

Ready Reckoner for Prevention and Protection of Children against Child Sexual Abuse (CSA) - Legal Handbook for Police (SJPU & AHTU)



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of Children against Child Sexual Abuse (CSA) -
Legal Handbook for Police (SJPU & AHTU)**

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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. JJ Act, 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 Ready Reckoner / Legal Handbook for Prevention and Protection of Children against Child Sexual Abuse (CSA) is a guide for Police (SJPU & AHTU) 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 Police has the duty and responsibility to ensure safety and protection of all children at their jurisdiction. The Police (SJPU and AHTU) 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 police needs 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 Police 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 Police personnel (SJPU and AHTU).

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).



Ranjan Kumar Mohanty, Ranjan Kumar Mohanty,
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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 under-gone 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.

When you get an unsafe touch, you may feel
bad, confused and helpless
You need not feel "bad" because it's not your fault.



Press This Button

Salient Features of the POCSO Act

- Child Friendly
- Child is given police protection during the Investigative Procedure
- Can avail Emergency Medical Treatment
- Provision 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

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
6.	Pornography	((Sec.14(1))	Any person uses the child for any pornographic purpose	5-7 years and fine

Sl. No	Punishable Offences	Section of punishment	Nature of Offence	Punishment
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)

Role of Police / SJPU in case of Child Sexual abuse:

The police play an important role for protection of children. The POCSO Act, 2012 mandates police to adopt child friendly procedures while dealing with cases of child sexual abuse.

Steps to be taken by police on receiving a report of child sexual abuse are given in the subsequent paragraphs. A police station that is aware of the various procedures can not only reduce the time taken to process a case but also ensure that the child does not have to go through any secondary trauma.

"Special Juvenile Police Unit (SJPU)" means a unit of the police force of a District or City or, as the case may be, any other Police Unit like Railway Police, dealing with children and designated as such for handling children under section 107 of J.J. Act, 2015.

Sec. 2 (55) of J.J. Act, 2015

1) Recording of Information

- + **Entry:** Record entry in a book about every report received about commission or apprehension of commission of a sexual offence in writing, ascribe an entry number, and read over to the informant.
- + **FIR:** Where information relates to commission, attempt or abetment of a cognizable offence, register a FIR as per Section 154, Cr. P.C and give a free copy to the informant.
- + **Recording of information given by child:** If the child is the informant, the report should be recorded in simple language to ensure child can understand contents being recorded.

- + **Person recording the information:** In cases of sexual offences under the IPC, the information should be recorded by a woman police officer or any woman officer.
- + **Recording information given by a child with disability:** Information by a girl temporarily or permanently disabled, mentally or physically, should be recorded by a police officer at her residence or at a convenient place of her choice in the presence of an interpreter or special educator and it should be video graphed.
- + **Assistance of Experts:** Take assistance of a qualified interpreter, translator, special educator, or person familiar with the manner of communication of the child, or experts, if necessary.
- + **Information:** Give details to the informant about the name, designation, contact information of the officer making the report and the details of the supervisor.

2) Recording the Statement

- + The statement of the child should be recorded at a place preferred by the child.
- + This can be at the child's home or if a child feels more comfortable in a garden nearby, then the statement must be recorded at that spot.
- + As far as practically possible, the child's statement should be recorded by a woman police officer not below the rank of Sub-Inspector.
- + The officer recording the statement of the child must be in plain clothes. They should not be wearing police uniform.
- + The statement of the child must be recorded in the presence of the child's parent/s or in the presence of an adult whom the child trusts. However, if a parent is also the accused they must not be present during the statement recording of the child.
- + The police officer recording the statement must ensure that the child does not come in contact with accused during statement recording and also investigation.
- + The child cannot remain at the police station at night for any reason cited.
- + The magistrate or the police officer may take the assistance of a translator or an interpreter while recording the statement of the child. Further, the magistrate or the police officer may seek the assistance of special educator or any person familiar with the manner of communication of child having a mental or physical disability to record the statement of the child.
- + As far as possible, the statement can be recorded by audio-video electronic means.
- + The police must maintain privacy and confidentiality of the child from public and media.

SHO should ensure that a lady police official/officer not below the rank of the Sub-Inspector should be available around the clock. While this is applicable to Delhi, other State Police may consider adopting this measure as well.

Recording of the statement of the victim child is a time taking process and needs to be handled sensitively. Give the child adequate breaks. Ensure that they are not hungry. Don't force answers out of them by asking close-ended questions. Patience is the key.

3) **Assessing the Child**

- + If the police are convinced that the child is without support or, in case of is living with the abuser or is in a situation of extraordinary risk at home, they need to record the reasons in writing.
- + They need to make immediate arrangements for the child's care and protection. This may include admitting the child to a hospital or shelter home within 24 hours of the report. If the child is living with the abuser, or is in an institution or is without a home and parental support, the police shall produce the child before the Child Welfare Committee within 24 hours.
- + If the police have assessed that the child needs emergency medical care, they must make immediate arrangement to take the child to the nearest hospital, either private or government.

4) **Medical examination**

- + The police must take the child to the hospital for medical examination within 24 hours of having received the report in accordance with Rule 6.
- + Ensure that the child and the accused do not come in contact during medical examination. No police person should be in uniform (including the constable) while taking the child to the hospital.
- + Medical examination is to be conducted as per the provisions of Section 27 of the POCSO Act, 2012 and Section 164A of the Cr. PC, 1973.

5) **Recording of Statement by Magistrate**

- + While recording the statement of the child under section 164 of the Code of Criminal Procedure, 1973, the Magistrate recording such statement shall, record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- + Provided that the provisions contained in the first proviso to Section 164 (1) of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.
- + The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under Section 27 of the Code of Criminal Procedure, 1973; upon the final report being filed by the police under section 173 of that Code.
- + The Investigating Officer should record the date and time at which they learnt about the offence taking place and the date and time at which they took the victim to the Magistrate.
- + In case of a child having a mental or physical disability, the Magistrate or the police officer may 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 to record the statement of the child.
- + Wherever possible, the Magistrate or the police officer shall ensure that the statement of the child is also recorded by audio-video electronic means.

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.

Procedure regarding care and protection of child – Sec. 4 POCSO Rule 2020

- (1) Where any Special Juvenile Police Unit (hereafter referred to as "SJPU") or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:-
 - (i) his or her name and designation;
 - (ii) the address and telephone number;
 - (iii) the name, designation and contact details of the officer who supervises the officer receiving the information.
- (2) If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police.

- (3) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -
- (a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that Code;
 - (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 6;
 - (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;
 - (d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately;
 - (e) inform the child and child's parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;
 - (f) inform the child and child's parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.
- (4) Where the SJPU or the local police receives information under sub-section (1) of section 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 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 (hereafter referred to as "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 section 19 of the Act, and with a request for a detailed assessment by the CWC.
- (5) 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 (2 of 2016), 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.
- (6) 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.

- (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.
- (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.
- (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 the role the Support person may play 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.
- (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.
- (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.
- (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.
- (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.

- (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.
- (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.

Reporting of pornographic material involving a child (Sec. 11 POCSO Rule 2020)

- (1) Any person who has received any pornographic material involving a child or any information regarding such pornographic material being stored, possessed, distributed, circulated, transmitted, facilitated, propagated or displayed, or is likely to be distributed, facilitated or transmitted in any manner shall report the contents to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the report, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.
- (2) In case the "person" as mentioned in sub-rule (1) is an "intermediary" as defined in clause (w) of sub-section (1) of section 2 of the Information Technology Act, 2000, such person shall in addition to reporting, as provided under sub-rule(1), also hand over the necessary material including the source from which such material may have originated to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the said material, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.
- (3) The report shall include the details of the device in which such pornographic content was noticed and the suspected device from which such content was received including the platform on which the content was displayed.
- (4) The Central Government and every State Government shall make all endeavours to create widespread awareness about the procedures of making such reports from time to time.

Medical aid and care – Sec. 6, POCSO Rule 2020

- (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.
- (2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.
- (3) No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.
- (4) The registered medical practitioner rendering medical care shall attend to the needs of the child, including:
 - (a) treatment for cuts, bruises, and other injuries including genital injuries, if any;
 - (b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
 - (c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
 - (d) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
 - (e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counselling, or drug de-addiction services and programmes should be made.
- (5) The registered medical practitioner shall submit the report on the condition of the child within 24 hrs to the SJPU or Local Police.
- (6) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.
- (7) If the child is found to be pregnant, then the registered medical practitioner shall counsel the child, and her parents or guardians, or support person, regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act 1971 and the Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016).
- (8) If the child is found to have been administered any drugs or other intoxicating substances, access to drug de-addiction programme shall be ensured.
- (9) If the Child is a divyang (person with disability), suitable measure and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016 (49 of 2016).

Entitlement of children who have suffered sexual abuse to receive information and services : POCSO Rule – 2020

FORM – A

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive Counseling and consultation for mental and psychological well being
5. For Recording of statement of child by woman police officer at child's home or any other place convenient to child
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith,
7. For Immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For Free Legal Aid.
12. For Support Person to be appointed by Child Welfare Committee,
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police

Duty Officer

(Name & Designation to be mentioned)

Date:

I have received a copy of 'Form-A'

(Signature of Victim/Parent/Guardian)

(Note : The form may be converted in local and simple Child friendly language)

Form-B
Preliminary Assessment Report

Parameters		Comment
1.	Age of the victim	
2.	Relationship of child to the offender	
3.	Type of abuse and gravity of the offence	
4.	Available details and severity of mental and physical harm/injury suffered by the child	
5.	Whether the child is disabled (physical, mental or intellectual)	
6.	Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income.	
7.	Whether the victim has undergone or is undergoing any medical treatment due to incident of the present case or needs medical treatment on account of offence.	
8.	Whether there has been loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial or other reason?	
9.	Whether the abuse was a single isolated incident or whether the abuse took place over a period of time?	
10.	Whether the parents of victim are undergoing any treatment or have any health issues?	
11.	Aadhar No. of the child, if available.	

Date:

Station House Officer

Sexual offences under Indian Penal Code :

Offence	Defined	Punishment
Sec.294 Obscene acts and songs	<ul style="list-style-type: none"> • Does any obscene act in any public place, • Sings, recites or ut ters any obscene song, ballad or words, in or near any public place 	Imprisonment of 3 months, or with fine, or both.

<p>Sec.354 Assault or criminal force to woman with intent to outrage her modesty.</p>	<p>criminalizes any act by a person that assaults or uses criminal force against a woman with the intention or knowledge that it will outrage her modesty</p>	<p>Either simple or rigorous imprisonment of up to 2 years, or a fine, or both.</p>
<p>Sec.354A Sexual Harassment</p>	<p>A man committing any of the following acts:</p> <ul style="list-style-type: none"> i. Physical contact and advances involving unwelcome and explicit sexual overtures; or ii. A demand or request for sexual favours; or iii. Showing pornography against the will of a woman; or iv. Making sexually colored remarks, 	<p>Rigorous imprisonment for a term that may extend to 3 years, or a fine, or both Punishment for (iv) is either simple or rigorous imprisonment for a term which may extend to 1 year, or a fine, or both.</p>
<p>Sec.354B Assault or use of criminal force to woman with intent to disrobe</p>	<p>Assault or use of criminal force against a woman with the intention of disrobing her, i.e. with the intention of depriving her of her clothing or forcing her to be naked.</p>	<p>Either simple or rigorous imprisonment of 3 to 7 years + Fine.</p>
<p>Sec.354C Voyeurism</p>	<p>A man watching or capturing the image of a woman engaged in a private act in circumstances where she would usually not expect to be observed by the perpetrator or by any other person on the orders of the perpetrator or the distribution of an image so captured by the perpetrator.</p>	<p>Simple or rigorous imprisonment of 1 to 3 years + fine. Repeated offenders are punished with simple or rigorous imprisonment of 3 to 7 years + fine.</p>
<p>Sec.354D Stalking</p>	<p>Act to include continuous following or contacting a woman by a man or attempts to contact a woman to build a personal relationship with that women even when the woman has shown a clear lack of interest. It also include acts of monitoring a woman's electronic communication, i.e.</p>	<p>First time, Either simple or rigorous imprisonment of up to 3 years + fine</p>

Sec.375 / 376 Rape	sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age.	7 - 10 years to Life imprisonment + Fine
Sec.377 Unnatural sex	Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal.	Imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years + Fine.
Section 509 Word, gesture or act intended to insult the modesty of a woman.	<ul style="list-style-type: none"> • Intention to insult the modesty of a woman, • The insult must be caused- <ul style="list-style-type: none"> ○ by uttering some word, or making some sound, or gesture or exhibiting any object or so as to be heard or seen by such woman, or ○ by intruding upon the privacy of such woman. 	Simple imprisonment for a term which may extend to 3 years + Fine.

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 *mala 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 (CCL)** and **Children in Need of Care and Protection (CNCP)**. 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

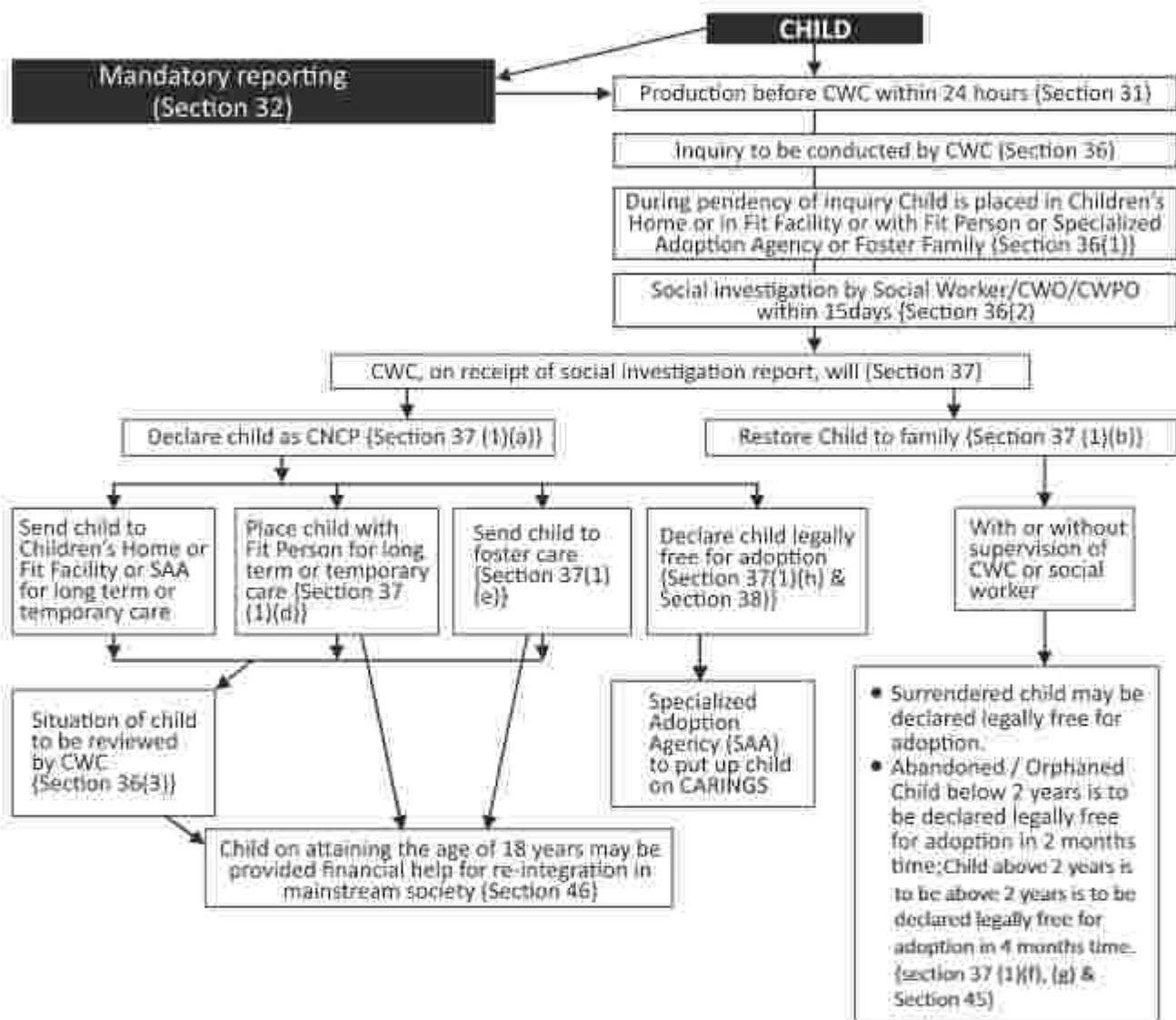
1. Who is found without any home or settled place
2. Found working
3. Living with an abusive parent or has threat to be killed.
4. Mentally ill / Physically challenged
5. Parents are not fit to care
6. Abandoned / surrendered / orphaned
7. Missing or run away child
8. Vulnerable to sexual abuse/ exploitation
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.

Procedure in case of CNCP:

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.

Flow Chart of Processes for CHILD IN NEED OF CARE AND PROTECTION (CNCP)



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.

Functions of JJ Board :

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
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

Child Welfare Committee (CWC) :

1. As per Sec.28 of the Act, there should be a meeting of the Child Welfare Committee at least twenty days in a month for observing rules and procedures with regards to the transaction at its business meetings.
2. A sitting of the Committee is considered when there is a visit to an existing child care institution of the Committee. A child, who is in need of care protection and care needs to be placed in a Children's Home or a fit person when the Committee but is not in session, he/she must be produced before an individual member of the Committee.
3. The opinion of the majority shall prevail if there is any difference of opinion between the members of the Committee or if there is no majority of such kind then the opinion of the Chairperson shall be considered.
4. Subject to the provision of minimum members of the Committee, there shall be no order made by the Committee that declares it invalid by reason of just the absence of a member during any stage of the proceedings that are held.
5. This is applicable provided that there are at least three members who need to be there to dispose of the case finally.

Powers of CWC:

The powers of the Child Welfare Committee as laid down in Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015:

1. The Committee has the full authority of disposing of cases for the care, protection and treatment of the children.
2. The Committee can also dispose of cases that are for the development, rehabilitation and protection of children that are in need, and also to provide for the basic need and protection that is needed by the children.
3. When a Committee is constituted for any particular area, then it has the power to exclusively deal with all proceedings that are being held under the provisions of this Act that are related to children in terms of need of care and protection.
4. While exercising the given powers curtailed under this Act, the Committee is barred from performing any act which would go against anything contained in any other law that is in force at that time.



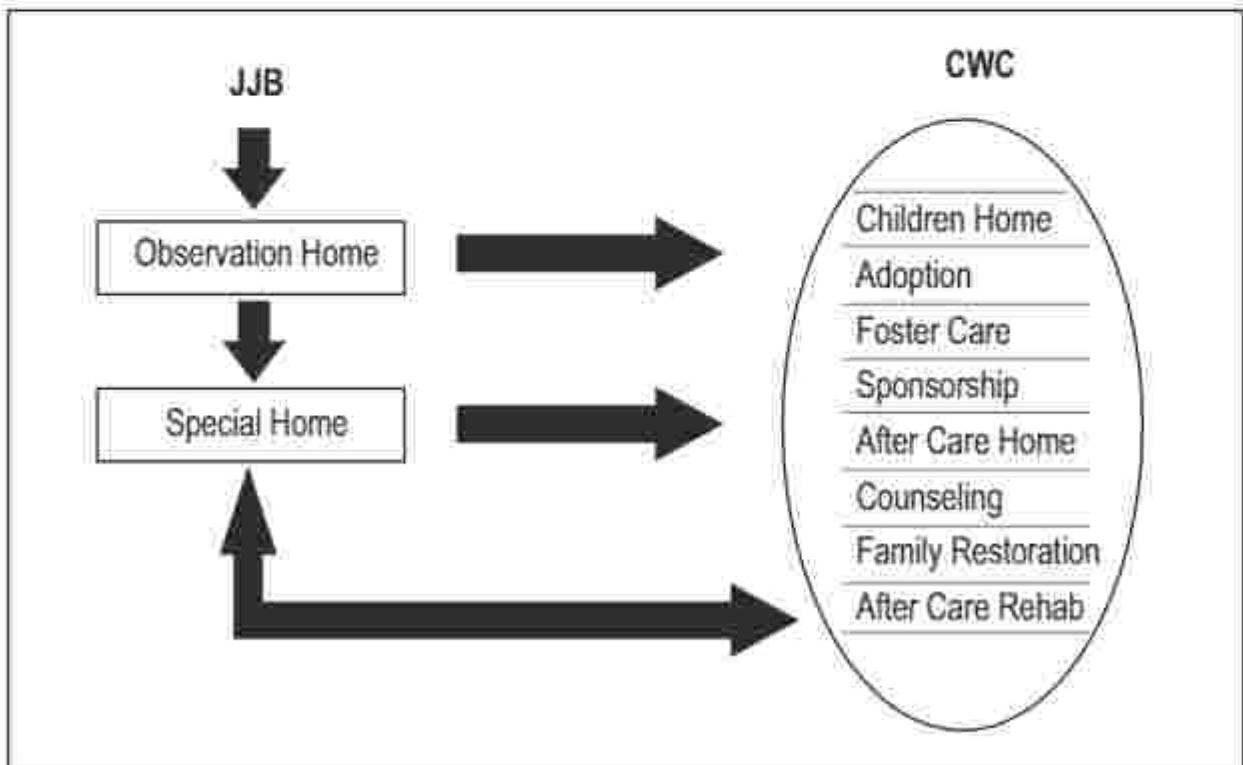
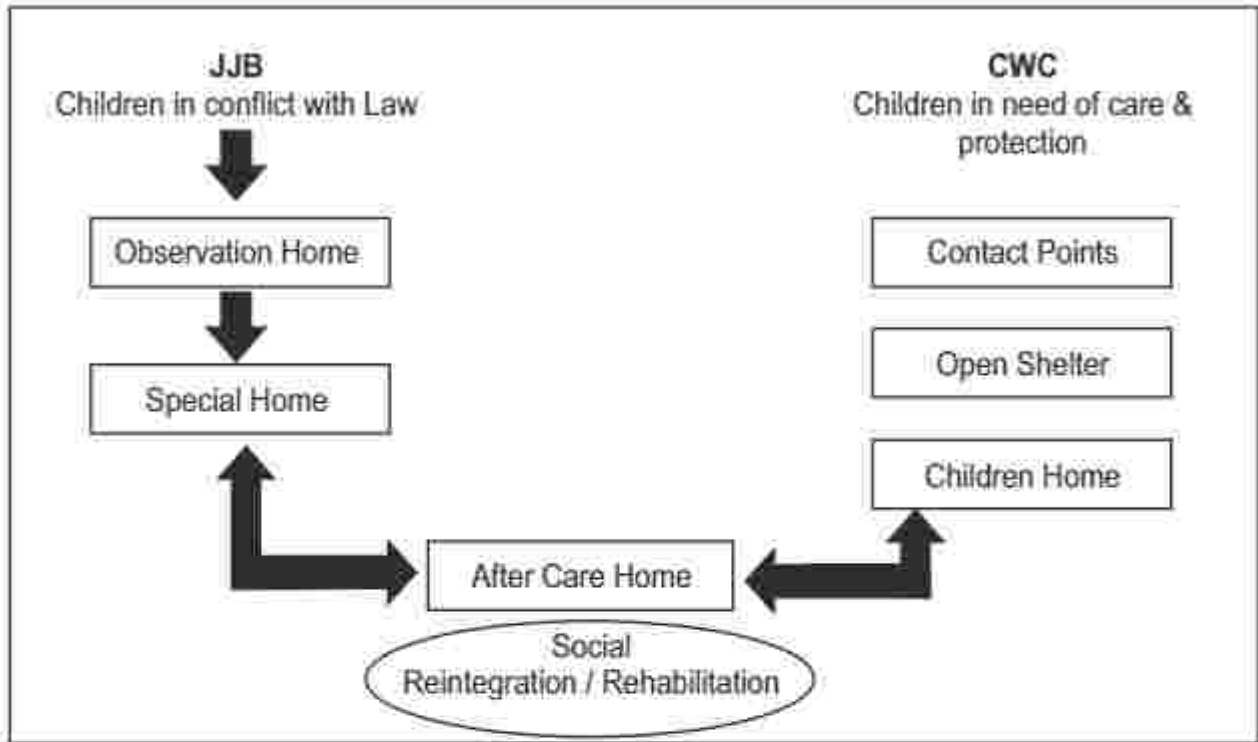
Functions & Responsibilities of CWC:

The Functions and Responsibilities of the Child Welfare Committee as mentioned in Section 30 of the Act, are listed below:

1. Cognizance of children that are produced before it. Children who are neglected can be produced before this committee.

2. Conducting inquiry on issues relating to and affecting the safety and well being of the children under this Act.
3. To direct the Child Welfare Officers, District Child Protection Unit and Non- Governmental organizations for social investigation and also to submit a report before the Committee.
4. To conduct an inquiry for the declaration of fit persons for the care of children in need of care and protection.
5. To direct placing of a child in a foster care facility.
6. To ensure care, protection, restoration and appropriate rehabilitation of those children that is in need of care and protection. This is based on that child's individual care plan. It also includes the passing of necessary directions to parents or guardians or the people who are fit or children's homes or fit facilities in this regard.
7. To select a registered institution for the placement of every child that requires support which is based on that child's gender, age, disability and needs. This should be done by keeping in mind the available capacity of the institution.
8. To recommend action that is for the improvement in the quality of services provided to the District Child Protection Unit and the Government of a State.
9. To certify the performance of the surrender deed by the parents and to make sure that they are given time to think about their decision as well as to make a reconsideration to keep the family together.
10. To make sure that all the efforts are made for the restoration of the lost or abandoned children to their families by following due process which is prescribed by the Act.
11. To declare children legally free for adoption after due inquiry who are orphans, abandoned and surrendered.
12. To take suo moto cognizance of cases and also to reach out to the children who are in need of care and protection.
13. To take action against the rehabilitation of children who are abused sexually and are reported as children in need of protection and care from the Committee, by the Special Juvenile Police Unit or the local police as the case may be.
14. To deal with cases referred by the Board under sub-section (2) of 17 of this Act.
15. To coordinate with various departments those are involved in the care and protection of children. These departments include the police, the labour department and other agencies.
16. To conduct an inquiry and give directions to the police or the District Child Protection Unit in case of a complaint of abuse of a child.
17. To access appropriate legal services for the children.
18. To perform such other functions and responsibilities as may be prescribed.

Jurisdictions of JJB and CWC in a nutshell:



Punishment for offences committed against the children under JJ Act:

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.*

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).

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

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 reformative 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 :

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.

Services available to children victims of sexual abuse

- 1098: The Childline Helpline
- Police
- Medical Care: A child victim of sexual offences receives free medical care and treatment at any private or government hospital.
- Counselling to child: Professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development are to be associated with the pre-trial and trial stage to assist the child.
- Free Legal Counsel: The family or the guardian of the child victim shall be entitled to the assistance of a legal counsel of their choice for any offence under ○ this Act. The Legal Service Authority shall provide a legal counsel to the child victim free of cost.
- Compensation: Various States in the country have different compensatory schemes for child victims of sexual offences.
- Support Person: The CWC can provide a Support Person to assist the child victim and family during the investigation and trial of the case.
- Shelter: If the child victim continues to remain unsafe or at-risk at home, especially in cases involving incest, the child may be transferred to a Shelter Home where all needs of the child will be taken care of.
- Education: Post the incident of abuse, it is essential that the child's life is gradually returned to normal. Enrolling in schools and resuming their education is an important step towards rehabilitation of the child. Under the RTE Act, 2009, the child can receive free and compulsory education till the age of 14 years.

Procedure for Media under POCSO Act 2012 and JJ Act 2015

- (1) Sec. 23. Of POCSO – (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.
- (2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
- (4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

Prohibition on disclosure of identity of children under JJ Act – Sec. 74

- (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.
- (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.

Anti-Human Trafficking Unit (AHTU)

AHTU is a task force with powers to collect intelligence, take up investigation of cases and file prosecution reports, as well as undertake other deterrent actions like eviction of places, etc. In certain states, AHTUs have been notified as a police station and therefore, they can register FIR as *suo motu* and proceed with investigation. In other states where they are not notified as police station, the Superintendent of Police (SP) should get the case registered with the jurisdictional police station and thereafter get the case investigated by the AHTU. As per the configuration envisaged, every AHTU should have at least one NGO as its component. The SP of the district needs to ensure this.

ROLE OF SPECIAL JUVENILE POLICE UNIT (SJPU) / LOCAL POLICE)

1) Reporting to Special Court and Child Welfare Committee

The SJPU or local police shall report the Child Welfare Committee (CWC) and the Special Court about every case of POCSO within a period of 24 hours. If the child was assessed as a child in need of care and protection, information of the steps taken to provide the same to the child must be sent along with the information about the case.

As per Section 19(6) of the POCSO Act, 2012

Where an F.I.R. has been registered before the Special Juvenile Police Unit (SJPU) or local police station in respect of any offence committed against a child under the said Act, the case should be reported by the SJPU or the local police to the Child Welfare Committee (CWC) within 24 hours.

Child is to be produced before the CWC in the following three situations.

- i. There is 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
- ii. The child is living in a child care institution and is without parental support, or
- iii. The child is found to be without any home and parental support.

Support Person :

The child must have access to support services which provide information, emotional and psychological support and practical assistance which are often crucial to the recovery of the child and help him to cope with the aftermath of the crime and with the strain of any criminal proceedings.

The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, to provide support to the child through the pre-trial and trial process. The support person is thus, in a way, a guardian for a child. He/she can be a useful intermediary between the authorities and the child.

2) Information to Informant and Victim

The Police must inform the informant about their own name, designation, address, telephone number and also their supervisor's. They must inform the child victim and family about:

- Right of the child to legal aid and representation and contact information of District Legal Services Authority.
- Availability of private and public health services and emergency crisis services.
- Procedures related to the case.
- Status of investigation
- Status of arrest of accused and status of the bail application
- Availability of compensation,
- Filing of charge-sheet
- Schedule of Court proceedings including information about time, date and venue.
- Contents of judgment and its implications.

3) Conduct Investigation and File Charge-sheet

- + Forensic samples: Samples collected for forensic tests should be sent to the forensic laboratory at the earliest.
- + Diary entries: The IO should enter proceedings in the investigation in the diary day by day and record information about the time at which information reached him, time at which investigation began and closed, places visited, and statement of the circumstances ascertained, and statement of witnesses. It should also be paginated.
- + Timeline: The investigation in a case of rape of a child may be completed within three months from the date on which information was recorded by the officer in-charge of the police station.

4) Do's and Don'ts for Police

REGISTRATION OF COMPLAINT	
Do's	Don'ts
Register every complaint regarding sexual offence committed against children	Refuse the registration of the complaint on any Grounds
Believe the child and the family. Be sensitive towards them irrespective of religion, race, caste, sex or place of birth or any of them.	Be judgmental of the child or the family. Blame the child or the family for the incident
Take down the complaint in detail from the Complainant	Insist on talking to the child or interviewing the child before registration of the complaint
Ascribe an entry number, read over the complaint to the informant and enter the complaint in a book to be maintained by the police unit	Make a random entry of the complaint in your Records
Ascribe an entry number, read over the complaint to the informant and enter the complaint in a book to be maintained by the police unit	Make a random entry of the complaint in your Records
Ensure you write the complaint in a simple language if the child is the complainant.	Use legal language or jargons which the child cannot understand
Seek help from an expert in case you cannot understand the language or the mode of communication of the child	Try to do this yourself with a child with special needs or who doesn't understand your language

PROTECTION OF THE CHILD	
Do's	Don'ts
Make immediate arrangements for the care and protection of the child including health needs or need for a shelter home if required	Ignore the needs of care & protection of the child.
Report the matter to the local Child Welfare Committee & the Special Court within 24 hours of registration of the complaint.	Provide the victim victim's family information regarding availability of free legal aid and other support services in the district
Provide the victim victim's family information regarding availability of free legal aid and other support services in the district.	Assume that they would know of the procedures and services to help the child
RECORDING THE STATEMENT OF THE CHILD	
Do's	Don'ts
Record the statement of the child in a place of comfort and choice of the child	Insist on recording the statement of the child in the premises of the police station
Be sympathetic and patient towards the child during the process	Ask leading questions or make derogatory remarks about the child or the incident during your interaction.
Others¹	
Do's	Don'ts
All applicable provisions under the POCSO Act, IPC, RPD Act, IT Act, Atrocities Act, and other relevant laws should be identified and included in the FIR.	The informant/child should not be humiliated and no aspersions should be cast on their character
Documents relating to the age of the victim such as birth certificate from the school, matriculation or equivalent certificate from the concerned examination Board, or a birth certificate given by a corporation or municipal authority or Panchayat should be collected.	The accused should not be asked to come to the police station in the presence of the victim for verification or confrontation.
In the absence of above - mentioned documents, an ossification test or any other latest medical age determination test should be requested.	

Ensure

- + Inform the parents/guardians in advance of the date of recording of the statement
- + You are not in uniform
- + As far as practicable, statement of the child shall be recorded by women police officer not below the rank of Sub-Inspector at the residence of child or at a place where he usually resides or at the place of his choice.
- + Record the statement in the language of child and as spoken by the child
- + Allow the parents/guardians, support persons or any other trusted adults to be present during the recording.
- + Statement is written/typed as the child speaks
- + Child get's frequent breaks and is comfortable during the recording of statement
- + In a case of a special child or a disabled child seek help of experts
- + While recording the statement using a audio-visual device, assess the quality of the equipment beforehand and ensure the child is comfortable speaking in front of the camera
- + After statement is recorded, read out the statement loudly to the child and its parents/guardians. If there are any changes or corrections make it then and there.
- + Provide a copy of the statement to the child and the family
- + Provide them with your complete details especially your name, designation and telephone Number Explain in brief the next steps that follow post the recording of the statement
- + Provide full support and protection to the child
- + Make sure that the child and the accused do not come in contact with each other after the registration of the complaint throughout the entire judicial process.

1) Legal Representatives

i. Free Legal Aid:

Under Section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under Section 40 of POCSO Act 2012, providing that the child or his/her family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority.

In every District, a District Legal Services Authority has been constituted to implement the Legal Services Programmes in the District. The District Legal Services Authority is usually situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

ii. Public Prosecutor

- 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.
- 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.

iii. Services that may be provided by Legal Aid Authorities:

- Legal Representation
 - o The abused child should be provided with such care and protection as required by law. Any such action shall be in accordance with the procedures established by the State Legal Services Authority and the National Legal Services Authority. The Form for Application for Legal Services should be provided to the child by the police at the time of making the report under Section 19(1).
- Legal Counselling
 - o Complainants in need of legal aid/ assistance/ advice in cases of violations of child rights may seek aid/ assistance from the Legal Aid Cell so that the child is able to testify in court without fear.
- Legal Advice
 - o The Cell shall render such aid/ assistance/ advice to the complainant as well as send its legal opinion in such cases to the concerned govt. authorities for suitable action. Governmental and Non Governmental Organisations, Civil Society Organisations, voluntary organisations, parents, relatives, concerned friends and members of the public may, on behalf of the child in need of care & protection, approach the Cell and receive legal advice regarding the legal rights of the child and the means for accessing those rights. The Cell will provide requisite information and advice to the concerned persons regarding the legal options available for protecting the interests.

iv. Guidance on examining child victims and witnesses

During criminal investigation, some minimum levels of protection are required in relation to any interviews with the victim. These should be carried out in a sensitive manner and advocates as well as law enforcement officials should have received appropriate training to this end. Such training should ensure that these persons know appropriate methods of interviewing which will take account of a victim's particular situation, minimize distress and maximize the collection of high-quality evidence. In order to ensure that the child-friendly trial procedures established under

- Before trial
 - o List cases for an as soon as possible and avoid adjournments.
 - o Ensure that communication with the child is in an understandable language and manner.
 - o Consider what special measures may be taken in light of the child's wishes and needs.
 - o Ensure that the child is able to exercise his/her right to be accompanied by an adult in whom he has trust and confidence.
 - o Chart all stages of children's evidence to minimize time at court and give them a fresh start in the morning
 - o Request that the child is given an opportunity to visit the court to familiarize himself with it before the trial
 - o Request that the child sees or can be briefed on his/her statement for the purpose of memory-refreshing before trial
 - o Consider the witness's access to the building and suitability of waiting areas

- o At trial
 - o Children have the right to be heard in any judicial and administrative proceedings affecting them.
 - o Ensure ahead of time that equipment is working, recordings can be played and that camera angles will not permit the witness to see the defendant.
 - o Explain that the judge or magistrates can always see the witness over the live video link.
 - o Request the Public Prosecutor to himself to the child before the trial and to answer his/her questions.
 - o Encourage the child to let the court know if they have a problem.
 - o Do not ask the child at trial to demonstrate intimate touching on his/her own body.
- v. Role of lawyer for the child

The Legal Aid services lawyer, or, as the case may be, the private lawyers appointed by the child and/or his/her family, plays a critical role. While it is the Special Public Prosecutor appointed under the POC SO Act, 2012 who will essentially be in charge of the trial in the Special Court, the child's lawyer is entrusted with the task of ensuring that the child's interest is protected. Thus, his/her role extends to representing the child, helping uncover the nature and extent of abuse, identifying responsible parties and securing damages to compensate the victim and facilitate the healing process.

- o In addition to this, the legal aid or private lawyer should also be able to build a good rapport with the Special Public Prosecutor, as this would ensure that all concerns in respect of the child are raised before the Court in the course of the trial.
 - o The lawyer must provide independent representation and advice to the child.
 - o The lawyer has a duty to put before the Court the views of the child, but should not require the child to express a view if he does not want to do so. However, the lawyer shall not be required to put before the Court any views expressed to him in confidence.
 - o Where a lawyer has been appointed to represent a number of children, some of whom are able to provide a view as to representation and some of whom are unable to do so, the lawyer must be alert to the possibility of conflict. In some cases the lawyer may be obliged to seek separate representation for one or more of the children.
 - o Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.
- o The lawyer shall represent the child in accordance with the child's welfare and best interests.
- o At a hearing, the lawyer should

- o Identify all relevant issues which need to be determined in regard to the child's welfare and best interests;
 - o Ensure that the Court has all the necessary information that is relevant to the welfare and best interests of the child, including the views of the child, so that an informed decision can be made;
 - o Call evidence where appropriate (other than any Court's witness), for example, from psychological and/or medical professionals and teachers;
 - o Ensure the lawyer does not give evidence himself or herself;
 - o Cross-examine to ensure all relevant issues are fully explored; and
 - o Make submissions on behalf of the child.
- After the conclusion of the trial
- o The lawyer should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding. He should give the necessary information on possible measures that could be taken, such as appeal or other mechanisms for complaints as well as compensation.
 - o When a decision has not been enforced, the child should be informed through his/her lawyer of available remedies either through non-judicial mechanisms or access to justice.
 - o The child's lawyer, guardian or legal representative should take all necessary steps to claim compensation for the child.



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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