to ill effects of caste system and oppressive social structure. Subjecting the children of these communities to various types of violent crimes sometimes becomes an instrument of domination by other communities, particularly in some areas of the country.

### WHEN IS THIS ACT APPLICABLE?

The provision of this case may be applied if,

- i. the child victim belongs to Scheduled Caste or Scheduled Tribe, and
- ii. the offender does not belong to Scheduled Castes or Scheduled Tribes.

### WHY IS THIS ACT APPLIED?

The stringent provision of this Act favours the victims and is harsh for the offenders. It also specifies the rights of victims and witnesses.

#### i. Penalty is High

The quantum of punishment for an offence is higher in this Act. For example, as per Section 3(2)(v), if an offence under the Indian Penal Code punishable with imprisonment of a term of 10 years or more is committed against a person or property (knowing that such person is a member of scheduled caste or scheduled tribe or such property belongs to such member) by a person who is not a member of SC or ST, then the punishment for such offence is imprisonment for life and with fine. **A list of offences under the Act that may have relevance for the children has been provided at Annexure I of this chapter.**



## ii. No Provision for Anticipatory Bail for Accused

Section 438, CrPC does not apply in relation to any case involving arrest of any person on an accusation of having committed an offence under this Act. *(Section 18)*

## iii. Punishment for Neglect of Duties by Public Servants (Section 4)

If a Public Servant (which includes any police officer) not being a member of scheduled caste or scheduled tribe, willfully neglects his duties required to be performed by him under this Act and the rules made under, the concerned officer is liable for punishment with imprisonment which may be from 6 months to 1 year. The duties of the public servant includes the following:

- To read out to an informant the information given orally, and reduced to writing by the officer-in-charge of the police station, before taking the signature of the informant,
- To register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
- To furnish a copy of the information so recorded forthwith to the informant;
- To record the statement of the victims or witnesses;
- To conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
- To correctly prepare, frame and translate any document or electronic record;
- To perform any other duty specified in this Act or the rules made there under.

Thus, if any police officer wilfully neglects any or more than one of the duties mentioned above then he commits an offence.

## iv. High Importance is Accorded to Investigation

- a. Time bound and speedy investigation
  - The investigating officer has to complete investigation on top priority, submit the report to SP, who in turn shall immediately forward the report to the DGP or Commissioner of Police and the officer-in-charge of the concerned police station shall file the charge sheet in Special

Court or Exclusive Special Court within a period of 60 days (the period in inclusive of investigation and filing of charge sheet). **(Rule 7(2))**

- The delay, if any, in investigation or filing of charge sheet within the time limit of 60 days has be explained in writing by the investigating officer. **(Rule 7(2A))**

The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) of the State Government or Union Territory Administration, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police or the Commissioner of Police in-charge of the concerned State or Union Territory shall review by the end of every quarter the position of all investigations done by the investigating officer **(Rule 7(3))**

b. Rank of the Investigating Officer

The rank of the investigating officer has to be DSP or above. **(Rule 7(1))\***

c. Monitoring of investigation

- The Police report has to be sent to the DGP/Commissioner of Police through SP after completion of investigation. **(Rule 7(2))**.
- The progress of investigation is monitored by ***the Schedule Castes and the Schedule Tribes Protection Cell*** headed by DGP of the State. **(Rule 8)**

**v. Relief and Other Safeguards to Victims**

a. The victims are entitled for relief as per Rule 12(4)

The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate has to make necessary administrative and other arrangements and provide relief in cash or in kind or both within seven days to the victims of atrocity, their family members and the dependents. The scale of relief has been mentioned in Annexure of the SC and ST (POA) Rules. The amount of relief varies from Rs. 85,000 to Rs. 8,25,000 depending on nature of atrocity. The relief amount has to be paid in installments as prescribed in the annexure. In most of the cases, relief is to be paid in three

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*\*It may be noted, that some states like Bihar and Madhya Pradesh, have extended the powers to investigate cases under SC & ST (POA) Act to all investigating ranks, i.e., Inspector, Sub-Inspector, Asst. Sub-Inspector of Police*

installments at FIR stage, at the stage of charge sheet and at the stage of conviction of accused by lower court.

*(Chapter 1 of this handbook may be referred for further details on payment of relief.)*

- b. Travelling allowance, daily allowance, maintenance expenses and transport facilities have to be provided to the victim, his or her dependent and witnesses by the DM, SDM or Executive Magistrate. **(Rule 11(6))**
- c. Protection of witness, victims including dependents **(Section 15A)**

The State Government has to make arrangement for protection of victims, their dependents and witnesses against any kind of intimidation or coercion or inducement, any violence or threats of violence.

The victims have to be informed by the State Government or Special Public Prosecutor about any proceeding under this Act.

The Special Court or Exclusive Special Court shall provide to victim his dependent, informant or witnesses various support including complete protection; travelling and maintenance expenses, social-economic rehabilitation during investigation, inquiry and trial; relocation, etc.

The victim has to be treated with fairness, respect and dignity and with due regard to any special need that arises because of victim's age or gender or educational disadvantage or poverty.

It is the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them free of cost.

**All proceedings relating to offences under this Act shall be video-recorded.**

### **OTHER PROVISION WHICH ARE RELEVANT FOR POLICE**

#### **i. State Level Vigilance and Monitoring Committee (Rule 16)**

The State Government has to constitute a high-powered Vigilance and Monitoring Committee of not more than 25 members. The Chief Minister or Administrator is the Chairman with following members:

- Home Minister, Finance Minister, Minister(s) in-charge of Welfare and Development of SC & ST.

- All elected members of Parliament, State Legislative Assembly and Legislative Council from the State belonging to SC & ST.
- Chief Secretary, Home Secretary, DGP, Director/Deputy Director NCSC and NCST.
- The Secretary in-charge to the Welfare and Development for SC & ST is the convener.
- The Committee has to meet at least twice in a calendar year in January and July to review the implementation of the provision of the Act.

## **ii. District Level Vigilance and Monitoring Committee**

The district level vigilance and monitoring committee consists of the elected Members of the Parliament and State Legislative Assembly and Legislative Council, Superintendent of Police, three group 'A' officers/Gazetted officers of the State Government belonging to the Scheduled Castes and the Scheduled Tribes, not more than 5 non-official Members belonging to the Scheduled Castes and the Scheduled Tribes and not more than three members from the categories other than the Scheduled Castes and the Scheduled Tribes having association with Non-Government Organisations. The District Magistrate and District Social Welfare Officer are Chairman and Member Secretary respectively.

The district level committee has to meet at least once in 3 months. *(Rule 17)*

## **iii. The Scheduled Castes and the Scheduled Tribes Protection Cell *(Rule 8)***

The State Government has to set up the Cell at the state headquarters under the charge of DGP/IGP. The Cell is responsible for:

- Conducting survey of the identified area;
- Maintaining public order and tranquility in the identified area;
- Recommending to the State Government for deployment of Special Police force or establishment of special police post in the identified area;
- Making investigations about the probable causes leading to an offence under the Act;
- Restoring the feeling of security amongst the members of the Scheduled castes and the Scheduled Tribes;
- Informing the nodal officer and special officer about the law and order situation in the identified area;
- Making enquiries about the investigation and spot inspections conducted by various officers;

- Making enquiries about the action taken by the Superintendent of Police in the cases where an officer-in-charge of the police station has refused to enter an information relating to commission of offence in the book maintained by that police station;
- Making enquiries about the willful negligence by a public servant;
- Reviewing the position of cases registered under the Act, and
- Submitting a monthly report on or before 20th day of each subsequent month to the State Government, nodal officer about the action taken proposed to be taken, in respect of the above.

#### **iv. Nomination of Nodal Officer (Rule 9)**

The State Government has to nominate a Nodal Officer of the level of a Secretary to the State Government preferably belonging to the Scheduled Castes or the Scheduled Tribes, for coordinating the functioning of the District Magistrates and Superintendent of Police or other officers authorized by them, investigating officers and other officers responsible for implementing the provisions of the Act.

#### **v. Appointment of Special Officer (Rule 10)**

A Special Officer not below the rank of a Additional District Magistrate shall be appointed, in the identified area, to co-ordinate with the District magistrate, Superintendent of Police or other officers responsible for implementing the provisions of the Act, various committees and the Scheduled Castes and the Scheduled Tribes Protection Cell.

#### **v. Special Court and Exclusive Special Court (Section 14)**

The State Government has to establish with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, An Exclusive Special Court for one or more districts, for the purpose of speedy trial. The State Government has to set up Special Courts, by notification in official gazette, for those districts which have less number of cases under this Act by specifying the Court of Sessions to be Special Court. It is the duty of the State Government to establish adequate number of Courts to ensure that the cases under this Act are disposed within a period of two months, as far as possible. The trial, as far as possible, has to be completed within a period of two months from the date of filing of charge sheet.

*The Special Courts and Exclusive Special Courts have the power to directly take cognisance of offences under this Act. (Section 14)*

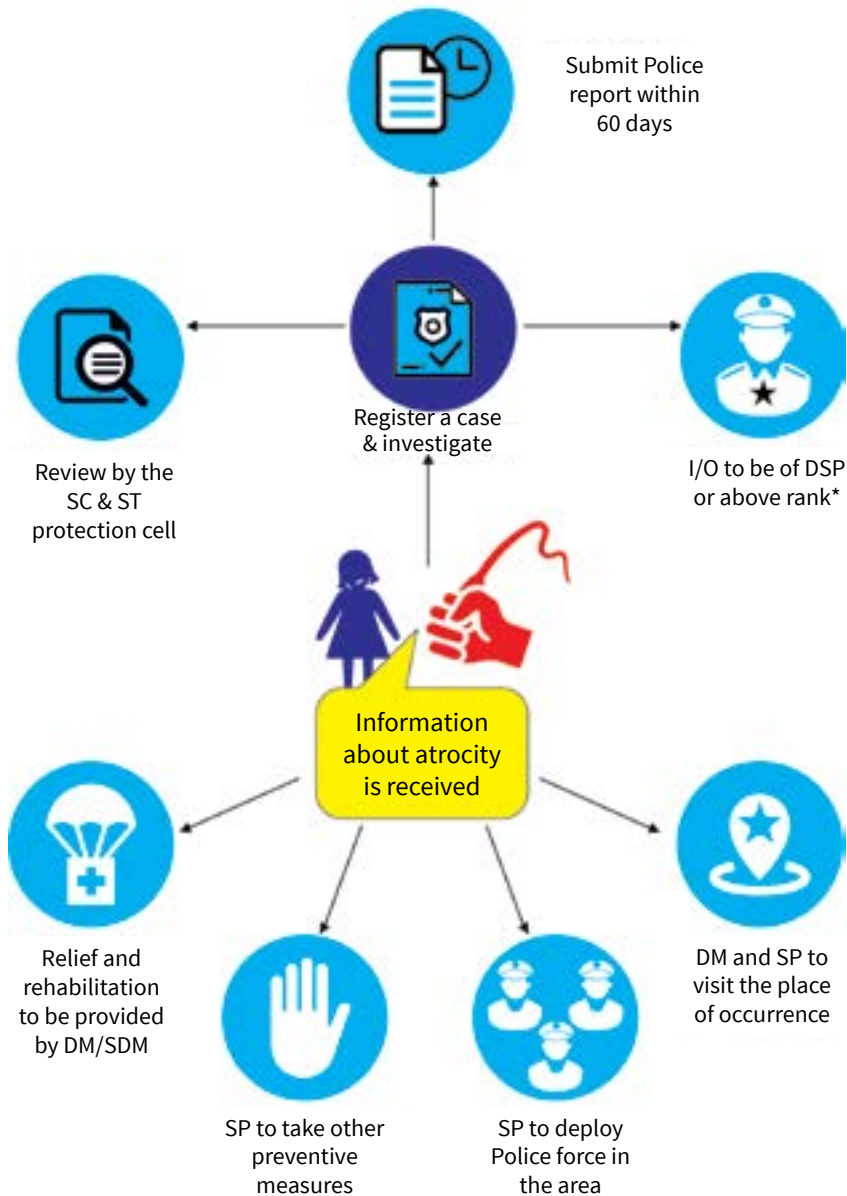
#### **vi. Special Public Prosecutor and Exclusive Special Public Prosecutor**

The State Government has to appoint Special Public Prosecutor and Exclusive Special Public Prosecutor, by notification in official gazette, for Special Court and Exclusive Special Court respectively for conducting the cases under this Act. *(Section 15)*

#### **ACTION TO BE TAKEN IN CASE OF ATROCITY**

- a. Whenever the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate or *any police officer not below the rank of DSP* receives an information from any person or upon his own knowledge that an atrocity has been committed on the members of SCs or the STs within his jurisdiction, he shall immediately visit the place of occurrence to assess the extent of atrocity, loss of life, loss and damage to the property and submit a report forth with to the State Government. *(Rule 6(1))*
- b. The DM and SP shall visit the place or area where the atrocity has been committed to assess the loss of life and damage to the property and draw a list of victim, their family members and dependants entitled for relief. *(Rule 12 (1))*
- c. The SP shall ensure that the FIR is registered in the book of the concerned police station and effective measures for apprehending the accused are taken. *(Rule 12 (2))*
- d. The SP, after spot inspection, shall immediately appoint an Investigation Officer and deploy such police force in the area and take such other preventive measures as may be deemed proper and necessary. *(Rule 12(3))*

### Action to be Taken in Case of Atrocity



*\*It may be noted, that some states like Bihar and Madhya Pradesh have extended the power to investigate cases under SC & ST (POA) Act to all investigating ranks, i.e, Inspector, Sub-Inspector, Asst. Sub-Inspector of Police.*

**IMPORTANT ASPECTS WHICH NEED TO BE COMPLIED BUT OFTEN IGNORED****Registration of Case**

- i. All cases where provision of this Act deserves to be applied must be applied. The police officer deprives the victims of the safeguards, support and protection prescribed by the Act and the Rules by not applying the Act. In fact, it may also be a criminal offence on the part of the police officer as already mentioned in this chapter.

For example,

- a. If a girl child is sexually assaulted, the officer-in-charge of a Police Station usually registers a case Section 8/10 of POCSO Act, 2012. However, this is also an offence Section 3(1)(w)(i) of the SC & ST Act, if the victim belongs to Scheduled Caste or Scheduled Tribe and the offender is from non-SC or non-ST community. Therefore, in addition to section of POCSO Act, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 have be applied in the interest of justice.
  - b. Similarly, in case of sexual harassment of a girl child belonging to scheduled caste or scheduled tribe community, Section 3(1)(w)(ii) has to be applied in addition to Section 12 of POCSO Act, 2012.
  - c. A large number of children belonging to SC and ST community, particularly from the North- East India are trafficked for sexual exploitation, marriage, child labour, etc. The relevant sections of this Act may be applied in suitable cases in addition to sections of other Acts for such offences.
  - d. Section 3(1)(k) prescribes punishment for promoting the practice of 'Devdasi' in respect of women belonging to SC or ST community. This provision may be applied when a girl child is dedicated as Devdasi in any place of worship, temple, or other religious institutions etc.
  - e. Similarly, Section 3(1)(h) prescribes punishment for making a member of SC or ST to do '*begar*' or other forms of forced or bonded labour. This Section may be applied along with relevant sections of other Acts for the offence of engaging children as bonded labour.
- ii. If the SP comes to know or is informed about any incident of atrocity, he should without loss of time inform the DM to enable the latter to undertake visit to the place or area where the atrocity has been committed as required by Rule 12(1). It is also advisable that whenever a case under this Act is registered, the matter



should be reported by the SP to the DM/SDM in order to enable them to take steps for payment of relief in terms of Rule 12(4).

### Common Mistakes

- a. Cases are not registered under the provision of this Act even if it ought to have been so registered.
- b. Even if the cases are registered under this Act, proper sections are not applied.
- c. Investigating Officer is below the rank of DySP like ASI, SI or Inspector.\*
- d. Charge Sheet/Final Report is not submitted in Special Court/Exclusive Special Court within 60 days. The Investigating Officer, in investigation or filing of the charge sheet does not explain delay, if any, in writing.
- e. The SC and ST Protection Cell and other supervisory officers do not review the case.
- f. Report is not sent to the DM/SDM after registration of cases for taking steps for payment of relief to the victim by them.

### Recent Developments

- a. **The Supreme Court Order:** The Supreme Court passed an order on 20th March, 2018 in *Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra and Anr. (Criminal Appeal No. 416 of 2018)*. The highlights of the order are:
  - Arrest of a public servant can only be made after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. The Magistrate must scrutinise these reasons before permitting further detention.
  - To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
  - Any violation of the above, will be actionable by way of disciplinary action as well as contempt.

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\*It may be noted, that some states like Bihar and Madhya Pradesh have extended the power to investigate cases under SC & ST (POA) Act to all investigating ranks, i.e., Inspector, Sub-Inspector, Asst. Sub-Inspector of Police

- b. Amendment of the Act after the SC Order:** The SC & ST Act was amended in 2018 after the Supreme Court order. The amended provisions came into effect from 17th Aug, 2018. Section 18A was inserted by this amendment.
- As per Section 18A(1) Preliminary enquiry is not required for registration of a First Information Report against any person; or the investigating officer is not required to take approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the CrPC shall apply.
  - As per Section 18A (2), the provisions of Section 438 of the CrPC would not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.
- c. Net effect of these two developments:** After the above mentioned amendment, the provisions of the Act have been restored to pre-Supreme Court order stage. After the amendment, the provision of anticipatory bail is not applicable, the IO need not take approval for arrest and no preliminary enquiry is needed before registration of a case under this Act.
- d. Amendment of Rules:** The SC & ST Rules (POA), 1995 have been amended in 2018. The amendment has been notified on 27th June, 2018. The amendments broadly relate to provision of relief to victims.

**ANNEXURE - I****List of Offences which may have Relevance to the Children belonging to SC or ST**

S.N	Section	Offences by a person not being a member of SC or ST	Punishment
1.	3(1)(d)	Garlands with footwear or parades naked or semi-naked a member of a SC or a ST	Imprisonment for a term which shall not be less than six months but which may extend to five years and with fine
2.	3(1)(e)	Forcibly commits on a member of a SC or ST any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity	Same as above
3.	3(1)(h)	Makes a member of a Scheduled Caste or a Scheduled Tribe to do: ' <i>begar</i> ' or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government	Same as above
4.	3(1)(k)	Performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts	Same as above
5.	3(1)(r)	Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view	Same as above
6.	3(1)(s)	Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view	Same as above

S.N	Section	Offences by a person not being a member of SC or ST	Punishment
7.	3(1)(w)(i)	Intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent.	Same as above
8.	3(1)(w)(ii)	Uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.	Same as above
9.	3(1)(zb)	Causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch.	Same as above
10.	3(2)(v)	Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property (knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member)	Imprisonment for life and with fine
11.	3(2)(va)	Commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member.	Punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine

S.N	Section	Offences by a person not being a member of SC or ST	Punishment
12.	3(2)(vi)	Knowingly or having reason to believe that an offence has been committed under this chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.	Punishment provided for that offence
13.	3(2)(vii)	Being a public servant, commits any offence under Section 3 of the Act.	Imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence

## THE ROLE OF POLICE - OTHER OFFENCES AGAINST CHILDREN

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Child sexual abuse, child trafficking, child marriage, cyber crime against children and child labour have been covered

in details in separate chapters of this handbook. However, children may also fall victims to other crimes, which are not covered under these heads. Some of such important offences committed against children are mentioned hereunder:

### OFFENCES UNDER PRE-CONCEPTION & PRE-NATAL DIAGNOSTIC TECHNIQUES ACT, 1994

Crime against children begins even before they are born. The purpose of enacting this legislation was to ban sex selection, before or after conception and to prevent the misuse of pre-natal diagnostic technique for sex determination that could lead to female foeticide. It also aims to regulate *'prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders'*.

All the offences under this Act are cognisable, non-bailable and non-compoundable. **(Section 27)**

However, the court can take cognisance of an offence under this Act only on a complaint made by Appropriate Authority concerned, or by any officer authorised by Central Government or State Government or a person who has given notice of not less than 15 days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court. **(Section 28 (1))**

Here, Court refers to Metropolitan Magistrate or a Judicial Magistrate of the First Class as per Section 28(2) of this Act.

*(For further details, please refer to chapter 4 of this handbook on Role of Health Department.)*

## OFFENCES UNDER THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Incidents of female foeticide or sex-selective abortions have been taking place leading to adverse sex ratio (less number of female as compared to male persons) and increased rate of maternal mortality and morbidity. The Medical Termination of Pregnancy Act has been enacted, to provide for the termination of certain pregnancies by registered medical practitioners.

Termination of pregnancy is permitted for a broad range of conditions up to 20 weeks of gestation as detailed below:

- When continuation of pregnancy is a risk to the life of a pregnant woman or could cause grave injury to her physically or mentally
- When there is a substantial risk that the child, if born, would be seriously handicapped due to physical or mental abnormalities
- When pregnancy is caused due to rape (presumed to cause grave injury to the mental health of the woman)
- When pregnancy is caused due to failure of contraceptives used by a married woman or her husband (presumed to constitute grave injury to mental health of the woman)

Pregnancy of a child (below 18 years of age) cannot be terminated, except with the consent in writing by the guardian.

The punishment for carrying out termination of pregnancy has been included in the Indian Penal Code under Chapter XVI.

*(For further details please refer to chapter 4 of the handbook on the Role of the Health Department)*

## THE YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956

The Act prohibits the dissemination of certain publications harmful to the young persons. Any person under the age of 20 years is considered 'young person' for the purpose of this Act (**Section 2(c)**).

As per **Section 2(a)**, 'harmful publication' means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consist of stories told with the aid of pictures or without the aid of pictures or wholly in pictures. Such publication portrays commission of offence or acts of violence or cruelty or incidents of repulsive or horrible nature in such a way that the publication has tendency to corrupt a young person to commit offences or acts of violence or cruelty or in any other manner whatsoever.

Sale, distribution, public exhibition or circulation, etc. of any harmful publication or possession of any harmful publication or advertisement for such publication is punishable with imprisonment, which may extend to 6 months, or with a fine, or with both. **(Section 3)**

Any police officer or any other officer empowered in this behalf by the State Government may seize any harmful publication. **(Section 6(1))**

Offences under this Act are cognisable. **(Section 7)**

## OFFENCES UNDER RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 (RPD ACT)

The United Nations General Assembly adopted Convention on the Rights of Persons with Disabilities on 13<sup>th</sup> December 2006 that lays down the principles for empowerment of persons with disabilities. The Convention was ratified by India, on 1<sup>st</sup> October 2007 and The Right of Persons with Disabilities Act, 2016 was enacted to implement the convention. As per the RPD Act, sexual exploitation of a child with disability or assaulting or using force with an intention to outrage the modesty of the child is an offence. The Act also includes victims of acid attack in the list of persons with disabilities as many girls and women are often left severely disfigured/disabled after such attacks. Some of the relevant penal provisions are as under:

Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to Rs. 10,000 and for any subsequent contravention with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000. **(Section 89)**

Whoever:

- a. intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;
- b. assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability;
- c. having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;
- d. being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;
- e. voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;
- f. performs, conducts or directs any medical procedure to be performed on a woman



with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be punishable with imprisonment for a term, which shall not be less than 6 months, but which may extend to 5 years and with fine. (*Section 92*)

(For further details, please refer chapter 2 (A) and 2 (C) of this handbook)

## OFFENCES UNDER INDIAN PENAL CODE, 1860

IPC has penal provisions for several offences against children. The provisions that could not be covered in other chapters are listed hereunder:

### 1. Causing Miscarriage (*Section 312*)

Any person who voluntarily causes a woman with child to miscarry, unless such miscarriage is in good faith for the purpose of saving the life of the woman, will be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both. However, if the mother is *quick with child*\*, the person causing miscarriage will be punished with imprisonment of either description for a term that may extend to 7 years, and shall also be liable to fine.

### 2. Causing Miscarriage Without Woman's Consent (*Section 313*)

Any person voluntarily causing miscarriage to a woman, without taking her consent, whether the woman is quick with the child or not, the person will be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

### 3. Death Caused by Act Done with Intent to Cause Miscarriage (*Section 314*)

'Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.'

If the act done without woman's consent, he/she shall be punished either with imprisonment for life, or with the punishment above mentioned. It is not essential to this offence that the offender should know that the act is likely to cause death.'

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\*The motion of the foetus, when felt by the mother, is called quickening, and the mother is then said to be 'Quick with Child'.

#### 4. **Infanticide (Section 315)**

Any act committed by a person with an intention to prevent the child from being born alive or causes the child to die after birth, unless such act is caused for the purpose of saving the life of the mother, is punishable with imprisonment of either description for a term which may extend to 10 years, or with fine, or with both.

#### 5. **Causing Death of Quick Unborn Child by Act Amounting to Culpable Homicide (Section 316)**

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

#### 6. **Exposure and abandonment of child under 12 years, by parent or person having care of it. (Section 317)**

Whoever being the father or mother of a child under the age of 12 years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to 7 years, or with fine, or with both.

#### 6. **Concealment of Birth by Secret Disposal of Dead Body (Section 318)**

Any person, who by secretly burying or disposing of the dead body of the child, whether or not the child died before or after or during the birth, with an intention to conceal or endeavors to conceal the birth of such child will be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

#### 7. **Abetment of Suicide of Children**

According to Section 305 IPC, if any person under 18 years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years and shall also be liable to fine. Abetment can be caused by instigation, conspiracy or intentional aiding as provided in Section 107 of the Code. The offences under this Section are cognisable, non-bail able and non-compoundable.

Suicide by children has become a serious concern in the recent times. Consistent efforts are being made by various stakeholders for all round development of

children, but if children continue to commit suicides, all efforts made for their protection, development and upliftment will go in vain. There can be no child protection if there are no children. Keeping this in mind, collaborative efforts must be made to prevent suicides by children.

*(For further details, please refer to chapter 3 of the handbook on Role of Education Department)*

### **RAGGING\***

Ragging vitiates the order of an educational campus and creates conditions which are conducive for other forms of victimisation of students. In '*The University Of Kerala Vs. The Council of Principals of College in Kerala case*' arising out of SLP(C) 24295 of 2004, the Supreme Court issued a set of guidelines to be followed to curb the menace of ragging in institutions as per the recommendations of Raghavan Committee. In addition to this, some of the States have passed their own anti ragging laws, which can be enforced to prevent, and address the menace of ragging.

### **SUBSTANCE ABUSE\***

Substance abuse is harmful use of any substance for altering the mood or state of mind. This is a menace that is gradually creeping in and crippling our young generation. As per the Narcotic Drugs & Psychotropic Substances Act, 1985, consumption of any narcotic drug or psychotropic substance is a punishable offence under Section 27 of the Act. Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 makes it a punishable offence to give or cause to be given any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, to any child except on the order of a duly qualified medical practitioner.

### **CORPORAL PUNISHMENT\***

Corporal punishment or physical punishment is a punishment intended to cause physical pain on a child with an intention to discipline the child. Corporal punishment amounts to abuse and militates against the freedom and dignity of a child. It also interferes with child's right to education because the fear of corporal punishment makes children more likely to avoid school or to drop out altogether. Corporal punishment is an offence and is covered under Right to Education Act, 2009 and Juvenile Justice (Care & Protection of Children) Act, 2015.

It is necessary that police officers should have the knowledge of all the Acts, which are relevant for offences against children. It is suggested that the police may apply the relevant provision of the Acts mentioned in this chapter in suitable cases.

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*\*For further details, please refer chapter 3 of the handbook on Role of Education Department.*

**ANNEXURE - I****Other Offences Under IPC Against Children**

Sl no.	Section	Offences	Nature of punishment
1	305	Abetment of Suicide of children	Imprisonment for life, or imprisonment for a term not exceeding 10 years and shall also be liable to fine.
2	312	Causing miscarriage	Imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.
3	313	Causing miscarriage without woman's consent	Imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.
4	314	Death caused by act done with intent to cause miscarriage	Imprisonment for life, or with imprisonment of either term which may extend to 10 years, and shall be liable to fine. It is not essential to this offence that the offender should know that the act is likely to cause death.
5	315	Infanticide	Imprisonment of either description for a term which may extend to ten years, or with fine, or with both.
6	316	Causing death of quick unborn child by act amounting to culpable homicide	Imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.
7	317	Exposure and abandonment of child under twelve years, by parent or person having care of it	Imprisonment of either description for a term which may extend to 7 years, or with fine, or with both
8	318	Concealment of birth by secret disposal of dead body	Imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

## **THE ROLE OF EDUCATION DEPARTMENT**

**E**ducation department plays a very important role in imparting quality education to children. The department is also responsible for all round development of children including their safety and protection in educational institutions. Schools act as agencies that provide formal, conscious, meaningful and systematic training to the students. They impart a plethora of values, attitudes and behaviors, which can be termed as a 'hidden curriculum'. Apart from the official curriculum, students can

also learn a lot from the physical environment of the school, the attitude teachers and students exhibit towards one another and the organisation of the institution. Teachers of schools are constantly in contact with children and thus have the maximum influence on the students after their parents and family. In schools, apart from teachers and other students, children also meet other people such as bus drivers, cleaning staff, caretakers, canteen staff, parents/guardians of other children, other visitors, etc. The action and attitude of every such person, children come into contact with, in the school has a bearing on the minds of the children. These factors not only affect the grooming of the children but also decide on what kind of citizens they are going to become in future. Hence, the role of schools, is not just limited to imparting education to children but also to imbibe a sense of rationality; secularism; with progressive, modern, liberal and democratic values; scientific temper, compassion, patriotism, self-confidence, gender equality, respect for other gender etc. in the children so that they can turn out to be responsible citizens of the country.

In this context, being the nodal agency for education in the state, the Education Department has a number of roles and responsibilities some of which are mentioned here:

### **A) CREATION OF AWARENESS**

#### **1) Awareness about Crime**

The teachers and Head Masters/Principals can make the children aware of lurking

dangers present within homes and in the outside world. The schools should educate children about the crimes being committed against them in the society and their '*modus operandi*'. Students should also be taught about the activities and behaviour that may make them vulnerable to crime. They should also know the aspects of behavior that can make them safer and a hard target for criminals. Self-defence techniques should be taught to children, after a certain age group, as far as possible, to improve their confidence. Children particularly girls may also be sensitised about safe touch and unsafe touch. Children may also be made aware of traits of pedophiles and threats from them.

## **2) Incorporating Chapters on Child Protection & Safety in Curriculum**

The Education department should actively consider including inputs on child trafficking, child labour, child marriage, child sexual abuse, online safety, cyber crime, etc. in the school curriculum.

## **3) Ways of Awareness Generation in Schools**

The schools should promote awareness among students by holding quiz, essay, debate competitions, etc. involving issues of child protection. Plays, drama, etc. featuring themes like child sexual abuse, child marriage, human trafficking, child labour, cyber crime, etc. should also be promoted among the students. Resource persons from relevant field like Police, Legal Service Authority, NGOs working in the field of child protection, etc. may be invited to interact with children. Students may be asked to take pledge designed to serve the cause during morning assembly. Schools may generate awareness through occasional screening of movies/documentaries relating to topics including types of crime, '*modus operandi*', consequences of being a victim of crime, precaution or alertness required from the victim, etc. Some relevant case studies preferably from the locality may also be shared for maximum impact. Parents and students should also be made aware from time to time on the Child Protection Policy/guidelines/child rights/legal provisions, reporting mechanisms etc.

## **4) Awareness Beyond the School Campus**

The school should make efforts to conduct community awareness programmes through parent-teacher meetings, school management committees, visits to families, community festivals, etc. It may not be difficult for the teachers of schools to educate the citizens of the locality particularly the family members of students of the catchment area. Additionally, the schools may also organise outdoor games among the children of different neighboring schools to promote student-to-student interactions. Such events would smoothen relations among students of schools of the vicinity and would

bring positive bearing on safety scenario as sometimes inter school rivalry may lead to untoward situations.

### 5) Awareness on Substance Abuse

Substance abuse poses a serious threat to many educational institutions these days. Schools may conduct awareness programs to sensitise students on the hazards of substance abuse like narcotic drugs and psychotropic substances; cigarette and other tobacco products; alcohol, dendrite, etc. The medical professionals may be associated for conducting such awareness programmes. The drug peddlers employ innovative methods to trap unsuspecting children into drug addiction. The students should know such tricks of the drug traffickers. It may be noted that the law (Narcotic Drug & Psychotropic Substances Act) also makes it an offence to consume Narcotic Drug & Psychotropic Substances. The students should be made aware of the penal provisions for consumption of such substances. (*Section 27, NDPS Act*)

## B) ENROLMENT DRIVE AND CASES OF DROP OUTS

### 1) Targeting the Parents

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 provides for free and compulsory education for children in the age group of 6 to 14 years. The Education Department through SSA is responsible for implementing this Act. In many cases children are not sent to school at all as their parents are not in a position to send them to schools due to poverty. In some cases, there is callousness on the part of the parents or guardians as they are not convinced of the utility of education particularly for girls. The Education Department with assistance from civil society, NGOs, PRIs etc., should launch drive to enroll children in the schools. During such drives the parent should be impressed upon about the importance of education in shaping the life of their children. The parents or guardians should also be counseled for changing their mindset. The department should facilitate linking of children and their families with state schemes/sponsorship that may help support children's education.

### 2) Reasons for Children Dropping Out of School

Most cases of drop outs occur mainly due to:

- a. Poverty
- b. Children do not find the education interesting
- c. Distance from schools, remoteness of the locality, poor road connectivity, etc. The parents, particularly of adolescent girls may not feel confident exposing their daughters during movement to safety risks and unwarranted masculine attention.

- d. Discrimination by some teachers on the basis of caste, religion, disability, and status of families etc. of students
- e. Going to school is not worth due to inadequate number of teachers, absenteeism by teachers, poor infrastructure, non-visibility of employment prospects.
- f. Disruptions caused by floods and other natural or man-made disasters.
- g. Lack of privacy and toilet facilities for the girls or lack of discipline where girls feel insecure in the school due to improper behavior from the male children.
- h. Probable victimisation or criminalisation of children

### 3) Alliance with other Stakeholders

The Education Department should take suitable corrective action by itself and also in collaboration with other stakeholders to address the instances of dropouts.

### 4) Linkage Between Dropouts and Crime

Cases of drop outs should be viewed seriously as the children may fall victim to crimes particularly child labour, child trafficking and child marriage. Dropouts may also be an indication of a child getting involved in criminal activities. Therefore, it is highly desirable that the cases of dropouts should be enquired into to find out the reason and for taking corrective action.

### 5) Compulsory Reporting of Long Absence of Child from the School

As per Rule 2B (2) of the '*Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988*', if any child who is receiving education in a school remains absent without intimation to the principal or headmaster consecutively for 30 days, then the Nodal Officer for Child Labour of the district has to be informed by the Head Master or Principal of the School.

It may be mentioned here that Nodal Officers are appointed by the DMs for the purpose of implementation of Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. It may be noted that District Education Officer is also a member of the District Task Force, which is headed by the DM of the district. (*Rule 17C*)

### 6) Every Child is Different

The intellectual capacity of children varies from child to child. All teachers should appreciate this aspect and may strive to customize teaching on the basis of strengths and weaknesses of a child. No child should feel left out because the child may be slow in grasping the inputs compared to other students. Instead, the teacher should discuss



the matter with the Headmaster of the school and the parents of the child so that appropriate remedial measures can be taken for the development of the child.

### **7) School to be Engaging**

The Education Department should incorporate different methods to make the learning process interesting for students. Textbooks should be designed in a manner that attracts the interest of children. The learning should not solely depend on oral instructions but should involve the other faculties of students to enhance the span of attention and to bind them with the proceedings.

### **8) Distance Covered by Children to Access Schools**

The department must do a proper assessment before establishing new schools. Schools should be located at places that children can access comfortably. It will improve enrollment and at the same time discourage drop outs.

## **RELEVANT LEGAL PROVISIONS**

### **1(a) Compulsory Reporting**

As per Section 21 of POCSO Act, 2012, if any person comes to know about commission of sexual offence against any child under POCSO (Protection of Children against Sexual offences) Act, 2012, then such person is bound by law to report the matter to police. Failure to report commission of an offence is an offence, which is punishable with imprisonment for a term, which may extend up to 6 months, or with fine, or with both. There is also provision for enhanced punishment (imprisonment for a term which may extend to 1 year and with fine) if head of the institution fails to report the commission of an offence under POCSO Act, 2012 in respect of a subordinate under his control. It may be kept in mind that any person either male or female is a child for the purpose of this Act. Thus, it is clear that if the head of the educational institution or a teacher or member of staff of a school or educational institution is informed or comes to know that a child has become victim of sexual offences or such offences is likely to be committed against any child, then the matter should be reported to police without loss of time. Under no circumstances, there should be any attempt to hush up the matter or to protect offenders or to discourage the victim from reporting the incident.

### **1(b) Offences Committed by a Person in Authority**

It should be kept in mind that if any person in a position of trust or authority or being on the management or staff of the educational institution, commits penetrative sexual assault or sexual assault, it constitutes aggravated penetrative sexual assault

or aggravated sexual assault under POCSO Act and such offences attract enhanced punishment.

### 1(c) POCSO e-box

An initiative named '**POCSO e-box**' was taken in August 2016 providing an easy and direct online medium for reporting any case of sexual assault on a child. The 'POCSO e-box' is incorporated prominently in the home page of NCPCR's website where any person can submit a complaint either by entering his/her name and phone number/email in the POCSO e-box portal in the NCPCR website. If the informant does not wish to disclose his/her identity, he/she can contact these numbers; **1800115455 (Toll free), 9868235077, 1098 (Childline)**.

### 2) Substance Abuse

As per **Section 77 of JJ Act, 2015**, it is an offence, to give or cause to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance (except on the order of a qualified medical practitioner). Any person who does so, may be punished with rigorous imprisonment for a term which may extend to 7 years, and also with fine which may extend up to Rs. 1,00,000.

As per **Section 78 of JJ Act, 2015**, if a person uses a child for vending, peddling, carrying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance then such person commits an offence which is punishable with rigorous imprisonment for a term which may extend to 7 years, and also with fine which may extend up to one lakh rupees. It may be kept in mind that any person either male or female is a child for the purpose of **JJ Act, 2015**.

As per **Section 6 of Cigarettes and Other Tobacco Products Act (COTPA), 2003**, it is an offence to sell, or permit sale of cigarette and other tobacco product,

- a. to any person who is under 18 years of age, and
- b. in an area within a radius of 100 yards of any educational institution.

Any person found guilty of this offence shall be punishable with a fine, which may extend to Rs. 200. (**Section 24 COTPA, 2003**)

### 3) Anti-Ragging Measures

Ragging vitiates the order of a campus and creates conditions which are conducive for other forms of victimisation of students. School authorities must be aware of anti ragging laws and take all preventive, protective and remedial steps in this regard.

**A. Supreme Court Order:** The Hon'ble Supreme Court of India has defined ragging as 'any disorderly conduct whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness to any student, indulging in rowdy or undisciplined activities which cause or likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student and which has the effect of causing or generating a sense of shame or embarrassment so as to adversely effect the psyche of a fresher or a junior student'.

In '*The University Of Kerala Vs. The Council of Principals of College in Kerala*' case arising out of *SLP(C) 24295 of 2004*, the Supreme Court issued a set of guidelines to be followed to curb the menace of ragging in institutions as per the recommendations of Raghavan Committee. The Committee's recommendations, in terms of actions necessary, fall in 6 levels, namely, Schools, Higher Educational Institutions, District Administration, Universities, State Authorities and Central Authorities.

**B. Recommendations of Raghavan Committee:** It would be beyond the scope of this chapter to mention all the 50 recommendations of the Raghavan Committee, however, some of the important recommendations are as follows:

- a. At the school level, the Committee recommends that on the same lines as topics on environment education were introduced in the school curriculum, the State Council of Educational Research and Training (SCERT), should devise methodologies and content for ragging should be a compulsory part.
- b. At the secondary and senior secondary stages of schooling, every school should be required to arrange regular and periodic psychological counseling sessions for every student till the time he/she passes out from the school. Parents and teachers should also be involved in such sessions. Every year there should be a certain number of mandatory counseling sessions with experienced psychologists.
- c. The Committee endorsed the view that bullying and corporal punishments at the school level legitimise ideas of power abuse, harassment, violation of dignity and privacy, and as such may prepare the ground for ragging at the college level. Therefore, training courses for the teachers should be organised which should include topics on sensitisation against corporal punishment and checking of bullying amongst students.

- d. Every institution must have an Anti-Ragging Committee and an Anti-Ragging Squad. It is essential to have a diverse mix of membership in terms of levels as well as gender in both the Anti-Ragging Squad as well as the Anti-Ragging Committee. The Anti-Ragging Committee at the level of the institution should consist of the representatives of civil and police administration, local media, Non Government Organisations involved in youth activities, representatives of faculty members, representatives of parents, representatives of students belonging to the freshers' category as well as seniors, non-teaching staff and should be headed by the Head of the Institution. The Anti-Ragging Squad, in contrast, should be a body with vigil, oversight and patrolling functions and should appropriately be a smaller body which should be nominated by the Head of the institution with such representation as considered necessary to keep it mobile, alert and active at all times. The Squad may be called upon to make surprise raids on hostels and other hot spots and should be empowered to inspect places of potential ragging. The Squad should work under the overall guidance of the Anti-Ragging Committee. The Squad should not have any outside representation and should only consist of members belonging to the various sections of the campus community.
- e. At the level of the District, the committee recommended a District level Anti-Ragging Committee, which should consist of the Heads of Higher Education Institutions as members. It should be headed by the District Collector/Deputy Commissioner/District Magistrate and should also have the Superintendent of Police/SSP of the District as member. The Additional District Magistrate should be a member-secretary of the Committee, which should also have representation of the local media and district level Non- Government Organisations actively associated in youth development programmes, as well as representatives of all student organisations.
- f. The guidelines lays down that on receipt of any information concerning any reported incident of ragging, the Head of institution shall immediately determine, if a case under the penal laws is made out and if so, either on his own or through a member of the Anti-Ragging Committee, proceed to file a First Information Report (FIR), within 24 hours of receipt of such information.

**C. State Specific Laws:** Some of the states have passed Anti Ragging Legislations like:

- The Assam Prohibition of Ragging Act, 1998
- Andhra Pradesh Prohibition of Ragging Act, 1997
- Maharashtra Prohibition of Ragging Act, 1999
- The Uttar Pradesh Prohibition of Ragging in Educational Institutions Act, 2010
- Tripura Educational Institutions (Prevention of Ragging) Act, 1990
- Tamil Nadu Prohibition of Ragging Act, 1997
- The Kerala Prohibition of Ragging Act, 1998
- Jammu and Kashmir Prohibition of Ragging Act, 2011
- The Goa Prohibition of Ragging Act, 2008

#### 4) Corporal Punishment

Corporal punishment is highly deplorable, blatantly illegal and violation of Child Rights and should not be practiced in any manner. It results in loss of self-esteem, spirit of curiosity, lack of interest and even drop outs. Stern action must be taken against any person found involved in awarding corporal punishment.

- A. RTE Act 2009:** The Right of Children to Free and Compulsory Education Act, 2009, prohibits ‘physical punishment’ and ‘mental harassment’ under Section 17(1) and makes it a punishable offence under Section 17(2). Any person found guilty of this offence under RTE Act, 2009 shall be liable to be punished as per his service rules.
- B. Juvenile Justice (Care and Protection of Children) Act, 2015:** As per *Section 75 of the Act*, any person having actual charge of, or control over, a child assaults, abandons, abuses, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner which is likely to cause such child unnecessary mental or physical suffering, shall be punishable with rigorous imprisonment which may extend up to 3 years, or fine which may extend up to one lakh rupees or both. Provided further that, if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, shall be punished with rigorous imprisonment which may extend up to 5 years, and fine which may extend up to Rs. 5,00,000. Provided also that, as a result of such cruelty if the child is physically incapacitated or develops a mental illness or is rendered

mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than 3 years but which may be extend up to 10 years and shall also be liable to fine of Rs. 5,00,000. *Thus it is evident that provision of this Section is attracted in case of corporal punishment in schools, other educational institutions, etc.*

As per *Section 85, JJ Act, 2015*, if any one commits any offence under Chapter IX of this Act on any child who is disabled as so certified by a medical practitioner, then, such person shall be liable to twice the penalty provided for such offence. *The provision of The Rights of Persons with Disabilities Act, 2016 may also be attracted if a child with disabilities is subjected to corporal punishment.*

*NCPCR has circulated 'Guidelines for Eliminating Corporal Punishments in Schools' which may be referred to by the principals, teachers and other stakeholders.*

## OTHER IMPORTANT ASPECTS REQUIRING ATTENTION

### 1. Suicide by Children

Suicide by children is increasing with an alarming rate across the country that needs immediate attention from the concerned stakeholders including Education Department. Some children are taking the extreme step for various reasons including high level of pressure in schools/coaching institutes; poor performance in exams; insensitive attitude of teachers/principals and failed love affairs.

A significant number of children die in India every year due to suicide which is the 9th leading cause of death in India in 2016 as 17.9 cases of suicide took place per lakh population. (*Source: The Lancet Public Health*)

Some of the prominent causes of suicide by children are:

- a. Pressure to perform:** The present system of examination and score based evaluation puts immense pressure on children to perform in periodic tests and examinations. Failure in exam may result in erosion of self-respect, depression; loss of interest and other adverse mental conditions which, if not handled promptly and sensibly, may ultimately drive some children to take this extreme step.
- b. Failed love affair:** This is one of the causes of suicides among teenagers. Rejection in such affairs may leave a deep negative impact on their minds. Some children under such condition are driven by strong emotions and may choose to take their own lives.

- c. **Cyber addiction:** Recently, cyber addiction is turning out to be one of the causes of suicide among children. With the onset of the global digital revolution, children are exposed to the cyberspace more than ever before. They spend considerable time in the cyber space which makes them vulnerable to various fatal games like Blue Whale, Momo Challenge, etc. as these games compel children to commit suicide.
- d. **Insensitive handling of children:** Humiliation, insensitivity of parents, teachers, etc. towards children on many occasions may become the cause of suicides by children. In a recent incident in 2018, a student in North Lakhimpur district of Assam was scolded by the Principal of his college as the Principal had suspected him of sexually harassing a girl studying in the same college. The boy committed suicide in his rented room after going from the college. The Principal has since been arrested. In some cases, the children who were ill treated by police during interrogation commit suicide after returning from the police station.

Suicide by children may be addressed with a collaborative approach involving all the stakeholders. It will require overhauling of examination system, proper counseling, emphasis on recreational activities, stress management sessions, keeping close watch on any behavioural change among children, etc.

## 2. Resumption of Schooling Post Disaster

Very often it is seen that schools take long time to resume after being hit by natural disasters like floods, earthquakes etc. Classes are suspended for a long time owing to the after effects of such disasters. In such scenario, the Education Department, on a priority basis, in association with other stakeholders should take all necessary steps to start classes so that children do not lose an academic year and, of course, interest.

## 3. Early Warning Signals of Deviance

The teachers should keep close watch on the behaviour of children and should look for any early warning signals in the form of deviation or abnormality. Such abnormality, if not addressed in the beginning, may lead to mental perversion and psychological disorders in later stage. Such deviant behavior may happen after they pass out from schools and sometimes even during schools. The school administration should spot such behavior and take corrective measures including counseling. The parents and family members should also be involved. Even an insignificant looking incident of eve teasing of girls by the boys in the school, if neglected, emboldens

such boys and they slowly graduate and commit more serious offences.

#### **4. Education for Rescued Children**

The rescued children who were victims of child labour or child trafficking etc. should be enrolled for formal education through Sarva Sikshya Abhiyan (SSA).

#### **5. Early Indicators of Drug Abuse**

School authorities should look for early symptoms of substance abuse like falling grades, absenteeism, loss of appetite, drowsiness, lack of sleep, abnormal eyes, spending more time in toilets, borrowing money from others, aggressiveness, prick marks on limbs, etc. Such suspicious symptoms, if seen in any student should immediately be brought to the notice of his/her parents followed by proper counseling and other remedial measures should be taken immediately. Children should necessarily be educated about the disastrous consequences of drug and tobacco abuse.

#### **6. Physical Safety Measures**

Physical safety measures like perimeter fencing, lighting, installation of CCTV, etc. should be taken as far as possible. It must be also ensured that the vehicles used for transportation of the students abide by the prescribed norms.

#### **7. District Child Protection Committee**

It is also to be noted that a representative of the Education department in a district is also a member of District Child Protection Committee under Integrated Child Protection Scheme. This Committee deals with implementation of laws and schemes relating to child protection at the district level.

#### **8. Manual on Safety and Security of Children in Schools**

National Commission has developed this manual for Protection of Child Rights in 2017. This manual has been brought out as a compilation of twenty-two existing and approved manuals/guidelines developed by various agencies, pertaining to the safety and security of children in schools and in school premises. This has been done with a view to assist various Education Boards in India and the Schools under them to have a common understanding regarding the basic safety and security measures/requirements that needs to be ensured for children.

#### **9. Legal Aid Clinics in Educational Institutions**

The Education Department as well as the Heads of educational institutions should



be aware of the fact that as per National Legal Services Authority Regulations, 2011, the District Legal Services Authority has to establish Legal Aid Clinics in all villages, jails, educational institutions, community centres, protection homes, Courts and other areas where the people face geographical, social and other barriers for access to the Legal Services Institutions. These Legal Aid Clinics are to be operated by para legal volunteers. It may be noted that during the year 2009, National Legal Services Authority (NALSA) brought out a scheme called the Para-Legal Volunteers (PLVs) Scheme which aimed at imparting legal training to volunteers selected from different walks of life so as to ensure legal aid reaching all sections of people. The Para-Legal Volunteers (PLVs) are expected to act as intermediaries bridging the gap between the common people and the Legal Services Institutions to remove impediments in access to justice. The Secretary, District Legal Services Authority (DLSA) or Taluk Legal Services Authority (TLSA) may depute PLVs in the Legal Aid Clinics set up under the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011. The PLVs engaged in the Legal Aid Clinics shall function in such clinics in accordance with the provisions of the aforesaid regulations.

The Head of educational institutions should liaise with the Secretary of District Legal Services Authority for exploring the possibility of setting up of Legal Aid Clinic in his institution. The clinic would be immensely helpful in creating legal awareness and providing free legal support to teachers, staff and students.

## 11. Sexual Harassment at Workplace

The Heads of the educational institutions should also be aware that as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the 'Internal Committee', to deal with complaints from working women, which shall consist of the following members to be nominated by the employer, namely,

- a. A presiding officer who shall be a woman employed at a senior level at the workplace from amongst the employees,
- b. Not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge, and
- c. One member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

It is to be mentioned that at least half of the members nominated for the Internal Committee has to be women. Not constituting the Internal Committee is an offence under this Act.

## **GOOD PRACTICES TO BE CONSIDERED**

### **1. Training of Teachers and Other Members of Staff**

The Education department can select few teachers from every district with proper aptitude and orientation and they may be trained as master trainers on child safety issues including online safety. Such training of trainers (TOT) may be conducted in one or more places in the State. These master trainers would, in turn train one or more teachers from each and every school of the district in batches. This system of two-tier training would enable the department to sustain continuous training without depending on outside resources. However, Police officers and representatives from other stakeholders may be associated with such trainings, as far as practicable. The trained teachers of the school would be creating awareness about legal provisions; child rights; type of crimes being committed; do's and don'ts; etc. among the children. Training for teaching and key non-teaching personnel on protection of child rights, child safety and child development, child abuse including signs and indicators of child abuse and related issues must be conducted.

### **2. Policy on Child Protection**

It is desirable that the Department formulates 'Policy on Child Protection' and creates awareness about such policy among teachers, students, parents, etc. through various means including the website of the Department.

### **3. Designation of Nodal Teacher for Child Safety**

One of the trained teachers from each school may be designated as a 'Nodal Teacher for Child Safety' to liaise with Police and other stakeholders. The Nodal teacher should co-ordinate and deal with all matters relating to Child Safety & Protection on behalf of the Head of the Institution. The name and contact number of the Nodal Teacher should be given wide publicity amongst students, parents/guardians and other stakeholders. The Nodal teacher should be a woman, as far as practicable.

### **4. Recognition of Good Work**

The Education Department may consider incentives or rewards for teachers, Head of Institutions or members of the non-teaching staff for good works on various

aspects of Child Safety including preventive and remedial measures. Students who foil any attempt of committing crime against other children or against themselves may also be rewarded.

### **5. Encouraging Crime Reporting by Victims**

Many times, the crime committed against children goes unreported due to lack of awareness, fear of stigma, the offender being a teacher or member of staff or lack of trust in the system. Such non-reporting emboldens the offenders who commit more crime, which may sometimes be more serious than the previous offences. The students should be encouraged to report incidents of victimisation without any hesitation or fear. This would act as a deterrent and would go long way in crime prevention. The school management may keep a drop box where students particularly girls and even parents can drop their suggestions as well as complaints about harassment by teachers, students or outsiders. Such boxes should be opened by head of the institution periodically either by himself or through the Nodal Teacher and proper action should be taken on each complaint without unnecessarily exposing the complainants. It is also important to preserve the crime scene if an offence against children has been committed in school.

### **6. Gender Sensitisation**

The children should be taught to respect the opposite gender and treat them as equals. Gender discrimination and inequality is one of the root causes of crime against women. Such mindset would go a long way in preventing crime against women as the students grow into adults. As children go through adolescence, they should be encouraged to reject harmful social norms, including rigid attitudes to masculinity. Adolescent boys and girls should also be provided comprehensive sex education and be encouraged to be active bystanders if they witness sexual assaults.

### **7. Background Verification of Employees**

A recruitment and verification protocol and procedure should be in place for teaching, non-teaching, contractual, voluntary and other staff, before they are allowed to work with the children. In many recent cases, the employees like bus driver, peon, guard, etc. are found involved in crimes committed against children. Their character and antecedents should be verified before their engagement and strict watch should be maintained on their activities.

## 8. Reporting Protocol

A clearly laid out procedure and line of reporting for teachers and other members of the staff to be followed, in the event of a child abuse by teaching or non-teaching staff or anyone else connected with the school.

## 9. Pink Toilets

Inadequate menstrual protection makes adolescent girls (12-18 years) miss school for many days in a month. A good number of these girls dropout of school after they start menstruating. Keeping these in view, NCPDR took the initiative of conceptualising Pink Toilets in Delhi that are suitably equipped for the needs of menstruating girls. Such initiatives can be very effective in preventing dropouts in case of girls.

## FREQUENTLY ASKED QUESTIONS (FAQs)

1. **A child verbally informs the Principal of a school that her class teacher has sexually assaulted her while she had gone to meet him in the school. The Principal took disciplinary action and the teacher was removed. Is this measure taken by the Principal enough?**

**Answer:** No, the measure was not enough. The Principal should have informed the police without loss of time about the incident as per the provisions of Section 21 of POCSO Act, 2012.

2. **Are schools required to constitute Internal Committees for conducting enquiries into complaints of sexual harassment?**

**Answer:** Yes, since a school may have women employees, it is necessary to constitute Internal Committee for conducting enquiries into complaints of Sexual Harassment as per the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. **A child has informed the Principal of her school about sexual harassment by her uncle in her home. She also informed that she informed no one in the family out of fear. What would be the correct response by the Principal?**

**Answer:** In this regard, the Principal should inform the police about the incident as per the provisions of Section 21 of POCSO Act, 2012. The Principal should also brief the parents/guardians of the student about the incident. The Principal should provide the child all possible support.

**4. A parent of a child studying in a school has submitted a written complaint to the Principal about awarding of corporal punishment by a subject teacher. What should the Principal do?**

**Answer:** The Principal should take action against the teacher under Right to Education Act as already discussed in this chapter. It would be also desirable that the teachers are sensitized about the ill effects of corporal punishment, legal provisions etc. so that they are not ignorant. They should be trained on positive and constructive ways of disciplining as well. However, the parent has the option of lodging FIR in the police station for this offence which is also punishable Section 75 of the JJ Act, 2015.

**5. Some shack/small shops have started selling cigarettes near the boundary wall of the school. What should be the proper action from the Principal to stop this menace?**

**Answer:** The Principal should inform the matter to police for necessary action. The Principal should also verify whether any student is buying any tobacco products from those shops. Section 77 of JJ Act, 2015 makes selling tobacco products to children a punishable offence. Police under the provision of COTPA Act may also take action against the shopkeeper.

**6. A child has not been coming to the school for more than a month continuously. What should be the response of the Principal on this?**

**Answer:** As already discussed in this chapter, if any child enrolled in a school remains absent without intimation the principal or headmaster consecutively for 30 days, then the Nodal Officer for Child Labour of the district has to be informed by the Head Master or Principal of the School as per Rule 2B(2) of the Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988.

**7. “Ganja” has been found in possession of a child in the school. What should be the course of action by the Principal?**

**Answer:** The Principal should immediately inform the Police regarding the incident. The “ganja” found in possession of the child has to be handed over to the police as per procedure. An enquiry should be done to find the person who gave “ganja” to the child. While doing this it has to be kept in mind that the child should not be treated as accused, rather the child may be a victim. The parents of the child have to be informed about the matter. The identity of the child should not be disclosed as per *Section 74 of JJ Act, 2015*.

**8. A case of ragging has been reported in a school. What should the Principal do in this regard?**

**Answer:** The Principal shall immediately determine, if a case under the penal laws is made out and if so, either on his own or through a member of the Anti-Ragging Committee, proceed to file a First Information Report (FIR), within 24 hours of receipt of such information. The Principal should also review in consultation with the Anti Ragging Committee the effectiveness of Anti Ragging measures to prevent repetition of such incidents.

**9. A child has been sexually assaulted by another child in the school. What should be the proper response of the school?**

**Answer:** The matter should be informed to the local police immediately. The parents of both the students also need to be informed. In this regard the Principal should ensure that the names of both the students are kept confidential.

**10. A girl complaints to the teacher of her school that one of her male classmates forcefully entered into the bathroom while she was in it. What should the teacher do?**

**Answer:** The teacher should immediately inform the principal of the school and the parents of both the students about the incident. As this may be an offence punishable under Section 354(C) IPC, *i.e.* voyeurism, police may be informed.

The principal should organise sensitisation programmes in the school in order to prevent repetition of such incidents in future.

**11. An otherwise bright student of a school suddenly seems to lose interest in his studies and started failing in the exams. What steps should be taken by the school authorities to find out the reasons for such behaviour?**

**Answer:** The parents/guardians of the child should be immediately informed about such behaviour. Proper counseling should be arranged for the child. The matter need to be confidentially enquired to find out likely reasons including addiction to drugs or psychotropic substance as such behavior may also be linked to substance abuse.

## Additional Reading Materials

1. **“Manual on Safety and Security of Children in Schools”** developed by National Commission for Protection of Child Rights (NCPCR) in 2017.
2. Ministry of Human Resource Development (MHRD) guidelines for school security.
3. NCPCR Guidelines for eliminating corporal punishment in schools
4. RK Raghavan Committee guidelines on Ragging
5. NCPCR Handbook for Ending violence Against Children
6. NCPCR Guidelines for regulating private play schools for the children of the age of three to 6 years
7. NCPCR Regulatory Guidelines for Hostels of Educational Institutions for Children.
8. NCPCR ‘Guidelines for Eliminating Corporal Punishments in Schools’
9. CBSE Guideline on ‘Safety of Children in Schools’

## THE ROLE OF HEALTH DEPARTMENT

**H**Health Department plays an important role in child protection. Children who are victims, in need of care and protection, or in conflict with law come in

contact with hospitals for medical examination and medical treatment or for accessing medical services. The handling of such children by medical practitioners and their staff has significant bearing on protection of children. The Department extends the following services through hospitals, doctors and medical staff:

1. Treatment of and medical support to the child victims of crime and children in need of care and protection
2. Psychological counseling of victims
3. Medical examination of the victim of offences for collection of evidence
4. Medical examination of the accused/arrested persons
5. Medical examination of offenders/victims for determination of age
6. Capacity building and sensitisation of doctors and members of staff
7. Adopting SOP and protocol for uniform standardised approach
8. Developing a child friendly approach

Representatives of Health Department are associated with various multi-disciplinary bodies dealing with child protection issues. The senior most officer of the Health Department in a district is a member of 'District Task Force' for child labour and District Child Protection Committee under ICPS. Representatives of the department are also associated with Anti-Human Trafficking Units (AHTU).

### MEDICAL SUPPORT TO VICTIMS

In many cases, victims are under state of shock or trauma due to impact of the violence or crime. Such victims require very sensible handling. Psychological counseling should also be arranged for such victims.



## Medical Examination of Victims to Support Investigation

1. Speedy completion of investigation is dependent on timely receipt of medical report like Injury Reports and Post Mortam (PM) Reports from medical authorities. Law has mandated time bound investigation for certain offences. Investigations of all cases of rape have to be mandatorily completed by police within 2 months as per ***Criminal Law (Amendment) Act, 2018***. Similarly, investigation of cases registered under the SC and ST (POA), Act, 1989 have to be completed within 2 months. Without the co-operation from health department, it would be difficult for investigating agencies to adhere to the prescribed time limit.
  - A woman against whom rape has been allegedly committed or attempted, has to be sent for medical examination by police within 24 hours from the time of receiving the information relating to the commission of such offence (***Section 164A CrPC***). However, there is no such time limit prescribed by law for the medical practitioner within which the medical examination is to commence (after the victim has been sent by police) and also the medical report has to be provided to police. Therefore, this gap can be filled by fixing time limit for registered medical practitioners through administrative order from the department.
  - It has been observed in few cases that the examining doctors do not mention their full names and designation in the medical reports. This sometimes makes it difficult to trace them, as they are required to depose in court during trial. It should be ensured that complete name, designation and contact number are mentioned in the medical report to avoid any inconvenience in tracing them as and when required during trial.
2. The medical examination of the child victim in a POCSO case has to be conducted in presence of the parent of the child or any other person in whom the child has trust or confidence. If parent or such other person cannot be present, for any reason, during medical examination of a child, the medical examination has to be conducted in presence of a woman nominated by the head of the medical institution. If the victim is a girl child then the medical examination has to be conducted by a female doctor only. The medical examination has to be conducted in accordance with Section 164A of CrPC and registration of FIR or complaint for offence is not necessary for it. (***Section 27 POCSO Act***)
3. **Rule 5 of POCSO Rules, 2012** further elaborates the procedure for medical examination of child victims in POCSO cases.

**Emergency medical care:** When an officer of the SJPU, or the local police receives

information that a sexual offence against a child has been committed, and is satisfied that such child is in need of urgent medical care and protection, the police officer shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care.

If the offence committed is penetrative sexual assault, aggravated penetrative sexual assault, sexual assault or aggravated sexual assault (**Section 3,5,7 or 9 of POCSO Act**), the victim has to be referred to emergency medical care. (**Rule 5 (1) of POCSO Rules, 2012**)

Emergency medical care has to be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and has confidence. (**Rule 5 (2) of POCSO Rules, 2012**)

No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care. (**Rule 5 (3) of POCSO Rules, 2012**)

The registered medical practitioner rendering emergency medical care has to attend to the needs of the child, including,

- i. treatment for cuts, bruises, and other injuries including genital injuries, if any;
- ii. treatment for exposure to Sexually Transmitted Diseases (STDs) including prophylaxis for identified STDs;
- iii. treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
- iv. possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and
- v. wherever necessary, a referral or consultation for mental or psychological health or other counseling should be made.

(**Rule 5 (4) (v) of POCSO Rules, 2012**)

Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with Section 27 of the POCSO Act. (**Rule 5 (5) of POCSO Rules, 2012**)

During medical examination, the examining doctor should try to find out whether other offences have also been committed against the victim. In many cases children, because of their age or mental capacity, do not understand the nature of the criminal act that they are subjected to by the offenders. It is worth mentioning here that there is no provision in law for examination of adult female victim of sexual offences only by woman doctor. However, all efforts should be made by the Health Department to get the examination done by female doctors as far as practicable. If no such woman doctor is available then the examination may be conducted in presence of a woman. In this connection, an order of *Gauhati High Court in 'PIL No. 75/2009 Dated 19/08/2010 in Lakshmi Kumari Goswami Vs. the State of Assam & Others'*, may be referred wherein the High Court has ordered that examination of all female victims of sexual offences is to be done only by lady Government doctors and if there is no lady doctor available, by a private female practitioner at State's expense or by a trained female nurse.

Kits for collection of samples for cases of sexual assault have to be provided to all hospitals particularly for rape cases. The Government of India has proposed to make available specially designed kits (Sexual Assault Evidence Collection Kits), which are commonly called '*Rape Investigation Kits*' for police stations and hospitals to carry out immediate medico-legal investigation into sexual assault cases. The Rape Investigation Kits have to be procured by the State Government with financial support under the Nirbhaya fund. These special kits will help collect blood and semen samples along with other evidences in sexual assault cases.

### CAPACITY BUILDING

The Department should make all possible efforts to improve the capacity of doctors so that evidences are collected in professional manner as improperly collected samples pose a challenge for forensic examination. The doctors and staff should also be made aware about various legal provisions relevant to them.

### STANDARD OPERATING PROCEDURE AND PROTOCOL

The Health Department should adopt uniform standardised procedure through SOP for all Hospitals for treatment of victim; examination of victims; collection, packing and storage of samples; maintaining chain of custody of evidences; reporting of examination; approach towards victims etc. It is suggested that the Health Department should make examining doctors aware of the guidelines relating to medical practitioners. These guidelines are in addition to provision contained in POCSO Act and CrPC.

## LEGAL PROVISIONS

All in-charges of hospitals and staff should be made aware about the legal provisions regarding examination and treatment of victims. The relevant provisions of POCSO Act and POCSO Rules have already been discussed in this chapter. The following Acts have provisions that are relevant for medical professionals:

1. POCSO Act, 2012 and POCSO Rules, 2012
2. Code of Criminal Procedure, 1973
3. Indian Penal Code, 1860
4. The Medical Termination of Pregnancy Act, 1971
5. Transplantation Of Human Organs Act, 1994
6. Pre-Conception and Pre- Natal Diagnostic Techniques Act, 1994
7. The Mental Healthcare Act, 2017
8. The Rights Of Persons With Disabilities Act, 2016
9. The Juvenile Justice (Care And Protection Of Children) Act, 2015

Some of the other important provisions are briefly mentioned hereunder:

**a. Mandatory Reporting (Section 21, POCSO, Act)**

Failure to report is an offence under this Act and the person who fails to report is liable for punishment with imprisonment, which may extend to six months or fine or with both. Therefore, if any doctor or staff of hospital comes to know about commission of any sexual offence against children (male or female person below 18 years of age) under POCSO Act then he or she is bound to report the matter to the police as per the provision of Section 19(1) of the Act<sup>7</sup>.

**b. Treatment of Victims**

All hospitals, public or private, should immediately provide first aid or medical treatment, free of cost, to the victims of offence of rape or acid attack (covered under Sections 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code). They should also immediately inform the police of such incident. (Section 357 C, CrPC)

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<sup>7</sup>Section 19 (1) – Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974), any person( including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, - a. the Special Juvenile Police Unit; or b. the local police.

**c. Examination of Accused by Medical Practitioner at the Request of Police Officer**

When a person is arrested on a charge of committing an offence under such circumstances that there are grounds for believing that a medical examination of the arrested person will afford evidence, a registered medical practitioner conducts medical examination of the arrested person at the request of a police officer not below the rank of Sub- Inspector. If the person to be examined is a female, the examination has to be made only by or under the supervision of registered medical practitioner. Reasonable force if necessary may be used for the medical examination. (**Section 53 CrPC**)

- i. *'Examination' includes the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;*
- ii. *'Registered Medical Practitioner' means a medical practitioner who possess any medical qualification as defined in Clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register).*

**d. Examination of person accused of rape by medical practitioner (Section 53A of CrPC)**

The examination of person accused of rape is done by registered medical practitioner at the request of police officer not below the rank of an S.I. and to make an examination of the arrested person, reasonable force may be used, if necessary. The medical examination is to be done by a registered medical practitioner employed in hospital run by the Govt. or by a local authority and in the absence of such a practitioner within the radius of 16 kilometers from the place where the offence has been committed, by any other registered medical practitioner. The registered medical practitioner examining the arrested person shall, without delay, examine such person and prepare a report of his examination giving the following particulars:

- i. the name and address of the accused and of the person by whom he was brought,
- ii. the age of the accused,
- iii. the description of material taken from the person of the accused for DNA profiling, and

- iv. marks of injury, if any, on the person of the accused,
- v. Other material particulars in reasonable detail.
  - The report has to state precisely the reasons for each conclusion arrived at.
  - The exact time of commencement and completion of the examination has also to be noted in the report.
  - The registered medical practitioner has to, without delay, forward the report to the Investigating Officer.

**e. Examination of Arrested Person by Medical Practitioner at the Request of the Arrested Person (*Section 54, CrPC*)**

Whenever an arrested person requests a magistrate for a medical examination of his body, the registered medical practitioner conducts the examination at the direction of the magistrate. A copy of the report of such examination has to be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person.

**f. Medical Examination of the Victim of Rape (*Section 164A, CrPC*)**

A woman against whom rape has been allegedly committed or attempted, has to be sent for medical examination by police within 24 hours from the time of receiving the information relating to the commission of such offence. The medical examination has to be conducted by a registered medical practitioner employed in a hospital run by Government or Local Authorities and in the absence of such a practitioner, by any other registered medical practitioner. The medical examination has to be conducted with her consent or the consent of a person competent to give such consent on her behalf. The registered medical practitioner conducting such examination should without delay, examine such person and prepare a report of his examination giving the following particulars, namely:

- i. the name and address of the woman and of the person by whom she was brought,
- ii. the age of the woman,
- iii. the description of material taken from the person of the woman for DNA profiling,
- iv. marks of injury, if any, on the person of the woman,
- v. general medical condition of the woman,
- vi. other material particulars in reasonable detail.

- The report has to state precisely the reasons for each conclusion arrived at, the report should specifically record that the consent of the woman or of the person competent to give such consent for conducting medical examination has been obtained.
- Medical examination without the consent of the woman or of any person competent to give such consent on her behalf would be unlawful.
- The exact time of commencement and completion of the examination has also to be noted in the report.
- The registered medical practitioner has to, without delay, forward the report to the Investigating Officer.

**g. Section 166 B IPC**

Failure to provide free treatment to the victim or failure to report about the offence to police in contravention of Section 357C, CrPC as mentioned above is an offence which is punishable with imprisonment up to 1 year, or with fine, or with both .

## THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Illegal abortion takes place mainly to get rid of female fetus. Medical professionals are mandated by law to terminate the pregnancy only as per prescribed provisions in this Act.

### 1. Conditions under which Pregnancy may be Terminated (Section 3)

A registered medical practitioner may terminate a pregnancy if the length of pregnancy does not exceed 12 weeks. If such medical practitioner forms an opinion in good faith that:

- a. the continuance of the pregnancy would involve the risk to the life of the pregnant woman or of grave injury, physical or mental health or,
- b. there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

If the length of pregnancy exceeds 12 weeks but does not exceed 20 weeks then the termination may take place, if not less than 2 registered medical practitioners form opinion in good faith on the above mentioned conditions.

If any pregnancy is alleged by the pregnant woman to have caused by rape or where any pregnancy occurs as a result of failure of any contraceptive device then the continuation of unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Pregnancy of a child (below 18 years) or adult who is lunatic has to be terminated with the consent in writing of her guardian.

## **2. Place where Termination of Pregnancy can take place (Section 4)**

Termination of pregnancy has to be made in accordance with this Act and only:

- a. in a hospital established or maintained by Government, or
- b. a place for the time being approved for the purpose of this Act by the Government.

## **3. Termination of Pregnancy in Cases of Emergency (Section 5)**

The provision of Section 4 and Section 3 (relating to length of pregnancy in the opinion of not less than 2 registered medical practitioners) shall not apply to the termination of pregnancy by the registered medical practitioners in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

The punishment for carrying out termination of pregnancy has been included in the Indian Penal Code under Chapter XVI.

## **TRANSPLANTATION OF HUMAN ORGAN ACT, 1994**

A large number of children are being trafficked for the purpose of exploitation including removal of organs. Human organ cannot be removed without the involvement of hospitals, doctors and hospital staff. Therefore, Health Department has a vital role in preventing this heinous crime.

### **Removal of Human Organ without Authority (Section 18)**

It is an offence, if any person renders his services to or at any hospital for purposes of transplantation, or helps in any manner in the removal of any human organ without authority. The offence is punishable with imprisonment for a term, which may extend to 5 years and with fine that may extend to Rs. 10,000. It may be noted that Section 18 specifically relates to hospitals, doctors and hospital staff.

Where any person convicted is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of 2 years for the first offence and permanently for the subsequent offence. *(Section 18 (2))*

### **Commercial Dealings in Human Organs (Section 19)**

It is an offence if any person,



- makes or receives any payment for the supply of, or for an offer to supply, any human organ;
- seeks to find person willing to supply for payment of any human organ;
- offers to supply any human organ for payment;
- initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
- takes part in management or control of a body of persons, whose activities consists of or includes the initiation or negotiation of any arrangement, as mentioned above; or
- publishes or distributes or causes to be published or distributed any advertisement inviting persons to supply, or offering to supply any human organ for payment or indicating that the advertiser is willing to initiate or negotiate any arrangement involving payment for supply or offer to supply any human organ.

This offence is punishable with imprisonment for a term which is not less than 2 years, but which may extend to 7 years and liable to fine which shall not be less than Rs 10,000, but may extend to Rs 20,000. The Court, for adequate and special reasons may impose sentence below 2 years and fine less than Rs 10,000.

Under this Act, a ‘minor’ is a person below 18 years of age. (*Section 2 (hb)*)

### PRE CONCEPTION AND PRE NATAL DIAGNOSTIC TECHNIQUE ACT, 1994

The practice of sex determination of fetus before childbirth is very unfortunate and such determination is done with intention to abort female fetus. The sex determination cannot be done without the involvement of hospitals, doctors, medical staff, and private nursing homes, laboratories, etc. This practice has potential to adversely affect sex ratio, which ultimately promotes crimes including human trafficking for marriage and commercial sexual exploitation of women. The PCPNDT Act was enacted in 1994 to stop female feticides and address the declining sex ratio of India.

- No medical geneticist, gynecologist, pediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act. (*Section 3 (3)*)
- No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them. (*Section 3A*)

- iii. Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act. No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of fetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act. **(Section 3B)**
- iv. No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the fetus by words, signs or in any other manner. **(Section 5(2))**
- v. Prohibition of determination of sex **(Section 6)**
  - No Genetic Counseling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a fetus;
  - No person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a fetus;
  - No person shall, by whatever means, cause or allow to be caused selection of sex after conception.
- vi. The advertisement relating to pre-natal determination of sex is punishable with imprisonment for a term, which may extend to 3 years, and with fine extendable to Rs. 10,000. **(Section 22(3))**
- vii. Any person who violates any provision of this Act may be punished with imprisonment for a term, which may extend to 3 years and with fine that may extend up to Rs. 10,000. Any subsequent conviction is punishable with imprisonment for a term, which may extend to 5 years, and with fine extendable to Rs. 50,000. **(Section 23)\***

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*\*Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or Rules made thereunder shall be punishable with Act, 1994 & Amendments imprisonment for a term, which may extend to 3 years, and with fine, which may extend to Rs. 10,000 and on any subsequent conviction, with imprisonment which may extend to 5 years, and with fine, which may extend to Rs. 50,000.*

## THE MENTAL HEALTHCARE ACT, 2017

Many children who are victims of crime and children in conflict with law may be suffering from mental illness. Such children deserve special attention. This Act deals with mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services.

‘Minor’ means a person who has not completed the age of 18 years for the purpose of this Act. (*Section 2(1)(t)*)

### Admission of Minor (Section 87)

1. A minor can be admitted to a mental health establishment only after following the procedure laid down in this section.
2. The nominated representative of the minor has to apply to the medical officer in charge of a mental health establishment for admission of the minor to the establishment.
3. Upon receipt of such an application, the medical officer or mental health professional in charge of the mental health establishment may admit such a minor to the establishment, if two psychiatrists, or one psychiatrist and one mental health professional or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding 7 days and both independently conclude based on the examination and, if appropriate, on information provided by others, that,
  - the minor has a mental illness<sup>\*</sup> of a severity requiring admission to a mental health establishment;
  - admission shall be in the best interests of the minor, with regard to his health, well-being or safety, taking into account the wishes of the minor if ascertainable and the reasons for reaching this decision;
  - the mental healthcare needs of the minor cannot be fulfilled unless he is admitted; and

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*\*Mental illness’ means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence. (Section 2 (1)(s))*

- all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor.
4. A minor so admitted shall be accommodated separately from adults, in an environment that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments.
  5. The nominated representative or an attendant appointed by the nominated representative shall under all circumstances stay with the minor in the mental health establishment for the entire duration of the admission of the minor to the mental health establishment.
  6. In the case of minor girls, where the nominated representative is male, a female attendant shall be appointed by the nominated representative and under all circumstances shall stay with the minor girl in the mental health establishment for the entire duration of her admission.
  7. A minor shall be given treatment with the informed consent\* of his nominated representative.
  8. If the nominated representative no longer supports admission of the minor under this Section or requests discharge of the minor from the mental health establishment, the mental health establishment shall discharge the minor.
  9. Any admission of a minor to a mental health establishment shall be informed by the medical officer or mental health professional in charge of the mental health establishment to the concerned Board\*\* within a period of 72 hours.
  10. The concerned Board shall have the right to visit and interview the minor or review the medical records if the Board desires to do so.
  11. Any admission of a minor that continues for a period of 30 days shall be immediately informed to the concerned Board.
  12. The concerned Board shall carry out a mandatory review within a period of 7 days of being informed, of all admissions of minors continuing beyond 30 days and every subsequent 30 days.

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*\*Informed consent\* means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person. (Section 2(1)(i))*

*\*\*Board\* means the Mental Health Review Board constituted by the State Authority under Sub-Section (1) of Section 80 in such manner as may be prescribed. (Section 2(1)(d))*

13. The concerned Board shall at minimum, review the clinical records of the minor, and may interview the minor if necessary.

### THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The hospitals, doctors and medical staff need to be aware of the relevant provision of this Act. Mention may be made of Section 92(f), which is directly related, to them and the provision is as here under:

*'Whoever performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 5 years, and with fine.'*

The appropriate Government and the local authorities has to provide barrier-free access in all parts of Government and private hospitals and other healthcare institutions and centres. **(Section 25 (1)(b))**

Priority in attendance and treatment has to be given to persons with disability. **(Section 25 (1)(c))**

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

#### A. Mandatory Reporting regarding a Child Found Separated from Guardian

Any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be. **(Section 32)**

If information regarding a child as required under Section 32 is not given within the period specified in the said Section, then, such act shall be regarded as an offence. **(Section 33).**

Any person who has committed an offence under Section 33 shall be liable to imprisonment up to 6 months, or fine of Rs. 10,000, or both. (*Section 34*).

### **B. Illegal Adoption**

It has been observed that in some cases, hospital staffs, doctors violate law by handing over new born babies to prospective adoptive parents with the consent of the parents of the new born baby. Adoption can take place only as per the procedure prescribed in Juvenile Justice (Protection of Children) Act, 2015 and rules framed there under. Such Act constitutes an offence and should not be allowed to happen.

*Section 80 of JJ Act, 2015* prescribes punitive measures for adoption without following prescribed procedures. This offence is punishable with imprisonment of either description for a term that may extend up to 3 years, or with fine of Rs. 1,00,000, or with both.

### **C. Prohibition on Disclosure of Identity of Children**

It is an offence to disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter and is punishable with imprisonment for a term which may extend to 6 months, or fine which may extend to Rs. 2,00,000, or both. (*Section 74*)

## **IMPORTANT COURT ORDERS/JUDGMENTS**

- 1. Supreme Court Judgement dated 11/04/2013 in LILLU @ Rajesh & another Vs. State of Haryana (Criminal Appeal No. 1226 of 2011)** has held that two finger test violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test cannot be performed on the victim of rape.
- 2. High Court of Karnataka Order in Siddu @ Siddeshwar Vs. State of Karnataka in Crl Petition No. 200464/2015:** The medical examination for age determination has to be done by a panel of three doctors which should include one Dentist, one Physiologist, one Radiologist and Forensic Expert.
- 3. Supreme Court in (State of MP Vs. Anoop Singh - Criminal Appeal No. 442 of 2010)** has held that Rule 12(3) of the Juvenile Justice (Care & Protection of Children) Rules, 2007 is applicable in determining the age of the victim of rape and the medical opinion can be relied on only in absence of the documents prescribed in the rule. The Child and

Adolescent Labour (Prohibition and Regulation) Rules, 1988 (Rule 17) also prescribes as to how age of Adolescent has to be determined.

4. **Supreme Court in Madan Gopal Kakkad Vs. Naval Dubey, 1992** has held that the child and the parent, guardian, or trusted person should be explained the purpose and process of medical examination and any fear and doubt should be answered with sensitivity.
5. **Supreme Court in its judgement (Madan Gopal Kakkad Vs. Naval Dubey, 1992)** which is as follows: *“It is quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.”*

### SOP/PROTOCOL/GUIDELINES

The hospitals, doctors and medical staff need to refer to various SOPs/Protocol/Guidelines pertaining to aspects including medical examination and rendering of medical care. ‘Guidelines & Protocols Medico-Legal: Care of survivors/victims of Sexual Violence’ brought out in 2014 under the aegis of the Ministry of Health and Family Welfare, Government of India may be referred to. ([www.mohfw.gov.in](http://www.mohfw.gov.in))

In June 2018, the Directorate of Forensics Science Services under Ministry of Home Affairs has issued guidelines for:

- i. Collection, storage and transportations of crime scene DNA sample for Investigating Officers
  - ii. Forensics medical Examination in sexual assault cases for medical practitioners.
- The list of important guidelines has been provided under the segment ‘Additional Reading Materials’.

### CHILD FRIENDLY MEASURES AND OTHER INITIATIVES

1. **Cradle Point:** Hospital authorities may actively consider setting up of cradle point in hospitals. It will enable safe abandonment of children by the biological parents who do not wish to appear before the CWC for relinquishing their children. It has been observed that such parents do not wish to reveal their identity and often abandon the child in highly unsafe and unhygienic places.

- 2. Child Friendly Approach:** The doctors and staff of hospitals should be sensitized to have child friendly approach through their behavior, conduct, practice, process attitude, environment or treatment that is humane, considerate and in the best interest of the victim.
- 3. Child Friendly Corners:** Hospital Authorities may also consider creation of Child Friendly Corners in the premises of the hospitals for children particularly victims who visit hospital for various purposes including medical treatment, medical examination and counseling. These corners must have child friendly structures and may be manned by specially trained staff in child friendly approach. The children may wait and avail of various services as far as possible in such corners.

As per the GUIDELINES & PROTOCOLS on Medico-legal care for survivors/victims of Sexual Violence by Ministry of Health and Family Welfare, *'The history taking & examination should be carried out in complete privacy in the special room set up in the hospital for examination of sexual violence survivor. The room should have adequate space, sufficient lighting, a comfortable examination table, all the equipment required for a thorough examination, and the sexual assault forensic evidence (SAFE) kit'*.

- 4. ASHA & ANM Workers:** Health department has a valuable resource pool of ASHA and ANM who have presence in every nook and corner of the district. These workers may be sensitised, trained and utilised for creating awareness about child protection matters, for encouraging reporting of cases committed against children and to provide support to the victims.
- 5. Co-ordination:** The Health Department should co-ordinate with other departments particularly education, social welfare, police, legal services authorities, etc. in the interest of child protection.

The department also has oversight on private hospitals, nursing homes and other medical infrastructure in private sector. Any illegal activity or violation of rule affecting child rights/protection of children, sex determination, etc. should be taken very seriously and action, as per law, should be initiated.

### Additional Reading Materials

1. GUIDELINES & PROTOCOLS Medico-legal care for survivors/victims of Sexual Violence (Ministry of Health & Family Welfare, Government of India)
2. Model Guidelines under Section 39 of The POCSO Act, 2012 (Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012) September, 2013 by Ministry of Women and Child Development, Government of India.



3. Guidelines by Directorate of Forensics Science Services under Ministry of Home Affairs for:
  - i. Collection, storage and transportations of crime scene DNA sample for Investigating Officers
  - ii. Forensics Medical Examination in sexual assault cases for medical practitioners.
4. Responding to children and adolescents who have been sexually abused, by WHO clinical guidelines.

### FREQUENTLY ASKED QUESTIONS (FAQs)

1. **A child comes directly to a hospital and reveals that she has been victim of sexual offence. What should the attending doctor and hospital authorities do?**

**Answer:** If a child comes directly to the hospital without police requisition, the hospital is bound to render medical care to the child. A police requisition is not a pre requisite in such cases.

The concerned health professional is also bound to inform police/SJPU as mandated by Section 19(1) of POCSO Act, 2012.

2. **A doctor while treating a girl child finds some injury on her private parts. On being asked, she tells that a neighbor has been sexually assaulting her. What is the responsibility of the doctor?**

**Answer:** As per Section 19 POCSO Act 2012, the doctor shall provide the information to Special Juvenile Police Unit or Local Police.

3. **Is it mandatory that only female doctors examine a female victim of rape?**

**Answer:** As per Section 27 of POCSO Act, 2012, in case the victim is a girl child, the medical examination has to be conducted by a woman doctor.

- The medical examination has to be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- In case the parent of the child or other person referred cannot be present, for any reason, during the medical examination of the child, the medical examination has to be conducted in the presence of a woman nominated by the head of the medical institution.

However, in case the victim is an adult woman, there is no such provision in law and it would not be unlawful if a male doctor examines her. However, it is advisable that, as far as practicable, such woman should be examined by a lady doctor.

As per MOHFW Guidelines 'every possible effort should be made to find a female doctor but absence of availability of lady doctor should not deny or delay the treatment and examination. In case a female doctor is not available for the examination of a female survivor, a male doctor should conduct the examination in the presence of a female attendant.'

**4. What should the doctor do if the victim refuses to undergo medical examination?**

**Answer:** The victim or guardian may refuse to give consent for medical examination. In this case, the doctor should explain the importance of examination and evidence collection; however informed refusal should be respected. It should also be explained that refusal for such examination will not affect/compromise treatment. Such informed refusal for examination and evidence collection must be documented.

In case the child is under 12 years of age, consent for examination needs to be sought from the parent or guardian.

**5. What is the time limit in law for submission of medical examination report by the doctor?**

**Answer:** There is no such time limit. However, it is desirable that the report is given without delay after the examination is over so that the Investigating Officer can complete the investigation within the prescribed time limit. It may be mentioned here that investigations of all cases of rape have to be mandatorily completed by police in 2 months as per Criminal Law Amendment Act, 2018. Similarly, investigation of cases registered under the SC and ST (POA), Act, 1989 have to be completed in 2 months. Without co-operation from Health Department, it would be difficult for investigating agencies to adhere to the prescribed time limit.

**6. Police has brought in a child victim for medical examination. What is the time limit for commencement of medical examination by the medical practitioner?**

**Answer:** There is no time limit prescribed in law for the doctor to commence the medical examination. However, the medical examination should commence without any undue delay as evidence may disappear with time. Delayed examination would adversely affect the investigation.

**7. Can a child of 13 years give his consent for undergoing medical examination?**

**Answer:** 'Majority' is achieved at an age of 18 years and considered a legal age for giving a valid consent for treatment as per Indian Majority Act, Guardian and Wards Act, and Indian Contract Act. A child below 12 years (minor) cannot give consent, and parents/guardian can consent for their medical/surgical procedures. A child

between 12 to 18 years can give consent for medical examination.

**8. Can a doctor of private hospital conduct medical examination of the victim of rape?**

**Answer:** Yes, as per Section 164 A CrPC, any registered medical practitioner can do medical examination of victim of rape, in case no registered medical practitioner employed in a hospital run by the government or a local authority is available.

**9. Is it necessary that medical examination of an adult rape victim is to be conducted by a gynecologist?**

**Answer:** It is not necessary, as per MOHFW Guideline, any registered medical practitioner can conduct the examination and it is not mandatory for a gynecologist to examine such case.

However, as per order of *Gauhati High Court in PIL No. 75/2009 Dated 19/08/2010* wherein female victims of sexual offences has to be examined by lady Government doctor and if there is no doctor available, by a private female practitioner at state expense or by a trained female nurse. This order is applicable under the jurisdiction of Gauhati High Court.

## THE ROLE OF THE DEPARTMENT DEALING WITH CHILDREN

**T**he Department that looks into the welfare of women and children is known by different names in different States. In some states, it is known as the ‘Social Welfare Department’ and its counterpart is the

Ministry of Women and Child Development under the Government of India. The Department of Social Welfare or the Department dealing with children is the nodal department for implementation of Integrated Child Protection Scheme (ICPS), a flagship programme of Government of India and also for the implementation of Juvenile Justice (Care & protection of Children) Act, 2015.

### **Note:**

*The word ‘State Government’ in this chapter indicates Department responsible for the implementation of the JJ Act, 2015 and Rules made there under. The Department of Social Welfare/Department dealing with Children is the Nodal Department of the State Government for implementation of JJ Act & JJ Rules.*

*The functions to be performed by DCPU and SCPS have also been reflected in this chapter in Annexure V as the JJ Act, POCSO Act, PCM Act and other social legislations are implemented by the Department through SCPS and DCPU at the State and the District level respectively. These two bodies are under the administrative control of the Department.*

### ROLE AND FUNCTION OF THE DEPARTMENT

#### **Establishment of Authorities, Institutions and Structures under JJ Act, 2015 and ICPS**

The Department should ensure that authorities, institutions and structures as mandated by the Act including State Child Protection Society (SCPCS), District Child Protection Unit (DCPU), State Adoption Resource Agency (SARA), Child Welfare Committee (CWC),

Juvenile Justice Board (JJB) are constituted and are functional. The Department is also responsible for setting up structures as per the scheme of ICPS like District Child Protection Committee (DCPC), Block Child Protection Committee (BLCPC) and Village Child Protection Committees.

The summary of various institutions and bodies set up under JJ Act, 2015 and ICPS has been provided at *Annexure I*.

### **Establishment of Juvenile Justice Boards**

The State Government has to constitute for every district, one or more Juvenile Justice Board for exercising powers and discharging the functions relating to Children in Conflict with Law (CCL). (*Section 4(1) JJ Act, 2015*) The State Government may, by notification in the Official Gazette constitute more than one JJB in the district, after giving due consideration to the pendency of the cases, area or terrain of the district, population density or any other consideration. (*Rule 6 (7) of JJ Model Rules, 2016*)

The Board is headed by a Judicial Magistrate First Class or Metropolitan Magistrate referred as Principal Magistrate, with at least 3 years of experience. It has two Social Worker Members of whom at least one has to be a woman. The Department is responsible for appointment of members and filling of the vacancy of members of the Board.

The Department has to ensure that the induction training and sensitisation of the Board Members including the Principal Magistrate on care, protection, rehabilitation, legal provisions and justice of children, is provided within a period of 60 days from the date of appointment. (*Section 4(5) JJ Act, 2015*)

### **Establishment of Child Welfare Committees (CWC)**

The Department is responsible for constituting one or more Child Welfare Committee (CWC), through a notification in Official Gazette to deal with issues relating to children in need of care and protection. The State Government may, by notification in the Official Gazette constitute more than one Committee in a district after giving due consideration to the pendency of the cases, area or terrain of the district, population density or any other consideration. (*Rule 15 & 16 (7) of JJ Model Rules, 2016*)

The Committee consists of a Chairperson and four other members of whom at least one should be a woman and another, an expert on matters concerning children (*Section 27(1) & (2), JJ Act, 2015*). The Chairperson and the members of the CWC have to be appointed by the Department and any vacancy arising in the Committee has to be filled up by it.

The Department has to ensure that the induction training and sensitisation of all

members of the committee is provided within two months from the date of notification. **(Rule 27(1) JJ Model Rules, 2016)**

The Chairperson and members of the Committee have to be paid such sitting allowance, travel allowance and any other allowance, as the State Government may prescribe but not less than Rs. 1500 per sitting. **(Rule 16(1) of JJ Model Rule, 2016)**

### **Special Juvenile Police Unit (SJPU)**

The State Government is mandated to constitute a SJPU in each district and city to coordinate all functions of police related to children. The Department through DCPU has to provide 2 social workers to each SJPU out of which one should be a woman. **(Section 107(2), JJ Act, 2015)**

*(For further details please refer to chapter 2(B) of this handbook)*

### **Complaints against Member of JJB/CWC**

In case of a complaint received against a member of the Board or Committee, the State Government is required to conduct necessary inquiry within a period of one month and take action within a period of 2 months.

In case of complaint against Judicial Officer, the complaint is forwarded to the Registrar of the High Court for action. **(Rule 88 (14) & (15), JJ Model Rules, 2016)**

### **Termination of CWC**

The CWC has to submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the prescribed manner. After review, the District Magistrate should direct the Committee to take necessary remedial measures to address the pendency and may send a report of such review to the State Government. **(Section 36 (4) JJ Act, 2015 & Rule 20 (2), JJ Model Rules, 2016)**

If the pendency of cases continues to be unaddressed by the committee even after 3 months of receiving such direction, the State Government can terminate such Committee and constitute a new Committee. **(Section 36 (5), JJ Act, 2015)**

### **Power to Frame Rules**

The Department is also entrusted with the responsibility to frame rules under different Acts, for implementation of which it is the Nodal Department. For example, rules under **Juvenile Justice (Care & Protection of Children) Act, 2015 (Section 110)** and under **Protection of Children against Sexual Offences Act, 2012 (Section 39)** have to be framed by the Department.

The Department is also responsible for issuing notification for appointment of authorised officers as per the provision of the various Acts. For example, Child Marriage Prohibition Officers under provision of Child Marriage Prohibition Act, 2006 have to be appointed by the Department.

### **Training of Personnel Dealing with Children (Rule 89 JJ Model Rules, 2016)**

The State Government shall provide for training of personnel appointed under the Act and the Rules for each category of staff, keeping in view their statutory responsibility and specific job requirements. The training programme has to include the following:

- i. Introduction of the Act and the rules made there under;
- ii. Orientation on child welfare, care, protection and child rights;
- iii. Induction training of the newly recruited personnel;
- iv. Refresher training courses and skill enhancement programmes, documentation and sharing of good practices; and
- v. Conferences, seminars and workshops.

The following categories of personnel have to undergo training for minimum period of 15 days, namely:

S No.	Personnel
1.	Staff of Children's Court and Principal Magistrates of Juvenile Justice Boards
2.	Members of Juvenile Justice Boards
3.	Chairpersons and Members of Child Welfare Committees
4.	Child Welfare Police Officers and other police officers of Special Juvenile Police Units
5.	Programme Managers and Programme Officers of State Child Protection Societies and State Adoption Resource Agency
6.	Staff of State Adoption Resource Agency
7.	Legal-cum-Probation Officers under District Child Protection Units and Probation Officers in Child Care Institutions
8.	Staff of District Child Protection Units and State Child Protection Society
9.	Persons-in-Charge of Child Care Institutions (including Open Shelters)

‘The State Government shall also provide training to other personnel such as social workers, Child Welfare Officers, Case Workers, Rehabilitation cum Placement Officers, care givers, house fathers and house mothers of Child Care Institutions, security personnel and other staff of Child Care Institutions, Frontline Workers, bridge course educators, outreach workers and community volunteers, Social Workers of Specialised Adoption Agencies, Directors or In-charge or Specialised Adoption Agencies, chief functionaries of organisations granted registration for running Child Care Institutions under the JJ Act, mental health practitioners, psychologists, psychiatrists, psychiatric social workers, legal services lawyers, members of Committees or societies constituted’ under the JJ Act and JJ Rules. **(Rule 89(4), JJ Model Rules)**

‘The State Government while organising training programmes for stakeholder at the state level or district level, shall ensure that the training modules that are to be developed by SCPS are in consultation with NIPCCD or Institutions having requisite expertise, so as to maintain uniformity in the training process in all states’.

### **Formation of Selection Committee**

The Department is required to constitute a Selection Committee (to be headed by a retired Judge of High Court) by notification in Official Gazette, for a period of 3 years **(Rule 87(1), JJ Model Rules, 2016)**. The Chairpersons and Members of the CWC and members of the Board are appointed on the recommendation of the Selection Committee. For the purpose of selection, the State Government through Member Secretary of the Selection Committee should call for applications through public advertisement in the local and national newspaper and official website of the Department implementing the Act **(Rule 88 of JJ Model Rules, 2016)**. In case, vacancy arises in the Board or the Committee, a person from the panel of names prepared by the Selection Committee has to be appointed.

The composition of the Selection Committee has been provided at *Annexure II*.

### **Secretarial Assistance and Payment of Fees**

The Department is required to provide fund and allowance to the following;

- i. Chairperson of the Committee, Member of the Committee and the Board Members shall be paid not less than Rs. 1500 per sitting, which would include sitting allowance and any other allowance as the State Government may prescribe. **(Rule 6(9) & 16 (1) JJ Model Rules, 2016)**
- ii. Non-ex-officio member other than State Adoption Resource Agency shall be entitled to a sitting fee of Rs.1,000 per sitting, for attending a meeting of the Steering Committee, travelling allowance in economy class air fare,



hotel accommodation and food bill as per the Central Government Rules. *(Rule 50 (15) JJ Model Rules, 2016)*

- iii. Sitting fees of the Chairperson and non-official Member of the Selection Committee as fixed.
- iv. The State Government will provide for funds to the police or Special Juvenile Police Unit or the Child Welfare Police Officer or Case Worker or persons for the safety and protection of children and provision of food and basic amenities including travel cost and emergency medical care to the child apprehended or kept under the charge during the period such children are with them. *(Rule 8(9) JJ Model Rules, 2016)*
- v. The JJB shall be provided infrastructure and staff by the Department. *(Rule 6 (10) JJ Model Rules, 2016)*
- vi. The CWC shall be provided infrastructure and staff by the Department. *(Rule 16 (12) JJ Model Rules, 2016)*

### **Empanelment of Experts and Support Services**

The services of experts like Special Educator, Interpreter, Translator, Psychologist, Psycho-Social Worker etc may be required by JJB, CWC, SJPU or Children Court. The panel of such experts having requisite qualification should be prepared by the Department and the payment to such experts for their services rendered is also made by the Department. The panel prepared by the Department has to be made available to various functionaries who may require services of such experts.

The Department shall maintain a panel of voluntary or Non-Governmental Organisations or persons who are in a position to provide the services of probation, counselling, case work and also associate with the Police or Special Juvenile Police Unit or the Child Welfare Police Officer, and have the requisite expertise to assist in physical production of the child before the Board within 24 hours and during pendency of the proceedings and the panel of such voluntary or Non-Governmental Organisations or persons shall be forwarded to the Board. *(Rules 8 (8) of JJ Model Rules, 2016)*

### **Maintenance of Database**

The Department is responsible for maintaining the following databases through the District Child Protection Unit (DCPU),

- i. District level database of missing children in institutional care and uploading the same on a designated portal (Trackchild) and of children availing the facility of Open Shelter and of children placed in foster care;

- ii. Child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, after care organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society, as the case may be;
- iii. Medical and counseling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society;
- iv. Special Educators, Mental Health Experts, Translators, Interpreters, Counselors, Psychologists or Social-Workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Childrens' Court and the State Child Protection Society.

*In Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Ors., Writ Petition (Criminal) No. 102 of 2007*, the Hon'ble Supreme Court directed all State Governments to maintain database of all children in need of care and protection which should be updated every month and while maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities.

### Registration of Child Care Institutions (CCIs)

- i. All Child Care Institutions whether run by the State Government or by a voluntary or a Non-Governmental Organisation, which are meant either, wholly or partially for housing children in need of care and protection or children in conflict with law have to be registered under the JJ Act, 2015, regardless of whether they are receiving grants from the Central Government or from the State Government as the case may be or not. **(Section 41(1) JJ Act, 2015)**
- ii. At the time of registration, the State Government has to determine and record the capacity and purpose of the institution and then register the institution as a Children's Home or Open Shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be. **(Section 41(2) JJ Act, 2015)**
- iii. The State Government may grant provisional registration within one month from the date of receipt of application, to an existing or a new institution housing children in need of care and protection or children in conflict with

- law. The provisional registration shall be for a maximum period of 6 months. **(Section 41(3) JJ Act, 2015)**
- iv. In case of failure of receipt of provisional certificate, within 1 months from the date of application, the application for registration will be treated as a provisional registration. **(Section 41(4) JJ Act, 2015)**
  - v. The State Government has the authority to not grant provisional registration if there are inadequate facilities in the institution applying for registration. **(Rule 21(4) JJ Model Rules, 2016)**
  - vi. The State Government has to conduct a detailed inspection where provisional registration has been granted or review annually after registration of the facilities, staff, infrastructure and compliance with the standard of care, protection, rehabilitation and reintegration services and management of the institution as laid down under the Act & Rules. **(Rule 21(6) JJ Model Rules, 2016)**
  - vii. If the inspection reveals that there is non-compliance with the standards of care, protection, rehabilitation and reintegration services and management of the institution, State Government can serve notice on the management of the institution and after giving an opportunity of being heard, declare within a period of 60 days from the date of the detailed inspection or annual review, that the registration of the institution or organisation shall stand withdrawn or cancelled. **(Rule 21(7) JJ Model Rules, 2016)**
  - viii. In cases where an institution ceases to be an institution or has failed to apply for registration or has not been granted provisional registration, the said institution shall be managed by the State Government or the children placed in that institution shall be transferred by the order of the Board or the Committee, to some other institution, registered under JJ Act, 2015. **(Rule 21(8) JJ Model Rules, 2016)**

***In Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Ors. (Writ Petition (Criminal) No. 102 of 2007)***, the Hon'ble Supreme Court directed the Union Government and the State Governments and the Union Territories to ensure that the process of registration of all Child Care Institution is completed positively by 31st December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned authorities.

### **Inspection of Child Care Institutions (CCIs)**

- i. The Department has to appoint State Level and District Level Inspection

Committees for all institutions registered or recognised to be fit under JJ Act. **(Section 54(1) JJ Act, 2015)**

The State Inspection Committee comprises maximum of seven members from among the State Government, namely the Board or Committee, the State Commission for the Protection of Child Rights, the State Human Rights Commission, State Adoption Resource Agency, medical and other experts, voluntary organisations and reputed social workers. The Member-Secretary, State Child Protection Society is the Chairperson of the State Inspection Committee. **(Rule 41(2) JJ Model Rules, 2016)**

- ii. The Inspection Committees should mandatorily conduct visits to CCIs in the area allocated, at least once in 3 months in a team of not less than 3 members, of whom at least one shall be a woman and one shall be a medical officer. The report of the finding of such visits has to be submitted within a week of their visit by the District Level Committee to the DCPU and the State Level Committee to the State Government for further action. **(Section 54(2) JJ Act, 2015)**
- iii. Appropriate action should be taken within a month by the DCPU or the State Government and a compliance report should be submitted to the State Government. **(Section 54(3))**
- iv. The State Inspection Committee shall carry out random inspections of the institutions housing children to determine whether such institution is housing children in need of care and protection. **(Rule 41(4) JJ Model Rules, 2016)**
- v. The Inspection Committees shall interact with the children during visit to the institution to determine their well being and get their feedback. **(Rule 41 (7 & 12) JJ Model Rules, 2016)**
- vi. The Inspection Committees shall have the powers to inspect any CCI, even if not registered to determine whether such institution is housing CNCP. **(Section 41(9) JJ Act 2015)**

### Monitoring and Evaluation

- i. The Central Government or the State Government may independently evaluate the functioning of the Board, Committee, Special Juvenile Police Units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government. **(Section 55(1) JJ Act, 2015)**
- ii. The State Government may evaluate, once in 3 years, the functioning of the Board, Committee, SJPU, registered institution or recognised fit facilities and person under

the Act through institutions and agencies such as reputed academic institution, schools of social work of Universities, Management Institutions, multidisciplinary Committee especially constituted for the purpose etc.

*(Rule 42 (1) of JJ Model Rules, 2016)*

- iii. The State Government may independently evaluate the functioning of the Board, Committee, SJPU, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by the Government. *(Section 55 (1) JJ Act, 2015)*

### Social Audit

Rule 64 of JJ Model Rules, 2007 (which is not in force) had provided for social audit. The JJ Model Rules 2016 provides for evaluation as already discussed in this chapter. However, in *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Others (Writ Petition (Criminal) No. 102 of 2007)*, the Hon'ble Supreme Court directed National Commission for Protection of Child Rights and State Commission for Protection of Child Rights to conduct social audit every year.

### Providing Institutional and Non-Institutional Care

The best interest of the child is secured in family environment. Placing the child in a CCI should be the last resort. In case, the child is without family or if sending back the child to the family may not be in the interest of the child, then the child may be provided care in non-institutional set up.

### Institutional Care

The Department is responsible for establishing and maintaining by itself or through voluntary or Non-Governmental Organisation, CCIs for children in need of care and protection (CNCP) and children in conflict with law (CCL). Children Home, Open Shelter, SAA and Fit Facility are institutions meant for CNCP whereas Observation Home, Special Home, Place of Safety and Fit Facility are institutions for housing CCL.

### Non-Institutional Care

Whenever it is not possible to restore a child to his family, efforts have to be made to place him in family like environment in the best interest of his care and protection. Such non-institutional care may be provided through Foster Care including Group Foster Care, adoption and sponsorship.

Summary of such institutions and services for care of children has been provided at *Annexure III*.

## PROVISIONS FOR CHILDREN IN NEED OF SPECIAL CARE AND CHILDREN WITH SPECIAL NEEDS

The Department through the DCPU is required to make provisions for children diagnosed with special problems such as hormonal problems, immuno-compromised diseases, physical and mental disabilities on the recommendation of the medical officer. These children shall be kept in special care homes or hospitals and avail necessary medical/psychiatric and psychological support or treatment. (*Rule 34(6), JJ Model Rules, 2016*)

The Department is also responsible for setting up of facilities for children with special needs, like drug de-addiction centres.

## JUVENILE JUSTICE FUND

The State Government may create a Juvenile Justice Fund for the welfare and rehabilitation of the children as per Section 105(1), JJ Act, 2015. The Department should make budgetary allocation towards JJ Fund and may receive donation from voluntary contributions, subscriptions or funds under Corporate Social Responsibility, whether or not for any specific purpose, and shall be directly credited to the Juvenile Justice Fund. The Juvenile Justice Fund has to be maintained and administered by Department of the State Government dealing with the implementation of this Act through the State Child Protection Society.

The purposes for which the fund may be utilised has been provided in *Annexure IV*.

## Awareness Generation

Programmes for creating awareness about legal provision, various threats to safety of children, their rights, '*modus operandi*' of offenders, do's and don't's and schemes for welfare of the children are to be organised by the Department. Awareness may also be created by the use of technology available through electronic means, social media platforms, bulk SMS, developing IEC materials, distribution of brochures and flyers, organising street plays and cultural troupes, etc. The exercise needs to target citizens in general besides focusing on children particularly vulnerable ones.

The Department may also commission research, carry out studies and conduct impact assessment on issues relating to child protection. Reports generated at the end of these exercises should be published for the benefit of various stakeholders and for improving the targeting of efforts and resources.

## SOP on Missing Children

The State Government may develop appropriate Standard Operating Procedures for

the manner of inquiry in cases of missing children to give effect to the JJ Model Rules. *(Rule 92(7), JJ Model Rule 2016)*

### **Database of Missing Children**

Details of all missing and rescued children are to be entered in 'Trackthemissingchild' web portal by all CCIs, CWCs etc. The Department has to ensure that the same is being done throughout the State.

### **Non-Compliance of Act/Rules**

The State Government can take necessary action against an officer/institution, statutory body etc, after inquiry, who fails to comply with the provision of the JJ Act and the Rules and simultaneously make alternative arrangements for discharge of functions for effective implementation of the JJ Act, 2015. *(Rule 93, JJ Model Rules, 2016)*

### **Rescue of Children**

The Department plays important role in rescue of missing children or child victims of crime, with other stakeholders like Police, NGO, District Legal Service Authority, etc. The representatives of the Department are expected to associate themselves in the rescue team. The expenses for rescue and other contingency expenses may be met by the Department. The Department should make arrangement for support services and rehabilitation of rescued children in coordination with other stakeholders. Children who are rescued and lodged in Child Care Institution outside their home State are brought back to their respective home States by SCPS (in whose jurisdiction the CCI is located) in co-ordination with SCPS of the State where children are to be restored.

### **Transfer of a Child**

The State Government may at any time, on the recommendation of a CWC or JJB, and keeping the best interest of the child in mind, order the child's transfer from any Children's Home or special home or fit facility or fit person, to a home or facility, within the State with prior intimation to the concerned Committee or the Board, provided that for transfer of a child between similar home or facility or person within the same district, the Committee or Board, as the case may be, of the said district shall be competent to issue such an order.

If transfer is being ordered by a State Government to an institution outside the State, the transfer has to be done only in consultation with the concerned State Government. *(Section 96 (2) of JJ Act, 2015)*

## Implementation of Welfare Schemes

The Department is also responsible for the implementation of Welfare Schemes of both Central and State Governments, relating to women and children like Ujjwala Homes, Swadhar Greha, One Stop Centre, etc.

## 24 x 7 Helpline

The 24x7 toll free helpline, 181, is operated by the Department in many States to guide and assist women in distress and under difficult circumstances. It may be noted here that this helpline along with other helpline numbers like 100, 108, etc. would be subsequently merged with 112 which is proposed as a single emergency helpline number under Emergency Response and Support System (ERSS) launched by MHA, Government of India. The proposed helpline 112, once operational, can also be accessed through Mobile Application throughout the country.

## Co-ordination with other Departments

Ensuring proper coordination among stakeholders for achieving synergy in order to effectively deal with child related issues is also a prime responsibility of this Department. The stakeholders have to meet regularly for convergence of efforts; sharing of experiences and good practices; removing operational roadblocks; strategising and developing informal contacts.

The Nodal Department is responsible for coordinating with other Department/Bodies/functionaries, like Health Department, Education Department, Commissioner for Persons with Disabilities, Labour Department and LSAs to link the services provided by them with CCIs to extend benefits of various schemes relating to nutrition, vocational training, education, skill development, medical care, etc. to the children residing in such institutions. The children under non-institutional care also need to be covered under this exercise. For example, children may be brought under the coverage of National Health Mission to meet their medical needs especially of those children with disabilities and special needs. Similarly Sarva Shiksha Abhiyan (SAA) and the National Skill Development Mission may provide education and skill upgradation services to the children.

The Department can also bring synergy between ICDS and ICPS as both these schemes are meant for children and the Department can bring about synergy through horizontal interaction and coordination between functionaries of these schemes. Proper training may be imparted to Anganwadi Workers so that they are adequately sensitised and may meaningfully contribute to the cause of child protection in the community particularly



by identifying victimisation of children and by helping the children/families report such victimisation.

### Fostering Partnership

The Department has a major role in building partnership and forging alliance with civil society organisations, corporate houses, media and advocacy groups, training and research institutes etc. for broadening the intervention required for dealing with child related issues.

### Management of CCIs

The Department should ensure through the SCPS and DCPU that all CCIs are being run as per the provision of the Act and Rules. Minimum standards of care and protection have to be maintained by CCIs. The Department is also responsible to ensure that various committees and mechanism including Management Committees, Children Committees, complaint box, and grievance redressal mechanism are in place in CCIs. The Department through SCPS and DCPU should ensure that provision for safety and security as prescribed in the Act and Rules are complied with by the CCIs.

Every institution shall evolve a system of ensuring that there is no abuse, neglect and maltreatment and shall include the staff who is aware of what constitutes abuse, neglect and maltreatment, and their early indication and how to respond to these abuses. *(Rule 76(1) JJ Model Rules, 2016)*

## SIGNIFICANT SUPREME COURT'S JUDGMENTS/ORDERS

### I. The Supreme Court in its order dated 9 February 2018 in **Sampurna Behura Vs. Union of India (Writ Petition (Civil) No. 473/ 2005)** has issued the following directions:

- i. The Ministry of Women and Child Development in the Government of India and the State Governments should ensure that all positions in the NCPCR and the SCPRs are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children.
- ii. The State level Child Protection Societies and the District level Child Protection Units have an enormous responsibility in ensuring that the JJ Act is effectively implemented and Child Care Institutions are managed and maintained in a manner that is conducive to the well-being of children in all respects including nutrition, education, medical benefits, skill development and general living conditions. These two bodies would be well advised to take the assistance of

NGOs and civil society to ensure that the JJ Act serves the purpose for which it is enacted by Parliament.

- iii. The State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously and in accordance with the Model Rules or the Rules framed by the State Government. Any delay in filling up the positions might adversely impact on children and this should be avoided.
- iv. The NCPCR and the SCPCRs must carry out time-bound studies on various issues, as deemed appropriate, under the JJ Act. Based on these studies, the State Governments and the Union Territories must take remedial steps.
- v. In particular, the NCPCR and the SCPCRs must carry out a study for estimating the number of Probation Officers required for the effective implementation of the JJ Act. Based on this study, the State Government must appoint the necessary number of Probation Officers. It must be emphasised that the role of a Probation Officer is critical for the rehabilitation and social reintegration of a juvenile in conflict with law and due importance must be given to their duties as postulated in the Model Rules and Rules, if any, framed by the State Governments and the Union Territories.
- vi. The management of Child Care Institutions is extremely important and State Governments and Union Territories would be well advised to ensure that all such institutions are registered so that children can live a dignified life in these Institutions and issues of missing children and trafficking are also addressed.
- vii. State Governments and Union Territories would be well advised to appoint eminent persons from civil society as visitors to monitor and supervise the Child Care Institutions in all the districts. This will ensure that the management and maintenance of these Institutions are addressed. We have no doubt that the State Legal Service Authorities and the District Legal Service Authorities will extend full assistance and co-operation to the Government authorities in this venture as well as to the visitors.

**II. The Supreme Court in its order dated 5th May, 2017 in ‘Re: Exploitation of Children in Orphanages in State of Tamil Nadu Vs. Union of India & Ors’ (Writ Petition (Criminal) No. 102 of 2007) passed the following directions/made following observation:**

- i. The definition of the expression ‘Child In Need of Care and Protection’ under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of

- care and protection should be extended to all such children in fact requiring State care and protection.
- ii. The Union Government and the Governments of the States and Union Territories must ensure that the process of registration of all Child Care Institutions is completed positively by 31st December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials.
  - iii. The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities. The Union Government and the Governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31st December, 2017. The Governments of the States and Union Territories should draw up plans for full and proper utilisation of grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme.
  - iv. Returning the grants as unspent or casual utilisation of the grants will not ensure anybody's benefit and is effectively wasteful expenditure. It is imperative that the Union Government and the Governments of the States and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection. There are several schemes of the Government of India including skill development, vocational training etc which must be taken advantage of keeping in mind the need to rehabilitate such children.
  - v. The Governments of the States and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections of child care institutions and to prepare reports of such inspections so that the living conditions of children in these institutions undergo positive changes. These Inspection Committees should be constituted on or before 31st July, 2017 and they should conduct the first inspection of the child care institutions in their jurisdiction and submit a report to the concerned Government of the States and Union Territories on or before 31st December, 2017.
  - vi. The preparation of individual child care plans is extremely important and all Governments of the States and Union Territories must ensure that there is a

child care plan in place for every child in each child care institution. While this process may appear to be long drawn and cumbersome, its necessity cannot be underestimated in any circumstances. The process of preparing individual child care plans is a continuing process and must be initiated immediately and an individual child care plan must be prepared for each child in each child care institutions on or before 31st December, 2017.

- vii. Wherever the State Commission for Protection of Child Rights has not been established or though established is not fully functional in the absence of a Chairperson or any one or more Members, the Governments of the States and Union Territories must ensure that all vacancies are filled up with dedicated persons on or before 31st December, 2017. The SCPCRs so constituted, must publish an Annual Report so that everyone is aware of their activities and can contribute individually or collectively for the benefit of children in need of care and protection.
- viii. The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau of Police Research and Training, the National Judicial Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest.
- ix. It is time that the Governments of the States and Union Territories consider de-institutionalisation as a viable alternative. It is not necessary that every child in need of care and protection must be placed in a child care institutions. Alternatives such as adoption and foster care need to be seriously considered by the concerned authorities.
- x. The importance of social audits cannot be over-emphasised. The necessity of having a social audit has been felt in some statutes and also by the Comptroller and Auditor General of India. That being the position, it is imperative that the process of conducting a social audit must be taken up in right earnestness by the National Commission for the Protection of Child Rights as well as by each State Commission for the Protection of Child Rights. This is perhaps the best possible method by which transparency and accountability in the management and functioning of child care institutions and other bodies under the JJ Act and Model Rules can be monitored and supervised.
- xi. While the Juvenile Justice Committee in each High Court is performing its role

in ensuring the implementation of the JJ Act and Model Rules, there is no doubt that each Committee will require a small Secretariat by way of assistance. We request each Juvenile Justice Committee to seriously consider establishing a Secretariat for its assistance and we direct each State Government and Union Territory to render assistance to the Juvenile Justice Committee of each High Court and to cooperate and collaborate with the Juvenile Justice Committee in this regard.

**III. The Supreme Court Judgment dated 11.12.2018 in ‘Nipun Saxena & ANR Vs. Union of India & ORS (Writ Petition (C) No. 565/2012)’**

All the States/Union Territories have been directed to set up at least one ‘one stop centre’ in every district within one year from the date of this judgment.

**ANNEXURE - I****Authorities, Institutions and Bodies under JJ Act and ICPS**

Level	Structure	Functions
<b>STATE LEVEL</b>	State Child Protection Society (SCPS) (Section 106, JJ Act, 2015)	Unit responsible for the implementation of provisions of JJ Act, 2015; JJ Model Rules, 2016 and the Integrated Child Protection Scheme (ICPS).
<b>DISTRICT LEVEL</b>	District Child Protection Unit (DCPU) (Section 106, JJ Act, 2015)	The implementing arm of Nodal Department, of the State Government at the district level to roll out the scheme at the District Level and for implementation of provisions of JJ Act, 2015 and JJ Rules, 2016.
	Child Welfare Committees (CWC)(Section 27, JJ Act, 2015)	To preside over all matters related to children in need of care and protection for prompt and effective rehabilitation.
	Juvenile Justice Boards (JJB) (Section 4, JJ Act, 2015)	To deal with matters relating to children in conflict with law.
	Special Juvenile Police Unit (Section 107, JJ Act, 2015)	SJPUs are set up to coordinate all police functions related to children.
	District Child Protection Committee (DCPC) under ICPS	It is responsible for implementation of child protection laws and schemes at the district level.
<b>BLOCK LEVEL</b>	Block Level Child Protection Committee (BLPC) under ICPS	It is responsible for recommending and monitoring the implementation of child protection services at block level.
<b>VILLAGE LEVEL</b>	Village Level Child Protection Committee (VLPC) under ICPS	It is responsible for recommending and monitoring the implementation of child protection services at village level.

**ANNEXURE - II****Composition of the Selection Committee for Appointment of Members of JJB and Chairperson and Members of CWC as per Rule 87, JJ Model Rules, 2016:**

- i. A retired Judge of High Court as the Chairperson to be appointed in consultation with the Chief Justice of the High Court concerned.
- ii. One representatives from the Department implementing the Act not below the rank of Director as the ex-officio Member Secretary.
- iii. Two representatives from two different reputed Non-Governmental Organisation respectively working in the area of child development or child protection for a minimum period of 7 years but not running or managing any children's institution.
- iv. Two representatives from academic bodies or Universities preferably from faculty of social work, psychology, sociology, child development, health, education, law and with special knowledge or experience of working on children's issues for a minimum period of 7 years, and
- v. A representative of the State Commission for Protection of Child Rights.

## ANNEXURE - III

### INSTITUTIONAL CARE

**Open Shelter:** Institution established or maintained by the State Government either by itself or through voluntary organisation or Non-Governmental Organisation, for children, established and maintained by the State Government or voluntary or Non-Governmental Organisation to function as a community based facility for children in need of residential support, on a short term basis, with an objective of protecting them from abuse or weaning them or keeping them away from a life on the streets. *(Section 43(1&2) JJ Act, 2015)*

**Observation Home:** Institution established or maintained by the State Government either by itself or through voluntary organisation or Non-Governmental Organisation for temporary reception of child alleged to be in conflict with law, during the pendency of any inquiry. *(Section 47(1) JJ Act, 2015)*

**Special Home:** Institution established or maintained by the State Government either by itself or through voluntary organisation or Non-Governmental Organisation for rehabilitation of those children in conflict with law who are found to have committed an offence. *(Section 48(1) JJ Act, 2015)*

**Place of Safety:** Institution established or maintained by the State Government either by itself or through voluntary organisation or Non-Governmental Organisation, to place a person above the age of 18 years, or child in conflict with law, who is between the age of 16 to 18 years and is accused of or convicted for committing a heinous offence. *(Section 49(1) JJ Act, 2015)*

**Children Home:** Institution established or maintained by the State Government either by itself or through voluntary organisation or Non-Governmental organisation, for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation. The State Government can also designate any Children's Home as a home fit for children with special needs delivering specialised services. *(Section 50 JJ Act, 2015)*

**Special Adoption Agency:** Institutions or organisations recognised by the State Government for rehabilitation of children below the age of 6 and for children who are either orphans, abandoned or surrendered for the purpose of adoption. *(Section 65 & 36(1) JJ Act, 2015)*



**Fit Facility:** The Board or the Committee shall recognise a facility being run by a Governmental Organisation or a voluntary or Non-Governmental Organisation registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child in such manner as may be prescribed. (*Section 51 (1) JJ Act, 2015*)

### NON-INSTITUTIONAL CARE

**Foster Care:** Placement of a child by the CWC for the purpose of alternate care in the domestic environment of a family, other than the child's biological family, that has been selected, qualified, approved and supervised for providing such care. (*Section 2 (29) JJ Act, 2015*)

**Sponsorship:** Provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child. (*Section 2 (58) JJ Act, 2015*)

The State Government shall prepare sponsorship programmes, which may include:

- i. individual to individual sponsorship;
- ii. group sponsorship;
- iii. community sponsorship;
- iv. support to families through sponsorship; and
- v. support to Children Homes and Special Homes. (*Rules 24 JJ Model Rules, 2016*)

**After Care:** The State Government shall prepare a programme for children who have to leave Child Care Institutions on attaining 18 years of age by providing for their education, giving them employable skills and placement as well as providing them places for stay to facilitate their re-integration into the mainstream of society. (*Rules 25 (1) JJ Model Rules, 2016*). The State Government shall provide funds for children, for their essential expenses, who are placed in after-care programmes. Such funds shall be transferred directly to their bank accounts. (*Rule 25 (6), JJ Model Rules, 2016*) (*Section 46 JJ Act, 2015*)

## ANNEXURE - IV

**The Juvenile Justice Fund may be utilised by the State Government for the following purposes, namely:**

1. Establishment and administration of Child Care Institutions;
2. Supporting innovative programmes for the welfare of the children in the Child Care Institutions;
3. Strengthening of legal assistance and support;
4. Providing entrepreneurial support, skill development training or vocational training;
5. Providing lump-sum subsistence support to children leaving Child Care Institution on attaining the age of 18 years;
6. Providing after care facilities and entrepreneurship fund for providing capital and infrastructure to persons who have crossed the age of 18 within institutionalised care, for starting up small businesses to support reintegration into mainstream life;
7. Providing support for foster care, sponsorship and after care;
8. Rehabilitation of children in special circumstances including children released from militant groups and adult groups;
9. Meeting the expenses of travel for trial and restoration of children, including the expenses of the escorts including police;
10. Creating Child Friendly Police Stations, Boards, Courts and Committees;
11. Capacity building for parents and caregivers to understand needs of children;
12. Awareness generation programmes on child rights and offences against children
13. Creating community-based child protection programmes to identify and report offences against children;
14. Providing specialised professional services, counselors, translators, interpreters, special educators, social workers, mental health workers, vocational trainers etc. for the children covered under the Act;
15. Providing recreational facilities and extra-curricular activities for the children covered under the Act including those in Child Care Institutions;
16. Palliative care for cancer affected children and stay facilities for their parents; and
17. Any other programme or activity to support the holistic growth, development and well-being of a child covered under the Act and the Rules.

## Functions of State Child Protection Society (Rule 84 of JJ Model Rules, 2016)

The State Child Protection Society shall perform the following functions namely:

1. Overseeing the implementation of the Act and the rules framed thereunder in the State and supervision and monitoring of agencies and institutions under the Act;
2. Addressing road-blocks, issues, complaints received regarding care and protection of children;
3. Ensure that all institutions set up under the Act and the Rules are in place and performing their assigned duties;
4. Reviewing reports received from various District Child Protection Units on the functioning of institutions in various districts and take action to facilitate the protection of children wherever necessary and monitoring the functioning of the District Child Protection Units;
5. Develop programmes for foster care, sponsorship and after-care;
6. Inquire into, seek reports and make recommendations in cases of death or suicide in Child Care Institutions and under other institutional care;
7. Ensure inter-department co-ordination and liaising with the relevant departments of the State and Central Governments and State Child Protection Societies of other States or Union Territories;
8. Networking and co-ordinating with civil society organisations working for the effective implementation of the Act and the Rules;
9. Maintaining a State level database of all children in institutional care and family based non-institutional care and updating it on a quarterly basis;
10. Maintaining a database of Child Care Institutions, Specialised Adoption Agencies, Open Shelters, fit persons and fit facilities, registered foster parents, sponsors, after care organisations and other institutions at the State level;
11. Maintaining a database of medical and counseling 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 State level;


12. Monitoring and administering the Juvenile Justice Fund set up by the State Government including disbursal of funds to the District Child Protection Units, Special Juvenile Police Units and police stations, as the case may be;
13. Maintaining separate accounts for all funds received by the State Child Protection Society such as the Juvenile Justice Fund, Funds under Schemes of Central and State Government and getting the same audited;
14. Generate awareness among public on various aspects of the Act and the Rules made thereunder specifically the existing institutional framework, rehabilitation measures, penalties, procedures for better protection of children;
15. Organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders;
16. Commission research programmes on child protection;
17. Co-ordinate with State Legal Services Authority and law schools; and
18. Any other function for the effective implementation of the Act and the Rules made thereunder.

The Member-Secretary of the State Child Protection Society shall be the Nodal Officer in the State for the implementation of the Act and the Rules.

### **Functions of District Child Protection Unit (Rule 85, JJ Model Rules)**

The District Child Protection Unit shall perform following functions, namely:

1. 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;
2. Arrange for individual or group counseling and community service for children;
3. Conduct follow up of the individual care plan prepared on the direction of the Children's Court for children in the age group of 16 to 18 years found to be in conflict with law for committing heinous offence;
4. Conduct review of the child placed in the place of safety every year and forward the report to the Children's Court;
5. 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;
6. Maintain record of runaway children from Child Care Institutions;
7. Identify families at risk and children in need of care and protection;
8. Assess the number of children in difficult circumstances and create district-

- specific databases to monitor trends and patterns of children in difficult circumstances;
9. Periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Committees and Boards from time to time;
  10. 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;
  11. Facilitate transfer of children at all levels for their restoration to their families;
  12. 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;
  13. Network and coordinate with civil society organisations working under the Act;
  14. 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;
  15. Look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action;
  16. Be represented on the Management Committees within the Child Care Institutions; maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the facility of Open Shelter and of children placed in foster care;
  17. Maintain a database of Child Care Institutions, Specialised Adoption Agencies, Open Shelter, fit persons and fit facilities, registered foster parents, after care organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society, as the case may be;
  18. Maintain a database of medical and counseling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society;
  19. Maintain a database of special educators, mental health experts, translators, interpreters, counselors, psychologists or psycho-social workers or other experts
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who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Children's Court and the State Child Protection Society; including training and capacity building of stakeholders under the Act;

20. Organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act;
21. Submit a monthly report to the State Child Protection Society;
22. Notify the State Government about a vacancy in the Board or the Committee 6 months before such vacancy arises;
23. Review reports submitted by Inspection Committees and resolve the issues raised through coordination among the stakeholders;
24. Provide secretarial staff to the Committees and the Boards;
25. All other functions necessary for effective implementation of the Act including liaising with community and corporates for improving the functioning of Child Care Institutions.

The District Child Protection Officer shall be the Nodal Officer in the district for the implementation of the Act and the Rules.

## THE ROLE OF LABOUR DEPARTMENT IN CHILD PROTECTION

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Labour Department is the Nodal Department for implementation of labour laws in the States.

### ROLE OF THE DEPARTMENT

Some of the important responsibilities of the department are given hereunder. It may be noted that the responsibilities at the district level are with various bodies in which Labour Officers are key members.

- a. District Task Force (as per The Child and Adolescent Labour (Prohibition & Regulation) Rules, 1988 amended in 2017)
  - b. Vigilance and Monitoring Committee (as per Bonded Labour System (Abolition) Act, 1976)
  - c. NCLP District Project Society
  - d. Vigilance and Monitoring Committee under modified NCLP Scheme
1. **Survey:** Conducting survey to find out whether children and adolescents are employed in violation of law. Special mention may be made of '*neo bondage*' as children may be employed as bonded labour in deceptive and innovative ways.
  2. **Rescue:** Carrying out rescue operation with the help of other stakeholders as planned by the District Task Force.
  3. **Legal Proceedings:** Initiation of legal proceeding against the offenders by lodging FIR with police or filing of complaint in Court, as applicable.
  4. **Inspection:** Visit, by labour officers, at places of work/enterprises and inspection of registers required to be maintained, as per law.
  5. **Creation of Awareness:** Awareness generation through appropriate measures like

using folk and traditional media, mass media including television, radio and print media to make the general public, especially children and adolescents, who may be employed in contravention of the law, aware about the provision of law. The social media platforms should be used to gain maximum reach. Salient features of law prohibiting engagement of children or adolescents are to be prominently displayed at public places.

- 6. Encourage Reporting:** Promote reporting of instances of employment of children or adolescents in contravention to the provision of law, through easily accessible means of communication.
- 7. Advocacy:** The corporate houses, business organisations, industrial enterprises, households, other work places etc. should be persuaded to have child labour free operation. They may take a pledge or an oath to not employ child or adolescent in contravention of law. The industry may be encouraged to put label on their products to notify that no child labour was used.
- 8. Study and Research:** To carry out studies to ascertain the severity of incidence of child/adolescent labour and also to measure the impact of interventions. This may help re-design and target the efforts for optimal result.
- 9. Framing of Rules and Drafting of Acts:** The Department is responsible for taking steps for enactment of laws covering various aspects like regulation of placement agencies and framing of rules under The Child and Adolescent Labour (P&R) Act and other labour laws.
- 10. Amendment of Conduct Rules:** Following up with the concerned department of Government to suitably amend conduct rules for State Government employees. The rules should make engaging of child labour by public servants a misconduct. For example, the Central Civil Services (Conduct) Rules were amended and Rule 22A prohibits Government Servants from employing children below 14 years of age for work. Similarly, *Rule 3(3)(iv) of the All India Services (Conduct) Rules, 1968* prohibits employment of children below 14 years for work by members of the All India Services.
- 11. Coordination:** Co-ordination with other stakeholders like Police, Social Welfare Department, Health Department and Education Department for ensuring convergence of efforts and synergy.
- 12. Partnership:** Building partnership with media, corporate sector, research & training institutions and civil society.
- 13. Safe Migration:** Maintaining co-ordination with source and destination states in case of migrant workmen for their tracking, monitoring and delivery of welfare



schemes. Strict implementation of *The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979* and Regulation of placement agencies would also help ensure safe migration.

14. **Registration of Labour:** Aim for 100 per cent registration of labourers and their family members who come from and move to other States. Suitable incentives may be provided to encourage reporting. Portability of benefits may be considered as one of the incentives.
15. Uploading of relevant information in **PENCIL** portal.
16. Senior most Labour Officer in the district, as member of District Task Force, NCLP, DPS, V&MC, etc. should make useful contribution.
17. **Schemes:** Implementation of various schemes for identification, rescue, welfare, skilling, education, empowerment of family of child labour etc. Two such important schemes are NCLP and Central Sector Scheme for Rehabilitation of Bonded Labour. A brief write-up about these schemes is given in this chapter.
18. Setting up of **State Resources Centre** as envisaged in modified NCLP.
19. Taking steps for setting up of new National Child Labour Projects (NCLPs) in high incidence districts. It starts with survey to be conducted by the District Administration with the help of Labour and Education Department, regarding the number of children engaged in hazardous and non-hazardous occupations and processes in the District. The proposal has to be submitted by the DM/DC.

## LEGAL PROVISIONS RELEVANT FOR THE DEPARTMENT

The provisions relating to Child and Adolescent labour are available in the following Acts:

- a. *The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, amended in 2016, and*
- b. *The Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988 amended in 2017.*

Some important provisions are here under:

### **Appointment of Inspectors (Section 17, CALPRA)**

The Central or the State Government may appoint Inspectors for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860.

### **Maintenance of Register (Section 11)**

There shall be maintained by every occupier in respect of adolescent employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing:

- a. The name and date of birth of every adolescent so employed or permitted to work;
- b. Hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- c. The nature of work of any such adolescent; and
- d. Such other particulars as may be prescribed.

### **Notice to Inspectors (Section 9)**

1. Every occupier, in relation to an establishment in which a adolescent was employed or permitted to work immediately before the date of commencement of this Act, in relation to such establishment shall, within a period of 30 days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:
  - a. The name and situation of the establishment;
  - b. The name of the person in actual management of the establishment;
  - c. The address to which communications relating to the establishment should be sent; and
  - d. The nature of the occupation or process carried on in the establishment.
2. Every occupier, in relation to an establishment, who employs, or permits to work, any adolescent after the date of commencement of this Act in relation to such establishment shall, within a period of 30 days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars, as are mentioned above.

### **Duties of Inspectors (Rule 17D)**

An Inspector appointed by the Central Government under Section 17, for the purposes of securing compliance with the provisions of the Act, shall,

- i. comply with the norms of inspection issued by the Central Government from time to time;

- ii. comply with the instructions issued by the Central Government from time to time for the purposes of securing the compliance with the provisions of the Act; and
- iii. report the Central Government quarterly regarding the inspection made by him for the purposes of securing the compliance with the provisions of the Act, and the action taken by him for such purposes.

### **Certificate of Age (Rule 17)**

(1) Where an Inspector has an apprehension that any adolescent has been employed in any of the occupation or processes in which he is prohibited to be employed under Section 3A of the Act, he may require the employer of such adolescent to produce to the Inspector a certificate of age from the appropriate medical authority.

(2) The appropriate medical authority shall, while examining an adolescent for issuing the certificate of age under subrule (1), take into account:

- i. the Aadhar card of the adolescent, and in the absence thereof;
- ii. the date of birth certificate from school or the matriculation or equivalent certificate from the concerned examination Board of the adolescent, if available, and in the absence thereof;
- iii. the birth certificate of the adolescent given by a corporation or a municipal authority or a Panchayat;

and only in the absence of any of the methods specified in clauses (i) to (iii), the age shall be determined by such medical authority through an ossification test or any other latest medical age determination test.

(3) The ossification test or any other latest medical age determination test shall be conducted on the order of the appropriate authority of the rank of Additional Labour Commissioner, as may be specified by the Central Government in this behalf, and such determination shall be completed within fifteen days from the date of such order.

(4) The certificate of age referred to in sub-rule (1) shall be issued in Form B.

(5) The charges payable to the medical authority for the issue of the certificate of age shall be same as specified by the Central Government or the State Government, as the case may be, for their Medical Boards.

(6) The charges payable to the medical authority shall be borne by the employer of the adolescent whose age is determined under this rule.

***(Section 94 of JJ Act, 2015 also prescribes procedure for determination of age. Chapter 2(B) of this handbook may be referred in this connection.)***

### **Disputes as to Age (Section 10)**

If any question arises between an Inspector and an occupier as to the age of any adolescent who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such adolescent granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

### **Procedure Relating to Offences (Section 16)**

- Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.
- Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purpose of this Act, be conclusive evidence as to the age of the child to whom it relates.
- No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act.

### **Persons who may File Complaint (Rule 17A)**

Any person who may file a complaint under the Act for commission of any offence include school teachers and representatives from school management committee, child protection committee, Panchayat or Municipality, who shall be sensitised to file complaint, in the event that any student, in their respective schools is employed in contravention to the provisions of the Act.

*(For further details on role of Police in case of child/adolescent labour, chapter 2(F) of this handbook may be referred)*

## **SCHEMES**

### **A. National Child Labour Project (NCLP)**

Elimination of child labour is joint responsibility of both Central Government and the State Governments as it is in the concurrent list. The Apex Court Order in Writ Petition (C) 465/1986 (also known as the *M.C. Mehta case Vs. State of Tamil Nadu & Ors*) on Child Labour rehabilitation observed that regular monitoring and survey of child labour in the State is the responsibility of the State Government(s). In view of this, State Governments need to play an active and important role in implementation, coordination and monitoring of the implementation of NCLP Scheme in their respective districts.

The Government of India initiated the National Child Labour Project (NCLP) in 1988 to rehabilitate working children in 12 child labour endemic districts of the country. At present the scheme is operational in 266 Districts of 20 States in the country\*. The scheme was revised w.e.f. 1st April, 2017.

The scheme seeks to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations and processes. Under the scheme, a survey of children/adolescents engaged in hazardous occupations and processes in a district or a specified area is conducted; then children are withdrawn from these occupations and processes, and put into NCLP Special Training Centres. In the NCLP Special Training Centres, these children are provided bridge education, vocational training, mid-day meal, stipend, health care and recreation etc. with the ultimate objective of preparing them to be mainstreamed into the formal system of education\*\*.

### The Purpose of NCLP Scheme

1. To eliminate all forms of child labour through,
  - i. identification and withdrawal of all children in the Project Area from child labour;
  - ii. preparing children withdrawn from work for mainstream education along with vocational training; and
  - iii. ensuring convergence of services provided by different government departments/agencies for the benefit of children and their families.
2. To contribute to the withdrawal of all adolescent workers from hazardous occupations/processes and their skilling and integration in appropriate occupations through,
  - i. identification and withdrawal of all adolescent workers from hazardous occupations/processes;
  - ii. facilitating vocational training opportunities for such adolescents through existing scheme of skill developments,
  - iii. raising awareness amongst stakeholders and target communities, and orientation of NCLP and other functionaries on the issues of 'child labour'

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\*<http://pib.nic.in/newsite/printrelease.aspx?relid=97788>

\*\*<https://labour.gov.in/sites/default/files/RevisedNCLPguidelines01.04.2016.pdf>

and 'employment of adolescent workers in hazardous occupations/ processes, and

- iv. creation of a Child Labour Monitoring, Tracking and Reporting System.

### Target Group

This scheme focuses on:

- i. All child workers below the age of 14 in the identified target area.
- ii. Adolescent workers below the age of 18 in the target area engaged in hazardous occupations/processes.
- iii. Families of Child workers in the identified target area.

The State Government has the responsibility in the matter of planning, co-ordination and monitoring of the NCLPS. The **State Level Monitoring Committee (SLMC) headed by the Chief Secretary of the State** is meant for effective and efficient implementation of NCLP Scheme and convergence of various development initiatives. The State Department of Labour or any other department may be designated to monitor and review the functioning of child labour project(s) in the State and give secretarial help to SLMC.

The implementation of the project is carried out at the District Level by a dedicated District Project Society (DPS) set up for the NCLPS. NCLP society is a registered under the Societies Registration Act, 1860 and functions under the Chairpersonship of the administrative head of the district namely DM/DC/Dy Commissioner of the district. It would comprise of key officers of Government Departments, representatives of Panchayat Raj Institutions, trade unions, employers, NGOs, child worker representatives etc.

The administrative head of the district, namely District Magistrate (DM)/District Collector (DC), is the key person for successful implementation of the Project in the district. There are a number of examples from NCLP districts demonstrating that if the DM/DC takes interest and pays attention to the Project, there will be greater chances for successful implementation of the Project. This is particularly important, as the issue of child labour has to be handled not only as a labour problem but as a social and development issue requiring multi-sectoral interventions and civil society partnership\*.

As per the modified scheme, a 3-tier monitoring system has been proposed.

1. **District Level Vigilance and Monitoring Committee** has MPs and MLAs elected from the district, Chairman Zila Parishad, DEEO (SAA), District Officer-in-Charge of Child Development, one member from CWC, representatives from PRI and NGOs,

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\*<https://labour.gov.in/sites/default/files/RevisedNCLPguidelines01.04.2016.pdf>

District Labour Officer, District Health Officer and representative of Chief Labour Commissioner (Central) as members; whereas DM/DC (Chairperson District and NCLP Project Society) is the Member Secretary.

2. **At the State Level**, State Resource Centre (SRC), under the Principal Secretary Labour/Labour Commissioner of the State has been envisaged to ensure involvement of State Government. The SRC has to be managed by the society registered under Societies Registration Act. The functions of SRC are as under:
  - a. Coordinate rescue of children and adolescents on complaint or information and report in PENCIL portal for information of Central Government.
  - b. Monitor enforcement of the Child and Adolescent Labour (P&R) Act in the State and update the information on online portal, PENCIL.
  - c. Coordinate inspection and monitoring of implementation of the NCLP in State and supervise the data of Project Societies on PENCIL.
  - d. Coordinate data on child tracking system with respect to child labour in State on PENCIL.
  - e. Make Awareness Generation Plan for various stakeholders and implement it.
  - f. Be the focal point for communication with the Central Government on enforcement of child and adolescent labour Act and implementation of NCLP\*.

### **B. Central Sector Scheme for Rehabilitation of Bonded Labour**

This scheme provides for survey, awareness generation, evaluation studies, cash and non-cash assistance and rehabilitation facilities.

The scheme has been modified w.e.f. 17th May, 2016. The rehabilitation package is Rs. 1 lakh per adult male beneficiary. For special category beneficiaries such as children including orphans or those rescued from organised and forced begging rings or other forms of forced child labour and women, the amount of rehabilitation assistance is Rs. 2 lakh out of which at least Rs. 1,25,000 has to be deposited in an annuity scheme in the name of each beneficiary and the balance amount is to be transferred to the beneficiary account through ECS. In cases of bonded or forced labour involving extreme cases of deprivation or marginalisation, the rehabilitation assistance is Rs. 3 lakh out of which at least Rs. 2 lakh has to be

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\*[https://labour.gov.in/sites/default/files/NCLP%20Modified%20Extension%20March%202020\\_0.pdf](https://labour.gov.in/sites/default/files/NCLP%20Modified%20Extension%20March%202020_0.pdf)

deposited in an annuity scheme in the name of each beneficiary and Rs. 1 lakh is to be transferred to the beneficiary account through ECS.

In cases where the DM/SDM finds that immediate assistance is necessary for care and protection of the rescued persons during the pendency of the summary trial, such assistance including food, lodging, medical assistance, legal aid, provisions for victims or witness' protection, etc., should be provided under any other law or scheme forthwith, notwithstanding the entitlements prescribed under this scheme.

The District Administration in a convergence approach should undertake measures for providing safe and secure environment for the capacity building of child bonded labourers in coordination with all relevant Government departments. Accordingly, facilities for ensuring their proper education, psycho social counseling, short stay home till education up to class 12th and skill development has to be an integral component of the rehabilitation package.

A Bonded Labour Rehabilitation Fund has to be created at the District level by each State with a permanent corpus of at least Rupees 10 lakhs at the disposal of the District Magistrate which should be renewable. This fund will be utilised for extending immediate help to the released bonded labourers. The entire penalties recovered from the perpetrators of the bonded labour upon conviction, may be deposited in this special fund.

Immediate assistance of at least Rs. 5,000 has to be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund at the disposal of the District Magistrate. Where the DM is satisfied that a particular rescued person requires more than Rs. 5,000, he or she may disburse such higher amount as deemed fit, but limited to the maximum entitlement prescribed under this scheme. Any such advance amount shall be deducted from the Central Cash Assistance amount.

At the district and sub-divisional level, the same implementation machinery for NCLP scheme shall also be responsible for implementation of the revised Bonded Labour Rehabilitation scheme assisted by the Vigilance Committees\*.

### **The Architecture of Institutional Mechanism under NCLP is as under:**

The fund is released by the Ministry under the Scheme to the District National Child

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\*[https://labour.gov.in/sites/default/files/OM\\_CSS\\_Rehab\\_BL\\_2016\\_1.pdf](https://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016_1.pdf)



Labour Project Society and the District Project Society, who in turn releases the fund to the implementing agencies including the district administration.

### **C. Central Schemes on Child Labour**

Funds under Grants-in-Aid Scheme are sanctioned directly to NGOs for elimination of Child Labour in districts not covered by NCLP Scheme. Under the scheme voluntary agencies are given financial assistance by the Ministry of Labour on the recommendation of the State Government to the extent of 75% of the project cost for the rehabilitation of working children. Voluntary organisations have been receiving funds under the scheme since 1979-80.

**PENCIL Portal:** PENCIL portal was launched by The Union Ministry of Labour and Employment at the National Conference on child labour on 26th September, 2017. It has five components - Child Tracking System, Complaint Corner, State Government, National Child Labour Project and Convergence.

Under this, each district will nominate District Nodal Officers (DNOs) who will receive the complaints. After receiving complaint, the DNO will verify the complaint within 48 hours and rescue measures will be taken in coordination with police based upon the verification by DNO.

## THE ROLE OF LEGAL SERVICES AUTHORITIES & VICTIM COMPENSATION SCHEME

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### LEGAL SERVICES AUTHORITIES

Legal Services Authorities are constituted under the Legal Services Authorities Act, 1987. The primary role is to provide free legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Article 39A of the Constitution of India mandates free legal aid to all citizens to be provided by the state. The various authorities at the National, State, District and Taluk level are:

- a. **National Legal Services Authority (NLSA)**
- b. **State Legal Services Authority (SLSA)**
- c. **District Legal Services Authority (DLSA)**
- d. **Taluk Legal Services Committee (TLSC)**

National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State and District Legal Services Authorities and NGOs for implementing legal aid schemes and programmes.

In every State, a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority and to give legal services to the people, conduct '*Lok Adalats*' in the State, undertake preventive and strategic legal aid programme. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its Chairman whereas a person belonging to the State Judicial Service not lower in

rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary is appointed as secretary of the DLSA.

Taluk Legal Services Committees (TLSC) is also constituted for each of the Taluk or Mandal or for group of Taluks or Mandals to coordinate the activities of legal services in the Taluk and to organise 'Lok Adalats'.

### Composition of LSAs

- i. **SLSA:** As per the provision of Section 6(2) of the Legal Services Authorities Act, 1987, the State Government constitutes a body to be called the Legal Services Authority for the State (SLSA), it consists of,
  - a. the Chief Justice of the High Court as the Patron-in-Chief;
  - b. a serving or retired Judge of the High Court, nominated by the Governor, in consultation with the Chief Justice of the High Court, to be the Executive Chairman; and
  - c. other members nominated by State Government, and
  - d. a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, is the Member-Secretary of the State Authority.
- ii. **DLSA:** As per the provision of Section 9 of the Legal Services Authorities Act, 1987, at district level, the State Government constitutes a body to be called the District Legal Services Authority (DLSA) consisting of,
  - a. the District Judge as Chairman;
  - b. other members nominated by the Government in consultation with the Chief Justice of the High Court, and
  - c. a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority.
- iii. **TLSC:** As per the provision of Section 11A(2) of the Legal Services Authorities Act, 1987, the Committee shall consist of,
  - a. the Senior Civil Judge operating within the jurisdiction of the Committee who shall be the ex-officio Chairman, and
  - b. such number of other Members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

## FUNCTIONS OF LSAs

- i. To provide free legal aid to eligible persons
- ii. Payment of compensation to women victims/survivors of sexual assault/other crimes
- iii. Implementation of various schemes
- iv. To create legal awareness
- v. To conduct training and to coordinate with other departments
- vi. Review of pendency of enquiries before JJBs

### 1. TO PROVIDE FREE LEGAL AID TO ELIGIBLE PERSONS

The following persons are considered as eligible for free legal Aid (Section 12 of LSA Act, 1987):

- i. a member of a Scheduled Caste or Scheduled Tribe;
- ii. a victim of trafficking in human beings or 'begar' as referred to in Article 23 of the Constitution;
- iii. a women or a child;
- iv. a person with disability;
- v. a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- vi. an industrial workman; or
- vii. in custody, including custody in a protective home or in a juvenile home or in a psychiatric hospital or psychiatric nursing home;
- viii. any person with annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

### Rule 54(14) of JJ Model Rules, 2016

As per this Rule, the Legal Services Authority may provide a support person or para legal volunteer for pre-trial counseling and to accompany the child for recording of the statement who shall also familiarise the child with the Court and its environment in advance, and where the child is found to have been disturbed by the experience of coming to the Court, orders for video-conferencing may be passed by the Court, on

an application moved by the support person or para-legal volunteer or by the Legal Services Authority, on behalf of the child.

Legal services may be extended to citizens through *Legal Aid Clinics*. The highlights of 'Legal Aid Clinic' scheme are as under:

### **Purpose of the Scheme**

The National Legal Services Authority (Legal Services Clinic) Regulations, 2011 has defined Legal Services Clinic as the facilities established by the DLSA to provide basic legal services to the people with the assistance of Para Legal Volunteers or lawyers as the first point of contact for help and advice.

***As per Regulation 5 of National Legal Services Authority (Legal Services Clinic) Regulations, 2011:***

- i. The Legal Services Institution having territorial jurisdiction or the DLSA may depute trained PLVs to the clinic.
- ii. At least two PLVs are available during the working hours of the clinic.
- iii. When lawyers are deputed, they are assisted by PLVs.

### **Location of the Clinic**

The DLSA shall establish Legal Services Clinic in,

- i. all villages or cluster of villages to be called as Village Legal Care & Support Center;
- ii. jails, educational institutions, community centers, protection homes, courts, JJBs, and
- iii. other areas where people face geographical, social and other barriers for access to legal services institutions.

## **2. PAYMENT OF COMPENSATION TO WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES**

The details of Victim Compensation have been provided in subsequent pages of this chapter.

## **3. IMPLEMENTATION OF VARIOUS SCHEMES OF NALSA**

The SLSA and DLSA have to implement various schemes formulated by NALSA. Some of the schemes that may be applicable to children are:

- i. NALSA (Legal Services to victims of Acid Attack) Schemes, 2016
- ii. NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015

- iii. NALSA (Child friendly legal services to children and their Protection) Scheme, 2015
- iv. NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015
- v. NALSA (Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace), Scheme, 2015
- vi. NALSA (Compensation Scheme for Women Victims/Survivors of Sexual Assault/ other Crimes, 2018)

*(Further details of some schemes have been provided at Annexure I)*

#### **4. CREATION OF LEGAL AWARENESS**

The DLSA and SLSA are mandated to create legal awareness among citizens. Awareness is created mainly by:

##### **i. Organising Legal Aids Camps**

One of the functions as per Section 4(e) of National Legal Services Authority Act, is to organise Legal Aid Camps especially in rural areas, slums, labour colonies with the dual purpose of educating weaker sections of the society as to their right as well as encouraging the settlement of disputes through Lok Adalats.

The Legal Service Authority particularly, DLSA is mandated to create awareness among masses about legal issues by various means including holding legal awareness camps.

##### **Suggested Themes/Issues Which May Be Covered in Legal Services Camps\***

- a. Children related issues
- b. Addressing educational rights of children aged between 6-14
- c. Child Marriage
- d. Child Labour
- e. Issues related to rights under Food Security Act
- f. Establishment of Legal Literacy Clubs in Higher Secondary and Senior Secondary Schools

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\*Legal Service Camp Module” prepared by National Legal Service Authority

## ii. By Appointing Para Legal Volunteer (PLV)

The details of the scheme of PLVs have been provided in subsequent pages of this chapter.

## 5. TO CONDUCT TRAINING AND TO COORDINATE WITH OTHER DEPARTMENTS\*

- i. The primary responsibility for training the designated Juvenile/Child Welfare Officers attached to the Police Station and the Members of the Special Juvenile Unit shall be on the District Legal Services Authority. The State Legal Services Authority shall provide the required assistance, guidance and the direction to District Legal Services Authority and shall monitor and supervise the training programme, in a manner it may deem appropriate and practicable.
- ii. The SLSA shall request the DLSAs to identify 2 or 3 lawyers having proclivity for ensuring the rights of children, as resource persons. They shall be sent for a state-level TOT (Training of Trainers) Programme to be organised by the State Legal Services Authority.
- iii. Every State Legal Services Authority shall coordinate with the head of the concerned Police Department to ensure that a Standing Order outlining the roles, responsibilities and functions of Special Juvenile Police Units and Juvenile/Child Welfare Officers is issued and the judgement of the Hon'ble Supreme Court in *Sheela Barse Vs. Union of India (1986 SCALE (2) 230): (1987) 3SC50: AIR 1987 SC 656* is to be followed.
- iv. State Legal Services Authority shall render assistance in drafting and preparing such Standing Order.
- v. State Legal Services Authority shall also ensure that such Standing Order is translated into local language and is made available at all the Police Stations.

## 6. REVIEW OF PENDENCY OF INQUIRIES BEFORE JJBS

The number of cases pending before the Juvenile Justice Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every 6 months by a high level committee consisting of the Executive Chairperson of the **State Legal Services Authority**, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the

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\*NALSA Guidelines for Training the Designated Juvenile/Child Welfare Officers attached to every police station and the Members of the Special Juvenile Police Unit Established under Section 63 of The Juvenile Justice (Care And Protection Of Children) Act, 2000. (Prepared as per the Order dated 12.10.2011 of the Hon'ble Supreme Court of India in *Sampurna Behrua Vs. Union of India and Others in Writ Petition (C) No. 473/2005*)

implementation of this Act in the State and a representative from a voluntary or Non-Governmental Organisation to be nominated by the Chairperson. *(Section 16(2) JJ Act, 2015)*

## LEGAL PROVISIONS RELATED TO PAYMENT OF COMPENSATION

### Provision under CrPC

Sections 357, 357A and 357B CrPC deal with victim compensation.

### Order for payment of compensation

When a Court imposes a sentence of fine or a sentence (including death), the Court may, when passing judgement order the whole or any part of the fine recovered to be applied for making payment to any person of compensation for any loss or injury caused by the offence. *(Section 357(1) CrPC)*

### Victim Compensation Scheme

Every State Government in consultation with Central Government is required to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation. *(Section 357A(1) CrPC)*

- i. The District Legal Services Authority or the State Legal Services Authority, as the case may be, decides the quantum of compensation to be awarded under the scheme on the basis of recommendation made by the Court for compensation. *(Section 357A(2) CrPC)*
- ii. If the Trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation or where the cases end in acquittal or discharge and the victim has to be rehabilitated, the Court may make recommendation for compensation. *(Section 357A(3) CrPC)*
- iii. The victim or the victim's dependents may make an application to the State or District Legal Services Authority for award of compensation if the offender is not traced or identified, but the victim is identified and no trial takes place. *(Section 357A(4) CrPC)*
- iv. The Legal Services Authority has to award adequate compensation after completing due enquiry within 2 months on receipt of recommendation from Court or application from the victim or his dependents. *(Section 357A(5) CrPC)*
- v. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer



not below the rank of Officer-in-Charge of a Police Station or the Magistrate of the area concerned, or any other interim relief as deemed fit. (**Section 357A (6), CrPC**)

- vi. The compensation payable by the State Government under Section 357A is in addition to the payment of fine to the victim under Sections 326A, 376AB, 376D, 376DA and 376DB of the IPC. (**Section 357B, CrPC**)

### **Provisions relevant to Compensation under POCSO Act, 2012 and POCSO Rules, 2012**

- i. In suitable cases, Special Court may, in addition to the punishment, direct payment of compensation (interim and final) to the child for any physical or mental trauma caused to him or for the child's immediate rehabilitation. (**Section 33(8), POCSO Act**)
- ii. The Special Court, on its own or on an application filed by or on behalf of the victim, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the FIR. Such interim compensation paid to the child shall be adjusted against the final compensation, if any. (**Rule 7(1) POCSO Rules, 2012**)
- iii. The Special Court, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of the offence. (**Rule 7(2), POCSO Rules, 2012**)
- iv. The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purpose of compensating and rehabilitating victims under Section 357A, CrPC or any other laws or where such fund or scheme does not exist, by the State Government. (**Rule 7(4) POCSO Rules, 2012**)
- v. The State Government should pay compensation ordered by Special Court within 30 days or receipt of such order. (**Rule 7 (5) POCSO Rules, 2012**)
- vi. In order for the Special Court to order for interim or final compensation, it is not pre-requisite for the child to file an application. The Special Court may order on its own accord where it is found to be appropriate.
- vii. A record of conviction is not mandatory for the provision of compensation. Where the Special Court is satisfied that a child has been a victim of sexual abuse, the

Judge may direct compensation to be paid in cases where the accused has been acquitted or even in cases where the accused has not been identified or traced.

- viii. The quantum of compensation is not specified in the POCSO Act and it is based on the discretion of the judge deciding the matter. The POCSO Rules provides that while deciding the quantum of compensation, the judge must take into consideration,
- a. abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child,
  - b. expenditure incurred or to be incurred on his medical treatment,
  - c. loss of educational opportunity,
  - d. loss of employment,
  - e. whether the child became pregnant as a result of the offence,
  - f. when child contracted STD,
  - g. any disability suffered by the child, etc. (**Rule 7(3) POCSO Rules, 2012**)

*(The Supreme Court judgement dated 25.07.2018 in Nipun Saxena & Anr. Vs. Union of India & Ors may also be referred in this regard.)*

## FUNDS FOR VICTIM COMPENSATION

The amount of compensation may be awarded from the following funds.

### 1. Central Victim Compensation Fund

- a. Objectives
  - Support and supplement the existing VCS notified by State/UTs.
  - To encourage effective implementation of VCSs under the provisions of **Section 357 A, CrPC**
- b. The size of CVCF is Rupees 200 Crore.
- c. Empowered committee & composition thereof:
  - i. Additional Secretary (CS), MHA as Chairperson
  - ii. Joint Secretary of Department of Expenditure, Ministry of Finance
  - iii. Joint Secretary of Ministry of Women & Child Development
  - iv. Joint Secretary of Ministry of Social Justice & Empowerment
  - v. Chief Controller of Accounts, Home
  - vi. Director (Finance), MHA
  - vii. Joint Secretary (UT Division), MHA
  - viii. Joint Secretary (CS Division), MHA, Convenor

- ix. The Joint Secretary (CS Division), MHA has been designated as the Administrator of the Fund.

## 2. The State Victim Compensation Fund\*\*\*

*(Details of State Victim Compensation Scheme is mentioned under 'Procedure for Payment of Compensation')*

### PROCEDURE FOR PAYMENT OF COMPENSATION

#### Women Victims/Survivors of Sexual Assault/Other Crimes

- i. The compensation is paid as per 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018' of NALSA.
- ii. The payment is made from 'Women Victim Compensation Fund' which comprises funds received from State Victim Compensation Fund, contributions from Central Victim Compensation Fund (CVCF) Scheme by MHA GOI and amount of compensation received from wrong doer/accused etc. The fund is operated by SLSA.
- iii. \*\*\* Within the State Victim Compensation Fund, a separate Bank Account shall be maintained as a portion of that larger fund which shall contain the funds contributed under CVCF Scheme by MHA, GOI contributed from Nirbhaya Fund apart from funds received from the State Victim Compensation Fund which shall be utilised only for victims covered under 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018' of NALSA.
- iv. Member Secretary, SLSA who places the fund under the disposal of DLSA as per requirements from time to time, operates the fund.
- v. Each State has its own scheme with different slabs. NALSA has come up with slabs and the minimums needs to be adhered to by the States pursuant to the Supreme Court judgment dated 25.07.2018 in *Nipun Saxena & Anr. Vs. Union of India & Ors.*
- vi. SHO/SP/DCP are mandated to share soft/hard copy of FIR immediately after its registration with SLSA/DLSA in respect of commission of offences covered under this scheme which includes Sections 326-A, 354-A to 354-D, 376-A to 376-E, 304-B, 498-A (in case of physical injury covered in the schedule) so that SLSA/DLSA, in deserving cases, may '*suo moto*' initiate preliminary verification for grant of interim compensation. The victim and/or her dependent(s) or the SHO of the area can file an application for the award of interim/final compensation before concerned SLSA or DLSA. It shall be submitted in Form 'I' along with the copy of the FIR or criminal complaint of which cognisance is taken by the Court

and if available medical report, death certificate, wherever applicable, copy of judgement/recommendation of Court if the trial is over.

*(‘Dependent’ includes husband, father, mother, grandparents, unmarried daughter and minor children of the victim as determined by the State Legal Services Authority or District Legal Services Authority on the basis of the report of the Sub-Divisional Magistrate of the concerned area/Station House Officer/Investigating Officer or on the basis of material placed on record by the dependents by way of affidavit or on its own enquiry under Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018.)*

- vii. The quantum of compensation by the SLSA, which is paid to the women victim or her dependent(s) who have suffered loss or injury as a result of an offence and who require rehabilitation, is as per rates prescribed in the schedule.
- viii. The SLSA/DLSA may order for immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief (including interim monetary compensation) as deemed appropriate, to alleviate the suffering of the victim on the certificate of a police officer, not below the rank of the officer-in-charge of the police station, or a Magistrate of the area concerned or on the application of the victim/dependents or ‘*suo moto*’.
- ix. On recommendation made by the Court for compensation under Section 357A of the CrPC, or an application is made by any victim/dependent(s) to the SLSA/DLSA, for interim compensation, it shall prima facie satisfy itself qua compensation needs and identify of the victim. The SLSA/DLSA will examine final compensation and verify the contents of the claim with respect of the loss/injury and rehabilitation needs as a result of the crime and may also call for any other relevant information necessary for deciding the claim. ***For disbursement of final compensation 75% of the same shall be put in a fixed deposit for a minimum period of 3 years and the remaining 25% shall be available for utilisation and initial expenses by the victim/dependent(s), as the case may be.***
- x. Secretary SLSA / DLSA may ‘*suo moto*’ or after preliminary verification of the facts grant interim relief.
- xi. The inquiry as contemplated under **Section 357A (5)** of the Code, shall be completed expeditiously and the period in no case shall exceed beyond 60 days from the receipt of the claim/petition or recommendation.
- xii. The victim may also be paid such further amount as is admissible under this Scheme. The SLSA/DLSA shall decide the quantum of compensation to be awarded

to the victim/dependent(s). In deserving cases, for reasons to be recorded, the upper limit may be exceeded.

***xiii. In case of a minor victim, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the schedule.***

The following points may also be noted in respect of payment of compensation,

- i. All those cases not covered by the above mentioned scheme of NALSA would be covered under Victim Compensation Scheme of the State prepared as per *Section 357A CrPC*.
- ii. The payment of the compensation to victim under POCSO Act should be as per *Section 33(8) of POCSO Act, 2012 and Rule (7) of POCSO Rules, 2012*.

### Compensation to Victims of Acid Attack

- i. In case of acid attack victim, the deciding authority shall be the Criminal Injury Compensation Board as directed by Hon'ble Supreme Court in *Laxmi Vs. Union of India, Writ Petition (Criminal) 129/2006 order dated 10.04.2015* which includes District & Sessions Judge, DM, SP, Civil Surgeon/CMO of the district.
- ii. An amount of Rupees 1 lakh shall be paid to the victim within 15 days after the matter is brought to notice. **NALSA** (Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018)
- iii. The order granting interim compensation shall be passed by DLSA within 7 days of the matter being brought to its notice and the SLSA shall pay the compensation within 8 days of passing of the order. Thereafter, an amount of Rupees 2 lakhs shall be paid to the victim as expeditiously as possible and positively within two months of the first payment.
- iv. Victims of Acid attack are also entitled to additional compensation of Rs. 1 lac under Prime Minister's National Relief Fund vide memorandum no. 24013/94/Misc./2014-CSR-III/GOI/MHA, dated 09.11.2016.
- v. Victims of Acid Attack are also entitled to additional special financial assistance up to Rs. 5 lakhs if they need treatment expenses over and above the compensation paid by the respective State/UTs in terms of Central Victim Compensation Fund Guidelines, 2016, no. 24013/94/Misc/2014-CSR.III, MHA/GOI.

### Amount of compensation for Acid attack victims as per schedule under NALSA (Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes 2018)

Victims of Acid Attack	Minimum (in rupees)	Maximum (in rupees)
In case of disfigurement of face	7 Lakh	8 Lakh
In case of injury more than 50%.	5 Lakh	8 Lakh
In case of injury less than 50%.	3 Lakh	5 Lakh
In case of injury less than 20%	3 Lakh	4 Lakh

## VARIOUS SCHEMES AND GUIDELINES IMPLEMENTED BY NALSA

### Implementation of Para-Legal Volunteer Scheme

#### i. Purpose of the Scheme

National Legal Services Authority (NALSA) in the year 2009 brought out a scheme called the Para-Legal Volunteers Scheme which aimed at imparting legal training to volunteers selected from different walks of life so as to ensure legal aid reaches all sections of people through the process of Para-Legal Volunteers Scheme thus removing the barriers into access to justice. The process aims at Legal Services Institutions reaching out to the people at their doorsteps rather than people approaching such Legal Services Institutions.

#### ii. Who are Para-Legal Volunteers?

They are generally from the following groups (but not lawyers) & trained in the basics of different laws applicable at the grass root level with reference to day-to-day life:

- a. Teachers (including retired teachers)
- b. Retired Government servants and senior citizens
- c. Master of social works students and teachers
- d. Anganwadi Workers
- e. Doctors/Physicians
- f. Students & law students (till they enroll as lawyers)
- g. Members of non-political, service oriented NGOs and Clubs

- h. Members of Women Neighbourhood Groups, Maithri Sanghams and other Self Help Groups including of marginalised/vulnerable groups
- i. Educated prisoners with good behaviour, serving long term sentences in prisons.
- j. Any other person whom the District Legal Services Authority or Taluk Legal Services Committee deems fit to be identified as PLVs.

### iii. Where are the Para-Legal Volunteers Deployed?

- a. Ideally every Taluk Legal Services Committee (TLSC) shall have a panel of PLVs; of a maximum number of 25 (50) on their roll at any given point of time. The District Legal Services Authority (DLSA) shall have 50 (100) active PLVs on their roll\*.
- b. PLVs shall be literate, preferably matriculate, with a capacity for overall comprehension. Preferably PLVs shall be selected from persons, who do not look up to the income they derive from their services as PLVs, but they should have a mind-set to assist the needy in the society coupled with the compassion, empathy and concern for the upliftment of marginalised and weaker sections of the society. They must have unflinching commitment towards the cause which should be translated into the work they undertake.

### iv. Duty of Para-Legal Volunteers

- a. To assist, educate, create awareness of the nature of their disputes/issues/problems in their immediate neighbourhood with the basic knowledge in the laws and other available welfare measures and legislation.
- b. The PLV shall visit the Police Station on receiving information and to ensure that the arrested person gets legal assistance, if necessary, through the nearest legal services institutions.
- c. The PLVs shall also ensure that the victims of crime also get proper care and attention. Efforts shall be made by the PLVs to secure compensation for the victims of crime under the provisions of Section 357-A CrPC.

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*\*Schemes for Para-Legal Volunteers (Revised) and Module for the Orientation-Induction-Refresher Courses for PLV Training*

- d. PLVs shall, with proper authorisation from the DLSA/TLSC visit jails, lock-ups, psychiatric hospitals, childrens' homes/observation homes to ascertain the legal service needs of the inmates.
- e. Para-Legal Volunteers shall submit monthly reports of their activities to the DLSA/TLSC under whom they are working in a prescribed format.

### GUIDELINES ISSUED BY NATIONAL LEGAL SERVICES AUTHORITY (NALSA)

- i. National Legal Services Authority (NALSA) has issued guidelines for Legal Services in Juvenile Justice Institutions in connection with the compliance of the order dated 19.08.2011 of Hon'ble Supreme Court of India in *Sampurna Behrua Vs. Union of India & Ors. Writ Petition (Civil) No. 473/2005* to establish legal aid centres attached to JJBs.

When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce child in conflict with the law/parents to the lawyer, the child and the Child's family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.

- ii. National Legal Services Authority (NALSA) has issued guidelines for training the designated juvenile/Child Welfare Officers attached to every police station and the members of the Special Juvenile Police Unit established under Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000. These guidelines have been prepared as per the Order dated 12.10.2011 of the Hon'ble Supreme Court of India in *Sampurna Behrua Vs. Union of India and Others in Writ Petition (Civil) No.473/2005*.

### HON'BLE SUPREME COURT OF INDIA JUDGEMENTS/ORDERS

#### 1. Laxmi Vs. Union of India & Others order dated 10.04.2015

- a. A minimum of Rs. 3,00,000 (Rupees three lakhs only) is made available to each victim of acid attack.
- b. Full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims.
- c. Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of **Section 357C** of the Code of Criminal Procedure, 1973.



- d. The victim of an acid attack to be given a certificate from the hospital where first treated, that the individual is a victim of an acid attack. The victim may utilise this certificate for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.
- e. In case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly, the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the ***Criminal Injuries Compensation Board*** for all purposes.

2. **Nipun Saxena & Anr. Vs. Union Of India & Ors Order Dated 11-05-2018:** The Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes 2018 framed by NALSA to be implemented by all the State Governments and Union Territory Administrations.

*‘The Scheme postulates only the minimum requirements. This does not preclude the State Governments and Union Territory Administrations from adding to the Scheme. However, nothing should be taken away from the Scheme.’*

## FREQUENTLY ASKED QUESTIONS (FAQs)

### 1. What is the procedure for compensation for POCSO victims?

**Answer:** The victims under POCSO Act have to be paid compensation only as per the procedure prescribed under the POCSO Act. (**Section 33(8), POCSO Act read with Rule 7, POCSO Rules**)

### 2. Are acid attack victims eligible for other benefits?

**Answer:** Yes, victims of acid attack are also entitled to additional compensation of Rs. 1 lakh under Prime Minister’s National Relief Fund vide memorandum no. 24013/94/Misc./2014-CSR-III/GOI/MHA dated 09.11.2016. An additional special financial assistance up to Rs. 5 lacs may be provided to an acid attack victim who needs treatment expenses over and above the compensation paid by the respective State/UTs in terms of Central Victim Compensation Fund Guidelines 2016, No. 24013/94/Misc/2014-CSR.III, MHA/GOI.

**3. What is the role of police in initiating the process of compensation to acid attack victims?**

**Answer:** The immediate first aid/medical facility/interim relief to acid attack victims from SLSA/DLSA may also be ordered on the certificate of a police officer, not below the rank of the officer-in-charge of the police station. The SHO/SP/DCP shall mandatorily share copy of FIR immediately after its registration with State Legal Services Authority/ District Legal Services Authority.

**4. Can State Government fix compensation lower than the amount prescribed in 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes 2018'?**

**Answer:** No, as per the Hon'ble SC order in Laxmi Vs. Union of India & Ors.

## ANNEXURE - I

**HIGHLIGHTS OF SOME IMPORTANT SCHEMES BY NALSA****NALSA (Legal Services to Victims of Acid Attacks) Scheme, 2016**

- a. SLSAs and DLSAs to ensure that the victims of acid attacks do not have to face any kind of delay in procedural wrangles and the interim compensation is awarded at the earliest.
- b. Support persons and legal representation to be provided to victims of acid attacks during the recording of their statement under Section 164 CrPC giving evidence etc.
- c. Every District Legal Services Authority and Taluk Legal Services Committee to designate at least one panel lawyer as Legal Services Officer for the purpose of this Scheme.
- d. The District Legal Services Authorities to depute sufficient number of PLVs for the implementation of this Scheme.
- e. The PLVs acts as the interface between the victims of acid attacks and the Legal Services Institutions.

**NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015**

The scheme provides legal services to victims of trafficking including women of all age groups and at every stage i.e. prevention, rescue and rehabilitation. The scheme emphasises to specially train the PLVs attached to the Police Stations to handle cases of missing children, report arrest of sex workers and so on. To organise public hearing where community members will depose their experience and where the jury is made up of SLSA/DLSA Chairperson.

**NALSA (Legal Services to Victims of Drug Abuse And Eradication Of Drug Menace) Scheme, 2015**

The rise in drug trafficking and abuse among the youth, adolescent and children has serious implication to the progress of the individual as well as the nation. This scheme generates awareness amongst the public and vulnerable masses organise literacy camps, sensitise the stakeholders, co-ordinates with drug de-addiction centers, so on. Special units at all levels to be organised comprising of Judicial officers, lawyers, Medical officers, PLVs and a representative from a NGO. This scheme emphasises on educating, training all stakeholders and tackle, intervene, and prevent drug abuse.

### **NALSA (Legal Services to Mentally Ill and Mentally Disabled Persons) Scheme, 2015**

The objective of the scheme is to ensure that the mentally ill or mentally disabled are not stigmatised and that they are dealt with as individuals who are to be helped to enforce all rights they are entitled to and as assured to them by law.

## **THE ROLE OF JUDICIARY IN CHILD PROTECTION**

**J**udiciary is one of the crucial pillars in the criminal justice system and has a pivotal role in matters pertaining to child protection. Sensitised judicial officers, child friendly courts and child friendly approach would go a long way in safeguarding the rights of the children.

Some of the important roles of judiciary in child protection are highlighted as under;

### **Holding of Judicial Colloquium**

A Judicial Colloquium is to be organised by each High Court for sensitisation of judicial officers of trial courts on human trafficking as per guidelines of Ministry of Home Affairs, Government of India.

### **Juvenile Justice Committees**

The genesis of the Juvenile Justice Committees of the Supreme Court and the High Courts can be traced back to the resolutions passed by the Chief Justices' Conference from 2006 to 2016. The Resolutions of 2006, 2009, 2013, 2015, and 2016 in varying degrees, urged Chief Justices of all High Courts to nominate a High Court Judge to oversee the conditions and functioning of the Institutions created under the (erstwhile) Juvenile Justice (Care and Protection of Children) Act of 2000, under the broad mandate of overseeing the Juvenile Justice System. The 2013 Chief Justices' Conference, specifically resolved that the Juvenile Justice Committee set up in the Delhi High Court, under the JJ Act of 2000, be set up in all High Courts to monitor the implementation of the provisions of the Act in its true spirit.

The Supreme Court Committee on Juvenile Justice (SCC-JJ) was subsequently set up in August 2013 to ensure the effective implementation of the JJ Act of 2000\*.

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*\*Guiding framework for juvenile justice committees for High Courts  
([http://mediationcentrepnhc.gov.in/jjmc/NOTIFICATION/FINAL%20Draft\\_Guiding%20Framework%20for%20HC%20JCs%20\\_23%20Apr%202018-HCs.pdf](http://mediationcentrepnhc.gov.in/jjmc/NOTIFICATION/FINAL%20Draft_Guiding%20Framework%20for%20HC%20JCs%20_23%20Apr%202018-HCs.pdf))*

The Juvenile Justice Committees of the Supreme Court and the High Courts play a crucial role in the matters of juvenile justice and child protection.

## ROLE OF JUDICIARY UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 AND JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) MODEL RULES, 2016

### Juvenile Justice Board

A Juvenile Justice Board consists of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (known as Principal Magistrate) with at least 3 years of experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. **(Section 4(2), JJ Act, 2015)**

- The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise. **(Section 8(2) JJ Act, 2015)**
- The JJB is required to complete the inquiry within a period of 4 months from the date of first production of child before the Board (Section 14(2) JJ Act, 2015). In case of heinous offence, the preliminary assessment should be disposed of by the Board within a period of 3 months from the date of first production of the child before the Board. **(Section 14(3))**

Provided that in case of serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing. **(Section 14(4))**

- The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every 3 months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards. **(Section 16(1) JJ Act, 2015)**
- The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government. **(Section 16(3) JJ Act, 2015)**

- The District Judge has to conduct an inspection of the Board once every quarter and appraise the performance of the members of the Board on the basis of their participation in the proceedings of the Board and submit a report to the Selection Committee. *(Rule 12 (3) JJ Act, 2015)*

### Procedure to be followed by a Magistrate who has not been Empowered under this Act

- When a magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence, and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately with the record of such proceedings to the Board having jurisdiction. *(Section 9(1) JJ Act, 2015)*
- In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child, or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the Rules made thereunder, even if the person has ceased to be a child on or before the date of commencement of this Act. *(Section 9(2) JJ Act, 2015)*

- If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the Court shall be deemed to have no effect. *(Section 9(3) JJ Act, 2015)*
- In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety. *(Section 9(4) JJ Act, 2015)*

### Procedure in Relation to Children's Court

'Children's Court' means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from

Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act. *(Section 2(20) JJ Act, 2015)*

### **Heinous Offence Committed by a Child of 16 years of age or above**

1. In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of 16 years, the JJB shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence. *(Section 15(1) JJ Act, 2015)*
2. The preliminary assessment shall be disposed by the JJB within a period of 3 months from the date of first production of the child. *(Section 14(3) JJ Act, 2015)*
3. After preliminary assessment, the JJB may pass an order that there is a need for trial of the said child as an adult and the board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences. *(Section 18(3))*
4. As per Section 19(1), after the receipt of preliminary assessment from the Board, the Children's Court may decide that,
  - a. there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;
  - b. there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18.
5. The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker. *(Section 19(2))*
6. The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of 21 years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill



development, alternative therapy such as counselling, behavior modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety. **(Section 19(3))**

7. The Children’s Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety, and to ensure that there is no ill-treatment to the child in any form. **(Section 19(4))**
8. The reports under Sub Section (4) shall be forwarded to the Children’s Court for record and follow up, as may be required. **(Section 19(5))**

### Procedures Prescribed in Rule 13, JJ Model Rules

1. Upon receipt of preliminary assessment from the Board, the Children’s Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.
2. Where an appeal has been filed under Sub-Section (1) of Section 101 of the Act against the order of the Board declaring the age of the child, the Children’s Court shall first decide the said appeal.
3. Where an appeal has been filed under Sub-Section (2) of Section 101 of the Act against the finding of the preliminary assessment done by the Board, the Children’s Court shall first decide the appeal.
4. Where the appeal under Sub-Section (2) of Section 101 of the Act is disposed of by the Children’s Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per Section 19 of the Act and these rules.
5. Where the appeal under Sub-Section (2) of Section 101 of the Act is disposed of by the Children’s Court on a finding that the child should be tried as an adult, the Children’s Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and these Rules.
6. The Children’s Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.
7. Where the Children’s Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:
  - a. It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.
  - b. The Children’s Court, while conducting the inquiry shall follow the

procedure for trial in summons case under the Code of Criminal Procedure, 1973.

- c. The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.
- d. When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by Section 165 of the Indian Evidence Act, 1872.
- e. While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.
- f. The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognised voluntary organisation on the basis of interaction with the child and his family, where possible.
- g. The Children's Court, in such cases, may pass any orders as provided in Sub-Sections (1) and (2) of Section 18 of the Act.

### **Children's Court's Decisions on Trial of the Child as an Adult**

1. It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.
2. The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognised voluntary organisation on the basis of interaction with the child and his family, where possible.
3. Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of 21 years.
4. While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form

- 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.
5. The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.
  6. When the child attains the age of 21 years and is yet to complete the term of stay, the Children's Court shall:
    - a. interact with the child in order to evaluate whether the child has undergone reformative changes and if the child can be a contributing member of the society.
    - b. take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.
    - c. After making the evaluation, the Children's Court may decide to:
      - release the child forthwith;
      - release the child on execution of a personal bond with or without sureties for good behaviour;
      - release the child and issue directions regarding education, vocational training, apprenticeship, employment, counseling and other therapeutic interventions with a view to promoting adaptive and positive behavior etc.;
      - release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.
  7. The child shall for the first quarter after release, meet with the monitoring authority on a fortnightly basis or at such intervals as may be directed by the Children's Court. The monitoring authority shall fix a time and venue for such meetings in consultation with the child. The monitoring authority will forward its observations on the progress of the child on a monthly basis to the Children's Court.
  8. Where the child, after release is found to be indulging in criminal activities or

associating with people with criminal antecedents, he shall be brought before the Children's Court for further orders.

9. If it is found that the child no longer requires to be monitored, the monitoring authority shall place the detailed report with recommendations before the Children's Court which shall issue further directions either terminating the monitoring or for its continuation.
10. After the first quarter, the child shall meet the monitoring authority at such intervals as may be directed by the Children's Court based on the recommendations made by the monitoring authority at the end of the first quarter and the monitoring authority shall forward its report to the Children's Court which shall review the same every quarter
11. When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society.

*(Section 20 JJ Act, 2015)*

### **Destruction of Records**

The records of conviction in respect of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer, and thereafter be destroyed by the Person-in-charge or Board or Children's Court, as the case may be.

Provided that in case of a heinous offence where the child is found to be in conflict with law under Clause (i) of Sub-Section (1) of Section 19 of the Act, the relevant records of conviction of such child shall be retained by the Children's Court. *(Rule 14)*

### **Rehabilitation and Social Re-Integration**

1. The placement of a child in a fit facility shall be for a period as deemed fit by the Board or the Committee or the Children's Court. *(Rule 27(12) JJ Model Rules, 2016)*
2. The Board or the Committee or the Children's Court may place the child with a fit person in cases wherever required, including where the child cannot be sent to a Child Care Institution due to distance and/or odd time. *(Rule 28(7))*
3. The Board or the Committee or the Children's Court, depending on the need of

the child and in consultation with the fit person shall determine the period for which a child shall remain with the fit person. **(Rule 28(9))**

4. The child shall not be placed with a fit person for a period exceeding 30 days, and in such cases where the child requires further care, the Committee may consider the placement of the child in foster care or may consider other rehabilitative alternatives for the child. The Board or the Children's Court in such cases where the period of placement of the child may exceed 30 days, refer the matter to the Committee for further orders in respect of the child. **(Rule 28(10))**
5. A child may be sent to the Children's Home by the Committee for rehabilitation stay and to the special home or the place of safety by the Board or the Children's Court. **(Rule 69(E)(1))**
6. The child shall be issued the Rehabilitation Card in Form 14 which shall state the duration of stay of the child, unless the duration is shortened by a specific order in that respect by the Board or the Committee or the Children's Court. **(Rule 69(E)(2))**
7. No meeting of a child in child care institution shall be permitted with the parent or guardian or relatives where such visitors have been found to be involved in subjecting the child to violence, abuse and exploitation or carrying any prohibited articles, except with the express permission granted by the Board or the Committee or the Children's Court or when such meeting has been specifically directed by the counsellor of the child. **(Rule 74(3))**
8. Where a girl child has no place to go after release from child care institution and requests for stay in the Child Care Institution after the period of stay is over, the person-in-charge may, subject to the approval of the Board or the Committee or the Children's Court, allow her stay only for a limited period till the time, some other suitable arrangement is made by her. **(Rule 79(8))**

### **Procedure in Case of Child Suffering from Disease Requiring Prolonged Medical Treatment, in an Approved Place and Transfer of a Child who is Mentally Ill or Addicted to Alcohol or Other Drugs (Section 80)**

1. The Board or the Committee or the Children's Court may send the child to a fit facility for such period as may be certified by a medical officer or mental health expert or on the recommendation of the person-in-charge or Probation Officer or Child Welfare Officer or Case Worker, as necessary for proper treatment of the child who is mentally ill or addicted to alcohol or drugs or any other substance

which lead to behavioral changes in a person for the remainder of the term for which he has to stay. **(Rule 80(1))**

2. When the child is cured of the disease or physical or mental health problems, the Board or the Committee or the Children's Court may, order the child to be placed back in the care from where the child was removed for treatment and if the child no longer requires to be kept under further care, the Board or the Committee or the Children's Court may order him to be discharged. **(Rule 80(2))**
3. The copy of the restoration order along with a copy of the order for escort shall be forwarded by the Board or the Committee or the Children's Court to the District Child Protection Unit which shall provide funds for the restoration of the child, including travel and other incidental expenses. **(Rule 82(7))**
4. When a child expresses his unwillingness to be restored back to the family, the Board or the Committee or the Children's Court shall interact with the child to find out the reasons for the same and record the same and the child shall not be coerced or persuaded to go back to the family. The child may also not be restored back to the family where the social investigation report prepared by the Child Welfare Officer or the social worker or the Case Worker or the Non-Governmental Organisation establishes that restoration to family may not be in the interest of the child. The child would also not be restored back to the family where the parents or guardians refuse to accept the child back. In all such cases, the Board or the Committee or the Children's Court may provide alternative means for rehabilitation. **(Rule 82(8))**

### Procedure for Restoration of Child and Follow Up

1. The Board or the Committee or the Children's Court may make an order in Form 44 for the release of the child placed in a Child Care Institution after hearing the child and his parents or guardian, and after satisfying itself as to the identity of the persons claiming to be the parents or the guardian. **(Rule 82(1))**
2. While passing an order for restoration of the child, the Board or the Committee or the Children's Court shall take into account the reports of the Probation Officer, social worker or Child Welfare Officer or Case Worker or Non-Governmental Organisation, including report of a home study prepared on the direction of the Board or the Committee or the Children's Court in appropriate cases, and any other relevant document or report brought before the Board or the Committee or the Children's Court. **(Rule 82(2))**

3. The Board or the Committee or the Children’s Court, while directing restoration of the child, may pass order for an escort in Form 45, where necessary. **(Rule 82(4))**

### Other Roles of the Childrens’ Court

1. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force. **(Section 21 JJ Act 2015)** Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child. **(Section 23(1))**
2. If during the inquiry by the Board or by the Children’s Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child. **(Section 23(2))**

### Adoption

1. As per Section 61(1), before issuing an adoption order, the Court shall satisfy itself that,
  - a. the adoption is for the welfare of the child;
  - b. due consideration is given to the wishes of the child having regard to the age and understanding of the child; and
  - c. that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

It may be noted that as per Section 2(23), JJ Act, 2015 ‘Court’ means a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts. The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing. **(Section 61(2))**

2. The procedure for obtaining an Adoption Order from the Court concerned would be as provided in Adoption Regulations. **(Rule 45(1))**
  - The Court, for the purpose of an application for adoption order, shall not

be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) and Evidence Act, 1872. The procedure, as laid down in the Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations shall be followed. **(Rule 45(2))**

3. The Court shall dispose of an application for making an adoption order within a period of two months from the date of filing of the application, as provided under Sub-Section (2) of Section 61 of the Act and where the judge of the Court concerned ordinarily exercising jurisdiction in such matters is not available for a period of more than one month, the applications shall be disposed of within stipulated time by other senior most judge. **(Rule 46(1))**
4. No information or Court order regarding adoption disclosing the identity of the child shall be uploaded on any portal except as may be stipulated in Adoption Regulations. **(Rule 46(2))**
5. The prospective adoptive parents shall file an application in Family Court or District Court or City Civil Court, as the case may be. **(Regulation 55(4) Adoption Regulation, 2017)**
6. Before issuing an adoption order, the Court shall satisfy itself of the various conditions stipulated under Section 61 of the Act, and regulations 51 to 56, as the case may be. **(Regulation 55(5) Adoption Regulation, 2017)**

### Offences against Children

1. Special children's rooms may be designated in every Court Complex with facility for separate space for children waiting and children who are giving their statement or interview; separate entrances, wherever feasible; video-conferencing facilities for interacting with children, wherever possible; provision for entertainment for children such as books, games, etc. Statements and interviews, other than during trial of children who are, victims, or witnesses, shall be recorded through child friendly procedure in a children's room. **(Rule 54(12))**
2. The Legal Services Authority may provide a support person or para legal volunteer for pre-trial counseling and to accompany the child for recording of the statement who shall also familiarise the child with the Court and Court environment in advance, and where the child is found to have been disturbed by the experience of coming to the Court, orders for video-conferencing may be passed by the Court, on an application moved by the support person or para-legal volunteer or by the Legal Services Authority, on behalf of the child. **(Rule 54(14))**
3. If the child victim or witness does not belong to the District or State or Country, the



statement or interview or deposition of the child may also be recorded through video conferencing. **(Rule 54(15))**

4. Where video-conferencing is not possible, all necessary accommodation, travel expenses for the child and a guardian accompanying the child will be provided as per actuals by the State Government or Union Territory Administration. **(Rule 56(16))**
5. Separate rooms for vulnerable witnesses may be designated in every Court Complex to record the evidence of child witnesses. **(Rule 54(17))**
6. During a trial involving children, as mentioned in **Rule 54(18)**, the following norms may be followed to ensure a child-friendly atmosphere:
  - a. Parents or guardian(s) shall accompany the child at all times (only if it is in the best interest of the child). If the said person has a conflict of interest, another person of the child's choice, or fit person, or representative of the fit institution identified, or psychologist appointed by the Committee or Court, shall accompany the child at all times, on approval of the Court.
  - b. In a situation where parents or guardians may have been involved in the commission of the crime, or where the child is living in a place where the child is at risk of further trauma, and the same is brought to the notice of the Court, or the Court on its own motion shall direct the child to be taken out of the custody or care, or out of such situation and the child should be immediately produced before the Committee.
  - c. Before the statement of the child is recorded, the Court to ensure that the child is capable of making a voluntary statement.
  - d. No statement of the child to be disregarded as evidence in the trial solely on the basis of the age of the child.
  - e. Images or statements admissible in the interview of the child not to be detrimental to the mental or physical well-being of the child.
  - f. Length and questions admissible at the interview not to be taxing and to be suitable to the attention span of the child.
  - g. In case of young children, or otherwise incapacitated child, alternative methods of interaction and evidence collection that is less intimidating to be adopted.
  - h. The Court to ensure that at no stage during trial, the child comes face to face with the accused.

7. All functionaries of the Court and others concerned may be sensitised on the special needs of children and child right. **(Rule 54(20))**
8. After the process of trial:
  - a. The child or guardian should be informed of the decision of the judicial proceeding and its implication.
  - b. The child or guardian should be made aware of his legal options. **(Rule 54(21))**

### Procedure in Case of Offence of Corporal Punishment

1. All complaints relating to corporal punishment shall be forthwith presented before the Judicial Magistrate of First Class nearest to the Child Care Institution and copies thereof shall be forwarded to the Board or the Committee. **(Rule 60(4))**
2. The Judicial Magistrate shall get the case investigated by the Child Welfare Police Officer concerned and take appropriate measures on receipt of a complaint. **(Rule 60(5))**
3. Where the Judicial Magistrate First Class finds that the management of the institution is not cooperating with the inquiry or complying with the orders of the court under Sub-Section (3) of Section 82 of the Act. The Judicial Magistrate First Class, will either take cognisance of the offence himself or direct the registration of FIR and proceed against the person-in-charge of the management of the institution. **(Rule 60(7))**
4. A complaint of subjecting a child to corporal punishment under Section 82 of the Act may be made by the child or any one on his behalf. **(Rule 60(1))**

### Classification of Offenses and Designated Courts

1. Where an offence under this Act is punishable with imprisonment for a term more than 7 years, then such offence shall be cognisable, non-bailable and triable by a Children's Court. **(Section 86(1))**
2. Where an offence under this Act is punishable with imprisonment for a term of 3 years and above, but not more than 7 years, then, such offence shall be cognisable, non-bailable and triable by a Magistrate of First Class. **(Section 86(2))**
3. Where an offence, under this Act, is punishable with imprisonment for less than 3 years or with fine only, then, such offence shall be non-cognisable, bailable and triable by any Magistrate. **(Section 86(3))**

### Appeal (*Section 101*)

1. Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within 30 days from the date of such order, prefer an appeal to the Children’s Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate: (*Section 101(1)*)

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of 30 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of 30 days.

2. An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under Section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said Section. (*Section 101(2)*)
3. No appeal shall lie from,
  - a. any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of 16; or
  - b. any order made by a Committee in respect of finding that a person is not a child in need of care and protection. (*Section 101(3)*)
4. No second appeal shall lie from any order of the Court of Session, passed in appeal under this Section. (*Section 101(4)*)
5. Any person aggrieved by an order of the Children’s Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973. (*Section 101(5)*)

### Revision

The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children’s Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto, as it thinks fit:

Provided that the High Court shall not pass an order under this Section prejudicial to

any person without giving him a reasonable opportunity of being heard. (*Section 102*)

### Selection Committee

1. A retired judge of High Court is appointed as the Chairperson of the Selection Committee in consultation with the Chief Justice of the High Court concerned. (*Rule 87(1)(i)*)
2. The Selection Committee selects and recommends a panel of names in order of merit to the State Government for appointment as member of the JJB or chairperson or member of the CWC as the case may be. (*Rule 88(7)*)

## ROLE OF JUDICIARY UNDER PROHIBITION OF CHILD MARRIAGE ACT, 2006 (PCM ACT)

### District Court

‘District Court’ means, in any area for which a Family Court established under Section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a city Civil Court exists, that court and in any other area, the principal Civil Court of original jurisdiction and includes any other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act. (*Section 2(e), PCM Act*)

### Decree of Nullity

The District Court may issue a decree of nullity on the basis of a petition for annulling a child marriage. The application may be filed in the District Court only by the contracting party to the marriage who was a child at the time of marriage. (*Section 3(1)*)

### Maintenance and Residence for Female Contracting Party to a Child Marriage

While granting a decree under Section 3, the District Court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage. (*Section 4(1)*)

- i. The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party. (*Section 4(2)*)
- ii. The amount of maintenance may be directed to be paid monthly or in a lump sum. (*Section 4(3)*)

- iii. In case the party making the petition under Section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage. *(Section 4(4))*

### **Custody and Maintenance of Children of Child Marriages**

Where there are children born of the child marriage, the District Court shall make an appropriate order for the custody of such children. *(Section 5(1))*

- i. While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the District Court. *(Section 5(2))*
- ii. An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the District Court may, in the interest of the child, deem proper. *(Section 5(3))*
- iii. The District Court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians. *(Section 5(4))*

### **Power of District Court to Modify Orders**

The District Court shall have the power to add to, modify or revoke any order made under Section 4 or Section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition. *(Section 7)*

### **Issue of Injunction Prohibiting Child Marriage**

Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the First Class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage. *(Section 13(1))*

- i. The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take suo motu cognisance on the basis of any reliable report or information. *(Section 13(3))*
- ii. No injunction under Sub-Section (1) shall be issued against any person or member of an organisation or association of persons unless the Court has previously given

notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this Section. **(Section 13(6))**

- iii. An injunction issued under Sub-Section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued. **(Section 13(7))**
- iv. The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under Sub-Section (1). **(Section 13(8))**
- v. Where an application is received under Sub-Section (1) the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing. **(Section 13(9))**

## ROLE OF JUDICIARY UNDER POCSO ACT, 2012 AND POCSO RULES, 2012

### Recording of a Statement of a Child by Magistrate

1. If the statement of the child is being recorded under Section 164 of the Code of Criminal Procedure, 1973, the Magistrate recording such statement shall notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to Sub-Section (1) of Section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case. **(Section 25(1))**

- The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under Section 173 of that Code. **(Section 25(2))**
2. The Magistrate or the police officer, as the case maybe, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence. **(Section 26(1))**
    - a. Wherever necessary, the Magistrate or the police officer, as the case maybe, may take the assistance of translator or an interpreter, having

- such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child. **(Section 26(2))**
- b. The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child. **(Section 26(3))**
  - c. Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means. **(Section 26(4))**

### Designation of Special Courts

- i. For the purpose of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court session to be a Special Court to try the offences under this Act.

Provided that if a Court of Session is notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this Section. **(Section 28(1))**

- ii. While trying an offence under this Act, a Special Court shall also try an offence (other than the offence referred to in Sub-Section (1)), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. **(Section 28(2))**
- iii. The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under Section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online. **(Section 28(3))**

### Presumption by Special Court

- i. Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3,5,7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. **(Section 29)**

- ii. In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. **(Section 30(1))**
  - For the purposes of this Section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. **(Section 30(2))**

### Procedure and Powers of Special Courts

A Special Court may take cognisance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. **(Section 33(1))**

- i. The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child. **(Section 33(2))**
- ii. The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial. **(Section 33(3))**
- iii. The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court. **(Section 33(4))**
- iv. The Special Court shall ensure that the child is not called repeatedly to testify in the court. **(Section 33(5))**
- v. The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial. **(Section 33(6))**
- vi. The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:  
 Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. **(Section 33(7))**
- vii. Subject to the provisions of this Act, a Special Court shall, for the purpose of the



trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session. **(Section 33(9))**

### Determination of Age by Special Court

Where a child commits any offence under this Act, he/she shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. **(Section 34(1))**

- i. If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. **(Section 34(2))**
- ii. No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under Sub-Section (2) was not the correct age of that person. **(Section 34(3))**

### Period for Recording of Evidence of Child

The evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognisance of the offence and the Special Court will record reasons of delay, if any. **(Section 35(1))**

### Trial by Special Court

- i. The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognisance of the offence. **(Section 35(2))**
- ii. The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the Court, it shall proceed to issue a commission in accordance with the provisions of Section 284 of the Code of Criminal Procedure, 1973. **(Section 37)**

### Child not to see Accused at the Time of Testifying

- i. The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate. **(Section 36(1))**

- For the purposes of Sub-Section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device. *(Section 36(2))*

### Assistance of Expert

- i. Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child. *(Section 38(1))*
  - If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child. *(Section 38(2))*
- ii. In proceedings under Section 38, the Special Court shall ascertain whether the child speaks the language of the Court adequately, and that the engagement of any interpreter, translator, special educator, expert or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest. *(Rule 3(9))*

### Alternate Punishment

Where an act or omission constitute an offence punishable under this Act and also under Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 376, 376A, 376AB, 376C, 376D, 376DA, 376DB, or Section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree. *(Section 42)*

### Compensation

- i. In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child. *(Section 33(8))*
- ii. The Special Court, may in appropriate cases on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to

the child shall be adjusted against the final compensation, if any. **(Rule 7 (1))**

- a. The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence. **(Rule 7(2))**
- b. According to Rule 7(3), the Special Court, under Sub-Section 8 of Section 33 of the Act read with Sub-Section 2 and 3 of Section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:
  - Type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
  - The expenditure incurred or likely to be incurred on his medical treatment for physical and/ or mental health;
  - Loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
  - Loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
  - The relationship of the child to the offender, if any;
  - Whether the child became pregnant as a result of the offence;
  - Whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
  - Any disability suffered by the child as a result of the offence;
  - Financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation; and
  - Any other factor that the Special Court may consider to be relevant.

## CODE OF CRIMINAL PROCEDURE, 1973

### Order for Maintenance of Children

If any person having sufficient means neglects or refuses to maintain,

- i. his wife, unable to maintain herself, or
- ii. his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- iii. his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- iv. his father or mother, unable to maintain himself or herself, a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rates as such Magistrate thinks fit and to pay the same to such person, as the Magistrate may from time-to-time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. (*Section 125*)

### Release on Probation of a Convicted Person

When any person not under 21 years of age is convicted of an offence punishable with fine only, or with imprisonment for a term of 7 years or less, or when any person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed; that it is expedient that the offender should be released on probation of good conduct. The Court may, in that case, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called. (*Section 360(1)*)

### Trial for Cases of Rape

- i. Any offence of rape (under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB) shall be tried as far as practicable by a court presided over by a woman. (*Section 26*)

- ii. Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of 16 years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders. *(Section 27)*
- iii. If the inquiry or trial relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB of the Indian Penal Code, the inquiry or trial shall, be completed within a period of 2 months from the date of filing of the charge sheet. *(Proviso to Section 309(1))*

### **Mode of Taking and Recording Evidence**

Where the evidence of a woman below the age of 18 years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused *(Section 273)*.

### **Provisions as to Bail and Bonds**

When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but,

- (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- (ii) such person shall not be so released if such offence is a cognisable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for 7 years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognisable offence:

provided that the Court may direct that a person referred to in Clause (i) or Clause (ii) be released on bail if such person is under the age of 16 years or is a woman or is sick or infirm. *(Section 437(1))*

### **Bond Required from Minor**

When the person required by any Court, or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only. *(Section 448)*

### **Anticipatory Bail**

Anticipatory Bail cannot be granted by High Court or Court of Session to any case involving the arrest of person on accusation of having committed an offence under Sub-Section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code. (*Section 438 (4)*)

### **Special powers of High Court or Court of Session regarding Bail**

The High Court or the Court of Session shall, before granting a bail to a person who is accused of an offence triable under Sub-Section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code, give notice of the application for bail to the public prosecutor within a period of 15 days from the date of receipt of the notice of such application. (*Section 439 (1)*)

The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under Sub-Section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code. (*Section 439 (1-A)*)

## **PROBATION OF OFFENDERS ACT, 1958**

### **Imprisonment of Offenders under 21 years of Age.**

When any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. (*Section 6(1)*)

### **Appeal & Revision**

In any case where any person under 21 years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under Section 3 or Section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the Court to which appeals ordinarily lie from the sentences of the former Court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit. (*Section 11(3)*)

## CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

- i. No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act. (*Section 16(3)*)
- ii. The District Magistrate may compound certain offences under the Act as per the provision of Section 14D.
- iii. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded, shall be discharged. (*Section 14D(4)*)

## SUPREME COURT JUDGMENTS

### 1. Sampurna Behura Vs. Union of India

As per order dated 9th February 2018 WPC (Civil) 473/2005 in Sampurna Behura Vs. Union of India, the Supreme Court has issued directions and made observations relating to Judiciary as hereunder:

- a. High Court & Juvenile Justice Courts are advised to expedite the setting-up of Secretariats for assisting them in the fulfillment of their mandate towards a stronger and strengthened juvenile justice system. The Secretariats of the High Court & Juvenile Justice Courts, should be staffed with judicial and/or administrative officers of the High Court. Support and assistance of any external agency (such as, UNICEF, National Law Schools, any other NGO, etc.), may be taken on the basis of specific requirements and on project basis.
- b. Since the involvement of the State Governments and the Union Territories is critical to child rights and the effective implementation of the JJ Act, it would be appropriate if each High Court and the Juvenile Justice Committee of each High Court continues its proactive role in the welfare of children in their State. To make the involvement and process more meaningful, we request the Chief Justice of every High Court to register proceedings on its own motion for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 so that road-blocks if any, encountered by statutory authorities and the Juvenile Justice Committee of the High Court are meaningfully addressed after hearing the concerned governmental authorities.

- c. We request and urge the Chief Justice of each High Court to seriously consider establishing Child Friendly Courts and vulnerable witness courts in each district. Inquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012, the Prohibition of Child Marriage Act, 2006, trials for sexual offences under the Indian Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. It is often said that the experience in our courts of a juvenile accused of an offence or the victim of a sexual offence is traumatic. We need to have some compassion towards them, even juveniles in conflict with law, since they are entitled to the presumption of innocence, and establishing Child Friendly Courts and vulnerable witness courts is perhaps one manner in which the justice delivery system can respond to ease their pain and suffering. Another advantage of such Child Friendly Courts and vulnerable witness courts is that they can be used for trials in which adult women are victims of sexual offences since they too are often traumatised by the not so friendly setting and environment in our Courts.

## 2. **Alakh Alok Srivastava Vs. Union of India and Others**

As per Supreme Court Order dated 1st May 2018 in WPC No. 76/2018 (*Alakh Alok Srivastava Vs. Union of India and others*)

- a. The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of said Courts are sensitised in the matters of child protection and psychological response.
- b. The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under POCSO Act.
- c. The instruction should be issued to the Special Courts to fast-track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act, and thus complete the trial in a time-bound manner, or within a specific timeframe under the Act.
- d. The Chief Justices of the High Courts are requested to constitute a committee of 3 Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three judges are not available, the Chief Justices of the said Courts shall constitute one-judge committee.



- e. Adequate steps have to be taken by the High Courts to provide child-friendly atmosphere in the Special Courts keeping in view the provision for the POCSO Act so that the spirit of the Act is observed.

### 3. **Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Others**

The Supreme Court vide its order dated 5th May, 2017 in WPC (Criminal) no. 102/2007 (Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India & Others) has issued directions and made observations relating to Judiciary as hereunder:

- a. The High Courts have a constitutional obligation to ensure that the rights of all citizens, including children, as guaranteed under the Constitution are preserved, protected and respected. With this in mind, all the High Courts have since set up a Juvenile Justice Committee consisting of Judges of the High Court and these Committees ensure that the provisions of the Act are implemented in letter and spirit. For better co-ordination on issues relating to children, some High Courts have also provided a Secretariat for the Juvenile Justice Committee.
- b. It is high time that the High Courts exercise their supervisory jurisdiction and intervene and take appropriate remedial steps. It is also high time that training of personnel be given due importance. We may note here that it was brought to our attention by the learned Amicus that untrained or inadequately trained personnel can unwillingly play havoc with the lives of victims of sexual abuse or sexual assault or sexual harassment.
- c. That the judiciary is not far behind in fulfilling its constitutional responsibilities is obvious from the fact that the rather slack implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 even after 4 years of its enactment, compelled the Chief Justice of India to request all the High Courts to set up a Juvenile Justice Committee to ensure effective implementation of the said Act and monitor the activities under the said Act.

### 4. **State of Karnataka Vs. Shivanna**

As per Supreme Court order, State of Karnataka Vs. Shivanna, dated 25th April, 2015 in SLP (Criminal) No. 5703/2011:

- Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan, preferably Judicial Magistrate for the purpose of recording her

statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge sheet/report under Section 173 CrPC is filed.

#### **5. Supreme Court Judgment dated 11th December 2018 in Nipun Saxena & ANR. Vs. Union of India & Ors. (Writ Petition (Civil) No. 565 of 2012)**

The Hon'ble Supreme Court issued the following directions relating to disclosure of identity of victims of rape and POCSO offences:

- a. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
- b. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
- c. FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under POCSO shall not be put in the public domain.
- d. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
- e. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.
- f. All authorities to which the name of the victim is disclosed by the investigating agency or the Court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the Court.
- g. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government Acts under

Section 228A(1)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organisations.

- h. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

The Court also directed all the States/Union Territories are requested to set up at least one 'one stop centre' in every district within one year from today.

## 6. Supreme Court Judgement on Witness Protection

The Supreme Court, in its judgment dated 5th December, 2018 in 'Mahender Chawla & others Vs. Union of India and others (Writ Petition (Criminal) 156 of 2016 has approved '*Witness Protection Scheme 2018*').

The Supreme Court has also directed that 'Vulnerable Witness Deposition Complexes' shall be set up by the States and Union Territories in all district courts in India within a period of one year, i.e., by the end of the year 2019. The Supreme Court has further directed the Central Government to support this endeavour of the States/Union Territories by helping them financially and otherwise. It may be noted that the Supreme Court had also issued direction for setting up of Centre for Vulnerable Witnesses vide its judgment in The State of Maharashtra Vs. Bandu @ Daulat (Order dated 24.10.2017 in Criminal Appeal No. 1820/2017)

'*Witness Protection Scheme 2018*' is applicable for witnesses of those offences which are punishable with death or life imprisonment or an imprisonment up to 7 years and above and also offences punishable under Sections 354, 354A, 354B, 354C, 354D and 509 of IPC.

### I. Salient Features of the Scheme

- a. A witness, or his family member, his duly engaged counsel or IO/SHO/SDPO/Prison SP concerned can submit 'Witness Protection Application' in the prescribed form before a Competent Authority for seeking Witness Protection Order.
- b. 'Competent Authority' means a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the district as Member and Head of the Prosecution in the district as Member Secretary.
- c. The "Witness Protection Order" is an order passed by the Competent Authority detailing the witness protection measures to be taken.
- d. 'Witness Protection Cell' means a dedicated cell of State/UT Police

or Centre Police Agencies assigned for implementation of witness protection order.

## II. Processing of the Application for Protection

- a. As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, it shall forthwith pass an order for calling for the Threat Analysis Report from the ACP/DSP in charge of the concerned Police Sub-Division.
- b. The Threat Analysis Report shall be prepared expeditiously while maintaining full confidentiality and it shall reach the Competent Authority within 5 working days of receipt of the order.
- c. The Threat Analysis Report shall categorise the threat perception and also include suggestive protection measures for providing adequate protection to the witness or his family.
- d. An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police authorities.
- e. While processing the application for witness protection, the Competent Authority shall also interact preferably in person, and if not possible, through electronic means with the witness and/or his family members/ employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.
- f. All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.

## III. Interim Protection

Depending upon the urgency in the matter owing to imminent threat, the Competent Authority can pass orders for interim protection of the witness or his family members during the pendency of the application.

## IV. Implementation of the Witness Protection Order

- a. The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT or the Trial Court, as the case may be. Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall

lie on the Head of the Police in the State/UT.

- b. However, the Witness Protection Order passed by the Competent Authority for change of identity and/or relocation shall be implemented by the Department of Home of the concerned State/UT.
- c. Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority.

#### **V. Revision of the Witness Protection Order**

In case, the Competent Authority finds that there is a need to revise the Witness Protection Order or an application is moved in this regard, and upon completion of trial, a fresh Threat Analysis Report shall be called from the ACP/DSP in charge of the concerned Police Sub-Division.

#### **VI. Types of Protection Measures**

The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration not exceeding 3 months at a time. They may include, ensuring that witness and accused do not come face-to-face during investigation or trial;

- a. monitoring of mail and telephone calls;
- b. arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number;
- c. installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc;
- d. concealment of identity of the witness by referring to him/her with the changed name or alphabet;
- e. emergency contact persons for the witness;
- f. close protection, regular patrolling around the witness's house;
- g. temporary change of residence to a relative's house or a nearby town;
- h. escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
- i. holding of in-camera trials;
- j. allowing a support person to remain present during recording of statement and deposition;

- k. usage of specially designed vulnerable witness court rooms which have special arrangements like live video links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness' voice, so that he/she is not identifiable;
- l. ensuring expeditious recording of deposition during trial on day-to-day basis without adjournments;
- m. awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting a new vocation/profession, if desired; and
- n. any other form of protection measures considered necessary.

### **VII. Protection/Change of Identity and Relocation of Witness**

The scheme also provides for the following measures for the purpose of protecting the witnesses in suitable cases:

- a. Protection of identity of the witnesses, his or her family members,
- b. Change of identity of witnesses, and
- c. Relocation of witnesses to a safer place within the State/UT.

### **VIII. Monitoring and Review**

Once the protection order is passed, the Competent Authority would monitor its implementation and can review the same in terms of follow-up reports received in the matter. However, the Competent Authority shall review the Witness Protection Order on a quarterly basis based on the monthly follow-up report submitted by the Witness Protection Cell.

