

Handbook for

ENDING VIOLENCE AGAINST CHILDREN

III- User Handbook



ACKNOWLEDGEMENTS

This Handbook finds its genesis on the dire need felt by watching many helpless children and families dealing with violence suffered by them. The first appreciation therefore rightly goes to all those children who despite adversities have shown great resilience in navigating through an unfriendly and alien system seeking redressal. Within the NCPCR, the process was led by the Chairperson, Ms.Stuti Kacker who steered from its conception to conclusion.

CREDITS:

Preparation, concept, content writing: Ms.Aparna Bhat, Advocate, Supreme Court of India;

Review and Scrutiny: Mr.Dhaniram, Consultant, JJ and POCSO, NCPCR

Assistants: Ms.Joshita Pai and Ms.Rajkumari Banju Advocates.

ChildFund Team: Mr.Thilakaratane Mudiyanselegae. Programme Director - Strategy and Impact
Mr.Pankaj Mehta, Head - Child Protection

This document is a product of the National Commission for the Protection of Child Rights (NCPCR) and ChildFund India with contributions from Ms.Aparna Bhat, Advocate, Supreme Court of India.

The data or information contained in this document is publicly available and does not violate any intellectual property and copyright of any person(s) other than the Author. The same may be reproduced with due acknowledgement.

ChildFund India,

Program office : 26, Okhla Phase-3, Industrial Area, New Delhi - 110 020

Telephone: 91-11-4100 6540, Fax: 91-11-4100 6542

Email: office@childfundindia.org

National Office: 22, Museum Road, Bangalore - 560001, Karnataka, India

Telephone: 91-80-25587157

Web: www.childfundindia.org



Handbook for

**ENDING VIOLENCE
AGAINST CHILDREN**

III- User Handbook

Madan B. Lokur
Judge
Supreme Court of India



4, Akbar Road
New Delhi-110011
Phone : 23014102
Fax : 23014107
E-mail : madanlokur@nic.in

FOREWORD

The official data on crimes against children and the corresponding data on effective and successful prosecution, reflects the enormous failure of the existing system in adequately responding to, ending and preventing violence against children. Multiple factors come to play when a case of violence emerges, and an efficient response would be one where the concerned stakeholder is in a position to understand the nuances of the law and its application.

It is therefore important that legislations relating to children are completely understood and updated by the law enforcement officers through regular orientation and training. Unfortunately, the large number of cases that get reported and need action do not leave much space and avenues for regular training. Manuals and handbooks which de-mystify the laws and make it available at one place instead of requiring the stakeholder to refer to multiple documents should be able to aid and assist in the learning process.

This initiative of the National Commission for Protection of Child Rights in compiling these statutes concerning violence against children alongwith a suggested SOP for each stakeholder spread across diverse legislations is perhaps the most exhaustive document on this subject in recent times. I congratulate the Chairperson, Ms. Stuti Kacker and her entire team for taking this initiative.

I also congratulate the Childfund Team and the consultant Ms. Aparna Bhat, an advocate practicing in the Supreme Court in preparing this Manual and further disseminating it. I also congratulate Ms. Ramya Subrahmanian on her document on the preventive aspects of violence. It is noteworthy that a simultaneous digital launch of the document has been contemplated which will ensure a wider outreach.

My best wishes to all those who were involved in putting these documents together and continuing their good work on the subject.

NEW DELHI

11th September, 2018

Madan Lokur
(Madan B. Lokur)



स्तुति कक्कड़
Stuti Kacker
अध्यक्ष
Chairperson

भारत सरकार
GOVERNMENT OF INDIA
राष्ट्रीय बाल अधिकार संरक्षण आयोग
NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
नई दिल्ली-110 001
New Delhi - 110 001



FOREWORD


Mapping of NCRB data of crimes against children indicated that from 2009 onwards, crime against children had increased rapidly. Now in 2016, the number of instances reported were 1,06,958 reaffirming this increasing trend, which indicates that besides the stark instances of abuse and violence, the society is not valuing its children.

I realized that addressing violence is the most critical part of addressing issues relating to protection of rights of children. Children tend to seek support from unknown places when conventional structures fail them or turn to crime when they can. Abusing a child leaves a permanent mark on the child hampering the development of the child's potential. The cycle of abuse creates a web leading to children getting more disturbed or in many cases becoming perpetrators of violence towards themselves, their peers, younger children and at times adults. Research indicates that childhood violence leads to significant social and economic loss to the Nation.

The present document prepared in three volumes is an attempt to addressing violence in childhood holistically.

In this effort, I am grateful for the support the Commission received, from Childfund India, particularly from Ms. Neelam Makhijani, Country Director who was a wonderful collaborator in ensuring this document is prepared. I also congratulate Ms. Ramya Subrahmanian, for her elaborate account on prevention of violence despite the complete lack of information on prevention initiatives in India. I am also happy to have got the support from Ms. Aparna Bhat, Advocate in the preparation of the legal aspects of prevention of violence against children.

Within the Commission, besides my Members, I am grateful for the continued support I received from our Advisor (JJ and POCSO) Mr. Kulbir Krishan and Sr. Consultant (JJ and POCSO) Mr. Dhaniram and for the effort they made in bringing these documents to a logical conclusion.


(Stuti Kacker)
10.09.2018

5वां तल, चन्द्रलोक बिल्डिंग, 36, जनपथ, नई दिल्ली-110 001
5th Floor, Chanderlok Building, 36, Janpath, New Delhi-110 001
दूरभाष /Ph. :011-23478212, 23731583 फैक्स /Fax: 011-23731584
ई-मेल / E-mail : cp.ncpcr@nic.in वेब /Web:www.ncpcr.gov.in

2nd Mezzanine Floor,
B Section, 26 Okhla Industrial Estate,
Phase - III, New Delhi - 110 020.

Tel.: 011 - 4052 1827 / 4052 0678 / 4052 0997
E-mail : office@childfundindia.org

www.ChildFundIndia.org

ChildFund
India

Foreword

The issues related to exploitation of children and violence against them is quite prevalent in India as well as worldwide. ChildFund resolutely believes that all children have an inherent and universal right to a life free from violence, abuse, exploitation and neglect to survival and development, and is committed to foster an enabling environment where children can grow to their fullest potential. ChildFund India has been making persistent efforts to achieve the Sustainable Development Goals with special focus on Sub Goal 16.2 - towards ending all forms of abuse, exploitation and violence against children by integrating Child Protection in all its programs.

To strengthen the rights of children in India, ChildFund India in association with the National Commission for Protection of Child Rights (NCPCR), has developed an overarching framework to prevent violence against children. This includes operating procedures for key stakeholders under various legislations related to protection of our children.

In this endeavor, ChildFund worked with the team at NCPCR, child protection specialists and legal experts. The work comprises of 3 volumes; 1) Situational analysis of childhood violence in India; 2) Demystification and unpacking of laws related to protection of children, and 3) User handbook of procedures related to key stakeholders mandated for protecting and combating childhood violence.

I am grateful to Ms. Stuti Kacker, Chairperson, NCPCR, for her leadership, passion and believing in ChildFund India, the team at NCPCR for extending their support for framing a robust and holistic framework - setting our steps towards a global mandate on ending violence against children.

It has been an insightful and a learning experience to work with Advocate Aparna Bhat of the Supreme Court of India, and her team to help us delve in deeper and look at legal frameworks and stakeholder portfolios for enhancing the scope of programming around child protection.

I hope that this knowledge will be used by duty-bearers to protect and safeguard our vulnerable children so that they can realize their full potential and achieve their dreams!

Neelam Makhijani

Neelam Makhijani
CEO and Country Director
ChildFund India

Date: 11/09/2018

PROGRAM STATES:

Andhra Pradesh, Telangana, Bihar, Chhattisgarh, Delhi, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal

Registered under Societies Registration Act: XXI of 1860



1

INTRODUCTION

Every child today has the potential of being a child subjected to violence given certain regressive human behavior in the progressive manner. In 2006, the then UN Secretary General, Kofi Annan had said " States bear primary responsibility for preventing and responding to violence against children and for upholding the Convention on the rights of the child and other treaties which guarantees girls and boys everywhere the right to live their lives free from violence. There must be action from all sectors, from health and education to labour and justice". While prevention of violence is a preferred intervention, law enforcement response becomes inevitable post violence. Despite documentation that there is poor reporting on violence against children, the reported figures are startling. As technology and innovation progresses, the nature of violence perpetrated on children is also taking newer dimensions overwhelming all the stakeholders.

State responses to violence more often than not, culminate in the introduction of new legislations and creating new agencies to implement the same while struggling to meet the institutional demands each such legislation warrants. Consequently, the same law enforcement is faced with the mammoth challenge of having to implement the new laws with their old training and support services. The new cadres created with each legislation also navigate through these processes and the stark contradictions between the paper and reality. Meanwhile, the number of children facing violence and the nature of violence continue to increase.

Laws addressing violence against children are meant to enhance their protection. However, studies do not indicate any significant advantage or benefit that the children have got post these legislations. Anecdotal reports post interactions with law enforcement officers indicate that the laws have progressed but the training has not and hence they fail in matching the manner in which the perpetrators manage to manipulate the very same law that is meant to protect the children. Application of the law does not necessarily involve a single legislation in a given case. A combination of multiple statutes would have to be used to understand which is best suited to the peculiar facts of each case. This application requires besides experience, a thorough understanding of the law and the institutions created under it, the role played by each institute/ stake holder and the appropriate manner in which they can be engaged.

A desk review of a wide range of literature on the subject indicated that there are some excellent pieces of work on various laws. However, a comprehensive single document dealing with multiple laws targeted at all stake holders was not available.

The present handbook is an attempt to fill that deficit.

2

HOW TO USE THIS HANDBOOK

Law enforcement is key in dealing with violence against children. There are diverse laws trying to address various aspects of violence with the overarching Penal Code. In certain instances there are laws in different statutes addressing the same category of violence, more often than not, without not making any reference to each other. Any member of law enforcement would be intrigued and overwhelmed with the legal provisions overlapping and dealt with divergent authorities. Consequently, children, despite best efforts, end up losing the advantages that was designed in the statutes and the rules to benefit them and support them positively. The present endeavour is to assist all the stake holders to understand the law, their roles in it and the roles played by other stake holders. It is designed in a way to facilitate optimum utilisation by multiple stake holders. The handbook is also written with the understanding that the police is the key law enforcement agency even for children with their role modified to suit the sensitive nature of the beneficiary. The underlying theme being violence against children, the aspects relating to civil remedies, though mentioned, have not been deliberated upon. They are introduced for the purposes of context and in some instances for highlighting the rights of the children.

The handbook is divided into three Volumes. Volume I presents the situational analysis of violence against children. Volume II of the handbook is demystifying certain statutes by explaining the framework of the statute, key provisions, key authorities created in the statute, offences and penalties and other beneficial provisions. In addition to that, there is a comprehensive table listing out all the offences against the children, the nature of the offence and the punishment that can be imposed.

Volume III of the handbook is the actual SOP targeting at the following stakeholders.

- a. Police/SJPU/CWPO
- b. Child Welfare Committee;
- c. State Child Protection Society;
- d. District Child Protection Unit;
- e. Social workers/Probation officers
- f. Medical Professionals
- g. Special provisions for Prosecutors;
- h. Special Provisions for Juvenile Justice Board, Children's Court and Special Court.

Convergence of roles and services is another key link for providing better services especially to the vulnerable group amongst the children. It is hence important for each stakeholder to know the simultaneous role of others. This handbook puts all the roles together for easy reference of everyone.

3

STANDARD OPERATION PROCEDURE FOR THE POLICE

GENERAL

The Police may come in contact with a child in the various ways, including:

- a. A call received on dialing 100;
- b. The family and/or the child visit the police station;
- c. A referral is made from the Child Welfare Committee or a hospital;
- d. The child is rescued from a scene of crime (brothel, harmful labour practice, etc.)
- e. A child unaccompanied by parent/guardian or adult, is rescued from a place; or
- f. Any other source

Every Police Station should have at least one designated **Child Welfare Police Officer** not below the rank of Asst. Sub-Inspector with appropriate aptitude, training orientation exclusively to deal with children and should have knowledge of child related legislations.

Reception:

- Make the child seated in a comfortable, child friendly place; If there is no child-friendly place available, ensure that the child is seated in a place which remains private and the child is not subjected to scrutiny by others in the room;
- Allow the child to gather the confidence to communicate;
- In the meantime to call for the woman police officer, support person depending on the nature of violence being reported;
- Make arrangements for and take permission to audio/video record the narration (Under section 161 of the Code of Criminal Procedure). (see box below) Enquire if the child would be able to communicate and narrate the violence that has taken place;
- In case the child is not able to communicate herself, enquire from the accompanying members about the incident;
- In cases where the child appears to need immediate medical attention, ensure that the child is taken to the hospital;
- In cases where the child is unaccompanied, initial efforts will have to be made to enquire about the parents/guardian of the child;
- In cases where the child is unaccompanied, alert the Child Welfare Committee. If it is outside the working hours of the CWC, contact the Chairperson or any member available.

RECORDING THE STATEMENT HAS TO BE AS SOON AS THE CHILD IS IN A POSITION TO SPEAK.
PROVIDING MEDICAL ATTENTION IS CRITICAL.

- In case the child is not able to give the information, the details of the child will have to be uploaded on "trackchild" available at: <http://trackthemissingchild.gov.in/trackchild/index.php>. This child could be a missing child;

Recording The Statement:

Section 161 in The Code Of Criminal Procedure, 1973

161. Examination of witnesses by police.

- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
- (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
- (3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, Section 376C, section 376D, section 376E, or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded by a woman police officer or any woman officer.

- Take permission to video record the narration (Under section 161 of the Code of Criminal Procedure)
- Take details of the perpetrator as described by the child/accompanying adult;
- Gather the details of the incident as the child narrates giving her adequate time to recollect;
- In case the child is unable to narrate at all, allowing the child to discuss with the support person may make the child comfortable to speak;
- Do not permit persons accompanying to prompt her at the first instance. The additional information other persons can give, can be taken only to supplement the child's statement or fill in the gaps in the statement of the child;
- During the course of the narration, if the child requests for a break, or appears to need a break, offer the break to the child;

It is important to understand the nature of the crime. In many cases relating to violence against children, there would be multiple offences committed. Do refer to the chart in the beginning of this manual to check under which head(s) the offences fall. Apply all the sections in the FIR against the accused.

After The Statement:

- Once the FIR is registered, the copy must be given to the child and/or the adult accompanying the child;
- It is recommended that the statement of the child be also recorded before the Magistrate under section 164 of the Code of Criminal Procedure.

Section 164(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

- In cases where the child is likely to be exposed to the perpetrator, the information about the FIR and the details must be provided to the Child Welfare Committee;
- In cases where the child is rescued from a situation of violence, the child must be presented before the Child Welfare Committee so that the child is placed in a Child Care institutions for temporary reception and care;
- The details of the Support Person must be shared with the child. In cases where it is not statutorily required to appoint a support person, contact details about the officer/person who would be available to provide the child/family with the progress of the case, must be given;
- Since all children who are subject to violence are children in need of care and protection, the District Child Protection Unit and CWC must also be informed about the case and the details of the child shared with the unit;

IN CASES WHERE A CHILD IS EXPLOITED FOR LABOUR¹:

Situation A: if the child is less than 15 years and is found working in a factory;

OR

Situation B: A child below 14 years of age is rescued while working for gain in any set up;

OR

Situation C: An adolescent (who has completed 14 years and is below the age of 18 years of age) found working in any workplace which fall within Part A or child working on any process specified under Part B of the schedule laid down in the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 or is prohibited under sections 22 and 23 of the Factories Act, 1948;

Or

Situation D: A child is found who has been forced into any form of labour with no gain or very nominal wage in return of any advance/favour that was made onto the child or onto any person associated to the child and is rescued from such bonded labour;

¹ Shall be governed by the Prohibition of Child and Adolescent Labour Act, the Factories Act, the Indian Penal Code, the Juvenile Justice Act;

The police may receive information with regard to such a child in several ways:

- a. A complaint from any person, member of civil society, institutions or organizations on an incident of child labour, or, adolescent labour in hazardous employment.
- b. Information through its own sources;
- c. During inspection of an establishment if the inspector suspects that a person employed is a child and the occupier of the establishment where the concerned child is working fails to produce a certificate about the age of the person who looks like a child.
- d. If the child has been found/rescued/escaped and been produced before the police under any of the means above or by any other person:

If the Police have information but is yet to procure the child:

- o The police shall, on receipt of the complaint/information, verify if the information/complaint is genuine.
- o If the information is correct, the police shall make preparations for rescuing the child.
- o It shall take measures to check if the concerned child's life is at risk.

Preparation for rescuing the child from the place of establishment or from the control of person employing the child: -

- o Put together a rescue team, which would comprise of a Child Welfare Police Officer/a person in charge of Special Juvenile Police unit/, a woman police officer, labour inspector (s), members of civil society;
- o Be in civilian clothes and not in the uniform;

165. Search by police officer:

- (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.
- (2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.
- (3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.
- (4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.
- (5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

- Obtain a search warrant (see box) beforehand from the concerned Magistrate if required
- Ensure that a medical practitioner and a counselor is made available at the time of rescue of the child/children, if required as per legal provision²

When search warrant may be issued (Section 93):

- (1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or
 - (b) where such document or thing is not known to the Court to be the possession of any person, or
- (c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.
- (2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.
- (3) Nothing contained in this section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

Rescue³:

- Each rescue operation is unique and requires different planning;
- A general diary entry⁴ shall be made just before leaving the police station.
- The general diary entry shall not mention specific details such as the address or location of the place or the source of information, in order to keep the operation confidential;
- If different members or members from different departments are a part of the rescue team, then they should all coordinate to reach the spot
- The rescue team shall cover all the exit gates/doors to ensure that no person leaves the premises.

²It shall keep in handy, water bottles, biscuits, fruits or any nourishment to readily provide the child.

³The High Court of Delhi in Court on its own Motion v. NCT of Delhi [2009 SCC Online Del 1958] had directed the National Commission for Protection of Child Rights to prepare the Delhi Action Plan to provide a detailed procedure for interim care and protection of the rescued children which is to be followed by Labour Department. The same was accepted by the High Court which directed the implementation of the same.

⁴ The General Diary entry is only recording the information received which is the genesis of the whole operation. FIR would be registered after the requisite information is received once the rescue/raid is conducted. The General Diary entry must be consistent with the FIR but need not contain all the details.

- On entering the premises, the team shall spot the children and escort them outside or to a spot within the premises, which has been marked by the rescue team to assist the child/ children or adolescents. It is important to keep the children secure when the operation is being conducted.
- The rescue team shall arrest all the alleged persons. Expect resistance including violence.
- Members of the team shall carefully check every part of the premises to ensure that no child or adolescent or any victim is left behind.

Attention to the rescued child/children:

- The child shall be made comfortable and provided with medical attention if necessary.
- The rescue team handling the child shall make efforts to take the child to a place, which is not intimidating, or a little further away from the commotion.
- The police officer shall ensure that no pictures or videos of the child/children are taken at the time of rescue or after.
- Disclosure of identity of child is prohibited under the Juvenile Justice Act, 2015.⁵
- It is important that the Child Welfare Committee is informed about the number of children rescued and efforts must be made to produce the children before the Committee/member of the Committee at the earliest;

Registration of FIR and Collection of Evidence

- The police shall noting the offences committed, **register an F.I.R.** against the occupiers of the establishment/ managers of the factories and other such persons keeping in consideration all relevant aspects including whether the child was trafficked, etc. and relevant laws: Child and Adolescent Labour (Prohibition & Regulation) Act, Juvenile Justice Act, 2015, Factories Act, The Bonded Labour Act, Section 370 of Indian Penal Code;
- It would be advisable that the police officers engaged in the operation divide themselves into teams where one team would engage with the children and other team engages with collection of evidence.
- While collecting evidence, attention must be paid to collect evidence of work done by the child, records/ identity cards of each child, identity cards of the accused etc.
- It shall prepare a seizure memo (see box) on the basis of the evidence collected.
- Find witnesses from the civil society who will be in a position to narrate facts as has taken place and would also be able to give evidence in the Court;

⁵ Section 74 of the Juvenile Justice Act, 2015

Persons in charge of closed place to allow search (Section 100):

- (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- (2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub- section (2) of section 47.
- (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- (4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.
- (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.
- (6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search. and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.
- (7) When any person is searched under sub- section (3), a list of all things taken possession of shall be prepared, and a copy thereto

Post Rescue:

- The communication with the child shall be in a language the child is comfortable with and in a manner, which is child friendly⁶.
- A counselor, preferably, shall explain to the child in a delicate manner about the situation at hand.

⁶A panel of translators is required to be maintained by the District Child Protection Unit under Rule 7(1)(i) of the Model Rules, 2016

Meanwhile:

- Meanwhile, the police shall immediately notify the Child Welfare Committee about the child/children.
- The police shall duly inform the parents of the child or any other person in charge of the child appropriate shelter home or other child care home of the rescued children and specify the time that the children will be taken there.

Interface with CWC:

- The police/SJPU/CWPO shall produce the rescued child before the Child welfare Committee within 24 hours.
- This does not include the time taken for the journey to the Committee.
- The police/CWPO/SJPU producing the child before the committee shall fill the details of the child in Form 17 format given in the Juvenile Justice Model Rules, 2016⁷.

In the Court:

- The accused may file an application for bail:
 - ◆ It is important that the prosecutor is informed about the entire operation and the bail is opposed. The Court will have to be apprised about the gravity of the offence and the consequence of the persons being released on bail;
- The accused may get the family to make an application to seek custody of the children:
 - ◆ The family members of the child victim also need proper counselling before they become hostile in the Court.
 - ◆ If the family of the victim is brought by the accused, then the police will have to advise the prosecutor to defer the application;
 - ◆ The police should ensure that home investigation is carried out to verify if the parents are indeed the parents and if they have been induced/coerced by the accused;

Miscellaneous:

- The police must contact the families of the children and inform them that the children are rescued and are being placed in shelter homes;
- The police shall advise the family/guardian/relative of the child that the child is entitled to receive compensation⁸.
- The police must finish investigation as diligently as possible in a time bound manner
- The police shall enable legal assistance to the child.
- The police shall ensure the anonymity of the child throughout.
- The police shall conduct speedy investigation.
- The chargesheet shall be filed expeditiously.
- If the child who is a victim of child labour is also a victim of sexual abuse, then the chargesheet shall be filed as prescribed in the POCSO Act.

⁷The Form can be found at: <http://www.wcd.nic.in/sites/default/files/171861.pdf>

⁸Section 14B of the Child and Adolescent Labour (Prohibition and Regulation) Act, 2016; M.C. Mehta v. UOI [1996 (6) SCC 756]

IF THE CHILD IS RESCUED FROM A CHILD MARRIAGE⁹:

- A marriage where either or both the party is a child, is prohibited and punishable under the Prohibition of Child Marriage Act, 2006 (Page 75 of Volume II of the Handbook), the Juvenile Justice Act, 2015,¹⁰ (Page 47 Volume II of the Handbook) and the Indian Penal Code¹¹.

A police officer or a person in charge of SJPU or a CWPO may receive information or be notified that a child marriage is going to take place through:

- On a complaint/information given by the parent/ any relative of the child or any other person;
- It's own contact and sources;
- On receipt of a report by the Child Marriage Prohibition Officer¹²
- On being notified by the Child Welfare Committee
- Or through any other means;

On receipt of such information, the Police may:

- Make a record in daily diary and if it is confirmed then such an offence is committed, then register and F.I.R. against such persons taking into consideration surrounding circumstances such as if the child was trafficked and forced into a marriage and relevant laws: IPC, The Prohibition of the Child Marriage Act, 2006, The Juvenile Justice Act, etc., Immoral Traffic (Prevention) Act.
- May forward an application to the District Magistrate to issue an injunction stopping the marriage;
- Shall accompany the Child Marriage Prohibition Officer if she/he requests for assistance for intervening in a child marriage;
- Take other steps in order to prevent the commission of a cognizable offence, including arresting the alleged accused¹³.

IF THE CHILD IS A VICTIM OF SEXUAL ABUSE¹⁴:

Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act¹⁵, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC

⁹ Shall be governed by The Prohibition of Child Marriage Act, the Indian Penal Code, the Juvenile Justice Act;

¹⁰ Section 75, the Juvenile Justice Act, 2015 provides for punishment for cruelty to a child and contracting a child's marriage constitutes mental cruelty under this provision; Section 81 penalises a person for sale and procurement of children for any purpose;

¹¹ Sections 370, 370A of the IPC, 1860

¹² Appointed by the State Government under section 16 of the Prohibition of Child Marriage Act, 2006

¹³ Section 151, Code of Criminal Procedure Code, 1973

¹⁴ Governed under the POCSO Act, The Juvenile Justice Act, the Indian Penal Code;

¹⁵ The Protection of Children from Sexual Offences, 2012

Recording the statement of a child:

Recording of Statement of a Child (Section 24):

- (1) the statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer below the rank of sub-inspector.
- (2) The police officer while recording the statement of the child shall not be in uniform.
- (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.
- (4) No child shall be detained in the police station in the night for any reason.
- (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

Additional provision regarding statement to be recorded (Section 26):

- (1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parent of the child or any other person in whom the child has trust or confidence.
- (2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a 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.
- (3) 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.
- (4) 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.

- The statement of the child must be recorded at a place that is convenient to the child and as far as possible by a lady police officer not below the rank of sub-inspector;
- The police officer must not be in uniform;
- The statement may be recorded in the presence of persons that the child is comfortable (parents, any person the child has trust or confidence)
- Inform the child and the persons accompanying the child about her rights in relation to legal aid and right to be represented by a lawyer, availability of support services and give all the information available about their contact details and if required, also contact them on the child's behalf. This will include:

- a. Availability of public and private emergency and crisis services;
- b. The procedural steps involved in a criminal prosecution;
- c. Availability of victims' compensation benefits;
- o In cases where the child is unable to communicate, the police officer must take the help of a translator (for language), interpreter (sign language) or any person who is in a position to communicate better with the child;
- o In case the child is disabled physically or mentally, the statement must be recorded with the assistance of a special educator or any person "familiar with the manner of communication of the the child";
- o Statement must be recorded by audio-video equipment;
- o If the police officer realizes the child victim is a child in need of care and protection, necessary steps prescribed in the Juvenile Justice Act must be taken. This would include:
 - a. Referring the matter to the Child Welfare Committee;
 - b. Ensuring that the child is placed in a CCI as per the JJ Act;
- o Within 24 hours or earlier than that, send a report to the Child Welfare Committee and the Special Court. The report must include information about the steps taken so far;
- o Ensure that the child is protected from the media and the accused at all times;
- o In cases where the information is received under section 19¹⁶ of POCSO, then the police will record the FIR and furnish a copy to the person making the Complaint;
- o Attend to the child for any emergency medical care needs she may have;
- o Take the child for the purposes of medical examination and the samples collected must be sent to the forensic laboratory;
- o Keep the child and the parents or any person of trust and the support person informed of all the developments in the matter. This includes, in addition to the above:
 - a. Informing about the status of the investigation of the crime;
 - b. Details of the arrest of the accused;
 - c. Filing of charges;
 - d. Schedule of court proceedings including information about the requirement of the presence of the child in the court;
 - e. Information on bail, release etc.
 - f. The judgment of the case and the sentence imposed;
 - g. Further steps that may be taken

¹⁶ Section 19 provides for reporting of offences to Child Welfare Committee

IF A CHILD/MINOR IS TRAFFICKED FOR COMMERCIAL SEXUAL EXPLOITATION¹⁷:

A child, for the purpose of this Act is conceived as any person who has not completed the age of 16 years **[Section 2(aa)]**.

A minor is a person who has completed 16 years of age but has not attained 18 years of age. **[Section 2(cb)]**

The Police may receive information about trafficking or sexual exploitation of a child or a minor through:

Following a rescue or a raid conducted under the Immoral Traffic (Prevention) Act;

Rescue of a person **[Section 16]:**

- On information from the police or from someone authorized from the State government, that any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel, the Magistrate may direct a police officer not below the rank of a sub-inspector, to enter such brothel, and to remove therefrom such person and produce him before him. The police officer, after removing the person, shall soon after produce him before the Magistrate issuing the order.
 - If the person rescued is a child or a minor, it shall be open to the Magistrate to place such child or minor in any institution established or recognised under any Children Act, for the time being in force in any State for the safe custody of children
-
- A complaint by the child or the parent/guardian or a social worker or civil society organization or any other person or organization; OR
 - A report from the CWO or CWC or a CWPO or the SJPU or the DCPU or the CMPO in case of a child marriage; or
 - A tip off from any sources;

Section 15 of the Act provides for the special police officer or the trafficking officer to search premises without a warrant.

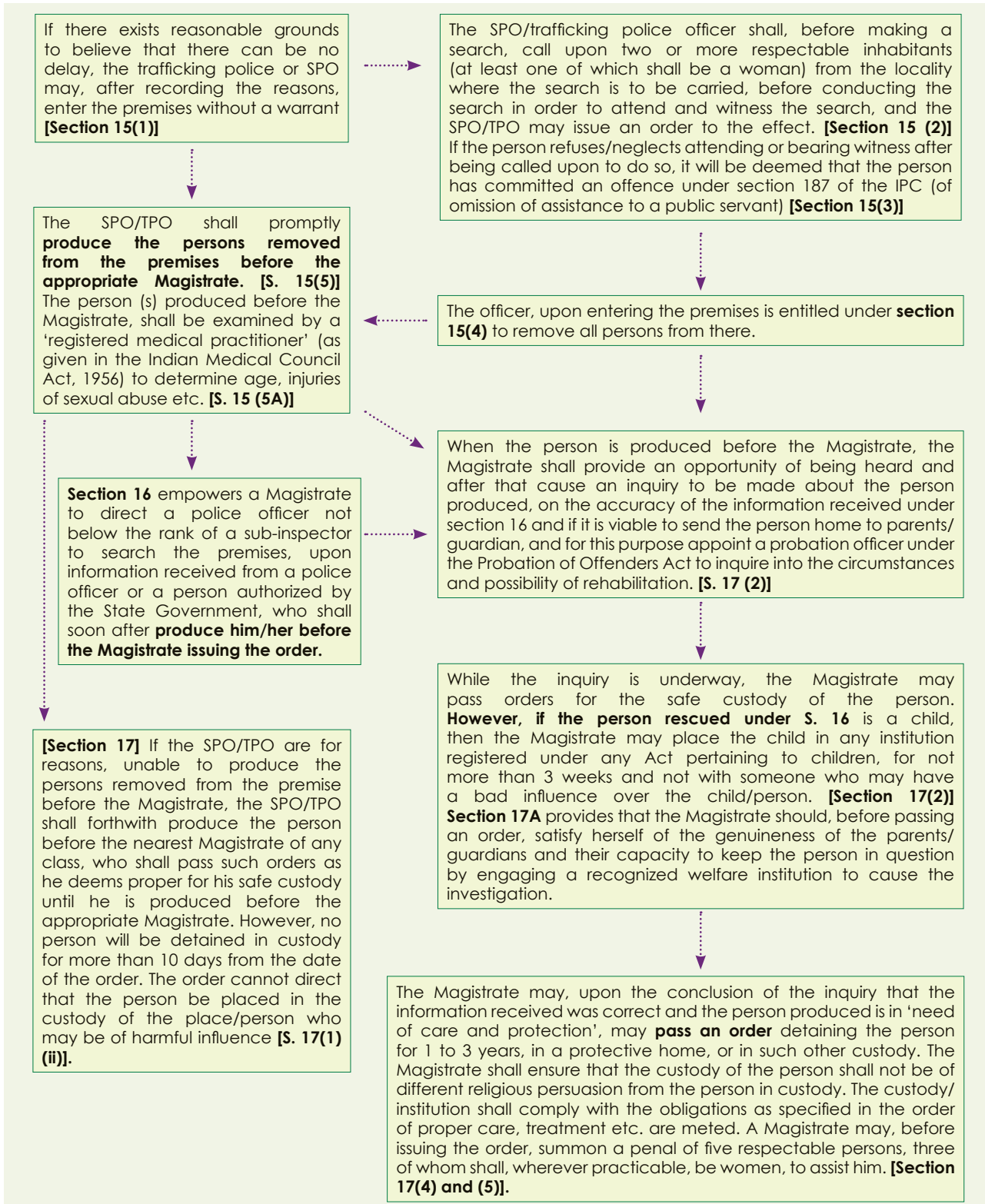
- This is based on the ground that the trafficking officer or the SPO has reasonable grounds to believe that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay. The reasons/grounds thereof are to be recorded.
- The provisions of the Code of Criminal Procedure, 1973 apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code. **[Section 15 (7)]**.

¹⁷ The prostitution or trafficking of a child or a minor for the purpose of commercial sexual exploitation (prostitution) is prohibited and punishable under several laws such as the Immoral Traffic and Prevention Act, 1956, the Indian Penal Code, the Juvenile Justice Act, 2015.

'Searching' of the premises:

1. No civil or criminal proceedings shall lie against the TPO or SPO or any witness attending the search for anything done lawfully by them for the purpose of the search. **[S. 15 (6)]**
2. Women officers shall always accompany the search, and where a woman/girl is removed from the premise under Section 15 (4), the interrogation therein will be conducted by the woman officers or in the presence of a lady who is a member of a recognized welfare organization (recognized by the state Govt.) **S. 15 (6A)]**

Flowchart of the Procedure of Search and Rescue:



As soon as the police come in contact with a trafficked child:

1. They will ensure that the designated police officer would conduct the case;
2. take steps to take the child for medical examination and produce the child before the Child Welfare Committee;
3. Record a detailed statement to understand how the child came to be in the place where she was rescued taking details about every person involved in bringing her to her destination; The child may give information in phases. It is important therefore to allow her to give multiple statements.
4. Involve a civil society member familiar with dealing with cases of trafficking to engage with the child;
5. Register a FIR under sections 3, 4, 5,6 and 7 of the Immoral Traffic (Prevention) Act in addition to Section 370 and 370A of the Penal Code; In certain cases, provisions of POCSO are also applicable.
6. In the FIR, using the detailed account given by the child, include all those persons who were instrumental in bringing the child to her destination as accused even if the child claims they are related to her;
7. Arrest the accused on the basis of the information given by the child;
8. Oppose bail and instruct the prosecutor with all the details the child has given;
9. Appraise the child welfare committee the sensitive nature of the case and make sure that the child is not visited by any person claiming to be a "family member";
10. Instruct both the child welfare committee as well as the prosecutor that all applications seeking custody of the child must be opposed and a mandatory order for getting a "home verification report" obtained by the magistrate to ensure that the protection of the child is not disturbed;

Intermediate custody of persons removed under section 15 or rescued under Section 16 (Section 17.)-

(2) when the person is produced before the appropriate Magistrate under sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in her home are likely to have on him if he is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

(3) The Magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person:

Provided that where a person rescued under Section 16 is a child or minor, it shall be open to the magistrate to place such child or minor in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children:

Provided further that no person shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over him.

11. In cases where there is a doubt as to the age of the child, get an age verification test done as per the procedure laid out in the Juvenile Justice Act; The traffickers would have trained the children to give false ages and false names of parents. It is important for the police officers to use their judgment and get the age verification done.
12. The child could be a substance user and hence may get aggressive as part of her withdrawal symptoms. It is important to recognize this and get professional assistance;
13. The child could be a young mother, she could have a sibling still not rescued. The traffickers may have videos of the child that is likely to stigmatise her. These are potential tools that the traffickers use to continue their control over the child. It is important to recognize this and engage with the child to dispel her fears. Professional expertise that may be needed must be sought for;
14. As far as possible, it is advisable to get a professional counselor, trained and experienced in dealing with the cases of trafficking to engage with the child;

Trafficking cases have to deal with from multiple angles.

- I. Monetary trail----- investigate to secure details of the amounts accumulated because of the trafficked person including properties, investments made by the traffickers etc;
- II. Journey of the trafficked—arrest and prosecute every person who was engaged in trafficking the child
- III. Ensuring that the victim is not re-trafficked—Ensure the child is housed and/or compensated in such a way that she is not re-trafficked;

Section 14 of the Act provides that offences specified under the Act are cognizable offences as defined in the Code of Criminal Procedure subject to provisions contained in the Code.

Under Section 14 only the SPO or a person working under his direction/guidance is allowed to arrest a person for an offence, without a warrant. If the subordinate officer is required by the SPO to arrest a person in her/his absence, then the same shall be issued as an order by the SPO, specifying the person to be arrested, and the subordinate officer shall read out the substance of the same to the person she/he is arresting.

If a police officer (not below the rank of a sub-inspector) specially authorised by the special police officer has reason to believe that on account of delay involved in obtaining the order of the special police officer, any evidence may be destroyed or the person in question may escape, then the police officer may arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

After The Child Is In The Protective Home:

- a. It is important to keep the management of the CCI where the child is placed, updated about the case;
- b. It is critical to ensure that the persons managing the home do not allow any “family member” to meet the child. They could be traffickers; Alert the home about these aspects so that they can get in touch with the police if they come across any person who wishes to meet the child;

- c. Always ensure that the child is transported to the home/CCI safely without the accused present. Even if there are infra-structural problems, it is important that the child and the accused are never in the same vehicle;
- d. At all times, the child must be kept physically safe. The traffickers operate very differently from other accused. They have more resources and exercise a lot of control over the child. It is important that the child realizes that she is in safe hands before she gets confident to defy the traffickers.
- e. It is also important to remember that in many cases biological parents are on the side of traffickers. Therefore, merely because the biological parents have asked for custody, the child should not be allowed to go with them without completing the verification process;
- f. When the child is needed for the deposition, ensure again she is provided protection and safe transport. Provide her protection even in the court premises.
- g. The child should be brought to the court only after the case is actually called out.

Since trafficking is unlike other offences and the elements of the offence are multiple, it is important that the investigation report addresses that. It is important that the journey of the child in the trafficking process and her encounters with multiple players are clearly mentioned in the report. This will help in the framing of specific charges against each of those persons.

Gathering Evidence:

Cases of trafficking are very different from other forms of violence against children. In order to conduct and prosecute these cases effectively, the nature of evidence to be gathered will require special attention. It is important to base the investigation and evidence gathering on the information given by the victim. It is also important to factor in that this information would not be complete inasmuch as most victims would be in confinement with little or no access to the outside world consequent to which they would barely know about their physical location. Certain key elements, which may emerge in the interview, are¹⁸:

- a. Names of the persons with whom the victims engaged on a daily basis;
- b. Names of the persons with whom the victim travelled during the process of trafficking;
- c. Number of days that she travelled to reach her destination;
- d. Places in which she was detained before she reached her ultimate destination from where she was rescued;
- e. Persons who groomed her to be engaged in prostitution;

It is also important to collect:

- a. Statements from other potential witnesses;
- b. Seize documents;
- c. Seal properties;

¹⁸ Sourced from interviews with police officers and social workers working on Anti-trafficking;

Using the above information, evidence can be gathered from the accused during interrogation including but not limited to:

- a. Details of properties owned by the accused/partners/family members;
- b. Additional raids must be conducted in those places whose details the accused provides;
- c. Accused must be taken to the physical locations described by the girl after corroborating the same with the information given by the accused;

If it is a case of inter-country trafficking:

- a. Take steps to gather evidence through the Letter Rogatory (section 166A, Cr.P.C.)
- b. Explore if there is Mutual Legal Assistance Treaty with the other country and work in partnership with law enforcement there;
- c. Make applications/requests for extradition;
- d. Engage with Interpol;
- e. Engage with the office of FRRO for the purposes of repatriating the victims;

Re-Patriating The Victims of Inter-Country Trafficking:

There is no protocol for re-patriating victims of trafficking. The recommended process is¹⁹:

- a. As soon as it is identified that the rescued victim is a foreign national, it is important to determine nationality of the child;
- b. After the nationality of the child is identified, applications have to be filed with the Embassy of that country requesting them to prepare temporary travel documents to facilitate her passage and to make arrangements to receive her at her home country;
- c. Following the confirmation from the Embassy, necessary applications have to be made to the concerned Court seeking permission to travel; It is recommended that these steps are taken after the child has completed her depositions/evidence in the on-going trial;
- d. After the permission for travel is granted, a no-objection for the travel will have to be taken from the office of FRRO attached to the Ministry of Home Affairs;
- e. Once the no-objection is received from the office of the FRRO, the same must be provided to the Embassy and travel arranged;
- f. Diplomatic channels may have to be explored since many embassies may not be forthcoming to bear the costs of travel of the child;

Civil society organisations have a good regional network and will have partners in other countries where the victim will have to be repatriated. It is useful to explore these links so that the chances of the girl being re-trafficked is addressed. It is also useful for her complete rehabilitation if an agency working with victims of trafficking is associated. On many occasions, these partnerships have helped identify families who have not been in touch with the victim for many years.

¹⁹ based on interviews with organisations working on anti-trafficking who have undertaken safe repatriation

Trial:

A trafficking case may be tried in a Magistrate's court, Sessions Court or a Children's Court depending on the charges made against the accused. The steps for the police however broadly remain the same irrespective of the forum.

Bail:

- a. The application for bail is normally filed by the accused within days of arrest. The accused could also file application for anticipatory bail;
- b. It is important to give details to the prosecutor so that the prosecutor is in a position to oppose bail effectively. These instructions must include details of the number of children rescued, the kind of activity that was being carried out, the nature of allegations that are made against the accused etc. including information about the potential threat to the victim as well as the likelihood of the person tampering with the witnesses. Reference may be made to the case of *Guria Swayamsansta versus State of UP and others*²⁰, where the Hon'ble Supreme Court had directed the manner in which discretion must be exercised by the courts before granting bail/anticipatory bail to the accused in these cases.
- c. In cases where bail gets granted, opinion must be taken from the Prosecutor expeditiously and the order granting bail must be challenged in a superior court.

Safe Custody of Children:

Trafficked children must be produced before the Child Welfare Committee who will in turn place them in child care institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015. However, it is generally observed that custody of children who are placed in these institutions are sought from the court of a Metropolitan Magistrate.

The following steps must be taken when an application for custody is made irrespective of the forum it is made in:

- a. Appraise the judicial officer that this is a case of trafficking and the person seeking custody is a potential trafficker;
- b. Insist on getting a verification conducted on the antecedents of the person making the application and take sufficient time for the same;
- c. Do not agree at this stage to seek the opinion of the rescued child since the child may not be in a position to understand the ramifications of going back to this person;
- d. Draw the attention of the Court to the provisions of Juvenile Justice Act which clearly state that in matters of children, the Child Welfare Committee is the competent authority;
- e. In case the custody is granted, the same needs to be challenged by way of a revision petition after seeking the opinion from the Prosecutor;

Evidence:

Oral evidence forms a significant component of a criminal trial and even in cases of trafficking these statements are important. It is important that the evidence that is given in court synchronizes with the charges made and all the key ingredients to constitute the offence is brought out. Victims of trafficking, in view of the power dynamics with the traffickers are mostly not comfortable to depose before the traffickers. The element of societal empathy which is present of rape victims is

²⁰ (2009) 15 SCC 75

also much lesser for victims of trafficking. This compounds their difficulty to easily depose in Court. One of the strategies that has been used in the past and is highly recommended is to depose the victim through video conferencing. This can be achieved if necessary applications for the same is filed before the Court through the prosecutor. It has been recognized by the Supreme Court of India that witnesses can depose through video conferencing²¹.

Video-Conferencing:

- An application for deposing the victim through video conferencing must be made to the court through the Prosecutor;
- After the application is allowed, information must be provided to the place where the child is located to arrange for the facilities required for video conferencing;
- Once the facilities are allowed, it is important to check the equipment and also get the child comfortable to speak through it;
- Necessary protocols must be followed by placing an official at the place where the child is deposing along with the support person to ensure that there is no interference in the deposition of the child;

USING TECHNIQUES TO DETERMINE THE SEX OF AN UNBORN CHILD²²

The police may receive information of such an offence through:

- A complaint/information by an interested person, or
- Information from any person
- Report (request for assistance) from the Appropriate Authority²³

On receipt of information:

- If the information has been received from credible source or from any other person, the police shall file an F.I.R.
- The appropriate authority is empowered to directly make a complaint under the Act and it is not bound to approach the police, in which case an F.I.R. may not be registered.
- It is advisable that if a raid of the medical lab or centre or clinic is required, the police and the appropriate authority shall coordinate with each other;
- The police shall assist the appropriate authority in carrying and completing the investigation;
- After the investigation is complete, the police will submit the record and documents of the investigation to the appropriate authority;
- Along with the investigation record, the police will prepare and send a draft complaint (colloquially known as Kalandra) to the appropriate authority, which shall sign the same.
- The police shall forward the signed complaint to the Magistrate.
- The police will thereafter send information to the Magistrate,²⁴ that no challan will be filed by the police since the complaint has been made in accordance with the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.²⁵

²¹ *State of Maharashtra v. Praful B. Desai* (2003) 4 SCC 601; Also see *Santhini vs Vijaya Venketesh* (2018) 1 SCC 1

²² Regulated by the Pre Natal Diagnostic Techniques Act, 1994

²³ Appointed by the Central or the State or the Union Territory Government under section 17 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994

²⁴ Section 173 of the Code of Criminal Procedure

²⁵ Section 28, Pre-Natal Diagnostic Techniques Act, 1994

- A medical geneticist, gynaecologist, pediatrician, registered medical practitioner or any other person shall conduct/employ pre-natal diagnostic techniques **only in those places as registered under this Act**, and not by themselves or through other persons, of their own accord. **[Section 4]**
- A person shall not use any process/technique/device, which enables her/him to find out the sex of an unborn child **[Sections 6]**
- Similarly, a genetic counselling centre or Genetic Laboratory or Genetic Clinic shall not conduct, aid or employ anyone not qualified under this Act for conducting pre-natal diagnostic techniques or activities related thereto **[Section 3]**.
- The same is prohibited under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.
- All offences connected to such an activity including advertising a device, which claims to pre-determine the sex of a child, is cognizable and non-bailable.

FACILITATING/CAUSING UNAUTHORIZED ABORTION²⁶:

- Attempting to or causing miscarriage of a pregnant person is punishable under the Indian Penal Code²⁷
- The termination of pregnancy is allowed only in accordance with the procedure laid down in the Medical Termination of Pregnancy Act, 1971

On receipt of a complaint/information by any source:

- The police shall file an F.I.R. against such persons
- The police shall conduct an investigation according to the provisions of the Code of Criminal Procedure
- In cases where a child is pregnant, she is a victim of sexual assault. Besides registration of a FIR under the relevant sections of POCSO, steps should be taken to take formal permission to terminate the pregnancy;
- In cases where there is no guardian available, the child welfare committee must either appoint a guardian or assume the role of the guardian and order termination of pregnancy;
- The police must collect the samples post the termination for forensic examination and hand over the samples to the lab;

CHILD IN CONFLICT WITH THE LAW²⁸

When the Police come in contact with a child alleged to be in conflict with law:

- ◆ On arriving at a crime scene if the police discovers that the alleged accused is a child;
- ◆ On complaint of a person;
- ◆ If the child is produced before the police;

²⁶ Prohibited under the Medical Termination of Pregnancy Act, the Indian Penal Code;

²⁷ Sections 312 to 317 of the Indian Penal Code, 1860

²⁸ All provisions of the law referred to in this section are from the Juvenile Justice (care and protection of children) Act 2015 and the rules therein

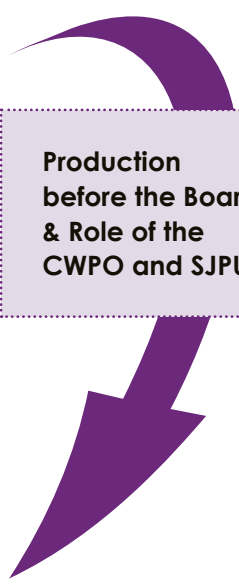
- a. The child must be placed under the charge of the special juvenile police unit or the designated child welfare police officer which is set up under section 107 of the Juvenile Justice (care and protection of children) Act, 2015;
- b. The child must be produced before the Juvenile Justice Board immediately before 24 hours excluding the time taken to travel;
- c. The child must not be placed in a police lock up or a prison;
- d. The member of the SJPU or the CWPO as the case may be would be in charge of the child till such time any order to the contrary is passed and must conduct himself "as if the said person was the child's parent and responsible for the child's maintenance"²⁹
- e. The SJPU or the CWPO must inform the parents of the child and require them to be present before the Board when the child is produced; **[Section 13]**

APPREHENSION OF A CHILD BY THE POLICE [SECTION 10]

Section 10 postulates the scenario when the **police have apprehended a child.**

It provides when a child alleged to be in conflict with law, is apprehended by the Police, **such child shall be produced before the Juvenile Justice Board within 24 hours of apprehension** by the police, excluding journey period (Section 10)

- Such child shall not be placed in a lock up or lodged in a jail under any circumstances.
- Such child shall be placed in the charge of SJPU or designated Child Welfare Police Officer
- Such person in whose charge the child is placed shall take responsibility of the child as if the said person was the child's parent and would be responsible for the child's maintenance. **(Section 11)**
- Whenever a child alleged to be in conflict with law is apprehended, the CWPO or the SJPU shall immediately inform **(Section 13)**:
 1. Parent or guardian of such child, if they can be found and direct them to be present before the board, before which the child is produced
 2. A probation officer or in her/his unavailability, the child welfare officer who shall prepare within two weeks, **a social investigation report,**



**Production
before the Board
& Role of the
CWPO and SJPU**

WHEN THE CHILD HAS BEEN PLACED WITH THE SJPU OR BEFORE THE CWPO:

- The CWPO or the person in charge at the SJPU shall produce the child before the Juvenile Justice Board within 24 hours. This shall not include time taken for the journey shall not be included (Section 10 and Rule 8(2) (iii)).
- The CWPO/SJPU shall ensure that the child is comfortable and try to make her/him feel at ease.

²⁹ Section 11, Juvenile Justice Act, 2015

- The person in charge in the SJPU or the CWPO shall upon meeting with the child, record such information regarding the offence in a general daily diary.
- The general daily diary shall include the circumstances in which the child was found.
- The SJPU or the CWPO shall after making an entry into the daily diary, prepare a social background report of the child as specified in Form 1 of the JJ Act Model Rules, 2016.³⁰
- The General Daily Diary and the Social Background Report shall be forwarded to the Board.
- There is no FIR to be registered in cases of children except in heinous offences. **[Rule 8(1)]**
- The child shall be interviewed by the CWPO/SJPU, which does not give the feeling of a custodial interrogation.
- The interview may be made held in the presence of the parent/guardian. **[Rule 8(3)(v)].**
- If the officer in charge does not release the child on bail, then till she/he is produced before the Board, he/she shall be kept in observation home.³¹
- The officer designated as CWPO of the police station, or the SJPU to which such child is brought shall immediately inform the:
 1. Parent or guardian of such child 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
 2. A probation officer or if she/he is unavailable, then the child welfare officer to obtain information about the social background of the child. **[Rule 8(2(ii))]**
 3. A child welfare officer or a case worker to accompany the special juvenile police unit or the CWPO at the time the child is produced before the Board'

Apprehension/Detention of the Child [Section 12]:

- If the police detain a child, the child shall be released on bail, with or without surety.³²
- A child can be apprehended only in case of a heinous offence **[(Rule 8(1) proviso)]**. However, for other offences also, the child may be detained if it is in the interest of the child to do so³³.
- The police officer apprehending the child shall not send the child to a police lock-up and not delay the child being transferred to the Child Welfare Police Officer from the nearest police station. **[Rule 8(3)]**
- The police officer may under sub-section (2) of section 12 of the Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e. within twenty-four hours of his being apprehended and appropriate orders are obtained as per **Rule 9** of these rules;
- The police officer shall not hand-cuff, chain or otherwise fetter a child and shall not use any coercion or force on the child;
- She or he shall inform the child promptly and directly of the charges levelled against him through his parent or guardian and if a First Information Report is registered, copy of the same shall be made available to the child or copy of the police report shall be given to the parent or guardian;

³⁰ Rule 8(1) specifies that Form 1 should be filled. Form 1 can be found at: <http://www.wcd.nic.in/sites/default/files/171861.pdf>

³¹ Section 12(2)

³² Section 12

³³ Section 12(1)

- Provide appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require, as the case may be;
- Not compel the child to confess his guilt and he shall be interviewed only at the Special Juvenile Police Unit or at a child-friendly premises or at a child friendly corner in the police station, which does not give the feel of a police station or of being under custodial interrogation. The parent or guardian, may be present during the interview of the child by the police;
- Not ask the child to sign any statement;
- Inform the District Legal Services Authority for providing free legal aid to the child.
 - ◆ If detained, a child can't be forced to confess her/his guilt.
 - ◆ If the child alleged to be in conflict with law is not detained, the Police or the CWPO or the SJPU shall send information about this to the Board. **[Section 9(4)]**

Statement/Final Report to be forwarded:

- The CWPO/SJPU shall submit the final report within one month to Board, in case of heinous offence³⁴ and in case of petty or serious offences, then the report shall be filed within two months from the date of first production.³⁵
- A copy of the final report shall be made available to the child/guardian/parent.

IF THE INFORMATION RECEIVED RELATES TO A CASE OF CYBER CRIME:

- The Police officer shall register an F.I.R. in accordance to the provisions of the IT Act, 2000 as amended in 2008; POCSO Act and Rules³⁶.
- The concerned police officer shall record the same in the entry book with an entry number and shall read it verbatim to the informant.³⁷
- If the information received is on the basis of a material stored in electronic form (photographs, videos), then the police shall ensure that the URL/screenshots/multimedia files etc. are saved which may be used as evidence.
- The Investigating Officer shall assess whether any device needs to be seized for forensic examination.
- The Investigating Officer shall take note of the exact offence, nature of available evidence (URL/image/e-mail-id/IP Address/video/Screenshot), the online intermediary on which the offence is available.
- The scene of 'cyber crime' is distinct from a scene of crime and the investigating officer must thoroughly examine the background of the images/videos to gather information on an as is manner to inquire into the physical place of occurrence of the crime, the perpetrator.
- If the source of the crime is on a private platform managed by an intermediary as defined under section 2(w) of the Information Technology Act, 2000, the data must be requisitioned from them and they are bound under the law to provide for the same. They are also legally mandated to retain information relating to child pornography for a period of atleast 90 days.

³⁴ Rule 10(5)

³⁵ Rule 10(6)

³⁶ Failure to record the complaint is punishable under Section 19 of the POCSO Act.

³⁷ Section 19(2), POCSO Act

- If the offending material is a video, the language used, if any in the video, the background etc. may point to a direction of investigation.
- The investigating officer may wherever necessary, require the assistance of cyber forensics experts to investigate the matter.
- The police may contact the service provides to provide available data on the content (IP Address, details of the person who uploaded the offending material, place from where it was uploaded etc.)
- If the cyber crime is of a nature where the forensic examination of evidence is not necessary and the device of the victim need not be scrutinized, such as trolling/threatening/extorting on social media etc., then the investigation may be confined to relying on the information provided by the service providers (IP address, etc.) to trace the perpetrator and gathering evidence through conventional witnesses.
- However, if the investigating officer in the course of her investigation, identifies the physical scene of occurrence and the device used, the following objects may be subject to confiscation as potential sources of electronic evidence: any computer, computer system, routers, mobile phones, pen drives, hard disks, serve racks, blu ray, memory sticks, smart watch or any other related accessories.³⁸
- The investigating officer must obtain the order from a competent court to retain the properties that have been seized for the purpose of investigation.
- The investigating officer is prohibited from disclosing the information contained in the evidence under section 72 of the Information technology Act.
- Any police officer (not below the rank of an Inspector) may enter any public place and search and arrest without warrant any person found who is reasonably suspected of having committed, committing or about to commit an offence under the IT Act.³⁹ Public place here refers to any public conveyance, any hotel, any shop or any other place for use by or accessible to the public.⁴⁰
- Where an officer other than a police officer arrests a person in connection with an offence under the IT Act, s/he should without any delay produce the person before a magistrate having jurisdiction or before the officer-in-charge of a police station.⁴¹
- All powers and functions specified in the Code of Criminal Procedure, 1973 in relation to entry, search or arrest are applicable with respect to offences under the IT Act as well.⁴²

Requesting data and issuing notices:

- The Investigating officer can generally send a request under section 91 of the Cr.P.C. to compel the production of the document or a thing.
- However, the data requested under this provision is non-content data but data pertaining to the identifiable information of the subscriber/user (such as name, associated email id, payment details, time and route, log-in log-out sessions, etc.)
- The request can be made to the service provider to not only produce information (non-content) but also to retain the data till the investigation is completed.
- Such a request shall be made from official government e-mail id with the department's letterhead.

³⁸ IT Act, 2000, Section 76.

³⁹ IT Act, 2000, Section 80(1).

⁴⁰ Id.

⁴¹ IT Act, 2000, Section 80(2).

⁴² IT Act, 2000, Section 80(3).

- It shall contain the F.I.R. number, the details being sought, name and rank of the investigating officer, a brief description of offence.
- State police agencies and the CBI may resort to Letters Rogatory to seek assistance of foreign law enforcement agencies and courts during criminal investigations.
- All social media companies store data and have a segment for supporting law enforcement agencies. An Investigating officer may put them to use in furtherance of section 91 of Cr.P.C. The guidelines and the manner of support provided by social media companies can be accessed on page 29 of the Handbook on Cyber Crimes Against Children And Investigation Methodologies for Law Enforcement Agencies, Bureau of Police Research and Development⁴³. The Government of India has also initiated a new portal for reporting cyber crimes against women and children which is at www.cybercrime.gov.in.

If the police officer comes in contact with a child during or as a result of the investigation:

- If a police officer investigating a cybercrime (while inspecting a scene or gathering preliminary information) comes in contact with a child who appears to be a child in need of care and protection, the child shall be placed with the Child Welfare Committee within 24 hours.
- The police must also report the matter to the Special Court without delay, within a period of 24 hours. If no Special Court has been designated, then the same should be reported to the Sessions Court⁴⁴.
- If the police officer comes in contact with a child who may be in conflict with law, the police officer apprehending such a child shall report the child in the charge of a CWPO or the SJPU and the legal treatment of such a child shall be guided by the provisions of the Juvenile Justice Act.

Preparation of chargesheet:

- The chargesheet shall include the information provided by the victim (or the information provided by the complainant) at the time of filing the F.I.R.. It shall include details of the offending material, the description of the scene of crime, the evidence adduced, the time line of the investigation, report of the forensic expert if any. Importantly, the provisions of law shall include all applicable laws (IT Act, POCSO if applicable, JJ act if applicable).
- If any provision under any Law is inconsistent with the POCSO Act, then the POCSO Act shall have an overriding effect⁴⁵
- If the child has been used for pornographic purposes, then there is a possibility that the child may also be a victim of trafficking, kidnapping, which would attract provisions of the IPC and the ITPA in addition to the POCSO and IT Act provisions.

⁴³ Accessible at: <https://scpsassam.org/wp-content/uploads/2018/01/UNICEF-Handbook-for-Law-Enf-Agencies-Handbook-on-Cyber-Crimes-against-Children.pdf>

⁴⁴ Section 19(6), POCSO Act

⁴⁵ Section 42A, POCSO Act

4

**STANDARD
OPERATING
PROCEDURE
FOR THE CHILD
WELFARE
COMMITTEE (CWC)**

GENERAL⁴⁶

A child can come in contact with the CWC when:

- a. A child is rescued from a situation of violence;
- b. A child is rescued by the police and produced before the CWC;
- c. A child is produced by a civil society organization;
- d. On receipt of a report;⁴⁷
- e. Any other source.

If a child in need of care and protection cannot be produced before the Committee, the Committee shall reach out to the child where the child is located⁴⁸.

FOLLOWING PERSONS MAY PRODUCE A CHILD IN NEED OF CARE AND PROTECTION BEFORE A CHILD WELFARE COMMITTEE⁴⁹ :

Section 31 of the Juvenile Justice Act provides:

- a. Any police officer or Special Juvenile Police Unit or a designated Child Welfare Police officer or any officer of DCPU or inspector appointed under any Labour Law;
- b. Any public servant;
- c. Childline services or any voluntary NGO or an agency as may be recognised by the State Government;
- d. Child Welfare Officer or Probation Officer;
- e. Any social worker or a public spirited citizen; or
- f. By the child himself, or
- g. Any nurse, doctor, management of a nursing home, hospital or maternity home

⁴⁶ All the provisions referred to in this section are from the Juvenile Justice (care and protection of children Act, 2015 and the rules made thereunder.

⁴⁷ Section 31(2) provides "The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children's home or fit facility or fit person, as the case may be, during the period of the inquiry."

⁴⁸ Rule 18, Model Rules, 2016

⁴⁹ Section 31 (1) of the Juvenile Justice Act, 2015

-It is mandatory that any child in need of care and protection be produced before the Committee within twenty-four hours, excluding the time necessary for the journey. **[Section 31(1) and Rule 18]**

At least one member of the Committee shall always be available or accessible to take cognizance of any matter of emergency and issue necessary directions to the Special Juvenile Police Unit or local police of the district. **[See Rule 16(6)]**

-Whoever produces the child before the Committee shall make a report in Form 17 containing the particulars of the child as well as the circumstances in which the child was received or found. **[Rule 18(2)]**

-In case of a child under two years of age, who is medically unfit, the person or the organization shall send a written report along with the photograph of the child to the Committee within twenty-four hours and produce the child before the Committee as soon as the child is medically fit along with a medical certificate to that effect. **[Rule 18(3)]**

Reception

- The committee shall ensure that whoever has produced the child has made a report in Form 17⁵⁰, which shall contain the particulars of the child;
- The child shall be seated and made comfortable;
- If the child is produced by any person⁵¹, the CWC shall first record the statement of the person producing the child;
- The Committee shall order that a medical examination of the child is conducted, wherever necessary;
- As far as possible, the CWC shall ensure that during the course of interviewing the child, only those concerned with the case of the child is present;
- The committee shall communicate with the child in a simple way that the child easily understands;⁵²
- The Committee shall interview the child sensitively and in a child friendly manner will not use adversarial or accusatory words or words that impact the child⁵³.
- The narration of the child shall be reduced in writing by the Committee with the help of the social worker/case worker present for the assistance of the Committee;
- After recording the narration and going through the same, the Committee shall first determine and declare if the child is in need of care and protection.

Age Determination [Section 94]:

- The Committee shall at the first instance take steps to determine the age of the child⁵⁴.
- In cases where it is apparent that the person produced is indeed a child, then the Committee may initiate proceedings as if the child's age has been confirmed.

⁵⁰ The Form can be found at: <http://www.wcd.nic.in/sites/default/files/171861.pdf>

⁵¹ Refer to Rule 18, Model Rules, 2016

⁵² Rule 16 (9)

⁵³ Rule 19(6)

⁵⁴ Section 94, The Juvenile Justice Act, 2015

- In case, the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee shall undertake the process of age determination, by seeking evidence by obtaining —
 1. Birth certificate from school certificate procured through MCD /Panchayat
 2. Ossification tests if the certificates are not available.
- Age determination test conducted on the order of the Committee shall be completed within fifteen days from the date of such order. The age recorded by the Committee of the person brought before it shall be deemed to be the true age of that person. [Section 94(2)]

Interim Placement:

- After recording the statement of the child, the Committee shall direct the Child Welfare Officer or probation officer or District Child Protection Unit or a Social Worker or Case Worker or Child Welfare Officer NGO's to conduct a social investigation and submit a report⁵⁵ to the Committee under **Section 36(2)** of the Act in **Form 21**.
- All children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available **[Proviso to section 36(1)]**
- The Committee after interaction with the child may issue directions for placing the child with the parent or guardian or Children's Home, where such Home is available in the vicinity of the Committee before which the child is produced, and in the absence of such Home, to direct the placing of the child in safe custody of a fit person or a fit facility. **[Rule 18(4)]**
- The Committee or the member on duty shall issue the order for placing the child in Children's Home in **Form 18**⁵⁶.
- In the case of abandoned or lost or orphaned child, the Committee, before passing an order granting interim custody of the child pending inquiry, shall see that, the information regarding such child is uploaded on a designated portal. **[Rule 18(7)]**
- Whenever the Committee orders a child to be kept in an institution, it shall forward to the Person-in-charge of such institution, a copy of the order of short term placement pending inquiry in **Form 18** with particulars of the Child Care Institution and parents or guardian and previous record. A copy of such order shall also be forwarded to the District Child Protection Unit⁵⁷.
- It is recommended that till the time the Social worker takes for giving her report, the Committee place the child in a home in the interim;
- It is a prescribed best practice that a childcare plan is initiated at the stage of the temporary placement itself.
- The Committee, after taking into account the risk factors, and in the best interest of the child, may direct the publication of the particulars and photograph of an orphan or abandoned child in national newspapers with wide circulation within seventy two hours from the time of receiving the child for the purposes of tracing out the biological parents or the legal guardian(s)⁵⁸
- It is prescribed that the Committee direct either the police or Childline to initiate action to locate the parents or the guardian of the child so that the child can be repatriated/re-united with the family;

⁵⁵ Section 30(iii) of the JJ Act, 2015 and Rule 19 (3), Model Rules, 2016

⁵⁶ Rule 18(5), Model Rules, 2016

⁵⁷ Rule 18(9)

⁵⁸ Rule 19(28), Model Rules, 2016;

Custody of The Child:

- i. If any person (s) claims to have the right to custody of the child, then the Committee shall inquire into the credibility of the claim and the person. The committee will scrutinize the documents, identification proof supplied by such person(s) to check if there is a relationship between the child and the person shall restore the custody to the person claiming custody after satisfying itself on the veracity of the claims made;
- ii. If the Committee rejects the claim of a person who has come forward or if no person has come forward, then the Committee shall direct that the child be placed in a children's home **[Rule 18(5)]**
- iii. Such direction to place the child in a children's home shall be made in Form 18.⁵⁹
- iv. Whenever the Committee orders a child to be kept in an institution, it shall forward to the Person-in-charge of such institution, a copy of the order of short-term placement pending inquiry in Form 18 with particulars of the Child Care Institution and parents or guardian and previous record.
- v. A copy of such order shall also be forwarded to the District Child Protection Unit.
- vi. If the committee decides to restore the child under the care of a parent or guardian or a fit person, then such a person shall have to give an undertaking as prescribed under Form 20.
- vii. In cases where the Committee is passing an order of restoration to the family, the Committee will have to verify with the police the requirements of the child to depose in any criminal proceedings and permit the child to be restored after the statement is recorded.
- viii. If the police inform the Committee that the deposition would be after a considerable period of time, the Committee shall restore the child through either the local childline or through a Committee which is functioning from the place where the child is being restored;
- ix. Before restoring the child, the Committee shall call for a report from the social worker regarding the safety of the child once she is restored. The child shall be restored only after the Committee is satisfied that there is no danger to the child post the restoration;
- x. Before the Committee releases or restores the child, the committee may refer both to a counselor.

Placement

- o When the Committee has issued an interim order for the short-term placement of a child in a children's home, a copy of the order shall be sent to the person-in-charge of the institution and to the DCPU. This shall be in the format of Form 18 as mentioned above.⁶⁰
- o In all cases pending inquiry, the Committee shall direct the person or institution with whom the child is placed to take steps for rehabilitation of the child including education, vocational training, etc., from the date of first production of the child itself ⁶¹.
- o The Committee shall notify the next date of appearance of the child not later than fifteen days of the previous date and also seek periodic status report from the social worker or Case Worker or Child Welfare Officer conducting investigation on each such date.⁶²

⁵⁹ Available in the Juvenile Justice Model Rules, 2016

Family Re-Unification/Adoption/Long Term Care:

- All children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a **Specialized Adoption Agency**, where available for speedy inquiry by a social worker or child welfare officer. **[Section 36(1) proviso]**
- The Committee shall, pending inquiry, issue an order in Form 19 for the placement of child under the care of a parent, guardian or fit person;
- The social investigation report shall be completed within 15 days to enable the Committee to pass the final order **within four months from the date the child was first produced before the Committee. [Section 36(2)].**
- However, in case of an orphan, abandoned or surrendered child, the time for completion of inquiry shall be as specified in section 38.
- If after the completion of the inquiry, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, may send the child to a **Specialised Adoption Agency** if the child is below six years of age, **children's home** or to a **fit facility or person or foster family**, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years. **[Section 36].**

- **Review:** The child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee **[Section 36(3)].**
 - ◆ If the child has been abandoned or lost or orphaned, then the Committee shall before passing an interim order, ensure that the information about the child has been uploaded on the portal⁶³.
 - ◆ In case of an abandoned or orphaned child, the Committee shall make every effort to trace the parent/guardian and on completion of such inquiry if it is established that the child is abandoned or an orphan, then the committee shall declare the child to be legally free for adoption.

⁶⁰ Rule 18 (9)

⁶¹ Rule 19(12)

⁶² Rule 19(11)

⁶³ Available at: <http://trackthemissingchild.gov.in/trackchild/index.php>

Orders With Respect To Child In Need Of Care And Protection [Section 37]:

Through the inquiry that the child before the Committee and on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, the Committee, may pass one/ more of the following orders: -

- a. Declare that a child is in need of care and protection;
- b. Restore the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- c. Place the child in a Children's Home or Fit Facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- d. Place the child with Fit Person for long term or temporary care;
- e. pass orders for placing the child under foster care under section 44;
- f. order that Sponsorship be made available for the child under section 45;
- g. Issue directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;
- h. Declare that the child is legally free for adoption as prescribed under section 38.

The Committee may also pass orders for [Section 37(2)] —

- i. Declaration of fit persons for foster care;
- ii. getting after care support as mentioned under section 46 of the Act; or
- iii. any other order related to any other function as may be prescribed.

Functions of the Committee that is pertinent at the time of disposal and issuing of orders⁶⁴:

- o At the time of final disposal of the case, the Committee shall incorporate in the order of disposal, an individual care plan in **Form 7** for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required.⁶⁵
- o The Committee while finally disposing the case shall give a date for follow-up of the child (within a month from the date of disposal) and following that, every month for the period of first six months and thereafter every three months for a minimum of one year or till such time as the Committee deems fit⁶⁶.

⁶⁴ See Section 8

⁶⁵ Rule 8(h)

⁶⁶ Rule 19(18)

- If the child belongs to another district, the Committee shall forward the age declaration, case file and the individual care plan to the Committee of the district concerned which shall likewise follow-up the individual care plan as if it had passed such disposal order⁶⁷;
- If a child has to be sent or repatriated to another district or state or country the Committee shall direct the DCPU to take necessary permissions as required, including approaching the Foreigners Regional Registration Offices and Ministry of External Affairs for a no-objection certificate, contacting the counterpart Committee, or any other voluntary organisation in the other district or state or country where the child is to be sent⁶⁸.

IF A PARENT SURRENDERS A CHILD TO THE COMMITTEE [SECTION 35]:

- If a parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, the parent shall make an application before the Committee in accordance with Form 23 as provided for in the model Rules, 2016.
- Then after the process of inquiry and counselling, the Committee if satisfied that the parent is indeed serious about surrendering the child, the parent or guardian shall execute a surrender deed before the Committee. The surrender deed is provided for in Form 24.
- The Committee shall after due inquiry either allow the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children's home if she/he is above six years.
- The Committee shall allow two months of time to the parent/ guardian to reconsider their decision. After the expiry of two months, the child shall be declared legally free for adoption.
- If the parents/ guardians are illiterate, the Committee will have to provide them with legal aid, as provided by the Legal Services Authority⁶⁹.

Miscellaneous:

- The Committee shall maintain proper records of the children produced before it including medical reports, social investigation report, any other report(s) and orders passed by the Committee in regard to the child⁷⁰.
- The Committee shall maintain a 'Case Monitoring Sheet' of every case and in case there is more than one child in one case, a separate sheet shall be used for each child.
- The case-monitoring sheet shall be in **Form 26**. The said Form shall be kept at the top of each case file and shall be updated from time to time.
- The following points shall be considered so far as 'progress of inquiry' mentioned in **Form 26**:
 - i. Time schedule for disposal of the case should be fixed on the first date of hearing;
 - ii. Scheduled date given in the 2nd column of Form 26 under 'progress of inquiry' shall be the maximum duration within which the inquiry shall be completed.
- The Committee shall ratify any decision taken by an individual member, when the Committee is not sitting, in its next sitting⁷¹.

⁶⁷ Rule 19 (19)

⁶⁸ Rule 19 (16)

⁶⁹ Rule 19 (22)

⁷⁰ Rule 19 (10)

⁷¹ Rule 19 (13)

- The Committee shall submit a quarterly report to District Magistrate in **Form 16** for review of pendency of cases **[Section 36(4)]**.
- At the time of final disposal of a case, there shall be at least three members present including the Chairperson, and in the absence of Chairperson, a member so nominated by the Chairperson to act as such⁷².
- All orders passed by the Committee in respect of a child in need of care and protection shall also be uploaded on the designated portal with due regard to the confidentiality and privacy of the child⁷³.
- Section 36 (4) mandates the committee to submit a quarterly report on the nature of disposal of cases and pendency of cases **to the District Magistrate**, for review of pendency of cases.
- On the basis of these reports, the D.M. shall direct the Committees to take appropriate steps to address the pendency and if the D.M. deems it necessary, she/he may send a report to the State government, which may direct constitution of additional committees. **[Section 36(5)]**
- If the pendency of cases continue to be unaddressed by the Committee even after three months, of receiving such directions, the State Government shall terminate the said Committee and constitute a new one **[Section 36(5)]**.
- In case of any delay in the constitution of a new Committee under sub-section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period. **[Section 36(6)]**

IF A CHILD IS EXPLOITED FOR LABOUR:

A child exploited in labour may come in contact with the Committee through the following ways:

- Rescued and produced by the Police/NGO/Childline/Family members
- The Child may itself approach the CWC

In addition to the general protocol laid down above, the Child Welfare Committee may follow these procedures:

- The Committee shall generally try to understand the facts and circumstances and try to procure details about the workplace, employers.
- If the Child has come in contact with the Committee by itself, the Committee shall immediately issue summons to the Police and direct them to take necessary steps (collect evidence, register FIR).
- During interviewing with the Child the Committee shall ascertain certain facts which is as follows: -
 - ◆ Whether the child wants to go back with the parents/guardian?
 - ◆ How did the child come in contact with the employer?
 - ◆ Whether the child has been abused or not?
 - ◆ Whether the wages has been paid or not?
- The Committee will summon the employer for their presence before the Committee and

⁷² Rule 19 (4)

⁷³ Rule 19 (21)

- direct the back wages alongwith Compensation to be paid to the child.
- The Committee can direct the Police to add appropriate penal provisions.
- If the parents or the guardian appears before the Committee for custody of the rescued child, the Committee will order for verification of the claim. If satisfied, the child will be restored to them pending inquiry.
- The Committee shall ensure that the parents or the Guardian should give an undertaking under **FORM 19**⁷⁴.
- The CWC shall immediately contact a shelter Home and placed the child pending inquiry by the Committee/investigation by the Police if the child is an orphaned or the child parents could not be traced.

Final disposal

- The Committee shall follow the general protocol as specified above.

IN CASE THE CHILD HAS BEEN SEXUALLY ASSAULTED:

- The police should report to the Special Court and CWC within 24 hours of the recording of the information including steps taken to ensure care and protection. (Section 19(6), POCSO Act).
- Produce the child before the CWC within 24 hours if the offence has been committed, attempted, or is likely to be committed by a person residing in the same or shared household as the child, or in a CCI and the child does not have parental support, or the child is without a home and parental support. (Rule 4(3), POCSO Rules) Submit a report 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)
- If the child cannot be produced, the CWC should be informed so that they can reach out to the child where the child is located. (Proviso to Rule 18(1), JJ Model Rules)
- Child victim of sexual abuse who is below two years of age or who is medically unfit need not be produced physically before the CWC and a written report along with the child's photograph can be sent to the CWC within 24 hours. The child can be produced before the CWC when the child is medically fit along with a medical certificate. (Rule 18(3), JJ Model Rules);
- In cases where a report has been received about the safety of the child in her home, the CWC must proceed to determine within three days if the child should remain with the family or the shared household and be placed in a child care institution or a shelter home⁷⁵;
- Before arriving at any conclusion in this regard, the Committee must take into account the preference of the child and the child's best interest as well as the ability of the parents to provide for care and attend to immediate needs of the child, the child's age and level of maturity, social and economic background, physical condition, chronic illness, history of family violence involving the child or a family member and other relevant factors⁷⁶;
- The child and his parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered⁷⁷.

⁷⁴ The Form can be found at: <http://www.wcd.nic.in/sites/default/files/171861.pdf>

⁷⁵ Rule 4(4), POCSO Rules, 2012

⁷⁶ Rule 4(5), POCSO Rules, 2012

⁷⁷ Rule 4(6), POCSO Rules, 2012

Appointment of Support Person:

- The Committee must appoint a Support Person for the case with the consent of the child and any adult member of the family (parents/guardians/person of trust) to support the child through the process of investigation and trial. The support person must be someone who has social work background and is familiar with conducting these cases⁷⁸;
- The Committee in certain circumstances may also terminate the services of the support person⁷⁹.

Other Functions:

The Committee must ensure that the perpetrator does not come in contact with the child at any point in time;

The Committee must also ensure that the child is made available for adducing evidence in the Court and should co-ordinate with the law enforcement agencies to make the entire process child friendly;

If the child in question who is a child in need of care and protection has no legal guardian, the Committee must ensure that the child is provided with legal aid and oversee the applications for compensation that can be made on behalf of the child;

IF THE CHILD IS A VICTIM OF CHILD MARRIAGE:

In addition to the general protocol as specified above, the following procedures may be followed:

- The Committee should ensure that the child is protected within and outside the marriage keeping in view the best interest of the child.
- The Committee should make sure of her maintenance and also for the child if a child is born out of the wedlock.
- The Committee should arrange for a legal counsel if the child does not have anyone to file a case in the family Court on her behalf.

If the Committee comes to know that a child marriage is about to take place, following steps are suggested to be taken:

- The Committee should initiate action to stop the marriage.
- The Committee should direct the Child Marriage Prohibition Officer, Gram Panchayat, Police, Magistrate to stop the marriage.
- The Committee should ensure that FIR are registered against the perpetrators and penalties are collected from them

If the marriage has already taken place, following steps may taken:

The Committee should determine the age of the child who is party to the marriage.

- The Committee can take into consideration the findings of the police, report of Child Marriage Prohibition Officer and discussions with the child for age determination of the child.
- The CWC should check whether the child was forced into the marriage.

⁷⁸ Rule 4(7), POCSO Rules, 2012

⁷⁹ Rule 4(10)

- The Committee should give her information on the legal rights under the Act.
- In a void marriage the Committee should take the custody of the Child, if the Child is below 18 years of age and if the child is in need of care and protection.
- The Committee can take the custody of the child born out of the marriage with the minor biological mother
- The Committee can call the parents through the PO, counsel them with the involvement of the NGOs and Panchayat and after making them sign a bond the child can be restored to the parents.
- The Committee will focus on the rehabilitation plan of the child rescued or the child born out of the marriage during the pendency of legal proceedings before the Family Court or other Court.

IN CASES WHERE THE CHILD IS A TRAFFICKED CHILD:

Apart from the general protocols, it is suggested out of Best Practice that the following special procedures may to be followed by the Child Welfare Committee:

- The child may be produced before the Committee by the Police, NGOs or by an order of the Session Court if it is a mass rescue and found that the child is a minor.
- The Committee should take care that the child does not come in contact with the family members, pimps, and brothel keepers, as they could be the traffickers or the agents.
- The Committee should ensure that the child meets her family only under their supervision so that the child is not pressurized to take back the case or change her statement.
- The CWC should direct the Medical Officer to conduct a detailed physical examination and gynecological examination. HIV testing should be done when advised by the medical officer and with the consent of the child.
- The Committee should ensure that the tests or the results are kept confidential and does not lead to discrimination and exclusion of the child from services.
- The Committee should ensure that the Police record the statement of the child before them.
- The Committee should verify the forwarding report, injury report, FIR copy along with statement of the woman police officer, Case Diary, belongings of the victims against the list provided by the police.
- The Committee should ensure that the child is not interviewed again and again by the Police as the same would traumatize and distress the child.
- The Committee should ensure that appropriate provisions from the relevant legislations are added as well as under the relevant penal provisions.
- The Committee may record the statement of the child since the statement made before the Committee is accepted as evidence under Section 164 of the IPC.
- The CWC can direct the Police to furnish a copy of the FIR alongwith supporting documents as well as the Chargesheet.
- Upon interaction with the rescued child, the CWC may issue directions to temporarily rehabilitate the child in the interim by placing the child in CCI's or with fit person or fit facility.⁸⁰

⁸⁰ Rule 18(4), Model Rules, 2016

- The Committee shall direct the person or organisation concerned to develop an individual care plan in **Form 7** including a suitable rehabilitation plan. The individual care plan prepared for every child in the institutional care shall be developed with the ultimate aim of the child being rehabilitated and re-integrated based on the case history, circumstances and individual needs of the child⁸¹.
- The Committee should not send the child back to the family if there is a likelihood that the parents, members of the extended families were involved in trafficking or if the child is not willing to go back.
- The CWC should also ensure that the PO/VPO takes into account the wishes of the child while determining the rehabilitation plan.
- It is advisable that if the parents of the child were the traffickers, then the Committee should not hand over the child to the parents once the girl completes 18 years of age. The Committee can allow the child to continue in the same home or place the child in fit institution for continuation of care. However the wish of the girl has to be taken into consideration.

CUSTODY

- It has been observed that once traffickers learn that the trafficked child is under the care of the CWC, fictitious persons claiming to be the parents of the child or actual parents influenced by the traffickers approach the Committee seeking the custody of the child.
- The Committee must not hand over any child unless a home verification report is called for in consultation with the SJPU or the DCPU.
- In case the police does not present a positive report, the Committee shall place the child in long term rehabilitation and also initiate a child care plan;
- If upon the receipt of the reports, the CWC is of the opinion that the child should be repatriated with the family, then the child shall be restored with the parents.
- If the committee decides to restore the child under the care of a parent or guardian or a fit person, then such a person shall have to give an undertaking as prescribed under Form 20⁸².
- For safe repatriation within the state and between States the CWC will inform the concerned authorities in the receiving area, such as the local CWC. The CWC may also order an NGO or the SJPU to accompany the child.

During Home Verification, the following factors need to be considered⁸³:

- a. Profile of the victim including caste, address, landmarks, disabilities;
- b. Details of family members and familial relationships;
- c. History of family involvement in crime;
- d. Education and employment details of the victim including level of learning salary earned etc.;
- e. Details of the victim's health including addiction to any narcotic or psychotropic substances;
- f. As far as possible the report should also determine the push factors for trafficking of the victim;
- g. Acceptance and opportunities for the victim to reintegrate into society if the victim is sent back home must be identified and recorded;

⁸¹ Rule 19(4), Juvenile Justice Act, 2015

⁸² Rule 18 (8), The Juvenile Justice Act; The Form can be found in the Model Rules, 2016;

⁸³ Standard Operating Procedure (Sop) For Combating Trafficking Of Persons In India, National Human Rights Commission, 1st Edition: 10th December, 2017, accessible at: http://nhrc.nic.in/Documents/Publications/sop_CTPI_19012018.pdf

IF THE CHILD IS SUFFERING FROM MENTAL AND PHYSICAL DISABILITIES:

The Juvenile Justice Act provides for punishment for subjecting a child to cruelty⁸⁴.

In addition to the general protocol specified above the following procedures have to be followed when a child with disability is produced before the CWC.

- The Committee should ensure that children with disability are placed at the Children homes without any discrimination.
- The Committee must pass an order that a specialist/a special educator to help/assist the Probation Officer or the Committee in handling the case of the child.
- The Committee shall order for an assessment of the disability of the child and its degree. Accordingly the child should be referred to the specialized institutions or mental health establishment⁸⁵;
- The Committee should hand over the child to the parent if they are in a position to take care of the child and if the child is willing to go provided with proper counselling to the parents.
- If the child family is not traced or the child does not want to go back the Committee should ensure that a long term plan for rehabilitation either by sending the child to a fit institution that offers long-term care so that the developmental needs of the child is met.
- The Committee can recommend the State Government to set up an institution if there is no institution available for the rehabilitation of children with disabilities within the jurisdiction of the Committee.

IF A CHILD IS SURRENDERED⁸⁶

Apart from the procedure laid down in the Juvenile Justice Act the following procedures also needs to be followed by the Child Welfare Committee:

- The Committee will inquire the biological mother/ parents and assess the reasons why the mother/parents wants to give away the child.
- The Committee will provide information on non-institutional support such as foster care, sponsorship or short term institutional care, or other schemes of the government if the reason for wanting to surrender the child is due to a crisis⁸⁷.
- The Committee can also refer the parent to an agency for professional counseling to strengthen their coping capacities to deal with the crisis that they are facing⁸⁸.
- If, after prescribed process of inquiry and counselling, the Committee is satisfied, the parent or guardian shall execute a surrender deed (**Form 24**)⁸⁹, as the case may be, before the Committee.
- The Committee while passing the Final Order should take the detailed assessment report of the counselor into consideration.
- If the Committee is convinced that the parent/couple is not in a position to take care for the child, the Committee may suggest/recommends/discuss with the parent/couple about surrendering the child and placing the child for adoption, foster care or other alternate care.
- The Committee should collect the marriage certificate and the birth certificate of the child, if, surrendering the child is done by a married couple. The document of surrender must be sign by both the father and the mother. In the absence of signature of one parent, the document will be considered invalid⁹⁰.

⁸⁴ Section 75, Juvenile Justice Act, 2015; The Penal provisions under the Indian Penal Code are also applicable;

⁸⁵ Rule 55, Model Rules, 2012

⁸⁶ Section 35 of the Juvenile Justice Act, 2015

⁸⁷ Section 35 (3)

⁸⁸ Section 35(2)

⁸⁹ Available on the Juvenile Justice Model Rules, 2016

⁹⁰ Standard Operating Procedure (SOP) For Child Welfare Committee (CWC), Govt. of Maharashtra, accessible at: <http://nird.org/wp-content/uploads/2012/02/SOPCWC.pdf>

In case a child is surrendered by a minor biological mother:

- The Committee should ensure that the parents/guardian of the minor are involved in the process of surrender and that the surrender deed is jointly executed by the parent and the minor mother.
- The Committee will consider the decision of the minor mother if there is a dispute about surrendering the child between the parents and the minor mother.
- ○ The Committee can deny the custody of the child to the minor mother if the safety of the child is in danger.
- The Committee will order the child to be placed in SAA until such time the committee is convinced that the mother is in a position to take care of the child.
- The Committee should provide information about the process of surrender, that her child would be placed in a Specialised Adoption Agency (SAA). That she can claim the child within a period of 60 days.
- The Committee should ensure that the Document of Surrender is signed by the minor biological mother and also record that the document has been explained to her and that she is giving her consent to the surrender.
- If the NGO/ Social Activist brings the minor mother should ensure that they signed the document as a witness.

Final Order

- The Committee shall write the order for surrender at the end of the surrender deed document. It must contain the following:-
 - ◆ Original surrender document
 - ◆ Interview of the parent by the Committee
 - ◆ Statement of the biological mother for surrendering the child
 - ◆ Affidavit of the witness.
 - ◆ Details of when the child was produced before the Committee
 - ◆ The biological mother was interviewed and explained the implications of surrendering her child, the documents were verified (such as hospital card/birth certificate of the child, age proof of the minor mother, proof of residence of the mother –ration card, electricity bill, election card and other documents to be listed and attached) and that the vacancy letter of the adoption placement agency was received.
 - ◆ The order must state that after completion of all the processes the child was ordered to be placed before Specialised Adoption Agency (SAA) is asked to commence the process for the child to be declared free for adoption. The SAA shall wait for completion of 60 days reconsideration time given to the biological parent or parents after surrender.
- The Committee will restore the child to the mother, if the mother comes and claim the child within 60 days of surrender only after conducting an enquiry and carefully examining the reason behind for changing her mind.
- The Committee should also ensure that all the parties involved in the surrender process, sign a bond before handing over the child to the mother.
- In such cases, the Committee should maintain a follow up with the minor mother, and child and the family of the biological mother.

If mother or parents do not come to claim the child:

- The Committee shall declare the surrendered child legally free for adoption.
- The child will remain in the adoption agency in safe custody.
- The adoption placement agency should inform the Committee if the child is adopted.
- The Committee can transfer the child to another agency if the child is not adopted within a year after declaring the child legally free for adoption.

IF THE CHILD IS AN ABANDONED OR MISSING CHILD:

Apart from the general protocol specified above, the Child Welfare Committee may adopt the following special procedures as best practice:

- The Committee should verify whether an FIR or missing complaint of the child was filed or not.
- If not the Committee should order the Police to do so and direct them to send wireless messages to all the police stations, Missing bureau etc.
- The Committee should ascertain whether the child has been abandoned or if the child was missing.
- The Committee shall use the designated portal to ascertain whether the abandoned child or orphan child is a missing child while causing the details of the orphan or the abandoned child to be uploaded.
- The Committee can also order a Television Order Memo for police to advertise the found child over the TV mass media.
- The Committee can also direct the probation officer to publish the photo of the child in at least one leading local and national newspaper.
- The Committee should direct the Probation Officer to make announcements of the child being found at places like railway stations as well as in religious places like temples, mosques etc.
- The Committee should in the meanwhile, placed the child in a place of safety.
- The Committee should direct the SJPU/POs/NGOs to verify the address if the child is able to indicate or give some clue about the place of residence.
- The Committee can also issue order to SJPU/PO/NGO to escort the child up to his place of residence and to verify the information.
- The Committee should summon the parents to appear before them on being traced during the inquiry.
- The Committee should hand over the child without any delay to the parent if a missing complaint had been made by the parents with the police.
- If the child was abandoned the Committee, should try to understand the reason for abandoning and assess whether the parents are fit to take responsibility of the child and if so, the parents will be counseled to assume responsibility of the child.
- The Committee will follow the procedure specified above if the parents wish to surrender the child.
- If there is no claimant the Committee will declare the child as abandoned child and legally free for adoption after due process of inquiry is being carried out and being satisfied that all possible efforts have been made to locate the parents/guardians.

5

**STANDARD
OPERATING
PROCEDURE FOR
STATE CHILD
PROTECTION
SOCIETY (SCPS)**

GENERAL:⁹¹

The State Child Protection Society⁹² shall perform the following functions envisaged under the Juvenile Justice Act, 2015⁹³ namely:

- oversee the implementation of the Act and the rules framed thereunder in the State and supervision and monitoring of agencies and institutions under the Act;
- address road-blocks, issues, complaints received regarding care and protection of children;
- Ensure that all institutions set up under the Act and the rules are in place and performing their assigned duties;
- Network and coordinate with civil society organisations working for the effective implementation of the Act and the rules;
- Ensure inter-department coordination and liaising with the relevant departments of the State and Central Governments and State Child Protection Societies of other States or Union Territories;
- Develop training module for stakeholders along with the NCPCR and National Institute of Public Cooperation and Child Development etc.⁹⁴
- Develop programmes for foster care, sponsorship and after-care;
- Maintaining a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the State level;
- **Authorize a person as a 'social worker' under the Juvenile Justice Act, 2015⁹⁵** for preparing social investigation report or individual care plan of the child, child study report, home study report of prospective adoptive parent or foster parents, rendering post-adoption services, and performing any other functions as assigned to such person under the Act or these rules;

⁹¹ All the provisions referred to in this section are from the Juvenile Justice (care and protection of children) Act, 2015 and the rules thereunder.

⁹² **Section 106, Juvenile Justice Act, 2015:** Every State Government shall constitute a Child Protection Society for the State consisting of such officers and other employees as may be appointed by that Government, 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 this Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed.

⁹³ Rule 84, Juvenile Justice Model Rules, 2016

⁹⁴ Rule 91(1)(vii), Model Rules, 2016

⁹⁵ Rule 2(xviii), Model Rules, 2016; A social worker can be engaged by a CCI or can be authorized by the DCPU or the SCPS for preparation of social investigation report.

With respect to the Child Care Institutions:

- The SCPS shall review 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;
- If a person in charge of a child care institution grants permission to visitors (with prior permission from the JJB or the Committee) to visit the CCI, then the person in charge of the CCI shall make a monthly report of such permission (including the orders received from the Board or the Committee) to the State Child Protection Society and also to the Board or the Committee, as the case may be.
- maintain a state level database of all children in institutional care and family based non-institutional care and updating it on a quarterly basis;
- maintain 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;
- inquire into, seek reports and make recommendations in cases of death or suicide in Child Care Institutions and under other institutional care⁹⁶;

Inspection Committee⁹⁷:

The Member-Secretary of the State Child Protection Society shall be the chairperson of the State Inspection Committees⁹⁸ constituted by the State to inspect Child Care Institutions.⁹⁹

With Respect to the Juvenile Justice Fund

- monitor and administer the Juvenile Justice Fund set up by the State Government including disbursement of funds to the District Child Protection Units, Special Juvenile Police Units and police stations, as the case may be;¹⁰⁰
- The State Child Protection Society, with the approval of the State Government shall adopt financial rules to govern the utilisation of the Juvenile Justice Fund¹⁰¹
- maintain 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;
- 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;
- organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders;
- commission research programmes on child protection;
- co-ordinate with State Legal Services Authority and law schools; and
- any other function for the effective implementation of the Act and the rules made there under.

⁹⁶ Rule 85(1)(xiv)

⁹⁷ Rule 84(3), Model Rules, 2016

⁹⁸ Other members of the State Inspection Committee shall comprise of a 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 and shall be headed by the member secretary of the SCPS as its chairperson.

⁹⁹ Rule 41(2)

¹⁰⁰ Rule 83(5), Model Rules, 2016, Rule 84(1)(xii)

¹⁰¹ Rule 83(6), Model Rules, 2016

6

STANDARD OPERATING PROCEDURE FOR DISTRICT CHILD PROTECTION UNIT (DCPU)

A DCPU¹⁰² may come in contact with a child who is in need of care and protection¹⁰³:

- If any person or department or organization contacted the DCPU informing about the child;
- Through a telephonic call;
- Through coordination with any other functionary or authority;
- If any of its officer is a part of a rescue team for child labour

On receipt of a child:

- Any staff of the DCPU shall produce the child before the Child Welfare Committee¹⁰⁴ within 24 hours;
- The time taken to cover the journey shall not be included;
- The staff of DCPU producing the child before the committee shall fill the details of the child in Form 17 format given in the Juvenile Justice Model Rules, 2016¹⁰⁵;

After production of a child before the Committee, the DCPU:

- May be called upon to conduct a social investigation of a child produced before it (by any person or functionary)
- Will accordingly take steps to thoroughly inquire about the child. It will include inquiring about the place of residence, background, and information about the parents, income etc., examining the physical and mental health of the child, education, upbringing and surrounding circumstances.
- Prepare a social investigation report as prescribed and given in Form 22 of the Model Rules, 2016.¹⁰⁶
- File the report before the Committee to assist in its inquiry¹⁰⁷.

The Functions of the DCPU as per Rule 85 Model Rules, 2016:

With Particular Regard to Children:

- Conduct follow up of the child in accordance to the order of the Board or the Children's Court¹⁰⁸.
- Follow up on the individual care plan prepared on the direction of the Children's Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offence¹⁰⁹;
- If the child remains in place of safety, the DCPU (or the Probation Officer or a social worker) shall conduct a yearly review to track the progress of the child in Form 13¹¹⁰.

¹⁰² Constituted under Section 106 of the Juvenile Justice Act, 2015

¹⁰³ All the provisions referred to are under the Juvenile Justice (care and protection of children) Act, 2015 and the rules thereunder.

¹⁰⁴ Section 31(1)(i), the Juvenile Justice Act, 2015

¹⁰⁵ The Form can be found at: <http://www.wcd.nic.in/sites/default/files/171861.pdf>

¹⁰⁶ The form can be found in the appendix to the Juvenile Justice Model rules, 2016

¹⁰⁷ Section 30(3), The Juvenile Justice Act, 2015

¹⁰⁸ Section 18(e) and Section 19(2) of the Juvenile Justice Act, 2015;

¹⁰⁹ Rule 85(1)(iii), Model Rules, 2016

¹¹⁰ Rule 85(1)(iv)

- The periodic follow up report will mention the status of the child, information about the improvement in the condition of the child since she/he was placed at the childcare institution.
- This report in accordance to Form 13 shall be forwarded to the Children's Court.
- It shall maintain record of run- away children from Child Care Institutions¹¹¹;

Transfer of a Child:

- The DCPU shall ensure the restoration of children to their families by facilitating transfer of children;
- Facilitate the transfer of children from one CCI to another if the child's residence is in another jurisdiction¹¹²;
- Where a child has to be sent or repatriated/transferred to another country, the DCPU shall on direction of the Committee, take necessary permission as may be required, such as:
 - ◆ Approaching the Foreigners Regional Registration Offices and Ministry of External Affairs for a no-objection certificate;
 - ◆ Contacting the equivalent Committee, or any other voluntary organisation in the other district or state or country where the child is to be sent¹¹³.
- Transfer a Child if she/he hails from a place outside the jurisdiction of the Committee or the Board:
 - ◆ It shall accordingly¹¹⁴:
 - Send the information of transfer to the appropriate Board or the Committee having jurisdiction over the area where the child is ordered to be transferred by the Board or Committee; and
 - Send a copy of the information to the Person-in-charge of the institution where the child is to be placed for care and protection at the time of the transfer order.
 - ◆ The DCPU may be directed to escort the child on inter-State transfer from one CCI to another under section 95 if the SJPU is unavailable.

Medical Care of Children:

- If it appears that a child has been subject to any form of abuse or there are marks of injury or that the child appears very scared of any physical admonition, the DCPU shall provide immediate medical assistance and advice the medical practitioner to take pregnancy tests to check if the child may be a victim of sexual abuse¹¹⁵
- The State Government through the DCPU shall make provisions for those children diagnosed with special problems such as hormonal problems, immuno-compromised diseases, physical and mental disabilities on the recommendation of the medical officer.
- These children shall be kept in special care homes or hospitals and avail necessary medical/ psychiatric and psychological support or treatment.

¹¹¹ Rule 85(1)(vi)

¹¹² Rule 85 (1) (xi)

¹¹³ Rule 19(6), Model Rules, 2016

¹¹⁴ Rule 81 (2), Model Rules, 2016

¹¹⁵ If required by the order of the Board or the Committee or the Children's Court, in accordance to the procedure laid down in the Medical Termination of Pregnancy Act, 1971, if so needed.

Role of DCPU with respect to Alternative Care:

- Assisting in sponsorship, adoption and foster care;
- Preparation of a child study report to assist in providing alternate care such as adoption or foster care.
- The Child Study Report shall be in the format of Form 31 provided in Model Rules, 2016.
- It shall publish photographs of the child in regional and national newspapers to trace the parents/guardians, requesting anyone to come forward with any information.

A. Foster Care:

- The DCPU shall be the nodal authority for implementing the foster care programme in a district.¹¹⁶
- The DCPU shall be the determining agency in finding suitable foster family to keep children in foster care.
- The DCPU, while selecting foster family shall consider the following, namely¹¹⁷:
 - i. both the spouses must be Indian citizens;
 - ii. both the spouses must be willing to foster the same child;
 - iii. both the spouses must be above the age of thirty-five years and must be in good physical, emotional and mental health;
 - iv. ordinarily the foster family should have an income with which they are able to meet the needs of the child;
 - v. medical reports of all the members of the foster family residing in the premises should be obtained including reports for Human Immuno Deficiency Virus (HIV), Tuberculosis (TB) and Hepatitis B etc. to determine that they are medically fit; and
 - vi. the foster family should have adequate space and basic facilities.
- While selecting Group foster care setting, the DCPU shall consider the following illustrative criteria:
 1. registration of the group setting under the Act;
 2. recognition as a fit facility by Committee;
 3. existence of child protection policy; and
 4. sufficient space and proper amenities for children.
- The DCPU shall maintain a record of each child in foster care in Form 34, provided for in the end of the JJ Model Rules, 2016¹¹⁸.
- If adoptable children between the age of 6 to 8 years do not get a family either in in-country adoption or in inter-country adoption within a period of two years after they are declared legally free for adoption by Child Welfare Committee, such children will be eligible to be placed in family foster care or group foster care, by the Committee on the recommendation of District Child Protection Unit or Specialised Adoption Agency.

¹¹⁶ Rule 23(2), Model Rules, 2016

¹¹⁷ Rule 23(12), Model Rules, 2016

¹¹⁸ Rule 23(17), Model Rules, 2016

- Children with special needs, irrespective of the age, who do not get a family either in in-country adoption or in inter-country adoption within a period of one year after they are declared legally free for adoption by Child Welfare Committee, such children shall be eligible to be placed in family foster care or group foster care, by the Committee on the recommendation of DCPU or Specialised Adoption Agency, provided the Home Study Report of the foster family supports their fitness and group setting has facilities for care of such children.

B. Sponsorship:

- The sponsorship programme shall be implemented by the DCPU.
- It shall provide a panel of persons or families or organisations interested in sponsoring a child.
- The panel will list sponsors according to the area of interest such as education, medical support, nutrition, vocational training etc., and the nature of sponsorship.
- The DCPU shall forward the panel to the Board or the Committee or the Children's Court.

In Case of an individual sponsorship:

- ◆ The DCPU shall open an account in the name of the child to be operated preferably by the mother.
- ◆ The money shall be transferred directly from the bank account of the DCPU to the bank account of the child.

With regard to functioning of Child Care Institutions:

- The DCPU shall receive the reports¹¹⁹ by the inspection committee made after visits to the child care institutions.
- Upon receipt of the report, the DCPU (or the State Government) shall make recommendations to the CCI's if necessary¹²⁰.
- Every CCI is mandated to have a complaint box addressing complaints made by a child or on the child's behalf about corporal punishment in the CCI, which will be opened in the presence of a representative of the District Child Protection Unit once a month.
- The DCPU shall forward the complaints to the Judicial Magistrate of First Class nearest to the Child Care Institution and copies shall also be forwarded to the Board or the Committee.
- The DCPU shall 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;

After Care:

- ◆ The DCPU shall prepare and maintain a list of organisations, institutions and individuals interested in providing after care as per their area of interest such as education, medical support, nutrition, vocational training etc.
- ◆ The list shall be updated regularly.
- ◆ The list shall be forwarded to the Board or the Committee and all Child Care Institutions for their record.

¹¹⁹ Filled in the format available in Form 46 of the model Rules, 2016

¹²⁰ Section 54

General¹²¹:

- Send the list of persons who can be engaged as monitoring authorities to the Children's Court along with bi-annual updates;
- Provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning;
- Arrange for and be ready with psychologists or psycho-social workers or other experts¹²² to assist in the preliminary assessment of the Board, which is dealing with a heinous offence;
- Maintain a panel of translators, interpreters and special educators to enable the inquiry of the Board or the Committee or the Children's Court;¹²³
- Ensure inter-departmental coordination 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;
- Arrange for counselors and community service in case a Board has directed the child's release after admonition etc.¹²⁴
- 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;
- Maintain a district level database of missing children in institutional care and upload the same on designated portal;
- Maintain a database of children placed in Open Shelter and in foster care;
- Provide for 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;

¹²¹ Refer to Rule 85 of the Juvenile Justice Model Rules, 2016

¹²² Rule 10A (2), Model Rules, 2016

¹²³ Rule 7(1)(i) of the Model Rules, 2016

¹²⁴ Rule 11(5), Model Rules, 2016

7

**STANDARD
OPERATION
PROCEDURE FOR
SOCIAL WORKER/
PROBATION
OFFICER**

A **Probation Officer** is an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 or the Legal-cum- Probation Officer appointed by the State Government under District Child Protection Unit **[S. 2(48) of the JJ Act]**

GENERAL

A child in need of care and protection may come in contact with a designated social worker/Probation Officer:

- If the child herself contacts the social worker; OR
- If any person contacts the social worker to inform that a child is in need of care and protection; OR
- If a social worker has been a part of a rescue operation of children who are exploited for labour or trafficking;

On Reception:

- She/he shall produce the child before the committee within 24 hours;
- The time lost in the travel is not counted in this;
- At the time of production, the Social worker shall fill Form 17 as included in the Model Rules, 2016.

The social worker shall upon being called by the Child Welfare Committee:

1. To explain the situation at hand to the child in a sensitive and friendly manner;
2. Conduct a social investigation of a child produced before it¹²⁵;
 - Will accordingly take steps to thoroughly inquire about the child. It will include inquiring about the place of residence, background, and information about the parents, income etc., examining the physical and mental health of the child, education, upbringing and surrounding circumstances.
 - Prepare a social investigation report as prescribed and given in Form 22 of the Model Rules, 2016.¹²⁶
 - File the report before the Committee to assist in its inquiry.¹²⁷
 - The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child.¹²⁸
3. Prepare an individual care plan¹²⁹ of the child being placed in a children's home:
 - The social worker shall keep in mind the needs and best interest of the child¹³⁰;
 - For the preparation of the individual care plan, the social worker needs to have built a comfort level with the child in order to understand the position, background and the needs of the child.

¹²⁵ Rule 19(3), Model Rules, 2016

¹²⁶ The form can be found in the appendix to the Juvenile Justice Model Rules, 2016

¹²⁷ Section 30(3), The Juvenile Justice Act, 2015

¹²⁸ Section 36 (2) of the Juvenile Justice Act, 2015

¹²⁹ In the format provided in Form 7 of the model Rules, 2016

¹³⁰ To examine whether she/he could be put up for adoption

- To achieve this, the social worker shall keep abreast with the inquiry and meet the child regularly;
- The individual care plan shall be submitted to the Child Welfare Committee in accordance with Form 7 of the Model Rules, 2016.¹³¹

A CHILD ALLEGED TO BE IN CONFLICT WITH LAW:

On receipt of information from the Police or CWPO under Section 13(1)(iii) of the Juvenile Justice Act, 2015:

- Without waiting for any formal order from the Board, the probation officer shall prepare a social investigation report and formulate an individual care plan in accordance with the procedure specified above¹³².
- The social worker may do so upon the direction by the Board;
- The social investigation report should provide for risk assessment, including aggravating and mitigating factors highlighting the circumstances which induced vulnerability such as traffickers or abusers being in the neighbourhood, adult gangs, drug users, accessibility to weapons and drugs, exposure to age inappropriate behaviours, information and material
- Rule 64 (3) provides that the probation officer shall carry out the directions given by the Board and fulfill the following functions and responsibilities:
 - ◆ To conduct social investigation of the child in **Form 6**;
 - ◆ To attend the proceedings of the Board and the Children's Court and to submit reports as and when required;
 - ◆ To clarify the problems of the child and deal with their difficulties in institutional life;
 - ◆ To participate in the orientation, monitoring, education, vocational and rehabilitation programmes;
 - ◆ To establish co-operation and understanding between the child and the Person-in-charge;
 - ◆ To assist the child to develop contacts with family and also provide assistance to family members;
 - ◆ To participate in the pre-release programme and help the child to establish contacts which could provide emotional and social support to the child after release;
 - ◆ To establish linkages with Probation Officers in other Districts and States for obtaining social investigation report, supervision and follow-up.
 - ◆ To establish linkages with voluntary workers and organisations to facilitate rehabilitation and social reintegration of children and to ensure the necessary follow-up;
 - ◆ Regular post release follow-up of the child extending help and guidance, enabling and facilitating their return to social mainstreaming;

¹³¹ The Form can be found at: <http://www.wcd.nic.in/sites/default/files/171861.pdf>

¹³² Rule 64 (1), Model Rules, 2016

- ◆ To prepare the individual care plan and post release plan for the child;
- ◆ To supervise children placed on probation as per the individual care plan;
- ◆ To make regular visits to the residence of the child under his supervision and places of employment or school attended by such child and submit periodic reports as per **Form 10**;
- ◆ To accompany children where ever possible, from the office of the Board to the observation home, special home, place of safety or fit facility as the case may be;
- ◆ To evaluate the progress of the children in place of safety periodically and prepare the report including psycho-social and forward the same to the Children's Court;
- ◆ To discharge the functions of a monitoring authority where so appointed by the Children's Court;
- ◆ To maintain a diary or register to record his day to day activities such as visits made by him, social investigation reports prepared by him, follow up done by him and supervision reports prepared by him;
- ◆ To identify alternatives of community services and to establish linkages with voluntary sector for facilitating rehabilitation and social reintegration of children; and

A CHILD WHO HAS BEEN EXPLOITED FOR LABOUR:

- A social worker may be made a part of a rescue operation and through this, come in contact with a child who may be in need of care and protection.
- Such a child shall generally be produced with the Child Welfare Committee at the instance of the police.
- It is not always the case that the social workers who are a part of such operation are designated social workers attached with the Committee or appointed under a statute.
- It is advisable that if the child has established a comfort level with a social worker who is a designated social worker, then the Committee shall retain the social worker for dealing with the case of the concerned child.

General:

- On the basis of a report of social worker the Committee or the Board may after consider the surrounding factors, direct the release of the child¹³³.
- The social worker shall provide counseling to the child;

¹³³Section 97, Juvenile Justice Act, 2015

8

**STANDARD
OPERATING
PROCEDURE FOR
THE PROSECUTOR/
SPECIAL PUBLIC
PROSECUTOR**

Special Public Prosecutors [S. 32, POCSO Act, 2012]

1. The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.
2. A person shall be eligible to be appointed as a Special Public Prosecutor under subsection (7) only if he had been in practice for not less than seven years as an advocate.
3. Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

GENERAL

- The Prosecutor/Special Public Prosecutor should scrutinize the investigation report of the Police and ensure that all the relevant evidences pertaining to the case that were collected by the Police before filing the same to the Court.
- The prosecutor should thoroughly examine the police file and the statement of the complainant/witnesses recorded under section 154, 161 and 164 of the Code of Criminal Procedure, 1973.
- The prosecutor should ensure that the requirements of the Evidence Act have been met and the expert opinion is clear and unambiguous in cases where scientific evidence, including forensic evidence, is to be led.
- The Prosecutor should check whether the names of all the police officials handling the case properly figure in the list of witness or not.
- The Prosecutor should ensure that the original record is attached with the challans/ chargesheet so that the documents can be exhibited by showing relevant record to the witness.
- The prosecutor should ensure that charges are framed under the appropriate section against the accused.
- The prosecutor should oppose the bail of the accused and ensure that they are not released on bail.
- The prosecutor should recommend for filing an appeal if bail is granted to the accused.

- The Prosecutor should arrange for a meeting with the Investigation Officer before the commencement of the deposition of witnesses, so that the Investigation Officer can brief him personally to refresh his memory with regard to the various relevant documents, statements and other material.
- The prosecutor should ensure that the child witness is met a day prior before the deposition so that the child feels more comfortable and able to depose without any distress and trauma.
- The prosecutor should ensure that all the material witnesses i.e. medical experts and other expert witnesses are examined during the trial.
- The prosecutor should understand the position of the witnesses and inform them the reasons for deposing them before the deposition.
- The prosecutor should enquire from the witnesses if they have received direct or indirect threat or inducement from the accused or family.
- The prosecutor should work in coordination with the lawyer/support person supporting/ assisting the child witness.

If the witness is a child:

- The Prosecutor should inform the court that a child witness has arrived for the deposition and ensure that the child is examined at the earliest;
- The Prosecutor should make the child sit comfortably while waiting for the case to be called out.
- The Prosecutor should ensure that the child is comfortable and is willing to depose without any pressure or stress.
- The Prosecutor should ensure that the child witness is examined on the same day and is discharged.
- The prosecutor should oppose any adjournment being sought by the accused counsel if the child witness is present for the deposition.
- The Prosecutor should ensure that no unwanted/irrelevant questions are being raised by the counsel of the accused, which may traumatize or frighten the child.

While considering the bail application:

- It is important that the IO is consulted and the complete facts are taken from the IO;
- Advance notice of application for bail of the accused should be given to the child victim as also to the Investigating Officer to take suitable necessary steps in the case.
- The Prosecutor should take into account all probable circumstances for fair trial especially keeping in mind the safety and security of child victims and their families.
- Particular attention should be paid to living arrangements, especially if the offender and the child reside in the same house as this may lead to the abuse continuing or intimidation of the victim to withdraw the complaint.

Role of Prosecutors in cases of Incest:

The High Court of Delhi in *Delhi Commission for Women v. Delhi Police* (2010) 172 DLT 65 (DB) formulated guidelines to effectively tackle sexual offences including incest and child sexual abuse offences to police, hospitals/ doctors, Child Welfare Committees, Sessions Court, Magistrate Courts, Prosecutors and other concerned authorities.

With respect to Prosecutors, the Court prescribes the following guideline:

a) In cases where the child is placed in a shelter following the orders of the Child Welfare Committee or a Metropolitan Magistrate, the application seeking custody of the child made by the parents/relatives of the victim should not be acceded to till such time, the Public Prosecutor gets the status of the applicants verified with the Rape Crisis Cell and also call for the records of the Child Welfare Committee if it is not available.

- It should be ensured that the privacy and the confidentiality of the child are maintained at all times.
- Assist the victim in depositions before the court and brief properly about the nature of court proceedings atleast one day in advance.
- The deposition of the child must be recorded when the support persons/companion is present with the child;
- Oppose adjournments especially when the witnesses are present and more particularly when the child is present;
- Ensure that the frequent breaks are given to the child during trial as younger children are likely to get tired faster.
- While preparing questions to examine a child witness, "Summary of Suggested Guidelines as to how a Child may be questioned in the Court" as provided in 'User Handbook on POCSO Act by the NCPCR' may be used.
- Recording of the statement of the victim is a time consuming process and needs to be handled sensitively. The same principles should apply to other witnesses as well, especially when the accused is well known to the family. In case of any cross-examination of the complainant or other witnesses, the Prosecutor should ensure that the defence counsel does not badger the victim or any witness and prevent any character assassination of the victim or other witnesses. In cases of a gang rape, where there are more than one accused, the judge should be requested to ensure that repeat questions are not put by defence counsels and in case a question is repeated, the prosecutor must object to the same;
- While recording the evidence of a child with mental or physical disability, the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, should be sought (**Section 26**).
- While recording the testimony of the child, it should be ensured that the child is not exposed in any way to the accused while at the same time the accused should be in a position to hear the statement of the child and communicate with their lawyer. The latter can be done by recording the testimony of the child via video conferencing, closed-circuit television or curtains etc.

- o The services of an interpreter, translator, special educator, expert, or person familiar with the manner of communication of the child, if required {Section 19 and Rule 3 (7)} may be engaged in order to facilitate communication with the child.
- o The Prosecutor should ensure that the witnesses feel safe and are not changing/ recanting their testimony due to any fear, threat, coercion etc. Additionally, the Prosecutor should also ensure that the reason for a victim's ostensible retraction is thoroughly investigated by the police.
- o Even when the victim may have given a full account of the abuse, a number of factors will be used to undermine the credibility of a child's statement. These may include:
 - a. delay in reporting;
 - b. the account given was inconsistent;
 - c. the victim voluntarily returned to the accused;
 - d. the victim has a learning disability or mental illness;
 - e. the victim is perceived as consenting to sexual activity;
 - f. the victim has previously told untruths about other matters; and,
 - g. the victim has been, or is a victim of substance abuse;

The Prosecutor should have an understanding of the consequences faced or likely to be faced by a child if they say no to their abuser and this should form part of the prosecution strategy to address perceived weaknesses or anomalies in the victim's account.

- o Upon conviction, the Prosecutor has a duty to assist the Court on sentencing and must challenge any defence plea on mitigation which may be misleading, untrue or which unfairly attacks the victim's character.
- o Victim should be informed with reasons in writing if charges against the accused are dropped, substantially altered, proceedings are discontinued or no evidence is offered.
- o Victim should be informed about the all stages of proceedings and progress with respect to trial processes.
- o Victim should be informed of their rights to prosecute the accused, seek compensation as well as right not to prosecute.
- o To ensure that interim compensation is provided by the Court to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of FIR, the Prosecutor must make this application on behalf of the child in consultation with the parents or simply remind the Special Court of this provision.
- o The compensation is to be awarded by the court and is payable by the State Government from the Victims Compensation Fund/Scheme established under **Section 357A** of the Cr.P.C, 1973. The victim compensation is payable within 30 days of the receipt of the order as per **POCSO Rule 7**.

9

STANDARD OPERATING PROCEDURES TO THE JUVENILE JUSTICE BOARD

Procedure adopted for the functioning of the Board [Sections 7, 8 read with Rule 7]:

- All the procedures must be child-friendly and the venue should not resemble regular Courts and should not appear intimidating to a child.
- A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting¹³⁴.
- An order of the board is not invalid for the sole reason that one of the members was absent during any stage of the proceeding¹³⁵. However, this shall apply only **if** at the time of disposal, 2 members including the Principal Magistrate were present at the time of final disposal or passage of an order;
- In case of difference of opinion at the time of interim or final disposal, majority's stance shall prevail, and if there is no such majority, then the Principal Magistrate's opinion shall prevail¹³⁶.

Manner of Inquiry:

- At the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment; **[Section 14 (5) (a)]**
- In all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings; **[S. 14 (5) (b)]**
- Every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry; **[S. 14(5)(c)]**
- Cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973; **[S. 14 (5) (d)]**
- The Board, shall dispose of inquiry of serious offences by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973; **[S. 14(5)(e)]**
- Inquiry of heinous offences,—
 - i. for children below 16 years of age, inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;
 - ii. for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.
- Whenever necessary, the Board shall provide a translator or interpreter or special educator who shall be paid not less than Rs. 1,500 per day and in case of translator, not exceeding Rs. 100 per page;¹³⁷

¹³⁴ Section 7(2)

¹³⁵ Section 7(3)

¹³⁶ Section 7(4)

¹³⁷ For the said purpose, the District Child Protection Unit shall maintain a panel of translators, interpreters and special educators who shall forward the same to the Board, the qualifications of the translator, interpreter and special educator shall be as prescribed under the POCSO Act, 2012 and rules framed thereunder **[Rule 7(1)(i)]**

Bail to a Person who is apparently a child alleged to be in conflict with the Law (Section 12)

If a person who is apparently a child and is alleged to have committed an offence (bailable or non-bailable), is:

- a. **detained** or
- b. **apprehended** by the Police or
- c. appears before the board or
- d. **produced before a Board,**

Then, such person shall immediately be released on bail (with or without surety) or be placed under a probation officer or under a fit person notwithstanding the Code of Criminal Procedure, 1973 or in any other law for the time being in force. **[Section 12(1)]**

If a child is released on bail, the Board shall duly inform the Probation Officer or the Child Welfare Officer **[section 13(2)]**.

However, the Board is empowered not to release a child if there exist substantial/ reasonable grounds to believe that the child's release may facilitate an association with a known criminal or may expose the said child to moral, physical or psychological danger or that the release of the child would defeat the ends of the justice. The Board should record the reasons for rejection of bail. **[Proviso to S. 12 (1)]**

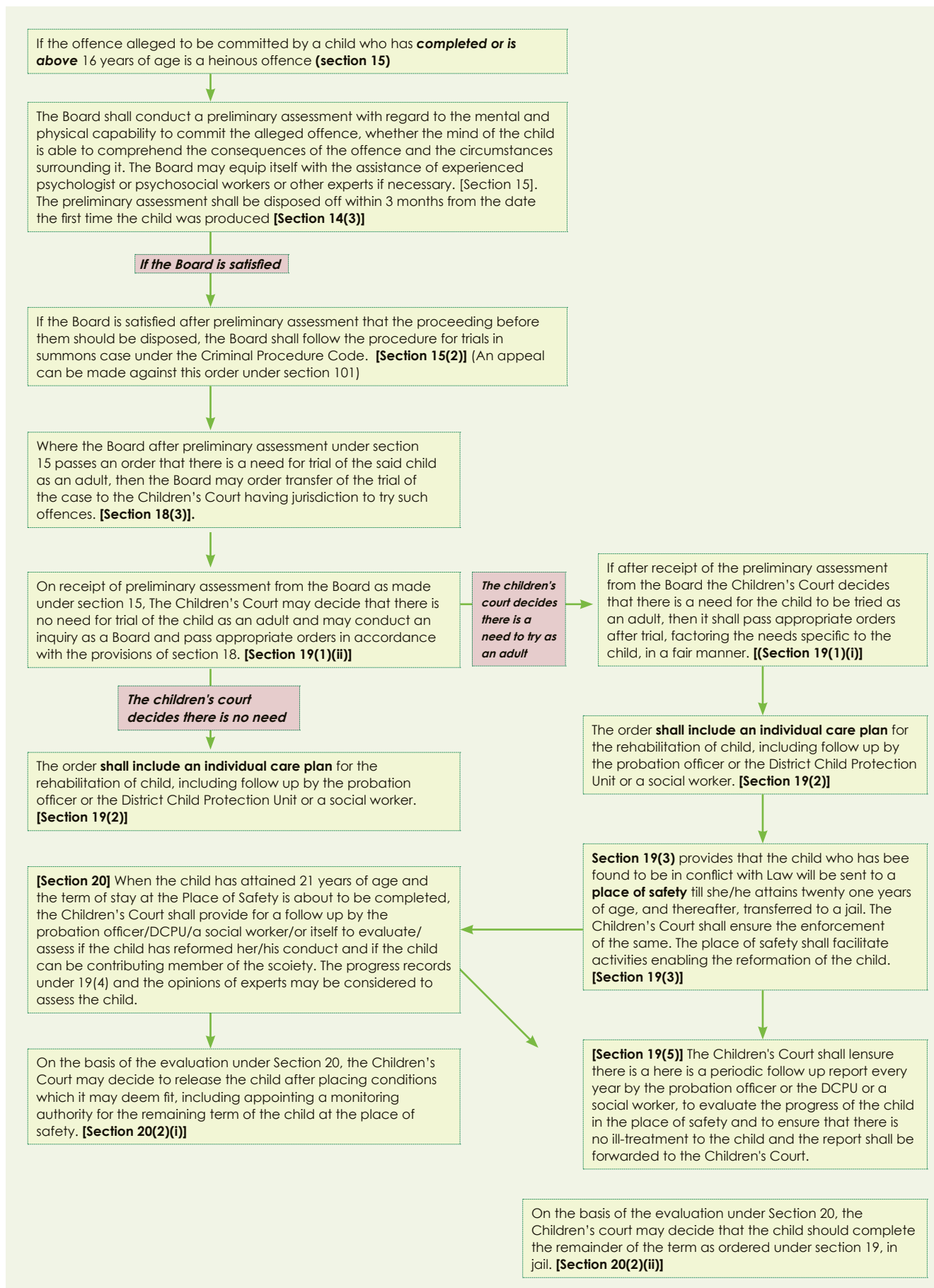
If the Person is not released on Bail:

*If the officer-in-charge of the police station does not release on bail, the child apprehended, such officer shall ensure the person is placed in an **observation home** until the person can be brought before a Board. **[Section 12 (2)]***

*If the Board does not release such person on bail, then the board shall by an order, send the person to an **observation home or a place of safety**, during the period of pendency of the inquiry. **[S. 12 (3)]***

If the child in conflict with law is unable to fulfill the conditions stipulated in the bail order within seven days, such child shall be produced before the Board for modification of the conditions of bail. **[S. 12 (4)]**

Inquiry if the heinous offence is alleged to be committed by a child who is sixteen years of age or above:



- For Petty Offences: - If the nature of offence alleged to be committed is petty, the same **shall be terminated** if the inquiry by the Board remains inconclusive **even after the extended period of inquiry has lapsed. [Section 14(3)].**

Removal of disqualification (Section 24):

- Any child who has committed an offence under such Law shall suffer disqualification, if any,, attached with a conviction of an offence.
- However, this does not apply to a child who has completed or is above 16 years of age who is found the be in conflict with Law by Children's Court under section 19.
- The provision mandates the Board to direct the Police or by/to Children's Court and its own registry, to destroy relevant records of conviction after the expiry of the period of appeal/reasonable period not exceeding 7 years (Rule 14)
- If the child in question is found to have committed a heinous offence, the relevant records of conviction of such child shall be retained by the Children's Court.
[Section 19(1)]

10

**STANDARD
OPERATING
PROCEDURE
FOR MEDICAL
PROFESSIONALS**

Section 164 A of the Code of Criminal Procedure: Medical Examination of rape victim:

- A child or a woman with whom rape is alleged or attempted to have been committed or attempted, should be examined by a medical expert.
- The examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner.
- The examination should be done after obtaining the consent of such child or woman or of a person competent to give such consent on her behalf within twenty-four hours from the time of receiving the information relating to the commission of such offence.
- The registered medical practitioner shall without delay, examine her and prepare a report of his/her examination.
- The report should contain the following details:-
 - a. the name and address of the child/woman and of the person by whom she was brought;
 - b. age of the victim
 - c. the description of material taken from the person of the victim for DNA profiling;
 - d. marks of injury, if any, on the person of the victim;
 - e. general mental condition of the victim; and
 - f. other material particulars in reasonable detail.
- The report shall state precisely the reasons for each conclusion arrived at.
- The report should specifically record that the consent of the child/woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- The exact time of commencement and completion of the examination shall also be noted in the report.
- The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate.

● Section 27 of the POCSO Act deals with the medical examination of child:

- The medical examination of a child in respect of whom any offence has been committed under this Act, shall, in accordance with Section 164A of the Code of Criminal Procedure, 1973, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted
- In case the victim is a girl child, a woman doctor shall conduct the medical examination.
- The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

- o Where, in case the parent of the child or other person the child has taken in confidence cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

In addition to the above, there are guidelines issued by the Ministry of Health and Family Welfare, Government of India¹³⁸. The relevant portions dealing with children are:

- a. In case the child is under 12 years of age, consent for examination needs to be sought from the parent or guardian.
- b. The abuser may accompany children when they come for medical treatment, so be aware and screen when you suspect abuse. In such situations, a female person appointed by the head of the hospital/institution may be called in to be present during the examination.
- c. Do not assume that because the child is young he/she will not be able to provide a history. History seeking can be facilitated by use of dolls and body charts.
- d. Believe what the child is reporting. There are misconceptions that children lie or that they are tutored by parents to make false complaints against others. Do not let such myths affect the manner in which you respond to cases of child sexual abuse.
- e. Specific needs of children must be kept in mind while providing care to child survivors. Doses of treatment will have to be adjusted as required in terms of medical treatment. For psychological support, it is imperative to speak with the care giver/s of the survivor in addition the survivor themselves.
- f. Health professionals must make a note of the following aspects while screening for sexual abuse. Assurance of confidentiality and provision of privacy are keys to enabling children to speak about the abuse. However genital and anal examination should not be conducted mechanically or routinely. A few indicators for routine enquiry are –
 - Pain on urination and /or defecation
 - Abdominal pain/ generalized body ache
 - Inability to sleep
 - Sudden withdrawal from peers/ adults
 - Feelings of anxiety, nervousness, helplessness
 - Inability to sleep
 - Weight loss
 - Feelings of ending one's life

WITH REGARD TO ILLEGAL MEDICAL TERMINATION OF PREGNANCY¹³⁹:

- o Only registered medical practitioners are authorized to conduct the termination of pregnancies and shall not be punished for conducting termination in accordance to the provisions of the Medical Termination of Pregnancy Act **[Section 3(1)]**.
- o Such termination conducted by an unregistered medical practitioner is a punishable offence under the Indian Penal Code **[Section 5(2)]**

¹³⁸ Available at <https://mohfw.gov.in/sites/default/files/953522324.pdf>

¹³⁹ Governed by the Medical Termination of Pregnancy Act

- A pregnancy shall be terminated only upon the consent of the woman **[Section 3(4)(b)]**. However, if the woman has not attained the age of 18 years or is over 18 years but not in a position to take a decision because of her mental illness, then the parent/guardian of the person is authorized to terminate the pregnancy by providing the consent for the same in writing.
- **Section 3(2)** provides that a pregnancy may be terminated by a registered medical practitioner: -
 - a. If the pregnancy has not exceeded 12 weeks and the registered medical practitioner is of the opinion that the pregnancy would affect the life or mental or physical health of the woman, or that the pregnancy entails a substantial risk to the child after its birth (it would suffer from such physical or mental abnormalities as to be seriously handicapped)

OR

- b. if the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks and at least two registered medical practitioners are of the opinion that the pregnancy would affect the life or mental or physical health of the woman, or that the pregnancy entails a substantial risk to the child after its birth (it would suffer from such physical or mental abnormalities as to be seriously handicapped)
- The registered medical practitioner(s) while assessing that the continuation of pregnancy may affect the health of the woman/child, will also give due weightage to the pregnant woman's immediate and foreseeable position. **[Section 3(3)]**
- However, the contingencies with respect to the length of the pregnancy and the opinion of (at least) two registered medical practitioners shall cease to operate if the registered medical practitioner is of opinion formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. **[Section 5(1)]**

Place of Termination:

- Termination of pregnancy can be executed only in accordance with the provisions of the Act and only in the following places:
 - a. a hospital established or maintained by Government, or
 - b. a place for the time being approved for the purpose of this Act by Government.
- However, this provision shall not apply to the termination of a pregnancy by the registered medical practitioner 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. **[Section 5(1)]**

11

SPECIAL PROVISIONS FOR THE COURTS DEALING WITH CHILDREN

RECORDING THE STATEMENT UNDER SECTION 164 OF THE CODE OF CRIMINAL PROCEDURE

- On an application made before it by the police, the court will record the statement under section 164, Cr.P.C.
- Before recording the statement, the Magistrate must determine if the child is in a physical and emotional condition to make the statement;
- After determining the readiness of the child to make the statement, the Magistrate must ensure that the child is comfortable and request for the presence of the support person during the time the child is giving the statement;
- The child must be asked direct questions in a simple manner, which would not confuse the child.
- It is important for the Magistrate to appreciate that the child may or may not comprehend the questions put.
- In case of a sexual assault, the magistrate must ensure that the child actually knows the body parts. In case of doubt, the magistrate may ask the child to use references, which the child would be familiar with;
- Necessary experts like language translators, sign language experts, and professional interpreters may be called for to facilitate the recording of statement.

Under the POCSO Act, 2012, the same Special Court takes cognizance of the offence and also tries the case:

- a. The Special Public Prosecutor and 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)]**.
- b. The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial **[Section 33(3)]**.
- c. The Special Court **should 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)]**.
- d. The Special Court should ensure that the child is not called repeatedly to testify in the court **[Section 33(5)]**.
- e. The Special Court should 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)]**.
- f. The Special Court should ensure that the **identity of the child** is not disclosed at any time during the course of investigation or trial **[Section 33(7)]**.
- g. The Special Court may permit such disclosure, if in its opinion, such disclosure is in the interest of the child and the same should be recorded in writing. The identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed **[Section 33(8)]**.
- h. The Special Court is empowered to, in addition to imposing the punishment, direct payment of such compensation to the child for any physical or mental trauma caused to her/him or for immediate rehabilitation of such child **[Section 33(9)]**.

● **Procedure in case the offence is committed by a child and the determination of age by the Special Court. (S. 34)**

- If the offence mentioned under this Act has been committed by a child, then the child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 [**Section 34 (1) POCSO Act**]
- Whether a person is a child or not, 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)**].
- 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 and the disposal of the case (S. 35)**

- Evidence of a child shall be recorded within thirty days from the date of cognizance by the Special Court, and any delay shall be explained by reasons recorded in writing.
- The trial shall be concluded within a period of one year from the date of taking cognizance of the offence.

● **Section 36 provides that the child should not be exposed 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.

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 37 of the Act provides that the trials shall be conducted in camera** and in the presence of the parents of the child or any other person in whom the child has trust or confidence.

● If 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.

● **As per Section 38** 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, wherever necessary.

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.



The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, an Act of Parliament (December 2005). National Commission for Protection of Child Rights (NCPCR) is a statutory body under the Commissions for Protection of Child Rights (CPCR) Act, 2005 under the administrative control of the Ministry of Women & Child Development, Government of India. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualizes a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificity and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences gathered at the field are taken into consideration by all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building processes, respect for decentralization at the local bodies and community level and larger societal concern for children and their well-being.



ChildFund is a child development organization representing the voice of deprived, excluded and vulnerable children in India regardless of their race, creed and gender, since 1951. Presently, we are assisting over 2 million children and families across the country with our unique child-centric intervention programs. There are 2 entities of ChildFund in India: ChildFund International in India and ChildFund India registered as a Society. ChildFund International is a global child development and protection agency, headquartered in US, serving more than 19 million children and family members in 25 countries. ChildFund International is a member of the ChildFund Alliance – a global network of 11 organizations which assists millions of children and families across 63 countries.

Say No to Child Sexual Abuse

जागरूक रहो , सुरक्षित रहो



PRESS THIS BUTTON at www.ncpcr.gov.in

बाल शोषण की शिकायत आयोग की POCSO e-Box

या हेल्पलाइन न. 09868235077 पर कीजिये