

A HANDBOOK ON THE ROLE OF CHILD WELFARE COMMITTEE & JUVENILE JUSTICE BOARD IN CHILD SEXUAL ABUSE CASE MANAGEMENT



A Handbook on the Role of Child Welfare Committee & Juvenile Justice Board in Child Sexual Abuse Case Management

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Abbreviations

1. CCIs – Child Care Institutions
2. CCL- Children in Conflict with Law
3. CNCP- Children in Need of Care and Protection
4. CWC- Child Welfare Committee
5. DCPU- District Child Protection Unit
6. JJAct, 2015- Juvenile Justice (Care and Protection of Children) Act, 2015
7. J J Model Rules, 2016 – Juvenile Justice (Care and Protection of Children) Model Rules, 2016
8. NGOs – Non-Governmental Organization
9. POCSO – Protection of Children from Sexual Offences Act, 2012
10. Model Rules 2020- Protection of Children from Sexual Offences Rules 2020
12. SJPU- Special Juvenile Police Unit



PREFACE

This Handbook is a guide for CWC and JJB members associated with the care and protection of children. It adopts a systems-based approach to sensitize, inform, and empower persons in the position of trust and authority to ensure that children are protected from sexual abuse and exploitation.

The safety of children is paramount consideration and the CWC and JJB members have the duty and responsibility to ensure safety and protection of all children during at the community level. The CWC and JJB members have to take all possible preventive actions in order to make the community a safe place for children and to ensure identification of potential risk/danger and reporting of any instances of child sexual abuse and exploitation. This includes setting up protocols for child safety, institutional mechanisms for disclosure, reporting, and supporting victims and families and so on.

The CWC and JJB members need to be aware of various laws, legislations, guidelines and protocols established for continuing care and protection of children.

The **BMZ (The Federal Ministry of Economic Cooperation and Development {Germany})**, World Vision Germany and World Vision India in collaboration with PECUC (The People's Cultural Centre) Secretariat of NACG-EVAC initiated a project for ***“Child Protection Workforce Capacity Building to End Child Sexual Abuse in India”*** in the four districts of Delhi and six districts of Odisha. It aims at reaching different stakeholders like Children, Parents and caregivers, formal and informal Child Protection (CP) stakeholders; Civil Society Organizations through capacity building and advocacy to demonstrates behaviours that provide a protective environment for all girls and boys, especially the most vulnerable.

This handbook aims to increase the understanding of CWC and JJB members about various stakeholders and their roles in ensuring safety of children. Gaining an understanding of the role of various duty bearers will be helpful for them.

We are thankful for the technical support of CRACR & PD for developing this valuable handbook for the CWC and JJB members.

We are very much thankful for the support of World Vision Germany, World Vision India and German Federal Ministry for Economic Development and Cooperation (BMZ) administered by Engagement Global (EG).



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Child Sexual Abuse – a snap Short:

Child sexual abuse, also referred to as child molestation, is a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation. Forms of child sexual abuse include engaging in sexual activities with a child (whether by asking or pressuring, or by other means), indecent exposure (of the genitals, female nipples, etc.), child grooming, or using a child to produce child pornography.

Child sexual abuse is a form of child abuse that includes sexual activity with a minor. A child cannot give consent to any form of sexual activity. When a perpetrator engages with a child this way, they are committing a crime that can have lasting effects on the victim for years. Child sexual abuse does not need to include physical contact between a perpetrator and a child. Some forms of child sexual abuse include:

- + Exhibitionism, or exposing oneself to a minor
- + Fondling
- + Intercourse
- + Masturbation in the presence of a minor or forcing the minor to masturbate
- + Obscene phone calls, text messages, or digital interaction
- + Producing, owning, or sharing pornographic images or movies of children
- + Sex of any kind with a minor, including vaginal, oral, or anal
- + Sex trafficking
- + Any other sexual conduct that is harmful to a child's mental, emotional, or physical welfare.

Safeguarding children from sexual abuse under UNCRC:

Article 34 of the Convention on Rights of the Child (UNCRC) provides that children and young people have the right to be protected from sexual abuse. They have this right whether they're male or female, and regardless of who they're attracted to. If a child or young person has a disability, the government should make sure they are protected from sexual abuse. The government should also do this for refugees. Being married before being legally old enough is a form of sexual abuse. Children and young people have the right to be protected from any form of abuse.

Safeguarding children from sexual abuse under POCSO:

POCSO which was enacted in 2012 is gender neutral, makes it mandatory for the victims to report the abuse, lists all kinds of sexual offences against children and provides for them protection during the judicial process. Some of the mandate laid down under POCSO are as follow:

- a. The police officers in every circumstance must bring a case to the attention of the Child Welfare Committee within 24 hours of receiving a report.
- b. The police officers must also be in civil clothes while recording the minor's statement so that the child does not get intimidated.
- c. The statement of the minor must be recorded in presence of the person whom he/she trusts.
- d. The medical examination of the child for the collection of forensic evidence should only be conducted by a lady doctor in presence of a person that the child trusts.
- e. Special courts have been set up under the act to conduct speedy and in-camera trials. It is the duty of these court to ensure that the minor is not exposed to the accused while recording his/her statement, the identity of the minor remains undisclosed, the minor is not asked to repeat

his/her testimony in court and that minor can also give his/her testimony through a video, the cases are not delayed and are disposed of within a year from the date of it being reported, an interpreter, translator, special educator or any other expert should be present in court if the minor needs any assistance, and the family of the minor should be awarded compensation for medical treatment and rehabilitation.

What is POCSO Act 2012 ?	Role of SCPCR in POCSO Act
<ul style="list-style-type: none"> • The Protection of Children from Sexual offences (POCSO) Act 2012 is applicable to the whole of India. The POCSO Act 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from sexual abuse. It also intends to protect the child through all stages of judicial process and gives paramount importance to the principle of "best interest of the child". 	<ul style="list-style-type: none"> • The State Commissions for Protection of Child Rights (SCPCR) has been empowered and with the responsibility of monitoring the implementation of the provisions of the POCSO Act 2012, to conduct inquiries and to report the activities undertaken under the POCSO Act 2012, in its annual report. The commission is also empowered to call for a report on any specific case of child sexual abuse falling within the jurisdiction of CWC. The commission can also recommend interim relief, or make recommendations to the state government to effectively redress the matter.

Highlights of POCSO Act, 2012

1. POCSO Act is invoked only in the case, where the victim/ survivor is a child, whether a girl child or male child, less than 18 years of age, has undergone sexual abuse or is likely to undergo sexual abuse,
2. POCSO Act is a gender-neutral law,
3. POCSO Act is a preventive law, as far as children likely to undergo sexual abuse is concerned,
4. The accused under the POCSO Act can be an adult and may also be a child or adolescent,
5. Section 19 of the POCSO Act provides for mandatory reporting by any person including the child, who has the knowledge of child sexual abuse or of a case where a child is likely to be sexually abused to SJPU or to the local police. Non-reporting of the offence or the case where the offence is likely to take place is punishable by imprisonment extending to six months or fine or both. Non-recording of the mandatory reporting is also punishable with imprisonment extending to six months or fine or both. However, non-recording under section 166 IPC is punishable with simple imprisonment for a term which may extend to one year, or with fine, or with both,
6. Alternate punishment (Section 42)—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 2[376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], 3[376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force,

the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

<p>When you get an unsafe touch, you may feel bad, confused and helpless You need not feel "bad" because it's not your fault</p>  <p>Press This Button</p>	<h3>Salient Features of the POCSO Act</h3> <ul style="list-style-type: none"> • Child Friendly • Child is given police protection during the Investigative Procedure • Can avail Emergency Medical Treatment • Provisions for avoiding re-victimisation of the child • Special Court to decide compensation for the child • Can testify through Video-link • A CSA case should be disposed within one year of reporting
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Punishment Table under POCSO (Amendment) Act 2019

Sl. No	Punishable Offences	Section of punishment	Nature of Offence	Punishment
1.	Sexual Harassment	(Sec.12)	-Using sexual intent words, gestures, exhibit any object or part of body or make the child to do so -Constantly follow or watches or contact the child directly or through in any medium	3 years and fine
2.	Sexual Assault	(Sec. 8)	Sexual Intent touches of private parts of a child	3 to 5 years and fine
3.	Aggravated Sexual Assault	(Sec.10)	Sexual assault repeatedly/by more than one person/in the custody/by public servant/ if the child is below 12 years	5-7 years and fine
4.	Penetrative Sexual Assault-	(Sec.4)	If penetrates into the vagina/ mouth/ urethra/ anus Or insert any object or part of body into vagina/urethra/anus or make the child to do so	10 years to life imprisonment (if victim is below 16-20 years to rest of life imprisonment and fine)
5.	Aggravated Penetrative Sexual Assault	(Sec.6)	Penetrative sexual assault repeatedly / by more than one person / in the custody/by public servant / if the child is below 12 years / if the child is pregnant / if the child is affected by STD or HIV etc.	20 years to imprisonment for rest of life and fine or death penalty

Sl. No	Punishable Offences	Section of punishment	Nature of Offence	Punishment
6.	Pornography	{{Sec.14(1}}	Any person uses the child for any pornographic purpose	5-7 years and fine
7.	Using child and directly participating with Pornography	{{Sec.14 (2}}	Any person uses the child for any pornographic purpose and commit the offence under Sec.3, 5,7 & 9	5-7 years + punishment for participating in the act
8.	Storage and Propagation	(Sec. 15)	Any person who stores or possess pornographic materials	3-7 years and fine
9.	Abetment	(Sec.17)	Any person who instigates or pursue the conspiracy for the offence	3 years and fine
10.	Attempt to commit offence	(Sec.18)	Person attempt to commit any offence punishable under POCSO	50% of the maximum punishment fixed
11.	Failure of reporting	(Sec.21)	Any person who knows the fact fails to record the offence and report to the police	6 months to one year or fine or both
12.	False reporting	(Sec.22)	False complaint about sexual abuse with an intention to humiliate, threaten or defame a person	6 months (No punishment for a child)

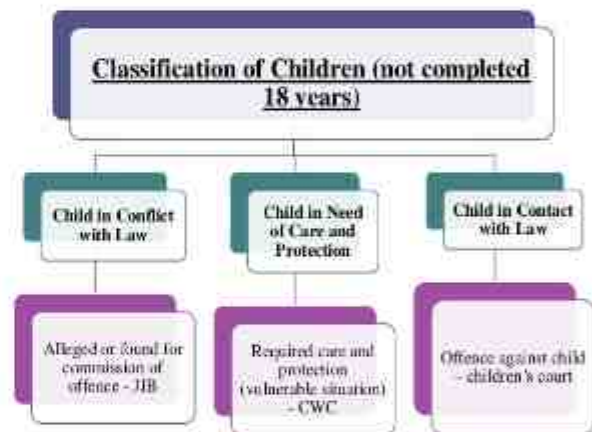
Safeguarding the children under Juvenile Justice (Care and Protection of Children) Act, 2015:

The Juvenile Justice Act (Care and Protection of Children) Act, 2015 is designed for the care, protection, development and rehabilitation of children in conflict with the law and children in need of care and protection under the age of 18 years by adopting a child-friendly approach and keeping in mind the best interests of the child.

Principles to be followed under JJ Act while dealing with the child victim of sexual abuse:

- (i) *Principle of presumption of innocence:* Any child shall be presumed to be an innocent of any *maia fide* or criminal intent up to the age of eighteen years.
- (ii) *Principle of dignity and worth:* All children shall be treated with equal dignity and rights.
- (iii) *Principle of participation:* Every child shall have a right to be heard and to participate in all processes and decisions affecting to his/her interest.
- (iv) *Principle of best interest:* All decisions taken shall be based on the best interest of the child and to help the child to develop full potential.
- (v) *Principle of family responsibility:* The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- (vi) *Principle of safety:* All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

- (vii) *Positive measures*: All resources are to be mobilised to promote the well-being, development and to reduce vulnerabilities of children.
- (viii) *Principle of non-stigmatising semantics*: Adversarial or accusatory words are not to be used in the processes pertaining to a child.
- (ix) *Principle of non-waiver of rights*: No waiver of any of the right of the child is permissible.
- (x) *Principle of equality and non-discrimination*: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment.
- (xi) *Principle of right to privacy and confidentiality*: Every child shall have the right to protection of his/her privacy and confidentiality, by all means and throughout the judicial process.
- (xii) *Principle of institutionalisation as a measure of last resort*: A child shall be placed in an institutional care as a step of last resort after making a reasonable inquiry.
- (xiii) *Principle of repatriation and restoration*: Every child shall have the right to be re-united with his/her family at the earliest.
- (xiv) *Principle of fresh start*: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
- (xv) *Principle of diversion*: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.
- (xvi) *Principles of natural justice*: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.



Children dealt with under the JJ Act:

The Juvenile Justice Act deals with two categories of children, i.e. Children in Conflict with Law and Children in need of care and protection. However, a third category of children are identified who are in contact with law. They also need care and protection from the state.

1. Children in Conflict with Law :

Child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence- (Sec. 2 (13) of JJ Act.)

The Act states that when an enquiry has been initiated against a child in conflict with law, the inquiry may be continued and orders may be made in respect of such person as if such person continues to be a juvenile.

According to Articles 37 and 40 of UNCRC, children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, takes into account their age and aims at their reintegration into society. All the children in conflicts with law are also considered as children in need of care and protection. Children in Conflicts with Law are produced before Juvenile Justice Board within 24 hours

Offences committed by children under JJ Act.

Offences have been categorized as petty/ serious/ heinous offences. Offences where punishment is less than or 3 years imprisonment are called Petty offence, where punishment is more than 3 three years and less than 7 years is called serious offence and when punishment is 7 years or more then the offences are considered as heinous offence.

Procedure for children in conflict with law:

A child in conflict with law will be sent to an Observation Home temporarily during pendency of inquiry. The child will be segregated according to age, gender, physical and mental status and nature of offence. A child who is found to have committed an offence by the Juvenile Justice Board will be placed in a Special Home.

Place of safety:

A Place of Safety will be setup for children above the age of 18 years or children of the age group of 16 - 18 years who are accused or convicted for committing a heinous offence. The Place of Safety will have separate arrangement and facilities for under trial children and convicted children

Procedure of children (16-18 years) committed heinous offence:

Children in the age group of 16 - 18 years may be tried as adults in cases of heinous offences like **rape** after preliminary assessment by the Juvenile Justice Board. The preliminary assessment is to be conducted within three months before transferring the case to the Children 's Court. The Act mandates that in case the child is tried as an adult by the Children 's Court, it shall ensure that the final order includes an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker. The Children's Court shall ensure that the child is kept in place of safety till he attains the age of twenty - one years. When he attains the age and the term is still pending, the Children's court shall evaluate whether he need to be transferred to jail or if he has undergone reformative changes and could be spared incarceration. However, there will no capital punishment or life imprisonment for a child.

2. Children in Need of Care and Protection (CNCP) :

As per sec. 2 (14) of Juvenile Justice Act, Child in need of care and protection means the child

1. Who is found without any home or settled place
2. Found working
3. Living with an abusive parent or has threat to be killed.
4. Mentally ill / Physically challenged
5. Parents are not fit to care
6. Abandoned / surrendered / orphaned
7. Missing or run away child
8. Vulnerable to sexual abuse/ exploitation
9. Vulnerable to drug abuse
10. Vulnerable to be abused for unconscionable gains
11. Victim of armed conflict/ civil unrest
12. Imminent risk of marriage before marriageable age.

Children in Need of Care and Protection and produced before Child Welfare Committee within 24 hours of their rescue who address their immediate needs of shelter, medical, counseling, restoration and other issues and are linked to long term rehabilitation.

The Child Welfare Committee is to send the child in need of care and protection to the appropriate Child Care Institution and direct a Social Worker, Case Worker or the Child Welfare Officer to conduct the social investigation within 15 days. A child may be placed in a Children's Home for care, treatment, education, training, development and rehabilitation. The Child Welfare Committee may recognize a facility to be a Fit Facility to temporarily take the responsibility of a child. The Specialized Adoption Agency is to take care of the rehabilitation of orphans, abandoned or surrendered children.



Juvenile Justice Board

A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class with at least three years' experience and two social workers selected in such manner as may be prescribed of whom at least one shall be a woman, forming a Bench.

Powers:

The Board shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. The Board constituted for any district shall have the power to deal exclusively with the proceedings under the Act:

- + In the area of jurisdiction of the Board,
- + In matters relating to children in conflict with the law.

When an alleged child in conflict with law is produced before the Board, it shall exercise its power to hold an inquiry according to the provisions of this Act and may pass orders as it deems fit under Section 17 and 18 of the JJ Act.

The Board is also empowered to inquire into heinous offences under Section 15 of the Act.

Sr. No.	Functions
01	Ensuring informed participation of the child & the parent or the guardian throughout the process
02	Ensuring protection of the child's rights throughout the process of arresting the child, inquiry, aftercare and rehabilitation
03	Ensuring the availability of legal aid for the child through various legal services institutions
04	Providing a qualified interpreter or translator to the child if he/she fails to understand the language during the course of proceedings
05	Directing Probation Officer/Child Welfare Officer/Social Worker to undertake a social investigation into the case. Further, directing them to submit the report within 15 days from the date of the first production before the Board.
06	Adjudicating and disposing of cases pertaining to children in conflict with the law according to the process mentioned in Section 14
07	Transferring matters to the Committee in cases where the child is alleged to be in conflict with the law, but is stated to be in need of care and protection at any stage

Sr. No.	Functions
08	Disposing of the matter and passing a final order which should include an individual care plan for the child's rehabilitation. This also includes follow-ups by officers or an NGO.
09	Conducting inquiry for declaring that a certain person is fit for taking care of the child in conflict with the law
10	Conducting inspection every month of residential facilities for children in conflict with the law and recommending various measures for improvement in the quality of services provided
11	Ordering the police for registration of FIR if any offence is committed against any child in conflict with the law
12	Conducting a regular inspection of jails meant for adults, to check if any child is lodged in such jails
13	Taking immediate measures for the transfer of a child found in jails for adults, to an observation home
14	Any other function as may be prescribed to the Board

Punishment for offences committed against the children:

Following is the list of offences against children and the punishment thereof.

Sl. No.	Offence against children	Section under JJ Act	Maximum Punishment
1	Disclosure of identity of the child during pendency of case	74	6-month imprisonment and fine upto 200,000/-
2	Cruelty to a child including hurting, neglect. Child marriage is also included	75	Upto 10 years imprisonment and fine 500,000/-
3	Employment of child for begging	76	Upto 10 years imprisonment and fine 500,000/-
4	Giving intoxicating liquor or narcotic drug or psychotropic substance to a child.	77	Upto 7 years imprisonment and fine 100,000/-
5	Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance	78	Upto 7 years imprisonment and fine 100,000/-
6	Exploitation of a child employee	79	Upto 5 years imprisonment and fine 100,000/-
7	Punitive measures for adoption without following prescribed procedures	80	Upto 3 years imprisonment and fine 100,000/-
8	Sale and procurement of children for any purpose	81	Upto 7 years imprisonment and fine 100,000/-

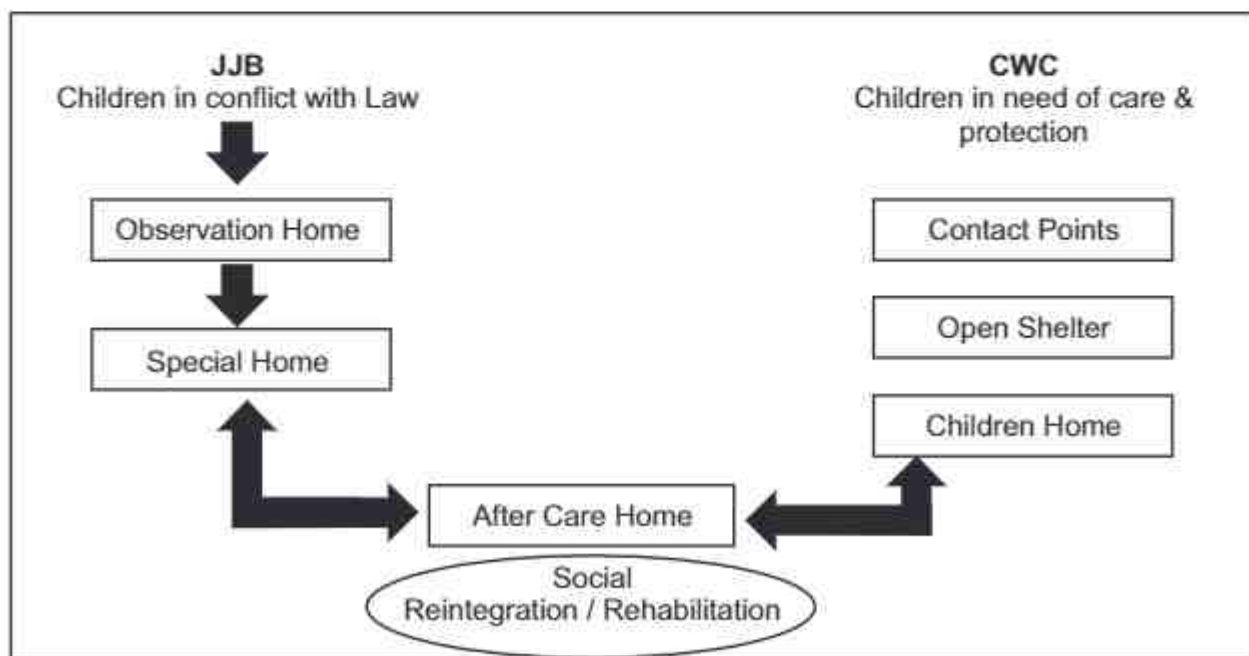
9	Corporal punishment	82	Upto 3 years imprisonment and fine 100,000/-
10	Use of child by militant groups or other adults	83	Upto 7 years imprisonment and fine 500,000/-
11	Kidnapping and abduction of child	84	As per the provision of IPC from sec. 59 to 69
12	Offences committed on disabled children	85	Twice the penalty provided for the offence under JJ Act.
13	Abetment	87	Same punishment provided for that offence
14	Non reporting of orphan / abandoned children for adoption	66	50,000/- fine for each case.
15	Non-registration of CCI	42	1 year imprisonment and fine upto 100,000/-

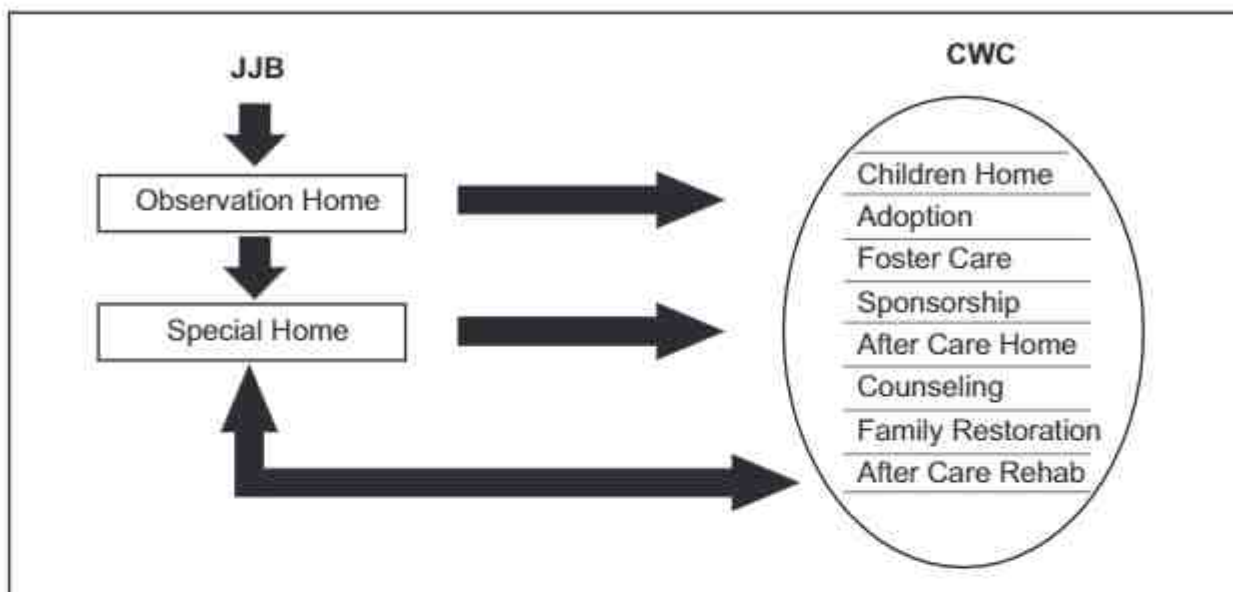
A child cannot be kept under police lock up:

Any child who is in conflict with law cannot be kept in police lock-up or jail under any circumstances. The Supreme Court said that Juvenile Justice Boards should not be 'silent spectators', in the case *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and Ors.*

Child Welfare Committee (CWC) :

Child Welfare committee is the final authority for exercising the powers and discharge duties in relation to child in need of care and **protection** under the Act. It is an autonomous body declared as a competent authority to deal with **children** in need of care and protection. (Section 27) and functions as a bench of Judicial Magistrate and dispose of cases in relation to the children in need of care and protection.





Mandatory registration of Child Care Institutions

All child care institutions, whether run by State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially for housing children, regardless of whether they receive grants from the Government, are to be mandatorily registered under the Act within 6 months from the date of commencement of the Act. Stringent penalty is provided in the law in case of non-compliance.

Social Reintegration measures :

The Child Care Institutions in respect of children in conflict with law are the Observation Home, Special Home, Place of Safety and fit facility.

For children in need of care and protection, Open Shelters, Children Home and Special Adoption Agencies have specific roles to play.

All Child Care Institutions have to be mandatorily registered within six months from the date of commencement of the Act and failure to do so is a punishable offence (Section 41).

Rehabilitation and Social Reintegration

The restoration and protection of a child shall be the prime objective of a Children's Home/ Specialized Adoption Agency/ Open Shelter. The Child Care Institution shall prepare Individual Care Plans for children in need of care and protection or children in conflict with law, preferably through family based care. Any child leaving a child care institution on attaining 18 years of age may be provided with financial support.

Monitoring

The National Commission for Protection of Child Rights as well as State Commission for Protection of Child Rights are mandated to monitor the implementation of the provisions of the JJ Act, 2015 in such manner, as may be prescribed (Section 109).

Role of CWC for Victims of Sexual Abuse :

The following Roles and Responsibilities have been planned based on the Standard Operating Procedure for Child Welfare Committee prepared by the Dept. of Women and Child Development, Govt. Of NCT of Delhi vide its Notification No. 61 (SOP)/CWC/DD/(CPU)/DwCD/2010-11 4011-4020 Dated 10th May 2013.

A) When information is received by a CWC from any source including the media regarding sexual abuse of a child under its jurisdiction the committee should take the following steps:

- a. Acknowledge receiving the information on record, take suo-moto cognizance of cases brought to notice and seek a report from local police within shortest possible time.
- b. A copy of such order should be mailed/faxed or sent by hand to the police station and to the state/district Child Protection Unit seeking necessary support in dealing with the cases.
- c. In case of no response from police, there must be a follow – up in a time bound manner. Matter must be brought to the knowledge of the senior police officers for necessary action. The state /District CPU should also be kept informed about action taken.
- d. Make efforts to locate the whereabouts of the victim and provide assistance by way of counselling, medical etc.

B. When a child victim of sexual abuse is produced before the Committee by any person, the Committee is required to do the following:

- a. If the child is in an institutional care (recognised or unrecognised) action as contained in Rule 60 (2) of the Delhi JJ Rules 2009 should be strictly followed by all concerned and CWC should ensure compliance. The Committee should seek a detailed report from the Head of the Institution within two days of having received such information regarding abuse of child in writing from any person or verbally from the child at the time of production of inspection of the institution.
- b. Child should be interviewed by a female member (s) separately. In case female member is not available only then the female Welfare Officer / Counsellor should interview the child in the presence of a CWC Member.
- c. Opinion of the family members and / or relatives should be sought before taking any decision about the child's care, protection and rehabilitation. The opinion sought should be mentioned in the order.
- d. The version of the child must be taken on record, identifying the abuser clearly, nature of abuse and need of the child for medical, psychological and psychiatric treatment. The name of the CWC Member and/or Welfare Officer / Counsellor who interviewed the child should be placed on record.
- e. In case the child is not in a position to speak due to age, mental and physical condition, Committee should make such observation referring to the medical examination report.
- f. In case the Committee finds any discrepancy in the statement of the child and the version recorded in the FIR and/ or medical examination report, the same must be indicated in the observation of the CWC in writing.

- g. In accordance with Rule 27 (9), the Committee shall facilitate filing of police complaint and FIR in all cases of sexual violence, exploitation and abuse of child.
- h. The Committee should also arrange for required legal aid through the legal aid counsel deputed by DALSA with the Committee and a copy of CWC order should be given to the concerned person.

C) Guidelines issued by Honb'le High Court of Delhi should be strictly followed as and where applicable in pursuance to the High Court Order. The CWC is required to do the following:

- a. In cases of incest and children in need of care and protection, the CWC shall examine the victim to ascertain the nature of support she is getting from her family and initiate steps for ensuring best interest of the child. In such cases, the CWC shall conduct a home study to assess and ensure the safety of the victim.
- b. In cases where the child is placed in an Institution, the Committee shall monitor the condition of the victim closely.
- c. In case of incest, while the victim stays in the children home the family members should be allowed to meet the victim only in the presence of the support person and care be taken by the staff of the home that the meeting is not used to pressurise/influence the victim to change her statement.
- d. CWC shall ensure that rehabilitation facilities are provided to the victim in appropriate cases. In case of prolonged stay, the victim should be given educational and vocational training in order to enable the victim to support herself after she leaves the children home.
- e. Before passing any order of restoration of custody of child to the family, the CWC shall conduct any inquiry to assess the suitability of the victim being restored to the family. The Custody of the child will be altered by the CWC only after consultation with the stake holders.
- f. CWC shall ensure that the victim is provided with necessary medical and psychological aid during her stay in Children Home for the purpose of her rehabilitation.
- g. CWC shall maintain a list of all registered Child Homes providing residential support, special services and rehabilitation facilities to the victim.

D) The role of CWC in handling cases of sexual abuse is well defined and prescribed under the provisions of JJ Act and Rules and POCSO Act and Rules. The same must be complied with the letter and spirit of the Act and Rules. The provisions under POCSO Rule are as under:

- a. Take cognizance of the children produced by Police/ SJPU, NGOs Childline or by any person including child himself/herself under the Provisions of JJ Act and POCSO Act.
- b. To provide a detailed assessment of the child produced by Police /SJPU under Rule 4 (3) of the POCSO Rules to the State Commission.
- c. In case the child is victim of abuse within a family or shared household, the CWC should decide within three days whether he/she needs to be taken out of the family. Shared household and placed in the children home / shelter home.
- d. CWC must take into account consent of the child and considerations listed I to VII under Rule 4 (5) of the POCSO Rule.

- e. CWC shall inform the parent/ guardian/ support person about the decision taken regarding the custody and also explain the reasons.
- f. As per Rule 4 (7) of POCSO Rule the CWC has to provide a support person to each child to render assistance through the process of investigation and trial. The CWC may designate W.O. of CWC/CIC Counsellor / WO, SJPU/WO, DCPU. Social Worker of NGO as support person. The CWC must explain to the support person his/her role and responsibilities. In case of a non-Govt. Person, CWC must ensure willingness and competence of the person before designating him/her as a support person.
- g. While deciding about the support person, CWC must take into account the opinion of the child/parent/guardian and ensure that he/she enjoys the trust and confidence of the child/parent/guardian.
- h. Compensation – CWC should facilitate the child's parents/guardians in seeking the compensation under victim compensation fund through DLSA as provided under section 33 of the POCSO Act. The W.O. posted in CWC should provide all required support to the persons applying for compensation.

E) Crisis Intervention Centre – CWC should coordinate with the crisis intervention centre programme of the Delhi Commission for Women and Delhi Police and refer all cases of Child sexual abuse for their intervention in writing and seek progress reports periodically.

Role of CWC under the Provisions of POCSO Rule 2020:

In the following areas, CWC has to play a vital role to ensure that the Rules of the POCSO is followed strictly in letter and spirit.

1. **As per Sec. 3 (4)** of POCSO Rule 2020 "Any institution housing children or coming in regular contact with children including school, crèches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual or any other person being an employee of such institution coming in contact with the child. Such institution shall also ensure that period training is organised for sensitising them o child safety and protection.
It means all the CCI coming under the supervision of CWC shall have to follow this Rule.
2. **Sec. 4 (4)** mandates that – Where the SJPU or the local police receives information under sub section (1) of sec. 19 of the Act 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 CCI and is without parental support, or the child found to be without any home and parental support the concerned SJPU or the local police shall produce the child before the concerned CWC 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 sec. 19 of the Act and with a request for a detailed assessment by the CWC.
3. **Sec. 4 (5)** of Rule – Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2015, to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home.

4. **Sec 4 (6)** of the Rule - In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely: -
- (i) The capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;
 - (ii) The need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;
 - (iii) The child's age and level of maturity, gender, and social and economic background;
 - (iv) Disability of the child, if any;
 - (v) Any chronic illness from which a child may suffer;
 - (vi) Any history of family violence involving the child or a family member of the child; and,
 - (vii) Any other relevant factors that may have a bearing on the best interests of the child.
- Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.
5. **Sec. 4 (7)** The child and child's 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 considered.
6. **Sec. 4 (8)** The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.
7. **Sec. 4 (9)** The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of this/her role in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.
8. **Sec. 4 (10)** Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.
9. **Sec. 4 (11)** The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.
10. **Sec. 4 (12)** The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental well being, and progress towards healing from trauma; engage

with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counselling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

11. **Sec. 4 (13)** It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.
12. **Sec. 4 (14)** SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per Form-A. It shall also complete the Preliminary Assessment Report in Form B within 24 hours of the registration of the First Information Report and submit it to the CWC.
13. **Sec. 4 (15)** The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following: -
 - (i) The availability of public and private emergency and crisis services;
 - (ii) The procedural steps involved in a criminal prosecution;
 - (iii) The availability of victim's compensation benefits;
 - (iv) The status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
 - (v) The arrest of a suspected offender;
 - (vi) The filing of charges against a suspected offender;
 - (vii) The schedule of court proceedings that the child is either required to attend or is entitled to attend;
 - (viii) The bail, release or detention status of an offender or suspected offender;
 - (ix) The rendering of a verdict after trial; and
 - (x) The sentence imposed on an offender.

Legal Aid and Assistance under POCSO Rule 2020 & Role of CWC:

1. As per Sec. 7. (1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as "DLSA") for legal aid and assistance.

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987).

2. As per Sec. 8 (1) For special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, CWC may recommend immediate payment of such amount as it may assess to be required at that stage, to any of the following: -

- (i) the DLSA under Section 357A; or;
- (ii) the DCPU out of such funds placed at their disposal by state or;
- (iii) funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

(2) Such immediate payment shall be made within a week of receipt of recommendation from the CWC.

3. As per Sec. 10. (1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim is in fact paid to the child.

(2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.

4. Sec. 12 of the Rule 2020 prescribes that – (f) NCPCR or SCPCR may call for a report on any specific case of child sexual abuse falling within the jurisdiction of CWC.

(g) NCPCR / SCPCR may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes provided under the Act, including information on (iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.

Rehabilitation & Social Re-Integration of Victims of CSA under JJ

As all the children victims of sexual abuse are CNCP their rehabilitation and re-integration plan will be done as per the provisions under JJ Act. If the child is found to without parental support, then following measure may be planned by the CWC.

1. Sec. 37 (1) a – CWC may declare the child a CNCP.
2. Sec. 37 (1) (b) restoration of the child to **parents or guardian or family** with or without supervision of Child Welfare Officer or designated social worker
3. Sec. 37. (1) (c) placement of the child in 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
4. Sec. 37. (1) (d) placement of the child with **fit person** for long term or temporary care
5. Sec. 37 (1)(e) **foster care** orders under section 44;
6. Sec. 37 (1) (f) **sponsorship** orders under section 45;
7. Sec. 37 (1)(g) 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;
8. Sec. 37 (1) (h) declaration that the child is legally **free for adoption** under section 38.
9. Sec. 37 (2) The Committee may also pass orders for (i) declaration of fit persons for foster care; (ii) getting after care support under section 46 of the Act; or (iii) any other order related to any other function as may be prescribed.

Role of JJB in case of Child Accused of CSA :

As per section 2 (33) of JJ Act 2015, "Heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

The punishment for Child Sexual Abuse especially if the child is a victim of penetrative sexual assault or aggravated penetrative sexual assault is more than 7 years of imprisonment and fine. Hence these are considered as Heinous Offence. If in case a child is apprehended of heinous offence and is produced before JJB, the Juvenile Justice Board has to play the following role and follow the following prescribed procedures as per the JJ Act.

- 1. As per Sec. 15. of JJ Act - (1)** In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

- (1) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period specified in section 14

As per Sec. 19. Of JJ Act - (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;
 - (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.
- (2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.
 - (3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

- (4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.
- (5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

Sec. 21. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

Age Determination of the Child :

(1) As per **Sec. 94. of JJ Act.** — (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

- (i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) The birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) And only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

Section 74 of Juvenile Justice Act 2015 - Prohibition on disclosure of identity of children:

(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published: Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

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- (2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.
 - (3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

Section 67- B - The Information Technology Act, 2000

Sec. 67-B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form. Whoever:

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- (d) facilitates abusing children online, or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

NACG EVAC India:

National Action and Coordination Group for Ending Violence Against Children (NACG EVAC), India, is the Country level Civil Society Forum of South Asia Initiative to End Violence Against Children SAIEVAC), an Inter-Governmental apex body of SAARC. It brings together NGOs, Networks, Coalitions, Media, Children Forums, Academia and other civil society bodies to promote interaction, networking, advocacy, sharing of good practices, and experience. NACG EVAC India is a country forum for collecting learning and sharing, advocacy and actions. It links country's action with wider effort of UN and international bodies. It has its operational areas at local, state & country level focusing on 5 critical thematic issues, i.e. Child Sexual Abuse and Exploitation, Child Trafficking, Child Labour, Child Marriage and Corporal Punishment, and 2 cross cutting issues i.e., Child participation and Children with Disability. It's strength and effectiveness lies in nationwide membership and active community engagement.

BMZ:

The Federal Ministry of Economic Cooperation and Development, abbreviated as BMZ, is a cabinet-level ministry of the Federal Republic of Germany. Founded in 1961, the Ministry works to encourage economic development within Germany and in other countries through international cooperation and partnerships. It cooperates with German international organizations involved in development including the International Monetary Fund, World Bank, and the United Nations.

World Vision Germany:

World Vision Germany was founded in 1979 as a child-focused humanitarian organisation working in the fields of development, relief and advocacy. More than 160,000 German sponsors currently support long-term programs benefiting the sponsored children as well as their families and communities. Through private donations and public funds WV Germany implements more than 300 projects in 50 countries in different sectors, such as Child Protection, Education, Livelihood, Health, Nutrition, WASH.

World Vision India:

World Vision India is one of the country's largest child-focused humanitarian organisations working through development, relief and advocacy, to create lasting change in the lives of children, their families, and communities living in poverty and injustice. With over six decades of experience at the grassroots, we employ proven, effective development, public engagement and relief practices empowering vulnerable children and communities living in contexts of poverty and injustice to become self-sufficient and bring lasting change. We serve children regardless of religion, race, ethnicity or gender. World Vision India works in 143 districts impacting around 26 lakh children and their families in over 6200 communities spread across 24 states and 2 union territories to address issues affecting children in partnership with governments, civil societies, donors and corporates.

PECUC:

Peoples' Cultural Centre (PECUC) is a child rights focused organization founded in 1990. Since last three decades, PECUC has been continuously working for children, their parents, Grandparents, families & communities to empower & enable them for leading a life of dignity. PECUC has implemented more than 135 projects and programmes in 30 districts of Odisha, 4 districts of Delhi and facilitated various campaigns at country level under different themes. PECUC has prioritised on different thematic issues i.e. Child Rights, Women Empowerment, Livelihood, Health, Hygiene and Sanitation, Rights of the Older Persons, Emergency Management & Climate Change Adaptation, Governance & Democracy, Youth Empowerment and Persons with Disabilities; implemented projects & programmes directly and in partnership with civil society organisations, communities, Government, and National, International organisations.



**National Secretariat of National Action & Coordination Group
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